

## **Explanatory report of the Executive Board of Deutsche Börse AG on the information pursuant to §§ 289a (1) and 315a (1) of the German Commercial Code per 31 December 2017**

The Executive Board must provide explanatory notes on the mandatory information in the management report and the consolidated management report regarding to §§ 289a (1) and 315a (1) of the German Commercial Code (Handelsgesetzbuch, HGB, the "Code") per 31 December 2017 to the Annual General Meeting. Accordingly, the Executive Board of Deutsche Börse AG hereby provides the following notes:

### **1. Structure of subscribed capital**

The share capital of Deutsche Börse AG amounted to €193.0 million on the above-mentioned reporting date and was composed of 193 million no-par value registered shares. There are no other classes of shares besides these ordinary shares.

### **2. Limitations relating to voting rights or the transfer of shares**

The Executive Board is only aware of limitations to voting rights that result from the Aktiengesetz (AktG, German Stock Corporation Act), according to which voting rights arising from shares affected by section 136 of the AktG may not be exercised. Furthermore, shares held by Deutsche Börse AG as treasury shares are exempted from the exercise of any rights according to section 71b of the AktG.

### **3. Equity interests which exceed 10% of the voting rights**

Under the Wertpapierhandelsgesetz (WpHG, German Securities Trading Act), any investor whose shareholding reaches, exceeds or falls below specified voting right thresholds as a result of purchase, sale or any other transaction is required to notify the company and the Bundesanstalt für Finanzdienstleistungsaufsicht (BaFin, German Federal Financial Supervisory Authority). The lowest threshold for this disclosure requirement is 3 per cent. Deutsche Börse AG is not aware of any direct or indirect equity interests in its capital exceeding 10 per cent of the voting rights.

### **4. Shares with special rights**

There are no shares with special rights granting the holder supervisory powers.

### **5. Control of voting rights within the meaning of § 289a (1) no. 5 and § 315a (1) no. 5 HGB**

Employees holding shares in Deutsche Börse AG exercise their rights in the same way as other shareholders in accordance with the statutory provisions and the Articles of Association.

### **6. Provisions concerning the appointment and dismissal of members of the Executive Board and amendments to the Articles of Incorporation**

Members of the Executive Board are appointed and dismissed in accordance with sections 84 and 85 of the AktG and with Article 6 of the Articles of Association of Deutsche Börse AG. Amendments to the Articles of Association of Deutsche Börse AG are adopted by resolution of the Annual General Meeting in accordance with section 119 (1) No. 5 of the AktG. Under Article 12 (4) of the Articles of Association of Deutsche Börse AG, the Supervisory Board has the power to make changes to the Articles of Association that relate to the wording only. In accordance with Article 18 (1) of the Articles of Association of Deutsche Börse AG, resolutions of the Annual General Meeting are passed by a simple majority of the votes cast, unless otherwise mandated by the AktG. Insofar as the AktG additionally prescribes a majority of the share capital represented at the time of a resolution, a simple majority of the share capital represented is sufficient where this is legally permissible.

## 7. Authorizations of the Executive Board regarding the issue or buy-back of shares

The Executive Board has the following powers to issue or buy back shares:

- Subject to the approval of the Supervisory Board, the Executive Board is authorised to increase the share capital by up to a total of €13.3 million on one or more occasions in the period up to 10 May 2021 by issuing new no-par value registered shares in exchange for cash and/or non-cash contributions (authorised capital I). Shareholders must be granted pre-emptive rights. However, subject to the approval of the Supervisory Board, the Executive Board may exclude shareholders' pre-emptive rights with respect to fractional amounts. However, according to the authorisation, the Executive Board may only exclude shareholders' pre-emptive rights if the total number of shares that are issued during the term of the authorisation and that exclude shareholders' pre-emptive rights does not exceed 20 per cent of the share capital. Full authorisation, and particularly the conditions under which shareholders' pre-emptive rights can be excluded, is derived from Article 4 (3) of the Articles of Association of Deutsche Börse AG.
- The Executive Board is also authorised to increase the share capital by up to a total of €19.3 million on one or more occasions in the period up to 12 May 2020, subject to the approval of the Supervisory Board, by issuing new no-par value registered shares against cash and/or non-cash contributions (authorised capital II). Shareholders must be granted pre-emptive rights, which the Executive Board can disapply in certain cases, subject to the approval of the Supervisory Board in each case. The Executive Board is authorised to exclude shareholders' pre-emptive rights: (i) in the case of cash capital increases, provided that the issue price of the new shares is not significantly lower than the prevailing exchange price, and the total number of shares issued under exclusion of shareholders' pre-emptive rights does not exceed 10 per cent of the share capital; (ii) in the case of physical capital increases in exchange for non-cash contributions for the purpose of acquiring companies, parts of companies, interests in companies, or other assets; or (iii) with respect to fractional amounts. However, according to the authorisation, the Executive Board may only exclude shareholders' pre-emptive rights if the total number of shares that are issued during the term of authorisation and that exclude shareholders' pre-emptive rights does not exceed 20 per cent of the share capital. The full authorisation, and particularly the conditions under which shareholders' pre-emptive rights can be disapplied, is derived from Article 4 (4) of the Articles of Association of Deutsche Börse AG.
- In addition, the Executive Board is authorised to increase the share capital by up to a total of €38.6 million on one or more occasions in the period up to 12 May 2020, subject to the approval of the Supervisory Board, by issuing new no-par value registered shares in exchange for cash contributions (authorised capital III). Shareholders must be granted pre-emptive rights, which the Executive Board can exclude, subject to the approval of the Supervisory Board, only for fractional amounts. However, according to the authorisation, the Executive Board may only exclude shareholders' pre-emptive rights if the total number of shares that are issued during the term of authorisation and that exclude shareholders' pre-emptive rights does not exceed 20 per cent of the share capital. The exact content of this authorisation is derived from Article 4 (5) of the Articles of Association of Deutsche Börse AG.

- Furthermore, the Executive Board is authorised to increase the share capital by up to a total of €6.0 million on one or more occasions in the period up to 16 May 2022, subject to the approval of the Supervisory Board, by issuing new no-par value registered shares against cash and/or non-cash contributions (authorised capital IV). Shareholders must be granted pre-emptive rights unless the Executive Board makes use of the authorisation granted to it to disapply such rights, subject to the approval of the Supervisory Board. The Executive Board is authorised to disapply shareholders' pre-emptive rights for fractional amounts with the approval of the Supervisory Board. However, according to the authorisation, the Executive Board may only exclude shareholders' pre-emptive rights if the total number of shares that are issued during the term of the authorisation and that exclude shareholders' pre-emptive rights does not exceed 20 per cent of the share capital. Full authorisation is derived from Article 4 (6) of the Articles of Association of Deutsche Börse AG.
  
- The Executive Board is authorised to acquire treasury shares amounting to up to 10 per cent of the share capital. However, the acquired shares, together with any treasury shares acquired for other reasons that are held by the company or attributed to it in accordance with sections 71a ff. of the AktG, may at no time exceed 10 per cent of the company's share capital. The authorisation to acquire treasury shares is valid until 16 May 2019 and may be exercised by the company in full or in part on one or more occasions. However, it may also be exercised by dependent companies, by companies in which Deutsche Börse AG holds a majority interest or by third parties on its or their behalf. The Executive Board may elect to acquire the shares (1) on the stock exchange, (2) via a public tender offer addressed to all shareholders or via a public request for offers of sale addressed to the company's shareholders, (3) by issuing tender rights to shareholders or (4) using derivatives (put options, call options, forward purchases or a combination of put options, call options and forward purchases). The full and exact wording of the authorisation to acquire treasury shares, and particularly the permissible uses to which the shares may be put, can be found in items 5 and 6 of the agenda for the Annual General Meeting held on 17 May 2017.
  
- The share capital has been contingently increased by up to €19.3 million by issuing up to 19.3 million no-par value registered shares (contingent capital 2014). The contingent capital increase will be implemented only to the extent that holders of convertible bonds or warrants attaching to bonds with warrants issued by the company or a Group company in the period until 14 May 2019 on the basis of the authorisation of the Executive Board in accordance with the resolution of the Annual General Meeting on 15 May 2014 on item 5 (a) of the agenda exercise their conversion or option rights, meet their conversion or option obligations, or to the extent that shares are tendered and to the extent that no other means are used to settle such rights or obligations. More details can be found in Article 4 (7) of the Articles of Association of Deutsche Börse AG.

## **8. Material agreements of the Company that are subject to change of control provisions as a result of a takeover bid**

The following material agreements of the company are subject to a change of control following a takeover bid:

- On 28 March 2017, Deutsche Börse AG and its subsidiary Clearstream Banking S.A. entered into a multicurrency revolving facility agreement with a banking syndicate for a working capital credit totalling up to €750 million. If there is a change of control, the credit relationship between Deutsche Börse AG and the lenders can be reviewed in negotiations within a period of no more than 60 days. In this process, each lender has the right, at its own discretion, to terminate its credit commitment and demand partial or full repayment of the amounts owing to it. A change of control occurs if Deutsche Börse AG no longer directly or indirectly holds the majority of Clearstream Banking S.A. or if a person or a group of persons acting in concert acquires more than 50 per cent of the voting shares of Deutsche Börse AG.

- Under the terms of Deutsche Börse AG's €600.0 million fixed-rate bond issue 2015/2041 (hybrid bond), Deutsche Börse AG has a termination right in the event of a change of control which, if exercised, entitles Deutsche Börse AG to redeem the bonds at par, plus accrued interest. If Deutsche Börse AG does not exercise this termination right, the affected bonds' coupon will increase by 5 percentage points. A change of control occurs if a person or a group of persons acting in concert or third parties acting on their behalf, has or have acquired more than 50 per cent of the shares of Deutsche Börse AG or the number of Deutsche Börse AG shares required to exercise more than 50 per cent of the voting rights at Annual General Meetings of Deutsche Börse AG. In addition, the relevant bond terms require that the change of control must adversely affect the long-term rating given to Deutsche Börse AG by Moody's Investors Services, Inc., Standard & Poor's Rating Services or Fitch Ratings Limited. Further details can be found in the applicable bond terms.
- The terms of the €500.0 million fixed-rate bonds 2015/2025, the €600.0 million fixed-rate bonds 2013/2018, and the €600.0 million fixed-rate bonds 2012/2022, which were all issued by Deutsche Börse AG, all provide Deutsche Börse AG with a termination right in the event of a change of control. If these cancellation rights are exercised, the bonds are repayable at par plus any accrued interest. A change of control occurs if a person or a group of persons acting in concert, or third parties acting on their behalf, has or have acquired more than 50 per cent of the shares of Deutsche Börse AG or the number of Deutsche Börse AG shares required to exercise more than 50 per cent of the voting rights at Annual General Meetings of Deutsche Börse AG. In addition, the respective sets of bond terms require that the change of control must adversely affect the rating given to one of the preferential unsecured debt instruments of Deutsche Börse AG by Moody's Investors Services, Inc., Standard & Poor's Rating Services or Fitch Ratings Limited. Further details can be found in the applicable bond terms.
- Under certain conditions, members of Deutsche Börse AG's Executive Board have a special right to terminate their contracts of service in the event of a change of control. According to the agreements made with all Executive Board members, a change of control occurs if (i) a shareholder or third party discloses possession of more than 50 per cent of the voting rights in Deutsche Börse AG in accordance with sections 33 and 34 of the WpHG (sections 21 and 22 of the WpHG (previous version)), (ii) an intercompany agreement in accordance with section 291 of the AktG is entered into with Deutsche Börse AG as a dependent company, or Deutsche Börse AG is absorbed in accordance with section 319 of the AktG or (iii) Deutsche Börse AG is merged in accordance with section 2 of the Umwandlungsgesetz (UmwG, German Reorganisation and Transformation Act).

## 9. Agreements on compensation

Details concerning termination agreements with members of the Executive Board, in the event of a takeover offer, are described in the previous no. 8. Further information, in particular concerning corresponding compensation agreements, can also be found in the remuneration report of the corporate report 2017.

Frankfurt/Main, March 2018

Deutsche Börse Aktiengesellschaft  
The Executive Board

  
\_\_\_\_\_  
(Theodor Weimer)

  
\_\_\_\_\_  
(Andreas Preuß)

  
\_\_\_\_\_  
(Gregor Pottmeyer)

  
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(Hauke Stars)

  
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(Jeffrey Tessler)