

**Explanatory report by the Executive Board of Aurubis AG,  
Hamburg, in accordance with Section 176 (1) sentence 1  
German Stock Corporation Act (AktG) regarding disclosures  
of takeover provisions pursuant to Section 289 (4) and  
Section 315 (4) German Commercial Code (HGB) as at the  
balance sheet date of September 30, 2016**

The following disclosures as at September 30, 2016 are presented in accordance with Section 289 (4) and Section 315 (4) German Commercial Code (HGB).

**Composition of the subscribed capital**

The subscribed capital (share capital) of Aurubis AG amounted to €115,089,210.88 as at the balance sheet date and was divided into 44,956,723 no-par-value bearer shares, each with a notional value of € 2.56 of the subscribed capital.

Each share grants the same rights and a single vote at the Annual General Meeting. There are no different classes of shares.

**Shareholdings exceeding 10 % of the voting rights**

One indirect shareholding in Aurubis AG exceeds 10 % of the voting rights:

Salzgitter AG, Salzgitter, notified the Company in accordance with Section 21 (1) German Securities Trading Act (WpHG) on August 29, 2011 that its voting interest in Aurubis AG had exceeded the threshold of 25 % of the voting rights on August 29, 2011 and amounted to 25.002 % of the voting rights (representing 11,240,000 votes). Of this total, 25.002 % of the voting rights

(representing 11,240,000 votes) are attributed to Salzgitter AG via Salzgitter-Mannesmann GmbH, Salzgitter.

Accordingly, one direct investment in the capital of Aurubis AG exceeds 25 % of the voting rights: according to the notification from Salzgitter AG, Salzgitter, dated August 29, 2011, Salzgitter Mannesmann GmbH, Salzgitter, has held 25.002 % of the voting rights (representing 11,240,000 votes) since August 29, 2011.

### **Appointment and removal of Executive Board members and amendments to the Articles of Association**

The appointment and removal of members of the Executive Board of Aurubis AG are covered by Sections 84 and 85 German Stock Corporation Act (AktG) and Section 31 Law on Co-determination (MitbestG) in conjunction with Section 6 (1) of the Articles of Association. Amendments to the Articles of Association are subject to the approval of the Annual General Meeting. The resolution at the Annual General Meeting is passed by a majority that must comprise at least three quarters of the subscribed capital represented in the vote; Sections 179 et seq. German Stock Corporation Act (AktG) apply. In accordance with Section 11 (9) of the Articles of Association, the Supervisory Board is authorized to resolve amendments to the Articles of Association that only relate to their wording. Furthermore, the Supervisory Board is empowered to adjust Section 4 of the Articles of Association after the complete or partial execution of the subscribed capital increase in accordance with the respective claim to the authorized capital and after the authorization expires. It is also empowered to adjust the wording of Section 4 (1) and (3) of the Articles of Association in accordance with the respective issuing of new no-par-value bearer shares to the holders or creditors of convertible bonds and/or bonds with warrants, profit participation rights or participating bonds (or combinations of these instruments), which are issued by the Company or companies in which it has an indirect or direct majority interest for a cash contribution as a result of the authorization resolved at the Annual General Meeting on March 1, 2012 under item 8 of the agenda, and grant a conversion

or option right to new no-par-value bearer shares in the Company or establish a conversion obligation. The same applies if the authorization to issue bonds with warrants or convertible bonds is not used after the authorization period expires or if the conditional capital is not used after the deadlines for exercising option or conversion rights or for fulfilling conversion or option obligations have expired.

### **Power of the Executive Board to issue shares**

In accordance with Section 4 (2) of the Articles of Association, the Executive Board is empowered, with the approval of the Supervisory Board, to increase the Company's subscribed capital in the period until February 23, 2021 by issuing up to 22,478,361 new no-par-value shares in exchange for a cash contribution and/or a contribution in kind, as a one-off or in several installments, by up to € 57,544,604.16. The shareholders shall always be granted a subscription right. The new shares can also be acquired by one or more credit institutions with the obligation of offering them to shareholders for subscription. The Executive Board is, however, authorized, subject to the approval of the Supervisory Board, to exclude shareholder subscription rights once or on several occasions,

- a) inasmuch as it is necessary to exclude subscription rights for possible fractional amounts,
- b) up to an arithmetical nominal value totaling € 23,017,840.64 if the new shares are issued for a contribution in kind,
- c) in the case of capital increases against cash contributions up to an arithmetical nominal value totaling € 11,508,920.32 or, if this amount is lower, by a total of 10 % of the subscribed capital (the "**maximum amount**") existing when this power was exercised for the first time (in each case offsetting any utilization of other authorizations to exclude the subscription right pursuant to or in corresponding application of Section

186 (3) sentence 4 German Stock Corporation Act (AktG)), if the issuing price of the new shares is not significantly lower than the price of Company shares in the same category on the stock exchange at the time when the price is finally fixed.

The subscribed capital allotted to any shares that are issued or must be issued in order to fulfill convertible bonds and/or bonds with warrants, that are issued after February 24, 2016 in the corresponding application of Section 186 (3) sentence 4 German Stock Corporation Act (AktG) excluding the subscription rights or that are sold after February 24, 2016 in the corresponding application of Section 186 (3) sentence 4 German Stock Corporation Act (AktG) must be included in this maximum amount. An inclusion that has been carried out is canceled if powers to issue convertible bonds and/or bonds with warrants in accordance with Section 221 (4) sentence 2 and Section 186 (3) sentence 4 German Stock Corporation Act (AktG) or to sell own shares in accordance with Section 71 (1) No. 8 and Section 186 (3) sentence 4 German Stock Corporation Act (AktG) are granted again at the Annual General Meeting after exercising such powers that have led to inclusion.

- d) up to an arithmetical nominal value totaling € 23,017,840.64 insofar as it is necessary to grant holders or creditors of bonds with warrants or convertible bonds issued by the Company to which the shares relate a subscription right for new shares to the same extent as they would be entitled after exercising their option or conversion rights.

In the resolution dated February 9, 2016 the Executive Board of Aurubis AG declared in the scope of a voluntary commitment that it would only make use of the authorizations to exclude shareholders' subscription rights if the issued shares did not exceed 20 % of the share capital, neither at the time the authorization went into effect nor at the time it was exercised. Any owned shares that are sold under the exclusion of subscription rights and shares that

are to be issued to service bonds with a conversion and/or option right or a conversion obligation, if the bonds have been issued excluding the shareholders' subscription rights, must be offset against the 20 % limit previously mentioned up to the issuance of new shares without subscription rights. If and to the extent that the shareholders at the Annual General Meeting reissue this authorization to exclude subscription rights after an authorization to exclude subscription rights has been exercised, leading to offsetting against the 20 % limit previously mentioned, the offsetting that has been carried out is no longer included.

This voluntary commitment was made accessible on Aurubis AG's website for the duration of the authorization.

### **Power of the Executive Board to repurchase shares**

With a resolution of the Annual General Meeting on February 28, 2013, the Company was empowered until February 27, 2018 to repurchase its own shares (treasury shares) up to a total of 10 % of the current subscribed capital. Together with other own shares held by the Company or attributable to it in accordance with Sections 71a et seq. German Stock Corporation Act (AktG), the shares acquired by the Company based on this authorization shall at no time exceed 10 % of the Company's current subscribed capital. The acquisition of shares for the purpose of trading with own shares is excluded. The Executive Board is empowered to use Company shares that are purchased using this power for all legally permitted purposes, and in particular also for the following purposes:

- a) Own shares that have been acquired can also be sold by means other than a sale via the stock exchange, or by means of an offer to all of the shareholders, if the shares are sold in return for a cash payment at a price that is not materially lower than the stock market price of the Company's shares of the same category at the time of the sale; the subscription rights of the shareholders are excluded. This power shall, however, only apply on

the condition that the shares sold excluding the subscription right may not, in accordance with Section 186 (3) sentence 4 German Stock Corporation Act (AktG), exceed 10 % of the subscribed capital, either at the time this becomes effective or at the time this power is exercised (the “upper limit”), in each case taking into account the possible use of other authorizations to exclude the subscription right in accordance with, or in the corresponding application of, Section 186 (3) sentence 4 German Stock Corporation Act (AktG). An inclusion that has been carried out is canceled if powers to issue new shares from authorized capital in accordance with Section 186 (3) sentence 4 German Stock Corporation Act (AktG) or to issue convertible bonds and/or bonds with warrants in commensurate application of Section 186 (3) sentence 4 German Stock Corporation Act (AktG) are granted again at the Annual General Meeting after exercising such powers that have led to inclusion.

- b) Own shares that have been acquired can also be sold by means other than a sale via the stock exchange or by means of an offer to all of the shareholders, if this is carried out in return for a contribution in kind by a third party, especially in conjunction with the acquisition of business entities, parts of business entities or participating interests in business entities by the Company itself or by a business entity dependent on it or majority owned by it, and in conjunction with business combinations or to fulfill conversion rights or obligations relating to conversion or option rights issued by the Company or Group entities of the Company; the subscription rights of shareholders are in each case excluded.
- c) Own shares acquired can be withdrawn entirely or in part without a further resolution of the Annual General Meeting. They can also be withdrawn applying simplified proceedings without a reduction in capital by adjusting the proportionate notional share of the remaining no-par-value shares in the subscribed capital of the Company.

The complete text of the resolution dated February 28, 2013 can be referenced under agenda item 7 in the invitation to the Annual General

Meeting 2013 published in the German Federal Gazette on January 15, 2013.

### **Power of the Executive Board to issue convertible bonds and shares from conditional capital**

In accordance with Section 4 (3) of the Company's Articles of Association, the subscribed capital is conditionally increased by up to € 52,313,277.44 through the issuing of up to 20,434,874 new bearer shares without a nominal amount (no-par-value shares), each with notional interest in the subscribed capital of € 2.56 (conditional capital). The conditional increase in capital will be used to grant no-par-value bearer shares to the holders or creditors of convertible bonds and/or bonds with warrants, profit participation rights and/or participating bonds (or combinations of these instruments), which are issued by the Company or companies in which it has an indirect or direct majority interest, for a cash contribution as a result of the authorization passed at the Annual General Meeting on March 3, 2012 under item 8 of the agenda, and grant a conversion or option right to new no-par-value bearer shares in the Company or establish a conversion obligation. The conditional increase in capital will only be carried out to the extent that option or conversion rights are used, or those holders or creditors that are required to convert fulfill their obligation to convert, and to the extent that the Company's own shares or new shares from the utilization of authorized capital are not used for this purpose. The holders of new no-par-value bearer shares are entitled to participate in the profits from the beginning of the fiscal year in which they come into existence, through the exercise of option or conversion rights, or the fulfillment of conversion obligations. The Executive Board is authorized to define the further details of how the conditional capital increase shall be performed.

The complete text of the resolution dated March 1, 2012 can be referenced under agenda item 8 in the invitation to the Annual General Meeting 2012 published in the German Federal Gazette on January 19, 2012. The intention is to renew this authorization at the next Annual General Meeting.

## **Significant conditional agreements concluded by the Company**

In the event that a single person or a group of persons acting together should acquire more than 50 % of the shares or the voting rights in Aurubis AG, every syndicate lender from the agreement with a banking syndicate (“the Syndicated Loan”) on a credit line totaling € 350 million, which primarily serves to finance the working capital of the Group, shall be entitled to cancel its participation in the Syndicated Loan and to demand immediate repayment of the amounts owed to it.

Within the scope of various bonds totaling € 436 million, every lender has an extraordinary right of cancellation if control over the borrower changes.

Hamburg, December 2016

Jürgen Schachler

Dr. Stefan Boel