

**Explanatory report of the Executive Board of Deutsche Börse Aktiengesellschaft on the information pursuant to § 289 (4) of the German Commercial Code (*Handelsgesetzbuch*) (management report) and § 315 (4) of the German Commercial Code (consolidated management report) per 31 December 2008**

Under §§ 289 (4) and 315 (4) of the German Commercial Code (HGB), listed companies are required to provide in the management report and consolidated management report additional information specified in greater detail in the Code, which, in particular, is supposed to enable potential bidders to form a picture of the structure of the target company and any takeover hurdles prior to any offer. From the date on which the Annual General Meeting is called, the Executive Board has to make explanatory notes on the mandatory information in the management report and consolidated management report available for inspection by the shareholders in the company's offices and submit the notes to the Annual General Meeting. Accordingly, the Executive Board of Deutsche Börse Aktiengesellschaft hereby provides the following notes:

At 31 December 2008, Deutsche Börse Aktiengesellschaft's share capital was EUR 195,000,000 and was divided into 195,000,000 no-par value registered shares. There are no share classes in addition to these ordinary shares.

The Executive Board is only aware of those voting right limitations that result from the German Stock Corporation Act (*Aktiengesetz* – AktG). These include the voting right limitations pursuant to section 136 of the AktG, as well as the limitation under the AktG for treasury shares. Section 136 of the AktG stipulates that shareholders may not exercise voting rights for themselves or on behalf of another shareholder if a resolution is to be adopted formally approving their actions, releasing them from an obligation, or deciding whether the Company should assert a claim against them. The voting rights from the relevant shares are thus excluded by law in cases where section 136 of the AktG applies. Under section 71b of the AktG, Deutsche Börse AG was additionally not permitted to exercise any rights under treasury shares held in its portfolio.

The Children's Investment Master Fund, George Town, Grand Cayman, Cayman Island, had notified Deutsche Börse Aktiengesellschaft in financial year 2006 that on 10 April 2006 the threshold of 10 percent of voting rights in Deutsche Börse Aktiengesellschaft had been exceeded. The level of the share of voting rights at this time was 10.06 percent, corresponding to 10,264,953 votes.

Furthermore, in financial year 2008, the Children's Investment Master Fund notified Deutsche Börse Aktiengesellschaft by way of a corrective notification that this 10.06 percent (10,264,953 voting rights) were attributable to it in accordance with § 22 (1) sentence 1 no. 2 of the German Securities Trading Act (*Wertpapierhandelsgesetz* – "WpHG").

The Children's Investment Fund Management (UK) LLP, London, United Kingdom, had notified Deutsche Börse Aktiengesellschaft in financial year 2008 that on 2 September 2008 its share of voting rights in Deutsche Börse Aktiengesellschaft had exceeded the threshold of 15 percent and amounted to 19.30 percent (37,630,334 voting rights). 10.26 percent of the share in voting rights (20,000,000 voting rights) were attributable to it in accordance with

§ 22 (1) sentence 1 no. 6 WpHG and 9.04 percent (17,630,334) were attributable to it in accordance with § 22 (2) WpHG.

The Children's Investment Fund Management Ltd., London, United Kingdom, The Children's Investment Fund Management (Cayman) Ltd., Grand Cayman, Grand Cayman Islands, and Mr Christopher Hohn, United Kingdom, notified Deutsche Börse Aktiengesellschaft in financial year 2008 that on 2 September 2008 their respective shares of voting rights in Deutsche Börse Aktiengesellschaft had each exceeded the threshold of 15 percent and each amounted to 19.30 percent (37,630,334 voting rights). 10.26 percent of the shares in voting rights (20,000,000 voting rights) were each attributable to them in accordance with § 22 (1) sentence 1 no. 6 WpHG in conjunction with § 22 (1) sentence 2 WpHG, and 9.04 percent (17,630,334) were each attributable to them in accordance with § 22 (2) WpHG.

Furthermore, Deutsche Börse Aktiengesellschaft was notified that the 15 percent threshold was exceeded in each instance based on an agreement entered into between The Children's Investment Fund Management (UK) LLP, Atticus Capital LP and Atticus Management Limited on the basis of which they could co-ordinate their conduct with regard to their equity interests in Deutsche Börse Aktiengesellschaft.

Atticus Capital LP, New York, USA, and Atticus Management Limited, St. Peter Port, Guernsey, notified Deutsche Börse Aktiengesellschaft in financial year 2008 that on 2 September 2008 their shares of voting rights in Deutsche Börse Aktiengesellschaft had each exceeded the thresholds of 10 percent and 15 percent and each amounted to 19.30 percent (37,630,334 voting rights). 9.04 percent of the shares in voting rights (17,630,334 voting rights) were attributable to them in accordance with § 22 (1) sentence 1 no. 6 WpHG and 10.26 percent (20,000,000 voting rights) were attributable to them in accordance with § 22 (2) WpHG.

Atticus LP Incorporated, St. Peter Port, Guernsey, Atticus Capital Holdings LLC, New York, USA, Atticus Holdings LP, New York, USA, Atticus Management LLC, New York, USA, and Mr Timothy Barakett, New York, USA, notified Deutsche Börse Aktiengesellschaft in financial year 2008 that on 2 September 2008 their shares of voting rights in Deutsche Börse Aktiengesellschaft had each exceeded the thresholds of 10 percent and 15 percent and each amounted to 19.30 percent (37,630,334 voting rights). 9.04 percent of the shares in voting rights (17,630,334 voting rights) were each attributable to them in accordance with § 22 (1) sentence 1 no. 6 WpHG in conjunction with § 22 (1) sentence 2 and 3 WpHG, and 10.26 percent (20,000,000 voting rights) were each attributable to them in accordance with § 22 (2) WpHG.

Furthermore, Deutsche Börse Aktiengesellschaft was notified that the 10 percent and 15 percent thresholds were exceeded in each instance based on an agreement entered into between The Children's Investment Fund Management (UK) LLP, Atticus Capital LP and Atticus Management Limited on the basis of which they could co-ordinate their conduct with regard to their equity interests in Deutsche Börse Aktiengesellschaft.

There are no holders of shares bearing special rights that give rise to controlling powers. Employees who hold interests in Deutsche Börse Aktiengesellschaft's capital may exercise their controlling rights under the shares like other shareholders directly in accordance with the provisions of the German Stock Corporation Act (*Aktiengesetz*, AktG) and the Articles of Incorporation.

Members of the Executive Board are appointed and dismissed in accordance with §§ 84, 85 of the AktG. Pursuant to § 6 (3) of Deutsche Börse Aktiengesellschaft's Articles of Incorporation, membership of the Executive Board generally ends upon reaching the age of 60.

According to the German Stock Corporation Act, it is the annual General Shareholders' Meeting that adopts resolutions to amend the Articles of Incorporation in accordance with the allocation of responsibilities. However, the Articles of Incorporation grant the Supervisory Board the right to adopt resolutions on amendments of the Articles of Incorporation that only involve the drafting. Pursuant to § 18 (1) of the Articles of Incorporation, resolutions by the Annual General Meeting are adopted by a simple majority of votes cast, unless mandatory provisions of the Stock Corporation Act provide otherwise. Should the Stock Corporation Act also require a majority of the share capital represented upon adoption of the relevant resolution in order to adopt the resolution, a simple majority of the represented share capital will suffice, to the extent permitted by law.

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

- § Subject to the Supervisory Board's consent, the Executive Board is authorized to increase the share capital on one or more occasions until 23 May 2011 by up to a total of EUR 5,200,000 by issuing new registered no-par value shares against cash contributions and/or contributions in kind (Authorized Capital I). In this respect, the shareholders must generally be granted a subscription right. However, subject to the Supervisory Board's consent, the Executive Board may exclude the shareholders' subscription right, provided the capital increase is implemented against contributions in kind for purposes of acquiring enterprises, parts of enterprises or interests in enterprises or of other assets. The full authorization is set forth in § 4 (3) of the Articles of Incorporation.
- § Moreover, subject to the Supervisory Board's consent, the Executive Board is authorized to increase the share capital on one or more occasions until 20 May 2013 by up to a total of EUR 14,800,000.00 by issuing new registered no-par value shares against cash contributions and/or contributions in kind (Authorized Capital II). In this respect, the shareholders must generally be granted a subscription right. However, subject to the Supervisory Board's consent, the Executive Board is authorized to exclude the shareholders' subscription right if certain requirements are met. The full authorization is set forth in § 4 (4) of the Articles of Incorporation.
- § Pursuant to § 4 (5) of the Articles of Incorporation, the company's share capital is conditionally increased by up to EUR 6,000,000 by issuing up to 6,000,000 registered no-par value shares (Conditional Capital I). The conditional capital increase is intended solely to satisfy subscription rights that were granted until 13 May 2008 based on the Annual General Meeting's authorization dated 14 May 2003 under topic 7 of the agenda at that time. The conditional capital increase is implemented only to the extent that holders of the subscription rights issued avail themselves of their subscription right and the company does not satisfy the subscription rights by transferring own shares or by way of a cash payment. The new shares participate in profits from commencement of the financial year in which they are created as a result of the exercise of subscription rights.

- § Moreover, the Executive Board is authorized to increase the share capital on one or more occasions until 10 May 2012 with the Supervisory Board's consent by up to a total of EUR 6,000,000 by issuing new registered no-par value shares against cash contributions and/or contributions in kind (Authorized Capital IV). In this case as well, the shareholders must be granted a subscription right, unless the Executive Board exercises the power granted it to exclude the shareholders' subscription right with the Supervisory Board's consent. In particular, subject to the Supervisory Board's consent, the Executive Board is authorized to exclude the shareholders' subscription right in order to issue up to 900,000 new shares per financial year to members of the Executive Board and company employees as well as to members of the executive boards, managements and employees of its affiliates within the meanings of §§ 15 *et seq.* AktG. The full authorization is set forth in § 4 (6) of the Articles of Incorporation.
- § The Executive Board is authorized to purchase own shares constituting up to 10 percent of the share capital. However, together with any own shares acquired for other reasons and held by the company or attributable to it pursuant to §§ 71 a *et seq.* AktG, the acquired shares may at no time exceed 10 percent of the company's share capital. The authorization to acquire own shares is valid until 31 October 2009 and may be exercised in whole or in part, on one or more occasions, and may be also implemented by dependent companies or companies in which the company has a majority holding or for its or their account by third parties. The Executive Board may elect to purchase the shares (1) via the stock exchange or (2) via a public purchase offer to all shareholders or a public invitation aimed at the Company's shareholders to submit sale offers or (3) by issuing rights of tender to the shareholders or (4) by using derivatives (put or call options or a combination of the two). The full and exact text of the authorization to acquire own shares, in particular, the permissible purposes for their use, is set forth in topic 7 of the agenda of the Annual General Meeting on 21 May 2008.

In the event of a change of control as a result of a takeover bid, the following material agreements are in place:

- § On 31 August 1998, Deutsche Börse Aktiengesellschaft and SIX Swiss Exchange AG agreed on an extraordinary termination right within a period of 60 days in the event that a third party exchange organisation acquires a controlling influence over a given party in a shareholders' voting agreement concerning their joint interest in Eurex Zürich AG and its subsidiaries. Termination would result in the liquidation of Eurex in its current structure with the participation of SIX Swiss Exchange AG.
- § On 25 October 2006, Deutsche Börse Aktiengesellschaft and SIX Group agreed in a co-operation agreement to combine their business in the structured products segment in a European exchange organization under a common company name and brand. The co-operation agreement provides both parties with a termination right subject to a six month termination period to the end of a given month, which results in termination of the co-operation if a change of control occurs at Deutsche Börse Aktiengesellschaft or SIX Group. According to the co-operation agreement, there is a change of control if a person, corporation or partnership, alone or together with other affiliates or in consultation with other persons or companies, directly or indirectly acquires control over a company. A company has control if it directly or indirectly holds more than 50 percent of the voting rights or of the capital of another corporation or partnership, has to fully consolidate another corporation or partnership according to IFRS or can control it through voting agreements or the appointment of management bodies. The

termination right lapses if it is not exercised within three months of occurrence of the change of control.

- § On 6 May 2008, Deutsche Börse Aktiengesellschaft and its subsidiary Clearstream Banking S.A. concluded an agreement (Multicurrency Revolving Facility Agreement) with a consortium of banks concerning a short term operating loan totalling up to USD 1.0 billion. In the event of a change of control, the lead underwriter must terminate the agreement subject to a 30 day notice period and declare all of the creditors' claims to be immediately due and payable if this is demanded by a majority of the syndicate banks that together accounts for two-thirds of the total loan amount granted at the time of the change of control. One or more persons will be deemed to have control within the meaning of this agreement if they co-ordinate their conduct and/or if they are able to manage the company's businesses or determine the composition of the majority of the Executive Board.
- § As part of the acquisition of ISE, it was agreed that, without the prior consent of the U.S. Securities and Exchange Commission (SEC), no person or group may directly or indirectly acquire more than 40% of the shares in ISE or voting control over more than 20% of the shares in ISE. Otherwise, as many ISE shares as necessary in order to meet the requirements will be transferred to a trust.
- § The terms and conditions of the fixed-rate debentures issued by Deutsche Börse Aktiengesellschaft from 2008/2013 for EUR 650.0 million and the terms and conditions of the subordinated fixed- or variable-rate debentures issued by Deutsche Börse Aktiengesellschaft from 2008 for EUR 550.00 million stipulate termination rights in the event of a change of control. In the event of a termination, the debentures shall be redeemed at their principal amount plus any interest accrued. A change of control is deemed to have taken place if a person or persons acting in a co-ordinated manner or acting on behalf of a third party acquire more than 50 percent of shares in Deutsche Börse Aktiengesellschaft or a number of shares in Deutsche Börse Aktiengesellschaft that represent more than 50 percent of voting rights exercisable at the Annual General Meeting of Deutsche Börse Aktiengesellschaft. In addition, pursuant to the relevant bond terms and conditions, the change of control must negatively affect the rating received from Moody's Investors Services, Inc., Standard & Poor's or Fitch Ratings Limited for one of Deutsche Börse Aktiengesellschaft's unsubordinated, unsecured liabilities. Further details can be found in the relevant bond terms and conditions.
- § Furthermore, a change of control gives rise to a claim for redemption of various debentures issued by Deutsche Börse Aktiengesellschaft in 2008 through a private placement in the US. In addition, the change of control must negatively affect the rating received from Moody's Investors Services, Inc., Standard & Poor's or Fitch Ratings Limited for one of Deutsche Börse Aktiengesellschaft's unsubordinated, unsecured liabilities. The provisions set forth in the relevant terms and conditions correspond to the provisions set forth in the bond terms and conditions for the fixed-rate debentures from 2008/2013. The debentures issued in the private placement are debentures for USD 170.00 million maturing as at 12 June 2015, for USD 220.00 million maturing as at 12 June 2018 and for USD 70.00 million maturing as at 12 June 2020.
- § The Executive Board members of Deutsche Börse Aktiengesellschaft have a special right of termination in the event of a change of control. Pursuant to the agreements with all Executive Board members, there is a change of control if (1) a shareholder or

third party advises pursuant to §§ 21, 22 of the WpHG that it holds more than 50 percent of the voting rights in Deutsche Börse Aktiengesellschaft, (2) an inter-company agreement is concluded with Deutsche Börse Aktiengesellschaft as dependent company pursuant to § 291 AktG or (3) Deutsche Börse Aktiengesellschaft is integrated pursuant to § 319 AktG or merged pursuant to § 2 of the German Reorganization Act (*Umwandlungsgesetz*, UmwG).

§ In addition to these agreements on the part of Deutsche Börse Aktiengesellschaft and its subsidiaries, which are subject to a change of control as a result of a takeover bid, there are other agreements that, in the view of Deutsche Börse Aktiengesellschaft, are not material within the meaning of §§ 289 (4), 315 (4) HGB and are therefore not mentioned here.

The compensation agreements reached for the event of a takeover bid with the members of the Executive Board may be seen in the remuneration report in the Corporate Governance chapter in the business report.

Frankfurt, [xxxx] 2009

Deutsche Börse Aktiengesellschaft  
The Executive Board

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(Dr. Reto Francioni)

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(Thomas Eichelmann)

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(Dr.-Ing. Michael Kuhn)

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(Andreas Preuß)

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

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(Frank Gerstenschläger)