

## OFFER MEMORANDUM

dated 15 March 2007

### RECOMMENDED CASH OFFER

by



0854690



### ROCKET SOFTWARE EUROPE HOLDING B.V.

(a private limited liability company (*besloten vennootschap met beperkte aansprakelijkheid*) incorporated under the laws of The Netherlands, with its corporate seat in Amsterdam, The Netherlands)

FOR ALL THE ISSUED AND OUTSTANDING SHARES WITH A NOMINAL VALUE OF EUR 0.03 IN THE CAPITAL OF



### SEAGULL HOLDING N.V.

(a public limited liability company (*naamloze vennootschap*) incorporated under the laws of The Netherlands, with its corporate seat in Dordrecht, The Netherlands)

This offer memorandum (the "**Offer Memorandum**") contains details of the recommended cash offer by Rocket Software Europe Holding B.V. (the "**Offeror**") to holders of issued and outstanding ordinary shares with a nominal value of EUR 0.03 each (the "**Shares**", holders of such Shares being referred to as "**Shareholders**") in the share capital of Seagull Holding N.V. ("**Seagull**" or the "**Company**") to purchase for cash all of or part of their Shares, on the terms and subject to the conditions and restrictions contained in this Offer Memorandum (the "**Offer**"). Capitalised terms used in this Offer Memorandum have the meanings as set out in Section 3 (Definitions).

Shareholders tendering their Shares under the Offer will be paid, on the terms and subject to the conditions and restrictions contained in this Offer Memorandum, in consideration of each Share validly tendered (or defectively tendered provided that such defect has been waived by the Offeror) and delivered (*geleverd*) a cash amount of EUR 4.33 per Share (the "**Offer Price per Share**"). See Section 9.1 (Offer Price per Share)

The Supervisory Board and the Management Board unanimously support and unanimously recommend the Offer to the Shareholders for acceptance. See Section 8 (Recommendation by the Supervisory Board and the Management Board).

The acceptance period under the Offer commences at 09:00 hours CET (04:00 hours EDT), on 19 March 2007 and expires at 15:00 hours CEST (09:00 hours EDT), on 17 April 2007, unless extended (the "**Acceptance Closing Date**"). Acceptance under the Offer must be made in the manner specified in this Offer Memorandum. Shares tendered on or prior to the Acceptance Closing Date may not be withdrawn, subject to the right of withdrawal of any tender during any extension of the Acceptance Period in accordance with the provisions of article 9o, paragraph 5 of the Bte 1995. The Offeror reserves the right to extend the Offer past the initial Acceptance Closing Date. If the Offer is extended past such Acceptance Closing Date, the Offeror will make an announcement to that effect in accordance with Applicable Law. See Section 9 (Invitation to Shareholders). The provisions of article 9o, paragraph 5 of the Bte 1995, require that such announcement is made within three Business Days following the Acceptance Closing Date.

The Offeror will announce whether the Offer is declared unconditional (*gestand wordt gedaan*) in accordance with Applicable Law (the "**Unconditional Date**"). Article 9t, paragraph 4 of the Bte 1995 requires that such announcement be made within five Business Days following the Acceptance Closing Date. The Offeror reserves the right to waive one or more of the Offer Conditions, provided that the waiver of certain of such Offer Conditions can only be made jointly with Seagull and that the Offer Condition as set out in Section 5.2(h) may not be waived by either party. See Section 9.5 (Declaring the Offer Unconditional).

Announcements contemplated by the foregoing paragraphs will be issued by press release and will be published in the Daily Official List and *Het Financieele Dagblad*. See Section 9.10 (Announcements).

In the event that the Offeror announces that the Offer is declared unconditional (*gestand wordt gedaan*), the Offeror will pay promptly but in any event within three Business Days following the Unconditional Date (the "**Settlement Date**") to Shareholders who have tendered and delivered their Shares to the Offeror prior to the Acceptance Closing Date the Offer Price per Share in respect of each Share validly tendered (or defectively tendered provided that such defect has been waived by the Offeror) and delivered (*geleverd*).

At 11:00 hours CEST (05:00 hours EDT), on 4 April 2007, the Extraordinary General Meeting of Shareholders will be held at the Sheraton Hotel at Schiphol, The Netherlands, in which meeting the Offer, among other matters, will be discussed in accordance with article 9q, paragraph 1 of the Bte 1995.

## 1 RESTRICTIONS AND IMPORTANT INFORMATION

### 1.1 Restrictions

The Offer is not being made, and the Shares will not be accepted for purchase from or on behalf of any Shareholders, in any jurisdiction in which the making or acceptance thereof would not be in compliance with the securities or other laws or regulations of such jurisdiction or would require any registration, approval or filing with any regulatory authority not expressly contemplated by the terms of this Offer Memorandum. However, acceptances of the Offer by Shareholders not resident in the Netherlands will be accepted by the Offeror if such acceptances comply with the acceptance procedure set out in this Offer Memorandum. Persons obtaining this Offer Memorandum are required to take due note and observe all such restrictions and obtain any necessary authorisations, approvals or consents. Neither the Offeror, nor Seagull, nor any of their advisers accepts any liability for any violation by any person of any such restriction. Any person (including, without limitation, any custodian, nominee or trustee) who would or otherwise intends to forward this Offer Memorandum or any related document to any jurisdiction outside The Netherlands should, among other things, carefully read this Section 1 (Restrictions and Important Information) before taking any action. The distribution of this document in jurisdictions other than The Netherlands may be restricted by law and therefore persons into whose possession this document comes should inform themselves about and observe such restrictions. Any failure to comply with any such restrictions may constitute a violation of the securities law of any such jurisdiction.

#### 1.1.1 Canada, Australia and Japan

The Offer is not being made, directly or indirectly, in or into Canada, Australia or Japan and this Offer Memorandum and any and all materials related thereto should not be sent in or into Canada, Australia or Japan, whether by use of a Canadian, Australian or Japanese interstate or foreign commerce, or of any facility of a Canadian, Australian or Japanese national securities exchange (including, without limitation, electronic mail, post, facsimile transmission, telex and telephone), and the Offer cannot be accepted by any such use, means or instrumentality, in or from within Canada, Australia or Japan. Accordingly, copies of this Offer Memorandum and any related materials are not being, and must not be, mailed or otherwise distributed or sent in or into or from Canada, Australia or Japan or, in their capacities as such, to custodians, trustees or nominees holding Shares for Canadian, Australian or Japanese persons, and persons receiving any such documents (including custodians, nominees and trustees) must not distribute or send them in, into or from Canada, Australia or Japan and doing so will render invalid any relevant purported acceptance of the Offer.

#### 1.1.2 United States of America

Neither the Offer nor this Offer Memorandum has been approved or disapproved by the U.S. Securities and Exchange Commission (the "**Commission**") nor has the Commission passed upon the fairness or merits of the offer nor upon the accuracy or adequacy of the information contained in this offer memorandum. Any representation to the contrary is unlawful.

The Offer is being made for the securities of a Dutch company and this Offer Memorandum complies with Dutch disclosure requirements, and is in Dutch format and style, which may differ from U.S. disclosure requirements, format and style. Seagull's financial information which is derived from the financial statements for the Financial Year 2004 included or incorporated in this Offer Memorandum has been prepared in accordance with Dutch generally accepted accounting principles (*Dutch GAAP*). Seagull's financial information based on the financial statements for the Financial Years 2005 and 2006 and the interim financial statements for the first half of the Financial Year 2007 (ended on 31 October 2006) has been prepared in accordance with International Financial Reporting Standards (*IFRS*). Seagull's financial information for the Financial Years 2005, 2006 and the first half of the Financial Year 2007 may thus not be comparable to financial statements of U.S. companies whose financial statements are prepared in accordance with U.S. generally accepted accounting principles.

Certain U.S. and Dutch tax considerations are described in Section 16 (Tax Aspects of the Offer).

### 1.2 Important Information

This Offer Memorandum contains important information that should be read carefully before any decision is made to tender Shares in connection with the Offer. The Shareholders are advised to seek independent advice where necessary. In addition, the Shareholders may wish to consult with their tax advisers regarding the tax consequences of tendering their Shares in the Offer.

The information included in Sections 1.1, 4.1, 4.2, 4.3, 4.5, 4.8 4.9, 4.10, 5.3, 5.4, 5.5, 5.7.1, 5.7.2, 5.7.3, 9 (introductory paragraph), 9.1 to 9.9 (inclusive), 12 and 16 has been solely provided by the Offeror. The information included in Sections 4.4, 5.6, 6, 8, 10, 11, 14.1, 14.3, 14.4, 15 and 17.5 has been solely provided by Seagull. The information included in Sections 1.2, 2, 3, 4.6, 4.7, 4.11, 4.12, 5.1, 5.2, 5.7.4, 5.7.5, 5.7.6, 5.8, 5.9, 9.10, 13, 17.1 up to and including 17.4, 18, and 19 has been provided by the Offeror and Seagull jointly. The information included in Section 7 has been provided by America's Growth Capital, LLC ("**AGC**") and the fairness opinion included therein is identical to the original fairness opinion as of the same date issued by AGC. The information included in Section 14.2 and Section 14.5 has been provided by KPMG Audit ("**KPMG**") and is identical to the original auditor's reports as of the same dates issued by KPMG.

The Offeror and Seagull are exclusively responsible for the accuracy and completeness of the information provided in this Offer Memorandum, each with respect to such information as it has provided, and together with respect to the information they have provided jointly, except for information that has not been provided by either of them (which includes the fairness opinion and the description thereof in Section 7, for which AGC is responsible and the information in Section 14.2 and Section 14.5, for which KPMG is responsible, or jointly by them as set out in the previous paragraph of this section. Each of the Offeror and Seagull confirms, with respect to such information it has provided in this Offer Memorandum, that to the best of its knowledge and belief as of the date hereof the information contained in this Offer Memorandum is true and accurate in all material respects and there are no facts the omission of which would make any statement in this Offer Memorandum misleading in any material respect. Please be aware that certain financial and statistical information in this Offer Memorandum may be rounded up or down and should therefore not be regarded as definitive.

AGC is acting as financial adviser exclusively to Seagull and to no one else in connection with the Offer and will not be responsible to anyone other than Seagull for providing the protections afforded to the clients of AGC or for providing advice in relation to the Offer.

The information included in this Offer Memorandum reflects the situation as at the date of this Offer Memorandum. Neither the issue nor the distribution of this Offer Memorandum shall under any circumstances imply that the information contained herein is accurate and complete as of any time subsequent to this date or that there has been no change in the information set out in this Offer Memorandum or in the affairs of Seagull and/or its subsidiaries and/or its affiliates since the date of this Offer Memorandum. The foregoing does not affect the obligation of both the Offeror and Seagull, each in so far as it concerns them, to make a public announcement pursuant to article 9b, paragraph 1 of the Bte 1995, if applicable.

No person, other than the Offeror and Seagull and without prejudice to the auditor's reports issued by KPMG and the fairness opinion issued by AGC included in this Offer Memorandum, is authorised in connection with the Offer to provide any information or to make any statements on behalf of the Offeror or Seagull in connection with this Offer or any information contained in this Offer Memorandum. If any such information or statement is provided or made by parties other than the Offeror or Seagull, such information or statements should not be relied upon as having been provided by or made by or on behalf of the Offeror or Seagull. Any information or representation not contained in this Offer Memorandum must not be relied upon as having been provided by or made by or on behalf of the Offeror or Seagull.

This Offer Memorandum and the Offer are, and any tender, purchase or delivery of Shares will be, governed by and construed in accordance with the laws of The Netherlands. The District Court of Amsterdam (*Rechtbank Amsterdam*) and its appellate courts shall have exclusive jurisdiction to settle any disputes which might arise out of or in connection with this Offer Memorandum, the Offer and/or any tender, purchase or delivery of Shares. Accordingly, any legal action or proceedings arising out of or in connection with the Offer Memorandum, the Offer and/or any tender, purchase or delivery of Shares must be brought exclusively in such courts.

The Offer Memorandum is published in English and a Dutch summary is included as Section 18. In the event of any differences, whether or not in interpretation, between the English text of the Offer Memorandum and the Dutch summary of this Offer Memorandum, the English text of the Offer Memorandum shall prevail.

Copies of this Offer Memorandum, the Seagull Articles of Association, the financial statements (jaarrekening) for Seagull's Financial Years 2006, 2005, 2004 and the first half of the Financial Year 2007 (ended on 31 October 2006), which documents are incorporated by reference in, and form an integral part of, this Offer Memorandum, are available free of charge at the offices of Seagull and the Settlement Agent and can be obtained by contacting Seagull or the Settlement Agent at the addresses below.

Seagull

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The Netherlands

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The Settlement Agent

Fortis Bank (Nederland) N.V.  
Department B.I.S.  
Rokin 55  
1012 KK Amsterdam  
The Netherlands

Tel: +31 (0) 20 527 1440

This Offer Memorandum includes forward-looking statements that involve risk and uncertainty. Generally, words such as may, will, expect, intend, estimate, anticipate, believe, plan, seek continue or similar expressions identify forward-looking statements. Although each of the Offeror and Seagull, each with respect to the statements it has provided, believes that the expectations reflected in such forward looking statements are based on reasonable assumptions, no assurance can be given that such statements will be fulfilled or prove to be correct, and no assurances or warranties are otherwise made with respect to such statements. Any such forward-looking statement must be considered together with the fact that actual events or results may vary materially from such forward-looking statements due to, among other things, political, economic or legal changes in the markets and environments in which the Offeror and/or Seagull does business, to competitive developments or risks inherent to Seagull's business plans and to uncertainties, risk and volatility in financial markets and other factors affecting the Offeror and/or Seagull.

The Offeror and Seagull undertake no obligation to publicly update or revise any forward-looking statements, whether as a result of new information, future events or otherwise, except as required by applicable laws and regulations or by any appropriate regulatory authority.

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### 3 DEFINITIONS

Any reference in this Offer Memorandum to defined terms in plural form shall constitute a reference to such defined terms in singular form, and vice versa. All grammatical and other changes required by the use of a definition in singular form shall be deemed to have been made herein and the provisions hereof shall be applied as if such changes have been made.

Defined terms used in this Offer Memorandum shall have the following meaning:

Acceptance Closing Date	the time and date on which the Offer expires, being at 15:00 hours CEST (09:00 hours EDT), on 17 April 2007, unless extended one or more times in accordance with article 9o, paragraph 5 of the Bte 1995, in which case such later date shall be deemed the "Acceptance Closing Date"
Acceptance Period	the period during which the Shareholders can tender their Shares to the Offeror, which begins on 19 March 2007 and ends on the Acceptance Closing Date
Admitted Institutions	those institutions admitted as defined in article 1 of the Securities Giro Act ( <i>Wet Giraal Effectenverkeer</i> ).
Applicable Law	applicable laws and regulations, including the Wte 1995, the Bte 1995, the Wft and other applicable securities laws
AFM	the Netherlands Authority for the Financial Markets ( <i>Stichting Autoriteit Financiële Markten</i> )
Boards	the Supervisory Board and the Management Board together
Bte 1995	the Securities Market Supervision Decree 1995 ( <i>Besluit Toezicht Effectenverkeer 1995</i> )
Business Day	a day on which Euronext Amsterdam is open for trading
CET	Central European Time
CEST	Central European Summer Time
Competing Offer	a <i>bona fide</i> offer by any third party for any Shares or other proposals which would involve a change of control of Seagull or a material part of the business conducted by, or the assets of Seagull, occurring on or prior to April 30, 2007, which in the reasonable opinion of the Boards is a better offer than the Offer
CRM	customer relationship management systems are a framework for all aspects of interaction and organization has with its customers, whether they be administration, sales or service related
Daily Official List	the Daily Official List ( <i>Officiële Prijscourant</i> ) of Euronext Amsterdam
Dutch GAAP	accounting principles generally accepted in the Netherlands and the financial reporting requirements included in Part 9 of Book 2 of the Netherlands Civil Code
EBITDA	Earnings Before Interest, Taxes, Depreciation and Amortization
EDT	Eastern Daylight Time
EUR or €	Euro, the legal currency of the European Monetary Union
Euronext Amsterdam	Euronext Amsterdam N.V. or Eurolist by Euronext Amsterdam N.V., as appropriate
GUI	graphical user interface, which is a Windows or Web-type interface for users of business applications that is more intuitive than older-style user interfaces built in the 1960's through 1980's
Extraordinary General Meeting of Shareholders	the extraordinary general meeting of Shareholders to be held at 11:00 hours, CEST (05:00 hours EDT), on 4 April 2007, at the Sheraton Hotel at Schiphol, The Netherlands, at which meeting the Offer, among other matters, will be discussed, in accordance with the provisions of article 9q, paragraph 1 of the Bte 1995



Financial Year 2004	financial year of Seagull ended on 30 April 2004
Financial Year 2005	financial year of Seagull ended on 30 April 2005
Financial Year 2006	financial year of Seagull ended on 30 April 2006
Financial Year 2007	financial year of Seagull ending on 30 April 2007
HTML	hypertext markup language, a standard programming language for developing Web pages
IFRS as adopted by the EU	the international accounting standards, international financial reporting standards and the related interpretations of these standards issued by the International Accounting Standards Board from time to time as adopted by the European Union
IT	information technology
Management Board	the Management Board ( <i>raad van bestuur</i> ) of Seagull
Material Adverse Effect	any effect, event, occurrence, circumstance or change that, individually or together with other effects, events, occurrences, circumstances or changes, has had or could reasonably be expected to have a material adverse effect on the results of operations, cash flow, financial position, the business and/or prospects of Seagull, taken as a whole, such that the Offeror cannot reasonably be expected to continue with the Offer or declare the Offer unconditional, other than any effect, event, occurrence, circumstance or change that results from or relates to changes after the date of the Merger Protocol in applicable laws or regulations (including Wte 1995, Bte 1995, Wft, the Dutch Civil Code, applicable securities laws, tax laws, accounting regulations or principles or interpretations thereof)
Merger Protocol	the merger protocol agreed and signed by the Offeror and the Company on 9 February 2007
.NET	Microsoft's name for its set of preferred integration standards
Offer	the offer described in this Offer Memorandum
Offer Conditions	the conditions to the Offer as set out in Section 5.2
Offer Memorandum	this offer memorandum relating to the Offer
Offer Price per Share	a cash amount of EUR 4.33 for each Share validly tendered (or defectively tendered provided that such defect has been waived by the Offeror) and delivered ( <i>geleverd</i> ) under the terms and subject to the conditions and restrictions of the Offer; no dividend will be declared or paid in respect of the Financial Year 2007
Offeror	Rocket Software Europe Holding B.V., a private company with limited liability ( <i>besloten vennootschap met beperkte aansprakelijkheid</i> ) incorporated under Dutch Law, having its corporate seat in Amsterdam, The Netherlands
Rocket Software	Rocket Software, Inc. a private company, incorporated under the laws of Delaware, USA, having its corporate seat in Newton, Massachusetts, USA
Seagull or the Company	Seagull Holding N.V., a public limited liability company ( <i>naamloze vennootschap</i> ), incorporated under Dutch law, having its statutory seat in Dordrecht, The Netherlands and, where appropriate, also including its group companies as described in article 2:24b of the Dutch Civil Code
SCM	supply chain management: the oversight of materials, information and finances as they move in a process from supplier to manufacturer to wholesaler to retailer to customer; supply chain management involves coordinating and integrating these flows both within and among companies

Seagull Articles of Association	The articles of association ( <i>statuten</i> ) of Seagull as most recently amended on 13 September 2001
Settlement Agent	Fortis Bank (Nederland) N.V., a public limited liability company ( <i>naamloze vennootschap</i> ), incorporated under Dutch law, having its statutory seat in Rotterdam, the Netherlands
Settlement Date	the date on which, in accordance with the terms and conditions of the Offer, payment of the Offer Price per Share shall be made by the Offeror to the Shareholders who have validly tendered (or defectively tendered provided that such defect has been waived by the Offeror) and delivered ( <i>geleverd</i> ) their Shares under the Offer prior to the Acceptance Closing Date, which date shall promptly, but in any event within three Business Days, follow the Unconditional Date, subject to the Offer being declared unconditional ( <i>gestanddoening</i> )
Share(s)	issued and outstanding shares with a nominal value of EUR 0.03 each in the capital of Seagull
Shareholder(s)	the holder(s) of Share(s)
SOA	service oriented architecture, which is a new approach to assembling business software applications from "building blocks" of reusable modules that have standardized interfaces for integration; this is analogous to the well-known Lego® children's blocks that easily connect to each other because they have standardized "interfaces" to each other
Supervisory Board	the supervisory board ( <i>raad van commissarissen</i> ) of Seagull
USA	The United States of America
Wft	the Act on the Financial Supervision ( <i>Wet op het financieel toezicht</i> )
Wte 1995	the Securities Market Supervision Act 1995 ( <i>Wet toezicht effecten-verkeer 1995</i> )
XML	extensible markup language, a new standard programming language

## 4 SUMMARY

This summary is qualified in its entirety by and should be read in conjunction with, the more detailed information appearing elsewhere in this Offer Memorandum. Shareholders are advised to review the Offer Memorandum in detail and to seek independent advice where appropriate in order to reach a reasoned judgment in respect of the contents of the Offer Memorandum and the Offer itself. Unless the context requires otherwise, capitalised terms used in this Offer Memorandum shall have the meanings set out in Section 3 (Definitions).

### 4.1 The Offer

The Offeror is making an Offer to purchase from Shareholders all Shares, on the terms and subject to the conditions and restrictions contained in this Offer Memorandum. Shareholders tendering their Shares under the Offer will be paid the Offer Price per Share in respect of each Share validly tendered (or defectively tendered provided that such defect has been waived by the Offeror) and delivered (*geleverd*), subject to the Offer being declared unconditional. See Section 9.1 (Offer Price per Share).

The Offer Price per Share of EUR 4.33 represents compelling value for Shareholders based on:

- (a) a premium of 94 percent to the unaffected closing price per Share of EUR 2.23 on 4 December 2006, the last trading day prior to the press release of 5 December 2006 announcing Rocket Software's intention to make a public offer to acquire 100% of the Shares subject to certain requirements as mentioned in said press release
- (b) premiums of 62 and 49 percent, respectively, to the 12-month and 24-month average price per Share of EUR 2.68 and EUR 2.90, respectively, prior to 4 December 2006, the last trading day prior to the press release dated 5 December 2006 announcing Rocket Software's intention to make a public offer to acquire 100% of the Shares subject to certain requirements as mentioned in said press release; and
- (c) using publicly available information and estimates, the Offeror considered the last twelve months (LTM) EBITDA and revenue multiples in comparable transactions in the USA and Europe. For purpose of this comparison, Seagull's LTM is determined in respect of the twelve months ended on 31 October 2006.
  - (i) Compared to the USA

Target	Acquiror
Hummingbird	Open Text
SeeBeyond Technologies	Sun Microsystems
NetIQ	Attachmate
Segue Software	Borland
Vision Solutions	Thoma Cressey
Neon	Progress Software
Vitria (pending)	Investor Group
Artemis	Versata
NetManage (pending)	Investor Group

The Offeror noted that the median LTM revenue multiple is approximately 0.9x and the mean LTM revenue multiple is approximately 1.3x for the comparable transactions with a value of less than \$100m (as noted in the table above), while on the basis of the Offer Price per Share the LTM revenue multiple would be equal to 1.7x.

The Offeror noted that the median LTM EBITDA multiple is approximately 19x and the mean LTM EBITDA multiple is approximately 23x in the comparable transactions (as noted in the table above). As Seagull's LTM EBITDA was negative, no multiple can be calculated.

(ii) Compared to Europe:

Target	Acquiror
Visma	Engel Holding AS
Intentia International AB	Lawson Software Inc.
Merant	Serena
Real Software NV	Gores Technology Group
Datamat Ingegneria dei Sistemi	Finmeccanica SpA
AttentiV Systems Group PLC	TietoEnator
Comino Group PLC	Civica PLC
Personal und Informatik AG	Carlyle Europe Venture
Syskoplan AG	Reply SpA
Frango AB	Cognos AB
Planit Holdings PLC	Velocity Acquisitions Ltd
DCS Group PLC	Reynolds & Reynolds UK

The Offeror noted that the median LTM revenue multiple is approximately 1.4x and the mean LTM revenue multiple is approximately 1.3x for the comparable transactions with a value of less than \$100m (as noted in the table above), while on the basis of the Offer Price per Share the LTM revenue multiple would be equal to 1.7x.

The Offeror noted that the median LTM EBITDA multiple is approximately 14x and the mean LTM EBITDA multiple is approximately 17x of the comparable (as noted in the table above). As Seagull's LTM EBITDA was negative, no multiple can be calculated.

On 2 February 2007, AGC rendered its fairness opinion in writing to the Boards. Such fairness opinion is reproduced in Section 7 (Fairness Opinion). As at the respective date of such opinion, and based upon and subject to the factors and assumptions referred to in such opinion, AGC considers the Offer Price per Share to be fair, from a financial point of view, to the Shareholders.

See also Section 5.3 (Substantiation of the Offer Price).

#### **4.2 The Offeror's Rationale for the Offer**

The Offer presents a number of benefits to the Shareholders and Seagull's employees, customers and other stakeholders:

- (a) A combined company will have a strong global organization that will be able to continue to deliver software products, solutions and services to customers in all major developed markets and emerging markets.
- (b) The Offeror and Seagull have complementary business models and strategies. Each organization expects to be able to utilize the unique strengths and capabilities of the other organization: Offeror seeks to utilize Seagull's direct sales model and international sales infrastructure to market Offeror's products which are sold directly to customers and strengthen the combined company's direct sales capabilities; Offeror expects to leverage its strong development organization and resources to gain efficiencies and productivity in product development, time to market and development expense; Offeror seeks to gain benefits from Seagull's strong public company financial, management and reporting systems infrastructure, in particular in Europe.
- (c) Over the past several years there has been an increasing trend by customers of all sizes to seek to purchase technology and software solutions from a smaller group of vendors with larger financial and operational resources to support the customer's technology and operational requirements. This trend has made the market for technology and software vendors more difficult and competitive for medium and smaller size technology solution providers to successfully sell their products in competition with larger technology solution vendors.
- (d) A combined company will seek to leverage Seagull's large customer base and established market presence in the SOA, legacy integration and Web services software sectors by providing a larger global footprint and greater resources to support customers large and small, and to continue to grow the customer base.
- (e) A combined company will provide the Offeror additional products and technologies which can be sold through the Offeror's OEM channel, providing customer growth and expansion within the core OEM-focused business.

- (f) A combined company will capture operating synergies arising from the merger in both cost savings as costs are spread out over a larger support base and public company reporting expenses are eliminated, as well as potential revenue synergies, noted above.
- (g) A combined company will have a broader platform of product offerings that intersect with target accounts at multiple levels in the IT stack, increasing the potential lifetime value of each customer relationship.

See also Section 5.3 (Substantiation of the Offer Price) and Section 5.4 (The Offeror's Rationale for the Offer).

#### **4.3 Financing of the Offer**

The Offeror will finance acceptances under the Offer through a combination of cash on hand and debt facilities, subject to customary conditions and other conditions in line with the Offer, arranged by Offeror's current banker, Wells Fargo Foothill.

#### **4.4 Shares held by members of the Supervisory Board and the Management Board**

As at the date of this Offer Memorandum a total of 8.07 per cent. of the Shares is held by Mr. F. van Pelt, Mr. T. van der Loo, Mr. G. Rozman, Mr. B. Jansen and Mr. D. Addington, who have irrevocably undertaken to tender the Shares held by them under the Offer as described in this Offer Memorandum including the Offer Conditions set out in Section 5.2 (Offer Conditions). See Section 5.6 (Shareholdings of the members of the Supervisory Board and Management Board).

#### **4.5 Liquidity and Delisting**

The purchase of Shares by the Offeror pursuant to the Offer, among other things, will reduce the number of Shareholders and the number of Shares that might otherwise trade publicly and could adversely affect the liquidity and market value of the remaining Shares not tendered and not held by Seagull.

Should the Offer be declared unconditional (*gestand worden gedaan*), it is intended that Seagull's listing on Euronext Amsterdam will be terminated as soon as possible. This would further adversely affect the liquidity of any Shares not tendered. In addition, the Offeror may initiate any of the procedures as set out in Section 5.7.3 (Legal Structure of Seagull following the Offer), including procedures that would result in termination of the listing of the Shares (including Shares not being tendered). See Section 5.7.2 (Liquidity and Delisting).

#### **4.6 Legal structure of Seagull following the Offer**

##### **4.6.1 Summary of risk factors following the Offer**

As set out in Section 5.2(a), the Offer is conditional upon acceptances being received with respect to at least 95% of the Shares. However, the Offeror has the right to waive this condition and to declare the Offer unconditional (*gestand doen*) even if the Shares that have not been tendered represent more than 5% of the Shares.

Shareholders who do not tender their Shares in the Offer should carefully review this Section 4.6, which describes certain risks they will be subject to after the Offer is declared unconditional (*gestand wordt gedaan*). These risks are in addition to the exposure to the business of Seagull and its subsidiaries, as such business and the structure of the Seagull group may change from time to time after the Settlement Date. The following is a summary of the key additional risks:

- **COMPULSORY PURCHASE**

As soon as the relevant legal requirements have been satisfied, the Offeror may seek to acquire the remaining Shares through a statutory Squeeze-Out (as defined in Section 4.6.3 below) procedure.

- **LOSS OF LIQUIDITY**

As soon as the relevant legal requirements have been satisfied, the Offeror may seek to terminate the listing of Seagull on Euronext Amsterdam and to convert Seagull into a private limited company (*besloten vennootschap met beperkte aansprakelijkheid*), which will *inter alia* cause all shares in Seagull to become subject to transfer restrictions. Alternatively or cumulatively, the Offeror may seek to implement an Upstream Merger (as defined in Section 4.6.4 below) or other merger transaction, which could result in shareholders in Seagull becoming shareholders in a Merging Entity (as defined in Section 4.6.4 below) by operation of law. This Merging Entity will likely be a private limited company (*besloten vennootschap met beperkte*

aansprakelijkheid), and the shares in its capital will not be listed or publicly traded, and will be subject to transfer restrictions.

Even if no conversion or merger is implemented, the size of the free float in Shares will be substantially reduced as a result of the Offer, and as a result trading volumes and liquidity of Shares will be materially adversely affected.

The Offeror may also seek a sale of substantially all assets of Seagull, which may be followed by a liquidation and a distribution of the sale proceeds.

- INCREASED LEVERAGE

As a result of one or more Legal Mergers (as defined in Section 4.6.2 below) or as a result of other measures implemented by the Offeror and Seagull after the Settlement Date, the proportion of the balance sheet of Seagull or its successor entities that is represented by debt may increase substantially compared to the current position.

- REDUCED GOVERNANCE RIGHTS

In the event that Seagull or its successor entity will no longer be listed and its shares will no longer be publicly traded, the statutory provisions applicable to the governance of public or listed companies will no longer apply and the rights of minority shareholders will be limited to the statutory minimum.

- CONTROLLING SHAREHOLDER

Following the Settlement Date, Seagull will be majority controlled by the Offeror and the indirect shareholders of the Offeror will appoint all of the members of the Management Board and all of the members of the Supervisory Board.

- TAX TREATMENT OF DISTRIBUTIONS

The Offeror and Seagull have no insight into and no responsibility with respect to the tax treatment of Shareholders with respect to any distributions made by Seagull or any successor entity to Seagull, which may include dividends, repayments of capital and liquidation distributions. In the event that there is a sale of substantially all assets of Seagull, followed by a liquidation and a distribution of the sale proceeds, this may raise specific tax issues for Shareholders.

#### 4.6.2 General

The Offeror reserves the right to use any permitted method to acquire 100% of Seagull's share capital, as well as to align Seagull with the holding and financing structure of the group of companies that includes the Offeror. For this purpose the Offeror will consider, depending *inter alia* on the number of Shares obtained by the Offeror as a result of the Offer, a number of processes, including a compulsory acquisition procedure (*uitkoopprocedure*) in accordance with article 2:92a of the Dutch Civil Code (a "**Squeeze-Out**"), a legal merger (*juridische fusie*) between Seagull and the Offeror or an affiliate of the Offeror in accordance with article 2:309 et seq of the Dutch Civil Code (a "**Legal Merger**"), a contribution of assets to Seagull in exchange for new shares issued (in which case the existing shareholders do not have pre-emptive rights), or a sale of assets by Seagull. Separately, the Offeror may cause Seagull to be converted into a private limited company (*besloten vennootschap met beperkte aansprakelijkheid*). Subject to the contents of this Offer Memorandum (including but not limited to, Sections 4.6.4 and 5.7.3.4), Offeror does not currently intend to amend Seagull's articles of association in the short term. However, Offeror does reserve the right to amend Seagull's articles of association in connection with the legal structure of Seagull following the Offer as set out in this paragraph 4.6 or otherwise.

For the avoidance of doubt, any or all of the measures and processes described in this Section 4.6 may be applied cumulatively, alternatively, or not at all, at the discretion of the Offeror subject to applicable provisions of Dutch law.

#### 4.6.3 Squeeze-Out

In the event that the Offeror has acquired 95% or more of the issued and outstanding share capital of Seagull at or following the Settlement Date (excluding Shares held by Seagull or its subsidiaries), the Offeror intends to initiate a Squeeze-Out, in order to acquire the remaining Seagull Shares not tendered and not held by the Offeror or Seagull. The Offeror may also initiate a Squeeze-Out at any time after the Settlement Date, if and when it is entitled to do so, with respect to shares in any successor entity of Seagull, created through a Legal Merger or otherwise.

#### 4.6.4 Legal Merger

At any time after the Offer has been declared unconditional (*gestand wordt gedaan*), the Offeror and Seagull may take steps to implement a Legal Merger between the Offeror or an affiliate of the Offeror (the **"Merging Entity"**) and Seagull. As a result of such a Legal Merger, one of the two legal entities involved (the **"Disappearing Entity"**) will disappear and the other (the **"Surviving Entity"**) will survive and acquire all assets and liabilities of the Disappearing Entity by operation of law on the date on which the Legal Merger becomes effective (the **"Merger Date"**). The following paragraphs of this subsection explain the two principal forms of Legal Merger which the Offeror may consider and set out a summary of the process that will be followed prior to any Legal Merger being implemented. No rights can be derived from these explanations and the Offeror reserves the right to pursue a Legal Merger on different terms.

In case a Legal Merger is effectuated in which Seagull is the disappearing entity (an **"Upstream Merger"**), shareholders in Seagull (including Shareholders that have not tendered their Shares under the Offer, but excluding the Merging Entity) will become by operation of law, shareholders in the Merging Entity, alongside the Offeror or the Offeror's affiliate which is already a shareholder of the Merging Entity (the **"Merging Entity Parent"**). The new shareholders will acquire shares in the capital of the Merging Entity that have the same economic value as the shares in Seagull they hold immediately before the Legal Merger becomes effective, which will be computed on the basis of the relevant prices set out in this Offer Memorandum. The capital of the Merging Entity may be divided in different classes of shares and the holders of shares in Seagull, if any, may acquire one or more classes of ordinary and/or preference shares in the Merging Entity, depending on factors such as the amount of any debt financing the Merging Entity has outstanding at that time. The exact identity of the Merging Entity, the composition of its share capital, the economic and other rights attaching to each class of shares in that capital and the exchange ratio applicable to the shares in Seagull will only be established by the management boards of Seagull and the Offeror and shall be approved by the Supervisory Board. The Supervisory Board may request that additional independent financial or legal experts are appointed to advise them on the reasonableness of the proposed exchange ratio for the shares in the Merging Entity with a view to the economic and other rights attached to the shares in the Merging Entity to be received by the minority shareholders as compared to the economic and other rights attached to the shares in Seagull held by them immediately prior to the Merger Date.

It is not intended that any shares in the Merging Entity will be listed on any stock exchange or otherwise be publicly traded. As the Merging Entity will likely be a private limited company (*besloten vennootschap met beperkte aansprakelijkheid*), restrictions will apply to the transferability of these shares. However, the Merging Entity Parent may (but will not necessarily) grant the new holders of shares in the Merging Entity the right for a certain period after the Merger Date to sell their shares to the Merging Entity Parent, for a price per share equal to the relevant price set out in this Offer Memorandum (i.e. the Offer Price per Share). Shareholders that do not tender their Shares in the Offer need to be aware that, in the event the Offer is declared unconditional (*gestand wordt gedaan*) and an Upstream Merger is implemented, except to the extent and for the period that any sale right is granted in accordance with the previous sentence, if any, the shares in the Merging Entity which they receive in exchange for their Shares will be illiquid and cannot be freely traded.

As a further result of the Merging Entity in an Upstream Merger being an unlisted private limited company, statutory provisions applicable to the governance of public or listed companies will not apply to the Merging Entity and the rights of minority shareholders in the Merging Entity will be limited to the statutory minimum.

As an alternative or precursor to an Upstream Merger, the Offeror may choose to implement a Legal Merger in which the Merging Entity will be the Disappearing Entity and Seagull will be the Surviving Entity (a **"Downstream Merger"**). In such a case, the shareholders of Seagull will continue to hold their Shares. The Shares held by the Merging Entity will be cancelled and the Merging Entity Parent will be issued with new shares in Seagull, taking into account any assets or liabilities which the Merging Entity has on the Merger Date, other than Shares.

A Downstream Merger will not in itself affect the listing of Seagull on Euronext Amsterdam or the tradability of Shares. The Downstream Merger does not, however, prevent the Offeror and Seagull from seeking a termination of that listing, when they are entitled to do so under applicable listing rules. Similarly, the Offeror may initiate a Squeeze-Out subsequent to a Downstream Merger, if and when it is entitled to do so, with respect to the shares in Seagull it does not at that point own (other than shares owned by Seagull itself or its subsidiaries). In addition, the completion of the Offer and any subsequent measures initiated by the Offeror and Seagull, within the restrictions imposed by applicable law, are likely to significantly reduce the trading volume in Shares and thereby the liquidity of a continued investment in Shares beyond the Settlement Date.

After implementing a Downstream Merger, the Offeror may decide to implement an Upstream Merger or other merger transaction, with a different Merging Entity than that which disappeared as a result of the Downstream Merger. The previous subsection, relating to an Upstream Merger and the shares that will be issued to holders of shares in Seagull, will apply *mutatis mutandis* in such a case.

In the event that the Offeror chooses to pursue any Legal Merger, the process for achieving this result will be subject to Part 7 of Book 2 of the Dutch Civil Code and any other applicable provisions of Dutch law, and will include safeguards to ensure that the exchange ratio applicable to the shares in Seagull is confirmed as being fair by independent experts, and is ultimately approved by the Supervisory Board. The process also requires a resolution of the general meeting of shareholders of the Disappearing Entity and, under certain circumstances, of the general meeting of shareholders of the Surviving Entity. Shareholders should be aware, however, that these safeguards and procedures do not prevent the Surviving Entity, in which they will be shareholders from the Merger Date, from having substantially more debt as a proportion of its balance sheet total than Seagull currently has.

#### **4.6.5 Asset Sale**

At any time after the Offer has been declared unconditional (*gestand wordt gedaan*), the Offeror and Seagull may take steps to cause a sale by Seagull of all or substantially all of its assets to a company directly or indirectly wholly owned by the Offeror or by an affiliate of the Offeror. This sale will be made at a value computed on the basis of the share prices set out in this Offer Memorandum. A confirmation will be obtained from independent experts as to the fairness of such a transaction and it would require the approval of the Supervisory Board, as well as that of the general meeting of Seagull's shareholders. Following such a sale, Seagull may be liquidated, in which case the proceeds of the transaction will be distributed to its shareholders, in accordance with the provisions of the Seagull Articles of Association in force at the relevant time.

#### **4.6.6 Other Possible Measures**

The Offeror reserves the right to use any other permitted method to obtain 100% of Seagull's share capital, as well as to align the company structure of Seagull with the group's new holding and financing structure that will exist once the Offer has been declared unconditional (*gestand wordt gedaan*), including the contribution of assets by the Offeror to Seagull against the issuance of shares in the capital of Seagull, whilst at the same time excluding the pre-emptive rights (*voorkeursrechten*) (if any) of other Seagull Shareholders, all in accordance with Dutch law and the Seagull Articles of Association in force at the relevant time.

Finally, the Offeror reserves the right to pursue alterations to the corporate and capital structure of Seagull, including internal reorganizations, changes to the accounting policies applied by Seagull, amendments to the Seagull Articles of Association, a liquidation, a demerger as specified in article 2:334a of the Dutch Civil Code or a rights issue, all to be effectuated in accordance with Dutch law and the Seagull Articles of Association (as amended from time to time). Any distributions made may, amongst others, take the form of a distribution out of reserves, an interim dividend, a final dividend, payment upon cancellation or, in case the Company is liquidated, a liquidation distribution.

#### **4.7 Dividend Policy**

Seagull has historically not declared dividends. Offeror currently intends to continue that policy.

#### **4.8 Recommendation by the Supervisory Board and Management Board**

The Supervisory Board and the Management Board each fully supports and each unanimously recommends that the Shareholders accept the Offer. See also Section 8 (Recommendation by the Supervisory Board and the Management Board).

Each of the members of the Supervisory Board and the Management Board holds Shares (see Section 5.6 Shares and options for Shares held by the Supervisory Board and Management Board) and each of them has irrevocably undertaken to tender the Shares held by them under the Offer as described in this Offer Memorandum including the Offer Conditions as set out in Section 5.2 (Offer Conditions).



#### **4.9 Acceptance Conditions, Acceptance Period, declaring the Offer Unconditional, Extension and Settlement**

##### **4.9.1 Acceptance Conditions**

The Offer shall be declared unconditional (*gestanddoening*) if the Offer Conditions as set out in Section 5.2 (Offer Conditions) are fulfilled or, if permitted by applicable law, waived by the party or parties entitled to waive such Offer Conditions.

##### **4.9.2 Acceptance Period**

The Acceptance Period begins at 09:00 hours CET (04:00 hours EDT) on 19 March 2007 and ends, subject to extension in accordance with Applicable Law, including article 9o, paragraph 5 of the Bte 1995, on 17 April 2007 at 15:00 hours CEST (09:00 hours EDT). See Section 9.4 (Acceptance Period).

If one or more of the Offer Conditions is not fulfilled, the Offeror may extend the Acceptance Period until all such Offer Conditions have been satisfied or waived. Extension of the Acceptance Period may occur one or more times. See also Section 4.9.4 (Extension).

Shares tendered on or prior to the Acceptance Closing Date may not be withdrawn, subject to the right of withdrawal of any tender during any extension of the Acceptance Period in accordance with the provisions of article 9o, paragraph 5 of the Bte 1995. During an extension of the Acceptance Period, any Shares previously tendered and not withdrawn will remain subject to the Offer. Shares tendered during an extension of the Acceptance Period may not be withdrawn.

If all Offer Conditions are satisfied or, where appropriate, waived, the Offeror will accept all Shares that have been validly tendered (or defectively tendered provided that such defect has been waived by the Offeror) and not previously withdrawn pursuant to the terms of the Offer in accordance with the procedures set forth in Section 9.2 (Acceptance by Shareholders).

##### **4.9.3 Declaring the Offer Unconditional (*gestanddoening*)**

The Offer shall be subject to the fulfilment of the Offer Conditions, including, but not limited to the Offer Condition that at least 95% of the issued and outstanding share capital of Seagull has been tendered under the Offer as set out in Section 5.2(a). The Offeror reserves the right to waive one or more of the Offer Conditions. See Section 5.2 (Offer Conditions). If the Offeror wishes to waive or reduce one or more Offer Conditions, the Offeror will announce in a manner reasonably designed to inform Shareholders that it waives or reduces such Offer Conditions by means as required by Applicable Law, including the Bte 1995.

Unless the Acceptance Period is extended, the Offeror will announce, in accordance with Applicable Law, such date being the Unconditional Date, whether the Offer Conditions have been fulfilled or are to be waived by the Offeror and will announce whether (i) the Offer has been declared unconditional, (ii) there is still uncertainty as to the fulfilment of any of the Offer Conditions, or (iii) the Offer is terminated, as a result of the Offer Conditions not having been fulfilled or waived by the Offeror, all in accordance with article 9t, paragraph 4 of the Bte 1995. See Section 9.5 (Declaring the Offer Unconditional (*gestanddoening*)). The Bte 1995 requires that such announcement be made within five days following the Acceptance Closing Date. In the event that the Offeror announces that the Offer is declared unconditional (*gestand wordt gedaan*), the Offeror will accept for payment all Shares validly tendered (or defectively tendered provided that such defect has been waived by the Offeror).

If and when the Offeror has declared the Offer unconditional, it reserves the right to offer the Shareholders who have not tendered their Shares during the Acceptance Period the opportunity to tender their Shares during a post-acceptance period ("*Post-Acceptance Period*"). The terms and conditions of the Offer apply *mutatis mutandis* to any tender of Shares during the Post-Acceptance Period, provided that the settlement by the Settlement Agent, in cooperation with the banks and stockbrokers, shall occur within three Business Days after the end of the Post-Acceptance Period. The opportunity to tender Shares during the Post-Acceptance Period, if any, and the duration of the Post Acceptance Period (not to exceed 15 Business days after the Unconditional Date) will be publicly announced by the Offeror at the latest together with the announcement as to whether or not the Offer is declared unconditional. Shareholders cannot withdraw Shares tendered during the Post-Acceptance Period.

##### **4.9.4 Extension**

The Offeror may extend the Acceptance Period past the initial Acceptance Closing Date, in which case all references in this Offer Memorandum to the "Acceptance Closing Date" or "15:00 hours CEST (09:00

hours EDT), on 17 April 2007" shall, unless the context requires otherwise, be moved to the latest date and time to which the Acceptance Period has been so extended. A bank or stockbroker may set an earlier deadline for communication by Shareholders in order to permit the bank or stockbroker to communicate its acceptances to the Settlement Agent in a timely manner.

If the Acceptance Period is extended such that the obligation pursuant to Applicable Law, including article 9t of the Bte 1995 to announce whether the Offer has been declared unconditional is postponed, a public announcement shall be made in accordance with Applicable Law. See Section 9.6 (Extension). Article 9o, paragraph 5 of the Bte 1995 requires that such announcement be made no later than the third Business Day following the Acceptance Closing Date.

#### 4.9.5 Settlement

In the event that the Offeror announces that the Offer is declared unconditional (*gestand wordt gedaan*), the Offeror will pay on the Settlement Date to Shareholders who have tendered and delivered their Shares to the Offeror prior to the Acceptance Closing Date, the Offer Price per Share in respect of each Share validly tendered (or defectively tendered provided that such defect has been waived by the Offeror) and delivered (*geleverd*). See Section 9.7 (Settlement).

#### 4.10 Offeror

The Offeror, a private limited liability company (*besloten vennootschap met beperkte aansprakelijkheid*), with its statutory seat in Amsterdam, The Netherlands, was incorporated under Dutch law on 28 February 2007. The Offeror is a wholly owned subsidiary of Rocket Software. The Offeror is registered with the Trade Register of the Chamber of Commerce of Amsterdam under nr. 34268175.

The management board of the Offeror consists of Messrs. Andrew Youniss and Johan Magnusson Gedda. The Offeror does not have a supervisory board.

See Section 12 (Information on the Offeror).

#### 4.11 Announcements

Announcements contemplated by the foregoing paragraphs will be issued by press release or advertisement and will be published in the Daily Official List and *Het Financieele Dagblad*. Subject to any applicable requirements of Dutch public offer regulations and without limiting the manner in which the Offeror may choose to make any public announcement, the Offeror will have no obligation to communicate any public announcement other than as described above.

#### 4.12 Indicative Timetable (all times are CET or CEST)

Expected Date and Time	Event
09:00 hours CET, 16 March 2007	Publication of advertisement announcing the availability of the Offer Memorandum in accordance with article 9o paragraph 2 of the Bte 1995
09:00 hours CET, 19 March 2007	Commencement of the Acceptance Period under the Offer
11:00 hours CEST, 4 April 2007	Extraordinary General Meeting of Shareholders, at which meeting the Offer, among other matters, will be discussed in accordance with the provisions of article 9q paragraph 1 of the Bte 1995
15:00 hours CEST, 17 April 2007, subject to extension	<u>Acceptance Closing Date</u> Deadline for Shareholders wishing to tender Shares
In accordance with Applicable Law	<u>Unconditional Date</u> The date on which the Offeror shall publicly announce whether the Offer is declared unconditional ( <i>gestand wordt gedaan</i> ) in accordance with Applicable Law. Pursuant to Article 9t paragraph 4 of the Bte 1995, the Offer must be declared unconditional within five Business Days following the Acceptance Closing Date

Within three Business Days after  
the Unconditional Date

Settlement Date

The date on which, in accordance with the terms and conditions of the Offer, payment of the Offer Price per Share shall be made by the Offeror to the Shareholders who have validly tendered (or defectively tendered provided that such defect has been waived by the Offeror) and delivered (geleverd) their Shares under the Offer prior to the Acceptance Closing Date, which date shall be promptly, but in any event, within three Business Days following the Unconditional Date, subject to the Offer being declared unconditional (*gestand wordt gedaan*)

Within a maximum of 15 Business  
Days after the Unconditional Date

Post Acceptance Period

Offeror may continue to accept for payment all Shares validly tendered during a period not to exceed 15 Business Days after the Unconditional Date

## 5 EXPLANATION OF THE OFFER

### 5.1 Introduction

On 9 February 2007, the Company and the Offeror entered into the Merger Protocol based upon which the Offeror agreed to make the Offer for EUR 4.33 per Share, subject to the Offer Conditions as set out in Section 5.2.

### 5.2 Offer Conditions

The obligation of the Offeror to declare the Offer unconditional (*gestand te doen*) shall be subject to the following conditions precedent (the “**Offer Conditions**”) being satisfied or waived, as the case may be:

- (a) on or before the Acceptance Closing Date, such number of Shares are tendered for acceptance that these, together with the Shares directly or indirectly held by the Offeror or its group at the Acceptance Closing Date and Shares that are the subject of purchase agreements in effect at the Acceptance Closing Date represent at least 95% of all issued and outstanding share capital of Seagull as at the Acceptance Closing Date (excluding Shares held by Seagull, if any);
- (b) no public announcement has been made announcing for the first time that a third party (i) is preparing, has prepared or made a Competing Offer, and (ii) there has been no indication that a third party has obtained the right or has reached agreement to acquire or subscribe for shares to be issued or sold by Seagull, or a substantial part of the assets of Seagull, or (iii) has obtained the right, or has agreed, to acquire a substantial part of the assets of Seagull;
- (c) the Boards have not withdrawn or changed their recommendation of the Offer as included in this Offer Memorandum;
- (d) on or prior the Acceptance Closing Date (i) all necessary approvals, permits, exemptions and permissions of domestic and international authorities, including competition authorities, and/or third parties in connection with the Offer and its intended change of control have been obtained and remain in full force, (ii) neither international nor domestic authorities nor third parties have taken or announced steps which could prevent the Offer and its intended change of control from being consummated and (iii) all waiting periods pursuant to applicable legislation have expired during which the authorities and/or third parties may oppose the Offer and its intended change of control;
- (e) Seagull shall not, other than pursuant to the exercise of employee options granted prior to the date of the Merger Protocol, have issued, sold nor committed itself in any way to issue or sell to third parties any shares in its capital or securities convertible into shares in its capital, nor granted, nor committed itself, in any way, to grant any rights or options to subscribe for or acquire any shares in its capital or securities convertible into shares in its capital;
- (f) Seagull has not issued, nor committed itself in any way, to issue any debt instruments and has not paid, nor committed itself to pay dividend or any other distribution;
- (g) Seagull's business has been conducted in the ordinary course, and (i) Seagull has not breached any of the provisions of the Merger Protocol; and (ii) no facts or circumstances with respect to Seagull or its business have occurred that are not known to Offeror that would reasonably be expected to have a Material Adverse Effect on Seagull, or that are otherwise of a nature or magnitude so that the Offeror cannot reasonably be expected to proceed with the Offer; for the purposes of this condition, facts or circumstances are in any case considered to be known to Offeror if they are apparent from information publicly disclosed by Seagull or otherwise provided by Seagull to Offeror prior to the date of this Offer Memorandum;
- (h) no notification has been received from the AFM stating that the preparation of the Offer is in violation of Chapter IIA of the Wte 1995, in which case pursuant to article 32a of the Bte 1995 the Dutch securities institutions (*effectenininstellingen*) would not be permitted to cooperate with the execution and completion of the Offer;
- (i) no order, stay, judgment or decree is issued by any court, arbitral tribunal, government, governmental authority or other regulatory or administrative authority and is in effect, or any statute, rule, regulation, governmental order or injunction shall have been enacted, enforced or deemed applicable to Seagull or the Offer, any of which restrains, prohibits or delays or is

reasonable likely to restrain, prohibit or delay consummation of the Offer in any material respect;

- (j) trading in the Shares on Euronext has not been permanently suspended as a result of a listing measure (*noteringsmaatregel*) taken by Euronext in accordance with Article 2706/1 of Euronext Rulebook II.

The Offer Conditions contained in Sections 5.2(a) up to and including Section 5.2(c) and in Sections 5.2(e) up to and including Section 5.2(g) are for the benefit of the Offeror and may be waived by the Offeror (either in whole or in part) at any time by written notice to the Company. The Offer Conditions contained in Section 5.2(d), Section 5.2(i) and Section 5.2(j) are for the benefit of both the Company and the Offeror and may be waived by the Company together with the Offeror (either in whole or in part) by written notice. The Offer Condition contained in Section 5.2(h) may not be waived by either party.

### **5.3 Substantiation of the Offer Price**

#### **5.3.1 Introduction**

In establishing the Offer Price per Share, the Offeror has carefully considered the history and prospects of Seagull, including through an analysis of historic and potential future developments in profitability, cash flows and balance sheet. Furthermore, account has been taken of the historic market valuation of the Shares.

The Offer Price per Share has been based on careful financial analyses, including, among others:

- (a) a trading multiple analysis based on the financial performance of Seagull and the prices and trading activity of the Shares compared with those of certain comparable publicly traded companies and their securities;
- (b) an analysis of bid premiums in recent public offers that were deemed comparable;
- (c) using publicly available information, the Offeror reviewed the enterprise values and estimated calendar year 2006 revenue multiples of the following selected publicly traded infrastructure software companies in the software industry with similar size and market capitalization: WebMethods, IONA Technologies, DataMirror, Vitria, Pervasive Software, NetManage, Progress Software and Tibco; the Offeror compared enterprise values (defined as equity value plus net debt plus minority interest and preferred stock) as multiples of calendar year 2006 estimated revenues; multiples were based on closing market prices on January 29, 2007. Estimated data for the selected companies were based solely on publicly available research analysts' estimates; the Offeror noted that the median 2006 revenue multiple of the selected companies as set out above is approximately 1.1x and the mean 2006 revenue multiple of the selected companies as set out above is approximately 1.5x.
- (d) a discounted cash flow analysis based on historic and expected developments in the operational and financial performance of Seagull;

In addition, certain financial information as derived from annual accounts, analyst presentations, market reports, press releases and additional financial information provided by the Company has been reviewed. Seagull's Research and Development capacity is not quantifiable in a measurable value. As such, Offeror has not considered Seagull's Research and Development in the valuation of Seagull or the Offer, and as such Offeror cannot give a specification of the value of Seagull's Research and Development either in the substantiation of the Offer Price or elsewhere in the Offer Memorandum.

#### **5.3.2 Premiums**

The Offer Price per Share of EUR 4.33 represents compelling value for Shareholders based on:

- (a) a premium of 94 percent to the unaffected closing price per Share of EUR 2.23 on 4 December 2006, the last trading day prior to the press release of 5 December 2006 announcing Rocket Software's intention to make a public offer to acquire 100% of the Shares subject to certain requirements as mentioned in said press release
- (b) premiums of 62 and 49 percent, respectively, to the 12-month and 24-month average price per Share of EUR 2.68 and EUR 2.90, respectively, prior to 4 December 2006, the last trading day prior to the press release dated 5 December 2006 announcing Rocket Software's intention to make a public offer to acquire 100% of the Shares subject to certain requirements as mentioned in said press release; and

- (c) using publicly available information and estimates, the Offeror considered the last twelve months (LTM) EBITDA and revenue multiples of comparable transactions in the USA and Europe. For purpose of this comparison, Seagull's LTM is determined in respect of the twelve months ended on 31 October 2006.

(i) Compared to the USA

<b>Target</b>	<b>Acquiror</b>
Hummingbird	Open Text
SeeBeyond Technologies	Sun Microsystems
NetIQ	Attachmate
Segue Software	Borland
Vision Solutions	Thoma Cressey
Neon	Progress Software
Vitria (pending)	Investor Group
Artemis	Versata
NetManage (pending)	Investor Group

The Offeror noted that the median LTM revenue multiple is approximately 0.9x and the mean LTM revenue multiple is approximately 1.3x for the comparable transactions with a value of less than \$100m (as noted in the table above), while on the basis of the Offer Price per Share the LTM revenue multiple would be equal to 1.7x.

The Offeror noted that the median LTM EBITDA multiple is approximately 19x and the mean LTM EBITDA multiple is approximately 23x in the comparable transactions (as noted in the table above). As Seagull's LTM EBITDA was negative, no multiple can be calculated.

(ii) Compared to Europe

<b>Target</b>	<b>Acquiror</b>
Visma	Engel Holding AS
Intentia International AB	Lawson Software Inc.
Merant	Serena
Real Software NV	Gores Technology Group
Datamat Ingegneria dei Sistemi	Finmeccanica SpA
AttentiV Systems Group PLC	TietoEnator
Comino Group PLC	Civica PLC
Personal und Informatik AG	Carlyle Europe Venture
Syskoplan AG	Reply SpA
Frango AB	Cognos AB
Planit Holdings PLC	Velocity Acquisitions Ltd
DCS Group PLC	Reynolds & Reynolds UK

The Offeror noted that the median LTM revenue multiple is approximately 1.4x and the mean LTM revenue multiple is approximately 1.3x for the comparable transactions with a value of less than \$100m (as noted in the table above), while on the basis of the Offer Price per Share the LTM revenue multiple would be equal to 1.7x.

The Offeror noted that the median LTM EBITDA multiple is approximately 14x and the mean LTM EBITDA multiple is approximately 17x of the comparable (as noted in the table above). As Seagull's LTM EBITDA was negative, no multiple can be calculated.

On 2 February 2007, AGC rendered its fairness opinion in writing to the Boards. Such fairness opinion is reproduced in Section 7 (Fairness Opinion). As at the date of such opinion, and based upon and subject to the factors and assumptions referred to in such opinion, AGC considers the Offer Price per Share to be fair, from a financial point of view, to the Shareholders.

#### **5.4 The Offeror's Rationale for the Offer**

The Offer presents a number of benefits to the Shareholders and Seagull's employees, customers and other stakeholders:

- (a) A combined company will have a strong global organization that will be able to continue to deliver software products, solutions and services to customers in all major developed markets and emerging markets.

- (b) The Offeror and Seagull have complementary business models and strategies. Each organization expects to be able to utilize the unique strengths and capabilities of the other organization: Offeror seeks to utilize Seagull's direct sales model and international sales infrastructure to market Offeror's products which are sold directly to customers and strengthen the combined company's direct sales capabilities; Offeror expects to leverage its strong development organization and resources to gain efficiencies and productivity in product development, time to market and development expense; Offeror seeks to gain benefits from Seagull's strong public company financial, management and reporting systems infrastructure, in particular in Europe.
- (c) Over the past several years there has been an increasing trend by customers of all sizes to seek to purchase technology and software solutions from a smaller group of vendors with larger financial and operational resources to support the customer's technology and operational requirements. This trend has made the market for technology and software vendors more difficult and competitive for medium and smaller size technology solution providers to successfully sell their products in competition with larger technology solution vendors.
- (d) A combined company will seek to leverage Seagull's large customer base and established market presence in the SOA, legacy integration and Web services software sectors by providing a larger global footprint and greater resources to support customers large and small, and to continue to grow the customer base.
- (e) A combined company will provide the Offeror additional products and technologies which can be sold through the Offeror's OEM channel, providing customer growth and expansion within the core OEM-focused business.
- (f) A combined company will capture operating synergies arising from the merger in both cost savings as costs are spread out over a larger support base and public company reporting expenses are eliminated, as well as potential revenue synergies, noted above.
- (g) A combined company will have a broader platform of product offerings that intersect with target accounts at multiple levels in the IT stack, increasing the potential lifetime value of each customer relationship.

## **5.5 Financing of the Offer**

The Offeror will finance acceptances under the Offer through a combination of cash on hand and debt facilities, subject to customary conditions and other conditions in line with the Offer, arranged by Offeror's current banker, Wells Fargo Foothill.

## **5.6 Shares and options held by members of the Supervisory Board and Management Board**

### **5.6.1 Information on Shares**

As of the date of this Offer Memorandum:

- (a) 535,920 Shares are held by Mr. F. van Pelt;
- (b) 38,378 Shares are held by Mr. T. van der Loo;
- (c) 33,993 Shares are held by Mr. G. Rozman;
- (d) 1,915 Shares are held by Mr. B. Jansen; and
- (e) 159,500 Shares are held by Mr. D. Addington,

Each of whom has irrevocably undertaken to tender the Shares held by them under the Offer as described in this Offer Memorandum including the Offer Conditions set out in Section 5.2 (Offer Conditions). Other than information contained in this Offer Memorandum, the Offeror did not disclose to these Shareholders any material information regarding the Offer which would be relevant for Shareholders when considering to tender Shares under the Offer.

### **5.6.2 Information on options for Shares**

At the date of this Offer Memorandum, Mr. D. Addington holds 547,500 options for Shares. At the date of this Offer Memorandum, no options for Shares are held by any of the members of the Supervisory Board.

Each of the holders of options for Shares are offered an agreement to the effect that on the Settlement Date, the outstanding employee stock option plans will be terminated and all outstanding options for Shares, then held by Seagull employees (including the Management Board) whether vested or unvested, and with regard to former employees only the vested options, will be cancelled by mutual agreement between Seagull and each of the holders of the outstanding options. In consideration for this termination, the employees (including the Management Board ) and former employees will receive from Rocket Software Europe Holding B.V. each an amount, in cash, equal to (i) the Offer Price per Share minus (ii) the exercise price of the relevant options as specified in the respective option agreements under which options have been granted to Seagull employees. In total, this will amount to an aggregate payment of approximately EUR 1,595,296.

## **5.7 Consequences of the Offer**

### **5.7.1 Strategy**

The Offeror intends to continue the Company's product initiatives, including specializing in technology that transforms "legacy" applications into SOA-compliant Web services, and helping enterprises achieve exponentially faster IT support for business change, governance and compliance. Seagull Software's LegaSuite® software platform, which includes SOA integration, GUI, workflow and terminal emulation modules, will become a strategic part of the combined entities' product offerings.

With LegaSuite, customers connect legacy applications on IBM mainframe, ICL mainframe, iSeries, UNIX/VT and Windows client/server platforms to the Web, to other middleware and to newer-generations of applications such as portals, CRM and SCM. Such legacy applications are already a mainstay of Offeror's own business and Seagull's technologies will be an excellent complement to its existing product portfolio. The Offeror plans to use its strong expertise in legacy infrastructure, particularly on all IBM platforms, and extensive development resources in the US, Europe, Russia and China to further enhance product offerings.

Seagull Software's long term strategy of providing the best customer experience in the industry fits well with Offeror's customer focused business and can be leveraged across both entities' product lines sold directly to end users. Particularly Seagull's larger footprint in Europe will allow Offeror to enhance its own level of sales and customer support in this geography. Seagull Software's technology is in use in more than 10,000 business and government organizations worldwide, and by millions of their end users. These relationships are a more valuable asset to the larger, combined company. In addition, many of the systems and processes designed by Seagull to support this user community can be enhanced and leveraged by the Offeror.

### **5.7.2 Liquidity and Delisting**

The purchase of Shares by the Offeror pursuant to the Offer, among other things, will reduce the number of Shareholders and the number of Shares that might otherwise trade publicly and could adversely affect the liquidity and market value of the remaining Shares not tendered and not held by Seagull.

Should the Offer be declared unconditional (*gestand worden gedaan*), it is intended that Seagull's listing on Euronext Amsterdam will be terminated as soon as possible. This would further adversely affect the liquidity of any Shares not tendered. In addition, the Offeror may initiate any of the procedures as set out in Section 5.7.3 (Legal Structure of Seagull following the Offer), including procedures that would result in termination of the listing of the Shares (including Shares not being tendered).

### **5.7.3 Legal structure of Seagull following the Offer**

#### **5.7.3.1 Summary of risk factors following the Offer**

As set out in Section 5.2(a), the Offer is conditional upon acceptances being received with respect to at least 95% of the Shares. However, the Offeror has the right to waive this condition and to declare the Offer unconditional (*gestand doen*) even if the Shares that have not been tendered represent more than 5% of the Shares.

Shareholders who do not tender their Shares in the Offer should carefully review this Section 5.7.3, which describes certain risks they will be subject to after the Offer is declared unconditional (*gestand wordt gedaan*). These risks are in addition to the exposure to the business of Seagull and its subsidiaries, as such business and the structure of the Seagull group may change from time to time after the Settlement Date. The following is a summary of the key additional risks:



- **COMPULSORY PURCHASE**

As soon as the relevant legal requirements have been satisfied, the Offeror may seek to acquire the remaining Shares through a statutory Squeeze-Out (as defined in Section 5.7.3.3 below) procedure.

- **LOSS OF LIQUIDITY**

As soon as the relevant legal requirements have been satisfied, the Offeror may seek to terminate the listing of Seagull on Euronext Amsterdam and to convert Seagull into a private limited company (*besloten vennootschap met beperkte aansprakelijkheid*), which will *inter alia* cause all shares in Seagull to become subject to transfer restrictions. Alternatively or cumulatively, the Offeror may seek to implement an Upstream Merger (as defined in Section 5.7.3.4 below) or other merger transaction, which could result in shareholders in Seagull becoming shareholders in a Merging Entity (as defined in Section 5.7.3.4 below) by operation of law. This Merging Entity will likely be a private limited company (*besloten vennootschap met beperkte aansprakelijkheid*), and the shares in its capital will not be listed or publicly traded, and will be subject to transfer restrictions.

Even if no conversion or merger is implemented, the size of the free float in Shares will be substantially reduced as a result of the Offer, and as a result trading volumes and liquidity of Shares will be materially adversely affected.

The Offeror may also seek a sale of substantially all assets of Seagull, which may be followed by a liquidation and a distribution of the sale proceeds.

- **INCREASED LEVERAGE**

As a result of one or more Legal Mergers (as defined in Section 5.7.3.2 below) or as a result of other measures implemented by the Offeror and Seagull after the Settlement Date, the proportion of the balance sheet of Seagull or its successor entities that is represented by debt may increase substantially compared to the current position.

- **REDUCED GOVERNANCE RIGHTS**

In the event that Seagull or its successor entity will no longer be listed and its shares will no longer be publicly traded, the statutory provisions applicable to the governance of public or listed companies will no longer apply and the rights of minority shareholders will be limited to the statutory minimum.

- **CONTROLLING SHAREHOLDER**

Following the Settlement Date, Seagull will be majority controlled by the Offeror and the indirect shareholders of the Offeror will appoint all of the members of the Management Board and all of the members of the Supervisory Board.

- **TAX TREATMENT OF DISTRIBUTIONS**

The Offeror and Seagull have no insight into and no responsibility with respect to the tax treatment of Shareholders with respect to any distributions made by Seagull or any successor entity to Seagull, which may include dividends, repayments of capital and liquidation distributions. In the event that there is a sale of substantially all assets of Seagull, followed by a liquidation and a distribution of the sale proceeds, this may raise specific tax issues for Shareholders.

#### 5.7.3.2 General

The Offeror reserves the right to use any permitted method to acquire 100% of Seagull's share capital, as well as to align Seagull with the holding and financing structure of the group of companies that includes the Offeror. For this purpose the Offeror will consider, depending *inter alia* on the number of Shares obtained by the Offeror as a result of the Offer, a number of processes, including a compulsory acquisition procedure (*uitkoopprocedure*) in accordance with article 2:92a of the Dutch Civil Code (a "**Squeeze-Out**"), a legal merger (*juridische fusie*) between Seagull and the Offeror or an affiliate of the Offeror in accordance with article 2:309 *et seq* of the Dutch Civil Code (a "**Legal Merger**"), a contribution of assets to Seagull in exchange for new shares issued (in which case the existing shareholders do not have pre-emptive rights), or a sale of assets by Seagull. Separately, the Offeror may cause Seagull to be converted into a private limited company (*besloten vennootschap met beperkte aansprakelijkheid*). Subject to the contents of this Offer Memorandum (including but not limited to, Sections 4.6.4 and 5.7.3.4), Offeror does not currently intend to amend Seagull's articles of association in the short term. However, Offeror does reserve the right to amend Seagull's articles of association in connection with the legal structure of Seagull following the Offer as set out in this paragraph 5.7.3.2 or otherwise.

For the avoidance of doubt, any or all of the measures and processes described in this Section 5.7 may be applied cumulatively, alternatively, or not at all, at the discretion of the Offeror subject to applicable provisions of Dutch law.

#### 5.7.3.4 Squeeze-Out

In the event that the Offeror has acquired 95% or more of the issued and outstanding share capital of Seagull at or following the Settlement Date (excluding Shares held by Seagull or its subsidiaries), the Offeror intends to initiate a Squeeze-Out, in order to acquire the remaining Seagull Shares not tendered and not held by the Offeror or Seagull. The Offeror may also initiate a Squeeze-Out at any time after the Settlement Date, if and when it is entitled to do so, with respect to shares in any successor entity of Seagull, created through a Legal Merger or otherwise.

#### 5.7.3.4 Legal Merger

At any time after the Offer has been declared unconditional (*gestand wordt gedaan*), the Offeror and Seagull may take steps to implement a Legal Merger between the Offeror or an affiliate of the Offeror (the **"Merging Entity"**) and Seagull. As a result of such a Legal Merger, one of the two legal entities involved (the **"Disappearing Entity"**) will disappear and the other (the **"Surviving Entity"**) will survive and acquire all assets and liabilities of the Disappearing Entity by operation of law on the date on which the Legal Merger becomes effective (the **"Merger Date"**). The following paragraphs of this subsection explain the two principal forms of Legal Merger which the Offeror may consider and set out a summary of the process that will be followed prior to any Legal Merger being implemented. No rights can be derived from these explanations and the Offeror reserves the right to pursue a Legal Merger on different terms.

In case a Legal Merger is effectuated in which Seagull is the disappearing entity (an **"Upstream Merger"**), shareholders in Seagull (including Shareholders that have not tendered their Shares under the Offer, but excluding the Merging Entity) will become by operation of law, shareholders in the Merging Entity, alongside the Offeror or the Offeror's affiliate which is already a shareholder of the Merging Entity (the **"Merging Entity Parent"**). The new shareholders will acquire shares in the capital of the Merging Entity that have the same economic value as the shares in Seagull they hold immediately before the Legal Merger becomes effective, which will be computed on the basis of the relevant prices set out in this Offer Memorandum. The capital of the Merging Entity may be divided in different classes of shares and the holders of shares in Seagull may acquire one or more classes of ordinary and/or preference shares in the Merging Entity, depending on factors such as the amount of any debt financing the Merging Entity has outstanding at that time. The exact identity of the Merging Entity, the composition of its share capital, the economic and other rights attaching to each class of shares in that capital and the exchange ratio applicable to the shares in Seagull will only be established by the management boards of Seagull and the Offeror and shall be approved by the Supervisory Board. The Supervisory Board may request that additional independent financial or legal experts are appointed to advise them on the reasonableness of the proposed exchange ratio for the shares in the Merging Entity with a view to the economic and other rights attached to the shares in the Merging Entity to be received by the minority shareholders as compared to the economic and other rights attached to the shares in Seagull held by them immediately prior to the Merger Date.

It is not intended that any shares in the Merging Entity will be listed on any stock exchange or otherwise be publicly traded. As the Merging Entity will likely be a private limited company (*besloten vennootschap met beperkte aansprakelijkheid*), restrictions will apply to the transferability of these shares. However, the Merging Entity Parent may (but will not necessarily) grant the new holders of shares in the Merging Entity the right for a certain period after the Merger Date to sell their shares to the Merging Entity Parent, for a price per share equal to the relevant price set out in this Offer Memorandum (i.e. the Offer Price per Share). Shareholders that do not tender their Shares in the Offer need to be aware that, in the event the Offer is declared unconditional (*gestand wordt gedaan*) and an Upstream Merger is implemented, except to the extent and for the period that any sale right is granted in accordance with the previous sentence, if any, the shares in the Merging Entity which they receive in exchange for their Shares will be illiquid and cannot be freely traded.

As a further result of the Merging Entity in an Upstream Merger being an unlisted private limited company, statutory provisions applicable to the governance of public or listed companies will not apply to the Merging Entity and the rights of minority shareholders in the Merging Entity will be limited to the statutory minimum.

As an alternative or precursor to an Upstream Merger, the Offeror may choose to implement a Legal Merger in which the Merging Entity will be the Disappearing Entity and Seagull will be the Surviving Entity (a **"Downstream Merger"**). In such a case, the shareholders of Seagull will continue to hold their Shares. The Shares held by the Merging Entity will be cancelled and the Merging Entity Parent will be issued with new

shares in Seagull, taking into account any assets or liabilities which the Merging Entity has on the Merger Date, other than Shares.

A Downstream Merger will not in itself affect the listing of Seagull on Euronext Amsterdam or the tradability of Shares. The Downstream Merger does not, however, prevent the Offeror and Seagull from seeking a termination of that listing, when they are entitled to do so under applicable listing rules. Similarly, the Offeror may initiate a Squeeze-Out subsequent to a Downstream Merger, if and when it is entitled to do so, with respect to the shares in Seagull it does not at that point own (other than shares owned by Seagull itself or its subsidiaries). In addition, the completion of the Offer and any subsequent measures initiated by the Offeror and Seagull, within the restrictions imposed by applicable law, are likely to significantly reduce the trading volume in Shares and thereby the liquidity of a continued investment in Shares beyond the Settlement Date.

After implementing a Downstream Merger, the Offeror may decide to implement an Upstream Merger or other merger transaction, with a different Merging Entity than that which disappeared as a result of the Downstream Merger. The previous subsection, relating to an Upstream Merger and the shares that will be issued to holders of shares in Seagull, will apply *mutatis mutandis* in such a case.

In the event that the Offeror chooses to pursue any Legal Merger, the process for achieving this result will be subject to Part 7 of Book 2 of the Dutch Civil Code and any other applicable provisions of Dutch law, and will include safeguards to ensure that the exchange ratio applicable to the shares in Seagull is confirmed as being fair by independent experts, and is ultimately approved by the Supervisory Board. The process also requires a resolution of the general meeting of shareholders of the Disappearing Entity and, under certain circumstances, of the general meeting of shareholders of the Surviving Entity. Shareholders should be aware, however, that these safeguards and procedures do not prevent the Surviving Entity, in which they will be shareholders from the Merger Date, from having substantially more debt as a proportion of its balance sheet total than Seagull currently has.

#### 5.7.3.5 Asset Sale

At any time after the Offer has been declared unconditional (*gestand wordt gedaan*), the Offeror and Seagull may take steps to cause a sale by Seagull of all or substantially all of its assets to a company directly or indirectly wholly owned by the Offeror or by an affiliate of the Offeror. This sale will be made at a value computed on the basis of the share prices set out in this Offer Memorandum. A confirmation will be obtained from independent experts as to the fairness of such a transaction and it would require the approval of the Supervisory Board, as well as that of the general meeting of Seagull's shareholders. Following such a sale, Seagull may be liquidated, in which case the proceeds of the transaction will be distributed to its shareholders, in accordance with the provisions of the Seagull Articles of Association in force at the relevant time.

#### 5.7.3.6 Other Possible Measures

The Offeror reserves the right to use any other permitted method to obtain 100% of Seagull's share capital, as well as to align the company structure of Seagull with the group's new holding and financing structure that will exist once the Offer has been declared unconditional (*gestand wordt gedaan*), including the contribution of assets by the Offeror to Seagull against the issuance of shares in the capital of Seagull, whilst at the same time excluding the pre-emptive rights (*voorkeursrechten*) (if any) of other Seagull Shareholders, all in accordance with Dutch law and the Seagull Articles of Association in force at the relevant time.

Finally, the Offeror reserves the right to pursue alterations to the corporate and capital structure of Seagull, including internal reorganizations, changes to the accounting policies applied by Seagull, amendments to the Seagull Articles of Association, a liquidation, a demerger as specified in article 2:334a of the Dutch Civil Code or a rights issue, all to be effectuated in accordance with Dutch law and the Seagull Articles of Association (as amended from time to time). Any distributions made may take, among others, the form of a distribution out of reserves, an interim dividend, a final dividend, payment upon cancellation or, in case the Company is liquidated, a liquidation distribution.

#### 5.7.4 Dividend Policy

Seagull has historically not declared dividends. Offeror currently intends to continue that policy.

#### 5.7.5 Social Consequences

The Offeror intends in due course to integrate the business of Rocket Software and Seagull. The details of such integration will, however, only be determined following the Settlement Date and once the

Offeror has been able to better understand the consequences of such integration. It is not anticipated that the Offer itself will substantially affect employment within Seagull on short term.

Seagull does not have a works council (*ondernemingsraad*). The secretariat of the Social Economic Council (*Sociaal-Economische Raad*) has been informed of the Offer in accordance with the SER Merger Code 2000 (*SER-besluit Fusiegedragsregels 2000*).

#### 5.7.6 Future Composition of the Boards

It is envisaged that after the Offer has been declared unconditional, the Management Board will consist of Mr. Andrew Youniss and Mr. Troy Heindel. Offeror, Seagull and Mr. Addington have agreed that, subject to the Offer being declared unconditional and the appointment of at least either Mr. Andrew Youniss or Mr. Troy Heindel as member of the Management Board, Mr. Donald P. Addington (who is currently the only member of the Management Board) will resign from such Board. In addition, Mr. Addington will resign as Chief Executive Officer as at the date the Offer is declared unconditional (*gestanddoening*). The total costs related to the termination of Mr. Addington's employment are estimated at US\$ 852,652.72. In addition, Mr. Addington is entitled to payment of medical insurance premiums, payable monthly for 18 months at US\$ 856 a month.

In addition to Mr. Donald P. Addington, Seagull's current executive team consists of Mrs. Kim Addington (Executive Vice President & Chief Marketing Officer), Mr. Michael Haynes (Acting Chief Financial Officer), Mr. Wico van Helden (Chief Technology Officer) and Mr. Andre de Haan (Chief Information Officer & Senior Vice President of Product Strategy). Mr. de Haan and Mr. van Helden will remain with the Company. Mrs. Addington's employment with the Company will be terminated subject to the Offer being declared unconditional. Also, as announced by Seagull on March 1, 2007, Seagull and Mr. Mory Motabar (the Company's former Chief Financial Officer) have reached agreement as to the termination of his employment in light of his position becoming redundant upon completion of the Offer (see Section 17.5).

Offeror and Seagull have agreed that, until Offeror has acquired the entire issued share capital of Seagull, Seagull shall maintain the Supervisory Board. It is envisaged that from the Settlement Date onwards the Supervisory Board will consist of Mr. van der Loo, Mr. van Pelt and two individuals to be identified by the Offeror. Subject to the Offer being declared unconditional and the appointment of at least one individual to be identified by Offeror as member of the Supervisory Board, Mr. B. Jansen and Mr. G.T. Rozman have agreed to resign from the Supervisory Board. Offeror has identified Mr. Johan Magnusson Gedda and Mr. Patrick Manning as the two new individuals who shall be proposed to be elected to the Supervisory Board. This appointment will be subject to at least two thirds of the Shares being tendered and completion of the Offer as evidenced by completion of all payments on the Settlement Date. The members of the Supervisory Board who shall so resign will not be paid any compensation as meant in article 9i sub p of the Bte 1995. In relation to the Offer, the members of the Supervisory Board who resign will not receive remuneration other than their unpaid board member's fees for services rendered until the date of resignation (if any). All such board members' fees have been paid up to and including Financial Year 2007.

#### 5.8 Termination Events Merger Protocol

The Merger Protocol provides for termination arrangements if one or more Offer Conditions (see Section 5.2) are not satisfied or waived on the Acceptance Closing Date. The Merger Protocol may also be terminated (i) by mutual written consent of the Offeror and Seagull, (ii) by either Offeror or Seagull if the other Party shall have breached or failed to perform in any material respect any of its obligations or commitments pursuant to this Merger Protocol. Also, in the event that a *bona fide* third party makes or announces its intention to make a Competing Offer, Offeror in its sole discretion may raise the Offer Price to a price in excess of the price per share offered by such third party ("**Revised Offer**") and Seagull shall remain bound by its obligations under the Merger Protocol. If the Offeror fails to announce a Revised Offer within a period of 15 Business Days following the public announcement of a Competing Offer, Seagull shall be entitled to terminate the Merger Protocol with immediate effect. This provision also applies to any consecutive Competing Offer.

#### 5.9 Certain arrangements between the Offeror and Seagull

If the Offeror fails to announce a Revised Offer within a period of 15 Business Days following the public announcement of a Competing Offer and Seagull terminates the Merger Protocol, it shall pay to the Offeror on first demand an amount of EUR 1,500,000 (one million five hundred thousand Euros).

## 6 LETTER TO SHAREHOLDERS

Dear Shareholder,

The extraordinary general meeting of shareholders to be held on 4 April 2007 is an important event for Seagull and the Shareholders. During this meeting you will be informed about the Offer.

On 9 February 2007 the Company and Rocket Software entered into the Merger Protocol based upon which the Offeror agreed to make the Offer for € 4.33 per Share, subject to certain Offer Conditions. In this letter we would like to address the background of this proposed transaction. As you will see, the Supervisory Board and the Management Board have given this transaction careful and extensive consideration. We have reached the conclusion that the Offer is in the best interests of the Company and its stakeholders, including its Shareholders. We support the Offer and unanimously recommend the Offer to the Shareholders for acceptance. The details of the Offer are set out in Section 9 (Invitation to Shareholders) of the Offer Memorandum.

### Background and Further Considerations

The Boards have regularly evaluated the Company's business, strategy, alternatives and prospects in the context of market developments and with a view to enhancing the Company's competitive position. In recent years, the Company made several acquisitions to broaden its portfolio and strengthen its position in the market. Nevertheless, the size of the Company is still relatively small.

The Boards believe that the listing of the Shares may prevent it from reaching its full potential. In addition, due to the size of the Company, the liquidity in the Shares is still very limited.

The Boards also believe that over the past several years there has been an increasing trend by customers of all sizes to seek to purchase technology and software solutions from a smaller group of vendors with larger financial and operational resources to support the customer's technology and operational requirements. This trend has made the market for technology and software vendors more difficult and competitive for medium and smaller size technology solution providers to successfully sell their products in competition with larger technology solution vendors.

In this context, the Boards ultimately came to the conclusion that the interests of the Shareholders and other stakeholders of the Company would be served best by means of taking the Company private and de-listing the Shares.

We believe that the taking private of the Company (by means of a public offer of all the Shares by the Offeror) and the subsequent de-listing, on balance, would have significant advantages for the Company, its Shareholders, employees, customers and other stakeholders. These advantages include:

- (i) the Offer provides the Shareholders the opportunity to sell their interest in the Company at an attractive premium relative to the price per Share before the press release of 5 December 2006. This allows the Shareholders to realise immediate value in cash for their Shares, eliminating significant price risk related to future investment, execution uncertainty and any liquidity discount upon sale;
- (ii) the Offer could give the Company the ability to utilize the unique strengths and capabilities of the Offeror. The Offer could give the Company access to additional financial resources, which would allow it to pursue a strategy of growth through, *inter alia*, (international) expansion;
- (iii) a combined company will seek to leverage Seagull's large customer base and established market presence in the SOA, legacy integration and Web services software sectors by providing a larger global footprint and greater resources to support customers large and small, and to continue to grow the customer base; and
- (iv) the Offer could lead to the capture of synergies arising from merging the activities of the Offeror and the Company. These synergies include cost savings from combining systems and sharing support functions as well as higher revenues generated from cross-fertilisation between the two companies.

The Company will continue its operations under its present names and labels. The Offer is not expected to have substantial negative consequences regarding employment and employment conditions of the employees of the Company and its subsidiaries on the short term.

### Process overview

The Company retained AGC as its independent financial adviser. AGC provided financial advisory services to the Company throughout the process, and, as part of its engagement as financial adviser to the

Company, also provided an opinion as to the fairness from a financial point of view of the price of EUR 4.33 offered per Share. The fairness opinion is contained in Section 7 (Fairness Opinion) of the Offer Memorandum.

On 9 February 2007 the Company and the Offeror entered into the Merger Protocol based upon which the Offeror agreed to make the Offer for EUR 4.33 per Share, subject to certain Offer Conditions.

The secretariat of the Social Economic Council (*Sociaal-Economische Raad*) has been informed of the Offer and the Company has otherwise acted in accordance with the SER Merger Code 2000 (*SER-besluit Fusiegedragsregels*).

#### **Recommendation**

The Boards unanimously recommend the Offer to the Shareholders for acceptance. See Section 8 (Recommendation by the Supervisory Board and the Management Board) of the Offer Memorandum.

#### **Actions to be taken**

If you hold Shares through an Admitted Institution (within the meaning of article 1 of the Securities Giro Act (*Wet Giraal Effectenverkeer*)) and wish to accept the Offer, you are requested to make your acceptance known via your bank or stockbroker as soon as possible and, in any event, by no later than 15:00 hours CEST (09:00 hours EDT), on 17 April 2007. The procedure for acceptance of the Offer is set out in Section 9 (Invitation to the Shareholders) of the Offer Memorandum.

15 March 2007

Supervisory Board

Mr. Tom van der Loo  
Mr. Frank van Pelt  
Mr. Bonaficius Henricus Maria Jansen  
Mr. Gabriel Thomas Rozman

Management Board

Mr. Donald Paul Addington

February 2, 2007

Management Board and Supervisory Board  
Seagull Holding N.V.  
Korte Parallelweg 1  
3311 JN Dordrecht  
The Netherlands

Gentlemen,

You have requested America's Growth Capital to provide you, from a financial perspective, an opinion regarding the fairness (the "Fairness Opinion" or the "Opinion") to the shareholders of the Seagull Holding N.V. ("Seagull" or the "Company") of the intended public offer for all issued and outstanding ordinary shares of Seagull (the "Shares") by Rocket Software, Inc. through its acquisition subsidiary ("Bidco"). The Offer will be an offer in cash for the Shares at a price of EUR 4.33 per Share (the "Cash Offer Price") tendered pursuant to the Offer (a "Tendered Share" and collectively, the "Transaction").

America's Growth Capital, as part of its investment banking business, is continually engaged in the valuation of businesses and their securities in connection with mergers and acquisitions, negotiated underwritings, secondary distributions of listed and unlisted securities, private placements and valuations for corporate and other purposes.

In arriving at the Opinion, America's Growth Capital has reviewed and considered the following financial and other information (the "Information") and other matters as we have deemed relevant, including among other things:

- (i) A draft of the Merger Protocol dated February 1, 2007 (the "Agreement");
- (ii) publicly available information with respect to Seagull, including the annual reports of Seagull with respect to the fiscal years 2004, 2005 and 2006 and the first half of fiscal 2007, and other publicly available information, including press and other interim releases;
- (iii) certain internal financial reports and documents relating to the operations of Seagull;
- (iv) certain publicly available information regarding listed companies with business activities comparable to Seagull's business activities;
- (v) certain publicly available information regarding comparable transactions deemed relevant by America's Growth Capital;
- (vi) discussions we have had with certain members of the management of Seagull concerning the historical and current business operations, financial conditions and prospects of Seagull and such other matters we deemed relevant;
- (vii) historical share price developments and trading volumes of shares in Seagull; and
- (viii) other information and analyses to the extent deemed relevant by America's Growth Capital. In addition, America's Growth Capital has conducted discussions with members of senior management and representatives of the Management Board and Supervisory Board of Seagull and the management and representatives of the Board of Directors of Bidco concerning their view on their respective businesses and prospects.

In conducting our review and arriving at our Opinion, we have, with your consent, assumed and relied, without independent investigation, upon the accuracy and completeness of all financial and other information provided to us by the Company or that is publicly available. We have not undertaken any responsibility for the accuracy, completeness or reasonableness of, or attempted to independently verify, the Information, although we are not aware of any material inaccuracies. In addition, we have not conducted nor have we assumed any obligation to conduct any physical inspection of the properties or facilities of the Company or Bidco. We have further relied upon the assurance of management of the Company that they are unaware of any facts that would make the Information incomplete or misleading in any respect. We have, with your consent, assumed that the financial forecasts that we examined were reasonably prepared by the management of the Company on bases reflecting the best currently available estimates and good faith judgments of such management as to the future performance of the Company.

We have not made or obtained any independent evaluations, valuations or appraisals of the assets or liabilities of the Company, nor have we been furnished with such materials. We have not made any review

of or sought or obtained advice of legal counsel regarding legal matters relating to the Company, and we understand that the Company has relied and will rely only on the advice of legal counsel to the Company as to such matters. Our services to the Company in connection with the Transaction have been comprised of (i) advising the Management and Supervisory Boards regarding financial matters relevant to the Transaction, and (ii) rendering an Opinion as to the fairness, from a financial point of view, to the holders of the ordinary shares of the Company of the Cash Offer Price to be received by such holders. The Opinion is necessarily based upon economic and market conditions and other circumstances as they exist and can be evaluated by us on the date hereof. It should be understood that although subsequent developments may affect our Opinion, we do not have any obligation to update, revise or reaffirm our Opinion (except upon the request of the Company in accordance with our engagement letter) and we expressly disclaim any responsibility to do so (except as provided in our engagement letter with the Company).

For purposes of rendering our Opinion we have assumed in all respects material to our analysis, that the representations and warranties of each party contained in the Agreement are true and correct as of the date of the Opinion, that each party will perform all of the covenants and agreements required to be performed by it under the Agreement and that all conditions to the consummation of the Transaction will be satisfied. We have assumed that the final form of the Agreement will be substantially the same as the last draft reviewed by us. We have also assumed that all governmental, regulatory and other consents and approvals contemplated by the Agreement will be obtained and that in the course of obtaining any of those consents no restrictions will be imposed or waivers made that would have an adverse effect on the contemplated benefits of the Transaction.

Furthermore, America's Growth Capital has considered general economic, monetary, market and other conditions that may have an impact on this Opinion. America's Growth Capital does not accept any responsibility for these general conditions or any changes thereof.

Seagull confirmed to America's Growth Capital that it has provided America's Growth Capital with all information relevant for this Opinion and has not omitted to provide to America's Growth Capital any information that could reasonably be expected to have an impact on the contents or purpose of the Opinion and that after the delivery of aforementioned information no events have occurred that could reasonably be expected to have a material impact on the contents or purpose of this Opinion; and that all financial and other information provided by Seagull is complete, true and not misleading, and has been carefully prepared and reflects the best available estimates and views of Seagull's management regarding the present and future results of Seagull.

Bidco confirmed to America's Growth Capital that it has provided, to the best of its knowledge, all information America's Growth Capital has requested for purpose of the Opinion and has not omitted, to the best of its knowledge, to provide to America's Growth Capital any information that it has requested and that the financial and other information provided by Bidco to America's Growth Capital is, to the best of its knowledge, complete, true and not misleading.

In arriving at the Opinion, America's Growth Capital has used the following methods of analysis:

- A peer group valuation of Seagull on a stand alone basis;
- A comparable company transaction analysis;
- A bid premium analysis;
- A discounted cash flow valuation of Seagull on a stand alone basis; and
- A comparison of the Cash Offer Price with the historical Seagull share price.

Based upon the foregoing and taking into account the qualifications set out hereunder, we are of the opinion that, as per the date of this Fairness Opinion, from a financial point of view, the Cash Offer Price can be considered fair to the holders of ordinary shares of Seagull.

This Opinion is subject to the following qualifications:

- (i) The Opinion is solely intended as an assessment of the Cash Offer Price from a financial perspective and is not intended to have any implications on any other, particularly legal or tax, areas;
- (ii) In arriving at this Opinion, America's Growth Capital has not performed an independent investigation as to tax, accounting, actuarial or legal aspects; and
- (iii) America's Growth Capital has not performed any investigation with the sole purpose of verification of the accuracy and completeness of the Information.



America's Growth Capital is acting as advisor to Seagull in connection with the Offer and will receive (i) a fee upon the issue of the Fairness Opinion, irrespective of the content of the Opinion and/or the Offer being declared unconditional and (ii) an additional fee contingent upon the consummation of the Offer.

America's Growth Capital has issued this Fairness Opinion, for the sole use by and benefit of the Supervisory Board and the Management Board of Seagull in connection with the Offer. The Fairness Opinion does not provide any opinion with respect to the underlying business decisions regarding the Offer. The Fairness Opinion is not and must not be considered to be a recommendation to the shareholders of Seagull whether or not to accept the Offer. At the request of Seagull, this Fairness Opinion, for information purposes only, will be incorporated in full in the offer memorandum in connection with the Offer.

Very truly yours,

**America's Growth Capital, LLC**

## **8 RECOMMENDATION BY THE SUPERVISORY BOARD AND THE MANAGEMENT BOARD**

The Boards have duly considered the strategic, financial and social aspects of the Offer and have concluded that the Offer is in the best interests of the Company, the Shareholders and other stakeholders in the Company. The Boards considered a number of factors as set out in this Offer Memorandum, including but not limited to, the strategic fit based on the combined strengths of the Offeror and the Company, and the potential synergetic benefits of combining the Offeror and the Company (as set out in Section 5.4 of the Offer Memorandum (The Offeror's Rationale for the Offer)) as well as the business continuity and the sustainability of employment, the level of execution risks and the Offer Price per Share.

The Boards have concluded that the Offer is reasonable and fair to the Shareholders. In this respect, reference is also made to the fairness opinion rendered by AGC, as included in Section 7 of the Offer Memorandum (Fairness Opinion).

With reference to the above, the Supervisory Board and the Management Board each fully supports the Offer and unanimously recommends that the Shareholders accept the Offer and tender their Shares pursuant to the Offer.

### **Supervisory Board**

Mr. Tom van der Loo  
Mr. Frank van Pelt  
Mr. Bonaficius Henricus Maria Jansen  
Mr. Gabriel Thomas Rozman

### **Management Board**

Mr. Donald Paul Addington

## 9 INVITATION TO THE SHAREHOLDERS

The Offeror hereby makes a recommended public cash offer for all the Shares. The Shareholders are advised to review this Offer Memorandum (including all documents incorporated by reference herein) and in particular Section 1 (Restrictions and Important Information) thoroughly and completely and to seek independent advice where appropriate in order to reach a balanced judgment with respect to the Offer and this Offer Memorandum. With due reference to all statements, terms, conditions and restrictions included in this Offer Memorandum, Shareholders are hereby invited to tender their Shares under the Offer in the manner and subject to the terms, conditions and restrictions set out below.

### 9.1 Offer Price per Share

For each Share tendered under the terms and conditions of the Offer, the Offeror offers the Offer Price per Share of EUR 4.33 in cash.

### 9.2 Acceptance by Shareholders

#### 9.2.1 Acceptance by Shareholders held through any Admitted Institution

Shareholders who hold their Shares through an Admitted Institution are requested to make their acceptance known via their bank or stockbroker no later than 15:00 hours CEST (09:00 hours EDT), on 17 April 2007, unless the Acceptance Period is extended in accordance with Section 9.6 (Extension). Your bank or stockbroker may set an earlier deadline for communication by Shareholders in order to permit the bank or stockbroker to communicate its acceptances to the Settlement Agent in a timely manner.

The Admitted Institutions may tender Shares for acceptance only to the Settlement Agent (Fortis Bank, Attn.: Afdeling Verwisselkantoor, Rokin 55, 1012 KK Amsterdam, the Netherlands, Tel: + 31(0)20 5272458, Fax: + 31 (0)20 5271963 E-mail: FBGC.verwisselkantoor@nl.fortis.com) and only in writing. In tendering the acceptance, the Admitted Institutions are required to declare that (i) they have the tendered Shares in their administration, (ii) each Shareholder who accepts the Offer irrevocably represents and warrants that the Shares tendered by him are being tendered in compliance with the restrictions set out in Section 1 (Restrictions and Important Information) and (iii) they undertake to transfer these Shares to the Offeror on the Settlement Date, provided the Offer has been declared unconditional (*gestand wordt gedaan*).

Subject to article 9o, paragraph 5 of the Bte 1995, the tendering of Shares in acceptance of the Offer shall constitute irrevocable instructions to block any attempt to transfer the Shares tendered, so that on or prior to the Settlement Date no transfer of such Shares may be effectuated (other than to the Settlement Agent on or prior to the Settlement Date if the Offer has been declared unconditional (*gestand wordt gedaan*) and the Shares have been accepted for purchase) and to debit the securities account in which such Shares are held on the Settlement Date in respect of all of the Shares tendered, against payment by the Settlement Agent of the Offer Price per Share in respect of those Shares.

#### 9.2.2 Undertakings, representations and warranties by tendering

Each Shareholder tendering Shares pursuant to the Offer by such tender, undertakes, represents and warrants to the Offeror, on the date that such Shares are tendered through to and including the Settlement Date, subject to the proper withdrawal of any tender, in accordance with article 9o, paragraph 5 of the Bte 1995, that:

- (a) the tender of any Shares constitutes an acceptance by the Shareholder of the Offer, on and subject to the terms and conditions of the Offer;
- (b) such Shareholder has full power and authority to tender, sell and deliver (*leveren*), and has not entered into any other agreement to tender, sell or deliver (*leveren*), the Shares stated to have been tendered to any party other than the Offeror (together with all rights attaching thereto) and, when the same are purchased by the Offeror for cash, the Offeror will acquire such Shares, with full title guarantee and free and clear of all third party rights and restrictions of any kind; and
- (c) such Shares are being tendered in compliance with the restrictions as set out in Section 1 (Restrictions and Important Information) and the securities and other applicable laws or regulations of the jurisdiction in which such Shareholder is located or of which it is a resident and no registration, approval or filing with any regulatory authority of such jurisdiction is required in connection with the tendering of such Shares.

Shares tendered on or prior to the Acceptance Closing Date may not be withdrawn, subject to the right of withdrawal of any tendered Shares during any extension of the Acceptance Period in accordance with the provisions of article 9o, paragraph 5 of the Bte 1995. During any such extension of the Acceptance Period, any Shares previously tendered and not withdrawn will remain subject to the Offer.

### 9.3 Offer Conditions

The Offer shall be declared unconditional (*gestanddoening*) if the conditions as set out in Section 5.2 (Offer Conditions) are fulfilled or, if permitted by applicable law, waived by the party or parties entitled to waive one or more of the Offer Conditions. Subject to the Conditions set out in Section 5.2 (Offer Conditions), the Offeror reserves the right to accept any tender for acceptance, even if it has not been effectuated in such manner as set out in Section 9.2 (Acceptance by Shareholders).

### 9.4 Acceptance Period

The Acceptance Period begins on 19 March 2007 at 09:00 hours CET (04:00 hours EDT) and ends, subject to extension in accordance with Article 9o, paragraph 5 of the Bte 1995, on 17 April 2007 at 15:00 hours CEST (09:00 hours EDT).

If one or more of the Offer Conditions set out in Section 5.2 (Offer Conditions) is not fulfilled, the Offeror may extend the Acceptance Period until all such Offer Conditions have been satisfied or waived. Extension of the Acceptance Period may occur one or more times. See also Section 9.6 (Extension). During an extension of the Acceptance Period, any Shares previously tendered and not withdrawn will remain subject to the Offer, subject to the right of each Shareholder to withdraw the Shares he or she has already tendered in accordance with Applicable Law, including Article 9o, paragraph 5 of the Bte 1995.

If all Offer Conditions are satisfied or, where appropriate, waived, the Offeror will accept all Shares that have been validly tendered (or defectively tendered provided that such defect has been waived by the Offeror) and not previously withdrawn pursuant to the terms of the Offer in accordance with the procedures set forth in Section 9.2 (Acceptance by Shareholders).

### 9.5 Declaring the Offer Unconditional (*gestanddoening*)

The Offer shall be subject to the fulfilment of the Offer Conditions. The Offeror reserves the right to waive one or more, if permitted by Applicable Law, of the Offer Conditions, provided that the waiver in certain circumstances of certain of such Offer Conditions can only be made jointly with Seagull and Offer Condition 5.2(h) cannot be waived by either party. See Section 5.2 (Offer Conditions). If the Offeror wishes to waive or reduce one or more of the Offer Conditions, the Offeror will announce in a manner reasonably designed to inform the Shareholders that it waives or reduces such Offer Conditions by means as required by Applicable Law.

Unless the Acceptance Period is extended, the Offeror will announce, in accordance with Applicable Law, such date being the Unconditional Date, whether the Offer Conditions have been fulfilled or are to be waived by the Offeror and will announce whether (i) the Offer has been declared unconditional, (ii) there is still uncertainty as to the fulfilment of any of the Offer Conditions, or (iii) the Offer is terminated, as a result of the Offer Conditions not having been fulfilled or waived by the Offeror, all in accordance with article 9t, paragraph 4 of the Bte 1995. The Bte 1995 requires that such announcement be made within five Business Days after the Acceptance Closing Date. In the event that the Offeror announces that the Offer is declared unconditional (*gestand wordt gedaan*), the Offeror will accept for payment all Shares validly tendered (or defectively tendered provided that such defect has been waived by the Offeror).

If and when the Offeror has declared the Offer unconditional, it reserves the right to offer the Shareholders who have not tendered their Shares during the Acceptance Period the opportunity to tender their Shares during a post-acceptance period ("**Post-Acceptance Period**"). The terms and conditions of the Offer apply *mutatis mutandis* to any tender of Shares during the Post-Acceptance Period, provided that the settlement by the Settlement Agent, in cooperation with the banks and stockbrokers, shall occur within three Business Days after the end of the Post-Acceptance Period. The opportunity to tender Shares during the Post-Acceptance Period, if any, and the duration of the Post Acceptance Period (not to exceed 15 Business days after the Unconditional Date) will be publicly announced by Offeror at the latest together with the announcement as to whether or not the Offer is declared unconditional. Shareholders cannot withdraw Shares tendered during the Post-Acceptance Period.

The announcement, if any, by the Offeror that there is still uncertainty as to the fulfilment of any of the Offer Conditions, does not mean that any Shareholder will have the right to withdraw any tender of Shares or that any tender of Shares shall be deemed to be automatically withdrawn.

## **9.6 Extension**

The Offeror may extend the Offer past the initial Acceptance Closing Date, in which case all references in this Offer Memorandum to the "Acceptance Closing Date" or "15:00 hours CEST (09:00 hours EDT), on 17 April 2007" shall, unless the context requires otherwise, be moved to the latest date and time to which the Offer has been so extended. A bank or a stockbroker may set an earlier deadline for communication by Shareholders in order to permit the bank or stockbroker to communicate its acceptances to the Settlement Agent in a timely manner.

If the Acceptance Period is extended such that the obligation pursuant to article 9t of the Bte 1995 to announce whether the Offer has been declared unconditional (*gestand wordt gedaan*) is postponed, a public announcement to that effect shall be made in accordance with Applicable Law. Article 9o, paragraph 5 of the Bte 1995 requires that such announcement be made no later than the third Business Day following the initial Acceptance Closing Date.

During any such extension of the Acceptance Period, any Shares previously tendered and not withdrawn will remain subject to the Offer. In accordance with Applicable Law, including article 9o, paragraph 5 of the Bte 1995, Shares tendered on or prior to the original Acceptance Closing Date may be withdrawn during the Acceptance Period as extended.

## **9.7 Settlement**

In the event the Offeror announces that the Offer is declared unconditional (*gestand wordt gedaan*), the Offeror will pay on the Settlement Date to Shareholders who have tendered and delivered their Shares for acceptance pursuant to the Offer prior to or on the Acceptance Closing Date, the Offer Price per Share in respect of each Share validly tendered (or defectively tendered provided that such defect has been waived by the Offeror) and delivered (*geleverd*), at which point, dissolution or annulment of a Shareholder's tender or delivery (*levering*) shall not be permitted.

## **9.8 Commission**

The Shareholders will not be charged by the Offeror or Seagull for the delivery and payment of the Shares in case an Admitted Institution is involved. With the purpose that the Shareholders will, in principal, not be charged, Admitted Institutions shall receive from the Settlement Agent on behalf of the Offeror a commission of EUR 0.02165 for each tendered Share up to a maximum of EUR 1,000 per accountholder in the event the Offer is declared unconditional. The commission must be claimed from Offeror through the Settlement Agent within thirty (30) days after the Offer is declared unconditional (*gestand wordt gedaan*). However, the Offeror and Seagull cannot rule out that Admitted Institutions (or banks or stockbrokers) will charge costs to the Shareholders. Costs might also be charged in case a foreign institution is involved in the delivery and payment of the Shares.

## **9.9 Restrictions**

The Offer is being made with due observance of such statements, conditions and restrictions as are included in the Offer Memorandum. The Offeror reserves the right to accept any tender under the Offer, which is made by or on behalf of a Shareholder, even if it has not been effectuated in such manner as set out above.

## **9.10 Announcements**

Announcements contemplated by the foregoing paragraphs will be issued by press release or advertisement and will be published in the Daily Official List and *Het Financieele Dagblad*. Subject to any applicable requirements of Dutch tender offer regulations and without limiting the manner in which the Offeror may choose to make any public announcement, the Offeror will have no obligation to communicate any public announcement other than as described above.

## **10 INFORMATION REGARDING SEAGULL**

### **10.1 Overview**

Seagull specializes in technology that transforms "legacy" applications into SOA-compliant Web services, helping enterprises achieve exponentially faster IT support for business change, governance and compliance. The Company's LegaSuite® software platform includes SOA integration, GUI, workflow and terminal emulation modules.

With LegaSuite, customers connect legacy applications on IBM mainframe, ICL mainframe, iSeries, UNIX/VT and Windows client/server platforms to the Web, to other middleware and to newer-generations of applications such as portals, CRM and SCM. LegaSuite is based on open standards including Web services, XML, J2EE and .NET. Powerful and innovative tools require no coding, which means rapid results, reduced risk and no maintenance burden.

Committed to providing the best customer experience in the industry, Seagull's technology is in use in more than 10,000 business and government organizations worldwide, and by millions of their end users.

Established in 1990, Seagull has direct operations in the United States, the Netherlands, the UK, France, Germany and Canada, supplemented by distributors serving approximately 30 additional countries. The company has been publicly traded on the Euronext Amsterdam Exchange since 1999.

### **10.2 History**

Seagull was founded in 1990 as an IT consultancy firm with special expertise surrounding an iSeries-based ERP package from Germany software vendor Steeb (later acquired by SAP), for which the Company had distribution rights. In the performance of its consulting work, the company developed internal software tools to speed and simplify implementation; and identified opportunities for application modernization in the iSeries market. The tools and ideas resulted in the release of the TTT foreign language translation product in 1992 and GUI/400 user interface enhancement product in 1994, and marked the Company's transition from IT consultancy to software vendor.

From 1992 through 1996, the Company established subsidiaries in Europe and the United States in order to expand its distribution capabilities and addressable market, resulting in today's group structure.

In 1996, the Company's management recruited Don Addington to join Seagull as president of the North American operation charged with growing the U.S. business which, at the time, was contributing only a small amount of revenue. Don established the U.S. direct sales force and grew its contribution to over 65% of Seagull's worldwide revenues.

In response to Internet technology trends, the Company introduced the highly successful J Walk browser interface product line in 1997, and entered the mainframe market with the corresponding WinJa browser interface in 1998, finishing out the year ranked #1 Legacyware vendor by IDC.

In February of 1999, Seagull made an initial public offering on the Amsterdam Exchange and with some of the proceeds acquired the Java development lab of ObjectShare. This acquisition added expertise and technology required to execute Seagull's strategic vision for emerging opportunities surrounding the application integration market.

In 2000, Don Addington was named worldwide President and COO, and one year later CEO and President. Seagull introduced Transidiom, the first product on the market to XML-enable mainframe and iSeries business processes for rapid, standards-based integration.

As Web services emerged as a key element of enterprise architecture for the new millennium, Seagull anticipated this market direction and released a new version of Transidiom, the first complete legacy Web Services solution for mainframe and iSeries applications that supports both Java and .NET infrastructures. In 2001, Seagull made its second acquisition, Renex Corporation, a highly respected mainframe emulator and protocol converter vendor. Renex added second generation emulation technology and in-depth mainframe connectivity expertise to the company. This acquisition was the basis for the Company's successful BlueZone product line.

Throughout 2001 and 2002, the Company ported its server technology to additional enterprise platforms including HP-UX, AIX, Sun Solaris and Linux. In 2003 the Company established the LegaSuite brand, integrating its products into one modularized technology platform. In 2003, Seagull introduced its sixth product, Seagull Secure FTP Pro™ to fill gaps in FTP Security with SSL encryption and digital certificates and added support for ICL mainframe applications to LegaSuite. The Company then expanded LegaSuite to include integration of Windows applications into service-oriented architecture.

In 2005, Seagull made two strategic acquisitions: Softouch Systems which added the CrossPlex mainframe-resident integration engine to LegaSuite and Oak Grove Systems which added a workflow engine to LegaSuite. With these two acquisitions the Company became the first vendor in the legacy integration market to offer integrated business process management and workflow capabilities.

In 2006, Seagull acquired the assets, including all software products and intellectual property, of Canada-based Farabi Technology Corporation, as well as the Farabi brand name and the company's installed base of customers. The acquisition brought additional .NET technology and expertise, and expanded Seagull's presence in Canada and in the Middle East, adding over 200 customers to Seagull's installed base.

### 10.3 Group structure

Seagull comprises Seagull Holding N.V. and the wholly owned subsidiaries shown below. These subsidiaries form the hubs for the sales and marketing activities in North America, Latin America, Europe and the Asia Pacific region. The Company's Europe headquarters is in Dordrecht, The Netherlands, and Americas headquarters is in Atlanta, Georgia USA.

Seagull owns (directly or indirectly) the following subsidiaries:

- Seagull Business Software B.V., The Netherlands
- Seagull Software Systems, Inc., USA
- SofTouch Systems, Inc., USA
- Seagull Consultancy Services B.V., The Netherlands
- Seagull Software Tools B.V., The Netherlands
- Seagull Software International B.V., The Netherlands
- Seagull Business Software Italy Srl., Italy
- Seagull Deutschland GmbH, Germany
- Seagull Business Software France Sarl, France
- Seagull Business Software UK Ltd., United Kingdom
- Seagull Business Software Ireland Ltd., Ireland
- Seagull Business Software Holding Ireland Ltd., Ireland
- Seagull Business Software AB, Sweden
- Seagull Renex, Inc., USA
- Seagull Software Canada, Inc., Canada

### 10.4 Business overview

#### 10.4.1 Products

Seagull's primary products are:

- (a) **LegaSuite**, which is a platform of tightly-integrated, loosely-coupled software modules for migrating legacy applications to Service-Oriented Architecture (SOA). LegaSuite software modules are grouped into several solution clusters that reduce the time, cost and risk of SOA migration. Designed for rapid results, LegaSuite is designed to exponentially accelerate IT response to new business requirements. All solutions are designed to utilize the skills of customer's existing developer teams, require little or no coding, and require no changes to the legacy applications.
  - (i) **LegaSuite Integration** to transform legacy application business processes into SOA Web services, XML, Java beans and .NET components. The Web services are re-usable, exposing industry-standard interfaces that make SOA-compliant integration and composite application development fast and easy.
  - (ii) **LegaSuite GUI** to replace green-screens with a Web or Windows graphical user interface. To improve efficiency, LegaSuite GUI can reengineer application workflow and integrate multiple applications at the desktop.

- (i) **LegaSuite Workflow** to model, execute and manage workflows that include human and/or machine steps – legacy and non-legacy. Designed for developers, LegaSuite Workflow can be embedded into customers' application infrastructure as a workflow engine.
- (b) **BlueZone**, which is a robust Web-to-host and desktop terminal emulator for IBM mainframes, iSeries, DEC/VT UNIX and Unisys. BlueZone is the most widely-used replacement for older desktop-based terminal emulators on the market. Every BlueZone license includes the Secure File Transfer Protocol feature.

The BlueZone product family also includes **BlueZone Access Server**, which is a three-tier, Web-to-host access solution which provides secure, browser-based emulation for IBM Mainframes, iSeries and VT100 terminal emulation using both thin clients and pure HTML. Users can easily access host applications by downloading small footprint clients, or using a zero-footprint HTML approach. These clients are feature-rich and capable of communicating over a persistent (TCP/IP) or non-persistent (HTTP or HTTPS) connection.

Seagull offers a number of other point-products that complement the primary products listed above.

#### 10.4.2 Services

Seagull has a professional services team that offers a complete range of consulting services:

- (a) **Training:** Seagull training classes.
- (b) **Mentoring:** A Seagull consultant mentors client's team at checkpoints through the entire project lifecycle.
- (c) **Embedding:** Supplement customers' existing resources to accelerate project timelines or to free resources for other projects.
- (d) **Outsourcing:** Transfer the responsibility of project management to Seagull, from development and QA to installation and rollout. Seagull uses their proven LTM process to insure deadlines, deliverables and budgets are met.

The Company performs its consulting work in accordance with a proprietary methodology developed from over 15 years of legacy transformation experience. LegaSuite Transformation Methodology (LTM) is a proven legacy integration methodology that incorporates best practices developed during 16 years of helping thousands of customers to unleash additional value trapped in mainframe, midrange and Windows applications. LTM provides step-by-step processes, supporting tools, case studies and an online project information repository. Project roles are defined, as are standard deliverables for each project phase. LTM also includes a formal communication plan, which is supported by regularly defined project checkpoints.

#### 10.4.3 Distribution

Seagull employs a direct sales force in North America, Continental Europe (Netherlands, France, Germany) and the United Kingdom, supplemented by approximately 20 active indirect resellers in other geographies. The Company's sales representatives call on the IT departments and business unit executives of large and medium-sized enterprises, as well as software application vendors who incorporate Seagull's LegaSuite technology into their commercial software products on an OEM basis.

All order processing, fulfilment and customer record-keeping is centralized in the Company's worldwide Order Processing Center in Atlanta, Georgia, USA.



#### 10.4.4 Development

Seagull has several development labs which specialize in certain areas of the Company's product portfolio:

Lab Location	Primary Focus
The Netherlands	SOA Integration, User Interface Technologies
Oklahoma, USA	Mainframe Integration Competency Center
Virginia, USA	Terminal Emulation
Canada	.NET Competency Center, Terminal Emulation
US Distributed Lab	Integration, Workflow

There is significant inter-lab collaboration and code-sharing to optimize productivity and integrate the products. The Company considers its development teams and collaboration methods to be among the core strengths of the business.

#### 10.4.5 Customers

Seagull's products are used by over 10,000 business and government organizations in over 30 countries, and by millions of end users. The largest vertical markets include financial services, insurance, telecommunications, cable/media, automotive, transportation, logistics and retail.

The Company sells product licenses directly to the IT departments of large and medium commercial and government entities, as well as to over 500 software vendors who incorporate the products into their commercial software applications and distribute the combined bundle to their end users on an OEM (Original Equipment Manufacturer) basis. Large software vendor OEM's include Oracle, Convergys, IBS, Jack Henry, Fiserv and Kronos. Government customers include the Dutch Police, Dutch Ministry of Defense, London Borough of Ealing, the United States Secret Service and many state government agencies in America. Corporate customers include Kia Motors, Skoda Auto Deutschland, Deutsche Bank, FedEx, Resolution Informatique, UTi, iesy Hessen, Waterstone's Books and Texaco.

#### 10.5 Dividend

Seagull has historically not declared dividends.

#### 10.6 Supervisory Board; Management Board

Seagull has two separate boards of directors: the Management Board and the Supervisory Board.

- (a) The Management Board currently consists of one member, being Mr. Donald Paul Addington, appointed on 17 July 2001.
- (a) The Supervisory Board currently consists of four members, being:
  - (i) Mr. Tom van der Loo (Chairman), reappointed on 25 August 2005;
  - (ii) Mr. Frank van Pelt, reappointed on 26 August 2004;
  - (iii) Mr. Bonifacius Henricus Maria Jansen, reappointed on 26 August 2004; and
  - (iv) Mr. Gabriel Thomas Rozman, reappointed on 24 August 2006.

## 11 CAPITAL AND SHARES

### 11.1 Authorised and Issued Capital

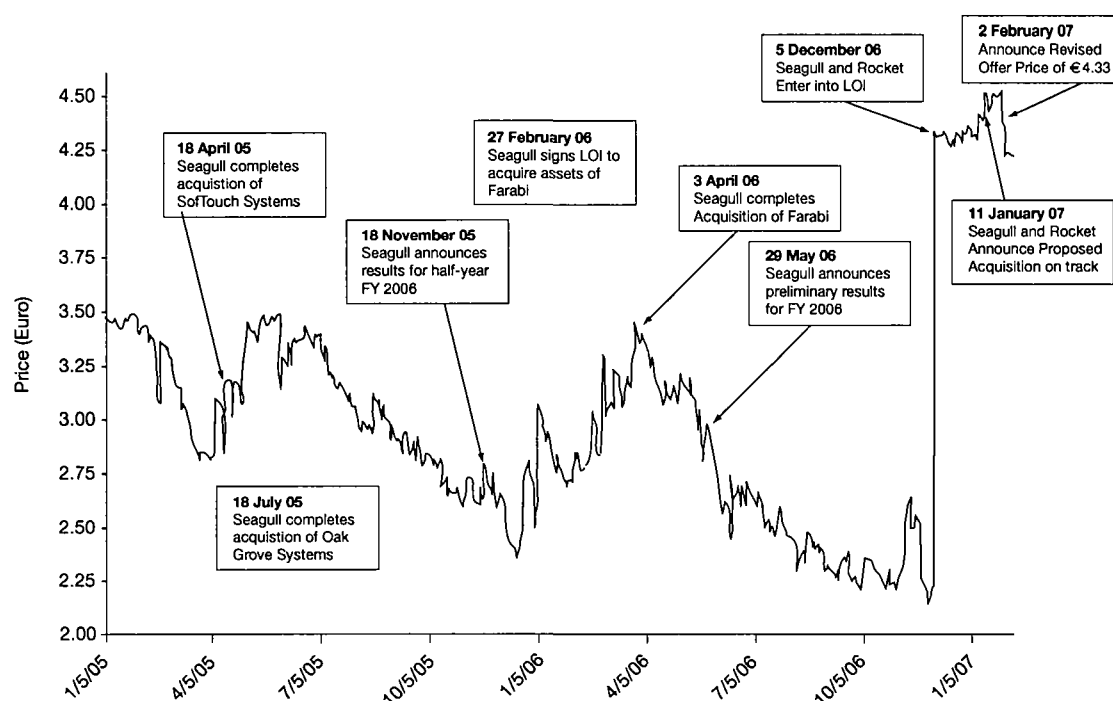
Seagull's authorized share capital amounts to EUR 780,000. It is divided into 26,000,000 Shares, each share having a nominal value of EUR 0.03.

Seagull's issued share capital at 15 March 2007 amounts to EUR 286,214.61. It is divided into 9,540,487 Shares. All issued shares are fully paid up. The Shares are listed on Euronext Amsterdam.

At 15 March 2007, a total number of 1,153,628 options to acquire Shares have been granted by Seagull to its Managing Director and employees.

Each Share carries the right to cast one vote. No votes may be cast in respect of shares held by Seagull or a subsidiary company of Seagull nor may Seagull or a subsidiary company cast votes in respect of shares that have been encumbered with a right of usufruct or pledge or a right of pledge on its or their behalf. Usufructuaries or pledgees of a Seagull Share held by Seagull or a subsidiary company are not excluded from voting rights, if the right of usufruct or pledge was created before Seagull or such subsidiary company acquired such share.]

### 11.2 Share Price Development



### 11.3 Shareholders

In accordance with the regulations of the Wft, the following shareholders have registered with the AFM an interest of 5% or more of the issued share capital of Seagull:

Shareholder	Date of disclosure obligation	Total capital interest	Total voting rights
J.P. Visser	2 February 2007	15.07%	15.07%
Kempen Capital Management N.V.	1 November 2006	13.80%	13.80%
M. Ritskes	1 November 2006	10.40%	10.40%
Mercurius Beleggingsmaatschappij B.V.	1 November 2006	12.88%	12.88%
Fortis Utrecht N.V.	1 November 2006	6.41%	6.41%
F. van Pelt	1 November 2006	5.89%	5.89%

### *Possible Differences between Disclosed Interests and Current Interests*

Disclosures pursuant to the registrations listed above may differ from the actual current interests of the Shareholders named here based on the following. Those acquisitions and disposals that bring a shareholder's capital interest or voting rights to specific percentage thresholds (*drempelwaarde*) have to be disclosed. The relevant percentage thresholds referred to in the Wft are 5%, 10%, 15%, 20%, 25%, 30%, 40%, 50%, 60%, 75% and 95%. Each time a percentage threshold is reached (upward or downward), disclosure must be made.

Although Seagull believes that the Offer has been generally well received by its Shareholders, other than the Shareholders listed in Section 11.4 below, no Shareholders have irrevocably committed to tender their Shares in the Offer or otherwise provided the Offeror with a firm commitment to sell their Shares.

#### **11.4 Overview of Shares and options held by members of the Boards**

The following tables contain an overview of the Shares and options for Shares held by the members of the Boards.

<b>Shares held by Supervisory Board members</b>	<b>Number of Shares held</b>
F. van Pelt	535,920
T. van der Loo	38,378
G. Rozman	33,993
B. Jansen	1,950

<b>Shares held by the Management Board member</b>	<b>Number of Shares held</b>
D. Addington	159,500

<b>Options for Shares held by the Management Board member</b>	<b>Number of options for Shares held</b>
D. Addington	547,500

## 12 INFORMATION ON THE OFFEROR

The Offeror, a private limited liability company (*besloten vennootschap met beperkte aansprakelijkheid*), with its statutory seat in Amsterdam, the Netherlands, was incorporated under Dutch law on 28 February 2007. The Offeror is a wholly owned subsidiary of Rocket Software. The Offeror is registered with the Trade Register of the Chamber of Commerce of Amsterdam under nr. 34268175. The management board of the Offeror consists of Mr. Andrew Youniss and Johan Magnusson Gedda. The Offeror does not have a supervisory board.

Rocket Software is a privately held, consistently profitable software manufacturer headquartered in Newton, Massachusetts, USA. Rocket Software has an extensive and very deep software engineering background and almost 20-year history of developing enterprise-class software products in a variety of technical domains, using a variety of programming languages, and on a variety of operating platforms. Rocket Software products, technology, components, and intellectual property have been licensed to and are typically sold by global brand names such as IBM, Microsoft, RSA, EMC, Motorola, Lucent, and HP. Rocket Software was founded in 1990 by Andrew Youniss and Johan Magnusson Gedda. In 2006 it had operating revenues of US\$ 65 million.

### **13 FURTHER DECLARATIONS PURSUANT TO THE BTE 1995**

In addition to the other statements set out in this Offer Memorandum, the Offeror and Seagull hereby, each for itself, declare as follows:

- (1) There have been consultations between the Offeror and the Management Board regarding the Offer, which have resulted in agreement regarding the Offer. Discussions regarding the Offer Price per Share and the conditions to the Offer took place between the Offeror and the Management Board and its representatives.
- (2) With due observance of and without prejudice to the restrictions referred to in Section 1 (Restrictions and Important Information), the Offer concerns all outstanding Shares and applies on an equal basis to all Shares of a certain class and holders of shares of a certain class.
- (3) No transactions have taken place or will take place on the basis of concluded agreements with individuals and/or legal persons within the meaning of article 9i paragraph s and/or t and/or u of the Bte 1995, other than with respect to the Management Board and the members of the Supervisory Board. See Section 5.6 (Shareholdings of the members of the Supervisory Board and Management Board).
- (4) At the date of his Offer Memorandum, the Offeror has no interest in the share capital of Seagull, and Seagull has no interest in the share capital of the Offeror, whether directly or indirectly within the meaning of article 9i sub q of the Bte 1995.
- (5) The information referred to in article 9p sub 1 and 2 of the Bte 1995 has been provided to the AFM.
- (6) The AFM and Euronext Amsterdam have been informed of the Offer.

## 14 FINANCIAL STATEMENTS

### 14.1 Unaudited interim figures first half of Financial Year 2007

#### (a) Financial Highlights

For the half-year period ended 31 October 2006, total revenue was \$15.7 million, an increase of 16% as compared with total revenue of \$13.6 million for the first half of the previous financial year (H1 FY2006).

Operating results continued to be positive with the Company reporting an operating profit excluding amortization, depreciation and stock option expenses amounting to \$7K; as compared with an operating profit of \$381K in the corresponding period last year.

Under IFRS including depreciation and amortization expense of \$740K and stock option expense of \$276K, the company reported a net loss of \$1.1 million for H1 FY2007, as compared with net income of \$101K in H1 FY2006.

The net loss for H1 FY2007 was \$0.12 per share as compared with net income per share of \$0.01 in the first half of the previous financial year. On a fully diluted basis, the H1 FY2007 net loss per share was \$0.12 as compared with net income per share of \$0.01 in H1 FY2006.

For the half year, license revenue grew 15% to \$6.8 million (H1 FY2006: \$5.9 million). Maintenance and service revenues grew 17% to \$9 million (H1 FY2006: \$7.7 million).

The Americas region contributed 61% of total revenues (H1 FY2006: 69%) with the remaining 39% generated by Europe (H1 FY 2006: 31%).

Total gross margin for H1 FY2007 grew 13% to \$12.2 million (77% of revenues), as compared with \$10.7 million (79% of revenues) for the corresponding period in previous year. Gross margin on license revenue grew 10% to \$6.1 million (H1 FY2006: \$5.3 million). Maintenance and services gross margin for H1 FY2007 increased 17% to \$6.1 million as compared with \$5.2 million in H1 FY2006.

Total operating expenses for H1 FY2007 were \$13.2 million, as compared with \$11.1 million for the corresponding period last year, with the increase largely attributable to costs associated with headcount growth in the sales, R&D and consulting services departments. Sales and marketing expenses were \$8 million (H1 FY2006: \$6.5 million) due to increased investment in sales headcount and marketing programs. Research and development expenses increased from \$2.4 million to \$2.7 million as a result of headcount growth relating to acquisitions made last year. General and Administrative expenses including the finance, IT, order processing, HR, and administration departments as well as third-party professional fees were \$2.4 million (H1 FY2006: \$2.1 million), with the increase due primarily to higher legal and accounting fees during the period.

Total cash and trade receivables on 31 October 2006 were \$10.7 million (comprising \$2 million net cash and \$8.7 million trade receivables) as compared with \$10.4 million on 30 April 2006. Days Sales Outstanding (DSO) on 31 October 2006 was 39 days, continuing a long track record of comparing favorably with industry averages of more than 60 days.

#### (b) Business Highlights

##### *Global Expansion of Enterprise Account Customer Base*

During the first half of FY 2007, Seagull Software continued to expand its customer base in its target market of enterprise accounts across a variety of vertical segments including government, financial services, media and transportation. Seagull Software closed new and follow-on business with the Dutch Police, Computer Software Group, LiquidLogic, Solpac and several large banking institutions.

##### *Other Accomplishments*

In August 2006, Seagull Software announced LegaSuite® 5.0, a major new release of its leading platform of solutions for transforming legacy applications into assets that readily support and drive business change. LegaSuite 5.0 includes a new Eclipse-based developer toolkit, the industry's most flexible runtime architecture, enhanced security features and support for bi-directional Web services.

In October 2006, the Company announced BlueZone® 4.0, a major new release of its terminal emulator solution. New features include internationalization supporting German, French, Dutch and Japanese language versions of the product, and various "wizards" to make it easier for customers to switch from older emulators to faster, thinner, more cost-effective BlueZone.

The Company joined the Integration Consortium to collaborate among end users, software vendors and academics to promote standards-based best practices for the integration industry. This relationship is

one of several such groups in which Seagull Software participates in order to impact industry direction and gain early visibility into trends.

Seagull Software was again included in the Software 500, Software Magazine's list of the world's foremost software companies; moving up in the ranking from 337 in 2005 to 299 in 2006.

The Company's target market is embracing Service-Oriented Architecture as a practical way to simplify and speed application development. Seagull Software has many excellent reference customers who have LegaSuite in production for business-critical SOA projects, and we are encouraged by the growing number of enterprise accounts that our sales teams are talking to who want to move in this direction. IT procurement governance, especially in the larger accounts, continues to make it challenging to predict when transactions will close, but we are encouraged by the number of dialogues we're engaged in with customers for whom LegaSuite is an ideal fit.

#### 14.1.2 Consolidated Interim Statement of Operations

##### Consolidated Interim Statement of Operations

For the six months ended 31 October 2006

<i>In thousands of US Dollars, except for net income/loss per share and share data</i>	<b>H1 FY2007 (unaudited)</b>	<b>H1 FY2006 (unaudited)</b>
<b>REVENUES</b>		
License revenue	6,751	5,879
Maintenance and service revenue	8,993	7,703
	15,744	13,582
<b>COST OF REVENUES</b>		
Cost of license revenue	125	44
Cost of amortization of purchased intangible assets	540	303
Cost of maintenance and service revenue	2,886	2,489
	3,551	2,836
<b>GROSS MARGIN</b>	12,193	10,746
<b>OPERATING EXPENSES</b>		
Sales and marketing	8,038	6,521
Research and development	2,743	2,384
General and administrative	2,421	2,149
	13,202	11,054
<b>LOSS FROM OPERATIONS</b>	(1,009)	(308)
Financial income	60	182
Financial expense	(33)	(27)
Exchange gain (loss)	(87)	186
<b>INCOME (LOSS) BEFORE INCOME TAX</b>	(1,069)	33
Income tax (credit) expense	-	(68)
<b>NET INCOME (LOSS)</b>	(1,069)	101
<b>ATTRIBUTABLE TO:</b>		
Shareholders of the parent	(1,069)	101
<b>NET INCOME (LOSS) PER SHARE</b>		
Basic	(0.12)	0.01
Diluted	(0.12)	0.01
<b>AVERAGE NUMBER OF SHARES</b>		
Basic	9,010,591	8,763,590
Diluted	9,896,712	9,638,103

### 14.1.3 Consolidated Interim Balance Sheet

#### Consolidated Interim Balance Sheet

<i>(in thousands of US Dollars)</i>	<b>31 Oct. 2006 (unaudited)</b>	<b>30 Apr. 2006 (unaudited)</b>
<b>ASSETS</b>		
<b>Non-current assets</b>		
Property, plant and equipment	789	616
Intangible assets	6,142	6,682
Deferred tax assets	1,063	1,063
	7,994	8,361
<b>Current assets</b>		
Cash and cash equivalents	2,303	5,460
Trade receivables	8,695	4,951
Prepaid expenses	715	863
Other receivables	125	118
	11,838	11,392
<b>TOTAL ASSETS</b>	<b>19,832</b>	<b>19,753</b>
<b>EQUITY AND LIABILITIES</b>		
<b>Equity attributable to shareholders of the Parent</b>	<b>6,682</b>	<b>7,422</b>
<b>Non-Current liabilities</b>	<b>649</b>	<b>973</b>
<b>Current liabilities</b>		
Accounts payable	824	909
Payroll accruals	1,563	1,342
Bank overdraft	282	-
Other current liabilities	2,152	1,670
Deferred revenues	7,680	7,437
	12,501	11,358
<b>TOTAL EQUITY AND LIABILITIES</b>	<b>19,832</b>	<b>19,753</b>

### 14.1.4 Consolidated Interim Statement of Recognized Income and Expense

#### Consolidated Interim Statement of Recognized Income and Expense

For the six months ended 31 October 2006

*In thousands of US Dollars*

	<b>H1 FY2007 (unaudited)</b>	<b>H1 FY2006 (unaudited)</b>
<b>INCOME AND EXPENSE RECOGNISED DIRECTLY IN EQUITY</b>		
Foreign exchange translation differences	43	(218)
Share based payment transactions	276	168
	319	(50)
<b>NET INCOME (LOSS)</b>	<b>(1,069)</b>	<b>101</b>
Total recognised income and expense for the period	(750)	51
<b>ATTRIBUTABLE TO:</b>		
Shareholders of the parent	(750)	51



## 14.1.5 Consolidated Interim Statement of Cash Flows

Consolidated Interim Statement of Cash Flows  
For the six months ended 31 October 2006

<i>In thousands of US Dollars</i>	<b>H1 FY2007 (unaudited)</b>	<b>H1 FY2006 (unaudited)</b>
<b>CASH FLOW FROM OPERATIONS</b>		
Net income (loss)	(1,069)	101
Adjustments to reconcile net income/loss to net cash provided by operating activities:		
Depreciation and amortization	740	522
Stock options	276	168
Movement in working capital:		
Trade receivables	(3,702)	(444)
Prepaid expenses	154	15
Other receivables	(6)	294
Accounts payable	(93)	(317)
Payroll accruals	206	(150)
Income taxes	-	(17)
Deferred revenue	181	(435)
Other current liabilities	455	10
Translation difference	74	(191)
	(2,784)	(444)
<b>CASH FLOW FROM INVESTING ACTIVITIES</b>		
Property, plant and equipment	(362)	(111)
Intangible assets	-	(1,102)
Translation difference	(11)	33
	(373)	(1,180)
<b>CASH FLOW FROM FINANCING ACTIVITIES</b>		
Long-term Loan	(324)	(511)
Cash receipts on issue of shares (net of expenses)	10	619
	(314)	108
<b>Effect of exchange rate on cash</b>	32	(144)
<b>Total net cash flow</b>	(3,439)	(1,660)
<b>Opening balance cash and cash equivalents</b>	5,460	6,912
<b>Closing balance cash and cash equivalents</b>	2,021	5,252

#### 14.1.6 Seagull Holding N.V. Movements in Shareholders' Equity

Seagull Holding N.V.  
Movements in Shareholders' Equity  
For the Six Months Ended 31 October 2006 (unaudited)

<i>In thousands of US Dollars</i>	<b>Issued</b>	<b>Share Share Capital</b>	<b>Other Premium</b>	<b>Result Reserves</b>	<b>Total For The Year</b>
Balance on 30 April 2006	338	21,977	(13,956)	(937)	7,422
Appropriation of FY06 result	-	-	(937)	937	-
Issue of shares	0	10	-	-	10
Shares to be issued	4	306	(310)	-	-
Stock option expense	-	-	276	-	276
Translation difference	5	279	(241)	-	43
Result for the period	-	-	-	(1,069)	(1,069)
Balance on 31 October 2006	347	22,572	(15,168)	(1,069)	6,682

#### Movements in Shareholders' Equity

<i>In thousands of US Dollars</i>	<b>H1 FY 2007</b>
Balance on 30 April 2006	7,422
Result for the period	(1,069)
Stock option expense	276
Issue of shares	4
Share premium	316
Share to be issued	(310)
Translation difference	43
Balance on 31 October 2006	6,682

#### 14.1.7 Notes to the Consolidated Interim Financial Statements

##### General

Seagull Holding N.V. is a company domiciled in The Netherlands. The condensed consolidated interim financial statements (interim financial statements) of the Company for the six months ended 31 October 2006 comprise the Company and its subsidiaries (collectively referred to as the "Group").

##### Statement of Compliance

These interim financial statements have been prepared in accordance with International Financial Reporting Standard IAS 34 *Interim Financial Reporting*. These interim financial statements do not include all of the information required for full annual financial statements, and should be read in conjunction with the consolidated financial statements as at and for the year ended 30 April 2006.

##### Basis of Preparation

The interim financial statements are presented in US Dollars, rounded to the nearest thousand. Due to the fact that more than half of the Group's revenue and expenses are denominated in US Dollars, the consolidated financials are reported in US Dollars. Where applicable, the financial statements of the subsidiaries are translated into US Dollars at exchange rates applicable at the dates of the transactions. Balance sheets are translated into US Dollars at the exchange rate prevailing on the balance sheet dates as follows:

30 April 2006 1 USD = EUR 0.80

31 October 2006 1 USD = EUR 0.79

Translation differences arising from the above policy have been reflected directly in the shareholders' equity. Shareholders' equity components have been translated at historical exchange rates.

The preparation of interim financial statements in conformity with IAS 34 *Interim Financial Reporting* requires management to make judgments, estimates and assumptions that affect the application of policies

and reported amounts of assets and liabilities, income and expenses. Actual results may differ from these estimates.

The accounting policies applied by the Group in these interim financial statements are the same as those applied by the group as at and for the year ended 30 April 2006. The accounting policies have been applied consistently throughout the Group for purposes of these interim financial statements.

### **Basis of Consolidation**

Subsidiaries are entities controlled by the Company. Control exists when the Company has the power, directly or indirectly, to govern the financial and operating policies of an entity so as to obtain benefits from its activities. In assessing control, potential voting rights that presently are exercisable or convertible are taken into account. The financial statements of subsidiaries are included in the interim financial statements from the date that control commences until the date that control ceases.

The consolidated accounts include Seagull Holding N.V. and its wholly-owned subsidiaries (owned directly and indirectly) as follows:

- Seagull Business Software B.V., The Netherlands
- Seagull Software Systems, Inc., USA
- SofTouch Systems, Inc., USA
- Seagull Consultancy Services B.V., The Netherlands\*
- Seagull Software Tools B.V., The Netherlands\*
- Seagull Software International B.V., The Netherlands\*
- Seagull Business Software Italy Srl., Italy
- Seagull Deutschland GmbH, Germany
- Seagull Business Software France Sarl, France
- Seagull Business Software UK Ltd., United Kingdom
- Seagull Business Software Ireland Ltd., Ireland \*
- Seagull Business Software Holding Ireland Ltd., Ireland \*
- Seagull Business Software AB, Sweden
- Seagull Renex, Inc., USA
- Seagull Software Canada, inc., Canada
- \* Non-trading

### **Transactions Eliminated on Consolidation**

Intra-group balances, and any unrealized gains and losses or income and expenses arising from intra-group transactions, are eliminated in preparing the interim financial statements.

### **Foreign Currency - Net Investment in Foreign Operations**

Exchange differences arising from the translation of the net investment in foreign operations are taken to translation reserve. They are recycled and recognized in profit or loss upon disposal of the operation.

### **Property, Plant and Equipment**

#### *Owned Assets*

Items of property, plant and equipment are stated at cost less accumulated depreciation (see below) and impairment losses.

When parts of an item of property, plant and equipment have different useful lives, those components are accounted for as separate items of property, plant and equipment.

#### *Depreciation*

Depreciation is charged to profit or loss on a straight-line basis over the estimated useful life of each part of an item of property, plant and equipment. The depreciation rates used are as follows:

Leasehold improvements:	20-33 1/3% per annum
Office equipment:	20% per annum
Computer hardware:	33 1/3% per annum
Computer software:	20% per annum

The residual value is reassessed annually.

### **Intangible Assets – Goodwill**

Goodwill is stated at cost less any accumulated impairment losses. Goodwill is allocated to cash-generating units and is tested annually for impairment. In respect of associates, the carrying amount of goodwill is included in the carrying amount of the investment in the associate.

Expenditure on internally generated goodwill is recognized in profit or loss as an expense as incurred.

### **Other Intangible Assets**

Intangible assets other than goodwill that are acquired by the Group are stated at cost less accumulated amortization and impairment losses.

Amortization of intellectual property is charged to profit or loss based on the expected useful life over which the assets economic benefits are consumed. This charge will not result in a lower amount of accumulated amortization than under the straight-line-method.

### **Deferred Tax Assets**

Deferred tax assets applicable to tax losses carried forward in various tax entities are recognized to the extent that it is probable that future taxable profits will be available against which the unused tax losses can be utilized.

### **Trade and Other Receivables**

Trade receivables and other receivables are measured at amortized cost using the effective interest method. In the event of an impairment loss on trade and other receivables, the carrying amount of the assets is reduced.

### **Cash and Cash Equivalents**

This includes cash balances on current and short term deposit accounts, as well as marketable securities valued at fair value on balance sheet date.

### **Impairment**

The carrying amounts of the Group's assets are reviewed at each balance sheet date to determine whether there is any indication of impairment. If any such indication exists, the asset's recoverable amount is estimated.

An impairment loss is recognized whenever the carrying amount of an asset or its cash-generating unit exceeds its recoverable amount.

### **Calculation of Recoverable Amount**

The recoverable amount is the greater of fair value less cost to sell and value in use. In assessing value in use, the estimated future cash flows are discounted to their present value using a pre-tax discount rate that reflects current market assessments of the time value of money and the risks specific to the asset. For an asset that does not generate largely independent cash inflows, the recoverable amount is determined for the cash-generating unit to which the asset belongs.

### **Share Capital - Dividends**

Dividends are recognized as a liability in the period in which they are declared.

### **Liabilities**

Liabilities are stated at amortized cost. Amortized cost is defined as the amount at which the liability is measured at initial recognition minus principal repayments, plus or minus the cumulative amortization using the effective interest method of any difference between that initial amount and the maturity amount, and minus any reduction for impairment.

## **Revenue**

Revenue comprises fees for product licenses, software maintenance services, consulting, training and other services. In accordance with the Company's revenue recognition policy, license revenue from corporate accounts, distributors and software vendor OEMs is recognized when the significant risks and rewards of ownership have been transferred to the buyer (upon shipment), provided amounts are collectable within one year from date of transaction and the collection of the resulting receivable is probable. If a license revenue transaction includes special terms tying payment or acceptance to a future performance obligation by the Company, this precludes the entire or the relevant portions of the transaction from revenue recognition until such time as the subsequent event or future performance obligation has been completed. Shipment in certain contracts is defined as shipment of a product master copy or first copy or setting up of a non-cancelable product licensing arrangement by which the customer has certain clearly defined rights to make copies of the software.

Revenue from software maintenance fees for ongoing customer support and product updates is typically sold on an annual subscription basis and is recognized ratably over the term of the maintenance period. Payments for maintenance fees are generally made in advance and are non-refundable. Service revenue from consulting and training is billed separately and is recognized when the services are performed. Costs of sub-contractor services (if any) are accrued by the Company as incurred. Revenues from certain long-term, fixed-bid implementation contracts are recognized under contract accounting on a percentage-of-completion basis or based on customer acceptance of specific milestones.

## **Gross Margin**

The gross margin represents revenues less direct costs of revenues. Costs of revenues consist of all costs incurred by the Company to provide the required products and services to customers.

## **Employee Benefits**

### *Share-Based Payment Transactions*

The share option program allows Group employees to acquire shares of the Company. The fair value of options granted is recognized as an employee expense with a corresponding increase in equity. The fair value is measured at grant date and spread over the period during which the employees become unconditionally entitled to the options. The fair value of the options granted is measured using the Black and Scholes model, taking into account the terms and conditions upon which the options were granted. The amount recognized as an expense is adjusted to reflect the actual number of share options that vest except where forfeiture is only due to share prices not achieving the threshold for vesting.

### *Defined Contribution Pension Plans*

Contributions to defined contribution pension plans are recognized as an expense on the income statement as incurred.

## **Research and Development Expenses**

The production of the software involves closely-linked iterative processes between research and development phases. Therefore, the delineation criteria required to capitalize development expenses are not fulfilled. Accordingly the Company can not measure reliably the expenditure attributable to the intangible assets during their development. On this basis, all internal expenditure on research and development activities shall be expensed in the income statement as incurred. The Company considers this to be a prudent and appropriate policy given the nature of its software development projects.

## **Financial Income and Expense**

Interest income and expense includes interest received or receivable from third parties on current and short-term deposit accounts and from marketable securities, including trading gains/losses net of interest paid or payable to third parties and revaluation surpluses/deficits on marketable securities in respect of the reporting period.

## **Income Tax**

Taxes are principally calculated on the reported profit before taxation of the individual legal entities, taking into account those amounts exempt from tax, non-deductible costs and tax losses available.

### **14.1.8 Specific Disclosures**

#### **Employee Benefits – Share-Based Payments**

The Company has two stock option plans in place: SOP III (grant date 17 July 2000) and SOP IV (grant date 25 August 2004). Both plans authorize the purchase of one ordinary share for each option. SOP

III provides for granting of 1,500,000 options over three years (500,000 per year). The vesting schedule for options granted under SOP III provides for vesting of 25% upon the first anniversary of the grant date from the date of granting, and thereafter on a monthly basis for the remaining three years pro-rata. In August 2004 a new pool of 1,500,000 options was approved and named as SOP IV. The vesting schedule for options granted under SOP IV provides for the vesting of 25% upon each anniversary from the grant date.

It is the Company's policy to issue new shares in respect of exercise of options.

The fair value of services received in return for share options granted to employees is measured by reference to the fair value of share options granted. The estimate of the fair value of the services received is measured based on the Black and Scholes model. The contractual life of the option is used as an input into this model. The expected dividends are zero. The share price equals the exercise price.

The terms and conditions of the grants made during the six months ended 31 October 2006 are as follows:

Effective Date	Options Granted	Exercise Price	Expected Life	Volatility	Risk Free Rate
15-09-2006	351,350	€2.33	7 years	25.23%	3.73%

The basis of measuring fair value is consistent with that disclosed in the consolidated financial statements as at and for the financial year ended 30 April 2006.

#### **Financial Instruments**

During the normal course of business, Seagull Holding N.V. makes use of several financial instruments including trade receivables, cash and cash equivalents, other receivables and current liabilities which expose Seagull Holding N.V. to market or credit risks. These financial instruments are included in the balance sheet.

Seagull Holding N.V. follows certain procedures and guidelines to limit the size of the credit risk for each of these financial instruments. In the event that the counterparty fails to meet its payment obligations to Seagull Holding N.V., the resulting losses are limited to the market value of the instruments in question. The contract value or principal amounts of the financial instruments serve only as an indication of the extent to which these instruments are used, and not of the value of the credit or market risk.

#### *Fair Value*

The fair value of the financial instruments stated on the balance sheet, including trade receivable, cash and cash equivalents, other receivables and current liabilities, is close to its book value.

#### *Estimates*

In preparing the financial statements, certain estimates are made based on the most recent and relevant information available.

#### **Subsequent Events**

Subsequent to the interim balance sheet date it has been announced that Enterprise software suppliers Rocket Software and Seagull Software have signed a letter of intent for Rocket Software, Inc. to make a public offer to acquire 100% of the shares and outstanding stock options of Seagull Holding N.V. (the parent holding company of all Seagull Software entities) in an all-cash transaction valued at €4.68 per share. The letter of intent includes customary binding provisions relating to costs, confidentiality, exclusivity, competing offers, break-up fees and standstill. The remainder of the letter of intent is non-binding on the parties.

The acquisition is subject to certain requirements including due diligence; execution of a mutually-acceptable definitive purchase agreement; approval of financing by Rocket Software's financing institutions; approval by the Supervisory Board of Seagull Holding N.V. and various other customary conditions.

#### **14.2 Auditor's review interim figures first half of Financial Year 2007**

In our opinion, the financial data for the half-year periods ended 31 October 2005 and 31 October 2006, as included in Section 14.1 of this Offering Memorandum, are consistent, in all material respects, with the interim financial statements from which they have been derived. We issued unqualified review reports on these interim financial statements on 17 November 2005 and 22 November 2006.

For a better understanding of the Company's financial position and results and of the scope of our review, the financial data in this Offering Memorandum should be read in conjunction with the interim financial statements from which they have been derived and our review reports thereon.

Rotterdam, 15 March 2007

KPMG Accountants N.V.

### 14.3 Audited Financial information 2006 and 2005

#### 14.3.1 Consolidated Statement of Operations

##### Consolidated Statement of Operations

*In thousands of US Dollars, except for profit/loss per share and share data*

	<b>FY 2006 (audited)</b>	<b>FY 2005 (audited)</b>
<b>REVENUES</b>		
License revenue	11,665	9,663
Maintenance and service revenue	16,081	13,699
	<b>27,746</b>	<b>23,362</b>
<b>COST OF REVENUES</b>		
Cost of license revenue	84	45
Cost of amortization of purchased intangible assets	883	260
Cost of maintenance and service revenue	5,464	5,317
	<b>6,431</b>	<b>5,622</b>
<b>GROSS MARGIN</b>	<b>21,315</b>	<b>17,740</b>
<b>OPERATING EXPENSES</b>		
Sales and marketing	13,564	11,321
Research and development	4,752	4,241
General and administrative	4,240	4,273
Restructuring expense	-	1,093
	<b>22,556</b>	<b>20,928</b>
<b>LOSS FROM OPERATIONS</b>	<b>(1,241)</b>	<b>(3,188)</b>
Financial income	270	102
Financial expense	(77)	(41)
Exchange gain (loss)	12	(74)
<b>LOSS BEFORE INCOME TAX</b>	<b>(1,036)</b>	<b>(3,201)</b>
Income tax credit	(99)	(2,238)
<b>NET LOSS FOR THE YEAR</b>	<b>(937)</b>	<b>(963)</b>
<b>ATTRIBUTABLE TO:</b>		
Shareholders of the parent	(937)	(963)
<b>LOSS PER SHARE</b>		
Basic	(0.11)	(0.12)
Diluted	(0.10)	(0.11)
<b>AVERAGE NUMBER OF SHARES</b>		
Basic	8,843,534	8,234,591
Diluted	9,664,628	8,929,878

### 14.3.2 Consolidated Statement of Recognized Income and Expense

#### Consolidated Statement of Recognized Income and Expense

*In thousands of US Dollars*

	<b>FY 2006 (audited)</b>	<b>FY 2005 (audited)</b>
<b>INCOME AND EXPENSE RECOGNISED DIRECTLY IN EQUITY</b>		
Foreign exchange translation differences	(149)	81
Share based payment transactions	203	55
	54	136
<b>LOSS FOR THE YEAR</b>	<b>(937)</b>	<b>(963)</b>
<b>Total recognised expense for the period</b>	<b>(883)</b>	<b>(827)</b>
<b>ATTRIBUTABLE TO:</b>		
Shareholders of the parent	(883)	(827)

### 14.3.3 Consolidated Balance Sheet

#### Consolidated Balance Sheet

*In thousands of US Dollars*

	<b>30 April 2006 (audited)</b>	<b>30 April 2005 (audited)</b>
<b>ASSETS</b>		
<b>Non-current assets</b>		
Property, plant and equipment	616	786
Intangible assets	6,682	4,956
Deferred tax assets	1,063	1,063
	8,361	6,805
<b>Current assets</b>		
Cash and cash equivalents	5,460	6,912
Trade receivables	4,951	3,676
Prepaid expenses	863	652
Other receivables	118	833
	11,392	12,073
<b>TOTAL ASSETS</b>	<b>19,753</b>	<b>18,878</b>
<b>EQUITY AND LIABILITIES</b>		
<b>Equity attributable to shareholders of the Parent</b>		
	7,422	6,294
<b>Non-current liabilities</b>		
	973	1,429
<b>Current liabilities</b>		
Accounts payable	909	1,053
Payroll accruals	1,342	1,334
Corporation taxes	-	18
Other current liabilities	1,670	2,014
Deferred revenues	7,437	6,736
	11,358	11,155
<b>TOTAL EQUITY AND LIABILITIES</b>	<b>19,753</b>	<b>18,878</b>



#### 14.3.4 Consolidated Statement of Cash Flows

##### Consolidated Statement of Cash Flows

In thousands of US Dollars	FY 2006 (audited)	FY 2005 (audited)
<b>CASH FLOW FROM OPERATIONS</b>		
Net loss for the year	(937)	(963)
Adjustments to reconcile loss to net cash provided by operating activities:		
Depreciation and amortization	1,286	1,021
Stock options	203	55
Movement in working capital:		
Trade receivables	(1,351)	1,226
Prepaid expenses	(222)	(138)
Other receivables	696	(466)
Accounts payable	(131)	(54)
Payroll accruals	35	(119)
Income taxes	(18)	(1,383)
Deferred revenue	781	1,238
Other current liabilities	(291)	287
Translation difference	(93)	(125)
	<b>(42)</b>	<b>579</b>
<b>CASH FLOW FROM INVESTING ACTIVITIES</b>		
Property, plant and equipment	(248)	(351)
Intangible assets	(2,609)	(4,760)
Translation difference	(15)	42
	<b>(2,872)</b>	<b>(5,069)</b>
<b>CASH FLOW FROM FINANCING ACTIVITIES</b>		
Long-term loan	(471)	1,429
Issue of shares	2,011	1,950
	<b>1,540</b>	<b>3,379</b>
<b>Effect of exchange rate on cash</b>	<b>(78)</b>	<b>313</b>
<b>Total net cash flow</b>	<b>(1,452)</b>	<b>(798)</b>
<b>Opening balance cash and cash equivalents</b>	<b>6,912</b>	<b>7,710</b>
<b>Closing balance cash and cash equivalents</b>	<b>5,460</b>	<b>6,912</b>

#### 14.3.5 Notes to the Consolidated Financial Statements

##### General

Seagull Holding N.V. is a company domiciled in The Netherlands. The condensed consolidated financial statements of the Company for the 12 months ended 30 April 2006 comprise the Company and its subsidiaries (collectively referred to as the "Group").

##### Statement of Compliance

These financial statements have been prepared in accordance with International Financial Reporting Standards as adopted by the European Union (EU-IFRS) and the interpretations of the International Financial Reporting Interpretations Committee (IFRIC). EU-IFRS 1 has been applied (first-time adoption).

An explanation of how the transition to EU-IFRS has affected the reported financial position and performance of the Group is provided later in this document.

##### Basis of Preparation

The financial statements are presented in US Dollars, rounded to the nearest thousand. Due to the fact that more than half of the Group's revenue and expenses are denominated in US Dollars, the

consolidated financials are reported in US Dollars. Where applicable, the financial statements of the subsidiaries are translated into US Dollars at exchange rates at the dates of the transactions. Balance sheets are translated into US Dollars at the exchange rate prevailing on the balance sheet dates as follows:

30 April 2006 1 USD = EUR 0.80

30 April 2005 1 USD = EUR 0.77

Translation differences arising from the above policy have been reflected directly in the shareholders' equity. Shareholders' equity components have been translated at historical exchange rates.

The preparation of financial statements in conformity with EU-IFRS requires management to make judgments, estimates and assumptions that affect the application of policies and reported amounts of assets and liabilities, income and expenses. Actual results may differ from these estimates.

The preparation of the financial statements in accordance with EU-IFRS resulted in a minor change to the accounting policies as compared with the most recent annual financial statements prepared previously under Dutch GAAP. The accounting policies set out below have been applied consistently to all periods presented in these financial statements. They also have been applied in preparing an opening EU-IFRS balance sheet at 1 May 2004 for the purposes of the transition to EU-IFRS, as required by EU-IFRS 1. The impact of the transition from previous GAAP to EU-IFRS is explained.

### **Basis of Consolidation**

Subsidiaries are entities controlled by the Company. Control exists when the Company has the power, directly or indirectly, to govern the financial and operating policies of an entity so as to obtain benefits from its activities. In assessing control, potential voting rights that presently are exercisable or convertible are taken into account. The financial statements of subsidiaries are included in financial statements from the date that control commences until the date that control ceases.

The consolidated accounts include Seagull Holding N.V. and its wholly-owned subsidiaries (owned directly and indirectly) as follows:

- Seagull Business Software B.V., The Netherlands
- Seagull Software Systems, Inc., USA
- SofTouch Systems, Inc., USA
- Seagull Consultancy Services B.V., The Netherlands\*
- Seagull Software Tools B.V., The Netherlands\*
- Seagull Software International B.V., The Netherlands\*
- Seagull Business Software Italy Srl., Italy
- Seagull Deutschland GmbH, Germany
- Seagull Business Software France Sarl, France
- Seagull Business Software UK Ltd., United Kingdom
- Seagull Business Software Ireland Ltd., Ireland
- Seagull Business Software Holding Ireland Ltd., Ireland
- Seagull Business Software AB, Sweden
- Seagull Renex, Inc., USA
- Seagull Software Canada, Inc., Canada
- \* Non-trading

### **Transactions Eliminated on Consolidation**

Intra-group balances, and any unrealized gains and losses or income and expenses arising from intra-group transactions, are eliminated in preparing the financial statements.

### **Foreign Currency – Net Investment in Foreign Operations**

Exchange differences arising from the translation of the net investment in foreign operations are taken to translation reserve. They are recycled and recognized in profit or loss upon disposal of the operation. In respect of all foreign operations, any differences that have arisen before 1 May 2004, the date of transition to EU-IFRS, are deemed to be zero.

## **Property, Plant and Equipment**

### *Owned Assets*

Items of property, plant and equipment are stated at cost less accumulated depreciation (see below) and impairment losses.

When parts of an item of property, plant and equipment have different useful lives, those components are accounted for as separate items of property, plant and equipment.

### *Depreciation*

Depreciation is charged to profit or loss on a straight-line basis over the estimated useful life of each part of an item of property, plant and equipment. The depreciation rates used are as follows:

Leasehold improvements:	20-33 1/3% per annum
Office equipment:	20% per annum
Computer hardware:	33 1/3% per annum
Computer software:	20% per annum

The residual value is reassessed annually.

### **Intangible Assets – Goodwill**

Goodwill is stated at cost less any accumulated impairment losses. Goodwill is allocated to cash-generating units and is tested annually for impairment. In respect of associates, the carrying amount of goodwill is included in the carrying amount of the investment in the associate.

Expenditure on internally generated goodwill is recognized in profit or loss as an expense as incurred.

### **Other Intangible Assets**

Intangible assets other than goodwill that are acquired by the Group are stated at cost less accumulated amortization and impairment losses.

Amortization of intellectual property is charged to profit or loss based on the expected useful life over which the assets economic benefits are consumed. This charge will not result in a lower amount of accumulated amortization than under the straight-line-method.

### **Deferred Tax Assets**

Deferred tax assets applicable to tax losses carried forward in various tax entities are recognized to the extent that it is probable that future taxable profits will be available against which the unused tax losses can be utilized.

### **Trade and Other Receivables**

Trade receivables and other receivables are measured at amortized cost using the effective interest method. In the event of an impairment loss on trade and other receivables, the carrying amount of the assets is reduced.

### **Cash and Cash Equivalents**

This includes cash balances on current and short term deposit accounts, as well as marketable securities valued at fair value on balance sheet date.

### **Impairment**

The carrying amounts of the Group's assets are reviewed at each balance sheet date to determine whether there is any indication of impairment. If any such indication exists, the asset's recoverable amount is estimated.

An impairment loss is recognized whenever the carrying amount of an asset or its cash-generating unit exceeds its recoverable amount.

### *Calculation of Recoverable Amount*

The recoverable amount is the greater of fair value less cost to sell and value in use. In assessing value in use, the estimated future cash flows are discounted to their present value using a pre-tax discount rate that reflects current market assessments of the time value of money and the risks specific to the asset. For an asset that does not generate largely independent cash inflows, the recoverable amount is determined for the cash-generating unit to which the asset belongs.

## **Share Capital – Dividends**

Dividends are recognized as a liability in the period in which they are declared.

## **Liabilities**

Liabilities are stated at fair value or amortized cost when appropriate. Amortized cost is defined as the amount at which the liability is measured at initial recognition minus principal repayments, plus or minus the cumulative amortization using the effective interest method of any difference between that initial amount and the maturity amount, and minus any reduction for impairment.

## **Revenue**

Revenue comprises fees for product licenses, software maintenance services, consulting, training and other services. In accordance with the Company's revenue recognition policy, license revenue from corporate accounts, distributors and software vendor OEMs is recognized when the significant risks and rewards of ownership have been transferred to the buyer (upon shipment), provided amounts are collectable within one year from date of transaction and the collection of the resulting receivable is probable. If a license revenue transaction includes special terms tying payment or acceptance to a future performance obligation by the Company, this precludes the entire or the relevant portions of the transaction from revenue recognition until such time as the subsequent event or future performance obligation has been completed. Shipment in certain contracts is defined as shipment of a product master copy or first copy or setting up of a non-cancelable product licensing arrangement by which the customer has certain clearly defined rights to make copies of the software.

Revenue from software maintenance fees for ongoing customer support and product updates is typically sold on an annual subscription basis and is recognized ratably over the term of the maintenance period. Payments for maintenance fees are generally made in advance and are non-refundable. Service revenue from consulting and training is billed separately and is recognized when the services are performed. Costs of sub-contractor services (if any) are accrued by the Company as incurred. Revenues from certain long-term, fixed-bid implementation contracts are recognized under contract accounting on a percentage-of-completion basis or based on customer acceptance of specific milestones.

## **Gross Margin**

The gross margin represents revenues less direct costs of revenues. Costs of revenues consist of all costs incurred by the Company to provide the required products and services to customers.

## **Employee Benefits**

### *Share-Based Payment Transactions*

The share option program allows Group employees to acquire shares of the Company. The fair value of options granted is recognized as an employee expense with a corresponding increase in equity. The fair value is measured at grant date and spread over the period during which the employees become unconditionally entitled to the options. The fair value of the options granted is measured using the Black and Scholes model, taking into account the terms and conditions upon which the options were granted. The amount recognized as an expense is adjusted to reflect the actual number of share options that vest except where forfeiture is only due to share prices not achieving the threshold for vesting.

### *Defined Contribution Pension Plans*

Contributions to defined contribution pension plans are recognized as an expense on the income statement as incurred.

## **Research and Development Expenses**

The production of the software involves closely-linked iterative processes between research and development phases. Therefore, the delineation criteria required to capitalize development expenses are not fulfilled. Accordingly the Company can not measure reliably the expenditure attributable to the intangible assets during their development. On this basis, all internal expenditure on research and development activities shall be expensed in the income statement as incurred. The Company considers this to be a prudent and appropriate policy given the nature of its software development projects.

## **Financial Income and Expense**

Interest income and expense includes interest received or receivable from third parties on current and short-term deposit accounts and from marketable securities, including trading gains/losses net of interest paid or payable to third parties and revaluation surpluses/deficits on marketable securities in respect of the reporting period.

## Income Tax

Taxes are principally calculated on the reported profit before taxation of the individual legal entities, taking into account those amounts exempt from tax, non-deductible costs and tax losses available.

### 14.3.6 Notes to the Consolidated Statement of Operations

#### Segmental Reporting

The Company has determined that it operates as one segment only. This is mainly based on the following factors:

1. Internal organization management structure and financial reporting are based on one entity as a whole.
2. Although the Company is selling both licenses and services, they are closely linked to each other and are provided as one package to customers.
3. All important products and services are part of the LegaSuite portfolio and therefore closely linked.

<b>Revenues by Geographical Area</b> In thousands of US Dollars	<b>FY 2006</b> <b>(audited)</b>	<b>FY 2005</b> <b>(audited)</b>
Americas	19,769	16,103
Europe, Middle East & Africa	7,977	7,259
<b>Total</b>	<b>27,746</b>	<b>23,362</b>

<b>Employees</b> Average in FTE	<b>FY 2006</b>	<b>FY 2005</b>
Sales and marketing	64	58
Development and research	39	41
General and administration	26	29
Professional services	24	20
Customer care	11	13
<b>Total</b>	<b>164</b>	<b>161</b>

<b>Personnel Expenses</b>	<b>FY 2006</b> <b>(audited)</b>	<b>FY 2005</b> <b>(audited)</b>
Wages and salaries	16,238	14,125
Contributions to social securities	2,202	1,891
Contributions to employee pension plans	58	89
Equity-settled transactions	203	55
<b>Total</b>	<b>18,701</b>	<b>16,160</b>

#### Management Board and Board of Supervisory Directors Compensation

The Management Board consists of Donald P. Addington, President and CEO of the Company. His total salary compensation for FY 2006 was \$351K (FY 2005: \$351K). There was no cash bonus paid to Mr. Addington in FY 2006.

The remuneration of the Supervisory Board was an aggregate total of \$129,300 (FY 2005: \$20,000). There was a correction to the remuneration for the prior financial year adopted at the last AGM, which reflects into the remuneration of this financial year as a one-off (\$50,550). Details of remuneration for each Supervisory Board member are as follows:

Tom van der Loo	\$34,300 (one-off \$11,800)
Frank van Pelt	\$33,900 (one-off \$15,150)
Gabriel Rozman	\$30,550 (one-off \$11,800)
Bob Jansen	\$30,550 (one-off \$11,800)

Details of share ownership and option holding (including options granted in financial year 2006) for the Management Board and the Supervisory Board are presented in the notes to the financial statements of the Parent Company.

### Restructuring Expense Classified by Function

Following are details associated with the restructuring charges included in the FY 2005 comparative results:

	FY 2005 (audited)
Cost of maintenance and services	99
Sales and marketing	284
Research and development	551
General and administrative	159
	1,093

### Corporate Income Tax

In thousands of US Dollars

Fiscal Unity (audited)	Results Before Income Tax	Income Tax
Seagull Holding N.V. ( Dutch fiscal unity)	(1,065)	(68)
Seagull Software Systems, Inc. ( US fiscal unity)	588	-
Seagull Business Software Italy Srl.	-	-
Seagull Deutschland GmbH	(349)	-
Seagull Business Software UK Ltd.	(686)	-
Seagull Business Software Ireland Ltd.	8	-
Seagull Business Software France Sarl	(10)	(31)
Seagull Business Software AB	34	-
SofTouch Systems, Inc.	477	-
Seagull Software Canada, Inc.	(33)	-
	(1,036)	(99)

The income tax amount of \$99K relates to a \$68K tax credit in The Netherlands and the release of a \$31K over-provision of tax in France made in the previous year. The Group has total un-utilized tax losses of \$23,800K available to be offset against future profits including \$10,000K in The Netherlands and \$13,800K in the United States available to be offset against future profits. On 30 April 2006 a deferred tax asset of \$1,063K (FY 2005: \$1,063K) is recorded relating to tax losses available to be utilized in future periods.

For corporate income tax purposes Seagull Holding N.V. forms a fiscal unity with Seagull Business Software B.V., Seagull Software Tools B.V., Seagull Software International B.V. and Seagull Consultancy Services B.V. Any corporate income tax due by this tax group is paid/payable by Seagull Holding N.V. However, all companies can be held severally liable for corporate income tax liability of the entire tax group for the period during which the Company was a part of the fiscal tax unity. The respective companies will be liable for corporate income tax due on the fiscal unit's assessment. The corporate income tax is settled in current accounts among the members of the tax group.

USA fiscal unity is formed by Seagull Software Systems, Inc. and Seagull Renex, Inc. The current applicable tax rate in the USA is 34%.

## 14.3.7 Notes to the Consolidated Balance Sheet

**Property, Plant and Equipment**

In thousands of US dollars (audited)	Leasehold Improvements	Office equipment	Computer Hardware & Software	Total
<b>Cost</b>				
<b>Balance 30 April 2005</b>	1,497	1,142	5,440	8,079
Additions	5	24	225	254
Disposal	—	—	(6)	(6)
Translation difference	(12)	(7)	(74)	(93)
<b>Balance 30 April 2006</b>	1,490	1,159	5,585	8,234
<b>Depreciation</b>				
<b>Balance 30 April 2005</b>	(1,372)	(1,112)	(4,809)	(7,293)
Charge for the year	(41)	(24)	(338)	(403)
Depreciation in disposal	—	—	6	6
Translation difference	9	7	56	72
<b>Balance 30 April 2006</b>	(1,404)	(1,129)	(5,085)	(7,618)
<b>Net book value 30 April 2006</b>	86	30	500	616
<b>Net book value 30 April 2005</b>	125	30	631	786

**Intangible Assets**

In thousands of US dollars (audited)	Intellectual Property
<b>Cost</b>	
<b>Balance 30 April 2005</b>	5,357
Additions	2,609
Disposal	(401)
<b>Balance 30 April 2006</b>	7,565
<b>Amortization</b>	
<b>Balance 30 April 2005</b>	(401)
Charge for the year	(883)
Disposal	401
<b>Balance 30 April 2006</b>	(883)
<b>Net book value 30 April 2006</b>	6,682
<b>Net book value 30 April 2005</b>	4,956

Additions to intangible assets relate primarily to the purchase of developed technology, customer relationships and maintenance agreements associated with the Company's acquisition of the assets of Oak Grove Systems, Inc. and Farabi Technology Corporation. These items comprised the majority of the assets purchased in the two acquisitions. These acquisitions resulted in recognized Intellectual Property value of \$2,609K. Both acquisitions were financed by the issuance of shares in Seagull Holding N.V.

In FY 2006, these acquisitions contributed \$1,011K to revenues and \$1,006 to expenses; Oak Grove Systems having approximately 11 months of contribution and Farabi Technology approximately 1 month of contribution for the period. On an annualized basis the contributions would have been \$1,814 and \$1,534K respectively.

#### **Cash and Cash Equivalents**

Cash and cash equivalents of \$5,460K are held on current and short-term deposit accounts with maturity of up to three months.

#### **Shareholders' Equity**

For the notes on this item, please refer to the Company balance sheet and the relevant notes.

#### **Long-term Liabilities**

Long-term liabilities include primarily the long-term portion of a promissory note of \$1,000K (amortized cost of \$936K on 30 April 2006), issued upon the acquisition of SofTouch Systems, Inc. and due in three equal annual installments payable through 1 May 2008.

#### **Payroll Accruals**

In thousands of US Dollars	<b>FY 2006 (audited)</b>	<b>FY 2005 (audited)</b>
Compensation	1,015	803
Social securities	164	162
Payroll tax	163	369
<b>Total</b>	<b>1,342</b>	<b>1,334</b>

#### **Other Current Liabilities**

In thousands of US Dollars	<b>FY 2006 (audited)</b>	<b>FY 2005 (audited)</b>
Current portion of long-term liability	547	572
Sales tax	289	419
Other	834	1,023
<b>Total</b>	<b>1,670</b>	<b>2,014</b>

#### **Deferred Revenues**

This includes amounts billed in advance to customers, comprising primarily software maintenance contracts typically covering a period of twelve months.

Liabilities not included in the Balance Sheet

Commitments falling due (in thousands of US dollars on 30 April 2006):

In FY 2007 (audited)	2,150
Between FY 2008 and FY 2011	3,885
After FY 2011	10
<b>Total</b>	<b>6,045</b>

The total of \$6,045K represents operating lease rental obligations as of 30 April 2006, which includes \$5,306K for office leases over 2.9 years (average) and \$739K for car leases over an average period of 2.4 year (a component of the standard employee compensation and benefits package for certain employees in European offices). For FY 2007 the annual commitment for office leases is \$1,837K (FY 2006 actual \$1,717K) and for car leases is \$313K (FY 2006 actual \$353K).

The agreement for the office lease in The Netherlands includes provisions for rent review, which is normally based on the changes in the price index and general market conditions. This agreement is due for renewal on 1 December 2007. The lease agreement for the office in Atlanta USA is based on a pre-determined rental price for the duration of the lease and is due for renewal on 31 July 2009.



## Financial Instruments

During the normal course of business, Seagull Holding N.V. makes use of several financial instruments including trade receivables, cash and cash equivalents, other receivables and current liabilities which expose Seagull Holding N.V. to market or credit risks. These financial instruments are included in the balance sheet.

Seagull Holding N.V. follows certain procedures and guidelines to limit the size of the credit risk for each of these financial instruments. In the event that the counterparty fails to meet its payment obligations to Seagull Holding N.V., the resulting losses are limited to the market value of the instruments in question. The contract value or principal amounts of the financial instruments serve only as an indication of the extent to which these instruments are used, and not of the value of the credit or market risk.

### *Fair Value*

The fair value of the financial instruments stated on the balance sheet, including trade receivables, cash and cash equivalents, other receivables and current liabilities, is close to its book value. In preparing the financial statements certain estimates are made, based on most recent and relevant information available.

### 14.3.8 Parent Company Balance Sheet

In thousands of US Dollars	30 April 2006 (audited)	30 April 2005 (audited)
<b>ASSETS</b>		
<b>Non-current assets</b>		
Investment in subsidiaries	4,068	7,739
<b>Current assets</b>		
Cash and cash equivalents	–	697
Prepaid expenses	49	496
Other receivables	13,152	6,094
	13,201	7,287
<b>TOTAL ASSETS</b>	17,269	15,026
<b>EQUITY AND LIABILITIES</b>		
<b>Equity attributable to shareholders of the Parent</b>		
Issued share capital	338	337
Share premium	21,977	21,604
Other reserves	(13,956)	(14,684)
Result for the year	(937)	(963)
	7,422	6,294
<b>Non-Current liabilities</b>		
Provision for negative net worth in subsidiaries	9,474	8,287
<b>Current liabilities</b>		
Accounts payable	266	279
Other current liabilities	107	166
	373	445
<b>TOTAL EQUITY AND LIABILITIES</b>	17,269	15,026

#### 14.3.9 Parent Company Statement of Operations

In thousands of US Dollars	FY 2006 (audited)	FY 2005 (audited)
loss from participating interests	(803)	(2,982)
Other results	(134)	2,019
<b>Loss for the year</b>	<b>(937)</b>	<b>(963)</b>

#### 14.3.10 Notes to Parent Company Financial Statements

##### **General**

The separate financial statements are part of the Financial Year 2006 financial statements of Seagull Holding N.V.

With reference to the separate profit and loss account of Seagull Holding N.V., use has been made of the exemption pursuant to Section 402 of Book 2 of the Netherlands Civil Code.

##### **Principles for the Measurement of Assets and Liabilities and the Determination of Result**

For setting the principles for the recognition and measurement of assets and liabilities and determination of result for its separate financial statement, Seagull Holding N.V. makes use of the option provided in section 2:362(8) of the Netherlands Civil Code. This means that the principles for the recognition and measurement of assets and liabilities and determination of the result (hereinafter referred to as principles for recognition and measurement) of the separate financial statements of Seagull Holding N.V., are the same as those applied for the consolidated EU-IFRS financial statements. Participating interests, over which significant influence is exercised, are stated on the basis of the equity method. These consolidated EU-IFRS financial statements are prepared according to the standards laid down by the International Accounting Standards Board and adopted by the European Union (hereinafter referred to as EU-IFRS). Please see pages 22 to 26<sup>1</sup> for a description of these principles.

The share in result of participating interests consists of the share of Seagull Holding N.V. in the result of these participating interests. Results on transactions, where the transfer of assets and liabilities between Seagull Holding N.V. and its participating interests and mutually between participating interests themselves, are not incorporated insofar as they can be deemed to be unrealized.

##### **Change in Accounting Policy**

As a result of the application of the accounting principles used in the consolidated financial statements to the separate financial statements, Seagull Holding N.V. has implemented a change in accounting policies. This change in accounting policies is the result of using the option in section 2:362(8) of the Netherlands Civil Code. By making use of this option, reconciliation is maintained between the consolidated and the separate shareholder' equity.

The separate financial statements were previously prepared in compliance with the principles for recognition and measurement of the assets and liabilities and determination of the result referred to in Part 9, book 2 of the Netherlands Civil Code (BW2).

For the purpose of comparison, the comparative figures have been adjusted on the basis of the changed accounting principles.

##### **Explanation of Transition to EU-IFRS**

These are the Group's first financial statements prepared in accordance with EU-IFRS, which became applicable for accounting periods starting after 1 January 2005.

The accounting policies have been applied in preparing the financial statements for FY 2006. In order to facilitate accurate comparison, in this Annual Report we have adjusted the results for FY 2005 and the opening EU-IFRS balance sheet at 1 May 2004 (the Group's date of transition) to reflect EU-IFRS.

In preparing its opening EU-IFRS balance sheet and comparative information for the twelve months ended 30 April 2005, the Group has adjusted amounts reported previously in financial statements prepared in accordance with previous GAAP.

The transition from previous GAAP to EU-IFRS has affected the Group's financial position and financial performance to a limited extent.

<sup>1</sup> Reference is made to the page numbers in the statements of the Financial Year 2006. These pages correspond with pages 67 through 71 (Section 14.3.5 ) of this Offer Memorandum.

In accordance with EU-IFRS 2 on share-based payments, Seagull Software has accounted for the cost associated with the Company's share option plans in its statement of operations. This change in accounting policies has a negative effect on the results of \$55K in FY 2005 and \$203K in FY 2006 and these costs were charged against equity.

This is the only difference between EU-IFRS and Dutch GAAP reporting standards.

### Investment in Subsidiaries

In thousands of US Dollars	FY 2006 (audited)	FY 2005 (audited)
Investment in group companies	4,068	3,682
Amounts owed by group companies	–	4,057
<b>Total</b>	<b>4,068</b>	<b>7,739</b>

### Investment in Group Companies

This item includes the following directly and indirectly wholly owned subsidiaries:

Seagull Business Software B.V., The Netherlands  
Seagull Software Systems, Inc., USA  
Seagull Consultancy Services B.V., The Netherlands  
Seagull Software Tools B.V., The Netherlands  
Seagull Software International B.V., The Netherlands  
Seagull Business Software Italy Srl, Italy  
Seagull Deutschland GmbH, Germany  
Seagull Business Software France Sarl, France  
Seagull Business Software UK Ltd., United Kingdom  
Seagull Business Software Ireland Ltd., Ireland  
Seagull Business Software Holding Ireland Ltd., Ireland  
Seagull Business Software AB, Sweden  
Seagull Renex, Inc., USA  
SofTouch Systems, Inc., USA  
Seagull Software Canada, Inc., Canada

### Movements in Investment in Group Companies

In thousands of US Dollars (audited)	
<b>Balance on 30 April 2005</b>	
Carrying value	3,682
Less: Provisions for negative net asset value of subsidiaries	8,287
<b>Net asset value</b>	<b>(4,605)</b>
<b>Movements during the financial year</b>	
Dividend received	112
Payment on shares	–
Net loss for financial year 2006	(803)
Translation difference	(110)
<b>Total movements</b>	<b>(801)</b>
<b>Balance on 30 April 2006</b>	
Net asset value	(5,406)
Add: Provisions for negative net asset value of subsidiaries	9,474
<b>Carrying value</b>	<b>4,068</b>

### Other Receivables

In thousands of US Dollars	FY 2006 (audited)	FY 2005 (audited)
Amounts owed by group companies	13,152	6,093
Other receivables	–	1
<b>Total</b>	<b>13,152</b>	<b>6,094</b>

### Shareholders Equity

Issued Share Capital	Authorized	Issued
Number of Ordinary Shares of € 0.03 each	26,000,000	8,989,607

### Movements in Shareholder Equity (audited)

In thousands of USD	Issued Share Capital	Share Premium	Other Reserves	Result For The Year	Total
<b>Balance on 30 April 2004</b>	<b>291</b>	<b>18,142</b>	<b>(9,276)</b>	<b>(3,985)</b>	<b>5,172</b>
Appropriation of FY 2004 result	–	–	(3,985)	3,985	–
Issue of shares	21	1,928	–	–	1,949
Stock options	–	–	55	–	55
Translation difference	25	1,534	(1,478)	–	81
Result FY 2005	–	–	–	(963)	(963)
<b>Balance on 30 April 2005</b>	<b>337</b>	<b>21,604</b>	<b>(14,684)</b>	<b>(963)</b>	<b>6,294</b>
Appropriation of FY 2005 result	–	–	(963)	963	–
Issue of shares	12	1,073	–	–	1,085
Shares to be issued	–	–	926	–	926
Stock options	–	–	203	–	203
Translation difference	(11)	(700)	562	–	(149)
Result FY 2006	–	–	–	(937)	(937)
<b>Balance on 30 April 2006</b>	<b>338</b>	<b>21,977</b>	<b>(13,956)</b>	<b>(937)</b>	<b>7,422</b>

The amount of \$926K for shares to be issued refers to consideration for the acquisition of the Farabi Technology Corporation assets. These shares will be issued in September 2006, March 2007 and September 2007<sup>2</sup>.

### Movements in Share Capital (audited)

	Number	Nominal Value per Share in €
<b>Balance on 30 April 2004</b>	<b>8,660,204</b>	<b>0.03</b>
New issue of shares	216,981	0.03
Exercise of options	112,422	0.03
<b>Balance on 30 April 2005</b>	<b>8,989,607</b>	<b>0.03</b>

As of 30 April 2006, the Company does not hold any of its own shares.

2 Pursuant to an addendum to the agreement between Seagull and Farabi the share issuance of September 2006 has taken place and the contemplated share issuances in March 2007 and September 2007 have been replaced by cash payments to Farabi instead, in the amounts of CAD 347,500 and CAD 347,500 respectively.

## Provisions

In thousands of US Dollars	FY 2006 (audited)	FY 2005 (audited)
Provisions for negative net asset value of subsidiaries	9,474	8,287

## Accounts Payable

In thousands of US Dollars	FY 2006 (audited)	FY 2005 (audited)
Amounts owed to group companies	256	267
Other payables	10	12
<b>Total</b>	<b>266</b>	<b>279</b>

## Employee Benefits

The fair value of services received from employees in return for the granting of share options are measured by reference to the fair value of the share options. This estimate of fair value is measured based on 'Black and Scholes' model. The contractual life of the option is used as an input into this model.

### Options Granted after December 1, 2002 (as per EU-IFRS)

Effective Date	Options Granted	Exercise Price	Expected Life	Volatility	Risk Free Rate
09-12-2002	247.500	2,05	5 years	24,92%	3,98%
08-07-2003	28.500	2,09	5 years	24,92%	3,04%
07-07-2004	364.500	3,66	7 years	24,92%	3,94%
02-12-2004	12.500	3,57	7 years	24,92%	3,52%
28-02-2005	20.000	3,30	7 years	39,82%	3,47%
05-07-2005	189.650	3,40	7 years	39,52%	2,87%
01-12-2005	25.000	2,64	7 years	33,28%	3,23%

The Company policy does not include payment of dividend. Options are issued at an exercise price equal to closing market value on date of grant.

### Movements on Outstanding Stock Options (audited)

	FY 2006 Number of Options	FY 2006 Average Option Price	FY 2005 Number of Options	FY 2005 Average Option Price
<b>Total outstanding at the beginning of the period</b>	1,385,697	€ 2.82	1,165,065	€ 2.75
Movements during the year				
Options exercised	(112,422)	€ 1.35	(136,308)	€ 1.57
Options expired	(144,416)	€ 5.02	(40,060)	€ 13.26
New options granted	214,650	€ 3.31	397,000	€ 3.64
<b>Total outstanding at the end of the period</b>	1,343,509	€ 2.78	1,385,697	€ 2.82
Vested and exercisable at the end of the period	808,015		752,950	

### Summary of the Total Outstanding Stock Options by Expiration Year

	Average Exercise Price in €	Number of Options
FY 2007	2.24	432,835
FY 2008	2.06	270,524
FY 2009	2.09	28,500
FY 2012	3.64	397,000
FY 2013	3.31	214,650

The Company has two stock option plans in place: SOP III (grant date 17 July 2000) and SOP IV (grant date 25 August 2004). Both plans authorize the purchase of one ordinary share for each option. SOP III provides for granting of 1,500,000 options over three years (500,000 per year). The vesting schedule for options granted under SOP III provides for vesting of 25% upon the first anniversary of the grant date from

the date of granting, and thereafter on a monthly basis for the remaining three years pro-rata. In August 2004 a new pool of 1,500,000 options was approved and named as SOP IV. The vesting schedule for options granted under SOP IV provides for the vesting of 25% upon each anniversary from the grant date.

It is the Company's policy to issue new shares in respect of exercise of options.

The following summarizes the outstanding issued options on 30 April 2006:

Management Board and the Supervisory Board	451,150
Current and former employees	892,359
Total issued options on 30 April 2006	1,343,509

#### **Options to Board of Supervisory Directors and Management Board**

The following is a summary of options granted to the members of the Management Board and the Supervisory Board as of 30 April 2006:

	<b>Number of Options</b>	<b>Grant Date</b>	<b>Exercise Price</b>	<b>Expiry</b>
<b>Supervisory Board</b>				
Tom van der Loo	5,000	15-08-2001	€ 1.59	14-08-2006
<b>Management Board</b>				
Don Addington	125,000	08-11-2001	€ 1.30	07-11-2006
	150,000	09-12-2002	€ 2.05	08-12-2007
	91,000	07-07-2004	€ 3.66	06-07-2011
	80,150	05-07-2005	€ 3.40	04-07-2012

Effective August 2004, the Company has adopted a policy not to grant shares or stock options to any members of the Supervisory Board.

#### **Liabilities Not Included in the Balance Sheet**

In thousands of US Dollars on 30 April 2005

Total value of rental obligation for operating leases is as follows. Commitments falling due:

In FY 2007	393
Between FY 2008 and FY 2011	230
After FY 2011	–
	623

The agreement for office lease in The Netherlands includes provisions for rent review, which is normally based on the changes in the price index and general market conditions. This agreement is due for renewal on 1 December 2007.

#### **Corporate Income Tax**

For corporate income tax purposes Seagull Holding N.V. forms a fiscal unity with Seagull Business Software B.V., Seagull Software Tools B.V., Seagull Software International B.V. and Seagull Consultancy Services B.V. Any corporate income tax due by this tax group is paid/payable by Seagull Holding N.V. The corporate income tax is settled in current accounts among the members of the tax group.

#### 14.4 Audited Financial information 2005 and 2004<sup>3</sup>

##### 14.4.1 Consolidated Statement of Operations

###### Consolidated Statement of Operations

In thousands of US Dollars, except for net income/loss per share and share data	<b>FY2005 (audited)</b>	<b>FY2004 (audited)</b>
<b>REVENUES</b>		
License revenue	9,663	10,611
Maintenance and service revenue	13,699	12,240
	23,362	22,851
<b>COST OF REVENUES</b>		
Cost of license revenue	45	147
Cost of maintenance and service revenue	5,309	4,827
	5,354	4,974
<b>GROSS MARGIN</b>	18,008	17,877
<b>OPERATING EXPENSES</b>		
Sales and marketing	11,312	12,539
Research and development	4,493	5,338
General and administrative	4,243	4,126
Restructuring expense	1,093	–
	21,141	22,003
<b>INCOME/(LOSS) FROM OPERATIONS</b>	(3,133)	(4,126)
Financial income and expense (net)	61	245
Exchange gain (loss)	(74)	(104)
<b>INCOME/(LOSS) BEFORE INCOME TAX</b>	(3,146)	(3,985)
Income tax	(2,238)	–
<b>NET INCOME (LOSS)</b>	(908)	(3,985)
<b>NET INCOME (LOSS) PER SHARE</b>		
Basic	(0.11)	(0.52)
Diluted	(0.10)	(0.46)
<b>AVERAGE NUMBER OF SHARES</b>		
Basic	8,234,591	7,675,556
Diluted	8,929,878	8,572,285

3 Prepared in accordance with Dutch GAAP

#### 14.4.2 Consolidated Statement of Operations

##### Consolidated Balance Sheet

In thousands of US Dollars	30 April 2005 (audited)	30 April 2004 (audited)
<b>ASSETS</b>		
<b>Current assets</b>		
Cash and cash equivalents	6,912	7,710
Trade receivables	3,676	4,716
Prepaid expenses	652	492
Other receivables	833	346
	<b>12,073</b>	<b>13,264</b>
<b>Non-current assets</b>		
Deferred tax	1,063	1,063
	<b>1,063</b>	<b>1,063</b>
<b>Fixed assets</b>		
Tangible assets	786	1,154
Intangible assets	4,956	455
	5,742	1,609
<b>Total assets</b>	<b>18,878</b>	<b>15,936</b>
<b>LIABILITIES AND SHAREHOLDERS' EQUITY</b>		
<b>Current liabilities</b>		
Accounts payable	1,053	1,075
Payroll accruals	1,334	1,391
Corporation taxes	18	1,292
Deferred revenues	6,736	5,365
Other current liabilities	2,014	1,641
	<b>11,155</b>	<b>10,764</b>
<b>Non-current liabilities</b>		
Long-term liabilities	1,429	-
	<b>1,429</b>	<b>-</b>
<b>Shareholders' equity</b>		
Issued capital	337	291
Share premium	21,604	18,142
Accumulated losses and other reserves	(14,739)	(9,276)
Current year earnings (losses)	(908)	(3,985)
	<b>6,294</b>	<b>5,172</b>
<b>Total liabilities and shareholders' equity</b>	<b>18,878</b>	<b>15,936</b>



#### 14.4.3 Consolidated Statement of Cash Flow

##### Consolidated Statement of Cash Flow

In thousands of US Dollars	FY2005 (audited)	FY2004 (audited)
<b>CASH FLOW FROM OPERATIONS</b>		
Net income (loss)	(908)	(3,985)
Adjustments to reconcile net income/loss to net cash provided by operating activities:		
Depreciation and amortization	1,021	1,322
Movement in working capital:		
Trade receivables	1,226	1,212
Prepaid expenses	(138)	(58)
Other receivables	(466)	(97)
Accounts payable	(54)	51
Payroll accruals	(119)	(400)
Corporation taxes	(1,383)	(401)
Deferred revenue	1,238	635
Other current liabilities	287	(1,395)
Deferred tax	–	237
Translation difference	(125)	(140)
	<b>579</b>	<b>(3,019)</b>
<b>CASH FLOW FROM INVESTING ACTIVITIES</b>		
Tangible assets	(351)	(519)
Intangible assets	(4,760)	–
Translation difference	42	24
	<b>(5,069)</b>	<b>(495)</b>
<b>CASH FLOW FROM FINANCING ACTIVITIES</b>		
Cash receipts on issue of shares (net of expenses)	1,950	993
Long-term loan	1,429	–
	<b>3,379</b>	<b>993</b>
<b>Effect of exchange rate on cash</b>	<b>313</b>	<b>699</b>
<b>Total net cash flow</b>	<b>(798)</b>	<b>(1,822)</b>
<b>Opening balance cash and cash equivalents</b>	<b>7,710</b>	<b>9,532</b>
<b>Closing balance cash and cash equivalents</b>	<b>6,912</b>	<b>7,710</b>

#### 14.5 Auditor's reports Financial Years 2006, 2005 and 2004

In our opinion, the financial data for the years ended 31 April 2004, 2005 and 2006, as included in Sections 14.3 and 14.4 of this Offering Memorandum, are consistent, in all material respects, with the financial statements from which they have been derived. We issued unqualified auditors' reports on these financial statements on 18 June 2004, 20 June 2005 and 1 August 2006, respectively.

For a better understanding of the Company's financial position and results and of the scope of our audit, the financial data in this Offering Memorandum should be read in conjunction with the financial statements from which they have been derived and our auditors' reports thereon.

Rotterdam, 15 March 2007

KPMG Accountants N.V.

## **15       EXTRAORDINARY GENERAL MEETING OF SHAREHOLDERS OF SEAGULL**

At 11:00 hours CEST (05:00 hours EDT), on 4 April 2007, the Extraordinary General Meeting of Shareholders will be held at the Sheraton Hotel at Schiphol, the Netherlands, during which, among other agenda items, the Offer will be explained and discussed in compliance with the provisions of article 9q of the Bte 1995. The information necessary for the Shareholders to adequately assess the Offer, as meant in article 9q of the Bte 1995, is included in this Offer Memorandum.

## 16 TAX ASPECTS OF THE OFFER

Shareholders are advised to seek independent tax advice regarding the tax consequences of tendering their Shares in the Offer, or any, other transaction described in or contemplated by this Offer Memorandum. No assurances or warranties are provided with respect to the statements contained in this Section 16, versus the particular situation of any individual Shareholder and Shareholders should therefore not place undue reliance on the statements contained in this Section 16. Reference is also made to the risk factors set out in Section 5.7.3.

### 16.1 Dutch tax aspects of the Offer

#### *General*

The following summary describes the principal Dutch tax consequences of a disposal of the Shares under the Offer. This summary does not purport to be a comprehensive description of all Dutch tax considerations that may be relevant to a Shareholder in relation to the decision to dispose of the Shares or that may be relevant to a Shareholder in light of its particular circumstances or to Shareholders subject to a special regime, such as the exempt status of qualifying pension funds. Furthermore, this summary does not address the Dutch tax consequences to holders of stock options in relation to Shares, or the Dutch tax consequences of post-closing dividends. Each Shareholder should consult a professional tax adviser with respect to the tax consequences of a disposal of the Shares. The discussion of certain Dutch taxes set forth below is included for general information only.

This summary is based on the tax legislation, published case law, treaties, rules, regulations and similar documentation as of the date of this Offer Memorandum, without prejudice to any amendments introduced at a later date and implemented with retroactive effect.

This summary does not address the tax consequences of the Offer for:

- (i) a Shareholder who is a corporate entity and who is subject to corporate income tax, holding a qualifying participation (*deelnemings*) in Seagull within the meaning of article 13 of the Dutch Corporate Income Tax Act 1969: Generally speaking, a corporate Shareholder owns a qualifying participation in Seagull if it owns 5 percent or more of the nominal paid-in capital of Seagull;
- (ii) a Shareholder who is a private individual and who holds a "substantial interest" (*aanmerkelijk belang*) in Seagull, within the meaning of article 4 of the Dutch Income Tax Act 2001. Generally speaking, a Shareholder holds a substantial interest in Seagull, if such Shareholder, alone or together with his or her partner (statutory defined term) or certain other related persons, directly or indirectly, holds (a) an interest of 5 percent or more of the issued capital of Seagull or of 5 percent or more of the issued capital of a certain class of Shares, (b) rights to acquire, directly or indirectly, such interest, or (c) profit sharing rights (*winstbewijzen*) in Seagull that relate to 5 percent or more of the annual profit of Seagull or to 5 percent or more of the liquidation proceeds of Seagull;
- (iii) a Shareholder who is a corporate entity and who is a non-resident of The Netherlands, holding a "substantial interest", as described under (ii) above, in Seagull.

#### **Dividend withholding tax**

No dividend tax (*dividendbelasting*) is due upon a disposal of Shares under the Offer.

#### **Corporate income tax and individual income tax**

##### *Residents of The Netherlands*

If a Shareholder is a corporate entity that is subject to corporate income tax (*vennootschapsbelasting*) and the Shares are attributed or (deemed) attributable to its business assets, the gains realized upon the disposal of the Shares under the Offer are generally taxable in The Netherlands at statutory corporate income tax rates.

If a Shareholder is a private individual and a resident or a deemed resident of The Netherlands for income tax (*inkomstenbelasting*) purposes (including a private individual who has opted to be taxed as a resident of The Netherlands), the gains realized upon the disposal of the Shares under the Offer are taxable in The Netherlands at the progressive rates of the Dutch Income Tax Act 2001, if:

- (i) the Shareholder has an enterprise or an interest in an enterprise, to which enterprise the Shares are attributable; or

- (ii) such gains qualify as “income from miscellaneous activities” (*resultaat uit overige werkzaamheden*) within the meaning of section 3.4 of the Dutch Income Tax Act 2001, which include activities with respect to the Shares that exceed “regular, active portfolio management” (*normaal, actief vermogensbeheer*).

If neither condition (i) nor condition (ii) applies to the Shareholder who is a private individual, the actual gains realized upon the disposal of the Shares under the Offer will not be taxable.

#### *Non-residents of The Netherlands*

Gains realized upon a disposal of the Shares under the Offer by a Shareholder who is not a resident, nor deemed to be a resident of The Netherlands for Dutch tax purposes are taxable in The Netherlands only, if:

- (i) the Shareholder has an enterprise or an interest in an enterprise that is carried on through a permanent establishment or a permanent representative in The Netherlands to which permanent establishment or permanent representative, the Shares are attributable; or
- (ii) the Shareholder is entitled to a share in the profits of an enterprise that is effectively managed in The Netherlands, other than by way of securities, and to which enterprise the Shares are attributable; or
- (iii) with respect to a Shareholder who is a private individual, such gains qualify as “income from miscellaneous activities” (*resultaat uit overige werkzaamheden*) within the meaning of section 3.4 of the Dutch Income Tax Act 2001, which include activities in The Netherlands with respect to the Shares that exceed “regular, active portfolio management” (*normaal, actief vermogensbeheer*).

#### **Value added tax**

No value added tax (*omzetbelasting*) will arise in relation to the disposal of Shares under the Offer.

#### **Other taxes and duties**

No capital duty, registration tax, customs duty, transfer tax, stamp duty or any other similar documentary tax or duty, will be due in The Netherlands in respect of or in connection with the Offer.

## **16.2 Dutch tax aspects of the legal merger**

### **Dividend withholding tax**

No dividend tax (*dividendbelasting*) is due as a result of the Legal Merger.

### **Corporate income tax and individual income tax**

#### *Residents of The Netherlands*

If a Shareholder is a corporate entity that is subject to corporate income tax (*vennootschapsbelasting*) and the Shares are attributed or (deemed) attributable to its business assets, the gains realized as a result of the Legal Merger are either taxable in The Netherlands or may be rolled-over to the newly acquired shares (article 8 Dutch Corporate Income Tax Act 1969 in conjunction with article 3.57 Dutch Income Tax Act 2001)

If a Shareholder is a private individual and a resident or a deemed resident of The Netherlands for income tax (*inkomstenbelasting*) purposes (including a private individual who has opted to be taxed as a resident in The Netherlands), the gains realized as a result of the Legal Merger are either taxable in The Netherlands or may be rolled-over to the newly acquired shares (article 3.57 Dutch Income Tax Act 2001), if:

- (i) the Shareholder has an enterprise or an interest in an enterprise, to which enterprise the Shares are attributable; or
- (ii) such gains qualify as “income from miscellaneous activities” (*resultaat uit overige werkzaamheden*) within the meaning of section 3.4 of the Dutch Income Tax Act 2001, which include activities with respect to the Shares that exceed “regular, active portfolio management” (*normaal, actief vermogensbeheer*),

If neither condition (i) nor condition (ii) applies to the Shareholder who is a private individual, the actual gains realized as a result of the Legal Merger will not be taxable.

#### *Non-residents of The Netherlands*

Gains realized as a result of a Legal Merger by a Shareholder who is not a resident, not deemed to be a resident of The Netherlands for tax purposes are either taxable in The Netherlands or may be rolled-over

to the newly acquired shares (article 18 and article 8 Dutch Corporate Income Tax Act 1969 in conjunction with article 3.57 Dutch Income Tax Act 2001), if:

- (i) the Shareholder has an enterprise or an interest in an enterprise that is carried on through a permanent establishment or a permanent representative, the Shares are attributable; or
- (ii) the Shareholder is entitled to a share in the profits of an enterprise that is effectively managed in The Netherlands, other than by way of securities, and to which enterprise the Shares are attributable; or
- (iii) with respect to a Shareholder who is a private individual, such capital gains qualify as "income from miscellaneous activities" (*resultaat uit overige werkzaamheden*) within the meaning of section 3.4 of the Dutch Income Tax Act 2001, which include activities in The Netherlands with respect to the Shares that exceed "regular, active portfolio management" (*normaal, actief vermogensbeheer*).

#### **Value added tax**

No value added tax (*omzetbelasting*) will arise in relation to the Legal Merger.

#### **Other taxes and duties**

No capital duty, registration tax, customs duty, transfer tax, stamp duty or any other similar documentary tax or duty, will be due in The Netherlands in respect of or in connection with the Legal Merger.

### **16.3 Certain U.S. Federal Income Tax Consequences of the Sale of Ordinary Shares**

The following is a summary of certain U.S. federal income tax consequences to U.S. holders (as defined below) of Shares who accept this Offer and is for general information only. This discussion is applicable to U.S. holders (as defined below) (i) who are residents of the United States for purposes of the current Netherlands-US income tax treaty (the "**Treaty**"), (ii) whose shares are not, for purposes of the Treaty, effectively connected with a permanent establishment in the Netherlands and (iii) who otherwise qualify for full benefits of the Treaty. This discussion is based on provisions of the United States Internal Revenue Code of 1986, as amended (the "**Code**"), United States Department of the Treasury ("**Treasury**") regulations promulgated thereunder, and judicial and administrative rulings and decisions as of the date hereof, all of which are *subject to change or differing interpretations* at any time, possibly with retroactive effect. The tax treatment of a U.S. holder may vary depending upon his or her particular situation. Certain U.S. holders (such as insurance companies, tax-exempt organizations, regulated investment companies, real estate investment trusts, U.S. holders whose "functional currency" is not the U.S. dollar, persons holding Shares as part of a hedging, integrated, conversion or constructive sale transaction or a straddle, persons owning (either actually or constructively) 10 per cent or more of the voting stock of Seagull, financial institutions, brokers, dealers in securities or currencies and traders that elect to mark-to-market their securities) may be subject to special rules not discussed below. This discussion does not consider the effect of any U.S. state, local or non-U.S. tax laws or any U.S. tax considerations (e.g. estate or gift), other than U.S. federal income tax considerations, that may be relevant to particular U.S. holders. This discussion is limited to U.S. holders who have held their Shares as "capital assets" as defined under the Code.

The following disclosure assumes that Seagull is not, and has not been during the holding period of any U.S. holder accepting this Offer, a "passive foreign investment company" ("**PFIC**"). U.S. holders should consult their tax advisers regarding the consequences of tendering Shares if Seagull was a PFIC at any time during their holding period of the Shares.

If a partnership holds Shares, the tax treatment of a partner will generally depend upon the status of the partner and the activities of the partnership. A U.S. holder of Shares that is a partner of a partnership tendering Shares should consult its tax adviser.

As used herein, a "U.S. holder" of a Share means a holder that is (1) a citizen or resident of the United States, (2) a corporation created or organized in or under the laws of the United States or any political subdivision thereof, (3) an estate the income of which is subject to U.S. federal income taxation regardless of its source or (4) a trust if a U.S. court is able to exercise primary supervision over the administration of the trust and one or more U.S. fiduciaries have the authority to control all substantial decisions of the trust or if it has a valid election in effect under applicable Treasury regulations to be treated as a U.S. person.

Each holder of Shares should consult his or her tax adviser to determine the U.S. federal income tax consequences of tendering the Shares, as well as the applicability of any state, local, non-U.S. and other tax laws.

## **General**

A U.S. holder who receives cash for Shares pursuant to this Offer will recognize gain or loss equal to the difference, if any, between the amount realized and the U.S. holder's adjusted tax basis in the Shares tendered. For a cash basis taxpayer (and an electing accrual basis taxpayer), the amount realized will be the U.S. dollar value of the euros received, determined using the Euro spot rate on the Settlement Date. Subject to the discussion below, such gain or loss generally will be considered gain from the sale or disposition of a capital asset within the meaning of Section 1221 of the Internal Revenue Code and U.S. source long-term capital gain or loss if the applicable Shares have been held for more than one year. Long-term capital gains of individuals are eligible for reduced rates of taxation. The deductibility of capital losses is subject to limitations.

For U.S. federal income tax purposes, it is not clear on what date a U.S. holder selling Shares pursuant to this Offer will be treated as having made such sale. If a tendering U.S. holder is an accrual basis taxpayer who has not made the election referred to above and is treated as having sold its Shares on a date prior to the Settlement Date, such U.S. holder may recognize an exchange gain or loss (as defined in Section 988 of the Code) attributable to any gain realized prior to the Settlement Date (the **"Exchange Gain or Loss"**) when it receives the Offer Price on the Settlement Date. Such exchange gain or loss will be an ordinary gain or loss regardless of whether the U.S. holder held such Shares as a capital asset.

## **Subsequent Transactions**

The Offeror is considering several alternatives by which holders that do not tender all their Shares pursuant to the Offer may receive cash or other consideration for their Shares. See Section 5.7.3. A U.S. Holder that receives cash for its Shares in a merger or squeeze out procedure will generally be taxed in the same manner as described above under the caption "In General". A U.S. Holder that receives stock in exchange for its Shares in a merger will generally recognize gain or loss based on the difference between the fair market value of the stock received and the U.S. Holder's adjusted tax basis in its Shares, unless the merger qualifies as reorganization under the Code. U.S. Holders that are not tendering all their Shares pursuant to the Offer should consult their own tax advisers regarding the potential tax consequences of any subsequent transactions.

## **Information Reporting and Backup Withholding**

In general, information reporting requirements will apply to the payment made pursuant to the Offer received by U.S. holders other than certain exempt recipients (such as corporations). A backup withholding tax may apply to such payment if the U.S. holder fails to provide a taxpayer identification number or a certification of exempt status, or if the U.S. holder fails to report in full dividend and interest income. The amount of any backup withholding from a payment to a U.S. holder will be allowed as a credit against the U.S. holder's federal income tax liability (or a refund, if applicable), provided the required information is furnished to the U.S. Internal Revenue Service.

## **Legend**

Any tax information or written tax advice contained herein is not intended to be and cannot be used by any taxpayer for the purpose of avoiding tax penalties that may be imposed on the taxpayer. The foregoing legend has been affixed pursuant to U.S. Treasury Regulations governing tax practice.

## 17 PRESS RELEASES

### 17.1 Press release 5 December 2006

On 5 December 2006 Seagull and Rocket Software issued the following press release:

#### **Rocket Software and Seagull Software Enter into Letter of Intent for Rocket Software to Acquire Seagull Software**

#### **Synergistic Combination Would Comprise Over 100 Products, Large Enterprise Customer Base, and Robust OEM and Direct Sales Channels**

Amsterdam, The Netherlands; Atlanta, Georgia, USA; and Newton, Massachusetts, USA, 05 December 2006

Enterprise software suppliers Rocket Software and Seagull Software announced today that the companies have signed a letter of intent for Rocket Software, Inc. to make a public offer to acquire 100% of the shares and outstanding stock options of Seagull Holding N.V. (the parent holding company of all Seagull Software entities) in an all-cash transaction valued at €4.68 per share. The letter of intent includes customary binding provisions relating to costs, confidentiality, exclusivity, competing offers, break-up fees and standstill. The remainder of the letter of intent is non-binding on the parties.

The acquisition is subject to certain requirements including due diligence; execution of a mutually-acceptable definitive purchase agreement; approval of financing by Rocket Software's financing institutions; approval by the Supervisory Board of Seagull Holding N.V. and various other customary conditions. Accordingly, while completion of the transaction is targeted for the first quarter of 2007, no assurances can be made that the transaction will be consummated.

Newton, Massachusetts-based Rocket Software is a privately-held company with over 350 employees across its operations in the United States, Europe and Asia. Consistently profitable since its founding in 1990, Rocket Software has a history of successful acquisitions. Many of the company's products are licensed on an OEM basis and sold under global brand names such as IBM, Microsoft, RSA, EMC, Motorola, Lucent, and HP.

Also founded in 1990, Seagull Software's holding company shares are publicly traded on the Euronext stock exchange in Amsterdam. The company has 170 employees across its corporate offices in the Netherlands and United States and its subsidiaries in Canada, the United Kingdom, France and Germany.

"Our strategy is to strengthen and expand Rocket's core OEM-focused business through acquisitions, and the acquisition of Seagull Software would give us the ability to leverage Seagull Software's considerable customer base and presence in the SOA, legacy integration and Web services software market," said Andy Youniss, CEO of Rocket Software. "The two companies are a perfect match, and we are very excited about the technology, talent and customer relationships that Seagull Software would bring to Rocket Software."

Commenting on the proposed acquisition Don Addington, CEO and President of Seagull Software, said, "We are very pleased to have reached a preliminary understanding with Rocket Software for a transaction that will benefit our shareholders, our customers and our employees. The combined companies would constitute a much more significant force in the enterprise software market, a strong foundation for continued organic and strategic growth; and an unparalleled enterprise customer service team."

Investors are cautioned that this announcement includes forward looking statements that are subject to risks and uncertainties that include (but are not limited to) the non-binding nature of portions of the letter of intent, successful completion of all activities required to effect the transaction, and the timing of the transaction.

**About Rocket Software.** Rocket Software is a global development firm that builds Enterprise Infrastructure products for the world's leading OEMs, networks and software companies. The company's current lines of business complement and extend strategic OEM offerings in the areas of enterprise and mobile security, relational databases, mobile and wireless computing, and operational support systems (OSS). Rocket's current OEM relationships and technology partners include IBM, RSA Security, Microsoft, NEC, and Toshiba. Rocket Software is based in Newton, Mass. For more information, visit [www.rocketsoftware.com](http://www.rocketsoftware.com).

**About Seagull Software.** Seagull Software specializes in technology that transforms "legacy" applications into SOA-compliant Web services, helping enterprises achieve exponentially faster IT support for business change, governance and compliance. Our LegaSuite® software platform includes integration, GUI, workflow and terminal emulation technology. With LegaSuite, customers connect legacy applications

on IBM mainframe, VME/ICL mainframe, System i, UNIX/VT and Windows client/server platforms to the Web, to other middleware and to newer-generations of applications such as portals, CRM and SCM. LegaSuite is based on open standards including Web services, XML, J2EE and .NET. Powerful and innovative tools require no coding, which means rapid results, reduced risk and no maintenance burden. Committed to providing the best customer experience in the industry, Seagull Software's technology is in use in more than 8,000 business and government organizations worldwide, and by millions of end users. Seagull Software has direct operations in the United States, Canada, the Netherlands, UK, France, and Germany, supplemented by distributors serving approximately 30 additional countries.

For more information, visit [www.seagullsoftware.com](http://www.seagullsoftware.com). Note to editors: The correct usage of our company name is Seagull Software.

**Forward-Looking Information:** All statements in this press release which address operating performance, events or developments that we expect or anticipate will occur in the future, including statements expressing general optimism about future operating results and non-historical information, are forward-looking statements. These forward-looking statements are, and will be, based on management's then-current views and assumptions regarding future events and operating performance.

Forward-looking statements are subject to certain risks and uncertainties that could cause actual results to differ materially, including, but not necessarily limited to management's ability to manage growth, and hire and retain qualified employees; unpredictable customer demand; intense competition; rapid technological change; unpredictable market acceptance of new products; and market instability and/or reduction in software purchasing caused by exceptional circumstances.

## **17.2 Press release 11 January 2007**

On 11 January 2007 Seagull and Rocket Software issued the following press release:

### **Proposed Acquisition of Seagull Software by Rocket Software Remains on Track for First Quarter 2007**

Amsterdam, The Netherlands; Atlanta, Georgia, USA; and Newton, Massachusetts, USA, 11 January 2007

On 5 December 2006, Rocket Software and Seagull Software announced that, subject to certain requirements being met, Rocket Software intends to make a public offer to acquire 100% of the shares and outstanding stock options of Seagull Holding n.v. in an all-cash transaction valued at € 4.68 per share. Pursuant to Section 9.b Paragraph 2.a of the Dutch Decree on the Supervision on Securities Transactions (*Besluit toezicht effectenverkeer 1995*), this press release provides an update on the status of this transaction.

The parties believe that their negotiations and other activities have now reached the level that the expectation is justified that the parties will reach agreement on the proposed public offer. Seagull Software has obtained reasonable comfort that a majority of the shareholders intend to tender their shares if the offer is made by Rocket Software. Rocket Software reasonably believes that it will be in a position to obtain adequate financing for the intended offer. The negotiations, due diligence, obtaining final Supervisory Board approval, other requirements and activities are continuing to progress. Assuming that the parties reach such agreement and that the other requirements for the acquisition are fulfilled, Rocket Software plans for the offer for Seagull Holding n.v. to take place during the first quarter of 2007.

**Forward Looking Statements.** Investors are cautioned that this announcement includes forward looking statements that are subject to risks and uncertainties that include but are not limited to successful completion of all activities required to effect the transaction, and the timing of the transaction.

**About Rocket Software.** Rocket Software is a global development firm that builds Enterprise Infrastructure products for the world's leading OEMs, networks and software companies. The company's current lines of business complement and extend strategic OEM offerings in the areas of enterprise and mobile security, relational databases, mobile and wireless computing, and operational support systems (OSS). Rocket's current OEM relationships and technology partners include IBM, RSA Security, Microsoft, NEC, and Toshiba. Rocket Software is based in Newton, Mass. For more information, visit [www.rocketsoftware.com](http://www.rocketsoftware.com).

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no coding, which means rapid results, reduced risk and no maintenance burden. Committed to providing the best customer experience in the industry, Seagull Software's technology is in use in more than 8,000 business and government organizations worldwide, and by millions of end users. Seagull Software has direct operations in the United States, Canada, the Netherlands, UK, France, and Germany, supplemented by distributors serving approximately 30 additional countries.

For more information, visit [www.seagullsoftware.com](http://www.seagullsoftware.com).

### 17.3 Press release 2 February 2007

On 2 February 2007 Seagull and Rocket Software issued the following press release:

#### **Rocket Software Inc. and Seagull Holding N.V. Reach Agreement on Revised Offer Price of €4.33 per Share**

Amsterdam, the Netherlands; Atlanta, Georgia, USA; and Newton, Massachusetts, USA – 2 February 2007

Rocket Software and Seagull Software announce that they have reached agreement on a revised offer price of €4.33 per share for Rocket Software's intended public offer to acquire 100% of the shares and outstanding stock options of Seagull Holding N.V. in an all-cash transaction. The offer price as announced in the press releases of 5 December 2006 and 11 January 2007 has been revised pursuant to a combination of factors including continued negotiations and due diligence.

Rocket Software has now completed its due diligence. The negotiations and obtaining final Supervisory Board approval are continuing to progress, and Seagull Software is continuing its discussions with major shareholders on their willingness to tender. Rocket Software continues to believe that it will be in a position to obtain adequate financing for the intended offer. Both parties have made substantial progress on the merger protocol and expect to be in a position to sign the definitive merger protocol shortly. The merger protocol is expected to contain customary commencement conditions and completion conditions for the intended public offer, including but not limited to (i) Seagull Software's Management Board and Supervisory Board recommending the public offer, (ii) the absence of a material adverse effect, (iii) the continuation of the business in the ordinary course and (iv) no breach of the representations and warranties to be included in the merger protocol having occurred.

Investors are cautioned that this announcement includes forward looking statements that are subject to risks and uncertainties that include (but are not limited to) signing of the definitive merger protocol, successful completion of all activities required to effect the transaction, and the timing of the transaction.

This is a press release within the meaning of section 9b paragraph 2 sub (d) of the Decree on the Supervision on the Securities Transactions (*Besluit toezicht effectenverkeer 1995*).

**About Rocket Software.** Rocket Software is a global development firm that builds Enterprise Infrastructure products for the world's leading OEMs, networks and software companies. The company's current lines of business complement and extend strategic OEM offerings in the areas of enterprise and mobile security, relational databases, mobile and wireless computing, and operational support systems (OSS). Rocket's current OEM relationships and technology partners include IBM, RSA Security, Microsoft, NEC, and Toshiba. Rocket Software is based in Newton, Mass. For more information, visit [www.rocketsoftware.com](http://www.rocketsoftware.com).

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**NOTE TO EDITORS:** The correct usage of our company name is Seagull Software.

**Forward-Looking Information:** All statements in this press release which address operating performance, events or developments that we expect or anticipate will occur in the future, including

statements expressing general optimism about future operating results and non-historical information, are forward-looking statements. These forward-looking statements are, and will be, based on management's then-current views and assumptions regarding future events and operating performance.

Forward-looking statements are subject to certain risks and uncertainties that could cause actual results to differ materially, including, but not necessarily limited to management's ability to manage growth, and hire and retain qualified employees; unpredictable customer demand; intense competition; rapid technological change; unpredictable market acceptance of new products; and market instability and/or reduction in software purchasing caused by exceptional circumstances.

#### **17.4 Press release 9 February 2007**

On 9 February 2007 Seagull and Rocket Software issued the following press release:

##### **Rocket Software and Seagull Holding N.V. Sign Definitive Merger Protocol Agreement**

Amsterdam, the Netherlands; Atlanta, Georgia, USA; and Newton, Massachusetts, USA, 09 February 2007

Rocket Software and Seagull Software today announce that, with the approval of the Seagull Holding N.V. Supervisory Board, they have executed a binding Merger Protocol under which Rocket Software, or one of its wholly owned subsidiaries, agrees to make a public offer to acquire 100% of the shares of Seagull Holding N.V. in an all-cash transaction at a price of €4.33 per share (the "Offer").

The Supervisory Board of Seagull Holding N.V., after giving due consideration to the business and financial aspects of the proposed transaction, unanimously resolved to support the Offer, concluded that the Offer is in the best interests of the shareholders and other stakeholders of Seagull Holding N.V., and recommends that shareholders accept the Offer.

The offer price of €4.33 represents a 94% premium over the Seagull Holding N.V. closing price of €2.23 on 4 December 2006, the last trading day prior to the first announcement of Rocket Software's intention to make an offer.

The Offer will be made by publishing an offer memorandum setting out the terms and conditions of the Offer. The parties expect that Rocket Software will make the Offer in the course of March 2007. Further details on the Offer will be announced simultaneously with publication of the offer memorandum.

The launch of the Offer is subject to customary commencement conditions including but not limited to Seagull Software's Management Board and Supervisory Board continuing to recommend the Offer, the absence of a material adverse effect prior to the closing of the transaction, the continuation of the business in the ordinary course and no breach of the representations and warranties specified in the merger protocol having occurred.

This announcement does not constitute an offer to purchase nor a solicitation of an offer to sell the shares in Seagull Holding N.V. and is an announcement pursuant to article 9g paragraph 1a of the Dutch Decree on the Supervision of the Securities Trade 1995 (Besluit toezicht effectenverkeer 1995). Any offer for the shares in Seagull Holding N.V. will be made only by means of an offer document to be issued prior to the commencement of the offer period.

Investors are cautioned that this announcement includes forward looking statements that are subject to risks and uncertainties that include (but are not limited to) successful completion of commencement and closing conditions, achieving all necessary regulatory approvals and the timing of the transaction.

**About Rocket Software.** Rocket Software is a global development firm that builds Enterprise Infrastructure products for the world's leading OEMs, networks and software companies. The company's current lines of business complement and extend strategic OEM offerings in the areas of enterprise and mobile security, relational databases, mobile and wireless computing, and operational support systems (OSS). Rocket's current OEM relationships and technology partners include IBM, RSA Security, Microsoft, NEC, and Toshiba. Rocket Software is based in Newton, Mass. For more information, visit [www.rocketsoftware.com](http://www.rocketsoftware.com).

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no coding, which means rapid results, reduced risk and no maintenance burden. Committed to providing the best customer experience in the industry, Seagull Software's technology is in use in more than 10,000 business and government organizations worldwide, and by millions of end users. Seagull Software has direct operations in the United States, Canada, the Netherlands, UK, France, and Germany, supplemented by distributors serving approximately 30 additional countries. For more information, visit [www.seagullsoftware.com](http://www.seagullsoftware.com).

## **17.5 Press Release 1 March 2007**

On 1 March 2007 Seagull issued the following press release:

### **Seagull Software Names New Acting CFO**

Amsterdam, the Netherlands – 01 March 2007

Seagull Software today announces that, in light of the position of the Chief Financial Officer of the Company becoming redundant upon completion of Rocket Software's proposed acquisition of the shares of Seagull Holding N.V., the Company and Mory Motabar, Chief Financial Officer, have now reached agreement on termination of Mr. Motabar's employment. During the interim period between this announcement and the contemplated closing of the transaction Mr. Michael Haynes, Director of Finance for Seagull Software for three years, has been named Acting Chief Financial Officer.

This is a press release pursuant to section 9b paragraph 1 of the Dutch Decree on the Supervision on Securities Transactions (Besluit toezicht effectenverkeer 1995).

**About Seagull Software.** Seagull Software specializes in technology that transforms "legacy" applications into SOA-compliant Web services, helping enterprises achieve exponentially faster IT support for business change, governance and compliance. Our LegaSuite® software platform includes integration, GUI, workflow and terminal emulation technology. With LegaSuite, customers connect legacy applications on IBM mainframe, VME mainframe, System i, UNIX/VT and Windows client/server platforms to the Web, to other middleware and to newer-generations of applications such as portals, CRM and SCM. LegaSuite is based on open standards including Web services, XML, J2EE and .NET. Powerful and innovative tools require no coding, which means rapid results, reduced risk and no maintenance burden. Committed to providing the best customer experience in the industry, Seagull Software's technology is in use in more than 10,000 business and government organizations worldwide, and by millions of end users. Seagull Software has direct operations in the United States, Canada, the Netherlands, UK, France, and Germany, supplemented by distributors serving approximately 30 additional countries. For more information, visit [www.seagullsoftware.com](http://www.seagullsoftware.com).

**NOTE TO EDITORS:** The correct usage of our company name is Seagull Software.

**Forward-Looking Information:** All statements in this press release which address operating performance, events or developments that we expect or anticipate will occur in the future, including statements expressing general optimism about future operating results and non-historical information, are forward-looking statements. These forward-looking statements are, and will be, based on management's then-current views and assumptions regarding future events and operating performance.

Forward-looking statements are subject to certain risks and uncertainties that could cause actual results to differ materially, including, but not necessarily limited to management's ability to manage growth, and hire and retain qualified employees; unpredictable customer demand; intense competition; rapid technological change; unpredictable market acceptance of new products; and market instability and/or reduction in software purchasing caused by exceptional circumstances.

In deze Paragraaf 18 wordt een samenvatting gegeven van de belangrijkste kenmerken van het Bod. Deze Nederlandse samenvatting maakt deel uit van het Biedingsbericht, maar vervangt hem niet. Deze Nederlandse samenvatting is niet volledig en bevat niet alle informatie die voor de Aandeelhouders van belang is om een afgewogen oordeel te kunnen vormen over het Bod. Het bestuderen van deze Nederlandse samenvatting mag derhalve niet worden beschouwd als een alternatief voor het volledig bestuderen van het volledige Biedingsbericht. De Aandeelhouders wordt geadviseerd het volledige Biedingsbericht (inclusief alle documenten die daarin door middel van verwijzing ("*incorporation by reference*") zijn opgenomen) zorgvuldig te bestuderen en zo nodig onafhankelijk advies in te winnen teneinde zich een afgewogen oordeel te kunnen vormen over het Bod en de beschrijving van het Bod in de samenvatting en het Biedingsbericht. In geval van verschillen tussen deze Nederlandse samenvatting en de Engelse tekst van het Biedingsbericht prevaleert de Engelse tekst van het Biedingsbericht (inclusief alle documenten die daarin door middel van verwijzing ("*incorporation by reference*") zijn opgenomen).

Het uitbrengen van het Bod, de verkrijgbaarstelling van het Biedingsbericht en deze Nederlandse samenvatting, alsmede verspreiding van enige andere informatie met betrekking tot het Bod, kunnen in bepaalde jurisdicties aan beperkingen onderhevig zijn. Dit Bod wordt niet, direct of indirect, gedaan in en mag niet worden geaccepteerd vanuit enige jurisdictie waarin het doen van het Bod of de Aanmelding niet in overeenstemming is met de in die jurisdictie geldende wet- en regelgeving. Echter, aanmeldingen door Aandeelhouders die niet woonachtig zijn in Nederland, zullen door de Bieder geaccepteerd worden, mits die aanmeldingen zijn gedaan conform de procedure voor aanmelding zoals uiteengezet in dit Biedingsbericht. Het niet voldoen aan deze beperkingen kan een overtreding van de effectenwet- en regelgeving van de betreffende jurisdictie opleveren. De Bieder, Seagull en hun adviseurs sluiten iedere aansprakelijkheid ter zake van overtredingen van voornoemde beperkingen uit. De Aandeelhouders dienen zo nodig onverwijld onafhankelijk advies in te winnen over hun positie. Voor de beperkingen wordt tevens verwezen naar Paragraaf 1 (*Restrictions and Important Information*).

### 18.1 Beperkingen en belangrijke informatie

Dit Biedingsbericht bevat belangrijke informatie die men zorgvuldig dient te lezen alvorens een besluit te nemen over het aanmelden van Aandelen onder het Bod. De Aandeelhouders wordt aangeraden waar nodig onafhankelijk advies in te winnen. Daarnaast zullen de Aandeelhouders mogelijk hun belastingadviseur willen raadplegen met betrekking tot de fiscale consequenties die verbonden zijn aan de aanmelding van Aandelen onder het Bod.

De informatie opgenomen in Paragrafen 1.1, 4.1, 4.2, 4.3, 4.5, 4.8, 4.9, 4.10, 5.3, 5.4, 5.5, 5.7.1, 5.7.2, 5.7.3, 9 (inleidende paragraaf), 9.1 tot en met 9.9, 12 en 16 is uitsluitend door de Bieder verstrekt. De informatie opgenomen in Paragrafen 4.4, 5.6, 6, 8, 10, 11, 14.1, 14.3, 14.4, 15 en 17.5 is uitsluitend door Seagull verstrekt. De informatie opgenomen in Paragrafen 1.2, 2, 3, 4.6, 4.7, 4.11, 4.12, 5.1, 5.2, 5.7.4, 5.7.5, 5.7.6, 5.8, 5.9, 9.10, 13, 17.1 tot en met 17.4, 18 en 19 is door de Bieder en Seagull gezamenlijk verstrekt. De informatie opgenomen in Paragraaf 7 is door AGC verstrekt en de fairness opinie die in die Paragraaf is opgenomen is identiek aan de originele fairness opinie die gedateerd op dezelfde dag door AGC is afgegeven. De informatie opgenomen in Paragraaf 14.2 en 14.5 is door KPMG verstrekt en is identiek aan de originele accountantsverklaring die op dezelfde dag gedateerd door KPMG is afgegeven.

Uitsluitend de Bieder en Seagull zijn verantwoordelijk voor de juistheid en volledigheid van de informatie die in dit Biedingsbericht is opgenomen, elk voor de informatie die door haar zelf werd verstrekt, en gezamenlijk voor de informatie die door hen gezamenlijk is verstrekt, met uitzondering van informatie die door geen van hen (met inbegrip van de fairness opinie en de omschrijving daarvan in Paragraaf 7 waarvoor AGC verantwoordelijk is en de informatie opgenomen in Paragraaf 14.2 en 14.5 waarvoor KPMG verantwoordelijk is) of gezamenlijk is verstrekt zoals weergegeven in de vorige alinea van deze Paragraaf. De Bieder en Seagull verklaren beiden, ieder voor de informatie die door hen in dit Biedingsbericht is verstrekt, dat de informatie in dit Biedingsbericht op de publicatiedatum van dit Biedingsbericht naar hun beste weten in elk wezenlijk opzicht in overeenstemming is met de werkelijkheid en juist is, en dat er geen informatie achterwege is gelaten waardoor enige verklaring in dit Biedingsbericht in enig wezenlijk opzicht misleidend is. Nota bene: bepaalde financiële en statistische informatie in dit Biedingsbericht kan naar boven of beneden zijn afgerond en dient derhalve niet als exact te worden beschouwd.

De informatie in dit Biedingsbericht geeft de situatie weer op de datum van dit Biedingsbericht. Onder geen beding houden de uitgifte en verspreiding van dit Biedingsbericht in dat de hierin opgenomen informatie ook na de datum van dit Biedingsbericht juist en volledig is of dat er sinds deze datum geen wijziging is opgetreden in de in het Biedingsbericht uiteengezette informatie of in de gang van zaken bij Seagull en/of haar dochtermaatschappijen en/of aan haar gelieerde ondernemingen. Het voorgaande laat

echter onverlet de verplichting van zowel de Bieder als Seagull om, indien zulks van toepassing is, een publieke aankondiging te doen ingevolge artikel 9b lid 1 van het Bte 1995.

## 18.2 Nederlandse Definities

In dit Biedingsbericht zal een verwijzing naar gedefinieerde termen in het meervoud gelijk staan aan verwijzingen naar dergelijk gedefinieerde termen in het enkelvoud en vice versa. Alle door gebruik van een definitie in het enkelvoud vereiste grammaticale en andere wijzigingen zullen hierna als gemaakt aangemerkt worden en de volgende bepalingen zullen toegepast worden alsof deze veranderingen plaats hebben gevonden.

Na het hierboven geschrevene gesteld te hebben, zullen de gedefinieerde termen in deze Paragraaf van het Biedingsbericht de volgende betekenis hebben:

Aande(e)l(en)	uitgegeven en uitstaand(e) gewo(o)n(e) aande(e)l(en) in het kapitaal van Seagull, elk met een nominale waarde van EUR 0,03
Aandeelhouder(s)	houder(s) van één of meer Aandelen
Buitengewone Vergadering van Aandeelhouders	de buitengewone vergadering van Aandeelhouders, die wordt gehouden op 4 april 2007 om 11:00 uur CEST (05:00 uur EDT), in het Sheraton Hotel te Schiphol, Nederland, waarin onder andere het Bod zal worden toegelicht en besproken, overeenkomstig het bepaalde in artikel 9q lid 1 van het Bte 1995
Aanmeldingstermijn	de periode gedurende welke de Aandeelhouders hun Aandelen bij de Bieder kunnen aanmelden, beginnend om 09:00 uur CET (04:00 uur EDT) op 19 maart 2007 en eindigend op de Sluitingsdatum
AFM	de Stichting Autoriteit Financiële Markten
Belangrijk Negatief Gevolg	enig effect, gebeurtenis, voorval, omstandigheid of verandering die, op zichzelf of tezamen met andere effecten, gebeurtenissen, voorvallen, omstandigheden of veranderingen een belangrijke negatief gevolg heeft of waarvan dit redelijkerwijs kan worden verwacht, op het operationele resultaat, de kasstroom, de financiële positie, de bedrijfsvoering en/of de vooruitzichten van Seagull, gezien als een geheel, zodanig dat van de Bieder redelijkerwijs niet verwacht kan worden dat hij het Bod voortzet of dat hij het Bod gestand doet, tenzij het gaat om een effect, gebeurtenis, voorval, omstandigheid of verandering als gevolg van of met betrekking tot veranderingen na de datum van de Fusieovereenkomst in Toepasselijk Recht of regelgeving (inclusief de Wte 1995, het Bte, het Burgerlijk Wetboek, toepasselijk effectenrecht, belastingrecht, accounting regelgeving of beginselen, of de interpretatie daarvan)
Betaal- en Wisselkantoor	Fortis Bank (Nederland) N.V. een naamloze vennootschap, opgericht naar Nederlands recht, met statutaire zetel in Rotterdam, Nederland
Bieder	Rocket Software Europe Holding B.V., een besloten vennootschap met beperkte aansprakelijkheid, opgericht naar Nederlands Recht, met statutaire zetel in Amsterdam, Nederland
Biedingsbericht	dit biedingsbericht met betrekking tot het Bod
Biedprijs per Aandeel	een bedrag in contanten van EUR 4,33 per Aandeel dat op geldige wijze is aangemeld (of op ongeldige wijze aangemeld, mits de Bieder de aanmelding daarvan desalniettemin aanvaardt) en geleverd onder de voorschriften en voorwaarden van het Bod; geen dividend zal worden uitgekeerd over Boekjaar 2007
Bod	het bod zoals in dit Biedingsbericht beschreven
Boekjaar 2004	het boekjaar van Seagull dat eindigde op 30 april 2004
Boekjaar 2005	het boekjaar van Seagull dat eindigde op 30 april 2005
Boekjaar 2006	het boekjaar van Seagull dat eindigde op 30 april 2006
Boekjaar 2007	het boekjaar van Seagull dat eindigt op 30 april 2007

Bte 1995	Besluit toezicht effectenverkeer 1995, zoals van tijd tot tijd gewijzigd
CET	Central European Time
CEST	Central European Summer Time
Concurrerend Bod	een bonafide bod van een derde partij voor enige Aandelen of andere voorstellen welke een verandering in de zeggenschap van, of een materieel deel van de bedrijfsvoering of activa van, Seagull zouden veroorzaken, plaatsvindend op of voor 30 april 2007, welke in het redelijk oordeel van de Raden een beter bod is dan het Bod
Dag van Betaling	onder de voorwaarde dat het Bod gestand is gedaan de datum waarop de Bieder, overeenkomstig de voorwaarden van het Bod, de Biedprijs per Aandeel prompt zal betalen aan de Aandeelhouders die op geldige wijze hun Aandelen hebben aangemeld (of op ongeldige wijze aangemeld, mits de Bieder de aanmelding daarvan desalniettemin aanvaardt) en geleverd voor de Sluitingsdatum, zijnde een datum gelegen niet later dan de derde Werkdag na de Gestanddoeningsdatum
Dutch GAAP	in Nederland algemeen aanvaarde grondslagen voor financiële verslaggeving en de bepalingen zoals opgenomen in Titel 9 van Boek 2 van Burgerlijk Wetboek
EBITDA	Earnings Before Interest Taxes, Depreciation and Amortization
EDT	Eastern Daylight Time
EUR of €	de Euro, het wettig betaalmiddel in de lidstaten van de Europese Monetaire Unie
Euronext Amsterdam	Euronext Amsterdam N.V. of Eurolist door Euronext Amsterdam N.V., afhankelijk van de context
Fusieovereenkomst	de fusieovereenkomst overeengekomen en getekend door de Bieder en Seagull op 9 februari 2007
Gestanddoeningsdatum	de datum waarop de Bieder publiekelijk aankondigt of hij het Bod gestand doet, overeenkomstig artikel 9t lid 4 van het Bte 1995, zijnde een datum gelegen niet later dan vijf Werkdagen na de Sluitingsdatum
IFRS zoals vastgesteld door de EU	de international accounting standards, international financial reporting standards en de aanverwante interpretaties van deze standaarden zoals van tijd tot tijd uitgegeven of aangenomen door de International Accounting Standards Board en zoals vastgesteld door de Europese Unie
Officiële Prijscourant	de Officiële Prijscourant van Euronext Amsterdam
Raad van Bestuur	raad van bestuur van Seagull
Raad van Commissarissen	raad van commissarissen van Seagull
Raden	de Raad van Commissarissen en de Raad van Bestuur gezamenlijk
Rocket Software	Rocket Software, Inc. een vennootschap opgericht naar het recht van Delaware, VS, statutaire gevestigd te Newton, Massachusetts, VS
Seagull of de Vennootschap	Seagull Holding N.V., een naamloze vennootschap, opgericht naar Nederlands recht, met statutaire zetel in Dordrecht, Nederland en, indien van toepassing, tevens haar groepsmaatschappijen zoals beschreven in artikel 2:24b van het Burgerlijk Wetboek en haar deelnemingen
Seagull Statuten	de statuten van Seagull, zoals meest recentelijk gewijzigd op 13 september 2001
Sluitingsdatum	de tijd en datum tot wanneer Aandelen onder het Bod kunnen worden aangemeld, zijnde om 15:00 uur CEST (09:00 uur EDT), op 17 april 2007 tenzij de Aanmeldingstermijn is verlengd met inachtneming van artikel 9o lid 5 van het Bte 1995

Toegelaten Instelling	instelling zoals gedefinieerd in artikel 1 Wet Giraal Effectenverkeer
Toepasselijk Recht	toepasselijk wetten en regelgeving, waaronder de Wte 1995, het Bte 1995 en de Wft en andere toezichtwetgeving
Voorwaarden	de voorwaarden uiteengezet in Paragraaf 5.2
VS	de Verenigde Staten van Amerika
Werkdag	een dag waarop Euronext Amsterdam open is voor de handel
Wft	Wet op het financieel toezicht
Wte 1995	Wet toezicht effectenverkeer 1995, zoals van tijd tot tijd gewijzigd

### 18.3 Het Bod

Onder de Voorwaarden en conform de bepalingen en beperkingen zoals opgenomen in dit Biedingsbericht worden de Aandeelhouders hierbij uitgenodigd om hun Aandelen aan te bieden aan de Bieder. Op voorwaarde dat het Bod gestand wordt gedaan, zal aan de Aandeelhouders die hun Aandelen onder het Bod op geldige wijze hebben aangemeld en geleverd (of op ongeldige wijze, indien de Bieder de aanmelding daarvan desalniettemin accepteert), op de Dag van Betaling, betaling in contanten plaatsvinden van de Biedprijs per Aandeel. Zie tevens Paragraaf 9.1 (*Offer Price per Share*).

De Biedprijs van EUR 4,33 vertegenwoordigt een aantrekkelijke prijs voor de aandeelhouders van Seagull en:

- (a) een premie van 94% ten opzichte van de onveranderde slotkoers per Aandeel van EUR 2,23 op 4 december 2006, de laatste handelsdag voor het persbericht van 5 december 2006 waarin Rocket Software aangaf dat het voornemens was een openbaar bod uit te brengen op alle uitstaande Aandelen in het aandelenkapitaal van Seagull onder de voorwaarden en beperkingen zoals genoemd in voornoemd persbericht;
- (b) premies van 62% en 49% respectievelijk, ten opzichte van de gemiddelde slotkoers per Aandeel van EUR 2,68 en EUR 2,90 over de 12 respectievelijk 24 maanden voorafgaand aan het persbericht van 5 december 2006 waarin Rocket Software aangaf dat het voornemens was een openbaar bod uit te brengen op alle uitstaande Aandelen in het aandelenkapitaal van Seagull onder de voorwaarden en beperkingen zoals genoemd in voornoemd persbericht; en
- (c) met gebruikmaking van publiekelijk beschikbare informatie en schattingen heeft de Bieder de EBITDA en omzetvermenigvuldigingsfactoren, berekend over de laatste 12 maanden (LTM) van vergelijkbare transacties in de VS en in Europa in overweging genomen; voor deze vergelijking liepen is Seagull's LTM berekend over de periode die afliep op 31 oktober 2006.
  - (i) Vergeleken met de VS

Doelvennootschap	Bieder
Hummingbird	Open Text
SeeBeyond Technologies	Sun Microsystems
NetIQ	Attachmate
Segue Software	Borland
Vision Solutions	Thoma Cressey
Neon	Progress Software
Vitria (pending)	Investor Group
Artemis	Versata
NetManage (pending)	Investor Group

Die Bieder heeft geconstateerd dat bij bovengenoemde vergelijkbare transacties met een waarde van minder dan \$100m, de mediaan van de LTM vermenigvuldigingsfactor ongeveer 0,9x is en dat de gemiddelde LTM vermenigvuldigingsfactor ongeveer 1,3x, zulks in vergelijking tot de LTM vermenigvuldigingsfactor van 1.7x voor de Biedprijs per Aandeel.

De Bieder heeft geconstateerd dat bij bovengenoemde vergelijkbare transacties de mediaan van de LTM EBITDA vermenigvuldigingsfactor ongeveer 19x is en dat de gemiddelde LTM EBITDA vermenigvuldigingsfactor ongeveer 23x is in vergelijkbare transactie, versus Seagull, die geen positieve LTM EBITDA genereerde.

- (i) Vergeleken met Europa:

**Doelvennootschap**

**Bieder**

Visma	Engel Holding AS
Intenia International AB	Lawson Software Inc.
Merant	Serena
Real Software NV	Gores Technology Group
Datamat Ingegneria dei Sistemi	Finmeccanica SpA
AttentiV Systems Group PLC	TietoEnator
Comino Group PLC	Civica PLC
Personal und Informatik AG	Carlyle Europe Venture
Syskoplan AG	Reply SpA
Frango AB	Cognos AB
Planit Holdings PLC	Velocity Acquisitions Ltd
DCS Group PLC	Reynolds & Reynolds UK

Die Bieder heeft geconstateerd dat bij bovengenoemde vergelijkbare transacties met een waarde van minder dan \$100m, de mediaan van de LTM vermenigvuldigingsfactor ongeveer 1,4x is en dat de gemiddelde LTM vermenigvuldigingsfactor ongeveer 1,3x, zulks in vergelijking tot de LTM vermenigvuldigingsfactor van 1.7x voor de Biedprijs per Aandeel.

De Bieder heeft geconstateerd dat bij bovengenoemde vergelijkbare transacties de mediaan van de LTM EBITDA vermenigvuldigingsfactor ongeveer 14x is en dat de gemiddelde LTM EBITDA vermenigvuldigingsfactor ongeveer 17x is in vergelijkbare transactie, versus Seagull die geen positieve LTM EBITDA genereerde.

Zie tevens Paragraaf 5.3 (*Substantiation of the Offer Price*).

#### 18.4 Voorwaarden

De verplichting van de Bieder om het Bod gestand te doen geldt indien aan elk van de volgende Voorwaarden wordt voldaan, tenzij van bepaalde voorwaarden afstand wordt gedaan:

- (a) op of voor de Sluitingsdatum wordt een zodanig aantal Aandelen ter aanvaarding aangemeld dat deze, tezamen met de Aandelen die rechtstreeks of indirect door de Bieder of zijn groep op de Sluitingsdatum worden gehouden en de Aandelen die het voorwerp zijn van koopovereenkomsten die van kracht zijn op de Sluitingsdatum, op de Sluitingsdatum tenminste 95% (vijfennegentig procent) van het geplaatste aandelenkapitaal van Seagull vertegenwoordigen (exclusief Aandelen gehouden door Seagull of haar dochtermaatschappijen);
- (b) er is geen publieke mededeling gedaan waaruit voor de eerste maal blijkt dat een derde partij (i) voorbereidingen treft of heeft getroffen tot het doen van een openbaar bod of een openbaar bod heeft gedaan, en (ii) een recht heeft of overeenstemming daartoe heeft bereikt, tot verkrijging van of inschrijving op aandelen in het kapitaal van Seagull of een substantieel deel van de activa van Seagull, of (iii) het recht heeft verkregen, of is overeengekomen een substantieel deel van, de activa van Seagull te verkrijgen;
- (c) de Raden hebben hun aanbeveling ten aanzien van het Bod, zoals uiteengezet in dit Biedingsbericht, niet herroepen of gewijzigd;
- (d) op of voorafgaand aan de Sluitingsdatum (i) zijn alle belangrijke goedkeuringen, licenties, vrijstellingen en vergunningen verkregen van binnenlandse en buitenlandse autoriteiten, waaronder mededingingsautoriteiten, die in verband met het Bod en de voorgenomen wijziging van zeggenschap zijn vereist welke van kracht zullen blijven, en (ii) binnenlandse, noch buitenlandse autoriteiten noch derde partijen hebben stappen ondernomen of stappen aangekondigd die het Bod en de voorgenomen wijziging van zeggenschap kunnen belemmeren en (iii) alle wachtperiodes krachtens toepasselijke wetgeving zijn verstreken gedurende welke binnenlandse of buitenlandse autoriteiten en/of derde partijen zich tegen het Bod of de voorgenomen wijziging van de zeggenschap kunnen verzetten;
- (e) Seagull zal geen, anders dan in verband met uitgeoefende opties welke aan werknemers van Seagull zijn toegekend voor de datum van de Fusieovereenkomst, aandelen in haar kapitaal hebben uitgegeven, verkocht of een verplichting zijn aangegaan tot verkoop daarvan aan derden, noch zal zij enige opties hebben toegekend, of zich verplicht hebben tot toekenning van opties tot het verkrijgen van aandelen of het omzetten in aandelen in het aandelenkapitaal van Seagull;



- (f) Seagull heeft geen schuldinstrumenten uitgegeven, noch zich daartoe verplicht en Seagull heeft geen dividend uitgekeerd, noch zich op enige wijze verplicht tot het uitkeren van dividend of andere distributies;
- (g) Seagull heeft de onderneming op een normale wijze voortgezet en (i) Seagull heeft geen inbreuk gemaakt op de Fusieovereenkomst; en (ii) er hebben zich met betrekking tot Seagull of haar bedrijfsvoering, geen feiten of omstandigheden voorgedaan die niet bekend waren bij de Bieder waarvan redelijkerwijs te verwachten is dat deze zullen leiden tot een Belangrijke Negatieve Verandering, of die zodanig zijn dat in redelijkheid niet van de Bieder verwacht kan worden dat hij het Bod voortzet; voor deze voorwaarde worden die feiten en omstandigheden in ieder geval bij de Bieder bekend geacht die blijken uit de informatie die openbaar bekend is gemaakt door Seagull of op andere wijze door Seagull aan de Bieder is verschaft voor de datum van dit Biedingsbericht;
- (h) er is geen kennisgeving ontvangen van de AFM dat het Bod is gedaan in strijd met een of meer bepalingen als uiteengezet in sectie IIa, Wte 1995, in de zin van artikel 32a Bte 1995, hetgeen er toe zou leiden dat effecteninstellingen geen medewerking zouden mogen verlenen aan de afwikkeling van het Bod;
- (i) er is geen bevel, schorsing, vonnis of besluit gegeven of verstrekt door een rechter, arbitragecommissie, overheid, overheidsinstantie of andere toezichthoudende of administratieve instantie, van toepassing; noch is er enig(e) wet, regel, regeling, bevel of verbod van overheidswege voorgesteld, in de wet opgenomen, ten uitvoer gelegd of van toepassing geacht op Seagull of het Bod, welke op enigerlei wijze het Bod beperkt, verbiedt of vertraagt, of waarvan redelijkerwijs aannemelijk is dat deze de uitvoering van het Bod in enige materiële zin zal beperken, verbieden of vertragen; en
- (j) is de handel in de Aandelen op Euronext Amsterdam niet blijvend opgeschort als gevolg van een noteringmaatregel genomen door Euronext Amsterdam in overeenstemming met artikel 2706/1 van Euronext Rulebook II;

De Voorwaarden in subparagraaf 5.2(a) tot en met 5.2(c) en subparagraaf 5.2(e) tot en met 5.2(g) strekken ten behoeve van de Bieder, die daarvan op elk moment (geheel of gedeeltelijk) afstand kan doen door schriftelijk mededeling aan de Vennootschap. De Voorwaarden in subparagraaf 5.2(d), 5.2(i) en 5.2(j) strekken ten behoeve van Seagull en de Bieder en Seagull en de Bieder zijn gerechtigd daarvan samen (geheel of gedeeltelijk) afstand te doen, door schriftelijke mededeling. Van Voorwaarde 5.2(h) kan door geen der partijen afstand worden gedaan.

## **18.5 Motivering van het Bod**

Het Bod biedt de volgende voordelen voor de Aandeelhouders, Seagull's werknemers, klanten en andere belanghebbenden:

Een gecombineerde onderneming zal een globaal sterke organisatie zijn die software producten, oplossingen en services kan blijven leveren aan klanten in grote ontwikkelde markten alsmede opkomende markten.

- (a) Bieder en Seagull hebben bedrijfsmodellen en strategieën die elkaar complementeren. Elke organisatie verwacht de unieke kwaliteiten en eigenschappen van de andere organisatie te kunnen benutten. Bieder is voornemens gebruik te maken van Seagull's directe verkoopmodel en internationale verkoop infrastructuur, om zijn producten die direct aan de klanten worden verkocht te marketen, en om de directe verkoop capaciteiten van beide organisaties te vergroten. Bieder verwacht zijn sterkte ontwikkelingsafdeling en middelen te kunnen vergroten, om zo de efficiëntie en productiviteit van productontwikkeling, marketingtijd en ontwikkelingskosten, te vergroten. Bieder streeft er naar voordeel te kunnen halen uit Seagull's sterke financiële, management en rapportage systemen, vooral in Europa.
- (b) Gedurende de afgelopen jaren heeft zich de trend ontwikkeld dat klanten van ieder formaat hun informatie technologie en software oplossingen kopen van een kleinere groep verkopers die grotere financiële en operationele middelen hebben om de klanten technische en operationele ondersteuning te verlenen. Door deze trend is de markt voor middelgrote en kleine verkopers van technologie en software moeilijker en competitiever geworden waardoor het voor hen moeilijker is om met succes hun producten te verkopen.
- (c) een gecombineerde onderneming zal streven naar het vergroten van Seagull's klantenbestand en haar marktaandeel in de SOA, legacy integratie en in Web services software sectoren door zowel een grotere wereldwijde aanwezigheid te leveren alsook het

leveren van meer bronnen om grote en kleine klanten te ondersteunen, en het klantenbestand te blijven uitbreiden.

- (d) een gecombineerde onderneming zal de Bieder meer producten en technologieën verschaffen welke via Bieder's OEM-infrastructuur verkocht kunnen worden, hetgeen de clientèle in de OEM-gerichte business zal vergroten en uitbreiden.
- (e) een gecombineerde onderneming zal leiden tot synergie-effecten voortvloeiend uit de fusie. Deze synergie effecten omvatten zowel kostenbesparingen door het combineren van systemen en het delen van ondersteunende functies alsook hogere opbrengsten zoals hierboven beschreven.
- (f) Een gecombineerde onderneming zal een breder platform aan producten kunnen bieden, waardoor target accounts binnen verschillende segmenten in de IT markt kunnen worden bereikt, hetgeen de potentiële levensduur van de client-relatie verlengt.

Zie verder Paragraaf 5.3 (*Substantiation of the Offer Price*) en Paragraaf 5.4 (*The Offeror's Rationale for the Offer*).

## **18.6 Financiering van het Bod**

De Bieder zal het Bod financieren door middel van een combinatie van contanten en kredietfaciliteiten welke worden verstrekt onder de gebruikelijke voorwaarden en andere voorwaarden welke specifiek verband houden met het Bod, gearrangeerd door Bieder's huidige bankier, Wells Fargo Foothill.

## **18.7 Aandelen die door leden van de Raad van Commissarissen en de Raad van Bestuur worden gehouden**

Op de datum van dit Biedingsbericht worden 159.500 Aandelen gehouden door D. Addington, 535.920 Aandelen door F. van Pelt, 38.378 Aandelen door T. van der Loo, 33.993 Aandelen door G. Rozman en 1.915 Aandelen door B. Jansen, welke allen onherroepelijk hebben toegezegd de door hen gehouden Aandelen onder het Bod aan te melden. Zie ook Paragraaf 5.6 (*Shares and options held by members of the Supervisory Board and Management Board*).

## **18.8 Liquiditeit en opheffing beursnotering**

De koop van de Aandelen door de Bieder onder het Bod zal onder andere tot gevolg hebben dat het aantal Aandeelhouders en het aantal Aandelen dat publiekelijk wordt verhandeld wordt verminderd, hetgeen een negatieve invloed zou kunnen hebben op de liquiditeit en de marktwaarde van de overige Aandelen die niet zijn aangemeld en niet gehouden worden door Seagull.

Indien het Bod gestand wordt gedaan is het voornemen om zo spoedig mogelijk de notering van de Aandelen op Euronext Amsterdam te beëindigen. Dit zou verdere negatieve gevolgen kunnen hebben voor de verhandelbaarheid van de Aandelen die niet zijn aangemeld. Verder zou de Bieder één van de procedures zoals beschreven in subparagraaf 18.9 (Juridische Structuur van Seagull na het Bod) kunnen starten, inclusief procedures die leiden tot de beëindiging van de beursnotering van de Aandelen (inclusief de niet aangeboden Aandelen). Zie subparagraaf 5.7.2 (*Liquidity and delisting*).

## **18.9 Juridische Structuur van Seagull na het Bod**

### **18.9.1 Samenvatting van de risicofactoren na het Bod**

Zoals uiteengezet in subparagraaf 5.2(a), is het Bod voorwaardelijk tot op het moment dat er aanmeldingen zijn ontvangen voor tenminste 95% van de Aandelen. Echter, de Bieder heeft het recht om afstand te doen van deze voorwaarden en het Bod gestand te doen, ook al vertegenwoordigen de niet aangemelde Aandelen meer dan 5% van de Aandelen.

Aandeelhouders die hun Aandelen niet aanmelden onder het Bod dienen zorgvuldig deze Paragraaf 18.9 te bestuderen, waarin bepaalde risico's worden beschreven die zij lopen nadat het Bod gestand wordt gedaan. Het betreft hier additionele risico's die men loopt naast de risico's die samenhangen met de bedrijfsuitoefening door Seagull en haar dochterondernemingen, aangezien deze bedrijfsuitoefening en de structuur van de Seagull groep na de Dag van Betaling van tijd tot tijd kunnen wijzigen. Hieronder volgt een samenvatting van de belangrijkste additionele risico's:

- VERPLICHTE KOOP

Op het moment dat is voldaan aan de relevante juridische vereisten kan de Bieder besluiten de resterende Aandelen te verwerven door middel van de wettelijke uitkoopprocedure (zoals hieronder uiteengezet in subparagraaf 18.9.3).

- VERLIES LIQUIDITEIT

De Bieder kan op het moment dat is voldaan aan de relevante vereisten er voor kiezen de beursnotering van de Aandelen op Euronext Amsterdam te beëindigen en Seagull om te zetten in een besloten vennootschap met beperkte aansprakelijkheid wat er, inter alia, toe zal leiden dat alle Aandelen slechts beperkt overdraagbaar zijn. De Bieder kan, in plaats daarvan of in aanvulling daarop, kiezen voor onder meer een fusie waarbij Seagull de verdwijnende vennootschap is, hetgeen er toe leidt dat de aandeelhouders in Seagull van rechtswege aandeelhouders worden van de verkrijgende vennootschap. De verkrijgende vennootschap zal, naar alle waarschijnlijkheid, een besloten vennootschap met beperkte aansprakelijkheid zijn en de aandelen in haar kapitaal zullen niet genoteerd dan wel publiek verhandelbaar zijn en zullen slechts beperkt overdraagbaar zijn.

Zelfs wanneer er geen sprake is van een omzetting of van een fusie zal het aantal vrij verhandelbare Aandelen substantieel afnemen als gevolg van het Bod. Dit zal een negatieve invloed hebben op het handelsvolume en de liquiditeit van de Aandelen.

De Bieder kan ook besluiten om alle of nagenoeg alle activa van Seagull te verkopen hetgeen gevolgd kan worden door een liquidatie van Seagull en een distributie van de verkoopopbrengsten.

- VERHOOGING VAN FINANCIERING MET VREEMD VERMOGEN

Als gevolg van een of meer juridische fusies of als gevolg van andere maatregelen die door de Bieder en Seagull na de Dag van Betaling kunnen worden geïmplementeerd kan het gedeelte van Seagull's of haar rechtsopvolgers' balanstotaal dat bestaat uit vreemd vermogen substantieel toenemen ten opzichte van de huidige positie.

- BEPERKTERE GOVERNANCE

Wanneer Seagull of haar rechtsopvolger niet meer beursgenoteerd is en haar aandelen niet langer publiekelijk verhandeld worden, zullen de wettelijk bepalingen inzake corporate governance van publieke of genoteerde ondernemingen niet langer van toepassing zijn en zullen de rechten van de minderheidsaandeelhouders worden beperkt tot het wettelijk minimum.

- CONTROLLERENDE AANDEELHOUDER

Na de Dag van Betaling zal de Bieder een meerderheidsbelang houden in Seagull en zullen de leden van de Raad van Bestuur en de leden van de Raad van Commissarissen kunnen worden ontslagen en worden benoemd door de Bieder.

- FISCALE BEHANDELING VAN DE DISTRIBUTIES

De Bieder en Seagull hebben geen inzicht in en geen verantwoordelijkheid voor de fiscale behandeling van uitkeringen zoals dividenden, terugbetaling van kapitaal en liquidatie-uitkeringen, gedaan door Seagull of één van haar rechtsopvolgers. Wanneer een verkoop plaatsvindt van alle of nagenoeg alle activa van Seagull gevolgd door een liquidatie en een distributie van de verkoopopbrengsten zal dit kunnen leiden tot specifieke fiscale kwesties voor de Aandeelhouders.

## 18.9.2 Algemeen

De Bieder behoudt zich het recht voor om elke juridisch toegestane methode aan te wenden om 100% van Seagull's aandelenkapitaal te verkrijgen, alsmede om de structuur van Seagull in lijn te brengen met de houdster- en financieersstructuur van de groep van ondernemingen waartoe de Bieder behoort. Hiertoe zal de Bieder, afhankelijk van, onder andere, het aantal Aandelen verkregen door de Bieder als gevolg van het Bod, een aantal opties overwegen, waaronder een uitkoopprocedure overeenkomstig artikel 2:292a van Burgerlijk Wetboek, een juridische fusie tussen Seagull en de Bieder of een aan de Bieder gelieerde (rechts)persoon overeenkomstig artikel 2:309 en verder van het Burgerlijk Wetboek, een inbreng van activa in Seagull in ruil voor nieuwe uit te geven aandelen (in welk geval de bestaande aandeelhouders geen voorkeursrechten hebben), of de verkoop van activa door Seagull. Daarnaast kan de Bieder Seagull omzetten in een besloten vennootschap met beperkte aansprakelijkheid.

Ter voorkoming van misverstanden, de Bieder heeft, behoudens toepasselijke bepalingen van Nederlands recht, de discretionaire bevoegdheid om de maatregelen en processen beschreven in deze subparagraaf 18.9 cumulatief, alternatief of helemaal niet toe te passen.

### 18.9.3 Uitkoopprocedure

Wanneer de Bieder 95% of meer van het geplaatste en uitstaande aandelenkapitaal van Seagull (de aandelen gehouden door Seagull of haar dochtermaatschappijen daarbij niet meegerekend) op of na de Dag van Betaling heeft verkregen, is de Bieder voornemens een uitkoopprocedure overeenkomstig artikel 2:92a van het Burgerlijk Wetboek te initiëren om de resterende aandelen, die niet zijn aangeboden noch gehouden worden door de Bieder of Seagull, te verkrijgen. De Bieder kan ook een uitkoopprocedure initiëren op enig moment na de Dag van Betaling als en wanneer het hiertoe bevoegd is, ook met betrekking tot de aandelen in enig rechtsopvolger van Seagull, ontstaan door een juridische fusie of op andere wijze.

### 18.9.4 Juridische fusie

Op ieder moment na gestanddoening van het Bod kunnen de Bieder en Seagull stappen zetten om een juridische fusie tussen de Bieder of een gelieerde (rechts)persoon van de Bieder (de **"Fuserende Entiteit"**) en Seagull te bewerkstelligen. Als gevolg van een dergelijke juridische fusie zal één van de twee betrokken juridische entiteiten verdwijnen (de **"Verdwijnde Entiteit"**). De andere entiteit (de **"Verkrijgende Entiteit"**) zal overblijven en alle activa en passiva van de Verdwijnde Entiteit overnemen op de dag dat de juridische fusie van rechtswege effectief wordt (de **"Fusiedatum"**). De volgende alinea's van deze subparagraaf verklaren de twee belangrijkste vormen van een juridische fusie die de Bieder kan overwegen en geven een samenvatting van het proces dat doorlopen dient te worden alvorens een juridische fusie kan worden geïmplementeerd. Er kunnen geen rechten worden ontleend aan deze beschrijving en de Bieder behoudt zich het recht voor om een juridische fusie onder andere voorwaarden na te streven.

Wanneer een juridische fusie wordt geëffectueerd waarin Seagull de verdwijnde entiteit is, een zogenaamde Opwaartse Juridische Fusie, zullen de aandeelhouders van Seagull (inclusief aandeelhouders die hun aandelen niet hebben aangeboden onder het Bod, maar exclusief de Fuserende Entiteit) van rechtswege aandeelhouders in de Fuserende Entiteit worden, naast de Bieder of de aan de Bieder gelieerde (rechts)persoon die reeds aandeelhouder van de Fuserende Entiteit is. De nieuwe aandeelhouders zullen aandelen verkrijgen in het kapitaal van de Fuserende Entiteit die dezelfde economische waarde hebben als de aandelen Seagull die zij houden direct voordat de Juridische Fusie wordt geëffectueerd, welke waarde zal worden berekend op basis van de relevante prijzen uiteengezet in dit Biedingsbericht. Het kapitaal van de Fuserende Entiteit wordt mogelijkverwijs verdeeld in verschillende klassen aandelen en houders van de aandelen in Seagull kunnen één of meer klassen van gewone en/of preferente aandelen in de Fuserende Entiteit verkrijgen, afhankelijk van een aantal factoren, zoals, bijvoorbeeld, het bedrag aan vreemd vermogen dat de Fuserende Entiteit op dat moment heeft uitstaan. De precieze identiteit van de Fuserende Entiteit, de samenstelling van het aandelenkapitaal, de economische en andere rechten behorend bij iedere klasse aandelen in dat kapitaal en de ruilverhouding van toepassing op elke klasse aandelen in Seagull, zullen slechts worden vastgesteld door het bestuur van Seagull en van de Bieder en zullen worden goedgekeurd door de Raad van Commissarissen. De Raad van Commissarissen kan verzoeken om de benoeming van additionele, onafhankelijke financiële of juridische deskundigen om hem te adviseren over de redelijkheid van de voorgestelde ruilverhouding voor de aandelen in de Fuserende Entiteit, met het oog op de economische en andere rechten verbonden aan de aandelen in de Fuserende Entiteit die zullen worden ontvangen door de minderheidsaandeelhouders in vergelijking met de economische en andere rechten verbonden met de aandelen in Seagull die door hen direct voor de Fusiedatum worden gehouden.

Het is niet de bedoeling dat enige aandelen in de Fuserende Entiteit worden genoteerd aan enige beurs of op een andere manier openbaar worden verhandeld. Omdat de Fuserende Entiteit naar alle waarschijnlijkheid een besloten vennootschap met beperkte aansprakelijkheid zal zijn, zullen beperkingen gelden met betrekking tot de overdraagbaarheid van deze aandelen. Echter, de moeder van de Fuserende Entiteit kan (maar hoeft niet noodzakelijkerwijs) de nieuwe aandeelhouders in de Fuserende Entiteit het recht geven om voor een bepaalde periode na de Fusiedatum hun aandelen aan haar te verkopen, voor een prijs per aandeel gelijk aan de relevante prijs uiteengezet in dit Biedingsbericht (d.w.z. de Biedprijs per Aandeel). Aandeelhouders die hun aandelen niet hebben aangeboden tijdens het Bod, moeten zich bewust zijn dat wanneer het Bod gestand wordt gedaan en een Opwaartse Juridische Fusie wordt geïmplementeerd, met uitzondering van de mate en voor de periode dat een verkooprecht is gegarandeerd in overeenstemming met de vorige zin, de aandelen in de Fuserende Entiteit die zij ontvangen in ruil voor hun Aandelen niet liquide zullen zijn en niet vrijelijk kunnen worden verhandeld.

Een ander gevolg van het feit dat de Fuserende Entiteit in een Opwaartse Juridische Fusie een niet genoteerde besloten vennootschap met beperkte aansprakelijkheid zal zijn, is dat statutaire bepalingen die van toepassing zijn op de governance van openbare of genoteerde ondernemingen niet van toepassing zullen zijn op de Fuserende Entiteit en de rechten van de minderheidsaandeelhouders in de Fuserende Entiteit beperkt zullen worden tot het wettelijke minimum.

Als een alternatief voor of voorafgaand aan een Opwaartse Juridische Fusie als hierboven beschreven kan de Bieder kiezen om een juridische fusie te implementeren waarbij de Fuserende Entiteit de Verdwijnende Entiteit zal zijn en Seagull de Verkrijgende Entiteit, een zogenaamde Neerwaartse Juridische Fusie. In een dergelijk geval zullen de aandeelhouders van Seagull hun Aandelen blijven houden. De Aandelen die worden gehouden door de Fuserende Entiteit zullen worden ingetrokken, en aan de moeder van de Fuserende Entiteit zullen nieuwe aandelen worden uitgegeven, rekening houdend met alle activa of passiva die de Fuserende Entiteit bezit op de Fusiedatum, anders dan aandelen.

Een dergelijke Neerwaartse Juridische Fusie zal op zichzelf de notering van Seagull aan Euronext Amsterdam of handelbaarheid van Aandelen niet beïnvloeden. Dit zal echter de Bieder en Seagull niet verhinderen om te streven naar een beëindiging van die notering, als ze hiertoe bevoegd zijn onder de toepasselijke noteringsregels. De Bieder kan, als en wanneer hij hiertoe bevoegd is, ook volgend op een Neerwaartse Juridische Fusie een uitkoopprocedure starten met betrekking tot de aandelen in Seagull die hij op dat moment niet bezit (anders dan de aandelen die Seagull of haar dochtermaatschappijen bezitten). De voltooiing van het Bod en enige daaropvolgende maatregelen geïnitieerd door de Bieder en Seagull, binnen de beperkingen gesteld door de toepasselijke wet- en regelgeving, zullen bovendien waarschijnlijk het handelsvolume van de Aandelen aanzienlijk verminderen en daarmee de liquiditeit van een aangehouden investering in de Aandelen na de Dag van Betaling.

Nadat een Neerwaartse Juridische Fusie is geïmplementeerd, kan de Bieder beslissen om een Opwaartse Juridische Fusie of andere fusie transactie te implementeren, met een andere Fuserende Entiteit dan degene die verdwenen is als gevolg van de Neerwaartse Juridische Fusie. De vorige subparagraaf, betreffende een Opwaartse Juridische Fusie en de aandelen die zullen worden uitgegeven aan houders van aandelen in Seagull, zal *mutatis mutandis* van toepassing zijn in een dergelijk geval.

In het geval dat de Bieder ervoor kiest een Juridische Fusie na te streven, zal het proces om dit te bereiken onderworpen zijn aan Titel 7 van Boek 2 van het Burgerlijk Wetboek en enige andere toepasselijke bepalingen van Nederlands recht. Het proces zal garanties bevatten om te verzekeren dat door onafhankelijke experts wordt bevestigd dat de ruilverhoudingen van toepassing op de aandelen in Seagull, redelijk zijn en zal uiteindelijk worden goedgekeurd door de Raad van Commissarissen. Het proces vereist ook een besluit van de aandeelhoudersvergadering van de Verdwijnende Entiteit en, onder bepaalde omstandigheden, van de algemene vergadering van aandeelhouders van de Verkrijgende Entiteit. Aandeelhouders moeten zich echter bewust zijn dat deze garanties en procedures de Verkrijgende Entiteit, waarvan zij aandeelhouders zullen zijn vanaf de Fusiedatum, er niet van weerhoudt om substantieel meer schulden te hebben in verhouding tot zijn balanstotaal dan Seagull momenteel heeft.

#### 18.9.5 Verkoop van Activa

Op elk moment nadat het Bod gestand is gedaan, kunnen de Bieder en Seagull stappen nemen om een verkoop door Seagull van alle of nagenoeg alle van haar activa aan een onderneming die direct of indirect volledig eigendom van de Bieder of van een (rechts)persoon gelieerd aan de Bieder is, te effectueren. Deze verkoop zal plaatsvinden tegen een waarde berekend op basis van de aandelenprijzen uiteengezet in dit Biedingsbericht.

Een bevestiging van de redelijkheid van een dergelijke transactie zal worden gevraagd van onafhankelijke experts. Voor een dergelijke transactie zal daarnaast de goedkeuring van de Raad van Commissarissen zijn vereist, alsmede de goedkeuring van de algemene vergadering van aandeelhouders van Seagull. Na een dergelijke verkoop kan Seagull worden geliquideerd, in welk geval de opbrengsten van de transactie worden verdeeld onder zijn aandeelhouders, in overeenstemming met de bepalingen van de statuten van Seagull van kracht op het relevante tijdstip.

#### 18.9.6 Andere mogelijke maatregelen

De Bieder behoudt zich het recht voor om elke juridisch toegestane methode aan te wenden om 100% van Seagull's aandelenkapitaal te verkrijgen, alsmede om de structuur van Seagull in lijn te brengen met de nieuwe houdster- en financieringsstructuur, die zal bestaan zodra het Bod gestand is gedaan, inclusief de inbreng van activa door de Bieder in Seagull tegen de uitgifte van aandelen in het kapitaal van Seagull, daarbij de voorkeursrechten (indien aanwezig) van andere Seagull Aandeelhouders uitsluitend, dit alles in overeenstemming met Nederlands recht en de statuten van Seagull zoals die van kracht zijn op het relevante tijdstip.

Tenslotte houdt de Bieder zich het recht voor om zich te richten op wijziging van de bedrijfs- en kapitaalsstructuur van Seagull, met inbegrip van interne reorganisaties, wijziging van de accountingmethodes zoals deze worden toegepast door Seagull, wijziging van de Seagull Statuten, een liquidatie, een splitsing zoals beschreven in artikel 2:334a van het Burgerlijke Wetboek of een claimemissie,

alles met inachtneming van de relevante bepalingen van Nederlands recht en de Seagull Statuten (zoals die van tijd tot tijd worden gewijzigd). Gedane distributies kunnen, onder andere, de vorm hebben van een distributie uit de reserves, een interim dividend, een slotdividend, een betaling na intrekking of, in het geval Seagull wordt geliquideerd, een distributie van de liquidatieopbrengsten.

#### **18.10 Dividendbeleid**

Seagull heeft in het verleden geen dividend uitgekeerd. Bieder is voornemens dat beleid te handhaven.

#### **18.11 Brief aan de Aandeelhouders**

Geachte aandeelhouder,

De buitengewone vergadering van aandeelhouders, die zal worden gehouden op 4 april 2007, is een belangrijke gebeurtenis voor Seagull en de Aandeelhouders. Tijdens deze vergadering zal u worden geïnformeerd over het Bod.

Op 9 februari 2007 hebben de Vennootschap en Bieder de Fusieovereenkomst getekend, waarbij is overeengekomen dat Bieder een Bod zal doen tegen een prijs van EUR 4,33 per Aandeel, mits aan bepaalde Voorwaarden is voldaan. Hierbij willen wij u graag informeren over de achtergrond van de voorgestelde transactie. Zoals u zult zien, hebben de Raad van Commissarissen en de Raad van Bestuur deze transactie uitgebreid en zorgvuldig in overweging genomen. Wij zijn tot de conclusie gekomen dat het Bod in het belang is van de Vennootschap en haar belanghebbenden, inclusief de Aandeelhouders. Wij ondersteunen het Bod en bevelen de Aandeelhouders unaniem aan het Bod te accepteren. De details van het Bod zijn uiteengezet in Paragraaf 9 (*Invitation to the Shareholders*) van het Biedingsbericht met betrekking tot het Bod.

##### **Achtergrond en verdere overwegingen**

De Raden hebben regelmatig de bedrijfsactiviteiten, strategie, alternatieven en vooruitzichten van de Vennootschap geëvalueerd in het kader van marktontwikkelingen en met het oog op verbetering van haar concurrentiepositie. De laatste jaren heeft de Vennootschap meerdere overnames gedaan om haar portfolio te verbreden en haar positie op de markt te versterken. Desondanks is de omvang van de Vennootschap nog relatief klein.

De Raden zijn van mening dat de beursnotering van de Aandelen er potentieel aan in de weg staat dat de Vennootschap haar mogelijkheden ten volle kan benutten. Daarbij komt dat, door het formaat van de Vennootschap, de liquiditeit in de aandelen nog erg beperkt is.

De Raden zijn ook van mening dat de afgelopen jaren klanten van verschillende omvang steeds vaker technologie en software oplossingen aanschaffen bij een kleinere groep van aanbieders die meer financiële en operationele bronnen hebben om de technologische en operationele eisen van de klant te ondersteunen. Hierdoor is het moeilijker voor de middelgrote en kleinere aanbieders van technologie en software om succesvol hun producten te verkopen in vergelijking met de grotere aanbieders.

In deze context zijn de Raden uiteindelijk tot de conclusie gekomen dat de belangen van de Aandeelhouders het beste worden gediend door de rechtsvorm van de Vennootschap om te zetten in een besloten vennootschap en de beursnotering van de Vennootschap te beëindigen.

Wij menen dat het omzetten van de rechtsvorm van de Vennootschap in een besloten vennootschap (door middel van een openbaar bod op alle Aandelen door de Bieder) en vervolgens de beursnotering te beëindigen, aanmerkelijke voordelen zullen hebben voor de Vennootschap, haar aandeelhouders, werknemers, klanten en andere belanghebbenden. Deze voordelen omvatten onder andere:

- (i) het Bod biedt de Aandeelhouders de kans om hun belang in de Vennootschap te verkopen tegen een aantrekkelijke meerwaarde ten opzichte van de prijs per Aandeel voor het persbericht van 5 december 2006. Dit stelt de Aandeelhouders in staat om direct geldelijke opbrengst te realiseren voor hun Aandelen en neemt aanmerkelijke prijsrisico's met betrekking tot toekomstige investeringen weg, alsook onzekerheid omtrent de uitvoering en liquiditeitskortingen bij de verkoop van de Aandelen;
- (ii) het Bod kan de Vennootschap de mogelijkheid bieden om de unieke kwaliteiten en eigenschappen van de Bieder te gebruiken. Het Bod zou de Vennootschap toegang kunnen geven tot additionele financiële bronnen, die voor de Vennootschap een groeistrategie mogelijk zou maken, door onder andere (internationale) uitbreiding;

- (iii) een gecombineerde Vennootschap zal streven naar het vergroten van het klantenbestand van de Vennootschap en het gevestigde marktaandeel in de SOA, legacy integratie en in Web services software sectoren door zowel een grotere wereldwijde aanwezigheid te leveren alsook het leveren van meer bronnen om grote en kleine klanten te ondersteunen, en door te gaan met het uitbreiden van het klantenbestand; en
- (iv) het Bod zou kunnen leiden tot synergie-effecten door de fusie van de activiteiten van de Bieder en de Vennootschap. Deze synergie-effecten omvatten zowel kostenbesparingen door het combineren van systemen en het delen van ondersteunende functies alsook hogere opbrengsten door kruisbestuiving tussen de twee Vennootschappen.

De Vennootschap zal doorgaan met haar werkzaamheden onder haar bestaande namen en labels. Er worden geen substantiële negatieve consequenties van het Bod verwacht met betrekking tot werkgelegenheid en voorwaarden voor werknemers van de Vennootschap en haar dochtervennootschappen op de korte termijn.

### **Overzicht van het proces**

De Vennootschap heeft AGC ingehuurd als haar onafhankelijke financiële adviseur. AGC heeft financieel advies aan de Vennootschap verstrekt tijdens dit proces, en, als onderdeel van haar functie als financieel adviseur van de Vennootschap, heeft zij vanuit financieel oogpunt ook een oordeel afgegeven over de 'fairness' van de prijs van EUR 4,33 per Aandeel. De 'fairness opinie' is opgenomen in Paragraaf 7 (*Fairness Opinion*) van het Biedingsbericht.

Op 9 februari 2007 hebben de Vennootschap en Bieder de Fusieovereenkomst getekend, waarbij is overeengekomen dat Bieder een Bod zal doen tegen een prijs van EUR 4,33 per Aandeel, mits aan bepaalde voorwaarden is voldaan.

Het secretariaat van de Sociaal-Economische Raad is op de hoogte gesteld van het Bod en de Vennootschap heeft verder gehandeld in overeenstemming met het SER-besluit Fusiegedragsregels.

### **Aanbeveling**

De Raad van Commissarissen en de Raad van Bestuur bevelen de Aandeelhouders unaniem aan het Bod te accepteren. Zie Paragraaf 8 (*Recommendation by the Supervisory Board and the Management Board*) van het Biedingsbericht.

### **Te ondernemen acties**

Als u Aandelen houdt via een Aangesloten Instelling (als bedoeld in artikel 1 van de Wet giraal effectenverkeer) en het Bod wilt aanvaarden, wordt u verzocht om uw aanvaarding zo snel mogelijk bekend te maken bij uw bank of uw effectenbemiddelaar, in ieder geval niet later dan 15.00 uur CEST (09.00 uur EDT) op 17 april 2007. De procedure voor de aanvaarding van het Bod is uiteengezet in Paragraaf 9 (*Invitation to the Shareholders*) van het Biedingsbericht.

15 maart 2007

Raad van Commissarissen

Dhr. Tom van der Loo

Dhr. Frank van Pelt

Dhr. Bonaficius Henricus Maria Jansen

Dhr. Gabriel Thomas Rozman

Raad van Bestuur

Dhr. Donald Paul Addington

## **18.12 Aanbeveling door de Raad van Commissarissen en de Raad van Bestuur**

De Raden hebben de strategische, financiële en sociale aspecten van het Bod grondig in overweging genomen en zijn tot de conclusie gekomen dat het Bod in het belang is van de Onderneming, de Aandeelhouders en andere belanghebbenden in de Onderneming. De Raden hebben een aantal factoren in overweging genomen, zoals uiteengezet in dit Biedingsbericht, waaronder (niet limitatief) de strategische geschiktheid, gebaseerd op het combineren van de kwaliteiten van de Bieder en de Onderneming en de potentiële synergievoordelen van de combinatie van de Bieder en de Onderneming (zoals uiteengezet in Paragraaf 5.4 van het Biedingsbericht (*The Offeror's Rationale for the Offer*)), alsook de continuïteit van de onderneming, de duurzaamheid van de werkgelegenheid, de hoogte van uitvoeringsrisico's en de Prijs per Aandeel.

De Raad van Commissarissen en de Raad van Bestuur zijn tot de conclusie gekomen dat het Bod redelijk en rechtvaardig is voor de Aandeelhouders. Met betrekking hiertoe wordt verwezen naar de "fairness

opinion" die is afgegeven door AGC, zoals opgenomen in Paragraaf 7 (*Fairness Opinion*) van het Biedingsbericht.

Onder verwijzing naar het bovenstaande, ondersteunen de Raad van Commissarissen en de Raad van Bestuur het Bod volledig en bevelen zij de Aandeelhouders unaniem aan om het Bod te aanvaarden en hun Aandelen aan te bieden onder het Bod.

Raad van Commissarissen

Raad van Bestuur

Dhr. Tom van der Loo

Dhr. Donald Paul Addington

Dhr. Frank van Pelt

Dhr. Bonaficius Henricus Maria Jansen

Dhr. Gabriel Thomas Rozman

### **18.13 Voorwaarden, Aanmeldingstermijn, gestanddoening, verlenging, betaling en levering**

#### **18.13.1 Voorwaarden**

Het Bod zal gestand worden gedaan indien voldaan is aan de Voorwaarden zoals beschreven in Paragraaf 5.2 (*Offer Conditions*), of, indien dat onder het toepasselijke recht is toegestaan, daarvan afstand is gedaan door de partij of partijen die daartoe gerechtigd is of zijn.

#### **18.13.2 Aanmeldingstermijn**

De Aanmeldingstermijn vangt aan om 09:00 uur CET (04:00 uur EDT) op 19 maart 2007 en eindigt, tenzij de termijn wordt verlengd met inachtneming van artikel 9o lid 5 van het Bte 1995, op 17 april 2007 om 15.00 uur CEST (09:00 uur EDT). Zie Paragraaf 9.4 (*Acceptance Period*).

In het geval dat aan één of meer van de Voorwaarden niet is voldaan, mag de Bieder de Aanmeldingstermijn één of meerdere malen verlengen totdat aan alle Voorwaarden is voldaan of daarvan afstand is gedaan. Zie Paragraaf 9.6 (*Extension*). Gedurende een verlenging van de Aanmeldingstermijn zullen de reeds aangemelde en niet teruggetrokken Aandelen onder het Bod blijven vallen, echter onder voorbehoud van het recht van elke Aandeelhouder om Aandelen terug te trekken die hij of zij al heeft aangemeld in overeenstemming met Toepasselijk Recht, inclusief artikel 9o, sub 5 van het Bte 1995.

Aandelen die zijn aangemeld op of voor de Sluitingsdatum mogen niet worden teruggetrokken, onder voorbehoud van het recht om een aanmelding terug te trekken tijdens de verlenging van de Aanmeldingstermijn met inachtneming van de bepalingen van artikel 9o, lid 5 van het Bte 1995.

Indien aan alle Voorwaarden is voldaan of, voor zover van toepassing, daar afstand van is gedaan, zal de Bieder alle Aandelen aanvaarden die op geldige wijze zijn aangemeld (of op ongeldige wijze, indien de Bieder de aanmelding desalniettemin aanvaardt) en niet eerder zijn teruggetrokken in overeenstemming met de voorwaarden van het Bod met inachtneming van de procedures zoals uiteengezet in Paragraaf 9.2 (*Acceptance by Shareholders*).

#### **18.13.3 Gestanddoening**

Het Bod wordt gedaan onder het voorbehoud van vervulling van de Voorwaarden. De Bieder behoudt zich het recht voor afstand te doen van één of meer van de Voorwaarden, met dien verstande dat van een aantal Voorwaarden slechts afstand kan worden gedaan samen met Seagull, en dat van Voorwaarde 18.4(h) door geen der partijen afstand kan worden gedaan. Zie Paragraaf 5.2 (*Offer Conditions*). Indien de Bieder afstand wenst te doen van één of meer Voorwaarden dan wel deze wenst te beperken, dan zal de Bieder op een daartoe redelijkerwijs geschikte wijze de Aandeelhouders informeren dat de Bieder afstand doet van deze Voorwaarde(n) dan wel deze wenst te beperken, op de wijze zoals voorzien in het Toepasselijke Recht.

Tenzij de Aanmeldingstermijn is verlengd, zal de Bieder binnen vijf Werkdagen volgend op de Sluitingsdatum, zoals voorgeschreven is onder het Bte 1995, zijnde de Gestanddoeningsdatum, bekend maken of aan de Voorwaarden is voldaan of dat er door de Bieder afstand van wordt gedaan en zal de Bieder aankondigen of (i) het Bod gestand wordt gedaan, (ii) er nog steeds onzekerheid is over de vervulling van enige Voorwaarden of (iii) dat het Bod wordt ingetrokken omdat er niet is voldaan aan de Voorwaarden of omdat daarvan geen afstand is gedaan door de Bieder, alles met inachtneming van artikel 9t lid 4 van het Bte 1995.



Wanneer de Bieder aankondigt dat het Bod gestand wordt gedaan, dan zal de Bieder alle Aandelen aanvaarden die op geldige wijze zijn aangemeld (of op ongeldige wijze, indien de Bieder de aanmelding desalniettemin aanvaardt). Bieder kan door middel van een na-aanmeldingstermijn van maximaal vijftien Werkdagen na de Gestanddoeningsdatum ("Na-Aanmeldingstermijn"), Aandelen blijven aanvaarden die gedurende de Na-Aanmeldingstermijn op geldige wijze zijn aangemeld (of op ongeldige wijze, indien de Bieder de aanmelding desalniettemin aanvaardt).

Zie Paragraaf 9.5 (*Declaring the Offer Unconditional*).

#### 18.13.4 Verlenging

De Bieder kan het Bod verlengen tot na de Sluitingsdatum, in welk geval alle verwijzingen in dit Biedingsbericht naar de "Sluitingsdatum" of naar "15.00 uur CEST (09:00 uur EDT), 17 april 2007" worden verschoven naar de uiterste datum en tijd waarnaar het Bod is verlengd, tenzij uit de context anders blijkt. Een bank of effectenmakelaar kan een vroegere uiterste termijn vaststellen voor de communicatie door de houders van Aandelen teneinde de bank of effectenmakelaar in staat te stellen zijn acceptaties tijdig aan het Betaal- en Wisselkantoor te communiceren.

Indien de Aanmeldingstermijn wordt verlengd met als gevolg dat de verplichting volgend uit artikel 9t van het Bte 1995 tot aankondiging of het Bod al dan niet gestand wordt gedaan, wordt uitgesteld, zal dit, met inachtneming van Toepasselijk Recht, maar in elk geval uiterlijk op de derde Werkdag na de oorspronkelijke Sluitingsdatum openbaar worden aangekondigd, met inachtneming van het bepaalde in artikel 9o lid 5 van het Bte 1995. Zie Paragraaf 9.6 (*Extension*).

#### 18.13.5 Betaling, levering

Indien de Bieder aankondigt dat het Bod gestand wordt gedaan, zullen de Aandeelhouders, die hun Aandelen voor of op de Sluitingsdatum hebben aangemeld en geleverd aan de Bieder, de Biedprijs per Aandeel ontvangen voor de Aandelen die op geldige wijze zijn aangemeld (of op ongeldige wijze, mits de Bieder de aanmelding en levering daarvan desalniettemin aanvaardt) en geleverd. Zie Paragraaf 9.7 (*Settlement*).

### 18.14 Bieder

De Bieder, een besloten vennootschap met beperkte aansprakelijkheid, werd op 28 februari 2007 opgericht naar Nederlands recht en is statutair gevestigd te Amsterdam, Nederland. De Bieder is een 100% dochter van Rocket Software, Inc. (een vennootschap opgericht naar het recht van Delaware, VS). De raad van bestuur van de Bieder bestaat uit de heren Andrew Youniss en Johan Magnusson Gedda. Zie Paragraaf 12 (*Information on the Offeror*).

### 18.15 Aankondigingen

Aankondigingen verband houdend met voorafgaande paragrafen zullen middels een persbericht of een advertentie worden gedaan en tevens worden gepubliceerd in de Officiële Prijscourant en het Financieele Dagblad.

Met inachtneming van de Nederlandse wet- en regelgeving met betrekking tot openbare biedingen en zonder de wijze waarop de Bieder een publieke aankondiging kan doen te beperken, heeft de Bieder geen verplichting enige publieke aankondiging te doen anders dan hierboven beschreven.

## 18.16 Verkrijgbaarheid Informatie

Exemplaren van dit Biedingsbericht, het aanmeldingsformulier alsmede de Seagull Statuten en de jaarrekeningen van Seagull voor het Boekjaar 2004, het Boekjaar 2005, het Boekjaar 2006 en de eerste halfjaarcijfers van het Boekjaar 2007, welke documenten door middel van verwijzing (*incorporation by reference*) zijn opgenomen in, en een onderdeel vormen van, dit Biedingsbericht, zijn kosteloos verkrijgbaar ten kantore van Seagull en het Betaal- en Wisselkantoor en kunnen worden verkregen door contact op te nemen met Seagull of het Betaal- en Wisselkantoor op de hieronder aangegeven adressen:

### Seagull

Seagull Holding N.V.  
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Tel: +31 (0) 78 632 2800

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Email: [investorrelations@seagullsoftware.com](mailto:investorrelations@seagullsoftware.com)

### Het Betaal- en Wisselkantoor

Fortis Bank (Nederland) N.V.  
Afdeling B.I.S.  
Rokin 55  
1022 KK Amsterdam  
Nederland

Tel: +31 (0) 20 527 1440

## 18.17 Buitengewone Vergadering van Aandeelhouders

Om 11:00 uur CEST (05:00 uur EDT) op 4 april 2007 zal de Buitengewone Vergadering van Aandeelhouders worden gehouden in het Sheraton Hotel te Schiphol, te Amsterdam, waarin naast andere agendapunten, het Bod zal worden toegelicht en besproken overeenkomstig het bepaalde in artikel 9q Bte 1995. De informatie die voor de Aandeelhouders noodzakelijk is voor een adequate beoordeling van het Bod, zoals bedoeld in artikel 9q Bte 1995, is opgenomen in dit Biedingsbericht.

## 18.18 Beoogd Tijdschema

(alle tijden zijn CET of CEST)

Verwachte Datum en Tijd

Gebeurtenis

09:00 uur CET, 16 maart 2007

Publicatie van het bericht met betrekking tot de verkrijgbaarstelling van het Biedingsbericht in overeenstemming met artikel 9o lid 2 van het Bte 1995.

09:00 uur CET, 19 maart 2007

Aanvang van de Aanmeldingstermijn onder het Bod

11:00 uur CEST, 4 april 2007

Buitengewone Vergadering van Aandeelhouders, waarin onder andere het Bod zal worden toegelicht en besproken, overeenkomstig het bepaalde in artikel 9q lid 1 van het Bte 1995.

15:00 uur CEST, 17 april 2007,  
behoudends verlenging

Sluitingsdatum

Uiterste datum waarop Aandeelhouders hun Aandelen onder het bod kunnen aanmelden.

Uiterlijk vijf Werkdagen na de  
Sluitingsdatum

Gestanddoeningsdatum

De dag waarop de Bieder openbaar aankondigt of het Bod gestand wordt gedaan, zijnde uiterlijk vijf Werkdagen na de Sluitingsdatum, overeenkomstig artikel 9t lid 4 van het Bte 1995.

Uiterlijk drie Werkdagen na de  
Gestanddoeningsdatum

Dag van Betaling

De datum op welke, overeenkomstig met de Voorwaarden onder het Bod, de Bieder zal overgaan tot Betaling van de Biedprijs per Aandeel aan de Aandeelhouders die op de geldige wijze hun Aandelen hebben aangemeld (of op ongeldige wijze, mits de Bieder de aanmelding en levering daarvan desalniettemin aanvaardt) onder de voorwaarde dat het Bod wordt gestand gedaan, zijnde uiterlijk drie Werkdagen na de Gestanddoeningsdatum.

Maximaal 15 Werkdagen na de  
Gestanddoeningsdatum

Na-Aanmeldingstermijn

Bieder kan gedurende een Na- Aanmeldingstermijn van maximaal vijftien additionele Werkdagen na de Gestanddoeningsdatum Aandelen blijven aanvaarden die op geldige wijze zijn aangemeld (of op ongeldige wijze, indien de Bieder de aanmelding desalniettemin aanvaardt)

**Adviser to Offeror**

**Legal adviser as to Dutch Law**

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