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## **DECLARATION OF CONFORMITY**

### **by the management and by the Supervisory Board of Borussia Dortmund GmbH & Co. KGaA in accordance with § 161 AktG dated 10 September 2018**

In accordance with § 161 AktG, the management of the general partner (Borussia Dortmund Geschäftsführungs-GmbH) and the Supervisory Board of Borussia Dortmund GmbH & Co. KGaA declare that since the last Declaration of Conformity was submitted on 11 September 2017, Borussia Dortmund GmbH & Co. KGaA has and will continue to comply with the recommendations of the German Corporate Governance Code (the "Code") as amended on 7 February 2017 (published in the Federal Gazette (*Bundesanzeiger*) on 24 April 2017 and amended on 19 May 2017), with the exception of the following deviations due to certain specific characteristics of the KGaA legal form and the provisions of the Articles of Association of the Company:

#### **Re section 3.8 (3):**

The D&O policy does not include a deductible; there is no intention to change this because, to our understanding, the negotiation of a deductible will neither influence the behaviour of the members of the executive bodies nor would it provide appropriate motivation.

#### **Re section 4.1.3 sentence 2:**

The recommendation to disclose the main features of the Compliance Management System was complied with from 22 December 2017 in the past financial year as part of the voluntary sustainability report for the 2016/2017 season. Going forward, the intention is to present this information in the separate non-financial Group report pursuant to § 315b (3) of the German Commercial Code (*Handelsgesetzbuch*, "HGB").

#### **Re section 4.1.3 sentence 3 first half-sentence:**

In accordance with this recommendation, appropriate measures must be in place that allow employees to report any violations of the law within the Company, without fear of retaliation. This is generally known as a whistleblower system and guarantees that employees within the Group can anonymously, or in a manner that safeguards the confidentiality of their identity, report certain violations (e.g., an anonymous electronic communications platform). Previously, no such whistleblower system was in place at the Company nor does the management currently intend

to establish such a system. The Company already had and continues to have what it considered and considers to be appropriate and reasonable measures in place that allow employees to report – confidentially, if necessary – any violations of the law or internal Company guidelines. Apart from the fact that the Company is not legally obligated to establish a whistleblower system, the Company also considered in particular the potential drawbacks of a whistleblower system, namely the risk that such system could be misused and create an atmosphere of mistrust that adversely affects the corporate culture and employee morale.

#### **Re section 4.2.1 sentence 2:**

The Supervisory Board of Borussia Dortmund GmbH & Co. KGaA has no authority to appoint and dismiss Managing Directors of Borussia Dortmund Geschäftsführungs-GmbH or to stipulate the terms of their service agreements; this is incumbent upon the Executive Committee of Borussia Dortmund Geschäftsführungs-GmbH. Its managing directors are Hans-Joachim Watzke (since February 2005, CEO since January 2006), Thomas Treß (since January 2006) and Carsten Cramer (since March 2018). The managing directors' areas of responsibility have been sufficiently defined in their service agreements; moreover, the Managing Directors exercise the authority granted to them by law and the Articles of Association jointly and in close cooperation with each other. Therefore, the relevant executive bodies of Borussia Dortmund Geschäftsführungs-GmbH have considered and continue to consider it unnecessary to stipulate additional rules of procedure for the management.

#### **Re section 4.2.2 (2) sentence 3:**

Article 7 of Borussia Dortmund GmbH & Co. KGaA's Articles of Association stipulates that the general partner has a right to reimbursement of the staff and materials expenses incurred by it in the course of managing the Company, plus a commission amounting to 3 percent of the net profit for the year generated by the Company. Moreover, as in the past, the Executive Committee of Borussia Dortmund Geschäftsführungs-GmbH (deviation from Supervisory Board responsibility

as stipulated in section 4.2.2 (2) sentence 3 due to the Company's legal form) will continue to adopt and regularly review the remuneration and the remuneration system for the Managing Directors.

**Re section 4.2.3 (2) sentences 3 and 4 as well as sentence 6, first alternative, and (2) sentence 8:**

The remuneration structure for the Managing Directors of Borussia Dortmund Geschäftsführungs-GmbH is adopted by the Executive Committee of Borussia Dortmund Geschäftsführungs-GmbH. As in the past, this will continue to be adopted without the Managing Directors' variable remuneration components having "essentially forward-looking characteristics", without considering negative developments when structuring them and without limiting the sum of the remuneration to a maximum amount; in addition, the Executive Committee will not exclude the possibility of retroactive modifications to performance targets and/or comparison parameters. Given the specific features of the legal form KGaA, the relevant recommendations appear irrelevant to and impracticable for the Company.

**Re section 4.2.3 (4) sentences 1 and 2, and (5):**

The Code recommends that German stock corporations stipulate severance caps in executive board members' service agreements in the event of early termination of executive board activity or due to early termination of executive board activity due to a change of control. As in the past, the Executive Committee will continue to have decision-making power in relation to the (re-)appointment of the Managing Directors of Borussia Dortmund Geschäftsführungs-GmbH, generally without stipulating severance caps as such, given that due to the specific features of the legal form KGaA and the provisions of the Articles of Association of the Company, the aforementioned recommendations do not appear practicable. However, the Executive Committee does consider the recommendation not to pay members of the executive board in the event of the termination of their service agreements for good cause analogously applicable to the Managing Directors of Borussia Dortmund Geschäftsführungs-GmbH.

**Re section 4.2.3 (6):**

As in the past, the Chairman of the Supervisory Board will not report to the Annual General Meeting on the

fundamentals of the remuneration system or changes thereto because – as mentioned above – the Supervisory Board of Borussia Dortmund GmbH & Co. KGaA has no authority to appoint and dismiss Managing Directors of Borussia Dortmund Geschäftsführungs-GmbH or to stipulate the terms of their service agreements.

**Re section 4.2.5 (3) sentences 1 and 2:**

As in the past, our Company will not follow the recommendation that the remuneration report include specific, detailed disclosures on each member of the executive board and that the table templates attached to the Code be used for this information. This is because that the Company does not have an executive board on account of its legal form. Furthermore, due to the specific characteristics of the KGaA legal form, there exists no obligation to disclose the remuneration of individual Managing Directors of the general partner of the Company, Borussia Dortmund Geschäftsführungs-GmbH, as would normally be the case for the members of the executive boards of listed German stock corporations. Nonetheless, we have presented the remuneration of individual Managing Directors in the notes to the annual and consolidated financial statements on a voluntary basis; this appears to be sufficient and appropriate from the perspective of the usefulness of information.

**Re section 4.3.3 sentence 4:**

Material transactions between the general partner and certain related parties on the one hand, and the Company on the other within the meaning of §§ 89, 112 in conjunction with §§ 278 (3), 283 no. 5 AktG (e.g., the granting of loans) require the consent of the Supervisory Board. In this sense, the Company has complied with the recommendation. Furthermore, the Supervisory Board is not authorised to adopt a list of transactions requiring its prior consent for the general partner or its Managing Directors.

**Re section 4.3.4:**

Given that the Supervisory Board has no authority to appoint and dismiss Managing Directors of Borussia Dortmund Geschäftsführungs-GmbH or to stipulate the terms of their service agreements, not

it but rather the Executive Committee of Borussia Dortmund Geschäftsführungs-GmbH is responsible for consenting to sideline activities of the Managing Directors of the general partner.

**Re section 5.1.2 (1) sentences 2 and 4:**

Long-term succession planning is the responsibility of the Managing Directors of the Company and – given that the Supervisory Board has no authority to appoint and dismiss personnel due to the Company's legal form – the Executive Committee of Borussia Dortmund Geschäftsführungs-GmbH. The latter also acts to ensure sufficient diversity when staffing the management.

**Re section 5.1.2 (2) sentence 2:**

As in the past, the Executive Committee of Borussia Dortmund Geschäftsführungs-GmbH will continue to decide on the reappointment of its Managing Directors, including, even in the absence of special circumstances, prior to the end of one year before the end of the existing term of appointment. Given the specific features of the KGaA legal form and due to the desire for greater flexibility, it is not considered practicable to make any staffing decision based solely on timing and circumstances.

**Re section 5.1.2 (2) sentence 3:**

As in the past, the Executive Committee of Borussia Dortmund Geschäftsführungs-GmbH will continue to make decisions as to age limits for the Managing Directors of the general partner for upcoming (re-)appointments of Managing Directors, without generally stipulating an age limit to that extent. It is not considered practicable to set any age limits.

**Re sections 5.3.1 sentence 1, 5.3.2 and 5.3.3:**

As in the past, the Supervisory Board will not set up committees, specifically an audit committee. Going forward, the full Supervisory Board will continue its existing practice of discussing all issues as they arise, specifically with regard to monitoring the bookkeeping, the accounting process, the effectiveness of the internal control system, the risk management system and the internal audit system, the audit of the financial statements as well as compliance. This applies *mutatis mutandis* to the Supervisory Board's decision not to establish a nominating committee as recommended in the

Code. Moreover, this committee already consists exclusively of shareholder representatives, as required of a nominating committee by the Code.

**Re section 5.4.1 (2) sentences 1 and 2 and (4) sentences 1 and 2:**

As in the past, the Supervisory Board will neither specify concrete objectives regarding its composition that consider specific issues addressed in the Code (namely "age limits for supervisory board members", "diversity", "the number of independent supervisory board members within the meaning of section 5.4.2", or a "limit on the length of membership"), nor develop a profile of skills and expertise for the entire Supervisory Board. Consequently, these objectives or any implementation thereof was not and is not disclosed in the Corporate Governance Report. The Supervisory Board believes that such limitations are not appropriate *vis-à-vis* other Supervisory Board member nomination criteria and prefers to decide on proposals relating to its composition in light of specific situations as they arise. Notwithstanding the foregoing, compliance with the requirement, issued by the legislator, that the target proportion of women on the Supervisory Board be defined, remains mandatory (§ 278 (3) and § 111 (5) AktG as well as § 289f (3) and (2) no. 4 HGB).

**Re section 5.4.1 (6):**

As in the past, when submitting nominations to the Annual General Meeting, the Supervisory Board will not disclose the personal or business relationships between each candidate with the Company, the executive bodies of the Company or any material limited liability shareholder in the Company (i.e., one holding more than 10% of voting shares), because, in its opinion, no secure legal practice exists with respect to this recommendation and the legal certainty of Supervisory Board elections takes a higher priority than any effort to make legally unnecessary disclosures in connection with nominations.

**Re section 5.4.3 sentence 3:**

No proposed candidates for the office of Chairman of the Supervisory have been or will be disclosed because the Supervisory Board considers the individual election of its members to be sufficient and a vote at the Annual General Meeting for or against a candidate with respect to their position on the Supervisory Board to be impracticable.

**Re section 5.5.3 sentence 1:**

As in the past, the Company will continue to reserve the right to not comply with the recommendation that the Supervisory Board reports to the Annual General Meeting on conflicts of interest as they arise and how these are managed. As in the past, the principle of confidentiality of deliberations within the Supervisory Board (see § 116 sentence 2 AktG and section 3.5 (1) sentence 2) will generally continue to take precedence.

**Re section 7.1.2 sentence 2:**

The Company has not and will not comply with the recommendation that the management and the Supervisory Board discuss any half-yearly and quarterly financial reports or interim financial information prior to their publication because the objective of publishing interim financial reports without delay following their preparation by the management takes precedence. Regardless, the Supervisory Board has discussed and monitored such financial reports, and will continue to do so in the future.

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Dortmund, 10 September 2018

On behalf of the Supervisory Board



Gerd Pieper  
Chairman

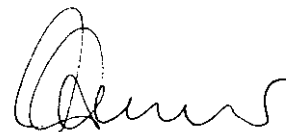
On behalf of Borussia Dortmund Geschäftsführungs-GmbH



Hans-Joachim Watzke  
Managing Director (Chairman)



Thomas Treß  
Managing Director



Carsten Cramer  
Managing Director