



# BAYER AKTIENGESSELLSCHAFT

(incorporated in the Federal Republic of Germany)

## € 1,300,000,000 Subordinated Fixed to Floating Rate Callable Bonds due 2105

**Issue Price: 98.812 %**

Bayer Aktiengesellschaft (the "Issuer") will issue € 1,300,000,000 principal amount of Subordinated Fixed to Floating Rate Callable Bonds (the "Bonds") on July 29, 2005 at an issue price of 98.812% of the principal amount of such Bonds.

The Bonds will bear interest from and including July 29, 2005 to but excluding July 29, 2015 at a rate of 5.00% per annum, payable annually in arrear on July 29 in each year, commencing July 29, 2006. Thereafter, unless previously redeemed, the Bonds will bear interest the Euro-zone inter-bank offered rate for three-month Euro deposits plus 1.80% plus a step-up of 1.00%, payable quarterly in arrear on October 29, January 29, April 29 and July 29 in each year (each a "Floating Rate Interest Payment Date").

**In the case of a Cash Flow Event (as defined in "Conditions of Issue – Interest"), the Issuer shall not pay interest on the Bonds. The Issuer is entitled to pay voluntarily such unpaid interest within one year following the Relevant Interest Payment Date on which no interest was paid due to a Cash Flow Event and must pay such unpaid interest under certain circumstances described in "Conditions of Issue – Interest". The Issuer is also entitled, in its sole discretion, to defer payments of interest on an Optional Interest Payment Date (as defined in "Conditions of Issue – Interest"). The Issuer may pay such voluntarily deferred interest (in whole or in part) at any time upon due notice and it shall pay such voluntarily deferred interest (in whole, but not in part) (i) if it decides to pay interest on an Optional Interest Payment Date thereafter, or (ii) under certain other circumstances, but generally no later than 10 years from the date on which such interest was voluntarily deferred, as described in "Conditions of Issue – Interest".**

The Bonds will be redeemed on July 29, 2105.

The Bonds are redeemable in whole but not in part at the option of the Issuer at their principal amount together with any interest accrued thereon, on July 29, 2015 and on any Floating Rate Interest Payment Date thereafter. The Issuer may also redeem the Bonds in whole but not in part at any time before July 29, 2015 following a Tax Event or a Gross-up Event (as defined in "Conditions of Issue – Redemption and Purchase") at their Early Redemption Amount (as defined in "Conditions of Issue – Redemption and Purchase").

The obligations of the Issuer under the Bonds constitute unsecured and subordinated obligations of the Issuer ranking *pari passu* among themselves and in the event of the liquidation, dissolution, insolvency, composition or other proceedings for the avoidance of insolvency of the Issuer rank junior to all other present and future obligations of the Issuer, whether subordinated or unsubordinated, except as otherwise required by mandatory statutory law. In the event of the liquidation, dissolution, insolvency, composition or other proceedings for the avoidance of insolvency of the Issuer, the obligations of the Issuer under the Bonds will be subordinated to the claims of all unsubordinated and subordinated creditors of the Issuer so that in any such event no amounts shall be payable in respect of the Bonds until the claims of all unsubordinated and subordinated creditors of the Issuer shall have first been satisfied in full. The obligations of the Issuer under the Bonds will be senior to the claims of all classes of the shareholders.

This Prospectus has been approved by the *Commission de Surveillance du Secteur Financier* ("CSSF"), has been filed with said authority and will be published in electronic form on the website of the Luxembourg Stock Exchange ([www.bourse.lu](http://www.bourse.lu)). It will also be available free of charge upon request at the specified office of the Paying Agent in Luxembourg.

Application has been made to list the Bonds on the regulated market (as defined below) of the Luxembourg Stock Exchange. The Bonds will be issued in bearer form in denominations of € 1,000.

The Issuer has requested CSSF to provide the competent authorities in the Federal Republic of Germany, the United Kingdom of Great Britain and Northern Ireland and The Netherlands with a certificate of approval attesting that the Prospectus has been drawn up in accordance with the *Loi relative aux prospectus pour valeurs mobilières* which implements Directive 2003/71/EC of the European Parliament and the Council of 4 November 2003 into Luxembourg law ("Notification").

### Joint Lead Managers/Joint Bookrunners

**Deutsche Bank**  
Structuring Advisor

**JPMorgan**

### Co-Lead Managers

**BNP PARIBAS**

**Citigroup**

**Goldman Sachs International**



## **Responsibility Statement**

The Issuer with its registered office in Leverkusen, Germany accepts responsibility for the information contained in this Prospectus (the "Prospectus") and hereby declares that, having taken all reasonable care to ensure that such is the case, the information contained in this Prospectus for which it is responsible is, to the best of its knowledge, in accordance with the facts and contains no omission likely to affect its importance.

The Issuer further confirms that (i) this Prospectus contains all information with respect to the Issuer and its subsidiaries and affiliates taken as a whole (the "Bayer Group") and to the Bonds which is material in the context of the issue and offering of the Bonds, including all information which, according to the particular nature of the Issuer and of the Bonds is necessary to enable investors and their investment advisers to make an informed assessment of the assets and liabilities, financial position, profits and losses, and prospects of the Issuer and the Bayer Group and of the rights attached to the Bonds; (ii) the statements contained in this Prospectus relating to the Issuer, the Bayer Group and the Bonds are in every material particular true and accurate and not misleading; (iii) there are no other facts in relation to the Issuer, the Bayer Group or the Bonds the omission of which would, in the context of the issue and offering of the Bonds, make any statement in the Prospectus misleading in any material respect and (iv) reasonable enquiries have been made by the Issuer to ascertain such facts and to verify the accuracy of all such information and statements.

## **Notice**

No person is authorised to give any information or to make any representations other than those contained in this Prospectus and, if given or made, such information or representations must not be relied upon as having been authorised by or on behalf of the Issuer or the managers set forth on the cover page (each a "Manager" and together, the "Managers"). Neither the delivery of this Prospectus nor any sale made hereunder shall, under any circumstances, create any implication that there has been no change in the affairs of the Issuer or any of its affiliates since the date of this Prospectus, or that the information herein is correct at any time since the date of this Prospectus.

Each investor contemplating purchasing any Bonds should make its own independent investigation of the financial condition and affairs, and its own appraisal of the creditworthiness of the Issuer. This Prospectus does not constitute an offer of Bonds or an invitation by or on behalf of the Issuer or the Managers to purchase any Bonds. Neither this Prospectus nor any other information supplied in connection with the Bonds should be considered as a recommendation by the Issuer or the Managers to a recipient hereof and thereof that such recipient should purchase any Bonds.

This Prospectus does not constitute, and may not be used for the purposes of, an offer or solicitation by anyone in any jurisdiction in which such offer or solicitation is not authorised or to any person to whom it is unlawful to make such offer or solicitation.

The offer, sale and delivery of the Bonds and the distribution of this Prospectus in certain jurisdictions is restricted by law. Persons into whose possession this Prospectus comes are required by the Issuer and the Managers to inform themselves about and to observe any such restrictions. In particular, the Bonds have not been and will not be registered under the United States Securities Act of 1933, as amended (the "Securities Act"), and are subject to U.S. tax law requirements. Subject to certain limited exceptions, the Bonds may not be offered, sold or delivered within the United States or to U.S. persons.

The legally binding language of this Prospectus is the English language; except for the Conditions of Issue where the legally binding language is the German language.

The Bonds will be listed on the regulated market of the Luxembourg Stock Exchange – the Luxembourg Stock Exchange's "regulated market" is a regulated market for the purposes of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instru-

ments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC.

IN CONNECTION WITH THE ISSUE OF THE BONDS, DEUTSCHE BANK AG, LONDON BRANCH (AS CO-ORDINATING STABILIZING MANAGER) AND J.P. MORGAN SECURITIES LTD. (OR PERSONS ACTING ON THEIR BEHALF) MAY OVER-ALLOT BONDS (PROVIDED THAT THE AGGREGATE PRINCIPAL AMOUNT OF BONDS ALLOTTED DOES NOT EXCEED 105% OF THE AGGREGATE PRINCIPAL AMOUNT OF THE BONDS) OR EFFECT TRANSACTIONS WITH A VIEW TO SUPPORTING THE MARKET PRICE OF THE BONDS AT A LEVEL HIGHER THAN THAT WHICH MIGHT OTHERWISE PREVAIL. HOWEVER, THERE IS NO ASSURANCE THAT DEUTSCHE BANK AG, LONDON BRANCH OR J.P. MORGAN SECURITIES LTD. (OR PERSONS ACTING ON THEIR BEHALF) WILL UNDERTAKE STABILISATION ACTION. ANY STABILISATION ACTION MAY BEGIN ON OR AFTER THE DATE ON WHICH ADEQUATE PUBLIC DISCLOSURE OF THE FINAL TERMS OF THE OFFER OF THE BONDS IS MADE AND, IF BEGUN, MAY BE ENDED AT ANY TIME, BUT IT MUST END NO LATER THAN THE EARLIER OF 30 DAYS AFTER THE ISSUE DATE OF THE BONDS AND 60 DAYS AFTER THE DATE OF THE ALLOTMENT OF THE BONDS. SUCH STABILISING SHALL BE IN COMPLIANCE WITH ALL LAWS, REGULATIONS AND RULES OF ANY RELEVANT JURISDICTION.

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## SUMMARY

The following constitutes the summary (the “Summary”) of the essential characteristics of, and risks associated with, the Issuer and the Bonds. This Summary should be read as an introduction to this Prospectus. It does not purport to be complete and is taken from, and is qualified in its entirety by, the remainder of this Prospectus. Any decision by an investor to invest in the Bonds should be based on consideration of this Prospectus as a whole. Where a claim relating to the information contained in this Prospectus is brought before a court, the plaintiff investor might, under the national legislation of such court, have to bear the costs of translating the Prospectus before the legal proceedings are initiated. Civil liability attaches to those persons who have tabled this Summary including any translation thereof, and applied for its notification, but only if the Summary is misleading, inaccurate or inconsistent when read together with the other parts of this Prospectus.

*Words and expressions defined in “Conditions of Issue” below shall have the same meanings in this section.*

### Summary in respect of the Bonds

**Issuer:** Bayer Aktiengesellschaft.

**Principal Amount:** € 1,300,000,000.

**Managers:** Deutsche Bank AG, London Branch  
J. P. Morgan Securities Ltd.  
BNP PARIBAS (London Branch)  
Citigroup Global Markets Limited  
Goldman Sachs International

**Principal Paying Agent:** JPMorgan Chase Bank, N. A.

**Luxembourg Listing Agent and Paying Agent:** J. P. Morgan Bank Luxembourg S. A.

**Issue Price:** 98.812 %.

**Denomination:** The Bonds will be issued in a principal amount of € 1,000 each.

**Form of Bonds:** The Bonds are in bearer form and are issued pursuant to U. S. Treasury Regulation Section 1.163-5(c)(2)(i)(D) (the “TEFRA D Rules”). The Bonds will initially be represented by a temporary global bearer bond (the “Temporary Global Bond”) without interest coupons which will be deposited with a common depository for Clearstream Banking, société anonyme, Luxembourg, and Euroclear Bank S. A./N. V. as operator of the Euroclear System (together the “Clearing System”). The Temporary Global Bond will be exchangeable for a permanent global bearer bond (the “Permanent Global Bond”) without interest coupons not earlier than 40 and not later than 180 days after the issue of the Temporary Global Bond upon certification as to non-U. S. beneficial ownership in accordance with the rules and operating procedures of the Clearing System. Payments on the Temporary Global Bond will only be made against presentation of such certifications. No definitive securities or interest coupons will be issued.

**Maturity:** July 29, 2105.

**Early Redemption:** The Bonds are redeemable in whole but not in part at the option of the Issuer on July 29, 2015 or any Floating Rate Interest Payment Date thereafter at their

principal amount plus any interest accrued until the redemption date (exclusive) and all outstanding Arrears of Interest to the redemption date. The Issuer may also redeem the Bonds in whole but not in part at any time before July 29, 2015 following a Tax Event or a Gross Up Event at their Early Redemption Amount.

**Interest:**

The Bonds will bear interest from and including the Issue Date to but excluding July 29, 2015 at a rate of 5.00% per annum on their aggregate principal amount, payable annually in arrear on July 29 of each year, commencing on July 29, 2006. Thereafter, unless previously redeemed, the Bonds will bear interest at the Euro-zone inter-bank offered rate for three-month Euro deposits plus 1.80% plus a step-up of 1.00%, payable quarterly in arrear on October 29, January 29, April 29 and July 29 of each year. In case of a Cash Flow Event, the Issuer shall not pay interest on the Bonds. The Issuer is entitled to voluntarily make up such unpaid interest within one year following the Relevant Interest Payment Date on which no interest was paid due to a Cash Flow Event and must make up such unpaid interest under certain circumstances. In addition, the Issuer is entitled, in its sole discretion, to defer payments of interest on an Optional Interest Payment Date. The Issuer may pay such voluntarily deferred interest (in whole or in part) at any time upon due notice to the Bondholders and the Issuer shall pay such voluntarily deferred interest (in whole, but not in part) (i) if it decides to pay interest on an Optional Interest Payment Date thereafter, or (ii) under certain other circumstances, but generally no later than 10 years from the date on which such interest was voluntarily deferred.

**Taxation:**

All payments in respect to the Bonds will be made free and clear of, and without deduction or withholding at source for or on account of any present or future taxes, duties, assessments or governmental charges of any nature whatsoever imposed, levied, withheld, assessed or collected by or on behalf of the Federal Republic of Germany or by or on behalf of any political subdivision or authority thereof having power to tax, unless such deduction or withholding is required by law. In such event, the Issuer shall pay such additional amounts necessary for the Bondholders to receive net amounts after such deduction or withholding, which are equal to the amounts which would have been received by them without such deduction or withholding, subject to customary exceptions as set out more fully in the Conditions of Issue.

**Status of the Bonds:**

The obligations of the Issuer under the Bonds constitute unsecured and subordinated obligations of the Issuer ranking *pari passu* among themselves and in the event of the liquidation, dissolution, insolvency, composition or other proceedings for the avoidance of insolvency of the Issuer rank junior to all other present and future obligations of the Issuer, whether subordinated or unsubordinated, except as otherwise required by mandatory statutory law. In the event of the liquidation, dissolution, insolvency, composition or other proceedings for the avoidance of insolvency of the Issuer, the obligations of the Issuer under the Bonds will be subordinated to the claims of all unsubordinated and subordinated creditors of the Issuer so that in any such event no amounts shall be payable in respect of the Bonds until the claims of all unsubordinated and subordinated creditors of the Issuer shall have first been satisfied in full.

**Negative Pledge:**

The Conditions of Issue will not contain a negative pledge provision.

**Cross Default:**

The Conditions of Issue do not contain a cross default clause of the Issuer.

**Listing:**

Application has been made for listing of the Bonds on the regulated market of the Luxembourg Stock Exchange.

**Governing Law:**

The Bonds will be governed by German law.

<b><i>Selling Restrictions:</i></b>	There will be specific restrictions on the offer and sale of Bonds and the distribution of offering materials in the European Economic Area, the United States of America and the United Kingdom of Great Britain and Northern Ireland.
<b><i>Jurisdiction:</i></b>	Exclusive place of jurisdiction for any legal proceedings arising under the Bonds is Frankfurt am Main, Federal Republic of Germany.
<b><i>Clearance and Settlement:</i></b>	The Bonds will be accepted for clearing through Clearstream Banking, société anonyme, Luxembourg and Euroclear Bank S.A./N.V., as operator of the Euroclear System.

### **Summary in respect of the Issuer**

Bayer AG was established on December 19, 1951 under the name “Farbenfabriken Bayer Aktiengesellschaft.” Its name was changed to “Bayer Aktiengesellschaft” by resolution of the Meeting of the Stockholders on June 14, 1972.

The objective of Bayer AG is the manufacturing, marketing and other industrial activities or provision of services in the fields of health care, agriculture, polymers and chemicals, as well as the transaction of all other business which is related to, or directly or indirectly serves, the object of Bayer AG.

Bayer is a global company offering a wide range of products, including ethical pharmaceuticals, diagnostics and other health care products, agricultural products and polymers. Bayer AG is headquartered in Leverkusen, Germany and is the management holding company of the Bayer Group, which includes approximately 350 consolidated subsidiaries (including LANXESS companies).

Following Bayer’s strategic alignment culminating in the spin-off of the LANXESS subgroup, Bayer’s business operations are now organized in three subgroups:

- *Bayer HealthCare* (consisting of Bayer’s four health care segments: Pharmaceuticals, Biological Products; Consumer Care; Diabetes Care, Diagnostics; Animal Health) develops, produces and markets products for the prevention, diagnosis and treatment of human and animal diseases.
- *Bayer CropScience* (consisting of Bayer’s two CropScience segments: Crop Protection and Environmental Science, BioScience) is active in the area of chemical crop protection and seed treatment, non-agricultural pest and weed control and plant biotechnology.
- *Bayer MaterialScience* (comprising Bayer’s Materials segment and Bayer’s Systems segment) primarily develops, manufactures and markets products in the polyurethane, polycarbonate, cellulose derivatives and special metals field.

Three service organizations provide support functions to the three subgroups, Bayer AG and third parties. They are:

- *Bayer Technology Services*, which provides engineering functions.
- *Bayer Business Services*, which provides information management, accounting and reporting, consulting and administrative services.
- *Bayer Industry Services*, which operates the Bayer Chemical Park network of industrial facilities in Germany and provides site-specific services. Since July 1, 2004, Bayer Industry Services GmbH & Co. OHG is held by Bayer AG (60 percent) and by LANXESS (40 percent).

For the year ended December 31, 2004, Bayer reported total sales of € 29,758 million, an operating result of € 1,808 million, and a net income of € 603 million. As of December 31, 2004, Bayer employed 113,000 people worldwide. Based on customers’ location, Bayer’s activities in the Europe region accounted for 43 percent of the group’s total sales in 2004; North America for 28 percent of sales; the Asia/Pacific region amounted to 17 percent; and the region Latin America/Africa/Middle East accounted for 12 percent of total sales.



Since February 28, 2003, the Board of Management consists of the following members: Werner Wenning, Chairman, Klaus Kuehn, Dr. Udo Oels, Dr. Richard Pott. The members of the Supervisory Board are: Dr. Manfred Schneider, Erhard Gipperich, Dr. Paul Achleitner, Dr. Josef Ackermann, Andreas Becker, Karl-Josef Ellrich, Thomas Hellmuth, Prof. Dr.-Ing.e.h. Hans-Olaf Henkel, Dr. rer. pol. Dipl.-Kfm. Klaus Kleinfeld, Dr.h.c. Martin Kohlhaussen, John C. Kornblum, Petra Kronen, Wolfgang Schenk, Hubertus Schmoldt, Dieter Schulte, Prof. Dr.-Ing. Dr.h.c. Ekkehard D. Schulz, Dipl.-Ing. Dr.-Ing e.h. Jürgen Weber, Siegfried Wendlandt, Thomas de Win, Prof. Dr. Dr.h.c. Ernst-Ludwig Winnacker. The auditors of Bayer AG are PricewaterhouseCoopers Aktiengesellschaft Wirtschaftsprüfungsgesellschaft (formerly PwC Deutsche Revision Aktiengesellschaft Wirtschaftsprüfungsgesellschaft).

#### Selected Historical Financial Information:

	December 31, 2004 <sup>(1)</sup>	December 31, 2003 <sup>(1)</sup>	March 31, 2005	March 31, 2004 <sup>(2)</sup>
	€ million			
Net sales / Total revenue . . . .	29,758	28,567	6,704	5,792
Income after taxes . . . . .	600	(1,349)	645	425
Net cash flow . . . . .	2,450	3,293	(258)	(299)
Total assets . . . . .	37,804	37,445	35,457	38,193
Stockholder's Equity . . . . .	12,268	12,213	10,627	11,547

<sup>(1)</sup> Financial information as published in the annual report 2004

<sup>(2)</sup> The financial information for the First Quarter 2004 is adjusted due to new accounting standards and the changed business situation regarding the Plasma business. See also the explanation in "IFRS regulations and changes in Group and reporting structure".

There has been no material change in the financial or trading position of Bayer Group since March 31, 2005 and there has also been no material adverse change in the prospects since the date of the last published financial statements.

## Summary in respect of Risk Factors

### *The Bonds*

An investment in the Bonds involves certain risks associated with the characteristics of the Bonds which could lead to substantial losses the Bondholders would have to bear in the case of selling their Bonds or with regard to receiving interest payments. Risks especially arise due to the fact that the Issuer may defer interest payments if certain requirements are satisfied, that the payment obligations of the Issuer under the Bonds constitute subordinated obligations of the Issuer, that the Bonds may be subject to early redemption following a Gross-up Event or a Tax Event, that there is no restriction on the amount of debt which the Issuer may issue, and that there are certain risks in connection with the Bonds due to the specific conditions on the capital markets.

### *The Issuer*

Bayer's business activities involve the following primary risks:

As a manufacturing company active in numerous areas of the health care and chemicals industry, Bayer is subject to the procurement market risk that the raw materials and utilities needed to manufacture its products may not be available or that their quality or quantity may be insufficient. During the reorganization process, therefore, the existing procurement structures were adapted to the new holding company structure with independent operating subgroups. The ongoing development of the procurement system into a flexible network structure allows Bayer to more easily identify risks on the procurement markets at an early stage, respond to changes and ensure a constant supply of raw materials. The holding company structure also ensures that Bayer can leverage its position as a single enterprise to achieve more favorable prices and supply terms for the Group as a whole.

Bayer guards against exchange and interest rate risks by financing its business in local currencies or by hedging currency and interest positions using derivative financial instruments that serve no other purpose. Such instruments are employed according to the respective risk assessments and on the basis of detailed guidelines.

Bayer addresses product and environmental risks by way of suitable quality assurance measures. These include certifying its operations to international standards, continuously upgrading its plants and processes, and developing new and improved products. Strict quality requirements are met by applying uniform standards throughout the world. Bayer places great importance on the safety of its products and their proper usage by customers.

Bayer Group is committed to the international Responsible Care® initiative of the chemical industry and to its own safety and environmental management system, which Bayer reports on at regular intervals. Specially developed guidelines on product stewardship, occupational safety and environmental protection are designed to ensure that all of its employees act competently and responsibly.

To guard against possible liability risks and compensation claims, Bayer has concluded insurance agreements to keep the potential consequences within reasonable limits or exclude them completely. The level of insurance coverage is continuously reexamined.

To counter risks that could arise from the numerous tax, competition, patent, antitrust and environmental regulations and laws, Bayer makes its decisions and engineers its business processes on the basis of comprehensive legal advice provided both by its own experts and by acknowledged external specialists. Bayer establishes provisions in the balance sheet for risks resulting from new laws or legal judgments that apply retroactively.

The extent to which the German government's emissions trading plans affect Bayer's earnings depends on the legislative implementation of these measures.

Business risks also include those pertaining to acquisitions, capital expenditures and research and development activities. These future-oriented activities are vital to the continued existence of Bayer Group, yet they also harbor risks because of the related uncertainties.

In addition to the risks described above, further risks could exist for its business that Bayer Group currently is unaware of or regards as negligible.

## GERMAN TRANSLATION OF THE SUMMARY

### ZUSAMMENFASSUNG

Der folgende Abschnitt stellt die Zusammenfassung (die „Zusammenfassung“) der wesentlichen Merkmale und Risiken in Bezug auf die Emittentin und die Schuldverschreibungen dar. Die Zusammenfassung ist als Einleitung zu diesem Prospekt zu verstehen. Sie erhebt keinen Anspruch auf Vollständigkeit, sondern ist ein Auszug aus dem Prospekt und ist im Zusammenhang mit diesem zu lesen. Der Anleger sollte bei jeder Entscheidung über eine Investition in die Schuldverschreibungen den Inhalt des gesamten Prospektes zugrunde legen. Wenn vor einem Gericht Ansprüche auf Grund der in diesem Prospekt enthaltenen Informationen geltend gemacht werden sollen, kann der klagende Anleger auf Grund einzelstaatlicher Rechtsvorschriften, denen das Gericht unterliegt, die Kosten für eine Übersetzung des Prospekts vor Prozessbeginn zu tragen haben. Wer diese Zusammenfassung einschließlich einer Übersetzung davon vorgelegt und deren Notifizierung beantragt hat, kann zivilrechtlich haftbar gemacht werden, sofern die Zusammenfassung irreführend, unrichtig oder widersprüchlich ist, wenn sie im Zusammenhang mit den anderen Teilen des Prospekts gelesen wird.

*Worte und Begriffe, die in den „Conditions of Issue“ definiert sind, haben in diesem Abschnitt die selbe Bedeutung.*

#### **Zusammenfassung in Bezug auf die Schuldverschreibungen**

<b>Emittentin:</b>	Bayer Aktiengesellschaft.
<b>Gesamtbetrag:</b>	€ 1.300.000.000.
<b>Manager:</b>	Deutsche Bank AG, London Branch J.P. Morgan Securities Ltd. BNP PARIBAS (London Branch) Citigroup Global Markets Limited Goldman Sachs International
<b>Hauptzahlstelle:</b>	JPMorgan Chase Bank, N.A.
<b>Listing Agent und Zahlstelle in Luxemburg:</b>	J.P. Morgan Bank Luxembourg S.A.
<b>Ausgabepreis:</b>	98,812 %
<b>Stückelung:</b>	Die Schuldverschreibungen haben einen Nennbetrag von jeweils € 1.000.
<b>Form der Schuldverschreibungen:</b>	Die Schuldverschreibungen werden als Inhaberpapiere und gemäß der U.S. Treasury-Bestimmungen § 1.163-5(c)(2)(i)(D) (die „TEFRA D Rules“) begeben. Die Schuldverschreibungen werden zunächst in einer vorläufigen Inhaber-Globalurkunde (die „Vorläufige Globalurkunde“) ohne Zinsscheine verbrieft, die bei einer gemeinsamen Verwahrstelle für Clearstream Banking, société anonyme, Luxembourg, und Euroclear Bank S.A./N.V., als Betreiberin des Euroclear Systems (beide gemeinsam als „Clearing System“ bezeichnet) hinterlegt wird. Die Vorläufige Globalurkunde wird nicht vor Ablauf von 40 und spätestens nach Ablauf von 180 Tagen nach ihrer Begebung gegen Vorlage einer Bestätigung über das Nichtbestehen wirtschaftlichen Eigentums im Sinne des US-Rechts ( <i>non-U.S. beneficial ownership</i> ) gegen eine endgültige Inhaber-Globalurkunde (die „Dauer-Globalurkunde“) ohne Zinsscheine nach den Regeln und dem Verfahren des Clearing Systems ausgetauscht. Zahlungen auf die Vorläufige Globalurkunde erfolgen nur gegen Vorlage einer solchen Bestätigung. Einzelurkunden oder Zinsscheine werden nicht ausgegeben.

<b>Endfälligkeit:</b>	29. Juli 2105.
<b>Vorzeitige Rückzahlung:</b>	Die Schuldverschreibungen können zum 29. Juli 2015 oder zu jedem darauf folgenden Variablen Zinszahlungstag (insgesamt, jedoch nicht teilweise) zu ihrem Nennbetrag zuzüglich sämtlicher bis zum Rückzahlungstag (ausschließlich) aufgelaufener Zinsen und sämtlicher am Rückzahlungstag ausstehender Zinsrückstände zurückgezahlt werden. Die Emittentin kann die Schuldverschreibungen (insgesamt, jedoch nicht teilweise) nach einem Steuerereignis oder einen Gross-up-Ereignis jederzeit vor dem 29. Juli 2015 zum Vorzeitigen Rückzahlungsbetrag zurückzahlen.
<b>Zinsen:</b>	Die Schuldverschreibungen werden ab dem Begebungstag (einschließlich) bis zum 29. Juli 2015 (ausschließlich) mit jährlich 5,00 % auf ihren Gesamtnennbetrag verzinst. Zinsen sind jährlich nachträglich am 29. Juli eines jeden Jahres, erstmals am 29. Juli 2006 fällig. Danach werden die Schuldverschreibungen, sofern sie nicht vorher zurückgezahlt wurden, mit dem Angebotssatz der Banken im Interbankenmarkt der Euro-Zone für Dreimonats-Einlagen in Euro zuzüglich 1,80 % zuzüglich eines Aufschlags von 1,00 % verzinst, wobei die Zinsen vierteljährlich nachträglich am 29. Oktober, 29. Januar, 29. April und 29. Juli eines jeden Jahres fällig sind. Im Falle eines Cash Flow-Ereignisses zahlt die Emittentin keine Zinsen auf die Schuldverschreibungen. Die Emittentin ist berechtigt, solche ausgefallenen Zinsen innerhalb eines Jahres nach dem Relevanten Zinszahlungstag, an dem auf Grund eines Cash Flow-Ereignisses keine Zinsen bezahlt wurden, freiwillig nachzuholen und ist verpflichtet, solche ausgefallenen Zinsen unter bestimmten Umständen nachzuzahlen. Darüber hinaus ist die Emittentin berechtigt, nach ihrer freien Entscheidung Zinszahlungen an einem Fakultativen Zinszahlungstag aufzuschieben. Die Emittentin ist berechtigt, die freiwillig aufgeschobenen Zinsen (ganz oder teilweise) jederzeit nach fristgerechter Mitteilung an die Anleihegläubiger nachzuzahlen. Die Emittentin muss die freiwillig aufgeschobenen Zinsen (insgesamt, jedoch nicht teilweise) nachzahlen, (i) wenn sie an einem Fakultativen Zinszahlungstag nach dem Zinsaufschub Zinsen bezahlt oder (ii) wenn bestimmte andere Umstände vorliegen, grundsätzlich aber innerhalb von 10 Jahren nach dem Tag, an dem diese Zinsen freiwillig aufgeschoben wurden.
<b>Steuern:</b>	Sämtliche Zahlungen in Bezug auf die Schuldverschreibungen sind ohne Einbehalt oder Abzug (einschließlich im Hinblick auf Quellensteuer) von und auf Grund von gegenwärtig oder von zukünftig bestehenden Steuern, Abgaben, Festsetzungen oder behördlichen Gebühren gleich welcher Art zu leisten, die von oder im Auftrag der Bundesrepublik Deutschland oder von oder im Auftrag einer ihrer mit dem Recht zur Steuererhebung versehenen Gebietskörperschaft oder Behörde auferlegt, erhoben, eingezogen, einbehalten oder festgesetzt werden, es sei denn, dieser Einbehalt oder Abzug ist gesetzlich vorgeschrieben. In diesem Fall wird die Emittentin diejenigen zusätzlichen Beträge bezahlen, die erforderlich sind, damit die den Anleihegläubigern zufließenden Nettobeträge nach einem solchen Einbehalt oder Abzug jeweils den Beträgen an Kapital und Zinsen entsprechen, die ohne einen solchen Abzug oder Einbehalt von den Anleihegläubigern empfangen worden wären, vorbehaltlich üblicher Ausnahmen, die in den Anleihebedingungen näher beschrieben sind.
<b>Rang der Schuldverschreibungen:</b>	Die Schuldverschreibungen begründen nicht gesicherte und nachrangige Verbindlichkeiten der Emittentin, die untereinander im Rang gleich stehen und im Falle der Liquidation, der Auflösung oder der Insolvenz der Emittentin oder eines Vergleichs oder eines anderen, der Abwendung der Insolvenz der Emittentin dienenden Verfahrens gegenüber allen anderen bestehenden und zukünftigen nachrangigen und nicht nachrangigen Verbindlichkeiten der Emittentin nachrangig sind, soweit zwingende gesetzliche Bestimmungen nichts anderes vorschreiben. Im Fall der Liquidation, der Auflösung oder der Insolvenz der Emittentin oder eines Vergleichs oder eines anderen, der Abwendung

der Insolvenz der Emittentin dienenden Verfahrens gehen die Verbindlichkeiten der Emittentin aus den Schuldverschreibungen im Rang den Ansprüchen aller nicht nachrangigen und nachrangigen Gläubiger nach, so dass Zahlungen auf die Schuldverschreibungen erst dann erfolgen, wenn die Ansprüche aller nicht nachrangigen und nachrangigen Gläubiger der Emittentin vollständig befriedigt sind.

- Negativklärung:** Die Anleihebedingungen enthalten keine Negativklärung.
- Cross Default:** Die Anleihebedingungen enthalten keine Cross Default-Bestimmungen.
- Börsenzulassung:** Die Zulassung der Schuldverschreibungen zum Handel im regulierten Markt der Luxemburger Wertpapierbörse wurde beantragt.
- Anwendbares Recht:** Die Schuldverschreibungen unterliegen deutschem Recht.
- Verkaufsbeschränkungen:** Es wird Beschränkungen für das Angebot und den Verkauf der Schuldverschreibungen und die Verteilung der Angebotsunterlagen im europäischen Wirtschaftsraum, in den Vereinigten Staaten von Amerika und im Vereinigten Königreich geben.
- Gerichtsstand:** Exklusiver Gerichtsstand für sämtliche im Zusammenhang mit den Schuldverschreibungen erwachsenden Klagen ist Frankfurt am Main, Bundesrepublik Deutschland.
- Clearing und Abwicklung:** Die Schuldverschreibungen sind für das Clearing durch Clearstream Banking, société anonyme, Luxembourg und Euroclear Bank S.A./N.V., als Betreiberin des Euroclear Systems, akzeptiert.

## **Zusammenfassung in Bezug auf Bayer AG**

Die Bayer AG wurde am 19. Dezember 1951 unter dem Namen „Farbenfabriken Bayer Aktiengesellschaft“ gegründet. Mit Beschluss der Hauptversammlung vom 14. Juni 1972 wurde der Name in „Bayer Aktiengesellschaft“ geändert.

Gegenstand des Unternehmens ist die Erzeugung, der Vertrieb und die sonstige industrielle Betätigung oder Erbringung von Dienstleistungen auf den Gebieten Gesundheit, Landwirtschaft, Polymere und Chemie. Die Bayer AG ist berechtigt, alle Geschäfte vorzunehmen, die mit dem Gegenstand des Unternehmens zusammenhängen oder ihm unmittelbar oder mittelbar zu dienen geeignet sind.

Bayer ist ein weltweit tätiges Unternehmen mit einem Produktportfolio, das unter anderem verschreibungspflichtige Arzneimittel, Diagnostika und sonstige Gesundheitsprodukte, landwirtschaftliche Produkte sowie Polymere umfasst. Die Bayer AG mit Sitz in Leverkusen (Deutschland) ist die Management-Holding des Bayer-Konzerns, zu dem rund 350 konsolidierte Tochtergesellschaften (einschließlich LANXESS-Gesellschaften) gehören.

Nach der strategischen Neuausrichtung von Bayer, deren wesentlicher Teil die Abspaltung des Teilkonzerns LANXESS war, ist das operative Geschäft von Bayer in drei Teilkonzernen organisiert:

- **Bayer HealthCare** (bestehend aus Bayers vier Gesundheitssegmenten: Pharma, Biologische Produkte; Consumer Care; Diabetes Care, Diagnostika; Animal Health) erforscht, entwickelt, produziert und vertreibt Produkte, die der Vorsorge, Diagnose und Behandlung von Krankheiten bei Mensch und Tier dienen.
- **Bayer CropScience** (bestehend aus Bayers zwei CropScience Segmenten: Ernteschutz und Environmental Science, BioScience) ist auf dem Gebiet des chemischen Pflanzenschutzes und der Saatgutbehandlung, der Schädlings- und Unkrautbekämpfung in nicht-landwirtschaftlichen Bereichen sowie der Pflanzenbiotechnologie tätig.

- *Bayer MaterialScience* (bestehend aus den Segmenten Materials und Systems) entwickelt, produziert und vermarktet vor allem Produkte im Bereich Polyurethane, Polycarbonate, Cellulose-Derivate und Spezialmetalle.

Die folgenden drei Servicegesellschaften stellen den drei Teilkonzernen, der Bayer AG und auch Dritten Dienstleistungen zur Verfügung:

- *Bayer Technology Services* bietet Serviceleistungen im Engineering-Bereich an.
- *Bayer Business Services* stellt Dienstleistungen im Bereich Informationsmanagement, Rechnungslegung und Berichtswesen, Beratung und Administration bereit.
- *Bayer Industry Services* betreibt die Bayer-Chemiepark-Standorte in Deutschland und stellt standortspezifische Dienstleistungen bereit. Seit dem 1. Juli 2004 gehört Bayer Industry Services GmbH & Co. OHG zu 60 % der Bayer AG und zu 40 % der LANXESS.

Im Geschäftsjahr 2004 erzielte Bayer insgesamt einen Umsatz von € 29.758 Millionen, ein operatives Ergebnis von € 1.808 Millionen und ein Konzernergebnis von € 603 Millionen. Zum 31. Dezember 2004 beschäftigte Bayer weltweit 113.000 Mitarbeiter. Im Geschäftsjahr 2004 entfielen 43 % des Umsatzes (jeweils Sitz des Kunden) auf die Region Europa, 28 % auf Nordamerika, 17 % auf die Region Fernost/Ozeanien und 12 % auf die Region Lateinamerika/Afrika/Nahost.

Seit 28. Februar 2003 besteht der Konzernvorstand aus den folgenden Mitgliedern: Werner Wenning, Vorsitzender, Klaus Kühn, Dr. Udo Oels, Dr. Richard Pott. Der Aufsichtsrat hat folgende Mitglieder: Dr. Manfred Schneider, Erhard Gipperich, Dr. Paul Achleitner, Dr. Josef Ackermann, Andreas Becker, Karl-Josef Ellrich, Thomas Hellmuth, Prof. Dr.-Ing. e. h. Hans-Olaf Henkel, Dr. rer. pol. Dipl.-Kfm. Klaus Kleinfeld, Dr. h. c. Martin Kohlhaussen, John C. Kornblum, Petra Kronen, Wolfgang Schenk, Hubertus Schmoldt, Dieter Schulte, Prof. Dr.-Ing. Dr. h. c. Ekkehard D. Schulz, Dipl.-Ing. Dr.-Ing. e. h. Jürgen Weber, Siegfried Wendlandt, Thomas de Win, Prof. Dr. Dr. h. c. Ernst-Ludwig Winnacker. Die Bayer AG wird von PricewaterhouseCoopers Aktiengesellschaft Wirtschaftsprüfungsgesellschaft (früher PwC Deutsche Revision Aktiengesellschaft Wirtschaftsprüfungsgesellschaft) geprüft.

Ausgewählte Kennzahlen für den Bayer-Konzern:

	31. Dezember 2004 <sup>(1)</sup>	31. Dezember 2003 <sup>(1)</sup>	31. März 2005	31. März 2004 <sup>(2)</sup>
	in Millionen €			
Umsatzerlöse . . . . .	29.758	28.567	6.704	5.792
Ergebnis nach Steuern . . . . .	600	(1.349)	645	425
Netto-Cashflow . . . . .	2.450	3.293	(258)	(299)
Bilanzsumme . . . . .	37.804	37.445	35.457	38.193
Eigenkapital . . . . .	12.268	12.213	10.627	11.547

<sup>(1)</sup> Kennzahlen entsprechen den im Geschäftsbericht 2004 veröffentlichten Zahlen.

<sup>(2)</sup> Vorjahreswerte wurden aufgrund neuer IFRS-Vorschriften und der geänderten Geschäftssituation für die Plasmaproducte angepasst. Siehe auch die Erklärung im Abschnitt „IFRS regulations and changes in Group and reporting structure“.

Seit 31. März 2005 haben sich die Finanzlage und die Handelsposition des Bayer-Konzerns nicht wesentlich verändert und auch die Aussichten haben sich seit den letzten veröffentlichten Finanzausweisen nicht wesentlich nachteilig verändert.

## Zusammenfassung in Bezug auf die Risikofaktoren

### Die Schuldverschreibungen

Ein Investment in die Schuldverschreibungen beinhaltet bestimmte Risiken, die mit den Merkmalen der Schuldverschreibungen verbunden sind und die zu signifikanten Verlusten der Anlagegläubiger führen können, die diese im Fall eines Verkaufs ihrer Schuldverschreibungen zu tragen hätten, oder bestimmte Risiken im Hinblick auf den Erhalt von Zinszahlungen. Solche Risiken entstehen vor des-



halb, weil die Emittentin Zinszahlungen aufschieben kann, falls bestimmte Voraussetzungen erfüllt sind, weil die Zahlungsverpflichtungen der Emittentin unter den Schuldverschreibungen nachrangige Verpflichtungen der Emittentin sind, weil die Schuldverschreibungen nach einem Gross-up-Ereignis oder einem Steuerereignis vorzeitig zurückgezahlt werden können, weil es keine Beschränkung weiterer Verschuldung der Emittentin gibt und weil bestimmte Risiken in Verbindungen mit den Schuldverschreibungen auf Grund der besonderen Bedingungen auf den Kapitalmärkten bestehen.

## **Bayer AG**

Mit der Geschäftstätigkeit von Bayer sind im Wesentlichen die folgenden Risiken verbunden:

Als in zahlreichen Bereichen der Gesundheits- und Chemieindustrie tätiges, produzierendes Unternehmen muss Bayer mit dem für den Beschaffungsmarkt üblichen Risiko rechnen, dass die für die Herstellung seiner Produkte erforderlichen Roh- und Hilfsstoffe unter Umständen nicht oder nicht in ausreichender Qualität oder Quantität zur Verfügung stehen. Im Zuge des Reorganisationsprozesses wurden daher die bisherigen Beschaffungsstrukturen an die Struktur der neuen Holding-Gesellschaft mit selbstständigen operativen Teilkonzernen angepasst. Die laufende Entwicklung des Beschaffungssystems zu einer flexiblen Netzwerkstruktur ermöglicht es Bayer, Risiken auf den Beschaffungsmärkten leichter und zu einem frühen Zeitpunkt zu erkennen, auf Veränderungen zu reagieren und eine konstante Rohstoffversorgung sicherzustellen. Die Struktur der Holding-Gesellschaft gewährleistet auch, dass Bayer seine Position als ein einheitliches Unternehmen nutzen kann, um günstigere Preise und Lieferkonditionen für den Konzern als Ganzes zu erzielen.

Gegen Wechselkurs- und Zinssatz-Risiken sichert sich Bayer durch Finanzierung seiner Geschäfte in Landeswährung oder durch die Absicherung von Währungs- und Zinspositionen mit derivativen Finanzinstrumenten ab, die keinem anderen Zweck dienen. Solche Instrumente werden entsprechend den jeweiligen Risikobeurteilungen und auf der Grundlage detaillierter Richtlinien eingesetzt.

Produkt- und Umweltrisiken berücksichtigt Bayer durch geeignete Qualitätssicherungsmaßnahmen. Hierzu gehören die Zertifizierung seiner operativen Tätigkeiten nach internationalen Standards, die ständige Weiterentwicklung seiner Anlagen und Verfahren und die Entwicklung neuer, verbesserter Produkte. Strenge Qualitätsanforderungen werden durch Anwendung einheitlicher Standards auf der ganzen Welt erfüllt. Bayer legt großen Wert auf die Sicherheit seiner Produkte und deren sachgemäße Anwendung durch die Kunden.

Der Bayer-Konzern ist der internationalen Initiative Responsible Care® der chemischen Industrie sowie seinem eigenen Sicherheits- und Umweltmanagement-System verpflichtet, über das Bayer regelmäßig berichtet. Eigens entwickelte Richtlinien für Produktverantwortung, Arbeitssicherheit und Umweltschutz sind darauf ausgelegt, dass alle Mitarbeiter kompetent und verantwortungsbewusst handeln.

Zur Absicherung gegen mögliche Haftungsrisiken und Schadenersatzforderungen hat Bayer Versicherungsverträge abgeschlossen, um die möglichen Konsequenzen in vertretbaren Grenzen zu halten oder ganz auszuschließen. Der Umfang des Versicherungsschutzes wird ständig überprüft.

Um Risiken zu begegnen, die sich aus den zahlreichen Steuer-, Wettbewerbs-, Patent-, Kartell- und Umweltbestimmungen und -gesetzen ergeben könnten, trifft Bayer seine Entscheidungen und gestaltet seine Geschäftsprozesse auf der Grundlage ausführlicher Rechtsberatung, die sowohl von eigenen Experten als auch von anerkannten externen Spezialisten erbracht wird. Bayer bildet in der Bilanz Rückstellungen für Risiken, die sich aus neuen Gesetzen oder Gerichtsurteilen mit rückwirkender Gültigkeit ergeben.

Inwieweit sich die Pläne der deutschen Bundesregierung für den Emissionshandel auf die Erträge von Bayer auswirken, hängt von der Umsetzung dieser Maßnahmen durch den Gesetzgeber ab.

Zu den Geschäftsrisiken gehören auch solche, die mit Akquisitionen, Investitionen und Forschungs- und Entwicklungsaktivitäten verbunden sind. Diese zukunftsgerichteten Aktivitäten sind für den Fortbestand des Bayer-Konzerns unerlässlich, bergen jedoch wegen der damit zusammenhängenden Unwägbarkeiten auch Risiken in sich.

Neben den oben beschriebenen Risiken könnten noch weitere Risiken für das Geschäft bestehen, die dem Bayer-Konzern gegenwärtig nicht bekannt sind oder die nach eigener Einschätzung zurzeit für vernachlässigbar zu halten sind.



## RISK FACTORS

The following is a description of risk factors which are material in respect of the Bonds and the financial situation of the Issuer and which may affect the Issuer's ability to fulfill its obligations under the Bonds which prospective investors should consider before deciding to purchase the Bonds. The sequence in which the following risk factors are listed is not an indication of their likelihood to occur or of the extent of their commercial consequences. The following statements are complete, although not exhaustive: prospective investors should consider all of the information provided in this Prospectus or incorporated by reference into this Prospectus and consult with their own professional advisers if they consider it necessary.

*Words and expressions defined in "Conditions of Issue" below shall have the same meanings in this section.*

### **Risk Factors in respect of the Issuer**

#### ***Bayer's transactions relating to LANXESS expose us to continuing liability***

As announced in November 2003, Bayer combined its former Bayer Chemicals segment (except for Wolff Walsrode and H.C. Starck) with parts of its former Bayer Polymers business to form the LANXESS subgroup with economic effect from July 1, 2004 as part of its portfolio realignment. LANXESS AG became a legally independent company on January 28, 2005, when its spin-off was registered in the Commercial Register (*Handelsregister*) for Bayer AG at the Local Court of Cologne (*Amtsgericht Köln*), Germany.

Bayer's liability for prior obligations of the LANXESS subgroup following its spin-off is governed by both statutory and contractual provisions. Under the German Transformation Act, all entities that are parties to a spin-off are jointly and severally liable for obligations of the transferor entity that are established prior to the spin-off date. Bayer AG and LANXESS AG are thus jointly and severally liable for all obligations of Bayer AG that existed on January 28, 2005. The company to which the respective obligations were not assigned under the spin-off and acquisition agreement, dated September 22, 2004, between Bayer AG and LANXESS AG ceases to be liable for such obligations after a five-year period.

Under a master agreement between Bayer AG and LANXESS AG of the same date, each of Bayer AG and LANXESS AG agreed to release the other party from those liabilities each has assumed as principal debtor under the spin-off and acquisition agreement. The master agreement contains provisions for the general apportionment of liability as well as special provisions relating to the apportionment of product liability and of liability for environmental contamination and antitrust violations between Bayer AG and LANXESS AG. The master agreement applies to all activities of Bayer AG and LANXESS AG units throughout the world, subject to certain conditions for the United States. For a description of these agreements, please see – "Material Contracts".

Bayer may bear expenses in the future relating to liabilities of the former LANXESS subgroup under the German Transformation Act or pursuant to the spin-off and acquisition agreement or the master agreement. These could have a material adverse effect on Bayer's financial condition and results of operations.

#### ***Cyclicality may reduce Bayer's operating margins or cause operating losses***

Several of the industries in which Bayer operates are cyclical. This applies particularly to Bayer's Materials and Systems segments. Typically, increased demand during peaks in the business cycle in these industries leads producers to increase their production capacity. Although peaks in the business cycle have been characterized by increased selling prices and higher operating margins, in the past these capacity increases have led to excess capacities because they have exceeded demand growth. Low periods in the business cycles are then characterized by decreasing prices and excess capacity. These factors can depress operating margins and may result in operating losses.

Excess capacities can affect Bayer's operating results especially with respect to those commodity businesses that are characterized by slow market growth. Bayer believes that some areas of the isocyanate business, in particular, face slow growth in demand together with substantial excess production capacity. Excess capacity in polycarbonates has declined but continues to affect the structure of the polycarbonates market. Future growth in demand may not be sufficient to absorb current excess capacity or future capacity additions without significant downward pressure on prices and adverse effects on Bayer's operating results.

The agriculture sector is particularly subject to seasonal and weather factors and fluctuations in crop prices, which may have a negative influence on Bayer's business results. As climate conditions and market prices for agricultural products change, the demand for Bayer's agricultural products generally also changes. For example, a drought will often reduce demand for Bayer's fungicides products.

***Failure to develop new products and production technologies may harm Bayer's competitive position***

Bayer's operating results significantly depend on the development of commercially viable new products and production technologies. Bayer devotes substantial resources to research and development. Because of the lengthy development process, technological challenges and intense competition, Bayer cannot assure you that any of the products Bayer is currently developing, or may begin to develop in the future, will become market-ready or achieve commercial success. If Bayer is unsuccessful in developing new products and production processes in the future, Bayer's competitive position and operating results will be harmed.

Competitive pressure from new agrochemical compounds that achieve similar or improved results with better ecotoxicological profiles and smaller doses may reduce the sales of Bayer's existing products. The growing importance of plant biotechnology in the crop protection field could reduce market demand for some of Bayer's agrochemical products and, to the extent that Bayer's competitors supply those biotechnological products, could lead to declines in Bayer's revenues.

***Regulatory controls and changes in public policy may reduce the profitability of new or current products***

Bayer must comply with a broad range of regulatory controls on the testing, manufacturing and marketing of many of Bayer's products. In some countries, including the United States, regulatory controls have become increasingly demanding. Bayer expects that this trend will continue and will expand to other countries, particularly those of the European Union (EU). A proposed EU chemicals policy could mandate a significant increase in the testing and assessment of all chemicals, leading to increased costs and reduced operating margins for these products. Although Bayer has adopted measures to address these stricter regulations, such as increasing the efficiency of Bayer's internal research and development processes in order to reduce the impact of extended testing on time-to-market, stricter regulatory regimes could substantially delay Bayer's product development or restrict Bayer's marketing and sales.

Bayer's Pharmaceuticals, Biological Products segment and Bayer's Consumer Care, Diagnostics segment are subject to particularly strict regulatory regimes. Failure to achieve regulatory approval of new products in a timely manner or at all can mean that Bayer does not recoup Bayer's research and development investment through sales of that product. Bayer does not know when or whether any approvals from regulatory authorities will be received. Withdrawal by regulators of an approval previously granted can mean that the affected product ceases to generate revenue. This can occur even if regulators take action falling short of actual withdrawal or direct their action at "over-the-counter" (OTC) products that do not require regulatory approval. In addition, in some cases Bayer may voluntarily cease marketing a product even in the absence of regulatory action.

Pharmaceutical product prices are subject to controls or pressures in many markets. Some governments intervene directly in setting prices. In addition, in some markets major purchasers of pharmaceutical products (whether governmental agencies or private health care providers) have the economic power to exert substantial pressure on prices. Price controls limit the financial benefits of

growth in the life sciences markets and the introduction of new products. Bayer cannot predict whether existing controls will increase or new controls will be introduced, further limiting Bayer's financial benefits from these products.

Changes in governmental agricultural policies could significantly change the structure of the overall market for agricultural products in affected countries in which Bayer operates. A substantial change in the level of subsidies for agricultural commodities could negatively affect the level of agricultural production and the extent of the area under cultivation. As a consequence, existing markets could change with a corresponding negative impact on Bayer's CropScience subgroup's sales and operating results. As it is impossible at present to determine precisely what changes, if any, may occur, whether and when such changes will be implemented and the extent of their impact, close monitoring and analyses of the related political developments are necessary. Bayer expects the operating result of Bayer's CropScience business to reflect the uncertainties of this industry.

***Bayer's operating margins may decrease if Bayer is not able to pass increased raw material prices on to customers or if prices for Bayer's products decrease faster than raw material prices***

Significant variations in the cost and availability of raw materials and energy may reduce Bayer's operating results. Bayer uses significant amounts of petrochemical-based raw materials and aromatics (benzene, toluene) in manufacturing a wide variety of Bayer's products. Bayer also purchases significant amounts of natural gas, coal, electricity and fuel oil to supply the energy required in Bayer's production processes. The prices and availability of these raw materials and energy vary with market conditions and may be highly volatile. There have been in the past, and may be in the future, periods during which Bayer cannot pass raw material price increases on to customers. Even in periods during which raw material prices decrease, Bayer may suffer decreasing operating profit margins if the prices of raw materials decrease more slowly than do the selling prices of Bayer's products. In the past, Bayer has entered into hedging arrangements with respect to raw material prices only to a limited extent. If the market for these hedging arrangements attains sufficient liquidity and Bayer can obtain their protection at a reasonable cost, Bayer would consider making more extensive use of these hedging instruments.

***Shortages or disruptions of supplies to customers due to unplanned capacity decreases or shutdowns of production plants may reduce sales***

Production at some of Bayer's manufacturing facilities or the supply of raw materials to them could be adversely affected by technical failures, strikes, natural disasters, regulatory rulings and other factors. Bayer's Biological Products division, in particular, generally faces complicated production processes that are more subject to disruption than is the case with other processes and therefore pose increased risk of manufacturing problems, unplanned shutdowns and loss of products. Production capacities at one or more of Bayer's sites or major plants could therefore decline temporarily or longer term. If, however, the capacity of one or more material facilities is reduced or manufacture of material products is shut down for a prolonged period and Bayer is unable to shift sufficient production to other plants or draw on Bayer's inventories, Bayer can suffer declines in sales revenues and in Bayer's results, be exposed to damages claims and suffer reputational harm.

***Litigation and administrative claims could harm Bayer's operating results and cash flows***

Bayer is involved in a number of legal proceedings and may become involved in additional legal proceedings. See "Legal Proceedings." Each of these proceedings or potential proceedings could involve substantial claims for damages or other payments. These proceedings include claims alleging product liability, claims alleging breach of contract and claims alleging antitrust violations. If Bayer's opponents in these lawsuits obtain judgments against us or if Bayer is ordered to pay fines by governmental authorities or if Bayer determines to settle any of these lawsuits, Bayer could be required, and in some cases expects to pay substantial damages, fines and related costs.

Bayer is also plaintiff in lawsuits to enforce Bayer's patent rights in Bayer's products. If Bayer is not successful in these actions, Bayer would expect Bayer's revenue from these products to decline as generic competitors enter the market.

Increased risks currently result from litigation commenced in the United States after Bayer voluntarily withdrew *Lipobay/Baycol* (cerivastatin) from the market, voluntarily stopped marketing products containing phenylpropanolamine (PPA), as well as actions related to Bayer's ciprofloxacin anti-infective product and actions and investigations relating to certain rubber related lines of business, polyester polyols and urethane related products.

In cases where Bayer believes it appropriate, Bayer has established provisions to cover potential litigation-related costs. Since the existing insurance coverage with respect to *Lipobay/Baycol* and PPA is exhausted, it is possible – depending on the future progress of the litigation – that Bayer could face further payments that are not covered by the provisions already established. Bayer will regularly review whether further accounting measures are necessary depending on the progress of the litigation. Please see also “– Existing insurance coverage may turn out to be inadequate”.

***The loss of patent protection or ineffective patent protection for marketed products may result in loss of sales to competing products***

During the life of its patent related to the compound *per se*, a patented product is normally only subject to competition from alternative products. After a patent expires, the producer of the formerly patented product is likely to face increased competition from generic products entering the market. This competition is likely to reduce market share and sales revenue of the formerly patented product. In addition, generic drug manufacturers, particularly in the United States, may seek marketing approval for pharmaceutical or agricultural products currently under patent protection by attacking the validity or enforceability of a patent. If a generic manufacturer succeeds in voiding a patent protecting one of Bayer's products, that product could be exposed to generic competition before the natural expiration of the patent. See “Legal Proceedings,” for a discussion of several important patent-related proceedings in which Bayer is involved.

The extent of patent protection varies from country to country. In some of the countries in which Bayer operates, patent protection may be significantly weaker than in the United States or the European Union. Piracy of patent-protected intellectual property has often occurred in recent years, particularly in some Asian countries. In particular, these countries could facilitate competition within their markets from generic manufacturers who would otherwise be unable to introduce competing products for a number of years. Bayer does not currently expect any proposed patent law modifications to affect us materially. Nevertheless, if a country in which Bayer sells a substantial volume of an important product were to effectively invalidate Bayer's patent rights in that product, Bayer's revenues could suffer.

***Failure to compete successfully or integrate newly acquired businesses may reduce Bayer's operating results***

Bayer operates in highly competitive industries. Actions of Bayer's competitors could reduce Bayer's profitability and market share. In some commodity areas (especially within Bayer's Materials and Systems segments), Bayer competes primarily on the basis of price and reliability of product and supply. All of Bayer's segments, however, also compete in specialty markets on the basis of product differentiation, innovation, quality and price. Significant product innovations, technical advances or the intensification of price competition by competitors could harm Bayer's operating results.

From time to time, Bayer acquires all or a portion of an established business and combines it with Bayer's existing business units. Integration of existing and newly-acquired businesses requires difficult decisions with respect to staffing levels, facility consolidation and resource allocation. Bayer must also plan carefully to ensure that established product lines and brands retain or increase their market position. If Bayer fails to effectively integrate a new business or if integration results in significant unexpected costs, Bayer's results of operations could suffer.

***Risks from the handling of hazardous materials could negatively impact Bayer's operating results***

Bayer's operations are subject to the operating risks associated with pharmaceutical and chemical manufacturing, including the related risks associated with storage and transportation of raw materials, products and wastes. These risks include, among other things, the following hazards:

- pipeline and storage tank leaks and ruptures;
- fires and explosions;
- malfunction and operational failure; and
- releases, discharges or disposal of toxic and/or hazardous substances resulting from these or other causes.

These operating risks have the potential to cause personal injury, property damage and environmental contamination, and may result in the shutdown of affected facilities and in business interruption and the imposition of civil or criminal penalties, and negatively impact the reputation of the company. The occurrence of any of these events may significantly reduce the productivity and profitability of the affected manufacturing facility and harm Bayer's operating results. Furthermore, Bayer's property damage, business interruption and casualty insurance policies may not be adequate to cover fully all potential hazards incidental to Bayer's business.

***Environmental liabilities and compliance costs may have a significant negative effect on Bayer's operating results***

The environmental laws of various jurisdictions impose actual and potential obligations on Bayer to remediate contaminated sites. These obligations may relate to sites:

- that Bayer currently owns or operates;
- that Bayer formerly owned or operated;
- where Bayer disposes or disposed waste from Bayer's operations;
- where Bayer's toll manufacturers operate or operated; or
- where property owned by third parties was contaminated by the emission or spill of contaminants for which Bayer bears responsibility.

The costs of these environmental remediation obligations could significantly reduce Bayer's operating results. In particular, Bayer's accruals for these obligations may be insufficient if the assumptions underlying these accruals prove incorrect or if Bayer is held responsible for additional, currently undiscovered contamination.

Furthermore, Bayer is or may become involved in claims, lawsuits and administrative proceedings relating to environmental matters. An adverse outcome in any of these might have a significant negative impact on Bayer's operating results and reputation.

Stricter health, safety and environmental laws and regulations as well as enforcement policies could result in substantial liabilities and costs to Bayer and could subject Bayer's handling, manufacturing, use, reuse or disposal of substances or pollutants to more rigorous scrutiny than is currently the case. Consequently, compliance with these laws and regulations could result in significant capital expenditures and expenses as well as liabilities, thereby harming Bayer's business and operating results.

***Existing insurance coverage may turn out to be inadequate***

Bayer seeks to cover foreseeable risks through insurance coverage. Such insurance coverage, however, may not fully cover the risks to which the company is exposed. This can be the case with respect to insurance covering legal and administrative claims, as discussed above, as well as with respect to insurance covering other risks. For certain risks, adequate insurance coverage may not be available



on the market or may not be available at reasonable conditions. Consequently, any harm resulting from the materialization of these risks could result in significant capital expenditures and expenses as well as liabilities, thereby harming Bayer's business and operating results.

### ***Significant fluctuations in exchange rates affect Bayer's financial results***

Bayer conducts a significant portion of its operations outside the euro zone. Fluctuations in currencies of countries outside the Euro zone, especially the U.S. dollar and Japanese yen, can materially affect Bayer's revenue as well as Bayer's operating results. For example, changes in currency exchange rates may affect:

- the relative prices at which Bayer and Bayer's competitors sell products in the same market;
- the cost of products and services Bayer requires for Bayer's operations; and
- the Euro-denominated items in Bayer's financial statements.

Although these fluctuations can benefit us, they can also harm Bayer's results. From time to time, Bayer may use financial instruments to hedge some of Bayer's exposure to foreign currency fluctuations. As of December 31, 2004, Bayer had entered into forward foreign exchange contracts and currency swaps with a total notional value of € 4.9 billion (excluding cross currency interest rate swaps included in Bayer's € 7.2 billion notional amount of interest rate hedging contracts).

### ***Negative developments affecting capital markets may make additional contributions to Bayer's pension funds necessary and changes in the yield assumptions could have an impact on the valuation of liabilities***

Fund assets generally have to cover future pension obligations. Changes and movements in the equity, fixed income, real estate and other markets could significantly change the valuation of the assets of Bayer's plans. A change in yield assumptions could also have an impact on the discounted present value of Bayer's pension obligations. In addition, changes in pension and postretirement benefit plan assumptions, such as rates for compensation increase, retirement rates, mortality rates, health care cost trends and other factors can lead to significant increases or decreases in Bayer's pension or postretirement benefit obligations, which would affect the reported funded status of Bayer's plans and therefore could also negatively affect the net periodic pension cost or cause cash contributions in the future.

Bayer cannot assure you that any future expenses or cash contributions that become necessary under Bayer's pension or postretirement benefit plans will not have a material adverse effect on Bayer's financial condition and results of operations.

## **Risk Factors in respect of the Bonds**

### ***Long-term securities***

The Bonds will be redeemed on July 29, 2105, the Issuer is under no obligation to redeem the Bonds at any time before this date. The Bondholders have no right to call for their redemption.

The Bonds may be redeemed at the option of the Issuer (in whole but not in part) on July 29, 2015 or on any Floating Rate Interest Payment Date thereafter at the principal amount, plus any interest accrued until the redemption date (exclusive) and upon payment of all outstanding Arrears of Interest to the redemption date. The Bonds may be redeemed at the option of the Issuer at any time before July 29, 2015 at the Early Redemption Amount following a Gross-up Event or a Tax Event.

### ***Deferral of Interest***

Bondholders should be aware that the Issuer, in case of a Cash Flow Event as set out in § 3(4) of the Conditions of Issue, will not pay interest on the Bonds. The Issuer may voluntarily make up such

unpaid interest within one year following the Relevant Interest Payment Date on which no payment was made due to a Cash Flow Event. Such unpaid interest will, under certain circumstances, become subsequently payable by the Issuer.

In addition, the Issuer has the right to defer any payment of interest on the Bonds if the requirements for deferral set out in § 3(3) of the Conditions of Issue are satisfied. Interest payments deferred pursuant to § 3(3) will constitute Arrears of Interest. The Issuer may pay such Arrears of Interest (in whole or in part) at any time upon due notice to the Bondholders. Arrears of Interest will become subsequently payable (in whole, but not in part) (i) if the Issuer decides to pay interest on an Interest Payment Date thereafter on which it would be entitled to defer interest pursuant to § 3(3) of the Conditions of Issue, or (ii) under certain other circumstances, but generally no later than 10 years from the Interest Payment Date on which interest payments were deferred pursuant to § 3(3) of the Conditions of Issue.

### ***Subordination***

The payment obligations of the Issuer under or in connection with the Bonds constitute subordinated obligations of the Issuer. Upon the occurrence of any liquidation, dissolution, insolvency, composition or other proceedings for the avoidance of insolvency of the Issuer, payments on the Bonds will be subordinated in right of payment to all unsubordinated and any other subordinated obligations of the Issuer except for liabilities which rank equal or junior to the Bonds. In any such proceedings of the Issuer, the Bondholders may recover proportionately less than the holders of unsubordinated and other subordinated liabilities of the Issuer.

Unsubordinated liabilities of the Issuer may also arise from events that are not reflected on the balance sheet of the Issuer, including, without limitation, the issuance of guarantees or the incurrence of other contingent liabilities on an unsubordinated basis. Claims made under such guarantees or such other contingent liabilities will become unsubordinated liabilities of the Issuer that in a winding-up or insolvency proceeding of the Issuer, will need to be paid in full before the obligations under the Bonds may be satisfied.

### ***No Limitation on Issuing Debt***

There is no restriction on the amount of debt which the Issuer may issue which ranks senior to the obligations under or in connection with the Bonds or on the amount of debt which the Issuer may issue which ranks equal to the obligations under or in connection with the Bonds. Such issuance of further debt may reduce the amount recoverable by the Bondholders upon insolvency or winding-up of the Issuer or may increase the likelihood that the Issuer may defer payments of interest under the Bonds.

### ***No Prior Market for the Bonds***

There is currently no secondary market for the Bonds. Application has been made to list the Bonds on the regulated market of the Luxembourg Stock Exchange. However, there can be no assurance that a secondary market for the Bonds will develop or, if it develops, that it will continue.

### ***Liquidity Risk***

Application has been made to list the Bonds on the regulated market of the Luxembourg Stock Exchange. There can be no assurance that a liquid secondary market for the Bonds will develop or, if it does develop, that it will continue. In an illiquid market, an investor might not be able to sell his Bonds at any time at fair market prices. The possibility to sell the Bonds might additionally be restricted by country specific reasons.

***Fixed Rate Bonds***

A holder of a fixed interest rate bond is exposed to the risk that the price of such bond falls as a result of changes in the market interest rate. While the nominal interest rate of a fixed interest rate bond is fixed during the life of such bond or during a certain period of time, the current interest rate on the capital market (market interest rate) typically changes on a daily basis. As the market interest rate changes, the price of such bond changes in the opposite direction. If the market interest rate increases, the price of such bond typically falls, until the yield of such bond is approximately equal to the market interest rate. If the market interest rate falls, the price of a fixed interest rate bond typically increases, until the yield of such bond is approximately equal to the market interest rate. Bondholders should be aware that movements of the market interest rate can adversely effect the price of the Bonds and can lead to losses for the Bondholders if they sell Bonds during the period in which the interest rate of the Bonds is fixed.

***Floating Rate Bonds***

A holder of a bond with a floating interest rate is exposed to the risk of fluctuating interest rate levels and uncertain interest income. Fluctuating interest rate levels make it impossible to determine the yield of such bonds in advance.



## INCORPORATION BY REFERENCE

The following documents are incorporated by reference into this Prospectus:

the audited consolidated financial statements of Bayer Group for the fiscal year ended on December 31, 2003 consisting of

Balance Sheet (page 5 of the Consolidated Financial Statements as included in the Annual Report of 2003),

Statement of Income (page 4 of the Consolidated Financial Statements as included in the Annual Report of 2003),

Statement of Cash Flow (page 6 in the Consolidated Financial Statements as included in the Annual Report of 2003),

Notes (pages 10 to 77 of the Consolidated Financial Statements as included in the Annual Report of 2003),

the Description of Accounting Policies (pages 10 to 21 of the Consolidated Financial Statements as included in the Annual Report of 2003),

the Auditors' Report (page 3 of the Consolidated Financial Statements as included in the Annual Report of 2003),

the audited consolidated financial statements of Bayer Group for the fiscal year ended on December 31, 2004 consisting of

Balance Sheet (page 69 of the Annual Report of 2004),

Statement of Income (page 68 of the Annual Report of 2004),

Statement of Cash Flow (page 70 in the Annual Report of 2004),

Notes (pages 74 to 137 of the Annual Report of 2004),

the Description of Accounting Policies (pages 74 to 87 of the Annual Report of 2004),

the Auditors' Report (page 67 of the Annual Report of 2004),

the unaudited consolidated financial statements of Bayer Group for the period ended on March 31, 2005.

The documents incorporated by reference are available on the website of the Luxembourg Stock Exchange ([www.bourse.lu](http://www.bourse.lu)) and may be inspected and are available free of charge at J.P. Morgan Bank Luxembourg S.A., 6 route de Trèves, 2633 Senningerberg (Municipality of Niederanven), Luxembourg as long as any Bonds are listed on the regulated market of the Luxembourg Stock Exchange.

## CONDITIONS OF ISSUE

### § 1

#### WÄHRUNG, STÜCKELUNG, FORM, BEGRIFFSBESTIMMUNGEN

##### (1) Währung, Stückelung und Form.

Die Bayer Aktiengesellschaft (die „**Emittentin**“) begibt am 29. Juli 2005 (der „**Begebungstag**“) auf den Inhaber lautende, nachrangige Schuldverschreibungen mit fest bzw. variabler Verzinsung (die „**Schuldverschreibungen**“) mit einem Nennbetrag von je € 1.000 (der „**Nennbetrag**“) im Gesamtnennbetrag von € 1.300.000.000.

##### (2) Globalurkunden und Austausch.

Die Schuldverschreibungen werden zunächst in einer vorläufigen Globalurkunde (die „**Vorläufige Globalurkunde**“) ohne Zinsschein verbrieft, die am oder um den Begebungstag bei einer gemeinsamen Verwahrstelle für Clearstream Banking, société anonyme, Luxemburg, und Euroclear Bank S.A./N.V., als Betreiberin des Euroclear-Systems (beide gemeinsam nachstehend als „**Clearing System**“ bezeichnet), hinterlegt wird. Die Vorläufige Globalurkunde wird nicht vor Ablauf von 40 und spätestens nach Ablauf von 180 Tagen nach dem Begebungstag gegen Vorlage einer Bestätigung über das Nichtbestehen wirtschaftlichen Eigentums im Sinne des US-Rechts (*non-U.S. beneficial ownership*) gegen eine endgültige Globalurkunde (die „**Dauer-Globalurkunde**“) ohne Zinsschein nach den Regeln und dem Verfahren des Clearing Systems ausgetauscht. Zahlungen auf die Vorläufige Globalurkunde erfolgen nur gegen Vorlage einer solchen Bestätigung. Einzelurkunden oder Zinsscheine werden nicht ausgegeben.

### § 2

#### NACHRANG

##### (1) Status der Schuldverschreibungen.

Die Schuldverschreibungen begründen nicht besicherte und nachrangige Verbindlichkeiten der Emittentin, die untereinander im Rang gleich stehen und im Falle der Liquidation, der Auflösung oder der Insolvenz der Emittentin oder eines Vergleichs oder eines anderen, der Abwendung der Insolvenz der Emittentin dienenden Verfahrens gegenüber allen anderen bestehenden und zukünftigen nachrangigen und nicht nachrangigen Verbindlichkeiten der Emittentin nachrangig sind, soweit zwingende gesetzliche Bestimmungen nichts anderes vorschreiben. Im Fall der Liquidation, der Auflösung oder der Insolvenz der Emittentin oder eines Vergleichs oder eines anderen, der Abwendung der Insolvenz der Emittentin dienenden Verfahrens gehen die Verbindlichkeiten der Emittentin aus den Schuldverschreibungen im Rang den Ansprüchen aller nicht nachrangigen und nachrangigen Gläubiger nach, so dass Zahlungen auf die Schuldverschreibungen erst dann erfolgen, wenn die Ansprüche aller nicht nachrangigen und nachrangigen Gläubiger der Emittentin vollständig befriedigt sind. Kein Inhaber eines Miteigentumsanteils, einer Beteiligung oder eines Rechts an den Schuldverschreibungen („**Anleihegläubiger**“) ist berechtigt, Forderungen aus den Schuldverschreibungen gegen mögliche Forderungen der Emittentin aufzurechnen. Die Emittentin ist nicht berechtigt, Forderungen gegenüber Anleihegläubigern gegen Verpflichtungen aus den Schuldverschreibungen aufzurechnen. Für die Rechte der Anleihegläubiger aus den Schuldverschreibungen ist diesen keine Sicherheit durch die Emittentin oder

### § 1

#### CURRENCY, DENOMINATION, FORM, CERTAIN DEFINITIONS

##### (1) Currency, Denomination and Form.

Bayer Aktiengesellschaft (the „**Issuer**“) shall issue on July 29, 2005 (the „**Issue Date**“) Subordinated Fixed to Floating Rate Bonds due 2105 (the „**Bonds**“) in bearer form in the denomination of € 1,000 each (the „**Denomination**“) in the aggregate principal amount of € 1,300,000,000.

##### (2) Global Bonds and Exchange.

The Bonds will initially be represented by a temporary global bond (the „**Temporary Global Bond**“) without coupons which will be deposited with a common depositary for Clearstream Banking, société anonyme, Luxembourg, and Euroclear Bank S.A./N.V., as operator of the Euroclear System (together hereinafter referred to as the „**Clearing System**“) on or about the Issue Date. The Temporary Global Bond will be exchangeable for a permanent global bond (the „**Permanent Global Bond**“) without coupons not earlier than 40 and not later than 180 days after the Issue Date upon certification as to non-U.S. beneficial ownership in accordance with the rules and operating procedures of the Clearing System. Payments on the Temporary Global Bond will only be made against presentation of such certification. No definitive Bonds and interest coupons will be issued.

### § 2

#### SUBORDINATED STATUS

##### (1) Status of the Bonds.

The obligations of the Issuer under the Bonds constitute unsecured and subordinated obligations of the Issuer ranking *pari passu* among themselves and in the event of the liquidation, dissolution, insolvency, composition or other proceedings for the avoidance of insolvency of the Issuer rank junior to all other present and future obligations of the Issuer, whether subordinated or unsubordinated, except as otherwise required by mandatory statutory law. In the event of the liquidation, dissolution, insolvency, composition or other proceedings for the avoidance of insolvency of the Issuer, the obligations of the Issuer under the Bonds will be subordinated to the claims of all unsubordinated and subordinated creditors of the Issuer so that in any such event no amounts shall be payable in respect of the Bonds until the claims of all unsubordinated and subordinated creditors of the Issuer shall have first been satisfied in full. No holder of a proportional co-ownership, participation or right in the Bond (the „**Bondholders**“) may set-off any claims arising under the Bonds against any claims that the Issuer may have against it. The Issuer may not set-off any claims it may have against the Bondholders against any of its obligations under the Bonds. No security is, or shall at any time be, provided by the Issuer or any other person securing rights of the Bondholders under the Bonds.

durch Dritte gestellt; eine solche Sicherheit wird auch zu keinem Zeitpunkt gestellt werden.

(2) *Beschränkung einer zusätzlichen nachrangigen Verschuldung.*

Die Emittentin verpflichtet sich, solange die Schuldverschreibungen ausstehen, keine zusätzlichen nachrangigen Verbindlichkeiten einzugehen oder zu begeben, die nach ihren Bedingungen oder den gesetzlichen Vorschriften im Falle der Liquidation, der Auflösung oder der Insolvenz der Emittentin oder eines Vergleichs oder eines anderen, der Abwendung der Insolvenz der Emittentin dienenden Verfahrens den Schuldverschreibungen gegenüber nachrangig wären.

### § 3 ZINSEN

(1) *Festzinsperiode.*

Vorbehaltlich der nachstehenden Ausnahmen werden Zinsen auf die Schuldverschreibungen ab dem Begebungstag (einschließlich) bis zum 29. Juli 2015 (ausschließlich) wie folgt gezahlt:

- (a) Die Schuldverschreibungen werden mit jährlich 5,00% auf ihren Gesamtnennbetrag verzinst und diese Zinsen sind, vorbehaltlich der Regelung in § 3(3) und (4), jährlich nachträglich am 29. Juli eines jeden Jahres, erstmals am 29. Juli 2006 fällig (jeweils ein „**Festzins-Zahlungstag**“).
- (b) Zinsen, die für eine Festzinsperiode von weniger als einem Jahr zu berechnen sind, werden auf Basis der Zahl der tatsächlich verstrichenen Tage, geteilt durch die tatsächliche Zahl der Tage (365 bzw. 366) im betreffenden Zinsjahr, berechnet.

(2) *Variable Zinsperiode.*

Vorbehaltlich der nachstehenden Ausnahmen werden Zinsen auf die Schuldverschreibungen ab dem 29. Juli 2015 (einschließlich) bis zum Tag der Rückzahlung der Schuldverschreibungen (ausschließlich) wie folgt gezahlt:

- (a) Soweit sie nicht nach Maßgabe dieser Anleihebedingungen vorzeitig zurückgezahlt wurden, wird der Gesamtnennbetrag der Schuldverschreibungen in Höhe des von der Berechnungsstelle (wie in § 5(1) definiert) gemäß § 3(2)(d) festgesetzten Zinssatzes verzinst, wobei die Zinsen, vorbehaltlich der Regelung in § 3(3) und (4), vierteljährlich nachträglich an jedem Variablen Zinszahlungstag (wie nachstehend definiert) fällig sind.

„**Variabler Zinszahlungstag**“ bedeutet 29. Oktober, 29. Januar, 29. April und 29. Juli eines jeden Jahres.

- (b) Fällt ein Variabler Zinszahlungstag auf einen Tag, der kein Geschäftstag (wie nachstehend definiert) ist, wird der Variable Zinszahlungstag auf den nächstfolgenden Geschäftstag verschoben, es sei denn, jener würde dadurch in den nächsten Kalendermonat fallen; in diesem Fall wird der Variable Zinszahlungstag auf den unmittelbar vorausgehenden Geschäftstag vorgezogen.

„**Geschäftstag**“ bedeutet in diesen Anleihebedingungen einen Tag (außer einem Samstag oder Sonntag), an dem alle relevanten Bereiche des Trans-European Automated Gross Express Settlement Transfer (TARGET) Systems betriebsbereit sind.

- (c) Der Zinssatz für jede Variable Zinsperiode (der „**Variable Zinssatz**“) ist, sofern nachstehend nichts

(2) *Limitation on Additional Subordinated Indebtedness.*

The Issuer agrees that so long as the Bonds are outstanding, it will not incur or issue any additional subordinated indebtedness which by its terms or by mandatory provisions of law would rank junior to the Bonds in the event of a liquidation, dissolution, insolvency, composition or other proceedings for the avoidance of insolvency of the Issuer.

### § 3 INTEREST

(1) *Fixed Interest Period.*

Subject to certain exceptions described below, interest on the Bonds from and including the Issue Date to (but excluding) July 29, 2015 will be paid as follows:

- (a) The Bonds bear interest at the rate of 5.00% per annum on their aggregate principal amount and, subject to § 3(3) and (4), interest shall be payable annually in arrear on July 29 of each year commencing on July 29, 2006 (each a „**Fixed Interest Payment Date**“).
- (b) If interest is to be calculated for a fixed interest period of less than one year, it shall be calculated on the basis of the actual number of days elapsed, divided by the actual number of days (365 or 366) in the relevant interest year.

(2) *Floating Rate Interest Period.*

Subject to certain exceptions described below, interest on the Bonds from and including July 29, 2015 to (but excluding) the day of redemption of the Bonds will be paid as follows:

- (a) Unless previously redeemed in accordance with these Conditions of Issue, the Bonds shall bear interest on their aggregate principal amount at a rate determined by the Calculation Agent (as defined in § 5(1)) pursuant to § 3(2)(d) below, payable, subject to § 3(3) and (4), quarterly in arrear on each Floating Rate Interest Payment Date (as defined below).

„**Floating Rate Interest Payment Date**“ means October 29, January 29, April 29 and July 29 in each year.

- (b) If any Floating Rate Interest Payment Date would otherwise fall on a day which is not a Business Day (as defined below), the Floating Rate Interest Payment Date shall be postponed to the next day which is a Business Day unless it would thereby fall into the next calendar month, in which case the Floating Rate Interest Payment Date shall be the immediately preceding Business Day.

„**Business Day**“ in these Conditions of Issue means a day (except a Saturday or Sunday) on which all relevant parts of the Trans-European Automated Real-time Gross Settlement Express Transfer (TARGET) systems are operational.

- (c) The rate of interest for each Floating Rate Interest Period (the „**Floating Rate of Interest**“) will, except

Abweichendes bestimmt ist, der angezeigte Angebotssatz (ausgedrückt als Prozentsatz per annum) für Dreimonats-Einlagen in Euro für die jeweilige Variablen Zinsperiode (wie nachstehend definiert), der auf der Bildschirmseite (wie nachstehend definiert) am Zinsfeststellungstag (wie nachstehend definiert) um 11:00 Uhr (Brüsseler Ortszeit) angezeigt wird, zuzüglich der Marge (wie nachstehend definiert), wobei alle Festlegungen durch die Berechnungsstelle erfolgen.

„**Variable Zinsperiode**“ ist jeder Zeitraum vom 29. Juli 2015 (einschließlich) bis zum ersten Variablen Zinszahlungstag (ausschließlich), und danach von jedem Variablen Zinszahlungstag (einschließlich) bis zum darauffolgenden Variablen Zinszahlungstag (ausschließlich).

„**Bildschirmseite**“ bezeichnet Telerate Seite 248 (die „**EURIBOR Bildschirmseite**“) oder eine andere Bildschirmseite von Telerate oder einem anderen Informationsanbieter, der als Nachfolger von Telerate Seite 248 für die Anzeige dieser Sätze bestimmt wurde.

Steht die Bildschirmseite nicht zur Verfügung, oder wird kein Angebotssatz angezeigt, wird die Berechnungsstelle (in jedem dieser Fälle und zu der genannten Zeit) von fünf von ihr ausgewählten Referenzbanken (wie nachstehend definiert) deren jeweilige Angebotssätze (als Prozentsatz per annum ausgedrückt) für Dreimonats-Einlagen in Euro für die betreffende Variable Zinsperiode gegenüber führenden Banken im Interbanken-Markt in den Teilnehmerstaaten der dritten Stufe der Wirtschafts- und Währungsunion im Sinne des Vertrages über die Europäische Union anfordern. Maßgeblich sind die Sätze um ca. 11:00 Uhr (Brüsseler Ortszeit) am Zinsfeststellungstag. Sofern zwei oder mehr der ausgewählten Referenzbanken der Berechnungsstelle solche Angebotssätze nennen, ist der Variable Zinssatz für die betreffende Variable Zinsperiode das arithmetische Mittel dieser Angebotssätze (falls erforderlich, auf- oder abgerundet auf das nächste tausendstel Prozent, wobei 0,0005 aufgerundet wird), zuzüglich der Marge.

Falls der Variable Zinssatz nicht gemäß den vorstehenden Bestimmungen ermittelt werden kann, ist der Variable Zinssatz der Angebotssatz auf der Bildschirmseite oder das arithmetische Mittel der Angebotssätze, wie vorstehend beschrieben, an dem letzten Tag vor dem Zinsfeststellungstag, an dem ein solcher Angebotssatz bzw. solche Angebotssätze angeboten wurde(n), zuzüglich der Marge.

„**Referenzbanken**“ sind diejenigen Banken, deren Angebotssätze zur Ermittlung des maßgeblichen Angebotssatzes benutzt wurden, als ein derartiges Angebot letztmals auf der Bildschirmseite angezeigt wurde.

„**Zinsfeststellungstag**“ bezeichnet den zweiten Geschäftstag vor dem Beginn der relevanten Variablen Zinsperiode.

Die „**Marge**“ beträgt 1,80 % per annum, zuzüglich eines Aufschlags von 1,00 %.

- (d) Die Berechnungsstelle wird zu oder baldmöglichst nach jedem Zinsfeststellungstag den Variablen Zinssatz bestimmen und den auf den Gesamtnennbetrag der Schuldverschreibungen fälligen

as provided below, be the offered quotation displayed (expressed as a percentage rate per annum) for three-month deposits in euro for that Floating Rate Interest Period (as defined below) which appears, on the Screen Page (as defined below) as of 11:00 a.m. (Brussels time) on the Floating Rate Interest Determination Date (as defined below), plus the Margin (as defined below), all as determined by the Calculation Agent.

„**Floating Rate Interest Period**“ is each period from and including July 29, 2015 to (but excluding) the first Floating Rate Interest Payment Date and thereafter from and including each Floating Rate Interest Payment Date to (but excluding) the next following Floating Rate Interest Payment Date.

„**Screen Page**“ means Telerate Page 248 („**EURIBOR Screen Page**“) or such other screen page of Telerate or such other information service, which has been designated as the successor to Telerate Page 248 for the purpose of displaying such rates.

If the Screen Page is not available or if no such quotation appears, in each case and at such time, the Calculation Agent shall request five Reference Banks (as defined below) selected by it to provide the Calculation Agent with its offered quotation (expressed as a percentage rate per annum) for three-month deposits in Euro for the relevant Floating Rate Interest Period to leading banks in the interbank market of the participating Member States in the third stage of the Economic and Monetary Union, as contemplated by the Treaty on European Union. The relevant offered quotations shall be those offered at approximately 11:00 a.m. (Brussels time) on the Floating Rate Interest Determination Date. As long as two or more of the selected Reference Banks provide the Calculation Agent with such offered quotations, the Floating Rate of Interest shall be the arithmetic mean of such offered quotations (rounded if necessary to the nearest one thousandth of a percentage point, with 0.0005 being rounded upwards), plus the Margin.

If the Floating Rate of Interest cannot be determined in accordance with the foregoing provisions, the Floating Rate of Interest shall be the offered quotation on the Screen Page or the arithmetic mean of the offered quotations, as described above, on the last day preceding the Floating Rate Interest Determination Date on which such quotation or, as the case may be, quotations were offered, plus the Margin.

„**Reference Banks**“ means those banks whose offered rates were used to determine such quotation when such quotation last appeared on the Screen Page.

„**Floating Rate Interest Determination Date**“ means the second Business Day prior to the commencement of the relevant Floating Rate Interest Period.

„**Margin**“ means 1.80 % per annum plus a step-up of 1.00 %.

- (d) The Calculation Agent shall, on or as soon as practicable after each Floating Rate Interest Determination Date, determine the Floating Rate of Interest and calculate the amount of interest (the „**Interest**

Zinsbetrag (der „**Zinsbetrag**“) für die entsprechende Variable Zinsperiode berechnen. Der Zinsbetrag ergibt sich aus der Multiplikation des Variablen Zinssatzes mit dem Zinstagequotienten (wie nachstehend definiert) und dem Gesamtnennbetrag der Schuldverschreibungen.

„**Zinstagequotient**“ bezeichnet im Hinblick auf die Berechnung des Zinsbetrages für eine Variable Zinsperiode oder einen Teil davon (der „**Zinsberechnungszeitraum**“) die tatsächliche Anzahl von Tagen im Zinsberechnungszeitraum geteilt durch 360.

- (e) Die Berechnungsstelle wird veranlassen, dass der Variable Zinssatz, jeder Zinsbetrag für jede Variable Zinsperiode, jede Variable Zinsperiode und der betreffende Variable Zinszahlungstag der Emittentin und jeder Wertpapierbörse, an der die Schuldverschreibungen zu diesem Zeitpunkt notiert sind und deren Regeln eine Mitteilung an die Wertpapierbörse verlangen, sowie den Anleihegläubigern gemäß § 12 unverzüglich, aber keinesfalls später als am vierten auf die Feststellung folgenden Geschäftstag mitgeteilt werden. Im Falle einer Verlängerung oder Verkürzung der Variablen Zinsperiode können der mitgeteilte Zinsbetrag und der Variable Zinszahlungstag nachträglich ohne Mitteilung angepasst (oder angemessene Anpassungsregelungen getroffen) werden. Jede solche Anpassung wird den Wertpapierbörsen, an denen die Schuldverschreibungen zu diesem Zeitpunkt notiert sind, sowie den Anleihegläubigern gemäß § 12 unverzüglich bekannt gegeben.
- (f) Sämtliche Bescheinigungen, Mitteilungen, Gutachten, Festsetzungen, Berechnungen, Quotierungen und Entscheidungen, die von der Berechnungsstelle für die Zwecke dieser Anleihebedingungen gemacht, abgegeben, getroffen oder eingeholt werden, sind (sofern nicht vorsätzliches Fehlverhalten oder ein offensichtlicher Irrtum vorliegt) für die Emittentin, die Hauptzahlstelle, alle weiteren Zahlstellen (jeweils wie in § 5 definiert) und die Anleihegläubiger bindend.

### (3) *Wahlweise Aussetzung der Zinszahlung.*

Zinsen, die während eines Zeitraumes auflaufen, der an einem Obligatorischen Zinszahlungstag (wie nachstehend definiert) (ausschließlich) endet, sind, vorbehaltlich der Regelung in § 3(4), an diesem Obligatorischen Zinszahlungstag zahlbar.

Zinsen, die während eines Zeitraumes auflaufen, der an einem Fakultativen Zinszahlungstag (wie nachstehend definiert) (ausschließlich) endet, sind an diesem Fakultativen Zinszahlungstag nur zahlbar, wenn und soweit sich die Emittentin für eine Zahlung entscheidet. Andernfalls bilden die aufgeschobenen Zinsen „**Zinsrückstände**“. Entscheidet sich die Emittentin für die (vollständige oder teilweise) Bezahlung von Zinsen an einem Fakultativen Zinszahlungstag, so hat sie an diesem Fakultativen Zinszahlungstag auch alle Zinsrückstände zu bezahlen. Die Emittentin hat keinerlei Verpflichtung, an einem Fakultativen Zinszahlungstag Zinsen zu bezahlen, falls sie sich nicht für eine Zahlung entscheidet, und der Ausfall der Zinszahlung begründet keinen Verzug der Emittentin und keine anderweitige Verletzung der Verpflichtungen unter den Schuldverschreibungen. Falls die Emittentin sich dafür entscheidet, an einem Fakultativen Zinszahlungstag keine Zinsen zu bezahlen, so hat die Emittentin die Anleihegläubiger mindestens 10 und höchstens 15 Geschäftstage vor diesem Fakultativen Zinszahlungstag

**Amount**“) payable on the aggregate principal amount of the Bonds for the relevant Floating Rate Interest Period. Each Interest Amount shall be calculated by multiplying the Floating Rate of Interest with the Day Count Fraction (as defined below) and the aggregate principal amount of the Bonds.

“**Day Count Fraction**” means, in respect of the calculation of an amount of interest for any Floating Rate Interest Period or part thereof (the “**Calculation Period**”), the actual number of days in the Calculation Period divided by 360.

- (e) The Calculation Agent will cause the Floating Rate of Interest, each Interest Amount for each Floating Rate Interest Period, each Floating Rate Interest Period and the relevant Floating Rate Interest Payment Date to be notified to the Issuer and, if required by the rules of any stock exchange on which the Bonds are listed from time to time, to such stock exchange, and to the Bondholders in accordance with § 12 without undue delay, but, in any case, not later than on the fourth Business Day after their determination. Each Interest Amount and Floating Rate Interest Payment Date so notified may subsequently be amended (or appropriate alternative arrangements may be made by way of adjustment) without notice in the event of an extension or shortening of the Floating Rate Interest Period. Any such amendment will be promptly notified to any Stock Exchange on which the Bonds are then listed and to the Bondholders in accordance with § 12.
- (f) All certificates, communications, opinions, determinations, calculations, quotations and decisions given, expressed, made or obtained for the purposes of the provisions of these Conditions of Issue by the Calculation Agent shall (in the absence of wilful default or manifest error) be binding upon the Issuer, the Principal Paying Agent, the Paying Agents (each as defined in § 5) and the Bondholders.

### (3) *Interest Deferral.*

Interest which accrues during a period ending on (but excluding) a Compulsory Interest Payment Date (as defined below) shall be payable on that Compulsory Interest Payment Date.

Interest which accrues during a period ending on (but excluding) an Optional Interest Payment Date (as defined below) shall be payable on that Optional Interest Payment Date only if and to the extent the Issuer so elects and, in the case there is no such election to pay, such interest shall otherwise constitute “**Arrears of Interest**”. If the Issuer decides to pay interest (in whole or in part) on an Optional Interest Payment Date, it shall also be obliged to pay all Arrears of Interest on such Optional Interest Payment Date. The Issuer shall not have any obligation to pay interest on any Optional Interest Payment Date if it does not elect to do so and any such failure to pay interest shall not constitute a default of the Issuer or any other kind of breach of obligations under the Bonds. If the Issuer decides not to pay the full amount of interest on an Optional Interest Payment Date, the Issuer shall notify the Bondholders in accordance with § 12 not less than 10 and not more than 15 Business Days prior to such Optional Interest Payment Date. The Issuer may pay outstanding Arrears of Interest (in whole or in part) at



gemäß § 12 zu unterrichten. Die Emittentin kann ausstehende Zinsrückstände jederzeit (ganz oder teilweise) nach einer Mitteilung an die Anleihegläubiger mit einer Frist von mindestens 10 und höchstens 15 Geschäftstagen zahlen (wobei diese Mitteilung unwiderruflich ist und die Emittentin dazu verpflichtet, die betreffenden Zinsrückstände an dem in der Mitteilung genannten Zahlungstag zu bezahlen).

Die Emittentin ist ebenfalls verpflichtet, ausstehende Zinsrückstände (ganz, jedoch nicht teilweise) an dem der nachstehend genannten Termine zu bezahlen, der zuerst eintritt:

- (a) der nächste Obligatorische Zinszahlungstag;
- (b) der Tag, an dem die Schuldverschreibungen zurückgezahlt werden;
- (c) der Tag, an dem eine Verfügung über die Abwicklung, Auflösung oder Liquidation der Emittentin ergeht (sofern dies nicht zum Zwecke oder als Folge eines Zusammenschlusses, einer Umstrukturierung oder Sanierung geschieht, bei dem bzw. der die Emittentin noch zahlungsfähig ist und bei dem bzw. der die überlebende Gesellschaft im Wesentlichen alle Vermögenswerte und Verpflichtungen der Emittentin übernimmt);
- (d) der Tag, an dem die Emittentin (direkt, aufgrund einer Garantie oder anderweitig) Zins- oder sonstige Zahlungen auf ein Nachrangiges Wertpapier (wie nachstehend definiert) oder ein Gleichrangiges Wertpapier (wie nachstehend definiert) leistet;
- (e) der Tag, an dem die Emittentin oder ein von ihr dazu bestimmtes Konzernunternehmen (wie nachstehend definiert) für eine Gegenleistung die Schuldverschreibungen (ganz oder teilweise), Gleichrangige Wertpapiere oder Nachrangige Wertpapiere zurückkauft oder anderweitig erwirbt; und
- (f) ein Wiederkehrender Fakultativer Zinszahlungstag (wie nachstehend definiert).

Falls die Emittentin (direkt, aufgrund einer Garantie oder anderweitig) Aufgeschobene Zinsen (wie nachstehend definiert) bezahlt, hat sie unverzüglich nach einer solchen Zahlung Zinsrückstände *pro rata* (auf prozentualer Basis) zu bezahlen. Jede solche *pro rata* Zahlung wird unter Bezugnahme auf das Datum der Zahlung solcher Aufgeschobener Zinsen berechnet.

Zinsrückstände werden nicht verzinst.

„**Obligatorischer Zinszahlungstag**“ bezeichnet jeden Zinszahlungstag (wie nachstehend definiert), (i) der nicht ein Fakultativer Zinszahlungstag und (ii) an dem nicht die Voraussetzungen für einen zwingenden Ausfall der Zinszahlung gemäß § 3(4) vorliegen.

„**Zinszahlungstag**“ bezeichnet in diesen Anleihebedingungen jeden Festzins-Zahlungstag und jeden Variablen Zinszahlungstag.

„**Fakultativer Zinszahlungstag**“ bezeichnet jeden Zinszahlungstag, an dem sämtliche nachfolgend aufgeführten Bedingungen erfüllt sind:

- (i) auf der Ordentlichen Hauptversammlung (wie nachstehend definiert) unmittelbar vor diesem Zinszahlungstag wurde für keine Aktiengattung der Emittentin eine Dividende, andere Ausschüttung oder Zahlung beschlossen;
- (ii) seit dieser Ordentlichen Hauptversammlung ist weder für Nachrangige Wertpapiere noch für

any time on the giving of not less than 10 and not more than 15 Business Days' notice to the Bondholders in accordance with § 12 (which notice will be irrevocable and will oblige the Issuer to pay the relevant Arrears of Interest on the payment date specified in such notice).

The Issuer will also be obliged to pay outstanding Arrears of Interest (in whole but not in part) on the earlier of:

- (a) the next Compulsory Interest Payment Date;
- (b) the due date for redemption of the Bonds;
- (c) the date on which an order is made for the winding-up, or dissolution or liquidation of the Issuer (other than for the purposes of or pursuant to an amalgamation, reorganisation or restructuring while solvent, where the continuing entity assumes substantially all of the assets and obligations of the Issuer (as applicable));
- (d) the date on which the Issuer (directly, pursuant to any guarantee or otherwise) makes any payment of interest or distribution of any sort on a Junior Security (as defined below) or a Parity Security (as defined below);
- (e) the date on which the Issuer repurchases or otherwise acquires, or causes another Group Entity (as defined below) to repurchase or otherwise acquire, any of the Bonds (in whole or in part), any Parity Security or any Junior Security against consideration therefor; and
- (f) a Recurred Optional Interest Payment Date (as defined below).

If the Issuer (directly, pursuant to any guarantee or otherwise) makes any payment of Deferred Interest (as defined below) it shall, immediately following such payment, make a *pro rata* payment on Arrears of Interest (calculated on a percentage basis). Any such *pro rata* payment will be calculated by reference to the date of payment of such Deferred Interest.

Arrears of Interest shall not themselves bear interest.

„**Compulsory Interest Payment Date**“ means any Interest Payment Date (as defined below) which (i) is not an Optional Interest Payment Date, and which (ii) is not a date on which a Mandatory Non-Payment prevails according to § 3(4).

„**Interest Payment Date**“ means in these Conditions of Issue any Fixed Interest Payment Date and any Floating Rate Interest Payment Date.

„**Optional Interest Payment Date**“ means any Interest Payment Date in respect of which all of the following criteria are met:

- (i) no dividend, other distribution of any sort or payment was resolved on in respect of any class of shares of the Issuer at the GMS (as defined below) immediately preceding such Interest Payment Date;
- (ii) no such dividend, other distribution of any sort or payment has been resolved on, paid or made in re-

Gleichrangige Wertpapiere eine Dividende, andere Ausschüttung oder Zahlung beschlossen, gezahlt oder vorgenommen worden;

(iii) die Emittentin hat seit dem letzten unmittelbar vorangegangenen Obligatorischen Zinszahlungstag weder selbst die Schuldverschreibungen (ganz oder teilweise), Gleichrangige Wertpapiere oder Nachrangige Wertpapiere gegen Gewährung einer Gegenleistung (mit Ausnahme einer in der Wandlung in oder im Umtausch von Stammaktien bestehenden Gegenleistung) zurückgekauft oder anderweitig erworben und auch keine Konzerngesellschaft veranlasst, dies zu tun; und

(iv) die Voraussetzungen für einen zwingender Ausfall von Zinszahlungen gemäß § 3(4) liegen nicht vor.

Die „**Ordentliche Hauptversammlung**“ ist die ordentliche Hauptversammlung der Emittentin für das jeweilige vorausgehende Geschäftsjahr.

„**Nachrangiges Wertpapier**“ bezeichnet jedes Instrument, das von der Emittentin begeben, abgeschlossen oder garantiert wird und das den Schuldverschreibungen oder Gleichrangigen Wertpapieren gegenüber nachrangig ist oder aufgrund dessen die Zahlungsverpflichtungen der Emittentin unter der betreffenden Garantie den Schuldverschreibungen oder Gleichrangigen Wertpapieren gegenüber nachrangig sind und schließt Aktien jeglicher Aktiengattung der Emittentin mit ein.

„**Gleichrangiges Wertpapier**“ bezeichnet jedes Instrument, das von der Emittentin begeben, abgeschlossen oder garantiert wird und das auf der Basis seiner Bedingungen oder aufgrund gesetzlicher Bestimmungen den Schuldverschreibungen gegenüber gleichrangig ist oder aufgrund dessen die Zahlungsverpflichtungen der Emittentin unter der betreffenden Garantie den Schuldverschreibungen gegenüber gleichrangig sind.

„**Konzerngesellschaft**“ ist jedes mit der Emittentin im Sinne des § 15 Aktiengesetz verbundene Unternehmen.

„**Wiederkehrender Fakultativer Zinszahlungstag**“ bezeichnet jeden Fakultativen Zinszahlungstag ab dem zehnten Jahrestag eines früheren Fakultativen Zinszahlungstags, vorausgesetzt, dass nach diesem früheren Fakultativen Zinszahlungstag kein Ereignis eingetreten ist, das zu der Zahlung aller zu diesem Zeitpunkt ausstehenden Zinsrückstände führt.

„**Aufgeschobene Zinsen**“ bezeichnet alle aufgeschobenen Zinsen und sonstigen Zahlungen für ein Gleichrangiges Wertpapier oder ein Nachrangiges Wertpapier an einem vorgesehenen Zinszahlungstag für dieses Gleichrangige Wertpapier oder Nachrangige Wertpapier.

#### (4) Zwingender Ausfall der Zinszahlungen.

Falls 12 Geschäftstage vor einem Zinszahlungstag ein Cash Flow-Ereignis besteht, wird die Emittentin die an diesem Zinszahlungstag fälligen Zinsen, vorbehaltlich § 3(5), nicht zahlen. Die Emittentin hat den Anleihegläubigern das Vorliegen eines Cash Flow-Ereignisses spätestens 8 Geschäftstage vor dem betreffenden Zinszahlungstag gemäß § 12 mitzuteilen. Die nach Maßgabe dieses § 3(4) ausgefallenen Zinsen stellen keine Zinsrückstände dar (nicht-kumulativ); eine Nichtzahlung von Zinsen aufgrund dieses § 3(4) begründet keinen Verzug der Emittentin und keine anderweitige Verletzung ihrer Verpflichtungen im Rahmen dieser Schuldverschreibungen oder für sonstige Zwecke.

spect of any Junior Security or Parity Security since such GMS;

(iii) the Issuer has not repurchased or otherwise acquired, or caused another Group Entity to repurchase or otherwise acquire any of the Bonds (in whole or in part), any Parity Security or any Junior Security for any consideration, except by conversion into or exchange for ordinary shares, since the immediately preceding Compulsory Interest Payment Date; and

(iv) no Mandatory Non-Payment prevails according to § 3(4).

“**GMS**” is the ordinary General Meeting of the Shareholders (*ordentliche Hauptversammlung*) for the respective preceding fiscal year of the Issuer.

“**Junior Security**” means any instrument issued, entered into or guaranteed by the Issuer which ranks (or in relation to which the Issuer’s payment obligations under the relevant guarantee rank) junior to the Bonds or any Parity Security, including any shares of any class of shares of the Issuer.

“**Parity Security**” means any instrument issued, entered into or guaranteed by the Issuer which ranks (or in relation to which the Issuer’s payment obligations under the relevant guarantee rank), by its terms or by operation of law, *pari passu* with the Bonds.

“**Group Entity**” means any of the Issuer’s affiliated enterprises within the meaning of Section 15 of the German Stock Corporation Act.

“**Recurred Optional Interest Payment Date**” means any Optional Interest Payment Date falling on or after the tenth anniversary of an earlier Optional Interest Payment Date, provided no event has occurred after such earlier Optional Interest Payment Date resulting in the repayment of all Arrears of Interest outstanding at that time.

“**Deferred Interest**” means any interest or other payment deferred on a Parity Security or a Junior Security on any scheduled interest payment date for such Parity Security or Junior Security.

#### (4) Mandatory Non-Payment.

If on any day which is 12 Business Days prior to any Interest Payment Date a Cash Flow-Event (as defined below) exists, the Issuer shall not, subject to § 3(5), pay the interest amount on such Interest Payment Date. The Issuer shall notify the Bondholders of the existence of the Cash Flow Event in accordance with § 12 not less than 8 Business Days prior to such Interest Payment Date. Interest not paid pursuant to this § 3(4) shall not constitute Arrears of Interest (non-cumulative); non-payment of interest pursuant to this § 3(4) shall not constitute a default of the Issuer or any other breach of obligations under the Bonds or for any other purpose.

Ein „**Cash Flow-Ereignis**“ liegt vor, sofern der Konsolidierte Brutto Cash Flow (wie nachstehend definiert) der Emittentin 7% der Konsolidierten Umsatzerlöse (wie nachstehend definiert) unterschreitet. Für beide Werte sind jeweils die im letzten veröffentlichten geprüften Konzernjahresabschluss (aufgestellt nach IFRS) ausgewiesenen Zahlen maßgeblich.

Für diese Zwecke wird der „**Konsolidierte Brutto Cash Flow**“ auf der Grundlage des letzten veröffentlichten geprüften Konzernjahresabschlusses der Emittentin (erstellt nach IFRS) berechnet, indem das operative Ergebnis (EBIT) des jeweiligen Geschäftsjahres (i) erhöht wird um die Abschreibungen, die Verluste aus dem Abgang von Anlagevermögen und die Zunahme der Pensionsrückstellungen, und (ii) ermäßigt wird um Ertragsteuern, Gewinne aus dem Abgang von Anlagevermögen und die Abnahme der Pensionsrückstellungen. Ist die Emittentin während der Laufzeit der Schuldverschreibungen gesetzlich verpflichtet oder macht sie von einem ihr zustehenden Wahlrecht Gebrauch, die Ermittlung des Konsolidierten Brutto Cash Flow in ihrem Jahresabschluss oder in ihrer Berichterstattung zu ändern, so bleibt während der Laufzeit der Schuldverschreibungen die vorstehende Berechnung des Konsolidierten Brutto Cash Flow maßgeblich.

Für diese Zwecke sind die „**Konsolidierten Umsatzerlöse**“ die im letzten veröffentlichten geprüften Konzernjahresabschluss der Emittentin (erstellt nach IFRS) ausgewiesenen Konzernumsatzerlöse.

(5) *Zinszahlungen bei Vorliegen eines Cash Flow-Ereignisses.*

(a) *Freiwillige Zinszahlungen.*

Die Emittentin ist nach ihrem freien Ermessen berechtigt, gemäß § 3(4) ausgefallene Zinszahlungen innerhalb eines Jahres nach dem Zinszahlungstag, an dem keine Zahlung erfolgt ist (der „**Relevante Zinszahlungstag**“), nachzuzahlen, wenn und soweit die Emittentin innerhalb des Zeitraums, der an dem Tag (einschließlich) beginnt, der 6 Monate vor dem Relevanten Zinszahlungstag liegt, und an dem Tag (einschließlich) endet, der 12 Monate nach dem Relevanten Zinszahlungstag liegt, durch die Ausgabe neuer Aktien oder durch den Verkauf eigener Aktien (mit Ausnahme von eigenen Aktien, welche innerhalb eines Zeitraums von 6 Monaten vor dem Relevanten Zinszahlungstag gegen Barzahlung erworben wurden) Mittel mindestens in Höhe des für eine solche freiwillige Nachzahlung erforderlichen Betrages erlöst hat. Eine Verpflichtung der Emittentin zur Ausgabe neuer oder zum Verkauf eigener Aktien besteht in keinem Fall; die Anleihegläubiger werden darauf hingewiesen, dass die Emittentin durch zwingende Bestimmungen des deutschen Aktienrechts an der Ausgabe von neuen oder dem Verkauf von eigenen Aktien gehindert sein kann. Soweit sich die Emittentin entscheidet, ausgefallene Zinszahlungen gemäß diesem § 3(5)(a) nachzuzahlen, hat sie dies den Anleihegläubigern gemäß § 12 unter Einhaltung einer Frist von mindestens 10 und höchstens 15 Geschäftstagen vor dem Tag der Nachzahlung unter Angabe des Tags der Nachzahlung und des auf jede Schuldverschreibung nachzuzahlenden Betrages mitzuteilen. Eine solche Mitteilung ist unwiderruflich und verpflichtet die Emittentin, die jeweiligen Zahlungen an dem in der Mitteilung genannten Tag zu bewirken.

A „**Cash Flow Event**“ shall exist if the Consolidated Gross Cash Flow (as defined below) of the Issuer is less than 7% of the Consolidated Sales Revenues (as defined below) of the Issuer, in each case as shown in the the last published audited annual consolidated financial statements of the Issuer (drawn up in accordance with IFRS).

For these purposes, the „**Consolidated Gross Cash Flow**“ shall be determined on the basis of the last published audited annual consolidated financial statements of the Issuer (drawn up in accordance with IFRS) by adjusting the consolidated operating result (EBIT) of the respective fiscal year (i) by adding the depreciation and amortisation, the loss on retirements of non-current assets and increase in pension provisions, and (ii) by deducting income taxes, gains on retirement of non-current assets and decrease in pension provisions. In the event that during the life of the Bonds the Issuer is legally obliged to or makes use of a respective right to change the determination of Consolidated Gross Cash Flow in any of his financial statements or reportings, the aforementioned determination shall be applicable for the calculation of Consolidated Gross Cash Flow during the life of the Bonds.

For these purposes, the „**Consolidated Sales Revenues**“ shall be the consolidated sales revenues as shown in the last published audited annual consolidated financial statements of the Issuer (drawn up in accordance with IFRS).

(5) *Interest Payments in case of a Cash Flow Event.*

(a) *Voluntary.*

The Issuer is entitled in its sole discretion to make up for payments of interest not made pursuant to § 3(4) within one year following the Interest Payment Date on which no payment was made (the „**Relevant Interest Payment Date**“), if and to the extent the Issuer has raised, within the period that starts on the day (inclusive) which is 6 months before the Relevant Interest Payment Date and ends on the day (inclusive) which is 12 months after the Relevant Interest Payment Date funds of at least the amount required for such voluntary payment by issuing new or selling treasury shares (save for treasury shares purchased against cash within a period of 6 months prior to the Relevant Interest Payment Date). Under no circumstances shall there be an obligation on the part of the Issuer to issue new or sell treasury shares; Bondholders are notified that compulsory provisions of German stock corporation law may prevent the Issuer from selling treasury shares or issuing new shares. If the Issuer decides pursuant to this § 3(5)(a) to make up for payments of interest previously not paid, it shall notify the Bondholders in accordance with § 12 not less than 10 and not more than 15 Business Days prior to the date on which such payment will be made; such notice shall state the date of payment and the amount payable per Bond. Such notice shall be irrevocable and shall oblige the Issuer to make the relevant payment on the date specified in such notice.



(b) *Verpflichtende Zinszahlungen.*

Falls an einem Zinszahlungstag gemäß § 3(4) keine Zahlung erfolgt ist, hat die Emittentin den ausgefallenen Zinsbetrag innerhalb von 6 Monaten nach dem Tag ihrer auf den Relevanten Zinszahlungstag folgenden Ordentlichen Hauptversammlung aus den Erlösen des Verkaufs eigener Aktien oder der Ausgabe neuer Aktien nachzuzahlen, wenn und soweit alle folgenden Bedingungen erfüllt sind:

- (i) die auf den Relevanten Zinszahlungstag folgende Ordentliche Hauptversammlung beschließt eine Dividende für eine Aktiengattung der Emittentin;
- (ii) die Emittentin hat innerhalb des Zeitraums, der an dem Tag (einschließlich) beginnt, der 6 Monate vor dem Tag der Ordentlichen Hauptversammlung liegt, und an dem Tag (einschließlich) endet, der 6 Monate nach dem Tag der Ordentlichen Hauptversammlung liegt, durch die Ausgabe neuer Aktien oder durch den Verkauf eigener Aktien Mittel mindestens in Höhe des für eine solche Nachzahlung erforderlichen Betrages erlöst;
- (iii) die relevanten eigenen Aktien wurden nicht nach dem Tag, der 6 Monate vor dem Relevanten Zinszahlungstag liegt, gegen Barzahlung erworben;
- (iv) im Falle des Verkaufs eigener Aktien unterliegt der Vorstand beim Verkauf dieser eigenen Aktien und bei der Verwendung der Verkaufserlöse gemäß diesem § 3(5)(b) keinen Beschränkungen;
- (v) im Falle der Ausgabe neuer Aktien werden diese neuen Aktien auf der Basis einer Ermächtigung in der Satzung und im Einklang mit den anwendbaren Gesetzen im Rahmen genehmigten Kapitals begeben, der Vorstand unterliegt bei der Ausgabe dieser neuen Aktien und bei der Verwendung der Erlöse gemäß diesem § 3(5)(b) keinen Beschränkungen und der Aufsichtsrat hat seine Zustimmung zur Ausgabe dieser neuen Aktien erklärt; und
- (vi) der Verkauf der eigenen Aktien und die Ausgabe der neuen Aktien kann unter Einhaltung der zwingenden Vorschriften des anwendbaren deutschen Rechts durchgeführt werden.

Selbst wenn eine solche Dividende beschlossen wurde, besteht die Verpflichtung der Emittentin, die gemäß § 3(4) ausgefallene Zinszahlung nachzuholen, nicht, wenn die Emittentin (aus rechtlichen oder tatsächlichen Gründen) verhindert ist, innerhalb des oben bezeichneten Zeitraums neue Aktien auszugeben oder eigenen Aktien zu verkaufen.

Die Anleihegläubiger haben im Hinblick auf eine Nichtnachzahlung von Zinsen gemäß diesem § 3(5)(b) keine Ansprüche gegen den Vorstand oder den Aufsichtsrat oder einzelne Aktionäre.

**§ 4  
RÜCKZAHLUNG UND RÜCKKAUF**

(1) *Endfälligkeit.*

Die Schuldverschreibungen werden am 29. Juli 2105 zum Nennbetrag zurückgezahlt. Die Emittentin beabsichtigt, innerhalb von 6 Monaten vor dem 29. Juli

(b) *Compulsory.*

If on an Interest Payment Date no payment has been made due to § 3(4) the Issuer shall pay the unpaid amount of interest, within 6 months following the date of the GMS of the Issuer, immediately following the Relevant Interest Payment Date, out of the proceeds from the sale of treasury shares or the issue of new shares, however, only if and to the extent all of the following conditions are fulfilled:

- (i) a dividend is declared in respect of any class of shares of the Issuer at the GMS of the Issuer immediately following the Relevant Interest Payment Date;
- (ii) the Issuer has raised within the period that starts on the day (inclusive) which is 6 months before the date of the GMS and ends on the day (inclusive) which is 6 months after the GMS, funds at least in the amount required for such payment by issuing new shares or selling treasury shares;
- (iii) the relevant treasury shares were not purchased against cash after the day falling 6 months prior to the Relevant Interest Payment Date;
- (iv) in relation to the sale of treasury shares, the Management Board (*Vorstand*) is not subject to any restriction with respect to selling such treasury shares and using the proceeds from their sale for purposes of this § 3(5)(b);
- (v) in relation to the issue of new shares, the shares are issued pursuant to an authorisation by the articles of association and applicable laws (authorised capital – *genehmigtes Kapital*), and the Management Board is not subject to any restriction with respect to issuing such new shares, and using the proceeds therefrom, for purposes of this § 3(5)(b), and the Supervisory Board (*Aufsichtsrat*) has declared its consent with respect to the issuance of such new shares; and
- (vi) any such sale of treasury shares or issue of new shares can be implemented subject to the limitations of applicable mandatory German law.

Even if such dividend was declared, but the Issuer, however, is unable (for any legal reason or *de facto*) to issue new shares or sell treasury shares within the relevant period set out above, the obligation of the Issuer to satisfy the interest payment not made due to § 3(4) shall be cancelled.

Bondholders shall not be entitled to any recourse against the Management Board, the Supervisory Board or individual shareholders for the non-payment of interest pursuant to this § 3(5)(b).

**§ 4  
REDEMPTION AND PURCHASE**

(1) *Maturity.*

The Bonds will be redeemed on July 29, 2105 at par. The issuer intends to issue, against issue proceeds at least equal to the amount payable on redemption,

2105 Gleichrangige Wertpapiere und/oder Nachrangige Wertpapiere mit den gleichen Bedingungen wie die Schuldverschreibungen und/oder Aktien gegen Ausgabeerlöse mindestens in Höhe des Rückzahlungsbetrags zu begeben oder eigene Aktien (mit Ausnahme eigener Aktien, die innerhalb von 6 Monaten vor deren relevantem Verkaufsdatum gegen Barzahlung erworben wurden) mit einem Erlös mindestens in Höhe des Rückzahlungsbetrags zu verkaufen.

(2) *Kündigungsrecht der Emittentin und vorzeitige Rückzahlung aus Steuergründen.*

Bei Eintritt eines Gross-up-Ereignisses, oder eines Steuerereignisses vor dem 29. Juli 2015 ist die Emittentin vorbehaltlich Absatz (3) berechtigt, die Schuldverschreibungen jederzeit (insgesamt, jedoch nicht teilweise) durch eine unwiderrufliche Mitteilung an die Anleihegläubiger gemäß § 12 unter Einhaltung einer Frist von mindestens 30 und höchstens 60 Tagen zu kündigen und zum Vorzeitigen Rückzahlungsbetrag (wie in Absatz (4) definiert) zurückzuzahlen.

(a) Ein „**Gross-up-Ereignis**“ liegt vor, wenn die Emittentin aufgrund einer Gesetzesänderung oder einer Änderung der Vorschriften der Bundesrepublik Deutschland oder einer ihrer Gebietskörperschaften oder Steuerbehörden oder als Folge einer Änderung der offiziellen Auslegung oder Anwendung dieser Gesetze oder Vorschriften durch eine gesetzgebende Körperschaft, ein Gericht, eine Steuerbehörde, eine Aufsichtsbehörde oder eine sonstige Behörde (einschließlich des Erlasses von Gesetzen sowie der Bekanntmachung gerichtlicher oder aufsichtsrechtlicher Entscheidungen) verpflichtet ist oder verpflichtet sein wird, Zusätzliche Beträge gemäß § 7 zu zahlen und die Emittentin diese Verpflichtung nicht abwenden kann, indem sie zumutbare Maßnahmen ergreift, die sie nach Treu und Glauben für angemessen hält.

Eine Kündigung im Falle eines Gross-Up-Ereignisses darf nicht früher als 90 Tage vor dem frühesten Termin vorgenommen werden, an dem die Emittentin erstmals verpflichtet wäre, die jeweiligen Zusätzlichen Beträge auf fällige Beträge auf die Schuldverschreibungen zu zahlen.

(b) Ein „**Steuerereignis**“ liegt vor, wenn aufgrund einer Gesetzesänderung oder einer Änderung der Vorschriften der Bundesrepublik Deutschland oder einer ihrer Gebietskörperschaften oder Steuerbehörden oder als Folge einer Änderung der offiziellen Auslegung oder Anwendung solcher Gesetze oder Vorschriften durch eine gesetzgebende Körperschaft, ein Gericht, eine Steuerbehörde, eine Aufsichtsbehörde oder eine sonstige Behörde (einschließlich des Erlasses von Gesetzen sowie der Bekanntmachung gerichtlicher oder aufsichtsrechtlicher Entscheidungen), Zinsen, die von der Emittentin auf die Schuldverschreibungen zu zahlen sind, von der Emittentin nicht mehr für Zwecke der deutschen Einkommen- und Ertragsteuer voll abzugsfähig sind und die Emittentin dieses Risiko nicht abwenden kann, indem sie zumutbare Maßnahmen ergreift, die sie nach Treu und Glauben für angemessen hält.

(c) Die Emittentin hat der Hauptzahlstelle vor Kündigung (wie oben beschrieben) folgende Dokumente zu übermitteln oder deren Übermittlung sicherzustellen:

(i) eine von zwei ordnungsgemäß bevollmächtigten Vertretern der Emittentin unterzeichnete

within the 6 months preceding July 29, 2105, Parity Securities and/or Junior Securities, with terms and conditions that are the same as those of the Bonds, and/or shares or to sell treasury shares (save for shares purchased against cash within a period of 6 months prior to the relevant sales date of the respective treasury shares) for an amount at least equal to the amount payable upon redemption.

(2) *Issuer Call Right and Early Redemption due to Tax Reasons.*

If prior to July 29, 2015 either a Gross-up Event or a Tax Event occurs, the Issuer may subject to subparagraph (3) call and redeem the Bonds (in whole but not in part) at their Early Redemption Amount (as defined in subparagraph (4)) at any time on the giving of not less than 30 and not more than 60 days' irrevocable notice to the Bondholders in accordance with § 12.

(a) A „**Gross Up Event**“ shall occur if the Issuer has or will become obliged to pay Additional Amounts pursuant to § 7 as a result of any change in, or amendment to, the laws or regulations of the Federal Republic of Germany or any political subdivision or taxing authority thereof, or therein, or as a result of any amendment to, or any change in, any official interpretation or application of any such laws or regulations by any legislative body, court, or taxing authority, governmental agency or regulatory authority (including the enactment of any legislation and the publication of any judicial decision or regulatory determination), and that obligation cannot be avoided by the Issuer taking such reasonable measures it (acting in good faith) deems appropriate.

In the case of a Gross-up Event no such notice of redemption may be given earlier than 90 days prior to the earliest date on which the Issuer would be for the first time obliged to pay the Additional Amounts in question on payments due in respect of the Bonds.

(b) A „**Tax Event**“ shall occur if as a result of any change in, or amendment to, the laws or regulations of the Federal Republic of Germany or any political subdivision or taxing authority thereof, or therein, or as a result of any amendment to, or change in, any official interpretation or application of any such laws or regulations by any legislative body, court, or taxing authority, governmental agency or regulatory authority (including the enactment of any legislation and the publication of any judicial decision or regulatory determination), interest payable by the Issuer in respect of the Bonds is no longer fully deductible by the Issuer for German income tax purposes, and that risk cannot be avoided by the Issuer taking such reasonable measures as it (acting in good faith) deems appropriate.

(c) Prior to the giving of any such notice of redemption as described above, the Issuer will deliver or procure that there is delivered to the Principal Paying Agent:

(i) a certificate signed by any two duly authorized representatives of the Issuer stating that the

Bescheinigung, die bestätigt, dass die Emittentin berechtigt ist, die entsprechende Kündigung vorzunehmen, und aus der die Tatsachen hervorgehen, auf deren Grundlage die Voraussetzungen für das Kündigungsrecht der Emittentin erfüllt sind; und

- (ii) ein Gutachten eines angesehenen unabhängigen Rechtsberaters, aus dem hervorgeht, dass die Emittentin verpflichtet ist oder verpflichtet sein wird, die betreffenden Zusätzlichen Beträge als Folge eines Gross-up-Ereignisses zu zahlen oder die Emittentin die Abzugsfähigkeit von der deutschen Einkommen- oder Ertragsteuer als Folge eines Steuerereignisses verliert.

(3) *Bestimmungen bezüglich des Kündigungsrechts der Emittentin und der vorzeitigen Rückzahlung aus Steuergründen.*

Im Falle der Ausübung des Kündigungsrechts gemäß § 4(2) durch die Emittentin beabsichtigt die Emittentin, innerhalb von 6 Monaten vor dem Wirksamwerden der Kündigung Gleichrangige Wertpapiere und/oder Nachrangige Wertpapiere mit den gleichen Bedingungen wie die Schuldverschreibungen und/oder Aktien gegen Ausgabeerlöse mindestens in Höhe des Rückzahlungsbetrags zu begeben, mit der Maßgabe, dass Änderungen vorgenommen werden können, damit die zu begebenden Gleichrangigen Wertpapiere und/oder Nachrangigen Wertpapiere ohne Vorliegen eines Gross-up-Ereignisses bzw. Steuerereignisses begeben werden können, wobei derartige Änderungen zu der gleichen oder einer höheren Eigenkapitalanrechnung der so begebenen Gleichrangigen Wertpapiere oder Nachrangigen Wertpapiere führen müssen.

(4) *Der Vorzeitige Rückzahlungsbetrag.*

Der „**Vorzeitige Rückzahlungsbetrag**“ entspricht (i) im Falle eines Gross-up-Ereignisses dem Nennbetrag der Schuldverschreibungen zuzüglich bis zum Rückzahlungstag (ausschließlich) aufgelaufener Zinsen und sämtlicher ausstehender Zinsrückstände oder (ii) im Falle eines Steuerereignisses dem (x) Nennbetrag der Schuldverschreibungen oder (y) falls höher, dem Abgezinsten Marktpreis (wie nachstehend definiert) der Schuldverschreibungen, in jedem dieser Fälle zuzüglich bis zum Rückzahlungstag (ausschließlich) aufgelaufener Zinsen und sämtlicher ausstehender Zinsrückstände.

Der „**Abgezinsten Marktpreis**“ wird von der Berechnungsstelle errechnet und entspricht der Summe der auf den Rückzahlungstag Abgezinsten Werte (wie nachstehend definiert) (i) des Nennbetrages der Schuldverschreibungen und (ii) der bis zum 29. Juli 2015 (ausschließlich) verbleibenden vorgesehenen Zinszahlungen auf die Schuldverschreibungen. Bei dieser Berechnung ist anzunehmen, dass die Zahlung des Nennbetrags der Schuldverschreibungen am 29. Juli 2015 fällig ist und alle relevanten Zinsen in vollem Umfang gezahlt werden.

Ein „**Abgezinsten Wert**“ wird von der Berechnungsstelle errechnet, indem der Nennbetrag der Schuldverschreibungen und bis zum 29. Juli 2015 verbleibende Zinszahlungen auf jährlicher Basis, unter Zugrundelegung eines Jahres mit 365 bzw. 366 Tagen und der Zahl der tatsächlich in dem Jahr verstrichenen Tage und der Angepassten Vergleichbaren Rendite (wie nachstehend definiert) zuzüglich 0,75%, abgezinst werden.

Issuer is entitled to effect such redemption and setting out a statement of facts showing that the conditions precedent to the exercise of the right of the Issuer to redeem have been satisfied; and

- (ii) an opinion of an independent legal adviser of recognised standing to the effect that the Issuer has or will become obliged to pay the Additional Amounts in question as a result of a Gross-up Event or the Issuer has suffered the loss of deductibility for German income tax purposes as a result of a Tax Event.

(3) *Conditions to Issuer's Call Right and Early Redemption due to Tax Reasons.*

In the event of an Issuer call right pursuant to § 4(2), the Issuer intends to issue, against issue proceeds at least equal to the amount payable on redemption, within the 6 months preceding the redemption becoming effective, Parity Securities and/or Junior Securities, with terms and conditions that are the same as those of the Bonds, and/or shares, provided that modifications may be made so that the Parity Securities and/or Junior Securities to be issued may be issued without there being a Gross-up Event or a Tax Event, as the case may be, and further provided that such modifications shall result in the same or a more equity-like treatment of the Parity Securities or Junior Securities so issued.

(4) *Early Redemption Amount.*

The „**Early Redemption Amount**“ will (i) upon the occurrence of a Gross-up Event, equal the principal amount of the Bonds, plus accrued interest until the date of redemption (exclusive) and all outstanding Arrears of Interest or (ii) upon the occurrence of a Tax Event, be calculated as the greater of (x) the aggregate principal amount of the Bonds and (y) the Make-Whole Amount (as defined below) of the Bonds, in each case, plus accrued interest until the date of redemption (exclusive) and all outstanding Arrears of Interest.

The „**Make-Whole Amount**“ will be calculated by the Calculation Agent, and will equal the sum of the Present Values (as defined below) on the date of redemption of (i) the principal amount of the Bonds and (ii) the remaining scheduled payments of interest on the Bonds to but excluding July 29, 2015. In performing such calculation it shall be assumed that the principal amount of the Bonds is a cash flow due on July 29, 2015 and that all applicable interest payments are to be made in full.

The „**Present Values**“ will be calculated by the Calculation Agent by discounting the principal amount of the Bonds and the remaining interest payments to July 29, 2015 on an annual basis, assuming a 365-day year or a 366-day year, as the case may be, and the actual number of days elapsed in such year and using the Adjusted Comparable Yield (as defined below) plus 0.75%.

Die „**Angepasste Vergleichbare Rendite**“ entspricht der am Rückzahlungs-Berechnungstag (wie nachstehend definiert) bestehenden Rendite der von der Berechnungsstelle im Einvernehmen mit der Emittentin ausgewählten Euro-Referenz-Anleihe mit einer mit der verbleibenden Laufzeit der Schuldverschreibung bis zum 29. Juli 2015 vergleichbaren Laufzeit. Dabei handelt es sich um die Rendite einer solchen Euro-Referenz-Anleihe, die im Zeitpunkt der Auswahlentscheidung und entsprechend der üblichen Finanzmarktpraxis zur Preisbestimmung bei Neuemissionen von Unternehmensanleihen mit einer mit dem Zeitraum bis zum 29. Juli 2015 vergleichbaren Laufzeit verwendet würde.

„**Rückzahlungs-Berechnungstag**“ ist der dritte Geschäftstag vor dem Tag, an dem die Schuldverschreibungen nach Wahl der Emittentin infolge eines Steuerereignisses zurückgezahlt werden.

(5) *Kündigung und vorzeitige Rückzahlung nach Wahl der Emittentin.*

Die Emittentin kann die Schuldverschreibungen vorbehaltlich § 4(6) zum 29. Juli 2015 oder zu jedem danach folgenden Variablen Zinszahlungstag durch unwiderrufliche Mitteilung an die Anleihegläubiger gemäß § 12 unter Einhaltung einer Frist von mindestens 30 und höchstens 60 Tagen kündigen und zum Nennbetrag zuzüglich sämtlicher bis zum Rückzahlungstag (ausschließlich) aufgelaufener Zinsen und sämtlicher am Rückzahlungstag ausstehender Zinsrückstände (insgesamt, jedoch nicht teilweise) zurückzahlen.

Eine solche Kündigung verpflichtet die Emittentin, die Schuldverschreibungen am 29. Juli 2015 oder an dem in der Kündigung angegebenen Variablen Zinszahlungstag zurückzuzahlen.

(6) *Bestimmungen bezüglich der Kündigung nach Wahl der Emittentin.*

Im Falle einer Kündigung durch die Emittentin gemäß § 4(5) beabsichtigt die Emittentin, innerhalb von 6 Monaten vor dem Wirksamwerden der Kündigung Gleichrangige Wertpapiere und/oder Nachrangige Wertpapiere mit den gleichen Bedingungen wie die Schuldverschreibungen und/oder Aktien gegen Ausgabeerlöse mindestens in Höhe des Rückzahlungsbetrags zu begeben oder eigene Aktien (mit Ausnahme eigener Aktien, die innerhalb von 6 Monaten vor deren relevantem Verkaufsdatum gegen Barzahlung erworben wurden) mit einem Erlös mindestens in Höhe des Rückzahlungsbetrags zu verkaufen.

(7) *Rückkauf.*

Die Emittentin oder eine Konzerngesellschaft können jederzeit Schuldverschreibungen im Markt oder anderweitig zu jedem beliebigen Preis kaufen. Derartig erworbene Schuldverschreibungen können entwertet, gehalten oder wieder veräußert werden. Falls die Emittentin oder eine Konzerngesellschaft Schuldverschreibungen im Volumen von 80% oder mehr des ursprünglich begebenen Gesamtnennbetrages der Schuldverschreibungen erworben hat, kann die Emittentin die verbleibenden Schuldverschreibungen (insgesamt, jedoch nicht teilweise) kündigen und zu einem Betrag zurückzahlen, der dem Nennbetrag der Schuldverschreibungen oder, falls dieser höher ist, dem Abgezinsten Marktpreis für die Schuldverschreibungen, jeweils zuzüglich bis zum Rückzahlungstag (ausschließlich) aufgelaufener Zinsen und zuzüglich aller ausstehenden Zinsrückstände, entspricht.

The „**Adjusted Comparable Yield**“ will be the yield at the Redemption Calculation Date (as defined below) on the Euro benchmark security selected by the Calculation Agent, after consultation with the Issuer, as having a maturity comparable to the remaining term of the Bonds to July 29, 2015 that would be utilised, at the time of selection and in accordance with customary financial practice, in pricing new issues of corporate debt securities of comparable maturity to July 29, 2015.

„**Redemption Calculation Date**“ means the third Business Day prior to the date on which the Bonds are redeemed at the option of the Issuer as a result of a Tax Event.

(5) *Issuer Call Right and Early Redemption at the Option of the Issuer.*

Subject to § 4(6), the Issuer may call and redeem the Bonds (in whole but not in part) on July 29, 2015 or on any Floating Rate Interest Payment Date thereafter at their principal amount, plus any interest accrued until the redemption date (exclusive) and upon payment of all outstanding Arrears of Interest to the date of redemption on the giving of not less than 30 and not more than 60 days' irrevocable notice of redemption to the Bondholders in accordance with § 12.

Such notice of redemption shall oblige the Issuer to redeem the Bonds on July 29, 2015 or the Floating Rate Interest Payment Date specified in that notice.

(6) *Conditions to Call at the Option of the Issuer.*

In the event of an Issuer call right pursuant to § 4(5), the Issuer intends to issue, against issue proceeds at least equal to the amount payable on redemption, within the 6 months preceding the redemption becoming effective, Parity Securities and/or Junior Securities, with terms and conditions that are the same as those of the Bonds, and/or shares or to sell treasury shares (save for shares purchased against cash within a period of 6 months prior to the relevant sales date of the respective treasury shares) for an amount at least equal to the amount payable upon redemption.

(7) *Purchase.*

The Issuer, or any Group Entity, may at any time purchase Bonds in the open market or otherwise and at any price. Such acquired Bonds may be cancelled, held or resold. In the event that the Issuer, or any Group Entity, has purchased Bonds equal to or in excess of 80% of the aggregate principal amount of the Bonds initially issued, the Issuer may call and redeem the remaining Bonds (in whole but not in part) at an amount calculated as the greater of the principal amount of the Bonds and the Make-Whole Amount of the Bonds plus accrued interest until the date of redemption (exclusive) and all outstanding Arrears of Interest.

## § 5

### ZAHLSTELLEN UND BERECHNUNGSSTELLE

#### (1) Hauptzahlstelle.

Die Emittentin hat JPMorgan Chase Bank, N.A. als Hauptzahlstelle und Berechnungsstelle („**Hauptzahlstelle**“ oder „**Berechnungsstelle**“) und J.P. Morgan Bank Luxembourg S.A. als Zahlstelle (die „**Zahlstelle**“, zusammen mit der Hauptzahlstelle die „**Zahlstellen**“) bestimmt.

#### (2) Rechtsverhältnisse der Zahlstellen und der Berechnungsstelle.

Die Hauptzahlstelle und die Berechnungsstelle handeln jeweils ausschließlich als Beauftragte der Emittentin und übernehmen keine Verpflichtungen gegenüber den Anleihegläubigern und es wird kein Vertrags-, Auftrags- oder Treuhandverhältnis zwischen ihnen und den Anleihegläubigern begründet. Die Zahlstellen sind von den Beschränkungen des § 181 BGB befreit.

#### (3) Ersetzung von Zahlstellen und Berechnungsstelle.

Die Emittentin behält sich das Recht vor, jederzeit mit Zustimmung der Hauptzahlstelle die Beauftragung von jeder Zahlstelle oder von der Berechnungsstelle zu ändern oder eine solche Beauftragung zu beenden und zusätzliche Zahlstellen oder Nachfolger der Zahlstellen bzw. Berechnungsstellen zu bestimmen. Die Emittentin wird jedoch gewährleisten, dass, solange die Schuldverschreibungen an einer Wertpapierbörse notiert sind, jederzeit eine Zahlstelle in dem Staat beauftragt ist, in dem die Wertpapierbörse ihren Sitz hat. Die Emittentin wird ferner, wenn im Hinblick auf die Richtlinie der Europäischen Union zur Besteuerung privater Zinserträge vom 3. Juni 2003 ein Gesetz erlassen wird, das diese Richtlinie umsetzt oder das eingeführt wird, um dieser Richtlinie nachzukommen, sicherstellen, dass in einem Mitgliedstaat der Europäischen Union eine Zahlstelle unterhalten wird (sofern es eine derartige gibt), die nicht verpflichtet ist, Steuern aufgrund dieser Richtlinie oder eines solchen Gesetzes einzubehalten oder abzuziehen. Den Anleihegläubigern werden Änderungen in Bezug auf die Zahlstellen oder die Berechnungsstelle oder ihrer jeweils angegebenen Geschäftsstellen unverzüglich gemäß § 12 mitgeteilt.

## § 6

### ZAHLUNGEN

#### (1) Zahlung von Kapital und Zinsen.

Die Emittentin verpflichtet sich, Kapital und Zinsen auf die Schuldverschreibungen sowie alle sonstigen auf die Schuldverschreibungen zahlbaren Beträge bei Fälligkeit in Euro zu zahlen. Die Zahlung von Kapital und Zinsen erfolgt, vorbehaltlich anwendbarer Steuer- und anderer Gesetze und Vorschriften, an die Hauptzahlstelle zur Weiterleitung an das Clearing System oder an dessen Order zur Gutschrift für die jeweiligen Kontoinhaber gegen Vorlage und (sofern es sich um die Kapitalrückzahlung handelt) Einreichung der Globalurkunde. Die Zahlung an das Clearing System oder an dessen Order befreit die Emittentin in Höhe der geleisteten Zahlung von ihren entsprechenden Verbindlichkeiten aus den Schuldverschreibungen, wenn die Schuldverschreibungen noch durch das Clearing System gehalten werden. Jede Bezugnahme in diesen Anleihebedingungen auf Kapital oder Zinsen schließt alle Zusätzlichen Beträge nach § 7 ein.

## § 5

### PAYING AGENTS AND CALCULATION AGENT

#### (1) Appointment.

The Issuer has appointed JPMorgan Chase Bank, N.A. as principal paying agent and calculation agent (the „**Principal Paying Agent**“ or „**Calculation Agent**“) and J.P. Morgan Bank Luxembourg S.A. as paying agent (the „**Paying Agent**“, together with the Principal Paying Agent, the „**Paying Agents**“).

#### (2) Status of the Agents.

The Principal Paying Agent and Calculation Agent act, in their respective capacities, solely as agents of the Issuer and do not assume any obligations towards or relationship of contract, agency or trust for or with any of the Bondholders. The Paying Agents are exempt from the restrictions of § 181 of the German Civil Code (*Bürgerliches Gesetzbuch*).

#### (3) Variation or Termination of Appointment.

The Issuer, with the consent of the Principal Paying Agent, reserves the right at any time to vary or terminate the appointment of any of the Paying Agents or the Calculation Agent and to appoint successor or additional Paying Agents or a successor Calculation Agent, provided that, for as long as the Bonds are listed on any stock exchange, the Issuer will at all times maintain a Paying Agent in the jurisdiction in which such stock exchange is located; and provided further that if, in light of the European Union Directive on the taxation of savings of June 3, 2003, any law implementing, or introduced in order to conform to, such Directive is introduced, the Issuer will ensure that (to the extent that such a Paying Agent exists) it maintains a Paying Agent in a Member State of the European Union that will not be obliged to withhold or deduct tax pursuant to this Directive or any such law. Notice of any change in the Paying Agents or Calculation Agent or in the specified office of any of the Paying Agents or the Calculation Agent will be given without undue delay to the Bondholders in accordance with § 12.

## § 6

### PAYMENTS

#### (1) Payment of Principal and Interest.

The Issuer undertakes to pay, as and when due, principal and interest as well as all other amounts payable on the Bonds in Euro. Payment of principal and interest on the Bonds shall be made, subject to applicable fiscal and other laws and regulations, through the Principal Paying Agent for on-payment to the Clearing System or to its order for credit to the respective account holders upon presentation and (in the case of the payment in respect of principal) surrender of the Global Bond. Payments to the Clearing System or to its order shall, to the extent of amounts so paid and provided the Bonds are still held on behalf of the Clearing System, constitute the discharge of the Issuer from its corresponding obligations under the Bonds. Any reference in these Conditions of Issue to principal or interest will be deemed to include any Additional Amounts as set forth in § 7.



(2) *Fälligkeitstag kein Geschäftstag.*

Falls ein Fälligkeitstag für die Zahlung von Kapital und/oder Zinsen kein Geschäftstag ist, erfolgt die Zahlung, außer im Fall des § 3(2)(b), erst am nächstfolgenden Geschäftstag. Ein Anleihegläubiger ist nicht berechtigt, zusätzliche Zinsen oder eine andere Entschädigung wegen eines solchen Zahlungsaufschubs zu verlangen.

(3) *Hinterlegung.*

Die Emittentin kann bei dem Amtsgericht Frankfurt am Main die von den Anleihegläubigern nicht innerhalb von zwölf Monaten nach dem Fälligkeitstag beanspruchten Kapital- und Zinsbeträge hinterlegen. Soweit auf das Recht zur Rücknahme der hinterlegten Beträge verzichtet wird, erlöschen die betreffenden Ansprüche der Anleihegläubiger gegen die Emittentin.

## § 7 STEUERN

Sämtliche Zahlungen in Bezug auf die Schuldverschreibungen sind ohne Einbehalt oder Abzug (einschließlich im Hinblick auf Quellensteuer) von oder aufgrund von gegenwärtig oder zukünftig bestehenden Steuern, Abgaben, Festsetzungen oder behördlichen Gebühren gleich welcher Art („**Steuer**“) zu leisten, die von oder im Auftrag der Bundesrepublik Deutschland oder von oder im Auftrag einer ihrer mit dem Recht zur Steuererhebung versehenen Gebietskörperschaft oder Behörde auferlegt, erhoben, eingezogen, einbehalten oder festgesetzt werden (zusammen „**Quellensteuer**“), es sei denn, dieser Einbehalt oder Abzug ist gesetzlich vorgeschrieben. In diesem Fall wird die Emittentin diejenigen zusätzlichen Beträge (die „**Zusätzlichen Beträge**“) bezahlen, die erforderlich sind, damit die den Anleihegläubigern zufließenden Nettobeträge nach einem solchen Einbehalt oder Abzug jeweils den Beträgen an Kapital und Zinsen entsprechen, die ohne einen solchen Abzug oder Einbehalt von den Anleihegläubigern empfangen worden wären. Die Verpflichtung zur Zahlung solcher zusätzlicher Beträge besteht jedoch nicht im Hinblick auf Steuern, die

- (a) anders als durch Einbehalt oder Abzug von Zahlungen, die die Emittentin an den Anleihegläubiger leistet, zu entrichten sind; oder
- (b) nicht erhoben worden wären, hätte der Anleihegläubiger die Schuldverschreibung nicht erst mehr als 15 Tage nach Fälligkeit der entsprechenden Zahlung oder, falls dieser Tag auf einen späteren Termin fällt, nach dem Tag, an dem die Zahlung ordnungsgemäß erfolgen konnte, vorgelegt; oder
- (c) von einer Zahlstelle abgezogen oder einbehalten werden, wenn eine andere Zahlstelle die Zahlung ohne einen solchen Abzug oder Einbehalt hätte vornehmen können; oder
- (d) nicht erhoben oder einbehalten worden wären, wenn der Anleihegläubiger die Schuldverschreibungen nicht in Deutschland zur Zahlung vorgelegt hätte, es sei denn, der Anleihegläubiger war verpflichtet, die Schuldverschreibungen in Deutschland zur Zahlung vorzulegen, ohne dass die Möglichkeit bestand, diese an einem anderen Ort vorzulegen; oder
- (e) abzuziehen oder einzubehalten sind aufgrund (i) einer Richtlinie oder Verordnung der Europäischen Union betreffend die Besteuerung von Zinserträgen oder (ii) einer zwischenstaatlichen Vereinbarung oder Absprache über deren Besteuerung, an der die Bundesrepublik Deutschland oder die Europäische Union beteiligt ist/sind, oder (iii) einer gesetzlichen Vorschrift, die

(2) *Due Date not a Business Day.*

Except as otherwise provided in § 3(2)(b), if the due date for any payment of principal and/or interest is not a Business Day, payment shall be effected only on the next Business Day. A Bondholder shall have no right to claim payment of any additional interest or other indemnity in respect of such delay in payment.

(3) *Deposit.*

The Issuer may deposit with the local court (*Amtsgericht*) in Frankfurt am Main principal and interest not claimed by Bondholders within twelve months after the respective due date. To the extent the right to withdraw such deposit is waived, the relevant claims of the Bondholders against the Issuer shall cease.

## § 7 TAXATION

All payments in respect to the Bonds will be made free and clear of, and without deduction or withholding at source for or on account of any present or future taxes, duties, assessments or governmental charges of any nature („**Taxes**“) whatsoever imposed, levied, withheld, assessed or collected by or on behalf of the Federal Republic of Germany or by or on behalf of any political subdivision or authority thereof having power to tax (together „**Withholding Taxes**“), unless such deduction or withholding is required by law. In such event, the Issuer shall pay such additional amounts (the „**Additional Amounts**“) necessary for the Bondholders to receive net amounts after such deduction or withholding, which are equal to the amounts which would have been received by them without such deduction or withholding. No such Additional Amounts shall, however, be payable with respect to such Taxes which:

- (a) are payable otherwise than by withholding or deduction from payments made by the Issuer to the Bondholder, or
- (b) would not be imposed but for the presentation by a Bondholder for payment on a date more than 15 days after the date on which such payment became due and payable or the date on which payment thereof is duly provided for, whichever occurs later; or
- (c) are deducted or withheld by a Paying Agent from a payment if the payment could have been made by another Paying Agent without such deduction or withholding; or
- (d) would not have been imposed or withheld if such Bondholder had not presented those Bonds for payment in Germany, as the case may be, unless such Bondholder was required to present the Bonds for payment in Germany, as the case may be, and they could not have been presented for payment anywhere else; or
- (e) are deducted or withheld pursuant to (i) any European Union Directive or Regulation concerning the taxation of savings, or (ii) any international treaty or understanding relating to such taxation and to which the Federal Republic of Germany or the European Union is a party/are parties or (iii) any provision of law implementing, or complying with, or introduced to conform

diese Richtlinie, Verordnung, Vereinbarung oder Absprache umgesetzt oder befolgt; oder

- (f) nicht zu zahlen gewesen wären, wenn der Anleihegläubiger bezüglich seiner Staatsangehörigkeit, seines Wohnsitzes oder seiner Identität entsprechende Informationen beigebracht oder andere einschlägige Nachweise oder Berichtspflichten erfüllt hätte, eine Nichtansässigkeits-Erklärung oder eine Erklärung zu einem vergleichbaren Befreiungstatbestand abgegeben oder eine entsprechende andere Bescheinigung vorgelegt hätte, deren Vorlegung die Zahlung von Quellensteuer vermieden hätte; oder
- (g) wegen einer gegenwärtigen oder früheren persönlichen oder geschäftlichen Beziehung des Anleihegläubigers zur Bundesrepublik Deutschland oder zu einem anderen Mitgliedstaat der Europäischen Union zu zahlen sind, sofern eine derartige Beziehung sich nicht lediglich aus der Tatsache ergibt, dass Zahlungen auf die Schuldverschreibungen aus Quellen in der Bundesrepublik Deutschland stammen (oder für Zwecke der Besteuerung so behandelt werden) oder dort besichert sind.

## **§ 8 VORLEGUNGSFRIST**

Die in § 801 Absatz 1 Satz 1 BGB bestimmte Vorlegungsfrist wird für die Schuldverschreibungen auf zehn Jahre verkürzt.

## **§ 9 VERZUG**

### **(1) *Verzug.***

Ein Anleihegläubiger kann seine Schuldverschreibungen durch schriftliche Mitteilung an die Emittentin, die bei der Emittentin oder bei der Hauptzahlstelle abzugeben ist, fällig stellen, woraufhin seine Schuldverschreibungen sofort zu ihrem Nennbetrag, zusammen mit aufgelaufenen Zinsen einschließlich aller ausstehenden Zinsrückstände, ohne weitere Handlungen oder Formalitäten, fällig und zahlbar werden, wenn

- (a) die Emittentin ihre Zahlungsunfähigkeit mitteilt oder ein Insolvenzverfahren über das Vermögen der Emittentin eröffnet und nicht innerhalb von 30 Tagen eingestellt oder ausgesetzt wird oder die Emittentin die Eröffnung eines solchen Verfahrens beantragt oder ihre Zahlungen einstellt oder einen Gesamtvergleich zugunsten ihrer Anleihegläubiger anbietet oder durchführt; oder
- (b) die Emittentin liquidiert, abgewickelt oder aufgelöst wird (sofern dies nicht zum Zwecke oder als Folge eines Zusammenschlusses, einer Umstrukturierung oder Sanierung geschieht, bei dem bzw. der die Emittentin noch zahlungsfähig ist und bei dem bzw. der die überlebende Gesellschaft im wesentlichen alle Vermögenswerte und Verpflichtungen der Emittentin übernimmt).

### **(2) *Mitteilungen.***

Jede Bekanntmachung nach Absatz (1), einschließlich der Fälligestellung der Schuldverschreibungen, hat im Wege einer schriftlichen Erklärung in Deutsch oder Englisch zu erfolgen, die per Bote oder Einschreiben bei der angegebenen Geschäftsstelle der Hauptzahlstelle einzugehen hat und der durch eine Bescheinigung der Depotbank (wie in § 13(4) definiert) oder in einer anderen angemessenen Weise der Nachweis beizufügen ist, dass der Anleihegläubiger zur Zeit der

with, such Directive, Regulation, treaty or understanding; or

- (f) would not have been imposed or withheld if such Bondholder had provided information or satisfied other applicable certification or reporting requirements concerning the nationality, residence or identity of the Bondholder, made a declaration of non residence or other similar claim for exemption or presented any applicable form or certificate, upon the making or presentation of which that Bondholder would have been able to avoid such Withholding Taxes; or
- (g) are payable by reason of the Bondholder having, or having had, some personal or business connection with the Federal Republic of Germany or another member state of the European Union and not merely by reason of the fact that payments in respect of the Bonds are, or for purposes of taxation are deemed to be, derived from sources in, or are secured in the Federal Republic of Germany.

## **§ 8 PRESENTATION PERIOD**

The presentation period provided in § 801 subparagraph 1, first sentence of the German Civil Code (BGB) is reduced to ten years for the Bonds.

## **§ 9 EVENTS OF DEFAULT**

### **(1) *Events of Default.***

Any Bondholder may, by written notice addressed to the Issuer and delivered to the Issuer or the Principal Paying Agent, declare its Bonds due and payable, whereupon such Bonds shall become immediately due and payable at their principal amount together with accrued interest thereon including all outstanding Arrears of Interest without further action or formality, if

- (a) the Issuer announces its inability to meet its financial obligations (*Zahlungsunfähigkeit*) or insolvency proceedings are commenced against the Issuer and are not dismissed or stayed within 30 days or the Issuer applies for the institution of such proceedings or suspends payments or offers or makes a general arrangement for the benefit of its creditors; or
- (b) the Issuer enters into a liquidation and winding up or dissolution (other than for the purposes of or pursuant to an amalgamation, reorganization or restructuring while solvent, where the continuing entity assumes substantially all of the assets and obligations of the Issuer).

### **(2) *Notice.***

Any notice, including any notice declaring Bonds due, in accordance with subparagraph (1) shall be made by means of a written declaration in the German or English language delivered by hand or registered mail to the specified office of the Principal Paying Agent together with proof that such Bondholder at the time of such notice is a Bondholder of the relevant Bonds by means of a certificate of his Custodian (as defined in § 13 (4)) or in other appropriate manner.

Mitteilung ein Anleihegläubiger der entsprechenden Schuldverschreibung ist.

## § 10 SCHULDNERERSETZUNG

### (1) *Ersetzung.*

Die Emittentin ist ohne Zustimmung der Anleihegläubiger jederzeit berechtigt, sofern sie sich nicht mit einer Zahlung von Kapital oder Zinsen auf die Schuldverschreibungen in Verzug befindet, jede andere Gesellschaft, deren stimmberechtigte Anteile oder anderweitige Eigenkapitalanteile zu mehr als 90% direkt oder indirekt von der Emittentin gehalten werden, an Stelle der Emittentin als Hauptschuldnerin für alle Verpflichtungen aus und im Zusammenhang mit diesen Schuldverschreibungen einzusetzen (die „**Nachfolgeschuldnerin**“), vorausgesetzt, dass:

- (a) vorbehaltlich § 10(1)(f), die Nachfolgeschuldnerin alle Verpflichtungen der Emittentin in Bezug auf die Schuldverschreibungen übernimmt;
- (b) die Emittentin und Nachfolgeschuldnerin alle erforderlichen Genehmigungen erhalten haben und berechtigt sind, an die Hauptzahlstelle alle zur Erfüllung der Zahlungsverpflichtungen aus den Schuldverschreibungen zahlbaren Beträge in der hierin festgelegten Währung zu zahlen, ohne verpflichtet zu sein, Steuern oder andere Abgaben jeglicher Art abzuziehen oder einzubehalten, die in dem Staat, in dem die Nachfolgeschuldnerin oder die Emittentin ihren Sitz oder Steuersitz haben, erhoben werden;
- (c) die Nachfolgeschuldnerin sich verpflichtet hat, jeden Anleihegläubiger hinsichtlich solcher Steuern, Abgaben, Festsetzungen oder behördlichen Gebühren freizustellen, die einem Anleihegläubiger im Hinblick auf die Ersetzung auferlegt werden;
- (d) die Emittentin auf nachrangiger Basis unwiderruflich und unbedingt gegenüber jedem Anleihegläubiger die Zahlung aller von der Nachfolgeschuldnerin auf die Schuldverschreibungen zahlbaren Beträge garantiert;
- (e) der Hauptzahlstelle ein oder mehrere Rechtsgutachten von anerkannten Rechtsanwälten vorgelegt werden, die bestätigen, dass die Voraussetzungen in den vorstehenden Unterabsätzen (a), (b), (c) und (d) erfüllt wurden; und
- (f) die Verpflichtungen aus § 4(1) Satz 2, § 4(3) und (6) weiterhin Verpflichtungen der Emittentin bleiben.

### (2) *Bekanntmachung und Wirksamwerden der Ersetzung.*

Jede Ersetzung ist gemäß § 12 bekannt zu machen. Mit dieser Bekanntmachung wird die Ersetzung wirksam und die Emittentin, und im Fall einer wiederholten Anwendung dieses § 10 jede frühere Nachfolgeschuldnerin, von ihren sämtlichen Verpflichtungen aus den Schuldverschreibungen frei. Im Falle einer solchen Ersetzung werden die Wertpapierbörsen informiert, an denen die Schuldverschreibungen notiert sind, und es wird, falls erforderlich, ein Nachtragsprospekt erstellt, der die Nachfolgeschuldnerin beschreibt.

### (3) *Bezugnahmen.*

Im Fall einer Ersetzung gilt ab dem Zeitpunkt der Ersetzung vorbehaltlich § 10(1)(f) jede Bezugnahme in diesen Anleihebedingungen auf die Emittentin als

## § 10 SUBSTITUTION

### (1) *Substitution.*

The Issuer may, without the consent of the Bondholders, if no payment of principal of or interest on any of the Bonds is in default, at any time substitute for the Issuer any other company more than 90% of the voting share or other equity interests of which are directly or indirectly owned by the Issuer as principal debtor in respect of all obligations arising from or in connection with the Bonds (the „**Substituted Debtor**“) provided that:

- (a) the Substituted Debtor assumes, subject to § 10(1)(f), all obligations of the Issuer in respect of the Bonds;
- (b) the Issuer and the Substituted Debtor have obtained all necessary authorisations and may transfer to the Principal Paying Agent in the currency required hereunder and without being obligated to deduct or withhold any taxes or other duties of whatever nature levied by the country in which the Substituted Debtor or the Issuer has its domicile or tax residence, all amounts required for the fulfilment of the payment obligations arising under the Bonds;
- (c) the Substituted Debtor has agreed to indemnify and hold harmless each Bondholder against any tax, duty, assessment or governmental charge imposed on such Bondholder in respect of such substitution;
- (d) the Issuer irrevocably and unconditionally guarantees on a subordinated basis in favour of each Bondholder the payment of all sums payable by the Substituted Debtor in respect of the Bonds;
- (e) there shall have been delivered to the Principal Paying Agent an opinion or opinions of lawyers of recognised standing to the effect that subparagraphs (a), (b), (c) and (d) above have been satisfied; and
- (f) the obligations resulting from the second sentence of § 4(1) and § 4(3) and (6) shall continue to be obligations of the Issuer.

### (2) *Notice and Effectiveness of Substitution.*

Notice of any such substitution shall be published in accordance with § 12. Upon such publication, the substitution shall become effective, and the Issuer and in the event of a repeated application of this § 10, any previous Substituted Debtor shall be discharged from any and all obligations under the Bonds. In case of such substitution, the stock exchange(s), if any, on which the Bonds are then listed will be notified and a supplemental prospectus describing the Substituted Debtor will be prepared, if required.

### (3) *References.*

In the event of any such substitution, any reference in these Conditions of Issue to the Issuer shall subject to § 10(1)(f) from then on be deemed to refer to the Sub-



Bezugnahme auf die Nachfolgeschuldnerin und jede Bezugnahme auf den Staat, in dem die Emittentin ihren Sitz oder Steuersitz hat, als Bezugnahme auf den Staat, in dem die Nachfolgeschuldnerin ihren Sitz oder Steuersitz hat.

Außerdem gilt im Falle der Ersetzung in § 7 eine alternative Bezugnahme auf die Bundesrepublik Deutschland zusätzlich zu der Bezugnahme nach Maßgabe des vorstehenden Satzes auf den Staat, in dem die Nachfolgeschuldnerin ihren Sitz oder Steuersitz hat als aufgenommen

## **§ 11 AUFSTOCKUNG**

Die Emittentin kann ohne Zustimmung der Anleihegläubiger weitere Schuldverschreibungen begeben, die in jeder Hinsicht (oder in jeder Hinsicht mit Ausnahme des Begebungstags, der ersten Zinszahlung und/oder des Begebungspreises) die gleichen Bedingungen wie die Schuldverschreibungen haben und die zusammen mit den Schuldverschreibungen dieser Anleihe eine einzige Serie bilden.

## **§ 12 MITTEILUNGEN**

### **(1) Zeitungsveröffentlichung.**

Alle Mitteilungen im Hinblick auf die Schuldverschreibungen werden in einer führenden Tageszeitung mit überörtlicher Verbreitung in Luxemburg veröffentlicht. Es wird erwartet, dass diese Tageszeitung d'Wort sein wird. Mitteilungen, die auf diese Weise veröffentlicht wurden, gelten am Tag ihrer Veröffentlichung (oder, falls mehr als einmal veröffentlicht, am Tag der erstmaligen Veröffentlichung) als wirksam bekannt gemacht.

### **(2) Mitteilungen an das Clearing System.**

Die Emittentin ist berechtigt, eine Zeitungsveröffentlichung nach § 12(1) durch eine Mitteilung an das Clearing System zur Weiterleitung an die Anleihegläubiger zu ersetzen, vorausgesetzt, dass in den Fällen, in denen die Schuldverschreibungen an einer Wertpapierbörse notiert sind, die Regeln dieser Wertpapierbörse eine derartige Form der Mitteilung erlauben. Eine solche Mitteilung gilt am siebten Tag nach dem Tag, an dem die Mitteilung an das Clearing System gegeben wurde, als den Anleihegläubigern mitgeteilt.

## **§ 13 ANWENDBARES RECHT, GERICHTSSTAND UND GERICHTLICHE GELTENDMACHUNG**

### **(1) Anwendbares Recht.**

Form und Inhalt der Schuldverschreibungen sowie die Rechte und Pflichten der Anleihegläubiger und der Emittentin bestimmen sich nach deutschem Recht.

### **(2) Gerichtsstand.**

Ausschließlich zuständig für sämtliche im Zusammenhang mit den Schuldverschreibungen erwachsenden Klagen oder sonstige Verfahren („**Rechtsstreitigkeiten**“) ist das Landgericht Frankfurt am Main. Die Emittentin verzichtet unwiderruflich darauf, Einwände oder Einreden geltend zu machen, die sie jetzt oder in Zukunft gegen die Vereinbarung vorbringen könnte, dass Frankfurt am Main der Gerichtsstand für alle Verfahren und Streitigkeiten sein soll, und verpflichtet sich, nicht zu bestreiten, dass dieses Gericht geeignet oder zuständig ist.

stituted Debtor and any reference to the country in which the Issuer is domiciled or resident for taxation purposes shall from then on be deemed to refer to the country of domicile or residence for taxation purposes of the Substituted Debtor.

Furthermore, in the event of such substitution in § 7 an alternative reference to the Federal Republic of Germany shall be deemed to have been included in addition to the reference according to the preceding sentence to the country of domicile or residence for taxation purposes of the Substituted Debtor.

## **§ 11 FURTHER ISSUES**

The Issuer may from time to time, without the consent of the Bondholders, issue further Bonds having the same terms and conditions as the Bonds in all respects (or in all respects except for the issue date, the first payment of interest and/or issue price) so as to form a single series with the Bonds.

## **§ 12 NOTICES**

### **(1) Notices in Newspaper.**

All notices concerning the Bonds shall be published in a leading daily newspaper having general circulation in Luxembourg. This newspaper is expected to be d'Wort. Any notice so given will be deemed to have been validly given on the date of such publication (or, if published more than once, on the date of the first such publication).

### **(2) Notices to the Clearing System.**

The Issuer may, in lieu of publication in the newspaper set forth in § 12 (1) above, deliver the relevant notice to the Clearing System, for communication to the Bondholders, provided that, so long as any Bonds are listed on any stock exchange, the rules of such stock exchange permit such form of notice. Any such notice shall be deemed to have been given to the Bondholders on the seventh day after the day on which the said notice was given to the Clearing System.

## **§ 13 APPLICABLE LAW, PLACE OF JURISDICTION AND ENFORCEMENT**

### **(1) Applicable Law.**

The Bonds, as to form and content, and all rights and obligations of the Bondholders and the Issuer, shall be governed by German law.

### **(2) Place of Jurisdiction.**

The District Court (*Landgericht*) in Frankfurt am Main shall have exclusive place of jurisdiction for any action or other legal proceedings ("**Proceedings**") arising out of or in connection with the Bonds. The Issuer irrevocably waives any objection it might now or hereafter have to the District Court in Frankfurt being nominated as the forum to hear and determine any Proceedings and to settle any disputes, and agrees not to claim that this court is not a convenient or appropriate forum.

(3) *Erfüllungsort.*

Erfüllungsort ist Frankfurt am Main, Bundesrepublik Deutschland.

(4) *Gerichtliche Geltendmachung.*

Jeder Anleihegläubiger ist berechtigt, in jedem Rechtsstreit gegen die Emittentin oder in jedem Rechtsstreit, in dem der Anleihegläubiger und die Emittentin Partei sind, seine Rechte aus diesen Schuldverschreibungen im eigenen Namen auf der Grundlage wahrzunehmen oder durchzusetzen, dass (i) er eine Bescheinigung der Depotbank (wie nachstehend definiert) beibringt, bei der er für die Schuldverschreibungen ein Wertpapierdepot unterhält, welche (a) den vollständigen Namen und die vollständige Adresse des Anleihegläubigers enthält, (b) den Gesamtnennbetrag der Schuldverschreibungen bezeichnet, die unter dem Datum der Bestätigung auf dem Wertpapierdepot verbucht sind und (c) bestätigt, dass die Depotbank gegenüber dem Clearing System eine schriftliche Erklärung abgegeben hat, die die vorstehend unter (a) und (b) bezeichneten Informationen enthält und (ii) er eine Kopie der die betreffenden Schuldverschreibungen verbriefenden Globalurkunde vorlegt, deren Übereinstimmung mit dem Original eine vertretungsberechtigte Person des Clearing Systems oder des Verwahrers des Clearing Systems bestätigt hat, ohne dass eine Vorlage der Originalbelege oder der die Schuldverschreibungen verbriefenden Globalurkunde in einem solchen Verfahren erforderlich wäre.

Für die Zwecke des Vorstehenden bezeichnet „**Depotbank**“ jede Bank oder sonstiges anerkanntes Finanzinstitut, das berechtigt ist, das Wertpapierverwahrungsgeschäft zu betreiben und bei der/dem der Anleihegläubiger ein Wertpapierdepot für die Schuldverschreibungen unterhält und schließt das Clearing System ein.

**§ 14  
SPRACHE**

Diese Anleihebedingungen sind in deutscher Sprache abgefasst und mit einer Übersetzung in die englische Sprache versehen. Der deutsche Wortlaut ist allein rechtsverbindlich. Die englische Übersetzung ist unverbindlich.

(3) *Place of Performance.*

Place of performance shall be Frankfurt am Main, Federal Republic of Germany.

(4) *Enforcement.*

Any Bondholder may in any Proceedings against the Issuer, or to which such Bondholder and the Issuer are parties, protect and enforce in his own name his rights arising under such Bonds on the basis of (i) a statement issued by the Custodian (as defined below) with whom such Bondholder maintains a securities account in respect of the Bonds (a) stating the full name and address of the Bondholder, (b) specifying the aggregate principal amount of Bonds credited to such securities account on the date of such statement and (c) confirming that the Custodian has given written notice to the Clearing System containing the information pursuant to (a) and (b) and (ii) a copy of the Bond in global form certified as being a true copy by a duly authorised officer of the Clearing System or a depository of the Clearing System, without the need for production in such proceedings of the actual records or the Global Bond representing the Bonds.

For purposes of the foregoing, „**Custodian**“ means any bank or other financial institution of recognised standing authorised to engage in securities custody business with which the Bondholder maintains a securities account in respect of the Bonds and includes the Clearing System.

**§ 14  
LANGUAGE**

These Conditions of Issue are written in the German language and provided with an English language translation. The German text shall be controlling and binding. The English language translation is provided for convenience only.

## **USE OF PROCEEDS**

The net proceeds of the issue of the Bonds of approximately € 1.28 billion will be used to repurchase approximately € 863 million aggregate principal amount of the € 3,000,000,000 5.375% Notes due April 10, 2007 (ISIN Code: XS0145757588 / Common Code: 014575758) for an amount of approximately € 920 million. The rest of net proceeds of the issue of the Bonds in the amount of approximately € 360 million will be applied by the Issuer to meet part of its general financing requirements.

## DESCRIPTION OF THE ISSUER

### General Information on Bayer AG

#### *History and Incorporation*

Bayer AG was established on December 19, 1951 under the name "Farbenfabriken Bayer Aktiengesellschaft". It was registered in the commercial register of the local court at Opladen (today the local court of Cologne) under the number HRB 1122. Its name was changed to "Bayer Aktiengesellschaft" by resolution of the Meeting of the Stockholders on June 14, 1972.

The registered seat of Bayer AG is at 51368 Leverkusen, Germany.

#### *Object*

According to its Articles of Incorporation (section 2), the objective of Bayer AG is the manufacturing, marketing and other industrial activities or provision of services in the fields of health care, agriculture, polymers and chemicals, as well as the transaction of all other business which is related to, or directly or indirectly serves, the object of Bayer AG.

#### *Capital*

The issued and fully paid-up capital stock of Bayer AG amounts to € 1,869,675,315.20, as in the previous year, and is divided into 730,341,920 no-par bearer shares of a single class.

The shares are admitted to trading with official quotation on all German stock exchanges. The shares are also quoted on the stock exchanges at Amsterdam, Antwerp, Barcelona, Brussels, London, Luxembourg, Madrid, Milan, New York, Paris and Tokyo as well as on the Swiss Stock Exchange (*Elektronische Börse Schweiz*).

#### *Authorised Capital*

With the consent of the Supervisory Board until April 26, 2007, the Board of Management is authorised to increase the share capital by € 250,000,000.00 through issuing new shares against cash payments. The Board of Management may exclude the pre-emption right of the shareholders.

Furthermore, with the consent of the Supervisory Board until April 27, 2006 the Board of Management is authorised to increase the share capital by a principal amount of up to € 373,935,063.04 in one or more stages by issuing new shares against non-cash contributions. Subscription rights shall not be granted to the shareholders.

Therefore, the authorised capital is € 623,935,063.04.

#### *Conditional Capital*

The capital stock is conditionally increased by an additional € 186,880,000 divided into no more than 73,000,000 bearer shares (Contingent Capital). The increase shall be implemented only to the extent that holders of subscription or conversion rights based on such warrant bonds or convertible bonds as may be issued or guaranteed – under the authorization granted to the Board of Management by the resolution of the Annual Stockholders' Meeting on April 30, 2004 – by Bayer AG or by a Bayer Group company, as defined in Article 18 of the German Stock Corporation Act (*Aktiengesetz*), in which Bayer owns a direct or indirect interest of at least 90 percent, choose to exercise their subscription or conversion rights, or persons obligated to exercise such rights discharge that obligation. Such new shares shall be issued in accordance with the aforementioned authorization on the basis of the subscription or conversion price set and shall have profit participation rights beginning in the fiscal year in which they were issued as a result of the voluntary or obligatory exercise of subscription or conversion rights. The Board of Management is authorized, subject to the approval of the Supervi-

sory Board, to stipulate any additional details concerning the implementation of the conditional capital increase.

### ***Fiscal Year***

Bayer AG's fiscal year is the calendar year.

### ***Capitalisation and Indebtedness of Bayer Aktiengesellschaft/Bayer Group***

The following presents the capitalisation and indebtedness of Bayer AG and its consolidated subsidiaries on an unaudited and consolidated basis as of March 31, 2005. The information below was extracted from the unaudited financial statement of Bayer Group as of March 31, 2005.

	As of March 31, 2005 (€ million)
<b>Equity attributable to Bayer AG stockholders</b> .....	10,449
Equity attributable to minority interest .....	178
<b>Total stockholders' equity</b> .....	<u>10,627</u>
<b>Liabilities</b> .....	24,830
<b>Noncurrent liabilities</b> .....	14,926
Provisions for pensions and other post-employment benefits .....	6,110
Other provisions .....	1,261
Financial liabilities .....	6,874
Miscellaneous liabilities .....	39
Deferred taxes .....	642
<b>Current liabilities</b> .....	9,904
Other provisions .....	3,058
Financial liabilities .....	2,502
Trade accounts payable .....	1,714
Tax liabilities .....	406
Miscellaneous liabilities .....	2,224
Liabilities directly related to assets held for sale and discontinued operations ....	0
<b>Total stockholders' equity and liabilities</b> .....	<u><u>35,457</u></u>

### ***Significant change in financial or trading position/Trend information***

There has been no material change in the capitalisation and indebtedness and financial or trading position of Bayer Group since March 31, 2005 and there has also been no material adverse change in the prospects since the date of the last published audited financial statements. Information on any known trends, uncertainties, demands, commitments or events that are reasonably likely to have a material effect on the prospects for at least the current financial year do not exist.

### ***Board of Management***

Pursuant to the Articles of Incorporation of Bayer AG, the Board of Management must have at least two members. The Supervisory Board may appoint one member of the Board of Management as chairman of the Board of Management.

Since February 28, 2003, the Board of Management consists of the following members:

Werner Wenning, Chairman  
Klaus Kuehn  
Dr. Udo Oels  
Dr. Richard Pott

The business address of each of the above is Bayer AG, 51368 Leverkusen, Germany.

### ***Supervisory Board***

According to the Articles of Incorporation the Supervisory Board consists of 20 members. Pursuant to the German Stock Corporation Act ( "*Aktiengesetz*") and the German Law on Co-Determination ( "*Mitbestimmungsgesetz*") ten of the members are elected by the Meeting of Stockholders and ten by the employees.

All of the current shareholder representatives on the Supervisory Board were elected by the shareholders at the annual meeting of shareholders:

Dr. Manfred Schneider, Chairman, Former Chairman of the company's Board of Management, Leverkusen

Erhard Gipperich, Vice Chairman, Chairman of the Group and Central Works Councils of Bayer AG, Leverkusen

Dr. Paul Achleitner, Member of the Board of Management of Allianz AG, Munich

Dr. Josef Ackermann, Spokesman of the Board of Managing Directors and Chairman of the Group Executive Committee of Deutsche Bank AG, Frankfurt am Main

Andreas Becker, Chairman of the Works Council of H. C. Starck

Karl-Josef Ellrich, Chairman of the Works Council of the Dormagen site of Bayer AG, Dormagen

Thomas Hellmuth, Agricultural Engineer, Langenfeld

Prof. Dr.-Ing. e. h. Hans-Olaf Henkel, President of the Leibniz Association, Berlin

Dr. rer. pol. Dipl.-Kfm. Klaus Kleinfeld (\*\*), Chairman of the Board of Management of Siemens AG, Munich

Dr. h. c. Martin Kohlhaussen, Chairman of the Supervisory Board of Commerzbank AG, Frankfurt am Main

John C. Kornblum, Chairman of Lazard & Co. GmbH, Berlin

Petra Kronen, Chairwoman of the Works Council of the Uerdingen site of Bayer AG, Krefeld-Uerdingen

Dr. Heinrich von Pierer (\*), President and Chief Executive Officer of Siemens AG, Munich

Wolfgang Schenk, Graduate Engineer, Leverkusen

Hubertus Schmoldt, Chairman of the German Mine, Chemical and Power Workers Union, Hanover

Dieter Schulte, Former Chairman of the German Unions Federation (DGB), Duisburg

Prof. Dr.-Ing. Dr. h. c. Ekkehard D. Schulz (\*\*), Chairman of the Board of Management at ThyssenKrupp AG, Düsseldorf

Dipl.-Ing. Dr.-Ing e. h. Jürgen Weber, Chairman of the Supervisory Board of Deutsche Lufthansa AG, Cologne

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(\*) Resigned effective April 29, 2005.

(\*\*) To serve until the Annual Shareholders Meeting in 2007.



Siegfried Wendlandt, North Rhine District Secretary of the German Mine, Chemical and Power Workers Union, Düsseldorf

Reinhard Wendt\*, Printer, Walsrode

Thomas de Win, Commercial Clerk, Cologne

Prof. Dr. Dr. h. c. Ernst-Ludwig Winnacker, President of the German Research Association, Bonn

Dr. Hermann Wunderlich\*, Former Vice Chairman of Bayer AG's Board of Management, Odenthal

\* Resigned effective April 29, 2005.

Jochen Appell, former General Counsel of Commerzbank AG, Frankfurt am Main and Dr. Hans-Dirk Krekeler, General Counsel of Deutsche Bank AG, Frankfurt am Main (both elected as substitute members to succeed any members who cease to be members of the Supervisory Board).

The business address of each of the above is Bayer AG, 51368 Leverkusen, Germany.

### **Auditors**

The independent auditors of Bayer AG are PricewaterhouseCoopers Aktiengesellschaft Wirtschaftsprüfungsgesellschaft (formerly PwC Deutsche Revision Aktiengesellschaft Wirtschaftsprüfungsgesellschaft), Friedrich-List-Str. 20, 45128 Essen, Germany ("PwC"). PwC has examined the consolidated financial statements of Bayer AG for the fiscal years ended on December 31, 2003 and 2004, and have, in each case, given their unqualified opinion.

### **Scope of Operating Activities of Bayer AG and Bayer Group**

The Bayer Group is a global company offering a wide range of products, including ethical pharmaceuticals, diagnostics and other health care products, agricultural products and polymers. Bayer AG is headquartered in Leverkusen, Germany, and is the management holding company of the Bayer Group, which includes approximately 350 consolidated subsidiaries (incl. LANXESS companies).

Following Bayer's strategic alignment culminating in the spin-off of the LANXESS subgroup, Bayer's business operations are now organised in three subgroups:

- *Bayer HealthCare* (consisting of Bayer's four health care segments: Pharmaceuticals, Biological Products; Consumer Care; Diabetes Care, Diagnostics; and Animal Health) develops, produces and markets:
  - prescription pharmaceuticals and biological products;
  - over-the-counter medications and nutritional supplements;
  - diagnostic products for laboratory testing, near-patient testing and self-testing applications;
  - veterinary medicines, nutritionals and grooming products for companion animals and livestock.
- *Bayer CropScience* (consisting of Bayer's two segments Crop Protection and Environmental Science, BioScience) develops and markets a comprehensive portfolio of:
  - fungicides, herbicides, insecticides, seed treatment products;
  - non-agricultural pest and weed control products, conventional seeds to meet a wide range of regional requirements and is active in plant biotechnology.
- *Bayer MaterialScience* (comprising Bayer's Materials segment and Bayer's Systems segment) primarily develops, manufactures and markets:
  - high-quality plastics granules, methylcellulose, metallic and ceramic powders and semi-finished products;

- polyurethanes for a wide variety of applications as well as coating and adhesive raw materials and basic inorganic chemicals.

The following service organisations provide support functions to the three subgroups, Bayer AG and third parties:

- *Bayer Technology Services*, which provides engineering functions.
- *Bayer Business Services*, which provides information management, accounting and

reporting, consulting and administrative services.

- *Bayer Industry Services*, which operates the Bayer Chemical Park network of industrial facilities in Germany and provides site-specific services. Since July 1, 2004, Bayer Industry Services GmbH & Co. OHG is owned by Bayer AG (60 percent) and by LANXESS (40 percent).

As the management holding company of the Bayer Group, Bayer AG determines the long-term strategy for the group and its subgroups and prescribes guidelines and principles for the corporate policy derived therefrom. Bayer AG holds equity interests in the subgroup management companies and the service companies (described above) and also in other domestic and foreign entities. The Bayer Group is managed by the four-member Board of Management of Bayer AG, which is supported by the Corporate Center (e.g. including services in the area of Law & Patents, Finance, Group Accounting and Controlling, Investors Relations, etc.). The Board of Management is responsible for the oversight of management and for the Group's financial management.

The subgroup management companies Bayer HealthCare AG, Bayer CropScience AG and Bayer MaterialScience AG, heading up the three subgroups, manage the business activities of the domestic and foreign affiliates assigned to them. Each subgroup is, within the framework of strategies, goals and guidelines determined by the Bayer AG Board of Management, an independent operating area with world-wide business accountability and its own management. Each of the subgroup management companies has entered into a control and profit and loss transfer agreement with Bayer AG.

Bayer's strategic alignment on core competencies should enable us to increase investment in growth businesses and innovative technologies. Bayer expects that this will allow us to play a leading role in these attractive markets and to expand Bayer's current strong positions. Bayer intends to optimise the allocation of resources as well as continue with Bayer's cost-saving and efficiency-improvement programs in order to increase Bayer's corporate value over the long term.

Bayer's long-term strategy and activities are guided by the role of a socially and ethically acting "corporate citizen" and the principles of *sustainable development*, whose objectives are to meet the economic, ecological and social needs of today's society without compromising the ability of future generations to meet their own needs. Bayer contributes to sustainable development by participating in the world-wide *Responsible Care*® initiative developed by companies in the global chemical industry.

## **IFRS regulations and changes in Group and reporting structure**

### ***IFRS regulations***

The following changes are reflected in the financial statements of the first quarter 2005 and the respective reference period:

The new International Financial Reporting Standard IFRS 5 (Non-current Assets Held for Sale and Discontinued Operations) contains specific recognition principles for certain assets and liabilities held for sale and for discontinued operations. Reporting is to be based primarily on continuing operations, while assets held for sale and discontinued operations are to be stated separately in a single line item in the balance sheet, income statement and cash flow statement. The distinction between continuing and discontinued operations or assets held for sale is thus drawn differently starting on January 1, 2005 than in the financial statements as of December 31, 2004.

In December 2004, the International Accounting Standards Board (IASB) adopted an amendment to IAS 19 (Employee Benefits) that allows actuarial gains and losses from defined benefit plans to be offset immediately against stockholders' equity without affecting net income. In accordance with the recommendation of the IASB, Bayer is implementing this reporting change with effect from January 1, 2005. The previous year's figures have been restated accordingly. The reporting change improves the full year 2004 operating result from continuing operations by € 48 million and the non-operating result by € 78 million. Application of IAS 19 (revised) leads to a deferred tax expense of € 50 million. In view of this immateriality to 2004 EBIT of Bayer's segments, the € 48 million gain has been reflected solely in the reconciliation. These non-cash reporting changes do not affect either gross or net cash flow.

With the fiscal year 2005 the requirements of IAS 1 (Presentation of Financial Statements) have to be met relating to the presentation of assets and liabilities according to maturity.

Among the other principal changes is that goodwill and other intangible assets with an indefinite service life are no longer amortised but subjected to annual impairment testing.

The financial information for the full year 2004 including the reference period matches the audited consolidated financial statements for the Bayer Group as published in the annual report 2004. The financials have not been adjusted regarding the new accounting standards and plasma discontinued operations (Refer to explanation in "Changes in Group portfolio").

### ***Changes in Group portfolio***

In 2004, Bayer spent a total of € 358 million on acquisitions. Of this amount, approximately € 100 million was used for the purchase of Crompton Corporation's 50 percent stake in the Gustafson joint venture (seed treatment business) based in the United States, Canada and Mexico, in which Bayer already held a 50 percent share.

*In connection with the acquisition of the Roche's global Consumer Health business (except Japan) Bayer acquired by the end of 2004 Roche's 50 percent interest in the U.S. Bayer-Roche joint venture that was established in 1996. The purchase price for the 50 percent equity interest plus additional plant, inventories and non-current assets was € 208 million.*

Effective January 1, 2005 the purchase of Roche's Consumer Health business was largely completed. Since January, the business with non-prescription drugs and vitamins has been part of Bayer HealthCare's Consumer Care Division, and has already been integrated into the Bayer organisation. Besides the 50 percent stake in the Bayer-Roche joint venture the acquired business includes five production sites, consumer brands such as Rennie® and Bepanthen®, vitamins and nutritional supplements. The purchase price is approximately € 2.3 billion. The business acquired from Roche is reflected in the balance sheet, income statement and cash flow statement with effect from January 1, 2005.

On January 10, 2005, Bayer HealthCare and GlaxoSmithKline plc (GSK) announced an agreement under which GSK's Levitra co-promotion rights have transferred back to Bayer for most of the world outside of the United States.

Bayer CropScience announced on February 11, 2005, that it has purchased the assets of Associated Farmers Delinting, Inc., a regional cotton seed production and processing company based in Littlefield, Texas, United States. Financial terms of the transaction were not disclosed.

On March 9, 2005, Bayer Technology Services GmbH announced the acquisition of Zeptosens AG, Witterswil, Switzerland. The acquired company is active in the field of highly sensitive detection processes for applications in the pharmaceutical industry and universities for genome and proteome research.

The following significant divestitures, the proceeds of which totalled € 76 million, were made in 2004:

In July 2004 Bayer sold, pursuant to contractual obligations, the 15 percent interest in the KWS Saat AG, a seed company acquired as part of Aventis CropScience in 2002.

In 2004 Bayer CropScience sold the rights to GA 21, a technology for herbicide tolerance in corn.

As announced in November 2003, Bayer combined its former Bayer Chemicals segment (except for Wolff Walsrode and H.C. Starck) with parts of its former Bayer Polymers business to form the LANXESS subgroup with economic effect from July 1, 2004 as part of its portfolio realignment. LANXESS ceased to be part of the Bayer Group when it was spun off at the end of January 2005. The data of the LANXESS group are thus no longer included in the balance sheet as of March 31, 2005. In the income and cash flow statements for the first quarter of 2005 and the corresponding period of 2004, LANXESS is reported under discontinued operations according to IFRS 5 (See explanation on IFRS 5 in "IFRS regulations"). Net earnings of the LANXESS group for the month of January are recognised in Bayer Group income for the current year.

In December 2004, Bayer announced the divestment of the plasma business to two U.S. financial investors. End of March 2005 the transaction was completed. All plasma activities in the United States were transferred to Talecris, a newly formed corporation by the two investors. In most of the countries outside of the United States Bayer will continue to distribute plasma products on behalf of Talecris. Since Bayer is continuing to market plasma products outside the United States for a transitional period, only the U.S. plasma business is reflected in discontinued operations (See explanation on IFRS 5 in "IFRS regulations") as of the first quarter 2005. The revenues from Bayer's marketing activities outside the United States are reflected in the sales of Bayer's Pharmaceuticals, Biological Products segment from continuing operations. The financial information on the plasma business for the full year 2004 including the reference period matches the one published in the annual report 2004. The financials have not been adjusted regarding plasma discontinued operations.

### ***Changes in reporting structure***

The spin-off of LANXESS and the acquisition of Roche's Consumer Health business have led to a shift in the relative sizes of Bayer's businesses in terms of sales, EBIT and assets. In compliance with IAS 14 (Segment Reporting) Bayer has adjusted Bayer's segment reporting with effect from January 1, 2005 and restated the financial information for the respective reference period. The former Consumer Care, Diagnostics segment was split into the Consumer Care segment (consisting of the hitherto existing Consumer Care business and the acquired Roche Consumer Health business) and into the Diabetes Care, Diagnostics segment (consisting of Bayer's Diabetes Care and Diagnostics divisions). The former CropScience segment was divided into the Crop Protection segment (consisting of the strategic business units Insecticide, Fungicide, Herbicide and Seed Treatment) and the Environmental Science, BioScience segment (consisting of Bayer's business groups Environmental Science and BioScience).

The following table shows Bayer's continuing business activities grouped into the subgroups and their respective reporting segments.

Subgroups	Reporting segments
HealthCare	Pharmaceuticals, Biological Products Consumer Care Diabetes Care, Diagnostics Animal Health
CropScience	Crop Protection Environmental Science, BioScience
MaterialScience	Materials Systems

## Legal Proceedings

Bayer is involved in a number of legal proceedings. As a global company active in a wide range of life sciences and chemical activities, we may in the normal course of our business become involved in proceedings relating to such matters as:

- product liability;
- patent validity and infringement disputes;
- tax assessments;
- competition and antitrust; and
- past waste disposal practices and release of chemicals into the environment.

We cannot predict with certainty the outcome of any proceedings in which we are or may become involved. An adverse decision in a lawsuit seeking damages from us, or our decision to settle certain cases, could result in a monetary award to the plaintiff and, to the extent not covered by our insurance policies, could significantly harm our business or the result of our operations, financial position or cash flows. If we lose a case in which we seek to enforce our patent rights, we could sustain a loss of future revenue as other manufacturers begin to market products we developed. The following discussion describes what we believe to be the most significant of the proceedings in which Bayer AG or its subsidiaries are currently involved. The list of cases is not an exhaustive list of all of the claims that have been made against Bayer AG or its subsidiaries or of the proceedings in which they are involved, and subsequent developments in any pending matter, as well as additional claims that may arise from time to time, including additional claims similar to those described below, could become significant to Bayer.

### ***Patent validity challenges and infringement proceedings; patent-related antitrust actions***

In the United States, Bayer AG and its U.S. subsidiaries are and have been plaintiffs or coplaintiffs in a number of patent infringement actions against generic drug manufacturers. The lawsuits arose because these manufacturers filed applications in the United States for regulatory approval of generic versions of products marketed by Bayer or its licensees. Some of these actions have, in turn, given rise to lawsuits alleging that Bayer AG, Bayer Corporation and other parties violated federal and state antitrust and similar statutes.

Generic drug manufacturers may receive approval to market formerly patented products after all applicable patent protections have expired. A generic drug manufacturer may, however, attempt to avoid a patent prior to its scheduled expiry by attacking its validity or enforceability. In the United States, the Federal Food, Drug, and Cosmetics Act (the “Act”) enables generic manufacturers wishing to market a bio-equivalent version of another manufacturer’s product to seek regulatory approval by filing an Abbreviated New Drug Application (ANDA). In its ANDA the applicant must state the basis on which it seeks to avoid any applicable patents.

One basis for seeking approval is a claim that the applicant’s product does not infringe existing patent rights or that the patent is invalid or unenforceable. This claim is commonly known as a “paragraph IV certification” or “ANDA (IV)”. Under the Act, the filing of a paragraph IV certification is deemed an infringement of patent rights. The Act permits the holder of the patent rights to file an infringement action against the ANDA applicant within 45 days of receiving notice of the paragraph IV certification. If the holder of the patent rights chooses not to file suit within this period, the FDA may approve the ANDA immediately. The filing of a suit, however, stays final FDA approval of the ANDA for a period of 30 months. The court may shorten or extend this period. If the court rules that the applicant’s product will not infringe the patent or that the patent is invalid or unenforceable, the FDA may grant approval immediately. If, on the other hand, the court rules that the product will infringe the patent, the FDA may not grant final approval until the original patent has expired.

### ***Ciprofloxacin-related actions***

**Patent-related actions.** In January 1997, Bayer AG and Bayer Corporation settled a patent infringement suit against Barr Laboratories, Inc. This suit had arisen when Barr filed an ANDA (IV) seeking regulatory approval of a generic form of Bayer's ciprofloxacin anti-infective product, which we sell in the United States under the trademark Cipro. Under the settlement agreement, Barr and Rugby Laboratories Inc., another generic manufacturer that supported Barr during the infringement suit, agreed to dismiss the litigation, acknowledging the validity and enforceability of Bayer's patent rights, and we agreed to pay each company U.S.\$ 24.5 million. The agreement gave us the option, until our patent expired in 2003, to supply Barr and Rugby's then parent company Hoechst Marion Roussel Inc. with ciprofloxacin products, which they could then market under a license from Bayer using a single trade name, or else to make quarterly cash payments. Since concluding the settlement agreement, we opted to make payments. As of June 9, 2003, Barr began selling ciprofloxacin hydrochloride tablets in the United States using licensed product purchased from Bayer. Shortly after settling this suit, we applied to the U.S. Patent and Trademark Office for a re-examination of our patent. The Patent and Trademark Office reissued the patent in February 1999. In addition, Bayer's Cipro patent was the subject of additional patent invalidity challenges litigated in the U.S. federal district courts and in each instance, the validity of Bayer's patent was upheld. See below, "– Antitrust actions".

**Antitrust actions.** Since July 2000, Bayer Corporation has been named as a defendant in 39 putative class action lawsuits, one individual lawsuit and one consumer protection group lawsuit filed in a number of state and federal courts in the United States. Bayer AG has also been named as a defendant in 20 of those cases. In addition, Barr Laboratories, Aventis S.A., Hoechst Marion Roussel, Inc., Rugby Laboratories, Inc., and Watson Pharmaceuticals, Inc. have each been named as a defendant in one or more of these lawsuits. The plaintiffs in these suits allege that they are direct or indirect purchasers of Cipro who were damaged because Bayer's settlement of the Barr ANDA (IV) litigation prevented generic manufacturers from selling a generic version of Cipro. The plaintiffs allege that the settlement violates various federal antitrust and state business, antitrust, unfair trade practices, and consumer protection statutes, and seek treble damages and injunctive relief.

All of the actions pending in federal court were consolidated in the District Court for the Eastern District of New York in a multidistrict litigation (MDL) proceeding.

In May 2004, Bayer moved for summary judgment on all of plaintiffs' antitrust claims, pending in the District Court for the Eastern District of New York, including certain plaintiffs' claims related to Bayer's actions during the prosecution of the Cipro patent in the U.S. Patent and Trademark Office and its enforcement against third party infringers. Bayer also moved to dismiss those plaintiffs' patent-related claims on grounds that these claims do not state a claim for relief under the anti-trust laws. The direct purchaser plaintiffs filed a cross-motion seeking summary judgment on certain liability issues. On March 31, 2005, the district court granted Bayer's motion for summary judgment and dismissed all of plaintiffs' claims in the MDL proceeding. Plaintiffs appealed the dismissal to the Second Circuit.

A class action brought on behalf of indirect purchasers is pending in California. The California judge stayed the proceeding pending appeal of the MDL order granting summary judgment. No other court has certified a class. Bayer is also involved in state court proceedings in Florida, New York, Kansas, Tennessee and Wisconsin. The New York and Wisconsin cases have been dismissed by the trial courts and plaintiffs have appealed the dismissals. The Kansas court has denied the motion to dismiss and also stayed the proceeding pending the appeal of the MDL order.

The Barr settlement is also the subject of an ongoing antitrust investigation by the U.S. Federal Trade Commission and a number of state attorneys general.

Because these cases, which may involve joint and several liability among the defendants, in the aggregate allege substantial unquantified damages and also seek treble and punitive damages and penalties, it is possible that the ultimate liability for us could materially adversely affect our results of operations, financial position or cash flows. Although we cannot predict the outcome of these cases with certainty, we believe that we have meritorious defenses to the antitrust allegations and intend to



defend them vigorously. Additionally, due to the considerable uncertainty associated with these proceedings, it is currently not possible to estimate potential liability. Depending on the progress of the litigation, we will continue to reconsider the need to establish provisions, which may have a negative effect on our results of operations, financial position or cash flows.

### ***Moxifloxacin-related actions***

In February 2004, Bayer AG and Bayer Corporation received separate ANDA (IV)s from the generic manufacturers Dr. Reddy's Laboratories, Ltd., Dr. Reddy's Laboratories, Inc. and Ranbaxy Laboratories Limited stating that they had filed ANDAs seeking regulatory marketing approval for allegedly bioequivalent versions of our brand name product, the respiratory tract anti-infective, *Avelox*®. Dr. Reddy's sought the approval for its generic product prior to the expiry of three Bayer patents protecting the active ingredient of *Avelox*®, moxifloxacin. Ranbaxy sought approval of their generic product to be effective after two of Bayer's patents expired and prior to the expiry of the third. Bayer filed a patent infringement suit against Dr. Reddy's Laboratories, Ltd. and Dr. Reddy's Laboratories Inc. in the United States District Court in Delaware alleging infringement of two U.S. patents which cover the active ingredient moxifloxacin. Dr. Reddy's alleged that the patents are invalid, not infringed and unenforceable. We believe that we have meritorious claims and defenses in this action and intend to pursue them vigorously. A trial has been scheduled for Spring 2006. By the timely filing of suit against Dr. Reddy's the regulatory approval proceedings will be delayed as provided under applicable laws. Bayer has not to date filed an action against Ranbaxy Laboratories Limited. If we lose a case in which we seek to enforce our patent rights, we could sustain a loss of future revenues as other manufacturers begin to market products we developed.

### ***Vardenafil-related actions***

In September 2003, Bayer AG, Bayer Corporation and SmithKline Beecham Corporation were sued by Pfizer Inc. and certain of its affiliates in the United States District Court in Delaware, alleging that Bayer and GlaxoSmithKline were infringing a Pfizer patent by, *inter alia*, marketing their co-promoted product, *Levitra*®, for the treatment of erectile dysfunction.

In some other countries, further proceedings were pending, in part infringement actions initiated by Pfizer, in part patent nullity proceedings initiated by Bayer.

In December 2004, Bayer, GlaxoSmithKline and Pfizer entered into an agreement on a worldwide basis to settle these patent infringement and nullity proceedings. We do not expect the terms of this settlement to have a material adverse effect on our financial condition or results of operations.

### ***Aventis Behring actions***

**Patent Litigation.** In April 2003, affiliates of Aventis, A. Nattermann & Cie GmbH and Aventis Behring L. L. C., filed a lawsuit against Bayer Corporation and Bayer HealthCare LLC in the United States District Court for the Eastern District of Pennsylvania, alleging that Bayer's manufacture and distribution of *Kogenate*®, constitutes an infringement of U.S. Patent No. 5,565,427. Bayer denied the allegation that manufacturing and distribution of *Kogenate*® is infringing any valid and enforceable patent of Aventis or its affiliates, and averred that Bayer's contract with Aventis Behring for the supply of a recombinant factor VIII product known as *Helixate*® to Aventis Behring provides for any necessary license, if Aventis or its affiliates hold a valid patent.

In December 2003, the U.S. Patent and Trademark Office granted the patent owner's request for a reexamination of the patent. In March 2004, the federal district court ordered a partial stay of the proceedings pending the completion of the reexamination while limited discovery is ongoing. We believe we have meritorious defenses in this patent infringement action and intend to defend it vigorously. Due to the considerable uncertainty associated with these proceedings, it is currently not possible to estimate potential liability.

**Contract Litigation.** In December 2003, Aventis Behring LLC filed a suit against Bayer Corporation and Bayer HealthCare LLC in the Court of Common Pleas of Montgomery County, Pennsylvania, alleging

that Aventis Behring has been damaged as a result of Bayer's breach of a contract to supply Aventis Behring with agreed-upon quantities of *Helixate*<sup>®</sup>. Preliminary discovery in this matter is now ongoing. We believe we have meritorious defenses to this contract claim and will defend it vigorously. Due to the considerable uncertainty associated with these proceedings, it is currently not possible to estimate potential liability.

#### ***ADVIA Centaur<sup>®</sup>-related actions***

*Patent-related action.* In February 2003, Bayer HealthCare LLC sued Abbott Laboratories in the U.S. District Court for the District of Delaware alleging that Abbott's Architect<sup>®</sup> immunoassay analyzer infringes four Bayer U.S. patents protecting Bayer's ACS:180<sup>®</sup> SE Automated Chemiluminescence System. A jury trial in this case is scheduled for late 2005.

In September 2004, Abbott filed suit in the U.S. District Court for the District of Delaware against Bayer HealthCare LLC and Bayer Corporation alleging that Bayer is infringing three U.S. patents by the operation of Bayer's *ADVIA Centaur*<sup>®</sup> Immunoassay System. Bayer believes that it has meritorious defenses in this patent infringement action and intends to defend itself vigorously. A jury trial in this case is scheduled for mid 2006. Due to the considerable uncertainty associated with these proceedings, it is currently not possible to estimate potential liability.

#### ***Antitrust Investigations in Portugal***

In Portugal, Bayer Diagnostics Europe and Bayer Portugal, have received a Statement of Objection by the local antitrust agency alleging price fixing in several cases between 2001 and 2004 in public tenders for the procurement of diabetes test strips by Portuguese hospitals. This investigation is in an early stage and we are in the process of obtaining access to the relevant documents to prepare our defense. Prior to this proceeding, in 2004 Bayer Diagnostics Europe, the Irish distribution company responsible for the European Diabetes Care business was fined € 658,000 by the same authority for one case of alleged price fixing in a public tender procedure. Bayer Diagnostics Europe appealed this decision which is now pending in the Lissabon Trade Court.

#### ***Product liability proceedings***

*HIV/HCV-related actions.* During the past decade, Bayer Corporation, as well as other fractionators of plasma products, have been involved in lawsuits alleging that hemophiliacs became infected with the human immunodeficiency virus (HIV), or ultimately developed AIDS, by using clotting factor concentrates derived from human plasma. All of the actions brought on these grounds by residents of the United States have been resolved. Other actions brought on these grounds outside the United States are still pending.

In 2003, a putative class action against Bayer Corporation and other manufacturers was filed in the United States on behalf of U.S. residents claiming compensation for HCV (hepatitis C virus) infections and non-U.S. residents claiming compensation for HIV/HCV infections allegedly acquired through blood plasma products manufactured in the U.S. Class certification has been denied. Prior to and since the denial of class certification, U.S. and non-U.S. residents filed additional cases against Bayer Corporation and other manufacturers claiming compensation for HIV/HCV infections allegedly acquired through blood plasma products manufactured in the United States. As of June 10, 2005, approximately seventy-five cases have been filed and served, some of which involve multiple plaintiffs and some of which name Bayer AG as a defendant. All of these matters have been filed in or transferred to the Northern District of Illinois for coordinated discovery and other pre-trial proceedings. These matters are at an early stage.

We believe that we have meritorious defenses to the HIV/HCV and remaining HIV-related actions and intend to defend them vigorously. Due to the considerable uncertainty associated with these proceedings, it is currently not possible to estimate potential liability. Depending on the progress of the litigation, we will continue to consider the need to establish provisions, which may have an adverse effect on our results of operations, financial position or cash flows.

*Cerivastatin-related actions.* In August 2001, Bayer voluntarily ceased marketing *Baycol*, the cerivastatin anticholesterol product, in response to reports of serious side effects in some patients. As of June 10, 2005, approximately 5,900 lawsuits are pending in the United States in both federal and state courts, including putative class actions. The actions in the United States have been based primarily on theories of product liability, consumer fraud, medical monitoring, predatory pricing and unjust enrichment. These lawsuits seek remedies including compensatory and punitive damages, disgorgement of funds received from the marketing and sale of cerivastatin and the establishment of a trust fund to finance the medical monitoring of former cerivastatin users. The federal cases were transferred to the U.S. District Court for the District of Minnesota for coordinated discovery and other pre-trial proceedings. A motion for certification of nationwide personal injury, medical monitoring and economic refund classes was denied by this court on September 17, 2003. Similarly, on December 15, 2003, the Circuit Court of Cook County, Illinois denied a motion to certify a class action. On June 16, 2002, the Oklahoma District Court of Pottawatomie County certified a class of all Oklahoma residents who took cerivastatin and sustained muscular/skeletal injuries as a result. The Oklahoma appellate courts have upheld the trial court's ruling and the case will proceed as a class. On March 19, 2004, the Philadelphia County Court of Common Pleas in Pennsylvania certified a medical monitoring class of persons in Pennsylvania who took cerivastatin and have not been diagnosed with the diseases specified in the certification order. The appellate court denied our request for leave to appeal this ruling and the case will proceed as a class. On April 4, 2005, the Philadelphia County Court of Common Pleas in Pennsylvania certified a class of Third Party Payors who allegedly suffered economic loss because the withdrawal of Baycol caused them to incur costs for unused medicine and expenses related to their patients changing to another medicine. Bayer had settled a majority of these claims prior to the Court's decision. This matter will proceed as a class. The certification of a class is unrelated to a determination of our liability.

As of June 10, 2005, 77 actions are pending against other companies of the Bayer Group in other countries, including class actions in Canada. In January and March 2004, Bayer signed settlement agreements with lawyers representing plaintiffs in Ontario, Quebec and British Columbia. These agreements together establish a procedure to resolve claims of rhabdomyolysis for all Canadian residents. To facilitate an efficient implementation of the agreement, the parties have agreed to a settlement class. This has been approved by the respective courts. In July 2004, the Supreme Court of Newfoundland and Labrador certified a class action for Newfoundland and Labrador residents who claim personal injury from *Baycol* other than rhabdomyolysis. Residents of Nova Scotia, Prince Edward Island and New Brunswick were allowed to opt in to the proceedings. The Court of Appeals in Newfoundland has denied Bayer's request for leave to appeal the class certification. Bayer is seeking leave to appeal that decision from the Supreme Court of Canada. In January 2005 the Court of Queen's Bench for Manitoba granted plaintiffs' motion to certify a class action for residents of Manitoba, British Columbia, Alberta, and Ontario who claim personal injury from *Baycol* other than rhabdomyolysis. Bayer is pursuing an appeal of this ruling.

Bayer expects additional lawsuits to be filed in the United States and elsewhere. Four U.S. cases have been tried to date to final judgment, all of which resulted in a verdict in our favor.

Following an agreement reached with the majority of the insurers in the cerivastatin litigation the company had taken accounting measures in the fiscal year 2003 which resulted in a charge to income of € 300 million in excess of the expected insurance coverage. Further insurers have since acceded to the agreement concluded in the spring of 2004 under which the insurers have withdrawn the reservation of rights customary in these cases. Negotiations with one remaining insurer are ongoing. A € 47 million charge to the operating result was recorded in 2004 in light of settlements already concluded or expected to be concluded and anticipated defense costs.

Due to the considerable uncertainty associated with the remaining proceedings, it is currently not possible to estimate the potential liability. Since the existing insurance coverage is exhausted it is possible – depending on the future progress of the litigation – that Bayer could face further payments that are not covered by the accounting measures already taken. We will regularly review the possibility of further accounting measures depending on the progress of the litigation. Without acknowledging any liability, we have settled 3,011 cases worldwide as of June 10, 2005, resulting in settlement payments of approximately U.S.\$ 1.137 billion.

Bayer will continue to offer fair compensation to people who experienced serious side effects while taking cerivastatin on a voluntary basis and without concession of liability. In cases where an examination of the facts indicates that cerivastatin played no part in the patient's medical situation, or where a settlement is not achieved, Bayer will continue to defend itself vigorously. Bayer believes it has meritorious defenses in these actions. In the United States, Bayer co-promoted this product with SmithKline Beecham Corporation. SmithKline Beecham Corporation and Bayer Corporation have signed an allocation agreement under which SmithKline Beecham has agreed to pay 5 percent of all settlements and compensatory damage judgments arising out of actions based on the sale or distribution of cerivastatin in the United States, with each party responsible for paying its own attorneys' fees. In some countries, criminal proceedings have been initiated by the relevant authorities

In January 2004, Bayer Corporation received a subpoena for documents principally relating to cerivastatin from the Defense Criminal Investigative Service of the U. S. Department of Defense Inspector General. Prior to the withdrawal, Bayer had a contract with the Department to provide it with a supply of cerivastatin. Preliminary conversations with the Justice Department indicate that this is a joint Department of Defense/Food and Drug Administration investigation relating to cerivastatin. Bayer is not aware of any charges or complaints filed in connection with this inquiry. Bayer believes it has acted responsibly and fulfilled its responsibilities to the U.S. government, and will work cooperatively to provide the information requested. Since April 2004, Bayer has received civil investigative demands from 24 states seeking documents regarding the marketing of *Baycol*. These investigations are being conducted pursuant to consumer protection laws. Bayer is not aware of any complaints filed in connection with these investigations. Bayer believes it has acted responsibly in the marketing of *Baycol* and will work cooperatively to provide the information requested.

*Phenylpropanolamine (PPA) actions.* In late 2000, Bayer voluntarily discontinued marketing over-the-counter cough and cold remedies containing the decongestant Phenylpropanolamine (PPA) in the United States in response to a recommendation from the FDA that manufacturers voluntarily discontinue marketing products containing PPA. Bayer also voluntarily discontinued marketing products containing PPA in Canada and in various Latin American countries in late 2000 and in Spain in 2001. The FDA issued this recommendation after one epidemiological study of a small number of patients suggested a possible association between PPA and hemorrhagic stroke in women of certain ages. As of June 10, 2005, approximately 600 lawsuits are pending in the United States against Bayer Corporation. Of these, approximately 400 cases name Bayer as the only manufacturing defendant. In the remaining 200 cases, one or more other manufacturers are also defendants. In addition, there are approximately 290 cases on appeal in federal court where the plaintiffs claims were dismissed by the trial court for failure to comply with procedural requirements. Bayer AG has been named as a defendant in 20 of the pending cases; however, plaintiffs have agreed not to actively pursue their claims against Bayer AG at this time. The MDL judicial panel has assigned management of the federal court cases to the U. S. District Court for the Western District of Washington. Bayer has obtained dismissals of all but one of many class actions that have been filed. The one remaining class action is pending in Pennsylvania and there has been little activity in that case since it was filed in 2001.

Three cases have proceeded to trial. On October 13, 2004, in a state court trial in Texas, the jury found a design defect and awarded plaintiff compensatory damages in the amount of U.S.\$ 400,000. The jury rejected plaintiff's claim for punitive damages. Bayer is appealing this decision. In two subsequent cases in state courts in Utah and Florida, juries returned verdicts in favor of Bayer.

The PPA claims primarily relate to compensation for alleged damage to health and personal injury, breach of warranty, negligent and reckless misrepresentation, entitlement to subsequent monitoring and reimbursement of the purchase price, and conspiracy to defraud and fraudulently conceal. Claims for punitive damages have also been filed. It is possible that additional actions will be initiated in the United States or in other jurisdictions where products containing PPA were marketed. Bayer believes it has meritorious defenses to these actions and intends to defend them vigorously. Bayer has settled a number of PPA cases, without acknowledging any liability. Bayer has decided to attempt to settle additional cases with sufficiently developed factual records to permit a meaningful assessment.

Bayer has recorded an additional provision during 2004 for those cases and further defense costs in the amount of € 16 million. Due to the considerable uncertainty associated with these proceedings, it

is currently not possible to further estimate potential liability with respect to the balance of the pending PPA cases and thus additional provisions for such potential liabilities have not yet been made. Since the existing insurance coverage is exhausted it is possible – depending on the future progress of the litigation – that Bayer could face further payments that are not covered by the accounting measures already taken. We will regularly review the possibility of further accounting measures depending on the progress of the litigation which may have a negative effect on the results of our operations, financial position or cash flows.

*Thimerosal actions.* Currently Bayer Corporation is a defendant in 18 lawsuits filed in various state and U.S. federal courts by or on behalf of persons alleging injuries from use of Bayer products containing Thimerosal or phenylmercuric acetate, specifically immunoglobulin injectable products and over-the-counter nasal sprays. Many of these cases involve multiple unrelated plaintiffs.

Numerous manufacturers used mercury-containing compounds as preservative agents in vaccines and other medical and over-the-counter products. Plaintiffs allege that use of products containing these compounds has caused autism, neurodevelopmental disorders and other injuries. They are requesting various remedies for the alleged resulting injuries including compensatory, punitive and statutory damages and funding for medical monitoring and research. Additional cases may be filed in the future against Bayer and other companies that sold products using mercury-containing compounds. The cases against Bayer are at an early stage, and Bayer is contesting them on both procedural and substantive grounds. Bayer believes it has meritorious defenses in these actions and intends to defend them vigorously. Due to the considerable uncertainty associated with these proceedings, it is currently not possible to estimate potential liability.

#### ***Everest litigation***

In January 2004, the purchaser of Bayer CropScience's global Everest herbicide business, Arvesta, filed a lawsuit demanding rescission of the asset purchase agreement and return of the purchase price or, alternatively, monetary damages. Arvesta had alleged that Bayer CropScience withheld material information concerning the value of certain claims resulting from Everest use in Idaho and that Bayer CropScience misled Arvesta about the amount of Everest that had been used in Canada. In April, 2005, the parties agreed to settle this dispute and the lawsuit which had been pending in the U.S. District Court for the Northern District of California was dismissed with prejudice.

#### ***Imidacloprid actions***

The French registration on Maize of the Bayer CropScience product containing imidacloprid, *Gaucho*®, was suspended by the French Ministry of Agriculture in May 2004, until finalization of the review of the active ingredient by the European Commission which is expected in 2007. Bayer CropScience has appealed this decision to the Conseil d'Etat.

In the United States, keepers of honeybees and honeybee hives have filed a putative class action against Bayer in the U.S. District Court for the Middle District of Pennsylvania alleging that imidacloprid caused damage to their honeybees, to the honey, the wax and the beekeeping equipment. In June 2005, the court denied plaintiffs' motion to certify this matter as a class action. Bayer believes it has meritorious defenses and intends to vigorously defend this action. Due to the considerable uncertainty associated with these proceedings, it is currently not possible to estimate potential liability.

#### ***Fipronil action***

Pending before a state court in Louisiana is a case brought against Bayer CropScience LP on behalf of crawfish processors and buyers seeking to recover lost profits and other damages allegedly arising from their inability to purchase crawfish for processing and resale. The case follows the 2004 settlement of litigation with crawfish growers who had alleged damage to their crawfish crops and harvesting ponds following use of a Bayer CropScience product containing fipronil. In the current case, the crawfish processors and others who buy from these crawfish growers are seeking to recover lost profits and other damages allegedly arising from their inability to purchase crawfish for processing



and resale. The case is at a preliminary stage. Bayer believes it has meritorious defenses and intends to vigorously defend this action. Due to the considerable uncertainty associated with these proceedings, it is currently not possible to estimate potential liability.

#### ***BASF Fipronil claim***

BASF notified Bayer CropScience AG of a claim, which was based on the allegation that Bayer CropScience AG in connection with the sale of its fipronil business to BASF willfully misled BASF by not disclosing updated business developments with respect to fipronil in Brazil and Korea in the third quarter of 2002 and not disclosing updated business expectations for 2003 and the following years. Bayer CropScience AG and BASF signed a settlement agreement in February 2005 for the purpose of settling these and other claims relating to the divestment of fipronil. We do not expect the terms of this settlement to have a material adverse effect on our financial condition or results of operations.

#### ***Limagrain indemnity claim***

In July 2004, Bayer CropScience Inc., as successor in interest to Rhone Poulenc Inc., was served with a Notice of Arbitration by Limagrain Genetics Corporation, Inc. Limagrain is seeking indemnification from Bayer CropScience for liability Limagrain has incurred to a third party, Midwest Oilseeds. This liability arises from a judgment entered against Limagrain and in favor of Midwest Oilseeds for U.S.\$40 million, plus interest and costs and stems from an alleged breach of a 1986 contract to which Midwest Oilseeds and a former business unit of Rhone Poulenc Inc. were parties. Rhone Poulenc Inc. sold its assets relating to this business unit to Limagrain in 1994. Limagrain seeks indemnification pursuant to the terms of the 1994 Asset Purchase Agreement with Rhone Poulenc Inc. The total amount sought by Limagrain which includes the judgment, interest and costs is approximately U.S.\$60 million. The judgment against Limagrain was upheld on appeal. The arbitration hearing is scheduled for October 2005.

In a parallel proceeding, Limagrain in France has sued Bayer CropScience SA, as successor in interest to Rhone Poulenc Agrochimie SA, for recovery of the judgment amount it is obligated to pay Midwest Oilseeds. The suit arises in part pursuant to a warranty provision in a shareholders agreement between Rhone Poulenc Agrochimie SA and a related Limagrain entity. Rhone Poulenc sold its shares held pursuant to the shareholders agreement in 2001. Bayer believes it has meritorious defenses and intends to defend these actions vigorously. Due to the considerable uncertainty associated with these proceedings, it is currently not possible to estimate potential liability.

#### ***Average wholesale price manipulation proceedings***

Fourty-five pending lawsuits allege that a number of pharmaceutical companies, including Bayer Corporation, manipulated the average wholesale price ("AWP") and/or Medicaid best price of their products resulting in overcharges to Medicare beneficiaries, Medicaid recipients, state governmental health programs, private health plans and privately insured patients. These suits generally seek damages, treble damages, disgorgement of profits, restitution and attorney's fees. A number of these actions are private class actions alleging injury to patients or payors. Some of these actions are brought by government entities.

Thirty-nine of the suits are pending in federal court and six are pending in various state courts. All of the suits in federal court have been or are expected to be transferred to the United States District Court for the District of Massachusetts for coordinated pretrial proceedings. Two of the suits filed in federal courts and one of the state suits name Bayer AG together with Bayer Corporation as defendants.

Bayer, along with other defendants, moved to dismiss the Amended Master Consolidated Complaint filed in June 2003 governing most of the private party class actions. In February 2004, the court granted the defendants' motion in part and denied it in part. Discovery is proceeding.

Bayer believes prior settlements between Bayer and certain U.S. states may preclude recovery by those states in pending cases that relate to similar claims. One state voluntarily dismissed Bayer



from its suit in January 2005 in reliance on the settlement. Two other states have had their claims dismissed in part based on the settlement.

In February 2005, a state court in Pennsylvania dismissed that state's suit against all defendants. The court allowed leave for the state to submit an amended complaint within 30 days.

We believe that we have meritorious defenses in these actions and intend to defend them vigorously. Due to the considerable uncertainty associated with these proceedings, it is not possible to accurately estimate potential liability. Depending on the progress of the proceedings, we will continue to reconsider the need to establish provisions, which may have a negative effect on the results of our operations, financial position and cash flows.

#### ***Rubber-related actions/Polyester polyols investigation/Urethane-related products actions***

Bayer AG and certain of its subsidiaries are the subjects of criminal and civil investigations being conducted by the Antitrust Division of the U. S. Department of Justice ("DOJ"), the Directorate General for Competition of the European Commission ("EC"), and the Canadian Competition Bureau ("CCB") (collectively, the "Competition Authorities"). The Competition Authorities are investigating potential violations of their respective antitrust or competition laws involving certain of Bayer's rubber-related lines of business.

Since September 2002, the DOJ has undertaken criminal grand jury investigations of potential anti-trust violations involving Bayer's rubber chemicals, ethylene propylene diene monomer ("EPDM") synthetic rubber, and acrylonitrile butadiene rubber ("NBR") synthetic rubber lines of business. To settle charges related to allegations that its rubber chemicals business unit engaged in anti-competitive activities between 1995 and 2001, Bayer AG plead guilty and paid a fine of U.S.\$ 66 million. To settle charges related to allegations that its NBR business unit engaged in anti-competitive activities between May 2002 and December 2002, Bayer AG plead guilty and paid a fine of U.S.\$ 4.7 million. The two agreements resolve all criminal charges against Bayer in the United States for activities related to its rubber chemicals and NBR business, provided Bayer continues to cooperate with the DOJ's ongoing investigations. Bayer AG is currently cooperating with the DOJ and the CCB with respect to their investigations of possible anti-competitive behavior involving a further product attributable to the former rubber-related lines of business. The DOJ and the CCB have granted conditional amnesty from the imposition of criminal liability in connection with these proceedings. Conditional amnesty requires continued cooperation by Bayer. The EC is conducting civil investigations of potential violations of European competition laws involving Bayer's rubber chemicals, EPDM and NBR lines of business. Provisions in the amount of € 50 million were established in 2003 with respect to the EC investigations, although a reliable estimate cannot yet be made as to the actual amount of any fines. Bayer AG and certain of its subsidiaries are currently cooperating with the EC and the antitrust authorities of several member states of the EU with respect to their investigations of possible anti-competitive behavior involving several additional products attributable to the former rubber-related lines of business. The EC and the member state authorities have granted conditional amnesty from the imposition of fines in connection with these proceedings. Conditional amnesty requires continued cooperation by Bayer.

The CCB is conducting criminal investigations of potential violations of Canadian competition laws involving Bayer's rubber chemicals, EPDM and NBR lines of business. Bayer AG is in the process of negotiating a settlement agreement with the CCB that would resolve all charges in Canada related to allegations that its rubber chemicals business unit engaged in anti-competitive activities between 1995 and 2001.

Bayer AG and certain of its subsidiaries have been named, among others, as defendants in multiple putative class action lawsuits in various state courts in the United States and as defendants in lawsuits including putative class actions pending before various federal courts in the United States, involving rubber chemicals, EPDM, NBR and polychloroprene rubber. In each state court action, the plaintiffs have alleged violations based on the defendants' alleged participation in a conspiracy to fix prices. The state court plaintiffs seek damages as indirect purchasers of the allegedly affected products. In the federal court actions, the plaintiffs allege the defendants' participation in a conspiracy to fix the prices and/or to allocate markets and customers for the sale of the allegedly affected products

and seek damages as direct purchasers of those products. These proceedings are at various preliminary stages.

Bayer AG and certain of its subsidiaries also have been named, among others, as defendants in multiple putative class action lawsuits in three Canadian courts. The actions involve rubber chemicals, EPDM, NBR and polychloroprene rubber. In the Canadian actions, the plaintiffs have alleged violations based on the defendants' alleged participation in a conspiracy to fix prices, and the Canadian plaintiffs seek damages as direct and indirect purchasers of the allegedly affected products. These proceedings are at various preliminary stages.

Bayer's U.S. subsidiary, Bayer Corporation, has been the subject of a criminal antitrust investigation by the DOJ involving adipic-based polyester polyols. On September 30, 2004, Bayer Corporation announced that it had reached agreement with the DOJ to settle charges related to the allegations that Bayer Corporation engaged in anti-competitive activities from February 1998 through December 2002 involving these products. Bayer Corporation plead guilty and paid a fine of U.S.\$ 33 million. The company established a provision in respect of this settlement in the third quarter of 2004. The agreement, resolves all criminal charges against Bayer Corporation in the United States for activities related to its adipic-based polyester polyols business, provided Bayer continues to cooperate with the DOJ's ongoing investigation. Adipic-based polyester polyols are a distinct type of a polyol raw material supplied to customers who produce polyurethanes. Adipic-based polyester polyols are not urethanes.

Bayer AG and certain of its subsidiaries also have been named, among others, as defendants in putative class action lawsuits involving polyester polyols in two Canadian courts. In these Canadian actions, the plaintiffs have alleged violations based on the defendants' alleged participation in a conspiracy to fix the price of polyester polyols. The Canadian plaintiffs seek damages on behalf of a class of direct and indirect purchasers of the allegedly affected products. These cases are at various preliminary stages.

The financial risk associated with all of the above litigation as well as the claims regarding polyester polyols discussed below (with the exception of those criminal proceedings in which fines have already been imposed), including the financial risk of private claims for damages, is currently not quantifiable, due to the considerable uncertainty associated with these proceedings, so no provisions have been taken in this regard. The company expects that, in the course of the regulatory proceedings and civil damages suits, significant expenses will become necessary that may have a material adverse effect on our results of operations, financial position and cash flows.

Bayer AG and certain of its subsidiaries have been named, among others, as defendants in multiple putative class action lawsuits in various state courts in the United States and as defendants in lawsuits including putative class actions pending before various federal courts in the United States, involving allegations of price fixing involving polyester polyols and/or urethanes and urethane chemicals. These cases are at various preliminary stages.

Bayer AG and certain of its subsidiaries have also been named, among others, as defendants in multiple putative class action lawsuits in various federal courts in the United States, involving allegations of price fixing involving, inter alia, polyether polyols and certain other precursors for urethane end-use products. These matters are at an early stage. Due to the considerable uncertainty associated with these proceedings, it is currently not possible to estimate potential liability.

### ***Securities litigation***

Bayer AG, along with certain of its current and former officers and Bayer Corporation have been named as defendants in a purported class action lawsuit pending in the U.S. District Court for the Southern District of New York. The class action alleges violations of the U.S. securities laws and asserts that the defendants made false and misleading statements and omissions with respect to the commercial prospects, safety and efficacy of our cerivastatin anticholesterol products and with respect to the extent of the potential product liability exposure following our voluntary decision to cease marketing and to withdraw these products in August 2001. Plaintiffs originally sought unspecified damages on behalf of a class of all persons who purchased Bayer AG stock (including Bayer AG

American Depository Receipts) between March 6, 1998 and February 21, 2003 at allegedly inflated prices. Defendants filed a motion to dismiss the consolidated amended complaint on January 15, 2004. On September 30, 2004, the Court granted defendants' motion (with leave to replead) as to claims asserted on behalf of non-U.S. purchasers of Bayer AG stock on non-U.S. exchanges, claims involving statements made prior to August 4, 2000, and claims asserted against two of the four individual defendants. The Court denied the remainder of the motion. On January 14, 2005, the lead plaintiff filed an amended complaint that repleaded claims asserted on behalf of non-U.S. purchasers of Bayer AG stock on non-U.S. exchanges, but did not replead claims with respect to statements made prior to August 4, 2000 or with respect to the two individuals who had been dismissed. On February 28, 2005, Bayer AG and the remaining defendants filed a motion to dismiss the claims asserted on behalf of non-U.S. purchasers of Bayer AG stock on non-U.S. exchanges. The court has not yet ruled on this motion. Bayer AG, as do the other defendants, denies liability, believes that it has meritorious defenses to this action and intends to defend itself vigorously. Due to the considerable uncertainty associated with these proceedings, it is currently not possible to estimate potential liability.

### ***Asbestos litigation***

We are a defendant in asbestos cases in the United States. The complaints allege that Bayer along with other premises defendants, employed contractors at industrial sites where they were exposed to asbestos and were injured. Plaintiffs contend that Bayer failed to warn them or protect them from the known hazards of asbestos during the 1960s, 1970s and 1980s. The majority of cases are pending in West Virginia and Texas. These states permit asbestos actions in which multiple plaintiffs can sue multiple defendants without specifying which plaintiff has a claim against which defendant. While Bayer may be named as a defendant, each plaintiff may not have a claim against Bayer. Since premises owners now form a new group of targeted corporate defendants in these litigations, these types of actions may have an adverse impact on our results of operations, financial position or cash flows.

One of our U.S. subsidiaries, Bayer CropScience, Inc., is the legal successor to entities that sold asbestos-containing products from the 1940's until 1976 and is named as a defendant in asbestos-related litigation. Bayer CropScience is and has been fully indemnified for its costs and exposure in relation to this litigation by Union Carbide. Union Carbide continues to accept Bayer CropScience's tender of these cases, and it defends and settles them in Bayer CropScience's name, in its own name and in the name of the several predecessor companies to Bayer CropScience.

We believe that we have meritorious defenses in these actions and are defending them vigorously. Without acknowledging any liability, we have settled a number of these cases in the past. We may, on a case-by-case basis, settle additional cases for reasonable amounts when, in our judgment, settlement is economically feasible given the risks and costs inherent in the litigation. We have made what we believe to be appropriate provisions in light of our experience in handling these cases.

Except for the proceedings described, Bayer is not, or during the last twelve months has not been involved (whether as defendant or otherwise) in, nor does it have knowledge of any threat of any legal, arbitration, administrative or other proceedings the result of which may have, in the event of an adverse determination, a significant effect on its financial condition.

### **Board Practices**

In accordance with the German Stock Corporation Act (*Aktiengesetz*), Bayer AG has both a Board of Management (*Vorstand*) and a Supervisory Board (*Aufsichtsrat*). The Board of Management is responsible for the management of Bayer's business; the Supervisory Board supervises the Board of Management and appoints its members. The two boards are separate, and no individual may simultaneously be a member of both boards.

Members of both the Board of Management and the Supervisory Board owe a duty of loyalty and care to Bayer AG. In exercising their duties, the applicable standard of care is that of a diligent and prudent businessperson. Members of both boards must take into account a broad range of considerations when making decisions, including the interests of Bayer AG and its shareholders as well as

of employees and creditors. There are no potential conflicts of interests of the members of both boards between any duties to Bayer and their private interests and/or other duties.

The members of the Board of Management and the Supervisory Board may be held personally liable to Bayer AG for breaches of their duties of loyalty and care. Bayer AG must bring an action for breach of duty against the Board of Management or Supervisory Board upon a resolution of the shareholders' meeting passed by a simple majority of votes cast, or upon the request of shareholders holding, as a group, at least 10 percent of the outstanding share capital. With the exception of shareholders of companies that (unlike Bayer AG) are under the control of another company, individual shareholders of German companies cannot sue directors on behalf of the company in a manner analogous to a shareholder's derivative action under U.S. law. Under German law, directors may be liable for breach of duty to shareholders (as opposed to a duty to the company itself) only where a breach of duty to the company also constitutes a breach of a statutory provision enacted specifically for the protection of shareholders. As a practical matter, shareholders are able to assert liability against directors for breaches of this sort only in unusual circumstances.

The Board of Management is responsible for managing the business of Bayer AG in accordance with the German Stock Corporation Act and Bayer AG's Articles of Association. It also represents Bayer AG in its dealings with third parties and in court. According to the Articles of Association, the Board of Management consists of a minimum of two members. The Supervisory Board determines the number of and appoints the members of the Board of Management. Members of the Board of Management are appointed for a maximum term of five years and are eligible for reappointment after the completion of their term in office.

Bayer AG is legally represented by two members of the Board of Management acting together, or by one member of the Board of Management together with a person possessing a special power of attorney (*Prokura*).

The Board of Management must report regularly to the Supervisory Board, particularly on proposed business policy and strategy, on profitability and on the current business of Bayer AG, as well as on any exceptional matters that may arise from time to time. If not otherwise required by law, the Board of Management decides with a simple majority of the votes cast. In case of deadlock, the vote of the chairman is the relevant vote.

Under certain circumstances, such as a serious breach of duty or a vote of no confidence by the shareholders in an annual meeting, a member of the Board of Management may be removed by the Supervisory Board prior to the expiration of his term. A member of the Board of Management may not deal with, or vote on, matters relating to proposals, arrangements or contracts between him/herself and Bayer AG.

Individual Board members serve as representatives with primary responsibility for Bayer's various corporate functions and as representatives for the various geographic regions in which Bayer operates.

Under the German Stock Corporation Act, the German Co-Determination Act (*Mitbestimmungsgesetz*) of 1976 and Bayer's Articles of Association, the Supervisory Board consists of 20 members. The principal function of the Supervisory Board is to supervise the Board of Management and to appoint its members. The Supervisory Board oversees Bayer's business policy, corporate planning and strategy. It also approves the annual budget and the financial statements of Bayer AG and of the Bayer Group. The Supervisory Board may not make management decisions, but the Board of Management's Standard Operating Procedures (*Geschäftsordnung*) may require the prior consent of the Supervisory Board for specified transactions above a specified threshold, including:

- the acquisition or disposition of assets;
- the acquisition, disposition or encumbrance of real property;
- the creation of new business units or the disposition of existing units; and
- the issuance of bonds, entry into credit agreements, or grant of guaranties, sureties (*Bürgschaften*) and loans, except to subsidiaries.

Bayer's shareholders elect ten members of the Supervisory Board at the annual meeting of shareholders. Pursuant to the Co-Determination Act of 1976, Bayer's employees elect the remaining ten members. The term of a Supervisory Board member expires at the end of the annual meeting of shareholders in which the shareholders discharge Supervisory Board members for the fourth fiscal year following the year in which the member was elected. There is no compulsory retirement age for members of the Supervisory Board. However, in accordance with the German Corporate Governance Codex, Supervisory Board members are encouraged to retire at the Annual Shareholders Meeting following the member's 72nd birthday.

Any member elected by the shareholders at the annual meeting of shareholders may be removed by a majority of three quarters of the votes cast by the shareholders in such meeting. Any member elected by the employees may be removed by a majority of three quarters of the votes cast by the employees. Unless otherwise required by law or by the Articles of Association of Bayer AG, resolutions of the Supervisory Board are passed by simple majority of the votes cast. According to the Articles of Association, in the case of a deadlock, a second vote is held in which the chairman of the Supervisory Board is entitled to one additional vote. In order to constitute a quorum, at least half of the total members of the Supervisory Board must participate in the voting.

Currently, the Supervisory Board has the following committees:

- The Presidium was established pursuant to § 27 (3) of the Co-Determination Act and consists of the chairman and vice chairman of the Supervisory Board, as well as of one shareholder representative and one employee representative. It serves as Bayer's nomination committee (*Vermittlungsausschuss*). The purpose of this committee is to nominate members of the Board of Management for election by a simple majority of the votes of the Supervisory Board in the event that the Supervisory Board is unable to appoint members of the Board of Management with the votes of at least a two thirds majority of the Supervisory Board. Pursuant to § 9 (2) of the Standard Operating Procedures (*Geschäftsordnung*) of the Supervisory Board, the Presidium also prepares the general meetings of the full Supervisory Board. The current members of the Presidium are Mr. Schneider (chairman), Mr. Achleitner, Mr. Gipperich and Mr. Schmoltdt.
- The personnel committee (*Personalausschuss*) was established pursuant to § 10 of the Standard Operating Procedures of the Supervisory Board. The personnel committee consists of four members of the Supervisory Board. The chairman of the Supervisory Board acts as chairman of the personnel committee. The main responsibility of the personnel committee is the determination of the salary and further conditions of the employment of Board of Management members, the legal representation of the Company in affairs with Board of Management members pursuant to § 112 of the German Stock Corporation Act, the approval of agreements with Supervisory Board members pursuant to § 114 of the German Stock Corporation Act and the approval of loans granted to Supervisory Board and Board of Management members and other persons pursuant to § 89 and § 115 of the German Stock Corporation Act. The current members of the personnel committee are Mr. Schneider (chairman), Mr. Kohlhaussen, Mr. Ellrich and Ms. Kronen.
- The audit committee (*Prüfungsausschuss*) was established pursuant to § 11 of the Standard Operating Procedures of the Supervisory Board. The audit committee consists of six members of the Supervisory Board. The main responsibilities of the audit committee are oversight of financial accounting, risk management, the preparation of the resolutions of the Supervisory Board with respect to the annual financial statements, the review of all non-audit services to be performed by the independent auditor, oversight over the independent auditors including scope of services, fees and schedules, the direct receipt of the audit reports, and the direct receipt of reports of accounting irregularities. The current members of the audit committee are Mr. Kohlhaussen (chairman), Mr. Schneider, Mr. Henkel, Mr. Schenk, Mr. Wendlandt and Mr. de Win.

Under article 161 of the German Stock Corporation Act, the Board of Management and the Supervisory Board of Bayer AG are required to issue an annual declaration that the company has been, and is, in compliance with the recommendations of the "Government Commission on the German Corporate Governance Code" as published by the Federal Ministry of Justice in the official section of the electronic Federal Gazette (*Bundesanzeiger*), or to advise of any recommendations that have not been, or are not being, applied.



The Board of Management and the Supervisory Board of Bayer AG declared in December 2004 that Bayer is in compliance with the recommendations of the "Government Commission on the German Corporate Governance Code" as published by the Federal Ministry of Justice in the official section of the electronic Federal Gazette and has been in compliance since issuance of the last declaration of conformity in December 2003/January 2004. Only the following recommendations were not, or are not being, applied or were, or are being, applied in a modified form:

1. **Section 2.3.3: Bayer shall facilitate the personal exercising of shareholders' rights. Bayer shall also assist the shareholders in the use of proxies. The Board of Management shall arrange for the appointment of a representative to exercise shareholders' voting rights in accordance with instructions.** The recommendation that a representative should be appointed to exercise stockholders' voting rights in accordance with instructions was applied for the first time at the Annual Stockholders' Meeting on April 30, 2004. Since then, all the above-mentioned recommendations have been fulfilled.
2. **Section 3.8, Paragraph 2: If Bayer obtains D&O (Directors' and Officers' Liability) insurance for the Board of Management and the Supervisory Board, a suitable deductible should be agreed.** The present D&O insurance for Bayer AG does not cover an intentional breach of duty. To the extent insurance coverage is provided, there is no deductible for members of the Board of Management or the Supervisory Board. Bayer AG has obtained personal declarations of obligation from the members of its Board of Management and Supervisory Board concerning the payment of a deductible, even if insurance coverage otherwise exists under D&O insurance obtained by the company. Pursuant to these declarations, members of the Board of Management who cause damage to the company or third parties through gross negligence under German standards in their Board of Management activity are to pay for such damage up to an amount equivalent to half of their annual income in the year in which the damage occurs. Members of the Supervisory Board who cause damage to the company or third parties through gross negligence under German standards in their Supervisory Board activity are to pay for such damage up to an amount equivalent to the variable portion of their respective annual compensation as members of the Supervisory Board for the year in which the damage occurs. This does not limit their liability toward the company or third parties.
3. **Section 4.2.3, Paragraph 2, Sentence 4: For exceptional, unforeseen developments, the Supervisory Board (in connection with stock option programs or similar arrangements for boards of management) should agree on a possible limit (cap).** The stock option program introduced in 2004 complies with this recommendation. The Supervisory Board also intends to reach corresponding agreements with the members of the Board of Management with regard to future stock option programs and similar arrangements.
4. **Section 7.1.2. Sentence 2: The Consolidated Financial Statements shall be publicly accessible within 90 days following the end of the fiscal year; interim reports shall be publicly accessible within 45 days following the end of the reporting period.** The interim reports for the first half and third quarter of 2004 were not published within 45 days following the respective closing dates because of the preparations to carve out certain chemicals and polymers activities. This recommendation will be applied again in the future.

The latest declaration has been issued in December 2004. No further declaration has been issued thereafter.

## Major Shareholders

Under Bayer's Articles of Association, each of Bayer's ordinary shares represents one vote. Major shareholders do not have different voting rights.

Under the German Securities Trading Act (*Wertpapierhandelsgesetz*), holders of voting securities of a listed German company must notify that company of the level of their holding whenever it reaches, exceeds or falls below specified thresholds. These thresholds are 5, 10, 25, 50 and 75 percent of the company's outstanding voting securities. One shareholder, Allianz AG, has informed us on January 12, 2005 pursuant to section 21 (1) of the German Securities Trading Act (*Wertpapierhandelsgesetz*) that its share of voting rights in Bayer's company fell below 5 percent on January 6, 2005, and



has since been at 4.76 percent. As of March 3, 2005, no other shareholder has notified us that it has crossed any of the thresholds of the German Securities Trading Act. Bayer is therefore not aware of any single shareholder holding 5 percent or more of Bayer's outstanding shares as of March 3, 2005. Allianz AG does not have any different voting rights.

Because the shares of Bayer AG are in bearer form, Bayer cannot obtain precise information as to the identity of shareholders or the distribution of the shares among them. From time to time, however, Bayer conducts surveys, using the assistance of banks, to form estimates as to Bayer AG's shareholder base. Bayer's last such survey measured Bayer's shareholder structure as of June 1, 2001. The survey recorded responses with respect to 95.6 percent of Bayer's approximately 500,000 shareholders. Of this number, 94 percent were individuals, who together owned 24 percent of the shares. Approximately 55,000, or 12 percent, of the individual shareholders were Bayer employees, who together held approximately 2 percent of Bayer AG's outstanding shares. Institutional investors (e.g., banks, insurance companies and investment funds) held another 67 percent of the shares. Shareholders in Germany numbered approximately 437,000 and owned 61 percent of the shares. Approximately 59,000 shareholders in 135 other countries held 39 percent of the shares. Of this group, British shareholders held approximately 10 percent, and U.S. shareholders approximately 8 percent, of the shares.

To Bayer's knowledge, Bayer is not directly or indirectly owned or controlled by another corporation, by any government, or by any other natural or legal person severally or jointly, and there are no arrangements which may result in a change of control.

## **Material Contracts**

### ***Relating to LANXESS***

Bayer AG (Bayer) and LANXESS AG (LANXESS) are parties to a spin-off and acquisition agreement dated September 22, 2004, which sets forth the assets and liabilities, including in particular the entire equity interest in LANXESS GmbH, transferred by Bayer to LANXESS by way of a spin-off pursuant to section 123 (2) No. 1 of the German Transformation Act (*Umwandlungsgesetz*). The spin-off, which took retroactive economic effect as of July 1, 2004, became legally effective upon its registration in the Commercial Register (*Handelsregister*) for Bayer at the Local Court of Cologne (*Amtsgericht Köln*) on January 28, 2005. Pursuant to the spin-off and acquisition agreement, all of LANXESS' no par value ordinary bearer shares were granted to the stockholders of Bayer in the ratio of one LANXESS share for every ten Bayer shares. On September 10, 2004, Bayer Chemicals AG and Bayer MaterialScience AG had already transferred Bayer's chemicals activities and portions of its polymers activities to LANXESS GmbH under two separate spin-off and acquisition agreements.

Bayer and LANXESS also entered into the master agreement, dated September 22, 2004, pursuant to which Bayer and LANXESS agreed on measures to ensure the formation of the LANXESS subgroup as well as on provisions for the general apportionment of liability as between the parties and special provisions relating to the apportionment of product liability, liability for environmental contamination and liability for antitrust proceedings, in each case arising under administrative, civil and criminal proceedings and settlements thereof. The rules on general apportionment of liability provide that Bayer is to indemnify LANXESS and its affiliates with respect to liabilities of Bayer or its affiliates arising by statute or by application of common law and which were not allocated to LANXESS. In the area of environmental contamination, liability is essentially established based on the contamination of the properties used by the relevant party or its affiliates on July 1, 2004, subject to a ceiling on the liability of LANXESS and its affiliates of € 350 million. Bayer is responsible for any claims asserted against LANXESS and its affiliates to the extent to which such claims in total exceed the ceiling. With respect to antitrust proceedings, each party has agreed generally to bear all liability that relates to those antitrust violations committed by it. With respect to products sold by the former Rubber business group, Bayer generally assumed 70 percent of liabilities arising from antitrust proceedings and LANXESS assumed 30 percent. LANXESS's total liability arising from antitrust proceedings with respect to products sold by the former Rubber business group is generally limited to € 100 million. Bayer is responsible for any expenses in excess of this limit incurred by LANXESS and its affiliates arising out of or in connection with these proceedings. Finally, Bayer and LANXESS will generally be

liable for any claims arising out of or in connection with defective products that the respective party or its affiliates introduced to the market prior to January 28, 2005.

### **Relating to Roche**

Pursuant to a share and asset purchase agreement among Roche Holding AG, certain of its affiliates and Bayer HealthCare AG, dated as of July 16, 2004, Bayer agreed to acquire the global activities (except in Japan) of Roche Consumer Health (over-the-counter drugs and vitamins), the Swiss health-care group's 50 percent share of the 1996 Bayer/Roche joint venture in the United States and five Roche production sites in Germany, France, Argentina, Morocco and Indonesia. The purchase price is approximately € 2.3 billion, including about € 208 million for the purchase, completed in 2004, of Roche's 50 percent share of the Bayer/Roche joint venture in the United States.

The transaction was approved by the European Commission in November 2004. This approval was the key condition precedent to the closings. The first of several closings, resulting in Bayer HealthCare AG's attaining control over the majority of the Roche activities that are the subject of the agreement, occurred on January 1, 2005. The parties have a right to terminate the agreement in case certain conditions precedent have not been satisfied or waived by June 30, 2005, chief among them the non-occurrence of a material adverse effect. The sellers' overall liability under the agreement is generally limited to 30 percent of the purchase price and is generally only triggered if aggregate claims for damages under the agreement exceed CHF 15,000,000.

### **Recent Developments**

*The financial information presented for the first quarter 2005 reflects only the continuing operations, except where specific reference is made to discontinued operations.*

Bayer had a successful start to 2005, with all subgroups contributing to the Group's positive performance in the first quarter. Group sales from continuing operations advanced by 15.7 percent year on year to € 6,704 million (2004: € 5,792 million), including sales of the Consumer Health business acquired from Roche and sales to LANXESS after its spin-off from Bayer. Currency- and portfolio-adjusted sales grew by 9.3 percent, due mainly to gratifying volume increases and higher selling prices in the MaterialScience subgroup.

The strong growth in business brought a substantial improvement in the operating result to which all subgroups contributed. EBIT from continuing operations before special items rose by 50.1 percent to € 1,142 million (2004: € 761 million), thanks to considerably higher margins at MaterialScience, additional cost savings and efficiency improvements. Underlying EBITDA advanced by 27.3 percent from € 1,237 million to € 1,575 million.

First-quarter earnings were impacted by € 138 million in special charges (2004: € 7 million), including one-time charges of € 94 million arising from the termination of the co-promotion agreement with GlaxoSmithKline for *Levitra*® and expenses of € 21 million for the integration of the Consumer Health business acquired from Roche.

After special items, first-quarter EBIT climbed by 33.2 percent to € 1,004 million (2004: € 754 million). EBITDA also increased considerably, moving ahead by 16.8 percent to € 1,437 million (2004: € 1,230 million). After a non-operating result of minus € 131 million (2004: minus € 116 million), pre-tax income came to € 873 million (2004: € 638 million). Net income, which also included € 52 million in after-tax income from discontinued operations, expanded by 55.6 percent to € 652 million.

Thanks to the considerable improvement in operating performance, the Bayer Group's gross cash flow from continuing operations increased by 27.0 percent to € 1,101 million (2004: € 867 million). Net cash flow held steady year on year at minus € 226 million. Working capital increased compared to the first quarter of 2004, due mainly to the substantial growth in business. In addition, € 114 million of deferred income was reversed due to the termination of the co-promotion agreement with GlaxoSmithKline.

Net cash outflow for investing activities amounted to € 947 million, compared to a € 160 million net inflow in the first quarter of 2004. A total of € 2,053 million was spent for acquisitions, including a € 1.9 billion disbursement for the Roche Consumer Health acquisition. Bayer had already made a € 200 million advance payment for this acquisition and a € 208 million payment for the remaining 50 percent interest in Bayer's U.S. joint venture with Roche at the end of 2004. Cash inflows consisted mainly of € 1,000 million related to investments, which in turn resulted primarily from the scheduled repayment of loans following the LANXESS spin-off and the expiration of derivatives used to hedge currency risks. Cash receipts from sales of property, plant and equipment totalled € 256 million, including some € 230 million from the divestiture of the plasma business.

Principal components of the € 430 million net cash outflow for financing activities were € 107 million in interest payments and € 290 million used to pay down net debt.

Net debt of the Bayer Group had increased to € 7,115 million by the end of the first quarter, mostly due to payments made to acquire the Roche Consumer Health business. Including marketable securities and other assets, the Group had liquid assets of € 1,783 million on March 31, 2005.

At the Annual Stockholders' Meeting on April 29, 2005, Bayer AG declared a dividend of € 0.55 per share (730,341,920 shares) on the capital stock of € 1,870 million entitled to the dividend for 2004. The dividend payment totalled € 402 million giving a dividend yield of 2.2 percent based on the 2004 year-end price.

On June 6, 2005 the Bayer Group has sold the mandatory convertible bond it purchased in September 2004 back to LANXESS AG at a transaction price exceeding the nominal value of € 200 million.

No significant change in the financial or trading position of the Bayer Group has occurred since the end of the first quarter 2005.

## **Full year 2004**

The financial information for the full year 2004, including the respective reference period, given in this report bases on the audited consolidated financial statements for the Bayer Group as published in the annual report 2004. Thus, the figures are not adjusted for any new accounting standard and the changed business situation regarding the Plasma business. This does not affect the comparability of the figures. As IFRS 5 was not applicable before January 1, 2005 the financials include continuing and discontinued or rather discontinuing operations (See also "IFRS regulations and changes in Group and reporting structure").

## **Statement of Income**

The economic background was favourable in 2004, and Bayer saw a gratifying increase in demand for Bayer's products, particularly in the industrial businesses. Net sales of the Bayer Group increased by 4.2 percent, or € 1,191 million, to € 29,758 million (2003: € 28,567 million). Adjusted for the effects of currency translations and portfolio changes, sales rose by 9.1 percent. The overall growth in business is even more gratifying in view of Bayer's *Cipro*<sup>®</sup> anti-infective following the expiration of its U.S. patent and considerable adverse shifts in exchange rates.

The cost of goods sold increased by 3.5 percent to € 17.4 billion, mainly as a result of higher volumes. The ratio of the cost of goods sold to total net sales was 58.4 percent, compared with 58.8 percent in the previous year. Despite initial charges related to the alliance with Schering-Plough, selling expenses declined by 4.7 percent to € 6.2 billion, largely due to currency effects. Research and development expenses declined by 12.4 percent to € 2.1 billion, mainly because of Bayer's concentration on Bayer's strategic core businesses and also for currency reasons. Administration expenses increased in 2004 by 2.5 percent to € 1.7 billion. The reduction in the negative balance of other operating income and expenses was mainly due to the fact that the previous year's amount contained impairment charges. Other operating expenses in 2004 included charges related to the divestiture of the plasma business and litigation-related expenses. Among the items of other operating income

was a € 121 million gain from changes in obligations relating to the payment of employees' post-retirement health care costs in the United States.

The EBIT improved to a profit of € 1,808 million, with special items having a € 436 million net negative effect. In 2004 the special items consisted mainly of litigation-related expenses (€ 160 million), charges for the stock-market listing of LANXESS (€ 77 million), losses related to the sale of the plasma business (€ 71 million), an environmental protection provision for LANXESS (€ 40 million) and a one-time gain from the sale of a license (€ 39 million). Whereas the special items in the previous year largely comprised impairment losses and valuation adjustments related to the portfolio realignment and changes in economic conditions.

EBIT before special items climbed by 53.1 percent to € 2,244 million. The growth in underlying EBIT in 2004 was mainly the result of a marked recovery in business and efforts to reduce costs and increase efficiency. These factors more than offset the sharp rise in raw material prices, negative currency effects and lower earnings from Bayer's *Cipro*<sup>®</sup> anti-infective. Reduced levels of depreciation and amortisation also boosted income.

The non-operating result improved by € 52 million to minus € 823 million, largely because of a decrease in net interest expense, lower write-downs of investments in subsidiaries and a drop in equity-method loss. This is a particularly pleasing development in view of the fact that the previous year's item contained the € 190 million gain from the sale of Bayer's interest in Millennium Pharmaceuticals.

Income taxes in 2004 came to € 385 million. In 2003, the global review of asset valuations led to substantial deferred taxes, resulting in net tax income of € 645 million.

Group net income in 2004 thus improved by € 1,964 million to € 603 million (2003: minus € 1,361 million).

### **Cash Flow Statement**

Gross cash flow increased by 12.1 percent to € 3,210 million (2003: € 2,864 million), mainly due to the higher income from operations. Net cash provided by operating activities amounted to € 2,450 million, a 25.6 percent decline from the € 3,293 million in 2003. The sales growth in CropScience, MaterialScience and LANXESS, combined with significantly higher costs for petrochemical raw materials, led to an increase in inventories and trade accounts and consequently to the decline in net cash provided by operating activities.

Net cash outflow for investing activities totalled € 814 million in 2004, as compared to a net cash inflow of € 460 million in 2003. The cash outflow of € 1,251 million for additions to property, plant and equipment and € 358 million for acquisitions were partially offset by € 200 million in cash receipts from sales of property, plant and equipment, € 90 million in inflows related to investments, € 400 million in interest and dividend receipts and € 105 million in inflows from marketable securities.

The € 358 million in cash outflow for acquisitions comprised mainly the € 100 million purchase price for the remaining 50 percent of the shares of Gustafson and € 208 million for the remaining 50 percent interest in the U. S. joint venture with Roche, both of which Bayer now wholly owns.

The € 90 million cash inflow related to investments comprised mainly a € 327 million payment from Aventis in connection with the 2002 acquisition of Aventis CropScience, as well as outflows of around € 200 million for advance payments related to the acquisition of the Roche Consumer Health business.

2003 capital expenditures of € 1,653 million were more than offset by cash receipts from sales of property, plant and equipment. Bayer received cash of € 1,185 million from the divestments of crop science businesses mandated by the antitrust authorities in connection with the Aventis CropScience acquisition and € 118 million from the sale of Bayer's interest in PolymerLatex. Further cash from investments of € 258 million was provided by the divestment of Bayer's equity stakes in Millennium

Pharmaceuticals and others. Cash was consumed, however, by the purchase of the remaining 45.5 percent of the shares of the Bayer Polymers Sheet Europe group (formerly Makroform GmbH).

Net cash outflow for financing activities of € 761 million in 2004 contained a total of € 559 million in dividends paid to Bayer's stockholders and advance capital gains tax payments on intra-Group dividends as well as € 724 million in interest payments. These outflows were partially offset by € 512 million in net borrowings and € 10 million in capital contributions to subsidiaries.

Net debt was reduced by € 530 million during 2004, to € 5,422 million. On December 31, 2004, Bayer had liquid assets of € 3,599 million.

### ***Balance Sheet***

Total assets increased by € 0.4 billion from the end of the previous year, to € 37.8 billion.

Non-current assets shrank by € 1.4 billion, or 7.6 percent. Intangibles decreased by € 0.5 billion, with amortisation of € 0.8 billion and negative currency effects of € 0.1 billion partially offset by additions of € 0.5 billion from capital expenditures and acquisitions. Property, plant and equipment declined by € 0.8 billion after € 1.5 billion in depreciation and € 1.2 billion in capital expenditures and acquisitions, with translation adjustments and asset retirements each accounting for a € 0.2 billion reduction. The value of investments declined by € 0.1 billion as a result of an equity-method loss and write-downs of investments in subsidiaries.

Current assets increased by 10.6 percent, to € 19.5 billion. Inventories were up by 5.6 percent to € 6.2 billion, while trade accounts receivable rose by 10.0 percent to € 5.6 billion. These increases were due to the substantial growth in business, as well as to higher inventory valuation stemming from the rise in raw material prices. Other receivables increased by 7.8 percent to € 4.2 billion, largely because of a € 0.2 billion advance payment in connection with the Roche consumer health acquisition.

Despite the dividend payment for 2003 and negative currency effects, stockholders' equity rose by € 0.1 billion overall to € 12.3 billion, thanks mainly to the Group net income of € 0.6 billion. Equity coverage of total assets for 2004 thus totalled 32.5 percent on December 31, 2004 (2003: 32.6 percent).

Liabilities grew by € 0.5 billion to € 23.5 billion, chiefly because of the increase in other provisions. The total of other liabilities remained steady year on year.

### ***Outlook***

In light of the very pleasing sales and earnings trend in the first quarter, Bayer confirms Bayer's guidance for the full year 2005 and are optimistic about future developments.

This year Bayer is targeting an increase of more than 5 percent in currency- and portfolio-adjusted sales, to over € 25 billion.

As far as earnings are concerned, Bayer is very confident that Bayer can improve EBIT before special items by about 20 percent year on year.

In the Bayer HealthCare subgroup, Bayer has achieved savings in the Pharmaceuticals Division more quickly than originally planned. Bayer also benefited from a strong flu season in the first quarter. In Consumer Care Bayer realised synergies ahead of schedule.

In the Pharmaceuticals, Biological Products segment, Bayer is now aiming for an underlying EBIT margin in low double digits. Bayer is therefore raising Bayer's full-year 2005 guidance for the HealthCare business, where Bayer believes Bayer will more than offset the negative effects of the fair-value measurement of inventories acquired with the Roche Consumer Health business and the decline in earnings from Cipro®, pushing underlying HealthCare EBIT above the 2004 level.

The very pleasing business trend at Bayer MaterialScience is continuing. Bayer remains optimistic for the full year and uphold Bayer's forecast of significant growth in underlying EBIT. Of course it remains to be seen how the economy and raw material prices will develop.

In Bayer CropScience too, Bayer expects a considerable improvement in underlying EBIT.

**Bayer Group Statements for the full year 2004  
(Summary)**

<b><i>Bayer Group Consolidated Statements of Income</i></b>	<b>Dec. 31, 2004</b>	<b>Dec. 31, 2003 (*)</b>
	<b>(€ million)</b>	<b>(€ million)</b>
<b>Net sales</b> .....	<b>29,758</b>	<b>28,567</b>
<i>of which discontinuing operations</i> .....	<i>6,713</i>	<i>6,389</i>
Cost of goods sold .....	(17,382)	(16,801)
<b>Gross profit</b> .....	<b>12,376</b>	<b>11,766</b>
Selling expenses .....	(6,155)	(6,460)
Research and development expenses .....	(2,107)	(2,404)
General administration expenses .....	(1,714)	(1,673)
Other operating income .....	804	1,158
Other operating expenses .....	(1,396)	(3,506)
<b>Operating result (EBIT)</b> .....	<b>1,808</b>	<b>(1,119)</b>
<i>of which discontinuing operations</i> .....	<i>18</i>	<i>(1,639)</i>
Expense from investments in affiliated companies – net .....	(158)	(93)
Interest expense – net .....	(275)	(353)
Other non-operating expenses – net .....	(390)	(429)
<b>Non-operating result</b> .....	<b>(823)</b>	<b>(875)</b>
<b>Income (loss) before income taxes</b> .....	<b>985</b>	<b>(1,994)</b>
Income taxes .....	(385)	645
<b>Income (loss) after taxes</b> .....	<b>600</b>	<b>(1,349)</b>
Minority stockholders' interest .....	3	(12)
<b>Net income (loss)</b> .....	<b>603</b>	<b>(1,361)</b>
<b>Earnings per share (€)</b> .....	<b>0.83</b>	<b>(1.86)</b>
<b>Diluted earnings per share (€)</b> .....	<b>0.83</b>	<b>(1.86)</b>

(\*) 2003 figures restated



**Bayer Group Consolidated Balance Sheets**

	Dec. 31, 2004 (€ million)	Dec. 31, 2003 (*) (€ million)
<b>Assets</b>		
<b>Noncurrent assets</b>		
Intangible assets .....	6,017	6,514
Property, plant and equipment .....	9,184	9,937
Investments .....	1,654	1,781
	<b>16,855</b>	<b>18,232</b>
<b>Current assets</b>		
Inventories .....	6,215	5,885
Receivables and other assets		
Trade accounts receivable .....	5,580	5,071
Other receivables and other assets .....	4,153	3,854
	<b>9,733</b>	<b>8,925</b>
Liquid assets		
Marketable securities and other instruments .....	29	129
Cash and cash equivalents .....	3,570	2,734
	<b>3,599</b>	<b>2,863</b>
	<b>19,547</b>	<b>17,673</b>
<b>Deferred taxes</b>	<b>1,235</b>	<b>1,298</b>
<b>Deferred charges</b>	<b>167</b>	<b>242</b>
<b>Total assets</b>	<b>37,804</b>	<b>37,445</b>
<i>of which discontinuing operations .....</i>	<i>4,934</i>	<i>4,648</i>
<b>Stockholders' Equity and Liabilities</b>		
<b>Stockholders' equity</b>		
Capital stock of Bayer AG .....	1,870	1,870
Capital reserves of Bayer AG .....	2,942	2,942
Retained earnings .....	8,753	10,479
Net income (loss) .....	603	(1,361)
Revaluation surplus .....	66	–
Other comprehensive income		
Currency translation adjustment .....	(2,003)	(1,699)
Miscellaneous items .....	37	(18)
	<b>12,268</b>	<b>12,213</b>
<b>Minority stockholders' interest .....</b>	<b>111</b>	<b>123</b>
<b>Liabilities</b>		
Long-term liabilities		
Long-term financial liabilities .....	7,117	7,378
Miscellaneous long-term liabilities .....	130	98
Provisions for pensions and other post-employment benefits .....	4,999	5,072
Other long-term provisions .....	1,400	1,343
	<b>13,646</b>	<b>13,891</b>
Short-term liabilities		
Short-term financial liabilities .....	2,605	2,048
Trade accounts payable .....	2,276	2,265
Miscellaneous short-term liabilities .....	2,038	2,361
Short-term provisions .....	2,969	2,448
	<b>9,888</b>	<b>9,122</b>
	<b>23,534</b>	<b>23,013</b>
<i>of which discontinuing operations .....</i>	<i>2,255</i>	<i>2,077</i>
<b>Deferred taxes</b> .....	<b>1,247</b>	<b>1,462</b>
<b>Deferred income</b> .....	<b>644</b>	<b>634</b>
	<b>37,804</b>	<b>37,445</b>

(\*) 2003 figures restated

**Bayer Group Consolidated Statements of Cash Flows**

	Dec. 31, 2004 (€ million)	Dec. 31, 2003 (*) (€ million)
Operating result (EBIT) . . . . .	1,808	(1,119)
Income taxes . . . . .	(527)	(607)
Depreciation and amortization . . . . .	2,322	4,735
Change in pension provisions . . . . .	(430)	(43)
(Gains) losses on retirements of noncurrent assets . . . . .	37	(102)
<b>Gross cash provided by (used in) operating activities . . . . .</b>	<b>3,210</b>	<b>2,864</b>
<i>of which discontinuing operations . . . . .</i>	<i>366</i>	<i>158</i>
(Increase) decrease in inventories . . . . .	(556)	(49)
(Increase) decrease in trade accounts receivable . . . . .	(561)	115
<i>Increase (decrease) in trade accounts payable . . . . .</i>	<i>52</i>	<i>(143)</i>
Changes in other working capital . . . . .	305	506
<b>Net cash provided by (used in) operating activities . . . . .</b>	<b>2,450</b>	<b>3,293</b>
<i>of which discontinuing operations . . . . .</i>	<i>218</i>	<i>33</i>
Cash outflows for additions to property, plant and equipment . . . . .	(1,251)	(1,653)
Cash inflows from sales of property, plant and equipment . . . . .	200	1,644
Cash inflows from sales of investments . . . . .	90	258
Cash outflows for acquisitions less acquired cash . . . . .	(358)	(72)
Interest and dividends received . . . . .	400	366
Net cash inflow (outflow) from marketable securities . . . . .	105	(83)
<b>Net cash provided by (used in) investing activities . . . . .</b>	<b>(814)</b>	<b>460</b>
<i>of which discontinuing operations . . . . .</i>	<i>(283)</i>	<i>(274)</i>
Capital contributions . . . . .	10	0
Bayer AG dividend and dividend payments to minority stockholders . . . . .	(559)	(664)
Issuances of debt . . . . .	1,393	1,621
Retirements of debt . . . . .	(881)	(1,936)
Interest paid . . . . .	(724)	(782)
<b>Net cash provided by (used in) financing activities . . . . .</b>	<b>(761)</b>	<b>(1,761)</b>
<i>of which discontinuing operations . . . . .</i>	<i>65</i>	<i>241</i>
<b>Change in cash and cash equivalents due to business activities . . . . .</b>	<b>875</b>	<b>1,992</b>
<b>Cash and cash equivalents at beginning of year . . . . .</b>	<b>2,734</b>	<b>767</b>
Change in cash and cash equivalents due to changes in scope of consolidation . . . . .	6	1
Change in cash and cash equivalents due to exchange rate movements . . . . .	(45)	(26)
<b>Cash and cash equivalents at end of year . . . . .</b>	<b>3,570</b>	<b>2,734</b>
Marketable securities and other instruments . . . . .	29	129
<b>Liquid assets as per balance sheets . . . . .</b>	<b>3,599</b>	<b>2,863</b>

(\*) 2003 figures restated

**Bayer Group Statements for the First Quarter 2005  
(Summary)**

<b>Consolidated Statements of Income</b>	<b>March 31, 2005</b>	<b>March 31, 2004 (*)</b>
	<b>(€ millions)</b>	<b>(€ millions)</b>
<b>Net sales</b> .....	<b>6,704</b>	<b>5,792</b>
Cost of goods sold .....	(3,542)	(2,807)
<b>Gross profit</b> .....	<b>3,162</b>	<b>2,985</b>
Selling expenses .....	(1,269)	(1,265)
Research and development expenses .....	(423)	(452)
General administration expenses .....	(324)	(327)
Other operating income (expenses) – net .....	(142)	(187)
<b>Operating result (EBIT)</b> .....	<b>1,004</b>	<b>754</b>
Expense from investments in affiliated companies – net ...	(2)	(19)
Interest expense – net .....	(80)	(21)
Other non-operating expense – net .....	(49)	(76)
<b>Non-operating result</b> .....	<b>(131)</b>	<b>(116)</b>
<b>Income before income taxes</b> .....	<b>873</b>	<b>638</b>
Income taxes .....	(280)	(239)
<b>Income from continuing operations after taxes</b> .....	<b>593</b>	<b>399</b>
<b>Income from discontinued operations after taxes</b> .....	<b>52</b>	<b>26</b>
<b>Income after taxes</b> .....	<b>645</b>	<b>425</b>
of which		
<b>attributable to minority interest</b> .....	<b>(7)</b>	<b>6</b>
<b>attributable to Bayer AG stockholders (net income)</b> .....	<b>652</b>	<b>419</b>
<b>Earnings per share (€)</b>		
<b>From continuing operations</b>		
Basic .....	0.81	0.55
Diluted .....	0.81	0.55
<b>From continuing and discontinued operations</b>		
Basic .....	0.89	0.57
Diluted .....	0.89	0.57

(\*) 2004 figures restated

**Consolidated Balance Sheet**

	March 31, 2005 (€ millions)	March 31, 2004 (*) (€ millions)
<b>Assets</b>		
<b>Noncurrent assets</b>		
Goodwill and other intangible assets .....	7,733	6,416
Property, plant and equipment .....	7,849	8,292
Investments in associates .....	751	841
Financial assets .....	1,034	1,016
Other assets .....	41	622
Deferred taxes .....	1,558	1,351
	<b>18,966</b>	<b>18,538</b>
<b>Current assets</b>		
Inventories .....	5,262	4,672
Trade accounts receivable .....	6,046	4,995
Financial assets .....	608	452
Other assets .....	1,933	1,451
Claims for tax refunds .....	859	721
Liquid assets .....	1,783	2,632
	<b>16,491</b>	<b>14,923</b>
Assets held for sale and discontinued operations .....	0	4,732
<b>Total assets</b> .....	<b>35,457</b>	<b>38,193</b>
<b>Stockholders' Equity and Liabilities</b>		
<b>Equity attributable to Bayer AG stockholders</b>		
Capital stock and reserves .....	4,812	4,812
Revaluation surplus .....	66	0
Retained earnings .....	7,520	8,811
Net income .....	652	419
Other comprehensive income (loss) .....	(2,601)	(2,595)
of which		
comprehensive income (loss) from discontinued		
operations .....	0	(87)
	<b>10,449</b>	<b>11,447</b>
Equity attributable to minority interest .....	178	100
<b>Total stockholders' equity</b> .....	<b>10,627</b>	<b>11,547</b>
<b>Liabilities</b>		
<b>Noncurrent liabilities</b>		
Provisions for pensions and other post-employment		
benefits .....	6,110	6,122
Other provisions .....	1,261	1,204
Financial liabilities .....	6,874	6,868
Miscellaneous liabilities .....	39	210
Deferred taxes .....	642	1,100
	<b>14,926</b>	<b>15,504</b>
<b>Current liabilities</b>		
Other provisions .....	3,058	2,545
Financial liabilities .....	2,502	1,617
Trade accounts payable .....	1,714	1,527
Tax liabilities .....	406	395
Miscellaneous liabilities .....	2,224	2,257
	<b>9,904</b>	<b>8,341</b>
Liabilities directly related to assets held for sale and		
discontinued operations .....	0	2,801
<b>Total liabilities</b> .....	<b>24,830</b>	<b>26,646</b>
<b>Total stockholders' equity and liabilities</b> .....	<b>35,457</b>	<b>38,193</b>

(\*) 2004 figures restated

**Consolidated Statements of Cash Flows**

	March 31, 2005	March 31, 2004 (*)
	(€ millions)	(€ millions)
Operating result (EBIT) .....	1,004	754
Income taxes .....	(221)	(215)
Depreciation and amortization .....	433	476
Change in pension provisions .....	(117)	(122)
(Gains) losses on retirements of noncurrent assets .....	2	(26)
<b>Gross cash flow .....</b>	<b>1,101</b>	<b>867</b>
Decrease (increase) in inventories .....	(231)	(104)
Decrease (increase) in trade accounts receivable .....	(936)	(785)
Increase (decrease) in trade accounts payable .....	(254)	(291)
Changes in other working capital .....	94	108
<b>Net cash provided by (used in) operating activities (net cash flow, continuing operations) .....</b>	<b>(226)</b>	<b>(205)</b>
Net cash provided by (used in) operating activities (net cash flow, discontinued operations) .....	(32)	(94)
<b>Net cash provided by (used in) operating activities (net cash flow, total) .....</b>	<b>(258)</b>	<b>(299)</b>
Cash outflows for additions to property, plant and equipment .....	(181)	(185)
Cash inflows from sales of property, plant and equipment .....	256	63
Cash inflows from sales of investments .....	1,000	355
Cash outflows for acquisitions less acquired cash .....	(2,053)	(142)
Interest and dividends received .....	28	128
Net cash inflow (outflow) from marketable securities .....	3	(59)
<b>Net cash provided by (used in) investing activities (total) ..</b>	<b>(947)</b>	<b>160</b>
Capital contributions .....	0	0
Bayer AG dividend and dividend payments to minority stockholders .....	(33)	(176)
Issuances of debt .....	264	312
Retirements of debt .....	(554)	(161)
Interest paid .....	(107)	(133)
<b>Net cash provided by (used in) financing activities (total) ..</b>	<b>(430)</b>	<b>(158)</b>
<b>Change in cash and cash equivalents due to business activities (total) .....</b>	<b>(1,635)</b>	<b>(297)</b>
<b>Cash and cash equivalents at beginning of period .....</b>	<b>3,570</b>	<b>2,734</b>
Change in cash and cash equivalents due to changes in scope of consolidation .....	(196)	0
Change in cash and cash equivalents due to exchange rate movements .....	10	3
<b>Cash and cash equivalents at end of period .....</b>	<b>1,749</b>	<b>2,440</b>
Marketable securities and other instruments .....	34	192
<b>Liquid assets as per balance sheets .....</b>	<b>1,783</b>	<b>2,632</b>

(\*) 2004 figures restated

## TAXATION

The following is a general description of certain tax considerations relating to the Bonds. It does not purport to be a complete analysis of all tax considerations relating to the Bonds. Prospective purchasers of Bonds should consult their tax advisers as to the consequences, under the tax laws of the country in which they are resident for tax purposes and under the tax laws of the Federal Republic of Germany, of acquiring, holding and disposing of Bonds and receiving payments of principal, interest and other amounts under the Bonds. This summary is based upon the laws in force and their interpretation on the date of this Prospectus and is subject to any change in law or interpretation that may take effect after such date.

### Federal Republic of Germany

The following is a summary of certain material German tax consequences of purchasing, owning and disposing of the Bonds. It does not purport to be a complete analysis of all possible tax situations that may be relevant to a decision to purchase, own or dispose of the Bonds. In particular, this discussion does not consider any specific facts or circumstances that may apply to a particular purchaser. This summary does not allow any conclusions to be drawn with respect to issues not specifically addressed. This summary is based on the laws of Germany currently in force and as applied on the date of this prospectus, which are subject to change, possibly with retroactive or retrospective effect.

PROSPECTIVE PURCHASERS OF BONDS ARE ADVISED TO CONSULT THEIR OWN TAX ADVISORS AS TO THE TAX CONSEQUENCES OF THE PURCHASE, OWNERSHIP AND DISPOSITION OF BONDS, INCLUDING THE EFFECT OF ANY STATE OR LOCAL TAXES, UNDER THE TAX LAWS OF GERMANY AND EACH COUNTRY OF WHICH THEY ARE RESIDENTS.

### *Tax Residents*

#### *Interest Payments*

Interest paid to a Bondholder resident in Germany (a person whose residence, habitual abode, statutory seat, or place of effective management and control is located in Germany) including any consideration invoiced separately for such portion of the interest of the current interest payment period which is attributable to the period up to the disposition of the Bond ("**Accrued Interest**") is subject to German personal or corporate income tax. On the basis of the assessed personal or corporate income tax, solidarity surcharge (*Solidaritätszuschlag*) of 5.5% is levied. In addition, if Bonds are held as assets of a German commercial business, any interest is subject to trade tax. Accrued interest (*Stückzinsen*) paid by an individual upon the acquisition of Bonds may give rise to negative income and may, therefore, reduce a Bondholder's personal tax liability.

If the Bonds are held in a custodial account which the Bondholder maintains with a German branch of a German or non-German bank or financial services institution (the "**Disbursing Agent**" – *inländische Zahlstelle*) a 30% withholding tax on interest payments (*Zinsabschlag*), plus 5.5% solidarity surcharge on such tax, will generally be levied, resulting in a total tax charge of 31.65% of the gross interest payment. Withholding tax is also imposed on Accrued Interest. Withholding tax and the solidarity surcharge thereon are credited as prepayments against the German personal or corporate income tax and the solidarity surcharge liability of the German resident Bondholder. Amounts over-withheld will entitle the holder of a Bond to a refund, based on an assessment to tax.

No tax is withheld by the Disbursing Agent if the Bondholder is an individual who has filed a withholding exemption certificate (*Freistellungsauftrag*) with the Disbursing Agent and the Bonds held by such individual are not part of a German trade or business property or generate income from the letting and leasing of property. However, this exemption applies only to the extent that the aggregate interest income derived from the Bond after deduction of accrued interest paid upon the acquisition of the Bonds together with an individual's other investment income administered by the Disbursing Agent does not exceed the maximum annual exemption amount shown on the withholding exemption certificate (up to € 1,370 for individuals and € 2,740 for married couples filing jointly) plus the flat deductible expense allowance (€ 51 for individuals and € 102 for married couples filing jointly). Fur-



ther, no withholding obligation exists, if the Bondholder submits a certificate of non-assessment (*Nichtveranlagungsbescheinigung*) issued by the local tax office to the Disbursing Agent.

### *Sale or Redemption of Bonds*

According to guidance issued by the German tax authorities the Bonds should qualify as a financial innovation (*Finanzinnovation*) within the meaning of § 20 para. 2 sentence 1 no. 4 of the German Income Tax Act (*Einkommensteuergesetz*) – which includes, among other things, floating rate securities –, in which case the following tax implications should apply. Should, however, the Bonds not qualify as a financial innovation, a different tax treatment – as further outlined below – may apply.

If the Bonds qualify as a financial innovation (*Finanzinnovation*) gains from the sale, assignment or redemption of Bonds are considered as interest and are subject to personal or corporate income tax as well as solidarity surcharge at a rate of 5.5% thereon. If Bonds are held as assets of a German commercial business, such gains are also subject to trade tax. In the absence of a predetermined yield to maturity (*Emissionsrendite*) of the Bonds attributable to the period over which the holder has held such Bond, the taxable gain from the sale, assignment or redemption of Bonds would be calculated as the difference between the proceeds from the disposition, assignment or redemption and the issue or purchase price of the Bond (*Marktrendite*).

Should the Bonds not be a financial innovation, for individual investors gains (other than accrued interest and certain other amounts) from the sale, assignment or redemption of Bonds are only taxable if the Bonds are held for not more than one year. It is assumed that the Bonds acquired first will be sold first. If the shareholder's aggregate amount of private capital gains for the year is less than € 512, such capital gains are not subject to tax. The deductibility of losses would be restricted.

If the Bonds qualify as financial innovations, as explained above, and if the Bonds are held in a custodial account maintained with a Disbursing Agent since the acquisition of the Bonds, withholding tax at a rate of 30% (plus solidarity surcharge of 5.5% thereon) will also be withheld from the difference between the proceeds from the disposition, assignment or redemption and the issue or purchase price of the Bonds if the Bonds have been kept in a custodial account with such Disbursing Agent since the time of issuance or acquisition, respectively. If the Bonds have been transferred into the custodial account of the Disbursing Agent only after such point in time, withholding tax at the aforementioned rate will be levied on a lump-sum basis on 30% of the proceeds from the disposition, assignment or redemption of the Bonds. In computing the tax to be withheld the Disbursing Agent may deduct from the basis of the withholding tax any Accrued Interest paid by the holder of a Bond to the Disbursing Agent during the same calendar year. Withholding tax and the solidarity surcharge thereon are credited as prepayments against the German personal or corporate income tax and the solidarity surcharge liability of the German resident Bondholder. Amounts overwithheld will entitle the holder of a Bond to a refund, based on an assessment to tax. In general, no withholding tax will be levied if the requirements outlined above under "Tax Residents – Interest Payments" are met.

### ***Non-Residents***

Interest paid to a Bondholder and capital gains realized by a Bondholder not resident in Germany will generally not be taxable in Germany and no tax will be withheld (even if the Bonds are kept with a Disbursing Agent). Exemptions apply, for example, if (i) the Bonds are held as a business asset of a German permanent establishment or by a permanent representative of the non-resident Bondholder, if (ii) the interest income of such Bonds does otherwise constitute German source income (such as income from the letting and leasing of certain German situs property) and if (iii) the non-resident Bondholder does not comply with the procedural rules to prove his status as a non-tax resident. In these cases, the Bondholder not resident in Germany will be subject to a tax regime similar to that described above under "Taxation in the Federal Republic of Germany – Tax Residents."

### ***Inheritance and Gift Tax***

No inheritance or gift taxes with respect to any Bond will arise under the laws of Germany, if, in the case of inheritance tax, neither the decedent nor the beneficiary, or, in the case of gift tax, neither the

donor nor the donee, is a resident of Germany and such Bond is not attributable to a German trade or business for which a permanent establishment is maintained, or a permanent representative has been appointed, in Germany. Exceptions from this rule apply to certain German citizens who previously maintained a residence in Germany. Double taxation treaties may provide for exceptions to the domestic inheritance and gift tax rules.

### ***Other taxes***

No stamp, issue, registration or similar direct or indirect taxes or duties will be payable in Germany in connection with the issuance, delivery or execution of the Bonds. Currently, net assets tax is not levied in Germany.

### **European Union Directive on the Taxation of Savings Income**

On June 3, 2003 the Council of the European Union approved a directive regarding the taxation of interest income (the "EU Savings Tax Directive"). Accordingly, each EU Member State must require paying agents (within the meaning of such directive) established within its territory to provide to the competent authority of this state details of the payment of interest made to any individual resident in another EU Member State as the beneficial owner of the interest. The competent authority of the EU Member State of the paying agent (within the meaning of the EU Savings Tax Directive) is then required to communicate this information to the competent authority of the EU Member State of which the beneficial owner of the interest is a resident.

For a transitional period, Austria, Belgium and Luxembourg may opt instead to withhold tax from interest payments within the meaning of the EU Savings Tax Directive at a rate of 15% for the first three years from application of the provisions of such directive, of 20% for the subsequent three years, and of 35% from the seventh year after application of the provisions of such directive.

In conformity with the prerequisites for the application of the EU Savings Tax Directive, Switzerland, Liechtenstein, San Marino, Monaco and Andorra have confirmed that from July 1, 2005 they will apply measures equivalent to those contained in such directive, in accordance with agreements entered into by them with the European Community. It has also been confirmed that certain dependent or associated territories (the Channel Islands, the Isle of Man and certain dependent or associated territories in the Caribbean) will apply from that same date an automatic exchange of information or, during the transitional period described above, a withholding tax in the described manner. Consequently, the Council of the European Union noted that the conditions have been met to enable the provisions of the EU Savings Tax Directive to enter into force as from July 1, 2005.

By legislative regulations dated January 26, 2004 the Federal Government enacted the provisions for implementing the EU Savings Tax Directive into German law. These provisions apply as from July 1, 2005.

## SUBSCRIPTION AND SALE

Pursuant to a subscription agreement dated July 25, 2005 (the "Subscription Agreement") among Bayer Aktiengesellschaft, Deutsche Bank AG, London Branch and J.P. Morgan Securities Ltd. (the "Lead Managers"), BNP PARIBAS (London Branch), Citigroup Global Markets Limited and Goldman Sachs International (the "Co-Lead Managers"; together with the Lead Managers, the "Managers"), Bayer Aktiengesellschaft has agreed to sell to the Managers, and the Managers have agreed, subject to certain customary closing conditions, to purchase, the Bonds on July 29, 2005 at a price of 98.812 % of their principal amount (equivalent to € 988.12 per Bond) (the "Issue Price"). The Issuer has furthermore agreed to reimburse the Managers for certain expenses incurred in connection with the issue of the Bonds.

The Subscription Agreement will provide that the Managers are entitled, under certain circumstances, to terminate the Subscription Agreement. In such event, no Bonds will be delivered to investors. Furthermore, Bayer Aktiengesellschaft has agreed to indemnify the Managers against certain liabilities in connection with the offer and sale of the Bonds.

The Managers or their affiliates have provided from time to time, and expect to provide in the future, investment services to Bayer Group, for which the Managers or their affiliates have received or will receive customary fees and commissions.

### **Selling Restrictions**

#### ***European Economic Area***

In relation to each Member State of the European Economic Area <sup>(1)</sup> which has implemented the Prospectus Directive (each, a "Relevant Member State"), each Manager has represented and agreed that with effect from and including the date on which the Prospectus Directive is implemented in that Member State (the "Relevant Implementation Date") it has not made and will not make an offer of Bonds to the public in that Relevant Member State prior to the publication of a prospectus in relation to the Bonds which has been approved by the competent authority in that Relevant Member State in accordance with the Prospectus Directive or, where appropriate, published in another Relevant Member State and notified to the competent authority in that Relevant Member State in accordance with Article 18 of the Prospectus Directive, except that it may, with effect from and including the Relevant Implementation Date, make an offer of Bonds to the public in that Relevant Member State at any time:

- (a) to legal entities which are authorised or regulated to operate in the financial markets or, if not so authorised or regulated, whose corporate purpose is solely to invest in securities;
- (b) to any legal entity which has two or more of (1) an average of at least 250 employees during the last fiscal year; (2) a total balance sheet of more than € 43,000,000 and (3) an annual turnover of more than € 50,000,000, as shown in its last annual or consolidated accounts;
- (c) in any other circumstances which do not require the publication by the Issuer of a prospectus pursuant to Article 3 of the Prospectus Directive.

For the purposes of this provision, the expression an "offer of Bonds to the public" in relation to any Bonds in any Relevant Member State means the communication in any form and by any means of sufficient information on the terms of the offer and the Bonds to be offered so as to enable an investor to decide to purchase or subscribe the Bonds, as the same may be varied in that Member State by any measure implementing the Prospectus Directive in that Member State and the expression "Prospectus Directive" means Directive 2003/71/EC and includes any relevant implementing measure in each Relevant Member State.

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<sup>(1)</sup> The EU plus Iceland, Norway and Liechtenstein.

### ***United States of America and its Territories***

The Bonds have not been and will not be registered under the Securities Act and may not be offered, or sold within the United States or to, or for the account or benefit of, U.S. persons except in accordance with Regulation S under the Securities Act. Each Manager has represented and agreed that it has offered and sold the Bonds, and will offer and sell the Bonds (i) as part of its distribution at any time and (ii) otherwise until 40 days after the completion of the distribution of all the Bonds only in accordance with Rule 903 of the Regulation S under the Securities Act. Neither the Managers, their affiliates nor any persons acting on its or their behalf have engaged or will engage in any directed selling efforts with respect to the Bonds, and it and they have complied and will comply with the offering restrictions requirements of Regulation S under the Securities Act. Each Manager has also agreed that at or prior to confirmation of sale of Bonds, it will have sent to each distributor, dealer or person receiving a selling concession, fee or other remuneration that purchases Bonds from it during the restricted period a confirmation or notice to substantially the following effect:

“The Bonds covered hereby have not been registered under the U.S. Securities Act of 1933, as amended (the “Securities Act”) and may not be offered or sold within the United States or to, or for the account or benefit of, U.S. persons (i) as part of their distribution at any time or (ii) otherwise until 40 days after the completion of the distribution of the Bonds as determined and certified by each Manager, except in either case in accordance with Regulation S under the Securities Act. Terms used above have the meaning given to them in Regulation S under the Securities Act.”

Terms used in the preceding paragraphs have the meaning given to them by Regulation S under the Securities Act.

In addition, each Manager has represented and agreed that:

- (a) except to the extent permitted under U.S. Treas. Reg. Section 1.163-5 (c)(2)(i)(D) (the “TEFRA D Rules”), (i) it has not offered or sold, and during the restricted period will not offer or sell, directly or indirectly, Bonds in bearer form to a person who is within the United States or its possessions or to a United States person, and (ii) it has not delivered and will not deliver, directly or indirectly, within the United States or its possessions definitive Bonds in bearer form that are sold during the restriction period;
- (b) it has and throughout the restricted period will have in effect procedures reasonably designed to ensure that its employees or agents who are directly engaged in selling Bonds in bearer form are aware that such Bonds may not be offered or sold during the restricted period to a person who is within the United States or its possessions or to a United States person, except as permitted by a TEFRA D Rules;
- (c) if it was considered a United States person, that is acquiring the Bonds for purposes of resale in connection with their original issuance and agrees that if it retains Bonds in bearer form for its own account, it will only do so in accordance with the requirements of TEFRA D Rules; and
- (d) with respect to each affiliate that acquires from it Bonds in bearer form for the purpose of offering or selling such Bonds during the restricted period that it will either (i) repeat and confirm the representations and agreements contained in sub-clauses (a), (b) and (c); or (ii) obtain from such affiliate for the benefit of the Issuer the representations and agreements contained in sub-clauses (a), (b) and (c).

Terms used in the preceding paragraph have the meanings given to them by the U.S. Internal Revenue Code and regulations thereunder, including the TEFRA D Rules.

### ***United Kingdom of Great Britain and Northern Ireland***

Each Manager has represented and agreed that:

- (a) (i) it is a person whose ordinary activities involve it in acquiring, holding, managing or disposing of investments (as principal or agent) for the purposes of its business and (ii) it has not offered or sold and will not offer or sell the Bonds other than to persons whose ordinary activities involve them in acquiring, holding, managing or disposing of investments (as principal or as agent) for the purposes of their businesses or who it is reasonable to expect will acquire, hold, manage or

dispose of investments (as principal or agent) for the purposes of their businesses where the issue of the Bonds would otherwise constitute a contravention of Section 19 of the FSMA by the Issuer;

- (b) it has only communicated or caused to be communicated and will only communicate or cause to be communicated an invitation or inducement to engage in investment activity (within the meaning of Section 21 of the FSMA) received by it in connection with the issue or sale of the Bonds in circumstances in which Section 21(1) of the FSMA does not apply to the Issuer; and
- (c) it has complied and will comply with all applicable provisions of the FSMA with respect to anything done by it in relation to the Bonds in, from or otherwise involving the United Kingdom.

### ***Italy***

The Bonds are in compliance with Article 129 of Decree No. 385 and the implementing instructions of the Bank of Italy (*Istruzioni di Vigilanza della Banca d'Italia*).

### ***General***

In addition to the specific restrictions set out above, the Managers agree that they will observe all applicable provisions of law in each jurisdiction in or from which it may offer Bonds or distribute any offering material.

## GENERAL INFORMATION

(1) The creation and issue of the Bonds has been authorised by resolutions of the Board of Directors of the Issuer dated June 14, 2005 and the Supervisory Board of the Issuer dated June 27, 2005.

(2) For so long as any Bond is outstanding, copies of the following documents may be inspected during normal business hours at the specified office of each Paying Agent and as long as the Bonds are listed on the regulated market of the Luxembourg Stock Exchange the documents set out under (c) and (e) below will be available on the website of the Luxembourg Stock Exchange ([www.bourse.lu](http://www.bourse.lu)) and (free of charge) at the head office of the listing agent in Luxembourg:

- (a) the Agency Agreement;
- (b) the articles of association (*Satzung*) of the Issuer;
- (c) the Prospectus;
- (d) the confirmation of the authorisation of the issue of the Bonds by the Issuer; and
- (e) documents incorporated by reference.

(3) The Luxembourg Stock Exchange will list the Bonds on the regulated market from July 29, 2005 on.

(4) For as long as any of the Bonds are listed on the regulated market of the Luxembourg Stock Exchange, the Luxembourg Stock Exchange will be informed by the Issuer of all notifications regarding payments.

For so long as any of the Bonds are listed on the regulated market of the Luxembourg Stock Exchange, all notices to the Bondholders regarding the Bonds will be published in a leading newspaper having general circulation in Luxembourg (which is expected to be *d'Wort*).

Payments and transfers of the Bonds will be settled through Euroclear Bank S.A./N.V. and Clearstream Banking, société anonyme, Luxembourg.

(5) The Issuer has appointed JPMorgan Chase Bank, N.A. as Principal Paying Agent and J.P. Morgan Bank Luxembourg S.A. as the initial Luxembourg Paying Agent. For so long as any Bonds are listed on the regulated market of the Luxembourg Stock Exchange, the Issuer will maintain a paying agent in the city of Luxembourg.

(6) The Temporary Global Bond and the Permanent Global Bond will each bear the following legend:

"Any United States person who holds this obligation will be subject to limitations under the United States income tax laws, including the limitations provided in Sections 165(j) and 1287(a) of the Internal Revenue Code."

(7) The Bonds have been accepted for clearance by Clearstream Banking, société anonyme, Luxembourg and Euroclear Bank N.V./S.A., as operator of the Euroclear System. The Common Code for the Bonds is 022536940, the ISIN is XS0225369403 and the German Securities Code (*WKN*) is A0E9Z7.

(8) Moody's Investor Services ("Moody's") has rated the Bonds (P) Baa2<sup>(1)</sup> and Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc. ("S&P") has rated the Bonds BBB<sup>(2)</sup>.

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<sup>(1)</sup> Moody's defines Baa2 as follows:

Obligations rated Baa are subject to moderate credit risk. They are considered medium-grade and as such may possess certain speculative characteristics. Moody's appends numerical modifiers 1, 2, and 3 to each generic rating classification from Aa through Caa. The modifier 1 indicates that the obligation ranks in the higher end of its generic rating category; the modifier 2 indicates a mid-range ranking; and the modifier 3 indicates a ranking in the lower end of that generic rating category.

<sup>(2)</sup> S&P defines BBB as follows:

An obligation rated BBB exhibits adequate protection parameters. However, adverse economic conditions or changing circumstances are more likely to lead to a weakened capacity of the obligor to meet its financial commitment on the obligation. The ratings from AA to CCC may be modified by the addition of a plus (+) or minus (-) sign to show relative standing within the major rating categories.



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