Linklaters

Linklaters LLP
One Silk Street
London EC2Y 8HQ
Telephone (+44) 20 7456 2000
Facsimile (+44) 20 7456 2222
DX Box Number 10 CDE
mike.bienenfeld@linklaters.com

Michael Coco, Esq.
Chief, Office of International Corporate Finance
Division of Corporation Finance
Securities and Exchange Commission
100 F Street, N.E.; Mail Stop 4546
Washington, D.C. 20549
United States of America

Securities Act of 1933:
Section 3(a)(10) and Rule 144

Electronic Submission

June 11, 2020

Dear Mr. Coco:

Re: Section 3(a)(10) and Rule 144 of the Securities Act

We[1] are writing on behalf of the Unilever Group ("**Unilever**") with respect to the potential transaction whereby Unilever N.V., a company incorporated under the laws of the Netherlands ("**Unilever NV**"), will merge with and into Unilever PLC, a public limited company organized under the laws of England and Wales ("**Unilever PLC**"), for the purpose of bringing Unilever NV and Unilever PLC (and their respective subsidiary companies) together under a single parent holding company and collapsing its current dual-headed structure ("**Unification**").[2] Unification is expected to be carried out by way of a European cross-border merger (the "**Cross-border Merger**"), which will include a U.K. court hearing, similar to the hearing that would be held in the context of a U.K. scheme of arrangement. Unilever has authorized us to make the factual representations set forth in this letter on their behalf and the discussion that follows is supported by a legal opinion issued on the date hereof by Linklaters LLP and addressed to Unilever (the "**Unification Legal Opinion**"). A copy of the Unification Legal Opinion is attached as Appendix A hereto.

As discussed below, Unilever requests that the staff (the "**Staff**") of the Office of International Corporate Finance, Division of Corporation Finance (the "**Division**") of the U.S. Securities Exchange Commission (the "**Commission**") (i) confirm that, based on the facts and circumstances set forth in this letter, the Staff will not recommend any enforcement action to the Commission if Unilever PLC issues, pursuant to the Cross-border Merger described herein, its ordinary shares of nominal value of 3 1/9 pence per share ("**Unilever PLC Shares**") and its American Depositary Shares each representing one Unilever PLC Share ("**Unilever PLC ADSs**"), including Unilever PLC Shares underlying such Unilever PLC ADSs, without registration under the Securities Act of 1933 (the "**Securities Act**") in reliance on the exemption from the registration requirements of the Securities Act provided by Section 3(a)(10) thereof ("**Section 3(a)(10)**"), and (ii) concur

[1] Linklaters LLP ("**Linklaters LLP**") is acting as US, English and Dutch legal counsel to Unilever.

[2] As the Staff will be aware, Unilever proposed a unification structure in 2018, which was ultimately withdrawn. As part of that proposed transaction, Unilever, acting through its wholly owned subsidiary, Unilever International Holdings NV, filed a registration statement on Form F-4 on April 25, 2018, and it filed a request to withdraw such registration statement on October 8, 2018.

with our view as to certain resales of Unilever PLC Shares and Unilever PLC ADSs, including the Unilever PLC Shares underlying such Unilever PLC ADSs, in reliance on Rule 144 under the Securities Act ("**Rule 144**") as described in this letter.

Background

Overview of Unilever

Unilever is one of the world's best-known consumer goods companies, with approximately 2.5 billion people using Unilever's products every day. Unilever operates in more than 100 countries, selling its products in more than 190 countries while employing approximately 150,000 people. Unilever is organized into three divisions ("Beauty & Personal Care", "Foods and Refreshment" and "Home Care"), each with a clearly defined strategy and portfolio of brands. For the financial year ended December 31, 2019, Unilever achieved turnover of €52.0 billion, operating profit of €8.7 billion and net profit of €6.0 billion. As at December 31, 2019, Unilever had total assets of €64.8 billion and total liabilities of €50.9 billion.

Unilever is a dual-headed company (a "**DHC**") comprised of Unilever PLC and Unilever NV, both of which are foreign private issuers within the meaning of the U.S. federal securities laws and are subject to the reporting requirements of the Securities Exchange Act of 1934 (the "**Exchange Act**"). The Unilever PLC Shares and Unilever NV's ordinary shares (the "**Unilever NV Shares**") are registered under Section 12 of the Exchange Act. . The Unilever PLC ADSs and the Unilever NV New York Registry Shares (the "**Unilever NV NYRSs**") [3] are listed and traded on the New York Stock Exchange (the "**NYSE**"). In addition, Unilever PLC Shares are listed in the United Kingdom and traded on the main market of the London Stock Exchange plc (the "**LSE**"), and the Unilever NV Shares are listed in the Netherlands and traded on Euronext in Amsterdam, a regulated market of Euronext Amsterdam N.V. ("**Euronext**"). Each of Unilever NV and Unilever PLC is a "well-known seasoned issuer" (as defined in Rule 405 under the Securities Act) (a "**WKSI**") and a "large accelerated filer" (as defined in Rule 12b-2 under the Exchange Act), and each is eligible for the use of Form F-3. Neither Unilever NV nor Unilever PLC is subject to the U.S. proxy rules pursuant to Rule 3a12-3(b) under the Exchange Act.

Each Unilever NV Share represents the same underlying economic interest in Unilever as each Unilever PLC Share. However, as noted above, Unilever NV and Unilever PLC remain separate legal entities with different shareholder constituencies and separate stock exchange listings. Shareholders (including Unilever NV NYRS and Unilever PLC ADS holders) cannot convert or exchange the shares of one for the shares of the other.

Dual-Headed Company Structure

As noted above, Unilever is a DHC, and, although it is comprised of two separate corporate entities, Unilever is managed and operated as a single company with a common board of directors (the "**Board**") and management team. Unilever NV and Unilever PLC together with their group companies have, since Unilever was formed in 1930, operated as nearly as practicable as a single economic entity.

The unified operating model is achieved by special provisions in the Articles of Association of Unilever NV and Unilever PLC, together with a series of agreements between Unilever NV and Unilever PLC which are together known as the "**Foundation Agreements**". The Foundation Agreements are: (i) the Equalisation Agreement; (ii) the Deed of Mutual Covenants; and (iii) the Agreement for Mutual Guarantees of Borrowing, each of which is briefly described below, is publicly available on Unilever's website and has been publicly filed with the Commission on EDGAR. These special provisions and agreements enable Unilever to achieve unity of management, operations, shareholders' rights, purpose and mission.

[3] Unilever NV NYRSs are exchangeable on a one-for-one basis with Unilever NV Shares. Unilever NV NYRS holders are direct shareholders in Unilever NV and have the same rights as holders of Unilever NV Shares. For purposes of this letter, "Unilever NV Shareholders" refers to holders of Unilever NV Shares and Unilever NV NYRSs.

The Foundation Agreements:

- *Equalisation Agreement* – The Equalisation Agreement makes the economic position of the shareholders of Unilever NV and Unilever PLC, as far as possible, the same as if they held shares in a single company and regulates the mutual rights of the shareholders (whether in the form of shares, NYRSs or ADSs, as applicable) of Unilever NV and Unilever PLC. In particular, under this agreement, Unilever NV and Unilever PLC must adopt the same financial periods and accounting policies. It also requires that dividends and other rights and benefits attaching to each Unilever NV Share, be equal in value to those rights and benefits attaching to each Unilever PLC Share, as if each such unit of capital formed part of the ordinary share capital of one and the same company.
- *Deed of Mutual Covenants* – The Deed of Mutual Covenants provides that Unilever NV, Unilever PLC and their respective subsidiary companies shall co-operate in every way for the purpose of maintaining a common operating policy. They shall exchange all relevant information about their respective businesses – the intention being to create and maintain a common operating platform for Unilever throughout the world. The deed also contains provisions for the allocation of assets within Unilever.
- *Agreement for Mutual Guarantees of Borrowing* – The Agreement for Mutual Guarantees of Borrowing between Unilever NV and Unilever PLC provides that each company will, if asked by the other, guarantee the borrowings of the other and the other's subsidiaries. These arrangements are used, as a matter of financial policy, for certain significant borrowings. They enable lenders to rely on the combined financial strength of Unilever.

Due to the operational and contractual arrangements referred to above, Unilever NV and Unilever PLC form a single reporting entity for the purposes of presenting consolidated financial statements (the "**Unilever Consolidated Financial Statements**"). Companies included in the consolidation are those companies controlled by Unilever NV or Unilever PLC. The Unilever Consolidated Financial Statements are presented by both Unilever NV and Unilever PLC as their respective consolidated financial statements. The Unilever Consolidated Financial Statements are prepared in accordance with International Financial Reporting Standards ("**IFRS**") as adopted by the European Union and IFRIC Interpretations. They are also in compliance with IFRS as issued by the International Accounting Standards Board ("**IASB**"). Both Unilever PLC's annual report on Form 20-F for the fiscal year ended December 31, 2019, filed on March 9, 2020, and Unilever NV's annual report on Form 20-F for the fiscal year ended December 31, 2019, filed on March 9, 2020, included the Unilever Consolidated Financial Statements for such fiscal year. Both annual reports filed on Form 20-F were accompanied by an unqualified opinion by Unilever's registered public accounting firm.

Unification Transaction

Cross-border Merger

The Board is considering effecting Unification by way of a Cross-border Merger of Unilever NV into Unilever PLC. Pursuant to the terms of the Cross-border Merger, all of the assets and liabilities of Unilever NV would be transferred to Unilever PLC, whereupon Unilever NV would be dissolved (without going into liquidation). As consideration for the Cross-border Merger, Unilever PLC would issue new Unilever PLC Shares and new Unilever PLC ADSs to holders of Unilever NV Shares and holders of Unilever NV NYRSs, respectively, on a one-for-one basis[4]. Unification would result in Unilever NV Shareholders receiving shares in the capital of Unilever PLC that represent the equivalent economic interest in Unilever PLC upon the consummation of Unification as their holdings in the capital of Unilever NV represented in Unilever as a whole immediately prior to the implementation of Unification. The proportionate economic interests of Unilever NV Shareholders and Unilever PLC Shareholders in Unilever as a whole would therefore not be affected as a

[4] While certain holders of Unilever NV NYRSs may elect to receive Unilever PLC Shares instead of Unilever PLC ADSs, this would have no impact on the one-for-one ratio described above, or on the economic or beneficial ownership position of such holders.

result of Unification, subject to the withdrawal of any Unilever NV Shareholders who vote against the Cross-border Merger and do not wish to hold Unilever PLC Shares (as further described below).

As required by Dutch law, the Cross-border Merger will provide a statutory withdrawal right for those Unilever NV Shareholders who vote against the Cross-border Merger and who do not wish to hold Unilever PLC Shares. This right is only exercisable by Unilever NV Shareholders ("**Withdrawing Shareholders**") who vote against the proposal at the general meeting of Unilever NV convened to approve the Cross-border Merger and who also file a request for compensation in accordance with the Dutch Civil Code. Upon completion of Unification, Withdrawing Shareholders will not receive Unilever PLC Shares. Instead, Withdrawing Shareholders will be entitled to receive cash compensation determined in accordance with a formula proposed to be included in the Unilever NV Articles of Association. Diagrams of Unilever's ownership structure before and after Unification are provided in Appendix B hereto.

The Cross-border Merger would be carried out pursuant to a statutory procedure that provides for the merger of a U.K. company with a company from a different European Union member state. This procedure is derived from a European Union Directive (Directive (EU) 2017/1132), which codified the European Union Directive on Cross-border Mergers of Limited Liability Companies (2005/56/EC) (together, the "**EU Directive**"), and came into effect in 2005. The EU Directive was required to be implemented by European Union member states by the end of 2007. In the United Kingdom, the EU Directive was implemented by the Companies (Cross-border Mergers) Regulations 2007 (the "**U.K. Regulations**")[5], and the consummation of cross-border mergers in the United Kingdom are considered to be a relatively new concept. However, much of the process and oversight for cross-border mergers involving U.K. companies is based on the same principles as apply in the context of U.K. schemes of arrangement, a statutory procedure which has been available in the United Kingdom for many years and with which the Staff will be more familiar from no-action requests discussing the applicability of Section 3(a)(10) to U.K. schemes of arrangement.[6]

The Cross-border Merger will be subject to a number of procedural steps in both the United Kingdom and the Netherlands, a primary purpose of which is to ensure the fairness of the transaction to all stakeholders. These steps will include, among other things, (i) convening shareholders' meetings and publishing merger terms, (ii) shareholder approvals, (iii) obtaining pre-merger certificates as to due completion of the pre-merger acts and formalities, and (iv) approval from the High Court of Justice in England and Wales (the "**High Court**") for the completion of the Cross-border Merger. Whilst steps (i) to (iii) take place for each of the merging parties in their jurisdiction of incorporation (so in the United Kingdom for Unilever PLC and in the Netherlands for Unilever NV), the final approval at step (iv) will take place in the United Kingdom for both merging parties since it is Unilever PLC which is the transferee company under the Cross-border Merger and which will be the surviving entity once the Cross-border Merger has completed. Steps (i) and (iii) also involve the High Court since the Unilever PLC shareholders' meeting is required to be convened pursuant to an order of the High Court and the U.K. pre-merger certificate has to be issued by the High Court. The due observance of equivalent requirements in the Netherlands is monitored and confirmed by a Dutch civil law notary in the Dutch pre-merger certificate. The statutory requirements of both jurisdictions also require the publication of draft merger terms and a directors' report explaining them, and the commission of an independent expert's report containing an opinion on whether both the methods used to determine the share exchange ratio and the share exchange ratio itself are reasonable. Both the United Kingdom and the Netherlands also have requirements to ensure the protection of creditors in the context of a cross-border merger and to require valuation reports setting out an independent expert's valuation of the share exchange ratio.

---

[5] The U.K. left the European Union on January 31, 2020 and entered into a standstill transition period, with the obligations and benefits of European Union membership continuing to apply until December 31, 2020. During this transition period, European Union legislation, rules and court decisions continue to apply to and in the U.K. as if it were a European Union member state.

[6] The Staff has written no-action letters in response to requests for Section 3(a)(10) relief based on U.K. schemes of arrangement approved by U.K. courts. *See e.g., Xyratex Group Limited (available May 29, 2002), Omnicom Group Inc. (available January 28, 1999), StaffMark, Inc. (available September 3, 1998), Guinness PLC (available October 31, 1997), Ashanti Gold Fields Company Limited (available October 17, 1996), and Lucas Industries plc (available August 20, 1996).*

The Unification Legal Opinion, attached as Appendix A hereto, contains opinions and confirmations in respect of Unification and relevant to this request. Furthermore, we have provided more details around the process for implementing the Cross-border Merger in Appendix C hereto.

Transaction-Related Form 6-K and Treatment of Unilever United States, Inc.

Unilever PLC will furnish a Form 6-K reporting that the Cross-border Merger has been consummated, and making all other required disclosures, including, among other relevant matters, disclosure of Unilever PLC's reliance upon the exemption from registration under the Securities Act provided under Section 3(a)(10). Unilever PLC Shares will continue to be registered under Section 12(b) of the Exchange Act and will continue to be listed on, and in the case of the Unilever PLC ADSs, traded over, the NYSE.

Unilever PLC and Unilever NV, as "Parents" of the Unilever Group, are co-registrants in respect of that certain registration statement on Form F-3 (File No. 333-215900), effective on July 27, 2017 (the "**Shelf Registration Statement**"), providing for the offer, sale and issuance from time to time of debt securities, pursuant to an Indenture, amended and restated as of September 22, 2014, among Unilever Capital Corporation, a Delaware corporation, Unilever NV, Unilever PLC, Unilever United States, Inc., a Delaware corporation ("**UNUS**") and The Bank of New York Mellon as trustee (the "**Indenture**"), which previously has been filed as an exhibit to the Shelf Registration Statement and qualified under the Trust Indenture Act of 1939, as amended (the "**TIA**") pursuant to a Form T-1 dated September 22, 2014, filed as an exhibit to the registration statement on Form F-3 (File No. 333-199023), filed on September 30, 2014.

UNUS is the only guarantor which currently is a subsidiary of Unilever NV. The guarantee of UNUS, as is the case with the guarantees of all guarantors under the Shelf Registration Statement, is provided for in Section 202 of the Indenture and is not evidenced by a separate instrument or agreement. Currently, UNUS is exempt from the requirements of Section 15(d) of the Exchange Act pursuant to Rule 12h-5 thereunder.

By operation of law, pursuant to the Cross-border Merger, upon Unification, UNUS will become a wholly owned indirect subsidiary of Unilever PLC. Nothing in the Cross-border Merger or any other transaction associated with Unification will change the status of UNUS under Rule 12h-5 (or Rule 3-10 of Regulation S-X under the Exchange Act), as Unilever PLC will remain a reporting company under the Exchange Act and UNUS will be a wholly owned indirect subsidiary thereof – thus remaining a subsidiary of a SEC reporting company for all relevant purposes under the Exchange Act and the Securities Act.

UNUS, as a guarantor, is and will remain a party to the Indenture, which includes the guarantee, and has previously been qualified under the TIA. The Indenture will remain in full force and effect, and will not be modified in connection with Unification (other than, in due course, by a supplemental indenture to evidence that, pursuant to the Cross-border-Merger, Unilever PLC has succeeded by right, title and operation of law to Unilever NV).

Accordingly, there will be no obligation of UNUS under either Section 15(d) of the Exchange Act or the TIA arising as a result of Unification.

Court Approval Process

Legal Background

As stated above, the U.K. cross-border merger regime is relatively new and much of it is based on the law relating to U.K. schemes of arrangement which has been in place for many years, and with which the Staff is familiar. Both a cross-border merger and a scheme of arrangement involve court hearings to convene a shareholders' meeting and subsequently to approve the transaction. In both cases, a judge from the Insolvency and Companies Court, the division within the High Court that is responsible for cross-border mergers, normally presides over (i) the hearing to convene the shareholders' meeting, and (ii) in the case of a cross-border merger, the hearing to grant the pre-merger certificate. Furthermore, in both cases it is a High Court judge who presides over the final approval hearing for the completion of the transaction. A High Court judge is a more senior member of the judiciary than an Insolvency and Companies Court judge, which reflects the increased emphasis on the importance of the final approval hearing.

In both a cross-border merger and a scheme of arrangement, shareholder approval for the U.K. company is required by a "dual" majority, being a majority in number, representing 75 per cent. by value of the shareholders voting in person or by proxy at the shareholders' meeting. Furthermore, in both a cross-border merger and a scheme of arrangement, the High Court has discretion as to whether or not to grant its approval at the final hearing and, in deciding whether or not to do so, will consider the fairness of the terms of the transaction (both procedurally and substantively) to all affected shareholders (and other stakeholders). The cross-border merger regime includes certain additional protections, not present in the case of a scheme of arrangement, including the requirement for an independent expert's report from an independent auditor opining on whether the share exchange ratio is sensibly determined and reasonable, and the requirement to publish and make available the merger terms and the independent expert's report for lengthy periods ahead of the shareholders' meetings. Under U.K. and Dutch law, there is also a requirement for a valuation report from an independent expert providing an actual valuation of the share exchange ratio, which must under U.K. law also be sent to the proposed allottees of the shares (in this case, the Unilever NV Shareholders).

The High Court approval hearing for a cross-border merger is held following a joint application by both merging companies, and the shareholders of both companies will have the opportunity to attend and to be heard at the hearing. Shareholders will be informed of their right to attend and be heard at the High Court approval hearing in the documentation that is sent to them with the notice convening the shareholders' meetings.

In approving the cross-border merger, the High Court must (under Regulation 16 of the U.K. Regulations) satisfy itself that all required statutory and procedural requirements have been satisfied, including that pre-merger certificates have been obtained in relation to both merging companies within the previous six months, and that the draft merger terms are the same as those used to obtain the pre-merger certificates. In addition to ensuring these requirements are met, the High Court has discretion as to whether or not to approve the cross-border merger. Regulation 16(1) of the U.K. Regulations states that the High Court "may" make an order approving a cross-border merger if such requirements are met. In the exercise of its discretion, the High Court will take into account the fairness of the terms of the cross-border merger, including those relating to the share exchange ratio as reported on by an independent expert, in reaching its decision as to whether or not to approve the cross-border merger.

Relevant Case Law

We set out below a summary of the case law which establishes the actual practice of the High Court in deciding whether or not to approve cross-border mergers.

In one of the early cases dealing with cross-border mergers in the United Kingdom (Re Wood DIY Ltd [2011] EWHC 3089), the judge (Roth J) noted that "There is, under reg. 16(1), a residual discretion in the court whether to grant approval….It is generally considered that it is appropriate to apply the test adopted for a scheme of arrangement, as expressed in Re National Bank Ltd [1966] 1 WLR 819 at 829 (approving a statement in Buckley on the Companies Act, 13th edn (Butterworths, 1957): '… the arrangement is such as an intelligent and honest man, a member of the class concerned and acting in respect of his interest, might reasonably approve'.

In subsequent cases, judges have noted their discretion as to whether or not to approve a cross-border merger and have adopted the approach formulated by Sales J in Re Diamond Resorts (Europe) Limited [2012] EWHC 3576 (Ch). In that case, Sales J noted that "Since the Court has a discretion under regulation 16(1) whether to approve the merger, it is required to consider whether it is proper to exercise that discretion in favour of approving the merger, involving a process of review over and above simply satisfying itself that the various pre-merger steps have indeed been undertaken". He went on to state that "I consider that the proper function for this Court in the exercise of its discretion under regulation 16(1) of the 2007 Regulations is to examine with care the question whether, if the merger proceeds and is authorised, stakeholders in the merging Spanish companies will suffer a material detriment such that the merger ought not to be approved".

Sales J went on to approve the cross-border merger, having considered its effect on the shareholders, employees and creditors of each of the merging companies.

For completeness, it should be noted that in two cases since the Diamond Resorts case referred to above, Re Livanova plc [2015] EWHC 2865 (Ch) and Re M2 Property Invest Limited [2017] EWHC 3218 (Ch), the judges have questioned the extent to which the English court, at the final approval hearing, should look into the procedures adopted in other European Union member states at the pre-merger certificate stage of checking completion of the pre-merger acts and formalities, particularly in relation to the protection of creditors. It is highly unlikely that this question would ever be resolved because practitioners always present the case at the final approval stage on the basis that the High Court will continue to adopt the approach outlined in the Diamond Resorts case as described above.

Furthermore, the debate mentioned above does not detract from the central position that a joint application is made to the High Court to seek its approval for a cross-border merger, and that the High Court has a discretion whether or not to approve such a merger. In deciding whether or not to exercise that discretion, the High Court will consider the effect of the cross-border merger on affected parties, including the shareholders of both merging companies, and will entertain any submissions from such shareholders supporting or opposing the cross-border merger at the approval hearing.

Court Approval in the context of the Cross-border Merger

In the context of the Cross-border Merger, the High Court judge at the final approval hearing will therefore need to be satisfied that pre-merger certificates have been obtained in the United Kingdom and the Netherlands in relation to Unilever PLC and Unilever NV, respectively, and that the other statutory requirements have also been met. The judge will then go on to consider whether to exercise the discretion to approve the Cross-border Merger, taking into account its fairness to all affected shareholders (and other stakeholders), the independent experts' opinions as to whether the share exchange ratio is sensibly determined and reasonable, and the valuation reports on the share exchange ratio.

The High Court will take into account the interests of Unilever NV Shareholders as they will be the recipients of the Unilever PLC Shares or Unilever PLC ADSs issued as consideration for the Cross-border Merger. As noted above, all Unilever NV Shareholders and Unilever PLC shareholders will be entitled to appear and be heard at the final High Court hearing to approve the Cross-border Merger, and this will be made clear in the documentation sent to both sets of shareholders with the notices convening the shareholders' meetings of Unilever PLC and Unilever NV.

Discussion and Analysis of Section 3(a)(10)

Section 3(a)(10) provides an exemption from the registration requirements of the Securities Act for, in relevant part, ". . . any security which is issued in exchange for one or more bona fide outstanding securities, claims or property interests . . . where the terms and conditions of such issuance and exchange are approved, after a hearing upon the fairness of such terms and conditions at which all persons to whom it is proposed to issue securities in such exchange shall have the right to appear, by any court . . ."

The prerequisites to qualifying for a Section 3(a)(10) exemption therefore are: (i) an exchange of a security for another security, claim or property interest; (ii) court approval of the terms and conditions of such issuance and exchange; and (iii) that such approval be granted after a hearing on the fairness of such terms and conditions that is open to all persons exchanging securities, claims or property interests, and with respect to which such persons have received notification. In addition, the Staff has emphasized that the approving court must be made aware that its approval will be relied upon in order for the transaction to qualify for an exemption from the registration requirements of the Securities Act. See *Staff Legal Bulletin No. 3A* (June 18, 2008), *Xyratex Group Limited* (available May 29, 2002), *Omnicom Group Inc.* (available January 28, 1999), *StaffMark, Inc.* (available September 3, 1998), *Guinness PLC* (available October 31, 1997), *Ashanti Gold Fields Company Limited* (available October 17, 1996), *Lucas Industries plc* (available August 20, 1996) and the other letters referred to therein.

Exchange of Securities

Under the terms of Unification (as achieved through the Cross-border Merger), Unilever NV Shares and Unilever NV NYRSs will be cancelled, and Unilever PLC Shares and Unilever PLC ADSs will be issued in lieu thereof. No other cash, securities, property or other consideration will be offered to Unilever NV Shareholders as part of the share exchange ratio. Therefore, there will be an exchange solely of securities for securities.[7]

Court Approval

The Staff has previously indicated that the term "any court" in Section 3(a)(10) includes a foreign court. Specifically, the Staff has granted numerous prior no-action requests in circumstances where the judicial proceeding on the applicable transaction was to be conducted by the High Court, which is the court that would approve the Cross-border Merger. *See Shire Pharmaceuticals Group Plc and Shire Plc* (available November 17, 2005), *Xyratex Group Limited* (available May 29, 2002), *Omnicom Group Inc.* (available January 28, 1999), *StaffMark, Inc.* (available September 3, 1998), *Guinness PLC* (available October 31, 1997), *Lucas Industries plc* (available August 20, 1996) and the other letters referred to therein. Based on the above, we believe the High Court should satisfy the “court” requirements of Section 3(a)(10).

Court Hearing

In determining whether or not to sanction the Cross-border Merger, the High Court would, among other things, consider the fairness of the Cross-border Merger to Unilever NV Shareholders. Such a High Court hearing to sanction a cross-border merger is in many ways equivalent to the court sanction hearing for a U.K. scheme of arrangement, on which the Staff has provided no-action letters in the past. In such no-action letters, the Staff has indicated that such a hearing satisfies the Section 3(a)(10) requirement that a court approve the terms and conditions of the issuance and exchange, after a hearing upon the fairness of such terms and conditions. *See Xyratex Group Limited* (available May 29, 2002), *Omnicom Group Inc.* (available January 28, 1999), *StaffMark, Inc.* (available September 3, 1998), *Guinness PLC* (available October 31, 1997), *Ashanti Gold Fields Company Limited* (available October 17, 1996), *Lucas Industries plc* (available August 20, 1996) and the other letters referred to therein. See also *Flamel Technologies S.A. and Avadel Pharmaceuticals Limited* (available July 15, 2016) for an example of a no-action letter issued by the Staff based on the approval of the fairness of terms and conditions of a merger by the Irish High Court in the context of a European cross-border merger carried out pursuant to the EU Directive.

Before and at the hearing by the High Court to sanction the Cross-border Merger, the High Court would be advised that its approval of the Cross-border Merger would be relied upon by Unilever as an approval of the Cross-border Merger following a hearing on the fairness of the Cross-border Merger to Unilever NV Shareholders for the purposes of qualifying for the exemption from the registration requirements of the Securities Act provided by Section 3(a)(10) thereof with respect to the Unilever PLC Shares issued pursuant to the Cross-border Merger. The Staff has indicated in the past that such pre-hearing notification to the court conducting the fairness hearing satisfies the requirements as set out in Section 3(a)(10). *See Flamel Technologies S.A. and Avadel Pharmaceuticals Limited* (available July 15, 2016), *Xyratex Group Limited* (available May 29, 2002), *Omnicom Group Inc.* (available January 28, 1999), *StaffMark, Inc.* (available September 3, 1998), *Guinness PLC* (available October 31, 1997), *Ashanti Gold Fields Company Limited* (available October 17, 1996), *Lucas Industries plc* (available August 20, 1996) and the other letters referred to therein.

---

[7] As required by Dutch law, the Cross-border Merger will provide a statutory withdrawal right for those Unilever NV Shareholders who vote against the Cross-border Merger and who do not wish to hold Unilever PLC Shares. This right is only exercisable by Unilever NV Shareholders (“Withdrawing Shareholders”) who vote against the proposal at the general meeting of Unilever NV convened to approve the Cross-border Merger and who also file a request for compensation in accordance with the Dutch Civil Code. Upon completion of Unification, Withdrawing Shareholders will not receive Unilever PLC Shares. Instead, Withdrawing Shareholders will be entitled to receive cash compensation from Unilever NV determined in accordance with a formula proposed to be included in the Unilever NV Articles of Association. This statutory withdrawal right does not contemplate the payment of cash in exchange for Unilever PLC Shares (but rather Unilever NV Shares), and should therefore not impact the applicability of Section 3(a)(10).

Notification

The Unilever NV Shareholders' meeting and the High Court hearing will be open to all record holders of NV Shares and NV NYRSs. Such holders will not be required to satisfy any pre-requisites, and will be subject to no filing or notification requirements, in order to attend either the Unilever NV Shareholders' meeting or the High Court hearing. Unilever NV Shareholders will receive adequate notice, which will include the date, time and place of the shareholders' meeting, and the date and place (with details of how to find out the time) of the High Court hearing, in the documentation sent to the Unilever NV Shareholders with the notice convening the shareholders' meeting of Unilever NV. This documentation will be sent to the Unilever NV Shareholders at least 42 days before the shareholders' meeting and a number of months before the High Court hearing. Should the date or location of the High Court hearing change, Unilever PLC will notify all shareholders of the new time and location of the High Court hearing through the publication of press releases in the UK and the Netherlands, and advertisements in newspapers with national circulation in each of the UK, the Netherlands and the United States. At the High Court Hearing, all Unilever NV Shareholders will have the opportunity to be heard to support or oppose the Cross-border Merger, and there will be no improper impediments that would prevent Unilever NV Shareholders from having an opportunity to appear at the hearing. The Staff has stated that steps such as these satisfy the notification requirements of Section 3(a)(10). *See Flamel Technologies S.A. and Avadel Pharmaceuticals Limited* (available July 15, 2016), *Xyratex Group Limited* (available May 29, 2002), *Omnicom Group Inc.* (available January 28, 1999), *StaffMark, Inc.* (available September 3, 1998), *Guinness PLC* (available October 31, 1997), *Ashanti Gold Fields Company Limited* (available October 17, 1996), and *Lucas Industries plc* (available August 20, 1996).

Conclusion of Analysis

Based on the analysis set out above, and as set out in the Unification Legal Opinion attached as Appendix A hereto, the hearing at which the approval of the High Court is sought for the Cross-border Merger:

- can properly be regarded as a hearing upon the fairness of the Cross-border Merger, including the exchange Unilever NV Shares for Unilever PLC Shares, to the shareholders of both Unilever PLC and Unilever NV;
- is a hearing in respect of which shareholders of both Unilever PLC and Unilever NV will receive notice of their right to appear, and at which shareholders of both Unilever PLC and Unilever NV will have the right to appear in person or by counsel to support or oppose the Cross-border Merger; and
- is a hearing in respect of which the High Court will be advised both before and again at the hearing that Unilever will rely on the Section 3(a)(10) exemption and not register under the Securities Act the exchange of Unilever NV Shares for Unilever PLC Shares based on the High Court's approval of the Cross-border Merger.

Based on the foregoing analysis, we respectfully submit that, given the facts and circumstances of Unification, Unilever PLC may issue Unilever PLC Shares and Unilever PLC ADSs, including the Unilever PLC Shares underlying such Unilever PLC ADSs, in the Cross-border Merger without registration under the Securities Act in reliance on the exemption from the registration requirements thereof provided by Section 3(a)(10).

Resales under Rule 144

The Staff has expressed the view that securities received in a business combination transaction not involving a shell company, that was exempt under Section 3(a)(10) may generally be resold without regard to Rule 144 if the sellers are not affiliates of the issuer of the Section 3(a)(10) securities and have not been affiliates within 90 days of the date of the Section 3(a)(10) transaction, as such securities would not constitute "restricted securities" within the meaning of Rule 144(a)(3) under the Securities Act. See *Staff Legal Bulletin No. 3A* (June 18, 2008) and *Flamel Technologies S.A. and Avadel Pharmaceuticals Limited* (available July 15, 2016).

On the basis of the foregoing, it is our view that:

- the Unilever PLC Shares and Unilever PLC ADSs received in the Cross-border Merger will not constitute “restricted securities” within the meaning of Rule 144(a)(3) under the Securities Act;
- persons who are not affiliates of Unilever PLC and have not been affiliates of Unilever PLC within 90 days of the date of the consummation of Unification may resell Unilever PLC Shares and Unilever PLC ADSs received in the Cross-border Merger without regard to Rule 144; and
- persons who are affiliates of Unilever PLC, or who have been affiliates of Unilever PLC within 90 days of the date of the consummation of Unification, would be permitted to resell Unilever PLC Shares and Unilever PLC ADSs received in the Cross-border Merger in the manner permitted by Rule 144.

* * * * *

For the reasons set forth above, we respectfully request that the Division (i) confirm that, based on the facts and circumstances set forth in this letter, the Staff will not recommend any enforcement action by the Commission if Unilever PLC issues, pursuant to the Cross-border Merger as described above, Unilever PLC Shares and Unilever PLC ADSs, including the Unilever PLC Shares underlying the Unilever PLC ADSs, without registration under the Securities Act in reliance on the exemption from the registration requirements provided by Section 3(a)(10), and (ii) concur with our view as to certain resales of Unilever PLC Shares and Unilever PLC ADSs, including the Unilever PLC Shares underlying the Unilever PLC ADSs, in reliance on Rule 144 as described above.

If the Division contemplates issuing a response that differs from any of our requests, we respectfully request the opportunity for a conference to discuss our views. If you require additional information or would like to discuss any of the above, please do not hesitate to contact me by phone at +44 20 7456 3660 or email at mike.bienenfeld@linklaters.com.

Yours sincerely,

Michael Bienenfeld

Michael Z. Bienenfeld
Partner

cc: Paul McNicholl
Anna Styles
Guido Portier
Linklaters LLP

Ritva Sotaama
Robert Leek
Unilever

Appendix A
Unification Legal Opinion

Linklaters LLP
One Silk Street
London EC2Y 8HQ
Telephone (+44) 20 7456 2000

The Directors
Unilever PLC
100 Victoria Embankment
London EC4Y 0DY

Ref: Anna Styles/Paul McNicholl June 11, 2020

Dear Sirs,
Unilever Group (Unilever PLC and Unilever N.V.) – Cross-border Merger

We are writing to you as your legal advisers in England, the Netherlands and the United States. You have asked for our opinion as to certain matters of English law concerning the Cross-border Merger of Unilever N.V. into Unilever PLC, as described in the accompanying Request for No Action Relief addressed to the US Securities and Exchange Commission (the "**Commission**") dated June 11, 2020 (the "**Request**"). Defined terms used in this letter and not defined herein have the meanings set out in the Request.

As explained in the Request, the Cross-border Merger will be carried out pursuant to a statutory procedure that provides for the merger of a U.K. company with a company from a different European Union member state. This procedure is derived from the EU Directive, which came into effect in 2005 and required European Union member states to implement it by the end of 2007. In the U.K., the EU Directive was implemented by the U.K. Regulations in 2007, and in the Netherlands it was implemented primarily by amendments to the Dutch Civil Code in 2008. Pursuant to the Cross-border Merger, (1) all of the assets and liabilities of Unilever N.V. will be transferred to Unilever PLC, whereupon Unilever N.V. will be dissolved (without going into liquidation); and (2) Unilever PLC will issue Unilever PLC Shares to the Unilever N.V. Shareholders on a one-for-one basis.

A number of procedural steps are required under both English and Dutch law to effect the Cross-border Merger. These are explained in detail in the Request, and include (1) convening shareholders' meetings of Unilever PLC and Unilever N.V. and publication of the merger terms and related documents; (2) obtaining shareholder approvals from the shareholders of both Unilever PLC and Unilever N.V.; and (3) obtaining pre-merger certificates in both the U.K. (for Unilever PLC) and the Netherlands (for Unilever N.V.). As the "transferee company" in the Cross-border Merger (Unilever PLC) is an English company, as a final step the Cross-border Merger will require the approval of the English High Court.

You have requested our opinion in order to assist with consideration of whether the High Court hearing to approve the Cross-border Merger will bring the issue of the Unilever PLC Shares within the exemption in section 3(a)(10) of the Securities Act so that, if the High Court approves the Cross-border Merger, the issuance of Unilever PLC Shares as part of the Cross-border Merger will be exempt from the registration requirements of the Securities Act.

Section 3(a)(10) provides an exemption from the registration requirements of the Securities Act for, in relevant part, ". . . *any security which is issued in exchange for one or more bona fide outstanding securities,*

claims or property interests . . . where the terms and conditions of such issuance and exchange are approved, after a hearing upon the fairness of such terms and conditions at which all persons to whom it is proposed to issue securities in such exchange shall have the right to appear, by any court . . ."

As set out in the Request, the prerequisites to qualifying for a Section 3(a)(10) exemption therefore are (1) an exchange of a security for another security, claim or property interest, (2) court approval of the terms and conditions of such issuance and exchange, and (3) that such approval be granted after a hearing on the fairness of such terms and conditions that is open to all persons exchanging securities, claims or property interests, and with respect to which such persons have received notification. In addition, the Commission has emphasized that the approving court must be made aware that its approval will provide an exemption from the registration requirements of the Securities Act.

We have described in the Request the ways in which the Cross-border Merger would satisfy these requirements. In order to support that analysis, we confirm that for the reasons set out in the Request, in our opinion as a matter of English law, the hearing at which the approval of the High Court is sought for the Cross-border Merger:

(a) can properly be regarded as a hearing upon the fairness of the Cross-border Merger, including the exchange of Unilever N.V. Shares for Unilever PLC Shares, to the shareholders of both Unilever PLC and Unilever N.V., such that in deciding whether to exercise its discretion to approve the Cross-border Merger, the High Court will need to be satisfied as to the fairness of the Cross-border Merger, including the exchange of Unilever N.V. Shares for Unilever PLC Shares, to the shareholders of both Unilever PLC and Unilever N.V.;

(b) is a hearing in respect of which shareholders of both Unilever PLC and Unilever N.V. will receive notice of their right to appear, and at which shareholders of both Unilever PLC and Unilever N.V. will have the right to appear in person or by counsel to support or oppose the Cross-border Merger; and

(c) is a hearing in respect of which the High Court will be advised, both before and again at the hearing, that Unilever will rely on the Section 3(a)(10) exemption and not register under the Securities Act the exchange of (i) Unilever N.V. Shares for Unilever PLC Shares or (ii) Unilever NV NYRSs for Unilever PLC Shares or Unilever PLC ADSs, based on the High Court's approval of the Cross-border Merger.

This opinion is limited to English law as applied by the English courts and in effect on the date of this opinion. It is given on the basis that it and all matters relating to it will be governed by, and that it (including all terms used in it) will be construed in accordance with, English law.

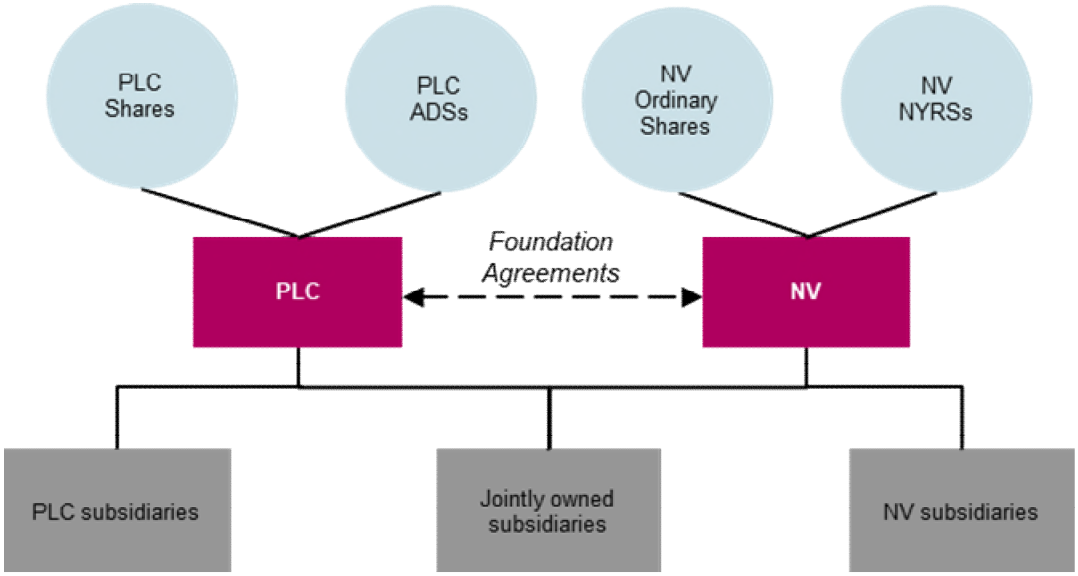
This opinion is addressed to you solely for your benefit in connection with Unification and the Cross-border Merger. It is not to be transmitted to anyone else nor is it to be relied upon by anyone else or for any other purpose or quoted or referred to in any public document or filed with anyone without our express consent, save that we agree that this letter may be sent to the Commission as part of the request for the issue of a no-action letter concerning the issue of the Unilever PLC Shares and may be published by the Commission as part of that no-action process.

Yours faithfully

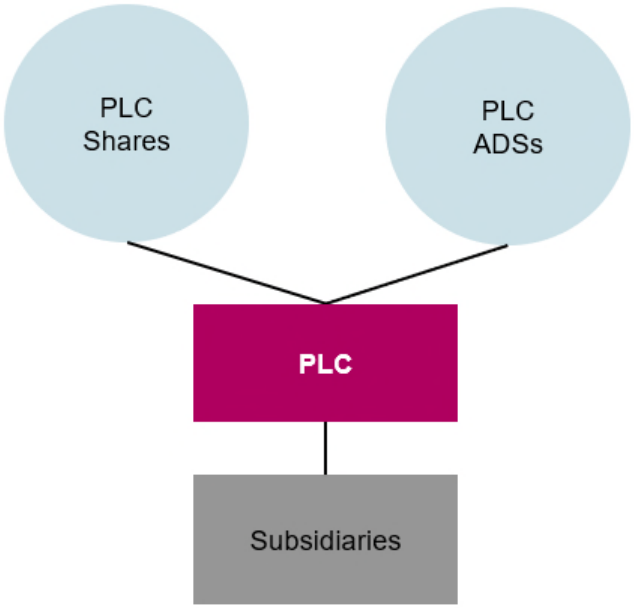
Linklaters LLP

Linklaters LLP

Appendix B
Unilever's ownership structure before Unification



Unilever's ownership structure after Unification



Appendix C
Further Details Relating to the Cross-border Merger

The Cross-border Merger involves four primary steps, which are designed in part to ensure that all interested parties are treated fairly as further discussed below.

- ***Convening shareholders' meetings and publication of merger terms***

  The United Kingdom

  Unilever PLC will make an application (the "**Court Application**") to the High Court under Regulation 11 of the U.K. Regulations for an order permitting it to convene a shareholders' meeting to seek shareholder approval for the Cross-border Merger. This application will be accompanied by (i) a near-final draft of a combined circular addressed to shareholders of both Unilever PLC and Unilever N.V. containing, amongst other things, the background to the Cross-border Merger and notices convening their respective shareholder meetings; (ii) a directors' report, (iii) an independent expert's report, (iv) a valuation report and (v) draft merger terms.

  The directors' report will explain the effect of the Cross-border Merger on shareholders, creditors and employees of Unilever PLC, as well as the legal and economic grounds for the merger terms, and will include any material interests of the directors and the effect of the merger on those interests where it is different from the effect on the like interests of others. The independent expert's report will be prepared by an independent person qualified to be an auditor appointed by Unilever PLC and will include an opinion on whether the methods used to determine the share exchange ratio are reasonable, and on whether the share exchange ratio itself is reasonable. The valuation report will be prepared by a similarly qualified independent person but will set out an actual valuation of the share exchange ratio by such independent expert. The draft merger terms will apply to both Unilever PLC and Unilever NV. The directors' report, the independent expert's report and the valuation report will be specific to Unilever PLC but there are equivalent requirements for Unilever NV under Dutch law.

  Following the filing of the Court Application, a High Court hearing will take place. The High Court will be concerned with ensuring that all affected shareholders of Unilever PLC will have the opportunity to vote (in person or by proxy) at the shareholders' meeting, and will have sufficient information made available to them so that they can reach a properly informed decision. If the High Court is satisfied, it will make an order giving Unilever PLC permission to convene the shareholders' meeting.

  Following the High Court hearing, the High Court order and other information relating to the Cross-border Merger must be filed with the U.K. companies registry, which filing must take place at least two months prior to Unilever PLC's shareholders' meeting. At the same time, the merger terms must be made available on Unilever PLC's website and the directors' report must be shared with Unilever PLC's employees. The U.K. companies registry will then publish notice of receipt of these documents and details of Unilever PLC's website in The Gazette, the U.K.'s official public record, which must take place at least one month prior to Unilever PLC's shareholders' meeting.

  In addition, the draft merger terms, the directors' report and the independent expert's report must be made available for inspection to Unilever PLC's shareholders and employees for at least one month prior to the Unilever PLC's shareholders' meeting. During this period, notice of the Unilever PLC's shareholders' meeting must also be sent to Unilever PLC's shareholders, and will be accompanied by the draft merger terms, directors' report, independent expert's report and the valuation report.

The Netherlands

An equivalent process for publicising the merger terms and associated documentation, and for convening the shareholders' meeting, will also take place for Unilever NV.

Under Dutch law the merging companies must decide upon the same merger proposal, therefore, the draft merger terms for Unilever NV and Unilever PLC will be the same. Unilever NV will also require a Dutch law compliant directors' report describing the same matters as included in Unilever PLC's directors' report. A report from a Dutch independent expert is also required. This report will confirm whether, after having considered the merger proposal and the documents attached thereto, the share exchange ratio proposed in the merger is reasonable. The Dutch valuation report will also be required to confirm that the shareholders' equity of Unilever NV was at least equal to (i) the nominal paid-up amount on the aggregate number of Unilever PLC Shares to be issued to Unilever NV Shareholders under the Cross-border Merger, plus (ii) the aggregate amount of the cash compensation which Unilever NV Shareholders who do not wish to receive Unilever PLC Shares may claim pursuant to Section 2:333h of the Dutch Civil Code.

Unilever NV will be required to file the merger proposal and the independent expert's report with the Dutch trade register and both Unilever NV and Unilever PLC will be required to make available the merger proposal, explanatory notes, independent experts' reports and other merger related documents at their respective offices.

Unilever NV will announce in an advertisement in a national newspaper and in the Dutch Government Gazette that the relevant merger documents have been filed. For a period of one month after these advertisements, creditors of both Unilever NV and Unilever PLC may file a notice of opposition with the competent Dutch District Court. If, after the one-month opposition period, the Dutch District Court confirms that no notice of opposition has been filed (or that any filed opposition has been settled or dismissed), the proposal to effect the Cross-border Merger may be passed by the general meeting of Unilever NV. The minutes of this general meeting must be drawn up in the form of a notarial deed of proceedings at the meeting.

The management boards of Unilever NV and Unilever PLC will be requested to confirm in writing that the merger documentation was made available at the offices of the merging companies promptly and in full during the period prescribed by Dutch law, and also that no material changes occurred that affected the information provided in the merger proposal or in the explanatory notes thereto.

- ***Shareholder approvals***

  At the shareholder meetings of Unilever PLC and Unilever NV, approval will be sought for the Cross-border Merger. In the United Kingdom, this requires approval by the same majority as is required for a U.K. scheme of arrangement, namely a majority in number, representing 75 per cent by value, of the shareholders who vote at the shareholders' meeting either in person or by proxy.

  In the Netherlands, the proposal to effect the Cross-border Merger is adopted by a simple majority of the votes cast, if at least 50 per cent of the issued capital is represented at the meeting; otherwise, a majority of at least 66.67 per cent of the votes cast is required.

- ***Obtaining pre-merger certificates***

  Once approval has been obtained from shareholders, each of Unilever PLC and Unilever NV must obtain a pre-merger certificate from the "competent authority" in its jurisdiction.

  In the United Kingdom, the competent authority is the High Court, which means a further High Court hearing is held. At this hearing, the High Court will verify that Unilever PLC has complied with the applicable requirements for the Cross-border Merger, which includes ensuring that:

  (i) the draft merger terms, the directors' report and the independent expert's report include all required information, and have been properly filed and publicised as described above;

  (ii) the shareholders' meeting has been properly convened and held; and

  (iii) the requisite approval was obtained at the shareholders' meeting.

  In the Netherlands, once the decision-making process of Unilever NV with respect to the Cross-border Merger has been duly finalised, the Dutch civil law notary may issue the pre-merger certificate, attesting the proper completion of all Dutch pre-merger acts and formalities. The Cross-border Merger may subsequently be effected in the manner and on the date provided by U.K. law.

- ***Court approval of the Cross-border Merger***

  The Cross-border Merger will require approval from the High Court within six months of the pre-merger certificates being obtained under Regulation 16 of the U.K. Regulations. A further joint application will be made by Unilever PLC and Unilever NV to the High Court seeking this approval, and a final High Court hearing is held for this purpose. If the High Court is satisfied, a High Court order will be made approving the Cross-border Merger and setting a date on which the Cross-border Merger will take effect, which must be at least 21 days after the date of the High Court order.