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May 7, 2003

The Rt Hon Patricia Hewitt MP
Secretary of State for Trade and Industry
Department of Trade and Industry
Victoria Street
London SW1H 0ETI

RE: Proposed Reciprocity Provisions To The EU Takeover Directive

Dear Secretary of State:

On behalf of the Securities Industry Association¹, I am writing to express our deep concern over amendments to the proposed EU Takeover Directive that could introduce a "reciprocity" provision into the text of the Directive. These provisions run contrary to the EU's goal of creating efficient markets, boosting competitiveness, and attracting foreign investment, and could be an additional source of friction in US and EU relations. We urge the Department of Trade and Industry to ensure that the UK opposes these damaging proposals in all relevant forums.

We are particularly disturbed that the proposed amendments seem to be largely aimed at preventing the acquisition of European companies by US firms. It is our understanding that these amendments have been proposed in response to US legislation – in particular the Sarbanes-Oxley and Exon-Florio Acts – that are perceived to impede the ability of European companies to acquire US companies.

The Sarbanes-Oxley Act was not targeted at foreign companies, nor at takeover situations, but was rather implemented in response to incidents of corporate fraud in the US. The Act focuses on companies listed in the US. And while it is true that provisions in Sarbanes-Oxley have an impact on non-US companies listed in the US, since adoption of the Act, the SEC has granted exemptive relief to non-US companies with regard to certain provisions of the Act and is considering other requests for relief. While we acknowledge that the perception of US extraterritoriality in connection with the Act persists, the Act itself does not discriminate against EU companies in the context of takeover bids. Therefore, it is wrong for it to be used as a justification for the broad "reciprocity" provisions proposed as amendments to the Takeover Directive.

¹ The Securities Industry Association, established in 1972 through the merger of the Association of Stock Exchange Firms and the Investment Banker's Association, brings together the shared interests of more than 600 securities firms to accomplish common goals. SIA member-firms (including investment banks, broker-dealers, and mutual fund companies) are active in all U.S. and foreign markets and in all phases of corporate and public finance. According to the Bureau of Labor Statistics, the U.S. securities industry employs more than 700,000 individuals. Industry personnel manage the accounts of nearly 93-million investors directly and indirectly through corporate, thrift, and pension plans. In 2002, the industry generated \$214 billion in U.S. revenue and \$285 billion in global revenues. (More information about SIA is available on its home page: www.sia.com).

The Exon-Florio Act is specifically tailored to address issues related to national security. It has been invoked only once since 1988. Moreover, it is our understanding that the EU itself, in EU treaties and Member State legislation, explicitly recognizes Member States' inherent rights to protect their own national security interests. Such a limited and mutually accepted principle on which to review and possibly prevent acquisitions should certainly not serve as a justification for the broadly stated reciprocity language proposed.

Data on recent transatlantic mergers and acquisition indicate that perceptions of US legislative and regulatory hurdles in acquiring US companies are unfounded. In the years 2001 and 2002, EU companies acquired US companies totaling \$81.3 billion and \$45.6 billion, respectively; in each case exceeding over 50 percent of the total transatlantic volume. Indeed, in 2002 the largest acquisitions were EU company purchases of US companies. Moreover, EU direct investment in the US totaled nearly \$1 trillion in 2001, led by the UK, the Netherlands, Germany and France, respectively. The data clearly indicate that the US is open to foreign acquirers.

We welcome the EU's ambitious plan to integrate and liberalize the market for goods, services, and capital, boosting economic growth and job creation. However, we believe that the proposed "reciprocity" provisions represent a backward step from this objective. The dynamism of capital markets should not be taken for granted. The health of these markets is dependent on economic and political certainty and predictability. Denying the entry of foreign capital into Europe to meet political goals can only injure the European market, and reduce the certainty that investors seek for the long-term commitment of capital. More broadly, such provisions could potentially undercut European efforts to foster open and competitive markets globally.

The bedrock of the US and EU approaches to building fair and open markets is a commitment to MFN and national treatment principles. The proposed reciprocity provisions undermine both of these principles. It is important for the US and EU to resist the temptation to seek resolution of differences through the invocation of reciprocity.

We very much appreciate the opportunity to comment, and respectfully urge the DTI to ensure that the UK strongly opposes the reciprocity amendments to the Takeover Directive in all EU forums. We would be pleased to discuss this with you further.

Sincerely,

Steve Judge
Senior Vice President,
Government Affairs