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Lic. Natascha Bissig, LL.M.
Lic. Sanda I. Bunaciu

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Konsulenten
Dr. Hugo A. Frey
Prof. Dr. Dr.h.c. Walter R. Schluemp
Prof. Dr. René Rhinow

By telefax 01 213 63 99

Herrn Thomas Gross
Umbricht Rechtsanwälte
Bahnhofstrasse 22
Postfach
8022 Zürich

Bahnhofstrasse 13
CH-8001 Zürich

Telefon +41-1-217-1000
Telefax +41-1-217-1400
E-Mail nkf@nkf.ch
Website www.nkf.ch

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THG/mus

Agreements with Intermediaries

Dear Colleague

I refer to your e-mail of May 16, 2002 and the attached draft Side Letter to the Underwriting Agreement.

1. In the Tax Ruling of June 22/June 28, 2002 and in the meeting with the Zurich tax commissioner it has been stressed that the financial and business risks are allocated to Nobel Investments Ltd., Bermuda. Nobel Investments SA shall render mere advisory services only. The remuneration scheme underlines this structure.
2. The handling of claims and of other legal matters in connection with agreements concluded by Nobel Investments Ltd. is not within the scope of the ordinary activities of Nobel Investments SA. As a consequence, Governing Law Clauses and Jurisdiction Clauses referring to Switzerland are not fully in line with the business structure as described in the Tax Ruling.

3. Whereas one could find arguments for choosing Swiss law as the governing law (adequacy and simplicity of Swiss law system compared to a common law system), the arguments for Switzerland as jurisdiction maybe difficult to find. If feasible, from a legal and business point of view, I therefore recommend to renounce at least the Jurisdiction Clause. Furthermore, it would also be better to renounce the Governing Law Clause. However, a Governing Law Clause, choosing Swiss law as applicable law, seems to a certain extent to be defensible.
4. The same is applicable to the Underwriting Agreement itself. Furthermore, I recommend to sign the agreements in Bermuda rather than in Hong Kong.

Please do not hesitate to contact me if you have further questions in this respect.

Yours sincerely

Thomas Graf

cc: Patrick J. Aregger, Mauro Gerli