

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

FORM 10-Q

(Mark one)

QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934
For the quarterly period ended **September 30, 2021**

OR

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934
For the transition period from _____ to _____

Commission file number **001-38373**



Transocean Ltd.

(Exact name of registrant as specified in its charter)

Switzerland

(State or other jurisdiction of incorporation or organization)

98-0599916

(I.R.S. Employer Identification No.)

Turmstrasse 30

Steinhausen, Switzerland

(Address of principal executive offices)

6312

(Zip Code)

+41 (41) 749-0500

(Registrant's telephone number, including area code)

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading symbol	Name of each exchange on which registered
Shares, CHF 0.10 par value	RIG	New York Stock Exchange
0.50% Exchangeable Senior Bonds due 2023	RIG/23	New York Stock Exchange

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes No

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company" and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer Accelerated filer Non-accelerated filer Smaller reporting company Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes No

As of October 25, 2021, 655,504,841 shares were outstanding.

TRANSOCEAN LTD. AND SUBSIDIARIES
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QUARTER ENDED SEPTEMBER 30, 2021

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ITEM I. FINANCIAL STATEMENTS**TRANSOCEAN LTD. AND SUBSIDIARIES**
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS
(In millions, except per share data)
(Unaudited)

	<u>Three months ended</u> <u>September 30,</u>		<u>Nine months ended</u> <u>September 30,</u>	
	<u>2021</u>	<u>2020</u>	<u>2021</u>	<u>2020</u>
Contract drilling revenues	\$ 626	\$ 773	\$ 1,935	\$ 2,462
Costs and expenses				
Operating and maintenance	398	470	1,267	1,535
Depreciation and amortization	185	190	558	592
General and administrative	40	45	118	133
	623	705	1,943	2,260
Loss on impairment	—	—	—	(597)
Loss on disposal of assets, net	(3)	(64)	(61)	(64)
Operating income (loss)	—	4	(69)	(459)
Other income (expense), net				
Interest income	4	6	11	19
Interest expense, net of amounts capitalized	(110)	(145)	(340)	(458)
Gain on restructuring and retirement of debt	—	449	51	396
Other, net	3	21	26	(23)
	(103)	331	(252)	(66)
Income (loss) before income tax expense (benefit)	(103)	335	(321)	(525)
Income tax expense (benefit)	27	(24)	10	4
Net income (loss)	(130)	359	(331)	(529)
Net income attributable to noncontrolling interest	—	—	1	1
Net income (loss) attributable to controlling interest	\$ (130)	\$ 359	\$ (332)	\$ (530)
Earnings (loss) per share				
Basic	\$ (0.20)	\$ 0.58	\$ (0.53)	\$ (0.86)
Diluted	\$ (0.20)	\$ 0.51	\$ (0.53)	\$ (0.86)
Weighted-average shares outstanding				
Basic	653	616	630	615
Diluted	653	702	630	615

See accompanying notes.

TRANSOCEAN LTD. AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME (LOSS)
(In millions)
(Unaudited)

	Three months ended September 30,		Nine months ended September 30,	
	2021	2020	2021	2020
Net income (loss)	\$ (130)	\$ 359	\$ (331)	\$ (529)
Net income attributable to noncontrolling interest	—	—	1	1
Net income (loss) attributable to controlling interest	(130)	359	(332)	(530)
Components of net periodic benefit costs before reclassifications	—	—	(5)	(9)
Components of net periodic benefit costs reclassified to net income (loss)	3	2	7	6
Other comprehensive income (loss) before income taxes	3	2	2	(3)
Income taxes related to other comprehensive income (loss)	—	—	—	—
Other comprehensive income (loss)	3	2	2	(3)
Other comprehensive income attributable to noncontrolling interest	—	—	—	—
Other comprehensive income (loss) attributable to controlling interest	3	2	2	(3)
Total comprehensive income (loss)	(127)	361	(329)	(532)
Total comprehensive income attributable to noncontrolling interest	—	—	1	1
Total comprehensive income (loss) attributable to controlling interest	\$ (127)	\$ 361	\$ (330)	\$ (533)

See accompanying notes.

TRANSOCEAN LTD. AND SUBSIDIARIES
CONDENSED CONSOLIDATED BALANCE SHEETS
(In millions, except share data)
(Unaudited)

	<u>September 30,</u> <u>2021</u>	<u>December 31,</u> <u>2020</u>
Assets		
Cash and cash equivalents	\$ 900	\$ 1,154
Accounts receivable, net of allowance of \$2 at September 30, 2021 and December 31, 2020	507	583
Materials and supplies, net of allowance of \$148 and \$143 at September 30, 2021 and December 31, 2020, respectively	433	434
Restricted cash and cash equivalents	576	406
Other current assets	165	163
Total current assets	2,581	2,740
Property and equipment	23,102	23,040
Less accumulated depreciation	(5,886)	(5,373)
Property and equipment, net	17,216	17,667
Contract intangible assets	223	393
Deferred income taxes, net	9	9
Other assets	947	995
Total assets	\$ 20,976	\$ 21,804
Liabilities and equity		
Accounts payable	\$ 215	\$ 194
Accrued income taxes	10	28
Debt due within one year	575	505
Other current liabilities	551	659
Total current liabilities	1,351	1,386
Long-term debt	6,773	7,302
Deferred income taxes, net	358	315
Other long-term liabilities	1,227	1,366
Total long-term liabilities	8,358	8,983
Commitments and contingencies		
Shares, CHF 0.10 par value, 891,379,306 authorized, 142,363,356 conditionally authorized, 685,676,456 issued and 651,155,650 outstanding at September 30, 2021, and 824,650,660 authorized, 142,363,647 conditionally authorized, 639,676,165 issued and 615,140,276 outstanding at December 31, 2020		
Additional paid-in capital	63	60
Accumulated deficit	13,659	13,501
Accumulated other comprehensive loss	(2,198)	(1,866)
Accumulated other comprehensive loss	(261)	(263)
Total controlling interest shareholders' equity	11,263	11,432
Noncontrolling interest	4	3
Total equity	11,267	11,435
Total liabilities and equity	\$ 20,976	\$ 21,804

See accompanying notes.

TRANSOCEAN LTD. AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF EQUITY

(In millions)
(Unaudited)

	<u>Three months ended</u>		<u>Nine months ended</u>	
	<u>September 30,</u>		<u>September 30,</u>	
	<u>2021</u>	<u>2020</u>	<u>2021</u>	<u>2020</u>
Shares				
Balance, beginning of period	\$ 62	\$ 60	\$ 60	\$ 59
Issuance of shares	1	—	3	1
Balance, end of period	63	\$ 60	\$ 63	\$ 60
Additional paid-in capital				
Balance, beginning of period	\$ 13,578	\$ 13,438	\$ 13,501	\$ 13,424
Share-based compensation	7	9	21	24
Issuance of shares	74	—	138	(1)
Equity component of convertible debt instrument	—	46	—	46
Other, net	—	—	(1)	—
Balance, end of period	\$ 13,659	\$ 13,493	\$ 13,659	\$ 13,493
Accumulated deficit				
Balance, beginning of period	\$ (2,068)	\$ (2,188)	\$ (1,866)	\$ (1,297)
Net income (loss) attributable to controlling interest	(130)	359	(332)	(530)
Effect of adopting accounting standards update	—	—	—	(2)
Balance, end of period	\$ (2,198)	\$ (1,829)	\$ (2,198)	\$ (1,829)
Accumulated other comprehensive loss				
Balance, beginning of period	\$ (264)	\$ (329)	\$ (263)	\$ (324)
Other comprehensive income (loss) attributable to controlling interest	3	2	2	(3)
Balance, end of period	\$ (261)	\$ (327)	\$ (261)	\$ (327)
Total controlling interest shareholders' equity				
Balance, beginning of period	\$ 11,308	\$ 10,981	\$ 11,432	\$ 11,862
Total comprehensive income (loss) attributable to controlling interest	(127)	361	(330)	(533)
Share-based compensation	7	9	21	24
Issuance of shares	75	—	141	—
Equity component of convertible debt instrument	—	46	—	46
Other, net	—	—	(1)	(2)
Balance, end of period	\$ 11,263	\$ 11,397	\$ 11,263	\$ 11,397
Noncontrolling interest				
Balance, beginning of period	\$ 4	\$ 6	\$ 3	\$ 5
Total comprehensive income attributable to noncontrolling interest	—	—	1	1
Balance, end of period	\$ 4	\$ 6	\$ 4	\$ 6
Total equity				
Balance, beginning of period	\$ 11,312	\$ 10,987	\$ 11,435	\$ 11,867
Total comprehensive income (loss)	(127)	361	(329)	(532)
Share-based compensation	7	9	21	24
Issuance of shares	75	—	141	—
Equity component of convertible debt instrument	—	46	—	46
Other, net	—	—	(1)	(2)
Balance, end of period	\$ 11,267	\$ 11,403	\$ 11,267	\$ 11,403

See accompanying notes.

TRANSOCEAN LTD. AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS

(In millions)

(Unaudited)

	Nine months ended	
	September 30,	
	2021	2020
Cash flows from operating activities		
Net loss	\$ (331)	\$ (529)
Adjustments to reconcile to net cash provided by operating activities:		
Contract intangible asset amortization	170	158
Depreciation and amortization	558	592
Share-based compensation expense	21	24
Loss on impairment	—	597
Loss on impairment of investment in unconsolidated affiliate	—	59
Loss on disposal of assets, net	61	64
Gain on restructuring and retirement of debt	(51)	(396)
Deferred income tax expense	43	28
Other, net	29	42
Changes in deferred revenues, net	(87)	(45)
Changes in deferred costs, net	8	10
Changes in other operating assets and liabilities, net	(31)	(484)
Net cash provided by operating activities	390	120
Cash flows from investing activities		
Capital expenditures	(137)	(218)
Proceeds from disposal of assets, net	8	15
Investments in loans to unconsolidated affiliate	(33)	—
Investments in unconsolidated affiliates	—	(17)
Net cash used in investing activities	(162)	(220)
Cash flows from financing activities		
Repayments of debt	(423)	(1,135)
Proceeds from issuance of shares, net of issue costs	141	—
Proceeds from issuance of debt, net of issue costs	—	743
Other, net	(30)	(27)
Net cash used in financing activities	(312)	(419)
Net decrease in unrestricted and restricted cash and cash equivalents	(84)	(519)
Unrestricted and restricted cash and cash equivalents, beginning of period	1,560	2,349
Unrestricted and restricted cash and cash equivalents, end of period	\$ 1,476	\$ 1,830

See accompanying notes.

TRANSOCEAN LTD. AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(Unaudited)

NOTE 1—BUSINESS

Transocean Ltd. (together with its subsidiaries and predecessors, unless the context requires otherwise, “Transocean,” “we,” “us” or “our”) is a leading international provider of offshore contract drilling services for oil and gas wells. We specialize in technically demanding sectors of the offshore drilling business with a particular focus on ultra-deepwater and harsh environment drilling services. Our mobile offshore drilling fleet is considered one of the most versatile fleets in the world. We contract our drilling rigs, related equipment and work crews predominantly on a dayrate basis to drill oil and gas wells. As of September 30, 2021, we owned or had partial ownership interests in and operated a fleet of 37 mobile offshore drilling units, including 27 ultra-deepwater floaters and 10 harsh environment floaters. As of September 30, 2021, we were constructing two ultra-deepwater drillships.

NOTE 2—SIGNIFICANT ACCOUNTING POLICIES

Presentation—We prepared our accompanying unaudited condensed consolidated financial statements in accordance with accounting principles generally accepted in the United States (“U.S.”) for interim financial information and with the instructions to Form 10-Q and Article 10 of Regulation S-X of the U.S. Securities and Exchange Commission. Pursuant to such rules and regulations, these financial statements do not include all disclosures required by accounting principles generally accepted in the U.S. for complete financial statements. The condensed consolidated financial statements reflect all adjustments, which are, in the opinion of management, necessary for a fair presentation of financial position, results of operations and cash flows for the interim periods. Such adjustments are considered to be of a normal recurring nature unless otherwise noted.

Operating results for the three and nine months ended September 30, 2021, are not necessarily indicative of the results that may be expected for the year ending December 31, 2021, or for any future period. The accompanying condensed consolidated financial statements and notes thereto should be read in conjunction with the audited consolidated financial statements and notes thereto as of December 31, 2020 and 2019, and for each of the three years in the period ended December 31, 2020, included in our annual report on [Form 10-K filed on March 1, 2021](#).

Accounting estimates—To prepare financial statements in accordance with accounting principles generally accepted in the U.S., we must make estimates and assumptions that affect the reported amounts of assets, liabilities, revenues and expenses and the disclosures of contingent assets and liabilities. On an ongoing basis, we evaluate our estimates and assumptions, including those related to our income taxes, property and equipment, equity investments, contingencies, allowance for excess materials and supplies, intangibles, allowance for credit losses, leases, share-based compensation and postemployment benefit plans. We base our estimates and assumptions on historical experience and other factors that we believe are reasonable. Actual results could differ from such estimates.

Fair value measurements—We estimate fair value at a price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants in the principal market for the asset or liability. Our valuation techniques require inputs that we categorize using a three-level hierarchy, from highest to lowest level of observable inputs, as follows: (1) significant observable inputs, including unadjusted quoted prices for identical assets or liabilities in active markets (“Level 1”), (2) significant other observable inputs, including direct or indirect market data for similar assets or liabilities in active markets or identical assets or liabilities in less active markets (“Level 2”) and (3) significant unobservable inputs, including those that require considerable judgment for which there is little or no market data (“Level 3”). When a valuation requires multiple input levels, we categorize the entire fair value measurement according to the lowest level of input that is significant to the measurement even though we may have also utilized significant inputs that are more readily observable.

NOTE 3—ACCOUNTING STANDARDS UPDATE

Recently adopted accounting standards

Debt with conversion and other options—Effective January 1, 2021, we early adopted the accounting standards update that simplifies the accounting for convertible instruments, such as our exchangeable debt, by limiting the accounting models that result in separately recognizing embedded conversion features from the host contract. The accounting standards update also enhances information transparency by making targeted improvements to the disclosures for convertible instruments and earnings-per-share guidance. Our adoption did not result in any accounting changes for the 0.50% exchangeable senior bonds due January 2023 (the “0.50% Exchangeable Senior Bonds”) or the 2.50% senior guaranteed exchangeable bonds due January 2027 (the “2.50% Senior Guaranteed Exchangeable Bonds”). Under previous accounting guidance, for the 4.00% senior guaranteed exchangeable bonds due December 2025 (the “4.00% Senior Guaranteed Exchangeable Bonds”), we would have recorded the debt and exchange features separately and, consequently, we would have recognized in current and future periods greater amortization, as a component of interest expense. See [Note 7—Debt](#).

NOTE 4—UNCONSOLIDATED AFFILIATES

Equity investments—We hold noncontrolling equity investments in various unconsolidated companies, including (a) our 33.0 percent ownership interest in Orion Holdings (Cayman) Limited (together with its subsidiary, “Orion”), a Cayman Islands company that, through its wholly owned subsidiary, owns the harsh environment floater *Transocean Norge*, and (b) our interests in certain companies that are involved in researching and developing technology to improve efficiency and reliability and to increase automation, sustainability and safety for drilling and other activities. In the nine months ended September 30, 2020, we recognized a loss of \$59 million, which had no tax

TRANSOCEAN LTD. AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS—continued
(Unaudited)

effect, recorded in other, net, associated with the impairment of our investment in Orion upon determination that the carrying amount of our equity method investment exceeded the estimated fair value and that the impairment was other than temporary.

We estimated the fair value of our investment using the income method, which required us to use significant unobservable inputs, representative of a Level 3 fair value measurement, including applying an assumed discount rate of 12 percent and making assumptions about the future performance of the investment, including future demand and supply for harsh environment floaters, rig utilization, revenue efficiency and dayrates. At September 30, 2021 and December 31, 2020, the aggregate carrying amount of our equity investments was \$135 million and \$138 million, respectively, recorded in other assets, of which the aggregate carrying amount of our equity investment in Orion was \$100 million and \$104 million, respectively.

Related party transactions—We engage in certain related party transactions with our unconsolidated affiliates, the most significant of which are under agreements with Orion. We have a management services agreement for the operation, stacking and maintenance of the harsh environment floater *Transocean Norge* and a marketing services agreement for the marketing of the rig. We also leased the rig under a short-term bareboat charter agreement, which expired in June 2021. Prior to the rig’s placement into service, we engaged in certain related party transactions with Orion under a shipyard care agreement for the construction of the rig and other matters related to its completion and delivery. In the three and nine months ended September 30, 2020, we received an aggregate cash payment of \$3 million and \$35 million, respectively, primarily related to the shipyard care agreement.

Additionally, in June 2021, Orion refinanced its shipyard loans under a financing arrangement for \$100 million, in which we participated at a rate equivalent to our ownership interest in Orion. Borrowings under the financing arrangement are secured by *Transocean Norge*. The financing arrangement, which expires in June 2024, requires interest to be paid on outstanding borrowings at the London Interbank Offered Rate plus a margin of 6.50 percent per annum. In the nine months ended September 30, 2021, we made a cash investment in loans of \$33 million, and at September 30, 2021, the outstanding borrowings due to us under the financing arrangement were \$33 million, recorded in other assets.

NOTE 5—REVENUES

Overview—The duration of our performance obligation varies by contract. As of September 30, 2021, the drilling contract with the longest expected remaining duration, excluding unexercised options, extends through February 2028. In the three and nine months ended September 30, 2021, we recognized pre-operating costs of \$13 million and \$43 million, respectively. In the three and nine months ended September 30, 2020, we recognized pre-operating costs of \$16 million and \$48 million, respectively. At September 30, 2021 and December 31, 2020, the carrying amount of our unrecognized pre-operating costs to obtain contracts was \$6 million and \$20 million, respectively, recorded in other assets.

In June 2020, we entered into a settlement and mutual release agreement with a customer, which provided for the final settlement of disputes related to performance obligations satisfied in prior periods. In connection with the settlement, among other things, our customer agreed to pay us \$185 million in four equal installments through January 15, 2023. In the nine months ended September 30, 2020, we recognized revenues of \$177 million, representing the discounted value of the future payments, and recorded corresponding accounts receivable, net of imputed interest. At September 30, 2021 and December 31, 2020, the aggregate carrying amount of the related receivable was \$89 million and \$133 million, respectively, net of imputed interest, including \$46 million and \$45 million, respectively, recorded in accounts receivable, and \$43 million and \$88 million, respectively, recorded in other assets.

Disaggregation—Our contract drilling revenues, disaggregated by asset group and by country in which they were earned, were as follows (in millions):

	<u>Three months ended September 30, 2021</u>				<u>Three months ended September 30, 2020</u>			
	U.S.	Norway	Other	Total	U.S.	Norway	Other	Total
Ultra-deepwater floaters	\$ 280	\$ —	\$ 148	\$ 428	\$ 295	\$ —	\$ 195	\$ 490
Harsh environment floaters	—	185	13	198	—	233	50	283
Total contract drilling revenues	<u>\$ 280</u>	<u>\$ 185</u>	<u>\$ 161</u>	<u>\$ 626</u>	<u>\$ 295</u>	<u>\$ 233</u>	<u>\$ 245</u>	<u>\$ 773</u>

	<u>Nine months ended September 30, 2021</u>				<u>Nine months ended September 30, 2020</u>			
	U.S.	Norway	Other	Total	U.S.	Norway	Other	Total
Ultra-deepwater floaters	\$ 819	\$ —	\$ 469	\$ 1,288	\$ 1,022	\$ —	\$ 632	\$ 1,654
Harsh environment floaters	4	609	34	647	—	647	149	796
Midwater floaters	—	—	—	—	—	—	12	12
Total contract drilling revenues	<u>\$ 823</u>	<u>\$ 609</u>	<u>\$ 503</u>	<u>\$ 1,935</u>	<u>\$ 1,022</u>	<u>\$ 647</u>	<u>\$ 793</u>	<u>\$ 2,462</u>

Contract liabilities—The contract liabilities for our contracts with customers were as follows (in millions):

	September 30, 2021	December 31, 2020
Deferred contract revenues, recorded in other current liabilities	\$ 89	\$ 133
Deferred contract revenues, recorded in other long-term liabilities	280	323
Total contract liabilities	<u>\$ 369</u>	<u>\$ 456</u>

TRANSOCEAN LTD. AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS—continued
(Unaudited)

The changes in contract liabilities were as follows (in millions):

	Nine months ended September 30,	
	2021	2020
Total contract liabilities, beginning of period	\$ 456	\$ 529
Decrease due to recognition of revenues for goods and services	(117)	(153)
Increase due to goods and services transferred over time	30	108
Total contract liabilities, end of period	<u>\$ 369</u>	<u>\$ 484</u>

NOTE 6—DRILLING FLEET

Construction work in progress—The changes in our construction work in progress were as follows (in millions):

	Nine months ended September 30,	
	2021	2020
Construction work in progress, beginning of period	\$ 828	\$ 753
Capital expenditures		
Newbuild construction program	106	114
Other equipment and construction projects	31	104
Total capital expenditures	137	218
Changes in accrued capital additions	19	(27)
Property and equipment placed into service	(28)	(130)
Construction work in progress, end of period	<u>\$ 956</u>	<u>\$ 814</u>

Impairments of assets held and used—During the nine months ended September 30, 2020, we identified indicators that the carrying amounts of our asset groups may not be recoverable. Such indicators included significant declines in commodity prices and the market value of our stock, a reduction of expected demand for our drilling services as our customers announced reductions of capital investments in response to commodity prices and a reduction of projected dayrates. As a result of our testing, we determined that the carrying amount of our midwater floater asset group was impaired. In the nine months ended September 30, 2020, we recognized a loss of \$31 million (\$0.05 per diluted share), which had no tax effect, associated with the impairment of our midwater floater asset group. We measured the fair value of the drilling unit and related assets in this asset group by applying the market approach, using estimates of the exchange price that would be received for the assets in the principal or most advantageous markets for the assets in an orderly transaction between participants as of the measurement date. Our estimate of fair value required us to use significant other observable inputs, representative of a Level 2 fair value measurement, including the marketability of the rig and prices of comparable rigs that may be sold for scrap value.

Impairments of assets held for sale—During the nine months ended September 30, 2020, we announced our intent to sell or retire, in an environmentally responsible way, the ultra-deepwater floater *GSF Development Driller II*, the harsh environment floaters *Polar Pioneer* and *Songa Dee* and the midwater floaters *Sedco 711*, *Sedco 714* and *Transocean 712*, along with related assets. In the nine months ended September 30, 2020, we recognized an aggregate loss of \$556 million (\$0.90 per diluted share), which had no tax effect, associated with the impairment of these assets, which we determined were impaired at the time we classified the assets as held for sale. We measured the impairment of the drilling units and related assets as the amount by which the carrying amount exceeded the estimated fair value less costs to sell. We estimated the fair value of the assets using significant other observable inputs, representative of a Level 2 fair value measurement, including indicative market values for the drilling units and related assets to be sold for scrap value or other purposes.

Dispositions—During the nine months ended September 30, 2021, in connection with our efforts to dispose of non-strategic assets, we completed the sale of the harsh environment floater *Leiv Eiriksson* and related assets. In the nine months ended September 30, 2021, we received aggregate net cash proceeds of \$4 million and recognized an aggregate net loss of \$60 million (\$0.10 per diluted share), which had no tax effect, associated with the disposal of these assets. In the nine months ended September 30, 2020, we completed the sale of the harsh environment floaters *Polar Pioneer*, *Songa Dee* and *Transocean Arctic* and the midwater floaters *Sedco 711*, *Sedco 714* and *Transocean 712*, along with related assets. In the nine months ended September 30, 2020, we received aggregate net cash proceeds of \$11 million and recognized an aggregate net loss of \$61 million, which had no tax effect, associated with the disposal of these assets.

TRANSOCEAN LTD. AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS—continued
(Unaudited)

NOTE 7—DEBT
Overview

Outstanding debt—The aggregate principal amounts and aggregate carrying amounts, including debt-related balances, such as the contractual interest payments of certain previously restructured debt and unamortized discounts, premiums, issue costs and fair value adjustments, were as follows (in millions):

	Principal amount		Carrying amount	
	September 30, 2021	December 31, 2020	September 30, 2021	December 31, 2020
6.375% Senior Notes due December 2021	\$ 38	\$ 38	\$ 38	\$ 38
5.52% Senior Secured Notes due May 2022	42	111	42	111
3.80% Senior Notes due October 2022	27	27	27	27
0.50% Exchangeable Senior Bonds due January 2023	140	463	140	462
5.375% Senior Secured Notes due May 2023	338	364	336	360
5.875% Senior Secured Notes due January 2024	462	585	457	577
7.75% Senior Secured Notes due October 2024	330	360	325	354
6.25% Senior Secured Notes due December 2024	344	375	339	369
6.125% Senior Secured Notes due August 2025	402	468	396	461
7.25% Senior Notes due November 2025	411	411	406	405
4.00% Senior Guaranteed Exchangeable Bonds due December 2025	294	—	263	—
7.50% Senior Notes due January 2026	569	569	565	565
2.50% Senior Guaranteed Exchangeable Bonds due January 2027	238	238	271	277
11.50% Senior Guaranteed Notes due January 2027	687	687	1,078	1,139
6.875% Senior Secured Notes due February 2027	550	550	544	542
8.00% Senior Notes due February 2027	612	612	607	606
7.45% Notes due April 2027	52	52	52	51
8.00% Debentures due April 2027	22	22	22	22
7.00% Notes due June 2028	261	261	265	266
7.50% Notes due April 2031	396	396	394	394
6.80% Senior Notes due March 2038	610	610	605	605
7.35% Senior Notes due December 2041	177	177	176	176
Total debt	7,002	7,376	7,348	7,807
Less debt due within one year				
6.375% Senior Notes due December 2021	38	38	38	38
5.52% Senior Secured Notes due May 2022	42	93	42	92
5.375% Senior Secured Notes due May 2023	63	47	62	46
5.875% Senior Secured Notes due January 2024	110	83	107	80
7.75% Senior Secured Notes due October 2024	60	60	58	58
6.25% Senior Secured Notes due December 2024	62	62	61	60
6.125% Senior Secured Notes due August 2025	66	66	64	64
2.50% Senior Guaranteed Exchangeable Bonds due January 2027	—	—	6	6
11.50% Senior Guaranteed Notes due January 2027	—	—	70	61
6.875% Senior Secured Notes due February 2027	69	—	67	—
Total debt due within one year	510	449	575	505
Total long-term debt	\$ 6,492	\$ 6,927	\$ 6,773	\$ 7,302

Scheduled maturities—At September 30, 2021, the principal installments and other installments, representing contractual interest payments of previously restructured debt, were as follows (in millions):

	Principal installments	Other installments	Total
Twelve months ending September 30,			
2022	\$ 510	\$ 76	\$ 586
2023	782	76	858
2024	540	77	617
2025	593	77	670
2026	1,357	78	1,435
Thereafter	3,220	40	3,260
Total installments of debt	\$ 7,002	\$ 424	7,426
Total debt-related balances, net			(78)
Total carrying amount of debt			\$ 7,348

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Interest rate adjustments—The interest rates for certain of our notes are subject to adjustment from time to time upon a change to the credit rating of our non-credit enhanced senior unsecured long-term debt. As of September 30, 2021, the interest rate in effect for the 6.375% senior notes due December 2021, 3.80% senior notes due October 2022 and the 7.35% senior notes due December 2041 was 8.375 percent, 5.80 percent and 9.35 percent, respectively.

Credit agreements

Secured Credit Facility—As of September 30, 2021, we have a \$1.3 billion secured revolving credit facility established under a bank credit agreement (as amended from time to time, the “Secured Credit Facility”), which is scheduled to expire on June 22, 2023. The Secured Credit Facility is guaranteed by Transocean Ltd. and certain wholly owned subsidiaries.

We may borrow under the Secured Credit Facility at either (1) the reserve adjusted London Interbank Offered Rate plus a margin (the “Secured Credit Facility Margin”), which ranges from 2.625 percent to 3.375 percent based on the credit rating of the Secured Credit Facility, or (2) the base rate specified in the credit agreement plus the Secured Credit Facility Margin, minus one percent per annum. Throughout the term of the Secured Credit Facility, we pay a facility fee on the amount of the underlying commitment which ranges from 0.375 percent to 1.00 percent based on the credit rating of the Secured Credit Facility. At September 30, 2021, based on the credit rating of the Secured Credit Facility on that date, the Secured Credit Facility Margin was 3.375 percent and the facility fee was 0.875 percent. At September 30, 2021, we had no borrowings outstanding, \$20 million of letters of credit issued, and we had \$1.3 billion of available borrowing capacity under the Secured Credit Facility. See [Note 10—Contingencies](#).

Shipyard financing arrangement—In June 2021, Transocean Offshore Deepwater Holdings Limited, a Cayman Islands company and our wholly owned indirect subsidiary, entered into credit agreements with Jurong Shipyard Pte Ltd. establishing facilities (the “Shipyard Loans”) to finance all or a portion of the final payments expected to be owed to the shipyard upon delivery of the ultra-deepwater floaters *Deepwater Atlas* and *Deepwater Titan*. The Shipyard Loans are guaranteed by Transocean Inc. Borrowings under the Shipyard Loan for *Deepwater Atlas* will be secured by, among other security, a lien on the rig. In certain circumstances, borrowings under the Shipyard Loan for *Deepwater Titan* may also be secured by, among other security, a lien on the rig. We will repay the borrowings, together with interest of 4.5 percent per annum, according to the selected installment schedule over a maximum of a six-year period following delivery of the drilling rigs. We have the right to prepay any outstanding borrowings, in full or in part, without penalty. The Shipyard Loans contain covenants that, among other things, limit the ability of the subsidiary owners of the drilling rigs to incur certain types of additional indebtedness or make certain additional commitments or investments. At September 30, 2021, we had no borrowings outstanding under the Shipyard Loans.

Exchangeable bonds

Exchange terms—At September 30, 2021, the (a) current exchange rates, expressed as the number of Transocean Ltd. shares per \$1,000 note, (b) implied exchange prices per Transocean Ltd. share and (c) aggregate shares, expressed in millions, issuable upon exchange of our exchangeable bonds were as follows:

	Exchange rate	Implied exchange price	Shares issuable
0.50% Exchangeable Senior Bonds due January 2023	97.29756	\$ 10.28	13.6
4.00% Senior Guaranteed Exchangeable Bonds due December 2025	190.47620	5.25	56.0
2.50% Senior Guaranteed Exchangeable Bonds due January 2027	162.16260	6.17	38.6

The exchange rates of our exchangeable bonds, identified above, are subject to adjustment upon the occurrence of certain events. The 0.50% Exchangeable Senior Bonds may be exchanged by holders into Transocean Ltd. shares at any time prior to the close of business on the business day immediately preceding the maturity date. The 2.50% Senior Guaranteed Exchangeable Bonds may be exchanged by holders into Transocean Ltd. shares at any time prior to the close of business on the second business day immediately preceding the maturity date or redemption date. The 4.00% Senior Guaranteed Exchangeable Bonds may be exchanged by holders at any time prior to the close of business on the second business day immediately preceding the maturity date and, at our election, such exchange may be settled by delivering cash, Transocean Ltd. shares or a combination of cash and shares.

Effective interest rates and fair values—At September 30, 2021, the effective interest rates and estimated fair values of our exchangeable bonds were as follows (in millions, except effective interest rates):

	Effective interest rate	Fair value
0.50% Exchangeable Senior Bonds due January 2023	0.5%	\$ 119
4.00% Senior Guaranteed Exchangeable Bonds due December 2025	6.9%	317
2.50% Senior Guaranteed Exchangeable Bonds due January 2027	0.0%	233

We estimated the fair values of the exchangeable debt instruments, including the exchange features, by employing a binomial lattice model and by using significant other observable inputs, representative of a Level 2 fair value measurement, including the terms and credit spreads of our debt and the expected volatility of the market price for our shares.

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Related balances—At September 30, 2021 and December 31, 2020, the premium associated with the original issuance of the 0.50% Exchangeable Senior Bonds had a carrying amount of \$172 million, recorded in equity as a component of additional paid-in capital.

Debt issuance

Senior guaranteed exchangeable bonds—On February 26, 2021, we issued \$294 million aggregate principal amount of the 4.00% Senior Guaranteed Exchangeable Bonds and made an aggregate cash payment of \$11 million in private exchanges (collectively, the “2021 Private Exchange”) for \$323 million aggregate principal amount of the 0.50% Exchangeable Senior Bonds. The 4.00% Senior Guaranteed Exchangeable Bonds are guaranteed by Transocean Ltd. and the same subsidiaries of Transocean Inc. that guarantee the 2.50% Senior Guaranteed Exchangeable Bonds and 11.50% senior guaranteed notes due January 2027 (the “11.50% Senior Guaranteed Notes”). The initial carrying amount of the 4.00% Senior Guaranteed Exchangeable Bonds, measured at the estimated fair value on the date of issuance, was \$260 million. We estimated the fair value of the exchangeable debt instrument, including the exchange feature, by employing a binomial lattice model and by using significant other observable inputs, representative of a Level 2 fair value measurement, including the terms and credit spreads of our debt and expected volatility of the market price for our shares. In the nine months ended September 30, 2021, as a result of the 2021 Private Exchange, we recognized a gain of \$51 million (\$0.08 per diluted share), with no tax effect, associated with the retirement of debt (see “—[Debt restructuring and retirement](#)”).

On August 14, 2020, we issued \$238 million aggregate principal amount of the 2.50% Senior Guaranteed Exchangeable Bonds in non-cash private exchanges (collectively, the “2020 Private Exchange”) for \$397 million aggregate principal amount of the 0.50% Exchangeable Senior Bonds. We may redeem all or a portion of the 2.50% Senior Guaranteed Exchangeable Bonds (i) on or after August 14, 2022, if certain conditions related to the price of our shares have been satisfied, at a price equal to 100 percent of the aggregate principal amount and (ii) on or after August 14, 2023, at specified redemption prices. Perestroika AS, an entity affiliated with one of our directors that beneficially owns approximately 10 percent of our shares, exchanged \$356 million aggregate principal amount of the 0.50% Exchangeable Senior Bonds for \$213 million aggregate principal amount of the 2.50% Senior Guaranteed Exchangeable Bonds. We recorded the conversion feature of the 2.50% Senior Guaranteed Exchangeable Bonds, measured at its estimated fair value of \$46 million, to additional paid in capital.

We estimated the fair value by employing a binomial lattice model and by using significant other observable inputs, representative of a Level 2 fair value measurement, including the expected volatility of the market price for our shares. In the three and nine months ended September 30, 2020, as a result of the 2020 Private Exchange, we recognized a gain of \$72 million (\$0.12 per diluted share), with no tax effect, associated with the restructuring of debt (see “—[Debt restructuring and retirement](#)”).

Guaranteed senior unsecured notes—On January 17, 2020, we issued \$750 million aggregate principal amount of 8.00% senior unsecured notes due February 2027 (the “8.00% Senior Notes”), and we received aggregate cash proceeds of \$743 million, net of issue costs. We may redeem all or a portion of the 8.00% Senior Notes on or prior to February 1, 2023 at a price equal to 100 percent of the aggregate principal amount plus a make-whole premium, and subsequently, at specified redemption prices.

Priority guaranteed senior unsecured notes—On September 11, 2020, we issued \$687 million aggregate principal amount of the 11.50% Senior Guaranteed Notes in non-cash exchange offers, pursuant to an exchange offer memorandum, dated August 10, 2020, as supplemented, for an aggregate principal amount of \$1.51 billion of several series of our existing debt securities that were validly tendered and accepted for purchase (the “2020 Exchange Offers”). We may redeem all or a portion of the 11.50% Senior Guaranteed Notes prior to July 30, 2023 at a price equal to 100 percent of the aggregate principal amount plus a make-whole premium, and subsequently, at specified redemption prices. We may also use the net cash proceeds of certain equity offerings by Transocean Ltd. to redeem, on one or more occasions prior to July 30, 2023, up to a maximum of 40 percent of the original aggregate principal amount of the 11.50% Senior Guaranteed Notes, subject to certain adjustments, at a redemption price equal to 111.50 percent of the aggregate principal amount. In the three and nine months ended September 30, 2020, as a result of the 2020 Exchange Offers, we recognized a gain of \$356 million (\$0.58 per diluted share), with no tax effect, associated with the restructuring of debt (see “—[Debt restructuring and retirement](#)”).

Debt restructuring and retirement

During the nine months ended September 30, 2021 and 2020, we restructured or retired certain notes as a result of redemption, exchange offers, private exchanges and open market repurchases. We recorded the 2020 Private Exchange and the 2020 Exchange Offers

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under ASC 470-60, Troubled Debt Restructuring by Debtors. The aggregate principal amounts, cash payments and recognized gain or loss for such transactions were as follows (in millions):

	Nine months ended September 30,							
	2021			2020				
	Exchanged	Repurchased	Total	Exchanged	Redeemed	Repurchased	Total	
6.50% Senior Notes due November 2020	\$ —	\$ —	\$ —	\$ —	\$ —	\$ 15	\$ 15	
6.375% Senior Notes due December 2021	—	—	—	37	—	68	105	
3.80% Senior Notes due October 2022	—	—	—	136	—	16	152	
0.50% Exchangeable Senior Bonds due January 2023	323	—	323	397	—	4	401	
5.375% Senior Secured Notes due May 2023	—	10	10	—	—	21	21	
9.00% Senior Notes due July 2023	—	—	—	—	714	—	714	
5.875% Senior Secured Notes due January 2024	—	41	41	—	—	—	—	
7.25% Senior Notes due November 2025	—	—	—	207	—	—	207	
7.50% Senior Notes due January 2026	—	—	—	181	—	—	181	
8.00% Senior Notes due February 2027	—	—	—	138	—	—	138	
7.45% Notes due April 2027	—	—	—	35	—	—	35	
8.00% Debentures due April 2027	—	—	—	35	—	—	35	
7.00% Notes due June 2028	—	—	—	39	—	—	39	
7.50% Notes due April 2031	—	—	—	192	—	—	192	
6.80% Senior Notes due March 2038	—	—	—	390	—	—	390	
7.35% Senior Notes due December 2041	—	—	—	123	—	—	123	
Aggregate principal amount restructured or retired	\$ 323	\$ 51	\$ 374	\$ 1,910	\$ 714	\$ 124	\$ 2,748	
Aggregate cash payment	\$ 11	\$ 51	\$ 62	\$ 9	\$ 767	\$ 91	\$ 867	
Aggregate principal amount of debt issued in exchanges	\$ 294	\$ —	\$ 294	\$ 925	\$ —	\$ —	\$ 925	
Aggregate net gain, three-month period	\$ —	\$ —	\$ —	\$ 428	\$ —	\$ 21	\$ 449	
Aggregate net gain (loss), nine-month period	\$ 51	\$ —	\$ 51	\$ 428	\$ (65)	\$ 33	\$ 396	

See [Note 13—Subsequent Events](#).

NOTE 8—INCOME TAXES

Tax provision and rate—In the nine months ended September 30, 2021 and 2020, our effective tax rate was (3.2) percent and (0.8) percent, respectively, based on loss before income tax expense. In the nine months ended September 30, 2021 and 2020, the effect of various discrete period tax items was a net tax benefit of \$25 million and \$54 million, respectively.

In the nine months ended September 30, 2021, such discrete items included loss on disposal of assets, gain on retirement of debt, expiration and settlements of various uncertain tax positions, remeasurement of deferred tax liabilities related to the jurisdictional ownership changes of certain assets and changes in valuation allowances. In the nine months ended September 30, 2020, such discrete items included losses on impairment and disposal of assets, gain on restructuring and retirement of debt, revenues recognized for the settlement of disputes, the loss on impairment of an investment in an unconsolidated affiliate, the carryback of net operating losses in the U.S. as a result of the Coronavirus Aid, Relief, and Economic Security Act, which included the release of valuation allowances previously recorded, and settlements and expirations of various uncertain tax positions. In the nine months ended September 30, 2021 and 2020, our effective tax rate, excluding discrete items, was (11.2) percent and (16.4) percent, respectively, based on loss before income tax expense.

Tax positions and returns—We conduct operations through our various subsidiaries in countries throughout the world. Each country has its own tax regimes with varying nominal rates, deductions and tax attributes that are subject to changes resulting from new legislation, interpretation or guidance. From time to time, as a result of these changes, we may revise previously evaluated tax positions, which could cause us to adjust our recorded tax assets and liabilities. Tax authorities in certain jurisdictions are examining our tax returns and, in some cases, have issued assessments. We intend to defend our tax positions vigorously. Although we can provide no assurance as to the outcome of the aforementioned changes, examinations or assessments, we do not expect the ultimate liability to have a material adverse effect on our condensed consolidated statement of financial position or results of operations; however, it could have a material adverse effect on our condensed consolidated statement of cash flows.

Brazil tax investigations—In December 2005, the Brazilian tax authorities began issuing tax assessments with respect to our tax returns for the years 2000 through 2004. In May 2014, the Brazilian tax authorities issued an additional tax assessment for the years 2009 and 2010. We filed protests with the Brazilian tax authorities for the assessments and are currently engaged in the appeals process. During the years ended December 31, 2018 and 2019, a portion of the two cases was favorably closed. As of September 30, 2021, the remaining aggregate tax assessment, including interest and penalties, was for corporate income tax of BRL 634 million, equivalent to approximately \$116 million, and indirect tax of BRL 109 million, equivalent to \$20 million. We believe our returns are materially correct as filed, and we are vigorously contesting these assessments. An unfavorable outcome on these proposed assessments could have a material adverse effect on our condensed consolidated statement of financial position, results of operations or cash flows.

TRANSOCEAN LTD. AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS—continued
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NOTE 9—EARNINGS (LOSS) PER SHARE

The computations of basic and diluted earnings (loss) per share were as follows (in millions, except per share data):

	Three months ended September 30,				Nine months ended September 30,			
	2021		2020		2021		2020	
	Basic	Diluted	Basic	Diluted	Basic	Diluted	Basic	Diluted
Numerator for earnings (loss) per share								
Net income (loss) attributable to controlling interest	\$ (130)	\$ (130)	\$ 359	\$ 359	\$ (332)	\$ (332)	\$ (530)	\$ (530)
Effect of interest expense on convertible debt instruments	—	—	—	1	—	—	—	—
Earnings (loss) for per share calculation	<u>\$ (130)</u>	<u>\$ (130)</u>	<u>\$ 359</u>	<u>\$ 360</u>	<u>\$ (332)</u>	<u>\$ (332)</u>	<u>\$ (530)</u>	<u>\$ (530)</u>
Denominator for earnings (loss) per share								
Weighted-average shares outstanding	651	651	615	615	629	629	614	614
Effect of share-based awards	2	2	1	3	1	1	1	1
Effect of convertible debt instruments	—	—	—	84	—	—	—	—
Weighted-average shares for per share calculation	<u>653</u>	<u>653</u>	<u>616</u>	<u>702</u>	<u>630</u>	<u>630</u>	<u>615</u>	<u>615</u>
Earnings (loss) per share	<u><u>\$(0.20)</u></u>	<u><u>\$(0.20)</u></u>	<u><u>\$ 0.58</u></u>	<u><u>\$ 0.51</u></u>	<u><u>\$(0.53)</u></u>	<u><u>\$(0.53)</u></u>	<u><u>\$(0.86)</u></u>	<u><u>\$(0.86)</u></u>

In the three and nine months ended September 30, 2021, we excluded from the calculation 13.0 million and 12.3 million shares, respectively, issuable pursuant to share-based awards since the effect would have been antidilutive. In the three and nine months ended September 30, 2020, we excluded from the calculation 7.9 million and 10.8 million shares, respectively, issuable pursuant to share-based awards since the effect would have been antidilutive. In the three and nine months ended September 30, 2021, we excluded from the calculation 108.1 million and 103.1 million shares, respectively, issuable upon exchange of the 0.50% Exchangeable Senior Bonds, the 2.50% Senior Guaranteed Exchangeable Bonds and the 4.00% Senior Guaranteed Exchangeable Bonds since the effect would have been antidilutive. In the nine months ended September 30, 2020, we excluded from the calculation 84.0 million shares issuable upon exchange of the 0.50% Exchangeable Senior Bonds and the 2.50% Senior Guaranteed Exchangeable Bonds since the effect would have been antidilutive.

NOTE 10—CONTINGENCIES**Legal proceedings**

Debt exchange litigation and purported notice of default—Prior to the consummation of the exchange transactions that we completed in August and September 2020, we completed certain internal reorganization transactions (the “Internal Reorganization”). In September 2020, funds managed by, or affiliated with, Whitebox Advisors LLC (“Whitebox”) as holders of certain series of our notes subject to the exchange offer transactions completed in September 2020 (the “Exchange Offers”), filed a claim (the “Claim”) in the U.S. District Court for the Southern District of New York (the “Court”) related to such certain internal reorganization transactions and the Exchange Offers. Additionally, in September and October 2020, Whitebox and funds managed by, or affiliated with, Pacific Investment Management Company LLC, as debtholders, together with certain other advisors and debtholders, provided purported notices of alleged default with respect to the indentures governing, respectively, the 8.00% Senior Notes and the 7.25% senior notes due November 2025 (the “7.25% Senior Notes”).

On September 23, 2020, we filed an answer to the Claim with the Court and asserted counterclaims seeking a declaratory judgment that, among other matters, the Internal Reorganization did not cause a default under the indenture governing the 8.00% Senior Notes. Concurrently, with our answer and counterclaims, we also submitted a motion for summary judgment seeking an expedited judgment on our request for declaratory judgment. Whitebox subsequently submitted a cross motion for summary judgment seeking dismissal of our counterclaims. On November 30, 2020, while awaiting the Court’s ruling on our motion for summary judgment, we amended certain of our financing documents and implemented certain internal reorganization transactions, which resolved the allegations contained in the purported notices of default. On December 17, 2020, the Court issued its ruling granting our motion for summary judgment and denying the plaintiff’s cross motion for summary judgment, holding, among other matters, that the allegations contained in the purported notice of default did not constitute a default under the indenture governing the 8.00% Senior Notes. Whitebox has appealed the Court’s ruling.

The facts alleged in the purported notice of default under the 8.00% Senior Notes were the same as the facts underlying the Claim and the purported notice of default under the 7.25% Senior Notes. Accordingly, following the amendment and internal reorganization transactions on November 30, 2020, and the subsequent ruling from the Court granting our motion for summary judgment, we do not expect the liability, if any, resulting from these matters to have a material adverse effect on our condensed consolidated statement of financial position, results of operations or cash flows.

Asbestos litigation—In 2004, several of our subsidiaries were named, along with numerous other unaffiliated defendants, in complaints filed in the Circuit Courts of the State of Mississippi, and in 2014, a group of similar complaints were filed in Louisiana. The plaintiffs, former employees of some of the defendants, generally allege that the defendants used or manufactured asbestos-containing

TRANSOCEAN LTD. AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS—continued
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drilling mud additives for use in connection with drilling operations, claiming negligence, products liability, strict liability and claims allowed under the Jones Act and general maritime law. The plaintiffs generally seek awards of unspecified compensatory and punitive damages, but the court-appointed special master has ruled that a Jones Act employer defendant, such as us, cannot be sued for punitive damages. One of our subsidiaries was named in additional complaints filed in Illinois and Missouri, where the plaintiffs similarly allege that the defendants manufactured asbestos-containing products or used asbestos-containing drilling mud additives in connection with land-based drilling operations. As of September 30, 2021, 10 plaintiffs have claims pending in Louisiana and 13 plaintiffs have claims pending in Illinois and Missouri, in which we have or may have an interest. We intend to defend these lawsuits vigorously, although we can provide no assurance as to the outcome. We historically have maintained broad liability insurance, although we are not certain whether insurance will cover the liabilities, if any, arising out of these claims. Based on our evaluation of the exposure to date, we do not expect the liability, if any, resulting from these claims to have a material adverse effect on our condensed consolidated statement of financial position, results of operations or cash flows.

One of our subsidiaries has been named as a defendant, along with numerous other companies, in lawsuits arising out of the subsidiary's manufacture and sale of heat exchangers, and involvement in the construction and refurbishment of major industrial complexes alleging bodily injury or personal injury as a result of exposure to asbestos. As of September 30, 2021, the subsidiary was a defendant in approximately 254 lawsuits with a corresponding number of plaintiffs. For many of these lawsuits, we have not been provided sufficient information from the plaintiffs to determine whether all or some of the plaintiffs have claims against the subsidiary, the basis of any such claims, or the nature of their alleged injuries. The operating assets of the subsidiary were sold in 1989. In September 2018, the subsidiary and certain insurers agreed to a settlement of outstanding disputes that provided the subsidiary with cash and an annuity. Together with a coverage-in-place agreement with certain insurers and additional coverage issued by other insurers, we believe the subsidiary has sufficient resources to respond to both the current lawsuits as well as future lawsuits of a similar nature. While we cannot predict or provide assurance as to the outcome of these matters, we do not expect the ultimate liability, if any, resulting from these claims to have a material adverse effect on our condensed consolidated statement of financial position, results of operations or cash flows.

Other matters—We are involved in various tax matters, various regulatory matters, and a number of claims and lawsuits, asserted and unasserted, all of which have arisen in the ordinary course of our business. We do not expect the liability, if any, resulting from these other matters to have a material adverse effect on our condensed consolidated statement of financial position, results of operations or cash flows. We cannot predict with certainty the outcome or effect of any of the litigation matters specifically described above or of any such other pending, threatened, or possible litigation or liability. We can provide no assurance that our beliefs or expectations as to the outcome or effect of any tax, regulatory, lawsuit or other litigation matter will prove correct and the eventual outcome of these matters could materially differ from management's current estimates.

Environmental matters

We have certain potential liabilities under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") and similar state acts regulating cleanup of hazardous substances at various waste disposal sites, including those described below. CERCLA is intended to expedite the remediation of hazardous substances without regard to fault.

Potentially responsible parties ("PRPs") for each site include present and former owners and operators of, transporters to and generators of the substances at the site. It is difficult to quantify the potential cost of environmental matters and remediation obligations. Liability is strict and can be joint and several.

One of our subsidiaries was named as a PRP in connection with a site located in Santa Fe Springs, California, known as the Waste Disposal, Inc. site. We and other PRPs agreed, under a participation agreement with the U.S. Environmental Protection Agency (the "EPA") and the U.S. Department of Justice, to settle our potential liabilities by remediating the site. The remedial action for the site was completed in 2006. Our share of the ongoing operating and maintenance costs has been insignificant, and we do not expect any additional potential liabilities to be material. Resolutions of other claims by the EPA, the involved state agency or PRPs are at various stages of investigation. Nevertheless, based on available information, we do not expect the ultimate liability, if any, resulting from all environmental matters and known potential legal claims that are likely to be asserted, to have a material adverse effect on our condensed consolidated statement of financial position, results of operations or cash flows.

NOTE 11—EQUITY

Share issuance—In June 2021, we commenced an at-the-market equity offering (the "ATM Program"). On June 14, 2021, we entered into an equity distribution agreement with a sales agent for the offer and sale of our shares, with up to a maximum aggregate net offering price of \$400 million, under the ATM Program. We intend to use the net proceeds from the ATM Program for general corporate purposes, which may include, among other things the repayment or refinancing of indebtedness and the funding of working capital, capital expenditures, investments and additional balance sheet liquidity. In the three and nine months ended September 30, 2021, we received aggregate cash proceeds of \$75 million and \$141 million, respectively, net of issue costs, for the aggregate sale of 16.5 million and 31.7 million shares, respectively, under the ATM Program. See [Note 13—Subsequent Events](#).

TRANSOCEAN LTD. AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS—continued
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NOTE 12—FINANCIAL INSTRUMENTS

Overview—The carrying amounts and fair values of our financial instruments were as follows (in millions):

	September 30, 2021		December 31, 2020	
	Carrying amount	Fair value	Carrying amount	Fair value
Cash and cash equivalents	\$ 900	\$ 900	\$ 1,154	\$ 1,154
Restricted cash and cash equivalents	576	576	406	406
Long-term loans receivable from unconsolidated affiliates	35	32	2	2
Total debt	7,348	6,183	7,807	4,820

Cash and cash equivalents—Our cash and cash equivalents are primarily invested in demand deposits, short-term time deposits and money market funds. The carrying amount of our cash and cash equivalents represents the historical cost, plus accrued interest, which approximates fair value because of the short maturities of the instruments.

Restricted cash and cash equivalents—Our restricted cash and cash equivalents, which are subject to restrictions due to collateral requirements, legislation, regulation or court order, are primarily invested in demand deposits and money market funds. The carrying amount of our restricted cash and cash equivalents represents the historical cost, plus accrued interest, which approximates fair value because of the short maturities of the instruments.

Long-term loans receivable from unconsolidated affiliates—The carrying amount of our long-term loans receivable from unconsolidated affiliates, recorded in other assets, represents the principal amount of the cash investment. We measured the estimated fair value of our long-term loans receivable from unconsolidated affiliates using significant unobservable inputs, representative of a Level 3 fair value measurement, including the terms and credit spreads for the instruments.

Total debt—The carrying amount of our total debt represents the principal amount, net of unamortized discounts, premiums, issue costs and fair value adjustments along with contractual interest payments of previously restructured debt. The carrying amount and fair value of our total debt includes amounts related to certain exchangeable debt instruments (see [Note 7—Debt](#)). We measured the estimated fair value of our total debt using significant other observable inputs, representative of a Level 2 fair value measurement, including the terms and credit spreads for the instruments and, with respect to the exchangeable debt instruments, the expected volatility of the market price for our shares.

NOTE 13—SUBSEQUENT EVENTS

Debt retirement—Subsequent to September 30, 2021, we repurchased in the open market \$28 million aggregate principal amount of the 5.875% senior secured notes due January 2024 and the 5.375% senior secured notes due May 2023 and made an aggregate cash payment of \$28 million.

Share issuance—Subsequent to September 30, 2021, we received aggregate cash proceeds of \$17 million, net of issue costs, for the aggregate sale of 4.3 million shares under the ATM Program.

ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

FORWARD-LOOKING INFORMATION

The statements included in this quarterly report regarding future financial performance and results of operations and other statements that are not historical facts are forward-looking statements within the meaning of Section 27A of the United States ("U.S.") Securities Act of 1933 and Section 21E of the U.S. Securities Exchange Act of 1934. Forward-looking statements in this quarterly report include, but are not limited to, statements about the following subjects:

- the effect, impact, potential duration, the rate of any economic recovery or other implications of the outbreak of a novel strain of coronavirus ("COVID-19"), including virus variants, and disputes and actions with respect to production levels by, among or between major oil and gas producing countries and any expectations we may have with respect thereto;
- our results of operations, our revenue efficiency and other performance indicators; optimization of rig-based spending and our cash flow from operations;
- the offshore drilling market, including the effects of variations in commodity prices, supply and demand, utilization rates, dayrates, customer drilling programs, stacking and reactivation of rigs, effects of new rigs on the market, the impact of changes to regulations in jurisdictions in which we operate and changes in the global economy or market outlook for the various geographies in which we operate or for our classes of rigs;
- customer drilling contracts, including contract backlog, force majeure provisions, contract awards, commencements, extensions, terminations, renegotiations, contract option exercises, contract revenues, early termination payments, indemnity provisions and rig mobilizations;
- liquidity, including availability under our bank credit agreement, and adequacy of cash flows for our obligations;
- debt levels, including impacts of the current financial and economic downturn, interest rates, credit ratings and our evaluation or decisions with respect to any potential liability management transactions or other strategic alternatives intended to prudently manage our liquidity, debt maturities and other aspects of our capital structure and any litigation, alleged defaults and discussions with creditors related thereto;
- newbuild, upgrade, shipyard and other capital projects, including completion, relinquishment or abandonment, delivery and commencement of operation dates, expected downtime and lost revenues, the level of expected capital expenditures and the timing and cost of completing capital projects;
- the cost and timing of acquisitions and the proceeds and timing of dispositions;
- tax matters, including our effective tax rate, changes in tax laws, treaties and regulations, tax assessments and liabilities for tax issues in the tax jurisdictions in which we operate or have a taxable presence;
- legal and regulatory matters, including results and effects of current or potential legal proceedings and governmental audits and assessments, outcomes and effects of internal and governmental investigations, customs and environmental matters;
- insurance matters, including adequacy of insurance, renewal of insurance, insurance proceeds and cash investments of our wholly owned captive insurance company;
- effects of accounting changes and adoption of accounting policies; and
- investment in recruitment, retention and personnel development initiatives, the timing of, and other matters concerning, severance payments and benefit payments.

Forward-looking statements in this quarterly report are identifiable by use of the following words and other similar expressions:

- anticipates ■ budgets ■ estimates ■ forecasts ■ may ■ plans ■ projects ■ should
- believes ■ could ■ expects ■ intends ■ might ■ predicts ■ scheduled

Such statements are subject to numerous risks, uncertainties and assumptions, including, but not limited to:

- those described under "Item 1A. Risk Factors" included in Part I of our annual report on [Form 10-K for the year ended December 31, 2020](#);
- the effects of public health threats, pandemics and epidemics, such as the outbreak of COVID-19, and the adverse impact thereof on our business, financial condition and results of operations, including, but not limited to, our growth, operating costs, supply chain, labor availability, logistical capabilities, customer demand for our services and industry demand generally, our liquidity, the price of our securities and trading markets with respect thereto, our ability to access capital markets, and the global economy and financial markets generally;
- the effects of actions by, or disputes among or between, members of the Organization of Petroleum Exporting Countries and other oil and natural gas producing countries with respect to production levels or other matters related to the prices of oil and natural gas;
- the adequacy of and access to our sources of liquidity;
- our inability to renew drilling contracts at comparable, or improved, dayrates and to obtain drilling contracts for our rigs that do not have contracts;
- operational performance;
- the cancellation of drilling contracts currently included in our reported contract backlog;
- losses on impairment of long-lived assets;
- shipyard, construction and other delays;
- the results of meetings of our shareholders;
- changes in political, social and economic conditions;
- the effect and results of litigation, regulatory matters, settlements, audits, assessments and contingencies; and
- other factors discussed in this quarterly report and in our other filings with the U.S. Securities and Exchange Commission ("SEC"), which are available free of charge on the SEC website at www.sec.gov.

The foregoing risks and uncertainties are beyond our ability to control, and in many cases, we cannot predict the risks and uncertainties that could cause our actual results to differ materially from those indicated by the forward-looking statements. Should one or more of these risks or uncertainties materialize, or should underlying assumptions prove incorrect, actual results may vary materially from those indicated. All subsequent written and oral forward-looking statements attributable to us or to persons acting on our behalf are expressly qualified in their entirety by reference to these risks and uncertainties. You should not place undue reliance on forward-looking statements. Each forward-looking statement speaks only as of the date of the particular statement. We expressly disclaim any obligations or undertaking to release publicly any updates or revisions to any forward-looking statement to reflect any change in our expectations or beliefs with regard to the statement or any change in events, conditions or circumstances on which any forward-looking statement is based, except as required by law.

BUSINESS

Transocean Ltd. (together with its subsidiaries and predecessors, unless the context requires otherwise, “Transocean,” “we,” “us” or “our”) is a leading international provider of offshore contract drilling services for oil and gas wells. As of October 25, 2021, we owned or had partial ownership interests in and operated 37 mobile offshore drilling units, including 27 ultra-deepwater floaters and 10 harsh environment floaters. As of October 25, 2021, we were constructing two ultra-deepwater drillships.

We provide contract drilling services in a single, global operating segment, which involves contracting our mobile offshore drilling fleet, related equipment and work crews primarily on a dayrate basis to drill oil and gas wells. We specialize in technically demanding regions of the offshore drilling business with a particular focus on ultra-deepwater and harsh environment drilling services. Our drilling fleet is one of the most versatile fleets in the world, consisting of drillships and semisubmersible floaters used in support of offshore drilling activities and offshore support services on a worldwide basis.

Our contract drilling services operations are geographically dispersed in oil and gas exploration and development areas throughout the world. Although rigs can be moved from one region to another, the cost of moving rigs and the availability of rig-moving vessels may cause the supply and demand balance to fluctuate somewhat between regions. Still, significant variations between regions do not tend to persist long term because of rig mobility. Our fleet operates in a single, global market for the provision of contract drilling services. The location of our rigs and the allocation of resources to operate, build or upgrade our rigs are determined by the activities and needs of our customers.

SIGNIFICANT EVENTS

Share issuance—In June 2021, we commenced an at-the-market equity offering (the “ATM Program”). In the nine months ended September 30, 2021, we received aggregate cash proceeds of \$141 million, net of issue costs, for the aggregate sale of 31.7 million shares under the ATM Program. In October 2021, we received aggregate cash proceeds of \$17 million, net of issue costs, for the aggregate sale of 4.3 million shares under the ATM Program. See “—Liquidity and Capital Resources—[Sources and uses of liquidity](#).”

Shipyard financing arrangement—In June 2021, Transocean Offshore Deepwater Holdings Limited, a Cayman Islands company and our wholly owned indirect subsidiary, entered into credit agreements with Jurong Shipyard Pte Ltd. establishing facilities (the “Shipyard Loans”) to finance the final payments expected to be owed to the shipyard upon delivery of the ultra-deepwater floaters *Deepwater Atlas* and *Deepwater Titan*. See “—[Liquidity and Capital Resources](#).”

Debt exchanges—On February 26, 2021, we completed private exchanges of \$323 million aggregate principal amount of outstanding 0.50% exchangeable senior bonds due January 2023 (the “0.50% Exchangeable Senior Bonds”) for \$294 million aggregate principal amount of the 4.00% senior guaranteed exchangeable bonds due December 2025 (the “4.00% Senior Guaranteed Exchangeable Bonds”), together with an aggregate cash payment of \$11 million. In the nine months ended September 30, 2021, we recognized a gain of \$51 million associated with the retirement of exchanged debt. See “—[Operating Results](#)” and “—Liquidity and Capital Resources—[Sources and uses of liquidity](#).”

Early debt retirement—In the nine months ended September 30, 2021, we repurchased in the open market \$51 million aggregate principal amount of our debt securities for an aggregate cash payment of \$51 million. In October 2021, we repurchased in the open market \$28 million aggregate principal amount of our debt securities for an aggregate cash payment of \$28 million. See “—[Operating Results](#)” and “—Liquidity and Capital Resources—[Sources and uses of liquidity](#).”

Dispositions—During the nine months ended September 30, 2021, we completed the sale of one harsh environment floater, along with related assets, for which we received \$4 million aggregate net cash proceeds and recognized an aggregate net loss of \$60 million associated with the disposal of these assets. See “—[Operating Results](#).”

OUTLOOK

Drilling market—We continue to observe a steady improvement in the outlook for the global economic recovery and for oil and natural gas fundamentals and pricing. This improved outlook is supported by the delivery of effective vaccines, the deployment of economic stimulus packages, and the improving economic activities associated with a more confident stance on defeating the pandemic. We remain cautiously optimistic about the recovery of the global economy, even in the context of emerging COVID variants, and can see the path to pre-pandemic levels of drilling activity. We expect that demand for hydrocarbons may return to or exceed pre-pandemic levels within the next year or two.

As a result, many of our customers are now shifting their focus to increase exploration and production activities, and many previously delayed projects are again active. Offshore drilling activity is increasing in almost every ultra-deepwater market, and due to attrition of the global offshore fleet over the last several years, there are significantly fewer available drilling units and, particularly, an increasing scarcity of the highest specification drilling units as customers look to secure the best equipment for their projects. In the North Sea harsh environment market, an accelerated level of recovery is anticipated in 2022 through 2023 as the effect of Norway tax incentive programs is realized by our customers.

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Global energy demand is expected to increase in member and non-member countries of the Organization for Economic Co-Operation and Development. Non-member countries, in particular, are expected to experience the largest population growth and most significant increases in living standards, creating a compounding effect on energy consumption. We believe that this forecasted increase in global energy demand will support an increase in demand for oil and gas. In the context of the sharp decline in production activities that resulted from the pandemic and the lack of investment in exploration and production activities over the past several years, we believe an increase in demand will precipitate substantial supply constraints that are not easily reversed without significant new investment in drilling.

With deepwater and harsh environment fields offering increasingly competitive returns, combined with their comparably low carbon intensity of production, we expect a significant portion of required spending in fossil fuel development will be allocated to deepwater and harsh environment projects. The restructuring and subsequent consolidation of many of our competitors plus the accelerated retirement of units seen over the past several months and projected through the remainder of this year, should facilitate higher utilization of active assets and more efficient allocation of capital amongst restructured drilling contractors. In summary, our improving market dynamics combined with increasing demand for deepwater and harsh environment drilling have the potential to provide a materially better business environment for offshore drillers that weathered the effects of the pandemic and now move towards a more favorable outlook for 2022 and beyond.

Fleet status—We refer to the availability of our rigs in terms of the uncommitted fleet rate. The uncommitted fleet rate is defined as the number of uncommitted days divided by the total number of rig calendar days in the measurement period, expressed as a percentage. An uncommitted day is defined as a calendar day during which a rig is idle or stacked, is not contracted to a customer and is not committed to a shipyard. The uncommitted fleet rates exclude the effect of priced options. As of October 25, 2021, the uncommitted fleet rates for the remainder of 2021 and each of the four years in the period ending December 31, 2025 were as follows:

	<u>2021</u>	<u>2022</u>	<u>2023</u>	<u>2024</u>	<u>2025</u>
Uncommitted fleet rate					
Ultra-deepwater floaters	48 %	60 %	73 %	82 %	83 %
Harsh environment floaters	40 %	42 %	76 %	98 %	100 %

PERFORMANCE AND OTHER KEY INDICATORS

Contract backlog—Contract backlog is defined as the maximum contractual operating dayrate multiplied by the number of days remaining in the firm contract period, excluding revenues for mobilization, demobilization, contract preparation, other incentive provisions or reimbursement revenues, which are not expected to be significant to our contract drilling revenues. The contract backlog represents the maximum contract drilling revenues that can be earned considering the contractual operating dayrate in effect during the firm contract period. The contract backlog for our fleet was as follows:

	<u>October 25, 2021</u>	<u>July 21, 2021</u>	<u>February 12, 2021</u>
Contract backlog		(In millions)	
Ultra-deepwater floaters	\$ 5,626	\$ 5,706	\$ 5,911
Harsh environment floaters	1,443	1,639	1,931
Total contract backlog	<u>\$ 7,069</u>	<u>\$ 7,345</u>	<u>\$ 7,842</u>

We believe our industry-leading contract backlog sets us apart from the competition. Our contract backlog includes only firm commitments, which are represented by signed drilling contracts or, in some cases, by other definitive agreements awaiting contract execution. Our contract backlog includes amounts associated with our contracted newbuild units that are currently under construction. The contractual operating dayrate may be higher than the actual dayrate we ultimately receive, or an alternative contractual dayrate, such as a waiting on weather rate, repair rate, standby rate or force majeure rate, may apply under certain circumstances. The contractual operating dayrate may also be higher than the actual dayrate we ultimately receive because of a number of factors, including rig downtime or suspension of operations. In certain contracts, the dayrate may be reduced to zero if, for example, repairs extend beyond a stated period of time.

The COVID-19 pandemic and volatility in oil prices could have significant adverse consequences for the financial condition of our customers. This could result in contract cancellations, early terminations, customers seeking price reductions or more favorable economic terms, a reduced ability to ultimately collect receivables, or entry into lower dayrate contracts or having to idle, stack or retire more of our rigs.

Average daily revenue—Average daily revenue is defined as contract drilling revenues, excluding revenues for contract terminations, reimbursements and contract intangible amortization, earned per operating day. An operating day is defined as a calendar day during which a rig is contracted to earn a dayrate during the firm contract period after commencement of operations. The average daily revenue for our fleet was as follows:

	Three months ended		
	September 30, 2021	June 30, 2021	September 30, 2020
Average daily revenue			
Ultra-deepwater floaters	\$ 351,900	\$ 363,500	\$ 329,300
Harsh environment floaters	\$ 401,600	\$ 379,900	\$ 372,500
Total fleet average daily revenue	\$ 367,100	\$ 369,400	\$ 343,500

Our average daily revenue fluctuates relative to market conditions and our revenue efficiency. The average daily revenue may be affected by revenues for lump sum bonuses or demobilization fees received from our customers. We include newbuilds in the calculation when the rigs commence operations upon acceptance by the customer. We remove rigs from the calculation upon disposal or classification as held for sale, unless we continue to operate rigs subsequent to sale, in which case we remove the rigs at the time of completion or novation of the contract.

Revenue efficiency—Revenue efficiency is defined as actual contract drilling revenues, excluding revenues for contract terminations and reimbursements, for the measurement period divided by the maximum revenue calculated for the measurement period, expressed as a percentage. Maximum revenue is defined as the greatest amount of contract drilling revenues the drilling unit could earn for the measurement period, excluding revenues for incentive provisions, reimbursements and contract terminations. The revenue efficiency rates for our fleet were as follows:

	Three months ended		
	September 30, 2021	June 30, 2021	September 30, 2020
Revenue efficiency			
Ultra-deepwater floaters	96 %	98 %	97 %
Harsh environment floaters	103 %	98 %	96 %
Total fleet average revenue efficiency	98 %	98 %	97 %

Revenue efficiency measures our ability to ultimately convert our contractual opportunities into revenues. Our revenue efficiency rate varies due to revenues earned under alternative contractual dayrates, such as a waiting on weather rate, repair rate, standby rate, force majeure rate or zero rate, that may apply under certain circumstances. Our revenue efficiency rate is also affected by incentive performance bonuses or penalties. We include newbuilds in the calculation when the rigs commence operations upon acceptance by the customer. We exclude rigs that are not operating under contract, such as those that are stacked.

Rig utilization—Rig utilization is defined as the total number of operating days divided by the total number of rig calendar days in the measurement period, expressed as a percentage. The rig utilization rates for our fleet were as follows:

	Three months ended		
	September 30, 2021	June 30, 2021	September 30, 2020
Rig utilization			
Ultra-deepwater floaters	50 %	48 %	60 %
Harsh environment floaters	60 %	73 %	75 %
Total fleet average rig utilization	53 %	55 %	65 %

Our rig utilization rate declines as a result of idle and stacked rigs and during shipyard and mobilization periods to the extent these rigs are not earning revenues. We include newbuilds in the calculation when the rigs commence operations upon acceptance by the customer. We remove rigs from the calculation upon disposal or classification as held for sale. Accordingly, our rig utilization can increase when idle or stacked units are removed from our drilling fleet.

OPERATING RESULTS

Three months ended September 30, 2021 compared to the three months ended September 30, 2020

The following is an analysis of our operating results. See “—[Performance and Other Key Indicators](#)” for definitions of operating days, average daily revenue, revenue efficiency and rig utilization.

	Three months ended September 30,		Change	% Change
	2021	2020		
	(In millions, except day amounts and percentages)			
Operating days	1,797	2,307	(510)	(22)%
Average daily revenue	\$ 367,100	\$ 343,500	\$ 23,600	7 %
Revenue efficiency	98 %	97 %		
Rig utilization	53 %	65 %		
Contract drilling revenues	\$ 626	\$ 773	\$ (147)	(19)%
Operating and maintenance expense	(398)	(470)	72	15 %
Depreciation and amortization expense	(185)	(190)	5	3 %
General and administrative expense	(40)	(45)	5	11 %
Loss on impairment	—	—	—	nm
Loss on disposal of assets, net	(3)	(64)	61	95 %
Operating income	—	4	(4)	nm
Other income (expense), net				
Interest income	4	6	(2)	(33)%
Interest expense, net of amounts capitalized	(110)	(145)	35	24 %
Gain on restructuring and retirement of debt	—	449	(449)	nm
Other, net	3	21	(18)	86 %
Income (loss) before income tax (expense) benefit	(103)	335	(438)	nm
Income tax (expense) benefit	(27)	24	(51)	nm
Net income (loss)	\$ (130)	\$ 359	\$ (489)	nm

“nm” means not meaningful.

Contract drilling revenues—Contract drilling revenues decreased for the three months ended September 30, 2021, compared to the three months ended September 30, 2020, primarily due to the following: (a) approximately \$80 million resulting from higher idle time for the marketed fleet, (b) approximately \$35 million resulting from rigs that were cold stacked, (c) approximately \$30 million resulting from rigs that were sold, (d) approximately \$15 million resulting from higher shipyard days and (e) approximately \$5 million due to lower customer reimbursables related to COVID-19. These decreases were partially offset by approximately \$15 million resulting from an increased average daily revenue.

Costs and expenses—Operating and maintenance costs and expenses decreased for the three months ended September 30, 2021, compared to the three months ended September 30, 2020, primarily due to the following: (a) approximately \$25 million resulting from rigs that were cold stacked, (b) approximately \$25 million resulting from rigs that were sold, (c) approximately \$25 million resulting from *Transocean Norge* being idle and (d) approximately \$10 million resulting from reduced onshore personnel costs. These decreases were partially offset by the following increases: (a) approximately \$10 million resulting from shipyard and maintenance costs and (b) approximately \$5 million of personnel costs due to unfavorable exchange rates.

Loss on disposal of assets—In the three months ended September 30, 2020, we recognized an aggregate loss of \$61 million associated with the sale of three harsh environment floaters and two midwater floaters, along with related assets.

Other income and expense—Interest expense, net of amounts capitalized, decreased in the three months ended September 30, 2021, compared to the three months ended September 30, 2020, primarily due to the following: (a) \$20 million resulting from our debt restructuring in the three months ended September 30, 2020 and (b) approximately \$17 million resulting from debt repaid as scheduled or retired early in our open market repurchases, redemption and cash tender offers subsequent to July 1, 2020, partially offset by a net increase of (c) \$4 million resulting from private debt exchanges completed in February 2021.

In the three months ended September 30, 2020, we recognized an aggregate net gain of \$428 million associated with restructuring debt in the exchange transactions in August and September 2020 and an aggregate net gain of \$21 million associated with the retirement of \$49 million aggregate principal amount of our debt securities repurchased in the open market.

Other income, net, decreased in the three months ended September 30, 2021, compared to the three months ended September 30, 2020, primarily due to decreased earnings of \$9 million related to our investment in Orion Holdings (Cayman) Ltd. (“Orion”).

Income tax expense—In the three months ended September 30, 2021 and 2020, our effective tax rate was (26.1) percent and (7.0) percent, respectively, based on income (loss) before income tax expense or benefit. In the three months ended September 30, 2021 and 2020, the effect of various discrete period tax items was a net tax expense of \$8 million and a net tax benefit of \$45 million, respectively.

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In the three months ended September 30, 2021, such discrete items included expiration and settlements of various uncertain tax positions, remeasurement of deferred tax liabilities related to jurisdictional ownership changes of certain assets and changes in valuation allowances. In the three months ended September 30, 2020, such discrete items included the gain on the restructuring and retirement of debt, loss on disposal of assets, additional carryback of net operating losses in the U.S. as a result of the Coronavirus Aid, Relief, and Economic Security Act, which included the release of valuation allowances previously recorded, and settlements and expirations of various uncertain tax positions. In the three months ended September 30, 2021 and 2020, our effective tax rate, excluding discrete items, was (18.1) percent and (45.6) percent, respectively, based on income (loss) before income tax expense or benefit.

Due to our operating activities and organizational structure, our income tax expense does not change proportionally with our income before income taxes. Significant decreases in our income before income taxes typically lead to higher effective tax rates, while significant increases in income before income taxes can lead to lower effective tax rates, subject to the other factors impacting income tax expense noted above. With respect to the effective tax rate calculation for the three months ended September 30, 2021, a significant portion of our income tax expense was generated in countries in which income taxes are imposed on deemed profits, which may differ significantly from actual earnings, with the most significant of these countries being Angola and India. Conversely, the countries in which we incurred the most significant income taxes during this period that were based on income before income tax include the U.S., Switzerland, Norway, Hungary and Brazil. Our rig operating structures further complicate our tax calculations, especially in instances where we have more than one operating structure for the taxing jurisdiction and, thus, more than one method of calculating taxes depending on the operating structure utilized by the rig under the contract.

Nine months ended September 30, 2021 compared to the nine months ended September 30, 2020

The following is an analysis of our operating results. See “—[Performance and Other Key Indicators](#)” for definitions of operating days, average daily revenue, revenue efficiency and rig utilization.

	Nine months ended September 30,		Change	% Change
	2021	2020		
	<small>(In millions, except day amounts and percentages)</small>			
Operating days	5,419	7,127	(1,708)	(24)%
Average daily revenue	\$ 370,100	\$ 321,800	\$ 48,300	15 %
Revenue efficiency	98 %	96 %		
Rig utilization	53 %	64 %		
Contract drilling revenues	\$ 1,935	\$ 2,462	\$ (527)	(21)%
Operating and maintenance expense	(1,267)	(1,535)	268	17 %
Depreciation and amortization expense	(558)	(592)	34	6 %
General and administrative expense	(118)	(133)	15	11 %
Loss on impairment	—	(597)	597	nm
Loss on disposal of assets, net	(61)	(64)	3	5 %
Operating loss	(69)	(459)	390	85 %
Other income (expense), net				
Interest income	11	19	(8)	(42)%
Interest expense, net of amounts capitalized	(340)	(458)	118	26 %
Gain on restructuring and retirement of debt	51	396	(345)	(87)%
Other, net	26	(23)	49	nm
Loss before income tax expense	(321)	(525)	204	39 %
Income tax expense	(10)	(4)	(6)	nm
Net loss	<u>\$ (331)</u>	<u>\$ (529)</u>	<u>\$ 198</u>	<u>37 %</u>

“nm” means not meaningful.

Contract drilling revenues—Contract drilling revenues decreased for the nine months ended September 30, 2021, compared to the nine months ended September 30, 2020, primarily due to the following: (a) approximately \$200 million resulting from the settlement of disputes and payments for early termination of a contract in the nine months ended September 30, 2020 with no comparable activity in the current-year period, (b) approximately \$175 million resulting from rigs that were idle or in shipyard in the nine months ended September 31, 2021, (c) approximately \$145 million resulting from rigs that were cold stacked and (d) approximately \$85 million resulting from rigs that were sold. These decreases were partially offset by the following increases: (a) approximately \$55 million resulting from an increased average daily revenue and (b) approximately \$25 million resulting from higher revenue efficiency.

Costs and expenses—Operating and maintenance costs and expenses decreased for the nine months ended September 30, 2021, compared to the nine months ended September 30, 2020, primarily due to the following: (a) approximately \$130 million resulting from rigs that were cold stacked, (b) approximately \$75 million resulting from rigs that were sold, (c) approximately \$25 million resulting from *Transocean Norge* being idle, (d) approximately \$25 million of litigation and settlement costs in the prior-year period, (e) approximately \$20 million resulting from onshore personnel costs, and (f) approximately \$5 million resulting from reimbursable expenses unrelated to

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COVID-19. These decreases were partially offset by the following increases: (a) approximately \$25 million resulting from shipyard and maintenance costs primarily driven by out-of-service activities and (b) approximately \$25 million of personnel costs due to unfavorable exchange rates.

Depreciation and amortization expense decreased for the nine months ended September 30, 2021, compared to the nine months ended September 30, 2020, primarily due to \$21 million resulting from rigs sold or classified as held for sale and \$12 million resulting from assets that had reached the end of their useful lives or had been retired.

General and administrative costs and expenses decreased for the nine months ended September 30, 2021, compared to the nine months ended September 30, 2020, primarily due to (a) \$9 million of reduced personnel costs, including severance, (b) \$5 million of reduced costs for information systems and technology and (c) \$3 million of reduced office rent expense, partially offset by (d) \$4 million of increased legal and professional fees and (e) \$3 million of increased insurance costs.

Loss on impairment and disposal of assets—In the nine months ended September 30, 2020, we recognized a loss on the impairment of assets, including an aggregate net loss of \$556 million associated with assets that we determined were impaired at the time we classified them as held for sale, a loss of \$31 million associated with the impairment of our midwater floater asset group and a loss of \$10 million associated with the impairment of other assets.

In the nine months ended September 30, 2021, we recognized a loss of \$60 million associated with the sale of a harsh environment floater and related assets. In the nine months ended September 30, 2020, we recognized an aggregate loss of \$61 million associated with the sale of three harsh environment floaters and three midwater floaters, along with related assets.

In the nine months ended September 30, 2021 and 2020, we recognized an aggregate loss of \$1 million and \$3 million, respectively, associated with the disposal of assets unrelated to rig sales.

Other income and expense—Interest expense, net of amounts capitalized, decreased in the nine months ended September 30, 2021, compared to the nine months ended September 30, 2020, primarily due to the following: (a) \$71 million resulting from our debt restructuring in the nine months ended September 30, 2020 and (b) approximately \$60 million resulting from debt repaid as scheduled or retired early in our open market repurchases, redemption and cash tender offers subsequent to January 1, 2020, partially offset by a net increase of (c) \$10 million resulting from private debt exchanges completed in February 2021.

In the nine months ended September 30, 2021, we recognized an aggregate net gain of \$51 million associated with the retirement of \$323 million aggregate principal amount of the 0.50% Exchangeable Senior Bonds as a result of private exchanges. In the nine months ended September 30, 2020, we recognized a gain on restructuring and retirement of debt, primarily due to the following: (a) an aggregate gain of \$428 million associated with the restructuring of debt in the exchange transactions in August and September 2020 and (b) an aggregate gain of \$33 million associated with the retirement of \$124 million aggregate principal amount of our debt securities repurchased in the open market, partially offset by (c) a loss of \$65 million associated with the full redemption of the 9.00% senior notes due July 2023 (the “9.00% Senior Notes”).

Other income, net, increased in the nine months ended September 30, 2021, compared to the nine months ended September 30, 2020, primarily due to (a) a loss of \$59 million recognized in the prior-year period associated with the impairment of our equity investment in Orion, (b) increased income of \$9 million related to our dual-activity patent resulting from settlements and (c) increased income of \$9 million related to the non-service components of net periodic benefit income, partially offset by (d) decreased income of \$21 million related to our investment in Orion.

Income tax expense—In the nine months ended September 30, 2021 and 2020, our effective tax rate was (3.2) percent and (0.8) percent, respectively, based on loss before income tax expense. In the nine months ended September 30, 2021 and 2020, the effect of various discrete period tax items was a net tax benefit of \$25 million and \$54 million, respectively. In the nine months ended September 30, 2021, such discrete items included loss on disposal of assets, gain on retirement of debt, expiration and settlements of various uncertain tax positions, remeasurement of deferred tax liabilities related to jurisdictional ownership changes of certain assets and changes in valuation allowances. In the nine months ended September 30, 2020, such discrete items included losses on impairment and disposal of assets, gain on restructuring and retirement of debt, revenues recognized for the settlement of disputes, the loss on impairment of an investment in an unconsolidated affiliate, the carryback of net operating losses in the U.S. as a result of the Coronavirus Aid, Relief, and Economic Security Act, which included the release of valuation allowances previously recorded, and settlements and expirations of various uncertain tax positions. In the nine months ended September 30, 2021 and 2020, our effective tax rate, excluding discrete items, was (11.2) percent and (16.4) percent, respectively, based on loss before income tax expense. In the nine months ended September 30, 2021 compared to the nine months ended September 30, 2020, our effective tax rate increased primarily due to changes in the relative blend of income from operations in certain jurisdictions.

Due to our operating activities and organizational structure, our income tax expense does not change proportionally with our income before income taxes. Significant decreases in our income before income taxes typically lead to higher effective tax rates, while significant increases in income before income taxes can lead to lower effective tax rates, subject to the other factors impacting income tax expense noted above. With respect to the effective tax rate calculation for the nine months ended September 30, 2021, a significant portion of our income tax expense was generated in countries in which income taxes are imposed on deemed profits, which may differ significantly from actual earnings, with the most significant of these countries being Angola and India. Conversely, the countries in which we incurred the most

significant income taxes during this period that were based on income before income tax include the U.S., Switzerland, Norway, Hungary and Brazil. Our rig operating structures further complicate our tax calculations, especially in instances where we have more than one operating structure for the taxing jurisdiction and, thus, more than one method of calculating taxes depending on the operating structure utilized by the rig under the contract.

LIQUIDITY AND CAPITAL RESOURCES

Sources and uses of cash

At September 30, 2021, we had \$900 million in unrestricted cash and cash equivalents and \$576 million in restricted cash and cash equivalents. In the nine months ended September 30, 2021, our primary sources of cash were net cash provided by our operating activities and net cash proceeds from the issuance of shares under the ATM Program. Our primary uses of cash were repayments of debt and capital expenditures.

	Nine months ended September 30,		Change
	2021	2020 (In millions)	
Cash flows from operating activities			
Net loss	\$ (331)	\$ (529)	\$ 198
Non-cash items, net	831	1,168	(337)
Changes in operating assets and liabilities, net	(110)	(519)	409
	<u>\$ 390</u>	<u>\$ 120</u>	<u>\$ 270</u>

Net cash provided by operating activities increased primarily due to (a) reduced cash interest payments, (b) the cash payment of \$125 million released from restricted cash to satisfy our remaining obligations under the Plaintiff Steering Committee settlement agreement in June 2020 with no comparable activity in the current-year period and (c) reduced net cash paid for income taxes.

	Nine months ended September 30,		Change
	2021	2020 (In millions)	
Cash flows from investing activities			
Capital expenditures	\$ (137)	\$ (218)	\$ 81
Proceeds from disposal of assets, net	8	15	(7)
Investment in loans to unconsolidated affiliate	(33)	—	(33)
Investments in unconsolidated affiliates	—	(17)	17
	<u>\$ (162)</u>	<u>\$ (220)</u>	<u>\$ 58</u>

Net cash used in investing activities decreased primarily due to (a) reduced capital expenditures unrelated to our two newbuilds under construction and (b) investments in equity of unconsolidated affiliates in the prior-year period, partially offset by (c) investments in loans to Orion in the current-year period.

	Nine months ended September 30,		Change
	2021	2020 (In millions)	
Cash flows from financing activities			
Repayments of debt	\$ (423)	\$ (1,135)	\$ 712
Proceeds from issuance of shares, net of issue costs	141	—	141
Proceeds from issuance of debt, net of issue costs	—	743	(743)
Other, net	(30)	(27)	(3)
	<u>\$ (312)</u>	<u>\$ (419)</u>	<u>\$ 107</u>

Net cash used in financing activities decreased primarily due to (a) reduced cash used to repay debt, primarily as a result of the redemption of \$714 million aggregate principal amount of the 9.00% Senior Notes in the prior-year period and (b) aggregate net cash proceeds from the issuance of 31.7 million shares under the ATM Program in the current-year period, partially offset by (c) net cash proceeds from the issuance of the 8.00% senior unsecured notes due February 2027 (“8.00% Senior Notes”) in the prior-year period.

Sources and uses of liquidity

Overview—We expect to use existing unrestricted cash balances, internally generated cash flows, borrowings under the Shipyard Loans or the Secured Credit Facility, as defined below, or proceeds from the disposal of assets, the issuance of additional debt or the issuance of additional shares under the ATM Program to fulfill anticipated obligations, which may include capital expenditures, working capital and other operational requirements, scheduled debt maturities or other payments. We may consider establishing additional financing arrangements with banks or other capital providers, and subject to market conditions and other factors, we may be required to provide collateral for any such future financing arrangements. We continue to evaluate additional potential liability management transactions in connection with our ongoing efforts to prudently manage our capital structure and improve our liquidity. In each case subject to then existing

market conditions and our expected liquidity needs, among other factors, we may continue to use existing unrestricted cash balances, internally generated cash flows and proceeds from asset sales to pursue liability management transactions, including among others, purchasing or exchanging one or more existing series of our debt securities in the open market, in privately negotiated transactions, through tender offers or through exchange offers. Any future purchases, exchanges or other transactions may be on the same terms or on terms that are more or less favorable to holders than the terms of any prior transaction, including the exchange transactions completed in February 2021 and in the year ended December 31, 2020. We can provide no assurance as to which, if any, of these alternatives, or combinations thereof, we may choose to pursue in the future, if at all, or as to the timing with respect to any future transactions.

The ongoing effect of the COVID-19 pandemic, including the impact of virus variants, and the volatility in oil prices could have significant adverse consequences for general economic, financial and business conditions, as well as for our business and financial position and the business and financial position of our customers and suppliers and may, among other things, impact our ability to generate cash flows from operations, access the capital markets on acceptable terms or at all, and affect our future need or ability to borrow under our Secured Credit Facility. In addition to our potential sources of funding, the effects of such global events may impact our liquidity or need to alter our allocation or sources of capital, implement further cost reduction measures and change our financial strategy. Although the COVID-19 pandemic and the volatility in oil prices could have a broad range of effects on our sources and uses of liquidity, the ultimate effect thereon, if any, will depend on future developments, which cannot be predicted at this time.

Our internally generated cash flows are directly related to our business and the market sectors in which we operate. We have generated positive cash flows from operating activities over recent years and, although we cannot provide assurances, we currently expect that such cash flows will continue to be positive over the next year. However, among other factors, if the drilling market deteriorates, or if we experience poor operating results, or if we incur expenses to, for example, reactivate, stack or otherwise assure the marketability of our fleet, cash flows from operations may be reduced or negative.

Our ability and willingness to access the debt and equity markets is a function of a variety of factors, including, among others, general economic conditions, industry conditions, market conditions and market perceptions of us and our industry and credit rating agencies' views of our debt. The rating of the majority of our long-term debt ("Debt Rating") is below investment grade. The Debt Rating is causing us to experience increased fees and interest rates under our Secured Credit Facility and agreements governing certain of our senior notes. Future downgrades may further restrict our ability to access the debt market for sources of capital and may negatively impact the cost of such capital at a time when we would like, or need, to access such markets, which could have an impact on our flexibility to react to changing economic and business conditions. An economic downturn like the one we are currently experiencing could have an impact on the lenders participating in our credit facilities or on our customers, causing them to fail to meet their obligations to us.

Secured Credit Facility—We have a \$1.3 billion secured revolving credit facility established under a bank credit agreement (as amended from time to time, the "Secured Credit Facility"), which is scheduled to expire on June 22, 2023. The Secured Credit Facility is guaranteed by Transocean Ltd. and certain subsidiaries. The Secured Credit Facility is secured by, among other things, a lien on the ultra-deepwater floaters *Deepwater Asgard*, *Deepwater Corcovado*, *Deepwater Invictus*, *Deepwater Mykonos*, *Deepwater Orion*, *Deepwater Skyros*, *Development Driller III*, *Dhirubhai Deepwater KG2* and *Discoverer Inspiration* and the harsh environment floaters *Transocean Barents* and *Transocean Spitsbergen*. The maximum borrowing capacity will be reduced to \$1.0 billion if, and so long as, our leverage ratio, measured as the aggregate principal amount of debt outstanding to earnings before interest, taxes, depreciation and amortization, exceeds 10.00 to 1.00. The Secured Credit Facility contains covenants that, among other things, include maintenance of certain guarantee and collateral coverage ratios, a maximum debt to capitalization ratio of 0.60 to 1.00 and minimum liquidity of \$500 million. The Secured Credit Facility also restricts the ability of Transocean Ltd. and certain of our subsidiaries to, among other things, merge, consolidate or otherwise make changes to the corporate structure, incur liens, incur additional indebtedness, enter into transactions with affiliates and pay dividends and other distributions. In order to borrow under the Secured Credit Facility, we must, at the time of the borrowing request, not be in default under the Secured Credit Facility and make certain representations and warranties, including with respect to compliance with laws and solvency, to the lenders. Repayment of borrowings under the Secured Credit Facility are subject to acceleration upon the occurrence of an event of default. Under the agreements governing certain of our debt and finance lease, we are also subject to various covenants, including restrictions on creating liens, engaging in sale/leaseback transactions and engaging in certain merger, consolidation or reorganization transactions. A default under our public debt indentures, the agreements governing our senior secured notes, our finance lease contract or any other debt owed to unaffiliated entities that exceeds \$125 million could trigger a default under the Secured Credit Facility and, if not waived by the lenders, could cause us to lose access to the Secured Credit Facility. At October 25, 2021, we had no borrowings outstanding, \$19 million of letters of credit issued, and we had \$1.3 billion of available borrowing capacity under the Secured Credit Facility.

Shipyards financing arrangement—In June 2021, we and Jurong Shipyards Pte Ltd. entered into the Shipyards Loans to finance all or a portion of the final payments expected to be owed to the shipyard upon delivery of the ultra-deepwater floaters *Deepwater Atlas* and *Deepwater Titan*. We expect to borrow approximately \$370 million upon delivery of *Deepwater Atlas* in the six months ending June 30, 2022, and we expect to borrow approximately \$90 million upon delivery of *Deepwater Titan* in the three months ending September 30, 2022. The Shipyards Loans are guaranteed by Transocean Inc. Borrowings under the Shipyards Loan for *Deepwater Atlas* will be secured by, among other security, a lien on the rig. In certain circumstances, the maximum aggregate borrowing capacity under the Shipyards Loan for *Deepwater Titan* may be increased to approximately \$440 million, and such Shipyards Loan may also be secured by, among other security, a lien on the rig. We will repay the borrowings, together with interest of 4.5 percent per annum, according to the selected installment schedule

over a maximum of a six-year period following delivery of the drilling rigs. We have the right to prepay any outstanding borrowings, in full or in part, without penalty. The Shipyard Loans contain covenants that, among other things, limits the ability of the subsidiary owners of the drilling rigs to incur certain types of additional indebtedness or make certain additional commitments or investments. At October 25, 2021, we had no borrowings outstanding under the Shipyard Loans.

Share issuance—On June 14, 2021, we entered into an equity distribution agreement with a sales agent for the offer and sale of our shares, with up to an aggregate net offering price of \$400 million, pursuant to the ATM Program. We intend to use the net proceeds from the sale of our shares under the ATM Program for general corporate purposes, which may include, among other things the repayment or refinancing of indebtedness and the funding of working capital, capital expenditures, investments and additional balance sheet liquidity. In the nine months ended September 30, 2021, we received aggregate cash proceeds of \$141 million, net of issue costs, for the aggregate sale of 31.7 million shares under the ATM Program. In October 2021, we received aggregate cash proceeds of \$17 million, net of issue costs, for the aggregate sale of 4.3 million shares under the ATM Program.

Debt exchanges—On February 26, 2021, we issued \$294 million aggregate principal amount of the 4.00% Senior Guaranteed Exchangeable Bonds and made an aggregate cash payment of \$11 million in private exchanges for \$323 million aggregate principal amount of the 0.50% Exchangeable Senior Bonds. The 4.00% Senior Guaranteed Exchangeable Bonds are guaranteed by Transocean Ltd. and the same subsidiaries of Transocean Inc. that guarantee the 2.50% senior guaranteed exchangeable bonds due January 2027 (the “2.50% Senior Guaranteed Exchangeable Bonds”) and the 11.50% senior guaranteed notes due January 2027 (the “11.50% Senior Guaranteed Notes”). The indenture that governs the 4.00% Senior Guaranteed Exchangeable Bonds also requires such bonds to be repurchased upon the occurrence of certain fundamental changes and events, at specified prices depending on the particular fundamental change or event, which include changes and events related to certain (i) change of control events applicable to Transocean Ltd. or Transocean Inc., (ii) the failure of our shares to be listed or quoted on a national securities exchange and (iii) specified tax matters. The 4.00% Senior Guaranteed Exchangeable Bonds may be exchanged at any time prior to the close of business on the second business day immediately preceding the maturity date at a current exchange rate of 190.4762 Transocean Ltd. shares per \$1,000 note, which implies an exchange price of \$5.25 per share, subject to adjustment upon the occurrence of certain events, and any such exchange may be settled in cash, Transocean Ltd. shares or a combination of cash and Transocean Ltd. shares, at our election.

On August 14, 2020, we issued \$238 million aggregate principal amount of the 2.50% Senior Guaranteed Exchangeable Bonds in private exchanges for \$397 million aggregate principal amount of the 0.50% Exchangeable Senior Bonds. The 2.50% Senior Guaranteed Exchangeable Bonds are fully and unconditionally guaranteed by Transocean Ltd. and certain wholly owned indirect subsidiaries of Transocean Inc. We may redeem all or a portion of the 2.50% Senior Guaranteed Exchangeable Bonds (i) on or after August 14, 2022, if certain conditions related to the price of our shares have been satisfied, at a price equal to 100 percent of the aggregate principal amount and (ii) on or after August 14, 2023, at specified redemption prices. The indenture that governs the 2.50% Senior Guaranteed Exchangeable Bonds contains covenants that, among other things, limit our ability to incur certain liens on our drilling units without equally and ratably securing the notes, engage in certain sale and lease back transactions covering any of our drilling units, allow our subsidiaries to incur certain additional debt, and consolidate, merge or enter into a scheme of arrangement qualifying as an amalgamation. The indenture that governs the 2.50% Senior Guaranteed Exchangeable Bonds also requires such bonds to be repurchased upon the occurrence of certain fundamental changes and events, at specified prices depending on the particular fundamental change or event, which include changes and events related to certain (i) change of control events applicable to Transocean Ltd. or Transocean Inc., (ii) the failure of our shares to be listed or quoted on a national securities exchange and (iii) specified tax matters. The 2.50% Senior Guaranteed Exchangeable Bonds may be exchanged at any time prior to the close of business on the second business day immediately preceding the maturity date or the redemption date at a current exchange rate of 162.1626 Transocean Ltd. shares per \$1,000 note, which implies an exchange price of \$6.17 per share, subject to adjustment upon the occurrence of certain events.

On September 11, 2020, we issued \$687 million aggregate principal amount of the 11.50% Senior Guaranteed Notes in exchange offer transactions, pursuant to an exchange offer memorandum, dated August 10, 2020, as supplemented, for an aggregate principal amount of \$1.5 billion of several series of our existing debt securities that were validly tendered and accepted for purchase. The 11.50% Senior Guaranteed Notes are fully and unconditionally guaranteed by Transocean Ltd. and certain wholly owned indirect subsidiaries of Transocean Inc. We may redeem all or a portion of the 11.50% Senior Guaranteed Notes prior to July 30, 2023 at a price equal to 100 percent of the aggregate principal amount plus a make-whole premium, and subsequently, at specified redemption prices. We may also use the net cash proceeds of certain equity offerings by Transocean Ltd. to redeem, on one or more occasions prior to July 30, 2023, up to a maximum of 40 percent of the original aggregate principal amount of the 11.50% Senior Guaranteed Notes, subject to certain adjustments, at a redemption price equal to 111.50 percent of the aggregate principal amount. The indenture that governs the 11.50% Senior Guaranteed Notes contains covenants that, among other things, limit our ability to incur certain liens on our drilling units without equally and ratably securing the notes, engage in certain sale and lease back transactions covering any of our drilling units, allow our subsidiaries to incur certain additional debt, make certain internal transfers of our drilling units and consolidate, merge or enter into a scheme of arrangement qualifying as an amalgamation.

Early debt retirement—In the nine months ended September 30, 2021, we repurchased in the open market \$51 million aggregate principal amount of our debt securities for an aggregate cash payment of \$51 million. In October 2021, we repurchased in the open market \$28 million aggregate principal amount of our debt securities for an aggregate cash payment of \$28 million.

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On February 18, 2020, we made an aggregate cash payment of \$767 million, including the make-whole premium, to redeem in full the then-outstanding 9.00% Senior Notes. On November 9, 2020, we completed the cash tender offers to purchase certain debt securities, and as a result, we made an aggregate cash payment of \$222 million to settle the validly tendered notes. In the year ended December 31, 2020, we also made an aggregate cash payment of \$110 million to repurchase in the open market \$147 million aggregate principal amount of our debt securities.

Debt issuances—On January 17, 2020, we issued \$750 million aggregate principal amount of our 8.00% Senior Notes, and we received aggregate cash proceeds of \$743 million, net of issue costs. We may redeem all or a portion of the 8.00% Senior Notes on or prior to February 1, 2023 at a price equal to 100 percent of the aggregate principal amount plus a make-whole premium, and subsequently, at specified redemption prices.

Litigation settlements—On May 29, 2015, together with the Plaintiff Steering Committee, we filed a settlement agreement in which we agreed to deposit \$212 million into an escrow account established to be allocated to two classes of plaintiffs in exchange for a release from all claims against us for damages related to the Macondo well incident. On February 15, 2017, the U.S. District Court for the Eastern District of Louisiana (the “MDL Court”) entered a final order and judgment approving our settlement agreement, pursuant to which we made the required cash deposits into escrow accounts established for settlement. In the year ended December 31, 2020, the MDL Court released \$125 million from the escrow account to satisfy our remaining obligations under the settlement agreement.

Equity and debt investments—In the year ended December 31, 2020, we made an aggregate cash investment of \$19 million in noncontrolling ownership interests in certain unconsolidated affiliates. Our most significant equity investment is a 33.0 percent ownership interest in Orion, the company that, through its wholly owned subsidiary, owns the harsh environment floater *Transocean Norge*. In June 2021, we agreed to participate in a financing arrangement for Orion at a rate equivalent to our ownership interest in Orion and made a cash investment of \$33 million in the loan facility. We also hold equity investments in certain companies that are involved in researching and developing technology to improve efficiency and reliability and to increase automation, sustainability and safety in drilling and other activities.

Share repurchase program—In May 2009, at our annual general meeting, our shareholders approved and authorized our board of directors, at its discretion, to repurchase an amount of our shares for cancellation with an aggregate purchase price of up to CHF 3.5 billion. On February 12, 2010, our board of directors authorized our management to implement the share repurchase program. At September 30, 2021, the authorization remaining under the share repurchase program was for the repurchase of up to CHF 3.2 billion, equivalent to approximately \$3.5 billion, of our outstanding shares. We intend to fund any repurchases using available cash balances and cash from operating activities. The share repurchase program could be suspended or discontinued by our board of directors or company management, as applicable, at any time. We may decide, based on our ongoing capital requirements, the price of our shares, regulatory and tax considerations, cash flow generation, the amount and duration of our contract backlog, general market conditions, debt rating considerations and other factors, that we should retain cash, reduce debt, make capital investments or acquisitions or otherwise use cash for general corporate purposes. Decisions regarding the amount, if any, and timing of any share repurchases will be made from time to time based on these factors. Any repurchased shares under the share repurchase program would be held by us for cancellation by the shareholders at a future general meeting of shareholders.

Contractual obligations—As of September 30, 2021, with exception to the following, there have been no material changes to the contractual obligations as previously disclosed in “Part II. Item 7. Management’s Discussion and Analysis of Financial Condition and Results of Operations” in our annual report on [Form 10-K for the year ended December 31, 2020](#):

	Total	Twelve months ending September 30,			Thereafter
		2022	2023 - 2024 (in millions)	2025 - 2026	
Debt	\$ 7,426	\$ 586	\$ 1,475	\$ 2,105	\$ 3,260
Interest on debt	2,485	397	686	484	918
Total	\$ 9,911	\$ 983	\$ 2,161	\$ 2,589	\$ 4,178

Other commercial commitments—As of September 30, 2021, there have been no material changes to the commercial commitments as previously disclosed in “Part II. Item 7. Management’s Discussion and Analysis of Financial Condition and Results of Operations” in our annual report on [Form 10-K for the year ended December 31, 2020](#).

Drilling fleet

Expansion—From time to time, we review possible acquisitions of businesses and drilling rigs and may make significant future capital commitments for such purposes. We may also consider investments related to major rig upgrades, new rig construction, or the acquisition of a rig under construction. Any such investment could involve the payment by us of a substantial amount of cash or the issuance of a substantial number of additional shares or other securities. We may commit to such investment without first obtaining customer contracts, and our failure to subsequently secure drilling contracts in these instances could have an adverse effect on our results of operations or cash flows.

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The historical and projected capital expenditures, capitalized interest and other cash or non-cash capital additions for our ongoing major construction projects were as follows:

	Total costs through December 31, 2020	Total costs for the nine months ended September 30, 2021	Expected costs for the three months ending December 31, 2021	For the years ending December 31,		Total estimated costs at completion
				2022	2023	
	(In millions)					
Deepwater Atlas (a)	\$ 369	\$ 37	\$ 55	\$ 614	\$ 35	\$ 1,110
Deepwater Titan (b)	412	69	49	632	23	1,185
Total	\$ 781	\$ 106	\$ 104	\$ 1,246	\$ 58	\$ 2,295

- (a) *Deepwater Atlas* is an ultra-deepwater drillship under construction at the Jurong Shipyard Pte Ltd. in Singapore. We currently expect that the shipyard will be ready to deliver *Deepwater Atlas* in the first half of 2022, and upon delivery, we expect to borrow approximately \$370 million under the Shipyard Loan, which may be discounted for imputed interest, to finance the final installment to the shipyard (see “[Sources and uses of liquidity](#)”). The rig is expected to commence operations under its drilling contract, in the first of two phases, in the second half of 2022, using a 15,000 pounds per square inch blowout preventer. Before the start of the second phase, the rig will undergo installation of a 20,000 pounds per square inch blowout preventer and related equipment, which is expected to be commissioned in the year ending December 31, 2023.
- (b) *Deepwater Titan* is an ultra-deepwater drillship under construction at the Jurong Shipyard Pte Ltd. in Singapore. We currently expect that the shipyard will be ready to deliver *Deepwater Titan* in the third quarter of 2022, and upon delivery, we expect to borrow approximately \$90 million under the Shipyard Loan, which may be discounted for imputed interest, to finance a portion of the final installment to the shipyard (see “[Sources and uses of liquidity](#)”). The rig is expected to commence operations under its drilling contract in the first half of 2023. The projected capital additions include estimates for an upgrade for two 20,000 pounds per square inch blowout preventers and other equipment required by our customer.

The ultimate amount of our capital expenditures is partly dependent upon financial market conditions, the actual level of operational and contracting activity, the costs associated with the current regulatory environment and customer requested capital improvements and equipment for which the customer agrees to reimburse us. As with any major shipyard project that takes place over an extended period of time, the actual costs, the timing of expenditures and the project completion date may vary from estimates based on numerous factors, including actual contract terms, weather, exchange rates, shipyard labor conditions, availability of suppliers to recertify equipment and the market demand for components and resources required for drilling unit construction. We intend to fund the cash requirements relating to our capital expenditures not financed under the Shipyard Loans by using available cash balances, cash generated from operations and asset sales, borrowings under our Secured Credit Facility and financing arrangements with banks or other capital providers. Economic conditions and other factors could impact the availability of these sources of funding. See “[Sources and uses of liquidity](#).”

Dispositions—From time to time, we may also review the possible disposition of certain drilling assets. Considering market conditions, we have committed to plans to sell certain lower-specification drilling units for scrap value. During the nine months ended September 30, 2021, we completed the sale of one harsh environment floater and related assets, and we received net cash proceeds of \$4 million. During the year ended December 31, 2020, we completed the sale of one ultra-deepwater floater, three harsh environment floaters and three midwater floaters, along with related assets, and we received aggregate net cash proceeds of \$20 million. We continue to evaluate the drilling units in our fleet and may identify additional lower-specification drilling units to be sold for scrap value.

CRITICAL ACCOUNTING POLICIES AND ESTIMATES

Our discussion and analysis of our financial condition and results of operations are based upon our condensed consolidated financial statements. This discussion should be read in conjunction with disclosures included in the notes to our condensed consolidated financial statements related to estimates, contingencies and other accounting policies. We disclose our significant accounting policies in [Note 2](#) to our condensed consolidated financial statements in this quarterly report on Form 10-Q and in [Note 2](#) to our consolidated financial statements in our annual report on [Form 10-K for the year ended December 31, 2020](#). For a discussion of the new accounting standards updates that have had or are expected to have an effect on our condensed consolidated financial statements, see Notes to Condensed Consolidated Financial Statements—[Note 3](#)—Accounting Standards Update in this quarterly report on Form 10-Q. For a discussion of the critical accounting policies and estimates that we use in the preparation of our condensed consolidated financial statements, see “Part II. Item 7. Management’s Discussion and Analysis of Financial Condition and Results of Operations—Critical Accounting Policies and Estimates” in our annual report on [Form 10-K for the year ended December 31, 2020](#). As of September 30, 2021, there have been no material changes to the critical accounting policies and estimates on which our judgments, assumptions and estimates are based.

OTHER MATTERS

Regulatory matters

We occasionally receive inquiries from governmental regulatory agencies regarding our operations around the world, including inquiries with respect to various tax, environmental, regulatory and compliance matters. To the extent appropriate under the circumstances, we investigate such matters, respond to such inquiries and cooperate with the regulatory agencies. See Notes to Condensed Consolidated Financial Statements—[Note 10—Contingencies](#).

Tax matters

We conduct operations through our various subsidiaries in countries throughout the world. Each country has its own tax regimes with varying nominal rates, deductions and tax attributes that are subject to changes resulting from new legislation, interpretation or guidance. From time to time, as a result of these changes, we may revise previously evaluated tax positions, which could cause us to adjust our recorded tax assets and liabilities. Tax authorities in certain jurisdictions are examining our tax returns and, in some cases, have issued assessments. We intend to defend our tax positions vigorously. Although we can provide no assurance as to the outcome of the aforementioned changes, examinations or assessments, we do not expect the ultimate liability to have a material adverse effect on our condensed consolidated statement of financial position or results of operations; however, it could have a material adverse effect on our condensed consolidated statement of cash flows. See Notes to Condensed Consolidated Financial Statements—[Note 8—Income Taxes](#).

ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

Overview—We are exposed to interest rate risk, primarily associated with our long-term debt, including current maturities. Additionally, we are exposed to currency exchange rate risk related to our international operations. For a complete discussion of our interest rate risk and currency exchange rate risk, see “Part II. Item 7A. Quantitative and Qualitative Disclosures About Market Risk” in our annual report on [Form 10-K for the year ended December 31, 2020](#).

Interest rate risk—The following table presents the scheduled installment amounts and related weighted-average interest rates of our long-term debt instruments by contractual maturity date. The expected maturity amounts, presented below, include both principal and other installments, representing the contractual interest payments resulting from previously restructured debt. The following table presents information as of September 30, 2021 for the 12-month periods ending September 30 (in millions, except interest rate percentages):

Debt	Scheduled Maturity Date					Thereafter	Total	Fair value
	2022	2023	2024	2025	2026			
Fixed rate (USD)	\$ 586	\$ 858	\$ 617	\$ 670	\$ 1,435	\$ 3,260	\$ 7,426	\$ 6,183
Average interest rate	5.68 %	4.65 %	5.63 %	6.00 %	6.31 %	5.47 %		

At September 30, 2021 and December 31, 2020, the fair value of our outstanding debt was \$6.2 billion and \$4.8 billion, respectively. During the nine months ended September 30, 2021, the fair value of our debt increased by \$1.4 billion due to the following: (a) a net increase of \$1.6 billion resulting from changes in the market prices of our outstanding debt, (b) a net increase of \$156 million due to the issuance of the 4.00% senior guaranteed exchangeable bonds due December 2025 in private exchanges for the 0.50% exchangeable senior bonds due January 2023, partially offset by (c) a decrease of \$306 million due to repayments of debt at scheduled maturities and (d) a decrease of \$43 million due to debt repurchased in the open market.

ITEM 4. CONTROLS AND PROCEDURES

Disclosure controls and procedures—Our disclosure controls and procedures are designed to provide reasonable assurance that information required to be disclosed in our reports filed or submitted under the United States (the “U.S.”) Securities Exchange Act of 1934 is (1) accumulated and communicated to our management, including our Chief Executive Officer, who is our principal executive officer, and our Chief Financial Officer, who is our principal financial officer, to allow timely decisions regarding required disclosure and (2) recorded, processed, summarized and reported within the time periods specified in the U.S. Securities and Exchange Commission’s rules and forms. Under the supervision and with the participation of management, including our Chief Executive Officer and Chief Financial Officer, we performed an evaluation of the effectiveness of our disclosure controls and procedures as of the end of the period covered by this report. Based on that evaluation, our Chief Executive Officer and Chief Financial Officer concluded that our disclosure controls and procedures were effective as of September 30, 2021.

Internal control over financial reporting—There were no changes to our internal control over financial reporting during the quarter ended September 30, 2021 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

PART II. OTHER INFORMATION

ITEM 1. LEGAL PROCEEDINGS

Transocean Ltd. (together with its subsidiaries and predecessors, unless the context requires otherwise, “Transocean,” “we,” “us,” or “our”) has certain actions, claims and other matters pending as discussed and reported in “Part II. Item 8. Financial Statements and Supplementary Data—Notes to Consolidated Financial Statements—Note 13—Commitments and Contingencies” and “Part II. Item 7. Management’s Discussion and Analysis of Financial Condition and Results of Operations—Other Matters—Regulatory matters” in our annual report on [Form 10-K for the year ended December 31, 2020](#). We are also involved in various tax matters as described in “Part II. Item 8. Financial Statements and Supplementary Data—Notes to Consolidated Financial Statements—Note 10—Income Taxes” and in “Part II. Item 7. Management’s Discussion and Analysis of Financial Condition and Results of Operations—Other Matters—Tax matters” in our annual report on [Form 10-K for the year ended December 31, 2020](#). All such actions, claims, tax and other matters are incorporated herein by reference.

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As of September 30, 2021, we were involved in a number of other lawsuits, regulatory matters, disputes and claims, asserted and unasserted, all of which have arisen in the ordinary course of our business and for which we do not expect the liability, if any, to have a material adverse effect on our consolidated financial position, results of operations or cash flows. We cannot predict with certainty the outcome or effect of any of the matters referred to above or of any such other pending, threatened or possible litigation or legal proceedings. We can provide no assurance that our beliefs or expectations as to the outcome or effect of any lawsuit or claim or dispute will prove correct and the eventual outcome of these matters could materially differ from management's current estimates.

In addition to the legal proceedings described above, we may from time to time identify other matters that we monitor through our compliance program or in response to events arising generally within our industry and in the markets where we do business. We evaluate matters on a case by case basis, investigate allegations in accordance with our policies and cooperate with applicable governmental authorities. Through the process of monitoring and proactive investigation, we strive to ensure no violation of our policies, Code of Integrity or law has occurred or will occur; however, we can provide no assurance as to the outcome of these matters.

ITEM 1A. RISK FACTORS

There have been no material changes to the risk factors as previously disclosed in "Part I. Item 1A. Risk Factors" in our annual report on [Form 10-K for the year ended December 31, 2020](#).

ITEM 2. UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS

ISSUER PURCHASES OF EQUITY SECURITIES

Period	Total number of shares purchased	Average price paid per share	Total number of shares purchased as part of publicly announced plans or programs (a)	Approximate dollar value of shares that may yet be purchased under the plans or programs (in millions) (a)
July 2021	—	\$ —	—	\$ 3,481
August 2021	—	—	—	3,481
September 2021	—	—	—	3,481
Total	—	\$ —	—	\$ 3,481

- (a) In May 2009, at our annual general meeting, our shareholders approved and authorized our board of directors, at its discretion, to repurchase for cancellation any amount of our shares for an aggregate purchase price of up to CHF 3.5 billion. At September 30, 2021, the authorization remaining under the share repurchase program was for the repurchase of our outstanding shares for an aggregate cost of up to CHF 3.2 billion, equivalent to \$3.5 billion. The share repurchase program could be suspended or discontinued by our board of directors or company management, as applicable, at any time. See "Part I. Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations—Liquidity and Capital Resources—[Sources and uses of liquidity](#)."

ITEM 5. OTHER INFORMATION

On October 27, 2021, we amended our Articles of Association (as amended, the "Articles of Association") to reflect changes in our total issued share capital resulting from the issuance of 42.5 million Transocean Ltd. shares to one of our wholly owned subsidiaries at par value for a total consideration of CHF 4,250,000. The issuance of these shares is exempt pursuant to Section 4(a)(2) of the Securities Act of 1933, as amended, which exempts transactions by an issuer not involving a public offering. Our Articles of Association now reflect a share capital of CHF 72,817,616.50 divided into 728,176,165 fully paid registered shares.

The foregoing description of the Articles of Association is qualified in its entirety by reference to the full text of the Articles of Association, a copy of which is filed herewith as Exhibit 3.1 and is incorporated herein by reference.

ITEM 6. EXHIBITS

- (a) Exhibits

The following exhibits are filed in connection with this quarterly report on Form 10-Q:

NUMBER	DESCRIPTION	LOCATION
3.1	Articles of Association of Transocean Ltd.	Filed herewith
3.2	Organizational Regulations of Transocean Ltd., adopted April 7, 2021	Exhibit 3.1 to Transocean Ltd.'s Current Report on Form 8-K (Commission File No. 001-38373) filed on April 7, 2021
31.1	Certification of Chief Executive Officer pursuant to Rule 13a-14(a) of the Securities Exchange Act of 1934 and Section 302 of the Sarbanes-Oxley Act of 2002	Filed herewith
31.2	Certification of Chief Financial Officer pursuant to Rule 13a-14(a) of the Securities Exchange Act of 1934 and Section 302 of the Sarbanes-Oxley Act of 2002	Filed herewith

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NUMBER	DESCRIPTION	LOCATION
32.1	Certification of Chief Executive Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002	Furnished herewith
32.2	Certification of Chief Financial Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002	Furnished herewith
101	Interactive data files pursuant to Rule 405 of Regulation S-T formatted in Inline Extensible Business Reporting Language: (i) our condensed consolidated balance sheets as of September 30, 2021 and December 31, 2020; (ii) our condensed consolidated statements of operations for the three and nine months ended September 30, 2021 and 2020; (iii) our condensed consolidated statements of comprehensive income (loss) for the three and nine months ended September 30, 2021 and 2020; (iv) our condensed consolidated statements of equity for the three and nine months ended September 30, 2021 and 2020; (v) our condensed consolidated statements of cash flows for the nine months ended September 30, 2021 and 2020; and (vi) the notes to condensed consolidated financial statements	Filed herewith
104	The cover page from our quarterly report on Form 10-Q for the quarterly period ended September 30, 2021, formatted in Inline Extensible Business Reporting Language	Filed herewith

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned; thereunto duly authorized, on November 2, 2021.

TRANSOCEAN LTD.

By: /s/ Mark L. Mey

Mark L. Mey
Executive Vice President and Chief Financial Officer
(Principal Financial Officer)

By: /s/ David Tonnel

David Tonnel
Senior Vice President and Chief Accounting Officer
(Principal Accounting Officer)

Statuten
von Transocean Ltd.
vom 27. Oktober 2021

Articles of Association
of
Transocean Ltd.
as of *October 27, 2021*

Abschnitt 1:
Firma, Sitz, Zweck und Dauer der Gesellschaft

Artikel 1

Firma, Sitz

Unter der Firma

Name, Place
of
Incorporation

Transocean Ltd.
(die **Gesellschaft**)

besteht eine Aktiengesellschaft mit Sitz in Steinhausen, Kanton Zug, Schweiz.

Zweck

Artikel 2

Purpose

- 1 Zweck der Gesellschaft ist der Erwerb, das Halten, die Verwaltung, die Verwertung und die Veräusserung von Beteiligungen an Unternehmen im In- und Ausland, ob direkt oder indirekt, insbesondere an Unternehmen, die im Bereich der Erbringung von Dienstleistungen für Offshore Öl- und Gasbohrungen, einschliesslich Management Dienstleistungen, Bohringenieurs- und Bohr-Projekt Management-Dienstleistungen für Öl- und Gasbohrungen, sowie von Öl- und Gas-Exploration und -Produktionsaktivitäten tätig sind, sowie die Finanzierung dieser Aktivitäten. Die Gesellschaft kann Grundstücke und gewerbliche Schutzrechte im In- und Ausland erwerben, halten, verwalten, belasten und verkaufen.
- 2 Die Gesellschaft kann alle Tätigkeiten ausüben und Massnahmen ergreifen, die geeignet erscheinen, den Zweck der Gesellschaft zu fördern, oder die mit diesem zusammenhängen.

Artikel 3

Dauer

Die Dauer der Gesellschaft ist unbeschränkt.

Duration

Section 1:
Name, Place of Incorporation, Purpose and Duration of the Company

Article 1

Under the name

Transocean Ltd.
(the **Company**)

there exists a corporation with its place of incorporation in Steinhausen, Canton of Zug, Switzerland.

Article 2

- 1 The purpose of the Company is to acquire, hold, manage, exploit and sell, whether directly or indirectly, participations in businesses in Switzerland and abroad, in particular in businesses that are involved in offshore contract drilling services for oil and gas wells, oil and gas drilling management services, drilling engineering services and drilling project management services and oil and gas exploration and production activities, and to provide financing for this purpose. The Company may acquire, hold, manage, mortgage and sell real estate and intellectual property rights in Switzerland and abroad.
- 2 The Company may engage in all types of transactions and may take all measures that appear appropriate to promote the purpose of the Company or that are related thereto.

Article 3

The duration of the Company is unlimited.

Abschnitt 2:
Aktienkapital

Artikel 4

Aktienkapital

Das Aktienkapital der Gesellschaft beträgt CHF 72'817'616.50, eingeteilt in 728'176'165 voll liberierte Namenaktien. Jede Namenaktie hat einen Nennwert von CHF 0.10 (jede Namenaktie nachfolgend bezeichnet als **Aktie** bzw. die **Aktien**).

Share
Capital

Section 2:
Share Capital

Article 4

The share capital of the Company is CHF 72,817,616.50 and is divided into 728,176,165 fully paid registered shares. Each registered share has a par value of CHF 0.10 (each such registered share hereinafter a **Share** and collectively the **Shares**).

Artikel 5

Genehmigtes
Aktienkapital

- 1 Der Verwaltungsrat ist ermächtigt, das Aktienkapital jederzeit bis zum 27. Mai 2023 im Maximalbetrag von CHF 16'320'285.00 durch Ausgabe von höchstens 163'202'850 vollständig zu liberierenden Aktien mit einem Nennwert von je CHF 0.10 zu erhöhen. Eine Erhöhung (i) auf dem Weg einer Festübernahme durch eine Bank, ein Bankenkonsortium oder Dritte und eines anschliessenden Angebots an die bisherigen Aktionäre sowie (ii) in Teilbeträgen ist zulässig.
- 2 Der Verwaltungsrat legt den Zeitpunkt der Ausgabe, den Ausgabebetrag, die Art, wie die neuen Aktien zu liberieren sind, den Beginn der Dividendenberechtigung, die Bedingungen für die Ausübung der Bezugsrechte sowie die Zuteilung der Bezugsrechte, welche nicht ausgeübt wurden, fest. Nicht-ausgeübte Bezugsrechte kann der Verwaltungsrat verfallen lassen, oder er kann diese bzw. Aktien, für welche Bezugsrechte eingeräumt, aber nicht ausgeübt werden, zu Marktkonditionen platzieren oder anderweitig im Interesse der Gesellschaft verwenden.
- 3 Der Verwaltungsrat ist ermächtigt, die Bezugsrechte der Aktionäre in Bezug auf höchstens 26'067'616 Aktien zu entziehen oder zu beschränken und einzelnen Aktionären oder Dritten zuzuweisen:

Authorized
Share
Capital

Article 5

- 1 The Board of Directors is authorized to increase the share capital, at any time until May 27, 2023, by a maximum amount of CHF 16,320,285.00 by issuing a maximum of 163,202,850 fully paid up Shares with a par value of CHF 0.10 each. An increase of the share capital (i) by means of an offering underwritten by a financial institution, a syndicate of financial institutions or another third party or third parties, followed by an offer to the then-existing shareholders of the Company, and (ii) in partial amounts shall be permissible.
 - 2 The Board of Directors shall determine the time of the issuance, the issue price, the manner in which the new Shares have to be paid up, the date from which the Shares carry the right to dividends, the conditions for the exercise of the preemptive rights and the allotment of preemptive rights that have not been exercised. The Board of Directors may allow the preemptive rights that have not been exercised to expire, or it may place such rights or Shares, the preemptive rights of which have not been exercised, at market conditions or use them otherwise in the interest of the Company.
 - 3 The Board of Directors is authorized to withdraw or limit the preemptive rights of the shareholders with respect to a maximum of 26,067,616 Shares and to allot them to individual shareholders or third parties:
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- | | |
|--|--|
| <p>(a) wenn der Ausgabebetrag der neuen Aktien unter Berücksichtigung des Marktpreises festgesetzt wird; oder</p> <p>(b) für die Übernahme von Unternehmen, Unternehmensteilen oder Beteiligungen oder für die Finanzierung oder Refinanzierung solcher Transaktionen oder die Finanzierung von neuen Investitionsvorhaben der Gesellschaft; oder</p> <p>(c) zum Zwecke der Erweiterung des Aktionärskreises in bestimmten Finanz- oder Investoren-Märkten, zur Beteiligung von strategischen Partnern, oder im Zusammenhang mit der Kotierung von neuen Aktien an inländischen oder ausländischen Börsen; oder</p> <p>(d) für die Einräumung einer Mehrzuteilungsoption (<i>Greenshoe</i>) von bis zu 20% der zu platzierenden oder zu verkaufenden Aktien an die betreffenden Erstkäufer oder Festübernehmer im Rahmen einer Aktienplatzierung oder eines Aktienverkaufs; oder</p> <p>(e) für die Beteiligung von Mitgliedern des Verwaltungsrates, Mitglieder der Geschäftsleitung, Mitarbeitern, Beauftragten, Beratern oder anderen Personen, die für die Gesellschaft oder eine ihrer Tochtergesellschaften Leistungen erbringen.</p> <p>4 Die neuen Aktien unterliegen den Eintragungsbeschränkungen in das Aktienbuch von Artikel 7 und 9 dieser Statuten.</p> | <p>(a) if the issue price of the new Shares is determined by reference to the market price; or</p> <p>(b) for the acquisition of an enterprise, part(s) of an enterprise or participations, or for the financing or refinancing of any of such transactions, or for the financing of new investment plans of the Company; or</p> <p>(c) for purposes of broadening the shareholder constituency of the Company in certain financial or investor markets, for purposes of the participation of strategic partners, or in connection with the listing of new Shares on domestic or foreign stock exchanges; or</p> <p>(d) for purposes of granting an over-allotment option (<i>Greenshoe</i>) of up to 20% of the total number of Shares in a placement or sale of Shares to the respective initial purchaser(s) or underwriter(s); or</p> <p>(e) for the participation of members of the Board of Directors, members of the Executive Management Team, employees, contractors, consultants or other persons performing services for the benefit of the Company or any of its subsidiaries.</p> <p>4 The new Shares shall be subject to the limitations for registration in the share register pursuant to Articles 7 and 9 of these Articles of Association.</p> |
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Artikel 5^{ter}

Article 5^{ter}

Genehmigtes
Aktienkapital

- 1 Der Verwaltungsrat ist ermächtigt, das Aktienkapital jederzeit bis zum 29. November 2020 im Maximalbetrag von CHF 0.80 durch Ausgabe von höchstens 8 vollständig zu liberierenden Aktien zu erhöhen im Zusammenhang mit dem Erwerb von Ocean Rig UDW Inc., einer nach dem Recht der Kaimaninseln organisierten Gesellschaft (**Ocean**

Authorized
Share
Capital

- 1 The Board of Directors is authorized to increase the share capital at any time until November 29, 2020, by a maximum amount of CHF 0.80 by issuing a maximum of 8 fully paid up Shares in connection with the acquisition of Ocean Rig UDW Inc., a company organized under the laws of the Cayman Islands (**Ocean Rig**), by way of a merger
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- Rig**), im Wege eines Merger nach dem Recht der Kaimaninseln von Ocean Rig mit einer direkten oder indirekten, nach dem Recht der Kaimaninseln organisierten Tochtergesellschaft der Gesellschaft (die **Transaktion**).
- 2 Eine Erhöhung des Aktienkapitals in Teilbeträgen ist zulässig.
 - 3 Die Bezugsrechte der Aktionäre werden für die Zwecke der Abwicklung der Transaktion entzogen und einem oder mehreren Umtauschagent(en) zugewiesen, der oder die im eigenen Namen aber auf Rechnung der Inhaber von Kategorie A Aktien und Kategorie B Aktien von Ocean Rig handelt oder handeln, die unmittelbar vor Wirksamkeit der Transaktion ausstehend sind (die **Ocean Rig Aktien**) und deren Inhaber nach dem Recht der Kaimaninseln, der Satzung von Ocean Rig und/oder dem für die Transaktion massgeblichen Vertrag einen Anspruch auf Aktien erworben haben (die **Berechtigten Ocean Rig Aktionäre**).
 - 4 Der Verwaltungsrat legt den (i) Zeitpunkt der Ausgabe, (ii) den Ausgabebetrag, (iii) die Art, wie die neuen Aktien zu liberieren sind (unter ausdrücklicher Zulassung der Liberierung der neuen Aktien im Wege einer Umwandlung frei verwendbarer Reserven in Aktienkapital zwecks Abwicklung der Transaktion und damit des Erwerbs von Ocean Rig), (iv) die etwaige zusätzliche Entschädigung, welche den Inhabern von Ocean Rig Aktien im Rahmen der Transaktion zu leisten ist, (v) den Beginn der Dividendenberechtigung, (vi) die Bedingungen für die Ausübung der zugewiesenen Bezugsrechte und (vii) die Verwendung der zugewiesenen Bezugsrechte, die vom oder von den Umtauschagenten aufgrund eines von Inhabern von Ocean Rig Aktien (die **Widerspruchsaktionäre**) eingeleiteten, auf die Transaktion anwendbares "Dissent"-Verfahren nach dem Recht der Kaimaninseln nicht ausgeübt werden, fest.
- pursuant to the laws of the Cayman Islands between Ocean Rig and a direct or indirect subsidiary of the Company organized under the laws of the Cayman Islands (the **Transaction**).
- 2 An increase of the share capital in partial amounts shall be permissible.
 - 3 The pre-emptive rights of the shareholders are excluded for the purposes of the settlement of the Transaction and allotted to one or several exchange agent(s) acting in its/their own name(s), but on behalf of the holders of Class A shares and Class B shares of Ocean Rig outstanding immediately prior to the effectiveness of the Transaction (the **Ocean Rig Shares**) who have acquired, pursuant to the laws of the Cayman Islands, the Memorandum of Association of Ocean Rig and/or based on the agreement that governs the Transaction a right to receive Shares (the **Entitled Ocean Rig Shareholders**).
 - 4 The Board of Directors shall determine (i) the time of the issuance, (ii) the issue price, (iii) the manner in which the new Shares have to be paid in (whereby a conversion of freely available reserves into nominal share capital for purposes of the settlement of the Transaction and thus the acquisition of Ocean Rig shall be expressly permitted, (iv) the additional consideration that may be payable to holders of Ocean Rig Shares, (v) the date from which the Shares carry the right to dividends, (vi) the conditions for the exercise of the allotted pre-emptive rights and (vii) the use of allotted pre-emptive rights not exercised by the exchange agent(s) on account of dissent proceedings pursuant to Cayman Islands law initiated by holders of Ocean Rig Shares (the **Dissenting Shareholders**). The Board of Directors may, in particular, allow such non-exercised pre-emptive rights (x) to lapse, or (y) allot them to a third party (including a subsidiary of the Company) for
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Solche nicht-ausgeübte Bezugsrechte kann der Verwaltungsrat insbesondere (x) verfallen lassen oder (y) einem Dritten (einschliesslich einer Tochtergesellschaft der Gesellschaft) zuweisen zwecks (A) Bereitstellung von Aktien an Widerspruchsaktionäre, die gegebenenfalls einen Anspruch auf Aktien erwerben, und/oder (B) direkter oder indirekter Finanzierung oder Refinanzierung von Wertansprüchen von Widerspruchsaktionären, wie insbesondere im Wege einer Platzierung von Aktien zu Marktkonditionen bei Investoren.

- 5 Die neuen Aktien unterliegen den Eintragungsbeschränkungen in das Aktienbuch von Artikel 7 und 9 dieser Statuten.

Artikel 6

Bedingtes
Aktienkapital

- 1 Das Aktienkapital kann sich durch Ausgabe von höchstens 142'363'647 voll zu liberierenden Aktien im Nennwert von je CHF 0.10 um höchstens CHF 14'236'364.70 erhöhen durch:
- (a) die Ausübung von Wandel-, Tausch-, Options-, Bezugs- oder ähnlichen Rechten auf den Bezug von Aktien (nachfolgend die **Rechte**), welche Dritten oder Aktionären in Verbindung mit auf nationalen oder internationalen Kapitalmärkten neu oder bereits begebenen Anleiheobligationen, Optionen, Warrants oder anderen Finanzmarktinstrumenten oder neuen oder bereits bestehenden vertraglichen Verpflichtungen der Gesellschaft, einer ihrer Gruppengesellschaften oder einer deren Rechtsvorgänger eingeräumt werden (nachfolgend zusammen die **mit Rechten verbundenen Obligationen**); und/oder
 - (b) die Ausgabe von Aktien oder mit Rechten verbundenen Obligationen an Mitglieder des Verwaltungsrates, Mitglieder der Geschäftsleitung, Arbeitnehmer, Beauftragte, Berater oder anderen

purposes of (A) the provision of Shares to Dissenting Shareholders who may acquire a right to receive Shares and/or (B) the direct or indirect financing or refinancing of monetary claims of Dissenting Shareholders by way of a placement of Shares to investors at market conditions.

- 5 The new Shares shall be subject to the limitations for registration in the share register pursuant to Articles 7 and 9 of these Articles of Association.

Article 6

Conditional
Share
Capital

- 1 The share capital may be increased in an amount not to exceed CHF 14,236,364.70 through the issuance of up to 142,363,647 fully paid-up Shares with a par value of CHF 0.10 per Share through:
- (a) the exercise of conversion, exchange, option, warrant or similar rights for the subscription of Shares (hereinafter the **Rights**) granted to third parties or shareholders in connection with bonds, options, warrants or other securities newly or already issued in national or international capital markets or new or already existing contractual obligations by or of the Company, one of its group companies, or any of their respective predecessors (hereinafter collectively, the **Rights-Bearing Obligations**); and/or
 - (b) the issuance of Shares or Rights-Bearing Obligations granted to members of the Board of Directors, members of the executive management, employees, contractors, consultants or other persons providing services to the Company or its subsidiaries.

Personen, welche Dienstleistungen für die Gesellschaft oder ihre Tochtergesellschaften erbringen.

- 2 Bei der Ausgabe von mit Rechten verbundenen Obligationen durch die Gesellschaft, eine ihrer Gruppengesellschaften oder eine deren Rechtsvorgänger ist das Bezugsrecht der Aktionäre ausgeschlossen. Zum Bezug der neuen Aktien, die bei Ausübung von mit Rechten verbundenen Obligationen ausgegeben werden, sind die jeweiligen Inhaber der mit Rechten verbundenen Obligationen berechtigt. Die Bedingungen der mit Rechten verbundenen Obligationen sind durch den Verwaltungsrat festzulegen.
 - 3 Der Verwaltungsrat ist ermächtigt, die Vorwegzeichnungsrechte der Aktionäre im Zusammenhang mit der Ausgabe von mit Rechten verbundenen Obligationen durch die Gesellschaft oder eine ihrer Gruppengesellschaften zu beschränken oder aufzuheben, falls (1) die Ausgabe zum Zwecke der Finanzierung oder Refinanzierung der Übernahme von Unternehmen, Unternehmensteilen, Beteiligungen oder Investitionen, oder (2) die Ausgabe auf nationalen oder internationalen Finanzmärkten oder im Rahmen einer Privatplatzierung erfolgt. Wird das Vorwegzeichnungsrecht weder direkt noch indirekt durch den Verwaltungsrat gewährt, gilt Folgendes:
 - (a) Die mit Rechten verbundenen Obligationen sind zu den jeweils marktüblichen Bedingungen auszugeben oder einzugehen; und
 - (b) der Umwandlungs-, Tausch- oder sonstige Ausübungspreis der mit Rechten verbundenen Obligationen ist unter Berücksichtigung des Marktpreises im Zeitpunkt der Ausgabe der mit Rechten verbundenen Obligationen festzusetzen; und
- 2 The preemptive rights of the shareholders shall be excluded in connection with the issuance of any Rights-Bearing Obligations by the Company, one of its group companies, or any of their respective predecessors. The then-current owners of such Rights-Bearing Obligations shall be entitled to subscribe for the new Shares issued upon conversion, exchange or exercise of any Rights-Bearing Obligations. The conditions of the Rights-Bearing Obligations shall be determined by the Board of Directors.
 - 3 The Board of Directors shall be authorized to withdraw or limit the advance subscription rights of the shareholders in connection with the issuance by the Company or one of its group companies of Rights-Bearing Obligations if (1) the issuance is for purposes of financing or refinancing the acquisition of an enterprise, parts of an enterprise, participations or investments or (2) the issuance occurs in national or international capital markets or through a private placement.
If the advance subscription rights are neither granted directly nor indirectly by the Board of Directors, the following shall apply:
 - (a) The Rights-Bearing Obligations shall be issued or entered into at market conditions; and
 - (b) the conversion, exchange or exercise price of the Rights-Bearing Obligations shall be set with reference to the market conditions prevailing at the date on which the Rights-Bearing Obligations are issued; and
 - (c) the Rights-Bearing Obligations may be converted, exchanged or exercised during a maximum period
-

(c) die mit Rechten verbundenen Obligationen sind höchstens während 30 Jahren ab dem jeweiligen Zeitpunkt der betreffenden Ausgabe oder des betreffenden Abschlusses wandel-, tausch- oder ausübbar.

of 30 years from the date of the relevant issuance or entry.

- 4 Bei der Ausgabe von Aktien oder mit Rechten verbundenen Obligationen gemäss Artikel 6 Absatz 1(b) dieser Statuten sind das Bezugsrecht wie auch das Vorwegzeichnungsrecht der Aktionäre der Gesellschaft ausgeschlossen. Die Ausgabe von Aktien oder mit Rechten verbundenen Obligationen an die in Artikel 6 Absatz 1(b) dieser Statuten genannten Personen erfolgt gemäss einem oder mehreren Beteiligungsplänen der Gesellschaft. Die Ausgabe von Aktien an die Artikel 6 Absatz 1(b) dieser Statuten genannten Personen kann zu einem Preis erfolgen, der unter dem Kurs der Börse liegt, an der die Aktien gehandelt werden, muss aber mindestens zum Nennwert erfolgen.
- 5 Die neuen Aktien, welche über die Ausübung von mit Rechten verbundenen Obligationen erworben werden, unterliegen den Eintragungsbeschränkungen in das Aktienbuch gemäss Artikel 7 und 9 dieser Statuten.

- 4 The preemptive rights and advance subscription rights of the shareholders shall be excluded in connection with the issuance of any Shares or Rights-Bearing Obligations pursuant to Article 6 para 1(b) of these Articles of Association. Shares or Rights-Bearing Obligations shall be issued to any of the persons referred to in Article 6 para 1(b) of these Articles of Association in accordance with one or more benefit or incentive plans of the Company. Shares may be issued to any of the persons referred to in Article 6 para 1(b) of these Articles of Association at a price lower than the current market price quoted on the stock exchange on which the Shares are traded, but at least at par value.
- 5 The new Shares acquired through the exercise of Rights-Bearing Obligations shall be subject to the limitations for registration in the share register pursuant to Articles 7 and 9 of these Articles of Association.

Artikel 7

Article 7

Aktienbuch, Rechtsausübung, Eintragungsbeschränkungen, Nominees

- 1 Die Gesellschaft oder von ihr beauftragte Dritte führen ein Aktienbuch. Darin werden die Eigentümer und Nutzniesser der Aktien sowie Nominees mit Namen und Vornamen, Wohnort, Adresse und Staatsangehörigkeit (bei juristischen Personen mit Firma und Sitz) eingetragen. Die Gesellschaft oder der von ihr mit der Aktienbuchführung beauftragte Dritte ist berechtigt, bei Eintragung im Aktienbuch von der antragstellenden Person einen angemessenen Nachweis seiner Berechtigung an den Aktien zu verlangen. Ändert eine im Aktienbuch eingetragene Person ihre Adresse, so hat sie dies dem Aktienbuchführer mitzuteilen. Solange dies nicht

Share Register, Exercise of Rights, Restrictions on Registration, Nominees

- 1 The Company shall maintain, itself or through a third party, a share register that lists the surname, first name, address and citizenship (in the case of legal entities, the company name and company seat) of the holders and usufructuaries of the Shares as well as the nominees. The Company or the third party maintaining the share register on behalf of the Company shall be entitled to request at the time of the entry into the share register from the Person requesting such entry appropriate evidence of that Person's title to the Shares. A person recorded in the share register shall notify the share registrar of any change in address. Until such notification shall have occurred, all written

geschehen ist, gelten alle brieflichen Mitteilungen der Gesellschaft an die im Aktienbuch eingetragenen Personen als rechtsgültig an die bisher im Aktienbuch eingetragene Adresse erfolgt.

- 2 Ein Erwerber von Aktien wird auf Gesuch als Aktionär mit Stimmrecht im Aktienbuch eingetragen, vorausgesetzt, dass ein solcher Erwerber ausdrücklich erklärt, die Aktien im eigenen Namen und auf eigene Rechnung erworben zu haben. Der Verwaltungsrat kann Nominees, welche Aktien im eigenen Namen aber auf fremde Rechnung halten, als Aktionäre mit Stimmrecht im Aktienbuch der Gesellschaft eintragen. Die an den Aktien wirtschaftlich Berechtigten, welche die Aktien über einen Nominee halten, üben Aktionärsrechte mittelbar über den Nominee aus.
- 3 Der Verwaltungsrat kann nach Anhörung des eingetragenen Aktionärs dessen Eintragung im Aktienbuch als Aktionär mit Stimmrecht mit Rückwirkung auf das Datum der Eintragung streichen, wenn diese durch falsche oder irreführende Angaben zustande gekommen ist. Der Betroffene muss über die Streichung sofort informiert werden.

Artikel 8

Form der Aktien

- 1 Die Gesellschaft gibt Aktien in Form von Einzelurkunden, Globalurkunden oder Wertrechten aus. Der Gesellschaft steht es im Rahmen der gesetzlichen Vorgaben frei, ihre in einer dieser Formen ausgegebenen Aktien jederzeit und ohne Zustimmung der Aktionäre in eine andere Form umzuwandeln. Die Gesellschaft trägt die Kosten, die bei einer solchen Umwandlung anfallen.
- 2 Ein Aktionär hat keinen Anspruch auf Umwandlung von in bestimmter Form ausgegebenen Aktien in eine andere Form. Jeder Aktionär kann jedoch jederzeit die Ausstellung einer Bescheinigung über die von ihm gemäss Aktienbuch gehaltenen Namenaktien verlangen.

communication from the Company to persons of record shall be deemed to have validly been made if sent to the address recorded in the share register.

- 2 An acquirer of Shares shall be recorded upon request in the share register as a shareholder with voting rights; *provided, however*, that any such acquirer expressly declares to have acquired the Shares in its own name and for its own account, save that the Board of Directors may record nominees who hold Shares in their own name, but for the account of third parties, as shareholders of record with voting rights in the share register of the Company. Beneficial owners of Shares who hold Shares through a nominee exercise the shareholders' rights through the intermediation of such nominee.
- 3 After hearing the registered shareholder concerned, the Board of Directors may cancel the registration of such shareholder as a shareholder with voting rights in the share register with retroactive effect as of the date of registration, if such registration was made based on false or misleading information. The relevant shareholder shall be informed promptly of the cancellation.

Article 8

Form of Shares

- 1 The Company may issue Shares in the form of individual certificates, global certificates or uncertificated securities. Subject to applicable law, the Company may convert the Shares from one form into another form at any time and without the approval of the shareholders. The Company shall bear all cost associated with any such conversion.
 - 2 A shareholder has no right to request a conversion of the Shares from one form into another form. Each shareholder may, however, at any time request a written attestation of the number of Shares held by it as reflected in the share register.
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- 3 Werden Bucheffekten im Auftrag der Gesellschaft oder des Aktionärs von einer Verwahrungsstelle, einem Registrar, Transfer Agenten, einer Trust Gesellschaft, Bank oder einer ähnlichen Gesellschaft verwaltet (die **Verwahrungsstelle**), so setzt Wirksamkeit gegenüber der Gesellschaft voraus, dass diese Bucheffekten und die damit verbundenen Rechte unter Mitwirkung der Verwahrungsstelle übertragen oder daran Sicherheiten bestellt werden.
- 4 Für den Fall, dass die Gesellschaft beschliesst, Aktienzertifikate zu drucken und auszugeben, müssen die Aktienzertifikate die Unterschrift von zwei zeichnungsberechtigten Personen tragen. Mindestens eine dieser Personen muss ein Mitglied des Verwaltungsrates sein. Faksimile-Unterschriften sind erlaubt.

Artikel 9

- Rechtsausübung
- 1 Die Gesellschaft anerkennt nur einen Vertreter pro Aktie.
 - 2 Stimmrechte und die damit verbundenen Rechte können der Gesellschaft gegenüber von einem Aktionär, Nutzniesser der Aktien oder Nominee jeweils nur im Umfang ausgeübt werden, wie dieser mit Stimmrecht im Aktienbuch eingetragen ist.

Exercise of Rights

- 3 If intermediated securities are administered on behalf of the Company or a shareholder by an intermediary, registrar, transfer agent, trust company, bank or similar entity (the **Intermediary**), any transfer or grant of a security interest in such intermediated securities and the appurtenant rights associated therewith, in order for such transfer or grant of a security interest to be valid against the Company, requires the cooperation of the Intermediary.
- 4 If the Company decides to print and deliver share certificates, the share certificates shall bear the signatures of two duly authorized signatories of the Company, at least one of which shall be a member of the Board of Directors. These signatures may be facsimile signatures.

Article 9

- 1 The Company shall only accept one representative per Share.
- 2 Voting rights and appurtenant rights associated therewith may be exercised in relation to the Company by a shareholder, usufructuary of Shares or nominee only to the extent that such person is recorded in the share register with the right to exercise his voting rights.

Abschnitt 3:
Gesellschaftsorgane

A. Generalversammlung

Artikel 10

Zuständigkeit Die Generalversammlung ist das oberste Organ der Gesellschaft.

Authority

Section 3:
Corporate Bodies

A. General Meeting of Shareholders

Article 10

The General Meeting of Shareholders is the supreme corporate body of the Company.

Artikel 11

Ordentliche
Generalver-
sammlung

Die ordentliche Generalversammlung findet alljährlich innerhalb von sechs Monaten nach Schluss des Geschäftsjahres statt. Spätestens zwanzig Kalendertage vor der Versammlung sind der Geschäftsbericht, der Vergütungsbericht und die Revisionsberichte den Aktionären am Gesellschaftssitz zur Einsicht aufzulegen. Jeder Aktionär kann verlangen, dass ihm unverzüglich eine Ausfertigung des Geschäftsberichts, des Vergütungsberichts und der Revisionsberichte ohne Kostenfolge zugesandt wird. Die im Aktienbuch eingetragenen Aktionäre werden über die Verfügbarkeit des Geschäftsberichts, des Vergütungsberichts und der Revisionsberichte durch schriftliche Mitteilung unterrichtet.

Annual
General
Meeting

Article 11

The Annual General Meeting shall be held each year within six months after the close of the fiscal year of the Company. The Annual Report, the Compensation Report and the Auditor's Reports shall be made available for inspection by the shareholders at the registered office of the Company no later than twenty calendar days prior to the Annual General Meeting. Each shareholder is entitled to request prompt delivery of a copy of the Annual Report, the Compensation Report and the Auditor's Reports free of charge. Shareholders of record will be notified of the availability of the Annual Report, the Compensation Report and the Auditor's Reports in writing.

Artikel 12

Ausser-
ordentliche
Generalver-
sammlung

- 1 Ausserordentliche Generalversammlungen finden in den vom Gesetz vorgesehenen Fällen statt, insbesondere, wenn der Verwaltungsrat es für notwendig oder angezeigt erachtet oder die Revisionsstelle dies verlangt.
- 2 Ausserdem muss der Verwaltungsrat eine ausserordentliche Generalversammlung einberufen, wenn es eine Generalversammlung so beschliesst oder wenn ein oder mehrere Aktionäre, welche zusammen mindestens den zehnten Teil des im Handelsregister eingetragenen Aktienkapitals vertreten, dies verlangen, unter der Voraussetzung, dass folgende Angaben gemacht werden: (a)(1) die Verhandlungsgegenstände, schriftlich unterzeichnet von dem/den antragstellenden Aktionär(en), (2) die Anträge sowie (3) der Nachweis der erforderlichen Anzahl der im Aktienbuch eingetragenen Aktien; und (b) die weiteren Informationen, die von der Gesellschaft nach den Regeln der U.S. Securities and Exchange Commission (**SEC**) in einem sog. Proxy Statement aufgenommen und veröffentlicht werden müssen.

Extraordinary
General
Meetings

Article 12

- 1 Extraordinary General Meetings shall be held in the circumstances provided by law, in particular when deemed necessary or appropriate by the Board of Directors or if so requested by the Auditor.
- 2 An Extraordinary General Meeting shall further be convened by the Board of Directors upon resolution of a General Meeting of Shareholders or if so requested by one or more shareholders who, in the aggregate, represent at least one-tenth of the share capital recorded in the Commercial Register and who submit (a)(1) a request signed by such shareholder(s) that specifies the item(s) to be included on the agenda, (2) the respective proposals of the shareholders and (3) evidence of the required shareholdings recorded in the share register and (b) such other information as would be required to be included in a proxy statement pursuant to the rules of the U.S. Securities and Exchange Commission (**SEC**).

Artikel 13

- Einberufung
- 1 Die Generalversammlung wird durch den Verwaltungsrat, nötigenfalls die Revisionsstelle, spätestens 20 Kalendertage vor dem Tag der Generalversammlung einberufen. Die Einberufung erfolgt durch einmalige Bekanntmachung im Publikationsorgan der Gesellschaft gemäss Artikel 32 dieser Statuten. Für die Einhaltung der Einberufungsfrist ist der Tag der Veröffentlichung der Einberufung im Publikationsorgan massgeblich, wobei der Tag der Veröffentlichung nicht mitzuzählen ist. Die im Aktienbuch eingetragenen Aktionäre können zudem auf dem ordentlichen Postweg über die Generalversammlung informiert werden.
- 2 Die Einberufung muss die Verhandlungsgegenstände sowie die Anträge des Verwaltungsrates und des oder der Aktionäre, welche die Durchführung einer Generalversammlung oder die Traktandierung eines Verhandlungsgegenstandes verlangt haben, und bei Wahlgeschäften die Namen des oder der zur Wahl vorgeschlagenen Kandidaten enthalten.

Artikel 14

- Traktandierung
- 1 Jeder Aktionär kann die Traktandierung eines Verhandlungsgegenstandes verlangen. Das Traktandierungsbegehren muss mindestens 30 Kalendertage vor dem Jahrestag des sog. Proxy Statements der Gesellschaft, das im Zusammenhang mit der Generalversammlung im jeweiligen Vorjahr veröffentlicht und gemäss den anwendbaren SEC Regeln bei der SEC eingereicht wurde, schriftlich unter Angabe des Verhandlungsgegenstandes und der Anträge sowie unter Nachweis der erforderlichen Anzahl im Aktienbuch eingetragenen Aktien eingereicht werden. Falls das Datum

Article 13

- Notice of Shareholders' Meetings
- 1 Notice of a General Meeting of Shareholders shall be given by the Board of Directors or, if necessary, by the Auditor, no later than twenty calendar days prior to the date of the General Meeting of Shareholders. Notice of the General Meeting of Shareholders shall be given by way of a one-time announcement in the official means of publication of the Company pursuant to Article 32 of these Articles of Association. The notice period shall be deemed to have been observed if notice of the General Meeting of Shareholders is published in such official means of publication, it being understood that the date of publication is not to be included for purposes of computing the notice period. Shareholders of record may in addition be informed of the General Meeting of Shareholders by ordinary mail.
- 2 The notice of a General Meeting of Shareholders shall specify the items on the agenda and the proposals of the Board of Directors and the shareholder(s) who requested that a General Meeting of Shareholders be held or an item be included on the agenda, and, in the event of elections, the name(s) of the candidate(s) that has or have been put on the ballot for election.

Article 14

- Agenda
- 1 Any shareholder may request that an item be included on the agenda of a General Meeting of Shareholders. An inclusion of an item on the agenda must be requested in writing at least 30 calendar days prior to the anniversary date of the Company's proxy statement in connection with the previous year's General Meeting of Shareholders, as filed with the SEC pursuant to the applicable rules of the SEC, and shall specify in writing the relevant agenda items and proposals, together with evidence of the required shareholdings recorded in the share register; *provided, however*, that if the date of the General Meeting of

der anstehenden Generalversammlung mehr als 30 Kalendertage vor oder nach dem Jahrestag der vorangegangenen Generalversammlung angesetzt worden ist, ist das Traktandierungsbegehren stattdessen spätestens 10 Kalendertage nach dem Tag einzureichen, an dem die Gesellschaft das Datum der Generalversammlung öffentlich bekannt gemacht hat.

- 2 Zu nicht gehörig angekündigten Verhandlungsgegenständen können keine Beschlüsse gefasst werden. Hiervon ausgenommen sind jedoch der Beschluss über den in einer Generalversammlung gestellten Antrag auf (i) Einberufung einer ausserordentlichen Generalversammlung sowie (ii) Durchführung einer Sonderprüfung gemäss Artikel 697a des Schweizerischen Obligationenrechts (**OR**).
- 3 Zur Stellung von Anträgen im Rahmen der Verhandlungsgegenstände und zu Verhandlungen ohne Beschlussfassung bedarf es keiner vorgängigen Ankündigung.

Artikel 15

Vorsitz der
Generalver-
sammlung,
Protokoll,
Stimmzähler

- 1 An der Generalversammlung führt der Präsident des Verwaltungsrates oder, bei dessen Verhinderung, der Vizepräsident oder eine andere vom Verwaltungsrat bezeichnete Person den Vorsitz.
- 2 Der Vorsitzende der Generalversammlung bestimmt den Protokollführer und die Stimmzähler, die alle nicht Aktionäre sein müssen. Das Protokoll ist vom Vorsitzenden und vom Protokollführer zu unterzeichnen.
- 3 Der Vorsitzende der Generalversammlung hat sämtliche Leitungsbefugnisse, die für die ordnungsgemässe Durchführung der Generalversammlung nötig und angemessen sind.

Shareholders is more than 30 calendar days before or after such anniversary date, such request must instead be made at least by the 10th calendar day following the date on which the Company has made public disclosure of the date of the General Meeting of Shareholders.

- 2 No resolution may be passed at a General Meeting of Shareholders concerning an agenda item in relation to which due notice was not given. Proposals made during a General Meeting of Shareholders to (i) convene an Extraordinary General Meeting or (ii) initiate a special investigation in accordance with article 697a of the Swiss Code of Obligations (**CO**) are not subject to the due notice requirement set forth herein.
- 3 No prior notice is required to bring motions related to items already on the agenda or for the discussion of matters on which no resolution is to be taken.

Article 15

Acting
Chair,
Minutes,
Vote
Counters

- 1 At the General Meeting of Shareholders the Chairman of the Board of Directors or, in his absence, the Vice-Chairman or any other person designated by the Board of Directors, shall take the chair.
 - 2 The acting chair of the General Meeting of Shareholders shall appoint the secretary and the vote counters, none of whom need be shareholders. The minutes of the General Meeting of Shareholders shall be signed by the acting chair and the secretary.
 - 3 The acting chair of the General Meeting of Shareholders shall have all powers and authority necessary and appropriate to ensure the orderly conduct of the General Meeting of Shareholders.
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Artikel 16

- Recht auf Teilnahme, Vertretung der Aktionäre
- 1 Jeder im Aktienbuch eingetragene Aktionär ist berechtigt, an der Generalversammlung und deren Beschlüssen teilzunehmen. Ein Aktionär kann sich an der Generalversammlung durch einen unabhängigen Stimmrechtsvertreter vertreten lassen, wobei die Vollmacht und die Weisungen an den unabhängigen Stimmrechtsvertreter auch in einer vom Verwaltungsrat von Zeit zu Zeit näher bestimmten elektronischen Form erteilt werden können, oder durch jeden anderen Bevollmächtigten, der jedoch kein Aktionär sein muss. Der Verwaltungsrat regelt die Einzelheiten über die Vertretung und Teilnahme an der Generalversammlung in Verfahrensvorschriften, einschliesslich mittels Verfahrensvorschriften in der Einladung zur Generalversammlung oder in den Stimmrechtskarten, die den Aktionären zugestellt werden.
- 2 Die Aktionäre wählen den unabhängigen Stimmrechtsvertreter an einer Generalversammlung für eine Amtszeit bis zum Abschluss der nächsten ordentlichen Generalversammlung. Wiederwahl ist möglich. Ist das Amt des unabhängigen Stimmrechtsvertreters aus irgendeinem Grund vakant, ernennt der Verwaltungsrat den unabhängigen Stimmrechtsvertreter für die nächste Generalversammlung.

Artikel 17

- Stimmrecht
- Jede Aktie berechtigt zu einer Stimme. Das Stimmrecht untersteht den Bedingungen von Artikel 7 und 9 dieser Statuten.

Artikel 18

- Beschlüsse und Wahlen
- 1 Die Generalversammlung fasst Beschlüsse und entscheidet Wahlen, soweit das Gesetz oder diese Statuten es nicht anders bestimmen, mit der relativen

Article 16

- Right to Participation and Representation
- 1 Each shareholder recorded in the share register is entitled to participate at the General Meeting of Shareholders and in any vote taken. The shareholders may be represented by the independent proxy, including, without limitation, by granting proxy and providing instructions to such independent proxy by electronic means, as determined by the Board of Directors from time to time, or by any other proxy who need not be a shareholder. The Board of Directors shall issue the particulars of the right to representation and participation at the General Meeting of Shareholders in procedural rules, including in procedural rules included in the notice of the General Meeting of Shareholders or the proxy cards made available to shareholders.
- 2 Shareholders shall elect the independent proxy at a General Meeting of Shareholders for a term of office extending until completion of the next Annual General Meeting. Re-election is possible. If the office of the independent proxy is vacant, for any reason, the Board of Directors shall appoint the independent proxy for the next General Meeting of Shareholders.

Article 17

- Voting Rights
- Each Share shall convey the right to one vote. The right to vote is subject to the conditions of Articles 7 and 9 of these Articles of Association.

Article 18

- Resolutions and Elections
- 1 Unless otherwise required by law or these Articles of Association, the General Meeting of Shareholders shall take resolutions and decide elections upon a relative
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- Mehrheit der abgegebenen Aktienstimmen (wobei Enthaltungen, sog. Broker Nonvotes, leere oder ungültige Stimmen für die Bestimmung des Mehrs nicht berücksichtigt werden).
- 2 Die Generalversammlung entscheidet über die Wahl von Mitgliedern des Verwaltungsrates nach dem proportionalen Wahlverfahren, wonach diejenige Person, welche die grösste Zahl der abgegebenen Aktienstimmen für einen Verwaltungsratssitz erhält, als für den betreffenden Verwaltungsratssitz gewählt gilt. Aktienstimmen gegen einen Kandidaten, Stimmenthaltungen, sog. Broker Nonvotes, ungültige oder leere Stimmen haben für die Zwecke dieses Artikels 18 Abs. 2 keine Auswirkungen auf die Wahl von Mitgliedern des Verwaltungsrates.
 - 3 Für die Abwahl von amtierenden Mitgliedern des Verwaltungsrates gilt das Mehrheitserfordernis gemäss Artikel 20 Abs. 2(e) sowie das Präsenzquorum von Artikel 21 Abs. 1(a).
 - 4 Die Abstimmungen und Wahlen erfolgen offen, es sei denn, dass die Generalversammlung schriftliche Abstimmung respektive Wahl beschliesst oder der Vorsitzende dies anordnet. Der Vorsitzende kann Abstimmungen und Wahlen auch mittels elektronischem Verfahren durchführen lassen. Elektronische Abstimmungen und Wahlen sind schriftlichen Abstimmungen und Wahlen gleichgestellt.
 - 5 Der Vorsitzende kann eine offene Wahl oder Abstimmung immer durch eine schriftliche oder elektronische wiederholen lassen, sofern nach seiner Meinung Zweifel am Abstimmungsergebnis bestehen. In diesem Fall gilt die vorausgegangene offene Wahl oder Abstimmung als nicht geschehen.
- majority of the votes cast at the General Meeting of Shareholders (whereby abstentions, broker nonvotes, blank or invalid ballots shall be disregarded for purposes of establishing the majority).
- 2 The General Meeting of Shareholders shall decide elections of members of the Board of Directors upon a plurality of the votes cast at the General Meeting of Shareholders. A plurality means that the individual who receives the largest number of votes for a board seat is elected to that board seat. Votes against any candidate, abstentions, broker nonvotes, blank or invalid ballots shall have no impact on the election of members of the Board of Directors under this Article 18 para. 2.
 - 3 For the removal of a serving member of the Board of Directors, the voting requirement set forth in Article 20 para. 2(e) and the presence quorum set forth in Article 21 para. 1(a) shall apply.
 - 4 Resolutions and elections shall be decided by a show of hands, unless a written ballot is resolved by the General Meeting of Shareholders or is ordered by the acting chair of the General Meeting of Shareholders. The acting chair may also hold resolutions and elections by use of an electronic voting system. Electronic resolutions and elections shall be considered equal to resolutions and elections taken by way of a written ballot.
 - 5 The chair of the General Meeting of Shareholders may at any time order that an election or resolution decided by a show of hands be repeated by way of a written or electronic ballot if he considers the vote to be in doubt. The resolution or election previously held by a show of hands shall then be deemed to have not taken place.
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Artikel 19

Befugnisse
der
Generalver-
sammlung

Der Generalversammlung sind folgende
Geschäfte vorbehalten:

- (a) Die Festsetzung und Änderung dieser Statuten;
- (b) die Wahl der Mitglieder des Verwaltungsrates, des Verwaltungsratspräsidenten, der Mitglieder des Vergütungsausschusses, der Revisionsstelle und des unabhängigen Stimmrechtsvertreters;
- (c) die Genehmigung des Lageberichts und der Konzernrechnung;
- (d) die Genehmigung der Jahresrechnung sowie die Beschlussfassung über die Verwendung des Bilanzgewinnes, insbesondere die Festsetzung der Dividende;
- (e) die Genehmigung der Vergütung des Verwaltungsrates und der Geschäftsleitung gemäss Artikel 29a dieser Statuten;
- (f) die Entlastung der Mitglieder des Verwaltungsrates und der Geschäftsleitung;
- (g) die Genehmigung eines Zusammenschlusses mit einem Nahestehenden Aktionär (gemäss der Definition dieser Begriffe in Artikel 35 dieser Statuten); und
- (h) die Beschlussfassung über die Gegenstände, die der Generalversammlung durch das Gesetz oder die Statuten vorbehalten sind oder ihr, vorbehältlich Artikel 716a OR, durch den Verwaltungsrat vorgelegt werden.

Powers of
the General
Meeting of
Shareholders

Article 19

The following powers shall be vested
exclusively in the General Meeting of
Shareholders:

- (a) The adoption and amendment of these Articles of Association;
 - (b) the election of the members of the Board of Directors, the Chair of the Board of Directors, the members of the Compensation Committee, the Auditor and the independent proxy;
 - (c) the approval of the Management Report and the Consolidated Financial Statements;
 - (d) the approval of the Annual Statutory Financial Statements of the Company and the resolution on the allocation of profit shown on the Annual Statutory Balance Sheet, in particular the determination of any dividend;
 - (e) the ratification of the compensation of the Board of Directors and the Executive Management Team pursuant to Article 29a of these Articles of Association;
 - (f) the discharge from liability of the members of the Board of Directors and the Executive Management Team;
 - (g) the approval of a Business Combination with an Interested Shareholder (as each such term is defined in Article 35 of these Articles of Association); and
 - (h) the adoption of resolutions on matters that are reserved to the General Meeting of Shareholders by law, these Articles of Association or, subject to article 716a CO, that are submitted to the General Meeting of Shareholders by the Board of Directors.
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Artikel 20

- Besonderes Quorum
- 1 Ein Beschluss der Generalversammlung, der mindestens zwei Drittel der an der Generalversammlung vertretenen Stimmen und die absolute Mehrheit der an der Generalversammlung vertretenen Aktiennennwerte auf sich vereinigt, ist erforderlich für:
- (a) Die Ergänzung oder Änderung des Gesellschaftszweckes gemäss Artikel 2 dieser Statuten;
 - (b) die Einführung und Abschaffung von Stimmrechtsaktien;
 - (c) die Beschränkung der Übertragbarkeit der Aktien und die Aufhebung einer solche Beschränkung;
 - (d) die Beschränkung der Ausübung des Stimmrechts und die Aufhebung einer solchen Beschränkung;
 - (e) eine genehmigte oder bedingte Kapitalerhöhung;
 - (f) die Kapitalerhöhung (i) aus Eigenkapital, (ii) gegen Sacheinlage oder zwecks Sachübernahme oder (iii) die Gewährung von besonderen Vorteilen;
 - (g) die Einschränkung oder Aufhebung des Bezugsrechts;
 - (h) die Verlegung des Sitzes der Gesellschaft;
 - (i) die Umwandlung von Namen- in Inhaberaktien und umgekehrt; und
 - (j) die Auflösung der Gesellschaft.
- 2 Ein Beschluss der Generalversammlung, der mindestens zwei Drittel aller stimmberechtigten Aktien auf sich vereinigt, ist erforderlich für:
- (a) Jede Änderung von Artikel 14 Abs. 1 dieser Statuten;

Article 20

- Special Vote
- 1 The approval of at least two-thirds of the votes and the absolute majority of the par value of Shares, each as represented at a General Meeting of Shareholders, shall be required for resolutions with respect to:
- (a) The amendment or modification of the purpose of the Company as described in Article 2 of these Articles of Association;
 - (b) the creation and the cancelation of shares with privileged voting rights;
 - (c) the restriction on the transferability of Shares and the cancelation of such restriction;
 - (d) the restriction on the exercise of the right to vote and the cancelation of such restriction;
 - (e) an authorized or conditional increase in share capital;
 - (f) an increase in share capital (i) through the conversion of capital surplus, (ii) through contribution in kind or for purposes of an acquisition of assets, or (iii) the granting of special privileges;
 - (g) the limitation on or withdrawal of preemptive rights;
 - (h) the relocation of the registered office of the Company;
 - (i) the conversion of registered shares into bearer shares and vice versa; and
 - (j) the dissolution of the Company.
- 2 The approval of at least two-thirds of the Shares entitled to vote shall be required for:
- (a) Any change to Article 14 para. 1 of these Articles of Association;
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|---|---|
| <p>(b) jede Änderung von Artikel 18 dieser Statuten;</p> <p>(c) jede Änderung dieses Artikels 20 Abs. 2;</p> <p>(d) jede Änderung von Artikel 21, 22, 23 oder 24 dieser Statuten; und</p> <p>(e) die Abwahl eines amtierenden Mitglieds des Verwaltungsrates.</p> | <p>(b) any change to Article 18 of these Articles of Association;</p> <p>(c) any change to this Article 20 para. 2;</p> <p>(d) any change to Article 21, 22, 23 or 24 of these Articles of Association; and</p> <p>(e) a resolution with respect to the removal of a serving member of the Board of Directors.</p> |
| <p>3 Zusätzlich zu etwaigen gesetzlich bestehenden Zustimmungserfordernissen ist ein Beschluss der Generalversammlung mit einer Mehrheit, die mindestens die Summe von: (i) zwei Drittel aller stimmberechtigten Aktien; zuzüglich (ii) einer Zahl von stimmberechtigten Aktien, die einem Drittel der von Nahestehenden Aktionären (wie in Artikel 35 dieser Statuten definiert) gehaltenen Aktienstimmen entspricht, auf sich vereinigt, erforderlich für (1) jeden Zusammenschluss der Gesellschaft mit einem Nahestehenden Aktionär innerhalb eines Zeitraumes von drei Jahren, seitdem diese Person zu einem Nahestehenden Aktionär wurde, (2) jede Änderung von Artikel 19(f) dieser Statuten oder (3) jede Änderung von Artikel 20 Abs. 3 dieser Statuten (einschliesslich der dazugehörigen Definitionen in Artikel 35 dieser Statuten). Das im vorangehenden Satz aufgestellte Zustimmungserfordernis ist jedoch nicht anwendbar falls:</p> <p>(a) der Verwaltungsrat, bevor diese Person zu einem Nahestehenden Aktionär wurde, entweder den Zusammenschluss oder eine andere Transaktion genehmigte, als Folge derer diese Person zu einem Nahestehenden Aktionär wurde;</p> <p>(b) nach Vollzug der Transaktion, als Folge derer diese Person zu einem Nahestehenden Aktionär wurde, der Nahestehende Aktionär mindestens 85% der unmittelbar vor Beginn der betreffenden</p> | <p>3 In addition to any approval that may be required under applicable law, the approval of a majority at least equal to the sum of: (i) two-thirds of the Shares entitled to vote; plus (ii) a number of Shares entitled to vote that is equal to one-third of the number of Shares held by Interested Shareholders (as defined in Article 35 of these Articles of Association), shall be required for the Company to (1) engage in any Business Combination with an Interested Shareholder for a period of three years following the time that such Person became an Interested Shareholder, (2) amend Article 19(f) of these Articles of Association or (3) amend this Article 20 para. 3 of these Articles of Association (including any of the definitions pertaining thereto as set forth in Article 35 of these Articles of Association); <i>provided, however</i>, that the approval requirement in the preceding sentence shall not apply if:</p> <p>(a) Prior to such time that such Person became an Interested Shareholder, the Board of Directors approved either the Business Combination or the transaction which resulted in such Person becoming an Interested Shareholder;</p> <p>(b) upon consummation of the transaction which resulted in such Person becoming an Interested Shareholder, the Interested Shareholder Owned at least 85% of the Shares generally entitled to vote</p> |
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Transaktion allgemein stimmberechtigten Aktien hält, wobei zur Bestimmung der Anzahl der allgemein stimmberechtigten Aktien (nicht jedoch zur Bestimmung der durch den Nahestehenden Aktionär gehaltenen Aktien) folgende Aktien nicht zu berücksichtigen sind: Aktien, (x) welche von Personen gehalten werden, die sowohl Verwaltungsrats- wie Geschäftsleitungsmitglieder sind, und (y) welche für Mitarbeiteraktienpläne reserviert sind, soweit die diesen Plänen unterworfenen Mitarbeiter nicht das Recht haben, unter Wahrung der Vertraulichkeit darüber zu entscheiden, ob Aktien, die dem betreffenden Mitarbeiteraktienplan unterstehen, in einem Übernahme- oder Austauschangebot angedient werden sollen oder nicht;

- (c) eine Person unbeabsichtigtweise zu einem Nahestehenden Aktionär wird und (x) das Eigentum an einer genügenden Anzahl Aktien sobald als möglich veräußert, so dass sie nicht mehr länger als Nahestehender Aktionär qualifiziert und (y) zu keinem Zeitpunkt während der drei dem Zusammenschluss zwischen der Gesellschaft und dieser Person unmittelbar vorangehenden Jahren als Nahestehender Aktionär gegolten hätte, ausgenommen aufgrund des unbeabsichtigten Erwerbs der Eigentümerschaft.
- (d) der Zusammenschluss vor Vollzug oder Verzicht auf und nach öffentlicher Bekanntgabe oder der nach diesem Abschnitt erforderlichen Mitteilung (was auch immer früher erfolgt) eine(r) beabsichtigten Transaktion vorgeschlagen wird, welche (i) eine der Transaktionen im Sinne des zweiten Satzes dieses Artikels 20 Abs. 3(d) darstellt; (ii) mit oder von einer Person abgeschlossen wird, die entweder während den

at the time the transaction commenced, excluding for purposes of determining such number of Shares then in issue (but not for purposes of determining the Shares Owned by the Interested Shareholder), those Shares Owned (x) by Persons who are both members of the Board of Directors and officers of the Company and (y) by employee share plans in which employee participants do not have the right to determine confidentially whether Shares held subject to the plan will be tendered in a tender or exchange offer;

- (c) a Person becomes an Interested Shareholder inadvertently and (x) as soon as practicable divests itself of Ownership of sufficient Shares so that such Person ceases to be an Interested Shareholder and (y) would not, at any time within the three-year period immediately prior to a Business Combination between the Company and such Person, have been an Interested Shareholder but for the inadvertent acquisition of Ownership;
 - (d) the Business Combination is proposed prior to the consummation or abandonment of and subsequent to the earlier of the public announcement or the notice required hereunder of a proposed transaction which (i) constitutes one of the transactions described in the second sentence of this Article 20 para. 3(d); (ii) is with or by a person who either was not an Interested Shareholder during the previous three years or who became an
-

letzten drei Jahren kein Nahestehender Aktionär war oder zu einem Nahestehenden Aktionär mit der Genehmigung des Verwaltungsrates wurde; und (iii) von einer Mehrheit der dann zum amtierenden Mitglieder des Verwaltungsrates (aber mindestens einem) genehmigt oder nicht abgelehnt wird, die entweder bereits Verwaltungsratsmitglieder waren, bevor in den drei vorangehenden Jahren irgendeine Person zu einem Nahestehenden Aktionär wurde, oder die auf Empfehlung einer Mehrheit solcher Verwaltungsratsmitglieder als deren Nachfolger zur Wahl vorgeschlagen wurden. Die im vorangehenden Satz erwähnten beabsichtigten Transaktionen sind auf folgende beschränkt: (x) eine Fusion oder andere Form des Zusammenschlusses der Gesellschaft (mit Ausnahme einer Fusion, welche keine Genehmigung durch die Generalversammlung der Gesellschaft voraussetzt); (y) ein Verkauf, eine Vermietung oder Verpachtung, hypothekarische Belastung oder andere Verpfändung, Übertragung oder andere Verfügung (ob in einer oder mehreren Transaktionen), einschliesslich im Rahmen eines Tauschs, von Vermögenswerten der Gesellschaft oder einer direkten oder indirekten Tochtergesellschaft, die zur Mehrheit von der Gesellschaft gehalten wird (jedoch nicht an eine direkt oder indirekt zu 100% gehaltene Konzerngesellschaft oder an die Gesellschaft), soweit diese Vermögenswerte einen Marktwert von 50% oder mehr entweder des auf konsolidierter Basis aggregierten Marktwertes aller Vermögenswerte der Gesellschaft oder des aggregierten Marktwertes aller dann ausgegebenen Aktien haben, unabhängig davon, ob eine dieser Transaktionen Teil einer Auflösung

Interested Shareholder with the approval of the Board of Directors; and (iii) is approved or not opposed by a majority of the members of the Board of Directors then in office (but not less than one) who were Directors prior to any person becoming an Interested Shareholder during the previous three years or were recommended for election to succeed such Directors by a majority of such Directors. The proposed transactions referred to in the preceding sentence are limited to (x) a merger or consolidation of the Company (except for a merger in respect of which no vote of the Company's shareholders is required); (y) a sale, lease, exchange, mortgage, pledge, transfer or other disposition (in one transaction or a series of transactions), whether as part of a dissolution or otherwise, of assets of the Company or of any direct or indirect majority-Owned subsidiary of the Company (other than to any direct or indirect wholly Owned subsidiary or to the Company) having an aggregate market value equal to 50% or more of either that aggregate market value of all of the assets of the Company determined on a consolidated basis or the aggregate market value of all the issued shares; or (z) a proposed tender or exchange offer for 50% or more of the voting shares then in issue. The Company shall give not less than 20 days' notice to all Interested Shareholders as well as to the other shareholders prior to the consummation of any of the transactions described in clause (x) or (y) of the second sentence of this Article 20 para. 3(d).

der Gesellschaft ist oder nicht;
oder (z) ein vorgeschlagenes
Übernahme- oder
Umtauschangebot für 50% oder
mehr der ausstehenden
Stimmrechte der Gesellschaft. Die
Gesellschaft muss
Nahestehenden Aktionären sowie
den übrigen Aktionären den
Vollzug einer der unter (x) oder (y)
des zweiten Satzes dieses
Artikels 20 Abs. 3(d) erwähnten
Transaktionen mindestens 20
Kalendertage vorher mitteilen.

Artikel 21

- Präsenzquorum 1 Die nachfolgend aufgeführten
Angelegenheiten erfordern zum Zeitpunkt
der Konstituierung der
Generalversammlung ein Präsenzquorum
von Aktionären oder deren Vertretern,
welche mindestens zwei Drittel des im
Handelsregister eingetragenen
Aktienkapitals vertreten, damit die
Generalversammlung beschlussfähig ist:
- (a) Die Beschlussfassung über die
Abwahl eines amtierenden
Verwaltungsratsmitglieds; und
 - (b) die Beschlussfassung, diesen
Artikel 21 oder Artikel 18, 19(f), 20,
22, 23 oder 24 dieser Statuten zu
ergänzen, zu ändern, nicht
anzuwenden oder ausser Kraft zu
setzen.
- 2 Jede andere Beschlussfassung oder Wahl
setzt zu ihrer Gültigkeit voraus, dass zum
Zeitpunkt der Konstituierung der
Generalversammlung zumindest die
Mehrheit aller stimmberechtigten Aktien
anwesend ist. Die Aktionäre können mit
der Behandlung der Traktanden
fortfahren, selbst wenn Aktionäre nach
Bekanntgabe des Quorums durch den
Vorsitzenden die Generalversammlung
verlassen und damit weniger als das
geforderte Präsenzquorum an der
Generalversammlung verbleibt.

Article 21

- Presence
Quorum 1 The matters set forth below require that a
quorum of shareholders of record holding
in person or by proxy at least two-thirds of
the share capital recorded in the
Commercial Register are present at the
time when the General Meeting of
Shareholders proceeds to business:
- (a) the adoption of a resolution to
remove a serving Director; and
 - (b) the adoption of a resolution to
amend, vary, suspend the
operation of, disapply or cancel this
Article 21 or Articles 18, 19(f), 20,
22, 23 or 24 of these Articles of
Association.
- 2 The adoption of any other resolution or
election requires that at least a majority of
all the Shares entitled to vote be
represented at the time when the General
Meeting of Shareholders proceeds to
business. The shareholders present at a
General Meeting of Shareholders may
continue to transact business, despite the
withdrawal of shareholders from such
General Meeting of Shareholders
following announcement of the presence
quorum at that meeting.

B. Verwaltungsrat

Artikel 22

Anzahl der
Verwaltungsräte

Der Verwaltungsrat besteht aus mindestens zwei und höchstens 11 Mitgliedern. Vorbehalten bleibt Artikel 38 dieser Statuten.

Artikel 23

Amts-dauer

- 1 Die Aktionäre wählen die Mitglieder des Verwaltungsrates und den Verwaltungsratspräsidenten einzeln an einer Generalversammlung für eine Amts-dauer bis zum Abschluss der nächsten ordentlichen Generalversammlung. Wiederwahl ist möglich. Ist das Amt des Verwaltungsratspräsidenten aus irgendeinem Grund vakant, ernennt der Verwaltungsrat den Verwaltungsratspräsidenten für eine Amts-dauer bis zum Abschluss der nächsten ordentlichen Generalversammlung.
- 2 Wenn ein Verwaltungsratsmitglied vor Ablauf seiner Amts-dauer aus welchen Gründen auch immer ersetzt wird, endet die Amts-dauer des an seiner Stelle gewählten neuen Verwaltungsratsmitgliedes mit dem Ende der Amts-dauer seines Vorgängers.

B. Board of Directors

Article 22

Number of
Directors

The Board of Directors shall consist of no less than two and no more than 11 members. Article 38 of these Articles of Association remains reserved.

Article 23

Term of
Office

- 1 The Shareholders shall elect the members of the Board of Directors and the Chair of the Board of Directors individually at a General Meeting of Shareholders for a term of office extending until completion of the next Annual General Meeting. Re-election is possible. If the office of the Chair of the Board of Directors is vacant, for any reason, the Board of Directors shall appoint the Chair from among its members for a term of office extending until completion of the next Annual General Meeting.
 - 2 If, before the expiration of his term of office, a Director should be replaced for whatever reason, the term of office of the newly elected member of the Board of Directors shall expire at the end of the term of office of his predecessor.
-

Artikel 24

Organisation
des
Verwaltungs-
rates,
Entschädigung

- 1 Vorbehältlich der Wahl des Verwaltungsratspräsidenten und der Mitglieder des Vergütungsausschusses durch die Aktionäre an einer Generalversammlung bestimmt der Verwaltungsrat seine Organisation selbst. Er kann einen oder mehrere Vize-Präsidenten wählen. Er bestellt weiter einen Sekretär, welcher nicht Mitglied des Verwaltungsrates sein muss. Der Verwaltungsrat regelt unter Vorbehalt der Bestimmungen des Gesetzes und dieser Statuten die Einzelheiten seiner Organisation in einem Organisationsreglement.
- 2 *[absichtlich leer gelassen]*
- 3 Soweit gesetzlich zulässig, hält die Gesellschaft aktuelle und ehemalige Mitglieder des Verwaltungsrates und der Geschäftsleitung sowie deren Erben, Konkurs- oder Nachlassmassen aus Gesellschaftsmitteln für Schäden, Verluste und Kosten aus drohenden, hängigen oder abgeschlossenen Klagen, Verfahren oder Untersuchungen zivil-, straf- oder verwaltungsrechtlicher oder anderer Natur schadlos, welche ihnen oder ihren Erben, Konkurs- oder Nachlassmassen entstehen aufgrund von tatsächlichen oder behaupteten Handlungen, Zustimmungen oder Unterlassungen im Zusammenhang mit der Ausübung ihrer Pflichten oder behaupteten Pflichten oder aufgrund der Tatsache, dass sie Mitglied des Verwaltungsrates oder der Geschäftsleitung der Gesellschaft sind oder waren oder auf Aufforderung der Gesellschaft als Mitglied des Verwaltungsrates, der Geschäftsleitung oder als Arbeitnehmer oder Agent eines anderen Unternehmens, einer anderen Gesellschaft, einer nicht-rechtsfähigen Personengesellschaft oder eines Trusts sind oder waren. Diese Pflicht zur Schadloshaltung besteht nicht, soweit in einem endgültigen, nicht weiterziehbaren Entscheid eines zuständigen Gerichts bzw. einer zuständigen Verwaltungsbehörde entschieden worden ist, dass eine der genannten Personen ihre Pflichten als Mitglied des

Article 24

Organization
of the Board,
Remuneration

- 1 Except for the election of the Chair of the Board of Directors and the members of the Compensation Committee by the shareholders at a General Meeting of Shareholders, the Board of Directors shall determine its own organization. It may elect one or more Vice-Chairs. It shall further appoint a Secretary, who need not be a member of the Board of Directors. Subject to applicable law and these Articles of Association, the Board of Directors shall establish the particulars of its organization in organizational regulations.
- 2 *[intentionally omitted]*
- 3 The Company shall indemnify and hold harmless, to the fullest extent permitted by law, the existing and former members of the Board of Directors and officers, and their heirs, executors and administrators, out of the assets of the Company from and against all threatened, pending or completed actions, suits or proceedings – whether civil, criminal, administrative or investigative – and all costs, charges, losses, damages and expenses which they or any of them, their heirs, executors or administrators, shall or may incur or sustain by or by reason of any act done or alleged to be done, concurred or alleged to be concurred in or omitted or alleged to be omitted in or about the execution of their duty, or alleged duty, or by reason of the fact that he is or was a member of the Board of Director or officer of the Company, or while serving as a member of the Board of Director or officer of the Company is or was serving at the request of the Company as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise; *provided, however,* that this indemnity shall not extend to any matter in which any of said persons is found, in a final judgment or decree of a court or governmental or administrative authority of competent jurisdiction not subject to appeal, to have committed an intentional or

Verwaltungsrates oder der Geschäftsleitung absichtlich oder grobfahrlässig verletzt hat.

grossly negligent breach of his statutory duties as a member of the Board of Director or officer.

- 4 Ohne den vorangehenden Absatz 3 dieses Artikels 24 einzuschränken, bevorschusst die Gesellschaft Mitgliedern des Verwaltungsrates und der Geschäftsleitung Gerichts- und Anwaltskosten. Die Gesellschaft kann solche Vorschüsse zurückfordern, wenn ein zuständiges Gericht oder eine zuständige Verwaltungsbehörde in einem endgültigen, nicht weiterziehbaren Urteil bzw. Entscheid zum Schluss kommt, dass eine der genannten Personen ihre Pflichten als Mitglied des Verwaltungsrates oder der Geschäftsleitung absichtlich oder grobfahrlässig verletzt hat.

- 4 Without limiting the foregoing paragraph 3 of this Article 24, the Company shall advance court costs and attorneys' fees to the existing and former members of the Board of Directors and officers. The Company may however recover such advanced costs if any of said persons is found, in a final judgment or decree of a court or governmental or administrative authority of competent jurisdiction not subject to appeal, to have committed an intentional or grossly negligent breach of his statutory duties as a Director or officer.

Artikel 25

Article 25

Befugnisse des Verwaltungsrates

- 1 Der Verwaltungsrat hat die in Artikel 716a OR statuierten unübertragbaren und unentziehbaren Aufgaben, insbesondere:
- (a) die Oberleitung der Gesellschaft und die Erteilung der nötigen Weisungen;
 - (b) die Festlegung der Organisation; und
 - (c) die Oberaufsicht über die mit der Geschäftsführung betrauten Personen, namentlich im Hinblick auf die Befolgung der Gesetze, Statuten, Reglemente und Weisungen.
- 2 Der Verwaltungsrat kann überdies in allen Angelegenheiten Beschluss fassen, die nicht nach Gesetz oder Statuten der Generalversammlung zugeteilt sind.
- 3 Der Verwaltungsrat kann Beteiligungspläne der Gesellschaft der Generalversammlung zur Genehmigung vorlegen.

Specific Powers of the Board

- 1 The Board of Directors has the non-delegable and inalienable duties as specified in Article 716a CO, in particular:
- (a) the ultimate direction of the business of the Company and the issuance of the required directives;
 - (b) the determination of the organization of the Company; and
 - (c) the ultimate supervision of the persons entrusted with management duties, in particular with regard to compliance with law, these Articles of Association, regulations and directives.
- 2 In addition, the Board of Directors may pass resolutions with respect to all matters that are not reserved to the General Meeting of Shareholders by law or under these Articles of Association.
- 3 The Board of Directors may submit benefit or incentive plans of the Company to the General Meeting of Shareholders for approval.

	Artikel 26		Article 26
Übertragung von Befugnissen	Der Verwaltungsrat kann unter Vorbehalt von Artikel 25 Abs. 1 dieser Statuten sowie der Vorschriften des OR die Geschäftsleitung nach Massgabe eines Organisationsreglements ganz oder teilweise an eines oder mehrere seiner Mitglieder, an einen oder mehrere Ausschüsse des Verwaltungsrates oder an Dritte übertragen. Die Verwaltungsratsmitglieder, Ausschüsse oder die Dritten, die vom Verwaltungsrat mit Geschäftsführungsaufgaben betraut sind, werden in diesen Statuten als " Geschäftsleitung " bezeichnet.	Delegation of Powers	Subject to Article 25 para. 1 of these Articles of Association and the applicable provisions of the CO, the Board of Directors may delegate the executive management of the Company in whole or in part to individual directors, one or more committees of the Board of Directors or to persons other than Directors pursuant to organizational regulations. The directors, committees or persons to whom the Board of Directors delegates executive management shall be referred to in these Articles of Association as the " Executive Management Team. "
	Artikel 27		Article 27
Sitzungen des Verwaltungsrats	<p>1 Sofern das vom Verwaltungsrat erlassene Organisationsreglement nichts anderes festlegt, ist zur gültigen Beschlussfassung über Geschäfte des Verwaltungsrates die Anwesenheit einer Mehrheit der Mitglieder des gesamten Verwaltungsrates notwendig. Kein Präsenzquorum ist erforderlich für die Statutenanpassungs- und Feststellungsbeschlüsse des Verwaltungsrates im Zusammenhang mit Kapitalerhöhungen.</p> <p>2 Der Verwaltungsrat fasst seine Beschlüsse mit einer Mehrheit der von den anwesenden Verwaltungsräten abgegebenen Stimmen, vorausgesetzt, das Präsenzquorum von Absatz 1 dieses Artikels 27 ist erfüllt. Der Vorsitzende hat bei Stimmgleichheit keinen Stichentscheid.</p>	Meeting of the Board of Directors	<p>1 Except as otherwise set forth in organizational regulations of the Board of Directors, the attendance quorum necessary for the transaction of the business of the Board of Directors shall be a majority of the whole Board of Directors. No attendance quorum shall be required for resolutions of the Board of Directors providing for the confirmation of a capital increase or for the amendment of the Articles of Association in connection therewith.</p> <p>2 The Board of Directors shall pass its resolutions with the majority of the votes cast by the Directors present at a meeting at which the attendance quorum of para. 1 of this Article 27 is satisfied. The Chairman shall have no casting vote.</p>
	Artikel 28		Article 28
Zeichnungsberechtigung	Die rechtsverbindliche Vertretung der Gesellschaft durch Mitglieder des Verwaltungsrates und durch Dritte wird in einem Organisationsreglement festgelegt.	Signature Power	The due and valid representation of the Company by members of the Board of Directors and other persons shall be set forth in organizational regulations.

Bbis. Vergütungsausschuss

Artikel 28a

Amts-dauer,
Organisation
des
Vergütungs-aus-
schusses

- 1 Der Vergütungsausschuss (der **Vergütungsausschuss**) ist der Ausschuss des Verwaltungsrates, der für Vergütungsfragen zuständig ist. Er besteht aus mindestens drei (3) Mitgliedern des Verwaltungsrates. Die Mitglieder des Vergütungsausschusses müssen die anwendbaren Anforderungen an Unabhängigkeit, Erfahrung oder andere regulatorische oder börsenspezifische Anforderungen erfüllen.
- 2 Die Aktionäre wählen die Mitglieder des Vergütungsausschusses einzeln an einer Generalversammlung für eine Amtsdauer bis zum Abschluss der nächsten ordentlichen Generalversammlung. Wiederwahl ist möglich. Ist der Vergütungsausschuss nicht vollständig besetzt, ernennt der Verwaltungsrat aus seiner Mitte Ersatzmitglieder für eine Amtsdauer bis zum Abschluss der nächsten ordentlichen Generalversammlung.
- 3 Der Verwaltungsrat ernennt den Vorsitzenden des Vergütungsausschusses. Unter Vorbehalt der Bestimmungen des Gesetzes und dieser Statuten regelt der Verwaltungsrat die Einzelheiten der Organisation des Vergütungsausschusses in einem Reglement oder einer Satzung.

Artikel 28b

Befugnisse und
Pflichten

- 1 Der Vergütungsausschuss hat unter anderem die Aufgabe, den Verwaltungsrat (1) bei der Erarbeitung eines angemessenen Vergütungs- und Leistungsprogrammes für die Mitglieder des Verwaltungsrates und der Geschäftsleitung und (2) bei der Vorbereitung der Anträge des Verwaltungsrates an die Generalversammlung betreffend die Vergütung des Verwaltungsrates und der Geschäftsleitung zu unterstützen. Der Vergütungsausschuss übernimmt weiter andere mit der

Bbis. Compensation Committee

Article 28a

Term of office,
Organization
of the
Compensation
Committee

- 1 The compensation committee (the **Compensation Committee**) shall be the committee of the Board of Directors responsible for compensation matters. It shall consist of no fewer than three (3) members of the Board of Directors. The members of the Compensation Committee shall meet any applicable independence, experience or other regulatory or stock exchange requirements.
- 2 The shareholders shall elect the members of the Compensation Committee individually at a General Meeting of Shareholders for a term of office extending until completion of the next Annual General Meeting. Re-election is possible. If there are vacancies on the Compensation Committee, the Board of Directors shall appoint from among its members substitutes for a term of office extending until completion of the next Annual General Meeting.
- 3 The Board of Directors shall elect the Chair of the Compensation Committee. Subject to applicable law and these Articles of Association, the Board of Directors shall establish the particulars of the organization of the Compensation Committee in regulations or in a charter.

Article 28b

Powers and
Duties

- 1 The Compensation Committee shall, among other things, assist the Board of Directors in (1) developing an appropriate compensation and benefit program for the members of the Board of Directors and the Executive Management Team and (2) preparing the proposals of the Board of Directors to the General Meeting of Shareholders regarding the compensation of the Board of Directors and the Executive Management Team. The Compensation Committee shall further perform such other compensation-

Vergütung in Zusammenhang stehende Aufgaben, wie sie von Zeit zu Zeit vom Verwaltungsrat an ihn delegiert werden.

- 2 Der Verwaltungsrat regelt die Einzelheiten der Befugnisse und Pflichten des Vergütungsausschusses in einem Reglement oder einer Satzung. Insbesondere legt der Verwaltungsrat fest, inwieweit der Vergütungsausschuss Leistungsziele, Zielwerte und die individuelle Vergütung der Mitglieder des Verwaltungsrates und der Geschäftsleitung selbst bestimmt, und inwieweit der Vergütungsausschuss dem Verwaltungsrat Vorschläge hierzu zur definitiven Beschlussfassung unterbreitet.
- 3 Der Verwaltungsrat kann weitere Befugnisse und Pflichten an den Vergütungsausschuss delegieren.

C. Revisionsstelle

Artikel 29

Amtsdauer,
Befugnisse
und
Pflichten

- 1 Die Revisionsstelle wird von der Generalversammlung gewählt und es obliegen ihr die vom Gesetz zugewiesenen Befugnisse und Pflichten.
- 2 Die Amtsdauer der Revisionsstelle beträgt ein Jahr, beginnend am Tage der Wahl an einer ordentlichen Generalversammlung und endend am Tage der nächsten ordentlichen Generalversammlung.

related duties as delegated to it by the Board of Directors from time to time.

- 2 The Board of Directors shall establish the particulars of the powers and duties of the Compensation Committee in regulations or in a charter. In particular, the Board of Directors shall establish to what extent the Compensation Committee shall determine performance objectives, target values and the individual compensation of the members of the Board of Directors and the Executive Management Team itself, and to what extent the Compensation Committee shall submit proposals in relation thereto to the Board of Directors for its final determination.
- 3 The Board of Directors may delegate further authorities and duties to the Compensation Committee.

C. Auditor

Article 29

Term,
Powers
and Duties

- 1 The Auditor shall be elected by the General Meeting of Shareholders and shall have the powers and duties vested in it by law.
 - 2 The term of office of the Auditor shall be one year, commencing on the day of election at an Annual General Meeting of Shareholders and terminating on the day of the next Annual General Meeting of Shareholders.
-

Abschnitt 3a:
Vergütung des Verwaltungsrates und der Geschäftsleitung

Artikel 29a

Genehmigung der Vergütung des Verwaltungsrates und der Geschäftsleitung durch die Aktionäre

- 1 Die Aktionäre genehmigen, unter Vorbehalt der nachstehenden Abs. 3 und Abs. 4, an jeder ordentlichen Generalversammlung die Anträge des Verwaltungsrates betreffend den Maximalgesamtbetrag (in US Dollars, Schweizer Franken oder einer anderen Währung):
 - (a) der Vergütung des Verwaltungsrates für die Periode zwischen der ordentlichen Generalversammlung, an der um Genehmigung ersucht wird, und der nächsten ordentlichen Generalversammlung; und
 - (b) der Vergütung der Geschäftsleitung für das Geschäftsjahr, das nach der ordentlichen Generalversammlung, an der um Genehmigung ersucht wird, beginnt.
- 2 Der Verwaltungsrat kann die Aktionäre an einer Generalversammlung um Genehmigung eines Gesamtbetrages oder eines Maximalgesamtbetrages der Vergütung des Verwaltungsrates bzw. der Geschäftsleitung, oder von Elementen davon, oder zusätzlicher oder bedingter Beträge für von Abs. 1 dieses Artikels 29a abweichende Zeitperioden ersuchen, sei es auf retrospektiver Basis, prospektiver Basis oder einer Kombination davon.
- 3 Innerhalb des von den Aktionären an der jeweiligen Generalversammlung genehmigten Gesamtbetrages oder Maximalgesamtbetrages ist ausschliesslich der Verwaltungsrat, oder soweit delegiert, der

Section 3a:
Compensation of the Board of Directors and the Executive Management Team

Article 29a

Shareholder Ratification of Compensation of the Board of Directors and the Executive Management Team

- 1 The shareholders shall, subject to para. 3 and para. 4 below, at each Annual General Meeting ratify the proposals of the Board of Directors as regards the maximum aggregate amount (expressed in U.S. dollars, Swiss francs or any other currency) of, respectively:
 - (a) the compensation of the Board of Directors for the period between the Annual General Meeting at which ratification is sought and the next Annual General Meeting; and
 - (b) the compensation of the Executive Management Team for the fiscal year commencing after the Annual General Meeting at which ratification is sought.
 - 2 The Board of Directors may seek ratification by the shareholders at a General Meeting of Shareholders on a retrospective or prospective basis, or a combination thereof, of the aggregate amount, or maximum aggregate amount, of compensation, respectively, of the Board of Directors and the Executive Management Team, or any element thereof, or any additional or contingent amount, in relation to different time periods than those referred to in para. 1 of this Article 29a.
 - 3 Within the aggregate amount, or maximum aggregate amount ratified by the shareholders at the relevant General Meeting of Shareholders, it shall be the exclusive authority and responsibility of the Board of Directors or, where
-

- Vergütungsausschuss befugt und verantwortlich, die tatsächliche individuelle Vergütung jedes Mitglieds des Verwaltungsrates beziehungsweise der Geschäftsleitung zu bestimmen. Zu diesem Zweck wird der Wert der Vergütung in der Regel gemäss allgemein anerkannten Bewertungsmethoden per Datum der Zuteilung des jeweiligen Vergütungselements bestimmt.
- 4 Genehmigen die Aktionäre an einer Generalversammlung einen Antrag des Verwaltungsrates gemäss Abs. 1 oder Abs. 2 hiervor nicht, so zieht der Verwaltungsrat oder, soweit delegiert, der Vergütungsausschuss den nicht-genehmigten Antrag unter Berücksichtigung, soweit feststellbar, der Gründe, aus denen die Aktionäre den Antrag nicht genehmigt haben, in Wiedererwägung und ersucht die Aktionäre um Genehmigung eines revidierten Antrags; die Genehmigung kann an der Generalversammlung, an welcher der Antrag gemäss Abs. 1 oder Abs. 2 hiervor nicht genehmigt wurde, an einer ausserordentlichen Generalversammlung oder an der nächsten ordentlichen Generalversammlung erfolgen.
- 5 Die Gesellschaft oder von ihr kontrollierte Gesellschaften können, unter Vorbehalt der nachträglichen Genehmigung durch die Aktionäre, Vergütung vor der Genehmigung durch die Aktionäre an einer Generalversammlung zuteilen oder bezahlen.
- 6 Der Begriff "Vergütung", so wie er in diesen Statuten verwendet wird (ausser soweit im Rahmen einer spezifischen Bestimmung dieser Statuten anders definiert), umfasst jegliche Form der Entschädigung, einschliesslich (ohne Beschränkung auf) anteilsbasierte Vergütung oder Leistungs-, Erfolgs- oder andere Vergütung, in bar, Aktien, gesperrten Aktien, gesperrten Aktieneinheiten, aufgeschobenen Einheiten, Optionen, Aktienwertsteigerungsrechten, Bonus-Aktien, Leistungsprämien oder anderen Finanzinstrumenten oder Derivaten, oder irgendeine Kombination davon, und
- delegated to it, the Compensation Committee, to determine the actual individual compensation of, respectively, each member of the Board of Directors and the Executive Management Team. For such purposes, the value of compensation shall as a rule be determined in accordance with generally recognized valuation methods as per the grant date of the respective compensation element.
- 4 If the shareholders at a General Meeting of Shareholders have not ratified a proposal of the Board of Directors pursuant to para. 1 or para. 2 above, the Board of Directors or, where delegated to it, the Compensation Committee shall reconsider the proposal that has not been ratified, taking into account, to the extent identifiable, the reasons for which the shareholders did not ratify the proposal, and seek shareholder ratification for a revised proposal at the General Meeting of Shareholders at which the proposal pursuant to para. 1 or para. 2 above has not been ratified, at an Extraordinary General Meeting or at the next Annual General Meeting.
- 5 The Company or companies under its control may grant or pay compensation subject to subsequent shareholder ratification prior to shareholder ratification at a General Meeting of Shareholders.
- 6 The term "compensation," as used in these Articles of Association (except to the extent defined otherwise in a specific provision of these Articles of Association), shall include any form of remuneration, including, without limitation, equity awards, or incentive awards or other awards, in cash, shares, restricted shares, restricted share units, deferred units, options, share appreciation rights, bonus shares, performance awards, awards of other financial instruments or derivatives, or any combination of the foregoing, granted or paid to, and any other benefits and perquisites received by, the respective recipients (it
-

andere Leistungen und Vorteile, welche den betreffenden Empfängern zugeteilt oder bezahlt wird bzw. welche diese erhalten (vorausgesetzt, dass Mitglieder des Verwaltungsrates nur eine anteilsbasierte Vergütung in der Form von Aktien, gesperrten Aktien, gesperrten Aktieneinheiten, aufgeschobenen Einheiten oder ähnlichen Instrumenten erhalten dürfen), in jedem Fall unabhängig davon, ob die Vergütung, die Leistungen oder die Vorteile in Aktien, in anderen Finanzmarktinstrumenten, in bar oder als Sach- oder Dienstleistung ausgerichtet oder beglichen werden. Der Begriff "Vergütung" umfasst nicht den Ersatz oder die Bevorschussung von Auslagen, die der betreffende Empfänger im Interesse der Gesellschaft oder von ihr kontrollierten Gesellschaften getätigt hat, oder eine Schadloshaltung oder Bevorschussung von Auslagen, die an ein Mitglied des Verwaltungsrates oder der Geschäftsleitung gemäss Artikel 24 Abs. 3 und Abs. 4 dieser Statuten ausgerichtet wird.

Artikel 29b

Vergütungs-
Prinzipien für
Verwaltungsrat
und
Geschäftsleitung

- 1 Die Vergütung des Verwaltungsrates kann (i) Barkomponenten, (ii) Aktien, gesperrte Aktien, gesperrte Aktieneinheiten, aufgeschobene Einheiten oder ähnliche Instrumente und/oder (iii) Leistungen oder Vorteile in der Form von Sach- oder Dienstleistungen umfassen, wie im Einzelnen vom Verwaltungsrat oder, soweit delegiert, vom Vergütungsausschuss von Zeit zu Zeit unter Vorbehalt der anwendbaren Planbestimmungen festgelegt. Die so festgelegte Vergütung soll unter anderem die Funktion und die Aufgaben der Verwaltungsräte im Verwaltungsrat und in Ausschüssen des Verwaltungsrates berücksichtigen. Exekutive Verwaltungsräte erhalten keine Vergütung zusätzlich zur Vergütung, welche ihnen im Rahmen ihrer Funktion als Officers der Gesellschaft ausgerichtet wird.
- 2 Sofern vom Verwaltungsrat oder, soweit delegiert, vom Vergütungsausschuss nicht anders festgelegt, besteht die Vergütung der Geschäftsleitung in der Regel aus (i) einem

being understood that members of the Board of Directors may only receive equity awards in the form of shares, restricted shares, restricted share units, deferred units or similar instruments), in each case irrespective of whether any of such awards, benefits or perquisites are provided or settled in shares, other securities, cash, in kind or in form of services. The term "compensation" shall not include the reimbursement or the advancement of expenses incurred by the respective recipient in the interest of the Company or companies under its control, or any indemnification or advancement of expenses provided to a member of the Board of Directors or the Executive Management Team pursuant to Article 24 para. 3 and para. 4 of these Articles of Association.

Article 29b

Compensation
Principles for
the Board of
Directors and
the Executive
Management
Team

- 1 The compensation of the Board of Directors may include (i) cash components, (ii) shares, restricted shares, restricted share units, deferred units or similar instruments, and/or (iii) benefits or perquisites in kind or in the form of services, as shall be determined by the Board of Directors or, where delegated to it, the Compensation Committee from time to time, subject to the terms of the applicable plans. The compensation so determined shall, among other things, take into account the position and the roles of the directors within the Board of Directors and on committees of the Board of Directors. Executive directors shall not receive any compensation in addition to the compensation paid to them in their roles as officers of the Company.
- 2 Except as otherwise determined by the Board of Directors or, where delegated to it, the Compensation Committee, the compensation of the Executive Management Team

- Basissalär, (ii) kurzfristiger Leistungs- oder Erfolgsvergütung gemäss den anwendbaren Plänen, (iii) langfristiger Leistungs- oder Erfolgsvergütung gemäss den anwendbaren Plänen und (iv) weiterer Vergütung, die der Verwaltungsrat oder, soweit delegiert, der Vergütungsausschuss als angemessen erachtet, einschliesslich (ohne Beschränkung auf) Beiträge an Vorsorgeleistungspläne und Spesenpauschalen.
- 3 Kurzfristige Leistungs- oder Erfolgsvergütung soll Mitgliedern der Geschäftsleitung die Möglichkeit geben, einen jährlichen Bar-Bonus, andere an kurzfristigen Leistungs- oder Erfolgszielen ausgerichtete Vergütung, oder eine Kombination davon zu verdienen, jeweils wie vom Verwaltungsrat oder, soweit delegiert, vom Vergütungsausschuss von Zeit zu Zeit festgelegt, und ist gestützt auf Performance festzulegen, gemessen an vordefinierten Zielen, einschliesslich (ohne Beschränkung auf) Sicherheitszielen, finanziellen Zielen, strategischen Unternehmenszielen, individuellen Leistungszielen, Leistungszielen bezogen auf vergleichbare Unternehmen, und anderen Zielen, wie vom Verwaltungsrat, oder soweit delegiert, vom Vergütungsausschuss von Zeit zu Zeit festgelegt.
- 4 Langfristige Leistungs- oder Erfolgsvergütung ist mit dem Ziel auszugestalten, einen Anreiz für eine erhöhte Leistung und die Erreichung von langfristigen Zielen durch die Geschäftsleitung zu setzen, das Wachstum von Shareholder Value zu fördern und Schlüsseltalente anzubinden, unter anderem dadurch, dass Mitgliedern der Geschäftsleitung Möglichkeiten gegeben werden, am langfristigen Wachstum und der Profitabilität der Gesellschaft teilzuhaben. Zu diesem Zweck, einschliesslich (ohne Beschränkung) zwecks Bestimmung der relevanten Zielwerte der Vergütung gemäss den anwendbaren Plänen, kann der Verwaltungsrat oder, soweit delegiert, der Vergütungsausschuss unter anderem
- shall generally consist of (i) a base salary, (ii) short-term incentive compensation pursuant to the applicable plans, (iii) long-term incentive compensation pursuant to the applicable plans and (iv) any other compensation as deemed appropriate by the Board of Directors or, where delegated to it, the Compensation Committee, including, without limitation, contributions to post-retirement benefit plans and allowances.
- 3 Short-term incentive compensation shall provide members of the Executive Management Team with the opportunity to earn an annual cash bonus, other short-term incentive awards, or a combination thereof, as shall be determined by the Board of Directors or, where delegated to it, the Compensation Committee from time to time, and shall be based on performance as measured against predetermined objectives, including, without limitation, safety performance objectives, financial performance objectives, strategic corporate objectives, individual performance objectives, peer performance objectives, and such other objectives, all as established by the Board of Directors or, where delegated to it, the Compensation Committee from time to time.
- 4 Long-term incentive compensation shall be designed so as to motivate superior performance and achievement of long-term goals by the Executive Management Team, to promote the growth of shareholder value and retain key talent, among other things, by providing members of the Executive Management Team with opportunities to participate in the long-term growth and profitability of the Company. For such purposes, including, without limitation, for purposes of determining the relevant target values of compensation pursuant to the applicable plans, the Board of Directors or, where delegated to it, the Compensation Committee may, among other things, take into account the position and level of responsibility of the respective
-

die Position und den Grad der Verantwortung des betreffenden Vergütungsempfängers, individuelle Leistungsziele, Ziele der Gesellschaft oder Teilen davon, einschliesslich (ohne Beschränkung) die Aktienrendite im Verhältnis zum Markt, anderen Unternehmen oder anderen Richtgrössen, berücksichtigen. Der endgültige Wert von langfristigen Leistungs- oder Erfolgsvergütung kann den jeweiligen Zielwert übersteigen. Der Verwaltungsrat oder, soweit delegiert, der Vergütungsausschuss bestimmt das relative Gewicht der Leistungskriterien und die jeweiligen Referenzwerte.

- 5 Der Verwaltungsrat, oder soweit delegiert, der Vergütungsausschuss legt, soweit anwendbar, die Zuteilungs-, Vesting-, Ausübungs- und Verfallsbedingungen fest; der Verwaltungsrat, oder soweit delegiert, der Vergütungsausschuss kann vorsehen, dass bei Eintritt von im Voraus bestimmten Ereignissen wie etwa einem Kontrollwechsel oder der Beendigung eines Arbeits-, Mandats- oder anderen Vertrags Vesting- und Ausübungsbedingungen fortbestehen, verkürzt oder aufgehoben werden, Vergütungen unter Annahme der Zielerreichung ausgerichtet werden oder Vergütungen verfallen.
- 6 Die Gesellschaft oder von ihr kontrollierte Gesellschaften können die Aktien, die im Rahmen der aktienbezogenen Vergütung an die Begünstigten auszugeben oder zu liefern sind, jeweils soweit verfügbar, aus genehmigtem oder bedingtem Aktienkapital oder unter Verwendung von eigenen Aktien bereitstellen.
- 7 Vergütung gemäss diesen Statuten kann durch die Gesellschaft oder durch von ihr kontrollierte Gesellschaften zugeteilt oder bezahlt werden.

Artikel 29c

compensation recipient, individual performance targets, targets of the Company or parts thereof, including, without limitation, total shareholder return relative to market, other companies or other benchmarks. The definitive value of long-term incentive compensation may exceed the relevant target value. The Board of Directors or, where delegated to it, the Compensation Committee shall determine the relative weight of the performance criteria and the respective target values.

- 5 The Board of Directors or, where delegated to it, the Compensation Committee shall, as applicable, determine the grant, vesting, exercise and forfeiture conditions; the Board of Directors or, where delegated to it, the Compensation Committee may provide for the continuation, acceleration or removal of vesting and exercise conditions, for the payment or grant of compensation based upon assumed target achievement, or for forfeiture, in each case with regard to pre-determined events such as a change-in-control or termination of an employment, mandate or other agreement.
- 6 The Company or companies under its control may procure the Shares to be issued or delivered to beneficiaries of equity-based awards, to the extent available, from authorized share capital, conditional share capital, or through use of treasury shares.
- 7 Compensation pursuant to these Articles of Association may be granted or paid by the Company or companies under its control.

Article 29c

Zusatzbetrag für Änderungen in der Geschäftsleitung

Reicht der von den Aktionären an einer Generalversammlung genehmigte Maximalgesamtbetrag der Vergütung der Geschäftsleitung für die Vergütung einer Person, die während einer Vergütungsperiode, für welche die Aktionäre bereits ihre Genehmigung erteilt haben, neu eine Geschäftsleitungsfunktion antritt, nicht aus, sind die Gesellschaft oder von ihr kontrollierte Gesellschaften ermächtigt, jeder solchen Person für die Dauer der bereits durch die Aktionäre an einer Generalversammlung genehmigten Vergütungsperiode(n) eine Vergütung (der **Zusatzbetrag**) zuzuteilen oder zu bezahlen, die keiner Genehmigung durch die Aktionäre unterliegt. Als Zusatzbetrag können die Gesellschaft oder von ihr kontrollierte Gesellschaften jeder solcher Person je relevante Vergütungsperiode für jeden der beiden nachfolgenden Zwecke je einen die Gesamtjahresvergütung des betreffenden Vorgängers bzw. für eine ähnliche vorbestehende Funktion um bis zu 40% übersteigenden Betrag zuteilen oder bezahlen: (1) als Vergütung für die relevante Vergütungsperiode; und zusätzlich (2) zum Ausgleich der Nachteile, die im Zusammenhang mit dem Stellenwechsel entstehen. Für die Zwecke dieser Bestimmung gilt als Gesamtjahresvergütung die im jüngsten Proxy Statement der Gesellschaft für das vorangehende Geschäftsjahr ausgewiesene Gesamtjahresvergütung des betreffenden Vorgängers bzw. für eine ähnliche vorbestehende Funktion; für die kurzfristige und langfristige Leistungs- oder Erfolgsvergütung ist dabei auf die tatsächlichen Werte oder, sofern höher, die Zielwerte der betreffenden Vergütungselemente abzustellen, je wie sie im jüngsten Proxy Statement der Gesellschaft für das vorangehende Geschäftsjahr ausgewiesen sind. Die Gesellschaft oder von ihr kontrollierte Gesellschaften dürfen gestützt auf die Bestimmung dieses Artikel 29c je relevante Vergütungsperiode keinesfalls an mehr als fünf (5) Personen einen Zusatzbetrag im Rahmen der

Supplementary Amount for Changes to the Executive Management Team

If the maximum aggregate amount of compensation of the Executive Management Team ratified by shareholders at a General Meeting of Shareholders is not sufficient to also cover the compensation of a person who newly assumes an Executive Management Team function during a compensation period for which shareholder ratification has already been granted, the Company or companies under its control shall be authorized to grant or pay, in relation to the compensation period(s) already ratified by the shareholders at a General Meeting of Shareholders, to each such person compensation (the **Supplementary Amount**), which shall not be subject to ratification by the shareholders. The Company or companies under its control may grant or pay as Supplementary Amount to each such person for each relevant compensation period for each of the following two purposes a separate amount of up to 40% in excess of the Total Annual Compensation of the respective predecessor or for a similar preexisting position: (1) as compensation for the relevant compensation period; and, in addition, (2) as compensation for any prejudice incurred in connection with the change of employment. For purposes of this provision, Total Annual Compensation shall mean the total annual compensation of the respective predecessor or for a similar preexisting position as disclosed in the most recent proxy statement of the Company in relation to the preceding fiscal year; for such purposes, short-term and long-term incentive compensation shall be included on the basis of the actual values or, if higher, the target values of the respective compensation elements, in each case as disclosed in the most recent proxy statement of the Company in relation to the preceding fiscal year. On the basis of this Article 29c, the Company or companies under its control may in no event grant or pay, in each relevant compensation period, a Supplementary Amount to more than five (5) persons within the limitations of the maximum values pursuant to the provision of this Article 29c.

Maximalwerte gemäss der Bestimmung dieses Artikels 29c zuteilen oder bezahlen.

Abschnitt 3b:
Verträge betreffend Vergütung mit Mitgliedern des Verwaltungsrates und der Geschäftsleitung

Artikel 29d

Verträge betreffend Vergütung mit Mitgliedern des Verwaltungsrates und der Geschäftsleitung

- 1 Die Gesellschaft oder von ihr kontrollierte Gesellschaften können mit Mitgliedern des Verwaltungsrates unbefristete oder befristete Mandatsverträge oder andere Verträge über deren Vergütung als Verwaltungsräte abschliessen. Die Dauer von befristeten Verträgen darf die Amtsdauer eines Verwaltungsrates nicht überschreiten. Eine Erneuerung eines befristeten Vertrags ist zulässig. Unbefristete Verträge haben eine Kündigungsfrist von maximal einer Amtsdauer.
- 2 Die Gesellschaft oder von ihr kontrollierte Gesellschaften können mit Mitgliedern der Geschäftsleitung unbefristete oder befristete Arbeitsverträge oder andere Verträge über ihre Vergütung als Mitglieder der Geschäftsleitung abschliessen. Die maximale Dauer eines befristeten Vertrags beträgt ein (1) Jahr. Eine Erneuerung eines befristeten Vertrags ist zulässig. Unbefristete Verträge haben eine Kündigungsfrist von maximal zwölf (12) Monaten.
- 3 Mitglieder der Geschäftsleitung können während der Kündigungsfrist von ihrer Arbeitspflicht befreit werden. Des Weiteren ist es zulässig, dass die Gesellschaft oder von ihr kontrollierte Gesellschaften Aufhebungs- oder ähnliche Vereinbarungen abschliessen.
- 4 Die Gesellschaft oder von ihr kontrollierte Gesellschaften können mit Mitgliedern der Geschäftsleitung Konkurrenzverbote für die Zeit nach Beendigung des

Agreements Regarding Compensation With Members of the Board of Directors and the Executive Management Team

Section 3b:
Agreements Regarding Compensation With Members of the Board of Directors and the Executive Management Team

Article 29d

- 1 The Company or companies under its control may enter into mandate or other agreements with the members of the Board of Directors regarding their compensation as directors for a fixed term or for an indefinite term. The duration of fixed term agreements may not exceed a director's term of office. A renewal of a fixed term agreement is permissible. Agreements for an indefinite term may have a termination notice period not exceeding a term of office.
- 2 The Company or companies under its control may enter into employment or other agreements with the members of the Executive Management Team regarding their compensation as members of the Executive Management Team for a fixed term or for an indefinite term. The duration of fixed term agreements may not exceed one (1) year. A renewal of a fixed term agreement is permissible. Agreements for an indefinite term may have a termination notice period of a maximum of twelve (12) months.
- 3 Members of the Executive Management Team may be released from their obligation of work during the period of the termination notice period. Further, it shall be permissible for the Company or companies under its control to enter into termination or similar agreements.
- 4 The Company or companies under its control may enter into non-competition agreements with members of the Executive Management Team for the period after the

Arbeitsvertrags vereinbaren. Die Dauer eines solchen Konkurrenzverbots für ein Mitglied der Geschäftsleitung darf ein (1) Jahr nicht überschreiten, und die Entschädigung für ein Konkurrenzverbot darf die Summe des Basissalärs und des Ziel-Bar-Bonus des betreffenden Mitglieds der Geschäftsleitung im letzten vollen Geschäftsjahr, während dem er oder sie von der Gesellschaft oder von einer von ihr kontrollierten Gesellschaft angestellt war, nicht übersteigen.

termination of the employment agreement. The duration of any such non-competition undertaking by an Executive Management Team member shall not exceed one (1) year, and the consideration paid for a non-competition undertaking shall not exceed the sum of the base salary and the target cash bonus of the respective Executive Management Team member in the last full fiscal year in which he or she was employed with the Company or one of its companies under its control.

Abschnitt 3c:

Mandate ausserhalb des Konzerns, Darlehen, Vorsorgeleistungen ausserhalb der beruflichen Vorsorge

Section 3c:

Mandates Outside the Group, Loans, Post-Retirement Benefits Beyond Occupational Pensions

Artikel 29e

Article 29e

Mandate
ausserhalb
des
Konzerns

- 1 Kein Mitglied des Verwaltungsrates kann zusätzlich zum Mandat bei der Gesellschaft mehr als zehn (10) Mandate in Personen wahrnehmen, wovon nicht mehr als vier (4) in Personen sein dürfen, deren Aktien an einer Börse kotiert sind.
- 2 Kein Mitglied der Geschäftsleitung kann mehr als vier (4) Mandate in Personen wahrnehmen, wovon zusätzlich zu einem allfälligen Mandat bei der Gesellschaft nicht mehr als eines (1) in einer Person sein darf, deren Aktien an einer Börse kotiert sind.
- 3 Die folgenden Mandate fallen nicht unter die Beschränkungen gemäss Abs. 1 und Abs. 2 dieses Artikels 29e:
 - (a) Mandate in Personen, welche die Gesellschaft kontrollieren, durch die Gesellschaft kontrolliert werden oder unter gemeinsamer Kontrolle mit der Gesellschaft stehen;
 - (b) Ohne Einschränkung von lit. a hiervor, Mandate, die auf Anordnung der Gesellschaft oder von Personen, welche die Gesellschaft kontrollieren, durch die

Mandates
Outside
the Group

- 1 No member of the Board of Directors may hold more than ten (10) Mandates in Persons other than the Company, of which not more than four (4) may be in Persons whose shares are listed on a stock exchange.
 - 2 No member of the Executive Management Team may hold more than four (4) Mandates in Persons of which, in addition to a Mandate at the Company, if any, not more than one (1) may be in Persons whose shares are listed on a stock exchange.
 - 3 The following Mandates shall not be subject to the limitations set forth in para. 1 and para. 2 of this Article 29e:
 - (a) Mandates in any Person which Controls, is Controlled by or is under common Control with the Company;
 - (b) Without limitation to subpara. a above, Mandates held at the instruction of the Company or any Person which Controls, is Controlled by or is under common
-

Gesellschaft kontrolliert werden oder unter gemeinsamer Kontrolle mit der Gesellschaft stehen, wahrgenommen werden. Kein Mitglied des Verwaltungsrates oder der Geschäftsleitung kann mehr als zehn (10) solche Mandate wahrnehmen; und

- (c) Mandate in Vereinen und Verbänden, gemeinnützigen Organisationen, Non-For-Profit Organisationen, Stiftungen (einschliesslich Personalfürsorgestiftungen), Trusts und ähnliche Personen. Kein Mitglied des Verwaltungsrates oder der Geschäftsleitung kann mehr als zehn (10) solche Mandate wahrnehmen.

- 4 Der Begriff "Mandat", so wie er in diesen Statuten verwendet wird, umfasst jeglichen Einsitz in das oberste Leitungs- oder Verwaltungsorgan einer Person, die zur Eintragung in ein schweizerisches Handelsregister oder ein entsprechendes ausländisches Register verpflichtet ist. Bis zu zehn (10) Mandate in verschiedenen Personen, welche ausserhalb des Anwendungsbereichs von Artikel 29e Abs. 3(a) unter einheitlicher Kontrolle oder gleicher wirtschaftlicher Berechtigung stehen, gelten als ein Mandat.

Artikel 29f

Darlehen /
Vorsorge-
leistungen
ausserhalb
der
beruflichen
Vorsorge

- 1 Die Gesellschaft oder von ihr kontrollierte Gesellschaften entrichten keine Darlehen an Mitglieder des Verwaltungsrates oder der Geschäftsleitung.
- 2 Die Gesellschaft oder von ihr kontrollierte Gesellschaften können an ein Mitglied der Geschäftsleitung Vorsorgeleistungen ausserhalb der beruflichen Vorsorge ausrichten, wobei solche Vorsorgeleistungen 50% des

Control with the Company; *provided, however*, that no member of the Board of Directors or the Executive Management Team shall hold more than ten (10) such Mandates; and

- (c) Mandates in associations, charitable organizations, non-for-profit organizations, foundations (including in relation to post-retirement benefits), trusts and similar Persons; *provided, however*, that no member of the Board of Directors or the Executive Management Team shall hold more than ten (10) such Mandates.

- 4 The term "Mandate," as used in these Articles of Association, shall refer to any position in the supreme governing body of a Person that is required to be registered in a Swiss Commercial Register or a foreign register of equivalent nature. Up to ten (10) Mandates in different Persons that are under joint Control or common beneficial ownership outside the scope of application of Article 29e para. 3(a) shall be deemed to be one Mandate.

Article 29f

Loans /
Post-
Retirement
Benefits
Beyond
Occupational
Pensions

- 1 The Company or companies under its control shall not grant any loans to members of the Board of Directors or the Executive Management Team.
- 2 The Company or companies under its control may grant a member of the Executive Management Team post-retirement benefits beyond occupational pensions; *provided, however*, that any such post-retirement benefits

Basissalärs im Geschäftsjahr, das der Pensionierung unmittelbar vorausgeht, nicht übersteigen dürfen.

may not exceed 50% of the base salary in the fiscal year immediately preceding the retirement.

Abschnitt 4:
Jahresrechnung, Konzernrechnung und Gewinnverteilung

Section 4:
Annual Statutory Financial Statements, Consolidated Financial Statements and Profit Allocation

Artikel 30

Article 30

Geschäftsjahr Der Verwaltungsrat legt das Geschäftsjahr fest. Fiscal Year

The Board of Directors determines the fiscal year.

Artikel 31

Article 31

Verteilung des Bilanzgewinns, Reserven 1 Über den Bilanzgewinn verfügt die Generalversammlung im Rahmen der anwendbaren gesetzlichen Vorschriften. Der Verwaltungsrat unterbreitet ihr seine Vorschläge.

2 Neben der gesetzlichen Reserve können weitere Reserven geschaffen werden.

3 Dividenden, welche nicht innerhalb von fünf Jahren nach ihrem Auszahlungsdatum bezogen werden, fallen an die Gesellschaft und werden in die allgemeinen gesetzlichen Reserven verbucht.

Allocation of Profit Shown on the Annual Statutory Balance Sheet, Reserves

1 The profit shown on the Annual Statutory Balance Sheet shall be allocated by the General Meeting of Shareholders in accordance with applicable law. The Board of Directors shall submit its proposals to the General Meeting of Shareholders.

2 Further reserves may be taken in addition to the reserves required by law.

3 Dividends that have not been collected within five years after their payment date shall enure to the Company and be allocated to the general statutory reserves.

Abschnitt 5:
Auflösung und Liquidation

Section 5:
Winding-up and Liquidation

Artikel 32

Article 32

Auflösung und Liquidation 1 Die Generalversammlung kann jederzeit die Auflösung und Liquidation der Gesellschaft nach Massgabe der gesetzlichen und statutarischen Vorschriften beschliessen.

Winding-up and Liquidation

1 The General Meeting of Shareholders may at any time resolve on the winding-up and liquidation of the Company pursuant to applicable law and the provisions set forth in these Articles of Association.

- 2 Die Liquidation wird durch den Verwaltungsrat durchgeführt, sofern sie nicht durch die Generalversammlung anderen Personen übertragen wird.
- 3 Die Liquidation der Gesellschaft erfolgt nach Massgabe der gesetzlichen Vorschriften.
- 4 Nach erfolgter Tilgung der Schulden wird das Vermögen unter die Aktionäre nach Massgabe der eingezahlten Beträge verteilt, soweit diese Statuten nichts anderes vorsehen.

- 2 The liquidation shall be effected by the Board of Directors, unless the General Meeting of Shareholders shall appoint other persons as liquidators.
- 3 The liquidation of the Company shall be effectuated pursuant to the statutory provisions.
- 4 Upon discharge of all liabilities, the assets of the Company shall be distributed to the shareholders pursuant to the amounts paid in, unless these Articles of Association provide otherwise.

Abschnitt 6:
Bekanntmachungen, Mitteilungen

Artikel 33

Bekannt-
machungen,
Mitteilungen

- 1 Publikationsorgan der Gesellschaft ist das Schweizerische Handelsamtsblatt.
- 2 Soweit keine individuelle Benachrichtigung durch das Gesetz, börsengesetzliche Bestimmungen oder diese Statuten verlangt wird, gelten sämtliche Mitteilungen an die Aktionäre als gültig erfolgt, wenn sie im Schweizerischen Handelsamtsblatt veröffentlicht worden sind. Schriftliche Bekanntmachungen der Gesellschaft an die Aktionäre werden auf dem ordentlichen Postweg an die letzte im Aktienbuch verzeichnete Adresse des Aktionärs oder des bevollmächtigten Empfängers geschickt. Finanzinstitute, welche Aktien für wirtschaftlich Berechtigte halten und als solches im Aktienbuch eingetragen sind, gelten als bevollmächtigte Empfänger.

Announcements,
Communications

Section 6:
Announcements, Communications

Article 33

- 1 The official means of publication of the Company shall be the Swiss Official Gazette of Commerce.
- 2 To the extent that individual notification is not required by law, stock exchange regulations or these Articles of Association, all communications to the shareholders shall be deemed valid if published in the Swiss Official Gazette of Commerce. Written communications by the Company to its shareholders shall be sent by ordinary mail to the last address of the shareholder or authorized recipient recorded in the share register. Financial institutions holding Shares for beneficial owners and recorded in such capacity in the share register shall be deemed to be authorized recipients.

Abschnitt 7: <i>Verbindlicher Originaltext</i>		Section 7: <i>Original Language</i>	
Artikel 34		Article 34	
Verbindlicher Originaltext	Falls sich zwischen der deutschen und englischen Fassung dieser Statuten Differenzen ergeben, hat die deutsche Fassung Vorrang.	Original Language	In the event of deviations between the German and English version of these Articles of Association, the German text shall prevail.
Abschnitt 8: <i>Definitionen</i>		Section 8: <i>Definitions</i>	
Artikel 35		Article 35	
Aktie(n)	1 Der Begriff Aktie(n) hat die in Artikel 4 dieser Statuten aufgeführte Bedeutung.	Share(s)	1 The term Share(s) has the meaning assigned to it in Article 4 of these Articles of Association.
Eigentümer	2 Eigentümer(in) , unter Einschluss der Begriffe Eigentum, halten, gehalten, Eigentümerschaft oder ähnlicher Begriffe, bedeutet, wenn verwendet mit Bezug auf Aktien, jede Person, welche allein oder zusammen mit oder über Nahestehende Gesellschaften oder Nahestehende Personen: (a) wirtschaftliche Eigentümerin dieser Aktien ist, ob direkt oder indirekt; (b) (1) das Recht hat, aufgrund eines Vertrags, einer Absprache oder einer anderen Vereinbarung, oder aufgrund der Ausübung eines Wandel-, Tausch-, Bezugs- oder Optionsrechts oder anderweitig Aktien zu erwerben (unabhängig davon, ob dieses Recht sofort ausübbar ist oder nur nach einer gewissen Zeit); vorausgesetzt, dass eine Person nicht als	Owner	2 Owner , including the terms Own, Owned and Ownership when used with respect to any Shares means a Person that individually or with or through any of its Affiliates or Associates: (a) beneficially Owns such Shares, directly or indirectly; (b) has (1) the right to acquire such Shares (whether such right is exercisable immediately or only after the passage of time) pursuant to any agreement, arrangement or understanding, or upon the exercise of conversion rights, exchange rights, warrants or options, or otherwise; <i>provided, however</i> , that a Person shall not be deemed the

		<p>Eigentümerin derjenigen Aktien gelten soll, die im Rahmen eines Übernahme- oder Umtauschgebots, das diese Person oder eine dieser Person Nahestehende Gesellschaft oder Nahestehende Person eingeleitet hat, angedient werden, bis diese Aktien zum Kauf oder Tausch akzeptiert werden; oder (2) das Recht hat, die Stimmrechte dieser Aktien aufgrund eines Vertrags, einer Absprache oder einer anderen Vereinbarung auszuüben; vorausgesetzt, dass eine Person nicht als Eigentümerin von Aktien gilt infolge des Rechts, das Stimmrecht auszuüben, soweit der diesbezügliche Vertrag, die diesbezügliche Absprache oder die diesbezügliche andere Vereinbarung nur aufgrund einer widerrufflichen Vollmacht (<i>proxy</i>) oder Zustimmung zustande gekommen ist, und diese Vollmacht (<i>proxy</i>) oder Zustimmung in Erwiderung auf eine an 10 oder mehr Personen gemachte diesbezügliche Aufforderung ergangen ist; oder</p>		<p>Owner of Shares tendered pursuant to a tender or exchange offer made by such Person or any of such Person's Affiliates or Associates until such tendered Shares are accepted for purchase or exchange; or (2) the right to vote such Shares pursuant to any agreement, arrangement or understanding; <i>provided, however,</i> that a Person shall not be deemed the Owner of any Shares because of such Person's right to vote such Shares if the agreement, arrangement or understanding to vote such Shares arises solely from a revocable proxy or consent given in response to a proxy or consent solicitation made to 10 or more Persons; or</p>	
	(c)	<p>zwecks Erwerbs, Haltens, Stimmrechtsausübung (mit Ausnahme der Stimmrechtsausübung aufgrund einer widerrufflichen Vollmacht (<i>proxy</i>) oder Zustimmung wie in Artikel 35 Abs. 2(b)(ii)(2) umschrieben) oder Veräußerung dieser Aktien mit einer anderen Person in einen Vertrag, eine Absprache oder eine andere Vereinbarung getreten ist, die direkt oder indirekt entweder selbst oder über ihr Nahestehende Gesellschaften oder Nahestehende Personen wirtschaftlich Eigentümerin dieser Aktien ist.</p>		(c)	<p>has any agreement, arrangement or understanding for the purpose of acquiring, holding, voting (except voting pursuant to a revocable proxy or consent as described in Article 35 para. 2(b)(ii)(2)), or disposing of such Shares with any other Person that beneficially Owns, or whose Affiliates or Associates beneficially Own, directly or indirectly, such Shares.</p>
Gesamtjahresvergütung	2a	<p>Der Begriff Gesamtjahresvergütung hat für Zwecke der Bestimmung von Artikel 29c dieser Statuten die in Artikel 29c dieser Statuten aufgeführte Bedeutung.</p>	Total Annual Compensation	2a	<p>The term Total Annual Compensation has, for purposes of the provision of Article 29c of these Articles of Association, the meaning assigned to it in Article 29c of these Articles of Association.</p>
Geschäftsleitung	2b	<p>Der Begriff Geschäftsleitung hat die in Artikel 26 dieser Statuten aufgeführte Bedeutung. In Bezug auf Artikel 20 Abs. 3 und den dazugehörigen Definitionen in diesem</p>	Executive Management Team	2b	<p>The term Executive Management Team has the meaning assigned to it in Article 26 of these Articles of Association. In relation to Article 20 para. 3 and the</p>

		Abschnitt 8 sowie in Bezug auf Artikel 24 Abs. 3 und Abs. 4 ist der Begriff "Mitglieder der Geschäftsleitung" weiterhin als Bezugnahme auf alle Mitglieder der Geschäftsleitung zusammen mit allen anderen Officers der Gesellschaft zu verstehen.			definitions pertaining thereto as set forth in this Section 8 and Article 24 para. 3 and para. 4, the term "officer" shall continue to be a reference to the members of the Executive Management Team together with all other officers of the Company.
Gesellschaft	3	Der Begriff Gesellschaft hat die in Artikel 1 dieser Statuten aufgeführte Bedeutung.	Company	3	The term Company has the meaning assigned to it in Article 1 of these Articles of Association.
Kontrolle	4	Kontrolle , einschliesslich die Begriffe kontrollierend, kontrolliert von und unter gemeinsamer Kontrolle mit , bedeutet die Möglichkeit, direkt oder indirekt auf die Geschäftsführung und die Geschäftspolitik einer Person Einfluss zu nehmen, sei es aufgrund des Haltens von Stimmrechten, eines Vertrags oder auf andere Weise. Eine Person, welche 20% oder mehr der ausgegebenen oder ausstehenden Stimmrechte einer Kapitalgesellschaft, rechts- oder nicht-rechtsfähigen Personengesellschaft oder eines anderen Rechtsträgers hält, hat mangels Nachweises des Gegenteils unter Anwendung des Beweismasses der überwiegenden Wahrscheinlichkeit der Beweismittel vermutungsweise Kontrolle über einen solchen Rechtsträger. Ungeachtet des Voranstehenden gilt diese Vermutung der Kontrolle nicht, wenn eine Person in Treu und Glauben und nicht zur Umgehung dieser Bestimmung Stimmrechte als Stellvertreter (<i>agent</i>), Bank, Börsenmakler (<i>broker</i>), Nominee, Depotbank (<i>custodian</i>) oder Treuhänder (<i>trustee</i>) für einen oder mehrere Eigentümer hält, die für sich allein oder zusammen als Gruppe keine Kontrolle über den betreffenden Rechtsträger haben.	Control	4	Control , including the terms controlling, controlled by and under common control with, means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through the Ownership of voting shares, by contract, or otherwise. A Person who is the Owner of 20% or more of the issued or outstanding voting shares of any corporation, partnership, unincorporated association or other entity shall be presumed to have control of such entity, in the absence of proof by a preponderance of the evidence to the contrary. Notwithstanding the foregoing, a presumption of control shall not apply where such Person holds voting shares, in good faith and not for the purpose of circumventing this provision, as an agent, bank, broker, nominee, custodian or trustee for one or more Owners who do not individually or as a group have control of such entity.
Mandat	4a	Der Begriff Mandat hat die in Artikel 29e Abs. 4 dieser Statuten aufgeführte Bedeutung.	Mandate	4a	The term Mandate has the meaning assigned to it in Article 29e para. 4 of these Articles of Association.
Nahestehender Aktionär	5	Nahestehender Aktionär bedeutet jede Person (unter Ausschluss der Gesellschaft oder jeder direkten oder	Interested Shareholder	5	Interested Shareholder means any Person (other than the Company or any direct or indirect majority-Owned subsidiary of the Company) (i) that is the Owner of 15% or

indirekten Tochtergesellschaft, die zur Mehrheit von der Gesellschaft gehalten wird), (i) die Eigentümerin von 15% oder mehr der ausgegebenen Aktien ist, oder (ii) die als Nahestehende Gesellschaft oder Nahestehende Person anzusehen ist und irgendwann in den drei unmittelbar vorangehenden Jahren vor dem Zeitpunkt, zu dem bestimmt werden muss, ob diese Person ein Nahestehender Aktionär ist, Eigentümerin von 15% oder mehr der ausgegebenen Stimmrechte gewesen ist, ebenso wie jede Nahestehende Gesellschaft und Nahestehende Person dieser Person; vorausgesetzt, dass eine Person nicht als **Nahestehender Aktionär** gilt, die aufgrund von Handlungen, die ausschliesslich der Gesellschaft zuzurechnen sind, Eigentümerin von Aktien in Überschreitung der 15%-Beschränkung ist; wobei jedoch jede solche Person dann als Nahestehender Aktionär gilt, falls sie später zusätzliche Aktien erwirbt, ausser dieser Erwerb erfolgt aufgrund von weiteren Gesellschaftshandlungen, die weder direkt noch indirekt von dieser Person beeinflusst werden. Zur Bestimmung, ob eine Person ein Nahestehender Aktionär ist, sind die als ausgegeben geltenden Aktien unter Einschluss der von dieser Person gehaltenen Aktien (unter Anwendung des Begriffs "gehalten" wie in Artikel 35 Abs. 2 dieser Statuten definiert) zu berechnen, jedoch unter Ausschluss von nichtausgegebenen Aktien, die aufgrund eines Vertrags, einer Absprache oder einer anderen Vereinbarung, oder aufgrund der Ausübung eines Wandel-, Bezugs- oder Optionsrechts oder anderweitig ausgegeben werden können;

Nahestehende
Gesellschaft 6

Nahestehende Gesellschaft bedeutet jede Person, die direkt oder indirekt über eine oder mehrere Mittelspersonen eine andere Person kontrolliert, von einer anderen Person kontrolliert wird, oder unter gemeinsamer Kontrolle mit einer anderen Person steht.

more of the issued Shares of the Company or (ii) that is an Affiliate or Associate of the Company and was the Owner of 15% or more of the issued Shares at any time within the three-year period immediately prior to the date on which it is sought to be determined whether such Person is an Interested Shareholder, and also the Affiliates and Associates of such Person; *provided, however*, that the term Interested Shareholder shall not include any Person whose Ownership of Shares in excess of the 15% limitation is the result of action taken solely by the Company; provided that such Person shall be an Interested Shareholder if thereafter such Person acquires additional Shares, except as a result of further corporate action not caused, directly or indirectly, by such Person. For the purpose of determining whether a Person is an Interested Shareholder, the Shares deemed to be in issue shall include Shares deemed to be Owned by the Person (through the application of the definition of Owner in Article 35 para. 2 of these Articles of Association) but shall not include any other unissued Shares which may be issuable pursuant to any agreement, arrangement or understanding, or upon exercise of conversion rights, warrants or options, or otherwise.

Affiliate 6

Affiliate means a Person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, another Person.

Nahestehende Person	7	Nahestehende Person bedeutet, wenn verwendet zur Bezeichnung einer Beziehung zu einer Person, (i) jede Kapitalgesellschaft, rechts- oder nicht-rechtsfähige Personengesellschaft oder ein anderer Rechtsträger, von welcher diese Person Mitglied des Leitungs- oder Verwaltungsorgans, der Geschäftsleitung oder Gesellschafter ist oder von welcher diese Person, direkt oder indirekt, Eigentümerin von 20% oder mehr einer Kategorie von Aktien oder anderer Anteilsrechte ist, die ein Stimmrecht vermitteln, (ii) jedes Treuhandvermögen (<i>Trust</i>) oder jede andere Vermögenseinheit, an der diese Person wirtschaftlich einen Anteil von 20% oder mehr hält oder in Bezug auf welche diese Person als Verwalter (<i>trustee</i>) oder in ähnlich treuhändischer Funktion tätig ist, und (iii) jeder Verwandte, Ehe- oder Lebenspartner dieser Person, oder jede Verwandte des Ehe- oder Lebenspartners, jeweils soweit diese den gleichen Wohnsitz haben wie diese Person.	Associate	7	Associate , when used to indicate a relationship with any Person, means (i) any corporation, partnership, unincorporated association or other entity of which such Person is a director, officer or partner or is, directly or indirectly, the Owner of 20% or more of any class of voting shares, (ii) any trust or other estate in which such Person has at least a 20% beneficial interest or as to which such Person serves as trustee or in a similar fiduciary capacity, and (iii) any relative or spouse of such Person, or any relative of such spouse, who has the same residence as such Person.
OR	8	Der Begriff OR hat die in Artikel 14 Abs. 2 dieser Statuten aufgeführte Bedeutung.	CO	8	The term CO has the meaning assigned to it in Article 14 para. 2 of these Articles of Association.
Person	9	Person bedeutet jede natürliche Person, jede Kapitalgesellschaft, rechts- oder nicht-rechtsfähige Personengesellschaft oder jeder andere Rechtsträger. Für die Zwecke von Artikel 29e dieser Statuten sind Individuen nicht erfasst.	Person	9	Person means any individual, corporation, partnership, unincorporated association or other entity. For purposes of Article 29e of these Articles of Association, it shall not include individuals.
Rechte	10	Der Begriff Rechte hat die in Artikel 6 Abs. 1 dieser Statuten aufgeführte Bedeutung.	Rights	10	The term Rights has the meaning assigned to it in Article 6 para. 1 of these Articles of Association.
Mit Rechten verbundenen Obligationen	11	Der Begriff mit Rechten verbundenen Obligationen hat die in Artikel 6 Abs. 1 dieser Statuten aufgeführte Bedeutung.	Rights-Bearing Obligations	11	The term Rights-Bearing Obligations has the meaning assigned to it in Article 6 para. 1 of these Articles of Association.

SEC	12	Der Begriff SEC hat die in Artikel 12 Abs. 2 dieser Statuten aufgeführte Bedeutung.	SEC	12	The term SEC has the meaning assigned to it in Article 12 para. 2 of these Articles of Association.
Transfer Agent	13	Der Begriff Transfer Agent hat die in Artikel 8 Abs. 3 dieser Statuten aufgeführte Bedeutung.	Transfer Agent	13	The term Transfer Agent has the meaning assigned to it in Article 8 para. 3 of these Articles of Association.
Vergütung	13a	Der Begriff Vergütung hat die in Artikel 29a Abs. 6 dieser Statuten aufgeführte Bedeutung.	Compensation	13a	The term Compensation has the meaning assigned to it in Article 29a para. 6 of these Articles of Association.
Vergütungs-ausschuss	13b	Der Begriff Vergütungsausschuss hat die in Artikel 28a Abs. 1 dieser Statuten aufgeführte Bedeutung.	Compensation Committee	13b	The term Compensation Committee has the meaning assigned to it in Article 28a para. 1 of these Articles of Association.
Zusammen-schluss	14	Zusammenschluss bedeutet, wenn im Rahmen dieser Statuten in Bezug auf die Gesellschaft oder einen Nahestehenden Aktionär der Gesellschaft verwendet: (a) Jede Fusion oder andere Form des Zusammenschlusses der Gesellschaft oder einer direkten oder indirekten Tochtergesellschaft, die zur Mehrheit von der Gesellschaft gehalten wird, mit (1) dem Nahestehenden Aktionär oder (2) einer anderen Kapitalgesellschaft, rechts- oder nicht-rechtsfähigen Personengesellschaft oder einem anderen Rechtsträger, soweit diese Fusion oder andere Form des Zusammenschlusses durch den Nahestehenden Aktionär verursacht worden ist und als Folge dieser Fusion oder anderen Form des Zusammenschlusses Artikel 19(f) und Artikel 20 Abs. 3 dieser Statuten (sowie jede der dazu gehörigen Definition in Artikel 35 dieser Statuten) oder im Wesentlichen gleiche Bestimmungen wie Artikel 19(f), Artikel 20 Abs. 3 (und die dazugehörigen Definitionen in Artikel 35	Business Combination	14	Business Combination , when used in these Articles of Association in reference to the Company and any Interested Shareholder of the Company, means: (a) Any merger or consolidation of the Company or any direct or indirect majority-Owned subsidiary of the Company with (1) the Interested Shareholder or (2) with any other corporation, partnership, unincorporated association or other entity if the merger or consolidation is caused by the Interested Shareholder and as a result of such merger or consolidation Article 19(f) and Article 20 para. 3 of these Articles of Association (including the relevant definitions in Article 35 of these Articles of Association pertaining thereto) or a provision substantially the same as such Article 19(f) and Article 20 para. 3 (including the relevant definitions in Article 35) are not applicable to the surviving entity;

dieser Statuten auf den überlebenden Rechtsträger) nicht anwendbar sind;

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|---|--|
| (b) jeder Verkauf, Vermietung oder Verpachtung, hypothekarische Belastung oder andere Verpfändung, Übertragung oder andere Verfügung (ob in einer oder mehreren Transaktionen), einschliesslich im Rahmen eines Tauschs, von Vermögenswerten der Gesellschaft oder einer direkten oder indirekten Tochtergesellschaft, die zur Mehrheit von der Gesellschaft gehalten wird, an einen Nahestehenden Aktionär (ausser soweit der Zuerwerb unter einer der genannten Transaktionen proportional als Aktionär erfolgt), soweit diese Vermögenswerte einen Marktwert von 10% oder mehr entweder des auf konsolidierter Basis aggregierten Marktwertes aller Vermögenswerte der Gesellschaft oder des aggregierten Marktwertes aller dann ausgegebenen Aktien haben, unabhängig davon, ob eine dieser Transaktionen Teil einer Auflösung der Gesellschaft ist oder nicht; | (b) any sale, lease, exchange, mortgage, pledge, transfer or other disposition (in one transaction or a series of transactions), except proportionately as a shareholder, to or with the Interested Shareholder, whether as part of a dissolution or otherwise, of assets of the Company or of any direct or indirect majority-Owned subsidiary of the Company which assets have an aggregate market value equal to 10% or more of either the aggregate market value of all the assets of the Company determined on a consolidated basis or the aggregate market value of all the Shares then in issue; |
| (c) jede Transaktion, die dazu führt, dass die Gesellschaft oder eine direkte oder indirekte Tochtergesellschaft, die zur Mehrheit von der Gesellschaft gehalten wird, Aktien oder Tochtergesellschafts-Aktien an den Nahestehenden Aktionär ausgibt oder überträgt, es sei denn (1) aufgrund der Ausübung, des Tauschs oder der Wandlung von Finanzmarktinstrumenten, die in Aktien oder Aktien einer direkten oder indirekten Tochtergesellschaft, die zur Mehrheit von der Gesellschaft gehalten wird, ausgeübt, getauscht oder gewandelt werden können, vorausgesetzt, die betreffenden Finanzmarktinstrumente waren zum Zeitpunkt, in dem der Nahestehende Aktionär zu einem solchem wurde, bereits ausgegeben; (2) als Dividende oder Ausschüttung an alle Aktionäre, | (c) any transaction which results in the issuance or transfer by the Company or by any direct or indirect majority-Owned subsidiary of the Company of any Shares or shares of such subsidiary to the Interested Shareholder, except (1) pursuant to the exercise, exchange or conversion of securities exercisable for, exchangeable for or convertible into Shares or the shares of a direct or indirect majority-Owned subsidiary of the Company which securities were in issue prior to the time that the Interested Shareholder became such; (2) pursuant to a dividend or distribution paid or made, or the exercise, exchange or conversion of securities exercisable for, exchangeable for or convertible into Shares or the shares of a direct or indirect |
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oder aufgrund der Ausübung, des Tauschs oder der Wandlung von Finanzmarktinstrumenten, die in Aktien oder Aktien einer direkten oder indirekten Tochtergesellschaft, die zur Mehrheit von der Gesellschaft gehalten wird, ausgeübt, getauscht oder gewandelt werden können, vorausgesetzt, diese Finanzinstrumente werden allen Aktionäre anteilmässig ausgegeben, nachdem der Nahestehende Aktionär zu einem solchem wurde; (3) gemäss einem Umtauschangebot der Gesellschaft, Aktien von allen Aktionären zu den gleichen Bedingungen zu erwerben; oder (4) aufgrund der Ausgabe oder der Übertragung von Aktien durch die Gesellschaft; vorausgesetzt, dass in keinem der unter (2) bis (4) genannten Fällen der proportionale Anteil des Nahestehenden Aktionärs an den Aktien erhöht werden darf;

- (d) jede Transaktion, in welche die Gesellschaft oder eine direkte oder indirekte Tochtergesellschaft, die zur Mehrheit von der Gesellschaft gehalten wird, involviert ist, und die direkt oder indirekt dazu führt, dass der proportionale Anteil der vom Nahestehenden Aktionär gehaltenen Aktien, in Aktien wandelbare Obligationen oder Tochtergesellschafts-Aktien erhöht wird, ausser eine solche Erhöhung ist nur unwesentlich und die Folge eines Spitzenausgleichs für Fraktionen oder eines Rückkaufs oder einer Rücknahme von Aktien, soweit diese(r) weder direkt noch indirekt durch den Nahestehenden Aktionär verursacht wurde; oder
- (e) jede direkte oder indirekte Gewährung von Darlehen, Vorschüssen, Garantien, Bürgschaften, oder garantieähnlicher Verpflichtungen, Pfändern oder anderen finanziellen Begünstigungen (mit Ausnahme einer solchen, die gemäss den Unterabschnitten (a) – (d) dieses

majority-Owned subsidiary of the Company which security is distributed, pro rata, to all shareholders subsequent to the time the Interested Shareholder became such; (3) pursuant to an exchange offer by the Company to purchase Shares made on the same terms to all holders of said Shares; or (4) any issuance or transfer of Shares by the Company; *provided, however*, that in no case under (2)–(4) above shall there be an increase in the Interested Shareholder's proportionate interest in the Shares;

- (d) any transaction involving the Company or any direct or indirect majority-Owned subsidiary of the Company which has the effect, directly or indirectly, of increasing the proportionate interest in the Shares, or securities convertible into the Shares, or in the shares of any such subsidiary which is Owned by the Interested Shareholder, except as a result of immaterial changes due to fractional share adjustments or as a result of any purchase or redemption of any Shares not caused, directly or indirectly, by the Interested Shareholder; or
- (e) any receipt by the Interested Shareholder of the benefit, directly or indirectly (except proportionately as a shareholder), of any loans, advances, guarantees, pledges or other financial benefits (other than those expressly permitted in subsections (a)–(d) of this Article 35 para. 14)
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Artikels 35 Abs. 14 ausdrücklich erlaubt ist sowie einer solchen, die proportional an alle Aktionäre erfolgt) durch die oder über die Gesellschaft oder eine direkte oder indirekte Tochtergesellschaft, die zur Mehrheit von der Gesellschaft gehalten wird, an den Nahestehenden Aktionär.

provided by or through the Company or any direct or indirect majority-Owned subsidiary of the Company.

Zusatzbetrag 15 Der Begriff **Zusatzbetrag** hat die in Artikel 29c dieser Statuten aufgeführte Bedeutung.

Supplementary 15 The term **Supplementary Amount** has the meaning assigned to it in Article 29c of these Articles of Association.

Abschnitt 9:
Übergangsbestimmungen

Artikel 36

Sacheinlage Die Gesellschaft übernimmt bei der Kapitalerhöhung vom 19. Dezember 2008 von der Transocean Inc. in Grand Cayman, Cayman Islands (**Transocean Inc.**), gemäss Sacheinlagevertrag per 18. Dezember 2008 (**Sacheinlagevertrag**) 319'228'632 Aktien (*ordinary shares*) der Transocean Inc. Diese Aktien werden zu einem Übernahmewert von insgesamt CHF 16'476'107'961.80 übernommen. Als Gegenleistung für diese Sacheinlage gibt die Gesellschaft einem Umtauschagenten, handelnd auf Rechnung der Aktionäre der Transocean Inc. im Zeitpunkt unmittelbar vor Vollzug des Sacheinlagevertrages und im Namen und auf Rechnung der Transocean Inc., insgesamt 335'228'632 voll einbezahlte Aktien mit einem Nennwert von insgesamt CHF 5'028'429'480 aus. Die Gesellschaft weist die Differenz zwischen dem totalen Nennwert der ausgegebenen Aktien und dem Übernahmewert der Sacheinlage im Gesamtbetrag von CHF 11'447'678'481.80 den Reserven der Gesellschaft zu.

Contribution in Kind

Section 9:
Transitional Provisions

Article 36

In connection with the capital increase of December 19, 2008, and in accordance with the contribution in kind agreement as of December 18, 2008 (the **Contribution in Kind Agreement**), the Company acquires 319,228,632 ordinary shares of Transocean Inc., Grand Cayman, Cayman Islands (**Transocean Inc.**). The shares of Transocean Inc. are acquired for a total value of CHF 16,476,107,961.80. As consideration for this contribution, the Company issues to an exchange agent, acting for the account of the holders of ordinary shares of Transocean Inc. outstanding immediately prior to the completion of the Contribution in Kind Agreement and in the name and the account of Transocean Inc, a total of 335,228,632 fully paid Shares with a total par value of CHF 5,028,429,480. The difference between the aggregate par value of the issued Shares and the total value of CHF 11,447,678,481.80 is allocated to the reserves of the Company.



Artikel 36bis

Gemischte
Sacheinlage
und
Sachübername

Die Gesellschaft übernimmt in der ordentlichen Kapitalerhöhung vom 30. Januar 2018 gemäss dem Einlagevertrag vom 30. Januar 2018 (der **Einlagevertrag**) von der Clarksons Platou Securities AS (die **Einlegerin**), handelnd im eigenen Namen aber auf Rechnung der Inhaber der Aktien mit einem Nennwert von je EUR 0.10 der Songa Offshore SE, in Limassol (CY) (die **Zielgesellschafts-Aktien**), die ihre Zielgesellschafts-Aktien im Rahmen des öffentlichen Angebots der Gesellschaft vom 21. Dezember 2017 für sämtliche ausgegebenen und ausstehenden Zielgesellschafts-Aktien angedient und die Einlegerin als Umtauschagenten bezeichnet haben (die **Andienenden Aktionäre**), insgesamt 187'390'391 Zielgesellschafts-Aktien. Die Zielgesellschafts-Aktien werden zu einem Übernahmewert von insgesamt USD 1'122'468'442.09 übernommen. Im Einklang mit dem Einlagevertrag (i) weist die Gesellschaft der Einlegerin, handelnd im eigenen Namen aber auf Rechnung der Andienenden Aktionäre, insgesamt 66'929'504 Namenaktien mit einem Nennwert von je CHF 0.10 und gesamthaft CHF 6'692'950.40 zu, (ii) leistet eine Barzahlung von insgesamt NOK 2'645'280 an die Andienenden Aktionäre (die **Barzahlung**) und (iii) gibt ein Wandeldarlehen an Transocean, Inc., Grand Cayman (CI) (**TINC**), im Nominalwert von insgesamt USD 561'440'000 aus, zwecks Finanzierung der von TINC an die Andienenden Aktionäre ausgegebenen Wandelanleihen im Nominalwert von insgesamt USD 561'440'000 (das **Wandeldarlehen** bzw. die **Wandelanleihen**). Die Gesellschaft weist die Differenz zwischen (i) dem Übernahmewert der Einlage und (ii)(x) dem Gesamtnennwert der neu ausgegebenen Namenaktien mit einem Nennwert von je CHF 0.10, (y) der Barzahlung und

Article 36bis

Mixed
Contribution
in Kind and
Acquisition
of Assets

In connection with the ordinary share capital increase of January 30, 2018, and in accordance with the contribution agreement of January 30, 2018 (the **Contribution Agreement**), the Company acquires from Clarksons Platou Securities AS (the **Contributor**), acting in its own name but for the account of the holders of shares with a nominal value of EUR 0.10 each in Songa Offshore SE, in Limassol (CY) (the **Target Shares**), who have tendered their Target Shares to the public tender offer of the Company of December 21, 2017, for all issued and outstanding Target Shares and who have appointed the Contributor as exchange agent (the **Tendering Shareholders**), in the aggregate 187,390,391 Target Shares. The Target Shares are acquired for a total value of USD 1,122,468,442.09. As consideration for this contribution, the Company, in accordance with the Contribution Agreement, (i) issues to the Contributor, acting in its own name but for the account of the Tendering Shareholders, an aggregate number of 66,929,504 registered shares with a nominal value of CHF 0.10 each and an aggregate nominal value of CHF 6,692,950.40, (ii) makes a cash payment in the aggregate amount of NOK 2,645,280 to the Tendering Shareholders (the **Cash Payment**) and (iii) issues a convertible loan to Transocean, Inc., Grand Cayman (CI) (**TINC**), in an aggregate nominal value of USD 561,440,000, for the purpose of financing the exchangeable bonds issued by TINC to the Tendering Shareholders in the aggregate amount of USD 561,440,000 (the **Convertible Loan** and the **Exchangeable Bonds**, respectively). The difference between (i) the total value of the contribution and (ii) (x) the sum of the aggregate nominal value of the newly issued registered shares, nominal value of CHF 0.10 each, (y) the

(z) dem Wandeldarlehen den Kapitaleinlagereserven der Gesellschaft zu.

Artikel 36^{ter}

Gemischte
Sacheinlage
und
Sachübername

Die Gesellschaft übernimmt in der genehmigten Kapitalerhöhung vom 27. März 2018 gemäss dem Sacheinlagevertrag vom 27. März 2018 (der **Einlagevertrag**) von der Clarksons Platou Securities AS (die **Einlegerin**), handelnd im eigenen Namen aber auf Rechnung der Inhaber der Aktien mit einem Nennwert von je EUR 0.10 der Songa Offshore SE, in Limassol (CY) (die **Songa Aktien**), deren Songa Aktien (a) am 30. Januar 2018 im Rahmen des Vollzugs des öffentlichen Übernahmeangebots der Gesellschaft vom 21. Dezember 2017 für sämtliche ausgegebenen und ausstehenden Songa Aktien von der Gesellschaft nicht erworben wurden, (b) somit dem Zwangserwerb der Gesellschaft gemäss dem Supplemental Prospectus vom 16. Februar 2018 und Artikel 36 des zypriotischen Takeover Bids Law (L.41(I)/2007) unterliegen und (c) von der Einlegerin in die Gesellschaft eingelegt werden (die **Squeeze-out Aktionäre**), insgesamt 4'475'201 Songa Aktien. Die Songa Aktien werden zu einem Übernahmewert von insgesamt USD 26'806'453.99 übernommen. Im Einklang mit dem Einlagevertrag (i) weist die Gesellschaft der Einlegerin, handelnd im eigenen Namen aber auf Rechnung der Squeeze-out Aktionäre, insgesamt 1'121'201 Namenaktien mit einem Nennwert von je CHF 0.10 und gesamthaft CHF 112'120.10 zu, (ii) leistet eine Barzahlung von insgesamt NOK 63'745'857.21 an die Squeeze-out Aktionäre (die **Barzahlung**) und (iii) gibt an Transocean Inc., Grand Cayman (CI) (**TINC**) Exchangeable Loan Notes im Nominalwert von insgesamt USD 9'375'000 (die **Exchangeable Loan Notes**) aus zwecks Finanzierung der von TINC an die Squeeze-out Aktionäre ausgegebenen Wandelanleihen im Nominalwert von insgesamt

Mixed
Contribution
in Kind and
Acquisition
of Assets

Cash Payment and (z) the Convertible Loan is allocated to the Company's reserves of capital contribution.

Article 36^{ter}

In connection with the authorized share capital increase of 27 March 2018, and in accordance with the contribution agreement of 27 March 2018 (the **Contribution Agreement**), the Company acquires from Clarksons Platou Securities AS (the **Contributor**), acting in its own name but for the account of the holders of shares with a nominal value of EUR 0.10 each in Songa Offshore SE, in Limassol (CY) (the **Songa Shares**), whose Songa Shares (a) were not acquired on January 30, 2018 by the Company upon settlement of the public tender offer of the Company of December 21, 2017, for all issued and outstanding Songa Shares, (b) are therefore subject to a compulsory acquisition pursuant to the Supplemental Prospectus dated as of February 16, 2018 and article 36 of the Cyprus Takeover Bids Law (L.41(I)/2007), and (c) are contributed to the Company by the Contributor (the **Squeeze-out Shareholders**), 4,475'201 Songa Shares in the aggregate. The Songa Shares are acquired for a total value of USD 26,806,453.99. As consideration for this contribution, the Company, in accordance with the Contribution Agreement, (i) issues to the Contributor, acting in its own name but for the account of the Squeeze-out Shareholders, an aggregate number of 1,121,201 registered shares with a nominal value of CHF 0.10 each and an aggregate nominal value of CHF 112,120.10, (ii) makes a cash payment in the aggregate amount of NOK 63'745'857.21 to the Squeeze-out Shareholders (the **Cash Payment**) and (iii) issues exchangeable loan notes to Transocean Inc., Grand Cayman (CI) (**TINC**), with an aggregate nominal value of USD 9,375,000 (the **Exchangeable Loan Notes**) for the purpose of financing the exchangeable bonds issued by TINC to the Squeeze-

USD 9'375'000 (die **Wandelanleihen**). Die Gesellschaft weist die Differenz zwischen (i) dem Übernahmewert der Einlage und (ii)(x) dem Gesamtnennwert der neu ausgegebenen Namenaktien mit einem Nennwert von je CHF 0.10, (y) der Barzahlung und (z) dem Gesamtnominalwert der Exchangeable Loan Notes den gesetzlichen Kapitaleinlagereserven der Gesellschaft zu.

Artikel 36^{quater}

emischte Sacheinlage und Sachübername in Zusammenhang mit dem Erwerb von Ocean Rig UDW Inc.

¹ Die Gesellschaft übernimmt in der Aktienkapitalerhöhung aus dem genehmigten Aktienkapital gemäss Art. 5^{ter} vom 30. November 2018 im Rahmen des indirekten Erwerbs der Ocean Rig UDW Inc., einer nach dem Recht der Kaimaninseln organisierten Gesellschaft (**Ocean Rig**), im Wege eines Merger nach dem Recht der Kaimaninseln von der Computershare Trust Company, eine nach dem Recht des Staates Delaware organisierte Gesellschaft (der **Einleger**), handelnd im eigenen Namen aber auf Rechnung der Ocean Rig Aktionäre, insgesamt 91'579'982 Stammaktien mit einem Nennwert von je USD 0.0001 der Transocean Oceanus Holdings Limited (je eine **HoldCo Aktie** und gemeinsam die **HoldCo Aktien**), einer nach dem Recht der Kaimaninseln organisierten Gesellschaft, wobei diese Anzahl HoldCo Aktien wertmässig 91'473'703 Kategorie A Aktien von Ocean Rig mit einem Nominalwert von je USD 0.01 und 106'279 Kategorie B Aktien von Ocean Rig mit einem Nominalwert von je USD 0.01 (je eine **Ocean Rig Aktie** und gemeinsam die **Ocean Rig Aktien**) entsprechen. Jede HoldCo Aktien wird zu einem Übernahmewert von USD 29.05 (gerundet) und alle HoldCo Aktien gesamthaft zu einem Übernahmewert von USD 2'660'331'074.23 übernommen. Die HoldCo Aktien wurden vom Einleger, handelnd im eigenen Namen aber auf Rechnung der Ocean Rig

Mixed Contribution in Kind and Acquisition of Assets in Connection with the Acquisition of Ocean Rig UDW Inc.

out Shareholders in the aggregate amount of USD 9,375,000 (the **Exchangeable Bonds**). The difference between (i) the total value of the contribution and (ii)(x) the sum of the aggregate nominal value of the newly issued registered shares, nominal value of CHF 0.10 each, (y) the Cash Payment and (z) the aggregate nominal value of the Exchangeable Loan Notes is allocated to the Company's statutory capital reserves from capital contribution.

Article 36^{quater}

¹ The Company acquires in the increase in share capital out of the authorized share capital pursuant to Article 5^{ter} of the Articles of Association of November 30, 2018, in connection with the indirect acquisition of Ocean Rig UDW Inc., a company organized under the laws of the Cayman Islands (**Ocean Rig**), by way of a merger according to the laws of the Cayman Islands from Computershare Trust Company, a company organized under the laws of the state of Delaware (the **Contributor**), acting on its own name but on account of the Ocean Rig Shareholders, in the aggregate 91,579,982 common shares of Transocean Oceanus Holdings Limited with a nominal value of each USD 0.0001 (each **HoldCo Share** and collectively the **HoldCo Shares**), a company organized under the laws of the Cayman Islands, whereby such number of HoldCo Shares corresponds in their value to 91,473,703 class A shares of Ocean Rig with a nominal value of each USD 0.01 and 106,279 class B shares of Ocean Rig with a nominal value of each USD 0.01 (each an **Ocean Rig Share** and collectively the **Ocean Rig Shares**). Each HoldCo Shares is acquired for a contribution value of USD 29.05 (rounded) and all HoldCo Shares, in the aggregate, are acquired for a contribution value of USD 2,660,331,074.23. The HoldCo Shares are contributed by the Contributor, acting in its own name but

Aktionäre, mittels gemischter Sacheinlage/Sachübernahme nach den Bestimmungen des Sacheinlage- und Sachübernahmevertrages vom 29. November 2018 eingelegt, wofür die Gesellschaft (i) 147'700'187 neue Namenaktien mit einem Nennwert von je CHF 0.10 (je eine **Aktie** und gemeinsam die **Aktien**) zu einem Ausgabepreis von je USD 10.11 (gerundet) und gesamthaft für die Aktien USD 1'492'686'207.22 an den Einleger zugunsten der Ocean Aktionäre ausgegeben hat, entsprechend einem Umtauschverhältnis von 1.6128 Aktien für jede eingelegte HoldCo Aktie (das **Umtauschverhältnis**), wobei entstehende Fraktionen von Aktien auf die nächste ganze Anzahl Aktien abgerundet und in bar (siehe (ii)(B) nachstehend) abgegolten werden, und (ii) Barzahlungen an den Einleger zugunsten der Ocean Rig Aktionäre im Umfang von (A) USD 12.75 je HoldCo Aktie und gesamthaft USD 1'167'644'770.50 für alle eingelegten HoldCo Aktien (die **Barentschädigung**) und (B) gesamthaft USD 96.51 zur Entschädigung der durch das Umtauschverhältnis und die Aktionärsstruktur von Ocean Rig entstandenen Fraktionen von Aktien (die **Fraktionen-Entschädigung**) geleistet hat. Die Gesellschaft weist die Differenz zwischen (x) dem gesamten Wert der eingelegten HoldCo Aktien im Betrag von USD 2'660'331'074.23 und (y)(1) dem Gesamtnennwert der neu ausgegebenen Aktien im Betrag von CHF 14'770'018.70, (2) der Barentschädigung und (3) der Fraktionen-Entschädigung den Kapitaleinlagereserven (*Agio*) der Gesellschaft zu.

² Zum Zwecke dieses Artikels 36^{ter} bedeutet **Ocean Rig Aktionär(e)** die Inhaber der unmittelbar vor dem Datum und Zeitpunkt der Eintragung der neuen Aktien im Tagesregister des Handelsregisters des Kantons Zug (der **Wirksamkeitszeitpunkt**) ausgegebenen und ausstehenden 91'579'982 Ocean Rig Aktien.

for the account of the Ocean Rig Shareholders, by way of a mixed contribution in kind / acquisition of assets pursuant to the terms and conditions of the contribution in kind and acquisition of assets agreement dated as of November 29, 2018, for which the Company has (i) issued to the Exchange Agent in favor of the Ocean Rig Shareholders 147,700,187 new registered shares with a nominal value of CHF 0.10 each (each a **Share** and collectively the **Shares**) at an issue price of USD 10.11 (rounded) each and in the aggregate for the Shares USD 1,492,686,207.22, corresponding to an exchange ratio of 1.6128 Shares for each contributed HoldCo Share (the **Exchange Ratio**), whereby resulting fractions of Shares are rounded down to the next whole number of Shares and are paid in cash (see (ii)(B) below), and (ii) paid to the Contributor in favor of the Ocean Rig Shareholders (A) cash in the amount of USD 12.75 for each HoldCo Share and, in the aggregate, USD 1,167,644,770.50 for all contributed HoldCo Shares (the **Cash Consideration**) and (B) cash in the amount of USD 96.51 as consideration for the fractions of Shares resulting from the Exchange Ratio and the shareholder of record composition of Ocean Rig (the **Fractions Consideration**). The difference between (x) the aggregate value of the contributed HoldCo Shares in the amount of USD 2,660,331,074.23 and (y)(1) the sum of the aggregate nominal value of the newly issued Shares in the amount of CHF 14,770,018.70, (2) the Cash Consideration and (3) the Fraction Consideration is allocated to the Company's reserves of capital contribution.

² For the purpose of this article 36^{ter} of the Articles of Association, the term **Ocean Rig Shareholder(s)** means the holders of the 91,579,982 Ocean Rig Shares issued and outstanding immediately prior to the date and time of registration of the new Shares in the daily ledger of the commercial register of the Canton of Zug (the **Effective Time**).

Artikel 37

Genehmigung der Vergütung gemäss Artikel 29a Abs. 1

Die Genehmigung der Vergütung des Verwaltungsrates und der Geschäftsleitung durch die Aktionäre gemäss Artikel 29a Abs. 1 dieser Statuten findet erstmals an der ordentlichen Generalversammlung 2015 statt.

Ratification of the compensation pursuant to Article 29a para. 1

Article 37

The ratification by shareholders of the compensation of the Board of Directors and the Executive Management Team pursuant to Article 29a para. 1 of these Articles of Association shall take place for the first time at the 2015 Annual General Meeting.

Artikel 38

Übergangsrechtliche Ausnahme zu Artikel 22 dieser Statuten betreffend die Höchstzahl der Mitglieder des Verwaltungsrates

- 1 Bis zum Abschluss der ordentlichen Generalversammlung 2015 kann die Höchstzahl der Mitglieder des Verwaltungsrates gemäss Artikel 22 dieser Statuten aufgrund der Wahl eines neuen Mitglieds des Verwaltungsrates an der ausserordentlichen Generalversammlung vom 22. September 2014 und des Verbleibs im Amt dieses neuen Mitglieds des Verwaltungsrates und der 11 an der ordentlichen Generalversammlung 2014 gewählten Mitglieder des Verwaltungsrates vorübergehend überschritten werden und 12 betragen.
- 2 Jede Änderung dieses Artikels 38 untersteht den gleichen Präsenz- und Mehrheitsquoten wie eine Änderung von Artikel 22.

Transitory exception to the maximum number of the members of the Board of Directors pursuant to Article 22 of the Articles of Association

Article 38

- 1 Until completion of the 2015 Annual General Meeting the maximum number of the members of the Board of Directors pursuant to Article 22 of these Articles of Association may be temporarily exceeded as a result of the election of one new member of the Board of Directors at the Extraordinary General Meeting of Shareholders of September 22, 2014 and the continuance in office of this new member of the Board of Directors and the 11 members of the Board of Directors elected at the 2014 Annual General Meeting and amount to 12.
- 2 Any amendment to this Article 38 shall be subject to the same presence quorum and voting majority requirements as an amendment to Article 22.

Steinhausen, 27. Oktober 2021

CEO CERTIFICATION PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Jeremy D. Thigpen, certify that:

1. I have reviewed this report on Form 10-Q of Transocean Ltd.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and we have:
 - a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b) designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c) evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d) disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent function):
 - a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Dated: November 2, 2021

/s/ Jeremy D. Thigpen
Jeremy D. Thigpen
President and Chief Executive Officer

CFO CERTIFICATION PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Mark L. Mey, certify that:

1. I have reviewed this report on Form 10-Q of Transocean Ltd.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and we have:
 - a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b) designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c) evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d) disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent function):
 - a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Dated: November 2, 2021

/s/ Mark L. Mey

Mark L. Mey

Executive Vice President and Chief Financial Officer

**CERTIFICATION PURSUANT TO SECTION 906 OF
THE SARBANES-OXLEY ACT OF 2002 (SUBSECTIONS (a) AND (b)
OF SECTION 1350, CHAPTER 63 OF TITLE 18, UNITED STATES CODE)**

Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 (Subsections (a) and (b) of Section 1350, Chapter 63 of Title 18, United States Code), I, Jeremy D. Thigpen, President and Chief Executive Officer of Transocean Ltd., a Swiss corporation (the "Company"), hereby certify, to my knowledge, that:

- (1) the Company's Quarterly Report on Form 10-Q for the quarter ended September 30, 2021 (the "Report") fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Dated: November 2, 2021

/s/ Jeremy D. Thigpen

Jeremy D. Thigpen
President and Chief Executive Officer

The foregoing certification is being furnished solely pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 (Subsections (a) and (b) of Section 1350, Chapter 63 of Title 18, United States Code) and is not being filed as part of the Report or as a separate disclosure document.

A signed original of this written statement required by Section 906 has been provided to the Company and will be retained by the Company and furnished to the U.S. Securities and Exchange Commission or its staff upon request.

**CERTIFICATION PURSUANT TO SECTION 906 OF
THE SARBANES-OXLEY ACT OF 2002 (SUBSECTIONS (a) AND (b)
OF SECTION 1350, CHAPTER 63 OF TITLE 18, UNITED STATES CODE)**

Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 (Subsections (a) and (b) of Section 1350, Chapter 63 of Title 18, United States Code), I, Mark L. Mey, Executive Vice President and Chief Financial Officer of Transocean Ltd., a Swiss corporation (the "Company"), hereby certify, to my knowledge, that:

- (1) the Company's Quarterly Report on Form 10-Q for the quarter ended September 30, 2021 (the "Report") fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Dated: November 2, 2021

/s/ Mark L. Mey

Mark L. Mey

Executive Vice President and Chief Financial Officer

The foregoing certification is being furnished solely pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 (Subsections (a) and (b) of Section 1350, Chapter 63 of Title 18, United States Code) and is not being filed as part of the Report or as a separate disclosure document.

A signed original of this written statement required by Section 906 has been provided to the Company and will be retained by the Company and furnished to the U.S. Securities and Exchange Commission or its staff upon request.
