

**JOINT  
REPORT  
OF THE EXECUTIVE BOARDS**

of

**Deutsche Börse Aktiengesellschaft, Frankfurt am Main**

and

**Clearstream Banking Aktiengesellschaft, Frankfurt am Main**

**concerning the Domination Agreement between Deutsche Börse  
Aktiengesellschaft and Clearstream Banking Aktiengesellschaft**

In order to inform their shareholders and for purposes of preparing the resolutions to be adopted at the Annual General Meetings of Deutsche Börse Aktiengesellschaft ("**Deutsche Börse**") and Clearstream Banking Aktiengesellschaft ("**Clearstream Banking**"), the Executive Board of Deutsche Börse and the Executive Board of Clearstream Banking hereby issue pursuant to Section 293a of the German Stock Corporation Act (*Aktiengesetz* - AktG) the following joint report on the Domination Agreement between Deutsche Börse and Clearstream Banking dated 2 March 2010. To the extent no other dates are indicated, the signing date of this report shall be the reference date for any and all information contained herein.

## **I. EXECUTION AND ENTRY INTO EFFECT OF THE DOMINATION AGREEMENT**

1. On 2 March 2010, Deutsche Börse entered into a Domination Agreement with Clearstream Banking (hereinafter also referred to as the "**Agreement**"). A copy of the Agreement is attached to this report as an **Annex**.
2. The Executive Board of Deutsche Börse approved the execution of the Agreement at its meeting on 2 March 2010. The consent of Deutsche Börse's Supervisory Board was not required.
3. The Executive Board of Clearstream Banking approved the execution of the Agreement on 22 February 2010. Clearstream Banking's Supervisory Board granted its consent thereto on 25 February 2010.
4. The Agreement must be approved by the Annual General Meetings of Clearstream Banking and Deutsche Börse (Section 293 (1) and (2) of the AktG). It will be submitted for approval to the Annual General Meeting of Deutsche Börse on 27 May 2010 and presumably to the Annual General Meeting of Clearstream Banking on 12 May 2010. The Agreement will not enter into effect until it has been recorded in the commercial register of Clearstream Banking (Section 294 (2) of the AktG). No entry in the commercial register of Deutsche Börse is required.

## **II. DEUTSCHE BÖRSE GROUP AND PARTIES TO THE AGREEMENT**

### **1. Overview of Deutsche Börse Group**

5. Deutsche Börse, as the parent company, together with its subsidiaries form a group ("**Deutsche Börse Group**"). Deutsche Börse Group's business is organized along the securities trading process chain and is divided into five segments:
  - The Xetra segment organizes securities trading in the cash market of the Frankfurt Stock Exchange via the fully electronic trading platform, Xetra, and floor trading.

- Eurex is one of the world's largest derivatives exchanges for trading in derivatives (futures and options) and functions as a central counterparty offering clearing services for the derivatives market, the cash market as well as off-exchange-traded (*OTC*) financial products.
- Clearstream assumes post-trading tasks and offers settlement and custody services for trading of equities and other securities.
- Market Data & Analytics designs, distributes and markets information and index products for international financial markets.
- Information Technology builds and operates Deutsche Börse Group's trading platforms.

The Corporate Services division provides comprehensive services for all five segments.

6. The business activities of the segments are performed by the respective Group companies as follows:

- Xetra: Deutsche Börse, as the operator of the Frankfurt Stock Exchange, a public law entity with partial legal capacity, and some of its affiliates.
- Eurex: Eurex Zürich AG (Switzerland) and its subsidiaries and affiliates including, *inter alia*, Eurex Frankfurt AG, Eurex Clearing AG and International Securities Exchange Holdings, Inc. (ISE) (the latter with seat in the USA); sole shareholders of Eurex Zürich AG are Deutsche Börse and SIX Swiss Exchange AG (Switzerland).
- Clearstream: Clearstream Holding AG, Clearstream International S.A. (Luxembourg) and its subsidiaries, including, Clearstream Banking S.A. (Luxembourg) and Clearstream Banking AG. The EDP departments of the individual subsidiaries are assigned to the Information Technology segment.
- Market Data & Analytics: Deutsche Börse and its holdings in STOXX Ltd. (Switzerland) and other companies.
- Information Technology: Deutsche Börse Systems AG and its subsidiary, Deutsche Börse Systems Inc. (USA), Deutsche Börse Services s.r.o. (Czech Republic) and parts of Clearstream Services S.A. and Clearstream Banking

S.A. (Luxembourg); Deutsche Börse Systems AG is a wholly owned subsidiary of Deutsche Börse.

- Corporate Services: Predominantly Deutsche Börse.

7. The key consolidated figures as at 31 December 2009 based on the consolidated balance sheet as at 31 December 2009 and the consolidated income statement as at 31 December 2009 (each compared to 2008 and 2007) prepared and audited in compliance with the International Financial Reporting Standards (IFRS) for annual financial statements are as follows:

	<b>31 Dec. 2009</b>	<b>31 Dec. 2008</b>	<b>31 Dec. 2007</b>
• Reported consolidated equity (in EUR millions)	3,338.8	2,978.3	2,690.2
• Earnings before interest, taxes, and amortisation (EBITA) (in EUR millions)	637.8	1,508.4	1,345.9
• Consolidated net income for the year (in EUR millions)	496.1	1,033.3	911.7
• Total assets (in EUR millions)	161,360.5	145,878.6	79,626.7

## 2. Deutsche Börse

8. Deutsche Börse is a listed stock corporation under German law (*Aktiengesellschaft*), recorded in the commercial register of the Local Court (*Amtsgericht*) of Frankfurt am Main under HRB 32232. Its financial year is the calendar year.
9. Its company object is the operation of exchanges (securities exchanges in particular) in accordance with statutory provisions; the planning, development and performance of electronic data processing particularly in the area of banks' exchange and securities business and its settlement; the collection, processing and distribution of financial information; as well as the provision of support services for organisations involved in the exchange and securities business (particularly in the form of centralized services in all operational fields of the relevant entities). The company may buy, sell, develop, lease or let hardware and software and any facilities associated therewith or use them on behalf of third parties. The company is authorized to transact all business and take any measures or other action deemed, directly or indirectly, necessary or expedient for the

promotion of its corporate purpose. In particular, the company may buy and sell land, establish branch offices in Germany and abroad and may form, acquire or hold equity interests in companies of the same or similar kind (and, in special cases, of a different kind). Moreover, the company is authorized to enter into inter-company agreements and joint venture agreements. The company is subject to the standard duty of confidentiality applicable within the banking industry.

10. Within Deutsche Börse Group, Deutsche Börse is responsible for the activities of the Xetra and Market Data & Analytics segments. Deutsche Börse shares this responsibility with its affiliates assigned to these segments.
11. Furthermore, Deutsche Börse is the holder of intangible assets (in particular, the customer base and software) of the Eurex Deutschland derivatives market operated by Eurex Frankfurt Aktiengesellschaft for Deutsche Börse's account, and provides support services for this derivatives market.
12. In addition, functions – so-called corporate services – are performed within Deutsche Börse, which are typically required at a listed stock corporation that is the Group parent and is at the same time engaged in operating business. Corporate Services assumes the following central functions for the other segments: Group Corporate Office (staff functions to support governing bodies and personnel development for executives); Investor Relations & Treasury; Corporate Communications; Legal Affairs; Group Strategy; Human Resources; Strategic Finance (M&A, management of equity interests, investment control); Group Compliance, Information Security & Risk Management; Financial Accounting and Control; Internal Auditing; Organization & Administration (facility management, infrastructure, purchasing).
13. As at 31 December 2009, Deutsche Börse held 12 fully consolidated (i.e. which are included with their assets and liabilities in the consolidated financial statements) direct subsidiaries. As at 31 December 2009, it held indirect interests in a further 21 fully consolidated entities. A further 10 companies (in which Deutsche Börse directly or indirectly held interests as at 31 December 2009) were accounted by using the equity method (this means that neither the assets nor the liabilities of the relevant entity, but only the *pro rata* equity holding is reported in the consolidated financial statements).
14. The key companies in which Deutsche Börse holds an equity interest and that operate outside the Xetra/partial business Frankfurt Stock Exchange and Market Data & Analytics segments are Eurex Zürich AG and its affiliates (e.g., Eurex Frankfurt AG, Eurex Clearing AG and International Securities Exchange Holdings, Inc.), Clearstream Holding AG, Clearstream International S.A. and its affiliates as well as Deutsche Börse Systems AG and its wholly owned subsidiary, Deutsche Börse Systems Inc.
15. As the operator of the Frankfurt Stock Exchange, Deutsche Börse is licensed under the German Stock Exchange Act (*Börsengesetz*).

16. Deutsche Börse's share capital is currently EUR 195,000,000 and is divided into 195,000,000 non-par value registered shares representing a proportionate interest in the share capital of EUR 1.00 each.
17. Deutsche Börse has no non-voting shares.
18. Deutsche Börse's shares are listed at the Frankfurt Stock Exchange on the Prime Standard market segment.
19. Deutsche Börse Group (within the meaning of the scope of consolidation for the consolidated financial statements) employed an average of 3,549 employees in 2009 and had 3,600 employees on 31 December 2009. Of these, 579 worked at Deutsche Börse as at 31 December 2009 (German Commercial Code figures).
20. The CEO of Deutsche Börse is Dr. Reto Francioni. The other members of the Executive Board of Deutsche Börse are Mr Gregor Pottmeyer, Mr Frank Gerstenschläger, Dr.-Ing. Michael Kuhn, Mr Andreas Preuß and Mr Jeffrey Tessler.
21. The Supervisory Board of Deutsche Börse comprises 18 members (Article 9 (1) sentence 1 of its Articles of Incorporation). The composition of the Supervisory Board is determined by the provisions of the German One-Third Participation Act (*Drittelbeteiligungsgesetz* - DrittelbG) and therefore consists of 12 shareholder representatives and six employee representatives.
22. The following persons are currently members of the Supervisory Board:
  - Dr. Manfred Gentz, Chairman
  - Gerhard Roggemann, Deputy Chairman
  - Herbert Bayer\*
  - Richard Berliand
  - Birgit Bokel\*
  - Hans-Peter Gabe\*
  - Dr. Joachim Faber
  - Richard M. Hayden
  - Craig Heimark
  - Dr. Konrad Hummler
  - David Krell
  - Hermann-Josef Lamberti
  - Friedrich Merz
  - Thomas Neiß

- Roland Prantl\*
- Dr. Erhard Schipporeit
- Norfried Stumpf\*
- Johannes Witt\*

\* Employee representatives.

23. The key financial figures of Deutsche Börse as at 31 December 2009 (single-entity financial statements) based on the balance sheet as at 31 December 2009 and the income statement as at 31 December 2009 (each compared to 2008 and 2007) prepared and audited in compliance with provisions of the German Commercial Code (*Handelsgesetzbuch* - HGB) for annual financial statements are as follows:

	<b>31 Dec. 2009</b>	<b>31 Dec. 2008</b>	<b>31 Dec. 2007</b>
• Reported equity (in EUR millions)	2,185.8	2,114.4	1,916.3
• Earnings before interest, taxes, and amortization (EBITA) (in EUR millions)	695.8	1,378.4	1,113.8
• Net income for the year (in EUR millions)	453.1	971.2	773.6
• Total assets (in EUR millions)	4,344.0	4,298.9	4,571.8

### 3. Clearstream Banking

24. Clearstream Banking is a stock corporation under German law (*Aktiengesellschaft*) recorded in the commercial register of the Local Court of Frankfurt am Main under HRB 7500. The financial year is the calendar year.
25. The company object is the operation of
- a central securities deposit bank and the performance of any and all functions related thereto, including the transmission of data and information between shareholders, institutions and issuers and the provision of corresponding systems;

- a central booking and clearing office for purposes of simplifying international securities transfer and clearing operations; and
- a collateral management system.

The company is also authorized to operate as trustee

- in connection with the issue of investment certificates by investment companies as well as the custody and management of the respective fund assets;
- accordingly in connection with the issue of certificates for foreign equities;
- in connection with the admittance of foreign equities to trading and official listing on domestic and foreign securities exchanges and in connection with the performance of additional securities and exchange functions aimed at facilitating international securities transfer and clearing operations; and
- for securities and monies or receivables earmarked as collateral for bonds held in custody at the company.

The company is further authorized to operate as custodian

- of precious metals, to the extent the precious metals held in custody are earmarked as collateral for bonds held in custody at the company;
- of relevant precious metals for institutions involved in the settlement, issuance or satisfaction of bonds under the terms and conditions of the issue;
- in the exercise of control functions in relation to delivery claims for precious metals earmarked as collateral for bonds held in custody at the company; and
- of precious metals for clients.

The company may establish branches and offices domestically and abroad, enter into inter-company agreements and acquire equity interests in companies. The company may furthermore participate in international securities transfer and clearing operations and transact any and all business serving to facilitate the settlement of international securities transactions.

26. The sole shareholder of Clearstream Banking is Clearstream International S.A. (Luxembourg). The shareholders of Clearstream International S.A. are Deutsche Börse, which directly holds 48.9996% of the share capital, Clearstream Holding AG, which directly holds 51% of the share capital, and Deutsche Börse Systems AG, which directly holds 0.0004% of the share capital. Deutsche Börse is the sole shareholder of Clearstream Holding AG and Deutsche Börse Systems AG. Thus, Deutsche Börse (indirectly) holds a 100% interest in Clearstream Banking.

27. Clearstream Banking holds 17.48% of share capital and voting rights of Link-Up Capital Markets, S.L., (Spain). Clearstream Banking has no other equity holdings, branches or offices beyond this.
28. As a credit institution within the meaning of the German Banking Act (*Kreditwesengesetz - KWG*), Clearstream Banking holds a banking licence. As a credit institution, Clearstream Banking is, in particular, subject to the capital requirements provisions of the German Banking Act and the Solvency Regulation, as well as solvency supervision by the German Federal Financial Supervisory Authority (*Bundesanstalt für Finanzdienstleistungsaufsicht - BaFin*) and BaFin's Minimum Requirements for Risk Management (MaRisk). Clearstream Banking is a central securities deposit bank within the meaning of the German Custody Act (*Depotgesetz - DepotG*). Clearstream Banking also constitutes an operator of a payment and securities transfer and settlement system within the meaning of Section 24b of the KWG notified to the Deutsche Bundesbank. In a letter dated 5 November 2009, BaFin informed Clearstream Banking that Clearstream Banking was deemed a system-relevant credit institution and that BaFin was planning to send representatives of BaFin to attend the company's Supervisory Board meetings in the future.
29. Clearstream Banking's share capital is currently EUR 25,000,000 and is divided into 25,000,000 non-par value registered shares representing a proportionate interest in the share capital of EUR 1.00 each. Clearstream Banking's shares are not listed and it has no non-voting shares. No convertible bonds, participating bonds, profit participation rights or stock options have been issued.
30. Clearstream Banking had 360 employees as at 31 December 2009.
31. The members of Clearstream Banking's Executive Board are Mr Andreas Wolf (CEO), Mr Stefan Lepp, Mr Mathias Papenfuß and Ms Katja Rosenkranz.
32. The Supervisory Board of Clearstream Banking comprises six members (Section 8 (1) of its Articles of Incorporation). The composition of the Supervisory Board is determined by the provisions of the German One-Third Participation Act (*DrittelbG*) and therefore consists of four shareholder representatives and two employee representatives.
33. The following persons are currently members of Clearstream Banking's Supervisory Board:
  - Jeffrey Tessler, CEO
  - Yves Baguet
  - Peter Eck\*
  - Frank Gerstenschläger
  - Norfried Stumpf\*

- Marcus Thompson

\* Employee representatives.

Jeffrey Tessler and Frank Gerstenschläger are also members of the Executive Board of Deutsche Börse.

34. The key financial figures of Clearstream Banking as at 31 December 2009 (single-entity financial statements) based on the balance sheet as at 31 December 2009 and the income statement as at 31 December 2009 (each compared to 2008 and 2007) prepared and audited in compliance with provisions of the German Commercial Code (HGB) for annual financial statements are as follows:

	<b>31 Dec. 2009</b>	<b>31 Dec. 2008</b>	<b>31 Dec. 2007</b>
• Reported equity (in EUR millions)	242.6	240.7	203.8
• Earnings before interest, taxes, and amortization (EBITA) (in EUR millions)	123.7	141.1	89.2
• Net income for the year (in EUR millions)	92.2	90.4	63.3
• Total assets (in EUR millions)	820	1,382	1,431

### **III. ECONOMIC AND LEGAL REASONS FOR ENTERING INTO THE AGREEMENT**

#### **1. Improvement of Group management structure**

35. There are economic reasons for entering into the Agreement, specifically that doing so would improve the Group management structure within Deutsche Börse Group.
36. In June/July 2009, an intermediate holding company structure was created within the Clearstream segment by increasing the share capital of Clearstream Holding AG against contribution in kind and having Deutsche Börse transfer 51% of the shares in Clearstream International S.A. (Luxembourg) to Clearstream Holding AG. As a consequence of the transfer, Clearstream Holding AG by virtue of its majority holding

in Clearstream International S.A., holds an indirect interest in Clearstream Banking and Clearstream Banking S.A. (Luxembourg) and since then functions as an intermediate holding company in the Clearstream segment. The reason for creating the intermediate holding company structure was to make the rating of Clearstream Banking S.A. more independent from that of Deutsche Börse. Creating Clearstream Holding AG as an additional level between Clearstream International S.A. and Deutsche Börse would make it more difficult to access Clearstream Banking S.A.'s equity. The Domination Agreement between Deutsche Börse and Clearstream Banking has no effect on this.

37. The Executive Board of Clearstream Banking currently consists of Jeffrey Tessler, Andreas Preuß, Dr.-Ing. Michael Kuhn and Andreas Wolf. In order to align management structures within the Clearstream segment, it is planned in the future that the Executive Board of Clearstream Holding AG is completely composed by officers/managers of other Clearstream companies. Thus, the Domination Agreement is being entered into in order to maintain and strengthen the organizational integration of Clearstream Banking into Deutsche Börse Group - with Deutsche Börse as the Group parent - even if the composition of the Executive Board of Clearstream Holding AG should change in future.
  
38. In addition to the economic and financial integration, an organizational integration is also a prerequisite for the existence of a VAT group. An organizational integration is deemed to exist where the parent takes organizational measures to ensure that its will is in fact imposed on the controlled entity. This can occur in several ways, for example, by executing a domination agreement. If a domination agreement has been executed, additional measures to ensure the organizational integration are principally not necessary. In this respect, entering into a domination agreement also serves the purpose of permanently strengthening the fiscal entity for value-added tax purposes between Deutsche Börse and Clearstream Banking, regardless of who sits on the governing bodies of the Clearstream companies in the future. The absence of a VAT group between Deutsche Börse and Clearstream Banking would give rise to considerable economic disadvantages for both companies. In the absence of a VAT group, the two companies would have to charge currently 19% VAT for services rendered to each other. Since in case of the absence of a VAT group there can be no full input tax relief from the perspective of the company purchasing the services – due to the nature of the services rendered – the inputs of the company providing the services, e.g. for personnel and the value added through the service process of the company providing the services which were not (previously) charged input tax, would negatively impact the company purchasing the services.

## **2. Advantages of a domination agreement between Deutsche Börse and Clearstream Banking from a legal perspective**

39. Absent a domination agreement between Deutsche Börse and Clearstream Banking, the companies would be deemed a “*de facto* group”, which would trigger the application of

the provisions in Section 311 *et seq.* of the AktG. Under these provisions, Deutsche Börse would, *inter alia*, be obligated to compensate Clearstream Banking for any loss caused in the course of a given financial year (Section 311 (1) of the AktG). In each case, losses must be compensated in fact by the close of the relevant financial year or it must be stipulated when and by means of what benefits any losses will be settled (Section 311 (2) sentence 1 of the AktG). The dependent entity must be granted a legal right to the benefits stipulated for purposes of settlement (Section 311 (2) sentence 2 of the AktG). This means that any and all actions or transactions effected by Clearstream Banking at the instigation or instruction of Deutsche Börse must be reviewed individually to determine whether (and to what extent) these resulted in a loss for Clearstream Banking and whether and to what extent Deutsche Börse is under a duty to compensate it therefor. Because of the extensive amount of services exchanged between Clearstream Banking and Deutsche Börse, determining whether and to what extent any losses have been caused is associated with a significant amount of administrative effort, which would be eliminated by the Domination Agreement.

### **3. Deutsche Börse's obligation to offset losses, reasonable protection of Clearstream Banking's interests**

40. Deutsche Börse's right to issue instructions to Clearstream Banking goes along with the obligation to compensate any annual net loss (loss) arising on the part of Clearstream Banking pursuant to Section 302 (1) of the AktG (see also sub-section 46 *et seq.*). Under this provision, Clearstream Banking has a claim against Deutsche Börse for lump sum compensation of any annual net loss incurred during the contract term, provided this is not compensated for by drawing from other profit reserves amounts that were paid into them during the contract term. In other words, Deutsche Börse need not seek to offset in a specific case losses that may have been suffered due to the exercise of control, where the offsetting would otherwise be the responsibility of Deutsche Börse according to the rules of the so-called *de facto* group existing in this case (see sub-section 39 above). Rather, Clearstream Banking is fully compensated for losses by Deutsche Börse. The reason for any loss that may be incurred by Clearstream Banking is irrelevant in this respect.

## **IV. ALTERNATIVES TO ENTERING INTO A DOMINATION AGREEMENT**

41. No alternative structures exist that would make it possible to achieve the objectives described above.
42. The parties discussed alternatives to entering into a domination agreement but these proved to be either less practical, associated with certain legal risks or simply unsuitable. For example, integrating Clearstream Banking into Deutsche Börse pursuant to Section 319 *et seq.* of the AktG would require that Deutsche Börse hold the shares of

Clearstream Banking directly, and for that reason alone, such integration (*Eingliederung*) would not be possible. Nor would reorganizing the legal structure of Clearstream Banking, e.g. into a German limited liability company (GmbH) or a partnership be a suitable alternative. The legal structure of a German stock corporation is also the preferred structure within Deutsche Börse Group and this should not be deviated from without good reason.

## V. EXPLANATION OF THE AGREEMENT

43. The material provisions of the Agreement attached as **Annex** are explained below:

### 1. Section 1 Management of Clearstream Banking

44. Section 1 (1) of the Agreement governs the management of Clearstream Banking which is characteristic for domination agreements. Thereunder, the Executive Board of Deutsche Börse may issue to the Executive Board of Clearstream Banking instructions with respect to managing the company under Section 308 of the AktG. Despite the right of instruction, Clearstream Banking remains a legally independent entity with its own governing bodies. Consequently, the Executive Board of Clearstream Banking remains responsible for management and representing Clearstream Banking *vis-à-vis* third parties. By contrast, on the basis of the Domination Agreement, the Executive Board of Clearstream Banking may and shall follow admissible instructions of Deutsche Börse. In this regard, Section 308 of the AktG provides that instructions which adversely affect Clearstream Banking as a dependent entity are also admissible if they serve the interests of Deutsche Börse or those of Deutsche Börse's or Clearstream Banking's Group affiliates. However, an instruction to amend, maintain or terminate the Agreement would not be admissible under Section 299 of the AktG. The right of instruction exists only *vis-à-vis* the Executive Board, not *vis-à-vis* the Supervisory Board or the Annual General Meeting of Clearstream Banking. If the Executive Board is issued instructions on matters requiring the consent of Clearstream Banking's Supervisory Board, such consent may be replaced by repeating the instruction in accordance with Section 308 (3) of the AktG. The right of instruction commences upon the entry into effect of the Agreement. Clearstream Banking's Annual General Meeting's authority to participate is not affected by the right of instruction.
45. Section 1 (2) of the Agreement contains a restriction on the right of instruction which is required on regulatory grounds and pursuant to which Deutsche Börse, in issuing instructions to Clearstream Banking, must respect the sole responsibility retained by the Executive Board of Clearstream Banking as stipulated in the German Banking Act (KWG) and may furthermore not issue any instructions the execution of which would cause Clearstream Banking or its governing bodies to breach the obligations imposed upon them by the German Banking Act and its ancillary provisions.

## **2. Section 2 Assumption of losses**

46. If a domination agreement is in place, the counterparty (i.e., in this case, Deutsche Börse) is obligated pursuant to Section 302 (1) of the AktG to offset any other – i.e., without taking into account the obligation to offset losses – net loss for the year incurred on the part of the controlled entity (i.e., in this case, Clearstream Banking), to the extent such loss is not offset by withdrawing amounts from other revenue reserves that were created during the term of the Agreement. The obligation to compensate losses applies in the case of a domination agreement between two stock corporations by operation of law. The dynamic reference in Section 2 of the Agreement therefore merely advises of the statutory provisions.
47. According to prevailing opinion, the obligation to compensate losses applies for the first time for the entire financial year in which the Agreement enters into effect.
48. According to prevailing opinion, the claim for compensation of losses accrues upon expiration of the final day of any given financial year of Clearstream Banking for which the respective claim exists. Between maturity and actual satisfaction of the claim, interest will be owed in the applicable statutory amount. Between merchants, the interest rate is currently 5% p.a. (Sections 352 (1), 353 of the HGB). Any exceeding interest due as a consequence of default remain unaffected thereof.
49. Pursuant to Section 302 (4) of the AktG, the claim to compensation of losses becomes time-barred ten years from the date on which the termination of the Agreement has been entered in the commercial register and published in accordance with Section 10 of the HGB.

## **§ 3 Section 3 Entry into effect, term, termination, amendments**

50. The wording in Section 3 (1) of the Agreement reflects the statutory provision that the Agreement will not enter into effect until it has been recorded in the commercial register of Clearstream Banking's registered office (Section 294 (2) of the AktG). Pursuant to Sections 293 (1) and (2) of the AktG, the Agreement also requires the consent of the Annual General Meetings of Clearstream Banking and Deutsche Börse before it will enter into effect (see sub-section 4 above). The resolutions by the Annual General Meetings of Clearstream Banking and Deutsche Börse must be passed by a simple majority of the votes cast under Section 133 (1) of the AktG and also require at least a three-quarter majority of the share capital represented at the adoption of the resolution (Section 293 (1) and (2) of the AktG).
51. The Agreement is entered into for an indefinite term but may be terminated at any time in writing by either of the parties subject to three months' notice to the end of a given financial year of Clearstream Banking (Section 3 (2)). The Agreement may be terminated without notice for good cause pursuant to Section 3 (2) sentence 3 of the Agreement. This provision reflects the statutory provision in Section 297 (1) sentence 1

of the AktG. Deutsche Börse and Clearstream Banking have expressly agreed in Section 3 (2) sentence 4 that the parties shall have the right to terminate the Agreement for good cause in the event Deutsche Börse no longer (directly or indirectly) holds a majority interest in Clearstream Banking or the majority of voting rights attaching to such interest, as well as in the event of the merger, division or liquidation of Clearstream Banking.

#### **4. Section 4 Severability**

52. Section 4 of the Agreement is a standard "severability clause", which ensures that the Agreement will remain valid and enforceable even in the event that individual provisions thereof were already invalid or unenforceable at the time the Agreement was entered into or became invalid or unenforceable subsequently, e.g. as a result of any legislative amendments or changes in case law.

#### **VI. NO COMPENSATION OR SETTLEMENT, CONTRACT AUDIT**

53. The Domination Agreement does not provide for any compensation or settlement claims under Section 304 of the AktG and Section 305 of the AktG, respectively, because as between Deutsche Börse, as the controlling entity, and Clearstream Banking, as the controlled entity, there are no shareholders outside the Group at any level, which means that, according to the prevailing view, Clearstream Banking has no "outside shareholders" in whose favour any compensation or settlement under Sections 304, 305 of the AktG would have to be agreed. This follows from the legislative history of the German Stock Corporation Act from 1965, according to which the counterparty and even those persons deemed to be equivalent to the counterparty do not qualify as "outside shareholders". According to the legislative history, this term also includes those persons whose net assets are economically attributable to those of the counterparty or whose income in the end accrues to the counterparty (in this case, Deutsche Börse), which is the case with Clearstream International S.A. as the sole shareholder of Clearstream Banking. As sole shareholder of Clearstream Banking, Clearstream International S.A.'s consent to the execution of the Domination Agreement is furthermore required. For the sake of precaution, it is also planned to have Clearstream International S.A. waive the agreement of any compensation or settlement at the General Meeting of Clearstream Banking.
54. Pursuant to Section 293b (1) of the AktG, a domination agreement must be audited by one or more expert auditors (contract auditors), unless all the shares of the controlled entity are in the hand of the controlling entity (Section 293b (1) of the AktG) or unless all shareholders of all the entities involved waive this by notarized instrument (Section 293b (2) in conjunction with Section 293a (3) of the AktG). In the instant case, a notarized waiver by all shareholders of Deutsche Börse is not possible. According to prevailing opinion, "all the shares of the controlled entity are in the hand of the

controlling entity" requires that all the shares of the controlled entity (i.e., Clearstream Banking) are directly held by the controlling entity itself (i.e. Deutsche Börse). Because Deutsche Börse is indirectly, but not directly, the sole holder of all shares in Clearstream Banking and, as such, according to prevailing opinion, the exemption from the requirement of having the Agreement audited does not apply in the present case, the Agreement will be audited by an independent expert auditor.

Frankfurt, 30 March 2010

**Deutsche Börse Aktiengesellschaft**

The Executive Board

\_\_\_\_\_  
(Dr. Reto Francioni)

\_\_\_\_\_  
(Andreas Preuß)

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

\_\_\_\_\_  
(Frank Gerstenschläger)

\_\_\_\_\_  
(Jeffrey Tessler)

\_\_\_\_\_  
(Dr. Michael Kuhn)

**Clearstream Banking Aktiengesellschaft**

The Executive Board

\_\_\_\_\_  
(Andreas Wolf)

\_\_\_\_\_  
(Stefan Lepp)

\_\_\_\_\_  
(Katja Rosenkranz)

\_\_\_\_\_  
(Mathias Papenfuß)

**Annex**

Domination Agreement between Deutsche Börse AG and Clearstream Banking AG dated 2 March 2010