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Munich, 12 May 2022

**Second Noteholders' Meeting of ESA Bond 2012/2022 on 30 May 2022 in Walldorf
(ISIN: DE000A1R0RZ5 / WKN: A1R0RZ)**

Here: Proposal Countermeasures

Dear Sir or Madam,

We refer to the invitation to the Second Noteholders' Meeting of Ekosem-Agrar AG ("**Issuer**") on 30 May 2022 in Walldorf, Germany, published in the German Federal Gazette (*Bundesanzeiger*), regarding the EUR 78,000,000.00 (previously EUR 60,000,000.00) 8.5% Bearer Bonds 2012/2022, ISIN: DE000A1R0RZ5 (collectively "**ESA Bond 2012/2022**").

Mr Markus Kienle, attorney-at-law, member of the management board of Schutzgemeinschaft der Kapitalanleger e.V. (SdK), Mr Hans-Jürgen Friedrich, member of the management board of KFM Deutsche Mittelstand AG, and Mr Dirk Heinrich Hermann Klitsch, member of the board of directors of the investment company Goldberg Holding SA, Lugano, Switzerland, together are the "**Movants**" (*Antragsteller*).

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Regarding agenda item 2 to 4 of the Noteholders' Meeting we propose the following counter motions as stated in this letter.

1. Preliminary remarks

The definitions used in the invitation to the Second Noteholders' Meeting published in the German Federal Gazette also apply to these counter motions.

The Movants are of the opinion that a value recovery option for the Noteholders should be created for the partial interest waiver as well as an incentive for the Issuer to repay the nominal amount of the ESA Bond 2012/2022 before the end of the extended term, if possible. In addition, we do not consider a waiver of the rights of the Noteholders in the event of a change of control necessary to take account of the legitimate interests of the Noteholders. It is however necessary and required to increase the quorum for the effective exercise of the Put Redemption Option to not less than 51% of the total nominal amount of the Notes so that the majority will decide on the future of the company in the event of a change of control.

In this context, we have held intensive discussions with the members of the Noteholders' Advisory Council, the designated Joint Representative, other Noteholders and the Issuer in recent weeks and are therefore submitting the following counter motions to agenda items 2 to 4.

2. Counter motion re TOP 2 (Resolution on the restructuring of the ESA Bond 2012/2022)

The Movants propose to pass the following resolution:

2.1. Reduction of interest, extension of term, clarification regarding termination rights

2.1.1. The interest rate of the ESA Bond 2012/2022 shall be reduced from 8.5% p.a. to 2.5% as of 7 December 2021 (including). The Issuer shall be entitled to defer interest payments by unilateral declaration once or several times, in whole or in part, for one year at a time, i.e. to postpone the due date to the respective subsequent interest payment date ("**Interest Deferral**"). The Interest Deferral shall be announced no later than one month before the respective Interest Payment Date in accordance with Clause 10 of the Terms and Conditions ("**Deferral Declaration**"). Interest that has already been deferred may be deferred once or several times for a further year. Interest Deferral beyond the

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Redemption Date of the bond shall not be permitted. Deferred interest shall not bear interest. Prior to any Deferral Declaration, the Issuer shall inform the Joint Representative and the noteholders' advisory council, consisting of Messrs. Hans-Jürgen Friedrich, Markus Kienle and Dirk Heinrich Hermann Klitsch ("**Noteholders' Advisory Council**"), and seek their advice with respect to the intended Interest Deferral and its scope ("**Consultation Obligation**"). The Noteholders consent to any Interest Deferrals.

2.1.2. The maturity of the principal claim of the ESA Bond 2012/2022 shall be extended by five years to 6 December 2027 (including). The redemption amount on the maturity date corresponds to 136% of the then outstanding nominal amount of the Bearer Notes. The Issuer shall be entitled to call in the outstanding Bearer Notes early at any time with a notice period of not less than 30 and not more than 60 days in accordance with Clause 10 of the Terms and Conditions *vis-à-vis* the Noteholders in the full amount or in the amount of any partial amount of the respective outstanding nominal amount on one or more occasions and to repay them on the call-in date in the amount of the Early Redemption Amount (Call) (as defined below). The Early Redemption Amount (Call) shall be in the event of early redemption

- until 7 December 2024 (including) 100% of the nominal amount of the Bearer Notes to be repaid,
- until 7 December 2025 (including) 112% of the nominal amount of the Bearer Notes to be repaid,
- until 7 December 2026 (including) 124% of the nominal amount of the Bearer Notes to be repaid,
- after 7 December 2026 136% of the nominal amount of the Bearer Notes to be repaid.

Outstanding interest, even to the extent that it has been deferred, shall become due on the call-in date in the amount corresponding to the ratio of the nominal amount of the Notes called-in to the nominal amount still outstanding on the call-in date.

2.1.3. It is clarified that the untimely submission or non-submission of annual financial statements of the Issuer or the untimely issuance or non-issuance of an audit opinion (*Bestätigungsvermerk*) by the auditor of the Issuer shall

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not trigger any termination rights or other rights or claims of the Holders of the Bearer Notes.

- 2.1.4.** In the Terms and Conditions, the heading "Terms and Conditions of the Ekosem Bond 2012/2022" is amended and changed as follows¹: "Terms and Conditions of the Ekosem Bond 2012/2027".

In Clause 2 letter a) of the Terms and Conditions, sentence 1 is amended and changed as follows:

"The Bearer Notes shall bear interest from 7 December 2012 (including) until 6 December 2021 (including) at a rate of 8.5% p.a. and from 7 December 2021 (including) until 6 December 2027 (including) at a rate of 2.5% p.a., in each case in relation to their nominal amount."

After Clause 2 letter a) of the Terms and Conditions a new letter b) is inserted. The present letters b) and c) become letters c) and d). The new letter b) of Clause 2 of the Terms and Conditions is amended as follows:

»b) The Issuer shall be entitled to defer interest payments by unilateral declaration once or several times, in whole or in part, for one year at a time, i.e. to postpone the due date to the respective subsequent interest payment date ("**Interest Deferral**"). The Interest Deferral shall be announced no later than one month before the respective Interest Payment Date in accordance with Clause 10 of the Terms and Conditions ("**Deferral Declaration**"). Interest that has already been deferred may be deferred once or several times for a further year. Interest Deferral beyond the Redemption Date shall not be permitted. Deferred interest shall not bear interest. Prior to any Deferral Declaration, the Issuer shall inform the Joint Representative and the noteholders' advisory council, consisting of Messrs. Hans-Jürgen Friedrich, Markus Kienle and Dirk Heinrich Hermann Klitsch ("**Noteholders' Advisory Council**"), and seek their advice with respect to the intended Interest Deferral and its scope ("**Consultation Obligation**").«

¹ It is – again – clarified that only the German version is decisive.

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Clause 4 letter a) of the Terms and Conditions is amended and changed as follows:

»The Bearer Notes shall be repaid on 7 December 2027 ("**Redemption Date**"), unless already repaid fully or partly before the maturity date. The Bearer Notes shall be redeemed on the Redemption Date in the amount of the redemption amount. The redemption amount with regard to each Bearer Note corresponds to 136% of the outstanding nominal amount of the Bearer Notes.«

In Clause 8 letter a) of the Terms and Conditions, the following last sentence ("If the reasons for termination are rectified before exercising the termination right, the termination right shall expire."), the following last sentence shall be added:

»The untimely submission or non-submission of annual financial statements of the Issuer or the untimely issuance or non-issuance of an audit opinion by the auditor of the Issuer shall not trigger any termination rights or other rights or claims of the holders of the Bearer Notes.«

In Clause 8 letter d) of the Terms and Conditions, sentence 1 is amended and changed as follows:

»d) The Issuer shall be entitled to call in the outstanding Bearer Notes early at any time with a notice period of not less than 30 and not more than 60 days in accordance with Clause 10 of the Terms and Conditions vis-à-vis the Noteholders in the full amount or in the amount of any partial amount of the respective outstanding nominal amount on one or more occasions and to repay them at the call-in date in the amount of the Early Redemption Amount (Call) (as defined below). The Early Redemption Amount (Call) shall be in the event of early redemption

- until 7 December 2024 (including) 100% of the nominal amount of the Bearer Notes to be repaid,
- until 7 December 2025 (including) 112% of the nominal amount of the Bearer Notes to be repaid,
- until 7 December 2026 (including) 124% of the nominal amount

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of the Bearer Notes to be repaid,

- after 7 December 2026 136% of the nominal amount of the Bearer Notes to be repaid.

Outstanding interest, even to the extent that it has been deferred, shall become due on the call-in date in the amount corresponding to the ratio of the nominal amount of the Notes called-in to the nominal amount still outstanding on the call-in date. It is clarified that if a partial repayment is made by reducing the outstanding nominal amount of the Bearer Notes, the term "nominal amount" in these Terms and Conditions shall only refer to the correspondingly reduced nominal amount of the Bearer Notes.«

In Clause 8 letter e) of the Terms and Conditions the following sentences 2 and 3 shall be added:

»In cases of this letter e) the redemption amount is time-dependently equivalent to the amount specified in Clause 8 letter d) sentence 2. Clause 8 letter d) sentences 3 and 4 shall remain unaffected.«

2.2. The resolution passed pursuant to this agenda item 2 shall only be executed pursuant to § 21 German Bond Act (*Schuldverschreibungsgesetz* – "**SchVG**") if

2.2.1. the Issuer has notified the Settlement Agent or the Joint Representative or the Joint Representative has determined that the resolution of the Noteholders pursuant to this agenda item 2 has not been challenged pursuant to § 20 para. 3 sentences 1 to 3 *SchVG* or that any actions for rescission filed have been terminated by settlement, withdrawal of action or settlement of the main action or that this resolution has become enforceable by virtue of a final court order pursuant to § 20 para. 3 sentence 4 *SchVG* in conjunction with § 246a German Stock Corporation Act (*Aktiengesetz* – "**AktG**") and

2.2.2. the resolution of the second Noteholders' meeting of the Noteholders of the ESA Bond 2019/2024 (ISIN: DE000A2YNR08) of 31 May 2022 on agenda item 2 therein (resolution on the restructuring of the ESA Bond 2019/2024) has become enforceable within the meaning of the resolution adopted therein under Clause 2.2.1.

2.3. Until the execution of the Noteholders' resolution pursuant to this agenda item 2, the Issuer is entitled, at its sole discretion, to refrain from the execution of the Noteholders'

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resolution pursuant to this agenda item 2.

- 2.4.** All subitems of this agenda item 2 constitute a uniform resolution proposal, as they are interconnected in terms of content. The proposed resolution under this agenda item 2 will therefore only be voted on uniformly.

3. Countermotion regarding TOP 3 (Resolution on the adjustment of the regulations on a change of control)

The Movants propose to pass the following resolution:

3.1. Amendment of quorum for exercise of Put Redemption Option

- 3.1.1.** The quorum that must be reached for the effective exercise of the Put Redemption Option in the event of a change of control shall be increased to not less than 51% of the aggregate principal amount of the Bearer Notes.

- 3.1.2.** The Terms and Conditions shall be amended as follows:

In Clause 11 letter a) of the Terms and Conditions sentence 3 shall be changed and amended as follows:

»However, for the Put Redemption Option to be effectively exercised, noteholders of Bearer Notes in the nominal amount of not less than 51% of the aggregate nominal amount of the Bearer Notes outstanding at the time of the declaration must have declared within the redemption period defined in Clause 11 e) that they wish to exercise the Put Redemption Option.«

- 3.2.** The resolution passed pursuant to this agenda item 3 shall only be executed in accordance with § 21 *SchVG* when

- 3.2.1.** the Issuer has notified the Settlement Agent or the Joint Representative or the Joint Representative has determined that the resolution of the Noteholders pursuant to this agenda item 3 has not been challenged pursuant to § 20 para. 3 sentences 1 to 3 *SchVG* or that any actions for rescission filed have been terminated by settlement, withdrawal of action or settlement of the main action or that this resolution has become enforceable by virtue of a final court

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order pursuant to § 20 para. 3 sentence 4 *SchVG* in conjunction with § 246a *AktG*; and

- 3.2.2.** the resolution of the second Noteholders' meeting of the Noteholders of the ESA Bond 2019/2024 (ISIN: DE000A2YNR08) of 31 May 2022 on agenda item 3 (Resolution on the amendment of the provisions regarding a Change of Control) has become enforceable within the meaning of the resolution adopted therein under Clause 3.2.1.
- 3.3.** Until the execution of the resolution of the Noteholders pursuant to this agenda item 3 the Issuer is entitled, at its sole discretion, to refrain from the execution of the resolution of the Noteholders pursuant to this agenda item 3.
- 3.4.** All subitems of this agenda item 3 constitute a uniform resolution proposal, as they are interrelated in terms of content. The proposed resolution under this agenda item 3 shall therefore only be voted on uniformly.
- 4. Countermotion regarding TOP 4 (Resolution on the authorisation and empowerment of the Joint Representative to declare the deferral of interest claims, the temporary exclusion of termination rights and the waiver of the Put Redemption Option as well as to approve the amendment of the Terms and Conditions)**

The Movants propose to pass the following resolution:

- 4.1.** The Joint Representative is authorised and empowered to decide on the deferral of claims, in particular the repayment claims and interest claims payable on 7 December 2022, until 31 March 2023 (including) and/or to not seriously enforce these payment claims for the Noteholders by declaration in text form *vis-à-vis* the Issuer.
- 4.2.** The Joint Representative is authorised and empowered to declare a temporary exclusion of any termination rights pursuant to Clause 8 letter a) (aa) of the Terms and Conditions until 31 March 2023 (including) by one or more declarations. Furthermore, the Common Representative shall be authorized to provide for a temporary exclusion of any termination rights pursuant to Clause 8 letter a) (bb) last alternative (which includes the last twelve words in letter a) (bb) before the last word "or") of the Terms and Conditions until 31 March 2023 (including) by means of one or more declarations. For the termination right in Clause 8 letter a) (ff) this shall apply only if within the period of Clause 11 letter e) holders of at least 51% of the aggregate principal amount of the Bearer Notes

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still outstanding at that point in time have not declared the exercise of the Redemption Option Put.

- 4.3.** The Joint Representative is instructed, authorised and empowered to defer or to not seriously enforce all claims of the Noteholders in respect of the early redemption amount (put) pursuant to Clause 11 letter c) of the Terms and Conditions for all Noteholders until the time of the execution of the resolution pursuant to agenda item 3, if (i) no actions for rescission and/or nullity has been brought against this resolution within the time limit or (ii) if an action for rescission and/or nullity has been brought against this resolution within the time limit and the Issuer, within 6 weeks after the expiry of the time limit for rescission pursuant to § 20 para. 3 sentence 1 *SchVG*, an application for release pursuant to § 20 para. 3 sentence 4 *SchVG* in conjunction with § 246a para. 1 *AktG* has been filed. § 246a para. 1 *AktG* and the competent Higher Regional Court has not rejected this application for release by a final court order (§ 20 para. 3 sentence 4 *SchVG* in conjunction with § 246a *AktG*). During this period, the Noteholders are not entitled to independently assert the rights in relation to the early redemption amount (put) pursuant to Clause 11 letter c) of the Terms and Conditions unless holders of at least 51% of the aggregate principal amount of the Bearer Notes still outstanding at that point in time declare the exercise of the Redemption Option Put within the period of Clause 11 letter e).
- 4.4.** The Joint Representative is authorised and empowered to represent the Noteholders in all measures, actions and declarations required or useful for the implementation and execution of (i) the resolutions adopted under agenda item 2 agenda item and/or (ii) the resolutions adopted under agenda item 3 to the extent that, in the Joint Representative's sole discretion, such action or declaration puts the Noteholders in a better, equal or not materially worse economic position. The Joint Representative is also authorised and empowered to declare the approvals of the amendments to the Terms and Conditions in connection with the exercise of the aforementioned authorisations and powers of attorney. This authorisation and empowerment of the Joint Representative shall, in case of doubt, be interpreted broadly. In connection with the aforementioned authorisations and powers, the Noteholders are not entitled to assert their rights independently; in particular, they are not entitled to demand interest payments during the period of the authorisation and power of attorney of the Joint Representative and/or to exercise any termination rights pursuant to Clause 8 letter a) (aa) or in accordance with Clause 8(a)(bb), last alternative (which includes the last twelve words in letter (a) (bb) before the last word "or") to the extent that the individual authorisations of the Joint Representative do not provide otherwise.

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We request that you make these counter motions to agenda items 2 to 4 available on the Issuer's website without delay.

Should you have any questions, please do not hesitate to contact us.

Sincerely

Rechtsanwalt Markus Kienle
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Hans-Jürgen Friedrich
(KFM Deutsche Mittelstand AG)

Dirk Heinrich Hermann Klitsch
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