

## **Report of the Management Board in accordance with section 71, subsection 1, clause 8 AktG in conjunction with section 186, subsections 3 and 4 AktG relating to agenda item 7**

Section 71, subsection 1, clause 8 AktG offers stock corporations the possibility to acquire treasury stock up to a total of 10 percent of their share capital based on authorization by the Annual General Meeting. Agenda item 7 contains a proposal to issue such an authorization, limited to a period of five years. The object of this is to enable the Management Board, in the interest of the company and its shareholders, to acquire treasury stock up to an amount equivalent to a total of 10 percent of the current share capital of the company, either by way of the stock market or by means of a public tender offer. The acquisition may also be effected by dependent Group subsidiaries as per the definition in section 17 AktG or by third parties for the company's account or for the dependent Group subsidiaries' account.

### **Acquisition of treasury stock**

As well as enabling acquisition by way of the stock market, the proposal also stipulates that the company should be able to acquire treasury stock through a public tender offer to the shareholders of the company or by public invitation to submit such an offer. Any such action must be in compliance with the principle of equality laid down in section 53 a AktG. In the case of public tender offers, the shareholders may decide how many shares are to be offered and – where a price span is stipulated – the price at which they wish to offer them to the company. If the number of shares offered at the set offer price exceeds the number of shares

requested by the company, the proposed authorization permits the acquisition to be effected according to the ratio of tendered shares (tender ratios). Only if an acquisition is, by principle, based on tender ratios instead of on share ratios can the acquisition procedure be technically handled within a commercially reasonable framework. The proposal also stipulates preferential acceptance of smaller volumes up to a maximum of 50 shares per shareholder. The object of enabling this possibility is, firstly, to avoid small residual amounts, entailing a potential de facto disadvantage to small shareholders; secondly, it aims to simplify the technical handling of the acquisition procedure. Finally, it is proposed that in all cases, rounding according to commercial principles should be permissible, in order to avoid arithmetic fractions of shares. This is likewise

intended to aid technical handling. An exclusion of any further tendering rights of shareholders entailed by this is considered objectively justified and appropriate with regard to the shareholders. The tender offer, or the invitation to submit such an offer, may stipulate additional conditions.

### **Appropriation of treasury stock**

The treasury stock acquired by the company may be sold-on by way of the stock market or by means of a public offer to all shareholders. This ensures conformance to the principle of shareholder equality on resale of the shares. Where the shares are sold by way of an offer to all shareholders, it is proposed that the Management Board be authorized to

exclude the subscription rights of shareholders to the treasury stock for residual amounts. This very limited exclusion of subscription rights is often key to enabling the sale of shares at all, and is essential in order to present a technically feasible subscription ratio. The surplus treasury stock excluded from the shareholders' rights of subscription will be realized either by being sold off through the market or in some other way to the optimum benefit of the company. The potential dilution is minimized because of the limitation to residual amounts and is therefore objectively justifiable.

Moreover, the proposed authorization enables the company also to sell the acquired treasury stock outside of the stock market for cash, without making a public offer to all shareholders. The precondition for this is that the shares are sold at a price not materially below the market price of shares in the company at the time of sale. This authorization utilizes the possibility to exclude subscription rights by a simplified procedure as permitted by section 71, subsection 1, clause 8 AktG in corresponding application of section 186, subsection 3, clause 4 AktG. The exclusion of subscription rights is in the interest of the company in terms of achieving the best possible price on selling the treasury stock. The revenue achievable by setting a price oriented to the market price generally results in a substantially higher in-flow of funds per share sold than share placements retaining subscription rights, which usually entail substantial discounts on the market price. Protection against share dilution is provided by the stipulation that the shares may only be sold at a price not materially below the determining market price. The authorization to exclude subscription rights when selling treasury stock pursuant to sec-

tion 186, subsection 3, clause 4 AktG, incorporating any other authorizations to issue or sell shares excluding subscription rights in corresponding application of section 186, subsection 3, clause 4 AktG, is limited to a maximum of 10 percent of the share capital of the company in total. The determining criterion is the share capital at the time the authorization comes into force or when it is exercised, whichever is the lower. Protection against share dilution is provided by the stipulation that the shares may only be sold at a price not materially below the determining market price. The definitive selling price of the treasury stock will be set shortly prior to the sale. The Management Board will attempt to calculate any discount against the market price according to the market conditions prevailing at the time of the placement as low as possible. Shareholders wishing to maintain their relative equity ratio and voting rights have the opportunity to acquire the necessary number of shares to this end on the open market.

It is further proposed that the company be enabled to transfer treasury stock as quid pro quo consideration to third parties, provided this is done for the purpose of acquiring companies, parts of companies, shareholdings in companies or other assets or effecting company mergers. Thereby the shareholders' subscription rights shall be likewise excluded. International competition and the globalization of the economy often demands that payment for such transactions be made in the form of shares. In view of the ever-increasing scale of corporate units involved in such transactions, funding can often not be provided in cash without placing major strain on the liquidity of the company or increasing the company's indebtedness to an unacceptable level. The possibility of acquiring shares for these purposes is already provided by the Authorized Capital in Article 4, paragraph 4 of the Articles of Association, but it is further proposed that the possibility be established to allot shares in the company for these purposes without having to increase the capital, which would be more time-consuming because of the required entry in the Register of Companies and also would entail higher administrative costs. The proposed authorization seeks to provide the company with the necessary freedom to enter into mergers or undertake acquisitions quickly and flexibly as opportunities arise. If subscription rights were granted this would not be possible, and the associated benefits for the company would not be achievable. When concrete opportunities arise to acquire companies, parts of companies,

shareholdings in companies or other assets, the Management Board will diligently review whether it should exercise the authorization to allot treasury stock. It will only do so if the undertaking is in the clearly understood interest of the company. In setting the valuation ratios, the Management Board will ensure that the interests of the shareholders are appropriately maintained. It will orient its assessment of the value of the shares tendered by way of quid pro quo to the market price of the company's shares. No schematic linkage to a market price is proposed, in particular to ensure that achieved negotiation outcomes are not placed in question by fluctuations in the market price.

Finally, the proposed resolution authorizes the company to redeem treasury stock without further resolution of the Annual General Meeting. The authorization enables the company to respond appropriately and flexibly to prevailing capital market conditions. Pursuant to section 237, subsection 3, clause 3 AktG, the proposed authorization also permits the Management Board to redeem the shares without reducing the capital. By redeeming the shares without reducing the capital, the proportional amount of the remaining no-nominal-value shares as a percentage of the company's share capital is increased. By redeeming the treasury stock without reducing the capital, the arithmetic proportion of the remaining no-nominal-value shares as a percentage of the company's share capital is automatically increased. The Management Board is therefore authorized to amend the Articles of Association with regard to the changed number of no-nominal-value shares.

The Management Board shall only be allowed to utilize the authorization to acquire treasury stock outside of the stock market for cash, without making a public offer to all shareholders, or the authorization to transfer treasury stock, provided this is done for the purpose of acquiring companies, parts of companies, shareholdings in companies or other assets or effecting company mergers, with the consent of the Supervisory Board. Furthermore, the Supervisory Board may stipulate that measures by the Management Board pursuant to the proposed resolution of the Annual General Meeting be undertaken only with its consent.

In concurrence with the Supervisory Board, the Management Board considers the exclusion of subscription rights in the cases cited, for the

reasons set out, taking into account a potential share dilution, as objectively justified and appropriate with regard to the shareholders. The Management Board will notify the next Annual General Meeting of its exercising of the authorization.