

# HELLA Annual General Meeting 2019

Documents regarding agenda items 12 and 13



## **Report to the Annual General Meeting on agenda items 12 and 13 in accordance with §§ 71 (1) no. 8, 186 (4) sentence 2 AktG**

The company last adopted a resolution to authorize the acquisition and use of treasury shares in the General Meeting on October 31, 2014. That resolution expires on October 30, 2019. In agenda items 12 and 13, the General Partner, the Shareholder Committee and the Supervisory Board ask the shareholders of the company to approve a new authorization for a period lasting until September 26, 2024. In this regard, pursuant to §§ 71 (1) no. 8 sentence 5, 186 (4) sentence 2 AktG, the General Partner submits a written report that is published as follows:

### **a) Possibilities of acquiring treasury shares**

In addressing agenda item 12, it is intended, in addition to acquiring treasury shares over the stock exchange, to allow the company the possibility of acquiring treasury shares by means of a public purchase offer addressed to all shareholders or by means of a public request directed at all shareholders to submit sales offers. The company's flexibility is thereby increased. Moreover, in such cases, each shareholder wanting to sell shares can decide individually how many and, if a price spread is set, at what price to offer the shares to the company.

In the event of an oversubscription of such a public offer or request, the company is to comply with the principle of equal treatment of shareholders by performing an allotment (*Repartierung*) either based on the shareholdings of the tendering shareholders or based on the proportions of offered shares (percentage of tendered shares). In order to avoid residual quantities, but also in order to prevent de facto disadvantages to small shareholders, the General Partners are to be able to stipulate with the approval of the Shareholder Committee and the Supervisory Board that small offers of up to no more than 100 shares are accepted preferentially. In addition, in order to avoid fractional shares, rounding down may take place. This simplification of the procedure justifies an

# HELLA Annual General Meeting 2019

Documents regarding agenda items 12 and 13



exclusion of any potential further rights to tender shares and is reasonable for the shareholders.

Furthermore, in addressing agenda item 13, it is intended to provide for the acquisition of treasury shares to also be carried out using put or call options, forward contracts, other equity derivatives or a combination of these instruments. This additional alternative offers the company greater flexibility when structuring the acquisition. For example, the company can hedge itself against rising share prices by acquiring call options (the use of which is done in return for payment of an option premium) and must acquire only as many shares as are in fact necessary at the agreed later point in time the relevant call option is exercised. This may be sensible to the effect treasury shares are acquired in a manner that protects the company's liquidity.

In this context, the regulations governing the structure of the Derivatives and governing the shares suitable for delivery ensure that account is also taken of the principle of equal treatment of shareholders in this form of acquisition.

Thus the issuance or acquisition of Derivatives is to be possible via the derivatives exchange Eurex or a comparable successor system if the company informs the shareholders prior to the intended issuance or acquisition of Derivatives through an announcement in the company's designated publication media. In accordance with the legal interpretation of § 71 (1) no. 8 sentence 4 AktG, such a utilization of an exchange satisfies the principle of equal treatment of shareholders. Moreover, the prior announcement gives the shareholders the opportunity to acquire or sell similar derivatives via the relevant derivatives exchange. Any rights of the shareholders to conclude derivative transactions directly with the company is excluded in such instances in analogous application of § 186 (3) sentence 4 AktG. This exclusion is justified because the company is able to use such Derivatives quickly, flexibly and inexpensively when acquiring them via the exchange owing to the high liquidity of exchanged-traded derivatives. By comparison, a conclusion of derivative transactions directly with the shareholders is considerably more time-consuming and costly.

# HELLA Annual General Meeting 2019

Documents regarding agenda items 12 and 13



Moreover, there is uncertainty in such cases as to whether a volume of derivatives sought by the company can even be obtained.

In addition, it is to be possible for the company to conclude Derivatives with one or more Financial Institutions or companies operating in accordance with § 53 (1) sentence 1 or § 53b (1) sentence 1 or § 53b (7) KWG or with one or more other appropriate counterparties that is experienced in the derivative business. These parties may, on the basis of the Derivatives, only deliver shares to the company that were previously acquired in accordance with the principle of equal treatment, in particular through acquisitions over the exchange. This condition justifies the exclusion of any rights of the shareholders to conclude a derivative contract with the company in analogous application of § 186 (3) sentence 4 AktG. The company is thereby enabled to enter into derivative transactions on short notice and react to market situations flexibly and promptly.

Lastly, the company is to be allowed to offer the issuance or acquisition of Derivatives publicly to all shareholders, or to conclude the issuance or acquisition of Derivatives with a Financial Institution with the requirement that such Financial Institution must offer the Derivatives to all shareholders. In the event of an oversubscription of such a public offer, the company is to comply with the principle of equal treatment of shareholders by performing an allotment (*Repartierung*) either based on the shareholdings of the tendering shareholders or based on the percentage of tendered shares. For the same reasons as in the case of a direct acquisition of shares, a preferential treatment of small quantities (Derivatives linked to up to 100 shares per shareholder) may be stipulated; furthermore, in order to avoid fractional shares, rounding down is to be possible.

If treasury shares are acquired using Derivatives, the shareholders have a right to tender their shares to the company only in so far as the company is obligated to accept the shares due to these derivative transactions. Any further right to tender shares is excluded in analogous application of § 186 (3) sentence 4 AktG. This is justified because a well-planned use of Derivatives would otherwise not be possible for the

# HELLA Annual General Meeting 2019

Documents regarding agenda items 12 and 13



company and the benefits for the company and hence for the shareholders associated with this use would not be attainable.

## **b) Possibilities of using treasury shares**

As regards the purposes of use, agenda item 12 proposes that the General Partners be authorized to use the treasury shares acquired on the basis of this authorization or a previous authorization for all legally permissible purposes with the approval of the Shareholder Committee and the Supervisory Board, in particular the following:

- (1) It is to be possible to cancel the shares without any further resolution being passed by the General Meeting. In this context, the General Partners are to be allowed to determine that the cancellation will not result in a reduction of the nominal capital and that the proportional amount of the remaining shares in the nominal capital will be increased instead. The General Partners will take advantage of these possibilities only if after careful examination it believes that the cancellation is in the best interests of the company and hence its shareholders.
  
- (2) In addition, the company is also to be able to sell treasury shares in order to raise capital once again. Thus the General Partners are to be authorized to offer the shares to all shareholders for acquisition via the stock exchange or by means of a public offer. The equal treatment of shareholders is guaranteed in that shares will be sold to the shareholders only in proportion to their respective shareholdings. In this context, the General Partners are entitled to facilitate the technical implementation by excluding subscription rights for fractional shares. The value of such fractional shares is generally low for the individual shareholder. The possible dilutive effect is also to be disregarded due to the limitation to fractional shares. The company will endeavor to dispose of free fractional shares on the best possible terms in the interests of the shareholders.

# HELLA Annual General Meeting 2019

Documents regarding agenda items 12 and 13



(3) Furthermore, the authorization provides that the shares can be sold off the stock exchange in exclusion of subscription rights in analogous application of § 186 (3) sentence 4 AktG. This is subject to the condition that the shares be sold in return for cash at a price that is not significantly lower than the stock exchange price of shares in the company at the time of the sale. This accounts for the protection of the shareholders from commercial dilution. The General Partners will set the placement price of the shares with the approval of the Shareholder Committee and the Supervisory Board promptly before the sale and keep any potential discount on the stock exchange price based on the market conditions prevailing at the time of placement as low as possible. The possibility of a sale in a manner other than through the stock exchange or by way of a public offer to all shareholders is in the interest of the company and the shareholders since German and foreign shareholders can be additionally attracted when shares are sold, e.g., to institutional investors. The company will thereby be enabled to adjust its equity capital according to the relevant business requirements and to seize opportunities that arise from prevailing market conditions quickly, flexibly and inexpensively. The disposal proceeds attainable by setting the price according to prevailing market conditions generally leads to a greater inflow of funds per share sold than if shares were placed with subscription rights, which generally leads to discounts on the stock exchange price that are not insignificant. Moreover, by eschewing the time-consuming and costly processing of subscription rights, market opportunities arising at short notice can be promptly taken advantage of in order to meet the need for equity funding. This manner of using treasury shares is therefore also in the interest of the shareholders. The shareholders can maintain their proportionate shareholdings via stock exchange purchases.

Moreover, the interests of the shareholders are protected by the limitation of the volume at 10%, which excludes any excessive dilution of the percentages of their shareholdings. Should the plans to this effect become specifically relevant,

# HELLA Annual General Meeting 2019

Documents regarding agenda items 12 and 13



the management will review carefully whether the authorization to grant treasury shares is to be used. When determining valuation ratios, the General Partners will, as a rule, use the stock exchange price of the company's shares as the basis for determining the value of the shares offered as consideration. However, the authorization does not provide for a systematic link to the stock exchange price, specifically in order not to jeopardize the successful outcome of negotiations as a result of fluctuations of the stock exchange price.

Irrespective of whether the corresponding authorizations with the option of excluding subscription rights are used individually or cumulatively, the limit of 10% of the nominal capital must not be exceeded pursuant to § 186 (3) sentence 4 AktG. The different authorizations proposed with the option of excluding subscription rights pursuant to § 186 (3) sentence 4 AktG are to provide the company in the specific case with the ability to choose the financing instrument that is best suited considering the interest of the company and of the shareholders.

- (4) Further, it is intended that the company be permitted to offer and transfer treasury shares against contributions in kind. This applies in particular in connection with business combinations or in connection with the direct or indirect acquisition of a business, parts of a business or a participation in a business or any other assets, including receivables against the company. Experience has shown that granting shares as consideration can be expedient or even required in order to meet seller expectations or to protect the company's liquidity. Purchasers that can offer shares as consideration often have a competitive advantage when acquiring attractive assets. This advantage, which also indirectly benefits the company's shareholders, can justify that the proportions of the current shareholders' shareholdings and their shares of the voting rights be diluted by an exclusion of subscription rights. However, both the authorization to issue shares in return for contributions in kind and an attendant exclusion of subscription rights are to be used only if the acquisition of the

# HELLA Annual General Meeting 2019

Documents regarding agenda items 12 and 13



relevant asset is in the best interests of the company and if acquiring the relevant asset by any other means, in particular through purchase, is legally or in fact inconceivable or conceivable only at unfavorable conditions. In such cases, the company will invariably examine whether there is an equally suited way to acquire the asset, the impact of which interferes much less with the position of the shareholders. The shareholders' interests will also be taken into account in that the company will carefully examine whether the value of the contribution in kind is reasonably comparable to the value of the shares.

- (5) The authorization also provides that treasury shares may be used with the exclusion of subscription rights to service rights or obligations to acquire shares of the company resulting from the issuance of convertible or warrant bonds, participating bonds with attached conversion or option rights or conversion obligations and/or profit participation rights with attached conversion or option rights or conversion obligations, any of which as have been issued by the company or one of its group companies. Repurchase may be expedient in order to be able to fulfill obligations under the bonds using treasury shares. It must be noted in this context that the aforesaid bonds may only be issued following a resolution of the General Meeting and if the subscription rights of the shareholders are respected. The shareholders' subscription rights are thus either safeguarded indirectly or excluded based on a corresponding authorization granted by separate resolution.
- (6) In addition, the authorization offers the possibility to offer for acquisition and transfer treasury shares with the exclusion of the shareholders' subscription rights to persons who have or have had an employment contract with the company or one of its group companies as defined by § 18 AktG in the context of an employee share scheme. The issuing of treasury shares to company employees may be in the interest of the company and its shareholders, as this clearly promotes employees' identification with their company and significantly enhances the enterprise value as such. If the company were to decide to

# HELLA Annual General Meeting 2019

Documents regarding agenda items 12 and 13



introduce such an employee share scheme, the use of treasury shares as an alternative to a capital increase may be reasonable from a financial perspective. The exclusion of the shareholders' subscription rights, which is necessary in this context, is justified by the advantages that an employee share scheme affords to the company and thus also to its shareholders. Furthermore, the granting of employee shares as a form of remuneration provides tax advantages in the form of tax allowances. As opposed to the acquisition of treasury shares on the basis of an authorization pursuant to § 71 (1) no. 2 AktG, which can also be used as the legal basis for employee share schemes, the acquisition of treasury shares based on a resolution of the General Meeting pursuant to § 71 (1) no. 8 AktG offers a higher degree of flexibility. In particular, issuing the treasury shares must not necessarily take place within one year following their acquisition, as stipulated in § 71 (3) sentence 2 AktG for shares that have been repurchased on the basis of § 71 (1) no. 2 AktG.

There are currently no concrete plans for utilizing the aforesaid authorizations. A report will be given to the shareholders on every utilization of the authorization in the General Meeting that follows such utilization.



# HELLA Annual General Meeting 2019

Documents regarding agenda items 12 and 13



Lippstadt, August 2019

A handwritten signature in black ink, appearing to read "Rolf Breidenbach".

**Dr. Rolf Breidenbach**

President and CEO of  
Hella Geschäftsführungsgesellschaft mbH

A handwritten signature in black ink, appearing to read "W. Benade".

**Dr. Werner Benade**

Managing Director of Hella  
Geschäftsführungsgesellschaft mbH

A handwritten signature in black ink, appearing to read "F. Huber".

**Dr. Frank Huber**

Managing Director of Hella  
Geschäftsführungsgesellschaft mbH

A handwritten signature in black ink, appearing to read "B. Schäferbarthold".

**Bernard Schäferbarthold**

Managing Director of Hella  
Geschäftsführungsgesellschaft mbH

A handwritten signature in black ink, appearing to read "N. Schneider".

**Dr. Nicole Schneider**

Managing Director of Hella  
Geschäftsführungsgesellschaft mbH