Translation for Convenience Purposes only

Responsibility is restricted to the German report "Bescheinigung zur Kapitaldeckung i.S.d. Artikel 37 Abs. 6 SE-VO anlässlich der beabsichtigten Umwandlung der AIXTRON Aktiengesellschaft, Herzogenrath, in eine Societas Europaea (SE), dated March 9, 2010

AIXTRON AKTIENGESELLSCHAFT, HERZOGENRATH

Certificate on capital adequacy within the meaning of Article 37 para. 6 SE-Reg. on the occasion of the intended conversion of AIXTRON Aktiengesellschaft, Herzogenrath, into a Societas Europaea (SE)

WARTH & KLEIN
WIRTSCHAFTSPRÜFUNGSGESELLSCHAFT

A. MANDATE FOR EXAMINATION

The Executive Board and the Supervisory Board of

AIXTRON Aktiengesellschaft,

Herzogenrath,

- hereinafter referred to as "AIXTRON AG" or the "Company" -

intend to convert the Company into a European stock corporation (SE). The corresponding conversion plan is supposed to be submitted for a vote to the regular general shareholders' meeting of AIXTRON AG on 18 May 2010.

Prior to this general shareholders' meeting, which according to Article 37 para. 7 SE-Reg.[1] must resolve on the conversion of the relevant Company into an SE and at the same time approve of the articles of association of the SE, an independent expert must in effect confirm pursuant to Article 37 para. 6 SE-Reg. that the Company has net assets at least in the amount of its share capital plus the reserves which cannot be distributed by virtue of law or the Company's articles of association.

Upon request of the Company dated 5 February 2010, the District Court of Cologne appointed us as expert for the preparation of a certificate pursuant to Article 37 para. 6 SE-Reg. in conjunction with § 10 of the German Act on Conversion of Corporate Form [*Umwandlungsgesetz*, "UmwG"] in an order dated 10 February 2010 (file no.: 82 OH 1/10) (see, Annex 1).

We conducted our work – with interruptions – in February and March 2010 at the registered office of the Company in Herzogenrath as well as in our offices in Düsseldorf.

1 Regulation (EC) no. 2157/2001 of the Council dated 8 October 2001 on the statutes of the European Stock Corporation (SE), published in the Official Journal of the European Community L 294 dated 10 November 2001.

Our evaluation was based especially on the following documents:

- Draft of the conversion plan under article 37 para. 4 SE-Reg. dated 1 March 2010 with the articles of association of AIXTRON SE dated 1 March 2010 as annex
- Articles of association of AIXTRON AG in the version dated 19 January 2010
- Excerpt from the commercial register of AIXTRON AG dated 10 February 2010
- Report of Deloitte Touche GmbH Wirtschaftsprüfungsgesellschaft (Deloitte) on the audit of the annual financial statements and the management report of AIXTRON AG as of 31 December 2009, bearing an unqualified opinion
- Consolidated financial statements under the International Financial Reporting Standards as of 31 December 2009 for AIXTRON AG
- Annual Report of AIXTRON AG for the financial year 2008
- Draft of a report by KPMG AG Wirtschaftsprüfungsgesellschaft dated 10 February 2010 about the conduct of a goodwill impairment test for AIXTRON AG as of 31 December 2009
- Various audit evidence on the line items on the balance sheet of AIXTRON AG as of 31 December 2009
- Other documents relevant for preparing this Certificate.

The following persons were available in order to provide us with information:

Mr. Wolfgang Breme	Member of the Executive Board and Chief Financial Officer of AIXTRON AG
Ms. Christine Herden	Tax Advisor and Senior Department Manager Finance of AIXTRON AG
Mr. David Poignie	Senior Department Manager Treasury of AIXTRON AG
Mr. Holger Grünewald	German Certified Public Accountant and Tax Advisor, Director of Deloitte & Touche GmbH Wirtschaftsprüfungsgesellschaft, Düsseldorf.

All requested information and evidence was willingly provided. The Executive Board of AIXTRON AG has issued to us a declaration of completeness stating that we have been provided with all information and records relevant for our examination and that this information and these records are correct.

Independent audit actions within the meaning of §§ 316 et seq. German Commercial Code [*Handelsgesetzbuch*, "HGB"] are not subject of our mandate. We critically examined the records provided to us, but we did not conduct an audit within the meaning of an audit of annual financial statements.

The conduct of our mandate and our responsibility, also in relation to third parties, are governed by the General Engagement Terms for Wirtschaftsprüfer and Wirtschaftsprüfungsgesellschaften [German Public Auditors and Public Audit Firms] as of January 1, 2002 attached hereto as Annex 2. Our liability is determined pursuant to No. 1 para. 2 and no. 9 of such General Terms and Conditions.

This Report has been prepared only in connection with the intended conversion of AIXTRON AG into an SE and is only intended for internal use by the Client. The internal use also includes the use, including the forwarding and publication, in the context of submission to the commercial register and in the context of informing the shareholders of AIXTRON AG in advance of and during the general shareholders' meeting resolving on the conversion of corporate form. Any further forwarding of this Report to any other third party shall be subject to our express written consent and shall be made only using the complete wording, including a written declaration regarding the purpose of the underlying mandate as well as the restrictions on forwarding this Report relating to the mandate and the terms and conditions of liability, if the respective third party previously declared its consent to the general terms and conditions as supplemented by an individual agreement on liability and a binding undertaking of the third party to maintain confidentiality to be issued to us in writing.

B. TYPE AND SCOPE OF EXAMINATION

The basis of the intended conversion of AIXTRON AG into a European stock corporation is set forth in Article 2 para. 4 as well as Article 37 para. 1 SE-Reg. The conversion of a stock corporation into a European stock corporation does neither result in the dissolution of the former Company nor in the establishment of a new legal entity pursuant to Article 37 para. 2 SE-Reg. The Company fully retains its identity and no assets are transferred.

Pursuant to Article 37 para. 6 SE-Reg., the conversion into a European stock corporation requires the previous company to have net assets at least in the amount of its share capital plus the reserves which by virtue of law or the company's articles of association cannot be distributed. This adequacy of capital must be confirmed by an expert pursuant to Article 37 para. 6 SE-Reg.

The provisions of the German Stock Corporation Act [*Aktiengesetz*, "AktG"] and the UmwG, especially those provisions relating to capital increases and the determination of the net asset value of the company, also generally apply by way of reference in Article 5 SE-Reg., Article 10 SE-Reg. and Article 15 SE-Reg.

Pursuant to Article 7 of the Second Directive, it must be noted when determining the net asset value of the Company that the capital can only consist of assets for which the economic value can be determined (see also § 27 para. 2 AktG). Any requirement or option to include the assets on the balance sheet pursuant to certain country specific law provisions is not determinative in this regard.[2]

The wording "net asset value" in Article 37 of the SE-Reg. in conjunction with the references in the commentaries show that the determination of the net assets to be certified under Article 37 SE-Reg., has to be based primarily on an individual evaluation. Nonetheless, since the subject of the analysis is an enterprise, the net assets to be certified pursuant to Article 37 SE-Reg. can also be supported in the sense of an economic analysis by means of an approach valuing them in the aggregate [Gesamtbewertungsansatz].

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2 See, Schwarz, Commentary on the SE Reg., 1st edition, no. 43, comparable also to commentaries on § 192 UmwG, Decher, in Lutter, UmwG, 3rd edition, no. 59, as well as § 220 UmwG, Schlitt, in Semler/Stengel, *Umwandlungsgesetz*, 2nd edition, no. 9

Since in the present case the net assets to be certified are already covered when engaging in an individual evaluation, we have only supplementally made a general, indicative aggregate valuation of AIXTRON AG.

For purposes of the valuation, the "real values" form the basis.[3] These "real values" are understood to be the fair market values of the assets and the liabilities.

Pursuant to § 242 para. 1 HGB, enterprises are required to prepare a comparison of their assets and their liabilities in regular intervals in the form of annual financial statements. Therefore, it is appropriate to refer to the balance sheet of the Company as the starting point for determining the net assets. As a general rule under the HGB, all assets and liabilities must be included in the balance sheet. Exceptions are made for assets which fall under the prohibition on entry in the balance sheet contained in § 248 HGB. According to this provision, for example, intangible assets which have been acquired without paying compensation are not to be included. Furthermore, it must be taken into account that the narrow statutory definition of assets only leads to incomplete inclusion of the actual assets of the company. These restrictions concerning the preparation of the balance sheet relate exclusively to assets and have the tendency in a balance sheet under the HGB to lead to a cautious entry of the assets. The law establishes an obligation to completely account for liabilities of the company.

With regard to the valuation of the assets and liabilities in the context of the annual financial statements or the preparation of the balance sheet under the HGB, the so-called principle of caution [Vorsichtsprinzip] constitutes the central parameter pursuant to § 252 para. 1 no. 4 HGB. Accordingly, assets and liabilities must be valued in a cautious manner, namely, all foreseeable risks and incurred losses as of the effective date of the financial statements must be taken into account.

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3 See, Schwarz, Commentary on the SE Reg., 1st edition, Article 37, no. 44, referring to § 192 para. 2 UmwG and § 220 para. 1 UmwG

A specification of the principle of caution when valuing assets is expressed in the lowest value principle [Niederstwertprinzip] codified in § 253 paras. 2 and 3 HGB. Accordingly, assets can be entered at most with their procurement costs and manufacturing costs [Anschaffungs- und Herstellungskosten], if applicable as reduced by scheduled depreciation. To the extent that the value to be assessed for an asset on the effective date of the balance sheet is lower than the carried forward procurement costs and costs of production, there is a requirement to use this lower value as a basis unless items in the fixed assets are involved for which depreciation can only be made for long-term reductions in value pursuant to § 253 para. 2 HGB. In the case of items in the current assets, however, the strict lowest value principle applies in full pursuant to § 253 para. 3 HGB. Accordingly, a book value for an asset determined under the provisions in the German Commercial Code represents the lowest value which at most can reach the fair market value or the "real value" of the asset but cannot exceed this value.

Pursuant to § 253 para. 1 HGB, debts must be entered with the amount to be repaid, in the case of pension obligations for which no consideration is to be expected any longer, with their present value, and in the case of provisions, in the amount of the amount required based on a reasonable commercial view. Provisions can only be reduced to present value if the underlying liability also contains a portion of interest. In this regard, the principle of maximum value [Höchstwertprinzip] applies for the valuation of provisions.[4] A book value of a liability determined in this manner, thus, corresponds at least to the fair market value or the "real value" of the liability.

In addition to the so-called principle of caution, the principle of individual valuation under § 252 para. 1 no. 3 HGB constitutes a further parameter for the valuation in the annual financial statements. This provision requires that assets and liabilities be valued individually. Thus, increases and decreases in value cannot be offset against each other which would otherwise violate the principle of caution. Effects of aggregation which increase value resulting from the coordination of individual assets also are not taken into account. These effects only become specified in the case of a valuation in the aggregate. A net asset value determined on the basis of a valuation in the aggregate, therefore, normally lies above the net asset value determined on the basis of an individual valuation.

It can be concluded as a result of the above discussion that a net asset value derived on the basis of financial statements under the HGB ("net asset value in the balance sheet") represents

4 See, Wiedmann, in Ebenroth/Boujong/Joost/Strohn, *Handelsgesetzbuch*, 2nd edition, § 253, no. 18.

the lower limit of the value. A determination of the fair market value of assets and liabilities is, thus, not required when simply the book values of the assets in the balance sheet minus the liabilities cover the capital to be certified. It is then also not necessary to account for and to value assets which are not entered in the balance sheet.

The net assets of the Company are determinative when certifying the capital adequacy. In cases in which the company represents the parent company in a corporate group and parts of the operational business have been conducted by subsidiaries, the consolidated financial statements may provide additional information. The obligation to prepare consolidated financial statements under the International Financial Reporting Standards (IFRS) applies for all capital market oriented enterprises in the European Union since the year 2005. While the principle of caution and, thus, protection of the creditors is the emphasis of the provisions in German commercial law under the HGB, the need for information on the part of the addressee, especially the investors, plays the primary role in the International Financial Reporting Standards.[5] The valuation of the assets and liabilities under IFRS, therefore, has the tendency to be oriented on the fair values. As a result of this, knowledge about the balance sheet net assets of the corporate parent company can be gained on the basis of the consolidated financial statements under IFRS.

5 See, Accounting Handbook 2006, volume I, no. 32 as well as IAS 1.

C. LEGAL AND ECONOMIC BASES

AIXTRON AG is registered with the commercial register at the Local Court [*Amtsgericht*] of Aachen under HRB no. 7002. An excerpt from the commercial register dated 10 February 2010 showing the last entry on 9 February 2010 was submitted to us. The articles of association in the version dated 19 January 2010 apply.

According to the articles of association, the purpose of AIXTRON AG is the manufacture and distribution of products as well as research, development and services for implementing semi-conductor technologies and for implementing other physical-chemical technologies, especially under the trademark AIXTRON.

The Company is authorized to engage in all transactions which are appropriate for directly or indirectly promoting the corporate purpose of the Company. The Company can establish branches in Germany and in foreign countries, participate in other enterprises in Germany and foreign countries and acquire or establish such enterprises. The corporate purpose of subsidiaries and companies in which shareholdings are held can also be different compared to the above mentioned corporate purpose, provided this appears appropriate to promote the corporate purpose of the Company. The Company can completely or partially spin off its operations into affiliated enterprises.

The financial year corresponds to the calendar year.

The share capital of the Company is EUR 100,667,177.00 and is divided into 100,667,177 shares, each representing a proportionate amount of the share capital of EUR 1.00.

The shares in AIXTRON AG are listed for trading on the stock exchanges in Frankfurt am Main, Berlin, Bremen, Düsseldorf, Hamburg, Munich and Stuttgart. The shares are listed in the Prime Standard/Regulated Market of Deutsche Börse AG and in the NASDAQ Global Market on the NASDAQ.

According to its articles of association (status: 19 January 2010), AIXTRON AG has the following authorized capital:

AIXTRON AG - authorized capital	
	31.12.2009
	EUR
Authorized capital I, up to 17 May 2010	35,919,751.00
Authorized capital II, in the fiscal year 2009 completely used up	0.00
Total	**35,919,751.00**

In the financial year 2009, the share capital was increased by the amount of EUR 8,979,937.00 with exclusion of the subscription rights of the shareholders by using the authorized capital in exchange for cash contributions by issuing 8,979,937 new bearer shares without a par value. After implementing this capital increase, the authorized Capital II was completely used up.

AIXTRON AG has the following conditional capital according to its articles of association:

AIXTRON AG - conditional capital	
	31.12.2009
	EUR
Based on resolution of shareholders meeting on 14 May 2008 (Stock option plan 1999)	1,926,005.00
Based on resolution of shareholders meeting on 14 May 2008 (Stock option plan 2002)	1,247,197.00
Based on resolution of shareholders meeting on 14 May 2008 (conditional capital I 2007)	35,875,598.00
Based on resolution of shareholders meeting on 22 May 2008 (conditional capital II 2007)	3,919,374.00
Total	**42,968,174.00**

The conditional capital serves to issue shares in connection with participation programs and to grant shares to holders or creditors of bonds with warrants and/or convertible bonds which are issued by the Company or a subordinate corporate group company.

The assets of AIXTRON AG according to the annual financial statements as of 31 December 2009 are reflected below:

AIXTRON AG - HGB-balance	
	31.12.2009
	EUR
Assets	
Intangible assets	3,093,063.20
Fixed physical assets	32,152,350.01
Investments	58,511,005.19
Total fixed assets	**93,756,418.40**
Inventories	90,149,585.38
Receivables and other assets	85,538,536.19
Cash on hand, deposits at credit institutions	248,371,842.30
Total current assets	**424,059,963.87**
Deferred assets	265,60
Total balance sheet assets	**518,081,977.69**
Share capital	100,667,177.00
Capital reserve	187,699,943.61
Profit reserve	50,608,091.08
Balance sheet profit	42,461,136.30
Total shareholders equity	**381,436,347.99**
Liabilities	
Pension provisions	828,511.00
Tax provisions	11,634,639.67
Other provisions	32,867,723.46
Liabilites	91,3147,55.57
Total liabilities	**136,645,629.70**
Total balance sheet liabilities	**518,081,977.69**

D. EXAMINATION OF THE CAPITAL ADEQUACY

I. Determination of the net assets on the balance sheet

1. Capital and reserves within the meaning of Article 37 para. 6 SE-Reg.

The equity capital of AIXTRON AG pursuant to the annual financial statements as of 31 December 2009 is shown as follows:

AIXTRON AG - shareholders equity	
	31.12.2009
	EUR
Share capital	100,667,177.00
Capital reserve	187,699,943.61
Profit reserve	50,608,091.08
Balance sheet profit	42,461,136.30
Total	**381,436,347.99**

As of 31 December 2009, the share capital of AIXTRON AG was EUR 100,667,177.00. In addition, the Company had capital reserves in the amount of EUR 187,699,943.61 as of 31 December 2009 which cannot be distributed due to statutory regulations.

The capital reserve and the statutory reserve together have to amount to at least 10 % of the subscribed capital (pursuant to § 150 para. 2 AktG). The scope of any statutory reserve that might have to be established is completely covered by the existing capital reserve so that any further establishment of a capital reserve under § 150 AktG is not required. The articles of association of AIXTRON AG also do not provide for the establishment of reserves with a restriction on distributions.

The share capital and the reserves of AIXTRON AG within the meaning of Article 37 para. 6 SE-Reg. as of 31 December 2009 are shown as follows:

AIXTRON AG - capital pursuant to Art. 37 para. 6 SE Reg.	
	31.12.2009
	EUR
Share capital	100,667,177.00
Shares not capable of being distributed under the law (capital reserve)	187,699,943.61
Shares not capable of being distributed under the articles	0.00
Capital pursuant to Art. 37 para. 6 SE Reg.	**288,367,120.61**

2. Balance sheet net assets

The starting point for determining the net assets consists of the audited annual financial statements under the HGB for AIXTRON AG as of 31 December 2009, certified by Deloitte. The net assets of the Company as of 31 December 2009 are determined as follows:

AIXTRON AG - net assets under the HGB annual financial statements pursuant to Art. 37 para. 6 SE Reg.	
	31.12.2009
	EUR
Assets	
Intangible assets	3,093,063.20
Fixed physical assets	32,152,350.01
Investments	58,511,005.19
Total fixed assets	**98,756,418.40**
Inventories	90,149,585.38
Receivables and other assets	85,538,536.19
Cash on hand, deposits at credit institutions	248,371,842.30
Total current assets	**424,059,963.87**
Deferred assets	265,595.42
Total balance sheet assets	**518,084,977.69**
Liabilities	
Pension provisions	828,511.00
Tax provisions	11,634,639.67
Other provisions	32,867,723.46
Liabilites	91,314,755.57
Total liabilities	**136,645,629.70**
Net assets pursuant to Art. 37 para. 6 SE Reg. (balance)	**381,436,347.99**

The valuation of the assets and liabilities in the annual financial statements of AIXTRON AG as of 31 December 2009 in particular is made as follows:

The valuation of the intangible assets and the fixed physical assets is made based on procurement costs or the costs of production minus the scheduled linear depreciation which is made based on the expected economic life. To the extent that a lower value assessed as of the effective date of the financial statements lies permanently below the book value, extraordinary depreciation is made for such assets.

Small assets for which the procurement costs or costs of production are less than EUR 150.00 are reflected in the year of procurement as a business expense. Assets for which the procurement costs or production costs are more than EUR 150.00 but no more than EUR 1,000.00 are aggregated in the year of acquisition in an aggregated line item and are uniformly depreciated over five years.

The shares in affiliated enterprises are shown at their procurement costs or at the lower fair market value.

Raw materials and consumables are reflected at procurement costs – based on the average price – or at the lower fair market value.

The valuation of semi-finished products includes, in addition to the directly attributable costs, also the costs of materials and the overhead costs for production. The strict principle of lowest value is observed in this context.

Receivables and other assets are entered at the nominal values. When valuing receivables, the general credit risk is reflected by individual adjustments in value or flat-rate adjustments in value. Long-term receivables are valued at the present value as of the effective date of the balance sheet.

The liquid funds are valued at the nominal value.

The line items shown as deferred positions represent expenditures prior to the effective date of the financial statements to the extent that they reflect expenditures for a certain period of time after this date.

Provisions for pension obligations are entered according to actuary principles in the amount of the present value [Teilwert] when applying the "Tables 2005 G" of Prof. Dr. Klaus Heubeck.

Tax provisions and other provisions reflect all recognizable risks and uncertain obligations. The provisions are valued in the amount to which they will likely be used. The valuation of provisions for warranty and fair dealing obligations are made on the basis of a flat-rate calculation process.

Debts are entered in the amount in which they are to be repaid.

Accordingly, we determine that the net assets of AIXTRON AG as of 31 December 2009 exceed the amount of capital of EUR 288.4 million to be certified in accordance with Article 37 para. 6 SE-Reg.

The balance of the assets and the liabilities in the consolidated financial statements of AIXTRON AG under IFRS provided to us in the amount of EUR 413.5 million as of 31 December 2009 also clearly exceed the capital in the amount of EUR 288.4 million to be certified by us pursuant to Article 37 para. 6 SE-Reg.

Accordingly, there are no indications that the net assets do not reach at least the amount of the capital plus the amount of reserves which by virtue of law or the Company's articles of association cannot be distributed.

II. Discounted Earnings Value [Ertragswert]

As a supplement when determining the net assets on the basis of an individual valuation, we have conducted an indicative aggregate valuation [indikative Gesamtbewertung] for AIXTRON AG according to the discounted earnings method. The discounted earnings value corresponds to the present value of the shareholders equity in a commercial enterprise and is derived from uncertain future cash flows to the providers of equity capital. Such an enterprise value, therefore, can be calculated as the present value of all future surpluses of revenues over expenditures [Einnahmen-/ Ausgaben-Überschüsse] of the enterprise. The view that the present value under the discounted earnings method reflects the theoretically correct value of an enterprise corresponds to the predominant view in business management academic writings and to the practice of enterprise valuation. The discounted earnings method is also acknowledged by german jurisdiction.

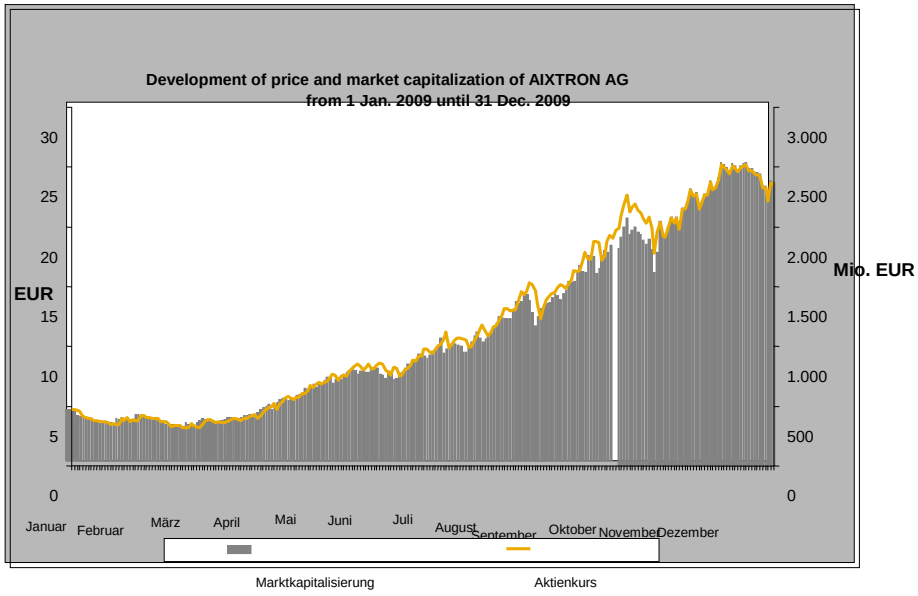
In order to determine the discounted earnings value, a forecast about the anticipated earnings of the enterprise is generally required. The basis for a discounted earnings valuation, therefore, is normally the corporate planning as well as an estimate of the long-term result which can be considered to be able to be realized on a permanent basis for the period of time after the planned years. The basis for such a forecast of future earnings and expenditures consists of the adjusted results generated in the past.

We have received planning for the long-term results of AIXTRON AG for the year 2010. The indicative enterprise value derived on this basis for the fair market value of the share holders equity in AIXTRON AG lies well above the amount of capital to be certified pursuant to Article 37 para. 6 SE-Reg.

III. Stock exchange value [Börsenwert]

In order to analyze the plausibility of the enterprise value determined in accordance with the preceding principles, stock exchange prices, to the extent they are available, must be referred to as a supplemental basis for purposes of the enterprise valuation. The stock exchange price for the shares in AIXTRON AG, thus, has a certain informative value with regard to the amount of the net assets of the Company because the stock exchange price expresses the estimate of a large number of participants in the capital markets about the value of the Company. The market capitalization of AIXTRON AG can be derived from the price per share (stock exchange price) with regard to the total number of shares in circulation. This market capitalization represents the fair market value of the net assets (shareholders equity).

Therefore, we have examined the stock exchange price for the shares in AIXTRON AG as well as the market capitalization. The following overview represents the development in the stock exchange price as well as the market capitalization in the financial year 2009:



Source: Bloomberg

The market capitalization as of the effective date for determining the net assets (31 December 2009) was around EUR 2.4 billion and thus substantially above the amount of EUR 288.4 million net assets to be certified for the Company.

In the period of time from 1 January 2010 until the conclusion of our activity on 9 March 2010, the market capitalization of AIXTRON AG was consistently above EUR 2.0 billion.

On the basis of our analysis of the enterprise value, there are no recognizable indications that the net assets do not reach at least the amount of the share capital plus the reserves that cannot be distributed by virtue of law or the Company's articles of association.

E. CONCLUDING REMARK

We issue the following certificate pursuant to Article 37 para. 6 SE-Reg.:

"According to the final result of our examination required pursuant to Article 37 para. 6 SE-Reg., we hereby certify, on the basis of the documents, books and records submitted to us as well as the explanations and evidence provided to us, that AIXTRON AG has a net asset value at least in the amount of its share capital plus the reserves which are not capable of being distributed by virtue of law or the Company's articles of association."

Düsseldorf, 9 March 2010

Warth & Klein Aktiengesellschaft
Wirtschaftsprüfungsgesellschaft

Michael Häger	Marc A. Sahner
German Certified Public Accountant	German Certified Public Accountant

A N N E X E S

82 OH 1/10

Landgericht Köln

Beschluss

In dem Verfahren

der AIXTRON AG,
vertreten durch den Vorstand und den Aufsichtsrat,
Kaiserstr. 98, 52134 Herzogenrath,

Antragstellerin,

Verfahrensbevollmächtigte: Rechtsanwälte White & Case, Graf-Adolf-Platz 15, 40213 Düsseldorf,

hat die 2. Kammer für Handelssachen des Landgerichts Köln
durch den Vorsitzenden Richter am Landgericht Lauber
am 10.02.2010
b e s c h l o s s e n :

Auf Antrag der Antragstellerin wird zur Prüfung nach Artikel 37 Abs. 6 der Verordnung (EG) Nr. 2157/2001 des Rates vom 08. Oktober 2001 über das Statut der Europäischen Gesellschaft (SE) folgender Sachverständiger ausgewählt und bestellt:

Warth & Klein Wirtschaftsprüfungsgesellschaft GmbH
Rosenstraße 47, 40479 Düsseldorf.

Gegenstandswert: 5.000,00 €.

Gründe:

Gemäß Artikel 37 Abs. 6 der Verordnung (EG) Nr. 2157/2001 ist vor einer formwechselnden Umwandlung einer Aktiengesellschaft in die Rechtsform einer europäischen Gesellschaft (SE) gemäß der Richtlinie 77/91/EWG(8) sinngemäß zu bescheinigen, dass die Gesellschaft über Netto-Vermögenswerte mindestens in Höhe ihres Kapitals zuzüglich der kraft Gesetzes oder Statut nicht ausschüttungsfähigen Rücklagen verfügt. Die unabhängigensachverständigen Prüfer sind nach den einzelstaatlichen Durchführungsbestimmungen zu Artikel 10 der Richtlinie 78/855/EWG durch ein Gericht oder eine Verwaltungsbehörde des Mitgliedstaates, dessen Recht die sich in eine SE umwandelnde Aktiengesellschaft unterliegt, zu bestellen. Durch den Verweis auf die Verschmelzungsrichtlinie sind §§ 60,10 Abs. 1 UmwG anwendbar. Danach werden Verschmelzungsprüfer auf Antrag des Vertretungsorgans der Gesellschaft vom Gericht ausgewählt und bestellt. Zuständig ist jedes Landgericht, in dessen Bezirk ein übertragender Rechtsträger seinen Sitz hat. Ist bei einem Landgericht eine Kammer für Handelssachen eingerichtet, so entscheidet deren Vorsitzender anstelle der Zivilkammer. Für die Bestellung von Verschmelzungsprüfern gemäß § 10 Abs. 1 UmwG ist nach der Verordnung über die gerichtliche Zuständigkeit zur Entscheidung in gesellschaftsrechtlichen Angelegenheiten und Angelegenheiten der Versicherungsvereine auf Gegenseitigkeit (Konzentrations-VO Gesellschaftsrecht) vom 31.05.2005 das Landgericht Köln für die Gerichtsbezirke der Landgerichte Aachen, Bonn und Köln zuständig, § 1 Nr. 2 Konzentrations-VO.

Für die Prüfung der form-wechselnden Umwandlung wird die Wirtschaftsprüfungsgesellschaft Warth & Klein aus Düsseldorf ausgewählt und bestellt. Die Wirtschaftsprüfungsgesellschaft ist der Kammer aus zahlreichen Begutachtungen in Spruchverfahren bekannt. Unerheblich ist in diesem Zusammenhang, dass die Antragstellerin selbst die Wirtschaftsprüfungsgesellschaft Warth & Klein als Prüfer vorgeschlagen hat. Die WP Gesellschaft hat am 05.02.2010 schriftlich mitgeteilt, dass sie zur Durchführung der Prüfung bereit ist und ihrer Bestellung keine Ausschlussgründe, insbesondere solche im Sinne von §§ 33 Abs. 5 i.V.m. §§ 143 AktG, 319, 319a und 319b HGB, entgegen stehen.

Lauber

Ausgefertigt

(Krawinkel), Justizbeschäftigte

als Urkundsbeamtin der Geschäftsstelle

[Translator's notes are in square brackets]

General Engagement Terms

for

Wirtschaftsprüfer and Wirtschaftsprüfungsgesellschaften

[German Public Auditors and Public Audit Firms]

as of January 1, 2002

This is an English translation of the German text, which is the sole authoritative version

1. Scope

(1) These engagement terms are applicable to contracts between Wirtschaftsprüfer [German Public Auditors] or Wirtschaftsprüfungsgesellschaften [German Public Audit Firms] (hereinafter collectively referred to as the "Wirtschaftsprüfer") and their clients for audits, consulting and other engagements to the extent that something else has not been expressly agreed to in writing or is not compulsory due to legal requirements.

(2) If, in an individual case, as an exception contractual relations have also been established between the Wirtschaftsprüfer and persons other than the client, the provisions of No. 9 below also apply to such third parties.

2. Scope and performance of the engagement

(1) Subject of the Wirtschaftsprüfer's engagement is the performance of agreed services – not a particular economic result. The engagement is performed in accordance with the Grundsätze ordnungsmäßiger Berufsausübung [Standards of Proper Professional Conduct]. The Wirtschaftsprüfer is entitled to use qualified persons to conduct the engagement.

(2) The application of foreign law requires – except for financial attestation engagements – an express written agreement.

(3) The engagement does not extend – to the extent it is not directed thereto – to an examination of the issue of whether the requirements of tax law or special regulations, such as, for example, laws on price controls, laws limiting competition and Bewirtschaftungsrecht [laws controlling certain aspects of specific business operations] were observed; the same applies to the determination as to whether subsidies, allowances or other benefits may be claimed. The performance of an engagement encompasses auditing procedures aimed at the detection of the defalcation of books and records and other irregularities only if during the conduct of audits grounds therefor arise or if this has been expressly agreed to in writing.

(4) If the legal position changes subsequent to the issuance of the final professional statement, the Wirtschaftsprüfer is not obliged to inform the client of changes or any consequences resulting therefrom.

3. The client's duty to inform

(1) The client must ensure that the Wirtschaftsprüfer – even without his special request – is provided, on a timely basis, with all supporting documents and records required for and is informed of all events and circumstances which may be significant to the performance of the engagement. This also applies to those supporting documents and records, events and circumstances which first become known during the Wirtschaftsprüfer's work.

(2) Upon the Wirtschaftsprüfer's request, the client must confirm in a written statement drafted by the Wirtschaftsprüfer that the supporting documents and records and the information and explanations provided are complete.

4. Ensuring independence

The client guarantees to refrain from everything which may endanger the independence of the Wirtschaftsprüfer's staff. This particularly applies to offers of employment and offers to undertake engagements on one's own account.

5. Reporting and verbal information

If the Wirtschaftsprüfer is required to present the results of his work in writing, only that written presentation is authoritative. For audit engagements the long-form report should be submitted in writing to the extent that nothing else has been agreed to. Verbal statements and information provided by the Wirtschaftsprüfer's staff beyond the engagement agreed to are never binding.

6. Protection of the Wirtschaftsprüfer's intellectual property

The client guarantees that expert opinions, organizational charts, drafts, sketches, schedules and calculations – expecially quantity and cost computations – prepared by the Wirtschaftsprüfer within the scope of the engagement will be used only for his own purposes.

7. Transmission of the Wirtschaftsprüfer's professional statement

(1) The transmission of a Wirtschaftsprüfer's professional statements (long-form reports, expert opinions and the like) to a third party requires the Wirtschaftsprüfer's written consent to the extent that the permission to transmit to a certain third party does not result from the engagement terms.

The Wirtschaftsprüfer is liable (within the limits of No. 9) towards third parties only if the prerequisites of the first sentence are given.

(2) The use of the Wirtschaftsprüfer's professional statements for promotional purposes is not permitted; an infringement entitles the Wirtschaftsprüfer to immediately cancel all engagements not yet conducted for the client.

8. Correction of deficiencies

(1) Where there are deficiencies, the client is entitled to subsequent fulfillment [of the contract]. The client may demand a reduction in fees or the cancellation of the contract only for the failure to subsequently fulfill [the contract]; if the engagement was awarded by a person carrying on a commercial business as part of that commercial business, a government-owned legal person under public law or a special government-owned fund under public law, the client may demand the cancellation of the contract only if the services rendered are of no interest to him due to the failure to subsequently fulfill [the contract]. No. 9 applies to the extent that claims for damages exist beyond this.

(2) The client must assert his claim for the correction of deficiencies in writing without delay. Claims pursuant to the first paragraph not arising from an intentional tort cease to be enforceable one year after the commencement of the statutory time limit for enforcement.

(3) Obvious deficiencies, such as typing and arithmetical errors and formelle Mängel [deficiencies associated with technicalities] contained in a Wirtschaftsprüfer's professional statements (long-form reports, expert opinions and the like) may be corrected – and also be applicable versus third parties – by the Wirtschaftsprüfer at any time. Errors which may call into question the conclusions contained in the Wirtschaftsprüfer's professional statements entitle the Wirtschaftsprüfer to withdraw – also versus third parties – such statements. In the cases noted the Wirtschaftsprüfer should first hear the client, if possible.

9. Liability

(1) The liability limitation of § ["Article"] 323 (2)["paragraph 2"] HGB ["Handelsgesetzbuch": German Commercial Code] applies to statutory audits required by law.

(2) Liability for negligence; An individual case of damages

If neither No. 1 is applicable nor a regulation exists in an individual case, pursuant to § 54a (1) no. 2 WPO ["Wirtschaftsprüferordnung": Law regulating the Profession of Wirtschaftsprüfer] the liability of the Wirtschaftsprüfer for claims of compensatory damages of any kind – except for damages resulting from injury to life, body or health – for an individual case of damages resulting from negligence is limited to € 4 million; this also applies if liability to a person other than the client should be established. An individual case of damages also exists in relation to a uniform damage arising from a number of breaches of duty. The individual case of damages encompasses all consequences from a breach of duty without taking into account whether the damages occurred in one year or in a number of successive years. In this case multiple acts or omissions of acts based on a similar source of error or on a source of error of an equivalent nature are deemed to be a uniform breach of duty if the matters in question are legally or economically connected to one another. In this event the claim against the Wirtschaftsprüfer is limited to € 5 million. The limitation to the fivefold of the minimum amount insured does not apply to compulsory audits required by law.

(3) Preclusive deadlines

A compensatory damages claim may only be lodged within a preclusive deadline of one year of the rightful claimant having become aware of the damage and of the event giving rise to the claim – at the very latest, however, within 5 years subsequent to the event giving rise to the claim. The claim expires if legal action is not taken within a six month deadline subsequent to the written refusal of acceptance of the indemnity and the client was informed of this consequence. The right to assert the bar of the preclusive deadline remains unaffected. Sentences 1 to 3 also apply to legally required audits with statutory liability limits.

10. Supplementary provisions for audit engagements

(1) A subsequent amendment or abridgernent of the financial statements or management report audited by a Wirtschaftsprüfer and accompanied by an auditor's report requires the written consent of the Wirtschaftsprüfer even if these documents are not published. If the Wirtschaftsprüfer has not issued an auditor's report, a reference to the audit conducted by the Wirtschaftsprüfer in the management report or elsewhere specified for the general public is permitted only with the Wirtschaftsprüfer's written consent and using the wording authorized by him.

(2) If the Wirtschaftsprüfer revokes the auditor's report, it may no longer be used. If the client has already made use of the auditor's report, he must announce its revocation upon the Wirtschaftsprüfer's request.

(3) The client has a right to 5 copies of the long-form report. Additional copies will be charged for separately.

11. Supplementary provisions for assistance with tax matters

(1) When advising on an individual tax issue as well as when furnishing continuous tax advice, the Wirtschaftsprüfer is entitled to assume that the facts provided by the client – especially numerical disclosures – are correct and complete; this also applies to bookkeeping engagements. Nevertheless, he is obliged to inform the client of any errors he has discovered.

(2) The tax consulting engagement does not encompass procedures required to meet deadlines, unless the Wirtschaftsprüfer has explicitly accepted the engagement for this. In this event the client must provide the Wirtschaftsprüfer, on a timely basis, all supporting documents and records – especially tax assessments – material to meeting the deadlines, so that the Wirtschaftsprüfer has an appropriate time period available to work therewith.

(3) In the absence of other written agreements, continuous tax advice encompasses the following work during the contract period:

a) preparation of annual tax returns for income tax, corporation tax and business tax, as well as net worth tax returns on the basis of the annual financial statements and other schedules and evidence required for tax purposes to be submitted by the client

b) examination of tax assessments in relation to the taxes mentioned in (a)

c) negotiations with tax authorities in connection with the returns and assessments mentioned in (a) and (b)

d) participation in tax audits and evaluation of the results of tax audits with respect to the taxes mentioned in (a)

e) participation in Einspruchs- und Beschwerdeverfahren [appeals and complaint procedures] with respect to the taxes mentioned in (a).

In the afore-mentioned work the Wirtschaftsprüfer takes material published legal decisions and administrative interpretations into account.

(4) If the Wirtschaftsprüfer receives a fixed fee for continuous tax advice, in the absence of other written agreements the work mentioned under paragraph 3 (d) and (e) will be charged separately.

(5) Services with respect to special individual issues for income tax, corporate tax, business tax, valuation procedures for property and net worth taxation, and net worth tax as well as all issues in relation to sales tax, wages tax, other taxes and dues require a special engagement. This also applies to:

a) the treatment of nonrecurring tax matters, e. g. in the field of estate tax, capital transactions tax, real estate acquisition tax

b) participation and representation in proceedings before tax and administrative courts and in criminal proceedings with respect to taxes, and

c) the granting of advice and work with respect to expert opinions in connection with conversions of legal form, mergers, capital increases and reductions, financial reorganizations, admission and retirement of partners or shareholders, sale of a business, liquidations and the like.

(6) To the extent that the annual sales tax return is accepted as additional work, this does not include the review of any special accounting prerequisities nor of the issue as to whether all potential legal sales tax reductions have been claimed. No guarantee is assumed for the completeness of the supporting documents and records to validate the deduction of the input tax credit.

12. Confidentiality towards third parties and data security

(1) Pursuant to the law the Wirtschaftsprüfer is obliged to treat all facts that he comes to know in connection with his work as confidential, irrespective of whether these concern the client himself or his business associations, unless the client releases him from this obligation.

(2) The Wirtschaftsprüfer may only release long-form reports, expert opinions and other written statements on the results of his work to third parties with the consent of his client.

(3) The Wirtschaftsprüfer is entitled – within the purposes stipulated by the client – to process personal data entrusted to him or allow them to be processed by third parties.

13. Default of acceptance and lack of cooperation on the part of the client

If the client defaults in accepting the services offered by the Wirtschaftsprüfer or if the client does not provide the assistance incumbent on him pursuant to No. 3 or otherwise, the Wirtschaftsprüfer is entitled to cancel the contract immediately. The Wirtschaftsprüfer's right to compensation for additional expenses as well as for damages caused by the default or the lack of assistance is not affected, even if the Wirtschaftsprüfer does not exercise his right to cancel.

14. Remuneration

(1) In addition to his claims for fees or remuneration, the Wirtschaftsprüfer is entitled to reimbursement of his outlays: sales tax will be billed separately. He may claim appropriate advances for remuneration and reimbursement of outlays and make the rendering of his services dependent upon the complete satisfaction of his claims. Multiple clients awarding engagements are jointly and severally liable.

(2) Any set off against the Wirtschaftsprüfer's claims for remuneration and reimbursement of outlays is permitted only for undisputed claims or claims determined to be legally valid.

15. Retention and return of supporting documentation and records

(1) The Wirtschaftsprüfer retains, for seven years, the supporting documents and records in connection with the completion of the engagement – that had been provided to him and that he has prepared himself – as well as the correspondence with respect to the engagement.

(2) After the settlement of his claims arising from the engagement, the Wirtschaftsprüfer, upon the request of the client, must return all supporting documents and records obtained from him or for him by reason of his work on the engagement. This does not, however, apply to correspondence exchanged between the Wirtschaftsprüfer and his client and to any documents of which the client already has the original or a copy. The Wirtschaftsprüfer may prepare and retain copies or photocopies of supporting documents and records which he returns to the client.

16. Applicable law

Only German law applies to the engagement, its conduct and any claims arising therefrom.