



## **CLAAS KOMMANDITGESELLSCHAFT AUF AKTIEN MBH**

**(Harsewinkel, Federal Republic of Germany)**

*(established under German law as a Limited Partnership limited by shares)*

### **€ 80,000,000 Subordinated Perpetual Securities**

Issue Price: €79.946.000 = 99,9325 %

The € 80,000,000 subordinated perpetual securities (the "**Securities**") have been issued by Class Kommanditgesellschaft auf Aktien mit beschränkter Haftung (the "**Issuer**" or the "**Company**") on October 8, 2004 (the "**Issue Date**") in denominations of € 50,000 each (the "**Issue**"). The Securities bear interest from and including the Issue Date to but excluding October 8, 2014, at a rate of 7.62% per annum on the nominal amount of the Securities, payable annually in arrears on October 8 of each year, commencing on October 8, 2005 (each a "**Fixed Remuneration Payment Date**"). Thereafter, unless previously redeemed, the Securities bear interest at a rate of 5.50% per annum above the Euro inter-bank offered rate for three-months' deposit in Euro (EURIBOR) on the nominal amount of the Securities, all as described in more detail herein. Payments of interest may be deferred by the Issuer as described in "THE SECURITIES - § 4 (3) (*Remuneration – Remuneration Deferral*)".

The Securities have no final maturity date and will not be redeemed except if the Issuer, at its sole discretion, calls and redeems the Securities (in whole but not in part) at their Redemption Amount effective October 8, 2014, or as of any Floating Payment Date thereafter. The Issuer may also call and redeem the Securities at their Early Redemption Amount if a Tax Event or an Accounting Event occurs at any time prior to October 8, 2014, all as described in more detail herein.

The obligations of the Issuer under the Securities constitute unsecured obligations of the Issuer which are subordinated in accordance with their terms and which rank *pari passu* among themselves. In the event of liquidation, dissolution, insolvency, composition or other proceedings for the avoidance of insolvency of the Issuer, claims against the Issuer under the security shall rank at least *pari passu* with all present and future unsecured liabilities and obligations of the Issuer which are subordinated pursuant to an agreement between the respective creditor and the Issuer. They rank in priority to the claims of any shareholders against the Issuer, to the extent that such claims, at the time of their creation, constitute equity-replacing loans or equivalent claims of a shareholder.

**Given the complexity of the terms and conditions, an investment in the Securities is suitable only for experienced investors who understand and are in a position to evaluate the risks inherent therein.**

**See "Risk Factors" for a discussion of certain factors that should be considered by prospective investors.**

The Securities are initially represented by a temporary global security (the "**Temporary Global Security**") without coupons. The Temporary Global Security will be exchangeable for a permanent global security (the "**Permanent Global Security**") without coupons. The Temporary Global Security and the Permanent Global Security shall each be signed manually by two authorized signatories of the Issuer and shall each be authenticated by or on behalf of the Principal Paying Agent. Definitive Securities and interest coupons shall not be issued. The Global Securities will be kept in custody by or on behalf of the clearing system until all obligations of the Issuer under the Securities have been satisfied.

The date of this Listing Prospectus is April 29, 2005.

*Capitalised terms in this document have the meanings assigned to them under "THE SECURITIES – § 1 Definitions and Interpretation".*

THE SECURITIES HAVE NOT BEEN AND WILL NOT BE REGISTERED UNDER THE U.S. SECURITIES ACT OF 1933, AS AMENDED (THE "**SECURITIES ACT**") AND INCLUDE SECURITIES IN REGISTERED FORM THAT ARE SUBJECT TO U.S. TAX LAW REQUIREMENTS. SUBJECT TO CERTAIN EXCEPTIONS, THE SECURITIES MAY NOT BE OFFERED, SOLD OR DELIVERED WITHIN THE UNITED STATES OR TO U.S. PERSONS.

The Securities are governed by the laws of the Federal Republic of Germany ("**Germany**").

The Global Securities have been deposited with Clearstream Banking AG, Frankfurt am Main, Federal Republic of Germany ("**Clearstream Frankfurt**"). The Securities may be transferred in book-entry form only.

Payment of principal and remuneration on the Securities shall be made to the Principal Paying Agent for on-payment to Clearstream Frankfurt or to its order to credit to the respective account holders upon presentation and (in the case of the payment in respect of principal) surrender of the Global Security.

The Securities have not been rated by any rating agency. There can be no assurance, however, that the Securities will not be rated in the future. Should such future rating be lower than expected by market participants at the time, this may have a material adverse effect on the market price of the Securities.

In this Prospectus references to "**euro**" or "**EUR**" or "**€**" are to the single unified currency of the members of the European Union, including Germany, which adopted the euro in accordance with the treaty on European Union, as amended.

The Issuer accepts responsibility for the information contained in this Prospectus. To the best of its knowledge and belief, the information contained in this Listing Prospectus is in accordance with the facts and does not omit anything likely to affect the import of such information.

This Prospectus does not constitute an offer of, or an invitation by or on behalf of the Issuer to subscribe for or purchase any of the Securities and should not be considered to be a recommendation by the Issuer or any other person that any recipient of this Prospectus should subscribe for or purchase any of the Securities.

The Securities may not be offered or sold, directly or indirectly, and neither this document nor any other offering material may be distributed or published in any jurisdiction, except under circumstances that will result in compliance with any applicable laws and regulations. For a description of certain restrictions on offers and sales of the Securities and distribution of this Prospectus, see "**SUBSCRIPTION AND SALE**" below.

No person has been authorized to give any information or to make any representations, other than those contained in this Prospectus or incorporated by reference herein, in connection with the issue or sale of the Securities and, if given or made, such information or representations must not be relied upon as having been authorized by or on behalf of the Issuer. Neither the delivery of this Prospectus nor

any offer, sale or delivery made in connection with the issue of the Securities shall, under any circumstances, constitute a representation that there has been no change or development likely to involve a change in the condition (financial or otherwise) of the Issuer since the date hereof or create any implication that the information contained herein is correct as of any date subsequent to the date hereof or the date as of which that information is dated herein to be given.

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## **DOCUMENTS INCORPORATED BY REFERENCE**

The 2004 and 2003 annual report (*Geschäftsbericht*) of the Issuer, including the audited consolidated financial statement as of and for the fiscal year ended 30 September, 2004 and 2003 prepared in accordance with accounting principles generally accepted in the United States of America ("**US GAAP**") is incorporated by reference in this Prospectus. Copies of the documents which are incorporated herein by reference and the financial statements of the Issuer for all subsequent years (such future financial statements not being incorporated in this Listing Prospectus by reference) may be inspected and will be available free of charge from the offices of Dresdner Bank Luxembourg S.A., 26, rue du Marché-aux-Herbes, L-2097 Luxembourg, as long as any Securities are listed on the Luxembourg Stock Exchange and the rules of the Luxembourg Stock Exchange so require. The Issuer does not publish interim financial statements.

## **RISK FACTORS**

*Before making an investment decision with respect to the Securities, you should carefully consider the risks relating to the Securities described below, in addition to the other information in this Listing Prospectus. The following is a summary of certain risk factors and is not exhaustive. Prospective investors should consider all of the information provided in this Listing Prospectus or documents incorporated by reference into this Listing Prospectus and consult with their own professional advisors if they consider it necessary.*

### ***Payments of Remuneration on the Securities are in the Discretion of the Issuer***

The Issuer has the option to defer any payment of Remuneration on the Securities in its sole discretion. The payment of Remuneration only becomes compulsory for the Issuer if (i) a dividend, other distribution or other payment was resolved in respect of any class of shares of the Issuer at the last Annual General Meeting or any subsequent general meeting (*Hauptversammlung*) directly preceding the Payment Date for such Remuneration, (ii) the Issuer has declared or made any payment of interest, remuneration or distribution on a Parity Security or a Junior Security since the preceding Payment Date; (iii) the Issuer has declared a distribution to its unlimited partner (*Komplementär*) since the preceding Payment Date, (iv) the Issuer has repurchased Parity Securities or Junior Securities since the preceding Payment Date, or (v) an order is made for the winding-up, or dissolution or liquidation of the Issuer. If the payment of remuneration becomes compulsory in accordance with these provisions, all payments or remuneration previously deferred by the Issuer will also become due for payment.

### ***The Securities will participate in Annual Net Losses of the Issuer***

The Terms and Conditions provide that the Nominal Amount of the Securities is written down in case of an annual net loss (*Jahresfehlbetrag*) for a given financial year which would be recorded in the consolidated financial statements of the Issuer after prior allocation of such losses to the capital and earning reserves, the stated share capital and the capital contribution of the limited partners (*Kommanditisten*). If there has been a reduction of the Nominal Amount of the Securities at the time the Securities become due for repayment and such repayment is not based on a termination by the Issuer according to the Terms and Conditions the repayment amount of the Securities will be lower than the Nominal Amount of the Securities. Accordingly, annual net losses of the Issuer may result in the Securityholders incurring a loss on their investment upon redemption.

### ***The Securities have no scheduled Maturity***

The Securities have an indefinite term and will generally only be redeemed if the Issuer chooses to exercise its right of redemption in accordance with the Terms and Conditions. The Securityholders should be aware that the Terms and Conditions of the Securities do not contain any express termination rights for the Securityholders.

### ***No express Events of Default***

The Securityholders should be aware that the Terms and Conditions of the Securities do not contain any express events of default.

### ***Claims under the Securities are subordinated***

The obligations of the Issuer under the Securities constitute unsecured obligations of the Issuer which are subordinated to the full prior payment of all existing and future unsubordinated indebtedness of the Issuer. Furthermore, claims against the Issuer under the Securities are subordinated to the claims of any shareholders against the Issuer unless such claims, at the time of their creation, constitute equity-replacing loans or equivalent claims of a shareholder.

Consequently, in the event of the liquidation, dissolution, insolvency, composition or other proceedings for the avoidance of insolvency of the Issuer, no amounts will be payable in respect of the Securities until the claims of all creditors and shareholders of the Issuer which rank in priority to the claims of the Securityholders pursuant to the Terms and Conditions, shall have first been satisfied in full.

Unsubordinated liabilities of the Issuer may also arise from events that are not reflected on the balance sheet of the Issuer, including, without limitation, the issuance of guarantees or the incurrence of other contingent liabilities on an unsubordinated basis. Claims made under such guarantees or such other contingent liabilities will become unsubordinated liabilities of the Issuer that in a winding-up or insolvency proceeding of the Issuer will need to be paid in full before the obligation under the Securities may be satisfied.

### ***No Restrictions on the Incurrence of additional Debt by the Issuer***

There is no restriction on the amount of debt which the Issuer may issue and which would rank senior to or *pari passu* with the Securities. Such issuance of further debt may reduce the amount recoverable by the Securityholders upon winding-up or insolvency of the Issuer or may increase the likelihood that the Issuer may elect to defer payments of Remuneration under the Securities.

### ***There has been no prior Market for the Securities***

There is currently no secondary market for the Securities. There can be no assurance that an active market in the Securities will develop. There will be no market maker or any other person obliged to maintain or develop such market in the Securities and therefore no assurance can be made that as secondary market for the Securities will develop or, if it develops, that it will continue.

## TERMS AND CONDITIONS OF THE SECURITIES

THE GERMAN TEXT OF THE TERMS AND CONDITIONS  
OF THE SECURITIES IS LEGALLY BINDING.  
THE ENGLISH TRANSLATION IS FOR CONVENIENCE ONLY.

### TERMS AND CONDITIONS of the

**€ 80,000,000**  
**Subordinated Perpetual Securities**  
**issued by**

**Claas Kommanditgesellschaft auf Aktien mbH,**  
**Harsewinkel, Germany**

### BEDINGUNGEN der

**€ 80.000.000**  
**nachrangigen Schuldverschreibungen**  
**ohne Fälligkeitstag der**

**Claas Kommanditgesellschaft auf Aktien mbH,**  
**Harsewinkel, Deutschland**

### § 1 DEFINITIONS AND INTERPRETATION

Unless the context otherwise requires, the following terms will have the following meanings in these Terms and Conditions:

**Present Values** has the meaning specified in § 5(2).

**Initial Reference Rate** has the meaning specified in § 5(2).

**GAAP** means either International Financial Reporting Standards (IFRS) or accounting principles generally accepted in the United States of America (US GAAP), whichever of these accounting standards are applied by the Issuer for the drawing up of its consolidated financial statements for the relevant financial year of the Issuer.

**Issue Date** means 8 October 2004.

**Terms and Conditions** means these terms and conditions of the Securities.

**Calculation Agent** has the meaning specified in § 10(3).

**Calculation Period** has the meaning specified in § 4(2)(d).

### § 1 DEFINITIONEN UND AUSLEGUNG

Soweit aus dem Zusammenhang nicht etwas anderes hervorgeht, haben die nachfolgenden Begriffe in diesen Bedingungen die folgende Bedeutung:

**Abgezinstе Werte** hat die in § 5(2) festgelegte Bedeutung.

**Anfangsreferenzzinssatz** hat die in § 5(2) festgelegte Bedeutung.

**Anwendbare Rechnungslegungsvorschriften** bezeichnet entweder die International Financial Reporting Standards (IFRS) oder die in den Vereinigten Staaten von Amerika allgemein anerkannten Grundsätze ordnungsgemäßer Rechnungslegung (US GAAP), je nach dem, welche dieser Rechnungslegungsvorschriften die Emittentin zur Erstellung ihres Konzernjahresabschlusses für das jeweilige Geschäftsjahr anwendet.

**Ausgabetag** bezeichnet den 8. Oktober 2004.

**Bedingungen** bezeichnet diese Bedingungen der Wertpapiere.

**Berechnungsstelle** hat die in § 10(3) festgelegte Bedeutung.

**Berechnungszeitraum** hat die in § 4(2)(d) festgelegte Bedeutung.

**Screen Page** means Reuters Page "EURIBOR01" (or such other screen page of Reuters or such other information service, which is the successor to Reuters Page EURIBOR01 for the purpose of displaying such rates).

**Clearing System** means Clearstream Frankfurt.

**Permanent Global Security** has the meaning specified in § 2(2)(a).

**Issuer** has the meaning specified in § 2(1).

**Final Reference Rate** has the meaning specified in § 5(2).

**Optional Payment Date** has the meaning specified in § 4(3).

**Determination Date** means the second Business Day prior to the commencement of the relevant Floating Remuneration Period.

**Fixed Remuneration Payment Date** has the meaning specified in § 4(1)(a).

**Business Day** means a day (other than a Saturday or a Sunday) on which TARGET (the Trans-European Automated Real Time Gross Settlement Express Transfer System) is effecting credit or transfer instructions in respects of payments in euro.

**Parity Securities** means any instrument issued or entered into by the Issuer which (i) ranks, by its terms or by operation of law, *pari passu* with the Securities, and (ii) qualifies, in its entirety, as "equity" pursuant to GAAP.

**Global Securities** means the Temporary Global Security and the Permanent Global Security.

**Gross-up Event** means that (i) the Issuer has or will become obliged to pay Additional Amounts pursuant to § 8 as a result of any change in, or amendment to, the laws (or any rules or regulations thereunder) of the Federal Republic of Germany or any political subdivision or any authority of or in the Federal Republic of Germany, or any change in or amendment to any official interpretation or application of those laws or rules or regulations which amendment, change or execution becomes effective on or after the Issue Date and (ii) that obligation cannot be avoided by the Issuer taking reasonable measures available to it.

**Bildschirmseite** bezeichnet Reuters Seite "EURIBOR01" (oder eine andere Bildschirmseite von Reuters oder einem anderen Informationsanbieter als Nachfolger, welche Reuters Seite EURIBOR01 zur Anzeige solcher Sätze ersetzt).

**Clearingsystem** bezeichnet Clearstream Frankfurt.

**Dauerglobalurkunde** hat die in § 2(2)(a) festgelegte Bedeutung.

**Emittentin** hat die in § 2(1) festgelegte Bedeutung.

**Endreferenzzinssatz** hat die in § 5(2) festgelegte Bedeutung.

**Fakultativer Zahlungstag** hat die in § 4(3) festgelegte Bedeutung.

**Festlegungstag** ist der zweite Geschäftstag vor Beginn des jeweiligen Variablen Vergütungszeitraums.

**Festvergütungs-Zahlungstag** hat die in § 4(1)(a) festgelegte Bedeutung.

**Geschäftstag** bezeichnet jeden Tag (außer einen Samstag oder einen Sonntag), an dem TARGET (das Trans-European Automated Real Time Gross Settlement Express Transfer System) Buchungen oder Zahlungsanweisungen im Hinblick auf Zahlungen in Euro abwickelt.

**Gleichrangiges Wertpapier** bezeichnet jegliches von der Emittentin ausgegebenes oder vereinbartes Finanzierungsinstrument, das (i) aufgrund seiner Bedingungen oder aufgrund gesetzlicher Bestimmung den Wertpapieren im Rang gleichsteht und (ii) nach Maßgabe der Anwendbaren Rechnungslegungsvorschriften als "Eigenkapital" qualifiziert wird.

**Globalurkunden** bezeichnet die Vorläufige Globalurkunde und die Dauerglobalurkunde.

**Gross-up-Ereignis** bezeichnet den Fall, dass die Emittentin (i) verpflichtet ist oder verpflichtet wird, gemäß § 8 Zusätzliche Beträge als Folge einer Änderung oder Ergänzung von Gesetzen der Bundesrepublik Deutschland oder einer ihrer Gebietskörperschaften oder Behörden (oder der Änderung oder Ergänzung von Bestimmungen und Vorschriften auf Grundlage dieser Gesetze), oder als Folge einer Änderung der offiziellen Auslegung oder Anwendung dieser Gesetze, Bestimmungen oder Vorschriften zu zahlen, soweit diese Änderung oder Durchführung an oder nach dem Ausgabetag wirksam wird; und (ii) diese Verpflichtung nicht durch das

**Principal Paying Agent** has the meaning specified in § 10(1).

**Annual General Meeting** is the shareholder meeting of the Issuer which resolves on the payment of a dividend for the respective preceding business year of the Issuer.

**Profit Participation Payment** has the meaning specified in § 4(3)

**Group Entity** means any of the Issuer's affiliated enterprises within the meaning of Section 15 of the German Stock Corporation Act.

**Margin** means 5.50 % *per annum*.

**Market Level Compensation Amount** has the meaning specified in § 5(2).

**Interest Compensation** has the meaning specified in § 5(2).

**Interest Compensation Rate** has the meaning specified in § 5(2).

**Reference Rate Determination Date** has the meaning specified in § 5(2).

**Junior Security** means any instrument issued or entered into by the Issuer which (i) ranks, by its terms or by operation of law, junior to the Securities, and (ii) qualifies, in its entirety, as "equity" pursuant to GAAP.

**Nominal Amount** means the nominal amount per Security of € 50,000.00

**Compulsory Payment Date** has the meaning specified in § 4(3).

**Accounting Event** means that an opinion of a recognised accountancy firm has been delivered to the Principal Paying Agent, stating that the funds raised through the issuance of the Securities must not or must no longer be recorded as "equity" pursuant to GAAP for the purposes of the annual consolidated financial statements of the Issuer.

**Reference Banks** has the meaning specified in § 4(2)(c).

Ergreifen zumutbarer Maßnahmen vermeiden kann.

**Hauptzahlstelle** hat die in § 10(1) festgelegte Bedeutung.

**Jahreshauptversammlung** ist die Hauptversammlung der Emittentin, welche über die Zahlung einer Dividende für das jeweils vorangegangene Geschäftsjahr der Emittentin entscheidet.

**Komplementär-Ausschüttung** hat die in § 4(3) festgelegte Bedeutung.

**Konzerngesellschaft** bezeichnet jedwede verbundenen Unternehmen der Emittentin i.S.d. § 15 Aktiengesetz.

**Marge** bezeichnet 5,50 % p.a.

**Marktausgleichsbetrag** hat die in § 5(2) festgelegte Bedeutung.

**Marktausgleichszinsen** hat die in § 5(2) festgelegte Bedeutung.

**Marktausgleichszinssatz** hat die in § 5(2) festgelegte Bedeutung.

**Marktzinsfeststellungstag** hat die in § 5(2) festgelegte Bedeutung.

**Nachrangiges Wertpapier** bezeichnet jegliches von der Emittentin ausgegebenes oder vereinbartes Finanzierungsinstrument, das (i) aufgrund seiner Bedingungen oder aufgrund gesetzlicher Bestimmung gegenüber den Wertpapieren nachrangig ist und (ii) nach Maßgabe der Anwendbaren Rechnungslegungsvorschriften als "Eigenkapital" qualifiziert wird.

**Nennbetrag** bezeichnet den Nennbetrag von € 50.000,00 je Wertpapier.

**Obligatorischer Zahlungstag** hat die in § 4(3) festgelegte Bedeutung.

Ein **Rechnungslegungs-Ereignis** liegt vor, wenn der Hauptzahlstelle ein Gutachten einer anerkannten Wirtschaftsprüfungsgesellschaft übergeben worden ist, aus dem hervorgeht, dass die Emittentin die durch die Ausgabe der Wertpapiere aufgenommenen Mittel nicht oder nicht mehr als "Eigenkapital" im Sinne der Anwendbaren Rechnungslegungsvorschriften in einem Konzernjahresabschluss der Emittentin auszuweisen berechtigt ist.

**Referenzbanken** hat die in § 4(2)(c) festgelegte Bedeutung.

***Tax Event*** means

- (i) an opinion of a recognised tax counsel has been delivered to the Principal Paying Agent, stating that on or after the Issue Date, as a result of:
  - (aa) any amendment to, or change in, the laws (or any rules or regulations there under) of the Federal Republic of Germany or any political subdivision or any taxing authority thereof or therein which is enacted, promulgated, issued or effective on or after the Issue Date; or
  - (bb) any amendment to, or change in, an official interpretation of any such laws or regulations by any legislative body, court, governmental agency or regulatory authority (including the enactment of any legislation and the publication of any judicial decision or regulatory determination) which is enacted, promulgated, issued or effective on or after the Issue Date; or
  - (cc) any generally applicable official interpretation or pronouncement that provides for a position with respect to such laws or regulations that differs from the previous generally accepted position which is issued or announced on or after the Issue Date,
  - (x) a Gross-up Event has occurred, or within 90 days of that opinion will occur, or
  - (y) the Issuer is not, or within 90 days of the date of that opinion will no longer be, entitled to deduct remuneration payable by it on the Securities fully for German corporate tax purposes and at least at half of their amount for trade tax purposes; and
- (ii) the risk of a Gross-up event occurring or non-deductability of interest payable cannot be avoided by the Issuer taking reasonable

Ein ***Steuerereignis*** liegt vor, wenn:

- (i) der Hauptzahlstelle ein Gutachten eines anerkannten Steuerberaters übergeben worden ist, aus dem hervorgeht, dass an oder nach dem Ausgabetag als Folge:
  - (aa) einer Änderung oder Ergänzung der Gesetze (oder von aufgrund dieser Gesetze erlassener Bestimmungen oder Vorschriften) der Bundesrepublik Deutschland oder einer ihrer Gebietskörperschaften oder Steuerbehörden, die an oder nach dem Ausgabetag erlassen, verkündet oder wirksam wird; oder
  - (bb) einer Änderung oder Ergänzung der offiziellen Auslegung solcher Gesetze oder Vorschriften durch eine gesetzgebende Körperschaft, ein Gericht, eine Regierungsstelle oder eine Aufsichtsbehörde (einschließlich des Erlasses von Gesetzen sowie der Bekanntmachung gerichtlicher oder aufsichtsrechtlicher Entscheidungen), die an oder nach dem Ausgabetag erlassen, verkündet oder wirksam wird, oder
  - (cc) einer allgemein anwendbaren offiziellen Auslegung oder Verkündung, die an oder nach dem Ausgabetag erlassen oder verkündet wird, und nach der die Rechtslage im Hinblick auf diese Gesetze oder Vorschriften von der früheren allgemein anerkannten Rechtslage abweicht,
  - (x) ein Gross-up-Ereignis eingetreten ist, bzw. innerhalb von 90 Tagen nach dem Datum des Gutachtens eintreten wird, oder
  - (y) die Emittentin nicht, bzw. innerhalb von 90 Tagen nach dem Datum des Gutachtens nicht mehr befugt sein wird, Vergütungen, die von der Emittentin in Bezug auf die Wertpapiere zahlbar sind, für die Zwecke der deutschen Körperschaftsteuer voll und Gewerbesteuer wenigstens hälftig abzuziehen; und
- (ii) die Emittentin das Risiko eines Gross-up Ereignisses bzw. der mangelnden Abzugsfähigkeit nicht durch das Ergreifen

measures available to it.

**Disputes** has the meaning specified in § 14(3).

**Floating Payment Date** means, subject to § 4(2)(b), 8 January, 8 April, 8 July and 8 October in each year, commencing and including 8 January 2015.

**Floating Remuneration Period** means each period from and including 8 October 2014 to but excluding the first Floating Payment Date and, thereafter, from and including each Floating Payment Date to but excluding the immediately following Floating Payment Date.

**United States** means the United States of America (including the States thereof and the District of Columbia) and its possessions (including Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, Wake Island und Northern Mariana Islands).

**Proceedings** has the meaning specified in § 14(3).

**Calculation Period** has the meaning specified in § 4(2)(d).

**Remuneration Amount** has the meaning specified in § 4(2)(d).

**Arrears of Remuneration** has the meaning specified in § 4(3).

**Rate of Remuneration** has the meaning specified in § 4(2)(c).

**Temporary Global Security** has the meaning specified in § 2(2)(a).

**Early Redemption Amount** has the meaning specified in § 5(2).

**Securities** has the meaning specified in § 2(1).

**Securityholder** means any holder of a proportional co-ownership participation or right in the Global Security.

**Paying Agent** and **Paying Agents** has the meaning specified in § 10(2).

**Payment Date** means any Fixed Remuneration Payment Date and any Floating Remuneration

zumutbarer Maßnahmen vermeiden kann.

**Streitigkeiten** hat die in § 14(3) festgelegte Bedeutung.

**Variabler Zahlungstag** ist, vorbehaltlich § 4(2)(b), der 8. Januar, 8. April, 8. Juli und 8. Oktober eines jeden Jahres beginnend mit dem 8. Januar 2015 (einschließlich).

**Variabler Vergütungszeitraum** bezeichnet jeweils den Zeitraum vom 8. Oktober 2014 (einschließlich) bis zum ersten Variablen Zahlungstag (ausschließlich) und danach von jedem Variablen Zahlungstag (einschließlich) bis zum jeweils darauffolgenden Variablen Zahlungstag (ausschließlich).

**Vereinigte Staaten** bezeichnet die Vereinigten Staaten von Amerika (einschließlich deren Bundesstaaten und des Districts of Columbia) sowie deren Territorien (einschließlich Puerto Ricos, der U.S. Virgin Islands, Guam, American Samoa, Wake Island und der Northern Mariana Islands).

**Verfahren** hat die in § 14(3) festgelegte Bedeutung.

**Vergütungsberechnungszeitraum** hat die in § 4(2)(d) festgelegte Bedeutung.

**Vergütungsbetrag** hat die in § 4(2)(d) festgelegte Bedeutung.

**Vergütungsrückstände** hat die in § 4(3) festgelegte Bedeutung.

**Vergütungssatz** hat die in § 4(2)(c) festgelegte Bedeutung.

**Vorläufige Globalurkunde** hat die in § 2(2)(a) festgelegte Bedeutung.

**Vorzeitiger Rückzahlungsbetrag** hat die in § 5(2) festgelegte Bedeutung.

**Wertpapiere** hat die in § 2(1) festgelegte Bedeutung.

**Wertpapiergläubiger** bezeichnet jeden Inhaber eines Miteigentumsanteils oder –rechts an der Globalurkunde.

**Zahlstelle** und **Zahlstellen** hat die in § 10(2) festgelegte Bedeutung.

**Zahlungstag** bezeichnet jeden Festvergütungs-Zahlungstag und jeden Variablen

Payment Date.

**Day Count Fraction** has the meaning specified in § 4(2)(d).

**Additional Amounts** has the meaning specified in § 8.

Vergütungszahlungstag.

**Zinstagequotient** hat die in § 4(2)(d) festgelegte Bedeutung.

**Zusätzliche Beträge** hat die in § 8 festgelegte Bedeutung.

## § 2

### NOMINAL AMOUNT AND DENOMINATION; FORM; TRANSFERABILITY

(1) **Nominal Amount and Denomination.** The issue of the Subordinated Perpetual Securities by Claas Kommanditgesellschaft auf Aktien mbH, Harsewinkel, Germany (the **Issuer**) in the aggregate nominal amount of € 80,000,000 (in words: Euro eighty million) is divided into 1,600 Securities payable to bearer and ranking *pari passu* among themselves, with a nominal amount of € 50,000 each (the **Securities**; this term includes any further Securities issued pursuant to § 11 that form a single series with the Securities).

(2) **Temporary Global Security – Exchange.**

(a) The Securities are initially represented by a temporary global Security (the **Temporary Global Security**) without coupons. The Temporary Global Security will be exchangeable for a permanent global Security (the **Permanent Global Security**) without coupons. The Temporary Global Security and the Permanent Global Security shall each be signed manually by two authorised signatories of the Issuer and shall each be authenticated by or on behalf of the Principal Paying Agent. Definitive Securities and interest coupons shall not be issued.

(b) The Temporary Global Security shall be exchanged for the Permanent Global Security on a date (the **Exchange Date**) not later than 180 days after the Issue Date. The Exchange Date will not be earlier than 40 days after the Issue Date. Such exchange shall only be made upon delivery of certifications to the effect

## § 2

### NENNBETRAG UND STÜCKELUNG; VERBRIEFUNG; ÜBERTRAGBARKEIT

(1) **Nennbetrag und Stückelung.** Die Emission der nachrangigen Schuldverschreibungen ohne Fälligkeitstag der Claas Kommanditgesellschaft auf Aktien mbH, Harsewinkel, Deutschland (**Emittentin**) im Gesamtnennbetrag von € 80.000.000 (in Worten: Euro Achtzig Millionen) ist eingeteilt in 1.600 an den Inhaber zahlbare und untereinander gleichrangige Schuldverschreibungen mit einem Nennbetrag von jeweils € 50.000 (die **Wertpapiere**; dieser Begriff umfasst sämtliche weiteren Wertpapiere, die gemäß § 11 begeben werden und eine einheitliche Serie mit den Wertpapieren bilden).

(2) **Vorläufige Globalurkunde – Austausch.**

(a) Die Wertpapiere sind anfänglich durch eine vorläufige Globalurkunde (die **Vorläufige Globalurkunde**) ohne Zinsscheine verbrieft. Die vorläufige Globalurkunde wird gegen eine Dauerglobalurkunde (die **Dauerglobalurkunde**) ohne Zinsscheine ausgetauscht. Die Vorläufige Globalurkunde und die Dauerglobalurkunde tragen jeweils die eigenhändigen Unterschriften zweier ordnungsgemäß bevollmächtigter Vertreter der Emittentin und sind jeweils von der Hauptzahlstelle oder in deren Namen mit einer Kontrollunterschrift versehen. Einzelurkunden und Zinsscheine werden nicht ausgegeben.

(b) Die Vorläufige Globalurkunde wird an einem Tag (der **Austauschtag**) gegen die Dauerglobalurkunde ausgetauscht, der nicht mehr als 180 Tage nach dem Ausgabetag liegt. Der Austausch tag darf nicht weniger als 40 Tage nach dem Ausgabetag liegen. Ein solcher Austausch darf nur nach Vorlage von

that the beneficial owner or owners of the Securities is not a U.S. person (other than certain financial institutions or certain persons holding Securities through such financial institutions). Payment of interest on Securities represented by a Temporary Global Security shall be made only after delivery of such certifications. A separate certification shall be required in respect of each such payment of interest. Any such certification received on or after the 40th day after the Issue Date shall be treated as a request to exchange the Temporary Global Security pursuant to this § 2(2)(b). Any Securities delivered in exchange for the Temporary Global Security shall be delivered only outside of the United States.

Bescheinigungen erfolgen, wonach der oder die wirtschaftlichen Eigentümer der Wertpapiere keine U.S.-Personen sind (ausgenommen bestimmte Finanzinstitute oder bestimmte Personen, die Wertpapiere über solche Finanzinstitute halten). Solange die Wertpapiere durch die Vorläufige Globalurkunde verbrieft sind, werden Zahlungen von Zinsen auf die Wertpapiere erst nach Vorlage solcher Bescheinigungen vorgenommen. Eine gesonderte Bescheinigung ist für jede solche Zahlung von Zinsen erforderlich. Jede Bescheinigung, die am oder nach dem 40. Tag nach dem Ausgabetag eingeht, wird nach dem Ersuchen behandelt werden, die Vorläufige Globalurkunde gemäß diesem § 2(2)(b) auszutauschen. Wertpapiere, die im Austausch für die Vorläufige Globalurkunde geliefert werden, dürfen nur außerhalb der Vereinigten Staaten geliefert werden.

- (3) **Clearing System.** The Global Securities will be kept in custody by or on behalf of the Clearing System until all obligations of the Issuer under the Securities have been satisfied.
- (4) **Transferability.** The Securityholders will receive proportional co-ownership participations or rights in the Global Securities that are transferable in accordance with applicable law and applicable rules of the Clearing System.

- (3) **Clearingsystem.** Die Globalurkunden werden solange von einem oder im Namen eines Clearingsystems verwahrt, bis sämtliche Verbindlichkeiten der Emittentin aus den Wertpapieren erfüllt sind.
- (4) **Übertragbarkeit.** Den Wertpapiergläubigern stehen Miteigentumsanteile oder -rechte an den Globalurkunden zu, die nach Maßgabe des anwendbaren Rechts und der jeweils geltenden Regelwerke des Clearingsystems übertragen werden können.

### § 3 STATUS OF THE SECURITIES

The obligations of the Issuer under the Securities constitute unsecured obligations of the Issuer which are subordinated pursuant to this § 3 and which rank *pari passu* among themselves. In the event of the liquidation, dissolution, insolvency, composition or other proceedings for the avoidance of insolvency of the Issuer, claims against the Issuer under the Securities shall rank at least *pari passu* with all present and future unsecured liabilities and obligations of the Issuer which are subordinated pursuant to an agreement between the respective creditor and the Issuer. They rank in priority to the claims of any shareholders against the Issuer, to the extent that such claims, at the time of their creation, constitute equity-replacing loans or equivalent claims of a shareholder. In the event of the

### § 3 STATUS DER WERTPAPIERE

Die Wertpapiere begründen nicht besicherte und nach Maßgabe dieses § 3 nachrangige Verpflichtungen der Emittentin, die untereinander im Rang gleich stehen. Im Fall der Liquidation, der Auflösung oder der Insolvenz der Emittentin oder eines Vergleichs oder eines anderen der Abwendung der Insolvenz der Emittentin dienenden Verfahrens stehen Forderungen gegen die Emittentin aus diesen Wertpapieren mit allen bestehenden und zukünftigen nicht besicherten und aufgrund Vereinbarung zwischen Gläubiger und Emittentin nachrangigen Verbindlichkeiten und Verpflichtungen der Emittentin im Rang wenigstens gleich. Sie gehen den Forderungen der Anteilseigner gegen die Emittentin im Rang vor, soweit diese im Zeitpunkt ihrer Begründung eigenkapitalersetzende Darlehen oder

liquidation, dissolution, insolvency, composition or other proceedings for the avoidance of insolvency of the Issuer, no amounts shall be payable in respect of the Securities until the claims of all creditors of the Issuer which rank in priority to the claims of the Securityholders pursuant to the preceding two sentences, shall have first been satisfied in full. No Securityholder may set-off any claims arising under the Securities against any claims that the Issuer may have against it. The Issuer may not set-off any claims it may have against the Securityholders against any of its obligations under the Securities. No security is, or shall at any time be, provided by the Issuer or any other person to secure rights of the Securityholders under the Securities.

gleichgestellte Forderungen eines Gesellschafters darstellen. Im Fall der Liquidation, der Auflösung oder der Insolvenz der Emittentin oder eines Vergleichs oder eines anderen der Abwendung der Insolvenz der Emittentin dienenden Verfahrens erfolgen Zahlungen auf die Wertpapiere so lange nicht, wie die Ansprüche aller Gläubiger gegen die Emittentin, die gemäß den vorstehenden beiden Sätzen den Ansprüchen der Wertpapiergläubiger im Rang vorgehen, nicht zuerst vollständig erfüllt sind. Die Wertpapiergläubiger sind nicht berechtigt, Forderungen aus den Wertpapieren gegen mögliche Forderungen der Emittentin gegen sie aufzurechnen. Die Emittentin ist nicht berechtigt, Forderungen gegenüber Wertpapiergläubigern gegen Verpflichtungen aus den Wertpapieren aufzurechnen. Für die Rechte der Wertpapiergläubiger aus den Wertpapieren ist diesen keine Sicherheit durch die Emittentin oder durch Dritte gestellt; eine solche Sicherheit wird auch zu keinem Zeitpunkt gestellt werden.

#### § 4 REMUNERATION

(1) **Fixed Remuneration Period.** As consideration for making the Nominal Amount available to the Issuer, the Issuer shall be obliged to pay, from and including the Issue Date to but excluding 8 October 2014, remuneration as follows:

(a) The Securities bear interest at the rate of 7.62 % per annum on the Nominal Amount and, subject to the payment deferral provisions contained in § 4(3), such remuneration shall be payable annually in arrears on 8 October of each year, commencing on 8 October 2005 (each a *Fixed Remuneration Payment Date*).

(b) If remuneration is to be calculated for a fixed remuneration period of less than one year, it shall be calculated on the basis of the actual number of days elapsed, divided by the actual number of days (365 or 366) in the relevant annual interest period.

(2) **Floating Remuneration Period.** As consideration for making the Nominal Amount available to the Issuer, the Issuer shall be obliged to pay, from and including 8 October 2014 to but excluding the day of redemption of the Securities, remuneration as

#### § 4 VERGÜTUNG

(1) **Fester Vergütungszeitraum.** Als Gegenleistung für die Überlassung des Nennbetrags ist die Emittentin vom Ausgabetag (einschließlich) bis zum 8. Oktober 2014 (ausschließlich) zur Zahlung folgender Vergütungen verpflichtet:

(a) Die Wertpapiere werden mit jährlich 7,62 % auf den Nennbetrag verzinst und diese Vergütung wird, vorbehaltlich der Stundungsregelung in § 4(3), nachträglich jährlich am 8. Oktober eines jeden Jahres, erstmals am 8. Oktober 2005 fällig (jeweils ein *Festvergütungs-Zahlungstag*).

(b) Vergütungen, die auf einen festen Vergütungszeitraum von weniger als einem Jahr zu berechnen sind, werden auf Basis der tatsächlich verstrichenen Tage, geteilt durch 365 bzw. 366 (tatsächliche Anzahl der Tage im betreffenden Zinsjahr), berechnet.

(2) **Variabler Vergütungszeitraum.** Als Gegenleistung für die Überlassung des Nennbetrags ist die Emittentin vom 8. Oktober 2014 (einschließlich) bis zum Tag der Rückzahlung der Wertpapiere (ausschließlich) zur Zahlung folgender

follows:

- (a) Unless previously redeemed in accordance with the Terms and Conditions, the Securities shall bear interest at a rate determined by the Calculation Agent pursuant to § 4(2)(d) below, payable, subject to the payment deferral provisions contained in § 4(3), quarterly in arrears on each Floating Payment Date.
- (b) If any Floating Payment Date would otherwise fall on a day which is not a Business Day, payment of remuneration shall be postponed to the next day which is a Business Day unless it would thereby fall into the next calendar month, in which case the Floating Payment Date shall be the immediately preceding Business Day.
- (c) The rate of interest for each Floating Remuneration Period (the **Rate of Remuneration**) will, except as provided below, be either:
  - (i) the offered quotation displayed (if the Screen Page ordinarily provides only one quotation); or
  - (ii) the arithmetic mean (rounded, if necessary, to the nearest one thousandth of a percentage point, with 0.0005 being rounded upwards) of the offered quotations displayed,

(expressed as a percentage rate per annum) for three-month deposits in euro (EURIBOR) for that Floating Remuneration Period which appears or appear, as the case may be, on the Screen Page as of 11:00 a.m. (Brussels time) on the Determination Date, plus the Margin, all as determined by the Calculation Agent.

If, in the case of (ii) above, five or more such offered quotations are available on the Screen Page, the highest rate (or, if there is more than one such highest rate, only one of such rates) and the lowest rate (or, if there is more than one such lowest

Vergütungen verpflichtet:

- (a) Vorbehaltlich einer vorzeitigen Rückzahlung gemäß diesen Bedingungen werden die Wertpapiere in Höhe des von der Berechnungsstelle gemäß § 4(2)(d) festgesetzten Vergütungssatzes verzinst, wobei diese Vergütung, vorbehaltlich der Stundungsregelung in § 4(3), vierteljährlich nachträglich an jedem Variablen Zahlungstag gezahlt werden.
- (b) Falls ein Variabler Zahlungstag auf einen Tag fallen würde, der kein Geschäftstag ist, wird die Zahlung der Vergütung auf den nächstfolgenden Geschäftstag verschoben, es sei denn, jener würde dadurch in den nächsten Kalendermonat fallen; in diesem Fall fällt der Variable Zahlungstag auf den unmittelbar vorausgehenden Geschäftstag.
- (c) Der Zinssatz für jeden Variablen Vergütungszeitraum (der **Vergütungssatz**) ist, sofern nachstehend nichts Abweichendes bestimmt wird, entweder:
  - (i) der angezeigte Angebotssatz (für den Fall, dass auf der Bildschirmseite üblicherweise nur ein Angebotssatz angezeigt wird); oder
  - (ii) das arithmetische Mittel der angezeigten Angebotssätze (falls erforderlich, auf das nächste eintausendstel Prozent auf- oder abgerundet, wobei 0,0005 aufgerundet wird),

(ausgedrückt als Prozentsatz per annum) für Dreimonats-Einlagen in Euro (EURIBOR) für den jeweiligen Variablen Vergütungszeitraum, der bzw. die auf der Bildschirmseite am Festlegungstag um 11:00 Uhr (Brüsseler Ortszeit) angezeigt wird bzw. werden, zuzüglich der Marge, wobei alle Festlegungen durch die Berechnungsstelle erfolgen.

Wenn im vorstehenden Fall (ii) auf der Bildschirmseite fünf oder mehr Angebotssätze angezeigt werden, werden der höchste (oder, falls mehr als ein solcher Höchstsatz angezeigt wird, nur einer dieser Sätze) und der niedrigste Ange-

rate, only one of such rates) shall be disregarded by the Calculation Agent for the purpose of determining the arithmetic mean (rounded as provided above) of such offered quotations and this rule shall apply throughout this § 4(2)(c) accordingly.

If the Screen Page is not available or if, in the case of (i) above, no such quotation appears or, in the case of (ii) above, fewer than three such offered quotations appear, in each case and at such time, the Calculation Agent shall request five Reference Banks selected by it to provide the Calculation Agent with its offered quotation (expressed as a percentage rate per annum) for three-month deposits in euro for the relevant Floating Remuneration Period to leading banks in the interbank market of the participating Member States in the third stage of the Economic and Monetary Union, as contemplated by the Treaty on European Union. The relevant offered quotations shall be those offered at approximately 11:00 a.m. (Brussels time) on the Determination Date. As long as two or more of the selected Reference Banks provide the Calculation Agent with such offered quotations, the Rate of Remuneration for such Floating Remuneration Period shall be the arithmetic mean of such offered quotations (rounded if necessary to the nearest one thousandth of a percentage point, with 0.0005 being rounded upwards), plus the Margin.

If the Rate of Remuneration cannot be determined in accordance with the foregoing provisions, the Rate of Remuneration shall be the offered quotation or the arithmetic mean of the offered quotations on the Screen Page, as described above, on the last day preceding the Determination Date on which such quotation or, as the case may be, quotations were offered, plus the Margin.

**Reference Banks** means those banks whose offered rates were used to determine such quotation when such quotation last appeared on the Screen

botssatz (oder, falls mehr als ein solcher niedrigstssatz angezeigt wird, nur einer dieser Sätze) von der Berechnungsstelle für die Bestimmung des arithmetischen Mittels der Angebotssätze (das wie vorstehend beschrieben auf- oder abgerundet wird) außer Acht gelassen; diese Bestimmung gilt entsprechend für diesen gesamten § 4(2)(c).

Sollte die Bildschirmseite nicht zur Verfügung stehen, oder wird im vorstehenden Fall (i) kein Angebotssatz angezeigt, oder werden im vorstehenden Fall (ii) weniger als drei Angebotssätze angezeigt (in jedem dieser Fälle zu der genannten Zeit), wird die Berechnungsstelle von fünf von ihr ausgewählten Referenzbanken deren jeweilige Angebotssätze (jeweils als Prozentsatz per annum ausgedrückt) für Dreimonats-Einlagen in Euro für den betreffenden Variablen Vergütungszeitraum gegenüber führenden Banken im Interbanken-Markt in den Teilnehmerstaaten der dritten Stufe der Wirtschafts- und Währungsunion im Sinne des Vertrages über die Europäische Union anfordern. Maßgeblich sind die Sätze um ca. 11:00 Uhr (Brüsseler Ortszeit) am Festlegungstag. Sofern zwei oder mehr der ausgewählten Referenzbanken der Berechnungsstelle solche Angebotssätze nennen, ist der Vergütungssatz für den betreffenden Variablen Vergütungszeitraum das arithmetische Mittel dieser Angebotssätze (falls erforderlich, auf- oder abgerundet auf das nächste ein tausendstel Prozent, wobei 0,0005 aufgerundet wird), zuzüglich der Marge.

Für den Fall, dass der Vergütungssatz nicht gemäß den vorstehenden Bestimmungen ermittelt werden kann, ist der Vergütungssatz der Angebotssatz oder das arithmetische Mittel der Angebotssätze auf der Bildschirmseite, wie vorstehend beschrieben, an dem letzten Tag vor dem Festlegungstag, an dem ein solcher Angebotssatz bzw. solche Angebotssätze angezeigt wurde(n) zuzüglich der Marge.

**Referenzbanken** sind diejenigen Banken, deren Angebotssätze zur Ermittlung des angezeigten Angebotssatzes zu dem Zeitpunkt benutzt wurden, als solch ein Angebot letztmals auf der

Page.

- (d) The Calculation Agent shall, on or as soon as practicable after each Determination Date, determine the Rate of Remuneration and calculate the amount of remuneration (the **Remuneration Amount**) payable on the aggregate nominal amount of the Securities for the relevant Floating Remuneration Period. Each Remuneration Amount shall be calculated by multiplying the Rate of Remuneration with the Day Count Fraction and the aggregate nominal amount of the Securities and rounding the resulting figure to the nearest Eurocent, with 0.5 or more of a Eurocent being rounded upwards.

**Day Count Fraction** means, in respect of the calculation of an amount of remuneration on each Security for any Floating Remuneration Period or part thereof (the **Calculation Period**), the actual number of days in the Calculation Period divided by 360.

- (e) The Calculation Agent will cause the Rate of Remuneration, each Remuneration Amount for each Floating Remuneration Period, each Floating Remuneration Period and the relevant Floating Payment Date to be notified to the Issuer and, if required by the rules of any stock exchange on which the Securities are listed from time to time, to such stock exchange, and to the Securityholders in accordance with § 12 without undue delay, but, in any case, not later than on the fourth Business Day after their determination.
- (f) All certificates, communications, opinions, determinations, calculations, quotations and decisions given, expressed, made or obtained for the purposes of the provisions of these Terms and Conditions by the Calculation Agent shall (in the absence of wilful default or manifest error) be binding upon the Issuer and the Securityholders.
- (3) **Remuneration Deferral.** Remuneration which accrues during a period ending on (but excluding) an Optional Payment Date shall be payable on that Optional Payment Date only if

Bildschirmseite angezeigt wurde.

- (d) Die Berechnungsstelle wird zu oder baldmöglichst nach jedem Festlegungstag den Vergütungssatz bestimmen und den auf den Gesamtnennbetrag der Wertpapiere zahlbaren Vergütungsbetrag (der **Vergütungsbetrag**) für den entsprechenden Variablen Vergütungszeitraum berechnen. Der Vergütungsbetrag ergibt sich aus der Multiplikation des Vergütungssatzes mit dem Zinstagequotienten und dem Gesamtnennbetrag der Wertpapiere, wobei der daraus resultierende Betrag auf den nächsten Eurocent auf- oder abgerundet wird, und 0,5 oder mehr eines Eurocents aufgerundet werden.

**Zinstagequotient** bezeichnet im Hinblick auf die Berechnung des Vergütungsbetrages auf jedes Wertpapier für einen Variablen Vergütungszeitraum oder einen Teil davon (der **Vergütungsberechnungszeitraum**) die tatsächliche Anzahl von Tagen im Vergütungsberechnungszeitraum dividiert durch 360.

- (e) Die Berechnungsstelle wird veranlassen, dass der Vergütungssatz, der Vergütungsbetrag für den jeweiligen Variablen Vergütungszeitraum, jeder Variable Vergütungszeitraum und der betreffende Variable Zahlungstag der Emittentin und jeder Börse, an der die Wertpapiere zu diesem Zeitpunkt notiert sind und deren Regeln eine Mitteilung an die Börse verlangen, sowie den Wertpapiergläubigern gemäß § 12 unverzüglich, aber keinesfalls später als am vierten auf die Festlegung folgenden Geschäftstag mitgeteilt werden.
- (f) Sämtliche Bescheinigungen, Mitteilungen, Gutachten, Festsetzungen, Berechnungen, Quotierungen und Entscheidungen, die von der Berechnungsstelle für die Zwecke dieser Bedingungen gemacht, abgegeben, getroffen oder eingeholt werden, sind (sofern nicht vorsätzliches Fehlverhalten oder ein offensichtlicher Irrtum vorliegt) für die Emittentin und die Wertpapiergläubiger bindend.
- (3) **Stundung von Vergütung.** Vergütungen, die während eines Zeitraumes auflaufen, der an einem Fakultativen Zahlungstag (ausschließlich) endet, sind nur dann an diesem

and to the extent the Issuer, in its sole discretion, so elects and, in the case there is no such election, such remuneration shall otherwise constitute **Arrears of Remuneration**. If the Issuer decides to pay remuneration (in whole or in part) on an Optional Payment Date, it shall also be obliged to pay all Arrears of Remuneration on such Optional Payment Date. The Issuer shall not have any obligation to pay remuneration on any Optional Payment Date if it does not elect to do so and any such failure to pay remuneration shall not constitute a default of the Issuer. If the Issuer decides not to pay the full amount of remuneration on an Optional Payment Date, the Issuer shall notify the Securityholders in accordance with § 12 not less than 10 and not more than 15 Business Days prior to such Optional Payment Date. The Issuer may pay outstanding Arrears of Remuneration (in whole or in part) at any time on the giving of not less than 10 and not more than 15 Business Days' notice to the Securityholders in accordance with § 12 (which notice will be irrevocable and will oblige the Issuer to pay the relevant Arrears of Remuneration on the payment date specified in such notice).

The Issuer will be obliged to pay outstanding Arrears of Remuneration (in whole but not in part) on the earlier of:

- (i) the date on which the Issuer's Annual General Meeting or any other general meeting (*Hauptversammlung*) of the Issuer resolves on a dividend, other distribution or other payment in respect of any class of shares of the Issuer;
- (ii) the date on which the Issuer declares or makes any payment of interest, remuneration or other distribution on a Junior Security or a Parity Security;
- (iii) the date on which any distributions are declared or made by the Issuer to an unlimited partner (*Komplementär*) of the Issuer (each such distribution, a **Profit**

Fakultativen Zahlungstag zahlbar, wenn und soweit sich die Emittentin nach ihrem alleinigen Ermessen zur Zahlung entschließt; entschließt sich die Emittentin nicht zur Zahlung, stellen die nicht gezahlten Vergütungen **Vergütungsrückstände** dar. Falls sich die Emittentin dafür entscheidet, an einem Fakultativen Zahlungstag Vergütungszahlungen ganz oder teilweise zu leisten, ist sie verpflichtet, an diesem Fakultativen Zahlungstag auch sämtliche Vergütungsrückstände zu zahlen. Die Emittentin ist nicht verpflichtet, an einem Fakultativen Zahlungstag Vergütungen zu zahlen, wenn sie sich gegen eine solche Zahlung entschieden hat; eine Nichtzahlung aus diesem Grunde begründet keinen Verzug der Emittentin. Soweit sich die Emittentin entscheidet, an einem Fakultativen Zahlungstag nicht den gesamten Vergütungsbetrag zu zahlen, hat sie dies den Wertpapiergläubigern gemäß § 12 unter Einhaltung einer Frist von mindestens 10 und höchstens 15 Geschäftstagen vor diesem Fakultativen Zahlungstag bekannt zu machen. Die Emittentin kann ausstehende Vergütungsrückstände jederzeit ganz oder teilweise nach Benachrichtigung der Wertpapiergläubiger gemäß § 12 unter Einhaltung einer Frist von nicht weniger als 10 und nicht mehr als 15 Geschäftstagen zahlen (wobei eine solche Mitteilung unwiderruflich ist und die Emittentin verpflichtet ist, die jeweiligen Vergütungsrückstände an dem in dieser Mitteilung genannten Zahlungstag zu zahlen).

Die Emittentin ist verpflichtet, ausstehende Vergütungsrückstände (vollständig, jedoch nicht teilweise) an dem zuerst eintretenden der folgenden Tage zu zahlen:

- (i) dem Tag, an dem die Jahreshauptversammlung oder eine andere Hauptversammlung der Emittentin für eine Aktiengattung der Emittentin eine Dividende, bzw. eine andere Ausschüttung oder Zahlung beschließt;
- (ii) dem Tag, an dem die Emittentin Zinsen, Vergütungen oder eine andere Zahlung auf ein Nachrangiges Wertpapier oder ein Gleichrangiges Wertpapier beschließt oder leistet;
- (iii) dem Tag, an dem die Emittentin eine Entnahme durch einen Komplementär der Emittentin (eine **Komplementär-Ausschüttung**, wobei eine Haftungs-

**Participation Payment**, provided, however, that remuneration payable to an unlimited partner for assuming unlimited liability in the Issuer (*Haftungsvergütung*) and any arm's length reimbursement to an unlimited partner in respect of services rendered by such unlimited partner (*Komplementär*) to the Issuer shall not be considered as a "Profit Participation Payment");

- (iv) the date on which the Issuer repurchases or otherwise acquires, or causes another Group Entity to repurchase or otherwise acquire, any Parity Security or Junior Security against consideration therefore;
- (v) the date on which an order is made for the winding-up, or dissolution or liquidation of the Issuer (other than for the purposes of or pursuant to an amalgamation, reorganisation or restructuring while solvent, where the continuing entity assumes substantially all of the assets and obligations of the Issuer); and
- (vi) the date on which the Securities are due for redemption in accordance with § 5.

Arrears of Remuneration shall not bear interest.

Remuneration which accrues during a period ending on (but excluding) a Compulsory Payment Date shall be payable on that Compulsory Payment Date.

**Compulsory Payment Date** means any Payment Date in respect of which any one of the following criteria is met:

- (i) a dividend, other distribution or other payment was resolved on in respect of any class of shares of the Issuer at the last Annual General Meeting or any subsequent general meeting (*Hauptversammlung*) directly preceding such Payment Date;
- (ii) the Issuer has declared or made any payment of interest, remuneration or distribution on a Junior Security or a Parity Security since the preceding

vergütung für die Übernahme der unbeschränkten persönlichen Haftung für die Verbindlichkeiten der Emittentin sowie die Zahlung von marktüblichem Aufwendersatz für Leistungen eines Komplementärs an die Emittentin nicht als „Komplementär-Ausschüttung“ gilt) beschließt oder leistet;

- (iv) dem Tag, an dem die Emittentin durch Rückkauf oder auf andere Weise Gleichrangige Wertpapiere oder Nachrangige Wertpapiere gegen Gewährung einer Gegenleistung zurückkauft oder sonst wie erwirbt oder eine Konzerngesellschaft veranlasst, dies zu tun;
- (v) dem Tag, an dem eine Verfügung zur Auflösung, Abwicklung oder Liquidation der Emittentin ergeht (sofern dies nicht für die Zwecke oder als Folge eines Zusammenschlusses, einer Umstrukturierung oder Sanierung geschieht, bei dem bzw. der die Emittentin noch zahlungsfähig ist und bei dem bzw. der die fortführende Gesellschaft im Wesentlichen alle Vermögenswerte und Verpflichtungen der Emittentin übernimmt); sowie
- (vi) dem Tag, an dem die Wertpapiere gemäß § 5 zur Rückzahlung fällig werden.

Vergütungsrückstände werden nicht verzinst.

Vergütungen, die während eines Zeitraumes auflaufen, der an einem Obligatorischen Zahlungstag (ausschließlich) endet, sind an diesem Obligatorischen Zahlungstag zahlbar.

**Obligatorischer Zahlungstag** bezeichnet jeden Zahlungstag, an dem wenigstens eines der nachfolgend aufgeführten Kriterien erfüllt ist:

- (i) auf der letzten Jahreshauptversammlung oder einer danach abgehaltenen Hauptversammlung, die diesem Zahlungstag unmittelbar vorausging, wurde für eine Aktiengattung der Emittentin eine Dividende, bzw. eine andere Ausschüttung oder Zahlung beschlossen;
- (ii) die Emittentin hat seit dem letzten Zahlungstag Zinsen, Vergütungen oder eine andere Zahlung auf ein Nachrangiges Wertpapier oder ein

Payment Date;

- (iii) the Issuer has declared or made a Profit Participation Payment since the preceding Payment Date;
- (iv) the Issuer has repurchased or otherwise acquired, or caused another Group Entity to repurchase or otherwise acquire any Parity Security or Junior Security against consideration therefore since the immediately preceding Payment Date.

**Optional Payment Date** means any Payment Date which is not a Compulsory Payment Date.

- (4) **Cessation of Remuneration Payments.** The Securities shall cease to bear interest from the beginning of the day on which they become due for redemption. If the Issuer shall fail to redeem the Securities when due, the obligation to pay remuneration shall continue to accrue at the then applicable rate on the outstanding nominal amount of the Securities beyond the due date until (and excluding) the day of actual redemption of the Securities.

## § 5

### REDEMPTION AND PURCHASE

- (1) **No Scheduled Maturity.** The Securities have no final maturity date and shall not be redeemed except in accordance with the provisions set out in this § 5 or in the event of the Issuer's liquidation or insolvency.
- (2) **Issuer Call Right and Early Redemption due to Tax Event or Accounting Event.** If prior to 8 October 2014 either a Tax Event or an Accounting Event occurs, the Issuer may, at its sole discretion, call and redeem the Securities (in whole but not in part) at their Early Redemption Amount at any time on the giving of not less than 30 and not more than 60 days' irrevocable notice to the Securityholders in accordance with § 12.

In the case of a Gross-up Event:

Gleichrangiges Wertpapier beschlossen oder geleistet;

- (iii) die Emittentin hat seit dem letzten Zahlungstag eine Komplementär-Ausschüttung beschlossen oder geleistet;
- (iv) die Emittentin hat seit dem letzten Zahlungstag Gleichrangige Wertpapiere oder Nachrangige Wertpapiere gegen Gewährung einer Gegenleistung zurückgekauft oder sonst wie erworben oder eine Konzerngesellschaft veranlasst, dies zu tun.

**Fakultativer Zahlungstag** bezeichnet jeden Zahlungstag, der kein Obligatorischer Zahlungstag ist.

- (4) **Ende des Zinslaufs.** Der Zinslauf der Wertpapiere endet mit Beginn des Tages, an dem sie zur Rückzahlung fällig werden. Sollte die Emittentin die Wertpapiere bei Fälligkeit nicht einlösen, endet die Verpflichtung zur Zahlung von Vergütungen auf den ausstehenden Nennbetrag der Wertpapiere zu dem dann maßgeblichen Vergütungssatz nicht am Fälligkeitstag, sondern erst mit dem Tag der tatsächlichen Rückzahlung der Wertpapiere (ausschließlich).

## § 5

### RÜCKZAHLUNG UND RÜCKKAUF

- (1) **Keine Endfälligkeit.** Die Wertpapiere haben keinen Endfälligkeitstag und werden nicht zurückgezahlt, außer nach Maßgabe dieses § 5 oder im Fall der Liquidation oder Insolvenz der Emittentin.
- (2) **Kündigungsrecht der Emittentin und vorzeitige Rückzahlung bei Steuerereignis oder Rechnungslegungsereignis.** Bei Eintritt eines Steuerereignisses oder eines Rechnungslegungs-Ereignisses vor dem 8. Oktober 2014 ist die Emittentin nach ihrem alleinigen Ermessen berechtigt, die Wertpapiere jederzeit (insgesamt, jedoch nicht teilweise) durch eine unwiderrufliche Benachrichtigung der Wertpapiergläubiger gemäß § 12 unter Einhaltung einer Frist von nicht weniger als 30 und nicht mehr als 60 Tagen zu kündigen und zum Vorzeitigen Rückzahlungsbetrag zurückzuzahlen.

Dabei gilt für den Fall eines Gross-up-Ereignisses, dass:

- (a) no such notice of redemption may be given earlier than 90 days prior to the earliest date on which the Issuer would be for the first time obliged to pay the Additional Amounts in question on payments due in respect of the Securities; and
- (b) prior to the giving of any such notice of redemption, the Issuer will deliver or procure that there is delivered to the Principal Paying Agent:
  - (i) a certificate signed by any two duly authorized representatives of the Issuer stating that the Issuer is entitled to effect such redemption and setting out a statement of facts showing that the conditions precedent to the exercise of the right of the Issuer to redeem have been satisfied; and
  - (ii) an opinion of an independent legal adviser of recognised standing to the effect that the Issuer has or will become obliged to pay the Additional Amounts in question as a result of a Gross-up Event.

The **Early Redemption Amount** is equal to the initial Nominal Amount of the Securities referred to in § 2 (1), plus the Marketlevel Compensation Amount, accrued remuneration until the date of redemption (exclusive) and all outstanding Arrears of Remuneration.

The **Marketlevel Compensation Amount** will be calculated by the Calculation Agent, and will equal the sum of the Present Values of the Interest Compensations.

The **Interest Compensation** will be calculated by the Calculation Agent by calculating the interest on the Nominal Amount of the Securities from (and including) the redemption date to (and excluding) 8 October 2014 using the Interest Compensation Rate.

The **Present Values** will be calculated by the Calculation Agent by discounting the Interest Compensations to 8 October 2014 on an annual basis, assuming a 365-day year or a 366-day year, as the case may be, and the actual number

- (a) eine solche Kündigungsmitteilung nicht früher als 90 Tage vor dem ersten Tag gemacht werden darf, an dem die Emittentin erstmals verpflichtet wäre, die jeweiligen Zusätzlichen Beträge in Ansehung fälliger Beträge auf die Wertpapiere zu zahlen; und
- (b) die Emittentin der Hauptzahlstelle vor Abgabe einer solchen Kündigungsmitteilung folgende Dokumente übermittelt bzw. deren Übermittlung veranlasst:
  - (i) eine von zwei ordnungsgemäß bevollmächtigten Vertretern der Emittentin unterzeichnete Bescheinigung, die bestätigt, dass die Emittentin berechtigt ist, die maßgebliche Rückzahlung vorzunehmen, und aus der die Tatsachen hervorgehen, auf deren Grundlage die Voraussetzungen für das Rückzahlungsrecht der Emittentin eingetreten sind; sowie
  - (ii) ein Gutachten eines angesehenen unabhängigen Rechtsberaters, aus dem hervorgeht, dass die Emittentin verpflichtet ist oder verpflichtet sein wird, die betreffenden Zusätzlichen Beträge als Folge eines Gross-up-Ereignisses zu zahlen.

Der **Vorzeitige Rückzahlungsbetrag** entspricht dem in § 2(1) genannten ursprünglichen Nennbetrag der Wertpapiere zuzüglich des Marktzinsausgleichsbetrags sowie bis zum Rückzahlungstag (ausschließlich) aufgelaufener Vergütungen und aller ausstehenden Vergütungsrückstände.

Der **Marktzinsausgleichsbetrag** wird von der Berechnungsstelle berechnet und entspricht der Summe der Abgezinsten Werte der Marktausgleichszinsen.

Die **Marktausgleichszinsen** werden von der Berechnungsstelle berechnet, indem der Nennbetrag der Wertpapiere mit dem Marktausgleichszinssatz vom Rückzahlungstag (einschließlich) bis zum 8. Oktober 2014 (ausschließlich) verzinst wird.

Die **Abgezinsten Werte** der Marktausgleichszinsen werden von der Berechnungsstelle berechnet, indem die bis zum 8. Oktober 2014 laufenden Marktausgleichszinsen auf jährlicher Basis,

of days elapsed in such year and using the Final Reference Rate.

The **Interest Compensation Rate** will be the higher of (i) the difference amount between the Initial Reference Rate and the Final Reference Rate per annum and (ii) 0 %.

The **Initial Reference Rate** equals 4.12 % per annum.

The **Final Reference Rate** will be the Euro-Swap-Rate which appears on Bloomberg Page IYC 1:153 (or the respective successor page, the **Bloomberg Page**) as of 12:00 a.m. (London time) on the Reference Rate Determination Date for a period closest to the period between the redemption date and 8 October 2014.

If the Bloomberg Page is not available the Calculation Agent shall request five reference banks selected by it to provide the Calculation Agent with its offered quotation (expressed as a percentage rate per annum) for the relevant Euro-Swap-Rate. The relevant offered quotations shall be those offered at approximately 12:00 a.m. (London time) on the Reference Rate Determination Date. As long as two or more of the selected reference banks provide the Calculation Agent with such offered quotations, the Final Reference Rate shall be the arithmetic mean of such offered quotations (rounded if necessary to the nearest one thousandth of a percentage point, with 0.0005 being rounded upwards).

If the Final Reference Rate cannot be determined in accordance with the foregoing provisions, the Final Reference Rate shall be the offered quotation or the arithmetic mean of the offered quotations on the Bloomberg Page, as described above, on the last day preceding the Reference Rate Determination Date on which such quotation or, as the case may be, quotations were offered,

The **Reference Rate Determination Date** will be the day that is the tenth Business Days prior to the redemption date.

- (3) **Issuer Call Right and Early Redemption at the option of the Issuer.** The Issuer may, at its sole discretion, call and redeem the Securities

unter Zugrundelegung eines Jahres mit 365 bzw. 366 Tagen und der Zahl der tatsächlich in dem Jahr verstrichenen Tage mit dem Endreferenzzinssatz abgezinst werden.

Der **Marktausgleichszinssatz** entspricht dem Differenzbetrag zwischen dem Anfangsreferenzzinssatz und dem Endreferenzzinssatz per annum, mindestens jedoch 0%.

Der **Anfangsreferenzzinssatz** beträgt 4,12 % per annum.

Der **Endreferenzzinssatz** ist der auf Bloomberg Seite IYC 1:153 (oder einer entsprechenden Nachfolgesseite, die **Bloomberg-Seite**) am Marktzinsfeststellungstag um 12.00 Uhr (Londoner Ortszeit) angezeigte Euro-Swapsatz für den Zeitraum, der dem Zeitraum zwischen dem Rückzahlungstag und dem 8. Oktober 2014 am nächsten kommt.

Sollte die Bloomberg-Seite nicht zur Verfügung stehen, wird die Berechnungsstelle von fünf von ihr ausgewählten Referenzbanken deren jeweilige Angebotssätze (jeweils als Prozentsatz per annum ausgedrückt) für die entsprechenden Euro-Swapsatz anfordern. Maßgeblich sind die Sätze um ca. 12:00 Uhr (Londoner Ortszeit) am Marktzinsfeststellungstag. Sofern zwei oder mehr der ausgewählten Referenzbanken der Berechnungsstelle solche Angebotssätze nennen, ist der Endreferenzzinssatz das arithmetische Mittel dieser Angebotssätze (falls erforderlich, auf- oder abgerundet auf das nächste ein tausendstel Prozent, wobei 0,0005 aufgerundet wird).

Für den Fall, dass der Endreferenzzinssatz nicht gemäß den vorstehenden Bestimmungen ermittelt werden kann, ist der Endreferenzzinssatz der Angebotssatz oder das arithmetische Mittel der Angebotssätze auf der Bloomberg-Seite, wie vorstehend beschrieben, an dem letzten Tag vor dem Marktzinsfeststellungstag, an dem ein solcher Angebotssatz bzw. solche Angebotssätze angezeigt wurde(n).

**Marktzinsfeststellungstag** ist der zehnte Geschäftstag vor dem Rückzahlungstag.

- (3) **Kündigung und vorzeitige Rückzahlung nach Wahl der Emittentin.** Die Emittentin kann nach ihrem alleinigen Ermessen die

(in whole but not in part) on 8 October 2014 or on any Floating Payment Date thereafter on the giving of not less than 30 and not more than 60 days' irrevocable notice of redemption to the Securityholders in accordance with § 12.

Such notice of redemption shall oblige the Issuer to redeem the Securities on 8 October 2014 or the Floating Payment Date specified in that notice at the initial Nominal Amount set forth in § 2(1), plus accrued remuneration to that date, including all outstanding Arrears of Remuneration.

- (4) **Redemption Amount.** Any redemption of the Securities other than in accordance with § 5(2) shall be made at the initial Nominal Amount of the Securities as set forth in § 2(1), plus any remuneration accrued until the redemption date (exclusive) and upon payment of all outstanding Arrears of Remuneration to the date of redemption.
- (5) **Purchase.** The Issuer or any Group Entity may at any time purchase Securities in the open market or otherwise and at any price. Such acquired Securities may be cancelled, held or resold.

## § 6 LOSS ABSORPTION

- (1) **Sharing in Losses:** The Securities shall share in an annual net loss for a given financial year which would be recorded in the consolidated financial statements of the Issuer after prior allocation of such losses to the capital and earning reserves, the stated share capital and the capital contribution of limited partners (*Komplementäre*). For the purposes of this §6(1), Remuneration accrued hereunder shall be deducted from the Issuer's annual result recorded in the Issuer's consolidated financial statements, irrespective of the actual treatment of Remunerations under respective GAAP. In relation to Parity Securities, losses shall be allocated on a *pari passu* basis. The sharing in losses shall be effected by write-down of the Nominal Amount. Irrespective of such write-down, Remunerations shall be calculated on the basis of the initial Nominal Amount referred to

Wertpapiere am 8. Oktober 2014 oder an jedem danach folgenden Variablen Zahlungstag vollständig, aber nicht in Teilbeträgen nach unwiderruflicher Kündigungsmitteilung an die Wertpapiergläubiger gemäß § 12 unter Einhaltung einer Frist von nicht weniger als 30 und nicht mehr als 60 Tagen kündigen und zurückzahlen.

Eine solche Kündigungsmitteilung verpflichtet die Emittentin, die Wertpapiere am 8. Oktober 2014 oder an dem in dieser Kündigungsmitteilung angegebenen Variablen Zahlungstag zu dem in § 2(1) genannten ursprüngliche Nennbetrag nebst Vergütungen, die bis zu diesem Tag aufgelaufen sind, einschließlich sämtlicher ausstehender Vergütungsrückstände zurückzuzahlen.

- (4) **Rückzahlungsbetrag.** Rückzahlungen der Wertpapiere erfolgen, mit Ausnahme von Rückzahlungen gemäß § 5(2), zu dem in § 2(1) genannten ursprünglichen Nennbetrag der Wertpapiere zuzüglich sämtlicher bis zum Rückzahlungstag (ausschließlich) aufgelaufener Vergütungen und sämtlicher ausstehender Vergütungsrückstände.
- (5) **Rückkauf.** Die Emittentin oder Konzerngesellschaften können jederzeit Wertpapiere auf dem freien Markt oder anderweitig sowie zu jedem beliebigen Preis kaufen. Derartig erworbene Wertpapiere können eingezogen, gehalten oder wieder veräußert werden.

## § 6 VERLUSTTEILNAHME

- (1) **Verlustteilnahme.** Die Wertpapiere nehmen an einem Jahresfehlbetrag für ein Geschäftsjahr teil, der in dem Konzernabschluss der Gesellschaft nach vorheriger Verrechnung mit Kapital- und Gewinnrücklagen der Gesellschaft, dem Grundkapital und mit Einlagen von Komplementären ausgewiesen würde. Dabei werden für die Zwecke dieses § 6(1) die Vergütungen der Wertpapiere zu Lasten des in einem Konzernabschluss ausgewiesenen Jahresergebnisses berücksichtigt; dies gilt unabhängig von der Erfassung der Vergütungen nach den jeweiligen Regelungen der Anwendbaren Rechnungslegungsvorschriften. Im Verhältnis zu Gleichrangigen Wertpapieren erfolgt die Verlustbeteiligung der Wertpapiere gleichrangig. Eine Verlustteilnahme führt zu einer entsprechenden Reduzierung des

in § 2 (1). A write-down of the Nominal Amount pursuant to this § 6 (1) shall leave the Issuer's obligations to pay Remunerations unaffected (subject to the deferral provisions contained in § 4 (3)).

**(2) Limitation of Sharing in Losses to Initial Nominal Amount.** The aggregate share of the Securities in losses shall be limited to the initial Nominal Amount (§ 2(1)).

**(3) Replenishment after Reduction.** After a sharing in losses pursuant to § 6(1), the Nominal Amount shall be replenished in each following fiscal year of the Issuer by write-up of the Nominal Amount up to its initial amount (§ 2(1)), but only if and to the extent such replenishment would not cause or increase an annual net loss to be recorded in the consolidated financial statements of the Issuer for the given fiscal year. For the purposes of this §6(3), Remuneration accrued hereunder shall be deducted from the annual result recorded in the Issuer's consolidated financial statements, irrespective of the actual treatment of Remunerations under respective GAAP. The replenishment of the Nominal Amount shall rank in priority to payments by the Issuer on Junior Securities, Profit Participation Payments to unlimited partners, allocations to profit reserves of unlimited partners and allocations to the Issuer's reserves. The Securities shall be replenished *pari passu* with the replenishment of Parity Securities in proportion to the book value of the Parity Securities and the Securities.

Nennbetrags. Unbeschadet einer solchen Reduzierung erfolgt die Berechnung von Vergütungen stets auf Grundlage des in § 2(1) genannten ursprünglichen Nennbetrags. Eine Reduzierung des Nennbetrags aufgrund dieses § 6(1) lässt die vorbehaltlich der Stundungsregelung in § 4 (3) bestehende Verpflichtung der Emittentin zur Zahlung von Vergütungen unberührt.

**(2) Begrenzung der Verlustbeteiligung auf ursprünglichen Nennbetrag.** Die Gesamtverlustbeteiligung der Wertpapiere ist auf ihren ursprünglichen Nennbetrag (§ 2(1)) beschränkt.

**(3) Wiederauffüllung des Nennbetrags nach Verlustbeteiligung.** Nach einer Verlustbeteiligung gemäß § 6(1) wird der Nennbetrag in jedem nachfolgenden Geschäftsjahr der Emittentin durch Heraufschreibung des Nennbetrags aufgefüllt bis der ursprüngliche Nennbetrag (§ 2(1)) wieder erreicht ist, soweit hierdurch im Konzernabschluss der Emittentin für das maßgebliche Geschäftsjahr kein Jahresfehlbetrag entsteht oder erhöht würde. Dabei werden für die Zwecke dieses § 6(3) die Vergütungen der Wertpapiere zu Lasten des in einem Konzernabschluss ausgewiesenen Jahresergebnisses berücksichtigt; dies gilt unabhängig von der Erfassung der Vergütungen nach den jeweiligen Regelungen der Anwendbaren Rechnungslegungsvorschriften. Die Wiederauffüllung geht Zahlungen der Emittentin auf Nachrangige Wertpapiere, Komplementär-Ausschüttungen, der Erhöhung des Einlagekontos der Komplementäre und der Bildung von Rücklagen im Rang vor. Im Verhältnis zu Gleichrangigen Wertpapieren erfolgt die Wiederauffüllung gleichrangig im Verhältnis der Buchwerte der Gleichrangigen Wertpapiere und der Wertpapiere.

## § 7 PAYMENTS

- (1) **Payment of Principal and Remuneration.** The Issuer undertakes to pay, as and when due, principal and remuneration as well as all other amounts payable on the Securities in euro. Payment of principal and remuneration on the Securities shall be made to the Principal Paying Agent for on-payment to the Clearing System or to its order for credit to the respective account holders upon presentation and (in the case of the payment in respect of principal) surrender of the Global Security. Payments to the Clearing System or to its order shall, to the extent of amounts so paid and provided the Securities are still held on behalf of the Clearing System, constitute the discharge of the Issuer from its corresponding obligations under the Securities.
- (2) **Due Date not a Business Day.** Except as otherwise provided in § 4(2)(b), if the due date for any payment of principal and/or remuneration is not a Business Day, payment shall be effected only on the next Business Day; a Securityholder shall have no right to claim payment of any additional remuneration, interests or other indemnity in respect of such delay in payment.

## § 8 TAXATION

- (1) All payments of principal and remuneration in respect of the Securities shall be made free and clear of, and without withholding or deduction for, any taxes, duties, assessments or governmental charges of whatever nature imposed, levied, collected, withheld or assessed by the Federal Republic of Germany or any political subdivision or any authority of or in the Federal Republic of Germany that has power to tax, unless such withholding or deduction is required by law. In such event and subject to the provisions of this paragraph (1) and the following paragraph (2), the Issuer will pay such additional amounts (***Additional Amounts***) as will result in receipt by the Securityholders of the same amounts as they would have received if no such withholding or deduction had been required, except that no additional amounts will be payable in respect of any Security:

## § 7 ZAHLUNGEN

- (1) **Zahlung von Kapital und Vergütungen.** Die Emittentin verpflichtet sich, Kapital und Vergütungen auf die Wertpapiere sowie alle sonstigen auf die Wertpapiere zahlbaren Beträge bei Fälligkeit in Euro zu zahlen. Die Zahlung von Kapital und Vergütungen erfolgt an die Hauptzahlstelle zur Weiterleitung an das Clearingsystem oder an dessen Order zur Gutschrift für die jeweiligen Kontoinhaber gegen Vorlage und (sofern es sich um die Kapitalrückzahlung handelt) Einreichung der Globalurkunde. Die Zahlung an das Clearingsystem oder an dessen Order, vorausgesetzt, die Wertpapiere werden noch durch das Clearingsystem gehalten, befreit die Emittentin in Höhe der geleisteten Zahlung von ihren entsprechenden Verpflichtungen aus den Wertpapieren.
- (2) **Fälligkeitstag kein Geschäftstag.** Falls ein Fälligkeitstag für die Zahlung von Kapital und/oder Vergütungen kein Geschäftstag ist, erfolgt die Zahlung, außer im Fall des § 4(2)(b), erst am nächstfolgenden Geschäftstag; Wertpapiergläubiger sind nicht berechtigt, Vergütungen, Zinsen oder eine andere Entschädigung wegen eines solchen Zahlungsaufschubs zu verlangen.

## § 8 BESTEUERUNG

- (1) Sämtliche Zahlungen von Kapital und Vergütungen in Bezug auf die Wertpapiere werden ohne Einbehalt oder Abzug von Steuern, Abgaben, Festsetzungen oder behördlicher Gebühren jedweder Art geleistet, die von der Bundesrepublik Deutschland oder einer ihrer Gebietskörperschaften oder Behörden mit der Befugnis zur Erhebung von Steuern auferlegt, erhoben, eingezogen, einbehalten oder festgesetzt werden, es sei denn, ein solcher Einbehalt oder Abzug ist gesetzlich vorgeschrieben. In einem solchen Falle wird die Emittentin, vorbehaltlich der Bestimmungen dieses Absatzes (1) und des nachfolgenden Absatzes (2) solche zusätzlichen Beträge (die ***Zusätzlichen Beträge***) zahlen, so dass die Wertpapiergläubiger die Beträge erhalten, die sie ohne Einbehalt oder Abzug erhalten hätten. Diese zusätzlichen Beträge sind jedoch nicht in Bezug auf Wertpapiere zahlbar,

- (a) if such Security is presented for payment by or on behalf of a Securityholder who is liable to pay such taxes, duties, assessments or governmental charges in respect of such Security by reason of it having some connection with the Federal Republic of Germany other than the mere holding of that Security; or
  - (b) if such Security is presented for payment by or on behalf of a Securityholder who would have been able to avoid such withholding or deduction by presenting any form or certificate and/or making a declaration of non-residence or similar claim for exemption or refund upon timely request by the Issuer; or
  - (c) if such Security is presented for payment more than 30 days after the date on which the payment in question first becomes due or, if the full amount payable on such due date has not been received by the Principal Paying Agent on or prior to such due date, the date on which notice of receipt of the full amount has been given to the Securityholders in accordance with § 12; or
  - (d) with respect to deduction or withholdings made pursuant to (i) European Council Directive 2003/48/EC or any other Directive implementing the conclusions of the ECOFIN Council meeting of 26-27 November 2000 on the taxation of savings income, (ii) any international treaty or understanding relating to such taxation and to which the Federal Republic of Germany or the European Union is a party, or (iii) any provision of law implementing, or complying with, or introduced to conform with, such Directive, Regulation, treaty or understanding; or
  - (e) if such Security is presented for payment by or on behalf of a Securityholder who would have been able to avoid such withholding or deduction by presenting the Security to a Paying Agent in another Member State of the European
- (a) die von einem Wertpapiergläubiger oder in dessen Namen zur Zahlung vorgelegt werden, der solchen Steuern, Abgaben, Festsetzungen oder behördlichen Gebühren in Bezug auf diese Wertpapiere deshalb unterliegt, weil er eine Verbindung zu der Bundesrepublik Deutschland hat, die nicht nur aus der bloßen Inhaberschaft der Wertpapiere besteht; oder
  - (b) die von einem Wertpapiergläubiger oder in dessen Namen zur Zahlung vorgelegt werden, der einen solchen Einbehalt oder Abzug nach rechtzeitiger Aufforderung durch die Emittentin durch Vorlage eines Formulars oder einer Urkunde und/oder durch Abgabe einer Nichtansässigkeits-Erklärung oder Inanspruchnahme einer vergleichbaren Ausnahme oder Geltendmachung eines Erstattungsanspruches hätte vermeiden können; oder
  - (c) die später als 30 Tage nach dem Tag vorgelegt werden an dem die betreffende Zahlung erstmals fällig wird, oder, falls nicht der gesamte an diesem Fälligkeitstag zahlbare Betrag an oder vor diesem Fälligkeitstag bei der Hauptzahlstelle eingegangen ist, dem Tag, an dem den Wertpapiergläubigern der Erhalt des Gesamtbetrags nach Maßgabe des § 12 bekannt gemacht wurde; oder
  - (d) im Hinblick auf Abzüge oder Einbehalte aufgrund (i) der Richtlinie des Rates 2003/48/EC oder einer anderen Richtlinie der Europäischen Union, welche die Beschlüsse der Versammlung des Rates der Wirtschafts- und Finanzminister der Europäischen Union (ECOFIN) vom 26. bis 27. November 2000 betreffend die Besteuerung von Zinserträgen umsetzt oder (ii) einer zwischenstaatlichen Vereinbarung über deren Besteuerung, an der Österreich oder die Europäische Union beteiligt ist, oder (iii) einer gesetzlichen Vorschrift, die eine solche Richtlinie, Verordnung oder Vereinbarung umsetzt oder befolgt; oder
  - (e) die von einem Wertpapiergläubiger oder in dessen Namen zur Zahlung vorgelegt werden, der diesen Einbehalt oder Abzug durch Vorlage des Wertpapiers bei einer Zahlstelle in einem anderen Mitgliedstaat der Europäischen Union hätte vermeiden

Union.

German withholding tax in the form of advanced interest income tax (*Zinsabschlagsteuer*), inclusive of the solidarity surcharge (*Solidaritätszuschlag*) levied thereon, does not constitute tax for which the Issuer is obliged to pay Additional Amounts.

Notwithstanding the provisions in § 8(2), if a Securityholder demands the payment of Additional Amounts following a decision of the Issuer not to pay such Additional Amounts in light of (a) to (e) above, the Issuer shall be entitled to require, prior to the payment of Additional Amounts, a written statement from the Securityholder demanding the payment of Additional Amounts, stating the circumstances which entitle such Securityholder to receive Additional Amounts, including (if this is useful and reasonable to evidence the entitlement to Additional Amounts) further explanatory documentation.

- (2) If a legal obligation of the Issuer to make a withholding or deduction is introduced as a result of which a Securityholder is entitled to receive Additional Amounts pursuant to this § 8, Additional Amounts shall not become due and payable prior to the time at which the respective Securityholder has provided the Issuer with evidence that such Securityholder is not entitled to a refund of or tax credit in relation to, such withholdings or deductions. In such case, the Additional Amounts shall not exceed the amount for which a refund or a tax credit is not available. If the Issuer has not notified, in accordance with § 12, its intention not to pay Additional Amounts pursuant to this § 8(2) at least 15 Business Days prior to the date on which such payment would otherwise become payable, the Issuer shall be obliged to pay such Additional Amounts in full on the respective due date.
- (3) Any reference in these Terms and Conditions to principal or remuneration will be deemed to include any additional amounts in respect of principal or remuneration (as the case may be) which may be payable under this § 8.

können.

Die deutsche Quellensteuer in Form von Zinsabschlagsteuer einschließlich des darauf erhobenen Solidaritätszuschlages ist keine Steuer, für die seitens der Emittentin Zusätzliche Beträge zu zahlen sind.

Unbeschadet der Bestimmungen des § 8(2) ist die Emittentin dann, wenn ein Wertpapiergläubiger die Zahlung Zusätzlicher Beträge geltend macht, nachdem die Emittentin im Hinblick auf die vorstehenden Buchstaben (a) bis (e) keine Zusätzlichen Beträge gezahlt hat, berechtigt, vor Zahlung Zusätzlicher Beträge von demjenigen Wertpapiergläubiger, der die Zahlung geltend macht, eine schriftliche Darstellung der Umstände und, sofern dies für einen entsprechenden Nachweis sinnvoll und angemessen ist, erläuternde Dokumentationsunterlagen zu verlangen, die ihn zur Geltendmachung der Zusätzlichen Beträge berechtigen.

- (2) Wird eine rechtliche Verpflichtung der Emittentin zur Vornahme eines Einbehalts oder Abzugs eingeführt, aufgrund dessen ein Wertpapiergläubiger nach Maßgabe dieses § 8 zum Bezug Zusätzlicher Beträge berechtigt ist, so ist die Verpflichtung der Emittentin zur Zahlung Zusätzlicher Beträge erst fällig, nachdem der jeweilige Wertpapiergläubiger gegenüber der Emittentin den Nachweis erbracht hat, dass er zu einer Erstattung oder Anrechnung derartiger Einbehalte oder Abzüge nicht berechtigt ist. In diesem Fall beschränken sich die zu zahlenden Zusätzlichen Beträge auf den Betrag, für den eine Erstattung oder Anrechnung nicht erfolgt. Sollte die Emittentin ihre Absicht, gemäß diesem § 8(2) keine Zusätzlichen Beträge zu zahlen, nicht wenigstens 15 Geschäftstage vor dem Tag, an dem eine solche Zahlung ansonsten zahlbar würde, gemäß § 12 bekannt machen, ist sie zur vollständigen Zahlung der Zusätzlichen Beträge an dem maßgeblichen Fälligkeitstag verpflichtet.
- (3) Eine Bezugnahme in diesen Bedingungen auf Kapital oder Vergütungen schließt jegliche zusätzlichen Beträge im Hinblick auf Kapital bzw. Vergütung ein, die gemäß diesem § 8 zahlbar sind.

**§ 9**  
**PRESENTATION PERIOD**

The presentation period shall be reduced to ten years in respect of principal and to four years in respect of remuneration on the Securities. The Issuer may irrevocably deposit with the local court (*Amtsgericht*) in Frankfurt am Main any amounts due on the Securities not claimed by the Securityholders within one year after such amounts have become due and payable. The deposit will be at the risk and expense of those Securityholders, and the Issuer will have no further obligation in respect of such amounts. If the Issuer waives all rights to withdraw such deposits, the respective claims of the Securityholders against the Issuer shall cease.

**§ 10**  
**PAYING AGENTS AND CALCULATION AGENT**

- (1) **Principal Paying Agent.** Dresdner Bank Aktiengesellschaft shall be the initial principal paying agent (*Principal Paying Agent*).
- (2) **Calculation Agent.** Dresdner Bank Aktiengesellschaft shall be the initial calculation agent (*Calculation Agent*).
- (3) **Paying Agents and Calculation Agent Legal Matters.** The Paying Agents and the Calculation Agent act solely as agents of the Issuer and do not assume any obligations towards or relationship of contract, agency or trust for or with any of the Securityholders.
- (4) **Replacement of Paying Agents and Calculation Agent.** The Issuer reserves the right at any time to vary or terminate the appointment of any Paying Agent or the Calculation Agent and to appoint successor or additional Paying Agents or a successor Calculation Agent, provided that, for as long as the Securities are listed on any stock exchange, the Issuer will at all times maintain a Paying Agent in the jurisdiction in which such stock exchange is located; and provided further that if any European Union Directive on the taxation of savings implementing the conclusions of the

**§ 9**  
**VORLEGUNGSFRIST**

Die Vorlegungsfrist im Hinblick auf Kapital wird auf zehn Jahre und im Hinblick auf Vergütungen auf die Wertpapiere auf vier Jahre reduziert. Die Emittentin kann beim Amtsgericht in Frankfurt am Main innerhalb eines Jahres nach Fälligkeit unwiderruflich sämtliche Beträge hinterlegen, die nicht innerhalb eines Jahres nach Fälligkeit von Wertpapiergläubigern beansprucht worden sind. Die Gefahr sowie die Kosten dieser Hinterlegung werden von den betreffenden Wertpapiergläubigern getragen. Die Emittentin hat keine weiteren Verpflichtungen in Bezug auf diese Beträge. Soweit die Emittentin auf das Recht zur Rücknahme der hinterlegten Beträge verzichtet, erlöschen die betreffenden Ansprüche der Wertpapiergläubiger gegen die Emittentin.

**§ 10**  
**ZAHLSTELLEN UND BERECHNUNGSSTELLE**

- (1) **Hauptzahlstelle.** Die Dresdner Bank Aktiengesellschaft ist die anfängliche Hauptzahlstelle (*Hauptzahlstelle*).
- (2) **Berechnungsstelle.** Die Dresdner Bank Aktiengesellschaft ist die anfängliche Berechnungsstelle (*Berechnungsstelle*).
- (3) **Rechtsverhältnisse der Zahlstellen und der Berechnungsstelle.** Die Zahlstellen und die Berechnungsstelle handeln ausschließlich als Beauftragte der Emittentin und übernehmen keine Verpflichtungen gegenüber den Wertpapiergläubigern; es wird kein Vertrags-, Auftrags- oder Treuhandverhältnis zwischen ihnen und den Wertpapiergläubigern begründet.
- (4) **Ersetzung von Zahlstellen und Berechnungsstelle.** Die Emittentin behält sich das Recht vor, jederzeit eine andere Zahlstelle oder Berechnungsstelle zu beauftragen oder eine solche Beauftragung zu beenden und zusätzliche oder Nachfolge-Zahlstellen bzw. Berechnungsstellen zu ernennen. Die Emittentin wird jedoch gewährleisten, dass, solange die Wertpapiere an einer Börse notiert sind, jederzeit eine Zahlstelle in dem Staat beauftragt ist, in dem die Börse ihren Sitz hat. Die Emittentin wird auch sicherstellen, dass für den Fall, dass eine Richtlinie der Europäischen

ECOFIN Council meeting of 26th–27th November 2000 or any law implementing or introduced in order to conform to such Directive is introduced, the Issuer will ensure that (to the extent that such a Paying Agent exists) it maintains a Paying Agent in a Member State of the European Union that will not be obliged to withhold or deduct tax pursuant to any such Directive or law. Notice of any change in the Paying Agents or Calculation Agent or in the specified office of any Paying Agent or the Calculation Agent will be given without undue delay to the Securityholders in accordance with § 12.

### **§ 11**

#### **FURTHER ISSUES OF THE SAME SERIES**

The Issuer may, from time to time and without the consent of the Securityholders create and issue further bonds having the same terms and conditions as the Securities in all respects (or in all respects, except for the first payment of remuneration) so as to form a single series with the Securities.

### **§ 12**

#### **NOTICES**

- (1) If the Securities are admitted for trading on any stock exchange, notices to the Securityholders will be valid if published in a leading daily newspaper having general circulation in the jurisdiction of any stock exchange on which the Securities may be listed from time to time, for so long as the Securities are listed on the respective exchange and the rules of any such exchange so require. Any such notice shall be deemed to have been given on the date of the first publication or, when required to be published in more than one newspaper, on the date on which the notice has first been published in all required newspapers.
- (2) Notices to Securityholders may (subject to applicable stock exchange rules and requirements), so long as any Global Security representing the Securities is held on behalf

Union zur Besteuerung privater Zinserträge, die die Beschlüsse der ECOFIN-Ratsversammlung vom 26. bis 27. November 2000 umsetzt, oder ein Gesetz, das diese Richtlinie umsetzt oder eingeführt wird, um dieser Richtlinie nachzukommen, erlassen wird, eine Zahlstelle in einem Mitgliedstaat der Europäischen Union unterhalten wird (sofern es eine derartige gibt), die nicht dazu verpflichtet ist, Steuern aufgrund einer solchen Richtlinie oder eines solchen Gesetzes an der Quelle einzubehalten oder abzuziehen. Den Wertpapiergläubigern werden Änderungen in Bezug auf die Zahlstellen oder die Berechnungsstelle oder ihre jeweils angegebenen Geschäftsstellen umgehend gemäß § 12 mitgeteilt.

### **§ 11**

#### **AUFSTOCKUNG**

Die Emittentin kann ohne Zustimmung der Wertpapiergläubiger weitere Wertpapiere begeben, die in jeder Hinsicht (oder in jeder Hinsicht mit Ausnahme der ersten Zinszahlung) die gleichen Bedingungen wie die Wertpapiere dieser Serie haben und die zusammen mit den Wertpapieren dieser Serie eine einzige Serie bilden.

### **§ 12**

#### **MITTEILUNGEN**

- (1) Falls die Wertpapiere zum Handel an einer oder mehreren Börsen zugelassen werden, gelten sämtliche Mitteilungen an die Wertpapiergläubiger als ordnungsgemäß bekannt gemacht, wenn sie in dem Staat einer jeden Wertpapierbörse, an der die Wertpapiere notiert werden, in einer Tageszeitung mit landesweiter Verbreitung veröffentlicht werden, solange diese Notierung fort dauert und die Regeln der jeweiligen Börse dies erfordern. Jede Mitteilung gilt mit dem Tag der ersten Veröffentlichung als bekannt gemacht; falls eine Veröffentlichung in mehr als einer Tageszeitung zu erfolgen hat, ist der Tag maßgeblich, an dem die Bekanntmachung erstmals in allen erforderlichen Tageszeitungen erfolgt ist.
- (2) Mitteilungen an die Wertpapiergläubiger können anstelle der Veröffentlichung in einer Zeitung nach Maßgabe des § 12(1), (vorbehaltlich anwendbarer Börsenvor-

of the Clearing System, be given *in lieu* of publication in a newspaper pursuant to § 12(1) by delivery of the relevant notice to the Clearing System for communication to the Securityholders.

### § 13 SECURITYHOLDERS NOT SHAREHOLDERS

- (1) **No Shareholder Rights.** The Securities shall not give rise to any shareholder rights of the Securityholders in the Issuer.
- (2) **No Share in Liquidation Proceeds.** In particular, the Securities convey no rights to the Securityholders to participate in any liquidation proceeds (*Liquidationserlöse*) of the Issuer.

### § 14 GOVERNING LAW AND JURISDICTION

- (1) **Governing law.** The form and contents of the Securities and the rights and obligations of the Securityholders and the Issuer shall be governed exclusively by, and construed in accordance with, the laws of the Federal Republic of Germany.
- (2) **Place of Performance.** Place of performance is Frankfurt am Main, Federal Republic of Germany.
- (3) **Jurisdiction.** The Issuer agrees for the benefit of the Securityholders that the courts of Frankfurt am Main shall have jurisdiction to hear and determine any suit, action or proceedings and to settle any disputes which may arise out of or in connection with the Securities (respectively, *Proceedings* and *Disputes*) and, for that purpose, the Issuer irrevocably submits to the jurisdiction of the courts of Frankfurt am Main.
- (4) **Forum.** The Issuer irrevocably waives any objection which it might now or hereafter have to the courts of Frankfurt am Main being nominated as the forum to hear and determine any Proceedings and to settle any Disputes, and agrees not to claim that any of those courts is not a convenient or

schriften bzw. -regeln) solange eine die Wertpapiere verbriefende Globalurkunde für das Clearingsystem gehalten wird, durch Abgabe der entsprechenden Mitteilung an das Clearingsystem zur Weiterleitung an die Wertpapiergläubiger ersetzt werden.

### § 13 KEINE GESELLSCHAFTERRECHTE

- (1) **Keine Gesellschafterrechte.** Die Wertpapiere vermitteln den Wertpapiergläubigern keinerlei Gesellschafterrechte bei der Emittentin.
- (2) **Keine Teilhabe am Liquidationserlös.** Insbesondere verbriefen die Wertpapiere keinerlei Berechtigung der Wertpapiergläubiger auf einen Anteil am Liquidationserlös der Emittentin.

### § 14 ANWENDBARES RECHT UND GERICHTSSTAND

- (1) **Anwendbares Recht.** Form und Inhalt der Wertpapiere sowie die Rechte und Pflichten der Wertpapiergläubiger und der Emittentin bestimmen sich ausschließlich nach dem Recht der Bundesrepublik Deutschland.
- (2) **Erfüllungsort.** Erfüllungsort ist Frankfurt am Main, Bundesrepublik Deutschland.
- (3) **Gerichtsstand.** Die Emittentin vereinbart zugunsten der Wertpapiergläubiger, dass Frankfurt am Main der Gerichtsstand für alle Klagen, Verfahren oder Rechtsstreitigkeiten gegen die Emittentin, die aus oder im Zusammenhang mit den Wertpapieren entstehen (jeweils *Verfahren* bzw. *Streitigkeiten*), ist. Die Emittentin erkennt diesen Gerichtsstand zu diesem Zweck unwiderruflich an.
- (4) **Gerichtsstand.** Die Emittentin verzichtet unwiderruflich darauf, Einwände oder Einreden geltend zu machen, die jetzt oder in Zukunft gegen die Vereinbarung vorgebracht werden könnten, dass Frankfurt am Main der Gerichtsstand für alle Verfahren und Streitigkeiten sein soll, und verpflichtet sich, nicht zu bestreiten, dass diese Gerichte

appropriate forum.

- (5) **Non-exclusivity.** The submission to the jurisdiction of the courts of Frankfurt am Main shall not (and shall not be construed so as to) limit the right of any Securityholder to take Proceedings in any other court of competent jurisdiction, nor shall the taking of Proceedings in any one or more jurisdictions preclude the taking of Proceedings in any other jurisdiction (whether concurrently or not) if and to the extent permitted by law.

#### **§ 15**

##### **SEVERABILITY**

Should any of the provisions of these Terms and Conditions be or become invalid or unenforceable, the validity or the enforceability of the remaining provisions shall not in any way be affected or impaired thereby. In such case, the invalid or unenforceable provision shall be replaced by a provision which, to the extent legally possible, provides for an interpretation in keeping with the meaning and the economic purposes of the Terms and Conditions at the time of the issue of the Securities.

#### **§ 16**

##### **LANGUAGE**

These Terms and Conditions are drawn up in the German language and provided with an English language translation. The German version shall be the only legally binding version. The English translation is for convenience only.

geeignet oder zuständig sind.

- (5) **Nichtausschließlichkeit.** Die Gerichtsstandsvereinbarung beschränkt nicht das Recht eines Wertpapiergläubigers (und wird auch nicht dahingehend ausgelegt), Verfahren vor einem anderen zuständigen Gericht anzustrengen. Ebenso wenig schließt die Einleitung von Verfahren an einem oder mehreren Gerichtsständen die Einleitung von Verfahren an einem anderen Gerichtsstand aus (gleichgültig, ob diese gleichzeitig geführt werden oder nicht), falls und soweit dies rechtlich zulässig ist.

#### **§ 15**

##### **TEILUNWIRKSAMKEIT**

Sollte eine der Bestimmungen dieser Bedingungen unwirksam oder undurchführbar sein oder werden, so bleibt die Wirksamkeit oder die Durchführbarkeit der übrigen Bestimmungen hiervon unberührt. Anstelle der unwirksamen oder undurchführbaren Bestimmung soll, soweit rechtlich möglich, eine dem Sinn und Zweck dieser Bedingungen zum Zeitpunkt der Ausgabe der Wertpapiere entsprechende Regelung gelten.

#### **§ 16**

##### **SPRACHE**

Diese Bedingungen sind in deutscher Sprache abgefasst und mit einer Übersetzung in die englische Sprache versehen. Der deutsche Wortlaut ist allein rechtsverbindlich. Die englische Übersetzung dient nur zur Erleichterung des Verständnisses.

## SUMMARY CONSOLIDATED FINANCIAL DATA

The following table provides selected consolidated financial data which is based on the Issuer's annual accounts as at and for the years ending September 30, 2004 and 2003, prepared in accordance with US GAAP. The consolidated financial data were derived from the Issuer's annual accounts for the above two financial years.

<b>Assets US GAAP (k EUR)</b>	<b>2004</b>	<b>2003</b>
Intangible assets	59.700	55.810
Property, plant and equipment	249.775	252.282
Financial assets	64.839	65.760
<b>Total fixed assets</b>	<b>374.314</b>	<b>373.852</b>
Inventories	280.906	337.553
Accounts receivable and other assets	286.852	286.010
Derivatives	11.939	16.395
Securities with a maturity of more than 90 days	158.316	111.569
Cash and cash equivalents	222.070	233.190
<b>Total current assets</b>	<b>960.083</b>	<b>984.717</b>
Deferred taxes	54.733	50.560
Prepaid expenses	3.188	3.631
<b>Total assets</b>	<b>1.392.318</b>	<b>1.412.760</b>

<b>Equity and Liabilities US GAAP (k EUR)</b>	<b>2004</b>	<b>2003</b>
Subscribed capital	78.000	78.000
Capital reserves	38.347	38.347
Accumulated retained earnings	182.881	164.980
Other comprehensive income	-9.084	-6.752
Retained earnings, current year	21.497	17.901
<b>Total equity</b>	<b>311.641</b>	<b>292.476</b>
Participation certificates	0	40.903
Silent partnership	18.280	17.202
Minority interests	45.916	48.159
<b>Total funds similar to equity</b>	<b>64.196</b>	<b>106.264</b>
Provisions	398.216	384.884
Liabilities	556.500	574.048
Derivatives	56.395	48.136
Deferred taxes	5.370	6.952
<b>Total liabilities</b>	<b>1.016.481</b>	<b>1.014.020</b>
<b>Total equity and liabilities</b>	<b>1.392.318</b>	<b>1.412.760</b>

<b>Income Statement US GAAP (k EUR)</b>	<b>2004</b>	<b>2003</b>
Net sales	1.928.379	1.496.308
Cost of goods sold	1.446.587	1.092.998
<b>Gross profit on sales</b>	<b>481.792</b>	<b>403.310</b>
Selling expenses	262.368	219.793
General and administrative expenses	81.616	74.542
Research and development expenses	72.594	67.209
Other operating income	28.826	31.710
Other operating expense	30.974	28.283
<b>Operating income</b>	<b>63.066</b>	<b>45.193</b>
Income from investments	-1.337	2.544
Financial income	-24.330	-25.181
<b>Profit from ordinary activities</b>	<b>37.399</b>	<b>22.556</b>
Income taxes	14.341	3.358
Minority interests	-1.561	-1.297
<b>Consolidated net income</b>	<b>21.497</b>	<b>17.901</b>

## **USE OF PROCEEDS**

The net proceeds to the Issuer from the issue amount to approximately € 78 million. The Issuer is using these proceeds for general corporate purposes.

## CAPITALIZATION

<b>Interest bearing debt</b>	<b>31/12/2004</b>	<b>30/09/2004</b>	<b>30/09/2003</b>
Mio. EUR (Nominal)	228,0	193,3	252,3
Mio. USD (Nominal)	200,0	200,0	200,0

Any differences between nominal debt as depicted in this table and consolidated numbers as per annual reports 2003 and 2004 are due to valuation of USD denominated positions in EUR. As non EUR denominated debt is fully hedged at Claas as a matter of principle, such valuation differences are compensated for by comparable OCI movements according to SFAS 133.

The following table gives an overview of the Issuer's capitalization as per the Issuer's consolidated annual accounts pursuant to US GAAP as of September 30, 2004 and 2003 (as derived from the audited consolidated financial accounts of the Issuer as of and for the fiscal year ended September 30, 2004 and 2003). Additionally, adjusted figures are shown to give effect to the issue of the securities (not audited):

<b>Equity and Liabilities US GAAP (k EUR)</b>	<b>30/09/2004</b>	<b>30/09/2004</b>	<b>30/09/2003</b>
	adjusted figures (not audited)		
<b>Total equity</b>	<b>390.277</b>	<b>311.641</b>	<b>292.476</b>
<b>Total funds similar to equity</b>	<b>64.196</b>	<b>64.196</b>	<b>106.264</b>
Liabilities, remaining term up to 1 year	240.159	240.159	236.300
Liabilities, remaining term over 1 year*	316.341	316.341	337.748
Provisions, Derivatives and Deferred Taxes	459.981	459.981	439.972
<b>Total liabilities</b>	<b>1.016.481</b>	<b>1.016.481</b>	<b>1.014.020</b>
<b>Total equity and liabilities</b>	<b>1.470.954</b>	<b>1.392.318</b>	<b>1.412.760</b>

\* Including a bond which is to mature on 22/03/2006

Based on our experience under seasonal patterns, there has been no material change in the capitalization of the Issuer since September 30, 2004 except for the issue of the Subordinated Perpetual Notes as disclosed in this prospectus and the changes resulting from the transition from US GAAP to IFRS.

## GENERAL INFORMATION ON THE ISSUER

### Incorporation

Claas Kommanditgesellschaft auf Aktien mbH ("**Claas**" or the "**Issuer**") was originally founded in 1913 by August Claas. Since 1995, it is incorporated under the laws of Germany as a partnership limited by shares with Helmut Claas GmbH being its sole general partner (*Komplementär*). The Issuer is registered in the commercial register of the local court of Gütersloh under HRB 3027.

### Corporate Seat and Duration

The Issuer has its corporate seat in Harsewinkel and its office address at Münsterstraße 33, 33428 Harsewinkel, Germany. The duration of the Issuer is for an indefinite period of time.

### Corporate Purpose

According to section 2 of its articles of association (*Satzung*), the corporate purpose of the Issuer is the manufacturing and sale of engineering products, in particular of agricultural equipment, automotive and engine equipment and accessories as well as machines, tools and other industrial products pertaining to vehicle construction and engineering. The Issuer is entitled to participate in other companies and to take all other actions that it deems adequate to serve such corporate purpose.

### Share Capital

The Issuer has an issued share capital of € 78,000,000 divided into three million ordinary shares without par value (*Stückaktien*). The shares are registered shares (*Namensaktien*). The share capital is fully paid in. Each share grants its holder one vote in the Issuer's general meeting of shareholders (*Hauptversammlung*) and entitles its holder to dividend rights to the extent dividends are paid and to shareholders' subscription rights granted with regard to the issue of new shares and similar instruments as required by the German Stock Corporation Act, unless such subscription rights have been validly excluded. The Issuer's shares may only be transferred in accordance with a shareholders' agreement (*Aktienbindungsvertrag*) entered into by the so-called family shareholders (*Familienaktionäre*) of Claas who jointly represent 100 % of the issued share capital.

### General Partner

The sole general partner of the Issuer is Helmut Claas GmbH (the "**General Partner**"). The General Partner was incorporated as a limited liability company under the laws of Germany on February 23, 1993 and is recorded in the commercial register of the local court of Gütersloh under HRB 2980. It has its corporate seat in Harsewinkel and its office address at Münsterstraße 33, 33428 Harsewinkel, Germany. The current share capital of the General Partner is € 26,000. According to Section 2 of its articles of association (*Satzung*), the sole corporate purpose of the General Partner is the participation in the Issuer as personally liable shareholder and sole manager. It is furthermore entitled to take all actions that it deems adequate to

directly or indirectly serve such corporate purpose. The General Partner has no financial interest in the Issuer. Save in case of a statutory requirement, the General Partner does not publish financial statements.

### **Fiscal Year**

The Issuer's fiscal year commences on October 1 and closes on September 30.

### **Auditors**

The Issuer's statutory auditor for the fiscal year 2004 and the two previous fiscal years has been Deloitte & Touche Wirtschaftsprüfungsgesellschaft, Schwannstraße 6, 40476 Düsseldorf ("**Deloitte & Touche**"). Deloitte & Touche has audited the Issuer's annual consolidated financial statements as of and for the years ended on September 30, 2003 and 2004, each prepared in accordance with the U.S. Generally Accepted Accounting Principals ("**US GAAP**"), providing an unqualified auditor's opinion in each case.

## CORPORATE BODIES OF THE ISSUER

The legal form of a partnership limited by shares combines elements of a stock corporation (*Aktiengesellschaft*) and a limited partnership (*Kommanditgesellschaft*). A partnership limited by shares is a legal entity (*juristische Person*) whose share capital is held by its shareholders. Unlike the general partner, the shareholders are not personally liable for the Issuer's obligations.

The corporate bodies of a partnership limited by shares are generally the general partner, the supervisory board and the shareholders' meeting. In addition to these statutory corporate bodies, the Issuer has established a shareholders' committee. The general Partner of the Issuer is Helmut Claas GmbH.

## REPRESENTATION AND BUSINESS MANAGEMENT

The Issuer is represented by Helmut Claas GmbH as general partner of the Issuer. The business management of the Issuer (*Geschäftsführung*) is also carried out by Helmut Claas GmbH in its capacity as the general partner of the Issuer.

## MANAGING DIRECTORS OF THE GENERAL PARTNER

The General Partner is represented by its managing directors who are also responsible for the management of the General Partner. The General Partner is represented by two managing directors or one managing director together with a company officer having statutory authority (*Prokurist*). If only one managing director is appointed, such managing director is authorized to solely represent the General Partner.

The current managing directors of the General Partner are:

Name	Date of Birth	Functions
Rüdiger A. Günther	03.06.1958	Executive President, CFO
Nikolaus Feil	27.06.1944	Execute Vice President, Production
Dr.-Ing. Hermann Garbers	17.11.1951	Execute Vice President, Technology and Quality, Research and Development
Thomas Klatt	05.01.1956	Executive Vice President, Accounting and Controlling
Lothar Kriszun	08.07.1952	Executive Vice President, Sales/Services
Guy Povie	06.05.1949	Executive Vice President, Tractors
Hans-Bernd Veltmaat	22.01.1951	Executive Vice President, Non Agricultural Business

The managing directors of the General Partner may be contacted at the General Partner's business address at Münsterstraße 33, 33428 Harsewinkel, Germany.

#### **SUPERVISORY BOARD**

The Issuer's supervisory board (*Aufsichtsrat*) has twelve members and is formed in accordance with Section 7 of the German Workers' Participation Act (*Mitbestimmungsgesetz*). Barring the particularities of a partnership limited by shares, the supervisory board has all powers and responsibilities granted to it by the German Stock Corporation Act and the Issuer's articles of association.

The current members of the Issuer's supervisory board are:

1. Dr. h.c. Helmut Claas, Harsewinkel,
2. Guntram Schneider, Münster,
3. Cathrina Claas, Zürich (CH),
4. Oliver Claas, Bohmte,
5. Volker Claas, Harsewinkel,
6. Günther Groß, Beckum,
7. Dr. Claus Helbig, München,
8. Michael Köhler, Paderborn,
9. Heiner Strotjohann, Harsewinkel,
10. Konrad Siegers, Rheda-Wiedenbrück,
11. Gerd Peskes, Düsseldorf,
12. Carmelo Zanghi, Paderborn.

The members of the Supervisory Board may be contacted at the Issuer's business address at Münsterstraße 33, 33428 Harsewinkel, Germany.

#### **SHAREHOLDERS' MEETING**

The annual shareholders' meeting is held within the first eight months of each fiscal year at the Issuer's principal place of business or in a city where a German stock exchange is located. The shareholders' annual meeting is called by the General Partner. Shareholders whose aggregate shareholding equal at least 5% of the Issuer's share capital may call for an extraordinary shareholders' meeting.

Unless otherwise required by the Issuer's articles of association or applicable statutory provisions, shareholders' resolutions are passed with a simple majority of the votes' cast. Only shareholders registered in the share register (*Aktienregister*) of the Issuer

are entitled to participate and to vote in shareholders' meetings. Each share entitles its holder to one vote at the shareholders' meeting.

#### **SHAREHOLDERS' COMMITTEE (*GESELLSCHAFTERAUSSCHUSS*)**

The Shareholders' Committee has a minimum of three members and a maximum of nine members. The members of the Shareholders' Committee are elected by the shareholders with the simple majority of the votes' cast together with the members of the Supervisory Board and for the same term as the members of the Supervisory Board.

The Shareholders' Committee represents the shareholders vis-à-vis the General Partner and supports the General Partner with regard to the business management. Furthermore, the Shareholders' Committee has, among others, the following responsibilities:

- to appoint and release the managing directors;
- to organize the relationship with the General Partner;
- to approve the annual accounts of the Issuer;
- to hold meetings on a regular basis in order to discuss the information given by the managing directors of the General Partner;
- to comment on such information in order to support the managing directors and to request, if required, further reports from the managing directors.

The current members of the Shareholders' Committee are:

1. Dr. h.c. Helmut Claas, Harsewinkel,
2. Cathrina Claas, Zürich (CH),
3. Oliver Claas, Bohmte,
4. Volker Claas, Harsewinkel,
5. Dr. Giancarlo Galli, Berlingen (CH),
6. Dr. Claus Helbig, München,
7. Gerd Peskes, Düsseldorf,
8. Prof. Dr. Uwe Loos, Stuttgart.

The members of the Shareholders' Committee may be contacted at the Issuer's business address at Münsterstraße 33, 33428 Harsewinkel, Germany.

## SUBSIDIARIES AND ASSOCIATED COMPANIES

Information on subsidiaries and associated companies of the Issuer is contained in the Notes to the consolidated accounts of the Issuer for the financial year ended September 30, 2004 incorporated into this document by reference.

## DESCRIPTION OF THE GROUP

The consolidation includes Claas KGaA mbh and all of its subsidiaries, representing a total of 47 companies (previous year: 53 companies), thereof 19 German and 28 foreign companies. All companies that are directly or indirectly controlled by Claas KGaA mbH were consolidated as subsidiaries in accordance with the full consolidation method.

## BUSINESS OF THE ISSUER

### OVERVIEW

Claas together with its consolidated subsidiaries (the "**Claas-Group**") is one of the leading manufacturers of agricultural equipment worldwide. The Claas-Group manufactures its products at eight domestic and eight foreign production sites and distributes in 140 countries around the world.

The Company's business is divided into three segments:

- **Agricultural engineering:** In this segment the Claas-Group is offering a broad range of agricultural machinery products. It accounts for about 90% of the total group sales in the business year ended September 30, 2004.
- **Production engineering:** Claas Fertigungstechnik GmbH is a supplier of engineered facilities for the automotive and aviation industries.
- **Industrial engineering:** Claas Industrietechnik GmbH is supplying drive technology and hydraulics within its small industrial engineering segment.

### PRODUCT RANGE

#### The Agricultural Engineering Business Segment

The core products of the Claas-Group in the Agricultural Engineering Business Segment are combine harvesters, tractors and foragers, but the group also offers other products such as balers and green harvest machinery. The Claas-Group is also engaged in the Western European market for used agricultural machinery.

### *Combine Harvesters*

Combine harvesters cut, thrash, separate, clean, and store a large number of cereals and other crops. Combine harvesters produced by the Claas-Group include the LEXION (220-580 HP), MEDION (185-245 HP), MEGA (220-260 HP) and DOMINATOR (120-125 HP) product groups. Combine harvesters for the European and Overseas Market are produced in Harsewinkel, Germany. Combine harvesters for the North American market are produced in Omaha, Nebraska under the brand name CAT (Caterpillar) and are distributed through the Caterpillar distribution network. In India the Claas-Group produces the Crop Tiger combine harvesters. The design of the machine is adapted to the special requirements of farming operations in Africa and Asia. Though small in size, it achieves a high throughput capacity in rice and other grain.

### *Tractors*

With its acquisition of Renault Agriculture in 2003, the Claas-Group added tractors to its product range. Currently tractors with performance classes ranging from 50 to 335 horsepower are being produced and distributed. In addition to smaller tractors for vineyards and orchards, the standard CELTIS tractor has been developed for mixed and grassland farming. Special tractors for the grape and fruit harvest are marketed under the brand name NECTIS. The ARES represents the premium class of tractors, while the ATLES is customized for agricultural contractors and large farms requiring tractors with power exceeding 200 hp. The tractor range is completed by the multi-functional system vehicle XERION.

### *Self-Propelled Forage Harvesters*

Forage harvesters pick up a swath of grass or cut crop, chop it into small pieces and blow it on transport wagons towed alongside. The protein-rich chopped material is stored and used as feed for animals (dairy and meat production). The Claas-Group produces five models of the JAGUAR range (321-605 HP), including the SPEEDSTAR and the PROFISTAR models. The Claas-Group also produces a wide range of pickups and maize headers as attachments.

### *Balers*

Balers pick up swathes of straw or grass, press the material, bind and discharge the bales back on the field. The Claas-Group produces the QUADRANT big square balers, the ROLLANT round balers with a fixed pressing chamber and the VARIANT round balers with a variable pressing chamber.

### *Green Harvest Machinery*

Green harvest machinery refers to grass handling. The Claas-Group produces 26 different models of the CORTO and the DISCO mowers with working widths between 1.65 meters and 8.50 meters, 6 models of VOLTO tedders (4.5 meters to 10 meters) and 11 models of LINER swathers (3.5 meters – 12.5 meters). Self-loading wagons with a volume of up to 34 cubic meters are also within the product range.

Furthermore, the self-propelled mower COUGAR, with a working width of up to 14 meters is another highly-efficient large-scale mower produced by the Claas-Group.

### **The Production Engineering Business Segment**

As a division of the Claas-Group, Claas-Fertigungstechnik GmbH originally manufactured facilities and equipment for the production of agricultural machinery. After the division was spun off into an independent company, the existing systems engineering expertise was used in order to develop and build up adjacent business segment.

Today, Claas-Fertigungstechnik GmbH is a high-tech supplier of complex production systems for the automobile and aviation industries. Its original business basis has been strengthened by the acquisition of Brötje Automation GmbH from the British Baxi Group which was completed in January 2004. Brötje Automation GmbH produces assembly cells for aircraft fuselages and wing parts and provides its special riveting technique to the international aircraft industry and its suppliers.

### **The Industrial Engineering Business Segment**

Claas Industrietechnik GmbH is a system supplier for drive technology and hydraulics and does not only support components to its affiliated companies of the Claas-Group, but also to its competitors. Components are also supplied to companies which manufacture municipal vehicles, buses, construction machinery or other kinds of machines. Its product range includes power shift gears for extreme all-terrain vehicles, hydraulic valves gear-boxes for small airplanes and track beds for high-speed trains. Claas Industrietechnik GmbH has its own research and development capacity.

### **PRODUCTION SITES**

The Claas-Group manufactures its products at the following eight German and eight foreign production sites:

- |                         |                              |
|-------------------------|------------------------------|
| - Harsewinkel (Germany) | - Metz (France)              |
| - Bad Saulgau (Germany) | - Le Mans (France)           |
| - Beelen (Germany)      | - Beauvais (France)          |
| - Paderborn (Germany)   | - Coventry (United Kingdom)  |
| - Bielefeld (Germany)   | - Omaha (USA)                |
| - Rostock (Germany)     | - Krasnodar (Russia)         |
| - Nördlingen (Germany)  | - Faridabad (India)          |
| - Wiefelstede (Germany) | - Törökszentmiklos (Hungary) |

## **REAL ESTATE**

The Company owns properties with a total area of approx. 3,000,000 square metres. The properties are located in Germany, France, United Kingdom, USA, Russia, India, Hungary, Italy and Spain.

## **INTELLECTUAL PROPERTY**

The Company currently holds patents, patent applications, registered designs and trademarks relating to its products. Patents were issued in Germany, Europe, the USA and other countries. More patent applications are still pending.

There is no dependance on particular patents or licenses of third parties which are essential for the business activity or the profitability of the Company.

## **LITIGATION**

There are no litigation proceedings against or affecting the Issuer or any of its subsidiaries or any of their respective assets, nor is the Issuer aware of any pending or threatened proceedings, which (in either case) are or might be material in the context of the issue of the Securities.

## **INVESTMENTS**

Total capital expenditure in the fiscal year ended September 30, 2004, at € 45.3 million, was below the record levels of the previous fiscal year. The above average volume in the fiscal year ended September 30, 2003 was determined primarily by the acquisitions of Renault Agriculture and Brötje Automation GmbH. Investments in property, plant and equipment as well as intangible assets excluding goodwill in the fiscal year 2004 were returning to the level of recent years at € 43.5 million. Investments exceeded depreciation and amortization, as in the previous years.

The largest single investment was the acquisition of the remaining 49% of shares in Brötje Automation GmbH with the amount of € 11.7 million. The complete acquisition of Brötje Automation GmbH, an established producer of assembly technology for the aviation industry, increases the diversification of the Production Engineering business segment of the Claas-Group.

The main focus of capital expenditure for property, plant and equipment was on measures for the modernization and structural optimization of production sites and processes.

The regional focus of investment was on Western Europe with over 90% of total volume with increased investment activity in Eastern Europe at the same time.

## **RECENT DEVELOPMENTS AND OUTLOOK**

We expect markets in 2005 to develop along the moderate lines predicted end of business year 2004. Growth in agricultural equipment markets in Germany and France

is still relatively subdued, UK being considerably lower while Central Europe is growing strongly. Also Eastern Europe is showing first signs of a higher order intake. In parallel, US and Overseas Markets are signaling improvements over comparable previous year figures.

Group Sales as a consequence are expected to be moderately higher than previous year. Our current order book has even materially increased in key products over previous year. However, the proportion of annual sales realized this time into the business year is – even though having met existing plans- relatively low. Therefore several risks might still impair on our plans for business year 2005 i.e.:

- Continuing Steel Price increases
- Continuing USD weakness
- Sudden protracted spells of dry weather in major markets or comparable effects entailing negative harvesting impacts

Such risks are partially mitigated in advance by ongoing efficiency programs, the integration process of the Renault Agriculture organization and our FX hedging strategy. Claas is therefore aiming to continue the positive income trend in 2004 into 2005 and is expecting income improvements by a double digit growth rate over previous year.

## **RATING**

The Securities have not been rated by any rating agency. There can be no assurance, however, that the Securities will not be rated in the future. Should such future rating be lower than expected by market participants at the time, this may have a material adverse effect on the market price of the Securities.

## TAXATION

The information contained in this section "Taxation" is not intended as tax advice and does not purport to describe all of the tax considerations that may be relevant to a prospective purchaser of the Securities. It should be read in conjunction with the section entitled "Risk Factors". Potential purchasers of the Securities are urged to satisfy themselves as to the overall tax consequences of acquiring, holding, redeeming and/or disposing of the Securities and should consult their own professional advisers. The summary below is based on the laws of Germany currently in force and as applied on the date of this prospectus, which are subject to change, possibly with retroactive effect. As the Securities should qualify as financial innovations ("Finanzinnovationen"), the information regarding the taxation of capital gains is of particular importance.

### Taxation of Securityholders in Germany

#### *A) Income Tax / Trade Tax*

##### **I. Taxation of interest**

###### 1. Securityholder resident in Germany

Interest derived by a Securityholder resident in Germany is subject to personal or corporate income tax (plus solidarity tax thereon currently at a rate of 5.5 %). Such interest is also subject to trade tax if the Securities form part of the property of a German business. Where the Securities are kept in a custodial account maintained with a German financial institution or financial services institution (including a German branch of a non-German financial institution or financial services institution, but excluding a non-German branch of a German financial institution or financial services institution, the "**Institution**") such Institution is generally required to withhold tax at a rate of 30 % (plus solidarity tax thereon at a rate of 5.5 %) of the gross amount of interest paid to a Securityholder resident in Germany. Such withholding tax is basically credited against the Securityholder's final liability for personal or corporate income tax.

###### 2. Securityholder non-resident in Germany

Interest derived by a non-resident Securityholder is subject to German personal or corporate income tax (plus solidarity tax thereon at a rate of 5.5 %) if the Securities form part of the business property of a permanent establishment in Germany (in which case such interest is also subject to trade tax) or a fixed base maintained in Germany by the Securityholder or are held by a German permanent representative of the Securityholder. Tax treaties concluded by Germany generally permit Germany to tax the interest income in this situation. Where the non-resident Securityholder keeps

the Securities in a custodial account maintained with a German Institution such Institution is generally required to withhold tax at a rate of 30 % (plus solidarity tax thereon at a rate of 5.5 %) of the gross amount of interest paid, provided the interest constitutes income from German sources (for instance, because the Securities form part of the business property of a permanent establishment which the Securityholder maintains in Germany). Such withholding tax is basically credited against the Securityholder's final liability for personal or corporate income tax.

## II. Taxation of capital gains

### 1. Securityholder resident in Germany

#### 1.1 Securityholder resident in Germany not holding the Securities as business assets

Gains from the alienation of Securities including gains derived by the initial holder or any subsequent holder of the Securities upon redemption of the Securities ("**Capital gains**") that are derived by an individual who is a Securityholder resident in Germany not holding the Securities as business assets are subject to personal income tax, regardless of the period between acquisition and alienation of the Securities, as the Securities should qualify as financial innovations ("**Finanzinnovationen**"). Capital gains are subject to personal income tax so far as they correspond to the calculative yield to maturity during the respective holding period. If no yield to maturity can be determined upon issuance of the Securities or the Securityholder does not give proof thereof, the difference between the proceeds from the disposition, assignment or redemption and the acquisition costs is subject to personal income tax in the year of the disposition, assignment or redemption of the Securities. The taxation of the interest ("**Zinsen**") and accrued interest ("**Stückzinsen**") remains unaffected; accordingly any previously received interest, which is subject to income taxation, is deducted in calculating the capital gain but only in the case that the yield to maturity can be determined upon issuance of the Securities. Where the yield to maturity of the Securities cannot be determined upon issuance of the Securities, the difference between the proceeds from the disposition, assignment or redemption and the acquisition costs should be subject to personal income tax in the year of the disposition, assignment or redemption of the Securities. Where the Securities are kept in a custodial account maintained with a German Institution such Institution is generally required to withhold tax at a rate of 30 % (plus solidarity tax thereon at a rate of 5.5 %) of an amount equal to 30 % of the proceeds from the alienation or redemption of the Securities, or, where such Institution has since acquiring or selling the Securities held such Securities in custody, of the excess of the sale or redemption proceeds over the purchase price for the Securities.

#### 1.2 Securityholder resident in Germany holding the Securities as business assets

Capital Gains, as defined under Sec. 1.1, derived by an individual Securityholder resident in Germany holding Securities as a business asset are subject to personal income tax (plus solidarity tax thereon at a rate of 5.5 %) and trade tax. Capital gains derived by a corporate Securityholder resident in Germany are subject to corporate income tax (plus solidarity tax thereon at a rate of 5.5 %) and trade tax.

Where the Securities are kept in a custodial account maintained with a German Institution such Institution is generally required to withhold tax at a rate of 30 % (plus solidarity tax thereon at a rate of 5.5 %) of an amount equal to 30 % of the proceeds from the alienation or redemption of the Securities, or, where such Institution has since acquiring or selling the Securities held such Securities in custody, of the excess of the sale or redemption proceeds over the purchase price for the Securities.

## 2. Securityholder non-resident in Germany

Capital gains derived by a non-resident Securityholder are subject to personal or corporate income tax (plus solidarity tax thereon at a rate of 5.5 %) if the Securities form part of the business property of a permanent establishment (in which case such gains are also subject to trade tax) or a fixed base maintained in Germany by the Securityholder or are held by a German permanent representative of the Securityholder.

Where the Securities are kept in a custodial account maintained with a German Institution such Institution is generally required to withhold tax at a rate of 30 % (plus solidarity tax thereon at a rate of 5.5 %) of an amount equal to 30 % of the proceeds from the alienation or redemption of the Securities, or, where such Institution has since acquiring or selling the Securities held such Securities in custody, of the excess of the sale or redemption proceeds over the purchase price for the Securities.

Tax treaties concluded by Germany generally do not permit Germany to tax the capital gains derived by a Securityholder resident in the other treaty country, unless the Securities form part of the business property of a permanent establishment or a fixed base maintained in Germany by the Securityholder. Where Germany is allowed to tax the capital gains, any tax withheld by the Institution will basically give rise to a refundable credit against the Securityholder's assessed liability for personal or corporate tax.

### ***B) EU Savings Tax Directive***

On June 3, 2003 the Council of the European Union ("**Ecofin**") approved a directive regarding the taxation of interest income. Accordingly, each EU Member State must require paying agents (within the meaning of the directive) established within its territory to provide to the competent authority of this state details of the payment of interest made to any individual resident in another EU Member State as the beneficial owner of the interest. The competent authority of the EU Member State of the paying agent (within the meaning of the directive) is then required to communicate this information to the competent authority of the EU Member State of which the beneficial owner of the interest is a resident.

For a transitional period, Austria, Belgium and Luxembourg may opt instead to withhold tax from interest payments within the meaning of the directive at a rate of 15 % presumably starting July 1, 2005, of 20 % presumably as from July 1, 2008 and 35 % presumably as from July 1, 2011. If the application of the provisions of the directive is delayed these dates will be postponed accordingly.

The Member States shall apply the respective provisions presumably as from July 1, 2005 provided that (i) Switzerland, Liechtenstein, San Marino, Monaco and Andorra apply from the same date measures equivalent to those contained in the directive, in accordance with agreements entered into by them with the European Community and (ii) also all the relevant dependent or associated territories (the Channel Islands, the Isle of Man and the dependent or associated territories in the Caribbean) apply from that same date an automatic exchange of information or, during the transitional period described above, apply a withholding tax in the described manner.

By legislative regulations dated January 26, 2004 the Federal Government enacted the provisions for implementing the directive into German law. The entry into force of the legislative regulations depends, however, on a determination by the Council of the European Union that the conditions for the application of the directive have been fulfilled. In view of the conditions mentioned before, it is presently not yet possible to predict when the directive will ultimately be applicable.

### ***C) Gift or Inheritance Tax***

The gratuitous transfer of a Security by a Securityholder as a gift or by reason of the death of the Securityholder is subject to German gift or inheritance tax if the Securityholder or the recipient is resident or deemed to be resident in Germany under German law at the time of the transfer. If neither the Securityholder nor the recipient is resident, or deemed to be resident, in Germany at the time of the transfer no German gift or inheritance tax is levied unless the Securities form part of the business property of a permanent establishment or fixed base maintained in Germany by the Securityholder. Tax treaties concluded by Germany generally permit Germany to tax the transfer in this situation.

## SUBSCRIPTION AND SALE

### SUBSCRIPTION

Dresdner Bank AG (the "**Sole Lead Manager**") has, pursuant to a subscription agreement dated October 5, 2004 (the "**Subscription Agreement**"), agreed with the Issuer to subscribe for 100% of the total principal amount of the Securities less commission which the Issuer has agreed to pay to the Sole Lead Manager.

The Securities were offered by the Sole Lead Manager as specified above, subject to receipt in acceptance by them and subject to the right to reject any order from an investor in whole or in part. The Issuer agreed to indemnify the Sole Lead Manager against certain liabilities in connection with the offer and sale of the Securities.

The Subscription Agreement is governed by German law.

### SELLING RESTRICTIONS

*Germany.* The Sole Lead Manager has confirmed that it is aware of the fact that no German sales prospectus (*Verkaufsprospekt*) within the meaning of the German Securities Sales Prospectus Act (*Verkaufsprospektgesetz* – the "**Sales Prospectus Act**") has been or will be published with respect to the Securities and has represented and agreed that it has only offered and sold and will only offer and sell the Securities in Germany in accordance with the provisions of the Sales Prospectus Act and any other laws applicable in Germany governing the issue, sale and offering of securities.

*United Kingdom.* The Sole Lead Manager has represented, warranted and agreed that: (a) it has not offered or sold and, prior to the expiry of the period of six months from the Issue Date, will not offer or sell any Securities to persons in the United Kingdom except to persons whose ordinary activities involve them in acquiring, holding, managing, or disposing of investments (as principal or agent) for the purpose of their businesses or otherwise in circumstances which have not resulted and will not result in an offer to the public in the United Kingdom within the meaning of the Public Offers of Securities Regulations 1995 (as amended); (b) it has complied and will comply with all applicable provisions of the Financial Services and Markets Act 2000 ("**FSMA**") with respect to anything done by it in relation to the Securities in, from or otherwise involving the United Kingdom; and (c) it has only communicated or caused to be communicated and will only communicate or cause to be communicated any invitation or inducement to engage in investment activity (within the meaning of Section 21 of the FSMA) received by it in connection with the issue of the Securities in circumstances in which Section 21 (1) of the FSMA does not apply to the Issuer.

As used herein, "**United Kingdom**" means the United Kingdom of Great Britain and Northern Ireland.

*United States of America and its Territories.* (1) The Securities have not been and will not be registered under the Securities Act and may not be offered, or sold within the United States or to, or for the account or benefit of, U.S. persons except in accordance

with Regulation S under the Securities Act. The Sole Lead Manager has represented and agreed that it has offered and sold the Securities, and will offer and sell the Securities (i) as part of its distribution at any time and (ii) otherwise until 40 days after the completion of the distribution of all the Securities only in accordance with Rule 903 of the Regulation S under the Securities Act. Neither the Sole Lead Manager, their respective affiliates nor any persons acting on its or their behalf have engaged or will engage in any directed selling efforts with respect to the Securities, and it and they have complied and will comply with the offering restrictions requirements of Regulation S under the Securities Act. The Sole Lead Manager has also agreed that at or prior to confirmation of sale of Securities, it will have sent to each distributor, dealer or person receiving a selling concession, fee or other remuneration that purchases Securities from it during the restricted period a confirmation or notice to substantially the following effect:

“The Securities covered hereby have not been registered under the U.S. Securities Act of 1933, as amended (the “**Securities Act**”) and may not be offered or sold within the United States or to, or for the account or benefit of, U.S. persons (i) as part of their distribution at any time or (ii) otherwise until 40 days after the completion of the distribution of the Securities as determined and certified by the Sole Lead Manager, except in either case in accordance with Regulation S under the Securities Act. Terms used above the meaning given to them in Regulation S under the Securities Act.”.

Terms used in this clause have the meaning given to them by Regulation S under the Securities Act.

(2) Further, the Sole Lead Manager has represented and agreed that:

- (a) except to the extent permitted under U.S. Treas. Reg. Section 1.163-5 (c)(2)(i)(D) (the “**TEFRA D Rules**”), (i) it has not offered or sold, and during the restricted period will not offer or sell, directly or indirectly, Securities in bearer form to a person who is within the United States or its possessions or to a United States person, and (ii) it has not delivered and will not deliver, directly or indirectly, within the United States or its possessions definitive Securities in bearer form that are sold during the restricted period;
- (b) it has and throughout the restricted period will have in effect procedures reasonably designed to ensure that its employees or agents who are directly engaged in selling Securities in bearer form are aware that such Securities may not be offered or sold during the restricted period to a person who is within the United States or its possessions or to a United States person, except as permitted by the TEFRA D Rules;
- (c) if it was considered a United States person, that is acquiring the Securities for purposes of resale in connection with their original issuance and agrees that if it retains Securities in bearer form for its own account, it will only do so in accordance with the requirements of U.S. Treas. Reg. Section 1.63-5 (c) (2)(i)(D)(6); and
- (d) with respect to each affiliate that acquires from it Securities in bearer form for the purpose of offering or selling such Securities during the restricted period

that it will either (i) repeat and confirm the representations and agreements contained in sub-clauses (a), (b) and (c); or (ii) obtain from such affiliate for the benefit of the Issuer the representations and agreements contained in sub-clauses (a), (b) and (c).

Terms used in this clause (2) have the meanings given to them by the U.S. Internal Revenue Code and regulations thereunder, including the TEFRA D Rules.

*General.* The Sole Lead Manager has agreed that it will not offer, sell or deliver any of the Securities, directly or indirectly, or distribute this Listing Prospectus or any other offering material relating to the Securities, in or from any jurisdiction except under circumstances that will to its best knowledge and belief result in compliance with the applicable laws and regulations thereof.

## **GENERAL INFORMATION**

### **AUTHORIZATION**

The issue of the Securities was authorized by a resolution of the managing directors of the General Partner on July 19, 2004 and by resolution of the Shareholders' Committee of the Issuer dated September 10, 2004.

### **LITIGATION**

Save as disclosed in this Listing Prospectus, there are no litigation proceedings against or affecting the Issuer or any of its subsidiaries or any of their respective assets, nor is the Issuer aware of any pending or threatened proceedings, which (in either case) are or might be material in the context of the issue of the Securities.

### **MATERIAL CHANGE**

Save as disclosed in this Listing Prospectus, there has been no adverse change, or any development reasonably likely to involve an adverse change, in the condition (financial or otherwise) or general affairs of the Issuer, in each case that is material in the context of the issue of the Securities, since September 30, 2004.

### **PAYMENT INFORMATION**

For as long as any of the Securities are listed on the Luxembourg Stock Exchange, the Luxembourg Stock Exchange will be informed by the Issuer of all notifications regarding payments.

Payments and transfers of the Securities will be settled through Euroclear and Clearstream Luxembourg.

All notices to the Securityholders regarding the Securities will be published in a leading daily newspaper having general circulation in Luxembourg (which is expected to be the *Tageblatt* (Luxembourg)) or in such other publication or manner conforming to the rules of the Luxembourg Stock Exchange.

### **LUXEMBOURG LISTING**

Application has been made to list the Securities on the Luxembourg Stock Exchange. The Issuer has appointed Dresdner Bank Luxembourg S.A. as the initial listing agent for the Luxembourg Stock Exchange in the City of Luxembourg and as the initial Luxembourg Listing and Paying Agent. The Luxembourg Listing and Paying Agent will act as intermediary between the Issuer and the holders of the Securities listed on the Luxembourg Stock Exchange. For as long as any of the Securities are listed on the Luxembourg Stock Exchange, the Issuer will maintain a Luxembourg Listing and Paying Agent in Luxembourg.

Prior to such listing of the Securities, the Articles of Association (*Satzung*) of the Issuer and a legal notice relating to the issue of the Securities will be lodged with the Register of Commerce and Companies in Luxembourg (*Registre de Commerce et des*

*Sociétés du Luxembourg*) where such documents may be inspected and copies thereof obtained upon request.

#### **CLEARING CODE**

The Securities have been accepted for clearing by Euroclear and Clearstream Luxembourg with the following security identification numbers:

ISIN Code: DE000A0DLTL6  
Common Code : 020258721  
WKN: A0DLTL

#### **AVAILABILITY OF DOCUMENTS**

Copies of the following documents may be obtained during customary business hours on any working day from the date hereof (or the date of publication of such document, as relevant) as long as any of the Securities remain outstanding and are listed on the Luxembourg Stock Exchange at the registered office of the Issuer and the head office of the Principal Paying Agent and as long as any of the Securities are listed on the Luxembourg Stock Exchange they will also be available and may be obtained (free of charge) at the specified offices of Dresdner Bank Luxembourg S.A.:

- (i) the Articles of Association (*Satzung*) of the Issuer;
- (ii) the confirmation of the authorization of the issue of the Securities by the Issuer;
- (iii) this Listing Prospectus;
- (iv) the documents incorporated by reference herein (see "DOCUMENTS INCORPORATED BY REFERENCE");
- (v) all future annual consolidated and non-consolidated financial statements of the Issuer.

As it is legally obligated, the Issuer publishes its unconsolidated financial statements in the Commercial Registry (Handelsregister) and in the Federal Gazette (Bundesanzeiger). Apart from that, the Issuer does not publish unconsolidated financial statements.

Save in case of a statutory requirement, the General Partner does not publish financial statements.

## **THE ISSUER**

**Claas Kommanditgesellschaft auf Aktien mbH**  
Münsterstraße 33  
33428 Harsewinkel  
Germany

## **PRINCIPAL PAYING AND CALCULATION AGENT**

**Dresdner Bank Aktiengesellschaft**  
Jürgen-Ponto-Platz 1  
60301 Frankfurt am Main  
Germany

## **LUXEMBURG LISTING AND PAYING AGENT**

**Dresdner Bank Luxembourg S.A.**  
26, Rue du Marché-aux-Herbes  
2097 Luxembourg  
Luxembourg

## **AUDITORS**

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