

## **Report of the Executive Board concerning Item 6 on the agenda**

Under Item 6 on the agenda of the general meeting of shareholders of May 19, 2009, the Executive Board and the Supervisory Board propose that the Executive Board be authorized to acquire treasury shares on behalf of the Company and to either resell or redeem such shares without requiring a further resolution of the general meeting of shareholders. Pursuant to Section 71 (1) no. 8 sentence 5 in conjunction with Section 186 (4) sentence 2 AktG, the Executive Board submits the following report on the reasons for the exclusion of the shareholders' subscription rights in connection with the sale of treasury shares as well as the exclusion of a potential right to offer shares in connection with the acquisition of treasury shares, which report, constituting an integral part of the present invitation, is also available to the shareholders for inspection at the general meeting of shareholders and, as of the day of the calling of the general meeting of shareholders, at the offices of the Company. The report may also be viewed on the Internet at [www.sap.com/agm](http://www.sap.com/agm) and will be sent to any shareholder upon request:

### **1. Acquisition of treasury shares and exclusion of a potential right to offer shares**

Under Item 6 on the agenda of the general meeting of shareholders of May 19, 2009, the Executive Board and the Supervisory Board propose that the Executive Board be authorized to acquire treasury shares on behalf of the Company. Under such authorization, the Executive Board has the option to acquire, on or before October 31, 2010, shares in the Company with a pro rata amount of capital stock represented by such shares of up to € 120 million in aggregate (i.e. 120 million shares, based on a pro rata amount of capital stock represented by one share of € 1.00). SAP AG's dependent group companies within the meaning of Section 17 AktG or third parties acting for the account of SAP AG or its dependent group companies are also to be entitled to acquire treasury shares.

The repurchase may either be effected on the stock exchange or by way of a public purchase offer to all shareholders, as the Executive Board deems fit.

In the event that the acquisition is effected by way of a purchase offer to all shareholders, the principle of equal treatment, as in connection with the acquisition of shares on the stock exchange, is to be observed. Should the volume offered at the stipulated price exceed the number of shares requested by the Company, it should be possible, however, for the acquisition to be performed according to the percentage of shares offered for sale (proportion offered). Only where acquisition is performed on the basis of the proportion offered as opposed to the proportion held the acquisition process can be executed along economically sound lines. Moreover, it should be possible for orders pertaining to limited numbers of shares (up to one hundred offered shares per shareholder) to be given preferential treatment. This option serves to avoid small, generally uneconomic, residual amounts and any corresponding disadvantage for minor shareholders. It also serves to simplify the actual execution of the acquisition procedure. Provision should also be made for a rounding rule to be applied according to commercial principles in order to avoid fractional shares. Thus the acquisition ratio and/or the number of shares to be acquired from an individual shareholder exercising a right to offer may be rounded

according to commercial principles in such a way as to ensure that only whole shares are acquired. The Executive Board and the Supervisory Board believe that the exclusion of any further right to offer shares is justified in view of the circumstances and reasonable from the shareholders' perspective.

## **2. Use of acquired treasury shares and exclusion of subscription rights pursuant to the resolution proposal under Item 6 on the agenda**

Under the authorization proposed in Item 6 on the agenda of the general meeting of shareholders of May 19, 2009, the Executive Board is to be authorized to sell the shares acquired pursuant to such authorization on the stock exchange or, by maintaining the shareholders' subscription rights, to offer the shares to the shareholders for acquisition in connection with a public offer for sale. Where the Executive Board sells treasury shares on the stock exchange, shareholders shall have no subscription rights. Under Section 71 (1) no. 8 sentence 4 AktG, however, a sale (or purchase) of treasury shares on the stock exchange is sufficient for the purposes of the principle of equal treatment within the meaning of Section 53a AktG.

It is furthermore proposed, however, that the Executive Board be authorized to redeem the acquired treasury shares without requiring a further resolution of the general meeting of shareholders. Such redemption will generally result in a capital reduction. It is proposed, however, that the Executive Board also be authorized to implement the redemption in accordance with Section 237 (3) no. 3 AktG without any changes to the capital stock. In such event, the redemption of shares is to lead to an increase in the pro rata amount of capital stock represented by the remaining shares pursuant to Section 8 (3) AktG.

The resolution proposal under Item 6 on the agenda of the general meeting of shareholders of May 19, 2009 furthermore provides for the exclusion of the shareholders' subscription rights in the case of the use of the repurchased treasury shares in the following cases:

- a) Sale against cash payment at a price not substantially below the stock exchange price

It is proposed that the Executive Board be authorized, subject to the consent of the Supervisory Board, to sell acquired treasury shares which account for a portion of up to 10% of the Company's capital stock in aggregate other than on the stock exchange or by way of an offer to sell addressed to all shareholders against payment in cash at a price which is not substantially below the stock exchange price of the Company's share on the Frankfurt Stock Exchange on the five trading days preceding the final determination of the selling price by the Executive Board, calculated on the basis of the arithmetic mean of the closing auction prices of the SAP share in the XETRA trading system (or any successor system) (subsection e) of the resolution proposal). The shareholders' subscription rights are to be excluded in respect of these shares. The statutory basis of this so-called simplified exclusion of the shareholders' subscription rights is Section 71 (1) no. 8 sentence 5 in conjunction with Section 186 (3) sentence 4 AktG. A possible deduction from the relevant stock exchange price will presumably not exceed 3%, and in no event 5%, of the stock exchange price.

The option to exclude the shareholders' subscription rights, as provided for in Section 186 (3) sentence 4 AktG, will enable the Company to quickly, flexibly and cost-effectively exploit opportunities arising as a result of prevailing stock exchange conditions. The sales proceeds that can be realized by way of fixing a price that is near market will as a rule result in a higher inflow of funds per share than in the case of a placement of shares with subscription rights, thus ensuring the highest possible inflow of equity. By avoiding the time-consuming and expensive handling of subscription rights, the Company will furthermore be able to meet its equity requirements quickly when market opportunities arise at short notice. It is true that Section 186 (2) sentence 2 AktG now allows the subscription price to be published three days prior to the expiration of the subscription period at the latest. In light of the volatility in the stock markets, however, this still involves a market risk, in particular a price change risk, for several days, which may lead to the deduction of safety margins in connection with the determination of the selling price and, therefore, to conditions which are not close to market. In addition, if the Company granted subscription rights, it would not be in a position to react to favorable market conditions at short notice due to the length of the subscription period.

In order to comply with the limit applicable to the simplified exclusion of the shareholders' subscription rights provided for in Section 186 (3) sentence 4 AktG of 10% of the capital stock, the authorization to dispose of acquired treasury shares subject to the simplified exclusion of the shareholders' subscription rights is limited to shares representing a pro rata amount of the Company's capital stock of 10%. For the purpose of calculating the 10% threshold, the lower of the amount of the capital stock existing at the time of adoption of the resolution concerning the authorization by the general meeting of shareholders of May 19, 2009 or the amount of the capital stock existing at the time of the exercise of the authorization is to be relevant. The resolution proposal also provides for a deduction clause, pursuant to which the authorized volume will be reduced to the extent that other authorizations concerning the simplified exclusion of the shareholders' subscription rights are exercised from the date of the general meeting of shareholders. This is to ensure that the 10% threshold stipulated in Section 186 (3) sentence 4 AktG is observed, taking into account all authorizations providing for the option to exclude subscription rights in accordance with Section 186 (3) sentence 4 AktG, whether applied directly, analogously or *mutatis mutandis*.

In light of the stated reasons, the proposed authorization to use treasury shares and the exclusion of subscription rights is in the interest of the Company and its shareholders. Since the selling price for treasury shares to be granted will have to be determined by reference to the stock exchange price and the scope of the authorization is limited, the interests of the shareholders are, in the opinion of the Executive Board, adequately protected. In addition, the shareholders intending to maintain their participation ratios have the option to acquire the required number of shares on the stock exchange. The portion of freely floating shares of the Company is approximately 68.41%. In the

2008 calendar year, the entire volume of trading in SAP shares on German exchanges amounted to more than 185% of the Company's capital stock.

b) Sale in the context of the acquisition of enterprises

It is further proposed that the Executive Board be authorized, subject to the consent of the Supervisory Board, to transfer the acquired treasury shares to third parties as consideration in connection with the acquisition of any enterprises or any parts thereof or interests therein (subsection f) of the resolution proposal). In this context, it is proposed that the shareholders' subscription rights be equally excluded.

SAP AG has to cope with international competition. The Company must always be in a position to act promptly and flexibly in the national and international markets in the interest of its shareholders. This also includes the option to acquire any enterprises or parts thereof or interests therein with a view to enhancing the Company's competitive position. In individual cases, the best possible way of implementing this option, in the interest of the shareholders and the Company, may consist in acquiring an enterprise or any parts thereof or interest therein by way of granting shares in the acquiring company. Practical experience shows that the shareholders of companies that are attractive in terms of an acquisition frequently request the delivery of shares in the acquiring company as consideration for the respective sale. In order to be in a position to acquire such companies as well, SAP AG must have the option to grant treasury shares by way of consideration.

The ability to grant SAP shares in this context is already provided for by means of the Authorized Capital II and IIa facilities in Section 4 of the Articles of Incorporation. In addition to this, however, the Company should also be able in suitable cases to offer shares as consideration for an acquisition without being forced to perform a capital increase, which is even more time-consuming, especially due to the fact that such increase must be entered in the commercial register, and would entail higher administrative cost.

If shareholders' subscription rights were to be maintained, the acquisition of enterprises or any parts thereof or interests therein in return for the granting of acquired treasury shares would thus be impossible, rendering the associated benefits for the Company and its shareholders unattainable. The Company is currently not contemplating any specific acquisition in respect of which it intends to avail itself of this option. Should any specific opportunities with regard to the acquisition of an enterprise or any parts thereof or interest therein open up, the Executive Board will carefully assess whether or not to exercise the authorization concerning the granting of treasury shares. The Executive Board will do so only if it arrives at the conclusion that the acquisition of the relevant enterprise, part thereof or interest therein against the granting of SAP shares is in the best interest of the Company. The same applies with regard to the consent of the Supervisory Board, which is required under the resolution proposal. The Executive Board will report on the details in

connection with the exercise of the authorization to the general meeting of shareholders following any acquisition against the granting of SAP shares.

- c) Servicing of conversion and subscription rights under the SAP AG 2000 Long Term Incentive Plan and the SAP Stock Option Plan 2002

Furthermore, it is proposed that the Executive Board be authorized, subject to the consent of the Supervisory Board and, to the extent that any members of the Executive Board are affected, the Supervisory Board be authorized to use acquired treasury shares for the purpose of servicing conversion and subscription rights under the SAP AG 2000 Long Term Incentive Plan and subscription rights under the SAP Stock Option Plan 2002 and to transfer these shares to the entitled persons in accordance with the terms stipulated in the relevant resolutions of the general meeting of shareholders, excluding the shareholders' subscription rights in this regard (subsections h) and i) of the resolution proposal). The transfer of treasury shares for the purpose of servicing these subscription rights instead of using the contingent capital will in particular contribute to preventing any dilutive effects which might otherwise occur. Hence, the exclusion of the shareholders' subscription rights is also in the interest of the existing shareholders.

The authorizing resolution on the establishment of the SAP Stock Option Plan 2002 adopted by the general meeting of shareholders of May 3, 2002 is available for inspection at the commercial register of Mannheim as part of the notarial records of said general meeting of shareholders. They are also available for inspection at the offices of SAP AG at Dietmar-Hopp-Allee 16, 69190 Walldorf, Germany, and may also be viewed on the Internet at [www.sap.com/agm](http://www.sap.com/agm). They will further be available for inspection at the general meeting of shareholders. A copy will be sent to any shareholder upon request without delay and free of charge. The contents of the authorizing resolution on the establishment of the SAP Stock Option Plan 2002 are further set out in the invitation to the annual general meeting of shareholders of May 3, 2002, which was published in the German Federal Gazette dated March 22, 2002.

The authorizing resolution on the establishment of the SAP AG 2000 Long Term Incentive Plan adopted by the general meeting of shareholders of January 18, 2000 as well as the supplementing and adjusting resolutions adopted by the general meeting of shareholders of May 3, 2001 are available for inspection at the commercial register of Mannheim as part of the notarial record of said general meetings of shareholders. They are also available for inspection at the offices of SAP AG at Dietmar-Hopp-Allee 16, 69190 Walldorf, Germany, and may also be viewed on the Internet at [www.sap.com/agm](http://www.sap.com/agm). They will further be available for inspection at the general meeting of shareholders. Copies will be sent to any shareholder upon request without delay and free of charge. The contents of the authorizing resolution on the establishment of the SAP AG 2000 Long Term Incentive Plan are further set out in the invitation to the extraordinary general meeting of shareholders of January 18, 2000, which was published in the German Federal Gazette dated December 9, 1999, and the

contents of the supplementing and adjusting resolutions are set out in the invitation to the annual general meeting of shareholders of May 3, 2001, which was published in the German Federal Gazette dated March 23, 2001.

- d) Servicing of conversion and/or option rights under convertible and/or warrant-linked bonds

It is also proposed that the Executive Board, subject to the consent of the Supervisory Board, be authorized to use treasury shares, with the exclusion of the shareholders' subscription rights, for the purpose of servicing conversion and/or option rights under convertible and/or warrant-linked bonds issued by the Company under the authorizations granted under the resolutions relating to Item 11 on the agenda of the general meeting of shareholders of May 9, 2006, subsections a) and b), and to transfer such shares to the holders of the conversion and/or subscription rights in accordance with the relevant conditions defined in the aforementioned general meeting resolutions (subsection j) of the resolution proposal). Transferring treasury shares to fulfill such subscription rights instead of utilizing the contingent capital can in particular counteract the otherwise dilutive effect of such a transaction. The exclusion of subscription rights is thus also in the shareholders' interests.

The authorizing resolutions adopted by the general meeting of shareholders of May 9, 2006 are available for inspection at the commercial register of Mannheim as part of the notarial record of said general meeting of shareholders. They are also available for inspection at the offices of SAP AG at Dietmar-Hopp-Allee 16, 69190 Walldorf, Germany, and may also be viewed on the Internet at [www.sap.com/aggm](http://www.sap.com/aggm). They will further be available for inspection at the general meeting of shareholders. Copies will be sent to shareholders upon request without delay and free of charge. Moreover, the content of such authorizing resolutions is taken from the invitation to the general meeting of shareholders of May 9, 2006, which was published in the electronic version of the German Federal Gazette on March 30, 2006.

### **3. Authorization to exclude subscription rights in respect of fractional shares**

Finally, it is proposed that the Executive Board be authorized, subject to the consent of the Supervisory Board, to exclude the shareholders' subscription rights in respect of fractional shares in the event of a sale of treasury shares by way of an offer for sale to all of the Company's shareholders (subsection k) of the resolution proposal). The exclusion of the shareholders' subscription rights in respect of fractional shares is required in order to ensure a technically feasible subscription ratio. The fractions of shares excluded from the shareholders' subscription rights will be realized either by sale on the stock exchange or in any other manner so as to best further the Company's interests. The potential dilutive effect is low due to the limitation to fractional shares.

#### **4. Final statement**

Having considered all of the above circumstances, the Executive Board, together with the Supervisory Board and for the stated reasons, considers the exclusion of the shareholders' subscription rights in the specified cases to be justified in view of the circumstances and reasonable for the shareholders, even when a potential dilutive effect is taken into account.

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