

**Polyphor AG: Absence of an obligation to make a tender offer: Opinion of the Board of Directors of Polyphor AG regarding the request of EnBiotix, Inc. dated 1 October 2021**

The Board of Directors of Polyphor AG ("Polyphor") comments on the application of EnBiotix, Inc. ("EnBiotix") dated 1 October 2021 on behalf of its majority shareholders, concerning the absence of an obligation to make a public tender offer to the shareholders of EnBiotix (together with EnBiotix the "Applicants") in accordance with Art. 135 FinMIA ("Request"), as follows:

**Background**

Polyphor AG is a public company domiciled in Allschwil. Its share capital as per the commercial register amounts to CHF 224'496.32 and is divided into 11'224'816 registered shares with a nominal value of CHF 0.02 each (such shares including any newly issued shares, "Polyphor Shares"). The Polyphor Shares are traded on the main segment of the SIX Swiss Exchange (SIX) under the valor symbol POLN and ISIN: CH0106213793.

Polyphor is a research-oriented Swiss biopharmaceutical company with a leading macrocyclic peptide technology platform. Due to adverse results of a clinical trial of balixafortide, Polyphor's leading oncology product, Polyphor had to reduce its headcount by around 30 employees and the market price for Polyphor Share dropped from around CHF 7.20 in June 2021 to currently around CHF 2.00. Polyphor has considered several potential strategic options for its future. In recent months, the Board of Directors and the management of Polyphor therefore reviewed all other strategic scenarios, such as reverse mergers, acquisitions, sales of assets and – as a last resort – a liquidation. The Board of Directors and management have, in this context, contacted numerous companies in- and outside of Switzerland.

EnBiotix is a privately-held, rare disease company with an initial focus on chronic respiratory diseases. The company is headquartered in Boston, Massachusetts, USA, with its affiliate, EnBiotix GmbH based in Leipzig, Germany. EnBiotix currently has five employees.

Polyphor and EnBiotix intend to merge. The proposed merger of Polyphor and EnBiotix aims at building a rare disease and oncology enterprise with good growth potential. This potential is founded first on ColiFin®, a product for the treatment of cystic fibrosis (CF) of EnBiotix, which has been approved in Europe and for which the merged company plans to seek FDA approval in the US. In parallel the merged company intends to further develop inhaled Murepavadin, another treatment for CF for which a phase I trial is being prepared, and is exploring additional oncology and non-oncology indications for balixafortide in collaboration with Fosun Pharma, which owns rights to the compound in China. The combined company further aims to in-license or acquire other rare disease and oncology assets post-closing that will consolidate its position in these therapeutic areas.

**Proposed Transaction**

Polyphor and EnBiotix are planning a reverse quasi-merger, by which at least 67% and preferably 100% of the EnBiotix shares are to be exchanged for Polyphor shares. For the implementation of the proposed merger, Polyphor is proposing an ordinary capital increase. The newly

issued Polyphor-shares will be subscribed by the shareholders of EnBiotix and paid for by contribution of the EnBiotix shares held by them. Thus EnBiotix is expected to become a subsidiary of Polyphor, and Polyphor will be renamed to Spexis AG ("Spexis").

Prior to the proposed merger, EnBiotix plans to conduct an equity financing round. The ratio according to which the EnBiotix shares are to be exchanged for Polyphor Shares will apply identically to all share classes of EnBiotix. According to the terms of the proposed merger, after completion, the current shareholders of Polyphor will hold between 23% and 26%, and the shareholders of EnBiotix between 74% and 77% of the Polyphor Shares (assuming the exchange of 100 % of EnBiotix shares).

The transaction is expected to be closed (consummated) by the end of November 2021; prior to closing certain conditions must be met, including the formal consent of the existing shareholders of Polyphor and of EnBiotix.

The proposed merger is expected to have no impact on the employees of EnBiotix and only limited impact on the employees of Polyphor. Jeffrey D. Wager, currently Chairman and CEO of EnBiotix, is expected to become Chairman of the Board of Directors and Chief Executive Officer of the combined company replacing the current CEO, Gökhan Batur, who will oversee the next steps until the closing of the merger. Andreas Wallnöfer, Silvio Inderbitzin and Hugh O'Dowd will resign as board members. Kuno Sommer and Bernard Bollag, current members of the Board of Directors at Polyphor will remain as board members. Dennis Ausiello, Dan Hartman and Robert Clarke, current members of the Board of Directors at EnBiotix are nominated as members of the Board of Directors of Polyphor. Hernan Levett, Polyphor's current CFO, will continue as CFO of Polyphor. Juergen Froehlich, Chief Medical Officer at EnBiotix, is to become CMO of the company.

### **Opinion and Reasoning**

The Board of Directors of Polyphor supports the Request for the following reasons:

The aim of Art. 135 FinMIA is to protect the position of minority shareholders in the event of the take-over of control of a company by a new main shareholder. According to Art. 135 FinMIA, a person must make a public takeover offer if such person acquires equity securities directly, indirectly or in concert with third parties and as a result exceeds the threshold of 33 1/3% of the voting rights of a target company. Thus, the minority shareholders are given the opportunity to sell their equity securities at a fair price in the event of a change of control.

The merger does not lead to change of control in Polyphor or EnBiotix. Due to the existing shareholder structure of EnBiotix or Polyphor as of today, it is clear that following the merger, no shareholder will exceed the relevant threshold of 33 1/3 % of the voting rights and thus is not obliged to submit a public tender offer in accordance with Art. 135 FinMIA.

According to the Request, with the closing of the transaction, the existing investors' rights agreement among the shareholders of EnBiotix will be cancelled and the shareholders will not conclude any new agreements with respect to Polyphor or EnBiotix which could be qualified as acting in concert or as an organized group pursuant to Art. 135 para. 1 FinMIA and Art. 33 in conjunction with Art. 12 para. 1 FinMIA-FINMA.

In summary, the proposed transaction has no negative consequences to the shareholders of Polyphor; the reduction of their relative voting power by about 3/4 (when the EnBiotix-shareholders become the shareholders of Polyphor) results from the contribution of the EnBiotix

shares into Polyphor and the corresponding issuance of Polyphor Shares in exchange. The Board of Directors of Polyphor has appointed a company specialized in providing independent assessment and valuation of technology-driven companies in growth industries to assess the business activities of EnBiotix. The Board of Directors concluded that the value attributed to EnBiotix's contribution in the proposed combination fairly reflects its market value. In view of its economic situation and long-term business prospects for Polyphor the combination is essential and enables the continuance of its existence in the long term together with EnBiotix.

The Board of Directors therefore unanimously supports the Request and proposes that it should be approved.

#### **Intentions of Shareholders with a stake of over 3%**


The Board of Directors does not know the intentions of the shareholders of Polyphor with a stake of over 3% in Polyphor.

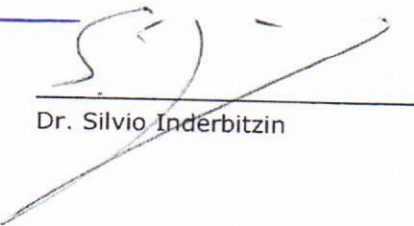
#### **Conflict of Interest**

The current Board of Directors of Polyphor consists of the following members: Kuno Sommer (President), Andreas Wallnöfer (Vice President), Bernard Bollag, Silvio Inderbitzin and Hugh O'Dowd. None of the board members have entered into agreements with the Applicants, nor are they in any particular contractual, familial or de facto relationship that would constitute a conflict of interest. At the time the Board of Directors of Polyphor agreed to the merger, no agreement had been reached between Polyphor and EnBiotix regarding the board composition at the combined entity. However, in light of the fact that Kuno Sommer and Bernard Bollag will be on the board of directors of Spexis, they have abstained from the discussion and vote on the Request and this opinion.

5 October 2021

For the Board of Directors:

  
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Dr. Andreas Wallnöfer

  
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Dr. Silvio Inderbitzin