

## **ERYTECH PHARMA**

A limited liability company (*société anonyme*) with a share capital of €2,113,966.80  
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 5 MARCH 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**") in order to issue 744,186 new ordinary shares within the context of a capital increase with cancellation of shareholders' preferential subscription rights reserved for categories of investors in accordance with the provisions of Article L. 225-138 of the French Commercial Code (the "**Delegation**").

This report has been prepared in accordance with Articles L. 225-136, R. 225-115 and R. 225-116 of the French Commercial Code following the use of this delegation by (i) the Board of Directors on September 18, 2020 and (ii) by the Chief Executive Officer in his decision dated January 28, 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 March 5, 2021 to the Board on the terms and conditions of the implementation of the sub-delegation granted to him on September 18, 2020, 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 September 18, 2020**

On September 18, 2020, the Board of Directors authorized the principle of the offering and issuance by the Company of Ordinary Shares in the form of ADSs for an aggregate maximum amount of USD 30 million (the "**ATM Shares**") in one or more "at the market" offerings or otherwise at prevailing market prices (each an "**ATM Offering**" and together the "**ATM Offerings**") by way of one or more capital increase with cancellation of preferential subscription rights of shareholders in connection with an offering reserved for specified categories of investors under the provisions of Article L. 225-138 of the French Commercial Code and for a total amount of up to \$30 million (the "**Global Authorized Amount**"), it being specified that the total number of ATM Shares to be issued in connection with the ATM Offerings will, together with all of the ordinary shares admitted to trading on Euronext Paris over the last 12 months, be less than 20% of the total number of shares of the Company already admitted to trading on Euronext Paris (the "**French Prospectus Limit**");

At this meeting, the Board of Directors also decided :

- (i) the number of ATM Shares to be issued at the time of any ATM Offering and the price and the terms of each ATM Offering will be determined at the time of the ATM Offering by a decision of the Chief Executive Officer to decide and realize such capital increase in conformity with the authorized and available ceiling set in the 25th resolution of the Meeting, within the Global Authorized Amount and the French Listing Prospectus Limit, and in conformity with the other limits set forth above in the decision of the Board of September 18, 2020 ; and

delegates to the Chief Executive Officer, with power to sub delegate in accordance with applicable law, full power and authority:

- (i) to implement on one or more occurrences until the next general meeting of the Company any ATM Offering in accordance with the terms of the agreement entered into

with Cowen and Company, LLC (the "**Agent**") on September 21, 2020 (the "**Sales Agreement**") at the price and on the terms and conditions to be approved by it at the time of each ATM Offering and up to the Global Authorized Amount in accordance with the provisions of the French Commercial Code, and in particular Article L. 225-138 of the French Commercial Code, the Sales Agreement, the French Prospectus Limit and the decision of the Board of Directors of September 18, 2020;

- (ii) establish the list of beneficiaries within the categories of investors (the "**Beneficiaries**") constituted of (i) natural or legal entities, including companies, trusts or investment funds or other investment vehicles whatever their form, governed by French or foreign law and investing on a regular basis in the pharmaceutical, biotechnological or medical technology sectors and/or (ii) companies, institutions or entities, whatever their form, governed by French or foreign law, that carry out a significant part of their activities in the pharmaceutical, cosmetic or chemical sectors or in medical devices and/or technology or in research in these sectors ;
- (iii) decide the timing of each ATM Offering by providing a placement notice to Cowen pursuant to the Sales Agreement;
- (iv) decide the issue and the number of ATM Shares to be issued and sold by the Company in each ATM Offering pursuant to the Sales Agreement;
- (v) decide the price or prices at which the ATM Shares shall be sold in the ATM Offerings, as well as any other pricing-related terms, within the limits set forth in the 25<sup>th</sup> resolution of the Meeting, it being specified that for each ATM Offering, the definitive subscription price in euros (issue premium included) of each ATM Share will be decided by the Chief Executive Officer, on the basis of the final price per ADS in U.S. dollars as decided by the Chief Executive Officer and based on the U.S. dollar/euro exchange rate on the date of determination of the price of each ATM Offering as determined by the Chief Executive Officer;
- (vi) decide the filing of any registration statement to be filed with the SEC, any amendments to any registration statement and any prospectus and prospectus supplements to any registration statement;
- (vii) request, if necessary, a trading halt of the Company's securities on Euronext Paris and/or on the Nasdaq Stock Market during all or part of any ATM Offering;
- (viii) set the settlement date for each ATM Offering and, as the case may be, to postpone any shares issue in connection with the ATM Offerings;
- (ix) prepare, finalize, file and/or execute all the documentation required in any ATM Offering, including one or more preliminary prospectus supplements pursuant to Rule 424(b) under the Act, one or more a free writing prospectuses pursuant to Rule 433 under the Act, and a final prospectus supplement pursuant to Rule 424(b) under the Act, in each case as necessary or appropriate, relating to the ATM Offerings;
- (x) prepare and finalize the form of representation letters to be signed by each of the investors subscribing to any ATM Offering, and to take all actions necessary or advisable to comply with the Sales Agreement;
- (xi) record, in the light of a depositary's certificate (*certificat du dépositaire*), final completion of any share capital increase in connection with any ATM Shares issued in an ATM Offering, and consequently, make any necessary amendments to the Company's bylaws;

- (xii) decide the matters relating to the SEC, Financial Industry Regulatory Authority, Inc. (“**FINRA**”), The Depository Trust Company and the Nasdaq Stock Market LLC, federal and state securities laws, including matters related to exemptions from the registration or qualification requirements thereof; qualifications to do business; transfer agents and registrars, matters necessary for the Company to be deemed not to be an “investment company” pursuant to Rule 3a-8 of the Investment Company Act of 1940 (the “**Investment Company Act**”), as amended, or any other rules or provisions thereof and proceed with all the required formalities and take all actions necessary or advisable to effect the admission of the ATM Shares to the regulated market of Euronext Paris and listing of the ATM Shares in the form of ADSs on the Nasdaq Global Select Market and, in particular, adopt the final terms of the documentation approved by the SEC;
- (xiii) deduct, on its sole initiative, the costs of the increase in capital from the amount of the issue premium;
- (xiv) the additional report regarding the final conditions of any shares issue in connection with the ATM Offerings pursuant to Articles R. 225-115 and R. 225-116 of the French commercial code;
- (xv) decide any delegation of authority to Authorized Officers of the Company in connection with any ATM Offerings, and any other matters related to the ATM Offerings; and
- (xvi) in general, carry out all acts and formalities, take all decisions and enter into any agreements that are useful or necessary for successful completion of the shares issue in connection with the ATM Offerings, and more generally do everything necessary in such a case.

### **3. Decision of the Chief Executive Officer dated January 28, 2021**

On January 28, 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 September 18, 2020 pursuant to Article L. 225-129-4 of the French Commercial Code and, consequently decided :

- to set the issue price of each ATM Share at an amount of 8.89 euros ;
- to determine, in accordance with the provisions of Article L. 225-138 paragraph 2 of the French Commercial Code, the list of subscribers as set out in Appendix 1, each of them having declared to belong to the categories of investors defined by the 25th resolution of the Shareholders' Meeting, under the terms of Investor Letters signed for each of them received by the Company, and following the settlement-delivery of the ATM Offering scheduled for February 2, 2021, to determine the allocation of the ATM Shares in favor of such subscribers;
- to proceed with a capital increase in cash with cancellation of preferential subscription rights by way of an offer reserved for specific categories of investors, in accordance with the provisions of article L. 225-138 of the French Commercial Code, under the ATM Offering of a nominal amount of 74,418.60 euros per issue of 744. 186 new ATM Shares underlying the 744,186 ADSs, to be subscribed for in cash at a price of 8.89 euros per ATM Share (i.e., 0.10 euros nominal value and 8.79 euros issue premium) and to be fully paid up at the time of subscription, i.e., a capital increase in the amount of 6,615,813.54 euros, including an issue premium of 6,541,394.94 euros ;

- noted that the issue of the 744,186 ATM Shares represents, together with the 2,430,925 new shares admitted to trading on the regulated market of Euronext in Paris over the last 12 months and the 168.350 new shares that could be admitted to trading upon exercise of the warrants issued under the OCABSA financing agreement signed with European High Growth Opportunities over the next 12 months, 16.39% of the 20,395,482 ordinary shares of the Company already admitted to trading on Euronext Paris, in accordance with the French Prospectus Limit ;
- decided that the new ATM Shares will be issued in dematerialized bearer form and will be registered in the books of Euroclear France SA and delivered by Société Générale Securities Services ("**SGSS**") ;
- provided that, upon their creation, each new ATM Share will be immediately transferred to Bank of New York Mellon, acting as transfer agent and account holder of the ADSs (the "**Custodian**"), in exchange for which the Custodian will deliver the ADSs, in accordance with the terms of the amended and restated deposit agreement dated May 14, 2018, between the Custodian, the Company and all owners and holders of ADSs;
- decided that the subscriptions and payments of the funds will be centralized at SGSS, the settlement-delivery of the ATM Offering being scheduled for February 2, 2021. SGSS will establish the certificate of the depositary in accordance with the provisions of Article L. 225-146 of the French Commercial Code, it being reminded that this certificate will be established by SGSS on the basis of the product of the total amount of the subscriptions received in US dollars and the Exchange Rate; and
- decided to request the admission of the new ATM Shares on Euronext Paris and the admission of the ADSs on the Nasdaq by February 2, 2021.

\*\*\*

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 Chairman of the Board**

**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 744,186 new shares from the capital increase <sup>2</sup>	€ 2,74	€ 3,12

(1) 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.

(2) This calculation takes into account the gross amount of the issue

***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 744,186 new shares from the capital increase	0,964 %	0,864 %

(1) 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 use of the delegation 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	€ 153,239,774	€ 171,715,517
After issuance of 744,186 new shares from the capital increase	€ 158,925,355	€ 177,401,098

(1) 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.