



## **CONVENIENCE TRANSLATION**

### **Deutsche Börse AG**

#### **Declaration of Conformity 2009**

#### **Declaration of Conformity regarding the German Corporate Governance Code in accordance with section 161 of the German Stock Corporation Act**

Section 161 of the German Stock Corporation Act (AktG) requires the Executive Board and the Supervisory Board of a listed stock corporation to declare each year that the recommendations of the “Government Commission German Corporate Governance Code” published by the Federal Ministry of Justice in the official section of the electronic Federal Gazette have been and are being met or, if not, which recommendations have not been or are not being applied and why not.

The Executive Board and the Supervisory Board of Deutsche Börse AG have decided to disclose not only deviations from the Code’s recommendations (see I.) but also – without legally obliged to do so – deviations from its suggestions (see II.).

For the period since the last declaration of conformity dated December 8, 2008, until August 4, 2009, the following declaration refers to the Code in the version as of June 6, 2008. Since August 5, 2009, the declaration refers to the requirements of the Code in its new version as of June 18, 2009, published in the electronic Federal Gazette on August 5, 2009.

The Executive Board and the Supervisory Board of Deutsche Börse AG declare that the recommendations of the “Government Commission German Corporate Governance Code” have been and will be met with few deviations (see I.).

The suggestions of the Code have been and will be met predominantly (see II).

## **I. Deviations from Recommendations of the German Corporate Governance Code**

### **1. Deductible in the D&O policy (no. 3.8 (2) and (3) of the Code)**

The Company has not followed the recommendation of agreeing a deductible for a D&O policy since January 1, 2008.

The D&O policy obtained by Deutsche Börse AG excludes coverage for wilful misconduct. As a result, the question of whether or not a deductible is advisable arises only in the context of negligent misconduct.

As a matter of fact a deductible for cases of negligence has remained fairly unusual in other countries until today. Hence, there was some concern that agreeing a deductible could impede the Company's ability to staff its boards with prominent members of the community abroad who have extensive business experience.

Since the Law on the Adequacy of the Executive Board Remuneration (*Gesetz zur Angemessenheit der Vorstandsvergütung – VorstAG*) has come into force, section 93 (2) sentence 3 AktG in its new version makes the agreement of a deductible now mandatory when obtaining D&O policies for executive board members. The new version of the Code includes a respective recommendation in no. 3.8 (2). Deutsche Börse AG will comply with the new legal requirements concerning the deductible and will amend existing D&O policies within the statutory transition period, i.e. with effect as of July 1, 2010, at the latest. Deutsche Börse AG will then also comply with the recommendation in no. 3.8 (2) of the Code.

Additionally, no. 3.8 (3) of the Code in its revised version recommends the agreement of a corresponding deductible in D&O policies for supervisory board members. Deutsche Börse AG has not followed the recommendation of agreeing a deductible in D&O policies for supervisory board members up to now. After thorough discussion it has been resolved not to initially follow the recommendation in the future, but to

further monitor the matter and to eventually resolve on it again. At present as in the past, the concern still prevails that agreeing a deductible, which is fairly unusual in other countries, could impede the Company's ability to staff its boards with prominent members of the community abroad who have extensive business experience.

## **2. Agreement of severance payment caps when concluding Executive Board contracts and of change of control clauses (no. 4.2.3 (4) and (5) of the Code)**

The Supervisory Board of Deutsche Börse AG has already considered severance payment caps - also in change of control situations - thoroughly in the past. For instance, the current contracts with the Executive Board members already include limitations for severance payments in the event of a change of control.

The recommendation to agree severance payment caps in accordance with no. 4.2.3 (4) of the Code has not been complied with so far. The Supervisory Board considered it more reasonable to analyse the question of complying with the recommendation on a case to case basis and then to implement the recommendation if appropriate in order to maintain flexibility in contract negotiations.

No. 4.2.3 (5) of the Code ties the amount of a severance payment in the event of a change of control to the recommended severance payment cap. Deutsche Börse AG has not agreed upon the recommended severance payment cap on a regular basis so far, but has made the decision on an agreement on a case to case basis. This is why Deutsche Börse AG has consequently not complied with the recommendation of the Code to regularly limit a severance payment due to a change of control to 150% of the severance payment cap either.

Against the background of the recent amendments of the German Stock Corporation Act due to the VorstAG and this year's adjustments of the German Corporate Governance Code Deutsche Börse AG currently reviews the complete remuneration system for the Executive Board. In this context, the Supervisory Board now intends to comply with the recommendations in no. 4.2.3 (4) and (5) of the Code in the future as far as legally feasible and insofar as the Supervisory Board does not consider deviations in specific cases to be in the best interest of the company.

## **II. Deviations from the Suggestions of the German Corporate Governance Code**

### **1. Transmittal of the Annual General Meeting by using modern communication media (no. 2.3.4 of the Code)**

Shareholders of Deutsche Börse AG could follow the complete Annual General Meeting 2009 of the Company in the internet as contemplated by suggestion no. 2.3.4 of the Code. As far as the Annual General Meeting 2010 is concerned the opening speeches of the boards can be followed in the internet again. The decision on a complete transmittal of the Annual General Meeting 2010 has not yet been taken.

### **2. Separate preparation of the Supervisory Board meetings by representatives of the shareholders and employees (no. 3.6 (1) of the Code)**

The suggestion to hold separate meetings of the representatives of the shareholders and employees to prepare the Supervisory Board meetings has not been and will not be met. In deviation to no. 3.6 (1) of the Code the Supervisory Board of Deutsche Börse AG has decided to hold separate preparation meetings not regularly, but only if need may be.

Frankfurt/Main, December 17, 2009

The Executive Board

The Supervisory Board