

**Report on Item 11 of the Agenda**  
of the  
**29th Annual General Meeting**  
of  
**S IMMO AG**  
on 03 May 2018

**Report by the Management Board of S IMMO AG for authorisation of the Management Board to exclude shareholder's tender rights in a repurchase of treasury shares and exclude subscription rights (exclusion of subscription rights) upon the sale of treasury shares (Sections 65 (1b) in conjunction with Section 153 (4) AktG).**

**1. Authorisations**

In the 29th Annual General Meeting of S IMMO AG (the "**Company**"), the following resolution is to be proposed on Agenda Item 11:

**1.1. Repurchase of treasury shares**

The authorisation granted to the Management Board at the 27th Annual General Meeting on 3 June 2016 to acquire treasury shares is withdrawn to the extent not used and the Management Board is simultaneously authorised pursuant to section 65 (1) no. 8, (1a) and (1b) AktG for a period of 30 months from the date of the resolution, with the approval of the Supervisory Board, to acquire treasury shares amounting to up to 10% of the company's share capital, including repeated utilisation of the 10% limit, both through the stock exchange and over-the-counter, including with the shareholders' pro rata right of tender excluded. The authorisation can be exercised in full or in part or in several partial amounts and in pursuit of one or more objectives by the company, affiliated companies or on their account by third parties. The equivalent value per no-par share must not be less than the lower limit of EUR 1.00. The highest equivalent value to be paid per no-par share on repurchase must not be more than 15% higher than the average daily closing price of the companies' shares over the previous 10 trading days on the Vienna Stock Exchange weighted by the respective trading volume.

**1.2. Sale of treasury shares**

The authorisation granted to the Management Board at the 27th Annual General Meeting on 3 June 2016 to dispose of treasury shares is withdrawn and the Management Board is simultaneously authorised pursuant to section 65 (1b) AktG for a period of five years from the date of the resolution, with the approval of the Supervisory Board, to dispose of or use treasury shares of the company, including in a manner other than through the stock exchange or through a public offer, and hereby to exclude the shareholders' pro rata purchase right (exclusion of subscription right). The authorisation can be exercised in full or in part or in several partial amounts and in pursuit of one or more objectives.

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To authorise the exclusion of pro rata purchase rights of the shareholders upon the acquisition of treasury shares under Section 65 (1) (8) AktG and for authorisation to exclude shareholder purchasing rights upon the sale of treasury shares, under Section 65 (1b) AktG in conjunction with Section 170 (2) AktG and Section 153 (4) (2) AktG, the Management Board is submitting a written report on the reason for the partial or complete exclusion of shareholder purchasing rights (exclusion of subscription rights) and, in application of the aforementioned reporting obligations, the reason for authorisation to exclude shareholder purchasing rights in whole or in part upon the repurchase of Company treasury shares.

## **2. Exclusion of the shareholders' purchase right in the course of a sale of treasury shares**

### **2.1. Company interest**

The exclusion of the shareholders' purchase right (exclusion of subscription right) in case the Company sells or uses treasury shares is, in terms of the resolution proposed under 1.2, in the interest of the Company for the following reasons:

- When purchasing companies, company stakes, shareholdings, businesses or partial businesses and when acquiring certain assets (particularly real estate), it can be advantageous for the company to offer some or all of its treasury shares as consideration, such as to provide a settlement to shareholders of target companies or, if the seller prefers to receive company shares in whole or in part instead of cash. It can also be necessary for the company for strategic or company organisational reasons to integrate the seller as a shareholder into the company. By using its own shares, the liquidity requirements of the company are reduced for investments/acquisitions and the handling of the investment/acquisition is expedited, because existing shares can be used and no new shares must be created. The option to offer shares as an acquisition currency is therefore advantageous to the company when competing for acquisition targets. One advantage of using treasury shares can also be that the typical dilution effect is avoided if the acquisition is made in exchange for newly created shares (e.g. from authorised capital).
- By placing treasury shares with an exclusion of the shareholders' purchase right, the shareholder structure of the Company may also be broadened or stabilised. First, this concerns an appropriate anchoring of the shareholders' base of the Company in regard to institutional investors (in particular financial investors and strategic investors). Furthermore, it can be appropriate, based on strategic reasons with respect to the business activities of the Company, to include an investor as new shareholder, who, due to know-how and/or investment capital, broadens the business activities for the Company or stabilises and strengthens the market position of the Company. The sale or use of treasury shares with the exclusion of the shareholders' purchase right allows for rapid placement. This allows the Company to take advantage of market opportunities, in particular regarding the price level of the shares, and use them quickly and flexibly for the sale or use of its treasury shares.
- Through the sale or use of treasury shares, the Company may cover a particular financing requirement in an individual case at more favourable terms than by way of debt financing. In particular in connection with the financing of a company acquisition or real estate acquisition but also when meeting a refinancing requirement of the Company or one of its subsidiaries, e.g. in case of a bond, a convertible bond or loan or other financing, it may be the case, due to the amount of the necessary financing requirement and/or the given time limit in which the financing requirement has to be met and in consideration of the general market and share prices development, the trading volumes available on the stock exchange and the statutory

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restrictions on trading volumes for share sale programmes over the stock exchange, that the necessary financing requirement cannot be met or not be met within the time limit required through a (exclusive) sale of treasury shares over the stock exchange or through a public offering.

The exclusive sale of treasury shares over the stock exchange or through a public offering is not consistent with the funding of means required to cover a specific financing need, in particular when it is not possible, due to usual trading volumes on the stock exchange, to sell the treasury shares in time or at the appropriate average market price on the market.

The authorisation proposed to the Management Board to resolve on another type of sale, also excluding the general purchase right, enables the Management Board to swiftly and flexibly take advantage of upcoming opportunities for the off-exchange block sale of treasury shares at appropriate prices. This is of particular importance to the Company in order to be able to take advantage of market opportunities in a swift and flexible way.

The exclusion of the general purchase opportunity allows the Company to avoid potential disadvantages. In particular, this applies to negative changes in the share price due to selling pressure on the stock exchange and in the course of a selling programme with negative impacts on the success and the profits of the capital measure (notably in volatile markets), avoidance of short selling during the selling programme, as well as securing of certain proceeds from the sale, in particular in a difficult stock market environment (exclusion of the placement risk). Especially in an unstable and volatile market environment due to macro-economic factors, the Company can be subject to market-driven price risks of the shares.

- Excluding the shareholders' purchase right allows the Company to take advantage of accelerated book building which reduces the placement risk. In the course of accelerated book building the Company is able to assess the market's perception of the price more quickly and precisely during a short offer period. International practice has also shown that an accelerated book building can usually achieve better conditions than would be the case otherwise since market risk factors, among others, cease to apply in the case of immediate placement, which would otherwise be priced in by institutional investors to the disadvantage of the Company. A public offering also requires a significantly longer time period for preparation and approval of a capital market prospectus. A placement of the shares with exclusion of the shareholders' purchase right as well as executing a private placement under a prospectus exemption avoids such downsides. Further, a placement within the scope of a prospectus exemption reduces the liability risks of the Company compared to a public offering requiring the publication of a prospectus.
- The exclusion of the shareholders' purchase right can also be useful in the course of a capital increase and placement of new shares of the Company in order to fulfil overallotment options (greenshoe) with treasury shares. Overallotment options (greenshoe) are applied for over-subscribed issues of shares. For overallotment options additional shares are issued under the same conditions that applied to the new shares issued in the course of the capital increase. Overallotment options (greenshoe) are standard international practice with the purpose to stabilise the share price after the placement of shares and are therefore in the interest of the Company.
- The Company's use of its treasury shares in financing transactions increases the ways in which the Company may conduct financing and is therefore an option to swiftly and flexibly achieve financing to optimal conditions. It is also in the interest of the Company to use its treasury shares (e.g. in securities

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lending or loans) as a source of income. Furthermore, treasury shares can be used in securities lending as (price) stabilisation measures in connection with issuances of securities (e.g. convertible bonds of the Company with conversion and/or subscription rights into shares of the Company). For the purpose of the sale of treasury shares it might be appropriate to conclude options with the right of the Company to sell shares (put options) or the obligation of the Company to sell shares if the option is exercised (call options).

- It is also in the company's interest to use treasury shares for any shareholding programmes (granting stock options or transferring shares) to Management Board members, employees or executive managers of the company or an affiliated company. Accordingly, Section 65 (1b) (3) AktG stipulates that the sale of treasury shares to cover stock options for this group of people (Section 65 (1) Fig. 4 AktG) does not require a resolution of the Annual General Meeting. Moreover, the priority issue of shares to this group of persons under Section 153 (5) AktG is sufficient reason for the exclusion of subscription rights.
- In case the Company uses existing treasury shares to cover or fulfil conversion and/or subscription rights of convertible bonds, no additional corporate actions (e.g. conditional capital) are necessary. Hence, no new shares (e.g. from conditional capital) have to be created to fulfil conversion and/or subscription rights, which is why the typical dilution effect of share capital increases can be avoided.

## **2.2. The exclusion of subscription rights is suitable, necessary and reasonable**

The authorisation of the Management Board to sell treasury shares in another way than over the stock exchange or through a public offering with the exclusion of the shareholders' purchase right (exclusion of subscription right) is suitable and required for the outlined purposes and in the interest of the Company.

To the extent of usual trading volumes the shareholders are free to purchase shares over the stock exchange. Consequently, when the Company sells or uses treasury shares with exclusion of the shareholders' purchase rights, the shareholders have the opportunity to avoid a dilution of their shareholding quota by way of share purchase over the stock exchange.

Provided that the sale price is adequate (see point 2.3), there is usually no dilution risk for shareholders that is comparable to capital increases. The voting rights of a shareholder may change in the case of sale of treasury shares, but the sale will only restore the ratio of participation existing prior to the Company's repurchase of treasury shares, which has changed temporarily due to the limitations on the rights arising from treasury shares for the Company in accordance with section 65 para. 5 Austrian Stock Corporation Act.

The use of treasury shares as consideration for an acquisition requires the exclusion of the shareholders' purchase rights because individual assets are acquired (e.g. companies, parts of companies and shareholdings or other assets) which in general cannot be provided by the shareholders.

Financing transactions using treasury shares, security lending transactions or security loan transactions or concluding put or call options may only be executed with certain market participants, for appropriate and practical reasons, in particular to react in a quick and flexible way to the market situation. Therefore, the exclusion is necessary to execute these transactions.

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When using treasury shares for conversion and/or subscription rights for convertible bonds, the above reasons apply accordingly: By setting a reasonable price when issuing convertible bonds, this generally avoids dilution of shares for the existing shareholders. Dilution effects can be reduced if conversion and/or subscription rights out of convertible bonds are fulfilled with treasury shares instead of issuing new shares out of conditional capital.

In any case the exclusion of the purchase right is suitable, required and proportionate, if a block of shares cannot be sold over the stock exchange within the required time frame or for adequate prices due to the usual trading volumes on the stock exchange.

Thus, consideration of the company's interests in the use or sale of treasury shares and/or financing of the company on the one hand and the shareholders' interest in maintaining their pro rata stakes on the other means that the consent to sell treasury shares with the exclusion of shareholder subscription rights is not unreasonable.

The sale or use of treasury shares with the exclusion of shareholder purchasing rights and the definition of terms for sale or use requires consent by the Supervisory Board of the company.

### **2.3. Justification of the sales price**

In the case of the use of treasury shares as consideration for acquisition purposes (acquisition currency), the sales price for the treasury shares compared to the value of the acquired asset must be in an appropriate ratio.

If treasury shares are used to fulfil overallotment options (greenshoe), the sales price for the treasury shares mostly corresponds to the issue amount of the shares issued in the course of the capital increase (issuance).

In the case of a sale or use of treasury shares under exclusion of the shareholders' purchase rights, the sales prices shall be determined depending on market conditions with regard to (average) share prices and the price level of the shares; where appropriate also with regard to calculated market values based on market standard calculation methods of options, taking into account in particular the strike price and paid and/or received option premiums. In most cases, with such pricing based on market standard calculation and pricing methods no disadvantage occurs to the shareholders; in any case, however, no disproportionate disadvantage occurs as a result of a percentage dilution.

When treasury shares are used for financing transactions or securities lending or securities loan, the sales price may deviate from the aforementioned limits, whereas a balance will be achieved due to a respective deviation of the repurchase price.

## **3. Exclusion of the shareholders' right to sell shares in case of a buyback of treasury shares**

### **3.1. Company interest**

The exclusion of the shareholders' right to sell when the Company buys back its treasury shares is in the interest of the Company, if the Company intends to use its treasury shares for the purposes described above under point 2.1 in the interest of the Company or if the Company purchases its treasury shares for "investment purposes", for

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a “management” of the capital structure of the Company (as the case may be), particularly with regard to the relationship between equity and debt or, in the case of a buy-back, for the redemption of its own shares.

The purchase of blocks of treasury shares from one or more shareholders with the exclusion of the other shareholders’ right to sell is in the interest of the Company if, for example due to the available time frame, consideration of general and special market developments and share price performance, the trading volume on an exchange or the statutory volume restrictions for stock buy-back programmes over an exchange, it can be assumed that the required treasury shares cannot be purchased by the Company within the required period of time or cannot be purchased at reasonable prices over an exchange or through a public offering.

The purchase of blocks of treasury shares from one or more shareholders with the exclusion of the other shareholders’ right to sell is also in the interest of the Company if, as a result, the shareholder structure of the Company can be stabilised, in particular with regard to strategic investors.

In the case of sale of companies, parts in companies, equity investments in companies, business operations or parts of business operations as well as sale of certain assets (in particular real estate) it may be advantageous to the Company to accept treasury shares in part or in full as the consideration in return. Thus, it will be possible to combine a deinvestment (sale) of assets of the Company with the buyback of treasury shares or blocks of treasury shares. The possibility of being able to accept treasury shares as acquisition currency gives the Company an advantage in the course of sale transactions.

It is also in the interest of the Company in connection with its own shares to be able to conclude put options which oblige the Company, as writer of the put option upon exercise of the option by a shareholder (*short position*) to purchase shares of the Company or to agree on call options which grant rights to the Company upon exercise of the option to purchase shares of the Company (*long positions*). Put options in the context with the buyback of shares can be appropriate, if the Company intends to repurchase treasury shares at a low share price level. By using call options the Company can also hedge the share price. Concluding options may also create liquidity advantages because liquidity is only required upon exercise of the option – with the exception of the option premium. Those transactions can – for practical and appropriate reasons – only be executed with professional market participants. Therefore those transactions can only be executed by excluding the shareholders’ right to sell the required shares.

The authorisation of the Management Board enables the Company to swiftly acquire the required treasury shares for the purposes pursued by the Company and at optimised terms.

Through the off-exchange purchase of blocks of shares as well as agreements on put or call options, which require a corresponding exclusion of the shareholders’ rights to sell shares, potential disadvantages to the Company in the course of a share buyback programme or a public offering can also be avoided. This applies in particular to price changes during the term of the programme or offer with negative effects on the success or costs of the corporate action (especially in volatile markets), covering a certain investment volume for the programme or the offer, and avoiding spikes in share prices due to increased demand on the market due to the Company’s share buybacks.

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As already described under point 2.1, it may be in the interest of the Company to use treasury shares in the course of financing transactions or securities lending or securities loan. The buyback of treasury shares upon the termination of a financing transaction requires – as part of the overall transaction – the exclusion of purchase rights for shareholders, so it is in the company interest, as is the financing transaction and securities lending or pledging transaction itself.

### **3.2. Consideration of interests**

The authorisation of the Management Board for the buyback of treasury shares as well as off-exchange with the exclusion of the shareholders' right to sell are suitable and required for the purchasing of the Company's own shares for the described purposes and in the interest of the Company.

The exclusion of the shareholders' rights to sell in case of an off-exchange repurchase of treasury shares by the Company will not have a negative dilutive effect for the shareholders and there is no risk of a decrease of the shareholding ratio. As the purchase price is determined depending on market conditions with regard to (average) share prices and the price level of the shares (also where appropriate with regard to calculated market values based on market standard calculation methods of options, taking into account in particular the strike price and paid and/or received option premiums) in most cases no disadvantage of shareholders will arise and in the (fewer) remaining cases no disproportionate disadvantage will occur as the shareholders are free to sell shares over the stock exchange within the limits of usual trading volumes.

By the exclusion from the right to sell in the case of a buyback of treasury shares upon the termination of financing transactions, transactions involving securities lending or securities loan, only the previous status – prior to the sale of treasury shares – is restored. The shareholders' assets will not be diluted. The consideration per share paid by the Company is limited with the initial sale price and – in accordance with the financing purpose – an appropriate interest rate may be taken into account.

Taking into account the described interests of the Company for the buyback of treasury shares on the one hand and the interest of the shareholders of the Company to sell shares to the Company over the stock exchange in the course of a share buyback programme or to tender the shares to the Company on the other hand, the authorisation to repurchase treasury shares off-exchange under exclusion of the shareholders' rights to sell shares is not disproportionate and based on the reasons described above is required and suitable in order to achieve the objectives in the interest of the Company and the shareholders.

The repurchases of treasury shares under exclusion of the shareholders' rights to sell and the determination of the terms for the repurchase requires the consent of the supervisory board.

Vienna, April 2018

The Management Board

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