



## **Notes on those agenda items that will not be resolved on:**

Re: agenda item no. 1 – Presentation of the adopted annual financial statements and the approved consolidated financial statements, the management report of the Company and the Group management report, the explanatory report of the Management Board (including the information in accordance with sections 289 (4) and 315 (4) of the German Commercial Code (*Handelsgesetzbuch*, "HGB")) as well as the report of the Supervisory Board for the 2010 financial year. No resolution will be passed on this item as the Supervisory Board has approved, pursuant to sections 172 and 173 of the German Public Limited Companies Act (*Aktiengesetz*, "AktG"), the annual financial statements and the consolidated financial statements prepared by the Management Board on 29. March 2011, thereby adopting the annual financial statements.

Legislative framework:

### **Section 172 of the AktG**

"Where the supervisory board approves the annual financial statements, said statements are deemed to have been adopted unless management board and supervisory board decide to leave the adoption of the annual financial statements to the annual general meeting. The resolutions of the management board and the supervisory board must be included in the supervisory board's report to the annual general meeting."

### **Section 173 of the AktG**

"(1) Where management board and supervisory board resolve that the adoption of the annual financial statements be left to the annual general meeting or if the supervisory board has not approved the annual financial statements, the annual general meeting shall adopt the annual financial statements. Where the supervisory board of the parent company (section 290 (1) and (2) of the HGB) does not approve the annual financial statements, the annual general meeting shall resolve on the approval.

(2) The rules and regulations applied in the preparation of the annual financial statements must also be applied when adopting said statements. When adopting the annual financial statements, the annual general meeting may only transfer those amounts to retained earnings that must be transferred in accordance with the law or the articles of association.

(3) Where the annual general meeting amends annual financial statements that have already been audited by an external auditor by virtue of statutory obligations, any resolutions passed by the annual general meeting on the adoption of said statements and the appropriation of profits prior to the second audit pursuant to section 316 (3) of the HGB will only enter into effect once, as a result of the second audit, an unqualified audit opinion has been issued with regard to those amendments. Any such resolutions will become null and void, unless an unqualified audit opinion is issued with regard to those amendments within two weeks after the passing of the relevant resolution."

### **Section 175 (1) of the AktG**

"Upon receipt of the report of the supervisory board, the management board shall, without undue delay, call an annual general meeting for the acceptance of the adopted annual financial statements, the management report and the single-entity financial statements approved by the supervisory board pursuant to section 325 (2a) of the HGB as well as the



passing of a resolution on the appropriation of net retained profits and, in the case of a parent company (section 290 (1) and (2) of the HGB) also for the acceptance of the consolidated financial statements and the group management report. The annual general meeting must take place within the first eight months of each financial year."

### **Section 175 (2) of the AktG**

"The annual financial statements, the single-entity financial statements approved by the supervisory board in accordance with section 325 (2a) of the HGB, the management report, the report of the supervisory board and the proposal of the management board for the appropriation of net retained profit shall be laid open at the offices of the company for inspection by shareholders as of the time of calling the annual general meeting. Upon request, every shareholder shall receive a copy of said documents without undue delay. In the case of a parent company (section 290 (1) and (2) of the HGB), sentences 1 and 2 also apply to the consolidated financial statements, the group management report and the report of the supervisory board pertaining thereto. The obligations under sentences 1 to 3 do not apply if the documents specified therein are accessible via the company's website for the same duration."

### **Section 176 (1) of the AktG**

"The management board shall make available to the annual general meeting the documents specified in section 175 (2) and, in the case of exchange-listed companies, an explanatory report on the information pursuant to section 289 (4) and section 315 (4) of the HGB. At the commencement of the meeting, the management board shall explain the documents prepared by itself, and the chairperson of the supervisory board shall explain the report of the supervisory board. In doing so, the management board shall also comment on any net losses for the year or any other losses that had a material impact on the annual results. Sentence 3 does not apply to banks."