



## **Statement issued by the Executive Board**

### **Countermotion re: agenda item 3 no. 2 by Cascade International Investment GmbH dated May 9, 2017**

The Executive Board continues to recommend voting in favor of the resolution proposed by the Executive Board and Supervisory Board on agenda item 3 and to ratify the actions of the members of the Executive Board for fiscal 2016 and thus to reject the countermotion.

The Executive Board expresses the following statement on the countermotion re: agenda item 3, no. 2 by Cascade International Investment GmbH ("Cascade") of May 9, 2017 and the reasons put forward:

The Executive Board explicitly points out that in its ruling handed down on May 12, 2017, the Higher Regional Court of Nuremberg confirmed the lawfulness of the company's procedure with regard to the petition to amend the agenda of the company's ordinary general meeting in all points.

#### **1. Requirement of reducing the number of Supervisory Board members to be newly elected (agenda item 7)**

In a letter dated April 12, 2017, Cascade filed a motion to amend the agenda of the company's ordinary general meeting on May 24, 2017 pursuant to Section 122 para. 2 of the German Stock Corporation Act (*AktG*). Specifically, Cascade demanded the inclusion of the following items for resolution in the agenda for the ordinary general meeting:

**ITEM 6:** *Discharge of Supervisory Board members*

**ITEM 7:** *New Supervisory Board election*

**ITEM 8:** *Vote of no confidence in relation to Executive Board members*

**ITEM 9:** *Study and assertion of claims for damages against the Executive Board and Supervisory Board in connection with the placement of a mandatory convertible bond issue in the amount of EUR 60.0 million."*

Cascade did not submit any motions on the individual agenda items (ITEMS 6 to 9) to accompany its petition for an amendment to the agenda. Accordingly, Cascade did not submit any candidate nominations for the agenda item of new Supervisory Board elections (ITEM 7).

Following an in-depth assessment of the petition for amendment to the agenda, the Executive Board and Supervisory Board of GRAMMER AG came to the conclusion with regard to ITEM 7 that augmenting the agenda to include ITEM 7 is not permissible owing to the lack of any candidates being nominated. At least in the context of Supervisory Board elections, resolution proposals for the purpose of nominating candidates are subjected to the mandatory information according to Section 124 para. 3 p. 4 of the German Stock Corporation Act (i.e. names of the candidates as well as their active profession and place of residence) in order to protect the right to attendance and information of the remaining shareholders. By announcing the candidates to be nominated within the scope of the petition for supplementary information, the shareholders are to be enabled to prepare for the AGM, to decide whether to attend the AGM and, if applicable, to nominate a proxy or issue voting instructions to such proxy. To this end, for one thing the shareholders must have already received the necessary information on the candidates in conformity with Section 124 para. 3 p. 4 AktG at the time at which the agenda is amended; for another, from a shareholder perspective, it is extremely important to find out whether a resolution is to be adopted concerning the new

election of three or up to six members of the Supervisory Board at the forthcoming AGM. The obligation to nominate candidates therefore serves to protect the shareholders' planning activities.

In a letter dated April 19, 2017, the company advised Cascade of the requirement to present nominations of candidates and gave Cascade the opportunity to submit the missing candidate nominations for the new elections to the Supervisory Board on a subsequent basis. In a letter dated April 20, 2017, Cascade augmented its proposed agenda item 7 (New elections to the Supervisory Board) to include a motion in terms of which it nominated three candidates for the elections to the Supervisory Board. No further candidate nominations were made by Cascade prior to the publication of the petition for an amendment to the agenda on April 28, 2017.

As Cascade merely submitted a motion for three candidates to be nominated, the Executive Board reduced the number of members re: ITEM 7 to the legally permissible extent and specifically amended the agenda item "New elections to the Supervisory Board" to read as "New election of three Supervisory Board members. From the Executive Board's perspective, it would not have been compatible with the need to protect shareholders' planning activities if – as intended by Cascade – only three candidates were to be nominated within the scope of publishing the request for amendment to the agenda, only to be followed by additional nominations of two or more candidates at the AGM. The admissibility of this procedure was explicitly confirmed by the Higher Regional Court of Nuremberg in its ruling of May 12, 2017.

From the Executive Board's perspective, the reasons presented for the countermotion received from Cascade once again document the fact that the Hastor group of companies, via its holding companies Cascade (which has a stake of more than 10%) and Halog GmbH & Co. KG, with a shareholding of over 9.18%, is making an attempt to gain control of the company's Supervisory Board in order to exert influence on the company.

## **2. Violation of Cascade's motion for resolution on agenda item 7 of April 20, 2017 against Section 96 para. 2 of the German Stock Corporation Act (AktG)**

Already in their statement on Cascade's petition for amendment to the agenda, the Executive Board and Supervisory Board pointed out that the Executive Board of GRAMMER AG is also required to elect a second female member on the shareholder side when carrying out elections to the Supervisory Board following the introduction of the gender quota pursuant to Section 96 para. 2 AktG. Only one female member on the shareholder side currently belongs to the Supervisory Board since the terms of office of the members elected to the Supervisory Board prior to the effective date of the gender quota have not yet expired. According to Section 96 para. 2 AktG, at least 30% of the Supervisory Board must consist of female members and at least 30% must consist of male members. As full compliance pursuant to Section 96 para. 2 sentence 3 AktG was challenged, the respective minimum share on the shareholder side and on the employee side must be met separately. Of the six seats of the shareholder representatives on the Supervisory Board, at least two must therefore be held by women. At present, Ms. Ingrid Hunger on the shareholder side is a member of the Supervisory Board. The election nominations by Cascade at the time of asserting its petition for amendment to the agenda merely included male candidates and would therefore continue to give rise to a violation of Section 96 para. 2 AktG if such election nominations were to be submitted by Cascade without being modified.

Amberg, May 2017

**GRAMMER Aktiengesellschaft**  
***The Executive Board***

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