

# Enclosure to the invitation to the 2015 Annual Shareholders' Meeting of Santhera Pharmaceuticals Holding AG

## Proposed changes to the Articles of Incorporation

### Translation of the legally binding German text

*In this enclosure, only those articles are listed with respect to which the Board of Directors (BoD) proposes amendments*

#### Article 3a

##### Authorized share capital

The Board of Directors shall be authorized, at any time until May 10, 2017 ~~May 21, 2016~~, to increase the share capital in an amount not to exceed CHF 1,800,000 through the issuance of up to 1,800,000 fully paid registered shares with a nominal value of CHF 1 each. An increase in partial amounts shall be permitted. The Board of Directors shall determine the issue price, the type of payment, the date of issue of new shares, the conditions for the exercise of pre-emptive rights and the beginning date for dividend entitlement. In this regard, the Board of Directors may issue new shares by means of a firm underwriting through a banking institution, a syndicate or another third party with a subsequent offer of these shares to the current shareholders or (if unless the pre-emptive rights of current shareholders are excluded or have not been validly exercised), to third parties. The Board of Directors is then entitled to restrict or deny any trade with pre-emptive rights. The Board of Directors may permit preferential subscription rights that have not been exercised to expire or it may place these rights and/or shares as to which preferential subscription rights have been granted but not exercised, at market conditions or use them for other purposes in the interest of the Company.

*Paragraph 2 remains unchanged.*

The Board of Directors is authorized to restrict or exclude the pre-emptive rights of shareholders and allocate such rights to third parties if the shares are to be used:

- a) for the acquisition of an enterprise, parts of an enterprise or participations, or products, intellectual property or licenses, or for new investments including product development programs, ~~or, in case of a share placement,~~ for the financing or refinancing of such transactions, or for investments through a share placement with one or several investors; or

- b) *remains unchanged*
- c) for the participation or compensation of persons or companies performing services for the benefit of the Company or any of its subsidiaries; or
- d) if the issue price of the new shares is determined taking into consideration the market price; or
- e) for the participation or compensation of companies performing services for the benefit of the Company or any of its subsidiaries; or
- f) for the defense of an actual, threatened or potential takeover bid, in relation to which the Board of Directors, upon consultation with an independent financial adviser retained by it, has not recommended to the shareholders acceptance on the basis that the Board of Directors has not found the takeover bid to be financially fair to the shareholders.

#### Article 3b

#### Conditional capital for employee participation

The share capital of the Company shall be increased by a maximum aggregate amount of CHF 800,000 ~~CHF 604,029~~ through the issuance of a maximum of 800,000 ~~604,029~~ registered shares, which shall be fully paid-in, with a par value of CHF 1 per share by the ~~exercise of option rights~~ direct or indirect issue of shares, options or rights pertaining thereto which the employees or directors of the Company or a group company are granted according to respective regulations of the Board of Directors. The exercise price of each option to be granted shall – at the full discretion of the Board of Directors - either equal (i) the weighted average share price during the three months preceding the grant or (ii) the closing price of the share at the grant date. ~~The pre-emptive rights of the shareholders are excluded.~~ If shares, options or respective subscription rights are issued, the pre-emptive rights and the subscription rights of the shareholders are excluded. The acquisition of registered shares ~~through the exercise of option rights~~ and the subsequent transfer of the registered shares shall be subject to the transfer restrictions provided in Article 5 of the Articles of Incorporation.

Article 3c

**Conditional Share Capital for financing and mergers & acquisitions**

The share capital of the Company shall be increased by a maximum aggregate amount of CHF 950,000 ~~CHF 600,000~~ through the issuance of a maximum of 950,000 ~~600,000~~ registered shares, which shall be fully paid-in, with a par value of CHF 1 per share by the exercise or mandatory exercise of option and/or conversion rights which are granted in connection with the issue of bonds, loans, similar obligations or other financial instruments by or contractual obligations of the Company or another group company, and/or by the exercise of options which are granted by the Company or another group company (hereinafter, collectively, the **Financial Instruments**) ~~. In the case of the issue of bonds, similar obligations or other financial instruments linked with option and/or conversion rights, and in the case of the issue of option rights, the pre-emptive right of shareholders is excluded. In the case of issue of shares as a result of the exercise of Financial Instruments, the pre-emptive rights of the shareholders are excluded.~~ The holders of Financial Instruments ~~option and/or conversion rights~~ are entitled to receive the new shares. The Board of Directors shall determine the terms of the Financial Instruments ~~option and/or conversion rights~~. The acquisition of registered shares through the exercise of Financial Instruments ~~option or conversion rights~~ and the subsequent transfer of the registered shares shall be subject to the transfer restrictions provided in Article 5 of the Articles of Incorporation.

The Board of Directors shall be authorized to restrict or exclude the advance subscription rights of shareholders in connection with the issue of Financial Instruments

- (1) if the issue of the Financial Instruments ~~is debt issues in connection with conversion rights or warrants or other financial market instruments~~ are for the purpose of financing or refinancing of the acquisition of an enterprise, parts of an enterprise, or participations or new investments or if the issue of the financial instrument occurs on national or international capital markets (including in the form of private placements);
- (2) if such ~~debt or other financial market instruments~~ are issued on the international capital markets and Financial Instruments are for the purpose of a firm underwriting by a banking institution or a consortium of banks with subsequent offering to the public;
- (3) ~~If there is another important reason in the sense of art. 652b para. 2 CO;~~

(3) for the purpose of a flexible capital raising through a placement of shares which, were the subscription rights preserved, would be difficult or possible only under significantly worse conditions.

If the advance subscription rights are excluded by the Board of Directors, the following shall apply: the issuance of Financial Instruments ~~of convertible bonds or warrants or other financial market instruments~~ shall be made at the prevailing market conditions (including dilution protection provisions in accordance with market practice) and the new shares shall be issued pursuant to the relevant conversion or exercise rights in connection with bond or warrant issue conditions. Conversion rights and warrants may be exercised during a maximum 10-year period, ~~and warrants may be exercised during a maximum 7-year period, in each case~~ from the date of the respective issuance.

## Article 5

### Share Register, Transfer Restrictions, Nominees

*Paragraphs 1 and 2 remain unchanged.*

The Board of Directors may register nominees with the right to vote in the share register to the extent of up to 2 percent of the registered share capital as set forth in the commercial register. Registered shares held by a nominee that exceed this limit may be registered in the share register with the right to vote if the nominee discloses the names, addresses and the number of shares of the persons for whose account it holds 2 percent or more of the registered share capital as set forth in the commercial register. Nominees within the meaning of this provision are persons who do not explicitly declare in the request for registration to hold the shares for their own account and with whom the Board of Directors has entered into a corresponding agreement with respect to their status and their duties of information.

*Paragraphs 4 to 8 remain unchanged.*

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## A. Meeting of Shareholders

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### Article 8

#### Competences of the Meeting of Shareholders

The Meeting of Shareholders is the supreme body of the Company. The following non delegable powers are vested in the Meeting of Shareholders:

1. *remains unchanged*
2. to elect and remove the members of the Board of Directors, the chairman of the board, the Auditors, the independent proxy and ~~the election of~~ the members of the Compensation Committee, all in individual elections;
3. to approve the annual report (Lagebericht) and the consolidated financial statements;
4. the approval of the aggregate compensation of the Board of Directors and of Executive Management in accordance with Article 25 of these Articles of Incorporation;
5. to approve the annual financial statements and to determine the allocation of profits shown on the balance sheets, in particular with regard to dividends and the bonus payments to members of the board of directors (*Tantiemen*);
6. to grant discharge to the members of the Board of Directors and of Executive Management ~~the persons entrusted with management;~~
7. to pass resolutions concerning all matters reserved to the authority of the Meeting of Shareholders by law or under the Articles of Incorporation.

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Article 13a

**Independent Proxy**

*Paragraphs 1 to 5 remain unchanged.*

The Board of Directors determines the requirements to the proxy forms and to the instructions for the independent proxy.

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Article 16

**Term of Office**

*Paragraphs 1 and 2 remain unchanged.*

If the chairmanship is vacant, the Board of Directors shall decide on a new chairman until the closure of the next ordinary shareholders' meeting.

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Article 17

**Organization of the Board of Directors**

The Board of Directors determines its own organization, subject to the election of the chairman and of the members of the Compensation Committee by the shareholders. The Board of Directors shall elect from among its members one or, if necessary, several Vice-Chairmen. The Board of Directors shall further appoint a Secretary, who need not be a member of the Board of Directors.

Subject to mandatory law and the provisions of these Articles of Incorporation, the Board of Directors determines its own internal organization and the modalities for the passing of resolutions in an Organizational Regulation ~~and determines the Board of Directors' compensation.~~

*Article 18 about convening the Board, decisions and minutes is deleted in its entirety and replaced with a modified version of the previous Article 19.*

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Article 18

### **Competences of the Board of Directors**

The Board of Directors may pass resolutions concerning all matters not reserved to the authority of any other corporate body by law, these Articles of Incorporation or regulations.

The Board of Directors has, in particular, the following nondelegable and inalienable duties:

*Subparagraphs 1 to 8 remain unchanged, 9 to 11 change their order.*

- 9. ~~10.~~ the examination of the professional qualifications of the Auditors;
- 10. ~~11.~~ the notification of the judge if liabilities exceed assets.
- 11. ~~9.~~ the non-delegable and inalienable duties and powers of the board of directors pursuant to the Swiss Merger Act and any other law;

*Paragraph 3 remains unchanged.*

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Article 19 (*new*)

**Compensation Committee**

The Remuneration Committee consists of at least two members of the Board of Directors.

The members of the Compensation Committee are elected by the Annual Shareholders' Meeting for a term until the conclusion of the next Annual General Meeting. Only members of the Board of Directors are eligible.

The members of the Compensation Committee may be re-elected.

In case of a vacancy in the Compensation Committee, the Board of Directors shall designate one or more alternate members until the conclusion of the next Annual Shareholders' Meeting.

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Article 20 (*new*)

**Organization of the Compensation Committee**

The Compensation Committee constitutes itself, subject to the powers of the Annual Shareholders' Meeting and the Board itself. The Board of Directors shall designate a chairman.

In addition, the Board shall issue regulations on the organization of, and the passing of resolutions by, the Compensation Committee.

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Article 21 (*new*)

**Powers of the Compensation Committee**

The Compensation Committee assists the Board in the determination and review of remuneration policies and guidelines, the performance objectives and in the preparation of proposals to the Annual Shareholders' Meetings concerning the compensation of the Board of Directors and of Executive Management. It may make proposals to the Board of Directors with respect to further compensation issues.



The Board of Directors determines in regulations for which functions of the Board of Directors and of Executive Management the Compensation Committee shall make proposals to the Board of Directors with respect to the performance objectives, targets and compensation to the Board and for which functions of the Board of Directors and of Executive Management the Compensation Committee shall make decisions with respect to the performance objectives, targets and compensation to the Board within the framework of these Articles of Incorporation and the regulations passed by the Board of Directors.

The Board of Directors may assign other tasks to the Compensation Committee, which shall be set out in the regulations.

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*The current Articles 20, 21 and 22 become Articles 22, 23 and 24.*

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## **IV. Compensation of the members of the Board of Directors and of Executive Management**

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Article 25 (*new*)

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### **Approval of Compensation**

The Annual Shareholders' Meeting shall approve the proposals of the Board of Directors with respect to the maximum total amounts of:

- a) the fixed and variable compensation of the Board of Directors until the next Annual Shareholders' Meeting; and
- b) the fixed and variable compensation of the Executive Management for the period from 1 July to 30 June of the following year.

The Board of Directors may submit to the Annual Shareholders' Meeting for approval different, additional or conditional motions relating to the total maximum amounts, several maximum partial sums for the same or other periods and/or individual compensation elements and/or in relation to additional amounts for special compensation elements.

The Directors must submit the annual compensation report to a consultative vote by the Annual Shareholders' Meeting.

In the event that the Annual Shareholders' Meeting does not approve a motion by the Board, the Board, taking into account all relevant factors, shall determine the relevant (maximum) total amount or the (maximum) partial amounts and shall submit the amounts so determined for decision by the same Annual Shareholders' Meeting, an Extraordinary Shareholders' Meeting or the next Annual Shareholders' Meeting.

Notwithstanding the foregoing provisions, the Company or companies directly or indirectly controlled by it may make compensation payments before the approval by the Annual Shareholders' Meeting, but subject to subsequent approval.

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Article 26 (*new*)

**Additional Amount**

The Company or companies directly or indirectly controlled by it are allowed to make compensation payments to members of Executive Management who are joining the Company or are promoted to members of Executive Management during the period for which the Annual Shareholders' Meeting has already approved the compensation as long as such compensation payments do not exceed 50% of the total compensation of Executive Management as approved by the most recent Annual Shareholders' Meeting. The additional amount may only be used if the total compensation of Executive Management of a specific compensation period is not sufficient to pay for the compensation of the new members of Executive Management until the next Annual Shareholders' Meeting.

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Article 27 (*new*)

**Principles of Compensation**

The compensation of the Board of Directors may include fixed and variable compensation elements. The total compensation shall take into consideration function and responsibility of the recipient.

The compensation of the members of Executive Management may include fixed and variable compensation elements. The fixed compensation includes base salary and other non-

variable compensation elements. The variable compensation may include short-term and long-term variable compensation elements. The variable compensation shall take into consideration function and level of responsibility of the recipient.

The short-term variable compensation elements may reflect personal and/or corporate performance targets, growth, value and range-specific objectives of the Company or companies wholly or partly controlled by it. The achievement of the objectives is usually measured during a one-year period.

The long-term variable compensation elements may reflect corporate, growth, value and unit-specific targets of the Company or companies wholly or partly controlled by it, while the target achievement may either be measured on a stand-alone basis or in comparison to the market or to other companies or to other comparable parameters. As a rule, the measuring period shall comprise several years. Depending on the achievement, the compensation may amount to a predefined multiple of the target compensation.

The Board of Directors or, to the extent delegated to it, the Compensation Committee establishes the performance targets and the respective target values as well as their weighting and achievement and applies its discretion. It reports thereon in the compensation report.

The compensation is paid in the form of cash, shares, options, comparable instruments or units, or goods or services. The Board of Directors or, if delegated to it, or, to the extent delegated to it, the Compensation Committee determines allocation, vesting and exercise conditions and periods as well as any restriction periods and forfeiture conditions. It may provide that vesting, exercise conditions and periods are shortened or canceled due to the occurrence of certain events determined in advance, such as a change of control or termination of an employment or mandate relationship. It may also provide that compensation is only paid upon the achievement of performance targets or that such compensation is forfeited. The Board of Directors or, to the extent delegated to it, the Compensation Committee takes into account the ability of the Company to recruit suitable employees on the labor market and to be able to bind these to the Company. The Company may acquire the necessary shares or other equity securities on the market, use treasury shares or make them available in the form of a capital increase.

The compensation can be made by the Company or companies it directly or indirectly controls.

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## **V. Agreements with members of the Board of Directors and of Executive Management**

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Article 28 (*new*)

### **Agreements with members of the Board of Directors and of Executive Management**

The Company or directly or indirectly controlled companies may enter into permanent or fixed term agreements with members of the Board of Directors with respect to their mandate and compensation. The duration and termination are based on term of office and the law.

The Company or directly or indirectly controlled companies may enter into permanent or fixed term agreements with members of Executive Management with respect to their employment. Fixed term agreement shall have a maximum period of one year; renewal is permitted. Permanent agreements shall contain a termination clause with a termination period of a maximum of one year.

Non-compete clauses for the period after termination of an employment agreement are permitted. Their term shall not exceed one year. In return for such a non-compete, a compensation may be made the amount of which shall not exceed the last total annual compensation of that member.

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## **VI. Loans and credits to, and pension benefits for, the members of the Board of Directors and of Executive Management**

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Article 29 (*new*)

### **Loans and pension benefits outside the pension funds**

Loans to members of the Board of Directors and of Executive Management may only be on market terms and may only be made by the Company or by any of its directly or indirectly controlled companies, and only to the extent that the total sum of total outstanding loans to such member, including the amount to be granted, does not exceed twice the most recent annual compensation to such member.

The amount to be paid to a current or former member of the Board of Directors or of Executive Management by the Company or by any of its directly or indirectly controlled companies for pension benefits outside the pension funds shall not exceed 100% of the most recent annual compensation of such member. In the case of lump-sum payments, the value of pension benefits outside the pension funds shall be determined in accordance with recognized actuarial methods.

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## VII. Mandates outside the Group

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### Article 30 (*new*)

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#### **Additional mandates**

No member of the Board of Directors may have more than four and no member of Executive Management may have more than two additional mandates in companies listed on a stock exchange. In addition, no member of the Board of Directors may have more than eight and no member of Executive Management may have more than four additional mandates in companies not listed on a stock exchange.

Do not fall under the above restrictions:

- a) Mandates in companies that are directly or indirectly controlled by the Company or are controlled in concert with third parties or which control the Company directly or indirectly, alone or in concert with third parties;
- b) Mandates that a member of the Board of Directors or of Executive Management carry out on order of the or by any of its directly or indirectly controlled companies. No member of the Board of Directors or of Executive Management may carry out more than ten such mandates; and
- c) Mandates in foundations, non-profit organizations, foundations, trusts and pension foundations. No member of the Board of Director or of Executive Management may carry out more than ten such mandates.

Count as mandates those mandates in the top management and boards of a company that is required to be entered into the commercial register or a similar foreign register. Mandates in different legal entities which are under common control shall be regarded as a single mandate.

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## VIII. Fiscal Year, Allocation of Profits

Article 31 (former Article 23)

### **Fiscal Year, ~~Business Report, Report of Auditors~~**

The Board of Directors determines the fiscal year.

~~For each fiscal year, the Board of Directors shall prepare a business report (consisting of the profit and lost statements, balance sheet and notes to the financial statement), the annual report and the consolidated financial statement.~~

*Article 24 becomes Article 32.*

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## IX. Dissolution

*Article 25 becomes Article 33.*

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## X. Notices, Communications

*Article 26 becomes Article 34.*

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## XI. Acquisition of Assets

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### Article 35 (former Article 27)

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~~The Company intends to acquire from MyoContract GmbH, with legal seat in Basel, certain assets, especially equipment and research results, but no liabilities at a price of up to CHF 87,500.~~

~~The Company acquires within the share capital increase of August 11, 2004 from a series of contributors (tbg Technologie-Beteiligungs-Gesellschaft mbH, 3i Group plc, Merlin Biosciences Fund LP, Merlin Biosciences Fund GbR, Oxford Bioscience Partners III, Oxford Bioscience Partners (Bermuda) III Limited Partnership, Oxford Bioscience Partners (Adjunct) III, L.P., mRNA Fund, GIMV NV; Adviesbeheer GIMV Life Sciences NV, TechnoStart Ventures GmbH & Co. Fonds KG, Zweite TechnoStart Ventures Fonds GmbH & Co. KG, Heidelberg Innovation GmbH & Co. BioScience Venture KG, Heidelberg Innovation BioScience Venture II GmbH & Co. KG, Heidelberg Innovation Parallel-Beteiligungs GmbH & Co. KgaA, Carnegie Fund II-Biotechbridge Sub-Fund, Graffinity Beteiligungsgesellschaft des bürgerlichen Rechts, The Dow Chemical Company, Dr. Helmut Kessmann) in accordance with agreements on contributions in kind dated September 14, 2004, a total of 15,114 ordinary shares, 100,175 preferential shares Serie (A), 134,539 preferential shares Serie (A-I) as well as 259,706 preferential shares Serie (B) of Graffinity Pharmaceuticals AG, with legal seat in Heidelberg (D), at the price of CHF 11,827,135.50. For these the contributors receive a total of 13,237 ordinary shares, 87,746 preferential shares Serie (A), 117,844 preferential shares Serie (A-I) as well as 227,480 preferential shares Serie (B), all and each with a par value of CHF 1.~~

The Company acquires within the share capital increase of June 14, 2005 in accordance with agreements on contributions in kind dated June 14, 2005 from NGN BioMed Opportunity I, L.P., New York, NY 10017 (USA), 56,512 preferential shares Series (B) of Santhera Pharmaceuticals (Deutschland) AG, in Heidelberg (D), at the price of CHF 247,500, for which the contributor receives 49,500 fully paid-in preferential shares Series (B) with a par value of CHF 1 each and from NGN BioMed Opportunity I GmbH & Co. Beteiligungs KG, in Heidelberg (D), 93,313 preferential shares Series (B) of Santhera Pharmaceuticals (Deutschland) AG, mentioned before, at the price of CHF 408,670, for which the contributor receives 81,734 fully paid-in preferential shares Series (B) with a par value of CHF 1 each.

The Company acquires within the share capital increase of September 29, 2009 in accordance with the respective shareholders' resolution dated April 21, 2009 and agreements on contributions in kind dated September 25, 2009 from Bio Fund Ventures II Follow on fund L.P., in the name of the seller of the shares in Oy Juvantia Pharma Ltd 57,955,443 fully paid in registered shares in Oy Juvantia Pharma Ltd with a par value of EUR 0.01 per share for a price of CHF 105,973.-- for which the contributors receive 105,973 fully paid in registered shares with a par value of CHF 1.-- each.