



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

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### Amended Proposal of the management for the resolution on agenda item 11 of the Annual Shareholders' Meeting

#### Authorization to issue convertible and/or option bonds along with an authorization to exclude preemptive rights, the creation of Contingent Capital and a corresponding amendment to articles of incorporation in Sec. 4 (Amount and Subdivision of the Share Capital)

In the resolution proposal of the management regarding agenda item 11 published in the invitation to the annual shareholders' meeting on April 22, 2009 in the electronic Federal Gazette (*elektronischer Bundesanzeiger*) the Executive Board and the Supervisory Board proposed under **subitem 1** an authorization to issue convertible and/or option bonds along with an authorization to exclude preemptive rights and under **subitem 2** the creation of a contingent capital and a corresponding amendment to articles of incorporation in Sec. 4 (Amount of Subdivision of the Share Capital).

The Executive Board and the Supervisory Board decided to amend the original resolution proposal on **subitem 1** and to have a resolution taken on an authorization to issue convertible and/or option rights 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 authorization to issue convertible and/or option bonds, which is essential for the flexibility of the Company, the management only proposes a resolution under subitem 1 of the agenda of the annual shareholders' meeting that does not require the consent of the preference shares widely held by the free float. The resolution proposal of the management on **subitem 2**, the creation of a contingent capital and a corresponding amendment to the articles, remains unchanged.

#### The resolution proposal of the Executive Board and the Supervisory Board on agenda item 11, subitem 1 as published in the invitation for the shareholders' meeting is there- fore – as shown in mark-up below - amended as follows:

The Executive Board shall be authorized, subject to the consent of the Supervisory Board, to issue bearer and/or registered convertible and/or option bonds (hereinafter together referred to as the "**Bonds**") in the total nominal amount of up to EUR one billion with limited or unlimited term on one or several occasions on or before June 3, 2014, and to grant the holders or creditors of Bonds, subject to the provisions of Sec. 139 para. 2 of the German Stock Corporation Act, conversion or option rights on registered common shares and/or bearer preference shares of the Company in the total notional amount of up to EUR 109,398,600.00 of the Company's share capital as specified in more detail in the terms and conditions of the Bonds to be stipulated by the Executive Board. Bonds may only be issued in return for cash contributions.

As well as in euros, the Bonds may also be issued in the official currency of an OECD country – limited to the respective equivalent value in euros. The single issues may be divided into fractional bonds being mutually equal to each other.



## Conversion right, conversion obligation

If convertible bonds are issued, the holders or creditors of Bonds are entitled to convert their Bonds into registered common shares and/or bearer preference shares of the Company as specified in more detail in the terms and conditions of the Bonds to be stipulated by the Executive Board. The conversion ratio is obtained by dividing the nominal amount of a bond by the stipulated conversion price per one no-par value registered or bearer share of the Company. The conversion ratio may also be obtained by dividing the issue price of a bond that is lower than the nominal amount by the stipulated conversion price per one no-par value registered or bearer share of the Company. Subject to the provisions of Sec. 199 para. 2 of the German Stock Corporation Act, the notional interest in the share capital of the no-par value registered or bearer shares to be issued in the event of a conversion may not exceed the nominal amount of the Bond or an issue price of the bond deviating from the nominal amount. The conversion ratio may be rounded up or down to a whole number; in addition, a supplemental cash payment may be stipulated. Also, it can be stipulated that fractions shall be combined and/or settled in cash. The terms and conditions of the Bonds may also provide for a conversion obligation to be fulfilled at or prior to the end of the term.

## Option right, option obligation

If option bonds are issued, one or more bearer or registered option rights are attached to each bond that entitle the holder to subscribe for registered common shares and/or bearer preference shares of the Company as specified in more detail in the terms and conditions of the options to be stipulated by the Executive Board. The notional interest of the share capital attributable to the registered common shares and/or bearer preference shares to be subscribed for per option bond may not exceed the nominal amount of the option bond. Also, it can be stipulated that fractions shall be combined and/or settled in cash. The terms and conditions of the Bonds may also provide for an option obligation to be fulfilled at or prior to the end of the term.

## Granting and exclusion of preemptive rights

In general, the shareholders are entitled to preemptive rights on the Bonds. The Bonds may also be assumed by one or several credit institutions subject to the obligation that these Bonds will be offered for subscription to the shareholders (indirect preemptive right). The Executive Board, however, is authorized, subject to the consent of the Supervisory Board, to exclude the shareholders' preemptive rights on the Bonds for the following reasons:

- ~~if~~ both bonds with conversion or option rights on registered common shares and bonds with conversion or option rights on bearer preference shares are issued, the preemptive rights of holders of one class of shares may be excluded for the bonds which grant conversion or option rights on shares of the respective other class provided that the same subscription ratio for the Bonds applies for holders of both classes of shares (mutual exclusion of preemptive rights).

~~for fractional amounts; and/or~~

~~to the extent necessary, in order to grant preemptive rights to holders of option rights, convertible bonds and/or convertible profit participation rights issued by~~



~~the Company, 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.~~

### **Conversion/option price**

If Bonds are issued that grant a conversion or option right but do not stipulate a conversion or option obligation, the conversion or option price to be stipulated in each case for one registered common share and one bearer preference share shall amount to 125 % of the reference price.

~~If the shareholders' statutory preemptive rights on Bonds are excluded, the reference price is the volume-weighted average of the closing auction price of ProSiebenSat.1-preference shares in trading on the XETRA system (or a comparable successor system) on the Frankfurt Stock Exchange in the time period between the resolution by the Executive Board on the exercise of the authorization and the final allotment of the Bonds by the credit institutions conducting the issuance.~~

~~If the shareholders' statutory preemptive rights on the Bonds within their respective class are not excluded, t~~The reference price is,

- in case the preemptive rights on the Bonds are traded on the Frankfurt Stock Exchange, the volume-weighted average of the closing auction price of ProSiebenSat.1-preference shares in trading on the XETRA system (or a comparable successor system) on the trading days on which the preemptive rights on the bond are traded on the Frankfurt Stock Exchange, with exception of the last two days of trading of preemptive rights;
- in case the preemptive rights on the Bonds are not traded on the Frankfurt Stock Exchange, the volume-weighted average closing auction price of ProSiebenSat.1-preference shares in trading on the XETRA system (or a comparable successor system) in the time period between the beginning of the preemption period and the day prior to the announcement of the definite stipulation of the terms and conditions (including).

If Bonds are issued that stipulate a conversion or option obligation, the conversion or option price shall correspond to the following amount:

- 100 % of the reference price if the arithmetic average of the closing auction price of ProSiebenSat.1-preference shares in trading on the XETRA system (or a comparable successor system) on the Frankfurt Stock Exchange on the 20 trading days ending on the third trading day before the day on which the conversion or exercise of the option takes place is below or equal to the reference price.
- 115 % of the reference price if the arithmetic average of the closing auction price of ProSiebenSat.1-preference shares in trading on the XETRA system (or a comparable successor system) on the Frankfurt Stock Exchange on the 20 trading days ending on the third trading day before the day on which the conversion or exercise of the option takes place is greater than or equal to 115 % of the reference price.



- Arithmetic average of the closing auction price of ProSiebenSat.1-preference shares in trading on the XETRA system (or a comparable successor system) on the Frankfurt Stock Exchange on the 20 trading days ending on the third trading day before the day on which the conversion or exercise of the option takes place, if this value is above the reference price and less than 115 % of the reference price.
- 115 % of the reference price, if the holders or creditors of convertible bonds or, in case of option bonds, the holders of option rights exercise an existing conversion or option right before the conversion or option obligation takes effect.

Irrespective of the above provisions, the conversion or option price of Bonds which stipulate a conversion or option obligation shall correspond to 100 % of the reference price if the Executive Board, subject to the consent of the Supervisory Board and in accordance with the terms and conditions of the Bonds, requires an early conversion or an early exercise of the option right in order to avert a direct serious damage to the Company or to avoid a significant deterioration of a public credit rating of the Company by an established rating agency.

Irrespective of the provisions of Sec. 9 para. 1 of the German Stock Corporation Act, the terms and conditions of the Bonds may provide for an antidilutive provision for the event that the Company increases the share capital or issues additional convertible or option bonds or grants or guarantees other option rights during the conversion or option period while granting preemptive rights to its shareholders and does not grant the holders of conversion or option rights preemptive rights to the extent they would be entitled to following the exercise of the conversion or option rights or following the fulfillment of a conversion or option obligation; such adjustment shall only apply unless other statutory provisions for such an adjustment already exist. The terms and conditions may also stipulate a value-preserving adjustment of the conversion or option price for other measures of the Company which may result in a dilution of the conversion or the option rights' value. In any case, the notional interest of the share capital attributable to the shares to be subscribed for per bond may not exceed the nominal amount of the Bond or an issue price deviating from the nominal amount, subject to the provisions of Sec. 199 para. 2 of the German Stock Corporation Act.

### **Further structuring possibilities**

The terms and conditions of the Bonds may in each case stipulate that, in the event of a conversion or the exercise of an option or the fulfillment of a conversion or option obligation, also already existing shares, including treasury stock of the Company, or new shares out of authorized capital may be granted. In addition, the terms and conditions may stipulate that the Company may grant the owners of a conversion or option right the equivalent value in cash rather than shares of the Company.

### **Authorization to determine the additional terms and conditions of the Bonds**

The Executive Board is authorized, subject to the consent of the Supervisory Board and in compliance with the provisions stipulated by this authorization, to determine the further details of the issuance and features of the Bonds and the terms and conditions of the latter, in particular the interest rate, issue price, term and denomination, conversion or option period, the stipulation of a supplemental cash contribution, the compensation or combination of fractions and a settlement in cash instead of a delivery. To the extent legally permissible, the terms and conditions may stipulate transfer



limitations for bonds granting conversion or option rights on registered common shares and/or for the respective option rights.

The authorization granted above under agenda item 11.1 shall take effect irrespective of the creation of Contingent Capital provided for under agenda item 11.2.

As far as the resolution proposal of the Executive Board and the Supervisory Board on agenda item 11 published in the invitation to the annual shareholders' meeting on April 22, 2009 in the electronic Federal Gazette concerns the creation of a contingent capital with a corresponding amendment to the articles of incorporation under **subitem 2**, it remains unchanged.

**The complete wording of the amended resolution proposal of the management on agenda item 11 is therefore the following:**

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

**11.1 Authorization to issue convertible and/or option bonds**

The Executive Board shall be authorized, subject to the consent of the Supervisory Board, to issue bearer and/or registered convertible and/or option bonds (hereinafter together referred to as the “**Bonds**“) in the total nominal amount of up to EUR one billion with limited or unlimited term on one or several occasions on or before June 3, 2014, and to grant the holders or creditors of Bonds, subject to the provisions of Sec. 139 para. 2 of the German Stock Corporation Act, conversion or option rights on registered common shares and/or bearer preference shares of the Company in the total notional amount of up to EUR 109,398,600.00 of the Company's share capital as specified in more detail in the terms and conditions of the Bonds to be stipulated by the Executive Board. Bonds may only be issued in return for cash contributions.

As well as in euros, the Bonds may also be issued in the official currency of an OECD country – limited to the respective equivalent value in euros. The single issues may be divided into fractional bonds being mutually equal to each other.

**Conversion right, conversion obligation**

If convertible bonds are issued, the holders or creditors of Bonds are entitled to convert their Bonds into registered common shares and/or bearer preference shares of the Company as specified in more detail in the terms and conditions of the Bonds to be stipulated by the Executive Board. The conversion ratio is obtained by dividing the nominal amount of a bond by the stipulated conversion price per one no-par value registered or bearer share of the Company. The conversion ratio may also be obtained by dividing the issue price of a bond that is lower than the nominal amount by the stipulated conversion price per one no-par value registered or bearer share of the Company. Subject to the provisions of Sec. 199 para. 2 of the German Stock Corporation Act, the notional interest in the share capital of the no-par value registered or bearer shares to be issued in the event of a conversion may not exceed the nominal amount of the Bond or an issue price of the bond deviating from the nominal amount. The conversion ratio may be rounded up or down to a whole number; in addition, a supplemental cash payment may be stipulated. Also, it can be stipulated that fractions shall be combined and/or settled in cash. The terms and conditions of the Bonds



may also provide for a conversion obligation to be fulfilled at or prior to the end of the term.

### **Option right, option obligation**

If option bonds are issued, one or more bearer or registered option rights are attached to each bond that entitle the holder to subscribe for registered common shares and/or bearer preference shares of the Company as specified in more detail in the terms and conditions of the options to be stipulated by the Executive Board. The notional interest of the share capital attributable to the registered common shares and/or bearer preference shares to be subscribed for per option bond may not exceed the nominal amount of the option bond. Also, it can be stipulated that fractions shall be combined and/or settled in cash. The terms and conditions of the Bonds may also provide for an option obligation to be fulfilled at or prior to the end of the term.

### **Granting and exclusion of preemptive rights**

In general, the shareholders are entitled to preemptive rights on the Bonds. The Bonds may also be assumed by one or several credit institutions subject to the obligation that these Bonds will be offered for subscription to the shareholders (indirect preemptive right). The Executive Board, however, is authorized, subject to the consent of the Supervisory Board, to exclude the shareholders' preemptive rights on the Bonds for the following reason:

- If both bonds with conversion or option rights on registered common shares and bonds with conversion or option rights on bearer preference shares are issued, the preemptive rights of holders of one class of shares may be excluded for the bonds which grant conversion or option rights on shares of the respective other class provided that the same subscription ratio for the Bonds applies for holders of both classes of shares (mutual exclusion of preemptive rights).

### **Conversion/option price**

If Bonds are issued that grant a conversion or option right but do not stipulate a conversion or option obligation, the conversion or option price to be stipulated in each case for one registered common share and one bearer preference share shall amount to 125 % of the reference price.

The reference price is,

- in case the preemptive rights on the Bonds are traded on the Frankfurt Stock Exchange, the volume-weighted average of the closing auction price of ProSiebenSat.1-preference shares in trading on the XETRA system (or a comparable successor system) on the trading days on which the preemptive rights on the bond are traded on the Frankfurt Stock Exchange, with exception of the last two days of trading of preemptive rights;
- in case the preemptive rights on the Bonds are not traded on the Frankfurt Stock Exchange, the volume-weighted average closing auction price of ProSiebenSat.1-preference shares in trading on the XETRA system (or a comparable successor system) in the time period between the beginning of the preemption period and the day prior to the announcement of the definite stipulation of the terms and conditions (including).





If Bonds are issued that stipulate a conversion or option obligation, the conversion or option price shall correspond to the following amount:

- 100 % of the reference price if the arithmetic average of the closing auction price of ProSiebenSat.1-preference shares in trading on the XETRA system (or a comparable successor system) on the Frankfurt Stock Exchange on the 20 trading days ending on the third trading day before the day on which the conversion or exercise of the option takes place is below or equal to the reference price.
- 115 % of the reference price if the arithmetic average of the closing auction price of ProSiebenSat.1-preference shares in trading on the XETRA system (or a comparable successor system) on the Frankfurt Stock Exchange on the 20 trading days ending on the third trading day before the day on which the conversion or exercise of the option takes place is greater than or equal to 115 % of the reference price.
- Arithmetic average of the closing auction price of ProSiebenSat.1-preference shares in trading on the XETRA system (or a comparable successor system) on the Frankfurt Stock Exchange on the 20 trading days ending on the third trading day before the day on which the conversion or exercise of the option takes place, if this value is above the reference price and less than 115 % of the reference price.
- 115 % of the reference price, if the holders or creditors of convertible bonds or, in case of option bonds, the holders of option rights exercise an existing conversion or option right before the conversion or option obligation takes effect.

Irrespective of the above provisions, the conversion or option price of Bonds which stipulate a conversion or option obligation shall correspond to 100 % of the reference price if the Executive Board, subject to the consent of the Supervisory Board and in accordance with the terms and conditions of the Bonds, requires an early conversion or an early exercise of the option right in order to avert a direct serious damage to the Company or to avoid a significant deterioration of a public credit rating of the Company by an established rating agency.

Irrespective of the provisions of Sec. 9 para. 1 of the German Stock Corporation Act, the terms and conditions of the Bonds may provide for an antidilutive provision for the event that the Company increases the share capital or issues additional convertible or option bonds or grants or guarantees other option rights during the conversion or option period while granting preemptive rights to its shareholders and does not grant the holders of conversion or option rights preemptive rights to the extent they would be entitled to following the exercise of the conversion or option rights or following the fulfillment of a conversion or option obligation; such adjustment shall only apply unless other statutory provisions for such an adjustment already exist. The terms and conditions may also stipulate a value-preserving adjustment of the conversion or option price for other measures of the Company which may result in a dilution of the conversion or the option rights' value. In any case, the notional interest of the share capital attributable to the shares to be subscribed for per bond may not exceed the nominal amount of the Bond or an issue price deviating from the nominal amount, subject to the provisions of Sec. 199 para. 2 of the German Stock Corporation Act.



### **Further structuring possibilities**

The terms and conditions of the Bonds may in each case stipulate that, in the event of a conversion or the exercise of an option or the fulfillment of a conversion or option obligation, also already existing shares, including treasury stock of the Company, or new shares out of authorized capital may be granted. In addition, the terms and conditions may stipulate that the Company may grant the owners of a conversion or option right the equivalent value in cash rather than shares of the Company.

### **Authorization to determine the additional terms and conditions of the Bonds**

The Executive Board is authorized, subject to the consent of the Supervisory Board and in compliance with the provisions stipulated by this authorization, to determine the further details of the issuance and features of the Bonds and the terms and conditions of the latter, in particular the interest rate, issue price, term and denomination, conversion or option period, the stipulation of a supplemental cash contribution, the compensation or combination of fractions and a settlement in cash instead of a delivery. To the extent legally permissible, the terms and conditions may stipulate transfer limitations for bonds granting conversion or option rights on registered common shares and/or for the respective option rights.

The authorization granted above under agenda item 11.1 shall take effect irrespective of the creation of Contingent Capital provided for under agenda item 11.2.

## **11.2 Contingent capital increase/amendment to the articles of incorporation**

The share capital shall be contingently increased by a total amount of up to EUR 109,398,600 by the issuance of a total amount of up to 109,398,600 new registered common shares and/or bearer preference shares (contingent capital). The contingent capital increase serves to grant shares to the holders or creditors of conversion or option bonds which are issued, in compliance with the authorization resolved upon under agenda item 11.1 above, by the Company, and which grant a conversion or option right on no-par value registered or bearer shares of the Company or provide for a conversion or option obligation. These new shares shall exclusively be issued, in compliance with the above authorization, at the conversion or option price respectively to be determined. The contingent capital increase shall only be implemented to the extent that conversion or option rights arising from Bonds are exercised or conversion or option obligations arising from such Bonds are fulfilled, and to the extent that no other forms of fulfillment are used to settle these Bonds. The new registered common shares and/or bearer preference shares shall carry dividend rights from the beginning of the fiscal year in which they are created by the exercise of conversion or option rights or the fulfillment of conversion or option obligations. The Executive Board is authorized, subject to the consent of the Supervisory Board, to determine the further details of the implementation of a contingent capital increase.

Sec. 4 of the articles of incorporation (amount and allocation of the share capital) shall be supplemented by an additional paragraph 5 with the following wording:

“The share capital shall be contingently increased by a total amount of up to EUR 109,398,600 by the issuance of a total amount of up to 109,398,600 new registered common shares and/or bearer preference shares (contingent capital). The contingent capital increase serves to grant shares to the holders or creditors of convertible and/or option bonds which are issued, upon authorization by the shareholders’





meeting of June 4, 2009, by the Company, and which grant a conversion or option right on no-par value registered or bearer shares of the Company or provide for a conversion or option obligation. These new shares shall exclusively be issued, in compliance with the above authorization, at the conversion or option price respectively to be determined. The contingent capital increase shall only be implemented to the extent that conversion or option rights arising from Bonds are exercised or conversion or option obligations arising from such Bonds are fulfilled, and to the extent that no other forms of fulfillment are used to settle these Bonds. The new registered common shares and/or bearer preference shares shall carry dividend rights from the beginning of the fiscal year in which they are created by the exercise of conversion or option rights or the fulfillment of conversion or option obligations. The Executive Board is authorized, subject to the consent of the Supervisory Board, to determine the further details of the implementation of a contingent capital increase.“

**Note to participants of the separate meeting of preference shareholders:**

In case the amended resolution proposal of the management on agenda item 11 (subitem 1) 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 11 (subitem 1) regarding the authorization to issue convertible and/or option bonds is legally not required anymore. The management therefore, in this case, envisages not to put its resolution proposal for agenda item 2 (subitem 1) of the separate meeting of the preference shareholders up for resolution anymore.

The resolution proposal of the management on agenda item 2 (subitem 2: contingent capital/amendment to the articles of incorporation) of the separate meeting of the preference shareholders remains unchanged and is put up for resolution in the separate meeting of the preference shareholders.