

## **Item 9: Explanatory report pursuant to sections 278 (3), 221 (4) sentence 2, 186 (4) sentence 2 of the German Stock Corporation Act (AktG)**

### **Resolution granting an authorization to issue convertible and/or warrant bonds with the option of excluding subscription rights, the creation of conditional capital (Conditional Capital 2023/I), and corresponding amendments to the Articles of Association**

An appropriate capital base and flexible financing opportunities form an important basis for the company's further development and its successful capital market presence. By issuing convertible and/or option bonds, the company may, depending on market circumstances and its financing needs, be able to draw on attractive financing opportunities with comparatively low interest rates in order, for example, to obtain debt capital for the company on favorable terms. Furthermore, issuing convertible and/or option bonds may enable the company to access new groups of investors. Moreover, the company stands to benefit from the conversion and/or option premiums. This being so, the General Partner and the Supervisory Board deem it expedient to enable the company to issue convertible and/or warrant bonds and, if applicable, also to exclude shareholders' subscription rights.

This authorization is to be added to Authorized Capital 2021, which is documented in § 4 (3) of the company's Articles of Association and which authorizes the General Partner until July 7, 2026, subject to approval by the Supervisory Board, to increase the company's share capital in full or in part, on one or several occasions, by a total amount of up to € 9,600.00.00 by issuing up to 3,200,000 new individual bearer shares in return for cash contributions or contributions in kind and to exclude shareholders' subscription rights in specified cases. In respect of Authorized Capital 2021, the General Partner has additionally undertaken only to increase the company's share capital to the exclusion of shareholders' subscription rights to the extent that the total number of shares issued to the exclusion of shareholders' subscription rights on the basis of Authorized Capital 2021 does not exceed an imputed share of 10% of share capital, either at the time at which Authorized Capital 2021 becomes effective or at the time at which Authorized Capital 2021 is utilized. This 10% limit also includes other shares in the company that are disposed of or issued to the exclusion of shareholders' subscription rights during the term of Authorized Capital 2021 or which require issuing to the exclusion of shareholders' subscription rights as a result of bonds to be issued subsequent to July 8, 2021. The inclusion of a corresponding requirement in the authorization proposed in this Agenda Item 9, which ensures that shares directly or indirectly issued on the basis of these two authorizations are mutually imputed, means that shareholders will be appropriately protected against dilution of their shareholdings, also if the authorization hereby proposed is approved.

The General Partner and Supervisory Board therefore propose the adoption of the following resolution:

#### **9.1 Authorization to issue convertible and/or warrant bonds with authorization to exclude subscription rights**

##### **a) Authorization period, nominal amount, term, amount of share capital**

The General Partner is authorized in the period up to (and including) July 6, 2028, subject to approval by the Supervisory Board, to issue bearer convertible bonds or warrant bonds (hereinafter collectively "**bonds**") on one or several occasions and with or without limited terms up to a total nominal amount of € 250,000,000.00 and to confer or impose conversion and/or option rights and/or conversion obligations on the bearers or creditors of the bonds to subscribe to a total of up to 1,600,000 new no-par bearer shares in the company with a prorated share of share capital amounting to a total of up to € 4,800,000.00 (corresponding to 10% of current share capital) in accordance with the more detailed stipulations set out in the terms and conditions of the bonds (hereinafter collectively "**bond conditions**"). The bonds may also be furnished with a variable return which may be fully or partly linked to the level of dividend paid by the company.

The aggregate total of shares that may or must be issued to satisfy conversion and/or option rights or meet conversion obligations from Conditional Capital 2023/I as a result of the issuing of bonds and of shares issued during the term of this authorization by drawing on authorized capital (in particular Authorized Capital 2021) or otherwise may not – even if subscription rights are granted to shareholders upon the issuing of bonds or shares – exceed a total amount of share

capital of € 9,600,000.00 (corresponding to 20% of current share capital) either at the time at which this authorization becomes effective or at the time at which it is utilized (mutual imputation).

Bonds may only be issued in return for cash payments. As well as in euros, they may also be issued in the legal currency of any OECD country, with the amount being limited to the equivalent euro amount. Bonds may also be issued by a domestic or foreign company in which the company directly or indirectly holds a majority of the votes and capital (hereinafter “**majority shareholding**”); in this case, the General Partner is authorized, subject to approval by the Supervisory Board, to assume a guarantee on behalf of the issuing majority shareholding to cover repayment of the bonds and to furnish bearers or creditors of such bonds with conversion and/or option rights to shares in the company, to meet conversion obligations into shares in the company, and to submit the further declarations and perform the further actions required for a successful issue.

An issue of bonds may be subdivided into partial-bonds with equal rights.

b) Conversion rights, conversion obligations

Should bonds be issued with conversion rights, the bearers or creditors of the partial bonds are entitled to convert these into shares in the company in accordance with the more detailed terms set out in the bond conditions. The bond conditions may also stipulate a conversion obligation at the end of the term or another point in time that may also depend on a future event that is still uncertain at the time at which the bonds are issued.

The conversion ratio is obtained by dividing the nominal amount of a partial bond by the conversion price stipulated for a share in the company. The conversion ratio may also be obtained by dividing the issue amount of a partial bond, should this be lower than the nominal amount, by the conversion price stipulated for a share in the company. It may be stipulated that the conversion ratio is variable, and in particular that it is set within a fixed range depending on the performance of the company's share price during the term of the bond and/or may be amended as a result of anti-dilution requirements pursuant to e). The bond terms may further stipulate that the conversion ratio is to be rounded up or down to a whole number (or to a decimal place to be stipulated); moreover, a supplementary payment to be made in cash may be stipulated. Should conversion rights to fractions of shares arise, it may be stipulated that such fractions are settled in cash or combined in such a way that conversion rights to subscribe whole shares arise, where applicable in return for a supplementary payment.

The prorated amount of share capital attributable to shares to be issued upon conversion of each partial bond may not exceed the nominal amount of the partial bond or the issue amount of the partial bond, should this be lower than the nominal amount. The requirements of § 9 (1) AktG and § 199 AktG will not be affected by this provision.

c) Option right

Should bonds be issued with option rights, one or more warrants will be added to each partial bond which entitle the bearers or creditors to subscribe shares in the company in accordance with the more detailed terms of the bond conditions. It may also be stipulated that the option price is variable, and in particular that it is set within a fixed range depending on the performance of the company's share price during the term of the warrant bond and/or may be amended as a result of anti-dilution requirements pursuant to e).

The bond terms may also stipulate that the option price may be fully or partly settled by transferring partial bonds and, where applicable, with a supplementary cash payment. In this case, the subscription ratio is obtained by dividing the nominal amount of a partial bond by the option price for a share in the company. Furthermore, the subscription ratio may also be obtained by dividing the issue amount of a partial bond, should this be lower than the nominal amount, by the option price stipulated for a share in the company. The bond terms may further stipulate that the conversion ratio is to be rounded up or down to a whole number (or to a decimal place to be stipulated); moreover, a supplementary payment to be made in cash may be stipulated. Should subscription rights to fractions of shares arise, it may be stipulated that such fractions are settled in cash or combined in such a way that subscription rights to subscribe whole shares arise, where applicable in return for a supplementary payment.

The prorated amount of capital attributable to the company shares to be subscribed for each partial bond may not exceed the nominal amount of the partial bond, or the issue amount of the partial bond, should this be lower than the nominal amount. The requirements of § 9 (1) AktG and § 199 AktG will not be affected by this provision. The term of the option right may not exceed the term of the bond.

d) Tender rights, granting of treasury stock, cash settlement

The bond terms may entitle the company to grant shares in the company or of another listed company to creditors of the bond as a full or partial substitute for payment of the due cash amount upon final maturity of the bonds (including maturity due to termination).

The bond terms of bonds which grant or involve a conversion right, conversion obligation, and/or option right may also stipulate or entitle the company to provide conversion or option beneficiaries or the parties with conversion obligations with treasury stock in the company or of another listed company upon conversion or the exercising of options as a full or partial substitute for granting new shares; alternatively, it may satisfy all or part of its obligation by making a cash payment corresponding to the equivalent value of the shares in accordance with the more detailed terms of the bond conditions. The requirements of § 9 (1) AktG and § 199 AktG will not be affected by this provision.

e) Conversion/option price, anti-dilution provisions

The conversion or option price must – also for variable conversion or option prices – amount to at least 80% of the company's average share price in XETRA trading (or a comparable successor system) during the respective periods stated below:

- Should the bonds not be offered for subscription by shareholders, the average price on the ten trading days on the Frankfurt Stock Exchange preceding the date of the resolution adopted by the General Partner in respect of issuing the bond (date of final decision in respect of submitting an offer to subscribe bonds or declaration of acceptance following a call to submit subscription tenders) will be definitive.
- Should the bonds be offered for subscription by shareholders, the average price on the ten trading days on the Frankfurt Stock Exchange preceding the date on which the subscription period is announced pursuant to § 186 (2) Sentence 1 AktG will be definitive; if the final conditions for issuing bonds pursuant to § 186 (2) Sentence 2 AktG are only announced during the subscription period, then the average price on the trading days on the Frankfurt Stock Exchange from the beginning of the subscription period through to the day before the announcement of the final conditions will be definitive.

Diverging from this, should conversion obligations or tender rights apply then in accordance with the more detailed terms of the bond conditions a conversion or option price may also be stipulated that corresponds to the company's average share price in XETRA trading (or a comparable successor system) on the ten trading days on the Frankfurt Stock Exchange preceding or following the date of final maturity or preceding or following the date of mandatory conversion or of the tender right, even if this average price falls short of the aforementioned minimum price (80%).

The average price is to be calculated in each case as the arithmetic mean of the closing auction prices on the respective stock market trading days. Should no closing auction be held, the closing auction price is replaced by the price determined in the most recent auction on a stock market trading day and, absent any auction, the most recent price determined on a stock market trading day (in each case in XETRA trading or a comparable successor system).

Irrespective of the requirements of § 9 (1) AktG, due to an anti-dilution clause intended to safeguard the economic value of the conversion and/or option rights or conversion obligations in accordance with the more detailed terms of the bond conditions, the conversion or option price may be reduced in cases in which the company increases its share capital during the conversion or option period while granting subscription rights to its shareholders, or the company or a majority shareholding issues further bonds with conversion or option rights or conversion obligations while granting subscription

rights to company shareholders, or the company grants other option rights and does not grant subscription rights to the bearers of conversion and/or option rights to the extent to which they would be entitled having exercised their conversion or option rights or met their conversion obligation. The reduction in the conversion or option price may also be achieved by making a cash payment upon the exercising of conversion or options rights or fulfillment of conversion obligations or by reducing any supplementary payment. Furthermore, in the event of a capital reduction, other capital or restructuring measures, or other exceptional measures or events that may lead to a dilution in the value of the company's issued shares, the bond terms may provide for an adjustment to be made to the conversion and/or option rights or conversion obligations in order to protect their value. Furthermore, in the event of third parties gaining control the option and conversion price may be adjusted and the term reduced in line with customary market practice.

In all cases, the prorated amount of share capital attributable to the company shares to be subscribed per partial bond may not exceed the nominal amount or the issue amount of the partial bond, should this be lower than the nominal amount.

f) Subscription rights, exclusion of subscription rights

Shareholders are generally entitled to statutory subscription rights upon the issue of bonds. The bonds may be taken over in full or in part by one or several banks or members of a consortium of banks or of companies deemed equivalent pursuant to § 186 (5) AktG with the obligation to offer these to shareholders for subscription. Should the bonds be issued by a majority shareholding, the company is obliged to ensure that statutory subscription rights are granted to shareholders. The General Partner is nevertheless authorized, subject to approval by the Supervisory Board, to exclude shareholders' subscription rights in full or in part and on one or several occasions in accordance with the more detailed conditions set out below:

- To avoid any residual amounts;
- With corresponding application of § 186 (3) Sentence 4 AktG to the extent that the bonds are issued in return for cash contributions and, following due examination, the General Partner concludes that the issue price does not fall materially short of the theoretical market value of the bonds with conversion or option rights or conversion obligations determined on the basis of recognized, and in particular mathematical principles. However, this authorization to exclude subscription rights for bonds with conversion and/or option rights or conversion obligations only applies to shares for which the total attributable prorated share of share capital does not exceed 10% either at the time at which this authorization becomes effective or at which it is exercised. Shares issued or sold with direct or corresponding application of § 186 (3) Sentence 4 AktG during the term of this authorization through to the time at which it is exercised are imputed to this 10% limit of share capital. Shares that may or must be issued by the company to satisfy conversion or option rights or to meet conversion or option obligations (or a combination of these instruments) are also imputed provided that such bonds conferring corresponding conversion or option rights or imposing corresponding conversion obligations are issued to the exclusion of shareholders' subscription rights during the term of this authorization through to the time that it is exercised with corresponding application of § 186 (3) Sentence 4 AktG.
- To the extent required to grant subscription rights to bearers or creditors of conversion and/or option rights and/or bearers or creditors of bonds involving conversion obligations that are or are to be issued by the company, or by a domestic or foreign company in which the company directly or indirectly holds a majority of the votes and capital, to the extent to which they would be entitled having exercised their conversion and/or option rights or met their conversion obligations.

Including shares issued to the exclusion of shareholders' subscription rights during the term of this authorization by drawing on authorized capital (in particular Authorized Capital 2021) or otherwise, the aggregate total of shares that are, may, or must be issued to the exclusion of shareholders' subscription rights to satisfy conversion and/or option rights or meet conversion obligations may not exceed an amount of share capital totaling € 4,800,000.00 (corresponding to 10% of existing share capital) either at the time at which this authorization becomes effective or at the time at which it is utilized (mutual imputation).

Unless they are excluded by the aforementioned conditions, shareholders' subscription rights may, where so determined by the General Partner with the approval of the Supervisory Board, also be granted by way of indirect subscription rights pursuant to § 186 (5) AktG or partly by way of direct subscription rights (such as to shareholders entitled to subscribe who submit a confirmed acquisition declaration in advance) and otherwise by way of indirect subscription rights pursuant to § 186 (5) AktG.

g) Authorization to stipulate further bond conditions

Taking due account of the aforementioned requirements, the General Partner is authorized, subject to approval by the Supervisory Board, to stipulate the precise calculation of the exact option or conversion price and further details concerning the issue and feature of the bonds and, to stipulate such in agreement with the governing bodies of the majority shareholding issuing the bond, and in particular the coupon, issue amount, distribution entitlement, term and denomination, subscription and conversion ratio, supplementary cash payment requirement, anti-dilution requirements, settlement or combination of residual amounts, conversion and option period, cash payment instead of granting of shares, and granting existing shares instead of issuing new shares.

## 9.2 Creation of Conditional Capital 2023/I

The company's share capital is to be conditionally increased by up to € 4,800,000.00 by issuing up to 1,600,000 new, no-par bearer shares (Conditional Capital 2023/I). This conditional capital increase serves to grant shares to the bearers or creditors of convertible and/or warrant bonds that are issued on the basis of the authorization provided by resolution of the Annual General Meeting on July 7, 2023 under Agenda Item 9 by the company or a domestic or foreign company in which the company directly or indirectly holds a majority of the votes and capital in the period up to (and including) July 6, 2028. The conditional capital increase will only be executed to the extent that option or conversion rights resulting from the aforementioned bonds are utilized or the conversion obligations from such bonds are met and only to the extent that other means are not drawn on to satisfy the resultant obligations. New shares will be issued at the option or conversion price to be stipulated in each case on the basis of the aforementioned resolution adopted by the Annual General Meeting on July 7, 2023.

The new shares will participate in profit from the beginning of the financial year in which they arise due to exercising of the respective conversion or option rights or fulfillment of the conversion obligations; diverging from this, to the extent permitted by law and subject to approval by the Supervisory Board, the General Partner may stipulate that the new shares participate in profit from the beginning of the financial year for which no resolution concerning the appropriation of net profit has yet been adopted by the Annual General Meeting at the time at which the conversion or option rights are exercised or the conversion obligations met. The General Partner is to be authorized to stipulate further details relating to the execution of the conditional capital increase.

The Supervisory Board is to be authorized to amend the wording of § 4 of the company's Articles of Association in accordance with the issue of new shares from Conditional Capital 2023/I. The same applies to the extent that the authorization to issue warrant and/or convertible bonds pursuant to the resolution adopted by the Annual General Meeting on July 7, 2023 has not been exercised during the term of such authorization or the corresponding option rights, conversion rights, or conversion obligations have lapsed due to expiry or otherwise.

### 9.3 Amendment to the Articles of Association

Subsequent to § 4 (3) a new § 4 (4) shall be added with the following wording:

“The company’s share capital is conditionally increased by up to € 4,800,000.00 by issuing up to 1,600,000 new, no-par bearer shares (Conditional Capital 2023/I). This conditional capital increase serves to grant shares to the bearers or creditors of convertible and/or warrant bonds that are issued on the basis of the authorization provided by resolution of the Annual General Meeting on July 7, 2023 under Agenda Item 9 by the company or a domestic or foreign company in which the company directly or indirectly holds a majority of the votes and capital in the period up to (and including) July 6, 2028. The conditional capital increase is only executed to the extent that option or conversion rights resulting from the aforementioned bonds are actually utilized or the conversion obligations from such bonds are met and only to the extent that other means have not been drawn on or are not drawn on to satisfy the resultant obligations. New shares are issued at the option or conversion price to be stipulated in each case on the basis of the aforementioned resolution adopted by the Annual General Meeting on July 7, 2023. The new shares participate in profit from the beginning of the financial year in which they arise due to exercising of the respective conversion or option rights or fulfillment of the conversion obligations; diverging from this, to the extent permitted by law and subject to approval by the Supervisory Board, the General Partner may stipulate that the new shares participate in profit from the beginning of the financial year for which no resolution concerning the appropriation of net profit has yet been adopted by the Annual General Meeting at the time at which the conversion or option rights are exercised or the conversion obligations met. The General Partner is authorized to stipulate further details relating to the execution of the conditional capital increase.

The Supervisory Board is authorized to amend the wording of § 4 of the company’s Articles of Association in accordance with the issue of new shares from Conditional Capital 2023/I. The same applies to the extent that the authorization to issue warrant and/or convertible bonds pursuant to the resolution adopted by the Annual General Meeting on July 7, 2023 has not been exercised during the term of such authorization or the corresponding option rights, conversion rights, or conversion obligations have lapsed due to expiry or otherwise.”