

## OFFERING CIRCULAR

# US\$ 500,000,000 HSH Nordbank SPHERE Securities

*Each issued on a fiduciary basis by Banque de Luxembourg (incorporated as a société anonyme with limited liability in the Grand Duchy of Luxembourg and registered with the Register of Commerce and Companies in Luxembourg under number RCS B 5310)*

*for the purpose of subscribing to*

## US\$ 500,000,000 Class B Preference Shares

in

## HSH N Funding II

*(incorporated with limited liability in the Cayman Islands and a wholly-owned subsidiary with the benefit of a support undertaking of)*

# HSH Nordbank AG

*(a stock corporation incorporated under the laws of Germany)*

### Issue price of the SPHERE Securities: 100 per cent.

The issue price of the US\$ 500,000,000 HSH Nordbank Silent Participation Hybrid Equity Regulatory (SPHERE) Securities in the denomination of US\$ 1,000 each (the **"SPHERE Securities"**), issued on a fiduciary basis by Banque de Luxembourg, a société anonyme incorporated in Luxembourg (the **"Fiduciary"**) is 100% of their principal amount.

With the proceeds of the issue of the SPHERE Securities, the Fiduciary will, in its own name but at the sole risk and for the sole benefit and account of the holders of the SPHERE Securities (the **"Securityholders"**), acquire 500,000 Class B Preference Shares (the **"Class B Securities"**) issued by HSH N Funding II (the **"Company"**). With the proceeds of the issue of the Class B Securities, the Company will acquire a silent capital interest in the commercial enterprise (*Handelsgewerbe*) of HSH Nordbank AG (the **"Bank"**) in the form of a *Stille Gesellschaft* under German law (the **"Participation"**) pursuant to an agreement providing for an asset contribution to the Bank in the amount of US\$ 500,000,000 (the **"Silent Contribution"**) and dated June 13, 2005 (the **"Participation Agreement"**).

The Bank has undertaken in a support undertaking (the **"Support Undertaking"**) with the Fiduciary and for the benefit of the holders of the SPHERE Securities to ensure that the Company will at all times be in a position to meet its obligations under the Class B Securities.

The SPHERE Securities are perpetual securities and have no fixed maturity date. They will represent a *pro rata* interest in the Class B Securities and all payments actually received by the Fiduciary thereunder. The Fiduciary will hold the Class B Securities in its own name, on a fiduciary basis, but solely at the risk and for the account of the Securityholders. The SPHERE Securities evidence a fiduciary contract between the Securityholders and the Fiduciary (the **"Fiduciary Contract"**), governed by the Luxembourg law dated July 27, 2003 relating to trust and fiduciary contracts, pursuant to which the Fiduciary is only obligated to pass on funds to the Securityholders actually received from the Company under the Class B Securities but has no other payment obligations to the Securityholders. The amounts of distributions under the Class B Securities depend, among others, on the profits of the Bank. By purchasing SPHERE Securities, Securityholders will be deemed to have acknowledged and agreed to the terms of the Fiduciary Contract.

**Investing in the SPHERE Securities involves certain risks. Please review the section entitled "Investment Considerations" beginning on page 31 of this Offering Circular.**

The SPHERE Securities will initially be represented by a temporary global security in bearer form without coupons which will be deposited on or about June 17, 2005 (the **"Issue Date"**) with a common depositary for Euroclear Bank S.A./N.V. as operator of the Euroclear System (**"Euroclear"**) and Clearstream Banking société anonyme (**"Clearstream Luxembourg"**), where the SPHERE Securities have been accepted for clearing. It is expected that delivery of the SPHERE Securities will be made through Euroclear and Clearstream Luxembourg against payment therefor in immediately available funds on or about the Issue Date. The temporary global security will be exchangeable for a permanent global security in bearer form upon certification as to non-US beneficial ownership. In certain limited circumstances the global securities can be exchanged for definitive SPHERE Securities (as described in "Terms and Conditions of the SPHERE Securities").

**The SPHERE Securities have not been, and will not be registered under the U.S. Securities Act of 1933, as amended (the "Securities Act"), or under any state securities laws and may not be offered, sold or delivered in the United States unless registered under the Securities Act or if an exemption from the registration requirements thereunder is available. The SPHERE Securities are being offered and sold only to certain persons in transactions outside the United States in compliance with Regulation S under the Securities Act.**

Application has been made to list the SPHERE Securities on Eurolist by Euronext Amsterdam (**"Euronext Amsterdam"**). This Offering Circular constitutes a prospectus for purposes of the listing and issuing rules of Euronext Amsterdam.

**Joint Bookrunner**

**ABN AMRO**

**Joint Bookrunner and Structuring Advisor**

**HSH Nordbank AG**

**Joint Bookrunner**

**Deutsche Bank**

**Joint Bookrunner**

**UBS Investment Bank**

The date of this Offering Circular is June 15, 2005.

The Bank accepts responsibility for the information contained in this Offering Circular (the “Offering Circular”). To the best of its knowledge and belief (having taken all reasonable care to ensure that such is the case) the information contained in this Offering Circular is in accordance with the facts and does not omit anything likely to affect the import of such information. The Company accepts responsibility for the information in this Offering Circular except for any information about other companies contained in this Offering Circular and as such provided by other parties as the Company. The Fiduciary accepts responsibility for the information contained in the first paragraph of the section entitled “The Fiduciary and the Fiduciary Contract” but does not accept responsibility for any other information contained in this Offering Circular.

In connection with the issue and sale of the SPHERE Securities, no person is authorised to give any information or to make any representation not contained in this document and in the documents referred to herein, which are made available for inspection by the public and, if given or made, such information or representation must not be relied upon as having been authorised by the Fiduciary, the Company the Bank or the Managers (as defined in “Subscription and Sale”).

An investment in the SPHERE Securities is suitable only for financially sophisticated investors who are capable of fully evaluating the risks involved in making such investments and who have an asset base sufficiently substantial as to enable them to sustain any loss that they might suffer as a result of making such investments.

Prospective investors should inform themselves as to the legal requirements and tax consequences within the countries of their residence and domicile for the acquisition, holding or disposal of SPHERE Securities and any foreign exchange restrictions that might be relevant to them. This Offering Circular does not constitute an offer of, or an invitation by or on behalf of, the Fiduciary, the Company, the Bank or the Managers to subscribe for or to purchase any of the SPHERE Securities.

Prospective investors should satisfy themselves that they understand all of the risks associated with making investments in the SPHERE Securities. If a prospective investor is in any doubt whatsoever as to the risks involved in investing in the SPHERE Securities, he should consult professional advisers.

This Offering Circular is not intended to provide the basis of any credit or other evaluation and should not be considered as a recommendation by the Fiduciary, the Company, the Bank or the Managers that any recipient of this Offering Circular should purchase any of the SPHERE Securities. Each investor contemplating purchasing SPHERE Securities should make its own independent investigation of the financial condition and affairs, and its own appraisal of the creditworthiness, of the Company and the Bank.

The distribution of this document and the offering or sale of the SPHERE Securities in certain jurisdictions may be restricted by law. None of the Fiduciary, the Company, the Bank or the Managers represent that this document may be lawfully distributed, or that the SPHERE Securities may be lawfully offered, in compliance with any applicable registration or other requirements in any such jurisdiction, or pursuant to an exemption available thereunder, or assume any responsibility for facilitating any such distribution or offering. In particular, none of the Fiduciary, the Company, the Bank or the Managers has taken any action which would permit a public offering of the SPHERE Securities or distribution of this document in any jurisdiction where action for that purpose is required. Accordingly, no SPHERE Securities may be offered or sold, directly or indirectly, and neither this Offering Circular nor any advertisement or 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. Persons into whose possession this Offering Circular or the SPHERE Securities may come, must inform themselves about, and observe, any such restrictions (see “Subscription and Sale” for a description, *inter alia*, of certain restrictions on offers, sales and deliveries of the SPHERE Securities). Neither the delivery of this Offering Circular nor any sale hereunder shall create under any circumstances any implication that there has been no change in the affairs of the Fiduciary, the Company, the Bank or the HSH Nordbank Group (as defined in “Presentation of Financial Information”) since the date hereof or that the information contained herein is correct as of any time subsequent to its date.

**It should be noted that the SPHERE Securities do not represent partnership or other shareholder or ownership interests in the Fiduciary or the Company.**

**IN CONNECTION WITH THE OFFERING, UBS LIMITED OR ANY PERSON ACTING FOR IT MAY OVER-ALLOT OR EFFECT TRANSACTIONS WITH A VIEW TO SUPPORTING THE MARKET PRICES OF THE SPHERE SECURITIES AT A LEVEL HIGHER THAN THAT WHICH MIGHT OTHERWISE PREVAIL FOR A LIMITED TIME. HOWEVER, THERE IS NO OBLIGATION ON UBS LIMITED OR ANY OF ITS AGENTS TO DO THIS. SUCH STABILISING, IF COMMENCED, MAY BE DISCONTINUED AT ANY TIME AND MUST BE BROUGHT TO AN END AT THE LATEST ON THE THIRTIETH DAY FOLLOWING THE ISSUE DATE. SUCH TRANSACTIONS MAY BE EFFECTED ON EURONEXT AMSTERDAM OR OTHERWISE.**

**The SPHERE Securities have not been, and will not be, registered under the Securities Act and are securities in bearer form that are subject to United States tax law requirements. Subject to certain exceptions, the SPHERE Securities may not be sold or delivered, directly or indirectly, within the United States or its possessions or to U.S. persons.**

## FORWARD-LOOKING STATEMENTS

This Offering Circular contains statements that constitute forward-looking statements with respect to the Bank within the meaning of Section 27A of the Securities Act and Section 21E of the U.S. Securities Exchange Act of 1934, as amended (the **“Exchange Act”**). All statements other than statements of historical facts included in this Offering Circular including, without limitation, statements regarding the intent, belief or current expectations of the Bank or its officers with respect to, among other things, (i) the use of proceeds of the issue of the SPHERE Securities, (ii) the Bank’s financing and listing plans, (iii) trends affecting the Bank’s financial condition or results of operations, (iv) the impact of competition and (v) future plans and strategies, are forward-looking statements. Such forward-looking statements involve known and unknown risks, uncertainties and other factors which may cause the actual results, performance or achievements of the Bank, or industry results, to be materially different from any such statements. Such forward-looking statements are based on numerous assumptions regarding the Bank’s present and future business strategies and the environment in which the Bank will operate in the future. Important factors that could cause the Bank’s actual results, performance or achievements to differ materially from such forward-looking statements include, but are not limited to, those discussed under “Investment Considerations”, “Activities and Business Description of the HSH Nordbank Group” and “Recent Developments and Outlook”. These forward-looking statements speak only as of the date of this Offering Circular. The Bank expressly disclaims any obligation or undertaking to release publicly any updates or revisions to any forward-looking statement contained herein to reflect any change in the Bank’s expectations with regard thereto or any change in events, conditions or circumstances after the date of this Offering Circular on which any such statement is based. These statements reflect the Bank’s current views with respect to such matters.

## PRESENTATION OF FINANCIAL INFORMATION

The operations of the Bank are based primarily in Germany. The Bank’s audited consolidated financial statements at and for the year ended December 31, 2004, including the notes thereto (the **“Financial Statements”**) and the Bank’s audited unconsolidated financial statements at and for the year ended December 31, 2004, including the notes thereto have been prepared in accordance with the provisions of the German Commercial Code (HGB), the Stock Corporation Act (AktG) and the Ordinance Regarding Accounting for Banks and Financial Services Institutions (RechKredV). In addition, the financial statements referred to in the preceding sentence have been prepared in accordance with the relevant statements of the Institute of Independent Auditors in Germany (IDW) and the German Accounting Standards (DRS) promulgated by the German Accounting Standards Committee (DRSC).

The relevant provisions of the German Commercial Code, the Stock Corporation Act and the Ordinance Regarding Accounting for Banks and Financial Services Institutions, together with the relevant statements of the Institute of Independent Auditors in Germany and the relevant German Accounting Standards promulgated by the German Accounting Standards Committee (DRSC), collectively are defined, for purposes of this Offering Circular, as **“German GAAP”**.

The Bank’s consolidated financial statements reflect financial information of the Bank and its affiliates consolidated under German GAAP (together, the **“HSH Nordbank Group”**).

In this Offering Circular, unless otherwise specified, references to “US\$”, “U.S.\$”, “\$”, “U.S. dollars” or “dollars” are to United States dollars and references to “EUR”, “€” or “euro” are to the single currency introduced at the start of the third stage of European Economic and Monetary Union pursuant to the Treaty establishing the European Communities, as amended by the Treaty on European Union.

Certain amounts (including percentage amounts) included in this Offering Circular have been rounded for purposes of presentation. Percentage figures included herein have not in all cases been calculated on the basis of such rounded figures but on the basis of such amounts prior to rounding. For this reason, certain percentage amounts may vary from those obtained by performing the same calculations using the figures in the financial statements referred to in the first paragraph of this section “Presentation of Financial Information”.

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## SUMMARY

### Introductory Summary of the Transaction

*The following paragraphs contain a brief overview of the most significant features of the transaction consisting of the issuance of the SPHERE Securities by the Fiduciary, payment of the proceeds therefrom to the Company as consideration for the Class B Securities and payment of the proceeds raised by the Company therefrom to the Bank under the Participation Agreement (the “**Transaction**”). This overview is necessarily incomplete and investors are urged to read carefully the entire summary and the full text of the Offering Circular for a more precise description of the offered SPHERE Securities and the information concerning (i) the Transaction, (ii) the Bank, the Company and the Fiduciary and (iii) the agreements among them. If not indicated otherwise, the following description is based on the situation on the Issue Date.*

The Fiduciary proposes to issue US\$ 500,000,000 SPHERE Securities on a fiduciary basis. Each SPHERE Security represents a *pro rata* interest in the investment which is held by the Fiduciary on behalf and at the sole risk of the Securityholders. Using the proceeds raised from the issuance of the SPHERE Securities, the Fiduciary will acquire 500,000 Class B Securities issued by the Company, an exempted company incorporated with limited liability under the laws of the Cayman Islands. All of the Company’s ordinary shares will be held directly or indirectly by the Bank. The SPHERE Securities will represent *pro rata* interests in the Class B Securities. Securityholders will be entitled to all payments made under the Class B Securities by the Company to the Fiduciary. The Fiduciary will hold the Class B Securities in its own name, on a fiduciary basis, but solely at the risk and for the account of the Securityholders. The terms and conditions of the SPHERE Securities (the “**SPHERE Terms**”) limit Securityholders’ recourse to distributions and/or capital payments actually received by the Fiduciary under the Class B Securities. In addition to its ordinary shares and the Class B Securities, the Company will issue 553,000 Class A Preference Shares (the “**Class A Securities**”) in the aggregate nominal amount of US\$ 553,000,000 which will be held, directly or indirectly, by the Bank.

The Company will, with the proceeds raised from the issuance of the Class B Securities, acquire a silent capital interest in the aggregate amount of US\$ 500,000,000 in the commercial enterprise (*Handelsgewerbe*) of the Bank in the form of *Stille Gesellschaft* under German law pursuant to the Participation Agreement. As silent partner under the Participation Agreement (“**Silent Partner**”), the Company will make the Silent Contribution in the form of a cash contribution of US\$ 500,000,000 to the Bank as principal. In return, the Company, as Silent Partner, will earn profit participations (“**Profit Participations**”) calculated annually on the basis of the nominal amount of its Silent Contribution for each fiscal year of the Bank and accruing quarterly in arrear. Profit Participations will not accrue if such accrual would create or increase an annual loss (*Jahresfehlbetrag*) as calculated under the Participation Agreement in accordance with German GAAP (“**Annual Loss**”). The aggregate amount of accrued Profit Participations will be payable on June 30, 2036 and on each 30th anniversary of such date thereafter. Under the terms and conditions of the Class B Securities (the “**Class B Terms**”), the Company is under an obligation to declare periodic distributions to the holders of the Class B Securities (“**Class B Dividends**”) payable quarterly in arrear and commencing September 30, 2005. Under the Class B Terms, Class B Dividends shall be payable if the Bank did not record an annual balance sheet loss (*Jahresbilanzverlust*) as calculated in accordance with German GAAP (“**Annual Balance Sheet Loss**”) for the Bank’s most recent financial year for which audited financial statements are available and ended on or prior to the date on which the calculation period for the relevant Class B Dividend (the “**Class B Calculation Period**”) ends (the “**Relevant Bank Fiscal Year**”) and the solvency ratio is higher than 9% on a consolidated and non-consolidated basis. An Annual Balance Sheet Loss is present if the Bank’s annual unconsolidated balance sheet records no balance sheet profit (*Bilanzgewinn*) as calculated in accordance with German GAAP (“**Annual Balance Sheet Profit**”). Under German GAAP, the Annual Balance Sheet Profit is derived from the annual surplus (*Jahresüberschuss*) adjusted for profits/losses carried over from previous fiscal years as well as transfers from and allocations to capital and earnings reserves (*Kapital- und Gewinnrücklagen*) (however, neither the Bank nor its shareholders are obligated to release any such reserves to avoid an Annual Balance Sheet Loss).

**If the Company does not declare a Class B Dividend in respect of any Class B Calculation Period, holders of the Class B Securities will have no right to receive a Class B Dividend in respect of such**

**Class B Calculation Period and there will be no corresponding payment by the Fiduciary to Securityholders. In such case, the Company will have no obligation to pay a Class B Dividend in respect of such Class B Calculation Period, whether or not Class B Dividends are declared and paid in respect of any future Class B Calculation Periods.**

The Silent Partner shares in an Annual Balance Sheet Loss in the proportion which the book value of its Silent Contribution bears in relation to the aggregate book value of all loss-sharing components of the Bank's regulatory liable capital (*Haftkapitalanteile*). In such case, the book value of the Silent Contribution will be reduced in the amount of its *pro rata* share in the relevant Annual Balance Sheet Loss ("**Reduction**"). Following a Reduction, future profits will be used to write-up the book value of the Silent Contribution to US\$ 500,000,000 and Profit Participations may only accrue after a full write-up of the Silent Contribution's book value to US\$ 500,000,000. If the book value of the Silent Contribution has not yet been fully written-up, the Company will not declare Class B Dividends and no Class B Dividends will be paid to the Fiduciary as the holder of the Class B Securities. If the book value of the Silent Contribution has not yet been fully written-up at the time the Silent Contribution becomes due for repayment, the amount which is repaid to the Company for the Silent Contribution under the Participation Agreement (the "**Repayment Amount**") is reduced accordingly. In such case, the redemption amount of the Class B Securities (the "**Class B Redemption Amount**") to be paid by the Company to the Fiduciary will be reduced accordingly.

The Company will use the proceeds from the issuance of the Class A Securities to extend a loan documented in the form of a German law governed *Schuldscheindarlehen* (the "**Loan**") to the Bank. The Company will use the interest earned under the Loan to satisfy its dividend payment obligations under the Class B Securities upon Class B Dividends having been declared. The Company will have the benefit of the Support Undertaking from the Bank (see "Description of the Support Undertaking").

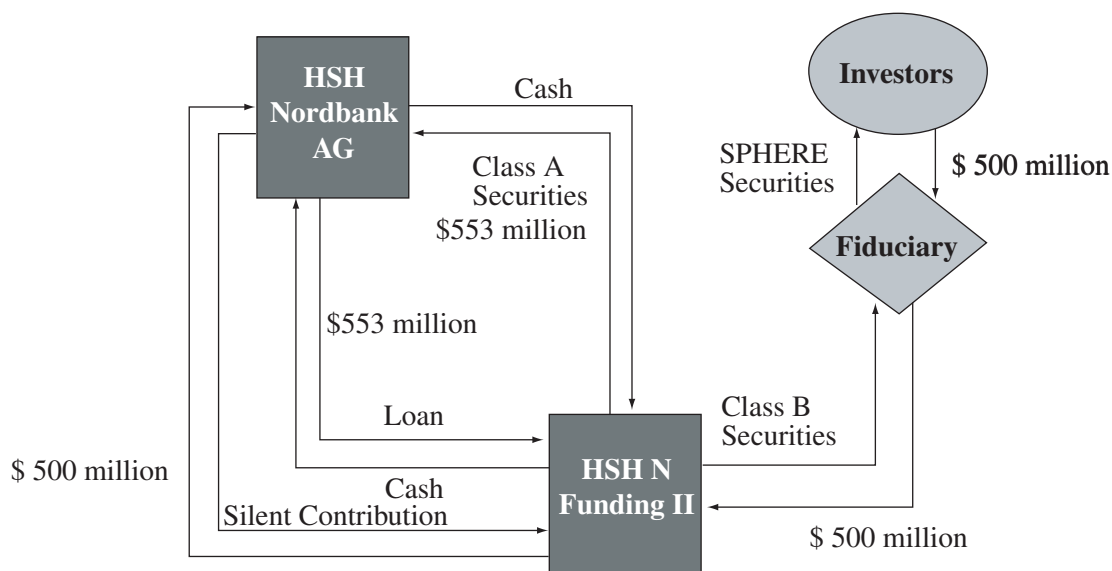
Payments of principal and interest under the SPHERE Securities are conditional upon receipt by the Fiduciary of Class B Dividends and the Class B Redemption Amount from the Company. Class B Dividends are dependent on (i) there being, for the relevant Class B Calculation Period, an excess of the amounts payable (whether or not paid) to the Company under the Loan over any operating expenses of the Company not paid or reimbursed by or on behalf of the Bank during such Class B Calculation Period (such excess the "**Company Operating Profits**") at least equal to the Class B Dividend to be paid, (ii) the Bank not recording an Annual Loss for the Relevant Bank Fiscal Year, or, if the Bank is recording an Annual Loss, but at the same time recording an Annual Balance Sheet Profit for the Relevant Fiscal Year and the Bank's solvency ratio on a consolidated and on an unconsolidated level being at least 9% and (iii) the Silent Contribution's book value corresponding to US\$ 500,000,000 (i.e. no Reduction having occurred and subsisting). The Class B Redemption Amount corresponds to the Repayment Amount under the Participation Agreement or, in case the Company exercises its right of termination of the Class B Securities on or after June 30, 2011, to US\$ 500,000,000. Hence, payments under the SPHERE Securities are dependent on the Bank's profitability and the Fiduciary's obligation to make interest payments ("**Coupon Payments**") and capital payments ("**Capital Payments**") under the SPHERE Securities are dependent on the financial condition and results of operations of the Bank. **If the Bank incurs an Annual Balance Sheet Loss in any fiscal year, Securityholders will receive no Coupon Payments and may not receive Capital Payments.**

The SPHERE Securities have an indefinite term and will only be redeemed if the Participation Agreement is terminated and the Silent Contribution is repaid to the Company or in case the Company chooses to exercise its right of early termination of the Class B Securities on or after June 30, 2011. The Participation Agreement runs for an indefinite period. Under its terms, the Participation Agreement may only be terminated by the Bank. The Participation Agreement may not be terminated by the Company. Subject to certain exceptions described in this Offering Circular, a termination of the Participation Agreement by the Bank may only become effective on or after December 31, 2015 and only if the Bank's solvency ratio (*Solvabilitätskoeffizient*) sustainably exceeds 9% on an unconsolidated and consolidated basis. In addition, the Participation Agreement provides for a termination notice of two years and stipulates that no termination shall become effective without prior regulatory approval. **Therefore, Securityholders should be aware that they may be required to bear the financial risks of an investment in the SPHERE Securities for an indefinite period of time.**

The Bank intends to treat the proceeds it receives as a Silent Contribution under the Participation Agreement as solo tier one capital for purposes of compliance with regulatory capital requirements and to treat the proceeds received from the Company from issuing the Class B Securities as consolidated tier one capital of the Bank for purposes of determining its compliance with regulatory capital requirements. For more information on the regulatory capital requirements applicable to the Bank and the HSH Nordbank Group, see “Regulation – Capital Adequacy Requirements”.

**The Fiduciary will hold the Class B Securities in its own name, on a fiduciary basis, but solely at the risk and for the account of the Securityholders. The Fiduciary will only be liable to make payments in respect of the SPHERE Securities when, as, if and to the extent that it actually receives amounts under the Class B Securities. The SPHERE Securities do not constitute direct debt obligations of the Fiduciary. Securityholders’ enforcement rights against the Fiduciary are limited.**

The following diagram outlines the relationship between the Bank, the Company, the Fiduciary and the Securityholders:





## Summary of the Offering

*The following overview describes the most important elements of the offering and the Transaction. It is necessarily incomplete and investors are urged to read carefully the entire summary and the full text of the Offering Circular for a more precise description of the offered SPHERE Securities and the information concerning (i) the Transaction, (ii) the Bank, the Company and the Fiduciary and (iii) the agreements among them. The following description is based on the situation on the Issue Date of the SPHERE Securities.*

<b>Securities Offered</b>	US\$ 500,000,000 SPHERE Securities; see (“—Summary of the Terms of the SPHERE Securities”).
<b>Issuer</b>	Banque de Luxembourg, a société anonyme incorporated in Luxembourg acting on a fiduciary basis under Luxembourg law and in particular the law dated July 27, 2003 relating to trust and fiduciary contracts. See “The Fiduciary and the Fiduciary Contract”.
<b>Company</b>	HSH N Funding II, an exempted company incorporated with limited liability in the Cayman Islands and a wholly-owned subsidiary of the Bank.
<b>Bank</b>	HSH Nordbank AG, Hamburg and Kiel, Germany, incorporated as a stock corporation ( <i>Aktiengesellschaft</i> ) in Germany.
<b>Fiduciary’s obligations</b>	The Fiduciary will act as a fiduciary for the Securityholders. It is only obliged to pass amounts on to Securityholders when, as, if and to the extent that those amounts are actually received by or on behalf of the Fiduciary. The SPHERE Securities do not constitute direct debt obligations of the Fiduciary.
<b>Class B Securities</b>	With the proceeds of the issue of the SPHERE Securities, the Fiduciary will acquire the Class B Securities issued by the Company; see “—Summary of the Terms of the Class B Securities”.
<b>Participation</b>	With the proceeds of the issue of the Class B Securities, the Company will acquire the Participation pursuant to the Participation Agreement; see “—Summary of the Terms of the Participation”.
<b>Support Undertaking</b>	The Bank has entered into an agreement with the Fiduciary in which it undertakes to the Fiduciary for the benefit of the Securityholders to ensure that the Company will at all times be in a position to meet its obligations under the Class B Terms and to procure that Class B Dividends are declared and paid as contemplated by the Company’s memorandum and articles of association. See “Terms & Conditions of the Support Undertaking”.
<b>Principal Paying Agent</b>	Deutsche Bank AG, Frankfurt, Germany.
<b>Netherlands Paying Agent</b>	Deutsche Bank AG, Amsterdam, The Netherlands.
<b>Rating</b>	The Bank expects that, upon issuance, the SPHERE Securities will be assigned a rating of A3 by Moody’s Investors Services Limited. A rating is not a recommendation to buy, sell or hold securities, and may be subject to revision, suspension or withdrawal at any time by Moody’s Investors Services Limited.
<b>Listing</b>	Application has been made to list the SPHERE Securities on Euronext Amsterdam.
<b>Increase of Issue</b>	The Company’s memorandum and articles of association provide that the Company can acquire further silent participations in the form of a German

law *Stille Gesellschaft* in the Bank on terms identical to the terms of the Participation Agreement and finance such silent participations with the issuance of additional Class B preference shares on terms identical to the terms of the Class B Securities to the Fiduciary. In such case, the Fiduciary will issue additional SPHERE Securities in an aggregate principal amount corresponding to the aggregate principal amount of such newly issued Class B preference shares.

**Security Codes**

ISIN: XS0221141400

Common Code: 022114140

Fonds Code: 15380

**The Offering**

The Securities will be publicly offered in The Netherlands and placed privately (excluding the United States) in accordance with applicable laws and regulations.

**Tax Consequences**

For a discussion of the material German, Cayman Islands and Luxembourg tax consequences of purchasing, owning and disposing of the SPHERE Securities, see “Taxation”.

## Summary of the Terms of the SPHERE Securities

*The following summary refers to certain terms and conditions of the SPHERE Securities. The summary does not purport to be complete and is subject to, and qualified in its entirety by reference to, the terms and conditions of the SPHERE Securities which may be found under “Terms and Conditions of the SPHERE Securities”. The following description is based on the situation on the Issue Date of the SPHERE Securities.*

<b>Issuer</b>	Banque de Luxembourg, a société anonyme incorporated in Luxembourg acting on a fiduciary basis under Luxembourg law and in particular the law of July 27, 2003 relating to trusts and fiduciary contracts.
<b>Nominal Amount</b>	US\$ 1,000 per SPHERE Security.
<b>Aggregate Nominal Amount</b>	US\$ 500,000,000
<b>Issue Price</b>	100 per cent. of nominal amount.
<b>Issue Date</b>	June 17, 2005
<b>Maturity</b>	The SPHERE Securities are perpetual securities and have no fixed maturity date. The Fiduciary may redeem the SPHERE Securities only upon the occurrence of certain events (see “—Redemption Date and Redemption Amount” and “—Termination and Redemption at the Option of the Company”).
<b>Form</b>	The SPHERE Securities will be initially represented by a temporary global security in bearer form without coupons (the “ <b>Temporary Global Note</b> ”) which will be exchangeable for a permanent global security in bearer form without coupons (“ <b>Permanent Global Note</b> ”) upon certification as to non-US beneficial ownership. Beneficial interests in the Permanent Global Note will be exchangeable for definitive SPHERE Securities under limited circumstances (as described in “Terms and Conditions of the SPHERE Securities”), each in bearer form.
<b>Nature of SPHERE Securities</b>	The SPHERE Securities evidence the Fiduciary Contract between the Fiduciary and the Securityholders. Under the Fiduciary Contract, the Fiduciary is obliged to hold the Class B Securities for the account and benefit and at the risk of Securityholders. It will pass to Securityholders payments actually received under the Class B Securities and the Support Undertaking, if any.
<b>Separation of Assets held by the Fiduciary</b>	Assets held by the Fiduciary in its fiduciary capacity and payments actually received by it under such assets are for the benefit of Securityholders. They are neither assets of nor payments for the benefit and at the risk of the Fiduciary. Such assets and payments are not subject to claims by other creditors of the Fiduciary. The Fiduciary may not employ such assets for any purpose other than for fulfilling its obligations under the SPHERE Securities. See “The Fiduciary and the Fiduciary Contract”.
<b>Coupon Payments</b>	Coupon Payments will be made at a rate of 7.25 per cent. <i>per annum</i> and are contingent on the Fiduciary’s receipt of Class B Dividends. As holder of the Class B Securities, the Fiduciary will be entitled to Class B Dividends and is obliged under the Fiduciary Contract to pay such Class B Dividends to Securityholders if and when received. See “—Summary of the Terms of the Class B Securities—Dividend Amounts” for a description of Class B Dividend Amounts payable by the Company.

<b>Coupon Payment Dates</b>	<p>Coupon Payments under the SPHERE Securities will be made on the dates Class B Dividends on the Class B Securities are paid to the Fiduciary. Under the Class B Terms, Class B Dividends will be paid on March 30, June 30, September 30 and December 30 of each year, commencing September 30, 2005 (see “—Summary of the Terms of the Class B Securities—Dividend Payment Dates”).</p>
<b>Redemption Date and Redemption Amount</b>	<p>The SPHERE Securities will be redeemed after the Class B Securities have been redeemed. The Class B Securities will be redeemed after the Participation Agreement has been terminated by the Bank at its option (subject to certain restrictions set out in the Participation Agreement, see “—Summary of the Terms of the Participation—Termination”) or in case the Company chooses to exercise its right of termination of the Class B Securities on or after June 30, 2011 in accordance with the Class B Terms. In the latter case such redemption may only occur upon 30 days’ notice to the Securityholders in accordance with the SPHERE Terms. In any such case, the aggregate Capital Payments will equal the Class B Redemption Amount (subject to receipt thereof by the Fiduciary). If the SPHERE Securities are redeemed on the date on which the Silent Contribution is repaid, the Class B Redemption Amount will equal the Repayment Amount required to be paid by the Bank under the Participation Agreement (see “—Summary of the Terms of the Participation—Repayment”). If the SPHERE Securities are redeemed on or after the Company has exercised its right of termination of the Class B Securities, the Class B Redemption Amount will be US\$ 500,000,000.</p>
<b>Termination and Redemption at the Option of the Company</b>	<p>The Fiduciary will redeem the SPHERE Securities when the Company redeems the Class B Securities. The Company may call the Class B Securities for redemption, in whole but not in part, with effect on any due date for Class B Dividends (however, other than for tax and regulatory reasons, such call for redemption shall not take effect earlier than June 30, 2011) and redeem the Class B Securities at their nominal amount plus any Class B Dividends accrued thereon. Under the Class B Terms, any such early termination shall not require a contemporaneous termination of the Participation Agreement and payment of the Repayment Amount thereunder and shall only be permissible if financing of the redemption of the Class B Securities at their nominal amount plus any interest accrued thereon has been secured through the issuance of similar securities or in any other way. In such case, the Class B Dividend payable will be calculated on the basis of the actual number of days elapsed since the last date on which a Class B Dividend was paid divided by 360 (the number of days to be calculated on the basis of a year consisting of 12 months of 30 days each).</p>
<b>Payment of Additional Amounts</b>	<p>If (i) the Company is required to withhold or deduct amounts payable under the Class B Securities on account of tax, or (ii) the Fiduciary is required to withhold or deduct amounts payable under the SPHERE Securities on account of tax, the Bank will, subject to certain exceptions set forth in the Class B Terms and in the SPHERE Terms, be under an obligation to gross up those amounts so that the Securityholders receive the full amounts payable if no such withholding or deduction were required.</p>
<b>Compliance with German Banking Regulations</b>	<p>Under applicable German banking regulations, any repayment of the Silent Contribution to the Company made in violation of the terms of the Participation Agreement must be repaid to the Bank.</p>

**Material Limitations of  
Fiduciary's Obligations**

The terms of the SPHERE Securities provide that the Fiduciary has no obligation to disclose to Securityholders any non-public information that may be in its possession and is of significance in connection with the SPHERE Securities or information on any other business transactions between the Fiduciary and the Company or the Bank.

The terms of the SPHERE Securities provide that the Fiduciary's liability is limited to wilful misconduct and gross negligence.

**Enforcement Rights**

**Securityholders' enforcement rights against the Fiduciary are limited. Direct action against the Fiduciary as issuer of the SPHERE Securities may only be brought if the Fiduciary defaults on payment to the Securityholders of amounts actually received under the Class B Securities or the Support Undertaking and due to Securityholders. Action in relation to payment defaults under the Class B Securities and the Support Undertaking may only be brought by the Fiduciary and not by Securityholders.**

Upon a default with respect to any amounts owed to the Fiduciary by the Company or the Bank, the Fiduciary may seek at any time at its discretion and without notice any remedy available to it under applicable law. Under the SPHERE terms, the Fiduciary will only be bound to seek any such remedy if (i) it shall have been so directed either by an extraordinary resolution of the Securityholders and (ii) it shall have been indemnified by the relevant Securityholders to its reasonable satisfaction. Meetings of the Securityholders are convened by the Fiduciary. The Fiduciary is required to convene a meeting after receiving a request in writing of Securityholders holding not less than one tenth of the aggregate principal amount of the SPHERE Securities.

The terms of the SPHERE Securities provide that action against the Fiduciary may only be brought in the district court of Luxembourg.

If the Fiduciary fails to take legal action against the Bank in respect of the Support Undertaking or against the Company in respect of the Class B Securities within a reasonable time, then the Securityholders may be entitled, subject to certain conditions, to institute legal action against the Company in respect of the Class B Securities or against the Bank in respect of the Support Undertaking (see "The Fiduciary and the Fiduciary Contract").

**Notices**

All notices to the Securityholders will be given by the Fiduciary (i) so long as any of the SPHERE Securities are listed on Euronext Amsterdam and Euronext Amsterdam so requires, by publication in the daily official list of Euronext Amsterdam (*Officiële Prijscourant*) and a leading newspaper having general circulation in Amsterdam (which is expected to be *Het Financieele Dagblad*), (ii) by mail, fax or electronically to Clearstream Luxembourg and Euroclear and (iii) to the Netherlands Paying Agent.

In accordance with its published rules and regulations, Clearstream Luxembourg and Euroclear will notify the Securityholders accounts to which any SPHERE Securities are credited of any such notices received by it.

**Issue of further SPHERE  
Securities**

The Company's memorandum and articles of association provide that the Company can acquire further silent participations in the form of a German law *Stille Gesellschaft* in the Bank on terms identical to the terms of the

Participation Agreement and finance such silent participations with the issuance of additional Class B preference shares on terms identical to the terms of the Class B Securities to the Fiduciary. In such case, the Fiduciary will issue additional SPHERE Securities in an aggregate principal amount corresponding to the aggregate principal amount of such newly issued Class B preference shares.

**Place of Jurisdiction**

Luxembourg–City.

**Governing law**

Luxembourg.



## Summary of the Terms of the Class B Securities

*The following summary refers to certain terms and conditions of the Class B Securities. The summary does not purport to be complete and is subject to, and qualified in its entirety by reference to, the terms and conditions of the Class B Securities which may be found under “Terms and Conditions of the Class B Securities”. The following description is based on the situation on the Issue Date.*

<b>Company</b>	HSH N Funding II, an exempted limited liability company registered in the Cayman Islands.
<b>Class B Securities and other securities issued by the Company</b>	The Class B Securities will be the class B preference share capital in the Company, consisting of 500,000 Class B Preference Shares of US\$ 1,000 par value each to be issued on or about the Issue Date. In addition to the Class B Securities the Company has an authorized ordinary share capital of 10 ordinary shares with a par value of US\$ 1,000 each (all of which are issued and are held, directly or indirectly, by the Bank) and the Company has an authorized class A preference share capital of 1,050,000 Class A Preference Shares of US\$ 1,000 par value each, 553,000 of which will be issued concurrently with the Class B Securities and subscribed for, directly or indirectly, by the Bank and the remainder of which are intended to be issued to the Bank in lieu of dividends under the Class A Securities.
<b>Nominal Amount</b>	US\$ 1,000 per Class B Security.
<b>Aggregate Nominal Amount</b>	US\$ 500,000,000
<b>Issue Price</b>	100% of the nominal amount.
<b>Form</b>	The Class B Securities will be issued in registered form, without interest coupons.
<b>Issue Date</b>	June 17, 2005.
<b>Maturity</b>	The Class B Securities are perpetual securities and have no fixed maturity date. They may nevertheless be redeemed upon the occurrence of certain events, subject to certain conditions (see “—Redemption Date and Redemption Amount”).
<b>Class B Calculation Periods</b>	Under the Class B Terms, Class B Dividends are payable in respect of Class B Calculation Periods. Class B Calculation Periods commence on March 30, June 30, September 30, and December 30 (each inclusive) and end on (exclusive) the day on which the next Class B Calculation Period commences. The first Class B Calculation Period will be from the Issue Date (inclusive) to September 30, 2005 (exclusive). The last Class B Calculation Period will end on the date of redemption of the Class B Securities (exclusive).
<b>Dividend Payment Dates</b>	<p>Class B Dividends for each Class B Calculation Period are payable on the day immediately following their last day (being March 30, June 30, September 30 and December 30 of each year, commencing September 30, 2005) or, if any of these is not a Business Day, the next Business Day.</p> <p>“<b>Business Day</b>” means a day (other than a Saturday or a Sunday) which is neither a legal holiday nor a day on which commercial banks are authorised or required by law, regulation or executive order to close in Kiel, Luxembourg or New York City.</p>
<b>Dividend Amounts</b>	Subject to having been declared in accordance with the Class B Terms, Class B Dividend Payments for each Class B Calculation Period shall be

in an amount of 7.25% *per annum* on the paid up value of the Class B Securities calculated on the basis of the actual number of days elapsed in the relevant Class B Calculation Period divided by 360 (the number of days to be calculated on the basis of a year consisting of 12 months of 30 days each). Class B Dividends are expected to be paid out of the Company Operating Profits.

Class B Dividends are authorized to be declared and paid in relation to any Class B Calculation Period, if:

- the Bank has
  - (i) an amount of unconsolidated net profit (*Jahresüberschuss*) for the Relevant Bank Fiscal Year at least equal to the aggregate amount of (x) Parity Security Distributions (as defined below) already paid for or in relation to the Relevant Bank Fiscal Year and (y) the relevant Class B Dividend to be paid or
  - (ii) in case the unconsolidated net profit (*Jahresüberschuss*) for the Relevant Bank Fiscal Year is not sufficient, an amount of Annual Balance Sheet Profit for the Relevant Bank Fiscal Year, at least equal to the aggregate amount of foregoing (x) and (y) and the Bank's solvency ratio is at least equal to 9% on a solo and on a consolidated basis; and
- the Silent Contribution's book value corresponds to US\$ 500,000,000 (i.e. no Reduction occurred and is subsisting); and
- the Company has an amount of Company Operating Profits for the relevant Class B Calculation Period at least equal to the amount of the relevant Class B Dividend.

If the amount by which the Annual Balance Sheet Profit exceeds the aggregate of Parity Security Distributions already paid for or in relation to the Relevant Bank Fiscal Year does not correspond to the full amount of the Class B Dividend that could accrue for the relevant Class B Calculation Period, such Class B Dividend will accrue partially in the amount of such excess.

**"Parity Security Distributions"** are distributions on Parity Securities. **"Parity Securities"** are all (i) securities and other instruments issued by the Bank and (ii) all securities or other instruments issued by a consolidated affiliate of the Bank and subject to any guarantee or support agreement of the Bank, where the Bank's obligation to make distributions (in the case of (i)) or, as the case may be, the Bank's obligation under such guarantee or support agreement (in the case of (ii)) ranks *pari passu* with the Bank's obligations under the Participation Agreement. The securities issued by (i) Banque de Luxembourg, Luxembourg, acting in a fiduciary capacity in February 2002 and trading on the Luxembourg Stock Exchange under ISIN XS0142391894, (ii) RESPARCS Funding Limited Partnership I, Hong Kong, in December 2002 and trading on the Luxembourg Stock Exchange under ISIN XS0159207850, and (iii) RESPARCS Funding II Limited Partnership, Jersey, in May 2003 and trading on the Frankfurt Stock Exchange and Euronext Amsterdam under ISIN DE0009842542 are Parity Securities.

In determining the aggregate Parity Security Distributions for a Relevant Bank Fiscal Year, any Parity Security Distributions (i) by the Bank which, under German GAAP, were deducted prior to the determination of the Annual Balance Sheet Profit for the Relevant Bank Fiscal Year and (ii) by the relevant consolidated affiliate of the Bank where such distributions are funded with payments from the Bank which, under German GAAP, were deducted prior to the determination of the Annual Balance Sheet Profit for the Relevant Bank Fiscal Year, shall not be taken into account.

**Capital Repayments**

The Company's memorandum and articles of association do not permit any capital repayments on the Class B Securities other than a return of capital on winding up of the Company or a repayment in accordance with the terms of the Class B Securities (see "—Redemption Date and Redemption Amount").

**Redemption Date and Redemption Amount**

The Class B Securities will become due for redemption in cash on the date on which the Silent Contribution becomes repayable to the Silent Partner in accordance with the Participation Agreement. On such date (the "**Class B Redemption Date**"), the Class B Securities will be redeemable by a payment in cash. The Silent Contribution becomes repayable following the termination of the Participation Agreement in accordance with its terms (see "—Summary of the Terms of the Participation—Termination", "—Summary of the Terms of the Participation—Termination Date" and "—Summary of the Terms of the Participation—Repayment Date").

In such case, the Class B Securities will be redeemed by the Company by paying the Repayment Amount under the Participation Agreement to the Fiduciary. In addition, the Company is entitled to terminate the Class B Securities on or after June 30, 2011 in accordance with the Class B Terms. If the SPHERE Securities are redeemed on or after the Company has exercised its right of termination of the Class B Securities, the Class B Redemption Amount will be US\$ 500,000,000. Either of such payments of cash will satisfy the Company's obligations in respect of redemption of the Class B Securities, even if the book value of the Silent Contribution, or the Repayment Amount, is less than the aggregate nominal amount of the Class B Securities.

**Ranking of Class B Securities**

Subject to Class B Dividends not being declared in accordance with the Class B Terms, no shareholder in the Company other than holders of the Class B Securities have a right to share in interest payments received under the Loan and certain other assets of the Company.

No shareholder in the Company other than holders of the Class A Securities have a right to share in (a) the Aggregate Accrued Profit Participation (as defined in "—Summary of the Terms of the Participation—Payment Dates for Accrued Profit Participations") nor (b) any amount of principal under the Loan and certain other assets of the Company.

Where the claims of creditors exceed the assets of the Company, excluding those assets identified as being exclusively for the benefit of the holders of the Class A Securities or exclusively for the benefit of the holders of the Class B Securities, those creditors' claims will first be met with the proceeds of the assets identified as being exclusively for the benefit of the holders of the Class B Securities and thereafter with the proceeds of the assets identified as being exclusively for the benefit of the holders of the Class A Securities.

<b>Payment of Additional Amounts</b>	If the Company is required to withhold or deduct amounts payable under the Class B Securities on account of tax, the Bank will be under an obligation to gross up those amounts so that the Fiduciary receives the full amount payable if no such withholding or deduction were required.
<b>Voting Rights</b>	Holders of the Class B Securities may not attend and vote at meetings of the shareholders of the Company. However, resolutions amending the rights attached to the Class B Securities require the consent of the holders of the Class B Securities and the holders of the Class B Securities may vote on such resolutions.
<b>Enforcement Rights</b>	The Company's memorandum and articles of association constitute a contract between the shareholders and the Company. Therefore, in general, only shareholders and the Company can enforce the rights under the memorandum and articles of association. The Fiduciary will hold all Class B Securities. Therefore, in order to enforce rights attaching to the Class B Securities, the Fiduciary, as a shareholder, would need to bring an action against the Company for breach of contract or, alternatively, against the directors of the Company directly for breach of their fiduciary duties under Cayman Islands law. The action taken would depend on the right which the Fiduciary was seeking to enforce. Such action may be taken if, for example, the Class B Dividends were not declared and paid by the directors of the Company in breach of the provisions of the articles of association and their fiduciary duties. In general, there is no duty on the Fiduciary to bring an action in order to enforce rights attaching to the Class B Securities (see "—Summary of the Terms of the SPHERE Securities—Enforcement Rights").
<b>Transfer of the Class B Securities</b>	The Class B Securities are generally not transferable. They may however be transferred to a substitute fiduciary in the context of a resignation or substitution of the Fiduciary pursuant to the SPHERE terms. Under the terms of the SPHERE Securities, the Securityholders will be informed of the occurrence of a substitution of the Fiduciary.
<b>Issue of further Class B Securities</b>	The Company's memorandum and articles of association provide that the Company can acquire further silent participations in the form of a German law <i>Stille Gesellschaft</i> in the Bank on terms identical to the terms of the Participation Agreement and finance such silent participations with the issuance of additional Class B preference shares on terms identical to the terms of the Class B Securities to the Fiduciary.
<b>Place of Jurisdiction</b>	Cayman Islands.
<b>Governing law</b>	Cayman Islands.

## Summary of the Terms of the Participation

*The following summary refers to certain terms and conditions of the Participation Agreement. The summary does not purport to be complete and is subject to, and qualified in its entirety by reference to, the terms and conditions of the Participation which may be found under “Terms and Conditions of the Participation”. The following description is based on the situation on the Issue Date.*

<b>Bank</b>	HSN Nordbank AG
<b>Instrument</b>	Silent capital interest in the commercial enterprise ( <i>Handelsgewerbe</i> ) of the Bank under German law.
<b>Principal Amount</b>	The principal amount of the Silent Contribution is US\$ 500,000,000.
<b>Denominations</b>	The principal amount is not divided into denominations.
<b>Issue Price</b>	100 per cent.
<b>Form</b>	The Participation is not represented by a security. It is set out in the Participation Agreement, a contract between the Bank and the Company.
<b>Issue Date</b>	The Participation Agreement provides that the Silent Contribution must be paid to the Bank on June 17, 2005 (the “ <b>Start Date</b> ”).
<b>Maturity</b>	The Participation is a perpetual instrument and has no fixed maturity date. It may nevertheless be repaid upon the occurrence of certain events (see “—Repayment Date”).
<b>Profit Periods</b>	Profit Participations on the Silent Contribution accrue for profit periods (“ <b>Profit Periods</b> ”) which run from (and including) January 1 to (and including) December 31 of each year. The first Profit Period (“ <b>First Profit Period</b> ”) commences on (and includes) the Start Date. The last Profit Period runs from January 1 of the year in which the Silent Partner ceases to share in the Bank’s profits and losses and ends on the date on which such sharing ceases (the “ <b>Termination Date</b> ”) (both days inclusive).
<b>Profit Participation Accruals and Dates</b>	Except for the Profit Participation for the first Profit Period (the “ <b>First Profit Participation</b> ”) (see “—Profit Participation Accruals and Dates for the First Profit Period”) and subject to Profit Participations being excluded in whole or in part (see “—Profit Participations Excluded”), Profit Participations shall accrue in four equal amounts on (i) September 30 in the year following the end of the relevant Profit Period (ii) the following December 30, (iii) the following March 30, and (iv) the following June 30 (or, if any of these is not a Business Day, the next Business Day). Under the Participation Agreement, no Profit Participation accrues for the Profit Period in which the Termination Date occurs.
<b>Profit Participation Accruals and Dates for the First Profit Period</b>	Subject to Profit Participations being excluded in whole or in part (see “—Profit Participations Excluded”), the First Profit Participation shall amount to US\$ 19,534,722.22 and shall accrue in five instalments. The first instalment shall amount to US\$ 3,906,944.44 and shall accrue on the later of (i) June 30, 2006 or, if that is not a Business Day, the next Business Day or (ii) the Business Day following the date on which the Bank’s annual financial statements have been adopted for the fiscal year 2005. The second, third, fourth and fifth instalments of US\$ 3,906,944.44 each shall accrue on September 30, 2006, December 30, 2006, March 30, 2007 and June 30, 2007 (or, if any of these is not a Business Day, the next Business Day).

	<p>To the extent that the First Profit Participation shall be less than US\$ 19,534,722.22 as a result of Profit Participations being excluded for the First Profit Period, the aggregate First Profit Participation (and each instalment thereof) shall be reduced to an amount (and amounts) corresponding to such amount (and amounts) multiplied by the quotient of the actual First Profit Participation accrued divided by the maximum First Profit Participation that could have accrued.</p>
<b>Profit Participation Rate for Profit Periods other than the First Profit Period</b>	<p>Subject to Profit Participations being excluded in whole or in part (see “—Profit Participations Excluded”), Profit Participations for Profit Periods other than the First Profit Period shall accrue on the Silent Contribution at a rate of 7.25 per cent. <i>per annum</i>.</p>
<b>Payment Dates for Accrued Profit Participations</b>	<p>The aggregate amount of accrued Profit Participations (the “<b>Aggregate Accrued Profit Participation</b>”) shall be payable on June 30, 2036 and on each 30th anniversary of such date thereafter (each a “<b>Profit Participation Payment Date</b>”) (or, if any of these is not a Business Day, the immediately following Business Day) and no interest or other amounts shall accrue on Profit Participation Accruals from the time of their accrual until the relevant Profit Participation Payment Date.</p>
<b>Profit Participations Excluded</b>	<p>If the Bank records an Annual Loss in the fiscal year to which the relevant Profit Period relates, no Profit Participations will accrue for such Profit Period. As set forth in further detail in the Participation Agreement, no Profit Participations will accrue:</p> <ul style="list-style-type: none"> <li>(i) if (but only to such extent that) accrual and/or payment thereof would lead to or increase an Annual Loss for the fiscal year of the Bank corresponding to the relevant Profit Period; or</li> <li>(ii) if, as a result of losses in previous fiscal years, the principal amount of the Silent Contribution has been reduced and has not been fully written-up again by profits accruing in subsequent fiscal years (see “—Replenishment of Silent Contribution”);</li> <li>(iii) in the case of insolvency or regulatory intervention in respect of the Bank; or</li> <li>(iv) if the Termination Date falls within such Profit Period.</li> </ul>
<b>Annual Loss</b>	<p>An Annual Loss is present if the Bank’s annual unconsolidated balance sheet records no net profit (<i>Jahresüberschuss</i>) as calculated under the Participation Agreement in accordance with German GAAP.</p>
<b>Loss Participation and Reduction</b>	<p>If the Bank incurs an Annual Balance Sheet Loss in any fiscal year, the Silent Partner shares in the Bank’s losses. The Silent Partner shares in an Annual Balance Sheet Loss in the proportion which the book value of the Silent Contribution bears in relation to the aggregate book value of all loss-sharing components of the Bank’s regulatory liable capital (<i>Haftkapitalanteile</i>). As provided in further detail in the Participation Agreement, the Bank’s liable capital includes all participations in the form of <i>Stille Gesellschaft</i>, all profit participation rights in the form of <i>Genussscheine</i> in accordance with the German Banking Act (<i>Kreditwesengesetz</i>) and all shareholders’ equity. At December 31, 2004 the Bank’s total liable capital amounted to €9,721.9 million.</p> <p>Following an Annual Balance Sheet Loss, there will be a corresponding Reduction in the book value of the Silent Contribution and the book value</p>



**Replenishment of Silent Contribution**

will be reduced in the amount of the Silent Partner's share in such Annual Balance Sheet Loss. The Silent Partner's aggregate share in Annual Balance Sheet Losses cannot exceed the principal amount of the Silent Contribution.

Following a Reduction, the book value of the Silent Contribution will be increased in subsequent fiscal years of the Bank in which Annual Balance Sheet Profits are recorded in accordance with German GAAP. The book value of the Silent Contribution will be written-up *pari passu* with the writing-up of other silent participations but only after all profit participation rights in the form of *Genussscheine* in accordance with the German Banking Act have been fully written-up. A writing-up of shareholders' equity and allocation to reserves (*Einstellungen in Rücklagen*) may only occur after the Silent Contribution has been fully written-up again to its initial principal amount.

No such increase of the principal amount of the Silent Contribution may result in the book value of the Silent Contribution being more than the principal amount of the Silent Contribution on the Start Date.

**Principal Payments**

No payments of principal will be made by the Bank other than on repayment of the Silent Contribution (see "—Repayment Date"). At such time, the nominal amount of the Silent Contribution, taking into account Reductions, if any, will be repaid (see "—Repayment").

**Termination**

The Participation Agreement is concluded for an indefinite period and, consequently, does not provide for a fixed maturity. Therefore, the Silent Contribution will only be repaid to the Silent Partner after termination of the Participation Agreement. The Participation Agreement may only be terminated by the Bank in accordance with its terms and subject to the conditions stated therein. The Company can not terminate the Participation Agreement.

The Bank is not obliged to terminate the Participation Agreement on any particular day or days of the year. As provided with further detail in the Participation Agreement, the Bank may only terminate the Participation Agreement if:

- (i) tax or regulatory changes which are material and adverse to the Bank occur but in no event with effect prior to December 31, 2010; or
- (ii) with effect as of December 31, 2015 or any December 31 thereafter, but only if the Bank's solvency ratio (*Solvabilitätskoeffizient*) sustainably exceeds 9% on an unconsolidated and consolidated basis;

provided in each case that the book value of the Silent Contribution is equal to its initial Principal Amount.

The Bank may only terminate the Participation Agreement with two years' prior notice to the Silent Partner. Any notice of termination by the Bank only becomes effective upon the German Financial Supervisory Authority's (*Bundesanstalt für Finanzdienstleistungsaufsicht*, "**BaFin**") prior approval thereof.

**Termination Date**

The Termination Date is the date as of which the Silent Partner ceases to participate in the profits and losses of the Bank as Silent Partner, which

	<p>occurs upon the effective date set out in the relevant termination notice delivered in accordance with the terms of the Participation Agreement (including the notice period required under the Participation Agreement).</p> <p>If the Termination Date occurs on a date other than a December 31, a Profit Participation will accrue from (and including) January 1 in the year in which the Termination Date occurs to (and including) the Termination Date and for the period thereafter until (and including) the December 31 following the Termination Date, the Silent Partner will be entitled to an interest payment calculated at the rate at which Profit Participations accrue for the Profit Period in which the Termination Date falls.</p>
<b>Repayment Date</b>	<p>The “<b>Repayment Date</b>” is June 30 in the fiscal year of the Bank after the year in which the Termination Date occurs or, if this date is not a Business Day, on the next following Business Day. If the Bank’s annual financial statements for the fiscal year in which the Termination Date occurred are not yet adopted on June 29 of the following year, the Repayment Date will be the Business Day following such adoption.</p>
<b>Repayment</b>	<p>On the Repayment Date, the Bank will pay the Repayment Amount to the Silent Partner.</p>
<b>Ranking</b>	<p>As provided for in further detail in the Participation Agreement, the Bank’s payment obligations under the Participation Agreement:</p> <ul style="list-style-type: none"> <li>(i) are subordinated to the claims of all existing and future creditors of the Bank (including profit participation rights in the form of <i>Genussscheine</i> in accordance with the German Banking Act);</li> <li>(ii) rank at least <i>pari passu</i> with all claims for the repayment of capital contributions made with respect to existing and future silent participations in the Bank; and</li> <li>(iii) rank senior to all claims of shareholders of the Bank in connection with their shares in the Bank;</li> </ul> <p>in each case as already arisen or arising in the future.</p>
<b>Enforcement Rights</b>	<p>The Participation Agreement constitutes a contract between the Bank and the Company. Therefore, in general, only the Company can enforce rights under the Participation Agreement against the Bank. The Company has no duty to bring an action against the Bank in order to enforce its rights under the Participation Agreement.</p>
<b>Place of Performance and Place of Jurisdiction</b>	<p>Kiel, Germany.</p>
<b>Governing law</b>	<p>German.</p>
<b>Governing language</b>	<p>German.</p>

## Summary of the Terms of the Loan Agreement

*The following summary refers to certain terms and conditions of the Loan Agreement. The summary does not purport to be complete and is subject to, and qualified in its entirety by reference to, the terms and conditions of the Loan Agreement which may be found under “Terms and Conditions of the Loan Agreement”. The following description is based on the situation on the Issue Date.*

<b>Lender</b>	HSH N Funding II, an exempted company with limited liability incorporated in the Cayman Islands.
<b>Borrower</b>	HSH Nordbank AG.
<b>Principal Amount</b>	US\$ 553,000,000.
<b>Form</b>	The terms of the Loan are set out in the loan agreement which is in the form of a German law governed <i>Schuldschein</i> , (which is a certificate evidencing the Loan) (the “ <b>Loan Agreement</b> ”). The Loan Agreement is neither in registered nor bearer form.
<b>Funding Date</b>	June 17, 2005.
<b>Maturity</b>	<p>The Loan must be repaid on June 30, 2036 but, in certain circumstances, can be repaid earlier (see “—Repayment”).</p> <p>Principal repayments of the Loan and the proceeds thereof will not be made to holders of the Class B Securities and thus the Securityholders have no interest therein (see “—Summary of the Terms of the Class B Securities—Ranking of Class B Securities”).</p>
<b>Interest Payment Dates</b>	Interest shall be paid on March 30, June 30, September 30 and December 30 of each year, commencing on September 30, 2005 or, if any of these is not a Business Day, the next Business Day .
<b>Interest Amounts</b>	The rate of interest on the Loan is 6.56 % <i>per annum</i> . Interest is calculated on the basis of the Loan’s principal amount and the actual days elapsed divided by 360 (the number of days to be calculated on the basis of a year consisting of 12 months of 30 days each).
<b>Repayment</b>	<p>The Loan is repayable on its maturity date, which is June 30, 2036.</p> <p>Prior to June 30, 2036, the Loan is repayable at the lender’s option if (i) it becomes illegal for either the lender or the borrower to perform their respective obligations under the Loan Agreement, (ii) the borrower defaults on a payment, (iii) the borrower breaches a covenant or (iv) there occurred a misrepresentation by the borrower.</p> <p>Prior to June 30, 2036, the Loan is repayable at the option of the borrower if (a) the borrower is obliged to make a payment under the Loan Agreement on account of tax which in aggregate with other such tax payments is in excess of US\$ 100,000, (b) it becomes illegal for either the lender or the borrower to perform their respective obligations under the Loan Agreement, or (c) the outstanding share capital of the lender (calculated at par) falls to below US\$ 1,000,000,000.</p>
<b>Costs, Expenses and Indemnities</b>	The borrower will pay the lender initial costs and expenses incurred in connection with the preparation of the Loan Agreement and all costs associated with the preservation or enforcement of the lender’s rights under the Loan Agreement. In addition, the borrower will indemnify the lender for all losses and liabilities it may suffer as a result of a payment not being made on its due date. If the lender is required to pay to the Fiduciary

	the amount by which the Fiduciary is obliged to withhold or deduct on account of Luxembourg tax, the borrower will pay to the lender an amount equal to such gross-up amount.
<b>Payment of Additional Amounts</b>	The borrower will make additional payments in the event of the deduction or retention of tax or duties from the amounts payable under the Loan Agreement.
<b>Place of Jurisdiction</b>	Kiel, Germany.
<b>Governing law</b>	German.

## Summary of the Terms of the Support Undertaking

*The following summary refers to certain provisions of the Support Undertaking. The summary does not purport to be complete and is subject to, and qualified in its entirety by reference to, the provisions of the Support Undertaking which may be found under “Terms and Conditions of the Support Undertaking”. The following description is based on the situation on the Issue Date.*

<b>Parties</b>	<p>HSN Nordbank AG.</p> <p>Banque de Luxembourg, a <i>société anonyme</i> incorporated in Luxembourg acting on a fiduciary basis under Luxembourg law and in particular the law of July 27, 2003 relating to trust and fiduciary contracts.</p>
<b>Undertaking in relation to Dividend Payments on the Class B Securities</b>	The Bank has undertaken to the Fiduciary that it will procure that Class B Dividends are declared and paid and ensure that the Company will at all times be in a position to meet its dividend obligations under the Class B Securities, in each case as contemplated in the Company’s memorandum and articles of association.
<b>Undertaking in relation to adoption of the Bank’s Financial Statements</b>	The Bank has undertaken to the Fiduciary that it will make every reasonable effort to be in a position to adopt its annual financial statements for any given fiscal year by no later than June 25 of the following year.
<b>Undertaking in relation to Payment of Additional Amounts</b>	The Bank has undertaken to the Fiduciary that it will, if requested, pay to the Fiduciary gross-up amounts if the Fiduciary is required to withhold or deduct amounts payable by it under the SPHERE Securities on account of tax so that the Fiduciary can gross-up payments under the SPHERE Securities so that Securityholders receive, in accordance with the SPHERE Terms, the full amounts payable if no such withholding or deduction were required.
<b>Undertaking in relation to the Activities of the Company</b>	The Bank has undertaken to the Fiduciary that it will ensure that the Company (i) does not engage in any activity other than those incidental to the financing contemplated by the Participation Agreement, the Class B Securities and the SPHERE Securities and (ii) does not have liabilities (other than in relation to the Class A Securities and the Class B Securities) over an aggregate of US\$ 10,000.
<b>Undertaking in relation to Actions of the Bank</b>	The Bank has undertaken to the Fiduciary that it will not take any action which would adversely affect the rights of the holders of the Class B Securities.
<b>Ranking of Payment Obligations</b>	The Bank’s payment obligations under the Support Undertaking are subordinated in the same way as its payment obligations under the Participation Agreement are subordinated (see “—Summary of the Terms of the Participation—Ranking”).
<b>Beneficiaries and Enforcement of Rights</b>	The obligations of the Bank under the Support Undertaking are for the benefit of the Fiduciary and the Securityholders only. The Fiduciary and (if the Fiduciary refrains from taking legal action against the Bank in respect hereof within a reasonable time) the Securityholders may pursue a claim in respect of the Bank’s obligations under the Support Undertaking. For a description of the obligation on the Fiduciary to bring an action in order to enforce rights under the Support Undertaking see “—Summary of the Terms of the SPHERE Securities—Enforcement Rights”).
<b>Place of Jurisdiction</b>	Kiel, Germany.
<b>Governing Law</b>	German.

## SUMMARY FINANCIAL INFORMATION

The following tables set forth certain summary financial information for the Bank on a consolidated basis as of and for the years ended December 31, 2004 and 2003. The summary financial information set forth below has been derived from the Financial Statements included elsewhere in this Offering Circular. This summary financial information should be read in conjunction with the sections captioned "Presentation of Financial Information".

The Bank's consolidated financial statements at and for the years ended December 31, 2004 and 2003 have been prepared in accordance with German GAAP. The audit report for the consolidated financial statements of the Bank as of and for the years ended December 31, 2004 and 2003 included in this Offering Circular was issued by BDO Deutsche Warentreuhand Aktiengesellschaft Wirtschaftsprüfungsgesellschaft as stated therein. See "Presentation of Financial Information".

Because the Bank was created on June 2, 2003 by the merger of two state banks, 2003 is the first year for which audited financial statements for the Bank are available.

	As of and for the year ended December 31,	
	2004	2003
	(in thousands of €)	
<b>Consolidated Balance Sheet Data</b>		
Cash reserve.....	344,096	339,703
Loans and advances to banks .....	35,587,604	37,319,017
Loans and advances to customers .....	78,469,543	79,207,345
Bonds and other fixed income securities.....	42,894,126	48,063,035
Shares and other non-fixed-income securities.....	3,018,642	2,828,564
Equity investments in non-affiliated companies .....	555,878	505,279
Equity investments in affiliated companies.....	1,038,692	920,199
Total assets.....	164,089,799	171,659,813
Liabilities to banks .....	44,269,448	47,569,824
Liabilities to customers .....	46,453,826	47,965,504
Certificated liabilities.....	58,133,851	61,547,029
Equity capital.....	6,535,591	6,485,261
Total liabilities and equity .....	164,089,799	171,659,813
<b>Consolidated Profit and Loss Account Data</b>		
Net interest income .....	1,524,179	1,499,152
Net commission income .....	273,997	223,325
Net income from trading activities .....	112,835	83,219
Other net operating income .....	53,073	88,658
Personnel expenses .....	357,219	347,663
Other administrative expenses.....	426,059	384,545
Other operating expenses .....	61,148	39,270
Write-downs on value adjustments to loans and certain securities as well as allocations to loan loss provisions .....	17,091	468,109
Allocations to the fund for general banking risks.....	—	113,359
Profit on ordinary activities .....	1,460,007	621,672



	As of and for the year ended December 31,	
	2004	2003
	<i>(in thousands of €)</i>	
Operating Profits before risk provisions/evaluations .....	1,180,806	1,162,146
Risk provisions/evaluations .....	346,200	579,417
Net extraordinary expenses .....	206,258	–
Taxes on income and revenues .....	176,867	3,925
Other taxes not shown under other operating expenses .....	29,866	38,943
Profit transferred under partial profit transfer agreements .....	324,448	316,949
Net income.....	127,033 <sup>(1)</sup>	261,855

- (1) Despite the extraordinary repayment of €756.2 million claimed by EU Commission, the Bank generated a net income of €127 million. The repayment has been settled by way of cash payment and booked as an expense item in the 2004 financial statements in full. To offset this in part, reserves totalling €595.5 million were written back, resulting in EUR 45.6 million in expenses due to reversing deferred taxes on these reserves. On balance, these effects will weigh on the 2004 income statement as an extraordinary charge of EUR 206.3 million.

Under their agreements relating to the 2003 merger, the stockholders of the Bank had agreed on a maximum reimbursement relating to this case of €200 million. Any amounts in excess of this will be retransferred by the stockholders to the Bank on a pro-rated basis. This retransfer from the stakeholders, which is to take place in the form of a capital injection of €556 million on July 20, 2005.

	As of and for the year ended December 31,	
	2004	2003
	(in millions of €)	
<b>Consolidated Ratios</b>		
Cost-income ratio <sup>(1)</sup> .....	39.9	38.7
<b>Profitability Ratios</b>		
Net interest margin <sup>(2)</sup> .....	0.890	0.845
Return on average total assets <sup>(3)</sup> .....	0.074	0.148
Return on equity <sup>(4)</sup> .....	12.8	11.0
<b>Average Balances</b>		
Average total assets <sup>(5)</sup> .....	171,348	177,502
Average shareholders' equity <sup>(5)</sup> .....	500	500
<b>Capital Ratios</b>		
Average shareholders' equity to average total assets .....	0.292	0.282
Tier 1 ratio (%) <sup>(6)</sup> .....	7.0	6.6
Total capital (Tier 1 and Tier 2) ratio (%) <sup>(6)</sup> .....	10.0	10.6
Risk weighted assets .....	88,547	95,396
<b>Credit Quality Data</b>		
Non-performing credits as a percentage of total credit portfolio .....	0.351	0.161
Allowance for credit losses as a percentage of non-performing credits ..	62.9	195.7

Notes:

- (1) Calculated as the ratio between administrative expenses and operating income (net interest income, net commission income, net income from trading activities and the balance of other operating income expenses).
- (2) Calculated as net interest income as a percentage of average total assets.
- (3) Calculated as consolidated net income as a percentage of average total assets.
- (4) Calculated as (i) operating profit after risk provisions, *plus* allocations to (or *minus* writebacks from) optional reserves under the German Corporate Code, *divided by* (ii) average equity capital, *minus* profit, *plus* average optional reserves under the German Corporate Code.
- (5) Averages herein are based on monthly balances.
- (6) Calculated in accordance with the German KWG.

## SELECTED FINANCIAL INFORMATION

The following tables set forth certain selected financial information for the Bank on a consolidated basis as of and for the years ended December 31, 2004 and 2003. The selected financial information set forth below has been derived from the Financial Statements included elsewhere in this Offering Circular. This selected financial information should be read in conjunction with the section captioned “Presentation of Financial Information”.

The Bank’s consolidated financial statements at and for the years ended December 31, 2004 and 2003 have been prepared in accordance with German GAAP. The audit report for the consolidated financial statements of the Bank as of and for the year ended December 31, 2004 included in this Offering Circular was issued by BDO Deutsche Warentreuhand Aktiengesellschaft Wirtschaftsprüfungsgesellschaft as stated therein. See “Presentation of Financial Information”. Financial statements for banks prepared under German GAAP differ from those under other regimes in format and level of detail. The financial information included below is shortened and reformatted from what is presented in the financial statements incorporated in this Offering Circular by reference.

Because the Bank was created on June 2, 2003 by the merger of two state banks, 2003 is the first year for which audited financial statements for the Bank are available.

### Condensed Consolidated Balance Sheet of HSH Nordbank Group

	<b>As of December 31, 2004</b>	<b>As of December 31, 2003</b>
	<i>(in thousands of €)</i>	<i>(in thousands of €)</i>
<b>Assets</b>		
Cash reserve.....	344,096	339,703
Debt instruments issued by public institutions and bills of exchange eligible for refinancing with central banks .....	6,488	20,326
Loans and advances to banks .....	35,587,604	37,319,017
Loans and advances to customers .....	78,469,543	79,207,345
Bonds and other fixed-income securities .....	42,894,126	48,063,035
Shares and other non-fixed-income securities.....	3,018,642	2,828,564
Equity investments in non-affiliated companies .....	555,878	505,279
Equity investments in consolidated affiliated companies .....	56,483	–
Equity investments in non-consolidated affiliated companies .....	1,038,692	920,199
Trust assets.....	385,426	377,323
Intangible fixed assets .....	293,980	241,250
Tangible fixed assets .....	149,377	153,523
Other assets .....	608,318	1,087,636
Prepaid expenses .....	586,209	473,667
Deferred Taxes.....	94,937	122,946
<b>Total assets</b> .....	<u>164,089,799</u>	<u>171,659,813</u>

	As of December 31, 2004	As of December 31, 2003
	<i>(in thousands of €)</i>	<i>(in thousands of €)</i>
Liabilities to banks .....	44,269,448	47,569,824
Liabilities to customers.....	46,453,826	47,965,504
Certified liabilities .....	58,133,851	61,547,029
Trust liabilities .....	385,426	377,323
Other liabilities .....	2,940,099	1,732,285
Deferred income .....	407,283	398,289
Provisions .....	912,491	881,509
Special reserve item .....	–	–
Subordinated debt.....	2,549,719	2,841,224
Profit participation capital .....	1,496,565	1,496,565
Fund for general banking risks.....	5,500	365,000
Equity capital .....	6,535,591	6,485,261
<b>Total liabilities and equity .....</b>	<b>164,089,799</b>	<b>171,659,813</b>

**Condensed Consolidated Profit and Loss Account of HSH Nordbank Group**  
**Consolidated statement of income**

	As at December 31, 2004	As at December 31, 2003
	<i>(in millions of €)</i>	
Operating income .....	1,964.1	1,894.3
net interest income.....	1,524.2	1,499.1
net commission income.....	274.0	223.3
net trading income .....	112.8	83.2
net other operating income .....	53.1	88.7
Administrative expenses .....	(783.3)	(732.2)
personnel expenses .....	(357.2)	(347.7)
operating expenses.....	(426.1)	(384.5)
<b>Operating profit before risk provisions/ evaluation .....</b>	<b>1,180.8</b>	<b>1,162.1</b>
Risk provisions/evaluation.....	(346.2)	(579.4)
loan-loss provisions .....	(295.1)	(436.7)
Securities .....	(33.4)	(43.4)
equity holdings .....	(17.7)	4.5
reserves pursuant to §§ 340 f/g HGB .....	0.0	(104.3)
writeback of special reserve item .....	0.0	0.5
<b>Operating profit after risk provisions/ evaluation .....</b>	<b>834.6</b>	<b>582.7</b>
Extraordinary result .....	(206.3)	0.0
Repayment demanded by EU commission .....	(756.2)	0.0
Writeback of reserves .....	595.5	0.0
Writeback of deferred taxes on written-back reserves .....	(45.6)	0.0
Net income before taxes .....	628.3	582.7
Partial payouts on silent participations .....	(324.4)	(316.9)
Income taxes .....	(176.9)	(3.9)
<b>Net income .....</b>	<b>127.0<sup>(1)</sup></b>	<b>261.9</b>

- (1) Despite the extraordinary repayment of €756.2 million claimed by EU Commission, the Bank generated a net income of €127 million. The repayment has been settled by way of cash payment and booked as an expense item in the 2004 financial statements in full. To offset this in part, reserves totalling €595.5 million were written back, resulting in EUR 45.6 million in expenses due to reversing deferred taxes on these reserves. On balance, these effects will weigh on the 2004 income statement as an extraordinary charge of EUR 206.3 million.

Under their agreements relating to the 2003 merger, the stockholders of the Bank had agreed on a maximum reimbursement relating to this case of €200 million. Any amounts in excess of this will be retransferred by the stockholders to the Bank on a pro-rated basis. This retransfer from the stakeholders, which is to take place in the form of a capital injection of €556 million on July 20, 2005.

## Ratios

	As of and for the year ended December 31,	
	2004	2003
	<i>(in millions of €)</i>	
<b>Efficiency</b>		
Cost-income ratio <sup>(1)</sup> .....	39.9	38.7
<b>Profitability Ratios</b>		
Net interest margin <sup>(2)</sup> .....	0.890	0.845
Return on average total assets <sup>(3)</sup> .....	0.074	0.148
Return on equity <sup>(4)</sup> .....	12.8	11.0
<b>Average balances</b>		
Average total assets <sup>(5)</sup> .....	171,348	177,502
Average shareholders' equity <sup>(5)</sup> .....	500	500
<b>Capital Ratios</b>		
Average shareholders' equity to average total assets .....	0.292	0.282
Tier 1 ratio (%) <sup>(6)</sup> .....	7.0	6.6
Total capital (Tier 1 and Tier 2) ratio (%) <sup>(6)</sup> .....	10.0	10.6
Risk weighted assets .....	88,547	95,396
<b>Asset quality</b>		
Non-performing credits as a percentage of total credit portfolio .....	0.351	0.161
Non-performing credits as a percentage of total assets .....	0.423	0.190
Allowance for credit losses as a percentage of non-performing credits ..	62.9	195.7
Allowance for credit losses as a percentage of total credit portfolio .....	0.221	0.315
Non-performing credits as a percentage of stockholders' equity .....	138.7	65.4
<b>Liquidity</b>		
Total credit portfolio as a percentage of total funding .....	125.2	122.8
Deposits as a percentage of total funding .....	57.6	57.8

### Notes:-

- (1) Calculated as the ratio between administrative expenses and operating income (net interest income, net commission income, net income from trading activities and the balance of other operating income and expenses).
- (2) Calculated as net interest income as a percentage of average total assets.
- (3) Calculated as the ratio of consolidated net income to average total assets.
- (4) Calculated as (i) operating profit after risk provisions, *plus* allocations to (or *minus* writebacks from) optional reserves under the German Corporate Code, *divided by* (ii) average equity capital, *minus* profit, *plus* average optional reserves under the German Corporate Code.
- (5) Averages herein are based on monthly balances.
- (6) Calculated in accordance with the German KWG.

## INVESTMENT CONSIDERATIONS

*The following is a summary of certain aspects of the business of the HSH Nordbank Group and the SPHERE Securities of which prospective investors should be aware. This summary is not intended to be exhaustive and prospective investors should carefully consider the following information in conjunction with the other information contained in this Offering Circular.*

***AN INVESTMENT IN THE SPHERE SECURITIES IS ONLY SUITABLE FOR INVESTORS EXPERIENCED IN FINANCIAL MATTERS WHO ARE IN A POSITION TO FULLY ASSESS THE RISKS RELATING TO SUCH AN INVESTMENT AND WHO HAVE SUFFICIENT FINANCIAL MEANS TO SUFFER ANY POTENTIAL LOSS STEMMING THEREFROM.***

### **Risks associated with the Business of the HSH Nordbank Group**

***The Bank will lose the benefit of the guarantee and maintenance obligation of the German states that are its shareholders, which will force it to change its funding strategy and business model.***

After July 18, 2005, the Bank will lose the benefit of the maintenance obligation (*Anstaltslast*) of the city-state of Hamburg and the state of Schleswig-Holstein. For obligations incurred after this date, it will also lose the benefit of the guarantee (*Gewährträgerhaftung*) of its shareholders, including the city-state of Hamburg, Germany and the state of Schleswig-Holstein (the “State Guarantors”) and WestLB Beteiligungsholding GmbH (“WestLB”), whose liabilities have had the benefit of the guarantee of North-Rhine Westphalia. The Bank will continue to benefit from the guarantee for (i) obligations which have been entered into on or prior to July 18, 2001 and (ii) obligations incurred thereafter until July 18, 2005, but only if they mature on or before December 31, 2015.

The loss of this state support is expected to impair the Bank’s rating and consequently the conditions governing its refinancing operations. Consequently, the Bank’s cost of funds could increase significantly in the future, and the Bank may need to seek funds from a greater variety of sources than has been the case historically. In the highly competitive market in which the Bank competes, this could have a significant impact on its earnings and market position. In addition, the Bank is subject to ratings requirements under various derivatives transactions, structured finance transactions and deposit and liquidity facilities. Any downgrade might trigger termination rights under these various transactions or facilities or may result in the Bank being required to post collateral. Any ratings downgrade could limit the Bank’s ability to conduct these or other lines of business, which could adversely impact the Bank’s financial condition or results of operations and could impede the Bank’s efforts to meet certain targets.

In addition, the loss of the state guarantee and maintenance obligation have caused the Bank to adjust its business model to the changing situation with the aim of improving profitability and achieving competitive ratings. Among other things, the Bank has sought to expand its product and service offerings, its customer base and its geographical presence. This expansion activity may involve risks, including risks that are presently not known to the Bank.

***The Bank’s levels of profitability are tied to its access to low cost funds. The Bank’s costs of funds may prove to be more expensive in the future than was the case historically and more expensive than currently contemplated in the Bank’s plans.***

Due to the nature of the Bank’s business, it does not have access to a large base of customer deposits as an inexpensive source of funds. Its principal sources of funds instead include the interbank market; *Pfandbriefe* issued in the German market and internationally; long-term debt issues to retail and institutional markets under its medium-term note programs, both domestically and internationally; and borrowings in the form of *Schuldscheindarlehen*. *Pfandbriefe* are a type of cost-efficient mortgage-backed or other credit-backed instrument offered by German mortgage banks and certain other authorized credit institutions. See “Regulation”. *Schuldscheindarlehen* are a type of bank loan that is represented by certificates and are traded among banks, financial institutions and other investors.

Reliance on the interbank market may make the Bank's earnings more susceptible to fluctuations in interest rates than banks with larger deposit bases. In addition, the regulatory framework governing the issuance of *Pfandbriefe* is scheduled to change in July 2005, with the result that the right to issue *Pfandbriefe* will be extended to most commercial banks. The Bank cannot predict what impact this will have on the *Pfandbrief* market and on its ability to rely on *Pfandbriefe* as an efficient source of funds.

In addition, as a consequence of losing the state guarantees, the Bank's obligations in the form of notes or *Schuldscheindarlehen* might no longer qualify for certain investors as eligible investments. This will close an important part of the funding market for the Bank.

***If the Bank is unable to implement its strategy of reducing risk and increasing its return on equity, its credit ratings and its ability to improve the return on capital may be harmed, and its business plan may be undermined.***

As discussed elsewhere in this Offering Circular, a central element of the Bank's growth strategy is to reduce its risk exposure, including by evolving its business from that of an asset financier, in which it holds the entire risk of a credit through maturity, to that of an asset manager, in which it will actively trade loans on the secondary market in order to diversify and reduce its credit risk. Stated more concretely, the Bank is diversifying its risk by syndicating portions of the loans it extends and by securitizing loan assets held on its balance sheet. If the Bank is unable to continue to implement this goal, that could harm its credit rating, frustrate its efforts to improve its return on equity and ultimately reduce its access to capital needed to grow its business. If any of these things were to happen, the Bank's financial condition and results of operations could be materially and adversely affected.

The Bank has set a goal of increasing return on equity from a current 12.8% to more than 15% by year-end 2006. To achieve this goal, the Bank aims to increase its fee income, including through offering non-credit products, through seeking lead syndication and securitization roles and through investment-banking fees. If the Bank is unable to realize this additional fee income, it may miss its targets, which may increase its cost of funds and its ability to compete effectively. A number of factors could contribute to such a failure, including changes in the markets in which the Bank is active, global, regional and national economic conditions and increased competition for business and employees.

In addition, the Bank's shareholders have approved a resolution to improve the quality of its equity capital on a sustained basis. For this reason a total of €1,355 million in silent participations is to be converted into share capital and capital reserves by the end of 2007. The conversion will take place in two steps: first, silent participations amounting to €605 million are to be converted on July 1, 2005. The shareholders have consented to this conversion in the merger agreement between the predecessor banks. In the second step, silent participations amounting to €750 million are to be converted on December 31, 2007. The Bank currently has silent participations with a total value of €4.5 billion, of which the shareholders held a total of €2.4 billion on September 30, 2004. Silent participations constitute subordinated, interest-bearing capital and – like share capital and reserves – form part of regulatory Tier 1 capital.

***The Bank's risk management policies, procedures and methods may leave it exposed to unidentified or unanticipated risks, which could lead to material losses.***

The Bank has devoted significant resources to developing its risk management policies, procedures and assessment methods and intends to continue to do so in the future. Nonetheless, the Bank's risk management system does not involve any formal mechanism for risk assessment by external experts. The Bank's techniques and strategies may not be fully effective in mitigating its risk exposure in all economic market environments or against all types of risk, including risks that the Bank fails to identify or anticipate. Some of the Bank's qualitative tools and metrics for managing risk are based upon its use of observed historical market behavior. The Bank applies statistical and other tools to these observations to arrive at quantifications of its risk exposures. These tools and metrics may fail to predict future risk exposures. These risk exposures could, for example, arise from factors the Bank did not anticipate or correctly evaluate in its statistical models. In addition, the Bank's quantified modeling does not take all risks into account. Its more qualitative approach to managing those risks could prove insufficient, exposing it to material unanticipated losses. See "Risk Management" for a more detailed discussion of the policies, procedures and methods the Bank uses



to identify, monitor and manage its risks. If the Bank's risk management is inadequate, losses greater than anticipated could harm the Bank's revenues and profits as well as its reputation.

***Unforeseen events can interrupt the Bank's operations and cause substantial losses and additional costs.***

Unforeseen events like severe natural catastrophes, terrorist attacks or other states of emergency can lead to an abrupt interruption of the Bank's operations, which can cause substantial losses. Such losses can relate to property, financial assets, trading positions and to key employees. The Bank's planning for any such event relies in great part on the fact that it operates out of headquarters in two cities and thus maintains much parallel information between the two sites. Such unforeseen events can also lead to additional costs (such as relocation of employees affected) and increase the Bank's costs (such as insurance premiums). Such events may also make insurance coverage for certain risks unavailable and thus increase the Bank's risk.

***The Bank is exposed to credit risk of other parties.***

As a credit institution, the Bank is exposed to the creditworthiness of its customers and counterparties. At year-end 2004, 28.9% of the Bank's loans and advances to customers were secured by real estate and ships. If the value of the collateral securing the loan portfolio declines, the Bank will be exposed to higher credit risk and increased risk of non-recovery in the event that any of its loans fail to perform. At December 31, 2004, the Bank's balance of bad debt provisions was €1,757 billion, and its level of coverage was 50.9% of the total amount of bad and doubtful debts. The Bank cannot assume that its level of provisions will be adequate or that it will not have to make significant additional provisions for possible bad and doubtful debts in future periods.

***An interruption in or breach of the Bank's information systems may result in lost business and other losses.***

As with most other banks, the Bank relies heavily on communications and information systems to conduct its business. Any failure or interruption or breach in security of these systems could result in failures or interruptions in the Bank's customer relationship management, general ledger, deposit, servicing and/or loan organization systems. If, for example, the Bank's information systems failed, even for a short period of time, it would be unable to timely serve some customers' needs and could thus lose their business. Likewise, a temporary shut-down of the Bank's information systems, even though it has back-up recovery systems and contingency plans, could result in considerable costs that are required for information retrieval and verification. The Bank cannot provide assurances that such failures or interruptions will not occur or, if they do occur, that they will be adequately addressed. The occurrence of any failures or interruptions could have a material adverse effect on the Bank's financial condition and results of operations.

### **Risks Relating to the German Banking Industry**

***Intense competition, especially in the Bank's home market of Germany, where the Bank conducts the majority of its business, could materially adversely affect the Bank's revenues and profitability.***

Competition is intense in all of the Bank's primary business areas in Germany and other European countries and the United States. The Bank derived approximately 83% of its total net revenues in 2004 from Germany, a mature market where competitive pressures have been increasing quickly. If the Bank is unable to respond to the competitive environment in Germany or in the Bank's other major markets with attractive and profitable products and service offerings, it may lose market share in important areas of its business or incur losses on some or all of its activities. In addition, downturns of sustained sluggishness in the German economy could add to the competitive pressure, through, for example, increased price pressure and lower business volumes for the Bank and its competitors.

***The introduction of Basel II will change banks capital adequacy ratios.***

The introduction in 2007 of the general agreement of the Basel Committee for Bank Supervision for the International Convergence of Capital Measurement and Capital Standards of June 2004, or Basel II is likely to bring changes to banks' capital ratios, including the Bank's capital ratios. The direction and magnitude of the impact of Basel II will depend on the particular asset structures of each bank and its precise impact on

the Bank cannot be quantified with certainty at this time. The Bank expects to incur costs in complying with the new guidelines. The new guidelines may also require the Bank to operate its business in ways that may be less profitable than its present operations.

***Market declines and volatility can materially adversely affect the Bank's revenues and profits.***

Conditions in the financial markets in Germany, elsewhere in Europe, in the United States and elsewhere around the world materially affect the Bank's businesses. An overall market downturn can adversely affect the Bank's business and financial performance. Market downturns can occur not only as a result of purely economic factors, but also as a result of war, acts of terrorism, natural disasters or other similar events. Market declines can cause the Bank's revenues to decline, and, if the Bank is unable to reduce its expenses at the same pace, can cause the Bank's profitability to erode. Volatility can sometimes also adversely affect the Bank's business and results of operations.

In some of the Bank's businesses, protracted market movements, particularly asset price declines, can reduce the level of activity in the market or reduce market liquidity. These developments can lead to material losses if the Bank cannot close out deteriorating positions in a timely way. This may be especially the case for assets the Bank holds for which there are no liquid markets to begin with. Assets that are not traded on stock exchanges or other public trading markets may have values that the Bank calculates using models other than publicly-quoted prices. Monitoring the deterioration of prices of assets like these is difficult and could lead to losses the Bank did not anticipate.

***The Bank operates in a difficult economic environment.***

Approximately 66% of the Bank's loan business is originated in Germany. Operating conditions for banks in Germany remain difficult, as economic growth has been and is slow, unemployment is high and the number of insolvencies over the past several years has been high. Necessary structural changes in German law and regulation are only taking place slowly. As a result, the German economy is increasingly dependent on exports. The great importance of export markets for Germany means that a decline in growth in Europe, the United States or Asia may have greater adverse effects in Germany than in other western European countries. Any further deterioration of the economy in Germany could have a material and adverse effect on the Bank's financial condition and results of operations.

***It is uncertain whether and when the consolidation of the German banking industry will materialize and what the effects for HSH Nordbank will be.***

HSH Nordbank is one of several examples of bank consolidations in the German market over the past three years. Many market analysts expect that further consolidation of the German banking industry will take place in the future. The concept of consolidation has been explicitly endorsed by German government officials. The consolidation may involve private sector banks, public sector banks and co-operative banks and may also involve non-German banks. This consolidation could take various forms, ranging from full-fledged bank mergers and acquisitions to partnerships and joint ventures in discrete service areas. If this further bank consolidation does take place, it may result in the German banking market becoming even more competitive than it is today.

***Volatility in interest rates may negatively affect the Bank's net interest income and have other adverse consequences.***

As with any bank, changes in market interest rates could affect the interest rates HSH Nordbank charges on its interest-earning assets differently than the interest rates it pays on its interest-bearing liabilities. This difference could result in an increase in interest expense relative to interest income, which would reduce the Bank's net interest income, the largest source of its revenues. An increase in interest rates may reduce the demand for loans and the Bank's ability to originate loans. A decrease in the general level of interest rates may affect the Bank through, among other things, increased prepayments on its loan and mortgage portfolio and increased competition for deposits. Likewise, a decrease in interest rates may affect the Bank's ability to issue mortgage-backed securities, securitize parts of its balance sheet or otherwise issue debt securities. Interest rates are highly sensitive to many factors beyond the Bank's control, including monetary policies and domestic and international economic and political conditions.

## **Risks associated with an Investment in the SPHERE Securities**

### ***Securityholders will have voting rights in limited circumstances only.***

Securityholders will only have voting rights in a meeting of Securityholders convened by or on behalf of the Fiduciary. Under the terms of the SPHERE Securities, the Fiduciary will convene a meeting of Securityholders only in limited circumstances. There can be no assurance that the Fiduciary will convene meetings of the Securityholders.

Voting rights relating to the Class B Securities, if any, can only be exercised at general meetings of the Company. Holders of the Class B Securities (i.e. the Fiduciary) are entitled to receive notice of general meetings of the Company but, subject to certain exemptions, are not entitled to attend or vote at such general meetings. The Silent Partner has no voting rights with respect to the Participation. The Silent Partner may only request certain information from the Bank.

### ***The SPHERE Securities are not direct obligations of the Fiduciary***

The SPHERE Securities do not constitute direct debt obligations of the Fiduciary. In the event that the Company or the Bank fail in whole or in part to make a payment required to be made by them under the Class B Securities, the Support Undertaking, the Loan Agreement or the Participation Agreement, the Fiduciary will not be obliged to make good the shortfall from its own funds. The Fiduciary assumes no responsibility with regard to the financial condition of the Company or the Bank or the legality or enforceability of the Class B Securities, the Support Undertaking, the Loan Agreement or the Participation. The Fiduciary's rights under the Class B Securities and the Support Undertaking are fiduciary assets of the Fiduciary and are held solely at the risk and for the account and benefit of the Securityholders. Under the terms of the SPHERE Securities and the Fiduciary Contract, the Fiduciary has extremely limited disclosure obligations to the Securityholders and is liable vis-à-vis Securityholders only in very limited circumstances. If the Fiduciary breaches its obligations by failing to segregate the fiduciary assets on its books, Securityholders will lose their rights to a pro rata interest in the fiduciary assets and will become creditors of the Fiduciary.

### ***Distributions on the SPHERE Securities depend on the Bank's profits.***

The amounts payable as Class B Dividends under the Class B Securities to the Fiduciary for on-payment to Securityholders depend on the Company Operating Profits and future profits or losses of the Bank. Class B Dividends will, among others, not be declared if the Bank recorded an Annual Balance Sheet Loss (see "Summary—Introductory Summary of the Transaction").

The Bank cannot give any assurances as to future profits and the Bank's management is under no obligation to propose that sufficient funds are taken from reserves to ensure that no Annual Balance Sheet Loss occurs. The Bank's owners are under no obligation to approve an Annual Balance Sheet Profit (*Bilanzgewinn*) proposed by the Bank's management.

### ***Class B Dividends under the Class B Securities and Coupon Payments under the SPHERE Securities are not cumulative***

Class B Dividends and thus Coupon Payments under the SPHERE Securities are not cumulative. Class B Dividends and Coupon Payments in following periods will not increase to compensate any Class B Dividends or Coupon Payments shortfall of a previous period.

### ***The SPHERE Securities have no scheduled maturity.***

The SPHERE Securities have an indefinite term and will only be redeemed if the Class B Securities are redeemed by the Company. The Class B Securities will only be redeemed if the Participation Agreement is terminated and the Silent Contribution is repaid to the Company or if the Company chooses to exercise its right of early termination of the Class B Securities on or after June 30, 2011. The Participation Agreement runs for an indefinite period. Under its terms, the Participation Agreement may only be terminated by the Bank and may not be terminated by the Company. Subject to certain exceptions described in this Offering Circular, a termination by the Bank may only become effective on or after December 31, 2015 and if the

Bank's regulatory solvency ratio (*Solvabilitätskoeffizient*) sustainably exceeds 9% on a consolidated and unconsolidated basis and provided that the book value of the Silent Contribution is equal to its initial principal amount. Neither the Participation Agreement nor any other agreement relating to the transactions described herein contains any provisions whatsoever which are designed to induce the Bank (be it for tax reasons, accounting reasons, economic reasons or otherwise) to terminate the Participation Agreement at any time. In addition, the Participation Agreement provides for two years' notice prior to termination and stipulates that no termination shall become effective without prior regulatory approval. Therefore, Securityholders should be aware that they may be required to bear the financial risks of an investment in the SPHERE Securities for an indefinite period of time.

***Claims under the Participation Agreement and under the Support Undertaking are subordinated.***

The payment obligations of the Bank in respect of the Participation and under the Support Undertaking constitute obligations of the Bank that are subordinated to the full prior payment in cash or cash equivalents of all existing and future unsubordinated indebtedness of the Bank. Accordingly, rights under the Participation and the Support Undertaking will rank behind all creditors of the Bank in the event of the liquidation or dissolution of the Bank, and senior only to equityholders. In addition, the payment obligations of the Bank in respect of the Participation and under the Support Undertaking will rank *pari passu* amongst themselves, with all claims in respect of existing and future participations in the form of *Stille Gesellschaft* in the Bank and other Tier 1 Capital Instruments, and the payment of profit participations relating thereto. The Bank has agreed in the Participation Agreement not to accept any additional participations in the form *Stille Gesellschaft* in the Bank ranking senior (as to participation in the Bank's assets in liquidation or otherwise) to the Participation. Other than this, the Bank has not entered into any restrictive covenants in connection with the Participation Agreement regarding its ability to incur additional indebtedness ranking *pari passu* or prior to the Participation.

***The Transaction involves companies which are controlled by the Bank which could give rise to conflicts of interest.***

The Bank and its affiliates are involved in substantially all aspects of the Company and, to a certain extent, of the Fiduciary's role in the Transaction. All authorized ordinary shares of the Company have been issued to, and are registered in the name of, the Bank. One of the three directors of the Company is an officer of the Bank. Conflicts may arise between the discharge by such individuals of their duties as officers and employees of the Bank on the one hand, and as directors of the Company on the other hand. The Bank and its affiliates may have interests which are not identical to those of the Fiduciary. Consequently, conflicts of interest may arise with respect to transactions, including without limitation, the Fiduciary's administration of the SPHERE Securities.

It is the intention of the Bank, the Company and the Fiduciary that the terms of any agreements and transactions, including the Terms and Conditions of the Participation, the Terms and Conditions of the Class B Securities, the Terms and Conditions of the SPHERE Securities, the Support Undertaking and a fiscal and paying agency agreement (the ***Fiscal Agency Agreement***), by and among, *inter alia*, the Bank, the Company and the Fiduciary, be fair to all parties and consistent with market terms. However, there can be no assurance that such agreements or transactions will be on terms as favourable to the Company or the Fiduciary as those that could have been obtained from unaffiliated third parties.

***Securityholders have only limited recourse against the Fiduciary.***

The liability of the Fiduciary to the Securityholders is limited to the value of its claims under the Support Undertaking and the Class B Securities, i.e. to the amounts received by the Fiduciary under the Support Undertaking and the Class B Securities. Securityholders have no direct right of action against the Company or the Bank. Further, Securityholders have no direct right of action to compel the Company or the Bank (as the case may be) to comply with their respective obligations under the Class B Securities or the Support Undertaking even in the event of a failure of the Fiduciary to act. If, however, the Fiduciary has become obliged to take legal action against the Company or the Bank under or in respect of the Class B Securities or the Support Undertaking and has failed to take such action within a reasonable time, then the relevant Securityholders may, as a matter of Luxembourg law, be entitled to institute legal action (*action oblique*)

against the Company or the Bank in the Fiduciary's place. There can be no assurance, however, that such action under Luxembourg law would be recognized by courts in other jurisdictions, including, but not limited to the Cayman Islands and Germany.

In addition, the terms of the SPHERE Securities provide that actions against the Fiduciary may only be brought in the district court of Luxembourg.

Further, under Luxembourg law, the Fiduciary might be ordered to be replaced and/or the Fiduciary Contract be extinguished in case of serious grounds by Luxembourg court.

***There has been no prior market for the SPHERE Securities.***

The SPHERE Securities that are the subject of this offering are a new issue of securities. Prior to their issue, there has been no public market for the SPHERE Securities. Although application has been made to have the SPHERE Securities listed on Euronext Amsterdam, there can be no assurance that an active public market for the SPHERE Securities will develop. If such a market were to develop, neither the Managers nor any other person is obligated to maintain it. The liquidity and the market for the SPHERE Securities can be expected to vary with changes in the securities market and economic conditions, the financial condition and prospects of the Bank and the Company and other factors which generally influence the market prices of securities. Such fluctuations may significantly affect liquidity and market prices for the SPHERE Securities.

***Changes in the tax or supervisory environment and other changes could materially adversely affect the Bank or Securityholders.***

The Participation Agreement provides that in the event of material changes in relation to the tax or supervisory treatment of the contributions and their profit and loss sharing under such agreement, the parties shall enter into good faith negotiations with a view to amending such agreement. There can be no assurance that any such material changes will not occur in the future. Any such changes may materially adversely affect the Bank's or the Securityholders' tax and/or regulatory treatment in relation to the agreement.

***Agreements governed by German Law may be subject to General Termination Rights.***

The Participation Agreement, the Loan Agreement and the Support Undertaking are governed by German law. Under German law, the right to terminate continuous contracts (*Dauerschuldverhältnis*) in extraordinary circumstances (*Kündigungsrecht aus wichtigem Grund*) cannot be excluded. Even though the circumstances under which such a termination right exists are limited, there can be no assurance that a party to either of those agreements will not assert the existence of such a termination right in the future.

## FOREIGN EXCHANGE RATES

The following table sets forth, for the period from January 1, 2000 through May 31, 2005, the yearly low, high, average and period-end noon buying rates in the City of New York for cable transfers of euros as certified for customs purposes by the Federal Reserve Bank of New York:

Year	U.S. Dollars per €1.00			
	Low	High	Average	Period-End
2000 .....	0.8270	1.0335	0.9207 <sup>(1)</sup>	0.9388
2001 .....	0.8370	0.9535	0.8909 <sup>(1)</sup>	0.8901
2002 .....	0.8594	1.0485	0.9495 <sup>(1)</sup>	1.0485
2003 .....	1.0361	1.2597	1.1411 <sup>(1)</sup>	1.2597
2004 .....	1.1975	1.3538	1.2478 <sup>(1)</sup>	1.3538
January 2005 .....	1.2954	1.3476	1.3123 <sup>(2)</sup>	1.3049
February 2005 .....	1.2773	1.3230	1.3013 <sup>(2)</sup>	1.3274
March 2005 .....	1.2877	1.3465	1.3185 <sup>(2)</sup>	1.2969
April 2005 .....	1.2819	1.3093	1.2943 <sup>(2)</sup>	1.2919
May 2005 .....	1.2349	1.2936	1.2697	1.2349

Source: Federal Reserve Bank of New York

Notes:—

- (1) The average of the noon buying rates on the last business day of each month during the relevant period.
- (2) The average of the noon buying rates on any business day of each month during the relevant period.

The noon buying rate for the euro on June 13, 2005 was €1.00 = \$1.2035.

The above rates may differ from the actual rates used in the preparation of the Bank's consolidated financial statements and other financial information appearing in this Offering Circular. The inclusion of these exchange rates is not meant to suggest that the euro amounts actually represent such U.S. dollar amounts or that such amounts could have been converted into U.S. dollars at any particular rate, if at all.



## USE OF PROCEEDS

The net proceeds from the issue of the SPHERE Securities will amount to about US\$ 500,000,000 and will be used by the Fiduciary to acquire the Class B Securities from the Company. The Company will use the proceeds received from the sale of the Class B Securities to acquire a silent capital interest in the commercial enterprise (*Handelsgewerbe*) of the Bank in the form of a *Stille Gesellschaft* under German law pursuant to the Participation Agreement providing for an asset contribution by the Company to the Bank in the form of the Silent Contribution. In addition to the commissions payable to the Managers (see “Subscription and Sale”) the Bank expects the costs related to the offering of the SPHERE Securities to amount to US\$500,000.

## THE FIDUCIARY AND THE FIDUCIARY CONTRACT

The Fiduciary was incorporated as a *société en nom collectif*, registration number RC Luxembourg B 5 310 under the laws of Luxembourg on March 31, 1937 under the denomination “Banque Mathieu Frères”. The Fiduciary was converted to a *société anonyme* on April 4, 1953. On May 24, 1977, the Fiduciary changed its name to “Banque de Luxembourg”. The registered office of Banque de Luxembourg is at 14, boulevard Royal, L- 2449 Luxembourg.

Banque de Luxembourg is a bank licensed in Luxembourg, serving national and international customers and specialized in asset management, advisory services and private banking.

Each SPHERE Security is one of a series of the US\$ 500,000,000 SPHERE Securities issued on a fiduciary basis by Banque de Luxembourg as fiduciary.

The SPHERE Securities will evidence the existence of the Fiduciary Contract on the terms described below between the Securityholders and the Fiduciary dated June 17, 2005, pursuant to which the Fiduciary’s sole obligation will be to account to the Securityholders for payments made by the Company in relation to the Class B Securities as well as in relation to the Support Undertaking, as the case may be, when, as and if actually received by or for the account of the Fiduciary pursuant to either the Class B Securities or, as the case may be, the Support Undertaking.

With the proceeds from the issue of the SPHERE Securities, the Fiduciary will in its own name but at the sole risk of the Securityholders, acquire the Class B Securities in the amount of US\$ 500,000,000. See “Terms and Conditions of the Class B Securities”.

The Fiduciary will hold the Class B Securities on a fiduciary basis in its own name, but solely at the risk and for the account and benefit of the Securityholders.

The Fiduciary Contract is a “*contrat fiduciaire*” governed by the Law of July 27, 2003 on trust and fiduciary contracts (the “**Law**”). Each of the Securityholders by accepting SPHERE Securities has agreed to all the provisions of the Fiduciary Contract applicable to it. The SPHERE Terms form part of the Fiduciary Contract. They set out the rights of the Securityholders under the Fiduciary Contract and certain duties, rights, powers and discretions of the Fiduciary. The SPHERE Terms include summaries of, and are subject to, the detailed provisions of, and definitions in, the Fiscal Agency Agreement with the benefit of which the SPHERE Securities are issued.

As a fiduciary under a Luxembourg law-governed “*contrat fiduciaire*”, the Fiduciary does not and cannot represent the Securityholders. The Fiduciary is under no obligation to the Securityholders other than that of faithful performance of its undertakings, duties, rights and powers under the Fiduciary Contract and, in the event of a default under the Class B Securities or the Support Undertaking, shall be under no obligation to apply the proceeds resulting from exercise of any rights of setoff, banker’s lien or counterclaim arising out of other transactions between the Fiduciary and the Company or the Bank, as the case may be, in payment under the SPHERE Securities.

Pursuant to the Law, the fiduciary assets are segregated from all other assets of the Fiduciary (including from all other fiduciary assets it may hold under fiduciary contracts with third parties) and are not available to meet the claims of creditors of the Fiduciary other than creditors (including Securityholders in their capacity as such) whose rights derive from the fiduciary assets. In a liquidation of the Fiduciary, pursuant to the Law, the fiduciary assets may only be attached by persons whose rights exist as a result of the creation and existence of the fiduciary assets.

Neither the Fiduciary nor any of its affiliates will be precluded from making any contracts or entering into any business transactions in the ordinary course of their respective business with the Company or the Bank or any person directly or indirectly associated with the Company or the Bank or from owning in any capacity any SPHERE Securities, and neither the Fiduciary nor any of its affiliates will be accountable to the Securityholders for any profit resulting therefrom.

Consistent with the Law, Securityholders have no direct right of action against the Company or the Bank, as the case may be, to enforce their rights under the SPHERE Securities or right to compel the Company or the Bank, as the case may be, to comply with their respective obligations under the Class B Securities or the Support Undertaking even in the case of the Fiduciary's failure to act (subject as set out in Condition 7 of the SPHERE Terms) or the insolvency of the Fiduciary.

The Fiduciary will, as legal owner thereof, have the benefit of its rights under the Class B Securities and the Support Undertaking and will hold all payments actually received by it in respect of principal and interest or otherwise under the Class B Securities or, as the case may be, the Support Undertaking as fiduciary assets for the exclusive benefit of the Securityholders.

Pursuant to the Fiduciary Contract, the SPHERE Securities do not constitute direct debt obligations of the Fiduciary and the Securityholders shall be deemed to have acknowledged and agreed (by the acceptance of the SPHERE Securities) that the Fiduciary's payment obligation under the SPHERE Securities is conditional upon the due performance by the Bank of its obligations under the Support Undertaking and the Company's performance of its obligations under the Class B Securities. Thus, in the event that the Bank or the Company do not make each payment in full as required under the Class B Securities or, as the case may be, the Support Undertaking, the Fiduciary shall not be obligated to make up for any such shortfall from its funds or otherwise, and in no event shall the Fiduciary be liable to make any payment in respect of the SPHERE Securities other than as expressly provided in the SPHERE Terms.

No commission or other remuneration will be due from the Securityholders to the Fiduciary for the performance of services in respect of the SPHERE Securities. The Fiduciary makes no representation or warranty and assumes no liability for the legality, validity or enforceability of the Class B Securities or the Support Undertaking and the performance and observance by the Company of its obligations in respect of the Class B Securities or its recoverability of any sums due or to become due from the Company under the Class B Securities.

The terms and conditions of the SPHERE Securities and the Class B Securities are contained in "Terms and Conditions of the SPHERE Securities" and "Terms and Conditions of the Class B Securities", respectively.

## CAPITALIZATION, REGULATORY CAPITAL, DISTRIBUTABLE PROFITS AND DIVIDENDS

The following table sets forth the consolidated capitalization of the Bank at December 31, 2004, as derived from the Financial Statements as at December 31, 2004, set forth elsewhere in this Offering Circular. See “Presentation of Financial Information”.

Except as disclosed herein, there has been no material change in the total capitalization since December 31, 2004.

	<b>At December 31, 2004</b>
	<i>(in thousands of €)</i>
<b>Current liabilities</b>	
Certificated liabilities (maturity less than 1 year) .....	12,466,091
Current liabilities (maturity less than 1 year) .....	51,049,613
<b>Total current liabilities</b> .....	<u>63,515,704</u>
<b>Long-term liabilities</b>	
Fund for general banking risk .....	5,500
Profit participation capital .....	1,496,565
Subordinated debt .....	2,549,718
Certificated liabilities (maturity greater than 1 year) .....	45,667,760
Long term liabilities (maturity greater than 1 year) .....	39,673,661
<b>Total long-term liabilities</b> .....	<u>89,393,204</u>
<b>Deferred income</b> .....	<u>407,283</u>
<b>Equity</b>	
Capital Stock .....	450,000
Non-voting preferred share capital .....	50,000
Silent partnership capital .....	4,540,435
Capital Reserves.....	1,164,289
Retained earnings.....	199,475
Differences arising from capital consolidation .....	3,442
Net profit .....	122,174
Minority Interests.....	5,775
<b>Equity capital according to German GAAP</b> .....	<u>6,535,590</u>
<b>Total capitalization<sup>(1)</sup></b> .....	<u><u>159,851,781</u></u>

Notes:—

(1) Total capitalization equals the sum of total current liabilities, total long-term liabilities, deferred income and equity.

## Regulatory capital

The following table shows the composition of the Bank's and HSH Nordbank Group's regulatory capital in accordance with the provisions of the German Banking Act on an unconsolidated and consolidated basis as at the dates specified.

	At December 31,	
	2004	2003
<b>Bank only</b>		
	<i>(in thousands of €)</i>	
Subscribed capital .....	4,990,435	5,007,716
Capital reserves .....	1,329,290	1,164,290
Fund for general banking risks .....	5,500	251,641
Intangible fixed assets .....	-69,343	-10,199
<b>Tier I capital</b> .....	<b>6,255,882</b>	<b>6,413,448</b>
Tier II capital .....	3,507,042	4,310,712
Equity investments in non-affiliated companies in accordance with § 10 (6) sentence 1 No. 1 and No. 4 of the German Banking Act .....	-41,050	-44,966
<b>Regulatory capital</b> .....	<b>9,721,874</b>	<b>10,679,194</b>

	At December 31,	
	2004	2003
<b>HSH Nordbank Group</b>		
	<i>(in millions of €)</i>	
Subscribed capital .....	4,990.4	5,007.7
Capital reserves .....	1,329.3	1,164.3
Difference arising from capital consolidation .....	-10.4	-54.1
Fund for general banking risks .....	5.7	251.6
Intangible fixed assets .....	-109.4	-53.8
<b>Tier I capital</b> .....	<b>6,205.6</b>	<b>6,315.7</b>
Tier II capital .....	3,575.1	4,406.4
Equity investments in non-affiliated companies in accordance with § 10 (6) sentence 1 No. 1 and No. 4 of the German Banking Act .....	-44.9	-44.9
<b>Regulatory capital</b> .....	<b>9,735.8</b>	<b>10,677.2</b>

## Annual Surplus, Annual Balance Sheet Profit and Dividends of the Bank

Coupon Payments on the SPHERE Securities depend, among other things, on the Annual Surplus (*Jahresüberschuss*) (as defined below) and the Annual Balance Sheet Profit (*Bilanzgewinn*) of the Bank for the preceding fiscal year. An “**Annual Surplus**” (*Jahresüberschuss*) is present if the Bank's annual unconsolidated balance sheet records an annual surplus (*Jahresüberschuss*) as calculated in accordance with German GAAP. An Annual Balance Sheet Profit (*Bilanzgewinn*) is present if the Bank's annual unconsolidated balance sheet records a balance sheet profit (*Bilanzgewinn*) as calculated in accordance with German GAAP. Under German GAAP, the Annual Balance Sheet Profit is derived from the annual surplus (*Jahresüberschuss*) adjusted for profits/losses carried over from previous fiscal years as well as transfers from and allocations to capital and earnings reserves (*Kapital und Gewinnrücklagen*).

The following table sets out, for the years ended December 31, 2003 and 2004, the Annual Surplus (*Jahresüberschuss*) and Annual Balance Sheet Profits of the Bank:

<b>Bank only</b>	<b>2004</b>	<b>2003</b>
	<i>(in thousands of €)</i>	
Annual Surplus ( <i>Jahresüberschuss</i> ) .....	80,000	230,000
Annual Balance Sheet Profits .....	80,000	230,000

<b>HSH Nordbank Group</b>	<b>2004</b>	<b>2003</b>
	<i>(in thousands of €)</i>	
Annual Surplus ( <i>Jahresüberschuss</i> ) .....	127,033 <sup>(1)</sup>	261,855
Annual Balance Sheet Profits .....	122,174	259,383

(1) Despite the extraordinary repayment of €756.2 million claimed by EU Commission, the Bank generated a net income of €127 million. The repayment has been settled by way of cash payment and booked as an expense item in the 2004 financial statements in full. To offset this in part, reserves totalling €595.5 million were written back, resulting in EUR 45.6 million in expenses due to reversing deferred taxes on these reserves. On balance, these effects will weigh on the 2004 income statement as an extraordinary charge of EUR 206.3 million.

Under their agreements relating to the 2003 merger, the stockholders of the Bank had agreed on a maximum reimbursement relating to this case of €200 million. Any amounts in excess of this will be retransferred by the stockholders to the Bank on a pro-rated basis. This retransfer from the stakeholders, which is to take place in the form of a capital injection of €556 million on July 20, 2005.

The following table shows the Bank's dividends in respect of each of the five years in the period ended December 31, 1999 through 2004.

	<b>1999<sup>(1)</sup></b>	<b>2000<sup>(1)</sup></b>	<b>2001<sup>(1)</sup></b>	<b>2002<sup>(1)</sup></b>	<b>2003</b>	<b>2004</b>
	<i>(in millions of €)</i>					
Dividends (ordinary shares)	46.09	47.39	49.39	56.39	56.25	69.75

(1) Aggregated dividends of the predecessor banks of the Bank.



## TERMS AND CONDITIONS OF THE SPHERE SECURITIES

### § 1

#### GENERAL

- (1) The US\$ 500,000,000 HSH Nordbank Silent Participation Hybrid Equity Regulatory (SPHERE) Securities (the **SPHERE Securities**) of US\$ 1,000 each (the **Nominal Amount**) are issued on or about June 17, 2005 (the **Issue Date**) by Banque de Luxembourg (the **Issuer**) on a fiduciary basis in its own name but on behalf and for the sole risk and exclusive benefit of the holders of the SPHERE Securities (the **Securityholders**). The SPHERE Securities are issued with the benefit of a fiscal and paying agency agreement (the **Fiscal Agency Agreement**) dated on or about the Issue Date among the Issuer, HSH N Funding II (the **Company**), Deutsche Bank AG, Frankfurt am Main as principal paying agent (the **Principal Paying Agent**, which definition shall include any successor), Deutsche Bank AG, Amsterdam as paying agent in the Netherlands (the **Netherlands Paying Agent**, which definition shall include any successor, and the Dutch Paying Agent together with the Principal Paying Agent, the **Paying Agents**) and HSH Nordbank AG, Hamburg and Kiel (the **Bank**).
- (2) The SPHERE Securities together evidence the existence of a fiduciary agreement (the **Fiduciary Agreement**) between the Securityholders and the Issuer, the terms of which are set forth below and which is governed by Luxembourg Law and in particular the law of July 27, 2003 relating to trusts and fiduciary contracts.
- (3) The Issuer will apply the proceeds from the issue of the SPHERE Securities to acquire 500,000 Class B Preference Shares (the **Class B Securities**) issued by the Company. The terms and conditions of the Class B Securities (the **Class B Terms**) are contained in the Company's memorandum and articles of association.
- (4) The Company will acquire a silent capital interest in the aggregate amount of US\$ 500,000,000 in the commercial enterprise (*Handelsgewerbe*) of the Bank in the form of a *Stille Gesellschaft* (the **Participation**) pursuant to an agreement (the **Participation Agreement**) providing for an asset contribution to the Bank in the amount of US\$ 500,000,000 (the **Silent Contribution**) and dated June 13, 2005.
- (5) Each SPHERE Security represents a proportionate economic and beneficial interest in the Class B Securities and a proportionate economic and beneficial interest in the Participation. The SPHERE Securities rank *pari passu* without any preference among themselves.
- (6) The Participation Agreement provides that the payment obligations of the Bank under the Participation Agreement constitute obligations of the Bank which:
  - (a) are subordinated to the claims of all existing and future creditors of the Bank (including profit participation rights in the form of *Genussrechte* or *Genussscheine* and other upper tier 2 capital instruments, if any, and any other subordinated debt in accordance with Section 10 para. 5 and para. 5a of the German Banking Act);
  - (b) rank at least *pari passu* (by percentage of the amount payable) with all claims for the repayment of capital contributions made with respect to existing and future silent participations in the Bank in the form of *Stille Gesellschaft* and other tier 1 capital instruments ranking *pari passu* with profit participations in the form of *Stille Gesellschaft*; and
  - (c) rank senior to all claims of shareholders of the Bank in connection with their shares in the Bank;in each case as already arisen or arising in the future.
- (7) The Bank has entered into an agreement (the **Support Undertaking**) with the Issuer for the benefit of the holders of the SPHERE Securities under which, *inter alia*, the Bank has undertaken to (i) ensure that the Company will at all times be in a position to meet its dividend obligations arising under the

Class B Securities, and (ii) pay, if requested, to the Issuer gross-up amounts if the Issuer is required to withhold or deduct amounts payable by it under these terms and conditions, as may be amended from time to time pursuant to § 14 (the **Conditions**) on account of tax so that the Issuer can gross-up payments so that Securityholders receive, in accordance with these Conditions, the full amounts payable if no such withholding or deduction were required.

- (8) The Company has extended a loan to the Bank which is documented in the form of a German law governed *Schuldschein* (the **Loan Agreement**). The Company's memorandum and articles of association, the Participation Agreement, the Loan Agreement and the Support Undertaking are together the **Transaction Documents**.
- (9) The rights of the Issuer under the Class B Securities are fiduciary assets of the Issuer and shall be held solely at the risk and for the exclusive benefit and for the account of the Securityholders.
- (10) The Issuer shall keep the Class B Securities, the Support Undertaking, and its respective rights arising thereunder separate from its own assets and reflect this separation in its books.
- (11) Each SPHERE Security will be subject to these Conditions.
- (12) References in these Conditions to payments to or on behalf of the Issuer or by and on behalf of the Issuer shall be interpreted as being in the manner contemplated in the Fiscal Agency Agreement.

## § 2

### ISSUER

- (1) The sole purpose for issuing the SPHERE Securities is to provide funds for the Issuer to acquire the Class B Securities from the Company.
- (2) The SPHERE Securities do not constitute direct debt obligations of the Issuer but evidence together the existence of the Fiduciary Agreement between the Issuer and the Securityholders pursuant to which the Issuer's payment obligations are conditional upon receipt by or on behalf of the Issuer of payment:
  - (a) from or on behalf of the Company of the amounts required to be paid under the Class B Securities (which, in turn, are subject to the Bank's due performance of its obligations under the Loan Agreement and Participation Agreement); and
  - (b) from the Bank of the amounts required to be paid under the Support Undertaking.
- (3) The Issuer will not be obliged to make up any payment shortfall by the Bank or the Company or make any payment in respect of the SPHERE Securities, other than as expressly provided herein and in particular, the Issuer will not make any payment in respect of the SPHERE Securities unless payment has been actually received by or on behalf of the Issuer as contemplated herein. The Issuer shall not have any obligations to Securityholders other than those expressly assumed by it pursuant to the Fiduciary Agreement.
- (4) The Issuer makes no representation and assumes no responsibility or liability with regard to the financial condition of the Bank or the Company or the ability of either to fulfil their respective obligations under, and shall have no responsibility for the legality, validity or, with respect to any party other than itself, enforceability of, any of the Transaction Documents or the Class B Securities.
- (5) By purchasing the SPHERE Securities, the Securityholders are deemed to have acknowledged and agreed to these Conditions and the Fiduciary Agreement.
- (6) Without prejudice to the right of the Issuer to be indemnified out of the fiduciary assets, no commission or other remuneration will be due from the Securityholders to the Issuer for the performance of its services or exercise of its rights under any of the Transaction Documents.

- (7) Pursuant to an agreement between the Issuer and the Bank, the Issuer will receive reimbursement of costs, indemnification and a remuneration by the Bank and will have no obligation to render an account to the Securityholders in respect thereof.
- (8) The Issuer and its affiliated enterprises may conduct business with the Company and the Bank and their respective affiliated enterprises without limitation and without obligation to account to the Securityholders, including, without limitation, the acceptance of deposits or the granting of loans or any other form of credit, without regard to the fiduciary relationship to the Securityholders.
- (9) The Issuer may conduct business with any Securityholder without regard to the fact that the Issuer is acting in a fiduciary capacity for the Securityholders in respect of the Class B Securities.
- (10) The Issuer and its affiliated enterprises may be in possession of information about the Company or the Bank or their respective affiliated enterprises which is of significance in connection with the SPHERE Securities but which is not known to the public or the Securityholders at the time when the Participation Agreement is entered into and the Class B Securities and the SPHERE Securities are issued or at a later point in time. Neither the execution of the Participation Agreement nor the issuance of the Class B Securities or the SPHERE Securities nor any other legal transactions conducted between the Issuer, the Company, the Bank and the Securityholders or any of them in connection therewith shall obligate the Issuer or any of its affiliated enterprises to disclose information regarding any other business transaction with the Company or the Bank to the Securityholders or to provide the Securityholders with information about the Company or the Bank or their respective affiliated enterprises (irrespective of whether such business transaction or information is confidential). Neither the Issuer nor any of its affiliated enterprises shall be subject to any liability to the Securityholders due to the fact that they will not disclose or make available any such business transaction or information save for any mandatory disclosure obligation under applicable law.
- (11) The liability of the Issuer in respect of the SPHERE Securities and its role thereunder shall be limited to its wilful misconduct (*dol*) or gross negligence (*faute grave*). Furthermore the Issuer shall not be liable for indirect damage or consequential damage of any kind whatsoever (including lost profits), regardless of whether such indirect damage or consequential damage was foreseeable. This limitation of liability applies to all claims, regardless of their nature or legal basis.

### § 3

#### FORM OF THE SPHERE SECURITIES; TRANSFERABILITY

- (1) SPHERE Securities are initially represented by a temporary global security in bearer form without coupons (***Temporary Global Note***) which will be exchangeable for a permanent global security in bearer form without coupons (***Permanent Global Note***, the Temporary Global Note together with the Permanent Global Note, the ***Global Notes*** and each a ***Global Note***) not earlier than 40 days and not later than 180 days after the Issue Date upon certification as to non-US beneficial ownership of the SPHERE Securities the contents and form of which shall correspond to the applicable requirements of the laws of the United States of America and the then prevailing standard practices of the Clearing System. The Global Notes shall only be valid if they bear the handwritten signature of one duly authorised representative of the Issuer and, by way of verification, the signature of a person instructed by the Principal Paying Agent. The Global Notes shall be deposited with Deutsche Bank AG, Frankfurt am Main, as common depositary for Euroclear Bank S.A./N.V., as operator of the Euroclear System (***Euroclear***), and Clearstream Banking, société anonyme (***Clearstream Luxembourg*** and, together with Euroclear, the ***Clearing System*** (which expression shall be deemed to include a reference to any additional or alternative clearing system approved by the Issuer and the Bank, each an ***Alternative Clearing System***)).
- (2) As long as the SPHERE Securities are represented by the Global Notes, beneficial interests in the Global Notes will be shown on, and transfers thereof will be effected in accordance with the rules of the Clearing System.

- (3) Beneficial interests in the Permanent Global Note will be exchangeable for definitive SPHERE Securities without interest coupons, issued in amounts of US\$ 1,000 each only if (i) the Clearing System or any Alternative Clearing System on behalf of which the SPHERE Securities may be held notifies the Issuer and the Principal Paying Agent that it is no longer willing or able to discharge properly its responsibilities with respect to the SPHERE Securities, or ceases to be a “clearing agency” or is at any time no longer eligible to act as such and no qualified successor is appointed within 90 days of receiving notice of such ineligibility on the part of the Clearing System (or, as the case may be, such Alternative Clearing System) or is closed for business for a continuous period of 14 days (other than by reason of holiday, statutory or otherwise) or announces its intention permanently to cease business or in fact does so or (ii) as a result of any amendment to, or change in or in the interpretation and administration of, the laws or regulations of Luxembourg, or of any authority in it or of it having power to impose a tax, which becomes effective on or after the Issue Date, the Bank, the Company, the Issuer, or any Paying Agent is or will be required to make any deduction or withholding from any payment in respect of those SPHERE Securities which would not be required were they in definitive form or (iii) the Bank instructs the Issuer and the Principal Paying Agent with the instruction to the Principal Paying Agent to notify the Securityholders of its intention to exchange all interests in the Global Notes with definitive SPHERE Securities or (iv) the Securityholders have not received what is due and payable under the SPHERE Securities and a Securityholder gives notice to any Paying Agent of its intention to exchange its interests in a Global Note with definitive SPHERE Securities. In any such circumstances, a SPHERE certificate (each a ***SPHERE Certificate***) will be issued to each Securityholder in respect of its holdings of definitive SPHERE Securities, which SPHERE Certificates will evidence definitive SPHERE Securities with an aggregate principal amount of US\$ 1,000 or an integral multiple thereof. Each definitive SPHERE Security and each SPHERE Certificate will have an identifying number which will be recorded on the relevant SPHERE Certificate. Each holder of definitive SPHERE Securities will be entitled to receive only one SPHERE Certificate in respect of its entire holding of SPHERE Securities. A notice of the issue of definitive SPHERE Securities shall be notified to the Securityholders by the Principal Paying Agent as soon as practicable thereafter by publication in accordance with § 15 of these Conditions.

#### § 4

##### REDEMPTION OF THE SPHERE SECURITIES

- (1) Subject to the provisions of this § 4, neither the Securityholders nor the Issuer may request the redemption of the SPHERE Securities.
- (2) The Fiscal Agency Agreement provides that the Principal Paying Agent will notify the Securityholders, in the manner specified in § 15 of these Conditions, of matters relating to the repayment of the Silent Contribution and redemption of the Class B Securities including the amount to be paid in any repayment of the Silent Contribution and redemption of the Class B Securities and the date of any such repayment and redemption, in each case as such information is provided to the Principal Paying Agent. In the event that the Class B Securities are redeemed at the option of the Company in accordance with the Class B Terms, such notice shall be made at least 30 days prior to the redemption of the SPHERE Securities.
- (3) On the date on which the Silent Contribution or the Class B Securities are due to be repaid in accordance with their respective terms, the SPHERE Securities will become due for redemption.
- (4) On the date on which the SPHERE Securities are due to be redeemed, the Issuer will redeem the SPHERE Securities by paying an amount equal to the amount by which the Participation or Class B Securities, as the case may be, are being redeemed *pro rata* amongst the SPHERE Securities.
- (5) To the extent that moneys received by or on behalf of the Issuer on the due date for redemption of the SPHERE Securities (or any later date) are in aggregate less than the amount by which the Class B Securities ought to be redeemed in accordance with their terms, the SPHERE Securities will be repaid, on any such date of receipt, in an amount equal to the amounts received by or on behalf of the Issuer on such date, on a *pro rata* basis amongst the SPHERE Securities. If at any time thereafter the

Issuer determines (on the basis of an opinion of a qualified third party) that no further amounts are recoverable by it under the Transaction Documents or that the costs of recovering amounts under the Transaction Documents would exceed the amounts which could be recovered then the Issuer shall, provided after making inquiry by notice to the Securityholders it is not aware of any legal actions by any Securityholders in respect of the Support Undertaking, redeem the SPHERE Securities. Such redemption will either occur upon receipt of what the Issuer considers to be the last payment to it under the Transaction Documents by payment of such amount to the Securityholders or, if the determination mentioned in the preceding sentence occurs after payment to the Securityholders of what the Issuer considers to be the last payment to it under the Transaction Documents, on the date of such determination, without any payment at all.

- (6) Notwithstanding this § 4, no amounts will be payable by the Issuer in redemption of the SPHERE Securities unless and until the same has been received by or on behalf of the Issuer in accordance with the Fiscal Agency Agreement.
- (7) If upon repayment of the Silent Contribution or redemption of the Class B Securities the respective principal amount due is, in accordance with the Participation Agreement or the Class B Terms, less than the aggregate Nominal Amount of the SPHERE Securities, then the Nominal Amount of each SPHERE Security will automatically be reduced by an amount equal to such difference divided by the number of SPHERE Securities outstanding.

## § 5

### NON-PRINCIPAL DISTRIBUTIONS

- (1) The Fiscal Agency Agreement provides that the Principal Paying Agent will notify the Securityholders, in the manner specified in § 15, of matters relating to the payment of interest, dividends and any additional amounts under the Class B Terms and the Support Undertaking and the date of any such payment, in each case as such information is provided to the Principal Paying Agent.
- (2) On the date on which payments described in § 5(1), are payable under the Class B Terms and the Support Undertaking to the Issuer in accordance with their respective terms, such amounts will be payable to the Securityholders by or on behalf of the Issuer, *pro rata*, amongst the SPHERE Securities.
- (3) The Issuer will, on the due date of any payments described in § 5(1) under the Class B Terms and the Support Undertaking, pay an amount equal to the sum of such payments due on such date, *pro rata*, amongst the SPHERE Securities (a ***Non-Principal Distribution***).
- (4) To the extent that payments described in § 5(1) are received by or on behalf of the Issuer on the due date for a Non-Principal Distribution under the SPHERE Securities and are less than the respective amounts due on such date under the Class B Terms and the Support Undertaking, the Non-Principal Distribution will be made to the Securityholders only to the extent amounts are received by or on behalf of the Issuer, *pro rata* amongst the SPHERE Securities. When such amounts are paid to or on behalf of the Issuer, they shall be paid without undue delay in accordance with the provisions of the Fiscal Agency Agreement *pro rata* amongst the SPHERE Securities.
- (5) Notwithstanding anything in this § 5, no amounts will be payable by the Issuer in respect of Non-Principal Distributions unless and until the same have been received by or on behalf of the Issuer in accordance with the Fiscal Agency Agreement.
- (6) Under the Class B Terms, dividends will be paid on March 30, June 30, September 30, and December 30, in each year, commencing on September 30, 2005 or, if any of these dates is not a business day, i.e. a day (other than a Saturday or Sunday) which is neither a legal holiday nor a day on which commercial banks are authorised or required by law, regulation or executive order to close in Kiel, Luxembourg or New York City (***Business Day***) on the next following Business Day.



- (7) The Fiscal Agency Agreement provides that the Paying Agents shall pay all Non-Principal Distributions received to those persons who held the SPHERE Securities on (i) 15 March, (ii) 15 June, (iii) 15 September or (iv) 15 December, respectively, (in each case relating to a payment to be made on the next following payment date) (each such date a **Record Date**), irrespective of whether, when payment is actually made by the relevant Paying Agent, the person so entitled to such payment is no longer the holder of the SPHERE Security to which such payment relates.

## § 6

### PAYMENTS; PAYING AGENTS

- (1) So long as the SPHERE Securities are listed on Eurolist by Euronext Amsterdam (***Euronext Amsterdam***), the Issuer shall ensure that there always is (i) a principal paying agent with offices located in Frankfurt am Main, Germany and (ii) a paying agent with offices located in the Netherlands. The Issuer may at any time, by giving not less than 30 days' notice in accordance with § 15 of these Conditions and the Fiscal Agency Agreement, appoint, subject to the approval of the Bank which shall not be unreasonably withheld, one or more additional paying agents or replace the principal paying agent or a paying agent by one or more other banks or financial institutions which assume such functions. Should the paying agent located in the Netherlands be replaced by another paying agent located in the Netherlands, Euronext Amsterdam will be notified by the Issuer, or the Principal Paying Agent on its behalf, and such notice will be published in the daily official list of Euronext Amsterdam (*Officiële Prijscourant*) and a leading newspaper of general circulation in Amsterdam (which is expected to be *Het Financieele Dagblad*) as required by the rules and regulations of Euronext Amsterdam. The Paying Agents shall act solely as agents for the Issuer and shall not have any trustee or agency relationship with the Securityholders.
- (2) Payments in respect of the redemption of and Non-Principal Distributions on the SPHERE Securities, will be made by the Paying Agents as directed by the Issuer pursuant to the terms of the Fiscal Agency Agreement to the holder on the relevant Record Date or if such day is not a Business Day, the immediately preceding Business Day.
- (3) Payments will be made (i) in the case of a Global Note, by wire transfer in immediately available funds to a US\$ account maintained by the Clearing System or its nominee or, if wire transfer is not available, by a US\$ check delivered to the Clearing System or its nominee and (ii) in the case of definitive SPHERE Securities, by wire transfer in immediately available funds to a US\$ account maintained by the holder in accordance with wire transfer instructions received by the Paying Agents on or before the Record Date or, if no wire transfer instructions are received by the Paying Agents, by a US\$ check drawn on a bank in the United States. Final redemption of the SPHERE Securities will be made against surrender of the Global Note or, as the case may be, against surrender of the definitive SPHERE Securities at the office of any Paying Agent on or prior to the date of such final payment.
- (4) None of the Issuer, the Bank and the Paying Agents will have any responsibility or liability for (i) any aspects of the records maintained by the Clearing System or its nominee or any of its direct or indirect participants relating to or payments made on account of beneficial interests in a Global Note or (ii) any aspect of the records relating to or payments made on account of beneficial ownership interests in a Global Note or for maintaining, supervising or reviewing any records relating to such beneficial ownership interests. As set out in a letter of representations from the Issuer to the Clearing System and accepted by the Clearing System, the Clearing System or its nominee, upon receipt of any payment in respect of the redemption of and Non-Principal Distributions on a Global Note, will immediately credit participants' accounts with payments in amounts proportionate to their respective beneficial interests in the principal amount of such Global Note, as shown on their respective records. Pursuant also to such letter payments by participants to owners of beneficial interests in a Global Note held through the participants will be governed by standing instructions and customary practices, as is now the case with securities held for the accounts of customers registered in the names of nominees for the customers. Such payments will be the responsibility of the participants.



- (5) All payments made by or on behalf of the Issuer in accordance with § 6 shall discharge the Issuer from its obligations with respect to the SPHERE Securities to the extent of the sums paid.

## § 7

### ENFORCEMENT OF CLAIMS

- (1) Upon default on a payment obligation of either the Company or the Bank vis-à-vis the Issuer, the Issuer may, at any time, at its discretion and without notice to the Securityholders, seek any remedy available under applicable law.
- (2) Under the Class B Terms and the terms of the Participation Agreement, the Issuer may not accelerate any payment or terminate the Class B Terms and the Participation Agreement, respectively. The Fiduciary Agreement does not create any right of a Securityholder to require the Issuer to seek the redemption of the Class B Securities or the termination of the Participation Agreement.
- (3) The Issuer is not required to seek any remedy or take any other enforcement action in connection with the Class B Securities, the Loan Agreement, the Participation Agreement or the Support Undertaking (including, without limitation, to verify or to require corrections to the annual financial statements of the Company or the Bank or require any distribution be made by either of them) unless (a) it shall have been so directed by an Extraordinary Resolution (as defined in the Fiscal Agency Agreement) of the Securityholders and (b) it shall have been indemnified by the relevant Securityholders to its reasonable satisfaction.
- (4) In the event of any enforcement or action by the Issuer against the Bank or the Company, the Issuer will be entitled to be fully indemnified out of the proceeds of such enforcement or action in priority to the claims of the Securityholders.
- (5) Any action or refraining from taking any action by the Issuer pursuant to this § 7 will be for the account of and at the cost of the Securityholders and, notwithstanding anything that may be provided to the contrary in these Conditions, the Issuer will only be liable in respect of any such action or omission constituting gross negligence (*faute grave*), bad faith or wilful misconduct (*dol*) on its part.
- (6) If the Issuer has become obliged to take legal action against the Company or the Bank under or in respect of the Class B Securities, the Participation Agreement or the Support Undertaking and has failed to take such action within a reasonable time, then as a matter of, and subject to, Luxembourg law, the relevant Securityholders may be entitled to institute legal action (*action oblique*) against the Company or the Bank in the Issuer's place. It is not certain whether a Cayman Islands court would enforce or accept an *action oblique* brought by a Securityholder against the Company. It is also not certain whether a German court would enforce or accept an *action oblique* brought by a Securityholder against the Bank.
- (7) If the Issuer refrains from taking legal action against the Bank in respect of the Support Undertaking within a reasonable time of the cause for that legal action arising, any Securityholder may bring a legal action against the Bank in respect of the Bank's obligations under the Support Undertaking. By purchasing the SPHERE Securities the Securityholder accepts that right.

## § 8

### EXERCISING SHAREHOLDER/SILENT PARTNER RIGHTS

- (1) The Issuer will not exercise any rights as a holder of the Class B Securities other than (a) when such action relates to enforcement of a right, and then only in accordance with § 7(3) or (b) otherwise, unless it has been instructed to do so by an Ordinary Resolution (as defined in the Fiscal Agency Agreement) or Extraordinary Resolution (as defined in the Fiscal Agency Agreement), as may be required in the provisions for the meetings of Securityholders in the Fiscal Agency Agreement, of Securityholders and it has been indemnified to its reasonable satisfaction.

- (2) The Issuer will accept any notice or certificate from the Bank or the Company as to any calculation or determination made pursuant to the Class B Terms, the Participation Agreement and the Support Undertaking and shall not be liable in respect thereof or be obliged to make any verification in respect thereof.

## § 9

### TAXATION

- (1) All payments in respect of the SPHERE Securities shall be made by the Issuer without deduction or withholding for or on account of any present or future taxes, duties or governmental charges of any nature whatsoever imposed, levied or collected by or in or on behalf of the Grand Duchy of Luxembourg or by or on behalf of any political subdivision or authority therein or thereof having power to tax, unless such deduction or withholding is required by law.
- (2) If the Issuer is required pursuant to § 9(1) to make a deduction or withholding when it passes a payment received from the Company or the Bank on to Securityholders it shall advise the Company or, as the case may be, the Bank of the amount (the **Luxembourg Gross-Up Amount**) by which the Company or, as the case may be, the Bank would have to increase any payment made to the Issuer to enable (after the Issuer so withholds or deducts) the Issuer to pay Securityholders an amount equal to the payment which would have been due if the Issuer would not so withhold or deduct and furnish the Company and the Bank with documentation evidencing the deduction or withholding obligation and the Luxembourg Gross-Up Amount provided, that no such Luxembourg Gross-Up Amounts shall be payable with respect to any payment on a SPHERE Security: (i) to, or to a third party on behalf of, a Securityholder who is subject to taxation in respect of SPHERE Securities by reason of his having some connection with Luxembourg other than the mere holding of SPHERE Securities; (ii) if and to the extent paid by the Bank to the Issuer, such payment could not be made without leading to or increasing an Annual Balance Sheet Loss for the relevant fiscal year of the Bank; (iii) by reason of a change in law that becomes effective more than 30 days after the relevant payment becomes due, or is duly provided for; or (iv) where such withholding or deduction is imposed on a payment to an individual and is required to be made pursuant to any European Directive on the taxation of savings implementing the conclusions of the ECOFIN Council meeting of November 26 to 27, 2000 or any other conclusions or decisions relating to the outcome of that meeting or any law implementing or complying with, or introduced in order to conform to, such directive; or (v) presented for payment by or on behalf of a Securityholder who would have been able to avoid such withholding or deduction by presenting the relevant SPHERE Security to another paying agent in a EU Member State. Under the Class B Terms, the Company is obliged to pay the Issuer such Luxembourg Gross-Up Amount.
- (3) The Issuer will have no obligation to pay amounts by way of gross-up with respect to any amounts withheld or deducted pursuant to § 9(1) other than to pass on Luxembourg Gross-Up Amounts (less amounts which must be deducted or withheld therefrom pursuant to § 9(1)) received by the Issuer pursuant to the Fiscal Agency Agreement to Securityholders *pro rata* amongst the SPHERE Securities.
- (4) Both the Class B Terms and the Participation Agreement provide that the Company and the Bank, respectively, will gross-up in respect of amounts withheld or deducted by the Company and the Bank on account of tax under, respectively, the Class B Securities and the Participation Agreement.

## § 10

### PRESERVATION OF REGULATORY CAPITAL

- (1) By purchasing the SPHERE Securities, the Securityholders are deemed to acknowledge and agree that the Issuer is permitted to refrain from paying them any payment received by it from the Company in respect of the Class B Securities and from the Bank under the Participation Agreement or the Support Undertaking if the Issuer reasonably believes that such payment has been made otherwise than in accordance with the Class B Terms, the Participation Agreement or the Support Undertaking,

respectively. The Issuer shall not incur any liability, if such determination is made based on the opinion of counsel of recognized standing selected by the Issuer.

- (2) Under German law, any premature repayment of the Silent Contribution other than in accordance with the terms of the Participation Agreement must be refunded to the Bank irrespective of any contractual obligation to the contrary unless (a) the Silent Contribution repaid has been replaced by an equal amount of other at least equivalent regulatory capital (or any other own funds of at least equivalent regulatory status) of the Bank or (b) all required consents or approvals under applicable banking laws (or any rules, regulations or interpretations thereunder, including rulings of the relevant banking authorities), including, if required, any consent or approval by the, German Federal financial services supervisory authority (*BaFin*) have been obtained for the payment or early repayment. By purchasing the SPHERE Securities the Securityholders are deemed to acknowledge and agree to repay to the Issuer any amount received in breach of the preceding sentence.

## § 11

### SET-OFF

- (1) The Securityholders may not set-off any claims arising under the SPHERE Securities against any claims of the Issuer, the Company or the Bank.
- (2) The Issuer will not be obliged to exercise, for its own or the Securityholders' benefit, any rights of set-off, banker's lien or to combine accounts of counter-claim that may arise out of other transactions between the Issuer, the Company and the Bank.

## § 12

### RESIGNATION AND SUBSTITUTION

- (1) The Bank may, without the consent of the Securityholders or the Issuer, at any time, substitute another financial institution (the ***New Issuer***) for Banque de Luxembourg, as the Issuer and, in the event of a liquidation of the Issuer, is obliged to use its best efforts to substitute the Issuer with a New Issuer, *provided however*, in each case, that (a) the Class B Securities and all rights of the Issuer under the Participation Agreement do not form part of the New Issuer's estate available for the satisfaction of the New Issuer's preferred and general creditors under applicable liquidation and insolvency laws and are not available for attachment or otherwise by or for such creditors, (b) the New Issuer assumes all rights and obligations (if any) under the Participation Agreement, the Class B Securities, the Fiduciary Agreement, the Support Undertaking and the SPHERE Securities, (c) the New Issuer has obtained all necessary regulatory and other approvals for the substitution (and that the New Fiduciary qualifies as a fiduciary under the law of July 27, 2003 relating to trusts and fiduciary contracts), (d) the substitution in respect of the obligation of the Bank does not result in the obligation to pay additional amounts due to withholding tax pursuant to the Participation Agreement, and (e) the substitution does not result in any violation of law.
- (2) Upon any substitution pursuant to this § 12(1), Banque de Luxembourg shall be released from all of its obligations under the Class B Securities, the Support Undertaking and the Participation Agreement, the Fiduciary Agreement and the SPHERE Securities and any reference in the Transaction Documents to the Issuer shall be deemed to refer to the New Issuer, and any reference to Luxembourg in § 9 of these Conditions shall be deemed to refer to the jurisdiction in which the New Issuer is organised or resident for tax purposes.
- (3) No substitution will occur pursuant to this § 12(1) or § 12(4) until 30 days' prior notice thereof has been given to the Securityholders specifying the name, address and fax number of any such New Issuer and the date when such New Issuer will assume the rights and obligations of the Issuer.
- (4) The Issuer may resign upon giving not less than three months' prior written notice to the Bank. If no New Issuer is appointed by the Bank in accordance with this § 12(1) in such three months' period, the Issuer will have the right to appoint a New Issuer.

### § 13

#### FINANCIAL INFORMATION

The Fiscal Agency Agreement provides that the Principal Paying Agent will make available to the Securityholders all copies of the latest published annual reports and other financial information of the Bank and the Company that it receives.

### § 14

#### MEETINGS OF SECURITYHOLDERS; MODIFICATIONS; INCREASE

- (1) Except as otherwise provided for herein, meetings of the Securityholders shall be held in accordance with Luxembourg law applicable to the convening and conduct of meetings of bondholders and Schedule 3 of the Fiscal Agency Agreement.
- (2) Any resolution properly passed at any meeting of the Securityholders will be binding on all the Securityholders (whether or not they were present or represented at the meeting at which such resolution was passed).
- (3) The Issuer will not agree to any modification to the Transaction Documents (including these Conditions) unless authorised to do so by a resolution of the Securityholders or pursuant to this § 14.
- (4) The Issuer may agree, without the consent of the Securityholders, to (i) any modification of these Conditions or any Transaction Document if the Issuer determines that any such modification, waiver or authorisation does not materially prejudice the interests of the Securityholders, (ii) any modification of these Conditions or any Transaction Document necessary or advisable in the case of the issuance of further SPHERE Securities and a corresponding increase of the aggregate Nominal Amount of the SPHERE Securities or (iii) authorise any modification of these Conditions or any Transaction Document which is of formal, minor or technical nature or to correct a manifest error.
- (5) In exercising its powers and discretions the Issuer shall have regard to the best interests of the Securityholders as a class and shall not have regard to the consequences of the exercise of its powers or discretion for individual Securityholders except to the extent provided for in § 7 of these Conditions.
- (6) Any modification, waiver or authorisation made in accordance with the preceding conditions shall be binding on the Securityholders and any modification shall be notified to the Securityholders as soon as practicable thereafter by publication in accordance with § 15 of these Conditions.

### § 15

#### NOTICES

- (1) Subject to this § 15(2), all notices to the Securityholders are published in the daily official list of Euronext Amsterdam (*Officiële Prijscourant*) and a leading newspaper of general circulation in Amsterdam (which is expected to be *Het Financieele Dagblad*) as required by the rules and regulations of Euronext Amsterdam. In addition, notices will be given by mail, fax or electronically to Clearstream Luxembourg and Euroclear and to the Netherlands Paying Agent. In accordance with its published rules and regulations, each Clearing System will notify the holders of securities accounts to which any SPHERE Securities are credited of any such notices received by it.
- (2) Provided that the rules of the stock exchange(s) where the SPHERE Securities are from time to time listed so permit, for as long as the Global Notes are held in their entirety on behalf of Euroclear and/or Clearstream Luxembourg, there may be substituted for publication in such newspaper(s) the delivery of the relevant notice to Euroclear and/or Clearstream Luxembourg for communication by them to the Securityholders. Any such notice shall be deemed to have been given to the Securityholders on the seventh day after the day on which the said notice was delivered to Euroclear and/or Clearstream Luxembourg.

## **§ 16**

### **PRESCRIPTION**

Claims for payment of principal in respect of the SPHERE Securities will become void unless presentation for payment is made in accordance with the Conditions within a period of 10 years from the appropriate date that is the later of (i) the date on which such payment first becomes due and (ii) if the full amount payable has not been received by or on behalf of the Fiduciary, on or prior to such due date, the date on which, the full amount having been so received, notice to that effect shall have been given to the Noteholders. Claims for payment of interest will become void in the same circumstances within a period of 5 years.

## **§ 17**

### **SEVERABILITY**

Should any provisions of these Conditions be held by a court of competent jurisdiction to be invalid, void, unenforceable or incomplete, in whole or in part, the other provisions of these Conditions shall remain in full force. Any invalid, void, unenforceable or incomplete provision shall be replaced by a valid provision which accomplishes as far as legally possible the economic effects of the invalid, void, unenforceable or incomplete provision.

## **§ 18**

### **GOVERNING LAW; JURISDICTION**

- (1) The SPHERE Securities, these Conditions and the Fiduciary Agreement thereby entered into will be governed by, and construed in accordance with, the laws of the Grand Duchy of Luxembourg and in particular the law of July 27, 2003 relating to trusts and fiduciary contracts. The Participation Agreement is governed by the laws of Germany. The Company's memorandum and articles of association are governed by the laws of the Cayman Islands.
- (2) Actions against the Issuer may be brought only in the district court of Luxembourg.

## TERMS AND CONDITIONS OF THE CLASS B SECURITIES

*The terms and conditions of the Class B Securities are contained in the Company's memorandum and articles of association. The Company's memorandum and articles of association regulate the rights and obligations of the Company and the holders of all shares in the Company, including the holders of the Class B Securities. Article 1 (the definitions article), Article 6(B) (an article exclusively dealing with the Class A Securities) and Article 6(C) (an article exclusively dealing with the Class B Securities) are reproduced below; however, those articles not reproduced below are of general application to all holders of shares in the Company, including the Class B Securities.*

1. In these Articles Table A in the Schedule to the Statute does not apply and, unless there is something in the subject or context inconsistent therewith:

<b><i>Annual Balance Sheet Loss</i></b>	means the balance sheet loss ( <i>Bilanzverlust</i> ) of the Bank for any fiscal year calculated in accordance with German GAAP.
<b><i>Annual Balance Sheet Profit</i></b>	means the balance sheet profit ( <i>Bilanzgewinn</i> ) of the Bank for any fiscal year calculated in accordance with German GAAP. Under German GAAP, the Annual Balance Sheet Profit is derived from the annual surplus ( <i>Jahresüberschuss</i> ) adjusted for profits/losses carried over from previous fiscal years as well as transfers from and allocations to capital and earnings reserves ( <i>Kapital und Gewinnrücklagen</i> ) (however, neither the Bank nor its shareholders are obligated to release any such reserves to avoid an Annual Balance Sheet Loss).
<b><i>Articles</i></b>	means the memorandum and articles of association of the Company.
<b><i>Auditor</i></b>	means the person for the time being performing the duties of auditor of the Company (if any).
<b><i>BaFin</i></b>	has the meaning given to it in the Participation Agreement.
<b><i>Bank</i></b>	means HSH Nordbank AG, Hamburg and Kiel, Germany or its legal successors.
<b><i>Business Day</i></b>	means a day (other than a Saturday or Sunday) which is neither a legal holiday nor a day on which commercial banks are authorised or required by law, regulation or executive order to close in Kiel, Luxembourg or New York City.
<b><i>Calculation Period</i></b>	means any of a Class A Calculation Period, Class B Calculation Period or Ordinary Calculation Period.
<b><i>Class A Calculation Period</i></b>	means each period from (and including) September 30, to (but excluding) September 30, provided that the first Class A Calculation Period will be from (and including) June 17, 2005 to (but excluding) September 30, 2005 or, in the case of the last Class A Calculation Period, to (but excluding) the date of redemption of the Class A Securities.
<b><i>Class A Dividend</i></b>	means the dividends for the Class A Securities calculated in accordance with Article 6(B)(a) of the Articles.
<b><i>Class A Ring-Fenced Assets</i></b>	means the Company's rights to Loan Repayment Amount.
<b><i>Class A Securities</i></b>	means (a) the initial 553,000 redeemable Class A Preference Shares in the capital of the Company with a par value of US\$ 1,000 each having the rights attaching thereto prescribed in these Articles and (b) any redeemable Class A Preference Shares issued to holders of Class A Preference Shares from time to time.



<b><i>Class A Shareholder</i></b>	means a holder of a Class A Security.
<b><i>Class B Calculation Period</i></b>	means each period (i) from (and including) March 30 to (but excluding) June 30, (ii) from (and including) June 30 to (but excluding) September 30, (iii) from (and including) September 30 to (but excluding) December 30 and (iv) from (and including) December 30 to (but excluding) March 30, provided that the first Class B Calculation Period will be from (and including) June 17, 2005 to (but excluding) September 30, 2005 or, in the case of the last Class B Calculation Period, to (but excluding) the date of redemption of the Class B Securities.
<b><i>Class B Cash Redemption Date</i></b>	means the date on which the Silent Contribution must be repaid in accordance with the Participation Agreement.
<b><i>Class B Dividends</i></b>	means dividends on the Class B Securities as calculated in accordance with Article 6(C)(a) and any gross-up required thereon pursuant to Article 6(C)(g).
<b><i>Class B Redemption Amount</i></b>	means an amount equal to the Repayment Amount unless the SPHERE Securities are redeemed on or after the Company has exercised its right of termination of the Class B Securities in which event the Class B Redemption Amount will be US\$ 500,000,000.
<b><i>Class B Ring-Fenced Assets</i></b>	means (a) the Company's rights to interest accrued under the Loan Agreement to the Class B Cash Redemption Date, (b) the Company's rights to the Repayment Amount payable under the Participation Agreement, (c) the Company's rights to the interest payable to the Company on such date by virtue of § 7(7) of the Participation Agreement, and (e) the Company's rights to funding of the Luxembourg Gross-Up Amount.
<b><i>Class B Securities</i></b>	means the 500,000 redeemable Class B Preference Shares in the capital of the Company with a par value of US\$ 1,000 each having the rights attaching thereto prescribed in the Articles.
<b><i>Class B Shareholder</i></b>	means a holder of a Class B Security.
<b><i>Company</i></b>	means HSH N Funding II.
<b><i>Company Operating Profits</i></b>	means an excess of the amounts payable (whether or not paid) to the Company under the Loan over any operating expenses of the Company not paid or reimbursed by or on behalf of the Bank during such Class B Calculation Period.
<b><i>Declared Class B Dividend</i></b>	means the Class B Dividend declared by the Company in accordance with Article 6(C)(a)(v).
<b><i>Directors</i></b>	means the directors for the time being of the Company.
<b><i>Dividend Payment Date</i></b>	means, in respect of any Class B Calculation Period, the day immediately following the last day of the respective Class B Calculation Period or, if such day is not a Business Day, the following Business Day and, in respect of each Class A Calculation Period, the fifth Business Day following a written notice by the Class A Shareholder to the Company but not earlier than the day immediately following the last day of the respective Class A Calculation Period.
<b><i>Electronic Record</i></b>	has the same meaning as in the Electronic Transactions Law (2000 Revision).

<b><i>Fiduciary</i></b>	means Banque de Luxembourg, a société anonyme incorporated in Luxembourg or any successor entity.
<b><i>Fiduciary Agreement</i></b>	means the fiduciary agreement between the Fiduciary and the Securityholders evidenced by the SPHERE Securities dated on or about June 17, 2005.
<b><i>German GAAP</i></b>	means German generally accepted accounting principles.
<b><i>HSH N Funding II Bank Accounts</i></b>	means the bank account numbered 1100176884 of the Company held with HSH Nordbank AG and any other bank accounts of the Company from time to time.
<b><i>Loan</i></b>	means the advance made under the Loan Agreement.
<b><i>Loan Agreement</i></b>	means the loan agreement in the form of a German law governed <i>Schuldscheindarlehen</i> to be dated on or about June 15, 2005 between the Company and the Bank.
<b><i>Loan Repayment Amount</i></b>	means all outstanding principal repayments receivable by the Company under the Loan.
<b><i>Loan Repayment Date</i></b>	means the date on which the Loan must be repaid or prepaid in accordance with the terms of the Loan Agreement.
<b><i>Luxembourg Gross-Up Amount</i></b>	means the amount by which payments to the Securityholders would have to be increased to enable the Fiduciary (after it makes any Luxembourg Tax Deduction) to pay Securityholders an amount equal to the payment which would have been due if no Luxembourg Tax Deduction had been required.
<b><i>Luxembourg Tax Deduction</i></b>	means a deduction or withholding for or on account of Luxembourg Tax from a payment under the SPHERE Securities.
<b><i>Member</i></b>	has the same meaning as in the Statute.
<b><i>Memorandum</i></b>	means the memorandum of association of the Company.
<b><i>Ordinary Resolution</i></b>	means (i) a resolution passed by a simple majority of the Members as, being entitled to do so, vote in person, (ii) where proxies are allowed, by proxy at a general meeting, or (iii) a unanimous written resolution. In computing the majority when a poll is demanded regard shall be had to the number of votes to which each Member is entitled by the regulations of the Company.
<b><i>Ordinary Shares</i></b>	means the 10 Ordinary Shares in the capital of the Company with a par value of US\$ 1,000 each having the rights attaching thereto prescribed in these Articles.
<b><i>Paid-up Value</i></b>	means the price at which each relevant Share is issued credited as fully paid-up comprising the nominal value thereof.
<b><i>Parity Security Distributions</i></b>	means distributions on Parity Securities. “ <b>Parity Securities</b> ” are all (i) securities and other instruments issued by the Bank and (ii) all securities or other instruments issued by a consolidated affiliate of the Bank and subject to any guarantee or support agreement of the Bank, where the Bank’s obligation to make distributions (in the case of (i)) or, as the case may be, the Bank’s obligation under such guarantee or support agreement (in the case of (ii)) ranks <i>pari passu</i> with the Bank’s obligations under the Participation Agreement. The securities issued by (i) Banque de

Luxembourg, Luxembourg, acting in a fiduciary capacity in February 2002 and trading on the Luxembourg Stock Exchange under ISIN XS0142391894, (ii) RESPARCS Funding Limited Partnership I, Hong Kong, in December 2002 and trading on the Luxembourg Stock Exchange under ISIN XS0159207850, and (iii) RESPARCS Funding II Limited Partnership, Jersey, in May 2003 and trading on the Frankfurt Stock Exchange and Euronext Amsterdam under ISIN DE0009842542 are Parity Securities.

In determining the aggregate Parity Security Distributions for a Relevant Bank Fiscal Year, any Parity Security Distributions (i) by the Bank which, under German GAAP, were deducted prior to the determination of the Annual Balance Sheet Profit for the Relevant Bank Fiscal Year and (ii) by the relevant consolidated affiliate of the Bank where such distributions are funded with payments from the Bank which, under German GAAP, were deducted prior to the determination of the Annual Balance Sheet Profit for the Relevant Bank Fiscal Year, shall not be taken into account.

<b><i>Participation Agreement</i></b>	means the agreement dated on or about June 13, 2005 between the Bank and the Company pursuant to which the Company acquires a silent capital interest in an amount of US\$ 500,000,000 in the commercial enterprise of the Bank in the form of a <i>Stille Gesellschaft</i> .
<b><i>Preference Securities</i></b>	means the Class A Securities and the Class B Securities.
<b><i>Profit Participation</i></b>	means the profit participation which accrued for a Relevant Bank Fiscal Year under the Participation Agreement.
<b><i>Reduction</i></b>	means the reduction of the book value of the Silent Contribution pursuant to the Participation Agreement following an Annual Balance Sheet Loss.
<b><i>Register of Members</i></b>	means the register maintained in accordance with the statute and includes (except where otherwise stated) any duplicate Register of Members.
<b><i>Registered Office</i></b>	means the registered office for the time being of the Company.
<b><i>Relevant Bank Fiscal Year</i></b>	means the most recent fiscal year of the Bank for which audited financial statements are available and which ended on or prior to the date on which the calculation period for the relevant Class B Dividend ends.
<b><i>Repayment Amount</i></b>	has the meaning given to it in the Participation Agreement.
<b><i>Repayment Date</i></b>	has the meaning given to it in the Participation Agreement.
<b><i>Seal</i></b>	means the common seal of the Company and includes every duplicate seal.
<b><i>Secretary</i></b>	includes an assistant secretary and any person appointed to perform the duties of secretary of the Company.
<b><i>Securityholders</i></b>	means the holders of the SPHERE Securities.
<b><i>Share and Shares</i></b>	means a share or shares in the Company and includes a fraction of a share.
<b><i>Silent Contribution</i></b>	means the asset contribution of the Company to the Bank in the amount of US\$ 500,000,000 pursuant to the Participation Agreement.
<b><i>Special Resolution</i></b>	has the same meaning as in the Statute, and includes a unanimous written resolution.
<b><i>SPHERE Securities</i></b>	means the US\$ 500,000,000 HSH Nordbank Silent Participation Hybrid Equity Regulatory (SPHERE) securities issued by the Fiduciary.

<b><i>Statute</i></b>	means the Companies Law (2004 Second Revision) of the Cayman Islands.
<b><i>Support Undertaking</i></b>	means the support undertaking agreement dated on or about June 15, 2005 between the Bank and the Fiduciary.
<b><i>Tax</i></b>	means any tax, levy, impost, duty or other charge or withholding or a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same).
<b><i>Tax Deduction</i></b>	means a deduction or withholding for or on account of Tax from a payment under the Articles.
<b><i>Transaction Documents</i></b>	means the Participation Agreement, the Loan Agreement and the Articles.

## **Article 6**

### **CLASS A SECURITIES**

(B) The rights attaching to the Class A Securities are as follows:

(a) **Income**

- (i) Subject to the provisions below, each Class A Security shall confer on the Class A Shareholder a right to receive a dividend on each Class A Security held.
- (ii) Dividends on the Class A Securities shall be paid in respect of each Class A Calculation Period annually in arrear.
- (iii) The Directors will, on December 31 of each year, or, if such day is not a business day in the Cayman Islands and Kiel, the business day in the Cayman Islands and Kiel prior to December 31, declare and pay an interim dividend on the Class A Securities in an amount calculated pursuant to Article 6(B)(a)(iv).
- (iv) The interim dividend under Article 6(B)(a)(iii) will be in an amount equal to the Profit Participation which would (ignoring any exclusions pursuant to section 3(3) of the Participation Agreement) accrue for the fiscal year of the Bank ending on December 31 of the year in which the interim dividend ought to be declared and paid in accordance with Article 6(B)(a)(iii) (but rounded down to the nearest US\$ 1000).
- (v) The interim dividend under Article 6(B)(a)(iii) will not be paid in cash but by the issue of such number of Class A Securities, the aggregate par value of which equals the amount of such declared interim dividend.
- (vi) If on a Dividend Payment Date it is apparent that the Profit Participation was less than the amount of the interim dividend declared and paid pursuant to Article 6(B)(a)(iii) for the relevant Class A Calculation Period, then such number of the Class A Securities issued by way of payment of such interim dividend shall be redeemed, for no payment, whose aggregate par value is equal to the excess of the interim dividend paid over the actual Profit Participation accrued.
- (vii) The Directors will, on each Dividend Payment Date, declare and pay a dividend on the Class A Securities in an amount calculated pursuant to Article 6(B)(a)(viii).
- (viii) The dividend under Article 6(B)(a)(vii) will be in an amount equal to (1) the income of the Company earned as interest under the Loan Agreement minus (2) the Class B Dividend which falls to be declared and paid pursuant to Article 6(C)(a) on such Dividend Payment Date and minus (3) the expenses of the Company.
- (ix) The dividend under Article 6(B)(a)(vii) will be paid in cash.

- (x) The Company may set off its obligation to make payments under Article 6(B)(a)(vii) against obligations owing to the Company by the Class A Shareholder in respect of interest accrued and due but unpaid under the Loan Agreement.
- (xi) Cash dividends per Class A Security will be calculated by dividing the declared dividend under Article 6(B)(a)(vii) by the number of Class A Securities outstanding.
- (xii) Dividends shall accrue from day to day. Each Class A Security will cease to accrue dividends from its due date for redemption. The Class A Securities shall not confer any further rights of participation in the profits of the Company.

(b) **Capital**

On a winding-up of the Company or other return of capital (other than a purchase or redemption of any Class A Security):

- (i) the Class A Shareholders will be entitled to share in the Class A Ring-Fenced Assets, but no further assets of the Company;
- (ii) no other holders of shares in the Company will be entitled to any part of the Class A Ring-Fenced Assets;
- (iii) if the proceeds of the Class A Ring-Fenced Assets are insufficient to repay in full the Paid-up Value of each Class A Security and any dividend declared under Article 6(B)(a)(vii), such proceeds shall be apportioned *pro rata* amongst the Class A Securities in proportion to the amounts paid up on the Class A Securities;
- (iv) if the value of claims of the Company's creditors exceed the Company's assets (minus the Class A Ring-Fenced Assets and the Class B Ring-Fenced Assets), the rights of the Class A Shareholders in the assets of the Company will rank senior to the rights of the holders of other shares in the Company, up to an amount equal to the Class A Ring-Fenced Assets (plus amounts which have actually been received thereunder and minus amounts which have been received and passed on to Class A Shareholders).

(c) **Voting**

The Class A Shareholders shall be entitled to receive notice of general meetings of the Company and shall be entitled to attend and vote thereat. On a poll every Class A Shareholder who (being an individual) is present in person or by proxy or (being a corporation) is present by representative or by proxy shall have one vote in respect of each Class A Security registered in the name of such Class A Shareholder.

(d) **Redemption**

The Class A Securities shall be repaid and redeemed by the Company upon and subject to the provisions of the applicable laws in the Cayman Islands and upon and subject to the following terms and conditions:

- (i) notwithstanding anything in these Articles but subject to Article 6(B)(a)(vi), the Class A Securities may only be redeemed contemporaneously with the redemption of the Class B Securities or after the Class B Securities have been redeemed.
- (ii) the Class A Securities may be redeemed at the option of the Class A Shareholder or the Company by notice to the other.
- (iii) the Company will redeem the Class A Securities on the date specified in the notice, *pro rata*, in an amount equal to the sum of the Loan Repayment Amount and the aggregate Profit Participations.

- (iv) the Company may set off its obligation to make payments under Article 6(B)(d)(iii) against obligations owing to the Company by the Class A Shareholder in respect of the Loan Repayment Amount under the Loan Agreement and the aggregate Profit Participation under the Participation Agreement.
- (v) the Company's payment obligation under Article 6(B)(d)(iii) will be satisfied in full upon payment by the Company to the Class A Shareholder of an amount equal to the sum of the Loan Repayment Amount and the aggregate Profit Participations in the manner contemplated in Article 6(B)(d)(iv).
- (v) the Class A Shareholders will not be entitled to share in any assets of the Company other than the Loan Repayment Amount and the aggregate Profit Participations and no other holders of shares in the Company will be entitled to the Loan Repayment Amount and the aggregate Profit Participations or any part thereof.

## CLASS B PREFERENCE SHARES

(C) the rights attaching to the Class B Securities are as follows:

(a) **Income**

- (i) Subject to the provisions below, each Class B Security shall confer on the Class B Shareholder a right to receive a dividend on each Class B Preference Share held.
- (ii) Dividends on the Class B Securities shall be paid in respect of each Class B Calculation Period quarterly in arrear.
- (iii) Subject to adjustment pursuant to Article 6(C)(a)(iv) below, Class B Dividends will be in an aggregate amount equal to 7.25 % *per annum* of the Paid-up Value of the Class B Securities calculated on the basis of the actual number of days elapsed in the relevant Class B Calculation Period divided by 360 (the number of days to be calculated on the basis of a year consisting of 12 months of 30 days each).
- (iv) Class B Dividends will be declared in relation to any Class B Calculation Period, if:
  - (1) the Bank has (i) an amount of unconsolidated net profit (*Jahresüberschuss*) for the Relevant Bank Fiscal Year, at least equal to the aggregate amount of (x) Parity Security Distributions (as defined below) already paid for or in relation to the Relevant Bank Fiscal Year and (y) the relevant Class B Dividend to be made or
    - (ii) in case the unconsolidated net profit (*Jahresüberschuss*) for the Relevant Bank Fiscal Year is not sufficient, an amount of Annual Balance Sheet Profit for the Relevant Bank Fiscal Year, at least equal to the aggregate amount of (x) and (y) and the Bank's solvency ratio is at least equal to 9 % on a solo and on a consolidated basis; and
  - (2) the Silent Contribution's book value corresponds to US\$ 500,000,000 (i.e. no Reduction occurred and is subsisting); and
  - (3) the Company has an amount of Company Operating Profits for the relevant Class B Calculation Period at least equal to the amount of the relevant Class B Dividend.

If the amount by which the Annual Balance Sheet Profit exceeds the aggregate of Parity Security Distributions already paid for or in relation to the Relevant Bank Fiscal Year does not correspond to the full amount of the Class B Dividend calculated for the relevant Class B Calculation Period pursuant to Article 6(C)(a)(iii) above, such Class B Dividend will accrue partially in the amount of such excess.

- (v) The Directors will declare Class B Dividends on or before the Dividend Payment Date. Declared Class B Dividends will be paid on the Dividend Payment Date.



- (vi) Dividends per Class B Security will be calculated by dividing the Declared Class B Dividend by the number of Class B Securities outstanding.
- (vii) Dividends shall accrue from day to day. Each Class B Security will cease to accrue dividends from its due date for redemption. The Class B Securities shall not confer any further rights of participation in the profit of the Company.

**(b) Capital**

On a winding-up of the Company or other return of capital (other than a purchase or redemption of any Class B Security):

- (i) the Class B Shareholders will be entitled to share in the Class B Ring-Fenced Assets, but no further assets of the Company;
- (ii) no other holders of shares in the Company will be entitled to any part of the Class B Ring-Fenced Assets;
- (iii) if the proceeds of the Class B Ring-Fenced Assets are insufficient to repay in full the Paid-up Value of each Class B Security together with any Declared Class B Dividend, such proceeds shall be apportioned *pro rata* amongst the Class B Securities;
- (iv) if the aggregate value of claims of the Company's creditors exceed the Company's assets (minus the Class A Ring-Fenced Assets and the Class B Ring-Fenced Assets), the rights of the Class B Shareholders in the assets of the Company will rank junior to the rights of the Class A Shareholders up to an amount equal to the sum of the Loan Repayment Amount (plus amounts which have actually been received thereunder and minus amounts which have been received and passed on to Class A Shareholders), but senior to the holders of other shares in the Company up to an amount equal to the Class B Ring-Fenced Assets (plus amounts which have actually been received thereunder and minus amounts which have been received and passed on to Class B Shareholders).

**(c) Voting**

The Class B Shareholder shall be entitled to receive notice of general meetings of the Company but shall not be entitled to attend or vote thereat (other than as set out in the following sentence). Resolutions amending the rights attached to the Class B Securities require the consent of the holders of the Class B Securities and the holders of the Class B Securities may vote on such resolutions.

**(d) Redemption**

The Class B Securities shall be redeemed by the Company upon and subject to the provisions of the applicable laws in the Cayman Islands and the following terms and conditions:

- (i) The Company will redeem all of the Class B Securities (but not some only) on the Class B Cash Redemption Date, which obligation will be satisfied in full by the Company paying to the Class B Shareholders an amount equal to the Class B Redemption Amount, any unpaid Declared Class B Dividends on the Class B Cash Redemption Date whereupon the Class B Securities shall be deemed to have been redeemed in full, irrespective of either (x) the value of the Class B Redemption Amount or Declared Class B Dividends or (y) the Class B Redemption Amount being lower than the Paid-up Value of the Class B Securities.
- (ii) The Company may redeem in its sole discretion all of the Class B Securities (but not some only) on any March 30, June 30, September 30, and December 30 on or after June 30, 2011 at the Class B Redemption Amount plus any unpaid Declared Class B Dividends on the date of redemption whereupon the Class B Securities shall be deemed to have been redeemed in full, irrespective of either (x) the value of the Class B Redemption Amount or Declared Class B Dividends or (y) the Class B Redemption Amount being lower than the Paid-up Value of the Class B Securities.



(e) **Return of capital – General**

- (i) In the event that the Class B Redemption Amount is insufficient to repay in full the Paid-up Value of each Class B Security and unpaid Declared Class B Dividends, the Class B Redemption Amount will be apportioned *pro rata* amongst the Class B Securities as payment in full for the Class B Securities.
- (ii) The Class B Securities may not be redeemed or any capital returned in respect thereof other than pursuant to Article 6(C)(d) or on a winding up of the Company or other return of capital (other than a purchase or redemption of any Class B Security).

(f) **Notice to Class B Shareholder**

- (i) The Company will, forthwith upon becoming aware that the Class B Securities will be redeemed, notify the Class B Shareholder of (A) the date on which they will be redeemed, and (B) the amount of the payment in cash.
- (ii) The Company will, forthwith upon becoming aware that the Participation Agreement will terminate, notify the Class B Shareholder thereof.

(g) **Gross-Up**

- (i) The Company shall make all payments to the Class B Shareholder pursuant to these Articles without any Tax Deduction, unless a Tax Deduction is required by law.
- (ii) If a Tax Deduction is required by law to be made by the Company the amount of the payment due from the Company shall be increased to an amount which (after making any Tax Deduction) leaves an amount equal to the payment which would have been due if no Tax Deduction had been required.
- (iii) If the Class B Shareholder (A) is required under the SPHERE Securities to make a Luxembourg Tax Deduction when it passes a payment from the Company on to Securityholders or from the Bank on to the Securityholders (under the Support Undertaking) and (B) advises the Company of the Luxembourg Gross-Up Amount, the Company shall make such payment to the Class B Shareholder together with such Luxembourg Gross-Up Amount.

(h) **Negative covenant**

The Company shall not, without the written consent of the Class B Shareholder:

- (i) make any payment to any holder of any shares in the Company with the proceeds of the Class B Ring-Fenced Assets except:
  - (A) to the Class B Shareholder; or
  - (B) to the Class A Shareholder, but only in an amount equal to or less than the Class A Dividend payable pursuant to these Articles.
- (ii) engage in any business or any other activities other than:
  - (A) the performance of its obligations under the Transaction Documents and any other agreement which have been entered into in connection with the issue of the Class B Securities;
  - (B) the enforcement of its rights;
  - (C) the performance of any acts which are necessary or desirable in connection with (A) or (B);

- (D) the execution of all further documents and undertaking of all other actions, at any time and to the extent permitted by law, which, in the opinion of the Class B Shareholder, are necessary or desirable having regard to the interests of the Securityholders, in order to ensure these Articles remain valid;
- (iii) hold shares in any entity;
- (iv) dispose of any assets or any part thereof or interest therein;
- (v) pay dividends or make any other distribution to its shareholders other than dividends to Class A Shareholders and Class B Shareholders in accordance with this Article 6;
- (vi) incur any indebtedness;
- (vii) have any employees or own any real estate asset;
- (viii) create or permit to subsist any mortgage, lien, pledge, security interest or other encumbrance in respect of any of its assets;
- (ix) consolidate or merge with or into any other person;
- (x) issue new shares or acquire shares (other than Class A Securities for the purposes of paying Declared Class A Dividends in accordance with this Article 6);
- (xi) open or maintain any bank accounts (other than the HSH N Funding II Bank Accounts);
- (xii) agree to the modification of any Transaction Document.

## TERMS AND CONDITIONS OF THE PARTICIPATION

THE GERMAN TEXT OF THE PARTICIPATION AGREEMENT IS LEGALLY BINDING.  
THE ENGLISH TRANSLATION IS FOR CONVENIENCE ONLY.

### Vertrag über die Errichtung einer Stillen Gesellschaft

zwischen

**HSH N Funding II**  
(nachstehend als *Stiller Gesellschafter* bezeichnet)

und

**HSH Nordbank AG, Hamburg und Kiel**  
(nachstehend als *Bank* bezeichnet)

### Präambel

Der Stille Gesellschafter und die Bank beabsichtigen die Errichtung einer stillen Gesellschaft mit dem Ziel, dass die Einlage des Stillen Gesellschafters in der Bank auf Dauer als haftendes Eigenkapital (Kernkapital) dient.

Dies vorausgeschickt, vereinbaren die Parteien folgendes:

### § 1

#### Definitionen und Auslegung

**Definitionen:** Sofern aus dem Zusammenhang nicht etwas anderes hervorgeht, haben die nachstehenden Begriffe folgende Bedeutung:

*Anfangsdatum* bezeichnet den 17. Juni 2005;

*BaFin* bezeichnet die Bundesanstalt für Finanzdienstleistungsaufsicht oder eine etwaige Nachfolgebehörde, die an deren Stelle tritt;

*Bank* bezeichnet HSH Nordbank Aktiengesellschaft mit Sitz in Hamburg und Kiel;

*Beendigungstag* bezeichnet den Tag, ab dem der Stille Gesellschafter nicht mehr am Handelsgewerbe der Bank als typischer stiller Gesellschafter beteiligt ist;

*Buchwert* bezeichnet den Buchwert der Stillen Einlage, so wie dieser in der Bilanz der Bank für das Geschäftsjahr der Bank festgestellt wurde, in das der Beendigungstag fällt. Wenn sich bei Aufstellung der Bilanz der Bank die Entstehung eines Jahresbilanzverlusts abzeichnet, so wird dieser

### Agreement on the Establishment of a Silent Partnership

between

**HSH N Funding II**  
(hereinafter called *Silent Partner*)

and

**HSH Nordbank AG, Hamburg and Kiel**  
(hereinafter called *Bank*)

### Preamble

The Silent Partner and the Bank intend to establish a silent partnership for the purpose of achieving that the Silent Partner's contribution to the Bank serves permanently as liable own capital (core capital).

This being premised, the parties agree as follows:

### § 1

#### Definitions and Interpretation

**Definitions:** Unless the context requires otherwise, the following terms shall have the following meanings:

*Start Date* means June 17, 2005;

*BaFin* means the German Financial Services Authority or any successor agency taking its place;

*Bank* means HSH Nordbank Aktiengesellschaft with registered offices in Hamburg and Kiel;

*Termination Date* shall mean the date as of which the Silent Partner ceases to participate in the Bank's commercial enterprise as an ordinary silent partner;

*Book Value* means the book value of the Silent Contribution as determined in the Bank's balance sheet for the Bank's fiscal year in which the Termination Date occurs. If, when drawing up the Bank's balance sheet, it becomes evident that an Annual Balance Sheet Loss would arise, such

Jahresbilanzverlust anteilig nach Maßgabe des § 6 vom Buchwert abgezogen;

**Einlagennennbetrag** bezeichnet den Betrag von US\$ 500,000,000 (US Dollar fünfhundert Millionen);

**Erste Gewinnbeteiligung** bezeichnet die für die Erste Gewinnperiode aufgelaufene Gewinnbeteiligung;

**Erste Gewinnperiode** bezeichnet den Zeitraum vom Anfangsdatum (einschließlich) bis zum 31. Dezember 2005 (einschließlich);

**Geschäftstag** bezeichnet jeden Tag (mit Ausnahme von Samstagen und Sonntagen), der weder ein Feiertag in Kiel, Luxemburg oder New York City noch ein Tag ist, an dem Banken in Kiel, Luxemburg oder New York City aufgrund gesetzlicher oder behördlicher Vorgaben für den Geschäftsverkehr geschlossen sind oder geschlossen bleiben können;

**Gewinnbeteiligung** bezeichnet die in der jeweiligen Gewinnperiode aufgelaufene Gewinnbeteiligung;

**Gewinnperiode** bezeichnet jeweils den Zeitraum vom 1. Januar (einschließlich) bis 31. Dezember (einschließlich) eines Jahres, wobei die erste Gewinnperiode am Anfangsdatum (einschließlich) beginnt und die letzte Gewinnperiode vom 1. Januar (einschließlich) bis zum Beendigungstag (einschließlich) läuft;

**Herabsetzung** bezeichnet jede Herabsetzung der Stillen Einlage nach § 6(1);

Ein **Jahresbilanzverlust** liegt dann vor, wenn die nicht konsolidierte Jahresbilanz der Bank nach Prüfung durch eine international und von der BaFin anerkannte Wirtschaftsprüfungsgesellschaft keinen Bilanzgewinn für das Geschäftsjahr in Bezug auf die maßgebliche Gewinnbeteiligung ausweist. Der Bilanzgewinn schließt den Jahresüberschuss oder -fehlbetrag ein, *zuzüglich* des Gewinnvortrags aus den Vorjahren, *abzüglich* des Verlustvortrags aus den Vorjahren, *zuzüglich* der Entnahmen aus Kapital- und Gewinnrücklagen, *abzüglich* Einstellungen in Gewinnrücklagen, und zwar jeweils nach Maßgabe und in Übereinstimmung mit dem Aktiengesetz und den Grundsätzen ordnungsmäßiger Buchführung der Bundesrepublik Deutschland im Einklang mit dem Handelsgesetzbuch sowie sonstigem zum maßgeblichen Zeitpunkt anwendbaren deutschen Recht;

Annual Balance Sheet Loss shall be proportionately deducted from the Book Value in accordance with § 6;

**Nominal Contribution Amount** means US\$ 500,000,000 (US dollar five hundred million),

**First Profit Participation** means the Profit Participation accrued in the First Profit Period;

**First Profit Period** means the period from (and including) the Start Date to (and including) December 31, 2005;

**Business Day** means a day (other than a Saturday or a Sunday) which is neither a legal holiday nor a day on which commercial banks are authorised or required by law, regulation or executive order to close in Kiel, Luxembourg or New York City;

**Profit Participation** means a profit participation accrued in any Profit Period;

**Profit Period** means each period from (and including) January 1, to (and including) December 31, of a year, provided that the first Profit Period shall commence on (and include) the Start Date and that the last Profit Period shall commence on (and include) January 1, of the year in which the Termination Date occurs to (and including) the Termination Date;

**Reduction** means any reduction of the Silent Contribution pursuant to § 6(1);

An **Annual Balance Sheet Loss** is present if the annual unconsolidated balance sheet of the Bank, as audited by an auditing firm which is recognised internationally and by the BaFin, does not show a balance sheet profit for the fiscal year to which the relevant Profit Participation relates. Such balance sheet profit includes the annual surplus or loss, plus any profit carried forward from previous years, minus any loss carried forward from previous years, plus transfers from capital reserves and earnings reserves, minus allocations to earnings reserves, all in compliance, and determined in accordance, with the German Stock Corporation Act and accounting principles generally accepted in the Federal Republic of Germany in compliance with the German Commercial Code and other applicable German law then in effect;

Ein **Jahresfehlbetrag** liegt dann vor, wenn die nicht konsolidierte Jahresbilanz der Bank keinen Jahresüberschuss und zwar nach Maßgabe und in Übereinstimmung mit den Grundsätzen ordnungsmäßiger Buchführung der Bundesrepublik Deutschland aufweist.

**KWG** bezeichnet das Kreditwesengesetz;

**Rückzahlungsbetrag** bezeichnet entweder den Buchwert oder den Einlagennennbetrag, je nachdem welcher niedriger ist;

**Rückzahlungstag** bezeichnet (i) den 30. Juni des Jahres, das auf das Geschäftsjahr der Bank folgt, in das der Beendigungstag fällt oder, falls dieser Tag kein Geschäftstag ist, den nächstfolgenden Geschäftstag oder, falls später, (ii) den ersten Geschäftstag nach Feststellung des Jahresabschlusses der Bank für das Geschäftsjahr, in das der Beendigungstag fällt;

**Stille Einlage** hat die in § 2(1) festgelegte Bedeutung;

**Stiller Gesellschafter** bezeichnet HSH N Funding II, PO Box 309GT, Ugland House, South Church Street, George Town, Grand Cayman, Cayman Islands.

An **Annual Loss** is present if the annual unconsolidated balance sheet of the Bank records no net profit (*Jahresüberschuss*) as calculated pursuant to the terms hereof and in accordance with German generally accepted accounting principles.

**KWG** means the German Banking Act;

**Repayment Amount** means the lower of the Book Value and the Nominal Contribution Amount;

**Repayment Date** means the later of (i) June 30, following the fiscal year in which the Termination Date occurs or, if such day is not a Business Day, the next Business Day following such day or (ii) the first Business Day after the Bank's annual financial statements are adopted for the fiscal year in which the Termination Date occurs;

**Silent Contribution** has the meaning specified in § 2(1);

**Silent Partner** means HSH N Funding II, PO Box 309GT, Ugland House, South Church Street, George Town, Grand Cayman, Cayman Islands.

## § 2 Vertragsgegenstand

- (1) **Stille Einlage:** Der Stille Gesellschafter ist ab dem Anfangsdatum am Handelsgewerbe der Bank als typischer stiller Gesellschafter mit einer Vermögenseinlage (**Stille Einlage**) in Höhe des Einlagennennbetrags beteiligt.
- (2) **Einzahlung der Stillen Einlage:** Die Stille Einlage wird in bar erbracht. Sie wird am Tag des Vertragsabschlusses fällig und ist spätestens am Anfangsdatum vollständig zu leisten. Die Stille Einlage geht in das Vermögen der Bank über.

## § 3 Gewinnbeteiligung

- (1) **Allgemeines:** Als Gegenleistung für die Stille Einlage stehen dem Stillen Gesellschafter vom Anfangsdatum bis zum Beendigungstag Gewinnbeteiligungen zu, deren Höhe sich nach Maßgabe dieses § 3 bestimmt.
- (2) **Gewinnbeteiligung:** Dem Stillen Gesellschafter stehen Gewinnbeteiligungen in Höhe von 7,25 % p.a. in Bezug auf den

## § 2 Subject Matter

- (1) **Silent Contribution:** The Silent Partner participates as of the Start Date in the business of the Bank as an ordinary silent partner with an asset contribution (**Silent Contribution**) in the amount of the Nominal Contribution Amount.
- (2) **Payment of Silent Contribution:** The Silent Contribution shall be made in cash. It shall be due and payable on the date hereof and shall be paid in full no later than the Start Date. The Silent Contribution passes over into the assets of the Bank.

## § 3 Profit Participation

- (1) **General:** In consideration for the Silent Contribution, the Silent Partner shall be entitled to Profit Participations from the Start Date to the Termination Date in the amounts specified in this § 3.
- (2) **Profit Participation:** The Silent Partner shall be entitled to Profit Participations on the Nominal Contribution Amount at a rate of

Einlagennennbetrag zu, wobei die Erste Gewinnbeteiligung US\$ 19.534.722,22 beträgt.

(3) **Ausschluss der Gewinnbeteiligung:** Eine Gewinnbeteiligung für eine Gewinnperiode (einschließlich der Ersten Gewinnperiode) ist ausgeschlossen:

- (a) soweit das Anfallen und/oder die Zahlung einer solchen Gewinnbeteiligung zu einem Jahresfehlbetrag in dem Geschäftsjahr der Bank, auf das sich die maßgebliche Gewinnperiode bezieht, führen oder diesen erhöhen würde; oder
- (b) wenn eine Herabsetzung erfolgt ist und die Stille Einlage noch nicht wieder vollständig gemäß § 6(3) gutgeschrieben wurde; oder
- (c) wenn zu irgendeinem Zeitpunkt vor Auszahlung der Gewinnbeteiligung ein Antrag auf Eröffnung des Insolvenzverfahrens über das Vermögen der Bank aus Gründen der drohenden oder bestehenden Zahlungsunfähigkeit oder Überschuldung gestellt wurde oder die BaFin die ihr verliehenen Befugnisse gemäß §§ 45, 46a und 47 KWG bzw. entsprechender Nachfolgebestimmungen ausgeübt hat; oder
- (d) falls der Beendigungstag in diese Gewinnperiode fällt.

#### § 4

##### **Entstehung und Fälligkeit der Gewinnbeteiligung**

(1) **Entstehen von Gewinnbeteiligungen:** Jede Gewinnbeteiligung (ausgenommen der Ersten Gewinnbeteiligung) fällt in vier gleichen Raten an (i) dem 30. September des Jahres, das auf den Ablauf der maßgeblichen Gewinnperiode folgt, (ii) dem nachfolgenden 30. Dezember, (iii) dem nachfolgenden 30. März und (iv) dem nachfolgenden 30. Juni oder, falls einer dieser Tage kein Geschäftstag ist, dem darauf folgenden Geschäftstag an.

**Erste Gewinnbeteiligung:** Die Erste Gewinnbeteiligung fällt in fünf gleichen Raten an. Die erste Rate fällt am 30. Juni 2006 oder, falls dies kein Geschäftstag ist, am

7.25 % per annum, provided that the First Profit Participation shall amount to US\$ 19,534,722.22.

(3) **Profit Participations excluded:** Profit Participations for any Profit Period (including the First Profit Period) shall be excluded:

- (a) if (but only to such extent that) accrual and/or payment of such Profit Participation would lead to or increase an Annual Loss for the fiscal year of the Bank to which the relevant Profit Period relates; or
- (b) if there has occurred a Reduction and the Silent Contribution has not yet been fully replenished as provided for in § 6(3); or
- (c) if at any time prior to payment of such Profit Participation an application for the institution of insolvency proceedings over the assets of the Bank has been filed for reasons of threatening or actual illiquidity or overindebtedness, or BaFin has made use of its powers vested by virtue of §§ 45, 46a and 47 of the KWG or the relevant successor provisions; or
- (d) if the Termination Date falls within such Profit Period.

#### § 4

##### **Accrual of Profit Participations and Payment**

(1) **Payment of Profit Participations:** Each Profit Participation (other than the First Profit Participation) shall accrue in four equal instalments on (i) September 30, in the year following the end of the relevant Profit Period, (ii) the following December 30, (iii) the following March 30, and (iv) the following June 30, or if any of these is not a Business Day, the next following Business Day.

**First Profit Participation:** The First Profit Participation shall accrue in five equal instalments. The first instalment shall accrue on the later of June 30, 2006 or, if that is not



darauf folgenden Geschäftstag, oder, falls später, am Geschäftstag nach dem Tag der Feststellung des Jahresabschlusses der Bank für das Geschäftsjahr 2005 an. Die zweite, dritte, vierte und fünfte Rate fallen am (i) 30. September 2006, (ii) 30. Dezember 2006, (iii) 30. März 2007 und (iv) 30. Juni 2007 oder, falls einer dieser Tage kein Geschäftstag ist, am darauf folgenden Geschäftstag an.

- (2) **Fälligkeit der Gewinnbeteiligungen:** Der Gesamtbetrag aller Gewinnbeteiligungen wird am 30. Juni 2036 und anschließend an jedem 30. Jahrestag dieses Datums fällig oder, falls einer dieser Tage kein Geschäftstag ist, am darauf folgenden Geschäftstag.
- (3) **Kein Ausgleich bei verspäteter Entstehung/Zahlung:** Falls der Tag der Entstehung bzw. Zahlung der Gewinnbeteiligungen nach Maßgabe des § 4(1) bzw. (2) verschoben wird, fallen keine Zinsen oder sonstigen Beträge auf den insoweit nicht angefallenen bzw. nicht gezahlten Betrag der Gewinnbeteiligungszahlung an.

## § 5

### Rangstellung des Beteiligungsvertrages

Die Zahlungsverpflichtungen der Bank aufgrund dieses Beteiligungsvertrages:

- (1) sind nachrangig gegenüber Forderungen aller bestehenden und künftigen Gläubiger der Bank (einschließlich in Bezug auf das Anrecht auf Gewinnbeteiligung in Form von Genussrechten oder Genussscheinen und ggf. andere Kapitalinstrumente des Ergänzungskapitals, sowie sonstige nachrangige Verbindlichkeiten gemäß § 10(5) und (5a) KWG);
- (2) sind (prozentual zum fälligen Betrag) mindestens gleichrangig mit allen Forderungen auf Rückzahlung von Kapitaleinlagen, die in Bezug auf bestehende und künftige stille Beteiligungen in Form von stillen Gesellschaften in die Bank eingebracht wurden, sowie mit anderen Kapitalinstrumenten zum Kernkapital, die gleichrangig mit Gewinnbeteiligungen in Form von stillen Gesellschaften sind; und

a Business Day, the next following Business Day or the Business Day following the date on which the Bank's annual financial statements have been adopted for the fiscal year 2005. The second, third, forth and fifth instalment shall accrue on (i) September 30, 2006 (ii) December 30, 2006, (iii) March 30, 2007 and (iv) June 30, 2007 or, if any of these is not a Business Day, the next following Business Day.

- (2) **Due Date for Profit Participation Payment:** The aggregate amount of accrued Profit Participations shall be payable on June 30, 2036 and on each 30th anniversary of such date thereafter or, if any of these is not a Business Day, the next following Business Day.

- (3) **No Compensation for Late Accrual/Payment:** No interest or further amounts of profit participations will accrue or be payable on Profit Participations which have not accrued or are not paid due to the postponement of the accrual or payment date of the Profit Participations under § 4(1) or (2), respectively.

## § 5

### Ranking of Participation Agreement

The Bank's obligations under this Participation Agreement:

- (1) are subordinated to the claims of all existing and future creditors of the Bank (including profit participation rights in the form of Genussrechte or Genussscheine and other upper tier 2 capital instruments, if any, and any other subordinated debt in accordance with § 10(5) and (5a) KWG);
- (2) rank at least pari passu (by percentage of the amount payable) with all claims for the repayment of capital contributions made with respect to existing and future silent participations in the Bank in the form of silent partnerships and with other tier 1 capital instruments ranking pari passu with profit participations in the form of silent partnerships; and

- (3) sind vorrangig vor allen Forderungen von Anteilseignern der Bank im Zusammenhang mit deren Anteilen an der Bank;

soweit diese jeweils bereits begründet wurden oder in Zukunft begründet werden.

## § 6

### Verlustbeteiligung, stille Reserven

- (1) **Verlustbeteiligung des Stillen Gesellschafters:** An einem Jahresbilanzverlust nimmt der Stille Gesellschafter im Verhältnis des Buchwerts der Stillen Einlage zum Gesamtbuchwert aller am Verlust teilnehmenden Haftkapitalanteile der Bank teil. Nachrangiges Haftkapital gemäß § 10(5a) KWG ist nicht am Jahresbilanzverlust beteiligt.

Somit nehmen alle stillen Gesellschafter, alle Inhaber von Genussrechten oder Genussscheinen und alle Anteilseigner der Bank am Jahresbilanzverlust mit dem gleichen Prozentsatz des Buchwertes ihrer Einlagen bzw. ihrer Rückzahlungsansprüche oder des sonstigen ausgewiesenen Eigenkapitals teil.

- (2) **Begrenzung der Verlustbeteiligung auf Vermögenseinlage:** Die Gesamtverlustbeteiligung des Stillen Gesellschafters am Jahresbilanzverlust ist auf seine Vermögenseinlage beschränkt.
- (3) **Gutschrift nach Verlustbeteiligung:** Nach einer Herabsetzung wird die Stille Einlage in jedem der Herabsetzung nachfolgenden Geschäftsjahr der Bank bis zur vollständigen Höhe des Einlagennennbetrages wieder gutgeschrieben, soweit hierdurch kein Jahresbilanzverlust entsteht oder erhöht würde.

Die Rückführung der Stillen Einlage nach einer Herabsetzung geht der Rückführung des Stammkapitals und Einstellungen in Rücklagen vor. Die Rückführung des Buchwerts der Stillen Einlage erfolgt gleichrangig mit der Rückführung anderer stiller Beteiligungen, jedoch erst, nachdem der Buchwert der von der Bank ausgegebenen und am Verlust teilnehmenden Genussrechte vollständig zurückgeführt wurde.

- (3) rank senior to all claims of shareholders of the Bank in connection with their shares in the Bank;

in each case as already arisen or arising in the future.

## § 6

### Sharing of Losses, Hidden Reserves

- (1) **Silent Partner's Sharing in Losses:** The Silent Partner shall share in an Annual Balance Sheet Loss in the proportion which the book value of the Silent Contribution bears in relation to the aggregate book value of all loss-sharing components of the Bank's liable capital. Subordinated liable capital in accordance with § 10(5a) KWG shall not share in an Annual Balance Sheet Loss.

Hence, all silent partners, all holders of profit participation rights in the form of *Genussrechte* or *Genussscheine* and all shareholders of the Bank shall share in an Annual Balance Sheet Loss with the same percentage of the book value of their contributions and/or repayment claims or the other stated own funds, respectively.

- (2) **Limitation of Sharing in Losses to Asset Contribution:** The Silent Partner's aggregate share in an Annual Balance Sheet Loss shall be limited to its asset contribution.
- (3) **Replenishment after Reduction:** After a Reduction, the Silent Contribution shall, in each fiscal year of the Bank following such Reduction, be replenished up to the full Nominal Contribution Amount, but only if and to the extent such replenishment would not cause or increase an Annual Balance Sheet Loss.

The replenishment of the Silent Contribution after a Reduction ranks prior to the replenishment of the owners' share capital and to allocations to reserves. The replenishment of the book value of the Silent Contribution shall be effected in the same priority as the replenishment of other silent contributions but only after the book value of profit participation rights issued by the Bank that also share in its losses has been completely restored.

- (4) **Stille Reserven:** Auf die vor oder während der Laufzeit der stillen Gesellschaft gebildeten stillen Reserven hat der Stille Gesellschafter kein Anrecht.
- (5) **Kein Pflicht zur Aufdeckung stiller Reserven;** Die Bank ist nicht verpflichtet, zur Vermeidung eines Jahresbilanzverlustes stille Reserven aufzudecken.

## § 7

### Dauer der stillen Gesellschaft, Kündigung

- (1) **Unbestimmte Laufzeit:** Dieser Beteiligungsvertrag wird auf unbestimmte Zeit abgeschlossen.
- (2) **Kündigung durch den Stillen Gesellschafter:** Der Stille Gesellschafter kann diesen Beteiligungsvertrag nicht kündigen.
- (3) **Kündigung durch die Bank:** Die Bank kann diesen Beteiligungsvertrag gegenüber dem Stillen Gesellschafter mit einer Kündigungsfrist von mindestens zwei Jahren zum 31. Dezember eines jeden Jahres kündigen, wobei eine Kündigung keinesfalls vor dem 31. Dezember 2015 wirksam wird.

Das Kündigungsrecht darf die Bank nur ausüben, sofern der Solvabilitätskoeffizient auf Instituts- und auf Gruppenbasis dauerhaft den Wert von 9% übersteigt und der Buchwert zum Zeitpunkt der Kündigungserklärung den Einlagenennbetrag nicht unterschreitet.

- (4) **Außerordentliche Kündigung durch die Bank aus aufsichtsrechtlichen oder steuerlichen Gründen:** Wenn eine Veränderung steuerlicher oder aufsichtsrechtlicher Vorgaben gemäß § 12 eintritt, kann die Bank diesen Beteiligungsvertrag unbeschadet § 7(3) jederzeit unter Einhaltung einer Kündigungsfrist von mindestens zwei Jahren gegenüber dem Stillen Gesellschafter kündigen mit der Maßgabe, dass eine Kündigung vor dem 31. Dezember 2010 keinesfalls wirksam wird.
- (5) **Schriftliche Kündigung:** Jede Kündigung bedarf der Schriftform.
- (6) **Zustimmung der BaFin zu Kündigungen:** Kündigungen dieses Beteiligungsvertrages

- (4) **Hidden Reserves:** The Silent Partner shall not be entitled to a share in the Bank's hidden reserves built up prior to or during the term of the silent partnership.
- (5) **No Obligation to Realise Hidden Reserves:** the Bank shall not be obliged to realise hidden reserves in order to avoid an Annual Balance Sheet Loss.

## § 7

### Duration of the Partnership, Termination

- (1) **Indefinite Term:** This Participation Agreement shall remain in effect for an indefinite term.
- (2) **Termination by Silent Partner:** The Silent Partner may not terminate this Participation Agreement.
- (3) **Termination by the Bank:** The Bank may only terminate this Participation Agreement upon two years' prior notice effective December 31, of any year, provided that no termination shall be effective earlier than December 31, 2015.

The Bank may only exercise the right to terminate this Participation Agreement, if the Bank's solvency ratio sustainably exceeds 9% on an unconsolidated and consolidated basis and the Book Value at the time of the termination notice is not less than the Nominal Contribution Amount.

- (4) **Exceptional Termination by the Bank for Regulatory or Tax Reasons:** Notwithstanding § 7(3), if a change in the tax or supervisory environment referred to in § 12 has occurred, the Bank may terminate this Participation Agreement at any time, provided that it gives the Silent Partner at least two years' prior notice thereof and no termination may occur prior to December 31, 2010.
- (5) **Notice in Writing:** Any notice of termination hereunder must be in writing.
- (6) **BaFin Approval of Terminations:** No notice of termination under this Participation

werden erst wirksam, wenn die BaFin der Kündigung zugestimmt hat.

- (7) **Rückzahlungsbetrag und -tag:** Am Rückzahlungstag zahlt die Bank an den Stillen Gesellschafter den Rückzahlungsbetrag.
- (8) **Ausschluss der Kündigung aufgrund bestimmter Ereignisse:** Von Fusionen, (Teil-) Vermögensübertragungen, Änderungen der Rechtsform oder des Stammkapitals der Bank bleibt die Stille Gesellschaft unberührt.
- (9) **Insolvenz/Liquidation:** Im Falle der Insolvenz oder Liquidation der Bank wird eine Barabfindung für die Stille Einlage erst nach Befriedigung aller Gläubiger der Bank einschließlich der Inhaber von Genussrechten oder Genussscheinen sowie der Gläubiger von nachrangigem Haftkapital gemäß § 10(5a) KWG, jedoch gleichrangig mit Ansprüchen auf Rückzahlung von Kapitalgebern aus bestehenden und künftigen stillen Beteiligungen an der Bank und vorrangig vor der Rückzahlung von Stammkapital zugunsten der Anteilseigner gezahlt.
- (10) **Ausschluss des Kündigungsrechts des Stillen Gesellschafters:** Falls der Ausschluss des Kündigungsrechts des Stillen Gesellschafters gemäß § 7(2) unwirksam sein sollte, ist die Kündigung dieses Beteiligungsvertrages durch den Stillen Gesellschafter und/oder die Rückzahlung der Stillen Einlage nur nach Zustimmung der BaFin zulässig, mit der Maßgabe, dass eine solche Kündigung nicht vor dem 31. Dezember 2035 wirksam wird. Ist auch die Bindung der Kündigung an die Zustimmung der BaFin unwirksam, kann der stille Gesellschafter mit einer Frist von zwei Jahren zum 31. Dezember eines Jahres, jedoch erstmals zum 31. Dezember 2035 kündigen.

## § 8

### Gesellschafterrechte

- (1) **Jahresabschluss:** Der Stille Gesellschafter ist berechtigt, (i) eine Abschrift des Jahresabschlusses der Bank (Bilanz mit Gewinn- und Verlustrechnung sowie Anmerkungen) einschließlich Lagebericht sowie Konzernabschluss und Konzernlagebericht zu verlangen und (ii)

Agreement shall become effective without the BaFin's prior approval thereof.

- (7) **Repayment Amount and Date:** On the Repayment Date, the Bank will pay to the Silent Partner the Repayment Amount.
- (8) **No termination by virtue of certain events:** The silent partnership shall remain unaffected in the case of a merger, transfer of assets (in part or in whole), a change in legal form or a change of the Bank's share capital.
- (9) **Insolvency/Liquidation:** In case of the Bank's insolvency or liquidation, a cash settlement in respect of the Silent Contribution shall only be paid after satisfaction of all creditors of the Bank, including the holders of profit participation rights in the form of *Genussrechte* or *Genussscheine* and creditors of subordinated capital in accordance with § 10(5a) KWG, but will be paid *pari passu* with all claims for the repayment of capital contributions made with respect to existing and future silent participations in the Bank and prior to payments towards repayment of share capital in favour of the shareholders.

- (10) **Exclusion of Silent Partner's Termination Right:** If the exclusion of the Silent Partner's termination right under §7(2) should be invalid, the termination of this Participation Agreement by the Silent Partner and/or the repayment of the Silent Contribution shall be permissible only upon BaFin's prior approval, provided that no such termination shall become effective prior to December 31, 2035. If the requirement of the BaFin's prior approval should be invalid, the Silent Partner shall be entitled to terminate this Participation Agreement by giving two years' prior notice effective as December 31 of any year but in no event with effect as of any date prior to December 31, 2035.

## § 8

### Shareholder Rights

- (1) **Financial Statements:** The Silent Partner shall be entitled (i) to request a copy of the annual financial statements of the Bank (balance sheet with profit and loss accounts and notes) including the management report as well as group financial statements and group management reports and (ii) to

dessen Richtigkeit durch Überprüfung des Prüfungsberichtes durch einen Wirtschaftsprüfer oder vereidigten Buchprüfer feststellen zu lassen.

- (2) **Auskunftsrecht:** Zusammen mit dem Jahresabschluss erhält der Stille Gesellschafter eine Aufstellung über seine Gewinn- bzw. Verlustbeteiligung. Auf Anfrage des Stillen Gesellschafters hat die Bank hierzu weitere Auskunft zu erteilen.
- (3) **Ausschluss anderweitiger Rechte:** Weitere Gesellschafter-Rechte stehen dem Stillen Gesellschafter nicht zu.

### § 9

#### Hinweis gemäß § 10(4) S. 1 Ziff. 6 KWG

- (1) **Verbot nachträglicher Änderungen zum Nachteil der Bank:** Nach Abschluss dieses Vertrages dürfen (i) weder die Verlustbeteiligung zum Nachteil der Bank verändert, (ii) noch die Nachrangigkeit eingeschränkt noch (iii) die Laufzeit oder Kündigungsfrist verkürzt werden.
- (2) **Rückzahlungsverpflichtung:** Ungeachtet anderweitiger Vereinbarungen sind Vorauszahlungen auf die Stille Einlage an die Bank zurückzuzahlen, es sei denn, (i) das Kapital wurde durch anderes mindestens gleichwertiges Eigenkapital ersetzt oder (ii) die BaFin stimmt der vorzeitigen Rückzahlung der Stillen Einlage zu.

### § 10

#### Begebung weiteren Haftkapitals

Die Bank behält sich das Recht vor, Verträge über weitere stille Gesellschaften zu gleichen oder anderen Bedingungen, insbesondere mit einer anderen Gewinnbeteiligung, oder Verträge über Genussrechte oder Genussscheine oder nachrangiges Haftkapital gemäß § 10(5a) KWG abzuschließen. Forderungen künftiger stiller Gesellschafter dürfen den Forderungen des Stillen Gesellschafters aus diesem Beteiligungsvertrag nicht im Rang vorgehen.

### § 11

#### Übertragungsrechte des Stillen Gesellschafters

Die Abtretung oder anderweitige Verfügung (z.B. durch Verpfändung) über Forderungen des Stillen

ascertain the correctness thereof through the review of the auditor's report by an auditor or a certified public accountant.

- (2) **Information Right:** The Silent Partner shall, together with the annual financial statements, receive a statement of its profit/loss sharing position. Upon request of the Silent Partner, the Bank shall provide further information in this regard.
- (3) **Exclusion of Other Rights:** The Silent Partner shall have no further shareholder rights.

### § 9

#### Notice in Accordance with § 10(4) s. 1 no. 6 KWG

- (1) **Exclusion of Amendments to the Bank's Detriment:** After conclusion of this Participation Agreement, (i) the loss participation may not be amended to the Bank's detriment, (ii) the subordination may not be limited and (iii) neither the term nor the notice period may be shortened.
- (2) **Recontribution Obligation:** Any premature repayment of the Silent Contribution must be repaid to the Bank irrespective of agreements to the contrary, unless (i) the capital has been replaced by other own funds of at least equal quality or (ii) the BaFin agrees to the premature repayment of the Silent Contribution.

### § 10

#### Issue of Additional Liab Capital

The Bank reserves the right to conclude agreements on additional silent partnerships, on identical or different terms, in particular with a different profit participation, or to conclude agreements on profit participation rights in the form of Genussrechte or Genussscheine or subordinated capital in accordance with § 10(5a) KWG. Claims of future silent partners may not rank senior to claims of the Silent Partner under this Participation Agreement.

### § 11

#### Silent Partner's Transfer Rights

Transfers or any other disposals (e.g. by pledge) of or over the claims of the Silent Partner under this



Gesellschafter aus diesem Beteiligungsvertrag bedarf der Zustimmung der Bank.

Participation Agreement require the Bank's approval.

## **§ 12**

### **Änderungen steuerlicher oder aufsichtsrechtlicher Vorgaben**

Im Falle wesentlicher Änderungen in der steuerlichen oder aufsichtsrechtlichen Behandlung der Einlagen und ihrer Gewinn- und Verlustbeteiligung oder falls auf Zahlungen des Stillen Gesellschafters im Zusammenhang mit dessen Refinanzierung der Stillen Einlage Quellensteuer anfallen, werden die Parteien dieses Beteiligungsvertrages in einvernehmliche Verhandlungen zum Zweck einer Anpassung dieses Beteiligungsvertrages an die veränderte Rechtslage eintreten. Die Stille Einlage behält bis zum Wirksamwerden einer Kündigung ihre vollen Rechte unter diesem Beteiligungsvertrag.

## **§ 12**

### **Changes in the Tax or Supervisory Environment**

In case of material changes in relation to the tax or supervisory treatment of the contributions and their profit and loss sharing or payments by the Silent Partner in connection with its refinancing of the Silent Contribution becoming subject to withholding taxes, the parties to this Participation Agreement shall enter into good faith negotiations with a view to amending this Participation Agreement to reflect the changes in the legal situation. The Silent Contribution shall carry the full rights under this Participation Agreement until a termination becomes valid.

## **§ 13**

### **Besteuerung**

Alle aufgrund dieses Vertrages fälligen Zahlungen werden ohne Einbehaltung oder Abzug aufgrund derzeitiger oder künftiger Steuern oder Abgaben gleich welcher Art geleistet, die durch Einbehaltung oder Abzug durch die oder im Auftrag der Bundesrepublik Deutschland, ihrer politischen Untergliederungen oder der zur Erhebung von Steuern befugten Behörden auferlegt oder erhoben werden, es sei denn, die Einbehaltung oder der Abzug sind gesetzlich vorgeschrieben.

## **§ 13**

### **Taxation**

All amounts payable under this Participation Agreement shall be made without withholding or deduction for or on account of any present or future taxes or duties of whatever nature imposed or levied by way of withholding or deduction by or on behalf of the Federal Republic of Germany or any political subdivision or any authority thereof or therein having power to tax unless such withholding or deduction is required by law.

## **§ 14**

### **Anwendbares Recht, Erfüllungsort und Gerichtsstand, Fassungen**

- (1) **Anwendbares Recht:** Das Gesellschaftsverhältnis und alle sich aus diesem Beteiligungsvertrag ergebenden Rechte und Pflichten unterliegen ausschließlich dem Recht der Bundesrepublik Deutschland.
- (2) **Erfüllungsort und Gerichtsstand:** Erfüllungsort und Gerichtsstand ist Kiel.
- (3) **Exemplare:** Dieser Beteiligungsvertrag kann in unterschiedlichen Exemplaren und von den Parteien auf verschiedenen Exemplaren ausgefertigt werden; sämtliche dieser Exemplare sind ein Originalvertrag und begründen ein und denselben Vertrag.

## **§ 14**

### **Governing Law, Place of Performance and Place of Jurisdiction; Counterparts**

- (1) **Governing Law:** The partnership relationship and all rights and obligations arising out of or under this Participation Agreement shall be exclusively governed by the laws of the Federal Republic of Germany.
- (2) **Place of Performance and Place of Jurisdiction:** Place of performance and of jurisdiction shall be Kiel.
- (3) **Counterparts:** This Participation Agreement may be executed and delivered in any number of counterparts and by the parties on separate counterparts, each of which is an original, but all of which taken together constitute one and the same instrument.



**§ 15**  
**Salvatorische Klausel**

Sollte eine Vertragsbestimmung ganz oder teilweise unwirksam oder unvollständig sein oder werden, so wird hierdurch die Wirksamkeit der übrigen Bestimmungen nicht berührt. Anstelle der unwirksamen oder unvollständigen Bestimmung tritt eine Regelung, die dem wirtschaftlichen Zweck der unwirksamen Bestimmung in rechtlich zulässiger Weise am nächsten kommt bzw. die Bestimmung in Übereinstimmung mit dem mutmaßlichen Parteiwillen so gut wie möglich ergänzt.

**§ 15**  
**Severability**

Should any provision of this Participation Agreement be or become invalid or incomplete in total or in part, the validity of the remaining provisions shall remain unaffected. The invalid or incomplete provision shall be replaced by such provision that achieves as closely as is legally possible the economic purpose of the invalid provision or best supplements the provision in accordance with the presumed intentions of the parties.

## TERMS AND CONDITIONS OF THE LOAN AGREEMENT

**HSH NORDBANK AG**, a stock corporation organized under the laws of Germany with its head office at Martensdamm 6, 24103 Kiel, Germany (the **Borrower**);

hereby confirms that it has received from:

**HSH N FUNDING II**, an exempted company with limited liability incorporated under the laws of the Cayman Islands under number 149519 with its registered office at Ugland House, PO Box 309GT, South Church Street, George Town, Grand Cayman, Cayman Islands, British West Indies (the **Lender**);

the sum of US\$ 553,000,000 by way of a loan (the **Loan**) on June 17, 2005 upon the following terms and conditions:

### 1. DEFINITIONS AND INTERPRETATION

In this *Schuldschein*:

**Authorization** means an authorization, consent, approval, resolution, license, exemption, filing or registration;

**Borrower Tax Event** means an event because of which the Borrower is obliged to make a payment pursuant to Clause 5 on account of Tax which would make the aggregate of all Tax Payments made pursuant to Clause 5 in excess of US\$ 100,000;

**Business Day** means a day (other than a Saturday or Sunday) which is neither a legal holiday nor a day on which commercial banks are authorized or required by law, regulation or executive order to close in Kiel, Luxembourg or New York City;

**Calculation Period** means the period from (and including) an Interest Payment Date to (but excluding) the next Interest Payment Date provided that the first Calculation Period will commence on (and include) June 17, 2005 and end on the first Interest Payment Date and the last Calculation Period will end on (and exclude) the date on which the Loan is repaid;

**Event of Default** means any event or circumstance specified as such in Clause 9;

**Final Repayment Date** means June 30, 2036;

**Interest Payment Date** means March 30, June 30, September 30 and December 30 of each year, the first Interest Payment Date being September 30, 2005 or, if any of these is not a Business Day, the next Business Day;

**Lender Capitalization Event** occurs when the outstanding share capital of the Lender (calculated at par) falls to below US\$ 1,000,000,000;

**Loan** means the US\$ 553,000,000 loan extended by HSH N Funding II to HSH Nordbank AG on June 17, 2005 upon terms and conditions set out in this *Schuldschein*;

**Loan Illegality Event** occurs if it becomes illegal in Germany or the Cayman Islands for the Lender or the Borrower to perform any of their respective obligations as contemplated by this *Schuldschein*;

**Rate of Interest** means 6.56 % *per annum*;

**Tax** means any tax, levy, impost, duty or other charge or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same);

**Tax Credit** means a credit against, relief or remission for, or repayment of any Tax;

**Tax Deduction** means a deduction or withholding for or on account of Tax from a payment under this *Schuldschein*;

**Voluntary Prepayment Event** means any of a Borrower Tax Event, a Loan Illegality Event or a Lender Capitalization Event.

## **2. REPAYMENT**

**2.1 Repayment of the Loan:** The Borrower shall repay the Loan in full on the Final Repayment Date.

**2.2 Reborrowing:** The Borrower may not reborrow any part of the Loan which is repaid.

## **3. PREPAYMENT**

**3.1 Illegality:** Upon the occurrence of a Loan Illegality Event:

- (a) the Lender shall promptly notify the Borrower upon becoming aware of that event; and
- (b) the Borrower shall repay the Loan on the date specified by the Lender in the notice delivered to the Borrower (being no earlier than the last day of any applicable grace period permitted by law).

**3.2 Voluntary prepayments of the Loan**

The Borrower may prepay the Loan following a Voluntary Prepayment Event if it gives the Lender not less than five Business Days' (or such shorter period as the Lender may agree to) prior notice.

**3.3 Restrictions**

- (a) Any notice of prepayment given by the Borrower under this Clause 3 shall be irrevocable and, unless a contrary indication appears in this *Schuldschein*, shall specify the date or dates upon which the relevant prepayment is to be made.
- (b) Any notice of prepayment given by the Borrower under this Clause 3 shall, in the event of prepayment by reason of a Borrower Tax Event, specify the event and supporting evidence.
- (c) Any prepayment under this *Schuldschein* shall be made for the full amount of the Loan and not part only.
- (d) Any prepayment under this *Schuldschein* shall be made together with accrued interest on the amount prepaid and without premium or penalty.
- (e) The Borrower may not reborrow any part of the Loan prepaid.
- (f) The Borrower shall not repay or prepay all or any part of the Loan except at the times and in the manner expressly provided for in this *Schuldschein*.

## **4. INTEREST**

**4.1 Calculation of Interest:** Interest on the Loan shall, for each Calculation Period, be calculated at the Rate of Interest. Interest shall be calculated on the basis of days elapsed in a 360-day year consisting of twelve 30-day months.

**4.2 Payment of Interest:** The Borrower shall, in respect of each Calculation Period, pay interest to the Lender in arrear in U.S. dollars on the Interest Payment Date coinciding with the end of the Calculation Period.

**4.3 Default Interest:** If the Borrower fails to pay any amount payable (other than interest) by it under this *Schuldschein* on its due date, interest shall accrue on the overdue amount from the due date up to the date of actual payment (both before and after judgment) at a rate *per annum* of one per cent higher than the Rate of Interest in the currency of the overdue amount. Any interest accruing under this Clause 4.3 shall be immediately payable by the Borrower on demand by the Lender.

## **5. TAX GROSS UP AND INDEMNITIES**

### **5.1 Tax gross-up**

- (a) The Borrower shall make all payments to be made by it without any Tax Deduction, unless a Tax Deduction is required by law.
- (b) The Borrower or the Lender shall promptly notify the other upon becoming aware that the Borrower must make a Tax Deduction.
- (c) If a Tax Deduction is required by law to be made by the Borrower the amount of the payment due from the Borrower shall be increased to an amount which (after making any Tax Deduction) leaves an amount equal to the payment which would have been due if no Tax Deduction had been required.
- (d) If the Borrower is required to make a Tax Deduction, it shall make that Tax Deduction and any payment required in connection with that Tax Deduction within the time allowed and in the minimum amount required by law.
- (e) Within thirty days of making either a Tax Deduction or any payment required in connection with that Tax Deduction, the Borrower shall deliver to the Lender evidence that the Tax Deduction had been made or (as applicable) any appropriate payment paid to the relevant taxing authority.

### **5.2 Tax indemnity**

- (a) The Borrower shall pay to the Lender (within three Business Days of demand by the Lender) an amount equal to the loss, liability or cost which the Lender suffers as a result of Tax assessed against it.
- (b) Paragraph (a) above shall not apply with respect to any Tax assessed on the Lender under the laws of the Cayman Islands if that Tax is imposed on or calculated by reference to the net income received or receivable (but not any sum deemed to be received or receivable) by the Lender.
- (c) The Lender shall, if it makes or intends to make a claim pursuant to paragraph (a) above, notify the Borrower of the event which will give, or has given, rise to the claim.

### **5.3 Tax Credit:** If the Borrower makes a Tax Payment and the Lender determines that:

- (i) a Tax Credit is attributable to that Tax Payment; and
- (ii) the Lender has obtained, utilized and retained that Tax Credit;

the Lender shall pay an amount to the Borrower which the Lender determines will leave it (after payment) in the same after-Tax position as it would have been in had the Tax Payment not been made by the Borrower.

### **5.4 Stamp taxes:** The Borrower shall pay and, within three Business Days of demand, indemnify the Lender against any cost, loss or liability that the Lender incurs in relation to all stamp duty, registration and other similar Taxes payable in respect of this *Schuldschein*.

## **6. COSTS, EXPENSES, INDEMNITIES**

- (a) The Borrower must pay to the Lender the amount of all initial costs and expenses, including legal fees, incurred by the Lender in connection with the preparation of this *Schuldschein*, as well as all costs associated with the preservation or enforcement of the Lender's rights under this *Schuldschein*.
- (b) The Borrower must indemnify the Lender for all losses (including profits foregone) and liabilities it may suffer as a result of a payment not being made on its due date.

- (c) If the Lender is required pursuant to Article 6(C)(g)(iii) of its memorandum and articles of association to make a payment of a Luxembourg Gross-Up Amount, the Borrower will forthwith pay the Lender an amount equal to such Luxembourg Gross-Up Amount. ***Luxembourg Gross-Up Amount*** bears the meanings given to it in the Lender's memorandum and articles of association.

## **7. REPRESENTATIONS**

The Borrower makes the representations and warranties set out in this Clause 7 to the Lender on the date of this *Schuldschein* and on each Interest Payment Date.

### **7.1 Status**

- (a) It is a stock corporation duly organized and validly existing under the laws of Germany.
- (b) It has the power to own its assets and carry on its business as it is being conducted.

### **7.2 Binding obligations**

The obligations expressed to be assumed by it in this *Schuldschein* are legal valid, binding and enforceable obligations.

### **7.3 Non-conflict with other obligations**

The entry into and performance by it of, and the transactions contemplated by, this *Schuldschein* do not and will not conflict with:

- (a) any law or regulation applicable to it;
- (b) any agreement or instrument binding upon it or its assets.

### **7.4 Power and authority**

It has the power to enter into, perform and deliver, and has taken all necessary action to authorize its entry into, performance and delivery of, this *Schuldschein* and the transactions contemplated by this *Schuldschein*.

### **7.5 Validity and admissibility in evidence**

All Authorizations required or desirable:

- (a) to enable it lawfully to enter into, exercise its rights and comply with its obligations in this *Schuldschein*; and
- (b) to make this *Schuldschein* admissible in evidence in Germany have been obtained or effected and are in full force and effect.

### **7.6 Pari passu ranking**

Its payment obligations under this *Schuldschein* rank at least *pari passu* with the claims of all its other unsecured and unsubordinated creditors, except for obligations mandatorily preferred by law applying to it.

## **8. GENERAL UNDERTAKINGS**

The undertakings in this Clause 8 remain in force from the date of this *Schuldschein* for so long as any amount is outstanding under this *Schuldschein*.

### **8.1 Authorizations**

The Borrower shall promptly obtain, comply with and do all that is necessary to maintain in full force and effect any Authorization required under any law or regulation of Germany to enable it to perform

its obligations under this *Schuldschein* and to ensure the legality, validity, enforceability or admissibility into evidence in Germany of this *Schuldschein*.

## 8.2 Compliance with laws

The Borrower shall comply in all respects with all laws to which it may be subject, if failure so to comply would materially impair its ability to perform its obligations under this *Schuldschein*.

## 9. EVENTS OF DEFAULT AND ACCELERATION

### 9.1 Events of Default

Each of the events or circumstances set out in Clause 9.1 is an Event of Default.

- (a) **Non-Payment:** The Borrower does not pay on the due date any amount payable pursuant to this *Schuldschein* at the place and in the currency in which it is expressed to be payable unless:
  - (i) its failure to pay is caused by administrative or technical error; and
  - (ii) payment is made within five Business Days of its due date.
- (b) **Other Obligations:** The Borrower does not comply with any provision of this *Schuldschein* (other than those referred to in Clause 9.1(a)), unless:
  - (i) the failure to comply is capable of remedy and is remedied within five Business Days of the Lender giving notice to the Borrower or the Borrower becoming aware of its failure to comply; or
  - (ii) such event will not materially affect the Borrower's ability to make interest payments and principal repayments under this *Schuldschein*.
- (c) **Misrepresentations:** Any representation or statement made or deemed to be made by the Borrower in this *Schuldschein* is or proves to have been incorrect or misleading in any material respect when made or deemed to be made, unless the facts and circumstances giving rise to the misrepresentation materially affect the Borrower's ability to make interest payments and principal repayments under this *Schuldschein*.

### 9.2 Acceleration

On and at any time after the occurrence of an Event of Default which is continuing the Lender may, by notice to the Borrower:

- (a) declare that all or part of the Loans, together with accrued interest, and all other amounts accrued under this *Schuldschein* be immediately due and payable, whereupon they shall become immediately due and payable; and/or
- (b) declare that all or part of the Loans be payable on demand, whereupon they shall immediately become payable on demand by the Lender.

## 10. CHANGES TO THE PARTIES

Neither the Lender nor the Borrower may assign any of its rights or transfer any of its rights or obligations under this *Schuldschein*.

## 11. PAYMENTS

- 11.1 **Set-off:** The Lender and the Borrower may set off any matured obligations due from the other against any matured obligation owed by the other, regardless of the place of payment or currency of either obligation or whether related to this *Schuldschein* or not. If the obligations are in different currencies,



the Lender or the Borrower (as the case may be) may convert either obligation at a market rate of exchange in its usual course of business for the purpose of set-off.

## **11.2 Business Days**

- (a) Any payment which is due to be made on a day that is not a Business Day shall be made on the next Business Day.
- (b) During any extension of the due date for payment of any principal of an unpaid sum under this *Schuldschein* interest accrues on the principal at the rate payable on the original due date. Such extra amount of interest is payable when the amount, upon which interest accrued, is payable.

## **11.3 Currency of account**

- (a) Subject to paragraph (b) below, the U.S. dollar is the currency of account and payment for any sum due from the Borrower to the Lender and *vice versa*.
- (b) Each payment in respect of costs, expenses or Tax shall be made in the currency in which the costs, expenses or Taxes are incurred.
- (c) Calculations for purposes of determining the countervalue of an amount in one currency in another currency shall be made by reference to a suitable and renowned screen service providing such rates.

## **12. NOTICES**

### **12.1 Communications in writing**

Any communication to be made under or in connection with this *Schuldschein* shall be made in writing and, unless otherwise stated, may be made by fax or letter.

### **12.2 Addresses**

The address and fax number (and the department or officer, if any, for whose attention the communication is to be made) of each Party for any communication or document to be made or delivered under or in connection with this *Schuldschein* is that identified with their names below or any substitute address, fax number or department or officer as the Party may notify to the other by not less than five Business Days' notice.

### **12.3 Delivery**

Any communication or document made or delivered by one person to another or in connection with the Agreement will only be effective:

- (a) if by way of fax, when received in legible form; or
- (b) if by way of letter, when it has been left at the relevant address; and, if a particular department or officer is specified as part of its address details provided under Clause 12.2, if addressed to that department or officer.

### **12.4 English language**

- (a) Any notice given under or in connection with this *Schuldschein* must be in English.
- (b) All other documents provided under or in connection with this *Schuldschein* must be:
  - (i) unless a constitutional, statutory or other official document, in English; or
  - (ii) if not in English and not a constitutional, statutory or other official document, accompanied by a certified English translation and, in this case, the English translation will prevail.

### **13. PARTIAL INVALIDITY**

If, at any time, any provision of this *Schuldschein* is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law or any other jurisdiction will in any way be affected or impaired.

### **14. AMENDMENTS AND WAIVERS**

Any term of the Agreements may be amended or waived only with the consent of the Lender and the Borrower.

### **15. COUNTERPARTS**

This *Schuldschein* may be executed in any number of counterparts, and this has the same effect as if the signatories on the counterparts were on a single copy of this *Schuldschein*.

### **16. GOVERNING LAW**

This *Schuldschein* is governed by German law.

### **17. ENFORCEMENT**

The district court (*Landgericht*) of Kiel/Germany shall have non-exclusive jurisdiction to settle any dispute arising out of or in connection with this *Schuldschein* (including a dispute regarding the existence, validity or termination of this *Schuldschein*).

## TERMS AND CONDITIONS OF THE SUPPORT UNDERTAKING

### PARTIES

1. **HSH NORDBANK AG**, a stock corporation incorporated under the laws of Germany with its head office at Martensdamm 6, 24103 Kiel, Germany (the **Bank**); and
2. **BANQUE DE LUXEMBOURG**, a société anonyme incorporated under the laws of Luxembourg, having its registered office at 14, boulevard Royal, L-2449 Luxembourg (the **Issuer**);

### RECITAL

- (A) On or about the date hereof HSH N Funding II (the **Company**), a company incorporated under the laws of the Cayman Islands, has entered into or will enter into a silent participation agreement (the **Participation Agreement**) with the Bank (*Stille Gesellschaft*), pursuant to which the Company contributes funds to the Bank in an amount of US\$ 500,000,000 (the **Participation**);
- (B) On or about the date hereof the Issuer has subscribed or will subscribe to all of the Class B Preference Shares (the **Class B Securities**) issued by the Company in a nominal amount of US\$ 500,000,000;
- (C) On or about the date hereof the Issuer has or will issue silent participation hybrid equity regulatory (SPHERE) securities (the **SPHERE Securities**) in a nominal amount of US\$ 500,000,000.
- (D) The Issuer is entering into this Agreement as a fiduciary under Luxembourg law for the benefit of the holders of the SPHERE Securities. Under the terms and conditions of the SPHERE Securities (the **Conditions**) the rights of the holders of the SPHERE Securities to recourse against the Bank are limited (§ 7 of the Conditions) and the Issuer is entitled to agree to modifications to this Agreement in limited circumstances (§ 14 of the Conditions).
- (E) The Bank wishes to provide comfort to the Issuer that the Company will be in a position to pay dividends on the Class B Securities as contemplated in the Company's memorandum and articles of association.

### AGREEMENT

#### Undertaking

- 1.1 The Bank will ensure that dividends on the Class B Securities are declared and paid as contemplated in the Company's memorandum and articles of association.
- 1.2 The Bank will ensure that the Company will at all times be in a position to meet its dividend obligations under the Class B Securities, as contemplated in the Company's memorandum and articles of association.
- 1.3 The Bank will make every reasonable effort to be in a position to adopt its annual financial statements for any given year by no later than 25 June of the following year.
- 1.4 If the Issuer (a) is required under the SPHERE Securities to make a Luxembourg Tax Deduction when it passes a payment from the Bank on to the Securityholders and (b) advises the Bank of the Luxembourg Gross-Up Amount, the Bank will pay the Issuer the Luxembourg Gross-Up Amount before the payment, to which the Luxembourg Gross-Up Amount relates, is made. **Luxembourg Gross-Up Amount** and **Luxembourg Tax Deduction** have the meaning given to them in the Company's memorandum and articles of association.
- 1.5 The Bank will ensure that the Company (a) does not engage in any activity other than those incidental to the financing contemplated by the Participation Agreement, the Class B Securities and the SPHERE Securities and (b) does not, at any time, have liabilities (other than in relation to the Class A Securities and the Class B Securities) in excess of an aggregate of US\$ 10,000.

1.6 The Bank's obligations under Clauses 1.1, 1.2 and 1.4:

- (a) are subordinated to the claims of all existing and future creditors of the Bank (including profit participation rights in the form of *Genussrechte* or *Genussscheine* and other upper tier 2 capital instruments, if any, and any other subordinated debt in accordance with Section 10 para. 5 and para. 5a of the German Banking Act);
- (b) rank at least *pari passu* (by percentage of the amount payable) with all claims for the repayment of capital contributions made with respect to existing and future silent participations in the Bank in the form of *Stille Gesellschaft* and other tier 1 capital instruments ranking *pari passu* with profit participations in the form of *Stille Gesellschaft*; and
- (c) rank senior to all claims of shareholders of the Bank in connection with their shares in the Bank;

in each case as already arisen or arising in the future.

1.7 The Bank will not exercise its shareholder voting rights in the Company in a manner which would adversely affect the rights of the holders of the Class B Securities.

**Beneficiaries and enforcement of rights**

- 2.1 The Issuer may transfer its rights and obligations hereunder to a New Issuer (as defined in the Conditions) in the context of a substitution pursuant to § 12 of the Conditions. The Issuer may not otherwise transfer its rights or obligations under this Agreement.
- 2.2 In the event of the liquidation of the Issuer, the Bank will use its best efforts to substitute the Issuer with a New Issuer, subject to the terms of § 12 of the Conditions.
- 2.3 The obligations of the Bank hereunder are for the benefit of the Issuer and the holders of the SPHERE Securities only.
- 2.4 Only the Issuer and (if the Issuer refrains from taking legal action against the Bank in respect hereof within a reasonable time of the cause for such legal action arising) the holders of the SPHERE Securities may bring an action against the Bank in respect of the Bank's obligations under this Agreement.
- 2.5 The Bank will not exercise any rights of subrogation that it may have against the Company.

**Evidence of breach**

- 3. A failure by the Company to pay dividends under the Class B Securities as contemplated by the Company's memorandum and articles of association shall constitute *prima facie* evidence of a breach by the Bank of its obligations under Clauses 1.1 and 1.2 of this Agreement.

**Continued ownership**

- 4. The Bank will maintain direct or indirect ownership of all outstanding ordinary shares and the Class A Preference Shares of the Company.

**No dissolution**

- 5. To the fullest extent permissible by law, the Bank will not permit the Company to be dissolved until all obligations under this Agreement have been satisfied.

**Validity of SPHERE Securities**

- 6. The Issuer represents and warrants to, and agrees with, the Bank that the SPHERE Securities have been duly authorized by the Issuer and, when executed, authenticated and issued in accordance with

the subscription agreement dated on or about the date hereof between, *inter alia*, the Bank and the Issuer (the **Subscription Agreement**), will, subject to the Reservations (as defined in the Subscription Agreement), constitute a valid and legally binding fiduciary contract governed by the Luxembourg law of July 27, 2003 relating to trusts and fiduciary contracts.

### **Solvency Ratio**

7. The Bank will, as soon as it has established the same for any fiscal year during the lifetime of this Agreement, furnish the Principal Paying Agent under the Fiscal Agency Agreement (as defined in the Conditions), for communication to the holders of the SPHERE Securities, the Bank's solvency ratio on a solo and consolidated basis, which the Bank undertakes also to include in its annual report relating to such fiscal year.

### **Modification and termination**

- 8.1 Subject to Clause 8.2, this Agreement may only be modified or terminated with the written agreement of both parties.
- 8.2 The rights and obligations of the parties to this Agreement will automatically terminate upon the later of (a) the redemption of the Class B Securities, (b) the payment of any dividends accrued under the Class B Securities which remain unpaid after such redemption, if any and (c) the satisfaction of any obligations of the Bank under this Agreement arising on, prior to or due to any of those events.

### **Separate Fiduciary Assets**

9. The Bank undertakes to request a certificate from the Issuer every 12 months, the first such request to be made within the first two weeks following the issue date of the SPHERE Securities, which certificate shall confirm that the assets held by the Issuer under the fiduciary contract evidenced by the SPHERE Securities are segregated and recorded separately from its own assets.

### **Successors**

10. This Agreement will be binding on successors of the parties.

### **Severability**

11. If any provision of this Agreement is found to be invalid, illegal or unenforceable for any reason, it will be deemed replaced by the valid, legal and enforceable provision most closely approximating the intent of the parties, as expressed in such provision, and the validity, legality and enforceability of the remainder of this Agreement will in no way be affected or impaired thereby.

### **Law and Jurisdiction**

12. This Agreement is governed by and construed in accordance with the laws of Germany and the parties submit to the non-exclusive jurisdiction of such German courts as have jurisdiction over civil matters in Kiel, Germany.

## DESCRIPTION OF HSH N FUNDING II

### *General*

The Company was registered and incorporated on May 26, 2005 in the Cayman Islands as an exempted company with limited liability under the Companies Law (2004 Revision) of the Cayman Islands. The Company's registration number is 149519. The registered office of the Company is at Ugland House, P.O. Box 309GT, South Church Street, George Town, Grand Cayman, Cayman Islands. The Company has no prior operating history.

### *Capitalization at Date of this Offering Circular*

The authorized share capital of the Company as at the date of this Offering Circular is US\$ 10,000 principal amount of ordinary shares divided into 10 ordinary shares of US\$ 1,000 each, US\$ 1,050,000,000 principal amount of Class A preference shares divided into 1,050,000 Class A preference shares of US\$ 1,000 each and US\$ 500,000,000 Class B preference shares divided into 500,000 Class B preference shares of US\$ 1,000 each.

All authorized ordinary shares of the Company have been issued and fully paid up and are registered in the name of HSH Nordbank AG. No other authorized capital has been issued or allotted.

The Company has no loan capital outstanding and has no term loans or other borrowings or indebtedness in the nature of borrowings nor any contingent liabilities or guarantees.

### *Capitalization at Issue Date*

It is envisaged that on the Issue Date the authorized share capital of the Company will remain unchanged from the date hereof but the issued share capital of the Company will be US\$ 10,000 principal amount of ordinary shares divided into 10 ordinary shares of US\$ 1,000 each, US\$ 553,000,000 principal amount of Class A preference shares divided into 553,000 Class A preference shares of US\$ 1,000 each and US\$ 500,000,000 Class B preference shares divided into 500,000 Class B preference shares of US\$ 1,000 each. The Company would have a total issued share capital of US\$ 1,053,010,000.

### *Future Capitalization*

The Company's authorized and issued share capital as set out in this Offering Circular may change in the future. In particular, it is envisaged that the principal amount of Class A preference shares authorized and issued will be increased in accordance with the Memorandum and Articles of Association of the Company by authorizing the issue of and issuing additional Class A preference shares to the holder(s) of Class A preference shares in lieu of cash dividends payable to the holder(s) of the Class A preference shares.

### *Business*

The objects of the Company are limited by the memorandum and articles of association of the Company to entering into the Transaction Documents and exercising its rights and performing its obligations in connection therewith. The Company's memorandum and articles of association restrict the Company from borrowing moneys other than borrowing required under the Transaction Documents.

Since the date of its incorporation the Company has not engaged in any business other than the transaction described in this Offering Circular. No dividends have been paid and no borrowings or indebtedness in the nature of borrowings, other than the Company's costs and expenses of incorporation, has been incurred by the Company and the Company has no employees. The Company has no subsidiaries.

The only assets of the Company available to meet the claims of the holder of the Class B Securities is the Repayment Amount due to the Company under the Participation Agreement and the interest payments under the Loan.



The Class B Securities are the obligations of the Company alone and not of the directors or shareholders of the Company.

### ***Directors***

The Company's Board of Directors will initially be composed of three Members, two of whom will be independent Directors employed by Maples Finance Limited. The Directors have unlimited terms of office, subject to resignation or removal. There is no current intention to alter the number of Directors on the Board. The memorandum and articles of association of the Company provide that the Board of Directors should consist of not less than one person.

Generally, when assessing any proposed action that requires the Directors' consent, the Directors must act *bona fide*, in what they consider to be the best interests of the Company and they must exercise the powers that are vested in them for the purpose for which they were conferred.

The Directors of the Company as at the date of the Offering Circular are as follows:

<i>Name</i>	<i>Occupation</i>
Phillip Hinds	Director
Hugh Thompson	Director
Ralf Schneider	Director

The business address of the Directors is at Queensgate House, P.O. Box 309 GT, South Church Street, George Town, Grand Cayman, Cayman Islands.

### ***Compensation of Directors and Officers***

The Company will pay Maples Finance Limited annual fees pursuant to the Administration Agreement to be entered into by the Company and Maples Finance Limited. These fees will cover the cost of the provision of three directors and other administrative services to be provided to the Company by Maples Finance Limited.

Each of the directors of the Company is entitled to be reimbursed for costs and expenses properly and reasonably incurred in connection with his duties.

### ***Indemnification of Directors and Officers***

The memorandum and articles of association of the Company provide that every director, agent or officer of the Company is indemnified from the assets of the Company against any liability incurred by him as a result of any act or failure to act in carrying out his functions, other than such liability (if any) that he incurs by his own wilful neglect or default.

### ***Liquidation***

The Company may be liquidated either (i) at the option of the voting shareholders of the Company by the passing of a special resolution, which requires not less than two thirds of the voting shares (the Class B Securities are not voting shares) to vote in favour of the resolutions or (ii) on the presentation of a petition to the court for winding up made by creditors or contributories of the Company. The court can wind up a company if it can be shown that either the Company's business has been suspended for one year or the Company is unable to pay its debts. In addition, the court has the power to wind up a company if it is of the opinion that it is just and equitable to do so.

### ***Financial Year and Financial Statements***

Since the date of incorporation no financial statements of the Company have been prepared. The financial statements of the Company will be produced on an annual basis and will not be audited. The Company will not produce any interim accounts. The Company's financial year is from 30 June of each year to 29 June of the following year.

The Company's first financial year is a short financial year.

## GENERAL INFORMATION ON THE BANK

### **Overview**

HSH Nordbank AG is a strong regional bank in northern Europe and a recognized international specialized financier with industry expertise in selected markets such as shipping, real estate, transportation and capital markets. It seeks to be a full-service provider of banking services to medium-sized to large companies in a number of selected business segments and geographical markets. The Bank is also a principal banker to the city-state of Hamburg and the state of Schleswig-Holstein as well as the central clearing house for the savings banks in Schleswig-Holstein.

The Bank has twin headquarters in the cities of Hamburg and Kiel, in northern Germany, and is present in most of the world's major financial centers. As of December 31, 2004, the Bank maintained branches in Luxembourg, London, New York, Hong Kong, Singapore, Copenhagen, Stockholm, Helsinki and the Cayman Islands and representative offices in Amsterdam, Oslo, Warsaw, Tallinn, Riga, Shanghai, Hanoi, Hannover and Paris. At December 31, 2004, the Bank had approximately 4,300 employees around the world and total assets of €164 billion. For the year then ended, the Bank had an operating profit after risk provisions and evaluation of €834.6 million.

The Bank was created on June 2, 2003 by the merger of state banks (*Landesbanken*) of the city-state of Hamburg and the state of Schleswig-Holstein, respectively named Hamburgische Landesbank – Girozentrale ("Hamburg LB") and Landesbank Schleswig-Holstein Girozentrale ("LB Kiel"). The German state banks have traditionally operated as the wholesale banks and clearing houses for the state-run savings banks, and their obligations have benefited from a guarantee of the respective state governments. For new obligations these guarantees will terminate on July 18, 2005, pursuant to European Union regulation. See "Regulation". In anticipation of the loss of the state guarantees, many German state banks have adopted new funding strategies, diversified their operations and consolidated with other banks to achieve critical mass.

### ***Executive Bodies of the Bank***

The Bank has both a supervisory board (*Aufsichtsrat*) and a management board (*Vorstand*). As required by German corporate law, the two boards are separate and no individual may be a member of both boards at the same time. The management board is responsible for managing the Bank's operation. The supervisory board's principal function is to supervise the management board, to issue rules of procedure for the management board and to appoint and remove the members of the management board. In addition, the supervisory board pursuant to the management board's rules of procedure must grant its prior consent to certain major or unusual transactions, such as large capital expenditure items, or strategic decisions. The supervisory board does not, however, supervise the day-to-day business of the Bank.

In carrying out its duties, each member of either board must exercise the standard of care of a diligent and prudent businessperson. In complying with this standard, the boards must take into account a broad range of considerations, including the interests of the Bank and its shareholders, employees and creditors.

### ***Management Board***

The management board is currently comprised of six members, who meet at least weekly. The Board of Managing Directors is responsible for the management of the Bank's operations. The business addresses of management are: HSH Nordbank AG, Martensdamm 6, 24103 Kiel, Germany, and Gerhart-Hauptmann-Platz 50, 20095 Hamburg, Germany.

The following table sets out the members of the management board and the year in which they were appointed.

<b>Name</b>	<b>Year Appointed</b>	<b>Position</b>	<b>Other Positions</b>
Alexander Stuhlmann	2003	Chairman	Member of the administrative board of DekaBank Deutsche Girozentrale; member of the supervisory board of LBS Bausparkasse Hamburg Aktiengesellschaft
Hans Berger	2003	Deputy Chairman	Member of the administrative board of DekaBank Deutsche Girozentrale; Member of the supervisory boards of FinanzIT GmbH and Nordex AG; deputy chairman of SIZ Informatik
Ulrich W. Ellerbeck	2003	Member	Member of the supervisory boards of HAW Hamburger Aluminium Werke GmbH and Helm AG;
Peter Rieck	2003	Member	Member of the supervisory boards of DEKA Immobilien Investment GmbH, DGAG Deutsche Grundvermögen AG and TxB Transaktionsbank GmbH; chairman of the supervisory boards of GEHAG GmbH and LB Immo Invest GmbH; deputy chairman of IVG Immobilien AG and Deutsche Real Estate AG
Hartmut Strauß	2003	Member	Member of the administrative board of Hamburgische Wohnungsbaukreditanstalt; member of the supervisory boards of HGV Hamburger Gesellschaft für Vermögens- und Beteiligungsverwaltung mbH and TxB Transaktionsbank GmbH
Franz S. Waas, Ph.D.	2003	Member	Member of the supervisory board of Deka Investment GmbH

#### *Supervisory Board*

The supervisory board consists of 20 members. Ten members are elected by the Shareholders' Meeting pursuant to the provisions of the German Stock Corporation Act and 10 members are elected by the employees under the German Codetermination Act of 1976. The supervisory board appoints a chairman and a vice chairman from among its members. At least half of the members of the supervisory board must be present to constitute a quorum. Unless otherwise provided for by law, the supervisory board passes resolutions by a simple majority. In the event of a tie, the supervisory board holds another vote and the chairman then has the decisive vote. The members of the supervisory board may be reached at the business addresses of the Bank: HSH Nordbank AG, Martensdamm 6, 24103 Kiel, Germany, and Gerhart-Hauptmann-Platz 50, 20095 Hamburg, Germany.

The members of the Bank's supervisory board appointed as at March 23, 2005 are:

<b>Name</b>	<b>Position</b>	<b>Main Activities/Place of Residence</b>
Mr. Rainer Wiegard <sup>(1)</sup>	Chairman	Minister of Finance of the State of Schleswig-Holstein, Kiel
Mr. Olaf Behm**	Deputy Chairman	Staff council of HSH Nordbank AG, Hamburg
Mr. Olaf Cord Dielewicz*	Member	President of the Savings Banks & Giro Association for Schleswig-Holstein, Kiel
Prof. Dr. Hans-Heinrich Driftmann*	Member	Managing shareholder of Peter Kölln KGaA, Elmshorn
Dr. Thomas R. Fischer*	Member	Chairman of the management board of WestLB AG, Düsseldorf
Mr. Hans-Peter Krämer*	Member	Chairman of the management board of Kreissparkasse Köln, Köln
Dr. Hans Lukas*	Member	Chairman of the management board of Sparkasse Stormann, Bad Oldesloe
Mr. Alexander Otto*	Member	Chairman of the executive board of ECE Projektmanagement GmbH & Co. KG, Hamburg
Dr. Wolfgang Peiner*	Member	Senator, head of the Ministry of Finance of the city-state of Hamburg, Hamburg
Dr. Ralf Stegner*	Member	Minister of the Interior of the State of Schleswig-Holstein, Kiel
Mr. Gunnar Uldall*	Member	Senator, head of the Ministry of Economics and Employment of the city-state of Hamburg, Hamburg
Ms. Sabine-Almut Auerbach**	Member	District chief executive, ver.di, Neumünster
Ms. Astrid Balduin**	Member	Staff counsel of HSH Nordbank AG, Kiel
Mr. Berthold Bose**	Member	Head of financial services sector at ver.di regional district of Hamburg, Hamburg
Mr. Jens-Peter Gotthardt**	Member	Staff counsel of HSH Nordbank AG, Hamburg
Mr. Thorsten Heick**	Member	Head of Private Clients of HSH Nordbank AG, representative of executive employees, Hamburg
Mr. Ronald Fitzau **	Member	Staff counsel of HSH Nordbank AG, Hamburg
Ms. Rieka Meetz-Schawaller**	Member	Staff member of Private Clients of HSH Nordbank AG, Kiel
Mr. Knut Pauker**	Member	Employee of Spielbank SH GmbH & Co. Casino Stadtzentrum Schenefeld KG, Schenefeld
Ms Edda Redeker**	Member	Head of legal department, ver.di, Kiel

\* Board members elected by the shareholders.

\*\* Board members elected by the employees.

(1) Mr. Rainer Wiegard has been elected as member of the supervisory board replacing Ms. Heide Simonis.

Set forth below are biographies of the members of the Bank's management board and supervisory board.

#### *Board of Managing Directors*

Alexander Stuhlmann was born in 1948 and joined Hamburgische Landesbank in 1976 after graduating with a law degree. He became Director of the Corporate Office in 1992. In 1996 he was appointed to the

management board of Hamburgische Landesbank and became its Chairman in 1998. Mr. Stuhlmann has served as Chairman of the management board of HSH Nordbank since its foundation in June 2003.

Hans Berger was born in 1950 and started his career in 1968 with the German savings banks organization, where he earned a diploma in Business Administration. In 1986 he was appointed to the management board of Sparkasse Kiel. In 1996 he joined the management board of Landesbank Schleswig-Holstein as a Deputy Chairman and became Chairman in 2003. Mr. Berger has served as Deputy Chairman of the management board of HSH Nordbank since its foundation in June 2003.

Peter Rieck was born in 1952 and joined Landesbank Schleswig-Holstein in 1978 after graduating with a degree in business administration. He advanced to become Director of the Corporate Office as well as the department head for German Corporates and Banks. In 1995 Mr. Rieck was appointed Chairman of the management board of Investitionsbank Schleswig-Holstein. In 1998 he was appointed Deputy Chairman of the management board of Hamburgische Landesbank and has served as a member of the management board of HSH Nordbank since its foundation in June 2003.

Franz S. Waas, Ph.D., was born in 1960 and, after graduating in business administration, he started his career with Bayerische Vereinsbank, where he was in charge of the New York and Cayman Islands branches from 1994. Parallel to his professional duties, Mr. Waas earned a Ph.D. in International Business Administration. In 1996 he became general manager of the New York and Cayman Islands branches of Landesbank Baden-Württemberg. Mr. Waas joined Landesbank Schleswig-Holstein as a member of the management board in 2001, and has served as a member of the management board of HSH Nordbank since its foundation in June 2003.

Hartmut Strauß was born in 1949 and joined Norddeutsche Landesbank after graduating in business administration in 1975. In 1977 he joined Hamburgische Landesbank, where he held a number of executive positions in the Controlling, Accounting and Tax departments before he was appointed to the management board in 2000. Mr. Strauß has served as a member of the management board of HSH Nordbank since its foundation in June 2003.

Ulrich W. Ellerbeck was born in 1952 and graduated in economics and joined Landesbank Schleswig-Holstein in 1980. He held executive positions in a number of departments before moving to Denmark in 1996 to build up the bank's Scandinavian activities as General Manager of the Copenhagen branch. At the beginning of 2001 he joined Hamburgische Landesbank as the Director for Corporate and Financial Institutions clients. In 2003 Mr. Ellerbeck was appointed to the management board of Landesbank Schleswig-Holstein and has served as a member of the management board of HSH Nordbank since its foundation in June 2003.

### **Remuneration of the Members of the Management Board and Supervisory Board**

The total remuneration paid to the management board was €4,997 thousand for the year ended December 31, 2004, including €2,366 thousand as variable components. Current pension payments to former members of the management board amounted to €3,362 thousand for the year ended December 31, 2004. Members of the supervisory board received remuneration and allowances of €550 thousand for the year ended December 31, 2004. In addition, advances, loans and other contingent liabilities of the Bank to members of the management board amounted to €939 thousand and €1,953 to members of the supervisory board for the period then ending.

### ***General Meeting***

The annual general meeting of stockholders (Ordinary Shareholders' Meeting) shall be held within the first eight months of a financial year. The meeting adopts resolutions on all matters assigned to it by law or by the articles of association, in particular, it deals with (i) the submission of the annual financial statements, the management report, the consolidated financial statements, the group management report and the respective report of the supervisory board as well as the proposal for the utilisation of the retained earnings, (ii) the adoption of the resolution concerning the annual financial statements if the general meeting has to approve these itself in the cases prescribed by law and concerning the consolidated financial statements if

the shareholders' meeting has to decide upon the approval of the same in the cases prescribed by law, (iii) the adoption of the resolution on the utilisation of the retained earnings, (iv) the adoption of the resolution to ratify the acts of the board of managing directors and of the supervisory board, (v) the election of members of the supervisory board, if necessary and (vi) the appointment of the auditor.

### ***Principal Stockholders***

As of the date of this Offering Circular, the city-state of Hamburg holds 35.38% of the share capital of the Bank, the State of Schleswig-Holstein holds 19.55%, the Savings Banks and Giro Association for Schleswig-Holstein holds 18.21% and WestLB Beteiligungsholding GmbH holds the remaining 26.86%. Of the 19.55% stake held by the State of Schleswig-Holstein, 2.69 percentage points are held on trust for the State of Schleswig-Holstein by the Gesellschaft zur Verwaltung und Finanzierung von Beteiligungen des Landes Schleswig-Holstein mbH ("GVB"). GVB is 100% owned by the State of Schleswig-Holstein. WestLB Beteiligungsholding GmbH, Düsseldorf, is a wholly owned subsidiary of WestLB AG, Düsseldorf and Münster.

The city-state of Hamburg, the State of Schleswig-Holstein and the Savings Banks and Giro Association for Schleswig-Holstein have entered into a "holding agreement" pursuant to which they have mutually undertaken to hold at least 50.1% in aggregate of the voting share capital in the Bank through at least the end of 2013.

The following table sets forth the beneficial ownership of the Bank's common shares at December 31, 2004. In addition to the common shareholdings shown here, the Bank has outstanding non-voting equity securities that are analogous to preferred shares in the United State in the form of silent participations (*stille Beteiligungen*), which constitute Tier 1 capital, and profit participations (*Genussrechte*), which form upper Tier 2 capital. See "Capitalization".

	<b>Percentage of Outstanding Common Shares</b>
<b>Principal Stockholders</b>	
City-state of Hamburg .....	35.38%
WestLB Beteiligungsholding GmbH .....	26.86%
State of Schleswig-Holstein.....	19.55%
Savings Banks and Giro Association for Schleswig-Holstein.....	18.21%
Total .....	100.00%



## ACTIVITIES AND BUSINESS DESCRIPTION OF THE HSH NORDBANK GROUP

### Overview

HSH Nordbank AG is a strong regional bank in northern Europe and a recognized international specialized financier with industry expertise in selected markets such as shipping, real estate, transportation and capital markets. It seeks to be a full-service provider of banking services to medium-sized to large companies in a number of selected business segments and geographical markets. The Bank is also a principal banker to the city-state of Hamburg and the state of Schleswig-Holstein as well as the central clearing house for the savings banks in Schleswig-Holstein. In particular, the Bank focuses on the following:

- **Shipping** The Bank is a leading arranger and provider of banking services to the global shipping industry with a well diversified credit portfolio of vessel types, vessel ages and customers' domiciles.
- **Real estate.** The Bank is an arranger and provider of financial services to institutional clients and developers of commercial and residential properties with a geographical focus on Germany and increasingly on prime metropolitan development areas in North America and western Europe.
- **German corporates.** The Bank provides the full range of financial products and services, with a focus on specialized financial products, to large and medium-sized corporate customers in Germany, especially its core region of northern Germany.
- **Nordic corporates.** The Bank provides specialized financial products and services to medium-sized to large corporate customers in northern Europe and the Baltic States.
- **Savings banks and public sector customers.** The Bank provides a full range of financial services, including deposit and financial advisory services and structured products, to German state governments and German savings banks. The Bank is the central clearing house for 22 savings banks in the state of Schleswig-Holstein.
- **Transportation.** The Bank is an active arranger and provider internationally of financing for the aviation, rail and logistics/infrastructure industry.

In addition the Bank has specialties in risk management, capital markets transactions and investments in credit and market price risks to enhance risk diversification and optimize earnings.

In anticipation of and following the merger, the Bank has focused its operations on a small number of areas where it has or can achieve a leading market position. Within these areas of focus, it seeks to maintain long-term client relationships, offer its clients the full range of banking and advisory services and serve as lead arranger or manager rather than merely as participant bank. It has focused especially, within each market area, on its expertise in structured and other specialized financial products. Following the merger, the Bank has generally focused on increasing its profitability and market presence.

### Products and Services

The Bank offers its domestic and international customers a broad range of banking products and services. Among other products and services, the Bank:

- makes short-term advances,
- grants medium- and long-term financing, both fixed rate and floating,
- arranges and grants guarantees and indemnities,
- places different asset classes via securitization, including assets from the shipping, real estate and aviation industries,
- purchases and sells receivables,
- offers factoring transaction services and structured finance products,

- assists customers through the purchase, sale, acceptance and drawing of bills,
- provides loans to public and private sector borrowers,
- finances residential and commercial mortgages for medium and large real estate companies,
- provides export finance and guarantees,
- accepts deposits and makes payments of all kinds,
- provides risk management products,
- trades securities and money-market instruments,
- acts as arranger and underwriter of many types of public and private debt instruments and
- provides custodial services to private clients, institutional investors and other financial institutions.

## Strategy

The Bank's strategy involves focusing on fields of business in which it can maintain or occupy a leading place in the market and generate attractive margins thanks to the leading position and/or the strong roots the Bank has in its core region. Beyond that, based on its traditional strength as a recognized provider of specialized finance, the Bank wants to strengthen the ties with its customers and thus sell a much larger number of capital-markets products and services involving higher commission income. In addition, the Bank is systematically reducing its credit risks by way of increased syndication and securitization of portfolios and thus creating additional opportunities for growth at the same time. Last but not least, intensified collaboration with the savings banks in Schleswig-Holstein is an important mainstay of its business model. The Bank's shorter-term targets are to increase its pre-tax return on equity from 12.8% for 2004 to more than 15% by 2006 and to maintain its core capital ratio above 7%. The Bank cannot assure investors that it will be able to accomplish these goals.

In order to achieve these goals, the Bank's strategy is to continue and augment its focus on the following:

- ***Commit itself primarily to business areas where it can obtain attractive returns*** due to its existing market position. Among other things, the Bank plans to increase its international activities in specific primary business areas where it possesses unique expertise in products, customers and/or markets; to strengthen its position as a regional supplier in northern European banking; to increase its international presence as a provider of specialized and structured financing; and to increase its position as an innovative capital markets partner.
- ***Increase commission income***, both by assuming syndicate lead or co-lead functions in areas where it holds a significant market position and by acting as arranger, offering its customers complete solutions that combine its own products with those of other providers. The Bank's goal is to achieve this aim by, among other things, maintaining and building long-term relationships with customers and increasing its knowledge of its customers and their requirements.
- ***Reduce risk exposure*** by shifting its focus from financing of assets to asset management. Historically, the Bank extended loans and held them as assets on its balance sheet. The Bank increasingly seeks to manage its portfolio by securitizing and trading its assets and by sharing loan risk through syndication, thus freeing its capital for further productive use.
- ***Improve its core capital position***, both by increasing core capital through retained earnings and capital increases by its existing shareholders and by improving the quality of its core capital by converting silent equity participations (*stille Einlagen*) held by its shareholders into permanent share capital. The current state shareholders of the Bank have committed themselves to a capital increase of €556 million that is scheduled for July 20, 2005. The current state shareholders have committed to convert a total of €1,355 million in silent participations into share capital and capital reserves by the end of 2007. Silent participations are a type of fixed-term, fixed-return equity capital that are in many

respects comparable to preferred shares in the United States and that constitute Tier 1 capital. The conversion is to take place in two steps: first, silent participations of €605 million are to be converted on July 1, 2005; in the second step, silent participations of €750 million are to be converted on December 31, 2007.

- ***Build on its role as a partner for German savings banks***, including by introducing new services designed for these savings banks. The Bank has signed bilateral agreements with nearly all savings banks in Schleswig-Holstein in order to mutually enhance distribution and product development.

This strategy entails risks, and the Bank cannot ensure its investors that it will achieve its targets or that its strategy will prove successful. See “Investment Considerations”.

## **Overview of the German Banking Market**

The German banking system consists of a variety of public sector and private sector banks of two general types: universal banks (also known as full-service or multi-purpose banks) and specialized banks. Universal banks engage not only in the deposit and lending business, but also in the investment banking, underwriting and securities trading for their own account and for the accounts of their customers. Specialized banks, such as mortgage banks, concentrate on certain types of credit business or have other special functions.

As a general rule, universal banks are permitted to engage in all or most of the banking activities reserved for specialized banks, such as mortgage lending and public sector lending, in addition to the regular banking activities, whereas specialized banks are limited to banking activities related to their special functions. However, with the exception of three universal banks with rights to operate as mixed mortgage banks, prior to July 2005 private sector universal banks have not been permitted to refinance mortgage loans and public sector loans through the issuance of mortgage bonds (*Pfandbriefe*) (although they may own mortgage banking subsidiaries that do so).

Universal banks can be divided into three broad types: private sector commercial banks (*private Geschäftsbanken*); public sector savings banks (*Sparkassen*) and their central institutions, the state banks (*Landesbanken*) and cooperative banks (*Genossenschaftsbanken*) and their central institutions. HSH Nordbank is a universal state bank but owns a mortgage bank that is permitted to issue mortgage bonds (*Pfandbriefe*).

As of December 31, 2004, there were 252 private sector commercial banks (5 major banks, 163 regional banks and other commercial banks, 84 branches of foreign banks) in Germany with a total business volume (balance sheet total plus endorsement liabilities on bills of exchange of €7.527 billion. In addition, there were 477 public sector savings banks (*Sparkassen*) and their 12 central institutions (*Landesbanken*), 1,336 cooperative banks (*Genossenschaftsbanken*) and their two central institutions (*Genossenschaftliche Zentralbanken*) and 25 specialized mortgage banks (*Hypothekenbanken*) and 16 credit institutions with special purposes (*Banken mit Sonderaufgaben*). Moreover, there were 126 foreign banks, including 84 branches of foreign banks and 42 credit institutions in the majority ownership of foreign banks. At the end of December 2004, the *Landesbanken* had a 19.2% share in the total business volume of all universal banks.

All German banks are subject to comprehensive supervision and regulation by German authorities, in particular, the Federal Financial Supervisory Authority (*Bundesanstalt für Finanzdienstleistungsaufsicht*), an independent federal regulatory authority (under the supervision of the Federal Minister of Finance) and the German Central Bank (*Bundesbank*). For more information on German banking supervision and regulation, see “Regulation”.

A new law governing mortgage bonds (*Pfandbriefe*) will come into force in July 2005, replacing the existing legal frameworks. Restrictions applicable to the activity of the specialized mortgage banks will disappear. Hence, any commercial bank will be able to issue mortgage bonds (*Pfandbriefe*), provided they have a minimum Tier 1 capital of €25 million and obtain a license from the Federal Financial Supervisory Authority (*Bundesanstalt für Finanzdienstleistungen*). Approval should be forthcoming if the bank demonstrates appropriate risk management systems and a long-term plan to issue mortgage bonds (*Pfandbriefe*) on a regular basis. In addition, current issuers can retain their issuance rights, provided they submit a declaration

demonstrating the fulfillment of the above-mentioned requirements. Among others, the license can be withdrawn if no issuance has taken place for two years.

### **History and Development of HSH Nordbank AG**

The Bank was formed on June 2, 2003 following the merger of Hamburgische Landesbank -Girozentrale and Landesbank Schleswig-Holstein Girozentrale. Hamburg LB was founded in 1938 as an institution under public law. LB Kiel was founded in 1917 as an institution under public law. The Bank was incorporated as an *Aktiengesellschaft* (German public limited company) under the laws of the Federal Republic of Germany and subsequently registered in the Handelsregister (commercial register) of Hamburg (HRB 87366) and Kiel (HRB 6127) on June 2, 2003. For accounting and tax purposes, the incorporation took effect retroactively as of January 1, 2003. The Bank is co-headquartered in Hamburg and Kiel. The merger united two partners firmly rooted in the Hamburg and Schleswig-Holstein regions of northern Germany.

To effect the merger of Hamburg LB and LB Kiel, the city-state of Hamburg and the State of Schleswig-Holstein signed a State Treaty on February 4, 2003, which was subsequently ratified by their respective parliaments in May 2003. As a result of the merger, all of the assets and liabilities as well as the employees of Hamburg LB and LB Kiel were transferred to the Bank by way of universal succession and Hamburg LB and LB Kiel were dissolved as public law institutions. The State Treaty provides for a guarantee obligation (*Gewährträgerhaftung*) under which the state guarantors have undertaken to guarantee all liabilities incurred by the Bank on or before July 18, 2005, including liabilities transferred to the Bank as a result of the merger. The State Treaty also provides for a maintenance obligation (*Anstaltslast*) under which the State Guarantors have undertaken to ensure that the Bank is able to fulfill its obligations up to and including July 18, 2005. *This applies without limitation as to time to liabilities undertaken on or before July 18 2001 and to liabilities undertaken thereafter but not later than on July 18 2005 only to the extent that the term of such liabilities does not extend beyond December 31 2015.* See “Investment Considerations”. The shareholders of Hamburg LB and LB Kiel, including the state guarantors, entered into a merger and consortium agreement governing, among other things, the operation and termination of the guarantee obligation (*Gewährträgerhaftung*) and maintenance obligation (*Anstaltslast*).

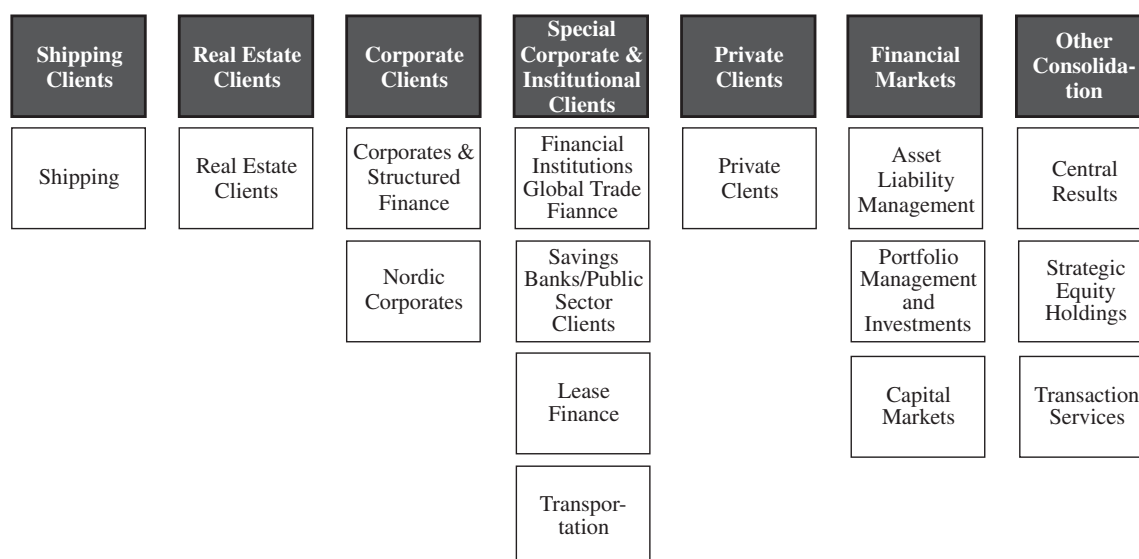
## Principal Business Activities of the Bank

The Bank organizes its different areas of activity into segments. The segments are structured to cater for the Bank's customers' particular requirements and are based on the Bank's strategic strengths. The following table sets out the relative contribution of each segment to the Bank's segment assets and profit before risk provisions and valuation as at and for the year ended December 31, 2004:

### Segment Data

	As of December 31, 2004	
	Operating profit before risk provisions and valuation	Segment assets
	<i>(in millions of €)</i>	
Shipping .....	246.4	17,945.7
Real Estate .....	198.2	25,505.7
Corporate Clients .....	238.9	16,928.5
Special Corporate and Institutional Clients .....	228.9	63,987.5
Private Clients.....	29.9	4,002.0
Financial Markets .....	324.7	28,255.1
Other/Consolidation .....	(86.2)	7,465.3
<b>HSH Nordbank consolidated.....</b>	<b>1,180.8</b>	<b>164,089.8</b>

The Bank divides certain segments into the divisions described below. Certain divisions are further divided into various units. The following chart shows the Bank's segment and division structure:



### Shipping

The total assets of the Bank's Shipping segment as at December 31, 2004 were €17.9 billion. For the year then ended, the Shipping segment's operating profit after risk provisions was €239.0 million.

### ***Products and services***

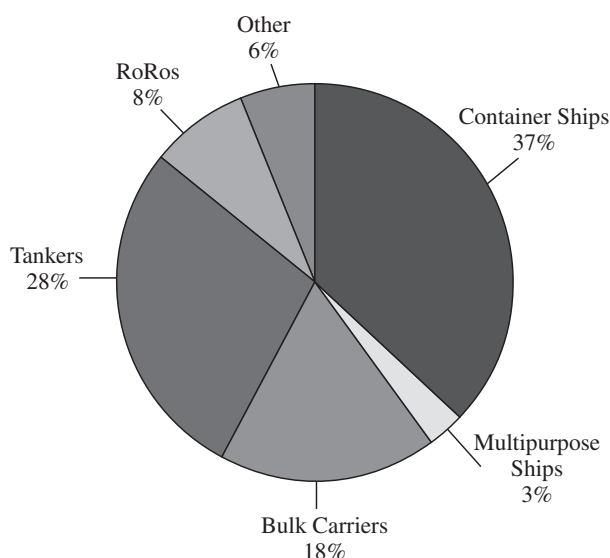
The Bank is a leading arranger and provider of ship finance worldwide. Through its Shipping segment, the Bank offers customized finance and financial services for shipping companies around the world, including in particular long-term ship-mortgage loans, finance during construction and structured ship finance. The Bank assists its customers both in financing the building of new vessels and the purchase of ships from other sources. The Bank also provides tailor-made finance solutions for a large variety of specialized ships. The Bank draws on the expertise and capabilities of all the Bank's divisions in order to make available to its shipping customers all of its banking services in line with their requirements.

The Bank has a 51% equity holding in the Greek investment bank Aegean Baltic Bank S.A. based in Athens, which is specialized in shipping services. Aegean Baltic Bank S.A. grants its own loans and syndicates loans and provides consulting services.

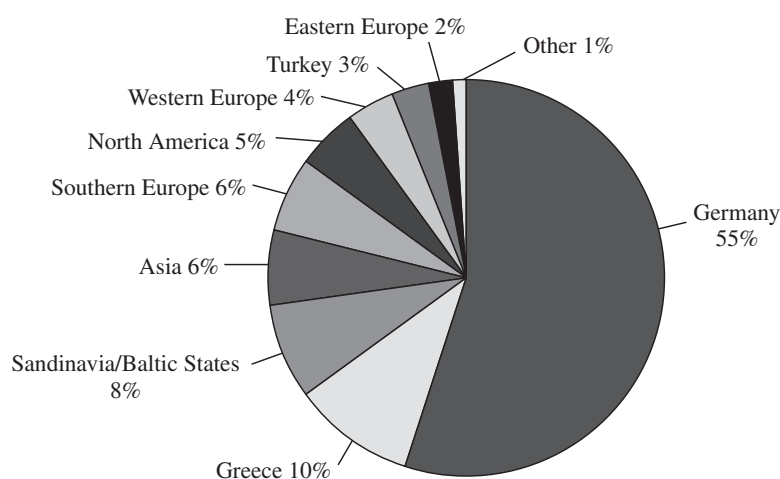
### ***Loan portfolio***

The Shipping segment's loan portfolio at December 31, 2004 was €17.2 billion. This portfolio is well diversified with regard to vessel type, vessel age and domicile of customer. The following tables show, for 2004, the distribution of the loan portfolio by domicile of customer and by type of asset granted as security.

#### **Portfolio by Type of Vessel in %, December 31, 2004**



#### **Portfolio by Region in %, December 31, 2004**





Shipping assets are of three principal types and serve distinct market segments: container vessels; dry bulk vessels (for such materials as iron ore, coal, wheat and steel); and oil tankers. The owners of these assets are either operators or charterers who lease the ships out to operators under term or spot charters.

The Shipping segment increasingly seeks to manage its loan portfolio by securitizing the loans and by syndicating its lending transactions. In October 2004, the Bank completed a U.S.\$1 billion ship-loan securitization under the name “OCEAN STAR 2004”. The Bank syndicated more than €1.5 billion of shipping loans in 2004.

### ***Market trends and development***

The trend in the shipping market over the past three years has been increasing demand for ship space and, consequently, rising charter rates. These developments were accelerated by a relatively short supply of vessels, which has also resulted in rising prices for both new and second-hand ships.

The principal driving force behind this upward trend, along with the good global economic situation, was the booming Chinese economy. Based on the growing turnover of containers and the need to replace old tonnage, new ships, especially container vessels, are being ordered from shipyards for delivery in 2008 and thereafter. In the bulk carrier segment as well, demand for shipping space was greater than the supply to satisfy it. Given the shortage of shipyard capacity, the Bank considers that fleet space in this segment is only likely to increase gradually.

In addition, orders for double-hull oil tankers are being placed in large numbers, due primarily to international agreements that require single-hull tankers to be replaced as a result of environmental concerns.

### ***Competition***

The Shipping segment’s competition consists of a range of international banks that are active in ship finance, including Royal Bank of Scotland, HSBC, Fortis Bank N.V., JP Morgan, ABN AMRO and ING, along with several Scandinavian banks. The Shipping segment’s competition in Germany includes Kreditanstalt für Wiederaufbau (KfW), Deutsche Schiffsbank, Commerzbank and Deutsche Bank.

### ***Real Estate***

The total assets of the Bank’s Real Estate segment as at December 31, 2004 were €25.5 billion. For the year then ended, the Real Estate segment’s operating profit after risk provisions was €30.8 million, compared to operating profit before risk provisions of €198.2 million.

### ***Products and services***

The Bank is an arranger and provider of financial services to institutional clients and developers of commercial and residential properties with an geographical focus on Germany and prime metropolitan development areas in North America and western Europe. The Bank’s German real estate business focuses on commercial and residential real estate in northern Germany and Berlin as well as in the major cities of western Germany. The Bank has a leading market position in northern Germany. At the same time, the Bank is selectively widening its international business, with foreign offices ensuring market and client proximity. Its operations are targeted at commercial properties in top locations in European and North American cities. In Europe, the Bank focuses primarily on the United Kingdom, Scandinavia and the Netherlands. In 2005, the Bank opened a representative office in Paris to optimize the quality of the services it provides to its European clients.

The Bank pursues an integrated business approach that involves offering its clients conventional finance and tailored products derived from real estate investment banking. The Bank conducts its mortgage lending operations under its own name and most of its other real estate operations through its subsidiary HSH N Real Estate AG, whose business comprises real estate project development, managing real estate funds, holding equity interests in real estate companies and offering real estate services.

**Real estate project development.** The Bank's real estate projects are generally carried out in joint ventures with partners. These projects involve conventional commercial properties for office or retail use as well as the development of residential quarters and estates. The Bank currently has eight equity commitments with a total project volume of €1.1 billion. The largest single project is the "EUROPA-Passage" in Hamburg, a shopping mall with office space situated in a top location in the Hamburg central business district, which is being carried out in collaboration with the ALLIANZ Group via a joint project company, ALIDA Grundstücksgesellschaft mbH & Co. KG. Completion and opening is scheduled for the end of 2006. A further shopping center, "Königsbau-Passagen" is currently under construction in the central business district of Stuttgart. The Bank's latest project is the so-called "Atlantic-Haus" located on the premises of the former Bavaria-St. Pauli-Brauerei brewery in Hamburg. This entails the construction of a modern office block particularly targeted at companies in the advertising and communications sector.

**Real estate funds.** The volume of closed-end retail funds managed by the Bank through HGA Capital Grundbesitz und Anlage GmbH continued to grow in 2004. Four new funds with properties in Germany, Poland, the Czech Republic and the United States were set up. The HGA Frankfurt and HGA Österreich I funds launched in 2003, as well as HGA Mitteleuropa II fund comprising a shopping mall in Brno (Czech Republic) and HGA Stuttgart comprising a logistics center at Stuttgart Airport (Germany), both of which were established in 2004. In addition, the HGA US III fund was placed in 2004. In total, equity of approximately €131 million was placed by the Bank's Real Estate segment in 2004. In addition, the favorable market situation in New York was used by the Bank to sell a property that had originally been intended for a fund.

HGA Management Investor und Anlage GmbH, a subsidiary of HSH Real Estate AG, manages a fund and property portfolio worth approximately €1.1 billion. LB Immo Invest GmbH, a joint venture of HSH N Real Estate AG with Landesbank Hessen-Thüringen and BayernLB, conducts special purpose fund business. In 2004, this company initiated a further three special purpose real estate funds, increasing the total number of funds it manages to five. In its second full year of operations, it increased the volume of its real estate assets to €359 million as of December 31, 2004.

**Equity interests.** The Bank holds equity interests in real estate companies and equity funds. A key equity interest is the DGAG Group, which develops, buys and sells, manages and administers residential and commercial properties. Its own and externally managed portfolio of shopping-center real estate comprises total retail floor space for rent of approximately 143,000 square meters and commercial floor space of approximately 297,000 square meters throughout Germany. In addition to its own residential portfolio of more than 19,400 rental apartments, the company manages approximately 3,300 rental units on behalf of third parties.

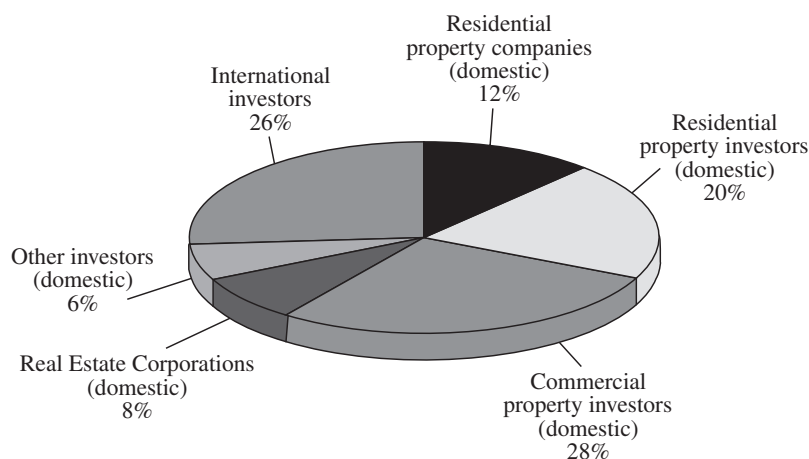
Since the end of 2002, the Bank has had shareholdings in two U.S. real estate mezzanine funds and a Canadian real estate fund via its wholly owned subsidiary TEUKROS GmbH, which was transferred to HSH N Real Estate AG in December 2004. The value of total committed equity stood at approximately €36.4 million at December 31, 2004. GEHAG GmbH, in which HSH N Real Estate AG has an equity interest, is a leading, formerly municipal housing company based in Berlin. The company (GEHAG) manages approximately 25,000 dwellings, of which it owns 18,000. The investment house Oaktree Capital Management will purchase 85% of the shares in GEHAG GmbH from HSH N Real Estate AG. The transaction, which will be carried out in several stages, is still subject to the condition precedent that the cartel authorities and the state of Berlin give their approval.

**Real estate services.** The real estate services division offers comprehensive consulting services relating to all aspects of real estate, including distribution and project management services, as well as real estate advice and services that include analyzing, structuring and generally advising on real estate portfolios and providing real estate asset management services.

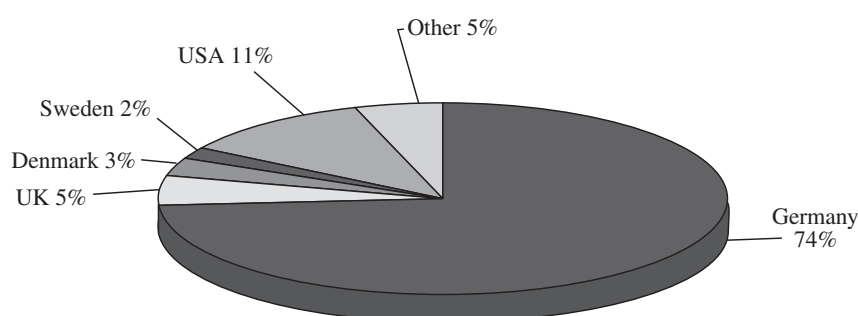
## ***Loan Portfolio***

The Real Estate segment's loan portfolio at December 31, 2004 was €21.2 billion. Of this portfolio, 36% was residential, and 64% was commercial. This portfolio is well diversified with regard to type of investor and geographic location of the properties granted as security. The following tables show, for 2004, the distribution of the loan portfolio by customer segment and region of asset:

### **Portfolio by Customer Segment in %, December 31, 2004**



### **Portfolio by Region in %, December 31, 2004**



As part of its active portfolio management, in 2004 the Bank securitized its loan exposure to certain U.S. commercial properties under the PURE MORTGAGES 2004 securitization transaction, valued at approximately U.S.\$1 billion. The risks were securitized in the form of credit derivatives.

## ***Funding of mortgage business***

The Bank funds a portion of its mortgage lending activities through its subsidiary HSH Nordbank Hypo AG, which was acquired from an existing mortgage bank in 2004. Under German regulation, HSH Nordbank Hypo AG is permitted to issue mortgage bonds (*Pfandbriefe*), which are a cost-efficient method of offering mortgage-backed and other credit-backed securities to the German and international markets. See "Regulation". For this purpose, top-ranking segments of real estate loans provided by HSH Nordbank are transferred to HSH Nordbank Hypo AG, which then funds them by issuing the covered mortgage bonds (*Pfandbriefe*). The Bank manages HSH Nordbank Hypo AG as part of its Strategic Equity Holdings division rather than as part of its Real Estate segment.

### ***Real Estate Competition***

The Real Estate segment's competition in Germany consists principally of the leading German mortgage banks, Eurohypo AG and Hypo Real Estate Bank AG, along with Landesbank Hessen-Thüringen (Helaba) and Aareal Bank AG. The Real Estate segment faces a broad array of competitors in the United States and in the other European markets in which it operates.

### ***Corporate Clients***

The total assets of the Bank's Corporate Clients segment as of December 31, 2004 were €16.9 billion. For the year then ended, the Corporate Client segment's operating profit after risk provisions was €165.9 million.

The Bank's Corporate Clients segment consists of two divisions: Corporates and Structured Finance, which offers full-service banking to larger medium-sized companies in Germany, especially northern Germany; and Nordic Corporates, which offers specialized banking products to customers in Scandinavia and other countries on the Baltic rim.

### ***Corporates and Structured Finance***

The Bank's German corporate customer base is principally focused on the northern German market among larger medium-sized corporations. The Bank's regional roots as well as its knowledge of a large number of sectors and industries constitute the foundation for its close ties with its customers. The Corporates and Structured Finance division had an average loan volume in 2004 of €8.7 billion in its Corporates unit and €3.6 billion in its Structured Finance unit.

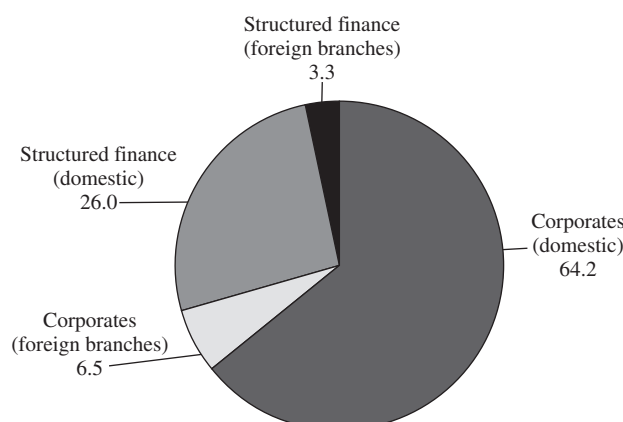
***Products and Services.*** As a core bank, in many cases the Bank handles all of its corporate customers' banking transactions and provides a comprehensive range of services through its Corporates unit. Its particular strength lies in sophisticated solutions which it tailors specifically to the requirements of its customers. In addition to conventional loans, interest and currency rate management as well as structured products play an increasingly large role in this respect. Moreover, close links with the Bank's other divisions and subsidiaries, especially in Corporate Finance, Leasing, Export and Trade Finance as well as Investment Management and Electronic Banking, allow the Corporate and Structured Finance division to offer its customers a broad range of services and products.

Of key strategic importance to the Bank is its Structured Finance unit, through which the Bank answers its customers' wishes for tailor-made product solutions to optimize their financing structure. The Bank's focus in this regard is increasingly on regulatory, tax law and rating-oriented aspects of transactions. The Bank also demonstrated its structuring ability by arranging both domestic and international energy and infrastructure projects as well as acquisition financing.

The Bank also engages in direct investment in small and medium-sized enterprises through its HSH N Kapital GmbH and HSH N Invest GmbH subsidiaries. The focus of these subsidiaries is on financing growth, management buy-outs and buy-ins (MBO/MBI) as well as changes in stockholder structure.

**Loan Portfolio.** The average loan portfolio of the Corporate and Structured Finance division in 2004 was €12.3 billion. The following tables show, for 2004, the distribution of the loan portfolio by customer segment:

**Structure of Portfolio in %, December 31, 2004**



**Competition.** The Corporates and Structured Finance division's competition consists principally of the leading German private-sector banks. These include Deutsche Bank, Commerzbank and Dresdner Bank. In addition, the Corporates and Structured Finance division faces significant competition from several of the state banks, including WestLB and HELABA.

**Nordic Corporates**

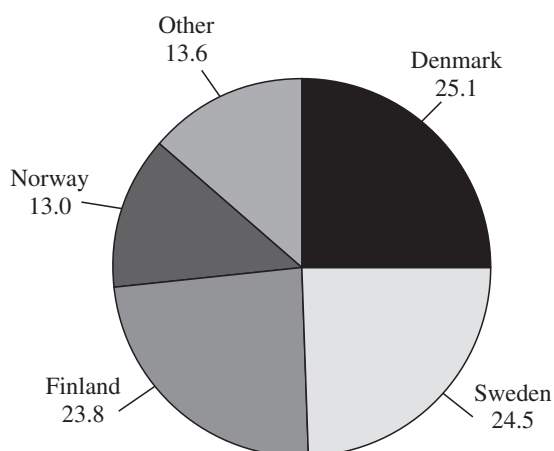
The Nordic Corporates division is responsible for the Bank's corporate customer business in northern Europe and the Baltic States. The Bank's network of offices offers it proximity to its customers. The Bank's main Nordic region branch is in Copenhagen and it has further branches in Stockholm and Helsinki as well as representative offices in Oslo, Tallinn, Riga and Warsaw.

The Bank's goal in the Nordic region is to become a prime provider of structured finance for large and medium-sized companies, with special focus on export finance, project finance, leveraged finance and asset-backed structures. At the same time, the Bank's aim is to intensify its relations with its medium-sized customers and become one of the leading foreign banks in northern Europe. By coordinating with other divisions at the Bank, the Nordic Corporates division is able to offer its customers a full range of its products and services, particularly capital markets, corporate finance and leasing products.

Nordic companies frequently maintain ties with several banks to cover their various needs. Conventional corporate customer business is exposed to heavy competition among the major banks of the region. By focusing on specialized finance, the Bank's strategy is to occupy a niche that is relatively less competitive so that it can respond to its customers' needs for individually tailored solutions.

**Loan Portfolio.** The total loan volume for the Nordic Corporates division was roughly €7 billion and the volume of new business was €1.8 billion in 2004.

**Portfolio by Country in %, December 31, 2004**



**Special Corporate and Institutional Clients**

The total assets of the Bank's Special Corporate and Institutional Clients segment as at December 31, 2004 were €64 billion. For the year then ended, the Special Corporate and Institutional Client segment's operating profit after risk provisions was €204.5 million.

The Special Corporate and Institutional Clients segment consists of four divisions: Financial Institutions/Global Trade Finance, Savings Banks and Public Sector Clients, Lease Finance and Transportation.

**Financial Institutions/Global Trade Finance**

**Products and Services.** The Financial Institutions/Global Trade Finance division is divided into the Financial Institutions unit and the Global Trade Finance unit. The Financial Institutions unit offers a range of services tailored to the requirements of banks, insurance companies and institutional clients. The Bank's main focus is on supporting approximately 200 key accounts in Germany and Europe which have a global orientation. To enable the Bank to offer its business partners a product range that is broader and more tailored to their needs, the Financial Institutions unit coordinates closely with other groups within the Bank, such as the Capital Markets and Transaction Services divisions. In addition, the Bank is selectively extending its operations to banks in the emerging markets.

In the Global Trade Finance unit, the Bank assists the export and trade financing businesses of domestic and foreign corporate clients. This unit focuses on specific commodities for which structured financing is arranged. The establishment of a new group in the New York Branch and the strengthening of its team in Shanghai have enabled the targeted expansion of its international network in this business area. This has given the Global Trade Finance unit local representation in all major trading regions around the world, allowing it to assist and serve its clients internationally.

**Loan Portfolio.** The average loan portfolio for the division in 2004 was €10.8 billion. The volume of new business was €5.2 billion in 2004.

**Competition.** Competition for the Financial Institutions/Global Trade Finance division consists principally of the leading German private-sector banks and state banks in Germany.



## ***Savings Banks and Public Sector Clients***

**Products and Services.** In its core region of Schleswig-Holstein, the Bank has traditionally been a close partner of the savings banks and of public-sector clients. With its comprehensive range of products, the Bank also seeks business from savings banks elsewhere in Germany as a competent second or third banking connection. The Bank provides the savings banks with a high-performance range of products for their own account as well as for their customers' businesses. These products extend from credit and other traditional banking products to innovative capital market products, such as structured retail instruments. The Bank also offers rating and balance sheet structure management consulting services.

In March 2004, the Bank signed a cooperation agreement with the umbrella organization for savings banks in the state of Schleswig-Holstein, Sparkassen- und Giroverband Schleswig-Holstein, which is also a shareholder of the Bank. Sparkassen- und Giroverband für Schleswig-Holstein is the savings banks association in the state of Schleswig-Holstein. It contains 22 savings banks organized under public law (*öffentlich-rechtliche Sparkassen*) and 4 private savings banks (*private Sparkassen*). The agreement contains general provisions with respect to the Bank's future collaboration with the savings banks in this region. In addition, the Bank has signed bilateral agreements with nearly all savings banks in Schleswig-Holstein that set out the specific and individual collaboration the Bank maintains with each of them with respect to joint distribution activities and the provision of products.

In the Public Sector Clients unit, the Bank has strengthened its position as a finance partner to the German states and municipalities, providing among other things consulting and portfolio management services. In this context, individual consulting activities, such as active debt management, are increasingly important to the Bank's product offering.

**Portfolio.** The portfolio for the division at December 31, 2004 was €15.0 billion.

**Competition.** Competition for the Savings Banks and Public Sector Clients division consists principally of the leading German private sector banks and state banks.

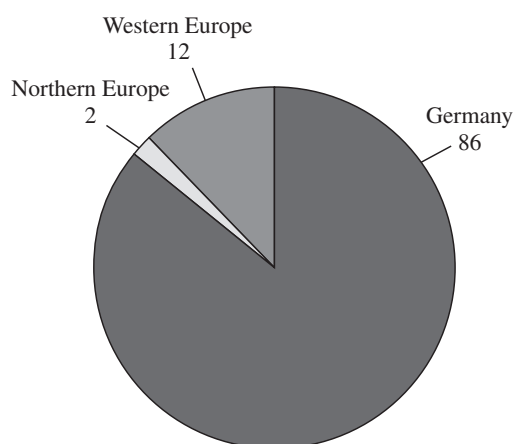
## ***Lease Finance***

The Lease Finance division is active as a refinancer of leasing companies. Among other things, the division offers German and international leasing companies, as well as arrangers that structure complex leasing transactions, tailored products to fund their portfolios. In addition, the Bank provides advice on domestic fund structures. The Bank is among the leading providers of refinancing for leasing companies in Germany. The division's main products include forfaiting (sale of receivables), funding for special-purpose entities and direct loans to motor vehicle and specialist banks.

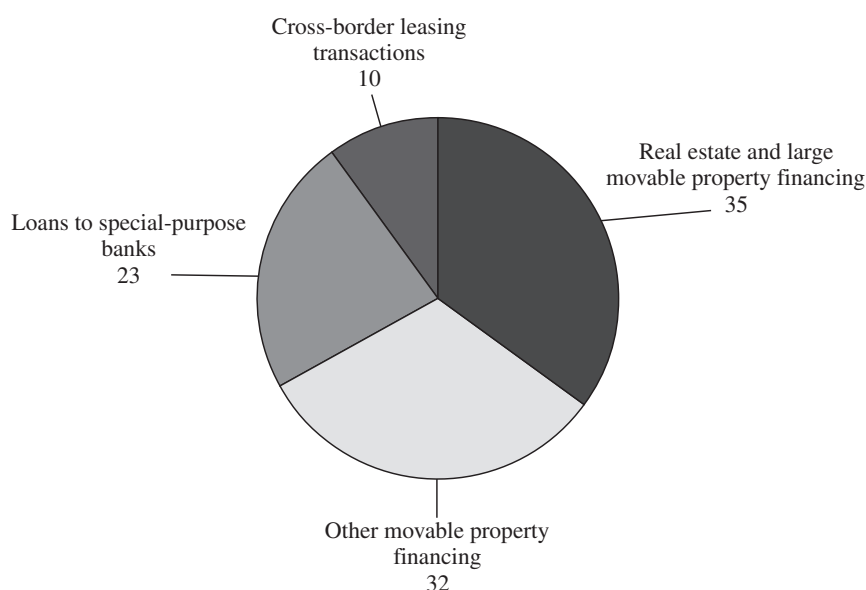
The Bank also engages in the funding and structuring of leasing transactions through AGV Anlagen- und Grundstücksvermietungsgesellschaft mbH & Co. KG, Wiesbaden ("AGV"), in which it holds a 100% interest. The Bank will reduce its stake to 40%, the remaining 60% interest in AGV will be held by Deutsche Leasing AG, Bad Homburg, Germany, subject to certain conditions precedent. AGV and its subsidiaries form a key group of leasing companies for real estate and big-ticket movables and structures complex and tailor-made leasing transactions for its customers. AGV and Deutsche Leasing AG also operate a joint venture, Deutsche Immobilienvermietungsgesellschaft mbH ("DIMO"), which acts as a partner to the German savings banks in the area of real estate leasing. The Bank regards its equity holdings in AGV and DIMO as long-term strategic investments.

**Portfolio.** The portfolio for this division at December 31, 2004 was €8.1 billion. The Bank's business model for this division is based on a balanced lending portfolio comprising finance for real estate and large movable property (approximately 35%), other movables (approximately 32%) and loans to specialist banks (approximately 23%). The following charts show, for 2004, the distribution of the portfolio by region and segment:

#### Portfolio by Region in %, December 31, 2004



#### Portfolio by Market Segment in %, December 31, 2004



Approximately 10% of the Bank's lending portfolio in this segment in 2004 was accounted for by loans in connection with cross-border leasing transactions, with U.S. leases accounting for the bulk of these transactions. The largest part of the Bank's lending portfolio in this segment in 2004 (approximately 86%) comprised domestic exposure.

**Competition.** Competition for the Lease Finance division consists principally of German state banks, such as Landesbank Baden-Württemberg, BayernLB and Norddeutsche Landesbank.

#### Transportation

**Products and Services.** The Bank's Transportation division focuses on the aviation, rail and logistics/infrastructure sectors. The Bank covers the entire value chain of the transport and logistics industry and offers its customers around the globe an innovative range of products. Increasingly and in line with the

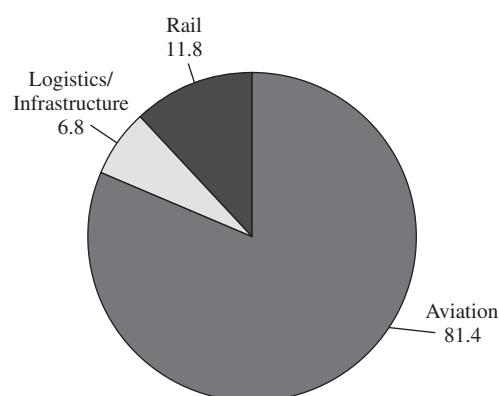
requirements of its business partners, the products offered by the division also include capital-market products for managing interest, exchange-rate and fuel-price risks.

In the aviation sector the Bank is a specialized provider of finance to airlines and leasing companies, aircraft and engine manufacturers, including the component industry. In the rail and logistics/infrastructure markets, its customers comprise railroad operators, locomotive and rolling-stock manufacturers, public sector commuter-service operators, airport and rail-network operators as well as air-traffic control organizations and international logistics companies.

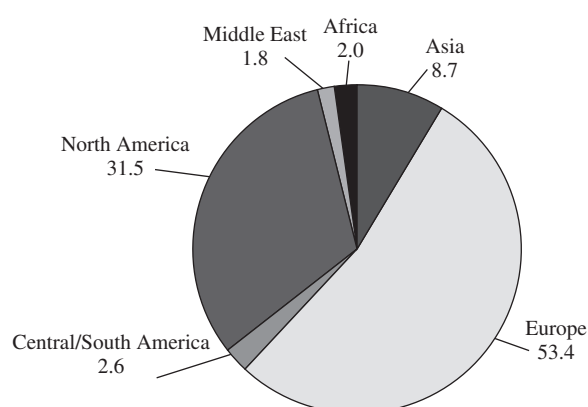
The Transportation division services its customers from both its head office in Kiel and its branches in New York, London and Singapore (since early 2005). From Kiel, the Bank looks after clients located primarily in continental Europe. Customers in North America and South America are served by the Bank's New York Branch, while its team in London focuses primarily on the United Kingdom, Ireland, the Middle East and Africa. The Bank's Singapore branch covers the Asian-Pacific market.

**Loan Portfolio.** The portfolio for the division at December 31, 2004 was €4.5 billion. The following charts show, for 2004, the distribution of the Division's portfolio by region and segment:

### Portfolio by Sector



### Portfolio by Region



Approximately 90% of the Transportation division's portfolio is denominated in U.S. dollars.

**Competition.** Competition for the Transportation division consists principally of Calyon S.A., Royal Bank of Scotland, DVB Bank AG, KfW and WestLB.

### ***Private Clients***

The total assets of the Bank's Private Clients division as at December 31, 2004 were €4.0 billion. For the year then ended, the Private Client segment's operating profit after risk provisions was €41.3 million.

### ***Products and services***

The Bank's Private Clients division concentrates on services for high net worth private customers, complemented by business clients and foundations. The basis of the Bank's business model is building strong customer relationships through constant personal dialogue. In 2004, the Bank expanded its range of services in this segment to include the marketing of the Bank's own capital market products, such as interest target bonds (*Zinszielanleihen*).

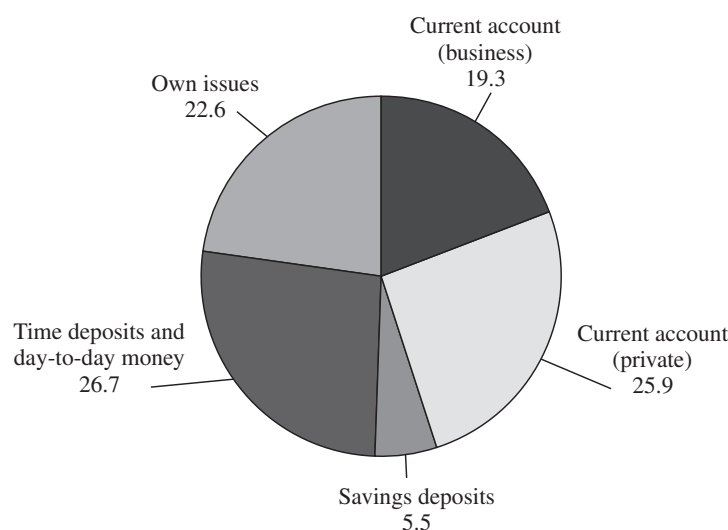
The Bank's range of services, in line with its customers' requirements, includes asset structure analysis and planning as well as asset and portfolio management. The Bank's product range is supplemented by deposit services, finance deals and the sale of equity holdings in businesses.

When advising its private customers, the Bank offers, in addition to its own range of services, financial products from other providers. This enables it to offer investment alternatives on an individualized basis and to achieve optimum diversification of its customers' portfolios.

### ***Loan and Deposit Portfolio***

The Private Client division's loan portfolio at December 31, 2004 was €3.2 billion. Private clients account for some 95% and thus the major part of the division's portfolio. The division's deposit portfolio at December 31, 2004 was €2.4 billion. For 2004, the following chart shows the distribution of the deposit business by type of deposit:

#### **Breakdown of deposit-taking and issuing business shares in %, December 31, 2004**



### ***Competition***

The Private Client segment's competition consists of nearly all German private banks that maintain a presence in northern Germany.

### ***Financial Markets***

The total assets of the Bank's Financial Markets segment as of December 31, 2004 were €28.3 billion. For the year then ended, the Financial Markets segment's operating profit after risk provisions was €308.8 million.

The Financial Markets segment of the Bank serves both the other segments of the Bank and external customers of the Bank. It consists of three divisions, Asset Liability Management (“ALM”), Portfolio Management and Investments and Capital Markets.

### ***Asset Liability Management***

The Bank’s ALM division is responsible for managing and ensuring the Bank’s liquidity, for managing its funding operations and for providing liquidity brokerage. Its aim is to minimize liquidity and funding costs as well as liquidity risks. The Bank expects that the expiry of state guarantees will lead to an increase in its liquidity costs. For this reason, liquidity management is of key importance to the Bank’s funding plans.

Within the context of strategic liquidity management, the ALM division has undertaken the management of the Bank’s funding operations. By establishing the funding requirements of the various market segments and divisions, extrapolating the corresponding funding parameters as well as by carrying out revolving monitoring, the ALM division’s strategy is to ensure funding for the Bank that is geared to optimized costs and minimized liquidity risks. Improved measurement and limitation of liquidity risk exposure, refined liquidity pricing and a further developed liquidity model are utilized in the ALM division in order to optimize liquidity management. As an additional step, measures to ensure solvency have been improved and made more cost effective.

The Bank continues to diversify its refinancing sources, and in 2004 achieved its targeted funding volumes without a corresponding increase in funding costs. The publication in July 2004 of ratings for the Bank’s future non-guaranteed liabilities did not result in an increase in liquidity costs. The Bank’s main focus in this division in 2004 was compliance with most of the recommendations made by the Basel Committee on Banking Supervision (“Sound Practices for Managing Liquidity in Banking Organizations”).

Unlike the other divisions within the Financial Markets segment, the ALM division does not serve external clients.

### ***Portfolio Management and Investments***

The Bank’s Portfolio Management and Investments (“PMI”) division fulfills two key functions at the Bank: it acts as asset manager and product manager.

As asset manager, the PMI division is responsible for managing market price and credit risks in the Bank’s own securities account. In order to maximize the diversification of its credit-weighted securities portfolio, the Bank invests worldwide in derivative products, such as asset backed securities (“ABS”) and single-name investments. In the area of market-price risk, the Bank is focused on assets in the interest rate, foreign exchange and equity categories. The Bank’s aim is to maximize the income on its securities portfolio with these investments and simultaneously to diversify the Bank’s risk exposure. At both of the division’s principal locations in Kiel and London, as well as via its branches in New York, Copenhagen and Singapore, it monitors the international financial markets, employs specialists analyzing investment options and commits to investments based on demarcated areas of responsibility for portfolios and strategies.

In the PMI division’s role as product manager, it provides both in-house, and to an increasing extent to external customers, equity sourcing/structured products and securitization products and services in a consulting and investment banking role. The PMI division also provides asset management products and services geared to external customers. The division’s in-house customers include the management board as well as the Bank’s various business segments. The division’s external customers comprise of savings banks, insurance companies, pension funds and other financial institutions. One of the Bank’s principal targets for 2005 is to take greater advantage of the existing cross-selling potential in the context of its multi-product approach.

Due to persistently narrow credit spreads in 2004, the Bank has focused on a far wider diversification of market price risks. Specifically, the Bank has focused on investing in differing trading/positioning strategies and on spreading risk across various economic regions, such as the United States and Asia. The Bank plans

to diversify market-price risk by, among other things, issuing third-party mandates to develop new areas of business.

The PMI division has repositioned itself because of the changed conditions underlying the capital markets. The Bank's subsidiary HSH N Financial Markets Advisory AG, which is wholly owned by the Bank, will provide consulting services to internal and external customers with respect to strategic asset allocation as well as company and rating analysis.

The Bank will set up a holding company in 2005 to cover asset-management activities for external customers. The holding company's task will be to coordinate implementation and sale of PMI products particularly in cooperation with the subsidiaries and companies in which the Bank has fixed equity holdings. The objective is to broaden the segment's product range, to improve processes and to ensure high product quality. In this context, the Bank acquired a 49% stake in Credaris Portfolio Management GmbH ("Credaris Group") in 2004. The Credaris Group offers fund products that invest in structured credit products and credit trading strategies.

In addition, in 2005 the credit-related securities business of PMI will be pooled in a specialist bank operating under the name of HSH Nordbank Securities, which will be based in Luxembourg. PMI will assume the role of portfolio advisor. HSH Nordbank Securities will manage these assets independently and engage in targeted investment in securities and capital-market transactions. See "— Other/Consolidation — Strategic Equity Holdings" below.

### ***Capital Markets***

The Capital Markets division is responsible for the diversified funding of the Bank on both the national and international capital markets as well as for trading and sales of a demand-oriented range of innovative capital market products including derivative multi-asset products, which diversify risk while simultaneously maximizing opportunity for income. The division increased the rate of adoption of capital market products across all customer segments.

In the Equity unit, by installing new software, the Bank has joined the small number of German banks that record structured products launched for customers in their trading books. This enables the Bank to independently quote prices for these products at any time. Due to this innovation, the Bank made progress in the segment involving exclusive issues..

In the Fixed-Income unit, in May 2004 the Bank was one of the lead managers to its first jumbo bond for the federal states, called "*Gemeinsame Länderschatzanweisung Nr. 18*", with a total volume of €1.5 billion. The Bank's contacts with Germany's state governments formed the basis for this placement. The Bank will in future continue to expand market making for jumbo-bond issues and thereby establish a further source for cross-selling by its sales units.

The Bank's Origination unit advises and assists domestic and foreign financial institutions and corporations based, among other places, in Scandinavia, enabling these organizations to raise capital. The Bank sells these issues via its sales units, principally through private placements of registered and bearer paper.

The Bank has set up a debt management service for public sector budgets, applying its experience as a portfolio manager for institutional and private clients and utilizing its risk management know-how. The Bank uses mainly derivative products for this service, which is provided by a new business unit, the Debt Management unit.

The Bank's strategy is to focus on providing its customers with individualized advisory services. The new Commodity and Inflation-Linked Trading units, which are being created, are intended to assume a key role in this regard. The Bank considers that changing rates of inflation and greater volatility in commodity prices will exert a growing influence on the business success and strategy of its customers. The Bank plans to respond to demand for hedging strategies with appropriate hedging products.



### ***Other/Consolidation***

The Bank's Other/Consolidation segment consists principally of its Strategic Equity Holdings, Central Results and Transaction Services.

The total assets of the Bank's Other/Consolidation segment as at December 31, 2004 were €7.5 billion.

### ***Strategic Equity Holdings***

The Bank's strategic equity holdings cover special fields of business and operate in areas that are of great importance in the long run to the Bank's business policy. Its strategic equity holdings include the following entities:

***HSH Nordbank Securities S.A.*** This bank, formerly named HSH Nordbank International S.A., has traditionally been based in Luxembourg and focused on international lending operations, the securities and private client businesses and on money market and foreign exchange operations. The bank has provided loans worldwide in virtually any convertible currency, although borrowers in the European Union and other western European countries accounted for 79% of its portfolio at December 31, 2004. The bank offers its private clients a comprehensive range of services, including asset management, portfolio management and loans provided against securities or commodities. The target customer for this segment is international medium or high net worth individuals with an international orientation.

As of May 1, 2005, the Bank reorganized its Luxembourg activities: HSH Nordbank Securities S.A. covers the PMI driven credit related securities business of the Bank, newly formed HSH Nordbank Private Banking S.A. focuses on the international private client activities and the lending activities are being transferred to HSH Nordbank Luxembourg Branch.

***HSH Nordbank Hypo AG.*** This Hamburg-based mortgage bank, which was acquired by the Bank in September 2003, was renamed HSH Nordbank Hypo AG in December 2003. Its core business involves funding the Bank's long-term real estate finance business. As part of its syndication model, the Bank transferred the first-ranked portion of property loans it acquired to HSH Nordbank Hypo AG. At HSH Nordbank Hypo AG, decisions on loans that are secured by a charge on real estate or by a public-sector guarantee are subject to the mortgage bank's own approval powers, entered in the register of mortgages serving as a cover for mortgage bonds issued, and funded by issuing mortgage bonds (*Pfandbriefe*).

In 2004, HSH Nordbank Hypo AG focused on establishing risk-control systems while taking into account the minimum requirements for its lending business.

HSH Nordbank Hypo AG's public-sector mortgage bonds received an Aaa rating from Moody's. Moody's gave HSH Nordbank Hypo AG an overall rating of Aa3.

The new German Mortgage Bond Act (*Pfandbriefgesetz*), which is expected to come into force in mid-2005, should provide the mortgage bank with additional business opportunities. The Bank's aim is to expand that part of its foreign business that is eligible for cover and to fund the tranches of first-ranking portions of ship loans by issuing ship mortgage bonds, once the German Federal Financial Supervisory Authority has granted a corresponding license. HSH Nordbank Hypo AG has also developed a model that will enable it to acquire retail real estate portfolios from third parties, including from savings banks and insurance companies, using mortgage bonds (*Pfandbriefe*) as a refinancing tool.

***TxB Transaktionsbank GmbH.*** TxB Transaktionsbank GmbH ("TxB") is a transaction bank for securities services. It was created on October 1, 2004 from the merger between PLUS BANK AG, a former wholly-owned subsidiary of the Bank, and LB Transaktionsbank GmbH, with retroactive effect from January 1, 2004. BayernLB holds 37.5%, HSH Nordbank AG 25.1% and Landesbank Hessen-Thüringen 37.4% of the new company's stock. TxB employs a staff of approximately 680 at its offices in Aschheim-Dornach near Munich, Hamburg, and Offenbach, and at a branch office in Erfurt.

At the end of 2004, TxB provided services to more than 200 clients in the German private banking and savings sectors. It is Germany's third-largest transaction bank in terms of the number of securities accounts

under administration. TxB has gained as clients the three remaining banks within the savings bank segment, Bankgesellschaft Berlin AG, Hamburger Sparkasse and Stadtparkasse München, to carry out their settlement transactions. The new WIS PLUS securities settlement system provides new functions that create added value for TxB's clients.

In order to gain further clients and enhance its competitive position TxB is focusing on a high level of expertise, systems technology performance and flexibility.

***HSH Gudme Corporate Finance.*** In 2004, the Bank's corporate finance operations were pooled under the HSH Gudme Corporate Finance brand. The HSH Gudme Corporate Finance network consists of Hamburg-based HSH Gudme Corporate Finance GmbH, HSH Gudme Bank A/S in Copenhagen and HSH Gudme Corporate Finance Oy in Helsinki.

***HSH Gudme Corporate Finance GmbH (Germany).*** HSH Gudme Corporate Finance GmbH completed 14 M&A mandates in 2004, the most important of which were the sale of Germany's largest privately owned bus company, Autobus Sippel, to the Arriva PLC, the sale of Hako Holding, a producer of industrial cleaning equipment, to L. Possehl & Co. mbH, the acquisition of Aral Waerme Service GmbH, a German heating oil end customer business, from Deutsche BP on behalf of OKTAN Mineraloel-Vertrieb GmbH, and the sale of Fachklinik Schleswig from the state government of Schleswig-Holstein to a syndicate consisting of Damp Holding and Martin-Luther-Krankenhaus.

***HSH Gudme Corporate Finance GmbH*** focuses on medium-sized businesses in the region and on the consumer goods, transportation/logistics, health/social care, and real estate sectors. In 2004, HSH Gudme Corporate Finance GmbH was one of Germany's top five most successful M&A consultants by number of mandates involving German business.

***HSH Gudme Bank A/S (Denmark).*** The Bank's Danish investment banking subsidiary, HSH Gudme Bank A/S, specializes in consulting services in the areas of corporate finance, debt capital markets and equities. HSH Gudme Bank A/S has offices in Copenhagen and Stockholm and a strong competitive position in northern Europe. In Denmark, HSH Gudme Bank A/S has more than 30 years' experience as a broker on the Danish stock market and is a leading Danish broker in the segment for stocks not listed on the Copenhagen Foreign Exchange, or KFX. It is focused on Danish institutional investors and on regional banks that offer the Bank's products to high net worth private clients in Denmark under the HSH Gudme Bank A/S brand.

***HSH Gudme Bank A/S*** completed several corporate finance transactions in Denmark in 2004, including the sale of the Magasin department store in Copenhagen to a group of Icelandic investors. In the Danish energy market, HSH Gudme Bank A/S completed two mandates in 2004. It placed two rights issues in Denmark in 2004, Pharmexa and Gudme Raaschou Vision A/S. It also executed three transactions in Sweden in 2004, including the acquisition of Swedish company Pro Products by Danish company Dansk Droge.

***HSH Gudme Bank A/S*** is a leading Danish provider of structured investment products and consultant for the issue of securities on the capital markets. In 2004, it advised on transactions on behalf of the two Danish television channels and of several public-sector and semi-public companies. In addition, HSH Gudme Bank A/S carried out a large number of other projects in close collaboration with the Bank, including the securitization of subordinated loans on behalf of Danish regional banks.

***HSH Gudme Corporate Finance Oy (Finland).*** HSH Gudme Corporate Finance Oy was established as PCA Corporate Finance OY in Helsinki in 1992. In addition to Finland, it serves the Baltic states and Russia. HSH Gudme Corporate Finance Oy offers its customers consulting products in connection with M&A, private equity and stocks, structured financing, and employee profit-sharing schemes in Finland. In 2004, HSH Gudme Corporate Finance Oy was involved in a number of transactions in an advisory capacity, including the merger between Yomi, a listed company in the telecommunications and IT industry, and Elisa, a telecommunications provider in Finland. In addition, HSH Gudme Corporate Finance Oy advised on the acquisition of Polar Real Estate Company by IVG Immobilien AG, a German company, and advised Atria on the acquisition of an Estonian incorporated meat producer.

***NorthStar Corporate Finance.*** NorthStar Corporate Finance is the affiliate of HSH Gudme Corporate Finance in Russia. The Bank holds an indirect stake of 50% in this company. A core product within the M&A

process is to identify potential partners and to draft industry analyses, and NorthStar Corporate Finance focuses on the food, construction/real estate, forestry and sophisticated services sectors in this regard.

**HSH Nordbank (Guernsey) Ltd.** HSH Nordbank (Guernsey) Ltd. was established in the Channel Islands by Hamburgische Landesbank in 1998. The focus of its operations is investment in bank debentures, asset-backed securities (ABS), credit derivatives and collateralized debt obligations (CDO). HSH Nordbank (Guernsey) Ltd. also performs deposit and lending activities. The Bank relocated the headquarters of this Company to Luxembourg in 2005 and merged HSH Nordbank (Guernsey) Ltd. with HSH Nordbank International S.A. under the name HSH Nordbank Securities S.A., as described above. This move will allow the Bank to further consolidate its non-German European operations.

**HSH N Finance & Science GmbH.** HSH N Finance & Science GmbH, which was established in December 2003, coordinates and provides services on behalf of the Bank to science joint ventures, ensures the transfer of knowledge between the Bank and the sciences and supports the Bank in its recruitment of university graduates.

**Investments in private equity funds.** As part of its investment-focused equity holdings, the Bank invests in private equity funds. The focus of its investment activity is on buyout funds. At December 31, 2004 funds totaling approximately €581.1 million had been committed by the Bank in private equity funds.

### **Transaction Services and Central Results**

Transaction Services provide a range of transaction services to internal and external clients, including payment services, software solutions for processing documentary business and a software platform to support the Bank's advisory services.

### **Corporate organization**

The following table sets forth the entities consolidated by the Bank in its consolidated financial statements.

Name and place of incorporation of consolidated subsidiaries	At December 31, 2004
	Shareholding in %
HSH Nordbank (Guernsey) Ltd., Guernsey .....	100
HSH Nordbank Hypo AG, Hamburg .....	100
HSH Nordbank International S.A., Luxembourg .....	100
Nobis Société des Banques Privées S.A., Luxembourg <sup>1)</sup> .....	90
HSH N Composites GmbH, Kiel .....	100
HSH N Funding I, Grand Cayman <sup>2)</sup> .....	61.87
HSH N Finance (Guernsey) Ltd., Guernsey .....	100
HSH N Real Estate AG, Hamburg .....	100
HGA Capital Grundbesitz und Anlage GmbH, Hamburg <sup>3)</sup> .....	100
International Fund Services & Asset Management S.A., Luxembourg <sup>1)</sup> .....	51.61
Spielbank SH GmbH, Kiel .....	100
Spielbank SH GmbH & Co. Casino Flensburg KG, Flensburg .....	90
Spielbank SH GmbH & Co. Casino Kiel KG, Kiel .....	100
Spielbank SH GmbH & Co. Casino Lübeck-Travemünde KG, Lübeck-Travemünde .....	100
Spielbank SH GmbH & Co. Casino Stadtzentrum Schenefeld KG, Schenefeld .....	100
Spielbank SH GmbH & Co. Casino Westerland auf Sylt KG, Westerland/Sylt .....	90

Notes:

- 1) subsidiary of HSH Nordbank International S.A., Luxembourg.
- 2) subsidiary of HSH N Composites GmbH, Kiel.
- 3) subsidiary of HSH N Real Estate AG, Hamburg.

## Properties

The Bank owns or leases the following properties:

Country / City	Number of Properties	Type of Ownership
China/Hong Kong .....	1	lessee
China/Shanghai .....	1	lessee
Denmark/Copenhagen .....	1	owner
Estonia/Talinn .....	1	lessee
Finland/Helsinki .....	1	lessee
Germany/Berlin .....	1	owner
	1	lessee
Germany/Hamburg .....	2	owner
	9	lessee
	3	sale-leaseback
Germany/Hannover .....	1	lessee
Germany/Kiel .....	2	owner
	5	lessee
	8	sale-leaseback
Germany/Lübeck .....	1	sale-leaseback
Germany/Schwerin .....	1	owner
Germany/Rostock .....	1	owner
Jersey/Guernsey .....	1	lessee
Latvia/Riga .....	1	lessee
Luxembourg/Luxembourg .....	1	lessee
Netherlands/Amsterdam .....	1	lessee
Norway/Oslo .....	1	lessee
Poland/Warsaw .....	1	lessee
Singapore/Singapore .....	1	lessee
Sweden/Stockholm .....	1	lessee
United Kingdom/London.....	1	lessee
United States/New York.....	1	lessee
Vietnam/Hanoi .....	1	lessee

## Employees

The following table sets out the Bank's total number of employees, both within Germany and internationally, at December 31, 2004 and 2003:

	At December 31,	
	2004	2003
<b>Total number of HSH Nordbank Group employees</b> .....	4,347	4,511
<i>of which:</i> .....		
employees in Germany .....	3,722	3,949
employees outside Germany .....	625	562
<b>Permanent HSH Nordbank Group employees<sup>(1)</sup></b> .....	4,036	4,314
<i>of which:</i> .....		
HSH Nordbank AG .....	3,634	3,625
HSH Nordbank International S.A. ....	134	126
HSH Nordbank (Guernsey) Ltd. ....	13	14
Plusbank .....	0	335
Spielbank .....	189	194
HSH N Hypo AG .....	32	20
HSH N Real Estate AG .....	9	0
HGA Capital GmbH.....	25	0
Maternity and parental leave .....	185	186
Pensioners and surviving dependants/early retired .....	1,646	1,566
Part-time employees (%) .....	18	16
Average age (years) .....	38	38
Newly recruited employees <sup>(2)</sup> .....	244	100

Notes:

(1) Total number of employees excluding trainees, casual workers and interns.

(2) Excluding foreign branches and subsidiaries.

At December 31, 2004, the Bank employed a total of 4,347 staff, 164 fewer than the previous year-end figure of 4,511. Deconsolidation of PLUS BANK AG was the main reason for this decrease. Increasing the number of specialist jobs offset the reduction in the number of staff required to meet cost targets. Strategic realignment was a key factor behind the heavy demands imposed on the restructuring process in 2004. The Bank recruited a total of 244 new staff in 2004 (100 in 2003), excluding subsidiaries and foreign branches.

There are various unions that represent the Bank's workforce. The Bank does not have data regarding the percentage of its workers who belong to these unions. The Bank believes its relationship with the unions and its employees to be good. In the past three years, neither the Bank nor its predecessor banks have suffered a strike or other coordinated employee work disruption.

## Legal Proceedings

The Bank, in its own name or as successor to Hamburg LB or LB Kiel, has been, is and may from time to time become involved in litigation and arbitration proceedings in Germany and a number of other jurisdictions outside Germany, including the United States, arising in the ordinary course of its business and that of its subsidiaries. While it is not possible to predict the outcome of all currently pending or threatened proceedings involving the Bank and/or its subsidiaries, the Bank believes that, with the exception of the litigation and arbitration proceedings described below, the outcome of any of these proceedings will not have a material adverse effect on its results of operations or financial condition, and, to the Bank's knowledge, no litigation or arbitration proceedings that are likely to have such an adverse effect are currently threatened.

### *Commission Proceedings*

A dispute between the Federal Republic of Germany and the European Commission involving a number of *Landesbanken* has been resolved in 2004 but the implementation of the European Commission decision by the Federal Republic of Germany has not yet been formally accepted by the European Commission.

The dispute concerned the adequacy of the consideration paid by the former WestLB to the German State of North Rhine-Westphalia in exchange for the integration of Wohnungsbauförderungsanstalt North Rhine-Westphalia into WestLB. In a decision of July 8, 1999, the European Commission claimed that the consideration paid by WestLB had not been calculated on an arm's length basis and that therefore the transaction violated EU state aid rules. This led to a number of proceedings at the European Court of Justice. On March 6, 2003 the European Court of First Instance annulled the decision of the European Commission from July 8, 1999 since, from the point of view of the Court, the European Commission had not provided sufficient reasons for the reference rate that it used to show the inappropriateness of the remuneration payments made by WestLB to the State of North Rhine-Westphalia. To determine whether other *Landesbanken* had benefited from similar allegedly illegal subsidies, the European Commission had launched a comprehensive investigation in 1999, which covered, among other *Landesbanken*, the Bank as successor to Hamburg LB and LB Kiel.

In November 2002, the European Commission initiated proceedings against Hamburg LB and LB Kiel, as well as other *Landesbanken*, for receiving unlawful subsidies. Regarding the Bank's predecessors, the question was whether an equity contribution in the form of shares in various public development banks in Hamburg and Schleswig-Holstein constituted an unlawful subsidy. Hamburg LB and LB Kiel sold the activities and shares in question before the foundation of HSH Nordbank.

In Schleswig-Holstein, the investigation of the European Commission focused on the merger of various development agencies of the State of Schleswig-Holstein into Investitionsbank Schleswig-Holstein ("IB") in 1991 and the integration of IB as an economically and organizationally separate business area into LB Kiel. In connection with the formation of the IB business, the capital of the former development agencies was transferred into IB. Potential state aid issues arose due to the fact that LB Kiel was entitled to use capital not needed by IB in its own business as regulatory capital to cover risk related assets and large exposures in LB Kiel's other business areas. The Bank had argued that LB Kiel paid the State of Schleswig-Holstein adequate consideration and that therefore the arrangement did not violate EU state aid rules. This consideration comprised of payments made by LB Kiel to the state, synergies and cost savings realized by the development agencies, cost caps guaranteed by LB Kiel to the state and an increase in the value of IB that enabled the state to realize a gain when it sold its stake in LB Kiel to WestLB and Landesbank Baden-Württemberg effective January 1, 1994. On June 1, 2003 IB was separated from LB Kiel with economically retroactive effect from January 1, 2003.

The investigations of the European Commission against Hamburg LB focused on the following circumstances: in 1986 and 1993, the city-state of Hamburg brought into the capital of Hamburg LB a total of 81.86% of its shares in Wohnungsbaukreditanstalt ("WK") as a contribution in kind. Since it was not the assets of WK, but the shares of the city-state of Hamburg, which were contributed to the capital, the method of contribution used in the case of Hamburg LB differed substantially from that of the WestLB case. Furthermore, the Bank had argued that the city-state of Hamburg received a return on its capital contribution which is equivalent to the return a private investor would have expected under market conditions. From 1986 to 1996, Hamburg LB effectively paid to the city-state of Hamburg, as one of its shareholders, an annual net dividend of approximately 9%. From 1997 onwards, this dividend increased substantially, reaching approximately 21% in 1999. In addition, the value of Hamburg LB increased substantially. The increased value could be realized by the city-state of Hamburg with respect to a 49.5% stake when it sold this stake to LB Kiel in 1997. Hamburg LB sold its 81.86% share in WK before the merger came into effect.

Following discussions with the Bundesverband deutscher Banken (the association of private and commercial banks in Germany) ("BdB") and the European Commission in order to bring all proceedings to an end without court decisions, an agreement was reached with the BdB on the remuneration that HSH Nordbank would - within the framework of an overall agreement - be prepared to pay as a basis for a decision by the European Commission.



On October 20, 2004, the European Commission announced a decision on the remuneration to be paid by the Bank for subsidies received by LB Kiel and Hamburg LB. As a result, the Bank made repayments of €432 million for LB Kiel and €91 million for Hamburg LB, in each case plus accrued interest resulting in a total repayment amount of €756 million. According to the business combination agreement regarding LB Kiel and Hamburg LB (*Grundsatzvereinbarung über die Verschmelzung der Landesbank Schleswig-Holstein Girozentrale und der Hamburgischen Landesbank – Girozentrale – auf die dadurch gegründete HSH Nordbank AG*) dated March 24/25, 2003 and a further execution agreement thereto (*Umsetzungsvereinbarung*) dated December 8, 2004, the Bank's shareholders have agreed on a maximum reimbursement amount of €200 million. HSH Nordbank therefore expects its shareholders to contribute an amount of €556 million to the Bank, by way of a capital measure at the end of July 2005.

As with all capital measures implemented by public-sector stockholders, the European Commission will examine the planned reinvestment to ensure that it complies with arms-length requirements. The European Commission has published a letter in November 2004 clarifying under which conditions it will assume that such arms-length requirements are met. One condition, the involvement of private sector parties in the capital measure, has later been withdrawn. The remaining requirements are as follows:

- The amount of the capital measure may not reach the amount of the subsidies to be repaid;
- The capital measure has to take place after July 18, 2005;
- The capital measure has to fulfill the so called market investor test, i.e. its economic conditions have to be at arm's-length basis.

The first two conditions are clearly fulfilled and the Bank is of the opinion that the last requirement is fulfilled as well. However, no formal statement to this extent has yet been published by the European Commission.

### ***Closed End Real Estate Funds***

The Bank's predecessor, Hamburg LB, financed purchases of shares in closed end real estate funds by approximately 3,900 of its customers from 1992-1996. In 1998 and 1999, several customers challenged the validity of the original loan documentation and the Bank entered into settlement agreements with 97% of these customers. Subsequently, approximately 450 of these customers disputed the validity of these settlement agreements and stopped making the agreed payments to the Bank. The Bank then sued eleven of these customers as test cases. It has won all cases that have already been decided by the courts of first instance and has recently won the first case to reach the appellate level, where the highest courts in the states of Hesse, Bavaria and Hamburg fully affirmed the Bank's position and upheld the settlement agreements as valid and enforceable. These are non-appealable decisions. These appellate court decisions are not binding on other appellate courts in Germany, and there can be no guarantee that other appellate courts will reach the same conclusion. While the Bank continues to believe that the better arguments speak in its favor, it estimates its costs to be approximately €70 million should all settlement agreements be held to be invalid. Notwithstanding this, the Bank believes that given its current financial strength, the financial risk arising from this special legal issue does not amount to a value that could be expected to have a material adverse effect on the Bank's results of operations or financial condition.

### ***Litigation in Turkey***

In 2003, the Bank's predecessor, Hamburg LB, foreclosed on four vessels owned by a defaulting Turkish group of shipowning companies to recover outstanding loans of U.S.\$18 million. The foreclosure proceedings and sales were conducted in the Republic of China (Taiwan), Singapore, South Africa and the United States. All foreclosure proceedings were heavily contested by the ship owners, but the Bank prevailed in all cases. After foreclosure, the ship owners instituted various proceedings in Turkish courts challenging the foreign foreclosure proceedings and the deletion of the vessels from the Turkish shipping register and claiming damages from the Bank. In a recent judgment, the Istanbul Court of Commerce awarded the plaintiffs damages of U.S.\$65 million. An appeals court has since overturned the decision and remanded the case to a more specialized lower court, stating that the court awarding the recent judgment did not have

subject matter jurisdiction. The case has not yet recommenced at the lower court. Under Turkish law, the Bank can halt enforcement by posting security until a final decision on the dispute has been reached.

## SELECTED STATISTICAL INFORMATION

The following information for the Bank is included for analytical purposes and should be read in conjunction with the Financial Statements contained elsewhere herein. Certain selected statistical information at and for the years ended December 31, 2004 and 2003 has been derived from the Financial Statements included elsewhere in this Offering Circular.

### Average Balance Sheets

The following table shows average balances of the Bank's consolidated assets for the years ended December 31, 2004 and 2003. Average balances are calculated as the average of each month-end balance.

#### Average Balance Sheet – Assets

	As of and for the year ended December 31,	
	2004	2003
	<i>(in millions of €)</i>	
<b>Assets:</b>		
Cash reserve, debt instruments issued by public institutions, bills of exchange eligible for refinancing .....	591	316
Loans and advances to banks .....	37,057	42,285
Loans and advances to customers .....	80,286	79,169
Total securities .....	47,845	50,262
Equity investments in affiliated and associated companies .....	1,696	1,436
Trust assets.....	361	324
Other assets .....	3,512	3,709
<b>Total average assets .....</b>	<b>171,348</b>	<b>177,502</b>

#### Average Balance Sheet – Liabilities and shareholders' equity

The following table shows average balances of the Bank's liabilities and shareholders' equity for the years ended December 31, 2004 and 2003 calculated as the average of the month-end balances.

	As of and for the year ended December 31,	
	2004	2003
	<i>(in millions of €)</i>	
Liabilities to banks .....	45,074	50,815
Liabilities to customers .....	48,541	46,224
Certificated liabilities.....	60,433	64,206
Trust liabilities .....	362	324
Subordinated debt .....	2,624	3,054
Profit participation capital .....	1,497	1,496
Fund for general banking risks .....	326	261
Equity capital .....	6,452	6,110
Other liabilities .....	6,039	5,012
<b>Total liabilities .....</b>	<b>171,348</b>	<b>177,502</b>

## Investment Portfolio

As at December 31, 2004, the Bank's fixed income securities were carried on its consolidated balance sheet at a value of €42,894 million, representing 26.15% of its total assets. As at that date €12,769.9 million, or 7.78% of its total assets, consisted of public sector issuers.

The following table analyzes the book values of the Bank's investment portfolio by type at each of the dates indicated.

	As at December 31, 2004		2003	
	Maturing within one year	Maturing after one year	Maturing within one year	Maturing after one year
	<i>(in millions of €)</i>			
<b>Bonds and other fixed income securities:</b>				
Money market instruments:				
Issued by public sector issuers .....	749	–	400	–
Issued by other issuers .....	896	–	2,485	–
Bonds:				
Issued by public sector issuers .....	2,694	9,326	2,813	8,557
Issued by other issuers .....	6,637	21,122	8,121	23,536
Own bonds .....	189	1,281	515	1,636
<b>Total .....</b>	<b>11,166</b>	<b>31,728</b>	<b>14,334</b>	<b>33,729</b>
<b>Shares and other non-fixed income securities .....</b>	<b>3,019</b>	<b>–</b>	<b>2,829</b>	<b>–</b>

## Loan portfolio

Loans and advances to banks

As at December 31, 2004, the Bank's total loans and advances to banks amounted to €35,588 million, or 21.69% of total assets. At that date, 21.44% or €24,443 of its total loans and advances were to German banks.

	As of and for the year ended December 31,	
	2004	2003
	<i>(in millions of €)</i>	
<b>Loans and advances to banks:</b>		
Payable on demand .....	3,221	4,356
Maturity up to 3 months .....	13,260	11,204
Maturity more than 3 months and up to 1 year .....	3,573	4,443
Maturity more than 1 and up to 5 years .....	13,008	12,508
Maturity more than 5 years .....	2,526	4,808
<b>Total .....</b>	<b>35,588</b>	<b>37,319</b>
Thereof:		
German banks .....	24,443	31,907
Non-German banks .....	11,145	5,412

## Loans and advances to customers

As at December 31, 2004, the Bank's total loans and advances to customers amounted to €78,470 million, or 47.83% of total assets. In addition to loans, the Bank had loan commitments, guarantees, endorsements and other similar commitments to third parties outstanding at December 31, 2004 and 2003 amounting to

€25,341 million and €26,439 million, respectively, of which €13,893 million and €12,290 million represented irrevocable loan commitments.

The following table presents a breakdown of loans and advances to customers by maturity as at December 31, 2004.

	<b>As of and for the year ended December 31,</b>	
	<b>2004</b>	<b>2003</b>
	<i>(in millions of €)</i>	
<b>Loans and advances to customers by maturity:</b>		
maturity up to 3 months .....	14,204	13,565
maturity more than 3 months and up to 1 year .....	8,507	7,571
maturity more than 1 and up to 5 years.....	28,465	26,286
maturity more than 5 years .....	27,252	30,501
undetermined maturity.....	42	1,284
<b>Total</b> .....	<b>78,470</b>	<b>79,207</b>
thereof:		
German customers .....	50,986	51,075
Non-German customers .....	27,484	28,132

The following table analyzes the Bank's loans and advances to customers by security at December 31, 2003 and 2004.

	<b>As of and for the year ended December 31,</b>	
	<b>2004</b>	<b>2003</b>
	<i>(in millions of €)</i>	
<b>Loans and advances to customers by security</b>		
Secured by mortgages .....	12,836	17,667
Public-sector loans.....	12,578	12,474
Secured by ship mortgages .....	9,852	11,526
Other .....	43,204	37,540
<b>Total</b> .....	<b>78,470</b>	<b>79,207</b>

### *Loan portfolio – risk elements*

The following table analyzes the risk elements of the Bank's loan portfolio at year-end 2004.

	<b>As at December 31, 2004</b> <i>(in millions of €)</i>
<b>Loans to Banks</b>	<b>Extra Value</b>
Interest arrears .....	0.0
Interest arrears .....	0.0
Total of non-performing loans .....	0.8
<b>Total of lending to banks for which debt charges have been made .....</b>	<b>21.8</b>
<b>Loans to customers</b>	<b>Extra Value</b>
Interest arrears .....	51.7
Repayment arrears .....	45.6
Total of non-performing loans .....	692.6
<b>Total of lending to banks for which debt charges have been made .....</b>	<b>3,427.9</b>

### *Foreign Country Outstandings*

As at December 31, 2004, with the exception of the United States and the United Kingdom, the Bank did not have more than 10% of its total assets in any one foreign country. The following table sets forth, as of the end of the years indicated, the aggregate amount of the Bank's cross-border outstandings (which consist of loans, interest-bearing deposits with other banks, and other assets) to borrowers outside Germany.



	<b>As at December 31, 2004</b>		<b>As at December 31, 2003</b>	
	<i>(in millions of €)</i>	<i>(% of total loan commitment)</i>	<i>(in millions of €)</i>	<i>(% of total loan commitment)</i>
Canada .....	1,058.0	1.3	1,037.3	1.2
Cayman Islands .....	–	–	2,711.7	3.1
Cyprus .....	–	–	877.4	1.0
Denmark .....	7,363.5	9.0	5,199.8	5.9
Finland .....	1,696.9	2.1	2,249.1	2.6
France .....	5,276.2	6.5	4,572.7	5.2
Great Britain (incl. Northern Ireland) ....	10,501.1	12.8	16,101.2	18.4
Greece .....	3,084.7	3.8	2,201.9	2.5
Hong Kong.....	1,097.3	1.3	964.0	1.1
Ireland .....	1,458.2	1.8	1,234.7	1.4
Italy .....	4,101.6	5.0	4,012.5	4.6
Japan .....	1,290.9	1.6	1,413.9	1.6
Jersey .....	1,676.2	2.0	–	–
Luxembourg.....	1,886.3	2.3	2,289.8	2.6
Netherlands .....	2,946.6	3.6	3,364.0	3.8
Norway .....	2,419.4	3.0	3,059.7	3.5
Portugal .....	1,121.1	1.4	1,652.2	1.9
Republic of Korea .....	1,882.8	2.3	2,713.5	3.1
Spain .....	1,641.1	2.0	2,118.2	2.4
Sweden.....	2,985.8	3.7	3,440.1	3.9
Switzerland .....	2,356.4	2.9	2,582.2	2.9
USA .....	14,363.3	17.6	13,867.2	15.8

#### Summary of Loan Loss Experience

##### Development of bad debt provisions

As at December 31, 2004, the amount of bad and doubtful debts, excluding off-balance sheet risks for which recovery was doubtful, was €2,050.5 million, an 5.01% decrease from €2,158.6 million as at December 31, 2003.

New entries into bad and doubtful debts were €481.8 million in 2004. Recoveries in 2004 amounted to €417.2 million.

The following table shows information on the comparative performance during the two years ended December 31, 2004 and 2003 of the balance of provisions for bad-and-doubtful-debts.

	<b>As of and for the year ended December 31,</b>	
	<b>2004</b>	<b>2003</b>
	<i>(in millions of €)</i>	
Specific bad debt provisions		
reduction from assets		
Balance at the beginning of the period .....	1,584	1,581
Transfer .....	(18)	(7)
Consumption .....	138	266
Release.....	140	199
Addition .....	443	518
price differences.....	(14)	(43)
Balance at the end of the period .....	1,717	1,584
as provisions		
Balance at the beginning of the period .....	131	75
Transfer .....	(3)	1
Consumption .....	2	3
Release.....	30	27
Addition .....	24	85
price differences.....	(1)	—
Balance at the end of the period .....	119	131
General bad debt provisions		
reduction from assets		
Balance at the beginning of the period .....	136	111
Transfer .....	3	—
Consumption .....	—	—
Release.....	5	6
Addition .....	7	31
price differences.....	—	—
Balance at the end of the period .....	141	136
as provisions		
Balance at the beginning of the period .....	6	5
Transfer .....	—	—
Consumption .....	—	—
Release.....	—	—
Addition .....	1	1
price differences.....	—	—
Balance at the end of the period .....	7	6
General bad debt provisions LCD-Risk Loan		
reduction from assets		
Balance at the beginning of the period .....	51	41
Transfer .....	—	7
Consumption .....	—	—
Release.....	4	8
Addition .....	7	10
price differences.....	—	—
Balance at the end of the period .....	54	51
as provisions		
Balance at the beginning of the period .....	5	1
Transfer .....	—	—
Consumption .....	—	—

	As of and for the year ended December 31,	
	2004	2003
	(in millions of €)	
Release.....	2	—
Addition .....	—	4
price differences.....	—	—
Balance at the end of the period .....	3	5
Contingency reserves § 340f HGB		
Balance at the beginning of the period .....	246	255
Transfer .....	—	—
Consumption .....	—	—
Release.....	236	16
Addition .....	—	7
price differences.....	—	—
Balance at the end of the period .....	10	246

### Country Risk

The Federal Financial Supervisory Authority (*Bundesanstalt für Finanzdienstleistungsaufsicht*) requires that minimum allowances be maintained for transfer risk arising with respect to all HSH Nordbank AG group loans, debt securities and other outstandings to countries or residents of countries falling into certain categories established by the Federal Financial Supervisory Authority on the basis of the level of perceived transfer risk in such countries. Separate allowances with respect to such loans also are maintained in accordance with the credit loss allowance criteria set forth above. The category that a country falls into is determined based on the Federal Financial Supervisory Authority's guidelines; the Bank's determination is subject to review by the Federal Financial Supervisory Authority. The following table shows the minimum required allowances with respect to each category of country:

	As of and for the year ended December 31,	
	2004	2003
	<i>(in millions of €)</i>	
<b>Countries with transitory difficulties (Rating 2 - 5).....</b>	–	–
<b>Very doubtful countries (Rating 6 - 18)</b>		
Algeria .....	0.8	0
Angola .....	0.6	0
Argentina .....	11.5	10.7
Brazil .....	0.5	0.9
Cameroun.....	1	0
Colombia .....	0.9	0.2
Costa Rica .....	0.4	1.5
Croatia .....	0	4.9
Dominican Republic .....	0.2	0.4
Egypt .....	0.4	0
Ghana.....	0.5	0.7
India .....	1.1	2.4
Indonesia .....	0.3	5.1
Iran .....	1.6	0.2
Kazakhstan.....	0.9	1.5
Macedonia .....	0.2	0
Panama.....	0.3	0
Peru .....	0	0.2
Philippines .....	12.6	7.5
Romania.....	0.1	0.3
Russian Federation .....	5.2	7.8
Sri Lanka .....	0.8	0
Tanzania.....	1.2	0
Tunesia.....	0.2	0
Turkey .....	6.1	3.6
Uganda.....	0	0.2
Uruguay .....	0.1	0
Venezuela.....	5	2.6
Vietnam .....	0	1.1

### Customer Deposits

The principal components of the Bank's deposits are domestic demand, savings and time deposits, and international and domestic interbank deposits. The Bank's retail customers are the principal source of its domestic demand and savings deposits. The Bank competes actively with other commercial banks and with savings banks for domestic demand and savings deposits.

The following table analyzes the Bank's year-end deposits (excluding assets sold under agreements to repurchase) by residence of the counterparty and type of deposit as at December 31, 2004.

As at December 31, 2004					
	Demand	Savings	Time	Non-interest bearing	Total
	<i>(in millions of €)</i>				
Financial institutions: .....	5,677		38,592		
Domestic (only total) .....					22,473
International (only total) .....					21,796
Customers: .....	7,189	158	39,107		
Domestic (only total) .....					38,215
International (only total) .....					8,239
<b>Total of Deposits.....</b>	<b>12,866</b>	<b>158</b>	<b>77,699</b>	<b>–</b>	<b>90,723</b>

### Short-term borrowings

Securities sold under agreements to repurchase and promissory notes issued by the Bank constituted the only categories of short-term borrowings that equaled or exceeded 0.1% of shareholders' equity at December 31, 2004 and 2003.

As of and for the year ended December 31,		
	2004	2003
	<i>(in millions of €)</i>	
Release.....	236	16
Securities sold under agreements to repurchase (principally German Treasury bills)		
At December 31.....	5	3
Other short-term borrowings (principally bank promissory notes)		
At December 31.....	1	17
Average during year.....	14	15
Maximum quarter-end balance .....	14	20
<b>Total short-term borrowings at year-end .....</b>	<b>6</b>	<b>20</b>

## RISK MANAGEMENT

The professional and responsible handling of risks is a key success factor for any bank. This is why risk controlling and management are important elements of HSH Nordbank's business policy.

The Bank defines risk as unfavorable future developments that may have an immediate or delayed adverse effect on its asset, earnings or liquidity. A distinction is drawn between default risks, market risks, operational risks, liquidity risks, and strategic risks.

### Risk management system

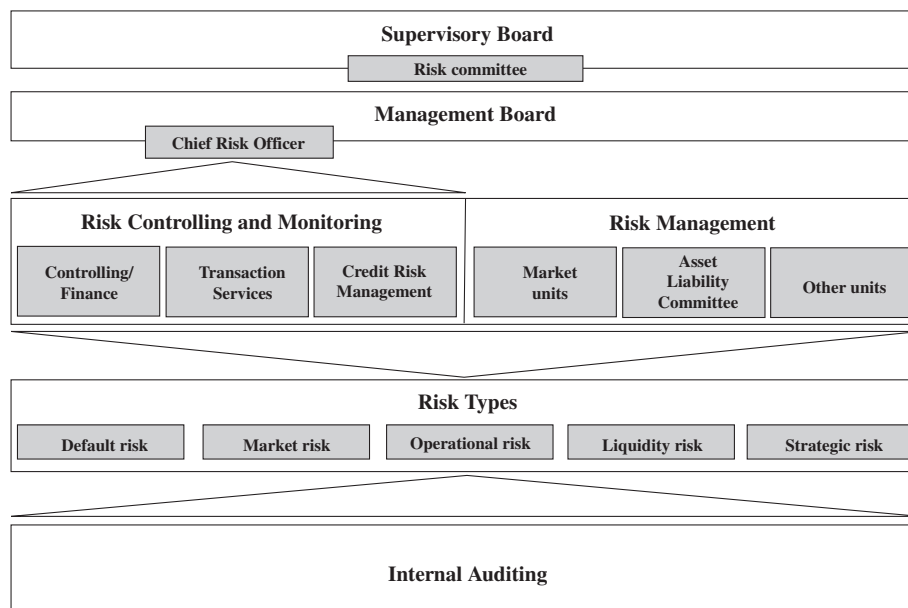
The individual elements of risk management constitute in their entirety a system that ensures the identification, analysis, evaluation, management, and ongoing monitoring of risks as well as reporting.

### Organization of risk management

Responsibility for risk management is clearly assigned within the Bank. The management board defines risk policy including the risk measurement, management, and monitoring methods and procedures to be applied. It bears overall responsibility for risk management at the Bank.

As a member of the management board, the Chief Risk Officer is responsible for risk controlling and monitoring. At this, he makes decisions independently of the management board members responsible for the market units. This ensures the functional separation between market and non-market units on all levels of the bank stipulated by regulatory requirements, specifically the Minimum Requirements for the Trading Activities of Credit Institutions (MaH) and the Minimum Requirements for the Credit Business of Credit Institutions (MaK). The Chief Risk Officer regularly briefs the management board and the Risk Committee, which is established by the supervisory board, on the Bank's current risk situation. In this connection, he is responsible for the Controlling/Finance, Credit Risk Management, and Transaction Services competence centers.

Central Risk Controlling develops the methods and instruments for measuring, managing, and monitoring risk. This is done independently of the units within the Bank that actively manage risks, particularly the market units. In this connection, Risk Controlling ensures that the main risks to which the Bank is exposed remain transparent and manageable. Credit risk management is responsible for measuring and monitoring individual credit risks and handling central issues relating to lending business. Operative risk reporting is handled by an independent unit respectively, primarily also Transaction Services. Active risks management is for the most part the reserve of the market units and the Asset Liability Committee (ALCO). Internal Auditing, which reports directly to the management board, performs process-independent examinations of the efficacy and suitability of the Bank's risk management system.



### ***Risk controlling and overall bank management***

The Bank's risk management and controlling system is regularly updated in the light of business and regulatory criteria and forms part of overall bank management. In this context, it is of fundamental importance that management focuses on the risk/return profile of business activities in the light of their specific risk/return profile on all relevant levels of the Bank is of elementary importance. In addition to the value added, the RaRoC (risk-adjusted return on capital) is a central parameter to manage business segments. Whereas the value added represents the absolute value created on the basis of the opportunity principle, RaRoC permits a comparison of the profitability of different business segments. This is particularly important for assessing the appeal of a market segment and, thus, determining the Bank's long-term business strategy.

As a matter of principle, HSH Nordbank manages its business in accordance with the global head principle. This also applies to risk controlling, meaning that all methods and instruments used are developed, implemented, and managed centrally to ensure uniform Bank-wide risk controlling.

With respect to the authorization and conclusion of its business activities decision-making powers and reporting duties are clearly defined across the Bank. The Bank has defined rules according to which formal auditing processes must be completed prior to the introduction of new or modified products and prior to transactions in new markets. Such transactions can only be completed with the approval of the management board. For this purpose, it must be possible for such transactions to be mapped in the processes and systems of relevance for the Bank.

A risk report keeps both the management board and Risk Committee regularly informed of the Bank's risk situation. The risk management methods and instruments are documented in a risk manual.

### ***Risk-bearing capacity***

All exposure to risk is subject to the overarching principle of risk-bearing capacity. For backing risks, the Bank's risk coverage potential is regularly calculated serving as economic hedging of potential losses. This risk coverage potential is used as a basis for determining a global limit for the Bank's aggregate risk exposure as well as individual limits for different risk types. These limits are determined by the management board.

### ***Regulatory capital backing***

The Bank complies with the regulatory requirements provided for in the German Banking Act by calculating on a monthly basis the amount of capital necessary to cover default and market risks on the basis of the standard procedures stipulated or optional pursuant to Principle I. None of the limits applicable in this connection were exceeded in the year under review.

### ***Default risk***

Lending forms part of HSH Nordbank's core business. Accordingly, the ability to accept, manage, and cap the risk of default is one of the Bank's key skills. The structure of lending business and the methods for managing default risks undergo constant further development in the light of changes in market conditions and new regulatory requirements (Basle II, MaK). As part of its credit risk strategy, HSH Nordbank defines the strategic and organizational thrust of its lending business. The credit risk strategy documents the planned development of business exposed to the risk of default in the light of the Bank's risk-bearing capacity. Default risk breaks down into credit, settlement, country, and equity holding risk.

### ***Credit risk***

In addition to the conventional credit risk, this includes the issuer and counterparty/replacement risk. Unlike settlement risks, credit risks persist throughout the entire term of the transaction.

The conventional credit risk takes the form of potential losses in value that may be caused by changes in the creditworthiness or the default of business partners. On the other hand, the issuer risk is the risk of



deterioration in the rating of the issuer of securities. Counterparty risk (replacement risk as defined in MaH) is defined as possible losses in value brought about by a change in the rating or default of a business partner, with whom off balance sheet transactions in particular, e.g. derivative financial instruments, have been conducted. The counterparty risk arises only with transactions with a positive market value from the Bank's point of view in connection with which a new contract would only be possible at less favorable conditions in the market in the event of the counterparty failing to comply with its obligations. Counterparty risks are valued on a mark-to-market basis and count towards the counterparty limits.

At the end of 2004, the nominal volume of derivative transactions within the HSH Nordbank Group amounted to €389.5 (previous year €349.9) billion. In order to hedge the risks arising from derivative transactions, the Bank has concluded collateral and netting agreements with a number of significant counterparties. The credit risk equivalents calculated for derivatives as at the end of the year in accordance with Principle I including these netting arrangements came to €233 (previous year: €1,002) million. The credit equivalents of these transactions are calculated using mark-to-market methods.

### ***Settlement risk***

With respect to the settlement risk. HSH Nordbank draws a distinction between the advance delivery and the performance risk. Advance delivery risks arise between the time at which advance delivery is requested and receipt of counter-performance. Risk equalling the counter-performance owing counts towards to the corresponding limit.

Performance risks arise when the counterparty fails to comply with its obligations on time and the Bank sustains a disadvantage as a result of a change in market prices. An amount equaling the difference in HSH Nordbank's favor between the agreed settlement price and the current market value of the underlying transaction is charged to the limit.

### ***Country risk***

The country risk is the risk that the agreed debt-servicing activities may be delayed or incomplete in part or in full as a result of restrictions to international payments, illiquidity or the suspension of payments by government debtors or guarantors. The risk is not related to the debtor's rating.

The following table breaks down the Bank's country exposure, which on December 31, 2004 stood at €81,784.9 (previous year: €87,657.1) million. Country exposure is defined as including lending and trading business in the light of-transfer-risk-relevant collateral such as bonds and guarantees.

<b>Region</b>	<b>Country exposure</b>	
	<b>2004</b>	<b>2003</b>
	<i>(in millions of €)</i>	
Western Europe .....	53,731.9	57,442.0
– EU countries .....	46,374.5	50,759.1
– non-EU countries .....	7,357.4	6,682.9
Central and eastern Europe .....	3,007.5	2,945.6
– EU accession countries 2004 .....	1,792.2	1,500.4
African countries .....	312.6	380.8
North America .....	15,750.6	15,087.3
Latin America .....	1,492.9	3,827.5
Middle East.....	472.0	310.1
Asia-Pacific region .....	6,124.7	7,106.9
International organizations .....	271.8	278.2
Special purpose companies .....	620.9	278.7
<b>Total .....</b>	<b>81,784.9</b>	<b>87,657.1</b>

### ***Equity holding risk***

The equity holding risk is the risk of possible loss from the provision of equity capital to third parties. Equity holding controlling therefore focuses on the continuous monitoring and management of risks arising from equity holdings as well as an ongoing review of profitability in terms of the return on investment and RaRoC. For this purpose, the new regulatory rules (Basle II) are increasingly being applied.

In the year under review, equity holdings underwent critical analysis in the light of capital commitment, profitability, and strategy. The results of this analysis were used to define recommended action as well as plans of activity. At the same time, investment principles were formulated as a basis for ensuring that quantitative targets are defined from the outset upon the equity holding being acquired so that compliance with these targets can be monitored on an ongoing basis. In addition, the strategies of the companies in which equity holdings are held are examined to ensure that they are consistent with the Bank's own strategic objectives. On top of this, due diligence reviews are conducted as part of an examination of the equity holding to analyze the profile of opportunities and risks intensively.

The portfolio of equity holdings has been divided into various risk categories to ensure efficient management. Individual equity holdings are assigned to the segments in accordance with their significance for the Bank as measured by their risk profile and potential for returns. On this basis, the companies report to the Bank on their business performance and economic condition. These reports are submitted in intervals of differing lengths and with a level of detail determined on the basis of the segment to which they have been assigned. The requirements the reports must meet are very largely uniform and differ only in terms of the specific nature of the type of business concerned. In addition, the articles of incorporation for these companies are formulated in such a way as to ensure that the Bank is able to assert as much management influence as possible. In this connection, the Bank takes steps to ensure that it is represented in the management bodies of particularly important companies.

### ***Organization of lending business***

In 2004, HSH Nordbank completed the first step in activities aimed at implementing the qualitative requirements set out in the Minimum Requirements for the Credit Business of Credit Institutions (MaK) with respect to the structure of lending business and the processes used. The necessary activities for implementing the adjustments to IT required to ensure compliance with these Minimum Requirements by December 31, 2005 have already been initiated.

Thanks to the Bank's structure, it is possible to separate market from non-market functions and risk controlling at all levels right up to the management board. The independent non-market tasks are handled by CC Credit Risk Management, while CC Controlling/Finance is responsible for the independent monitoring of risks at the portfolio level and independent reporting.

To ensure uniform lending policies and quality in the assessment of lending risks, all independent non-market tasks are assigned to CC Credit Risk Management, e.g. preparing the second risk assessment, examining and determining the rating, checking the value of collateral, overseeing loan restructuring activities, liquidation, risk-provisioning, and defining processes and rules for the Bank's lending business.

The model selected by HSH Nordbank for the separation of functions in the loan-approval process reflects its strategic orientation as a client-driven bank with intensive special-purpose finance business as loan approval requires high-quality risk analysis as part of market assessment as well as a secondary risk assessment on the part of the non-market segment, which performs an independent uniform quality-management function for the assessment of risk in the Bank's lending business. In the event of any discrepancy between the market and the non-market risk assessment, an escalation process is initiated to reach a decision. Pursuant to the escape clause provided for in the Minimum Requirements for the Credit Business of Credit Institutions, HSH Nordbank makes use of the option to dispense with non-market risk assessment for all lending business classified as being not relevant for risk purposes (municipal loans, loans to banks backed by guarantor's liability) or loans below certain amounts.

Operations in the lending area are based on the rules set out in the HSH Nordbank Credit Manual and internal guidelines, particularly the lending competence, risk assessment, collateral and rating guidelines, which describe the main principles for the Bank's lending business. Under these principles, credit risks recorded in accordance with the extended definition as defined in Section 19 (1) of the German Banking Act are viewed

individually and treated according to the collateral provided, type of loan, rating class as well as the type of credit risk. This is based on the aggregate exposure of the HSH Nordbank Group to the borrower unit pursuant to Section 19 (2) of the German Banking Act. For this purpose, the relevant borrower is always viewed as the economic risk bearer.

With respect to the distinction between secured and non-secured loans, the types of collateral considered acceptable by the Bank and the requirements to be met by them (e.g. identifiable market value, ability to realize the collateral value, no correlation with the collateralized loan, legal enforceability, matching of maturities) as well as the lending limits are defined in the Bank's Collateral Guidelines.

As a matter of principle, the Bank never relies solely on third-party credit risk assessments, e.g. by using only external ratings. Depending on the type of finance, a credit, asset or project rating is required. This rating is then checked and approved by the non-market unit with respect to the selection of the rating method as well as the appropriate application of the rating method in the light of the nature of the risk and economic considerations. The rating processes are an integral part of the loan approval processes, the competence guidelines as well as risk provisioning and intensity of the customer service.

Management of individual credit risks is in particular supplemented by rules governing the monitoring of exposure, the early detection of risks and the treatment of problem loans.

### ***Limitation of risks in lending business***

HSH Nordbank limits default risks at various hierarchical levels. The Bank's risk capital is capped at the overall Bank level. For this purpose, the limit on default risk depends on a confidence level defined in accordance with Basle II. Regulatory limits pursuant to Principle I are defined at the overall Bank level and as a part of capital allocation activities at the global head level.

A further limit at the overall Bank level is defined as part of country risk management. Country exposure is managed in a dual-level process. For one thing, HSH Nordbank's maximum nominal foreign credit volume is limited on the basis of the country rating levels clustered in categories in accordance with the Bank's risk appetite. For another, business is micro-managed in the individual countries on the basis of a risk-weighted amount-based limit system. These weighted amounts count towards the corresponding country limits, which are derived from the limits per rating class and the specific economic condition of the country in question. The limits are defined by the management board, with limit utilization monitored centrally on an ongoing basis by the units responsible for country management.

Limits at the borrower/borrower unit level are defined as part of large risk management and the formulation of limits for conventional lending and trading.

The process used for managing large risks ensures compliance with the regulatory limits for large credits at the institute and group level and allows the Bank to detect potential overlarge loans at an early stage and to take suitable precautionary steps before they arise.

### ***Risk provisions***

The primary focus of the Bank's risk management activities is on default risks. Its cautious business policy is reflected in the fact that in spite of the difficult business conditions of the past few years the HSH Nordbank Group loss rate<sup>1)</sup> dropped to 0.08% in 2004 (previous year: 0.16%). Thus, the average for the past five years has been maintained at a low level of 0.09% (previous year: 0.09%)<sup>2)</sup>. On December 31, 2004, HSH Nordbank Group risk provisions in the form of individual value adjustments provisions for default risks were valued at €1,552.6 (previous year: €1,418.5) million, equivalent to 0.79% of the total loan volume (previous year: 0.70%)<sup>3)</sup>. The general value adjustments (including general country value adjustments) came to €205 (previous year: €197) million.

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1) The Group loss rate is the actual number of loan defaults (sum total of utilization of individual value adjustments, direct write-offs of loans and receipt of payments towards written-off receivables) as a percentage of the total loan volume. The sum total of defaults in 2004 was €155.92 (2003: €318.34) million and the total loan volume for 2004 was €197,311.21 (2003: €202,864.26) million.

2) The average default rate for the past five years is based on the parent-company financial statements on account of differences in the figures for the two predecessor banks.

3) As a result of the new allocation method, individual risk positions for the Luxembourg branch are allocated to securities business. The individual value adjustments and provisions as at December 31, 2003 set out in the 2003 risk report have been adjusted accordingly.

## ***Basle II***

In preparation for Basle II, the Bank is conducting numerous projects aimed at further enhancing credit risk management. In shared projects with other Landesbanks as well as the German Savings Banks Association (DSGV), jointly developed complex scorecard and simulation-based rating procedures are being worked on. At the beginning of December 2003, the participating Landesbanks established a company known as RSU Rating Service Unit GmbH & Co. KG, which in 2004 assumed responsibility for the joint management and development of rating systems complying with regulatory quality requirements. In addition, it is coordinating the implementation of the individual ranking modules in a uniform multi-client-enabled IT environment meeting internal and regulatory requirements.

The internal rating methods are based on the Basle II standards in the light of economic requirements.

The risk categories form a key aspect of efforts to comply with Basle II, IAS/IFRS, integrated bank management and limitation. In order to depict the various segments of the portfolio on a uniform rating scale and thus to ensure comparability, the Bank uses an identical rating master scale against which external ratings can also be mapped.

HSH Nordbank applies a uniform pre-pricing method to calculate the present value of default risks. On the basis of the RaRoC system, expected risk costs and the economic cost of capital for individual transactions are mapped over the entire duration of the transaction. Country and transfer risks are also included in pricing operations.

In addition, loss given default (LGD) figures, which are calculated internally, are also incorporated in pricing operations. LGD is calculated using the method developed by the joint Landesbank project and RSU based on a shared data history compiled by the Landesbanks. Thus, for example, LGD parameters have been defined for ship, aircraft, and project finance, with figures for further business segments to be available as of April 2005.

In addition, HSH Nordbank is establishing consolidated and logically central data-storage systems complying with the Basle II requirements with respect to the provision of data and information as part of its efforts to analyze, monitor, and report on risks. In this connection, further key elements of a system for calculating regulatory capital backing pursuant to Basle II were developed in 2004 in the light of HSH Nordbank's specific requirements.

By engaging in these preparations and taking other organizational measures, HSH Nordbank is seeking to ensure that one business segment after another complies with the Basle II stipulations with respect to the internal rating approach.

## **Market risk**

Market risks entail potential losses that may result from detrimental changes in the market value of the Bank's positions. Market moves of relevance to the Bank include changes in interest rates (interest rate risks), exchange rates (foreign exchange risks), share prices and fund prices (equity risks), and volatility in any of these.

### ***Organization of market risk management***

The management board stipulates the methods and processes for measuring, limiting, and managing market risk and budgets a general global limit for market risks. As part of this upper loss limit, the risk arising from all transactions exposed to market risk is defined by means of a dynamic system of loss and risk limits.

Market risks are managed directly by the trading units Capital Markets and Portfolio Management and Investments as well as by Asset Liability Management. Selected strategic positions exposed to market risks are managed by the Asset Liability Committee, which comprises the Chair-man of the management board, the Chief Trading Officer, the Chief Risk Officer, and representatives of the market units.

Daily reports constantly keep the management board and trading units informed of exposure to market risks and current limit utilization.

In accordance with MaH requirements, the organizational separation of risk controlling from risk management is ensured at all levels.

### ***Market risk measuring methods***

The basis of the Bank's system for measuring and managing market risks is a value-at-risk approach. The market risk of a position is the loss in value (in EUR), which with a defined probability will not be exceeded within a defined period up until the date on which the position is hedged or liquidated.

At HSH Nordbank, value at risk (VaR) is calculated using historical simulation methods for nearly all portfolios. Calculations are based on a confidence level of 99% and a holding period of one day over an observation history of 250 trading days. VaR is thus the forecast loss, which with a probability of 99% will not be exceeded over a period of one trading day.

In connection with the technical consolidation of the IT systems of the two predecessor banks, work on establishing a joint platform for market risk controlling continued to make decisive headway in the year under review. The small number of positions whose risk exposure is still being calculated using a variance-covariance approach based on risk parameters was further reduced. The completion of the system-based and technical consolidation of all positions is planned for 2005. Calculations of the parameters using historical market fluctuation in accordance with the Basle standards are also based on a confidence level of 99% and a holding period of one day over an observation history of 250 trading days. Reflecting the various applicable determinants, separate parameters are calculated for interest rate, foreign exchange, and equity risks and updated quarterly or upon the occurrence of material market movements.

### ***Daily value at risk during the year under review***

The following diagram illustrates the movements in the daily value at risk for the entirety of HSH Nordbank's trading and banking book positions during 2004. Market risk was valued at between €15 million and €116 million, with the Bank's aggregate VAR coming to €26 million on the last day of trading in 2004.

HSH Nordbank: Daily value at risk in the course of 2004.

#### **HSH Nordbank:**

in Mio €



In June 2004, the valuation of credit and funding transactions for market risk measurement purposes was adjusted following the incorporation of superior market data. The resultant improvement in the calculation of interest rate risk for these transactions resulted in a sharp decline in overall value at risk whereas risk positions remained largely unchanged.

The following table sets out the value at risk for the entirety of the Bank's trading and banking book positions. The terms "maximum" and "minimum" refer to the upper and lower limits of the range in which the risk ratio in question moved in the course of the year under review. Total risk is calculated by aggregating the individual market risk types. Allowance is made for correlations between the individual risk factors in line with the historical simulation in the risk measurement system in question. Market risks from derivatives – including the volatility risks arising from options – are included in the figures shown.

	January to December							
	2004	2003 <sup>(1)</sup>	2004	2003 <sup>(1)</sup>	2004	2003 <sup>(1)</sup>	2004	2003 <sup>(1)</sup>
	Interest rate risk		Foreign exchange risk		Equity risk		Market risk (aggregated)	
	(in million €)							
Average .....	33.9	44.7	14.6	21.5	8.1	5.3	44.5	56.3
Maximum .....	83.8	62.9	52.0	55.4	13.0	12.2	116.2	77.9
Minimum .....	13.5	34.3	2.4	9.4	3.9	2.6	14.9	39.4
December 31 of each year .....	24.3	39.5	4.0	10.6	3.9	4.2	26.4	49.0

Notes:

(1) Until June 2003, the two predecessor banks used different methods for measuring market risk.

### ***Backtesting***

The Bank performs regular backtesting to verify the quality of its value-at-risk forecasts. This involves comparing the theoretical daily profit loss derived from the market performance observed on the following day with the VaR figures for the previous day forecast using historical simulation based on the assumption of unchanged positions. As part of the variance-covariance method of calculating market risk, the risk parameters applied undergo separate backtesting. The results of backtesting are taken into account in the ongoing development of the Bank's value at risk methods.

### ***Stress tests***

In accordance with the Minimum Requirements for the Trading Activities of Credit Institutions (MaH), the Bank supplements its daily risk measurement operations with regular stress tests to determine the impact of extraordinary market fluctuation on the value of its positions. To this end, the Bank varies the assumptions underlying its models compared with the calculation of risk under normal circumstances. In addition, separate interest rate stress tests are performed on the basis of standardized interest rate shifts ("interest rate shocks") across all positions exposed to interest risk.

The Bank regularly calculates the change in the present value of its banking book positions in the event of an interest rate shock of 200 basis points to analyze interest risks in this area.

### ***Regulatory requirements***

On the basis of the (optional) standard procedures laid down in Principle 1 of the German Banking Act (KWG), the Bank determines at monthly intervals the equity capital requirement for market coverage risk. During the year under review, none of the stipulated limits was at any time infringed. Within the context of Basel II project activities, the management functions of interest rate risks in the banking book were also further extended.



## **Operational risks**

HSH Nordbank defines operational risk (OpRisk) as the risk of direct or indirect loss caused by the inappropriateness or failure of the internal infrastructure, internal processes or staff or as a result of external factors. This definition includes legal and reputation risks.

The Bank considers operational risk controlling to constitute a key aspect of its management systems, the importance of which is set to continue growing in the future due to dynamic business conditions, the limited scope for risk transfer as well as the rising demands made by rating agencies and other market participants.

At the same time, the Bank's activities are targeted at meeting regulatory requirements. Currently, the Bank is creating the basis for selecting an advanced measurement approach for determining future capital backing requirements for operational risks.

### ***Organization of operational risk management***

HSH Nordbank has an independent central unit for identifying, evaluating, and analyzing operational risks. It is responsible for developing and overseeing the use of the controlling instruments and providing expertise and advice on operational risks as well as encouraging risk awareness throughout the Bank. The central controlling unit for operational risks handles independent reporting to the management units at HSH Nordbank responsible for overseeing these risks.

This central unit is backed up by a local network of experts. All business units have OpRisk officers and OpRisk assistants responsible for applying the controlling instruments and acting as the link between central controlling and the local organizational entities. The OpRisk officers and OpRisk assistants are trained by the central operational risk controlling unit in preparation for their tasks. Conversely, they contribute local expertise from the various segments via their activities.

### ***Instruments***

Operational risks can affect all products, processes, and organizational entities. For this reason, particular attention is paid to effective risk awareness so that the knowledge possessed by staff can be utilized for identifying operational risks. At HSH Nordbank, various instruments are used on an ongoing basis to heighten risk awareness.

On January 1, 2004, a central risk event database was rolled out for recording all losses incurred as a result of operational risks at HSH Nordbank. The organizational entities affected record the operational risk events on a local basis and forward this data directly to the central controlling unit, which checks the data, collates collective risk events, and produces analyses and reports.

The controlling instruments are implemented, local experts trained, and risk awareness heightened at the Bank's foreign branches simultaneously with the business units based in Germany.

In 2004, HSH Nordbank played a key role in the establishment of a data pool for exchanging information on operational risk events amongst the members of the Association of German Public Sector Banks (VÖB). This data pool is to go into operation in 2005.

The first group-wide risk inventory at HSH Nordbank is also to be held in 2005. With the introduction of regular risk inventories, reporting on operational risks to management units is to be supplemented with the addition of forward-looking risk estimates to encourage proactive management and monitoring of operational risks. Based on the results of the risk inventory, scenario analysis will be conducted to gauge the danger of particularly serious operational risk events of particular importance for quantifying operational risks.

The management of operational risks also includes legal risks in full. The Bank is currently engaged in litigation with a Turkish shipping group. At the first instance, judgment was entered against the Bank, with the court requiring it to pay damages. A court bond of U.S.\$72 million (€53 million) has been lodged for the appeal. The Bank is convinced that ultimately judgment will be awarded in its favor.



## **Liquidity risks**

Liquidity risk refers to the danger of the Bank being unable to settle its own payment obligations or cover its funding requirement to the desired extent or on the terms it expects. Losses may arise if funding must be raised in the market place or more expensive terms or if assets can only be sold at a discount. For this reason, the Bank utilizes various instruments to measure, manage, and limit liquidity risks to ensure future solvency at all times even under tight market conditions.

### ***Organization of liquidity risk management***

Asset Liability Management is responsible for managing liquidity at the level of the overall Bank. In addition to managing liquidity as a resource within the Bank, this also includes planning funding in the light of the future business structure. In this connection, particular attention is paid to changes in funding conditions expected as a result of the abolition of guarantor liability and modifications to institutional liability. The Capital Markets trading unit is responsible for the implementation of funding operations as well as market smoothing operations. Thanks to its highly diversified funding structure with respect to the instruments, currencies, maturities, and investor groups selected as well as specific efforts to tap new sources of funding, HSH Nordbank has been able to position itself in the market very well.

The liquidity management model is being implemented and enhanced in conjunction with Risk Controlling, which is responsible for defining the methods for treasuring and limiting liquidity risks.

### ***Identification and measurement of liquidity risks***

The basic instrument for measuring funding requirements is the liquidity maturity statement, which converts the transactions impacting the Bank's liquidity into figures and assigns incoming and outgoing payments to maturity bands. The difference between incoming and outgoing payments is the liquidity excess or shortfall (gap) in the individual maturity bands. The cumulative gaps indicate the funding requirements at given points in time.

The cumulative gap in the period up to one year is the measure of the risk of full or partial insolvency. In addition, gaps in the individual maturity bands arising within the year are converted into a second risk parameter that measures the losses sustained from an immediate closure of all open funding gaps in this segment assuming a stress-induced premium on the standard market funding prices.

Liquidity maturity statements are regularly compiled for the Bank as a whole and for the individual foreign branches. In addition to all on-balance-sheet business, this statement also includes loan commitments granted, guarantees as well as expected new business. Maturity scenarios are used for a number of positions to map economic maturities more effectively. In this connection, possible base rates from deposits and current accounts as well as the liquidity periods of assets are modeled conservatively as a matter of principle.

### ***Limiting and monitoring of liquidity risks***

Both funding requirements and the cost of immediately funding all open items with maturities of less than one year are limited. At the same time, there are internal minimum requirements with respect to the amount and quality of a securities portfolio to be retained that must be capable of being liquidated at all times even under stress conditions. Limit utilization and compliance with the internal requirements are determined on a monthly basis and monitored by Risk Controlling. In addition, the regulatory Principle II ratio is used as a further management parameter.

The management board and the responsible management units are regularly briefed on all risk-relevant ratios and developments. The Bank has a contingency plan comprising a catalog of activities as well as documented processes and clearly assigned responsibilities in the event of a liquidity crisis. In fiscal 2004 all internal limits as well as the regulatory ratio were complied with at all times.

### ***Further developments in liquidity risk management***

In 2004, a project was implemented to develop new methods for treasuring, managing, and limiting liquidity risks. The implementation of a new evaluation system on December 31, 2004 resulted in the harmonization of valuation measures and provided broad scope for analysis. In a further step, risk measurement is to be fine-tuned in 2005, the reporting, frequency increased and a backtesting system for validating the methods used established.

### **Strategic risks**

Strategic risk is the danger of financial loss being incurred as a result of long-term decisions that are erroneous or based on incorrect assumptions particularly with respect to the performance of individual segments of business or the banking sector as a whole.

To reduce these risks, the Bank's strategic and organizational orientation is regularly checked over and above the annual planning process for the Bank as a whole. For this purpose, an extensive overall Bank strategy-definition process was carried out in 2003. Among other things, this systematically examined all of the Bank's business segment strategies. As part of a strategy-up-date process in 2004 the main elements defined in the strategy-definition process were reviewed again and adjusted in the light of the Bank's strategy of preparing itself for the capital market.

### **Summary and outlook**

In accordance with its strict evaluation criteria, the Bank has made sufficient provisions for all discernible risks. Consolidated risk provisions (individual value adjustments and provisions) for default risks came to a yearend figure of €1,552.6 (previous year: €1,418.5) million. The liquidity ratio (Principle II as defined in Section 11 of the German Banking Act) exceeded the minimum requirements at all times during the year under review. The liable capital as defined in the German Banking Act of the regulatory HSH Nordbank Group equaled €9,735.8 million. The total ratio in accordance with Principle I was 10.0 (ratio of liable capital to risk-weighted assets plus market risk positions).

Numerous Bank-wide projects are currently being implemented to develop new methods and instruments and to enhance existing ones to ensure that any adverse developments in the Bank's risk structure are detected early so that allowance can be made for them in its risk management system. The Bank has a range of instruments allowing it to expose itself to risk consciously and in a controlled manner.

In order to further optimize risk management at HSH Nordbank, a Bank-wide system for the economic management and limiting of all relevant risk types (default risks, e.g. credit, country, and equity holding risks, as well as market, operational, and liquidity risks) will be rolled out in 2005. To avoid cluster risks, an integrated limit system, which underwent further development in 2004, is to manage and monitor overall business and borrower-related risks. In addition to the definition of limits at the global-head level, borrower units and country limits based on the economic capital required are defined to avoid clusters on the exposure level or in individual countries. As well as limiting risk, this ensures that the minimum Tier 1 capital ratio and Principle I (Basle I) as well as the minimum profit target are achieved.

Work will continue in 2005 on implementing the regulatory requirements defined in Basle II. Thus, among other things, there are plans to migrate the individual rating modules to a shared IT platform step by step starting in 2005. Other matters concern the extended requirements made of management and the disclosure of interest rate risks in the banking book as well as a group-wide inventory of operational risks. In addition, preparations for the supervisory review (Pillar II) and the disclosure duties (Pillar III) constitute key elements of the work remaining for 2005.

## RECENT DEVELOPMENTS AND OUTLOOK

### HSH Nordbank Group at a Glance

Details and figures taken from the HSH interim report of March 31, 2005.

<b>Key figures</b>	<b>Jan.-Mar. 2005</b>	<b>Jan.-Mar. 2004</b>	<b>Change (%)</b>
Operating profit before risk provisions (€ m).....	306.9	254.8	20.4
Operating profit after risk provisions (€ m) .....	225.8	202.8	11.3
Net income (€ m) .....	93.0	76.0	22.4
	<b>Jan.-Mar. 2005</b>	<b>2004</b>	
Return on equity (%) .....	15.2	12.8	
Cost/income ratio (%).....	39.7	39.9	
	<b>03/31/2005</b>	<b>12/31/2004</b>	
Total assets (€ m) .....	172,562	164,090	
Tier 1 capital ratio (%), German Banking Act .....	6.8	7.0	
Tier 1 capital ratio (%), BIS .....	6.5	6.7	
Total capital ratio (%), German Banking Act.....	9.6	10.0	
Total capital ratio (%), BIS .....	9.3	9.7	
Employees.....	4,530	4,347	
	<b>Unguaranteed* obligations</b>	<b>Guaranteed obligations</b>	
<b>Long-term ratings</b>			
Moody's .....	A1	Aa3	
Standard & Poor's.....	A	AA-	
Fitch .....	A	AAA	

\*Obligations not covered by *Anstaltslast* (maintenance obligation) and *Gewährträgerhaftung* (guarantee obligation).

### Business performance of the HSH Nordbank Group

- **Robust operating income**
- **Administrative expenses up**
- **Low risk-provisioning requirement**
- **Operating profit after risk provisions up 11.3%**
- **Return on equity above 15%**
- **Total assets up to EUR 172.6 billion**
- **Tier 1 capital ratio down slightly to 6.8%**

### Earnings situation

Operating profit before risk provisions/evaluation for the first quarter of 2005 was up 20.4% on the first quarter of 2004, to EUR 307 million. Operating profit after risk provisions/evaluation climbed to EUR 226 million – an increase of 11.3%.

**Net interest income** was up 15.7%, i.e. by more than EUR 50 million, on the same quarter last year to EUR 388 million. Dividend payouts on equity holdings also, along with selective business expansion, accounted

for this increase. **Net commission income** was up slightly in the first quarter of 2005, by 4.2% to EUR 70 million. **Net trading income** was up 18.1% year on year to EUR 32 million. **Other net operating income** posted a substantial 163% rise to EUR 19 million, reflecting in particular the benefit of initial consolidation such as that of HSH N Real Estate.

**Administrative expenses** amounted to EUR 202 million and were thus up by an overall 11% on the first quarter of 2004. **Operating expenses** rose 14.2% to EUR 108 million due mainly to more spending on consulting and IT. **Personnel expenses** amounted to EUR 95 million and were thus up 7.6% compared with one year earlier. The increase was due primarily to recruitment both in Germany and abroad, which overall more than offset the diminishing effect of consolidation compared with the previous year. The number of employees was up by 35 versus March 31, 2004, to 4,530. Staffing has increased by 183 since the beginning of the year, due particularly to the fact that the HSH Gudme Corporate Finance companies (in Hamburg, Copenhagen and Helsinki) were included for the first time in the opening quarter.

With a **cost/income ratio** of 39.7% we remain among the leaders in Europe (39.9% in 2004 and 41.7% in Q1/2004).

**Operating profit before risk provisions/evaluation** amounted to EUR 307 million on March 31, 2005 – a 20.4% year-on-year gain.

The **risk provisions/evaluation** item was up significantly compared with the same quarter in the previous year because of significantly larger allocations to reserves pursuant to Article 340 f and g of the German Commercial Code, from EUR 52 million to EUR 81 million. In the **lending business**, risk provisions amounted to EUR 32 million after the first three months of this year – a 26.1% year-on-year decrease. In the **securities business** we were able to scale back risk provisions by EUR 47 million in the first quarter of 2005. When adding the two elements together, we therefore did not need to form any provisions in the first quarter. What should be taken into consideration is that a large proportion of the value adjustments for the first quarter is always accounted for in the financial statements for the previous year.

**Operating profit after risk provisions** amounted to EUR 226 million, equating to 11.3% growth on the first quarter of 2004.

The **return on equity** improved by 2.4 percentage points from the end of 2004 to 15.2%.

**Net income** exceeded the Q1/2004 figure by 22.4%. After deducting income tax and payouts on silent participations it amounted to EUR 93 million.

## Income statement

	Jan.-Mar. 2004	Jan.-Mar. 2005	Change absolute	%
	(€ million)			
Net interest income .....	335.8	388.4	52.6	15.7%
Net commission income .....	66.8	69.6	2.8	4.2%
Net trading income .....	27.0	31.9	4.9	18.1%
Administrative expenses .....	-182.1	-202.2	-20.1	11.0%
Personnel expenses .....	-87.9	-94.6	-6.7	7.6%
Other operating expenses .....	-94.2	-107.6	-13.4	14.2%
Net other operating income.....	7.3	19.2	11.9	163.0%
<b>Operating profit before risk provisions/evaluation</b>	<b>254.8</b>	<b>306.9</b>	<b>52.1</b>	<b>20.4%</b>
Risk provisions/evaluation .....	-52.0	-81.1	-29.1	56.0%
Loan loss provisions .....	-43.3	-32.0	11.3	-26.1%
Securities .....	42.9	46.5	3.6	8.4%
Equity holdings .....	0.0	-0.7	-0.7	
Other .....	-51.6	-94.9	-43.3	83.9%
<b>Operating profit after risk provisions/evaluation ..</b>	<b>202.8</b>	<b>225.8</b>	<b>23.0</b>	<b>11.3%</b>
Taxes on income .....	-44.8	-54.9	-10.1	22.5%
Payouts on silent participations.....	-82.0	-77.9	4.1	-5.0%
<b>Net income</b> .....	<b>76.0</b>	<b>93.0</b>	<b>17.0</b>	<b>22.4%</b>

## Income statement – Quarterly overview

	Q1-2004	Q2-2004	Q3-2004	Q4-2004	Q1-2005
Net interest income .....	335.8	430.8	379.3	378.3	388.4
Net commission income .....	66.8	56.7	74.7	75.8	69.6
Net trading income .....	27.0	21.7	22.7	41.4	31.9
Administrative expenses .....	-182.1	-188.5	-207.7	-205.0	-202.2
Personnel expenses .....	-87.9	-85.4	-91.0	-92.9	-94.6
Other operating expenses.....	-94.2	-103.1	-116.7	-112.1	-107.6
Net other operating income .....	7.3	7.6	24.9	13.3	19.2
<b>Operating profit before risk provisions/evaluation</b> .....	<b>254.8</b>	<b>328.3</b>	<b>293.9</b>	<b>303.8</b>	<b>306.9</b>
Risk provisions/evaluation.....	-52.0	-124.6	-154.0	-15.6	-81.1
<b>Operating profit after risk provisions/evaluation</b> .....	<b>202.8</b>	<b>203.7</b>	<b>139.9</b>	<b>288.2</b>	<b>225.8</b>
Extraordinary result .....	0.0	0.0	0.0	-206.3	0.0
Taxes on income .....	-44.8	-46.3	-8.2	-77.6	-54.9
Payouts on silent participations .....	-82.0	-81.6	-82.0	-78.8	-77.9
<b>Net income</b> .....	<b>76.0</b>	<b>75.8</b>	<b>49.7</b>	<b>-74.5</b>	<b>93.0</b>

## Assets and financial position

Total assets amounted to EUR 172.6 billion on March 31, 2005. The 5.2% increase versus December 31, 2004 is due mainly to selective expansion of business as well as the U.S. dollar's slight appreciation since the end of 2004. The volume of business increased by 5.3% to EUR 210.7 (December 31, 2004: 200.1) billion.

## Balance sheet

Assets	03/31/2004	12/31/2004	03/31/2005
		(€ million)	
Cash reserve, debt instruments issued by public institutions, bills of exchange eligible for refinancing .....	702	351	193
Loans and advances to banks .....	39,396	35,588	41,814
Loans and advances to customers.....	80,610	78,470	78,874
Total securities .....	48,399	45,913	45,886
Equity holdings in affiliated and associated companies.....	1,561	1,651	1,754
Trust assets .....	359	385	389
Other assets.....	4,067	1,733	3,653
<b>Total assets</b> .....	<b>175,094</b>	<b>164,090</b>	<b>172,562</b>
<b>Liabilities and equity capital</b>	<b>03/31/2004</b>	<b>12/31/2004</b>	<b>03/31/2005</b>
Liabilities to banks .....	44,083	44,269	41,771
Liabilities to customers.....	50,329	46,454	50,223
Certificated liabilities .....	63,267	58,134	63,706
Trust liabilities .....	359	385	389
Subordinated debt .....	2,620	2,550	2,601
Profit participation capital .....	1,497	1,497	1,497
Fund for general banking risks .....	365	6	6
Equity capital .....	6,462	6,536	6,563
Other liabilities .....	6,114	4,260	5,806
<b>Total liabilities</b> .....	<b>175,094</b>	<b>164,090</b>	<b>172,562</b>
Contingent liabilities.....	14,149	11,449	11,449
Irrevocable loan commitments .....	12,485	13,893	16,232
Derivatives (Credit risk equivalent) .....	6,565	10,663	10,460
<b>Business volume</b> .....	<b>208,293</b>	<b>200,094</b>	<b>210,703</b>

The Tier 1 capital ratio contracted to 6.8% from 7.0% on December 31, 2004. The total capital ratio dropped to 9.6% (from 10.0% on December 31, 2004). The declines are due to a slight increase in risk-weighted assets combined with an unchanged amount of capital. The minimum thresholds stipulated by regulatory law are clearly exceeded.

## Regulatory figures

	03/31/2004	12/31/2004	03/31/2005
		€ billion	
Total liable capital.....	10.3	9.7	9.7
Tier 1 capital .....	6.4	6.2	6.2
Risk-weighted assets (KWG <sup>1</sup> ) .....	95.6	88.5	91.7
Risk-weighted assets incl. market risk position (KWG <sup>1</sup> ) .....	101.4	97.4	101.8
Risk-weighted assets (BIS).....	99.5	92.1	95.0
Risk-weighted assets incl. market risk position (BIS) .....	104.5	100.0	104.4
<b>in %</b>			
Total capital ratio (KWG <sup>1</sup> ) .....	10.2	10.0	9.6
Total capital ratio (BIS) .....	9.8	9.7	9.3
Tier 1 capital ratio (KWG <sup>1</sup> ) .....	6.6	7.0	6.8
Tier 1 capital ratio (BIS).....	6.4	6.7	6.5

1 German Banking Act

## Performance of individual segments <sup>2</sup>

### Shipping segment

In the first quarter, operating profit after risk provisions dropped slightly to EUR 57.5 (1/4 2004: 59.8) million, following last year's sharp growth, primarily due to the decline in the USD exchange rate accompanied by specified limits on risk-weighted assets. The return on tier 1 capital<sup>3</sup> came to 19.5 % (2004: 20.2 %).

The business segment continues to benefit from consistently strong demand in the world's shipping markets. In the first quarter, HSH Nordbank has increasingly assumed the role of an arranger and underwriter of major ship loans. Furthermore, it was also successful in the signing of several structured deals. By setting up a new unit called "Structuring and Development", the Bank has further strengthened its position as a competent partner for complex and innovative finance structures in the shipping sector.

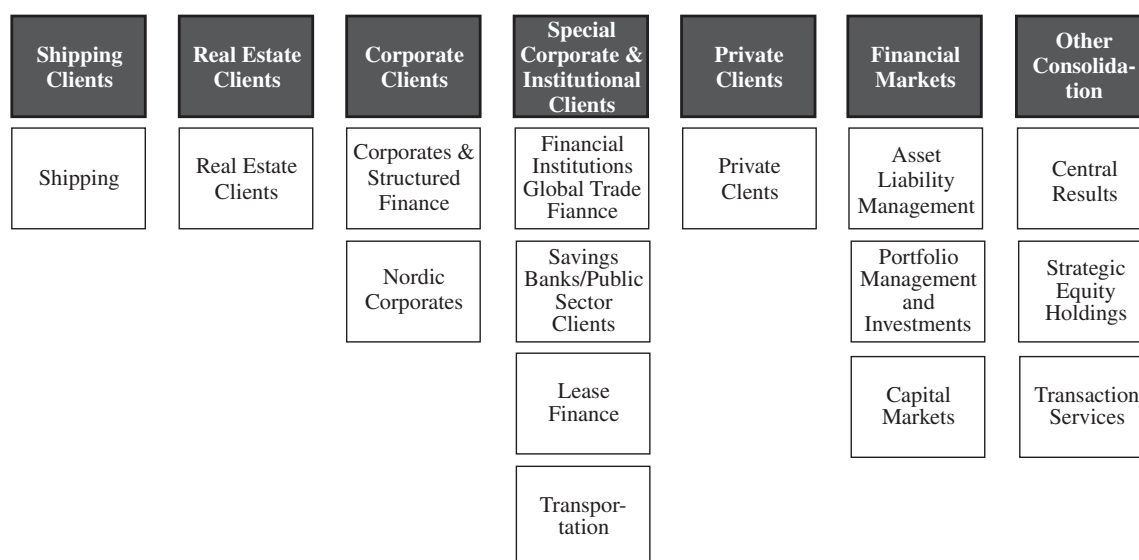
### Real Estate Clients segment

At EUR 49.0 (49.6) million in the first quarter, this segment's operating profit before risk provisions remained steady at last year's level. Operating profit after risk provisions totaled EUR 25.4 (7.7) million. The return on tier 1 capital thus rose to 10.1 % (3.0 % in 2004).

Due, not least, to the persistent weakness of the domestic real estate market, we have continued to extend our activities at attractive locations around the world. The percentage of new business accounted for by international finance rose to more than 50 % in the first quarter of 2005. In March, we opened an office in Paris, Europe's second-largest real estate market, thereby strengthening our presence in the French market. Our range of services, which goes beyond conventional finance and was essentially pooled under the roof of newly established HSH N Real Estate AG in 2004, was extended further in the first quarter in line with demand.

### Segment Structure

#### HSH Nordbank





## **Corporate Clients segment**

This segment comprises the global corporate client business run from Hamburg and Kiel (Corporates and Structured Finance) as well as the corporate-client-related operations of the Copenhagen branch (Nordic Corporates). Operating profit after risk provisions rose to EUR 52.1 (41.5) million, thanks to a decline in risk-provisioning requirements. The return on tier 1 capital climbed to 23.8 % (2004: 17.4 %).

### **Corporates and Structured Finance**

Amid a setting characterized by muted credit demand and persistently high liquidity in the market, we were able to achieve further quality growth especially thanks to our clear orientation to medium-sized businesses, our hands-on efforts to attract new customers and on the basis of our strong market position. By attracting new customers in the larger mid-sized businesses segment, we have thus optimized the earnings and risk structure of our portfolio further. Following the completion of the set-up phase of our office in Hanover and our team at the Berlin branch, we are operating at both locations with an increased selling power. The Structured Finance division has established itself further on the market. Our tailor-made product solutions for optimizing financing structures meet customers' requests, especially with respect to accounting and taxation legislation and including rating aspects. It has demonstrated its success by arranging a number of both domestic and international energy and infrastructure projects as well as in acquisition financing.

### **Nordic Corporates**

In addition to Relationship Banking it is particularly the Structured Finance activities that consolidated its market position further. In this connection, Leveraged Finance played a particularly significant role, as demand remains strong. In the first quarter, the Bank successfully accompanied a number of transactions in this area. Export and project finance involving Nordic companies also continued its dynamic uptrend.

## **Special Corporate and Institutional Clients segment**

This segment comprises the Savings Banks/Public Sector Clients, Transportation, Lease Finance and Financial Institutions/Global Trade Finance divisions. Its operating profit after risk provisions came to EUR 70.4 (51.1) million, producing a return on tier 1 capital of 30.1 % (2004: 22.5 %). This sharp rise was due, in particular, to higher net commission income and lower risk-provisioning requirements.

### **Savings Banks / Public Sector Clients**

Conventional funding and municipal loan business continued to be scaled back. Our innovative capital-market products and advisory services are proving increasingly popular. This includes structured retail products developed in-house as well as the Bank's equity investments in businesses. Our advisory offerings, with respect to asset diversification for example, are also meeting with a good response from the savings banks. Cooperation with the savings banks in Schleswig-Holstein was intensified further by means of bilateral agreements on the basis of the joint agreement.

### **Transportation**

This area continued to perform well in 2004 and once again achieved favorable lead and arranger business. In the Aviation unit, we managed to enter into alliances with leading international leasing corporations. In the Rail and Logistics/Infrastructure units, we further stepped up our specialization in airport finance by accompanying a number of transactions. Also worthy of mention is an equity interest in a private equity fund.

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2 The profit reported for the individual segments includes a positive effect resulting from what on balance is the loss sustained in the Other/Consolidation "segment", which comprises consolidation items and reconciliation with consolidated figures as well as subsidiaries and income from equity investments not assigned to other segments in addition to other corporate income and expense items (see also table on Page 14).

3 The return on tier 1 capital is the ratio of operating profit after risk provisioning to average tier 1 capital employed. The allocation of tier 1 capital across the segments is based on an assumed ratio of 6% of risk-weighted assets.

## Lease Finance

Against the backdrop of weak investment activity at the start of the year and a liquid funding market for leasing companies, performance in the first quarter was satisfactory thanks to the unit's strong position in the domestic market. The volume of new business and existing business is broadly in line with full-year forecasts. In March 2005, the Bank sold 60 % of the shares in AGV Anlagen- und Grundstücksvermietungsgesellschaft mbH & Co. to Deutsche Leasing AG, the savings banks organization's leasing company. At the same time, AGV acquired an 88 % stake in Deutsche Anlagen-Leasing GmbH, alongside AGV a sought-after provider of real estate leasing, municipal and big-ticket leasing within the German savings banks organization. An important institutional partner of HSH Nordbank, AGV will continue to supplement the Bank's leasing expertise in the future. We will thus be able to offer joint intelligent leasing products to our customers.

## Financial Institutions / Global Trade Finance

Despite ample liquidity in the markets, earnings rose perceptibly over last year thanks to a slight increase in average margins in tandem with a reduced nominal portfolio. A key contributing factor in this respect was the sale of capital-market products and continued success in arranging syndicated loans for banks all over the world. In the traditionally rather weak first quarter, we were able to complete several transactions with a volume totaling approx. EUR 0.8 billion in our capacity as arranger.

The Global Trade Finance unit has further strengthened its focus on international market requirements. In a global business area, it systematically takes advantage of regional cost benefits. Through the completion of complex commodity transactions, we have further raised our profile as competent arranger and underwriter in the first quarter of 2005.

## Private Clients segment

Operating profit after risk provisions decreased slightly to EUR 9.0 (10.3) million. After a net writeback last year, we stepped up the segment's risk provisions again in the first quarter. These allocations more than offset the earnings increase. The return on tier 1 capital came to 22.4 % in the first quarter (2004: 26.8 %).

We increased the volume of deposit-taking business by stepping up our distribution activities and offering a specifically supplemented range. Asset management was particularly successful with the acquisition of more than 60 new mandates. All told, however, private customers remain cautious in their investment behavior. The link-up between this segment and the Bank's other units was intensified in the first quarter, the aim being to generate further growth in services and deposit-taking business.

## Financial Markets segment<sup>4</sup>

This segment comprises the Capital Markets, Portfolio Management and Investments as well as Asset Liability Management divisions. Operating profit after risk provisions increased to EUR 85.6 (77.2) million not least due to cost-cutting and reduced provisioning requirements. The return on tier 1 capital climbed to 28.5 % (2004: 23.9 %).

## Capital Markets

The focus of capital-market activities was once again mainly on customer business. Thus, selling of structured products, especially to existing Bank customers, continued successfully. The high potential in the areas involving commodities and inflation was confirmed through the signing of preliminary deals. We were able to continue last year's successful performance in the placement of issues on behalf of third parties. Alongside various private placements of *Schuldscheindarlehen* (certificate of indebtedness), we acted for the first time as co-lead manager in a jumbo issue on behalf of an institutional client and as market-makers in this transaction. Moreover, we have further established ourselves as issuers of structured retail bonds together with the savings banks.

Due to strong investor demand for long-term investment products, funding operations were very encouraging in the first quarter. As a result, HSH Nordbank's medium and long-term credit spreads shrunk further. The release of upbeat preliminary 2004 results also boosted this trend.

#### Portfolio Management and Investments (PMI)

HSH N Financial Markets Advisory AG (FMA) was set up at the beginning of the year to advise not only in-house customers, but especially savings banks, other financial institutions, pension funds and foundations on matters relating to ratings and strategic asset allocation. In addition, it provides corporate analyses. Our expertise is increasingly being sought outside our core Northern German region.

In cooperation with Landesbank Baden-Württemberg (LBBW) and Hamburger Sparkasse (Haspa), the Bank has developed an innovative profit-participation-rights (SmartMezzanine) program, which allows small and mid-sized businesses to take advantage of an equity-related type of corporate finance and offers a large number of benefits: SmartMezzanine provides businesses with long-term capital for their capex projects and, thanks to its equity nature, the companies' credit rating might be strengthened. There is no transfer of voting or stockholder rights, which means that the companies' stockholder structure remains unaffected. The profit-participation-rights raised by the credit institutions are pooled in a joint portfolio and are then sold on the capital markets as part of a securitization transaction. This provides domestic and foreign investors with an attractive opportunity to invest in Germany's mid-sized business sector.

#### Asset Liability Management

The Bank's liquidity situation was very favorable in the first quarter of 2005 thanks to its successful refinancing operations. Systematic diversification of refinancing sources continued and the targeted funding volumes were achieved. As expected, liquidity costs did not increase in the first quarter but continued to decline in line with general market trends. We expect the expiry of state guarantees in July 2005 to lead to higher liquidity costs. As we have optimized our liquidity management, we are thus well prepared for this increase.

#### Other / Consolidation<sup>5</sup>

##### Transaction Services

Since the underlying business conditions faced by our customers are characterized by mounting cost pressure in competitive markets, demand for high-performance products to process electronic and other payments, documentary business and in the areas of financial planning and corporate liquidity management remains high. Our product portfolio is being developed on an ongoing basis to respond to requirements and specific target groups, especially as we consider payment transactions to constitute important link between customers and the Bank.

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<sup>4</sup> The segmental breakdown by client responsibility means that net commission income generated from capital-market products is not reported in the Financial Markets segment.

## Segment report\*

	Shipping Clients	Real Estate Clients	Corporate Clients	Special Corporate and Institutional Clients	Private Clients	Financial Markets	Other/Con- solidation	Group
	(€ million)							
Net interest income								
First quarter 2005.....	70,1	66,0	66,5	65,7	16,2	78,7	25,2	388,4
¼ 2004 .....	74,0	65,4	67,6	63,0	14,3	84,8	11,9	381,1
+ Net commission income								
First quarter 2005.....	17,3	18,1	23,1	40,5	6,9	-32,3	-4,0	69,6
¼ 2004 .....	16,7	14,9	24,8	26,6	4,0	-18,5	0,0	68,5
+ Net trading income								
First quarter 2005.....	0,0	0,0	0,0	0,0	0,0	75,2	-43,3	31,9
¼ 2004 .....	—	—	—	—	—	63,4	-35,2	28,2
+ Net other operating income								
First quarter 2005.....	0,0	0,0	0,0	0,0	0,0	0,0	19,2	19,2
¼ 2004 .....	—	—	—	—	—	—	13,3	13,3
<b>= Total income</b>								
<b>First quarter 2005 .....</b>	<b>87,4</b>	<b>84,1</b>	<b>89,6</b>	<b>106,2</b>	<b>23,1</b>	<b>121,6</b>	<b>-2,9</b>	<b>509,1</b>
<b>¼ 2004 .....</b>	<b>90,7</b>	<b>80,4</b>	<b>92,4</b>	<b>89,6</b>	<b>18,4</b>	<b>129,7</b>	<b>-10,1</b>	<b>491,0</b>
/./ Personnel expenses								
First quarter 2005.....	15,5	15,2	15,0	14,4	5,2	23,6	5,7	94,6
¼ 2004 .....	13,7	14,3	14,9	13,4	5,2	22,9	4,9	89,3
/./ Operating expenses								
First quarter 2005.....	16,3	19,9	16,5	23,4	6,8	15,8	8,9	107,6
¼ 2004 .....	15,4	16,5	17,7	18,9	5,7	25,7	6,6	106,5
<b>= Operating profit before risk provisions</b>								
<b>First quarter 2005 .....</b>	<b>55,6</b>	<b>49,0</b>	<b>58,1</b>	<b>68,4</b>	<b>11,1</b>	<b>82,2</b>	<b>-17,5</b>	<b>306,9</b>
<b>¼ 2004 .....</b>	<b>61,6</b>	<b>49,6</b>	<b>59,7</b>	<b>57,3</b>	<b>7,5</b>	<b>81,2</b>	<b>-21,6</b>	<b>295,2</b>
/./ Risk provisions								
First quarter 2005.....	-1,9	23,6	6,0	-2,0	2,1	-3,4	56,6	81,1
¼ 2004 .....	1,9	41,9	18,3	6,1	-2,8	4,0	17,4	86,5
<b>= Operating profit after risk provisions</b>								
<b>First quarter 2005 .....</b>	<b>57,5</b>	<b>25,4</b>	<b>52,1</b>	<b>70,4</b>	<b>9,0</b>	<b>85,6</b>	<b>-74,2</b>	<b>225,8</b>
<b>¼ 2004 .....</b>	<b>59,8</b>	<b>7,7</b>	<b>41,5</b>	<b>51,1</b>	<b>10,3</b>	<b>77,2</b>	<b>-38,9</b>	<b>208,7</b>
Average risk positions								
First quarter 2005.....	19.707,8	16.702,9	14.571,7	15.607,5	2.683,3	20.012,1	11.289,4	100.574,7
2004 .....	19.718,7	17.206,2	15.896,1	15.176,9	2.564,4	21.563,9	8.762,3	100.888,5
Average employed regulatory capital (10%)								
First quarter 2005.....	1.970,8	1.670,3	1.457,2	1.560,8	268,3	2.001,2	1.128,9	10.057,5
2004 .....	1.971,9	1.720,6	1.589,6	1.517,7	256,4	2.156,4	876,3	10.088,9
Tier 1 capital (6%)								
First quarter 2005.....	1.182,5	1.002,2	874,3	936,5	161,0	1.200,7	677,3	6.034,5
2004 .....	1.183,1	1.032,4	953,8	910,6	153,9	1.293,8	525,7	6.053,3
<b>Return on tier 1 capital</b>								
<b>First quarter 2005 .....</b>	<b>19,5%</b>	<b>10,1%</b>	<b>23,8%</b>	<b>30,1%</b>	<b>22,4%</b>	<b>28,5%</b>		<b>15,0%</b>
<b>2004 .....</b>	<b>20,2%</b>	<b>3,0%</b>	<b>17,4%</b>	<b>22,5%</b>	<b>26,8%</b>	<b>23,9%</b>		<b>13,8%</b>
Cost/income ratio (CIR)								
First quarter 2005.....	36,4%	41,7%	35,2%	35,6%	51,9%	32,4%		39,7%
2004 .....	32,1%	38,3%	35,4%	36,1%	59,2%	37,4%		39,9%
Return on equity (RoE)								
First quarter 2005.....								15,2%
2004 .....								12,8%

\*Primary reporting format: Segmentation by business.

The segmental breakdown by client responsibility means that net commission income generated from capital-market products is not reported in the Financial Markets segment.

Return on tier 1 capital = operating profit after risk provisions/tier 1 capital (6% of risk-weighted assets)

In some cases rounding differences occur.

There are several respects in which the preparation of the quarterly data as of and for the three-month periods ended March 31, 2005 and 2004 differs from the preparation of the year-end financial statements for 2004 and 2003 contained in this Offering Circular. Among other things:

- certain expense items included in “personnel expenses” and “operating expenses” have not been fully booked as the expenses were incurred; in those cases, budgeted data has been used;
- certain provisions included in “Risk provisions/evaluation” have not been calculated as required under German GAAP; in those cases, the figures used are either based on the previous year’s forecasts or based on preliminary calculations; and
- certain items of income are recognized prior to the point in time that they would be permitted to be recognized under German GAAP.

Accordingly, HSH Nordbank cautions investors not to compare these figures to the year-end financial results presented in this Offering Circular or to use these figures as an indication of what the Bank’s 2005 year-end results are likely to be. These figures are presented only for the purpose of giving investors a rough guide as to how the first quarter of 2005 has developed compared to the first quarter of 2004. In particular, investors should not place reliance on the developments indicated above with respect to administrative expenses and risk provisions/evaluation.

The Bank’s total operating income increased 16.5% from €436.9 million for the first three months of 2004 to €509.1 million for the first three months of 2005. This increase is principally explained by a €52.6 million increase in net interest income, which was largely the result of improved interest margins, especially in the Corporate Clients and Special Corporate and Institutional Clients segments. This increase is partially due as well to one-off interest gains on transactions entered into with corporate clients and in net other operating income.

The provision information shown above for the first three months of 2005 reflect the Bank’s current intention to resume making the provisions permitted under Section 340 f and g of the German Commercial Code, offset in part by lower provisions relating to the Bank’s holdings in securities, which increased in value between the two periods.

The Bank’s total assets decreased 1.4% from €175.1 billion to €172.6 billion. The decrease is primarily resulting from transfers of the securities portfolio in connection with a reduction of liabilities vis-à-vis credit institutions.

To improve the Bank’s rating-relevant equity capital structure, the Bank’s shareholders decided in December 2004 to inject new capital into the Bank and to convert a further considerable portion of their silent participations into share capital and capital reserves. These moves are to include a €556 million capital increase by July 20, 2005, a €605 million conversion of silent participations by July 1, 2005 and a further €750 million conversion of silent participations by December 31, 2007.

## REGULATION

### Overview

The Bank's operations throughout the world are regulated and supervised by the regulatory authorities in each of the jurisdictions where the Bank conducts operations. The primary countries in which the Bank conducts business are Germany, Luxembourg, Denmark, Sweden, Finland, the United Kingdom, the United States, Hong Kong, Singapore and the Cayman Islands, and the Bank is regulated and supervised in all of these countries. Local authorities impose certain reserve and reporting requirements and controls (such as capital adequacy, depositor protection, activity limitations and other types of prudential supervision) on the Bank's banking and non-banking operations. In addition, a number of countries in which the Bank operates impose additional limitations on, or with respect to, foreign or foreign-owned or controlled banks and financial services institutions, including:

- restrictions on the opening of local offices, branches or subsidiaries and the types of banking and non-banking activities that may be conducted by those local offices, branches or subsidiaries;
- restrictions on the acquisition of local banks or requirements of specified percentages of local ownership or specified numbers of local management personnel; and
- restrictions on investment and other financial flows in and out of the country.

Changes in the regulatory and supervisory regimes of the countries where the Bank operates will determine, to some degree, the Bank's ability to expand into new markets, the services and products that the Bank will be able to offer in those markets and how it structures specific operations.

The German Federal Financial Supervisory Authority (*Bundesanstalt für Finanzdienstleistungsaufsicht*) is the Bank's principal supervisor on an unconsolidated (HSH Nordbank AG only) and on a consolidated basis (HSH Nordbank AG and the entities consolidated with it for German regulatory purposes). Additionally, many of the Bank's operations outside Germany are regulated by local authorities. Within countries that are member states of the European Union or other contracting states of the Agreement on the European Economic Area (Iceland, Liechtenstein and Norway), the Bank's branches generally operate under the so-called "European Passport." Under the European Passport, the Bank's branches are subject to regulation and supervision primarily by the German Federal Financial Supervisory Authority. The authorities of the host country are responsible for the regulation and supervision of the liquidity requirements and the markets of the host country. In the United States, the Bank's New York Branch is supervised by the New York State Banking Department and the Board of Governors of the Federal Reserve System.

The following sections present a description of the supervision of the Bank's business by the authorities in Germany and the United States, which the Bank views as the most significant for its business, and more generally with respect to the other jurisdictions in which the Bank operates. Beyond these countries, and the European Economic Area member states where the European Passport applies, local country regulations generally have limited impact on the Bank's operations that are unconnected with these countries.

### Regulation and Supervision in Germany

#### *Distinctive Features of the German Banking System*

The German banking system consists of a variety of public and private sector banks. There are two general types of banks: universal banks and specialized banks. Universal banks are also known as full-service or multi-purpose banks. Universal banks, such as the Bank, engage not only in the deposit and lending business but also in investment banking, underwriting and securities trading, both for their own account and for their customers. Specialized banks, such as mortgage banks, engage only in certain types of credit business or in specialized banking services. Financial services institutions, which primarily engage in the securities business, are different in nature from universal and specialized banks.

German law generally allows universal banks, in addition to regular banking activities, to engage in all the specialized banking activities that specialized banks perform, such as mortgage lending and public sector



lending. Despite this, private sector universal banks are generally not allowed to operate as mixed mortgage banks and to refinance mortgage loans and public sector loans by issuing mortgage bonds (*Hypothekendarlehenbriefe*) and public sector bonds (*Öffentliche Darlehenbriefe*). *Darlehenbriefe* are a specialized type of debt security. They are collateralized by pools of loans secured by first mortgages or a pool of public sector loans. Only three German universal banks are permitted to operate as a mixed mortgage bank: Bayerische Hypo- und Vereinsbank AG, EUROHYPO AG and Hypo Real Estate Bank AG. The Bank has the ability to refinance mortgage loans and public sector loans by issuing *Darlehenbriefe* through its mortgage-bank subsidiary, HSH Nordbank Hypo AG.

On March 18, 2005, the German Federal Council adopted the Act on the Revision of the Law Governing *Darlehenbriefe* (*Gesetz zur Neuordnung des Darlehenbriefrechts*), including the new German Act on *Darlehenbriefe* (*Darlehenbriefgesetz*). Under the German Act on *Darlehenbriefe*, the issuance of *Darlehenbriefe* by private sector banks will no longer be limited to mortgage banks and mixed mortgage banks. Rather, all private sector and public sector banks that meet certain requirements, such as the maintenance of Tier I capital in the amount of at least €25 million, the intention to engage in the mortgage banking business on a sustainable basis and the establishment of an adequate internal organization for such business, and evidence that the bank has in place suitable procedures and instruments to monitor, manage and control the specific risks inherent in the mortgage banking business may be granted a license to conduct a mortgage banking business. Except for certain provisions of the new law that became effective upon its publication, the new law will enter into effect on July 19, 2005.

German universal banks are organized either as corporations (private sector banks), as cooperatives (mutual banks) or as public-law institutions (savings banks and *Landesbanken*). The Bank is organized as a corporation. The public-law institutions, by virtue of their legal form, have benefited from the guarantee and business continuation obligations of the public body or bodies that created them. These mechanisms, which are known as *Anstaltslast* and *Gewährträgerhaftung*, currently apply to the Bank, but are being phased out. See “Investment Considerations”—Remarks regarding the loss of the guarantee obligation and the maintenance obligation. On July 18, 2001, the European Commission and the German government agreed to discontinue these mechanisms in general after July 18, 2005, subject to transition rules for liabilities existing on that date.

### ***Principal Laws and Regulators***

The Bank is authorized to conduct general banking business and to provide financial services under, and subject to the requirements set forth in, the German Banking Act (*Kreditwesengesetz*).

The Bank is subject to comprehensive regulation and supervision by the Federal Financial Supervisory Authority and the *Deutsche Bundesbank* (referred to as the German Central Bank). The European Central Bank regulates the Bank in regard to minimum reserves on deposits.

### ***The German Banking Act***

The German Banking Act contains the principal rules for German banks, including the requirements for a banking license, and regulates the business activities of German banks. The German Banking Act defines a “banking institution” (*Kreditinstitut*) as an enterprise that engages in one or more of the activities defined in the Act as “banking business.” The German Banking Act also applies to “financial services institutions” (*Finanzdienstleistungsinstitute*), which are enterprises that engage in one or more of the activities defined in the Act as “financial services”. Banking institutions and financial services institutions are subject to the licensing requirements and other provisions of the German Banking Act.

The German Banking Act and the rules and regulations adopted thereunder implement certain recommendations of the Basel Committee on Banking Supervision (which is referred to herein as the Basel Committee) the secretariat of which is provided by the Bank for International Settlements (which is referred to herein as the BIS), as well as certain European Union directives relating to banks. These directives address issues such as accounting standards, regulatory capital, risk-based capital adequacy, consolidated supervision, the monitoring and control of large exposures, the establishment of branches within the European Union and the creation of a single European Union-wide banking market with no internal barriers



to cross-border banking services. The Agreement on the European Economic Area extends this single market to Iceland, Liechtenstein and Norway.

### ***The German Securities Trading Act***

Under the German Securities Trading Act (*Wertpapierhandelsgesetz*), the Federal Financial Supervisory Authority regulates and supervises securities trading in Germany. The Securities Trading Act prohibits, among other things, insider trading with respect to securities admitted to trading or included in the over-the-counter market at a German exchange or admitted to trading on an organized market in another country that is a member state of the European Union or another contracting state of the Agreement on the European Economic Area.

To enable the Federal Financial Supervisory Authority to carry out its supervisory functions, banking institutions are subject to comprehensive reporting requirements with respect to securities and derivatives transactions. The reporting requirements apply to transactions for the banking institution's own account as well as for the account of its customers. The Securities Trading Act also contains rules of conduct. These rules of conduct apply to all businesses that provide securities services. Securities services include, in particular, the purchase and sale of securities or derivatives for others and the intermediation of transactions in securities or derivatives. The Federal Financial Supervisory Authority has broad powers to investigate businesses providing securities services to monitor their compliance with the rules of conduct and the reporting requirements. In addition, the Securities Trading Act requires an independent auditor to perform an annual audit of the securities services provider's compliance with its obligations under the Securities Trading Act.

### ***Regulation by the German Federal Financial Supervisory Authority***

The Federal Financial Supervisory Authority is a federal regulatory authority and reports to the German Federal Ministry of Finance. It was formed on May 1, 2002, and assumed the responsibilities of the German Banking Supervisory Authority, the German Securities Trading Supervisory Authority and the German Insurance Supervisory Authority. The Federal Financial Supervisory Authority issues regulations and guidelines that implement German banking laws and other laws affecting German banks.

The Federal Financial Supervisory Authority supervises the operations of German banks on an unconsolidated and a consolidated basis to ensure that they are in compliance with the German Banking Act and other applicable German laws and regulations. It places particular emphasis on compliance with capital adequacy and liquidity requirements, large exposure limits and restrictions on certain activities imposed by the German Banking Act and related regulations.

### ***Regulation by the German Central Bank***

The German Financial Supervisory Authority carries out its banking supervisory role in close cooperation with the German Central Bank. Though the responsibility for the supervision of German banks vis-à-vis the Federal Ministry of Finance and vis-à-vis the banks lies solely with the German Financial Supervisory Authority, the German Central Bank has distinct functions in the supervisory regime. Most importantly, the German Central Bank is responsible for the ongoing monitoring of German banks in accordance with an agreement on the allocation of responsibilities for the ongoing monitoring of German banking and financial services institutions entered into between the German Central Bank and the German Financial Supervisory Authority and in compliance with guidelines on the performance and quality assurance of the ongoing monitoring of German banking and financial services institutions by the German Central Bank adopted by the Federal Ministry of Finance in consultation with the German Central Bank. The ongoing monitoring of German banks by the German Central Bank comprises in particular the collection and analysis of statistics and other reports from German banks, as well as the conduct and analysis of supervisory reviews in the area of compliance with the capital adequacy and risk management requirements. The German Central Bank performs its monitoring functions primarily through its nine regional offices ("*Hauptverwaltungen*"), which are responsible for different federal states and the banks that have their corporate seat therein. The Bank reports to, and is monitored by, the *Hauptverwaltung* for the state of Schleswig-Holstein, the city-state of Hamburg and the state of Mecklenburg-Vorpommern which is based in Hamburg.

The German Financial Supervisory Authority has authority to issue administrative orders (*Verwaltungsakte*) and general regulations (*Verordnungen*) binding on German banks. The German Financial Supervisory Authority must obtain the German Central Bank's consent before it issues any general regulations in areas that require the German Central Bank's consent under the German Banking Act, such as the Principles on Own Funds and Liquidity of Credit Institutions (*Grundsätze über die Eigenmittel und Liquidität der Kreditinstitute*), which relate to capital adequacy (*Grundsatz I* or "Principle I") and liquidity (*Grundsatz II* or "Principle II").

### ***The European Central Bank Minimum Reserve Requirements***

The European Central Bank sets the minimum reserve requirements for institutions that engage in the customer deposit and lending business. These minimum reserves must equal a certain percentage of the institutions' liabilities resulting from certain short-term liabilities, including deposits and the issuance of short-term bonds. Liabilities to European Monetary Union national central banks and to other European Monetary Union banking institutions that are themselves subject to the minimum reserve requirements are not included in this calculation.

### ***Capital Adequacy Requirements***

German capital adequacy principles are based on the principle of risk adjustment. German capital adequacy principles, as set forth in Principle I, address capital adequacy requirements for both counterparty risk (*Adressenausfallrisiko*) and market price risk (*Marktrisiko*). German banks are required to cover counterparty and market risks with Tier I capital (*Kernkapital* or "core capital") and Tier II capital (*Ergänzungskapital* or "supplementary capital") (together, *haftendes Eigenkapital* or "regulatory banking capital"). They may also cover market price risk with Tier III capital (*Drittrangmittel*) and (to the extent not required to cover counterparty risk) with regulatory banking capital. The calculation of regulatory banking capital and Tier III capital is set forth below.

Principle I requires each German bank to maintain a solvency ratio (*Eigenkapitalquote*) of regulatory banking capital to risk-weighted assets (*gewichtete Risikoaktiva*) of at least 8%. Risk-weighted assets include loans, securities, financial swaps, financial forward transactions, options and other off-balance sheet items. The Bank further explains the calculation of risk-weighted assets below. The solvency ratio rules implement certain European Union directives, which in turn, are based on the recommendations of the Basel Committee at the BIS.

### ***Regulatory Banking Capital and Risk-Weighted Assets***

Regulatory banking capital, the numerator of the solvency ratio, is defined in the German Banking Act for banks, such as HSH Nordbank, that are organized as stock corporations, as consisting principally of the following items:

#### **Tier I capital:**

- Paid-in subscribed capital (not including capital with respect to preferred shares with cumulative dividend rights),
- Capital reserves,
- Earnings (revenues) reserves,
- Fund for general banking risks (A bank may record this fund on the liability side of its balance sheet to reflect special risks inherent in the banking business. A bank must use its reasonable commercial judgment in making this determination.), and
- Silent partnership interests (*stille Beteiligungen*) (Silent partnership interests are hybrid participations in the business of a bank. Such interests are subject to certain conditions, including a minimum term of five years (or 10 years for purposes of BIS capital rules), noncumulative dividends, participation in

the bank's losses and subordination to the rights of all creditors in the event of insolvency or liquidation of the bank.).

Own shares held by the bank, losses and certain intangible assets are subtracted from the Tier I capital calculation. In addition, the German Financial Supervisory Authority may require further deductions from a bank's Tier I capital, in particular with respect to a bank's unrealized losses. The German Financial Supervisory authority has never requested that the Bank make such deduction.

Tier II capital (limited to the amount of Tier I capital):

- Paid-in subscribed capital (This is capital with respect to preferred shares with cumulative dividend rights),
- Profit-participation rights (*Genussrechte*) (These rights are subject to certain conditions, including a minimum term of five years, participation in the bank's losses and subordination to the rights of all nonsubordinated creditors in the event of insolvency or liquidation of the bank),
- Longer-term subordinated debt. (Limited to 50% of the amount of Tier I capital. This debt is subject to certain criteria, including a minimum term of five years and subordination to the rights of all nonsubordinated creditors in the event of insolvency or liquidation of the bank),
- Reserves pursuant to Section 6b of the German Income Tax Law (*Einkommensteuergesetz*) (A bank may include 45% of these reserves in regulatory banking capital. However, any reserves included in regulatory banking capital must have been created from the proceeds of the sale of real property, property rights equivalent to real property or buildings),
- Reserves for general banking risks. (A bank may record certain receivables on its balance sheet at a lower value than would be permitted for industrial and other non-banking entities. Such receivables include loans and securities that are neither investment securities nor part of the trading portfolio. The bank may record these receivables at a lower value if the use of a lower value is advisable, in its reasonable commercial judgment, to safeguard against the special risks inherent in the banking business. Reserves for general banking risks may not exceed 4% of the book value of the receivables and securities recorded), and
- Certain unrealized reserves (These may include up to 45% of the difference between the book value and the lending value (*Beleihungswert*) of land and buildings, and up to 35% of the difference between the book value of unrealized reserves (including provisioning reserves) and the sum of the market value of securities listed on a stock exchange and the published redemption price of shares issued by certain securities or real estate funds. A bank may include these reserves in Tier II capital only if its Tier I capital amounts to at least 4.4% of its risk-weighted assets. Reserves may be included in regulatory banking capital only up to a maximum amount of 1.4% of risk-weighted assets).

Certain capital components which a bank has provided to another bank, financial services institution or financial enterprise which is not consolidated with the bank for regulatory purposes, are subtracted from the bank's regulatory banking capital if the bank holds more than 10% of the capital of such other bank, financial services institution or financial enterprise, or if the bank holds 10% or less of the capital of such other bank, financial services institution or financial enterprise, to the extent the aggregate book value of such investments exceeds 10% of the bank's regulatory banking capital. In addition, a general principle of effective capital raising exists which gives the Federal Financial Services Authority the right not to accept certain structures which are aimed at creating regulatory capital.

The calculation of risk-weighted assets, the denominator of the solvency ratio, is set forth in Principle I. Assets are assigned to one of five basic categories of relative credit risk based on the debtor and the type of collateral, if any, securing the respective assets. Each category has a risk-classification multiplier (0%, 10%, 20%, 50% and 100%). The balance sheet value of each asset is then multiplied by the risk-classification multiplier for the asset's category. The resulting figure is the risk-weighted value of the asset.

Off-balance sheet items, such as financial guarantees or letters of credit, are subject to a two-tier adjustment. First, the value of each item is determined. The value of each item is multiplied by one of three risk-classification multipliers (20%, 50% and 100%) depending on the type of instrument. In the second step, the off-balance sheet item is assigned to one of the five credit risk categories set forth above for balance sheet items. Selection of an appropriate risk multiplier is based on the type of counterparty or debtor and the type of collateral, if any, securing the asset. The adjusted value of the off-balance sheet item is then multiplied by the risk multiplier to arrive at the risk-weighted value of the off-balance sheet item.

### *Tier III Capital and Market Price Risk*

Principle I also sets forth the principles governing capital adequacy requirements for market price risk. The market price risk positions of a bank include the following:

- foreign exchange positions;
- commodities positions;
- certain trading book positions, including those involving counterparty risk, interest rate risk and share price risk; and
- options positions.

The net risk-weighted market price risk positions must be covered by Own Funds (*Eigenmittel*) that are not required to cover counterparty risk. Own Funds consist of regulatory banking capital (Tier I plus Tier II capital) and Tier III capital. The calculation of risk-weighted market price risk positions must be made in accordance with specific rules set forth in Principle I or, at the request of a bank, in whole or in part in accordance with the bank's internal risk rating models approved by the Federal Financial Supervisory Authority. At the close of each business day, a bank's total net risk-weighted market price risk positions must not exceed the sum of:

- the difference between the bank's regulatory banking capital and 8% of its aggregate amount of risk-weighted risk assets; and
- the bank's Tier III capital.

Tier III capital consists of the following items:

- Net profits. (Net profits are defined as the proportionate profit of a bank which would result from closing all trading book positions at the end of a given day minus all foreseeable expenses and distributions and minus losses resulting from the banking book which would likely arise upon a liquidation of the bank, unless such losses must be deducted from the bank's regulatory banking capital pursuant to an order of the Federal Financial Supervisory Authority.) and
- Short-term subordinated debt. (This debt must meet certain criteria, including a minimum term of two years, subordination to the rights of all nonsubordinated creditors in the event of insolvency or liquidation of the bank and suspension of the payment of interest and principal if such payment would result in a breach of the Own Funds requirements applicable to the bank.).

Net profits and short-term subordinated debt qualify as Tier III capital only up to an amount which, together with the supplementary capital not required to cover risks arising from the banking book (as described below), does not exceed 250% of the Tier I capital not required to cover risks arising from the banking book. The German Banking Act defines the banking book as all positions and transactions that are not part of the trading book. The trading book is defined as consisting primarily of the following:

- financial instruments that a bank holds in its portfolio for resale or that a bank acquires to exploit existing or expected spreads between the purchase and sale price or price and interest rate movements;
- positions and transactions for the purpose of hedging market price risks arising from the trading book and related refinancing transactions;
- transactions subject to the designation of the counterparty (*Aufgabegeschäfte*);

- payment claims in the form of fees, commissions, interest, dividends and margins directly linked to trading book positions; and
- repurchase, lending and similar transactions related to trading book positions.

Banks must set internal criteria according to which they allocate positions and transactions to the trading book and notify such criteria to the Federal Financial Supervisory Authority and the German Central Bank.

### *Consolidated Regulation and Supervision*

The German Banking Act's provisions on consolidated supervision require that each group of institutions (*Institutgruppe*) taken as a whole meets the Own Funds requirements. Under the German Banking Act, a group of institutions consists of a bank or financial services institution, as the parent company, and all other banks, financial services institutions, financial enterprises and bank service enterprises in which the parent company holds more than 50% of the capital or voting rights or on which the parent company can otherwise exert a controlling influence. Special rules apply to joint venture arrangements that result in the joint management of another bank, financial services institution, financial enterprise or bank service enterprise by a bank and one or more third parties.

### *Capital Requirements under the Basel Capital Accord*

The Bank has agreed with the Federal Financial Supervisory Authority to calculate and report the Bank's consolidated capital adequacy ratios in direct application of the recommendations made by the Basel Committee in 1988 (which is referred to herein as the Basel Capital Accord) in addition to the calculation and reporting requirements in accordance with the German Banking Act as described above. The Basel Capital Accord provides that banks shall maintain (on a consolidated basis) a risk-based core capital ratio of at least 4% and a risk-based regulatory banking capital ratio of at least 8%. In some respects (for example, for the treatment of goodwill and commercial real estate loans), the calculation of these ratios is different from the calculation under the German Banking Act.

In April 2003, the Basel Committee issued its third Consultative Paper for a new Basel capital accord ("Basel II") that will replace the current Basel Capital Accord. On June 25, 2004, the Basel Committee approved, and one day later the central bank governors and the heads of bank supervisory authorities in the Group of Ten (G10) countries endorsed, the publication of *International Convergence of Capital Measurement and Capital Standards: A Revised Framework*. The goal of the Basel Committee is that Basel II be generally available for implementation in the member states by year-end 2006, except for the most advanced approaches, which will only be available for implementation by year-end 2007. Basel II focuses on three key elements, or pillars; (i) minimum capital requirements, which enhance the measurement framework of the current Basel Capital Accord, the first pillar; (ii) supervisory review of bank's capital adequacy, the second pillar; and (iii) market discipline through effective public disclosure to provide for sound banking practices, the third pillar. Basel II has the goal to increase substantially the risk sensitivity of the minimum capital requirements by closely aligning banks' capital requirements with prevailing modern risk management practices.

In July 2004, the European Commission has presented a proposal for a new framework for capital requirements for banks and investment firms that is intended to ensure the coherent application throughout the EU of Basel II in a manner tailored to the specific features of the EU market. The new Capital Requirements Directive is scheduled to be implemented by the end of 2006.

### *Liquidity Requirements*

The German Banking Act requires German banks and certain financial services institutions to invest their funds so as to maintain adequate liquidity at all times. Principle II prescribes these specific liquidity requirements applicable to banks and to certain financial services institutions. The liquidity requirements set forth in Principle II are based on a comparison of the remaining terms of certain assets and liabilities. Principle II requires maintenance of a ratio (*Liquiditätskennzahl* or "one-month liquidity ratio") of liquid assets to liquidity reductions expected during the month following the date on which the ratio is determined



of at least one. German banks and certain financial services institutions are required to report the one-month liquidity ratio and estimated liquidity ratios for the next 11 months to the Federal Financial Supervisory Authority on a monthly basis. The liquidity requirements set forth in Principle II do not apply on a consolidated basis.

### *Limitations on Large Exposures*

The German Banking Act and the Large Exposure Regulation (*Grosskredit- und Millionenkreditverordnung*) limit a bank's concentration of credit risks on an unconsolidated and a consolidated basis through restrictions on large exposures (*Grosskredite*). The large exposure rules distinguish between the following two types of institutions:

- banks and groups of institutions with minor trading book positions that are not subject to the rules relating to the trading book (see “—Capital Adequacy Requirements”) (non-trading book institutions); and
- banks and groups of institutions that are subject to the rules relating to the trading book (trading book institutions).

The Bank is a trading book institution.

### *Banking Book Large Exposures and Aggregate Book Large Exposures*

The large exposure rules contain separate restrictions for large exposures related to the banking book (banking book large exposures) and aggregate large exposures (aggregate book large exposures) of a bank or group of institutions. Banking book large exposures are exposures incurred in the banking book and related to a single client (and clients affiliated with it) that equal or exceed 10% of a bank's or group's regulatory banking capital. Individual banking book large exposures must not exceed 25% of the bank's or group's regulatory banking capital (20% in the case of exposures to affiliates of the bank that are not consolidated for regulatory purposes).

Aggregate book large exposures are created when the sum of banking book exposures and the exposures incurred in the trading book related to a client, and clients affiliated with it, (trading book large exposures) equals or exceeds 10% of the bank's or group's Own Funds. The 25% limit (20% in the case of unconsolidated affiliates), calculated by reference to a bank's or group's Own Funds, also applies to aggregate book large exposures. Exposures incurred in the trading book include:

- the net amount of long and short positions in financial instruments involving interest rate risk (interest net positions);
- the net amount of long and short positions in financial instruments involving equity price risk (equity net positions); and
- the counterparty risk arising from positions in the trading book.

In addition to the above limits, the total of all banking book large exposures must not exceed eight times the bank's or group's regulatory banking capital, and the total of all aggregate book large exposures must not exceed in the aggregate eight times the bank's or group's Own Funds. A bank or group of institutions may exceed these ceilings only with the approval of the Federal Financial Supervisory Authority. In such a case, the bank or group is required to support the amount of the large exposure that exceeds the ceiling with regulatory banking capital (in the case of ceilings calculated with respect to regulatory banking capital) or with Own Funds (in the case of ceilings calculated with respect to Own Funds) on a one-to-one basis.

Furthermore, total trading book exposures to a single client (and clients affiliated with it) must not exceed five times the bank's or group's Own Funds, to the extent such Own Funds are not required to meet the capital adequacy requirements with respect to the banking book. Total trading book exposures to a single client (and clients affiliated with it) in excess of the aforementioned limit are not permitted.

### ***Limitations on Qualified Participations***

The German Banking Act places limitations on the investments of deposit-taking banks, such as HSH Nordbank, in enterprises outside the financial and insurance industry, where such investment (called a “qualified participation”):

- directly or indirectly amounts to 10% or more of the capital or voting rights of an enterprise; or
- would give the owner significant influence over the management of the enterprise.

Participations that meet the above requirements are not counted as qualified participations if the bank does not intend for the participation to establish a permanent relationship with the enterprise in which the participation is held. For purposes of calculating qualified participations, all indirect participations held by a bank through one or more subsidiaries are fully attributed to the parent bank.

The nominal value (as opposed to book value or price paid) of a bank’s qualified participation in an enterprise must not exceed 15% of the bank’s regulatory banking capital. Furthermore, the aggregate nominal value of all qualified participations of a bank must not exceed 60% of the bank’s regulatory banking capital. A bank may exceed those ceilings only with the approval of the Federal Financial Supervisory Authority. The bank is required to support the amount of the qualified participation or participations that exceed a ceiling with regulatory banking capital on a one-to-one basis. The limitations on qualified participations also apply on a consolidated basis.

### ***Financial Statements and Audits***

In the past, including for fiscal year 2004, the Bank prepared its consolidated financial statements solely in accordance with German GAAP. German GAAP for banks primarily reflect the German Commercial Code and the Regulation on Accounting by Credit Institutions and Financial Services Institutions (*Verordnung über die Rechnungslegung der Kreditinstitute und Finanzdienstleistungsinstitute*) which in turn implement EU Directives on accounting. The Regulation on Accounting by Credit Institutions and Financial Services Institutions requires a uniform format for the presentation of financial statements for all banks.

Compliance with the capital adequacy requirements of the German Banking Act, the liquidity requirements, large exposure rules and other requirements of the German Banking Act are based on financial statements prepared in accordance with German GAAP.

In July 2002, the European Union issued a Regulation which requires companies governed by the law of a European Union member state to prepare their financial statements from and including the financial year 2005 onwards in accordance with International Financial Reporting Standards (“IFRS”), if their securities are admitted to trading on a regulated market in the European Union. Consequently, the Bank will prepare its financial statements also in accordance with IFRS beginning with the 2005 fiscal year.

Compliance with the capital adequacy ratios pursuant to the Basel Capital Accord (see “—Capital Adequacy Requirements— Capital Requirements under the Basel Capital Accord”) is based on consolidated financial statements prepared for the Bank’s group of institutions. Therefore, prior to the issuance of the Bank’s 2005 financial statements, the Bank’s compliance with such capital adequacy ratios will continue to be based on financial statements prepared in accordance with German GAAP.

Under German law, the Bank is required to be audited annually by a certified public accountant (*Wirtschaftsprüfer*). The accountant is appointed at the shareholders’ meeting. However, the supervisory board mandates and supervises the audit. The Federal Financial Supervisory Authority must be informed of and may reject the accountant’s appointment.

The German Banking Act requires that a bank’s accountant inform the Federal Financial Supervisory Authority of any facts that come to the accountant’s attention which would lead it to refuse to certify or to limit its certification of the bank’s annual financial statements or which would adversely affect the financial position of the bank. The accountant is also required to notify the Federal Financial Supervisory Authority in the event of a material breach by management of the articles of association or of any other applicable law.



The accountant is required to prepare a detailed and comprehensive annual audit report (*Prüfungsbericht*) for submission to the bank's supervisory board, the Federal Financial Supervisory Authority and the German Central Bank.

### ***Reporting Requirements***

The Federal Financial Supervisory Authority and the German Central Bank require German banks to file comprehensive information in order to monitor compliance with the German Banking Act and other applicable legal requirements and to obtain information on the financial condition of banks.

### ***Internal Auditing***

The Federal Financial Supervisory Authority requires every German bank to have an effective internal auditing department. The internal auditing department must be adequate in size and quality and must establish adequate procedures for monitoring and controlling the bank's activities.

Banks are also required to have a written plan of organization that sets forth the responsibilities of the employees and operating procedures. The bank's internal audit department is required to monitor compliance with the plan.

### ***Enforcement of Banking Regulations; Investigative Powers***

#### ***Investigations and Official Audits***

The Federal Financial Supervisory Authority conducts audits of banks on a random basis, as well as for cause. It may require banks to furnish information and documents in order to ensure that the bank is complying with the German Banking Act and its regulations. The Federal Financial Supervisory Authority may conduct investigations without having to state a reason for its investigation.

The Federal Financial Supervisory Authority may also conduct investigations at a foreign entity that is part of a bank's group for regulatory purposes in order to verify data on consolidation, large exposure limitations and related reports. Investigations of foreign entities are limited to the extent that the law of the jurisdiction where the entity is located restricts such investigations.

The Federal Financial Supervisory Authority may attend meetings of a bank's supervisory board and shareholders' meetings. It also has the authority to require that such meetings be convened.

#### ***Enforcement Powers***

The Federal Financial Supervisory Authority has a wide range of enforcement powers in the event it discovers any irregularities. It may remove the bank's managers from office, transfer their responsibilities in whole or in part to a special commissioner or prohibit them from exercising their current managerial capacities. If a bank's Own Funds are inadequate or if a bank does not meet the liquidity requirements and the bank fails to remedy the deficiency within a certain period, then the Federal Financial Supervisory Authority may prohibit or restrict the bank from distributing profits or extending credit. This prohibition also applies to the parent bank of a group of institutions in the event that the Own Funds of the group are inadequate on a consolidated basis. If a bank fails to meet the liquidity requirements, the Federal Financial Supervisory Authority may also prohibit the bank from making further investments in illiquid assets.

If a bank is in danger of defaulting on its obligations to creditors, the Federal Financial Supervisory Authority may take emergency measures to avert default. These emergency measures may, in particular, include:

- issuing instructions relating to the management of the bank;
- prohibiting the acceptance of deposits and the extension of credit;
- prohibiting or restricting the bank's managers from carrying on their functions; and

- appointing supervisors.

If these measures are inadequate, the Federal Financial Supervisory Authority may revoke the bank's license and, if appropriate, order the closure of the bank. To avoid the insolvency of a bank, the Federal Financial Supervisory Authority may prohibit payments and disposals of assets, close the bank's customer services, and prohibit the bank from accepting any payments other than payments of debts owed to the bank. Only the Federal Financial Supervisory Authority may file an application for the initiation of insolvency proceedings against a bank. Violations of the German Banking Act may result in criminal and administrative penalties.

### ***Deposit Protection in Germany***

#### *The Deposit Guarantee Act*

The Law on Deposit Insurance and Investor Compensation (*Einlagensicherungs- und Anlegerentschädigungsgesetz*, the Deposit Guarantee Act) provides for a mandatory deposit insurance system in Germany. It requires that each German bank participates in one of the licensed government-controlled investor compensation institutions (*Entschädigungseinrichtungen*).

The investor compensation institutions collect and administer the contributions of the member banks and settle the compensation claims of investors in accordance with the Deposit Guarantee Act. In the event a bank's financial condition leaves the bank permanently unable to repay deposits or perform its obligations under securities transactions, the Deposit Guarantee Act authorizes creditors of the bank, subject to certain procedural conditions, to make claims against the bank's investor compensation institution. Certain entities, such as banks, financial institutions (*Finanzinstitute*), insurance companies, investment funds, the Federal Republic of Germany, the German federal states, municipalities and medium-sized and large corporations, are not eligible to make such claims.

Investor compensation institutions are liable only for obligations resulting from deposits and securities transactions that are denominated in euro or the currency of a contracting state to the Agreement on the European Economic Area. Investor compensation institutions are not liable for obligations represented by instruments in bearer form, obligations compliant to the prerequisites set out in Article 22 para. 4 of Council Directive 85/611/EEC of December 20, 1985 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) or obligations negotiable by endorsement. Investor compensation institutions' liabilities for failed banks are limited to 90% of the aggregate value of each creditor's deposits with the bank and to 90% of the aggregate value of obligations arising from securities transactions. The maximum liability of an investor compensation institution to any one creditor is limited to €20,000.

Banks are obliged to make annual contributions to the investor compensation institution in which they participate. An investor compensation institution must levy special contributions on the banks participating therein or take up loans, whenever it is necessary to settle compensation claims by such institution in accordance with the Deposit Guarantee Act. Provided the consent of the Federal Financial Supervisory Authority, the investor compensation institution may exempt a bank from special contributions in whole or in part if full payment of such contributions are likely to render such bank unable to repay its deposits or perform its obligations under securities transactions. The amount of such contribution will then be added proportionately to the special contributions levied on the other participating banks.

#### *Voluntary Deposit Protection System*

Liabilities to creditors that are not covered under the Deposit Guarantee Act may be covered by one of the various protection funds set up by the banking industry on a voluntary basis. The Deposit Protection Fund covers liabilities to customers up to an amount equal to 30% of the bank's core capital and supplementary capital (to the extent that supplementary capital does not exceed 25% of core capital). Liabilities to other banks and other specified institutions, and obligations of banks represented by instruments in bearer form, are not covered. To the extent the Deposit Protection Fund makes payments to customers of a bank, it will be subrogated to their claims against the bank.

Banks that participate in the Deposit Protection Fund make regular contributions to the fund based on their liabilities to customers, and may be required to make special contributions up to the amount of their regular contributions to the extent requested by the Deposit Protection Fund to enable it to fulfill its purpose.

### ***Regulation and Supervision in the United States***

The Bank is regulated in the United States as a bank holding company (“BHC”), under the Bank Holding Company Act of 1956, as amended (“BHCA”). The Bank engages in U.S. banking activities through its New York Branch which is licensed by the New York State Banking Department. Under current law, U.S. branches of foreign banks are subject to other extensive federal and state regulation and supervision in the United States depending on the activity. Thus, banking and securities laws and regulations govern many aspects of the Bank’s U.S. business.

### ***Regulatory Authorities***

The New York Branch’s principal regulators are the Federal Reserve Board and the New York State Banking Department. These agencies are required to conduct an on-site examination of the New York Branch on an annual basis. The New York Branch is also subject to periodic reporting of financial and structural information that is used for supervisory purposes.

### ***Restrictions on Activities***

Federal and state banking laws and regulations restrict the Bank’s ability to engage, directly or indirectly through subsidiaries, in non-banking activities in the United States. The BHCA restricts the Bank from acquiring U.S. companies engaged in, or commencing on its own, non-banking activities unless the Federal Reserve Board has determined that the activity is closely related to banking and a proper incident thereto, or that another exemption applies. Moreover, the Bank must also obtain prior Federal Reserve Board approval or provide notice as required in order to engage in new activities and to make non-banking acquisitions in the United States. The Gramm-Leach-Bliley Act, which was enacted in November 1999, significantly modified these restrictions. Under the Gramm-Leach-Bliley Act, qualifying BHCs and foreign banks that elect to become “Financial Holding Companies” or “FHCs” are permitted to engage in a substantially broader range of non-banking activities in the United States, including securities underwriting, merchant banking, insurance and other financial activities, in many cases without prior notice to, or approval from, the Federal Reserve Board or any other U.S. banking regulator. To qualify as a FHC, a foreign bank or BHC must, among other requirements, certify and demonstrate that it is “well capitalized” and “well managed”. Qualification as a FHC would require the Bank to continue to maintain capital ratios comparable to that of a well-capitalized U.S. bank, including a Tier I risk-based capital ratio of at least 6% and a total risk-based capital ratio of at least 10%, and to remain well managed. The Bank is not yet an FHC and is limited to BHCA-permitted activities

BHCs and FHCs may not engage in commercial activities that are not financial in nature. However, a FHC may hold passive investments in any company as part of bona fide merchant banking activities. Certain other provisions of the BHCA also govern the U.S. activities of the Bank. For example, the Bank would be required to obtain the prior approval of the Federal Reserve Board before directly or indirectly acquiring the ownership or control of more than 5% of any class of voting shares of any U.S. bank or bank holding company. Also, under the BHCA and regulations issued by the Federal Reserve Board, the Branch is restricted from engaging in certain arrangements “tying” bank products and services with non-bank products and services.

In addition, as a result of a systemic change to “functional regulation” from “institutional regulation,” the so-called “push-out” provisions of the Gramm-Leach-Bliley Act narrowed the exclusion of banks (including U.S. branches of foreign banks, such as the Branch) from the definitions of “broker” and “dealer” under the Securities Exchange Act of 1934. In May 2001, the Securities and Exchange Commission (“SEC”) issued interim rules defining certain terms in the “push-out” provisions and granting banks additional exemptions from broker-dealer registration. Since that time, the SEC has made modifications to the proposed rules and has extended the time period for compliance with such rules several times. The rules narrowing the exclusion

of banks from the definition of “dealer” became effective on September 30, 2003. The rules narrowing the exclusion of banks from the definition of “broker” have been deferred until at least September 30, 2005. It is possible that the SEC will further modify these rules or delay their effectiveness. As a result of these rules, the New York Branch avoids certain securities-related activities in order to comply with the securities laws and regulations.

In addition, under U.S. federal banking laws, state-licensed branches and agencies of foreign banks (such as the New York Branch) may engage only in activities that would be permissible for their federally chartered or licensed counterparts, unless the Federal Reserve Board were to determine that the additional activity is consistent with sound banking practices. U.S. federal and New York State banking laws also subject the Branch to the same single-borrower lending limits that apply to domestic banks. However, these single-borrower lending limits are based on the worldwide capital of the entire foreign bank.

Under the International Banking Act of 1978, as amended, the Federal Reserve Board may terminate the activities of any U.S. office of a foreign bank if it determines that the foreign bank is not subject to comprehensive supervision on a consolidated basis in its home country (unless the home country is making demonstrable progress toward establishing such supervision), or that there is reasonable cause to believe that such foreign bank or its affiliate has violated the law or engaged in an unsafe or unsound banking practice in the United States and, as a result of such violation or practice, the continued operation of the U.S. office would be inconsistent with the public interest or with the purposes of federal banking laws. The Federal Reserve has determined that German banks and the Bank are subject to comprehensive supervision on a consolidated basis.

The Branch is not a member of the Federal Deposit Insurance Corporation, and is not supervised by the FDIC. The New York Branch may not engage in retail deposit activity. The Branch is required to pledge eligible assets to the New York State Banking Department in an amount equal to 1% of its liabilities (excluding liabilities to other Bank offices and subsidiaries) as security for the protection of depositors and certain other creditors. These eligible assets consist of specified types of governmental obligations, U.S. dollar deposits, investment-grade commercial paper, obligations of certain international financial institutions and other specified obligations.

The New York State Banking Law also empowers the Superintendent of Banks to establish asset maintenance requirements for branches of foreign banks, expressed as a percentage of each branch’s liabilities. The presently designated percentage is 0%, although the Superintendent may impose additional asset maintenance requirements upon individual branches on a case-by-case basis. No such requirement has been imposed upon the Bank’s New York branch.

The New York State Banking Law authorizes the Superintendent of Banks to take possession of the business and property of a New York branch of a foreign bank under circumstances similar to those that would permit the Superintendent of Banks to take possession of the business and property of a New York state-chartered bank. These circumstances include violation of law, conduct of business in an unsafe manner, impairment of capital, suspension of payment of obligations, or initiation of liquidation proceedings against the foreign bank at its domicile or elsewhere. Pursuant to Section 606.4(a) of the New York State Banking Law, in liquidating or dealing with a branch’s business after taking possession of a branch, only the claims of creditors which arose out of transactions with a branch are to be accepted by the Superintendent of Banks for payment out of the business and property of the foreign bank in the State of New York, without prejudice to the rights of the holders of such claims to be satisfied out of other assets of the foreign bank. After such claims are paid, the Superintendent of Banks will turn over the remaining assets, if any, to the foreign bank or a duly appointed liquidator or receiver for the bank.

Banks and other financial institutions that operate in the United States are subject to extensive regulations under the Bank Secrecy Act that are directed at preventing money laundering and terrorist financing and identifying and reporting suspicious activity. The Bank is subject to these requirements as well as requirements to screen transactions and block, if necessary, any transactions that are made by or are directed to parties that have been designated by the U.S. government as contrary to U.S. national security interests.

## **Regulation and Supervision in Other Jurisdictions**

The Bank's operations elsewhere in the world are subject to regulation and control by local supervisory authorities, including local central banks and monetary authorities, which supplement the home country supervision exercised by the Federal Financial Supervisory Authority.

For the Bank's branches within the European Economic Area, the primary regulator remains the Federal Financial Supervisory Authority pursuant to the "European Passport" summarized above. Branches operated outside the European Economic Area operate under two licenses: the Bank's German banking license and a license from the host country. The Bank may conduct businesses in the host country only to the extent that its German banking license and the host country's license both permit them. When the Bank operates a subsidiary outside Germany, the subsidiary holds whichever license is required by local law.

## **TAXATION**

Prospective investors should consult their professional advisers on the possible tax consequences of buying, holding or selling, either directly or indirectly, any SPHERE Securities or Class B Securities under the laws of their country of citizenship, residence or domicile

### **Taxation in the Cayman Islands**

The following is a discussion on certain Cayman Islands income tax consequences of an investment in the Class B Securities. The discussion is a general summary of present law, which is subject to prospective and retroactive change. It is not intended as tax advice, does not consider any investor's particular circumstances, and does not consider tax consequences other than those arising under Cayman Islands law.

Payments of dividends and capital in respect of the Class B Securities will not be subject to taxation in the Cayman Islands and no withholding will be required on the payment of a dividend or capital to any holder of the Class B Securities nor will gains derived from the disposal of the Class B Securities be subject to Cayman Islands income or corporation tax. The Cayman Islands currently have no income, corporation or capital gains tax and no estate duty, inheritance tax or gift tax. No stamp duty is payable in respect of the issue of the Shares or on an instrument of transfer in respect of a Share.

The Company has been incorporated under the laws of the Cayman Islands as an exempted company and, as such, has applied for and expects to obtain an undertaking from the Governor in Cabinet of the Cayman Islands in the following form:

**The Tax Concessions Law**  
**1999 Revision**  
**Undertaking as to Tax Concessions**

In accordance with the provision of Section 6 of The Tax Concession Law (1999 Revision), the Governor in Cabinet undertakes with the Company.

- 1 That no law which is hereafter enacted in the Islands imposing any tax to be levied on profits, income, gains or appreciations shall apply to the Company or its operations; and
- 2 In addition, that no tax to be levied on profits, income, gains or appreciations or which is in the nature of estate duty or inheritance tax shall be payable:
  - 2.1.1 On or in respect of the shares, debentures or other obligations of the Company; or
  - 2.1.2 by way of the withholding in whole or part, of any relevant payment as defined in Section 6(3) of the Tax Concessions Law (1999 Revision).

These concessions shall be for a period of twenty years from the date of the undertaking.

### **Taxation in the Grand Duchy of Luxembourg**

Under current Luxembourg tax law, no Luxembourg withholding tax is levied on payments by the Fiduciary to the Securityholders of dividends or repayment of capital received by it in respect of Class B Securities. However, as of July 1, 2005, (if dividends were construed as interest) a withholding tax may be applicable to payments on the Sphere Securities made through a "Paying Agent" (generally the Securityholder's intermediary) located in Luxembourg to an individual Securityholder who is a resident in another EU Member State. For a more comprehensive description of such regime please see below "European Union Savings Tax Directive".

No payments received by the Fiduciary on behalf of the Securityholders under or in connection with the SPHERE Securities, the Class B Securities or the Participation will be subject to any taxes, duties, assessments or charges of whatever nature imposed or levied by or on behalf of Luxembourg or any political subdivision or authority thereof or therein.



Securityholders who are neither resident in, nor engaged in a trade or business through a permanent establishment in, Luxembourg will not be subject to taxes or duties in Luxembourg with respect to payments under the SPHERE Securities or gains realised upon disposal or repayment of the SPHERE Securities.

Securityholders not resident in Luxembourg at the time of death will not be subject to inheritance or other similar taxes in Luxembourg in respect of the SPHERE Securities and the Securityholders will not be deemed to be resident, domiciled or carrying on business in Luxembourg solely by reason of holding the SPHERE Securities.

No stamp, value, issue, registration, transfer or similar taxes or duties will be payable in Luxembourg by Securityholders in connection with the issue of the SPHERE Securities.

Securityholders who are domiciled in Luxembourg or maintain a permanent establishment therein with which the SPHERE Securities are effectively connected will be subject to Luxembourg taxation as provided for by applicable tax provisions.

### **Taxation in the Federal Republic of Germany**

The following contains certain German tax considerations that may be relevant to a holder of the SPHERE Securities. It describes some tax consequences for three different categories of prospective investors:

1. German residents.
2. Non-German residents being assessed for German income taxes with the income deriving from SPHERE Securities, e.g., because such SPHERE Securities form part of the business property of the permanent establishment or fixed base maintained in Germany or for which a permanent representative has been appointed in Germany ("Assessed Non-German Resident").
3. A resident in a country other than Germany ("Other Non-German Residents").

The information is based on an interpretation of the German tax laws as of the date of this Offering Circular, and is subject to change. Any such change may be applied retroactively and may adversely affect the tax consequences described herein. The information may not deal with all aspects of taxation that may be relevant for prospective investors regarding their individual circumstances. Prospective investors are therefore advised to contact their tax advisors for advice on the German tax consequences of purchasing, holding, redeeming, disposing or the gratuitous transfer of SPHERE Securities as well as the effect of any foreign tax laws.

Since each SPHERE Certificate will represent a *pro rata* interest in Class B Securities, from an economic standpoint and from a tax perspective Class B Securities will be attributed – pro rata – to SPHERE Securities holders.

### ***Income tax / Trade Tax***

#### **German Residents**

As the Company has its registered office in the Cayman Islands German resident holders will be subject to an add back under the German CFC Code with respect to their shareholding in the Company (represented by SPHERE Securities). This means that, for tax purposes, income of the Company will be attributed to German resident SPHERE Securityholders.

- Add back pursuant to German CFC Code

- Holding Quota -

In general, an attribution of income pursuant to the German CFC Code requires that individual or corporate tax residents in Germany hold more than one half of the voting capital or the nominal capital in a corporation having neither its central management nor its corporate seat in Germany and not qualifying as a tax exempt organisation under section 3 (1) Corporate Income Tax Code. Pursuant to section 7 (6) sentence 3 CFC Code,



CFC rules will apply irrespective of the holding quota if the company earns exclusively or almost exclusively investment income within the meaning of section 10 (6) sentence 2 CFC Code. The term investment income comprises interest income, income from receivables, securities and comparable instruments (other than dividend income).

The latter is relevant for the case at hand because the Company earns exclusively interest income deriving from the loan and the silent partnership which is both investment income within the meaning of section 10 (6) sentence 2 CFC Code. Thus, CFC rules will be applicable irrespective of the holding quota.

*- Income of Company attributable to German Resident -*

In principle, the part of the income for which the Company is an intermediate company shall be included in the income of each of the German resident investors in proportion to their participation in the Company.

A foreign company is considered to be an intermediate company for income which is subject to a low tax rate (effective tax rate below 25%) and which does not result from so-called active income within the meaning of section 8 (1) CFC Code.

If the participation in the capital of the foreign company is not relevant for the distribution of its profits or if the foreign company does not have a share capital, then the actual distribution of its profits shall be the basis for the allocation of its profits.

According to the Company's shareholder agreement, distributions under Class B Securities are only made on the basis of the Company's profits deriving from the loan issued by the Company to the Bank. Hence, only such income is (pro rata) subject to an add back at the level of German resident investors.

*- Tax treatment of add back amount -*

Pursuant to section 10 (2) sentence 1 CFC Code the add back amount is income within the meaning of section 20 (1) No. 1 German Income Tax Code a provision which covers e. g. the tax treatment of dividends. It will be taxed at standard rates (the so – called *Halbeinkünfteverfahren*, according to which only half of the dividends paid to a German individual are subject to tax, and the tax exemption pursuant to section 8 b (1) German Corporate Income Tax Code are not applicable). This applies for (corporate) income tax and trade tax on income.

**A subsequent distribution of already taxed profits will be tax – exempt.**

*“Assessed Non-German Residents”*

Taxpayers not liable to German resident taxation are not subject to an add back pursuant to the German CFC Code. Therefore, the taxation of dividends and capital gains depends only on the German (Corporate) Income Tax Code or the German Trade Tax Code.

There may be tax consequences regarding a) income distributions under the SPHERE Securities and b) capital gains deriving from the disposal of SPHERE Securities.

*Taxation of dividends*

*- Income tax -*

From a German perspective, distributions under SPHERE Securities (representing a dividend on the Class B Securities) qualify as dividends within the meaning of Section 20 (1) no. 1 German Income Tax Code, which are paid by a foreign company.

Only half of the income distributions under the SPHERE Securities (representing a dividend on the Class B Securities) distributed to German individual “Assessed Non-German Residents” are subject to German income tax (the so-called *Halbeinkünfteverfahren*). Correspondingly, only half of the expenses related to the SPHERE Securities (when they represent interests in Class B Securities) are deductible.

The income tax is calculated using the general (progressive) income tax rate. On the assessed income tax liability a 5.5% solidarity surcharge is levied.

Income distributions under the SPHERE Securities (representing a dividend on the Class B Certificates) to a corporate “Assessed Non-German Resident” are tax exempt. However, 5% of the foreign dividends are deemed non-deductible expenses. This means that, finally, 5% of the dividends are liable to (corporate) income tax. German corporations are generally subject to corporate income tax at a uniform rate of 25%. This tax rate applies also to, e.g., a branch of a foreign corporation. An additional solidarity surcharge of 5.5% is levied on the determined corporate tax liability amounting to a total tax burden of 26.375%.

The tax exemption with respect to the dividends does not apply if the SPHERE Securities are held by banks and financial service institutions (within the meaning of the German Banking Act (*Kreditwesengesetz*)) and if the SPHERE Securities are accounted for in the trading books (*Handelsbuch*) pursuant to § 1(12) of the German Banking Act. The same applies if the SPHERE Securities are acquired by a financial institution (within the meaning of the German Banking Act) in order to obtain a short-term capital gain (*kurzfristige Eigenhandelserfolge*). This also applies for banks, financial services institutions and financial institutions with a statutory seat in an EU member state or in another country that is a signatory to the Treaty on the European Economic Area (*EWR-Abkommen*). In the same way, to the extent life and health insurance companies or pension funds hold SPHERE Securities that are attributable to their capital investments (*Kapitalanlagen*) the tax exemption for dividends does not apply in principle. Certain exemptions may apply to corporate shareholders incorporated in another EU member state if the EU Parent-Subsidiary Directive is applicable to them.

#### - Trade Tax -

Pursuant to section 8 no. 5 in conjunction with section 9 no. 7 of the German Trade Tax Code dividends distributed by a foreign company are not exempt from trade tax if the shareholding in the foreign company amounts to less than 10%. Additionally, a trade tax exemption regarding dividends requires that the foreign company’s profits originate from activities within the meaning of section 8 (1) no. 1 – no. 6 German CFC Code (so-called “active income”). Since the Company’s business cannot be attributed to such activities income distributions under the SPHERE Securities (representing a dividend under the Class B Securities) are fully taxable for trade tax purposes.

#### *Taxation of Capital gains*

Individual Assessed Non-German Residents will only be subject to income tax on half of the capital gains deriving from the disposal of SPHERE Securities (for such time as the SPHERE Securities represent interests in the Class B Securities). This applies also for trade tax purposes. Correspondingly, only half of the business expenses related to such gains and half of the losses incurred from such disposal of the SPHERE Securities are deductible for tax purposes.

Capital gains of shareholders liable to corporate income tax are generally tax-exempt. However, 5% of the capital gains are deemed non-deductible expenses. This means that, finally, 5% of the capital gains are liable to (corporate) income tax and where applicable to trade tax. If a Securityholder is a bank or financial services institution within the meaning of the German Banking Act, and if the SPHERE Securities (representing interests in the Class B Securities) disposed of are accounted for in the trading books (*Handelsbuch*), pursuant to §1(12) of the German Banking Act, the capital gains are fully taxable. The same applies if the SPHERE Securities (representing interests in the Class B Securities) disposed of were acquired by a finance institution within the meaning of the German Banking Act with the aim of realising short-term gains (*kurzfristige Eigenhandelserfolge*) to their own account. It also applies to banks, financial services institutions and finance companies having their seat in a member state of the European Community or another country that is signatory to the Treaty on the European Economic Area. In the same way, to the extent life and health insurance companies or pension funds hold SPHERE Securities that are attributable to their capital investments (*Kapitalanlagen*) the tax exemption for capital gains does not apply in principle.

### *“Other Non-German Residents”*

The tax consequences of dividends or capital gains with respect to Class B Securities regarding Other Non-German Residents are dependent on the respective foreign tax law applicable for the respective investor.

### ***Inheritance and gift tax***

The transfer of SPHERE Securities representing either Class B Securities to other persons by virtue of inheritance or gift is, in principle, only subject to German inheritance and gift tax if at the time of the transfer of the Securities

1. the testator (donor) or the heir, donee or any other beneficiary had his or her residence or habitual abode in Germany or is a German citizen who has not been living abroad for more than five years without having a residence in Germany; or
2. the testator's or donor's Securities formed part of the assets of a business property for which a permanent establishment is maintained in Germany or a permanent representative has been appointed in Germany.

The few double taxation treaties in force for inheritance and gift tax (e.g. the treaty with the United States) usually provide that German inheritance and gift tax may only be imposed in case (1) and, with restrictions, in case (2).

### ***Other German taxes***

There are no German transfer, stamp or other similar taxes which would apply to the sale or transfer of the Class B Securities. Net-worth tax (Vermögensteuer) ceased to be levied by Germany on January 1, 1997 and trade tax on capital (Gewerbesteuer) ceased to be levied by Germany on January 1, 1998.

### **Taxation in the Netherlands**

The following summary outlines certain Netherlands tax consequences to holders of the SPHERE Securities. It is based on the current law and practice of the Netherlands, which is subject to changes that could prospectively or retrospectively affect the stated tax consequences. Prospective holders of SPHERE Securities who may be in any doubt as to their respective tax positions should consult their own professional advisors.

### ***Withholding Tax***

All payments under the SPHERE Securities may be made free of withholding or deduction of, for or on account of any taxes of whatever nature imposed, levied, withheld or assessed by the Netherlands or any political subdivision or taxing authority thereof or therein.

### ***Taxes on Income and Capital Gains***

A holder of the SPHERE Securities will not be subject to any Netherlands taxes on income or capital gains in respect of the SPHERE Securities, including such tax on any payment under the SPHERE Securities or in respect of any gain realised on the disposal, deemed disposal or exchange of the SPHERE Securities, provided that:

- (i) such holder is neither a resident nor deemed to be a resident of the Netherlands, nor, if he is an individual, has elected to be taxed as a resident of the Netherlands; and
- (ii) such holder does not have an enterprise or an interest in an enterprise that is, in whole or in part, carried on through a permanent establishment or a permanent representative in the Netherlands and to which enterprise or part of an enterprise, as the case may be, the SPHERE Securities are attributable; and

- (iii) if such holder is an individual, such income or capital gain do not form “benefits from miscellaneous activities in the Netherlands” (“*resultaat uit overige werkzaamheden in Nederland*”), which would for instance be the case if the activities in the Netherlands with respect to the SPHERE Securities exceed “normal active asset management” (“*normaal, actief vermogensbeheer*”).

A holder of SPHERE Securities will not be subject to taxation in the Netherlands by reason only of the execution, delivery and/or enforcement of the Participation Agreement, the Loan Agreement, and the issue of the SPHERE Securities and the Class B Securities or the performance by the Issuer or the Company, respectively, of its obligations under the SPHERE Securities or the Class B Securities, respectively.

### ***Inheritance and Gift Tax***

No gift, estate or inheritance taxes will arise in the Netherlands with respect to an acquisition of SPHERE Securities by way of a gift by, or on the death of, a holder of SPHERE Securities who is neither resident nor deemed to be resident in the Netherlands, unless:

- (i) such holder at the time of the gift has or at the time of his death had an enterprise or an interest in an enterprise that is or was, in whole or in part, carried on through a permanent establishment or a permanent representative in the Netherlands and to which enterprise or part of an enterprise, as the case may be, the SPHERE Securities are or were attributable; or
- (ii) in the case of a gift of SPHERE Securities by an individual who at the date of the gift was neither resident nor deemed to be resident in the Netherlands, such individual dies within 180 days after the date of the gift, while being resident or deemed to be resident in the Netherlands.

### ***Other Taxes and Duties***

No Netherlands registration tax, capital tax, custom duty, transfer tax, stamp duty or any other similar documentary tax or duty, other than court fees, will be payable in the Netherlands in respect of or in connection with the execution, delivery and/or enforcement by legal proceedings (including the enforcement of any foreign judgment in the Courts of the Netherlands) of the Participation Agreement, the Loan Agreement, and the issue of the SPHERE Securities and the Class B Securities or the performance by the Issuer or the Company, respectively, of its obligations thereunder or under the SPHERE Securities or the Class B Securities, respectively.

### **European Union Savings Tax Directive**

The EU has adopted a Directive regarding the taxation of savings income. Subject to a number of important conditions being met, it is proposed that Member States will be required from July 1, 2005 to provide to the tax authorities of other Member States details of payments of interest and other similar income paid by a person to an individual in another Member State, except that Austria, Belgium and Luxembourg will instead impose a withholding system for a transitional period unless during such period they elect otherwise. It is expected that a number of third countries and territories will adopt similar measures with effect from the same date.

## SUBSCRIPTION AND SALE

Under a subscription agreement dated June 15, 2005, ABN AMRO Bank N.V., Deutsche Bank AG, London Branch, HSH Nordbank AG and UBS Limited (collectively, the “**Managers**”) have agreed to subscribe for the aggregate principal amount of US\$ 500,000,000 SPHERE Securities at the price of 100 per cent. of their principal amount in order to sell the SPHERE Securities to investors. HSH Nordbank AG has agreed to pay to the Managers a combined management, underwriting and selling commission of US\$ US\$10,000,000.

HSH Nordbank AG has undertaken to indemnify and hold harmless each of the Managers of any liability incurred in the context of the subscription and sale of the SPHERE Securities. The Subscription Agreement entitles the Managers to terminate it in certain circumstances prior to the issue of, and payment for, the SPHERE Securities.

The Managers or their affiliates have provided from time to time, and expect to provide in the future, investment services to the HSH Nordbank Group, for which the Managers or their affiliates have received or will receive customary fees and commissions.

### *Selling Restrictions*

#### *United States*

Each of the Managers has acknowledged and agreed that the SPHERE 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 certain transactions exempt from the registration requirements of the Securities Act. Terms used in this paragraph have the meanings given to them by Regulation S under the Securities Act.

Each of the Managers has acknowledged and agreed that the SPHERE Securities are in bearer form and are subject to U.S. tax law requirements and may not be offered, sold or delivered within the United States or its possessions or to a United States person, except in certain transactions permitted by U.S. tax regulations. Terms used in this paragraph have the meanings given to them by the U.S. Internal Revenue Code of 1986 and regulations thereunder.

Each of the Managers has represented and agreed that, except as permitted by the Subscription Agreement, it will not offer or sell the SPHERE Securities within the United States of America or to, or for the account or benefit of, U.S. persons (i) as part of its distribution at any time or (ii) otherwise until 40 days after the later of the commencement of the offer and the closing date, and it will send to each dealer to which it sells SPHERE Securities during the 40-day distribution compliance period a confirmation or other notice setting forth the restrictions on offers and sales of the SPHERE Securities within the United States of America or to, or for the account or benefit of, U.S. persons. Terms used in this paragraph have the meanings given to them by Regulation S under the Securities Act. In addition, until 40 days after the commencement of the offering, an offer or sale of the SPHERE Securities within the United States of America by any dealer (whether or not participating in the offering) may violate the registration requirements of the Securities Act. The SPHERE Securities may not be purchased by or transferred to any employee benefit, plan subject to Title I of the U.S. Employee Retirement Income Security Act of 1974, as amended, any plan or arrangement subject to Section 4975 of the Code, or any entity whose underlying assets include the assets of any such employee benefit plans, plan or arrangements.

#### *United Kingdom*

Each of the Managers has represented, warranted and agreed that:

- (i) it has not offered or sold and, prior to the expiry of a period of six month from the Issue Date, will not offer or sell any SPHERE 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 purposes of their businesses of 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 from time to time;

- (ii) 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 Financial Services and Markets Act 2000, as amended from time to time (“FSMA”)) received by it in connection with the issues or sale of any SPHERE Securities in circumstances in which section 21(1) of the FSMA does not apply to the Issuer; and
- (iii) it has complied and will comply with all applicable provisions of the FSMA with respect to anything done by it in relation to the SPHERE Securities in, from or otherwise involving the United Kingdom.

#### *Cayman Islands*

Each of the Managers has represented and agreed that no invitation will be made to the public in the Cayman Islands to purchase any SPHERE Securities, whether directly or indirectly unless listed on the Cayman Islands Stock Exchange.

#### *Germany*

Each of the Managers has confirmed that it is aware that no German sales prospectus (*Verkaufsprospekt*) has been or will be published in respect of the Offering; and each of the Managers has represented and agreed that it will comply with the German Securities Sales Prospectus Act (*Wertpapier-Verkaufsprospektgesetz*) or any other laws applicable in Germany governing the issue, offering and sale of the SPHERE Securities. In particular each Manager has undertaken not to engage in a public offering (*öffentliches Anbieten*) in Germany with respect to any SPHERE Securities otherwise than in accordance with the Securities Sales Prospectus Act and any other act replacing or supplementing it and all other applicable laws and regulations.

#### *Singapore*

This Offering Circular has not been and will not be registered as a prospectus with the Monetary Authority of Singapore. Accordingly, this Offering Circular or any other document or material in connection with any offer of the SPHERE Securities may not be issued, circulated or distributed and, the offer of SPHERE Securities or any invitation to subscribe for or purchase any SPHERE Securities (or any of them) may not be made, directly or indirectly, to the public or any member of the public in Singapore, other than (a) to an institutional investor or other person specified in Section 274 of the Securities and Futures Act 2001 of Singapore (the “**Singapore Securities and Futures Act**”), (b) to a sophisticated investor, and in accordance with the conditions, specified in Section 275 of the Singapore Securities and Futures Act or (c) otherwise pursuant to, and in accordance with the conditions of, any other applicable provisions of the Singapore Securities and Futures Act.

#### *Hong Kong*

Each Manager has represented and agreed that:

- (i) it has not offered or sold and will not offer or sell in Hong Kong, by means of any document, any SPHERE Securities other than (a) to “professional investors” as defined in the Securities and Futures Ordinance (Cap. 571) of Hong Kong and any rules made under that Ordinance; or (b) in other circumstances which do not result in the document being a “prospectus” as defined in the Companies Ordinance (Cap. 32) of Hong Kong or which do not constitute an offer to the public within the meaning of that Ordinance; and
- (ii) it has not issued or had in its possession for the purposes of issue, and will not issue or have in its possession for the purposes of issue, whether in Hong Kong or elsewhere, any advertisement, invitation or document relating to the SPHERE Securities, which is directed at, or the contents of which are likely to be accessed or read by, the public of Hong Kong (except if permitted to do so under the securities laws of Hong Kong) other than with respect to SPHERE Securities which are or are



intended to be disposed of only to persons outside Hong Kong or only to “professional investors” as defined in the Securities and Futures Ordinance and any rules made under that Ordinance.

### *Luxembourg*

Each Manager has represented and agreed that the SPHERE Securities will not be offered or sold to the public in the Grand-Duchy of Luxembourg, directly or indirectly, and that, neither the Offering Circular nor any other circular, prospectus, form of application, advertisement or other material will be distributed, or otherwise made available in, or from or published in, the Grand-Duchy of Luxembourg except in circumstances where the Luxembourg legal requirements for a public offer of securities have been met first.

### *General*

No action has been taken in any jurisdiction that would permit a public offering of any of the SPHERE Securities, or possession or distribution of the Offering Circular or any other offering material, in any country or jurisdiction where action for that purpose is required. Each Manager has severally agreed that it will, to the best of its knowledge and belief, comply with all relevant securities laws and regulations in each jurisdiction in which it purchases, offers, sells or delivers SPHERE Securities or has in its possession or distributes this Offering Circular or any other offering material.

### *Stabilisation*

In connection with the issue, UBS Limited or any person acting on its behalf may, on behalf of the Managers, over-allot or effect transactions with a view to supporting the market price of the SPHERE Securities at a level higher than that which might otherwise prevail for a limited period. However, there is no obligation on UBS Limited or any agent of it to do this. Such stabilising, may be effected on Euronext Amsterdam or otherwise. Such stabilising, if commenced, may be discontinued at any time and, which in any case, will not exceed a period of 30 days after (and including) the date of issue of the SPHERE Securities. Such stabilising shall be in compliance with all relevant laws and regulations which might substantially differ from regulations and customs for such stabilization measures applicable in other jurisdictions.

### *Delivery of the SPHERE Securities*

The SPHERE Securities will initially be represented by a temporary global security in bearer form without coupons which will be exchanged not earlier than 40 days and not later than 180 days into a permanent global security in bearer form without coupons upon certification as to non U.S. beneficial ownership of the SPHERE Securities in accordance with the practices of Euroclear and Clearstream Luxembourg. Both the temporary and the permanent global security will be deposited with and held by a common depository for Euroclear and Clearstream Luxembourg and will bear the handwritten signature of an authorised signatory of the Fiduciary and a control signature of the Common Depository. Co-ownership interests in SPHERE Securities may be transferred according to the applicable rules of Euroclear and Clearstream Luxembourg. It is expected that the delivery of the SPHERE Securities will be made through Euroclear and Clearstream Luxembourg against payment therefor in immediately available funds on June 17, 2005. Physical certificates or interest coupons will not be issued. A copy of the global security will be free of charge available with the paying agents named below.

### *Admission*

The SPHERE Securities shall be admitted for trading on June 17, 2005 on Eurolist by Euronext Amsterdam.

## GENERAL INFORMATION

### Subject of this Offering Circular

The subject of this Offering Circular are the US\$ 500,000,000 SPHERE Securities.

### Clearing Codes

The SPHERE Securities have been accepted for clearance through the facilities of Euroclear and Clearstream Luxembourg under the following clearance codes:

ISIN: XS0221141400

Common Code: 022114140

Dutch Securities Code (Fonds Code): 15380

### Issue Date

The SPHERE Securities will be issued on June 17, 2005. The rights attached to the SPHERE Securities take effect as of such Issue Date.

### Yield to Maturity

There is no explicit yield to maturity. The SPHERE Securities do not carry a fixed date for redemption and the Company is not obliged, and under certain circumstances is not permitted, to make payments on the Class B Securities at the full stated rate.

### Replacement

It is the Bank's intention (although there is no obligation to do so nor any guarantee of future behaviour) to cause the SPHERE Securities to be redeemed in accordance with Section 4 thereof, in whole (but not in part), only to the extent that the Bank or any of its subsidiaries has raised funds in the period of six (6) months preceding such redemption by the issuance of any securities ranking *pari passu* or junior (including any class of share capital) to the SPHERE Securities, in an aggregate amount at least equal to the aggregate original Nominal Amount of the SPHERE Securities.

### Listing Documents for Inspection

Application has been made to list the SPHERE Securities on Euronext Amsterdam. So long as the SPHERE Securities are listed on Euronext Amsterdam, the Bank will maintain a paying agent in each of Frankfurt, Germany and The Netherlands.

At any time during the term of the SPHERE Securities the most recently publishes consolidated and non-consolidated audited annual financial statements of the Bank, and, once available, the most recently available annual accounts of the Company, will also be available for inspection and obtainable free of charge at the offices of the Principal Paying Agent in Frankfurt and the Netherlands Paying Agent.

The Bank does not publish non-consolidated interim financial statements. The Company does not prepare interim financial statements.

In addition, the following documents will be available for inspection and obtainable, free of charge, at the offices of the Bank and the Netherlands Paying Agent:

- (a) the Articles of Association (*Satzung*) of the Bank;
- (b) the memorandum and articles of association of the Company; and
- (c) the consents and authorisations referred to under "Authorisations" below.

Copies of these documents as well as financial statements and interim financial statements are also available at the office of HSH Nordbank AG, Martensdamm 6, 24103 Kiel, Germany.

### **Incorporation by reference**

The unconsolidated and consolidated financial statements of the Bank for the financial years 2003 and 2004, the Articles of Association (*Satzung*) of the Bank and the memorandum and articles of association of the Company (dated May 26, 2005 and amended on June 13, 2005 and June 14, 2005) are hereby incorporated in this Offering Circular by reference.

### **Notices**

All notices to the Securityholders will be given or caused to be given by the Fiduciary (i) so long as any of the SPHERE Securities are listed on Euronext Amsterdam and Euronext Amsterdam so requires, in the daily official list of Euronext Amsterdam (*Officiële Prijscurant*) and by publication in a leading newspaper having general circulation in Amsterdam (which is expected to be *Het Financieele Dagblad*) and (ii) by mail, fax or electronically to Clearstream Luxembourg and Euroclear and (iii) to the Netherlands Paying Agent. In accordance with its published rules and regulations, each clearing system will notify the holders of securities accounts to which any SPHERE Securities are credited of any such notices received by it.

### **No Material Change**

Save as described herein, there has been no material adverse change in the financial position or prospects of the Bank or the HSH Nordbank Group since December 31, 2004 or the Company since its formation on May 26, 2005.

### **Authorisations**

The Fiduciary, the Company and the Bank have obtained all necessary consents, approvals and authorisations in connection with the issue and performance of the SPHERE Securities and the execution and performance of the Transaction Documents.

### **Litigation**

Save as disclosed in this Offering Circular, neither the Bank nor the Company is or was during the past two years involved in any litigation or arbitration proceedings relating to claims or amounts which could, if determined adversely, have a material adverse affect on the financial position of the Bank nor, so far as the Bank and the Company are aware, is any such litigation or arbitration pending or threatened.

### **Subsidiaries**

A selective overview of the Bank's equity participations as at December 31, 2004 is set out in the published consolidated audited financial statements of the Bank for the year ended December 31, 2004.

### **Auditors**

The consolidated financial statements of the Bank have been audited without qualification for the two financial years ended December 31, 2003 and December 31, 2004 by BDO Deutsche Warentreuhand AG, Ferdinandstr. 59, 20095 Hamburg, Germany.

### **General**

For so long as the SPHERE Securities are listed on Euronext Amsterdam, the Fiduciary will comply with the provisions of the Listing and Issuing Rules (*Fondsenreglement*) of Euronext Amsterdam (including Section 2.1.20 of Schedule B) as amended from time to time.

### **Head Offices of the Bank**

HSH Nordbank AG  
Martensdamm 6  
24103 Kiel  
Germany

HSH Nordbank AG  
Gerhart-Hauptmann Platz 50  
20095 Hamburg  
Germany

### **Registered Office of the Company**

HSH N Funding II  
PO Box 309GT  
Ugland House  
South Church Street  
George Town  
Grand Cayman  
Cayman Islands

### **Fiduciary**

Banque de Luxembourg  
14, boulevard Royal  
2449 Luxembourg  
Luxembourg

### **Principal Paying Agent**

Deutsche Bank AG  
Grosse Gallusstr. 10-14  
60272 Frankfurt  
Germany

### **Netherlands Paying Agent**

Deutsche Bank AG  
Herengracht 450  
Amsterdam, 1017 CA  
The Netherlands

### **Netherlands Listing Agent**

ABN AMRO Bank N.V.  
Gustav Mahlerlaan 10  
1082 PP Amsterdam  
The Netherlands

### **Legal Advisors to the Company**

*as to Cayman Islands law*

Maples and Calder  
Princes Court  
7 Princes Street  
London EC2R 8AQ  
United Kingdom

### **Legal Advisors to the Bank**

*as to Luxembourg law*

Elvinger Hoss & Prussen  
2 Place Winston Churchill  
B.P. 425  
L-2014 Luxembourg

### **Legal Advisor to the Managers**

*as to German law*

Freshfields Bruckhaus Deringer  
Taunusanlage 11  
60329 Frankfurt am Main  
Germany

### **Legal Advisor to the Fiduciary**

*as to Luxembourg law*

Elvinger Hoss & Prussen  
2 Place Winston Churchill  
B.P. 425  
L-2014 Luxembourg

### **Auditors to the Bank**

BDO Deutsche Warentreuhand AG  
Ferdinandstr. 59  
20095 Hamburg  
Germany

