



Report of the Board of Management pursuant to § 71 para. 1 no. 8 in conjunction with § 186 para. 4 sentence 2 AktG

§ 71 para. 1 no. 8 AktG offers stock corporations the possibility to acquire treasury shares of up to a total of 10% of their share capital on the basis of an authorization by the Annual Stockholders' Meeting. Agenda item 4 contains the recommendation to grant a corresponding authorization limited to 18 months. This is intended to enable the Board of Management to acquire treasury shares in the interest of the Company and its stockholders on an exchange or through a public tender offer up to a total amount of 10% of the current share capital of the Company. The tender may also be carried out on behalf of the Company by affiliated group companies (according to the meaning of § 17 AktG) and third parties acting in or their behalf.

The principle of equal treatment of § 53 a AktG must be observed from the beginning if the tender occurs through a public tender offer as well as the tender of shares on an exchange. If the number of shares offered at a fixed price exceeds the number of shares demanded by the Company, it should be possible under the recommended authority that the tender should occur according to the relation of the tendered shares (tender rate). Only when a tender occurs principally according to the tender rate instead of the holding rate, can the tender process be technically concluded in an economically reasonable fashion. Furthermore it should be possible to preferentially accept smaller numbers of shares up to a maximum of 50 shares per stockholder. To one extent this ability serves to avoid small normally uneconomical remnants and a potential accompanying disadvantage for small stockholders. To another extent it serves to simplify the technical settlement of the tender process. Finally in all cases a rounding according to business principles for the avoidance of fractions of shares is intended. This also serves to simplify the technical settlement. The Board of Management in conformity with the Supervisory Board finds an exclusion of any additional stockholder tender rights justified as well as appropriate vis-à-vis the stockholders.



The treasury shares acquired by the Company can be sold again over an exchange or by means of a public offering to all stockholders. In this regard the principal of equal treatment of the stockholders is observed in the sale of the shares. To the extent shares are sold by means of an offer to all stockholders, the Board of Management shall be authorized to exclude stockholder subscription rights for fractional amounts of shares. The ability to exclude subscription rights for fractional amounts serves to produce a technically feasible subscription ratio. The fractional shares excluded from the stockholder subscription rights will be either sold over an exchange or disposed of in another manner in the best interest of the Company. The potential dilution effect is marginal due to the limitation of the fractional amounts.

Furthermore, under the recommended authority the Company can also sell the acquired shares on cash terms outside of an exchange and without a public offer directed to stockholders if the sale price at the time of the sale does not materially fall below the exchange quotation. The ability of this authorization, available under § 71 para. 1 no. 8 AktG in corresponding application of § 186 para. 3 sentence 4 AktG for facilitating an exclusion of the subscription right is invoked. This serves, in the interests of the Company, to reach a best possible price at the sale of the treasury shares. The Company would thus be in the position of being able to react quickly, flexibly and cost effectively to beneficial situations on the stock exchange. Sale proceeds recoverable through price determination close to the market generally lead to a considerably higher cash inflow per share sold than in the case of a share placement with a subscription right which normally incurs a substantial deduction from its market price. Through the avoidance of the time and cost intensive settlement of the subscription right, stockholder equity needs can be covered through timely short term market opportunities. The asset and voting interests of the stockholders will be appropriately protected. The authorization on excluding subscription rights under § 186 para. 3 sentence 4 AktG when selling treasury shares or options and / or convertible bonds is limited to a maximum amount of 10% of the share capital of the Company, including any authorizations for the issuance of new shares or convertible bonds excluding the subscription right according to, pursuant to, or in the meaning of § 186 para. 3 sentence 4 AktG. Determinative is the share capital upon effectiveness of the authority or at its use, whichever value is smaller. This addresses the question of protecting stockholders against dilution of their



holdings, such that the shares can only be sold at a price which does not materially fall below the controlling exchange price. The final determination of the sale price for the shares occurs promptly before the sale. The Board of Management will endeavor – under consideration for the current market conditions – to keep a potential deduction from the exchange price as low as possible. Interested stockholders can maintain their holding quota at the substantially same terms through purchases on the market. The entire trading volume in the 2008 calendar year was more than 200% of the capital stock of the Company.

The Company should retain the possibility to transfer its shares as consideration to third parties to the extent that it is used for the purpose of acquiring companies, portions of companies, or interests in companies or other assets or to transact business mergers. At the same time the stockholders' subscription right should be excluded. The Company competes globally. It must at any moment be in the position to quickly and flexibly trade on the national and international markets. This also includes the ability to improve its competitive position by combining with other companies or acquiring companies, portions of companies and interests in companies. In particular in connection with the acquisition of companies or portions of companies it can be economically meaningful to acquire other assets that could economically serve the Company or segment of the Company. The optimal case in the interest of the Company would be the single case where a company combination or the acquisition would be conducted under warranty of the shares of the acquiring company. Practice further shows that on the international as well as the national markets the procurement of shares of the acquiring company is often demanded as consideration in the scope of corporate mergers or for attractive acquisition objects. The possibility to grant shares for this purpose is already envisaged by Authorized Capital I in § 4 of the Articles of Incorporation. Beyond this the possibility to grant shares of the Company should exist without having to execute an increase in the capital stock especially because of the time consuming requirements of entry into the commercial registry and the associated higher administrative costs. The recommended authorization should give the Company the necessary latitude to quickly and flexibly take advantage of opportunities for business mergers or acquisitions. This would not be possible if subscription rights were granted and the associated advantages would not be available to the Company. There are currently no specific plans for a business combination or acquisition which would make use of this possibility. When the respective



plans become more specific, the Board of Management will carefully examine whether the authority to grant shares should be used. When determining the relative valuation, the Board of Management will ensure that the interests of the stockholders are reasonably protected. The Board of Management will normally base its determination of the value of the shares being provided as consideration on the stock exchange price of the shares of the Company. A fixed link to a stock exchange price is not contemplated, especially so as not to call into question achieved results of negotiations because of fluctuations in the stock exchange price.

Furthermore, the terms in e) of the resolution proposal would enable the Company to use treasury shares in order to service stock programs from the years 2000 – 2002.

The grant of Stock Options and subscription rights to employees and management personnel which entitle them under certain conditions to obtain shares in the Company is an internationally common method of compensation. This is intended to create an incentive to additionally increase the value of the Company by special efforts, and thus to promote the development of the stock exchange price of the shares of the Company in the interests of the stockholders and the Company, also when compared to other businesses. At the same time, the aim is to attract qualified employees and management personnel to the Bayer Group and retain them in the Bayer Group over the long-term. In light of this purpose, shares acquired to service the Stock Programs 2000 – 2002 cannot be offered to stockholders in the event of a sale, but only to the participants in the Stock Programs 2000 – 2002. All material provisions in the relevant Stock Programs are already set forth in the proposal for the resolution. Therefore, only the most important aspects are explained below:

The proposed authorization is intended to permit the Company to service the Module 1 of the SPP and the SIP using treasury shares. The Stock Programs which are to be serviced using treasury shares on the basis of the proposed authorization of the Annual Stockholders' Meeting are based on two or three aspects respectively, which correspond to the specific interests of the Company and its stockholders. The first aspect consists in the respectively



established waiting periods which create a mid to long-term relationship between the management personnel and employees and the Bayer Group. These waiting periods exceed the waiting periods in stock programs of other companies, in some cases to a substantial degree.

The second aspect is based in personal investment. Only if the relevant employees and management personnel invest in shares of the Company for their own account, and thus for their own risk, can they participate in the Stock Programs as has been described. Accordingly, the Stock Programs have particular importance and a particular weight which differentiate them from many other stock programs of other companies. Not only do the respective employees and management personnel have the opportunity to participate in the development of the Company by using increased efforts, they are also at risk with their own resources, as is the case with the other stockholders. The third aspect consists of additional prerequisites for exercising the rights.

The participants in the SPP have two available modules. While Module 2, for which no resolution is required here, corresponds to the structure of a normal employee stock program which can be serviced under § 71 para. 1 no. 2 AktG using treasury shares of the Company which are acquired by the Board of Management on the market, Module 1, as a supplement to § 71 para. 1 no. 2 AktG, is an innovative employee stock model which makes the grant of additional shares in the Company dependent on remaining with the Bayer Group and holding a personal investment.

The participants in the sip only receive Incentive Shares if the performance of the stock of the Company for tranches up to and including 2002 (on a total return basis) in each case during the relevant period was better than the performance of the Dow Jones EURO STOXX 50SM (Performance Index). The management personnel of the Bayer Group, therefore, are prepared to have their performance measured against the performance of the most important listed companies in the European economic region. The Stock Programs represent in each case elements of compensation which expand the already existing variable compensation



components for the purpose of developing even greater motivation and are intended to contribute to a long-term increase in the value of the business. Upon the grant of the Incentive Shares, the management personnel will therefore have already earned them as consideration as a result of their own personal performance. The shares are thus issued free of charge.

During the year 2008, 67,520 shares were granted free of charge under the SPP Module 1 incentive program, and 16,860 shares were granted free of charge under the sip incentive program to employees and management personnel.

Finally, the authorization permits the Company to cancel treasury shares without requiring any further resolution from the Annual Stockholders' Meeting. The authorization permits the Company to react in a reasonable and flexible manner to the respective situation in the capital markets. Pursuant to § 237 para. 3 no. 3 AktG, the proposed authorization provides that the Board of Management can also cancel the shares without a reduction of capital. By canceling the shares without a reduction of capital, the proportionate amount of the remaining shares in the share capital of the Company is increased. The Board of Management is authorized in this regard to adjust the Articles of Association with regard to the altered number of shares.

According to g) of the resolution proposal the Board of Management shall only with the consent of the Supervisory Board make use of the authority to sell shares outside of an exchange without an offer directed to all stockholders for cash consideration as well as the authority to transfer shares to third parties to the extent that it serves the purpose of conducting acquisitions of companies, portions of companies, or interests in companies. Furthermore the Supervisory Board shall be able to determine that the measures taken by the Board of Management on the basis of the proposed resolution of the Annual Stockholders' Meeting may only be affected with its consent.



Irrespective of the ability on the basis of the proposed tender authority to use acquired shares according to c) through f) of the resolution proposal, the authority to use shares in c) through f) which were acquired through the authority granted by an earlier Annual Stockholders' Meeting should additionally be effective. The stockholders' subscription right should also to this extent be precluded. The aforesaid shall apply with respect to the basis for the preclusion of the subscription right. With respect to the requirement of the Supervisory Board's consent, g) of the resolution proposal shall apply.

The Board of Management in conformity with the Supervisory Board finds an exclusion of any additional stockholder subscription rights in the cited cases and for the stated reasons, also in consideration of a possible dilution effect justified as well as appropriate vis-à-vis the stockholders. The Board of Management shall appraise the next Annual Stockholders' Meeting regarding the use of this authority.

Leverkusen, February 27, 2009

Bayer Aktiengesellschaft

The Board of Management

This notice is a convenience translation. For the legally binding document, please refer to the original German version.