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## **Apportionment of taxable values of Bayer and LANXESS shares according to the ratio of the market capitalizations of Bayer AG and LANXESS AG**

The ratio of the market capitalizations of Bayer AG and LANXESS AG for German tax purposes is 93.71 % to 6.29 %. These market capitalizations were determined from the average of the Xetra closing prices for LANXESS shares on the Frankfurt Stock Exchange on the first day of listing and the following nine trading days, and the average of the Xetra closing prices for Bayer shares, also on the Frankfurt Stock Exchange, on the day before “ex-spin-off” trading began and the preceding nine trading days.

The following notes are only a summary of the tax effects associated with the spin-off of the LANXESS Subgroup on the stockholders, and cannot address the particular situation of any given stockholder. This discussion, therefore, cannot replace tax advice, which takes into account a stockholder’s individual circumstances. Moreover, the discussion is limited to the tax treatment of the spin-off under currently applicable German law. It does not address tax effects under foreign tax law or applicable double tax treaties.

Tax effects on U.S. stockholders are addressed more specifically in Annex 3 to the Spin-Off Report prepared by Bayer AG. While only that description with respect to the situation of U.S. stockholders is determinative, it should be noted here that, although U.S. legal counsel to Bayer Group is unable to issue a “more likely than not” opinion, there may, if a shareholder were to take the position that the spin-off meets the requirements of Section 355 of the Internal Revenue Code, be a “reasonable basis” for this position. Every U.S. stockholder is urged to consult with his or her tax advisor and to disclose the tax treatment to the U.S. tax authorities by filing a Form 8275 Disclosure Statement along with his or her income tax return.

For the stockholders of Bayer AG that are taxable in Germany, the receipt of LANXESS shares does not, in the view of Bayer AG, result in a taxable gain. This view is shared by the tax office (*Finanzamt*) in Leverkusen, which have confirmed in a binding advance ruling the fulfillment of the requirements under Section 15 (1) of the German Transformation Tax Act (“**UmwStG**”) at the level of Bayer AG regarding the application of the provisions set forth below. There is, however, no formal assurance that this view will be shared by the local tax office responsible for the respective stockholder.

If Bayer AG shares are held as part of the assets of a business property, then the spin-off does not result in a taxable gain under Sections 15 (1), 13 (1) UmwStG. The pre-spin-off tax basis for the Bayer shares must be apportioned between the Bayer

AG shares and the LANXESS AG shares after the spin-off. Following consultation with the fiscal authorities responsible for Bayer AG and LANXESS AG, this apportionment must be based on the above-mentioned ratio of the market capitalization of Bayer AG before the spin-off to that of LANXESS AG after the spin-off. For tax purposes, the LANXESS AG shares will be treated as having been purchased for the amount of the tax basis apportioned to such shares (Section 13 (1) UmwStG). On any subsequent sale of Bayer AG or LANXESS AG shares, the taxable capital gain will be computed according to this apportionment of the tax basis.

If Bayer AG shares are held as non-business (private) assets, and the stockholder does not meet the requirements of Section 17 of the German Income Tax Act (“**ESTG**”) (a significant participation, i.e., an equity interest totaling at least one percent within the past 5 years) or Section 23 of the EStG (private sales within the so-called “speculation period” of one year for short-term capital gains), the spin-off will likewise not result in a taxable gain. Following the spin-off, the stockholders will be required to apportion their tax basis in Bayer AG shares between their Bayer AG shares and LANXESS AG shares in accordance with the apportionment ratio described in the preceding paragraph (Section 13 (2) UmwStG). The LANXESS AG shares will be deemed to have been purchased at the amount of the tax basis apportioned to them. According to a recently issued opinion of the fiscal authorities, a new twelve-month holding period will begin on the date of entry of the spin-off in the Bayer AG commercial register (January 28, 2005) for all LANXESS AG shares acquired in the spin-off, irrespective of the date on which the Bayer AG shares were purchased. The sale of LANXESS shares prior to January 29, 2006 may therefore result in a taxable short-term capital gain. This will be the difference between the selling price and the tax basis apportioned to the LANXESS shares in accordance with Section 13 (2) UmwStG as described above.

In the view of the fiscal authorities, a new speculation period for the LANXESS shares will begin even if the Bayer AG shares are held as non-business (private) assets and their disposal is not otherwise taxable (i.e. there is no significant participation and the speculation period (minimum holding period) has already expired). In such cases, the tax basis of the LANXESS shares equals the portion of the fair market value of the Bayer AG shares at the spin-off date (“gemeiner Wert”) that is attributable to the LANXESS shares. In the opinion of Bayer AG that portion is to be calculated using the apportionment ratio described above.

Bayer AG believes the term of any so-called speculation period for short-term capital gains with respect to Bayer AG shares will be unaffected by the spin-off.

If any Bayer AG shares are tainted by a so-called blocking amount (*Sperrbetrag*) within the meaning of Section 50c of the EStG, in the view of Bayer AG a portion of this amount will also be allocated to the LANXESS AG shares based on the apportionment ratio described above, according to Section 13 (4) UmwStG.

If any Bayer AG shares are held by persons subject to limited taxability in Germany (i.e., taxable foreign residents), then the spin-off will also be tax neutral for such persons under German tax law. If a disposal of the shares is subject to tax in Germany (i.e., the shares are held as part of the assets of a German permanent establishment), then the principles described above will apply. If, in connection with

the allotment of shares, stockholders have received fractional rights to LANXESS AG shares and sell them under the offsetting arrangements announced, then in the opinion of Bayer AG such sales will be treated for tax purposes as sales of LANXESS shares.

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