Report of the Management Board to the General Meeting regarding the authorisations to exclude the subscription right pursuant to § 203(1) and (2) sentence 2 in conjunction with § 186(4) sentence 2 AktG listed under agenda item 6

Under agenda item 6, the Management and Supervisory Boards propose creating a new authorised capital 2023/I in the increased extent of 25 percent of the share capital for five years, the maximum period permitted under statutory law.

This authorised capital would be used to open up a flexible option to raise additional equity capital if this appears to be in the company's interests by the Management Board with the Supervisory Board's approval. The new authorised capital should expand the opportunities for action in the shareholders' interests and make it possible for the company to react at short notice to financing needs that appear. In principle, the shareholders will be given a subscription right if the capital is increased. However, the Management Board should be authorised to exclude that subscription right in certain cases with the Supervisory Board's approval.

The report made by the Management Board to that end is announced as follows:
If the authorised capital is utilised, the shareholders will in principle have a subscription right. However, the requested authorisation includes the option to exclude the shareholders' subscription right in the following cases:

1. Excluding the subscription right for fractional amounts

The Management Board should be authorised to exclude fractional amounts (with the Supervisory Board's approval) that accrue due to the subscription ratio, to make it easier to process the shareholders' subscription right. This should make it possible to present a practical subscription ratio with regard to the amount of the respective capital increase. If the subscription right were not excluded regarding fractional amounts, it would be much harder to technically implement the capital increase and exercise the subscription right. The new fractional shares excluded from the shareholders' subscription rights will be optimally exploited for the company, either through sale via the stock exchange or otherwise.

2. Excluding the subscription right during cash capital increases pursuant to § 186(3) sentence 4 AktG

Pursuant to § 186(3) sentence 4 AktG, the subscription right may be excluded unless the capital increase against cash contributions exceeds ten percent of the share capital in total or the issued amount is significantly less than the stock exchange price. This places the management in a position to use the options offered by stock market conditions quickly, flexibly, and inexpensively. It enables the management to procure new equity capital quickly and close to the market price, thereby strengthening the equity capital base. And a need for capital caused by the short-term exploitation of market opportunities can be covered quickly and flexibly. So it lies in the interests of the company and the shareholders. Such cash capital increases are also limited to ten percent of the share capital, which considers the shareholders' need to keep their holdings from being overly diluted. Pursuant to § 186(3) sentence 4 AktG, shares must be credited to this ten percent limit if they were issued or sold during the term of this authorisation in direct or appropriate application of this regulation based on other authorisations. Shares must also be credited to this limit if they were or are to be issued based on debt securities with conversion or option rights or with conversion obligations issued at the time of the utilisation. Moreover, any deduction from the current stock exchange price for the company shares will presumably not exceed three percent, but may not exceed five percent of the stock exchange price. New shares will be issued close to the market price so that any shareholder interested in retaining their participation quota has the opportunity to acquire shares on the market under almost the same conditions as the issuance provides for.

3. Excluding the subscription right to fulfil a greenshoe option

Finally, the subscription right may also be excluded to fulfil a greenshoe option agreed with issuing banks during an additional IPO of the company. An additional IPO enables the company to obtain improved access to the capital market and therefore cover the need for capital simply and flexibly. This is particularly significant in light of a possible additional expansion of the company in the future. The greenshoe is typical in IPOs. It applies not only to first-time IPOs, but also to additional IPOs. This means a provision should be made for it even if there is currently no specific plan for an additional IPO that includes a greenshoe option. A greenshoe option is also called an over-allotment option. This is primarily used to precisely determine the placement quantity and stabilise the share price if (additional) shares are listed. It functions as follows: On the grant date, the issuing banks sell not only the planned placement volume (100 percent), but a certain number of additional shares beyond that which are otherwise made available (up to 15 percent of the actually planned placement volume). Those additional shares can be used to stabilise the price. The issuing banks can buy back shares in the market as long as generally typical reflows as part of the issuance of sold shares in the market lead to a price decline that is beneath the placement price. This allows a price reduction caused by the reflows to be absorbed. If no such buyback occurs in the market, the second element of the over-allotment option applies: covering the overly allotted and sold shares (through shares of other shareholders, or even through a capital increase in the company, for example). So a greenshoe option makes it possible to better exhaust the market potential during pricing. Since the investors can be given a certain assurance in price development, they are prepared to pay a higher price. Therefore, in addition to and because of the stabilisation, the greenshoe option leads to an increase in the earnings to be gained during the issuance and ultimately lies in the interests of the company and the shareholders.

4. Excluding the subscription right for warrant and convertible bonds

Moreover, the subscription right can be excluded with the Supervisory Board's approval if this is necessary so that owners of warrant and/or convertible bonds that have been or will be issued can be given a subscription right to new shares if this has been provided for in the conditions of the respective debt security. To make it easier to place them on the capital market, such debt securities are normally associated with a mechanism to protect them from dilution which provides that, if subsequent shares are issued with a shareholder subscription right, the owners of the debt securities can be granted the same subscription right to new shares to which the shareholders are also entitled (instead of a reduction of the option or con-version price). This will put them in the position they would be in had they already exercised their option or conversion right or a conversion obligation had already been met. This has the advantage that, unlike dilution protection by reducing the option or conversion price, the company can achieve a higher issue price for the shares to be issued when the conversion or option is exercised.

5. Excluding the subscription right to carry out a scrip dividend

With the Supervisory Board's approval, the Management Board should be authorised to exclude the statutory subscription right so a scrip dividend can be carried out under optimal conditions. During a scrip dividend, shareholders are given the chance to pay their claim to a dividend disbursement (which arose with the General Meeting's decision on appropriating profit) into the company as a contribution in kind to purchase new company shares.
The scrip dividend can be carried out as a genuine issuance of subscription rights, especially under consideration of the provisions in § 186(1) AktG (minimum subscription period of two weeks) and § 186(2) AktG (disclosure of the issue amount at least three days before the subscription period expires). As part of this process, each shareholder will be offered only whole shares; regarding the part of the dividend claim that falls short of or exceeds the subscription price for a whole share, shareholders are referred to the subscription of cash dividends and to that extent cannot subscribe to shares; an offer of partial rights is not provided for any more than the establishment of trading in subscription rights or parts thereof. Since, instead of a subscription to new shares, the shareholders obtain a cash dividend to the same extent, this seems justified and reasonable.
Depending on the capital market situation, it can sometimes be preferable to offer and prepare scrip dividends without being bound by the restrictions of § 186(1) AktG (minimum subscription period of two weeks) and § 186(2) AktG (disclosure of the issue amount at least three days before the subscription period expires) to that extent. The Management Board should therefore also be authorised to offer new shares for subscription to all shareholders who are entitled to a dividend, against payment of their dividend claim and while observing the general principle of equal treatment (§ 53a AktG), but to formally exclude the shareholders' subscription right with the Supervisory Board's approval. Carrying out the scrip dividend while formally excluding the subscription right makes it possible to increase the capital under more flexible conditions. Since all shareholders are offered the new shares and excess fractional dividends are covered through cash dividend payments, excluding the subscription right also seems justified and reasonable to that extent.

Summary

Considering all the circumstances, the respective authorisation to exclude the subscription right to the limits described is necessary and called for in the interests of the company and, therefore, the shareholders. The Management Board shall exercise its authorisation with the Supervisory Board's approval. The respective conditions will be established in due course so that the interests of the shareholders and needs of the company are adequately protected considering the circumstances. The Management Board shall report each exercise of the authorisation to the General Meeting.

Using the authorisation

There are currently no plans to utilise the authorised capital 2023/I. Anticipatory resolutions with the option of excluding the subscription right are typical both nationally and internationally. All cases of excluding the shareholders' subscription right proposed here require the Supervi-sory Board's approval. In any case, the Management Board shall also check whether the utili-sation of the authorised capital 2023/I is in the company's interests; to that end, it will also check in particular whether any exclusion of the subscription right is objectively justified on a case-by-case basis. Each time the Management Board uses the authorisation, it shall report that use to the next General Meeting.

The Management Board's written report pursuant to § 203(2) sentence 2 in conjunction with § 186(4) sentence 2 AktG regarding the Management Board's authorisation to exclude the shareholders' subscription right in connection with the voting on agenda item 6 will be made available to the shareholders at

https://www.eqs.com/de/ueber-eqs/corporate-governance/

beginning with the summons to the General Meeting.