

**Opinion of the board of directors of Cassiopea S.p.A. regarding the request of Cosmo Pharmaceuticals S.A. and Cassiopea S.p.A. filed with the Takeover Board on 12 May 2015 for the declaration that the obligation to submit an offer to the shareholders of Cassiopea S.p.A. does not apply in case Cosmo Pharmaceuticals S.A. reduces its shareholding in Cassiopea S.p.A. below the threshold of 50% of the voting rights and, at a later date, again exceeds this threshold again**

**1. Introduction**

Cassiopea S.p.A. (until 14 April 2015: "Cosmo dermatos S.r.l."; hereinafter: "**Cassiopea**") has its registered seat in Lainate (Milan), Italy, and its registered address at Cristoforo Colombo 1, 20020 Lainate (Milan), Italy. Cassiopea has a share capital of EUR 10,000,000 divided into 10,000,000 registered shares with a par value of EUR 1.00 each (hereinafter: "**Cassiopea Shares**").

As of the date hereof, the Cassiopea Shares are not listed on any stock exchange and are held at 97% by Cosmo Pharmaceuticals S.A. (hereinafter: "**Cosmo**"). The remaining 3% of the Cassiopea Shares are held by certain other shareholders.

**2. Intended Transaction**

It is intended to list the Cassiopea Shares at SIX Swiss Exchange. In the context of this listing, Cosmo plans to sell part of its Cassiopea Shares and thereby to reduce its shareholding below 50% of the voting rights of Cassiopea but above 33 1/3% of said voting rights (hereinafter: "**Intended Transaction**"). It is not intended to introduce any opting-out nor any opting-up provision in Cassiopea's articles of incorporation.

In view of the Intended Transaction, Cassiopea and Cosmo filed on 12 May 2015 with the Takeover Board a request for the declaration that the obligation of Cosmo Pharmaceuticals S.A. to make an offer in the sense of art. 32 of the Federal Act on Stock Exchanges and Securities Trading (hereinafter: "**SESTA**") to the shareholders of Cassiopea does not apply in case Cosmo exceeds again the 50% threshold subsequent to the listing of Cassiopea (hereinafter: "**Request**").

**3. Opinion and Motivation**

The board of directors of Cassiopea reviewed the Request and unanimously supports it for the following reasons:

Art. 52 SESTA establishes that whoever, upon coming into force of the SESTA, owns directly, indirectly or acting in concert with third parties equity securities which give him or her more than 33 1/3 percent but less than 50% of the voting rights of an offeree company, shall, if he acquires equity securities and thereby exceeds the threshold of 50% of the voting rights, be under an obligation to make an offer to acquire all the equity securities listed.

Furthermore, art. 35 of the Ordinance of the Swiss Financial Market Supervisory Authority on Stock Exchanges and Securities Trading (hereinafter: "**SESTO-FINMA**") stipulates that anyone who, after the entry into force of the SESTA, reduces a previous shareholding of 50% or more of the voting rights of a company to a proportion below 50% is subject to the offer obligation pursuant to art. 32 SESTA if, at a later date, this party again exceeds the threshold of 50%.

Both art. 52 SESTA and 35 SESTO-FINMA are transitional provisions, *i.e.* provisions which apply to companies already listed at the time of the entry into force of the SESTA. They do not apply, however, to the new listing of a company. An analogous application of these two provisions to the new listing of a company is not possible. Indeed, the wording of 52 SESTA ("*upon coming into force of SESTA*") and of 35 SESTO-FINMA ("*after the entry into force of the SESTA*") clearly refers to shareholdings at the time of the entry into force of the SESTA. The purpose of both articles was also to avoid that an obligation to make an offer be automatically triggered for shareholders holding more than 33 1/3% of the voting rights of a listed company at the time of the entry into force of the SESTA. Thus, neither the wording nor the purpose of art. 52 SESTA and 35 SESTO-FINMA allow an analogous application to the Intended Transaction.

It shall further be outlined that an analogous application of art. 52 SESTA and 35 SESTO-FINMA would *de facto* force Cassiopea to introduce an opting-out provision in its articles of incorporation. This would, however, not be in the minority shareholders' best interest as they would be deprived of the possibility to step out of the company in case of a change of control. Moreover, even if those shareholders would be given the opportunity to step out of the company, that would not have to occur at the same price as paid to Cosmo.

For all these reasons, the board of directors of Cassiopea is of the opinion that the obligation to make an offer to the shareholders of Cassiopea does not apply in case Cosmo reduces its shareholding in Cassiopea below the threshold of 50% of the voting rights and, at a later date, again exceeds this threshold.

**4. Shareholders holding more than 3% of the voting rights**

As of the date hereof, the only shareholder holding more than 3% of the voting rights of Cassiopea is Cosmo:

<b>Shareholder</b>	<b>Number of Cassiopea Shares</b>	<b>Percentage of the voting rights</b>
Cosmo Pharmaceuticals S.A.	9,700,000	97.00%

As outlined, Cosmo intends to sell part of its Cassiopea Shares in the course of the listing of Cassiopea and thereby to reduce the number of Cassiopea Shares it holds to a shareholding of between 4,536,360 to 4,900,000 Cassiopea Shares, corresponding to 45.3%, respectively 49% of the voting rights of Cassiopea.

## **5. Potential Conflicts of Interest**

As of the date hereof, the board of directors of Cassiopea consists of the following members: Jan de Vries (chairman), David Hale (independent director), Øyvind Bjordal (independent director), Pierpaolo Guzzo (independent director) and Diana Habort (CEO). Jan de Vries and Diana Habort are considered to be non-independent members of the board of directors under Italian law. Therefore, they recused themselves and did not take part in the board decision with regard to the present report. Apart from that, none of the aforementioned members of the board of directors has any conflict of interests with regard to the Intended Transaction. In particular, none of these members has concluded any agreement or has any family or other connection with Cosmo that would lead to a conflict of interest with regard to the Intended Transaction.

The management of Cassiopea is composed of Diana Harbort (CEO), Hans Christoph Tanner (CFO and Head of IR), Louise Dube (Head of Clinical Development and Regulatory Approvals), Diane S. Goostree (Head of Clinical Trial Management) and Luigi Moro (CSO). Hans Christoph Tanner is a board member and CFO of Cosmo. Luigi Moro is chief scientific officer of Cosmo. Apart from those two cases, none of the members of the management of Cassiopea has concluded any agreement or has any family or other connection with Cosmo that would lead to a conflict of interest with regard to the Intended Transaction.

## **6. Decision of the Takeover Board**

On 8 June 2015, the Takeover Board rendered the following decision (published on [www.takeover.ch](http://www.takeover.ch)):

1. In case Cosmo Pharmaceuticals S.A.'s holding is reduced below the threshold of 50% of the voting rights of Cassiopea S.p.A. but remains above the threshold of 33 1/3% of the voting rights, and, at a later date, again exceeds the threshold of 50% of the voting rights, this crossing of the threshold of 50% will not trigger the obligation for Cosmo Pharmaceuticals S.A. to make an offer.
2. This decision shall be published on the day of the publication of the listing prospectus of Cassiopea S.p.A.
3. The board of directors of Cassiopea S.p.A. shall publish its opinion in accordance with art. 6a and 6b TOO simultaneously to the publication of this decision and of the listing prospectus of Cassiopea S.p.A.
4. The fees for this decision shall be borne by Cosmo Pharmaceuticals S.A. and Cassiopea S.p.A. jointly and amount to CHF 25,000.

## 7. Objection

A shareholder who holds at least 3% of the voting rights of Cassiopea, whether exercisable or not (qualified shareholder in the sense of art. 56 Takeover Ordinance), may file an objection against the Takeover Board's decision. Such objection must be filed with the Takeover Board (Selnaustrasse 30, Postfach 1758, 8021 Zurich, e-mail: [counsel@takeover.ch](mailto:counsel@takeover.ch), fax: +41 58 499 22 91) within five trading days after publication of the conclusions of the decisions of the Takeover Board in the newspapers. The first trading day after the publication of the conclusions of the Takeover Board's decision will be the first day of the filing period. The objection must contain a motion, a summary of the legal ground and proof of the qualified participation.

Lainate, 18 June 2015

The board of directors of Cassiopea S.p.A.

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