

## Report of the executive board on Agenda Item 9

### 1. **Reasons for the proposed authorization to issue bonds and create contingent capital**

Appropriate capital resources and financing are major bases for the further development of Nemetschek SE, for growth and for a successful presence on the market. By issuing convertible and/or warrant bonds, depending on the market situation and its financing requirements, the company can make use of attractive financing options with comparatively low interest rates, e.g. in order to provide the company with affordable access to debt capital. Moreover, by issuing convertible and/or warrant bonds, as well as by also using other instruments as required such as a capital increase, it is possible to access new circles of investors. Further, the company benefits from the conversion and option premiums resulting from the issue. At present, there are no authorizations to issue convertible and/or warrant bonds or other contingent capital. The executive board and supervisory board consider it wise to enable the company to flexibly issue convertible and/or warrant bonds subject to exclusion of the right of subscription and thus exclude the shareholders' right of subscription.

The authorization to issue bonds proposed under Agenda Item 9 and likewise proposed Contingent Capital 2021 enable the executive board, with the consent of the supervisory board, to issue bearer or name convertible and/or warrant bonds with a conversion or option right and/or conversion or option obligation (or a combination of these instruments), once or repeatedly, up to (and including) May 11, 2026, amounting to a total nominal value of up to EUR 700,000,000.00 with or without term limitation (hereinafter referred to collectively as "bonds") and to grant creditors of bonds conversion and/or option rights and/or subject creditors of bonds to conversion and/or option obligations for the subscription of a total of up to 11,550,000 new, no-par value bearer shares of the company with a proportional amount of the share capital of a total of up to EUR 11,550,000.00 in accordance with the terms and conditions of bonds (hereinafter referred to together as "bond terms and conditions"). In addition, the authorization proposed under Agenda Item 9 makes it possible for the executive board to make the bonds subject to a variable interest rate, whereby the interest can be completely or partially dependent on the amount of the net income for the year, the retained earnings or the dividends of the company.

The option provided for in the authorization in the case of bonds to also provide for a conversion or option obligation at the end of the term or at other points in time extends the scope for structuring such financing instruments.

The bonds can also be issued by domestic or foreign companies in which the company holds, directly or indirectly, the majority of the votes and of the capital; in this case, the executive board is authorized to assume the guarantee for the bonds for the company and to grant creditors of such bonds conversion and/or option rights to shares of the company and/or to perform conversion or option obligations in shares of the company as well as to undertake further declarations and actions required for successful issue. In the case of bond issue, these can

and/or will as a rule be correspondingly subdivided into partial bonds which are equivalent among themselves.

If a bond does not provide for an obligation to deliver Nemetschek shares or conversion or option rights and/or conversion or option obligations with respect to Nemetschek shares until after a declaration has been made for the exercise of an exchange right on the part of the issuing company or on the part of Nemetschek SE, the corresponding declaration must be submitted on or before May 11, 2026.

The proposed Contingent Capital 2021 serves to make it possible to issue shares to creditors of bonds, which are issued pursuant to the authorization to be newly created under Agenda Item 9. The nominal amount of Contingent Capital 2021 corresponds to 10% of the current share capital of the company. The issue of the new shares from Contingent Capital 2021 is carried out at the conversion or option price to be respectively defined in accordance with the authorization. In the authorization, in accordance with § 193 Para. 2 No. 3 of the German Stock Corporation Act (AktG), only the bases for definition of the pertinent minimum issue price are specified so that the company retains the necessary flexibility for defining the conditions. The contingent capital increase is to be carried only to the extent that conversion or option rights arising from issued bonds are exercised or conversion or option obligations arising from such bonds are performed and to the extent that the conversion or option rights and/or conversion or option obligations are not serviced by means of own shares, by means of shares from authorized capital or by means of other considerations.

## **2. Authorization to exclude the right of subscription**

Shareholders are generally entitled to a right of subscription in the case of the issue of bonds with a conversion or option right (§ 221 Para. 4 of the German Stock Corporation Act (AktG) in conjunction with § 186 Para. 1 of the German Stock Corporation Act (AktG)). If the bonds are issued by a domestic or foreign company in which Nemetschek SE holds, directly or indirectly, the majority of the votes and of the capital, Nemetschek SE must ensure that the shareholders are granted the legally applicable right of subscription. In order to facilitate the procedure, in accordance with § 186 Para. 5 of the German Stock Corporation Act (AktG), the bonds may also be acquired from a credit institution or more than one credit institution along with the duty to offer them to the shareholders for subscription (so-called indirect right of subscription).

For this, with the consent of the supervisory board, the executive board is to be enabled to define the right of subscription in part as a direct right of subscription and otherwise as an indirect right of subscription. Thus, for cost reasons in the interest of the company, it may be especially expedient to directly offer these bonds for subscription to a major shareholder with a right of subscription, who has agreed to the purchase of a fixed number of (partial) bonds in advance, in order to avoid to the extent possible any charges incurred to the company from the issuing bank in the case of an indirect right of subscription. For the shareholders that are offered the bonds by way of the indirect right of subscription, this does not constitute any restriction of their right of subscription in terms of content.

In compliance with the applicable provisions, in the cases individually specified in the authorization, the executive board is to be authorized – with the consent of the supervisory board – to exclude the shareholders' right of subscription.

## **2.1 Exclusion of right of subscription in case of fractional amounts**

With the consent of the supervisory board, the executive board is initially to be authorized to exclude the right of subscription of shareholders for fractional amounts. Such an exclusion of the right of subscription is to enable a practicable subscription ratio and thus make it easier to technically carry out the issue of bonds. The value of the fractional amounts is generally low, whereas the time and effort required for the issue of bonds without exclusion of the right of subscription for fractional amounts are usually considerably higher. The bonds that are excluded from the right of subscription due to fractional amounts will be used in the best possible way for the company. The exclusion of the right of subscription in these cases therefore serves to make implementing an issue easier and more practicable.

## **2.2 Exclusion of the right of subscription in case of warrant bonds and convertible bonds**

Further, for the issue of bonds, the executive board is to be authorized, with the consent of the supervisory board, to exclude the shareholders' right of subscription to the extent that this is necessary in order to grant a right of subscription to holders and/or creditors of conversion or option rights or creditors of bonds carrying conversion or option obligations that were or are yet to be issued by the company or by a company in which a majority of the shares are held in the scope to which they, as shareholders, would be entitled after exercise of the conversion or option rights and/or performance of the conversion or option obligations.

The background for this is as follows: The economic value of the aforementioned conversion or option rights and/or the bonds carrying conversion or option obligations depends not only on the conversion or option price but also on the value of the shares of the company to which the conversion or option rights and/or conversion or option obligations relate. In order to ensure a successful placement of the bonds in question and/or to avoid a corresponding markdown of the price during placement, it is therefore common practice to include so-called dilution protection provisions in the bond terms and conditions, which will protect the entitled parties against a loss in value of their conversion or option rights as a result of a dilution of the value of the shares to be subscribed; the inclusion of such dilution protection provisions in the bond terms and conditions is therefore also provided for in the authorization to issue bonds as proposed under Agenda Item 9. In the absence of dilution protection, a subsequent issue of further bonds with the granting of the right of subscription would typically lead to such dilution of the value. In order to structure the right of subscription in a way that is attractive to the shareholders and to ensure the purchase, the convertible or warrant bonds in question are usually issued at more favorable conditions than would correspond to their market value when the right of subscription is granted. This leads to a corresponding dilution of the value. The aforementioned dilution protection

provisions in the bond terms and conditions regularly provide for a reduction of the conversion and/or option price in such a case, with the result that in the event of a subsequent conversion or exercise of the option and/or the subsequent performance of a conversion or option obligation, the funds accruing to the company are reduced and/or the number of shares to be issued by the company is increased.

As an alternative by means of which it is possible to avoid reducing the conversion and/or option price, the dilution protection provisions usually permit the holders of rights arising from bonds to be granted a right of subscription for the convertible and/or warrant bonds subsequently issued to the extent to which they would be entitled after exercising their own conversion or option rights and/or after performing their conversion or option obligations. They are thus placed in the position they would be in if they had already become shareholders prior to the offer to subscribe by exercising their conversion or option rights or by performing any conversion or option obligations, and would already be entitled to subscribe to that extent; thus, they are compensated – like all shareholders already holding shares – for the dilution of the value by the value of the right of subscription. For the company, this second alternative for ensuring protection against dilution has the benefit that the conversion and/or option price does not have to be reduced; therefore, this alternative serves to ensure the largest possible inflow of funds in the event of a subsequent conversion or exercise of the option and/or the subsequent performance of any conversion or option obligation, and/or reduces the number of shares to be issued in this case. This also benefits the participating shareholders so that at the same time this is compensation for the restriction of the right of subscription. Their right of subscription as such continues to exist and is merely reduced pro rata to the extent to which, in addition to the participating shareholders, the holders of conversion or option rights and/or bonds carrying conversion or option obligations are also granted a right of subscription. In the case of an issue of rights of subscription, this authorization gives the company the opportunity to choose one of the two above alternatives for ensuring protection against dilution after weighing the shareholders' interests and those of the company.

### **2.3 Exclusion of the right of subscription in case of issue of bonds in return for cash**

Further, the executive board is to be authorized, with the consent of the supervisory board, to exclude the right of subscription if, for the issue of bonds in return for cash, the issue price of the bonds does not fall significantly below the theoretical market value determined according to recognized principles, especially finance-mathematical principles.

It may be expedient to make use of this statutory possibility of excluding the right of subscription in order to take advantage of favorable market situations in the short term and be able to quickly and flexibly place bonds on the market at attractive conditions. The two-week subscription period required for granting a right of subscription to shareholders (pursuant to § 186 Para. 1 Sentence 2 of the German Stock Corporation Act (AktG)) does not allow for a comparatively short-

term response to current market situations. Moreover, due to the volatility of the share markets, conditions which are similar to market conditions can normally only be achieved if the company is not bound to them for a longer period of time. In the case of granting a right of subscription, § 186 Para. 2 of the German Stock Corporation Act (AktG) stipulates that the final subscription price and/or, in the case of bonds with conversion and/or option rights and/or carrying conversion or option obligations, that the final conditions of the bonds be announced no later than three days before expiration of the subscription period. This consequently means a greater market risk – in particular, the risk of price changes over several days – than is the case with an allocation without a right of subscription. When granting a right of subscription, in order to achieve a successful placement, it is therefore necessary to regularly provide for corresponding safety discounts for the definition of the conditions of bonds; this will normally result in less favorable conditions for the company than the placement of bonds with the exclusion of the right of subscription. Also, in the case of granting a right of subscription, a full placement is not definitely ensured due to the uncertainty regarding the exercise of the rights of subscription by those entitled to do so, and a subsequent placement with third parties is normally associated with additional expenses.

In the case of this exclusion of the right of subscription, the interests of the shareholders are ensured by way of the fact that it is not permitted to issue the bonds at a price considerably below their theoretical market value. For this, the theoretical market value is to be calculated according to recognized finance-mathematical principles in particular. In determining the price, the administration will keep the discount on that market value as small as possible, taking into account the respective capital market situation. Thus, the book value of a right of subscription in respect of the bonds will drop to near zero and, consequently, shareholders will not incur any material economic disadvantage as a result of the exclusion of their right of subscription. Inasmuch as the executive board deems it appropriate in the respective situation to obtain informed advice, it obtain the support of experts, e.g. through the syndicate of banks accompanying the issue, an independent investment bank or an authority on the subject, who confirm in suitable form that no significant dilution of the share value is to be expected. Independent of the examination by the executive board, market-appropriate determination of conditions is ensured if a book building procedure is carried out. Thus, no significant dilution of the value of the shares occurs as a result of exclusion of the right of subscription.

This authorization to exclude the subscription right only applies to bonds with rights to shares or obligations regarding the subscription of shares which involve a proportional amount of the share capital which in total does not exceed 10% of the share capital, neither at the point in time that they become effective nor at the point in time that this authorization is exercised. Within this framework, the legislator deems it reasonable for the shareholders to maintain the percentage of their shareholding by means of purchases on the market. This 10% limit is to include shares of the company which are issued or sold by the company during term of this authorization, subject to the exclusion of the shareholders' right of subscription in accordance with or pursuant to § 186 Para. 3 Sentence 4 of the German Stock Corporation Act (AktG). Such taking into account serves to protect

the shareholders in order to keep the dilution of their shareholding as low as possible.

#### **2.4 Exclusion of the right of subscription in case of issue of bonds in return for a contribution in kind**

Further, the executive board is to be authorized, with the consent of the supervisory board, to exclude the shareholders' right of subscription in the case of the issue of bonds in return for a contribution in kind.

This is to ensure that it is possible to use the bonds as acquisition currency in order to strategically acquire specific intangible assets, enterprises, parts of enterprises or investments in enterprises. The company will consequently be put in a position, especially in combination with other financing instruments or an issue of bonds in return for cash, to flexibly act and respond to the corresponding demands of the sellers. The issue of bonds in return for a contribution in kind is subject to the prerequisite that, at the time the bonds are issued, the value of the contributions in kind at least correspond to the issue amount of the bonds. Therefore, the company is put at no disadvantage as a result of the issue of bonds in return for a contribution in kind. Rather, this option generates additional flexibility and increases the company's competitive chances in the case of acquisitions. In individual cases, the executive board will carefully examine whether it will make use of the issue of bonds in return for a contribution in kind. It will use only use this option if this is in the clear interest of the company and thus of its shareholders.

#### **3. Restriction of the exclusion of the right of subscription to 10%**

The authorizations for excluding the right of subscription described in the above paragraphs are in total limited to an amount which does not exceed 10% of the share capital, neither at the time of this authorization taking effect nor at the time of this authorization being utilized. In addition, the aforementioned 10% limit is to apply to the company's own shares which are sold during the term of this authorization, subject to the exclusion of the right of subscription, as well as to those shares which are issued during the term of this authorization, subject to the exclusion of the shareholders' right of subscription. Moreover, this limitation applies to shares which were or are to be issued for servicing bonds with conversion or option rights and/or conversion or option obligations if these bonds were issued on the basis of another authorization as per § 221 Para. 2 of the German Stock Corporation Act (AktG) during the term of this authorization, subject to the exclusion of the right of subscription. The maximum limit reduced as per the aforementioned sentences of this section will be increased again upon a new authorization resolved by the annual general meeting going into effect after the reduction with the exclusion of the shareholders' right of subscription, to the extent of the new authorization, albeit up to a maximum of 10% of share capital as per the provisions of Sentence 1 of this section. As a result of this capital limit, the shareholders are additionally protected against a dilution of their shareholding.

**4. Utilization of the authorization**

At present there are no actual plans for a utilization of the authorization to issue bonds as proposed under Agenda Item 9. The provisional resolutions with the possibility to exclude shareholders' rights of subscription proposed here are common, nationally and internationally. For all cases of exclusion of the right of subscription proposed here, the consent of the supervisory board is required. The executive board will additionally in each case carefully examine whether the utilization of the proposed authorization to issue bonds is in the best interest of the company; for this, it will also examine in particular whether exclusion of the shareholders' right of subscription is objectively justified. The executive board will report to the next annual general meeting respectively about every utilization of the authorization.