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SWISS TAKEOVER BOARD**Selnaustrasse 32  
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www.takeover.ch**RECOMMENDATION****of 7 October 1999****Public Tender Offer of LVMH Moët Hennessy Louis Vuitton SA, Paris for all outstanding and issued registered shares of TAG Heuer International SA, Luxembourg**

TAG Heuer International SA (TAG Heuer) is a Société Anonyme organized under Luxembourg law with the registered office in Luxembourg. The authorized capital stock consists of 6'000'000 shares with a nominal value of CHF 10.-- each. 5'383'721 registered shares are issued and outstanding. The registered shares are listed on the SWX Swiss Exchange. On the New York Stock Exchange (NYSE) American Depositary Receipts (ADRs) are listed and traded. The company produces prestigious Swiss sports watches and chronographs.

On 13 September 1999 LVMH Moët Hennessy Louis Vuitton SA (LVMH) and TAG Heuer announced that they have reached an agreement, inter alia, on the terms of a cash offer to be made by LVMH for all issued share capital of TAG Heuer, valuing each TAG Heuer share at CHF 215.--. Furthermore, the parties agreed on further conditions and procedures for the tender offer pursuant to which the tender offer is submitted by LVMH. TAG Heuer Finances SA, certain key managers, and a further shareholder have irrevocably undertaken to accept the offer in respect of their holdings of TAG Heuer shares which amount to 2'089'112 TAG Heuer shares, representing approx. 38,8% of TAG Heuer's issued share capital.

The Takeover Board in its recommendation of 21 September 1999 concluded that the Swiss public takeover rules are not applicable to the tender offer of LVMH for the shares in TAG Heuer given that TAG Heuer is a company domiciled in Luxembourg.

On 30 September 1999 the Swiss Federal Banking Commission issued a contrary decision according to which the tender offer of LVMH shall be governed by the takeover rules of Swiss law.

Upon request of LVMH the Takeover Board in its recommendation of 4 October 1999 ruled separately on the issue of the extension of the offer to TAG Heuer's ADRs that are listed and traded on the NYSE and concluded that the present tender offer of LVMH needs not to be addressed directly to the holders of ADRs of TAG Heuer. However, the offeror must secure that the offer extends to all shares resulting from the possible exchange of ADRs into ordinary

shares that are tendered during the offer period until the end of the additional acceptance period of LVMH's offer.

## **Considerations:**

### **1. Equal Treatment Principle**

According to Art. 10.1 OTB the offer must extend to all categories of listed equity securities and according to para. 3 of this provision the offer must also extend to all equity securities resulting from the exercise of option rights through the end of the additional acceptance period.

TAG Heuer has ADRs listed and traded on the NYSE. The holders of such ADRs are entitled to exchange the ADRs into registered shares of the company. According to its recommendation of 4 October 1999 such ADRs are qualified as derivative rights and, as a result, the offer needs not to be addressed directly to the holders of such ADRs. The offer prospectus explicitly states that the offer extends to all outstanding shares. The equal treatment principle, therefore, is observed.

### **2. Sales Restriction**

The Takeover Board acknowledges that a takeover offer made in compliance with Swiss law may conflict with regulations in foreign jurisdictions and, therefore, an offeror may become potentially liable if it is considered that an offer is made in such foreign jurisdictions. It is the Takeover Board's long standing practice to allow the offeror to include provisions regarding sales restrictions in the offer prospectus in order to avoid this potential liability. However, the Board considers that the respective sales restrictions included in the offer documents should be drafted in such a way as to reflect the essential, but minimal standard required for the offeror not to become liable under the relevant jurisdictions.

In the future, the Takeover Board will carefully review such sales restrictions in the offer documents and verify whether the above mentioned condition is met.

### **3. Acting in Concert and Organized Group**

Those who coordinate their conduct with the offeror by contract or by any other organized measures in view of the offer shall be held to be acting in concert or as an organized group (Art. 15 SESTO-FBC and Art. 11 OTB). Such persons cooperating with the offeror are to be described in the prospectus and must comply with the rules of transparency, with the rules concerning equal treatment, with the rules of fairness and with the rules concerning the duty to report transactions (Art. 12 OTB).

The prospectus sets forth that all companies under the control of LVMH are acting in concert with LVMH. Additionally, in line with the Takeover Board's practice, the target company is also qualified as a person acting in concert with the offeror if an agreement has been concluded between the offeror and the target company with respect to the launch of an offer. Therefore, TAG Heuer is to be included as a person acting in concert and, consequently, must respect all duties described in Art. 12 OTB. The target company, however, has to comply with the duties imposed on persons acting in concert only for the period following the execution of the agree-

ment with LVMH. Consequently, it is not required to include in the offer prospectus all sales or purchases in own shares within the 12 months preceding the offer.

According to the prospectus LVMH's major shareholder owns shares representing 63.11% of the voting rights. Pursuant to the Takeover Board's long standing practice such shareholder is also qualified as a person acting in concert and, therefore, must be included in the offer prospectus. Accordingly, it will be bound by the same duties as the offeror that are described in Art. 12 OTB.

#### **4. Conditions**

According to Art. 13.1 OTB an offer, in general, may be made subject exclusively to suspensory conditions, i.e. the conditions must be fulfilled before the end of the offer period. In addition, the conditions must not be in the offeror's decisive control. An offer may be made subject to resolutive conditions that may be fulfilled once the first acceptance period has expired only with the approval of the Takeover Board (Art. 13.4 OTB).

The present offer shall be conditional on the condition that the responsible authorities issue the necessary permits and/or release clearance certificates for the takeover of TAG Heuer by LVMH without there being imposed on any of the parties any material condition, requirement or commitment. Until expiry of the (possibly extended) offer period, this condition shall constitute a suspensory condition pursuant to Art. 13.1 OTB. *Following expiry* of the (possibly extended) offer period, it will constitute a resolutive condition according to Art. 13.4 OTB.

The Board approves resolutive conditions if the advantages of such conditions for the offeror outweigh its disadvantages for the recipients of the offer and for the offeree. It is the Takeover Board's practice to approve a condition that foresees the regulatory proceedings to be satisfactorily resolved to be drafted as a resolutive condition. The Takeover Board takes into account that such a solution is in the best interest for the recipients of the offer. Moreover, such a condition is not in the offeror's decisive control. Consequently, this condition is permissible.

LVMH reserves the right to rescind a tender offer which has been successful at any time once the additional acceptance period has expired but prior to completion of the tender offer, if the condition is not fulfilled and has not been waived for the purposes of this offer. According to Art. 16 OTB a published offer may be withdrawn if the offeror has expressly reserved the right to do so by inserting one or more conditions. Therefore, this provision is permissible.

#### **5. Waiver of the Cooling-off Period**

If the offeror presents the offer to the Takeover Board for its review prior to publication of the offer including the report of the board of directors, the Takeover Board basically exempts the offeror from the duty to observe the cooling-off period (Art. 14.1 OTB).

Both conditions are met. The offeror, therefore, will be exempted from the duty to observe the cooling-off period.

#### **6. Report of the Board of Directors**

The report of the board of directors of TAG Heuer describes all information required by Art. 29 OTB that permits the recipients of the offer to reach an informed decision. This includes,

among other things, the rationale for the board's recommendation as well as the statement that the terms of the call options granted to the offeror by several directors and shareholders are not more favorable to the grantors of the options than the terms of the present offer of LVMH.

According to Art. 31.1 OTB the report of the board of directors shall also clarify whether certain members of the board or executive management have a conflict of interest. In particular, the report shall indicate whether certain members have entered into a contractual agreement with or other commitments to the offeror.

Firstly, the offer prospectus sets forth that three board members abstained in the voting due to a direct and personal interest. They are parties to the private transaction granting option rights to the offeror. This constitutes an adequate statement as to the measures the company has taken to avoid having this potential conflict of interest negatively impact on the recipients of the offer. The condition of Art. 31.3 is met.

In addition, the report includes a statement that the board is not aware that any member of the board of directors or the senior management of TAG Heuer group companies has entered into an agreement except the grant of call options by TAG Finance SA and certain key managers of TAG Heuer. The report furthermore sets forth that so far, none of the current members has resigned and the board of directors is not aware of LVMH's intention regarding the re-appointment of current members of the board of directors of TAG Heuer. Therefore, also Art. 31.2 OTB is observed.

## **7. Fee**

According to Art. 62 OTB the fee shall be calculated proportionately to the total amount of the offer. The offer amounts to CHF 577'592'555. Based on this amount a fee of CHF 167'750.-- shall be charged.

### **The Takeover Board adopts the following recommendation:**

1. The offer of LVMH Moët Hennessy Louis Vuitton SA complies with the Stock Exchange Act.
2. The Takeover Board grants the following exemptions from the Takeover Ordinance (Art. 4): resolutive conditions (Art. 13.4), waiver of the duty to observe the cooling-off period (Art. 14.1).
3. The fee amounts to CHF 167'750.--.

The Chairman:

Hans Caspar von der Crone

The parties may reject this recommendation by delivering a written statement to the Takeover Board no later than five trading days after receipt of the recommendation. The Takeover Board may extend this time limit. It starts with notification by telefax. Any recommendation not rejected within five trading days shall be deemed to be accepted by the parties. If a recommendation is rejected, not followed within the specified time limit or if an accepted recommendation is not complied with, the Takeover Board shall refer the case to the Banking Commission so that administrative proceedings may be initiated.

This recommendation is communicated to:

- LVHM Moët Hennessy Louis Vuitton SA through its representatives on behalf offeror and the persons acting in concert with it,
- TAG Heuer International SA through its representative,
- Federal Banking Commission.