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

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**POST-EFFECTIVE AMENDMENT NO. 1  
TO  
FORM F-1  
REGISTRATION STATEMENT  
UNDER  
THE SECURITIES ACT OF 1933**

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**Affimed N.V.**

(Exact Name of Registrant as Specified in Its Charter)

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**The Netherlands**  
(State or Other Jurisdiction of  
Incorporation or Organization)

**2834**  
(Primary Standard Industrial  
Classification Code Number)

**NOT APPLICABLE**  
(I.R.S. Employer  
Identification Number)

**Technologiepark, Im Neuenheimer Feld 582  
69120 Heidelberg, Germany  
(+49) 6221-65307-0**  
(Address, Including Zip Code, and Telephone Number, Including Area Code, of Registrant's Principal Executive Offices)

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**National Corporate Research, Ltd.  
10 East 40th Street  
New York, New York 10016  
(212) 947-7200**  
(Name, Address, Including Zip Code, and Telephone Number, Including Area Code, of Agent For Service)

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**Copies to:**

**Richard D. Truesdell, Jr.  
Sophia Hudson  
Davis Polk & Wardwell LLP  
450 Lexington Avenue  
New York, New York 10017**

**Eric W. Blanchard  
Brian K. Rosenzweig  
Covington & Burling LLP  
The New York Times Building  
620 Eighth Avenue  
New York, New York 10018**

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**Approximate date of commencement of proposed sale to the public:** As soon as practicable after the effective date of this Registration Statement.

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, 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 post-effective amendment filed pursuant to Rule 462(d) 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. ☒ 333-197097

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## EXPLANATORY NOTE

This Post-Effective Amendment No. 1 to the Registration Statement on Form F-1 (File No. 333-197097) is filed pursuant to Rule 462(d) under the Securities Act of 1933, as amended (the “Securities Act”), solely to add new Exhibits 3.1, 4.2, 4.3 and 5.1 to such Registration Statement. This Registration Statement shall become effective upon filing with the Commission in accordance with Rule 462(d) under the Securities Act.

**Item 8. Exhibits**

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

- 1.1\*\*\*\* Form of Underwriting Agreement.
- 3.1 Articles of Association of Affimed N.V.
- 4.1\*\*\* Form of Registration Rights Agreement
- 4.2 Share Issue Deed of Affimed Therapeutics B.V.
- 4.3 Deed of Issue of Common Shares in the share capital of Affimed N.V.
- 5.1 Opinion of De Brauw Blackstone Westbroek N.V., Dutch counsel of Affimed Therapeutics B.V., as to the validity of the common shares
- 8.1\*\*\* Opinion of De Brauw Blackstone Westbroek N.V., counsel of Affimed Therapeutics B.V., as to Dutch tax matters
- 8.2\*\*\* Opinion of Hengeler Mueller, counsel of Affimed Therapeutics B.V., as to German tax matters
- 8.3\*\* Opinion of Davis Polk & Wardwell LLP, as to U.S. tax matters
- 10.1+\*\* License Agreement, dated September 29, 2006 between Affimed Therapeutics AG and XOMA Ireland Limited.
- 10.2+\*\* License Agreement, dated March 8, 2001 between Affimed Therapeutics AG and Deutsches Krebsforschungszentrum (DKFZ).
- 10.3\*\* Memorandum of Clarification of License Agreement Signed Between Affimed Therapeutics AG and Deutsches Krebsforschungszentrum (DKFZ), dated March 8, 2001.
- 10.4+\*\* Amendment to License Agreement, dated June 13, 2006 between Affimed Therapeutics AG and Deutsches Krebsforschungszentrum (DKFZ).
- 10.5+\*\* Amended and Restated License and Development Agreement dated July 11, 2013 between Affimed Therapeutics AG and Amphivena Therapeutics, Inc.
- 10.6+\*\* Research Funding Agreement dated August 15, 2013 between Affimed Therapeutics AG and The Leukemia and Lymphoma Society.
- 10.7+\*\* Amendment No. 1 to the Research Funding Agreement, dated April 29, 2014 between Affimed Therapeutics AG and The Leukemia and Lymphoma Society.
- 10.8\*\* English language summary of Lease Agreement, dated September 19, 2000 and amendments thereto between Affimed Therapeutics AG and Technologiepark Heidelberg II GmbH & Co. KG.
- 10.9\*\* Lease Contract dated October 1, 2009, between Abcheck s.r.o. and Vědeckotechnický park Plzeň a.s.
- 10.10\*\* Amendment No. 4 to Lease Contract dated October 1, 2009, between Abcheck s.r.o. and Vědeckotechnický park Plzeň a.s., dated June 30, 2011.
- 10.11\*\* Amendment No. 5 to Lease Contract dated October 1, 2009, between Abcheck s.r.o. and Vědeckotechnický park Plzeň a.s., dated November 14, 2012.
- 10.12\*\*\*\* Investment Agreement Series D Round of Financing, Affimed Therapeutics AG, Heidelberg, Germany, dated September 24, 2012
- 10.13\*\*\*\* Investment Agreement Pre-IPO Financing, Affimed Therapeutics AG, Heidelberg, Germany, dated June 24, 2014
- 10.14\*\*\*\* Convertible Bridge Loan Agreement, dated June 28, 2013 by and between the shareholders party thereto and Affimed Therapeutics AG
- 10.15\*\*\*\* Amendment to Investment Agreement Pre-IPO Financing, Affimed Therapeutics AG, Heidelberg, Germany
- 10.16\*\*\*\* Form of Supervisory Director and Managing Director Indemnification Agreement.
- 10.17\*\*\*\* Term Facility Agreement between Affimed Therapeutics AG and PCOF 1, LLC dated as of 24 July 2014

21.1**	List of subsidiaries.
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 De Brauw Blackstone Westbroek N.V. (included in Exhibit 8.1).
23.4***	Consent of Hengeler Mueller (included in Exhibit 8.2)
23.5**	Consent of Davis Polk & Wardwell LLP (included in Exhibit 8.3)
23.6*****	Consent of KPMG AG Wirtschaftsprüfungsgesellschaft, independent registered public accounting firm
24.1**	Powers of attorney (included on signature page to the registration statement).
99.1**	Consent of Thomas Hecht, as supervisory director nominee
99.2**	Consent of Frank Mühlenbeck, as supervisory director nominee
99.3**	Consent of Michael B. Sheffery, as supervisory director nominee
99.4**	Consent of Richard B. Stead, as supervisory director nominee
99.5*****	Consent of Ferdinand Verdonck, as supervisory director nominee
99.6*****	Consent of Berndt Modig, as supervisory director nominee

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\*\* Filed as part of this registration statement on Form F-1 (Registration no. 333-197097) on June 27, 2014.

\*\*\* Filed as part of this registration statement on Form F-1 (Registration no. 333-197097) on July 17, 2014.

\*\*\*\* Filed as part of this registration statement on Form F-1 (Registration no. 333-197097) on August 19, 2014.

\*\*\*\*\* Filed as part of this registration statement on Form F-1 (Registration no. 333-197097) on September 2, 2014.

† Confidential treatment requested as to portions of the exhibit. Confidential materials omitted and filed separately with the Securities and Exchange Commission.

(b) Financial Statement Schedules

None.

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## Signatures

Pursuant to the requirements of the Securities Act of 1933, the Registrant duly caused this Post-Effective Amendment No. 1 to the Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in Heidelberg, Germany on September 17, 2014.

Affirmed N.V.

By: /s/ Adi Hoess

Name: Adi Hoess

Title: Chief Executive Officer

By: /s/ Florian Fischer

Name: Florian Fischer

Title: Chief Financial Officer

Pursuant to the requirements of the Securities Act of 1933, as amended, this Post-Effective Amendment No. 1 to the Registration Statement has been signed by the following persons on September 17, 2014 in the capacities indicated:

<u>Name</u>	<u>Title</u>
<div>/s/ Adi Hoess</div> <div>Adi Hoess</div>	Chief Executive Officer (principal executive officer)
<div>/s/ Florian Fischer</div> <div>Florian Fischer</div>	Chief Financial Officer (principal financial officer and principal accounting officer)
<div>/s/ Thomas Hecht</div> <div>Thomas Hecht</div>	Chairman
<div>/s/ Berndt Modig</div> <div>Berndt Modig</div>	Director
<div>/s/ Frank Mühlenbeck</div> <div>Frank Mühlenbeck</div>	Director
<div>/s/ Michael B. Sheffery</div> <div>Michael B. Sheffery</div>	Director
<div>/s/ Richard B. Stead</div> <div>Richard B. Stead</div>	Director
<div>/s/ Ferdinand Verdonck</div> <div>Ferdinand Verdonck</div>	Director
<div>*</div> <div>Colleen A. DeVries</div> <div>SVP of National Corporate Research, Ltd.</div>	Authorized Representative in the United States

\*By: 

/s/ Florian Fischer

Name: Florian Fischer

Title: Attorney-in-fact

## Exhibit index

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**UNOFFICIAL TRANSLATION**  
**ARTICLES OF ASSOCIATION OF**  
**AFFIMED N.V.**

**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 report</b>	:	the annual report referred to in section 2:391 CC;
<b>annual statement of accounts</b>	:	the annual accounts and, if applicable, the annual 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>meeting rights</b>	:	the right to attend the general meeting and to address such meeting, either in person or by proxy authorised in writing;
<b>persons entitled to attend general meetings</b>	:	shareholders as well as holders of a right of use and enjoyment and holders of a right of pledge with meeting rights;
<b>persons entitled to vote</b>	:	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
<b>subsidiary</b>	:	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 one million one hundred thousand euro (EUR 1,100,000) and is divided into:
  - a. fifty-five million (55,000,000) common shares, each with a nominal value of one eurocent (EUR 0.01);
  - b. fifty-five million (55,000,000) cumulative preference 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, the common shares from 1 onwards and the cumulative preference shares from CP1 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 and class 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. Common 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. Cumulative preference shares may be issued against partial payment. Further payment on the cumulative preference shares shall be made within one (1) month after the management board upon approval by the supervisory board has made a corresponding request in writing to the shareholders concerned.
- 3.3.3. 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.
- 3.3.4. 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.
- 3.3.5. 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.
- 3.3.6. 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 common shares, each holder of common shares shall have a pre-emptive right to acquire such newly issued shares in proportion to the aggregate amount of his common 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.No pre-emptive right shall exist with respect to the issue of cumulative preference shares.
- 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 electronics 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.

**Cumulative preference shares transfer restrictions.**

**Article 5.2.**

- 5.2.1. A shareholder can transfer one or more of his cumulative preference shares with due observance of this article 5.2. This article 5.2 is not applicable to the extent the company transfers any cumulative preference shares that it acquired.
- 5.2.2. A transfer of cumulative preference shares shall require the approval of the supervisory board. The request for approval shall be made in writing and must specify the name and the address of the proposed transferee and the price or other consideration which the proposed transferee is willing to pay or give.
- 5.2.3. The supervisory board will resolve upon the request for approval within three months upon receipt of the request for approval. If the supervisory board fails

to resolve upon the request within this period and the transferor has not received from the company a written notice rejecting the request, the approval of the transfer shall be deemed to have been granted.

- 5.2.4. The approval of the transfer shall also be deemed to have been granted if the supervisory board has not designated one (1) or several interested buyers who are willing and able to acquire against payment in cash all the cumulative preference shares to which the request for approval relates in the written notice rejecting the request, at a price to be determined in accordance with article 5.2.5.

The company itself can only be a transferee with the consent of the transferor.

- 5.2.5. The shareholder and the designated transferee(s) shall determine the price for the cumulative preference shares by mutual agreement. If they have not reached agreement on the price within two (2) months after the date of the written notice of rejection which was combined with the designation of one (1) or several interested buyers to whom the cumulative preference shares concerned may be transferred in accordance with the provisions of this article, that price shall then be determined by an expert to be appointed by the transferor and the supervisory board by mutual agreement. If the supervisory board and the transferor fail to reach such agreement within three (3) months after the notice of rejection, the chairman of the Royal Notarial Association (*Koninklijke Notariële Beroepsorganisatie*) acting at the request of either of the parties, shall appoint an expert.

- 5.2.6. Upon the notification of the price determined by the independent expert, the transferor may decide to not transfer his shares to the designated transferee, provided he shall notify the supervisory board of that decision within one (1) month after he has been informed of the name(s) of the designated interested buyer(s) and of the price determined in the manner as described above.

- 5.2.7. The provisions of this article 5.2 shall apply mutatis mutandis to the assignment of cumulative preference shares in the event of a division of any joint holding.

## **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. Common shares may be encumbered with a right of pledge.
- 6.3.2. If an common 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.
- 6.3.4. Cumulative preference shares may not be encumbered with a right of pledge.

**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 an common 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. The voting rights attached to cumulative preference shares cannot be granted to the holders of a right of use and enjoyment.
- 6.4.4. 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.

#### **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 the general meeting are persons who:
- (i) are a shareholder or are otherwise entitled to attend the general meeting;
  - (ii) are as such registered in a register (or one or more parts thereof) designated thereto by the management board, hereinafter referred to as: the "register"; 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.

### **Meetings of holders of cumulative preference shares.**

#### **Article 8.7.**

- 8.7.1. Meetings of holders of cumulative preference shares shall be held as frequently and whenever such a meeting is required by virtue of any statutory regulation or any regulation in the articles of association.
- 8.7.2. The meeting will be convened by convocation letters addressed to the addresses of the holders of cumulative preference shares as registered in the shareholders register.
- 8.7.3. The convocation notice shall be sent no later than on the sixth day prior to the day of the meeting.
- 8.7.4. The provisions of this chapter 8 shall apply *mutatis mutandis*, provided that articles 8.1.2, 8.3.4, and 8.4.1 shall not apply, and the percentage set out in article 8.3.5 will relate to the cumulative preference shares only.
- 8.7.5. A meeting of holders of cumulative preference shares may adopt resolutions in writing if the proposal has been sent to all holders of cumulative preference shares in writing, none of them opposes this manner of decision-making and all holders of cumulative preference shares express themselves in favour of the proposal concerned.

## **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 annual 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 annual 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, or if the supervisory board also fails to give such assignment, the management board. 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.

9.2.2. The selection of the auditor shall not be restricted by any nomination. The assignment given to the auditor may be revoked by the general meeting and by the corporate body which has given such assignment; furthermore, the assignment given by the management board may be revoked by the supervisory board.

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 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 for the common shares to which only the holders of the common shares 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. a. A dividend shall be paid out of the profit, if available for distribution, first of all on the cumulative preference shares in accordance with this paragraph.
- b. The dividend paid on the cumulative preference shares shall be based on the percentage, mentioned immediately below, of the amount called up and paid-up on those shares. The percentage referred to in the previous sentence shall be equal to the average of the EURIBOR interest charged for cash loans with a term of twelve months as set by the European Central Bank - weighted by the number of days to which this interest was applicable - during the financial year for which this distribution is made, increased by a maximum margin of five hundred (500) basis points to be fixed upon issue by the management board; EURIBOR shall mean the Euro Interbank Offered Rate.
- c. If in the financial year over which the aforesaid dividend is paid the amount called up and paid-up on the cumulative preference shares has been reduced or, pursuant to a resolution to make a further call on said shares, has been increased, the dividend shall be reduced or, if applicable, increased by an amount equal to the aforesaid percentage of the amount of such reduction or increase, as the case may be, calculated from the date of the reduction or, as the case may be, from the date when the further call on the shares was made.
- d. If and to the extent that the profit is not sufficient to pay in full the dividend referred to under a of this paragraph, the deficit shall be paid to the debit of the reserves provided that doing so shall not be in violation of article 10.1.2.
- If and to the extent that the dividend referred to under a. of this article 10.1.4 cannot be paid to the debit of the reserves, the profits earned in subsequent years shall be applied first towards making to the holders of cumulative preference shares such payment as will fully clear the deficit, before the provisions of the following paragraphs of this article can be applied. No further dividends on the cumulative preference shares shall be paid than as stipulated in this article 10.1.4, in article 10.2 and in article 11.2. Interim dividends paid over any financial year in accordance with article 10.2 shall be deducted from the dividend paid by virtue of this article 10.1.4.
- e. If the profit earned in any financial year has been determined and in that financial year one or more cumulative preference shares have

been cancelled against repayment, the persons who were the holders of those shares shall have an inalienable right to payment of dividend as described below. The amount of profit, if available for distribution, to be distributed to the aforesaid persons shall be equal to the amount of the dividend to which by virtue of the provision under a. of this paragraph they would have been entitled if on the date of determination of the profit they had still been the holders of the aforesaid cumulative preference shares, calculated on the basis of the period during which in the financial year concerned said persons were holders of said shares, such dividend shall be reduced by the amount of any interim dividend paid in accordance with article 10.2.

- f. If in the course of any financial year cumulative preference shares have been issued, with respect to that financial year the dividend to be paid on the shares concerned shall be reduced pro rata to the day of issue of said shares.
- g. If the dividend percentage has been adjusted in the course of a financial year, then for the purposes of calculating the dividend over that financial year the applicable rate until the date of adjustment shall be the percentage in force prior to that adjustment and the applicable rate after the date of adjustment shall be the altered percentage.

- 10.1.5. The management board may determine, with the approval of the supervisory board, that any amount remaining out of the profit, after application of article 10.1.4 shall be added to the reserves.
- 10.1.6. The profit remaining after application of article 10.1.4 and 10.1.5 shall be at the disposal of the general meeting, provided that no further distribution shall be made on the cumulative preference shares. The general meeting may resolve to carry it to the reserves or to distribute it among the holders of common shares.
- 10.1.7. 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 holders of common shares a dividend in the form of common shares in the capital of the company.
- 10.1.8. 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 holders of common shares to the debit of one or several reserves which the company is not prohibited from distributing by virtue of the law.
- 10.1.9. 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.
- 10.1.10. Any change to an addition as referred to in article 10.1.4 under b and g shall require the approval of the meeting of holders of cumulative preference shares. If the approval is withheld the previously determined addition shall remain in force.
- 10.1.11. 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 or to holders of shares of a particular class 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. In the event that all cumulative preference shares are cancelled against repayment, on the day of such repayment a dividend shall be paid, this dividend to be equal to the premium paid on the share concerned at its issue increased by a distribution to be calculated in accordance with the provisions of article 10.1.4 and over the period over which until the date of repayment no earlier distribution as referred to in the first sentence of article 10.1.4 has been made, all this provided that the requirement of article 10.1.2 has been met as demonstrated by an interim statement of assets and liabilities as referred to article 10.2.2.
- 10.2.4. Any proposal for distribution of a dividend on common shares and any resolution to distribute an interim dividend on common 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.
- 10.2.5. 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.
- 10.2.6. 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.
- 10.2.7. 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, as follows:
  - a. firstly, the holders of the cumulative preference shares shall be paid, if possible, the nominal value amount of their shares or, if those shares are not fully paid-up, the amount paid thereon, that payment to be increased by an amount equal to the percentage, referred to under b of article 10.1.4, of the amount called up and paid-up on the cumulative preference shares, calculated over each year or part of a year in the period beginning on the day following the period over which the last dividend on the cumulative preference shares was paid and ending on the day of the distribution, as referred to in this article, made on cumulative preference shares.

If the company's surplus assets are not sufficient to make the distributions as referred to in this subparagraph a., these distributions shall be made to the holders of the cumulative preference shares pro rata to the amounts that would be paid if the surplus assets were sufficient for distribution in full;
  - b. secondly, the balance, if any, remaining after the payments referred to under a shall be for the benefit of the holders of common shares in proportion to the nominal value amount of common shares held by each of them.

## **Chapter 12**

### **Transitional provision.**

#### **Article 12.**

The first financial year shall end on the thirty-first day of December two thousand and fourteen.

This article and its heading shall lapse after expiry of the first financial year.

**SHARE ISSUE DEED**  
**AFFIMED THERAPEUTICS B.V.**

On the twelfth day of September two thousand and fourteen appear before me, Corstiaan Anne Voogt, notaris (civil-law notary) practising in Amsterdam:

- a. Janiek Johanna Meppelink, kandidaat-notaris (candidate civil-law notary), employed by De Brauw Blackstone Westbroek N.V., a limited liability company, with corporate seat in Amsterdam, the Netherlands, with address at: 1082 MD Amsterdam, the Netherlands, Claude Debussylaan 80, born in Rhenen, the Netherlands, on the seventh day of June nineteen hundred and eighty-seven, for the purpose hereof acting as attorney authorised in writing of:
1. **Affimed Therapeutics B.V.**, a private company with limited liability, with corporate seat in Amsterdam, the Netherlands, and with address at: Im Neuenheimer Feld 582, D-69120 Heidelberg, Germany, number Trade Register 60673389 (the “**Company**”), and in that capacity is representing the Company;
  2. **Dr Melvyn Little**, residing at: Immenseeweg 17, 25826 Saint Peter-Ording, Germany, born in Manchester, United Kingdom, on the sixth day of January nineteen hundred and forty-five, holder of a British passport with number: 519669637, having the British nationality, married (“**Little**”) and in that capacity is representing Little;
  3. **SGR Sagittarius Holding AG**, a company incorporated under the laws of Germany, with registered office and address at: Brügglistrasse 2, 8852 Altendorf, Switzerland, registered with the register of commerce of the Canton of Schwyz, Switzerland, under number: CHE-109.711.527 (“**SGR**”), and in that capacity is representing SGR;
  4. **AGUTH Holding GmbH**, a company incorporated under the laws of Germany, with registered office and address at: Schloß-Wolfsbrunnenweg 33, 69118 Heidelberg, Germany, registered with the Amtsgericht Mannheim under number: HRB 337072 (“**AGUTH**”), and in that capacity is representing AGUTH;
  5. **tbg Technologie-Beteiligungs-Gesellschaft mbH**, a company incorporated under the laws of Germany, with registered office and address at: Ludwig-Erhard-Platz 1-3, 53179 Bonn, Germany, registered with the Amtsgericht Bonn under number: HRB 4940 (“**tbg**”), and in that capacity is representing tbg;
  6. **BioMed Invest I Ltd.**, a company incorporated under the laws of Guernsey, Channel Islands, with registered office and address at: Suite 7, Provident House, Havilland Street, St. Peter Port, Guernsey, GY1 2QE, Channel Islands, registered with the Guernsey Registry under number: 51788 (“**BMI**”), and in that capacity is representing BMI;
  7. **OrbiMed Associates III, LP**, a limited partnership organized under the laws of the state of Delaware, with registered office at: Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, Delaware, United States of America, 19808, and address at: 601 Lexington Avenue, 54th Floor, New York, NY 10022,

United States of America, registered with the State of Delaware Department of State under number: 4141034 (“**OrbiMed Associates**”) and in that capacity is representing OrbiMed Associates;

8. **OrbiMed Private Investments III, LP**, a limited partnership organized under the laws of the state of Delaware, with registered office at: Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, Delaware, United States of America, 19808, and address at: 601 Lexington Avenue, 54th Floor, New York, NY 10022, United States of America, and registered with the State of Delaware Department of State under number: 4141039 (“**OrbiMed Private Investments**”) and in that capacity is representing OrbiMed Private Investments,
  9. **LSP III Omni Investment Coöperatief U.A.**, a cooperative with excluded liability incorporated under the laws of the Netherlands, with corporate seat in Amsterdam, the Netherlands, with address at: 1071 DV Amsterdam, the Netherlands, Johannes Vermeerplein 9, registered with the Dutch trade register under number: 34259327 (“**LSP**”) and in that capacity is representing LSP; and
  10. **Novo Nordisk A/S**, a company incorporated under the laws of Denmark, with registered office and address at: Novo Allé, 2880 Bagsværd, Denmark, registered with the Danish Business Authority (Erhvervsstyrelsen) under number: CVR 24256790 (“**Novo Nordisk**”) and in that capacity is representing Novo Nordisk;
- b. Eline Hedwig Viersen, kandidaat-notaris (candidate civil-law notary), employed by De Brauw Blackstone Westbroek N.V., a limited liability company, with corporate seat in Amsterdam, the Netherlands, with address at: 1082 MD Amsterdam, the Netherlands, Claude Debussylaan 80, born in The Hague on the nineteenth day of August nineteen hundred and eighty-seven, for the purpose hereof acting as attorney authorised in writing of **KfW**, a German public law institution, with seat in Frankfurt am Main and a branch office with address at: Ludwig-Erhard-Platz 1-3, 53179 Bonn, Germany (“**KfW**”), and in that capacity is representing KfW; and
- c. Nathalia Christina Dymphna van Wiggen, kandidaat-notaris, (candidate civil-law notary), employed by De Brauw Blackstone Westbroek N.V., a limited liability company, with corporate seat in Amsterdam, the Netherlands, with address at: 1082 MD Amsterdam, the Netherlands, Claude Debussylaan 80, born in Harderwijk on the twenty-fifth day of July nineteen hundred and eighty-nine, for the purpose hereof acting as attorney authorised in writing of **Deutsches Krebsforschungszentrum**, a foundation under German public law, with registered office and address at: Im Neuenheimer Feld 280, D-69120 Heidelberg, Germany, registered within the foundation register (*Stiftungsverzeichnis Teil II, Stiftungen, des öffentlichen Rechts des Regierungspräsidiums Karlsruhe*) under number: AZ: 14-0561.1 (12-21/9567.25) (“**DKFZ**”), and in that capacity is representing DKFZ,

(the Company, Little, DKFZ, AGUTH, KfW, tbg, SGR, BMI, OrbiMed Associates, OrbiMed Private Investments, LSP, Novo Nordisk hereinafter together: the “**Parties**”);

(Little, DKFZ, AGUTH, KfW, tbg, SGR, BMI, OrbiMed Associates, OrbiMed Private Investments, LSP, Novo Nordisk, each hereinafter an “**Investor**”, and together: the “**Investors**”); and

(the Investors other than tbg hereinafter together: the “**Other Investors**”).

The persons appearing

**DECLARE THAT,**

**WHEREAS:**

**Current shareholding.**

- (i) prior to the execution of this deed the sole shareholder of the Company: Stichting Affimed Therapeutics, a foundation organised under the laws of the Netherlands, with corporate seat in Amsterdam, the Netherlands, and address at: D-69120 Heidelberg, Germany, Im Neuenheimer Feld 582, number Trade Register 60669675 (the “**Foundation**”), holds one (1) share, with a nominal value of one eurocent (EUR 0.01), in the share capital of the Company (the “**Foundation Share**”);

**Restructuring.**

- (ii) in connection with a contemplated initial public offering of common shares in the share capital of the Company on the NASDAQ Global Stock Market (the “**IPO**”), the Investors intend to exchange all their shares in Affimed Therapeutics A.G., a company incorporated under the laws of Germany, with corporate seat in Heidelberg, Germany, and address at: D-69120 Heidelberg, Germany, Im Neuenheimer Feld 582 (“**Affimed AG**”), for shares in the share capital of the Company, each share with a nominal value of one eurocent (EUR 0.01) (the “**BV Shares**”). As a result of such exchange, Affimed AG will become a wholly-owned subsidiary of the Company (the “**Reorganisation**”);
- (iii) the current issued share capital of Affimed AG consists of common shares, series D preferred shares and series E preferred shares (such shares together the “**AG Shares**”). The shareholding of each Investor in Affimed AG at the moment of execution of this deed is reflected in a schedule that is attached to this deed as Schedule A (the “**Schedule A**”);
- (iv) to effectuate the Reorganisation, the Investors wish to contribute their AG Shares in exchange for BV Shares (the “**Share Exchange**”). This Share Exchange will take into account the relevant provisions of an investment agreement regarding pre-IPO financing between the Investors and Affimed AG, entered into on the twenty-fifth day of June two thousand and fourteen (the “**Pre-IPO Investment Agreement**”). The difference between the tbg Exchange Ratio (as defined below) applicable for tbg and the Exchange Ratios (as defined below) applicable for the Other Investors is based on the understanding that tbg will waive any special rights it has in comparison to the rights of the Other Investors with respect to the same classes of shares under Section H two (2) of the “Series C Investment and Shareholders’ Agreement with respect to Affimed Therapeutics AG in Heidelberg” dated eight April two thousand and ten and as amended by paragraph seventeen (17) of the Pre-IPO Investment Agreement, a photocopy of both agreements will be attached to this deed;
- (v) to implement the Share Exchange, the Parties wish to agree that, in conformity with the Pre-IPO Investment Agreement, BV Shares will be issued in the following manner:
  - (i) to tbg: for each series D preferred share in Affimed AG contributed by tbg fifteen point four six three seven nine four (15.463794) BV Shares will be issued (the “**tbg Exchange Ratio**”);
  - (ii) to the Other Investors:
    - (a) for each common share in Affimed AG contributed by this Investor seven point five four three four three seven (7.543437) BV Shares will be issued;



- (b) for each series D preferred share in Affirmed AG contributed by this Investor seven point five four three four three seven (7.543437) BV Shares will be issued; and
- (c) for each series E preferred share in Affirmed AG contributed by this Investor thirteen point seven zero two six five four (13.702654) BV Shares will be issued,

(the exchange ratios described under (a), (b), and (c) hereinafter: the “**Exchange Ratios**”),

the number of BV Shares to be issued to an Investor based on the Exchange Ratios is reflected in a schedule that is attached to this deed as Schedule B;

the number of BV Shares to be issued to tbG based on the tbG Exchange Ratio is reflected in a schedule that is attached to this deed as Schedule C;

#### **Share Issue.**

- (vi) on the twelfth day of September two thousand and fourteen the general meeting of the Company resolved to (i) cancel the Foundation Share of the Foundation by the execution of this deed of issue, (ii) in conformity with the Exchange Ratios, to issue:
  - (a) to Little one hundred and fifty-one thousand and eighty (151,080) BV Shares, numbered 2 up to and including 151,081 (the “**Little Shares**”), against contribution of all AG Shares held by Little as set forth in Schedule A (the “**Contribution Shares Little**”) (the “**Contribution Little**”);
  - (b) to DKFZ twenty-eight thousand and one (28,001) BV Shares, numbered 151,082 up to and including 179,082 (the “**DKFZ Shares**”), against contribution of all AG shares held by DKFZ as set forth in Schedule A (the “**Contribution Shares DKFZ**”) (the “**Contribution DKFZ**”);
  - (c) to AGUTH five hundred and fifty-four thousand eight hundred and twelve (554,812) BV Shares, numbered 179,083 up to and including 733,894 (the “**AGUTH Shares**”), against contribution of all AG Shares held by AGUTH as set forth in Schedule A (the “**Contribution Shares AGUTH**”) (the “**Contribution AGUTH**”);
  - (d) to KfW three hundred and thirty-five thousand two hundred and seventy-six (335,276) BV Shares, numbered 733,895 up to and including 1,069,170 (the “**KfW Shares**”), against contribution of all AG Shares held by KfW as set forth in Schedule A (the “**Contribution Shares KfW**”) (the “**Contribution KfW**”);
  - (e) to SGR four million five hundred and forty-eight thousand six hundred and eighty-two (4,548,682) BV Shares, numbered 8,863,931 up to and including 13,412,612 (the “**SGR Shares**”), against contribution of all AG Shares held by SGR as set forth in Schedule A (the “**Contribution Shares SGR**”) (the “**Contribution SGR**”);
  - (f) to BMI one million four hundred and sixty one thousand five hundred and ninety-five (1,461,595) BV Shares, numbered 1,069,171 up to and including 2,530,765 (the “**BMI Shares**”), against contribution of all AG Shares held by BMI as set forth in Schedule A (the “**Contribution Shares BMI**”) (the “**Contribution BMI**”);
  - (g) to OrbiMed Associates forty-five thousand one hundred and forty-eight (45,148) BV Shares, numbered 7,357,380 up to and including 7,402,527 (the “**OrbiMed Associates Shares**”), against contribution of all AG Shares held by OrbiMed Associates as set forth in Schedule A (the “**Contribution Shares OrbiMed Associates**”) (the “**Contribution OrbiMed Associates**”);

- (h) to OrbiMed Private Investments four million eight hundred and twenty-six thousand six hundred and fourteen (4,826,614) BV Shares, numbered 2,530,766 up to and including 7,357,379 (the “**OrbiMed Private Investments Shares**”), against contribution of all AG Shares held by OrbiMed Private Investments as set forth in Schedule A (the “**Contribution Shares OrbiMed Private Investments**”) (the “**Contribution OrbiMed Private Investments**”);
- (i) to LSP one million four hundred and sixty-one thousand four hundred and three (1,461,403) BV Shares, numbered 7,402,528 up to and including 8,863,930 (the “**LSP Shares**”), against contribution of all AG Shares held by LSP as set forth in Schedule A (the “**Contribution Shares LSP**”) (the “**Contribution LSP**”); and
- (j) to Novo Nordisk two million two hundred and seventy one thousand one hundred and fifty-seven (2,271,157) BV Shares, numbered 13,412,613 up to and including 15,683,769 (the “**Novo Nordisk Shares**”), against contribution of all AG Shares held by Novo Nordisk as set forth in Schedule A (the “**Contribution Shares Novo Nordisk**”) (the “**Contribution Novo Nordisk**”),

and (iii) in conformity with the tbg Exchange Ratio, to issue to tbg three hundred thousand and four hundred (300,400) BV Shares, numbered 15,683,770 up to and including 15,984,169 (the “**tbg Shares**”), against contribution of all AG Shares held by tbg as set forth in Schedule A (the “**Contribution Shares tbg**”) (the “**Contribution tbg**”);

(the “**Shareholder Resolution**”);

(the Little Shares, the DKFZ Shares, the AGUTH Shares, the KfW Shares, the tbg Shares, the SGR Shares, the BMI Shares, the OrbiMed Associates Shares, the OrbiMed Private Investments Shares, the LSP Shares, and the Novo Nordisk Shares, hereinafter together: the “**Shares**”);

(the Contribution Little, the Contribution DKFZ, the Contribution AGUTH, the Contribution KfW, the Contribution tbg, the Contribution SGR, the Contribution BMI, the Contribution OrbiMed Associates, the Contribution OrbiMed Private Investments, the Contribution LSP, the Contribution Novo Nordisk, hereinafter together: the “**Contributions**”);

#### **Cancellation Foundation Share.**

- (vii) pursuant to the Shareholder Resolution, the Foundation Share held by the Foundation is cancelled upon the execution of this deed;

#### **Description.**

- (viii) the management board of the Company prepared a description referred to in section 2:204b in conjunction with section 2:204a Dutch Civil Code relating to the Contributions (the “**Contribution Description**”), which Contribution Description is attached to this deed;

#### **Approval contribution in kind.**

- (ix) with respect to the issue of the BV Shares described under recital (vi) above, the general meeting of the Company resolved to approve the entering by the Company into the agreement contained in this deed and the issue of the BV Shares contained in this deed in conformity with section 2:204 Dutch Civil Code, on the twelfth day of September two thousand and fourteen by way of the Shareholder Resolution;
- (x) pursuant to article 3.4 of the articles of association of the Company a shareholder has no pre-emptive rights upon an issue of shares,

**IT IS HEREBY AGREED AND CONFIRMED AS FOLLOWS:**

**Issue Little.**

**Article 1.**

- 1.1. Little hereby agrees to subscribe for, and the Company hereby agrees to issue to Little, the Little Shares. In consideration for the issue of the Little Shares and in order to fulfil his obligation to fully pay up the Little Shares, Little hereby agrees to contribute and transfer the Contribution Shares Little to the Company.
- 1.2. In accordance with the provisions of section 2:196 Dutch Civil Code, the Shareholder Resolution to issue the Shares and the agreement in article 1.1, the Company hereby issues to Little the Little Shares, under the obligation for Little to make the Contribution Little to pay-up the Little Shares.
- 1.3. Little accepts the Little Shares under the obligation referred to under 1.2.
- 1.4. The value of the Contribution Little appears from the Contribution Description. The Little Shares will be fully paid up by way of the Contribution Little. To the extent the value of the Contribution Little exceeds the aggregate nominal value of the Little Shares, such excess value shall be regarded as (non-stipulated) share premium ("*niet-bedongen agio*").
- 1.5. The transfer of the Contribution Shares Little by Little to the Company shall be effectuated forthwith in accordance with the laws of Germany and the Contribution Shares Little shall be for the account of the Company as per the date hereof.

**Issue DKFZ.**

**Article 2.**

- 2.1. DKFZ hereby agrees to subscribe for, and the Company hereby agrees to issue to DKFZ, the DKFZ Shares. In consideration for the issue of the DKFZ Shares and in order to fulfil his obligation to fully pay up the DKFZ Shares, DKFZ hereby agrees to contribute and transfer the Contribution Shares DKFZ to the Company.
- 2.2. In accordance with the provisions of section 2:196 Dutch Civil Code, the Shareholders Resolution to issue the Shares and the agreement in article 2.1, the Company hereby issues to DKFZ the DKFZ Shares, under the obligation for DKFZ to make the Contribution DKFZ to pay-up the DKFZ Shares.
- 2.3. DKFZ accepts the DKFZ Shares under the obligation referred to under 2.2.
- 2.4. The value of the Contribution DKFZ appears from the Contribution Description. The DKFZ Shares will be fully paid up by way of the Contribution DKFZ. To the extent the value of the Contribution DKFZ exceeds the aggregate nominal value of the DKFZ Shares, such excess value shall be regarded as (non-stipulated) share premium ("*niet-bedongen agio*").
- 2.5. The transfer of the Contribution Shares DKFZ by DKFZ to the Company shall be effectuated forthwith in accordance with the laws of Germany and the Contribution Shares DKFZ shall be for the account of the Company as per the date hereof.

### **Issue AGUTH.**

#### **Article 3.**

- 3.1. AGUTH hereby agrees to subscribe for, and the Company hereby agrees to issue to AGUTH, the AGUTH Shares. In consideration for the issue of the AGUTH Shares and in order to fulfil his obligation to fully pay up the AGUTH Shares, AGUTH hereby agrees to contribute and transfer the Contribution Shares AGUTH to the Company.
- 3.2. In accordance with the provisions of section 2:196 Dutch Civil Code, the Shareholders Resolution to issue the Shares and the agreement in article 3.1, the Company hereby issues to AGUTH the AGUTH Shares, under the obligation for AGUTH to make the Contribution AGUTH to pay-up the AGUTH Shares.
- 3.3. AGUTH accepts the AGUTH Shares under the obligation referred to under 3.2.
- 3.4. The value of the Contribution AGUTH appears from the Contribution Description. The AGUTH Shares will be fully paid up by way of the Contribution AGUTH. To the extent the value of the Contribution AGUTH exceeds the aggregate nominal value of the AGUTH Shares, such excess value shall be regarded as (non-stipulated) share premium ("*niet-bedongen agio*").
- 3.5. The transfer of the Contribution Shares AGUTH by AGUTH to the Company shall be effectuated forthwith in accordance with the laws of Germany and the Contribution Shares AGUTH shall be for the account of the Company as per the date hereof.

### **Issue KfW.**

#### **Article 4.**

- 4.1. KfW hereby agrees to subscribe for, and the Company hereby agrees to issue to KfW, the KfW Shares. In consideration for the issue of the KfW Shares and in order to fulfil his obligation to fully pay up the KfW Shares, KfW hereby agrees to contribute and transfer the Contribution Shares KfW to the Company.
- 4.2. In accordance with the provisions of section 2:196 Dutch Civil Code, the Shareholders Resolution to issue the Shares and the agreement in article 4.1, the Company hereby issues to KfW the KfW Shares, under the obligation for KfW to make the Contribution KfW to pay-up the KfW Shares.
- 4.3. KfW accepts the KfW Shares under the obligation referred to under 4.2.
- 4.4. The value of the Contribution KfW appears from the Contribution Description. The KfW Shares will be fully paid up by way of the Contribution KfW. To the extent the value of the Contribution KfW exceeds the aggregate nominal value of the KfW Shares, such excess value shall be regarded as (non-stipulated) share premium ("*niet-bedongen agio*").
- 4.5. The transfer of the Contribution Shares KfW by KfW to the Company shall be effectuated forthwith in accordance with the laws of Germany and the Contribution Shares KfW shall be for the account of the Company as per the date hereof.

### **Issue tbg.**

#### **Article 5.**

- 5.1. tbg hereby agrees to subscribe for, and the Company hereby agrees to issue to tbg, the tbg Shares. In consideration for the issue of the tbg Shares and in order to fulfil his obligation to fully pay up the tbg Shares, tbg hereby agrees to contribute and transfer the Contribution Shares tbg to the Company.

- 5.2. In accordance with the provisions of section 2:196 Dutch Civil Code, the Shareholders Resolution to issue the Shares and the agreement in article 5.1, the Company hereby issues to tbg the tbg Shares, under the obligation for tbg to make the Contribution tbg to pay-up the tbg Shares.
- 5.3. tbg accepts the tbg Shares under the obligation referred to under 5.2.
- 5.4. The value of the Contribution tbg appears from the Contribution Description. The tbg Shares will be fully paid up by way of the Contribution tbg. To the extent the value of the Contribution tbg exceeds the aggregate nominal value of the tbg Shares, such excess value shall be regarded as (non-stipulated) share premium (“*niet-bedongen agio*”).
- 5.5. The transfer of the Contribution Shares tbg by tbg to the Company shall be effectuated forthwith in accordance with the laws of Germany and the Contribution Shares tbg shall be for the account of the Company as per the date hereof.

#### **Issue SGR.**

#### **Article 6.**

- 6.1. SGR hereby agrees to subscribe for, and the Company hereby agrees to issue to SGR, the SGR Shares. In consideration for the issue of the SGR Shares and in order to fulfil his obligation to fully pay up the SGR Shares, SGR hereby agrees to contribute and transfer the Contribution Shares SGR to the Company.
- 6.2. In accordance with the provisions of section 2:196 Dutch Civil Code, the Shareholders Resolution to issue the Shares and the agreement in article 6.1, the Company hereby issues to SGR the SGR Shares, under the obligation for SGR to make the Contribution SGR to pay-up the SGR Shares.
- 6.3. SGR accepts the SGR Shares under the obligation referred to under 6.2.
- 6.4. The value of the Contribution SGR appears from the Contribution Description. The SGR Shares will be fully paid up by way of the Contribution SGR. To the extent the value of the Contribution SGR exceeds the aggregate nominal value of the SGR Shares, such excess value shall be regarded as (non-stipulated) share premium (“*niet-bedongen agio*”).
- 6.5. The transfer of the Contribution Shares SGR by SGR to the Company shall be effectuated forthwith in accordance with the laws of Germany and the Contribution Shares SGR shall be for the account of the Company as per the date hereof.

#### **Issue BMI.**

#### **Article 7.**

- 7.1. BMI hereby agrees to subscribe for, and the Company hereby agrees to issue to BMI, the BMI Shares. In consideration for the issue of the BMI Shares and in order to fulfil his obligation to fully pay up the BMI Shares, BMI hereby agrees to contribute and transfer the Contribution Shares BMI to the Company.
- 7.2. In accordance with the provisions of section 2:196 Dutch Civil Code, the Shareholders Resolution to issue the Shares and the agreement in article 7.1, the Company hereby issues to BMI the BMI Shares, under the obligation for BMI to make the Contribution BMI to pay-up the BMI Shares.
- 7.3. BMI accepts the BMI Shares under the obligation referred to under 7.2.

- 7.4. The value of the Contribution BMI appears from the Contribution Description. The BMI Shares will be fully paid up by way of the Contribution BMI. To the extent the value of the Contribution BMI exceeds the aggregate nominal value of the BMI Shares, such excess value shall be regarded as (non-stipulated) share premium ("*niet-bedongen agio*").
- 7.5. The transfer of the Contribution Shares BMI by BMI to the Company shall be effectuated forthwith in accordance with the laws of Germany and the Contribution Shares BMI shall be for the account of the Company as per the date hereof.

#### **Issue OrbiMed Associates.**

##### **Article 8.**

- 8.1. OrbiMed Associates hereby agrees to subscribe for, and the Company hereby agrees to issue to OrbiMed Associates, the OrbiMed Associates Shares. In consideration for the issue of the OrbiMed Associates Shares and in order to fulfil his obligation to fully pay up the OrbiMed Associates Shares, OrbiMed Associates hereby agrees to contribute and transfer the Contribution Shares OrbiMed Associates to the Company.
- 8.2. In accordance with the provisions of section 2:196 Dutch Civil Code, the Shareholders Resolution to issue the Shares and the agreement in article 8.1, the Company hereby issues to OrbiMed Associates the OrbiMed Associates Shares, under the obligation for OrbiMed Associates to make the Contribution OrbiMed Associates to pay-up the OrbiMed Associates Shares.
- 8.3. OrbiMed Associates accepts the OrbiMed Associates Shares under the obligation referred to under 8.2.
- 8.4. The value of the Contribution OrbiMed Associates appears from the Contribution Description. The OrbiMed Associates Shares will be fully paid up by way of the Contribution OrbiMed Associates. To the extent the value of the Contribution OrbiMed Associates exceeds the aggregate nominal value of the OrbiMed Associates Shares, such excess value shall be regarded as (non-stipulated) share premium ("*niet-bedongen agio*").
- 8.5. The transfer of the Contribution Shares OrbiMed Associates by OrbiMed Associates to the Company shall be effectuated forthwith in accordance with the laws of Germany and the Contribution Shares OrbiMed Associates shall be for the account of the Company as per the date hereof.

#### **Issue OrbiMed Private Investments.**

##### **Article 9.**

- 9.1. OrbiMed Private Investments hereby agrees to subscribe for, and the Company hereby agrees to issue to OrbiMed Private Investments, the OrbiMed Private Investments Shares. In consideration for the issue of the OrbiMed Private Investments Shares and in order to fulfil his obligation to fully pay up the OrbiMed Private Investments Shares, OrbiMed Private Investments hereby agrees to contribute and transfer the Contribution Shares OrbiMed Private Investments to the Company.
- 9.2. In accordance with the provisions of section 2:196 Dutch Civil Code, the Shareholders Resolution to issue the Shares and the agreement in article 9.1, the Company hereby issues to OrbiMed Private Investments the OrbiMed Private Investments Shares, under the obligation for OrbiMed Private Investments to make the Contribution OrbiMed Private Investments to pay-up the OrbiMed Private Investments Shares.

- 9.3. Orbimed Private Investments accepts the Orbimed Private Investments Shares under the obligation referred to under 9.2.
- 9.4. The value of the Contribution Orbimed Private Investments appears from the Contribution Description. The Orbimed Private Investments Shares will be fully paid up by way of the Contribution Orbimed Private Investments. To the extent the value of the Contribution Orbimed Private Investments exceeds the aggregate nominal value of the Orbimed Private Investments Shares, such excess value shall be regarded as (non-stipulated) share premium (“*niet-bedongen agio*”).
- 9.5. The transfer of the Contribution Shares Orbimed Private Investments by Orbimed Private Investments to the Company shall be effectuated forthwith in accordance with the laws of Germany and the Contribution Shares Orbimed Private Investments shall be for the account of the Company as per the date hereof.

#### **Issue LSP.**

#### **Article 10.**

- 10.1. LSP hereby agrees to subscribe for, and the Company hereby agrees to issue to LSP, the LSP Shares. In consideration for the issue of the LSP Shares and in order to fulfil his obligation to fully pay up the LSP Shares, LSP hereby agrees to contribute and transfer the Contribution Shares LSP to the Company.
- 10.2. In accordance with the provisions of section 2:196 Dutch Civil Code, the Shareholders Resolution to issue the Shares and the agreement in article 10.1, the Company hereby issues to LSP the LSP Shares, under the obligation for LSP to make the Contribution LSP to pay-up the LSP Shares.
- 10.3. LSP accepts the LSP Shares under the obligation referred to under 10.2.
- 10.4. The value of the Contribution LSP appears from the Contribution Description. The LSP Shares will be fully paid up by way of the Contribution LSP. To the extent the value of the Contribution LSP exceeds the aggregate nominal value of the LSP Shares, such excess value shall be regarded as (non-stipulated) share premium (“*niet-bedongen agio*”).
- 10.5. The transfer of the Contribution Shares LSP by LSP to the Company shall be effectuated forthwith in accordance with the laws of Germany and the Contribution Shares LSP shall be for the account of the Company as per the date hereof.

#### **Issue Novo Nordisk.**

#### **Article 11.**

- 11.1. Novo Nordisk hereby agrees to subscribe for, and the Company hereby agrees to issue to Novo Nordisk, the Novo Nordisk Shares. In consideration for the issue of the Novo Nordisk Shares and in order to fulfil his obligation to fully pay up the Novo Nordisk Shares, Novo Nordisk hereby agrees to contribute and transfer the Contribution Shares Novo Nordisk to the Company.
- 11.2. In accordance with the provisions of section 2:196 Dutch Civil Code, the Shareholders Resolution to issue the Shares and the agreement in article 11.1, the Company hereby issues to Novo Nordisk the Novo Nordisk Shares, under the obligation for Novo Nordisk to make the Contribution Novo Nordisk to pay-up the Novo Nordisk Shares.

- 11.3. Novo Nordisk accepts the Novo Nordisk Shares under the obligation referred to under 11.2.
- 11.4. The value of the Contribution Novo Nordisk appears from the Contribution Description. The Novo Nordisk Shares will be fully paid up by way of the Contribution Novo Nordisk. To the extent the value of the Contribution Novo Nordisk exceeds the aggregate nominal value of the Novo Nordisk Shares, such excess value shall be regarded as (non-stipulated) share premium (“*niet-bedongen agio*”).
- 11.5. The transfer of the Contribution Shares Novo Nordisk by Novo Nordisk to the Company shall be effectuated forthwith in accordance with the laws of Germany and the Contribution Shares Novo Nordisk shall be for the account of the Company as per the date hereof.

## **Representations and Warranties.**

### **Article 12.**

- 12.1. The Company represents and warrants to each of the Investors as of the date of the execution of this deed as follows:
- (a) the Company is a private company with limited liability duly organised and validly existing under the laws of the Netherlands;
  - (b) immediately prior to the execution of this deed, the issued share capital of the Company consists of the Foundation Share;
  - (c) the Company has the full power and authority to enter into and perform this agreement contained in this deed and any other documents to be executed by the Company following the agreement contained in this deed, which, when executed, will constitute valid and binding obligations on the Company, in accordance with their respective terms and conditions;
  - (d) the Company has taken all corporate action required by it to authorise it to perform in accordance with the agreement contained in this deed and any other documents to be executed by it under the agreement contained in this deed.
- 12.2. Each Investor, save for Little in respect of (a) and (c) below, hereby represents and warrants to each of the Company and the other Investors as of the date of the execution of this deed that:
- (a) the respective Investor validly exists and is a legal entity duly incorporated under the laws of its jurisdiction of incorporation;
  - (b) the respective Investor has the full power and authority to enter into and perform the agreement contained in this deed and any other documents to be executed by the respective Investor under the agreement contained in this deed, which, when executed, will constitute valid and binding obligations on the respective Investor, in accordance with their respective terms and conditions;
  - (c) the respective Investor has taken all corporate action required by it to authorise it to perform in accordance with the agreement contained in this deed and any other documents to be executed by it under the agreement contained in this deed;
  - (d) the respective Investor is fully entitled to the AG Shares held by it, as set forth in Schedule A, such AG Shares are fully paid-up, they are encumbered neither with a right of pledge nor with a right of usufruct and are not attached.



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**Miscellaneous.**

**Article 13.**

- 13.1. The Company hereby agrees to forthwith register the issue of the Shares and the relevant details of the Investors in its register of shareholders and register the issue with the Dutch Trade Register (*handelsregister*) at the Chamber of Commerce (*Kamer van Koophandel*).
- 13.2. Each of the parties waives any right to dissolve the agreement contained in this deed.
- 13.3. All costs and expenses connected with this deed will be for the account of the Company.
- 13.4. The issuance of the Shares and the agreement contained in this deed are subject to the laws of the Netherlands.
- 13.5. All disputes arising in connection with the agreement laid down in this deed, including disputes concerning the existence and validity thereof, shall be resolved by the courts in Amsterdam, the Netherlands.
- 13.6. With reference to the Rules of Professional Conduct (*Verordening beroeps- en gedragsregels*) of the Royal Dutch Organisation of Civil Law Notaries (*Koninklijke Notariële Beroepsorganisatie*) all Parties expressly agree that (i) De Brauw Blackstone Westbroek N.V. acts as counsel to the Company in connection with, or acts as counsel for or on behalf of the Company in the event of any dispute relating to, this agreement or any related agreement, and that (ii) a civil law notary (*notaris*) of De Brauw Blackstone Westbroek N.V. executes deeds connected with this agreement or any related agreement.

Finally, the person appearing declares that through the execution of this deed (i) the condition precedent as included in the Shareholder Resolution, being the execution of this deed of issue, is fulfilled by means of the execution of this deed, as a consequence of which the Foundation Share is cancelled, and (ii) the Shares are issued to the Investors.

A photocopy of the Shareholder Resolution is attached to this deed.

Sufficient proof of the existence of the powers of attorney has been given to me, notaris.

The written powers of attorney to the persons appearing are evidenced by twelve (12) private instruments, (photo-)copies of which are attached to this deed.

In witness whereof the original of this deed which will be retained by me, notaris, is executed in Amsterdam, on the date first mentioned in the head of this deed.

Having conveyed the substance of the deed and given an explanation thereto and having pointed out the consequences arising from the contents of the deed for the parties or one or more of them and following the statement of the persons appearing that they have taken note of the contents of the deed and agree with the partial reading thereof, this deed is signed, immediately after reading those parts of the deed which the law requires to be read, by the persons appearing, who are known to me, notaris, and by me.

**Deed of Issue of Underwritten Shares**

*relating to*

**the issue of 8,000,000 registered common shares  
in the share capital of Affimed N.V.**

*Issuer*

**Affimed N.V.**

*Dated 17 September 2014*

## Deed of Issue of Common Shares in the share capital of Affirmed N.V.

### THE UNDERSIGNED:

**Affirmed N.V.**, a limited liability company (*naamloze vennootschap*) organised under the laws of the Netherlands, with corporate seat in Amsterdam, the Netherlands, and address at: D-69120 Heidelberg, Germany, Im Neuenheimer Feld 582, as this company will be named upon the execution of the Notarial Deed of Conversion (as defined below) (the “**Issuer**”),

### WHEREAS:

- (A) The Issuer intends to offer and issue common shares in the share capital of the Issuer (the “**Offer Shares**”) in an offering (the “**Offering**”) as described in the registration statement on Form F-1 with registration number 333-197097, as amended. In connection with the Offering, the Issuer has applied for admission to listing and trading of the Shares on the NASDAQ Stock Market.
- (B) On 12 September 2014, the Issuer entered into an underwriting agreement (the “**Underwriting Agreement**”) with Jefferies LLC and Leerink Partners LLC as representatives of several underwriters (the “**Underwriters**”) named in a schedule to the Underwriting Agreement (and in such capacity jointly referred to as the “**Representatives**”), in respect of the offer and sale of shares in the share capital of the Issuer (the “**Shares**”) and granting of option rights to the Underwriters to acquire Shares.
- (C) By its resolution adopted on 12 September 2014, the management board of the Issuer (the “**Management Board**”) resolved to proceed with the Offering and determined the number of Offer Shares to be issued at 8,000,000 (the “**Underwritten Shares**”) for a price of USD 7.00 per Offer Share (the “**Offer Price**”). The Underwriters will pay an aggregate amount of USD 56,000,000 for the Underwritten Shares (the “**Aggregate Purchase Price**”). With due observance of the Underwriting Agreement the Issuer will set-off its debt to pay the cost and expenses to the Underwriters against its claim on the Underwriters to pay up the Underwritten shares in the aggregate amount of USD 3,920,000 (the “**Set-off**”), resulting in a payment by the Underwriters of USD 6.51 per Underwritten Share, being in aggregate USD 52,080,000, into the bank account of the Company.
- (D) On 12 September 2014 the general meeting of the Issuer resolved to issue the Underwritten Shares for the Offer Price to Cede & Co as nominee for the DTC (both as defined below) and to exclude the pre-emptive rights pertaining to the Underwritten Shares, under the condition precedent of and with effect from the execution of the Notarial Deed of Conversion (as defined in the GM Resolution) (the “**GM Resolution**”), which issue of the Underwritten Shares will be implemented by the execution of this deed of issue of the Underwritten Shares.

- (E) Pursuant to the Underwriting Agreement, delivery of the Underwritten Shares shall be made to the Representatives through the facilities of the Depositary Trust Company, a limited purpose trust company organised under New York State banking law (“**DTC**”) unless the Representatives shall otherwise instruct. The Issuer did not receive such instruction.
- (F) In order to include the Underwritten Shares in the electronic book-entry delivery and settlement system of DTC, the Underwritten Shares will be issued to Cede & Co as nominee for DTC (“**Cede & Co**”).
- (G) Payment of the Aggregate Purchase Price was made by the Representatives in the account designated by the Issuer in accordance with the Underwriting Agreement.

**NOW HEREBY CONFIRMS AS FOLLOWS:**

**1 ISSUE OF THE SHARES**

- 1.1 In accordance with section 2:86c Dutch Civil Code and the GM Resolution, the Issuer hereby issues and delivers the Underwritten Shares to Cede & Co, acting as nominee for the DTC, Cede & Co accepts the Underwritten Shares and shall credit the Representatives in the book-entry system of DTC as holders of the Underwritten Shares, each of the Representatives for the respective amounts of Underwritten Shares in accordance with and specified in the Underwriting Agreement, under the condition precedent of and with effect from the execution of the Notarial Deed of Conversion.
- 1.2 The Issuer shall register the Underwritten Shares in the share register in the name of Cede & Co.

**2 PAYMENT AND COSTS**

- 2.1 The Issuer hereby acknowledges receipt of the Aggregate Purchase Price in accordance with the terms and conditions set forth in the Underwriting Agreement and the Set-off, and confirms that as a result thereof the Underwritten Shares have been fully paid up. If and to the extent that the Aggregate Purchase Price of the Underwritten Shares exceeds the total par value of the Underwritten Shares, such excess value will be regarded as share premium and shall be added to the general share premium reserve of the Issuer.
- 2.2 The Issuer allows the payment of the Aggregate Purchase Price to be made in a foreign currency in accordance with article 3.3.4 of the Issuer’s articles of association and shall deposit with the Dutch trade register a bank certificate, as referred to in section 2:93a subsection 6 of the Dutch Civil Code within two weeks after the payment.
- 2.3 The costs associated with this deed shall be borne by the Issuer.

**3 MISCELLANEOUS**

- 3.1 This deed shall be exclusively governed by and construed in accordance with the laws of the Netherlands.
- 3.2 Any disputes arising from or in connection with this deed shall be submitted to the jurisdiction of the competent court in Amsterdam, the Netherlands which jurisdiction shall be exclusive.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

**EXECUTED ON 17 SEPTEMBER 2014 BY:**

**ISSUER**

/s/ A. Hoess

*Name:* A. Hoess

*Title:* Chief Executive Officer

/s/ F.H.M. Fischer

*Name:* F.H.M. Fischer

*Title:* Chief Financial Officer

[Signature page to Deed of Issue of Underwritten Shares]

Advocaten  
Notarissen  
Belastingadviseurs

Claude Debussylaan 80  
P.O. Box 75084  
1070 AB Amsterdam

T +31 20 577 1771  
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To Affimed N.V.  
Im Neuenheimer Feld 582 0  
D-69120 Heidelberg

Date 17 September 2014

J.J.J. Schutte  
Advocaat

Our ref. M21553265/1/20599951/tmf

Dear Sir/Madam,

**Registration with the US Securities and Exchange Commission of  
ordinary 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**

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

**3.1** A copy of the Registration Statement.

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.

**3.2** A copy of:

- (a) the Issuer's deed of incorporation, as provided by the Chamber of Commerce (*Kamer van Koophandel*);
- (b) the Trade Register Extract; and
- (c) the Shareholders Register.
- (d) the Board Certificate.
- (e) each Corporate Resolution;
- (f) the Underwriting Agreement;
- (g) the Deed of Issue; and
- (h) the Deed of Conversion, containing the Issuer's articles of association as in force at the time of the issue of the Registration Shares.

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**

For the purpose of this opinion, I have made the following assumptions:

**4.1**

- (a) Each copy document conforms to the original and each original is genuine and complete.
- (b) Each signature is the genuine signature of the individual concerned.
- (c) The Registration Statement has been or will have been filed with the SEC in the form referred to in this opinion.

**4.2** 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 the assumptions made in paragraphs 3 and 4, I am of the following opinion:

**5.1** The Registration Shares have been validly issued and are fully paid and nonassessable<sup>1</sup>.

## **6 Reliance**

**6.1** This opinion is an exhibit to the Registration Statement and may be relied upon for the purpose of the Registration. 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 and may not be relied upon for any purpose other than the Registration.

**6.2** Each person relying on this opinion agrees, in so relying, that only De Brauw shall have any liability in connection with this opinion, that the agreement in this paragraph 6.2 and all liability and other matters relating to this opinion shall be governed exclusively by Dutch law and that the Dutch courts shall have exclusive jurisdiction to settle any dispute relating to this opinion.

**6.3** The Issuer may:

- (a) file this opinion as an exhibit to the Registration Statement; and
- (b) refer to De Brauw giving this opinion under the heading “Legal Matters” in the prospectus 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 Section 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/ J.J.J. Schutte

J.J.J. Schutte

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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.



## Annex 1 – Definitions

In this opinion:

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

“**Corporate Resolution**” means each of the Shareholders’ Resolutions, each of the Managing Board Resolutions, and the Pricing Committee Resolution.

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

“**Deed of Conversion**” means the deed of conversion and amendment of the articles of association dated 17 September 2014, providing for the conversion of the Issuer into a limited liability company and amendment of the articles of association.

“**Deed of Issue**” means the deed of issue dated 17 September 2014 providing for the issue of 8,000,000 Registration Shares; and

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

“**Issuer**” means Affimed N.V., a public company with limited liability with corporate seat in Amsterdam, the Netherlands.

“**Managing Board Resolution**” means each of:

- (a) A written resolution by the Issuer’s managing board dated 17 July 2014, to:
  - (i) publish the Registration Statement;
  - (ii) enter into to Underwriting Agreement; and
  - (iii) appoint a pricing committee (the “**Pricing Committee**”) and request the Pricing Committee to advise the Issuer’s managing board on (i) the decision whether or not to proceed with the Offer, (ii) the number of Registration Shares to be issued and (iii) the issue price for the Registration Shares (“**Managing Board Resolution A**”).
- (b) A written resolution by the Issuer’s managing board dated 12 September 2014, to:
  - (iv) resolve to proceed with the Offer;

- (v) determine the number of Registration Shares to be issued; and
- (vi) determine the issue price for the Registration Shares (“**Managing Board Resolution B**”).

“**Offer**”: means the offer by the Issuer of the Registration Shares and includes, where the context permits, the issue of the Registration Shares.

“**Pricing Committee Resolution**” means the written resolution of the Pricing Committee dated 12 September 2014, to (i) advise the Issuer’s managing board to resolve to proceed with the Offer, (ii) advise the Issuer’s managing board on the number of Registration Shares to be issued and (iii) advise the Issuer’s managing board on the issue price for the Registration Shares.

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

“**Registration Shares**” means 8,000,000 common shares (*gewone aandelen*), nominal value EUR 0.01 each, in the Issuer’s capital, issued by the Issuer pursuant to the Corporate Resolutions.

“**Registration Statement**” means the Issuer’s registration statement on form F-1 (Registration No. 333-197097) originally filed with the SEC on 27 June 2014 as amended as of its effective date (excluding any documents incorporated by reference in it or 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.

“**Shareholders Register**” means the Issuer’s shareholders register.

“**Shareholder Resolution**” means each of:

- (a) a written resolution of the Issuer’s general meeting of shareholders dated 17 July 2014 to approve Managing Board Resolution A.
- (b) a written resolution of the Issuer’s general meeting of shareholders dated 12 September 2014, to:
  - (i) enter into the Deed of Conversion;

- 
- (ii) issue the Registration Shares, under the condition of execution of the Deed of Conversion, and to exclude all pre-emption rights (*voorkeursrechten*) in respect thereof; and
  - (iii) grant an option for a number of Registration Shares to be issued at the request of the Underwriters, in addition to the number of Registration Shares referred to in (ii), under the condition of execution of the Deed of Conversion, and to exclude all pre-emption rights (*voorkeursrechten*) in respect thereof.

**“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 17 September 2014.

**“Underwriting Agreement”** means the underwriting agreement dated 12 September 2014 between the Issuer and the underwriters named in it.



**BOARD CERTIFICATE**  
**FROM THE MANAGING BOARD OF AFFIMED N.V.**  
**DATED 17 SEPTEMBER 2014**

**THE UNDERSIGNED:**

1. **Adolf Hoess**, born in Hausham, Germany, on 23 December 1961; and
  2. **Florian Heinz Martin Fischer**, born in München, Germany, on 3 January 1968,
  3. **Jens-Peter Marshner**, born in Zeulenroda, Germany, on 29 November 1962,
- acting in their capacity as managing directors of **Affimed N.V.**, a limited liability company with corporate seat in Amsterdam, the Netherlands and having its principal office in Heidelberg, Germany (the “**Issuer**”),

**BACKGROUND:**

- (i) The Issuer intends to seek the Registration with the SEC of the Registration Shares.
- (j) 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**”).
- (k) This Board Certificate is the “Board Certificate” as defined in the Legal Opinion.
- (l) The undersigned make the certifications in this Board Certificate after due and careful consideration and after having made all necessary enquiries.

**7 Construction**

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

**8 CERTIFICATION:**

Each undersigned certifies the following.

**8.1 Authenticity**

- (a) As at the date of this Board Certificate:
  - (i) all information regarding the Issuer registered or on file with the Dutch Trade Register; and
  - (ii) all information in the Shareholders Register;is correct, complete and up to date.

## 8.2 Solvency

The Issuer is not subject to any bankruptcy proceedings, suspension of payments, emergency measures, other insolvency proceedings as defined in Article 2(a) of Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings or other laws relating to or affecting the rights of creditors.

## 8.3 Issue

- (a) The maximum number of Registration Shares to be issued will not exceed the maximum number of shares that can be issued pursuant to the Corporate Resolutions.
- (b) An amount of USD 56,000,000 was paid on the Registration Shares in accordance with the Underwriting Agreement and the Deed of Issue, which amount is at least sufficient to pay up the Registration Shares.

## 8.4 Corporate Resolutions

- (a) the undersigned are not aware of any fact or circumstances (including (i) any lack of capacity of any person, (ii) any conflict of interest, (iii) any force (*bedreiging*), fraud (*bedrog*), undue influence (*misbruik van omstandigheden*) or mistake (*dwaling*), and (iv) any amendment or supplement) which had the effect of could have the effect that any Corporate Resolution is not or ceases to be in full force and effect without modification; and
- (b) the undersigned believe that each Corporate Resolution is reasonable and fair and the undersigned are not aware of any claim (whether actual or threatened and including any claim, litigation, arbitration or administrative or regulatory proceedings) to the contrary.

## 8.5 General

No undersigned is aware of:

- (c) 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
- (d) any fact or circumstance which he or she 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.

9     **RELIANCE**

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

10    **IN EVIDENCE WHEREOF:**

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

*(Signature page to follow)*

EXECUTION COPY

/S/ Adolf Hoess

Name: Adolf Hoess  
Title: Chief Executive Officer

/S/ Florian Heinz Martin Fischer

Name: Florian Heinz Martin Fischer  
Title: Chief Financial Officer

/S/ Jens Peter Marschner

Name: Jens-Peter Marshner  
Title:

*(Signature page to board certificate)*