

## **Report of the Executive Board on agenda item 5**

The Articles of Association (§ 5 (7)) currently include an Authorized Capital III in the amount of EUR 5,695,209. The Executive Board has made use of this authorization in connection with a capital increase in kind in the total amount of EUR 304,791 by issuance of new shares to Affymetrix Inc., Santa Clara, California, USA, in July 2006. In the case that the Executive Board makes further use of this authorization in the period from the date of the invitation to the day of the Annual General Shareholders' Meeting, the Executive Board would report to the Annual General Shareholders' Meeting on such use of Authorized Capital III.

The Authorized Capital III is not of the maximum amount provided for by law. In order to ensure sufficient flexibility of the Executive Board regarding the financing out of the Company's equity and the prompt realization of business opportunities, the Authorized Capital shall be of the maximum amount of EUR 8,458,062 as permitted by law. Therefore, it is intended to create a new Authorized Capital 2007 and to annul the old Authorized Capital III at the same time.

If the Authorized Capital 2007 will be used by the way of a capital increase in cash, the shareholders have, in principle, a subscription right. However, it shall be possible to exclude the subscription right, upon the Supervisory Board's approval, in three cases:

- First, it shall be possible to exclude the subscription right for fractional amounts. This shall make easier the implementation of an issuance with a principle subscription right. Fractional amounts can result from a certain issuance amount and the necessity of a practical subscription ratio. Such fractional amounts are, generally, of minor value for the individual shareholder, while the cost of such issuance without exclusion of the subscription right would be considerably higher. In addition, the possible dilution effect is negligible due to the restriction to fractional amounts. The new shares which have been excluded from the subscription right due to fractional amounts will be used to the best possible purpose for the Company. The exclusion of the subscription right serves therefore the practicability and makes the implementation of an issuance easier.
- Furthermore, it shall be possible to exclude the subscription right in the case that the new shares are issued in a capital increase in cash at a subscription amount which is not substantially below the stock exchange price (Section 186 (3) sent. 4 of the German Stock Corporation Act (AktG)). This authorization enables the Company to promptly and flexibly realize opportunities on the market in its different business areas and to satisfy capital need which may arise therefrom, even on very short notice. The exclusion of the subscription right enables the Company not only to prompt actions, but also to the placement of shares at a price close to the stock exchange price, i.e. without the reduction which, in general, is required in connection with an issuance with subscription right. This results in higher issuance proceeds to the benefit of the Company. In addition, such placement may gain new groups of shareholders. The German Stock Corporation Act does not set a fixed

limit on the discount. When utilizing the authorization, the Executive Board will – with the consent of the Supervisory Board – fix the discount as low as it is possible according to the market conditions prevailing at the time of the placement. A discount of 3% up to a maximum of 5% of the current stock exchange price will generally not be regarded as a substantial shortfall. The shares issued with an exclusion of the subscription right according to Section 186 (3) sent. 4 AktG must not, in total, exceed 10 % of the share capital, neither at the time of its effectiveness nor at the time of the use of the authorization. In calculating this limit, Company stock sold during the term of this authorization pursuant to Section 186 (3) sent. 4 AktG will be included if it is sold under exclusion of subscription rights. Further included in calculating this limit are those stocks which were or are to be issued in satisfaction of bonds having conversion rights or attached warrants or obligatory conversion rights if the bonds were issued during the term of this authorization under exclusion of subscription rights in analogous application of Section 186 (3) sent. 4 AktG.

This requirement responds, in accordance with mandatory provisions, to the need of the shareholders for a dilution protection regarding their shareholding. Due to the limited amount of the capital increase with exclusion of subscription rights, each shareholder has, in principle, the possibility to acquire such amount of shares, which is necessary to preserve his share quota, at substantially the same terms over the stock exchange. Therefore, it is secured that, at the use of such Authorized Capital with exclusion of the subscription rights, the shareholders' interests regarding economic value and voting rights will be satisfied in accordance with the valuation as set forth in Section 186 (3) sent. 4 AktG. At the same time, this opens further scope for actions to the Company which is in the interest of all shareholders.

- Finally, it shall be possible to exclude the shareholders' subscription right in the case of a capital increase in kind. The Executive Board is thereby enabled to use, in singular eligible cases, shares of the Company for the acquisition of enterprises, parts of enterprises, participations in enterprises or other assets. It may become necessary during negotiations to offer as consideration not cash but shares. The possibility to offer shares of the Company as consideration creates an competitive advantage regarding attractive acquisition objects, and the required scope to profit liquidity friendly from opportunities to acquire enterprises, parts of enterprises, participations in enterprises or other assets. In addition, a consideration in shares may be useful with respect to an optimal financing structure. It is of no disadvantage for the Company, since the issuance of shares against contribution in kind requires that the contribution in kind is of fair value in relation to the value of the shares. When determining the value relation, the Executive Board will ensure that the interests of the Company and its shareholders are adequately considered and that an adequate subscription price will be received for the new shares.

The Executive Board will in every single case thoroughly scrutinize whether it will make use of the authorization to increase the capital and exclude the shareholders' subscription right. It

will make use of this authorization only if the Executive Board and the Supervisory Board are of the opinion that this is in the interest of the Company and, therefore, its shareholders. It will report to the Annual General Shareholders' Meeting on every use it has made of the authorization.

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The Executive Board  
Epigenomics AG