

OFFERING CIRCULAR

# € 240,000,000 Capital Securities

issued by

## Hybrid Capital Funding II Limited Partnership

(a limited partnership established under the laws of Jersey on 27 April 2005)

for purposes of acquiring a silent partnership interest in the commercial enterprise (*Handelsgewerbe*) of

# WestLB AG

(a stock corporation (*Aktiengesellschaft*) established under the laws of Germany)

Issue price of the Capital Securities: 100 per cent.

The issue price of the € 240,000,000 Capital Securities in the denomination of € 1,000 each (the “**Capital Securities**”), issued by Hybrid Capital Funding II Limited Partnership (the “**Issuer**”), a limited partnership established under the laws of Jersey on 27 April 2005, is 100 per cent. of their principal amount.

The Capital Securities will bear interest from (and including) 13 May 2005 (the “**Issue Date**”) at a rate of 6.0 per cent. *per annum*, payable semi-annually in arrear on 30 June, and 30 December of each year, commencing on 30 June 2005. Payments may be delayed and are contingent on the Issuer’s actual receipt of funds under the Participation Agreement and under the Loan Agreement (each as defined below) as described in “Terms and Conditions of the Capital Securities”. The Capital Securities are redeemable in whole, but not in part, at the option of the Issuer on 30 June 2011 or on 30 June of any year thereafter as described in “Terms and Conditions of the Capital Securities”.

With the proceeds of the issue, the Issuer will acquire a silent partnership interest (the “**Participation**”) in the commercial enterprise (*Handelsgewerbe*) of WestLB AG (“**WestLB**” or the “**Bank**”) in the form of a *Stille Gesellschaft* under German law pursuant to an agreement providing for a capital contribution by the Issuer to WestLB in the amount of € 240,000,000 (the “**Silent Contribution**”) and dated 3 May 2005 (the “**Participation Agreement**”). The Issuer expects to fund interest payments on the Capital Securities with distributions received under the Participation Agreement and funds received from WestLB (in this capacity, the “**Lender**”) under a loan agreement.

**Investing in the Capital Securities involves certain risks. Please review carefully the section entitled “Risk Factors” beginning on page 22 of this Offering Circular.**

The Capital Securities will initially be represented by a temporary global security in bearer form without coupons which will be deposited on or about the Issue Date with Clearstream Banking AG, Frankfurt am Main (“**Clearstream Frankfurt**”), where the Capital Securities have been accepted for clearance. The Capital Securities will also be eligible for clearing and settlement in Euroclear Bank S.A./N.V., as operator of the Euroclear System (“**Euroclear**”) and Clearstream Banking, société anonyme (“**Clearstream Luxembourg**”). It is expected that delivery of the Capital Securities will be made through Clearstream Frankfurt 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.

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

Application has been made to list the Capital Securities on the Luxembourg Stock Exchange.

Joint Bookrunner

ABN AMRO

Joint Bookrunner and Structuring Advisor

Merrill Lynch International

Joint Bookrunner

Deutsche Bank

Joint Bookrunner

WestLB

The date of this Offering Circular is 11 May 2005

WestLB accepts responsibility for the information contained in this 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 Issuer and its partners accept responsibility for the information in this Offering Circular about themselves and the description of the Transaction (as defined in “Summary”) but do not accept responsibility for any other information contained in this Offering Circular.

In connection with the issue and sale of the Capital 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 Issuer, the partners of the Issuer, WestLB or the Managers (as defined in “Subscription and Sale”).

The Jersey Financial Services Commission (the “Commission”) has given and has not withdrawn its consent under Article 8 of the Control of Borrowing (Jersey) Order 1958 to the creation by the Issuer of the limited partnership interests in the Issuer. The Commission is protected by the Borrowing (Control) (Jersey) Law 1947, as amended, against liability arising from the discharge of its functions under that Law.

Nothing in this Offering Circular or anything communicated to holders of, or investors in, the Capital Securities (or any such potential Security holders or investors) is intended to constitute, or should be construed as, advice on the merits of the purchase of, or subscription for, the Capital Securities or the exercise of any rights attached thereto for the purposes of the Financial Services (Jersey) Law 1998, as amended.

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

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 Capital 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 Issuer, the partners of the Issuer, WestLB or the Managers to subscribe for or to purchase any of the Capital Securities.

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 Issuer, the partners of the Issuer, WestLB or the Managers that any recipient of this Offering Circular should purchase any of the Capital Securities. Each investor contemplating purchasing Capital Securities should make its own independent investigation of the financial condition and affairs, and its own appraisal of the creditworthiness, of the Issuer and WestLB.

The distribution of this document and the offering or sale of the Capital Securities in certain jurisdictions may be restricted by law. None of the Issuer, the partners of the Issuer, WestLB or the Managers represent that this document may be lawfully distributed, or that the Capital 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 Issuer, the partners of the Issuer, WestLB or the Managers has taken any action which would permit a public offering of the Capital Securities or distribution of this document in any jurisdiction where action for that purpose is required. Accordingly, no Capital 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 Capital 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 Capital 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 Issuer, the partners of the Issuer, WestLB or the WestLB 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 Capital Securities do not represent partnership interests in the Issuer.

*In connection with the offering, Merrill Lynch International or any person acting for it may over-allot or effect transactions with a view to supporting the market prices of the Capital Securities at a level higher than that which might otherwise prevail for a limited time. However, there is no obligation on Merrill Lynch International 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 after a limited period. Such transactions may be effected on the Luxembourg Stock Exchange or otherwise.*

The Capital Securities have not been, and will not be, registered under the 1933 Act and are securities in bearer form that are subject to United States tax law requirements. Subject to certain exceptions, the Capital Securities may not be sold or delivered, directly or indirectly, within the United States or to U.S. persons.

## **FORWARD-LOOKING STATEMENTS**

In addition to historical information, this Offering Circular includes forward-looking statements. These statements relate to WestLB's future prospects, developments and business strategies. They are based on analyses of forecasts of future results and estimates of amounts not yet determinable or foreseeable. These forward-looking statements are identified by the use of terms and phrases such as "anticipate", "believe", "could", "estimate", "expect", "intend", "may", "plan", "predict", "project", "will", and similar terms and phrases, including references to assumptions. These statements are contained in the sections entitled "Summary of the Transaction", "Summary of the offering", "Risk Factors", "Business of WestLB" and other sections of this Offering Circular.

These forward-looking statements involve risks, uncertainties and other factors that may cause the actual future results, performance and achievements to be materially different from those suggested or described in this Offering Circular. Many of the factors that will determine these results, performance and achievements are beyond WestLB's control. Such factors include, among others, uncertainties in respect of overall economic development, loan defaults, court proceedings or other proceedings such as formal investigations of the European Commission in respect of illegal state aid, maintenance of appropriate refinancing conditions and generally the economic and business framework of the markets relevant for WestLB's business.

The risks described above and in the section entitled "Risk Factors" are not comprehensive. New risks, uncertainties and other factors may emerge from time to time and it is not possible for WestLB to predict all such risk factors, to assess the impact of all such risk factors on its business or the extent to which any factor, or combination of factors, may cause actual results to differ materially from those contained in any forward-looking statements. Given these risks and uncertainties, the investor should not place undue reliance on forward-looking statements as a prediction or guarantee of actual results or events.

## PRESENTATION OF FINANCIAL INFORMATION

WestLB's unconsolidated and consolidated financial statements have been prepared on the basis of the German Commercial Code (*Handelsgesetzbuch*) and generally accepted accounting rules thereunder ("**German GAAP**"). All of the financial information presented in this Offering Circular and relating to WestLB is based on WestLB's audited consolidated and unconsolidated financial statements as of and for the years ended 31 December 2002, 2003 and 2004 including the notes thereto. The audited unconsolidated and consolidated financial statements for the year ended 31 December 2004 have not yet been formally approved (*festgestellt*) by WestLB's Supervisory Board. WestLB's consolidated financial statements reflect financial information of WestLB and its affiliates consolidated under German GAAP (together, the "**WestLB Group**").

## TABLE OF CONTENTS

SUMMARY OF THE TRANSACTION .....	7
SUMMARY OF THE OFFERING .....	9
SUMMARY OF THE TERMS OF THE CAPITAL SECURITIES.....	11
SUMMARY OF THE TERMS OF THE PARTICIPATION AGREEMENT .....	14
SUMMARY OF THE TERMS OF THE LOAN AGREEMENT .....	19
SELECTED FINANCIAL INFORMATION .....	20
RISK FACTORS .....	22
USE OF PROCEEDS.....	26
CAPITALISATION, REGULATORY CAPITAL, DISTRIBUTABLE PROFITS AND DIVIDENDS ..	27
TERMS AND CONDITIONS OF THE CAPITAL SECURITIES .....	31
TERMS AND CONDITIONS OF THE PARTICIPATION AGREEMENT .....	50
TERMS AND CONDITIONS OF THE LOAN AGREEMENT .....	62
DESCRIPTION OF THE CONTRIBUTION AGREEMENT .....	74
DESCRIPTION OF THE ASSIGNMENT AGREEMENT .....	75
GENERAL INFORMATION ON WESTLB .....	76
GENERAL INFORMATION ON THE ISSUER .....	84
BUSINESS OF WESTLB .....	86
REGULATION .....	92
TAXATION .....	98
SUBSCRIPTION AND SALE .....	100
GENERAL INFORMATION .....	103
RECENT DEVELOPMENTS AND OUTLOOK .....	105

## 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 € 240,000,000 Capital Securities (the "**Capital Securities**") by Hybrid Capital Funding II Limited Partnership (the "**Issuer**") and the acquisition by the Issuer of a silent partnership interest (the "**Participation**") in the commercial enterprise of WestLB AG ("**WestLB**") in the form of a *Stille Gesellschaft* under German law pursuant to an agreement providing for a capital contribution by the Issuer to WestLB in the amount of € 240,000,000 (the "**Silent Contribution**") and dated 3 May 2005 (the "**Participation Agreement**") (together, the "**Transaction**").

The Issuer proposes to issue € 240,000,000 Capital Securities. With the proceeds of issue of the Capital Securities, the Issuer will acquire a silent partnership interest in the aggregate amount of € 240,000,000 in the commercial enterprise (*Handelsgewerbe*) of WestLB in the form of a *Stille Gesellschaft* under German law. As silent partner under the Participation Agreement ("**Silent Partner**"), the Issuer will make the Silent Contribution in the form of a cash contribution of € 240,000,000 to WestLB as principal. In return, the Issuer, 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 WestLB and payable semi-annually in arrear ("**Profit Participation Payments**"). Profit Participations will not accrue if (but only to such extent that) there are insufficient Distributable Profits available to make payment thereof. The Participation Agreement defines "**Distributable Profits**" as the unconsolidated net profit (*Jahresüberschuss*) or net loss (*Jahresfehlbetrag*) of the Bank, *plus* withdrawals from other earnings reserves, if any, accumulated during the term of this Agreement, *minus* any loss carried forward from previous years and *minus* any amount to be allocated to the legal reserves pursuant to Section 300 of the German Stock Corporation Act, all in compliance and determined in accordance with German GAAP (see "-Risk Factors – Risks associated with an investment in the Capital Securities – Coupon Payments on the Capital Securities depend on WestLB's profits and allocation of Profit Participations to the Participation"). If Distributable Profits of WestLB do not suffice for the accrual of full Profit Participations, Profit Participations may accrue in part. In addition, the Silent Partner shares in an Annual Balance Sheet Loss (as defined in the Silent Partnership Agreement) in the proportion which the book value of its Silent Contribution bears in relation to the aggregate book value of all components of WestLB's regulatory liable capital (*Haftkapitalanteile*) which are required to share in such Annual Balance Sheet Loss. 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**"). After a Reduction, the book value of the Silent Contribution will be written up again to its initial amount of € 240,000,000 to the extent that such write-up will not result in a Balance Sheet Loss for the relevant year. Future Profit Participations may only be paid after a full write-up of the Silent Contribution's book value to € 240,000,000. **Profit Participation Payments in following years will not increase to compensate for any shortfall in Profit Participation Payments during a previous year.**

Profit Participation Payments and replenishments of the Silent Contribution after a Reduction are subject to German withholding tax (*Kapitalertragssteuer*) ("**German Withholding Tax**") plus solidarity surcharge (*Solidaritätszuschlag*) to be withheld and transferred by WestLB to the German tax authorities. To the extent such Profit Participation Payments and to the extent such replenishments are attributable to the Issuer's limited partner as taxable profit under German tax laws, such withholdings will be counted as a prepayment towards the German income tax owed by the Issuer's limited partner. The Issuer's limited partner will be entitled to refund claims against the German tax authorities ("**Tax Refund Claims**") in amounts by which the prepayments in the form of withholdings made by WestLB exceed its actual German income tax liability. The Issuer's limited partner has undertaken, in a separate contribution agreement with the Issuer's general partner dated 11 May 2005 (the "**Contribution Agreement**"), to contribute to the Issuer amounts it receives from the German tax authorities on account of its Tax Refund Claims as and when it receives such amounts (each such payment a "**Contribution Payment**"). As Tax Refund Claims only become due after the tax assessment for each tax year, the Issuer, on 3 May 2005, has entered into a loan agreement (the "**Loan Agreement**") with the Lender. Under the Loan Agreement, the Lender is obliged to make loan advances (each an "**Advance**") to the Issuer. The Advances will be made (i) in the amount of the withholdings made by the Bank in connection with Profit Participation Payments on account of German Withholding Tax in order to fund in part the Issuer's obligation to pay interest on the Capital Securities, (ii) in the amount of the withholdings made by the Bank on account of German Withholding Tax in connection with a replenishment of the Silent Contribution after a Reduction in order to fund the Issuer's obligation to pay such amount to the Bank to further replenish the Silent Contribution, and (iii) in the amount of the interest payments falling due on the Capital Securities up to and including 30 December 2005 in order to fund such interest payments. The Issuer expects to repay



the Advances (i) made in connection with withholdings made by the Bank on account of German Withholding Tax with the monies that it receives as Contribution Payments and (ii) made to fund interest payments on the Capital Securities falling due on or prior to 30 December 2005 with the monies it receives as the first Profit Participation Payment under the Partnership Agreement.

Principal payments (“**Capital Payments**”) and interest payments (“**Coupon Payments**”) under the Capital Securities are conditional upon receipt by the Issuer of (i) Profit Participations under the Participation Agreement, (ii) the Repayment Amount (as defined below) to be paid to the Issuer by WestLB following termination of the Participation Agreement and (iii) Advances from the Lender under the Loan Agreement. Coupon Payments (save for Coupon Payments falling due on or prior to 30 December 2005) are thus linked to the Profit Participation Payments payable under the Participation Agreement falling due on such dates as the corresponding payments under the Capital Securities fall due. These are in turn dependent upon WestLB’s financial performance. Similarly, the repayment of principal on the Capital Securities is dependent upon WestLB’s ability after termination of the Participation Agreement to pay the Repayment Amount. In both instances, the Issuer’s ability and obligation to make payments under the Capital Securities are directly dependent on the financial condition and results of operations of WestLB. **Moreover, if WestLB incurs an Annual Balance Sheet Loss in any fiscal year, the book value of the Silent Contribution will be written down and holders of the Capital Securities (the “Securityholders”) will not receive Coupon Payments under the Capital Securities until the Silent Contribution has been fully written up using subsequent Distributable Profits.**

The Capital Securities have an indefinite term. The Issuer will redeem the Capital Securities only if it has actually received prior to redemption sufficient funding for the Capital Payments, whether through the payment of the Repayment Amount by WestLB following termination of the Participation Agreement or otherwise. The Participation Agreement runs for an indefinite period and may only be terminated by WestLB. It may not be terminated by the Silent Partner. A termination of the Participation Agreement by WestLB requires two years’ notice and, subject to certain exceptions described in this Offering Circular, may not become effective prior to 31 December 2015 for repayment on 30 June 2016. In addition, the Participation Agreement provides that no termination may become effective without prior regulatory approval. **Securityholders should therefore be aware that they may be required to bear the financial risks of an investment in the Capital Securities for an indefinite period of time.**

Pursuant to a security assignment agreement dated 11 May 2005 (“**Assignment Agreement**”) between the Issuer, the Issuer’s partners, WestLB, the Lender and HSBC Trustee (C.I.) Limited acting as a security trustee for the benefit of the Securityholders (the “**Security Trustee**”), the Issuer has assigned to the Security Trustee, for the benefit of the Securityholders, all present and future payment claims under the Participation Agreement, the Loan Agreement and the Contribution Agreement.

WestLB intends to treat the Silent Contribution under the Participation Agreement as solo tier one capital for the purposes of determining its compliance with regulatory capital requirements. For more information on the regulatory capital requirements applicable to WestLB and the WestLB Group, see “Regulation”.



## 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 Capital Securities and the information concerning (i) the Transaction, (ii) WestLB, the Issuer and the partners in the Issuer and (iii) the agreements among them. The following description is based on the situation on the Issue Date of the Capital Securities.*

<b>Securities Offered</b>	€ 240,000,000 Capital Securities; see (“Summary of the Terms of the Capital Securities”).
<b>Issuer</b>	Hybrid Capital Funding II Limited Partnership, a limited partnership established under the laws of Jersey on 27 April 2005.
<b>Partners in the Issuer</b>	<p>The Issuer’s general partner (with a 0.1 per cent. interest in the Issuer’s equity) is Hybrid Capital Funding II Limited, a limited liability company incorporated under the laws of Jersey (the “<b>Issuer General Partner</b>”).</p> <p>The sole shareholder of the Issuer General Partner is Mourant &amp; Co. Trustees Limited as trustee of the Hybrid Capital Funding II Charitable Trust. The Issuer’s limited partner (with a 99.9 per cent. interest in the Issuer’s equity) is Hybrid Funding II GmbH, Cologne, Germany, a limited liability company (<i>Gesellschaft mit beschränkter Haftung</i>) incorporated under the laws of Germany (the “<b>Issuer Limited Partner</b>”). The sole beneficial shareholder of the Issuer Limited Partner is Mourant &amp; Co. Trustees Limited as trustee of the Hybrid Funding II Charitable Trust.</p>
<b>Limited Purpose of Issuer</b>	Apart from entering into the Participation Agreement (see “Summary of the Terms of the Participation Agreement”), entering into other agreements ancillary to the Transaction and issuing the Capital Securities, the Issuer General Partner has undertaken to the Issuer Limited Partner that the Issuer will not create additional liabilities, except for those liabilities which are absolutely necessary to keep its business in operation. See “General Information on the Issuer—Incorporation, Domicile, Duration and Object”.
<b>Ordinary Issuer Relocation</b>	Under the partnership agreement of the Issuer and the articles of association of the Issuer General Partner, the Issuer and the Issuer General Partner will relocate their principal place of business and tax jurisdiction for German trade tax purposes to Germany, subject to certain conditions. Such relocation (an “ <b>Ordinary Issuer Relocation</b> ”) will not affect the Issuer’s obligations under the Capital Securities. See “General Information on the Issuer—Ordinary Issuer Relocation”.
<b>Participation</b>	With the proceeds of the issue of the Capital Securities, the Issuer will acquire the Participation pursuant to the Participation Agreement; see “Summary of the Terms of the Participation Agreement”.
<b>Contribution Agreement</b>	<p>In the Contribution Agreement, entered into between the Issuer Limited Partner and the Issuer General Partner, the Issuer Limited Partner has undertaken for the benefit of the Issuer to contribute to the Issuer any amounts it receives from the German tax authorities on account of its Tax Refund Claims. See “Description of the Contribution Agreement”.</p> <p>Following an Ordinary Issuer Relocation, the Issuer Limited Partner expects to continue to be entitled to receive amounts on account of its Tax Refund Claims and its obligation to pay those amounts to the Issuer remains unchanged.</p>

<b>Loan Agreement</b>	Under the Loan Agreement entered into between the Issuer and the Lender, the Issuer will be paid Advances corresponding to the relevant withholdings on account of German Withholding Tax on (i) the Profit Participation Payments and (ii) replenishments of the Silent Contribution after a Reduction. The Issuer will use the Advances to fund its obligations to make the Coupon Payments under the Capital Securities and to make such additional cash contribution to WestLB as is necessary to make up the withheld tax and complete the replenishment of the Silent Contribution after a Reduction. The Issuer will also be paid Advances by the Lender under the Loan Agreement to fund Coupon Payments falling due on the Capital Securities on or prior to 30 December 2005. See “Summary of the Terms of the Loan Agreement”.
<b>Assignment Agreement</b>	Pursuant to the Assignment Agreement, the Issuer has assigned to the Security Trustee, for the benefit of the Securityholders, all present and future payment claims under the Participation Agreement, the Loan Agreement and the Contribution Agreement. See “Description of the Assignment Agreement”.
<b>Principal Paying Agent</b>	WestLB AG
<b>Luxembourg Paying Agent</b>	WestLB International S.A.
<b>Rating</b>	The Issuer expects that, upon issuance, the Capital Securities will be assigned a rating of Baa2 by Moody’s Investors Service, Inc. 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 Investor Service, Inc.
<b>Security Trustee</b>	HSBC Trustee (C.I.) Limited
<b>Listing</b>	Application has been made to list the Capital Securities on the Luxembourg Stock Exchange
<b>Securities Codes</b>	ISIN: DE000A0D2FH1 Common Code: 021845167 Wertpapier-Kenn-Nummer (WKN): A0D2FH

## SUMMARY OF THE TERMS OF THE CAPITAL SECURITIES

The following summary refers to certain terms and conditions of the Capital 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 Capital Securities which may be found under “Terms and Conditions of the Capital Securities”. The following description is based on the situation on the Issue Date of the Capital Securities.

<b>Issuer</b>	Hybrid Capital Funding II Limited Partnership, a limited partnership established under the laws of Jersey on 27 April 2005.
<b>Nominal Amount</b>	€ 1,000 per Capital Security.
<b>Aggregate Nominal Amount</b>	€ 240,000,000.
<b>Issue Price</b>	100 per cent. of the Nominal Amount.
<b>Form</b>	The Capital Securities will be initially represented by a temporary global security in bearer form without coupons (the “ <b>Temporary Global Capital Security</b> ”) which will be exchangeable for a permanent global security in bearer form without coupons (“ <b>Permanent Global Capital Security</b> ”) upon certification as to non-US beneficial ownership. Beneficial interests in the Temporary Global Capital Security and the Permanent Global Capital Security will not be exchangeable for definitive Capital Securities in bearer form.
<b>Issue Date</b>	13 May 2005.
<b>Status</b>	The Capital Securities constitute unsubordinated and (with the exception of the collateral granted under the Assignment Agreement) unsecured conditional obligations of the Issuer ranking <i>pari passu</i> among themselves and with all other unsecured and unsubordinated liabilities of the Issuer, save for mandatory exceptions afforded by statutory law.
<b>Maturity</b>	The Capital Securities are perpetual securities and have no fixed maturity date. The Issuer may redeem the Capital Securities only upon the occurrence of certain events (see “Repayment Date and Repayment Amount” and “Termination and Repayment”).
<b>Coupon Payments</b>	<p>Coupon Payments will be made at a rate of 6.0 per cent. <i>per annum</i> and are contingent on receipt by the Issuer of Profit Participation Payments from WestLB under the Participation Agreement (save for the interest payments falling due on or prior to 30 December 2005) (see “Summary of the Terms of the Participation Agreement—Profit Participation Payments and Dates”) and Advances from the Lender under the Loan Agreement (see “Summary of the Loan Agreement—Advances”).</p> <p>If the aggregate Profit Participation accruing on account of the First Profit Period is less than € 31,584,000, the Issuer will apply the funds received from the Bank on account of such Profit Participation first to the repayment of the Advance received from the Lender for the purpose of funding the Coupon Payments on the Capital Securities falling due on 30 June and 30 December 2005 as well as to the Coupon Payment falling due on 30 June 2006 and will only be obliged to apply, on a <i>pro rata</i> basis, the remainder, if any, of the Profit Participation for the First Profit Period to the Coupon Payments under the Capital Securities falling due on 30 December 2006 and 30 June 2007.</p>

<b>Coupon Payment Dates</b>	For the period from the Issue Date up to (and including) 30 December 2005, Coupon Payments under the Capital Securities will be made on 30 June and 30 December 2005. Any subsequent Coupon Payments will be made on the dates on which Profit Participation Payments under the Participation Agreement, if any, are paid to the Issuer. The due dates for Profit Participation Payments under the Participation Agreement (“ <b>Profit Participation Payment Dates</b> ”) are 30 June and 30 December of each year, commencing 30 June 2006. Profit Participation Payment Dates will be delayed if the date of WestLB’s shareholders’ meeting which approves the annual accounts for the relevant fiscal year of WestLB is held after 29 June in any year. See “Summary of the Terms of the Participation Agreement—Profit Participation Payments and Dates”.
<b>Repayment Date and Repayment Amount</b>	The Capital Securities will be redeemed if WestLB terminates the Participation Agreement at its option but subject to certain restrictions set out therein. In such event, the Capital Securities will be redeemed on the date on which the Silent Contribution is repaid in accordance with the terms of the Participation Agreement. See “Summary of the Terms of the Participation—Repayment Date”. The redemption amount will equal the Repayment Amount (as defined below) paid by WestLB under the Participation Agreement (see “Summary of the Terms of the Participation Agreement—Repayment Amount”).
<b>Termination and Repayment</b>	The Issuer may, by giving at least 30 but not more than 60 days’ notice, call the Capital Securities for redemption, in whole but not in part, with effect on 30 June of any year on or after 30 June 2011. The Issuer may also redeem the Capital Securities earlier and on a different date if a change in law or regulation would require it to pay additional amounts to the Securityholders to make up for amounts withheld on account of tax. The Issuer shall redeem the Capital Securities at their nominal amount plus any interest accrued thereon. The Issuer may only redeem the Capital Securities in such circumstances if it has obtained funding for the relevant redemption payments. Accrued interest will be calculated on the basis of the actual number of days elapsed since the last Profit Participation Payment Date.
<b>Payment of Additional Amounts</b>	If the Issuer is in future required to withhold or deduct amounts payable under the Capital Securities on account of tax, it will be under an obligation to gross up such amounts payable (the “ <b>Additional Amounts</b> ”) so that the Securityholders receive the full amount that would have been payable were no such withholding or deduction required. The Issuer’s obligation to pay Additional Amounts is subject to funds being available to it for this purpose. The Issuer has currently not entered into any arrangements to avail itself of funds required to pay Additional Amounts and its ability to do so will depend on the Bank’s agreement, at the time, to pay higher Profit Participation Payments to cover such Additional Amounts (see “Risk Factors – Distributions on Capital Securities are conditional upon receipt of the necessary funds by the Issuer and Securityholders have no recourse against WestLB”). In the event of an Ordinary Issuer Relocation, the Bank will be required to indemnify the Issuer in respect of such Additional Amounts payable by it as a result of the Ordinary Issuer Relocation and it would do so by paying greater Profit Participations.
<b>Compliance with German Banking Regulations</b>	Under applicable German banking regulations, any repayment of the Silent Contribution made in violation of the terms of the Participation Agreement must be repaid to WestLB.

<b>Notices</b>	Notices in relation to the Capital Securities will be published in a newspaper designated for mandatory stock exchange notices in Luxembourg (expected to be the <i>Luxemburger Wort</i> ) or such other Luxembourg daily newspaper as the Issuer may select. Provided that the rules of the stock exchange(s) where the Capital Securities are listed so permit, this notice requirement may be satisfied by the delivery of the relevant notice to Clearstream Frankfurt, Clearstream Luxembourg and Euroclear for communication by it to the Securityholders or by delivery directly to the Securityholders.
<b>Governing Law</b>	German.
<b>Governing Language</b>	German.
<b>Tax Consequences</b>	For a discussion of the material Jersey and German tax consequences of purchasing, owning and disposing of the Capital Securities, see "Taxation".

## SUMMARY OF THE TERMS OF THE PARTICIPATION AGREEMENT

*The following summary refers to certain provisions 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 provisions of the Participation Agreement which may be found under "Terms and Conditions of the Participation". The following description is based on the situation on the Issue Date of the Capital Securities.*

<b>Bank</b>	WestLB AG.
<b>Silent Partner</b>	Hybrid Capital Funding II Limited Partnership, a limited partnership established under the laws of Jersey on 27 April 2005.
<b>Instrument</b>	Silent partnership interest in the commercial enterprise ( <i>Handelsgewerbe</i> ) of WestLB in the form of a <i>Stille Gesellschaft</i> under German law.
<b>Principal Amount</b>	The principal amount of the Silent Contribution is € 240,000,000 .
<b>Issue Price</b>	100 per cent.
<b>Issue Date</b>	The Participation Agreement provides that the Silent Contribution must be paid to WestLB no later than 13 May 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 at the option of WestLB 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) 1 January to (and including) 31 December 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 1 January of the year in which the Silent Partner ceases to share in WestLB'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 Payments and Dates</b>	<p>Except for the Profit Participation for the first Profit Period (the "<b>First Profit Participation</b>") (see "Profit Participation Payments 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 be payable in two equal Profit Participation Payments on (i) 30 December in the year following the end of the relevant Profit Period and (ii) the following 30 June (or, if any of these days 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.</p> <p>"<b>Business Day</b>" means a day on which TARGET (the Trans-European Automated Real Time Gross Settlement Express Transfer System) is operating credit or transfer instructions in respect of payments in Euro.</p>
<b>Profit Participation Payments and Dates for the First Profit Period</b>	<p>Subject to Profit Participations being excluded in whole or in part (see "Profit Participations Excluded"), the First Profit Participation shall amount to € 31,584,000 and shall be payable in three Profit Participation Payments. The first such Profit Participation Payment of € 16,800,000 shall be payable on the later of (i) 30 June 2006 or, if that is not a Business Day, the next Business Day or (ii) the Business Day following the date on which WestLB's annual financial statements have been adopted for the fiscal year 2005. The second and third such Profit Participation Payments of € 7,392,000 each shall become payable on 30 December 2006, and 30 June 2007 (or, if any of these days is not a Business Day, the next Business Day).</p>



**Profit Participation Rate for Profit Periods other than the First Profit Period**

**Profit Participations Excluded**

To the extent that the First Profit Participation shall be less than € 31,584,000 as a result of Profit Participations being excluded for the Profit Period ending 31 December 2005, the Bank will apply amounts that remain payable on the First Profit Participation to the first Profit Participation Payment and the remainder, if any, will be applied to the second and third Profit Participation Payment on a *pro rata* basis.

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 Principal Amount of the Silent Contribution at a rate of 6.16 per cent. *per annum*.

If WestLB records no Distributable Profits for the fiscal year to which the relevant Profit Period relates, no Profit Participations will accrue for the relevant Profit Period and the Issuer will not receive Profit Participation Payments. Accordingly, save for the interest payments falling due on or prior to 30 December 2005, no distributions will be made to the Securityholders in relation to the relevant fiscal year of WestLB. As set forth in further detail in the Participation Agreement, Profit Participations will not accrue or will not accrue in full:

- (i) if (but only to such extent that) there are insufficient Distributable Profits available for the fiscal year of the Bank in which the relevant Profit Period falls to make Profit Participation Payments; or
- (ii) if, as a result of losses in previous fiscal years, the principal amount of the Silent Contribution has been reduced and has not yet been fully written-up again as a result of profits accrued in subsequent fiscal years (see “Replenishment of Silent Contribution”); or
- (iii) in the case of insolvency on the part of, or regulatory intervention in respect of, WestLB; or
- (iv) if the Bank’s solvency ratio (*Gesamtkennziffer*) is below 9.0 per cent. on an unconsolidated basis, to the extent that payment of such Profit Participation would lead to or increase an unconsolidated annual loss (in accordance with the German Commercial Code) in the fiscal year of the Bank to which the relevant Profit Period relates; or
- (v) if the Termination Date falls within such Profit Period.

**Distributable Profits**

The Participation Agreement defines “**Distributable Profits**” as the net profit (*Jahresüberschuss*) or net loss (*Jahresfehlbetrag*) of the Bank as shown on the Bank’s unconsolidated profit and loss statement for the relevant Profit Period, *plus* withdrawals from other earnings reserves, if any, accumulated during the term of the Participation Agreement, *minus* any loss carried forward from previous years and *minus* any amount to be allocated to the legal reserves pursuant to Section 300 of the German Stock Corporation Act, all in compliance, and determined in accordance, with German GAAP. (See “Risk Factors – Risks associated with an investment in the Capital Securities – Coupon Payments on the Capital Securities depend on WestLB’s profits and allocation of Profit Participations to the Participation” and “Capitalisation, Regulatory Capital, Distributable Profits and Dividends.”)

**Loss Participation and Reduction**

If WestLB incurs an Annual Balance Sheet Loss in any fiscal year, the Silent Partner shares in such loss. The Silent Partner shares in an Annual Balance Sheet Loss in the proportion which the book value of the Silent Contribution bears to the aggregate book value of all components of WestLB’s regulatory liable capital (*aufsichtsrechtliches Eigenkapital*) sharing in the Bank’s Annual Balance Sheet Loss. At 31 December 2004 WestLB’s total regulatory liable capital amounted to € 10,736.6 million and WestLB’s regulatory liable capital sharing in Annual Balance Sheet Losses (*Genussrechtskapital*) amounted to € 2,102.0 million.



Following an Annual Balance Sheet Loss, there will be a corresponding Reduction in the book value of the Silent Contribution in an amount equivalent to 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. In accordance with mandatory German law, in the event of an insolvency/ liquidation of WestLB at a time where the book value of the Silent Contribution is lower than the amount of the initial Silent Contribution, the Silent Partner will only participate in such insolvency proceeding/ liquidation with such lower book value of the Silent Contribution.

**Annual Balance Sheet Loss**

Pursuant to the terms of the Silent Partnership Agreement, an "Annual Balance Sheet Loss" is present if the annual unconsolidated balance sheet of the Bank in accordance with the German Commercial Code, as audited by an auditing firm which is recognised by the German Financial Supervisory Authority (*Bundesanstalt für Finanzdienstleistungsaufsicht*) ("**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 net profit or net 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 with, and determined in accordance with, the German Stock Corporation Act, accounting principles generally accepted in the Federal Republic of Germany and other applicable German laws then in effect.

**Ranking and Subordination of Existing Silent Participations**

As provided in further detail in the Participation Agreement, WestLB's payment obligations under the Participation Agreement:

- (i) are subordinated to the claims of all existing and future creditors of WestLB (including profit participation rights in the form of *Genussscheine* in accordance with the German Banking Act); and
- (ii) rank at least *pari passu* with all claims for the repayment of capital contributions made with respect to existing and future silent participations in WestLB; and
- (iii) rank senior to all claims of shareholders of WestLB in connection with their shares in WestLB;

in each case as already arisen or arising in the future; provided that (i) Profit Participations shall accrue and be paid in priority to distributions on silent participations in WestLB existing as of the Issue Date (other than the silent participation held by Hybrid Capital Funding I Limited Partnership) ("**Existing Silent Participations**") as well as in priority to replenishments of the book value of any Existing Silent Participations and (ii) replenishments of the Silent Contribution (see "Replenishment of Silent Contributions") shall accrue and be made in priority to replenishments of the book value of any Existing Silent Participations which have been reduced on account of a sharing in losses and which have not yet been fully replenished. Hence, Profit Participations will accrue irrespective of whether or not the book values of Existing Silent Participations have fully been written-up and irrespective of whether or not profit participations accrue under Existing Silent Participations.

<b>Replenishment of Silent Contribution</b>	<p>Following a Reduction, the book value of the Silent Contribution will be increased in subsequent fiscal years of WestLB in which balance sheet profits (<i>Bilanzgewinn</i>) are recorded in accordance with German GAAP. The book value of the Silent Contribution will be written-up prior to the writing-up of Existing Silent Participations, but only after all profit participation rights in the form of <i>Genussscheine</i> in accordance with the German Banking Act have been fully written-up. Payments of dividends or other distributions on shareholders' equity or an allocation to reserves (<i>Einstellungen in Rücklagen</i>) and a write-up of Existing Silent Participations (but only with regard to write-downs existing as of the Issue Date) may only occur after the Silent Contribution has been fully written-up again to the principal amount of the Silent Contribution at the Start Date.</p> <p>No such write-up 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. Profit Participations accruing after a Reduction of the Silent Contribution will be attributed (as set forth above) to the Profit Participation for the current fiscal year but not for any previous fiscal year in which a Profit Participation was not accrued or been paid due to an Annual Balance Sheet Loss. No Profit Participation Payments will be made until the book value of the Silent Contribution has been fully written up.</p>
<b>Principal Payments</b>	No payments of principal will be made by WestLB other than on repayment of the Silent Contribution (see "Repayment Date").
<b>Termination</b>	<p>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 in accordance with its terms and subject to the conditions stated therein.</p> <p>WestLB is not obliged to terminate the Participation Agreement on any particular day or days of the year. As provided in further detail in the Participation Agreement, WestLB may only terminate the Participation Agreement:</p> <ul style="list-style-type: none"> <li>(i) if tax or regulatory changes which are material and adverse to WestLB occur, but in no event with effect prior to 31 December 2010; or</li> <li>(ii) with effect as of 31 December 2015 or any 31 December thereafter, and provided that, in each case, the book value of the Silent Contribution is equal to its original principal amount.</li> </ul> <p>WestLB may only terminate the Participation Agreement with two years' prior notice to the Silent Partner. Any notice of termination by WestLB only becomes effective upon the BaFin's approval thereof.</p>
<b>Termination Date</b>	The Termination Date is the last date on which the Silent Partner participates in the profits and losses of WestLB as Silent Partner, which 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).
<b>Repayment Date</b>	The " <b>Repayment Date</b> " is the later of (i) 30 June in the fiscal year of WestLB following the fiscal year in which the Termination Date occurs or, if this date is not a Business Day, on the next following Business Day, or (ii) if, on 29 June of the relevant fiscal year of West LB, WestLB's annual financial statements for the fiscal year in which the Termination Date occurred have not yet been adopted, the Business Day following such adoption.
<b>Repayment Amount</b>	On the Repayment Date, WestLB will pay to the Silent Partner the lower of the book value of the Silent Contribution as at the Repayment Date and its original principal amount (the " <b>Repayment Amount</b> ").

<b>Enforcement Rights</b>	The Participation Agreement constitutes a contract between WestLB and the Issuer. Therefore, only the Issuer (or its assignee) can enforce rights under the Participation Agreement against WestLB. The Issuer has no duty to bring an action against WestLB in order to enforce its rights under the Participation Agreement.
<b>Corporate Authorization and Registration</b>	<p>The Participation Agreement constitutes a partial profit transfer agreement (<i>Teilgewinnabführungsvertrag</i>) under German law requiring an affirmative resolution by WestLB's shareholders and registration in WestLB's commercial register.</p> <p>At the shareholders' meeting held on 3 May 2005, WestLB's shareholders consented to the Participation Agreement. Registration in the commercial registers of WestLB occurred on 11 May 2005.</p>
<b>Place of Performance and Place of Jurisdiction</b>	Düsseldorf, Germany.
<b>Governing Law</b>	German.
<b>Governing Language</b>	German.

## SUMMARY OF THE TERMS OF THE LOAN AGREEMENT

*The following summary refers to certain provisions 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 provisions 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 of the Capital Securities.*

<b>Parties</b>	WestLB AG as Lender. Hybrid Capital Funding II Limited Partnership, Jersey, Channel Islands, a limited partnership established under the laws of Jersey as Borrower.
<b>Advances</b>	On each date on which a Profit Participation Payment becomes due, the Lender is required to pay an Advance to the Issuer in an amount corresponding to the withholding made by WestLB on account of German Withholding Tax on the relevant Profit Participation Payment. On each date on which the Silent Contribution is replenished after a Reduction, the Lender is required to pay an Advance to the Issuer in an amount corresponding to the withholding made by WestLB on account of German Withholding Tax on the relevant replenishment. On each date on which a Coupon Payment falls due under the Capital Securities on or prior to 30 December 2005, the Lender is required to pay an Advance to the Issuer in an amount corresponding to such Coupon Payment.
<b>Repayment</b>	The Issuer is required to repay outstanding Advances made in connection with withholdings made by the Bank on account of German Withholding Tax with the monies it receives as Contribution Payments promptly upon receipt of the relevant Contribution Payment. The Issuer expects to repay Advances made to fund interest payments on the Capital Securities falling due on or prior to 30 December 2005 with the monies it receives as the Profit Participation Payment for the First Profit Period under the Partnership Agreement. The Issuer will make such repayment to the Lender in priority to making the Coupon Payments on the Capital Securities that fall due from and (including) 30 June 2006 through (and including) 30 June 2007. Recourse of the Lender against the Issuer for repayment of Advances will be limited to Contribution Payments and the first Profit Participation Payment actually received by the Issuer from the Issuer Limited Partner and the Bank, respectively.
<b>Interest</b>	The Issuer must pay interest to the Lender on each date it makes a Prepayment. The interest rate will initially be 3-month EURIBOR plus 0.04 per cent. <i>per annum</i> .
<b>Governing Law</b>	German.
<b>Governing Language</b>	German.

## SELECTED FINANCIAL INFORMATION

### WestLB

The following table presents selected unconsolidated financial information of WestLB pursuant to German GAAP as of and for the last three fiscal years ended 31 December 2002, 2003, and 2004, respectively:

	<i>(in € billion)</i>		
	<b>2004</b>	<b>2003</b>	<b>2002</b>
<b>Balance Sheet</b>			
Cash / Liquid debt issues	3.9	16.7	10.4
Claims on Banks	81.7	66.1	72.2
Claims on Customers	56.2	67.7	81.1
Securities / Equalisation Claims	57.5	51.2	58.6
Equity Investments in affiliated and non-affiliated Companies	6.6	8.9	8.7
Trust Assets	0.5	0.5	0.5
Fixed Assets	0.3	0.3	0.3
Other Assets	7.9	6.8	6.5
<b>Total Assets</b>	<b>214.6</b>	<b>218.2</b>	<b>238.3</b>
Liabilities to Banks	94.4	91.5	104.7
Liabilities to Customers	58.9	61.0	61.0
Certificated Liabilities	35.8	42.4	49.7
Trust Liabilities (Treuhandverbindlichkeiten)	0.5	0.5	0.5
Other Liabilities	14.6	12.6	10.5
Subordinated Liabilities / Profit participation capital	6.5	6.8	7.4
Capital and Reserves	3.9	3.4	4.5
<b>Total Liabilities</b>	<b>214.6</b>	<b>218.2</b>	<b>238.3</b>
<b>Business Volume</b>	<b>270.5</b>	<b>291.5</b>	<b>328.1</b>
	<i>(in € million)</i>		
<b>Statement of Income</b>	<b>2004</b>	<b>2003</b>	<b>2002</b>
Net Interest Income	1,657.3	1,548.3	1,286.2
Risk Provisions / Result of Evaluation (Credit Risk)	234.4	-1,098.3	-1,882.0
Interest Income after risk provisioning	1,891.7	450.0	-595.8
Net commission income	278.0	338.1	438.6
Net income from trading operations	-92.8	-104.2	219.7
Other operating expenses	59.1	142.2	115.6
Personel expenses	-697.5	-684.9	-773.7
Other administrative expenses	-777.7	-825.3	-902.4
Income from investment portfolio and equities	35.4	-1,266.3	1,012.5
<b>Net Income before extraordinary result / taxes</b>	<b>696.2</b>	<b>-1,950.4</b>	<b>-485.5</b>
extraordinary result	-1,571.0	-342.0	-65.3
<b>Net Income before Taxes</b>	<b>-874.8</b>	<b>-2,292.4</b>	<b>-550.8</b>
Taxes	-45.2	-27.6	-59.2
<b>Net Loss for the year after taxes</b>	<b>-920.0</b>	<b>-2,320.0</b>	<b>-610.0</b>

## WestLB Group

The following table presents selected consolidated financial information of the WestLB Group pursuant to German GAAP as of and for the last three fiscal years ended 31 December 2002, 2003 and 2004, respectively:

	<i>(in € billion)</i>		
	2004	2003	2002
<b>Balance Sheet</b>			
Cash / Liquid debt issues	4.1	17.2	10.8
Claims on Banks	85.4	70.3	77.4
Claims on Customers	75.0	84.9	88.8
Securities / Equalisation Claims	75.4	68.4	72.3
Equity Investments in affiliated and non-affiliated Companies	3.1	5.5	6.4
Trust Assets	0.5	0.5	0.5
Other Assets	10.3	9.4	9.4
<b>Total Assets</b>	<b>253.8</b>	<b>256.2</b>	<b>265.6</b>
Liabilities to Banks	112.1	106.1	118.8
Liabilities to Customers	67.0	70.1	63.8
Certificated Liabilities	48.1	55.1	58.1
Treuhandverbindlichkeiten	0.5	0.5	0.5
Other Liabilities	15.3	13.4	9.2
Subordinated Liabilities / Profit participation capital	6.9	7.2	7.6
Capital and Reserves	3.9	3.8	7.6
<b>Total Liabilities</b>	<b>253.8</b>	<b>256.2</b>	<b>265.6</b>
<b>Business Volume</b>	<b>349.2</b>	<b>365.2</b>	<b>396.9</b>

	<i>(in € million)</i>		
	2004	2003	2002
<b>Statement of Income</b>			
Net Interest Income	1,591.7	1,891.4	1,540.0
Risk Provisions/Result of Evaluation (Credit Risk)	117.9	-1,181.8	-1,984.8
Interest Income after risk provisioning	1,709.6	709.6	-444.8
Net commission income	336.4	438.1	692.2
Net income from trading operations	-170.5	1.4	177.3
Other operating expenses	212.6	254.3	230.1
Personel expenses	-924.3	-984.7	-1,217.7
Other administrative expenses	-878.2	-843.3	-1,055.9
Income from investment portfolio and equities	52.2	-1,021.9	39.5
Income from the release of the fund for general banking risks pursuant to Section 340 g of Commercial Code	170.8	0.0	0.0
<b>Net income before extraordinary result/taxes</b>	<b>508.6</b>	<b>-1,446.5</b>	<b>-1,579.3</b>
Extraordinary result	-1,583.6	-390.8	-88.1
<b>Net income before taxes</b>	<b>-1,075.0</b>	<b>-1,837.3</b>	<b>-1,667.4</b>
Taxes	-84.3	-60.1	-62.2
<b>Net Loss for the year after taxes</b>	<b>-1,159.3</b>	<b>-1,897.4</b>	<b>-1,729.6</b>

## **RISK FACTORS**

*The following is a summary of certain aspects of the business of WestLB and the Capital 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.*

### **Risks associated with the business of WestLB**

#### ***Losses Stemming from Credit Exposure and Increased Loan Loss Provisions***

WestLB's business is subject to the risk that borrowers and other contractual partners may become unable to meet their obligations to WestLB. Although WestLB regularly reviews its credit exposure and corresponding collateral position with regard to specific borrowers and to specific countries and industries, defaults may arise from events or circumstances that are difficult to foresee or detect or have not yet been foreseen or detected. In addition, WestLB may find that any collateral position is insufficient to cover the respective credit exposure due to, for example, market developments reducing the value of such collateral. Any default by a major borrower of WestLB could have a material adverse effect on WestLB's business, results of operations or financial condition. This, in turn, could result in WestLB generating no Distributable Profits such that no distributions under the Capital Securities would be made for the relevant fiscal year and, potentially, in the future (until the full replenishment of the Silent Contribution after a Reduction).

In order to cover estimated loan losses, WestLB has made individual value adjustments and general bad debt provisions. Although WestLB's management has exercised its best judgment in establishing provisions for loan losses, WestLB may have to increase its loan loss provisions in the future as a result of a rise in the number or amount of nonperforming loans in its loan portfolio or as a result of applying uniform provisioning policies to the entire loan portfolio of WestLB. Any such increases in loan loss provisions in excess of existing provisions could have a material adverse effect on WestLB's business, results of operations and financial condition. This, in turn, could result in WestLB generating no Distributable Profits such that no distributions under the Capital Securities would be made for the relevant fiscal year and, potentially, in the future (until the full replenishment of the Silent Contribution after a Reduction).

#### ***Risks Associated with the Risk Management Procedures and Integration thereof***

WestLB may not be successful in developing and implementing new risk management policies, procedures and assessment methods, in particular the information technology on which these risk management policies, procedures and assessment methods of WestLB are based. As a result thereof or as a result of insufficiencies at the level of WestLB's risk management policies, procedures and assessment methods may not be effective in mitigating its risk exposure in each of the markets in which it is active or against all types of risk, including risks that WestLB may fail to identify or anticipate in the future or which WestLB has failed to identify or anticipate in the past. There can be no assurance that WestLB's procedures for identifying, monitoring and managing risks will be sufficient and adequate in the future. Any such insufficiency or inadequacy could expose WestLB to material unanticipated losses that would have a material adverse effect on its business, results of operations and financial condition. This, in turn, could result in WestLB generating no Distributable Profits such that no distributions under the Capital Securities would be made for the relevant fiscal year and, potentially, in the future (until the full replenishment of the Silent Contribution after a Reduction).

#### ***Increased Exposure to Market Risk***

When entering into trading and investment positions in the debt, currency and equity markets, assessments and predictions about future developments of the financial markets are made as the revenues and profits derived from such positions and transactions are dependent on market prices and price movements. Many of the more sophisticated transactions are designed to profit from price movements and differences among prices. If prices move in a direction not anticipated by WestLB, it may experience substantial losses which could have a material adverse effect on its business, results of operations or financial condition. This, in turn, could result in WestLB generating no Distributable Profits such that no distributions under the Capital Securities would be made for the relevant fiscal year and, potentially, in the future (until the full replenishment of the Silent Contribution after a Reduction).



### ***Abolition of Maintenance Obligation (Anstaltslast) and Guarantee Obligation (Gewährträgerhaftung)***

The imminent abolition of Maintenance Obligation and Guarantee Obligation as per 18 July 2005 (see “General Information on WestLB – Institutional Liability and Guarantor Liability”) dramatically changes the operating environment for WestLB.

As the statutory principles of Maintenance Obligation and Guarantee Obligation have so far enabled WestLB to access the capital markets at any time for refinancing purposes, liquidity risk (i.e., the risk of potential asset and liability mismatches that could prevent WestLB from repaying borrowings as they mature or from funding new loans and investments as they arise) was previously immaterial. If WestLB is unable to manage this risk successfully, its ability to repay borrowings and to fund new loans and investments could suffer and WestLB’s business, results of operations or financial condition could be materially adversely affected. This, in turn, could result in WestLB generating no Distributable Profits such that no distributions under the Capital Securities would be made for the relevant fiscal year and, potentially, in the future (until the full replenishment of the Silent Contribution after a Reduction).

In addition, WestLB expects that the abolition of Maintenance Obligation and Guarantee Obligation will result in increased funding costs of WestLB. Any significant increase in the future in WestLB’s funding costs without corresponding increases in the risk adjusted returns on the loan portfolio would materially adversely affect WestLB’s profitability. To prevent greater pressure on future margins, WestLB has already begun to seek higher yielding assets which potentially means assets with higher risks. If WestLB is unable to manage these risks effectively and adequately, its business, results of operations and financial condition could suffer. This, in turn, could result in WestLB generating no Distributable Profits such that no distributions under the Capital Securities would be made for the relevant fiscal year and, potentially, in the future (until the full replenishment of the Silent Contribution after a Reduction).

### **Risks associated with an investment in the Capital Securities**

#### ***Coupon Payments on the Capital Securities depend on WestLB’s profits and allocation of Profit Participations to the Participation.***

The amounts payable by WestLB to the Issuer as Profit Participation Payments under the Participation Agreement and, in turn, by the Issuer as Coupon Payments under the Capital Securities to Security-holders (save for coupon payments falling due on or prior to 30 December 2005 which will depend on the receipt by the Issuer of Advances from the Lender in corresponding amounts), depend on the future profits or losses of WestLB and the manner in which profits, if any, are allocated. Under the Participation Agreement, Profit Participations will accrue if (but only to the extent that) there are sufficient Distributable Profits shown on WestLB’s unconsolidated profit and loss statement for the fiscal year to which the relevant Profit Period relates. Hence, if WestLB’s Distributable Profits do not suffice for the accrual of full Profit Participations, no or only partial Profit Participation Payments will be made to the Issuer and no or only partial corresponding Coupon Payments will be made by the Issuer. See “Summary – Summary of the Transaction”.

Further, whether or not WestLB has sufficient Distributable Profits available to make Profit Payments depends on how profits, if any, are allocated by WestLB’s management and shareholders. Even if WestLB were to record a net profit (*Jahresüberschuss*) in accordance with German GAAP in any given fiscal year, full Profit Participations would not accrue under the Participation Agreement if WestLB’s management were under a statutory obligation to allocate a portion of such profits to reserves. If its statutory reserves are less than 10 per cent. of its stated share capital (€ 1,794.6 million as of 31 December 2004), WestLB must allocate at least 5 per cent. of its annual surplus before Profit Distribution, as reduced by losses carried forward from prior fiscal years, to reserves. As of 31 December 2004, WestLB had no statutory reserves. Accordingly, based on the stated share capital figure as at 31 December 2004, WestLB must allocate at least 5 per cent. of its future net profits (before Profit Distributions) to statutory reserves until such reserves amount to € 179.46 million. Amounts used to make such allocations to the statutory reserves will not be available as Distributable Profits. Further, even though WestLB could, even in the absence of a net profit, release funds from other profit reserves (*andere Gewinnrücklagen*) accrued over the term of the Participation Agreement to create Distributable Profits, there is no obligation for WestLB’s management or shareholders to do so. WestLB’s management and shareholders are under no obligation whatsoever to approve unconsolidated accounts only if these accounts show Distributable Profits which are sufficient for the accrual of full Profit Participations under the Participation Agreement.

***Capital Payments on the Capital Securities are dependent on the Repayment Amount under the Participation Agreement.***

If, because the Silent Contribution has participated in WestLB's Annual Balance Sheet Loss, there has been a Reduction of the Silent Contribution's book value at the time that it becomes due for repayment following the insolvency or liquidation of WestLB and the Silent Contribution's book value has not yet been fully written up to its initial principal amount, the Repayment Amount payable under the Participation Agreement will be lower than its initial principal amount. In such case, Capital Payments under the Capital Securities will be lower than the nominal amount of the Capital Securities. Accordingly, even in the unlikely case that liquidation proceeds would be allocated to junior creditors of WestLB following an insolvency or liquidation of WestLB, Balance Sheet Losses of WestLB may result in the Securityholders incurring a loss on their investment upon redemption of the Capital Securities.

***Claims under the Participation Agreement are subordinated.***

The payment obligations of WestLB under the Participation Agreement constitute obligations that are subordinated to the full prior payment in cash or cash equivalents of all existing and future unsubordinated and subordinated indebtedness of WestLB. Accordingly, the Issuer's rights under the Participation Agreement will rank behind all unsubordinated and subordinated creditors of WestLB in the event of the liquidation or dissolution of WestLB and senior only to shareholders' claims and claims under Existing Silent Participations. WestLB's payment obligations under the Participation Agreement will rank *pari passu* amongst themselves and with all claims in respect of future participations in the form of *Stille Gesellschaft* in WestLB and other Tier 1 capital instruments of WestLB ranking *pari passu* therewith. WestLB has agreed in the Participation Agreement not to accept any additional participations in the form of *Stille Gesellschaft* in WestLB ranking senior (as to participation in WestLB's assets in liquidation or otherwise) to claims under the Participation Agreement but has not agreed any restrictive covenants regarding its ability to incur additional indebtedness in the form of *Stille Gesellschaft* ranking *pari passu* or additional indebtedness ranking senior to claims under the Participation Agreement.

***Profit Participation Payments under the Participation Agreement and Coupon Payments under the Capital Securities are not cumulative.***

Profit Participation Payments under the Participation Agreement and, in turn, Coupon Payments under the Capital Securities are not cumulative. Hence, if no or only partial Profit Participation Payments were made under the Participation Agreement and, in turn, no or only partial Coupon Payments were made under the Capital Securities, Profit Participation Payments and Coupon Payments in following years will not increase to compensate for any shortfall.

***The Issuer is a special purpose entity which is not affiliated with WestLB. Coupon Payments and Capital Payments under the Capital Securities are conditional upon receipt of the necessary funds by the Issuer and Securityholders have no recourse against WestLB.***

The Issuer is not affiliated with WestLB and its only assets are the claims under the Participation Agreement, the Loan Agreement and the Contribution Agreement. Further, the Issuer's obligations to make Coupon Payments and Capital Payments (including, if necessary, any Additional Amounts) under the Capital Securities are conditional upon the receipt of funds under the Participation Agreement and the Loan Agreement. Hence, if the Issuer does not receive funds under the Participation Agreement or the Loan Agreement, it will have no obligation to make the corresponding Coupon Payments or Capital Payments (or Additional Amounts) under the Capital Securities. In any such case, Securityholders will not receive Coupon Payments or Capital Payments under the Capital Securities and will have no claim or other recourse against WestLB.

The Issuer's obligation to pay Additional Amounts is subject to funds being available to it for this purpose. The Issuer has currently not entered into any arrangements to avail itself of funds required to pay Additional Amounts and its ability to do so will depend on the Bank's agreement, at the time, to pay higher Profit Participation Payments to cover such Additional Amounts. In the event of an Ordinary Issuer Relocation, the Bank will be required to indemnify the Issuer in respect of such Additional Amounts payable by it as a result of the Ordinary Issuer Relocation and would do so by paying higher Profit Participations.

The activities of the Issuer are contractually limited to performing its role in the Transaction. There can be no assurance, however, that the management of the Issuer will restrict its business activities to the

Transaction, which may result in the Issuer incurring additional liabilities. Any such additional liabilities of the Issuer could adversely affect its ability to perform its obligations in connection with the Transaction and its obligations under the Capital Securities. If the Issuer is not in a position to meet its obligations under the Capital Securities, Securityholders will have no claim or other recourse against WestLB.

***The Capital Securities have no scheduled maturity.***

The Capital Securities have an indefinite term and will only be redeemed if the Participation Agreement is terminated and the Silent Contribution is repaid to the Issuer or if the Issuer chooses to exercise its right of redemption in accordance with the terms of the Capital Securities. The Capital Securities may be terminated by the Issuer for the first time with effect on 30 June 2011, but subject to the availability of funds to the Issuer required for full repayment of capital and accrued interest. The Issuer may fund any repayment of the Capital Securities out of the funds received by it upon repayment of the Silent Contribution from the Bank. However, the Participation Agreement runs for an indefinite period and may, according to its terms, only be terminated by WestLB and may not be terminated by the Issuer. Other than for certain tax or regulatory reasons, a termination of the Participation Agreement by WestLB may only become effective on or after 31 December 2015 and in the event of termination as of such date repayment of the principal amount of the Silent Contribution would fall due on 30 June 2016. 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. No arrangements have been made by the Issuer to finance the repayment of the Capital Securities in any other way than by repayment of the Silent Contribution from the Bank. Therefore, Securityholders should be aware that they may be required to bear the financial risks of an investment in the Capital Securities for an indefinite period of time.

***The Agreements between WestLB and the Issuer may not be at arms length.***

The Issuer is owned by Hybrid Capital Funding II Limited, Jersey, as Issuer General Partner and Hybrid Funding II GmbH, Cologne, Germany as Issuer Limited Partner and neither the Issuer nor any of its partners is affiliated with WestLB. It is the intention of WestLB, the Issuer, the Lender and the Issuer Limited Partner that the terms of any agreements and transactions among them, including the Participation Agreement, the Terms and Conditions of the Capital Securities, the Contribution Agreement and the Loan Agreement by and among, *inter alia*, WestLB, the Issuer, the Lender and the Issuer Limited Partner should be fair to all parties and consistent with market terms. However, there can be no assurance that such agreements or transactions are on terms as favourable to the Issuer as those that could have been obtained from parties other than WestLB.

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

The Capital 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 Capital Securities. Although application has been made to have the Capital Securities listed on the Luxembourg Stock Exchange, there can be no assurance that an active public market for the Capital Securities will develop. If such a market develops, neither the Lead Managers nor any other person is obliged to maintain it. In addition, it is anticipated that a substantial portion in principal amount of the Capital Securities will, directly or indirectly, be acquired and held by shareholders of WestLB (see "Subscription and Sale"), which could reduce the size and liquidity of such a market. Furthermore, the liquidity and the market for the Capital Securities can be expected to vary with changes in the securities market and economic conditions, the financial condition and prospects of WestLB and the Issuer and other factors which generally influence the market prices of securities. Such fluctuations may significantly affect liquidity and market prices for the Capital Securities.

***Agreements governed by German law may be subject to general termination rights.***

The Capital Securities, the Participation Agreement, the Contribution Agreement, the Loan Agreement and the Assignment Agreement 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 any of those agreements will not assert the existence of such a termination right in the future.

## USE OF PROCEEDS

The proceeds from the issue of the Capital Securities will amount to € 240,000,000 and will be used by the Issuer to acquire a silent partnership interest in the commercial enterprise (*Handelsgewerbe*) of WestLB in the form of a *Stille Gesellschaft* under German law pursuant to the Participation Agreement, which provides for a capital contribution by the Issuer to WestLB in the form of the Silent Contribution. In addition to the commissions payable to the Managers (see “Subscription and Sale”), WestLB expects the costs related to the offering of the Capital Securities to amount to € 270,000.

## CAPITALISATION, REGULATORY CAPITAL, DISTRIBUTABLE PROFITS AND DIVIDENDS

### Capitalisation and Indebtedness

The following tables present the audited unconsolidated and consolidated capitalisation of WestLB and the WestLB Group pursuant to German GAAP at the dates specified.

#### *WestLB*

	as of 31 December	
	2004	2003
	(in € million)	
<b>Long-term debt</b>		
– Bonds and notes	19,683.9	10,968.0
– Other Liabilities	15,261.3	12,787.1
<b>Total long-term debt</b>	34,945.2	23,755.1
<b>Short-term debt</b>	154,148.8	171,150.5
<b>Total Debt</b>	<b>189,094.0</b>	<b>194,905.6</b>
<b>Equity</b>		
– Paid in capital	1,794.6	950.5
– Capital reserves	1,561.3	1,510.9
– Capital contribution made to implement the resolved capital increase	250.0	–
– Retained earnings reserves required by WestLB's Statutes	–	–
– Other reserves	–	–
– Total reserves from retained earnings	–	–
– Silent participation	272.5	837.1
<b>Equity-like Positions</b>		
– Funds for general banking risks	82.0	82.0
– Participation certificates	2,427.7	2,423.9
– Subordinated liabilities	4,111.0	4,338.5
<b>Total Equity and Equity-like Positions</b>	<b>10,499.1</b>	<b>10,142.9</b>

**WestLB Group**

	as of 31 December	
	2004	2003
	(in € million)	
<b>Long-term debt</b>		
– Bonds and notes	28,382.2	20,291.3
– Other Liabilities	19,613.7	16,455.7
<b>Total long-term debt</b>	47,995.9	36,747.0
<b>Short-term debt</b>	179,197.0	194,527.0
<b>Total Debt</b>	<b>227,192.9</b>	<b>231.274.0</b>
<b>Equity</b>		
– Paid in capital	1,794.6	950.5
– Capital reserves	1,561.3	1,510.9
– Capital contribution made to implement the resolved capital increase	250.0	–
– Equalising items for shares of other shareholders	-49.6	287.2
– Group reserves	14.7	5.9
– Silent participation	272.5	837.1
<b>Equity-like Positions</b>		
– Funds for general banking risks	89.0	260.9
– Participation certificates	2,648.7	2,644.9
– Subordinated liabilities	4,278.4	4,506.7
<b>Total Equity and Equity-like Positions</b>	<b>10,859.6</b>	<b>11,004.1</b>

**Material Changes in Capitalisation and Indebtedness**

As per 31 December 2004, WestLB AG's owners effected the conversion of a portion of a silent contribution made to the Bank into share capital. The share capital increase was registered in WestLB AG's commercial registers on 21 February 2005 and resulted in an increase of paid-in capital in the amount of € 33.3 million and of capital reserves by € 216.7 million. This increase corresponded to a decrease of the principal amount of the remaining silent contribution by € 250 million. WestLB received a silent capital contribution in the principal amount of US\$ 300,000,000 from Hybrid Capital Funding I Limited Partnership on 22 April 2005. The corresponding silent participation agreement dated 6 April 2005 is made on terms which are substantially similar to the terms of the Participation Agreement described in this Offering Circular.

There has been no other material change in the consolidated or unconsolidated capitalisation and indebtedness of WestLB and the WestLB Group since 31 December 2004.

## Regulatory Capital

The following table shows the composition of WestLB's and the WestLB 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 (columns may not add up due to rounding):

	as of 31 December				
	2000	2001	2002	2003	2004
	(in € million)				
<b>WestLB only</b>					
Tier I (liable) capital ( <i>Eigenkapital</i> )	5,521	5,623	5,054	5,697	4,846
of which:					
Silent participations ( <i>Stille Einlagen</i> )	0	0	0	1,250	587
Reserves ( <i>offene Rücklagen</i> )	4,034	4,144	4,028	3,418	2,417
Tier II (supplementary) capital ( <i>Ergänzungskapital</i> )	5,329	5,623	4,937	5,259	4,525
Deductible items ( <i>Abzugsposten</i> )	-47	-31	-28	-42	-46
Tier III capital	1,799	2,168	1,576	1,168	1,411
<b>Total</b>	<b>12,602</b>	<b>13,382</b>	<b>11,539</b>	<b>12,082</b>	<b>10,737</b>
Overall Ratio ( <i>Gesamtkennziffer</i> )	9.7%	9.8%	11.2%	14.6%	15.1%
	2000	2001	2002	2003	2004
<b>WestLB Group</b>					
Tier I (liable) capital ( <i>Eigenkapital</i> )	7,987	8,396	7,813	8,871	7,641
of which:					
Silent participations ( <i>Stille Einlagen</i> )	793	1,023	1,531	2,709	1,872
Reserves ( <i>offene Rücklagen</i> )	7,190	7,819	9,439	9,327	6,357
Tier II (supplementary) capital ( <i>Ergänzungskapital</i> )	7,124	7,777	6,798	7,288	6,323
Deductible items ( <i>Abzugsposten</i> )	-188	-97	-109	-111	-71
Tier III capital	1,953	1,955	1,750	848	935
<b>Total</b>	<b>16,876</b>	<b>18,031</b>	<b>16,252</b>	<b>16,896</b>	<b>14,828</b>
Overall Ratio ( <i>Gesamtkennziffer</i> )	9.8%	9.6%	10.5%	12.5%	13.0%

WestLB received a silent capital contribution in the principal amount of US\$ 300,000,000 from Hybrid Capital Funding I Limited Partnership on 22 April 2005. The corresponding silent participation agreement dated 6 April 2005 is made on terms which are substantially similar to the terms of the Participation Agreement. There has been no other material change in the regulatory capitalisation of WestLB or the WestLB Group since 31 December 2004.

## Net Profits, Distributable Profits and Dividends of WestLB

Coupon Payments on the Capital Securities depend, among other things, on the Distributable Profits of WestLB for the preceding fiscal year. See "Summary of the Terms of the Capital Securities".

The Participation Agreement defines "**Distributable Profits**" as the net profit (*Jahresüberschuss*) or net loss (*Jahresfehlbetrag*) of the Bank as shown in the Bank's unconsolidated profit and loss statement for the relevant Profit Period, *plus* withdrawals from other earnings reserves, if any, accumulated during the term of the Participation Agreement, *minus* any loss carried forward from previous years and *minus* any amount to be allocated to the legal reserves pursuant to Section 300 of the German Stock Corporation Act, all in compliance with, and determined on the basis of, German GAAP.



The following table sets out, for the years ended 31 December 2002, 2003 and 2004, the net profit (*Jahresüberschuss*) and Distributable Profits of WestLB:

	<u>2004</u>	<u>2003</u>	<u>2002</u>
	(in € million)		
Net Profit ( <i>Jahresüberschuss</i> )	-920.0	-2,320.0	-610.0
Distributable Profits	-920.0	-2,320.0	-610.0

As the Distributable Profits of the Bank for the years 2002, 2003 and 2004 were negative, no Profit Distribution would have accrued on the Participation Agreement for those years had the Participation Agreement been effective during such years.

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

<b>Year ended 31 December</b>	<u><b>Dividends</b></u>
	(in € million)
1999	95.1
2000	95.1
2001	70.9
2002	0
2003	0
2004 (expected)	0

## TERMS AND CONDITIONS OF THE CAPITAL SECURITIES

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

EMISSIONSBEDINGUNGEN	TERMS AND CONDITIONS
der	of the
€ 240.000.000 Capital Securities	€ 240,000,000 Capital Securities
der	issued by
<b>Hybrid Capital Funding II Limited Partnership</b> St Helier Jersey JE4 8PX Kanalinseln (nachstehend als <b>Emittentin</b> bezeichnet)	<b>Hybrid Capital Funding II Limited Partnership</b> St Helier Jersey JE4 8PX Channel Islands (hereinafter called <b>Issuer</b> )
<b>§ 1</b> <b>Definitionen und Auslegung</b>	<b>§ 1</b> <b>Definitions and Interpretation</b>
<b>Definitionen:</b> Sofern aus dem Zusammenhang nicht etwas anderes hervorgeht, haben die nachstehenden Begriffe folgende Bedeutung:	<b>Definitions:</b> Unless the context requires otherwise, the following terms will have the following meanings:
<b>Ausgabetag</b> bezeichnet den 13. Mai 2005.	<b>Issue Date</b> means 13 May 2005.
<b>BaFin</b> bezeichnet die Bundesanstalt für Finanzdienstleistungsaufsicht oder eine etwaige Nachfolgebehörde, die an deren Stelle tritt.	<b>BaFin</b> means the German Financial Supervisory Authority or any successor agency taking its place.
<b>Bank</b> bezeichnet die WestLB AG, eine nach deutschem Recht errichtete Aktiengesellschaft mit Sitz in Düsseldorf und Münster, Deutschland.	<b>Bank</b> means WestLB AG, a stock corporation established under the laws of Germany, having its seat in Düsseldorf and Münster, Germany.
<b>Beendigungstag</b> bezeichnet den Tag, ab dem die Emittentin aufgrund einer wirksamen Kündigung des Beteiligungsvertrages nicht mehr am Handelsgewerbe der Bank als typischer stiller Gesellschafter beteiligt ist.	<b>Termination Date</b> shall mean the date on which the Issuer ceases to participate in the Bank's commercial enterprise as an ordinary silent partner because the Participation Agreement has been validly terminated.
<b>Beteiligungsvertrag</b> hat die in § 4(1) festgelegte Bedeutung.	<b>Participation Agreement</b> has the meaning specified in § 4(1).
<b>Buchwert der Stillen Einlage</b> bezeichnet den handelsrechtlichen Buchwert der Stillen Einlage, so wie dieser in der Bilanz der Bank festgestellt wurde. Wenn sich bei Aufstellung der Bilanz der Bank für dieses Geschäftsjahr die Entstehung eines Jahresbilanzverlusts abzeichnet, so wird dieser Jahresbilanzverlust anteilig nach Maßgabe des Beteiligungsvertrags vom Buchwert abgezogen.	<b>Book Value of the Silent Contribution</b> means the commercial law book value of the Silent Contribution as specified in the Bank's balance sheet. If, when drawing up the Bank's balance sheet for such fiscal year, it becomes evident that an annual balance sheet loss would arise, a proportionate part of such annual balance sheet loss will be deducted from the book value in accordance with the Participation Agreement.
<b>Clearing-System</b> bezeichnet Clearstream Frankfurt.	<b>Clearing System</b> means Clearstream Frankfurt.
<b>Clearstream Frankfurt</b> bezeichnet Clearstream AG, Frankfurt am Main.	<b>Clearstream Frankfurt</b> means Clearstream AG, Frankfurt am Main.
<b>Darlehens-Auszahlung</b> hat die in § 4(3) festgelegte Bedeutung.	<b>Advance</b> has the meaning specified in § 4(3).

**Darlehensgeberin** bezeichnet die WestLB AG.

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

**Depotbank** bezeichnet ein Bank- oder sonstiges Finanzinstitut, das zum Betreiben des Wertpapierdepotgeschäfts berechtigt ist und bei dem der betreffende Emissionsgläubiger Capital Securities in einem Wertpapierdepot verwahren lässt und das ein Konto bei dem Clearing-System unterhält.

**Einlagennennbetrag** bezeichnet den Betrag von € 240.000.000 (Euro zweihundertvierzig Millionen).

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

**Emissionsbedingungen** bezeichnet diese Bedingungen der Capital Securities.

**Emissionsgläubiger** bezeichnet die Inhaber eines Miteigentumsanteils oder -rechts an der Globalurkunde.

**Emittenten-Gesellschafter** bezeichnet die Emittenten-Kommanditistin und die Emittenten-Komplementärin.

**Emittenten-Kommanditistin** bezeichnet Hybrid Funding II GmbH, eine nach deutschem Recht errichtete Gesellschaft mit beschränkter Haftung mit Sitz in Köln, Deutschland, die der Limited Partner der Emittentin nach Maßgabe des Limited Partnerships (Jersey) Law 1994 in der jeweils gültigen Fassung ist.

**Emittenten-Komplementärin** bezeichnet Hybrid Capital Funding II Limited, eine nach dem Recht von Jersey errichtete Gesellschaft mit beschränkter Haftung mit Sitz in 22 Grenville Street, St. Helier, Jersey JE4 8PX, Kanalinseln, die der General Partner der Emittentin nach Maßgabe des Limited Partnerships (Jersey) Law 1994 in der jeweils gültigen Fassung ist.

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

**Erste Gewinnperiode** hat die in § 4(1)(b) festgelegte Bedeutung.

**Fälligkeitstag** hat die in § 4(1)(c) festgelegte Bedeutung.

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

**Gewinnbeteiligung** hat die in § 4(1)(a) festgelegte Bedeutung.

**Gewinnbeteiligungszahlung** hat die in § 4(1)(a) festgelegte Bedeutung.

**Lender** means WestLB AG.

**Loan Agreement** has the meaning specified in § 4(3).

**Custodian** means any bank or other financial institution authorised to engage in securities custody business with which the relevant Securityholder maintains a securities account in respect of any Capital Securities and which maintains an account with the Clearing System.

**Nominal Contribution Amount** means € 240,000,000 (Euro two hundred and forty million).

**Contribution Agreement** has the meaning specified in § 4(2).

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

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

**Issuer Partners** means the Issuer Limited Partner and the Issuer General Partner.

**Issuer Limited Partner** means Hybrid Funding II GmbH, a limited liability company incorporated under the laws of Germany whose registered office is at Cologne, Germany and who is a limited partner of the Issuer within the meaning of the Limited Partnerships (Jersey) Law 1994, as amended.

**Issuer General Partner** means Hybrid Capital Funding II Limited, a limited liability company incorporated under the laws of Jersey whose registered office is at 22 Grenville Street, St. Helier, Jersey JE4 8PX, Channel Islands and who is a general partner of the Issuer within the meaning of the Limited Partnerships (Jersey) Law 1994, as amended.

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

**First Profit Period** has the meaning specified in § 4(1)(b).

**Due Date** has the meaning specified in § 4(1)(c).

**Business Day** means a day on which TARGET (the Trans-European Automated Real Time Gross Settlement Express Transfer System) is operating credit or transfer instructions in respect of payments in Euro.

**Profit Participation** has the meaning specified in § 4(1)(a).

**Profit Participation Payment** has the meaning specified in § 4(1)(a).

**Gewinnperiode** hat die in § 4(1)(b) festgelegte Bedeutung.

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

**Globalurkunden** hat die in § 2(2) festgelegte Bedeutung.

**Hauptzahlstelle** hat die in § 13(1) festgelegte Bedeutung.

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

**Kapitalertragsteuer** bezeichnet nach Maßgabe von § 43 EStG einbehaltene Kapitalertragsteuer zuzüglich des Solidaritätszuschlags.

**KWG** bezeichnet das Kreditwesengesetz.

**Nachfolgerin** hat die in § 14(1) festgelegte Bedeutung.

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

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

**Rückzahlungsbetrag** bezeichnet entweder den Buchwert der Stillen Einlage oder den Einlagen-nennbetrag, je nachdem welcher Betrag niedriger ist.

**Rückzahlungstag** bezeichnet entweder (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) falls am 29. Juni des maßgeblichen Geschäftsjahres der Bank der Jahresabschluss der Bank für das Geschäftsjahr, in das der Beendigungstag fällt, noch nicht festgestellt war, der auf den Tag der Feststellung folgende Geschäftstag, je nachdem, welches der spätere Zeitpunkt ist.

**Sperrfrist** hat die in § 2(2) festgelegte Bedeutung.

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

**Stille Einlage** hat die in § 4(1) festgelegte Bedeutung.

**Tilgungszahlung** hat die in § 7(1) festgelegte Bedeutung.

**U.S.-Person** bezeichnet eine U.S. person im Sinne des US-amerikanischen Internal Revenue Code von 1986 in seiner jeweils gültigen Fassung.

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

**Zahlstelle und Zahlstellen** hat die in § 13(2) festgelegte Bedeutung.

**Profit Period** has the meaning specified in § 4(1)(b).

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

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

**Principal Paying Agent** has the meaning specified in § 13(1)

**Contribution Payment** has the meaning specified in § 4(2).

**German Withholding Tax** means German Withholding tax levied in accordance with § 43 German Income Tax Act plus the solidarity surcharge.

**KWG** means the German Banking Act.

**Successor** has the meaning specified in § 14(1).

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

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

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

**Repayment Date** means the later of (i) 30 June of the year following the fiscal year of the Bank in which the Termination Date occurs or, if such day is not a Business Day, the next Business Day following such day or (ii) if, on 29 June of the relevant fiscal year of the Bank, the Bank's annual financial statements for the fiscal year of the Bank in which the Termination Date occurs have not been adopted, the Business Day following the adoption thereof.

**Restricted Period** has the meaning specified in § 2(2).

**Tax Refund Claims** has the meaning specified in § 4(2).

**Silent Contribution** has the meaning specified in § 4(1).

**Redemption Payment** has the meaning specified in § 7(1).

**U.S. Person** means a U.S. person as defined in the United States Internal Revenue Code of 1986, as amended.

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

**Paying Agent and Paying Agents** has the meaning specified in § 13(2).

**Zinszahlung** hat die in § 6(1) festgelegte Bedeutung.

**Zusätzliche Beträge** hat die in § 10 festgelegte Bedeutung.

**Coupon Payment** has the meaning specified in § 6(1).

**Additional Amounts** has the meaning specified in § 10.

## § 2

### Stückelung; Verbriefung und Verwahrung; Übertragbarkeit

- (1) **Stückelung:** Die Emission der Capital Securities im Gesamtnennbetrag von € 240.000.000 (in Worten: Euro zweihundertvierzig Millionen) der Hybrid Capital Funding II Limited Partnership (**Emittentin**) ist eingeteilt in 240.000 untereinander gleichrangige Teilschuldverschreibungen mit einem Nennbetrag von jeweils € 1.000 (die **Capital Securities**).
- (2) **Verbriefung:** Die Capital Securities werden zunächst durch eine vorläufige auf den Inhaber lautende Globalschuldverschreibung (die **Vorläufige Globalurkunde**) ohne Zinsscheine verbrieft; die Vorläufige Globalurkunde wird nicht früher als 40 Tage (dieser Zeitraum nachfolgend die **Sperrfrist**) und nicht später als 180 Tage nach dem Ausgabebetrag in eine permanente auf den Inhaber lautende Globalschuldverschreibung (**Permanente Globalurkunde**), und die Vorläufige Globalurkunde gemeinsam mit der Permanenten Globalurkunde die **Globalurkunden** und jede für sich eine **Globalurkunde**) ohne Zinsscheine ausgetauscht, und zwar gegen Nachweis über das Nichtbestehen U.S.-amerikanischen wirtschaftlichen Eigentums (*U.S. beneficial ownership*) an den Capital Securities, der nach Inhalt und Form den Anforderungen des Rechts der Vereinigten Staaten von Amerika und den dann bestehenden Usancen des Clearing-Systems entspricht.
- (3) **Ausgabe und Verwahrung:** Die Vorläufige Globalurkunde und die Permanente Globalurkunde sind jeweils nur wirksam, wenn sie die eigenhändigen Unterschriften von zwei durch die Emittentin bevollmächtigen Personen sowie die Unterschrift eines Kontrollbeauftragten der Hauptzahlstelle tragen. Die Globalurkunden werden bei Clearstream Frankfurt hinterlegt, bis sämtliche Verpflichtungen der Emittentin aus den Capital Securities erfüllt sind.
- (4) **Übertragbarkeit:** Den Emissionsgläubigern stehen Miteigentumsanteile oder -rechte an den Globalurkunden zu, die nach Maßgabe des anwendbaren Rechts und der jeweils geltenden Usancen des Clearing-Systems übertragen werden können.

## § 2

### Denomination; Form and Custody; Transferability

- (1) **Denomination:** The issue of the Capital Securities in the aggregate nominal amount of € 240,000,000 (in words: Euro two hundred and forty million) by Hybrid Capital Funding II Limited Partnership (**Issuer**) is divided into 240,000 notes, ranking *pari passu* among themselves, in the nominal amount of € 1,000 each (the **Capital Securities**).
- (2) **Form:** The Capital Securities will initially be represented by a temporary global bearer security (**Temporary Global Security**) without interest coupons, which will be exchanged no earlier than 40 days (this period hereinafter referred to as the **Restricted Period**) and no later than 180 days after the Issue Date against delivery of a permanent global bearer security (**Permanent Global Security**, the Temporary Global Security together with the Permanent Global Security hereinafter referred to as the **Global Securities** and each a **Global Security**) without interest coupons upon certification as to non-U.S. beneficial ownership of the Capital 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.
- (3) **Issuance and Custody:** Each of the Temporary Global Security and the Permanent Global Security shall only be valid if it bears the hand-written signatures of two duly authorised representatives of the Issuer and, by way of verification, the signature of a person instructed by the Principal Paying Agent. The Global Securities shall be deposited with Clearstream Frankfurt until the Issuer has satisfied and discharged all its obligations under the Capital Securities.
- (4) **Transferability:** The Securityholders will receive proportional co-ownership participations or rights in the Global Securities that are transferable in accordance with applicable law and applicable regulations of the Clearing System.



### § 3

#### Status der Capital Securities

Die Capital Securities begründen unmittelbare, nicht nachrangige und (mit Ausnahme einer Sicherungsabtretung von Zahlungsansprüchen der Emittentin an einen zugunsten der Emissionsgläubiger handelnden Sicherheitstreuhänder) nicht besicherte bedingte Verbindlichkeiten der Emittentin und stehen im gleichen Rang untereinander und mindestens im gleichen Rang mit allen anderen gegenwärtigen und zukünftigen nicht besicherten und nicht nachrangigen Verbindlichkeiten der Emittentin, soweit zwingendes Gesetzesrecht nichts anderes vorschreibt.

### § 4

#### Beteiligungsvertrag; Einzahlungsvertrag; Darlehensvertrag

(1) **Beteiligungsvertrag:** Den Erlös aus der Ausgabe der Capital Securities wird die Emittentin ausschließlich zu dem Zweck verwenden, auf Grundlage eines zwischen ihr und der Bank am Ausgabetag abgeschlossenen Vertrages (**Beteiligungsvertrag**), der eine Vermögenseinlage der Emittentin bei der Bank in Höhe von € 240.000.000 (**Stille Einlage**) vorsieht, eine stille Beteiligung an dem Handelsgewerbe der Bank nach deutschem Recht zu begründen.

(a) **Gewinnbeteiligungszahlungen:** Nach Maßgabe des Beteiligungsvertrags wird die Emittentin die Stille Einlage in Höhe von € 240.000.000 als Bareinlage an die Bank erbringen. Als Gegenleistung stehen der Emittentin Gewinnbeteiligungen (**Gewinnbeteiligungen**) zu, die jeweils jährlich nach Maßgabe des Beteiligungsvertrags auf Grundlage des Nennbetrages der Stillen Einlage in jedem Geschäftsjahr der Bank ermittelt und halbjährlich nachträglich ausgeschüttet werden (jeweils eine **Gewinnbeteiligungszahlung**).

(b) **Gewinnperioden; Erste Gewinnperiode:** Nach Maßgabe des Beteiligungsvertrages fallen auf die Stille Einlage Gewinnbeteiligungen für Gewinnzeiträume (jeweils eine **Gewinnperiode**) an. Gewinnperioden laufen jeweils vom 1. Januar (einschließlich) bis 31. Dezember (einschließlich) eines Jahres. Die erste Gewinnperiode (**Erste Gewinnperiode**), beginnt am Ausgabetag (einschließlich) und endet (einschließlich) am 31. Dezember 2005. Die letzte Gewinnperiode läuft vom 1. Januar des Jahres, in das der Beendigungstag fällt, bis zum Beendigungstag (beide Tage einschließlich).

### § 3

#### Status of the Capital Securities

The Capital Securities constitute direct, unsubordinated and (except for a security assignment of claims of the Issuer to a security trustee acting for the benefit of the Securityholders) unsecured conditional obligations of the Issuer and rank *pari passu* among themselves and at least *pari passu* with all other unsubordinated and unsecured obligations of the Issuer, present or future, save for mandatory exceptions prescribed by statute.

### § 4

#### Participation Agreement; Contribution Agreement; Loan Agreement

(1) **Participation Agreement:** The proceeds of the issue of the Capital Securities will be used by the Issuer exclusively for the purpose of establishing a silent participation in the commercial enterprise of the Bank under German law pursuant to an agreement between the Issuer and the Bank (**Participation Agreement**) providing for a capital contribution by the Issuer to the Bank in the amount of € 240,000,000 (**Silent Contribution**) and dated the Issue Date.

(a) **Profit Participation Payments:** Under the Participation Agreement, the Issuer will make the Silent Contribution in the form of a cash contribution of € 240,000,000 to the Bank. In return, the Issuer will earn profit participations (**Profit Participations**) calculated annually in accordance with the Participation Agreement on the basis of the nominal amount of the Silent Contribution for each fiscal year of the Bank and payable semi-annually in arrear (each a **Profit Participation Payment**).

(b) **Profit Periods; First Profit Period:** Under the Participation Agreement, Profit Participations on the Silent Contribution accrue for profit periods (**Profit Periods**). Profit Periods run from (and including) 1 January to (and including) 31 December of a year. The first Profit Period (**First Profit Period**) commences on (and includes) the Issue Date and ends on (and includes) 31 December 2005. The last Profit Period runs from 1 January of the year in which the Termination Date occurs and ends on the Termination Date (both days inclusive).

- (c) **Fälligkeitstage:** Jeder 30. Juni und 30. Dezember an oder vor dem 30. Dezember 2005 (oder, falls dies keine Geschäftstage sein sollten, des jeweils darauf folgenden Geschäftstag) und jeder Tag danach, an dem nach Maßgabe des Beteiligungsvertrages Gewinnbeteiligungszahlungen fällig werden, ist ein **Fälligkeitstag**.

Nach Maßgabe des Beteiligungsvertrages ist jede Gewinnbeteiligung (mit Ausnahme der Gewinnbeteiligung für die Erste Gewinnperiode) in zwei gleichen Gewinnbeteiligungszahlungen wie folgt fällig: die erste Gewinnbeteiligungszahlung wird (i) am 30. Dezember eines Jahres nach Ablauf der maßgeblichen Gewinnperiode oder, falls dies kein Geschäftstag ist, am darauf folgenden Geschäftstag; oder, falls später, (ii) am Geschäftstag nach dem Tag der Feststellung des Jahresabschlusses der Bank für das Geschäftsjahr, auf das sich die maßgebliche Gewinnperiode bezieht, fällig; die zweite Gewinnbeteiligungszahlung wird an dem nachfolgenden 30. Juni oder, falls dies keine Geschäftstag sein sollte, am darauf folgenden Geschäftstag fällig.

Der Beteiligungsvertrag sieht vor, dass die Gewinnbeteiligung für die Erste Gewinnperiode in drei Gewinnbeteiligungszahlungen wie folgt fällig wird: Die erste Gewinnbeteiligungszahlung wird (i) am 30. Juni 2006 oder, falls dies kein Geschäftstag ist, am darauf folgenden Geschäftstag; oder, falls später, (ii) am Geschäftstag nach dem Tag der Feststellung des Jahresabschlusses der Bank für das Geschäftsjahr 2005, fällig; die zweite und dritte Gewinnbeteiligungszahlung werden am 30. Dezember 2006 und am 30. Juni 2007 oder, falls dies keine Geschäftstage sein sollten, am darauf folgenden Geschäftstag fällig.

- (d) **Rückzahlungsbetrag und -tag:** Nach Maßgabe des Beteiligungsvertrages zahlt die Bank der Emittentin am Rückzahlungstag den Rückzahlungsbetrag.
- (e) **Hinweis gemäß § 10(4) S. 1 Ziff. 6 KWG:** Entsprechend den Vorgaben des KWG sieht der Beteiligungsvertrag vor, dass

- (c) **Due Dates:** Each 30 June, and 30 December on or prior to 30 December 2005 (or, if any such day is not a Business Day, the respective next Business Day) and, thereafter, each date on which Profit Participation Payments fall due under the Participation Agreement is a **Due Date**.

Under the Participation Agreement, each Profit Participation (other than the Profit Participation for the First Profit Period) is payable in two equal Profit Participation Payments as follows: The first Profit Participation Payment is payable on 30 December in the year following the end of the relevant Profit Period or, if that day is not a Business Day, the next Business Day; the second Profit Participation Payment is payable on the following 30 June, or, if such day is not a Business Day, the next Business Day.

The Participation Agreement provides that the Profit Participation for the First Profit Period is payable in three Profit Participation Payments as follows: The first Profit Participation Payment is payable on the later of (i) 30 June 2006 or, if that day 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 and third Profit Participation Payments are payable on 30 December 2006 and 30 June 2007, respectively, or, if any such day is not a Business Day, the next Business Day.

- (d) **Repayment Amount and Date:** Under the Participation Agreement, the Bank will, on the Repayment Date, pay to the Issuer the Repayment Amount.
- (e) **Notice in Accordance with § 10(4) s. 1 no. 6 KWG:** In accordance with the requirements of the KWG, the Participation Agreement provides that



- (i) **Verbot nachträglicher Änderungen zum Nachteil der Bank:** nach seinem Abschluss (A) die Verlustbeteiligung der Emittentin nicht zum Nachteil der Bank verändert werden kann, (B) die Nachrangigkeit nicht eingeschränkt werden kann und (iii) Laufzeit sowie Kündigungsfrist nicht verkürzt werden können; und
- (ii) **Rückzahlungsverpflichtung:** ungeachtet anderweitiger Vereinbarungen Vorauszahlungen auf die Stille Einlage an die Bank zurückzuzahlen sind, es sei denn, (A) das Kapital wurde durch anderes mindestens gleichwertiges Eigenkapital ersetzt oder (B) die BaFin hatte der vorzeitigen Rückzahlung der Stillen Einlage zugestimmt.
- (f) **Vollständiger Beteiligungsvertrag:** Die Bestimmungen des Beteiligungsvertrags werden diesen Emissionsbedingungen sowie der Globalurkunde als Anlage beigefügt und bilden mit diesen jeweils eine Einheit. Eine Kopie des Beteiligungsvertrags in seiner jeweils gültigen Fassung liegt zur Einsichtnahme in den Geschäftsstellen der Zahlstellen aus.
- (2) **Einzahlungsvertrag:** Bei Zahlung von Gewinnbeteiligungszahlungen an die Emittentin und Wiederauffüllungen der Stillen Einlage nach einer Herabsetzung des Buchwerts der Stillen Einlage nach Maßgabe des Beteiligungsvertrages ist die Bank verpflichtet, Kapitalertragsteuer auf die ausgeschütteten bzw. zur Auffüllung verwendeten Beträge einzubehalten. Soweit diese Einbehalte nach deutschem Steuerrecht der Emittenten-Kommanditistin zuzurechnen sind, gelten sie als Vorauszahlungen auf die von der Emittenten-Kommanditistin geschuldete deutsche Einkommensteuer. In Bezug auf diese Vorauszahlungen geht die Emittenten-Kommanditistin davon aus, dass ihr gegenüber den deutschen Finanzbehörden Steuererstattungsansprüche zustehen (**Steuererstattungsansprüche**). In diesem Zusammenhang haben die Emittenten-Gesellschafter am 11. Mai 2005 einen ergänzenden Gesellschaftervertrag (**Einzahlungsvertrag**) geschlossen, nach dem die Emittenten-Kommanditistin verpflichtet ist, der Emittentin sämtliche Beträge zu zahlen, die sie von den deutschen Steuerbehörden in Bezug auf Steuererstattungsansprüche erhält (jede solche Zahlung jeweils eine **Kapitaleinzahlung**).
- (i) **Exclusion of Amendments to the Bank's Detriment:** Subsequent to its execution, (A) the loss participation of the Issuer may not be amended to the Bank's detriment, (B) the subordination may not be limited and (C) neither the term nor the notice period may be shortened; and
- (ii) **Recontribution Obligation:** any premature repayment of the Silent Contribution must be repaid to the Bank notwithstanding any agreement to the contrary, unless (A) the capital has been replaced by other own funds of at least equal quality or (B) the BaFin has agreed to the premature repayment of the Silent Contribution.
- (f) **Complete Participation Agreement:** The provisions of the Participation Agreement are attached to these Terms and Conditions and to the Global Security and shall be deemed to constitute one document herewith. A copy of the Participation Agreement, as amended from time to time, is available for inspection at the office of each Paying Agent.
- (2) **Contribution Agreement:** Upon payment of Profit Participation Payments to the Issuer and write-up of the Silent Contribution (after a reduction of the Book Value of the Silent Contribution in accordance with the Participation Agreement), the Bank must withhold German Withholding Tax on the amounts distributed and used for replenishments. These withholdings, to the extent attributable to the Issuer Limited Partner in accordance with German tax laws, will be counted as prepayments towards the German income tax owed by the Issuer Limited Partner. In relation to such prepayments, the Issuer Limited Partner expects to be entitled to refund claims against the German tax authorities (**Tax Refund Claims**). In this context, the Issuer Partners entered into a supplementary partnership agreement on 11 May 2005 (**Contribution Agreement**) under which the Issuer Limited Partner is required to pay to the Issuer all amounts that it receives from the German tax authorities on account of Tax Refund Claims (each such payment a **Contribution Payment**).

- (3) **Darlehensvertrag:** Steuererstattungsansprüche werden erst nach der steuerlichen Veranlagung der Emittenten-Kommanditistin für jedes einzelne Steuerjahr fällig. Demgemäss hat die Emittentin am 3. Mai 2005 mit der Darlehensgeberin einen Darlehensvertrag abgeschlossen (**Darlehensvertrag**), nach dem die Emittentin Auszahlungen (jeweils eine **Darlehens-Auszahlung**) erhält, um ihre Verpflichtung zur Zahlung von Zinszahlungen (bis zum 30. Dezember 2005 einschließlich vollständig; danach im Höhe der Einbehaltung) an den jeweiligen Fälligkeitstagen nachzukommen und die Stille Einlage nach einer Herabsetzung des Buchwerts der Stillen Einlage nach Maßgabe des Beteiligungsvertrages wieder aufzufüllen. Die Emittentin erwartet, die Darlehens-Auszahlungen mit den von der Emittenten-Kommanditistin entweder als Kapitaleinzahlungen oder als Erste Gewinnbeteiligungszahlung erhaltenen Geldern zurückzuführen. Die Bestimmungen des Darlehensvertrages werden diesen Emissionsbedingungen sowie der Globalurkunde als Anlage beigefügt und bilden mit diesen jeweils eine Einheit. Eine Kopie des Darlehensvertrages in seiner jeweils gültigen Fassung liegt zur Einsichtnahme in den Geschäftsstellen der Zahlstellen aus.
- (3) **Loan Agreement:** Tax Refund Claims only become due and payable after the Issuer Limited Partner's tax assessment for each tax year. Accordingly, the Issuer has entered into a loan agreement with the Lender on 3 May 2005 (**Loan Agreement**), pursuant to which the Issuer is entitled to obtain advances (each an **Advance**) in order to fund Coupon Payments (up to and including 30 December 2005, in full; thereafter, in the amount of the withholding) on the relevant Due Dates or fully to replenish the Silent Contribution after a reduction of the Book Value of the Silent Contribution in accordance with the Participation Agreement. The Issuer expects to repay the Advances with the monies that it receives from the Issuer Limited Partner either as the First Profit Participation Payment or as Contribution Payments. The terms of the Loan Agreement are attached to these Terms and Conditions and to the Global Security and shall be deemed to constitute one document herewith. A copy of the Loan Agreement, as amended from time to time, is available for inspection at the office of each Paying Agent.

## § 5

### Bindung der Emittentin; Rechtsverhältnisse

- (1) **Bindung der Emittentin:** Die Capital Securities verbriefen die Verpflichtung der Emittentin, den Erlös aus der Ausgabe der Capital Securities zur Zahlung der Stillen Einlage zu verwenden und (i) die Gewinnbeteiligungszahlungen, (ii) den Rückzahlungsbetrag und eventuell darauf aufgelaufene Zinsen sowie (iii) die Darlehens-Auszahlungen zu verwenden, um ihre Zahlungsverpflichtungen gegenüber den Emissionsgläubigern nach Maßgabe dieser Emissionsbedingungen zu erfüllen. Vorbehaltlich § 6 ist die Emittentin unter keinen Umständen verpflichtet, Zahlungen an die Emissionsgläubiger zu leisten, wenn sie nicht zuvor die ihr nach Maßgabe des Beteiligungsvertrages oder des Darlehensvertrages zustehenden Beträge tatsächlich erhalten hat.
- (2) **Kein Rechtsverhältnis zwischen Emissionsgläubigern und Bank:** Durch den Beteiligungsvertrag und den Darlehensvertrag werden keine Rechte der Emissionsgläubiger gegenüber der Bank begründet.
- (3) **Kein Rechtsverhältnis zwischen Emissionsgläubigern und Emittenten-Kommanditistin:** Durch den Einzahlungsvertrag werden keine Rechte der Emissionsgläubiger gegenüber der Emittenten-Kommanditistin begründet.

## § 5

### Issuer Commitment; Legal Relationships

- (1) **Issuer Commitment:** The Capital Securities represent the Issuer's obligations to use the proceeds from the issue of the Capital Securities for the purpose of paying the Silent Contribution, and to use (i) the Profit Participation Payments, (ii) the Repayment Amount, including any interest accrued thereon, and (iii) the Advances to satisfy its payment obligations to the Securityholders under these Terms and Conditions. Subject to § 6, in no event will the Issuer be under any obligation to make payments to Securityholders without prior receipt of the relevant amounts due to the Issuer under the Participation Agreement or the Loan Agreement.
- (2) **No Relationship between Securityholders and Bank:** The Participation Agreement and the Loan Agreement do not create any rights of the Securityholders vis-à-vis the Bank.
- (3) **No Relationship between Securityholders and Issuer Limited Partner:** The Contribution Agreement does not create any rights of the Securityholders vis-à-vis the Issuer Limited Partner.

**§ 6**  
**Zinszahlungen**

- (1) **Fälligkeit:** An jedem Fälligkeitstag wird die Emittentin aus der jeweiligen Gewinnbeteiligungszahlung und Darlehens-Auszahlung, die die Emittentin jeweils tatsächlich von der Bank an diesem Fälligkeitstag erhalten hat, Zinsen auf die Capital Securities in Höhe von 6,0% p.a. an die Emissionsgläubiger zahlen (jeweils eine **Zinszahlung**).
- (2) **Unzureichende Gewinnbeteiligungszahlung und Darlehensauszahlung:** Falls die Gewinnbeteiligung für die Erste Gewinnperiode den Betrag von € 31.584.000 unterschreitet, wird die Emittentin die auf die Gewinnbeteiligung für die Erste Gewinnperiode erhaltenen Zahlungen vorrangig zur Tilgung des ihr seitens der Darlehensgeberin zur Finanzierung der am 30. Juni und 30. Dezember 2005 fällig werdenden Zinszahlungen auf die Capital Securities gewährten Darlehens sowie zur Vornahme der am 30. Juni 2006 fällig werdenden Zinszahlung verwenden und ist lediglich verpflichtet, einen etwa verbleibenden Anteil der Gewinnbeteiligung für die Erste Gewinnperiode anteilig auf die am 30. Dezember 2006 und 30. Juni 2007 fällig werdenden Zinszahlungen unter der Capital Securities zur Auszahlung zu bringen.

Falls nach dem 30. Juni 2006 von der Bank geschuldete Gewinnbeteiligungszahlungen geringer sind als die nach dem Beteiligungsvertrag an dem betreffenden Fälligkeitstag maximal fällig werdende Gewinnbeteiligungszahlung, reduziert sich der Zinssatz von 6,0% p.a. des Nennbetrags der Capital Securities auf einen Zinssatz, der sich aus der Multiplikation von 6,0% mit der tatsächlich geschuldeten niedrigeren Gewinnbeteiligungszahlung dividiert durch diese maximale Gewinnbeteiligungszahlung ergibt. Auf die einzelnen Capital Securities entfällt ein jeweils verhältnismäßiger Anteil aller vorstehend genannten zahlbaren Beträge (auf den nächsten vollen Cent abgerundet).

- (3) **Keine Nachzahlungsverpflichtung in Bezug auf Zinszahlungen:** Die Emittentin ist nicht verpflichtet, Zinszahlungen, die aufgrund von § 5(1), § 6(1) oder § 6(2) ausfallen oder weniger als 6,0% p.a. ausmachen, nachzuholen.

**§ 6**  
**Coupon Payments**

- (1) **Payment:** The Issuer shall on each Due Date pay interest on the Capital Securities to the Securityholders at a rate of 6.0 per cent. *per annum* of the nominal amount of the Capital Securities using the proceeds of the relevant Profit Participation Payment or Advance effectively received by the Issuer from the Bank on such Due Date (each a **Coupon Payment**).
- (2) **Insufficient Profit Participation Payments and Advances:** If the aggregate Profit Participation for the First Profit Period is less than € 31,584,000, the Issuer will apply the funds received from the Bank on account of the First Profit Participation for the First Profit Period first to the repayment of the loan received from the Lender for the purpose of funding the Coupon Payments on the Capital Securities falling due on 30 June and 30 December 2005 as well as to fund the Coupon Payment falling due on 30 June 2006 and shall only be obliged to apply, on a *pro rata* basis, any remainder of the Profit Participation for the First Profit Period to the Coupon Payments under the Capital Securities falling due on 30 December 2006 and 30 June 2007.

To the extent that after 30 June 2006 the Profit Participation Payment owed by the Bank is lower than the maximum Profit Participation Payment falling due on the relevant Due Date under the Participation Agreement, the interest rate of 6.0 per cent. *per annum* on the nominal amount of the Capital Securities shall be reduced to an interest rate corresponding to 6.0 per cent. multiplied by the lower Profit Participation Payment actually owed and then divided by the amount of such maximum Profit Participation Payment. A pro rata share of the amounts payable (rounded down to the next full cent) shall be allocated to each Capital Security.

- (3) **No Obligation to Compensate for Coupon Payments:** The Issuer shall be under no obligation subsequently to compensate any Securityholder for Coupon Payments which are not made or amount to less than 6.0 per cent. *per annum* as a consequence of to § 5(1), § 6(1) or § 6(2).

(4) **Bekanntmachung:** Die Emittentin wird die Emissionsgläubiger und, soweit dies von einer Wertpapierbörse, an der die Capital Securities notiert werden, vorgesehen ist, dieser Wertpapierbörse unverzüglich gemäß § 15 benachrichtigen, wenn ihr bekannt wird, dass Zinszahlungen auf die Capital Securities aufgrund von § 5(1), § 6(1) oder § 6(2) ganz oder teilweise ausfallen werden.

#### § 7 Rückzahlung

(1) **Rückzahlung:** Am Rückzahlungstag wird die Emittentin (a) den Rückzahlungsbetrag, (b) ihr nach Maßgabe des Beteiligungsvertrags noch zustehende Gewinnbeteiligungszahlungen und (c) die Mittel aus diesbezüglichen Darlehensauszahlungen, die sie jeweils tatsächlich von der Bank erhalten hat, zur Rückzahlung der Capital Securities bzw. zur Zahlung aufgelaufener Zinsen auf die Capital Securities an die Emissionsgläubiger verwenden (**Tilgungszahlung**). Reichen die von der Bank als Rückzahlungsbetrag und Gewinnbeteiligungszahlung sowie die von der Darlehensgeberin als Darlehens-Auszahlung tatsächlich gezahlten Beträge nicht aus, um eine Zahlung in Höhe des Nennbetrags der Capital Securities sowie Zinsen in Höhe von 6,0% p.a. des Nennbetrags der Capital Securities (oder dem ggf. nach Maßgabe von § 6(1) anwendbaren niedrigeren Zinssatz) zu leisten, vermindern sich Rück- und Zinszahlung auf die Capital Securities entsprechend. Auf die einzelnen Capital Securities entfällt ein jeweils verhältnismäßiger Anteil aller vorstehend genannten zahlbaren Beträge (auf den nächsten vollen Cent abgerundet).

(2) **Erlöschen der Zahlungspflichten:** Durch die Zahlung nach Maßgabe von § 7(1) an die Emissionsgläubiger gilt das Kapital der Capital Securities als vollständig zurückgezahlt und alle Ansprüche der Investoren gegenüber der Emittentin als erloschen.

(3) **Bekanntmachung:** Die Emittentin wird den Beendigungstag und den Rückzahlungstag nach Maßgabe von § 15 gegenüber den Emissionsgläubigern mit einer Frist von nicht weniger als 30 und nicht mehr als 60 Tagen bekannt machen. Die Emittentin wird die Luxemburger Börse auch entsprechend benachrichtigen. Die Emittentin wird die Emissionsgläubiger weiterhin unverzüglich den Empfang einer Kündigungserklärung bzgl. des Beteiligungsvertrags nach Maßgabe von § 15 bekannt machen.

(4) **Notification:** The Issuer shall notify the Securityholders and, if required by the rules of any stock exchange on which the Capital Securities are listed from time to time, such stock exchange, without delay pursuant to § 15 if it becomes known to the Issuer that Coupon Payments on the Capital Securities will not be made in whole or will be made only in part as provided for by § 5(1), § 6(1) or § 6(2).

#### § 7 Redemption

(1) **Repayment:** On the Repayment Date, the Issuer will use (a) the Repayment Amount, (b) any Profit Participation Payment due under the Participation Agreement and (c) any amounts from corresponding Advances effectively received by the Issuer for the repayment of the Capital Securities and/or the payment of interest accrued on the Capital Securities to the Securityholders (**Redemption Payment**). To the extent that the amounts effectively paid by the Bank and comprised in the Repayment Amount or the Profit Participation Payment and by the Lender as Advances are not sufficient to pay the nominal amount of the Capital Securities and interest equal to 6.0 per cent. *per annum* on the nominal amount of the Capital Securities (or the lower applicable rate of interest determined in accordance with § 6(1)), the Redemption Payment shall be reduced accordingly. A *pro rata* share of the above amounts payable (rounded down to the next full cent) shall be allocated to the individual Capital Securities.

(2) **Discharge of Payment Obligations:** Upon payment to the Securityholders in accordance with § 7(1), the principal of the Capital Securities shall be deemed to have been fully repaid and all claims of the Investors against the Issuer shall be deemed to have been discharged.

(3) **Notification:** The Issuer shall notify the Securityholders, in accordance with § 15, of the Termination Date and the Repayment Date and the notice period shall be no less than 30 and no greater than 60 days. The Issuer shall also notify the Luxembourg Stock Exchange accordingly. The Issuer shall further provide prompt notice to the Securityholders in accordance with § 15 of receipt of a notice of termination of the Participation Agreement.



## § 8

### Kündigung und Rückzahlung

- (1) **Kündigung und Rückzahlung nach Wahl der Emittentin:** Die Capital Securities können von der Emittentin insgesamt, jedoch nicht teilweise, durch Mitteilung nach Maßgabe des § 15 gegenüber den Emissionsgläubigern mit einer Frist von nicht weniger als 30 und nicht mehr als 60 Tagen zum 30. Juni eines jeden Jahres, erstmalig zum 30. Juni 2011, vorzeitig gekündigt und zum Nennbetrag zuzüglich aufgelaufener Zinsen zurückgezahlt werden.
- (2) **Vorzeitige Kündigung und Rückzahlung aus Steuergründen:** Die Capital Securities können insgesamt, jedoch nicht teilweise, nach Wahl der Emittentin mit einer Kündigungsfrist von nicht weniger als 30 und nicht mehr als 60 Tagen durch Erklärung gegenüber der Hauptzahlstelle und Mitteilung nach Maßgabe des § 15 gegenüber den Emissionsgläubigern vorzeitig gekündigt und zum Nennbetrag zuzüglich aufgelaufener Zinsen zurückgezahlt werden, falls die Emittentin als Folge einer Änderung oder Ergänzung der Steuer- oder Abgabengesetze und -vorschriften Jerseys oder dessen politischen Untergliederungen oder Steuerbehörden oder als Folge einer Änderung oder Ergänzung der Anwendung oder der offiziellen Auslegung dieser Gesetze und Vorschriften (vorausgesetzt, diese Änderung oder Ergänzung wird am oder nach dem Ausgabetag wirksam) am nächstfolgenden Fälligkeitstag zur Zahlung Zusätzlicher Beträge verpflichtet sein wird und diese Verpflichtung nicht durch das Ergreifen zumutbarer, der Emittentin zur Verfügung stehender Maßnahmen vermieden werden kann. Eine solche Kündigung darf allerdings nicht (a) früher als 90 Tage vor dem frühestmöglichen Termin erfolgen, an dem die Emittentin verpflichtet wäre, solche Zusätzlichen Beträge zu zahlen, falls eine Zahlung auf die Capital Securities dann fällig sein würde, oder (b) erfolgen, wenn zu dem Zeitpunkt, zu dem die Kündigung erklärt wird, die Verpflichtung zur Zahlung Zusätzlicher Beträge nicht mehr wirksam ist. Eine solche Kündigung ist unwiderruflich, muss den für die Rückzahlung festgelegten Termin nennen und eine zusammenfassende Erklärung enthalten, welche die das Rückzahlungsrecht der Emittentin begründenden Umstände darlegt. Aufgelaufene Zinsen für einen Zeitraum von weniger als einem Jahr werden auf Grundlage der Anzahl Tage in dem Zeitraum dividiert durch 360 berechnet, wobei die Anzahl der Tage in dem Zeitraum auf der Grundlage eines Jahres von 360 Tagen mit zwölf Monaten zu je 30 Tagen zu ermitteln ist.

## § 8

### Termination and Repayment

- (1) **Termination and Repayment at the Option of the Issuer:** The Issuer may call the Capital Securities for redemption, in whole but not in part, with effect on 30 June of each year (however, with no earlier effect than 30 June 2011) and redeem the Capital Securities at their nominal amount plus any interest accrued, by giving not less than 30 and not more than 60 days' notice in accordance with § 15.
- (2) **Early Termination and Repayment for Tax Reasons:** If, as a result of any change in, or amendment to, the laws or regulations of Jersey or any political subdivision or taxing authority thereof or therein affecting taxation or the obligation to pay duties of any kind, or any change in, or amendment to, an official interpretation or application of such laws or regulations, which amendment or change is effective on or after the Issue Date, the Issuer is required to pay Additional Amounts on the next succeeding Due Date, and this obligation cannot be avoided by the use of reasonable measures available to the Issuer, the Capital Securities may be redeemed, in whole but not in part, at the option of the Issuer, upon no more than 60 days' and no less than 30 days' prior notice of redemption given to the Principal Paying Agent and, in accordance with § 15 to the Securityholders, at their nominal amount together with interest accrued to the date fixed for redemption. However, no such notice of redemption may be made (a) earlier than 90 days prior to the earliest date on which the Issuer would be obliged to pay such Additional Amounts were a payment in respect of the Capital Securities then due or (b) if, at the time such notice is given, such obligation to pay such Additional Amounts does not remain in effect. Any such notice shall be irrevocable, must specify the date fixed for redemption and must set forth a statement in summary form of the facts constituting the basis for the right of the Issuer so to redeem. Interest accrued for a period of less than one year shall be calculated on the basis of the actual number of days elapsed in such period divided by 360, where the number of days within such period is to be calculated on the basis of a year of 360 days with twelve 30-day months.

**(3) Eingeschränkte Zulässigkeit der Kündigung:** Die Kündigung der Capital Securities durch die Emittentin nach Maßgabe dieses § 8 ist nur zulässig, sofern die Finanzierung der Rückzahlung der Capital Securities zum Nennbetrag zuzüglich aufgelaufener Zinsen gesichert ist.

### § 9 Zahlungen

- (1) Befreiende Zahlung an das Clearing-System:** Die Emittentin verpflichtet sich, Zahlungen auf die Capital Securities bei Fälligkeit in Euro an die Hauptzahlstelle zur Weiterleitung an das Clearing-System oder dessen Order zur Gutschrift auf den Konten der jeweiligen Kontoinhaber bei dem Clearing-System zu zahlen. Vorbehaltlich § 9(2) wird die Emittentin durch Leistung der Zahlung an das Clearing-System oder dessen Order in Höhe der geleisteten Zahlung von ihrer Zahlungsverpflichtung befreit.
- (2) Zahlung an Geschäftstagen:** Falls eine Zahlung auf Capital Securities an einem Tag zu leisten ist, der kein Geschäftstag ist, so erfolgt die Zahlung am nächstfolgenden Geschäftstag. In diesem Fall steht den Emissionsgläubigern weder ein Zahlungsanspruch noch ein Anspruch auf Zinszahlungen oder eine andere Entschädigung wegen dieser Verzögerung zu.

### § 10 Steuern

Sämtliche auf die Capital Securities zu zahlenden Beträge sind ohne Einbehalt oder Abzug von oder aufgrund von gegenwärtigen oder zukünftigen Steuern oder sonstigen Abgaben gleich welcher Art zu leisten, die von Jersey oder für dessen Rechnung oder von oder für Rechnung einer politischen Untergliederung oder Steuerbehörde in Jersey auferlegt oder erhoben werden, es sei denn, ein solcher Einbehalt oder Abzug ist gesetzlich vorgeschrieben. In diesem Fall wird die Emittentin, jedoch nur soweit sie die dafür erforderlichen Beträge tatsächlich von der Bank erhalten hat, diejenigen zusätzlichen Beträge (**Zusätzlichen Beträge**) zahlen, die erforderlich sind, damit die den Emissionsgläubigern zufließenden Nettobeträge nach diesem Einbehalt oder Abzug jeweils den Beträgen entsprechen, die ohne einen solchen Einbehalt oder Abzug von den Emissionsgläubigern empfangen worden wären; die Verpflichtung zur Zahlung solcher zusätzlicher Beträge besteht jedoch nicht im Hinblick auf Steuern und Abgaben, die:

- (1)** auf andere Weise als durch Einbehalt oder Abzug von zahlbaren Beträgen zu entrichten sind; oder

**(3) Limited Permissibility of Termination:** Any termination of the Capital Securities by the Issuer in accordance with this § 8 is only permissible if financing of the redemption of the Capital Securities at their nominal amount plus any interest accrued thereon has been obtained.

### § 9 Payments

- (1) Discharge by Payment to the Clearing System:** The Issuer undertakes to pay, as and when due, amounts due on Capital Securities in Euro to the Principal Paying Agent for on-payment to the Clearing System or to its order for credit to the relevant account holders of the Clearing System. Subject to § 9(2), upon effecting the payment to the Clearing System or to its order, the Issuer shall be released from its payment obligation in the amount of the payment effected by or on its behalf.
- (2) Payment on Business Days:** If any payment of any amount with respect to Capital Securities is to be effected on a day other than a Business Day, payment shall be effected on the next following Business Day. In this case, the Securityholders shall neither be entitled to any interest or other compensation with respect to such delay.

### § 10 Taxes

All amounts payable in respect of the Capital Securities 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 in or for the account of Jersey or any political subdivision or any authority thereof or therein having power to tax, unless such withholding or deduction is required by law. In such event, the Issuer will, subject always to receipt thereof from the Bank, pay such additional amounts (**Additional Amounts**) as shall be necessary in order that the net amounts received by the Securityholders, after such withholding or deduction, shall equal the respective amounts which would otherwise have been receivable by the Securityholders in the absence of such withholding or deduction; except that no such Additional Amounts shall be payable on account of any taxes or duties which:

- (1)** are payable otherwise than by withholding or deduction from amounts payable; or

- |   |   |
|---|---|
| <p>(2) wegen einer gegenwärtigen oder früheren persönlichen oder geschäftlichen Beziehung des Emissionsgläubigers zu Jersey zu zahlen sind, und nicht allein deshalb, weil Zahlungen auf die Capital Securities aus Quellen in Jersey stammen (oder für Zwecke der Besteuerung so behandelt werden) oder dort besichert sind; oder</p>  | <p>(2) are payable by reason of the Securityholder having, or having had, some personal or business connection with Jersey and not merely by reason of the fact that payments in respect of the Capital Securities are, or for purposes of taxation are deemed to be, derived from sources in, or are secured in, Jersey; or</p>    |
| <p>(3) aufgrund einer Richtlinie der Europäischen Union betreffend die Besteuerung von Zinserträgen, die die Schlussfolgerungen des Treffens des ECOFIN-Rates vom 26.-27. November 2000 umsetzt, oder aufgrund einer gesetzlichen Vorschrift, die diese Richtlinie umsetzt oder befolgt oder erlassen wurde, um der Richtlinie zu entsprechen, von Zahlungen an eine natürliche Person einzubehalten oder abzuziehen sind; oder</p> | <p>(3) are to be withheld or deducted from a payment to an individual pursuant to any European Union Directive on the taxation of savings implementing the conclusions of the ECOFIN Council meeting of 26-27 November 2000 or any law implementing or complying with, or introduced in order to conform to, such Directive; or</p> |
| <p>(4) aufgrund einer Rechtsänderung zu zahlen sind, welche später als 30 Tage nach Fälligkeit der betreffenden Zahlung von Kapital oder Zinsen oder, wenn dies später erfolgt, ordnungsgemäßer Bereitstellung aller fälligen Beträge und einer diesbezüglichen Bekanntmachung nach Maßgabe von § 15 wirksam wird; oder</p>   | <p>(4) are payable by reason of a change in law that becomes effective more than 30 days after the relevant payment of principal or interest becomes due, or is duly provided for and notice of which is published in accordance with § 15, whichever occurs later; or</p>  |
| <p>(5) von einer Zahlstelle abgezogen oder einbehalten werden, wenn eine andere Zahlstelle in einem EU-Mitgliedstaat die Zahlung ohne einen solchen Abzug oder Einbehalt hätte leisten können.</p>  | <p>(5) are deducted or withheld by a Paying Agent from a payment if the payment could have been made by another Paying Agent in an EU member state without such deduction or withholding.</p>   |

#### § 11

##### Kündigung durch Emissionsgläubiger

- (1) **Kündigungsgründe:** Jeder Emissionsgläubiger ist berechtigt, seine Capital Securities durch Erklärung gegenüber der Hauptzahlstelle zu kündigen und deren Rückzahlung zum Nennbetrag zuzüglich aufgelaufener Zinsen auf seine Capital Securities bis zum Tag der tatsächlichen Rückzahlung zu verlangen, falls:
- (a) Kapital oder Zinsen nicht innerhalb von 15 Tagen nach dem betreffenden Fälligkeitstag gemäß §§ 6 und 7 weitergeleitet wurden; oder
  - (b) die Emittentin die ordnungsgemäße Erfüllung einer sonstigen Verpflichtung aus den Capital Securities unterlässt und diese Unterlassung länger als 30 Tage andauert, nachdem der Hauptzahlstelle hierüber eine Benachrichtigung von einem Emissionsgläubiger erhalten hat; oder
  - (c) die Emittentin ihre Zahlungen einstellt; oder
  - (d) die Emittentin ihre Zahlungsunfähigkeit bekannt gibt; oder

#### § 11

##### Termination by Securityholders

- (1) **Events of Default:** Each Securityholder shall be entitled to declare due and payable, by notice to the Principal Paying Agent its Capital Securities, and to demand immediate redemption thereof together with accrued interest (if any) on its Capital Securities to the date of repayment, in the event that:
- (a) principal or interest have not been paid within 15 days from the relevant due date in accordance with §§ 6 and 7; or
  - (b) the Issuer fails duly to perform any other obligation arising under the Capital Securities and such failure continues for more than 30 days without cure after the Principal Paying Agent has received notice thereof from a Securityholder; or
  - (c) the Issuer suspends its payments generally; or
  - (d) the Issuer announces its inability to meet its financial obligations; or



- (e) die Emittentin in Liquidation tritt, es sei denn, dies geschieht im Zusammenhang mit einer Verschmelzung, Konsolidierung oder einer anderen Form des Zusammenschlusses mit einer anderen Gesellschaft oder im Zusammenhang mit einer Umwandlung, und diese andere oder neue Gesellschaft übernimmt alle Verpflichtungen, die die Emittentin im Zusammenhang mit den Capital Securities eingegangen ist; oder
- (f) ein Gericht ein Insolvenzverfahren oder ein Vergleichsverfahren zur Abwendung der Insolvenz oder des Konkurses oder ein vergleichbares Verfahren über das Vermögen der Emittentin eröffnet, und ein solches Verfahren nicht innerhalb von 60 Tagen aufgehoben oder ausgesetzt wird, oder die Emittentin die Eröffnung eines solchen Verfahrens beantragt oder einleitet oder eine allgemeine Schuldenregelung zugunsten ihrer Gläubiger anbietet oder trifft oder ein Dritter ein Insolvenzverfahren gegen die Emittentin beantragt und ein solches Verfahren nicht innerhalb einer Frist von 60 Tagen aufgehoben oder ausgesetzt wird.

Das Kündigungsrecht erlischt, falls der Kündigungsgrund vor Ausübung des Rechts geheilt wurde.

- (2) **Quorum:** In den Fällen des § 11(1)(b), (c), und/oder (d) wird eine Kündigung, sofern nicht bei deren Eingang zugleich einer der in § 11(1)(a), (e) oder (f) bezeichneten Kündigungsgründe vorliegt, erst wirksam, wenn bei der Hauptzahlstelle Kündigungserklärungen von Emissionsgläubigern im Gesamtnennbetrag von mindestens einem Zehntel des Gesamtnennbetrags der ausstehenden Capital Securities eingegangen sind.
- (3) **Benachrichtigung:** Eine Benachrichtigung oder Kündigung gemäß § 11(1) hat in der Weise zu erfolgen, dass der Emissionsgläubiger der Hauptzahlstelle eine schriftliche Erklärung per Bote oder durch eingeschriebenen Brief übersendet und dabei wie in § 16(3) vorgesehen nachweist, dass er im Zeitpunkt der Erklärung Inhaber der betreffenden Capital Securities ist.

- (e) the Issuer enters into liquidation, except in connection with a merger, consolidation or other form of combination with another company or in connection with a reorganisation and such other or new company assumes all obligations undertaken by the Issuer under or in connection with the Capital Securities; or
- (f) a court institutes insolvency proceedings or composition proceedings to avert insolvency or bankruptcy or similar proceedings against the assets of the Issuer and such proceedings are not discharged or stayed within 60 days, or the Issuer applies for the institution of such proceedings in respect of its assets or offers or makes a general arrangement for the benefit of its creditors generally, or a third party applies for insolvency proceedings against the Issuer and such proceedings are not discharged or stayed within 60 days.

The right to declare Capital Securities due shall terminate if the relevant circumstances have been cured before the right is exercised.

- (2) **Quorum:** In the events specified in § 11(1)(b), (c), and/or (d), any notice declaring Capital Securities due shall, unless at the time such notice is received any of the events of default specified in § 11(1)(a), (e) or (f) has occurred, become effective only when the Principal Paying Agent has received such notices from the Securityholders of at least one-tenth of the aggregate nominal amount of Capital Securities then outstanding.
- (3) **Notice:** Any notice in accordance with § 11(1) shall be made by means of a written declaration delivered by hand or registered mail to the Principal Paying Agent together with evidence in accordance with § 16(3) that such Securityholder, at the time of such written notice, is a holder of the relevant Capital Securities.

## § 12

### Vorlegungsfrist; Verjährung

Die Vorlegungsfrist gemäß § 801 (1) Satz 1 BGB für die Capital Securities wird auf zehn Jahre verkürzt. Die Verjährungsfrist für Ansprüche aus den Capital Securities, die innerhalb der Vorlegungsfrist zur Zahlung vorgelegt wurden, beträgt zwei Jahre von dem Ende der betreffenden Vorlegungsfrist an.

## § 13

### Zahlstellen

- (1) **Hauptzahlstelle:** Die WestLB AG, Düsseldorf, Deutschland ist die anfängliche Hauptzahlstelle (**Hauptzahlstelle**).
- (2) **Luxemburger Zahlstelle:** Die WestLB International S.A., Luxemburg, ist als weitere Zahlstelle (gemeinsam mit der Hauptzahlstelle, die **Zahlstellen**, und jede eine **Zahlstelle**) bestellt. Die Emittentin wird dafür sorgen, dass solange Capital Securities an der Luxemburger Wertpapierbörse notiert sind, immer eine Zahlstelle in Deutschland und in Luxemburg bestellt ist. In keinem Fall darf die Adresse einer von der Emittentin benannten Zahlstelle innerhalb der Vereinigten Staaten oder ihrer Landesbesitzungen liegen.
- (3) **Ersetzung von Zahlstellen:** Die Emittentin wird dafür sorgen, dass stets eine Hauptzahlstelle vorhanden ist. Die Emittentin ist berechtigt, Banken von internationalem Ansehen als Hauptzahlstelle zu bestellen. Die Emittentin ist weiterhin berechtigt, die Bestellung einer Bank zur Hauptzahlstelle zu widerrufen. Im Falle einer solchen Abberufung oder, falls die bestellte Bank nicht mehr als Hauptzahlstelle tätig werden kann oder will, bestellt die Emittentin eine andere Bank von internationalem Ansehen als Hauptzahlstelle. Die Emittentin wird sich, soweit möglich, darum bemühen, dass stets eine Zahlstelle mit Geschäftsstelle in einem Mitgliedsstaat der Europäischen Union vorhanden ist, die nicht verpflichtet ist, Steuern einzubehalten oder abzuziehen, die aufgrund einer Richtlinie der Europäischen Union betreffend die Besteuerung von Zinserträgen, die die Schlussfolgerungen des Treffens des ECOFIN-Rates vom 26. - 27. November 2000 umsetzt, oder aufgrund einer gesetzlichen Vorschrift, die diese Richtlinie umsetzt oder befolgt oder erlassen wurde, um der Richtlinie zu entsprechen, einzubehalten oder abzuziehen sind. Jede solche Bestellung oder ein solcher Widerruf der Bestellung ist unverzüglich gemäß § 15 oder, falls dies nicht möglich sein sollte, in sonstiger Weise öffentlich bekannt zu machen.

## § 12

### Presentation Period; Prescription

The period for presentation of the Capital Securities (as provided for in § 801(1) sentence 1 of the German Civil Code) shall be reduced to ten years. The period of limitation for claims under the Capital Securities presented during the period for presentation shall be two years calculated from the expiration of the relevant presentation period.

## § 13

### Paying Agents

- (1) **Principal Paying Agent:** WestLB AG, Düsseldorf, Germany, shall be the initial paying agent (**Principal Paying Agent**).
- (2) **Luxembourg Paying Agent:** WestLB International S.A., Luxembourg, shall be appointed as additional paying agent (together with the Principal Paying Agent, the **Paying Agents** and each a **Paying Agent**). The Issuer shall procure that as long as Capital Securities are listed on the Luxembourg Stock Exchange, there will at all times be a Paying Agent in Germany and Luxembourg, respectively. In no event shall the specified office of a Paying Agent appointed by the Issuer be within the United States or its possessions.
- (3) **Replacement of Paying Agents:** The Issuer shall procure that there will at all times be a Principal Paying Agent. The Issuer shall be entitled to appoint banks of international standing as Principal Paying Agent. Furthermore, the Issuer shall be entitled to terminate the appointment of a bank as Principal Paying Agent. In the event of such termination or such bank being unable or unwilling to continue to act as Principal Paying Agent, the Issuer shall appoint another bank of international standing as Principal Paying Agent. The Issuer shall, to the extent possible, procure that it will at all times maintain a Paying Agent with a specified office in a European Union member state that will not be obliged to withhold or deduct tax pursuant to any European Union Directive on the taxation of savings implementing the conclusions of the ECOFIN Council meeting of 26 - 27 November 2000 or any law implementing or complying with, or introduced in order to conform to, such Directive. Any such appointment or termination shall be published without undue delay in accordance with § 15, or, should this not be possible, be published in another way.

- (4) **Haftung der Zahlstellen:** Jede Zahlstelle haftet dafür, dass sie Erklärungen abgibt, nicht abgibt oder entgegennimmt oder Handlungen vornimmt oder unterlässt, nur, wenn und soweit sie die Sorgfalt eines ordentlichen Kaufmanns verletzt hat.
- (5) **Rechtsverhältnisse der Zahlstellen:** Die Zahlstellen sind in ihrer jeweiligen Funktion ausschließlich Beauftragte der Emittentin. Zwischen den Zahlstellen einerseits und den Emissionsgläubigern andererseits besteht kein Auftrags- oder Treuhandverhältnis. Die Zahlstellen sind von den Beschränkungen des § 181 BGB und etwaigen gleichartigen Beschränkungen des anwendbaren Rechts anderer Rechtsordnungen befreit.
- (4) **Liability of Paying Agents:** Each Paying Agent shall be held responsible for giving, failing to give, or accepting a declaration, or for acting or failing to act, only if, and insofar as, it fails to act with the diligence of a conscientious businessman.
- (5) **Paying Agent Legal Matters:** The Paying Agents, acting in such capacity, act only as agents of the Issuer. There is no agency or fiduciary relationship between the Paying Agents on the one side and the Securityholders on the other side. Each of the Paying Agents shall be exempt from the restrictions set forth in § 181 German Civil Code and similar restrictions of other applicable laws of other jurisdictions.

#### § 14 Ersetzung

- (1) **Ersetzung:** Die Emittentin ist jederzeit berechtigt, ohne Zustimmung der Emissionsgläubiger im Wege (i) der Abtretung bzw. Vertragsübernahme oder (ii) einer gesellschaftsrechtlichen Umstrukturierung eine andere Gesellschaft an ihrer Stelle als Hauptschuldnerin und Hauptgläubigerin (**Nachfolgerin**) für alle Verpflichtungen und Rechte aus und im Zusammenhang mit den Capital Securities, dem Teilnahmevertrag und dem Einzahlungsvertrag sowie sonstigen, mit diesen Verträgen zusammenhängenden Verträge einzusetzen; allerdings nur sofern:
- (a) sie sich nicht mit einer Zahlung auf die Capital Securities in Verzug befindet;
  - (b) die Nachfolgerin alle Rechte und Verpflichtungen der Emittentin in Bezug auf die Capital Securities übernimmt;
  - (c) die Emittentin und die Nachfolgerin alle erforderlichen Genehmigungen erhalten haben und berechtigt sind, die zur Erfüllung der Zahlungsverpflichtungen aus den Capital Securities zahlbaren Beträge in Euro zu zahlen, ohne verpflichtet zu sein, in dem Land, in dem die Nachfolgerin oder die Emittentin ihren jeweiligen Sitz oder Steuersitz haben, erhobene Steuern oder andere Abgaben jeder Art abzuziehen oder einzubehalten;

#### § 14 Substitution

- (1) **Substitution:** The Issuer may, at any time and without the consent of the Securityholders, substitute, by (i) assignment or contractual assumption or (ii) corporate restructuring, another company for the Issuer as principal debtor and creditor (**Successor**) in respect of all obligations and rights under and in connection with the Capital Securities, the Participation Agreement and the Contribution Agreement as well as any other agreements related thereto, provided that:
- (a) the Issuer is not in default of any payment owed under the Capital Securities;
  - (b) the Successor assumes all rights and obligations of the Issuer under the Capital Securities;
  - (c) the Issuer and the Successor have obtained all necessary permits and are authorised to comply with the payment obligations under the Capital Securities by paying the amounts due in Euro without being obliged to withhold or deduct applicable tax or other duties of any kind in the respective countries in which the Successor and the Issuer are domiciled or resident for tax purposes;

(d) die Nachfolgerin sich verpflichtet hat, die Investoren hinsichtlich solcher Steuern, Abgaben oder behördlichen Lasten freizustellen, die den Emissionsgläubigern bezüglich der Ersetzung auferlegt werden; und

(e) die Ersetzung nicht zu einer erhöhten Belastung der (i) Nachfolgerin oder (ii) ihrer Anteilseigner (für den Fall einer Kapitalgesellschaft) bzw. Gesellschafter (für den Fall einer Personengesellschaft) mit Kapitalertrag- oder sonstiger Abzugssteuer, etwaiger Vermögensteuer oder der Gewerbeertrag- oder sonstiger Ertragsteuer führt; allerdings mit der Maßgabe, dass dieser § 14(1)(e) nicht untersagt, dass die Emittenten-Kommanditistin deswegen die Nachfolgerin wird, weil die Emittenten-Komplementärin ihren Anteil an der Emittentin an die Emittenten-Kommanditistin überträgt (wodurch der Emittenten-Kommanditistin sämtliche Vermögensgegenstände und Verbindlichkeiten der Emittentin anwachsen würden (in einem solchen Fall würde der Einzahlungsvertrag erlöschen und die Nachfolgerin würde die Darlehensauszahlungen unmittelbar mit den Zahlungen auf die Steuererstattungsansprüche zurückzahlen).

(2) **Bekanntmachung der Ersetzung:** Jedwede Ersetzung gemäß diesem § 14 ist den Emissionsgläubigern unverzüglich nach Maßgabe von § 15 bekannt zu machen.

(3) **Änderung von Bezugnahmen:** Im Fall einer Ersetzung gilt jedwede Bezugnahme in diesen Emissionsbedingungen auf die Emittentin ab dem Zeitpunkt der Ersetzung als Bezugnahme auf die Nachfolgerin und jedwede Bezugnahme auf das Land, in dem die Emittentin ihren Sitz oder Steuersitz hat, als Bezugnahme auf das Land, in dem die Nachfolgerin ihren Sitz oder Steuersitz hat.

#### § 15 Bekanntmachungen

(1) **Mitteilungen über die Presse:** Die Capital Securities betreffende Bekanntmachungen werden in einem Börsenpflichtblatt der Luxemburger Wertpapierbörse, voraussichtlich dem *Luxemburger Wort*, veröffentlicht. Eine Mitteilung gilt mit dem Tag ihrer Veröffentlichung (oder bei mehreren Mitteilungen mit dem Tage der ersten Veröffentlichung) als erfolgt.

(d) the Successor has agreed to indemnify the Securityholders against such taxes, duties or other governmental charges as may be imposed on the Securityholders in connection with the substitution; and

(e) the substitution does not result in an increase in German Withholding Tax or any other withholding tax, in property tax, if applicable, trade income or any other income tax payable by (i) the Successor or (ii) its shareholders (if incorporated as a corporation) or partners (if established as a partnership); provided that this § 14(1)(e) shall not inhibit the Issuer Limited Partner becoming the Successor by virtue of the Issuer General Partner transferring its interest in the Issuer to the Issuer Limited Partner as a consequence of which all of the Issuer's assets and liabilities would accrue to the Issuer Limited Partner (in such a case, the Contribution Agreement would lapse and the Successor would repay the Advances directly with the amounts received on the Tax Repayment Claims ).

(2) **Notification of Substitution:** Any substitution in accordance with this § 14 shall be notified to Securityholders in accordance with § 15 hereof without undue delay.

(3) **Change in Reference:** Upon substitution, any references in these Terms and Conditions to the Issuer shall forthwith be deemed to be references to the Successor and any references to the country of domicile or tax residence of the Issuer shall forthwith be deemed to be references to the country of domicile or tax residence of the Successor, in each case with effect from the substitution date.

#### § 15 Notices

(1) **Newspaper Notices:** Notices relating to the Capital Securities shall be published in a newspaper designated by the Luxembourg Stock Exchange, expected to be the *Luxemburger Wort*. A notice shall be deemed to be made on the day of its publication (or, in the case of more than one publication, on the day of the first publication).

- (2) **Unmittelbare Mitteilungen:** Sofern die Regularien der Börse, an der die Capital Securities notiert sind, dies zulassen, ist die Emittentin berechtigt, Bekanntmachungen auch durch eine Mitteilung an das Clearing-System zur Weiterleitung an die Emissionsgläubiger oder direkt an die Emissionsgläubiger zu bewirken. Bekanntmachungen über das Clearing-System gelten sieben Tage nach der Mitteilung an das Clearing-System, direkte Mitteilungen an die Emissionsgläubiger mit ihrem Zugang als bewirkt.
- (3) **Auslegung bei den Zahlstellen:** Die Texte sämtlicher Veröffentlichungen gemäß diesem § 15 sind außerdem in den Geschäftsräumen der Zahlstellen zugänglich zu machen.
- (2) **Direct Notices:** The Issuer shall also be entitled to make notifications to the Clearing System for communication by the Clearing System to the Securityholders or directly to the Securityholders, provided this complies with the rules of the stock exchange on which the Capital Securities are listed. Notifications vis-à-vis the Clearing System shall be deemed to be effected seven days after the notification to the Clearing System, direct notifications to the Securityholders shall be deemed to be effected upon their receipt.
- (3) **Display at the Paying Agents:** The text of any publication to be made in accordance with this § 15 shall also be available at the specified office of each Paying Agent.

### § 16 Schlussbestimmungen

- (1) **Anwendbares Recht:** Form und Inhalt der Capital Securities sowie die Rechte und Pflichten der Emissionsgläubiger, der Emittentin und der Zahlstellen bestimmen sich in jeder Hinsicht nach deutschem Recht und werden in Übereinstimmung damit ausgelegt.
- (2) **Gerichtsstand:** Jegliche aus oder im Zusammenhang mit den Capital Securities entstehenden Klagen oder Verfahren unterliegen der nichtausschließlichen Zuständigkeit des Landgerichts Düsseldorf.
- (3) **Geltendmachung von Ansprüchen:** Jeder Emissionsgläubiger kann in Rechtsstreitigkeiten gegen die Emittentin oder in Rechtsstreitigkeiten, an denen der Emissionsgläubiger und die Emittentin beteiligt sind, im eigenen Namen seine Rechte aus den ihm zustehenden Capital Securities unter Vorlage der folgenden Dokumente geltend machen:
- (a) einer Bescheinigung seiner Depotbank, die (i) den vollen Namen und die volle Anschrift des Emissionsgläubiger bezeichnet (ii) den Gesamtnennbetrag von Capital Securities angibt, die am Ausstellungstag dieser Bescheinigung dem bei dieser Depotbank bestehenden Wertpapierdepot dieses Emissionsgläubigers gutgeschrieben sind und (iii) bestätigt, dass die Depotbank dem Clearing-System und der Hauptzahlstelle eine schriftliche Mitteilung gemacht hat, die die Angaben gemäß (i) und (ii) enthält und Bestätigungsvermerke des Clearing-Systems trägt; und
- (b) einer von einem Vertretungsberechtigten des Clearing Systems oder der Zahlstelle beglaubigten Ablichtung der Globalurkunde.

### § 16 Final Clauses

- (1) **Governing Law:** The form and content of the Capital Securities and the rights and duties of the Securityholders, the Issuer and the Paying Agents shall in all respects be governed by, and construed in accordance with, the laws of Germany.
- (2) **Jurisdiction:** The District Court in Düsseldorf shall have non-exclusive jurisdiction for any action or other legal proceedings arising out of or in connection with the Capital Securities.
- (3) **Enforcement:** Any Securityholder may, in any proceedings against the Issuer or to which the Securityholder and the Issuer are parties, protect and enforce in its own name its rights arising under its Capital Securities upon presentation of the following documents:
- (a) a certificate issued by its Custodian (i) stating the full name and address of the Securityholder, (ii) specifying the aggregate nominal amount of Capital Securities credited on the date of such statement to such Securityholder's securities account maintained with its Custodian and (iii) confirming that its Custodian has given a written notice to the Clearing System and the Principal Paying Agent containing the information specified in (i) and (ii) and bearing the acknowledgement of the Clearing System; and
- (b) a copy of the Global Security, certified as being a true copy by a duly authorised officer of the Clearing System or by a Paying Agent.



- (4) **Ersetzung von Capital Securities:** Falls eine Globalurkunde verloren geht, gestohlen, verstümmelt, beschädigt oder zerstört wird, kann sie bei den Geschäftsstellen der Zahlstellen ersetzt werden, vorbehaltlich anwendbaren Rechts und Anforderungen der Börsen. Der Anspruchsteller erstattet diejenigen Kosten, die mit dem Austausch verbunden sind und die aus von der Emittentin zumutbarerweise geforderten Beweis-, Sicherheits- und Freistellungsgründen angefallen sind.
- (5) **Teilunwirksamkeit:** Sollte eine der Bestimmungen dieser Emissionsbedingungen ganz oder teilweise unwirksam und undurchführbar sein oder werden, so bleibt die Wirksamkeit oder die Durchführbarkeit der übrigen Bestimmungen hiervon unberührt. Anstelle der unwirksamen Bestimmung soll, soweit rechtlich möglich, eine dem Sinn und wirtschaftlichen Zweck dieser Emissionsbedingungen zum Zeitpunkt der Begebung der Capital Securities entsprechende Regelung gelten. Unter Umständen, unter denen sich diese Emissionsbedingungen als unvollständig erweisen, soll eine ergänzende Auslegung, die dem Sinn und Zweck dieser Emissionsbedingungen entspricht, unter angemessener Berücksichtigung der berechtigten Interessen der beteiligten Parteien erfolgen.
- (6) **Bindende Fassung:** Die deutsche Fassung dieser Emissionsbedingungen ist bindend.
- (4) **Replacement of Capital Securities:** Any Global Security which is lost, stolen, mutilated, defaced or destroyed, may be replaced at the office of a Paying Agent, subject to all applicable laws and stock exchange requirements, upon payment by the claimant of the expenses incurred in connection with such replacement as a result of such requirements as to evidence, security and indemnity as the Issuer may reasonably specify.
- (5) **Severability:** Should any of the provisions of these Terms and Conditions be or become invalid or unenforceable in whole or in part, the validity or the enforceability of the remaining provisions shall not in any way be affected or impaired thereby. In this case, the invalid provision shall be replaced by a provision which is, to the extent legally possible, in accordance with the meaning and the economic purposes of the Terms and Conditions at the time of the issue of the Capital Securities. Under circumstances in which these Terms and Conditions prove to be incomplete, a supplementary interpretation in accordance with the meaning and the purposes of these Terms and Conditions under due considerations of the legitimate interest of the parties involved shall be applied.
- (6) **Binding Version:** The German version of these Terms and Conditions shall be the binding version.

## TERMS AND CONDITIONS OF THE PARTICIPATION AGREEMENT

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

**Hybrid Capital Funding II Limited Partnership,**  
St Helier  
Jersey JE4 8PX  
Kanalinseln  
(nachstehend als **Stiller Gesellschafter** bezeichnet)

und

**WestLB AG,**  
Düsseldorf/Münster  
Bundesrepublik Deutschland  
(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 13. Mai 2005.

**Ausschüttungsfähiger Gewinn** bezeichnet den nach Maßgabe und in Übereinstimmung mit den in der Bundesrepublik Deutschland geltenden Rechnungslegungsvorschriften des Handelsgesetzbuchs sowie sonstigem zum maßgeblichen Zeitpunkt anwendbaren deutschen Recht ermittelten Jahresüberschuss oder Jahresfehlbetrag der Bank für das maßgebliche Geschäftsjahr der Bank wie er sich aus der nicht konsolidierten und durch eine von der BaFin anerkannte Wirtschaftsprüfungsgesellschaft geprüften Gewinn- und Verlustrechnung ergibt, zuzüglich Entnahmen aus den anderen Gewinnrücklagen, soweit diese während der Dauer dieses Vertrages gebildet wurden sowie abzüglich eines etwaigen Verlustvortrags aus den Vorjahren und dem Betrag, der gemäß § 300 AktG in die gesetzliche Rücklage einzustellen ist.

### Agreement on the Establishment of a Silent Partnership

between

**Hybrid Capital Funding II Limited Partnership,**  
St Helier  
Jersey JE4 8PX  
Channel Islands  
(hereinafter called **Silent Partner**)

and

**WestLB AG,**  
Düsseldorf/Münster  
Federal Republic of Germany  
(hereinafter called **Bank**)

### Preamble

The Silent Partner and the Bank intend to establish a silent partnership for the purpose of ensuring that the Silent Partner's contribution to the Bank permanently constitutes liable equity capital (core capital).

On this basis, 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 13 May 2005.

**Distributable Profits** means the net profit (*Jahresüberschuss*) or net loss (*Jahresfehlbetrag*) of the Bank for the relevant fiscal year (determined on the basis of the annual unconsolidated profit and loss statement of the Bank as audited by an auditing firm which is recognised by the BaFin), plus withdrawals from other earnings reserves, if any, accumulated during the term of this Agreement, minus any loss carried forward from previous years and minus any amount to be allocated to the legal reserves pursuant to Section 300 of the German Stock Corporation Act, all in compliance with, and determined in accordance with, the accounting principles generally accepted in the Federal Republic of Germany in compliance with the German Commercial Code and any other applicable German law then in effect.



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

**Bank** bezeichnet die WestLB AG, eine nach deutschem Recht errichtete Aktiengesellschaft mit Sitz in Düsseldorf und Münster, Deutschland.

**Beendigungstag** bezeichnet den letzten Tag, an dem der Stille Gesellschafter am Handelsgewerbe der Bank als typischer stiller Gesellschafter beteiligt ist.

**Bestehende Stille Beteiligungen** hat die in § 5 festgelegte Bedeutung.

Ein **Bilanzverlust** liegt dann vor, wenn die nicht konsolidierte Jahresbilanz der Bank auf Grundlage der Rechnungslegungsvorschriften des deutschen HGB nach Prüfung durch eine 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, deutschen Rechnungslegungsvorschriften sowie sonstigem zum maßgeblichen Zeitpunkt anwendbaren deutschen Recht getroffenen Feststellungen.

**Buchwert** bezeichnet den Buchwert der Stillen Einlage, so wie dieser in der Bilanz der Bank festgestellt wurde. Wenn sich bei Aufstellung der Bilanz der Bank die Entstehung eines Bilanzverlusts abzeichnet, so wird dieser Bilanzverlusts anteilig nach Maßgabe des § 6 vom Buchwert abgezogen.

**Einlagennennbetrag** bezeichnet den Betrag von € 240.000.000 (Euro zweihundertvierzig Millionen).

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

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

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

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

**Bank** means WestLB AG, a stock corporation established under the laws of Germany, having its seat in Düsseldorf and Münster, Germany.

**Termination Date** shall mean the last date on which the Silent Partner participates in the Bank's commercial enterprise as an ordinary silent partner.

**Existing Silent Participations** has the meaning set forth in § 5.

An **Annual Balance Sheet Loss** exists if the annual unconsolidated balance sheet of the Bank in accordance with the German Commercial Code, as audited by an auditing firm which is recognised by the BaFin, does not show a balance sheet profit for the fiscal year to which the relevant Profit Participation relates. Any such balance sheet profit includes the net profit or net 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 with, and determined in accordance with, the German Stock Corporation Act, accounting principles generally accepted in the Federal Republic of Germany and other applicable German law then in effect.

**Book Value** means the book value of the Silent Contribution as specified in the Bank's balance sheet. If, when drawing up the Bank's balance sheet, it becomes evident that a Annual Balance Sheet Loss would arise, a proportionate part of such Annual Balance Sheet Loss shall be deducted from the Book Value in accordance with § 6.

**Nominal Contribution Amount** means € 240,000,000 (Euro two hundred and forty million).

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

**Business Day** means a day on which TARGET (the Trans-European Automated Real Time Gross Settlement Express Transfer System) is operating credit or transfer instructions in respect of payments in Euro.

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

**Gewinnbeteiligungszahlung** hat die in § 4(1) und § 4(2) festgelegte Bedeutung.

**Gewinnperiode** bezeichnet jeweils den Zeitraum vom 1. Januar (einschließlich) bis 31. Dezember (einschließlich) eines Jahres, wobei die erste Gewinnperiode am Anfangsdatum (einschließlich) beginnt und am 31. Dezember 2005 (einschließlich) endet und die letzte Gewinnperiode vom 1. Januar (einschließlich) bis zum Beendigungstag (einschließlich) läuft.

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

**KWG** bezeichnet das Gesetz über das Kreditwesen.

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

**Rückzahlungstag** bezeichnet entweder (i) den 30. Juni des Jahres, das auf das Geschäftsjahr der Bank folgt, in das der Beendigungstag fällt bzw., falls dieser Tag kein Geschäftstag ist, den nächstfolgenden Geschäftstag oder (ii) falls am 29. Juni des maßgeblichen Geschäftsjahres der Bank der Jahresabschluss der Bank für das Geschäftsjahr, in das der Beendigungstag fällt, noch nicht festgestellt war, der auf den Tag der Feststellung folgende Geschäftstag, je nachdem, welches der spätere Zeitpunkt ist.

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

**Stiller Gesellschafter** bezeichnet Hybrid Capital Funding II Limited Partnership, eine in Jersey begründete und nach Maßgabe des Limited Partnerships (Jersey) Law 1994 in der jeweils gültigen Fassung registrierte Kommanditgesellschaft (Limited Partnership), mit Sitz in 22 Grenville Street, St. Helier, Jersey JE4 8PX, Kanalinseln.

## § 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 ist am Anfangsdatum vollständig zu leisten. Die Stille Einlage geht in das Vermögen der Bank über.

**Profit Participation Payment** has the meaning specified in § 4(1) and § 4(2).

**Profit Period** means each period from (and including) 1 January to (and including) 31 December for each year, provided that the first Profit Period shall commence on (and include) the Start Date and end on (and include) 31 December 2005 and that the last Profit Period shall commence on (and include) 1 January 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).

**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) 30 June of the year following the fiscal year of the Bank in which the Termination Date occurs or, if such day is not a Business Day, the next Business Day following such day, or (ii) if, on 29 June of the relevant fiscal year of the Bank, the Bank's annual financial statements for the fiscal year in which the Termination Date occurs have not been adopted, the Business Day following the adoption thereof.

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

**Silent Partner** means Hybrid Capital Funding II Limited Partnership, a partnership established in Jersey and registered under the Limited Partnerships (Jersey) Law 1994, as amended, whose registered office is at 22 Grenville Street, St. Helier, Jersey JE4 8PX, Channel Islands.

## § 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 a capital contribution (Silent Contribution) in an amount equal to the Nominal Contribution Amount.
- (2) **Payment of Silent Contribution:** The Silent Contribution shall be paid in cash. It shall be paid in full no later than the Start Date. The Silent Contribution becomes part of the assets of the Bank.

**§ 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:** Die Gewinnbeteiligung für die Erste Gewinnperiode beträgt € 31.584.000 und Gewinnbeteiligungen für Gewinnperioden nach der Ersten Gewinnperiode fallen in Höhe von 6,16% p.a. an.
- (3) **Ausschluss der Gewinnbeteiligung:** Eine Gewinnbeteiligung für eine Gewinnperiode (einschließlich der Ersten Gewinnperiode) ist ausgeschlossen:
  - (a) falls und soweit für eine solche Zahlung kein ausreichender Ausschüttungsfähiger Gewinn in dem Geschäftsjahr der Bank, auf das sich die maßgebliche Gewinnperiode bezieht, zur Verfügung steht; oder
  - (b) wenn eine Herabsetzung erfolgt ist und die Stille Einlage noch nicht wieder vollständig gemäß § 6(3) heraufgeschrieben 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 die Gesamtkennziffer der Bank auf Institutsebene unter 9,0% liegt, soweit die Zahlung einer solchen Gewinnbeteiligung im Einzelabschluss zu einem Fehlbetrag (nach HGB) in dem Geschäftsjahr der Bank, auf das sich die maßgebliche Gewinnperiode bezieht, führen oder diesen erhöhen würde; oder
  - (e) falls der Beendigungstag in diese Gewinnperiode fällt.

**§ 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 Profit Participation for the First Profit Period shall amount to € 31,584,000 and Profit Participations for Profit Periods after the First Profit Period shall accrue at a rate of 6.16 per cent. *per annum*.
- (3) **Profit Participations excluded:** The payment of Profit Participations for any Profit Period (including the First Profit Period) is excluded:
  - (a) if (but only to such extent that) there are insufficient Distributable Profits available for the fiscal year of the Bank into which the relevant Profit Period falls to make such payment; or
  - (b) if there has occurred a Reduction and the Silent Contribution has not been fully written-up again 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 in respect of the assets of the Bank has been filed for reasons of threatened 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 Bank's solvency ratio (*Gesamtkennziffer*) is below 9.0 per cent. on an unconsolidated basis, to the extent that payment of such Profit Participation would lead to or increase an unconsolidated annual loss (in accordance with the German Commercial Code) in the fiscal year of the Bank to which the relevant Profit Period relates; or
  - (e) if the Termination Date falls within such Profit Period.

- (4) **Berechnung unterjähriger Gewinnbeteiligungen:** Gewinnbeteiligungen für einen Zeitraum von weniger als einem Jahr werden auf Grundlage der Anzahl Tage in dem Zeitraum dividiert durch 360 berechnet, wobei die Anzahl der Tage in dem Zeitraum auf der Grundlage eines Jahres von 360 Tagen mit zwölf Monaten zu je 30 Tagen zu ermitteln ist.

#### § 4

##### Zahlung der Gewinnbeteiligung

(1) **Fälligkeit von Gewinnbeteiligungen:**

(a) **Erste Gewinnperiode:** Die Gewinnbeteiligung für die Erste Gewinnperiode beträgt € 31.584.000 und wird in drei Raten (jeweils eine **Gewinnbeteiligungszahlung**) fällig; die erste Gewinnbeteiligungszahlung in Höhe von € 16.800.000 wird am 30. Juni 2006 oder, falls später, an dem Geschäftstag, der auf den Tag der Feststellung des Jahresabschlusses der Bank für das Geschäftsjahr 2005 folgt, fällig; die zweite und dritte Gewinnbeteiligungszahlung in Höhe von jeweils € 7.392.000 werden jeweils am 30. Dezember 2006 und 30. Juni 2007 fällig. Soweit die Gewinnbeteiligung für die Erste Gewinnperiode den Betrag von € 31.584.000 wegen eines Ausschlusses der Gewinnbeteiligung gemäß § 3(3) nicht erreicht, wird die Bank den verbleibenden zahlbaren Teil der Gewinnbeteiligung für die Erste Gewinnperiode vorrangig mit der ersten Gewinnbeteiligungszahlung zur Auszahlung bringen und lediglich etwa danach verbleibende Teile rätierlich auf die zweite und dritte Gewinnbeteiligungszahlung zur Anwendung bringen.

(b) **Andere Gewinnperioden:** Jede Gewinnbeteiligung (mit Ausnahme der Ersten Gewinnbeteiligung) wird in zwei gleichen Raten (jeweils eine **Gewinnbeteiligungszahlung**) fällig und zwar an dem dem Ablauf der maßgeblichen Gewinnperiode jeweils folgenden 30. Dezember und dem darauf folgenden 30. Juni.

- (2) **Zahlung an Geschäftstagen; kein Ausgleich bei verspäteter Zahlung:** Falls der Tag, an dem eine Gewinnbeteiligungszahlung nach Maßgabe des § 4(1)(a) oder § 4(1)(b) fällig wird, kein Geschäftstag ist, verschiebt sich die Fälligkeit auf den nächstfolgenden Geschäftstag; aufgrund einer solchen Verschiebung erfolgt keine Zahlung von Zinsen und keine Zahlung von weiteren Beträgen an Gewinnbeteiligung.

- (4) **Calculation of short Profit Participations:** Profit Participations accrued for a period of less than one year shall be calculated on the basis of the actual number of days elapsed in such period divided by 360, with the number of days within such period is to be calculated on the basis of a year of 360 days with twelve 30-day months.

#### § 4

##### Profit Participation Payment

(1) **Payment of Profit Participations:**

(a) **First Profit Period:** The Profit Participation for the First Profit Period shall equal € 31,584,000 and shall be payable in three instalments (each a **Profit Participation Payment**); the first Profit Participation Payment shall equal € 16,800,000 and shall be payable on 30 June 2006 or, if later, the Business Day following the adoption of the Bank's annual financial statements for the fiscal year 2005; the second and third Profit Participation Payments shall equal € 7,392,000 each and shall be payable on 30 December 2006 and 30 June 2007, respectively. To the extent that the Profit Participation for the First Profit Period shall be less than € 31,584,000 as a result of Profit Participations being excluded for the First Profit Period pursuant to § 3(3), the Bank will apply amounts that remain payable on the Profit Participation for the First Profit Period to the first Profit Participation Payment and the remainder, if any, will be applied to the second and third Profit Participation Payment on a *pro rata* basis.

(b) **Other Profit Periods:** Each Profit Participation (other than the First Profit Participation) shall be payable in two equal instalments (each a **Profit Participation Payment**) on 30 December following the end of the relevant Profit Period and the next following 30 June.

- (2) **Payment on Business Days; no Compensation for Late Payment:** If a day on which a Profit Participation Payment under § 4(1)(a) or § 4(1)(b) falls due is not a Business Day, payment shall be postponed to the next following Business Day; no interest or further amount of Profit Participation will accrue or be payable as a result of such postponement.

## § 5

### Rangstellung des Beteiligungsvertrages

Die Zahlungsverpflichtungen der Bank aufgrund dieses Beteiligungsvertrages:

- (1) sind nachrangig gegenüber Forderungen aller bestehenden und künftigen Gläubiger der Bank (einschließlich der Gläubiger von Genussrechten oder Genussscheinen und ggf. anderer Kapitalinstrumente des Ergänzungskapitals, sowie sonstiger nachrangiger 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 künftige Gewinnbeteiligungen in Form von stillen Gesellschaften in die Bank eingebracht wurden, sowie mit anderen Kapitalinstrumenten des Eigenkapitals, die gleichrangig mit Gewinnbeteiligungen in Form von stillen Gesellschaften sind; und
- (3) sind vorrangig vor allen Forderungen von Anteilseignern der Bank im Zusammenhang mit ihren Anteilen am Grundkapital der Bank;

allerdings mit der Maßgabe, dass (i) Gewinnbeteiligungen nach § 3 vorrangig zu Ausschüttungen auf am Anfangsdatum bestehende stille Beteiligungen an der Bank (mit Ausnahme der stillen Beteiligung der Hybrid Capital Funding I Limited Partnership) (**Bestehende Stille Beteiligungen**) sowie vorrangig zu der Wiederauffüllung des Buchwertes Bestehender Stiller Beteiligungen zur Entstehung gelangen und auszuzahlen sind und (ii) Gutschriften nach § 6(3) vorrangig zu Gutschriften auf Bestehende Stille Beteiligungen erfolgen, die nach einer noch nicht wieder auf den vollen anfänglichen Buchwert hochgeschrieben wurden. Demgemäß fallen Gewinnbeteiligungen unabhängig davon an, ob (i) der Buchwert Bestehender Stiller Beteiligungen wieder vollständig gutgeschrieben wurde oder (ii) Ausschüttungen auf Bestehende Stille Beteiligungen gezahlt wurden oder werden.

## § 6

### Verlustbeteiligung, stille Reserven

- (1) **Verlustbeteiligung des Stillen Gesellschafters:** An einem Bilanzverlust nimmt der Stille Gesellschafter im Verhältnis des Buchwerts der Stillen Einlage zum Gesamtbuchwert aller am Verlust teilnehmenden Kernkapitalanteile der Bank teil.

## § 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 holders of 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 distributions under or the repayment of capital contributions made with respect to future profit participations in the Bank in the form of silent partnerships and with other liable capital instruments ranking *pari passu* with profit participations in the form of silent partnerships; and
- (3) rank senior to all claims of shareholders of the Bank in connection with their shares in the statutory capital of the Bank;

provided that (i) Profit Participations in accordance with § 3 shall accrue and be paid in priority to distributions on silent participations in the Bank existing as of the Start Date (other than the silent participation held by Hybrid Capital Funding I Limited Partnership) (**Existing Silent Participations**) as well as in priority to replenishment of the book value of any Existing Silent Participations, and (ii) replenishments in accordance with § 6(3) shall accrue and be made in priority to replenishments of the book value of any Existing Silent Participations which have not yet been fully written up to the initial book value following a sharing in losses. Hence, Profit Participations will accrue irrespective of whether (i) the book value of any Existing Silent Participations that were written down has fully been written up or (ii) distributions accrue or have accrued under Existing Silent Participations.

## § 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 to the aggregate book value of all loss-sharing components of the Bank's "liable core capital".



Somit nehmen alle am Bilanzverlust der Bank beteiligten stillen Gesellschafter und alle Anteilseigner der Bank am Bilanzverlust 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 Bilanzverlust ist auf den Einlagennennbetrag 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 Bilanzverlust entsteht oder erhöht würde.

Die Gutschrift der Stillen Einlage nach einer Herabsetzung geht der Rückführung des Grundkapitals, der Gutschrift Bestehender Stillen Beteiligungen und Einstellungen in Rücklagen vor. Im Verhältnis zu anderen Kapitalgebern nach § 10(4) KWG (Vermögenseinlagen stiller Gesellschafter) (ausgenommen die Bestehenden Stillen Beteiligungen) erfolgt die Gutschrift gemäß diesem § 6(3) in der gleichen Reihenfolge und im gleichen Verhältnis wie die Verlustbeteiligung. Im Verhältnis zu anderen Kapitalgebern nach § 10(5) KWG (Genussrechte) erfolgt die Gutschrift gemäß diesem § 6(3) nachrangig.

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

## § 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.

Hence, all silent partners participating in the Bank's Annual Balance Sheet Loss and all shareholders of the Bank shall share in a Annual Balance Sheet Loss in the same percentage as the book value of their contributions and/or repayment claims or the other stated own funds, respectively.

- (2) **Limitation of Sharing in Losses to Capital Contribution:** The Silent Partner's aggregate share in an Annual Balance Sheet Loss shall be limited to the Nominal Contribution Amount.
- (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 senior to the replenishment of the share capital, the replenishment of Existing Silent Participations and to allocations to reserves. In relation to other capital providers in accordance with § 10(4) KWG (silent participations) (other than Existing Silent Participations), the replenishment pursuant to this § 6(3) shall be effected in the same priority and in the same proportion as the sharing of losses. In relation to other capital providers in accordance with § 10(5) KWG (profit participation rights), the replenishment in accordance with this § 6(3) shall be subordinated.

- (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 or to make withdrawals from on-balance sheet 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) **Ordentliche 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 Recht zur ordentlichen Kündigung darf die Bank nur ausüben, wenn ihre Gesamtkennziffer auf Einzelbankebene den Wert von 9% dauerhaft übersteigt und der Buchwert zum Zeitpunkt der Kündigungserklärung den Einlagenennbetrag nicht unterschreitet.
- (4) **Kündigung durch die Bank aus aufsichtsrechtlichen oder steuerlichen Gründen:** Die Bank ist berechtigt, diesen Beteiligungsvertrag unbeschadet § 7(3) jederzeit unter Einhaltung einer Kündigungsfrist von mindestens zwei Jahren gegenüber dem Stillen Gesellschafter außerordentlich zu kündigen, wenn eine wesentliche und für die Bank nachteilige Veränderung steuerlicher oder aufsichtsrechtlicher Vorschriften gemäß § 12 eintritt und diese sich nicht durch eine Anpassung dieses Vertrages auf Grundlage von § 12 abwenden lässt. Eine außerordentliche Kündigung darf frühestens zum 31. Dezember 2010 erfolgen. Das Recht zur außerordentlichen Kündigung darf die Bank nur ausüben, wenn der Buchwert zum Zeitpunkt der Kündigungserklärung den Einlagenennbetrag nicht unterschreitet.
- (5) **Schriftliche Kündigung:** Jede Kündigung bedarf der Schriftform.
- (6) **Zustimmung der BaFin zu Kündigungen:** Kündigungen dieses Beteiligungsvertrages werden erst wirksam, wenn die BaFin der Kündigungserklärung 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.
- (3) **Ordinary Termination by the Bank:** The Bank may only terminate this Participation Agreement upon two years' prior notice with effect on 31 December of the relevant year, provided that no termination shall be effective earlier than 31 December 2015. The Bank may exercise this ordinary termination right only if its solvency ratio sustainably exceeds 9 per cent on an unconsolidated level and the Book Value at the time of the termination notice is not less than the Nominal Contribution Amount.
- (4) **Termination by the Bank for Regulatory or Tax Reasons:** Notwithstanding § 7(3), the Bank may terminate this Participation Agreement at any time with not less than two years' prior notice if a change in the tax or supervisory environment referred to in § 12 has occurred which is material and adverse to the Bank and which cannot be addressed by an amendment of this Agreement on the basis of § 12. No exceptional termination may become effective prior to 31 December 2010. The Bank may exercise this extraordinary termination right only if the Book Value at the time of the termination notice is not less than the Nominal Contribution Amount.
- (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 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, a transfer of assets (whether a transfer of the whole or any part) or, a change in legal form in respect of the Bank or a change of the Bank's share capital.



- (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.
- (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 holding 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 the repayment of share capital for the benefit of the shareholders.
- (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.
- (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 31 December 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 of 31 December of any year but in no event with effect as of any date prior to 31 December 2035.
- (11) **Nachträgliche Herabsetzung des Buchwertes der Stillen Einlage:** Kommt es zwischen dem Zeitpunkt der Kündigung dieses Beteiligungsvertrages und dem Beendigungstag infolge einer Verlustbeteiligung nach § 6(1) zu einer Herabsetzung, der am Rückzahlungstag nicht voll ausgeglichen ist, gilt die Kündigung als nicht erfolgt und die Stille Beteiligung setzt sich zu den Bestimmungen des Vertrages fort. In diesem Fall ist der Beendigungstag der 31. Dezember, der auf die vollständige Wiederhochschreibung der Stillen Einlage folgt.
- (11) **Subsequent Reduction of Book Value of the Silent Contribution:** If there occurs a Reduction pursuant to § 6(1) between the date on which any termination of this Agreement occurs and the Repayment Date, the termination shall automatically cease to have effect and the Silent Participation shall continue on the terms of this Agreement. In such case, the Termination Date shall be the 31 December which follows the complete replenishment of the Silent Contribution.

**§ 8**  
**Gesellschafterrechte**

- (1) **Jahresabschluss:** Der Stille Gesellschafter ist berechtigt, (i) eine Abschrift des Jahresabschlusses der Bank (Bilanz mit Gewinn- und Verlustrechnung sowie Anhang) einschließlich Lagebericht sowie Konzernabschluss und Konzernlagebericht zu verlangen und (ii) dessen Richtigkeit durch Überprüfung des Prüfungsberichtes auf eigene Kosten durch einen Wirtschaftsprüfer oder vereidigten Buchprüfer feststellen zu lassen. Zusammen mit dem Jahresabschluss erhält der Stille Gesellschafter eine Aufstellung über seine Gewinn- bzw. Verlustbeteiligung.
- (2) **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.

**§ 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 ascertain, at its own cost, the correctness thereof through the review of the auditor's report by an auditor or a certified public accountant. The Silent Partner shall, together with the annual financial statements, receive a statement of its profit/loss sharing position.
- (2) **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 notwithstanding any agreement to the contrary, unless (i) the capital has been replaced by other own funds of at least equal quality or (ii) the BaFin has agreed to the premature repayment of the Silent Contribution.

**§ 10**  
**Issue of Additional Liable 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**  
**Übertragungsrechte des Stillen**  
**Gesellschafters**

Die Abtretung oder anderweitige Verfügung (z.B. durch Verpfändung) über Forderungen des Stillen Gesellschafters aus diesem Beteiligungsvertrag bedarf der Zustimmung der Bank.

**§ 12**  
**Änderungen steuerlicher oder aufsichtsrechtlicher Vorschriften**

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 Quellensteuern 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.

**§ 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.

**§ 14**  
**Anwendbares Recht, Erfüllungsort und**  
**Gerichtsstand**

- (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 Düsseldorf.

**§ 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 Participation Agreement require the Bank's approval.

**§ 12**  
**Changes in the Tax or Supervisory Law**

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, 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**  
**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**  
**Governing Law, Place of Performance and**  
**Place of Jurisdiction**

- (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 Düsseldorf.

**§ 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.

**§ 16**  
**Wirksamkeit**

Dieser Vertrag wird erst mit Eintragung als Teilgewinnabführungsvertrag im Handelsregister der Bank wirksam.

**§ 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.

**§ 16**  
**Effectiveness**

This Agreement shall only become effective upon registration as partial profit transfer agreement with the commercial register of the Bank.

## TERMS AND CONDITIONS OF THE LOAN AGREEMENT

THE GERMAN TEXT OF THE LOAN AGREEMENT IS LEGALLY BINDING.

THE ENGLISH TRANSLATION IS FOR CONVENIENCE ONLY.

DIESER VERTRAG wird am 3. Mai 2005 abgeschlossen zwischen:

- (1) **HYBRID CAPITAL FUNDING II LIMITED PARTNERSHIP**, einer nach dem Recht Jerseys errichteten Kommanditgesellschaft (*Limited Partnership*) mit eingetragenem Sitz in 22 Grenville Street, St. Helier, Jersey JE4 PX, Kanalinseln (die **Darlehensnehmerin**), handelnd durch ihre Komplementärin (*General Partner*) Hybrid Capital Funding II Limited; und
- (2) **WestLB AG**, Herzogstrasse 15, 40217 Düsseldorf, Deutschland (die **Darlehensgeberin**).

### PRÄAMBEL

- (A) Die Darlehensnehmerin wurde am 27. April 2005 bei der Financial Services Commission Jersey registriert und als Kommanditgesellschaft (*limited partnership*) nach dem Recht von Jersey errichtet. Die alleinigen Gesellschafter der Darlehensnehmerin sind die Komplementärin und die Kommanditistin.
- (B) Die Darlehensgeberin ist mit der Komplementärin und der Kommanditistin nicht verbunden.
- (C) Die Darlehensnehmerin beabsichtigt, die Capital Securities zu begeben, deren Erlös sie für den Erwerb einer stillen Beteiligung an dem Handelsgewerbe der WestLB AG (in dieser Funktion nachfolgend die als **Bank** bezeichnet) in Form einer Stillen Gesellschaft nach deutschem Recht nach Maßgabe eines Vertrages vom 3. Mai 2005 (der **Beteiligungsvertrag**) verwenden wird, der vorsieht, dass die Darlehensnehmerin eine Vermögenseinlage in Höhe von € 240.000.000 in die Bank einbringt (die **Stille Einlage**).

THIS AGREEMENT is made on 3 May 2005 between:

- (1) **HYBRID CAPITAL FUNDING II LIMITED PARTNERSHIP**, a limited partnership established under the laws of Jersey whose registered office is at 22 Grenville Street, St. Helier, Jersey JE4 PX, Channel Islands (the **Borrower**) acting through its general partner Hybrid Capital Funding II Limited; and
- (2) **WestLB AG** Herzogstrasse 15, 40217 Düsseldorf, Germany (the **Lender**).

### WHEREAS

- (A) The Borrower was registered with the Jersey Financial Services Commission and established as a limited partnership under Jersey law on 27 April 2005. The Borrower's sole partners are the General Partner and the Limited Partner.
- (B) The Lender is unaffiliated with the General Partner and the Limited Partner.
- (C) The Borrower proposes to issue the Capital Securities, the proceeds of which will be used by the Borrower to acquire a silent partnership interest in the commercial enterprise of WestLB AG (in this capacity hereinafter referred to as the **Bank**) in the form of a *Stille Gesellschaft* under German law pursuant to an agreement providing for a capital contribution by the Borrower to the Bank in the amount of € 240,000,000 (the **Silent Contribution**) and dated 3 May 2005 (the **Participation Agreement**).

- (D) Als Gegenleistung für die Stille Einlage erhält die Darlehensnehmerin Gewinnbeteiligungen, die jeweils jährlich auf der Grundlage des Nennbetrages der Stillen Einlage der Darlehensnehmerin für jedes Geschäftsjahr der Bank ermittelt und – soweit sie nach Maßgabe des Beteiligungsvertrages anfallen – halbjährlich nachträglich ausgeschüttet werden (mit Ausnahme der Gewinnbeteiligungen für das Geschäftsjahr 2005, die gemäß den Bestimmungen des Beteiligungsvertrags, nachträglich in drei Raten ausgeschüttet werden sollen) (**Gewinnbeteiligungszahlungen**).
- (E) Gemäß und nach Maßgabe der Emissionsbedingungen der Capital Securities sind die Inhaber der Capital Securities (**Emissionsgläubiger**) berechtigt, halbjährlich von den Gewinnbeteiligungszahlungen abhängende Zinszahlungen auf die Capital Securities (**Zinszahlungen**) zu erhalten.
- (F) Wenn Gewinnbeteiligungszahlungen an die Darlehensnehmerin ausgeschüttet werden oder die Stille Einlage nach einer Herabsetzung ihres Buchwerts gemäß § 6(3) des Beteiligungsvertrages wieder gutgeschrieben wird (eine **Wiedergutschrift**), ist die Bank verpflichtet, von den ausgeschütteten Beträgen oder dem Betrag der Wiedergutschrift Kapitalertragsteuer zuzüglich Solidaritätszuschlag einzubehalten (jeweils ein **Einbehalt**), sofern nicht die Finanzbehörden Zahlungen an die Darlehensnehmerin befreit haben. Soweit die Einbehalte nach deutschem Steuerrecht der Kommanditistin zuzurechnen sind, gelten sie als Vorauszahlung auf die von der Kommanditistin geschuldete Körperschaftsteuer in Deutschland.
- (G) Die Kommanditistin rechnet in ihrer Eigenschaft als *limited partner* der Darlehensnehmerin in jedem Jahr mit Steuererstattungsansprüchen gegenüber den deutschen Finanzbehörden (jeweils ein **Steuererstattungsanspruch**) in Höhe der Beträge, um die die Vorauszahlungen in Form der Einbehalte ihre jeweilige tatsächliche Körperschaftsteuerschuld in Deutschland überschreiten.
- (D) In return for the Silent Contribution, the Borrower is entitled to profit participations calculated annually on the basis of the nominal amount of the Borrower's Silent Contribution for each fiscal year of the Bank which are, subject to having accrued under the Participation Agreement, payable semi-annually in arrear (other than profit participations earned in respect of the 2005 fiscal year which shall, subject to the terms of the Participation Agreement, be payable in three instalments in arrear) (**Profit Participation Payments**).
- (E) Pursuant and subject to the terms and conditions of the Capital Securities, the holders of the Capital Securities (**Securityholders**) are entitled to receive semi-annual interest payments on the Capital Securities (**Coupon Payments**) which are linked to the Profit Participation Payments.
- (F) When Profit Participation Payments are distributed to the Borrower or upon a replenishment of the Silent Contribution after a reduction of its book value in accordance with § 6(3) of the Participation Agreement (a **Replenishment**), the Bank must withhold German Withholding Tax plus the "solidarity surcharge" (each a **Withholding**) on the distributed amounts or on the amount of the Replenishment, unless the tax authorities have granted an exemption for payments to the Borrower. The Withholdings, to the extent attributable to the Limited Partner under German tax laws, will be counted as a prepayment towards the German corporate income tax owed by the Limited Partner.
- (G) The Limited Partner, in its capacity as the limited partner of the Borrower, expects to be entitled for each tax year to refund claims against the German tax authorities (each a **Tax Refund Claim**) in the amount by which the prepayments in the form of the Withholdings exceed its actual German corporate income tax liability.



(H) In einem Vertrag zwischen der Komplementärin und der Kommanditistin, der das gleiche Datum wie dieser Vertrag trägt (**Einzahlungsvertrag**), verpflichtet sich die Kommanditistin zugunsten der Darlehensnehmerin, sämtliche Beträge, die sie von den deutschen Finanzbehörden in Bezug auf die Kommanditisten-Steuererstattungsansprüche erhält, an die Darlehensnehmerin zu zahlen (jeweils eine **Kapitaleinzahlung**).

(I) Die Darlehensnehmerin hat die Darlehensgeberin gebeten, ihr ein Darlehen einzuräumen, um damit ihre Verpflichtungen zu Zinszahlungen auf die Capital Securities und zur vollständigen Wiedergutschrift der Stillen Einlage nach einer Herabsetzung ihres Buchwertes gemäß dem Beteiligungsvertrag zu finanzieren.

AUF DIESER GRUNDLAGE WIRD FOLGENDES VEREINBART:

### § 1 Definitionen

**Auszahlungszahltag** bezeichnet jeden Tag, an dem eine Darlehens-Auszahlung gemäß § 2.2 fällig wird.

**Bank** bezeichnet die WestLB AG, eine nach deutschem Recht errichtete Aktiengesellschaft mit Sitz Herzogstrasse 15, 40217 Düsseldorf, Deutschland.

**Beteiligungsvertrag** hat die in der Präambel festgelegte Bedeutung; eine Abschrift des Beteiligungsvertrages ist diesem Vertrag als Anhang I beigefügt.

**Capital Securities Bedingungen** bezeichnet die Emissionsbedingungen der Capital Securities, von denen eine Abschrift diesem Vertrag als Anhang II beigefügt wurde.

**Capital Securities** bezeichnet die € 240.000.000 Capital Securities mit einem Nennbetrag von jeweils € 1.000, die die Darlehensnehmerin am 13. Mai 2005 auszugeben beabsichtigt.

**Darlehen** bezeichnet die ausstehenden Darlehens-Auszahlungen, die die Darlehensgeberin der Darlehensnehmerin nach Maßgabe der Bestimmungen dieses Vertrages gewährt.

**Darlehens-Auszahlung** bezeichnet jeden Betrag, den die Darlehensgeberin der Darlehensnehmerin gemäß § 2 gewährt.

**Darlehensgeberin** hat die in der Präambel festgelegte Bedeutung.

(H) In an agreement between the General Partner and the Limited Partner dated the date hereof (**Contribution Agreement**), the Limited Partner undertakes, for the benefit of the Borrower, to contribute to the Borrower amounts it receives from the German tax authorities on account of the Limited Partner Tax Refund Claims (each such contribution a **Contribution Payment**).

(I) The Borrower has requested that the Lender make available to it a loan facility in order to fund the Borrower's obligations to pay Coupon Payments under the Capital Securities and to fully replenish the Silent Contribution after reduction of its book value in accordance with the Participation Agreement.

NOW THEREFORE, IT IS AGREED AS FOLLOWS:

### § 1 Definitions

**Advance Payment Date** shall mean each date on which an Advance becomes due in accordance with § 2(2).

**Bank** shall mean WestLB AG, a stock corporation established under the laws of Germany whose registered office is at Herzogstrasse 15, 40217 Düsseldorf, Germany.

**Participation Agreement** has the meaning specified in the preamble; a copy of the Participation Agreement is attached to this Agreement as Annex I.

**Capital Securities Terms** shall mean the terms and conditions of the Capital Securities, a copy of which is attached to this Agreement as Annex II.

**Capital Securities** shall mean the € 240,000,000 Capital Securities in the denomination of € 1,000 each, proposed to be issued by the Borrower on 13 May 2005.

**Loan** shall mean the outstanding Advances extended by the Lender to the Borrower upon the terms and conditions set out in this Agreement.

**Advance** shall mean each amount extended by the Lender to the Borrower as provided in § 2.

**Lender** shall have the meaning specified in the preamble.

**Darlehensnehmerin** hat die in der Präambel festgelegte Bedeutung.

**Einbehalt** hat die in der Präambel festgelegte Bedeutung.

**Einzahlungsvertrag** hat die in der Präambel festgelegte Bedeutung.

**Emissionsgläubiger** hat die in der Präambel festgelegte Bedeutung.

**Endgültiger Rückzahlungstag** bezeichnet den Rückzahlungstag gemäß der Definition in den Capital Securities Bedingungen.

**Euro** oder € bezeichnet die einheitliche europäische Währung, die am 1. Januar 1999 in Deutschland und den anderen teilnehmenden Mitgliedstaaten der Europäischen Union eingeführt wurde.

**Fälligkeitstag** bezeichnet jeden Tag, an dem die Emissionsgläubiger zum Erhalt von Zinszahlungen auf die Capital Securities berechtigt sind.

**Genehmigung** bezeichnet eine Genehmigung, Zustimmung, Billigung, einen Beschluss, eine Zulassung, Befreiung, Einreichung oder Registrierung.

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

**Gewinnbeteiligungszahlungen** hat die in der Präambel festgelegte Bedeutung.

**Kapitaleinzahlung** hat die in der Präambel festgelegte Bedeutung.

**Kommanditistin** bezeichnet Hybrid Funding II GmbH, eine nach deutschem Recht errichtete Gesellschaft mit beschränkter Haftung mit Sitz in Köln, Deutschland, die der Limited Partner der Darlehensnehmerin nach Maßgabe des Limited Partnerships (Jersey) Law 1994 in der jeweils gültigen Fassung ist.

**Komplementärin** bezeichnet die Hybrid Capital Funding II Limited, eine nach dem Recht von Jersey errichtete Gesellschaft mit beschränkter Haftung mit Sitz in St. Helier, Jersey JE4 8PX, Kanalinseln, die der General Partner der Darlehensnehmerin im Sinne des Limited Partnerships (Jersey) Law 1994 in der jeweils gültigen Fassung ist.

**Kündigungsgrund** bezeichnet jedes Ereignis bzw. jeden Umstand, der in § 6 genannt ist.

**Borrower** shall have the meaning specified in the preamble.

**Withholding** has the meaning specified in the preamble.

**Contribution Agreement** has the meaning specified in the preamble.

**Securityholders** has the meaning specified in the preamble.

**Final Repayment Date** shall mean the Repayment Date as such term is defined in the Capital Securities Terms.

**Euro** or € refers to the single unified currency that was introduced in Germany and other participating member states of the European Union on 1 January 1999.

**Due Date** shall mean each date upon which the Securityholders are entitled to receive interest payments in respect of the Capital Securities.

**Authorisation** shall mean an authorisation, consent, approval, resolution, licence, exemption, filing or registration.

**Business Day** shall mean a day on which TARGET (the Trans-European Automated Real Time Gross Settlement Express System) is operating credit or transfer instructions in respect of payments in Euro.

**Profit Participation Payments** has the meaning specified in the preamble.

**Contribution Payment** has the meaning specified in the preamble.

**Limited Partner** shall mean Hybrid Funding II GmbH, a limited liability company incorporated under the laws of Germany whose registered office is at Cologne, Germany and who is the Borrower's limited partner within the meaning of the Limited Partnerships (Jersey) Law 1994, as amended.

**General Partner** shall mean Hybrid Capital Funding II Limited, a limited liability company incorporated under the laws of Jersey whose registered office is at 22 Grenville Street, St. Helier, Jersey JE4 8PX, Channel Islands and who is the Borrower's general partner within the meaning of the Limited Partnerships (Jersey) Law 1994, as amended.

**Event of Default** shall mean any event or circumstance specified as such in § 6.

**Ordentliche Rückzahlung** hat die in § 3(1) festgelegte Bedeutung.

**Ordentlicher Rückzahlungstag** bezeichnet jeden Tag, an dem die Darlehensnehmerin ausstehende Darlehens-Auszahlungen gemäß § 3(1) oder 3(3) zurückzahlt.

**Referenzzinssatz** bedeutet den 3-Monats-EURIBOR-Zinssatz p.a. für Euro-Einlagen, der auf Seite 248 von Telerate Monitor (oder derjenigen anderen Bildschirmseite von Telerate oder desjenigen anderen Informationsdienstes, der als Nachfolger von Telerate Seite 248 für die Zwecke der Anzeige dieser Zinssätze festgelegt wird) am maßgeblichen Berechnungstag um oder etwa um 11.00 Uhr (Brüsseler Zeit) als Angebotssatz am Europäischen Interbankenmarkt für 3-Monats-Einlagen in Euro angezeigt wird..

Für den Fall, dass der vorgenannte Zinssatz an einem Berechnungstag nicht auf der vorstehend genannten Bildschirmseite erscheint, ist der Referenzzinssatz für die betreffende Zinsperiode der Prozentsatz per annum, der auf Basis der Quotierungen, die der Darlehensgeberin am maßgeblichen Berechnungstag um oder etwa um 11.00 Uhr (Brüsseler Zeit) von den Euro-Zone-Hauptbüros von fünf europäischen Großbanken, die von der Darlehensgeberin ausgewählt werden, um ihr einen Angebotssatz an Banken erster Bonität im Europäischen Interbankenmarkt für 3-Monats-Einlagen in Euro zu stellen, von der Darlehensgeberin am maßgeblichen Berechnungstag festgelegt wird. Wenn zwei oder mehr Banken der Darlehensgeberin Angebotssätze zur Verfügung stellen, ist der Referenzzinssatz das arithmetische Mittel der Quotierungen dieser Angebotssätze (ggf. auf das nächste Tausendstel eines Prozentpunktes gerundet, wobei 0,0005 aufgerundet wird). Wenn fünf Banken der Darlehensgeberin Angebotssätze zur Verfügung stellen, erfolgt die Berechnung des Referenzzinssatzes unter Ausschluss der höchsten Quotierung (bzw. für den Fall von gleich hohen Quotierungen, einer der höchsten Quotierungen) und der niedrigsten Quotierung (bzw. für den Fall von gleich niedrigen Quotierungen, einer der niedrigsten Quotierungen)

**Steuerabzug** bezeichnet einen Abzug oder Einbehalt von einer Zahlung nach Maßgabe dieses Vertrages, der für oder aufgrund von Steuern erfolgt.

**Steuererstattungsanspruch** hat die in der Präambel festgelegte Bedeutung.

**Steuergutschrift** bezeichnet eine Gutschrift auf, eine Ermäßigung, einen Erlass oder die Rückerstattung von Steuern.

**Repayment** shall have the meaning specified in § 3(1).

**Repayment Date** shall mean each date on which the Borrower repays outstanding Advances in accordance with § 3(1) or 3(3).

**Reference Interest Rate** means the 3-month EU-RIBOR rate for deposits in Euro *per annum* published on page 248 of the Telerate Monitor (or such other screen page of Telerate or such other information service that is designated as successor to Telerate page 248 for the purpose of displaying such rate) on the relevant Determination Date at or around 11:00 a.m. (Brussels time) as the rate offered in the European interbank market for 3-month deposits in Euro.

In the event that the foregoing rate does not appear on the screen page mentioned in the preceding paragraph on any Determination Date, the Reference Rate for the relevant Coupon Period will be the rate expressed as a percentage per annum determined by the Lender on the basis of quotations provided by the principal Euro-zone office of each of five major banks in the European interbank market selected by the Lender to provide it with their offered quotations for 3-month deposits in Euro at or around 11:00 a.m. (Brussels time) on the relevant Determination Date to prime banks in the European interbank market. If two or more reference banks provide quotations, the Reference Rate will be the arithmetic mean of such quotations (rounded, if necessary, to the nearest one-thousandth of a percentage point, with 0.0005 being rounded upwards). If five banks provide their quotations to the Lender, the highest (but if the highest is quoted more than once, only one such quote) and the lowest (but if the lowest is quoted more than once, only one such quote) will be disregarded for the purpose of calculating the Reference Rate

**Tax Deduction** shall mean a deduction or withholding for or on account of Tax from a payment under this Agreement.

**Tax Refund Claim** has the meaning specified in the preamble.

**Tax Credit** shall mean a credit against, relief or remission for, or repayment of any Tax.

**Steuern** bezeichnet sämtliche Steuern, Abgaben, Erhebungen, Gebühren oder andere Belastungen oder Einbehalte ähnlicher Art (einschließlich aller Strafen oder Zinsen, die im Zusammenhang mit einer Nichtzahlung oder einem Zahlungsverzug derselben erhoben werden).

**Stille Einlage** hat die in der Präambel festgelegte Bedeutung.

**Wiedergutschrift** hat die in der Präambel festgelegte Bedeutung.

**Zinsfestlegungstag** bezeichnet zweiten Geschäftstag vor dem jeweiligen Anzahlungszahltag.

**Zinssatz** bedeutet für den Zeitraum vom jeweiligen Auszahlungszahltag (einschließlich) bis zum jeweiligen ordentlichen Rückzahlungstag (ausschließlich) einen Zinssatz p.a in Höhe des Referenzzinssatzes, der am Zinsfestlegungstag, der dieser Periode unmittelbar vorausgeht, festgelegt wird, zuzüglich einer Marge von 0,04% p.a.

**Zinszahlungen** hat die in der Präambel genannte Bedeutung.

**Zinszahlungsverpflichtungen** bezeichnet die Verpflichtung der Darlehensnehmerin als Emittentin der Capital Securities, an jedem Fälligkeitstag Zinszahlungen an die Emissionsgläubiger nach Maßgabe der Emissionsbedingungen der Capital Securities zu leisten.

## § 2 Vertragsgegenstand

- (1) Die Darlehensgeberin verpflichtet sich, nach Maßgabe der Bestimmungen dieses Vertrages, an jedem Fälligkeitstag und in Bezug auf jede Wiedergutschrift, sobald diese erfolgt, an den in § 2(2) genannten Tagen und in der in § 2(3) genannten Höhe Darlehens-Auszahlungen an die Darlehensnehmerin vorzunehmen.
- (2) Darlehens-Auszahlungen werden fällig
  - (a) an jedem Tag, an dem eine Gewinnbeteiligungszahlung nach Maßgabe des Beteiligungsvertrages fällig wird;
  - (b) an jedem Tag, an dem eine Wiedergutschrift auf den Buchwert der Stillen Einlage gemäß den Bestimmungen des Beteiligungsvertrages tatsächlich erfolgt; und
  - (c) jeweils am 30. Juni und 30. Dezember 2005 .

**Tax** shall mean 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).

**Silent Contribution** has the meaning specified in the preamble.

**Replenishment** shall have the meaning specified in the preamble.

**Rate Determination Date** means the second Business Day prior to the relevant Advance Payment Date.

**Rate of Interest** means, for each period from the relevant Advance Payment Date to but excluding the relevant Repayment Date, a rate of interest per annum equal to the Reference Interest Rate determined on the Rate Determination Date immediately preceding such period plus a margin of 0.04 per cent. per annum.

**Coupon Payments** shall have the meaning specified in the preamble.

**Coupon Payment Obligations** shall mean the obligation of the Borrower, as issuer of the Capital Securities, to make Coupon Payments to the Securityholders pursuant to the terms and conditions of the Capital Securities on each Due Date.

## § 2 Loan Facility

- (1) Subject to, and upon the terms and conditions contained herein, the Lender agrees to make Advances to the Borrower on each Due Date and in respect of each Replenishment as it arises, as applicable, on the dates specified in § 2(2) and in the amounts specified in § 2(3).
- (2) Advances shall become due on
  - (a) each day on which a Profit Participation Payment becomes due under the Participation Agreement;
  - (b) each day on which a Replenishment of the book value of the Silent Contribution is actually made pursuant to the terms of the Partnership Agreement; and
  - (c) 30 June and 30 December 2005.

- |  |  |
|--|--|
| <p>(3) Darlehens-Auszahlungen sind in Euro in der in diesem § 2(3) festgesetzten Höhe vorzunehmen.</p> <p>(a) Falls Darlehens-Auszahlungen gemäß §2(2)(a) geleistet werden, sind diese in Höhe des Betrages zu zahlen, der dem Einbehalt von der Gewinnbeteiligungszahlung entspricht, die an dem betreffenden Auszahlungszahltag fällig wird.</p> <p>(b) Falls Darlehens-Auszahlungen gemäß § 2(2)(b) geleistet werden, sind diese in Höhe des Betrages zu zahlen, der dem Einbehalt von der Wiedergutschrift entspricht, die an dem betreffenden Auszahlungszahltag tatsächlich erfolgt.</p> <p>(c) Falls Darlehens-Auszahlungen gemäß § 2(2)(c) geleistet werden, sind diese in Höhe des Betrages zu zahlen, der der Zinszahlung entspricht, die an dem betreffenden Tag von der Darlehensnehmerin an die Emissionsgläubiger zu zahlen ist.</p> | <p>(3) Advances shall be payable in Euro in the amounts stipulated in this § 2(3).</p> <p>(a) In the case of Advances falling due under Section 2(2)(a), an Advance shall be payable in an amount corresponding to the Withholding on the Profit Participation Payment falling due on the relevant Advance Payment Date.</p> <p>(b) In the case of Advances paid under Section 2(2)(b), an Advance shall be payable in an amount corresponding to the Withholding on the Replenishment being actually made on the relevant Advance Payment Date.</p> <p>(c) In the case of Advances paid under Section 2(2)(c), an Advance shall be payable in an amount corresponding to the Coupon Payment payable by the Borrower to the Securityholders on such day.</p> |
| <p>(4) Die Darlehensnehmerin wird die Erlöse aus jeder gemäß diesem Vertrag erhaltenen Darlehens-Auszahlung wie folgt verwenden:</p> <p>(a) im Fall von gemäß § 2(2)(a) geleisteten Darlehens-Auszahlungen, zur Finanzierung ihrer Zinszahlungsverpflichtungen;</p> <p>(b) im Fall von gemäß § 2(2)(b) geleisteten Darlehens-Auszahlungen, zur weiteren Wiedergutschrift der Stillen Einlage; und</p> <p>(c) im Fall von gemäß § 2(2)(c) geleisteten Darlehens-Auszahlungen, zur Finanzierung der am 30. Juni und 30. Dezember 2005 fällig werdenden Zinszahlungen.</p>  | <p>(4) The Borrower shall use the proceeds of each Advance obtained hereunder:</p> <p>(a) in the case of Advances paid under § 2(2)(a), to fund its Coupon Payment Obligations;</p> <p>(b) in the case of Advances paid under § 2(2)(b), to further replenish the Silent Contribution; and</p> <p>(c) in the case of Advances paid under § 2(2)(c), to fund the Coupon Payments falling due on 30 June and 30 December 2005.</p>   |

### § 3

#### Ordentliche Rückzahlung

- (1) Die Darlehensnehmerin ist verpflichtet, das Darlehen in Höhe des vollen Betrages aller Kapitaleinzahlungen, die sie von der Kommanditistin erhält, unverzüglich nach Erhalt der jeweiligen Zahlung zurückzuzahlen (jede solche Zahlung und jede Zahlung gemäß § 3(2) eine **Ordentliche Rückzahlung**).

### § 3

#### Repayment

- (1) The Borrower shall be required to repay the Loan in the full amount of any Contribution Payment it receives from the Limited Partner promptly after receipt of the relevant payment (each such payment, as well as each payment pursuant to § 3(2), a **Repayment**).



- (2) Im Fall von gemäß § 2(2)(c) geleisteten Darlehens-Auszahlungen ist die Darlehensnehmerin verpflichtet, das Darlehen in der erforderlichen Höhe unter Verwendung der von der Bank zu leistenden Gewinnbeteiligungszahlung, welche am 30. Juni 2006 fällig wird, zurückzuzahlen.
- (2) In the case of advances paid under § 2(2)(c), the Borrower shall be required to repay the Loan in an amount corresponding to such advances, using the Profit Participation Payment from the Bank falling due on 30 June 2006 in the amount required to effect such repayment.
- (3) Nach vollständiger Rückzahlung der Capital Securities und Rückführung des Darlehens aus allen verfügbaren Steuererstattungsansprüchen ist die Darlehensnehmerin verpflichtet, etwa verbleibende Darlehenssalden aus sonstigen ihr tatsächlich zur Verfügung stehenden Mitteln zurückzuführen, soweit diese Mittel nicht zur Finanzierung anderer aktueller wie bedingter Verpflichtungen und Verbindlichkeiten zum Zweck der Aufrechterhaltung ihrer Existenz erforderlich sind.
- (3) Following the full and final repayment of the Capital Securities and the reduction of any loan balances using all available Tax Refund Claims, the Borrower shall be obliged to repay any remaining loan balance using other amounts available to it to the extent such amounts are not otherwise required to fund the Borrower's outstanding and contingent obligations and liabilities in order to keep the Borrower in operation.
- (4) Vorbehaltlich § 3(3) sind die Ansprüche der Darlehensgeberin gegen die Darlehensnehmerin auf Rückzahlung von Darlehensauszahlungen gemäß diesem § 3(4) sowie alle anderen Zahlungsverpflichtungen der Darlehensnehmerin hierunter mit Ausnahme der Verpflichtung zur Zahlung von aufgelaufenen Zinsen durch die Barmittel begrenzt, welche die Darlehensnehmerin tatsächlich in Anbetracht von (i) der ersten Gewinnbeteiligung und (ii) Steuererstattungsansprüchen erhält. Die Ansprüche der Darlehensgeberin auf Zahlung von Zinsen sind durch die verbleibenden und der Darlehensnehmerin zum maßgeblichen Zeitpunkt tatsächlich zur Verfügung stehenden Mittel begrenzt. Derartige Ansprüche sind gegenüber fällig gewordenen Verbindlichkeiten aus den Capital Securities nachrangig und erst nach deren vollständiger Befriedigung und nachdem die Darlehensnehmerin Rückstellungen für ihre übrigen aktuellen and bedingten Verbindlichkeiten gebildet hat, die zur Aufrechterhaltung ihrer Existenz erforderlich sind, zahlbar. Die Darlehensnehmerin verfügt über keine anderen Mittel zur Erfüllung ihrer Verbindlichkeiten und dieser Vertrag begründet demgemäß keinerlei Zahlungsverbindlichkeiten der Darlehensnehmerin über diese Beträge hinaus.
- (4) Subject to § 3(3), the Lender's claims against the Borrower for repayment of outstanding Advances pursuant to this § 3(4) and any other payment obligations of the Borrower hereunder save for the payment of interest are limited to the payments actually received by the Borrower on account of (i) the first Profit Participation Payment and (ii) Tax Refund Claims. The Lender's claims against the Borrower for payment of accrued and unpaid interest are limited to the remaining amounts actually available for application by the Borrower at the relevant time. Such claims shall be subordinated to, and be effected only after full satisfaction of, any matured payment obligation under the Capital Securities and only after the Borrower has made provisions for its other outstanding and contingent liabilities in order to keep the Borrower in operation. Other than the foregoing, the Borrower will have no funds available to meet its payment obligations under this Agreement and this Agreement will not give rise to any payment obligation in excess of the foregoing.



**§ 4**  
**Zinsen**

- (1) Die Darlehensnehmerin zahlt Zinsen an die Darlehensgeberin, die gemäß diesem § 4 an jedem Ordentlichen Rückzahlungstag und an dem Endgültigen Rückzahlungstag berechnet werden.
- (2) Zinsen fallen zum Zinssatz auf den Betrag des Darlehens an, der (klarstellungshalber) nicht die an dem unmittelbar vorhergehenden Ordentlichen Rückzahlungstag geleistete Ordentliche Rückzahlung umfasst.
- (3) Die Zinsen werden berechnet, indem der Zinssatz mit der tatsächlichen Anzahl von Tagen, die in dem Zeitraum vom jeweiligen Auszahlungstag (einschließlich) bis zum jeweiligen ordentlichen Rückzahlungstag (ausschließlich) verstrichen sind, multipliziert und durch 360 dividiert.

**§ 5**  
**Allgemeine Verpflichtungen**

Die Verpflichtungen in diesem § 5 bleiben vom Datum dieses Vertrages an solange in Kraft, wie Darlehens-Auszahlungen gemäß diesem Vertrag ausstehen.

- (1) Die Darlehensnehmerin wird sämtliche Genehmigungen, die gemäß irgendeinem Gesetz oder einer Vorschrift erforderlich sind, um sie in die Lage zu versetzen, ihre Verpflichtungen aufgrund dieses Vertrages zu erfüllen und die Rechtmäßigkeit, Wirksamkeit, Durchsetzbarkeit und Zulässigkeit dieses Vertrages als Beweismittel in Deutschland sicherzustellen, unverzüglich einholen, einhalten und alles Erforderliche unternehmen, damit diese uneingeschränkt wirksam bleiben.
- (2) Die Darlehensnehmerin wird sämtliche Gesetze, denen sie gegebenenfalls unterliegt, in jeder Hinsicht einhalten soweit die Nichteinhaltung solcher Gesetze ihre Fähigkeit zur Erfüllung ihrer Verpflichtungen aufgrund dieses Vertrages erheblich beeinträchtigen würde.

**§ 6**  
**Sonderkündigungsgrund und Kündigung**

- (1) Jedes der in diesem § 6(1) genannten Ereignisse oder Umstände ist ein Kündigungsgrund.

**§ 4**  
**Interest**

- (1) The Borrower shall make interest payments to the Lender to be calculated in accordance with this § 4 on each Repayment Date and on the Final Repayment Date.
- (2) Interest shall accrue at the Rate of Interest on the amount of the Loan, which (for the avoidance of doubt) shall not include the Repayment made on the immediately preceding Repayment Date.
- (3) Interest will be calculated by multiplying the Rate of Interest by the actual number of days elapsed during the period between the relevant Advance Payment Date (inclusive) and the relevant Repayment Date (exclusive) divided by 360.

**§ 5**  
**General Undertakings**

The undertakings in this § 5 shall remain in force from the date of this Agreement for so long as any Advance is outstanding under this Agreement.

- (1) The Borrower shall promptly obtain, comply with and do all that is necessary to maintain in full force and effect any Authorisation required under any law or regulation to enable it to perform its obligations under this Agreement and to ensure the legality, validity, enforceability or admissibility in evidence in Germany of this Agreement.
- (2) 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 Agreement.

**§ 6**  
**Events of Default and Acceleration**

- (1) Each of the events or circumstances set out in this § 6(1) is an Event of Default.

- (a)** Die Darlehensnehmerin zahlt einen gemäß diesem Vertrag fälligen Betrag nicht am Fälligkeitstag an dem Ort und in der Währung, die für die Zahlung vorgesehen sind, es sei denn, dass:
- (i)** ihre Nichtzahlung auf einem administrativen oder technischen Fehler beruht; und
  - (ii)** die Zahlung innerhalb von fünf Geschäftstagen nach dem Fälligkeitstag erfolgt.
- (b)** Die Darlehensnehmerin erfüllt irgendeine Bestimmung dieses Vertrages nicht (mit Ausnahme der in § 6.1(a) genannten), es sei denn, dass:
- (i)** die Nichterfüllung geheilt werden kann und innerhalb von fünf Geschäftstagen geheilt wird, nachdem die Darlehensgeberin die Darlehensnehmerin benachrichtigt hat oder die Darlehensnehmerin von ihrer Nichterfüllung Kenntnis erlangt; oder
  - (ii)** dieses Ereignis keine erheblichen Auswirkungen auf die Fähigkeit der Darlehensnehmerin zur Leistung von Zinszahlungen und Tilgungszahlungen gemäß diesem Vertrag hat.
- (c)** Eine Zusicherung oder Erklärung, die von der Darlehensnehmerin in diesem Vertrag abgegeben wurde bzw. als abgegeben gilt, ist oder erweist sich in irgendeiner wesentlichen Hinsicht als zum Zeitpunkt der Abgabe oder angenommenen Abgabe unrichtig oder irreführend, es sei denn, dass die Tatsachen und Umstände, die die falsche Darstellung verursacht haben, keine erheblichen Auswirkungen auf die Fähigkeit der Darlehensnehmerin zur Leistung von Zinszahlungen und Tilgungszahlungen gemäß diesem Vertrag haben.
- (2)** Bei und jederzeit nach Eintritt eines Kündigungsgrundes, der fortbesteht, kann die Darlehensgeberin durch Mitteilung an die Darlehensnehmerin:
- (a)** The Borrower does not pay on the due date any amount payable pursuant to this Agreement 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)** The Borrower does not comply with any provision of this Agreement (other than those referred to in § 6.1(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 Agreement.
- (c)** Any representation or statement made or deemed to be made by the Borrower in this Agreement 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 Agreement.
- (2)** 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) das Darlehen und alle unter diesem Vertrag angefallenen Beträge unverzüglich ganz oder teilweise fällig stellen, woraufhin diese unverzüglich (aber vorbehaltlich § 3(3) und § 3(4)) fällig werden; und/oder
- (b) das Darlehen ganz oder teilweise für auf Verlangen zahlbar erklären, woraufhin es auf Verlangen der Darlehensgeberin unverzüglich (aber vorbehaltlich § 3(3) und § 3(4)) fällig wird.

**§ 7  
Wechsel der Parteien**

Weder die Darlehensgeberin noch die Darlehensnehmerin sind berechtigt, irgendwelche ihrer jeweiligen Rechte aus diesem Vertrag abzutreten oder zu übertragen oder irgendwelche ihrer jeweiligen Verpflichtungen aufgrund dieses Vertrages ohne die vorherige schriftliche Zustimmung der jeweils anderen Partei zu übertragen.

**§ 8  
Zahlungen**

- (1) Die Darlehensgeberin und die Darlehensnehmerin sind nicht berechtigt, fällige Verpflichtungen, die eine von ihnen schuldet, gegen eine fällige Verpflichtung aufzurechnen, die die andere von ihnen schuldet, unabhängig vom Zahlungsort oder der Währung jeder Verpflichtung oder ob diese sich auf diesen Vertrag bezieht oder nicht.
- (2) Jede Zahlung, die an einem Tag fällig ist, der kein Geschäftstag ist, hat am darauf folgenden Geschäftstag zu erfolgen.

**§ 9  
Kommunikation**

Jede Mitteilung gemäß diesem Vertrag muss schriftlich erfolgen und per Einschreiben, Kurier, bestätigter Sendung oder Fax zu Händen der nachstehend genannten Personen an die jeweiligen Anschriften der Parteien oder die in diesem Vertrag genannten eingetragenen Sitze oder, bei Sendung per Fax, an die jeweils nachstehend genannten Nummern gesendet bzw. übermittelt werden:

*[absichtlich ausgelassen]*

- (a) declare that all or part of the Loan and all other amounts accrued under this Agreement be immediately due and payable, whereupon they shall become immediately due and payable (subject to § 3(3) and § 3(4)); and/or
- (b) declare that all or part of the Loan be payable on demand, whereupon they shall immediately become payable on demand by the Lender (subject to § 3(3) and § 3(4)).

**§ 7  
Changes to the Parties**

Neither the Lender nor the Borrower may assign or transfer, as applicable, any of their respective rights or transfer any of their respective obligations under this Agreement without the prior written consent of the respective other party.

**§ 8  
Payments**

- (1) The Lender and the Borrower shall not 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 Agreement or not.
- (2) 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.

**§ 9  
Notices**

Any notice to be given under this Agreement shall be in writing and shall be delivered to or sent by registered, special delivery or recorded post or by facsimile transmission for the attention of the persons set out below to the parties' respective addresses or registered offices as set out in this Agreement or, in the case of facsimile transmission, to the respective numbers set out below:

*[intentionally omitted]*

**§ 10**  
**Teilunwirksamkeit**

Sollte irgendeine Bestimmung dieses Vertrages aus irgendeinem Grund unwirksam, ungesetzlich oder undurchsetzbar sein, gilt sie als durch diejenige wirksame, gesetzliche und durchsetzbare Bestimmung ersetzt, die der in der betreffenden Bestimmung niedergelegten Absicht der Parteien soweit wie möglich nahe kommt, und die Wirksamkeit, Gesetzlichkeit und Durchsetzbarkeit der übrigen Bestimmungen dieses Vertrages wird hierdurch in keiner Weise berührt oder beeinträchtigt.

**§ 11**  
**Änderungen und Verzichtserklärungen**

Eine Änderung oder Verzichtserklärung in Bezug auf irgendeine Bestimmung dieses Vertrages ist nur mit schriftlicher Zustimmung der Darlehensgeberin und der Darlehensnehmerin möglich.

**§ 12**  
**Schlussbestimmungen**

- (1) Dieser Vertrag unterliegt dem Recht der Bundesrepublik Deutschland und die Parteien unterwerfen sich unwiderruflich dem Landgericht Düsseldorf, als nicht-ausschließlichem Gerichtsstand.
- (2) Dieser Vertrag kann in mehreren Ausfertigungen und durch die Parteien in getrennten Ausfertigungen unterzeichnet und übergeben werden, von denen jede ein Original darstellt, jedoch alle zusammen ein und dasselbe Instrument bilden.
- (3) Die deutsche Fassung dieses Vertrages ist bindend.

**Anhang I** – Beteiligungsvertrag

**Anhang II** – Emissionsbedingungen der Capital Securities

**§ 10**  
**Severability**

Should any provision of this Agreement be found invalid, illegal or unenforceable for any reason, it is to 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 shall in no way be affected or impaired thereby.

**§ 11**  
**Amendments and Waivers**

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

**§ 12**  
**Final Clauses**

- (1) This Agreement shall be governed by, and construed in accordance with, the laws of the Federal Republic of Germany and the parties irrevocably submit to the non-exclusive jurisdiction of the district court (*Landgericht*) Düsseldorf.
- (2) This 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.
- (3) The German version of this Agreement shall be the binding version.

**Annex I** – Participation Agreement

**Annex II** – Terms and Conditions of the Capital Securities

## DESCRIPTION OF THE CONTRIBUTION AGREEMENT

Upon distribution of Profit Participation Payments to the Issuer or the replenishment of the Silent Contribution following a Reduction, WestLB must withhold amounts on account of German Withholding Tax plus solidarity surcharge (*Solidaritätszuschlag*) payable on the distributed amounts and/or on the amount of replenishment pursuant to § 43 (1) No. 3 German Income Tax Act (*EStG*), unless the tax authorities have granted a tax exemption for such payments.

The withholding of such amounts is treated as a prepayment towards the corporate income tax liability of the Issuer's profits attributable to the Issuer Limited Partner under German tax law. To the extent that any such prepayment exceeds the actual amount of corporate income tax payable by the Issuer Limited Partner, the Issuer Limited Partner will have a Tax Refund Claim against the German tax authorities.

On 11 May 2005, the Issuer General Partner and the Issuer Limited Partner have entered into the Contribution Agreement according to which the Issuer Limited Partner is obliged to contribute to the Issuer all payments it receives from the German tax authorities on account of its Tax Refund Claims. Under the Contribution Agreement, the Issuer must use the monies received as Contribution Payments to make prepayments under the Loan Agreement.

The Contribution Agreement is governed by, and construed in accordance with, German law.

## DESCRIPTION OF THE ASSIGNMENT AGREEMENT

On 11 May 2005, WestLB (as Bank), WestLB acting as Lender, the Issuer, the Issuer General Partner, the Issuer Limited Partner and HSBC Trustee (C.I.) Limited, acting as security trustee for the benefit of Securityholders have entered into the Assignment Agreement.

Under the Assignment Agreement, the Issuer assigned to the Security Trustee all its (present and future, conditional and unconditional) payment claims against (i) WestLB under the Participation Agreement and (ii) the Lender under the Loan Agreement to secure the Securityholders' claims for Coupon Payments and Capital Payments under the Capital Securities. The payment claims so assigned under the Assignment Agreement are the "**Assigned Claims**". The Assignment Agreement provides that any existing payment claims under the Participation Agreement and the Loan Agreement, respectively, shall pass to the Security Trustee immediately and that any and all future payment claims under the Participation Agreement and the Loan Agreement, respectively, shall pass to the Security Trustee as they arise.

Under the Assignment Agreement, the Security Trustee holds the Assigned Claims in trust for the benefit of the Securityholders to secure payments to be made to the Securityholders under the Capital Securities. The Security Trustee may not dispose of the Assigned Claims without the prior written consent of the Issuer, the Issuer Limited Partner and the Bank.

In addition, the Security Trustee is obliged to provide assistance so that the payments to be made in respect of the Assigned Claims are properly effected and passed on to the Securityholders in accordance with the terms and conditions of the Capital Securities. In case the payments due in respect of the respective Assigned Claims are not made as and when due, the Security Trustee is obliged to immediately assert any such Assigned Claims against the relevant debtor thereof.

The Assignment Agreement further provides that the Issuer may not dispose of the Assigned Claims. In particular, the Issuer is prohibited from encumbering the Assigned Claims with any third-party rights or taking any action which might adversely affect or jeopardise the Assigned Claims.

The Assignment Agreement is governed by, and construed in accordance with, German law.



## GENERAL INFORMATION ON WESTLB

### The Bank

WestLB AG (the “**Bank**”) is a universal bank based in the German federal state of North Rhine Westphalia (“**NRW**”), Germany’s most densely populated federal state with a total population of approximately 18 million inhabitants. The Bank provides a broad range of financial services, with particular emphasis on commercial and investment banking services, to its client base, comprising corporate customers, public sector customers and financial institutions, in particular savings banks (“**Sparkassen**”). As of 31 December 2004, WestLB AG (non-consolidated) had total assets of approximately € 214.6 billion and shareholders’ equity of € 3.9 billion and is the largest financial institution and market leader in its domestic core region.

Apart from its domestic banking activities in its core market, the Bank operates internationally through an extensive network of banking subsidiaries, branches and representative offices, with primary focus on Europe. Globally, the Bank conducts business in approximately 25 countries.

In addition to its commercial and investment banking activities, WestLB AG performs the functions of a municipal bank for two German federal states, NRW and Brandenburg, by supporting financing projects of local governments and state governments in NRW and Brandenburg, and acts as the central bank of the Sparkassen in NRW and Brandenburg, comprising clearing and depository services. In the context of WestLB AG’s alliance with the Sparkassen in NRW, the Bank also provides product development to the Sparkassen in NRW.

WestLB AG funds its operations in the medium- to long-term primarily by issuing bonds and through customer deposits. Via two fully owned subsidiaries, the Bank is furthermore able to issue mortgage and public sector covered bonds. Its short-term financing involves primarily interbank transactions and the issuance of commercial paper under its respective commercial paper programme.

### Establishment and Domicile

WestLB AG is domiciled in Düsseldorf (Herzogstrasse 15, 40217 Düsseldorf) and Münster (Friedrichstrasse 1, 48145 Münster). Pursuant to the “Gesetz zur Neuregelung der Rechtsverhältnisse der öffentlich-rechtlichen Kreditinstitute in Nordrhein-Westfalen” dated 2 July 2002 (the “**Re-organisation Law**”), the public legal form of the former Westdeutsche Landesbank Girozentrale (“**WestLB Girozentrale**”) was changed into a stock corporation (WestLB AG) as of 30 August 2002.

### Legal Form

WestLB AG has legal capacity by virtue of its entry in the Commercial Register. It is a credit institution in the legal form of a joint stock company under German law (Aktiengesellschaft) registered in the Commercial Registers of Düsseldorf (HRB 42975) and Münster (HRB 6400) on 30 August 2002.

### Object and Purpose

According to its statutes, WestLB AG conducts all types of banking business as well as complementary business including the acquisition and holding of equity investments. Furthermore, the Bank acts as central bank for the Sparkassen and municipal bank for local governments and state governments in NRW and Brandenburg. As part of the savings bank organisation, and especially in light of WestLB AG’s strategic focus, the Bank’s scope of business also includes the development and provision of bank products for Sparkassen and public-sector clients in NRW.

### Historical Development of WestLB AG

WestLB Girozentrale was formed in 1969 through the merger of Rheinische Girozentrale und Provinzialbank, Düsseldorf, and Landesbank für Westfalen Girozentrale, Münster. The origins of the two merging entities trace back to 1935, when Rheinische Girozentrale und Provinzialbank was established in Düsseldorf as a successor of Rheinische Provinzial-Hülfskasse, founded in Cologne in 1853. Landesbank für Westfalen Girozentrale on the other hand was established in 1943 in Münster as a result of the merger of Sparkassenzentrale, Westfälisches Pfandbriefamt and Landesbank der Provinz Westfalen. The latter was the successor of Westfälische Provinzial-Hülfskasse, founded in Münster in 1832.

In 1969, WestLB Girozentrale's opening balance sheet had total assets of DM 28.7 billion, making it Germany's largest bank by assets at that time. Employing more than 5,000 staff, its business activities were strongly focused on NRW.

In the context of the subsequent international expansion of its business activities, WestLB Girozentrale opened its first branches, subsidiaries, and representative offices abroad. In 1972, WestLB International S.A. (Luxembourg) was the first foreign subsidiary giving German customers and the Sparkassen in NRW access to the European financial markets. In 1973, WestLB Girozentrale opened a branch in London, making it the second German bank to be represented in this European financial centre. Openings of branches in New York and Tokyo followed. By 1986, WestLB Girozentrale was represented in 13 international locations. Today, WestLB AG is present in 30 international locations with a strong presence in Europe, the Americas and South East Asia.

Following German reunification in 1989, WestLB Girozentrale expanded its activities to Eastern Germany. It was one of the first financial institutions to open a representative office in East Berlin in 1990. In the same year, WestLB Girozentrale commenced supporting the Sparkassen in Brandenburg and two years later became their co-operation partner.

In December 1999, the European Banking Association filed a complaint with the European Commission, aiming to have institutional liability and guarantor liability for German public-law banks recognised as state aid contrary to European competition law. Under the Brussels Agreement on 17 July 2001, the Commission, the Federal Republic of Germany and the German Federal States agreed on a four-year transition period for the abolition of the Guarantor Liability and Institutional Liability.

### **Re-organisation Following the Brussels Agreement**

Following the Brussels agreement, WestLB AG's guarantors approved the re-organisation of the Bank in accordance with the so-called parent-subsidiary model. Pursuant to the Re-organisation Law, all business activities of WestLB Girozentrale carried out as part of the public mission, i.e. its state bank and development activities, were spun off and transferred to the then-to-be-established Landesbank NRW, while the commercial business was concentrated in WestLB AG, a wholly-owned subsidiary of Landesbank NRW and the successor company of Westdeutsche Landesbank Girozentrale.

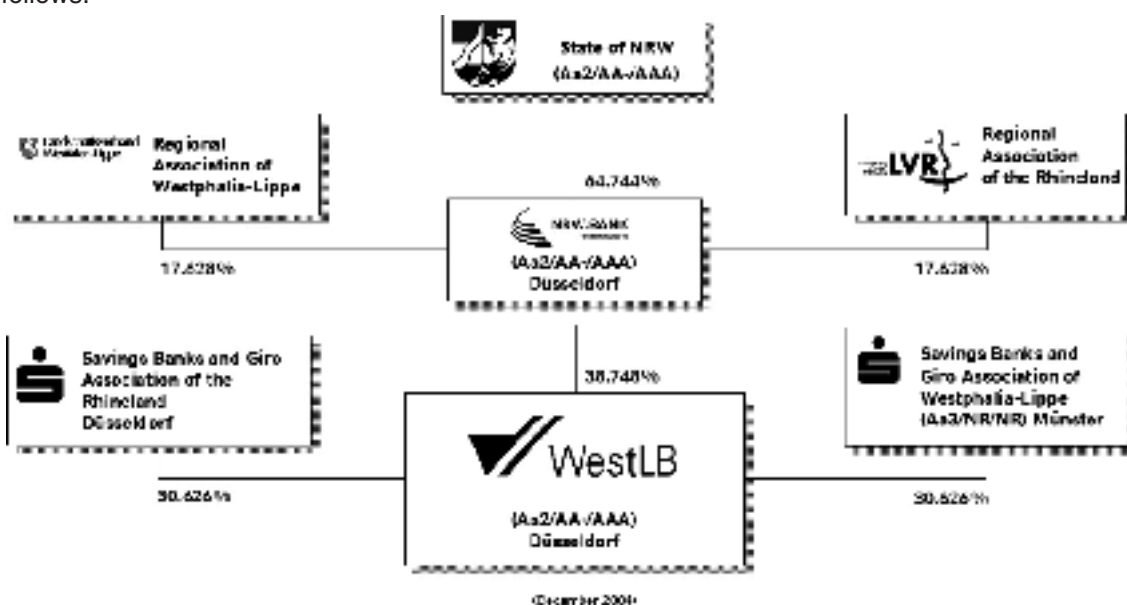
With the Re-organisation Law becoming effective on 1 August 2002, Landesbank NRW commenced operations. WestLB Girozentrale's existing owners became owners of Landesbank NRW's, with Landesbank NRW owning 100% of WestLB AG. WestLB AG was established following its entry in the commercial register on 30 August 2002.

Upon establishment of the parent-subsidiary model, the owners of Landesbank NRW agreed on a direct investment option for the Regional Associations as well as for the Sparkassen Associations (as each of such terms is defined under "Institutional Liability and Guarantor Liability"). This option gave the Sparkassen Associations as well as the Regional Associations the right to receive a direct stake in the shareholders' equity of WestLB AG by giving up their direct ownership in Landesbank NRW. Landesbank NRW was renamed NRW.BANK in March 2004.

Effective 1 July 2004, the Sparkassen Associations chose to exercise their options, thus becoming direct owners of WestLB AG (each 14.66%, the remainder held by NRW.BANK, 70.68%). Following a capital increase of € 1.5 billion in October 2004, supported by the two Sparkassen Associations, the Sparkassen Associations control WestLB AG with a combined interest in excess of 60%, with the remainder being held by NRW.BANK, which in turn is majority owned by the State of NRW.

## Shareholders

Following these ownership transfers, the ownership structure of WestLB AG as of 31 December 2004 is as follows:



## Share Capital

As of 31 December 2004, the share capital of WestLB AG amounts to € 1,794.6 million and is divided into 17,945,718 shares. All shares are registered shares.

## Executive Bodies of WestLB

The executive bodies of WestLB AG are the Supervisory Board, the General Meeting and the Managing Board. The corporate governance of WestLB AG follows the dual system of German corporate law by separating the Bank's management from the responsibility to oversee and supervise WestLB's management.

### *Supervisory Board*

The Supervisory Board consists of 20 members, 10 of whom are elected by the shareholders of WestLB AG. The other members are employee representatives appointed in accordance with the Codetermination Act of 4 May 1976. The Supervisory Board supervises the conduct of business by the Bank's Managing Board.

The Supervisory Board must be called at least four times a year.

The Supervisory Board fulfils the following main tasks and authorities:

- involvement in decisions of fundamental importance to the bank,
- co-ordinating the Bank's strategic approach and regular discussions about the current state of strategy implementation with the Managing Board,
- regular advice to and supervision of the Managing Board in its management of the Company (including the meeting of long-term corporate goals),
- appointing and dismissing the members of the Managing Board and its chairman, as well as ensuring (together with the Managing Board) long-term succession planning,
- proposing resolutions to the shareholders' meeting,
- reporting each year on WestLB AG's corporate governance rules in the annual report, which includes explaining any deviations from the rules.

The supervisory board has formed the following committees:

1. an executive committee,
2. an audit committee,
3. a risk committee,
4. a mediation committee.

The committees fulfil the following main duties:

The executive committee prepares decisions incumbent upon the Supervisory Board. The audit committee deals with issues of accounting and auditing of the annual accounts. The risk committee discusses with the Managing Board the principles of the Bank's risk policy and risk management, monitors the different risk categories and the loan portfolios. The mediation committee fulfils its duties according to § 31(3) of the Codetermination Act.

The following table sets forth, as of 9 February 2005, the names and functions of the members of WestLB AG's supervisory board and their principal business activities outside of WestLB AG.

Delegated by the shareholders:

Dr. Rolf Gerlach, President, Savings Banks and Giro Association of Westphalia-Lippe, Münster (Chairman of the Supervisory Board)

Dr. Karlheinz Bentele, President, Savings Banks and Giro Association of the Rhineland, Düsseldorf

Jochen Dieckmann, Minister of Finance of the State of North Rhine-Westphalia

Hans-Peter Krämer, Chairman of the Managing Board, Kreissparkasse Köln, Cologne

Dr. Gerhard Langemeyer, Lord Mayor of the City of Dortmund, Dortmund

Udo Molsberger, Director, Regional Association of the Rhineland, Cologne

Dr. Hans-Ulrich Predeick, Erster Landesrat, Regional Association of Westphalia-Lippe, Münster

Dr. Dietrich Rümker, Former Chairman of the Managing Board, c/o HSH Nordbank AG, Kiel

Gustav Adolf Schröder, Chairman of the Managing Board, Sparkasse KölnBonn, Cologne

Hans-Georg Vogt, Chairman of the Managing Board, Sparkasse Bielefeld, Bielefeld

Employee representatives:

Gerd-Uwe Löschmann, Director, WestLB AG, Düsseldorf (Deputy Chairman of the Supervisory Board)

Thorsten Ellwanger, Assistant Vice President, WestLB AG, Hamburg

Horst-Wolfgang Klophaus, Authorised Signatory, WestLB AG, Düsseldorf

Joachim Krämer, Senior Managing Director, WestLB AG, Düsseldorf

Manfred Matthews, Assistant Vice President, WestLB AG, Düsseldorf

Heinz-Günter Sander, Bank Employee, WestLB AG, Düsseldorf

Elisabeth Weber, Assistant Vice President, WestLB AG, Düsseldorf

Bernd Fiegler, ver.di Vereinte Dienstleistungsgewerkschaft, Düsseldorf

Franz-Georg Schröermeyer, ver.di Vereinte Dienstleistungsgewerkschaft, Münster

Christiane Stascheit, ver.di Vereinte Dienstleistungsgewerkschaft, Düsseldorf

After the close of the financial year, the members of the Supervisory Board receive an adequate remuneration determined by a resolution of the General Meeting.

*General Meeting*

The ordinary General Meeting is held within the first eight months of each financial year. It is called by the Managing Board and held at the domicile of the Bank. The General Meeting resolves on all matters assigned to it by law or by the statutes. A quorum will be constituted if more than 50 per cent. of the share capital is represented. Resolutions are taken by a simple majority of the votes cast, unless a higher majority is mandatorily required by law or by the statutes.

For 2005, the General Meeting is scheduled for 18 May 2005.

### *Managing Board*

The Managing Board represents WestLB in court and out of court. It has not less than two and not more than eight members. The Chairman of the Managing Board and the other members of the Managing Board are appointed by the Supervisory Board. Resolutions of the Managing Board are taken by a simple majority of the votes cast. In the case of an equality of votes, the Chairman will have the casting vote.

WestLB AG's Managing Board is required to keep WestLB AG's supervisory board informed of all material developments in the Bank's business and to provide it with information upon request. The paragraphs below provide an overview of the present members of WestLB AG's Managing Board, their ages as of 31 December 2004, their positions and responsibilities within the Bank and their professional background:

The members of the Managing Board are at present:

Dr. Thomas R. Fischer, Chairman of the Managing Board

Dr. Matthijs van den Adel

Dr. Norbert Emmerich

Klaus-Michael Geiger

Dr. Hans-Jürgen Niehaus

Dr. Manfred Puffer

Rainer Schmitz, Deputy Member

Robert M. Stein

Dr. Thomas R. Fischer (57) took office as Chairman of the Managing Board of WestLB AG in January 2004. His career in the banking industry spans 20 years beginning with Deutsche Bank in 1985 following a position as Head of Controlling with VARTA Batterie, Hannover. From 1985 to 1995, Dr. Fischer held a number of senior executive positions at Deutsche Bank before joining the Landesgirokasse Stuttgart as Vice Chairman of the Managing Board. He was promoted to Chairman of the Managing Board in 1996. In 1999, Dr. Fischer returned to Deutsche Bank as a member of the Managing Board, a position he held until 2002 when he decided to leave the bank.

Dr. Matthijs van den Adel (60) joined WestLB AG in January 2004 as the Bank's Chief Risk Officer. He began his career at the Bank for International Settlements in Basel in the early seventies. In 1975 he joined Rabobank Nederland where he held a variety of positions before becoming a member of the Managing Board at Fuji Bank Deutschland in 1990. From 1995 – 2003, Dr. van den Adel held various management positions at Fortis, including membership on the Managing Board of Fortis Finance.

Dr. Norbert Emmerich (54), joined WestLB AG's Managing Board in May 2004 and is Vice Chairman of the Managing Board. He began his banking career as a consultant for the Federal Association of German Cooperative Banks (BVR) where he stayed for two years until 1984. He then became central department manager at Stadtparkasse Flensburg, followed by his membership of the Managing Board of Sparkasse Lüdenscheld (1987 – 1992). Before joining WestLB AG, he was Chairman of the Managing Board of Sparkasse Coesfeld (1992 – 1996) as well as Sparkasse Münsterland Ost (1996 – 2004). Dr. Emmerich is responsible for corporate business and business with the savings banks within the Managing Board.

Klaus-Michael Geiger (42) was appointed WestLB AG's Chief Operating Officer in January 2003. He started his banking career with Dresdner Bank in 1985. Following his banking apprenticeship, he worked in various departments of the Group. In 1997, he became Chief Operating Officer at Dresdner Kleinwort Benson, first in charge of Global Markets, then for the UK before he became Global Chief Operating Officer. In December 2001, Mr. Geiger was appointed Chief Information and Technology Officer and joined Dresdner Bank's Managing Board.

Dr. Hans-Jürgen Niehaus (47) became WestLB AG's Chief Financial Officer in November 2004. He started his professional career in the credit risk management department of Bayerische Vereinsbank in 1988. From 1990 to 1994, Dr. Niehaus held senior executive positions in corporate banking at Vereinsbank's branch in Chemnitz and subsequently in Vereinsbank's finance department (1994 – 2004) in Munich. Before joining WestLB AG, Dr. Niehaus was Head of Group Finance at HVB, Munich.

Dr. Manfred Puffer (41) became a member of WestLB AG's Managing Board in charge of investment banking in January 2002. From 1989 to 1991 he worked for MG Commodity Corp. After two years as



executive director at Goldman Sachs – J. Aron UK, Dr. Puffer joined Bayerische Vereinsbank in 1994, which later merged with Hypo Bank to form HypoVereinsbank. He became Head of the Asset Liability Management and Interest Rate Management business unit. In 2000, Dr. Puffer joined the Kirch-Group in Munich as CFO of Kirch Vermögensverwaltungs GmbH and CEO of Kirch Pay TV.

Rainer Schmitz (57) became a deputy member of the WestLB AG Managing Board in October 2003. He is in charge of Human Resources, Equity Markets and Research. Mr. Schmitz joined WestLB AG's predecessor Rheinische Girozentrale and Provinzialbank, Düsseldorf, in 1965. Except for a short period, from 1974 to 1975 with Bankhaus Berenberg, Gossler & Co., Hamburg, Mr. Rainer Schmitz spent his entire career at the Bank in increasingly responsible positions.

Robert M. Stein (43) joined WestLB AG in July 2004 as a member of the WestLB AG Managing Board and heads the Bank's Private Banking, Asset Management and Treasury units. Mr. Stein began his career with Lazard Freres, Government Advisory Group (NY) in 1984. In 1985, Mr. Stein joined Merrill Lynch, where he held various senior executive positions until 1995, most recently as Head of Asian Debt and Equity Markets. In 1995, Mr. Stein moved to Deutsche Bank where, as Chief Executive Officer Asia Pacific, he was responsible for the Deutsche Bank's Corporate and Institutional Banking as well as Private Client and Asset Management businesses in the region. He left Deutsche Bank to found Adelphi Capital Partners in 2003.

The members of the Managing Board may be reached at the address of WestLB.

### **Annual Accounts and Annual Report**

The financial year is the calendar year. WestLB AG prepares an annual report within the first eight months of each year. The Bank's preliminary 2004 results were released on 28 February 2005.

### **Auditors**

Ernst & Young AG, Wirtschaftsprüfungsgesellschaft, Eschersheimer Landstraße 6, 60322 Frankfurt am Main, Federal Republic of Germany were the auditors of the consolidated and unconsolidated financial statements of WestLB AG for the financial year ended 31 December 2004 and 31 December 2003.

PwC Deutsche Revision Aktiengesellschaft Wirtschaftsprüfungsgesellschaft, Moskauer Strasse 19, 40227 Düsseldorf, Federal Republic of Germany were the auditors of the consolidated and unconsolidated financial statements of WestLB AG for the financial year ended 31 December 2002 and of the former WestLB Girozentrale for the financial year ended 31 December 2001 and 31 December 2000, respectively.

The above auditors have issued, in each case, an unqualified audit report for each of the years specified.

### **Employees**

Due to the integration of subsidiaries, amongst others WestLB Systems, into WestLB AG, the total number of employees, including part-time employees, apprentices and trainees, of the Bank increased from 4,955 as per 31 December 2003, to 5,132 per 31 December 2004.

### **Institutional Liability and Guarantor Liability**

Under the current laws of the Federal Republic of Germany and the Federal State of NRW, the owners of NRW.BANK, namely the Federal State of NRW, the Landschaftsverband Rheinland, the Landschaftsverband Westfalen-Lippe (jointly the "**Regional Associations**"), the Rheinischer Sparkassen- und Giroverband and the Westfälisch-Lippischer Sparkassen- und Giroverband, representing the regional associations of the Sparkassen in Rhineland and Westphalia-Lippe (jointly the "**Sparkassen Associations**") are jointly and severally liable for the obligations of WestLB AG ("**Guarantor Liability**").

Furthermore, the guarantors of NRW.BANK are jointly and severally liable for obligations of WestLB AG incurred on or before 18 July 2005. For those obligations of WestLB AG agreed between 19 July 2001 and 18 July 2005, this applies only if their maturity does not extend beyond 31 December 2015. Guarantor Liability is a direct obligation of the Guarantors of NRW.BANK which can be enforced by the creditors of WestLB AG as soon as the Guarantors of NRW.BANK have stated duly and in writing, when these obligations of WestLB AG become due, that the creditors of these obligations cannot be satisfied out of the assets of WestLB AG. A creditor will have a direct claim against the owners if the claims of the creditors have not first been satisfied out of the assets of WestLB AG.



Until and including 18 July 2005, the guarantors of NRW.BANK have a legal obligation to maintain WestLB AG in a financial position which enables it to carry out its functions and to meet its liabilities (“**Institutional Liability**”). Creditors of WestLB AG do not, however, have a direct claim against the guarantors of NRW.BANK for the enforcement of this obligation.

Neither the claims by the Issuer against WestLB nor any claims by Securityholders under the Capital Securities will be secured by the Guarantor Liability or the Institutional Liability.

### **Legal Proceedings**

WestLB and its affiliated companies are involved in a number of court and out-of-court lawsuits in Germany and abroad concerning their ordinary business activities. Although WestLB AG cannot necessarily predict the outcome of all pending and threatened proceedings, the Bank expects that the outcome of none of these proceedings will have a material adverse effect on its business or financial conditions.

The Bank’s recent history has been characterised not only by the challenges posed by the market, but also by questions raised about the contribution in kind of the Wohnungsbauförderungsanstalt (“**Wfa**”) into WestLB AG in 1992 as well as the institutional and guarantor liability enjoyed by WestLB AG, as already indicated in the section above headed “Institutional Liability and Guarantor Liability”.

#### *Wfa*

In 1992, the State of NRW contributed Wfa into WestLB AG as a contribution in kind, generating approximately € 2 billion in additional liable capital for WestLB AG. Given the fact that the federal Banking Supervisory Office and the Directorate-General of the European Commission responsible for banks expressly upheld the recognition of Wfa’s assets as qualified contribution towards WestLB AG’s capital base, other German federal states implemented similar measures for their public sector banks. This capital injection has been an important factor in the growth of the Bank as well as the other Landesbanken throughout the 1990s.

In 1994, Germany’s Federal Association of Private Banks (“Bundesverband deutscher Banken”) filed a complaint with the European Commission with respect to the Wfa contribution, claiming that the level of interest payable by the Bank represents illegal state aid. This complaint resulted in an adverse decision of the European Commission in 1999, requiring the Bank to repay approximately € 1.9 billion. Upon appeal by WestLB AG, the Federal Government and the Federal State of NRW, the amount repayable by the Bank was set by the European Commission at approximately € 1.4 billion in summer 2004. WestLB AG duly implemented this decision on 21 January 2005 by making an effective payment to the Federal State of NRW.

In light of the expected new decision of the European Commission, WestLB AG’s owners agreed, in a shareholder agreement signed in the summer of 2004, to ensure an appropriate capitalisation of WestLB.

#### *Institutional and Guarantor Liability*

Separately, the European Banking Association filed a complaint in December 1999 with the European Commission, aiming to have Institutional Liability and Guarantor Liability for public-law banks recognised as state aid contrary to European competition law.

As indicated in the section Institutional Liability and Guarantor Liability, the Commission, the Federal Republic of Germany and the German Federal States agreed on 17 July 2001 on a four-year transition period for the abolition of the Guarantor Liability and Institutional Liability.

### **Contingent Liabilities**

WestLB AG has issued several letters of undertaking in connection with residual value guarantees furnished by one of its subsidiaries.

As at 1 January 2005, the responsibility for the IT infrastructure and Web/Office application services so far provided by WestLB Systems will be assumed by an outside contractor. Under the relevant outsourcing contract, WestLB AG has assumed liability obligations to the WestLB Group companies acceding to this contract.

### **Letters of Comfort**

WestLB AG will, except in the case of political risk, ensure that – proportionate with its investment quota – the banks, financial institutions and management companies in which it holds a significant investment will

be in a position to meet their obligations. The Letter of Comfort applies to WestLB Asset Management (Australia) Pty. Ltd. irrespective of WestLB AG's investment quota. In addition to the Letters of Comfort indicated above, WestLB AG has issued further Letters of Comfort to third parties on a case-by-case basis.

### **Other Financial Obligations**

WestLB AG's liability to make additional contributions to the Liquiditätskonsortialbank of which it is a member remained unchanged in 2004 at € 65.3 million (2003: € 65.3 million). The Bank may incur additional obligations with respect to its joint liability for the additional contributions to the Liquiditätskonsortialbank from partners who are members of the German Savings Banks and Giro Association.

The deficit resulting from pension obligations not carried on the balance sheet within the meaning of Art. 28(2) of the Introductory Act to the German Commercial Code (EGHGB) was € 69.1 million as at 31 December 2004.

WestLB AG had rental and leasing obligations of € 1,211.2 million, € 639.6 million of which to affiliated companies; the relevant contracts had terms of up to 22 years.

NRW.Bank and WestLB AG will be jointly and severally liable until the end of 2006 for all liabilities that were incurred before the division of Westdeutsche Landesbank Girozentrale. WestLB's joint liability will also be covered by the liability for pre-existing commitments assumed by the former guarantors of Westdeutsche Landesbank Girozentrale.

### **Deposit Insurance**

WestLB AG is a member of the German Savings Banks and Giro Association (DSGV) and makes contributions to the security reserves of the Landesbanks. These security reserves constitute protection for contributing banks within the meaning of § 12 of the German Deposit Protection and Investor Compensation Act (Einlagensicherungs- und Anlegerentschädigungsgesetz, EAG) and are associated in local statutes with the deposit insurance scheme of the savings banks.

The deposit insurance scheme of the German savings banks organisation consists of eleven funds belonging to the regional savings banks and giro associations, the security reserves of the Landesbanks and the security fund of the Landesbausparkassen, which together form a community of joint liability. There are rules and regulations governing the relationships between regional and national funds that provide for offsetting in cases where coverage is claimed (so-called overflow agreements). In the business year 2004, there was no obligation to make additional contributions under the agreement on the security reserves of the Landesbanks/Girozentralen.

With effect from 1 October 2004 the two Sparkassen Associations – together with WestLB AG established two reserve funds to support the member savings banks of each of the Associations or WestLB AG in the event of their getting into financial difficulties. For this purpose, each of the Associations, at equal shares with WestLB AG, established a reserve fund with a total volume of € 500 million each. This amount comprises liquid funds of € 250 million and an additional funding obligation in the same amount. In 2004, WestLB AG contributed € 12.5 million to each fund, a total of € 25 million. The remaining € 225 million in cash will be paid by WestLB AG in equal instalments over the next nine years, with the earnings generated by the funds being taken into account.

### **Guarantor Liability**

Together with its wholly-owned subsidiary WestLB Beteiligungsholding GmbH, WestLB AG is a guarantor, to the extent permitted by law, of Landesbank Rheinland-Pfalz, Mainz (in respect of obligations incurred by 1 October 2004) and of HSH Nordbank AG, Hamburg/Kiel. It is the sole guarantor of Westdeutsche ImmobilienBank, Mainz, and is also a guarantor of DekaBank Deutsche Girozentrale, Frankfurt/Main.

## GENERAL INFORMATION ON THE ISSUER

### Incorporation, Domicile and Duration

The Issuer was established and registered under the name Hybrid Capital Funding II Limited Partnership under the Limited Partnerships (Jersey) Law 1994, as amended, with the Jersey Financial Services Commission on 27 April 2005. The Issuer was established for an unlimited duration and is not a legal entity separate from its partners and has no operating history.

### Contributed Capital

The partnership capital of the Issuer amounts to €1,000 (one thousand Euro and zero cents).

### Partners

The Issuer General Partner is Hybrid Capital Funding II Limited, a limited liability company incorporated under Jersey law whose sole beneficial shareholder will be, upon consummation of the offering described herein, Mourant & Co. Trustees Limited as trustee for the Hybrid Capital Funding II Charitable Trust, an independent charitable trust domiciled in Jersey. The Issuer Limited Partner is Hybrid Funding II GmbH, a limited liability company incorporated under German law and domiciled in Cologne, Germany. The sole beneficial shareholder of the Issuer Limited Partner is Mourant & Co. Trustees Limited as trustee for the Hybrid Funding II Charitable Trust, an independent charitable trust domiciled in Jersey.

### Principal Activities

The business purpose of the Issuer is, pursuant to a limited partnership agreement entered into by the Issuer General Partner and the Issuer Limited Partner on 26 April 2005, to participate as silent partner in the business of WestLB, and, for this purpose, to raise capital by the issuance of debt securities and conducting certain activities related thereto. The Issuer is further entitled to engage in any ancillary business which promotes the foregoing principal business purpose.

The principal activities of the Issuer correspond with the business purpose stipulated in the limited partnership agreement. The Issuer has no employees.

### Management

The Issuer acts through the Issuer General Partner who has the sole power to represent the partnership. The Issuer General Partner may be contacted at the address of the Issuer which is 22 Grenville Street, Jersey JE4 8PX. The current directors of the Issuer General Partner are:

<u>Name</u>	<u>Function</u>
Julia Chapman	Director
Gareth Essex-Cater	Director
Helen Grant	Director
Daniel le Blancq	Director

### Fiscal Year

The fiscal year of the Issuer corresponds to the calendar year.

### Auditor

The auditor of the Issuer is Ernst & Young LLP having its address at Unity Chambers, 28 Halkett Street, St. Helier, Jersey JE1 1EY.

The audited accounts of the Issuer may be obtained at the Issuer's office at 22 Grenville Street, St. Helier, Jersey JE4 8PX, Channel Islands.

### Litigation

The Issuer is not involved in any litigation or arbitration proceedings which may have any material adverse effect on the financial position of the Issuer. The Issuer is not aware that any such proceedings or arbitration proceedings are imminent or threatened, which could adversely affect the Issuer's business, results of operations or financial condition.

## Material Adverse Change

Unless otherwise disclosed in this Offering Circular, there has been no material adverse change in respect of the financial situation of the Issuer since the date of its establishment on 27 April 2005.

## Capital Contributions on the Issue Date

Under the limited partnership agreement, the Issuer General Partner and the Issuer Limited Partner have agreed to make an initial capital contribution (respectively, its “**Capital Contribution**”) to the Issuer in the following amounts:

	<u>€</u>
Issuer General Partner.....	1
Issuer Limited Partner .....	999

Provided that the Issuer Limited Partner does not become involved with the management of the Issuer other than in the circumstances provided in the limited partnership agreement, the liability of the Issuer Limited Partner for the debts or obligations of the Issuer will be limited to its Capital Contribution and any additional capital contribution it has made or agreed to make to the Issuer.

## Capitalisation on the Issue Date

The following table sets forth the Issuer’s contributed capital on the date of its establishment and as adjusted for the consummation of the transaction:

<u>Date</u>	<u>Contributed Capital</u>
Date of Establishment	€ 1,000
Issue Date	€ 1,000

In addition, as of the Issue Date, the Issuer will have additional liabilities of € 240,000,000 incurred under the Capital Securities.

There has been no material adverse change in respect of the capitalisation of the Issuer since the date of its establishment on 27 April 2005.

## Ordinary Issuer Relocation

The constitutional documents of the Issuer and the Issuer General Partner provide that the Issuer and the Issuer General Partner will relocate their respective principal place of business and tax jurisdiction for German trade tax purposes to Germany (such relocation an “**Ordinary Issuer Relocation**”) upon the occurrence of an Issuer Relocation Event.

An “**Issuer Relocation Event**” means receipt by each of the Issuer General Partner and the trustees of the charitable trust that owns the Issuer General Partner, on or prior to 30 September in any year of a written request by WestLB (or any legal successor thereof) to take such actions which are necessary to effect an Ordinary Issuer Relocation with effect as of 1 January as of the next following year. The addressees of such notice will only effect the Ordinary Issuer Relocation upon fulfilment of, inter alia, the following conditions: they have received (i) a legal opinion by reputable German legal counsel confirming that (a) an Ordinary Issuer Relocation will not adversely affect the legal existence of the rights and claims of the Securityholders as set forth in the terms and conditions of the Capital Securities nor the German law governed rights and claims of the Issuer’s other creditors, (b) all regulatory approvals which may be necessary in Germany to effect the Ordinary Issuer Relocation have been obtained, and (ii) satisfactory proof that WestLB has undertaken to the Issuer General Partner and the Issuer to indemnify each of them in respect of for any German Withholding Tax (*Kapitalertragsteuer*) or any other withholding tax which the Issuer may become obliged to withhold or deduct on payments under the Capital Securities (such as to allow the Issuer to pay such Additional Amounts to the holders of the Capital Securities in respect of such withholdings and deductions as provided for in the terms and conditions of the Capital Securities), any property tax, if applicable, and any trade, income or any other tax becoming payable by the Issuer or the Issuer General Partner as a consequence of the Ordinary Issuer Relocation.

## BUSINESS OF WESTLB

### Overview

WestLB AG has positioned itself as a European universal bank with an active presence in key international, primarily European markets and deep roots in its home region of NRW. NRW is the largest German federal state with a total population of approximately 18 million inhabitants and has 30 cities with a population in excess of 100,000 inhabitants. Based on a strong local economy, where 22 out of the 50 largest Germany's companies are domiciled, NRW's GDP amounts to roughly € 480 billion, close to 22% of the total German economic output.

The Bank implemented this new strategic position responding to two consecutive years of high risk provisioning in its credit and equity investment portfolio and in anticipation of the abolition of Institutional Liability and Guarantor Liability from 2005 onwards. The Bank's new management team headed by Dr. Thomas Fischer, who joined the Bank as CEO as of 1 January 2004, developed the Bank's new strategy and business model.

At the core of WestLB AG's new business model is the close co-operation and integrated market approach with the 113 Sparkassen in NRW. WestLB's AG positioning as close partner to the Sparkassen in NRW is highlighted by the joint business planning effort of the two parties, reflecting the symbiotic network, which combines the two parties' individual strengths. In this partnership, WestLB AG is responsible for providing a broad range of innovative and customer focused products, while the Sparkassen contribute their extensive branch network in the region, with access to roughly 11.5 million clients, and their in-depth knowledge of local business partners.

A general framework agreement and supplementary individual contracts with the Sparkassen reflect the shared commitment to this partnership. The individual contracts include a joint business planning of Sparkassen and the Bank with a view towards working together to better utilise the local market potential of the Sparkassen by increasing co-operation and expanding the product portfolio for Sparkassen customers, e.g. Corporate Finance, Capital Markets Products and structured retail products.

The close cohesion between WestLB AG and its owners is furthermore supported by the establishment of two additional reserve funds for the member banks of the Sparkassen Associations and for WestLB AG in June 2004. Effective as of 1 October 2004, the funds amount to € 500 million each. This amount comprises liquid funds of € 250 million and an additional funding obligation of the same amount. The two associations and WestLB AG each contribute € 12.5 million annually until the targeted amount has been reached. Irrespective of the new individual reserve funds, WestLB AG is a member of the German Savings Banks and Giro Association and makes contributions to the security reserves of the Landesbanken. These reserve funds are set up to protect its member institutes. This security reserve is an important contribution to the stability of the German banking system and exceeds the legal requirements by far.

With total assets of € 214.6 billion (unconsolidated) and a shareholders' equity of € 3.9 billion as of 31 December 2004, WestLB AG is among the top 10 German banks by assets. In Germany, WestLB AG has offices in Berlin, Dortmund, Frankfurt am Main, Hamburg, Cologne and Munich. In Europe, the Bank is present in Istanbul, London, Madrid, Milan and Paris. Outside Europe, the Bank is represented through branches in Hong Kong, New York, Singapore, Sydney, Tokyo and Toronto. Its international presence is complemented by other representative and sales offices in other major financial centres worldwide.

Already prior to the arrival of the Bank's new management team, WestLB AG started in 2003 to radically restructure its credit and investment portfolios. As a consequence, far reaching loan-loss provisions as well as negative value adjustments to equity holdings and principal finance investments have been made covering the discernible risks in the Bank's books. WestLB AG believes that it has to the best of its knowledge provided for any realised or foreseeable deterioration in credit quality. WestLB AG furthermore managed to complete by early 2005 the disposal of its entire former Principal Finance portfolio.

As part of the Bank's de-risking, WestLB AG started in 2004 to dispose of its non-core industry investment portfolio. By year-end 2004, the Bank's major investments, e.g. TUI, RWE, ThyssenKrupp, AXA, HVB / Hypo Real Estate, had already been sold at a profit. WestLB AG will continue to reduce its equity investment portfolio in 2005.

### Business Strategy

WestLB AG's strategy focuses on the banking needs of its customers. In the context of its strategic repositioning, the Bank changed from being a wholesale bank to being a customer-orientated bank



targeting primarily Sparkassen, financial institutions, small and medium-sized enterprises (SMEs), multinational corporates, public clients and private high net worth individuals.

The core customer-focused business units are:

- Corporate Banking & Sparkassen
- Investment Banking
- Private Banking & Asset Management

Further business units are:

- Bank Services
- Risk Management
- Group Finance & Controlling
- Treasury
- Human Resources

#### *Corporate Banking & Sparkassen*

The business unit Corporate Banking & Sparkassen comprises the business areas of Corporates Europe/Germany, Equity Finance, Sparkassen/Public Sector Clients, Mergers & Acquisitions, and Westdeutsche ImmobilienBank (WIB).

In line with the Bank's new targeted approach to SMEs, WestLB AG is redesigning its products to meet the banking requirements of these clients. This strategy includes lending products and private equity solutions, such as SME funds or mezzanine finance. Furthermore, the Bank focuses on increasing the volume of small-scale, placement-driven business in specialised finance as well as in trading operations. Through a number of initiatives, WestLB AG is aiming to (i) intensify the dialogue with corporate customers and (ii) provide solutions to issues such as participation rights, loan obligations, interest optimisations / swaps or non-recourse export financing.

In the context of the Bank's close partnership with the Sparkassen in NRW, WestLB AG has as of today signed individual agreements with the majority of the Sparkassen in the region. In order to maximise the value of the partnership each Sparkasse is allocated a co-ordinator, who, as key client relationship manager, (i) reviews with the Sparkasse the client portfolio of each Sparkasse, (ii) develops with each Sparkasse a joint marketing strategy and (iii) channels business to the relevant product team. The success of this co-operation is monitored by various joint committees, managed by the various WestLB AG Managing Board members.

Westdeutsche ImmobilienBank (WIB), a 100% owned subsidiary of WestLB AG, acts as the competence centre for real estate investment banking and financing of the Bank and the Sparkassen. Established on 1 January 1995 as a joint venture between WestLB AG (50%), Landesbank Baden-Württemberg (LBBW, 25%) and Landesbank Rheinland-Pfalz (LRP, 25%), WestLB AG acquired a 100% interest in WIB as of 31 July 2003, allowing the Bank to create the structural requirements for a re-organisation of real estate finance within WestLB AG, involving the transfer of all real-estate finance and related advisory services to WIB. As part of the Bank's customer management strategy, WIB will cover all real estate transaction clients, while all relationship clients and multi-product relationships are dealt with WestLB AG sales.

#### *Investment Banking*

Over the years, WestLB AG has developed internationally acknowledged expertise in providing its clients with banking services. In particular, the Bank developed a high reputation in the fields of specialised finance, global financial markets, and equity markets.

Combining proven skills in financial structuring, WestLB AG is a leading global player in specialised finance. The Bank is known for its strong franchise in financial engineering, leveraged finance, commodity finance, export finance, forfaiting, trading finance, project finance and asset securitisation. These globally customised financial products cater to the needs of the Bank's wholesale banking clients, financial institutions, identified SMEs as well as public sector clients.

WestLB AG has established a leading market position in Germany with respect to its capability of placing bond issues or private placements of German and international clients in the capital market. Furthermore, WestLB AG ranks prominently in the debt origination business for SMEs, e.g. bearer bonds



(Schuldscheine) and in syndicated loans. WestLB AG's distribution power will be further enhanced through the close co-operation with the Sparkassen by leveraging the extensive network of the Sparkassen.

Similarly, WestLB AG has a good reputation for equity market products as well as equity research. Accordingly, German and European large and mid caps find in the Bank a competent and powerful partner covering the full range of corporate equity products and providing local know-how.

In sales and trading WestLB AG is well regarded for its know-how of German counterparties. In line with the Bank's aim to align its sales and trading activities more closely with investor requirements, the Bank offers institutional clients and, increasingly, retail clients tailor-made equity derivatives solutions. Customer trading in equity products, money market and derivatives continues to be executed locally from the Bank's headquarters in Düsseldorf as well as WestLB's branches in London, New York and Tokyo.

#### *Private Banking & Asset Management*

In 2002, WestLB AG sold its Private Banking business to Merck Finck. As a consequence, WestLB AG is currently restricted under the terms of the agreement with Merck Finck not to reassume private banking business with Germany-based clients before April 2005. Upon expiry of the agreement, the Bank intends to offer in close co-operation with the Sparkassen private banking services to high net worth individuals by leveraging the existing private banking expertise of the Bank's international affiliates in this area.

Currently, WestLB AG has private banking operations in Luxembourg with WestLB International Luxembourg S.A., managing approximately € 2 billion of assets under management and Banque d'Orsay with approximately € 170 million of assets under management.

WestAM, the Bank's global investment management organisation, managed as of 31 December 2004 approximately € 59.7 billion for more than 500 institutional clients globally. With particular strength in select geographic markets and product categories, WestAM has not only established itself as one of the leading institutional asset managers in Germany, but also established a good pan-European mutual fund product platform.

#### *Funding Strategy*

WestLB AG's revised business strategy is backed by a flexible funding strategy which has been geared to the time after the abolition of institutional and guarantee liability. WestLB AG enjoys a strong presence on the domestic and international bond markets. The Bank issues a wide and flexible range of funding products to match the funding requirements of WestLB AG with the demands of a diversified investor base.

WestLB AG pursues a multi-issuer approach ensuring a clear segmentation of its funding products:

- WestLB AG focuses on unsecured senior and subordinated debt via its € 50 billion global debt issuance programme (DIP).
- In addition the Bank also issues promissory notes (Schuldscheindarlehen) and unsecured senior bonds outside of the DIP documentation.
- In September 2004 WestLB tapped the Australian dollar domestic bond market via the establishment of an AUD 3 billion debt issuance programme.

Complementing the multi-issuer approach are WIB and WestLB Covered Bond Bank plc, Dublin. The former issues mortgage covered bonds (*Pfandbriefe*) under the German Public Covered Bond Act (*Öffentliches Pfandbriefgesetz*) and complements its unsecured funding needs through a € 3 billion debt issuance programme. The latter is active in the public sector covered bond market under Irish law and complements its unsecured funding needs through a € 10 billion MTN programme and a USD 5 billion USCP programme.

Short-term commercial paper issues are launched by WestLB AG out of its € 15 billion global commercial paper programme. In addition, the Bank is also an issuer of certificates of deposits. Liquidity is procured primarily in the major currencies: EUR, USD, JPY and GBP. Where necessary, the funds raised are converted into the target currency using derivatives. WestLB AG's aim is to reduce total short-term funding in favour of medium- and long-term funding. Furthermore, the Bank holds a large portfolio, worth more than € 20 billion on average, of highly liquid securities which are suitable for repos and central bank tenders, constituting substantial refinancing facilities if needed.

## **Risk Management**

### *Integrated bank wide risk steering*

Risk steering at WestLB AG is based on the definition of the Bank's targeted risk profile and its consistency with planned earnings. Therefore, the aim of value-based Bank-wide steering is to achieve an efficient allocation of resources to those business areas which realise adequate returns, in relation to the level of risk.

The starting point for risk steering is the definition of the risk tolerance by the board and the shareholders based on the risk taking capacity. At the moment, the risk taking capacity of the Bank is determined by its Tier 1 capital, hidden reserves/ liabilities and part of the Bank's budgeted earnings.

The Bank's risk tolerance expresses its targeted risk profile and restricts the accepted total amount of risk via the overall risk limit. Based on risk tolerance, economic capital limits for each risk category and organisational unit are defined. These limits are continuously monitored and steered.

Usage of risk tolerance is measured via economic capital. The concept of economic capital is a cornerstone of the integrated risk steering over all risk categories. Economic capital enables a comparison of the risk within the different risk categories and therefore supports the diversification in products, customers and regions.

Within the yearly budgeting process, regulatory capital and economic capital are allocated to business units. Allocation of risk capital is linked with expected return which is derived from the overall return expected by the Bank and its shareholders. Economic capital limits for each risk category and for each organisational unit are based on the results of the budgeting process. The Asset Liability Committee (ALCO) is responsible for allocating and limiting economic capital.

The risk profile of WestLB AG is therefore mainly steered by economic capital. Additionally further instruments are used to steer the structure of the portfolio. These instruments comprise, for example, VaR and sensitivity limits for steering of trading risks as well as single concentration and sector limits for management of the Bank's credit portfolio.

Risk steering of the Bank is supported by the Bank's regular decision-orientated reporting. Reports focus on the current risk situation as well as its development and give indications for risk steering measures.

### *Market Price Risk*

Market price risk is defined as the potential loss resulting from changes in financial markets prices. It contains general and specific interest rate risks as well as FX and equity risks.

Market price risk for trading business within the Bank's trading and banking book is measured by the Value-at-Risk (VaR) Method based on a Monte Carlo simulation technique.

Risk positions within the trading and banking book are steered by a VaR based limit system, which aims to restrict the potential loss resulting from market price risk. Risk limits are derived from the risk tolerance based economic capital limit for market price risk and are then allocated among all relevant organisational levels of the trading business under consideration of diversification effects.

At year-end 2002, the Bank received BaFin's approval to use the internal VaR model to determine Principle I ("Grundsatz I") capital ratios for the trading business. BaFin's approval to extend the internal model to cover currency risks and share price risks (Full Use) and also specific interest rate risks is expected for mid-2005.

### *Counterparty Default Risks*

Counterparty Default Risk is defined as the risk of potential losses due to the default of the counterparty. It includes credit risk, issuer risk, pre-settlement risk and country risk.

The framework for managing all counterparty default risks and for credit portfolio steering is set by the credit risk strategy. Based on the business strategy and the risk tolerance of the Bank, the credit risk strategy sets out additional terms and limits. Thus, one-sided portfolio developments and risk concentrations should be avoided in favour of balanced risk diversification. The board reviews the strategy on a yearly basis taking into account changes in the external environment as well as new internal strategic goals.

The two pillars of risk management at the individual commitment level are the credit approval process and the ongoing monitoring process. Each credit application approval needs the approval of the responsible key personnel. The board delegated this role to the Credit Committee as the most important decision panel. The internal rating, which evaluates both quantitative and qualitative factors, plays a central role within the credit application process.

All credit positions are permanently monitored, and the degree of scrutiny depends on the current risk situation of the specific individual borrower. At least once a year, a credit review is prepared for each individual borrower. Furthermore, the Bank uses procedures for the early identification of critical credit engagements which bear a higher risk of default.

If a loan threatens to become non-performing because of the worsening situation of a borrower, that loan is added to the Bank's Global Watchlist (WGW) and becomes subject to closer scrutiny and support.

The Credit Portfolio Committee (CPC) is responsible for all credit risk steering activities at a portfolio level. The functionally independent Credit Portfolio Management unit continuously monitors the credit risk at a portfolio level and manages the allocation and limitation of credit risks across business units, especially concentration risks (single borrower, sectors and countries). By using specific techniques, e.g. credit derivatives, as well as a strict steering of new business, credit portfolio management ensures an improved level of credit portfolio diversification.

The correct measurement of trading related counterparty or country risk is performed under consideration of product specifics and modelling with the aim to prepare a risk profile for each counterparty and risk category within the maturity of the transactions. The Bank performs portfolio simulations based on Monte Carlo simulation techniques for the derivatives business.

The Market Risk Management unit monitors exposures and corresponding limits for monitoring of individual risks on a daily basis. This ensures central evidence across counterparty and issuer limits of the trading business as well as consistent and real-time risk management.

Participation risk refers to potential fluctuations in the value of companies of WestLB Group, as well as risks arising from contracts with companies in which WestLB holds participations.

Management of participation risks at WestLB refers to managing all of the Group's participations, which has been assigned to the Equity Investments business unit. Companies of the Banking Group which themselves are banks are fully incorporated into the risk and operational management of WestLB.

### *Liquidity Risks*

Liquidity risk is defined as the risk that a bank may not be able to meet its current and future payment obligations in full or on time, that in the case of a liquidity crisis refinancing may only be raised at higher market rates (funding risk), or that assets may only be liquidated at a discount to the market rates (market liquidity risk).

The objective of liquidity management is to avoid a concentration of financing requirements with very short-term maturities, to keep enough liquid assets on hand for unexpected liquidity needs and, at the same time, to optimise the Bank's structural liquidity with the help of a medium and long-term-oriented funding programme.

### *Operational Risks*

Operational Risks are risks of potential losses due to the inappropriateness or failure of business processes, technology or bank staff or are consequences of external events.

Operational Risk Management is an independent central steering unit which defines Bank-wide rules for management of operational risks, and coordinates operational risk management activities. Operational Risk Management should ensure a Bank-wide high quality standard in terms of risk analysis, measurement, steering and monitoring. This comprises predominantly general OpRisk-Methods, Risk Self-Assessment, loss data base and risk indicators for identification and valuation of operational risks, as a basis for an active management. To comply with the Advanced Measurement Approach according to Basle II, development of quantification procedures for risk measurement have been initiated.

## **Corporate Governance**

With the coming into force of the Transparency and Disclosure Act in June 2002, the boards of managing directors and members of supervisory boards of listed companies have to publish an annual statement

of conformity with the German Corporate Governance Code. The corporate governance code aims at making the statutory regulations to which German enterprises are subject transparent for the international audience. The code formulates principles of good and responsible business management which the management and members of the supervisory boards are obliged to recognise. As a globally operating company, WestLB AG has committed itself to gaining investor's confidence by laying down its own corporate governance rules, reflecting internationally and nationally recognised standards of good and responsible company management. Even as a non-listed company, WestLB AG attaches great importance to open and transparent communication with the capital markets. This is also why the Bank expanded its communications department in 2004 and established an investor relations unit in May 2004.

The key issues of the code refer to the close co-operation of the managing and supervisory board, a clear distribution of tasks and duties between the two bodies as well as a general policy regarding WestLB AG's disclosure practices. The Bank will regularly report on its compliance with these rules of Corporate Governance. They will be subject to regular examination in order to ensure that they are constantly brought up to date in the face of changing corporate, economic and legal circumstances over time.

Although WestLB AG's new business model is clearly aimed at being a profitable company, the Bank does not ignore the non-monetary aspects of a successful modern enterprise. The Bank is committed to a responsible and sustainable mode of doing business. That this is more than words to WestLB AG is substantiated in the Bank initiating the Equator Principles in 2002 in co-operation with other internationally operating banks. WestLB AG defines corporate responsibility as a sustainable, credible and transparent corporate commitment. The Bank wants not only to be profitable but also to act responsibly, be accountable and benefit society.

## REGULATION

The following explains certain regulatory matters which are of significance for the business of WestLB and the WestLB Group.

WestLB is authorised to conduct general banking business and to provide financial services under, and subject to the provisions of, the German Banking Act (*Gesetz über das Kreditwesen*). WestLB is subject to comprehensive supervision by the Federal Financial Services Supervisory Agency (*Bundesanstalt für Finanzdienstleistungsaufsicht*) (the “**BaFin**”), which is supported in its function by the Deutsche Bundesbank, the German central bank.

### Regulation Pursuant to the German Banking Act

The German Banking Act contains the basic set of rules applicable to German banks, including the requirement for a banking license, and regulates the business activities of German banks. The BaFin supervises the operations of banks to ensure that they conduct their business in accordance with the provisions of the German Banking Act and other applicable German laws and regulations. The BaFin places particular emphasis on ensuring compliance with:

- capital adequacy and liquidity requirements;
- large exposure limits; and
- restrictions on certain activities imposed by the German Banking Act and the regulations issued thereunder.

### Capital Adequacy Requirements – Current Regulatory Framework

The German capital adequacy requirements provide that banks guard against counterparty risk (*Adressenausfallrisiko*) and market risk (*Marktrisiko*) by possessing certain levels of minimum capital. Counterparty risk is covered by “**Regulatory Banking Capital**” (*haftendes Eigenkapital*), whereas market risk is covered by “**Own Funds**” (*haftende Eigenmittel*) comprising Regulatory Banking Capital and “Tier III Capital”. Pursuant to “**Principle I**” of the BaFin, each bank must maintain a ratio (the “**Solvency Ratio**”) of Regulatory Banking Capital to risk-adjusted assets (including financial swaps, financial forward transactions, options, and other off-balance-sheet items) of at least eight percent.

Pursuant to the German Banking Act, for WestLB, as a bank that is organized in the form of a stock corporation, Regulatory Banking Capital (the numerator of the Solvency Ratio) consists of “Core Capital” (*Kernkapital*) and “Supplementary”, or “Tier II”, Capital (*Ergänzungskapital*). The distinction between Core Capital and Supplementary Capital reflects the different degrees of loss or insolvency protection provided by the individual Regulatory Banking Capital items. The Supplementary Capital may be taken into account only up to the amount of the Core Capital. In addition, longer-term subordinated debt is recognized as Regulatory Banking Capital only up to 50 per cent. of the amount of Liable Capital.

**Core Capital** comprises:

- paid-in subscribed capital;
- capital reserves;
- earnings reserves;
- funds for general banking risks (an item that a bank may create on the liability side of its balance sheet, in its reasonable commercial judgment, to reflect the special risks inherent in its banking business);
- capital paid in consideration of silent partnership interests (*stille Beteiligungen*).

**Supplementary Capital** consists of:

- reserves for general banking risks (a bank may record on its balance sheet certain receivables at a lower value than that is permitted for commercial and other non-banking entities if the use of a lower value is, in the bank’s reasonable business judgment, advisable to safeguard against the special risks inherent in the banking business), provided that such reserves do not exceed 4 per cent. of the book value of such receivables and securities;
- capital paid in consideration of profit-participation rights (*Genussrechte*) meeting certain conditions set out in the German Banking Act;

- longer-term subordinated debt meeting certain conditions set out in the German Banking Act;
- certain unrealised reserves; and
- reserves pursuant to § 6b of the German Income Tax Law (*Einkommensteuergesetz*), such reserves being included in Regulatory Banking Capital in the amount of 45 per cent. thereof to the extent that they were created from the proceeds of the sale of real property, property rights equivalent to real property, and buildings.

The German Banking Act requires that the following be deducted in computing Regulatory Banking Capital:

- losses;
- certain intangible assets (including goodwill); and
- certain participations in banks, financial services institutions, or other financial enterprises.

Under Principle I, the risk-adjusted value of assets of a bank (the sum of which is the denominator of the Solvency Ratio) is computed by assigning assets to one of five basic categories of relative credit risk (i.e., 0, 10, 20, 50 and 100 per cent.) depending on the debtor or the type of collateral securing the assets. The balance sheet value of each asset item is multiplied by the percentage weight applicable to its risk category to arrive at the risk-adjusted value.

Off-balance-sheet items, such as financial guarantees, letters of credit, swaps, and other financial derivatives, are subject to a two-tier adjustment. First, their value (or in the case of guarantees and letters of credit, their amount, or in the case of swaps and other derivatives, the value computed on a market or time basis) is adjusted according to their risk classification (i.e., 20, 50 and 100 per cent.) depending on the type of instrument. Then the off-balance-sheet items are assigned, similar to balance-sheet assets, to credit risk categories depending on the type of the counterparty, debtor, or type of collateral, if any, securing the respective assets and multiplied by the applicable percentage weight.

In addition to the capital adequacy requirements for counterparty risk, Principle I also lays down principles relating to capital adequacy requirements covering market risk. The market-risk positions of a bank are comprised of:

- its foreign exchange positions;
- its commodities positions;
- certain of its trading book positions, including those involving counterparty risk, as well as interest-rate and share-market risk; and
- its options transactions positions.

The market risk positions are net positions, risk-adjusted in accordance with the detailed rules set forth in Principle I. As of the close of each business day, the sum of the net risk-adjusted market-risk positions of a bank must not exceed the sum of:

- the difference between its Regulatory Banking Capital and 8 per cent. of its aggregate amount of risk-adjusted risk assets; and
- its Tier III Capital.

Thus, the market risk positions must be covered by Own Funds that are not required to cover counterparty risk.

“**Tier III Capital**” (*Dritrangmittel*) consists of:

- net profits (i.e., the proportionate profit of a bank which would result from closing all trading-book positions at the end of a given day), less (i) all foreseeable expenses and distributions and (ii) losses resulting from the investment book that are likely to arise upon a liquidation of the bank; and
- short-term subordinated debt meeting certain conditions set out in the German Banking Act, including a minimum term of two years and the requirement that the rights of the holder thereof be subordinated to the rights of all other creditors in the event of insolvency or liquidation.

Net profits and short-term subordinated debt qualify as Tier III Capital up to an amount which, together with the Supplementary Capital not required to cover risks arising from the investment book, does not exceed 250 per cent. of the Core Capital not required to cover risks arising from the investment book.



Under the German Banking Act's provisions on consolidated supervision, each group of institutions (*Institutsgruppe*) on a consolidated basis, as well as each bank within the group on an unconsolidated basis, must meet the Regulatory Banking Capital requirements. A group of institutions is deemed to exist if:

- another bank, financial services institution, financial enterprise, or bank service enterprise is a subsidiary (*nachgeordnetes Unternehmen*) of a bank or financial services institution (with subsidiary being defined in terms of possessing a voting majority or controlling influence of the parent bank or financial services institutions); or
- a member of the group of institutions:
- owns, directly or indirectly, at least 20 per cent. of the shares of such other bank, financial services institution, financial enterprise, or bank service enterprise;
- manages such bank, institution, or enterprise jointly with other enterprises; and
- is liable for the obligations of such bank, institution, or enterprise in proportion to its capital investment in such bank, institution, or enterprise.

### **Capital Adequacy Requirements – The Basle II Capital Accord**

The capital adequacy requirements applicable to WestLB and described in the preceding section are based on the 1988 capital accord of the Basle Committee at WestLB for International Settlement (“**BIS**”). The Basle Committee is a committee of central banks and bank supervisors/regulators from the major industrialized countries that develops broad policy guidelines that each country's supervisors use to determine the supervisory policies they apply. In January 2001, the BIS released a proposal to replace the 1988 capital accord with a new capital accord and to overhaul the existing international capital adequacy standards. The two principal goals of the proposals were to align capital requirements more closely with the underlying risks and to introduce a capital charge for operational risk (comprising, among other things, risks related to certain external factors, as well as to technical errors and errors of employees). Following extensive negotiations, the proposals have been adopted by the Basle Committee in June 2004 and are expected to become effective as of year-end 2006 or, with regard to the most advanced approaches for risk evaluation, as of year-end 2007. The Basle II framework comprises three pillars. The first pillar represents a significant amendment of the minimum requirements under the 1988 capital accord. It requires higher levels of capital for those borrowers which present higher levels of credit risk, and vice-versa. Moreover, an explicit capital charge for a bank's exposure to operational risks such as the risk of losses caused by failures in systems, processes or staff or by external events is established. Capital charges are aligned more closely to a bank's internal assessments of its overall risks to ensure that the management is exercising sound judgement and has set aside adequate capital for its risks. The third pillar aims at the enhancement of the degree of transparency in banks' public reporting.

In July 2004, the European Commission issued its proposed revisions to the Banking Directive 2001/12/EC which is intended to implement the Basle II framework in a coherent manner throughout the EU. Under the Basle II capital accord, WestLB may need to maintain higher levels of capital for bank regulatory purposes, which could increase its financing costs.

### **Limitations on Large Exposures**

The German Banking Act, together with the regulation on large exposures (*Großkredit- und Millionenkreditverordnung*, the “**Large Exposure Regulation**”), is designed to limit the concentration of credit risks through restrictions on large exposures (*Großkredite*, “**Large Exposures**”) of banks and groups of institutions. The Large Exposure rules and the Large Exposure Regulation distinguish between:

- banks and groups of institutions with minor trading book positions (see “Capital Adequacy Requirements – Current Regulatory Framework”) that are not subject to the rules relating to the trading book; and
- banks and groups of institutions which are subject to the rules relating to the trading book (“**Trading Book Institutions**”).

WestLB is a Trading Book Institution. For Trading Book Institutions, the Large Exposure rules contain different restrictions for Large Exposures related to the investment book (“**Investment Book Large**

**Exposures**”) and aggregate large exposures (“**Aggregate Book Large Exposures**”) of the bank or group of institutions. Investment Book Large Exposures exist where the assets of a bank attributable to a single client or connected group of clients equals or exceeds 10 per cent. of the relevant bank’s or group of institutions’ Regulatory Banking Capital. Aggregate Book Large Exposures mean situations in which the aggregate of the Investment Book Large Exposures and the exposures incurred in the trading book (including the net amount of all long and short positions in debt instruments and shares of an individual issuer, the counterparty risk of certain derivatives, the counterparty risk after the agreed date of settlement, and repurchase and securities lending transactions) attributable to a single client or connected group of clients (the “**Trading Book Large Exposures**”) equal or exceed 10 per cent. of the relevant bank’s or group of institutions’ Own Funds.

The following limitations apply to Large Exposures of Trading Book Institutions:

- all Aggregate Book Large Exposures taken together must not exceed eight times such bank’s or group’s Own Funds;
- the Investment Book Large Exposures must not exceed in the aggregate eight times such bank’s or group’s Regulatory Banking Capital;
- the Investment Book Large Exposures to a single client or group of clients must not exceed 25 per cent. of the bank’s or group of institutions’ Regulatory Banking Capital;
- Investment Book Large Exposures in relation to an affiliated enterprise of the bank or group of institutions outside the group of institutions must not exceed 20 per cent. of the bank’s or group of institutions’ Regulatory Banking Capital;
- the aggregate amount of Trading Book Large Exposures and Investment Book Large Exposures to a client or group of clients must not exceed 25 per cent. of the bank’s or group of institutions’ Own Funds; and
- the aggregate amount of Trading Book Large Exposures and Investment Book Large Exposures must not exceed 20 per cent. of the bank’s or group of institutions’ Own Funds.

With the approval of the German Banking Supervisory Authority, a bank or group of institutions may exceed these thresholds.

The term “group of institutions” for purposes of the Large Exposure limitations is defined in the same manner as for capital adequacy purposes. See “Capital Adequacy Requirements”.

### **Financial Statements and Audits**

The financial statements on the basis of which compliance with the capital adequacy requirements is assessed must be prepared in accordance with the German Commercial Code (*Handelsgesetzbuch*) and the Regulation on Accounting by Credit Institutions (*Verordnung über die Rechnungslegung der Kreditinstitute*).

Under German law, the Bank must be audited annually by a certified public accountant (*Wirtschaftsprüfer*) who has been appointed by the shareholders’ general meeting and mandated by the supervisory board. A bank’s certified public accountant is required to inform the BaFin of any facts coming to the accountant’s attention which give reason to deny or qualify the certifications of the bank’s annual financial statements or adversely affect the financial position of the bank, as well as of any material breach by the bank’s management of the law or the bank’s articles of association. The certified public accountant is required to prepare a detailed and comprehensive annual audit report (*Prüfungsbericht*), which is submitted to the supervisory board of the bank, the BaFin, and the Bundesbank. In the report, the accountant must confirm that the bank has complied with:

- the regulatory reporting requirements;
- the Large Exposures limitations;
- the limitations on extension of credit to borrowers forming a unit of borrowers;
- the principles as to capital adequacy and liquidity; and
- regulations concerning the prudential granting of credit.

In addition, the audit report must:

- discuss in detail certain large loans and other important loans;

- confirm compliance with certain provisions of the German Banking Act;
- match assets and liabilities bearing interest at fixed rates according to maturity and assets and liabilities bearing interest at floating rates according to interest periods; and
- explain the effect of a change in interest rates on the unmatched portion of such assets and liabilities.

### **Reporting Requirements**

In order to enable the BaFin and the Bundesbank to monitor compliance with the German Banking Act and other applicable legal requirements, banks are required to file the following information with the BaFin and the Bundesbank:

- immediate notice of certain organizational changes, the acquisition or sale of more than 10 per cent. of the equity of another company or changes in the amount of such equity share, loss of 25 per cent. of the Regulatory Banking Capital, the commencement or termination of certain non-banking activities, the acquisition or termination of a significant participation in the bank giving notice, the bank's status as subsidiary, the existence, change in or termination of any "close relationship" with another company (i.e., ownership of at least 20 per cent. of the capital or voting rights);
- on an annual basis, audited unconsolidated and consolidated financial statements for the bank;
- on a monthly basis, balance sheet and statistical information;
- on a monthly basis, compliance statements with regard to the capital adequacy rules and the requirements on liquidity; and
- on a quarterly basis, a list of the borrowers to whom the reporting bank has granted loans of € 1.5 million or more and certain information about the amount and the type of loan, including syndicated loans exceeding this amount even if the reporting bank's share does not exceed € 1.5 million.

If several different banks notify the Bundesbank of loans of € 1.5 million or more to the same borrower, the Bundesbank must inform each of the reporting banks of the total reported indebtedness and of the type of such indebtedness of the borrower.

### **Enforcement of Banking Regulations; Investigative Powers**

To ensure that German banks fully comply with all applicable regulatory and reporting requirements, the BaFin requires that banks maintain an effective internal auditing department to monitor and control their activities. In order to secure compliance with the German Banking Act and the regulations issued thereunder, the BaFin and the Bundesbank may require information and documents from a bank and the BaFin may conduct investigations of a bank. In addition, the BaFin may attend or convene meetings of the bank's supervisory board and of the bank's shareholders.

The BaFin has a wide range of enforcement powers. It can remove the bank's managers from office or prohibit them from engaging in banking activities. If the Own Funds of a bank are not adequate or if the liquidity requirements are not met (provided the bank has failed to remedy the deficiency within a certain period), the BaFin may prohibit or restrict the distribution of profits or the extension of credit. These prohibitions also apply to the parent bank of a group of institutions if the Own Funds of the bank's group enterprises do not meet the legal requirements. If the liquidity requirements are not met, the BaFin may also prohibit further investments in illiquid assets.

If a bank is in danger of defaulting on its obligations to creditors, the BaFin may take emergency measures to avert a default, including, among others:

- issuing instructions relating to the management of the bank;
- prohibiting the acceptance of deposits and the extension of credit;
- prohibiting or restrict the managers of the bank from carrying on their functions; and
- appointing supervisors.

If these measures are inadequate to remedy the situation, the BaFin may revoke the bank's license and, if appropriate, order that the bank be shut down. In order to prevent the insolvency of a bank, the BaFin has the authority to:

- prohibit payments and disposals of assets;
- close customer services; and
- prohibit the acceptance of payments other than in payment of debt owed to the bank.

Violations of the German Banking Act may result in criminal and administrative penalties.

### **Current Legislative Proposal to Enact a new Pfandbrief Act**

The German legislature is currently revising the legislative framework for Pfandbriefe (bonds secured by private property mortgages or public sector loans). The federal government has introduced in the German legislature a bill for a new Pfandbrief Act which will replace the current Act on Pfandbriefe and Related Bonds Issued by Public Pfandbrief Institutions (*Gesetz über die Pfandbriefe und verwandten Schuldverschreibungen öffentlich-rechtlicher Pfandbriefanstalten*), the Mortgage Bank Act (*Hypothek-  
enbankgesetz*) and the Ship Bank Act (*Schiffsbankgesetz*) and it is currently contemplated that the new Pfandbrief Act will enter into force on 19 July 2005.

The new Pfandbrief Act is intended to harmonize the regulation of Pfandbriefe regardless of whether the issuer is a public bank or a private bank. Under the current proposal, the provisions protecting the interests of Pfandbrief creditors remain largely unchanged. Additional protective measures for the benefit of Pfandbrief creditors are however still being discussed in the course of the legislative proceedings. One of the major changes is the proposed abolishment of the principle of specialised mortgage banks. Under the current proposal, universal banks will be authorized to issue Pfandbriefe if they meet the requirements set out in the new Pfandbrief Act and additional requirements to be implemented by an amendment to the German Banking Act. Consequently, WestLB will be authorised to issue Pfandbriefe if it meets the aforementioned requirements.

## TAXATION

*The statements below regarding taxation are based on the law and practice of the relevant specified jurisdiction at the date of this Offering Circular and are subject to any subsequent changes in law or practice (which could be made on a retroactive basis). The following statements do not constitute tax advice and do not purport to be a comprehensive description of all of the tax considerations that may be relevant to a decision to purchase, own or dispose of the Capital Securities and may not apply equally to all persons. Prospective purchasers of the Capital Securities are advised to consult their own tax advisers concerning the tax consequences of their ownership of the Capital Securities.*

### **Taxation in Jersey**

Investors (other than residents of Jersey) are not subject to any tax in Jersey in respect of the holding, sale or other disposition of Capital Securities. Payments of interest on Capital Securities will be made by the Issuer without withholding or deduction for or on account of Jersey income tax.

No stamp duties are payable in Jersey on the acquisition, ownership, redemption, sale or other disposal of Capital Securities. Stamp duty is payable in Jersey on the registration of Probate or Letters of Administration relating to the death of an individual holder of Capital Securities with assets situate in Jersey (which may, in some circumstances, extend to the Capital Securities) which is calculated by reference to the value of the holder's estate in Jersey.

### **Taxation in the Federal Republic of Germany**

This chapter "Taxation in the Federal Republic of Germany" contains a summary of some important German fiscal provisions that are relevant in connection with the acquisition, the holding and the sale or redemption of the Capital Securities. This summary is not intended to be a comprehensive and complete representation of all aspects that could be relevant to investors under German tax law. It is based on the German tax law in force at the time of preparing this Offering Circular which may change at short notice, even with retroactive effect. We therefore strongly recommend that potential investors seek advice from their professional tax advisors with respect to the tax implications of the acquisition, the holding and the sale or redemption of Capital Securities.

#### ***Investors tax resident in Germany***

All interest payments made by the Issuer to investors tax resident in Germany (persons whose residence, habitual abode, statutory seat, or place of effective management and control is located in Germany) are subject to income or corporate tax plus solidarity surcharge in the amount of 5.5 % of the relevant income or corporate tax liability. If Capital Securities are held as assets of a German commercial business, these interest payments are subject to trade tax (*Gewerbesteuer*) also. If Capital Securities are held in a custodial account maintained with a bank or financial services provider in Germany, including branches of foreign banks or financial services providers in Germany (the "**Disbursing Agent**" – *inländische Zahlstelle*), withholding tax on interest income (*Zinsabschlagsteuer*) in the amount of 30 % (plus 5.5 % solidarity surcharge thereon, i.e. a total of 31.65 %) will be withheld from the gross amount of the interest payments. Tax withheld by the Disbursing Agent will be credited against the final German income or corporate tax burden of the Securityholder.

Profits from the sale or redemption of the Capital Securities, including the profits achieved by a second or subsequent purchaser, are deemed to be interest income and are subject to personal income or corporate tax plus solidarity surcharge thereon under German tax law. If Capital Securities are held as part of a German commercial business, such profits are subject to trade tax also. For Capital Securities held in a custodial account maintained with a Disbursing Agent since the acquisition of the Capital Securities, the Disbursing Agent will be required to withhold tax in the amount of 30 % (plus a 5.5 % solidarity surcharge) of the difference between the sale or redemption proceeds and the purchase price paid for the Capital Securities. If the Disbursing Agent has changed since the acquisition of the Capital Securities, tax is withheld in the amount of 30 % of the sale or redemption proceeds. The tax withheld will be credited against the final German income or corporate tax burden of the Securityholder.

#### ***Non-resident investors***

Interest paid to a Securityholder and profits from the sale or redemption realized by a Securityholder not resident in Germany will generally not be taxable in Germany and no tax will be withheld (even if the Capital Securities are kept with a Disbursing Agent). Exemptions apply, for example, if (i) the Capital



Securities are held as a business asset of a German permanent establishment or by a permanent representative of the non-resident Securityholder, if (ii) the interest income of such Capital Securities does otherwise constitute German source income and if (iii) the non-resident Securityholder does not comply with the procedural rules to prove his status as a non-tax resident. In these cases, the Securityholder not resident in Germany will be subject to a tax regime similar to that described above under "Investors tax resident in Germany".

### ***Inheritance and Gift Tax***

The transfer of Capital Securities in case of succession upon death, or by way of a gift among living persons is subject to German inheritance and/or gift tax, if the deceased, donor and/or the recipient is a German resident. German inheritance and gift tax is also triggered, if neither the deceased, the donor nor the recipient of the Capital Securities are German residents, if the Capital Securities are attributable to German business activities and if for such business activities a German permanent establishment is maintained or a permanent representative is appointed in Germany. In specific situations, also German expatriates that have been tax resident in Germany may be subject to inheritance and gift tax. Double taxation treaties may provide for exceptions to the German inheritance and gift tax regulations.

### **European Union Directive on the Taxation of Savings Income**

On 3 June 2003 the Council of the European Union approved Council Directive 2003/48/EC regarding the taxation of savings income (the "**Savings Directive**"). Under the Savings Directive, if a paying agent for interest on a debt claim is resident in one Member State of the European Union and an individual who is the beneficial owner of the interest is a resident of another Member State, then the former Member State will be required to provide information (including the identity of the beneficial owner) to authorities of the latter Member State. "Paying agent" is defined broadly for this purpose and generally includes any agent of either the payor or payee. The requirement under the Savings Directive is subject to the right of Belgium, Luxembourg and Austria to opt instead to withhold tax on interest payments during a transitional period (initially at a rate of 15 % but rising in steps to 35 % after six years). The effective date is contingent on certain non-EU Member States (Switzerland, Liechtenstein, Andorra, Monaco and San Marino), as well as dependent and associated territories in the United Kingdom and the Netherlands, adopting equivalent measures so as to allow the effective taxation of savings income paid to EU residents.

So far, not all non-EU Member States have adopted equivalent measures. As a result, the effective date of the Savings Directive may be delayed. On July 19, 2004 the Council agreed in Council Directive 2004/587/EC to apply the Savings Directive, including the agreements with non-EU Member States, from July 1, 2005 onwards. Germany has implemented the Savings Directive through the Interest Information Regulation (*Zinsinformationsverordnung – ZIV*) of 26 January 2004.

Jersey is not a member of the European Union and therefore is not required to implement the Savings Directive. However, the Policy & Resources Committee of the States of Jersey has announced that, in keeping with Jersey's policy of constructive international engagement, Jersey, in line with steps proposed by other relevant third countries, proposes to introduce a retention tax system in respect of payments of interest, or other similar income, made to an individual beneficial owner resident in an EU Member State by a paying agent situate in Jersey (the terms "**beneficial owner**" and "**paying agent**" for this purpose are as defined in the Savings Directive). The retention tax system would apply for a transitional period prior to the implementation of a system of automatic communication to EU Member States of information regarding such payments. During this transitional period, such an individual beneficial owner resident in an EU Member State will be entitled to request a paying agent not to retain tax from such payments but instead to apply a system by which the details of such payments are communicated to the tax authorities of the EU Member State in which the beneficial owner is resident. Under the current proposals in respect of the implementation of such a retention tax system in Jersey the Issuer would not be obliged to levy retention tax in respect of interest payments made by it to a paying agent.



## SUBSCRIPTION AND SALE

Under a subscription agreement dated 11 May 2005, ABN AMRO Bank N.V., Deutsche Bank AG London, Merrill Lynch International and WestLB AG (collectively, the “**Managers**”) have agreed to subscribe for the aggregate principal amount of € 240,000,000 Capital Securities at the price of 100 per cent. of their principal amount in order to sell the Capital Securities to investors. WestLB has agreed to pay to the Managers a combined management, underwriting and selling commission of € 3,620,000. It is expected that Capital Securities in the principal amount of € 118,000,000 will initially be purchased, directly or indirectly, by shareholders of WestLB.

WestLB 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 Capital Securities. The Subscription Agreement entitles the Managers to terminate it in certain circumstances prior to the issue of, and payment for, the Capital Securities.

The Managers or their affiliates have provided from time to time, and expect to provide in the future, investment services to the WestLB 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 represented and agreed that, except as permitted by the Subscription Agreement, it will not offer or sell the Capital 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 closing date and the completion of the distribution of the Capital Securities, and it will send to each dealer to which it sells Capital Securities during the 40-day distribution compliance period a confirmation or other notice setting forth the restrictions on offers and sales of the Capital 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 Capital 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 Capital 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 months from the Issue Date, will not offer or sell any Capital 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 or otherwise in circumstances which have not resulted and will not result in an offer to the public in the United Kingdom within the meaning of the Public Offers of Securities Regulations 1995, as amended 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 Capital 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 Capital Securities in, from or otherwise involving the United Kingdom.

### *Jersey*

Each of the Managers has represented and agreed that it has not offered or sold, and will not offer or sell, the Capital Securities to any person resident for income tax purposes in Jersey.

### *France*

Each Manager has acknowledged and agreed that it will not offer or sell, directly or indirectly, the Capital Securities to the public in France, and offers and sales by it of the Capital Securities in France will only be made to qualified investors, provided that such investors act on their own accounts, in accordance with Article L411-2 of the *Code Monétaire et Financier*, as amended and *Décret no. 98-880* dated October 1, 1998, as amended. Accordingly, the Offering Circular has not been submitted to the *Autorité des Marchés Financiers*. Each Manager has agreed that it will distribute neither the Offering Circular nor any other offering material to the public in France.

Chaque manager a admis et accepté que les titres ne pourront pas être offerts ou vendus directement ou indirectement au public en France et ne pourront l'être qu'à des investisseurs qualifiés, sous réserve que ces investisseurs agissent pour compte propre, au sens de l'article L-411-2 du Code Monétaire et Financier, tel que modifié et du décret No. 98-880 du 1<sup>er</sup> Octobre 1998 tel que modifié. Par conséquent, ce prospectus n'a pas été soumis au visa de l'Autorité des Marchés Financiers. Chaque manager a accepté que ni ce prospectus ni aucun autre document promotionnel ne pourront être communiqués au public en France.

### *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 Capital Securities. In particular each Manager has undertaken not to engage in a public offering (*öffentliches Anbieten*) in Germany with respect to any Capital 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.

### *The Netherlands*

Each Manager has acknowledged and agreed that it will not offer, sell, deliver or transfer the Capital Securities in The Netherlands other than to persons who trade or invest in securities in the conduct of a profession or business (which include banks, securities firms, investment institutions, insurance companies, pension funds, other institutional investors and finance companies and treasury departments of large enterprises).

### *Switzerland*

Each Manager has acknowledged and agreed that it will not offer, directly or indirectly, the Capital Securities to the public in Switzerland, and the Offering Circular does not constitute a public offering prospectus as that term is understood pursuant to art. 625a or art. 1156 of the Swiss Federal Code of Obligations (*Schweizer Obligationenrecht*)

### *General*

No action has been taken in any jurisdiction that would permit a public offering of any of the Capital 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 Capital Securities or has in its possession or distributes this Offering Circular or any other offering material.

### **Stabilisation**

In connection with the issue, Merrill Lynch International 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 Capital Securities at a level higher than that which might otherwise prevail for a limited period. However, there

is no obligation on Merrill Lynch International or any agent of it to do this. Such stabilising, may be effected on the Luxembourg Stock Exchange 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 Capital Securities. Such stabilising shall be in compliance with all relevant laws and regulations which might substantially differ from regulations and customs for such stabilisation measures applicable in other jurisdictions.

### **Delivery of the Capital Securities**

The Capital 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 Capital Securities in accordance with the practices of Clearstream Banking AG, Frankfurt am Main ("**Clearstream Frankfurt**"). Both the temporary and the permanent global security will be deposited with and held by Clearstream Frankfurt and will bear the handwritten signature of the Issuer's management and a control signature of the Principal Paying Agent.

Co-ownership interests in Capital Securities may be transferred according to the applicable rules of Clearstream Frankfurt. It is expected that the delivery of the Capital Securities will be made through Clearstream Frankfurt against payment therefor in immediately available funds on 13 May 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 Capital Securities shall be admitted for trading on 13 May 2005 of the Luxembourg Stock Exchange.

## GENERAL INFORMATION

### Subject of this Offering Circular

The subject of this Offering Circular are the € 240,000,000 Capital Securities.

### Clearing Codes

The Capital Securities have been accepted for clearance through the facilities of Clearstream Banking AG, Frankfurt am Main, Euroclear and Clearstream Luxembourg under the following clearance codes:

ISIN: DE000A0D2FH1

Common Code: 021845167

Wertpapier-Kenn-Nummer (WKN): A0D2FH

### Issue Date

The Capital Securities will be issued on 13 May 2005. The rights attached to the Capital Securities take effect as of such Issue Date.

### Yield to Maturity

There is no explicit yield to maturity. The Capital Securities do not carry a fixed date for redemption and the Issuer is not obliged, and under certain circumstances is not permitted, to make payments on the Capital Securities at the full stated rate.

### Replacement

It is WestLB's intention (although there is no obligation to do so nor any guarantee of future behaviour) to cause the Silent Participation to be redeemed in accordance with Section 7 thereof, in whole (but not in part), only to the extent that WestLB 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 Silent Participation, in an aggregate amount at least equal to the aggregate original Nominal Amount of the Silent Participation.

### Listing Documents for Inspection

Application has been made to list the Capital Securities on the Luxembourg Stock Exchange. In connection with such application a legal notice relating to the issue of the Capital Securities and copies of the constitutional documents of the Issuer will be deposited with the Trade and Commerce Register in Luxembourg where such documents may be examined and copies obtained. So long as the Capital Securities are listed on the Luxembourg Stock Exchange, the Issuer will maintain a paying agent in each of Düsseldorf, Germany and Luxembourg.

At any time during the term of the Capital Securities the most recently published consolidated and non-consolidated audited annual financial statements of WestLB, the most recently published consolidated unaudited quarterly financial statements of WestLB and, once available, the most recently available annual accounts of the Issuer, will also be available for inspection and obtainable free of charge at the offices of the Principal Paying Agent in Düsseldorf and the Luxembourg Paying Agent.

WestLB does not publish non-consolidated interim financial statements. The Issuer 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 Issuer and the Luxembourg Paying Agent:

- (a) the Articles of Association (*Satzung*) of WestLB;
- (b) the limited partnership agreement of the Issuer;
- (c) the consents and authorisations referred to under "Authorisations" below; and
- (d) the consolidated financial statements of WestLB for financial years 2002, 2003 and 2004 as well as the unconsolidated financial statements of WestLB for financial years 2002, 2003 and 2004.

Copies of these documents, as well as of financial statements and interim financial statements are also available at the office of WestLB, Herzogstrasse 15, 40217 Düsseldorf, Germany.

### **Incorporation by reference**

The consolidated financial statements of WestLB for the financial years 2003 and 2004 and the unconsolidated financial statements of WestLB for the financial years 2003 and 2004 and the Articles of Association (*Satzung*) of WestLB are hereby incorporated in this Offering Circular by reference.

### **Notices**

All notices to the Securityholders will be given by the Issuer (i) so long as any of the Capital Securities is listed on the Luxembourg Stock Exchange and the Luxembourg Stock Exchange so requires, notices relating to the Capital Securities shall be published in a leading newspaper with general distribution in Luxembourg (this newspaper is expected to be the *Luxemburger Wort*, (ii) by mail, fax or electronically to Clearstream Banking AG, Frankfurt am Main, Clearstream Banking, société anonyme and Euroclear Bank S.A./N.V., and (iii) to the Luxembourg Stock Exchange through the Luxembourg Paying Agent. In accordance with its published rules and regulations, each clearing system will notify the holders of securities accounts to which any Capital 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 WestLB or the WestLB Group since 31 December 2004 or the Issuer since its formation on 27 April 2005.

### **Authorisations**

The issue of the Capital Securities by the Issuer has been duly authorised by a board resolution of the Issuer General Partner, dated 3 May 2005.

### **Legal Status**

The Issuer was registered under the name "Hybrid Capital Funding II Limited Partnership" under the Limited Partnerships (Jersey) Law 1994, as amended, with the Jersey Financial Services Commission on 27 April 2005. The Issuer was established for an unlimited duration, is not a legal entity separate from its partners and has no operating history.

WestLB operates as a stock corporation under German law. WestLB is registered in the commercial register (*Handelsregister*) of the lower courts (*Amtsgericht*) in Düsseldorf under No. HRB 42975 and in Münster under No. HRB 6400 and has been established for an unlimited duration.

### **Litigation**

Save as disclosed in this Offering Circular, neither WestLB nor the Issuer 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 WestLB or the Issuer nor, so far as WestLB and the Issuer is aware, is any such litigation or arbitration pending or threatened.

### **Subsidiaries**

A selective overview of WestLB's equity participations as at 31 December 2004 is set out in the published consolidated audited financial statements of WestLB for the year ended 31 December 2004.

### **Auditors**

The consolidated and unconsolidated financial statements of WestLB have been audited without qualification for the financial year ended 31 December 2002 by PwC Deutsche Revision Aktiengesellschaft Wirtschaftsprüfungsgesellschaft, Moskauer Strasse 19, 40227 Düsseldorf, and for the financial year ended 31 December 2003 by Ernst & Young AG Wirtschaftsprüfungsgesellschaft, Eschersheimer Landstraße 6, 60322 Frankfurt am Main, Germany. The auditors for the fiscal year ended 31 December 2004 are Ernst & Young AG Wirtschaftsprüfungsgesellschaft, Eschersheimer Landstraße 6, 60322 Frankfurt am Main.

## RECENT DEVELOPMENTS AND OUTLOOK

### WestLB AG

For the financial year 2004, the bank reported a profit from ordinary activities of € 696.2 million in 2004. This compares with a loss of € 1,950.4 million in the previous year. The marked turnaround in operating results is due to the systematic management of risk, higher net interest income and the continued reduction in costs.

Mainly as a result of provisions for approximately € 1.4 billion in respect of the Wfa state aid proceedings, however, the Bank incurred extraordinary expenses which resulted in a net loss for the year of € 920 million. This will be met from capital reserves and the release of silent capital participations.

Net interest income rose by € 109.0 million (+7%) to € 1,657.3 million last year. This increase was mainly attributable to higher income from sales of participations. The transfer of municipal loans to the Bank's subsidiary WIB had an opposite effect and, as a result, interest from lending and money market transactions declined.

At € 234.4 million (previous year: € -1,098.3 million), the provisioning result from the lending business is positive due to the systematic reduction of risk in the loan portfolio since 2003. Net commission income fell by € 60.1 million to € 278.0 million. This was due to a reduction in fee income from lending due to a greater sensitivity to credit risk. Net commission income from securities business, however, increased during the year. Money market and securities trading produced profits of € 737.1 million. This is included under the net interest income heading. Net income from trading operations rose by € 11.4 million to € -92.8 million, reflecting improved performance in the bond and equity trading businesses, but a decline in foreign exchange trading.

Costs (personnel expenses and other administrative expenses) were reduced by a further € 35 million in 2004. Operating expenses were cut by € 47.6 million to € 777.7 million, primarily as a result of systematically enhancing IT efficiency. Personnel expenses, on the other hand, rose slightly to € 697.5 million. In addition to moderate increases in wages and salaries, this was due to the integration into WestLB AG of roughly 650 employees from its subsidiary WestLB Systems. Therefore, despite implementing planned headcount reductions, the total number of employees rose from 4,955 to 5,132 at 31 December 2004.

The positive contribution of € 35.4 million from securities and participations was largely due to income from the disposal of investments. In the previous year the result of participations was adversely affected by substantial write-downs attributable to the de-risking of the balance sheet. Despite the disposals of 2004, net reserves increased due to rising market values of holdings.

WestLB AG's total assets declined by 1.6% to € 214.6 billion. Claims on customers fell by 17% to € 56.2 billion, largely due to active management of the credit portfolio aimed at reducing concentration risks. Further loans totalling € 2.2 billion were transferred to WIB. Claims on banks increased by 23.6% to € 81.7 billion. The increase is closely related to the sharp decrease in cash/liquid debt instruments to € 3.9 billion. Securities/equalisation claims rose by 12.3% to € 57.5 billion. Following the sale of investments such as TUI and the divestment of Landesbank Rheinland-Pfalz, the book value of equity investments in affiliated and non-affiliated companies fell from € 8.9 billion to € 6.6 billion.

On the liabilities side, liabilities to customers fell by 3.4% to € 58.9 billion, with liabilities to banks rising by 3.2% to € 94.4 billion. Certificated liabilities fell by 15.6% to € 35.8 billion. The Bank has a strong liquidity position, both in terms of quality and quantity of its funding.

In February 2005, the State of NRW and the Regional Associations became direct owners of WestLB AG, albeit of a negligible share (State of NRW 0.787%, each Regional Association holding 0.214%). The change in ownership is due to the conversion of the second tranche of silent participations into share capital which was agreed upon in June 2004. As the shares could not be transferred to NRW.BANK the three shareholders became direct shareholders of WestLB AG in addition to their indirect ownership, resulting in a marginal decline of WestLB AG's shareholders as of year-end 2004, i.e. each Sparkassen Association 30.372% and NRW.BANK 38.041%.

### WestLB Group

The consolidated financial statements of the WestLB Group for 2004, which are scheduled to be approved by the Supervisory Board on or about 19 May 2005, show that WestLB Group returned to



operative earnings growth in 2004. After the high loss reported in the previous year, the WestLB Group achieved a profit before tax (marked-to-market) excluding the charges resulting from the EU State Aid proceedings of € 528.4 million. The WestLB Group thus clearly exceeded its target of € 357 million for 2004.

Mainly as a result of one-off expenses relating to the settlement of the EU state aid proceedings, WestLB Group reports a loss after taxes (German GAAP accounting basis) of € -1,159.3 million (2003: € -1,897.4 million). This includes the payment of € 1,411.3 million to the State of North Rhine-Westphalia in settlement of the Wfa proceedings as well as the expenses amounting to € 124.3 million resulting from the pro-rata payment made by HSH Nordbank to its owners in conjunction with the settlement of the similar State Aid proceedings relating to HSH Nordbank.

At 31 December 2004, WestLB Group's total assets remained largely unchanged at € 253.8 billion (2003: 256.2 billion). Business volume declined to € 349.2 billion (2003: € 365.2 billion).

WestLB Group's positive operating result reflects a strong increase in net interest income after loan loss provisions to € 1,709.6 million (2003: € 709.6 million).

The continuing adjustment of the lending portfolio resulted in a positive result from loan loss provisions of € 117.9 million (2003: € -1,181.8) million. This also reduced the WestLB Group's economic risk capital requirement. The change of strategy implemented in 2004 contributed to a more risk-oriented lending policy, as a result of which net commission income fell to € 336.4 million (2003: € 438.1 million).

Net income from trading operations amounted to € -170.5 million (2003: € 1.4 million). The positive trend in trading with equities as well as equity and index derivatives was not sufficient to offset a negative trend in trading with foreign exchange and interest rate products. However, profits from the money market and securities trading business, which are shown under the net interest income as opposed to the trading operations heading, totalled € 807.5 million.

Personnel expenses declined by over 6% to € 924.3 million (2003: € 984.7 million), reflecting, among other things, the scheduled reduction in headcount to 7,154 (2003: 7,738) at December 31, 2004.

Financial and equity investments generated a profit of € 52.2 million, an increase of € 1,074.1 million on the previous year. This is primarily the result of the systematic reduction of risks and sales of non-strategic investments at Group level. In this context, on 11 May 2005 WestLB confirmed that it had entered into an agreement with Aviation Capital Group, a subsidiary of Pacific LifeCorp, regarding the sale of Boulliou Aviation Services. Closing is subject to various conditions and is expected within the second quarter.

WestLB Group's return on equity was 13.2% before taxes and 11.1% after taxes in 2004. This is in contrast to the negative ROE posted in 2003. ROE figures are based on the marked-to-market valuation of the trading portfolios and do not take account of the non-recurring expenses from the settlement of the EU state aid proceedings.

Including the effects of the EU proceedings, WestLB Group's regulatory core capital ratio as of 31 December 2004 was at 6.9% (2003: 5.7%). This figure is expected to rise to more than 7% following receipt by WestLB of two tranches of hybrid core capital. The first tranche was received as a silent capital contribution from Hybrid Capital Funding I Limited Partnership in the principal amount of US\$ 300 million on 22 April 2005. The silent capital contribution of € 240,000,000 described in this Offering Circular constitutes the second tranche. WestLB intends to further strengthen its regulatory capital base to compensate for the extraordinary expenses incurred as a result of the settlement of the EU proceedings. WestLB AG's shareholders will agree on an increase in WestLB's share capital at a later date.

For the first quarter 2005 WestLB is expected to report a group net profit before taxes (marked-to-market) of € 155.7 million, an increase on the figure of € 123.5 million for the same quarter of 2004. The return on equity before taxes rose from 13.2% to 15.8%.

### **Outlook**

In the second half of 2004, WestLB AG achieved a strategic turnaround. Further measures to accelerate the turnaround for 2005 are implemented with respect to clients, products, and infrastructure.

On the client side, focus will be on a sales initiative in Corporate Banking and with the Sparkassen, on increased cross-selling and the establishment of a sales and coverage committee, and on customer-driven investment banking. Regarding products, the Bank plans to strengthen the co-operation with the savings banks in real-estate finance, enhance retail/savings banks-oriented products, develop Private Banking through organic and potentially external growth and extend Asset Management in co-operation

with the savings banks. With respect to infrastructure, the goals are to increase return on assets, to optimise balance sheet usage and allocation of capital, to enhance risk management; to maintain a neutral treasury strategy, and to achieve cost reductions via pooled purchasing activities.

Despite the increasingly difficult macroeconomic environment, WestLB expects to be able to increase the profit before taxes (marked-to-market) of the Group in 2005 as compared to 2004.

## **Head Office of WestLB**

WestLB AG  
Herzogstrasse 15  
40217 Düsseldorf  
Germany

### **Issuer**

Hybrid Capital Funding II Limited Partnership  
22 Grenville Street  
St Helier  
Jersey JE4 8PX  
Channel Islands

### **Security Trustee**

HSBC Trustee (C.I.) Limited  
1 Grenville Street  
St Helier  
Jersey JE4 9PF  
Channel Islands

### **Lender**

WestLB AG  
Herzogstrasse 15  
40217 Düsseldorf  
Germany

### **Principal Paying Agent**

WestLB AG  
Herzogstrasse 15  
40217 Düsseldorf  
Germany

### **Luxembourg Paying Agent and Listing Agent**

WestLB International S.A.  
32-34 boulevard Grande-Duchesse Charlotte  
2014 Luxembourg  
Luxembourg

### **Legal Advisors to the Managers**

*as to German law*

Freshfields Bruckhaus Deringer  
Taubusanlage 11  
60329 Frankfurt am Main  
Germany

*as to Jersey law*

Mourant du Feu & Jeune  
22 Grenville Street  
St Helier  
Jersey JE4 8PX  
Channel Islands

### **Auditors to WestLB**

Ernst & Young AG Wirtschaftsprüfungsgesellschaft  
Eschersheimer Landstraße 6  
60322 Frankfurt am Main  
Germany

