

**CONVENIENCE TRANSLATION**

**JOINT  
REPORT  
OF THE EXECUTIVE BOARDS**

of

**Deutsche Börse Aktiengesellschaft, Frankfurt am Main**

and

**Deutsche Börse Dienstleistungs AG, Frankfurt am Main**

**concerning the Profit and Loss Transfer Agreement between Deutsche Börse  
Aktiengesellschaft and Deutsche Börse Dienstleistungs AG**

In order to advise its shareholders and for purposes of preparation of the resolutions to be adopted at the Annual General Meetings of Deutsche Börse Aktiengesellschaft ("**Deutsche Börse**") and Deutsche Börse Dienstleistungs AG ("**DBD AG**"), the Executive Board of Deutsche Börse and the Executive Board of DBD AG are furnishing pursuant to section 293a of the German Stock Corporation Act (AktG) the following joint report on the Profit and Loss Transfer Agreement between Deutsche Börse and DBD AG.

## **I. CONCLUSION OF THE AGREEMENT**

1. Deutsche Börse concluded on 4 March 2008 a Profit and Loss Transfer Agreement with its subsidiary, DBD AG (hereinafter also referred to as the "**Agreement**"). A copy of the Agreement is attached to this Report as **Annex 1**.
2. The Executive Board of Deutsche Börse approved conclusion of the Agreement at its meeting on 4 March 2008
3. The Executive Board of DBD AG approved conclusion of the Agreement at its meeting on 4 March 2008.
4. The Agreement requires the approval of the Annual General Meetings of DBD AG and Deutsche Börse (section 293 (1) and (2) of the AktG). The Agreement shall be submitted to the Annual General Meeting of Deutsche Börse for approval on 21 May 2008. The Agreement shall be submitted for approval to the Annual General Meeting of DBD AG, which will be held during the course of March 2008. The Agreement will enter into effect only once it has been recorded in the commercial register of DBD AG (section 294 (2) of the AktG). Recording in the commercial register of Deutsche Börse is not necessary.

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

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

5. As the parent company, Deutsche Börse forms a group together with its subsidiaries ("**Deutsche Börse Group**"). Deutsche Börse Group's business is organized along the securities trading process chain and 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 organizes the derivatives market and is the global market leader in derivatives trading (futures and options) and clearing (i.e. clearing or settlement), which follows derivatives trading.

- Clearstream assumes tasks that are downstream from trading. It offers settlement and custody services for trading of shares and other securities.
- Market Data & Analytics makes market events transparent. It markets courses and distributes information.
- Information Technology builds and operates the Group's trading platforms.

Corporate Services is a division that does business for all five segments.

6. The business activities of the segments are performed by the following Group companies respectively:

- Xetra segment: Deutsche Börse, as the supporting organization of the public law institution of the Frankfurt Stock Exchange, with partial legal capacity, and some of its affiliates.
- Eurex segment: Eurex Zürich AG and its subsidiaries and affiliates; Eurex Zürich AG is a joint venture between Deutsche Börse and SWX Swiss Exchange AG.
- Clearstream segment: Clearstream International S.A. and its subsidiaries; Clearstream International S.A. is a wholly-owned subsidiary of Deutsche Börse.
- Market Data & Analytics segment: Deutsche Börse with its equity interests in STOXX Ltd. and in other companies.
- Information Technology segment: Deutsche Börse Systems AG and its subsidiary, Clearstream Services S.A. and Deutsche Börse Services s.r.o.; Deutsche Börse Systems AG is a wholly-owned subsidiary of Deutsche Börse.
- Corporate Services Division: Deutsche Börse.

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

<b>31 Dec. 2007</b>	<b>31 Dec. 2006</b>
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• Reported consolidated equity (in EUR millions)	2,690.2	2,283.3
• Earnings before interest, taxes, and amortization (EBITA)	1,345.9	1,029.1
• Consolidated net income for the year	911.7	668.7
• Total assets (in EUR millions)	79,657.6	65,025.1

## 2. Deutsche Börse

8. Deutsche Börse is a listed stock corporation, recorded in the commercial register of the Local Court (*Amtsgericht*) of Frankfurt am Main under HRB 32232. The financial year is the calendar year.
9. Its company object is the operation of exchanges (securities exchanges in particular) in accordance with the statutory provisions, the planning, development and performance of electronic data processing (particularly in the area of banks' exchange and securities business and its settlement and the collection, processing and distribution of financial information) as well as the provision of supporting services for organizations involved in the exchange and securities business (particularly in the form of centralized services in all operational fields of the relevant companies). The company may buy, sell, develop, lease or let hardware and software and all the facilities associated therewith or use them on behalf of third parties. The company is authorized to carry out any and all business activities and measures and take any and all actions that appear to be, directly or indirectly, necessary, suitable or useful for the promotion of its company object. In particular, the Company may buy and sell land, establish branch offices in Germany and abroad and form, acquire or hold 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 the companies in which it holds shares and which are to be allocated to these segments.
11. Furthermore, Deutsche Börse is the holder of intangible assets (in particular, the customer base and software) of the derivatives market operated by Eurex Frankfurt AG for Deutsche Börse's account, Eurex Deutschland, and provides support services for this derivatives market.

12. Furthermore, tasks – 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 (caring for shareholder relations), Corporate Communications, Legal Affairs (legal department), Group Strategy, Human Resources (personnel department), Corporate Finance, Group Risk Management and Group Compliance (risk management and monitoring of compliance with provisions for Deutsche Börse Group), Financial Accounting and Controls, Internal Auditing, Purchasing, and Administration and Organization (property management, infrastructure provision, Internet presentation).
13. Per 31 December 2007, Deutsche Börse had 13 fully-consolidated subsidiaries (i.e. included in the consolidated financial statements). It held indirect interests in a further 22 fully-consolidated companies. A further nine companies were accounted for using the equity method (this means that neither the assets nor liabilities of the relevant company, but only the pro-rata equity holding is reported in the consolidated financial statements)..
14. The key companies in which Deutsche Börse has an equity interest and that do business outside the Xetra/independent business of the Frankfurt Stock Exchange and Market Data & Analytics segments are Eurex Zürich AG and its affiliates, Clearstream International S.A. and its affiliates and Deutsche Börse Systems AG with its wholly-owned subsidiary, Deutsche Börse Systems Inc.
15. As the body which is legally and economically responsible for the Frankfurt Stock Exchange, Deutsche Börse has a permit under the German Stock Exchange Act (*Börsengesetz*).
16. At the time this report is signed Deutsche Börse's share capital is EUR 200,000,000 and it is divided into 200,000,000 ordinary registered shares representing a *pro rata* share in the capital of stock of EUR 1.00 each. It is planned to reduce the share capital of Deutsche Börse by way of cancellation of own shares. Afterwards, the share of Deutsche Börse will be EUR 195,000,000 and will be divided into 195,000,000 ordinary registered shares representing a *pro rata* share in the capital of stock of EUR 1.00 each.
17. There are no Deutsche Börse shares that do not bear voting rights.
18. Deutsche Börse shares are admitted to the Frankfurt Stock Exchange on the Prime Standard market segment.
19. Deutsche Börse Group (within the meaning of the reporting entity for the consolidated financial statements) employed an average of 3,052 in 2007 and on 31 December 2007 3,281 employees. Of these, 545 were attributable to Deutsche Börse (all figures according to IAS).

20. The CEO of Deutsche Börse is Dr. Reto Francioni. The other members of the Executive Board of Deutsche Börse are Mr Thomas Eichelmann, Mr Frank Gerstenschläger, Dr.-Ing. Michael Kuhn, Mr Andreas Preuß and Mr Jeffrey Tessler.
21. The Supervisory Board of Deutsche Börse comprises 21 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 Act to Simplify the Election of Employee Representatives to the Supervisory Board (*Drittelbeteiligungsgesetz*, "DrittelbG") and therefore consists of 14 members representing the shareholders and seven members representing the employees.
22. The following persons are currently members of the Supervisory Board:
1. Kurt F. Viermetz, Chairman of the Supervisory Board
  2. Herbert Bayer\*
  3. Udo Behrenwaldt
  4. Richard Berliand
  5. Birgit Bokel\*
  6. Hans-Peter Gabe\*
  7. Dr. Manfred Gentz
  8. Richard M. Hayden
  9. Craig Heimark
  10. Dr. Konrad Hummler
  11. David Krell
  12. Hermann-Josef Lamberti
  13. Friedrich Merz
  14. Friedrich von Metzler
  15. Roland Prantl\*
  16. Sadegh Rismanchi\*
  17. Gerhard Roggemann
  18. Dr. Erhard Schipporeit
  19. Dr. Herbert Walter
  20. Otto Wierczimok\*
  21. Johannes Witt\*

Employee representatives are marked \*.

23. Deutsche Börse is subject to unrestricted corporate income tax and trade tax liability in Germany.
24. From the perspective of foreign tax law, the activities of the foreign representative offices in London and Paris each result in the creation of a permanent establishment, whose income abroad is subject to taxation. In contrast, from the perspective of foreign tax law, the activities of the foreign representative office in Moscow are assessed such that there is no equivalent taxation abroad.

### 3. DBD AG

25. DBD AG is a stock corporation recorded in the commercial register of the Local Court of Frankfurt am Main under HRB 80393. The financial year is the calendar year.
26. DBD AG was formed under the company name "Deutsche Börse Verwaltungs AG" as a so-called shelf stock corporation by Deutsche Börse, which has been the sole shareholder in DBD AG since its formation. Accordingly, the company object of DBD AG read as follows upon formation:

The company object is the management of own assets.

27. On 20 August 2007, a resolution was adopted for a commercial reformation of DBD AG and filed with the commercial register. During this process, the Articles of Incorporation of DBD AG were also amended and the company object stipulated therein was adjusted. The amendment of the Articles of Incorporation, which was also resolved on 20 August 2007, was filed with the commercial register together with the commercial reformation. The amendment of the Articles of Incorporation entered into effect upon recording in the commercial register on 28 August 2007. Since this amendment of the Articles of Incorporation entered into effect, DBD AG's company object has read as follows:

The company object is the provision of support services of all kinds for companies in Germany or abroad that are engaged in the exchange and securities business, except those services that are subject to supervision, in particular public bank or exchange supervision or require a licence, in particular under the German Banking Act (*Kreditwesengesetz*) or the German Stock Exchange Act

Despite the commercial reformation and amendment of the Articles of Incorporation, DBD AG has not to date engaged in operating business.

28. DBD AG might be used for Group-internal restructurings, in particular, as an intermediate holding company for the acquisition and holding of equity interests of Deutsche Börse Group (in this respect, see in detail margin note 36 *et seq.*).
29. Since its formation, DBD AG has only completed a short financial year, which ended on 31 December 2007. At the end of the short financial year, earnings were as follows:

31 December 2007	EUR 44.52
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30. At the present time, DBD AG has no equity interests, branches or representative offices.
31. DBD AG has no public law permits, licences or authorizations.

32. DBD AG's share capital is EUR 50,000, divided into 50,000 ordinary registered shares representing a *pro rata* share in the share capital of EUR 1.00 each. DBD AG's shares are not listed. There are no shares that do not bear voting rights. The company has not issued any convertible bonds, participating bonds, profit-participation certificates or stock options..
33. The Executive Board members of DBD AG are Mr Thomas Eichelmann, Mr Frank Gerstenschläger and Mr Andreas Preuß, who also sit on the Executive Board of Deutsche Börse.
34. DBD AG has not to date employed any staff. Accordingly, DBD AG also does not have a Supervisory Board that is subject to employee co-determination.
35. The Supervisory Board of DBD AG has three members. Current members of the Supervisory Board are: Dr. Reto Francioni, Dr.-Ing. Michael Kuhn and Mr Jeffrey Tessler, who are also members of the Executive Board of Deutsche Börse.

### **III. FINANCIAL AND LEGAL REASONS FOR CONCLUSION OF THE AGREEMENT**

#### **1. Tax optimization of the Group structure and other reasons**

36. There are, in particular, financial reasons supporting conclusion of the Agreement, not least maintenance of the Group tax structure of Deutsche Börse Group.
37. Deutsche Börse is the sole shareholder in DBD AG. Thus, following conclusion of the Agreement, there will be the possibility of Deutsche Börse and DBD AG forming a fiscal entity for corporate income tax and trade tax purposes (section 14 of the German Corporate Income Tax Act (KStG) and section 2 (2) of the German Trade Tax Act (GewStG)).
38. Being a fiscal entity for corporate income tax and trade tax purposes results in consolidated taxation of DBD AG as the dependent enterprise and of Deutsche Börse as the controlling enterprise. This makes it possible to set off the profits and losses of both companies against one another for tax purposes.
39. Following the entry into effect of the Profit and Loss Transfer Agreement, DBD AG's profits may also be transferred to Deutsche Börse without corporate income tax liability.
40. For trade tax purposes, DBD AG will, as the dependent enterprise, be a permanent establishment of the controlling enterprise, Deutsche Börse. Therefore, as between Deutsche Börse and DBD AG, in the future only Deutsche Börse will incur trade tax as the controlling enterprise.

41. Without conclusion of the Agreement, DBD AG's profits could not be transferred to Deutsche Börse, and instead could only be passed on to Deutsche Börse by way of a dividend distribution. In this event, according to current tax law, 5% of any amount distributed as dividends would be subject to taxation.
  42. The 5% taxation of the dividend volume may be important if DBD AG were to act as an intermediary holding company in the future. In particular, there is a possibility that some or all of the shares in Clearstream International S.A. and/or Deutsche Börse Systems AG will be transferred to DBD AG by way of a non-cash capital contribution. In this respect, under certain circumstances, the transfer of shares in Clearstream Banking S.A. - and hence indirectly in its subsidiary Clearstream Banking S.A. as well - could result in Clearstream Banking S.A.'s rating being structured more independently from that of Deutsche Börse. The inclusion of DBD AG as an additional level between Deutsche Börse and Clearstream International S.A. would make any potential access to Clearstream's equity by Deutsche Börse more difficult.
  43. The level of the financial benefits resulting, *inter alia*, from being a fiscal entity for income tax purposes depends on the future function of DBD AG within Deutsche Börse Group, particularly on whether or not it will be used as an intermediary holding company. Moreover, the financial benefits of being a fiscal entity for income tax purposes depend on the annual results of Deutsche Börse and the amounts available at DBD AG for profit transfer to Deutsche Börse. None of this can be quantified at the present time.
- 2. Deutsche Börse's obligation to offset losses, reasonable protection of DBD AG's interests**
44. The aforementioned benefits are offset by Deutsche Börse's obligation to offset losses. In the 2007 short financial year, DBD AG was not engaged in operating business and therefore only generated income from investment of its share capital. In the context of potential use of DBD AG as an intermediary holding company for the acquisition and holding of interests of Deutsche Börse Group, future writedowns on the values of shares held by DBD AG in other companies could adversely affect DBD AG's earnings. Such writedowns would become necessary, in particular, if the respective shares held by DBD AG no longer had the same value set for them in the previous annual financial statements of DBD AG (e.g. due to losses by the relevant company). Moreover, a loss may also result from DBD AG's own business. In both cases, any resultant loss at DBD AG would have to be offset by Deutsche Börse. In turn, DBD AG has a claim against Deutsche Börse for lump sum compensation for any net loss for the year 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 (section 302 (1) of the AktG). In other words, Deutsche Börse need not seek to offset in a specific case losses that may have been suffered due to exerting of influence, 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. Rather, it is fully compensated for losses by Deutsche Börse. In this respect, the reason for any loss that may be incurred by DBD AG is irrelevant.

#### **IV. ALTERNATIVES TO CONCLUSION OF AN AGREEMENT**

45. No other structures are suitable to achieve the objectives described above.
46. Assumption of a profit transfer obligation is an essential prerequisite for being a fiscal entity for corporate income tax and trade tax purposes, meaning that the associated tax benefits may only be realized in this way.
47. A change in DBD AG's legal form does not constitute an expedient alternative structure either, as following a reorganization as another type of company (limited liability company (GmbH), partnership limited by shares (KGaA)) the need for a profit and loss transfer agreement would again arise in order to achieve the objective of a fiscal entity for corporate income tax and trade tax purposes. If DBD AG were reorganized as a partnership, a similar result would indeed be achieved in tax terms, but Deutsche Börse generally manages its group companies in the form of corporations. Given that the desired tax effect can be achieved by a profit and loss transfer agreement, there is also no need to deviate from this principle.

#### **V. EXPLANATION OF THE AGREEMENT**

48. The material provisions of the Agreement attached as Annex 1 are explained below:

##### **1. § 1 Profit transfer**

49. Section 1 of the Agreement provides for the obligation on the part of DBD AG to transfer its entire profit to Deutsche Börse. This obligation is characteristic of a profit and loss transfer agreement. Pursuant to section 1 (1) sentence 2 of the Agreement, this means that, generally speaking, the respective net income for the year of DBD AG, not including the profit transfer, is to be transferred to Deutsche Börse after any loss carry-forward from the previous year has been deducted and – provided there is a legal obligation to do so – contributions have been made to the statutory reserve.
50. The amount of the statutory reserve to be created is defined in detail in section 300 of the AktG. It is based on DBD AG's share capital.

51. Section 1 (2) sentence 1 of the Agreement governs the creation of other revenue reserves at DBD AG. The provision refers to the criteria for tax recognition of creation of reserves pursuant to section 14 (1) No. 4 of the KStG and ensures that any transfer to other revenue reserves at DBD AG requires Deutsche Börse's consent so that its interests remain protected.
52. Other revenue reserves created during the term of the Agreement may be released and the amounts withdrawn transferred as profits. This conforms to the statutory provision under section 301 sentence 2 of the AktG. Moreover, pursuant to section 1 (2) sentence 2 of the Agreement, Deutsche Börse has the right to request that DBD AG release such revenue reserves created during the contract term and that the amounts thus released be used to offset any net loss for the year or be transferred as profit.
53. Section 1 (4) of the Agreement stipulates the commencement of the obligation to transfer profits. Under this provision, the Agreement enters into effect on 1 January 2008, if it is recorded in DBD AG's commercial register in 2008 following the grant of approval by the Annual General Meetings of Deutsche Börse and DBD AG. Section 1 (5) of the Agreement provides that a right to the transfer of profits vests on the effective date of the respective annual financial statements of DBD AG and shall fall due and payable at such time.

## 2. § 2 Assumption of losses

54. If a profit and loss transfer agreement is in place, the other contracting party (i.e., in this case, Deutsche Börse) is obliged 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 company obliged to transfer profits (i.e., in this case, DBD AG), to the extent that such loss is not offset by withdrawing amounts from other revenue reserves that were created during the term of the Agreement.
55. The Executive Boards of Deutsche Börse and DBD AG believe that the risk that a net loss for the year that must be offset will actually be recorded by DBD AG, thus triggering Deutsche Börse's payment obligation, is low, provided DBD AG continues not to have any major assets of its own and is not engaged in operating business. Following implementation of Group-internal restructurings, particularly of the nature described in margin notes 42 *et seq.*, losses could be recorded at DBD AG, in particular, as a result of writedowns on the values of the shares held by DBD AG in other companies; moreover, losses could be recorded at DBD AG due to its own business (in this respect, see margin note 44 above).
56. The obligation to assume losses applies to DBD AG's financial years for which Deutsche Börse has a right to profit transfer pursuant to section 1 of the Agreement in the event of net surplus for the year on the part of DBD AG.
57. Pursuant to section 302 (3) of the AktG, DBD AG may waive the right to the offsetting of losses only three years after the date on which the entry of termination of the

Agreement in the commercial register pursuant to section 10 of the German Commercial Code (HGB) has been announced or reach a settlement in this respect; this provision is reproduced in section 2 (3) of the Agreement. Moreover, pursuant to section 302 (4) of the AktG, claims to offsetting of losses becomes statute-barred only ten years after such date; reference to this provision is made in section 2 (4) of the Agreement.

### **3. § 3 Commencement and term**

58. In section 3 (1) sentence 1, the Agreement reproduces the statutory provision that the Agreement will enter into force only when it is recorded in the commercial register of DBD AG's registered office (section 294 (2) of the AktG). From such time, for commercial and tax law purposes, it will be backdated to commencement of the financial year in which the Agreement is recorded in DBD AG's commercial register. DBD AG's financial year is the calendar year. Thus DBD AG's obligation to transfer its entire profits to Deutsche Börse applies – depending on when the Agreement is recorded in DBD AG's commercial register – for financial year 2008 or, in the event of recording in a subsequent financial year, for that subsequent financial year. Thus the obligation to transfer profits – depending on the date of recording in the commercial register – is delayed. The reason for this is that longer backdating of the Agreement to a financial year that has already expired at the date of recording in the commercial register would not be recognized for tax purposes (section 14 (1) sentence 2 of the KStG).
59. In order to create the fiscal entity for corporate income tax purposes, the Profit and Loss Transfer Agreement must be concluded pursuant to section 14 (1) No. 3 of the KStG for no less than five years. This is ensured by the provision in section 3 (2) sentences 1 and 2. These provide for a minimum term of five years, beginning upon commencement of the DBD AG financial year for which the profit transfer obligation applies for the first time pursuant to section 3 (1) in conjunction with section 1 (1). The Agreement's earliest effective termination date is the end of the Minimum Term, subject to a notice period of three months prior to the expiry of the Minimum Term. If it is not terminated, it shall in each case be extended by one additional year and may, again subject to a three month termination notice period, be terminated effective as of the end of a DBD AG financial year.
60. Termination without notice for good cause is possible pursuant to section 3 (2) sentence 4 of the Agreement if good cause lies for such termination; this provision conforms to the statutory provision under section 297 (1) sentence 1 of the AktG. Deutsche Börse and DBD AG have expressly agreed on a termination right on the part of Deutsche Börse for good cause in the event that Deutsche Börse no longer (directly or indirectly) has a majority shareholding in DBD AG or is no longer entitled to exercise the majority of voting rights attaching to such shares. This provision has been included merely by way of precaution, as loss of the share or voting majority does not necessarily constitute good cause creating an entitlement to terminate the Profit and Loss Transfer Agreement

for good cause. The limitations on the termination right set forth in section 297 (2) of the AktG do not have to be implemented in the Agreement, as DBD AG - the party subject to the obligation to transfer profits – has no outside shareholders.

61. Section 3 (3) of the Agreement refers to Deutsche Börse's statutory obligation to furnish security to DBD AG's creditors in accordance with section 303 of the AktG if the Agreement is terminated. Pursuant to section 301 (1) of the AktG, security may be demanded by DBD AG's creditors in the event of termination of the Agreement if their claims were created prior to recording of termination of the Agreement in the commercial register having been announced in accordance with the provision in section 10 of the HGB, which applies to commercial register entries, and such creditors contact Deutsche Börse for this purpose within six months of the announcement of the entry. The creditors are to be notified of this right in the announcement of the entry. Pursuant to section 303 (2) of the AktG, the foregoing right to be able to demand security does not vest in certain creditors, namely, those that, in the event of insolvency proceedings, have a right to preferential satisfaction under state-supervised covering assets that were set up under a statutory provision for their protection. Moreover, pursuant to section 303 (3) of the AktG, Deutsche Börse may, in the event of termination of the Agreement, act as guarantor for the debt instead of furnishing security; in this respect, section 349 of the HGB concerning exclusion of the defence of failure to pursue remedies (*Einrede der Vorausklage*) shall not apply.
62. Pursuant to section 3 (4) of the Agreement, it is entered into subject to the consent of the Annual General Meeting of Deutsche Börse and the Annual General Meeting of DBD AG. This means that the Agreement is provisionally invalid until such consents have been granted.

#### **4. § 4 Severance**

63. Section 4 of the Agreement contains a standard so-called severance clause, which ensures the validity and enforceability of the Agreement in the event that individual provisions were already invalid or unenforceable upon conclusion of the Agreement or become invalid or unenforceable at a later time, e.g. as a result of a statutory amendment or change in case law.

## **VI. NO STIPULATIONS IN ACCORDANCE WITH §§ 304, 305 AktG**

64. Since Deutsche Börse holds all shares in DBD AG – which is obliged to transfer the profits – and DBD AG therefore has no outside shareholders, no settlement provisions pursuant to sections 304, 305 of the AktG are necessary.

Therefore the obligation to review the Agreement (section 293b (1) last half sentence of the AktG) also does not apply.

Frankfurt/Main, 4 March 2008

Deutsche Börse Aktiengesellschaft  
The Executive Board

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

\_\_\_\_\_  
(Frank Gerstenschläger)

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(Dr.-Ing. Michael Kuhn)

\_\_\_\_\_  
(Andreas Preuß)

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

\_\_\_\_\_  
(Thomas Eichelmann)

Frankfurt/Main, 4 March 2008

Deutsche Börse Dienstleistungs AG  
The Executive Board

\_\_\_\_\_  
(Frank Gerstenschläger)

\_\_\_\_\_  
(Andreas Preuß)

\_\_\_\_\_  
(Thomas Eichelmann)

**Annex 1**

Profit and Loss Transfer Agreement Deutsche Börse / DBD AG