

## **Report of the Managing Board to the Virtual Annual Shareholders' Meeting on Agenda Item No. 9**

Item No. 9 of the Agenda contains a proposal to be submitted to the Virtual Annual Shareholders' Meeting to the effect that would authorize the Managing Board to purchase the Company's own shares pursuant to Section 71 (1) no. 8 AktG for a period of five years ending 26 May 2025 in an amount not to exceed 10% of the Company's issued share capital as of the time the resolution is adopted by the Virtual Annual Shareholders' Meeting or as of the time the authorization is exercised, whichever is lower. The proposed resolution calls for authorization of the Company to purchase own shares and exclude pre-emption rights of shareholders in connection with the use of this or previous authorizations independently of the principle of equal treatment of shareholders and any tender rights of shareholders.

The Company had already adopted resolutions authorizing the purchase of shares in the past, most recently at the Annual Shareholders' Meeting of 12 May 2015, in which case the purchase of shares was authorized up to 11 May 2020. As in the past, the Company will now again be authorized to purchase own shares. This authorization is subject to the statutory restriction to the effect that any shares that are acquired and shares that have been acquired but not yet allotted may not exceed the limit of 10% of issued share capital pursuant to Section 71 (2) sentence 1 AktG. Own shares may be purchased on the stock exchange or on the basis of a public offer to purchase made to all shareholders. All shareholders thus receive an equal opportunity to sell shares to the Company in the event the Company exercises the authorization to acquire own shares. However, the authorization also permits the purchase of shares independently of the principle of equal treatment of all shareholders and any existing tender rights.

### **Details:**

#### **Purchase of own shares and disapplication of tender rights**

Own shares will first be purchased on the stock exchange or on the basis of a public offer to purchase made to all shareholders of the Company or on the basis of a public invitation to all shareholders to submit offers for sale.

In the case of a public offer to purchase or a public invitation to all shareholders to submit offers for sale, the number of shares offered by the shareholders may exceed the number of shares required by the Company. In that case, the shares are purchased on a prorata basis. Priority may then be given to small offers or smaller lots of up to a maximum of 100 shares. That makes it possible to avoid notional fractional amounts when determining the percentages to be purchased and small residual amounts, thereby simplifying technical processing. It also makes it possible to avoid inequitable treatment of minority shareholders. In addition, purchases may be based upon a certain percentage of shares offered instead of on the basis of shareholder interests to make processing economically viable. Finally, amounts may be rounded off by applying commercial rounding principles to avoid notional fractions of shares. In that regard, the relative percentages of purchases and the number of shares to be purchased from individual shareholders can be rounded off when necessary to make it technically possible to acquire entire shares. The Managing Board is of the opinion that disapplication of any further tender rights of shareholders for such purposes is objectively justified and acceptable to shareholders.

In addition to purchasing shares on the stock exchange or on the basis of a public offer to purchase made to all shareholders or on the basis of a public invitation to all shareholders to submit offers for sale, the authorization also permits acquisition of shares on the basis of tender rights granted to shareholders. These tender rights are structured in such a way that the Company is only under obligation to purchase whole shares. Any tender rights that cannot be exercised for that reason are forfeited. This procedure ensures equal treatment of shareholders and simplifies processing of the purchase of own shares.

### **Use of purchased own shares and disapplication of pre-emption rights**

The Company is legally allowed to resell own shares that it has purchased through a public offer to sell made to all shareholders or on the stock exchange. The possibilities mentioned above for selling own shares that have been purchased ensure that the shareholders' right to equal treatment is protected when the shares are sold.

The proposed authorization to disapply shareholders' pre-emption rights when the purchased shares are sold for cash at a price that is not significantly lower than the stock exchange price of the Company's shares of the same class at the time of the sale is based on the possibility of simplifying disapplication of pre-emption rights pursuant to Section 71 (1) no. 8 AktG in conjunction with Section 186 (3) sentence 4 AktG. The fact that the shares can be sold only at a price that is not substantially lower than the relevant stock exchange price of the Company's shares takes into account the shareholders' interest in protection against dilution of their investments. The final purchase price for the Company's own shares is determined shortly before the sale. The Managing Board will ensure that any discount on the stock exchange price is as low as possible in view of market conditions prevailing at the time of placement. The discount on the stock exchange price at the time the authorization is exercised may in any event not exceed 5% of the current stock exchange price. This authorization is subject to the condition that the Company's own shares sold must not exceed 10% of the issued share capital at the time the authorization enters into effect or at the time the authorization is exercised, whichever is lower. Shares issued under any other authorization during the term of this authorization will be counted towards this 10% limit of the issued share capital if pre-emption rights are disappplied pursuant to Section 186 (3) sentence 4 AktG. In addition, those shares that are issued or are to be issued to service option and/or conversion rights and/or conversion obligations are counted towards this limit of 10% of issued share capital pursuant to Section 186 (3) sentence 4 AktG if and to the extent pre-emption rights were disappplied when the debentures were issued during the term of this authorization. Counting these shares towards that limit ensures that pre-emption rights are not disappplied pursuant to Section 186 (3) sentence 4 AktG when purchased own shares are sold if this would result in disapplication, directly or indirectly, of shareholders' pre-emption rights on more than 10% of the issued share capital. This restriction and the fact that the stock exchange price must be used as a point of reference for the issue price ensure that the financial and voting interests of shareholders remain appropriately safeguarded. Shareholders may acquire the number of shares required to maintain their ownership interests under almost identical conditions on the stock exchange. Furthermore, the authorization is in the interest of the Company as it will ensure a greater degree of flexibility and will provide the opportunity to broaden the Company's shareholder base by specifically issuing shares to cooperation partners, institutional investors or financial investors. This is also intended to enable the Company to respond swiftly and flexibly to favorable conditions on the stock exchange.

Furthermore, the Managing Board would be authorized to offer own shares, with the consent of the Supervisory Board, to persons who have or had an employment relationship with the Company or any of its affiliated undertakings or are or were members of management of any affiliated undertaking of the Company. This constitutes authorization to issue 'employee shares'. The proposed disapplication of pre-emption rights is a prerequisite for the issuance of such employee shares. The Stock Corporation Act already allows the use of own shares for the purposes of issuance of employee shares without the authorization of the Annual Shareholders' Meeting (Section 71 (1) no. 2 AktG), but only for the purposes of issuance of shares to employees within one year after their purchase (Section 71 (3) sent. 2 AktG). On the other hand, the Managing Board is in this case authorized to use own shares as employee shares without complying with any time limits. The Managing Board makes its decisions regarding the conditions for issuance within the limits allowed by Section 71 (1) no. 2 AktG. In this context, the Managing Board may, in particular within the limits of what is usual and appropriate, offer shares at prices lower than the current trading price on the stock exchange to create an incentive to purchase. The issuance of own shares as employee shares, which are generally subject to an appropriate lockup period of several years, is in the interest of the Company and its shareholders since this promotes identification with the undertaking and as a result increases its value. The use of available own shares instead of a capital increase or cash payment can be economically advantageous. The authorization is in that regard intended to increase flexibility. In addition to direct assignment of shares by the Company, another possibility considered is to initially transfer purchased shares to a financial institution that accepts the shares on the condition that they be assigned exclusively to employees of the Company or its affiliated undertakings or members of management of affiliated undertakings. This procedure can facilitate processing.

Furthermore, the Company would retain the possibility of being able to offer its own shares in the context of mergers or in connection with the acquisition of other companies, operations, equity interests or other assets. In the case of transactions of this type, sellers frequently request consideration in the form of shares rather than in cash, and international competition also increasingly calls for this particular method of financing acquisitions. The authorization proposed here would give the Managing Board (subject to the consent of the Supervisory Board) the discretionary authority required to be able to respond swiftly and flexibly to opportunities for acquisitions of other companies, operations or equity interests on both the German and international markets. Other assets to be acquired may include debt (loans or bonds) of the Company or any of its affiliated undertakings. When debt is contributed to the Company as a non-cash contribution to capital, the liability ceases to exist and the Company's equity base is reinforced at the same time. The proposed disapplication of pre-emption rights takes this into account. When defining the valuation ratios, the Managing Board will ensure that the interests of shareholders are appropriately safeguarded. As a rule, the Managing Board will use the stock exchange price as a point of reference for determining the value of the shares provided as consideration. The authorization does not provide for a rigid link to the stock exchange price, in particular to avoid subjecting the results of negotiations to uncertainty due to fluctuations in the stock exchange price.

The Company would also have the possibility of disapplying pre-emption rights when servicing conversion or option rights or conversion obligations with its own shares, entirely or in part, instead of shares from a capital increase. The proposed authorization also creates the possibility of disapplying the pre-emption rights of shareholders to permit preferential treatment of holders of promissory notes

(including participation rights) with conversion or option rights or a conversion obligation in order to be able to grant holders of existing option or conversion rights or holders of convertible bonds with conversion obligations the right to subscribe for shares as protection against dilution instead of a reduction in the price of the option or conversion price.

The Managing Board would, with the consent of the Supervisory Board, also be authorized to use own shares purchased under the proposed authorization or a previous authorization to issue a scrip dividend. In the case of a scrip dividend based on the use of own shares, shareholders would be offered the possibility of assigning the right to receive payment of cash dividends pursuant to the resolution of the Annual Shareholders' Meeting regarding the distribution of profit to the Company in exchange for own shares. Distribution of a scrip dividend based on the use of own shares may take the form of an offer to all shareholders that respects pre-emption rights and the principle of equal treatment of shareholders (Section 53a AktG). As regards the practical aspects of distribution of scrip dividends, shareholders would receive the right to subscribe only to whole shares. Shareholders would then receive payment in cash instead of shares for any portion of the scrip dividend that is less or more than the subscription price for a whole share. Under normal circumstances, no fractional rights would be offered or measures taken to permit trading in pre-emption rights or fractions thereof since shareholders receive a prorata cash dividend instead of own shares for any fraction of a share. The Managing Board would, however, also be authorized to disapply pre-emption rights of shareholders in the case of a declaration of a scrip dividend in order to be able to implement the distribution of the scrip dividend under optimal conditions. Depending on the situation on the capital market, it could prove advantageous to structure issuance of a scrip dividend based on the use of own shares so that the Managing Board can be sure to offer all shareholders eligible to receive dividends an opportunity to subscribe for own shares in a manner consistent with the general principle of equal treatment (Section 53a AktG) in exchange for their dividend rights, which would grant the shareholders pre-emption rights in economic terms, but legally disapply the right of shareholders to subscribe for new shares. Such disapplication of pre-emption rights would permit flexible implementation of the distribution of scrip dividends. In view of the fact that all shareholders are offered own shares and receive cash in lieu of any fraction of shares to which they may be entitled, disapplication of pre-emption rights would seem justified and appropriate in this case.

In addition, this authorization is designed to enable the Managing Board to use the Company's own shares, subject to the consent of the Supervisory Board, to float its shares on foreign stock exchanges on which the Company's shares have not previously been listed. The Company is faced with intense competition on the international capital markets. It is of paramount importance for the future economic performance of the Company business that the Company will be able to raise equity under reasonable market conditions at any time. This objective is served by the option of floating its shares on foreign stock exchanges since this helps to broaden the Company's foreign shareholder base and make its shares a stronger investment proposition. The proposed disapplication of pre-emption rights makes this type of flotation on foreign stock exchanges possible. The resolution contains clearly defined restrictions on the price at which the Company's shares may be floated on foreign stock exchanges in order to protect the interests of shareholders.

Finally, in the case of the disposal of own shares on the basis of a public offer made to all shareholders, the Managing Board would be authorized to disapply the pre-emption rights on notional fractional amounts with the consent of the Supervisory

Board. The disapplication of the pre-emption rights on notional fractional amounts is necessary to make it technically possible to issue purchased own shares to shareholders in the context of an offer to sell. The fractional amounts of own shares on which pre-emption rights are disallowed will either be sold on the stock exchange or otherwise disposed of to achieve maximum benefit for the Company.

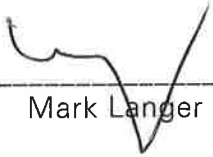



The authorization also makes provision for cancellation of purchased own shares. Cancellation may be effected either by formally reducing the share capital of the Company or, without any such formal reduction in capital, by simply canceling the shares and at the same time increasing the amount of share capital allocated to each of the remaining shares. The rights of shareholders are not be prejudiced in either of the aforementioned cases.

Finally, the Supervisory Board would be authorized to assign own shares purchased by the Company under the proposed authorization or a previous authorization to members of the Managing Board of the Company to fulfill obligations arising from compensation agreements. It would therefore be possible to use own shares to service contractual obligations that may be made to members of the Managing Board in the future in connection with provisions of agreements governing the compensation of members of the Managing Board. The compensation system for the Managing Board currently contains no component that calls for assignment of shares in the Company. The Supervisory Board should, however, be in a position to be able to make provision for such a compensation component in the future. Disapplication of the pre-emption rights of shareholders would be necessary in the case of any grant of shares to members of the Managing Board in the future in connection with compensation. Distribution of shares to members of the Managing Board would constitute a further possibility for promoting loyalty to the Company on the part of members of the Managing Board since they would share in the increase in the value of the Company through such shares. This could represent a possible way to deploy additional incentives to achieve managerial performance geared to sustainability over the long term. For example, this could permit payment of a variable compensation component (variable bonus) in the form of shares instead of in cash. As a rule, this would then involve an agreement that would prevent members of the Managing Board from selling such shares until a certain lock-up period lapses. As a result, the member of the Managing Board would not only benefit from positive performance of the corresponding shares during the lock-up period, but would also feel the effect of negative performance. Members of the Managing Board would therefore be exposed to the possibility of a penalty as well as a bonus. The performance targets to be set for the variable components of compensation, the corresponding factors for assessment, the increase and decrease in bonus payments when targets are exceeded or not met and the relative amounts to be disbursed in cash and in shares as well as all other details would be fixed in the employment contracts or compensation agreements entered into with the various members of the Managing Board by the Supervisory Board on behalf of the Company. As legally required by Section 87 AktG, the Supervisory Board would ensure that total compensation (including components provided in the form of shares) is appropriately aligned with the duties and performance of the members of the Managing Board and does not exceed usual compensation without special reason.

Pre-emption rights may be disappplied on up to 10% of the issued share capital at the time of such disapplication or at the time the authorization is exercised, whichever is lower. If other authorizations to issue or sell shares or rights that permit or require subscription for shares in the Company are used during the term of the present authorization to purchase own shares prior to its exercise and pre-emption rights are

disapplied, such shares or rights will be counted towards the limit of 10% to ensure that pre-emption rights are not disapplied on more than 10% of issued share capital. This would provide shareholders with additional protection against dilution of their investments.

The Managing Board will in each case carefully determine whether the use of the authorization is in the interest of the Company and its shareholders. The Managing Board will report to the Annual Shareholders' Meeting following any exercise of the authorization to purchase the Company's own shares in accordance with Section 71 (3) sentence 1 AktG and, if applicable, in conjunction with Section 160 (1) no. 2 AktG.

			
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