

**Report by the Executive Board to the Annual General Meeting  
on item 8 of the agenda on the exclusion of subscription rights  
in accordance with Section 221 paragraph 4 sentence 2 AktG in  
conjunction with Section 186 paragraph 3 and paragraph 4  
sentence 2 AktG**

The proposed resolution foresees the authorisation of the Executive Board, with the approval of the Supervisory Board, to issue, once or on several occasions, until 2 March 2015, bearer or registered convertible bonds and/or bonds with warrants, profit participation rights and/or participating bonds (or combinations of these instruments) (hereinafter called "bonds") with or without a limited term in the total nominal amount of up to EUR 700,000,000.00 and to grant the holders or creditors of bonds conversion or option rights to no-par-value bearer shares in the Company with a proportionate amount of the subscribed capital of up to €52,313,277.44 as more closely defined by the conversion and option terms.

The issuance of bonds in the aforementioned sense offers the Company the opportunity, in addition to the traditional possibilities of taking up debt and equity, of exploiting attractive financing alternatives on the capital market depending on the market situation. In particular, the authorisation to issue profit-dependent or profit-oriented instruments such as profit participation rights and participating bonds offers the opportunity to strengthen the Company's liquidity by issuing so-called hybrid financial instruments and ensure the establishment of the prerequisites for future corporate development. For the aforementioned reasons, the creation of authorisation for the issuance of bonds will be proposed to the Annual General Meeting.

The issuance of bonds makes it possible to take up debt, which can be classified, not only for rating purposes but also for accounting purposes, as equity or as similar to equity. The conversion or option premiums earned and the attribution to equity benefit the Company's capital basis. Apart from the granting of conversion and/or option rights, the further possibilities foreseen of establishing conversion obligations or the combination of convertible bonds, warrants, profit participation rights and/or participating bonds increase the scope for the form of these financial instruments. The authorisation furthermore enables the Company to place the bonds itself or via its indirect or direct affiliated and associated companies. Besides euros, bonds can also be issued in other currencies, for example in the legal currency of an OECD country, with and without a limited term.

For bonds that grant a conversion or option right, the bond terms can provide greater flexibility in that the Company does not grant no-par-value bearer shares in the Company to the owner of a conversion or option right, but pays the countervalue in cash.

With the Act on the Implementation of Shareholders' Rights Directive (ARUG) that largely came into force in September 2009, the legislator clarified that, in

the event of a conditional capital increase, it is sufficient to provide support for convertible bonds and similar instruments if the empowerment resolution on the issuing of the respective instruments stipulates a minimum issue amount or the basis for the calculation of the shares to be issued on conversion or exercising an option. The legislator therefore reversed the decisions of some courts, which – contrary to customary practice up to that time – demanded in the event of a resolution on conditional capital that a resolution should be passed at the Annual General Meeting giving a specific conversion or option price.

In view of the clarification of the legal position achieved by the ARUG, the empowerment stipulates that the conversion or option price must amount to at least 80 % of the average price of the Company's shares as defined in detail in the empowerment. Since on the basis of the ARUG the conversion or option price can be defined as a minimum price, the empowerment also stipulates that the conversion price and the exchange ratio can be variable, in particular based on the share price during the term.

The conversion or option rights, inasmuch as an adjustment has not already been enforced by law, are adjusted irrespective of Section 9 paragraph 1 AktG to preserve the value, as long as the economic value of the existing conversion or option rights has not been diluted during the term of the convertible bond (e.g. by a capital increase) and no subscription right is granted as compensation.

The shareholders shall generally be granted a subscription right. The subscription right is to be excluded in the following circumstances:

If bonds with conversion or option rights and/or conversion obligation are issued, the Executive Board shall be authorised, subject to the approval of the Supervisory Board, to exclude the subscription right in analogous application of Section 186 paragraph 3 sentence 4 AktG provided the share issue on account of conversion and/or option rights or conversion obligations is limited to 10 % of the Company's subscribed capital. This ceiling for the simplified subscription right exclusion is reduced by the proportionate amount of the subscribed capital allocated to those shares or convertible bonds and/or warrants, which are issued or sold after 3 March 2010 with the exclusion of subscription rights in direct or commensurate application of Section 186 paragraph 3 sentence 4 AktG. These offsets ensure that no bonds are issued if this would have the consequence that the subscription right of the shareholders for altogether more than 10 % of the subscribed capital is excluded in direct or commensurate application of Section 186 paragraph 3 sentence 4 AktG without a special relevant reason. This further restriction is in the interests of shareholders who wish to maintain the percentage of their shareholding to the greatest extent possible in the event of capital measures.

In the event of such a subscription right exclusion, the corresponding application of Section 186 paragraph 3 sentence 4 AktG results in the need to stipulate the issue price of the bonds at a level that is not significantly lower than the market value. This fulfils the protection requirement for the shareholders as regards dilution of their shareholdings. As a result of the definition of the issue price of the bonds at a level not significantly lower than

the arithmetical market value that is foreseen in the authorisation, the value of a subscription right would be practically reduced to zero. In order to ensure this requirement for the issue of bonds, the issue price may not be significantly lower than the theoretical market value of the bonds with conversion and option rights in accordance with acknowledged financial mathematical methods. This ensures that the shareholders are then protected from dilution of their shareholdings and that the shareholders do not suffer any economic disadvantage from the exclusion of subscription rights. Shareholders who wish to maintain their percentage of the Company's subscribed capital or to acquire bonds in accordance with their shareholding quota can do this by buying them in the market.

Inasmuch as profit participation rights or participating bonds without conversion rights, option rights or conversion obligation are to be issued, the Executive Board is authorised, subject to the approval of the Supervisory Board, to exclude the shareholders' subscription right overall if these profit participation rights or participating bonds are in a similar form to debentures, i.e. do not establish membership rights in the Company, do not grant participation in liquidation proceeds and the amount of interest is not based on the amount of the net income, the unappropriated profit or the dividend. In addition, it is necessary that the interest rate and the issue price of the profit participation rights or profit participation bonds are in line with the current market conditions at the time of being issued. If the aforementioned prerequisites are fulfilled, no disadvantages will result for the shareholders from the exclusion of subscription rights, since the profit participation rights and participating bonds do not establish any membership rights and also grant no share of the liquidation proceeds or the Company's profits. Although it can be foreseen that the payment of interest will depend on the existence of an annual profit, an unappropriated profit or a dividend, on the other hand, a regulation that a higher annual net profit, higher unappropriated earnings or a higher dividend would result in a higher interest rate would not be permissible. Consequently, the issuance of profit participation rights or participating bonds will not change or dilute the shareholders' voting rights or their participation in the Company and its profits. Furthermore, since the terms of issuance are in line with the market, which is mandatory for this case of subscription right exclusion, this does not result in a significant value for the subscription right.

As a consequence of the two aforementioned possibilities of excluding the subscription right, the Company acquires the flexibility to take advantage of favourable capital market situations at short notice and is placed in the position to exploit a low level of interest rates or a favourable demand situation for an issue flexibly and at short notice. This is due to the fact that, contrary to an issue of bonds with subscription rights, the issue price can be fixed directly before placement, so that an increased risk of price changes during the subscription period can be avoided and the proceeds from the issue maximised in the interests of all shareholders. In addition, further advantages result from the elimination of the lead time connected with the subscription right, both as regards the cost of taking up the funds and the placement risks. Placement excluding subscription rights can not only reduce the safety margin that is otherwise necessary but also the cost of taking up the funds to the benefit of the Company and its shareholders.

The Executive Board is furthermore authorised, subject to the approval of the Supervisory Board, to exclude fractional amounts from the subscription right. Such fractional amounts can result from the amount of the respective issue volume and the necessity to present a practical subscription ratio. In these cases, the exclusion of the subscription right facilitates the handling of the issue. The free fractional amounts excluded from the shareholders' subscription right are turned into cash to the Company's best advantage either by being sold on the stock exchange or in some other way.

It is furthermore the intention that the Executive Board will be given the opportunity, subject to the approval of the Supervisory Board, to exclude the shareholders' subscription right in order to grant a subscription right to the holders or creditors of conversion and/or option rights or of convertible bonds with conversion obligations to the extent to which they would be entitled after exercising the conversion or option rights or after fulfilling the conversion obligations. The warrant and convertible bond conditions usually contain clauses which protect the holders or creditors of option and conversion rights from dilution. This improves the ability of these financial instruments to be placed on the market. A subscription right for holders of existing option or conversion rights makes it possible, in the event of the exercise of the authorisation, to prevent a reduction in the option or conversion price for holders of existing option or conversion rights. This ensures a higher issue price for the no-par-value bearer shares issued when exercising the option or conversion. Since this simplifies the placement of the issue, the exclusion of the subscription right serves the interests of the shareholders in an optimum financial structure of their Company.

The Executive Board will report at the next Annual General Meeting if the proposed authorisation is used.

The conditional capital proposed for resolution under item 8 of the agenda enables no-par-value bearer shares to be granted to the holders or creditors of bonds, which are issued as a result of the authorisation of the Company or its direct or indirect affiliated companies to be resolved under item 8 of the agenda at the Annual General Meeting of 3 March 2010, for a contribution in cash, and grants a conversion or option right to new no-par-value bearer shares in the Company, or stipulate a conversion obligation. Alternatively, the Company's own shares can also be used to the extent allowed by law to fulfil this.

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