



## **Epigenomics AG**

Berlin, Federal Republic of Germany

**Bonds issued by Epigenomics AG**  
ISIN: DE000A1YC2W2 / WKN: A1YC2W

### **TAKING OF VOTES WITHOUT A MEETING**

#### **Request to Cast the Vote**

issued by

Epigenomics AG with registered office in Berlin, registered in the commercial register of the Local Court (*Amtsgericht*) of Charlottenburg under HRB 75861 and having its business address at Geneststrasse 5, 10829 Berlin (hereinafter also referred to as the "**Issuer**")

relating to the

EUR 2,675,000 CONVERTIBLE BONDS

issued by Epigenomics AG  
due for redemption on December 31, 2015

ISIN: DE000A1YC2W2 / WKN: A1YC2W

(collectively referred to as the "**Bonds**"), divided into 25 bonds in bearer form in a principal amount of EUR 107,000.00 each (each a "**Bond**" and collectively the "**Bonds**").

The Issuer hereby requests the holders of the Bonds (each a "**Bondholder**" and collectively the "**Bondholders**") to

#### **submit their votes in the taking of votes without a meeting**

within the period beginning on Tuesday, December 15, 2015, at 0:00 hours (CET) and ending on Thursday, December 17, 2015, at 24:00 hours (CET)

to the notary Hans-Hermann Rösch, with offices in Berlin (the "**Taking of Votes Without a Meeting**"; the request to cast a vote in the Taking of Votes Without a Meeting is hereinafter referred to as the "**Request to Cast the Vote**").

## 1. Background information regarding the Request to Cast the Vote without a Meeting

The amendments proposed to be made to the terms and conditions of the Bonds ("**Terms and Conditions**") reflect the changed financial situation of the Issuer in respect to the delays in the regulatory approval decision of its lead product Epi proColon<sup>®</sup>, a blood-based screening test for the early detection of colorectal cancer, for the US market by the US Food and Drug Administration ("**FDA**"):

The Bonds issued in December 2013 had the purpose of securing financing of the Issuer's business operations in the time period up to the FDA approval of Epi proColon<sup>®</sup> for the US market and its market launch. The proceeds from the issuance of the Bonds were used, among other things, to finance costs of the regulatory approval and preparatory measures for the market launch of the test in the US. At the time the Bonds were issued, regulatory approval of Epi proColon<sup>®</sup> by the FDA had been expected to be granted prior to expiry of December 31, 2015, in which case the Issuer would have received, in the short term, additional funds for the economic usage of the market approval upon exercise of the conversion right by the Bondholders against Conversion Payment.

Consequently, § 4 (1) of the Terms and Conditions currently provides for the maturity of the Bonds for redemption in the Principal Amount of EUR 107,000.00 on December 31, 2015, unless they have previously been redeemed or converted or repurchased and cancelled or unless the Issuer exercises its Maturity Date Conversion Right and commits the Bondholders to Maturity Date Conversion. Until November 25, 2015 (24:00 hours CET), 15 of the total 25 Bonds issued had been converted into shares of the Issuer. Up to that point in time, no Bondholder had exercised its right to termination and early redemption of the Bonds under § 4 (3) of the Terms and Conditions. Likewise, no repurchase and cancellation of the Bonds by the Issuer have occurred until that point in time.

In view of the delays in the regulatory approval decision of Epi proColon<sup>®</sup> for the US market, final maturity of the Bonds on December 31, 2015 is no longer deemed appropriate, because, in the case of redemption at the principal amount, the Issuer would be deprived of liquid funds now required by it for the financing of an additional approval study. If the Maturity Date Conversion were exercised by the Issuer, no conversion payment would generally become due for the conversion so that the Issuer would not receive any new cash. In the event that approval is granted by the FDA, the Issuer wishes to secure additional cash flow resulting from a conversion against a Conversion Payment. Therefore, the period of the Bonds is to be extended and the maturity date for redemption is to be postponed to December 31, 2016. For the Bondholders, such extension of the period of the Bonds is not disadvantageous; their consent contributes to the financial stability of the Issuer and preserves their Conversion Right in the event that Epi proColon<sup>®</sup> is subsequently approved for the US market.

At the same time, it is intended to amend the Anti-Dilution Protection contained in the Terms and Conditions in order to reflect the current share price level of the Issuer. The Terms and Conditions currently provide for the Conversion Price in the event of one or

more capital increases against contribution in cash (with or without granting to shareholders any statutory subscription right), to be automatically reduced to the issue price of such capital increase against contribution in cash, if such issue price amounts to less than the Conversion Price. Since the number of shares to be issued in the event of conversion increases by each reduction of the Conversion Price, it is currently not ensured that following a further reduction of the Conversion Price to the current market level of shares in the Issuer a sufficient number of shares resulting from the Issuer's contingent capital will be available to serve all Conversion Rights. Therefore, an abstract calculation mechanism for setting a lower-limit in the reduction of the Conversion Price, which also takes into account the number of Bonds outstanding at the time of the diluting capital measure, shall be implemented in the Terms and Conditions. Thereby, it will be avoided that in case of conversion a cash settlement mechanism will apply for such shares that may not be delivered from contingent capital leading to a liquidity outflow with the Issuer. Taking into account the number of 10 Bonds currently outstanding, such lower-limit for the Conversion Price is set at EUR 2.83.

According to § 19 (1) of the Terms and Conditions, such amendment of the Terms and Conditions requires a resolution by a majority of the votes of the Bondholders. In accordance with the Terms and Conditions, the relevant resolution will be passed pursuant to the regulations of Sec. 18 of the German Bond Act of 31 July 2009 (*Schuldverschreibungsgesetz*) ("**SchVG**"). In the present case, the taking of votes is to be conducted without a meeting in accordance with Secs. 5(6), 18 SchVG.

## 2. Subject matter of the Taking of Votes Without a Meeting and Resolutions Proposals

### 2.1 Amendment of the provision regarding the Maturity Date

In coordination with the scrutineer, the Issuer submits and puts to vote the following resolution proposal to the Bondholders:

§ 4 (1) of the Terms and Conditions is amended to read as follows:

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| <p>(1) <b>Endfälligkeit.</b> Die Schuldverschreibungen werden am 31. Dezember 2016 (dem "<i>Endfälligkeitstag</i>") zu ihrem Nennbetrag zurückgezahlt, sofern sie nicht vorzeitig zurückgezahlt oder gewandelt oder zurückgekauft und entwertet worden sind oder die Anleihschuldnerin ihr Endfälligkeitswandlungsrecht nach § 10(1) ausübt und die Anleihegläubiger zur Endfälligkeitswandlung nach § 10(3) verpflichtet.</p> | <p>(1) <b>Final Maturity.</b> The Bonds shall be redeemed at their Principal Amount on December 31, 2016 (the "<i>Maturity Date</i>"), unless they have previously been redeemed or converted or repurchased and cancelled or unless the Issuer exercises its Maturity Date Conversion Right pursuant to § 10(1) and commits the Bondholders to Maturity Date Conversion pursuant to § 10(3).</p> |
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## 2.2 Amendment of the Dilution Adjustments

In coordination with the scrutineer, the Issuer submits and puts to vote the following resolution proposal to the Bondholders:

§ 13 (2) (a) of the Terms and Conditions will be supplemented by sentences 2 and 3 and read as follows:

- (a) **Ausgabe von Aktien.** In den Fällen, in denen die Anleiheschuldnerin vor dem letzten Tag des Ausübungszeitraums oder einem früheren Rückzahlungstag Aktien zu einem tatsächlichen Gegenwert (der "**Neuausgabepreis**") ausgibt oder verkauft (einschließlich der Ausgabe oder des Verkaufs von Aktien, die im Namen der Anleiheschuldnerin als Eigentum oder in Besitz gehalten werden), der unter dem Wandlungspreis liegt, der unmittelbar vor einer solchen Ausgabe oder eines solchen Verkauf gilt (der jeweilige Wandlungspreis wird als "**Maßgeblicher Preis**" bezeichnet, das vorstehende als "**Verwässernde Ausgabe**"), wird unverzüglich nach einer solchen verwässernden Ausgabe der jeweilige Wandlungspreis auf den Neuausgabepreis reduziert. Soweit eine Reduzierung des Maßgeblichen Preises nach dem vorstehenden Satz dazu führt, dass die nach § 11(1) im Falle der Wandlung sämtlicher zum Zeitpunkt der Verwässernden Ausgabe ausstehenden Schuldverschreibungen maximal zu liefernde Anzahl an Aktien (auch unter Berücksichtigung etwaig erfolgreicher Wandlungszahlungen der Anleihegläubiger) die Anzahl der Aktien überschreitet, die unter dem gemäß Beschluss der Hauptversammlung der Anleiheschuldnerin vom 6. Mai 2013 geschaffenen und im Zeitpunkt der Verwässernden Ausgabe noch verfügbaren bedingten Kapital ausgegeben werden können, (die "**Jeweilige Aktienhöchstgrenze**") wird der Maßgebliche Preis nur soweit reduziert, dass die nach § 11(1) im Falle der Wandlung sämtlicher zum Zeitpunkt der Verwässernden Ausgabe ausstehenden Schuldverschreibungen maximal zu liefernde Anzahl an Aktien (auch unter Berücksichtigung etwaig erfolgreicher Wandlungszahlungen der Anleihegläubiger) der Jeweiligen Aktienhöchstgrenze entspricht; der sich hieraus ergebende Wand-
- (a) **Issuance of Shares.** If the Issuer prior to the last day of the Conversion Period or an earlier date of redemption issues or sells any Shares (including the issuance or sale of Shares owned or held by or for the account of the Issuer) for an effective consideration per share (the "**New Issuance Price**") less than a price equal to the Conversion Price in effect immediately prior to such issue or sale (such Conversion Price then in effect is referred to as the "**Applicable Price**") (the foregoing a "**Dilutive Issuance**"), then immediately after such Dilutive Issuance, the Conversion Price then in effect shall be reduced to the New Issuance Price. Provided that a reduction of the Applicable Price pursuant to the proceeding sentence will result in the maximum number of Shares to be delivered in accordance with § 11(1) in the case of a conversion of all Bonds outstanding at the time of the Dilutive Issuance (also taking into account respective Conversion Payments by Bondholders) to exceed such number of Shares which may legally be issued pursuant to the Issuer's conditional capital as created by resolution of its shareholders' meeting on May 6, 2013 and as available at the time of the Dilutive Issuance (the "**Respective Share Threshold**"), the Applicable Price will be reduced only to the extent that the maximum number of Shares to be delivered in accordance with § 11(1) in the case of a conversion of all Bonds outstanding at the time of the Dilutive Issuance (also taking into account respective Conversion Payments by Bondholders) equals the Respective Share Threshold; the resulting Conversion Price will be rounded upwards to the nearest full Cent. Insofar

lungspreis wird stets auf volle Cent aufgerundet. Insoweit gilt für den nach Satz 1 angepassten Wandlungspreis:

$$E' \geq \frac{(F+Cp) \times Bn}{Sc}$$

wobei gilt:

E' = der nach der Verwässernden Ausgabe angepasste Wandlungspreis,  
 F = der Nennbetrag,  
 Cp = die Wandlungszuzahlung,  
 Bn = die Anzahl an ausstehenden Schuldverschreibungen zum Zeitpunkt der Verwässernden Ausgabe, und  
 Sc = die Jeweilige Aktienhöchstgrenze.

the following applies to a reduction of the Conversion Price pursuant to sentence 1:

$$E' \geq \frac{(F+Cp) \times Bn}{Sc}$$

where:

E' = the amended Conversion Price following the Dilutive Issuance,  
 F = the Nominal Value,  
 Cp = the Conversion Payment,  
 Bn = the number of Bonds outstanding at the time of the Dilutive Issuance, and  
 Sc = the Relevant Share Threshold

- 2.3 The Issuer hereby irrevocably and in advance consents to the amendment of the Terms and Conditions as provided for in the resolution proposals made in clauses 2.1 and 2.2 above.
- 2.4 The aforementioned amendments of the Terms and Conditions result in a change of the maturity of the principal debt within the meaning of Sec. 5 (3) no. 2 SchVG and concern the conversion or exchange of the Bonds into shares of the Issuer pursuant to Sec. 5 (3) no. 5 SchVG and thus constitute a material change requiring the consent of a qualified majority of the bondholders under Sec. 5 (4) SchVG.

### **3. Legal Basis for the Taking of Votes Without a Meeting, Quorum and Majority Requirement**

- 3.1 Pursuant to § 19 (1) of the Terms and Conditions, the Terms and Conditions may be amended by the Issuer with the consent of the Bondholders based on a resolution by way of a majority voting. According to § 19 (2) of the Terms and Conditions, the Bondholders pass a resolution in this context in accordance with the regulations of Secs. 5 et seqq. SchVG.
- 3.2 In the present case, the Bondholders pass a resolution by way of a Taking of Votes Without a Meeting pursuant to Sec. 18 SchVG.
- 3.3 In accordance with Sec. 18 (1) SchVG in conjunction with Sec. 15 (3) sentence 1 SchVG, a quorum exists in the taking of votes without a meeting if the bondholders for whom the scrutineer has received votes of any kind within the voting period represent at least half of the principal amount of the bonds outstanding at the time the resolution is passed.
- 3.4 The resolutions pursuant to clauses 2.1 and 2.2 above of this Request to Cast the Vote require a qualified majority of more than 75 per cent of the voting rights taking part in the voting in order to be effective, because they are resolutions by which the Terms and Condi-

tions are substantially amended, in particular concerning the change of maturity of the principal debt pursuant to Sec. 5 (3) no. 2 SchVG and the conversion or exchange of the Bonds into shares of the Issuer pursuant to Sec. 5 (3) no. 5 SchVG.

- 3.5 In the event that the scrutineer determines that no quorum exists following expiry of the voting period, a meeting of the Bondholders may be convened pursuant to Sec. 18 (4) sentence 2 SchVG for the purpose of another passing of the resolution; the meeting is deemed the second meeting of Bondholders within the meaning of Sec. 15 (3) SchVG. Such second meeting of the Bondholders has a quorum irrespective of the number of participating bondholders. However, for a resolution the valid adoption of which requires a qualified majority the persons present at the meeting must represent at least 25 per cent of the total principal amount of the outstanding Bonds.

#### **4. Legal consequences in case the resolutions are passed**

If the Bondholders validly resolve on the subject matters of the resolutions pursuant to clauses 2.1 and 2.2 , this will have in particular the following legal consequences:

A resolution of the Bondholders passed with a required majority of the votes is equally binding upon all Bondholders.

#### **5. Course of procedure of the Taking of Votes Without a Meeting and the manner of voting**

- 5.1 The Taking of Votes Without a Meeting will be conducted by the notary commissioned by the Issuer, Hans-Hermann Rösch with offices in Berlin at the business address Friedrichstraße 71, 10117 Berlin, as scrutineer (the "**Scrutineer**") in accordance with Sec. 18 (2) SchVG.
- 5.2 Bondholders that would like to participate in the Taking of Votes Without a Meeting must cast their votes in the time period between Tuesday, December 15, 2015, at 0:00 hours (CET) until Thursday, December 17, 2015, at 24:00 hours (CET) (the "**Voting Period**") in text form (Sec. 126b of the German Civil Code (*Bürgerliches Gesetzbuch*, "**BGB**") either in the German or the English language to the Scrutineer at the address specified below (the "**Voting**"). The Voting is deemed to be made upon receipt by the Scrutineer. Any Voting that is not received by the Scrutineer within the Voting Period, i.e. either before or after such Voting Period, will be disregarded.
- 5.3 The Voting to the Scrutineer may be made by mail, telefax or email to the following address:

Notary  
Hans-Hermann Rösch

- Scrutineer -

"Epigenomics AG 2013 Convertible Bonds – Taking of Votes Without a Meeting"

Gleiss Lutz Hootz Hirsch PartmbB Rechtsanwälte, Steuerberater  
 Friedrichstraße 71  
 10117 Berlin, Germany  
 Fax: +49 30 800 979 979  
 Email: [hans-hermann.roesch@gleisslutz.com](mailto:hans-hermann.roesch@gleisslutz.com)

The following documents must be attached to the document containing the vote:

- proof of the participation rights pursuant to clause 6.3; and
- power of attorney pursuant to clause 7., provided that the Bondholder is represented by a third party in the Taking of Votes Without a Meeting.

It is requested that Bondholders that are legal entities or partnerships under German law or under foreign law provide proof of power of representation by submitting a current excerpt from the applicable register or an equivalent confirmation pursuant to clause 6.4.

Moreover, it is requested that legal representatives (e.g. parents for their child, a guardian for a ward) or an official administrator (e.g. an insolvency administrator) provide proof of their statutory power of representation in accordance with clause 6.5.

- 5.4 To facilitate and accelerate the counting of the votes, the Bondholders are requested to use for the Voting the form that is available for downloading from the Issuer's website (<http://www.epigenomics.com>) at "News & Investors – Investors – Convertible Bonds 2013" from the time of publication of this Request to Cast the Vote. However, the effectiveness of a Voting shall not be contingent upon the use of such form. Any counterproposals and/or demands for additions within the meaning of clause 8 that have been properly and timely submitted by that point in time will also be included in the form for the Voting.
- 5.5 The voting result will be determined using the addition method by counting all votes cast. All votes that have been duly cast within the Voting Period together with the required proof will be considered.

## **6. Participation Rights, Voting Rights and Proof**

- 6.1 Each Bondholder that provides proof of its ownership of the Bonds at the time of the Voting in accordance with the provisions set out in clause 6.3 at the latest by the end of the Voting Period will be entitled to participate in the Taking of Votes Without a Meeting.
- 6.2 In the Taking of Votes Without a Meeting, each Bondholder will participate based on the principal amount held by it or the notional share of its entitlement in the outstanding Bonds at the time the resolution is passed. Each Bond in the principal amount of EUR 107,000.00 grants one vote.
- 6.3 Bondholders must provide proof of their right to participate in the Taking of Votes Without a Meeting at the latest by the end of the Voting Period. For this purpose, current proof is-

sued by the depositary bank in text form (Sec. 126b BGB) of the ownership in the Bonds at the time of the Voting (Sec. 10 (3) SchVG) must be sent to the Scrutineer (the "**Proof of Participation Rights**").

Bondholders that have not sent any Proof of Participation Rights at the latest by the end of the Voting Period in text form (Sec. 126b BGB) will not be entitled to vote. In these cases, authorized proxies of such Bondholders cannot exercise the voting right, either.

A standard form to provide Proof of Participation Rights that may be used by the depositary bank may be downloaded from the Issuer's website (<http://www.epigenomics.com>) at "News & Investors – Investors – Convertible Bonds 2013".

- 6.4 Representatives of Bondholders that are legal entities or partnerships under German law (e.g. a stock corporation (*Aktiengesellschaft*), a limited liability company (*GmbH*), a limited partnership (*Kommanditgesellschaft*), a general partnership (*Offene Handelsgesellschaft*), an entrepreneurial company (*Unternehmergesellschaft*) or a partnership under the German Civil Code (*GbR*)) or under foreign law (such as a limited company under English law) are requested to present proof of power of representation in addition to Proof of Participation Rights no later than until expiry of the Voting Period. Such proof may be presented by way of transmission of a current excerpt from the relevant register (e.g. commercial register, register of associations) or by way of an equivalent confirmation (e.g. certificate of incumbency, secretary certificate).
- 6.5 To the extent that Bondholders are represented by a legal representative (e.g. a child by the parents or a ward by the guardian) or by an official administrator (e.g. an insolvency debtor by the insolvency administrator appointed for such debtor), the legal representative or official administrator is requested, in addition to providing proof that the person they represent has participation rights, to present adequate proof of their statutory power of representation (e.g. by copy of the civil status documents or the certificate of appointment) no later than until expiry of the Voting Period.

## 7. Representation by authorized proxies

Each Bondholder may be represented in the Voting by a proxy of its choice (Sec. 14 SchVG in conjunction with Sec. 18 (1) SchVG). The voting right may be exercised by the proxy. For the power of attorney granted to the proxy by the principal, text form as defined in Sec. 126b BGB shall suffice. A form that may be used to grant power of attorney may be downloaded from the Issuer's website (<http://www.epigenomics.com>) at "News & Investors – Investors – Convertible Bonds 2013". The granting of power of attorney must be evidenced to the Scrutineer at the latest by the end of the Voting Period by transmission of the declaration of power of attorney in text form (Sec. 126b BGB). Proof of Participation Rights of the principal must be provided to the Scrutineer at the latest by the end of the Voting Period also in the case of Voting by proxies.



## 8. Counterproposals and Demands for Additions

- 8.1 Each Bondholder is entitled to submit own resolution proposals in addition to the resolution proposals on which a resolution will be taken in accordance with this Request to Cast the Vote pursuant to clauses 2.1 and 2.2 (the "**Counterproposal**").
- 8.2 Bondholders whose Bonds in aggregate account for 5 per cent or more of the outstanding Bonds may request that new items for resolution be included in the agenda (the "**Demand for Addition**").
- 8.3 Counterproposals and/or Demands for Additions must be addressed to the Scrutineer and may be transmitted prior to the beginning of the Voting Period by mail, telefax or email to the address specified in clause 5.3.
- 8.4 It is mandatory to attach Proof of Participation Rights also in respect of a Counterproposal and/or a Demand for Addition (see clause 6.3). In the event of a Demand for Addition, the Bondholders requesting to put a further subject matter to vote must also prove that they, in aggregate, represent 5 per cent of the outstanding Bonds.
- 8.5 Under the SchVG, Demands for Addition and Counterproposals must be received by the Scrutineer in a timely manner before the beginning of the Voting Period. Any Counterproposals and/or Demands for Addition properly submitted and received in a timely manner will be published without undue delay on the Issuer's website (<http://www.epigenomics.com>) at "News & Investors – Investors – Convertible Bonds 2013"; furthermore, Demands for Addition will be published in the German Federal Gazette.

## 9. Specification of the outstanding Bonds

The volume of Bonds currently outstanding amounts to EUR 1,070,000.00, divided into 10 Bonds in the principal amount of EUR 107,000.00 each.

If the volume of the outstanding Bonds is reduced in the time period between publication of this announcement and the beginning of the Voting Period, the reduced amount will be applicable.

The Issuer and its affiliated companies are currently not entitled to any of the Bonds. At present, no Bonds are held for the account of the Issuer or of any of its affiliated companies.

## 10. Documents

From the day of the Request to Cast the Vote until the end of the Voting Period, the following documents will be available in German and English to the Bondholders on the Issuer's website (<http://www.epigenomics.com>) at "News & Investors – Investors – Convertible Bonds 2013":

- This **Request to Cast the Vote** in a Taking of Votes Without a Meeting,
- the **Form for the Voting** in the context of the Taking of Votes Without a Meeting (if necessary, the form already published will be updated),
- the **Proxy Form** for the granting of power of attorney to third parties,
- the standard form for the **Proof of Participation Rights** and
- the **Terms and Conditions** of the Bonds of Epigenomics AG.

Upon a Bondholder's request, copies of the aforementioned documents will be sent to such Bondholder without undue delay and free of charge. Such request is to be made by mail, telefax, telephone or email to:

Epigenomics AG  
"2013 Convertible Bonds: Taking of Votes Without a Meeting"  
Geneststraße 5  
10829 Berlin, Germany  
Telefax: +49 30 24345-555  
Telephone: +49 30 24345-386  
Email: [ir@epigenomics.com](mailto:ir@epigenomics.com)

Berlin, November 2015

Epigenomics AG  
The Management

The notary commissioned by Epigenomics AG, Berlin, Hans-Hermann Rösch with offices in Berlin, in his capacity as Scrutineer also requests that the holders of the Bonds specified above cast their votes in the context of the Taking of Votes Without a Meeting within the time period beginning on Tuesday, December 15, 2015, at 0:00 hours (CET) and ending on Thursday, December 17, 2015, at 24:00 hours (CET) in accordance with clauses 2 to 10.

Berlin, November 2015

Notary  
Hans-Hermann Rösch