

**Joint Report**  
**of the Executive Board of Wacker Chemie AG**  
and  
**the Management of Wacker-Chemie Achte Venture GmbH**  
as per Section 293a of the German Stock Corporation Act (AktG)  
**Regarding a Draft Profit-and-Loss Transfer Agreement**  
between  
**Wacker Chemie AG**  
and  
**Wacker-Chemie Achte Venture GmbH**

**I.**  
**Introduction**

Wacker Chemie AG and Wacker-Chemie Achte Venture GmbH wish to enter into a profit-and-loss transfer agreement pursuant to Section 291, Subsection 1 (1), 2nd Alternative, of the German Stock Corporation Act (AktG) (hereinafter referred to as the “agreement”). Said agreement must be in writing. To be valid under civil law, it shall also require the consent of Wacker Chemie AG’s annual shareholders’ meeting and Wacker-Chemie Achte Venture GmbH’s general meeting of shareholders. Wacker Chemie AG’s annual shareholders’ meeting will be requested to approve said agreement, pursuant to Section 293 AktG, the expected date of said meeting being scheduled for May 18, 2011. Wacker-Chemie Achte Venture GmbH’s general meeting of shareholders takes place immediately thereafter and will likewise be requested to approve same. Said agreement shall be concluded within one week of both meetings consenting thereto. The agreement becomes effective once it has been entered in Wacker-Chemie Achte Venture GmbH’s commercial register.

To inform the shareholders of both companies and to prepare the appropriate taking of each company’s resolution, Wacker Chemie AG’s Executive Board and Wacker-Chemie Achte Venture GmbH’s management jointly submit the following report in accordance with Section 293a AktG.

**II.**  
**The Contractual Partners**

The parties to said agreement are Wacker Chemie AG and Wacker-Chemie Achte Venture GmbH.

**2.1 Wacker Chemie AG**

Headquartered in Munich, Germany, and entered in the Munich District Court’s commercial register (under HRB 159705), Wacker Chemie AG is a listed stock corporation (Aktiengesellschaft). Wacker Chemie AG is the Wacker Group’s parent company. Its capital stock amounts to €260,763,000. Wacker Chemie AG is a globally active company with state-of-the-art specialty chemical products. As of December 31, 2010, Wacker Chemie AG had some 16,300 employees.

Its business year runs from January 1 to December 31.

## **2.2 Wacker-Chemie Achte Venture GmbH**

Founded on December 23, 2004, Wacker-Chemie Achte Venture GmbH was entered in the Munich District Court's commercial register (under HRB 155956) on February 8, 2005. Its capital stock amounts to €25,000. The purpose of Wacker-Chemie Achte Venture GmbH is to participate in, and administer, subsidiaries of Wacker Chemie AG. The company can participate in other enterprises with similar business activities, regardless of the legal form of said enterprises. It can also set up branch offices.

Wacker Chemie AG is the sole shareholder of Wacker-Chemie Achte Venture GmbH. Since 2009, Wacker-Chemie Achte Venture GmbH has been the sole owner of Wacker Polysilicon North America LLC, which is currently engaged in setting up a polysilicon production plant in the US State of Tennessee, and on whose behalf the Wacker Group has set aside investment capital of about €1.1 billion. As per December 31, 2010, Wacker-Chemie Achte Venture GmbH's equity amounted to €15,717,068.74. Its balance sheet total is €20 higher, totaling €15,717,088.74. In fiscal 2010, the company's net income amounted to €0.30. After booking initial losses, Wacker Polysilicon North America LLC is expected to pay any profits to Wacker-Chemie Achte Venture GmbH.

In order to integrate the US-based production of polysilicon into the existing US-American entities of the Wacker Group and subject to a final decision about the economic benefits and disadvantages of such an integration, it is currently intended to transfer the shares in Wacker-Chemie Achte Venture GmbH to Wacker Chemical Corporation, a corporation located in Michigan, USA, being a wholly-owned indirect subsidiary of Wacker Chemie AG.

Wacker-Chemie Achte Venture GmbH's business year runs from January 1 to December 31.

### **III. Reasons for the Agreement**

Said agreement is a profit-and-loss transfer agreement as defined by Section 291, Subsection 1, 2nd Alternative, AktG.

The main aspects of the agreement are as follows:

- Section 1 thereof deals with the obligation to transfer the entire profits to the other contractual party, said obligation being characteristic of such a profit-and-loss transfer agreement. Wacker-Chemie Achte Venture GmbH (in its capacity as fiscal subsidiary company) shall undertake, for the duration of this agreement, to transfer all its profits, calculated as per Section 301 AktG, to Wacker Chemie AG (in its capacity as fiscal parent company). Once this agreement enters into force during the current fiscal year, the above obligation to transfer all the profits becomes effective for the first time. Those terms of Section 301 AktG that are needed in order to acknowledge legal fiscal unity (i.e. a German tax-consolidated group known as "Organschaft") are taken into account by way of an appropriate arrangement (one that is "dynamic," i.e. referring to whichever version of this provision is valid at any one particular time).
- Section 2 thereof deals with the transfer of any losses to Wacker Chemie AG. Wacker Chemie AG shall undertake, as per Section 302 AktG, to assume any net loss otherwise incurred by Wacker-Chemie Achte Venture GmbH during this agreement – i.e. without taking account of the contractual obligation to assume losses. The obligation to assume losses shall therefore apply only if said otherwise incurred net loss is not offset by the release of sums from other retained earnings, said sums having been posted in said

other retained earnings for the duration of this agreement. The provisions set out in Section 302 AktG regarding the transfer of losses shall apply in whichever version is valid at any one particular time. The obligation to assume losses correlates with the transfer of profits and is mandatory for the acknowledgment of legal fiscal unit (Section 17 of the German Corporation Tax Act (KStG)).

- Section 3 thereof stipulates that Wacker-Chemie Achte Venture GmbH prepares its annual financial statements in consultation with Wacker Chemie AG. The aim is to ensure that the annual financial statements are prepared properly and that the profit-and-loss transfer agreement is implemented effectively.
- Section 4 thereof deals with the settlement date of the claim to have profits transferred and to have losses assumed. The claim to the transfer of profits becomes effective at the end of Wacker-Chemie Achte Venture GmbH's fiscal year and is due at this point in time. Analogous stipulations apply to any claim to have losses assumed. Both the claim to have profits transferred and the claim to have the net loss assumed shall, between the settlement date and actual performance, bear interest at a rate of 5% for the year. This obligation to charge interest is based on Sections 352 and 353 of the German Commercial Code (HGB). These terms were included in the present agreement in order to avoid unclear points of law. Section 4 also contains a provision on the possibility of installment payments on an expected profit-transfer claim or advance payments on any expected net losses to be offset, which payments can be non-interest-bearing in each case.
- Sections 5 and 6 thereof contain provisions on the contractual duration and the date on which the agreement takes effect. Once entered in the fiscal subsidiary company's commercial register, said agreement takes effect under civil law. However, the obligations, especially those pertaining to the transfer of profits and the assumption of losses, take effect retroactively as of the beginning of the fiscal subsidiary companies' fiscal year in which the agreement becomes effective by registration in the Commercial Registry at the domicile of the fiscal subsidiary company. Unless terminated prematurely for mandatory legal reasons, the agreement shall last for an indefinite term. The agreement may be terminated with a three months notice towards the end of the fiscal year of the financial subsidiary company, but in no event shall a termination be possible before the end of the fifth full year after the beginning of the fiscal year of the fiscal subsidiary company in which the agreement becomes effective. To render legal fiscal unity effective, said agreement must, in accordance with Section 14, Subsection 1 (1) No. 3 in conjunction with Section 17 (1) KStG, be concluded for a period of at least five years and actually be implemented throughout its valid term. Section 5, Subsection 2, clarifies that the agreement can be terminated for good cause without having to comply with a specific period of notice. One example of good cause is if the fiscal parent company's stake in the fiscal subsidiary company no longer fulfills the scope required under tax law for financial incorporation. This is particularly so whenever the fiscal parent company no longer has an indirect or direct majority stake in the fiscal subsidiary company. Section 6 clarifies that conclusion of said agreement requires the consent of the contracting parties' respective meetings of shareholders.
- Finally, Section 7 thereof contains the usual severability clause, whereby the agreement's overall validity shall not be affected should individual contractual terms and conditions become invalid or unworkable or should omissions be discovered. In such an event, the contracting parties shall undertake to replace an invalid, unworkable or incomplete provision with a legally valid provision that they would have agreed to, in accordance with their business intentions, if they had noticed the invalid or unworkable nature of the provision or spotted this omission.

#### **IV. Explanation of the Legal and Economic Reasons for Concluding the Profit-and-Loss Transfer Agreement**

Said agreement provides an opportunity to create fiscal unity (under German corporation and trade tax law) between Wacker Chemie AG and Wacker-Chemie Achte Venture GmbH. Based on a relationship of fiscal unity, any profits and losses pertaining to Wacker-Chemie Achte Venture GmbH in its capacity as fiscal subsidiary company are directly attributable to Wacker Chemie AG in its capacity as fiscal parent company, thus enabling positive and negative results to be settled for tax purposes on a Group level. Depending on the taxable earnings of the companies involved, this settlement mechanism may provide tax benefits. This is expected to be the case especially during the time of the planned investment and beginning of the operations of the polysilicon production plant of Wacker Polysilicon North America LLC in Tennessee, USA.

It is currently planned to finance the setup of the polysilicon production plant in Tennessee in part through group-internal loans to be granted to Wacker-Chemie Achte Venture GmbH. The interest burden of Wacker-Chemie Achte Venture GmbH for these group-internal loans would be matched by corresponding interest earnings of other companies of the Wacker-Group and would consequently not affect the consolidated result of the Wacker-Group. In the beginning it is uncertain, however, if the interest burden of Wacker-Chemie Achte Venture GmbH can be compensated through the withdrawal of the earnings of Wacker Polysilicon North America LLC by Wacker-Chemie Achte Venture GmbH. The losses resulting from the tax burden - which are matched by respective interest earnings of Wacker Chemie AG - would have to be assumed by Wacker Chemie AG pursuant to the agreement. Under a fiscal unity, this assumption of interest burden pursuant to the agreement will lead to tax benefits, especially during the financing phase.

No economically meaningful alternative to concluding the agreement exists, because no other legal or tax-based structuring would be able to meet the contractual aims. If a profit-and-loss transfer agreement were not to be concluded, Wacker-Chemie Achte Venture GmbH's profits might at most be subject to profit distribution. However, this distribution would, under current fiscal stipulations, be subject to German corporation and trade tax of 5%. Even transforming Wacker-Chemie Achte Venture GmbH from a limited liability company into a partnership (Personengesellschaft) would not entail the desired tax benefits. For trade-tax purposes, income would be subject to taxation at the level of a partnership, whereas, in the case of fiscal unity, this income can be taxed directly at the level of Wacker Chemie AG, and settled against any losses made by Wacker Chemie AG. Even the merger of Wacker-Chemie Achte Venture GmbH with Wacker Chemie AG is not a viable option, because the loss of Wacker-Chemie Achte Venture GmbH's legal independence is not desirable.

The agreement creates benefits for Wacker-Chemie Achte Venture GmbH in the form of a financial safeguard, because Wacker Chemie AG must offset all losses (including those resulting from group-internal loans) that may arise.

From the point of view of Wacker Chemie AG's shareholders, the agreement will not give rise to any consequences of note, apart from the aforementioned obligation to assume any losses. This is particularly because there is no requirement for any compensation payment or financial settlement with outside shareholders.

**V.**  
**Agreement Not Subject to Auditing**

Since Wacker Chemie AG is Wacker-Chemie Achte Venture GmbH's sole shareholder and there are no outside shareholders, said agreement does not require any provisions regarding compensation payment to, or financial settlement with, such shareholders as defined in Sections 304 and 305 AktG. For this reason, there is no need either to audit the agreement pursuant to Section 293b, Subsection 1 AktG, or to submit an audit report as per Section 293e AktG. For want of a compensation payment pursuant to Section 304 AktG, which payment would have to be determined in accordance therewith, and for want of a financial settlement as per Section 305 AktG, there is likewise no need to evaluate the contracting companies in order to ascertain either a reasonable compensation payment or a reasonable financial settlement.

Said agreement is therefore beneficial both to Wacker Chemie AG and to Wacker-Chemie Achte Venture GmbH.

Munich, Germany, March 30, 2011

**Wacker Chemie AG**  
Executive Board

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Dr. Rudolf Staudigl

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Dr. Wilhelm Sittenthaler

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Dr. Joachim Rauhut

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Auguste Willems

**Wacker-Chemie Achte Venture GmbH**  
Managing Director

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Goetz N. Neumann