

**Explanatory Report**  
**by the Executive Board of**  
**Norddeutsche Affinerie Aktiengesellschaft, Hamburg,**  
**in accordance with Section 175 paragraph 2 German Companies Act (AktG)**  
**on disclosures of takeover provisions pursuant to Section 315 paragraph 4**  
**German Commercial Code (HGB) as at**  
**the balance sheet date of 30 September 2008**

**TAKEOVER DIRECTIVE IMPLEMENTATION ACT**

The following disclosures are presented in accordance with Section 315 paragraph 4 of the German Commercial Code (HGB).

**Composition of subscribed capital**

The subscribed capital (share capital) of Norddeutsche Affinerie Aktiengesellschaft amounted to € 104,626,557.44 as at the balance sheet date and was divided into 40,869,749 no-par-value bearer shares each with a notional value of € 2.56 of the subscribed capital.

Each share grants the same rights and one vote at the Annual General Meeting.

**Shareholdings exceeding 10% of the voting rights**

One indirect shareholding in Norddeutsche Affinerie Aktiengesellschaft exceeds 10 % of the voting rights:

Salzgitter AG, Salzgitter, notified the Company in accordance with Section 21 paragraph 1 German Securities Trade Act on 19 September 2008 that its voting interest in Norddeutsche Affinerie Aktiengesellschaft had exceeded the threshold of 15 % of the voting rights on 18 September 2008 and had since then amounted to 17.646 % of the voting rights (representing 7,212,069 votes). Of this total, 17.646 % of the voting rights (representing 7,212,069 votes) are attributed to Salzgitter AG via Salzgitter Mannesmann GmbH, Salzgitter.

Accordingly, one direct investment in the capital of Norddeutsche Affinerie Aktiengesellschaft exceeds 10 % of the voting rights: according to the notification of Salzgitter AG, Salzgitter, dated 19 September 2008, Salzgitter Mannesmann GmbH, Salzgitter, has held 17.646 % of the voting rights (representing 7,212,069 votes) since 18 September 2008.

Salzgitter AG, Salzgitter, notified the Company in accordance with Section 21 paragraph 1 German Securities Trade Act on 10 October 2008 that its voting interest in Norddeutsche Affinerie Aktiengesellschaft had exceeded the threshold of 20 % of the voting rights on 9 October 2008 and amounted to 20.0001 % of the voting rights (representing 8,173,987 votes). Of this total, 20.0001 % of the voting rights (representing 8,173,987 votes) are attributed to Salzgitter AG via Salzgitter Mannesmann GmbH, Salzgitter.

Accordingly, one direct investment in the capital of Norddeutsche Affinerie Aktiengesellschaft exceeds 20 % of the voting rights: according to the notification of Salzgitter AG, Salzgitter, dated 10 October 2008, Salzgitter Mannesmann GmbH, Salzgitter, has held 20.0001 % of the voting rights (representing 8,173,987 votes) since 9 October 2008.

### **Appointment and removal of Executive Board members and amendments to the Articles of Association**

The appointment and removal of members of the Executive Board of Norddeutsche Affinerie Aktiengesellschaft is covered by Sections 84 and 85 German Companies Act and Section 31 Co-determination Act in conjunction with Section 6 paragraph 1 of the Articles of Association. Amendments to the Articles of Association are subject to the approval of the Annual General Meeting. The resolution at the Annual General Meeting is passed by a majority that must comprise at least three quarters of the subscribed capital represented in the vote; Section 179 et seq. German Companies Act applies. In accordance with Section 11 paragraph 9 of the Articles of Association, the Supervisory Board is authorised to resolve amendments to the Articles of Association that only relate to their wording.

### **Power of the Executive Board to issue shares**

In accordance with Section 4 paragraph 2 of the Articles of Association, the Executive Board is empowered, with the approval of the Supervisory Board, to increase the Company's subscribed capital in the period until 29 March 2011 by issuing new no-par-value shares in exchange for a cash contribution and/or a contribution in kind once or in several instalments by up to €38,046,026.24. The shareholders shall be granted a subscription right. The Executive Board is, however, authorised, subject to the approval of the Supervisory Board, to exclude shareholder subscription rights once or on several occasions:

- a) inasmuch as it is necessary to exclude subscription rights for possible fractional amounts,
- b) up to an arithmetical nominal value totalling €38,046,026.24 if the new shares are issued for a contribution in kind,

- c) for capital increases against cash contributions up to arithmetical nominal value totalling € 10,462,653.44 or, if this amount is lower, by a total of 10 % of the subscribed capital existing when this power was exercised for the first time (in each case taking into account the possible use of other authorisations to exclude the subscription right in accordance with or in the corresponding application of Section 186 paragraph 3 sentence 4 German Companies Act), if the issuing price of the new shares is not significantly lower than the price of company shares in the same category on the stock exchange at the time when the issuing price is finally fixed,
- d) inasmuch as it is necessary to grant holders or creditors of bonds with bonds with warrants or convertible bonds issued by the Company relating to shares a subscription right for new shares to the same extent as they would be entitled after exercising their option or conversion rights.

### **Power of the Executive Board to repurchase shares**

- a) With a resolution of the Annual General Meeting on 29 February 2008, the Company was empowered until 28 August 2009 to repurchase its own shares (treasury shares) up to a total of 10 % of the current subscribed capital. Together with other own shares held by the Company or attributable to it in accordance with Section 71a et seq. German Companies Act, the shares acquired by the Company based on this authorisation shall at no time exceed 10 % of the Company's current subscribed capital. The acquisition of shares for the purpose of trading with own shares is excluded.

The power may be exercised in full or in instalments, once or several times, in pursuance of one or several purposes, by the Company or by its group companies or by third parties for the account of the Company or its group companies.

The acquisition may be effected at the option of the Executive Board via the stock exchange or by means of a public tender offer directed to all shareholders or by means of a public invitation to submit such an offer. In the case of acquisition via the stock exchange, the consideration paid per share (excluding transaction costs) shall not be more than 10 % higher or 50 % lower than the mean value of the closing prices for the Company's shares of the same category in Xetra trading (or a comparable successor system) on the last five trading days at the Frankfurt Stock Exchange before entering into the obligation to purchase. In the case of a public purchase offer or a public invitation to submit a purchase offer, the purchase price offered or the threshold amounts per share (excluding transaction costs) shall not be more than 20 % higher or 50 % lower than the mean value of closing prices for the Company's shares of the same category in Xetra trading (or a comparable successor system) on the last five trading days at the Frankfurt Stock Exchange before the publication of the offer or the public invitation to submit a purchase offer. If significant fluctuations to the relevant share price occur following the publication of a purchase offer or the public invitation to submit a purchase offer, the offer or the invitation to submit such an offer can be amended. In this case, the relevant share price shall be determined in accordance with the closing price for the Company's shares of the same category in Xetra trading (or a comparable successor system) at the Frankfurt Stock Exchange on the last trading date before publication of the amendment; the 20 % limit for a higher offer or the 50 % for a lower offer shall be applied to this amount. The volume of the offer or the invitation to submit

purchase offers can be limited. If the total acceptances of the offer or the invitation to submit offers by the shareholders exceed this volume, the acquisition or the acceptances must be carried out in proportion to the shares offered in each case. Preferential purchases or preferential acceptances of smaller lots of up to 100 shares in the Company offered per Company shareholder can be foreseen. The purchase offer or invitation to submit such an offer can include further conditions.

b) The Executive Board is empowered to use shares in the Company that are purchased on account of this power for all legally permitted purposes, and in particular for the following purposes:

aa) Own shares that have been acquired can be sold, also in a way other than a sale via the stock exchange or by means of an offer to all of the shareholders, if the shares are sold in return for a cash payment at a price that is not materially lower than the stock market price of the Company's shares of the same category at the time of the sale. The relevant stock market price within the meaning of the above-mentioned rule shall be regarded as the mean value of the closing prices for the Company's shares of the same category in Xetra trading (or a comparable successor system) on the last five trading days at the Frankfurt Stock Exchange before entering into the obligation to sell the shares. The subscription right of the shareholders is excluded. This power shall however only apply on condition that the shares sold excluding the subscription right may not, in accordance with Section 186 paragraph 3 sentence 4 German Companies Act, exceed 10 % of the sold shares, either at the time this becomes effect or at the time of exercise of this power. This limit of 10 % of the subscribed capital shall include shares that will be issued after this power becomes effective, exercising a power resolved at the time that this power becomes effective, or replacing it, to issue new shares out of authorised, unissued capital in accordance with Section 186 paragraph 3 sentence 4 German Companies Act, excluding the right of subscription. Furthermore, this limit of 10 % of the subscribed capital shall include shares that will be or have been issued to serve convertible and/or option bonds, to the extent that these bonds were issued after this power became effective on account of power existing at the time that this power becomes effective, or replacing it, in commensurate application of Section 186 paragraph 3 sentence 4 German Companies Act, excluding the right of subscription.

bb) Own shares that have been acquired can be sold, also in a way other than a sale via the stock exchange or by means of an offer to all of the shareholders, if this is carried out in return for a contribution in kind by a third party, especially in conjunction with the acquisition of business entities, parts of business entities or participating interests in business entities by the Company itself or by a business entity dependent on it or majority owned by it, and in conjunction with business combinations or to fulfil conversion rights or obligations of holders or creditors relating to conversion or option rights issued by the Company or Group entities of the Company, in particular however not exclusively on account of the power resolved under Point 8 of the Agenda of the Annual General Meeting on 31 March 2005 to issue option and/or convertible bonds. The subscription rights of the shareholders shall in each case be excluded.

cc) Own shares acquired can be withdrawn entirely or in part without a further resolution of the Annual General Meeting. They can also be withdrawn applying simplified proceedings without a reduction in capital by adjusting the proportionate notional share of the remaining no-par-value shares in the subscribed capital of the Company. The withdrawal can be limited to a portion of the acquired shares.

If the withdrawal is carried out applying simplified proceedings, the Executive Board is empowered in the Articles of Association to adjust the number of shares.

- c) The powers under letter b) and aa) to cc) also include the use of shares in the Company that are acquired on account of Section 71d sentence 5 German Companies Act.
- d) The powers under letter b) can be exploited once or on several occasions, entirely or in part, individually or together; the powers under letter b), aa) and bb) can also be exploited by entities dependent on or majority owned by the Company or for their account or by third parties acting for the account of the Company.
- e) The Supervisory Board can decide that measures performed by the Executive Board on account of this resolution of the Annual General Meeting can only be carried out with its approval.

### **Power of the Executive Board to issue convertible bonds and shares out of conditional capital**

In the resolution passed at the Annual General Meeting on 31 March 2005, the Executive Board was empowered until 30 March 2010, subject to the approval of the Supervisory Board, to issue once or on several occasions registered bonds with warrants and/or convertible bonds with a total face value of up to €300,000,000 and a maximum term of 20 years and to grant option rights to the warrant holders and conversion rights to the convertible bond holders for new company shares with a proportionate amount of the subscribed capital of up to €41,500,000 in accordance with the terms of the bonds with warrants and convertible bonds (Conditional Capital II).

The bonds with warrants and convertible bonds (bonds) can also be issued, as well as in euros, in the legal currency of an OECD country, but limited to the corresponding euro counter-value. They can also be issued by companies in which Norddeutsche Affinerie Aktiengesellschaft holds an indirect or direct controlling interest. In this case, the Executive Board is empowered, subject to the approval of the Supervisory Board, to take over the guarantee for the bonds for Norddeutsche Affinerie Aktiengesellschaft and to grant the holders of such bonds option and/or conversion rights to new shares in Norddeutsche Affinerie Aktiengesellschaft.

Bonds can also be issued in return for a contribution in kind, provided the value of the contribution in kind corresponds to the issue price and this value does not significantly exceed the theoretical market value of the bonds, as calculated using recognised actuarial methods.

The shareholders are entitled to legal subscription rights, when bonds with warrants and convertible bonds are issued. The bonds can also be offered to shareholders as part of the

direct subscription right; they will then be taken over by a bank or a banking syndicate with the obligation of offering them to the shareholders for subscription.

The Executive Board is empowered, subject to the approval of the Supervisory Board, to exclude shareholders' subscription rights for fractional amounts, which arise due to the subscription ratio, and to exclude the subscription right insofar as is necessary in order that warrant holders and creditors of previous issued convertible bonds (or option and/or conversion rights) can be granted a subscription right to the extent that they as shareholders would be entitled after exercising the option or conversion rights or after fulfilling the option or conversion obligations.

Furthermore, the Executive Board is empowered, with the approval of the Supervisory Board, to exclude the shareholders' subscription right inasmuch as the Executive Board, after due examination, comes to the conclusion that the issue price of the bonds with warrants and/or convertible bonds is not significantly lower than the theoretical market value determined by means of recognised actuarial methods. This, however, only applies to bonds with a conversion or option right (or an option or conversion obligation) for shares with a proportional amount of the subscribed capital of up to €8,552,755.00 or, if this amount should be lower, of 10 % of the subscribed capital existing at the time that the authorisation was exercised (in each case taking into account the possible utilisation of other authorisations to exclude subscription rights in accordance with or in the respective application of Section 186 paragraph 3 sentence 4 German Companies Act, e.g. for the sale of the Company's own shares or to issue shares from an authorised capital with exclusion of the subscription rights). In addition, the Executive Board is empowered, subject to the approval of the Supervisory Board, to exclude the shareholders' subscription right insofar as bonds are issued against a contribution in kind and the exclusion of the subscription rights is in the interests of the Company.

In the event that bonds with warrants are issued, one or several subscription warrants will be attached to each bond, which will entitle the holder to subscribe to the Company's shares in accordance with the warrant conditions laid down by the Executive Board. In the event of warrants denominated in euros, the warrant conditions can stipulate that the warrant price can also be fulfilled by the transfer of the bonds and, if necessary, an extra cash payment. The proportional amount of the subscribed capital of the shares to be subscribed per bond may not exceed the face value of the bonds. In the event that fractions of shares result, it can be stipulated that these fractions can be combined to procure whole shares in accordance with the conditions for the bonds with warrants, if necessary for an extra payment.

In the event that convertible bonds are issued, the holders shall be entitled or, if the convertible bond conditions stipulate this, shall be obliged to exchange their bonds for shares

in the Company in accordance with the bond conditions. The exchange ratio results from the division of the face value or the bonds' issue price, if this is below the face value, by the fixed conversion price for one of the Company's shares. In any case the exchange ratio can be rounded up or down to a full currency unit (euros/cents); in addition, it can be agreed that payment will be made in cash. Otherwise, it can be prescribed that fractions shall be combined and/or settled in money. The proportional amount of the subscribed capital of the shares to be issued in the conversion may not exceed the face value of the convertible bonds or a lower issue price.

The warrant or convertible bond terms may also stipulate that the number of shares that can be subscribed for when exercising option or conversion rights or after the fulfilment of warrant or conversion obligations or an exchange ratio in this regard is variable, and/or the warrant exercise price or conversion price can be changed during the term within a range stipulated by the Executive Board depending on the performance of the share price or as the result of anti-dilution provisions.

The respective warrant or conversion price that can be set for a share, also in the event of a variable exchange ratio/conversion price (except if warrant exercise or conversion obligations exist or inasmuch as the Company has been given the right to grant to the bond creditors, in whole or in part, shares in the Company or another quoted company instead of payment of the due amount of money in case of the final maturity of the convertible bonds (this also includes maturity due to cancellation)), must amount to either at least 80 % of the volume-weighted average price of the shares of Norddeutsche Affinerie Aktiengesellschaft in Xetra trading on the Frankfurt Stock Exchange (or a corresponding successor system) on the last five trading days before the day when the resolution is passed by the Executive Board on the issuing of bonds with warrants or convertible bonds, or – in the event of granting a subscription right – correspond to at least 80 % of the volume-weighted average of the price of shares of Norddeutsche Affinerie Aktiengesellschaft in Xetra trading on the Frankfurt Stock Exchange (or a corresponding successor system) during the subscription period, with the exception of the last five calendar days before the end of the subscription period. Section 9 paragraph 1 German Companies Act remains unaffected.

Irrespective of Section 9 paragraph 1 German Companies Act, the warrant and conversion price can be marked down due to an anti-dilution clause on closer examination of the warrant or conversion bond terms by payment of a corresponding amount in cash on execution of the option or conversion right (or on fulfilment of warrant exercise or conversion obligations) or by a reduction in the extra charge if Norddeutsche Affinerie Aktiengesellschaft increases the subscribed capital while granting a subscription right to its shareholders or by a capital increase from company funds during the warrant exercise or conversion period, issues further bonds with warrants or convertible bonds or grants other option rights and the holders

of option and conversion rights are not granted a subscription right to the extent to which they would be entitled after exercising option or conversion rights. Instead of a cash payment or a reduction in the extra payment, the exchange ratio can also – as far as possible – be adjusted by dividing the issue amount of the bond by a reduced conversion price. In addition, the terms may provide for adjustments to the option and/or conversion rights or warrant exercise/conversion obligations in the event of a capital reduction, share split or other extraordinary measures or events (such as unusually high dividends, control being taken over by third parties). If third parties gain control, an adjustment of the warrant exercise or conversion price can be provided for.

In the event of conversion or exercising of the warrant or fulfilment of the warrant exercise or conversion obligations, the Company may be given the right under the warrant or convertible bond terms not to grant shares but pay a sum of money, which (for the number of shares otherwise to be delivered) corresponds to the volume-weighted average of the price of shares of Norddeutsche Affinerie Aktiengesellschaft in Xetra trading on the Frankfurt Stock Exchange (or a corresponding successor system) during the reference period of ten to thirty trading days immediately before or after declaration of the conversion or exercising the warrant. The warrant or convertible bond terms can also, at the Company's option, provide for the conversion of the warrants or bonds into existing shares in the Company or in another quoted company instead of into new shares from conditional capital, or the fulfilment of the option right by supplying such shares or the fulfilment of option or conversion rights by supplying such shares.

The warrant and convertible bond terms can also provide for a warrant exercise and conversion obligation at the end of the term (or at another point in time) and/or provide the Company with the right to grant the bond creditors, either in whole or in part, shares in the Company or another quoted company instead of payment of the due amount upon final maturity of the subscription warrants or convertible bonds (this also includes maturity due to cancellation). In such cases the bond terms must provide for a warrant exercise price or conversion price of at least 80 % of the volume-weighted average of the Company's share price in Xetra trading on the Frankfurt Stock Exchange (or a comparable successor system) during a benchmark period of ten to thirty trading days immediately before or after the due date, even if this average share price is lower than the above-mentioned minimum average stock exchange price (calculation of the 80 % limit based on a period of five trading days before the day on which the Executive Board passes the resolution on the issue of convertible bonds or the subscription period related to the period (with the exception of the last five calendar days before the end of the subscription period)). The proportional amount of the subscribed capital of the shares to be issued on exercising the conversion or option rights may not exceed the face value of the bonds. Furthermore, in the event of a conversion

or warrant exercise obligation, the Company shall be entitled to compensate, either in whole or in part, in cash for any possible difference between the face value of the bonds and a company share price to be laid down in the bond terms at the time of the obligatory conversion or exercising the warrant, at least, however, 80 % of the share price at the time of issuing the bonds – as described above – multiplied by the conversion ratio or warrant exercise price. Section 9 paragraph 1 in combination with Section 199 paragraph 2 German Companies Act shall be observed in each case.

The Executive Board is empowered, subject to the approval of the Supervisory Board, to define the remaining details of the issue and terms of the bonds with warrants and/or convertible bonds, in particular the interest rate, issue price, term and breakdown between denominations, possible subordination of the bonds, warrant exercise price and conversion price, their adjustment in the event of special occurrences and the warrant exercise and conversion period, or, subject to the approval of the governing bodies of the companies in which Norddeutsche Affinerie Aktiengesellschaft has a majority interest, which issue the bonds with warrants or convertible bonds.

At the same time, it was resolved at the Annual General Meeting to increase the Company's capital conditionally by up to €41,500,000.00 by issuing up to 16,210,937 new bearer shares (Section 4 paragraph 3 of the Articles of Association). The conditional increase in capital shall only be carried out in the event of the issuance of bonds with warrants and convertible bonds, and only to the extent that the holders of bonds with warrants and convertible bonds, which are issued by Norddeutsche Affinerie Aktiengesellschaft or one of the companies in which it has a majority interest due to an authorisation valid from 31 March 2005 to 30 March 2010, resolved at the Annual General Meeting on 31 March 2005, make use of their option and conversion rights or holders of bonds, who are obliged to exercise their option or conversion rights, fulfil their obligation to exercise option or conversion rights and the conditional capital is needed in accordance with the option and conversion bond terms. The new shares shall participate in dividends from the beginning of the fiscal year in which they are issued as a result of the exercising of conversion and warrant rights or in the fulfilment of warrant and conversion obligations. The Executive Board is empowered, subject to the approval of the Supervisory Board, to define further details concerning the execution of the conditional capital increase.

### **Significant conditional agreements concluded by the Company**

Norddeutsche Affinerie Aktiengesellschaft has concluded an agreement with a banking syndicate (the "Syndicated Loan") on a credit line totalling €1.2 billion, which, apart from financing the acquisition of Cumerio nv/sa, serves to finance the working capital of the new group. In the event that a single person or a group of persons acting together should acquire

more than 50 % of the shares or the voting rights in Norddeutsche Affinerie Aktiengesellschaft, every syndicate lender shall be entitled to cancel its participation in the Syndicated Loan and to demand immediate repayment of the amounts own to it.

*This version of the Explanatory Report prepared for the convenience of English-speaking readers is a translation of the German original. For the purposes of interpretation, the German shall be authoritative and final.*