

VIA COURIER

Privileged & Confidential

Securities and Exchange Commission
Office International Corporate Finance
Division of Corporation Finance
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Attention of Paul Dudek, Esq.

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OUR REF SCMMH

YOUR REF

CLIENT MATTER NO. 095456-0309

CONFIDENTIAL TREATMENT REQUESTED

July 25, 2001

Public Avail. Date: 11/3/01 0128200210

Act	Section	Rule
1933	2(3)	—
1933	4(1)	144
1933	5(a)	—

Dear Ladies and Gentlemen:

Attached please find (i) a letter requesting that the Division of Corporate Finance of the Securities and Exchange Commission confirm that no enforcement action be taken by the Securities and Exchange Commission in connection with the spin-off by Kingfisher plc ("Kingfisher") of its general merchandising and home entertainment operations and (ii) a letter requesting reinstatement of an exemption from the registration requirements of Section 12(g) of the Securities Exchange Act of 1934, as amended, pursuant to the Rule 12g3-2(b) for Kingfisher. We hereby request, on behalf of Kingfisher, confidential treatment for the attached requests, as well as for any related correspondence. This request for confidential treatment is made for the reason that certain of the facts set forth in the attached request have not been made public.

This confidential treatment request is made under the Freedom of Information Act pursuant to Section 200.83 of the Securities and Exchange Commission's Rules of Practice. It is our understanding that, pursuant to this rule, (i) no determination as to the merits of our request will be made at this time, and (ii) if the staff receives a request for any of the documents subject to this request for confidential treatment, we will be notified and provided with the opportunity to substantiate our request for confidential treatment.

Pursuant to Regulation 200.81, we respectfully request on behalf of Kingfisher that the attached request and any related correspondence be accorded confidential treatment until 120 days after the date of the response to such request or such earlier date as the staff of the Securities and Exchange Commission is advised that all of the information in this letter has been made public.



FRESHFIELDS BRUCKHAUS DERINGER

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Please direct any questions relating to this request for confidential treatment and any notices to the undersigned at 011 44 20 7716 4502 or at the above address.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Miika Heiskanen'.

Miika Heiskanen

cc: Sarah C. Murphy, Esq.
Freshfields Bruckhaus Deringer

David Springthorpe
Kingfisher plc

Kate Brown, Esq.
Kingfisher plc



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Attention of Paul Dudek, Esq.

CONFIDENTIAL TREATMENT REQUESTED

July 27, 2001

Kingfisher plc Spin-off

Securities Act of 1933
Sections 2(3), 5,
Rule 144 and Rule 145

Dear Ladies and Gentlemen:

We are acting as special United States counsel to Kingfisher plc, a company incorporated under the laws of England and Wales ("Kingfisher"), in connection with the proposed demerger (the "Demerger") from Kingfisher of its general merchandise retailing and home entertainment businesses, referred to as Kingfisher General Merchandise. Kingfisher General Merchandise comprises Sandelcroft Limited, a limited liability company organized under the laws of England and Wales and a wholly owned subsidiary of Kingfisher ("Sandelcroft"), VCI plc, a company organized under the laws of England and Wales and a wholly owned subsidiary of Kingfisher ("VCI"), and Streets Online Limited, a limited liability company incorporated under the laws of England and Wales and a 91% owned subsidiary of Kingfisher ("Streets Online", and together with Sandelcroft and VCI, the "Demerged Businesses"), respectively, and the businesses operated by Sandelcroft, VCI and Streets Online and their subsidiaries as described below. Although Kingfisher does not have any specific plans to do so, it is possible that prior to the Demerger some parts of the Kingfisher General Merchandise will be sold to a third party buyer and thus will not be included in the Demerged Businesses.

Prior to the Demerger, the shares of Streets Online and VCI will be transferred under Sandelcroft, certain companies not part of Kingfisher General Merchandise will be transferred out of Sandelcroft and, upon Demerger, the shares of Sandelcroft will be transferred by Kingfisher to Flagbriar Limited, a company incorporated under the laws of England and Wales ("GM Newco") in satisfaction of a dividend in specie declared on Kingfisher's ordinary shares

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(the "Kingfisher Shares"). New shares of GM Newco will then be issued to the existing shareholders of ordinary shares of Kingfisher.

We are writing this letter to request, on behalf of Kingfisher and GM Newco, that the staff of the Securities and Exchange Commission (the "Staff") confirm that (i) it will not recommend that the Securities and Exchange Commission (the "Commission") take enforcement action if, pursuant to the Demerger, a limited number of United States persons are the recipients of the shares of GM Newco, the company intended to hold the shares of Sandelcroft (including VCI and Streets Online), and (ii) the shares of GM Newco received by Kingfisher shareholders will not be deemed "restricted securities" within the meaning of Rule 144(a)(3) of the Securities Act of 1933, as amended ("Securities Act").

Kingfisher Shares are listed on the London Stock Exchange and Premier Marche of Euronext Paris. As of June 2, 2001, there were 26 persons with United States addresses on the Kingfisher share register owning in aggregate 48,778 Kingfisher Shares (representing approximately 0.003% of all outstanding Kingfisher Shares). The Bank of New York (the "Depository") has established a sponsored American Depositary Receipt ("ADR") program in 1988 to facilitate over-the-counter trading with Kingfisher Shares. As of June 2, 2001, there were 22,134,603 Kingfisher Shares (representing approximately 1.58% of all outstanding Kingfisher Shares) represented by ADRs (the "Kingfisher ADRs") outstanding under the ADR program. The Depository has advised Kingfisher that as of June 2, 2001 the Kingfisher ADRs were held by one person (being The Depository Trust Corporation) for the benefit of 150 persons with United States addresses. Furthermore, as of July 15, 2001 approximately 6.71% of the outstanding shares of Kingfisher were held by U.K. based fund managers who were holding shares on behalf of 71 persons with United States addresses. Thus, there were 247 holders of Kingfisher Shares and ADRs with addresses in the United States, who owned of record in aggregate approximately 8.29% of Kingfisher outstanding share capital. As Kingfisher has not made any offerings into the United States, it is assumed that the U.S. shareholder base of Kingfisher has developed gradually in secondary market trading. Kingfisher has submitted an application to the Commission to perfect an exemption under Rule 12g3-2(b) under the Securities Exchange Act of 1934, as amended ("Exchange Act") from the reporting requirements of Section 12(g) of the Exchange Act. In addition, GM Newco has undertaken to submit information in order to establish for its shares an exemption from the reporting requirements of Section 12(g) of the Exchange Act to the extent necessary, because GM Newco's ordinary shares ("GM Newco Shares") may be in the future owned by more than 300 persons resident in the United States. GM Newco does not currently intend to set up a new ADR programme in respect of the GM Newco Shares.

On September 13, 2000, Kingfisher announced its intention to pursue the Demerger to create a separately listed company to operate the general merchandise retailing and home entertainment businesses of Kingfisher. Kingfisher on the other hand intends to continue to operate its electrical and home improvement goods retailing businesses. Due to U.K. tax considerations, the Demerger is structured as an "indirect demerger". In this regard, GM Newco, which has



been a dormant indirect subsidiary of Kingfisher, will act as the demerging company. GM Newco will have no assets or liabilities prior to the Demerger.

Immediately prior to the Demerger, all issued and outstanding shares of GM Newco are expected to be transferred to certain officers of Kingfisher ("Pre-Demerger Shareholders"), who also will own shares of Kingfisher. Thereafter, Kingfisher will declare a dividend to the holders of Kingfisher Shares. The dividend is then satisfied by the allotment and issuance (the "Distribution" and, together with the Demerger, the "Demerger Proposals") by GM Newco of GM Newco Shares to the holders of Kingfisher Shares in consideration for the transfer by Kingfisher to GM Newco of the entire issued share capital of Sandelcroft (including Kingfisher's holdings in VCI and Streets Online). No consideration will be payable by the holders of Kingfisher Shares in connection with the Distribution.

The Distribution will be *pro rata*¹ to the holders of Kingfisher Shares and, through the Depository, holders of Kingfisher ADRs in accordance with the terms of the deposit agreement. The result of the proposed Demerger and Distribution is that the GM Newco Shares to be issued will, immediately after the Distribution, be 100% owned directly and in the same proportion by the same shareholders that own the Kingfisher Shares at the time of the Demerger. The Demerger will not, in and of itself, change the interests of the holders of Kingfisher Shares or Kingfisher ADRs in the assets of Kingfisher. The shareholders of Kingfisher will have the same proportionate interest in the same aggregate assets immediately before and after the Demerger. Immediately following the Demerger, these same shareholders will hold a 100% interest in GM Newco, rather than continuing to hold their 100% interests in Sandelcroft and VCI and their 91% interest in Streets Online through Kingfisher. These same shareholders also will maintain their proportionate interest in the remainder of Kingfisher. The structure of the Demerger outlined above is dictated by U.K. tax considerations and is expected to result in a tax-free spin-off in all material respects in the United Kingdom.

The only activity of GM Newco after the Demerger will be the holding of the shares in Sandelcroft (including VCI and Streets Online). In connection with the Demerger, GM Newco will convert to a public limited company and it is proposed that the GM Newco Shares will be admitted to the Official List of the United Kingdom Listing Authority ("UKLA") and to trading on the London Stock Exchange market for listed securities (the "Admission"). Admission of the GM Newco Shares is currently expected to take place in the second half of August 2001. GM Newco currently does not intend to list the GM Newco Shares on a U.S. securities exchange, or seek quotation on the Nasdaq National Market or any other inter-dealer quotation system in the United States, or sponsor an ADR program for GM Newco Shares in connection

¹ Save that in respect of the Pre-Demerger Shareholders the number of GM Newco Shares allotted and issued to them will be reduced by the number of GM Newco Shares already held by them immediately prior to the Demerger. Without this marginal adjustment, the Pre-demerger Shareholders would own after the Distribution a proportionately higher holding in GM Newco than they currently hold in Kingfisher.



with the Distribution. The Distribution is thus not being effected to create a public market in the United States for the GM Newco Shares.

The rules of the UKLA and the terms of Kingfisher's Articles of Association require Kingfisher to call a general meeting to approve the Demerger Proposals and the proposed Distribution. Prior to holding such general meeting and the Admission, information conforming to the listing rules of the UKLA (the "Listing Rules") and the U.K. Financial Services Act 1986 is required to be and will be disseminated regarding Kingfisher, GM Newco (including the businesses of Sandelcroft, VCI and Streets Online) and the Demerger Proposals. Such information will be contained in (i) a shareholder circular for Kingfisher (the "Shareholder Circular") containing information about the Demerger that is required by the UKLA or otherwise deemed necessary by Kingfisher to enable its shareholders to make an informed decision as to whether or not to approve the Distribution and other matters related to the Demerger and (ii) a detailed disclosure document (the "Listing Particulars") containing certain information about GM Newco to be issued and filed by GM Newco with the UKLA in respect of the listing of the GM Newco Shares on the London Stock Exchange. Each of the Listing Particulars and the Shareholder Circular is subject to the review and, in the case of the Listing Particulars, approval of the UKLA before it is disseminated. We understand that the review is broadly similar to that performed by the Commission during Securities Act registration.

Prior to a vote on the Demerger Proposals, Kingfisher will send to its shareholders (including those resident in the United States), and the Depositary has confirmed in writing to Kingfisher that it will send to the holders of Kingfisher ADRs, the Shareholder Circular and the Listing Particulars. Kingfisher is exempt from Section 14(a), 14(b), 14(c) and 14(f) of the Exchange Act pursuant to Rule 3a12-3(b) thereunder, however, the Shareholder Circular and the Listing Particulars will be drafted so that such documents will contain information substantially similar to the information which would be made available to shareholders in a proxy or information statement concerning the Distribution complying with Schedules 14A or 14C under the Exchange Act.²

Upon completion of the Demerger, it is intended that the Kingfisher Shares will continue to be listed on the London Stock Exchange and Euronext Paris and, immediately following the Demerger, the GM Newco Shares are expected to be listed on the London Stock Exchange. Application on behalf of GM Newco will be made after the structure of the Demerger has been finalized by a separate letter to the Commission to establish an exemption from the reporting requirements under the Exchange Act pursuant to Rule 12g3-2(b) thereunder, and GM Newco will also comply with the information supplying requirements under Rule 12g3-2(b) so long as it believes that it may have more than 300 shareholders resident in the United States.

² See discussion in Section IV(d)(i) of this letter.



As noted above, Kingfisher has submitted by separate letter an application to reinstate for itself the exemption from the reporting requirements under the Exchange Act pursuant to Rule 12g3-2(b).

I. No-Action Request

On behalf of Kingfisher and GM Newco, we respectfully request that the Staff confirm that (i) it will not recommend enforcement action to the Commission in the event that the Distribution of GM Newco Shares to holders of Kingfisher Shares and, through the Depositary, holders of Kingfisher ADRs, is effected in the manner described herein without registration under the Securities Act in reliance upon our opinion that the Distribution will not constitute a "sale" or other "disposition for value" within the meaning of Section 2(3) of the Securities Act and (ii) that the GM Newco Shares received by the holders of Kingfisher Shares or, through the Depositary, holders of Kingfisher ADRs will not be deemed to be "restricted securities" within the meaning of Rule 144(a)(3) of the Securities Act.

Sections IV, V and VI of this letter discuss the no-action position requested in connection with the Demerger in light of the previous positions taken by the Staff.

II. Kingfisher, Sandelcroft, VCI and Streets Online

Kingfisher currently is the parent company of a group of businesses, which include: (i) home improvement goods retailing, referred to as Kingfisher DIY; (ii) electrical appliances retailing, referred to as Kingfisher Electrical; and (iii) general merchandise retailing and home entertainment, referred to as Kingfisher General Merchandise (collectively, the "Kingfisher Group"). For the financial year ended February 3, 2001, the turnover of Kingfisher was £12,134.2 million and operating profit was £670.3 million of which approximately £3,358 million or 27.7 % and £140.7 million or 21.0 % was attributable to its general merchandise retailing operations, respectively.

Kingfisher General Merchandise comprises businesses, which Kingfisher currently operates under Sandelcroft, VCI and Streets Online. Sandelcroft, together with its subsidiaries, operates Woolworths, a leading UK based retailer chain, and MVC, a fast-growing UK based home entertainment chain. Woolworths is one of the largest retailers of kidswear, entertainment, toys and confectionery in the UK with 797 stores and approximately 616,000 square meters of retail space. The other subsidiaries that are being spun-off in the Demerger include VCI, a cross-media publishing company that focuses principally on the publication of music and videos, and Streets Online, the UK's leading on-line entertainment retailer. VCI was acquired by Kingfisher in November 1998, and Streets Online, which represents a small portion of the overall business, in December 2000.

In light of the differing business focuses and strategies, on September 13, 2000, Kingfisher announced its intention to restructure its operations and to break up the Kingfisher Group into



two constituent parts, GM Newco to be comprised of Kingfisher General Merchandise (i.e., Sandelcroft, VCI and Streets Online) and Kingfisher to be comprised of the retained businesses of Kingfisher (i.e., Kingfisher DIY and Kingfisher Electrical).

The primary objective of the Board of Directors of Kingfisher in demerging the Kingfisher General Merchandise is to facilitate the development of GM Newco and Kingfisher as separate businesses with their own focussed strategies, geographic scopes of activities and dedicated management teams. Kingfisher General Merchandise operates primarily on the high street in the UK, through the main brands of Woolworths and MVC. There is, in addition, some vertical integration in the provision of CDs, cassettes and videos through MVC, a home entertainment chain, and VCI, a music and video publisher and distributor. Kingfisher General Merchandise operates almost exclusively in the UK, in markets that are mature and highly competitive.

Kingfisher DIY and Kingfisher Electrical, the retained businesses of Kingfisher, operate in an international context. Although Kingfisher DIY and Kingfisher Electrical operate through distinct retail formats in each country in which they are present, there is an increasing convergence in the products that customers want and the way in which they are sold internationally. A key to continued growth in the profitability of the retained businesses is as part of a group with global reach. The individual brands in the UK will, at different times and in different measure, benefit from and contribute to the better buying terms that derive from the group's scale and the inside track on innovations in formats, merchandise, service and systems that are developed within the group.

The challenges facing the two groups are sufficiently different to have led to the conclusion that the retail activities of General Merchandise on one hand and Kingfisher DIY and Kingfisher Electrical on the other should be managed separately. Further, the board believes that the Demerger will enable the two businesses to grow substantially and that the new entities will be better positioned to participate in the consolidation of their respective industries. Therefore, the board believes that the Demerger is in the best interests of Kingfisher and its shareholders as a whole.

Following the Demerger, Kingfisher and GM Newco will each operate as separate companies and neither company will have a shareholding in the other. There will be no overlapping directors or officers between Kingfisher and GM Newco. Each of Kingfisher and GM Newco believes that, following the Demerger, it will be able to service its respective debt obligations in accordance with their terms. It is expected that, following the Demerger a number of relationships will continue to exist between Kingfisher and GM Newco for a transition period. These arrangements will, without limitation, include:

- (i) Sourcing — It is expected that Kingfisher will continue to provide certain products procurement and distribution services to GM Newco; and



- (ii) Gift Vouchers and Employee Discounts — It is expected that gift vouchers issued by Kingfisher stores will continue to be accepted by all other Kingfisher stores and by stores which after the Demerger will be operated by GM Newco and that gift vouchers issued by GM Newco stores will continue to be accepted by GM Newco stores and all Kingfisher stores. Similarly, employees of both Kingfisher and GM Newco will continue to qualify for employee discounts in both their own and each other's stores.

All future dealings between Kingfisher and GM Newco will be conducted on a commercial basis.

III. The Distribution

The Demerger Proposals will be conditional upon the approval by the shareholders of Kingfisher at the Kingfisher general meeting and upon the Admission. The conditionality of the Demerger Proposals themselves, however, should not affect the analyses and conclusions set forth in this letter.

The following actions will be taken in connection with the Demerger Proposals:

1. Prior to the Demerger, Kingfisher will transfer (i) the 91% shareholding in Streets Online under Sandelcroft from Kingfisher, and (ii) certain other assets and investments under Kingfisher from Sandelcroft.
2. Kingfisher will distribute to its shareholders the Shareholder Circular, a notice convening the Kingfisher general meeting to approve the Demerger Proposals (the "Notice"), a form of proxy and the Listing Particulars a minimum of 14 clear days before the Kingfisher general meeting, and will request the Depositary to distribute to holders of Kingfisher ADRs its Shareholder Circular, the Notice, voting instruction cards prepared by the Depositary and the Listing Particulars.
3. The shareholders of Kingfisher will vote on the approval of the Demerger Proposals at the general meeting expected to be held in the second half of August 2001. The announcement of the result of such vote will be made shortly after such meeting.
4. The Demerger (if approved by Kingfisher shareholders at the general meeting and the remaining conditions, including Admission, are fulfilled) will be effected soon after the Kingfisher general meeting. Upon the completion of the Demerger, the CREST accounts³ of the shareholders of Kingfisher will be credited with GM Newco Shares issued pursuant to the Distribution and share certificates representing the GM Newco Shares issued pursuant to the

³ CREST is the U.K. paperless settlement system enabling securities to be evidenced otherwise than by a certificate and transferred otherwise than by written instrument. The Articles of Association of GM Newco permit the holding of GM Newco Shares under the CREST system.



Distribution will be sent to those Kingfisher shareholders with no CREST accounts, including the Depository. GM Newco will, after the Demerger, comply with the information supplying requirements under Rule 12g3-2(b).

5. Kingfisher proposes to effect a consolidation of its share capital immediately after the Demerger through a process that would be classified as a reverse stock split in the United States. The aim of the consolidation is to reduce the number of Kingfisher shares in issue by a proportion approximately equal to that proportion which the demerged business represents of the combined value of the retained businesses and the demerged business post-Demerger.

IV. Section 2(3) of the Securities Act

Our opinion is that the Distribution should not be viewed as constituting an "offer to sell" or "sale" of securities within the meaning of Section 2(3) of the Securities Act and, consequently, registration of the GM Newco Shares should not be required.

Staff Legal Bulletin No. 4 (September 16, 1997) ("Bulletin No. 4") and a series of no-action letters involving share distributions similar to the proposed Distribution have confirmed that registration of the shares distributed is not required where: (1) the parent shareholders do not provide consideration for the spun-off shares; (2) the spin-off is *pro rata* to the parent ordinary shareholders; (3) the parent provides adequate information about the spin-off and the spun-off company to its shareholders and to the trading markets; (4) the parent has a valid business purpose for the spin-off; and (5) the spun-off shares are not "restricted securities" and if the parent spins-off "restricted securities," it has held those securities for at least two years (unless it formed the subsidiary being spun-off). See Bulletin No. 4. Also see, e.g., AB Electrolux (available April 28, 1997) ("Electrolux"); Asea AB (available April 25, 1991) ("Asea"); B.A.T Industries plc (available July 5, 1990) ("B.A.T"); British Gas plc (available December 4, 1996) ("British Gas"); English China Clays plc (available September 1, 1994) ("English China Clays"); Hanson plc (available January 22, 1997) ("Hanson II"); National Grid Holding plc (available November 28, 1995) ("NGH") and Sears plc (available June 19, 1998) ("Sears").

(a) Consideration for Spun-Off Shares.

As discussed in the description of the Distribution above, no consideration will be payable by the holders of Kingfisher Shares or Kingfisher ADRs in connection with the Distribution. Kingfisher will transfer the whole of the issued share capital of Sandelcroft (including Kingfisher's holdings in VCI and Streets Online, which will be transferred to Sandelcroft in preparation of the Demerger) to GM Newco and will declare a dividend to the holders of Kingfisher Shares. The dividend will be satisfied by the issuance of GM Newco Shares by GM Newco to such holders.



(b) *Pro Rata* Distribution.

As discussed in the description of the Distribution above, the Distribution will be *pro rata*⁴ to the holders of Kingfisher Shares. Hence, the number of shares which GM Newco has in issue immediately after the Demerger will be the same as that which Kingfisher has in issue. The result of the proposed Demerger and Distribution is that the GM Newco Shares to be issued will, immediately after the Distribution, be 100% owned directly and in the same proportion by the same shareholders which own the Kingfisher Shares at the time of the Demerger. The Demerger will not, in and of itself, change the interests of the holders of Kingfisher Shares and Kingfisher ADRs in the assets of Kingfisher. The shareholders of Kingfisher will have the same proportionate interest in the same aggregate assets immediately before and after the Demerger. Immediately following the Demerger, these same shareholders will hold 100% interests in Sandelcroft and, through Sandelcroft, a 100% interest in VCI and a 91% interest in Streets Online through their interest in GM Newco, rather than continuing to hold their 100% interests in Sandelcroft and VCI and 91% interest in Streets Online through Kingfisher. The shareholders of Kingfisher will also maintain their proportionate interest in the remainder of Kingfisher.

(c) Valid Business Purpose.

As noted in certain "no-action" requests, the Staff has, in recent years, looked to the economic substance of transactions rather than to their form. By doing so, the Staff has not viewed transactions such as the Distribution as a disposition of securities for value, but rather as a means of facilitating a policy decision of the distributing entity based on business reasons. See, e.g., AB Electrolux; Asea AB; B.A.T; British Gas; English China Clays; Hanson II; NGH and Sears.

The proposed Distribution is unlike the situations presented in *SEC v. Datronics Engineers, Inc.*, 490 F.2d 250 (4th Cir. 1973) ("Datronics"), and *SEC v. Harwyn Industries Corp.*, 326 F. Supp. 943 (S.D.N.Y. 1971) ("Harwyn"), in which corporations used spin-offs without any valid business purpose to create public markets in their securities without registration of the shares. In both *Datronics* and *Harwyn*, the spin-offs were accomplished without dissemination of adequate information to either the marketplace or the shareholder-recipients. The Courts liberally construed the words "for value" under Section 2(3) in *Datronics* and *Harwyn* in order to prevent violations of the "spirit and purpose of the registration requirements." See *Harwyn*, 326 F. Supp. at 954.

⁴ Save that in respect of the Pre-Demerger Shareholders the number of GM Newco Shares allotted and issued to them will be reduced by the number of GM Newco Shares already held by them immediately prior to the Demerger. Without this marginal adjustment, the Pre-demerger Shareholders would own a proportionately higher holding in GM Newco after the Distribution than they currently hold in Kingfisher.



The policy concerns which led to the decisions in Datronics and Harwyn and the position of the Commission expressed in Securities Act Release No. 4982 (July 2, 1969) ("Release 33-4982") are not present in the Distribution. The Distribution to holders of Kingfisher Shares is motivated by valid business purposes rather than by a desire to evade the registration requirements of the securities laws.

The Board of Directors of Kingfisher has determined that the Demerger will facilitate the development of GM Newco and Kingfisher as separate businesses with their own focussed strategies, their own geographic scopes of activities and their own dedicated management teams and that this will enable the two businesses to grow substantially and participate in the international consolidation of their respective industries. Based on these reasons, there is clearly neither a desire nor an intention to evade the requirements of the United States securities laws, and we believe that the proposed Distribution satisfies the valid business purpose test.

(d) *Adequate Information.*

Bulletin No. 4 states that whether the parent provides adequate information in connection with a spin-off where the parent company is not a reporting company or where the spun-off entity will not register its securities under the Exchange Act requires an analysis of all the facts and circumstances.

(i) *Adequate information about the Distribution.*

As required by U.K. law and the Listing Rules, holders of Kingfisher Shares (and, through the Depositary, holders of Kingfisher ADRs) and the marketplace will receive extensive information about the Distribution through the Shareholder Circular and the Listing Particulars. Together, these documents will contain a description of the Distribution, a description of the general merchandise retailing and home entertainment businesses of Kingfisher (currently operated by Sandelcroft, VCI and Streets Online), financial information regarding general merchandise retailing and home entertainment businesses of Kingfisher extracted from that of Kingfisher, *pro forma* financial information regarding Kingfisher and reflecting the Distribution, as well as a discussion of the tax consequences of the Distribution to holders of the Kingfisher Shares and the Kingfisher ADRs in the United Kingdom and in the United States.⁵

As mentioned above, the Shareholder Circular and the Listing Particulars will be drafted so that, together, such documents will contain information substantially similar to the information which would be made available to shareholders in a proxy or information statement concerning

⁵ Consistent with the basis upon which Kingfisher reports financial information and GM Newco intends to report financial information, all financial information will be presented in accordance with U.K. generally accepted accounting practices.



the Distribution complying with Schedule 14A or 14C under the Exchange Act.⁶ Attached hereto as Exhibit A is a detailed comparison of the type of information to be contained in the Listing Particulars and the Shareholder Circular to the type of information contained in an Exchange Act proxy or information statement and an Exchange Act registration statement on new Form 20-F. As Exhibit A indicates, the Shareholder Circular and the Listing Particulars will contain information of a nature substantially comparable with that included in similar United States documents.

In British Gas, NGH, English China Clays and B.A.T, the Staff recognized that requiring a non-U.S. company to conform its home country disclosure documents to United States securities laws would be unnecessary and unduly burdensome. In taking no-action positions at the request of British Gas, NGH, English China Clays and B.A.T, the Staff emphasized that the documents that were to be distributed by British Gas, NGH, English China Clays and B.A.T in accordance with the requirements of the laws of the United Kingdom and the Listing Rules were sufficient and satisfied the requirement that the United States shareholders of the distributing company receive adequate information with respect to the distribution transaction. The Staff has not required registration of the shares of the spun-off companies under the Exchange Act nor has it required formal compliance with the disclosure guidelines and forms applicable to registration statements or proxy statements under the Exchange Act in order to satisfy the "adequate information" criterion described above.

(ii) *Adequate Information about GM Newco.*

As discussed above, a great deal of information about GM Newco and the Demerger Proposals will be made available through the Shareholder Circular and the Listing Particulars. With respect to ongoing reporting, GM Newco will become subject to the reporting obligations of the UKLA and will be and will continue to be subject to the U.K. Companies Act 1985. As in the British Gas, NGH, English China Clays, B.A.T and Sears transactions, GM Newco has no intention to list the GM Newco Shares on a United States securities exchange or obtain a quotation on the Nasdaq National Market or any other inter-dealer quotation system in the United States in conjunction with the Distribution. Accordingly, under Section 12 of the Exchange Act and Rule 12g3-2 thereunder, GM Newco will not be required to register the GM Newco Shares under the Exchange Act. As discussed above, GM Newco intends to comply with the information supplying requirements of Rule 12g3-2(b) under the Exchange Act.

Providing United States shareholders with periodic information through compliance with the requirements for foreign private issuers under Rule 12g3-2(b) should adequately support "pink-sheet"- trading in GM Newco Shares in the United States. It is our view that providing the

⁶ In addition, the Shareholder Circular and Listing Particulars will contain specific disclosure stating that (a) the GM Newco Shares will not be registered under the Exchange Act and (b) the primary market for the GM Newco Shares will be the London Stock Exchange. Further, the Notice will contain information regarding the Demerger and Kingfisher's general meeting.



regular and periodic information required by the UKLA and compliance with the requirements for foreign issuers under Rule 12g3-2(b) of the Exchange Act should satisfactorily substitute for Exchange Act registration under these circumstances. Requiring registration under the Exchange Act, in view of the Commission's policy that a foreign company that does not voluntarily create an active trading market for its securities in the United States should be exempt from the registration and reporting requirements of the Exchange Act, would impose an undue burden and is not required to accomplish the purposes of the Exchange Act.⁷ As indicated in Exhibit A, the contents of the Listing Particulars will provide Kingfisher shareholders with information of a nature substantially comparable to that contained in an Exchange Act registration statement on Form 20-F and similar to that provided to their shareholders by foreign private issuers incorporated in England and Wales in previously effected spin-offs.

(e) "Restricted Securities".

The Staff has taken the position in Bulletin No. 4 that a parent company must spin-off securities either (i) which are not "restricted securities" as defined in Rule 144(a)(3) under the Securities Act or (ii) which the parent has held for at least two years (unless the parent formed the subsidiary being spun-off rather than acquired the business from a third party).

In the Demerger, Kingfisher is effectively distributing shares of GM Newco, which is an entity holding the shares of Sandelcroft, a subsidiary of Kingfisher since 1988, and the shares of VCI, a subsidiary of Kingfisher since November 1998. The shares of Streets Online have only been owned since December 2000. However, these shares represent a small portion of the Demerged Businesses calculated on the basis of turnover, operating profit and gross assets⁸. Further, these shares were not acquired for the purpose of distributing the Streets Online shares to the public without registration, but to complement the e-commerce operations and the distribution network of Kingfisher's general merchandise businesses. Therefore, we believe that the assets distributed in the Demerger satisfy the two-year holding requirement set out in Bulletin No. 4.

⁷ We recognize that in the event that GM Newco does list ADRs representing the GM Newco Shares on a securities exchange in the United States or obtains a quotation on the Nasdaq National Market or on another inter-dealer quotation system in the United States after the Distribution is effected, GM Newco will become subject to the reporting requirements under the Exchange Act and would be obligated to file periodic reports with the Commission accordingly.

⁸ For the financial year ended December 31, 1999, the turnover of Streets Online was £3.5 million and its operating loss was £6.6 million. In comparison, in the financial year ended January 29, 2000, the turnover and operating profit attributable to the Demerged Businesses were £2,261.5 million and £126.4 million, respectively. As of December 31, 1999, gross assets of Streets Online were £2.5 million. The purchase price paid by Kingfisher for Streets Online shares was £15 million. In comparison, gross assets of attributable to the Demerged Businesses were £811.1 million as of January 29, 2000.



Further, despite the fact that U.K. tax considerations may result in the distribution of shares of an entity that is technically not a wholly-owned subsidiary of Kingfisher⁹, the entity will be a former dormant group company of Kingfisher with no assets nor liabilities, and the result is substantively a spin-off of the general merchandise retailing and home entertainment businesses of Kingfisher, which Kingfisher has held in all material respects for a period longer than two years, as required by Bulletin No. 4.

Further information in line with the information requirements of Bulletin No. 4 about Kingfisher, GM Newco, Sandelcroft, VCI, Streets Online and the Distribution will be made available through the Shareholder Circular and the Listing Particulars as discussed under IV(d) above.

(f) Conclusion.

Based on the discussion above and in light of prior spin-off determinations with respect to similar transactions, we believe that the Distribution satisfies all five of the Staff's requirements relating to spin-offs as outlined in Bulletin No. 4 and the similar requirements set forth in previous no-action requirements: (1) Kingfisher shareholders will not provide consideration for the Distribution; (2) the Distribution will be *pro rata* to the holders of the Kingfisher Shares; (3) a valid business purpose exists for the Demerger; (4) (a) adequate information with respect to the Demerger Proposals will be disseminated to holders of the Kingfisher Shares and, through the Depositary, holders of Kingfisher ADRs prior to the Distribution by means of the Shareholder Circular and the Listing Particulars and (b) there will be adequate public information in the marketplace regarding GM Newco and the GM Newco Shares through GM Newco's compliance with the information supplying requirements of Rule 12g3-2(b) under the Exchange Act so long as it believes that it may have more than 300 shareholders resident in the United States; and (5) Kingfisher will effectively be distributing shares of GM Newco, which is an entity operating a business that Kingfisher has held in all material respects for a period longer than two years as required by the Bulletin No. 4. Accordingly, Kingfisher should not be viewed as an underwriter distributing GM Newco in a public distribution.

Based on the foregoing, we respectfully request on behalf of Kingfisher and GM Newco that the Staff confirm that they will not recommend that the Commission take any enforcement action if the Distribution is effected without compliance with the registration requirements of the Securities Act.

⁹ Pre-Demerger Shareholders will hold a portion of their GM Newco Shares (constituting a majority of GM Newco's issued and outstanding shares prior to the Demerger) in trust for Kingfisher. Hence, GM Newco will be considered to be a subsidiary of Kingfisher prior to the Demerger for the purposes of the UK Companies Act of 1985.



V. Rule 145

We are also of the opinion that the Demerger Proposals should not be viewed as involving a transfer of assets or other transaction covered by Rule 145 under the Securities Act that would result in the Distribution being deemed to involve an "offer to sell" or "sale" of securities within the meaning of Section 2(3) of the Securities Act by virtue of such Rule. The Staff has recognized in *Asea*, *B.A.T.*, *British Gas*, *English China Clays*, *Hanson II*, *NGH* and *Sears*, among others, that a spin-off distribution similar to the Distribution does not constitute a "sale" of securities within the meaning of Section 2(3) of the Securities Act by virtue of Rule 145. This position is effectively confirmed in Bulletin No. 4 with respect to spin-offs satisfying the requirements for spin-offs set forth in such bulletin provided that the spun-off entity is wholly-owned by the parent effecting the spin-off.

The Preliminary Note to Rule 145 makes it clear that the Rule was designed to provide the protections of registration under the Securities Act to persons who are making a new investment decision regarding a new or different security in connection with any of the business combinations enumerated in the Rule. Through the Distribution, Kingfisher will distribute shares in GM Newco proportionately to its existing shareholders. GM Newco will own Sandelcroft and, through Sandelcroft, VCI and Streets Online. No new investment decision is required to be made by the existing holders of the Kingfisher Shares; no sale of assets to an independent third party in the sense intended in Rule 145 will take place; and no "value" under Section 2(3) of the Securities Act is being given by holders of the Kingfisher Shares for the GM Newco Shares.

Even though the mechanical implementation of the Demerger involves a restructuring of Kingfisher's corporate organization, and as part of a larger transaction, it is subject to shareholder vote, the result is still substantively a spin-off and is not a transaction intended to be covered by Rule 145. As is recognized in Bulletin No. 4, the fact that shareholder approval is required should not affect the conclusion that a spin-off transaction is not subject to Rule 145; *provided* that the entity being spun-off is wholly-owned by the parent if shareholder approval is required for the transfer of assets to the subsidiary. While the shareholder approval being sought by Kingfisher authorizes all actions necessary to effect the Demerger and U.K. tax considerations result in a spin-off of shares of an entity that may not technically be a wholly-owned subsidiary of Kingfisher, the result is still substantively a spin-off of the entirety of Kingfisher's wholly owned subsidiary.

Kingfisher, through the Distribution, is effectively distributing to its existing shareholders, in a pure spin-off, shares of a company intended to hold Kingfisher's General Merchandise business. Prior to the Demerger, GM Newco, which is the entity whose shares are distributed to the holders of Kingfisher Shares and ADRs, had no operations, assets or liabilities and, accordingly, no sale or other transfer of assets to a third party in the sense contemplated by Rule 145 will take place and no "value" under Section 2(3) of the Securities Act is being given by Kingfisher shareholders for the GM Newco Shares. In the present situation, there is no



business combination with a third party and the shareholders of Kingfisher are not otherwise making any new investment decision in consideration for new securities. In this respect, the Distribution and related Demerger transactions are similar to the demergers that were the subject of other favorable Staff responses. See, e.g., B.A.T., British Gas and Hanson II.

As demonstrated by prior no-action letters, a shareholder vote on a spin-off does not constitute a new investment decision of the kind that Rule 145 was intended to address. See, e.g., B.A.T., British Gas and Hanson II. In those letters, three reasons were cited as to why spin-offs do not require shareholders to make a new investment decision: (a) each shareholder already indirectly owns the shares to be spun-off; (b) the spin-off does not represent a fundamental change in any shareholder's investment; and (c) no shareholder will receive a new or different security for such shareholder's existing security. These three reasons also apply to the Distribution.

Kingfisher shareholders together currently hold their existing equity interest in Sandelcroft, VCI and Streets Online through their equity interest in Kingfisher, and thus the nature of their equity interest will be the same after the Distribution as it was before. Furthermore, the Distribution will not cause Kingfisher shareholders to make a fundamental change in their investment, because immediately after the Distribution, together they will hold their equity interest in Sandelcroft, VCI and Streets Online through GM Newco, and will retain the same proportionate interest in Sandelcroft, VCI and Streets Online. Finally, the Distribution will not cause Kingfisher shareholders to exchange new or different securities for their existing securities. Rather, they will receive a number of GM Newco Shares in proportion to their Kingfisher Shares, which they will retain.

For the foregoing reasons, we believe that the Distribution should not be considered a "sale" of securities requiring registration under the Securities Act by virtue of Rule 145.

VI. Rule 144

We are also of the view that the GM Newco Shares that will be distributed to holders of the Kingfisher Shares (and, through the Depositary, holders of Kingfisher ADRs) should not constitute "restricted securities" as defined in Rule 144(a)(3) under the Securities Act because the GM Newco Shares will be acquired by the Kingfisher shareholders (and, through the Depositary, holders of Kingfisher ADRs) and would therefore not have been issued to the public. We believe, therefore, that U.S. holders of the Kingfisher Shares and the Kingfisher ADRs, except for affiliates of GM Newco, should be able to sell GM Newco Shares without complying with Rule 144¹⁰.

¹⁰ We recognize that any United States shareholders of Kingfisher that become affiliates of GM Newco will be subject to Rule 144 absent registration under the Securities Act or another appropriate exemption



In Bulletin No. 4, the Staff stated that securities received by shareholders in a spin-off that meets the five conditions detailed in paragraphs (a) through (e) of Section IV above generally are not "restricted securities". Moreover, the Staff has on several occasions adopted the view that shares distributed in transactions similar to the proposed Distribution would not be deemed to be restricted securities within the meaning of Rule 144(a)(3) of the Securities Act. See, e.g., British Gas, NGH, English China Clays, Asea and B.A.T. Although Bulletin No. 4 principally addresses situations in which shares of the spun-off company would be registered under the Exchange Act and, in instances where the Staff has adopted this view, the Staff has frequently also referred to the fact that the shares in the particular transaction would be registered under the Exchange Act prior to the completion of the particular distribution in British Gas, NGH, English China Clays, Asea and B.A.T, the Staff has confirmed that, in circumstances similar to those outlined in this letter, the absence of Exchange Act registration does not alter the analysis under Rule 144; provided that, in the case of a foreign private issuer, the requirement concerning the adequacy of current information is otherwise satisfied pursuant to Rule 12g3-2(b).

VII. Conclusion

We respectfully request, on behalf of Kingfisher and GM Newco, that the Staff confirm that it will not recommend that the Commission take any action if the GM Newco Shares are distributed pursuant to the Distribution without registration under the Securities Act and that the Staff confirm that the GM Newco Shares so distributed to Kingfisher shareholders will not constitute "restricted securities" as defined in Rule 144(a)(3) of the Securities Act and may be sold by persons (other than affiliates of GM Newco) without complying with Rule 144.

Pursuant to Regulation 200.81, we respectfully request on behalf of Kingfisher and GM Newco that this no-action request and the Staff's response be accorded confidential treatment until 120 days after the date of the response of the Staff to such request or such earlier date as the Staff is advised that all of the information in this letter has been made public. This request for confidential treatment is made on behalf of Kingfisher and GM Newco for the reason that certain of the facts surrounding the Demerger Proposals set forth in this letter have not been made public.

In accordance with Securities Act Release No. 33-6269 (December 5, 1980), seven additional copies of this letter are enclosed. If you have any questions or there is further information that you require with respect to these matters, please contact the undersigned or Sarah C. Murphy of Freshfields Bruckhaus Deringer by telephone at 011-44-20-7936-4000 or by calling our Washington, D.C. office (202) 969-4500 and asking to be connected to the London office. If for any reason the Staff does not concur with the views expressed in this letter or finds itself unable to grant the relief requested hereby, we respectfully request a conference or telephone conference with the Staff before any written response to this letter is issued.



Kingfisher is hoping to commence the Demerger and Distribution by the posting of the Shareholder Circular, the Notice and Listing Particulars to Kingfisher shareholders on Wednesday, August 1, 2001. Accordingly, on behalf of Kingfisher and GM Newco, we respectfully request the Staff's cooperation in meeting this timetable.

Very truly yours,

A handwritten signature in black ink, appearing to read "Miika Heiskanen".

Miika Heiskanen

cc: Sarah C. Murphy, Esq.
Freshfields Bruckhaus Deringer

David Springthorpe
Kingfisher plc

Kate Brown
Kingfisher plc

**Comparison of United Kingdom and
United States Disclosure Requirements for
Spin-Offs/Demergers**

**Information Required
in
New Form 20-F**

1. The identity of the directors, senior management, advisers and auditors of the registrant.

2. Offer statistics and expected timetable.

3. Key information regarding the registrant's financial condition, capitalization, use of proceeds¹ and risk factors, presented in summary form, including a columnar presentation of selected financial data for the registrant and its subsidiaries for the last five fiscal years.
 - (i) Selected financial data required includes: net sales or operating revenues; income (loss) from operations; income (loss) from

**Information Required
in
Listing Particulars**

1. Part F of Chapter 6 of the Listing Rules issued by the London Stock Exchange (the "Listing Rules")¹ requires this information to be disclosed for directors. In addition, it would be usual for Listing Particulars to include information in relation to senior management who are not directors. Part A of Chapter 6 requires this information to be disclosed for auditors and other advisers. These include bankers, legal advisers, sponsor and reporting accountants.

2. Part B of Chapter 6 of the Listing Rules requires information regarding the expected timetable of the offering to be disclosed.

3. Part D of Chapter 6 of the Listing Rules describes the group's activities and requires the disclosure of an issuer's capitalization. Part B of Chapter 6 requires that the expected amount and use of proceeds be disclosed. Selected financial data is required by Chapter 12 and by Part E of Chapter 6. In addition, Listing Particulars must comply with the general duty of disclosure specified in Section 146 of the United Kingdom Financial Services Act

¹ The portions of the Listing Rules cited are attached hereto for your information and set forth the disclosure requirements in more detail.

² The term "host country" refers in this case to the United States and its territories.

**Information Required
in
New Form 20-F**

continuing operations; net income (loss); net income (loss) from operations per share; income (loss) from continuing operations per share; total assets; net assets; capital stock (excluding long term debt and redeemable preferred stock); number of shares as adjusted to reflect changes in capital; dividends declared per share in both the currency of the financial statements and the host country currency, including the formula used for any adjustments to dividends declared; and diluted net income per share.

(ii) Exchange rate information where financial statements are provided in a currency other than that of the host country.²

(iii) Statement of capitalization and indebtedness.

(iv) Net proceeds to the registrant from the offering and intended uses thereof.

(v) Factors specific to the registrant and its industry which make investment in its securities speculative or which involve a high degree of risk.

4. (i) A fairly specific description of the history and development of the registrant, a description of the business of the registrant and its

**Information Required
in
Listing Particulars**

1986 (the "FSA"). This Act provides that Listing Particulars shall contain all such information as investors and their professional advisors would reasonably require, and reasonably expect, for the purpose of making an informed assessment of the assets and liabilities, financial position, profits and losses and prospects of the company being listed and of the rights attached to the securities to be listed. Accordingly, risk factors and statements concerning an issuer's financial condition are included in the Listing Particulars, especially in relation to high growth companies (Item 6 of Chapter 25 of the Listing Rules) and with regard to the spread in investment entities (Item 2(b) of Chapter 21).

(ii) Not required by the Listing Rules.

(iii) Part E of Chapter 6 of the Listing Rules requires a statement of capitalization; a statement of indebtedness is not required.

(iv) Item 15 of Part B of Chapter 6 of the Listing Rules requires this disclosure.

(v) Section 146 FSA imposes a general duty of disclosure which may include risks specific to the industry.

4. (i) Part D of Chapter 6 of the Listing Rules requires a similar detailed description of an issuer's business, and the Listing Particulars

**Information Required
in
New Form 20-F**

subsidiaries and any special characteristics of the registrant's operations or industry which may have a material impact on its future financial performance.

(ii) Description of the registrant's organizational structure, including its subsidiaries and/or its position within a group of companies, if applicable.

(iii) A description of the material properties, plant and equipment of the registrant and its subsidiaries.

5. Management's discussion and analysis of the registrant's business, its financial condition and results of its operations for the historical periods covered by the financial statements, including a discussion of the registrant's liquidity, capital resources, research and development policies and trend information.

6. (i) Information concerning the registrant's directors and senior management, including their experience, qualifications and compensation (including share ownership).

(ii) Information about the registrant's employees is also required, including any share option or share grant plans involving

**Information Required
in
Listing Particulars**

must comply with the general duty of disclosure specified in Section 146 of the FSA.

(ii) As for (i) above.

(iii) Part D of Chapter 6 of the Listing Rules requires the disclosure of principal and future investments.

5. Part G of Chapter 6 of the Listing Rules requires similar information to be disclosed. In addition, information required by items 3, 12 (which relates to principal investments) and 13 (which relates to future investments) of Part D and items 8 and 16 of Part E of Chapter 6 will be disclosed. Item 8 of Part E of Chapter 6 relates to any significant change in company's financial position and Item 16 of Part E of Chapter 6 requires that a company must state if there is sufficient working capital to facilitate the transaction.

6. (i) Part F of Chapter 6 of the Listing Rules requires this information to be disclosed for directors. In addition, it would be usual for Listing Particulars to include information in relation to senior management who are not directors.

(ii) Item 8 of Part F of Chapter 6 requires any employee share schemes to be disclosed.

Information Required
in
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employees.

7. (i) A description, to the extent known or can be ascertained, of (a) ownership or control of the registrant by another corporation, by a foreign government or by any group of natural or legal persons; (b) the portion and number of the registrant's securities held by U.S. persons; (c) information concerning any person known to beneficially own five percent or more of any class of the registrant's voting securities and the total amount of any class of the registrant's voting securities; and (d) any arrangements, the operation of which may result in a change in control of the registrant.

(ii) The interest of related parties in material transactions or loans between such parties and the registrant during the last three fiscal years.

(iii) Material interests of experts and counsel in the registrant or any of its subsidiaries or in the success of the offering.

8. (i) Consolidated financial statements covering the registrant's latest three financial years, audited by an independent auditor and accompanied by an audit report, including: balance sheet; income statement; statement of changes in equity; cash flow statement; related

Information Required
in
Listing Particulars

800.1

7. (i) Part C of Chapter 6 of the Listing Rules requires this information to be disclosed. Item 16 of Part C of Chapter 6 requires disclosure of all persons interested (who are not directors) in three percent or more of an issuer's shares. Information regarding the shareholdings of each director is required under Item 4 (the holding of each director is separately identified against his name). Item 15 governs the disclosure requirements regarding control of the company.

(ii) This information is generally required by item 6 of Part F of Chapter 6 of the Listing Rules, which requires particulars regarding the nature and extent of interests in unusual transactions in the preceding financial year or for outstanding transactions.

(iii) Chapter 2.7(c) of the Listing Rules requires a statement from any expert, in the form prescribed in Schedule 1A to the Listing Rules, which confirms its independence from the company in question.

8. (i) Similar detailed financial information is required to be disclosed by Part E of Chapter 6 and Chapter 12 of the Listing Rules. Chapter 3 states that financial statements must be audited in accordance with U.K. or U.S. generally accepted accounting

Information Required
in
New Form 20-F

notes and schedules required by the relevant body of accounting standards; and pro forma information, including a pro forma condensed balance sheet, pro forma condensed statements of income and accompanying explanatory notes. Financial statements must be audited in accordance with U.S. generally accepted accounting standards. The last year of audited financial statements may not be older than 15 months at the time of the offering or listing; 12 months at the time of filing for initial public offerings. Offering documents dated more than nine months after the end of the last audited financial year must contain consolidated interim financial statements (which may be unaudited) covering at least the first six months of the financial year.

(ii) Information on legal, governmental or arbitration proceedings, including bankruptcy, receivership or similar proceedings, with significant effects on the registrant.

(iii) The registrant's dividend distribution policy.

Information Required
in
Listing Particulars

standards or International Standards
on Auditing.

(ii) Item 8 of Part D of Chapter 6 of the Listing Rules requires this information to be disclosed, including any pending or threatened litigation over the last 12 months and the effect it may have on the company's financial position.

(iii) Dividend policy is referred to in Item 8 of Part B of Chapter 6, whereby the time limits for declaring a dividend must be given. Item 12 requires that any fixed date on which an entitlement to a dividend arises be stated. Item 23(a)(iii) requires that an explanation of how the shares will rank for dividend be given. Item 14 requires the disclosure of any agreements made to waive future

Information Required
in
New Form 20-F

9. A description of the offering, including the plan of distribution, trading markets, selling shareholders, dilution and expenses.

10. A fairly specific description of (i) the registrant's share capital, (ii) significant provisions of the registrant's articles of incorporation and bylaws, (iii) material contracts, (iv) applicable exchange controls, (v) taxes to which shareholders in the United States may be subject under the laws of the registrant's home country, (vi) dividends, (vii) information, qualifications and consents of experts and (viii) where the documents referred to in the offering document may be inspected.

11. A specific description of both quantitative and qualitative

Information Required
in
Listing Particulars

dividends.

9. Chapter 6, Part B, requires the disclosure of this information.

10. (i) Item 9 of Part C of Chapter 6 of the Listing Rules requires the disclosure of this information.

(ii) Items 7 and 13 of Part C and Item 13 of Part F require this disclosure.

(iii) Material contracts are required to be disclosed by Item 20 of Part C.

(iv) This information is not required to be contained in the Listing Particulars. There are however, no exchange controls in the United Kingdom.

(v) This information is not required to be contained in the Listing Particulars.

(vi) Part B of Chapter 6 of the Listing Rules requires that this information be disclosed. (As for 8. (iii) above.)

(vii)- Items 8 and 9 of Part A require the inclusion of information regarding auditors and other advisors in the Listing Particulars.

(viii) Public inspection of documents is mandated by Item 7 of Part A of Chapter 6 of the Listing Rules.

11. There is a general market practice under Section 146 FSA whereby the

Information Required
in
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Information Required
in
Listing Particulars

disclosures about market risk.

company has a general duty of disclosure under which descriptions like this should be made.

12. A specific description of any of the following, if applicable: (i) debt securities being registered, (ii) warrants and rights being registered, (iii) securities other than equity, debt, warrants or rights being registered and (iv) ADSs being registered, including information of the depositary, the ADRs and the fees ADS holders must pay.

12. (i) Part H of Chapter 6 of the Listing Rules deals with the information required for the registration of debt securities.

(ii) Item 31 of Chapter 5 relates to the offering of warrants and options.

(iii) Part B of Chapter 6 contains provisions relating to other securities which may be offered.

(iv) [N/A]

13. Identification and description of (i) any uncured material default with respect to any indebtedness exceeding five percent of the total assets of the registrant and its consolidated subsidiaries and (ii) any uncured material arrearage in payment of dividends on the registrant's or any significant subsidiary's preferred stock.

13. (i) Item 8 of Part D of Chapter 6 of the Listing Rules requires information on litigation to be disclosed, under which any material default would be apparent.

(ii) Item 8 of Part E of Chapter 6 requires information to be given regarding any significant change to the company's financial and trading position.

14. A description of any material modification of the rights of holders of any class of registered securities and of any material withdrawal or substitution of assets securing any class of registered securities.

14. Item 7 of Part B of Chapter 6 of the Listing Rules requires this information to be disclosed in detail.

15. [Reserved]

15. [N/A]

16. [Reserved]

16. [N/A]

17. Financial statements are to be prepared according to United States generally accepted accounting principles ("U.S. GAAP") or "a

17. Chapter 12 of the Listing Rules requires that financial statements must be prepared in accordance with United Kingdom generally

Information Required
in
New Form 20-F

comprehensive body of accounting principles" other than U.S. GAAP, provided that variations from U.S. GAAP are disclosed and quantified in the form of relatively detailed reconciliations of net income and balance sheet items calculated under U.S. GAAP.

18. Optional financial statement reporting provision includes all requirements of Item 17, plus all other information required under U.S. GAAP and Regulation S-X, with certain exceptions.
19. The following are the most common of the exhibits also required to be filed:
- (1) The articles of incorporation or association and by-laws of the registrant or instruments corresponding thereto;
 - (2) All instruments defining the rights of holders of the securities being registered and in some instances the instruments defining the rights of holders of long-term debt of the registrant; and
 - (3) Material contracts, including most contracts to which directors, officers, promoters, voting trustees or security holders named in registration statement are parties.

Information Required
in
Listing Particulars

accepted accounting principles, U.S. GAAP or International Accounting Standards. No reconciliation to U.S. GAAP is required. In addition, Chapter 12 of the Listing Rules sets forth the standards for accountants' reports contained in Listing Particulars and requires that financial statements be prepared by a reputable firm of auditors who will be required to express an opinion whether a true or fair opinion is given. The London Stock Exchange is unlikely to allow listing if there are any material qualifications to such an opinion.

18. Item 33 of Chapter 12 of the Listing Rules lists all required financial statements along with a *pro forma*.
19. The following exhibits are also required by Item 7 of Part C of Chapter 6 of the Listing Rules to be put on display for no fewer than 14 days from the date of issue of the Listing Particulars:
- (1) The Memorandum and Articles of the Company; and
 - (2) Material contracts.

**Additional
Information Specifically
Required by the Proxy Rules**

1. The date, time and place of the meeting of security holders and the date on which the proxy statement is first sent to security holders.
2. A statement as to whether a proxy is revocable and a description of any limitation on, or the procedure for, revocation.
3. A brief description of the rights of appraisal or similar rights of dissenters.
4. A statement of whether the solicitation is being made on behalf of the registrant and a description of the methods used and to be used to solicit security holders and the costs thereof.
5. A description of any substantial interest, direct or indirect, by security holdings or otherwise, of each director or executive officer of the registrant in the matter to be acted upon. No disclosure is required with respect to interests arising from ownership of securities where there is no special benefit received by a security holder that is not shared on a pro rata basis by all other security holders.
6. A statement of (i) the number of outstanding shares of each class entitled to vote and the number of votes to which each class is entitled; (ii) the record date, if any, or a description of the criteria for the determination of security

**Additional
Information Contained
in Shareholder Circular**

1. This information is contained in the Shareholder Circular.
2. The Shareholder Circular does not state whether a proxy is revocable, but will contain a statement that completion of a proxy does not prevent a shareholder from attending and voting in person.
3. This information is not required.
4. This information is not required.
5. This information is required.
6. Not included in the Shareholder Circular. However, 3% shareholders and director shareholdings are contained in the Listing Particulars. If there is a record date, the information set out in 6(ii) is contained in the

Additional
Information Specifically
Required by the Proxy Rules

holders entitled to vote; (iii) the name of any person known to the registrant to own greater than 5% of any class of the registrant's voting securities; (iv) the total amount of equity shares beneficially owned by all directors, naming them, and directors and officers as a group without naming them; (v) any arrangements, known to the registrant, the operation of which may at a subsequent date result in a change of control of the registrant; and (vi) a detailed description of any change of control of the registrant which has occurred in the last fiscal year.

7. If action is to be taken involving the transfer of any substantial part of the assets of the registrant, a summary of the material features of such transaction and items related to the transaction, including (i) the reasons for engaging in the transaction; (ii) any material differences in the rights of security holders as a result of the transaction; (iii) the accounting treatment of the transaction; (iv) the tax consequences of transaction; (v) if material, pro forma financial information giving effect to the transaction; (vi) whether any regulatory requirements must be complied with in connection with the transaction, (vii) descriptions of any past, present or proposed material arrangements, e.g., an acquisition or a sale or transfer of assets; and (viii) the high and low sales prices of the securities as of the date preceding the public announcement of the transaction.

Additional
Information Contained
in Shareholder Circular

notice of the shareholder meeting.

7. This information is contained in the Shareholder Circular.

**Additional
Information Specifically
Required by the Proxy Rules**

8. A description of each matter security holders are considering, the vote required for the approval of each such matter and the method by which the votes will be counted.

**Additional
Information Contained
in Shareholder Circular**

8. This information is contained in the Shareholder Circular.



01056198

July 27, 2001

RESPONSE OF THE OFFICE OF INTERNATIONAL CORPORATE FINANCE
DIVISION OF CORPORATION FINANCE

Act 33
Section _____
Rule 144
Public Availability 11/03/01

00039DC
NO ACT
P.E 7-27-01
132-02122

Re: Kingfisher plc ("Kingfisher")
Incoming letter dated July 27, 2001

Based on the facts presented, and noting that the shareholders of Kingfisher ordinary shares, including ordinary shares represented by Kingfisher ADRs (together "Kingfisher shares" and "Kingfisher shareholders"), will receive a Shareholder Circular and Listing Particulars (each as defined in your letter) containing information substantially similar to that required in a proxy or information statement complying with the requirements of Regulation 14A or 14C under the Securities Exchange Act of 1934 ("Exchange Act"), and that ongoing information relating to Flagbriar Limited ("GM Newco") will be prepared in accordance with United Kingdom law and the rules of the London Stock Exchange, and will be further supplied in accordance with the requirements of Exchange Act Rule 12g3-2(b), the Division will not recommend enforcement action to the Commission if Kingfisher, in reliance on your opinion as counsel that registration is not required, distributes the shares of GM Newco ("GM Newco shares") in accordance with the Demerger and Distribution (each as defined in your letter) without registration under the Securities Act of 1933 ("Securities Act").

We are also of the view that the GM Newco shares received by Kingfisher shareholders in accordance with the Demerger and Distribution would not be "restricted securities" within the meaning of Rule 144(a)(3) under the Securities Act. However, sales of GM Newco shares by Kingfisher's affiliates would be subject to Securities Act Rule 144, except for the holding period requirement, absent registration or another appropriate exemption.

We grant your request for confidential treatment under Rule 200.81 for the shorter of 120 days from the date of this letter or until the information in this letter has been made public.

These positions are based on the representations made to the Division in your letter, and any different facts or conditions might require the Division to reach different conclusions. Furthermore, the responses regarding registration under the Securities Act express the Division's positions on enforcement action only and do not express any legal conclusions on the questions presented.

Sincerely,

Elliot B. Staffin
Special Counsel

PROCESSED

NOV 08 2001

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FINANCIAL

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