



Information for Participants of the Shareholders' Meeting and the Separate Meeting of Preference Shareholders on June 4, 2009

Amended proposal of the management for the resolution on agenda item 10 of the Annual Shareholders' Meeting

Cancellation of existing authorized capital and creation of new authorized capital along with an authorization to exclude preemptive rights with a respective amendment to the articles of incorporation in Sec. 4 (Amount and Subdivision of the Share Capital)

In the resolution proposal of the management regarding agenda item 10 published in the invitation to the shareholders' meeting on April 22, 2009 in the electronic Federal Gazette (*elektronischer Bundesanzeiger*) the Executive Board and the Supervisory Board proposed the cancellation of existing authorized capital and the creation of new authorized capital along with an authorization to exclude preemptive rights with a respective amendment to the articles of incorporation in Sec. 4.

The Executive Board and the Supervisory Board decided to amend the original resolution proposal and to have a resolution taken on an authorized capital not comprising any authorization to exclude preemptive rights except for the mutual exclusion of preemptive rights. The scope of the originally provided authorization was common practice, however, in order to be in a position to unchallengeable resolve on the creation of a new authorized capital, which is essential for the flexibility of the Company, the management only proposes a resolution that does not require the consent of the preference shares widely held by the free float. The background for this decision are concerns emerged among preference shareholders against the scope of the originally provided authorization to exclude preemptive rights.

The resolution proposal of the Executive Board and the Supervisory Board on agenda item 10 as published in the invitation for the shareholders' meeting is therefore – as shown in mark-up below - amended as follows:

Subject to a cancellation of the authorization of the Executive Board under Sec. 4 para. 4 of the articles of incorporation to increase the share capital (Authorized Capital) and the granting of a new authorization, this Sec. 4 para. 4 of the articles of incorporation shall be amended as follows:

- a) Subject to the consent of the Supervisory Board, the Executive Board is authorized to increase the Company's share capital on one or more occasions on or before June 3, 2014, by not more than EUR 109,398,600, in return for contributions in cash and/or in kind, by issuing new no-par value shares. Subject to Sec. 139 para. 2 of the German Stock Corporation Act, this authorization also includes the authorization to issue new preference shares that take precedence over or have the same priority as previously issued preference shares in the distribution of profits or the Company's assets. The Executive Board is authorized, subject to the consent of the Supervisory Board, to define the further content of the shareholder rights and the terms and conditions for the new stock issuance.



The shareholders shall be granted a preemptive right proportional to their respective holdings in the Company's share capital, provided such a preemptive right is not excluded for the following reasons. The shares may also be assumed by a credit institution, subject to the obligation that the shares will be offered for subscription to the Company's shareholders (indirect preemptive right).

- b) Subject to the consent of the Supervisory Board, the Executive Board is authorized to exclude the preemptive right of holders of one class of shares for shares of the respective other class in the event that both registered common shares and bearer preference shares are issued provided that the same subscription ratio applies for both classes of shares (mutual exclusion of preemptive rights).
- ~~c) In the event of capital increases in return for cash contributions, and subject to the consent of the Supervisory Board, the Executive Board is furthermore authorized to exclude the shareholders' preemptive rights for the following purposes:
 - ~~(aa) In order to realize any fractional amounts under exclusion of shareholders' preemptive rights;~~
 - ~~(bb) To the extent necessary, in order to grant a preemptive right for new shares to holders of option rights, convertible bonds and/or convertible profit participation rights, which are granted by the Company or by entities dependent upon the Company or entities in which the Company holds a majority interest, to the extent they would be entitled to following the exercise of their option or conversion rights or following the fulfillment of their conversion or option obligations; and/or~~
 - ~~(cc) If shares of the same class as the shares to be issued are traded on a domestic stock exchange, the issue amount of the new shares is not significantly below the other shares' trading price and the total stock issued under this authorization does not exceed 10 % of the share capital, neither at the time when this authorization takes effect nor the time when it is exercised (Sec. 186 para. 3 sentence 4 of the German Stock Corporation Act). Shares issued or sold in a direct or analogous application of this provision during the term of this authorization, up and until the time of its exercise, shall be counted towards this limit. Option or conversion rights on shares of the Company shall also count towards this limit if these are issued after this authorization is granted, with an exclusion of preemptive rights under Sec. 186 para. 3 sentence 4 of the German Stock Corporation Act.~~~~
- ~~d) The Executive Board is furthermore authorized, subject to the consent of the Supervisory Board, to exclude preemptive rights in the event of capital increases in return for contributions in kind, directly or indirectly, of subordinated receivables of the contributor against the Company; subordinated receivables are receivables which are at least subordinated to all receivables from syndicated loans existing against the Company.~~
- ~~e) The authorization of the Executive Board to exclude preemptive rights according to no. c) and d) may also be exercised respectively in combination with a mutual exclusion of preemptive rights according to no. b).~~



The complete wording of the amended resolution proposal of the management on agenda item 10 is therefore the following:

„The Executive Board and the Supervisory Board propose that the following resolution be adopted:

Subject to a cancellation of the authorization of the Executive Board under Sec. 4 para. 4 of the articles of incorporation to increase the share capital (Authorized Capital) and the granting of a new authorization, this Sec. 4 para. 4 of the articles of incorporation shall be amended as follows:

- a) Subject to the consent of the Supervisory Board, the Executive Board is authorized to increase the Company's share capital on one or more occasions on or before June 3, 2014, by not more than EUR 109,398,600, in return for contributions in cash and/or in kind, by issuing new no-par value shares. Subject to Sec. 139 para. 2 of the German Stock Corporation Act, this authorization also includes the authorization to issue new preference shares that take precedence over or have the same priority as previously issued preference shares in the distribution of profits or the Company's assets. The Executive Board is authorized, subject to the consent of the Supervisory Board, to define the further content of the shareholder rights and the terms and conditions for the new stock issuance.

The shareholders shall be granted a preemptive right proportional to their respective holdings in the Company's share capital, provided such a preemptive right is not excluded for the following reasons. The shares may also be assumed by a credit institution, subject to the obligation that the shares will be offered for subscription to the Company's shareholders (indirect preemptive right).

- b) Subject to the consent of the Supervisory Board, the Executive Board is authorized to exclude the preemptive right of holders of one class of shares for shares of the respective other class in the event that both registered common shares and bearer preference shares are issued provided that the same subscription ratio applies for both classes of shares (mutual exclusion of preemptive rights).

Note to participants of the separate meeting of preference shareholders:

In case the amended resolution proposal of the management on agenda item 10 of the annual shareholders' meeting obtains the consent of the common shares, a consent of the separate meeting of the preference shareholders regarding the resolution taken by the annual shareholders' meeting on agenda item 10 is legally not required anymore. The management therefore, in this case envisages not to put its resolution proposal for agenda item 1 of the separate meeting of the preference shareholders up for resolution anymore.