

## Report of the Executive Board on Agenda Item 7 pursuant to § 293a AktG

In order to inform the shareholders and to prepare the resolution at the Annual General Meeting, pursuant to § 293a AktG, the Executive Board of adidas AG hereby reports as follows on the profit and loss transfer agreement between adidas AG (“**adidas AG**”) and adidas anticipation GmbH (“**anticipation GmbH**”) of March 4, 2016.

### I. **Conclusion of the profit and loss transfer agreement; Entry into force**

On March 4, 2016, adidas AG concluded a profit and loss transfer agreement with anticipation GmbH, a wholly-owned subsidiary of adidas AG without external shareholders, with its registered offices in Herzogenaurach (hereinafter also referred to as “agreement”).

As a profit and loss transfer agreement within the meaning of § 291 section 1 sentence 1 AktG, the agreement has to be approved by the Annual General Meeting of adidas AG (§ 293 section 1 and 2 AktG). Furthermore, the agreement also requires the approval of the shareholders’ meeting of anticipation GmbH which has already been granted on March 11, 2016. The agreement shall only enter into force upon entry with the commercial register of anticipation GmbH (§ 294 section 2 AktG). An entry with the commercial register of adidas AG is not required.

### II. **Purpose of anticipation GmbH**

The purpose of the company is the development and implementation of new products and business models which are suitable to promote the company purpose of adidas AG, also in collaboration with external business partners, as well as financing such products and business models, including the establishment and acquisition of companies or corporate holdings in Germany or abroad as well as the holding and management of such subsidiaries and the management of own assets.

The company was established in order to enable the adidas Group to participate in pioneering innovations at an early stage.

This shall i. a. be achieved by investing in start-up companies as well as by creating fields of application in view of innovative business models.

The Company shall be entitled to enter into all transactions and to take all measures relating to the purpose of the company or which directly or indirectly serve such purpose.

### III. **Legal and economic reasons for concluding the profit and loss transfer agreement**

The agreement serves to establish a fiscal affiliation for corporate tax purposes between adidas AG and anticipation GmbH pursuant to § 14 KStG. A fiscal affiliation aims at the consolidated taxation of otherwise legally independent companies and enables a potential offset of losses by the consolidation of the tax results of the affiliated companies.

Such consolidated taxation of adidas AG and anticipation GmbH cannot be achieved by the conclusion of another type of affiliation agreement within the meaning of § 292 AktG (corporate lease agreement, corporate surrender agreement, partial profit transfer agreement, profit pooling agreement) or a business management agreement.

#### **IV. Explanatory notes on the profit and loss transfer agreement**

The profit and loss transfer agreement corresponds to the statutory model of a profit and loss transfer agreement and contains all standard provisions for establishing a fiscal affiliation within a group of companies. The essential provisions are disclosed and outlined in the following:

##### **1. Transfer of profits (§ 1 of the profit and loss transfer agreement)**

§ 1 of the profit and loss transfer agreement regulates the typical contractual obligation of anticipation GmbH to transfer its annual net profit determined in accordance with the regulations of commercial law to adidas AG. This means that in accordance with § 1 section 1 of the profit and loss transfer agreement and § 301 sentence 1 AktG, the respective annual net profit of anticipation GmbH, minus (i) any losses carried forward from the previous year and minus (ii) the non-distributable amounts as defined in § 268 section 8 German Commercial Code (Handelsgesetzbuch - HGB), shall generally be transferred to adidas AG.

The profit to be transferred in accordance with § 1 section 1 of the profit and loss transfer agreement is reduced in accordance with § 1 section 2 of the profit and loss transfer agreement if anticipation GmbH, with the approval of adidas AG, transfers amounts from the net profit before profit transfer to other retained earnings (§ 272 section 3 sentence 2 HGB). For the recognition of the fiscal affiliation, such transfer to other retained earnings is only permissible insofar as this is justified on the basis of a reasonable commercial appraisal (see § 14 section 1 sentence 1 number 4 German Corporation Tax Act [Körperschaftsteuergesetz - KStG]). § 1 section 2 of the profit and loss transfer agreement takes account of this regulation.

In accordance with § 1 section 3 sentence 1 of the profit and loss transfer agreement, adidas AG may demand that other retained earnings set up during the term of the profit and loss transfer agreement (§ 272 section 3 sentence 2 HGB) be withdrawn and transferred as profits (§ 301 sentence 2 AktG). § 1 section 3 sentence 2 of the profit and loss transfer agreement clarifies that other reserves may neither be transferred as profits nor be used to offset an annual net loss. This regulation corresponds to the statutory provisions of § 301 AktG as well as to supreme court decisions on the use of reserves within the framework of profit and loss transfer agreements. In this respect, "other reserves" comprises all reserves in accordance with § 272 HGB with the exception of other retained earnings set up during the term of the agreement. Thus, irrespective of the time of their set-up, potential statutory reserves as well as capital reserves of anticipation GmbH are excluded from a transfer.

The claim of adidas AG to the transfer of profits shall accrue on the balance sheet date of anticipation GmbH and shall become due on this date. For the time period between the balance sheet date and the effective settlement of the claim, it shall bear

interest at the applicable statutory rate between merchants (currently 5% per annum, § 352 section 1 sentence 1 HGB).

## **2. Absorption of losses (§ 2 of the profit and loss transfer agreement)**

§ 2 section 1 of the profit and loss transfer agreement stipulates the obligation of adidas AG to absorb the losses of anticipation GmbH in accordance with § 302 AktG as amended. This means that adidas AG has to absorb any existing annual net loss of anticipation GmbH (before loss transfer). Such obligation to offset losses shall not exist insofar as the annual net loss is offset by taking amounts from other retained earnings within the meaning of § 272 section 3 sentence 2 HGB, which were transferred to these retained earnings during the term of the profit and loss transfer agreement.

The obligation to offset losses shall ensure that the equity of the statutory accounts of anticipation GmbH existing at the date of the entry into force of the agreement is not reduced during the term of the agreement. The obligation to offset the losses serves the purpose of safeguarding the financial interest of anticipation GmbH and of its creditors for the time of the existence of the profit and loss transfer agreement.

In accordance with § 2 section 2 of the profit and loss transfer agreement, the claim of anticipation GmbH to the absorption of losses shall accrue on the balance sheet date of anticipation GmbH and shall become due on this date. For the time period between the balance sheet date and the effective settlement of the claim, it shall bear interest at the applicable statutory rate between merchants (currently 5% per annum, § 352 section 1 sentence sentence 1 HGB).

## **3. Effectiveness and Term (§ 3 of the profit and loss transfer agreement)**

In accordance with the statutory approval requirements pursuant to § 293 AktG, the profit and loss agreement shall only enter into force following approval by the Annual General Meeting of adidas AG and by the shareholders' meeting of anticipation GmbH and following the entry with the commercial register of anticipation GmbH (§ 3 section 1 of the profit and loss transfer agreement). The shareholders' meeting of anticipation GmbH already gave the required approval.

The financial year of anticipation GmbH shall be the calendar year. If the Annual General Meeting of adidas AG approves the conclusion of the contract and if the profit and loss transfer agreement is entered with the commercial register in the year 2016 as scheduled, it shall initially be effective for the overall results of the 2016 financial year. This provision makes use of § 14 section 1 sentence 2 KStG which allows the agreement to take effect retroactively.

The profit and loss transfer agreement is concluded for an unlimited term (§ 3 section 2 sentence 1). At the earliest, the agreement may be terminated with three months' notice effective at the end of the financial year that ends five years after the beginning of the respective financial year of anticipation GmbH in which the profit and loss transfer agreement enters into effect pursuant to § 3 section 1 sentence 2. Thus, there is a fixed minimum term of sixty consecutive months. In case the profit and loss transfer agreement is entered with the commercial register of anticipation GmbH by December 31, 2016, the obligation to transfer profits shall commence with the

beginning of the short financial year as at January 25, 2016. The contractual minimum term shall then expire on December 31, 2021. In accordance with § 14 section 1 sentence 1 number 3 KStG, a fixed minimum term of five years is necessary to justify the targeted fiscal affiliation between adidas AG and anticipation GmbH by the profit and loss transfer agreement.

Notwithstanding the exclusion of an ordinary right to termination, the profit and loss transfer agreement may be terminated extraordinarily without observing the notice period in the event of a significant cause. The right to termination for significant cause is determined by act of law and can thus not be contractually precluded. A significant cause exists if, taking into account all circumstances, the terminating party cannot be expected to continue the contractual relationship on a reasonable basis. This is particularly the case if the risks for the controlling company are no longer bearable, e.g. due to a deterioration of the dependant company's financial position not caused by the controlling company. Vice versa, the dependant company shall have the right to terminate if the controlling company can no longer fulfil its obligations e.g. concerning the absorption of losses. Irrespective thereof, § 3 section 3 sentence 3 of the profit and loss transfer agreement ensures an explicit right to termination for adidas AG if it no longer holds the majority of votes in anticipation GmbH or if adidas AG has contractually agreed to transfer shareholdings in anticipation GmbH to a third party, so that with the imminent execution of the according agreement, adidas AG would no longer be directly or indirectly entitled to the majority of votes deriving from shares in anticipation GmbH or that anticipation GmbH would be merged with another company.

In accordance with applicable tax law, the conclusion of a profit and loss transfer agreement is necessary to justify the targeted fiscal affiliation between adidas AG and anticipation GmbH. Besides the minimum term in accordance with § 14 section 1 sentence 1 number 3 KStG, the fact that anticipation GmbH, as dependant company, is integrated into adidas AG as controlling company in such a way that the controlling company is entitled to the majority of votes in the dependant company is one of the preconditions for this fiscal affiliation. Furthermore, the profit and loss transfer agreement needs to be actually implemented during its term. A termination of the profit and loss transfer agreement prior to the expiration of the statutory minimum term in accordance with § 14 section 1 sentence 1 number 3 KStG generally leads to a fiscal repudiation of the fiscal affiliation from its outset. Only a termination for significant cause, insofar as the significant cause is recognised for tax purposes, does generally not affect the fiscal affiliation for already closed financial years, even if the termination is made during the fiscal minimum term of the profit and loss transfer agreement.

It is recognised for tax purposes that a loss of the shareholding generally constitutes a significant cause within the meaning of § 14 section 1 sentence 1 number 3 KStG for a premature termination of the profit and loss transfer agreement by the controlling company, which does not affect the tax recognition of the fiscal affiliation; the same applies in case of a merger. § 3 section 3 of the profit and loss transfer agreement ensures that grounds for termination for significant cause recognised for tax purposes shall at the same time constitute grounds for termination in accordance with civil law.

As adidas AG holds all shares in anticipation GmbH both at the time of the conclusion of the agreement and at the time of the resolution of the shareholders' meeting of anticipation GmbH and as anticipation GmbH therefore does not have any external shareholders, neither compensatory nor termination payments are to be granted. In case an external shareholder acquires a shareholding in anticipation GmbH at a later date, the profit and loss transfer agreement shall terminate no later than at the end of the financial year in which the external shareholder acquires a shareholding (cf. § 307 AktG)

#### **4. Final provisions of the agreement (§ 4 of the profit and loss transfer agreement)**

§ 4 of the profit and loss transfer agreement shall ensure the continuation of the contents of the profit and loss transfer agreement if, contrary to expectations, individual provisions of this agreement prove to be totally or partially ineffective, unenforceable or incomplete. This is a regulation typically included in profit and loss transfer agreements.

#### **V. Provisions in accordance with §§ 304, 305 AktG, Audit of agreement**

As adidas AG holds all shares in anticipation GmbH both at the time of the conclusion of the agreement and at the time of the resolution of the shareholders' meeting of anticipation GmbH and anticipation GmbH therefore does not have any external shareholders, the provisions in accordance with §§ 304, 305 AktG governing balancing and compensation do not apply (cf. § 304 section 1 sentence 3 AktG). Thus, it was not necessary to have the agreement audited by certified experts (§ 293b section 1, last subclause AktG).

Herzogenaurach, March 2016

adidas AG  
The Executive Board