

Significant Differences in Corporate Governance Practices for Purposes of Section 303A.11 of the New York Stock Exchange Listed Company Manual ('NYSE Manual')

Corporate governance principles for our company are set forth in the German Stock Corporation Act (*Aktiengesetz*, the “Stock Corporation Act”), our articles of association (*Satzung*) and rules of procedure (*Geschäftsordnungen*) and the German Corporate Governance Code (*Deutscher Corporate Governance Kodex*, the “Code”). The Code was released in 2002 by a commission comprised of German corporate governance experts, including top managers of large German companies and representatives of institutional and retail investors, academia, the accounting profession and labor unions, that was appointed by the German Federal Ministry of Justice in 2001. The Code has been amended since its initial release, most recently in June 2006. As a general rule, the Code will be reviewed annually and amended if necessary to reflect international corporate governance developments. The Code describes and summarizes the basic mandatory statutory corporate governance principles found in the Stock Corporation Act and other provisions of German law. In addition, it contains supplemental recommendations and suggestions for standards on responsible corporate governance intended to reflect generally accepted best practice.

We believe the following to be the significant differences between German corporate governance practices, as we have implemented them, and those applicable to U.S. companies under NYSE listing standards.

The Code does not set forth mandatory provisions of law.

The Code addresses six core areas of corporate governance. These are (i) shareholders and shareholders’ meetings, (ii) the interaction between the Management Board (*Vorstand*) and the Supervisory Board (*Aufsichtsrat*), (iii) the Management Board, (iv) the Supervisory Board, (v) transparency and (vi) accounting and audits. Although these corporate governance issues are similar to those covered by the NYSE corporate governance guidelines and code of business conduct that a U.S. company subject to the NYSE listing standards must adopt and disclose, the Code’s provisions as such are not legally binding.

The Code contains three types of provisions. First, the Code describes and summarizes the existing statutory, *i.e.*, legally binding, corporate governance framework set forth in the Stock Corporation Act and in other German laws. Those laws – and not the incomplete and abbreviated summaries of them reflected in the Code – must be complied with. The second type of provisions is “recommendations”. While these are not legally binding, § 161 of the Stock Corporation Act requires that a German stock corporation (*Aktiengesellschaft*) listed on a stock exchange must issue an annual compliance report stating which of these Code recommendations, if any, are not being applied. Disclosure is not required in the event of immaterial non-compliance, such as a one-time failure to comply with a recommendation that imposes ongoing obligations. However, failure to apply a recommendation at all will almost always constitute material non-compliance that needs to be disclosed. The third and final type of Code provisions comprises “suggestions” which issuers may choose not to adopt without disclosure. The Code contains suggestions for almost all of the core areas of corporate governance addressed.

A German stock corporation is required to have a two-tier board system.

A German stock corporation is required by the Stock Corporation Act to have both a Supervisory Board (*Aufsichtsrat*) and a Management Board (*Vorstand*). This contrasts with

the unitary board of directors envisaged by the relevant laws of all U.S. states and the NYSE listing standards. Under the Stock Corporation Act, the two boards are separate and no individual may be a member of both boards. Both the members of the Management Board and the members of the Supervisory Board owe a duty of loyalty and care to the stock corporation. The Boards must take into account a broad range of considerations, including the interests of Qimonda and its shareholders, customers, creditors and employees.

The Management Board is responsible for managing the company and representing the company in its dealings with third parties. The Management Board is also required to ensure appropriate risk management within the corporation and to establish an internal monitoring system.

The Supervisory Board of our company is subject to the German Act on the One-Third Participation of Employees in Supervisory Boards (*Gesetz über die Drittelbeteiligung der Arbeitnehmer im Aufsichtsrat*), pursuant to which our Supervisory Board consists of representatives of the shareholders and representatives of the employees. Our employees have the right to elect 2 of the total of 6 Supervisory Board members. The chairman of our Supervisory Board is a shareholder representative who has the deciding vote in the event of a tie.

The Supervisory Board appoints and removes the members of the Management Board. Although it is not permitted to make management decisions, the Supervisory Board has comprehensive monitoring functions, including advising the company on a regular basis and participating in decisions of fundamental importance to the company. To ensure that these monitoring functions are carried out properly, the Management Board must, among other things, regularly report to the Supervisory Board with regard to current business operations and business planning, including any deviation of actual developments from concrete and material targets previously presented to the Supervisory Board. The Supervisory Board may also request special reports from the Management Board at any time. Under the Stock Corporation Act, the articles of association or the rules of procedures of a stock corporation must subject “certain kinds of transactions”, *i.e.*, transactions of fundamental importance to the stock corporation, such as major strategic decisions or other actions that may have a fundamental impact on the company’s assets and liabilities, financial condition or results of operations, to the consent of the Supervisory Board. The rules of procedure for our Management Board contain a list of transactions to which the Supervisory Board must consent. In light of the limitation on the making by the Supervisory Board of management decisions, less significant transactions are not meant to be subject to the consent of the Supervisory Board.

The committees required by the NYSE Manual are not required under the Stock Corporation Act or the Code.

The Stock Corporation Act does not require that we establish any Supervisory Board committee. The Code contains the recommendation that the Supervisory Board establish one or more committees with sufficiently qualified members. In particular, it recommends establishing an “audit committee” to handle issues of accounting and risk management, auditor independence, the engagement and compensation of outside auditors appointed by the shareholders’ meeting and the determination of auditing focal points. The Code also includes suggestions on other subjects that may be handled by committees, including corporate strategy, compensation of the members of the Management Board, investments and financing.

Under the Stock Corporation Act, any Supervisory Board committee must regularly report to the Supervisory Board.

We have created a technology committee, a presidential committee and an audit committee. As a result of our listing on the NYSE, our audit committee is required to comply with the provisions of Section 301 of the Sarbanes-Oxley Act and Rule 10A-3 of the U.S. Securities Exchange Act of 1934, which are also applicable to U.S. companies. We are also required to disclose information concerning any “audit committee financial expert” (as defined in the relevant SEC rules) serving on our audit committee, the fees we pay to our auditors for various services, the policies we have for approving engagements of these auditors in advance and any exemptions from the listing standards for audit committees on which we rely in our annual report on Form 20-F.

Our audit committee is not subject to requirements similar to those applied to U.S. companies under Section 303.07 of the NYSE Manual. These requirements include an affirmative determination that audit committee members are “independent” according to strict criteria, the adoption of a written charter addressing the audit committee’s purpose and an annual performance evaluation, and the review of an auditor’s report describing internal quality-control issues and procedures and all relationships between the auditor and the corporation.

The NYSE Manual and the Stock Corporation Act and the Code address the issue of “independence” differently.

As noted above, German corporate law does not require an affirmative independence determination, meaning that the Supervisory Board need not make affirmative findings that audit committee members are independent. Nevertheless, both the Stock Corporation Act and the Code contain several rules, recommendations and suggestions to ensure the Supervisory Board’s independent advice and supervision of the Management Board. Under the Stock Corporation Act, advisory, service and certain other contracts between a member of the Supervisory Board and the company require the Supervisory Board’s approval. A similar requirement applies to loans granted by the stock corporation to a Supervisory Board member or other persons, such as certain members of the Supervisory Board member’s family. In addition, the Code recommends that no more than two former members of the Management Board be members of the Supervisory Board and that Supervisory Board members not exercise directorships or accept advisory tasks for important competitors of the stock corporation. Furthermore, as noted above the Code suggests that the chairman of the audit committee should not be the current chair of the Supervisory Board or a former member of the Management Board of the stock corporation.

As part of the duty of loyalty owed to our Company, our Supervisory Board members are required to avoid conflicts of interest. Furthermore, the Code recommends that each member of the Supervisory Board inform the Supervisory Board of any conflicts of interest which may result from a consulting or directorship function with clients, suppliers, lenders or other business partners of the stock corporation. In the case of material conflicts of interest or ongoing conflicts, the Code recommends that the mandate of the Supervisory Board member be terminated. The Code further recommends that any conflicts of interest that have occurred be reported by the Supervisory Board at the annual shareholders’ meeting, together with the action taken, and that potential conflicts of interest be also taken into account in the nomination process for the election of Supervisory Board members.

German corporate law generally requires shareholder approval for a wider range of transactions and activities than the NYSE Manual.

The NYSE Manual only requires U.S. companies to seek shareholder approval for certain equity compensation plans and issuances of common stock. Under the Stock Corporation Act and other applicable German laws, shareholder approval is required for amendments to the articles of association, certain corporate measures (including inter-company agreements and material restructurings), the issuance of new shares and of convertible bonds or bonds with warrants attached, the authorization to purchase the corporation's own shares and other essential issues, such as transfers of all, or substantially all, of the assets of the stock corporation, including shareholdings in subsidiaries. However, we might not be required to seek shareholder approval for issuances of shares in some circumstances in which a U.S. company would be required to do so under the NYSE rules applicable to domestic companies. An example would be our acquisition of another company for shares representing more than 20% of the voting power in us using previously authorized capital available for acquisitions.

Shareholder approval in a German stock corporation such as Qimonda AG is obtained through a shareholders' meeting (*Hauptversammlung*), which must be held at least once a year. At the annual shareholders' meeting, the shareholders resolve the appropriation of distributable balance sheet profit and discharge the acts of the Management Board and Supervisory Board. Furthermore, our outside auditor is appointed by a shareholders' resolution adopted in the annual meeting based on a proposal by the Supervisory Board.