

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**  
Washington, D.C. 20549

**FORM F-3  
REGISTRATION STATEMENT  
UNDER  
THE SECURITIES ACT OF 1933**

**Affimed N.V.**

(Exact Name of Registrant as Specified in Its Charter)

Not Applicable  
(Translation of Registrant's name into English)

Netherlands  
(State or Other Jurisdiction of  
Incorporation or Organization)

Not Applicable  
(I.R.S. Employer  
Identification Number)

Technologiepark, Im Neuenheimer Feld 582  
69120 Heidelberg, Germany  
(+49) 6221-6743-60  
(Address, Including Zip Code, and Telephone Number, Including Area Code, of Registrant's Principal Executive Offices)

Affimed Inc.  
1209 Orange Street  
Wilmington, Delaware 19801  
(212) 450-4000  
(Name, Address, Including Zip Code, and Telephone Number, Including Area Code, of Agent For Service)

*Copies to:*  
Sophia Hudson, P.C.  
Kirkland & Ellis LLP  
601 Lexington Avenue  
New York, NY 10022  
(212) 446-4800

**Approximate date of commencement of proposed sale to the public:** From time to time after this Registration Statement becomes effective.

If the only securities being registered on this Form are being offered pursuant to dividend or interest reinvestment plans, please check the following box.

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, check the following box.

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a registration statement pursuant to General Instruction I.C. or a post-effective amendment thereto that shall become effective upon filing with the Commission pursuant to Rule 462(e) under the Securities Act, check the following box.

If this Form is a post-effective amendment to a registration statement filed pursuant to General Instruction I.C. filed to register additional securities or additional classes of securities pursuant to Rule 413(b) under the Securities Act, check the following box.

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933. Emerging growth company

If an emerging growth company that prepares its financial statements in accordance with U.S. GAAP, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards<sup>†</sup> provided pursuant to Section 7(a)(2)(B) of the Securities Act.

<sup>†</sup> The term "new or revised financial accounting standard" refers to any update issued by the Financial Accounting Standards Board to its Accounting Standards Codification after April 5, 2012.

**CALCULATION OF REGISTRATION FEE**

Title of Each Class of Securities to be Registered	Amount to be Registered(1)	Proposed Maximum Aggregate Price per Unit(2)	Proposed Maximum Aggregate Offering Price(3)	Amount of Registration Fee(3)
Common Shares, nominal value €0.01 per share				(1)
Debt securities				(1)
Warrants				(1)
Purchase Contracts				(1)
Units				(1)
<b>Total</b>	\$225,000,000.00		\$225,000,000.00	\$24,547.50

- (1) There are being registered hereunder such indeterminate number of the securities of each identified class being registered as may be sold by the registrant from time to time at indeterminate prices, with the maximum aggregate public offering price not to exceed \$225,000,000. If any debt securities are issued at an original issue discount, then the offering price of such debt securities shall be in such greater principal amount as shall result in a maximum aggregate offering price not to exceed \$225,000,000, less the aggregate dollar amount of all securities previously issued hereunder.
- (2) The proposed maximum aggregate price per unit of each class of securities will be determined from time to time by the registrant in connection with the issuance by the registrant of the securities registered hereunder and is not specified as to each class of securities pursuant to the General Instruction II.C. of Form F-3 under the Securities Act.
- (3) Estimated solely for the purpose of calculating the registration fee pursuant to Rule 457(o) under the Securities Act with respect to the securities to be sold by the registrant. In no event will the aggregate offering price of all securities sold by the registrant from time to time pursuant to this registration statement exceed \$225,000,000.

**The Registrant hereby amends this Registration Statement on such date or dates as may be necessary to delay its effective date until the Registrant shall file a further amendment which specifically states that this Registration Statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until the Registration Statement shall become effective on such date as the Commission, acting pursuant to said Section 8(a), may determine.**

**The information in this prospectus is not complete and may be changed. We may not sell these securities until the registration statement filed with the Securities and Exchange Commission is effective. The prospectus is not an offer to sell these securities nor a solicitation of an offer to buy these securities in any jurisdiction where the offer and sale is not permitted.**

**Subject to completion, dated December 23, 2020**

**PROSPECTUS**

**\$225,000,000**

**Common Shares, Debt Securities, Warrants, Purchase Contracts and Units**



**Affimed N.V.**  
(incorporated in the Netherlands)

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We may offer, from time to time, in one or more offerings, common shares, senior debt securities, subordinated debt securities, warrants, purchase contracts or units, which we collectively refer to as the “securities.” The aggregate initial offering price of the securities that we may offer and sell under this prospectus will not exceed \$225,000,000. We may offer and sell any combination of the securities described in this prospectus in different series, at times, in amounts, at prices and on terms to be determined at or prior to the time of each offering. This prospectus describes the general terms of these securities and the general manner in which these securities will be offered. We will provide the specific terms of these securities in supplements to this prospectus. The prospectus supplements will also describe the specific manner in which these securities will be offered and may also supplement, update or amend information contained in this prospectus. You should read this prospectus and any applicable prospectus supplement before you invest.

The securities covered by this prospectus may be offered through one or more underwriters, dealers and agents, or directly to purchasers. The names of any underwriters, dealers or agents, if any, will be included in a supplement to this prospectus. For general information about the distribution of securities offered, please see “Plan of Distribution” beginning on page 29.

Our common shares are listed on The Nasdaq Global Market under the symbol “AFMD.” On December 22, 2020, the last sale price of our common shares as reported by The Nasdaq Global Market was \$6.58 per common share. As of December 22, 2020, the aggregate market value of our outstanding common shares held by non-affiliates was approximately \$642,554,996 based on approximately 98,119,675 outstanding common shares, of which approximately 97,652,735 common shares were held by non-affiliates. We have not offered any securities pursuant to General Instruction I.B.5 of Form F-3 during the prior 12 calendar month period that ends on, and includes, the date of this prospectus.

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**Investing in our securities involves risks. See “[Risk Factors](#)” beginning on page 4 of this prospectus.**

**Neither the U.S. Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.**

The date of this prospectus is \_\_\_\_\_, 2020.

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We have not authorized anyone to provide any information other than that contained in or incorporated by reference in this prospectus and any related prospectus supplement we provide to you. We have not authorized anyone to provide you with different or additional information. We are not making an offer of securities in any jurisdiction where the offer is not permitted. You should not assume that the information contained in or incorporated by reference in this prospectus is accurate as of any date other than the date on the front of this prospectus. Unless otherwise noted or the context otherwise requires, references in this prospectus to “Affimed” “the Company,” “our company,” “we,” “us” or “our” refer to Affimed N.V. and its subsidiaries.

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## ABOUT THIS PROSPECTUS

This prospectus is part of a registration statement that we filed with the Securities and Exchange Commission, or the SEC, utilizing a “shelf” registration process. Under this shelf process, we may sell any combination of the securities described in this prospectus in one or more offerings. This prospectus provides you with a general description of the securities we may offer. Each time we sell securities, we will provide a prospectus supplement that will contain specific information about the terms of that offering. The prospectus supplement may also add, update or change information contained in this prospectus. You should read both this prospectus and any prospectus supplement together with additional information described under the headings “Where You Can Find More Information” and “Incorporation of Certain Information by Reference.”

We have filed or incorporated by reference exhibits to the registration statement of which this prospectus forms a part. You should read the exhibits carefully for provisions that may be important to you.

**Neither the delivery of this prospectus nor any sale made under it implies that there has been no change in our affairs or that the information in this prospectus is correct as of any date after the date of this prospectus. You should not assume that the information in this prospectus, including any information incorporated in this prospectus by reference, the accompanying prospectus supplement or any free writing prospectus prepared by us, is accurate as of any date other than the date on the front of those documents. Our business, financial condition, results of operations and prospects may have changed since that date.**

You should not assume that the information contained in this prospectus is accurate as of any other date.

## WHERE YOU CAN FIND MORE INFORMATION

We file annual reports on Form 20-F, reports on Form 6-K, and other information with the SEC under the Securities Exchange Act of 1934, as amended, or the Exchange Act. You may read and copy this information at the following location of the SEC: Public Reference Room, 100 F Street, N.E., Washington, D.C. 20549.

You may obtain information on the operation of the SEC’s Public Reference Room by calling the SEC at 1-800-SEC-0330. The SEC also maintains an Internet site that contains reports and other information about issuers like us who file electronically with the SEC. The address of the site is <http://www.sec.gov>.

As a foreign private issuer, we are exempt under the Exchange Act from, among other things, the rules prescribing the furnishing and content of proxy statements, and our managing directors and supervisory directors and principal shareholders are exempt from the reporting and short-swing profit recovery provisions contained in Section 16 of the Exchange Act. In addition, we are not required under the Exchange Act to file periodic reports and financial statements with the SEC as frequently or as promptly as U.S. companies whose securities are registered under the Exchange Act.

## SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

This prospectus and the financial statements and other documents incorporated by reference in this prospectus contain forward-looking statements, including statements concerning our industry, our operations, our anticipated financial performance and financial condition, and our business plans and growth strategy and product development efforts. These statements constitute forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, or the Securities Act, and Section 21E of the Exchange Act. Many of the forward-looking statements contained in this prospectus can be identified by the use of forward-looking words such as “anticipate,” “believe,” “could,” “expect,” “should,” “plan,” “intend,” “estimate” and “potential,” among others. Readers are cautioned not to place undue reliance on these forward-looking

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statements, which speak only as of their dates. These forward-looking statements are based on estimates and assumptions by our management that, although we believe to be reasonable, are inherently uncertain and subject to a number of risks and uncertainties.

The following represent some, but not necessarily all, of the factors that could cause actual results to differ from historical results or those anticipated or predicted by our forward-looking statements:

- our operation as a development stage company with a history of operating losses; as of September 30, 2020, our accumulated deficit was €261.0 million;
- the chance our clinical trials may be delayed or put on clinical hold, for example, due to slower than expected enrollment or regulatory actions, or not be successful and clinical results may not reflect results seen in previously conducted preclinical studies and clinical trials, or expectations based on these preclinical studies and clinical trials;
- our reliance on contract manufacturers and contract research organizations over which we have limited control;
- our lack of adequate funding to complete development of our product candidates and the risk we may be unable to access additional capital on reasonable terms or at all to complete development and begin commercialization of our product candidates;
- our dependence on the success of AFM24 and AFM13 (which are still in clinical development) and certain of our other product candidates, each of which may eventually prove to be unsuccessful or commercially not exploitable;
- uncertainty surrounding whether any of our product candidates will gain regulatory approval, which is necessary before they can be commercialized;
- the outcome of any, or any discussions we may enter regarding, acquisitions, dispositions, partnerships, license transactions or changes to our capital structure, including our receipt of any milestone payments or royalties or any future securities offerings;
- the chance that we may become exposed to costly and damaging liability claims resulting from the testing of our product candidates in the clinic or in the commercial stage;
- if our product candidates obtain regulatory approval, or being subject to expensive ongoing obligations and continued regulatory oversight;
- enacted and future legislation may increase the difficulty and cost for us to obtain marketing approval and commercialization;
- future legislation may materially impact our ability to realize revenue from any approved and commercialized products;
- the chance that our products may not gain market acceptance, in which case we may not be able to generate product revenues;
- our reliance on our current strategic relationships with LLS, The MD Anderson Cancer Center, Genentech, Artiva, Roivant and NKMax America, and the potential failure to enter into new strategic relationships;
- our reliance on third parties to conduct our nonclinical and clinical trials and on third-party single-source suppliers to supply or produce our product candidates;
- our ability to scale-up manufacturing processes of our product candidates and reduce the cost of manufacturing our product candidates in advance of any commercialization;
- our future growth and ability to compete, which depends on retaining our key personnel and recruiting additional qualified personnel;

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- the length and severity of the COVID-19 outbreak and its impact on our business, including our supply chain, clinical trials and operations; and
- other risk factors discussed herein under “Risk Factors” or incorporated herein by reference.

Our actual results or performance could differ materially from those expressed in, or implied by, any forward-looking statements relating to those matters. Accordingly, no assurances can be given that any of the events anticipated by the forward-looking statements will transpire or occur, or if any of them do so, what impact they will have on our results of operations, cash flows or financial condition. Additionally, some of the risks and uncertainties identified above may be amplified by the recent COVID-19 outbreak. It is not possible to predict or identify all such risks. There may be additional risks that we consider immaterial or which are unknown. Except as required by law, we are under no obligation, and expressly disclaim any obligation, to update, alter or otherwise revise any forward-looking statement, whether written or oral, that may be made from time to time, whether as a result of new information, future events or otherwise.

## **AFFIMED N.V.**

We are a clinical-stage immune-oncology company focused on discovering and developing highly targeted cancer immunotherapies. Our product candidates represent an innovative approach to cancer treatment that seeks to harness the body's own immune defenses to fight tumor cells. The most potent cells of the human defense arsenal are types of white blood cells called innate immune cells (Natural Killer cells, or NK cells, and macrophages) and T cells. Leveraging our fit-for-purpose ROCK<sup>®</sup> platform, we develop proprietary, next-generation bispecific antibodies, so-called Innate Cell Engagers (ICE<sup>®</sup>), which are designed to direct innate immune cells and establish a bridge to cancer cells. Our innate cell engagers have the ability to bring innate immune cells into the proximity of tumor cells and trigger an activation cascade that leads to the destruction of cancer cells. Due to their novel tetravalent architecture with four binding domains, our innate cell engagers bind to their targets with high affinity. Different dosing schemes are being explored to allow for improved exposure in heavily pretreated patient populations. Based on their mechanism of action as well as the preclinical and clinical data we have generated to date, we believe that our product candidates as monotherapy and/or in combination, may ultimately improve response rates, clinical outcomes and survival in cancer patients, and could eventually become a cornerstone of modern targeted oncology care. Building on our leadership in the innate cell engager space, we are also developing novel antibody formats with the potential to tailor innate cell-engaging therapy to different indications and settings.

The common shares covered by this prospectus refer to the common shares of Affimed N.V. The offices of Affimed N.V. are located at Technologiepark, Im Neuenheimer Feld 582, 69120 Heidelberg, Germany. Our telephone number is (+49) 6221-6743-60. Investors should contact us for any inquiries at the address and telephone number of our principal executive office. Our principal website is [www.affimed.com](http://www.affimed.com). The information contained on our website is not a part of this prospectus.

## **RISK FACTORS**

Before making a decision to invest in our securities, you should carefully consider the risks described under "Risk Factors" in the applicable prospectus supplement and in our then most recent Annual Report on Form 20-F, and in any updates to those risk factors in our reports on Form 6-K incorporated herein, together with all of the other information appearing or incorporated by reference in this prospectus and any applicable prospectus supplement, in light of your particular investment objectives and financial circumstances.

## **USE OF PROCEEDS**

Unless otherwise indicated in a prospectus supplement, the net proceeds from our sale of the securities will be used for general corporate purposes and other business opportunities.

## DESCRIPTION OF SHARE CAPITAL AND ARTICLES OF ASSOCIATION

### General

We were incorporated pursuant to the laws of the Netherlands as Affimed Therapeutics B.V. in May 2014 to become a holding company for Affimed Therapeutics AG prior to consummation of our initial public offering. Affimed Therapeutics AG was founded in 2000 as a spin-off from Deutsches Krebsforschungszentrum, the German Cancer Research Centre, or the DKFZ, by Professor Melvyn Little in Heidelberg, Germany. Pursuant to the terms of a corporate reorganization that was completed prior to the consummation of our initial public offering, all of the interests in Affimed Therapeutics AG were exchanged for newly issued common shares of Affimed Therapeutics B.V. and, as a result, Affimed Therapeutics AG became a wholly owned subsidiary of Affimed Therapeutics B.V. Prior to consummation of our initial public offering, we converted into a public company with limited liability (*naamloze vennootschap*) pursuant to a *Deed of Amendment and Conversion*. Since then, our legal form has not changed and our legal name is *Affimed N.V.*

We are registered with the Trade Register of the Chamber of Commerce (*handelsregister van de Kamer van Koophandel*) under number 60673389. Our corporate seat is in Amsterdam, the Netherlands, and our registered office is in Heidelberg, Germany.

Our authorized share capital is €3,119,500, divided into 311,950,000 common shares, each with a nominal value of €0.01. Our issued share capital is €981,196.75 as of December 22, 2020.

Under Dutch law, our authorized share capital is the maximum capital that we may issue without amending our Articles of Association. An amendment of our Articles of Association would require a resolution of the general meeting of shareholders upon proposal by the management board with the prior approval of the supervisory board.

Initial settlement of any common shares to be issued pursuant to this prospectus will take place through The Depository Trust Company, or DTC, in accordance with its customary settlement procedures for equity securities. Each person owning common shares held through DTC must rely on the procedures thereof and on institutions that have accounts therewith to exercise any rights of a holder of the common shares.

### Stock Exchange Listing

Our common shares are listed on The Nasdaq Global Market, or Nasdaq, under the symbol “AFMD.”

### Articles of Association and Dutch Law

Set forth below is a summary of relevant information concerning our share capital and material provisions of our Articles of Association and applicable Dutch law. This summary does not constitute legal advice regarding those matters and should not be regarded as such.

### Company’s Shareholders’ Register

Subject to Dutch law and the Articles of Association, we must keep our shareholders’ register accurate and up-to-date. The management board keeps our shareholders’ register and records names and addresses of all holders of shares, showing the date on which the shares were acquired, the date of the acknowledgement by or notification of us as well as the amount paid on each share. The register also includes the names and addresses of those with a right of use and enjoyment (*vruchtgebruik*) in shares belonging to another or a pledge in respect of such shares. There is no restriction on the ownership of our shares. Any common shares to be issued pursuant to this prospectus will be held through DTC, therefore DTC or its nominee will be recorded in the shareholders’ register as the holder of the common shares.



## Corporate Objectives

Pursuant to the Articles of Association, our corporate objectives are:

- the research, development, manufacture and commercialization of products for the detection, prevention and treatment of human and non-human diseases and conditions and to provide services therewith;
- to incorporate, participate in, conduct the management of and take any other financial interest in other companies and enterprises;
- to render administrative, technical, financial, economic or managerial services to other companies, persons or enterprises;
- to acquire, dispose of manage and exploit real and personal property, including patents, marks, licenses, permits and other intellectual property rights;
- to borrow and/or lend moneys, act as surety or guarantor in any other manner, and bind itself jointly and severally or otherwise in addition to or on behalf of others; and
- the foregoing, whether or not in collaboration with third parties, and inclusive of the performance and promotion of all activities which directly and indirectly relate to those objects, all this in the broadest sense.

## Limitation on Liability and Indemnification Matters

Under Dutch law, managing directors and supervisory directors and certain other officers may be held liable for damages in the event of improper or negligent performance of their duties. They may be held jointly and severally liable for damages to the Company and to third parties for infringement of the Articles of Association or of certain provisions of the Dutch Civil Code. In certain circumstances, they may also incur additional specific civil and criminal liabilities. Managing directors and supervisory directors and certain other officers are also insured under an insurance policy taken out by us against damages resulting from their conduct when acting in the capacities as such directors or officers, as applicable. In addition, our Articles of Association provide for indemnification of our current and former managing directors and supervisory directors. These provisions give managing directors and supervisory directors the right, to the fullest extent permitted by law, to recover from us amounts, including but not limited to litigation expenses, and any damages they are ordered to pay, in relation to acts or omissions in the performance of their duties. However, there is generally no entitlement to indemnification for acts or omissions that amount to willful (*opzettelijk*), intentionally reckless (*bewust roekeloos*) or seriously culpable (*ernstig verwijtbaar*) conduct.

## Shareholders' Meetings and Consents

### General Meeting

General meetings of shareholders may be held in Amsterdam, Rotterdam, The Hague, Arnhem, Utrecht or the municipality of Haarlemmermeer (Schiphol Airport), the Netherlands. The annual general meeting of shareholders must be held within six months of the end of each financial year. Additional extraordinary general meetings of shareholders may also be held, whenever considered appropriate by the management board or the supervisory board. Pursuant to Dutch law, one or more shareholders, who jointly represent at least one-tenth of the issued capital may, on their application, be authorized by a Dutch district court to convene a general meeting of shareholders. The district court shall disallow the application if it does not appear that the applicants have previously requested the management board and the supervisory board to convene a general meeting of shareholders and neither the management nor the supervisory board has taken the necessary steps so that the general meeting of shareholders could be held within six weeks after the request.

General meetings of shareholders can be convened by a notice, which shall include an agenda stating the items to be discussed, including for the annual general meeting of shareholders, among other things, the adoption

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of the annual accounts, appropriation of our profits and proposals relating to the composition of the management board or supervisory board, including the filling of any vacancies in the management board or supervisory board. In addition, the agenda shall include such items as have been included therein by the management board or supervisory board. The agenda shall also include such items requested by one or more shareholders, and others entitled to attend general meetings of shareholders, representing at least 3% of the issued share capital. Requests must be made in writing and received by the management board at least 60 days before the day of the convocation of the meeting. No resolutions shall be adopted on items other than those which have been included in the agenda. In accordance with the Dutch Corporate Governance Code, or DCGC, a shareholder shall exercise the right of putting an item on the agenda only after consulting the management board in that respect. If one or more shareholders intend to request that an item be put on the agenda that may result in a change in the company's strategy, the management board may invoke a response time of a maximum of 180 days until the day of the general meeting of shareholders.

The general meeting is presided over by the chairman of the supervisory board. However, the chairman may charge another person to preside over the general meeting in his place even if he himself is present at the meeting. If the chairman of the supervisory board is absent and he has not charged another person to preside over the meeting in his place, the supervisory directors present at the meeting shall appoint one of them to be chairman. If no supervisory directors are present at the general meeting, the general meeting is to be presided over by one of the managing directors designated for that purpose by the management board. Managing directors and supervisory directors may attend a general meeting of shareholders. In these meetings, they have an advisory vote. The chairman of the meeting may decide at its discretion to admit other persons to the meeting.

All shareholders and others entitled to attend general meetings of shareholders are authorized to attend the general meeting of shareholders, to address the meeting and, in so far as they have such right, to vote.

### ***Quorum and Voting Requirements***

Each common share confers the right on the holder to cast one vote at the general meeting of shareholders. Shareholders may vote by proxy. No votes may be cast at a general meeting of shareholders on shares held by us or our subsidiaries or on shares for which we or our subsidiaries hold depositary receipts. Nonetheless, the holders of a right of use and enjoyment (*vruchtgebruik*) and the holders of a right of pledge in respect of shares held by us or our subsidiaries in our share capital are not excluded from the right to vote on such shares, if the right of use and enjoyment (*vruchtgebruik*) or the right of pledge was granted prior to the time such shares were acquired by us or any of our subsidiaries. Neither we nor any of our subsidiaries may cast votes in respect of a share on which we or such subsidiary holds a right of use and enjoyment (*vruchtgebruik*) or a right of pledge. Shares which are not entitled to voting rights pursuant to the preceding sentences will not be taken into account for the purpose of determining the number of shareholders that vote and that are present or represented, or the amount of the share capital that is provided or that is represented at a general meeting of shareholders.

Decisions of the general meeting of shareholders are taken by an absolute majority of votes cast, except where Dutch law or the Articles of Association provide for a qualified majority or unanimity.

## **Directors**

### ***Election of Directors***

Under our Articles of Association, our managing directors and supervisory directors are appointed by the general meeting of shareholders upon a binding nomination by our supervisory board. The general meeting of shareholders may overrule the binding nomination by a resolution adopted with a two-thirds majority of the votes cast representing at least half of the issued share capital. If the general meeting of shareholders overrules the binding nomination, the supervisory board shall make a new binding nomination.

### ***Duties and Liabilities of Directors***

Under Dutch law, the management board is responsible for our management, strategy, policy and operations. The supervisory board is responsible for supervising the conduct of and providing advice to the management board and for supervising our business generally. Furthermore, each member of the management board and the supervisory board has a duty to act in the corporate interest of the company. Under Dutch law, the corporate interest extends to the interests of all corporate stakeholders, such as shareholders, creditors, employees, customers and suppliers. The duty to act in the corporate interest of the company also applies in the event of a proposed sale or break-up of the company, whereby the circumstances generally dictate how such duty is to be applied. Any resolution of the management board regarding a significant change in our identity or character requires shareholder approval.

### **Dividends and Other Distributions**

#### ***Amount Available for Distribution***

We may only make distributions to our shareholders if our shareholders' equity exceeds the sum of the paid-in and called-up share capital plus the reserves as required to be maintained by Dutch law or by the Articles of Association.

Under the Articles of Association, the management board may resolve, subject to the approval of the supervisory board, to reserve the profits or part of the profits. After reservation by the management board of any profit, the remaining profit will be at the disposal of the general meeting of shareholders. We only make a distribution of dividends to our shareholders after the adoption of our annual accounts demonstrating that such distribution is legally permitted. The management board may resolve, with the approval of the supervisory board, to make interim distributions to the shareholders if an interim statement of assets and liabilities shows that Affimed's shareholders' equity exceeds the sum of the paid-up and called-up part of the capital and the reserves which must be maintained by Dutch law. Dividends and other distributions shall be made payable no later than thirty days after the date when they were declared, unless the corporate body authorized to declare the dividend determines a different date. Claims to dividends and other distributions not made within five years and one day after the date that such dividends or distributions became payable, shall be forfeited to us (*verjaring*) and shall be carried to the reserves. We do not anticipate paying any cash dividends for the foreseeable future.

#### ***Exchange Controls***

Under existing laws of the Netherlands, there are no exchange controls applicable to the transfer to persons outside of the Netherlands of dividends or other distributions with respect to, or of the proceeds from the sale of, shares of a Dutch company.

#### ***Squeeze out Procedures***

Pursuant to Section 92a, Book 2, Dutch Civil Code, a shareholder who for his own account holds at least 95% of our issued share capital may initiate proceedings against the other shareholders jointly for the transfer of their shares to such shareholder. The proceedings are held before the Enterprise Chamber of the Amsterdam Court of Appeal, or the Enterprise Chamber, and can be instituted by means of a writ of summons served upon each of the other shareholders in accordance with the provisions of the Dutch Code of Civil Procedure (*Wetboek van Burgerlijke Rechtsvordering*). The Enterprise Chamber may grant the claim for squeeze out in relation to the other shareholders and will determine the price to be paid for the shares, if necessary after appointment of one or three experts who will offer an opinion to the Enterprise Chamber on the value to be paid for the shares of the other shareholders. Once the order to transfer becomes final before the Enterprise Chamber, the person acquiring the shares shall give written notice of the date and place of payment and the price to the holders of the shares to be acquired whose addresses are known to him. Unless the addresses of all of them are known to the acquiring person, such person is required to publish the same in a daily newspaper with a national circulation.

## COMPARISON OF DUTCH LAW AND OUR ARTICLES OF ASSOCIATION AND U.S. CORPORATE LAW

The following comparison between Dutch corporation law, which applies to us, and Delaware corporation law, the law under which many publicly listed corporations in the United States are incorporated, discusses additional matters not otherwise described in this prospectus. Although we believe this summary is materially accurate, the summary is subject to Dutch law, including Book 2 of the Dutch Civil Code and the DCGC and Delaware corporation law, including the Delaware General Corporation Law.

### *Corporate Governance*

#### *Duties of directors*

*The Netherlands.* We have a two-tier board structure consisting of our supervisory board (*raad van commissarissen*) and a separate management board (*raad van bestuur*).

Under Dutch law, the management board is collectively responsible for the management and the strategy, policy and operations of the company. The supervisory board is responsible for supervising the conduct of and providing advice to the management board and for supervising the business generally. Furthermore, each member of the management board and the supervisory board has a duty to act in the corporate interest of the company and the business connected with it. Under Dutch law, the corporate interest extends to the interests of all corporate stakeholders, such as shareholders, creditors, employees, customers and suppliers. The duty to act in the corporate interest of the company also applies in the event of a proposed sale or break-up of the company, whereby the circumstances generally dictate how such duty is to be applied.

*Delaware.* The board of directors bears the ultimate responsibility for managing the business and affairs of a corporation. In discharging this function, directors of a Delaware corporation owe fiduciary duties of care and loyalty to the corporation and to its stockholders. Delaware courts have decided that the directors of a Delaware corporation are required to exercise informed business judgment in the performance of their duties. Informed business judgment means that the directors have informed themselves of all material information reasonably available to them. Delaware courts have also imposed a heightened standard of conduct upon directors of a Delaware corporation who take any action designed to defeat a threatened change in control of the corporation. In addition, under Delaware law, when the board of directors of a Delaware corporation approves the sale or break-up of a corporation, the board of directors may, in certain circumstances, have a duty to obtain the highest value reasonably available to the stockholders.

#### *Director terms*

*The Netherlands.* Managing directors and supervisory directors of a Dutch listed company are generally appointed for an individual term of a maximum of four years. There is no limit to the number of consecutive terms managing directors may serve. Following the DCGC, supervisory directors of a Dutch listed company are appointed for a period of four years and may then be reappointed once for another four-year period. The supervisory board member may then subsequently be reappointed for a period of two years, which appointment may be extended by at most two years.

Our managing directors are appointed by the general meeting of shareholders pursuant to a binding nomination by the supervisory board. The general meeting may at all times overrule the binding nomination by a resolution adopted by at least a two-thirds majority of the votes cast, representing more than one-half of the issued share capital. If the binding nomination is not overruled in accordance with the preceding sentence, the person proposed for appointment will have been appointed. If the general meeting overrules the binding nomination, the supervisory board shall make a new nomination.

Our supervisory directors are also appointed by the general meeting of shareholders upon a binding nomination by the supervisory board. The general meeting may at all times overrule the binding nomination by a

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two-thirds majority of the votes cast, representing more than one-half of the issued share capital. If the binding nomination is not overruled in accordance with the preceding sentence, the person proposed for appointment will have been appointed. If the general meeting overrules the binding nomination, the supervisory board shall make a new nomination.

There are no restrictions on the number of reelections of our management directors. Pursuant to the Articles of Association, a supervisory director shall be appointed for a maximum term of four years, and may be reappointed for a term of not more than four years at a time. A supervisory director may be a supervisory director for a period not longer than twelve years, unless the general meeting of shareholders resolves otherwise. Under the DCGC, in the event of a reappointment of a supervisory director after he or she has served as supervisory director for eight years, the supervisory board report should include the reasons for such reappointment. As a result of our supervisory directors' staggered four-year term of appointment, approximately one-fourth of our supervisory directors will be subject to election in any one year.

The general meeting of shareholders shall at all times be entitled to suspend or dismiss a member of the management board or supervisory board. The general meeting of shareholders may only adopt a resolution to suspend or dismiss such a member with a two-thirds majority of the votes cast, if such majority represents more than half of the issued share capital, unless the proposal was made by the supervisory board, in which case a simple majority is sufficient. The supervisory board may at all times suspend (but not dismiss) a member of the management board.

*Delaware.* The Delaware General Corporation Law generally provides for a one-year term for directors, but permits directorships to be divided into up to three classes with up to three-year terms, with the years for each class expiring in different years, if permitted by the certificate of incorporation, an initial bylaw or a bylaw adopted by the stockholders. A director elected to serve a term on a "classified" board may not be removed by stockholders without cause. There is no limit in the number of terms a director may serve.

### *Director vacancies*

*The Netherlands.* Under Dutch law, new managing directors and supervisory directors are generally appointed by the general meeting of shareholders.

Under our Articles of Association, in case of a vacancy or vacancies of one or more managing directors, the remaining managing directors shall temporarily be in charge of the management, without prejudice to the right of the supervisory board to replace the managing director with a temporary managing director. In the case of a vacancy or vacancies of one or more supervisory directors, the remaining supervisory directors shall temporarily be in charge of the supervision, without prejudice to the right of the general meeting to appoint a temporary member of the supervisory board to replace the member of the supervisory board concerned.

*Delaware.* The Delaware General Corporation Law provides that vacancies and newly created directorships may be filled by a majority of the directors then in office (even though less than a quorum) unless (i) otherwise provided in the certificate of incorporation or bylaws of the corporation or (ii) the certificate of incorporation directs that a particular class of stock is to elect such director, in which case any other directors elected by such class, or a sole remaining director elected by such class, will fill such vacancy.

### *Conflict-of-interest transactions*

*The Netherlands.* Pursuant to Dutch law and our Articles of Association, a managing director or a supervisory director shall not take part in the deliberations and the decision-making process of the management board or the supervisory board, as applicable, if he or she has a direct or indirect personal conflict of interest with the company or the business connected with it. Our Articles of Association provide that if as a result of the conflict of interest of managing directors no resolution of the management board can be adopted, the resolution is

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adopted by the supervisory board. If as a result of the conflict of interest of supervisory directors no resolution of the supervisory board can be adopted, the resolution can nonetheless be adopted by the supervisory board. In that case, each supervisory board member is entitled to participate in the discussion and decision making process of the supervisory board and to cast a vote.

*Delaware.* The Delaware General Corporation Law generally permits transactions involving a Delaware corporation and an interested director of that corporation if:

- the material facts as to the director's relationship or interest are disclosed and a majority of disinterested directors consent;
- the material facts are disclosed as to the director's relationship or interest and a majority of shares entitled to vote thereon consent; or
- the transaction is fair to the corporation at the time it is authorized by the board of directors, a committee of the board of directors or the stockholders.

### *Proxy voting by directors*

*The Netherlands.* Under our Articles of Association, at a meeting of the management board, a managing director may only be represented by another managing director holding a written proxy. At a meeting of the supervisory board, a supervisory director may only be represented by another supervisory director holding a written proxy.

*Delaware.* A director of a Delaware corporation may not issue a proxy representing the director's voting rights as a director.

## **Dutch Corporate Governance Code**

The DCGC contains both principles and best practice provisions for management boards, supervisory boards, shareholders and general meetings of shareholders, financial reporting, auditors, disclosure, compliance and enforcement standards. A copy of the DCGC can be found on [www.mccg.nl](http://www.mccg.nl). As a Dutch company, we are subject to the DCGC and are required to disclose in our annual report, filed in the Netherlands, whether we comply with the provisions of the DCGC. If we do not comply with the provisions of the DCGC (for example, because of a conflicting Nasdaq requirement or otherwise), we must list the reasons for any deviation from the DCGC in our annual report. Our deviations from the DCGC are summarized below.

### *Remuneration*

- We have granted and intend to grant options and restricted stock units in the future to members of our management board. These options provide for vesting conditions which allow exercise of one third of the options after the first anniversary of the grant date, which qualifies as a deviation from best practice provision 3.1.2 of the DCGC. Such vesting conditions are market practice among companies listed at Nasdaq. We are in competition with other companies in this field and intend to maintain an attractive compensation package for its current and any future management board members.
- We have granted and intend to grant options and restricted stock units in the future to members of our supervisory board, which qualifies as a deviation from best practice provision 3.3.2 of the DCGC. Such remuneration is in accordance with Nasdaq corporate governance requirements and market practice among companies listed at Nasdaq. We are in competition with other companies in this field and intend to maintain an attractive compensation package for our current and any future supervisory board members. The number of option rights granted to each supervisory board member is determined by the general meeting of shareholders.

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- The compensation committee of the Supervisory Board has not prepared a remuneration report, which qualifies as a deviation from best practice provision 3.4.1 of the DCGC. Instead, an overview of the implementation and planning of the remuneration of managing and supervisory directors is described in more detail in our Annual Report on Form 20-F filed with the SEC on April 28, 2020 (available on our website at <http://www.affimed.com/sec>).

### *Board nominations and shareholder voting*

- Pursuant to our Articles of Association, the supervisory board will nominate one or more candidates for each vacant seat on the management board or the supervisory board. A resolution of our general meeting of shareholders to appoint a member of the management board or the supervisory board other than pursuant to a nomination by our supervisory board requires at least two-thirds of the votes cast representing more than half of our issued share capital, which qualifies as a deviation from best practice provision 4.3.3 of the DCGC. Although a deviation from the provision 4.3.3 of the DCGC, the supervisory board and the management board hold the view that these provisions will enhance the continuity of our management and policies.

### *Chairman of the compensation committee*

- We have opted out of the director independence requirements under applicable Nasdaq rules.

## **Shareholder rights**

### *Voting rights*

*The Netherlands.* In accordance with Dutch law and our Articles of Association, each issued common share confers the right to cast one vote at the general meeting of shareholders. Each holder of shares may cast as many votes as it holds shares. Shares that are held by us or our direct or indirect subsidiaries do not confer the right to vote.

In accordance with our Articles of Association, for each general meeting of shareholders, the management board may determine that a record date will be applied in order to establish which shareholders are entitled to attend and vote at the general meeting of shareholders. Such record date shall be the 28th day prior to the day of the general meeting. The record date and the manner in which shareholders can register and exercise their rights will be set out in the notice of the meeting.

*Delaware.* Under the Delaware General Corporation Law, each stockholder is entitled to one vote per share of stock, unless the certificate of incorporation provides otherwise. In addition, the certificate of incorporation may provide for cumulative voting at all elections of directors of the corporation, or at elections held under specified circumstances. Either the certificate of incorporation or the bylaws may specify the number of shares and/or the amount of other securities that must be represented at a meeting in order to constitute a quorum, but in no event will a quorum consist of less than one third of the shares entitled to vote at a meeting.

Stockholders as of the record date for the meeting are entitled to vote at the meeting, and the board of directors may fix a record date that is no more than 60 nor less than 10 days before the date of the meeting, and if no record date is set then the record date is the close of business on the day next preceding the day on which notice is given, or if notice is waived then the record date is the close of business on the day next preceding the day on which the meeting is held. The determination of the stockholders of record entitled to notice or to vote at a meeting of stockholders shall apply to any adjournment of the meeting, but the board of directors may fix a new record date for the adjourned meeting.

### *Shareholder proposals*

*The Netherlands.* Pursuant to our Articles of Association and in accordance with Dutch law, general meetings of shareholders will be held whenever our supervisory board or management board deems such to be

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necessary. Pursuant to Dutch law, one or more shareholders representing at least ten percent of the issued capital may, on their application, be authorized by a Dutch district court to convene a general meeting of shareholders. The district court shall disallow the application if it does not appear that the applicants have previously requested the management board and the supervisory board to convene a general meeting of shareholders and neither the management nor the supervisory board has taken the necessary steps so that the general meeting of shareholders could be held within six weeks after the request.

Also, the agenda for a general meeting of shareholders shall include such items requested by one or more shareholders representing at least 3% of the issued share capital, except where the articles of association state a lower percentage. Our Articles of Association do not state such lower percentage. Requests must be made in writing and received by the management board at least 60 days before the day of the convocation of the meeting. In accordance with the DCGC, a shareholder shall exercise the right of putting an item on the agenda only after consulting the management board in that respect. If one or more shareholders intend to request that an item be put on the agenda that may result in a change in the company's strategy, the management board may invoke a response time of a maximum of 180 days from the moment the management board is informed by one or more shareholders of their intention to put an item on the agenda to the day of the general meeting of shareholders at which the item is to be considered.

*Delaware.* Delaware law does not specifically grant stockholders the right to bring business before an annual or special meeting. However, if a Delaware corporation is subject to the SEC's proxy rules, a stockholder who owns at least \$2,000 in market value, or 1% of the corporation's securities entitled to vote, and has owned such securities for at least one year, may propose a matter for a vote at an annual or special meeting in accordance with those rules.

### *Action by written consent*

*The Netherlands.* Under Dutch law, resolutions of the general meeting of shareholders of a Dutch public limited liability company may be adopted in writing without holding a meeting of shareholders, provided that (i) the articles of association allow such action by written consent and (ii) the resolution is adopted unanimously by all shareholders that are entitled to vote. The requirement of unanimity renders the adoption of shareholder resolutions without holding a meeting not feasible for publicly traded companies. Therefore, our Articles of Association do not provide for shareholder action by written consent.

*Delaware.* Although permitted by Delaware law, publicly listed companies do not typically permit stockholders of a corporation to take action by written consent.

### *Appraisal rights*

*The Netherlands.* The concept of appraisal rights is not known as such under Dutch law.

However, in accordance with the directive 2005/56/EC of the European Parliament and the Council of 26 October 2005 on cross-border mergers of limited liability companies, Dutch law provides that, to the extent that the acquiring company in a cross-border merger is organized under the laws of another EU member state, a shareholder of a Dutch disappearing company who has voted against the cross-border merger may file a claim with the Dutch company for compensation. Such compensation is to be determined by one or more independent experts. The independent experts will take into account any provisions in the articles of association or agreements between the company and shareholders concerning the determination of the fair value of shares and the compensation to be paid to shareholders demanding their shares to be acquired at fair value. If the articles of association or an agreement between the company and the shareholders contains criteria for the unequivocal determination of the fair value of shares and the compensation to be paid to shareholders demanding their shares to be acquired at fair value, no independent experts are required to be appointed. The shares of such shareholder that are subject to such appraisal claim will cease to exist as of the moment of effectiveness of the cross-border



merger. If the acquiring company is a company incorporated under the laws of another member state of the European Union or the European Economic Area, the Dutch notary may only issue a declaration stating that the pre-merger formalities have been complied with if no appraisal claim has been filed, the compensation shareholders have been demanding has been paid or the other merging companies have decided that the acquiring company must pay the compensation due to shareholders.

*Delaware.* The Delaware General Corporation Law provides for stockholder appraisal rights, or the right to demand payment in cash of the judicially determined fair value of the stockholder's shares, in connection with certain mergers and consolidations.

### *Shareholder suits*

*The Netherlands.* In the event a third party is liable to a Dutch company, only the company itself can bring a civil action against that party. The individual shareholders do not have the right to bring an action on behalf of the company. Only in the event that the cause for the liability of a third party to the company also constitutes a tortious act directly against a shareholder does that shareholder have an individual right of action against such third party in its own name. The DCC provides for the possibility to initiate such actions collectively. A foundation or an association whose objective is to protect the rights of a group of persons having similar interests can institute a collective action if such representative organization meets certain statutory criteria. Until recently a collective action could only result in a declaratory judgment (*verklaring voor recht*). In order to obtain compensation for damages, the foundation or association and the defendant may reach— for instance, on the basis of such declaratory judgment—a settlement. Pursuant to the Dutch Act on the Collective Settlement of Mass Claims (the “WCAM”), a Dutch court may declare the settlement agreement binding upon all the injured parties with an opt-out choice for an individual injured party. However, as of January 1, 2020, new legislation allows Dutch courts to award monetary damages in class action cases. The new legislation encourages parties to explore the options of a collective settlement pending the class action. The new legislation also introduces higher thresholds for class actions and statutory criteria on the basis of which representative organizations can only bring a collective claim before the Dutch courts if they, inter alia, have sufficient expertise on the matter brought before the court, their governance meets certain threshold criteria and are sufficiently funded and transparent concerning their funding. The new legislation also contains stricter rules with regard to the jurisdiction of the Dutch courts. A class action will only be admissible if it has a sufficiently substantive connection with the Netherlands. This will be the case if the majority of the claimants are based in the Netherlands, the defendant is domiciled in the Netherlands or where the unlawful event took place in the Netherlands. Finally, class actions under the new legislation will, as a rule, only apply to injured Dutch parties that have not chosen to opt-out of the class action. Foreign plaintiffs will, in principle, only be bound by the outcome of the class action proceedings if they explicitly opt-in. If a settlement is reached during the proceedings, there is an additional possibility for an injured party to opt-out. This is different than under the WCAM (see above), which does not feature an opt-in for foreign injured parties. If a settlement is declared binding by the Dutch courts pursuant to the WCAM, all intended beneficiaries are bound by the settlement unless they opt-out. An individual injured party may also itself—outside the collective action—institute a civil claim for damages.

*Delaware.* Under the Delaware General Corporation Law, a stockholder may bring a derivative action on behalf of the corporation to enforce the rights of the corporation. An individual also may commence a class action suit on behalf of himself and other similarly situated stockholders where the requirements for maintaining a class action under Delaware law have been met. A person may institute and maintain such a suit only if that person was a stockholder at the time of the transaction which is the subject of the suit. In addition, under Delaware case law, the plaintiff normally must be a stockholder at the time of the transaction that is the subject of the suit and throughout the duration of the derivative suit. Delaware law also requires that the derivative plaintiff make a demand on the directors of the corporation to assert the corporate claim before the suit may be prosecuted by the derivative plaintiff in court, unless such a demand would be futile.

### *Repurchase of shares*

*The Netherlands.* Under Dutch law, when issuing shares, a public company with limited liability such as ours may not subscribe for newly issued shares in its own capital. Such company may, however, subject to certain restrictions of Dutch law and its articles of association, acquire shares in its own capital. A listed public company with limited liability may acquire fully paid shares in its own capital at any time for no valuable consideration. Furthermore, subject to certain provisions of Dutch law and its articles of association, such company may repurchase fully paid shares in its own capital if (i) the company's shareholders' equity less the payment required to make the acquisition does not fall below the sum of paid-up and called-up capital and any reserves required by Dutch law or its articles of association and (ii) the company and its subsidiaries would not thereafter hold shares or hold a pledge over shares with an aggregate par value exceeding 50% of its then current issued share capital. Such company may only acquire its own shares if its general meeting of shareholders has granted the management board the authority to effect such acquisitions.

An acquisition of common shares for a consideration must be authorized by our general meeting of shareholders. Such authorization may be granted for a maximum period of 18 months and must specify the number of common shares that may be acquired, the manner in which common shares may be acquired and the price limits within which common shares may be acquired. Authorization is not required for the acquisition of common shares in order to transfer them to our employees. The actual acquisition may only be effected by a resolution of our management board. At the general meeting held on August 4, 2020, the general meeting of shareholders authorized our management board acting with the approval of our supervisory board, for a period of 18 months (until February 4, 2021) to cause the repurchase of common shares by us of up to 10% of our issued share capital, for a price per share not exceeding 110% of the most recent closing price of a common share on any stock exchange where the common shares are listed.

No authorization of the general meeting of shareholders is required if common shares are acquired by us with the intention of transferring such common shares to our employees under an applicable employee stock purchase plan.

If we would decide to repurchase any of our shares, no votes could be cast at a general meeting of shareholders on the shares held by us or our subsidiaries or on shares for which we or our subsidiaries hold depositary receipts. Nonetheless, the holders of a right of use and enjoyment (*vruchtgebruik*) and the holders of a right of pledge in respect of shares held by us or our subsidiaries in our share capital are not excluded from the right to vote on such shares, if the right of use and enjoyment (*vruchtgebruik*) or the right of pledge was granted prior to the time such shares were acquired by us or any of our subsidiaries. Neither we nor any of our subsidiaries may cast votes in respect of a share on which we or such subsidiary holds a right of use and enjoyment (*vruchtgebruik*) or a right of pledge.

*Delaware.* Under the Delaware General Corporation Law, a corporation may purchase or redeem its own shares unless the capital of the corporation is impaired or the purchase or redemption would cause an impairment of the capital of the corporation. A Delaware corporation may, however, purchase or redeem out of capital any of its preferred shares or, if no preferred shares are outstanding, any of its own shares if such shares will be retired upon acquisition and the capital of the corporation will be reduced in accordance with specified limitations.

### ***Anti-Takeover Provisions***

*The Netherlands.* Under Dutch law, various protective measures are possible and permissible within the boundaries set by Dutch law and Dutch case law. We have adopted several provisions that may have the effect of making a takeover of our company more difficult or less attractive, including:

- the staggered four-year terms of our supervisory directors, as a result of which only approximately one-fourth of our managing directors and supervisory directors will be subject to election in any one year;

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- a provision that our managing directors and supervisory directors may only be removed at the general meeting of shareholders by a two-thirds majority of votes cast representing at least 50% of our outstanding share capital if such removal is not proposed by our supervisory board; and
- requirements that certain matters, including an amendment of our Articles of Association, may only be brought to our shareholders for a vote upon a proposal by our management board that has been approved by our supervisory board.

*Delaware.* In addition to other aspects of Delaware law governing fiduciary duties of directors during a potential takeover, the Delaware General Corporation Law also contains a business combination statute that protects Delaware companies from hostile takeovers and from actions following the takeover by prohibiting some transactions once an acquirer has gained a significant holding in the corporation.

Section 203 of the Delaware General Corporation Law prohibits “business combinations,” including mergers, sales and leases of assets, issuances of securities and similar transactions by a corporation or a subsidiary with an interested stockholder that beneficially owns 15% or more of a corporation’s voting stock, within three years after the person becomes an interested stockholder, unless:

- the transaction that will cause the person to become an interested stockholder is approved by the board of directors of the target prior to the transactions;
- after the completion of the transaction in which the person becomes an interested stockholder, the interested stockholder holds at least 85% of the voting stock of the corporation not including shares owned by persons who are directors and officers of interested stockholders and shares owned by specified employee benefit plans; or
- after the person becomes an interested stockholder, the business combination is approved by the board of directors of the corporation and holders of at least 66.67% of the outstanding voting stock, excluding shares held by the interested stockholder.

A Delaware corporation may elect not to be governed by Section 203 by a provision contained in the original certificate of incorporation of the corporation or an amendment to the original certificate of incorporation or to the bylaws of the company, which amendment must be approved by a majority of the shares entitled to vote and may not be further amended by the board of directors of the corporation. In most cases, such an amendment is not effective until twelve months following its adoption.

### **Inspection of Books and Records**

*The Netherlands.* The management board and the supervisory board provide the general meeting of shareholders in good time with all information that the shareholders require for the exercise of their powers, unless this would be contrary to an overriding interest of us.

*Delaware.* Under the Delaware General Corporation Law, any stockholder may inspect for any proper purpose certain of the corporation’s books and records during the corporation’s usual hours of business.

### **Removal of Directors**

*The Netherlands.* Under our Articles of Association, the general meeting of shareholders shall at all times be entitled to suspend or dismiss a member of the management board or supervisory board. The general meeting of shareholders may only adopt a resolution to suspend or dismiss such a member by at least a two-thirds majority of the votes cast, if such majority represents more than half of the issued share capital, unless the proposal was made by the supervisory board in which case a simple majority is sufficient.

*Delaware.* Under the Delaware General Corporation Law, any director or the entire board of directors may be removed, with or without cause, by the holders of a majority of the shares then entitled to vote at an election

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of directors, except (i) unless the certificate of incorporation provides otherwise, in the case of a corporation whose board is classified, stockholders may effect such removal only for cause, or (ii) in the case of a corporation having cumulative voting, if less than the entire board is to be removed, no director may be removed without cause if the votes cast against his removal would be sufficient to elect him if then cumulatively voted at an election of the entire board of directors, or, if there are classes of directors, at an election of the class of directors of which he is a part.

### ***Preemptive Rights***

*The Netherlands.* Under Dutch law, upon the issue of common shares, each holder of common shares shall have a preemptive right to acquire such newly issued shares in proportion to the aggregate amount of such holder's common shares, it being understood that this preemptive right shall not apply to (i) the issuance of shares to employees of the company or employees of a group company; and (ii) the issuance of shares against payment in kind.

Under our Articles of Association, if and insofar as the management board is not authorized to limit or exclude pre-emptive rights, the preemptive rights in respect of newly issued common shares may be restricted or excluded by a resolution of the general meeting of shareholders upon proposal of the management board, which proposal has been approved by the supervisory board. The management board, subject to approval of the supervisory board, may also resolve to restrict or exclude the preemptive rights in respect of newly issued common shares if it has been designated as the authorized body to do so by the general meeting of shareholders. Such designation can be granted for a period not exceeding five years. A resolution of the general meeting of shareholders to restrict or exclude the preemptive rights or to designate the management board as the authorized body to do so requires a majority of not less than two-thirds of the votes cast, if less than one-half of our issued share capital is represented at the meeting.

At a general meeting held on June 25, 2019, the general meeting of shareholders authorized our management board, subject to the approval of our supervisory board, for a period of five years from the date of the meeting (up to and including June 25, 2024) to restrict or exclude pre-emptive rights accruing to shareholders in connection with the issue of common shares and/or rights to subscribe for common shares in relation to any issuance or granting of rights to subscribe for common shares in the share capital of Affimed, up to the maximum number of common shares that can be issued under the size of the authorized share capital of Affimed as per the date of adoption of such resolution.

*Delaware.* Under the Delaware General Corporation Law, stockholders have no preemptive rights to subscribe for additional issues of stock or to any security convertible into such stock unless, and to the extent that, such rights are expressly provided for in the certificate of incorporation.

### ***Dividends***

*The Netherlands.* Dutch law provides that dividends may be distributed after adoption of the annual accounts by the general meeting of shareholders from which it appears that such dividend distribution is allowed. Moreover, dividends may be distributed only to the extent the shareholders' equity exceeds the amount of the paid-up and called-up part of the issued share capital and the reserves that must be maintained under the law or the articles of association. Interim dividends may be declared as provided in the articles of association and may be distributed to the extent that the shareholders' equity exceeds the amount of the issued and paid-up and called-up part of the issued share capital and the required legal reserves as described above as apparent from our financial statements.

Under the Articles of Association, the management board may resolve, subject to the approval of the supervisory board, to reserve the profits or part of the profits. After reservation by the management board of any profit, the remaining profit will be at the disposal of the general meeting of shareholders. We only make a

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distribution of dividends to our shareholders after the adoption of our annual accounts demonstrating that such distribution is legally permitted. The management board may resolve, with the approval of the supervisory board, to make interim distributions to the shareholders if an interim statement of assets and liabilities shows that Affimed's shareholders' equity exceeds the sum of the paid-up and called-up part of the capital and the reserves which must be maintained by Dutch law.

Dividends and other distributions shall be made payable no later than thirty days after the date when they were declared, unless the corporate body authorized to declare the dividend determines a different date. Claims to dividends and other distribution not made within five years from the date that such dividends or distributions became payable, shall be forfeited to us (*verjaring*) and shall be carried to the reserves.

*Delaware.* Under the Delaware General Corporation Law, a Delaware corporation may pay dividends out of its surplus (the excess of net assets over capital), or in case there is no surplus, out of its net profits for the fiscal year in which the dividend is declared and/or the preceding fiscal year (provided that the amount of the capital of the corporation is not less than the aggregate amount of the capital represented by the issued and outstanding stock of all classes having a preference upon the distribution of assets). In determining the amount of surplus of a Delaware corporation, the assets of the corporation, including stock of subsidiaries owned by the corporation, must be valued at their fair market value as determined by the board of directors, without regard to their historical book value. Dividends may be paid in the form of common stock, property or cash.

### ***Shareholder Vote on Certain Reorganizations***

*The Netherlands.* Under Dutch law, the general meeting of shareholders must approve resolutions of the management board relating to a significant change in the identity or the character of the company or the business of the company, which includes:

- a transfer of the business or virtually the entire business to a third party;
- the entry into or termination of a long-term cooperation of the company or a subsidiary with another legal entity or company or as a fully liable partner in a limited partnership or general partnership, if such cooperation or termination is of a far-reaching significance for the company; and
- the acquisition or divestment by the company or a subsidiary of a participating interest in the capital of a company having a value of at least one third of the amount of its assets according to its balance sheet and explanatory notes or, if the company prepares a consolidated balance sheet, according to its consolidated balance sheet and explanatory notes in the last adopted annual accounts of the company.

*Delaware.* Under the Delaware General Corporation Law, the vote of a majority of the outstanding shares of capital stock entitled to vote thereon generally is necessary to approve a merger or consolidation or the sale of all or substantially all of the assets of a corporation. The Delaware General Corporation Law permits a corporation to include in its certificate of incorporation a provision requiring for any corporate action the vote of a larger portion of the stock or of any class or series of stock than would otherwise be required.

Under the Delaware General Corporation Law, no vote of the stockholders of a surviving corporation to a merger is needed, however, unless required by the certificate of incorporation, if (i) the agreement of merger does not amend in any respect the certificate of incorporation of the surviving corporation, (ii) the shares of stock of the surviving corporation are not changed in the merger and (iii) the number of shares of common stock of the surviving corporation into which any other shares, securities or obligations to be issued in the merger may be converted does not exceed 20% of the surviving corporation's common stock outstanding immediately prior to the effective date of the merger. In addition, stockholders may not be entitled to vote in certain mergers with other corporations that own 90% or more of the outstanding shares of each class of stock of such corporation, but the stockholders will be entitled to appraisal rights.

***Remuneration of Directors***

*The Netherlands.* Under Dutch law and our Articles of Association, we must adopt a remuneration policy for our managing directors. Such remuneration policy shall be adopted by the general meeting of shareholders upon the proposal of the supervisory board. The supervisory board determines the remuneration of the management board in accordance with the remuneration policy. A proposal with respect to remuneration schemes in the form of shares or rights to shares must be submitted to the general meeting of shareholders for its approval.

The general meeting may determine the remuneration of supervisory directors. The supervisory directors shall be reimbursed for their expenses.

*Delaware.* Under the Delaware General Corporation Law, the stockholders do not generally have the right to approve the compensation policy for directors or the senior management of the corporation, although certain aspects of executive compensation may be subject to stockholder vote due to the provisions of U.S. federal securities and tax law, as well as exchange requirements.

## DESCRIPTION OF DEBT SECURITIES

The debt securities will be our direct general obligations. The debt securities will be either senior debt securities or subordinated debt securities and may be secured or unsecured and may be convertible into other securities, including our common shares. The debt securities will be issued under one or more separate indentures between our company and a financial institution that will act as trustee. Senior debt securities will be issued under a senior indenture. Subordinated debt securities will be issued under a subordinated indenture. Each of the senior indenture and the subordinated indenture is referred to individually as an indenture and collectively as the indentures. Each of the senior debt trustee and the subordinated debt trustee is referred to individually as a trustee and collectively as the trustees. The material terms of any indenture will be set forth in the applicable prospectus supplement.

We have summarized certain terms and provisions of the indentures. The summary is not complete. The indentures are subject to and governed by the Trust Indenture Act of 1939, as amended. The senior indenture and subordinated indenture are substantially identical, except for the provisions relating to subordination.

Neither indenture will limit the amount of debt securities that we may issue. We may issue debt securities up to an aggregate principal amount as we may authorize from time to time. The applicable prospectus supplement will describe the terms of any debt securities being offered. These terms will include some or all of the following:

- classification as senior or subordinated debt securities;
- ranking of the specific series of debt securities relative to other outstanding indebtedness, including subsidiaries' debt;
- if the debt securities are subordinated, the aggregate amount of outstanding indebtedness, as of a recent date, that is senior to the subordinated securities, and any limitation on the issuance of additional senior indebtedness;
- the designation, aggregate principal amount and authorized denominations;
- the date or dates on which the principal of the debt securities may be payable;
- the rate or rates (which may be fixed or variable) per annum at which the debt securities shall bear interest, if any;
- the date or dates from which such interest shall accrue, on which such interest shall be payable, and on which a record shall be taken for the determination of holders of the debt securities to whom interest is payable;
- the place or places where the principal and interest shall be payable;
- our right, if any, to redeem the debt securities, in whole or in part, at our option and the period or periods within which, the price or prices at which and any terms and conditions upon which such debt securities may be so redeemed, pursuant to any sinking fund or otherwise;
- our obligation, if any, of the Company to redeem, purchase or repay any debt securities pursuant to any mandatory redemption, sinking fund or other provisions or at the option of a holder of the debt securities;
- if other than denominations of \$2,000 and any higher integral multiple of \$1,000, the denominations in which the debt securities will be issuable;
- if other than the currency of the United States, the currency or currencies, in which payment of the principal and interest shall be payable;
- whether the debt securities will be issued in the form of global securities;

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- provisions, if any, for the defeasance of the debt securities;
- any U.S. federal income tax consequences; and
- other specific terms, including any deletions from, modifications of or additions to the events of default or covenants described below or in the applicable indenture.

### **Senior Debt**

We may issue under the senior indenture the debt securities that will constitute part of our senior debt. These senior debt securities will rank equally and pari passu with all our other unsecured and unsubordinated debt.

### **Subordinated Debt**

We may issue under the subordinated indenture the debt securities that will constitute part of our subordinated debt. These subordinated debt securities will be subordinate and junior in right of payment, to the extent and in the manner set forth in the subordinated indenture, to all our “senior indebtedness.” “Senior indebtedness” is defined in the subordinated indenture and generally includes obligations of, or guaranteed by, us for borrowed money, or as evidenced by bonds, debentures, notes or other similar instruments, or in respect of letters of credit or other similar instruments, or to pay the deferred purchase price of property or services, or as a lessee under capital leases, or as secured by a lien on any asset of ours. “Senior indebtedness” does not include the subordinated debt securities or any other obligations specifically designated as being subordinate in right of payment to, or pari passu with, the subordinated debt securities. In general, the holders of all senior indebtedness are first entitled to receive payment in full of such senior indebtedness before the holders of any of the subordinated debt securities are entitled to receive a payment on account of the principal or interest on the indebtedness evidenced by the subordinated debt securities in certain events. These events include:

- subject to Dutch law, any insolvency or bankruptcy proceedings, or any receivership, dissolution, winding up, total or partial liquidation, reorganization or other similar proceedings in respect of us or a substantial part of our property, whether voluntary or involuntary;
- (i) a default having occurred with respect to the payment of principal or interest on or other monetary amounts due and payable with respect to any senior indebtedness or (ii) an event of default (other than a default described in clause (i) above) having occurred with respect to any senior indebtedness that permits the holder or holders of such senior indebtedness to accelerate the maturity of such senior indebtedness. Such a default or event of default must have continued beyond the period of grace, if any, provided in respect of such default or event of default, and such a default or event of default shall not have been cured or waived or shall not have ceased to exist; and
- the principal of, and accrued interest on, any series of the subordinated debt securities having been declared due and payable upon an event of default pursuant to the subordinated indenture. This declaration must not have been rescinded and annulled as provided in the subordinated indenture.

### **Authentication and Delivery**

We will deliver the debt securities to the trustee for authentication, and the trustee will authenticate and deliver the debt securities upon our written order.

### **Events of Default**

When we use the term “Event of Default” in the indentures with respect to the debt securities of any series, set forth below are some examples of what we mean:

- (1) default in the payment of the principal on the debt securities when it becomes due and payable at maturity or otherwise;



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- (2) default in the payment of interest on the debt securities when it becomes due and payable, and such default continues for a period of 30 days;
- (3) default in the performance, or breach, of any covenant in the indenture (other than defaults specified in clauses (1) or (2) above) and the default or breach continues for a period of 90 consecutive days or more after written notice to us by the trustee or to us and the trustee by the holders of 25% or more in aggregate principal amount of the outstanding debt securities of all series affected thereby;
- (4) the occurrence of certain events of bankruptcy, insolvency, or similar proceedings with respect to us or any substantial part of our property; or
- (5) any other Events of Default that may be set forth in the applicable prospectus supplement.

If an Event of Default (other than an Event of Default specified in clause (4) above) with respect to the debt securities of any series then outstanding occurs and is continuing, then either the trustee or the holders of not less than 25% in principal amount of the securities of all such series then outstanding in respect of which an Event of Default has occurred may by notice in writing to us declare the entire principal amount of all debt securities of the affected series, and accrued interest, if any, to be due and payable immediately, and upon any such declaration the same shall become immediately due and payable.

If an Event of Default described in clause (4) above occurs and is continuing, then the principal amount of all the debt securities then outstanding and accrued interest shall be and become due immediately and payable without any declaration, notice or other action by any holder of the debt securities or the trustee.

The trustee will, within 90 days after the occurrence of any default actually known to it, give notice of the default to the holders of the debt securities of that series, unless the default was already cured or waived. Unless there is a default in paying principal or interest when due, the trustee can withhold giving notice to the holders if it determines in good faith that the withholding of notice is in the interest of the holders.

### **Satisfaction, Discharge and Defeasance**

We may discharge our obligations under each indenture, except as to:

- the rights of registration of transfer and exchange of debt securities, and our right of optional redemption, if any;
- substitution of mutilated, defaced, destroyed, lost or stolen debt securities;
- the rights of holders of the debt securities to receive payments of principal and interest;
- the rights, obligations and immunities of the trustee; and
- the rights of the holders of the debt securities as beneficiaries with respect to the property deposited with the trustee payable to them (as described below);

when:

- either:
  - all debt securities of any series issued that have been authenticated and delivered have been delivered by us to the trustee for cancellation; or
  - all the debt securities of any series issued that have not been delivered by us to the trustee for cancellation have become due and payable or will become due and payable within one year or are to be called for redemption within one year under arrangements satisfactory to the trustee for the giving of notice of redemption by such trustee in our name and at our expense, and we have irrevocably deposited or caused to be deposited with the trustee as trust funds the entire amount

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sufficient to pay at maturity or upon redemption all debt securities of such series not delivered to the trustee for cancellation, including principal and interest due or to become due on or prior to such date of maturity or redemption;

- we have paid or caused to be paid all other sums then due and payable under such indenture; and
- we have delivered to the trustee an officers' certificate and an opinion of counsel, each stating that all conditions precedent under such indenture relating to the satisfaction and discharge of such indenture have been complied with.

In addition, unless the applicable prospectus supplement and supplemental indenture otherwise provide, we may elect either (i) to have our obligations under each indenture discharged with respect to the outstanding debt securities of any series ("legal defeasance") or (ii) to be released from our obligations under each indenture with respect to certain covenants applicable to the outstanding debt securities of any series ("covenant defeasance"). Legal defeasance means that we will be deemed to have paid and discharged the entire indebtedness represented by the outstanding debt securities of such series under such indenture and covenant defeasance means that we will no longer be required to comply with the obligations with respect to such covenants (and an omission to comply with such obligations will not constitute a default or event of default).

In order to exercise legal defeasance or covenant defeasance with respect to outstanding debt securities of any series:

- we must irrevocably have deposited or caused to be deposited with the trustee as trust funds in trust for the purpose of making the following payments, specifically pledged as security for, and dedicated solely to the benefits of the holders of the debt securities of a series:
  - money in an amount;
  - U.S. government obligations; or
  - a combination of money and U.S. government obligations,

in each case sufficient without reinvestment, in the written opinion of a nationally recognized firm of independent public accountants, to pay and discharge, and which shall be applied by the trustee to pay and discharge, all of the principal and interest at due date or maturity or if we have made irrevocable arrangements satisfactory to the trustee for the giving of notice of redemption by the trustee, the redemption date;

- we have delivered to the trustee an opinion of counsel stating that, under then applicable U.S. federal income tax law, the holders of the debt securities of that series will not recognize gain or loss for U.S. federal income tax purposes as a result of the defeasance and will be subject to the same federal income tax as would be the case if the defeasance did not occur;
- no default relating to bankruptcy or insolvency and, in the case of a covenant defeasance, no other default has occurred and is continuing at any time;
- if at such time the debt securities of such series are listed on a national securities exchange, we have delivered to the trustee an opinion of counsel to the effect that the debt securities of such series will not be delisted as a result of such defeasance; and
- we have delivered to the trustee an officers' certificate and an opinion of counsel stating that all conditions precedent with respect to the defeasance have been complied with.

We are required to furnish to each trustee an annual statement as to compliance with all conditions and covenants under the indenture.

## DESCRIPTION OF WARRANTS

We may issue warrants to purchase debt securities, common shares or other securities. We may issue warrants independently or together with other securities. Warrants sold with other securities may be attached to or separate from the other securities. We will issue warrants under one or more warrant agreements between our company and a warrant agent that we will name in the applicable prospectus supplement.

The prospectus supplement relating to any warrants we offer will include specific terms relating to the offering. These terms will include some or all of the following:

- the title of the warrants;
- the aggregate number of warrants offered;
- the designation, number and terms of the debt securities, common shares or other securities purchasable upon exercise of the warrants and procedures by which those numbers may be adjusted;
- the exercise price of the warrants;
- the dates or periods during which the warrants are exercisable;
- the designation and terms of any securities with which the warrants are issued;
- if the warrants are issued as a unit with another security, the date on and after which the warrants and the other security will be separately transferable;
- if the exercise price is not payable in U.S. dollars, the foreign currency, currency unit or composite currency in which the exercise price is denominated;
- any minimum or maximum amount of warrants that may be exercised at any one time;
- any terms relating to the modification of the warrants;
- any terms, procedures and limitations relating to the transferability, exchange or exercise of the warrants; and
- any other specific terms of the warrants.

The terms of any warrants to be issued and a description of the material provisions of the applicable warrant agreement will be set forth in the applicable prospectus supplement.

## DESCRIPTION OF PURCHASE CONTRACTS

We may issue purchase contracts for the purchase or sale of debt or equity securities issued by us or securities of third parties, a basket of such securities, an index or indices or such securities or any combination of the above as specified in the applicable prospectus supplement.

Each purchase contract will entitle the holder thereof to purchase or sell, and obligate us to sell or purchase, on specified dates, such securities at a specified purchase price, which may be based on a formula, all as set forth in the applicable prospectus supplement. We may, however, satisfy our obligations, if any, with respect to any purchase contract by delivering the cash value of such purchase contract or the cash value of the property otherwise deliverable as set forth in the applicable prospectus supplement. The applicable prospectus supplement will also specify the methods by which the holders may purchase or sell such securities and any acceleration, cancellation or termination provisions or other provisions relating to the settlement of a purchase contract.

The purchase contracts may require us to make periodic payments to the holders thereof or vice versa, which payments may be deferred to the extent set forth in the applicable prospectus supplement, and those payments may be unsecured or prefunded on some basis. The purchase contracts may require the holders thereof to secure their obligations in a specified manner to be described in the applicable prospectus supplement. Alternatively, purchase contracts may require holders to satisfy their obligations thereunder when the purchase contracts are issued. Our obligation to settle such pre-paid purchase contracts on the relevant settlement date may constitute indebtedness. Accordingly, pre-paid purchase contracts will be issued under either the senior indenture or the subordinated indenture.

## DESCRIPTION OF UNITS

As specified in the applicable prospectus supplement, we may issue units consisting of one or more common shares, debt securities, warrants, purchase contracts or any combination of such securities. The applicable prospectus supplement will describe:

- the terms of the units and of the common shares, debt securities, warrants and/ or purchase contracts comprising the units, including whether and under what circumstances the securities comprising the units may be traded separately;
- a description of the terms of any unit agreement governing the units; and
- a description of the provisions for the payment, settlement, transfer or exchange of the units.

## FORMS OF SECURITIES

Each debt security, warrant and unit will be represented either by a certificate issued in definitive form to a particular investor or by one or more global securities representing the entire issuance of securities. Certificated securities in definitive form and global securities will be issued in registered form. Definitive securities name you or your nominee as the owner of the security, and in order to transfer or exchange these securities or to receive payments other than interest or other interim payments, you or your nominee must physically deliver the securities to the trustee, registrar, paying agent or other agent, as applicable. Global securities name a depositary or its nominee as the owner of the debt securities, warrants or units represented by these global securities. The depositary maintains a computerized system that will reflect each investor's beneficial ownership of the securities through an account maintained by the investor with its broker/dealer, bank, trust company or other representative, as we explain more fully below.

### Registered Global Securities

We may issue the registered debt securities, warrants and units in the form of one or more fully registered global securities that will be deposited with a depositary or its nominee identified in the applicable prospectus supplement and registered in the name of that depositary or nominee. In those cases, one or more registered global securities will be issued in a denomination or aggregate denominations equal to the portion of the aggregate principal or face amount of the securities to be represented by registered global securities. Unless and until it is exchanged in whole for securities in definitive registered form, a registered global security may not be transferred except as a whole by and among the depositary for the registered global security, the nominees of the depositary or any successors of the depositary or those nominees.

If not described below, any specific terms of the depositary arrangement with respect to any securities to be represented by a registered global security will be described in the prospectus supplement relating to those securities. We anticipate that the following provisions will apply to all depositary arrangements.

Ownership of beneficial interests in a registered global security will be limited to persons, called participants, that have accounts with the depositary or persons that may hold interests through participants. Upon the issuance of a registered global security, the depositary will credit, on its book-entry registration and transfer system, the participants' accounts with the respective principal or face amounts of the securities beneficially owned by the participants. Any dealers, underwriters or agents participating in the distribution of the securities will designate the accounts to be credited. Ownership of beneficial interests in a registered global security will be shown on, and the transfer of ownership interests will be effected only through, records maintained by the depositary, with respect to interests of participants, and on the records of participants, with respect to interests of persons holding through participants. The laws of some states may require that some purchasers of securities take physical delivery of these securities in definitive form. These laws may impair your ability to own, transfer or pledge beneficial interests in registered global securities.

So long as the depositary, or its nominee, is the registered owner of a registered global security, that depositary or its nominee, as the case may be, will be considered the sole owner or holder of the securities represented by the registered global security for all purposes under the applicable indenture, warrant agreement or unit agreement. Except as described below, owners of beneficial interests in a registered global security will not be entitled to have the securities represented by the registered global security registered in their names, will not receive or be entitled to receive physical delivery of the securities in definitive form and will not be considered the owners or holders of the securities under the applicable indenture, warrant agreement or unit agreement. Accordingly, each person owning a beneficial interest in a registered global security must rely on the procedures of the depositary for that registered global security and, if that person is not a participant, on the procedures of the participant through which the person owns its interest, to exercise any rights of a holder under the applicable indenture, warrant agreement or unit agreement. We understand that under existing industry practices, if we request any action of holders or if an owner of a beneficial interest in a registered global security

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desires to give or take any action that a holder is entitled to give or take under the applicable indenture, warrant agreement or unit agreement, the depositary for the registered global security would authorize the participants holding the relevant beneficial interests to give or take that action, and the participants would authorize beneficial owners owning through them to give or take that action or would otherwise act upon the instructions of beneficial owners holding through them.

Principal, premium, if any, and interest payments on debt securities, and any payments to holders with respect to warrants or units, represented by a registered global security registered in the name of a depositary or its nominee will be made to the depositary or its nominee, as the case may be, as the registered owner of the registered global security. None of Affimed N.V., its affiliates, the trustees, the warrant agents, the unit agents or any other agent of Affimed N.V., agent of the trustees or agent of the warrant agents or unit agents will have any responsibility or liability for any aspect of the records relating to payments made on account of beneficial ownership interests in the registered global security or for maintaining, supervising or reviewing any records relating to those beneficial ownership interests.

We expect that the depositary for any of the securities represented by a registered global security, upon receipt of any payment of principal, premium, interest or other distribution of underlying securities or other property to holders on that registered global security, will immediately credit participants' accounts in amounts proportionate to their respective beneficial interests in that registered global security as shown on the records of the depositary. We also expect that payments by participants to owners of beneficial interests in a registered global security held through participants will be governed by standing customer instructions and customary practices, as is now the case with the securities held for the accounts of customers in bearer form or registered in "street name," and will be the responsibility of those participants.

If the depositary for any of these securities represented by a registered global security is at any time unwilling or unable to continue as depositary or ceases to be a clearing agency registered under the Exchange Act, and a successor depositary registered as a clearing agency under the Exchange Act is not appointed by us within 90 days, we will issue securities in definitive form in exchange for the registered global security that had been held by the depositary. Any securities issued in definitive form in exchange for a registered global security will be registered in the name or names that the depositary gives to the relevant trustee, warrant agent, unit agent or other relevant agent of ours or theirs. It is expected that the depositary's instructions will be based upon directions received by the depositary from participants with respect to ownership of beneficial interests in the registered global security that had been held by the depositary.

## PLAN OF DISTRIBUTION

We may sell the securities in one or more of the following ways (or in any combination) from time to time:

- through underwriters or dealers;
- directly to a limited number of purchasers or to a single purchaser;
- in “at-the-market” offerings, within the meaning of Rule 415(a)(4) of the Securities Act, to or through a market maker or into an existing trading market on an exchange or otherwise;
- through agents; or
- through any other method permitted by applicable law and described in the applicable prospectus supplement.

The prospectus supplement will state the terms of the offering of the securities, including:

- the name or names of any underwriters, dealers or agents;
- the purchase price of such securities and the proceeds to be received by us, if any;
- any underwriting discounts or agency fees and other items constituting underwriters’ or agents’ compensation;
- any initial public offering price;
- any discounts or concessions allowed or reallocated or paid to dealers; and
- any securities exchanges on which the securities may be listed.

Any initial public offering price and any discounts or concessions allowed or reallocated or paid to dealers may be changed from time to time.

If underwriters are used in the sale, the securities will be acquired by the underwriters for their own account and may be resold from time to time in one or more transactions, including:

- negotiated transactions;
- at a fixed public offering price or prices, which may be changed;
- at market prices prevailing at the time of sale;
- at prices related to prevailing market prices; or
- at negotiated prices.

Unless otherwise stated in a prospectus supplement, the obligations of the underwriters to purchase any securities will be conditioned on customary closing conditions and the underwriters will be obligated to purchase all of such series of securities, if any are purchased.

The securities may be sold through agents from time to time. The prospectus supplement will name any agent involved in the offer or sale of the securities and any commissions paid to them. Generally, any agent will be acting on a best efforts basis for the period of its appointment.

Sales to or through one or more underwriters or agents in at-the-market offerings will be made pursuant to the terms of a distribution agreement with the underwriters or agents. Such underwriters or agents may act on an agency basis or on a principal basis. During the term of any such agreement, shares may be sold on a daily basis on any stock exchange, market or trading facility on which the common shares are traded, in privately negotiated transactions or otherwise as agreed with the underwriters or agents. The distribution agreement will provide that



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any common share sold will be sold at negotiated prices or at prices related to the then prevailing market prices for our common shares. Therefore, exact figures regarding proceeds that will be raised or commissions to be paid cannot be determined at this time and will be described in a prospectus supplement. Pursuant to the terms of the distribution agreement, we may also agree to sell, and the relevant underwriters or agents may agree to solicit offers to purchase, blocks of our common shares or other securities. The terms of each such distribution agreement will be described in a prospectus supplement.

We may authorize underwriters, dealers or agents to solicit offers by certain purchasers to purchase the securities at the public offering price set forth in the prospectus supplement pursuant to delayed delivery contracts providing for payment and delivery on a specified date in the future. The contracts will be subject only to those conditions set forth in the prospectus supplement, and the prospectus supplement will set forth any commissions paid for solicitation of these contracts.

Underwriters and agents may be entitled under agreements entered into with us to indemnification by us against certain civil liabilities, including liabilities under the Securities Act, or to contribution with respect to payments which the underwriters or agents may be required to make.

The prospectus supplement may also set forth whether or not underwriters may over-allot or effect transactions that stabilize, maintain or otherwise affect the market price of the securities at levels above those that might otherwise prevail in the open market, including, for example, by entering stabilizing bids, effecting syndicate covering transactions or imposing penalty bids.

Underwriters and agents may be customers of, engage in transactions with, or perform services for us and our affiliates in the ordinary course of business.

Each series of securities will be a new issue of securities and will have no established trading market, other than our common shares, which are listed on The Nasdaq Global Market. Any underwriters to whom securities are sold for public offering and sale may make a market in the securities, but such underwriters will not be obligated to do so and may discontinue any market making at any time without notice. The securities, other than our common shares, may or may not be listed on a national securities exchange.

## INCORPORATION OF CERTAIN INFORMATION BY REFERENCE

The SEC allows us to incorporate by reference information into this document. This means that we can disclose important information to you by referring you to another document filed separately with the SEC. The information incorporated by reference is considered to be a part of this document, except for any information superseded by information that is included directly in this prospectus or incorporated by reference subsequent to the date of this prospectus.

We incorporate by reference the following documents or information that we have filed with the SEC:

- Our Annual Report on [Form 20-F](#) for the fiscal year ended December 31, 2019;
- Our Forms 6-K filed on [June 23, 2020](#), [August 11, 2020](#), [November 9, 2020](#) (other than Exhibit 99.1) and [November 10, 2020](#); and
- The description of our common shares contained in our registration statement on [Form 8-A](#) filed with the SEC on September 10, 2014, including any amendments or reports filed for the purpose of updating such description.

All annual reports we file with the SEC pursuant to the Exchange Act on Form 20-F after the date of this prospectus and prior to termination or expiration of this registration statement shall be deemed incorporated by reference into this prospectus and to be part hereof from the date of filing of such documents. We may incorporate by reference any Form 6-K subsequently submitted to the SEC by identifying in such Form 6-K that it is being incorporated by reference into this prospectus.

Documents incorporated by reference in this prospectus are available from us without charge upon written or oral request, excluding any exhibits to those documents that are not specifically incorporated by reference into those documents. You can obtain documents incorporated by reference in this document by requesting them from us in writing at Technologiepark, Im Neuenheimer Feld 582, 69120, Heidelberg, Germany or via telephone at (+49) 6221-6743-60.

## ENFORCEMENT OF CIVIL LIABILITIES

We are incorporated under the laws of the Netherlands and our headquarters are located in Germany. Substantially all of our assets are located outside the United States. The majority of our managing directors and supervisory directors reside outside the United States. As a result, it may not be possible for investors to effect service of process within the United States upon such persons or to enforce against them or us in U.S. courts, including judgments predicated upon the civil liability provisions of the federal securities laws of the United States.

The United States and the Netherlands currently do not have a treaty providing for the reciprocal recognition and enforcement of judgments, other than arbitration awards, in civil and commercial matters. Consequently, a final judgment for payment given by a court in the United States, whether or not predicated solely upon U.S. securities laws, would not automatically be recognized or enforceable in the Netherlands. In order to obtain a judgment which is enforceable in the Netherlands, the party in whose favor a final and conclusive judgment of the U.S. court has been rendered will be required to file its claim with a court of competent jurisdiction in the Netherlands. Such party may submit to the Dutch court the final judgment rendered by the U.S. court. If and to the extent that the Dutch court finds that the jurisdiction of the U.S. court has been based on grounds which are internationally acceptable, that the proceedings before the U.S. court complied with principles of proper procedures, that recognition and/or enforcement of such judgment would not contravene the public policy of the Netherlands, and that recognition and/or enforcement of the judgment is not irreconcilable with a decision of a Dutch court rendered between the same parties or with an earlier decision of a foreign court rendered between the same parties in a dispute that is about the same subject matter and that is based on the same cause, provided that earlier judgment can be recognized in the Netherlands, the court of the Netherlands will, in principle, give binding effect to the judgment of the U.S. court. A Dutch court may reduce the amount of damages granted by a U.S. court and recognize damages only to the extent that they are necessary to compensate actual losses or damages, and refuse to award punitive damages if that would contravene public policy of the Netherlands. In addition, there is doubt as to whether a Dutch court would impose civil liability on us, our managing directors or supervisory directors or certain experts named herein in an original action predicated solely upon the U.S. federal securities laws brought in a court of competent jurisdiction in the Netherlands against us or such directors or experts, respectively. Enforcement and recognition of judgments of U.S. courts in the Netherlands are solely governed by the provisions of the Dutch Civil Procedure Code.

The United States and Germany currently do not have a treaty providing for the reciprocal recognition and enforcement of judgments, other than arbitration awards, in civil and commercial matters. Consequently, a final judgment for payment given by a court in the United States, whether or not predicated solely upon U.S. securities laws, would not automatically be recognized or enforceable in Germany. German courts may deny the recognition and enforcement of a judgment rendered by a U.S. court if they consider the U.S. court not to be competent or the decision not in line with German public policy principles. For example, recognition of court decisions based on class actions brought in the United States typically raises public policy concerns and judgments awarding punitive damages are generally not enforceable in Germany.

In addition, actions brought in a German court against us, our managing directors or supervisory directors, our senior management and the experts named herein to enforce liabilities based on U.S. federal securities laws may be subject to certain restrictions. In particular, German courts generally do not award punitive damages. Litigation in Germany is also subject to rules of procedure that differ from the U.S. rules, including with respect to the taking and admissibility of evidence, the conduct of the proceedings and the allocation of costs. Proceedings in Germany would have to be conducted in the German language and all documents submitted to the court would, in principle, have to be translated into German. For these reasons, it may be difficult for a U.S. investor to bring an original action in a German court predicated upon the civil liability provisions of the U.S. federal securities laws against us, our managing directors or supervisory directors, our senior management and the experts named in this prospectus.

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Based on the lack of a treaty as described above, U.S. investors may not be able to enforce against us or managing directors or supervisory directors, officers or certain experts named herein who are residents of the Netherlands, Germany, or other countries other than the United States any judgments obtained in U.S. courts in civil and commercial matters, including judgments under the U.S. federal securities laws.

## EXPENSES

The following table sets forth the expenses (other than underwriting discounts and commissions or agency fees and other items constituting underwriters' or agents' compensation, if any) expected to be incurred by us in connection with a possible offering of securities registered under this registration statement.

	<u>Amount To Be Paid</u>
SEC registration fee	\$ 24,547.50
FINRA filing fee	\$ 34,250.00
Transfer agent's fees	*
Printing and engraving expenses	*
Legal fees and expenses	*
Accounting fees and expenses	*
Miscellaneous	*
Total	<u>\$ *</u>

\* To be provided by a prospectus supplement or a Report on Form 6-K that is incorporated by reference into this prospectus.

**LEGAL MATTERS**

The validity of the common shares and certain other matters of Dutch law will be passed upon for us by De Brauw Blackstone Westbroek N.V. Certain matters of U.S. federal and New York State law will be passed upon for us by Kirkland and Ellis LLP, New York, New York.

**EXPERTS**

The consolidated financial statements of Affirmed N.V. as of December 31, 2019 and 2018, and for each of the years in the three-year period ended December 31, 2019, have been incorporated by reference herein in reliance upon the reports of KPMG AG Wirtschaftsprüfungsgesellschaft, an independent registered public accounting firm, incorporated by reference elsewhere herein, and upon the authority of said firm as experts in accounting and auditing. The audit report covering the December 31, 2019 financial statements refers to a change in accounting for leases on January 1, 2019 as a result of the adoption of International Financial Reporting Standard 16, *Leases*.

# **Affimed N.V.**

**Common Shares  
Debt Securities  
Warrants  
Purchase Contracts  
Units**

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**PROSPECTUS**

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**PART II – INFORMATION NOT REQUIRED IN PROSPECTUS  
INDEMNIFICATION OF OFFICERS AND DIRECTORS**

Our managing directors and supervisory directors have the benefit of the following indemnification provisions in our Articles of Association: Current and former managing directors and supervisory directors shall be reimbursed for:

- a) the reasonable costs of conducting a defense against claims based on acts or failures to act in the exercise of their duties or any other duties currently or previously performed by them at our request;
- b) any damages or fines payable by them as a result of an act or failure to act as referred to under (a); and
- c) the reasonable costs of appearing in other legal proceedings or investigations in which they are involved as current or former managing director or supervisory director, with the exception of proceedings primarily aimed at pursuing a claim on their own behalf.

There shall be no entitlement to reimbursement as referred to above if and to the extent that:

- a) a Dutch court or, in the event of arbitration, an arbitrator has established in a final and conclusive decision that the act or failure to act of the person concerned can be characterized as willful (*opzettelijk*), intentionally reckless (*bewust roekeloos*) or seriously culpable (*ernstig verwijtbaar*) conduct, unless Dutch law provides otherwise or this would, in view of the circumstances of the case, be unacceptable according to standards of reasonableness and fairness; or
- b) the costs or financial loss of the person concerned are covered by an insurance and the insurer has paid out the costs or financial loss.

If and to the extent that it has been established by a Dutch court or, in the event of arbitration, an arbitrator in a final and conclusive decision that the person concerned is not entitled to reimbursement as referred to above, he shall immediately repay the amount reimbursed by us. We have also entered into indemnification agreements with each of our managing directors and supervisory directors.

## EXHIBITS

The following documents are filed as part of this registration statement:

- 1.1\* Form of Underwriting Agreement
- 4.1 [Articles of Association of Affimed N.V.](#)
- 4.2 [Form of Senior Indenture \(incorporated by reference to Exhibit 4.2 of the Affimed N.V. registration statement on Form F-3 \(Registration no. 333-207235\) filed with the Commission on October 1, 2015\)](#)
- 4.3 [Form of Subordinated Indenture \(incorporated by reference to Exhibit 4.3 of the Affimed N.V. registration statement on Form F-3 \(Registration no. 333-207235\) filed with the Commission on October 1, 2015\)](#)
- 4.4\* Form of Senior Note
- 4.5\* Form of Subordinated Note
- 4.6\* Form of Warrant Agreement
- 4.7\* Form of Purchase Contract
- 4.8\* Form of Unit Agreement
- 5.1 [Opinion of De Brauw Blackstone Westbroek N.V.](#)
- 5.2 [Opinion of Kirkland & Ellis LLP](#)
- 23.1 [Consent of KPMG AG Wirtschaftsprüfungsgesellschaft, independent registered public accounting firm](#)
- 23.2 [Consent of De Brauw Blackstone Westbroek N.V. \(included in Exhibit 5.1\)](#)
- 23.3 [Consent of Kirkland & Ellis LLP \(included in Exhibit 5.2\)](#)
- 24.1 [Powers of Attorney \(included on signature page to the registration statement\)](#)
- 25.1\* Statement of Eligibility on Form T-1 for Senior Indenture
- 25.2\* Statement of Eligibility on Form T-1 for Subordinated Indenture

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\* To be filed, if necessary, by amendment.

## UNDERTAKINGS

- (a) The undersigned registrant hereby undertakes:
- (1) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:
    - (i) To include any prospectus required by Section 10(a)(3) of the Securities Act of 1933;
    - (ii) To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) (§ 230.424(b) of this chapter) if, in the aggregate, the changes in volume and price represent no more than 20% change in the maximum aggregate offering price set forth in the “Calculation of Registration Fee” table in the effective registration statement.
    - (iii) To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement;

*Provided, however, That:*

- (A) Paragraphs (a)(1)(i), (a)(1)(ii) and (a)(1)(iii) of this section do not apply if the registration statement is on Form S-1 (§ 239.11 of this chapter), Form S-3 (§ 239.13 of this chapter), Form SF-3 (§ 239.45 of this chapter) or Form F-3 (§ 239.33 of this chapter) and the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the Commission by the registrant pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in the registration statement, or is contained in a form of prospectus filed pursuant to Rule 424(b) (§ 230.424(b) of this chapter) that is part of the registration statement.
- (2) That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.
- (3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.
- (4) To file a post-effective amendment to the registration statement to include any financial statements required by Item 8.A of Form 20-F (§ 249.220f of this chapter) at the start of any delayed offering or throughout a continuous offering. Financial statements and information otherwise required by Section 10(a)(3) of the Act (15 U.S.C. 77j(a)(3)) need not be furnished, provided that the registrant includes in the prospectus, by means of a post-effective amendment, financial statements required pursuant to this paragraph (a)(4) and other information necessary to ensure that all other information in the prospectus is at least as current as the date of those financial statements. Notwithstanding the foregoing, with respect to registration statements on Form F-3 (§ 239.33 of this chapter), a post-effective amendment need not be filed to include financial statements and information required by Section 10(a)(3) of the Act or Item 8.A of Form 20-F if such financial statements and information are contained in periodic reports filed with or furnished to the Commission by the registrant pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in the Form F-3.

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- (5) That, for the purpose of determining liability under the Securities Act of 1933 to any purchaser:
- (A) Each prospectus filed by the registrant pursuant to Rule 424(b)(3) shall be deemed to be part of the registration statement as of the date the filed prospectus was deemed part of and included in the registration statement; and
  - (B) Each prospectus required to be filed pursuant to Rule 424(b)(2), (b)(5), or (b)(7) as part of a registration statement in reliance on Rule 430B relating to an offering made pursuant to Rule 415(a)(1)(i), (vii), or (x) for the purpose of providing the information required by Section 10(a) of the Securities Act of 1933 shall be deemed to be part of and included in the registration statement as of the earlier of the date such form of prospectus is first used after effectiveness or the date of the first contract of sale of securities in the offering described in the prospectus. As provided in Rule 430B, for liability purposes of the issuer and any person that is at that date an underwriter, such date shall be deemed to be a new effective date of the registration statement relating to the securities in the registration statement to which that prospectus relates, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof. *Provided, however*, that no statement made in a registration statement or prospectus that is part of the registration statement or made in a document incorporated or deemed incorporated by reference into the registration statement or prospectus that is part of the registration statement will, as to a purchaser with a time of contract of sale prior to such effective date, supersede or modify any statement that was made in the registration statement or prospectus that was part of the registration statement or made in any such document immediately prior to such effective date; or
- (6) That, for the purpose of determining liability of the registrant under the Securities Act of 1933 to any purchaser in the initial distribution of the securities:

The undersigned registrant undertakes that in a primary offering of securities of the undersigned registrant pursuant to this registration statement, regardless of the underwriting method used to sell the securities to the purchaser, if the securities are offered or sold to such purchaser by means of any of the following communications, the undersigned registrant will be a seller to the purchaser and will be considered to offer or sell such securities to such purchaser:

- (i) Any preliminary prospectus or prospectus of the undersigned registrant relating to the offering required to be filed pursuant to Rule 424;
  - (ii) Any free writing prospectus relating to the offering prepared by or on behalf of the undersigned registrant or used or referred to by the undersigned registrant;
  - (iii) The portion of any other free writing prospectus relating to the offering containing material information about the undersigned registrant or its securities provided by or on behalf of the undersigned registrant; and
  - (iv) Any other communication that is an offer in the offering made by the undersigned registrant to the purchaser.
- (b) The undersigned registrant hereby undertakes that, for purposes of determining any liability under the Securities Act of 1933, each filing of the registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Securities Exchange Act of 1934) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.
- (c) Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission

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such indemnification is against public policy as expressed in the Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Act and will be governed by the final adjudication of such issue.

- (d) The undersigned registrant hereby undertakes that:
- (1) For purposes of determining any liability under the Securities Act of 1933, the information omitted from the form of prospectus filed as part of this registration statement in reliance upon Rule 430A and contained in a form of prospectus filed by the registrant pursuant to Rule 424(b)(1) or (4) or 497(h) under the Securities Act shall be deemed to be part of this registration statement as of the time it was declared effective.
  - (2) For the purpose of determining any liability under the Securities Act of 1933, each post-effective amendment that contains a form of prospectus shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.
- (e) The undersigned registrant hereby undertakes to file an application for the purpose of determining the eligibility of the trustee to act under subsection (a) of Section 310 of the Trust Indenture Act (“Act”) in accordance with the rules and regulations prescribed by the Commission under Section 305(b)(2) of the Act.

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form F-3 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in Heidelberg, Germany on December 23, 2020.

Affirmed N.V.

By: /s/ Adi Hoess

Name: Adi Hoess

Title: Chief Executive Officer

By: /s/ Angus Smith

Name: Angus Smith

Title: Chief Financial Officer

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below hereby constitutes and appoints Adi Hoess and Angus Smith and each of them, individually, as his true and lawful attorneys-in-fact and agents, with full power of substitution and resubstitution, for him and in his name, place and stead in any and all capacities, in connection with this registration statement, including to sign in the name and on behalf of the undersigned, this registration statement and any and all amendments thereto, including post-effective amendments and registrations filed pursuant to Rule 462 under the U.S. Securities Act of 1933, and to file the same, with all exhibits thereto, and other documents in connection therewith, with the U.S. Securities and Exchange Commission, granting unto such attorneys-in-fact and agents full power and authority to do and perform each and every act and thing requisite and necessary to be done in and about the premises, as fully to all intents and purposes as he might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or his substitute, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, as amended, this registration statement has been signed by the following persons on December 23, 2020 in the capacities indicated:

<u>NAME</u>	<u>TITLE</u>
<u>/s/ Adi Hoess</u> Adi Hoess	Chief Executive Officer (principal executive officer)
<u>/s/ Angus Smith</u> Angus Smith	Chief Financial Officer (principal financial officer and principal accounting officer); Authorized Representative in the United States
<u>/s/ Thomas Hecht</u> Thomas Hecht	Supervisory Director
<u>/s/ Bernhard Ehmer</u> Bernhard Ehmer	Supervisory Director
<u>/s/ Ulrich M. Grau</u> Ulrich M. Grau	Supervisory Director
<u>/s/ Harry Welten</u> Harry Welten	Supervisory Director

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<u>NAME</u>	<u>TITLE</u>
<hr/> /s/ Mathieu Simon Mathieu Simon	Supervisory Director
<hr/> /s/ Ferdinand Verdonck Ferdinand Verdonck	Supervisory Director
<hr/> /s/ Annalisa Jenkins Annalisa Jenkins	Supervisory Director

**UNOFFICIAL TRANSLATION**  
**DEED OF AMENDMENT OF THE ARTICLES OF ASSOCIATION**  
**AFFIMED N.V.**

On the fourth day of August two thousand and twenty appears before me, Reinier Hans Kleipool, civil law notary in Amsterdam:

Gerrit Aaltinus Slatman, candidate civil law notary, working at the offices of De Brauw Blackstone Westbroek N.V., with seat in Amsterdam, at Claude Debussylaan 80, 1082 MD Amsterdam, born in Gramsbergen on the first day of February nineteen hundred and ninety-three.

The individual appearing before me declares that on the fourth day of August two thousand and twenty, the general meeting of shareholders of **Affimed N.V.**, a public limited liability company, with corporate seat in Amsterdam, the Netherlands, address at Im Neuenheimer Feld 582, D-69120 Heidelberg, Germany and Trade Register number 60673389 (the “**company**”), resolved to amend the company’s articles of association and to authorise the person appearing to execute this deed.

In order to implement these resolutions, the individual appearing before me declares to amend the company’s articles of association as follows such that these will read in full as follows

**ARTICLES OF ASSOCIATION:**

**Chapter 1**

**Definitions.**

**Article 1.**

In the articles of association the following terms shall have the meaning as defined below:

<b>annual accounts</b>	: the annual accounts referred to in section 2:361 CC;
<b>annual statement of accounts</b>	: the annual accounts and, if applicable, the management report as well as the additional information referred to in section 2:392 CC;
<b>CC</b>	: the Dutch Civil Code;
<b>company</b>	: the company with limited liability which organisation is laid down in these articles of association;
<b>general meeting</b>	: the corporate body that consists of shareholders entitled to vote and all other persons entitled to vote / the meeting in which shareholders and all other persons entitled to attend general meetings assemble;
<b>management report</b>	: the management report referred to in section 2:391 CC;
<b>meeting rights</b>	: the right to attend the general meeting and to address such meeting, either in person or by proxy authorised in writing;



- persons entitled to attend general meetings** : shareholders as well as holders of a right of use and enjoyment and holders of a right of pledge with meeting rights;
- persons entitled to vote** : shareholders with voting rights as well as holders of a right of use and enjoyment and holders of a right of pledge with voting rights; and
- subsidiary** : a subsidiary as referred to in section 2:24a CC.

## **Chapter 2**

### **Name. Corporate seat.**

#### **Article 2.1.**

The name of the company is: Affimed N.V.

Its corporate seat is in Amsterdam, the Netherlands, and it may establish branch offices elsewhere.

### **Objects.**

#### **Article 2.2.**

The objects of the company are:

- a. the research, development, manufacture, and commercialization of products for the detection, prevention and treatment of human and non-human diseases and conditions and to provide services associated therewith;
- b. to incorporate, participate in, conduct the management of and take any other financial interest in other companies and enterprises;
- c. to render administrative, technical, financial, economic or managerial services to other companies, persons or enterprises;
- d. to acquire, dispose of manage and exploit real and personal property, including patents, marks, licenses, permits and other intellectual property rights;
- e. to borrow and/or lend moneys, act as surety or guarantor in any other manner, and bind itself jointly and severally or otherwise in addition to or on behalf of others,

the foregoing, whether or not in collaboration with third parties, and inclusive of the performance and promotion of all activities which directly and indirectly relate to those objects, all this in the broadest sense.

## **Chapter 3**

### **Share structure.**

#### **Article 3.1.**

- 3.1.1. The authorised share capital of the company amounts to three million one hundred nineteen thousand and five hundred euro (EUR 3,119,500) and is divided into three hundred eleven million nine hundred and fifty thousand (311,950,000) shares, each with a nominal value of one eurocent (EUR 0.01).
- 3.1.2. The shares shall be in registered form and shall be consecutively numbered from 1 onwards.
- 3.1.3. No share certificates shall be issued.

**Issue of shares.**

**Article 3.2.**

- 3.2.1. Shares shall be issued pursuant to a resolution of the management board that has been approved by the supervisory board, provided that the management board has been authorised to do so by resolution of the general meeting for a specific period not exceeding five (5) years. The resolution of the general meeting granting the aforesaid authorisation must determine the number of the shares that may be issued. The authorisation may from time to time be extended for a period not exceeding five (5) years. Unless otherwise stipulated at its grant, the authorisation cannot be withdrawn.
- 3.2.2. If and insofar as the management board is not authorised to issue shares as referred to in article 3.2.1, the general meeting shall have the power to resolve to issue shares upon the proposal of the management board, which proposal also must be approved by the supervisory board.
- 3.2.3. Article 3.2.1 and 3.2.2 shall equally apply to a grant of rights to subscribe for shares, but shall not apply to an issue of shares to a person who exercises a previously acquired right to subscribe for shares.
- 3.2.4. Save for the provisions of section 2:80 CC, the issue-price may not be below nominal value of the shares.
- 3.2.5. Shares shall be issued in accordance with the provisions of sections 2:86c and 2:96 CC.

**Payment for shares.**

**Article 3.3.**

- 3.3.1. Shares may only be issued against payment in full of the amount at which such shares are issued and with due observance of the provisions of sections 2:80a and 2:80b CC.
- 3.3.2. Payment on a share must be made in cash, unless an alternative contribution has been agreed. Payment other than in cash is made with due observance of the provisions of section 2:94b CC.
- 3.3.3. Payment on a share in cash may be made in a foreign currency if the company agrees to this and such payment is made with due observance of the provisions of section 2:80a subsection 3 CC.
- 3.3.4. The company may grant loans for the purpose of a subscription for or an acquisition of shares in its share capital subject to the applicable statutory provisions.
- 3.3.5. The management board may perform legal acts as referred to in section 2:94 CC without the prior approval of the general meeting.

**Pre-emptive rights.**

**Article 3.4.**

- 3.4.1. Upon the issue of shares, each shareholder shall have a pre-emptive right to acquire such newly issued shares in proportion to the aggregate amount of his shares, it being understood that this pre-emptive right shall not apply to:
  - a. the issuance of shares to employees of the company or employees of a group company; and
  - b. the issuance of shares against payment in kind.
- 3.4.2. Pre-emptive rights may be limited or excluded pursuant to a resolution of the management board that has been approved by the supervisory board, provided that the management board has been authorised to do so by resolution of the general meeting for a specific period not exceeding five (5) years. This authorisation of the management board by the general meeting for a specific period may from time to time be extended. Unless provided otherwise in the authorisation of the management board by the general meeting, the authorisation cannot be cancelled.

A resolution to designate the management board as referred to in this article 3.4.2 requires a two thirds (2/3) majority of the votes cast if less than half (1/2) the issued share capital is represented at a meeting.

If and insofar as the management board is not authorised to limit or exclude pre-emptive rights as referred to in this article 3.4.2, the general meeting shall have the power to resolve to limit or exclude pre-emptive rights upon the proposal of the management board, which proposal also must be approved by the supervisory board.

- 3.4.3. Without prejudice to section 2:96a CC, the management board, or if the authorisation of the management board in accordance with article 3.2.1 has not been granted, the general meeting, shall when adopting a resolution to issue shares, determine the manner in which and the period within which such pre-emptive rights may be exercised.
- 3.4.4. The company shall announce the issue with pre-emptive rights and the period within which such rights can be exercised in such manner as shall be prescribed by applicable law and applicable stock exchange regulations, including but not limited to an announcement published by electronic means.
- 3.4.5. This article 3.4 shall equally apply to a grant of rights to subscribe for shares, but shall not apply to an issue of shares to a person who exercises a previously acquired right to subscribe for shares.

#### **Depository receipts for shares.**

##### **Article 3.5.**

The company is not authorised to cooperate in the issue of depository receipts for shares.

#### **Chapter 4**

##### **Acquisition of shares.**

##### **Article 4.1.**

- 4.1.1. The acquisition of fully paid-up shares by the company can only take place if and to the extent the general meeting has authorised the management board for this purpose. Such authorisation shall only be valid for a specific period of not more than eighteen (18) months, but may from time to time be extended. The resolution of the management board to acquire fully paid-up shares is subject to approval of the supervisory board. An acquisition by the company of shares that have not been fully paid-up is null and void.
- 4.1.2. The authorisation of the general meeting as referred to in article 4.1.1 shall not be required if the company acquires fully paid-up shares for the purpose of transferring such shares, by virtue of an applicable employee stock purchase plan, to persons employed by the company or by a group company, provided such shares are quoted on the official list of any stock exchange.

##### **Capital reduction.**

##### **Article 4.2.**

- 4.2.1. The general meeting, upon proposal of the management board, which proposal has been approved by the supervisory board, may resolve to reduce the issued share capital by (i) reducing the nominal value of shares, or (ii) cancelling:

- a. shares which the company holds in its own share capital, or
  - b. all issued shares of a specific class against repayment of the amount paid-up on those shares and, to the extent applicable, repayment of the share premium reserve, attached to the relevant class of shares; and against a simultaneous release from the obligation to pay any further calls on the shares to the extent that the shares had not been fully paid-up.
- 4.2.2. Partial repayment on shares pursuant to a resolution to reduce their nominal value may also be made exclusively on the shares of a specific class.

## **Chapter 5**

### **Form of transfer of shares.**

#### **Article 5.1.**

- 5.1.1. The transfer of a share shall require a deed executed for that purpose and, save in the event that the company itself is a party to the transaction, written acknowledgement by the company of the transfer. Service of notice of the transfer deed or of a certified notarial copy or extract thereof, upon the company shall be the equivalent of acknowledgement as stated in this paragraph.
- 5.1.2. Article 5.1.1 shall apply mutatis mutandis to the transfer of a limited right to a share, provided that a pledge may also be created without acknowledgement by or service of notice upon the company and that section 3:239 CC shall apply, in which case acknowledgement by or service of notice upon the company shall replace the announcement referred to section 3:239 subsection 3 CC.

## **Chapter 6**

### **Shareholders register.**

#### **Article 6.1.**

- 6.1.1. The management board shall keep a share register on behalf of the company. The register shall be regularly updated.  
Part of the register may be kept abroad in order to comply with applicable foreign statutory provisions or applicable stock exchange regulations.
- 6.1.2. Each shareholder's name, his address and such further information as required by law or considered appropriate by the management board, shall be recorded in the share register.
- 6.1.3. Upon his request a shareholder shall be provided with written evidence of the contents of the shareholders register with regard to the shares registered in his name free of charge. The statement so issued may be validly signed on behalf of the company by a person to be designated for that purpose by the management board.
- 6.1.4. The provisions of the articles 6.1.2 and article 6.1.3 shall equally apply to persons who hold a right of use and enjoyment or a right of pledge on one or more shares.

### **Joint holding.**

#### **Article 6.2.**

If through any cause whatsoever one or more shares are jointly held by two or more persons, such persons may jointly exercise the rights arising from those shares, provided that these persons be represented for that purpose by one of them or by a third party authorised by them for that purpose by a written power of attorney.

The management board may, whether or not subject to certain conditions, grant an exemption from this article.

**Right of pledge.**

**Article 6.3.**

- 6.3.1. Shares may be encumbered with a right of pledge.
- 6.3.2. If a share is encumbered with a right of pledge, the voting right attached to that share shall vest in the shareholder, unless at the creation of the pledge the voting right has been granted to the pledgee.
- 6.3.3. Shareholders who as a result of the granting of a right of pledge do not have voting rights, have meeting rights. Holders of a right of pledge with voting rights have meeting rights. Holders of a right of pledge without voting rights do not have meeting rights.

**Right of use and enjoyment (*vruchtgebruik*).**

**Article 6.4.**

- 6.4.1. A right of use and enjoyment may be established on shares.
- 6.4.2. If a share is encumbered with a right of use and enjoyment, the voting right attached to that share shall vest in the shareholder, unless at the creation of the right of use and enjoyment the voting right has been granted to the holder of the right of use and enjoyment.
- 6.4.3. Shareholders who as a result of the granting of a right of use and enjoyment do not have voting rights, have meeting rights. Holders of a right of use and enjoyment that have no voting rights do not have meeting rights.

**Chapter 7**

**Management. Supervisory Board.**

**Article 7.1.**

- 7.1.1. The company shall be managed by a management board under the supervision of a supervisory board.
- 7.1.2. Each managing director is obliged vis-à-vis the company to perform his duties in a proper manner. These duties include all managing duties that have not been allocated to one or more other managing directors by law or by the articles of association. In fulfilling their tasks, the managing directors must be guided by the interests of the company and its business. Each managing director is responsible for the company's general course of affairs.
- 7.1.3. The supervisory board carries out the supervision of the policies of the management board and of the general course of the company's affairs and its business enterprise. The supervisory board shall support the management board with advice. In fulfilling their duties the supervisory directors shall serve the interests of the company and its business enterprise. The management board shall in due time provide the supervisory board with the information it needs to carry out its duties.

**Management board: appointment, suspension and dismissal.**

**Article 7.2.**

- 7.2.1. Managing directors shall be appointed by the general meeting. The supervisory board shall determine the number of managing directors.
- 7.2.2. If a managing director is to be appointed, the supervisory board shall make a binding nomination.

The general meeting may at all times overrule the binding nomination by a resolution adopted by at least a two thirds (2/3) majority of the votes cast, representing more than one half (1/2) of the issued share capital. If the general meeting overrules the binding nomination, the supervisory board shall make a new nomination.

The nomination shall be included in the notice of the general meeting at which the appointment shall be considered.

- 7.2.3. If no nomination has been made for the appointment of a managing director, this shall be stated in the notice of the general meeting at which the appointment shall be considered and the general meeting shall be free to appoint a managing director at its discretion.

A resolution to appoint a managing director that was not nominated by the supervisory board may only be adopted with a majority of two thirds (2/3) of the votes cast, representing more than one half (1/2) of the issued share capital.

- 7.2.4. The general meeting shall at all times be entitled to suspend or dismiss a managing director. A resolution to suspend or dismiss a managing director shall require a majority of at least two thirds (2/3) of the votes cast, representing more than one half (1/2) of the issued share capital, unless the proposal was made by the supervisory board in which case a simple majority of the votes cast is sufficient.

A second general meeting as referred to in section 2:120, subsection 3 CC may not be convened.

- 7.2.5. The supervisory board shall also at all times be entitled to suspend (but not to dismiss) a managing director. Within three (3) months after a suspension of a managing director has taken effect, a general meeting shall be held, in which meeting a resolution must be adopted to either terminate or extend the suspension for a maximum period of another three (3) months. The managing director shall be given the opportunity to account for his actions at that meeting.

If neither such resolution is adopted nor the general meeting has resolved to dismiss the managing director, the suspension shall terminate after the period of suspension has expired.

- 7.2.6. In the event that one or more managing directors are prevented from acting, or in the case of a vacancy or vacancies for one or more managing directors, the remaining managing directors shall temporarily be in charge of the management, without prejudice to the right of the supervisory board to replace the managing director with a temporary managing director.

In the event that all managing directors are prevented from acting or there are vacancies for all managing directors, the supervisory board shall temporarily be in charge of the management; the supervisory board shall be authorised to designate one or more temporary managing directors.

### **Management board: remuneration.**

#### **Article 7.3.**

- 7.3.1. The company has a policy in respect of the remuneration of the management board. The policy is adopted by the general meeting upon the proposal of the supervisory board.

- 7.3.2. The remuneration of the management board shall be determined by the supervisory board with due observance of the remuneration policy adopted by the general meeting.
- 7.3.3. A proposal with respect to remuneration schemes in the form of shares or rights to acquire shares shall be submitted by the supervisory board to the general meeting for its approval.

**Management board: adoption of resolutions.**

**Article 7.4.**

- 7.4.1. If there is more than one (1) managing director, the supervisory board can appoint one of the managing directors as chairman of the management board, and grant such chairman the title of Chief Executive Officer (CEO).
- 7.4.2. The management board may adopt written rules governing its internal proceedings and providing for the division of their duties among themselves. The adoption and amendment of the rules governing the management board shall be subject to the approval of the supervisory board.
- 7.4.3. The management board shall meet whenever a managing director so requires. The management board shall adopt its resolutions by a simple majority of the votes cast, with at least the affirmative vote of the CEO, in a meeting in which the CEO is present or represented.
- In a tie vote the CEO shall have a casting vote.
- 7.4.4. At a meeting of the management board, a managing director may only be represented by another managing director holding a written proxy.
- 7.4.5. If a managing director has a direct or indirect personal conflict of interest with the company, he shall not participate in the deliberations and the decision-making process of the management board. If as a result thereof no resolution of the management board can be adopted, the resolution may be adopted by the supervisory board.
- 7.4.6. The management board may also adopt resolutions without holding a meeting, provided such resolutions are adopted in writing or in a reproducible manner by electronic means of communication and all the managing directors entitled to vote have consented to adopting the resolution outside a meeting.

Articles 7.4.3 and 7.4.5 shall equally apply to adoption by the management board of resolutions without holding a meeting.

**Representation.**

**Article 7.5.**

- 7.5.1. The management board is authorised to represent the company. In the event that more than one (1) managing director is in office, the company may also be represented by two (2) managing directors acting jointly.
- 7.5.2. The management board may grant one or more persons, whether or not employed by the company, the power to represent the company (*procuratie*) or grant in a different manner the power to represent the company on a continuing basis.

**Supervisory board: appointment, suspension and dismissal.**

**Article 7.6.**

- 7.6.1. The company shall have a supervisory board consisting of at least three (3) supervisory directors. The supervisory board determines the number of supervisory directors with due observance of the provision in the previous sentence. If less than three supervisory directors are in office, the supervisory board shall take prompt measures to ensure the appointment of new supervisory directors.

- 7.6.2. The supervisory directors shall be appointed by the general meeting upon a binding nomination by the supervisory board.
- The general meeting may at all times overrule the binding nomination by a two thirds (2/3) majority of the votes cast, representing more than one half (1/2) of the issued share capital. If the general meeting overrules the binding nomination, the supervisory board shall make a new nomination.
- The nomination shall be included in the notice of the general meeting at which the appointment shall be considered.
- 7.6.3. If no nomination has been made for the appointment of a supervisory director, this shall be stated in the notice of the general meeting at which the appointment shall be considered, and the general meeting shall be free to appoint a supervisory director at its discretion.
- A resolution to appoint a supervisory director that was not nominated by the supervisory board, may only be adopted by a two thirds (2/3) majority of the votes cast, representing more than one half (1/2) of the issued share capital.
- 7.6.4. A supervisory director shall be appointed for a maximum term of four (4) years and may be reappointed for a term of not more than four (4) years at a time. A supervisory director may be a supervisory director for a period not longer than twelve (12) years, which period may or may not be interrupted, unless the general meeting resolves otherwise. The term of appointment of a supervisory director shall end at the close of the annual general meeting that will be held in the year that his term of appointment will end. The supervisory board may draw up a resignation schedule for the supervisory board directors.
- 7.6.5. The general meeting shall at all times be entitled to suspend or dismiss a supervisory director. The general meeting may only adopt a resolution to suspend or dismiss a supervisory director by at least a two thirds (2/3) majority of the votes cast, representing more than one half (1/2) of the issued share capital, unless the proposal was made by the supervisory board in which case a simple majority of the votes cast is sufficient.
- A second general meeting as referred to in section 2:120 subsection 3 CC may not be convened.
- 7.6.6. In the event that one or more supervisory directors are prevented from acting, or in the case of a vacancy or vacancies for one or more supervisory directors, the remaining supervisory directors shall temporarily be in charge of the supervision, without prejudice to the right of the general meeting to appoint a temporary member of the supervisory board to replace the member of the supervisory board concerned.
- 7.6.7. In the event that all supervisory directors are prevented from acting, or in the case of vacancies for all supervisory directors, the management board shall as soon as possible take the necessary measures to make arrangements, without prejudice to the right of the general meeting to appoint one or more temporary supervisory directors to replace the supervisory director(s) concerned. The person(s) designated for this purpose shall take the necessary measures to make a definitive arrangement.



**Supervisory board: remuneration.**

**Article 7.7.**

The general meeting shall determine the remuneration of supervisory directors. Supervisory directors shall be reimbursed for their expenses.

**Supervisory board: adoption of resolutions.**

**Article 7.8.**

- 7.8.1. The supervisory board shall appoint one of its members as chairman. The supervisory board may also appoint a secretary, whether or not from among its members.
- 7.8.2. The supervisory board may adopt written rules governing its internal proceedings.
- 7.8.3. The supervisory board shall meet whenever a supervisory director or the management board so requires. The supervisory board shall adopt its resolutions by a simple majority of the votes cast.
- In a tie vote the chairman shall have a casting vote.
- 7.8.4. At a meeting of the supervisory board, a supervisory director may only be represented by another supervisory director holding a written proxy.
- 7.8.5. If a supervisory director has a direct or indirect personal conflict of interest with the company, he shall not participate in the deliberations and the decision-making process of the supervisory board. If as a result thereof no resolution of the supervisory board can be adopted the resolution can nonetheless be adopted by the supervisory board. In that case each supervisory director shall be entitled to participate in the deliberations and the decision-making process of the supervisory board.
- 7.8.6. The supervisory board may also adopt resolutions without holding a meeting, provided such resolutions are adopted in writing or in a reproducible manner by electronic means of communication and all supervisory directors entitled to vote have consented to adopting the resolution outside a meeting.
- Articles 7.8.3 and 7.8.5 shall equally apply to adoption by the supervisory board of resolutions without holding a meeting.
- 7.8.7. The managing directors shall attend the meetings of the supervisory board, if invited to do so, and they shall provide in such meetings all information required by the supervisory board.
- 7.8.8. The supervisory board may decide that one or more of its members shall have access to all premises of the company and shall be authorised to examine all books, correspondence and other records and to be fully informed of all actions which have taken place, or may decide that one or more of its members shall be authorised to exercise a portion of such powers.
- 7.8.9. At the expense of the company, the supervisory board may obtain such advice from experts as the supervisory board deems desirable for the proper fulfilment of its duties.

**Indemnification managing directors and supervisory directors.**

**Article 7.9.**

- 7.9.1. Unless Dutch law provides otherwise, the following shall be reimbursed to current and former members of the management board or supervisory board:
- a. the reasonable costs of conducting a defence against claims (including investigations of potential claims), based on acts or failures to act in the exercise of their duties, or any other duties currently or previously performed by them at the company's request;

- b. any damages or fines payable by them as a result of an act or failure to act as referred to under a;
- c. the reasonable costs of appearing in other legal proceedings or investigations in which they are involved as current or former members of the management board or supervisory board, with the exception of proceedings primarily aimed at pursuing a claim on their own behalf.

There shall be no entitlement to reimbursement as referred to above if and to the extent that:

- i. a Dutch court or, in the event of arbitration, an arbitrator has established in a final and conclusive decision that the act or failure to act of the person concerned can be characterised as wilful (*opzettelijk*), intentionally reckless (*bewust roekeloos*) or seriously culpable (*ernstig verwijtbaar*) conduct, unless Dutch law provides otherwise or this would, in view of the circumstances of the case, be unacceptable according to standards of reasonableness and fairness; or
- ii. the costs or financial loss of the person concerned are covered by insurance and the insurer has paid out the costs or financial loss.

If and to the extent that it has been established by a Dutch court or, in the event of arbitration, an arbitrator in a final and conclusive decision that the person concerned is not entitled to reimbursement as referred to above, he shall immediately repay the amount reimbursed by the company.

7.9.2. The company may take out liability insurance for the benefit of the persons concerned.

## **Chapter 8**

### **General meetings.**

#### **Article 8.1.**

- 8.1.1. General meetings shall be held in Amsterdam, Rotterdam, The Hague, Arnhem, Utrecht or in the municipality of Haarlemmermeer (Schiphol Airport).
- 8.1.2. A general meeting shall be held once a year, no later than six months after the end of the financial year of the company.
- 8.1.3. The management board and the supervisory board shall provide the general meeting with all requested information, unless this would be contrary to an overriding interest of the company. If the management board or supervisory board invokes an overriding interest, it must give reasons.

### **General meetings.**

#### **Article 8.2.**

General meetings shall be convened by the management board or supervisory board.

### **General meetings: notice and agenda.**

#### **Article 8.3.**

- 8.3.1. Notice of the general meeting shall be given by the management board or supervisory board taking into account the notice period prescribed by law, and any other requirements prescribed by law or the regulations of the stock exchange where shares in the share capital of the company are officially listed at the company's request.
- 8.3.2. The management board or supervisory board may decide that the convocation letter in respect of a person authorised to attend a general meeting who agrees thereto, is replaced by a legible and reproducible message sent by electronic mail to the address indicated by him to the company for such purpose.

- 8.3.3. The notice shall state at least:
- (i) the subjects on the agenda;
  - (ii) the place and date of the general meeting;
  - (iii) the procedure to attend the general meeting by written proxy; and
  - (iv) shall inform the persons authorised to attend a general meeting that they may inspect the agenda at the office of the company and that copies thereof are obtainable at such places as are specified in the notice.
- 8.3.4. The agenda for the annual general meeting shall in any case include the following items:
- a. the consideration of the annual statement of accounts;
  - b. the adoption of the annual accounts and the allocation of profits;
  - c. the discharge of managing directors from liability for their management over the last financial year and the discharge of supervisory directors from liability for their supervision thereof; and
  - d. the proposals placed on the agenda by the management board or supervisory board, together with proposals made by shareholders in accordance with provisions of the law and the provisions of the articles of association.
- 8.3.5. A matter, the consideration of which has been requested in writing by one or more shareholders, representing solely or jointly at least the percentage of the issued share capital prescribed by law, will be placed on the notice convening a meeting, or will be announced in the same manner if the company has received the request not later than on the date as prescribed by law.
- 8.3.6. The management board shall inform the general meeting by means of a shareholders' circular or explanatory notes to the agenda of all facts and circumstances relevant to the proposals on the agenda.

**General Meetings: attendance of meetings.**

**Article 8.4.**

- 8.4.1. The persons who are entitled to attend a general meeting and persons entitled to vote at such meeting are persons who:
- (i) are a person entitled to attend general meetings or a person entitled to vote as per a certain date determined by the management board (the "record date");
  - (ii) are as such registered in a register (or one or more parts thereof) designated thereto by the management board; and
  - (iii) have given notice in writing to the company, including the name and the number of shares the person will represent in the meeting, prior to a date set in the notice convening a general meeting, regardless of who will be shareholder at the time of the meeting.
- The provision above under (iii) concerning the notice to the company also applies to the proxy holder of a person authorised to attend a general meeting.
- 8.4.2. The management board may decide that persons entitled to attend shareholders' meetings and vote thereat may, within a period prior to the shareholders' meeting to be set by the management board, cast their votes electronically in a manner to be decided by the management board. Votes cast in accordance with the previous sentence are equal to votes cast at the meeting.

- 8.4.3. The management board may decide that the business transacted at a general meeting can be taken note of by electronic means of communication.
- 8.4.4. The management board may decide that each person entitled to attend general meetings and vote thereat may, either in person or by written proxy, participate, address and vote at that meeting by electronic means of communication, provided that such person can be identified via the electronic means of communication and furthermore provided that such person can directly take note of the business transacted at the general meeting concerned and can exercise his voting rights. The management board may attach conditions to the use of the electronic means of communication, which conditions shall be announced at the convocation of the general meeting and shall be posted on the company's website.
- 8.4.5. Managing directors and supervisory directors shall have admission to the general meetings. They shall have an advisory vote at the general meetings.
- 8.4.6. Furthermore, admission shall be given to the persons whose attendance at the general meeting is approved by the chairman of the meeting.
- 8.4.7. All issues concerning the admittance to the general meeting shall be decided by the chairman of the meeting.

**General meetings: order of the meeting, minutes.**

**Article 8.5.**

- 8.5.1. The general meeting shall be presided over by the chairman of the supervisory board. However, the chairman may charge another person to preside over the general meeting in his place even if he is present at the meeting. If the chairman of the supervisory board is absent and he has not charged another person to preside over the meeting in his place, the supervisory directors present at the meeting shall appoint one of them to be chairman. If no supervisory directors are present at the general meeting, the general meeting shall be presided by the chairman of the management board, or, if the chairman of the management board is absent, by one of the other managing directors designated for that purpose by the management board. If no managing directors are present at the general meeting, the meeting shall appoint a chairman. The chairman shall designate the secretary.
- 8.5.2. The chairman of the meeting shall determine the order of proceedings at the meeting with due observance of the agenda and he may restrict the speaking time or take other measures to ensure orderly progress of the meeting.
- 8.5.3. All issues concerning the proceedings at the meeting shall be decided by the chairman of the meeting.
- 8.5.4. Minutes shall be kept of the business transacted at the meeting unless a notarial record is prepared thereof. Minutes shall be adopted and in evidence of such adoption be signed by the chairman and the secretary of the meeting concerned.
- 8.5.5. A certificate signed by the chairman and the secretary of the meeting confirming that the general meeting has adopted a particular resolution, shall constitute evidence of such resolution vis-à-vis third parties.

**General meetings: adoption of resolutions.**

**Article 8.6.**

- 8.6.1. Resolutions proposed to the general meeting by the management board or supervisory board shall be adopted by a simple majority of the votes cast, unless the law or the articles of association provide otherwise. All other resolutions shall be adopted by at least a simple majority of the votes cast, provided such majority represents more than one-third of the issued share capital, unless another majority of votes or quorum is required by virtue of the law.
- A second meeting referred to in section 2:120, subsection 3 CC cannot be convened.
- 8.6.2. Each share confers the right to cast one (1) vote at the general meeting.
- Blank votes and invalid votes shall be regarded as not having been cast.
- 8.6.3. No votes may be cast at the general meeting in respect of shares which are held by the company or any of its subsidiaries. Holders of a right of use and enjoyment and pledge of shares which belong to the company or its subsidiaries shall not be excluded from the right to vote if such right of use and enjoyment or pledge was created before the shares concerned were held by the company or a subsidiary of the company and at the creation of the right of pledge or the right of use and enjoyment the voting rights were granted to the pledgee or holder of the right of use and enjoyment. The company or any of its subsidiaries cannot cast a vote at the general meeting in respect of shares on which it has a right of use and enjoyment or a right of pledge.
- 8.6.4. The chairman of the general meeting determines the method of voting.
- 8.6.5. The ruling pronounced by the chairman of the general meeting in respect of the outcome of any vote taken at a general meeting shall be decisive. The same shall apply to the contents of any resolution passed.
- 8.6.6. Any and all disputes with regard to voting for which neither the law nor the articles of association provide shall be decided by the chairman of the general meeting.

**Chapter 9**

**Financial year; annual statement of accounts.**

**Article 9.1.**

- 9.1.1. The financial year of the company shall be the calendar year.
- 9.1.2. Annually, within the term set by law, the management board shall prepare the annual accounts.
- The annual accounts shall be accompanied by the auditor's statement referred to in article 9.2.1 and by the management report, unless section 2:391 CC does not apply to the company, as well as the other particulars to be added to those documents by virtue of law.
- The annual accounts shall be signed by all managing directors and by all supervisory directors; if the signature of one or more of them is lacking, this shall be disclosed, stating the reasons therefor.
- 9.1.3. The company shall ensure that the annual accounts as prepared, the management report and the other particulars referred to in article 9.1.2 shall be made available at the office of the company as of the date of the notice of the general meeting at which they are to be discussed.
- The shareholders and other persons with meeting rights may inspect the above documents at the offices of the company and obtain a copy thereof at no cost.

**Auditor.**

**Article 9.2.**

- 9.2.1. The general meeting shall instruct a registered accountant or another expert, as referred to in section 2:393, subsection 1 CC, both hereinafter called: the auditor, to audit the annual accounts prepared by the management board, in accordance with the provisions of section 2:393, subsection 3 CC. If the general meeting fails to issue such instructions, then the supervisory board shall be so authorised. The auditor shall report on his audit to the management board and shall present the results of his examination, in an auditor's statement, regarding the accuracy of the annual accounts. The supervisory board shall nominate an expert or organisation of experts as referred to in section 2:393, subsection 1 CC, for instruction.
- 9.2.2. The assignment given to the auditor may be revoked by the general meeting and by the corporate body which has given such assignment with due observance of section 2:393 subsection 2 CC.
- The assignment may only be revoked for good reasons with due observance of section 2:393, subsection 2 CC.
- 9.2.3. The management board as well as the supervisory board may give assignments, other than those assignments referred to in the previous paragraphs of this article 9.2, to the auditor or any other auditor at the expense of the company.

**Chapter 10**

**Profit and loss. Distributions on shares.**

**Article 10.1.**

- 10.1.1. The management board will keep a share premium reserve and profit reserve to which the shareholders are entitled.
- 10.1.2. The company may make distributions on shares only to the extent that its shareholders' equity exceeds the sum of the paid-up and called-up part of the capital and the reserves which must be maintained by law.
- 10.1.3. Distributions of profit, meaning the net earnings after taxes shown by the adopted annual accounts, shall be made after the adoption of the annual accounts from which it appears that they are permitted, entirely without prejudice to any of the other provisions of the articles of association.
- 10.1.4. The management board may resolve, with the approval of the supervisory board, to reserve the profits or part of the profits.
- 10.1.5. The profit remaining after application of article 10.1.4 shall be at the disposal of the general meeting. The general meeting may resolve to carry it to the reserves or to distribute it among the shareholders.
- 10.1.6. On a proposal of the management board - which proposal must be approved by the supervisory board -, the general meeting may resolve to distribute to the shareholders a dividend in the form of shares in the capital of the company instead of a cash payment.
- 10.1.7. Subject to the other provisions of this article 10.1 the general meeting may, on a proposal made by the management board which proposal is approved by the supervisory board, resolve to make distributions to the shareholders to the debit of one or several reserves which the company is not prohibited from distributing by virtue of the law.

- 10.1.8. No dividends on shares shall be paid to the company on shares which the company itself holds in its own capital or the depositary receipts issued for which are held by the company, unless such shares are encumbered with a right of use and enjoyment or pledge.
- 10.1.9. The management board is authorised to determine how a deficit appearing from the annual accounts will be accounted for.

### **Interim distributions.**

#### **Article 10.2.**

- 10.2.1. The management board may resolve with the approval of the supervisory board, to make interim distributions to the shareholders if an interim statement of assets and liabilities shows that the requirement of article 10.1.2 has been met.
- 10.2.2. The interim statement of assets and liabilities shall relate to the condition of the assets and liabilities on a date no earlier than the first day of the third month preceding the month in which the resolution to distribute is published. It shall be prepared on the basis of generally acceptable valuation methods. The amounts to be reserved under the law and the articles of association shall be included in the statement of assets and liabilities. It shall be signed by the managing directors and supervisory directors. If one or more of their signatures are missing, this absence and the reason for this absence shall be stated.
- 10.2.3. Any proposal for distribution of a dividend on shares and any resolution to distribute an interim dividend on shares shall immediately be published by the management board in accordance with the applicable stock exchange regulations at the company's request. The notification shall specify the date when and the place where the dividend shall be payable or - in the case of a proposal for distribution of dividend - is expected to be made payable.
- 10.2.4. Dividends shall be payable no later than thirty (30) days after the date when they were declared, unless the body declaring the dividend determines a different date.
- 10.2.5. Dividends which have not been claimed upon the expiry of five (5) years and one (1) day after the date when they became payable shall be forfeited to the company and shall be carried to the reserves.
- 10.2.6. The management board may determine that distributions on shares shall be made payable either in euro or in another currency.

### **Chapter 11**

#### **Amendment of the articles of association; dissolution of the company.**

##### **Article 11.1.**

A resolution to amend the articles of association or to dissolve the company may only be adopted by the general meeting at the proposal of the management board with the prior approval of the supervisory board.

##### **Liquidation.**

##### **Article 11.2.**

- 11.2.1. On the dissolution of the company, the liquidation shall be carried out by the management board, unless otherwise resolved by the general meeting.
- 11.2.2. Pending the liquidation the provisions of the articles of association shall remain in force to the fullest possible extent.

11.2.3. The surplus assets of the company remaining after satisfaction of its debts shall be divided, in accordance with the provisions of section 2:23b CC for the benefit of the shareholders in proportion to the nominal value amount of shares held by each of them.

Finally the person appearing declares that at the time of the execution of this deed the issued share capital of the company amounts to eight hundred fifty thousand six hundred seventeen euro and eighty-four eurocent (EUR 850,617.84), divided into eighty-five million sixty-one thousand seven hundred and eighty-four (85,061,784) shares.

A document in evidence of the resolutions referred to in the opening statements of this deed, is attached to this deed.

The original copy of this deed was executed in Amsterdam, on the date mentioned at the top of this deed. I summarised and explained the substance of the deed. The individual appearing before me confirmed having taken note of the deed's contents and having agreed to a limited reading of the deed. I then read out those parts of the deed that the law requires. Immediately after this, the individual appearing before me, who is known to me, and I signed the deed, (signed): G.A. Slatman, R.H. Kleipool.



To Affimed N.V. (the “**Issuer**”)  
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D-69120 HEIDELBERG  
Germany

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T +31 20 577 1771  
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Date 23 December 2020

**Gaby Smeenk**  
Advocaat

Our ref. M33334360/1/20714378/ffm

**Dear Sir/Madam,**

**Registration with the US Securities and Exchange Commission of  
common shares in the capital of the Issuer**

**1 INTRODUCTION**

I act as Dutch legal adviser (*advocaat*) to the Issuer in connection with the Registration.

Certain terms used in this opinion are defined in **Annex 1** (*Definitions*).

**2 DUTCH LAW**

This opinion is limited to Dutch law in effect on the date of this opinion. It (including all terms used in it) is to be construed in accordance with Dutch law.

**3 SCOPE OF INQUIRY**

I have examined, and relied upon the accuracy of the factual statements in, the following documents:

- (a) A copy of the Registration Statement.
- (b) A copy of:

De Brauw Blackstone Westbroek N.V., Amsterdam, is registered with the Trade Register in the Netherlands under no. 27171912.

All services and other work are carried out under an agreement of instruction (“overeenkomst van opdracht”) with De Brauw Blackstone Westbroek N.V. The agreement is subject to the General Conditions, which have been filed with the register of the District Court in Amsterdam and contain a limitation of liability.

Client account notaries ING Bank IBAN NL83INGB0693213876 BIC INGBNL2A.

- (i) the Issuer's deed of incorporation, the Deed of Conversion, the Deed of Amendment and its articles of association as provided by the Chamber of Commerce (*Kamer van Koophandel*); and
  - (ii) the Trade Register Extract.
- (c) A copy of the Board Certificate.

In addition, I have examined such documents, and performed such other investigations, as I considered necessary for the purpose of this opinion. My examination has been limited to the text of the documents.

#### 4 ASSUMPTIONS

I have made the following assumptions:

- (a)
  - (i) Each copy document conforms to the original and each original is genuine and complete.
  - (ii) Each signature is the genuine signature of the individual concerned.
  - (iii) The Registration Statement has been or will have been filed with the SEC in the form referred to in this opinion.
- (b)
  - (i)
    - (A) The issue by the Issuer of the Registration Shares (or of any rights to acquire Registration Shares) will have been validly authorised; and
    - (B) any pre-emption rights in respect of the issue of the Registration Shares (or of any rights to acquire Registration Shares) will have been observed or validly excluded;all in accordance with the Issuer's articles of association at the time of authorisation or of observance or exclusion.
  - (ii) The Issuer's authorised share capital at the time of issue of any Registration Share will be sufficient to allow for the issue.

- (iii) The Registration Shares will have been:
  - (A) issued in the form and manner prescribed by the articles of association at the time of issue; and
  - (B) otherwise offered, issued and accepted by their subscribers in accordance with all applicable laws (including, for the avoidance of doubt, Dutch law).
- (iv) The nominal amount of the Registration Shares and any agreed share premium will have been validly paid.

## 5 OPINION

Based on the documents and investigations referred to and assumptions made in paragraphs 3 and 4, I am of the following opinion:

- (a) When issued, the Registration Shares will have been validly issued and will be fully paid and nonassessable<sup>1</sup>.

## 6 RELIANCE

- (a) This opinion is an exhibit to the Registration Statement and may be relied upon for the purpose of the Registration and not for any other purpose. It may not be supplied, and its contents or existence may not be disclosed, to any person other than as an Exhibit to (and therefore together with) the Registration Statement.
- (b) Each person accepting this opinion agrees, in so accepting, that only De Brauw (and not any other person) will have any liability in connection with this opinion; that De Brauw's liability in connection with this opinion is limited to the amount that is paid out in the specific case under De Brauw's professional liability insurance, increased by the applicable deductible (*eigen risico*); that the agreements in this paragraph 6(b) and all liability and other matters relating to this opinion will be governed exclusively by Dutch law and that the Dutch courts will have exclusive jurisdiction to settle any dispute relating to this opinion; and that this opinion (including the agreements in this paragraph 6(b)) does not make any person, other than the Issuer, a client of De Brauw.
- (c) The Issuer may:
  - (i) file this opinion as an exhibit to the Registration Statement; and

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<sup>1</sup> In this opinion, "nonassessable" – which term has no equivalent in Dutch – means, in relation to a share, that the issuer of the share has no right to require the holder of the share to pay to the issuer any amount (in addition to the amount required for the share to be fully paid) solely as a result of his shareholdership.

(ii) refer to De Brauw giving this opinion under the heading “Legal Matters” in the prospectus as included in the Registration Statement.

The previous sentence is no admittance from me (or De Brauw) that I am (or De Brauw is) in the category of persons whose consent for the filing and reference as set out in that sentence is required under article 7 of the Securities Act or any rules or regulations of the SEC promulgated under it.

Yours faithfully,  
De Brauw Blackstone Westbroek N.V.

/s/ Gaby Smeenk  
**Gaby Smeenk**

## Annex 1 – Definitions

In this opinion:

“**Board Certificate**” means the certificate dated the date of this opinion attached to this opinion as Annex 2.

“**De Brauw**” means De Brauw Blackstone Westbroek N.V.

“**Deed of Amendment**” means the deed of amendment of the Issuer’s articles of association (*akte van statutenwijziging*) dated 4 August 2020 increasing the Issuer’s authorised share capital.

“**Deed of Conversion**” means the deed of conversion and amendment of the articles of association of the Issuer (*akte van omzetting en statutenwijziging Affimed Therapeutics B.V. (na omzetting en statutenwijziging genaamd: Affimed N.V.)*) dated 17 September 2014 providing for the conversion of the Issuer into a public limited liability company and amendment of its articles of association.

“**Dutch law**” means the law directly applicable in the Netherlands.

“**Issuer**” means Affimed N.V., with seat in Amsterdam, Trade Register number 60673389.

“**Registration**” means the registration of the Registration Shares with the SEC under the Securities Act.

“**Registration Shares**” means the common shares (*gewone aandelen*) in the capital of the Issuer registered with the SEC pursuant to the Registration to be issued after the date hereof, not exceeding the limitations referred to in the Registration Statement.

“**Registration Statement**” means the Issuer’s registration statement on form F-3 dated 23 December 2020 in relation to the Registration (excluding any documents incorporated by reference in it and any exhibits to it).

“**SEC**” means the U.S. Securities and Exchange Commission.

“**Securities Act**” means the U.S. Securities Act of 1933, as amended.

“**the Netherlands**” means the part of the Kingdom of the Netherlands located in Europe.

“**Trade Register Extract**” means a Trade Register extract relating to the Issuer provided by the Chamber of Commerce and dated 22 December 2020.



**BOARD CERTIFICATE**

**FROM THE MANAGEMENT BOARD OF AFFIMED N.V.**

**DATED 23 DECEMBER 2020**

**THE UNDERSIGNED:**

1. **A. Hoess**, born on 23 December 1961;
2. **W. Fischer**, born on 5 January 1964;
3. **A.W. Smith**, born on 15 October 1982;
4. **A.J.G. Schottelius**, born on 16 May 1966; and
5. **A. Harstrick**, born on 25 July 1961,

acting in their capacity as managing directors of **Affimed N.V.**, a public limited liability company with corporate seat in Amsterdam, the Netherlands and having its principal office in Heidelberg, Germany (the “**Issuer**”),

**BACKGROUND:**

- (a) The Issuer intends to seek the Registration with the SEC of the Registration Shares.
- (b) In connection with the Registration, on the date of this Board Certificate, De Brauw Blackstone Westbroek N.V. intends to issue a legal opinion in the form attached to this certificate (the “**Legal Opinion**”).
- (c) This Board Certificate is the “Board Certificate” as defined in the Legal Opinion.
- (d) The undersigned make the certifications in this Board Certificate after due and careful consideration and after having made all necessary enquiries.

**1 CONSTRUCTION**

- 1.1** Terms defined in the Legal Opinion have the same meaning in this Board Certificate.
- 1.2** In this Board Certificate “**including**” means “including without limitation”.

**2 CERTIFICATION:**

Each undersigned certifies the following.

## **2.1 Authenticity**

As at the date of this Board Certificate all information regarding the Issuer registered or on file with the Dutch Trade Register is correct, complete and up to date.

## **2.2 Solvency**

The Issuer is not subject to any bankruptcy proceedings, suspension of payments, emergency measures, other insolvency proceedings as defined in Article 2(4) of Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings (recast).

## **2.3 General**

No undersigned is aware of:

- (a) any claim (whether actual or threatened and including any claim, litigation, arbitration or administrative or regulatory proceedings) to the contrary of the certifications in this Board Certificate; or
- (b) any fact or circumstance which he understands or suspects has or might have any impact on the correctness of the Legal Opinion and which has not been disclosed to De Brauw in writing.

## **3 RELIANCE**

De Brauw may rely on this Board Certificate (without personal liability for the undersigned).

## **4 IN EVIDENCE WHEREOF:**

this Board Certificate was signed in the manner set out below.

*(Signature page to follow)*



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/S/ A. Hoess

Name: A. Hoess  
Title: Chief Executive Officer

/S/ W. Fischer

Name: W. Fischer  
Title: Chief Operating Officer

/S/ A.W. Smith

Name: A.W. Smith  
Title: Chief Financial Officer

/S/ A.J.G. Schottelius

Name: A.J.G. Schottelius  
Title: Chief Scientific Officer

/S/ A. Harstrick

Name: A. Harstrick  
Title: Chief Medical Officer

*(Signature page to Board Certificate)*

**KIRKLAND & ELLIS LLP**  
AND AFFILIATED PARTNERSHIPS

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+1 212 446 4900

Affimed N.V.  
Technologiepark  
Im Neuenheimer Feld 582  
69120 Heidelberg, Germany

Re: Registration Statement on Form F-3

Ladies and Gentlemen:

We are issuing this opinion letter in our capacity as special U.S. counsel to Affimed N.V., a Dutch public company with limited liability (*naamloze vennootschap*) (the “Company”), in connection with the Registration Statement on Form F-3 (the “Registration Statement”) to be filed with Securities and Exchange Commission (the “Commission”) by the Company, to register the offer and sale by the Company of up to \$225,000,000 in initial offering price or number of (i) common shares, nominal value €0.01 per share (the “Common Shares”), of the Company; (ii) senior debt securities (the “Senior Debt Securities”), which may be issued pursuant to an indenture (the “Senior Indenture”) to be executed by the Company and the trustee to be named therein; and subordinated debt securities (the “Subordinated Debt Securities”) and, together with the Senior Debt Securities, the “Debt Securities”), which may be issued pursuant to an indenture (the “Subordinated Indenture”) and, together with the Senior Indenture, the “Indentures”) to be executed by the Company and the trustee to be named therein; (iii) warrants or other rights to purchase or otherwise acquire Common Shares or Debt Securities of the Company (the “Warrants”); (iv) purchase contracts (the “Purchase Contracts”) for the purchase or sale of the Company’s securities or securities of third parties, a basket of such securities, an index or indices of such securities or any combination of the above; and (v) units (the “Units”) consisting of one or more Common Shares, Debt Securities, Warrants, Purchase Contracts, or any combination of such securities.

For purposes of the opinions hereinafter expressed, we have examined the Registration Statement, copies of the forms of the Indentures and originals or copies, certified and otherwise identified to our satisfaction, of such other documents, corporate or limited liability company records, certificates of public officials and other instruments as we have deemed necessary as a basis for the opinions expressed herein. Insofar as the opinions expressed herein involve factual matters, we have relied (without independent factual investigation), to the extent we deemed proper or necessary, upon certificates of, and other communications with, officers and employees of the Company and upon certificates of public officials.

Beijing Boston Chicago Dallas Hong Kong Houston London Los Angeles Munich Palo Alto Paris San Francisco Shanghai Washington, D.C.

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In connection with this opinion, we have assumed that (i) the Registration Statement will have become effective under the Securities Act of 1933, as amended (the "Act"); (ii) a prospectus supplement will have been prepared and filed with the Commission describing the securities offered thereby; (iii) all offered securities will be issued and sold in compliance with applicable federal and state securities laws and in the manner stated in the Registration Statement and the applicable prospectus supplement; (iv) a definitive purchase, underwriting, sales agency or similar agreement with respect to the offered securities will have been duly authorized and validly executed and delivered by the Company and the other parties thereto; (v) any applicable indenture and indenture trustee will have been qualified under the Trust Indenture Act of 1939, as amended; and (vi) with respect to any Units, consisting of one or more Common Shares, Debt Securities, Warrants, Purchase Contracts, or any combination of such securities, such Units will be authorized, validly issued, fully paid and nonassessable (to the extent applicable).

Based on the foregoing, and having regard for such legal considerations as we have deemed relevant, we advise you that:

1. When the Debt Securities and the applicable Indenture have been authorized by appropriate corporate authorization, the applicable Indenture has been duly executed by the parties thereto, and the Debt Securities have been executed, authenticated and delivered in accordance with the applicable Indenture against payment therefor, the Debt Securities will be validly issued and the Debt Securities will constitute binding obligations of the Company in accordance with their terms and the terms of the applicable Indenture.
2. When the Warrants and the related warrant agreement have been duly authorized by appropriate corporate authorization, the warrant agreement has been duly executed by the parties thereto, and the Warrants have been executed, countersigned, and delivered in accordance with the warrant agreement against payment therefor, the Warrants will be validly issued and will constitute binding obligations of the Company.
3. When the Purchase Contracts and the related purchase contract agreement have been duly authorized by appropriate corporate authorization, and the Purchase Contracts have been duly executed and issued in accordance with the related purchase contract agreement, the Purchase Contracts will constitute valid and binding obligations of the Company, enforceable against the Company in accordance with their terms.
4. When the Units and the related unit agreement have been duly authorized by appropriate corporate authorization, and the Units have been duly executed and issued in accordance with the related unit agreement, the Units will constitute valid and binding obligations of the Company, enforceable against the Company in accordance with their terms.

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Each opinion (an “enforceability opinion”) in this letter that any security is a valid and binding obligation or is enforceable in accordance with its terms is subject to: (i) the effect of bankruptcy, insolvency, fraudulent conveyance and other similar laws and judicially developed doctrines in this area such as substantive consolidation and equitable subordination; (ii) the effect of general principles of equity; and (iii) other commonly recognized statutory and judicial constraints on enforceability including statutes of limitations. In addition, we do not express any opinion as to the enforceability of any rights to contribution or indemnification which may be violative of public policy underlying any law, rule or regulation (including any federal or state securities law, rule or regulation). “General principles of equity” include, but are not limited to: principles limiting the availability of specific performance and injunctive relief; principles which limit the availability of a remedy under certain circumstances where another remedy has been elected; principles requiring reasonableness, good faith and fair dealing in the performance and enforcement of an agreement by the party seeking enforcement; principles which may permit a party to cure a material failure to perform its obligations; and principles affording equitable defenses such as waiver, laches and estoppel. We express no opinion with respect to the enforceability of any provision which purports to waive the benefit of usury laws. It is possible that terms in a particular contract covered by our enforceability opinion may not prove enforceable for reasons other than those explicitly cited in this letter should an actual enforcement action be brought, but (subject to all the exceptions, qualifications, exclusions and other limitations contained in this letter) such unenforceability would not in our opinion prevent the party entitled to enforce that contract from realizing the principal benefits purported to be provided to that party by the terms in that contract which are covered by our enforceability opinion.

This opinion does not cover the law of any jurisdiction other than the law of the State of New York. We did not find it necessary for the purposes of this opinion, and accordingly we do not purport to cover herein, the application of the securities or “Blue Sky” laws of the various states. We undertake no responsibility to update or supplement this opinion in response to changes in law or future events or other circumstances. We have assumed the indentures, purchase contract agreement, warrant agreement and unit agreement referenced in the numbered paragraphs above will be governed by the law of the State of New York.

This opinion is furnished to you in connection with the filing of the Registration Statement and is not to be used, circulated, quoted or otherwise relied upon or otherwise referred to by any other person for any other purpose.

This opinion is being furnished in accordance with the requirements of Item 601 of Regulation S-K promulgated under the Act, and no opinion is expressed herein as to any matter pertaining to the contents of the Registration Statement, other than as to the specific issues addressed herein, and no opinion may be inferred or implied beyond that expressly stated herein.

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We hereby consent to the filing of this opinion as an exhibit to the Registration Statement and to the reference to our firm under the heading “Legal Matters” in the Registration Statement. In giving this consent, we do not thereby admit that we are in the category of persons whose consent is required under Section 7 of the Act or the rules and regulations of the Commission.

Yours very truly,

/s/ KIRKLAND & ELLIS LLP  
KIRKLAND & ELLIS LLP

**Consent of Independent Registered Public Accounting Firm**

The Supervisory board of Affimed N.V.:

We consent to the use of our reports dated April 28, 2020, with respect to the consolidated statements of financial position of Affimed N.V. as of December 31, 2019 and 2018, and the related consolidated statements of comprehensive loss, cash flows and changes in equity for each of the years in the three-year period ended December 31, 2019, and the related notes, and the effectiveness of internal control over financial reporting, incorporated by reference herein and to the reference of our firm under the heading “Experts” in the prospectus. Our report refers to a change in accounting for leases on January 1, 2019 as a result of the adoption of International Financial Reporting Standard 16, *Leases*.

/s/ KPMG AG Wirtschaftsprüfungsgesellschaft

Mannheim, Germany

December 23, 2020