Science For A Better Life

Control agreement

between
Bayer Aktiengesellschaft, Leverkusen,
and Bayer CropScience Aktiengesellschaft,
Monheim am Rhein

Joint report

of the Board of Management of Bayer Aktiengesellschaft and of the Board of Management of Bayer CropScience Aktiengesellschaft in accordance with section 293a of the German Stock Corporation Act (AktG) submitted under item 6 of the agenda of the Annual Stockholders' Meeting of Bayer Aktiengesellschaft on April 28, 2017

The annual financial statements of Bayer Aktiengesellschaft and of Bayer CropScience Aktiengesellschaft for the fiscal years 2014, 2015 and 2016 are available on the website www.bayer.com/stockholders-meeting. This also applies for the combined management reports of Bayer Aktiengesellschaft and the Bayer Group which are part of the Annual Reports for the fiscal years 2014, 2015 and 2016. Bayer CropScience Aktiengesellschaft availed itself of the exemption granted under section 264 Paragraph 3 of the German Commercial Code (HGB) and therefore did not prepare notes and management reports.

Control agreement

between

Bayer Aktiengesellschaft, Leverkusen, („BAG“),

and

Bayer CropScience Aktiengesellschaft, Monheim am Rhein, („BCS“)

§ 1

Management

(1) BCS entrusts the management of its company to BAG. BAG is therefore authorized to issue instructions to the Board of Management of BCS with regard to the management of the company. The provisions of the valid version of Section 308 of the German Stock Corporation Act (AktG) shall apply.

(2) BAG shall only exercise the right to issue instructions through its Board of Management. Instructions must be issued in text form.

§ 2
Assumption of losses

BAG is obligated to assume any losses made by BCS. The provisions of the valid version of Section 302 of the AktG shall apply. This obligation shall take effect for the first time for any loss made by BCS in the fiscal year in which this agreement enters into force.

§ 3
Entry into force and duration

(1) This agreement must be approved by the Stockholders' Meetings of BAG and BCS.

(2) This agreement shall enter into force when it is entered in the commercial register for the registered office of BCS and is concluded for an unlimited duration.

(3) The agreement can be terminated at the end of a fiscal year, provided that a period of notice of six months is given. If such notice is not given, the agreement shall be extended in each case by a further fiscal year, with the same period of notice.

(4) This shall not prejudice the right to terminate the agreement immediately for cause. In particular, BAG is authorized to terminate the agreement for cause if it no longer holds a majority interest in BCS or if another stockholder has an interest in BCS. Reasons for termination for cause shall constitute, in particular, the merger, split or liquidation of one of the parties.

§ 4
Other provisions

Should a provision of this agreement be or become invalid or a required rule not be contained therein, this shall not impact the validity of the remaining provisions. The invalid provisions shall be replaced or the loophole closed by incorporating a legally permissible rule that corresponds as closely as possible to what the parties originally intended or would have intended based on the meaning and purpose of this agreement had they been aware of the invalidity of the provision or the loophole.

Leverkusen, February 21, 2017

Bayer Aktiengesellschaft

Werner Baumann Johannes Dietsch

Monheim am Rhein, February 21, 2017

Bayer CropScience Aktiengesellschaft

Liam Condon Michael A. Schulz

Joint Report

of the Board of Management of

Bayer Aktiengesellschaft, Leverkusen,
(“BAG”)

and

of the Board of Management of

Bayer CropScience Aktiengesellschaft, Monheim am Rhein,
(“BCS”)

on the Control Agreement of February 21, 2017

in accordance with Section 293a

of the German Stock Corporation Act (AktG)

By way of notifying their shareholders and preparing the resolution of the Stockholders’ Meetings of BAG and BCS, the Board of Management of BAG and the Board of Management of BCS hereby submit the following Joint Report on the Control Agreement of February 21, 2017, between BAG and BCS:

1. Conclusion of the Agreement; Entry into Force

The Control Agreement was concluded on February 21, 2017. It will be submitted to the Annual Stockholders’ Meeting of BAG on April 28, 2017, for its approval in accordance with Section 293 AktG. It is planned that the Stockholders’ Meeting of BCS will approve the Control Agreement on February 22, 2017 in accordance with Section 293 AktG. The Agreement still has to be entered in the commercial register for the registered office of BCS in order for it to enter into force.

2. Parties to the Agreement

BAG is a German stock corporation with its head office in Leverkusen, Germany, which is entered in the commercial register of the district court of Leverkusen under HRB 48248. Its fiscal year is the calendar year. The capital stock of BAG is EUR 2,116,986,388.48.

The Object of the Company is manufacturing, marketing and other industrial activities or the provision of services in the fields of health care and agriculture. The Company may also perform these activities in the fields of polymers and chemicals.

BAG is the Group management company of the Bayer Group. Since January 1, 2016, the Bayer Group has been managed through three divisions: Consumer Health, Crop Science and Pharmaceuticals. The previous organizational structure of BAG consisting of a strategic management holding company and operating subgroups has been replaced by an integrated structure. In the course of the reorganization, Bayer HealthCare AG and Bayer Technology Services GmbH were merged into BAG effective July 1, 2016. Moreover, the role of Bayer Business Services GmbH as the central service provider for the Bayer Group in the areas of accounting, human resources and IT has been strengthened and the corresponding employees transferred to Bayer Business Services GmbH. The reorganization was concluded effective January 1, 2017, with the lease of the business operations of BCS and Bayer Pharma AG to BAG.

The total assets of BAG were approximately EUR 45 billion in 2014, approximately EUR 48 billion in 2015 and approximately EUR 57 billion in 2016. The balance sheet profit was approximately EUR 1.861 billion in 2014, approximately EUR 2.067 billion in 2015 and approximately EUR 2.233 billion in 2016.

BCS is a German stock corporation with its head office in Monheim am Rhein, Germany, which is entered in the commercial register of the district court of Düsseldorf under HRB 46985. Its fiscal year is the calendar year. The capital stock of BCS is EUR 501,001,000.00. BAG is the sole shareholder of BCS.

The object of the Company is manufacturing, marketing and other industrial activities or provision of services in the field of agriculture. In particular, BCS may transfer its operations in full or in part to newly established or existing subsidiaries.

Crop Science is divided into three business areas: Crop Protection, Seeds and Environmental Science. Crop Protection develops and commercializes solutions to protect crop plants. The product portfolio comprises insecticides, fungicides, herbicides and products for the preventive treatment of seeds. The Seeds business consolidates the company’s expertise in plant breeding, biotechnology and improving the quality of crop plants. The Environmental Science business encompasses applications and products for professional use such as lawn care products and products to control termites and locusts.

The total assets of BCS were approximately EUR 5.4 billion in 2014, approximately EUR 5.8 billion in 2015 and approximately 5.8 billion in 2016. The balance sheet profit was approximately EUR 787 million in 2014, approximately EUR 964 million in 2015 and approximately EUR 1.017 billion in 2016.

In accordance with the Business Lease Agreement between BCS and BAG that came into force on January 1, 2017, BAG as the lessee conducts the business operations of BCS. The employment contracts of the employees assigned to the leased business operations have in principle been transferred with all rights and obligations to BAG in accordance with Section 613a of the German Civil Code (BGB). Excluded from the business lease are all investments in affiliated companies and other financial assets, together with the associated receivables, other rights and liabilities, as well as receivables and liabilities prior to January 1, 2017, and the inventories of BCS. BCS sold its inventories to BAG. The Business Lease Agreement can be terminated by BCS and BAG with regular notice of six months to the end of a calendar year.

3. Explanation of the Control Agreement

The Agreement contains the customary provisions of a control agreement that has been concluded as the basis for establishing a consolidated value added tax (VAT) group within the Bayer Group.

3.1 Management

The main content of the Control Agreement is as follows:

BCS entrusts the management of its company to BAG. Upon its entry into force, therefore, the Agreement will be the basis for certain Group managerial powers held by BAG. BAG is authorized to issue instructions to the Board of Management of BCS with regard to the management of the company. The provisions of the valid version of Section 308 AktG shall apply. If no instructions have been issued, the Board of Management of BCS shall manage the company on its own responsibility.

The right to issue instructions has its basis in Section 308 AktG. BCS must comply with permissible instructions. Instructions may be issued which are detrimental to BCS if they serve the requirements of BAG or of companies associated with BAG and BCS. It must not comply with impermissible instructions if compliance would result in regulatory violations. Moreover, instructions to change, maintain or terminate the Agreement may not be issued.

BAG shall only exercise the right to issue instructions through its Board of Management. Instructions must be issued in text form.

3.2. Assumption of losses

§ 2 of the Agreement stipulates that BAG, in accordance with the valid version of Section 302 AktG, shall be obligated to assume losses. In line with this stipulation, BAG must compensate any loss which occurs throughout the duration of the Agreement, insofar as such a loss is not compensated by way of a withdrawal from other retained earnings established throughout the duration of the Agreement. In accordance with Section 302, Paragraph 3 AktG, BCS may first waive or settle its claim to compensation of a loss three years from the day on which notification is given of the entry in the commercial register of termination of the Agreement, pursuant to Section 10 of the German Commercial Code (HGB). In accordance with Section 302, Paragraph 4 AktG, claims of BCS shall lapse ten years from the day on which notification is given of the entry in the commercial register of termination of the Agreement, pursuant to Section 10 HGB.

3.3 Entry into force and duration

This Agreement must be approved by the Stockholders' Meetings of BAG and BCS. The Agreement shall enter into force when it is entered in the commercial register for the registered office of BCS and is concluded for an unlimited duration.

The agreement can be regularly terminated at the end of a fiscal year, provided that notice of six months is given. If such notice is not given, the Agreement shall be extended in each case by a further fiscal year, with the same period of notice.

The above notwithstanding, the Agreement may be terminated for cause without notice. In particular, BAG is authorized to terminate the Agreement for cause if it no longer holds a majority interest in BCS or if another stockholder acquires an interest in BCS. Reasons for termination for cause shall constitute, in particular, the merger, split or liquidation of one of the parties.

3.4 No payment of compensation or consideration pursuant to Sections 304 and 305 AktG; no contract audit

The Control Agreement does not provide for payment of compensation or consideration to external shareholders as BAG is the sole shareholder of BCS.

As BAG holds all shares in BCS, there is also no requirement for audit of the Control Agreement by an expert auditor (contract auditor) in accordance with Section 293b, Paragraph 1 AktG or for preparation of an audit report in accordance with Section 293e AktG.

4. Legal and Commercial Reasons for Concluding the Control Agreement

The Control Agreement serves to ensure the targeted commercial success of the Bayer Group as a whole. The Control and Profit and Loss Transfer Agreement concluded between BAG and BCS on March 8, 2002, was terminated effective December 31, 2016. The consolidated tax group between BAG and BCS for the purposes of income tax was thereby terminated. In place of the Control and Profit and Loss Transfer Agreement, the present Control Agreement alone is to enter into force between BAG and BCS.

With the entry of the Control Agreement in the commercial register for the registered office of BCS, BAG is authorized to instruct BCS in respect of the Company's management. The authority of BAG to instruct BCS strengthens the Group managerial powers of BAG, e.g. in respect of potentially detrimental instructions which might be expedient in the interests of the Bayer Group as a whole. This will enable BAG to harmonize the specific interests of BCS with the interests of BAG and the interests of the Bayer Group as a whole.

The Control Agreement provides legal certainty for the organizational integration of BCS into BAG and thus safeguards the continued existence of the consolidated VAT group with BAG, which represents a substantial administrative and legal simplification. Without the existence of the consolidated VAT group, BAG and BCS would be treated as independent entrepreneurs for the purposes of VAT. Both BCS and BAG would have to separately fulfill their VAT obligations, including the submission of VAT declarations and payment of the resulting obligations.

5. Alternatives to Concluding the Control Agreement

There is no economically reasonable alternative to the conclusion of the Control Agreement between BAG and BCS which would have achieved the above-mentioned objectives in an equal or better way. The right of BAG to issue instructions could not have been achieved in an equal or better way by means of a different measure. While joint membership of the boards of management of BAG and BCS would fulfill the conditions for organizational integration required for a consolidated VAT group, it would offer too little flexibility in respect of future changes to the boards of management.

Leverkusen, February 21, 2017

Bayer Aktiengesellschaft

The Board of Management

Werner Baumann	Liam Condon	Johannes Dietsch
Dr. Hartmut Klusik	Kemal Zulfiqar Malik	Erica Mann
Dieter Weinand		

Monheim am Rhein, February 21, 2017

Bayer CropScience Aktiengesellschaft

The Board of Management

Liam Condon	Michael A. Schulz