



**Report of the  
Executive Board  
on agenda item 6**



**Regarding agenda item 6:**

Report of the Executive Board pursuant to section 221 (4) sentence 2 AktG in conjunction with section 186 (4) AktG on the exclusion of subscription rights as part of the authorization to issue convertible bonds, bonds with warrants and profit participation rights with or without conversion or subscription rights.

a) Introduction

Under agenda item 6, the Executive Board and Supervisory Board request that the Company's shareholders authorize the Executive Board to issue convertible bonds and bonds with warrants as well as profit participation rights with or without conversion or subscription rights. These financing instruments can each be provided with conversion rights or subscription rights to shares in the Company. The holders of these conversion or subscription rights are thus given the opportunity to acquire shares in the Company by converting the payments they have already made to the Company into equity (conversion right) or by making an additional payment into the Company's equity (subscription right). When issuing, the Company may also decide that the bonds and profit participation rights issued are to be exchanged for shares in the Company at a later date at the Company's request (conversion obligation). Delivery of the shares upon exercise of the conversion and subscription rights or fulfilment of the conversion obligation is possible from conditional capital, authorized capital or treasury shares. Cash settlement would also be possible.

The primary purpose of the authorization is to be able to strengthen the Company's capital resources quickly and flexibly if necessary.

The largely open definition of the conditions for the issue of the aforementioned financing instruments at the present time enables the Company to react appropriately to current market conditions and to raise new capital at the lowest possible cost. As a purely precautionary measure, the proposed authorization is also intended to create the possibility of using these financing instruments in the same way as the authorized capital to acquire assets, in particular to acquire companies and interests therein, while preserving liquidity. In practice, however, this use is likely to be of secondary importance.

When these financing instruments are issued, the Company's shareholders generally have a subscription right in accordance with Section 221 (4) AktG.

The requested authorizations are intended to enable the company to exclude subscription rights in certain cases if this should be necessary in the overriding interest of the Company, whereby the sum of the exclusions of subscription rights from this authorization may not relate to more shares (calculated at the time of issue of the respective instrument) than the amount corresponding to 10% of the share capital at the time this authorization is created. The following applies in detail:

b) Exclusion of subscription rights for fractional amounts



The Executive Board and Supervisory Board shall be authorized to exclude subscription rights for fractional amounts. This may be necessary if a practicable subscription ratio cannot otherwise be achieved. The Company will endeavor to make the best possible use of fractional amounts in the interests of the shareholders.

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

For the issue of bonds with warrants and convertible bonds as well as for profit participation rights with a conversion or subscription right to shares in the Company, the Executive Board is to be authorized in analogous application of section 186 (3) sentence 4 AktG to exclude the subscription right if the issue price of the respective financial instrument is not significantly lower than its theoretical market value determined using recognized methods of financial mathematics. This exclusion of subscription rights could become necessary if a bond is to be placed quickly in order to take advantage of a favorable market environment. The exclusion of subscription rights gives the Company the necessary flexibility to take advantage of a favorable capital market situation at short notice in the aforementioned case.

In this case, the interests of the shareholders are safeguarded by ensuring that the issue price of the bonds is not significantly lower than the market value, thereby minimizing the value of the excluded subscription right as far as possible. In addition, this authorization is limited to 10% of the share capital provided for in Section 186 (3) sentence 4 AktG and therefore below the limit of 20% of the share capital. According to the legislator, these requirements protect shareholders from excessive dilution of their shareholdings.

d) Exclusion of subscription rights in the case of profit participation rights under the law of obligations

The Executive Board is also to be authorized, with the approval of the Supervisory Board, to exclude shareholders' subscription rights when issuing profit participation rights that are not share-like or similar to shares, i.e. in particular do not grant a share in the liquidation proceeds and for which the amount of the distribution is not based on the amount of the net profit for the year, the balance sheet profit or the dividend, and which are not linked to conversion or subscription rights. Assuming a bond-like structure of the profit participation rights, the membership position of the shareholders is not affected; neither the voting right nor the pro rata dividend entitlement or the share in the Company's assets would be changed by an issue of profit participation rights without subscription rights. In the event of an exclusion of subscription rights, the profit participation rights would also have to be issued at market conditions, so that there would be no significant subscription right value in this respect. In contrast, the possibility of excluding subscription rights enables the Executive Board to use a low interest rate level or a favorable demand situation for an emission, flexibly and at short notice. This enables the Executive Board to significantly reduce the placement risk. On the other hand, depending on the market situation, there could be a greater or lesser risk that the conditions once set out, in case of an emission of profit participation rights with subscription rights, would no longer be in line with the market by the time of the actual placement on the market. The Company would therefore run the risk of not being able to place the profit participation rights at all, or of placing them too cheaply. Neither



would be in the interests of the Company or its shareholders. However, in order to take account of the shareholders' need for protection, the Executive Board will carefully examine in each individual case whether an exclusion of subscription rights is necessary in the interests of the Company.

e) Exclusion of subscription rights for dilution protection

In addition, it should be possible to exclude the subscription right insofar as this is necessary in order to also grant the holders of conversion and subscription rights a subscription right to which they would be entitled if they had already exercised their conversion or subscription right or had already fulfilled their conversion obligation. Financing instruments such as those described here regularly contain an anti-dilution clause in their terms and conditions in the event that the Company issues further such financing instruments or shares to which the shareholders have a subscription right. To ensure that the value of these financing instruments is not impaired by such measures, the holders of these financing instruments generally receive compensation in that the conversion or subscription price is reduced or that they also receive a subscription right to the subsequently issued financing instruments or shares. In order to maintain the greatest possible flexibility in this respect, it should therefore also be possible to exclude subscription rights in this case. This serves to facilitate the placement and thus ultimately to optimize the Company's financing structure.

f) Exclusion of subscription rights for contributions in kind

Furthermore, it should be possible to exclude subscription rights in order to be able to issue the respective financial instruments in return for contributions in kind. The authorization is intended to enable the Company to use these financing instruments in connection with the acquisition of assets. As can be seen from the wording of the proposed resolution, this may become practical in particular when acquiring companies, parts of companies and interests in companies, industrial property rights, such as patents, trademarks or licenses based on these, or other product rights or other contributions in kind, including bonds, convertible bonds and other financial instruments. In such cases, sellers often insist on receiving consideration in a form other than money or only money. It can then be an interesting alternative to offer bonds with option or conversion rights or profit participation rights instead of or in addition to the granting of shares or cash payments. This option creates additional flexibility and increases the Company's chances of making acquisitions.

However, both the authorization to issue shares against contributions in kind and the exclusion of subscription rights in this regard should only be used if the acquisition of the relevant item is in the overriding interest of the Company and another acquisition, in particular by purchase, is not legally or actually possible or only possible on less favorable terms. In such cases, however, the Company will always check whether there is an equally suitable way of acquiring the item that has less of an impact on the position of the shareholders. The interests of the shareholders are also taken into account by the fact that the Company is obliged to base the acquisition of non-cash benefits against the issue of a bond and/or profit participation rights and/or the issue of new shares on market prices.



Convenience translation

There are currently no concrete plans to make use of the authorization to issue convertible bonds/bonds with warrants and profit participation rights. In any case, the Executive Board will carefully examine whether the use of the authorization is in the interests of the Company and its shareholders.