

## **Joint report**

of the Executive Boards of

**Deutsche Börse Aktiengesellschaft**

with registered offices in **Frankfurt/Main**  
**Mergenthalerallee 61, 65760 Eschborn**

and of

**Clearstream Beteiligungs AG**

with registered offices in **Frankfurt/Main**  
**Mergenthalerallee 61, 65760 Eschborn**

concerning the

Profit and Loss Transfer Agreement between Deutsche Börse Aktiengesellschaft and  
Clearstream Beteiligungs AG

in accordance with section 293a of the German Stock Corporation Act (*Aktiengesetz*, "AktG")

13 March 2019

# CONVENIENCE TRANSLATION

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<b>Annex 1</b>	Profit and Loss Transfer Agreement between Deutsche Börse Aktiengesellschaft and Clearstream Beteiligungs AG which was concluded on 13 March 2019
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In order to advise its shareholders and for the purposes of preparation of the resolutions to be adopted at the General Meetings of Deutsche Börse Aktiengesellschaft (**Deutsche Börse AG**) and Clearstream Beteiligungs AG (**CBAG**), the Executive Board of Deutsche Börse AG and the Executive Board of CBAG 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 AG and CBAG.

## 1. INTRODUCTION

At the time of submitting this contract report, Deutsche Börse AG is indirectly – via its wholly owned subsidiary Clearstream Holding AG – holding a total of 50,000 shares in CBAG, which corresponds to 100% of CBAG's share capital and voting rights. Since 2008, a profit and loss transfer agreement exists between Deutsche Börse AG and Clearstream Holding AG.

In order to streamline and simplify Deutsche Börse Group's corporate structure, at the time this contract report is executed it is intended that in the course of a group wide reorganization group companies of the Clearstream Group which are currently being held, whether directly or indirectly, by Clearstream Holding AG, the parent company of CBAG, be transferred to CBAG (in the following the **Planned Group Reorganization**) (for greater details see No. 3.1 below). As part of this group restructuring, it is currently planned that Clearstream Holding AG then be merged with CBAG. Upon the proposed merger taking effect, Deutsche Börse AG will become the sole shareholder of CBAG (for greater details see No. 3.1 below), and CBAG will become the sole intermediate holding company for all shareholdings of the Clearstream Group. Upon the proposed merger of Clearstream Holding AG with CBAG, the existing profit and loss transfer agreement between Deutsche Börse AG and Clearstream Holding AG will terminate.

It is in the economic interest of Deutsche Börse AG and CBAG that a profit and loss transfer agreement be concluded between them in order to maintain the Group tax structure of Deutsche Börse Group, in particular with a view to the proposed merger of Clearstream Holding AG with CBAG.

On 13 March 2019, Deutsche Börse AG concluded a Profit and Loss Transfer Agreement with CBAG (hereinafter also referred to as the "**Agreement**"). A copy of the Agreement is attached to this contract report as **Annex 1**.

The Executive Board of Deutsche Börse AG approved the conclusion of the Agreement at its meeting on 19 February 2019. The Executive Board of CBAG approved the conclusion of the Agreement by way of a resolution adopted on 7 March 2019.

The Agreement requires the approval of the General Meetings of CBAG and Deutsche Börse AG (section 293 (1) and (2) of the AktG). In accordance with section 294 (2) of the AktG, the Agreement will enter into force only when it is recorded in the commercial register at CBAG's registered office. Entry into the commercial register at Deutsche Börse AG's registered office is not required.

The figures contained in this contract report (including percentages) are mostly rounded, even if this is not expressly noted in the text. The totals shown in the tables may therefore deviate from the relevant individual items. Also, the roundings shown in the tables may sometimes deviate from the commercial practice used elsewhere in this report. Unless another date has been noted, any figures in this contract report relate to the date on which this contract report was signed.

## 2. THE PARTIES TO THE AGREEMENT

### 2.1 Deutsche Börse Group

#### (a) Overview

Deutsche Börse AG with its registered office in Frankfurt am Main, Germany, is the parent company of Deutsche Börse Group. As at 31 December 2018, Deutsche Börse AG employed a total of 1,502 employees at six locations worldwide. As one of the largest providers of market infrastructure world-wide, the Group offers a broad product and service range to its clients. This range covers the entire process chain of financial market transactions, from the provision of market information as well as indices (pre-trading) via the trading and clearing services based thereon, the settlement of orders and the custody of securities through to liquidity and collateral management services (post-trading). The Group also operates the IT systems that support all of these processes.

Deutsche Börse AG markets the price and reference data of the systems and platforms of Deutsche Börse Group as well as any other trading-relevant information. In addition, it develops and markets indices via its subsidiary STOXX Ltd. Furthermore, Deutsche Börse AG operates the Eurex Exchange futures and options market via Eurex Frankfurt AG. The spot and derivatives markets in the commodities sector are operated by the indirectly held subsidiary European Energy Exchange AG (EEX). Via its subsidiary 360 Treasury Systems AG (360T), Deutsche Börse AG offers a platform for foreign exchange trading. Moreover, the Group operates the cash market of the Frankfurt Stock Exchange (*Frankfurter Wertpapierbörse*, FWB<sup>®</sup>) including the fully electronic Xetra<sup>®</sup> market and offers trading in structured products (certificates and warrants) in Germany via Börse Frankfurt Zertifikate AG. This spectrum is rounded out by clearing services for the cash and derivatives market (Eurex Clearing AG). All the services provided by Deutsche Börse Group in the post-trading segment are rendered by Clearstream Holding AG or its subsidiaries (Clearstream Group). They comprise the settlement of securities transactions, the custody and administration of securities as well as services for investment funds and for global securities finance. Deutsche Börse AG and Clearstream Services S.A. develop and operate the technical infrastructure of Deutsche Börse Group.

#### (b) Business activities

Deutsche Börse Group is one of the largest providers of market infrastructure worldwide. Through its business model, the Group is strengthening the stability, efficiency and integrity of the capital markets. This benefits issuers in the form of low costs of raising capital and investors in the form of high liquidity and low transaction costs. At the same time, Deutsche Börse Group stands for transparent and secure capital markets characterised by orderly trading with free pricing.

Deutsche Börse Group's business model is geared towards a broadly diversified product and service offer that covers the entire value chain of financial market transactions. It aims to offer its clients reliable services in an efficient and cost-effective manner while at the same time benefiting from the high degree of scalability of the business, and is based on the following key parameters:

- Integration of diverse financial market services such as trading, clearing, settlement, securities custody, liquidity and collateral management as well as index and market data services

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- Offer of these services for various asset classes such as equities, bonds, funds, commodities, foreign currencies, rate products as well as derivatives based on these underlyings
- Development and operation of own electronic systems for all processes along the value chain
- Organisation of a neutral market place for orderly supervised trading with fair
- pricing and provision of services for the management of risks

As far as comparable products are concerned, Deutsche Börse Group is one of the most cost-effective providers for trading, clearing and settlement world-wide – a testament to the efficiency of its business model. As a result of its efficient cost basis and the high scalability of its business, the Group has been experiencing a strong cashflow in its operative business for many years now.

Since 1 January 2018, Deutsche Börse Group has been dividing its business in nine individual segments:

- The former Eurex segment has been split into the three segments of Eurex (financial derivatives), EEX (commodities) and 360T (foreign exchange trading).
- The former Clearstream segment has been split into the three segments of Clearstream (post-trading), IFS (Investment Fund Services) and GFF (collateral management).
- Via the former Market Data + Services (MD+S) segment, differentiated reporting services are provided for STOXX (index business) and Data (data business). The revenues from the Infrastructure Services division, which is the third pillar of the former MD+S segment, were allocated to the Eurex and Xetra segments.
- The Group continues to report on its business development in the cash market in the Xetra segment (securities trading).

Reporting segments of Deutsche Börse Group

Reporting segment	Business areas
Eurex (financial derivatives)	<ul style="list-style-type: none"> <li>▪ Electronic trading of derivatives (Eurex Exchange)</li> <li>▪ Eurex Repo® OTC trading platform</li> <li>▪ C7® electronic clearing architecture</li> <li>▪ Central counterparty for OTC and exchange-traded derivatives and repurchase transactions</li> </ul>
EEX (commodities)	<ul style="list-style-type: none"> <li>▪ Electronic trading of electricity and gas products as well as emission rights (EEX Group)</li> <li>▪ Central counterparty for the traded cash market and derivative products</li> </ul>
360T (foreign exchange trading)	<ul style="list-style-type: none"> <li>▪ Electronic trading of foreign currencies (360T®)</li> <li>▪ Central counterparty for OTC and exchange-traded derivatives</li> </ul>
Xetra (securities trading)	<ul style="list-style-type: none"> <li>▪ Cash market with the trading venues Xetra®, Börse Frankfurt and Tradegate</li> <li>▪ Central counterparty for equities and bonds</li> <li>▪ Listing</li> </ul>
Clearstream (post-trading)	<ul style="list-style-type: none"> <li>▪ Custody and settlement of securities</li> </ul>
IFS (Investment Fund Services)	<ul style="list-style-type: none"> <li>▪ Services for investment funds (order routing, settlement and custody)</li> </ul>
GFF (collateral management)	<ul style="list-style-type: none"> <li>▪ Services for global securities finance and collateral management as well as collateralised money market transactions, repo and securities lending transactions</li> </ul>
STOXX (index business)	<ul style="list-style-type: none"> <li>▪ Development and marketing of indices (STOXX® and DAX®)</li> </ul>
Data (data business)	<ul style="list-style-type: none"> <li>▪ Marketing of licences for trading and market signals</li> <li>▪ Technology and reporting solutions for external clients</li> <li>▪ Link-up of trading participants</li> </ul>

(c) Key financial indicators

Based on the audited consolidated balance sheet as at 31 December 2018 and the consolidated income statement as at 31 December 2018, in each case prepared and audited in accordance with the International Financial Reporting Standards (IFRS) for financial statements, the consolidated key financial indicators as at 31 December 2018 compared to the previous year are as follows:

	31/12/2018	31/12/2017
Reported consolidated shareholders' equity (in EUR million)	4,829.9	4,841.3
Earnings before interest, taxes and amortisation (EBITA)	1,233.2	1,368.6
Consolidated net income for the year	852.5	896.0
Total assets (in EUR million)	161,899.1	135,141.4

(d) Employees

Deutsche Börse Group (as per the scope of consolidation for the consolidated financial statements) employed an average of 5,800 employees in 2018, and as at 31 December 2018 a total of 5,964 employees.

(e) Other

The published annual reports for 2016, 2017 and 2018 and the other sections of this contract report contain further details regarding the business activities of Deutsche Börse Group, its

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financial position and performance and its risks and opportunities. These documents as well as the Profit and Loss Transfer Agreement itself are available on Deutsche Börse AG's website at [www.deutsche-boerse.com/hv](http://www.deutsche-boerse.com/hv) as of the convocation of Deutsche Börse AG's General Meeting.

### 2.2 Deutsche Börse AG

(a) Registered office, financial year and corporate object of Deutsche Börse AG

Deutsche Börse AG is an exchange-listed stock corporation under German law (*Aktiengesellschaft*, AG), having its registered office in Frankfurt am Main and registered in the commercial register of the Local Court of Frankfurt am Main (*Amtsgericht Frankfurt am Main*) under HRB 32232. Its business address is Mergenthalerallee 61, 65760 Eschborn. Its financial year corresponds to the calendar year.

Pursuant to article 2 of its Articles of Association, the company's corporate object is the operation of exchanges, including but not limited to stock exchanges, subject to applicable laws and regulations, services for the design, development and implementation of electronic data processing in areas including but not limited to stock exchange transactions, the securities business of financial institutions and the settlement thereof and, furthermore, the collection, processing and sale of financial information, the provision of support services to undertakings engaged in the stock exchange and securities business which shall include, but not be limited to, the provision of central services to such undertakings in relation to all activities thereof. Deutsche Börse AG may acquire, dispose of, develop, lease, rent out or employ for third parties any hardware and software and all facilities related thereto. It may transact any business, take any action and perform any other acts, which appear to be directly or indirectly necessary, suitable or useful to achieve the corporate objectives. It may acquire and dispose of real estate, establish branches within and outside Germany and participate in, establish or acquire any undertakings of the same or a similar kind or, by way of exception, of a different kind. Furthermore, it may enter into intra-Group agreements and joint ventures. It shall be subject to confidentiality requirements as are customary in the banking industry.

(b) Governing bodies

In accordance with article 6 (1) of the Articles of Association, the company's Executive Board consists of at least two members. The Supervisory Board appoints the members of the Executive Board and determines their number. The Executive Board's chairman and CEO is Dr Theodor Weimer. The other members of Deutsche Börse AG's Executive Board are Dr Christoph Böhm, Dr Thomas Book, Dr Stephan Leithner, Gregor Pottmeyer and Hauke Stars.

In accordance with article 7 (1) of the Articles of Association, the company is represented by two Executive Board members or by one Executive Board member acting jointly with a commercial attorney-in-fact (*Prokurist*).

Pursuant to article 9 (1) of the Articles of Association, the Supervisory Board consists of 16 members who are elected by the General Meeting. In accordance with the provisions of the German Co-determination Act (*Mitbestimmungsgesetz*), the Supervisory Board has eight members representing the shareholders and eight members representing the employees. At the time of signing this contract report, the Supervisory Board consisted of the following members:

- Dr Joachim Faber (Chairman of the Supervisory Board)



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- Jutta Stuhlfauth\* (Deputy Chairwoman of the Supervisory Board)
- Dr Nadine Absenger\*
- Professor Dr Dr Ann-Kristin Achleitner
- Dr Markus Beck\*
- Richard Berliand
- Karl-Heinz Flöther
- Martin Jetter
- Susann Just-Marx\*
- Achim Karle\*
- Cornelis Johannes Nicolaas Kruijssen\*
- Barbara Lambert
- Professor Dr Joachim Nagel
- Dr Karsten Schäfer\*
- Gerd Tausendfreund\*
- Amy Yip

Employee representatives are indicated by \*.

### (c) Capital structure

Deutsche Börse AG's share capital recorded in the commercial register amounts to EUR 190,000,000 (in words: one hundred ninety million euros), divided into 190,000,000 registered shares with no par value, each such share representing a pro-rata interest of EUR 1.00 in the share capital. All the shares belong to the same class.

The no-par value registered shares have also been admitted to trading in the Regulated Market of Frankfurter Wertpapierbörse (the Frankfurt Stock Exchange). In addition, these shares are also admitted to a sub-segment of the Frankfurt Stock Exchange's Regulated Market with additional post-admission listing obligations (Prime Standard).

The International Securities Identification Number (ISIN) and the German Securities Code (*Wertpapierkennnummer*, WKN) of Deutsche Börse AG's no-par value registered shares are:

ISIN: DE0005810055

WKN: 581005

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The company has the following authorised capital:

<b>Designation</b>	<b>Amount in EUR</b>	<b>End of authorisation</b>
Authorised Capital I	13,300,000	10 May 2021
Authorised Capital II	19,300,000	12 May 2020
Authorised Capital III	38,600,000	12 May 2020
Authorised Capital IV	6,000,000	16 May 2022

In addition, the company has contingent capital in the amount of EUR 19,300,000 (Contingent Capital 2014).

(d) Overview of business activities

The Chief Executive Officer (CEO) is, *inter alia*, responsible for the Group's strategy, legal affairs as well as regulatory matters and the internal audit division (Group Audit). The duties of the Chief Financial Officer (CFO) comprise, among other things, financial reporting and controlling, risk management, compliance and investor relations. The executive division "Trading & Clearing" combines derivatives trading and Deutsche Börse Group's clearing houses. The electronic foreign exchange trading platform 360T<sup>®</sup> and the EEX Group also fall within this executive division. The executive division "Post-Trading, Data & Index" combines the settlement and custody business of Clearstream as well as the reporting segments IFS (Investment Fund Services) and GFF (collateral management). The index and data business also falls under the purview of this division. Deutsche Börse Group's cash market business with the trading venues of Xetra<sup>®</sup>, Frankfurt Stock Exchange and the certificate and warrant business are the responsibility of the executive division "Cash Market, Pre-IPO & Growth Financing". This executive division is also responsible for the development of the pre-IPO market and instruments to finance growth. HR rounds out this portfolio. The Chief Information Officer / Chief Operating Officer executive division combines Deutsche Börse Group's IT activities and the operation of its market segments. Technological transformation and digitalisation are key themes that drive this division.

As at 31 December 2018, Deutsche Börse AG held 17 fully consolidated (i.e. reflected in the consolidated financial statements) subsidiaries. Indirectly, Deutsche Börse AG held interests in a further 40 fully consolidated companies. A further 13 companies were accounted for at equity (this means that neither the assets nor the liabilities of the relevant company, but only the pro-rata shareholders' equity is reported in the consolidated financial statements).

As the body which is legally and economically responsible for the Frankfurt Stock Exchange, Deutsche Börse AG holds a permit under the German Stock Exchange Act (*Börsengesetz*).

(e) Key financial indicators

The following discussion includes an overview of Deutsche Börse AG's key financial indicators for the past three years as at 31 December 2016, 2017 and 2018 (in accordance with the German Commercial Code (*Handelsgesetzbuch*, "HGB")). The following figures for the financial years 2016, 2017 and 2018 originate from the respective audited single-

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entity financial statements of Deutsche Börse AG for the financial years 2016, 2017 and 2018.

The key financial indicators for the last three complete financial years 2016, 2017 and 2018 are as follows (in million euros, unless otherwise stated):

<b>Financial indicators Deutsche Börse AG (HGB)</b>			
<b>In EUR million</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>
<b>Revenues</b>	1,300.2	1,348.0	1,396.5
<b>Result from ordinary activities (EBT)</b>	603.2	756.6	674.6
<b>Net income for the year</b>	553.2	615.7	532.2
<b>Net retained profit</b>	445.0	470.0	515.0
<b>Total shareholders' equity</b>	2,643.0	2,800.9	2,526.5
<b>Equity ratio (in %)</b>	34.16	41.03	35.6
<b>Debt</b>	5,093.8	4,026.0	4,576.9
<b>Total assets</b>	7,736.8	6,826.9	7,103.4

(f) **Employees**

Deutsche Börse AG (as per the scope of consolidation for the consolidated financial statements) employed an average of 1,465 employees in 2018 and, as at 31 December 2018, a total of 1,502 employees.

(g) **Information under tax law**

Deutsche Börse AG is subject to unrestricted taxation in Germany with regard to corporate income tax (*Körperschaftsteuer*) and trade tax (*Gewerbesteuer*).

## 2.3 CBAG

(a) **Registered office, financial year and corporate object**

CBAG is a stock corporation under German law (*Aktiengesellschaft*, AG), having its registered office in Frankfurt am Main and registered in the commercial register at the Local Court of Frankfurt am Main (*Amtsgericht Frankfurt am Main*) under HRB 113395. Its business address is Mergenthalerallee 61, 65760 Eschborn. CBAG was established on 2 October 2018 under the company name of Skylinehöhe 96. VV AG and registered with the commercial register at the Local Court of Frankfurt am Main on 21 October 2018. By way of a sale and purchase agreement dated 14 December 2018, CBAG was acquired by Clearstream Holding AG, a wholly owned subsidiary of Deutsche Börse AG.

On 14 December 2018, a resolution was adopted for the economical re-establishment of CBAG and filed with the commercial register. In the course of this process, the company's

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Articles of Association were amended. *Inter alia*, the company's name was changed to Clearstream Beteiligungs AG and its corporate object was adjusted. The amendment to the Articles of Association, which was also resolved upon on 14 December 2018, was filed with the commercial register at the same time as the economical re-establishment. The amendment to the Articles of Association took effect upon its recording in the commercial register on 2 January 2019. Since said amendment entered into effect, the company's corporate object reads as follows:

"(1) The objective of the Company is the is the formation, the acquisition and management of companies and interests in companies, in particular in the area of custody, clearing and settlement of securities, precious metals, derivatives and other financial instruments, as well as the holding and management of assets of all kinds and the provision of services for and for the benefit of the companies and the interests in companies held and to be acquired (intra group services).

(2) The Company shall be entitled to carry out all business transactions, measures which deem directly or indirectly to be necessary, suitable or conducive or which are otherwise connected therewith to achieving the Company's purpose. In particular, it may acquire or dispose of real estate, set up branches in Germany and abroad, invest in, or establish or acquire companies of the same or related type, and in special cases of a different kind. Furthermore, the Company is entitled to conclude agreements between companies and joint ventures as well as agreements pursuant to the German Transformation Act (*Umwandlungsgesetz*)."

### (b) Governing bodies

In accordance with Article 5 (1) of the Articles of Association, the company's Executive Board consists of one or more members. The Supervisory Board appoints the members of the Executive Board and determines their number. At the time of signing this contract report, the Executive Board was composed of Mr Philip Brown, Dr Berthold Kracke, Mr Marc Robert-Nicoud and Mr Philippe Seyll.

Pursuant to article 6 (1) of the Articles of Association, the company is represented by one member of its Executive Board if the Executive Board consists of only one member or if the Supervisory Board grants the Executive Board sole authority to represent the company. Otherwise, the company is represented by two Executive Board members or by one Executive Board member acting jointly with a commercial attorney-in-fact (*Prokurist*).

Pursuant to article 7 (1) of the Articles of Association, the Supervisory Board consists of three members who are elected by the General Meeting. At the time of signing this contract report, the Supervisory Board consisted of the following members:

- Dr Stephan Leithner (Chairman of the Supervisory Board),
- Gregor Pottmeyer (Deputy Chairman of the Supervisory Board),
- Dr Christoph Böhm.

### (c) Capital structure

CBAG's share capital amounts to EUR 50,000 (in words: fifty thousand euros), divided into 50,000 registered shares with no par value representing a pro-rata interest in the share capital of EUR 1.00 each. The company's shares are not exchange-listed. CBAG has no non-voting shares. The company has not issued any convertible bonds, participating bonds, profit-

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participation certificates or stock options. The company has no authorised or contingent capital.

### (d) Shareholder structure

- (i) At the time this contract report is executed CBAG's sole shareholder is Clearstream Holding AG, a stock corporation under German law (*Aktiengesellschaft*, AG) with its registered office in Frankfurt am Main and registered in the commercial register of the Local Court of Frankfurt am Main (*Amtsgericht Frankfurt am Main*) under number HRB 80393. Its business address is Mergenthalerallee 61, 65760 Eschborn. As at the date of this report, Clearstream Holding AG's share capital amounts to EUR 101,000,000 (in words: one hundred one million euros), divided into 101,000,000 registered shares with no par value, each such share representing a pro-rata interest of EUR 1.00 in the share capital.
- (ii) At the time this contract report is executed, Deutsche Börse AG is the sole shareholder of Clearstream Holding AG. For a comprehensive description of Deutsche Börse AG, see No. 2.2 above.

Upon the proposed merger of Clearstream Holding AG with CBAG taking effect, Deutsche Börse AG will become the sole shareholder of CBAG (for greater details see No. 3.1 below).

### (e) Overview of business activities

Despite its commercial reformation and the amendment of its Articles of Association, CBAG has not engaged in operating business to date. At present, CBAG has neither shareholdings nor branches or representative offices. Also, the company holds no permits, licences or consents under public law.

It is intended to use CBAG for the Planned Group Reorganization. For this purpose, at the time this contract report is executed it is intended to transfer group companies of the Clearstream Group to CBAG (for further details, see No. 3.1 below).

### (f) Key financial indicators, outlook on future development

#### (i) Key financial indicators of CBAG

CBAG has not yet engaged in operating business. Since its incorporation, only one rump financial year has been completed, which ended on 31 December 2018. To date, CBAG has not generated any income. Even after the Planned Group Reorganization, there are no plans for CBAG to conduct any other business activities than the acquisition, holding and management of shareholdings of Deutsche Börse Group and the provision of intra-group services.

#### (ii) Outlook on future development

Upon completion of the Planned Group Reorganization, any assets, debts and contractual relationships which are, until now, attributable to Clearstream Holding AG will transfer to CBAG. Accordingly, CBAG's future development will largely depend on the performance of any shareholdings that CBAG holds after the Planned Group Reorganization.

The following overview shows the key indicators for the financial years 2015, 2016 and 2017 (final key indicators for the financial year 2018 were not available as of

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the date of the execution of this contract report) as well as the financial position of Clearstream Holding AG (in million euros, unless otherwise stated):

<b>Key financial indicators of Clearstream Holding AG (HGB)</b>			
<b>In EUR million</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>
<b>Revenues</b>	0,0	0.0	0.0
<b>Result from ordinary activities (EBT)</b>	147.1	167.2	84.7
<b>Net income for the year</b>	0,0	0.0	0.0
<b>Net retained profit</b>	0,0	0.0	0.0
<b>Total shareholders' equity</b>	2,285.3	2,285.3	2,285.3
<b>Equity ratio (in %)</b>	93.87	93.09	96.23
<b>Debt</b>	149.3	169.6	89.6
<b>Total assets</b>	2,434.6	2,454.9	2,374.9

(g) Employees

At present, CBAG does not employ any staff. Upon completion of the Planned Group Reorganization, Clearstream Holding AG's existing employment relationships will be transferred to CBAG.

### 3. REASONS FOR CONCLUDING THE PROFIT AND LOSS TRANSFER AGREEMENT

#### 3.1 Financial and legal reasons

(a) Planned Group Reorganization

Deutsche Börse Group is currently restructuring its Clearstream sub-group. The Planned Group Reorganization is intended to simplify and streamline the group structure.

At the time this contract report is executed the intention is that CBAG takes on the previous functions of its parent company, Clearstream Holding AG, namely in the capacity as the intermediate holding company for shareholdings of the Deutsche Börse Group. For this purpose, it is intended that, as part of the Planned Group Reorganization group companies of the Clearstream Group which are currently being held, whether directly or indirectly, by Clearstream Holding AG be transferred to CBAG.

Accordingly, as a first step, those group companies in which Clearstream Holding AG previously held an indirect interest via its wholly-owned subsidiary, Clearstream International S.A., shall be transferred to a newly incorporated subsidiary in the legal form of a Luxembourg stock corporation (*société anonyme*, S.A.). In a second step, it is intended that this Luxembourg company will be merged, cross-border, with its German sister company, CBAG. In a third step, CBAG's parent company, Clearstream Holding AG, shall

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also be merged with CBAG (downstream merger). Therewith, CBAG shall become the sole interim holding company for the shareholdings of Clearstream sub-group.

There is neither a financial nor a legal need for a second holding level below CBAG. Overall, the elimination of one group level would facilitate the transfer of profits from the Clearstream sub-group to the shareholders of Deutsche Börse AG. Going forward and according to the current plans, Clearstream International S.A. shall (under a new name) fulfil the function of a collateral agent licensed under Luxembourg law within the Clearstream sub-group.

Upon the proposed merger of Clearstream Holding AG with CBAG taking effect, the entire assets of Clearstream Holding AG, including all rights and obligations, will transfer to CBAG by way of universal succession. After the merger has entered into effect, CBAG shall continue Clearstream Holding AG's commercial activities. As a consequence of the proposed merger, Clearstream Holding AG will cease to exist as an independent legal entity; concurrently, the existing profit and loss transfer agreement between Deutsche Börse AG and Clearstream Holding AG, dated 4 March 2008, will terminate.

### (b) Maintenance of the Group tax structure and other reasons

It is in the economic interest of Deutsche Börse AG and CBAG that a profit and loss transfer agreement be concluded between them in order to maintain the Group tax structure of Deutsche Börse Group, in particular with regard to the proposed merger of Clearstream Holding AG with CBAG. This is because the conclusion of a profit and loss transfer agreement within the meaning of section 291 of the AktG is a prerequisite for the establishment of fiscal unity for corporate income tax and trade tax purposes (**fiscal unity for income tax purposes**) between Deutsche Börse AG (**controlling enterprise**) and CBAG (**dependent enterprise**).

At the time this contract report is executed Deutsche Börse AG holds indirectly all shares in CBAG. Upon the proposed merger of Clearstream Holding AG with CBAG taking effect, Deutsche Börse AG will become the sole direct shareholder of CBAG. Accordingly, Deutsche Börse AG and CBAG will have the opportunity of establishing a fiscal entity for corporate income tax and trade tax purposes. This is because the establishment of fiscal unity for income tax purposes also requires the controlling enterprise to hold an interest in the dependent enterprise uninterruptedly from the beginning of its financial year to such an extent that it is entitled to the majority of voting rights conveyed by the shares in the dependent enterprise (section 14 (1) sentence 1 no. 1 sentence 1 of the German Corporate Income Tax Act (*Körperschaftsteuergesetz*, "KStG")) and that this interest must be attributable to a permanent establishment in Germany throughout the entire duration of fiscal unity (section 14 (1) sentence 1 no. 2 sentence 4 KStG). Moreover, in order to render fiscal unity for income tax purposes effective, the Profit and Loss Transfer Agreement must be concluded for a period of no less than five years (60 months) and must be in effect throughout its entire term (section 14 (1) sentence 1 no. 3 sentence 1 KStG).

Being a fiscal entity for corporate income tax and trade tax purposes results in consolidated taxation of CBAG as the dependent enterprise and of Deutsche Börse AG as the controlling enterprise. As from the financial year in which the fiscal unity comes into existence, CBAG's entire taxable income – taking into consideration certain statutory restrictions – will be attributed to Deutsche Börse AG and taxed at the level of Deutsche Börse AG. This will enable the companies to offset the profits and losses of both companies against each other for tax purposes. The establishment of fiscal unity also has a positive liquidity effect for Deutsche Börse AG as, under the German Commercial Code, profit transfers as part of fiscal unity for income tax purposes are not subject to any capital gains tax deduction plus solidarity surcharge (as opposed to profit distributions). Following the entry into effect of

the Profit and Loss Transfer Agreement, CBAG's profits may therefore be transferred to Deutsche Börse AG without corporate income tax liability.

For trade tax purposes, CBAG, as the dependent enterprise, will be a permanent establishment of the controlling enterprise, Deutsche Börse AG. In future, it will therefore solely be Deutsche Börse AG who incurs trade tax on its income, and not CBAG.

Fiscal unity will be deemed to have been in existence since 1 January 2019 if the Agreement is recorded in CBAG's commercial register during the course of the 2019 financial year. If the Agreement is registered at a later stage, fiscal unity will only come into existence as from the beginning of the financial year during which the registration took place.

Without the conclusion of this Agreement, CBAG's profits cannot not be transferred to Deutsche Börse AG, and could instead only be passed on to Deutsche Börse AG by way of a dividend distribution. In this event, according to current tax law, 5% of any amounts distributed as dividends would be subject to taxation, now or in future. Moreover, any imputation or refund of capital gains tax plus solidarity surcharge would only be possible as part of the corporate income tax assessment, i.e. once the tax return for the assessment period during which dividends were collected has been filed.

The above tax effects do not apply to pre-fiscal unity surplus transfers (section 14 (3) KStG).

The amount of the economic benefits which results, inter alia, from the fiscal unity for income tax purposes depends on the future function of CBAG with the Deutsche Börse Group. Furthermore, the economic benefits resulting from the fiscal unity for income tax purposes depend on the annual results of Deutsche Börse AG and the amounts available at CBAG for the profit transfer to Deutsche Börse AG. Against the background of the Planned Group Reorganization, the contracting parties believe (also in view of the currently existing profit and loss transfer agreement between Deutsche Börse AG and Clearstream Holding AG) that the achievable income tax effects of the Profit and Loss Transfer Agreement will be positive in sum for the participating companies, provided that the Agreement remains in effect for a sufficiently long period. This assessment is based on the fact that the following quantifiable benefits have been realised under the existing profit and loss transfer agreement between Deutsche Börse AG and Clearstream Holding AG: For the financial years from 2015 to 2017, Clearstream Holding AG transferred the following profits under German commercial law to DBAG: approx. EUR 147 million (2015), approx. EUR 167 million (2016) and approx. EUR 85 million (2017). As a result, double taxation of any intra-group distributions was avoided in the order of approx. € 5.5 million.

### **3.2 Deutsche Börse AG's obligation to offset losses, reasonable protection of CBAG's interests**

The aforementioned benefits are offset by Deutsche Börse AG's obligation to offset losses. After completion of the Planned Group Reorganization, CBAG's results could adversely be affected by, e.g. future writedowns on the shares in other companies held by CBAG. Such writedowns would become necessary, in particular, if the respective shares held by CBAG no longer had the same value as shown in CBAG's previous annual financial statements (e.g. due to losses incurred by the relevant company). Any resulting loss at CBAG would have to be compensated for by Deutsche Börse AG. In turn, CBAG would be able to claim against Deutsche Börse AG for lump sum compensation for any net loss for the year incurred during the life of the Agreement, provided that such loss is not compensated for by drawing amounts from other revenue reserves that were paid into these reserves during the life of the Agreement (section 302 (1) of the AktG). In contrast, without the profit and loss transfer agreement, Deutsche Börse AG and CBAG would be deemed to have formed a *de facto* group. In this case, Deutsche Börse AG would be obligated to compensate CBAG, at the end of each financial year, for any loss that CBAG incurs due to Deutsche Börse AG exerting influence. The determination of the reason and the extent of the obligation to compensate could then lead to



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difficult issues of differentiation. In contrast, the Profit and Loss Transfer Agreement provides CBAG with an entitlement to full compensation from Deutsche Börse AG. The reason for any loss that may be incurred by CBAG is irrelevant.

### **4. ALTERNATIVES TO THE CONCLUSION OF A PROFIT AND LOSS TRANSFER AGREEMENT**

The Executive Board of Deutsche Börse AG and the Executive Board of CBAG have examined whether there are any alternatives to the conclusion of a profit and loss transfer agreement. In doing so, they arrived at the conclusion that none of the alternatives examined are equally suited to achieving the objectives outlined under Nos. 3.1 and 3.2 above. The assumption of a profit transfer obligation is an essential prerequisite for fiscal unity for corporate income tax and trade tax purposes, meaning that the associated tax benefits can only be realised in this way. More specifically, the following alternatives were taken into consideration:

#### (a) Merger

A merger of Deutsche Börse AG with CBAG does not constitute an expedient alternative structure; conversely, this also applies to a merger of Deutsche Börse AG with CBAG.

Likewise, a downstream merger is not a suitable alternative either. In the present case, this alternative is precluded, from the outset, because Deutsche Börse AG would cease to exist as a separate legal entity while CBAG would continue to exist as a separate legal entity. This option would not be in keeping with the corporate concept of either of the companies involved, as Deutsche Börse AG's existing exchange listing would lapse as a consequence of such a merger, and Deutsche Börse AG would thus divest itself of the opportunity of raising equity capital on the stock market.

Similarly, an upstream merger would not be a suitable alternative either, as this would not be the right vehicle to bring about fiscal unity between Deutsche Börse AG and CBAG in its function as an interim holding for the Clearstream Group's shareholdings.

#### (b) Change in legal form

A change in CBAG's legal form does not constitute an expedient alternative either, as following any reorganisation under another legal form (limited liability company under German law (GmbH), partnership limited by shares under German law (KGaA)), the need for a profit and loss transfer agreement would again arise in order to achieve the desired fiscal unity for corporate income tax and trade tax purposes. If CBAG were to be reorganised as a partnership, a similar result would indeed be achieved in tax terms, but Deutsche Börse AG, as a rule, 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 no need to depart from this principle.

#### (c) Conclusions

For these reasons, the legal entities involved decided to enter into a Profit and Loss Transfer Agreement. Moreover, this type of contract has proven to be successful within Deutsche Börse Group, particularly in light of the existing profit and loss transfer agreement between Clearstream Holding AG and Deutsche Börse AG.

### **5. COSTS OF THE PROFIT AND LOSS TRANSFER AGREEMENT**

The conclusion of the Profit and Loss Transfer Agreement is associated with one-off expenses. External expenses have incurred or will incur, in particular for legal, tax and other advisory services

as well as for the preparation and holding of CBAG's General Meeting, which will resolve on the approval of the Profit and Loss Transfer Agreement. As the conclusion of the Profit and Loss Transfer Agreement has been brought about by the Planned Group Reorganization, CBAG bears the costs of both contracting parties, including the costs of external advisors, except those costs that arose on the part of Deutsche Börse AG in connection with the preparation of its Annual General Meeting.

## 6. EXPLANATION OF THE PROFIT AND LOSS TRANSFER AGREEMENT

Hereinafter, we will explain the individual provisions of the Profit and Loss Transfer Agreement attached hereto as **Annex 1** in greater detail.

### 6.1 Explanation of the individual contractual provisions

#### (a) Clause 1 – Profit transfer

Clause 1 (1) of the Agreement contains the operative provision for a profit and loss transfer agreement, under which CBAG undertakes to transfer its entire profits to Deutsche Börse AG as from a point in time defined in the Agreement. As to the extent of the profit to be transferred in accordance with clause 1 (1) of the Agreement, it is referred to the statutory provision of section 301 of the AktG as amended, subject to the setting aside or reversal of reserves as per clause 1 (2) and clause 1 (3) of the Agreement. Pursuant to section 301 AktG in its current version, the net profit (before profit transfer), less any loss carryforwards from the previous year, any amounts to be transferred to legal reserves pursuant to section 300 of the AktG and the amount barred from distribution in accordance with section 268 (8) of the HGB, constitutes the amount to be transferred.

The reference contained in clause 1 (1) sentence 2 of the Profit and Loss Transfer Agreement is a dynamic reference to section 301 of the AktG. If the relevant provisions of section 301 of the AktG were to be amended, this would result in the actual extent of CBAG's profit transfer obligation under the Profit and Loss Transfer Agreement to also change.

The amount of the legal reserves to be set aside is determined by section 300 no. 1 of the AktG and depends on the amount of the share capital, the net income for the year and the amount already set aside as a legal reserve. CBAG has not yet set aside any legal reserves. Accordingly, the profit transfer will be reduced by any amounts to be posted to the legal reserve under section 300 of the AktG, until the legal reserve has been set aside in full.

The restriction on distribution pursuant to section 268 (8) sentence 1 of the HGB only applies if internally generated intangible fixed assets (section 248 (2) sentence 1 HGB) are capitalised in the balance sheet. In this case, profits may only be distributed to the extent that freely available reserves, plus any profit carried forward and minus any loss carried forward, remain – after distribution – in an amount that equals at least the total value capitalised for internally generated intangible fixed assets minus any deferred tax liabilities set aside for this purpose. Where deferred tax assets (section 274 (1) sentence 2 HGB) are capitalised in the balance sheet, the restriction on distribution exists to the extent that these deferred tax assets exceed the deferred tax liabilities (section 268 (8) sentence 2 HGB). Furthermore, the restriction on distribution also applies to assets that are protected from access by any and all creditors and may only be used to meet liabilities from post-retirement obligations or similar long-term obligations (section 246 (2) sentence 2 HGB). In this case, the restriction on distribution relates, pursuant to section 268 (8) sentence 3 of the HGB, to the difference between the sum of the fair values shown in the balance sheet (reduced by any deferred tax liabilities incurred for this purpose) and the cost of acquisition of these assets. The term "freely available reserves" (*frei verfügbare Rücklagen*) includes both profit reserves and

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capital reserves. Accordingly, revenue reserves whose distribution is not restricted by any statutory provisions or company agreements, as well as the freely available capital reserve under section 272 (2) no. 4 of the HGB, must be taken into account when determining the maximum distribution amount. The restriction on distribution primarily serves as creditor protection. It is intended to ensure that any permissible profit distributions do not exceed those that would have been feasible without the items specified in section 268 (8) of the HGB being carried as an asset.

The amount to be transferred as profit in accordance with clause 1 (1) of the Agreement will be reduced pursuant to clause 1 (2) sentence 1 of the Agreement if CBAG posts, with the consent of Deutsche Börse AG, amounts from any net income for the year that accrued independent of the profit transfer to other revenue reserves (section 272 (3) HGB). Pursuant to clause 1 (2) sentence 1 of the Agreement, any addition to these other revenue reserves would require that such addition be commercially justified in accordance with prudent commercial judgement. Any addition to these revenue reserves is only recognised under tax law to the extent that it is commercially justified in accordance with prudent commercial judgement (section 14 (1) sentence 1 no. 4 KStG). The provision of clause 1 (2) sentence 1 of the Agreement reflects this requirement.

Pursuant to clause 1 (2) sentence 2 of the Agreement, Deutsche Börse AG may request that any revenue reserves created during the term of the Agreement (section 272 (3) HGB) be released and transferred as profit (section 301 sentence 2 AktG) or used to compensate for any net losses for the year (section 302 (1) AktG).

Clause 1 (3) of the Agreement stipulates that any other reserves or profit carryforwards from the time before the Agreement entered into effect must not be transferred as a profit or used to compensate for any net losses for the year. This provision is in concordance with the requirements of section 301 of the AktG and the established case law of the highest court regarding the utilisation of reserves under an agreement. The term "other reserves" (*sonstige Rücklagen*) encompasses all reserves under section 272 of the HGB, with the exception of any profit reserves set aside during the term of the agreement. For this reason, the legal reserve, the statutory reserves and the capital reserves are excluded from any transfer, irrespective of the point in time when they were created. Furthermore, the other profit reserves within the meaning of section 272 (3) sentence 2 of the HGB that were created before the Agreement entered into effect are also precluded from any contractual transfer.

The profit transfer obligation will apply for the first time to the entire profit generated during CBAG's financial year commencing on 1 January 2019 or, if the Agreement enters into effect at a later date, to the entire profit of the financial year during which the Agreement enters into effect pursuant to clause 3 (1) of the Agreement (clause 1 (4) of the Agreement). With the approval of the General Meetings of CBAG and Deutsche Börse AG (section 294 (2) AktG, clause 3 (1) of the Agreement), the Agreement concluded on 13 March 2019 will enter into effect upon its recording in CBAG's commercial register

Pursuant to clause 1 (5) of the Agreement, Deutsche Börse AG's claim to a profit transfer will fall due upon expiry of the last day of CBAG's financial year in relation to which such claim arose. During the period between the due date and the actual satisfaction of the claim to profit transfer, interest will be owed at the statutory rate in accordance with the correct view expressed in legal literature, i.e. at the statutory rate that applies between businesses (currently 5% p.a., section 353 sentence 1, section 352 (1) sentence 1 HGB).

Where the Profit and Loss Transfer Agreement is terminated during the course of any year for good cause in accordance with clause 3 (2) of the Agreement, clause 1 (6) of the Agreement only obligates CBAG to transfer the pro-rata profit accrued until the termination of the Profit and Loss Transfer Agreement under commercial law.

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### (b) Clause 2 – Loss assumption

Section 2 (1) of the Profit and Loss Transfer Agreement provides for the – in such an agreement – mandatory loss compensation obligation of the other party, in this case Deutsche Börse AG. Pursuant to clause 2 (1) of the Profit and Loss Transfer Agreement, Deutsche Börse AG is obligated to assume any losses, i.e. to compensate for any net losses of the year on the part of CBAG in accordance with the provisions of section 302 of the AktG as a whole and as amended. Applying the statutory provisions currently in force, this would mean that Deutsche Börse AG would have to "otherwise" (i.e. without any loss compensation obligation) compensate any net loss for the year incurred during the contractual term and that such loss compensation obligation does not apply to the extent that the net loss for the year is compensated for by withdrawing amounts from other profit reserves (section 272 (3) sentence 2 HGB) that were posted to such reserves during the term of the Profit and Loss Transfer Agreement.

The reference contained in clause 2 (1) of the Profit and Loss Transfer Agreement to the requirements of section 302 of the AktG is a dynamic reference. If the relevant provisions of section 302 of the AktG were to be amended, this would result in the actual extent of Deutsche Börse AG's loss compensation obligation under the Profit and Loss Transfer Agreement changing accordingly.

The loss compensation obligation ensures that CBAG's balance-sheet equity capital existing at the time the Agreement enters into effect will not be reduced during the term of the Agreement. The loss assumption obligation serves to safeguard the financial interests of CBAG, its shareholders and its creditors during the existence of the Profit and Loss Transfer Agreement.

The Executive Boards of Deutsche Börse AG and CBAG believe that the risk that CBAG may actually incur a net loss for the year that must be compensated for, thus triggering Deutsche Börse AG's payment obligation, is low. However, once the Planned Group Reorganization enters into effect, CBAG may incur losses, particularly through writedowns on any shares that CBAG may then hold in other companies.

Pursuant to clause 2 (1) sentence 2 of the Profit and Loss Transfer Agreement, CBAG will, for the first time, be entitled to loss assumption by Deutsche Börse AG for the entire financial year in which the Profit and Loss Transfer Agreement enters into effect by being recorded in CBAG's commercial register in accordance with clause 1 (4) in conjunction with clause 3 (1) of the Agreement.

Pursuant to section 302 (2) of the AktG, CBAG may waive its right to loss compensation, or reach a settlement in this respect, only three years after the date on which the entry of the termination of the Agreement in the commercial register pursuant to section 10 of the HGB has been announced; this provision is reproduced in clause 2 (2) of the Agreement. Moreover, pursuant to section 302 (4) of the AktG, claims to loss compensation will become statute-barred only ten years after such date; reference to this provision is made in clause 2 (3) of the Agreement.

### (c) Clause 3 – Commencement and term

In its clause 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 at CBAG's registered office (section 294 (2) of the AktG). From such time, for commercial and tax law purposes, it will be backdated to the commencement of the financial year in which the Agreement is recorded in CBAG's commercial register. CBAG's financial year is the calendar year. Thus, CBAG's obligation to transfer its entire profits to Deutsche Börse AG

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applies depending on when the Agreement is recorded in CBAG's commercial register. If the Profit and Loss Transfer Agreement is recorded in CBAG's commercial register during the 2019 financial year, the Profit and Loss Transfer Agreement will apply to CBAG's entire 2019 financial year or, in the event of it being recorded during a subsequent financial year, it will apply to that subsequent financial year. Depending on the date when the relevant entry is made in the commercial register, the obligation to transfer profits may therefore be delayed. The reason for this is that any retrospective effect of the Agreement for a financial year that has already expired at the date of entry in the commercial register would not be recognised for tax purposes (section 14 (1) sentence 2 KStG).

In order to create fiscal unity 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 clause 3 (2) sentences 1 and 2, which provides for a minimum term of five full years, beginning upon the commencement of CBAG's financial year to which the profit transfer obligation applies for the first time pursuant to clause 3 (1) in conjunction with clause 1 (1).

The Agreement's earliest effective termination date is the end of this minimum period, subject to a notice period of three months prior to the expiry of said minimum period. If it is not terminated, it will be extended by one additional year each time and may, again subject to a three-month notice period, be terminated with effect as of the end of any CBAG financial year. Notice of termination must be given in writing.

Termination without notice for good cause is possible pursuant to clause 3 (2) sentence 3 of the Agreement. This stipulation reflects the statutory provision in section 297 (1) sentence 1 of the AktG. The right of termination for good cause exists by virtue of the law and cannot be contractually excluded. Pursuant to section 297 (1) sentence 2 of the AktG, good cause is shown if the other contractual party will presumably not be able to fulfil its obligations under the Agreement.

In clause 3 (2) sentence 5 of the Agreement, Deutsche Börse AG and CBAG have expressly stipulated further circumstances in which immediate termination for good cause is permissible. In any such cases, the prerequisites of section 297 (1) of the AktG may also be met but this is not a requirement. According to the established case law of the highest court, the expansion of the circumstances that give rise to immediate termination for good cause is permissible. Pursuant to clause 3 (2) sentence 5 option 1 of the Agreement, the contracting parties are entitled to terminate the Agreement with immediate effect for good cause in the event that Deutsche Börse AG no longer (directly or indirectly) has a majority shareholding in CBAG or is no longer entitled to exercise the majority of voting rights attached to such shares. This provision has been included merely for precaution, as a loss of the majority shareholding or voting majority does not necessarily constitute good cause giving rise to an entitlement to terminate the Profit and Loss Transfer Agreement with immediate effect in accordance with section 297 (1) of the AktG. Furthermore, clause 3 (2) sentence 5 options 2 and 3 give the contracting parties the right to terminate the Agreement for good cause if good cause for termination exists from a tax perspective, or if Deutsche Börse AG or CBAG merge, split or are liquidated.

The provision in clause 3 (2) sentence 5 option 2 of the Agreement must be viewed in the light of taxation law. The conclusion of a Profit and Loss Transfer Agreement is necessary in order to establish the intended fiscal unity for income tax purposes between Deutsche Börse AG and CBAG. One of the prerequisites of said fiscal unity for income tax purposes is the contractual minimum term as per section 14 (1) sentence 1 no. 3 of the KStG. Should the Profit and Loss Transfer Agreement be terminated prior to the end of said minimum term, this will automatically result in the non-recognition of fiscal unity from the outset. It is only termination for good cause that will not affect fiscal unity for income tax purposes with

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regard to past financial years, even if it takes place within the minimum term of the Profit and Loss Transfer Agreement, provided that the cause of termination is recognised as good cause under tax law. Tax law recognises that the loss of the relevant shareholding may, in principle, constitute good cause within the meaning of section 14 (1) sentence 1 no. 3 of the KStG for the early termination of a profit and loss transfer agreement by the controlling company, which would not affect the recognition of fiscal unity for income tax purposes as far as previous years are concerned. The same applies to the cases of merger, demerger and liquidation of one of the contracting parties, as stipulated in the third option of clause 3 (2) sentence 5 of the Agreement. The purpose of clause 3 (2) sentence 5 of the Agreement is to enable the parties to terminate for good cause also under company law if such termination is recognised under tax law.

The restrictions of the right of termination set forth in section 297 (2) of the AktG do not have to be reflected in the Agreement, as Clearstream Holding AG has no claim for compensation according to section 304 of the AktG.

Clause 3 (3) of the Agreement makes reference to Deutsche Börse AG's statutory obligation to furnish security to Deutsche Börse 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 CBAG's creditors in the event of termination of the Agreement if their claims arose prior to the entry of the Agreement's termination in the commercial register having been announced in accordance with the provision of section 10 of the HGB, which applies to commercial register entries, and such creditors contact Deutsche Börse AG for this purpose within six months of the announcement of the entry. Creditors must be notified of this right in the announcement of the entry. Pursuant to section 303 (2) of the AktG, the aforementioned right 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 cover funds that were set up under a statutory provision for creditor protection and are supervised by the state. Moreover, pursuant to section 303 (3) of the AktG, Deutsche Börse AG 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 benefit of discussion (*Einrede der Vorausklage*) shall not apply. According to the established case law of the highest court, sections 26 and 160 of the HGB and section 327 (4) of the AktG shall apply analogously to the obligation to provide security, so that any such obligation applies only to claims that arose before the entry of the Agreement's termination was announced and that fall due before five years have passed since such entry was announced.

In concordance with the statutory approval requirements as set forth in section 293 of the AktG, clause 3 (4) of the Agreement stipulates that it is entered into subject to the approval of the General Meeting of Deutsche Börse AG and the General Meeting of CBAG. This means that the Agreement will be provisionally ineffective until such approvals have been granted.

(d) Clause 4 – Severance

Clause 4 of the Agreement contains a standard so-called severance clause which ensures the validity and enforceability of the Agreement with regard to its material content in the event that individual provisions, contrary to expectations, 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 changes in case law, or if they prove to contain a lacuna.

(e) Clause 5 – Final provisions

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Clause 5 contains the usual final provisions. Clause 5 of the Agreement stipulates that any amendments and additions to this Agreement must be made in writing to be valid, which also applies to this provision requiring written form, while the statutory provision of section 295 of the AktG remains unaffected. As to the allocation of costs, reference is made to the explanations under No. 5 above. In clause 5 (4) of the Agreement, the parties have agreed upon an exclusive legal venue, namely Frankfurt am Main. Pursuant to clause 5 (5), the Agreement is subject to German law.

### **6.2 Explanatory notes regarding contract conclusion and the Profit and Loss Transfer Agreement taking effect**

The Profit and Loss Transfer Agreement concluded on 13 March 2019 by Deutsche Börse AG and CBAG will be submitted to Deutsche Börse AG's Annual General Meeting on 8 May 2019 for approval. It is envisaged that CBAG's General Meeting will resolve on the approval of the Profit and Loss Transfer Agreement in the course of the year 2019.

Thereafter, CBAG's Executive Board will register the existence of the Profit and Loss Transfer Agreement, specifying the controlling company, i.e. Deutsche Börse, for entry in the commercial register. Pursuant to section 294 (2) of the AktG, the Profit and Loss Transfer Agreement will only enter into force, once it has been recorded in CBAG's commercial register.

### **7. NO REVIEW OF PROFIT AND LOSS TRANSFER AGREEMENT; NO STIPULATIONS IN ACCORDANCE WITH SECTIONS 304, 305 AKTG**

CBAG has no other shareholders than Clearstream Holding AG. Deutsche Börse AG is the sole shareholder in Clearstream Holding AG and a profit and loss transfer agreement is in place between Deutsche Börse AG and Clearstream Holding AG. Further, Deutsche Börse AG will become the sole shareholder in CBAG after the completion of the Planned Group Reorganization and the effectiveness of the proposed merger between Clearstream Holding AG and CBAG. Therefore, the profit and loss transfer agreement does neither require a stipulation of an adequate compensation nor of a settlement provision in accordance with sections 304, 305 of the AktG. Consequently, the profit and loss transfer agreement includes no such provisions.

Furthermore, Clearstream Holding AG has on 15 February 2019 irrevocably and unconditionally waived any current or future compensation or settlement claims in accordance with sections 304, 305 of the AktG.

Therefore the obligation to review the Agreement (section 293b (1) last half sentence of the AktG) is not applicable.

*(signature pages to follow)*

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Eschborn, 13 March 2019

Deutsche Börse Aktiengesellschaft  
The Executive Board

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

\_\_\_\_\_  
(Dr Christoph Böhm)

\_\_\_\_\_  
(Dr Thomas Book)

\_\_\_\_\_  
(Dr Stephan Leithner)

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

\_\_\_\_\_  
(Hauke Stars)

Eschborn, 13 March 2019

Clearstream Beteiligungs AG  
The Executive Board

\_\_\_\_\_  
(Philip Brown)

\_\_\_\_\_  
(Dr Berthold Kracke)

\_\_\_\_\_  
(Marc Robert-Nicoud)

\_\_\_\_\_  
(Philippe Seyll)