B.5 TAKEOVER-RELEVANT INFORMATION (PURSUANT TO SECTIONS 289 PARA. 4 AND 315 PARA. 4 OF THE GERMAN COMMERCIAL CODE) AND EXPLANATORY REPORT

The Takeover-Relevant Information pursuant to Sections 289 para. 4 and 315 para. 4 of the German Commercial Code (Handelsgesetzbuch) and Explanatory Report are part of the Combined Management Report.

B.5.1 Composition of common stock

As of September 30, 2012, the Company’s common stock totaled €2.643 billion (2011: €2.743 billion) divided into 881 million (2011: 914,203,421) registered shares with no par value and a notional value of €3.00 per share. The shares are fully paid in. In accordance with Section 4 para. 3 of the Company’s Articles of Association, the right of shareholders to have their ownership interests evidenced by document is excluded, unless such evidence is required under the regulations of a stock exchange on which the shares are listed. Collective share certificates may be issued. Pursuant to Section 67 para. 2 of the German Stock Corporation Act (Aktiengesetz), only those persons recorded in the Company’s stock register will be recognized as shareholders of the Company. For purposes of recording the shares in the Company’s stock register, shareholders are required to submit to the Company the number of shares held by them and their e-mail address if they have one, and, in the case of individuals, their name, address and date of birth, or in the case of legal entities, their company name, business address and registered offices.

All shares confer the same rights and obligations. At the Annual Shareholders’ Meeting, each share of stock has one vote and accounts for the shareholders’ proportionate share in the Company’s net income. Exempted from this rule are treasury shares held by the Company, which do not entitle the Company to any rights. The shareholders’ rights and obligations are governed by the provisions of the German Stock Corporation Act, in particular by Sections 12, 53a et seq., 118 et seq. and 186 of this German Stock Corporation Act.

B.5.2 Restrictions on voting rights or transfer of shares

Shares issued to employees worldwide under the stock scheme implemented since the beginning of fiscal 2009, in particular the Share Matching Plan, are freely transferable. However, participants are required to own and hold the shares issued to them under the rules of the Plan for a vesting period of about three years, during which the participants have to have been continuously employed by Siemens AG or another Siemens company, in order to receive one matching share free of charge for each three shares provided. The right to receive matching shares forfeits, if the underlying shares are sold, transferred, hedged on, pledged or hypothecated in any way during the vesting period.

The von Siemens-Vermögensverwaltung GmbH (vSV) has, on a sustained basis, powers of attorney allowing it to vote, as of October 12, 2012, 11,454,464 shares on behalf of members of the Siemens family, whereby aforementioned shares constitute a part of the overall number of shares held by members of the Siemens family. The vSV is a German limited liability company and party to an agreement with, among others, members of the Siemens family (family agreement). In order to bundle and represent their interests, the members of the Siemens family established a family partnership. This family partnership makes proposals to the vSV with respect to the exercise of the voting rights at Shareholders’ Meetings of the Company, which are taken into account by the vSV when acting within the bounds of its professional discretion. Pursuant to the family agreement, the shares under powers of attorney are voted by the vSV collectively.

B.5.3 Equity interests exceeding 10% of voting rights

We are not aware of, nor have we been notified of, any shareholder directly or indirectly holding 10% or more of the voting rights.

B.5.4 Shares with special rights conferring powers of control

There are no shares with special rights conferring powers of control.

B.5.5 System of control of any employee share scheme where the control rights are not exercised directly by the employees

Shares of stock issued by Siemens AG to employees under its employee stock scheme are transferred directly to the employees. The beneficiary employees who hold shares of employee stock may exercise their control rights in the same way as any other shareholder directly in accordance with applicable laws and the Articles of Association.
B.5.6 Legislation and provisions of the articles of association applicable to the appointment and removal of members of the Managing Board and governing amendment to the Articles of Association

The appointment and removal of members of the Managing Board is subject to the provisions of Sections 84 and 85 of the German Stock Corporation Act and Section 31 of the German Codetermination Act. According to these provisions, members of the Managing Board are appointed by the Supervisory Board for a maximum term of five years. They may be reappointed or have their term of office extended for one or more terms of up to a maximum of five years each. Pursuant to Section 31 para. 2 of the German Codetermination Act, a majority of at least two thirds of the members of the Supervisory Board is required to appoint members of the Managing Board. If such majority is not achieved, the Mediation Committee shall give, within one month after the first round of voting, a recommendation for the appointments to the Managing Board. The Supervisory Board will then appoint the members of the Managing Board with the votes of the majority of its members. If such appointment fails as well, the Chairman of the Supervisory Board shall have two votes in a new round of voting.

According to Section 8 para. 1 of the Articles of Association, the Managing Board is comprised of several members, the number of which is determined by the Supervisory Board. Pursuant to Section 84 of the German Stock Corporation Act and Section 9 of the Articles of Association, the Supervisory Board may appoint a President of the Managing Board as well as a Vice President. If a required member of the Managing Board has not been appointed, the necessary appointment shall be made, in urgent cases, by a competent court upon motion by any party concerned, in accordance with Section 85 of the German Stock Corporation Act. Pursuant to Section 84 para. 3 of the German Stock Corporation Act, the Supervisory Board may revoke the appointment of an individual as member of the Managing Board or as President of the Managing Board for good cause.

According to Section 179 of the German Stock Corporation Act, any amendment to the Articles of Association requires a resolution of the Annual Shareholders’ Meeting. The authority to adopt purely formal amendments to the Articles of Association was transferred to the Supervisory Board under Section 13 para. 2 of the Articles of Association. In addition, by resolution of the Annual Shareholders’ Meetings on January 27, 2009 and January 25, 2011, the Supervisory Board has been authorized to amend Section 4 of the Articles of Association in accordance with the utilization of the Authorized Capital 2009 and the Authorized Capital 2011, and after expiration of the then-applicable authorization period.

Resolutions of the Annual Shareholders’ Meeting require a simple majority vote, unless a greater majority is required by law. Pursuant to Section 179 para. 2 of the German Stock Corporation Act, amendments to the Articles of Association require a majority of at least three-fourth of the capital stock represented at the voting round, unless another capital majority is prescribed by the Articles of Association.

B.5.7 Powers of the Managing Board to issue and repurchase shares

The Managing Board is authorized to increase, with the approval of the Supervisory Board, the capital stock until January 26, 2014 by up to €520.8 million through the issuance of up to 173.6 million registered shares of no par value against cash contributions and/or contributions in kind (Authorized Capital 2009). The Managing Board is authorized to exclude, with the approval of the Supervisory Board, preemptive rights of shareholders in the event of capital increases against contributions in kind. In addition, preemptive rights of shareholders may be excluded in the event of capital increases against cash contributions, (1) to make use of any fractional amounts, (2) in order to grant holders of conversion or option rights issued by the Company or any of its subsidiaries, as protection against the effects of dilution, preemptive rights to subscribe for new shares, and (3) if the issue price of the new shares is not significantly lower than their stock market price and the total of the shares issued in accordance with Section 186 para. 3 sentence 4 of the German Stock Corporation Act (against cash contributions, (1) to make use of any fractional amounts, (2) in order to grant holders of conversion or option rights issued by the Company or any of its subsidiaries, as protection against the effects of dilution, preemptive rights to subscribe for new shares, and (3) if the issue price of the new shares is not significantly lower than their stock market price and the total of the shares issued in accordance with Section 186 para. 3 sentence 4 of the German Stock Corporation Act (against cash contributions not significantly below the stock market price, with shareholders’ subscription rights excluded) together with other shares issued or disposed of by direct or mutatis mutandis application of this statutory regulation during the effective period of this authorization until the date of using this authorization does not exceed 10% of the capital stock at that point in time.

Furthermore, the Managing Board is authorized to increase, with the approval of the Supervisory Board, the capital stock until January 24, 2016 by up to €90 million through the issuance of up to 30 million registered shares of no par value against contributions in cash (Authorized Capital 2011). Preemptive rights of existing shareholders are excluded. The new shares shall be issued under the condition that they are offered exclusively to employees of Siemens AG and its subsidiaries. The new shares may also be issued to a suitable bank that assumes the obligation to use these shares for the sole purpose
of granting them to employees of Siemens AG and any of its consolidated subsidiaries. To the extent permitted by law, employee shares may also be issued in such a manner that the contribution to be paid on such shares is covered by that part of the annual net income which the Managing Board and the Supervisory Board may allocate to other retained earnings under Section 58 para. 2 of the German Stock Corporation Act.

As of September 30, 2012, the total unissued authorized capital of Siemens AG therefore consisted of €610.8 million nominal that may be issued in installments with varying terms by issuance of up to 203.6 million registered shares of no par value. For details, please refer to Section 4 of the Articles of Association.

By resolution of the Annual Shareholders’ Meeting of January 26, 2010, the Managing Board was authorized until January 25, 2015 to issue bonds in an aggregate principal amount of up to €15 billion with conversion rights or with warrants attached, or a combination of these instruments, entitling the holders to subscribe to up to 200 million new registered shares of Siemens AG of no par value, representing a pro rata amount of up to €600 million of the capital stock. The bonds under this authorization are to be issued against cash or non-cash contributions.

Besides, by resolution of the Annual Shareholders’ Meeting of January 25, 2011, the Managing Board was authorized until January 24, 2016 to issue bearer or registered bonds in an aggregate principal amount of up to €15 billion with conversion rights or with bearer or registered warrants attached or a combination of these instruments, entitling the holders to subscribe to up to 90 million new registered shares of Siemens AG of no par value, representing a pro rata amount of up to €270 million of the capital stock. The bonds under this authorization are to be issued against cash contributions.

For further details of the authorizations please refer to the respective resolutions of the Annual Shareholders’ Meetings. In particular, the bonds are, as a matter of principle, to be offered to shareholders for subscription, including the possibility of issuing them to banks with the obligation that they must be offered to shareholders for subscription. However, the Managing Board is authorized to exclude shareholders’ subscription rights with the approval of the Supervisory Board (1) provided that the issue price of the bonds is not significantly lower than their theoretical market price computed in accordance with generally accepted actuarial methods, (2) to the extent the exclusion is necessary with regard to fractional amounts resulting from the subscription ratio, (3) in order to grant holders of conversion or option rights or conversion or option obligations on Siemens shares subscription rights as compensation against the effects of dilution, and (4) to the extent that bonds were issued against non-cash contributions, in particular within the context of business combinations or when acquiring companies or interests therein.

In order to grant shares of stock to holders of convertible bonds or warrant bonds issued until January 25, 2015 by the Company or any of its consolidated subsidiaries in accordance with the authorization of the Managing Board adopted by the Annual Shareholders’ Meeting on January 26, 2010, the capital stock was conditionally increased by €600 million through the issuance of up to 200 million no-par value shares registered in the names of the holders (Conditional Capital 2010). In order to grant shares of stock to holders or creditors of convertible bonds or warrant bonds issued until January 24, 2016 by the Company or any of its consolidated subsidiaries in accordance with the authorization of the Managing Board adopted by the Annual Shareholders’ Meeting on January 25, 2011, the capital stock was conditionally increased by €270 million through the issuance of up to 90 million no-par value shares registered in the names of the holders (Conditional Capital 2011).

The total of the shares to be issued on the basis of bond issues under these authorizations pursuant to Section 186 para. 3 sentence 4 of the German Stock Corporation Act, in combination with other shares issued or sold by direct or mutatis mutandis application of this statutory regulation during the effective period of these authorizations, does not exceed 10% of the capital stock at the date of using these authorization. This limit also includes shares of stock issued up to this point in time against non-cash contributions, under exclusion of shareholders’ subscription rights, on the basis of the Authorized Capital 2009. In addition, the issue of convertible bonds and/or warrant bonds pursuant to both authorizations shall be limited to convertible bonds and/or warrant bonds that entitle or oblige to subscribe to a maximum number of 200 million Siemens shares representing a pro rata amount of €600 million of the capital stock while both authorizations are simultaneously effective.

In February 2012 Siemens issued bonds with warrant units with a volume of US$3 billion. The bonds with warrant units with a minimum per-unit denomination of US$250,000 were offered exclusively to institutional investors outside the U.S. Pre-emptive rights of Siemens shareholders were excluded. The bonds issued by Siemens Financieringsmaatschappij N.V. are guaranteed by Siemens AG and complemented with warrants issued by Siemens AG. The warrants entitle their holders to receive Siemens shares against payment of the exercise price in Euros. At issuance, the warrants resulted in option rights relating to a total of about 21.7 million Siemens shares. The terms and conditions of the warrants enable Siemens to service exercised option rights also by delivering treasury stock as well as to buy back the warrants. The bonds with warrant units were issued in two tranches with maturities of
5.5 and 7.5 years, respectively. The maturities refer to both the bonds and the related warrants. After issuance, the warrants can be detached from the bonds, the option period commenced on March 28, 2012. The bonds with warrant units, the bonds detached from warrants and the warrants detached are listed by Deutsche Bank AG in the Open Market segment of the Frankfurt Stock Exchange (Freiverkehr).

On January 25, 2011, the Annual Shareholders’ Meeting authorized the Company to acquire until January 24, 2016 up to 10% of its 914,203,421 shares of stock existing at the date of adopting the resolution or – if this value is lower – as of the date on which the authorization is exercised. The aggregate of shares of stock of Siemens AG repurchased under this authorization and any other Siemens shares previously acquired and still held in treasury by the Company or attributable to the Company pursuant to Sections 71d and 71e of the German Stock Corporation Act, may at no time exceed 10% of the then existing capital stock. Any repurchase of Siemens shares shall be accomplished at the discretion of the Managing Board either (1) by acquisition over the stock exchange or (2) through a public share repurchase offer.

The Managing Board is additionally authorized, with the approval of the Supervisory Board, to complete the repurchase of Siemens shares in accordance with the authorization described above, with the use of certain equity derivatives (put options, call options, forward purchases and by using a combination of these derivatives). In exercising this authorization, all stock repurchases based on the equity derivatives are limited to a maximum volume of 5% of the capital stock of 914,203,421 shares existing at the date of adopting the resolution at the Annual Shareholders’ Meeting. An equity derivative’s term of maturity must, in each case, not exceed 18 months and must be chosen in such a way that the repurchase of Siemens shares upon exercise of the equity derivative will take place no later than January 24, 2016.

Besides selling them over the stock exchange or through a public sales offer to all shareholders, the Managing Board was authorized by resolution of the Annual Shareholders’ Meeting on January 25, 2011 to also use Siemens shares repurchased on the basis of this or any previously given authorization as follows: such Siemens shares may be (1) retired; (2) offered for purchase to individuals currently or formerly employed by the Company or any of its consolidated subsidiaries as well as to board members of any of the Company’s consolidated subsidiaries, or awarded and / or transferred to such individuals with a vesting period of at least two years, provided that the employment relationship or board membership existed at the time of the offer or award commitment; (3) offered and transferred, with the approval of the Supervisory Board, to third parties against non-cash contributions, particularly in connection with business combinations or the acquisition of companies, businesses, parts of businesses or interests therein; (4) sold, with the approval of the Supervisory Board, to third parties against payment in cash if the price at which such Siemens shares are sold is not significantly lower than the market price of Siemens stock at the time of selling, or (5) used to meet obligations or rights to acquire Siemens shares arising from, or in connection with, convertible bonds or warrant bonds issued by the Company or any of its consolidated subsidiaries. The aggregate volume of shares used under the authorization pursuant to (4) and (5) by mutatis mutandis application of the provisions of Section 186 para. 3 sentence 4 of the German Stock Corporation Act together with other shares issued or sold by direct or mutatis mutandis application of this statutory regulation during the effective period of this authorization until the date of using this authorization must not exceed 10% of the capital stock at that point in time.

Furthermore, the Supervisory Board was authorized by resolution of the Annual Shareholders’ Meeting on January 25, 2011 to use shares acquired on the basis of this or any previously given authorization to meet obligations or rights to acquire Siemens shares that were or will be agreed with members of the Managing Board of Siemens AG within the framework of rules governing Managing Board compensation. In particular, repurchased shares may be offered for acquisition, or awarded and/or transferred subject to a restriction period, by the Supervisory Board to the members of the Managing Board, provided that Managing Board membership existed at the time of the offer or award commitment.

In August 2012, Siemens announced a share buy back amounting to up to €3 billion, using the authorization given by the Annual Shareholders’ Meeting on January 25, 2011. The shares repurchased may be used for the purposes of cancellation and reduction of capital stock, issuance to employees, board members of affiliated companies and members of the Managing Board as well as to meet obligations arising under and in connection with convertible bonds and warrant bonds. The share buy back was completed on November 7, 2012, after repurchasing 37,949,286 shares, the total consideration paid for the shares amounting to about €2.9 billion (excluding incidental transaction charges). Additionally, the Managing Board decided to cancel 33,203,421 treasury shares, which reduced the common stock from 914,203,421 to 881 million shares. As of September 30, 2012, the Company held 24,725,674 (2011: 39,952,074) shares of stock in treasury.

For further information on the authorized and conditional capitals and on the treasury stock of the Company as of September 30, 2012 see → NOTE 26 IN D.6 NOTES TO CONSOLIDATED FINANCIAL STATEMENTS.
Siemens AG maintains two lines of credit in an amount of €4 billion and an amount of US$4 billion respectively which provide its lenders with a right of termination in the event that (1) Siemens AG becomes a subsidiary of another company or (2) a person or a group of persons acting in concert acquires effective control over Siemens AG by being able to exercise decisive influence over its activities (Art. 3(2) of Council Regulation (EC) 139/2004). In addition, Siemens AG has a bilateral credit line at its disposal in the amount of €450 million which may be terminated by the lender if major changes in Siemens AG’s corporate legal situation occur that jeopardise the orderly repayment of the credit.

Framework agreements concluded by Siemens AG under International Swaps and Derivatives Association Inc. documentation (ISDA Agreements) grant the counterparty a right of termination upon the occurrence of the following events: (i) the Company consolidates with, merges into, or transfers at least substantially all its assets to a third party and (1) the resulting entity’s creditworthiness is materially weaker than the Company’s immediately prior to such event, or (2) the resulting entity fails to simultaneously assume the Company’s obligations under the ISDA Agreement; or (ii) additionally some ISDA Agreements grant the counterparty a right of termination upon a third party acquiring the beneficial ownership of equity securities having the power to elect a majority of the Company’s Supervisory Board or otherwise acquiring the power to control the Company’s material policy-making decisions and the creditworthiness of the Company is materially weaker than it was immediately prior to such event. In either situation, ISDA Agreements are designed such that upon termination all outstanding payment claims documented under them are to be netted.

In February 2012 Siemens issued bonds with warrant units with a volume of US$3 billion. In case of a “Change of Control”, the terms and conditions of these warrants enable their holders to receive a higher number of Siemens shares in accordance with an adjusted strike price if they exercise their option rights within a certain period of time after the Change of Control. This period of time shall end either (1) not less than 30 days and no more than 60 days after publication of the notice of the issuer regarding the Change of Control, as determined by the issuer or (2) 30 days after the Change of Control becomes first publicly known. The strike price adjustment decreases depending on the remaining term of the warrants and is determined in detail in the terms and conditions of the warrants. In this context, a Change of Control occurs if a person or persons acting in concert, respectively, acquires or acquire control of the Company.

In the event of a change of control – that is if one or several shareholders acting jointly or in concert acquire a majority of the voting rights in Siemens AG and exercise a controlling influence, or if Siemens AG becomes a dependent enterprise as a result of entering into an intercompany agreement within the meaning of Section 291 of the German Stock Corporation Act, or if Siemens AG is to be merged into another company – any member of the Managing Board has the right to terminate the contract of employment if such change of control results in a substantial change in position (for example due to a change in corporate strategy or a change in the Managing Board member’s duties and responsibilities). If this right of termination is exercised, the Managing Board member is entitled to a severance payment in the amount of not more than two years’ compensation. The calculation of the annual compensation includes not only the base compensation and the target amount for the bonus, but also the target amount for the Stock Awards. This calculation will be based on the last contractual year before the termination of the contract. Additionally, the severance payments cover non-monetary benefits by paying an amount of 5% of the compensation or severance total. Furthermore, compensatory or severance payments will be reduced 15% as a lump-sum allowance for discounted values and for income earned elsewhere. However, this reduction will apply only to the portion of the compensatory or severance payment that was calculated without taking account of the first six months of the remaining term of the Managing Board member’s contract. The stock-based compensation components for which a firm commitment already exists remain unaffected. No severance payments are made to the extent the Managing Board member receives benefits from third parties on the occasion of, or in connection with, a change of control. A right of termination does not exist if the change of control occurs within a period of twelve months prior to a Managing Board member’s retirement.