Convenience Translation

General Meeting of home24 SE on June 3, 2020

Report of the management board regarding Agenda Item 8: Resolution on the cancellation of the authorization of the general meeting on June 13, 2018 to issue convertible bonds, option bonds, profit participation rights and/or profit participation bonds (or combinations of these instruments) with the option of excluding subscription rights, on the granting of a new authorization to issue convertible bonds, option bonds, profit participation rights and/or profit participation bonds (or combinations of these instruments) with the option of excluding subscription rights, creation of a new Conditional Capital 2020 as well as on the cancellation of the Conditional Capital 2018 and corresponding amendment of the articles of association

Under Agenda Item 8, the management board and the supervisory board propose to cancel the existing authorization to issue convertible bonds, option bonds, profit participation rights and/or profit participation bonds (or combinations of these instruments) with the option of excluding subscription rights, to grant a new authorization to issue convertible bonds, option bonds, profit participation rights and/or profit participation bonds (or combinations of these instruments) with the option of excluding subscription rights, and to create a new Conditional Capital 2020.

Pursuant to Article 5 SE Regulation in conjunction with Section 221 para. 4 sentence 2 in conjunction with Section 186 para. 4 sentence 2 AktG, the management board presents the following report regarding Agenda Item 8 of the general meeting about the reasons for the authorization to exclude the subscription right of shareholders when issuing new bonds:

In order for the company to remain flexible in the future as well to issue convertible bonds and/or option bonds and/or profit participation rights with option or conversion rights (or a combination of these instruments) as needed (including issues with a simplified exclusion of subscription rights) and to be able to support these with shares for servicing the resulting option or conversion rights, the existing authorization is to be canceled and replaced by a new authorization with a scope adapted to the larger number of shares and with a longer term. The Conditional Capital 2018 in Section 4 para. 8 of the articles of association should be adjusted accordingly.

In order to be able to also utilize the spectrum of possible capital market instruments that securitize conversion or option rights accordingly, it seems appropriate to limit the permissible issue volume in the authorization to EUR 150,000,000.00. The conditional capital that serves to fulfill the conversion or option rights or conversion or option obligations should equal EUR 10,774,773.00. This ensures that this authorization framework can be fully utilized. The number of shares required to service conversion or option rights, conversion or option obligations or to grant shares instead of the amount due under a bond with a specific issue volume generally depends on the market price of the company's share at the time of the issue of the bond. If conditional capital is sufficiently available, the possibility to fully utilize the authorization framework for the issue of bonds is ensured.

Adequate capital resources are an essential basis for the development of the company. By issuing convertible bonds and option bonds, depending on the market situation, the company can use attractive financing options to enable the company to obtain capital at a low current interest rate. By issuing profit participation rights with conversion or option rights, the interest can also be based, for example, on the company's current dividend. The conversion and option premiums that are achieved benefit the company in the issuance. Practice has shown that some financing instruments can only be placed through the granting of option or conversion rights.

When issuing convertible bonds, option bonds, profit participation rights and/or profit participation bonds with conversion or option rights, the shareholders must generally be granted a subscription right to the bonds (Article 5 SE Regulation in conjunction with Section 221 para. 4 in conjunction with Section 186 para. 1 AktG). The management board can make use of the option of issuing bonds to one or more credit institutions with the obligation to offer the bonds to the shareholders in accordance with their subscription rights (so-called indirect subscription rights in accordance with Section 186 para. 5 AktG). This is not a limitation of shareholders' subscription rights. Ultimately, the shareholders are granted the same subscription rights as with a direct subscription. For technical reasons, only one or more credit institutions are involved in the settlement.

i. The management board shall however be authorized, with the consent of the supervisory board, to exclude the subscription rights for fractional amounts. This exclusion of subscription rights aims to facilitate the settlement of an issuance with a general subscription right of the shareholders, because it enables a technically feasible subscription ratio to be represented. The value of the fractional amounts is usually low per shareholder, which is why the possible dilution effect can likewise be considered as low. In contrast, the effort for the issuance without such an exclusion is significantly higher. The exclusion therefore serves the purpose of practicability and facilitating the execution of an issuance. For these reasons, the management board and the supervisory board consider the possible exclusion of subscription rights to be objectively justified and, taking into account the interests of the shareholders, also appropriate.

ii. Furthermore, the management board shall be authorized, with the consent of the supervisory board, to exclude shareholders' subscription rights in order to grant holders or creditors of bonds a subscription right to the extent which they would be entitled after exercising their conversion or option rights or after fulfilling their conversion or option obligations. This provides the option of granting subscription rights to the holders or creditors of bonds already issued at that time or still to be issued as protection against dilution, instead of a reduction in the option or conversion price. It is standard in the market to provide bonds with such protection against dilution.

iii. In analogous application of Article 5 SE Regulation in conjunction with Section 186 para. 3 sentence 4 AktG, the management board shall further be authorized, with the consent of the supervisory board, to exclude subscription rights where bonds are issued against cash payments if the issue price of the bonds does not substantially fall below their market value. This can be expedient in order to rapidly identify favorable stock market conditions and to be able to place a bond quickly and flexibly on the market at attractive conditions. Since the stock markets can be volatile, achieving the most advantageous possible issue result often depends on whether it is possible to react to market developments at short notice. Favorable conditions that are as close to market conditions as possible can usually only be fixed if the company can place the instruments within a short offer period. In order to secure the chances of success of the issue for the entire offer period, a not inconsiderable safety discount is generally required for subscription rights issues. Admittedly, Section 186 para. 2 AktG permits publication of the subscription price (and thus the conditions of the bond in the case of option and convertible bonds) until the third to last day of the subscription period. In view of the volatility of the stock markets, though, even then there is a market risk for several days, which leads to safety margins when fixing the bond conditions. When granting a subscription right, an alternative placement with third parties is also rendered more difficult due to the uncertainty of the exercise (subscription behavior) or involves additional efforts. Finally, if a subscription right is granted, the company cannot react to a change in market conditions at short notice due to the length of the subscription period, which can lead to less favorable capital procurement for the company.

The interests of the shareholders are safeguarded by the fact that the bonds are not issued substantially below the market value. The market value is to be determined according to recognized financial mathematical principles. When setting the price, the management board will keep the discount on the market value as low as possible, taking into account the respective situation on the capital market. This means that the exclusion of subscription rights does not result in any noteworthy economic disadvantage for the shareholders.

A market-oriented determination of the conditions and thus the avoidance of a noteworthy dilution of value can also be effected, inter alia, by the management board carrying out a so-called bookbuilding process. In this process, investors are asked to submit purchase orders based on preliminary bond terms by specifying, e.g., the interest rate and/or other economic components considered to be fair in the market. After completion of the bookbuilding period, the conditions still open at that time, e.g., the interest rate, will be determined on the basis of the purchase orders submitted by investors in line with supply and demand. In this manner, the total value of the bonds is determined close to the market. Among other things, the management board can use such a bookbuilding process to ensure that there is no significant dilution of the value of equity due to the exclusion of subscription rights.

Shareholders also have the option of maintaining their share in the company's share capital on nearly the same conditions by purchasing on the stock exchange. This ensures that their financial interests are adequately safeguarded. The authorization to exclude subscription rights in accordance with Section 221 para. 4 sentence 2 in conjunction with Section 186 para. 3 sentence 4 AktG only applies to bonds with rights to shares that do not account for a pro rata amount of the share capital totaling more than 10 % of the share capital, either at the time they become effective or at the time when this authorization is exercised. The sale of treasury shares shall be counted towards this limit, provided this occurs during the term of this authorization under the exclusion of the subscription right pursuant to Section 71 para. 8 no. 5 sentence 2 clause 2 in conjunction with Section 186 para. 3 sentence 4 AktG. In addition, shares shall be counted towards this limit that are issued from authorized capital during the term of this authorization under the exclusion of subscription rights pursuant to Section 203 para. 2 sentence 1 in conjunction with Section 186 para. 3 sentence 4 AktG. This crediting is done in the interests of the shareholders to minimize dilution of their participation.

iv. Bonds can also be issued against contributions in kind, provided this is in the interests of the company. In this case, the management board is authorized, with the consent of the supervisory board, to exclude shareholders' subscription rights, provided that the value of the contribution in kind is commensurate with the theoretical market value of the bonds to be determined according to recognized financial mathematical principles. This opens up the possibility of also using bonds as an acquisition currency in suitable individual cases, e.g., in connection with the acquisition of undertakings, equity interest or other assets. Thus, it has been shown in practice that it is often necessary in negotiations to provide the consideration not in cash, but also or exclusively in another form. The possibility of being able to offer bonds as consideration therefore creates an advantage in the competition for interesting acquisition assets, as well as the necessary leeway to be able to take advantage of opportunities to acquire undertakings – even larger ones –, equity interest or other assets in a manner that conserves liquidity. This may also make sense from the perspective of an optimal financing structure. In each individual case, the management board will carefully examine whether it will make use of the authorization to issue bonds with conversion or option rights or conversion or option obligations against contributions in kind under the exclusion of subscription rights. It will only do this if this is in the interests of the company and thus its shareholders.

Insofar as profit participation rights or profit participation bonds with no conversion or option rights or conversion or option obligations are to be issued, the management board is also authorized, with the consent of the supervisory board, to exclude the subscription right of the shareholders as a whole, if these profit participation rights or profit participation bonds are structured similar to obligations, i.e., do not establish membership rights in the company, grant any participation in the liquidation proceeds, and the amount of the interest is not calculated on the basis of the amount of the annual profit, the balance sheet profit or the dividend. Moreover, this requires that the interest and the issue price of the profit participation rights or profit participation bonds must also correspond to the current market conditions for comparable borrowings at the time of the issue. If the above conditions are met, the exclusion of subscription rights does not result in any disadvantages for the shareholders, since the profit participation rights or profit participation bonds do not establish any membership rights and do not grant any share in the liquidation proceeds or in the profit of the company. Although it can be stipulated that the interest rate depends on the existence of an annual surplus, a balance sheet profit or a dividend, a provision would on the other hand be inadmissible according to which a higher annual surplus, a higher balance sheet profit or a higher dividend would lead to a higher interest rate. Therefore, the issuance of profit participation rights or profit participation bonds does not change or dilute the voting rights or the shareholders' participation in the company and its profits. In addition, there is no noteworthy subscription right value as a result of the fair market issue conditions that are mandatory in this case of the exclusion of subscription rights.

The proposed conditional capital serves to fulfill conversion or option rights or conversion or option obligations for shares in the company from issued bonds, or to grant shares in the company to creditors or holders of bonds instead of paying the amount due. It is also envisaged that the conversion or option rights or conversion or option obligations can instead also be serviced by the delivery of treasury shares or shares from authorized capital or by other benefits.

If the management board utilizes one of the above authorizations to exclude subscription rights in the course of issuing bonds during a fiscal year, it will report on this at the following general meeting.

Berlin, May 2020

home24 SE
– The Management Board –

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