

## **ERYTECH PHARMA**

A limited liability company (*société anonyme*) with a share capital of €2,604,822.50  
Registered office: 60, avenue Rockefeller – 69008 Lyon  
Lyon Trade and Companies Register No. 479 560 013 LYON  
(the “**Company**”)

### **ADDITIONAL REPORT OF THE BOARD OF DIRECTORS AS OF 25 JUNE 2021 FOLLOWING THE IMPLEMENTATION BY THE BOARD OF DIRECTORS OF THE DELEGATION GRANTED BY THE TWENTY-FIFTH RESOLUTION OF THE COMBINED SHAREHOLDER’S MEETING OF JUNE 26, 2020**

Dear Shareholders,

The Board of Directors has decided to implement the delegation granted in its twenty-fifth resolution by Erytech's combined general shareholders' meeting held on June 26, 2020 (the “**AGM**”) and decided on the principle of a capital increase reserved for specific categories of investors with cancellation of preferential subscription rights for ordinary shares with warrants.

This report has been prepared in accordance with Articles R. 225-114 to R. 225-116 of the French Commercial Code following the use of this delegation by (i) the Board of Directors on April 28, 2021 and (ii) by the Chief Executive Officer in his decision dated April 29, 2021, and describes the final terms and conditions of the transaction and provides an assessment of the effective impact of the transaction on the situation of the Company's shareholders. The impact of the issue on the share of shareholders' equity and on the position of shareholders is set out in Appendix 1.

It is specified that, in accordance with the instructions of the Board of Directors, the Chief Executive Officer has reported on June 25, 2021 to the Board on the terms and conditions of the implementation of the sub-delegation granted to him on April 28, 2021, pursuant to paragraph 4 of Article L22-10-49 of the French Commercial Code.

#### **1. Delegation of the AGM to the Board of Directors dated June 26, 2020**

The Board of Directors recalls that the General Shareholders' Meeting, in its twenty-fifth resolution, granted the Company's Board of Directors an 18-month authorization to increase the share capital by issuing ordinary shares or securities convertible to shares with cancellation preferential of subscription rights for the benefit of certain categories of investors (the “**Twenty-Fifth Resolution**”).

The Board of Directors indicates that under the terms of the Twenty-Fifth Resolution, the AGM decided, inter alia, that :

*“The General Shareholders’ Meeting, voting under the rules of quorum and majority required for Extraordinary General Shareholders’ Meetings, after having read the Board of Directors’ report and the Statutory Auditors’ special report, in accordance with Articles L. 225-138 and L.*

225-129-2 of the French Commercial Code [...] delegates the authority to the Board of Directors, which may further delegate such authority as provided by law, to decide to increase the share capital a maximum nominal amount of EUR 1,500,000 one or more times, at the time(s) it sets forth and in the proportion it deems fit (provided that (i) a portion of the ceiling is shared with the ceiling set forth in the 21<sup>st</sup> resolution and deducted from it, and that (ii) the total nominal amount of capital increases likely to result from this resolution, as well as the 20<sup>th</sup> to 27<sup>th</sup> resolutions submitted to this General Shareholders' Meeting, may not exceed the total ceiling of EUR 2,000,000 set forth in the 20<sup>th</sup> resolution by issuing shares as well as any other securities convertible to shares to be issued immediately or in the future by the Company.

[...]

The General Shareholders' Meeting decides to remove shareholders' preemptive subscription rights to these common shares and marketable securities for this resolution and accord the right to subscribe to:

- i. physical and legal persons, including companies, trusts or investment funds, organized under French or foreign law, that habitually invest in the pharmaceutical, biotechnological or medical technology sector; and/or
- ii. companies, institutions or entities of any type, French or foreign, that exercise a significant part of their business in the pharmaceutical, cosmetic, chemical or medical devices and/or technologies or research in these sectors; and/or
- iii. French or foreign investment services companies, or any foreign firm with an equivalent status, that could guarantee to carry out an issue to be placed with the persons described in (i) and/or (ii) above, and, in this context, to subscribe to securities that are issued.

[...]

The General Meeting resolves that the Board of Directors will have full authority, and may further delegate such authority in accordance with the law, to implement this resolution, and in particular determine the list of beneficiaries from within the aforementioned category of investors who will benefit from the waiver of preferential subscription rights, to proceed with any adjustments in order to take into account the impact of operations on the Company' capital, and to settle, in compliance with the applicable laws and regulations and when appropriate the applicable contractual terms providing others adjustments cases and settle the features, amount and terms and conditions of any issue as well as the type of securities to be issued. In particular, it shall determine the number to be issued to each beneficiary and shall define the subscription price of said securities, their entitlement date which may be retroactive, as well as the duration, or the terms and conditions under which the marketable securities issued under this resolution will provide access to common shares to be issued by the Company and by which the rights of holders of securities giving access to the capital will be preserved where applicable, given the instructions contained in its report. Any amount owed to the Company should at least be equal to:

- a) For common shares issued under this delegation of authority at the Board's discretion:
  - Either at the closing price of the Company's share on the regulated Euronext Paris stock market at the last trading session preceding its being set;
  - Or the volume-weighted average price (in the central order book and excluding off-market blocks) of the Company's share prices on the regulated Euronext Paris stock market from the three trading sessions preceding the date that the issue price was set. This average may be adjusted for differences in the entitlement date, where applicable

*and may potentially be discounted by a maximum of 20%;*

- b) marketable securities issued under this delegation will be such that the amount received immediately by the Company plus any amount likely to be received subsequently by the Company, where applicable, be at least equal to the amount listed in paragraph "a)" above, for each common share issued as a result of the issue of these marketable securities.*

*The General Meeting resolves that the amount of any additional capital increases necessary to protect the rights of holders of securities giving access to Company capital shall be added to the EUR 1,500,000 amount defined above.*

*In accordance with Article L. 225-138 of the French Commercial Code, the Board of Directors will prepare a report for the next Ordinary General Shareholders' Meeting describing the definitive terms and conditions of the transactions completed, in accordance with this resolution."*

## **2. Decisions of the Board of Directors dated April 28, 2021**

On April 28, 2021 the Board of Directors of the Company, decided to approve an offering reserved to specific categories of investors as defined below with cancellation of preferential subscription rights of new ordinary shares with warrants attached (ABSAs) or units (the "Units"), each consisting of (i) four ordinary shares, par value €0.10 per share (each, an "Ordinary Share") delivered in the form of American Depositary Shares (the "ADSs"), each ADS representing one ordinary share and (ii) three warrants, each warrant to purchase one Ordinary Share (each, a "Warrant") (as exercised, collectively the "Warrant Shares");

The Board accordingly:

- (i) approved the principle of a capital increase in cash without shareholders' preferential subscription rights by way of an offering reserved to specified categories of investors of a maximum nominal value up to the maximum nominal value available under the 25th resolution i.e. 1,425,581.40 euros (corresponding to 14,255,814 new Ordinary Shares), and hereby authorizes the issuance, offering and sale of newly issued Ordinary Shares (which may be in the form of ADSs) with Warrants attached or Units, in the context of the Offering and within the ceilings authorized and available pursuant to resolution 25th and the US Prospectus Limit;
- (ii) decided that each Unit will consist of four (4) Ordinary Shares of the Company (in the form of ADS) with three (3) Warrants attached and that the exercise of one Warrant shall allow for one (1) ordinary share of the Company to be issued. As from the settlement date of the Offering, the Warrants will be detached from the corresponding Ordinary Shares, will be freely transferable, in accordance with applicable securities laws, and will be exercisable at any time during a period of two (2) years (provided that the exercise period shall be automatically extended for the same duration as the period of suspension that may be imposed upon the exercise of the Warrants pursuant to Article L. 225-149-1 of the French Commercial Code if such suspension occurs in relation to (i) an issue of new Shares or securities giving access to the share capital, or any other financial transaction involving a preferential subscription right or reserving a priority subscription period for the benefit of the Company's shareholders, or (ii) a stock-split or a reverse stock-split);

- (iii) decided that the Offering will be implemented as soon as possible after the close of trading on Nasdaq on April 28, 2021 and until April 29, 2021 before the opening of trading on Euronext Paris, or any other date that the Chief Executive Officer might decide,
- (iv) decided that the categories of investors (the "**Beneficiaries**") will consist of (i) natural and legal persons, including companies, trusts or investment funds or other investment vehicles regardless of their form, organized under French or foreign law, that regularly invest in the pharmaceutical, biotechnological or medical technology sector and/or (ii) companies, institutions or entities of any type, French or foreign, that exercise a significant part of their business in the pharmaceutical, cosmetic, chemical or medical devices and/or technologies or research in these sectors;
- (v) decided that the subscription price in euros for the Units will be, at least equal either:
  - (a) to the closing price of the Company's share on Euronext Paris at the last trading session preceding the pricing (i.e. the 28 of April, 2021), or
  - (b) to the volume-weighted average price (in the central order book and excluding off-market blocks) of the Company's share prices on Euronext Paris from the three (3) trading sessions preceding the pricing (i.e. the 26, 27 and 28 of April, 2021), it being specified that this average may be adjusted for differences in the entitlement date, where applicable,and subject to a maximum discount of 20%; and
- (vi) the exercise price of the Warrants will be such that the amount likely to be received subsequently by the Company for each ordinary share issued as a result of the issue and exercise of these Warrants, will be at least equal to the amount referred to in the paragraph (a) or (b) above;
- (vii) decided that (i) the definitive subscription price (issue premium included) of each Unit and the corresponding price of the newly issued Ordinary Shares with warrants attached and the final Terms and Condition of the Warrants will be decided by the Chief Executive Officer, on the basis of the subscription price recommended by the Agent and based on the USD/EUR exchange rate as agreed upon between the Agent and the Company on the date of determination of the price of the Offering (the "**Exchange Rate**") and that (ii) the Warrants exercise price will be set and paid in euro;
- (viii) decided that the total amount of Offering will be equal to the product of the total amount of the subscriptions received in U.S. dollars and of the Exchange Rate;
- (ix) decided that the gross proceeds of the Offering will be received by Société Générale Securities Services ("**SGSS**"), acting as central depository;
- (x) decided that the share capital increase in respect of the new Ordinary Shares to be issued will be definitely completed through the issuance of the depository's certificate (*certificat du dépositaire*) by SGSS;
- (xi) decided that the Warrants will be issued in bearer or registered form;

- (xii) decided that all fees and expenses of any kind relating to this Offering may be charged to the share issue premium;
- (xiii) decided that the new Ordinary Shares to be issued in respect of the Offering, and as the case may be the new Warrants Shares, will be completely assimilated with the existing Ordinary Shares and subject to all the provisions of the bylaws and to the decisions of the general meetings of the Company and will entitle them to any distribution of dividends decided from their date of issue;
- (xiv) decided that the new Ordinary Shares, and as the case may be the Warrants Shares, will be admitted to trading on Euronext Paris on the same listing line as the Company's existing ordinary shares. The Company's ADSs are admitted for trading on Nasdaq;
- (xv) decided that the Warrants will not be listed and will not give any right to any request to be admitted for trading and negotiations on a regulated or non-regulated market in France or abroad;
- (xvi) resolved, that H.C Wainwright & Co., LLC, or one or more of its affiliates, is hereby appointed both as Agent and the settlement agent with respect to the Offering;
- (xvii) Approved the latest drafts of the French Listing Prospectus, the Company's investor presentation, the Placement Agreement, the Subscription Agreements, the Terms and Conditions of the Warrants and the pricing press release;
- (xviii) Authorized the Company to file with the AMF the final French Listing Prospectus as may be approved by Mr. Gil Beyen, the Chief Executive Officer or Mr. Eric Soyer, the Deputy Executive Officer and Chief Financial Officer of the Company (individually, an "**Authorized Officer**" and, collectively, the "**Authorized Officers**");
- (xix) Authorized the Company, for the purpose of the Offering, to enter into, a Placement Agreement, the Subscription Agreements and the Terms and Conditions of the Warrants;
- (xx) resolved, that the Authorized Officers be, and each of them hereby is, authorized and empowered, in the name and on behalf of the Company, to negotiate, finalize and execute the Placement Agreement, the Subscription Agreements and the Terms and Conditions of the Warrants, and proceed with all the required formalities and take all actions necessary or advisable with the Agent or the investors, in the name and on behalf of the Company, and finalize and execute any other requisite documents in relation with the Offering;
- (xxi) resolved, that the Units must be subscribed in cash and fully paid up at the time of subscription and the issuance of the Units, in accordance with the Subscription Agreements, and that upon the issuance of the depositary's certificate (*certificat du dépositaire*) and the issuance and delivery of the Units in accordance with the terms of the Subscription Agreements and of the Placement Agreement, such Units will be duly and validly issued, fully paid and non-assessable;

- (xxii) resolved, that the Board decided to sub-delegate to Mr. Gil Beyen, the Chief Executive Officer of the Company, pursuant to the provisions of Article L.22-10-49 of the French Commercial Code, full power and authority in order to decide, within the limits set forth in the present decision and in accordance with legal and regulatory requirements, the implementation of the Offering at the price and upon such terms he shall approve, in particular full power and authority as to:
- decide the final amount of the Offering, the price at which the Units will be sold in the Offering and the corresponding price per Ordinary Share,
  - decide the final number of Units issued and corresponding number of Ordinary Shares and Warrants and corresponding number of shares to be issued upon exercise of the Warrants,
  - decide the final terms of Warrants and newly issued Ordinary Shares,
  - decide the final list of beneficiaries (within the Beneficiaries mentioned above) and the number of Units allocated to each of them,
  - decide the maximum share capital increase resulting from the exercise of the Warrants, it being specified that such amount shall not take into account the nominal value of the ordinary shares to be issued in order to preserve the rights of holders of securities giving access to the issued capital or capital to be issued, in accordance with the legal and regulatory provisions and the contractual stipulations providing for other cases of adjustment where appropriate,
  - request, if necessary, a trading halt of the Company's securities on Euronext Paris and/or on Nasdaq during all or part of the Offering,
  - acknowledge the payment in full and the completion of the Offering (including obtain the depositary's certificate (certificat du dépositaire),
  - determine, in accordance with the regulations in force and the Terms and Conditions of the Warrants, measures to preserve the rights of holders of the Warrants in the event that the Company would conduct operations for which the regulations in force or the Terms and Conditions of the Warrants provide for the preservation of their rights, and thereby, collect subscriptions and entitlements related to the new shares issued as a result of the exercise of the Warrants,
  - more generally, enter into any agreement related to the Offering, carry out, directly or by proxy, all appropriate measures and perform all formalities including publication formalities required to finalize the capital increase resulting from the Offering as well as the deferred capital increase(s) resulting from the exercise of the Warrants attached to the Units, and
    - collect the exercise notices of the Warrants and the corresponding payments.
- (xxiii) resolved, that the Authorized Officers are, and each of them hereby is, in the name and on behalf of the Company, authorized and directed to (a) deliver the Units to the Agent or the investors, as applicable, subject to the

terms and conditions stated in the Subscription Agreements and the Terms and Conditions of the Warrants , (b) take such actions and execute and deliver such documents or instruments as they deem necessary, appropriate or desirable in connection with the sale of the Units in the Offering or with respect to the Company's performance of its obligations under the Subscription Agreements, the Terms and Conditions of the Warrants and the Placement Agreement (c) do all things that they deem necessary, appropriate or desirable to carry out the terms and provisions of the Subscription Agreements and the Terms and Conditions of the Warrants, (d) take all actions to have the newly issued Ordinary Shares listed and quoted on Euronext Paris on the same existing line as the Company's existing Ordinary Shares and the ADSs representing such Ordinary Shares to be listed or quoted on Nasdaq, including without limitation, the preparation, execution and filing of all necessary applications, documents, forms and agreements with respectively Euronext and the AMF and Nasdaq, (e) the payment by the Company of filing, entry, listing or application fees, the preparation of temporary and permanent certificates for the Ordinary Shares to be sold in the Offering and, as the case may be, the appearance of any such officer before Nasdaq officials;

- (xxiv) resolved, that the Chief Executive Officer and the Chief Financial Officer of the Company are hereby appointed as to whom correspondence may be directed by the SEC in connection with the Offering;
- (xxv) resolved, that the officers of the Company be, and each of them hereby is, authorized and directed, for and on behalf of the Company, to prepare and file one or more prospectus supplements pursuant to Rule 424(b) under the Act and one or more free writing prospectuses pursuant to Rule 433 under the Act related to the Offering, in each case as necessary upon the advice of counsel;
- (xxvi) resolved, that the officers of the Company be, and each of them hereby is, authorized and directed, for and on behalf of the Company, to take such further actions, pay such fees and expenses, and execute and deliver such other documents, instruments, certificates or agreements as each deems necessary or appropriate to effectuate the Offering and to carry out the foregoing resolutions;
- (xxvii) resolved, that all actions heretofore taken by any officer, director, employee or agent of the Company that are within contemplation of the foregoing resolutions are hereby in all respects ratified, confirmed, authorized and approved as acts of the Company.

### **3. Decision of the Chief Executive Officer dated April 29, 2021**

On April 29, 2021, the Chief Executive Officer decided to make use of the Delegation granted under the terms of the Twenty-Fifth Resolution and the sub-delegation granted by the Board of Directors on April 28, 2021 pursuant to Article L. 22-10-49 of the French Commercial Code and, consequently :

- acknowledged that after the marketing period of the Offering and taking into account the success of the Offering, the Agent recommends, after comparison of the offer

and of the orders received in the context of the placement, to set the price per ADS, each representing one Ordinary Share, at a price to the public of 29.00 U.S. dollars;

- decided therefore to set the price of (i) each Unit at an amount equal to 29.00 U.S. dollars (corresponding to 24.03 euros on the basis of the exchange rate as agreed between the Company and the Agent and as published by the Central European Central Bank, i.e. 1.207 U.S. dollar for each euro the "**Exchange Rate**"), and (ii) each Ordinary Shares at an amount equal to 7.25 U.S. dollars (6.01 euros) corresponding to a discount of 2.25 % compared to the Reference Price and a discount of 19.91% compared to the Reference Price taking into account the theoretical value of 75% of a Warrant (€1.45), in conformity with the price limit described above;
- decided to determine, pursuant to Article L. 225-138 I *alinéa* 2 of the French Commercial Code, the list of subscribers, each of them having represented to fall into the categories of investors set in the 25<sup>th</sup> resolution of the Meeting according to the executed Subscription Agreements received by the Company and, following the closing of the Offering scheduled on May 4, 2021, to note the allocation of the Units for the benefit of these subscribers, as set forth in Annex 1;
- decided, using the 25<sup>th</sup> resolution of the Meeting, to proceed with a capital increase in cash with cancellation of preferential subscription rights by way of an offering reserved to specified categories of investors, in accordance with the provisions of Article L. 225-138 of the French Commercial Code, under the Offering of a nominal amount of 413,793.20 euros by issuing 1,034,483 Units comprised of 4,137,932 new Ordinary Shares underlying ADSs to which 3,103,449 Warrants are attached, to be subscribed in cash at a price of 6.01 euros per new Ordinary Share (i.e. 0.10 euro nominal value and 5.91 euros of the issue premium) and to be fully paid up upon subscription, i.e. a capital increase of an amount of €24,868,971.30 euros including an issue premium of an amount of €24,455,178.10 euros;
- decided that the maximum nominal amount of the share capital increase resulting from the full exercise of the Warrants will be equal to 310,344.9 euros per issuance of a maximum of 3,103,449 ordinary shares, at a nominal value of 0.10 euro to be subscribed for in cash at a price of 7.50 euros (i.e. 0.10 euro nominal value and 7.40 euros of issue premium) and to be fully paid up upon subscription, i.e. a capital increase of a maximum amount of 23,275,867.5 euros, including an issue premium of a maximum amount of 22,965,522.6 euros, it being specified that such amount does not take into account the nominal value of the ordinary shares to be issued in order to preserve the rights of holders of securities giving access to the issued capital or capital to be issued, in accordance with the legal and regulatory provisions and the contractual stipulations providing for other cases of adjustment where appropriate;
- specified that immediately upon creation, each new Ordinary Share will be transferred to The Bank of New York Mellon, acting as transfer agent and registrar for the ADSs (the "**Depository**") in exchange of which the Depository will issue the ADS, in accordance with the terms of the Placement Agreement and the amended



and restated deposit agreement dated May 14, 2018 entered into by and among the Depository, the Company and all owners and holders;

- decided that the new Ordinary Shares and the Warrants will be issued in dematerialised (*dématérialisé*) bearer form (*au porteur*) or registered form (*nominatif*) and will be inscribed in the books of Euroclear France SA and delivered by SGSS;
- decided that the subscriptions and payments of the funds will be centralized with SGSS with the settlement and delivery of the Offering scheduled for May 4, 2021. SGSS will deliver the depository's certificate (*certificat du dépositaire*) in accordance with the provisions of Article L. 225-146 of the French Commercial Code; and
- decided to request the admission of the new Ordinary Shares on Euronext Paris and the admission of ADSs on Nasdaq for May 4, 2021.

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An additional report from your Statutory Auditor is also submitted to you, under the terms of which he has verified the conformity of our decisions with the authorization you have granted us.

In accordance with applicable laws and regulations, this report is immediately made available to shareholders at the Company's registered office and brought to their attention at the next shareholders' meeting.

**The Board of Directors**

**APPENDIX 1:  
IMPACT OF THE TRANSACTION ON THE COMPANY'S SHAREHOLDERS**

The impact of the transaction on the situation of holders of equity securities and securities giving access to the Company's capital is described below.

**INCIDENCE TABLES**

***Impact of the issuance on the share of shareholders' equity***

The impact of the issuance on the Company's share of shareholders' equity per share (calculated on the basis of shareholders' equity at December 31, 2020<sup>1</sup> and the number of the Company's shares at December 31, 2020 excluding treasury shares) is as follows:

	Share of equity per share (in euros)	
	Non-diluted basis	Diluted basis <sup>(1)</sup>
Before issuance of new shares resulting from the capital increase	€2,51	€2,93
After issuance of 4,137,932 new shares from the capital increase <sup>(2)</sup>	€3,11	€3,41
After issuance of 4,137,932 new shares from the capital increase and issuance of 3,103,449 new shares upon exercise of all associated warrants	€3,61	€3,84

<sup>(1)</sup> The calculations are based on the assumption that all share subscription warrants (BSA), founders warrants (BSCPE) and stock options will be exercised and that all bonus shares granted will vest.

<sup>(2)</sup> This calculation takes into account the gross amount of the issuance.

***Impact of the issuance on the shareholders' situation***

The impact of the issuance on the equity interest of a shareholder holding 1% of the Company's share capital and not subscribing to the issuance (calculations based on shareholders' equity at December 31, 2020 and the number of shares of the Company at December 31, 2020 excluding treasury shares) is as follows:

<sup>1</sup> At the close of the last financial year or, if the close is more than 6 months earlier, in view of the interim financial situation (art. R. 225-115 Ccom)

	Share of capital (%)	
	Non-diluted basis	Diluted basis <sup>(1)</sup>
Before issuance of new shares resulting from the capital increase	1,00 %	0,892 %
After issuance of 4,137,932 new shares from the capital increase <sup>(1)</sup>	0,829 %	0,754 %
After issuance of 4,137,932 new shares from the capital increase and issuance of 3,103,449 new shares upon exercise of all associated warrants	0,735 %	0,675 %

<sup>(1)</sup> The calculations are based on the assumption that all share subscription warrants (BSA), founders warrants (BSCPE) and stock options will be exercised and that all bonus shares granted will vest.

#### **Impact of the issuance on the current stock market value**

The theoretical impact of the issuance on the current market value of the Company's shares as determined by the average of the last twenty trading sessions preceding the meeting of the Board of Directors deciding on the terms of this report, is as follows

	Current market value (in euros)	
	Non-diluted basis	Diluted basis <sup>(1)</sup>
Before issuance of new shares resulting from the capital increase	€ 85,916,567	€ 96,275,316
After issuance of 4,137,932 new shares from the capital increase <sup>(1)</sup>	€ 103,641,399	€ 114,000,148
After issuance of 4,137,932 new shares from the capital increase and issuance of 3,103,449 new shares upon exercise of all associated warrants	€ 116.935.022	€ 127.293.772

<sup>(1)</sup> The calculations are based on the assumption that all share subscription warrants (BSA), founders warrants (BSCPE) and stock options will be exercised and that all bonus shares granted will vest.