

## **Report of the Board of Directors on item 7 of the Agenda of the Annual General Meeting of January 25, 2010 (Resolution regarding the creation of conditional capital - Conditional Capital I 2010 and authorization to issue share options; amendment of Section 4 (7) of the Articles of Association)**

### **Introduction**

On May 14, 2004, the Annual General Meeting of the Company resolved to authorize the Board of Directors and/or the Supervisory Board (to the extent that members of the Board of Directors are concerned) to issue share options to members of the Board of Directors as well as to other executives and employees of the Company and its associated companies in the period ending on May 13, 2009 (hereinafter referred to as the "Old SOP"). This authorization was amended by the resolutions of the Annual General Meetings of February 21, 2006, January 29, 2007 and January 28, 2008. For the purpose of delivering the share options, conditional capital was created. The Board of Directors and the Supervisory Board availed themselves of the Old SOP and issued share options until the authorization expired on May 13, 2009.

The Board of Directors and the Supervisory Board share the view that share options have proved to be excellent long-term variable elements of compensation with lasting incentive effect for members of the Board of Directors as well as other executives and employees of the Company and its associated companies. This remuneration component creates a strong bond between the interests of decision-makers and the interests of shareholders, namely to increase the Company's value. The use of share options as a performance-related component in remuneration strengthens the identification of the entitled persons with the Company and their loyalty.

Hence, in item 7 of the Agenda, the Board of Directors and the Supervisory Board propose to the Annual General Meeting to grant a new authorization for the issue of share options (hereinafter also referred to as the "New SOP") and the creation of a conditional capital (Conditional Capital I 2010) for (partial) service of the New SOP. The New SOP is based on, and, as regards its contents, largely corresponds to the Old SOP. The contents of the New SOP are reflected in item 7 of the agenda. The explanations set forth in this report serve as an illustration of the relevant contents of the provisions of the New SOP.

### **Entitled Persons**

As in case of the Old SOP, the circle of entitled persons includes members of the Company's Board of Directors (Group 1) and members of the management bodies of subordinate associated companies of the Company within and outside Germany as well as other executives and employees of the Company and its subordinate associated companies (Group 2).

### **Total number of share options and allocation to the groups of entitled persons**

Under the New SOP, the total number of share options is 3,308,498 ("Total Amount"). As, generally, one share option entitles to the subscription of one share, the Total Amount equals 10% of the share capital.

As specified under "Service of the share options" below, however, the service of the New SOP can only result in a maximum dilution of the shareholders in the amount of 5% of the share capital.

Up to 35% of this Total Amount can be issued to the entitled persons of Group 1, the remaining percentage to the entitled persons of Group 2.

### **Service of the share options**

According to the terms of the New SOP, claims arising from the exercise of options may be satisfied by the following measures:

- a) If the Annual General Meeting of January 25, 2010 resolves upon the creation of such conditional capital under item 7 of the agenda, the claims may be satisfied through the issue of new shares from the Conditional Capital I 2010. However, only a maximum of 1,654,249 shares may be issued from this conditional capital. This amounts to half of the total number of share options and, thus, to a total of 5% of the current share capital. The participation quota of the existing shareholders will be reduced relatively by the issue of new shares out of conditional capital to entitled persons (dilution of shareholding).

The Board of Directors and the Supervisory Board propose to create a conditional capital of no more than 5% (€1,654,249) in order to minimize the dilution effect for the Company's existing shareholders upon the use of the conditional capital.

The existing shareholders did not experience any dilution effects in previous years because no tranches of the Old SOP were taken from new shares resulting from a conditional capital increase carried out for this purpose.

In the past six years, a total of 2,581,360 share options were issued. The tranches 2004 through 2007 thereof, bearing a total of 1,583,760 issued share options, have now become due; the respective 2-year holding periods for the exercise of the two tranches 2008 and 2009, bearing a total of 997,600 issued share options, have not expired yet. 864,220 share options out of the 1,583,760 share options issued and due under the tranches 2004 through 2007 forfeited either because the exercise price was not achieved (tranches 2006 and 2007) or because a number of entitled persons left the Company. 698,790 share options were settled in cash (tranches 2004 and 2005), and another 20,750 of own shares were used for service of the share-based payment programs. At this point in time, 1,420,980 own shares are available to the Company for the service of share options.

- b) As before, the claims can also be satisfied through own shares previously acquired by the Company. Currently, the Company still owns 1,420,980 own shares which it had acquired on the basis of authorizations of the Annual General Meetings of the previous years according to Sec. 71 (1) No 8 German Stock Corporation Act (AktG). In addition, on January 25, 2010, the Board of Directors and the Supervisory Board will propose to the Annual General Meeting in item 6 of the agenda to grant a new authorization to purchase own shares, according to Sec. 71 (1) No. 8 German Stock Corporation Act (AktG), inter alia, for service of the share options.
- c) The value of the option, which corresponds to the balance between the current share price and the exercise price, may also be settled in cash.

Basically, the entitled person must pay in cash the exercise price upon the exercise of the option (hereinafter referred to as the "Exercise Price Old"). Like in the past, however, the possibility to pay only a portion of the option's exercise price in cash, i.e. the lowest possible issue price for new shares of € 1.00 per share, shall continue to exist. The entitled person must provide the remainder through share options, i.e. he/she must use several share options in order to receive one share. The value of the individual share option is determined by the balance between the current share price and the actual exercise price of the share option. If, for instance, the current stock exchange price is €61.00 and the actual exercise price is €51.00, the value of the individual option amounts to € 10.00.

The number of share options to be exercised to subscribe for one share equals the ratio of the stock market price of the share minus the lowest issue amount to the stock market price of the share minus the Exercise Price Old.

Should the number of options delivered by the entitled person result in a non-integral number of shares to be received, this number shall be rounded up to the next higher integral number of shares.

If the exercised share options were taken out of Conditional Capital I 2010, the new shares shall carry dividend rights from the beginning of the fiscal year in which they were created

through the issue. In the event that they are issued before the Ordinary Annual General Meeting, the new shares shall be entitled to dividends for the previous fiscal year as well.

The Company is entitled to put eligible employees in countries where the purchase of shares and/or share options is subject to legal restrictions, in the same economic position they would be in if they participated in the share-based payment program.

### **Exercise price and performance target**

Just as provided for in the previous share-based payment program, the exercise price payable upon exercise of the share option corresponds to the performance target. The exercise price and, hence, the performance target, correspond to 112% of the respective value at the outset. In this context, as regards compliance with the recommendations under Clause 4.2.3 (3) sentences 1 and 2 of the German Corporate Governance Code, reference is made to the relevant statements in the separate report to the Annual General Meeting of January 25, 2010 in relation to item 8 of the agenda ("Report on the compensation of the members of the Board of Directors (Vorstand) as a basis of information for the resolution on the approval of the compensation system for the members of the Board of Directors") under the section "Share-based compensation (long-term incentive component)", here "Additional targets for members of the Board of Directors".

The value at the outset corresponds to the share's stock market price at the time of issue of the share options. Distributions, in particular dividend payments and any subscription rights or other special rights must be taken into account during the term of the respective share options (total shareholder return approach). Just as in the past, the share options are to be issued in annual tranches.

To the extent that for the value at the outset, for the calculation of a cash compensation or for the calculation of the stock market price at the time the share options are exercised, reference is made to the share price of the Company's share, this price shall be an unweighted average in XETRA or a system replacing XETRA on the Frankfurt Stock Exchange. Instead of 10 (ten) stock exchange trading days up to now, the applicable period to determine the unweighted average shall amount to 30 (thirty) stock trading days in the future. This serves to improve leveling of possible exchange rate fluctuations and to counteract any impression of interference with the relevant share price. For each of the relevant values, the proposal for resolution in relation to item 7 of the agenda specifies the date as of which this 30-day-period shall start to run.

### **Purchase periods and exercise periods, holding period**

The holding period for the initial exercise of the share options has now been extended from previously 2 (two) to 4 (four) years, in accordance with the amendment of Sec. 193 (2) No. 4 German Stock Corporation Act (AktG).

As before, the individual tranches of the share options will be issued within a period of 8 (eight) weeks commencing on the 11th (eleventh) stock exchange trading day in Frankfurt am Main following the day of the Annual General Meeting of the Company, during the authorization period (expiring on January 24, 2015). For plants and companies joining the Wincor Nixdorf Group (for instance, as the result of an acquisition), the tranches will be issued within 12 (twelve) weeks after control has been obtained.

As before, the share options may only be exercised within a short time-frame of 10 (ten) stock exchange trading days after the expiration of the holding period. In this process, the conditions of exercise shall (as in the past) continue to provide for the opportunity that the notice of exercise to be given within the last 10 (ten) stock exchange trading days of its 4-year term may already be filed after expiration of the term at a date set forth in the conditions of exercise. From the Company's point of view, it is necessary to maintain such a provision in order to avoid an overlap of the vesting periods for the acquisition of shares which are set by the Company in the interest of the capital market and as a protection against insider trading.

As before, the period for the issue of the share options of a given tranche overlaps in time with the period of exercise for the share options of a previous tranche. As a result of the time overlap of the tranches, a high stock market price in the exercise period bolsters the attractiveness of the share option which can be exercised after 4 years, but also represents an ambitious target given the almost simultaneous fixing of the exercise price for the new share options then to be issued. Likewise, a low stock market price in the exercise period indicates a less profitable share option, but offers greater market opportunities as a result of the low exercise price set for the new share options. Consequently, this measure enables two tranches of the share-based payment program to be linked more closely and expediently by almost simultaneous issue of the share options and exercise, and to impart a long-term incentive effect due to reasonable option prices. Even though as a result of the amendment of Section 193 (2) No. 4 German Stock Corporation Act (AktG), there is now a period of 4 years between the initial issue of share options and the time they may be exercised for the first time, such time overlap is only absent for the years 2012 and 2013 because share options were still issued in annual tranches under the Old SOP until it expired in May 2009. This gap is a consequence of the amendment of the law which must be observed mandatorily (holding period of 4 years instead of 2 years).

### **Private Investment**

As before, the New SOP stipulates that the entitled persons make a private investment at a ratio of 1:10 as a requirement for the exercise of the option after the holding period. This means that an entitled person must hold one company share to exercise 10 (ten) awarded share options. Such a share may originate from the exercise of previous share options or from any other purchase of shares. In accordance with the previously applicable statutory holding period, the vesting period under the Old SOP was 2 (two) years. In spite of the legal extension of the holding period to 4 years, the Board of Directors and the Supervisory Board propose not to extend the vesting period and not to modify its 2-year term. As a result, the entitled person will generally be obliged to evidence ownership of the shares required for the private investment within 2 years after having purchased the share options and, subsequently, to hold these shares until the exercise of the share options (i.e. at least two more years). In particular where the total compensation comprises a very high percentage of share options, the private investment will add up to significant amounts which can more easily be borne by the entitled person if distributed over a period of 2 (two) years, as compared with a one-time investment at the beginning.

The share options cannot be transferred under an agreement. As far as the entitled persons of Group 2 are concerned, share options may only be exercised if the entitled person is employed with the Company or an associated company at the time of exercise and was not given notice. Special provisions may be agreed upon for the events of death, retirement and other special cases of termination of employment, including the scenario where an associated company withdraws from the group. The entitled persons of Group 1 (members of the Board of Directors) have the opportunity to exercise the share options even after termination of their service contracts. As stated in the report in relation to item 8 of the agenda, members of the Board of Directors may, by operation of law, be appointed for a maximum period of 5 (five) years. Otherwise, already starting as of their second year of service, the members of the Board of Directors would lose the legal certainty that they may exercise share options for the current and any following tranche, given the 4-year holding period. As before, share options continue to be a long-term variable remuneration component for members of the Board of Directors. In turn, however, the members of the Board of Directors must enjoy legal certainty in terms of exercisability.

### **Other conditions of exercise**

To the extent that the members of Board of Directors of the Company are concerned, the Supervisory Board will set the other conditions of exercise for the share options, including the details for the issue of new shares upon fulfillment of the exercised share options created from an increase of the conditional capital (i.e. Conditional Capital I 2010). In all other respects, the Company's Board of Directors shall determine these details. These details include, but are not limited to, provisions concerning the implementation and the process of

granting and exercising the share options, the granting of share options to individual entitled persons, the fixing of the issue date within the respective issue periods as well as arrangements concerning the treatment of share options in special situations, in particular in case of retirement, death or in the event that an associated company withdraws from the group. The conditions of exercise shall provide for the customary dilution protection clauses.

### **Special arrangements for members of the Board of Directors**

For further special arrangements applicable to members of the Board of Directors pertaining to the calculation of the number of share options and the targets provided for in the service contracts, please see the compensation report in relation to item 8 of the agenda.

**Paderborn, in December 2009**

**Wincor Nixdorf Aktiengesellschaft**

***The Board of Directors***