Exasol
The analytics database

Report of the Executive Board on agenda item 5

Regarding agenda item 5:

Report of the Executive Board on the exclusion of subscription rights in the context of authorized capital pursuant to Section 203 (2) sentence 2 AktG in conjunction with Section 186 (4) sentence 2 AktG

The Executive Board of the Company hereby submits the following report to the Annual General Meeting in accordance with section 203 (2) sentence 2 AktG in conjunction with section 186 (4) sentence 2 AktG on the reasons for the intended exclusion of subscription rights as part of the aforementioned proposed resolution to create an authorized capital.

a) Introduction

Under agenda item 5, the management proposes the creation of an authorized capital of up to EUR 8.064.827,00. The authorized capital is intended to increase the Company's flexibility and provide it with additional courses of action in the interests of its shareholders.

In the event of a capital increase using the authorized capital, shareholders are generally to be granted subscription rights, which can be implemented by way of indirect subscription rights. However, the Executive Board is to be authorized, with the approval of the Supervisory Board, to exclude subscription rights in certain cases, whereby the total amount of subscription rights excluded under this authorization may not exceed 10% of the share capital at the time this authorization is entered in the commercial register.

b) Exclusion of subscription rights for capital increases of up to 10%

Shareholders' subscription rights may be excluded in particular in the case of cash capital increases of up to 10% of the share capital existing at the time the authorization becomes effective or is exercised if the issue price of the new shares is not significantly lower than the stock exchange price of the Company's shares of the same class and features already traded on the stock exchange (Section 186 (3) sentence 4 AktG, simplified exclusion of subscription rights). Other cases of simplified exclusion of subscription rights on the basis of an authorization by the Annual General Meeting, which may still have to be resolved, are to be counted towards the 10% restriction insofar as this is required by law. The possibility of excluding shareholders' subscription rights with regard to cash capital increases that do not exceed 10% of the share capital enables the Company to react flexibly to favorable capital market situations that arise and to place the new shares with institutional investors in order to raise new funds for corporate financing in the short term without the requirement of a subscription offer lasting at least 14 days.

The simplified exclusion of subscription rights is a standard case provided for by law in which shareholders' subscription rights can be excluded. The restriction to 10% of the share capital existing at the time the authorization becomes effective or is exercised takes into account the shareholders' need for protection with regard to a proportional dilution of their shareholding. Shareholders who wish to maintain their shareholding quota can prevent the reduction of their shareholding quota by purchasing additional shares on the stock exchange. In the case of the simplified exclusion of subscription rights, it is mandatory that the issue price of the new shares is not significantly lower than the market price. This takes into account the shareholders' need for protection with regard to a dilution of the value of their shareholding. By setting the issue price close to the market price, it is ensured that the value of the subscription right for the new shares is practically zero.

c) Exclusion of subscription rights for contributions in kind

Subscription rights may also be excluded in the case of capital increases against contributions, in particular for the acquisition of companies, parts of companies and interests in companies, industrial property rights, such as patents, trademarks or licenses relating thereto, or other product rights or other contributions, including bonds, convertible bonds and other financial instruments. This is intended to enable the Company to react flexibly on national and international markets to opportunities that arise, in particular for the acquisition of companies, parts of companies or interests in companies, as well as to offers for company mergers. Particularly in the context of company or investment acquisitions, there are many reasons to grant sellers shares instead of a purchase price exclusively in cash. In particular, the liquidity of the Company can be protected in this way and the seller(s) can participate in future share price opportunities. This option increases the Company's competitive opportunities for acquisitions. This does not put the Company at a disadvantage, as the issue of shares in return for non-cash contributions requires that the value of the non-cash contribution is in reasonable proportion to the value of the shares. When exercising the authorization, the Executive Board and Supervisory Board of the Company will carefully examine the valuation ratio between the Company and the acquired shareholding or company and determine the issue price of the new shares and the further conditions of the share issue in the best interests of the Company and the shareholders.

d) Exclusion of subscription rights for bonds

The authorization to exclude subscription rights in favor of the holders of bonds with option or conversion rights or obligations issued by the Company, or its group companies serves the purpose of not having to reduce the option or conversion price in accordance with the so-called dilution clauses of the option or conversion conditions if this authorization is exercised. Instead, the holders of bonds with option or conversion rights or obligations should also be granted a subscription right to the extent to which they would be entitled after exercising the option or conversion right or after fulfilling the option or conversion obligation. The authorization gives the Executive Board the opportunity to choose between the two alternatives when utilizing the authorized capital, carefully weighing up the interests involved.

e) Exclusion of subscription rights for fractional amounts

The Executive Board is also authorized, with the approval of the Supervisory Board, to exclude subscription rights to avoid fractional amounts. Fractional amounts may result from the scope of the respective volume of the capital increase and the determination of a practicable subscription ratio. The planned exclusion of subscription rights for fractional amounts enables a smooth subscription ratio and thus facilitates the handling of the issue. The free fractions excluded from shareholders' subscription rights will be utilized in the best possible way for the Company.

If the Executive Board makes use of the authorization during a financial year, it will report on this at the following Annual General Meeting.