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## **Volkswagen considers shareholder lawsuit to be without merit**

**Wolfsburg, 2 March 2016 – Volkswagen Aktiengesellschaft today announced that the Company has submitted a statement of defense to the Braunschweig District Court (Landgericht Braunschweig) in connection with the allegation of a violation of disclosure obligations under capital markets law. After careful examination by internal and external legal experts, the Company confirms its belief that its Management Board duly fulfilled its disclosure obligation under German capital markets law. The Company emphasizes that this examination does not replace the independent investigation for the complete clarification of the diesel matter which is being conducted by the law firm Jones Day and is ongoing. The Company is making this public announcement to correct the selective and incomplete publication of documents in the media about the diesel matter and to avoid having partial excerpts of its statement of defense published in the media. Notwithstanding this, Volkswagen deeply regrets the incidents related to the diesel issue.**

Volkswagen considers the German shareholder lawsuits to be without merit, since any ad hoc disclosure obligation requires that the persons responsible for the fulfillment of this obligation obtain knowledge of facts relevant for the stock price and can assess the economic effects of those facts. With respect to the diesel matter, stock price relevance occurred only as of 18 September 2015 when the violation of U.S. environmental regulations was announced. Until then, there were no indications whatsoever of information with relevance for the stock price, since up until that point in time it was expected that a manageable number of vehicles (approx. 500,000) would be affected by the diesel matter and that fines in a two-digit or lower three-digit million amount would be imposed, as had been the case in the past in the U.S. in comparable cases involving passenger vehicles. Additionally, to the best knowledge, the diesel matter appeared to be an issue that could be contained by measures that were common in such cases, including effective technical solutions, and, thus, appeared to be neutral with regard to the Company's stock price. The potential maximum fine of USD 18 billion that was publicly discussed after 18 September 2015 had never been fully applied in other cases to any extent. Once an initial reliable data basis regarding the global risks had been established after the "Notice of Violation", the Company promptly published its ad-hoc announcement on 22 September 2015. The comprehensive investigation commissioned by the Supervisory Board of Volkswagen with regard to the events and responsibilities related to the diesel matter is continuing.

The Jones Day investigators are sifting through enormous amounts of data: 102 terabytes of data have been secured; this amount is the equivalent of about 50 million books. As previously announced, Volkswagen will report preliminary results of the investigation in the second half of April.

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## **Background on the legal point of view expounded in the statement of defense**

The starting point of the diesel matter was, in hindsight, the strategic decision by Volkswagen in 2005 to start a major diesel campaign in the United States and to facilitate a breakthrough for this technology which at the time was already very popular in Europe. For this purpose, the Company decided to develop a new diesel powertrain unit with the EA 189 type diesel engine that features high performance and cost-efficient production.

The U.S. emissions limits for emissions of pollutants are strict. Under the strictest standard in the U.S. at the time, only 31 mg/km of nitrogen oxides (NO<sub>x</sub>) were allowed to be emitted, about six times less than under the EU5 standard applicable in Europe at that time. When designing modern diesel engines, technicians and engineers face the challenge that any measure to reduce nitrogen oxides has a knock-on effect with regard to other parameters (e.g. CO<sub>2</sub>).

In the ensuing period, in order to resolve this conflicting objective satisfactorily within the timeframe and budget of the EA189 project, according to the current state of knowledge, a group of persons – whose identity is still being determined – at levels below the Group's Management Board in the powertrain development division, decided to modify the engine management software. With this software modification, emissions values were generated in bench testing that differed substantially from those under real driving conditions.

This software modification required a selective but significant modification of the existing engine management software that Volkswagen expressly regrets. This modification could be implemented with relatively small changes and within the budget that was available for the development of the engine management software and without the need to involve superior levels. Only a small number of an approximate total 15,000 individual algorithms were changed. The Californian environmental agency California Air Resources Board (CARB) received indications of irregularities from a study published by the International Council on Clean Transportation (ICCT) in May 2014.

According to this study, nitrogen oxide values for two Volkswagen diesel vehicles reportedly deviated significantly between bench testing and road operation than would be expected under normal circumstances. CARB then requested an explanation from Volkswagen Group of America (VW GoA). Internal verification tests were conducted at Volkswagen over the following months. During a meeting with CARB on 2 December 2014, VW GoA offered to recalibrate the first and second generation EA 189 type diesel engines in the course of regular service work that was already scheduled in the North American market for December 2014.

On 23 May 2014, a memo about the ICCT study was prepared for Martin Winterkorn, then-Chairman of the Management Board of Volkswagen AG. This memo was included in his extensive weekend mail. Whether and to which extent Mr. Winterkorn took notice of this memo at that time is not documented. On 14 November 2014, Mr. Winterkorn received another memo that reported, amongst other things, on several then current product defect cases and referred to a cost framework of approx. EUR 20 million for the diesel issue in North America.

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According to current knowledge, the diesel matter, as it was treated as one of many product issues facing the Company, did not initially receive particular attention at the management levels of Volkswagen. Accordingly, the “Committee for Product Safety” (APS) was responsible for this matter at Volkswagen. Emission deviations between test bench and road operation exist at all automobile manufacturers and are by no means automatically attributable to violations of regulations. For global automobile manufacturers, service measures and recall campaigns are nothing out of the ordinary. Volkswagen expressly regrets that, looking back, the situation is different.

After subsequent tests conducted by CARB, it became apparent that improvements in the voluntary service measure for the affected engines in the North American market were not sufficient to reduce the nitrogen oxide emissions to an acceptable level. In summer 2015, the APS established a diesel task force of its own. Additionally, the U.S. law firm Kirkland & Ellis was retained to advise Volkswagen with regard to questions related to the American emissions law.

According to current knowledge, on 27 July 2015, individual Volkswagen employees discussed the diesel issue on the periphery of a regular meeting about damage and product issues, in the presence of Martin Winterkorn and Herbert Diess. Concrete details of this meeting have not yet been reconstructed. In particular, it is not clear whether the participants understood already at this point in time that the change in the software violated U.S. environmental regulations. Mr. Winterkorn asked for further clarification of the issue.

At the end of August 2015, Volkswagen technicians gave a full explanation of the technical causes for the irregularities discovered regarding the emission of nitrogen oxides in the U.S. to lawyers from the Volkswagen Legal Department as well as to the U.S. attorneys from Kirkland & Ellis. These detailed explanations led to the Management Board member’s realization that the modification of the engine management software constituted a prohibited defeat device under U.S. law. It was then decided to communicate this information transparently to CARB and EPA. This occurred during a meeting with the U.S. authorities on 3 September 2015. Mr. Winterkorn was informed accordingly in a note dated 4 September 2015.

Volkswagen was advised that in the past, defeat device violations under U.S. environmental law by other car manufacturers had been sanctioned with settlement payments that were not especially high for a company the size of Volkswagen. Even the highest U.S. fine by then, which amounted to USD 100 million and was imposed in 2014, was at the lower end of the statutory range of fines. This case affected about 1.1 million vehicles, which corresponded to a fine of not more than approximately USD 91 per passenger vehicle.

In light of this recommendation, it was expected that the diesel matter could be resolved with the U.S. authorities by disclosing the software modification, agreeing on appropriate measures to restore vehicle compliance with the law and the payments of potential fines in line with prior U.S. settlements.

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As of early September 2015, the effect of the diesel issue still appeared to be limited to the United States. Directly after the publication of the Notice of Violation on 18 September 2015 – which was unexpected, because of the course of the discussions with the U.S. authorities until then – and the resulting publicity effect, a specific task force comprising Group Internal Audit was established and directed to pursue an urgent investigation of the facts. The assessment of the concrete global risks resulting from this matter required several days and was promptly disclosed on 22 September 2015 by way of an ad hoc announcement when a first reasonably reliable, but still preliminary, factual basis had been determined.

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