

**Project Neptun**

dated 28 February 2018

**HSH Beteiligungs Management GmbH**

and

**JCF IV Neptun Holdings S.à r.l.**

and

**Promontoria Holding 221 B.V.**

and

**Promontoria Holding 231 B.V.**

and

**Promontoria Holding 233 B.V.**

and

**BAWAG P.S.K. Bank für Arbeit und Wirtschaft und Österreichische Postsparkasse  
Aktiengesellschaft**

and

**GoldenTree Asset Management Lux S.à r.l.**

and

**Chi Centauri LLC**

**SHARE PURCHASE AGREEMENT**

relating to shares in HSH Nordbank AG

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Share Purchase Agreement

between

- (1) HSH Beteiligungs Management GmbH, a company incorporated under the laws of Germany, whose registered office is in Hamburg and which is registered in the commercial register at the Local Court (*Amtsgericht*) of Hamburg under HRB 141769, having its business address at Besenbinderhof 37, 20097 Hamburg, Germany,  
(the "**Seller**"),
- (2) JCF IV Neptun Holdings S.à r.l., a company incorporated under the laws of Luxembourg, whose registered office is at 5, Rue Guillaume Kroll, L-1882, Luxembourg,  
(the "**JCF Purchaser**"),
- (3) Promontoria Holding 221 B.V., a company incorporated under the laws of The Netherlands with its corporate seat in Baarn and with business address at Oude Utrechtseweg 32, 3743KN Baarn, The Netherlands,  
(the "**Cerberus Purchaser 1**"),
- (4) Promontoria Holding 231 B.V., a company incorporated under the laws of The Netherlands with its corporate seat in Baarn and with business address at Oude Utrechtseweg 32, 3743KN Baarn, The Netherlands,  
(the "**Cerberus Purchaser 2**"),
- (5) Promontoria Holding 233 B.V., a company incorporated under the laws of The Netherlands with its corporate seat in Baarn and with business address at Oude Utrechtseweg 32, 3743KN Baarn, The Netherlands,  
(the "**Cerberus Purchaser 3**"),
- (6) BAWAG P.S.K. Bank für Arbeit und Wirtschaft und Österreichische Postsparkasse Aktiengesellschaft, a company incorporated under the laws of the Republic of Austria with business address at Georg-Coch-Platz 2, 1018 Wien, Austria,  
(the "**BAWAG Purchaser**"),
- (7) GoldenTree Asset Management Lux S.à r.l., a company incorporated under the laws of Luxembourg, whose registered office is at 26 Boulevard Royal, 2449 Luxembourg,  
(the "**Goldentree Purchaser**"),
- (8) Chi Centauri LLC, a company incorporated under the laws of Delaware with business address at 1717 West Loop South – Suite 1800, Houston, Texas, 77027, United States of America,  
(the "**Centaurus Purchaser**").

The JCF Purchaser, the Cerberus Purchaser 1, the Cerberus Purchaser 2, the Cerberus Purchaser 3, the BAWAG Purchaser, the Goldentree Purchaser and the Centaurus Purchaser are also referred to collectively as the "**Purchasers**" and individually as a "**Purchaser**". The Seller and the Purchasers are also referred to collectively as the "**Parties**", and individually as a "**Party**".

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### Whereas:

- (A) HSH Nordbank AG ("**HSH Nordbank**") is a stock corporation under German law (*Aktiengesellschaft – AG*). HSH Nordbank is registered in the commercial register at the Local Court (*Amtsgericht*) of Hamburg under HRB 87366 and in the commercial register at the Local Court (*Amtsgericht*) of Kiel under HRB 6127 KI. HSH Nordbank has a share capital of EUR 3,018,224,530.00, which is divided into 301,822,453 no-par-value shares (*Stückaktien*) (hereinafter the "**Shares**"). The Shares are registered shares and represented by a global certificate (*Globalurkunde*), which is held by HSH Nordbank in collective custody (*Sammelverwahrung*) (hereinafter the "**Global Certificate**").
- (B) HSH Nordbank directly or indirectly holds shares in the entities listed in Schedule (B), which are fully consolidated in the consolidated annual financial statements of HSH Nordbank (the "**Subsidiaries**"). For the avoidance of doubt, Schedule (B) does not include those entities which are consolidated in accordance with IFRS 10, but in which HSH Nordbank does not hold shares or which may only be commercially attributed to HSH Nordbank by way of a trust agreement. HSH Nordbank and its Subsidiaries are hereinafter individually referred to as a "**Group Company**" and collectively as the "**Group Companies**" or the "**Group**".
- (C) The Group operates in the area of banking and financial transactions of all kinds as well as in the lending business. These activities, as undertaken by the Group Companies at the time of concluding this Agreement, are hereinafter referred to as the "**Business**".
- (D) In its final decision of 2 May 2016 (on state aid SA.29338, 2016 Official Journal of the European Union L 319/13, the "**HSH Decision 2016**"), the European Commission approved the re-increase of the Sunrise Guarantee based on the list of commitments submitted on 21 March 2016. The decision stipulates, *inter alia*, that HSH Nordbank shall be split into a holding company – the Seller – and an operating bank as subsidiary, and, until the sale of the operating bank, the holding company was to hold at least 90% of the Shares (the "**Formation of the Holding Structure**"). In addition, the HSH Decision 2016 stipulates that the Seller sells its shares in HSH Nordbank by means of an open, non-discriminatory, competitive and transparent process by 28 February 2018 to an acquirer independent of HSH Nordbank and the public sector (except for state banks (*Landesbanken*) and a minority holding held by savings banks (*Sparkassen*)).
- (E) Following the implementation of the Formation of the Holding Structure, as from 29 June 2016 the shareholder structure of HSH Nordbank has been as follows:
- (i) The Seller holds 286,428,304 Shares and thus a stake of 94.9% in HSH Nordbank's share capital.
  - (ii) The remaining 15,394,149 Shares and thus a total stake of 5.1% in HSH Nordbank's share capital are held by nine funds initiated by J.C. Flowers: HSH Alberta I L.P., HSH Alberta II L.P., HSH Alberta V L.P., HSH Luxembourg S.à r.l., HSH Luxembourg Coinvest S.à r.l., HSH Delaware L.P., HSH Coinvest (Alberta) L.P., HSH Investment Holdings FSO S.à r.l. and HSH Investment Holdings Coinvest-C S.à r.l. (the "**JCF Companies**").
- (F) The Seller intends to sell all of the Shares held by it in HSH Nordbank (the "**Sold Shares**") to the Purchasers as further set out in this Agreement; the Purchasers intend to acquire the Sold Shares as further set out in this Agreement.

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- (G) In addition, HSH Nordbank has agreed to sell a certain credit portfolio of non-core non-performing exposures and non-core performing shipping loans to an SPV held by certain Purchasers (this transaction being the "**NPE-Transaction**" and the respective agreement being the "**NPE-Agreement**") (deed of the civil notary Dr Thomas Diehn, Hamburg with number 705/2018).
- (H) In connection with the transaction contemplated in this Agreement and the NPE-Transaction, HSH Nordbank, the Seller and Finfo entered into an agreement regarding the termination of the Sunrise Guarantee, including the settlement of the NPE portfolio under the Sunrise Guarantee ("**Sunrise Guarantee Settlement Agreement**"), (deed of the recording notary with number 331/2018).

The Parties agree the following:

### 1 Interpretation

In this Agreement including the Recitals, unless the context requires otherwise, the provisions of this Clause 1 apply.

#### 1.1 Definitions

Defined terms shall have the meaning ascribed or referenced to them in Schedule 1.1.

#### 1.2 Schedules etc.

References to this Agreement also include references to any Schedules to it as well as to any agreements entered into, or to be entered into, pursuant to this Agreement. References to Clauses and Schedules are to Clauses of, and Schedules to, this Agreement and references to Paragraphs and Parts are to Paragraphs and Parts of the Schedules. The descriptions of the Schedules given in the List of Schedules are intended for guidance only and shall not affect the interpretation of the Agreement.

#### 1.3 Headings

The headings of the Clauses in this Agreement are intended for guidance only and shall not affect the interpretation of the Agreement.

#### 1.4 German Terms

Where a German term has been added in parenthesis after an English term, only such German term shall be decisive for the interpretation of the relevant English term whenever such English term is used in this Agreement.

#### 1.5 Legal Terms and Concepts

1.5.1 References to any German legal term or concept shall, in relation to any jurisdiction other than Germany, be construed as references to the term or concept which most nearly corresponds to it in that jurisdiction.

1.5.2 Without limitation or prejudice to the provisions of Clause 10.3 or joint declarations to be given by the Purchasers pursuant to this Agreement, the obligations of any Party under this Agreement shall be several and no Party shall have any obligations which are joint or joint and several with the obligations of any other Party.

## 2 Sale and Transfer of the Sold Shares

### 2.1 Sale

Subject to the terms of this Agreement, the Seller hereby sells with economic effect as of the Closing Date:

- 2.1.1 100,249,906 of the Sold Shares ("**JCF Sold Shares**") to the JCF Purchaser,
- 2.1.2 47,847,992 of the Sold Shares ("**Cerberus Sold Shares 1**") to the Cerberus Purchaser 1,
- 2.1.3 38,809,388 of the Sold Shares ("**Cerberus Sold Shares 2**") to the Cerberus Purchaser 2,
- 2.1.4 35,074,650 of the Sold Shares ("**Cerberus Sold Shares 3**") to the Cerberus Purchaser 3,
- 2.1.5 7,160,707 of the Sold Shares ("**BAWAG Sold Shares**") to the BAWAG Purchaser,
- 2.1.6 35,803,538 of the Sold Shares ("**Goldentree Sold Shares**") to the Goldentree Purchaser, and
- 2.1.7 21,482,123 of the Sold Shares ("**Centaurus Sold Shares**") to the Centaurus Purchaser,

and each Purchaser hereby accepts such sale. The Sold Shares are sold together with all rights and obligations attaching to them, including the profit participation rights from and including the Locked Box Date (save for any Permitted Leakage). For the avoidance of doubt, the sale and transfer of the Sold Shares to the Purchasers to be effected hereunder does not include the Seller's rights and obligations under Clause 21 of the Agreement on Principles dated 24/25 March 2003 (the "**Agreement on Principles**"), an excerpt of which is attached as Schedule 2.1.

### 2.2 Assignment

At Closing, the Seller and the Purchasers shall enter into a share transfer agreement substantially in the form as attached in Schedule 2.2 under which the Seller shall assign (*abtreten*) the JCF Sold Shares to the JCF Purchaser, the Cerberus Sold Shares 1 to the Cerberus Purchaser 1, the Cerberus Sold Shares 2 to the Cerberus Purchaser 2, the Cerberus Sold Shares 3 to the Cerberus Purchaser 3, the BAWAG Sold Shares to the BAWAG Purchaser, the Goldentree Sold Shares to the Goldentree Purchaser and the Centaurus Sold Shares to the Centaurus Purchaser, in each case together with all rights and obligations attaching to the relevant Sold Shares as at the Closing Date, including the profit participation rights. Each Purchaser shall accept such assignment.

### 2.3 Fulfilment of Approval Requirements

- 2.3.1 In accordance with Article 6.5.2 and Article 6.6.2 of the Seller's articles of association, (i) the Seller's supervisory board and (ii) the Seller's shareholders' meeting have approved the conclusion of this Agreement, including the transfer of the Sold Shares to the Purchasers. Copies of the relevant resolutions are attached to this Agreement as Schedule 2.3.1.
- 2.3.2 HSH Nordbank's shareholders' meeting has approved the transfer of the Sold Shares to the Purchasers. Copies of the relevant resolution and declaration

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are attached to this Agreement as Schedule 2.3.2. The Parties shall request that HSH Nordbank's management board declares in due course its consent, on behalf of HSH Nordbank, to the transfer of the Sold Shares.

- 2.3.3 The board of managers of the JCF Purchaser has approved the conclusion of this Agreement. A copy of the relevant minutes is attached to this Agreement as Schedule 2.3.3.
- 2.3.4 The board of directors of the Cerberus Purchaser 1 has approved the conclusion of this Agreement. A copy of the relevant resolution is attached to this Agreement as Schedule 2.3.4.
- 2.3.5 The board of directors of the Cerberus Purchaser 2 has approved the conclusion of this Agreement. A copy of the relevant resolution is attached to this Agreement as Schedule 2.3.5.
- 2.3.6 The board of directors of the Cerberus Purchaser 3 has approved the conclusion of this Agreement. A copy of the relevant resolution is attached to this Agreement as Schedule 2.3.6.
- 2.3.7 The management board of the BAWAG Purchaser has approved the conclusion of this Agreement. A copy of the relevant resolution is attached to this Agreement as Schedule 2.3.7.
- 2.3.8 The management board of the Goldentree Purchaser has approved the conclusion of this Agreement. A copy of the minutes of the management board meeting is attached to this Agreement as Schedule 2.3.8.
- 2.3.9 The sole member and manager of the Centaurus Purchaser has approved the conclusion of this Agreement. A copy of the unanimous consent and authorisation of the sole member and manager of the Centaurus Purchaser is attached to this Agreement as Schedule 2.3.9.

### 3 Purchase Price

#### 3.1 Total Purchase Price

3.1.1 The total consideration for the sale of the Sold Shares shall be determined based on a purchase price for all Shares in an amount equal to:

- (i) EUR 1,054,000,000 (in words: one billion fifty four million euros) (the "**Basic Purchase Price**");
- (ii) minus the Sunrise Guarantee Adjustment Amount (if any) pursuant to Clause 3.1.2

(collectively, the "**Total Purchase Price**"), provided that the Total Purchase Price shall never be an amount less than EUR 1 (in words: one euro). The total consideration payable for all the Sold Shares shall be equal to 94.9% of the Total Purchase Price (the "**Sold Shares Purchase Price**").

3.1.2 The "**Sunrise Guarantee Adjustment Amount**" shall be an amount (but not less than zero) of:

- (i) EUR 10 billion (in words: ten billion euros);

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- (ii) less the total amount of losses incurred by HSH Nordbank settled or acknowledged for settlement by Finfo as per the Closing Date in accordance with the Sunrise Guarantee Settlement Agreement, which in total shall be no less than EUR 9 billion.

3.1.3 If the Basic Purchase Price is reduced by the Sunrise Guarantee Adjustment Amount, each Purchaser agrees, for the benefit of HSH Nordbank, to apply an amount equal to that Purchaser's Relevant Percentage of the Sunrise Guarantee Adjustment Amount to recapitalise HSH Nordbank accordingly. The Parties shall cooperate in good faith to implement such recapitalisation as appropriate.

### 3.2 Individual Purchase Price Portions

- 3.2.1 The purchase price for the JCF Sold Shares payable by the JCF Purchaser shall be an amount equal to Sold Shares Purchase Price multiplied by the JCF Percentage rounded up to the nearest euro (the "**JCF Purchase Price Portion**").
- 3.2.2 The purchase price for the Cerberus Sold Shares 1 payable by the Cerberus Purchaser 1 shall be an amount equal to the Sold Shares Purchase Price multiplied by the Cerberus Percentage 1 rounded up to the nearest euro (the "**Cerberus Purchase Price Portion 1**").
- 3.2.3 The purchase price for the Cerberus Sold Shares 2 payable by the Cerberus Purchaser 2 shall be an amount equal to the Sold Shares Purchase Price multiplied by the Cerberus Percentage 2 rounded up to the nearest euro (the "**Cerberus Purchase Price Portion 2**").
- 3.2.4 The purchase price for the Cerberus Sold Shares 3 payable by the Cerberus Purchaser 3 shall be an amount equal to the Sold Shares Purchase Price multiplied by the Cerberus Percentage 3 rounded up to the nearest euro (the "**Cerberus Purchase Price Portion 3**").
- 3.2.5 The purchase price for the BAWAG Sold Shares payable by the BAWAG Purchaser shall be an amount equal to the Sold Shares Purchase Price multiplied by the BAWAG Percentage rounded up to the nearest euro (the "**BAWAG Purchase Price Portion**").
- 3.2.6 The purchase price for the Goldentree Sold Shares payable by the Goldentree Purchaser shall be an amount equal to the Sold Shares Purchase Price multiplied by the Goldentree Percentage rounded up to the nearest euro (the "**Goldentree Purchase Price Portion**").
- 3.2.7 The purchase price for the Centaurus Sold Shares payable by the Centaurus Purchaser shall be an amount equal to the Sold Shares Purchase Price multiplied by the Centaurus Percentage rounded up to the nearest euro (the "**Centaurus Purchase Price Portion**"; and each of the JCF Purchase Price Portion, the Cerberus Purchase Price Portion 1, the Cerberus Purchase Price Portion 2, the Cerberus Purchase Price Portion 3, the BAWAG Purchase Price Portion, the Goldentree Purchase Price Portion and the Centaurus Purchase Price Portion an "**Individual Purchase Price Portion**").
- 3.2.8 For the avoidance of doubt, each Purchaser shall be liable as partial debtor (*Teilschuldner*) only for its respective Individual Purchase Price Portion.

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### 3.3 Sunrise Guarantee Adjustment Amount

As soon as practicable after the date of this Agreement and by no later than 30 June 2018, the Seller shall – following an in-depth consultation with HSH Nordbank's management board – submit to the Purchasers in writing a notification of the Sunrise Guarantee Adjustment Amount determined in accordance with the terms of the Sunrise Guarantee Settlement Agreement.

### 3.4 Due Date

3.4.1 On Closing, the amount which becomes due for payment (*fällig*) by each Purchaser shall be that Purchaser's Individual Purchase Price Portion.

3.4.2 Each Purchaser's obligation to pay its Individual Purchase Price Portion to the Seller shall be satisfied when such amount has been credited by such Purchaser to the Seller's bank account.

### 3.5 Interest

If and to the extent that any payment under or in connection with this Agreement, including the Total Purchase Price, is not paid when due (*fällig*), the respective outstanding amounts shall bear interest at the 3-month EURIBOR rate plus 600 base points p.a. (calculated on an actual/360-days-count basis) as from and including their respective due date until but excluding the date of actual payment.

### 3.6 Value-Added Tax

If and to the extent that any transaction contemplated under this Agreement is subject to VAT, the Purchasers shall pay the relevant VAT owed by the Seller in addition to the portions of the Total Purchase Price payable by them, if the Seller is required to pay such VAT to the tax authorities, unless and to the extent such VAT is the result of the fact that the Seller waived an exemption from VAT that would have applied otherwise. VAT is due as soon as the Purchasers receive an invoice from the Seller complying with section 14 et seq. of the German VAT Act (*Umsatzsteuergesetz – UStG*) or comparable provisions of non-German VAT law.

### 3.7 US-Tax Elections

The Seller shall co-operate in making an election under Section 338(g) of the United States Internal Revenue Code with respect to HSH Nordbank or any applicable subsidiaries, and any elections with regard to the US tax classification of HSH Nordbank or any of its subsidiaries requested by the Purchasers, provided that the Purchasers in each case indemnify and hold the Seller harmless from and against any costs, losses and expenses associated with such election (including reasonable costs incurred by the Seller for external US tax advisers). The Purchasers shall prepare (at their own cost) the relevant US tax election forms and forward the respective drafts reasonably in advance of the relevant filing deadlines to the Seller.

### 3.8 No Netting

Neither Party shall be entitled to:

3.8.1 set off any claims against the respective other Party or any of its Affiliates against any claims which the other Party or any of its Affiliates may have under or in connection with this Agreement or otherwise, or

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3.8.2 refuse to perform any obligation it may have under or in connection with this Agreement on the grounds that it has a right of retention (*Zurückbehaltungsrecht*),

unless the underlying rights or claims of the Party setting off the claims or asserting a right of retention have been acknowledged in writing by the respective other Party or have been confirmed by a final decision of a competent court (*Gericht*) or arbitral tribunal (*Schiedsgericht*).

## 4 Tag-Along Right and Pre-Emption Right of the JCF Companies

### 4.1 Tag-Along Right

According to clause 5.1 of the agreement entered into between the JCF Companies, FHH, LSH (LSH together with FHH also referred to as the "**States**"), Finfo and HGV on 1 March 2016, the JCF Companies have the right to co-sell all the Shares held by them in HSH Nordbank (the "**Tag-Along Shares**") to a purchaser purchasing the shares held by the Seller, on substantially the same terms and conditions (the "**Tag-Along Right**").

### 4.2 Pre-Emption Right

According to Clause 22.3 of the Agreement on Principles, the JCF Companies have a pre-emption right in the case of a sale and transfer of shares in HSH Nordbank by another shareholder (the "**Pre-Emption Right**").

### 4.3 Waiver of the Pre-Emption Right and Consent

By means of the waiver letters attached in Schedule 4.3 to this Agreement (the "**Pre-Emptive Waiver Letters**"), in each case subject to the condition precedent (*aufschiebende Bedingung*) of the execution of this Agreement, each of the JCF Companies have irrevocably: (i) offered to the Seller a waiver of the Pre-Emption Right with regard to the transactions contemplated in this Agreement; and (ii) declared their consent to a transfer of the Sold Shares to the Purchasers as set forth in this Agreement. The Seller hereby accepts such waiver of the Pre-Emption Right.

### 4.4 Process regarding Tag-Along Right

4.4.1 The Seller shall, in compliance with the Seller's obligations regarding the Tag-Along Right under the JCF Agreement, inform the JCF Companies about the conclusion of this Agreement without undue delay (*unverzüglich*) on the date hereof and shall offer the JCF Companies to sell the Tag-Along Shares to the Purchasers in the proportion shown in the table set forth in Schedule 4.4 and subject to the terms and conditions set forth in this Clause 4 (the "**Tag-Along Notice**") on the date hereof. The form of the Tag-Along Notice the Seller undertakes to deliver to the JCF Companies is set out in Schedule 4.4.1. If the JCF Companies exercise the Tag-Along Right after receipt of the Tag-Along Notice, the Purchasers hereby undertake to acquire the Tag-Along Shares as set forth in the Tag-Along Notice and to take all measures reasonably required for such an acquisition. The purchase price per Tag-Along Share for the acquisition of the Tag-Along Shares shall be an amount in cash equal to the Basic Purchase Price divided by the number of all Shares; for the avoidance of doubt, the purchase price per Tag-Along Share shall be determined disregarding the Sunrise Guarantee Adjustment Amount, if any. The other terms and conditions of the acquisition of the Tag-Along Shares shall be the same as the terms and conditions of the acquisition

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of the Sold Shares by the Purchasers under this Agreement in principle *provided that* representations, warranties (*Garantien*) and indemnities with respect to the Tag-Along Shares are only granted in line with the JCF Companies' obligations under the JCF Agreement. Other deviating terms and conditions for the acquisition of the Tag-Along Shares may be agreed between the JCF Companies and the Purchasers. The Purchasers undertake that the acquisition of the Tag-Along Shares shall be implemented based on a separate share purchase agreement between the Purchasers and the JCF Companies in accordance with the requirements of this Clause 4 (the "**JCF Share Purchase Agreement**"). The JCF Share Purchase Agreement shall be concluded in due course after the JCF Companies have exercised the Tag-Along Right, but in any event before Closing. The Purchasers undertake that the closing under the JCF Share Purchase Agreement shall take place simultaneously with the Closing. Upon signing of the JCF Share Purchase Agreement, the Seller undertakes to request HSH Nordbank to call a general shareholders meeting and to exercise its shareholder rights to approve the transfer of the Tag-Along Shares under the JCF Share Purchase Agreement.

- 4.4.2** The JCF Purchaser undertakes to ensure that HSH Luxembourg Coinvest S.à r.l, HSH Investment Holdings FSO S.à r.l. and HSH Investment Holdings Coinvest-C S.à r.l. (together "**JCF 5-8-9**" and the JCF Companies without JCF 5-8-9 "**JCF 1-4&6-7**") will exercise the Tag-Along Right on the date of receipt of the Tag-Along Notice and enter into the JCF Share Purchase Agreement in accordance with Clause 4.4.1 above.
- 4.4.3** The provisions set out in this Clause 4.4, and any terms of this Agreement related to this Clause 4.4, cannot be amended by the Parties without JCF 1-4&6-7's prior written consent and that each of JCF 1-4&6-7 is entitled alone to enforce compliance with the obligations of the Parties under this Clause 4.4 by way of an agreement for the benefit of third parties in accordance with Section 328 German Civil Code (*Vertrag zugunsten Dritter gemäß § 328 Bürgerliches Gesetzbuch*).

## 5 Further Obligations of the Purchasers

### 5.1 Cancellation of the Agreement on Principles

By means of the Pre-Emptive Waiver Letters, subject to the conditions precedent (*aufschiebende Bedingung*) of: (i) all Closing Actions having been completed; and (ii) the closing of the transactions under the JCF Share Purchase Agreement having occurred, the JCF Companies have irrevocably offered to the Seller to cancel the Agreement on Principles. The Seller hereby and irrevocably accepts such offer.

### 5.2 Equity Commitment

On the date of this Agreement, each of the JCF Purchaser, the Cerberus Purchaser 1, the Cerberus Purchaser 2, the Cerberus Purchaser 3, the Goldentree Purchaser and the Centaurus Purchaser have each received an equity commitment letter with respect to amounts due under or in connection with this Agreement, up to its Relevant Percentage of the Sold Shares Purchase Price, which are attached respectively in Schedules 5.2 (a) to (f).

## 6 Intentionally left blank

## 7 Closing Conditions

### 7.1 Closing Conditions

The obligation of the Seller and the Purchasers to perform the Closing Actions pursuant to Clause 10.2 shall be subject to the following conditions precedent (*aufschiebende Bedingungen*) (the "**Closing Conditions**"):

#### 7.1.1 The German Federal Cartel Office (*Bundeskartellamt*):

- (i) after the submission of the complete merger control filing, has notified the Seller and/or the Purchasers in writing that the notified acquisition of the Sold Shares does not fulfil the conditions for prohibition stated in section 36 para. 1 of the German Act against Restraints on Competition (*Gesetz gegen Wettbewerbsbeschränkungen – GWB*); or
- (ii) has failed to notify the Seller and/or the Purchasers within one (1) month after the submission of the complete merger control filing of the proposed acquisition of the Sold Shares in accordance with section 40 para. 1 GWB that it has initiated the main examination proceedings; or
- (iii) after the initiation of main examination proceedings has issued an order in accordance with section 40 para. 2, sentence 1 GWB that the acquisition of the Sold Shares will be approved either unconditionally or subject to the fulfilment of certain conditions or obligations (*Auflagen oder Bedingungen*) accepted by the Purchasers or to be accepted by the Purchasers pursuant to Clause 7.2.2(iii);
- (iv) has failed to issue an order pursuant to section 40 para. 2 sentence 1 GWB within the time periods set out in section 40 para. 2 GWB; or
- (v) after the submission of the complete merger control filing, has notified the Seller and/or the Purchasers in writing or otherwise that the acquisition of the Shares does not fulfil the conditions for a merger control filing obligations pursuant to Sections 35 et seq GWB.

#### 7.1.2 The Austrian Federal Competition Authority (*Bundeswettbewerbsbehörde*)

- (i) and Federal Cartel Prosecutor (together the "**Statutory Parties**") have not filed a request for in-depth scrutiny of the acquisition of the Sold Shares with the Austrian Cartel Court within the deadlines set forth in section 11 para. 1 or para. 1a of the Austrian Cartel Act; or
- (ii) the Statutory Parties have waived their right to file a request for in-depth scrutiny of the acquisition of the Sold Shares pursuant to section 11 para. 4 of the Austrian Cartel Act; or
- (iii) in case the Statutory Parties have filed a request for in-depth scrutiny (Phase II) the Austrian Cartel Court or the Austrian Supreme Cartel Court has rejected such request pursuant to section 12 para. 1 no. 1 of the Austrian Cartel Act and has declared with a binding ruling that the acquisition of the Sold Shares does not qualify as a concentration requiring merger control scrutiny; or

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- (iv) the Austrian Cartel Court or the Austrian Supreme Cartel Court approved the acquisition of the Sold Shares either unconditionally or subject to the fulfilment of certain conditions or obligations (Auflagen oder Bedingungen) accepted by the Purchasers or to be accepted by the Purchasers pursuant to Clause 7.2.2(iii); or
- (v) the Austrian Cartel Court or the Austrian Supreme Cartel Court ceases Phase II proceedings pursuant to section 14 para. 1 or para. 2 Austrian Cartel Act as a consequence of the expiration of the deadlines referred to in section 14 para. 1 or para 2 Austrian Cartel Act or after withdrawal of the requests for in-depth scrutiny.

7.1.3 The transactions contemplated by this Agreement have been expressly approved by other competent merger control authorities or are deemed to have been approved under other applicable merger control laws, or the Seller and the Purchasers have agreed in writing that such approval is not required prior to the Closing.

The conditions set out in Clause 7.1.1, Clause 7.1.2 and Clause 7.1.3 are collectively referred to as the "**Merger Control Closing Condition**".

7.1.4 The state parliament of FHH (*Hamburgische Bürgerschaft*) has resolved the sale of the Sold Shares on the terms and conditions of this Agreement;

7.1.5 The state parliament (*Landtag*) of LSH has approved the sale of the Sold Shares on the terms and conditions of this Agreement;

7.1.6 The European Central Bank has:

- (i) not prohibited the proposed direct or indirect acquisition of a significant participation in HSH Nordbank caused by the acquisition of the Sold Shares within the time limit set out in section 2c para. 1a of the German Banking Act (*Gesetz über das Kreditwesen – KWG*) and article 4 para. 1 c) and 15 of Regulation (EU) No. 1024/2013; or
- (ii) submitted a non-objection declaration (*Nichtbeanstandungserklärung*) with respect to the proposed direct or indirect acquisition of the Sold Shares within this time limit.

in both cases either unconditionally or subject to the fulfilment of certain conditions or obligations accepted by the Purchasers or to be accepted by the Purchasers pursuant to Clause 7.2.3(iii);

7.1.7 The European Commission has approved the sale of the Sold Shares (having concluded a viability assessment of the proposed structure of HSH Nordbank following Closing);

7.1.8 The Purchasers, the Seller and HSH Nordbank Securities S.A. ("**HSH Lux**") having made a change of control notice (as referred to in articles 6 (5), 6 (15) and 6 (16), respectively of the Luxembourg Law dated 5 April 1993 on the financial sector, as amended (the "**Banking Act 1993**")) to the *Commission de Surveillance du Secteur financier* (the "**CSSF**"), and either:

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- (i) the European Central Bank has given notice in writing that the European Central Bank approves or does not object to the Purchasers as acquirers as a result of the Closing; or
- (ii) the legal assessment period (as defined in article 6 (7) of the Banking Act 1993) as may be extended has expired without the European Central Bank having opposed the proposed acquisition of HSH Lux in accordance with Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the potential supervision of credit institutions and Regulation ECB/2014/17 of 16 April 2014 establishing the framework for cooperation within the Single Supervisory Mechanism between the European Central Bank and national competent authorities and with national designated authorities and by reference to the Banking Act 1993.

7.1.9 The German Savings Bank Association (*Deutscher Sparkassen- und Giroverband*, the "**DSGV**") having unconditionally confirmed in writing as to HSH Nordbank's continued, unrestricted and unconditioned membership in the institutional protection scheme (*Institutssicherungssystem*) of the German Savings Bank Finance Group (*Sparkassen-Finanzgruppe*) (the "**Deposit Protection Scheme**") for the first three (3) years following the Closing (the "**Interim Period**");

7.1.10 The German Federal Financial Supervisory Authority (Bundesanstalt für Finanzdienstleistungsaufsicht, the "**BaFin**") has:

- (i) not prohibited the proposed indirect acquisition of a significant participation in Altstadt GmbH caused by the acquisition of the Sold Shares within the time limit set out in section 2c para. 1a of the German Banking Act (Gesetz über das Kreditwesen – KWG); or
- (ii) submitted a non-objection declaration (*Nichtbeanstandungserklärung*) with respect to the proposed indirect acquisition of a significant participation in Altstadt GmbH within this time limit;

in both cases either unconditionally or subject to the fulfilment of certain conditions and obligations accepted by the Purchasers or to be accepted by the Purchasers in accordance pursuant to Clause 7.2.3(iii); and

7.1.11 Finfo has provided written confirmation to HSH Nordbank and the Purchasers that the aggregate amount of losses Finfo has settled or confirmed for settlement pursuant to the Sunrise Guarantee Settlement Agreement (the "**Sunrise Settlement Amount**") immediately following the closing of the NPE-Transaction pursuant to the NPE-Agreement is an amount of not less than EUR 9.0 billion and that no portion of such amount is subject to any "claw-back" rights of Finfo (the "**Sunrise Settlement Condition**").

## 7.2 Satisfaction of the Closing Conditions; Waiving of Closing Conditions

7.2.1 The Purchasers shall use commercially reasonable best efforts to ensure the satisfaction of the Closing Conditions referred to in Clauses 7.1.1 to 7.1.3 as well as Clauses 7.1.6 to Clause 7.1.11 as soon as possible after the date of this Agreement.

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- 7.2.2** The Purchasers shall in particular duly notify the transactions contemplated in this Agreement on its own behalf and on behalf of the Seller to the competent merger control authorities as soon as reasonably practicable and, subject to Clauses 7.2.2 (i) and 7.2.2 (ii) being complied with, no later than twenty (20) Business Days after the date of this Agreement, unless applicable law or regulations require an earlier notification.
- (i) Such notification as well as any requests and enquiries from the merger control authorities which relate to the satisfaction of the Merger Control Closing Condition shall be dealt with by the Purchasers in consultation with the Seller, and the Purchasers agree to take any necessary or reasonable comments or amendments by the Seller into account when preparing such communication.
  - (ii) The Seller and the Purchasers shall, without undue delay (*unverzüglich*), closely co-operate in preparing the notification and in all discussions and negotiations with the merger control authorities, and the Purchasers shall provide, without undue delay (*unverzüglich*), all necessary information requested by the merger control authorities.
  - (iii) If the merger control authorities are prepared to grant their approval only subject to the Purchasers' compliance with certain conditions or obligations, the Purchasers shall accept such conditions and obligations unless the acceptance causes unreasonable commercial hardship (*wirtschaftliche Unzumutbarkeit*). In the context of this transaction, such unreasonable commercial hardship (*wirtschaftliche Unzumutbarkeit*) shall include (but not be limited to): (a) any requirement on a Purchaser to undertake the divestiture of any assets, investments, properties or business (whether directly or indirectly held) by it or any Affiliate; and (b) any Material Deviations from the Business Plan.
- 7.2.3** In addition, in order to fulfil the Closing Conditions under Clause 7.1.6 to Clause 7.1.11, the Purchasers shall duly inform the European Central Bank, the CSSF, the BaFin and, together with HSH Nordbank, the DSGVO, inform and initiate the relevant procedures vis-à-vis the European Commission, as applicable, of the transaction and initiate the relevant procedures by no later than five (5) Business Days after the date of this Agreement unless applicable law or regulations require a shorter period.
- (i) Such information as well as any requests and enquiries from the European Central Bank or the European Commission or the CSSF, the BaFin or the DSGVO, and, together with the Seller and the German Federal Ministry of Economic Affairs, as applicable, relating to the satisfaction of the Closing Conditions referred to in Clause 7.1.6 to Clause 7.1.11, as applicable, shall be dealt with by the Purchasers in consultation with the Seller, and the Purchasers agree to take any necessary or reasonable comments or amendments by the Seller into account in such communication when preparing such communication.
  - (ii) The Seller and the Purchasers shall, without undue delay (*unverzüglich*), closely co-operate in preparing any statements and in all discussions and negotiations with the European Central Bank or the European Commission

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or the CSSF, the BaFin or the DSGVO, as applicable, in relation to the transaction and the Parties shall use commercially reasonable efforts to provide, without undue delay (*unverzüglich*), all necessary information requested by the relevant authority.

- (iii) Should the European Central Bank or the European Commission or the CSSF or the BaFin, as applicable, be prepared to accept the transaction only subject to the Purchasers' compliance with certain conditions or obligations, the Purchasers shall accept such conditions and obligations unless the acceptance causes unreasonable commercial hardship (*wirtschaftliche Unzumutbarkeit*); in the context of the transaction, such unreasonable commercial hardship (*wirtschaftliche Unzumutbarkeit*) to include (but not be limited to) (a) any requirement on a Purchaser to undertake the divestiture of any assets, investments, properties or business (whether directly or indirectly held) by it or any Affiliate; and (b) any Material Deviations from the Business Plan.

- 7.2.4 Subject to Clause 7.2.7, the Seller shall use its commercially reasonable best efforts to ensure that the Closing Conditions referred to in Clause 7.1.4 and Clause 7.1.5 will be satisfied as soon as practicable after the date of this Agreement. For the avoidance of doubt, the Seller's obligation shall not include any financial expenditures or similar obligations beyond ancillary procedural (for example filing fees), internal or advisory costs.
- 7.2.5 Without prejudice to the obligations set out under Clause 7.2.2 and Clause 7.2.3 as well as, for the Seller, Clause 7.2.4 and, for the Purchasers, Clause 7.2.1, the Seller and the Purchasers shall reasonably assist each other with any measures to be taken for the purpose of satisfaction of the Closing Conditions. Such assistance shall include, in particular – to the extent permitted by law and to the extent reasonable – the consultation when preparing statements, providing information and co-operating within the time limits required.
- 7.2.6 The Purchasers shall provide to the Seller, and the Seller shall provide to the Purchasers, written evidence of the satisfaction of a Closing Condition or the impossibility to satisfy such Closing Condition, in each case without undue delay (*unverzüglich*) after becoming aware of the same.
- 7.2.7 The Seller may at any time waive all or part of the Closing Conditions set forth in Clause 7.1.4 and Clause 7.1.5 by way of a Notice to the Purchasers. For the avoidance of doubt, such waiver shall only apply to the relationship between the Seller and the Purchasers, but shall not affect any approval requirements existing internally between the Seller and FHH and LSH.
- 7.2.8 The Purchasers may at any time waive all or part of the Closing Conditions set out in Clause 7.1.9 by way of a Notice to the Seller.
- 7.2.9 Without prejudice to the other provisions of this Clause 7, the Seller shall, to the extent permitted by law and taking into consideration its share participation in a German stock corporation, during the period of time from the date of this Agreement to the Closing Date, exercise all rights available to the Seller to procure that HSH Nordbank and the Subsidiaries shall make all filings and notifications to the extent required by applicable statutory law or applicable rules (including those

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of stock exchanges) in connection with the transactions contemplated under this Agreement.

### 8 Period until Closing

#### 8.1 Ordinary Course of Business

The Seller shall, to the extent permitted by law and taking into consideration its share participation in a German stock corporation, during the period of time from the date of this Agreement to the Closing Date, exercise all rights available to the Seller to ensure that:

- 8.1.1 unless otherwise stipulated in this Agreement or sections 9.1 or 9.2 or Schedule 9.1 of the NPE-Agreement, HSH Nordbank carries on its Business as a going concern in the normal and ordinary course of business as carried on prior to the date of this Agreement;
- 8.1.2 without prejudice to the generality of Clause 8.1.1 and unless stated otherwise in this Agreement or sections 9.1 or 9.2 or Schedule 9.1 of the NPE-Agreement, HSH Nordbank shall not carry out or resolve any of the following actions without the prior written consent of the Purchasers, which shall not be unreasonably withheld:
- (i) amendment of the articles of association of HSH Nordbank;
  - (ii) execution or approval of a reorganisation (*Umwandlung*) within the meaning of the German Reorganisation Act (*Umwandlungsgesetz – UmwG*);
  - (iii) conclusion of any enterprise agreement (*Unternehmensvertrag*) within the meaning of section 291 and section 292 of the German Stock Corporation Act (*Aktiengesetz – AktG*) or silent partnership agreement;
  - (iv) consent to the disposal of, or commitment to dispose of, any Shares in HSH Nordbank or any shares or interests in any Group Company by way of transfer, divestiture or encumbrance;
  - (v) consent to the creation or issuance of, or granting any option to subscribe for, any shares in HSH Nordbank;
  - (vi) cancelling, calling, redeeming or repurchasing shares or other financial instruments issued by HSH Nordbank or any of the Group Companies, in particular silent participations, or taking any action in respect of any securities convertible into any share capital;
  - (vii) acquisition of participations or interest in of any of the shares in any company, partnership or other venture (other than in the ordinary course of business of HSH Nordbank);
  - (viii) acquisition or disposal of, or commitment to acquire or dispose of, any material assets of HSH Nordbank involving consideration, expenditure and/or liabilities in total of more than EUR 500,000 (in words: five hundred thousand euros);
  - (ix) secure any third party obligation by way of guarantees (*Garantien und Bürgschaften*) or otherwise or discharge third parties from obligations or create encumbrances on any material assets of HSH Nordbank, in each

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case in excess of more than EUR 500,000 (in words: five hundred thousand euros);

- (x) termination of memberships of HSH Nordbank, in particular in the DSGVO and the institutional protection scheme of the German Savings Bank Finance Group (*Institutssicherungssystem der Sparkassen-Finanzgruppe*);
- (xi) amend any agreement between a Group Company and any member of the Seller's Group to the detriment of the relevant Group Company; or
- (xii) enter into any agreement or commitment to do any of the foregoing.

### 8.2 Leakage

8.2.1 The Seller covenants to each of the Purchasers that in the period from 21 February 2018 up to and including the Closing Date:

- (i) neither it, nor any of Finfo, FHH, LSH, SGVSH, HGV and hsh PM (together the "**Seller's Group**") has received or benefited or will receive or benefit from any amount of Leakage; and
- (ii) no arrangement or agreement has been made or entered into or will be made or entered into that has resulted or will result in any of the Seller's Group receiving any Leakage.

8.2.2 In the event of any Leakage, the provisions of Clause 8.4 shall apply.

### 8.3 Sunrise

8.3.1 The Seller shall comply with its obligations under the Sunrise Guarantee Settlement Agreement, shall not take any action intended to prevent or frustrate the Sunrise Settlement Condition from being satisfied and shall use its best efforts to facilitate and support the settlement pursuant to the Sunrise Guarantee Settlement Agreement.

8.3.2 The Seller shall:

- (i) not amend or waive or fail to enforce any material provision of the Sunrise Guarantee Settlement Agreement without the prior written consent of the Purchasers; and
- (ii) use its best efforts to procure that HSH Nordbank shall without prejudice to the generality of Clause 8.1:
  - (a) provide all information and assistance required by Finfo to conclude the process of settling the Sunrise Settlement Amount as soon as reasonably practical and to otherwise comply with HSH Nordbank's obligations under the Sunrise Guarantee Settlement Agreement; and
  - (b) provide each of the Seller and the Purchasers with regular (not less than once every four weeks) updates regarding the status of the processes contemplated by this Clause 8.3.2 and Clause 8.2 and otherwise by the Sunrise Guarantee Settlement Agreement.

8.3.3 The Seller shall use its best efforts to procure that Finfo complies with its obligations under the Sunrise Guarantee Settlement Agreement and that Finfo

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does not take any action intended to prevent or frustrate the Sunrise Settlement Condition from being satisfied.

- 8.3.4 For the avoidance of doubt, the Seller's obligation to use best efforts shall not include any financial expenditures or similar obligations beyond ancillary procedural (for example, filing fees), internal or advisory costs.

### 8.4 Notified Breaches

- 8.4.1 On the date that is 10 Business Days prior to the Closing Date the Seller shall send a notice to the Purchasers:

- (i) confirming that there has been no breach of the provisions of Clause 8 and of the obligations of the Seller pursuant to Clause 7.2, Clause 15.6.2 and Clause 15.6.3; or
- (ii) setting out any occurrences of breaches of the provisions of Clause 8 or of the obligations of the Seller pursuant to Clause 7.2, Clause 15.6.2 and Clause 15.6.3 (in reasonable detail to allow the Purchaser to identify the nature of the breach and the level of any losses) (each, a "**Notified Breach**").

- 8.4.2 If the Purchasers are informed of any Notified Breach, the Purchasers shall be entitled to (subject to Clause 8.4.3 below) require that the Closing Date is delayed by 25 Business Days to provide the Seller with an opportunity to rectify each Notified Breach (the "**Rectification Period**"). If at the end of the Rectification Period, each Notified Breach has been remedied to the satisfaction of the Purchasers (acting reasonably), Closing will proceed on the next available Closing Date.

- 8.4.3 If, at the conclusion of the Rectification Period, any of the Notified Breaches have not been rectified to the satisfaction of the Purchasers in accordance with Clause 8.4.2 (each, an "**Unremedied Breach**") then the Purchasers shall submit to the Seller within ten (10) Business Days a reasonable and good faith estimate of the aggregate economic losses (including in respect of Taxes) of HSH Nordbank and/or the Purchasers arising as a result of each of the Unremedied Breaches (the "**Proposed Breach Amount**").

- 8.4.4 Within ten (10) Business Days after receipt of the notification of the Proposed Breach Amount, the Seller may raise in reasonable detail written objections against the Proposed Breach Amount (the "**Disputed Items**"). The Seller shall be deemed to have agreed with the Proposed Breach Amount if it does not object within such period and the Proposed Breach Amount shall then become final and binding upon the parties and be the "**Final Determination**" and Closing will proceed on the next available Closing Date.

- 8.4.5 The Seller and the Purchasers shall endeavour to resolve the Disputed Items within five (5) Business Days following the receipt of the notice of the Disputed Items by the Seller in accordance with Clause 8.4.4.

- 8.4.6 Any Disputed Items not resolved within such period shall be submitted by the Seller and the Purchasers to an expert arbitrator (*Schiedsgutachter*). The Seller and the Purchasers agree that KPMG AG Wirtschaftsprüfungsgesellschaft ("**KPMG**") shall be appointed as the expert arbitrator. Should KPMG become

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unavailable or unable to act, the Seller and the Purchasers shall agree (acting reasonably) on another auditing firm of international standing to be appointed as expert arbitrator. If the Seller and the Purchasers cannot reach such agreement within a further two (2) Business Days then the Seller and the Purchaser shall each have the right to have the expert arbitrator appointed by the Handelskammer Hamburg (chamber of commerce of the City of Hamburg, Germany) (KPMG or such other auditing firm being the “**Expert Arbitrator**”). The Expert Arbitrator shall determine the Disputed Items by way of a binding expert opinion pursuant to section 317 para. 1 of the German Civil Code (*Bürgerliches Gesetzbuch – BGB*) and shall deliver its opinion to the Seller and Purchaser as soon as practicable and in any event within ten (10) Business Days of its appointment. Absent manifest mathematical errors, the determination by the Expert Arbitrator shall be final and binding upon the Parties and shall be the Final Determination; section 319 BGB shall not apply. The fees of the Expert Arbitrator shall be borne 50% by the Seller and 50% between the Purchasers in accordance with each Purchaser’s Relevant Percentage.

**8.4.7** In this event, the sole remedies of the Purchasers are agreed to be as follows, without prejudice to the right of the Purchasers to sue for the primary claim of specific performance pursuant to Clause 12.6.3. If the Final Determination:

- (i) is less than the Sold Shares Purchase Price but more than EUR1, then the Sold Shares Purchase Price shall be reduced by an amount equal to the Final Determination and, provided that the Sold Shares Purchase Price is not reduced below EUR1 as a result of such reduction, Closing will proceed on the next available Closing Date after the date on which the Final Determination is made; or
- (ii) is equal to or more than the Sold Shares Purchase Price, then the Purchasers shall be entitled to terminate this Agreement and shall not be obliged to undertake Closing.

## **8.5 Information Obligation**

**8.5.1** From the date of this Agreement until and including Closing, each Party shall inform the respective other Party in writing or in text form without undue delay (*unverzüglich*) after becoming aware of a fact capable, on the basis of specific indication, of endangering, impeding or preventing the completion of this Agreement.

**8.5.2** From the date of this Agreement until and including the Closing the Seller shall, to the extent permitted by law and taking into consideration its share participation in a German stock corporation, exercise all rights available to the Seller to procure that:

- (i) the Purchasers, their respective agents and representatives are given access to the management of HSH Nordbank and to the books and records of HSH Nordbank, in each case during normal business hours on any Business Day on reasonable notice;
- (ii) HSH Nordbank provides such information regarding the businesses and affairs of the Group as the Purchasers may reasonably require; and
- (iii) HSH Nordbank and the Subsidiaries shall give the Purchasers and their advisors the opportunity to conduct a customary follow up due diligence as

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regards the existing insurance coverage of the Group and such non-German Subsidiaries as regards to which the W&I Insurers have rejected insurance coverage due to lack of information (in particular 2200 Victory LLC, Amentum Aircraft Leasing No. Five Limited, Amentum Aircraft Leasing No. Seven Limited, Amentum Aircraft Leasing No. Six Limited, HSH N (Guernsey) Limited, RESPARCS Funding Limited Partnership I, RESPARCS Funding II Limited Partnership).

### 8.6 Consent by Counterparties to Changes of Control

The Seller shall inform the relevant counterparties under the following agreements:

- 8.6.1 HSH Mid Cap Loan EUR 100m dated 30 June 2014 with Data Room reference 6.7.1;
- 8.6.2 Secured Credit Facility US\$ 247m dated 10 August 2016 with Data Room reference 6.10.5; and
- 8.6.3 the agreements on market data in the Data Room,

(collectively "**CoC-Relevant Agreements**")

without undue delay (*unverzöglich*) after the date of this Agreement in accordance with the provisions of the CoC-Relevant Agreements that a change of control will take place upon completion of this Agreement and shall propose that the counterparties waive their respective right to extraordinary termination under these agreements when the change of control takes place.

For the avoidance of doubt, the following agreements between HSH Nordbank and affiliates of FHH and/or LSH shall not be affected by the transaction contemplated in this Agreement:

- 8.6.4 loan agreement between HSH Nordbank and [REDACTED] with Data Room reference 11.4.1, 11.4.2 and 11.4.3; and
- 8.6.5 servicing agreement between HSH Nordbank and [REDACTED] dated 28 June 2016 and 15 March 2017 with Data Room reference 5.9.4.6 and 5.9.4.9.

### 8.7 W&I notification

The Seller shall submit to the Purchasers by 5pm (CET) on the Business Day before the Closing Date a letter substantially in the form as set out in Schedule 8.7 by means of which the Seller shall confirm (following due enquiry of the Seller's Knowledge Persons as set out in Schedule 12.2) to the Purchasers and the W&I Insurers (as defined in Clause 12.6.1) that, between the date of this Agreement and the Closing Date, no facts or circumstances have occurred or are existing that constitute or are reasonably expected to lead to a Warranty Breach (as defined in Clause 12.1(ii)) and/or claims in respect of Tax matters against the W&I Insurers, or if such facts or circumstances have occurred, provide the Purchasers and the W&I Insurers with a detailed description of such facts or circumstances and the relevant breach resulting therefrom (the "**Updated Disclosure Letter**").

## 8.8 Sunrise Settlement

Following satisfaction of the Sunrise Settlement Condition, the Seller shall ensure that the Sunrise Settlement Amount (as defined in Clause 7.1.11) has been or will be settled in full in accordance with the terms of the Sunrise Guarantee Settlement Agreement and that such amount is not subject to any rights of 'clawback' by Finfo.

## 9 Right to Withdraw

### 9.1 Non-Fulfilment of Closing Conditions

If on or before 30 June 2019 (the "**Long Stop Date**") a Closing Condition pursuant to Clause 7.1 is not satisfied and has not been waived in accordance with Clause 7.2.7 and is definitely not capable of being fulfilled on or before the Long Stop Date, either the Seller or the Purchasers, the latter by joint declaration to the Seller, shall each be entitled to withdraw from this Agreement (*Rücktritt*) without prior notice (*ohne Einhaltung einer Frist*) prior to the fulfilment (or waiver) of all Closing Conditions. A Party shall have no right to withdraw if it failed to fulfil its obligations with respect to the satisfaction of the relevant Closing Conditions and if this breach of obligations caused, or materially contributed to, the non-fulfilment of the relevant Closing Conditions (a "**Breaching Party**").

### 9.2 Breach of Other Contractual Obligations

**9.2.1** The Seller shall at any time be entitled to withdraw from this Agreement without prior notice if any of the Individual Purchase Price Portions and any default interest required hereunder are not or not fully paid within ten (10) Business Days from the due date.

**9.2.2** The Seller shall at any time prior to the Closing be entitled to withdraw from this Agreement without prior notice if a Purchaser, in violation of its obligations under Clause 18.6, disposes of any rights under or in connection with this Agreement.

**9.2.3** The Purchasers shall at any time be entitled to withdraw from this Agreement by joint declaration to the Seller without prior notice if the Seller makes a Material Updated Disclosure in accordance with Clause 12.4.4(vii) and does not cure the Breach on which such Material Updated Disclosure is based within a period of 20 Business Days.

### 9.3 Conditions and Obligations by European Central Bank or European Commission

If:

**9.3.1** any merger control authority, European Central Bank or the European Commission, as applicable, are prepared to accept the transaction or declare the transaction compatible with the common market (as applicable) with certain conditions or obligations; and

**9.3.2** compliance or acceptance of such conditions or obligations would cause unreasonable commercial hardship (*wirtschaftliche Unzumutbarkeit*) in the context of the transaction as set out in Clause 7.2.2(iii) and Clause 7.2.3(iii) above,

the Seller and the Purchasers shall co-operate in good faith to find a mutually acceptable solution which would not result in the occurrence of such unreasonable commercial hardship (*wirtschaftliche Unzumutbarkeit*). If such solution cannot be found in good faith consultations between the Purchasers and the Seller, taking into account the valid interests

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of the Parties, within a period of six (6) weeks, the Purchasers shall by joint declaration to the Seller be entitled to withdraw from this Agreement.

### 9.4 Exercising of the Right to Withdraw

The right to withdraw may be exercised by the Seller by way of a Notice to the Purchasers, and by the Purchasers by way of a Notice jointly declared to the Seller.

### 9.5 Consequences of Withdrawal

9.5.1 In the event of a withdrawal from this Agreement, the provisions set out in Clause 1 (Interpretation), Clause 5.2 (Equity Commitment), Clause 9.5 (Consequences of Withdrawal), Clause 16 (Public Announcements and Confidentiality), Clause 17 (No Liability of the Seller's Representatives) and Clause 18 (Miscellaneous) shall continue to be effective. All other provisions and obligations of the Parties shall cease to have effect.

9.5.2 In the event of a withdrawal pursuant to Clause 9.1 (where a Purchaser is the Breaching Party), Clause 9.2.1 or Clause 9.2.2, the Seller may retain the Sold Shares and claim damages from the Purchaser.

9.5.3 Any failure to exercise a right to withdraw from this Agreement shall under no circumstances be deemed to constitute a waiver of any other right the Party entitled to such withdrawal may have under or in connection with this Agreement.

## 10 Closing

### 10.1 Closing Place and Date

The Closing shall take place at the offices of Linklaters LLP in Hamburg at 10am (CET) on the last Business Day of the calendar month during which the last Closing Condition has been fulfilled (or waived), provided that if there are less than fifteen (15) Business Days between the date of such fulfilment or waiver and the end of the then current calendar month, the Closing shall take place on the last Business Day of the following calendar month. The Closing may also take place at such other location, time or date as may be agreed in writing between the Seller and the Purchasers.

### 10.2 Closing Actions

At the Closing, the Seller and the Purchasers shall take the following actions (the "**Closing Actions**") simultaneously (*Zug um Zug*):

10.2.1 Each Purchaser shall pay its respective Individual Purchase Price Portion payable by it in accordance with Clause 3.2

10.2.2 The Seller and each of the Purchasers shall execute a share transfer agreement regarding the respective Sold Shares in accordance with Clause 2.2.

10.2.3 The Seller shall deliver or make available to the Purchasers copies of the letters of resignation by the members of the supervisory board of HSH Nordbank, with effect as of the Closing Date, to the extent such members are listed in Schedule 10.2.3.

10.2.4 The Seller shall submit to the Purchasers an Updated Disclosure Letter with regard to the Seller's Warranties set out in Clauses 11.2.1, 11.3.1, 11.3.2 and 11.9 sent. 1 (the "**Fundamental Warranties**").

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**10.2.5** By signing the respective closing minutes substantially in the form of the draft attached as Schedule 10.2.5, the Seller and the Purchasers shall confirm to each other (e.g. by enclosing copies of the relevant documents):

- (i) that the Closing Conditions have been satisfied (or waived pursuant to Clause 7.2.7) in accordance with this Agreement and, as a matter of precaution, the Parties shall waive, to the extent legally permissible, the fulfilment of the Closing Conditions; and
- (ii) that the Closing Actions set out in Clause 10.2 have been taken in accordance with this Agreement.

### 10.3 Deferred Closing

**10.3.1** At the first Closing, each Purchaser shall be obliged to take the Closing Actions owed by that Purchaser only if each other Purchaser simultaneously takes the Closing Actions owed by each such Purchaser. If one or more Purchasers do not take the Closing Actions owed by each such Purchaser (each, a "**Breaching Purchaser**"):

- (i) the Seller shall be entitled to defer Closing to the end of the following calendar month ("**Deferred Closing Date**"), in which case the provisions of Clause 10.2 shall apply to Closing as so deferred;
- (ii) the Seller and the other Purchasers ("**Non-Defaulting Purchasers**") will discuss in good faith a basis on which Closing can proceed and the Non-Defaulting Purchasers shall exercise all rights available in respect of each such Breaching Purchaser to the extent such rights would support achieving Closing.

**10.3.2** At the Deferred Closing Date, each Purchaser shall be obliged to take the Closing Actions owed by that Purchaser. If there are one or more Purchasers who continue to be a Breaching Purchaser at the Deferred Closing Date (each a "**Defaulting Purchaser**"), the Seller shall be entitled to proceed to Closing with all the Non-Defaulting Purchasers so far as practicable and provided that as a result of such Closing:

- (i) the HSH-Decision 2016 is complied with;
- (ii) more than 50% of the Sold Shares are transferred to Non-Defaulting Purchasers; and
- (iii) no Purchaser is or shall be deemed to be a Controller.

**10.3.3** With regard to each Defaulting Purchaser each such Party shall cease to have any rights (but shall continue to be bound by the obligations) under this Agreement and the Seller and the Non-Defaulting Purchasers shall discuss in good faith how to proceed in order to transfer the remaining parts of the Sold Shares (to the extent not to be retained by the Seller) to one or more parties acceptable to each of the other Purchasers and the Seller (each acting reasonably) as soon as reasonably possible after the Deferred Closing Date.

**10.3.4** All provisions of this Agreement shall so far as they are capable of being performed or observed continue in full force and effect notwithstanding Closing except in

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respect of those matters then already performed and Closing shall not constitute a waiver of any Party's rights in relation to this Agreement.

### 11 Seller's Warranties

The Seller guarantees by way of an independent promise of warranty (*selbständiges Garantieverprechen*) pursuant to section 311 BGB and exclusively with the remedies pursuant to Clause 12, which form an integral part and define the scope of this promise of warranty, that the statements set forth in this Clause 11 (the "**Seller's Warranties**") are true and correct as at the date of this Agreement and as at the Closing Date.

#### 11.1 Seller's Capacity

11.1.1 The Seller is a validly existing and duly incorporated limited liability company under German law (*Gesellschaft mit beschränkter Haftung*). It is vested with the necessary capacity under corporate law to be the owner of its assets and to conduct its business.

11.1.2 The Seller has requisite power and authority to enter into and, subject to the Closing Conditions set forth in Clause 7.1, perform this Agreement and the transactions contemplated by this Agreement. The Seller has obtained all material approvals required by the Seller (save for those set out in the Closing Conditions) to enter into and perform this Agreement and the transactions contemplated hereby.

11.1.3 The execution and performance of this Agreement will not result in a breach of the articles of association or rules of procedure of the Seller or legal provisions, decisions, decrees, court orders, orders by public authorities or any other mandatory rules by which the Seller is bound. There are no claims, investigations, proceedings or other measures pending at, or threatened by, a court, other public authority or an arbitral tribunal against the Seller which are able, or intended to, hinder, delay or amend the execution and performance of this Agreement.

#### 11.2 Legal Situation of the Shares

11.2.1 The Seller is the sole owner of the Sold Shares.

11.2.2 The Sold Shares are free of encumbrances and other third party rights, including expectancy rights (*Anwartschaftsrechte*), and not subject to any restrictions in respect of the sale or assignment pursuant to Clauses 2.1 and 2.2, except as set forth in this Agreement.

11.2.3 The Sold Shares are fully paid in and free of additional payment obligations (*Nachschusspflichten*).

11.2.4 As at Closing, the Sold Shares and the Existing JCF Shares are all the shares of HSH Nordbank in issue.

#### 11.3 Corporate Status of HSH Nordbank

11.3.1 The statements in Recital (A) in respect of HSH Nordbank are accurate.

11.3.2 No insolvency proceedings have been commenced or, to the Seller's Knowledge, applied for in respect of HSH Nordbank. HSH Nordbank is neither over-indebted

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(*überschuldet*) nor unable to pay its due debts (*zahlungsunfähig*). HSH Nordbank has not been dissolved (*aufgelöst*).

- 11.3.3 Unless expressly stated otherwise in Schedule 11.3.3, as at Closing HSH Nordbank has not entered into any enterprise agreements (*Unternehmensverträge*) within the meaning of section 291 and section 292 AktG under which HSH Nordbank is obliged to transfer its profits (or parts thereof) or to subordinate its management (or parts thereof) to a third party.

### 11.4 Corporate Status of the Subsidiaries

- 11.4.1 The statements in Schedule (B) regarding HSH Nordbank's (direct or indirect) participation in the Subsidiaries are accurate. HSH Nordbank is not a party to any agreements relating to the acquisition or the sale of participations in other entities under which the main contractual obligations have not yet been fulfilled except for those sold under the NPE-Agreement and the TU 00851, TU 06452, TU 06563; and TU 08393 which are permitted to be sold under the NPE-Agreement.
- 11.4.2 Except as set out in Schedule 11.4.2, the shares and partnership interests which are directly or indirectly held by HSH Nordbank in the Subsidiaries are free of encumbrances and other rights of third parties outside the Group. For the avoidance of doubt, the necessity for a third party to approve a transfer of shares or partnership interests shall not be considered a right of a third party.
- 11.4.3 Except as set out in Schedule 11.4.3, no Subsidiary has received written notice of any insolvency proceedings, and the Seller has no other knowledge of insolvency proceedings having been commenced or, to the Seller's Knowledge, applied for in respect of a Subsidiary. To the Seller's Knowledge and except as set out in Schedule 11.4.3, no Subsidiary is either over-indebted (*überschuldet*) or unable to pay its due debts (*zahlungsunfähig*) or has been dissolved (*aufgelöst*).
- 11.4.4 No Subsidiary has entered into any enterprise agreements within the meaning of section 291 and section 292 AktG under which it is obliged to transfer its profits (or parts thereof) or to subordinate its management (or parts thereof) to a third party outside the Group.

### 11.5 Annual Accounts

- 11.5.1 Except as set out in Schedule 11.5.1, the Seller has delivered to the Purchasers:
- (i) in respect of each Subsidiary, the audited individual annual accounts including the audit reports for the financial year ending 31 December 2016,
  - (ii) in respect of HSH Nordbank, the audited individual annual accounts as well as the audited consolidated annual accounts for the financial year ending 31 December 2016 (the "**Consolidated Annual Accounts**" and, collectively with the Group Companies' individual annual accounts specified in Clause 11.5.1(i) above, the "**Annual Accounts**") including the respective audit reports,
  - (iii) in respect of HSH Nordbank, the unaudited consolidated interim accounts for the nine months' period ending 30 September 2017 (the "**Interim Financial Information**").

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11.5.2 The Annual Accounts and the Interim Financial Information have been set up with the diligence of a prudent businessman (*Sorgfalt eines ordentlichen Kaufmanns*) in accordance with accounting standards and accounting and valuation principles generally accepted in the respective jurisdiction they have been prepared for. The accounting standards and the other aforementioned accounting and valuation principles were applied unchanged and consistent with past practice unless otherwise required by such accounting principles and policies or disclosed or noted in the Annual Accounts.

11.5.3 To the Seller's Knowledge, the Annual Accounts correctly reflect in all material aspects the financial situation, financial standing and profitability of the Group or the Group Companies to which they relate as at the relevant date and relevant period.

### 11.6 Agreements with Affiliates

Except as set out in Schedule 11.6 or otherwise stated in this Agreement, no agreements between HSH Nordbank and any member of the Seller's Group are in place.

### 11.7 Management and Employees

11.7.1 Schedule 11.7.1 contains a list of all individuals who are currently appointed as management board members of HSH Nordbank (the "**Executives**") and supervisory board members of HSH Nordbank.

11.7.2 Unless stated otherwise in Schedule 11.7.2, no Executives have given or received notice of termination of their employment or service agreement (*Anstellungs- oder Dienstvertrag*). Furthermore, no Executive (i) has entered into a termination agreement (*Aufhebungsvereinbarung*) or (ii) has made or received an offer to enter into a termination agreement.

11.7.3 To the Seller's Knowledge, Schedule 11.7.3 contains a list of all material collective bargaining agreements (*Tarifverträge*), company bargaining agreements (*Firmentarifverträge*) and shop agreements (*Betriebsvereinbarungen*) applicable to HSH Nordbank which contain more than merely a repetition of statutory law and which contain limitations on the termination of employment agreements (including provisions concerning severance payments) or on the relocation of activities of HSH Nordbank. There are no such agreements which:

- (i) contain, for the relevant employees, benefits or incentive plans to be triggered by a change of control over HSH Nordbank, or
- (ii) guarantee a certain number of employees in general or in respect of individual locations.

### 11.8 Litigation

Unless stated otherwise in Schedule 11.8, (i) HSH Nordbank is not subject or party to any pending court or arbitration proceedings (excluding insolvency proceedings) having a preliminary litigation value (*Streitwert*) in excess of EUR 1,000,000 (in words: one million euros) in the individual case, (ii) nor to the Seller's Knowledge have such proceedings been threatened in writing *vis-à-vis* HSH Nordbank. For the avoidance of doubt, Schedule 11.8 does not include cases, in which HSH Nordbank considers initiating such proceedings as claimant.

### 11.9 Banking Licence

HSH Nordbank and, if applicable, the Subsidiaries has all banking permits and licences (*öffentlich-rechtliche Bankzulassungen und Banklizenzen*) and all other permits granted under public law which are required by them in order to operate the Business or, in the case of the Subsidiaries, their respective business as presently conducted. To the Seller's Knowledge, no circumstances exist which could justify a revocation, restriction or the imposition of any conditions on the above permits and licenses, and, to the Seller's Knowledge, such revocation, restriction or imposition of any conditions is not planned or imminent.

### 11.10 Financial Supervisory Authorities

To the Seller's Knowledge, no order of any financial supervisory authority is planned or imminent as the result of organisational deficits of the Group or of other non-compliance with regulatory requirements, except those potential orders listed in Schedule 11.10.

### 11.11 Real Estate

Except for the real estate stated in Schedule 11.11, HSH Nordbank does not own any real property (*Grundstücke*) or rights equivalent to real property (*grundstücksgleiche Rechte*), e.g. hereditary building rights (*Erbbaurechte*), directly. For the avoidance of doubt, land charges (*Grundschulden*) shall not be considered rights equivalent to real property. There are no agreements in place in which HSH Nordbank is obliged to acquire or sell real property, rights equivalent to real property or buildings by HSH Nordbank under which the main obligations have not been fulfilled yet. For the avoidance of doubt, this does not include agreements, in which HSH Nordbank has the option, but not the obligation to acquire or sell real property, rights equivalent to real property or buildings (e.g. sale-and-lease-back agreements).

### 11.12 Intellectual Property

11.12.1 Schedule 11.12.1 contains a list of all intellectual property rights which are owned or used by HSH Nordbank and which are material to its Business (collectively the "**Material Intellectual Property Rights**"). An intellectual property right shall be considered material to the Business only if (i) any impossibility of, or impediment to, its use by HSH Nordbank would have a material adverse effect on the Business of HSH Nordbank and (ii) it cannot be acquired within reasonable time on the free market at market price.

11.12.2 Except as set out in Schedule 11.12.2, the Material Intellectual Property Rights are not subject to any pending opposition, cancellation or revocation proceedings.

### 11.13 Insurance

11.13.1 Schedule 11.13.1 contains a complete and correct list of the insurance agreements entered into by HSH Nordbank and its Subsidiaries with the corresponding insurance cover. The insurance agreements are in full force and effect, have not been terminated or threatened to be terminated and will remain in force irrespective of the execution of the transactions contemplated by this Agreement. To the Seller's Knowledge, no circumstances exist which could question the existence of the insurance cover, in particular neither HSH Nordbank nor any of its Subsidiaries is in arrears with the payment of insurance premiums.

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11.13.2 Except as set out in Schedule 11.13.2, there are no open damage cases or damages of HSH Nordbank or a Subsidiary notified to the relevant insurer and (i) which exceed EUR 1,000,000 (in words: one million euros) and (ii) for which cover has been disputed by the relevant insurer.

### 11.14 GDPR Compliance

11.14.1 Schedule 11.14.1 contains a high-level project description, including an estimated budget and project objectives which HSH Nordbank and its Subsidiaries intend to achieve to ensure compliance with the European General Data Protection Regulation (EU) 2016/679 ("GDPR").

11.14.2 Schedule 11.14.2 contains, in respect of GDPR compliance, a mile stone plan, including envisaged timelines and information about the project workstreams that have already been initiated as of the date of this Agreement.

### 11.15 No Further CoC-Relevant Agreements

To the Seller's Knowledge, the CoC-Relevant Agreements defined in Clause 8.6 and the agreements listed in Schedule 11.15 are the only agreements (i) to which HSH Nordbank or any of the Subsidiaries is a party and (ii) under which any counterparty has a right to terminate or withdraw or demand any payment or other penalty due to the transactions contemplated by this Agreement and (iii) the termination of or withdrawal from such agreement has a commercial effect similar to the termination of a CoC-Relevant-Agreement.

### 11.16 Taxes

11.16.1 Unless stated otherwise in Schedule 11.16.1, HSH Nordbank and the Subsidiaries have duly filed all material Tax Returns required to be filed with the competent Tax Authority (taking into account any extensions granted by the relevant Tax Authority) and to the Seller's Knowledge all such Tax Returns have been prepared in all material aspects in accordance with applicable law and administrative guidance.

11.16.2 To the Seller's Knowledge, HSH Nordbank and the Subsidiaries have fully paid all due Taxes (*fällige Steuern*) in time.

11.16.3 To the Seller's Knowledge, HSH Nordbank and the Subsidiaries have sufficient documentation (books, records and/or other documents) to substantiate the positions taken in all material Tax Returns.

## 12 Legal Consequences

### 12.1 Exhaustive Provisions

Subject to mandatory law, in particular section 123 (wilful deceit – *arglistige Täuschung*) or section 276 para. 3 (wilful misconduct – *Vorsatz*) BGB, and except as otherwise expressly provided in this Agreement, the following shall apply:

- (i) The Seller's Warranties are exhaustive and no further warranties shall be deemed to be given by the Seller.
- (ii) The legal consequences set forth in this Clause 12 shall apply instead and to the exclusion of any and all remedies that would otherwise be available to the Purchasers (a) in the event of any of the Seller's Warranties being incorrect (a

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"**Warranty Breach**") or (b) in the event of a Notified Breach or (c) in the event of any other obligation of the Seller arising from or relating to this Agreement being breached ("**Other Breach**") (each of a Warranty Breach, a Notified Breach and an Other Breach being referred to as a "**Breach**"). With regard to Tax Claims of the Purchasers, Clause 12 shall only apply if and to the extent expressly provided for in Clause 13.

- (iii) None of the statements made in Clause 11 or anywhere else in this Agreement shall constitute a quality agreement within the meaning of section 434 para. 1 BGB (*Beschaffenheitsvereinbarung*), or shall be construed as a guarantee within the meaning of sections 434, 444 BGB (*Garantie für die Beschaffenheit der Sache*).
- (iv) Any further liability of the Seller (excluding, for the avoidance of doubt, liabilities of HSH Nordbank and its Subsidiaries and their respective representatives, agents and/or advisers), and any differing or further rights or claims of the Purchasers other than provided for in this Agreement or any other documents entered into or in connection with this Agreement or the transactions contemplated hereunder, irrespective of their nature or legal basis, including, without limitation, any right to rescind (*anfechten*) or to withdraw from (*zurücktreten*) this Agreement, to claim remediation (*Nacherfüllung*), to reduce the Total Purchase Price (*mindern*) and/or to claim damages (*Schadenersatz*) or reimbursement of frustrated expenditure (*Ersatz vergeblicher Aufwendungen*) are hereby expressly excluded, in particular any right and claim arising from or in connection with (a) defects in quality or title (*Sach- oder Rechtsmängel*), (b) incorrectness of any of the Seller's Warranties or any other warranty, representation, indemnification or other commitment, (c) breaches of any contractual or pre-contractual obligation, (d) tort (*unerlaubte Handlung*) or (e) interference with the contractual basis (*Störung der Geschäftsgrundlage*); or (f) any other circumstances or any other basis.

### 12.2 Seller's Knowledge

To the extent that the Seller's Warranties are restricted to "**Seller's Knowledge**", Seller's Knowledge shall exclusively mean the actual positive knowledge, after reasonable enquiries with HSH Nordbank's management board (*Vorstand*), of the Seller's managing directors and/or the executive representatives/employees of HSH Nordbank as set out in Schedule 12.2 have, of the underlying facts of the relevant Seller's Warranties at the date of this Agreement.

### 12.3 Seller's Liability

12.3.1 In case of a Breach for which the Seller is responsible under this Agreement, the Seller shall be given the opportunity to factually remedy (restitution in kind; *Naturalrestitution*) the relevant Breach within a period of one month. This one-month period shall begin upon the Seller's receipt of the one or first of several notifications, which shall for a Warranty Breach meet the requirements of Clauses 12.8.1 and 12.8.2, on Notified Claims (as defined in Clause 12.8.1) exceeding individually or jointly, as applicable, the thresholds defined in Clause 12.5.

12.3.2 The Seller shall at any time prior to the expiry of the period pursuant to Clause 12.3.1 be entitled to factually remedy a Breach in respect of which the Seller has

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received a notice of a Notified Claim, irrespective of whether or not the thresholds defined in Clause 12.5 are applicable and exceeded.

- 12.3.3** If and to the extent that the Seller fails to achieve factual remediation of a Breach within the period pursuant to Clause 12.3.1, or factual remediation of a Breach (i.e. conformity with contractually agreed conditions) is impossible, or the Seller finally refuses (*ernsthaft und endgültig verweigern*) to factually remedy a Breach, the Seller shall, subject to the limitations set forth in this Agreement, be obliged to compensate the Purchasers by way of monetary damages (*Schadensersatz in Geld*) in an amount equal to the monetary loss suffered by the Purchasers in result of the relevant Breach (but in any event including the actual financial loss suffered by HSH Nordbank in result of the relevant Breach), including for the avoidance of doubt consequential tax losses; the obligation of the Seller to compensate the Purchasers for financial losses shall not include any (i) unforeseeable indirect damages, (ii) unforeseeable consequential losses, (iii) other than in the case of a Notified Breach, lost profit or lost opportunities or (iv) other than in the case of a Notified Breach, frustrated expenditure (*vergebliche Aufwendungen*) within the meaning of section 284 BGB or (v) internal costs. Any liability due to a recalculation (*Neuberechnung*) of the consideration upon a Breach is explicitly excluded. In respect of Notified Breaches, Clause 8.4 shall apply.

## 12.4 Limitations on the Seller's Liability

### 12.4.1 Changes in Legislation

The Seller shall not be liable under or in connection with this Agreement to the extent that such liability would not have occurred but for the passing of, or change in, any law, statute, ordinance, rule, regulation, or administrative practice of any governmental or supervisory body (including any increase in the rates of Taxes) after the date of this Agreement, assuming compliance therewith.

### 12.4.2 Changes Attributable to the Purchasers

The Seller shall not be liable under or in connection with this Agreement in respect of any damage or loss to the extent it results from:

- (i) any voluntary act or undue omission of the respective Purchaser or any of the Purchasers' respective Affiliates, or their respective members of corporate bodies, employees, agents, advisers or other representatives, after the date of this Agreement including any changes in the accounting methods or principles, or
- (ii) any specific act taken or omission made by the Seller if required under this Agreement or additionally requested or approved in writing by the respective Purchaser.

### 12.4.3 Non-Compliance by the Purchasers

- (i) The Seller shall not be liable under or in connection with this Agreement in respect of any damage towards a Purchaser to the extent caused by the Purchasers' failure to comply with its obligations under Clause 12.8 or its statutory obligation to mitigate damages pursuant to section 254 BGB.
- (ii) The Seller shall not be liable under or in connection with this Agreement in the event of a valid disposal of any Warranty Claim of a Purchaser arising

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from or in connection with this Agreement resulting from a breach by the Purchaser of its obligations under Clause 18.6.

### 12.4.4 Purchasers' Knowledge

The Seller shall not be liable for a Warranty Breach towards a Purchaser if the respective Purchaser, any of the respective Purchaser's direct or indirect shareholders, or any director, officer, employee, agent or other representative of the respective Purchaser or any of the Purchaser's direct or indirect shareholders who has been involved in the negotiation or preparation of this Agreement (including without limitation the due diligence performed in relation to the Group and its Business), has on the date of this Agreement knowledge of the underlying facts constituting the relevant Warranty Breach. Such knowledge of the respective Purchaser shall include the following facts on the date of this Agreement:

- (i) all facts fairly disclosed, contained or expressly mentioned in this Agreement, including the Schedules hereto;
- (ii) all facts fairly disclosed in the documents which have been made accessible to the Purchaser and any members of corporate bodies or any employees, agents, advisers and/or any other representatives of the Purchasers during the period commencing on 26 April 2017 and ending on 25 February 2018, 16:05 CET through virtual data rooms under the designation Project Neptun operated by Merrill Datasite for the purposes of conducting a due diligence of the Group (the "**Virtual Data Room**");
- (iii) all facts fairly disclosed in the documents which have been made accessible to advisers of the Purchasers who are subject to a professional secrecy obligation within the meaning of section 203 para. 1 no. 3, para 3 of the German Criminal Code (*Strafgesetzbuch – StGB*) on 11 October 2017, 13 October 2017, 18 October 2017, 14 December 2017 and 18 December 2017 through a physical data room under the designation Project Neptun at the offices of Linklaters LLP, Taunusanlage 8, 60329 Frankfurt, established for the purposes of conducting a due diligence of the Group (collectively, the "**Black Data Room**" and together with the Virtual Data Room the "**Data Room**"), but only to the extent the Purchasers' advisers were allowed to share such facts contained in the Black Data Room with the Purchasers in accordance with the Black Data Room rules as attached hereto as Schedule 12.4.4 (iii);
- (iv) all facts fairly disclosed, provided for or noted in the Annual Accounts or in the Interim Financial Information;
- (v) all facts fairly disclosed to the Purchaser, any of its members of corporate bodies, employees in writing or through digital presentations in writing following the management presentation and expert sessions and expert calls (a list of such presentations as of 27 October 2017 is attached hereto as Schedule 12.4.4(v)) or any further meetings with the management and other managing employees of the Group at least two (2) Business Days before the date of this Agreement; and
- (vi) all facts otherwise fairly disclosed at least two (2) Business Days before the date of this Agreement in writing, including data tapes, by or on behalf of

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the Seller or its representatives or advisers to the Purchaser, its direct or indirect shareholders, any of its or their members of corporate bodies, employees in connection with the transactions contemplated in this Agreement;

- (vii) all facts fairly disclosed in the Updated Disclosure Letter with respect to any Warranty Breach during the period from the date of this Agreement to the Closing Date (the "**Updated Disclosure**") subject to the following:
  - (a) The Seller shall deliver the Updated Disclosure Letter to the Purchasers as soon as reasonably practicable following a material Warranty Breach setting forth therein in reasonable detail the facts, circumstances and information relating to such Updated Disclosure and the Seller shall have the right to update, modify and supplement the Updated Disclosure up to the Closing Date.
  - (b) If the Updated Disclosure results in a failure of a Fundamental Warranty to be true, accurate and not misleading (a "**Material Updated Disclosure**") the Purchasers may withdraw from this Agreement pursuant to Clause 9.2.3 of this Agreement.
  - (c) For the avoidance of doubt, the Updated Disclosure shall not limit the liability of the Seller under or in connection with this Agreement for a Warranty Breach as at the date of this Agreement.

For identification purposes, the index to the Data Room, in which the documents which were displayed in the Virtual Data Room and the Black Data Room are listed, is attached hereto as Schedule 12.4.4(vii); for the same purposes, the content of the Data Room is saved on USB flash drives which have been handed over to the acting notary who is hereby instructed to hold such USB flash drives in custody for at least five (5) years after the Closing Date and accepts such instruction. Each of the Seller and the Purchasers shall receive a copy of such a USB flash drive as well.

### 12.4.5 Purchasers' Rights to Recover

The Seller shall not be liable under or in connection with this Agreement in respect of any Claim to the extent that:

- (i) the damage giving rise to such claim (a) is covered by an insurance of HSH Nordbank, the Purchasers or any of the Purchasers' Affiliates pursuant to which such liability is fully settled resulting in HSH Nordbank and/or the Purchasers not suffering any loss as a result of a claim pursuant to such insurance, or (b) would have been covered by an insurance of HSH Nordbank pursuant to which a valid claim would have resulted in payment of a claim if the insurance cover of HSH Nordbank existing at Closing had been continued in the same scope as prior to Closing, save for any increases to insurance premiums or loss of insurance coverage as a result of such claim, or
- (ii) the Purchasers or HSH Nordbank has successfully claimed for compensation of, or indemnification from, the damage against any other third party, including full reimbursement for the Purchasers or HSH Nordbank of any associated costs relating to such claim.

**12.4.6 Offsetting Benefits**

The Seller shall not be liable under or in connection with this Agreement in respect of any Warranty Claim to the extent of any Tax benefits accruing or attributable to the Purchasers or HSH Nordbank on account of the matters or circumstances giving rise to such Warranty Claim. Future offsetting Tax benefits shall be valued at their net present value calculated at a discount rate of 3% p.a.

**12.4.7 Consideration in the Locked Box Accounts**

The Seller shall not be liable under or in connection with this Agreement in respect of any claim to the extent that the matter giving rise to such claim of the Purchasers has been taken into consideration in the Locked Box Accounts.

**12.4.8 *Ne bis in idem***

The Purchasers shall not be entitled to recover from the Seller more than once in respect of the same damage suffered. In particular, without limitation, the foregoing shall apply where one and the same set of facts (*Sachverhalt*) qualifies under more than one provision entitling the Purchasers to a claim or remedy under or in connection with this Agreement. In such event, the more specific provision shall apply only.

**12.5 *De minimis*, Basket**

Warranty Claims against the Seller under or in connection with this Agreement can only be made if:

**12.5.1** each single Warranty Claim exceeds an amount of EUR 300,000 (in words: three hundred thousand euros); and

**12.5.2** the aggregate amount of all such Warranty Claims exceeds an amount of EUR 3,000,000 (in words: three million euros).

If the threshold pursuant to Clause 12.5.1 or pursuant to Clause 12.5.2, respectively, is exceeded, the entire amount shall be taken into account (*Freigrenze*) in each case.

**12.6 W&I Insurance and Limitation of Liability**

**12.6.1** The Purchasers confirm that they have taken out, or will take out without undue delay (*unverzüglich*) following the signing of this Agreement, a purchasers' warranties & indemnities insurance substantially in the form of the insurance policy attached hereto as Schedule 12.6.1 (the "**W&I Insurance**" and the insurer(s) defined therein the "**W&I Insurer(s)**"). The Purchasers expressly acknowledge and the Parties agree that the Purchasers solely and irrevocably assume all responsibility and bear all risk in connection with the effectiveness, enforceability and value of the claims under the W&I Insurance.

**12.6.2** Upon providing proper evidence of the conclusion of the W&I Insurance by the Purchasers, the Seller agrees to pay at Closing an amount of up to EUR 3,250,000 (in words: three million two hundred fifty thousand euros) as (partial) reimbursement of premiums to the W&I Insurer(s). Any premiums in excess of this amount shall be borne by the Purchasers on a pro rata basis corresponding to each Purchaser's Relevant Percentage. The Parties agree that the Relevant Percentage of each Purchaser's reimbursement claim is set-off (*aufgerechnet*) at

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Closing against the Seller's claim vis-à-vis such Purchaser for the Relevant Percentage of the Sold Shares Purchase Price.

- 12.6.3 The Parties agree that, except for the primary claim for specific performance (*primärer Erfüllungsanspruch*) and the legal remedies in respect of a Notified Breach as set out in Clause 8.4, in accordance with the clean cut concept any other claims of the Purchasers against the Seller arising from a Breach, in particular from a breach of the Seller's Warranties and Purchasers' Tax Claims, are hereby expressly excluded (the "**Liability Exclusion**") and the Purchasers' sole recourse shall be claims under the W&I Insurance. With regard to the W&I Insurance, the Parties are in agreement that the Liability Exclusion shall only limit the amount of the claim in connection with a Warranty Breach or the Tax Claim (*die Anspruchshöhe begrenzend Wirkung*) vis-à-vis the Seller and that the legal basis (*Anspruchsgrund*) of the claim shall remain unaffected irrespective of such limitation of the amount and shall be the basis for the cover between the Purchasers and the W&I Insurer(s) in accordance with the W&I Insurance to be concluded.

## 12.7 Time Limitation

Except as set forth elsewhere in this Agreement, the claims of the Purchasers under or in connection with this Agreement shall become time-barred as follows:

- 12.7.1 Warranty Claims arising from a breach of the Seller's Warranties given in Clauses 11.1, 11.2, 11.3 and 11.4 shall become time-barred five (5) years after the Closing Date;
- 12.7.2 all other Warranty Claims shall become time-barred 24 (twenty four) months after the Closing Date; and
- 12.7.3 all other claims shall become time-barred after the following periods:
- (i) in respect of Clause 15 (Period after Closing) seven (7) years after the Closing Date;
  - (ii) in respect of Clause 16 (Public Announcements and Confidentiality) five (5) years after the Closing Date, and
  - (iii) in respect of all other provisions, two (2) years after the Closing Date.
- 12.7.4 Section 203 BGB shall not apply.

## 12.8 Conduct of Claims

### 12.8.1 Notification

The Purchasers shall give Notice jointly declared to the Seller of any Warranty Breach within the time period defined in Clause 12.8.2. Such Notice shall specify in reasonable detail for each individual Warranty Breach all material facts constituting the Warranty Breach, the legal basis for a potential Warranty Claim and the amount or estimated amount of the damage suffered by the Purchasers in result of the Warranty Breach and shall be submitted together with documents which enable the Seller to assess the merits of any Warranty Claims in respect of the relevant Warranty Breach and the amount or estimated amount of the damage arising from

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the Warranty Breach. The Purchasers' Warranty Claims so notified are herein referred to as "**Notified Claims**".

### 12.8.2 Time Limit for Notification

The Purchasers shall make the notification pursuant to Clause 12.8.1 within three (3) months after they have obtained knowledge of the Warranty Breach.

### 12.8.3 Investigation by the Seller

To the extent the Purchasers made a notification pursuant to Clauses 12.8.1 and 12.8.2 to the Seller, the Purchasers shall exercise all rights available to them to procure that HSH Nordbank will enable the Seller and its advisers bound by professional secrecy obligations to verify and investigate the matter or circumstance alleged to give rise to a Warranty Claim against the Seller under this Agreement and whether and to what extent any amount is payable in respect of such Warranty Claim. In particular, to the extent permitted by law, all material and documents relating to the relevant Warranty Claim which are available to the Purchasers shall be disclosed without undue delay (*unverzüglich*), and the Purchasers shall exercise all rights available to them to procure that HSH Nordbank will disclose without undue delay (*unverzüglich*) all material and documents relating to the relevant Warranty Claim which are available to it and provide reasonable assistance, including access to premises and personnel during normal business hours, and the permission to examine any assets, accounts, documents and records, as the Seller or its advisers bound by professional secrecy obligations may reasonably request, shall be given without undue delay (*unverzüglich*). The Seller shall procure that its advisers bound by professional secrecy obligations shall keep for themselves, abstain from disclosing to the Seller or any other person not bound by professional secrecy obligations, any information which HSH Nordbank or a Purchaser has instructed a Seller's professional advisers to keep for itself, and furthermore hereby undertakes to keep all information disclosed to it confidential and to use it only for the purpose of investigating and defending the Warranty Claim in question. All reasonable expenses of the Purchasers and HSH Nordbank caused by such disclosure and assistance, other than internal costs such as labour or overhead costs, shall be borne by the Seller. Nothing in this clause shall oblige any of the Purchasers, their Affiliates or HSH Nordbank to disclose any documents or information that may be protected by legal or professional privilege.

### 12.8.4 Third Party Claims

If a third party (including any supervisory authority) asserts, makes, files or threatens a claim against the Purchasers or HSH Nordbank which results, or which the Purchasers believe to result, in a Warranty Claim of the Purchasers based on a Warranty Breach by the Seller or increases the damage resulting from a Warranty Breach (a "**Third Party Claim**"), the following shall apply:

- (i) The Purchasers shall make, and shall use all rights available to them to procure that HSH Nordbank and the Subsidiaries shall make no admissions in relation to such Third Party Claim. The Purchaser shall not compromise, dispose of or settle, and shall use all rights available to them to procure that HSH Nordbank and the Subsidiaries shall not compromise, dispose of or

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settle, any Third Party Claim without the prior written consent of the Seller (such consent not to be unreasonably withheld or delayed).

- (ii) If the Seller wishes to defend the Purchasers or HSH Nordbank against the Third Party Claim in their name and on their behalf, the Seller shall give Notice to the Purchasers of such decision, including a confirmation that there has been a Warranty Breach, within a period of three (3) weeks after having been duly notified of the Third Party Claim in accordance with Clauses 12.8.1 and 12.8.2. Upon receipt of such Notice by the Purchasers, the Purchasers shall use all rights available to them to procure that HSH Nordbank and the Subsidiaries enable the Seller to take any action it deems necessary to defend, compromise or settle, acknowledge or fulfil the Third Party Claim (including the assertion and pursuit of counter-claims or other claims against any third parties) at its sole discretion in the name and on behalf of the Purchasers or HSH Nordbank, but taking into account the reasonable interests of the Purchasers and HSH Nordbank. Notwithstanding the Purchasers' obligations pursuant to Clause 12.8.3, the Purchasers shall, and shall use all rights available to them to procure that HSH Nordbank shall, promptly give all reasonable assistance and information to the Seller as may be reasonably required to defend the Third Party Claim and in particular promptly forward all notices, communications and filings (including court papers) to the Seller.
- (iii) If the Seller does not notify the Purchasers in accordance with Clause 12.8.4(ii) that the Seller wishes to defend against the Third Party Claim, the Purchasers shall, or shall use all rights available to them to procure that HSH Nordbank shall, conduct the defence of the Third Party Claim diligently and in good faith. The Purchasers shall, and shall use all rights available to them to procure that HSH Nordbank shall,
  - (a) keep the Seller fully informed of the progress of the Third Party Claim and its defence,
  - (b) promptly provide the Seller with copies of all material notices, communications and filings (including court papers),
  - (c) ensure that the Seller and/or advisers of the Seller bound by professional secrecy obligations shall, to the extent legally permissible and practicable, be invited to participate in any meetings or discussions (including in connection with any tax audits (*Betriebsprüfungen*)), and
  - (d) timely consult with the Seller prior to taking any action in relation to the Third Party Claim and its defence so as to give the Seller the opportunity to comment and object to the extent reasonably practicable and legally permitted.
- (iv) The Purchasers shall, and shall use all rights available to them to procure that HSH Nordbank shall, at all times and in particular until the Seller has notified the Purchasers in accordance with Clause 12.8.4(ii), act in the best interest of the Seller, taking into account reasonable interests of the Purchasers and HSH Nordbank, in relation to a Third Party Claim and shall consult with the Seller in due time in relation to the suitable manner of

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dealing with the Third Party Claim. In particular, the Purchasers shall, and shall use all rights available to them to procure that HSH Nordbank shall, notify the Seller promptly upon a Third Party Claim being, or likely to be, asserted or threatened, such Notice to be submitted together with all information in relation to the Third Party Claim which is available to the Purchasers and, to the extent that the Purchasers have the right to procure that HSH Nordbank provides such information, HSH Nordbank, and, to the extent such information is contained in documents, papers or other data, with such documents, papers or data enclosed. Nothing in this clause shall oblige any of the Purchasers, their Affiliates or HSH Nordbank to disclose any documents or information that may be protected by legal or professional privilege.

- (v) The costs and expenses incurred in relation to the defence against a Third Party Claim shall be borne as follows:
  - (a) All costs and expenses reasonably incurred by the Purchasers and HSH Nordbank (other than internal costs such as labour or overhead costs) shall, to the extent the Third Party Claim is valid or does result from a Warranty Breach for which the Seller is, subject to the limitations set forth in this Agreement, liable, be borne by the Seller, subject to the Purchasers having complied with their obligations under this Clause 12.8.
  - (b) All costs and expenses reasonably incurred by the Seller (other than internal costs such as labour or overhead costs) shall, to the extent the Third Party Claim is not valid or does not result from a Warranty Breach for which the Seller is, subject to the limitations set forth in this Agreement, liable, be borne by the Purchasers. The same shall apply if the Purchasers do not comply in all material respects with their obligations under this Clause 12.8.
  - (c) The Seller shall bear the other costs and expenses incurred by the Seller or the Purchasers.
- (vi) To the extent the Purchasers have informed the Seller in writing that the W&I Insurer has claimed to control or be involved in any Third Party Claim, the Seller's rights under this Clause 12.8.4 shall be suspended for the time of the involvement of the W&I Insurer(s) and no action or omission of the Purchasers shall be construed or qualify as a breach of this Clause 12.8.4.

## 13 Tax Matters

### 13.1 Definitions

- 13.1.1 "Tax" or "Taxes" means (i) any taxes or tax-related ancillary obligations (*steuerliche Nebenleistungen*) within the meaning of section 3 of the German Tax Code (*Abgabenordnung – AO*) as well as comparable taxes and tax-related ancillary obligations in a foreign jurisdiction and any secondary liability for third parties' tax liabilities, (ii) social security contributions (*Sozialversicherungsbeiträge*) and (iii) any taxes to be withheld or paid for the account of a third party (*Steuerabzugsbeträge*), such as (in particular, but not limited to) capital withholding or wage tax (*Kapitalertrag- und Lohnsteuer*), in each case including any penalties,

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finer, interest, costs or additions thereto, and in each case irrespective whether imposed under the laws of Germany or any other jurisdiction.

- 13.1.2 **"Tax Authority"** or **"Tax Authorities"** means any authority competent to impose any liability in respect of Tax or responsible for the administration or collection of Tax or the enforcement of any law in relation to Tax whereby "Tax" has the meaning set out in Clause 13.1.1.
- 13.1.3 **"Tax Return"** means all returns, reports and forms (including schedules and attachments thereto) required to be filed with a Tax Authority.

### 13.2 Tax Indemnity

- 13.2.1 The Seller shall pay to the Purchasers the amount which is necessary to hold HSH Nordbank and the Subsidiaries harmless of (i) any and all Taxes, which relate to periods ending on or before the Locked Box Date (the **"Seller Period"**) and for which HSH Nordbank or a Subsidiary is liable for Taxes (the **"Indemnifiable Taxes"**) and (ii) any and all Taxes and costs arising out of or in connection with a breach of any tax warranties in Clause 11.16, Clause 12.1, Clause 12.2 (to the extent that the tax warranties in Clause 11.16 are restricted to Seller's Knowledge) and Clause 12.6 shall apply accordingly to the Purchasers' Tax Claims.

If and to the extent that Indemnifiable Taxes have to be paid by a Subsidiary in which HSH Nordbank holds a direct or indirect participation of less than 100% at the Closing Date, the Seller's indemnification obligation under this Clause 13.2 is limited to the portion of Indemnifiable Taxes of the relevant Subsidiary which corresponds to the percentage of the participation held by HSH Nordbank in such Subsidiary on the Closing Date.

- 13.2.2 Without prejudice to the limitations of the Seller's liability pursuant to Clause 12.4.8 which shall apply in addition to the Tax-specific limitations of liability under this Clause 13.2.2 to Purchasers' Tax Claims, the Seller shall not be obliged to indemnify the Purchasers from Indemnifiable Taxes:
- (i) which have been paid by the Locked Box Date;
  - (ii) resulting from a change in written law after the Closing Date;
  - (iii) which relate to income that may be set off against Tax loss carrybacks or Tax loss carryforwards if the underlying losses were incurred by the Locked Box Date;
  - (iv) shown or provided for specifically in the Locked Box Accounts as (a) Tax liabilities (*Steuerverbindlichkeiten*), (b) Tax accruals (*Steuerrückstellungen*) or (c) as part of other accruals (*sonstige Rückstellungen*) for potential Tax liabilities, irrespective of whether the concrete Indemnifiable Tax is shown on the liabilities side of the Locked Box Accounts provided that it can be readily identified as relating to Tax;
  - (v) resulting from a reorganisation or other measure induced by the Purchasers or one of its Affiliates (including HSH Nordbank and the Subsidiaries after the Closing Date) after the Locked Box Date with retroactive effect to the Seller Period, for example, from a change in Tax accounting (*steuerliche Rechnungslegung*) or a change in any Tax return (*Steuererklärung*) of HSH Nordbank or of one of its Subsidiaries if such a

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measure is not mandatorily required by law or serves to implement an unappealable (*bestandskräftig*) administrative order (*Verwaltungsakt*) or an unappealable (*rechtskräftig*) court decision;

- (vi) which are connected with future Tax reductions or Tax advantages that HSH Nordbank or a Subsidiary, the Purchasers or one of their Affiliates may benefit from for periods after the Locked Box Date and which arise from circumstances prior to or on the Locked Box Date, e.g. from the lengthening of depreciation periods, the shift of income or expenses in other taxation periods (*Phasenverschiebung*) whereby only the net present value of the future Tax reductions or Tax advantages shall reduce an indemnity Tax Claim of the Purchasers; the net present value shall be computed taking into account the future reductions or advantages in Tax (based on the applicable Tax rates as known at the time of computation) for the five (5) years following the Locked Box Date discounted with an interest rate of 5.5% p.a.;
- (vii) with respect to which enforceable claims for payment, indemnity claims or claims for damages against third parties (except for Tax Authorities and the W&I Insurer(s)) exist; or
- (viii) if and to the extent that any of the Purchasers fails to comply with its obligations under Clause 13.4, unless any of the Purchasers proves that the relevant breach of obligations did not lead to or increase the relevant Indemnifiable Tax, or its statutory obligation to mitigate any damage pursuant to section 254 BGB.

**13.2.3** If and to the extent a Tax receivable is accounted for in the Locked Box Accounts, but is assessed or reimbursed after the Locked Box Date at an amount lower than the respective amount of the Tax receivable in the Locked Box Accounts, the Seller shall pay to the Purchasers an amount equal to such difference as payment under the Tax indemnity under this Clause 13.2 (without, for the avoidance of doubt, overruling the final and binding effect of the Locked Box Accounts between the Parties).

**13.2.4** For the purposes of this Agreement, the following shall apply to Taxes with respect to the Seller Period:

- (i) In the case of Taxes imposed on income, turnover, gross receipts, wages or salaries, capital expenditure, expenditure or similar Tax assessment basis, the Taxes relating to the Seller Period correspond to the amount that would have to be paid if the relevant assessment period (*Veranlagungszeitraum*) and the relevant financial year of HSH Nordbank or the relevant Subsidiary ended on the Locked Box Date.
- (ii) Without restricting the validity of the principles set out in Clause 13.2.4(i) in the case of transaction Taxes (*Verkehrssteuern*) that are not value-added taxes or real estate transfer Taxes arising in connection with the sale or the transfer of the Sold Shares, the transaction Taxes that are incurred in connection with transactions that occurred on or prior to the Locked Box Date relate to the Seller Period.

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- (iii) In the case of Taxes that are neither imposed based on income, turnover, gross receipts, wages or salaries, capital expenditure, expenditure or similar Tax assessment basis nor transaction Taxes, the amount applicable to the Seller Period is deemed to be the result of the Taxes for the complete assessment period multiplied by a fraction, the denominator of which is the number of days of the complete assessment period and the numerator of which is the number of days of the assessment period until and the Locked Box Date itself.

To the extent permissible under applicable law and the applicable accounting principles, all determinations necessary for the allocation pursuant to this Clause 13.2.4 must be made based on, and in accordance with, the principles for drawing up the Locked Box Accounts.

- 13.2.5 Tax Claims of the Purchasers will become due and payable ten (10) Business Days after the assertion of the Tax Claim by the Purchasers against the Seller, with which a copy of the relevant Tax assessment notice must be enclosed and which must describe in reasonable detail the basis of the Tax Claim, however, no earlier than two (2) Business Days before the relevant Indemnifiable Tax is due for payment to the Tax Authorities or, in case of Clause 13.2.3, would have been due for payment by the Tax Authorities. At the Seller's request, the Purchasers shall procure that HSH Nordbank or the relevant Subsidiary apply for a suspension of the enforcement of any Tax assessment; any reasonable external costs incurred in this context (including suspension interest) shall be borne by the Seller.
- 13.2.6 Any Tax Claims of the Purchasers shall become time-barred six (6) months after the Tax assessment notice for the relevant Indemnifiable Tax becomes final, binding and non-appealable (*formell und materiell bestandskräftig*). The application of section 203 BGB shall be excluded.

### 13.3 Tax Refunds

- 13.3.1 After: (a) final and binding tax assessment in accordance with sec. 173 para. 2 General Tax Code (*Abgabenordnung*) of all taxable periods until and including the Locked Box Date; and, unless waived by the Seller in its sole discretion, (b) final settlement of claims under the W&I Insurance with the W&I Insurer(s) (the "**Tax Refund Determination Point in Time**") the Purchasers shall pay to the Seller an amount equal to any Tax refunds or allowances ("**Tax Refunds**") that HSH Nordbank or a Subsidiary is granted for the Seller Period by way of payment, set-off or in any other way, plus any interest received and minus any Taxes that must be paid by the Purchasers and/or HSH Nordbank and/or a Subsidiary on these Tax Refunds (the remaining amount the "**Net Tax Refunds**"), provided and to the extent that these Net Tax Refunds in aggregate are in excess of all claims of the Purchasers under Clause 13.2 and Clause 12.3, for which the Purchasers have not received a payment from the W&I Insurer(s) until the Tax Refund Determination Point in Time). This clause does not apply to Tax Refunds that have been accounted for in the Locked Box Accounts. Further, this clause does not apply to the extent that Tax Refunds that are caused by timing differences lead to additional Taxes of HSH Nordbank or a Subsidiary in a taxable period other than for which the Tax Refund is granted, unless and to the extent the Purchasers have received a payment for such additional Taxes from the W&I Insurer(s).

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If and to the extent a Subsidiary in which HSH Nordbank holds a direct or indirect participation of less than 100% on the Closing Date is granted a Tax Refund, any obligation of the Purchasers to reimburse the Seller in accordance with this Clause 13.3 is limited to the portion of the Tax Refund of the relevant Subsidiary, which shall correspond to the percentage of HSH Nordbank's participation in the relevant Subsidiary on the Closing Date.

For the avoidance of doubt, each Purchaser shall be liable as partial debtor (*Teilschuldner*) only for Relevant Percentage of the Tax Refunds pursuant to this Clause 13.3.1.

- 13.3.2 Clause 13.2.4 shall apply to the Seller's claims under this Clause 13.3.
- 13.3.3 For every calendar year within six (6) months following the end of the respective calendar year, the Purchasers will notify the Seller in writing of any Tax Refunds and any payments from the W&I Insurer(s) in each case received in such respective calendar year of which a Purchaser is aware after having used its reasonable best efforts to receive the relevant information on Tax Refunds from HSH Nordbank and the Subsidiaries. Within six (6) months from the Tax Refund Determination Point in Time the Purchasers will notify the Seller in writing of the total amount of the Net Tax Refunds payable under Clause 13.3.1 as of such date including a reasonable detailed explanation of such determination.
- 13.3.4 Payments of the Purchasers to the Seller under this Clause 13.3 will become due and payable ten (10) Business Days after the Tax Refund Determination Point in Time.
- 13.3.5 Any Tax Claims of the Seller shall become time-barred six (6) months after the Tax Refund Determination Point in Time, however, not prior to six (6) months after the Purchasers notified the Seller in accordance with the last sentence of Clause 13.3.3 of the amount to be paid by the Purchasers to the Seller.

## 13.4 Indemnity Procedure

- 13.4.1 The Purchasers shall procure that HSH Nordbank and its Subsidiaries provide the Seller with all information and documents that the Seller reasonably requests in connection with its Tax affairs or in connection with any Tax Claims.
- 13.4.2 As from the date of this Agreement, the Seller shall use reasonable best efforts to procure that HSH Nordbank and its Material Subsidiaries prepare and file any Tax Returns (including material schedules and explanations) that must be filed by HSH Nordbank and its Material Subsidiaries prior to Closing in line with past practice or positions taken vis-à-vis the Tax Authorities in the past as well as principles that have been applied when determining the tax accruals as per the Locked Box Date, unless otherwise agreed to by the Purchasers or required under applicable law.
- 13.4.3 The Purchasers shall procure that HSH Nordbank and its Material Subsidiaries send the drafts of any Tax Returns (including material schedules and explanations) that must be filed by HSH Nordbank and its Material Subsidiaries for the period until (and including) the Locked Box Date (the "**Relevant Tax Returns**") and have not yet been filed on the Closing Date to the Seller for review and comments by no later than twenty (20) Business Days in the case of Tax Returns to be filed annually prior to the day on which the Relevant Tax Return must be filed with the Tax Authority. If the period until the day on which a Relevant Tax Return must be filed

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with the Tax Authority is less than twenty (20) Business Days on the Closing Date, the Purchasers will send the draft for such Relevant Tax Return, without undue delay (*unverzüglich*) to the Seller for review and comments. The Purchasers shall procure that HSH Nordbank and its Material Subsidiaries prepare and file any Relevant Tax Returns in line with past practice or positions taken vis-à-vis the Tax Authorities in the past as well as principles that have been applied when determining the tax accruals as per the Locked Box Date if such position has a direct impact on the Tax position of the Seller or its direct or indirect shareholders, unless otherwise agreed to by the Seller or required under applicable law, and consider in good faith any comments by the Seller on the drafts for the Relevant Tax Returns prior to filing them, if and to the extent that they comply with applicable law.

- 13.4.4** The Purchasers shall procure that HSH Nordbank or the relevant Material Subsidiary informs the Seller as soon as reasonably practicable and in writing of any notices in respect of a Tax audit or other audits conducted by Tax Authorities (collectively referred to as the "**Tax Audits**") as well as of any Tax assessment notice issued or any similar measures taken by Tax Authorities and of all written communication in Tax affairs (collectively referred to as the "**Tax Measures**") for periods ending on or before the Locked Box Date, a copy of the relevant notice, Tax assessment notice or other relevant written correspondence being enclosed with this notification.
- 13.4.5** The Seller and/or one or more representatives of the Seller who is/are bound to professional secrecy shall be entitled to passively participate, at the Seller's cost, in Tax Audits, including the right to attend and observe but without the right to speak at the final meetings, and/or in proceedings in relation to Tax Measures. The Purchasers shall procure that the Seller will be kept timely updated on the Tax Audits and/or Tax Measures and that the Seller and/or one or more of its representatives who is/are bound to professional secrecy will be given the opportunity to discuss with HSH Nordbank or the relevant Material Subsidiary all significant actions or measures of HSH Nordbank or the relevant Material Subsidiary in connection with the Tax Audits and/or the Tax Measures in advance of such action or such measure; the Purchasers shall, and shall procure that HSH Nordbank or the relevant Material Subsidiary does, (i) use their reasonable best efforts to defend the position taken in the past (in particular, but not limited to in the Tax Returns for the Seller Period) vis-à-vis any Tax Authority if such position has a direct impact on the Tax position of the Seller or its direct or indirect shareholders, unless and to the extent that such position taken does not comply with applicable law, and (ii) consider in good faith any lawful comments the Seller may have.
- 13.4.6** At the Seller's request, the Purchasers shall procure that HSH Nordbank or the relevant Material Subsidiary consider in good faith (i) any suggestion to file, withdraw or modify and (ii) any lawful comments the Seller may have when filing, withdrawing or modifying in each case legal remedies in respect of Tax assessment notices which have been amended as a result of a Tax Audit or in respect of Tax Measures and when conducting the corresponding proceedings. All reasonable external costs incurred as a consequence of any requests or comments made by the Seller shall be borne by the Seller.

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- 13.4.7 To the extent the Purchasers have informed the Seller in writing that: (a) the W&I Insurer(s) has/have claimed to control or be involved in any administrative or court proceedings within the meaning of this Clause 13.4 or (b) that the management board of HSH Nordbank, notwithstanding the reasonable best efforts of the Purchasers, does not co-operate in complying with the obligations under this Clause 13.4, the Seller's rights under this Clause 13.4 shall be suspended for the time and to the extent of the involvement of the W&I Insurer(s) or the non-cooperation of the management board of HSH Nordbank, as the case may be, and no action or omission of the Purchasers shall be construed or qualify as a breach of this Clause 13.4. For the avoidance of doubt, this paragraph 13.4.6 shall not limit in any way the right of the Seller to receive the information under Clauses 13.4.1, 13.4.4, 13.4.5 sentence 1 and the first half of sentence 2 in case of an involvement of the W&I Insurer(s).
- 13.4.8 The Purchasers shall be deemed to have sufficiently complied with the information obligations set out in this Clause 13 if one of the Purchasers has sufficiently complied with the obligation to provide the relevant information.
- 13.4.9 "**Material Subsidiary**" shall mean HSH Nordbank Securities S.A., HSH Care+Clean GmbH, HSH Facility Management GmbH, HSH Gastro+Event GmbH, HSH Move+More GmbH, HSH N Funding II Limited and HSH Private Equity GmbH and any other Subsidiary requested by the Seller from time to time.

## 14 Warranties by the Purchasers

Each Purchaser warrants to the Seller by way of an independent promise of warranty (*selbständiges Garantieverprechen*) pursuant to section 311 BGB, and exclusively with the remedies pursuant to this Clause 14, which form an integral part and define the scope of this promise of warranty, that the statements set forth in this Clause 14 (the "**Purchasers' Warranties**") are true and correct as at the date of this Agreement as well as at the Closing Date unless another date is expressly stated in the respective Purchasers' Warranty in which case such other date shall be relevant.

Each of the Purchasers' Warranties is given by each Purchaser individually (and not jointly) (*Teilschuldner*) and by each Purchaser only with respect to itself and not with respect to any other Purchaser.

### 14.1 Purchasers' Warranties

- 14.1.1 Each Purchaser validly exists and is duly incorporated in accordance with the applicable statutory law. It is vested with the necessary capacity under corporate law to be the owner of its assets and to conduct its business.
- 14.1.2 Each Purchaser has requisite power and authority to enter into and, subject to the Closing Conditions set forth in Clause 7.1, perform this Agreement and the transactions contemplated by this Agreement. Each Purchaser has obtained all material approvals required by such Purchaser (save for those set out in the Closing Conditions) to enter into and perform this Agreement and the transactions contemplated hereby.
- 14.1.3 The execution and performance of this Agreement will not result in a breach of the articles of association or rules of procedure of a Purchaser or legal provisions, decisions, decrees, court orders, orders by public authorities or any other

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mandatory rules by which a Purchaser is bound. There are no claims, investigations, proceedings or other measures pending at, or threatened by, a court, other public authority or an arbitral tribunal against a Purchaser which are able, or intended to, hinder, delay or amend the execution and performance of this Agreement.

- 14.1.4** Each Purchaser holds, or at least has access to sufficient immediately available funds or binding financing commitments to fulfil all payment obligations under or in connection with this Agreement as and when they become due.
- 14.1.5** The acquisition of the Sold Shares in HSH Nordbank is executed for the account of the Purchasers and not for the account, by order or for the benefit of a third party. Each Purchaser warrants that as of the date hereof it has not offered to, or agreed with, any third party to resell, pledge, encumber or otherwise dispose of the Sold Shares and the Business.

### 14.2 Legal Consequences, Partial Debtor

- 14.2.1** In a case of a breach of a Purchasers' Warranty or in respect of any other claim under this Agreement against any Purchaser,
- (i) the relevant claims of the Seller shall become time-barred three (3) years after the Closing Date;
  - (ii) any Purchaser shall be liable as partial debtor (*Teilschuldner*) only for its Individual Purchase Price Portion and any joint and several liability (*Gesamtschuld*) of the Purchasers shall be excluded; and
  - (iii) the maximum liability of each Purchaser under this Agreement shall be capped at an amount equal to the respective Individual Purchase Price Portion.
- 14.2.2** Each Purchaser shall be liable (i) only for such breaches or non-fulfilment of any Purchasers' Warranty given by or any covenant or other obligation undertaken by such Purchaser under this Agreement individually and (ii) only for such breaches or non-fulfilment committed by the Purchaser itself and any liability for breach or non-fulfilment of any Purchasers' Warranty given by or of any covenant or obligation undertaken or committed by any other Purchaser is excluded.
- 14.2.3** If any Purchaser agrees with the Seller on an acknowledgement (*Anerkennung*), a waiver agreement (*Erläss*) or settlement (*Vergleich*) with respect to any claim of the Seller under or in connection with this Agreement, such acknowledgement, waiver agreement or settlement shall only be binding upon the respective Purchaser agreeing thereto in writing and not upon any other Purchaser.
- 14.2.4** This Clause 14.2 shall apply in particular to any liability of a Purchaser for (i) any purchase price adjustment, (ii) any breach of a Purchasers' Warranty, (iii) any breaches and/or damages under Clauses 9.5.2 and/or 15.4.1 and (iv) any Tax refunds.

## 15 Period after Closing

### 15.1 Information and Documents

Subject to the following sentence, for a period of seven (7) years after the Closing Date, the Seller or any legal successor and their respective representatives shall, at the Seller's expense, have reasonable access to the books and records of the Group with respect to the period prior to the Closing Date. To the extent that the relevant books and records of the Group concern liabilities secured by guarantor liability (*Gewährträgerhaftung*) or comparable circumstances, the Purchasers shall grant the aforementioned access to the Seller, SGVSH and the States for a period of three (3) years after the expiration of the relevant guarantor liability. The Purchasers shall afford such access upon receipt of reasonable advance notice and during normal business hours. If the Purchasers or any Group Company desire to dispose of or destroy any of such books and records prior to the expiration of the aforementioned periods, the Purchasers shall prior to such disposition give the Seller reasonable opportunity to segregate and keep the books and records at its own discretion and at its own costs.

### 15.2 Claims after Closing

If, after Closing,

15.2.1 the Seller or any of its directors or representatives (including any individuals who are nominated as representatives of the Seller or the Seller's Affiliates on the supervisory board of HSH Nordbank) (collectively, referred to as "**Beneficiaries**") are held liable for any liability or obligation of HSH Nordbank or any liability or obligation arising out of, or in connection with, the conduct of the business of HSH Nordbank prior to Closing, or

15.2.2 HSH Nordbank asserts any claims against any Beneficiary arising out of, or in connection with, the conduct of the business of HSH Nordbank prior to Closing,

the Purchasers shall indemnify the Beneficiaries and hold them harmless in respect of the relevant liability or obligation, except the relevant claim, liability or obligation has been caused as a result of gross negligence or wilful misconduct by the relevant Beneficiary. This shall not apply in respect of the Seller to the extent that the Purchasers have the right to be indemnified from such liability or obligation by the Seller under the terms of this Agreement or have any other right against the Seller under the terms of this Agreement.

### 15.3 Use of Names, Change of the Name etc.

15.3.1 The Purchasers shall procure that

- (i) as soon as practicable but no later than three (3) months after the Closing Date, the corporate names of the Group Companies are changed insofar as this is necessary in order to eliminate references to "HSH Nordbank" or parts thereof, and
- (ii) the Group Companies cease to use the designation "HSH Nordbank" or parts thereof to acquire new business as soon as practicable after the Closing Date (i.e. in particular, cease to use the designation on company letterheads, other correspondence, in advertising, on websites or internal and external documents or for product names) but no later than three (3) months after the Closing Date so that, in any case, by six (6) months after

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the Closing Date, the designation will no longer be used. Details with respect to the use of trademarks and domains transferred to the Seller under the trademark and domain transfer and licence-back agreement as attached in Schedule 15.3.1(ii) are set forth therein.

- 15.3.2 The Purchasers shall inform the Seller about the completion of the change of names (*Umfirmierung*) and the definite cessation of the use of the designation "HSH Nordbank". Upon request of the Seller, the Purchasers shall at any time inform the Seller of the current state of the change of names.
- 15.3.3 If the change of names pursuant to this Clause 15.3 is not, or not completely, implemented in due time, the Purchasers shall be responsible for any disadvantages and shall indemnify, on first demand, the Seller, FHH as well as LSH against any disadvantages experienced by, or damage or liabilities incurred by the Seller, FHH or LSH as a result of such delayed or incomplete implementation.

### 15.4 Own-Account Acquisition, No-Disposal Undertaking

- 15.4.1 Each Purchaser warrants that as of the date hereof it has not offered to, or agreed with, any third party to dispose (as defined below) of the Sold Shares or the Business. Each Purchaser further undertakes not to dispose (as defined below) of all or substantially all of (A) the Sold Shares or (B) 30% or more of the Business to a third party purchaser (or its Affiliates) (in one or several transactions), during a period of twenty-four (24) months starting from the Closing Date (the "**No-Disposal Period**"), except for transactions: (a) with Purchasers' Affiliates; or (b) involving a merger or analogous transaction with a financial institution regulated by the European Central Bank with an investment grade rating which results in each Purchaser exchanging its holding of the Sold Shares for an interest in the enlarged group following such transaction provided that no Purchaser receives cash consideration for any of its Sold Shares pursuant to such transaction; or (c) prior to Closing, any offer to transfer or the transfer of Sold Shares as a result of a deferred closing pursuant to Clause 10.3.2; or (d) in connection with any requirements or requests made by the European Central Bank, the European Commission, BaFin, CSSF or any other regulatory body of authority or requirements of the BdB and the DSGVO, aimed at fulfilling full membership requirements, including where necessary to avoid the requirement for any Purchaser or any Affiliate of a Purchaser to issue a guarantee as provided for in Sec. 5 para 10 of the bylaws of the ESF. The Parties agree that for purposes of this Clause 15.4, "dispose" shall include (i) any measures pursuant to the German Reorganisation Act (*UmwG*) (excluding changes in legal form (*Formwechsel*)); or (ii) any measures leading to results economically equivalent to those set forth in (B) above, in one or several transactions, to the extent they concern more than 30% of the Business; (iii) any listing of shares in a Purchaser or any legal successor of a Purchaser or in any of a Purchaser's Affiliates which directly or indirectly own the entire (or a material part of the) Business; or (iv) any change of control in a Purchaser (excluding BAWAG).
- 15.4.2 In the event of a breach of the obligations by a Purchaser under Clause 15.4.1, the relevant Purchaser shall pay to the Seller (i) the difference between the total purchase price or consideration generated by means of the disposal and that Purchaser's Individual Purchase Price Portion payable under this Agreement provided that such amount will be reduced by 1/24 for each full month that, as of the date of such breach, has expired since the Closing Date; or (ii) liquidated

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damages (*Vertragsstrafe*) in an amount equal to EUR 500,000,000 (in words: five hundred million euros) multiplied by that Purchaser's Relevant Percentage, whichever is higher. The right of the Seller to evidence that the actual damages suffered by the Seller exceed such amount shall remain unaffected.

- 15.4.3** In the event a Purchaser wishes to initiate a disposal as set out above, it shall give notice in writing to the Seller as soon as reasonably practicable. The notice shall contain all information, including copies of the relevant documentation, necessary to enable the Seller to review the proposed disposal and to calculate the amount payable in accordance with Clause 15.4.2 above.

### 15.5 Guarantor Liability

The Seller and the Purchasers are in agreement that in connection with this transaction, the Parties will use their respective best reasonable commercial efforts to implement a satisfactory solution with regard to those obligations and liabilities of HSH Nordbank that are subject to the guarantor liability (*Gewährträgerhaftung*) of the States and SGVSH pursuant to section 2 of the HSH State Treaty 2003 (the "**GTH Liabilities**"). Against this background, the Parties have begun to jointly develop a concept equivalent to a quasicontractual trust arrangement structure ("**CTA**") attached as Schedule 15.5, which serves to reserve certain assets in an insolvency remote way for fulfilment of the GTH Liabilities. The Parties shall cooperate in good faith in analysing and structuring such a concept which shall, to the extent possible, be implemented simultaneously with Closing. If and to the extent that each of the Seller and the Purchasers (the Purchasers acting by joint declaration) determine (each acting reasonably and in good faith) that the CTA cannot be implemented without having an adverse negative effect on HSH Nordbank and/or the Purchasers (which adverse negative effect would include the provision or commitment of additional capital), the Parties shall not be obliged to implement the CTA, however shall each use their respective best reasonable commercial efforts to develop an alternative solution to the extent practicable. The obligations on the Parties under this Clause 15.5 to find a solution to the GTH Liabilities shall continue until the Closing Date, provided that if the Parties have identified a solution to the GTH Liabilities in accordance with this clause prior to such date then the Parties shall continue to co-operate in order to implement such solution within a reasonable time period thereafter.

### 15.6 Withdrawal from the Deposit Protection Scheme and Membership in the ESF

- 15.6.1** As of the date of this Agreement, HSH Nordbank is a member of the guarantee fund of the state banks and central savings banks (*Sicherungsreserve der Landesbanken und Girozentralen*) and, consequently, a member of the Deposit Protection Scheme. The Purchasers have knowledge and are aware that pursuant to the current version of the framework bylaws of the protection scheme of the German Savings Banks Finance Group of 21 May 2015, amended by a resolution of the general meeting held in September 2015, and the bylaws of the savings banks and giro association HSH Nordbank would withdraw from the Deposit Protection Scheme upon the transfer of the Shares to the Purchasers at the latest two (2) years after the Closing Date.

- 15.6.2** The Seller undertakes to use its commercially reasonable best efforts (without being required to use financial means) to support the intention that the DSGV unconditionally confirms in writing HSH Nordbank's continued, unrestricted and

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unconditioned membership in the Deposit Protection Scheme during the Interim Period.

- 15.6.3** The Seller undertakes to use its commercially reasonable best efforts to support the Purchasers' intention to obtain the written confirmation of the Association of German Banks (*Bundesverband deutscher Banken*) regarding the availability of an ordinary membership in the ESF at the Association of German Banks (*Bundesverband deutscher Banken*) without any restrictions or conditions as to the membership and the funds protected, except for the general restrictions applicable pursuant to the bylaws of the ESF, as well as without the legal requirement for any Purchaser or any Affiliate of a Purchaser to issue a guarantee as provided for in Sec. 5 para 10 of the bylaws of the ESF. For the avoidance of doubt, the Seller's obligation shall not include any financial expenditures or similar obligations beyond ancillary procedural (for example filing fees), internal or advisory costs.

## 16 Public Announcements and Confidentiality

### 16.1 Public Announcements

The Parties and their Affiliates (including the Group Companies) shall not make, issue, or let a third party on their behalf make or issue, any press or other public announcements in connection with the existence or subject matter of this Agreement without the prior written approval of the Seller and the Purchasers. This shall not be applicable to information requiring a parliament's consent (*Parlamentsvorbehalt*) or announcements required by law, any regulatory body or the rules of any recognised stock exchange on which the shares of any Party or any of its Affiliates (including the Group Companies) are listed. The Purchasers shall consult with the Seller as soon as reasonably practicable before complying with such an obligation to make an announcement applicable to them or any of their Affiliates, and the Seller shall consult with the Purchasers as soon as reasonably practicable before complying with an obligation to make an announcement applicable to itself or one of its Affiliates.

### 16.2 Confidentiality

**16.2.1** The confidentiality agreement between the Seller and:

- (i) Cerberus European Investments LLC dated 17 February 2017,
- (ii) JC Flowers & Co LLC dated 3 March 2017,
- (iii) the BAWAG Purchaser dated 17/20 February 2017,
- (iv) GoldenTree Asset Management UK LLP dated 28 December 2017,
- (v) Centaurus Capital LP dated 22 December 2017,

shall each cease to have effect in the relation between the Seller and the respective Purchaser upon the date of this Agreement and shall be replaced by this Clause 16.2.

- 16.2.2** Each Party shall treat as strictly confidential and not disclose or use for purposes not related to this Agreement any information received or obtained as a result of this Agreement or in connection with the entering into this Agreement which relates to the existence of this Agreement, its provisions, the negotiations relating to this Agreement, or any agreement to be entered into pursuant to this Agreement or, in

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the case of the Seller, all information received or obtained in its capacity as a shareholder of HSH Nordbank.

16.2.3 This Agreement shall not prohibit the disclosure or use of any information if and to the extent that:

- (i) the disclosure or use is required by law, in particular as required under the transparency act of Hamburg (*Hamburgisches Transparenzgesetz, HmbTG*) and the information access act of Schleswig-Holstein (*Informationszugangsgesetz für das Land Schleswig-Holstein, IZG-SH*), any regulatory body or any recognised stock exchange on which the shares of any Party, or any of its Affiliates, are listed,
- (ii) the disclosure or use is required for the purpose of any judicial proceedings or arbitration proceedings arising out of the conclusion of this Agreement or any other agreement entered into under or pursuant to this Agreement or the disclosure is made to a Tax Authority in connection with the Tax affairs of the disclosing Party,
- (iii) the disclosure is made to professional advisers or actual or potential financiers or investors of any Party on a need to know basis and under the condition that such professional advisers or actual or potential financiers or investors, to the extent they are not bound to professional secrecy, undertake (also for the benefit of the other Parties) to comply with the confidentiality obligations set out in this Clause 16.2 in respect of such information as if they were a party to this Agreement,
- (iv) the disclosure is made by the Seller prior to the Closing or by the Purchasers after the Closing to any Group Company or any statutory representative (*gesetzlicher Vertreter*) of a Group Company, provided that the Seller or the Purchasers, as the case may be, procures compliance of the relevant Group Company or statutory representative with the confidentiality obligations set out in this Clause 16.2 in respect of such information as if such Group Company or statutory representative were a party to this Agreement,
- (v) the information is or becomes publicly available (other than by breach of this Agreement or any other confidentiality agreement between all or some of the Parties),
- (vi) the Seller, in the event of disclosure or use by the Purchasers, has given prior written approval to the disclosure or use, and the Purchasers in the event of disclosure or use by the Seller, have given prior written approval to the disclosure or use, or
- (vii) the information is independently developed after Closing.

## 17 No Liability of the Seller's Representatives

The Purchasers acknowledge and agree that, except for cases of wilful misconduct, none of any of the directors, members of corporate bodies, employees, advisers or other representatives of the Seller and its Affiliates (collectively the "**Seller's Representatives**") shall have any liability or obligation towards the Purchasers arising out of, or in connection with, the activities of any of the foregoing as adviser to, or representative of, the Seller in

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connection with the preparation, negotiation and implementation of this Agreement and the transactions contemplated thereby (including but not limited to any information or advice given or supplied by the Seller's Representatives) unless expressly agreed otherwise in writing between any of the Seller's Representatives and the Purchasers.

**18 Miscellaneous Provisions**

**18.1 Account Details**

For all payments to be made under this Agreement, the following shall apply:

- (i) payments to the Seller shall be made in euros to the following bank account or to any other account held in the Federal Republic of Germany which may be notified by the Seller to the Purchasers not later than five (5) Business Days prior to the respective payment:

Account owner: [REDACTED]  
SORT/ABA/SWIFT (BIC): [REDACTED]  
IBAN: [REDACTED]

- (ii) payments to the JCF Purchaser shall be made in euros to the following bank account or to any other account which may be notified by the JCF Purchaser to the Seller not later than five (5) Business Days prior to the respective payment:

Account owner: [REDACTED]  
SORT/ABA/SWIFT (BIC): [REDACTED]  
IBAN: [REDACTED]

- (iii) payments to the Cerberus Purchaser 1 shall be made in euros to the following bank account or to any other account which may be notified by the Cerberus Purchaser 1 to the Seller not later than five (5) Business Days prior to the respective payment:

Account owner: [REDACTED]  
SORT/ABA/SWIFT (BIC): [REDACTED]  
IBAN: [REDACTED]

- (iv) payments to the Cerberus Purchaser 2 shall be made in euros to the following bank account or to any other account which may be notified by the Cerberus Purchaser 2 to the Seller not later than five (5) Business Days prior to the respective payment:

Account owner: [REDACTED]  
SORT/ABA/SWIFT (BIC): [REDACTED]  
IBAN: [REDACTED]

- (v) payments to the Cerberus Purchaser 3 shall be made in euros to the following bank account or to any other account which may be notified by the Cerberus Purchaser 3 to the Seller not later than five (5) Business Days prior to the respective payment:

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Account owner: [REDACTED]

SORT/ABA/SWIFT (BIC): [REDACTED]

IBAN: [REDACTED]

- (vi) payments to the BAWAG Purchaser shall be made in euros to the following bank account or to any other account which may be notified by the BAWAG Purchaser to the Seller not later than five (5) Business Days prior to the respective payment:

Account owner: [REDACTED]

SORT/ABA/SWIFT (BIC): [REDACTED]

IBAN: [REDACTED]

- (vii) payments to the Goldentree Purchaser shall be made in euros to the following bank account or to any other account which may be notified by the Goldentree Purchaser to the Seller not later than five (5) Business Days prior to the respective payment:

Account owner: [REDACTED]

SORT/ABA/SWIFT (BIC): [REDACTED]

IBAN: [REDACTED]

- (viii) payments to the Centaurus Purchaser shall be made in euros to a bank account which shall be notified by the Centaurus Purchaser to the Seller not later than five (5) Business Days prior to the respective payment.

**18.2 Costs**

Each Party shall bear all costs incurred by it in connection with the preparation, negotiation and execution of this Agreement by itself. Unless explicitly set forth otherwise in this Agreement, all notarial fees and all registration, stamp and transfer taxes and duties (including any real estate transfer tax) and other fees (including any fees of merger control authorities) that are payable as a result of the transactions contemplated by this Agreement shall be borne by the Purchasers.

**18.3 Notices to the Parties**

18.3.1 To the extent that any communication shall in accordance with this Agreement be made by way of a "Notice" this shall mean that, in order to be valid, they have to be submitted to the recipient:

- (i) in German or English;
- (ii) in written form by hand, registered post or an internationally renowned courier, or by email; and
- (iii) to the following persons and addresses:
  - (a) a Notice to the Seller shall be sent to the following address, or such other person or address as the Seller may notify to the Purchasers by way of a Notice from time to time:

To: [REDACTED]

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Attention: [REDACTED]  
Address: [REDACTED]  
Email: [REDACTED]  
Telephone: [REDACTED]

with a courtesy copy to:

To: [REDACTED]  
Attention: [REDACTED]  
Address: [REDACTED]  
Email: [REDACTED]  
Telephone: [REDACTED]

- (b) a Notice to the JCF Purchaser shall be sent to the following address, or such other person or address as the JCF Purchaser may notify to the Seller by way of a Notice from time to time:

To: [REDACTED]  
Attention: [REDACTED]  
Address: [REDACTED]  
Email: [REDACTED]  
Telephone: [REDACTED]

with a courtesy copy to:

To: [REDACTED]  
Attention: [REDACTED]  
Address: [REDACTED]  
Email: [REDACTED]  
Telephone: [REDACTED]

- (c) a Notice to the Cerberus Purchaser 1 shall be sent to the following address, or such other person or address as the Cerberus Purchaser 1 may notify to the Seller by way of a Notice from time to time:

To: [REDACTED]  
Attention: [REDACTED]  
Address: [REDACTED]  
Email: [REDACTED]  
Telephone: [REDACTED]

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with a courtesy copy to:

To: [REDACTED]  
Attention: [REDACTED]  
Address: [REDACTED]  
Email: [REDACTED]  
Telephone: [REDACTED]

- (d) a Notice to the Cerberus Purchaser 2 shall be sent to the following address, or such other person or address as the Cerberus Purchaser 2 may notify to the Seller by way of a Notice from time to time:

To: [REDACTED]  
Attention: [REDACTED]  
Address: [REDACTED]  
Email: [REDACTED]  
Telephone: [REDACTED]

with a courtesy copy to:

To: [REDACTED]  
Attention: [REDACTED]  
Address: [REDACTED]  
Email: [REDACTED]  
Telephone: [REDACTED]

- (e) a Notice to the Cerberus Purchaser 3 shall be sent to the following address, or such other person or address as the Cerberus Purchaser 3 may notify to the Seller by way of a Notice from time to time:

To: [REDACTED]  
Attention: [REDACTED]  
Address: [REDACTED]  
Email: [REDACTED]  
Telephone: [REDACTED]

with a courtesy copy to:

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To: [REDACTED]  
Attention: [REDACTED]  
Address: [REDACTED]  
Email: [REDACTED]  
Telephone: [REDACTED]

- (f) a Notice to the BAWAG Purchaser shall be sent to the following address, or such other person or address as the BAWAG Purchaser may notify to the Seller by way of a Notice from time to time:

To: [REDACTED]  
Attention: [REDACTED]  
Address: [REDACTED]  
Email: [REDACTED]  
Telephone: [REDACTED]

with a courtesy copy to:

To: [REDACTED]  
Attention: [REDACTED]  
Address: [REDACTED]  
Email: [REDACTED]  
Telephone: [REDACTED]

- (g) a Notice to the Goldentree Purchaser shall be sent to the following address, or such other person or address as the Goldentree Purchaser may notify to the Seller by way of a Notice from time to time:

To: [REDACTED]  
Attention: [REDACTED]  
Address: [REDACTED]  
Email: [REDACTED]  
Telephone: [REDACTED]

with a courtesy copy to:

To: [REDACTED]  
Attention: [REDACTED]

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Address: [REDACTED]  
Email: [REDACTED]  
Telephone: [REDACTED]

- (h) a Notice to the Centaurus Purchaser shall be sent to the following address, or such other person or address as the Centaurus Purchaser may notify to the Seller by way of a Notice from time to time:

To: [REDACTED]  
Attention: [REDACTED]  
Address: [REDACTED]  
Email: [REDACTED]  
Telephone: [REDACTED]

and

To: [REDACTED]  
Attention: [REDACTED]  
Address: [REDACTED]  
Email: [REDACTED]  
Telephone: [REDACTED]

with a courtesy copy to:

To: [REDACTED]  
Attention: [REDACTED]  
Address: [REDACTED]  
Email: [REDACTED]  
Telephone: [REDACTED]

18.3.2 A Notice shall be effective upon receipt (*Zugang*) which shall be deemed to have occurred

- (i) at delivery, if delivered by hand, registered post or courier; and/or
- (ii) at transmission, if delivered by email, provided that the person sending the email shall not have received an out-of-office reply and shall have received a transmission receipt confirming a successful transmission thereof.

#### 18.4 Disputes

18.4.1 Any contractual and non-contractual dispute arising from or in connection with this Agreement and its consummation, including disputes about its validity, shall be finally settled by three (3) arbitrators in accordance with the arbitration rules of the German Institution of Arbitration (*Deutsche Institution für Schiedsgerichtsbarkeit e.V.*) without recourse to the courts of law. The venue of the arbitration shall be Hamburg, Germany. The language of the arbitral proceedings shall be English with the presentation of evidence in the German language being permitted.

18.4.2 In the event mandatory applicable law requires any matter arising from or in connection with this Agreement and its consummation, including disputes about its validity, to be decided upon by a court of law, the competent courts in and for Hamburg, Germany, shall have the exclusive jurisdiction thereupon.

#### 18.5 Form of Amendments

Any amendment or supplement to, or the termination of, this Agreement, including this provision, shall be valid only if made in writing (*Schriftform*) (section 126 BGB), except where a stricter form (e.g. notarisation) is required under applicable law or this Agreement.

#### 18.6 Disposal of Claims under this Agreement

The Purchasers shall not dispose of (*verfügen*) any Claims arising under, or in connection with, this Agreement, in whole or in part, by way of assignment, encumbrance or otherwise (including any actions pursuant to UmwG) without the prior consent of the Seller to such disposal, unless such disposal only involves Purchasers' Affiliates.

#### 18.7 Invalid Provisions

Should any provision of this Agreement be or be held to be wholly or partly invalid, ineffective or unenforceable, this shall not affect the validity, effectiveness or enforceability of the remaining provisions of this Agreement. Any such invalid, ineffective or unenforceable provision shall, to the extent permitted by law, be deemed replaced by such valid, effective and enforceable provision as comes closest to the economic intent and purpose of such invalid, ineffective or unenforceable provision. The aforesaid shall apply *mutatis mutandis* to any unintended omission in this Agreement.

#### 18.8 Entire Agreement

This Agreement constitutes the entire agreement among and between the Parties with respect to the subject matter hereof and shall replace any negotiations and understandings, oral or written, heretofore made between the Parties or between individual Parties with respect to the subject matter hereof. Side agreements to this Agreement do not exist.

#### 18.9 Governing Law

18.9.1 This Agreement and any contractual rights and obligations arising out of or in connection with this Agreement and its consummation, including disputes about its validity, shall be governed by and construed in accordance with German law, excluding the provisions of German private international law and the United Nations Convention on Contracts for the International Sale of Goods (CISG).

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- 18.9.2** Any non-contractual rights and obligations in connection with this Agreement and its consummation shall also be governed by and construed in accordance with German law.

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### List of Schedules

Schedule	Content
Schedule (B)	Subsidiaries
Schedule 1.1	Definitions
Schedule 2.1	Excerpt Agreement on Principles
Schedule 2.2	Share Transfer Agreement
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# **Schedule 1.1**

Definitions

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### Schedule 1.1: Definitions

"**3-month EURIBOR**" shall mean, for the relevant day, the interest rate p.a. published by the European Money Markets Institute at which, on the interbank market, a leading bank offers time deposits in euros with a maturity of three (3) months to another leading bank within the euro zone; if such interest rate falls below 0 (zero), however, the 3-month EURIBOR shall be 0 (zero). If no interest rate is published by the European Money Markets Institute for the relevant day, the interest rate last published before the relevant day shall apply. The 3-month EURIBOR shall be calculated seven (7) Business Days before the due date of the relevant payment at the interest rate published by the European Money Markets Institute for the respective preceding Business Day, and such published interest rate shall be used when calculating the interest rate for all the days remaining until the due date.

"**Affiliates**" means affiliated companies (*verbundene Unternehmen*) in the meaning of sections 15 et seq. AktG, provided that, for the purpose of this Agreement, the Group Companies shall neither be deemed to be Seller's Affiliates nor Purchasers' Affiliates except as otherwise expressly provided. Furthermore, for the purpose of this Agreement, those local authorities and institutions under public law (*öffentlich-rechtliche Gebietskörperschaften und Anstalten*) that are (analogously) affiliated to HSH Nordbank by participating in, or having controlling influence on, it within the meaning of sections 15 et seq. AktG shall also be deemed to be Affiliates.

"**Agreement**" means this share purchase agreement.

"**Agreement on Principles**" has the meaning set out in Clause 2.1

"**Altstadt GmbH**" means GmbH Altstadt Grundstücksgesellschaft, HRB 45803 Local Court of Mainz.

"**Annual Accounts**" has the meaning set out in Clause 11.5.1(ii).

"**BaFin**" has the meaning set out in Clause 7.1.10.

"**Banking Act 1993**" has the meaning set out in Clause 7.1.8.

"**Basic Purchase Price**" has the meaning set out in Clause 3.1.1(i).

"**BAWAG Percentage**" means [REDACTED]

"**BAWAG Purchase Price Portion**" has the meaning set out in Clause 3.2.3.

"**BAWAG Purchaser**" has the meaning set out in the parties' section on the first page of this Agreement.

"**BAWAG Sold Shares**" has the meaning set out in Clause 2.1.5.

"**Beneficiaries**" has the meaning set out in Clause 15.2.1.

"**Black Data Room**" has the meaning set out in Clause 12.4.4(iii).

"**Breach**" has the meaning set out in Clause 12.1(ii).

"**Breaching Party**" has the meaning set out in Clause 9.1.

"**Breaching Purchaser**" has the meaning set out in Clause 10.3.1.

"**Business**" has the meaning set out in Recital (C) of the Preamble to this Agreement.

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"**Business Day**" means a day on which banks are generally open for business in Frankfurt am Main, Germany.

"**Business Plan**" means the business plan in respect of the Group as set out in Schedule C.

"**Centaurus Percentage**" means [REDACTED]

"**Centaurus Purchase Price Portion**" has the meaning set out in Clause 3.2.7.

"**Centaurus Purchaser**" has the meaning set out in the parties' section on the first page of this Agreement.

"**Centaurus Sold Shares**" has the meaning set out in Clause 2.1.7.

"**Cerberus Percentage 1**" means [REDACTED]

"**Cerberus Percentage 2**" means [REDACTED]

"**Cerberus Percentage 3**" means [REDACTED].

"**Cerberus Purchase Price Portion 1**" has the meaning set out in Clause 3.2.2.

"**Cerberus Purchase Price Portion 2**" has the meaning set out in Clause 3.2.3.

"**Cerberus Purchase Price Portion 3**" has the meaning set out in Clause 3.2.4.

"**Cerberus Purchaser 1**" has the meaning set out in the parties' section on the first page of this Agreement.

"**Cerberus Purchaser 2**" has the meaning set out in the parties' section on the first page of this Agreement.

"**Cerberus Purchaser 3**" has the meaning set out in the parties' section on the first page of this Agreement.

"**Cerberus Sold Shares 1**" has the meaning set out in Clause 2.1.2.

"**Cerberus Sold Shares 2**" has the meaning set out in Clause 2.1.3.

"**Cerberus Sold Shares 3**" has the meaning set out in Clause 2.1.4.

"**Claim**" means either a Tax Claim or a Warranty Claim.

"**Closing**" means the consummation of the transactions agreed in this Agreement, in particular the consummation of the transfer of the Sold Shares.

"**Closing Actions**" has the meaning set out in Clause 10.2.

"**Closing Conditions**" has the meaning set out in Clause 7.1.

"**Closing Date**" means 23:59 of the last Business Day of the month in which Closing occurs.

"**CoC-Relevant Agreements**" has the meaning set out in Clause 8.6.

"**Controller**" means a person who, directly or indirectly, controls influence over HSH Nordbank within the meaning of sec. 16 et sequi of the German Stock Corporation Act.

"**CSSF**" has the meaning set out in Clause 7.1.8.

"**CTA**" has the meaning set out in Clause 15.5.

"**Data Room**" has the meaning set out in Clause 12.4.4(iii).

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"**Defaulting Purchaser**" has the meaning set out in Clause 10.3.2.

"**Deferred Closing Date**" has the meaning set out in Clause 10.3.1(i).

"**Deposit Protection Scheme**" has the meaning set out in Clause 7.1.9.

"**DSGV**" has the meaning set out in Clause 7.1.9.

"**Euro**", "**euro(s)**", "**EUR**" each means the lawful currency of such sovereigns which as members of the European Union belong to the monetary union pursuant to the "Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community" dated 13 December 2007 (OJ 2007/C 306/01) at such point in time as relevant pursuant to this Agreement.

"**Executive**" has the meaning set out in Clause 11.7.1.

"**Existing JCF Shares**" means the 15,394,149 shares in HSH Nordbank held by the JCF Companies as at the date of this Agreement;

"**FHH**" means the Free and Hanseatic City of Hamburg (*Freie und Hansestadt Hamburg*).

"**Formation of the Holding Structure**" has the meaning set out in Recital (D) of the Preamble.

"**Finfo**" means HSH Finanzfonds AöR, an institution under public law (*öffentlich-rechtliche Anstalt*) with legal capacity, incorporated under the laws of Germany and having its registered office at Besenbinderhof 37, 20097 Hamburg, Germany.

"**Fundamental Warranties**" has the meaning set out in Clause 10.2.4;

"**GDPR**" has the meaning set out in Clause 11.14.1.

"**Global Certificate**" has the meaning set out in Recital (A) of the Preamble.

"**Goldentree Percentage**" means [REDACTED].

"**Goldentree Purchase Price Portion**" has the meaning set out in Clause 3.2.6.

"**Goldentree Purchaser**" has the meaning set out in the parties' section on the first page of this Agreement.

"**Goldentree Sold Shares**" has the meaning set out in Clause 2.1.6.

"**Group**" has the meaning set out in Recital (B) of the Preamble to this Agreement.

"**Group Company**" or "**Group Companies**" has the meaning set out in Recital (B) of the Preamble to this Agreement.

"**GTH Liabilities**" has the meaning set out in Clause 15.5.

"**HGV**" means HGV Hamburger Gesellschaft für Vermögens- und Beteiligungsverwaltung mbH.

"**HSH Decision 2016**" has the meaning set out in Recital (D) of the Preamble.

"**HSH Nordbank**" has the meaning set out in Recital (A) of the Preamble.

"**hsh PM**" means hsh portfoliomanagement Anstalt öffentlichen Rechts.

"**HSH State Treaty 2003**" means the state treaty of 4 February 2003 between the Free and Hanseatic City of Hamburg and the German State of Schleswig-Holstein regarding the merger of Landesbank Schleswig-Holstein Girozentrale with Hamburgische Landesbank – Girozentrale –

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into a German stock corporation (*Aktiengesellschaft*), Hamburg Gazette for Laws and Ordinances 2003, p. 119 et seq.

"**Indemnifiable Taxes**" has the meaning set out in Clause 13.2.1.

"**Individual Purchase Price Portion**" has the meaning set out in Clause 3.2.7.

"**Interim Financial Information**" has the meaning set out in 11.5.1(iii).

"**Interim Period**" has the meaning set out in Clause 7.1.9.

"**JCF 1-4&6-7**" means HSH Alberta I L.P., HSH Alberta II L.P., HSH Alberta V L.P., HSH Luxembourg S.à r.l., HSH Delaware L.P. and HSH Coinvest (Alberta) L.P.

"**JCF 5-8-9**" means HSH Luxembourg Coinvest S.à r.l., HSH Investment Holdings FSO S.à r.l. and HSH Investment Holdings Coinvest-C S.à r.l..

"**JCF Companies**" has the meaning set out in Recital (E) of the Preamble.

"**JCF Percentage**" means [REDACTED].

"**JCF Purchase Price Portion**" has the meaning set out in Clause 3.2.1.

"**JCF Purchaser**" has the meaning set out in the parties' section on the first page of this Agreement.

"**JCF Sold Shares**" has the meaning set out in Clause 2.1.1.

"**Leakage**" means:

- (i) any dividend (in cash or in kind) or distribution declared, paid or made of its profits, assets or reserves by a Group Company to, or at the direction of, the Seller;
- (ii) any payments made (or future benefits granted) to (or money or assets moved to or assets transferred to, or liabilities assumed, indemnified, guaranteed, secured or incurred for the benefit of) the Seller or any of the Seller's Group, by any Group Company, other than such payments made in the ordinary course of business of the Group Companies on an arm's length terms and which are consistent with past practice of the Group Companies (to the extent relevant, by reference to the most recently audited accounts of HSH Nordbank);
- (iii) any payments made or agreed to be made by any Group Company to, or at the direction of or for the benefit of, the Seller or any of the Seller's Group, in respect of any share capital or other securities of any Group Company being issued, redeemed, purchased or repaid, or any other return of capital, other than such payments made in the ordinary course of business of the Group Companies on an arm's length terms and which are consistent with past practice of the Group Companies (to the extent relevant, by reference to the most recently audited accounts of HSH Nordbank);
- (iv) the waiver or discount by any Group Company of any amount or obligation owed to such Group Company by the Seller, or any of the Seller's Group or right of claim held by any Group Company against the Seller or any of the Seller's Group;

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- (v) the purchase by any Group Company from the Seller, or any of the Seller's Group, of any assets, other than such payments made in the ordinary course of business of the Group Companies on arm's length terms and which are consistent with past practice of the Group Companies (to the extent relevant, by reference to the most recently audited accounts of HSH Nordbank);
- (vi) the transfer by any Group Company to the Seller or any of the Seller's Group any assets to the extent that such transfer is at less than market value;
- (vii) any payment by a Group Company of, or obligation on a Group Company to pay or incur, any costs, professional fees, expenses or transaction bonuses to any person (including, but not limited to, any consulting, advisory, finder's fee, management fee or commission) which have been incurred by the Seller in connection with the transactions contemplated by this Agreement or as result of Closing or any disposal of the Shares, including, but not limited to, any costs, professional fees and expenses relating to any preparatory work carried out at the expense of the Seller, (for the avoidance of doubt, this shall not include any such payments incurred by a Group Company vis-à-vis its own advisers, consultants or similar individuals that have been instructed or engaged by the Group Company in connection with the transactions contemplated by this Agreement);
- (viii) the grant of any encumbrance over any assets of a Group Company in favour of the Seller or any of the Seller's Group; or
- (ix) any agreement or arrangement made or entered into by any Group Company to do or give effect to any matter referred to in (i) to (viii) above;

but excludes **Permitted Leakage**;

**"Liability Exclusion"** has the meaning set out in Clause 12.6.3.

**"Locked Box Date"** means 30 September 2017.

**"Locked Box Accounts"** means the published interim accounts of HSH Nordbank dated 30 September 2017.

**"Long Stop Date"** has the meaning set out in Clause 9.1

**"LSH"** means the German State of Schleswig-Holstein.

**"Material Deviations from the Business Plan"** shall include but not be limited to the obligation on the Purchasers to put in capital or guarantees or other commitments of more than EUR 300 million of equity to achieve a CET1 ratio of 15%.

**"Material Intellectual Property Rights"** has the meaning set out in Clause 11.12.1.

**"Material Subsidiary"** or **"Material Subsidiaries"** have the meaning set out in Clause 13.4.9.

**"Material Updated Disclosure"** has the meaning set out in Clause 12.4.4(vii)(b).

**"Merger Control Closing Condition"** has the meaning set out in Clause 7.1.3.

**"Net Tax Refunds"** has the meaning set out in Clause 13.3.1

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"**No-Disposal Period**" has the meaning set out in Clause 15.4.1.

"**Non-Defaulting Purchasers**" has the meaning set out in Clause 10.3.1(ii).

"**Notice**" has the meaning set out in Clause 18.3.1.

"**Notified Breach**" has the meaning set out in Clause 8.4.1(ii).

"**Notified Claims**" has the meaning set out in Clause 12.8.1.

"**NPE-Agreement**" has the meaning set out in Preamble (G).

"**NPE Transaction**" has the meaning set out in Preamble (G).

"**Other Breach**" has the meaning set out in Clause 12.1(ii).

"**Party**" or "**Parties**" has the meaning set out in the parties' section on the first page of this Agreement.

"**Permitted Leakage**" means:

- (i) any payments to Finfo in accordance with the existing contractual arrangements, in particular the Sunrise Guarantee, and which are consistent with past practice of the relevant Group Companies (to the extent relevant, by reference to the most recently audited accounts of HSH Nordbank);
- (ii) any performance or payments made or to be made by a Group Company to the Seller or any of the Seller's Group under or in connection with this Agreement, including the NPE-Transaction and the Sunrise Guarantee Settlement Agreement;
- (iii) any matter undertaken at the written request or with the written consent of the Purchasers;
- (iv) any payments made by a Group Company to the Seller or the Seller's Group pursuant to the agreements set out in Schedule 11.6 on a consistent basis with past practice of the Group Companies (to the extent relevant, by reference to the most recently audited accounts of HSH Nordbank);
- (v) any provision of services to, or other non-cash benefit received by the Seller or any of the Seller's Group in respect of time spent and services provided by employees of any Group Company in connection with the transactions contemplated by this Agreement;
- (vi) any performance or payments made or to be made by a Group Company to the Seller or any of the Seller's Group in compliance with mandatory laws or regulations, in particular any Taxes; and
- (vii) any payment or performance for which the relevant Group Company is fully and adequately compensated.

"**Pre-Emption Right**" has the meaning set out in Clause 4.2.

"**Pre-Emptive Waiver Letters**" has the meaning set out in Clause 4.3.

"**Proposed Breach Amount**" has the meaning set out in Clause 8.4.3.

"**Purchasers**" has the meaning set out in the parties' section on the first page of this Agreement.

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"**Purchasers' Warranties**" has the meaning set out in Clause 14.

"**Rectification Period**" has the meaning set out in Clause 8.4.2.

"**Relevant Percentage**" means, in the case of the Cerberus Purchaser 1 the Cerberus Percentage 1, in the case of the Cerberus Purchaser 2 the Cerberus Percentage 2, in the case of the Cerberus Purchaser 3 the Cerberus Percentage 3, in the case of JCF the JCF Purchaser Percentage, in the case of the Goldentree Purchaser the Goldentree Percentage, in the case of the BAWAG Purchaser the BAWAG Percentage and in the case of the Centaurus Purchaser the Centaurus Percentage.

"**Relevant Tax Returns**" has the meaning set out in Clause 13.4.3.

"**Seller**" has the meaning set out in the parties' section on the first page of this Agreement.

"**Seller's Group**" has the meaning set out in 8.2.1.

"**Seller's Knowledge**" has the meaning set out in Clause 12.2, for the avoidance of doubt, this shall not include deemed knowledge (*Wissenszurechnung*).

"**Seller Period**" has the meaning set out in Clause 13.2.1.

"**Seller's Representatives**" has the meaning set out in Clause 17.

"**Seller's Warranties**" has the meaning set out in Clause 11.

"**SGVSH**" means Sparkassen- und Giroverband für Schleswig-Holstein.

"**Shares**" has the meaning set out in Recital (A) of the Preamble to this Agreement.

"**Sold Shares**" has the meaning set out in Recital (F).

"**Sold Shares Purchase Price**" has the meaning set out in Clause 3.1.1

"**States**" has the meaning set out in Clause 4.1.

"**Subsidiaries**" has the meaning set out in Recital (B) of the Preamble to this Agreement.

"**Sunrise Guarantee**" means the German-law guarantee in the amount of EUR 10 billion, structured as a second loss guarantee, granted by a public law entity established by the German Länder, Finfo, covering a large portfolio of loans as set out in the "Agreement on providing a Guarantee Line" (*Vertrag über die Bereitstellung eines Garantierahmens*) dated 2 June 2009;

"**Sunrise Guarantee Adjustment Amount**" has the meaning set out in Clause 3.1.2.

"**Sunrise Guarantee Settlement Agreement**" has the meaning set out in Recital (H).

"**Sunrise Settlement Amount**" has the meaning set out in Clause 7.1.11.

"**Sunrise Settlement Condition**" has the meaning set out in Clause 7.1.11.

"**Tag-Along Notice**" has the meaning set out in Clause 4.4.1.

"**Tag-Along Right**" has the meaning set out in Clause 4.1.

"**Tax**" or "**Taxes**" has the meaning set out in Clause 13.1.1.

"**Tax Audits**" has the meaning set out in Clause 13.4.4.

"**Tax Authority**" or "**Tax Authorities**" has the meaning set out in Clause 13.1.2.

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"**Tax Claim**" means a claim made by a Party under Clause 13 or arising out of or in connection with a breach of any of the tax warranties in Clause 11.16.

"**Tax Measures**" has the meaning set out in Clause 13.4.4.

"**Tax Refunds**" has the meaning set out in Clause 13.3.1.

"**Tax Refund Determination Point in Time**" has the meaning set out in Clause 13.3.1.

"**Tax Return**" has the meaning set out in Clause 13.1.3.

"**Third Party Claim**" has the meaning set out in Clause 12.8.4.

"**Total Purchase Price**" has the meaning set out in Clause 3.1.1.

"**Unremedied Breach**" has the meaning set out in Clause 8.4.3.

"**Updated Disclosure**" has the meaning set out in Clause 12.4.4(vii).

"**Updated Disclosure Letter**" has the meaning set out in Clause 8.7.

"**VAT**" means value-added tax (*Umsatzsteuer*) and any other tax of a similar nature, whether imposed in Germany or elsewhere.

"**Virtual Data Room**" has the meaning set out in Clause 12.4.4(ii).

"**W&I Insurance**" has the meaning set out in Clause 12.6.1.

"**W&I Insurer(s)**" has the meaning set out in Clause 12.6.1.

"**Warranty Breach**" has the meaning set out in Clause 12.1(ii).

"**Warranty Claim**" means any claim made by the Purchasers arising out of or in connection with a Breach, howsoever arising.

"**writing**" or "**Writing**" includes communication made by mail, facsimile or email, except where a stricter form (e.g. notarisation) is required under applicable law or where otherwise provided in this Agreement.

# **Schedule 2.3.3**

Approval Resolutions Passed by the board of members  
of the JCF Purchaser

JCF IV Neptun Holdings S.à r.l.  
*Société à responsabilité limitée*  
Registered Office: 5, rue Guillaume Kroll,  
L-1882 Luxembourg  
*R.C.S. Luxembourg: in process of registration*  
(the "Company")

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Minutes of the meeting of the board of managers of the Company  
held on 21 February 2018 in Luxembourg

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**MANAGERS PRESENT OR REPRESENTED:**



being all the managers of the Company (each a "Manager" and together the "Board").

**IN ATTENDANCE:**

- 

The meeting is opened at 3.30 p.m. (CET), with  in the chair (the "Chairman") and  as secretary (the "Secretary").

The Chairman declares and the meeting agrees that:

- all the members of the Board can hear and understand each other on a continuous basis;
- all the members of the Board have been duly informed and have had full knowledge of the purpose of the meeting of the Board;
- the present meeting is duly constituted and can therefore validly deliberate on the following agenda:

**AGENDA**

1. Discussion and potential ratification of any action taken and/or any document entered into for and on behalf of the Company prior to and in connection with its incorporation;
2. Discussion and potential approval of any agreement and/or document to be entered into by the Company in connection with its incorporation including but not limited to any domiciliation agreement and/or employment agreement;
3. Approval of a new investment by the Company and consisting in the acquisition of shares in HSH Nordbank AG and associated entities holding portfolios of non-performing loans transferred from HSH Nordbank AG;

4. Discussion and potential approval of the Company's entering into any agreement and/or document necessary and/or useful for the purpose of the acquisition referred to under item 3 above;
5. Powers of attorneys; and
6. Miscellaneous.

#### 1° INCORPORATION OF THE COMPANY



#### 2° ACQUISITION OF SHARES IN HSH NORDBANK AG

The Board of Managers notes that certain affiliates and entities under common control with J.C. Flowers & Co. LLC (together, the "HSH Group"), including among others HSH Investment Holdings FSO S.à r.l., HSH Luxembourg Coinvest S.à r.l. and HSH Investment Holdings Coinvest-C S.à r.l., holds shares in HSH Nordbank AG, a stock company organised and existing under the laws of Germany, having its business seats at Kiel, Martensdamm 6, 24103 Kiel, Germany and Hamburg, Gerhart-Hauptmann-Platz 50, 20095 Hamburg, Germany and being registered at the commercial register of the local court (Amtsgericht) of Kiel under No. HRB 6127 KI. and the commercial register of the local court (Amtsgericht) of Hamburg under No. HRB 87366 ("HSH Nordbank").

As of the date hereof, HSH Group holds 15,394,149 shares, representing c. 5.10% of the share capital of HSH Nordbank. The remaining 94.90% of the share capital is held by German government entities.

explained to the Board that there is an EU mandated privatization process in which HSH Group together with the Sole Shareholder have been participating (the "Company's Group"). The Company's Group, as part of a bidding group, is the final bidder in the process to acquire the 94.90% stake held by the German government entities ("the Acquisition"). The Sole Shareholder has incorporated the Company for the purpose of being the JCF acquiring entity.

submitted to the Board an investment committee memorandum (the "Memo"). Each Manager has carefully considered the Memo and is familiar with its content.

highlighted different prices are being paid by each investor in the bidding group based on slightly different valuations. The purchase price to be paid by the Company would be approximately EUR based on a valuation of EUR 1 billion for the bank (subject to price adjustments at closing)(the "JCF Group"). The final envisaged ownership structure will be as follows:

- 42.5% Cerberus;
- 35% JCF Group;
- 15% Golden Tree
- 4.99% Centarus
- 2.51% BAWAK PSK.

also highlighted that the key advantage of the bidding group is to avoid there being a controlling shareholder and hence the need for the shareholder(s) to guarantee the bank's depositors. He confirmed that the bank should be in a good position to join the private sector deposit protection scheme.

The Board then discussed the following documents in relation to the Acquisition.

- Share Purchase Agreement ("the SPA");
- Shareholders Agreement to be entered into by the parties of the bidding group. This document mainly contains provision in relation to board appointment rights, exit rights and maintains independence between the shareholders ("the Shareholders Agreement");
- Interim Purchaser Agreement to govern the parties during the period between signing the SPA and closing which is expected in September or October 2018, once various regulatory CPs have been met ("the IPA");
- An equity commitment letter from JCF IV LP confirming its commitment to the Company in relation to the financing of the transaction ("the Equity Commitment Letter");
- Power of Attorney to be granted to each of representatives of the JCF Flowers & Co, representatives of Noerr LLP and to execute the SPA. Signing is expected in Hamburg on Wednesday 28<sup>th</sup> of February ("the PoA 1"). The Board noted that PoA1 has already been executed by on Tuesday 20<sup>th</sup> February in order to accelerate the notarisation and apostille process given the tight timing.

- Power of Attorney to be granted to Noerr LLP to take care of regulatory filings ("the "PoA 2").

all referred to together as the "Acquisition Documents".

The Board also noted that the sellers will provide Rep & Warranty insurance in the name of the bidding group. The members of the bidding group are currently considering extending the insurance at their own expense.

Further to a query from [REDACTED] confirmed that there would be a separate transaction to clear up the existing shareholding structure held by the HSH Group, thus allowing existing lenders to exit the bank. This however would not change the final stake held by the JCF Group; 35%.

Further to a query from [REDACTED], it was confirmed that no deposit is required upon signing of the SPA and funding of the Company is expected to be a mix of equity and CPECs for the payment of the acquisition price at closing. Final mechanics will be confirmed at a later board meeting.

The Company is therefore willing to take any action required and to enter into any agreements and/ or documents necessary and/or useful for the purpose of i) the Opening of the Bank Account, ii) the Incorporation and iii) the Acquisition.

The Bank Account Documents, the Incorporation Documents, the Acquisition Documents as they may be amended from time to time as well as any documents or agreements listed therein or in relation thereto are hereinafter collectively referred to as the "Documents" and the transactions contemplated under the Opening of the Bank Account, the Incorporation and the Acquisition, as well as any documents or agreements in relation thereto, are hereinafter collectively referred to as the "Transactions".

**WHEREAS** the latest version of the Documents, as the case may be, and all other necessary information in connection with the Transactions have been sent to or are known by the Board and each Manager has carefully considered such information and thoroughly reviewed such Documents and is familiar with their content.

**WHEREAS** each member of the Board further declares that the matters referred to in the present resolutions are in compliance with the articles of association of the Company (the "Articles") and the applicable legal provisions, and do not breach any restriction imposed by law, the Articles or any agreement to which the Company is a party or by which the Company is bound.

**WHEREAS** the Board hereby deems it to be in the corporate interest of the Company to approve the entering into and the performance of the Transactions and of the Documents.

**THEREFORE**, after due and careful consideration of the above and after due deliberation, the Board resolves as follows:

### FIRST RESOLUTION

The Board resolves to acknowledge, approve, authorize and, to the extent necessary and applicable, ratify the Transactions and the Documents.

### SECOND RESOLUTION

The Board resolves to ratify the signature of the PoA 1 by [REDACTED] on behalf of the Company, power of attorney which has already been executed in order to accelerate the notarisation and apostille process given the tight timing.

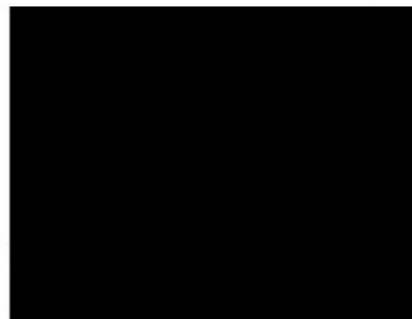
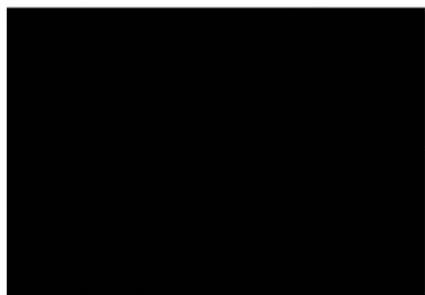
### THIRD RESOLUTION

The Board resolves to authorize and appoint each of the managers (the "Attorneys" and each an "Attorney") each acting individually and under his/her sole signature, with full power of substitution, to negotiate, amend, adapt, waive, finalize, sign, execute and perform for and on behalf of the Company, the Documents and any agreements, documents, certificates, instruments, proxies, notices, letters and registers as may be required in connection with the Transactions and the Documents in such form as the Attorney may approve and to do so all such acts and things as may be ancillary thereto and/or necessary and/or useful and/or desirable in the sole opinion of the Attorney in connection with the Transactions and the Documents. For the avoidance of doubt, the Board further ratifies the execution of any of the above documents by an Attorney prior to the date of these resolutions.

There being no further business, the meeting closed at 4.00 p.m. Luxembourg time.

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Signature page for the board minutes of JCF IV Neptun Holdings Sàrl on 21<sup>st</sup> February 2018.



# **Schedule 2.3.4**

Approval Resolutions Passed by the board of directors  
of the Cerberus Purchaser 1

## WRITTEN RESOLUTION OF THE MANAGEMENT BOARD OF

Promontoria Holding 221 B.V.

Date 25 February 2018

The undersigned, constituting the entire management board (the **Management Board**) of Promontoria Holding 221 B.V., a private limited liability company (*besloten vennootschap met beperkte aansprakelijkheid*) incorporated under the laws of the Netherlands and registered with the commercial register under number 69855854 (the **Company**);

### 1. THE TRANSACTION

- 1.1 It is intended that the Company enters into a share purchase agreement (the **SPA**) with respect to the sale and purchase of shares in the capital of HSH Nordbank AG by the Company and other individuals as set out in the SPA (together, the **Purchasers**) from HSH Beteiligungs Management GmbH (the **Seller**) (the **Transaction**).
- 1.2 In connection therewith it is envisaged that the Company enters into the documents listed in Schedule 1 attached hereto as well as any further deeds (including security deeds), instruments, agreements, notices, acknowledgements, letter agreements, memoranda, statements, utilisation requests, selection notices, powers of attorney, certificates and other documents as may be ancillary, necessary or useful in connection with the documents listed above and in Schedule 1 hereto and/or the transactions envisaged thereby.
- 1.3 The documents referred to under 1.1 and 1.2 above are hereinafter collectively referred to as the **Documents**.

### 2. DECLARATIONS

- 2.1 Each of the undersigned declares not to have a conflict of interest (as described below) in respect of the transactions contemplated by the Documents. In addition, the Management Board, after due consideration, declares that it has no indications for the existence of a conflict of interest between any of the undersigned and the Company in respect of the transactions contemplated by the Documents. In this resolution, **conflict of interest** (*tegenstrijdig belang*) means a situation in which the relevant person has a direct or indirect personal interest that conflicts with the interest of the Company and the business connected with it.
- 2.2 No works council (*ondernemingsraad*) having jurisdiction over the Company has been installed and no action has been taken for the installation of such a works council.
- 2.3 At the date hereof, the Company has not filed a request for its bankruptcy (*faillissement*) or for a suspension of payments (*surseance van betaling*) and has not received a notice concerning its dissolution from the chamber of commerce (*Kamer van Koophandel*) under section 2:19a of the Dutch Civil Code or from the relevant court (*Rechtbank*) under section 2:21 of the Dutch Civil Code.
- 2.4 To the best of its knowledge at the date hereof, no third parties have filed a request for bankruptcy of the Company and no resolution has been adopted concerning a statutory merger (*juridische fusie*), demerger (*splitsing*) or split-off (*afsplitsing*), in each case involving the Company as disappearing or splitting entity, or concerning the voluntary liquidation (*ontbinding*) of the Company.

2.5 The transactions contemplated by the Documents are conducive to the Company's corporate objects (*doel*) and serve the corporate interest (*vennootschappelijk belang*) of the Company.

2.6 The Documents and the transactions contemplated thereby are not prejudicial to the interests of (present and future) creditors of the Company.

### 3. RESOLUTIONS AND RELATED CONFIRMATIONS

3.1 The terms of, and the transactions contemplated by the Documents and the entering into the Documents by the Company are approved and ratified (as the case may be).

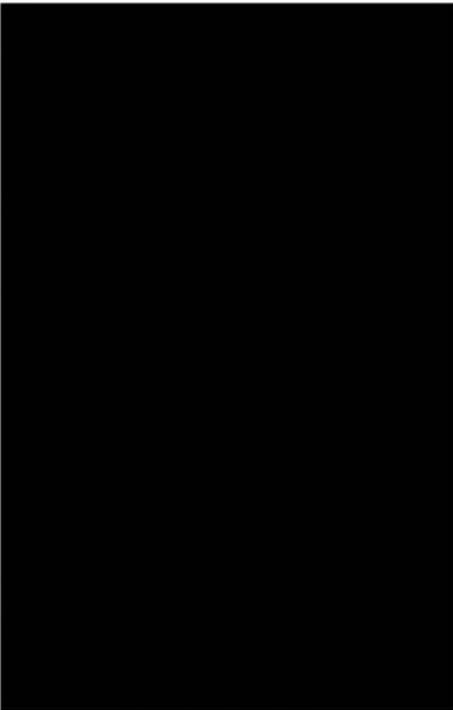
3.2 All such further acts and things that any member of the Management Board may deem necessary or appropriate for the proper implementation of the transactions contemplated by the Documents are approved, including any amendments to the Documents, further deeds (including security deeds), instruments, agreements, notices, acknowledgements, letter agreements, memoranda, statements, utilisation requests, selection notices, powers of attorney, certificates and other documents as may be ancillary, necessary or useful in connection with the documents listed above and in Schedule 1 hereto and/or the transactions envisaged thereby.

3.3 No (board) regulations (*bestuursreglement*) have been adopted as referred to in the articles of association of the Company, containing provisions that would preclude the Management Board from validly adopting the resolutions contained herein.

3.4 The Management Board has not been instructed to resolve differently on the basis of the articles of association of the Company.

This document may be signed in counterparts and all such counterparts will jointly constitute one and the same document. This document has been signed on the date first mentioned above.





## SCHEDULE 1

1. The Share Purchase Agreement
2. Equity Commitment Letter
3. The Interim Purchaser Agreement
4. The Shareholders' Agreement
5. The Power of Attorney
6. The Policy in respect of Warranty and Indemnity Insurance

# **Schedule 2.3.5**

Approval Resolutions Passed by the board of directors  
of the Cerberus Purchaser 2

## WRITTEN RESOLUTION OF THE MANAGEMENT BOARD OF

Promontoria Holding 231 B.V.

Date 25 February 2018

The undersigned, constituting the entire management board (the **Management Board**) of Promontoria Holding 231 B.V., a private limited liability company (*besloten vennootschap met beperkte aansprakelijkheid*) incorporated under the laws of the Netherlands and registered with the commercial register under number 69855714 (the **Company**);

### 1. THE TRANSACTION

- 1.1 It is intended that the Company enters into a share purchase agreement (the **SPA**) with respect to the sale and purchase of shares in the capital of HSH Nordbank AG by the Company and other individuals as set out in the SPA (together, the **Purchasers**) from HSH Beteiligungs Management GmbH (the **Seller**) (the **Transaction**).
- 1.2 In connection therewith it is envisaged that the Company enters into the documents listed in Schedule 1 attached hereto as well as any further deeds (including security deeds), instruments, agreements, notices, acknowledgements, letter agreements, memoranda, statements, utilisation requests, selection notices, powers of attorney, certificates and other documents as may be ancillary, necessary or useful in connection with the documents listed above and in Schedule 1 hereto and/or the transactions envisaged thereby.
- 1.3 The documents referred to under 1.1 and 1.2 above are hereinafter collectively referred to as the **Documents**.

### 2. DECLARATIONS

- 2.1 Each of the undersigned declares not to have a conflict of interest (as described below) in respect of the transactions contemplated by the Documents. In addition, the Management Board, after due consideration, declares that it has no indications for the existence of a conflict of interest between any of the undersigned and the Company in respect of the transactions contemplated by the Documents. In this resolution, **conflict of interest** (*tegenstrijdig belang*) means a situation in which the relevant person has a direct or indirect personal interest that conflicts with the interest of the Company and the business connected with it.
- 2.2 No works council (*ondernemingsraad*) having jurisdiction over the Company has been installed and no action has been taken for the installation of such a works council.
- 2.3 At the date hereof, the Company has not filed a request for its bankruptcy (*faillissement*) or for a suspension of payments (*surseance van betaling*) and has not received a notice concerning its dissolution from the chamber of commerce (*Kamer van Koophandel*) under section 2:19a of the Dutch Civil Code or from the relevant court (*Rechtbank*) under section 2:21 of the Dutch Civil Code.
- 2.4 To the best of its knowledge at the date hereof, no third parties have filed a request for bankruptcy of the Company and no resolution has been adopted concerning a statutory merger (*juridische fusie*), demerger (*splitsing*) or split-off (*afsplitsing*), in each case involving the Company as disappearing or splitting entity, or concerning the voluntary liquidation (*ontbinding*) of the Company.

2.5 The transactions contemplated by the Documents are conducive to the Company's corporate objects (*doel*) and serve the corporate interest (*vennootschappelijk belang*) of the Company.

2.6 The Documents and the transactions contemplated thereby are not prejudicial to the interests of (present and future) creditors of the Company.

### 3. RESOLUTIONS AND RELATED CONFIRMATIONS

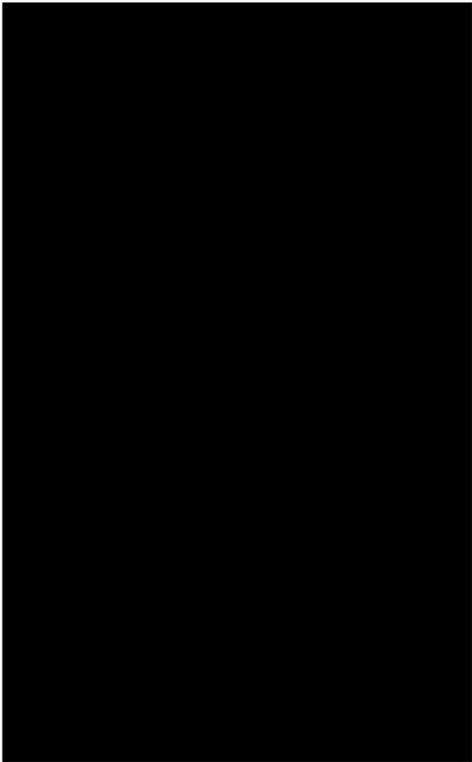
3.1 The terms of, and the transactions contemplated by the Documents and the entering into the Documents by the Company are approved and ratified (as the case may be).

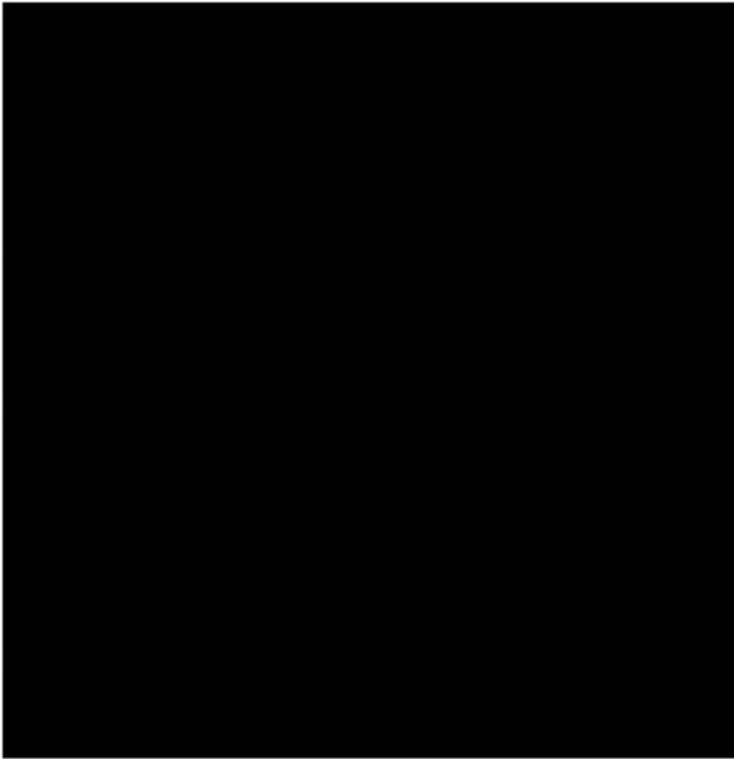
3.2 All such further acts and things that any member of the Management Board may deem necessary or appropriate for the proper implementation of the transactions contemplated by the Documents are approved, including any amendments to the Documents, further deeds (including security deeds), instruments, agreements, notices, acknowledgements, letter agreements, memoranda, statements, utilisation requests, selection notices, powers of attorney, certificates and other documents as may be ancillary, necessary or useful in connection with the documents listed above and in Schedule 1 hereto and/or the transactions envisaged thereby.

3.3 No (board) regulations (*bestuursreglement*) have been adopted as referred to in the articles of association of the Company, containing provisions that would preclude the Management Board from validly adopting the resolutions contained herein.

3.4 The Management Board has not been instructed to resolve differently on the basis of the articles of association of the Company.

This document may be signed in counterparts and all such counterparts will jointly constitute one and the same document. This document has been signed on the date first mentioned above.





## SCHEDULE 1

1. The Share Purchase Agreement
2. Equity Commitment Letter
3. The Interim Purchaser Agreement
4. The Shareholders' Agreement
5. The Power of Attorney
6. The Policy in respect of Warranty and Indemnity Insurance

# **Schedule 2.3.6**

Approval Resolutions Passed by the board  
of directors of the Cerberus Purchaser 3

## WRITTEN RESOLUTION OF THE MANAGEMENT BOARD OF

Promontoria Holding 233 B.V.

Date 25 February 2018

The undersigned, constituting the entire management board (the **Management Board**) of Promontoria Holding 233 B.V., a private limited liability company (*besloten vennootschap met beperkte aansprakelijkheid*) incorporated under the laws of the Netherlands and registered with the commercial register under number 70086567 (the **Company**);

### 1. THE TRANSACTION

- 1.1 It is intended that the Company enters into a share purchase agreement (the **SPA**) with respect to the sale and purchase of shares in the capital of HSH Nordbank AG by the Company and other individuals as set out in the SPA (together, the **Purchasers**) from HSH Beteiligungs Management GmbH (the **Seller**) (the **Transaction**).
- 1.2 In connection therewith it is envisaged that the Company enters into the documents listed in Schedule 1 attached hereto as well as any further deeds (including security deeds), instruments, agreements, notices, acknowledgements, letter agreements, memoranda, statements, utilisation requests, selection notices, powers of attorney, certificates and other documents as may be ancillary, necessary or useful in connection with the documents listed above and in Schedule 1 hereto and/or the transactions envisaged thereby.
- 1.3 The documents referred to under 1.1 and 1.2 above are hereinafter collectively referred to as the **Documents**.

### 2. DECLARATIONS

- 2.1 Each of the undersigned declares not to have a conflict of interest (as described below) in respect of the transactions contemplated by the Documents. In addition, the Management Board, after due consideration, declares that it has no indications for the existence of a conflict of interest between any of the undersigned and the Company in respect of the transactions contemplated by the Documents. In this resolution, **conflict of interest** (*tegenstrijdig belang*) means a situation in which the relevant person has a direct or indirect personal interest that conflicts with the interest of the Company and the business connected with it.
- 2.2 No works council (*ondernemingsraad*) having jurisdiction over the Company has been installed and no action has been taken for the installation of such a works council.
- 2.3 At the date hereof, the Company has not filed a request for its bankruptcy (*faillissement*) or for a suspension of payments (*surseance van betaling*) and has not received a notice concerning its dissolution from the chamber of commerce (*Kamer van Koophandel*) under section 2:19a of the Dutch Civil Code or from the relevant court (*Rechtbank*) under section 2:21 of the Dutch Civil Code.
- 2.4 To the best of its knowledge at the date hereof, no third parties have filed a request for bankruptcy of the Company and no resolution has been adopted concerning a statutory merger (*juridische fusie*), demerger (*splitsing*) or split-off (*afsplitsing*), in each case involving the Company as disappearing or splitting entity, or concerning the voluntary liquidation (*ontbinding*) of the Company.

2.5 The transactions contemplated by the Documents are conducive to the Company's corporate objects (*doel*) and serve the corporate interest (*vennootschappelijk belang*) of the Company.

2.6 The Documents and the transactions contemplated thereby are not prejudicial to the interests of (present and future) creditors of the Company.

### 3. RESOLUTIONS AND RELATED CONFIRMATIONS

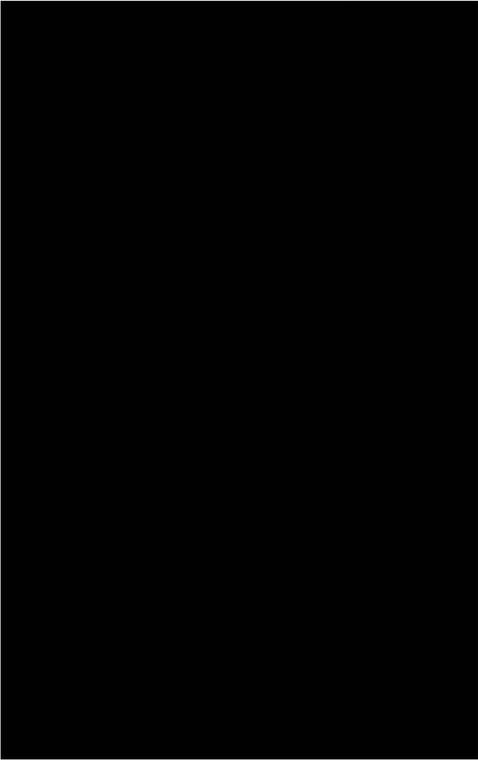
3.1 The terms of, and the transactions contemplated by the Documents and the entering into the Documents by the Company are approved and ratified (as the case may be).

3.2 All such further acts and things that any member of the Management Board may deem necessary or appropriate for the proper implementation of the transactions contemplated by the Documents are approved, including any amendments to the Documents, further deeds (including security deeds), instruments, agreements, notices, acknowledgements, letter agreements, memoranda, statements, utilisation requests, selection notices, powers of attorney, certificates and other documents as may be ancillary, necessary or useful in connection with the documents listed above and in Schedule 1 hereto and/or the transactions envisaged thereby.

3.3 No (board) regulations (*bestuursreglement*) have been adopted as referred to in the articles of association of the Company, containing provisions that would preclude the Management Board from validly adopting the resolutions contained herein.

3.4 The Management Board has not been instructed to resolve differently on the basis of the articles of association of the Company.

This document may be signed in counterparts and all such counterparts will jointly constitute one and the same document. This document has been signed on the date first mentioned above.





## SCHEDULE 1

1. The Share Purchase Agreement
2. Equity Commitment Letter
3. The Interim Purchaser Agreement
4. The Shareholders' Agreement
5. The Power of Attorney
6. The Policy in respect of Warranty and Indemnity Insurance

# **Schedule 2.3.7**

Approval Resolutions Passed by the management board  
of the BAWAG Purchaser

# Project Atlas



Submission to

BAWAG Group

BAWAG P.S.K.

Submitting unit

MB

ERM

SALCO

CAC

IC

NFRC

SB

ACC

RCC

RPC

NRC

CMB

General Meeting

ST

## Proposed decision

ACKNOWLEDGEMENT OF REPORT

APPROVAL

### Approval

- to conclude a share purchase agreement between HSH Beteiligungs Management GmbH as seller and, *inter alios*, BAWAG P.S.K. as buyer pursuant to which BAWAG P.S.K. shall acquire shares in HSH Nordbank AG, essentially pursuant to the terms and conditions set forth in the draft attached hereto (the "Transaction") and to complete the Transaction;
- to conclude of a shareholders' agreement to which BAWAG P.S.K. is a party, essentially pursuant to the terms and conditions set forth in the draft attached hereto;
- to conclude an interim purchaser agreement to which BAWAG P.S.K. is a party, essentially pursuant to the terms and conditions set forth in the draft attached hereto;
- to take all steps necessary to complete the Transaction, including delivery of any declarations and/or conclusion of further ancillary agreements.

## Attachments

- Share Purchase Agreement
- Shareholders' Agreement
- Interim Purchaser Agreement

## Decision taken

**UNANIMOUSLY APPROVED**

# **Schedule 2.3.8**

Minutes of the management board meeting recording the Approval Resolutions by the management board of the Goldentree Purchaser



**EXTRACT OF THE MINUTES OF THE MEETING OF THE BOARD OF MANAGERS**

**OF**

**GoldenTree Asset Management Lux S.à r.l.  
Société à responsabilité limitée  
26, Boulevard Royal  
L-2449 Luxembourg  
Share Capital EUR 3,063,650  
R.C.S. Luxembourg B 112971**

**(the "Company")**

**Held at 8-10 Avenue de la Gare, L-1610 Luxembourg on February 5, 2018**

**(the "Meeting")**

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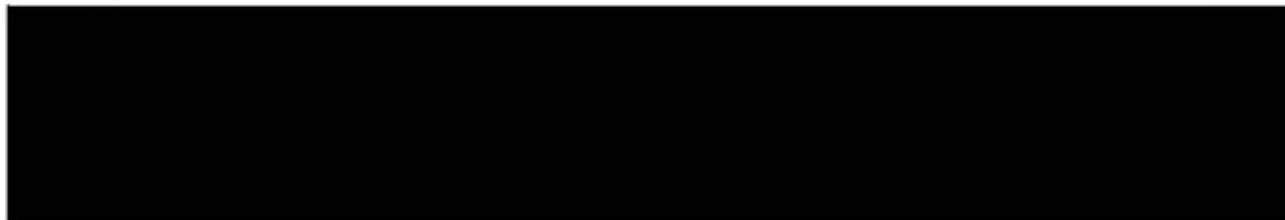
**Present:**



**Apology:**



**In attendance:**



---

The undersigned:

 in his capacity as Chairperson of the board of managers meeting held on February 5, 2018 with starting time 5:00 p.m.

Hereby confirm that the following items have been discussed during the above-mentioned meeting:

[...]

### 3. Description of transaction to be effected by the Company

#### HSH Nordbank AG acquisition

The Board of Managers discussed the fact that the Company could, on or around 28<sup>th</sup> February 2018, together with certain other parties (the "**Bidding Consortium**") enter into a transaction for 94.9% of the shares in HSH Nordbank AG (the "**HSH**") which will be sold by HSH Beteiligungs Management GmbH (the "**HSH Transaction**").

██████████ provided the Board of Managers prior to the meeting with the following documents describing the investment opportunity and related financial information:

- Draft of Share Purchase Agreement
- Revised Binding Offer
- Side letter between Promontoria Holding 221 B.V., an affiliate of Cerberus European Investments LLC and J.C. Flowers & Co. LLC.

██████████ provided the Board of Managers with detailed information relating to the proposed HSH Transaction. It was noted that HSH is a stock corporation and one of the largest bank located in north Germany with its headquarter situated in Hamburg.

██████████ presented to the Board of Managers a discussion regarding the potential investment and noted the following points:

- The bank has recorded massive losses after financial crisis.
- The European Commission approved the re-increase of the Sunrise Guarantee based on the list of commitments submitted by HSH. The decision specifies that HSH shall be split into a holding company and an operating bank as subsidiary. Until the sale of the operating bank, the holding company was to hold at least 90% of the HSH shares. In addition, the decision stipulates that the HSH shares should be sold to an acquirer independent of HSH and the public sector by 28 February 2018.
- The Company enter into a Bidding Consortium together with:
  - Cerbeus European Investment LLC (CEI), on behalf of certain affiliated funds and accounts;
  - J.C. Flowers & Co LLC on behalf of certain funds advised by it (together JCF);
  - BAWAG P.S.K. Bank für Arbeit und Wirtschaft und Österreichische Postsparkasse Aktiengesellschaft (BAWAG); and
  - Centaurus Capital LP (Centaurus).
- The Bidding Consortium proposed the acquisition of all 286,428,304 HSH shares representing a stake of 100% of HSH share capital.
- Based on the initial binding offer the Company would hold 10% of HSH equity, JCF 40%, CEI 42.5%, BAWAG 2.51% and Centaurus 4,99% of the SHS share capital.
- The initial total consideration for the purchase of SHS shares was EUR 1.2 billion.

- [REDACTED]
- The Bidding Consortium submitted a revised binding offer to acquire the HSH and SPV transactions. Potentially, the acquisition price of the SHS shares could be determine as low as a EUR 1.0 billion versa the EUR 1.2 billion of previous proposal.
- The Board of Managers were informed that the deal was still under negotiation and these were estimated numbers however if there are any changes the board will be notified.

[REDACTED] also noted that the bidder group is committed to the transaction and aimed to maximize the value of the bank and minimising the execution risks. The capital injection on the bank will create a stable and well-capitalized bank, able to efficiently fund the bank's ongoing lending franchises and be one of the strongest bank for the Northern German economy.

[REDACTED] then went on to answer several questions by the managers relating to the proposed investment.

[REDACTED] considered this deal as a decent transaction. He mentioned that Goldentree has experience on the German speaking market.

[REDACTED] mentioned that Goldentree did not enter in any bidding agreement related to the HSH Transaction. The only bidding document will be the agreement to be signed on 23rd February.

Following a detailed discussion, **IT WAS RESOLVED** to approve that the funds necessary to acquire the above-mentioned investment would be provided to the Company (the "**Financing**") by GoldenTree Asset Management Lux II S.à r.l. being the sole shareholder of the Company (the "**Sole Shareholder**").

#### **4. Approval of the related transaction documents**

The Board of Managers declared that it was advisable and in the best corporate interest of the Company to approve and authorise and, to the extent necessary or applicable, to ratify the entering into and the performance of the HSH transaction, the Financing, and the documentation involved in this transaction (collectively, the "**Transaction Documents**").

[REDACTED] was not available to join the Meeting, but he has been updated separately about the details of the transaction. He then noted that it is a good investment and consequently approved entering into HSH Transaction.

Following further discussion, **IT WAS RESOLVED** to approve and, to the extent necessary or applicable, to ratify the entering into and the performance of HSH transaction, the Financing and of the Transaction Documents as well as any agreements, documents, certificates, instruments, proxies, registers and notices as may be required in connection with or as contemplated by the terms of HSH transaction and/or the Transaction Documents in such forms as any Authorised Signatory (as defined below) may approve and to do all such acts and things as may be ancillary thereto and/or necessary and/or useful and/or desirable in the sole opinion of any Authorised Signatory (as defined below) in connection with or for the purpose of the entering into, execution

or performance of the Transaction Documents and the entering into and performance of the investment and the Financing by the Company (the "Ancillary Documents");

**5. Delegation of power in relation to the above mentioned transactions**

To facilitate the mentioned transactions and following a detailed discussion, **IT WAS RESOLVED** to appoint any manager of the Company or any authorised signatory of GoldenTree Asset Management LP, (collectively, the "**Authorised Signatories**" and each an "**Authorised Signatory**"), acting individually, with full power of substitution, to sign, execute and perform each of the Transaction Documents in the name and on behalf of the Company, as well as any Ancillary Documents.

[...]

*Extract of the minutes of the meeting of the Board of Managers of GoldenTree Asset Management  
Lux S.à r.l.*

*held on February 5, 2018*

**LEGALIZATION**

The undersigned, [REDACTED]  
Notary public, hereby certifies the validity  
of the signature(s) of [REDACTED]  
Luxembourg, the



# **Schedule 2.3.9**

Approval Resolutions Passed by the Shareholders' Meeting /  
Advisory Board of the Centaurus Purchaser

**UNANIMOUS CONSENT AND AUTHORIZATION OF THE SOLE  
MEMBER AND MANAGER OF CHI CENTAURI LLC**

**(Authorizing Acquisition of HSH Nordbank AG Equity Interest)**

**February 22, 2018**

The undersigned, being the sole member and manager (the "*Member*") of Chi Centauri LLC, a Delaware limited liability company (the "*Company*"), acting pursuant to the Limited Liability Company Agreement of the Company, does hereby waive the requirements of notice, including, without limitation, any specific requirement of prior notice for taking actions by written consent, and of a meeting, and does hereby vote for, adopt, approve and consent to the following resolutions of the Company:

**I**

**AUTHORIZATION OF ACQUISITION OF EQUITY INTEREST IN  
HSH NORDBANK AG**

**RESOLVED**, that the Member, in its capacity as the sole member and manager of the Company, hereby approves, consents to, and authorizes the Company to enter into and conclude the transaction substantially as described in that certain Share Purchase Agreement (the "*SPA*"), by and between the Company and the parties described therein, a copy of which SPA is attached hereto as Exhibit A;

**RESOLVED FURTHER**, that [REDACTED] (each, an "*Authorized Person*"), on behalf of the Company, be and he hereby is authorized to execute and deliver, and perform under, the SPA and such ancillary agreements, instruments, certificates or other documents as the Authorized Person shall deem necessary or appropriate in connection with the foregoing resolution (collectively, the "*Transaction Documents*"), such approval to be conclusively established by the Authorized Person's execution and delivery thereof;

**RESOLVED FURTHER**, that [REDACTED] on behalf of the Company, be and he hereby is authorized as Secretary of the Company to acknowledge the authority of any party authorized pursuant to these resolutions to execute the Transaction Documents;

**II**

**GENERAL AUTHORIZATION**

**RESOLVED FURTHER**, that the execution by the Authorized Person of any document authorized by the foregoing resolutions or any document executed in the accomplishment of any action or actions so authorized, is (or shall become upon delivery)

the enforceable and binding act and obligation of the Company without the necessity of the signature or attestation of any other officer, partner or representative of the Company;

**RESOLVED FURTHER**, that all actions that have been taken to date by the Authorized Person in connection with or in furtherance of the transactions contemplated by the foregoing resolutions be, and they hereby are, approved, ratified, and confirmed in all respects and for all purposes as the authorized acts and deeds of the Company; and

**RESOLVED FURTHER**, that the Authorized Person be, and hereby is, authorized and directed to take or cause to be taken all such further actions and to sign, execute, acknowledge, certify, deliver, accept, record and file all such further instruments in the name and on behalf of the Company as, in the judgment of the Authorized Person, is necessary, appropriate, advisable, or convenient to carry out the intent and to accomplish the purposes of the foregoing resolutions.

**IN WITNESS WHEREOF**, the undersigned has executed this Consent and Authorization in the capacity as the sole member and manager effective as of the date first above written.

**CENTAURUS CAPITAL LP  
(The Sole Member and Manager of Chi Centauri LLC)**

By its General Partner:  
Centaurus Holdings, LLC

By:

Name:

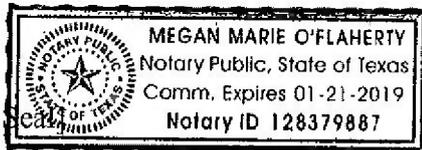
Title:

STATE OF TEXAS

COUNTY OF HARRIS

I, [REDACTED], a Notary Public in and for said County in said State, hereby certify that [REDACTED] Manager of Centaurus Holdings, LLC, in its capacity as the general partner of Centaurus Capital LP, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, in such capacity and with full authority, executed the same voluntarily for and as the act of said limited liability company on the day the same bears date.

Given under my hand this the 12 day of February, 2018.



[Notarial Seal]



# **Schedule 4.3**

Waiver Letter

HSH Luxembourg Coinvest S.à r.l.  
5, rue Guillaume Kroll  
L-1882 Luxembourg

**HSH Beteiligungs Management GmbH**  
Besenbinderhof 37  
20097 Hamburg  
Germany

London

16 February 2018

**HSH Nordbank AG**

**Waiver of Pre-emption Right, consent to share transfer and cancellation of the Agreement on Principles and other declarations**

Dear Sirs,

We refer to:

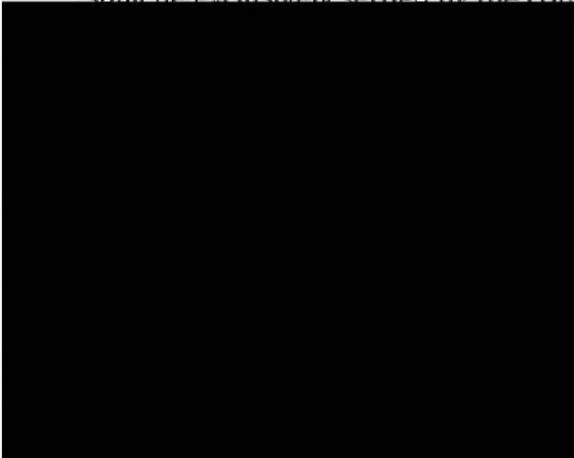
- (A) Our holding of 811,712 shares in HSH Nordbank AG, a stock corporation under the laws of Germany, registered with the commercial register of the local court (*Amtsgericht*) of Hamburg under no. HRB 87366 (**HSH**).
- (B) The Agreement on Principles (*Grundsatzvereinbarung*) entered into between the initial shareholders of HSH on 24/25 March 2003 as amended from time to time (the **Agreement on Principles**) to which we and you later acceded as parties. Section 22.3 of the Agreement on Principles stipulates a pre-emption right of the parties in the case of a sale and transfer of Shares in HSH by another shareholder (the **Pre-Emption Right**).
- (C) The restructuring agreement entered into between us and you on 1 March 2016 (the **Restructuring Agreement**). Under Section 5.1 of the Restructuring Agreement, we (together with other parties) have a joint right to co-sell all shares in HSH held by us to a purchaser purchasing the shares held by HSH Beteiligungs Management GmbH, on substantially the same terms and conditions (the **Tag-Along Right**).
- (D) The ongoing negotiations in relation to a share purchase agreement (the **Share Purchase Agreement**) between HSH Beteiligungs Management GmbH as seller and certain entities affiliated with Cerberus European Investments LLC, an entity controlled

by funds managed by J.C. Flowers & Co. LLC (the **JCF Purchaser**), an entity controlled by funds managed by GoldenTree Asset Management UK LLP, an entity controlled by funds managed by Centaurus Capital LP and BAWAG P.S.K. Bank für Arbeit und Wirtschaft und Österreichische Postsparkasse Aktiengesellschaft as purchasers (together the **Purchasers**) to be signed on or about 28 February 2018. Under the Share Purchase Agreement HSH Beteiligungs Management GmbH intends to sell and transfer its entire shareholding in HSH of 286,428,304 HSH Shares (representing 94.9 per cent. of HSH's share capital) to the Purchasers.

Now, therefore, we offer and declare to you as follows:

1. We hereby irrevocably offer to waive, by means of a waiver agreement (*Erlassvertrag*) in accordance with Section 397 para. 1 of the German Civil Code (*Bürgerliches Gesetzbuch*), the Pre-emption Right with regard to the specific transactions contemplated under the Share Purchase Agreement (but, for the avoidance of doubt, no other), subject to the condition precedent (the **Condition**) that the Share Purchase Agreement has been notarised and executed by all parties and that the Share Purchase Agreement contains the contractual terms set forth in **Annex 1** to this Waiver Letter, provided (i) that the "Basic Purchase Price" referred to in Annex 1 shall be defined in the Share Purchase Agreement as an amount of no less than EUR 1 billion and (ii) that, for the purpose of the JCF Share Purchase Agreement (as defined in the Share Purchase Agreement), such "Basic Purchase Price" shall not be subject to an adjustment for the Sunrise Guarantee Adjustment Amount.
2. Subject to the fulfilment of the compliance with the Condition, we hereby declare our consent to the transfer of the HSH Shares to the Purchasers under the Share Purchase Agreement.
3. Subject to the fulfilment of the Condition, we hereby irrevocably: (i) offer to you to cancel the Agreement on Principles with effect from the later of (y) the completion of all closing actions set forth in the Share Purchase Agreement and (z) the occurrence of closing of the transactions under the JCF Share Purchase Agreement (as such term is defined in the Share Purchase Agreement); and (ii) accept any corresponding offers by other parties of the Agreement on Principles to cancel the Agreement on Principles.
4. We hereby waive a declaration of acceptance of the offer and other declarations contained herein in accordance with Section 151 sent. 1 of the German Civil Code (*Bürgerliches Gesetzbuch*).
5. This document and any contractual rights and obligations arising out of it or in connection with it shall be governed by and construed in accordance with, the laws of

Germany. Any dispute arising out of or relating to this document or the validity of it, shall be exclusively settled by the courts of Hamburg, Germany.



HSH Investment Holdings FSO S.à r.l.  
5, rue Guillaume Kroll  
L-1882 Luxembourg

HSH Beteiligungs Management GmbH  
Besenbinderhof 37  
20097 Hamburg  
Germany

Luxembourg and New York

16 February 2018

HSH Nordbank AG

**Waiver of Pre-emption Right, consent to share transfer and cancellation of the Agreement on Principles and other declarations**

Dear Sirs,

We refer to:

- (A) Our holding of 174,777 shares in HSH Nordbank AG, a stock corporation under the laws of Germany, registered with the commercial register of the local court (*Amtsgericht*) of Hamburg under no. HRB 87366 (*HSH*).
- (B) The Agreement on Principles (*Grundsatzvereinbarung*) entered into between the initial shareholders of HSH on 24/25 March 2003 as amended from time to time (the *Agreement on Principles*) to which we and you later acceded as parties. Section 22.3 of the Agreement on Principles stipulates a pre-emption right of the parties in the case of a sale and transfer of Shares in HSH by another shareholder (the *Pre-Emption Right*).
- (C) The restructuring agreement entered into between us and you on 1 March 2016 (the *Restructuring Agreement*). Under Section 5.1 of the Restructuring Agreement, we (together with other parties) have a joint right to co-sell all shares in HSH held by us to a purchaser purchasing the shares held by HSH Beteiligungs Management GmbH, on substantially the same terms and conditions (the *Tag-Along Right*).
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by funds managed by J.C. Flowers & Co. LLC (the *JCF Purchaser*), an entity controlled by funds managed by GoldenTree Asset Management UK LLP, an entity controlled by funds managed by Centaurus Capital LP and BAWAG P.S.K. Bank für Arbeit und Wirtschaft und Österreichische Postsparkasse Aktiengesellschaft as purchasers (together the *Purchasers*) to be signed on or about 28 February 2018. Under the Share Purchase Agreement HSH Beteiligungs Management GmbH intends to sell and transfer its entire shareholding in HSH of 286,428,304 HSH Shares (representing 94.9 per cent. of HSH's share capital) to the Purchasers.

Now, therefore, we offer and declare to you as follows:

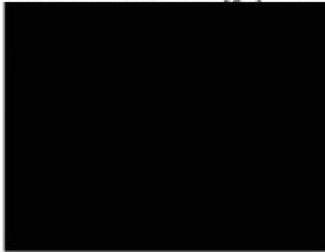
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Germany. Any dispute arising out of or relating to this document or the validity of it, shall be exclusively settled by the courts of Hamburg, Germany.

Yours sincerely,

For HSH Investment Holdings FSO S.à r.l.:

Name:  
Position:



Name:  
Position:

HSH Investment Holdings FSO S.à r.l.  
5, rue Guillaume Kroll  
L-1882 Luxembourg

**HSH Beteiligungs Management GmbH**

Besenbinderhof 37  
20097 Hamburg  
Germany

Luxembourg and New York

16 February 2018

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Yours sincerely,



For HSH Investment Holdings FSO S.à r.l.:

Name:

Name:

Position:

Position:



HSH Investment Holdings Coinvest C- S.à r.l.  
5, rue Guillaume Kroll  
L-1882 Luxembourg

HSH Beteiligungs Management GmbH  
Besenbinderhof 37  
20097 Hamburg  
Germany

Luxembourg and New York

16 February 2018

HSH Nordbank AG

**Waiver of Pre-emption Right, consent to share transfer and cancellation of the Agreement on Principles and other declarations**

Dear Sirs,

We refer to:

- (A) Our holding of 198,484 shares in HSH Nordbank AG, a stock corporation under the laws of Germany, registered with the commercial register of the local court (*Amtsgericht*) of Hamburg under no. HRB 87366 (*HSH*).
- (B) The Agreement on Principles (*Grundsatzvereinbarung*) entered into between the initial shareholders of HSH on 24/25 March 2003 as amended from time to time (the *Agreement on Principles*) to which we and you later acceded as parties. Section 22.3 of the Agreement on Principles stipulates a pre-emption right of the parties in the case of a sale and transfer of Shares in HSH by another shareholder (the *Pre-Emption Right*).
- (C) The restructuring agreement entered into between us and you on 1 March 2016 (the *Restructuring Agreement*). Under Section 5.1 of the Restructuring Agreement, we (together with other parties) have a joint right to co-sell all shares in HSH held by us to a purchaser purchasing the shares held by HSH Beteiligungs Management GmbH, on substantially the same terms and conditions (the *Tag-Along Right*).
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by funds managed by J.C. Flowers & Co. LLC (the *JCF Purchaser*), an entity controlled by funds managed by GoldenTree Asset Management UK LLP, an entity controlled by funds managed by Centaurus Capital LP and BAWAG P.S.K. Bank für Arbeit und Wirtschaft und Österreichische Postsparkasse Aktiengesellschaft as purchasers (together the *Purchasers*) to be signed on or about 28 February 2018. Under the Share Purchase Agreement HSH Beteiligungs Management GmbH intends to sell and transfer its entire shareholding in HSH of 286,428,304 HSH Shares (representing 94.9 per cent. of HSH's share capital) to the Purchasers.

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Yours sincerely,

For HSH Investment Holdings Coinvest C- S.à r.l.:

Name:  
Position:



Name:  
Position:

HSH Investment Holdings Coinvest C- S.à r.l.  
5, rue Guillaume Kroll  
L-1882 Luxembourg

**HSH Beteiligungs Management GmbH**  
Besenbinderhof 37  
20097 Hamburg  
Germany

Luxembourg and New York

16 February 2018

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Yours sincerely,



For HSH Investment Holdings Coinvest C- S.à r.l.:

Name:  
Position:

Name:  
Position:



From

**HSH Luxembourg S. à r. l.**

To

**HSH Beteiligungs Management GmbH**  
Besenbinderhof 37  
20097 Hamburg  
Germany

27<sup>th</sup> February 2018

**HSH Nordbank AG**

**Waiver of Pre-emption Right, consent to share transfer and cancellation of the Agreement on Principles and other declarations**

Dear Sirs,

We refer to:

- (A) Our holding of 2,792,670 shares in HSH Nordbank AG, a stock corporation under the laws of Germany, registered with the commercial register of the local court (*Amtsgericht*) of Hamburg under no. HRB 87366 (*HSH*).
- (B) The Agreement on Principles (*Grundsatzvereinbarung*) entered into between the initial shareholders of HSH on 24/25 March 2003 as amended from time to time (the **Agreement on Principles**) to which we and you later acceded as parties. Section 22.3 of the Agreement on Principles stipulates a pre-emption right of the parties in the case of a sale and transfer of Shares in HSH by another shareholder (the **Pre-emption Right**).
- (C) The restructuring agreement entered into between us and you on 1 March 2016 (the **Restructuring Agreement**). Under Section 5.1 of the Restructuring Agreement, we (together with other parties) have a joint right to co-sell all shares in HSH held by us to a purchaser purchasing the shares held by HSH Beteiligungs Management GmbH, on substantially the same terms and conditions (the **Tag-Along Right**).

- (D) The ongoing negotiations in relation to a share purchase agreement (the *Share Purchase Agreement*) between HSH Beteiligungs Management GmbH as seller and certain entities affiliated with Cerberus European Investments LLC, an entity controlled by funds managed by J.C. Flowers & Co. LLC (the *JCF Purchaser*), an entity controlled by funds managed by GoldenTree Asset Management UK LLP, an entity controlled by funds managed by Centaurus Capital LP and BAWAG P.S.K. Bank für Arbeit und Wirtschaft und Österreichische Postsparkasse Aktiengesellschaft as purchasers (together the *Purchasers*) to be signed on or about 28 February 2018. Under the Share Purchase Agreement HSH Beteiligungs Management GmbH intends to sell and transfer its entire shareholding in HSH of 286,428,304 HSH Shares (representing 94.9 per cent. of HSH's share capital) to the Purchasers.

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Yours sincerely,

[REDACTED]

HSB LUXEMBOURG S.À R.L.

acting by [REDACTED]

## Annex 1

The Parties agree the following:

### 1 Interpretation

### 2 Sale and Transfer of the Sold Shares

### 3 Purchase Price

### 4 Tag-Along Right and Pre-Emption Right of the JCF Companies

#### 4.1 Tag-Along Right

According to clause 5.1 of the agreement entered into between the JCF Companies, FHH, LSH (LSH together with FHH also referred to as the "States"), Finfo and HGV Hamburger Gesellschaft für Vermögens- und Beteiligungsverwaltung mbH on 1 March 2016 (the "JCF Agreement"), the JCF Companies have the right to co-sell all the Shares held by them in HSH Nordbank (the "Tag-Along Shares") to a purchaser purchasing the shares held by the Seller, on substantially the same terms and conditions (the "Tag-Along Right").

#### 4.2 Pre-Emption Right

According to Clause 22.3 of the Agreement on Principles dated 24/25 March 2003 in the version applicable at the time of the conclusion of this Agreement (the "Agreement on Principles"), the JCF Companies have a pre-emption right in the case of a sale and transfer of shares in HSH Nordbank by another shareholder (the "Pre-Emption Right").

#### 4.3 Waiver of the Pre-Emption Right and Consent

By means of the waiver letters attached in Schedule 4.3 to this Agreement (the "Pre-Emptive Waiver Letters"), in each case subject to the condition precedent (*aufschiebende Bedingung*) of the execution of this Agreement, each of the JCF Companies have irrevocably: (i) offered to the Seller a waiver of the Pre-Emption Right with regard to the transactions contemplated in this Agreement; and (ii) declared their consent to a transfer of the Sold Shares to the Purchasers as set forth in this Agreement. The Seller hereby accepts such waiver of the Pre-Emption Right.

#### 4.4 Process regarding Tag-Along Right

4.4.1 The Seller shall, in compliance with the Seller's obligations regarding the Tag-Along Right under the JCF Agreement, inform the JCF Companies about the conclusion of this Agreement without undue delay (*unverzüglich*) on the date hereof and shall offer the JCF Companies to sell the Tag-Along Shares to the Purchasers in the proportion shown in the table

set forth in Schedule 4.4 and subject to the terms and conditions set forth in this Clause 4 (the "Tag-Along Notice") on the date hereof. The form of the Tag-Along Notice the Seller undertakes to deliver to the JCF Companies is set out in Schedule 4.4.1. If the JCF Companies exercise the Tag-Along Right after receipt of the Tag-Along Notice, the Purchasers hereby undertake to acquire the Tag-Along Shares as set forth in the Tag-Along Notice and to take all measures reasonably required for such an acquisition. The purchase price per Tag-Along Share for the acquisition of the Tag-Along Shares shall be an amount in cash equal to the Basic Purchase Price divided by the number of all Shares; for the avoidance of doubt, the purchase price per Tag-Along Share shall be determined disregarding the Sunrise Guarantee Adjustment Amount, if any. The other terms and conditions of the acquisition of the Tag-Along Shares shall be the same as the terms and conditions of the acquisition of the Sold Shares by the Purchasers under this Agreement in principle *provided that* representations, warranties (*Garantien*) and indemnities with respect to the Tag-Along Shares are only granted in line with the JCF Companies' obligations under the JCF Agreement. Other deviating terms and conditions for the acquisition of the Tag-Along Shares may be agreed between the JCF Companies and the Purchasers. The Purchasers undertake that the acquisition of the Tag-Along Shares shall be implemented based on a separate share purchase agreement between the Purchasers and the JCF Companies in accordance with the requirements of this Clause 4 (the "JCF Share Purchase Agreement"). The JCF Share Purchase Agreement shall be concluded in due course after the JCF Companies have exercised the Tag-Along Right, but in any event before Closing. The Purchasers undertake that the closing under the JCF Share Purchase Agreement shall take place simultaneously with the Closing. Upon signing of the JCF Share Purchase Agreement, the Seller undertakes to request HSH Nordbank to call a general shareholders meeting and to exercise its shareholder rights to approve the transfer of the Tag-Along Shares under the JCF Share Purchase Agreement.

- 4.4.2 The JCF Purchaser undertakes to ensure that HSH Luxembourg Coinvest S.à r.l., HSH Investment Holdings FSO S.à r.l. and HSH Investment Holdings Coinvest-C S.à r.l. (together "JCF 5-8-9" and the JCF Companies without JCF 5-8-9 "JCF 1-4&6-7") will exercise the Tag-Along Right on the date of receipt of the Tag-Along Notice and enter into the JCF Share Purchase Agreement in accordance with Clause 4.4.1 above.
- 4.4.3 The provisions set out in this Clause 4.4, and any terms of this Agreement related to this Clause 4.4, cannot be amended by the Parties without JCF 1-4&6-7's prior written consent and that each of JCF 1-4&6-7 is entitled alone to enforce compliance with the obligations of the Parties under this Clause 4.4 by way of an agreement for the benefit of third parties in accordance with Section 328 German Civil Code (*Vertrag zugunsten Dritter gemäß § 328 Bürgerliches Gesetzbuch*).

## **5 Further Obligations of the Purchasers**

### **5.1 Cancellation of the Agreement on Principles**

By means of the Pre-emptive Waiver Letters, subject to the conditions precedent (*aufschiebende Bedingung*) of (i) all Closing Actions having been completed and (ii) the closing of the transactions under the JCF Share Purchase Agreement having occurred, the JCF Companies have irrevocably offered to the Seller to cancel the Agreement on Principles. The Seller hereby and irrevocably accepts such offer.

From

**HSH Coinvest (Alberta) L.P.**

To

**HSH Beteiligungs Management GmbH**  
Besenbinderhof 37  
20097 Hamburg  
Germany

27 February 2018

**HSH Nordbank AG**

**Waiver of Pre-emption Right, consent to share transfer and cancellation of the Agreement on Principles and other declarations**

Dear Sirs,

We refer to:

- (A) Our holding of 1,660,528 shares in HSH Nordbank AG, a stock corporation under the laws of Germany, registered with the commercial register of the local court (*Amtsgericht*) of Hamburg under no. HRB 87366 (**HSH**).
- (B) The Agreement on Principles (*Grundsatzvereinbarung*) entered into between the initial shareholders of HSH on 24/25 March 2003 as amended from time to time (the **Agreement on Principles**) to which we and you later acceded as parties. Section 22.3 of the Agreement on Principles stipulates a pre-emption right of the parties in the case of a sale and transfer of Shares in HSH by another shareholder (the **Pre-Emption Right**).
- (C) The restructuring agreement entered into between us and you on 1 March 2016 (the **Restructuring Agreement**). Under Section 5.1 of the Restructuring Agreement, we (together with other parties) have a joint right to co-sell all shares in HSH held by us to a purchaser purchasing the shares held by HSH Beteiligungs Management GmbH, on substantially the same terms and conditions (the **Tag-Along Right**).

- (D) The ongoing negotiations in relation to a share purchase agreement (the **Share Purchase Agreement**) between HSH Beteiligungs Management GmbH as seller and certain entities affiliated with Cerberus European Investments LLC, an entity controlled by funds managed by J.C. Flowers & Co. LLC (the **JCF Purchaser**), an entity controlled by funds managed by GoldenTree Asset Management UK LLP, an entity controlled by funds managed by Centaurus Capital LP and BAWAG P.S.K. Bank für Arbeit und Wirtschaft und Österreichische Postsparkasse Aktiengesellschaft as purchasers (together the **Purchasers**) to be signed on or about 28 February 2018. Under the Share Purchase Agreement HSH Beteiligungs Management GmbH intends to sell and transfer its entire shareholding in HSH of 286,428,304 HSH Shares (representing 94.9 per cent. of HSH's share capital) to the Purchasers.

Now, therefore, we offer and declare to you as follows:

1. We hereby irrevocably offer to waive, by means of a waiver agreement (*Erlassvertrag*) in accordance with Section 397 para. 1 of the German Civil Code (*Bürgerliches Gesetzbuch*), the Pre-emption Right with regard to the specific transactions contemplated under the Share Purchase Agreement (but, for the avoidance of doubt, no other), subject to the condition precedent (the **Condition**) that the Share Purchase Agreement has been notarised and executed by all parties and that the Share Purchase Agreement contains the contractual terms set forth in **Annex 1** to this Waiver Letter, provided (i) that the "Basic Purchase Price" referred to in Annex 1 shall be defined in the Share Purchase Agreement as an amount of no less than EUR 1 billion and (ii) that, for the purpose of the JCF Share Purchase Agreement (as defined in the Share Purchase Agreement), such "Basic Purchase Price" shall not be subject to an adjustment for the Sunrise Guarantee Adjustment Amount.
2. Subject to the fulfilment of the compliance with the Condition, we hereby declare our consent to the transfer of the HSH Shares to the Purchasers under the Share Purchase Agreement.
3. Subject to the fulfilment of the Condition, we hereby irrevocably: (i) offer to you to cancel the Agreement on Principles with effect from the later of (y) the completion of all closing actions set forth in the Share Purchase Agreement and (z) the occurrence of closing of the transactions under the JCF Share Purchase Agreement (as such term is defined in the Share Purchase Agreement); and (ii) accept any corresponding offers by other parties of the Agreement on Principles to cancel the Agreement on Principles.
4. We hereby waive a declaration of acceptance of the offer and other declarations contained herein in accordance with Section 151 sent. 1 of the German Civil Code (*Bürgerliches Gesetzbuch*).

5. It is agreed that [REDACTED], acting as joint official liquidator of HSH Coinvest (Alberta) L.P. (the *Liquidator*), signs this waiver letter as agent for and on behalf of HSH Coinvest (Alberta), and neither the liquidator nor his firm, his firm's members, partners, directors, officers or employees shall incur any personal liability whatsoever under or in connection with this waiver letter. It is also acknowledged that the Liquidator has entered into this waiver letter in his personal capacity (for himself and on behalf of the joint official liquidators) solely to rely on the protections set out in this paragraph.
6. This document and any contractual rights and obligations arising out of it or in connection with it shall be governed by and construed in accordance with, the laws of Germany. Any dispute arising out of or relating to this document or the validity of it, shall be exclusively settled by the courts of Hamburg, Germany.

Yours sincerely,

[REDACTED]

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**HSH COINVEST (ALBERTA) L.P.**  
acting by its general partner  
**HSH COINVEST (CAYMAN) GP LTD (in liquidation)**  
acting by [REDACTED] as joint official liquidator,  
as agent and without personal liability

[REDACTED]

without personal liability and solely for the purposes  
of receiving the benefit of the provisions  
of this waiver letter in favour of  
the joint official liquidators

## Annex 1

The Parties agree the following:

### 1 Interpretation

### 2 Sale and Transfer of the Sold Shares

### 3 Purchase Price

### 4 Tag-Along Right and Pre-Emption Right of the JCF Companies

#### 4.1 Tag-Along Right

According to clause 5.1 of the agreement entered into between the JCF Companies, FHH, LSH (LSH together with FHH also referred to as the "**States**"), Finfo and HGV Hamburger Gesellschaft für Vermögens- und Beteiligungsverwaltung mbH on 1 March 2016 (the "**JCF Agreement**"), the JCF Companies have the right to co-sell all the Shares held by them in HSH Nordbank (the "**Tag-Along Shares**") to a purchaser purchasing the shares held by the Seller, on substantially the same terms and conditions (the "**Tag-Along Right**").

#### 4.2 Pre-Emption Right

According to Clause 22.3 of the Agreement on Principles dated 24/25 March 2003 in the version applicable at the time of the conclusion of this Agreement (the "**Agreement on Principles**"), the JCF Companies have a pre-emption right in the case of a sale and transfer of shares in HSH Nordbank by another shareholder (the "**Pre-Emption Right**").

#### 4.3 Waiver of the Pre-Emption Right and Consent

By means of the waiver letters attached in Schedule **Error! Reference source not found.** to this Agreement (the "**Pre-Emptive Waiver Letters**"), in each case subject to the condition precedent (*aufschiebende Bedingung*) of the execution of this Agreement, each of the JCF Companies have irrevocably: (i) offered to the Seller a waiver of the Pre-Emption Right with regard to the transactions contemplated in this Agreement; and (ii) declared their consent to a transfer of the Sold Shares to the Purchasers as set forth in this Agreement. The Seller hereby accepts such waiver of the Pre-Emption Right.

#### 4.4 Process regarding Tag-Along Right

**4.4.1** The Seller shall, in compliance with the Seller's obligations regarding the Tag-Along Right under the JCF Agreement, inform the JCF Companies about the conclusion of this Agreement without undue delay (*unverzüglich*) on the date hereof and shall offer the JCF Companies to sell the Tag-Along Shares to the Purchasers in the proportion shown in the table

set forth in Schedule 4.4 and subject to the terms and conditions set forth in this Clause 4 (the "**Tag-Along Notice**") on the date hereof. The form of the Tag-Along Notice the Seller undertakes to deliver to the JCF Companies is set out in Schedule 4.4.1. If the JCF Companies exercise the Tag-Along Right after receipt of the Tag-Along Notice, the Purchasers hereby undertake to acquire the Tag-Along Shares as set forth in the Tag-Along Notice and to take all measures reasonably required for such an acquisition. The purchase price per Tag-Along Share for the acquisition of the Tag-Along Shares shall be an amount in cash equal to the Basic Purchase Price divided by the number of all Shares; for the avoidance of doubt, the purchase price per Tag-Along Share shall be determined disregarding the Sunrise Guarantee Adjustment Amount, if any. The other terms and conditions of the acquisition of the Tag-Along Shares shall be the same as the terms and conditions of the acquisition of the Sold Shares by the Purchasers under this Agreement in principle *provided that* representations, warranties (*Garantien*) and indemnities with respect to the Tag-Along Shares are only granted in line with the JCF Companies' obligations under the JCF Agreement. Other deviating terms and conditions for the acquisition of the Tag-Along Shares may be agreed between the JCF Companies and the Purchasers. The Purchasers undertake that the acquisition of the Tag-Along Shares shall be implemented based on a separate share purchase agreement between the Purchasers and the JCF Companies in accordance with the requirements of this Clause 4 (the "**JCF Share Purchase Agreement**"). The JCF Share Purchase Agreement shall be concluded in due course after the JCF Companies have exercised the Tag-Along Right, but in any event before Closing. The Purchasers undertake that the closing under the JCF Share Purchase Agreement shall take place simultaneously with the Closing. Upon signing of the JCF Share Purchase Agreement, the Seller undertakes to request HSH Nordbank to call a general shareholders meeting and to exercise its shareholder rights to approve the transfer of the Tag-Along Shares under the JCF Share Purchase Agreement.

- 4.4.2** The JCF Purchaser undertakes to ensure that HSH Luxembourg Coinvest S.à r.l, HSH Investment Holdings FSO S.à r.l. and HSH Investment Holdings Coinvest-C S.à r.l. (together "**JCF 5-8-9**" and the JCF Companies without JCF 5-8-9 "**JCF 1-4&6-7**") will exercise the Tag-Along Right on the date of receipt of the Tag-Along Notice and enter into the JCF Share Purchase Agreement in accordance with Clause 4.4.1 above.
- 4.4.3** The provisions set out in this Clause 4.4, and any terms of this Agreement related to this Clause 4.4, cannot be amended by the Parties without JCF 1-4&6-7's prior written consent and that each of JCF 1-4&6-7 is entitled alone to enforce compliance with the obligations of the Parties under this Clause 4.4 by way of an agreement for the benefit of third parties in accordance with Section 328 German Civil Code (*Vertrag zugunsten Dritter gemäß § 328 Bürgerliches Gesetzbuch*).

## **5 Further Obligations of the Purchasers**

### **5.1 Cancellation of the Agreement on Principles**

By means of the Pre-emptive Waiver Letters, subject to the conditions precedent (*aufschiebende Bedingung*) of (i) all Closing Actions having been completed and (ii) the closing of the transactions under the JCF Share Purchase Agreement having occurred, the JCF Companies have irrevocably offered to the Seller to cancel the Agreement on Principles. The Seller hereby and irrevocably accepts such offer.

From

**HSH Delaware L.P.**

To

**HSH Beteiligungs Management GmbH**  
Besenbinderhof 37  
20097 Hamburg  
Germany

27 February 2018

**HSH Nordbank AG**

**Waiver of Pre-emption Right, consent to share transfer and cancellation of the Agreement on Principles and other declarations**

Dear Sirs,

We refer to:

- (A) Our holding of 870,760 shares in HSH Nordbank AG, a stock corporation under the laws of Germany, registered with the commercial register of the local court (*Amtsgericht*) of Hamburg under no. HRB 87366 (**HSH**).
- (B) The Agreement on Principles (*Grundsatzvereinbarung*) entered into between the initial shareholders of HSH on 24/25 March 2003 as amended from time to time (the **Agreement on Principles**) to which we and you later acceded as parties. Section 22.3 of the Agreement on Principles stipulates a pre-emption right of the parties in the case of a sale and transfer of Shares in HSH by another shareholder (the **Pre-Emption Right**).
- (C) The restructuring agreement entered into between us and you on 1 March 2016 (the **Restructuring Agreement**). Under Section 5.1 of the Restructuring Agreement, we (together with other parties) have a joint right to co-sell all shares in HSH held by us to a purchaser purchasing the shares held by HSH Beteiligungs Management GmbH, on substantially the same terms and conditions (the **Tag-Along Right**).

- (D) The ongoing negotiations in relation to a share purchase agreement (the **Share Purchase Agreement**) between HSH Beteiligungs Management GmbH as seller and certain entities affiliated with Cerberus European Investments LLC, an entity controlled by funds managed by J.C. Flowers & Co. LLC (the **JCF Purchaser**), an entity controlled by funds managed by GoldenTree Asset Management UK LLP, an entity controlled by funds managed by Centaurus Capital LP and BAWAG P.S.K. Bank für Arbeit und Wirtschaft und Österreichische Postsparkasse Aktiengesellschaft as purchasers (together the **Purchasers**) to be signed on or about 28 February 2018. Under the Share Purchase Agreement HSH Beteiligungs Management GmbH intends to sell and transfer its entire shareholding in HSH of 286,428,304 HSH Shares (representing 94.9 per cent. of HSH's share capital) to the Purchasers.

Now, therefore, we offer and declare to you as follows:

1. We hereby irrevocably offer to waive, by means of a waiver agreement (*Erlassvertrag*) in accordance with Section 397 para. 1 of the German Civil Code (*Bürgerliches Gesetzbuch*), the Pre-emption Right with regard to the specific transactions contemplated under the Share Purchase Agreement (but, for the avoidance of doubt, no other), subject to the condition precedent (the **Condition**) that the Share Purchase Agreement has been notarised and executed by all parties and that the Share Purchase Agreement contains the contractual terms set forth in **Annex 1** to this Waiver Letter, provided (i) that the "Basic Purchase Price" referred to in Annex 1 shall be defined in the Share Purchase Agreement as an amount of no less than EUR 1 billion and (ii) that, for the purpose of the JCF Share Purchase Agreement (as defined in the Share Purchase Agreement), such "Basic Purchase Price" shall not be subject to an adjustment for the Sunrise Guarantee Adjustment Amount.
2. Subject to the fulfilment of the compliance with the Condition, we hereby declare our consent to the transfer of the HSH Shares to the Purchasers under the Share Purchase Agreement.
3. Subject to the fulfilment of the Condition, we hereby irrevocably: (i) offer to you to cancel the Agreement on Principles with effect from the later of (y) the completion of all closing actions set forth in the Share Purchase Agreement and (z) the occurrence of closing of the transactions under the JCF Share Purchase Agreement (as such term is defined in the Share Purchase Agreement); and (ii) accept any corresponding offers by other parties of the Agreement on Principles to cancel the Agreement on Principles.
4. We hereby waive a declaration of acceptance of the offer and other declarations contained herein in accordance with Section 151 sent. 1 of the German Civil Code (*Bürgerliches Gesetzbuch*).

5. This document and any contractual rights and obligations arising out of it or in connection with it shall be governed by and construed in accordance with, the laws of Germany. Any dispute arising out of or relating to this document or the validity of it, shall be exclusively settled by the courts of Hamburg, Germany.

Yours sincerely,



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**HSH DELAWARE L.P.**  
acting by its general partner  
**HSH DELAWARE GP LLC**  
acting by [REDACTED] as manager

## Annex 1

The Parties agree the following:

### 1 Interpretation

### 2 Sale and Transfer of the Sold Shares

### 3 Purchase Price

### 4 Tag-Along Right and Pre-Emption Right of the JCF Companies

#### 4.1 Tag-Along Right

According to clause 5.1 of the agreement entered into between the JCF Companies, FHH, LSH (LSH together with FHH also referred to as the "**States**"), Finfo and HGV Hamburger Gesellschaft für Vermögens- und Beteiligungsverwaltung mbH on 1 March 2016 (the "**JCF Agreement**"), the JCF Companies have the right to co-sell all the Shares held by them in HSH Nordbank (the "**Tag-Along Shares**") to a purchaser purchasing the shares held by the Seller, on substantially the same terms and conditions (the "**Tag-Along Right**").

#### 4.2 Pre-Emption Right

According to Clause 22.3 of the Agreement on Principles dated 24/25 March 2003 in the version applicable at the time of the conclusion of this Agreement (the "**Agreement on Principles**"), the JCF Companies have a pre-emption right in the case of a sale and transfer of shares in HSH Nordbank by another shareholder (the "**Pre-Emption Right**").

#### 4.3 Waiver of the Pre-Emption Right and Consent

By means of the waiver letters attached in Schedule **Error! Reference source not found.** to this Agreement (the "**Pre-Emptive Waiver Letters**"), in each case subject to the condition precedent (*aufschiebende Bedingung*) of the execution of this Agreement, each of the JCF Companies have irrevocably: (i) offered to the Seller a waiver of the Pre-Emption Right with regard to the transactions contemplated in this Agreement; and (ii) declared their consent to a transfer of the Sold Shares to the Purchasers as set forth in this Agreement. The Seller hereby accepts such waiver of the Pre-Emption Right.

#### 4.4 Process regarding Tag-Along Right

**4.4.1** The Seller shall, in compliance with the Seller's obligations regarding the Tag-Along Right under the JCF Agreement, inform the JCF Companies about the conclusion of this Agreement without undue delay (*unverzüglich*) on the date hereof and shall offer the JCF Companies to sell the Tag-Along Shares to the Purchasers in the proportion shown in the table

set forth in Schedule 4.4 and subject to the terms and conditions set forth in this Clause 4 (the "**Tag-Along Notice**") on the date hereof. The form of the Tag-Along Notice the Seller undertakes to deliver to the JCF Companies is set out in Schedule 4.4.1. If the JCF Companies exercise the Tag-Along Right after receipt of the Tag-Along Notice, the Purchasers hereby undertake to acquire the Tag-Along Shares as set forth in the Tag-Along Notice and to take all measures reasonably required for such an acquisition. The purchase price per Tag-Along Share for the acquisition of the Tag-Along Shares shall be an amount in cash equal to the Basic Purchase Price divided by the number of all Shares; for the avoidance of doubt, the purchase price per Tag-Along Share shall be determined disregarding the Sunrise Guarantee Adjustment Amount, if any. The other terms and conditions of the acquisition of the Tag-Along Shares shall be the same as the terms and conditions of the acquisition of the Sold Shares by the Purchasers under this Agreement in principle *provided that* representations, warranties (*Garantien*) and indemnities with respect to the Tag-Along Shares are only granted in line with the JCF Companies' obligations under the JCF Agreement. Other deviating terms and conditions for the acquisition of the Tag-Along Shares may be agreed between the JCF Companies and the Purchasers. The Purchasers undertake that the acquisition of the Tag-Along Shares shall be implemented based on a separate share purchase agreement between the Purchasers and the JCF Companies in accordance with the requirements of this Clause 4 (the "**JCF Share Purchase Agreement**"). The JCF Share Purchase Agreement shall be concluded in due course after the JCF Companies have exercised the Tag-Along Right, but in any event before Closing. The Purchasers undertake that the closing under the JCF Share Purchase Agreement shall take place simultaneously with the Closing. Upon signing of the JCF Share Purchase Agreement, the Seller undertakes to request HSH Nordbank to call a general shareholders meeting and to exercise its shareholder rights to approve the transfer of the Tag-Along Shares under the JCF Share Purchase Agreement.

- 4.4.2** The JCF Purchaser undertakes to ensure that HSH Luxembourg Coinvest S.à r.l, HSH Investment Holdings FSO S.à r.l. and HSH Investment Holdings Coinvest-C S.à r.l. (together "**JCF 5-8-9**" and the JCF Companies without JCF 5-8-9 "**JCF 1-4&6-7**") will exercise the Tag-Along Right on the date of receipt of the Tag-Along Notice and enter into the JCF Share Purchase Agreement in accordance with Clause 4.4.1 above.
- 4.4.3** The provisions set out in this Clause 4.4, and any terms of this Agreement related to this Clause 4.4, cannot be amended by the Parties without JCF 1-4&6-7's prior written consent and that each of JCF 1-4&6-7 is entitled alone to enforce compliance with the obligations of the Parties under this Clause 4.4 by way of an agreement for the benefit of third parties in accordance with Section 328 German Civil Code (*Vertrag zugunsten Dritter gemäß § 328 Bürgerliches Gesetzbuch*).

## **5 Further Obligations of the Purchasers**

### **5.1 Cancellation of the Agreement on Principles**

By means of the Pre-emptive Waiver Letters, subject to the conditions precedent (*aufschiebende Bedingung*) of (i) all Closing Actions having been completed and (ii) the closing of the transactions under the JCF Share Purchase Agreement having occurred, the JCF Companies have irrevocably offered to the Seller to cancel the Agreement on Principles. The Seller hereby and irrevocably accepts such offer.

From

**HSH Alberta V L.P.**

To

**HSH Beteiligungs Management GmbH**  
Besenbinderhof 37  
20097 Hamburg  
Germany

27 February 2018

**HSH Nordbank AG**

**Waiver of Pre-emption Right, consent to share transfer and cancellation of the Agreement on Principles and other declarations**

Dear Sirs,

We refer to:

- (A) Our holding of 638,434 shares in HSH Nordbank AG, a stock corporation under the laws of Germany, registered with the commercial register of the local court (*Amtsgericht*) of Hamburg under no. HRB 87366 (**HSH**).
- (B) The Agreement on Principles (*Grundsatzvereinbarung*) entered into between the initial shareholders of HSH on 24/25 March 2003 as amended from time to time (the **Agreement on Principles**) to which we and you later acceded as parties. Section 22.3 of the Agreement on Principles stipulates a pre-emption right of the parties in the case of a sale and transfer of Shares in HSH by another shareholder (the **Pre-Emption Right**).
- (C) The restructuring agreement entered into between us and you on 1 March 2016 (the **Restructuring Agreement**). Under Section 5.1 of the Restructuring Agreement, we (together with other parties) have a joint right to co-sell all shares in HSH held by us to a purchaser purchasing the shares held by HSH Beteiligungs Management GmbH, on substantially the same terms and conditions (the **Tag-Along Right**).

- (D) The ongoing negotiations in relation to a share purchase agreement (the **Share Purchase Agreement**) between HSH Beteiligungs Management GmbH as seller and certain entities affiliated with Cerberus European Investments LLC, an entity controlled by funds managed by J.C. Flowers & Co. LLC (the **JCF Purchaser**), an entity controlled by funds managed by GoldenTree Asset Management UK LLP, an entity controlled by funds managed by Centaurus Capital LP and BAWAG P.S.K. Bank für Arbeit und Wirtschaft und Österreichische Postsparkasse Aktiengesellschaft as purchasers (together the **Purchasers**) to be signed on or about 28 February 2018. Under the Share Purchase Agreement HSH Beteiligungs Management GmbH intends to sell and transfer its entire shareholding in HSH of 286,428,304 HSH Shares (representing 94.9 per cent. of HSH's share capital) to the Purchasers.

Now, therefore, we offer and declare to you as follows:

1. We hereby irrevocably offer to waive, by means of a waiver agreement (*Erlassvertrag*) in accordance with Section 397 para. 1 of the German Civil Code (*Bürgerliches Gesetzbuch*), the Pre-emption Right with regard to the specific transactions contemplated under the Share Purchase Agreement (but, for the avoidance of doubt, no other), subject to the condition precedent (the **Condition**) that the Share Purchase Agreement has been notarised and executed by all parties and that the Share Purchase Agreement contains the contractual terms set forth in **Annex 1** to this Waiver Letter, provided (i) that the "Basic Purchase Price" referred to in Annex 1 shall be defined in the Share Purchase Agreement as an amount of no less than EUR 1 billion and (ii) that, for the purpose of the JCF Share Purchase Agreement (as defined in the Share Purchase Agreement), such "Basic Purchase Price" shall not be subject to an adjustment for the Sunrise Guarantee Adjustment Amount.
2. Subject to the fulfilment of the compliance with the Condition, we hereby declare our consent to the transfer of the HSH Shares to the Purchasers under the Share Purchase Agreement.
3. Subject to the fulfilment of the Condition, we hereby irrevocably: (i) offer to you to cancel the Agreement on Principles with effect from the later of (y) the completion of all closing actions set forth in the Share Purchase Agreement and (z) the occurrence of closing of the transactions under the JCF Share Purchase Agreement (as such term is defined in the Share Purchase Agreement); and (ii) accept any corresponding offers by other parties of the Agreement on Principles to cancel the Agreement on Principles.
4. We hereby waive a declaration of acceptance of the offer and other declarations contained herein in accordance with Section 151 sent. 1 of the German Civil Code (*Bürgerliches Gesetzbuch*).

5. It is agreed that [REDACTED] acting as joint official liquidator of HSH Alberta V L.P. (the *Liquidator*), signs this waiver letter as agent for and on behalf of HSH Alberta V L.P., and neither the liquidator nor his firm, his firm's members, partners, directors, officers or employees shall incur any personal liability whatsoever under or in connection with this waiver letter. It is also acknowledged that the Liquidator has entered into this waiver letter in his personal capacity (for himself and on behalf of the joint official liquidators) solely to rely on the protections set out in this paragraph.
6. This document and any contractual rights and obligations arising out of it or in connection with it shall be governed by and construed in accordance with, the laws of Germany. Any dispute arising out of or relating to this document or the validity of it, shall be exclusively settled by the courts of Hamburg, Germany.

Yours sincerely,

[REDACTED]

HSH ALBERTA V L.P.  
acting by its general partner  
HSH CAYMAN V GP LTD (in liquidation)  
acting by [REDACTED] as joint official liquidator,  
as agent and without personal liability

[REDACTED]

without personal liability and solely for the purposes  
of receiving the benefit of the provisions  
of this waiver letter in favour of  
the joint official liquidators

## Annex 1

The Parties agree the following:

### 1 Interpretation

### 2 Sale and Transfer of the Sold Shares

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### 4 Tag-Along Right and Pre-Emption Right of the JCF Companies

#### 4.1 Tag-Along Right

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#### 4.2 Pre-Emption Right

According to Clause 22.3 of the Agreement on Principles dated 24/25 March 2003 in the version applicable at the time of the conclusion of this Agreement (the "**Agreement on Principles**"), the JCF Companies have a pre-emption right in the case of a sale and transfer of shares in HSH Nordbank by another shareholder (the "**Pre-Emption Right**").

#### 4.3 Waiver of the Pre-Emption Right and Consent

By means of the waiver letters attached in Schedule **Error! Reference source not found.** to this Agreement (the "**Pre-Emptive Waiver Letters**"), in each case subject to the condition precedent (*aufschiebende Bedingung*) of the execution of this Agreement, each of the JCF Companies have irrevocably: (i) offered to the Seller a waiver of the Pre-Emption Right with regard to the transactions contemplated in this Agreement; and (ii) declared their consent to a transfer of the Sold Shares to the Purchasers as set forth in this Agreement. The Seller hereby accepts such waiver of the Pre-Emption Right.

#### 4.4 Process regarding Tag-Along Right

**4.4.1** The Seller shall, in compliance with the Seller's obligations regarding the Tag-Along Right under the JCF Agreement, inform the JCF Companies about the conclusion of this Agreement without undue delay (*unverzüglich*) on the date hereof and shall offer the JCF Companies to sell the Tag-Along Shares to the Purchasers in the proportion shown in the table

set forth in Schedule 4.4 and subject to the terms and conditions set forth in this Clause 4 (the "**Tag-Along Notice**") on the date hereof. The form of the Tag-Along Notice the Seller undertakes to deliver to the JCF Companies is set out in Schedule 4.4.1. If the JCF Companies exercise the Tag-Along Right after receipt of the Tag-Along Notice, the Purchasers hereby undertake to acquire the Tag-Along Shares as set forth in the Tag-Along Notice and to take all measures reasonably required for such an acquisition. The purchase price per Tag-Along Share for the acquisition of the Tag-Along Shares shall be an amount in cash equal to the Basic Purchase Price divided by the number of all Shares; for the avoidance of doubt, the purchase price per Tag-Along Share shall be determined disregarding the Sunrise Guarantee Adjustment Amount, if any. The other terms and conditions of the acquisition of the Tag-Along Shares shall be the same as the terms and conditions of the acquisition of the Sold Shares by the Purchasers under this Agreement in principle *provided that* representations, warranties (*Garantien*) and indemnities with respect to the Tag-Along Shares are only granted in line with the JCF Companies' obligations under the JCF Agreement. Other deviating terms and conditions for the acquisition of the Tag-Along Shares may be agreed between the JCF Companies and the Purchasers. The Purchasers undertake that the acquisition of the Tag-Along Shares shall be implemented based on a separate share purchase agreement between the Purchasers and the JCF Companies in accordance with the requirements of this Clause 4 (the "**JCF Share Purchase Agreement**"). The JCF Share Purchase Agreement shall be concluded in due course after the JCF Companies have exercised the Tag-Along Right, but in any event before Closing. The Purchasers undertake that the closing under the JCF Share Purchase Agreement shall take place simultaneously with the Closing. Upon signing of the JCF Share Purchase Agreement, the Seller undertakes to request HSH Nordbank to call a general shareholders meeting and to exercise its shareholder rights to approve the transfer of the Tag-Along Shares under the JCF Share Purchase Agreement.

- 4.4.2** The JCF Purchaser undertakes to ensure that HSH Luxembourg Coinvest S.à r.l, HSH Investment Holdings FSO S.à r.l. and HSH Investment Holdings Coinvest-C S.à r.l. (together "**JCF 5-8-9**" and the JCF Companies without JCF 5-8-9 "**JCF 1-4&6-7**") will exercise the Tag-Along Right on the date of receipt of the Tag-Along Notice and enter into the JCF Share Purchase Agreement in accordance with Clause 4.4.1 above.
- 4.4.3** The provisions set out in this Clause 4.4, and any terms of this Agreement related to this Clause 4.4, cannot be amended by the Parties without JCF 1-4&6-7's prior written consent and that each of JCF 1-4&6-7 is entitled alone to enforce compliance with the obligations of the Parties under this Clause 4.4 by way of an agreement for the benefit of third parties in accordance with Section 328 German Civil Code (*Vertrag zugunsten Dritter gemäß § 328 Bürgerliches Gesetzbuch*).

## **5 Further Obligations of the Purchasers**

### **5.1 Cancellation of the Agreement on Principles**

By means of the Pre-emptive Waiver Letters, subject to the conditions precedent (*aufschiebende Bedingung*) of (i) all Closing Actions having been completed and (ii) the closing of the transactions under the JCF Share Purchase Agreement having occurred, the JCF Companies have irrevocably offered to the Seller to cancel the Agreement on Principles. The Seller hereby and irrevocably accepts such offer.

From

**HSH Alberta II L.P.**

To

**HSH Beteiligungs Management GmbH**  
Besenbinderhof 37  
20097 Hamburg  
Germany

27 February 2018

**HSH Nordbank AG**

**Waiver of Pre-emption Right, consent to share transfer and cancellation of the Agreement on Principles and other declarations**

Dear Sirs,

We refer to:

- (A) Our holding of 2,623,168 shares in HSH Nordbank AG, a stock corporation under the laws of Germany, registered with the commercial register of the local court (*Amtsgericht*) of Hamburg under no. HRB 87366 (**HSH**).
- (B) The Agreement on Principles (*Grundsatzvereinbarung*) entered into between the initial shareholders of HSH on 24/25 March 2003 as amended from time to time (the **Agreement on Principles**) to which we and you later acceded as parties. Section 22.3 of the Agreement on Principles stipulates a pre-emption right of the parties in the case of a sale and transfer of Shares in HSH by another shareholder (the **Pre-Emption Right**).
- (C) The restructuring agreement entered into between us and you on 1 March 2016 (the **Restructuring Agreement**). Under Section 5.1 of the Restructuring Agreement, we (together with other parties) have a joint right to co-sell all shares in HSH held by us to a purchaser purchasing the shares held by HSH Beteiligungs Management GmbH, on substantially the same terms and conditions (the **Tag-Along Right**).

- (D) The ongoing negotiations in relation to a share purchase agreement (the **Share Purchase Agreement**) between HSH Beteiligungs Management GmbH as seller and certain entities affiliated with Cerberus European Investments LLC, an entity controlled by funds managed by J.C. Flowers & Co. LLC (the **JCF Purchaser**), an entity controlled by funds managed by GoldenTree Asset Management UK LLP, an entity controlled by funds managed by Centaurus Capital LP and BAWAG P.S.K. Bank für Arbeit und Wirtschaft und Österreichische Postsparkasse Aktiengesellschaft as purchasers (together the **Purchasers**) to be signed on or about 28 February 2018. Under the Share Purchase Agreement HSH Beteiligungs Management GmbH intends to sell and transfer its entire shareholding in HSH of 286,428,304 HSH Shares (representing 94.9 per cent. of HSH's share capital) to the Purchasers.

Now, therefore, we offer and declare to you as follows:

1. We hereby irrevocably offer to waive, by means of a waiver agreement (*Erlassvertrag*) in accordance with Section 397 para. 1 of the German Civil Code (*Bürgerliches Gesetzbuch*), the Pre-emption Right with regard to the specific transactions contemplated under the Share Purchase Agreement (but, for the avoidance of doubt, no other), subject to the condition precedent (the **Condition**) that the Share Purchase Agreement has been notarised and executed by all parties and that the Share Purchase Agreement contains the contractual terms set forth in **Annex 1** to this Waiver Letter, provided (i) that the "Basic Purchase Price" referred to in Annex 1 shall be defined in the Share Purchase Agreement as an amount of no less than EUR 1 billion and (ii) that, for the purpose of the JCF Share Purchase Agreement (as defined in the Share Purchase Agreement), such "Basic Purchase Price" shall not be subject to an adjustment for the Sunrise Guarantee Adjustment Amount.
2. Subject to the fulfilment of the compliance with the Condition, we hereby declare our consent to the transfer of the HSH Shares to the Purchasers under the Share Purchase Agreement.
3. Subject to the fulfilment of the Condition, we hereby irrevocably: (i) offer to you to cancel the Agreement on Principles with effect from the later of (y) the completion of all closing actions set forth in the Share Purchase Agreement and (z) the occurrence of closing of the transactions under the JCF Share Purchase Agreement (as such term is defined in the Share Purchase Agreement); and (ii) accept any corresponding offers by other parties of the Agreement on Principles to cancel the Agreement on Principles.
4. We hereby waive a declaration of acceptance of the offer and other declarations contained herein in accordance with Section 151 sent. 1 of the German Civil Code (*Bürgerliches Gesetzbuch*).

5. It is agreed that [REDACTED] acting as joint official liquidator of HSH Alberta II L.P. (the *Liquidator*), signs this waiver letter as agent for and on behalf of HSH Alberta II L.P., and neither the liquidator nor his firm, his firm's members, partners, directors, officers or employees shall incur any personal liability whatsoever under or in connection with this waiver letter. It is also acknowledged that the Liquidator has entered into this waiver letter in his personal capacity (for himself and on behalf of the joint official liquidators) solely to rely on the protections set out in this paragraph.
6. This document and any contractual rights and obligations arising out of it or in connection with it shall be governed by and construed in accordance with, the laws of Germany. Any dispute arising out of or relating to this document or the validity of it, shall be exclusively settled by the courts of Hamburg, Germany.

Yours sincerely,

[REDACTED]

\_\_\_\_\_  
HSH ALBERTA II L.P.  
acting by its general partner  
HSH CAYMAN II GP LTD (in liquidation)  
acting by [REDACTED] as joint official liquidator,  
as agent and without personal liability

[REDACTED]

without personal liability and solely for the purposes  
of receiving the benefit of the provisions  
of this waiver letter in favour of  
the joint official liquidators

## Annex 1

The Parties agree the following:

### 1 Interpretation

### 2 Sale and Transfer of the Sold Shares

### 3 Purchase Price

### 4 Tag-Along Right and Pre-Emption Right of the JCF Companies

#### 4.1 Tag-Along Right

According to clause 5.1 of the agreement entered into between the JCF Companies, FHH, LSH (LSH together with FHH also referred to as the "**States**"), Finfo and HGV Hamburger Gesellschaft für Vermögens- und Beteiligungsverwaltung mbH on 1 March 2016 (the "**JCF Agreement**"), the JCF Companies have the right to co-sell all the Shares held by them in HSH Nordbank (the "**Tag-Along Shares**") to a purchaser purchasing the shares held by the Seller, on substantially the same terms and conditions (the "**Tag-Along Right**").

#### 4.2 Pre-Emption Right

According to Clause 22.3 of the Agreement on Principles dated 24/25 March 2003 in the version applicable at the time of the conclusion of this Agreement (the "**Agreement on Principles**"), the JCF Companies have a pre-emption right in the case of a sale and transfer of shares in HSH Nordbank by another shareholder (the "**Pre-Emption Right**").

#### 4.3 Waiver of the Pre-Emption Right and Consent

By means of the waiver letters attached in Schedule **Error! Reference source not found.** to this Agreement (the "**Pre-Emptive Waiver Letters**"), in each case subject to the condition precedent (*aufschiebende Bedingung*) of the execution of this Agreement, each of the JCF Companies have irrevocably: (i) offered to the Seller a waiver of the Pre-Emption Right with regard to the transactions contemplated in this Agreement; and (ii) declared their consent to a transfer of the Sold Shares to the Purchasers as set forth in this Agreement. The Seller hereby accepts such waiver of the Pre-Emption Right.

#### 4.4 Process regarding Tag-Along Right

**4.4.1** The Seller shall, in compliance with the Seller's obligations regarding the Tag-Along Right under the JCF Agreement, inform the JCF Companies about the conclusion of this Agreement without undue delay (*unverzüglich*) on the date hereof and shall offer the JCF Companies to sell the Tag-Along Shares to the Purchasers in the proportion shown in the table

set forth in Schedule 4.4 and subject to the terms and conditions set forth in this Clause 4 (the "**Tag-Along Notice**") on the date hereof. The form of the Tag-Along Notice the Seller undertakes to deliver to the JCF Companies is set out in Schedule 4.4.1. If the JCF Companies exercise the Tag-Along Right after receipt of the Tag-Along Notice, the Purchasers hereby undertake to acquire the Tag-Along Shares as set forth in the Tag-Along Notice and to take all measures reasonably required for such an acquisition. The purchase price per Tag-Along Share for the acquisition of the Tag-Along Shares shall be an amount in cash equal to the Basic Purchase Price divided by the number of all Shares; for the avoidance of doubt, the purchase price per Tag-Along Share shall be determined disregarding the Sunrise Guarantee Adjustment Amount, if any. The other terms and conditions of the acquisition of the Tag-Along Shares shall be the same as the terms and conditions of the acquisition of the Sold Shares by the Purchasers under this Agreement in principle *provided that* representations, warranties (*Garantien*) and indemnities with respect to the Tag-Along Shares are only granted in line with the JCF Companies' obligations under the JCF Agreement. Other deviating terms and conditions for the acquisition of the Tag-Along Shares may be agreed between the JCF Companies and the Purchasers. The Purchasers undertake that the acquisition of the Tag-Along Shares shall be implemented based on a separate share purchase agreement between the Purchasers and the JCF Companies in accordance with the requirements of this Clause 4 (the "**JCF Share Purchase Agreement**"). The JCF Share Purchase Agreement shall be concluded in due course after the JCF Companies have exercised the Tag-Along Right, but in any event before Closing. The Purchasers undertake that the closing under the JCF Share Purchase Agreement shall take place simultaneously with the Closing. Upon signing of the JCF Share Purchase Agreement, the Seller undertakes to request HSH Nordbank to call a general shareholders meeting and to exercise its shareholder rights to approve the transfer of the Tag-Along Shares under the JCF Share Purchase Agreement.

- 4.4.2** The JCF Purchaser undertakes to ensure that HSH Luxembourg Coinvest S.à r.l, HSH Investment Holdings FSO S.à r.l. and HSH Investment Holdings Coinvest-C S.à r.l. (together "**JCF 5-8-9**" and the JCF Companies without JCF 5-8-9 "**JCF 1-4&6-7**") will exercise the Tag-Along Right on the date of receipt of the Tag-Along Notice and enter into the JCF Share Purchase Agreement in accordance with Clause 4.4.1 above.
- 4.4.3** The provisions set out in this Clause 4.4, and any terms of this Agreement related to this Clause 4.4, cannot be amended by the Parties without JCF 1-4&6-7's prior written consent and that each of JCF 1-4&6-7 is entitled alone to enforce compliance with the obligations of the Parties under this Clause 4.4 by way of an agreement for the benefit of third parties in accordance with Section 328 German Civil Code (*Vertrag zugunsten Dritter gemäß § 328 Bürgerliches Gesetzbuch*).

## **5 Further Obligations of the Purchasers**

### **5.1 Cancellation of the Agreement on Principles**

By means of the Pre-emptive Waiver Letters, subject to the conditions precedent (*aufschiebende Bedingung*) of (i) all Closing Actions having been completed and (ii) the closing of the transactions under the JCF Share Purchase Agreement having occurred, the JCF Companies have irrevocably offered to the Seller to cancel the Agreement on Principles. The Seller hereby and irrevocably accepts such offer.

From

**HSH Alberta I L.P.**

To

**HSH Beteiligungs Management GmbH**  
Besenbinderhof 37  
20097 Hamburg  
Germany

27 February 2018

**HSH Nordbank AG**

**Waiver of Pre-emption Right, consent to share transfer and cancellation of the Agreement on Principles and other declarations**

Dear Sirs,

We refer to:

- (A) Our holding of 5,623,616 shares in HSH Nordbank AG, a stock corporation under the laws of Germany, registered with the commercial register of the local court (*Amtsgericht*) of Hamburg under no. HRB 87366 (**HSH**).
- (B) The Agreement on Principles (*Grundsatzvereinbarung*) entered into between the initial shareholders of HSH on 24/25 March 2003 as amended from time to time (the **Agreement on Principles**) to which we and you later acceded as parties. Section 22.3 of the Agreement on Principles stipulates a pre-emption right of the parties in the case of a sale and transfer of Shares in HSH by another shareholder (the **Pre-Emption Right**).
- (C) The restructuring agreement entered into between us and you on 1 March 2016 (the **Restructuring Agreement**). Under Section 5.1 of the Restructuring Agreement, we (together with other parties) have a joint right to co-sell all shares in HSH held by us to a purchaser purchasing the shares held by HSH Beteiligungs Management GmbH, on substantially the same terms and conditions (the **Tag-Along Right**).

- (D) The ongoing negotiations in relation to a share purchase agreement (the **Share Purchase Agreement**) between HSH Beteiligungs Management GmbH as seller and certain entities affiliated with Cerberus European Investments LLC, an entity controlled by funds managed by J.C. Flowers & Co. LLC (the **JCF Purchaser**), an entity controlled by funds managed by GoldenTree Asset Management UK LLP, an entity controlled by funds managed by Centaurus Capital LP and BAWAG P.S.K. Bank für Arbeit und Wirtschaft und Österreichische Postsparkasse Aktiengesellschaft as purchasers (together the **Purchasers**) to be signed on or about 28 February 2018. Under the Share Purchase Agreement HSH Beteiligungs Management GmbH intends to sell and transfer its entire shareholding in HSH of 286,428,304 HSH Shares (representing 94.9 per cent. of HSH's share capital) to the Purchasers.

Now, therefore, we offer and declare to you as follows:

1. We hereby irrevocably offer to waive, by means of a waiver agreement (*Erlassvertrag*) in accordance with Section 397 para. 1 of the German Civil Code (*Bürgerliches Gesetzbuch*), the Pre-emption Right with regard to the specific transactions contemplated under the Share Purchase Agreement (but, for the avoidance of doubt, no other), subject to the condition precedent (the **Condition**) that the Share Purchase Agreement has been notarised and executed by all parties and that the Share Purchase Agreement contains the contractual terms set forth in **Annex 1** to this Waiver Letter, provided (i) that the "Basic Purchase Price" referred to in Annex 1 shall be defined in the Share Purchase Agreement as an amount of no less than EUR 1 billion and (ii) that, for the purpose of the JCF Share Purchase Agreement (as defined in the Share Purchase Agreement), such "Basic Purchase Price" shall not be subject to an adjustment for the Sunrise Guarantee Adjustment Amount.
2. Subject to the fulfilment of the compliance with the Condition, we hereby declare our consent to the transfer of the HSH Shares to the Purchasers under the Share Purchase Agreement.
3. Subject to the fulfilment of the Condition, we hereby irrevocably: (i) offer to you to cancel the Agreement on Principles with effect from the later of (y) the completion of all closing actions set forth in the Share Purchase Agreement and (z) the occurrence of closing of the transactions under the JCF Share Purchase Agreement (as such term is defined in the Share Purchase Agreement); and (ii) accept any corresponding offers by other parties of the Agreement on Principles to cancel the Agreement on Principles.
4. We hereby waive a declaration of acceptance of the offer and other declarations contained herein in accordance with Section 151 sent. 1 of the German Civil Code (*Bürgerliches Gesetzbuch*).

5. It is agreed that [REDACTED] acting as joint official liquidator of HSH Alberta I L.P. (the *Liquidator*), signs this waiver letter as agent for and on behalf of HSH Alberta I L.P., and neither the liquidator nor his firm, his firm's members, partners, directors, officers or employees shall incur any personal liability whatsoever under or in connection with this waiver letter. It is also acknowledged that the Liquidator has entered into this waiver letter in his personal capacity (for himself and on behalf of the joint official liquidators) solely to rely on the protections set out in this paragraph.
6. This document and any contractual rights and obligations arising out of it or in connection with it shall be governed by and construed in accordance with, the laws of Germany. Any dispute arising out of or relating to this document or the validity of it, shall be exclusively settled by the courts of Hamburg, Germany.

Yours sincerely,

[REDACTED]

---

**HSH ALBERTA I L.P.**  
acting by its general partner  
**HSH CAYMAN I GP LTD (in liquidation)**  
acting by [REDACTED] as joint official liquidator,  
as agent and without personal liability

[REDACTED]

without personal liability and solely for the purposes  
of receiving the benefit of the provisions  
of this waiver letter in favour of  
the joint official liquidators

## Annex 1

The Parties agree the following:

### 1 Interpretation

### 2 Sale and Transfer of the Sold Shares

### 3 Purchase Price

### 4 Tag-Along Right and Pre-Emption Right of the JCF Companies

#### 4.1 Tag-Along Right

According to clause 5.1 of the agreement entered into between the JCF Companies, FHH, LSH (LSH together with FHH also referred to as the "**States**"), Finfo and HGV Hamburger Gesellschaft für Vermögens- und Beteiligungsverwaltung mbH on 1 March 2016 (the "**JCF Agreement**"), the JCF Companies have the right to co-sell all the Shares held by them in HSH Nordbank (the "**Tag-Along Shares**") to a purchaser purchasing the shares held by the Seller, on substantially the same terms and conditions (the "**Tag-Along Right**").

#### 4.2 Pre-Emption Right

According to Clause 22.3 of the Agreement on Principles dated 24/25 March 2003 in the version applicable at the time of the conclusion of this Agreement (the "**Agreement on Principles**"), the JCF Companies have a pre-emption right in the case of a sale and transfer of shares in HSH Nordbank by another shareholder (the "**Pre-Emption Right**").

#### 4.3 Waiver of the Pre-Emption Right and Consent

By means of the waiver letters attached in Schedule **Error! Reference source not found.** to this Agreement (the "**Pre-Emptive Waiver Letters**"), in each case subject to the condition precedent (*aufschiebende Bedingung*) of the execution of this Agreement, each of the JCF Companies have irrevocably: (i) offered to the Seller a waiver of the Pre-Emption Right with regard to the transactions contemplated in this Agreement; and (ii) declared their consent to a transfer of the Sold Shares to the Purchasers as set forth in this Agreement. The Seller hereby accepts such waiver of the Pre-Emption Right.

#### 4.4 Process regarding Tag-Along Right

**4.4.1** The Seller shall, in compliance with the Seller's obligations regarding the Tag-Along Right under the JCF Agreement, inform the JCF Companies about the conclusion of this Agreement without undue delay (*unverzüglich*) on the date hereof and shall offer the JCF Companies to sell the Tag-Along Shares to the Purchasers in the proportion shown in the table

set forth in Schedule 4.4 and subject to the terms and conditions set forth in this Clause 4 (the "**Tag-Along Notice**") on the date hereof. The form of the Tag-Along Notice the Seller undertakes to deliver to the JCF Companies is set out in Schedule 4.4.1. If the JCF Companies exercise the Tag-Along Right after receipt of the Tag-Along Notice, the Purchasers hereby undertake to acquire the Tag-Along Shares as set forth in the Tag-Along Notice and to take all measures reasonably required for such an acquisition. The purchase price per Tag-Along Share for the acquisition of the Tag-Along Shares shall be an amount in cash equal to the Basic Purchase Price divided by the number of all Shares; for the avoidance of doubt, the purchase price per Tag-Along Share shall be determined disregarding the Sunrise Guarantee Adjustment Amount, if any. The other terms and conditions of the acquisition of the Tag-Along Shares shall be the same as the terms and conditions of the acquisition of the Sold Shares by the Purchasers under this Agreement in principle *provided that* representations, warranties (*Garantien*) and indemnities with respect to the Tag-Along Shares are only granted in line with the JCF Companies' obligations under the JCF Agreement. Other deviating terms and conditions for the acquisition of the Tag-Along Shares may be agreed between the JCF Companies and the Purchasers. The Purchasers undertake that the acquisition of the Tag-Along Shares shall be implemented based on a separate share purchase agreement between the Purchasers and the JCF Companies in accordance with the requirements of this Clause 4 (the "**JCF Share Purchase Agreement**"). The JCF Share Purchase Agreement shall be concluded in due course after the JCF Companies have exercised the Tag-Along Right, but in any event before Closing. The Purchasers undertake that the closing under the JCF Share Purchase Agreement shall take place simultaneously with the Closing. Upon signing of the JCF Share Purchase Agreement, the Seller undertakes to request HSH Nordbank to call a general shareholders meeting and to exercise its shareholder rights to approve the transfer of the Tag-Along Shares under the JCF Share Purchase Agreement.

- 4.4.2** The JCF Purchaser undertakes to ensure that HSH Luxembourg Coinvest S.à r.l, HSH Investment Holdings FSO S.à r.l. and HSH Investment Holdings Coinvest-C S.à r.l. (together "**JCF 5-8-9**" and the JCF Companies without JCF 5-8-9 "**JCF 1-4&6-7**") will exercise the Tag-Along Right on the date of receipt of the Tag-Along Notice and enter into the JCF Share Purchase Agreement in accordance with Clause 4.4.1 above.
- 4.4.3** The provisions set out in this Clause 4.4, and any terms of this Agreement related to this Clause 4.4, cannot be amended by the Parties without JCF 1-4&6-7's prior written consent and that each of JCF 1-4&6-7 is entitled alone to enforce compliance with the obligations of the Parties under this Clause 4.4 by way of an agreement for the benefit of third parties in accordance with Section 328 German Civil Code (*Vertrag zugunsten Dritter gemäß § 328 Bürgerliches Gesetzbuch*).

## **5 Further Obligations of the Purchasers**

### **5.1 Cancellation of the Agreement on Principles**

By means of the Pre-emptive Waiver Letters, subject to the conditions precedent (*aufschiebende Bedingung*) of (i) all Closing Actions having been completed and (ii) the closing of the transactions under the JCF Share Purchase Agreement having occurred, the JCF Companies have irrevocably offered to the Seller to cancel the Agreement on Principles. The Seller hereby and irrevocably accepts such offer.

The Parties agree the following:

**1 Interpretation**

**2 Sale and Transfer of the Sold Shares**

**3 Purchase Price**

**4 Tag-Along Right and Pre-Emption Right of the JCF Companies**

**4.1 Tag-Along Right**

According to clause 5.1 of the agreement entered into between the JCF Companies, FHH, LSH (LSH together with FHH also referred to as the "**States**"), Finfo and HGV Hamburger Gesellschaft für Vermögens- und Beteiligungsverwaltung mbH on 1 March 2016 (the "**JCF Agreement**"), the JCF Companies have the right to co-sell all the Shares held by them in HSH Nordbank (the "**Tag-Along Shares**") to a purchaser purchasing the shares held by the Seller, on substantially the same terms and conditions (the "**Tag-Along Right**").

**4.2 Pre-Emption Right**

According to Clause 22.3 of the Agreement on Principles dated 24/25 March 2003 in the version applicable at the time of the conclusion of this Agreement (the "**Agreement on Principles**"), the JCF Companies have a pre-emption right in the case of a sale and transfer of shares in HSH Nordbank by another shareholder (the "**Pre-Emption Right**").

**4.3 Waiver of the Pre-Emption Right and Consent**

By means of the waiver letters attached in Schedule 4.3 to this Agreement (the "**Pre-Emptive Waiver Letters**"), in each case subject to the condition precedent (*aufschiebende Bedingung*) of the execution of this Agreement, each of the JCF Companies have irrevocably: (i) offered to the Seller a waiver of the Pre-Emption Right with regard to the transactions contemplated in this Agreement; and (ii) declared their consent to a transfer of the Sold Shares to the Purchasers as set forth in this Agreement. The Seller hereby accepts such waiver of the Pre-Emption Right.

**4.4 Process regarding Tag-Along Right**

**4.4.1** The Seller shall, in compliance with the Seller's obligations regarding the Tag-Along Right under the JCF Agreement, inform the JCF Companies about the conclusion of this Agreement without undue delay (*unverzüglich*) on the date hereof and shall offer the JCF Companies to sell the Tag-Along Shares to the Purchasers in the proportion shown in the table set forth in Schedule 4.4 and subject to the terms and conditions set forth in this Clause 4 (the "**Tag-Along Notice**") on the date hereof. The form of the Tag-Along Notice the Seller undertakes to deliver to the JCF Companies is set out in Schedule 4.4.1. If the JCF Companies exercise the Tag-Along Right after receipt of the Tag-Along Notice, the Purchasers hereby undertake to acquire the Tag-Along Shares as set forth in the Tag-Along Notice and to take all measures reasonably required for such an

acquisition. The purchase price per Tag-Along Share for the acquisition of the Tag-Along Shares shall be an amount in cash equal to the Basic Purchase Price divided by the number of all Shares; for the avoidance of doubt, the purchase price per Tag-Along Share shall be determined disregarding the Sunrise Guarantee Adjustment Amount, if any. The other terms and conditions of the acquisition of the Tag-Along Shares shall be the same as the terms and conditions of the acquisition of the Sold Shares by the Purchasers under this Agreement in principle *provided that* representations, warranties (*Garantien*) and indemnities with respect to the Tag-Along Shares are only granted in line with the JCF Companies' obligations under the JCF Agreement. Other deviating terms and conditions for the acquisition of the Tag-Along Shares may be agreed between the JCF Companies and the Purchasers. The Purchasers undertake that the acquisition of the Tag-Along Shares shall be implemented based on a separate share purchase agreement between the Purchasers and the JCF Companies in accordance with the requirements of this Clause 4 (the "**JCF Share Purchase Agreement**"). The JCF Share Purchase Agreement shall be concluded in due course after the JCF Companies have exercised the Tag-Along Right, but in any event before Closing. The Purchasers undertake that the closing under the JCF Share Purchase Agreement shall take place simultaneously with the Closing. Upon signing of the JCF Share Purchase Agreement, the Seller undertakes to request HSH Nordbank to call a general shareholders meeting and to exercise its shareholder rights to approve the transfer of the Tag-Along Shares under the JCF Share Purchase Agreement.

- 4.4.2** The JCF Purchaser undertakes to ensure that HSH Luxembourg Coinvest S.à r.l, HSH Investment Holdings FSO S.à r.l. and HSH Investment Holdings Coinvest-C S.à r.l. (together "**JCF 5-8-9**" and the JCF Companies without JCF 5-8-9 "**JCF 1-4&6-7**") will exercise the Tag-Along Right on the date of receipt of the Tag-Along Notice and enter into the JCF Share Purchase Agreement in accordance with Clause 4.4.1 above.
- 4.4.3** The provisions set out in this Clause 4.4, and any terms of this Agreement related to this Clause 4.4, cannot be amended by the Parties without JCF 1-4&6-7's prior written consent and that each of JCF 1-4&6-7 is entitled alone to enforce compliance with the obligations of the Parties under this Clause 4.4 by way of an agreement for the benefit of third parties in accordance with Section 328 German Civil Code (*Vertrag zugunsten Dritter gemäß § 328 Bürgerliches Gesetzbuch*).

## **5 Further Obligations of the Purchasers**

### **5.1 Cancellation of the Agreement on Principles**

By means of the Pre-emptive Waiver Letters, subject to the conditions precedent (*aufschiebende Bedingung*) of (i) all Closing Actions having been completed and (ii) the closing of the transactions under the JCF Share Purchase Agreement having occurred, the JCF Companies have irrevocably offered to the Seller to cancel the Agreement on Principles. The Seller hereby and irrevocably accepts such offer.

# **Schedule 4.4**

Tag-Along Shares Proportions

Selling JCF Company	JCF Purchaser	Goldentree Purchaser	Centaurus Purchaser	Purchasers			Check Cerberus Total		
				BAWAG Purchaser	Cerberus Purchaser 1	Cerberus Purchaser 2		Cerberus Purchaser 3	
	f. of shares								
MSH Alberta I L.P.	JCF 1	1,968,266	421,771	140,591	939,428	761,968	668,641	5,623,616	2,390,037
MSH Alberta II L.P.	JCF 2	918,109	196,738	65,579	438,201	355,424	321,221	2,623,168	1,114,845
MSH Alberta V L.P.	JCF 3	223,452	79,804	15,961	106,651	86,504	78,180	638,434	271,334
MSH Luxembourg S.à r.l.	JCF 4	977,434	349,084	209,450	466,517	378,391	341,977	2,792,670	1,186,885
MSH Luxembourg Coinvest S.à r.l.	JCF 5	284,099	101,464	20,293	135,597	109,982	99,398	811,712	344,978
MSH Delaware L.P.	JCF 6	304,766	108,845	65,307	145,461	117,983	106,629	870,760	370,073
MSH Coinvest (Alberta) L.P.	JCF 7	581,185	207,566	124,540	277,392	224,992	203,340	1,660,528	705,724
MSH Investment Holdings FSO S.à r.l.	JCF 8	61,172	21,847	13,108	29,197	23,681	21,402	174,777	74,280
MSH Investment Holdings Coinvest-C S.à r.l.	JCF 9	69,469	24,811	14,886	33,157	26,893	24,305	198,484	84,356
<b>Total</b>		<b>5,387,952</b>	<b>1,924,269</b>	<b>1,154,561</b>	<b>384,854</b>	<b>2,571,600</b>	<b>2,085,819</b>	<b>15,394,149</b>	<b>6,542,513</b>
Total (as set forth in Investors Allocation)		5,887,952	1,924,269	1,154,561	384,854	2,571,600	2,085,819	15,394,149	6,542,513
Percentage of Tag-Along Shares:		35,00%	12,50%	7,50%	2,50%	16,71%	13,55%	100,00%	42,50%
Percentage of total number of MSH shares:		1,79%	0,64%	0,38%	0,13%	0,85%	0,69%	100,00%	2,17%

# **Schedule 4.4.1**

Tag-Along Notice

## Schedule 4.4.1

### Tag-Along Notice

[Letterhead of HSH Beteiligungs Management GmbH]

To

HSH Alberta I L.P. (**JCF 1**)  
HSH Alberta II L.P. (**JCF 2**),  
HSH Alberta V L.P. (**JCF 3**),  
HSH Luxembourg S.à r.l. (**JCF 4**)  
HSH Luxembourg Coinvest S.à r.l. (**JCF 5**)  
HSH Delaware L.P. (**JCF 6**)  
HSH Coinvest (Alberta) L.P. (**JCF 7**)  
HSH Investment Holdings FSO S.à r.l. (**JCF 8**)  
HSH Investment Holdings Coinvest-C S.à r.l. (**JCF 9**)

(JCF 1 to JCF 9 together **JCF**)

Hamburg, 28 February 2018

#### Sale of Shares in HSH Nordbank AG/Tag-Along-Notice

Dear Sirs,

We refer to:

- (A) Your holding of together 15,394,149 shares in HSH Nordbank AG (**JCF Shares**), a stock corporation under the laws of Germany, registered with the commercial register of the local court (*Amtsgericht*) of Hamburg under no. HRB 87366 (**HSH**).
- (B) The restructuring agreement entered into between, *inter alia*, Freie und Hansestadt Hamburg, HGV Hamburger Gesellschaft für Vermögens- und Beteiligungsmanagement mbH, Land Schleswig-Holstein, HSH Finanzfonds AÖR and JCF on 1 March 2016 (**Restructuring Agreement**). Pursuant to Section 5.1 of the Restructuring Agreement, you have the joint right to co-sell the JCF Shares to a purchaser purchasing the shares held by us in HSH on substantially the same terms and conditions (**Tag-Along Right**).
- (C) On 28 February 2018, we have entered into a notarised share purchase agreement on the sale of our entire shareholding in HSH with JCF IV Neptun Holdings S.à r.l., Promontoria Holding 221 B.V., Promontoria Holding 231 B.V., Promontoria Holding 233 B.V., BAWAG P.S.K. Bank für Arbeit und Wirtschaft und Österreichische Postsparkasse Aktiengesellschaft, GoldenTree Asset Management Lux S.à r.l. and Chi Centauri LLC as purchasers (together **Purchasers**) (**Share Purchase Agreement**).

We hereby give notice to you of the sale of our entire holding of 286,428,304 shares in HSH to the Purchasers pursuant to the Share Purchase Agreement a full copy of which (including Schedules) is attached.

In accordance with Section 5.1.2 of the Restructuring Agreement, we advise you as follows:

1. HSH Beteiligungs Management GmbH is registered with the commercial register at the Local Court (*Amtsgericht*) of Hamburg under HRB 141769 and has its business address at Besenbinderhof 37, 20097 Hamburg, Germany.
2. We have sold our entire holding of shares in HSH to the Purchasers, i.e. 286,428,304 shares without par value (*Stückaktien*), together with all rights and obligations attaching to them as at the Closing Date (as defined in the Share Purchase Agreement).
3. The Purchasers have the following addresses:
  - (a) JCF IV Neptun Holdings S.à r.l., 5, Rue Guillaume Kroll, L-1882, Luxembourg,
  - (b) Promontoria Holding 221 B.V., Oude Utrechtseweg 32, 3743KN Baarn, The Netherlands,
  - (c) Promontoria Holding 231 B.V., Oude Utrechtseweg 32, 3743KN Baarn, The Netherlands,
  - (d) Promontoria Holding 233 B.V., Oude Utrechtseweg 32, 3743KN Baarn, The Netherlands,
  - (e) BAWAG P.S.K. Bank für Arbeit und Wirtschaft und Österreichische Postsparkasse Aktiengesellschaft, Georg-Coch-Platz 2, 1018 Wien, Austria,
  - (f) GoldenTree Asset Management Lux S.à r.l., 26 Boulevard Royal, 2449 Luxembourg and
  - (g) Chi Centauri LLC, Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware, 19801.
4. The Total Purchase Price (as defined in Section 3.1.1 of the Share Purchase Agreement) for our shares in HSH is EUR 1,054,000,000 (in words: one billion fifty four million euro) (**Basic Purchase Price**) minus an amount being defined in Section 3.1.2 of the Share Purchase Agreement as Sunrise Guarantee Adjustment Amount (if any).
5. The Total Purchase Price is due on the Closing Date (as defined in the Share Purchase Agreement).
6. Representations, warranties, indemnities given by us are set out (*inter alia*) in Sections 11 and 13 of the Share Purchase Agreement.
7. For all other relevant terms of agreements leading to the transfer and the obligations to transfer we refer to the Share Purchase Agreement (and its Schedules) as attached hereto.

We hereby offer you to co-sell all (but not only parts of) the JCF Shares to the Purchasers as set forth in the table attached as Schedule 1 on the same terms as set out in the Share Purchase Agreement provided, however, that (i) the purchase price per JCF Share shall be an amount in cash equal to the Basic Purchase Price divided by the number of all shares in HSH currently issued (i.e. 301,822,453 shares); for the avoidance of doubt, the purchase price per JCF Share shall be determined disregarding the Sunrise Guarantee Adjustment Amount, if any, (ii) each of JCF 1-7 shall not be obliged to grant any representation, warranty and/or indemnity except a representation and warranty by each of JCF 1-7 granted severally regarding title to the JCF Shares held by it in line with the content as set forth in Schedule 2 Part 1, (iii) each of JCF 8 and JCF 9 shall not be obliged to grant any representation, warranty and/or indemnity except a representation and warranty by JCF 8 and 9 granted jointly regarding title to the JCF Shares held by it in line with the content as set forth in Schedule 2 Part 2 and (iv) each of JCF shall be responsible for a breach of any representation, warranty and/or indemnity only in line with the content as set forth in Schedule 2 Part 3. Other deviating terms and conditions for the acquisition of the JCF Shares may be agreed between you and the Purchasers. The acquisition of the JCF Shares shall be implemented based on a separate share purchase agreement between the Purchasers and you (**JCF Share Purchase Agreement**). The JCF Share Purchase Agreement shall be concluded

in due course after you have exercised the Tag-Along Right, but in any event before Closing (as defined in the Share Purchase Agreement). The closing under the JCF Share Purchase Agreement shall take place simultaneously with the closing of the Share Purchase Agreement.

Yours sincerely,

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HSH Beteiligungs Management GmbH  
Name: [●]  
Position: Managing Director

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HSH Beteiligungs Management GmbH  
Name: [●]  
Position: Managing Director

Schedule 1

[Identical with Schedule 4.4 of the Share Purchase Agreement]

## Schedule 2

### 1. Part 1 - Warranties of JCF 1-7

Each of JCF 1-7 severally and not jointly guarantees by way of an independent promise of warranty (*selbständiges Garantieverprechen*) pursuant to § 311 German Civil Code (*BGB*) and exclusively with the remedies pursuant to Schedule 2 Part 3 below that the statements set forth in this Schedule 2 Part 1 are correct:

- 1.1 The interest in the Transferred Shares which is transferred by each of JCF 1-7 respectively is all such right, title and interest as the relevant JCF 1-7 entity may have at the date of this Agreement and reference to the Transferred Shares of JCF 1-7 shall mean all such right, title and interest.
- 1.2 No step has been taken by the relevant JCF 1-7 entity to create any pledge, charge, mortgage or other security interest in the Transferred Shares since (i) with respect to JCF 1-3 and JCF 7, the date the JCF Liquidators were appointed and (ii) with respect to JCF 4, JCF 5 and JCF 6, 11 February 2011.

### 2. Part 2 - Warranties of JCF 8-9

JCF 8 and JCF 9 guarantee by way of an independent promise of warranty (*selbständiges Garantieverprechen*) pursuant to § 311 German Civil Code (*BGB*) and exclusively with the remedies pursuant to Schedule 2 Part 3 below, that the statements set forth in this Schedule 2 Part 2 are correct:

- 2.1 JCF 8 and JCF 9 have unrestricted ownership of the Transferred Shares which are transferred by JCF 8 and JCF 9 (“**JCF 8 and 9 Transferred Shares**”), free and clear from any third party rights, liens, encumbrances, pledges, or any other restrictions and can, subject to the terms of the Shareholders Agreement, freely dispose of the JCF 8 and 9 Transferred Shares.
- 2.2 The JCF 8 and 9 Transferred Shares are duly authorised and validly issued.
- 2.3 The JCF 8 and 9 Transferred Shares are free of any obligations to make additional contributions or payments and similar obligations or restrictions.

### 3. Part 3 – Legal Consequences

Should any of the warranties in Schedule 2 Part 1 and Schedule 2 Part 2 above be inaccurate, the legal consequences stipulated hereinafter shall apply provided that, subject to mandatory law, in particular sections 123 and 276 para. 3 German Civil Code, the warranties stipulated in Schedule 2 Part 1 and Schedule 2 Part 2 above and the legal consequences pursuant to this Schedule 2 Part 3 shall be the only remedies and override all statutory remedies available to HoldCo in case of defects in substance or in title (*Sach- oder Rechtsmängel*) of the Transferred Shares. Any further liability of JCF and any additional further rights of HoldCo, including the right to terminate, void (*anfechten*) or rescind (*zurücktreten*) this Agreement, for inaccuracy or incompleteness of the warranties stipulated in Schedule 2 Part 1 or Schedule 2 Part 2 above or based upon them or for defects in substance or in title or for breach of contractual or pre-contractual protection duties (*Schutzpflichten*) shall be excluded to the extent such liability or such right relates to a defect in substance or in title of the Transferred Shares or on the fact that JCF have made untrue, incomplete or misleading statements relating to the Transferred Shares or have otherwise violated disclosure duties regarding the Transferred Shares.

- 3.1 To the extent, in respect of JCF 1-7, that any of the warranties as per Schedule 2 Part 1 above, or in respect of JCF 8 and JCF 9, that any of the warranties as per Schedule 2 Part 2 above, are untrue as of the date of transfer of the Transferred Shares, the relevant JCF entity whose warranty is untrue shall pay to HoldCo such an amount as is required to put HoldCo into the position it would have been in had the relevant JCF' s warranty been correct.

- 3.2 The obligations of JCF set out in Schedule 2 Part 3.1 above shall apply irrespective of whether or not HoldCo was or should have been aware of the inaccuracy or incompleteness of the respective JCF' s warranty.
- 3.3 Any claims of HoldCo under Schedule 2 Part 3.1 above shall become time-barred upon expiration of a three year period from the date of this Agreement.

We hereby exercise our Tag-Along Right in accordance with Section 5.1 of the Restructuring Agreement.

The joint official liquidators (or any one of them) acting for JCF 1, JCF 2, JCF 3 and JCF 7 (the **JCF Liquidators**) have signed this acceptance notice to the Tag-Along-Notice as agents for and on behalf of JCF 1, JCF 2, JCF 3 and JCF 7, respectively, and neither the JCF Liquidators nor their respective firms, members, partners, directors, officers or employees shall incur any personal liability whatsoever under or in connection with the Tag-Along-Notice or the acceptance of its terms. It is acknowledged that the JCF Liquidators have signed this acceptance form in their personal capacity solely to rely on the protections set out herein.

**HSH ALBERTA I L.P. (JCF 1)**

acting by its general partner

**HSH CAYMAN I GP LTD** (in liquidation)

acting by [REDACTED] as joint official liquidator,  
as agent and without personal liability

Date:

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**HSH ALBERTA II L.P. (JCF 2)**

acting by its general partner

**HSH CAYMAN II GP LTD** (in liquidation)

acting by [REDACTED] as joint official liquidator,  
as agent and without personal liability

Date:

---

**HSH ALBERTA V L.P. (JCF 3)**

acting by its general partner

**HSH CAYMAN V GP LTD** (in liquidation)

acting by [REDACTED] as joint official liquidator,  
as agent and without personal liability

Date:

---

**HSH LUXEMBOURG S.À R.L. (JCF 4)**

by [REDACTED] as manager

Date:

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**HSH LUXEMBOURG COINVEST S. à r. l. (JCF 5)**

acting by its sole manager

**JCF HSH (DE) GP LLC**

acting by [REDACTED]

Date:

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**HSH DELAWARE L.P. (JCF 6)**

acting by its general partner

**HSH DELAWARE GP LLC**

acting by [REDACTED] as manager

Date:

---

**HSH COINVEST (ALBERTA) L.P. (JCF 7)**

acting by its general partner

**HSH COINVEST (CAYMAN) GP LTD (in liquidation)**

acting by [REDACTED] as joint official liquidator,

as agent and without personal liability

Date:

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**HSH INVESTMENT HOLDINGS FSO S. à r. l. (JCF 8)**

acting by

Name: [●]

Title: Manager

Date:

---

**HSH INVESTMENT HOLDINGS COINVEST-C S. à r. l. (JCF 9)**

acting by

Name: [●]

Title: Manager

Date:

## JCF LIQUIDATORS

[REDACTED]

[REDACTED]

[REDACTED]

without personal liability and solely for the purposes  
of receiving the benefit of the provisions  
of this letter (including the acceptance form)  
in favour of the joint official liquidators

# **Schedule 5.2 (a)**

Equity Commitment Letter JCF

27 February 2018

JCF IV Neptun Holdings S.à r.l.  
5, rue Guillaume Kroll  
L-1882 Luxembourg

Members of the Board of Directors:

**Re: Project Neptun Binding Offer**

Reference is made to a share purchase agreement (as amended or modified from time to time in accordance with its terms, the "SPA"), which is intended to be entered into by and between, amongst others, (a) JCF IV Neptun Holdings S.à r.l. as purchaser (the "JCF Purchaser"), and (b) HSH Beteiligungs Management GmbH as seller (the "Seller") on or about 28 February 2018 in respect of the proposed acquisition of HSH Nordbank AG, a substantially final version of which is attached hereto as Annex A. Capitalized terms that are used but are not otherwise defined in this letter agreement (this "Equity Financing Letter") shall have the meanings given to them in the SPA.

1. This Equity Financing Letter is being delivered by J.C. Flowers IV L.P. (the "Equity Sponsor") to the JCF Purchaser and confirms the agreement of the Equity Sponsor to make an equity investment (the Equity Sponsor's "Commitment"), directly or indirectly, in the JCF Purchaser, (a) in an aggregate amount of up to EUR 369,929,629.00 (the "Equity Financing") if (i) the Closing Conditions set forth in Clause 7.1 of the SPA have been satisfied or, in the case of Clauses 7.1.4 or 7.1.5 of the SPA, waived by the Seller, in accordance with Clause 7.2 of the SPA (other than those conditions that by their nature are to be satisfied at Closing, but subject to the satisfaction or waiver of such conditions), (ii) the Relevant Percentage of the Total Purchase Price is due and payable by the JCF Purchaser pursuant to Clause 3.4.1 of the SPA, (iii) the Seller has not exercised its right to withdraw under Clause 9.2.1 or 9.2.2 of the SPA, (iv) the JCF Purchaser (together with all other Purchasers) has not exercised its right to withdraw under Clause 9.2.3 of the SPA or to terminate the SPA under Clause 8.4.7(ii) of the SPA, (v) neither the Seller nor the JCF Purchaser (together with all other Purchasers) has exercised a right to withdraw under Clause 9.1 of the SPA, and (vi) no amounts are due to the Seller from the JCF Purchaser under clause 9.5.2 of the SPA (such amounts, the "Withdrawal Amounts") or (b) to fund, if and only if, (i) the JCF Purchaser is a Breaching Party for purposes of Clause 9.1 of the SPA and, as a result of the JCF Purchaser's breach, the Withdrawal Amount becomes due to the Seller under Clause 9.5.2 of the SPA, or (ii) the Seller has validly withdrawn from the SPA pursuant to Clause 9.2.1 or Clause 9.2.2 of the SPA and as a result the Withdrawal Amount becomes due to the Seller under Clause 9.5.2 of the SPA, an aggregate amount equal to the lesser of (A) such Withdrawal Amount that is actually due to the Seller by the JCF Purchaser or (B) the amount of the Equity Financing (the "Withdrawal Financing").

2. The proceeds from the Equity Financing will be used only to pay the Relevant Percentage of (i) the Total Purchase Price due to be paid by the JCF Purchaser to the Seller at Closing pursuant to the SPA; (ii) any amount due to be paid by JCF Purchaser to HSH Nordbank AG pursuant to clause 3.1.3 of the SPA; and (iii) any other claims of the Seller against the JCF Purchaser that become due and payable in accordance with the terms of the SPA (and to pay transaction fees and expenses related

thereto) and the proceeds from the Withdrawal Financing will be used only to satisfy any Withdrawal Amount due to the Seller if, and only if, such Withdrawal Amount is due to the Seller as a result of (A) the JCF Purchaser's breach of Clause 9.1 of the SPA or (B) the Seller's withdrawal from the SPA pursuant to Clause 9.2.1 or Clause 9.2.2 of the SPA; provided that in no event will the Equity Sponsor's obligations hereunder exceed the amount of the Equity Financing. In no event shall the Equity Sponsor be obliged to fund all or any portion of the Withdrawal Financing if all or any portion of the Equity Financing is due and payable, and in no event shall the Equity Sponsor be obligated to fund all or any portion of the Equity Financing if all or any portion of the Withdrawal Financing is due or payable. The obligation of the Equity Sponsor to fund or cause the funding of the Equity Financing hereunder is subject to the satisfaction of all of the conditions to the JCF Purchaser's obligations to consummate the transactions contemplated by the SPA (other than those conditions that by their nature are to be satisfied at Closing, but subject to the satisfaction by the JCF Purchaser of such conditions) and the requirement that the JCF Purchaser pay only its Relevant Percentage of the Total Purchase Price pursuant to the SPA.

3. The Equity Sponsor shall have no obligation to fund or cause the funding of the Withdrawal Financing except to the extent funding in respect of the Withdrawal Amount is due as a result of the JCF Purchaser's breach of Clause 9.1 of the SPA or the Seller's withdrawal from the SPA pursuant to Clause 9.2.1 or Clause 9.2.2 of the SPA, as expressly required by the SPA (and not any related costs, fees, penalties or other expenses).

4. The JCF Purchaser and the Equity Sponsor hereby agree that: (i) except as set forth in paragraph 6 below, there is no express or implied intention to benefit any third party (including, without limitation, the other Purchasers or their respective affiliates) and nothing contained in this Equity Financing Letter is intended, nor shall anything herein be construed, to confer any rights, legal or equitable, in any person (other than the JCF Purchaser) (including, without limitation, the other Purchasers or their respective affiliates); and (ii) under no circumstances shall the Equity Sponsor (or any of its Related Parties) be liable for any costs or damages including, without limitation, any special, incidental, consequential, exemplary or punitive damages, to any person, including the JCF Purchaser and the Seller and their respective affiliates, in respect of this Equity Financing Letter; provided, that notwithstanding anything contrary in this paragraph, nothing in this Equity Financing Letter shall impair (or be construed to impair) any of the rights of the Seller against the JCF Purchaser under the SPA.

5. The Commitment will be effective upon your acceptance of the terms and conditions of this Equity Financing Letter and will immediately and automatically expire upon the earlier of the (a) the funding of the Relevant Percentage of the Total Purchase Price due to the Seller from the JCF Purchaser at Closing (at which time the Equity Sponsor's obligations hereunder shall be deemed discharged), and (b) the valid termination of the SPA in accordance with its terms where no Withdrawal Amount is due to the Seller from the JCF Purchaser pursuant to Clause 9.5.2 of the SPA. Upon valid termination or expiration of this Equity Financing Letter, the Equity Sponsor shall have no further obligations or liabilities in respect of the Commitment hereunder. Except as expressly set forth in this paragraph, this Equity Financing Letter may not be terminated without the Seller's express prior written consent.

6. The JCF Purchaser and the Equity Sponsor hereby agree that (i) the Seller shall be an express third-party beneficiary of this Equity Financing Letter for purposes of seeking to enforce the obligations of the Equity Sponsor to the JCF Purchaser under this Equity Financing Letter in the circumstances where, and to the extent, the Seller is entitled to seek specific performance of the JCF Purchaser's obligation pursuant to the SPA; and (ii) HSH Nordbank AG shall be an express third-party beneficiary of this Equity Financing Letter for purposes of seeking to enforce the obligations of the Equity Sponsor to the JCF Purchaser under this Equity Financing Letter in the circumstances where, and to the extent, HSH Nordbank AG is entitled to seek specific performance of the JCF Purchaser's obligation pursuant to clause 3.1.3 of the SPA.

7. Notwithstanding anything that may be expressed or implied in this Equity Financing Letter or any document or instrument delivered contemporaneously herewith, no person (other than the JCF Purchaser and the Equity Sponsor, to the extent provided in, and subject to the limitations of, this Equity Financing Letter) shall have any obligation hereunder and, notwithstanding that the Equity Sponsor may be a corporation, partnership or limited liability company, no person shall have any rights of recovery against, or recourse hereunder or in respect of any oral representations made or alleged to be made in connection herewith, against, any former, current and future direct or indirect equityholders, controlling persons, stockholders, directors, officers, employees, agents, affiliates, members, managers, general or limited partners, financing sources, assignees, successors or predecessors or attorneys or other representatives of the Investor, or any of their successors or assigns, or any former, current and future direct or indirect equityholders, controlling persons, stockholders, directors, officers, employees, agents, affiliates, members, managers, general or limited partners, financing sources, assignees, successors or predecessors or attorneys or other representatives or successors or assigns of any of the foregoing (each, a "Related Party" and together, the "Related Parties", it being understood that, notwithstanding anything to the contrary herein, the foregoing and the term Related Parties shall not include the Equity Sponsor (but solely with respect to any Available Remedy) or the JCF Purchaser), in each case, other than, for the avoidance of doubt (i) solely against the Equity Sponsor, to the extent provided in, and subject to the limitations contained in, this Equity Financing Letter, and (ii) against the JCF Purchaser under the SPA (collectively, the "Available Remedies"), whether by or through attempted piercing of the corporate veil, by or through any claim against any Related Party, by the enforcement of any assessment or by any legal or equitable proceeding, or by virtue of any applicable law, it being agreed and acknowledged that no personal liability whatsoever shall attach to, be imposed on or otherwise be incurred by any Related Party for any obligations of the Equity Sponsor under this Equity Financing Letter or in respect of any oral representations made or alleged to be made in connection herewith or therewith or for any claim (whether at law or equity or in tort, contract, attempted piercing of the corporate veil or otherwise) based on, in respect of, or by reason of such obligations or their creation (in each case, for the avoidance of doubt, other than in respect of the Available Remedies solely against the JCF Purchaser or the Equity Sponsor). For the avoidance of doubt, nothing in this paragraph 7 shall impair (or be construed to impair) any of the rights of the Seller against the JCF Purchaser under the SPA.

8. Subject to paragraph 6 above, this Equity Financing Letter may be enforced only by the JCF Purchaser to seek to cause performance hereunder by the Equity Sponsor (subject to the terms herein and in the SPA) and only in accordance with this Equity Financing Letter. Notwithstanding anything to the contrary in this letter

agreement, none of the Seller's equityholders or creditors shall have any right to enforce or cause the JCF Purchaser to enforce this Equity Financing Letter.

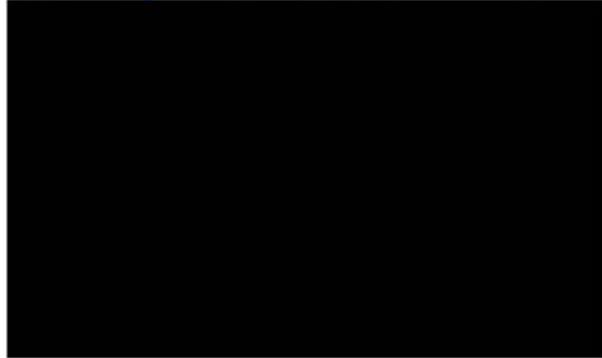
9. This Equity Financing Letter may not be amended or otherwise modified except by an instrument signed by each of the parties hereto and the Seller. The observance of any term or provision of this letter agreement may be waived only if the party that will lose the benefit of such term or provision as a result of such waiver (including, without limitation, the Seller) executes a waiver in writing.

10. This Equity Financing Letter shall be governed by, and construed in accordance with, the laws of the State of New York (without giving effect to the conflict of laws principles thereof). Each party to this Equity Financing Letter hereby irrevocably and unconditionally agrees that any action, suit or proceeding, at law or equity, arising out of or relating to this Equity Financing Letter or any agreements or transactions contemplated hereby shall only be brought in the courts of the State of New York located in Borough of Manhattan and any United States federal courts located in the Borough of Manhattan, and hereby irrevocably and unconditionally expressly submits to the personal jurisdiction and venue of such courts for the purposes thereof and hereby irrevocably and unconditionally waives (by way of motion, as a defense or otherwise) any and all jurisdictional, venue and convenience objections or defenses that such party may have in such action, suit or proceeding, and to any trial by jury to the extent permitted by applicable law. Each party hereby irrevocably and unconditionally consents to the service of process of any of the aforementioned courts. Nothing herein contained shall be deemed to affect the right of any party to serve process in any manner permitted by law or commence legal proceedings or otherwise proceed against any other party in any other jurisdiction to enforce judgments obtained in any action, suit or proceeding brought pursuant to this section.

11. The parties hereto agree that irreparable damage would occur to the non-breaching party if any provision of this letter agreement were not performed by a party hereto in accordance with the terms hereof. Accordingly, the parties hereto agree that, subject to the limitations set forth in this paragraph 11, prior to the valid termination of this Equity Financing Letter in accordance with its terms, and in addition to any other remedy to which a non-breaching party is entitled at law or in equity, the non-breaching party will be entitled to seek injunctive relief to prevent breaches of this Equity Financing Letter and will be entitled to seek to specifically enforce the performance of the provisions hereof. Notwithstanding the foregoing, the JCF Purchaser will be entitled to seek specific performance under this letter agreement if and only if all of the conditions to the Equity Financing or the Withdrawal Financing, as the case may be, that are set forth in paragraph 1 of this Equity Financing Letter have been satisfied.

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**J.C. Flowers IV L.P., a Cayman Islands exempted  
limited partnership**



Agreed and accepted as of the date first written  
above:

*JCF IV Nentun Holdings S.à r.l.*



Name:  
Title:

Annex A

Share Purchase Agreement

TO ALL TO WHOM THESE PRESENTS SHALL COME, I  
[REDACTED] of the City of London, England  
**NOTARY PUBLIC** by royal authority duly admitted, sworn and  
holding a faculty to practise throughout England and Wales,  
DO HEREBY CERTIFY the genuineness of the signature  
subscribed to the document hereunto annexed for and on  
behalf of **JCF ASSOCIATES IV LP**, a limited partnership duly  
registered under the laws of the Cayman Islands, such  
signature having been this day subscribed in my presence by  
[REDACTED], whose personal identity I attest.

IN FAITH AND TESTIMONY WHEREOF I the said notary have  
subscribed my name and set and affixed my seal of office in  
London, England this twenty third day of February in the year  
two thousand and eighteen.



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DK 627 / London City EC3 [www.cheeswrights.co.uk](http://www.cheeswrights.co.uk)

Cayman Island office Tel 030 7712 1565

### APOSTILLE

(Convention de La Haye du 5 octobre 1961)

<b>1. Country:</b> Pays / País; <b>United Kingdom of Great Britain and Northern Ireland</b>	
<b>This public document</b> Le présent acte public / El presente documento público	
<b>2. Has been signed by</b> a été signé par / ha sido firmado por	
<b>3. Acting in the capacity of</b> agissant en qualité de / quien actúa en calidad de <b>Notary Public</b>	
<b>4. Bears the seal / stamp of</b> est revêtu du sceau / timbre de / y está revestido del sello / timbre de <b>The Said Notary Public</b>	
<b>Certified</b> Attesté / Certificado	
<b>5. at</b> à / en <b>London</b>	<b>6. the</b> le / el día <b>26 February 2018</b>
<b>7. by</b> par / por <b>Her Majesty's Principal Secretary of State for Foreign and Commonwealth Affairs</b>	
<b>8. Number</b> sous no / bajo el numero <b>APO-755786</b>	
<b>9. Seal / stamp</b> Sceau / timbre Sello / timbre 	<b>10. Signature</b> Signature Firma 

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**JCF ASSOCIATES IV L.P.**

(the "Company")

WHEREAS, the Company is the General Partner of J.C. Flowers IV L.P. (collectively, with any Alternative Investment Structures (as defined in the Fund Agreements) thereof, the "Fund");

WHEREAS, the Company has the power and authority as set forth in the Amended and Restated Limited Partnership Agreements and the Master Fund Agreements of the Fund (as amended from time to time, the "Fund Agreements"); and

WHEREAS, the Company may become the general partner or similar managing fiduciary of any other investment vehicle organized by the Company, the Fund or any of their affiliates (each, an "Investment Vehicle") for the purpose of making Portfolio Investments (as defined in the Fund Agreements), co-investments or other side-by-side investments with, in lieu of or on behalf of the Fund (each, an "Investment");

NOW THEREFORE, JCF Associates IV Ltd., the General Partner of the Company, acting through [REDACTED] hereby resolves as follows:

RESOLVED, that each of the persons listed on Appendix A as attached hereto and as may be amended from time to time, and each of them hereby is, appointed or ratified as an officer of the Company (each, an "Officer" and collectively, the "Officers"), to serve until his or her successor is elected and duly qualified or until his or her earlier resignation or removal.

RESOLVED, that [REDACTED] be, and hereby is, authorized, empowered and directed, in the name and on behalf of the Company, the Fund and any Investment Vehicle to execute and deliver any and all documents, agreements, letters, certificates or other instruments that [REDACTED] reasonably considers necessary, advisable or convenient in furtherance of the affairs of the Company, the Fund and any such Investment Vehicle, including but not limited to, confidentiality or nondisclosure agreements that [REDACTED] reasonably considers necessary, advisable or convenient in furtherance of the affairs of the Company, the Fund and any such Investment Vehicle, and documents, agreements, letters, certificates or other instruments requested or required in connection with money laundering, "know your customer" or similar requirements of a third party that such Officer reasonably considers necessary, advisable or convenient in furtherance of affairs of the Company, the Fund and any such Investment Vehicle.

RESOLVED, that each Officer with the title of Managing Director (other than [REDACTED] whose authority shall be governed by the resolution above), Chief Financial Officer, Tax Director or Associate General Counsel be, and hereby is, authorized, empowered and directed, in the name and on behalf of the Company, the Fund and/or any Investment Vehicle to execute and deliver any and all documents, agreements, letters, certificates or other instruments that such Officer reasonably considers necessary, advisable or convenient in furtherance of the affairs of the Company, the Fund or any Investment Vehicle including but not limited to: (i) confidentiality or nondisclosure agreements that such Officer reasonably considers necessary, advisable or convenient in furtherance of the affairs of the Company, the Fund or any Investment Vehicle (ii) documents, agreements, letters, certificates or other instruments requested or required in connection with money laundering, "know your customer" or similar requirements of a third party that such Officer reasonably considers necessary, advisable or convenient in furtherance of affairs of the Company, the Fund or any Investment Vehicle, (iii) such other documents as may be directed by [REDACTED]. The authority granted above is subject to the following limitations:

- (a) the foregoing resolution shall not be deemed to provide any such Officer other than as specified on the Cash/Wire Transfer Policy of J.C. Flowers & Co. LLC, as it may be amended from time to time, and attached hereto as Appendix B with authority over any bank accounts of the Company, the Fund or any Investment Vehicle;
- (b) the foregoing resolution shall not be deemed to provide any such Officer with authority to engage the Company, the Fund or any Investment Vehicle in transactions or otherwise create obligations of the Company, the Fund or any Investment Vehicle which have not received Investment Committee approval, if applicable, or are of a type that are outside the typical job responsibilities and duties of such Officer (as such responsibilities and duties may be defined from time to time by [REDACTED] or the Management Committee (the "Management Committee") of the J.C. Flowers & Co. LLC (the "Manager")); and
- (c) the foregoing resolution shall not be deemed to provide any such Officer with authority to execute any documents, agreements, letters, certificates or other instruments (other than instruments necessary to effect cash/wire transfers in accordance with the Cash/Wire Transfer Policy) that have not been reviewed and approved prior to execution by a member of the Manager's legal department.

RESOLVED, that each Officer with the title of Vice President be, and hereby is, authorized, empowered and directed, in the name and on behalf of the Company, the Fund and/or any Investment Vehicle to execute and deliver any and all confidentiality or nondisclosure agreements that such Officer reasonably considers necessary, advisable or convenient in furtherance of the affairs of the Company, the Fund or any Investment Vehicle; provided that such confidentiality or nondisclosure agreement has been reviewed prior to execution by a member of the Manager's legal department.

RESOLVED, that all previous actions taken in the name of and on behalf of the Company, the Fund and any Investment Vehicle by any and all of the Officers in furtherance of the business and operations of the Company, the Fund and each such Investment Vehicle are hereby ratified, confirmed and approved.

RESOLVED, that each Officer be, and each of them hereby is, authorized, empowered and directed, in the name and on behalf of the Company, the Fund and/or any Investment Vehicle to take such other actions and to execute, deliver and file such further documents, agreements, letters, certificates or other instruments as may be required or as such Officer may deem necessary or appropriate in furtherance of the foregoing resolutions and to effectuate fully the purposes and intent thereof, and further, that it be and is hereby confirmed that any and all such actions taken by an Officer are taken by such Officer as a representative of the Company, the Fund and any such Investment Vehicle and not in his or her personal capacity.

RESOLVED, that each Officer be, and each of them hereby is, authorized, empowered and directed, in the name and on behalf of the Company, the Fund and any Investment Vehicle, to certify and/or deliver a true copy of the foregoing resolutions to any person to whom such certification and/or delivery may be deemed necessary or appropriate in the opinion of such Officer.

[Remainder of page intentionally left blank.]

this 23 day of February 2018.



ndix A – as of February 23, 2018

<u>Name</u>	<u>Title</u>
[REDACTED]	Managing Director
[REDACTED]	Associate General Counsel
[REDACTED]	Managing Director & CFO
[REDACTED]	Managing Director
[REDACTED]	Vice President
[REDACTED]	Managing Director & Director of Tax
[REDACTED]	Managing Director
[REDACTED]	Vice President
[REDACTED]	Managing Director & CCO
[REDACTED]	Managing Director, Europe & Asia Pacific
[REDACTED]	Managing Director
[REDACTED]	Managing Director
[REDACTED]	Managing Director
[REDACTED]	Associate General Counsel
[REDACTED]	Managing Director & General Counsel
[REDACTED]	Vice President

CERTIFICATE OF NOTARY PUBLIC

I, Debbie Robinson, Notary Public in and for the Cayman Islands, DO HEREBY CERTIFY that the attached photocopies of the Certificate of Registration, Certificate of Existence and Certificate of Good Standing (the "Documents") relating to J.C. Flowers IV L.P. (the "Partnership") are true and correct copies of the electronic Documents which I confirm have been verified to be the Documents of such Partnership through the Cayman Islands Online General Registry.

Dated this 22<sup>nd</sup> day of February 2018.



Notary Public in and for the Cayman Islands



**APOSTILLE**  
(Hague Convention of 5 October 1961 / Convention de La Haye du 5 octobre 1961)

1. Country: The Cayman Islands  
This public document [REDACTED]

2. has been signed by [REDACTED]

3. acting in the capacity of Notary Public

4. bears the seal/stamp of Notary Public  
Cayman Islands

**CERTIFIED**

5. at Grand Cayman      6. the 22 February 2018

7. by [REDACTED] Governor of the Cayman Islands

8. No. 1941

9. Seal/Stamp      10. Signature [REDACTED]



WC-82605

# Certificate of Registration of Exempted Limited Partnership



I, [REDACTED] Assistant Registrar of Exempted Limited Partnership in the Cayman Islands DO HEREBY CERTIFY, pursuant to the Exempted Limited Partnership Law, 2014 that all the requisitions of the said Law in respect of registration were complied with by

**J.C. Flowers IV L.P.**

an Exempted Limited Partnership registered in the Cayman Islands on the 1st day of July Two Thousand Fifteen



Given under my hand and Seal at George Town in the Island of Grand Cayman this 1st day of July Two Thousand Fifteen



Assistant Registrar of Exempted Limited Partnership  
Cayman Islands.

# Partnership Certificate of Existence

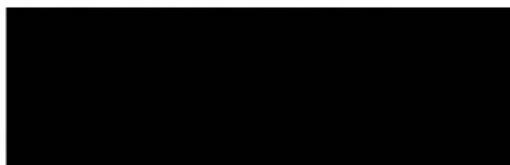
I, [REDACTED] Assistant Registrar in and for the Cayman Islands,  
DO HEREBY CERTIFY the information provided below for:-

## *J.C. Flowers IV L.P.*

*Registered Office :* Walkers Corporate Limited  
Cayman Corporate Centre  
27 Hospital Road  
George Town  
Grand Cayman KY1-9008  
Cayman Islands

*Registration Date:* 01st July 2015  
*Type :* EXEMPTED LIMITED  
*General Partner:* JCF ASSOCIATES IV L.P.  
*Partnership Number:* 82605  
*Status:* ACTIVE

*Given under my hand and Seal at George Town in the  
Island of Grand Cayman this 22nd day of February  
Two Thousand Eighteen*



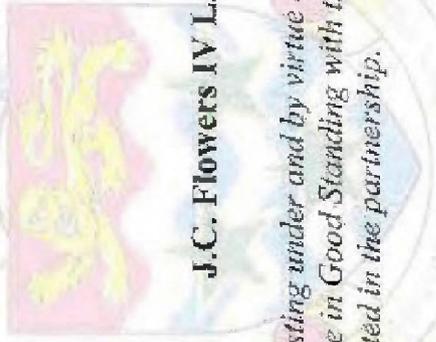
*Assistant Registrar Of Partnerships  
Cayman Islands*

Authorisation Code : 485891198207  
[www.verify.gov.ky](http://www.verify.gov.ky)  
21 February 2018

WC-82605

# *Certificate of Good Standing of a Partnership*

TO WHOM IT MAY CONCERN



**J.C. Flowers IV L.P.**

I DO HEREBY CERTIFY that

*a partnership duly organized and existing under and by virtue of the Laws of The Cayman Islands is at the date of this certificate in Good Standing with this office, and duly authorized to exercise therein all the powers vested in the partnership.*

*Given under my hand and Seal at George Town in the  
Island of Grand Cayman this 21st day of February  
Two Thousand Eighteen*



**An Authorised Officer  
Registrar of Partnerships  
Cayman Islands.**

CERTIFICATE OF NOTARY PUBLIC

I, [REDACTED] Notary Public in and for the Cayman Islands, DO HEREBY CERTIFY that the attached photocopies of the Certificate of Registration and Certificate of Existence (the "Documents") relating to JCF Associates IV L.P. (the "Partnership") are true and correct copies of the electronic Documents which I confirm have been verified to be the Documents of such Partnership through the Cayman Islands Online General Registry.

Dated this 22<sup>nd</sup> day of February 2018.

[REDACTED]

Notary Public in and for the Cayman Islands

[REDACTED]



APOSTILLE	
(Hague Convention of 5 October 1961 - Convention de La Haye du 5 octobre 1961)	
1. Country: The Cayman Islands	
This public document [REDACTED]	
2. has been signed by [REDACTED]	
3. acting in the capacity of	<u>Notary Public</u>
4. bears the seal/stamp of	<u>Notary Public</u> <u>Cayman Islands</u>
CERTIFIED	
5. at Grand Cayman	6. the <u>22 February 2018</u>
7. by [REDACTED] for Governor of the Cayman Islands	
8. No. <u>1942</u>	
9. Seal/Stamp	10. Signature [REDACTED]

# Certificate of Registration of Exempted Limited Partnership



I, [REDACTED] Assistant Registrar of Exempted Limited Partnership in the Cayman Islands DO HEREBY CERTIFY, pursuant to the Exempted Limited Partnership Law, 2014 that all the requisitions of the said Law in respect of registration were complied with by

**JCF Associates IV L.P.**

an Exempted Limited Partnership registered in the Cayman Islands on the 1st day of July Two Thousand Fifteen



Given under my hand and Seal at George Town in the Island of Grand Cayman this 1st day of July Two Thousand Fifteen



Assistant Registrar of Exempted Limited Partnership  
Cayman Islands.

# Partnership Certificate of Existence

I, [REDACTED] Assistant Registrar in and for the Cayman Islands,  
DO HEREBY CERTIFY the information provided below for:-

## *JCF Associates IV L.P.*

*Registered Office.:* Walkers Corporate Limited  
Cayman Corporate Centre  
27 Hospital Road  
George Town  
Grand Cayman KY1-9008  
Cayman Islands

*Registration Date:* 01st July 2015  
*Type :* EXEMPTED LIMITED  
*General Partner:* JCF ASSOCIATES IV LTD  
*Partnership Number:* 82596  
*Status:* ACTIVE

*Given under my hand and Seal at George Town in the  
Island of Grand Cayman this 22nd day of February  
Two Thousand Eighteen*



*Assistant Registrar Of Partnerships  
Cayman Islands*

Authorisation Code : 197829581812  
[www.verify.gov.ky](http://www.verify.gov.ky)  
21 February 2018

CERTIFICATE OF NOTARY PUBLIC

I, [REDACTED] Notary Public in and for the Cayman Islands, DO HEREBY CERTIFY that the attached photocopies of the Certificate of Incorporation and Certificate of Incumbency (the "Documents") relating to JCF Associates IV Ltd (the "Company") are true and correct copies of the electronic Documents which I confirm have been verified to be the Documents of such Company through the Cayman Islands Online General Registry.

Dated this 22<sup>nd</sup> day of February 2018.



Notary Public in and for the Cayman Islands



**APOSTILLE**  
(Hague Convention of 6 October 1961 / Convention de La Haye du 5 octobre 1961)

1. Country: The Cayman Islands

This public document

2. has been signed by [REDACTED]

3. acting in the capacity of Notary Public

4. bears the seal/stamp of Notary Public  
Cayman Islands

**CERTIFIED**

5. at Grand Cayman      6. the 22 February 2018

7. by [REDACTED] for Governor of the Cayman Islands

8. No. 1939

9. Seal/Stamp [REDACTED]



WC-301497

# Certificate Of Incorporation

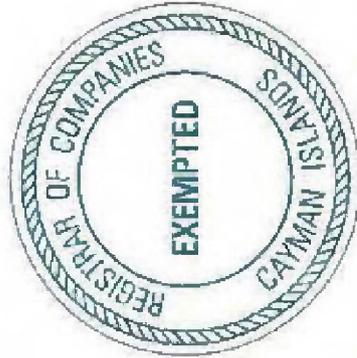


I, [REDACTED] Assistant Registrar of Companies of the Cayman Islands  
DO HEREBY CERTIFY, pursuant to the Companies Law CAP. 22, that all requirements of the said  
Law in respect of registration were complied with by

## JCF Associates IV Ltd

an Exempted Company incorporated in the Cayman Islands with Limited Liability with effect from the  
1st day of July Two Thousand Fifteen

Given under my hand and Seal at George Town in the  
Island of Grand Cayman this 1st day of July  
Two Thousand Fifteen



Assistant Registrar of Companies,  
Cayman Islands.



## Certificate Of Incumbency

I, [REDACTED] Assistant Registrar of Companies in and for the Cayman Islands DO HEREBY CERTIFY that the below mentioned are the Directors and Officers of

*JCF Associates IV Ltd*

as filed with this office:-

[REDACTED]

[REDACTED]

*Given under my hand and  
Seal at George Town in the  
Island of Grand Cayman the  
Twenty-First day of February  
Two Thousand Eighteen*



[REDACTED]

*Assistant Registrar  
of Companies, Cayman Islands*



# **Schedule 5.2 (b)**

Equity Commitment Letter Cerberus Purchaser 1

28 February 2018

Promontoria Holding 221 B.V.  
Oude Utrechtseweg, 32  
3743 KN Baarn  
The Netherlands

Gentlemen:

**Re: Project Neptun Binding Offer**

Reference is made to a share purchase agreement (as amended or modified from time to time in accordance with its terms, the "SPA"), which is intended to be entered into by and between, amongst others, (a) Promontoria Holding 221 B.V. as purchaser (the "Cerberus Purchaser 1"), and (b) HSH Beteiligungs Management GmbH as seller (the "Seller") on or about 28 February 2018 in respect of the proposed acquisition of HSH Nordbank AG, a substantially final version of which is attached hereto as Annex A. Capitalized terms that are used but are not otherwise defined in this letter agreement (this "Equity Financing Letter") shall have the meanings given to them in the SPA.

1. This Equity Financing Letter is being delivered by Cerberus Institutional Partners VI, L.P. (the "Equity Sponsor") to the Cerberus Purchaser 1 and confirms the agreement of the Equity Sponsor to make an equity investment (the Equity Sponsor's "Commitment"), directly or indirectly, in the Cerberus Purchaser 1, (a) in an aggregate amount of up to [REDACTED] (the "Equity Financing") if (i) the Closing Conditions set forth in Clause 7.1 of the SPA have been satisfied or, in the case of Clauses 7.1.4 or 7.1.5 of the SPA, waived by the Seller, in accordance with Clause 7.2 of the SPA (other than those conditions that by their nature are to be satisfied at Closing, but subject to the satisfaction or waiver of such conditions), (ii) the Relevant Percentage of the Total Purchase Price is due and payable by the Cerberus Purchaser 1 pursuant to Clause 3.4.1 of the SPA, (iii) the Seller has not exercised its right to withdraw under Clause 9.2.1 or 9.2.2 of the SPA, (iv) the Cerberus Purchaser 1 (together with all other Purchasers) has not exercised its right to withdraw under Clause 9.2.3 of the SPA or to terminate the SPA under Clause 8.4.7(ii) of the SPA, (v) neither the Seller nor the Cerberus Purchaser 1 (together with all other Purchasers) has exercised a right to withdraw under Clause 9.1 of the SPA, and (vi) no amounts are due to the Seller from the Cerberus Purchaser 1 under clause 9.5.2 of the SPA (such amounts, the "Withdrawal Amounts") or (b) to fund, if and only if, (i) the Cerberus Purchaser 1 is a Breaching Party for purposes of Clause 9.1 of the SPA and, as a result of the Cerberus Purchaser 1's breach, the Withdrawal Amount becomes due to the Seller under Clause 9.5.2 of the SPA, or (ii) the Seller has validly withdrawn from the SPA pursuant to Clause 9.2.1 or Clause 9.2.2 of the SPA and as a result the Withdrawal Amount becomes due to the Seller under Clause 9.5.2 of the SPA, an aggregate amount equal to the lesser of (A) such Withdrawal Amount that is actually due to the Seller by the Cerberus Purchaser 1 or (B) the amount of the Equity Financing (the "Withdrawal Financing").

2. The proceeds from the Equity Financing will be used only to pay the Relevant Percentage of (i) the Total Purchase Price due to be paid by the Cerberus Purchaser 1 to the Seller at Closing pursuant to the SPA; (ii) any amount due to be paid by Cerberus Purchaser 1 to HSH Nordbank AG pursuant to clause 3.1.3 of the SPA; and (iii)

any other claims of the Seller against the Cerberus Purchaser 1 that become due and payable in accordance with the terms of the SPA (and to pay transaction fees and expenses related thereto) and the proceeds from the Withdrawal Financing will be used only to satisfy any Withdrawal Amount due to the Seller if, and only if, such Withdrawal Amount is due to the Seller as a result of (A) the Cerberus Purchaser 1's breach of Clause 9.1 of the SPA or (B) the Seller's withdrawal from the SPA pursuant to Clause 9.2.1 or Clause 9.2.2 of the SPA; provided that in no event will the Equity Sponsor's obligations hereunder exceed the amount of the Equity Financing. In no event shall the Equity Sponsor be obliged to fund all or any portion of the Withdrawal Financing if all or any portion of the Equity Financing is due and payable, and in no event shall the Equity Sponsor be obligated to fund all or any portion of the Equity Financing if all or any portion of the Withdrawal Financing is due or payable. The obligation of the Equity Sponsor to fund or cause the funding of the Equity Financing hereunder is subject to the satisfaction of all of the conditions to the Cerberus Purchaser 1's obligations to consummate the transactions contemplated by the SPA (other than those conditions that by their nature are to be satisfied at Closing, but subject to the satisfaction by the Cerberus Purchaser 1 of such conditions) and the requirement that the Cerberus Purchaser 1 pay only its Relevant Percentage of the Total Purchase Price pursuant to the SPA.

3. The Equity Sponsor shall have no obligation to fund or cause the funding of the Withdrawal Financing except to the extent funding in respect of the Withdrawal Amount is due as a result of the Cerberus Purchaser 1's breach of Clause 9.1 of the SPA or the Seller's withdrawal from the SPA pursuant to Clause 9.2.1 or Clause 9.2.2 of the SPA, as expressly required by the SPA (and not any related costs, fees, penalties or other expenses).

4. The Cerberus Purchaser 1 and the Equity Sponsor hereby agree that: (i) except as set forth in paragraph 6 below, there is no express or implied intention to benefit any third party (including, without limitation, the other Purchasers or their respective affiliates) and nothing contained in this Equity Financing Letter is intended, nor shall anything herein be construed, to confer any rights, legal or equitable, in any person (other than the Cerberus Purchaser 1) (including, without limitation, the other Purchasers or their respective affiliates); and (ii) under no circumstances shall the Equity Sponsor (or any of its Related Parties) be liable for any costs or damages including, without limitation, any special, incidental, consequential, exemplary or punitive damages, to any person, including the Cerberus Purchaser 1 and the Seller and their respective affiliates, in respect of this Equity Financing Letter; provided, that notwithstanding anything contrary in this paragraph, nothing in this Equity Financing Letter shall impair (or be construed to impair) any of the rights of the Seller against the Cerberus Purchaser 1 under the SPA.

5. The Commitment will be effective upon your acceptance of the terms and conditions of this Equity Financing Letter and will immediately and automatically expire upon the earlier of the (a) the funding of the Relevant Percentage of the Total Purchase Price due to the Seller from the Cerberus Purchaser 1 at Closing (at which time the Equity Sponsor's obligations hereunder shall be deemed discharged), and (b) the valid termination of the SPA in accordance with its terms where no Withdrawal Amount is due to the Seller from the Cerberus Purchaser 1 pursuant to Clause 9.5.2 of the SPA. Upon valid termination or expiration of this Equity Financing Letter, the Equity Sponsor shall have no further obligations or liabilities in respect of the Commitment

hereunder. Except as expressly set forth in this paragraph, this Equity Financing Letter may not be terminated without the Seller's express prior written consent.

6. The Cerberus Purchaser 1 and the Equity Sponsor hereby agree that (i) the Seller shall be an express third-party beneficiary of this Equity Financing Letter for purposes of seeking to enforce the obligations of the Equity Sponsor to the Cerberus Purchaser 1 under this Equity Financing Letter in the circumstances where, and to the extent, the Seller is entitled to seek specific performance of the Cerberus Purchaser 1's obligation pursuant to the SPA; and (ii) HSH Nordbank AG shall be an express third-party beneficiary of this Equity Financing Letter for purposes of seeking to enforce the obligations of the Equity Sponsor to the Cerberus Purchaser 1 under this Equity Financing Letter in the circumstances where, and to the extent, HSH Nordbank AG is entitled to seek specific performance of the Cerberus Purchaser 1's obligation pursuant to clause 3.1.3 of the SPA.

7. Notwithstanding anything that may be expressed or implied in this Equity Financing Letter or any document or instrument delivered contemporaneously herewith, no person (other than the Cerberus Purchaser 1 and the Equity Sponsor, to the extent provided in, and subject to the limitations of, this Equity Financing Letter) shall have any obligation hereunder and, notwithstanding that the Equity Sponsor may be a corporation, partnership or limited liability company, no person shall have any rights of recovery against, or recourse hereunder or in respect of any oral representations made or alleged to be made in connection herewith, against, any former, current and future direct or indirect equityholders, controlling persons, stockholders, directors, officers, employees, agents, affiliates, members, managers, general or limited partners, financing sources, assignees, successors or predecessors or attorneys or other representatives of the Investor, or any of their successors or assigns, or any former, current and future direct or indirect equityholders, controlling persons, stockholders, directors, officers, employees, agents, affiliates, members, managers, general or limited partners, financing sources, assignees, successors or predecessors or attorneys or other representatives or successors or assigns of any of the foregoing (each, a "Related Party" and together, the "Related Parties", it being understood that, notwithstanding anything to the contrary herein, the foregoing and the term Related Parties shall not include the Equity Sponsor (but solely with respect to any Available Remedy) or the Cerberus Purchaser 1), in each case, other than, for the avoidance of doubt (i) solely against the Equity Sponsor, to the extent provided in, and subject to the limitations contained in, this Equity Financing Letter, and (ii) against the Cerberus Purchaser 1 under the SPA (collectively, the "Available Remedies"), whether by or through attempted piercing of the corporate veil, by or through any claim against any Related Party, by the enforcement of any assessment or by any legal or equitable proceeding, or by virtue of any applicable law, it being agreed and acknowledged that no personal liability whatsoever shall attach to, be imposed on or otherwise be incurred by any Related Party for any obligations of the Equity Sponsor under this Equity Financing Letter or in respect of any oral representations made or alleged to be made in connection herewith or therewith or for any claim (whether at law or equity or in tort, contract, attempted piercing of the corporate veil or otherwise) based on, in respect of, or by reason of such obligations or their creation (in each case, for the avoidance of doubt, other than in respect of the Available Remedies solely against the Cerberus Purchaser 1 or the Equity Sponsor). For the avoidance of doubt, nothing in this paragraph 7 shall impair (or be construed to impair) any of the rights of the Seller against the Cerberus Purchaser 1 under the SPA.

8. Subject to paragraph 6 above, this Equity Financing Letter may be enforced only by the Cerberus Purchaser 1 to seek to cause performance hereunder by the Equity Sponsor (subject to the terms herein and in the SPA) and only in accordance with this Equity Financing Letter. Notwithstanding anything to the contrary in this letter agreement, none of the Seller's equityholders or creditors shall have any right to enforce or cause the Cerberus Purchaser 1 to enforce this Equity Financing Letter.

9. This Equity Financing Letter may not be amended or otherwise modified except by an instrument signed by each of the parties hereto and the Seller. The observance of any term or provision of this letter agreement may be waived only if the party that will lose the benefit of such term or provision as a result of such waiver (including, without limitation, the Seller) executes a waiver in writing.

10. This Equity Financing Letter shall be governed by, and construed in accordance with, the laws of the State of New York (without giving effect to the conflict of laws principles thereof). Each party to this Equity Financing Letter hereby irrevocably and unconditionally agrees that any action, suit or proceeding, at law or equity, arising out of or relating to this Equity Financing Letter or any agreements or transactions contemplated hereby shall only be brought in the courts of the State of New York located in Borough of Manhattan and any United States federal courts located in the Borough of Manhattan, and hereby irrevocably and unconditionally expressly submits to the personal jurisdiction and venue of such courts for the purposes thereof and hereby irrevocably and unconditionally waives (by way of motion, as a defense or otherwise) any and all jurisdictional, venue and convenience objections or defenses that such party may have in such action, suit or proceeding, and to any trial by jury to the extent permitted by applicable law. Each party hereby irrevocably and unconditionally consents to the service of process of any of the aforementioned courts. Nothing herein contained shall be deemed to affect the right of any party to serve process in any manner permitted by law or commence legal proceedings or otherwise proceed against any other party in any other jurisdiction to enforce judgments obtained in any action, suit or proceeding brought pursuant to this section.

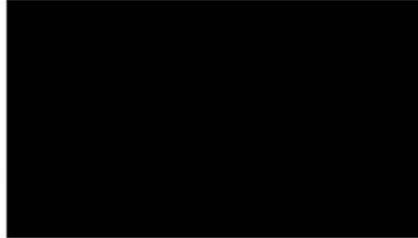
11. The parties hereto agree that irreparable damage would occur to the non-breaching party if any provision of this letter agreement were not performed by a party hereto in accordance with the terms hereof. Accordingly, the parties hereto agree that, subject to the limitations set forth in this paragraph 11, prior to the valid termination of this Equity Financing Letter in accordance with its terms, and in addition to any other remedy to which a non-breaching party is entitled at law or in equity, the non-breaching party will be entitled to seek injunctive relief to prevent breaches of this Equity Financing Letter and will be entitled to seek to specifically enforce the performance of the provisions hereof. Notwithstanding the foregoing, the Cerberus Purchaser 1 will be entitled to seek specific performance under this letter agreement if and only if all of the conditions to the Equity Financing or the Withdrawal Financing, as the case may be, that are set forth in paragraph 1 of this Equity Financing Letter have been satisfied.

*remainder of page intentionally blank*

CERBERUS INSTITUTIONAL PARTNERS VI, L.P.

By: Cerberus Institutional Associates III, Ltd.  
its General Partner

By:  
Name:  
Title:



Agreed and accepted as of the date first written  
above:

*Promontoria Holding 221 B.V. acting by its  
attorney* [REDACTED]

By: \_\_\_\_\_

By Power of Attorney

Name: [REDACTED]

Share Purchase Agreement

# **Schedule 5.2 (c)**

Equity Commitment Letter Cerberus Purchaser 2

28 February 2018

Promontoria Holding 231 B.V.  
Oude Utrechtseweg, 32  
3743 KN Baarn  
The Netherlands

Gentlemen:

**Re: Project Neptun Binding Offer**

Reference is made to a share purchase agreement (as amended or modified from time to time in accordance with its terms, the "SPA"), which is intended to be entered into by and between, amongst others, (a) Promontoria Holding 231 B.V. as purchaser (the "Cerberus 2 Purchaser"), and (b) HSH Beteiligungs Management GmbH as seller (the "Seller") on or about 28 February 2018 in respect of the proposed acquisition of HSH Nordbank AG, a substantially final version of which is attached hereto as Annex A. Capitalized terms that are used but are not otherwise defined in this letter agreement (this "Equity Financing Letter") shall have the meanings given to them in the SPA.

1. This Equity Financing Letter is being delivered by Cerberus Institutional Partners VI, L.P. (the "Equity Sponsor") to the Cerberus 2 Purchaser and confirms the agreement of the Equity Sponsor to make an equity investment (the Equity Sponsor's "Commitment"), directly or indirectly, in the Cerberus 2 Purchaser, (a) in an aggregate amount of up to [REDACTED] (the "Equity Financing") if (i) the Closing Conditions set forth in Clause 7.1 of the SPA have been satisfied or, in the case of Clauses 7.1.4 or 7.1.5 of the SPA, waived by the Seller, in accordance with Clause 7.2 of the SPA (other than those conditions that by their nature are to be satisfied at Closing, but subject to the satisfaction or waiver of such conditions), (ii) the Relevant Percentage of the Total Purchase Price is due and payable by the Cerberus 2 Purchaser pursuant to Clause 3.4.1 of the SPA, (iii) the Seller has not exercised its right to withdraw under Clause 9.2.1 or 9.2.2 of the SPA, (iv) the Cerberus 2 Purchaser (together with all other Purchasers) has not exercised its right to withdraw under Clause 9.2.3 of the SPA or to terminate the SPA under Clause 8.4.7(ii) of the SPA, (v) neither the Seller nor the Cerberus 2 Purchaser (together with all other Purchasers) has exercised a right to withdraw under Clause 9.1 of the SPA, and (vi) no amounts are due to the Seller from the Cerberus 2 Purchaser under clause 9.5.2 of the SPA (such amounts, the "Withdrawal Amounts") or (b) to fund, if and only if, (i) the Cerberus 2 Purchaser is a Breaching Party for purposes of Clause 9.1 of the SPA and, as a result of the Cerberus 2 Purchaser's breach, the Withdrawal Amount becomes due to the Seller under Clause 9.5.2 of the SPA, or (ii) the Seller has validly withdrawn from the SPA pursuant to Clause 9.2.1 or Clause 9.2.2 of the SPA and as a result the Withdrawal Amount becomes due to the Seller under Clause 9.5.2 of the SPA, an aggregate amount equal to the lesser of (A) such Withdrawal Amount that is actually due to the Seller by the Cerberus 2 Purchaser or (B) the amount of the Equity Financing (the "Withdrawal Financing").

2. The proceeds from the Equity Financing will be used only to pay the Relevant Percentage of (i) the Total Purchase Price due to be paid by the Cerberus 2 Purchaser to the Seller at Closing pursuant to the SPA; (ii) any amount due to be paid by Cerberus 2 Purchaser to HSH Nordbank AG pursuant to clause 3.1.3 of the SPA; and (iii)

any other claims of the Seller against the Cerberus 2 Purchaser that become due and payable in accordance with the terms of the SPA (and to pay transaction fees and expenses related thereto) and the proceeds from the Withdrawal Financing will be used only to satisfy any Withdrawal Amount due to the Seller if, and only if, such Withdrawal Amount is due to the Seller as a result of (A) the Cerberus 2 Purchaser's breach of Clause 9.1 of the SPA or (B) the Seller's withdrawal from the SPA pursuant to Clause 9.2.1 or Clause 9.2.2 of the SPA; provided that in no event will the Equity Sponsor's obligations hereunder exceed the amount of the Equity Financing. In no event shall the Equity Sponsor be obliged to fund all or any portion of the Withdrawal Financing if all or any portion of the Equity Financing is due and payable, and in no event shall the Equity Sponsor be obligated to fund all or any portion of the Equity Financing if all or any portion of the Withdrawal Financing is due or payable. The obligation of the Equity Sponsor to fund or cause the funding of the Equity Financing hereunder is subject to the satisfaction of all of the conditions to the Cerberus 2 Purchaser's obligations to consummate the transactions contemplated by the SPA (other than those conditions that by their nature are to be satisfied at Closing, but subject to the satisfaction by the Cerberus 2 Purchaser of such conditions) and the requirement that the Cerberus 2 Purchaser pay only its Relevant Percentage of the Total Purchase Price pursuant to the SPA.

3. The Equity Sponsor shall have no obligation to fund or cause the funding of the Withdrawal Financing except to the extent funding in respect of the Withdrawal Amount is due as a result of the Cerberus 2 Purchaser's breach of Clause 9.1 of the SPA or the Seller's withdrawal from the SPA pursuant to Clause 9.2.1 or Clause 9.2.2 of the SPA, as expressly required by the SPA (and not any related costs, fees, penalties or other expenses).

4. The Cerberus 2 Purchaser and the Equity Sponsor hereby agree that: (i) except as set forth in paragraph 6 below, there is no express or implied intention to benefit any third party (including, without limitation, the other Purchasers or their respective affiliates) and nothing contained in this Equity Financing Letter is intended, nor shall anything herein be construed, to confer any rights, legal or equitable, in any person (other than the Cerberus 2 Purchaser) (including, without limitation, the other Purchasers or their respective affiliates); and (ii) under no circumstances shall the Equity Sponsor (or any of its Related Parties) be liable for any costs or damages including, without limitation, any special, incidental, consequential, exemplary or punitive damages, to any person, including the Cerberus 2 Purchaser and the Seller and their respective affiliates, in respect of this Equity Financing Letter; provided, that notwithstanding anything contrary in this paragraph, nothing in this Equity Financing Letter shall impair (or be construed to impair) any of the rights of the Seller against the Cerberus 2 Purchaser under the SPA.

5. The Commitment will be effective upon your acceptance of the terms and conditions of this Equity Financing Letter and will immediately and automatically expire upon the earlier of the (a) the funding of the Relevant Percentage of the Total Purchase Price due to the Seller from the Cerberus 2 Purchaser at Closing (at which time the Equity Sponsor's obligations hereunder shall be deemed discharged), and (b) the valid termination of the SPA in accordance with its terms where no Withdrawal Amount is due to the Seller from the Cerberus 2 Purchaser pursuant to Clause 9.5.2 of the SPA. Upon valid termination or expiration of this Equity Financing Letter, the Equity Sponsor shall have no further obligations or liabilities in respect of the Commitment

hereunder. Except as expressly set forth in this paragraph, this Equity Financing Letter may not be terminated without the Seller's express prior written consent.

6. The Cerberus 2 Purchaser and the Equity Sponsor hereby agree that (i) the Seller shall be an express third-party beneficiary of this Equity Financing Letter for purposes of seeking to enforce the obligations of the Equity Sponsor to the Cerberus 2 Purchaser under this Equity Financing Letter in the circumstances where, and to the extent, the Seller is entitled to seek specific performance of the Cerberus 2 Purchaser's obligation pursuant to the SPA; and (ii) HSH Nordbank AG shall be an express third-party beneficiary of this Equity Financing Letter for purposes of seeking to enforce the obligations of the Equity Sponsor to the Cerberus 2 Purchaser under this Equity Financing Letter in the circumstances where, and to the extent, HSH Nordbank AG is entitled to seek specific performance of the Cerberus 2 Purchaser's obligation pursuant to clause 3.1.3 of the SPA.

7. Notwithstanding anything that may be expressed or implied in this Equity Financing Letter or any document or instrument delivered contemporaneously herewith, no person (other than the Cerberus 2 Purchaser and the Equity Sponsor, to the extent provided in, and subject to the limitations of, this Equity Financing Letter) shall have any obligation hereunder and, notwithstanding that the Equity Sponsor may be a corporation, partnership or limited liability company, no person shall have any rights of recovery against, or recourse hereunder or in respect of any oral representations made or alleged to be made in connection herewith, against, any former, current and future direct or indirect equityholders, controlling persons, stockholders, directors, officers, employees, agents, affiliates, members, managers, general or limited partners, financing sources, assignees, successors or predecessors or attorneys or other representatives of the Investor, or any of their successors or assigns, or any former, current and future direct or indirect equityholders, controlling persons, stockholders, directors, officers, employees, agents, affiliates, members, managers, general or limited partners, financing sources, assignees, successors or predecessors or attorneys or other representatives or successors or assigns of any of the foregoing (each, a "Related Party" and together, the "Related Parties", it being understood that, notwithstanding anything to the contrary herein, the foregoing and the term Related Parties shall not include the Equity Sponsor (but solely with respect to any Available Remedy) or the Cerberus 2 Purchaser), in each case, other than, for the avoidance of doubt (i) solely against the Equity Sponsor, to the extent provided in, and subject to the limitations contained in, this Equity Financing Letter, and (ii) against the Cerberus 2 Purchaser under the SPA (collectively, the "Available Remedies"), whether by or through attempted piercing of the corporate veil, by or through any claim against any Related Party, by the enforcement of any assessment or by any legal or equitable proceeding, or by virtue of any applicable law, it being agreed and acknowledged that no personal liability whatsoever shall attach to, be imposed on or otherwise be incurred by any Related Party for any obligations of the Equity Sponsor under this Equity Financing Letter or in respect of any oral representations made or alleged to be made in connection herewith or therewith or for any claim (whether at law or equity or in tort, contract, attempted piercing of the corporate veil or otherwise) based on, in respect of, or by reason of such obligations or their creation (in each case, for the avoidance of doubt, other than in respect of the Available Remedies solely against the Cerberus 2 Purchaser or the Equity Sponsor). For the avoidance of doubt, nothing in this paragraph 7 shall impair (or be construed to impair) any of the rights of the Seller against the Cerberus 2 Purchaser under the SPA.

8. Subject to paragraph 6 above, this Equity Financing Letter may be enforced only by the Cerberus 2 Purchaser to seek to cause performance hereunder by the Equity Sponsor (subject to the terms herein and in the SPA) and only in accordance with this Equity Financing Letter. Notwithstanding anything to the contrary in this letter agreement, none of the Seller's equityholders or creditors shall have any right to enforce or cause the Cerberus 2 Purchaser to enforce this Equity Financing Letter.

9. This Equity Financing Letter may not be amended or otherwise modified except by an instrument signed by each of the parties hereto and the Seller. The observance of any term or provision of this letter agreement may be waived only if the party that will lose the benefit of such term or provision as a result of such waiver (including, without limitation, the Seller) executes a waiver in writing.

10. This Equity Financing Letter shall be governed by, and construed in accordance with, the laws of the State of New York (without giving effect to the conflict of laws principles thereof). Each party to this Equity Financing Letter hereby irrevocably and unconditionally agrees that any action, suit or proceeding, at law or equity, arising out of or relating to this Equity Financing Letter or any agreements or transactions contemplated hereby shall only be brought in the courts of the State of New York located in Borough of Manhattan and any United States federal courts located in the Borough of Manhattan, and hereby irrevocably and unconditionally expressly submits to the personal jurisdiction and venue of such courts for the purposes thereof and hereby irrevocably and unconditionally waives (by way of motion, as a defense or otherwise) any and all jurisdictional, venue and convenience objections or defenses that such party may have in such action, suit or proceeding, and to any trial by jury to the extent permitted by applicable law. Each party hereby irrevocably and unconditionally consents to the service of process of any of the aforementioned courts. Nothing herein contained shall be deemed to affect the right of any party to serve process in any manner permitted by law or commence legal proceedings or otherwise proceed against any other party in any other jurisdiction to enforce judgments obtained in any action, suit or proceeding brought pursuant to this section.

11. The parties hereto agree that irreparable damage would occur to the non-breaching party if any provision of this letter agreement were not performed by a party hereto in accordance with the terms hereof. Accordingly, the parties hereto agree that, subject to the limitations set forth in this paragraph 11, prior to the valid termination of this Equity Financing Letter in accordance with its terms, and in addition to any other remedy to which a non-breaching party is entitled at law or in equity, the non-breaching party will be entitled to seek injunctive relief to prevent breaches of this Equity Financing Letter and will be entitled to seek to specifically enforce the performance of the provisions hereof. Notwithstanding the foregoing, the Cerberus 2 Purchaser will be entitled to seek specific performance under this letter agreement if and only if all of the conditions to the Equity Financing or the Withdrawal Financing, as the case may be, that are set forth in paragraph 1 of this Equity Financing Letter have been satisfied.

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CERBERUS INSTITUTIONAL PARTNERS VI, L.P.

By: Cerberus Institutional Associates III, Ltd.  
its General Partner

By:

Name:

Title:



Agreed and accepted as of the date first written above:

*Promontoria Holding 231 B.V. acting by its attorney*

By:

By Power of Attorney

Name:

Share Purchase Agreement

# **Schedule 5.2 (d)**

Equity Commitment Letter Cerberus Purchaser 3

28 February 2018

Promontoria Holding 233 B.V.  
Oude Utrechtseweg, 32  
3743 KN Baarn  
The Netherlands

Gentlemen:

**Re: Project Neptun Binding Offer**

Reference is made to a share purchase agreement (as amended or modified from time to time in accordance with its terms, the "SPA"), which is intended to be entered into by and between, amongst others, (a) Promontoria Holding 233 B.V. as purchaser (the "Cerberus 3 Purchaser"), and (b) HSH Beteiligungs Management GmbH as seller (the "Seller") on or about 28 February 2018 in respect of the proposed acquisition of HSH Nordbank AG, a substantially final version of which is attached hereto as Annex A. Capitalized terms that are used but are not otherwise defined in this letter agreement (this "Equity Financing Letter") shall have the meanings given to them in the SPA.

1. This Equity Financing Letter is being delivered by Cerberus Institutional Partners VI, L.P. (the "Equity Sponsor") to the Cerberus 3 Purchaser and confirms the agreement of the Equity Sponsor to make an equity investment (the Equity Sponsor's "Commitment"), directly or indirectly, in the Cerberus 3 Purchaser, (a) in an aggregate amount of up to [REDACTED] (the "Equity Financing") if (i) the Closing Conditions set forth in Clause 7.1 of the SPA have been satisfied or, in the case of Clauses 7.1.4 or 7.1.5 of the SPA, waived by the Seller, in accordance with Clause 7.2 of the SPA (other than those conditions that by their nature are to be satisfied at Closing, but subject to the satisfaction or waiver of such conditions), (ii) the Relevant Percentage of the Total Purchase Price is due and payable by the Cerberus 3 Purchaser pursuant to Clause 3.4.1 of the SPA, (iii) the Seller has not exercised its right to withdraw under Clause 9.2.1 or 9.2.2 of the SPA, (iv) the Cerberus 3 Purchaser (together with all other Purchasers) has not exercised its right to withdraw under Clause 9.2.3 of the SPA or to terminate the SPA under Clause 8.4.7(ii) of the SPA, (v) neither the Seller nor the Cerberus 3 Purchaser (together with all other Purchasers) has exercised a right to withdraw under Clause 9.1 of the SPA, and (vi) no amounts are due to the Seller from the Cerberus 3 Purchaser under clause 9.5.2 of the SPA (such amounts, the "Withdrawal Amounts") or (b) to fund, if and only if, (i) the Cerberus 3 Purchaser is a Breaching Party for purposes of Clause 9.1 of the SPA and, as a result of the Cerberus 3 Purchaser's breach, the Withdrawal Amount becomes due to the Seller under Clause 9.5.2 of the SPA, or (ii) the Seller has validly withdrawn from the SPA pursuant to Clause 9.2.1 or Clause 9.2.2 of the SPA and as a result the Withdrawal Amount becomes due to the Seller under Clause 9.5.2 of the SPA, an aggregate amount equal to the lesser of (A) such Withdrawal Amount that is actually due to the Seller by the Cerberus 3 Purchaser or (B) the amount of the Equity Financing (the "Withdrawal Financing").

2. The proceeds from the Equity Financing will be used only to pay the Relevant Percentage of (i) the Total Purchase Price due to be paid by the Cerberus 3 Purchaser to the Seller at Closing pursuant to the SPA; (ii) any amount due to be paid by Cerberus 3 Purchaser to HSH Nordbank AG pursuant to clause 3.1.3 of the SPA; and (iii)

any other claims of the Seller against the Cerberus 3 Purchaser that become due and payable in accordance with the terms of the SPA (and to pay transaction fees and expenses related thereto) and the proceeds from the Withdrawal Financing will be used only to satisfy any Withdrawal Amount due to the Seller if, and only if, such Withdrawal Amount is due to the Seller as a result of (A) the Cerberus 3 Purchaser's breach of Clause 9.1 of the SPA or (B) the Seller's withdrawal from the SPA pursuant to Clause 9.2.1 or Clause 9.2.2 of the SPA; provided that in no event will the Equity Sponsor's obligations hereunder exceed the amount of the Equity Financing. In no event shall the Equity Sponsor be obliged to fund all or any portion of the Withdrawal Financing if all or any portion of the Equity Financing is due and payable, and in no event shall the Equity Sponsor be obligated to fund all or any portion of the Equity Financing if all or any portion of the Withdrawal Financing is due or payable. The obligation of the Equity Sponsor to fund or cause the funding of the Equity Financing hereunder is subject to the satisfaction of all of the conditions to the Cerberus 3 Purchaser's obligations to consummate the transactions contemplated by the SPA (other than those conditions that by their nature are to be satisfied at Closing, but subject to the satisfaction by the Cerberus 3 Purchaser of such conditions) and the requirement that the Cerberus 3 Purchaser pay only its Relevant Percentage of the Total Purchase Price pursuant to the SPA.

3. The Equity Sponsor shall have no obligation to fund or cause the funding of the Withdrawal Financing except to the extent funding in respect of the Withdrawal Amount is due as a result of the Cerberus 3 Purchaser's breach of Clause 9.1 of the SPA or the Seller's withdrawal from the SPA pursuant to Clause 9.2.1 or Clause 9.2.2 of the SPA, as expressly required by the SPA (and not any related costs, fees, penalties or other expenses).

4. The Cerberus 3 Purchaser and the Equity Sponsor hereby agree that: (i) except as set forth in paragraph 6 below, there is no express or implied intention to benefit any third party (including, without limitation, the other Purchasers or their respective affiliates) and nothing contained in this Equity Financing Letter is intended, nor shall anything herein be construed, to confer any rights, legal or equitable, in any person (other than the Cerberus 3 Purchaser) (including, without limitation, the other Purchasers or their respective affiliates); and (ii) under no circumstances shall the Equity Sponsor (or any of its Related Parties) be liable for any costs or damages including, without limitation, any special, incidental, consequential, exemplary or punitive damages, to any person, including the Cerberus 3 Purchaser and the Seller and their respective affiliates, in respect of this Equity Financing Letter; provided, that notwithstanding anything contrary in this paragraph, nothing in this Equity Financing Letter shall impair (or be construed to impair) any of the rights of the Seller against the Cerberus 3 Purchaser under the SPA.

5. The Commitment will be effective upon your acceptance of the terms and conditions of this Equity Financing Letter and will immediately and automatically expire upon the earlier of the (a) the funding of the Relevant Percentage of the Total Purchase Price due to the Seller from the Cerberus 3 Purchaser at Closing (at which time the Equity Sponsor's obligations hereunder shall be deemed discharged), and (b) the valid termination of the SPA in accordance with its terms where no Withdrawal Amount is due to the Seller from the Cerberus 3 Purchaser pursuant to Clause 9.5.2 of the SPA. Upon valid termination or expiration of this Equity Financing Letter, the Equity Sponsor shall have no further obligations or liabilities in respect of the Commitment

hereunder. Except as expressly set forth in this paragraph, this Equity Financing Letter may not be terminated without the Seller's express prior written consent.

6. The Cerberus 3 Purchaser and the Equity Sponsor hereby agree that (i) the Seller shall be an express third-party beneficiary of this Equity Financing Letter for purposes of seeking to enforce the obligations of the Equity Sponsor to the Cerberus 3 Purchaser under this Equity Financing Letter in the circumstances where, and to the extent, the Seller is entitled to seek specific performance of the Cerberus 3 Purchaser's obligation pursuant to the SPA; and (ii) HSH Nordbank AG shall be an express third-party beneficiary of this Equity Financing Letter for purposes of seeking to enforce the obligations of the Equity Sponsor to the Cerberus 3 Purchaser under this Equity Financing Letter in the circumstances where, and to the extent, HSH Nordbank AG is entitled to seek specific performance of the Cerberus 3 Purchaser's obligation pursuant to clause 3.1.3 of the SPA.

7. Notwithstanding anything that may be expressed or implied in this Equity Financing Letter or any document or instrument delivered contemporaneously herewith, no person (other than the Cerberus 3 Purchaser and the Equity Sponsor, to the extent provided in, and subject to the limitations of, this Equity Financing Letter) shall have any obligation hereunder and, notwithstanding that the Equity Sponsor may be a corporation, partnership or limited liability company, no person shall have any rights of recovery against, or recourse hereunder or in respect of any oral representations made or alleged to be made in connection herewith, against, any former, current and future direct or indirect equityholders, controlling persons, stockholders, directors, officers, employees, agents, affiliates, members, managers, general or limited partners, financing sources, assignees, successors or predecessors or attorneys or other representatives of the Investor, or any of their successors or assigns, or any former, current and future direct or indirect equityholders, controlling persons, stockholders, directors, officers, employees, agents, affiliates, members, managers, general or limited partners, financing sources, assignees, successors or predecessors or attorneys or other representatives or successors or assigns of any of the foregoing (each, a "Related Party" and together, the "Related Parties", it being understood that, notwithstanding anything to the contrary herein, the foregoing and the term Related Parties shall not include the Equity Sponsor (but solely with respect to any Available Remedy) or the Cerberus 3 Purchaser), in each case, other than, for the avoidance of doubt (i) solely against the Equity Sponsor, to the extent provided in, and subject to the limitations contained in, this Equity Financing Letter, and (ii) against the Cerberus 3 Purchaser under the SPA (collectively, the "Available Remedies"), whether by or through attempted piercing of the corporate veil, by or through any claim against any Related Party, by the enforcement of any assessment or by any legal or equitable proceeding, or by virtue of any applicable law, it being agreed and acknowledged that no personal liability whatsoever shall attach to, be imposed on or otherwise be incurred by any Related Party for any obligations of the Equity Sponsor under this Equity Financing Letter or in respect of any oral representations made or alleged to be made in connection herewith or therewith or for any claim (whether at law or equity or in tort, contract, attempted piercing of the corporate veil or otherwise) based on, in respect of, or by reason of such obligations or their creation (in each case, for the avoidance of doubt, other than in respect of the Available Remedies solely against the Cerberus 3 Purchaser or the Equity Sponsor). For the avoidance of doubt, nothing in this paragraph 7 shall impair (or be construed to impair) any of the rights of the Seller against the Cerberus 3 Purchaser under the SPA.

8. Subject to paragraph 6 above, this Equity Financing Letter may be enforced only by the Cerberus 3 Purchaser to seek to cause performance hereunder by the Equity Sponsor (subject to the terms herein and in the SPA) and only in accordance with this Equity Financing Letter. Notwithstanding anything to the contrary in this letter agreement, none of the Seller's equityholders or creditors shall have any right to enforce or cause the Cerberus 3 Purchaser to enforce this Equity Financing Letter.

9. This Equity Financing Letter may not be amended or otherwise modified except by an instrument signed by each of the parties hereto and the Seller. The observance of any term or provision of this letter agreement may be waived only if the party that will lose the benefit of such term or provision as a result of such waiver (including, without limitation, the Seller) executes a waiver in writing.

10. This Equity Financing Letter shall be governed by, and construed in accordance with, the laws of the State of New York (without giving effect to the conflict of laws principles thereof). Each party to this Equity Financing Letter hereby irrevocably and unconditionally agrees that any action, suit or proceeding, at law or equity, arising out of or relating to this Equity Financing Letter or any agreements or transactions contemplated hereby shall only be brought in the courts of the State of New York located in Borough of Manhattan and any United States federal courts located in the Borough of Manhattan, and hereby irrevocably and unconditionally expressly submits to the personal jurisdiction and venue of such courts for the purposes thereof and hereby irrevocably and unconditionally waives (by way of motion, as a defense or otherwise) any and all jurisdictional, venue and convenience objections or defenses that such party may have in such action, suit or proceeding, and to any trial by jury to the extent permitted by applicable law. Each party hereby irrevocably and unconditionally consents to the service of process of any of the aforementioned courts. Nothing herein contained shall be deemed to affect the right of any party to serve process in any manner permitted by law or commence legal proceedings or otherwise proceed against any other party in any other jurisdiction to enforce judgments obtained in any action, suit or proceeding brought pursuant to this section.

11. The parties hereto agree that irreparable damage would occur to the non-breaching party if any provision of this letter agreement were not performed by a party hereto in accordance with the terms hereof. Accordingly, the parties hereto agree that, subject to the limitations set forth in this paragraph 11, prior to the valid termination of this Equity Financing Letter in accordance with its terms, and in addition to any other remedy to which a non-breaching party is entitled at law or in equity, the non-breaching party will be entitled to seek injunctive relief to prevent breaches of this Equity Financing Letter and will be entitled to seek to specifically enforce the performance of the provisions hereof. Notwithstanding the foregoing, the Cerberus 3 Purchaser will be entitled to seek specific performance under this letter agreement if and only if all of the conditions to the Equity Financing or the Withdrawal Financing, as the case may be, that are set forth in paragraph 1 of this Equity Financing Letter have been satisfied.

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CERBERUS INSTITUTIONAL PARTNERS VI, L.P.

By: Cerberus Institutional Associates III, Ltd.  
its General Partner

By:

Name

Title



Agreed and accepted as of the date first written above:

*Promontoria Holding 233 B.V. acting by its attorney*

By: \_\_\_\_\_

By Power of Attorney

Name: \_\_\_\_\_

Share Purchase Agreement

# **Schedule 5.2 (e)**

Equity Commitment Letter Goldentree

\_\_\_ February 2018

GoldenTree Asset Management Lux S.à r.l.  
Boulevard Royal, 26  
2449 Luxembourg  
Luxembourg

Gentlemen:

**Re: Project Neptun Binding Offer**

Reference is made to a share purchase agreement (as amended or modified from time to time in accordance with its terms, the "SPA"), which is intended to be entered into by and between, amongst others, (a) GoldenTree Asset Management Lux S.à r.l. as purchaser (the "GoldenTree Purchaser"), and (b) HSH Beteiligungs Management GmbH as seller (the "Seller") on or about 28 February 2018 in respect of the proposed acquisition of HSH Nordbank AG, a substantially final version of which is attached hereto as Annex A. Capitalized terms that are used but are not otherwise defined in this letter agreement (this "Equity Financing Letter") shall have the meanings given to them in the SPA.

1. This Equity Financing Letter is being delivered by GoldenTree Asset Management Lux S.à r.l. (the "Equity Sponsor") to the GoldenTree Purchaser and confirms the agreement of the Equity Sponsor to make an equity investment (the Equity Sponsor's "Commitment"), directly or indirectly, in the GoldenTree Purchaser, (a) in an aggregate amount of up to [REDACTED] (the "Equity Financing") if (i) the Closing Conditions set forth in Clause 7.1 of the SPA have been satisfied or, in the case of Clauses 7.1.4 or 7.1.5 of the SPA, waived by the Seller, in accordance with Clause 7.2 of the SPA (other than those conditions that by their nature are to be satisfied at Closing, but subject to the satisfaction or waiver of such conditions), (ii) the Relevant Percentage of the Total Purchase Price is due and payable by the GoldenTree Purchaser pursuant to Clause 3.4.1 of the SPA, (iii) the Seller has not exercised its right to withdraw under Clause 9.2.1 or 9.2.2 of the SPA, (iv) the GoldenTree Purchaser (together with all other Purchasers) has not exercised its right to withdraw under Clause 9.2.3 of the SPA or to terminate the SPA under Clause 8.4.7(ii) of the SPA, (v) neither the Seller nor the GoldenTree Purchaser (together with all other Purchasers) has exercised a right to withdraw under Clause 9.1 of the SPA, and (vi) no amounts are due to the Seller from the GoldenTree Purchaser under clause 9.5.2 of the SPA (such amounts, the "Withdrawal Amounts") or (b) to fund, if and only if, (i) the GoldenTree Purchaser is a Breaching Party for purposes of Clause 9.1 of the SPA and, as a result of the GoldenTree Purchaser's breach, the Withdrawal Amount becomes due to the Seller under Clause 9.5.2 of the SPA, or (ii) the Seller has validly withdrawn from the SPA pursuant to Clause 9.2.1 or Clause 9.2.2 of the SPA and as a result the Withdrawal Amount becomes due to the Seller under Clause 9.5.2 of the SPA, an aggregate amount equal to the lesser of (A) such Withdrawal Amount that is actually due to the Seller by the GoldenTree Purchaser or (B) the amount of the Equity Financing (the "Withdrawal Financing").

2. The proceeds from the Equity Financing will be used only to pay the Relevant Percentage of (i) the Total Purchase Price due to be paid by the GoldenTree Purchaser to the Seller at Closing pursuant to the SPA; (ii) any amount due to be paid by GoldenTree Purchaser to HSH Nordbank AG pursuant to clause 3.1.3 of the SPA; and (iii)

any other claims of the Seller against the GoldenTree Purchaser that become due and payable in accordance with the terms of the SPA (and to pay transaction fees and expenses related thereto) and the proceeds from the Withdrawal Financing will be used only to satisfy any Withdrawal Amount due to the Seller if, and only if, such Withdrawal Amount is due to the Seller as a result of (A) the GoldenTree Purchaser's breach of Clause 9.1 of the SPA or (B) the Seller's withdrawal from the SPA pursuant to Clause 9.2.1 or Clause 9.2.2 of the SPA; provided that in no event will the Equity Sponsor's obligations hereunder exceed the amount of the Equity Financing. In no event shall the Equity Sponsor be obliged to fund all or any portion of the Withdrawal Financing if all or any portion of the Equity Financing is due and payable, and in no event shall the Equity Sponsor be obligated to fund all or any portion of the Equity Financing if all or any portion of the Withdrawal Financing is due or payable. The obligation of the Equity Sponsor to fund or cause the funding of the Equity Financing hereunder is subject to the satisfaction of all of the conditions to the GoldenTree Purchaser's obligations to consummate the transactions contemplated by the SPA (other than those conditions that by their nature are to be satisfied at Closing, but subject to the satisfaction by the GoldenTree Purchaser of such conditions) and the requirement that the GoldenTree Purchaser pay only its Relevant Percentage of the Total Purchase Price pursuant to the SPA.

3. The Equity Sponsor shall have no obligation to fund or cause the funding of the Withdrawal Financing except to the extent funding in respect of the Withdrawal Amount is due as a result of the GoldenTree Purchaser's breach of Clause 9.1 of the SPA or the Seller's withdrawal from the SPA pursuant to Clause 9.2.1 or Clause 9.2.2 of the SPA, as expressly required by the SPA (and not any related costs, fees, penalties or other expenses).

4. The GoldenTree Purchaser and the Equity Sponsor hereby agree that: (i) except as set forth in paragraph 6 below, there is no express or implied intention to benefit any third party (including, without limitation, the other Purchasers or their respective affiliates) and nothing contained in this Equity Financing Letter is intended, nor shall anything herein be construed, to confer any rights, legal or equitable, in any person (other than the GoldenTree Purchaser) (including, without limitation, the other Purchasers or their respective affiliates); and (ii) under no circumstances shall the Equity Sponsor (or any of its Related Parties) be liable for any costs or damages including, without limitation, any special, incidental, consequential, exemplary or punitive damages, to any person, including the GoldenTree Purchaser and the Seller and their respective affiliates, in respect of this Equity Financing Letter; provided, that notwithstanding anything contrary in this paragraph, nothing in this Equity Financing Letter shall impair (or be construed to impair) any of the rights of the Seller against the GoldenTree Purchaser under the SPA.

5. The Commitment will be effective upon your acceptance of the terms and conditions of this Equity Financing Letter and will immediately and automatically expire upon the earlier of the (a) the funding of the Relevant Percentage of the Total Purchase Price due to the Seller from the GoldenTree Purchaser at Closing (at which time the Equity Sponsor's obligations hereunder shall be deemed discharged), and (b) the valid termination of the SPA in accordance with its terms where no Withdrawal Amount is due to the Seller from the GoldenTree Purchaser pursuant to Clause 9.5.2 of the SPA. Upon valid termination or expiration of this Equity Financing Letter, the Equity Sponsor shall have no further obligations or liabilities in respect of the Commitment

hereunder. Except as expressly set forth in this paragraph, this Equity Financing Letter may not be terminated without the Seller's express prior written consent.

6. The GoldenTree Purchaser and the Equity Sponsor hereby agree that (i) the Seller shall be an express third-party beneficiary of this Equity Financing Letter for purposes of seeking to enforce the obligations of the Equity Sponsor to the GoldenTree Purchaser under this Equity Financing Letter in the circumstances where, and to the extent, the Seller is entitled to seek specific performance of the GoldenTree Purchaser's obligation pursuant to the SPA; and (ii) HSH Nordbank AG shall be an express third-party beneficiary of this Equity Financing Letter for purposes of seeking to enforce the obligations of the Equity Sponsor to the GoldenTree Purchaser under this Equity Financing Letter in the circumstances where, and to the extent, HSH Nordbank AG is entitled to seek specific performance of the GoldenTree Purchaser's obligation pursuant to clause 3.1.3 of the SPA.

7. Notwithstanding anything that may be expressed or implied in this Equity Financing Letter or any document or instrument delivered contemporaneously herewith, no person (other than the GoldenTree Purchaser and the Equity Sponsor, to the extent provided in, and subject to the limitations of, this Equity Financing Letter) shall have any obligation hereunder and, notwithstanding that the Equity Sponsor may be a corporation, partnership or limited liability company, no person shall have any rights of recovery against, or recourse hereunder or in respect of any oral representations made or alleged to be made in connection herewith, against, any former, current and future direct or indirect equityholders, controlling persons, stockholders, directors, officers, employees, agents, affiliates, members, managers, general or limited partners, financing sources, assignees, successors or predecessors or attorneys or other representatives of the Investor, or any of their successors or assigns, or any former, current and future direct or indirect equityholders, controlling persons, stockholders, directors, officers, employees, agents, affiliates, members, managers, general or limited partners, financing sources, assignees, successors or predecessors or attorneys or other representatives or successors or assigns of any of the foregoing (each, a "Related Party" and together, the "Related Parties", it being understood that, notwithstanding anything to the contrary herein, the foregoing and the term Related Parties shall not include the Equity Sponsor (but solely with respect to any Available Remedy) or the GoldenTree Purchaser), in each case, other than, for the avoidance of doubt (i) solely against the Equity Sponsor, to the extent provided in, and subject to the limitations contained in, this Equity Financing Letter, and (ii) against the GoldenTree Purchaser under the SPA (collectively, the "Available Remedies"), whether by or through attempted piercing of the corporate veil, by or through any claim against any Related Party, by the enforcement of any assessment or by any legal or equitable proceeding, or by virtue of any applicable law, it being agreed and acknowledged that no personal liability whatsoever shall attach to, be imposed on or otherwise be incurred by any Related Party for any obligations of the Equity Sponsor under this Equity Financing Letter or in respect of any oral representations made or alleged to be made in connection herewith or therewith or for any claim (whether at law or equity or in tort, contract, attempted piercing of the corporate veil or otherwise) based on, in respect of, or by reason of such obligations or their creation (in each case, for the avoidance of doubt, other than in respect of the Available Remedies solely against the GoldenTree Purchaser or the Equity Sponsor). For the avoidance of doubt, nothing in this paragraph 7 shall impair (or be construed to impair) any of the rights of the Seller against the GoldenTree Purchaser under the SPA.

8. Subject to paragraph 6 above, this Equity Financing Letter may be enforced only by the GoldenTree Purchaser to seek to cause performance hereunder by the Equity Sponsor (subject to the terms herein and in the SPA) and only in accordance with this Equity Financing Letter. Notwithstanding anything to the contrary in this letter agreement, none of the Seller's equityholders or creditors shall have any right to enforce or cause the GoldenTree Purchaser to enforce this Equity Financing Letter.

9. This Equity Financing Letter may not be amended or otherwise modified except by an instrument signed by each of the parties hereto and the Seller. The observance of any term or provision of this letter agreement may be waived only if the party that will lose the benefit of such term or provision as a result of such waiver (including, without limitation, the Seller) executes a waiver in writing.

10. This Equity Financing Letter shall be governed by, and construed in accordance with, the laws of the State of New York (without giving effect to the conflict of laws principles thereof). Each party to this Equity Financing Letter hereby irrevocably and unconditionally agrees that any action, suit or proceeding, at law or equity, arising out of or relating to this Equity Financing Letter or any agreements or transactions contemplated hereby shall only be brought in the courts of the State of New York located in Borough of Manhattan and any United States federal courts located in the Borough of Manhattan, and hereby irrevocably and unconditionally expressly submits to the personal jurisdiction and venue of such courts for the purposes thereof and hereby irrevocably and unconditionally waives (by way of motion, as a defense or otherwise) any and all jurisdictional, venue and convenience objections or defenses that such party may have in such action, suit or proceeding, and to any trial by jury to the extent permitted by applicable law. Each party hereby irrevocably and unconditionally consents to the service of process of any of the aforementioned courts. Nothing herein contained shall be deemed to affect the right of any party to serve process in any manner permitted by law or commence legal proceedings or otherwise proceed against any other party in any other jurisdiction to enforce judgments obtained in any action, suit or proceeding brought pursuant to this section.

11. The parties hereto agree that irreparable damage would occur to the non-breaching party if any provision of this letter agreement were not performed by a party hereto in accordance with the terms hereof. Accordingly, the parties hereto agree that, subject to the limitations set forth in this paragraph 11, prior to the valid termination of this Equity Financing Letter in accordance with its terms, and in addition to any other remedy to which a non-breaching party is entitled at law or in equity, the non-breaching party will be entitled to seek injunctive relief to prevent breaches of this Equity Financing Letter and will be entitled to seek to specifically enforce the performance of the provisions hereof. Notwithstanding the foregoing, the GoldenTree Purchaser will be entitled to seek specific performance under this letter agreement if and only if all of the conditions to the Equity Financing or the Withdrawal Financing, as the case may be, that are set forth in paragraph 1 of this Equity Financing Letter have been satisfied.

*remainder of page intentionally blank*

Agreed and accepted as of the date first written above:

*GoldenTree Asset Management Lux S.à r.l.*

By:

Name:

Title:



Agreed and accepted as of the date first written above:

*GoldenTree Asset Management Lux S.à r.l.*

By:

Name:

Title:



Agreed and accepted as of the date first written  
above:

*GoldenTree Asset Management LP*

By:

Name

Title:



Annex A

Share Purchase Agreement

# **Schedule 5.2 (f)**

Equity Commitment Letter Centaurus

28 February 2018

Chi Centauri LLC  
1717 West Loop South – Suite 1800  
Houston, Texas 77027  
United States of America

Gentlemen:

**Re: Project Neptun Binding Offer**

Reference is made to a share purchase agreement (as amended or modified from time to time in accordance with its terms, the “SPA”), which is intended to be entered into by and between, amongst others, (a) Chi Centauri LLC as purchaser (the “Centaurus Purchaser”), and (b) HSH Beteiligungs Management GmbH as seller (the “Seller”) on or about 28 February 2018 in respect of the proposed acquisition of 94.9% of the capital stock of HSH Nordbank AG, a substantially final version of which is attached hereto as Annex A. Capitalized terms that are used but are not otherwise defined in this letter agreement (this “Equity Financing Letter”) shall have the meanings given to them in the SPA.

1. This Equity Financing Letter is being delivered by Centaurus Capital LP (the “Equity Sponsor”) to the Centaurus Purchaser and confirms the agreement of the Equity Sponsor to make an equity investment (the Equity Sponsor’s “Commitment”), directly or indirectly, in the Centaurus Purchaser, (a) in an aggregate amount of up to [REDACTED] (the “Equity Financing”) if (i) the Closing Conditions set forth in Clause 7.1 of the SPA have been satisfied or, in the case of Clauses 7.1.4 or 7.1.5 of the SPA, waived by the Seller, in accordance with Clause 7.2 of the SPA (other than those conditions that by their nature are to be satisfied at Closing, but subject to the satisfaction or waiver of such conditions), (ii) the Relevant Percentage of the Total Purchase Price is due and payable by the Centaurus Purchaser pursuant to Clause 3.4.1 of the SPA, (iii) the Seller has not exercised its right to withdraw under Clause 9.2.1 or 9.2.2 of the SPA, (iv) the Centaurus Purchaser (together with all other Purchasers) has not exercised its right to withdraw under Clause 9.2.3 of the SPA or to terminate the SPA under Clause 8.4.7(ii) of the SPA, (v) neither the Seller nor the Centaurus Purchaser (together with all other Purchasers) has exercised a right to withdraw under Clause 9.1 of the SPA, and (vi) no amounts are due to the Seller from the Centaurus Purchaser under clause 9.5.2 of the SPA (such amounts, the “Withdrawal Amounts”) or (b) to fund, if and only if, (i) the Centaurus Purchaser is a Breaching Party for purposes of Clause 9.1 of the SPA and, as a result of the Centaurus Purchaser’s breach, the Withdrawal Amount becomes due to the Seller under Clause 9.5.2 of the SPA, or (ii) the Seller has validly withdrawn from the SPA pursuant to Clause 9.2.1 or Clause 9.2.2 of the SPA and as a result the Withdrawal Amount becomes due to the Seller under Clause 9.5.2 of the SPA, an aggregate amount equal to the lesser of (A) such Withdrawal Amount that is actually due to the Seller by the Centaurus Purchaser or (B) the amount of the Equity Financing (the “Withdrawal Financing”).

2. The proceeds from the Equity Financing will be used only to pay the Relevant Percentage of (i) the Total Purchase Price due to be paid by the Centaurus Purchaser to the Seller at Closing pursuant to the SPA; (ii) any amount due to be paid by

Centaurus Purchaser to HSH Nordbank AG pursuant to clause 3.1.3 of the SPA; and (iii) any other claims of the Seller against the Centaurus Purchaser that become due and payable in accordance with the terms of the SPA (and to pay transaction fees and expenses related thereto) and the proceeds from the Withdrawal Financing will be used only to satisfy any Withdrawal Amount due to the Seller if, and only if, such Withdrawal Amount is due to the Seller as a result of (A) the Centaurus Purchaser's breach of Clause 9.1 of the SPA or (B) the Seller's withdrawal from the SPA pursuant to Clause 9.2.1 or Clause 9.2.2 of the SPA; provided that in no event will the Equity Sponsor's obligations hereunder exceed the amount of the Equity Financing. In no event shall the Equity Sponsor be obliged to fund all or any portion of the Withdrawal Financing if all or any portion of the Equity Financing is due and payable, and in no event shall the Equity Sponsor be obligated to fund all or any portion of the Equity Financing if all or any portion of the Withdrawal Financing is due or payable. The obligation of the Equity Sponsor to fund or cause the funding of the Equity Financing hereunder is subject to the satisfaction of all of the conditions to the Centaurus Purchaser's obligations to consummate the transactions contemplated by the SPA (other than those conditions that by their nature are to be satisfied at Closing, but subject to the satisfaction by the Centaurus Purchaser of such conditions) and the requirement that the Centaurus Purchaser pay only its Relevant Percentage of the Total Purchase Price pursuant to the SPA.

3. The Equity Sponsor shall have no obligation to fund or cause the funding of the Withdrawal Financing except to the extent funding in respect of the Withdrawal Amount is due as a result of the Centaurus Purchaser's breach of Clause 9.1 of the SPA or the Seller's withdrawal from the SPA pursuant to Clause 9.2.1 or Clause 9.2.2 of the SPA, as expressly required by the SPA (and not any related costs, fees, penalties or other expenses).

4. The Centaurus Purchaser and the Equity Sponsor hereby agree that: (i) except as set forth in paragraph 6 below, there is no express or implied intention to benefit any third party (including, without limitation, the other Purchasers or their respective affiliates) and nothing contained in this Equity Financing Letter is intended, nor shall anything herein be construed, to confer any rights, legal or equitable, in any person (other than the Centaurus Purchaser) (including, without limitation, the other Purchasers or their respective affiliates); and (ii) under no circumstances shall the Equity Sponsor (or any of its Related Parties) be liable for any costs or damages including, without limitation, any special, incidental, consequential, exemplary or punitive damages, to any person, including the Centaurus Purchaser and the Seller and their respective affiliates, in respect of this Equity Financing Letter; provided, that notwithstanding anything contrary in this paragraph, nothing in this Equity Financing Letter shall impair (or be construed to impair) any of the rights of the Seller against the Centaurus Purchaser under the SPA.

5. The Commitment will be effective upon your acceptance of the terms and conditions of this Equity Financing Letter and will immediately and automatically expire upon the earlier of the (a) the funding of the Relevant Percentage of the Total Purchase Price due to the Seller from the Centaurus Purchaser at Closing (at which time the Equity Sponsor's obligations hereunder shall be deemed discharged), and (b) the valid termination of the SPA in accordance with its terms where no Withdrawal Amount is due to the Seller from the Centaurus Purchaser pursuant to Clause 9.5.2 of the SPA. Upon valid termination or expiration of this Equity Financing Letter, the Equity Sponsor shall have no further obligations or liabilities in respect of the Commitment

hereunder. Except as expressly set forth in this paragraph, this Equity Financing Letter may not be terminated without the Seller's express prior written consent.

6. The Centaurus Purchaser and the Equity Sponsor hereby agree that (i) the Seller shall be an express third-party beneficiary of this Equity Financing Letter for purposes of seeking to enforce the obligations of the Equity Sponsor to the Centaurus Purchaser under this Equity Financing Letter in the circumstances where, and to the extent, the Seller is entitled to seek specific performance of the Centaurus Purchaser's obligation pursuant to the SPA; and (ii) HSH Nordbank AG shall be an express third-party beneficiary of this Equity Financing Letter for purposes of seeking to enforce the obligations of the Equity Sponsor to the Centaurus Purchaser under this Equity Financing Letter in the circumstances where, and to the extent, HSH Nordbank AG is entitled to seek specific performance of the Centaurus Purchaser's obligation pursuant to clause 3.1.3 of the SPA.

7. Notwithstanding anything that may be expressed or implied in this Equity Financing Letter or any document or instrument delivered contemporaneously herewith, no person (other than the Centaurus Purchaser and the Equity Sponsor, to the extent provided in, and subject to the limitations of, this Equity Financing Letter) shall have any obligation hereunder and, notwithstanding that the Equity Sponsor may be a corporation, partnership or limited liability company, no person shall have any rights of recovery against, or recourse hereunder or in respect of any oral representations made or alleged to be made in connection herewith, against, any former, current and future direct or indirect equityholders, controlling persons, stockholders, directors, officers, employees, agents, affiliates, members, managers, general or limited partners, financing sources, assignees, successors or predecessors or attorneys or other representatives of the Investor, or any of their successors or assigns, or any former, current and future direct or indirect equityholders, controlling persons, stockholders, directors, officers, employees, agents, affiliates, members, managers, general or limited partners, financing sources, assignees, successors or predecessors or attorneys or other representatives or successors or assigns of any of the foregoing (each, a "Related Party" and together, the "Related Parties", it being understood that, notwithstanding anything to the contrary herein, the foregoing and the term Related Parties shall not include the Equity Sponsor (but solely with respect to any Available Remedy) or the Centaurus Purchaser), in each case, other than, for the avoidance of doubt (i) solely against the Equity Sponsor, to the extent provided in, and subject to the limitations contained in, this Equity Financing Letter, and (ii) against the Centaurus Purchaser under the SPA (collectively, the "Available Remedies"), whether by or through attempted piercing of the corporate veil, by or through any claim against any Related Party, by the enforcement of any assessment or by any legal or equitable proceeding, or by virtue of any applicable law, it being agreed and acknowledged that no personal liability whatsoever shall attach to, be imposed on or otherwise be incurred by any Related Party for any obligations of the Equity Sponsor under this Equity Financing Letter or in respect of any oral representations made or alleged to be made in connection herewith or therewith or for any claim (whether at law or equity or in tort, contract, attempted piercing of the corporate veil or otherwise) based on, in respect of, or by reason of such obligations or their creation (in each case, for the avoidance of doubt, other than in respect of the Available Remedies solely against the Centaurus Purchaser or the Equity Sponsor). For the avoidance of doubt, nothing in this paragraph 7 shall impair (or be construed to impair) any of the rights of the Seller against the Centaurus Purchaser under the SPA.

8. Subject to paragraph 6 above, this Equity Financing Letter may be enforced only by the Centaurus Purchaser to seek to cause performance hereunder by the Equity Sponsor (subject to the terms herein and in the SPA) and only in accordance with this Equity Financing Letter. Notwithstanding anything to the contrary in this letter agreement, none of the Seller's equityholders or creditors shall have any right to enforce or cause the Centaurus Purchaser to enforce this Equity Financing Letter.

9. This Equity Financing Letter may not be amended or otherwise modified except by an instrument signed by each of the parties hereto and the Seller. The observance of any term or provision of this letter agreement may be waived only if the party that will lose the benefit of such term or provision as a result of such waiver (including, without limitation, the Seller) executes a waiver in writing.

10. This Equity Financing Letter shall be governed by, and construed in accordance with, the laws of the State of New York (without giving effect to the conflict of laws principles thereof). Each party to this Equity Financing Letter hereby irrevocably and unconditionally agrees that any action, suit or proceeding, at law or equity, arising out of or relating to this Equity Financing Letter or any agreements or transactions contemplated hereby shall only be brought in the courts of the State of New York located in Borough of Manhattan and any United States federal courts located in the Borough of Manhattan, and hereby irrevocably and unconditionally expressly submits to the personal jurisdiction and venue of such courts for the purposes thereof and hereby irrevocably and unconditionally waives (by way of motion, as a defense or otherwise) any and all jurisdictional, venue and convenience objections or defenses that such party may have in such action, suit or proceeding, and to any trial by jury to the extent permitted by applicable law. Each party hereby irrevocably and unconditionally consents to the service of process of any of the aforementioned courts. Nothing herein contained shall be deemed to affect the right of any party to serve process in any manner permitted by law or commence legal proceedings or otherwise proceed against any other party in any other jurisdiction to enforce judgments obtained in any action, suit or proceeding brought pursuant to this section.

11. The parties hereto agree that irreparable damage would occur to the non-breaching party if any provision of this letter agreement were not performed by a party hereto in accordance with the terms hereof. Accordingly, the parties hereto agree that, subject to the limitations set forth in this paragraph 11, prior to the valid termination of this Equity Financing Letter in accordance with its terms, and in addition to any other remedy to which a non-breaching party is entitled at law or in equity, the non-breaching party will be entitled to seek injunctive relief to prevent breaches of this Equity Financing Letter and will be entitled to seek to specifically enforce the performance of the provisions hereof. Notwithstanding the foregoing, the Centaurus Purchaser will be entitled to seek specific performance under this letter agreement if and only if all of the conditions to the Equity Financing or the Withdrawal Financing, as the case may be, that are set forth in paragraph 1 of this Equity Financing Letter have been satisfied.

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*CENTAURUS CAPITAL LP*

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Agreed and accepted as of the date first written above:

*CHI CENTAURUS LLC*

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Share Purchase Agreement

# **Schedule 8.7**

Updated Disclosure Letter

## Schedule 8.7

### Updated Disclosure Letter

by:

**HSH Beteiligungs Management GmbH**, a company incorporated under the laws of Germany, whose registered office is in Hamburg and which is registered in the commercial register at the Local Court (*Amtsgericht*) of Hamburg under HRB 141769, having its business address at Besenbinderhof 37, 20097 Hamburg, Germany,

(the "**Seller**"),

to:

(1) JCF IV Neptun Holdings S. à r. l., a company incorporated under the laws of Luxembourg whose registered office is at 5 Rue Guillaume Kroll, L-1882, Luxembourg,

(the "**JCF Purchaser**"),

(2) Promontoria Holding 221 B.V., a company incorporated under the laws of The Netherlands with its corporate seat in Baarn and with business address at Oude Utrechtseweg 32, 3743KN Baarn, The Netherlands,

(the "**Cerberus Purchaser 1**"),

(3) Promontoria Holding 231 B.V., a company incorporated under the laws of The Netherlands with its corporate seat in Baarn and with business address at Oude Utrechtseweg 32, 3743KN Baarn, The Netherlands,

(the "**Cerberus Purchaser 2**"),

(4) Promontoria Holding 233 B.V., a company incorporated under the laws of The Netherlands with its corporate seat in Baarn and with business address at Oude Utrechtseweg 32, 3743KN Baarn, The Netherlands,

(the "**Cerberus Purchaser 3**"),

(5) BAWAG P.S.K. Bank für Arbeit und Wirtschaft und Österreichische Postsparkasse Aktiengesellschaft, a company incorporated under the laws of the Republic of Austria with business address at Georg-Coch-Platz 2, 1018 Wien, Austria,

(the "**BAWAG Purchaser**"),

(6) Goldentree Asset Management Lux S. à r.l., a company incorporated under the laws of Luxembourg, whose registered office is at 26 Boulevard Royal, 2449 Luxembourg,

(the "**Goldentree Purchaser**"),

(7) Chi Centauri LLC, a company incorporated under the laws of Delaware with business address at 1717 West Loop South – Suite 1800, Houston, Texas, 77027, United States of America,

(the "**Centaurus Purchaser**").

The JCF Purchaser, the Cerberus Purchaser 1, the Cerberus Purchaser 2, the Cerberus Purchaser 3, the BAWAG Purchaser, the Goldentree Purchaser and the Centaurus Purchaser are also referred to collectively as the "**Purchasers**" and the Seller together with the Purchaser are also collectively referred to as the "**Parties**" and each of them as a "**Party**".

**Whereas:**

- (A) On 28 February 2018, the Parties entered into a share purchase agreement relating to shares in HSH Nordbank AG ("**SPA**"). Capitalised terms used in this updated disclosure letter (the "**Updated Disclosure Letter**") have the meaning ascribed to them in the SPA, unless indicated otherwise in this Updated Disclosure Letter.
- (B) Pursuant to Clause 8.7 of the SPA, at Closing, the Seller shall submit to the Purchasers a letter by means of which the Seller shall confirm to the Purchasers and the W&I Insurers that between the date of the SPA and the Closing Date no facts or circumstance have occurred or are existing that constitute or are reasonably expected to lead to a **Warranty Breach** and/or claims in respect of Tax matters against the W&I Insurers, or, if such facts or circumstances have occurred, provide the Purchasers and the W&I Insurers with a detailed description of such facts and circumstances and the relevant breach resulting therefrom.

On or immediately prior to the Closing Date, we have enquired with the following individuals

- HSH Nordbank's management board (Vorstand) and
- the executives/employees of HSH Nordbank as set out in Schedule 12.2 of the SPA

in respect of the **Warranties** and Tax Indemnities and their actual knowledge of facts, matters or circumstances that constitute a **Warranty Breach** or a claim under the Tax Indemnities (the "**Due Enquiry**")

By signing this Updated Disclosure Letter, the Seller confirms based on his actual knowledge and after Due Enquiry to the Purchasers and the W&I Insurers that the Seller's **Warranties** are true and correct as of Closing and that between Signing and Closing no facts or circumstance have occurred or are existing that constitute or are reasonably expected to lead to a **Warranty Breach** and/or claims in respect of Tax matters against the Seller and/or W&I Insurers.

[Place, Date]

**HSH Beteiligungs Management GmbH**

---

Name: [●]

Position: Managing Director (*Geschäftsführer*)

# **Schedule 10.2.3**

Resigning Supervisory Board Members

Project Neptun

Schedule 10.2.3

Resigning Supervisory Board Members of HSH Nordbank

No.	Name
1	Dr. Thomas Mirow
2	Silke Grimm
3	Stefan Jütte
4	Dr. Rainer Klemmt-Nissen
5	Dr. Philipp Nimmernann
6	Elke Weber-Braun
7	Jörg Wohlers



# **Schedule 10.2.5**

Draft Closing Minutes

## Schedule 10.2.5 Draft Closing Minutes

**between**

- (1) HSH Beteiligungs Management GmbH, a company incorporated under the laws of Germany, whose registered office is in Hamburg and which is registered in the commercial register at the Local Court (*Amtsgericht*) of Hamburg under HRB 141769, having its business address at Besenbinderhof 37, 20097 Hamburg, Germany  

(the "**Seller**"),
- (2) JCF IV Neptun Holdings S.à r.l., a company incorporated under the laws of Luxembourg, whose registered office is in/with business address at 5, Rue Guillaume Kroll, L-1882, Luxembourg,  

(the "**JCF Purchaser**")
- (3) Promontoria Holding 221 B.V., a company incorporated under the laws of The Netherlands with its corporate seat in Baarn and with business address at Oude Utrechtseweg 32, 3743KN Baarn, The Netherlands,  

(the "**Cerberus Purchaser 1**");
- (4) Promontoria Holding 231 B.V., a company incorporated under the laws of The Netherlands with its corporate seat in Baarn and with business address at Oude Utrechtseweg 32, 3743KN Baarn, The Netherlands,  

(the "**Cerberus Purchaser 2**");
- (5) Promontoria Holding 233 B.V., a company incorporated under the laws of The Netherlands with its corporate seat in Baarn and with business address at Oude Utrechtseweg 32, 3743KN Baarn, The Netherlands,  

(the "**Cerberus Purchaser 3**");
- (6) BAWAG P.S.K. Bank für Arbeit und Wirtschaft und Österreichische Postsparkasse Aktiengesellschaft, a company incorporated under the laws of the Republic of Austria with business address at Georg-Coch-Platz 2, 1018 Wien, Austria,  

(the "**BAWAG Purchaser**"),
- (7) GoldenTree Asset Management Lux S.à r.l., a company incorporated under the laws of Luxembourg, whose registered office is at 26 Boulevard Royal, 2449 Luxembourg,  

(the "**Goldentree Purchaser**"),
- (8) Chi Centauri LLC, a company incorporated under the laws of Delaware with business address at 1717 West Loop South – Suite 1900, Houston, Texas, 77027, United States of America ,  

(the "**Centaurus Purchaser**").

The JCF Purchaser, the Cerberus Purchaser 1, the Cerberus Purchaser 2, the Cerberus Purchaser 3, the BAWAG Purchaser, the Goldentree Purchaser and the Centaurus Purchaser are

also referred to collectively as the "**Purchasers**" and individually as a "**Purchaser**". The Seller and the Purchasers are also collectively referred to as the "**Parties**" and each of them as a "**Party**".

## **Preamble**

On 28 February 2018, the Parties entered into a share purchase agreement regarding the sale and assignment of the Shares in HSH Nordbank by the Seller to the Purchasers (the "**Share Purchase Agreement**"). Clause 10.2.5 of the Share Purchase Agreement provides that the Parties shall confirm to each other, by signing respective closing minutes, that the Closing Conditions have been fulfilled (or waived in accordance with Clauses 7.2.7 and 7.2.8 of the Share Purchase Agreement) and that the Closing Actions have been taken in accordance with the Share Purchase Agreement. Today is the day on which the Closing takes place according to Clause 10.1 of the Share Purchase Agreement.

## **1 Interpretation**

- 1.1** Except as otherwise expressly provided in these closing minutes (the "**Closing Minutes**"), Clause 1 of the Share Purchase Agreement (Interpretation) shall apply to these Closing Minutes *mutatis mutandis*; in particular, the terms defined in Schedule 1.1 of the Share Purchase Agreement (Definitions) shall have the meaning ascribed to them in these and shall be construed and interpreted as set out in the Share Purchase Agreement.
- 1.2** Any references to Sections or Annexes are to Sections or Annexes of these Closing Minutes unless express reference is made to Clauses or Schedules of the Share Purchase Agreement.

## **2 Confirmation of Satisfaction of Closing Conditions**

Each Party hereby confirms that all Closing Conditions pursuant to Clause 7.1 of the Share Purchase Agreement have been satisfied or waived in accordance with the Share Purchase Agreement.

In particular:

- 2.1** The German Federal Cartel Office (*Bundeskartellamt*):
  - 2.1.1** after the submission of the complete merger control filing, has notified the Seller and/or the Purchasers in writing that the notified acquisition of the Sold Shares does not fulfil the conditions for prohibition stated in section 36 para. 1 of the German Act against Restraints on Competition (*Gesetz gegen Wettbewerbsbeschränkungen – GWB*); or
  - 2.1.2** has failed to notify the Seller and/or the Purchasers within one (1) month after the submission of the complete merger control filing of the proposed acquisition of the Sold Shares in accordance with section 40 para. 1 GWB that it has initiated the main examination proceedings; or
  - 2.1.3** after the initiation of main examination proceedings has issued an order in accordance with section 40 para. 2, sentence 1 GWB that the acquisition of the Sold Shares will be approved either unconditionally or subject to the fulfilment of certain conditions or obligations (*Auflagen oder Bedingungen*) accepted by the Purchasers or to be accepted by the Purchasers pursuant to Clause 7.2.2(iii) of the Share Purchase Agreement;

- 2.1.4 has failed to issue an order pursuant to section 40 para. 2 sentence 1 GWB within the time periods set out in section 40 para. 2 GWB; or
- 2.1.5 after the submission of the complete merger control filing, has notified the Seller and/or the Purchasers in writing or otherwise that the acquisition of the Shares does not fulfil the conditions for a merger control filing obligations pursuant to Sections 35 et seq GWB.
- 2.2 The Austrian Federal Competition Authority (*Bundeswettbewerbsbehörde*)
- 2.2.1 and Federal Cartel Prosecutor (together the "**Statutory Parties**") have not filed a request for in-depth scrutiny of the acquisition of the Sold Shares with the Austrian Cartel Court within the deadlines set forth in section 11 para. 1 or para. 1a of the Austrian Cartel Act; or
- 2.2.2 the Statutory Parties have waived their right to file a request for in-depth scrutiny of the acquisition of the Sold Shares pursuant to section 11 para. 4 of the Austrian Cartel Act; or
- 2.2.3 in case the Statutory Parties have filed a request for in-depth scrutiny (Phase II) the Austrian Cartel Court or the Austrian Supreme Cartel Court has rejected such request pursuant to section 12 para. 1 no. 1 of the Austrian Cartel Act and has declared with a binding ruling that the acquisition of the Sold Shares does not qualify as a concentration requiring merger control scrutiny; or
- 2.2.4 the Austrian Cartel Court or the Austrian Supreme Cartel Court approved the acquisition of the Sold Shares either unconditionally or subject to the fulfilment of certain conditions or obligations (*Auflagen oder Bedingungen*) accepted by the Purchasers or to be accepted by the Purchasers pursuant to Clause 7.2.2(iii) of the Share Purchase Agreement; or
- 2.2.5 the Austrian Cartel Court or the Austrian Supreme Cartel Court ceases Phase II proceedings pursuant to section 14 para. 1 or para. 2 Austrian Cartel Act as a consequence of the expiration of the deadlines referred to in section 14 para. 1 or para 2 Austrian Cartel Act or after withdrawal of the requests for in-depth scrutiny.
- 2.3 The transactions contemplated by this Agreement have been expressly approved by other competent merger control authorities or are deemed to have been approved under other applicable merger control laws, or the Seller and the Purchasers have agreed in writing that such approval is not required prior to the Closing.
- 2.4 The state parliament of FHH (*Hamburgische Bürgerschaft*) has resolved the sale of the Sold Shares on the terms and conditions of this Agreement;
- 2.5 The state parliament (*Landtag*) of LSH has approved the sale of the Sold Shares on the terms and conditions of this Agreement;
- 2.6 The European Central Bank has:
- 2.6.1 not prohibited the proposed direct or indirect acquisition of a significant participation in HSH Nordbank caused by the acquisition of the Sold Shares within the time limit set out in section 2c para. 1a of the German Banking Act (*Gesetz*

*über das Kreditwesen – KWG*) and article 4 para. 1 c) and 15 of Regulation (EU) No. 1024/2013; or

2.6.2 submitted a non-objection declaration (*Nichtbeanstandungserklärung*) with respect to the proposed direct or indirect acquisition of the Sold Shares within this time limit.

in both cases either unconditionally or subject to the fulfilment of certain conditions or obligations accepted by the Purchasers or to be accepted by the Purchasers pursuant to Clause 7.2.3(iii) of the Share Purchase Agreement;

2.7 The European Commission has approved the sale of the Sold Shares (having concluded a viability assessment of the proposed structure of HSH Nordbank following Closing);

2.8 The Purchasers, the Seller and HSH Nordbank Securities S.A. ("**HSH Lux**") having made a change of control notice (as referred to in articles 6 (5), 6 (15) and 6 (16), respectively of the Luxembourg Law dated 5 April 1993 on the financial sector, as amended (the "**Banking Act 1993**") to the *Commission de Surveillance du Secteur financier* (the "**CSSF**"), and either:

2.8.1 the European Central Bank has given notice in writing that the European Central Bank approves or does not object to the Purchasers as acquirers as a result of the Closing; or

2.8.2 the legal assessment period (as defined in article 6 (7) of the Banking Act 1993) as may be extended has expired without the European Central Bank having opposed the proposed acquisition of HSH Lux in accordance with Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the potential supervision of credit institutions and Regulation ECB/2014/17 of 16 April 2014 establishing the framework for cooperation within the Single Supervisory Mechanism between the European Central Bank and national competent authorities and with national designated authorities and by reference to the Banking Act 1993.

2.9 The German Savings Bank Association (*Deutscher Sparkassen- und Giroverband*, the "**DSGV**") having unconditionally confirmed in writing as to HSH Nordbank's continued, unrestricted and unconditioned membership in the institutional protection scheme (*Institutssicherungssystem*) of the German Savings Bank Finance Group (*Sparkassen-Finanzgruppe*) (the "**Deposit Protection Scheme**") for the first three (3) years following the Closing (the "**Interim Period**");

2.10 The German Federal Financial Supervisory Authority (Bundesanstalt für Finanzdienstleistungsaufsicht, the "**BaFin**") has:

2.10.1 not prohibited the proposed indirect acquisition of a significant participation in Altstadt GmbH caused by the acquisition of the Sold Shares within the time limit set out in section 2c para. 1a of the German Banking Act (*Gesetz über das Kreditwesen – KWG*); or

2.10.2 submitted a non-objection declaration (*Nichtbeanstandungserklärung*) with respect to the proposed indirect acquisition of a significant participation in Altstadt GmbH within this time limit;

in both cases either unconditionally or subject to the fulfilment of certain conditions and obligations accepted by the Purchasers or to be accepted by the Purchasers in accordance pursuant to Clause 7,2,3(iii) of the Share Purchase Agreement; and

- 2.11** Finfo has provided written confirmation to HSH Nordbank and the Purchasers that the aggregate amount of losses Finfo has settled or confirmed for settlement pursuant to the Sunrise Guarantee Settlement Agreement (the "**Sunrise Settlement Amount**") immediately following the closing of the NPE-Transaction pursuant to the NPE-Agreement is an amount of not less than EUR 9.0 billion and that no portion of such amount is subject to any "claw-back" rights of Finfo (the "**Sunrise Settlement Condition**").

As a matter of precaution, the Parties hereby expressly waive, to the extent legally permissible, the fulfilment of the Closing Conditions.

### **3 Closing Actions**

The Parties convened today at the offices of [●] and confirmed that all closing actions set out in Clause 10.2 of the Share Purchase Agreement (the "**Closing Actions**") have been taken in accordance with the Share Purchase Agreement.

In particular:

- 3.1** Each Purchaser paid its respective Individual Purchase Price Portion payable by it in accordance with Clause 3.2 of the Share Purchase Agreement.
- 3.2** The Seller and each of the Purchasers executed a share transfer agreement regarding the respective Sold Shares in accordance with Clause 2.2 of the Share Purchase Agreement.
- 3.3** The Seller delivered or made available to the Purchasers copies of the letters of resignation by the members of the supervisory board of HSH Nordbank, with effect as of the Closing Date, to the extent such members are listed in Schedule 10.2.3 of the Share Purchase Agreement.
- 3.4** The Seller submitted to the Purchasers an Updated Disclosure Letter with regard to the Seller's Warranties set out in Clauses 11.2.1, 11.3.1, 11.3.2 and 11.9 sent. 1 of the Share Purchase Agreement (the "**Fundamental Warranties**").

### **2 Miscellaneous**

- 2.1** Nothing in these Closing Minutes shall constitute a waiver of any rights, or otherwise prejudice any rights or obligations, of any Party under the Share Purchase Agreement.
- 2.2** With the exception of Clause 18.1 (Account Details), Clause 18 of the Share Purchase Agreement (Miscellaneous Provisions) shall apply to these Closing Minutes *mutatis mutandis*.

[Date], \_\_\_\_\_ hrs

Seller

JCF IV Neptun Holdings S. à r.l.

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([•])

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([•])

Promontoria Holding 221 B.V.

Promontoria Holding 231 B.V.

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([•])

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([•])

Promontoria Holding 233 B.V.

BAWAG P.S.K. Bank für Arbeit und Wirtschaft  
und Österreichische Postsparkasse  
Aktiengesellschaft

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([•])

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([•])

GoldenTree Asset Management Lux S.à r.l.

Chi Centauri LLC

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([•])

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([•])

# **Schedule 11.3.3**

Overview of Enterprise Agreements Concluded

Project Neptun

Schedule 11.3.3

Enterprise agreements (Unternehmensverträge)

1 Silent participations

Issuer	Value Date	SAP-CML-Contract-No.	Current counterparty	Currency	Nominal value in contract currency
HLB	02/11/1999	4316448090		EUR	5,000,000.00
LBSH	16/08/2000	4323901168		EUR	2,500,000.00
LBSH	16/08/2000	4323901174		EUR	2,800,000.00
LBSH	16/08/2000	4323901180		EUR	2,500,000.00
HLB	12/10/2001	4324039166		EUR	30,000,000.00
LBSH	16/08/2000	4324095078		EUR	7,200,000.00
LBSH	24/07/2000	4898364019		EUR	20,000,000.00
LBSH	24/07/2000	4898358019		EUR	10,000,000.00
LBSH	24/07/2000	4898373010		EUR	30,000,000.00
LBSH	29/05/2000	4856174025		EUR	10,000,000.00
LBSH	24/07/2000	4857000020		EUR	100,000,000.00
LBSH	10/09/2001	4857031010		EUR	5,000,000.00
LBSH	23/07/2001	4857035019		EUR	5,000,000.00
LBSH	22/11/2000	4857044014		EUR	10,000,000.00
LBSH	22/11/2000	4857045018		EUR	10,000,000.00

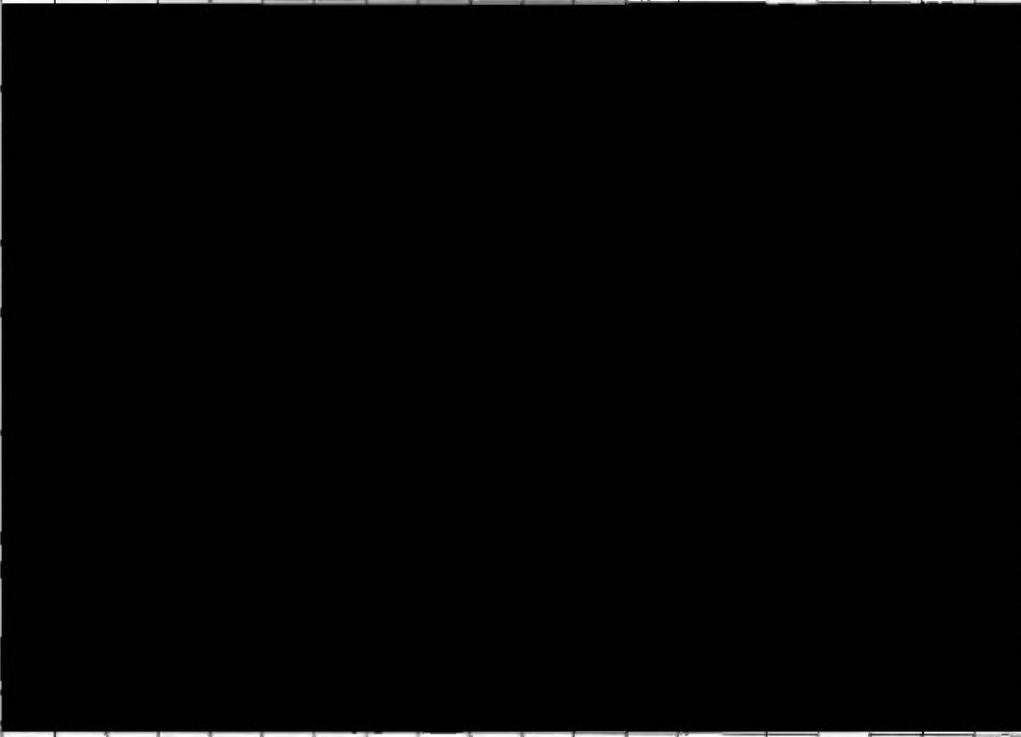
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Project Neptun

Issuer	Value Date	SAP-CML-Contract-No.	Current counterparty	Currency	Nominal value in contract currency
LBSH	18/09/2000	4857063014		EUR	5,000,000.00
LBSH	18/09/2000	4857065016		EUR	5,000,000.00
LBSH	18/09/2000	4857067013		EUR	10,000,000.00
LBSH	01/02/2001	4857108016		EUR	5,000,000.00
LBSH	19/02/2001	4857113018		EUR	25,000,000.00
LBSH	02/08/2000	4857123017		EUR	7,500,000.00
LBSH	14/07/2000	4857124015		EUR	20,000,000.00
LBSH	14/07/2000	4857127016		EUR	5,000,000.00
LBSH	16/08/2000	4857129024		EUR	4,000,000.00
LBSH	16/08/2000	4857129030		EUR	1,000,000.00
LBSH	15/12/1999	4857153014		EUR	500,000.00
LBSH	24/07/2000	4857183011		EUR	30,000,000.00
LBSH	15/12/1999	4857185013		EUR	500,000.00
LBSH	15/12/1999	4857269018		EUR	2,500,000.00
LBSH	05/06/2000	4857415018		EUR	10,000,000.00
LBSH	10/09/2001	4857418013		EUR	500,000.00
LBSH	01/02/2001	4857421018	EUR	20,000,000.00	
LBSH	29/05/2000	4857422011	EUR	500,000.00	
LBSH	19/07/2000	4857422027	EUR	500,000.00	

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Project Neptun

Issuer	Value Date	SAP-CML-Contract-No.	Current counterparty	Currency	Nominal value in contract currency
LBSH	23/07/2001	4857443013		EUR	5,000,000.00
LBSH	10/09/2001	4880544014		EUR	2,000,000.00
LBSH	03/07/2001	4894786011		EUR	10,000,000.00
LBSH	16/08/2000	4894796010		EUR	5,000,000.00
LBSH	03/07/2001	4894794013		EUR	5,000,000.00
LBSH	16/08/2000	4894798012		EUR	5,000,000.00
LBSH	03/07/2001	4894799016		EUR	10,000,000.00
LBSH	03/07/2000	4894801013		EUR	10,000,000.00
LBSH	03/07/2000	4894804018		EUR	10,000,000.00
LBSH	03/07/2000	4894803010		EUR	10,000,000.00
LBSH	14/06/2000	4894784014		EUR	10,000,000.00
LBSH	04/08/2000	4854656025		EUR	25,000,000.00
LBSH	01/06/2001	4854656031		EUR	25,000,000.00
LBSH	02/08/2000	4857125019		EUR	10,000,000.00
LBSH	02/08/2000	4857131019		EUR	15,000,000.00
LBSH	02/08/2000	4857417015		EUR	10,000,000.00
LBSH	01/08/2000	4898344011		EUR	5,000,000.00
HLB	30/12/1997	4324025127		EUR	11,759,713.27
HLB	30/12/1997	4894797014	EUR	13,604,680.79	

*Handwritten signature*

Project Neptun

Issuer	Value Date	SAP-CML-Contract-No.	Current counterparty	Currency	Nominal value in contract currency
HSH	17/06/2005	4862217027	[REDACTED]	USD	500,000,000.00
LBSH	19/02/2002	4857437013 neu 4895390019	[REDACTED]	EUR	500,000,000.00
LBSH	28/05/2003	4857438011	[REDACTED]	EUR	500,000,000.00
LBSH	19/12/2002	4863348013	[REDACTED]	USD	300,000,000.00

*[Handwritten signature]*

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- 2 Others
- N/A

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# **Schedule 11.4.2**

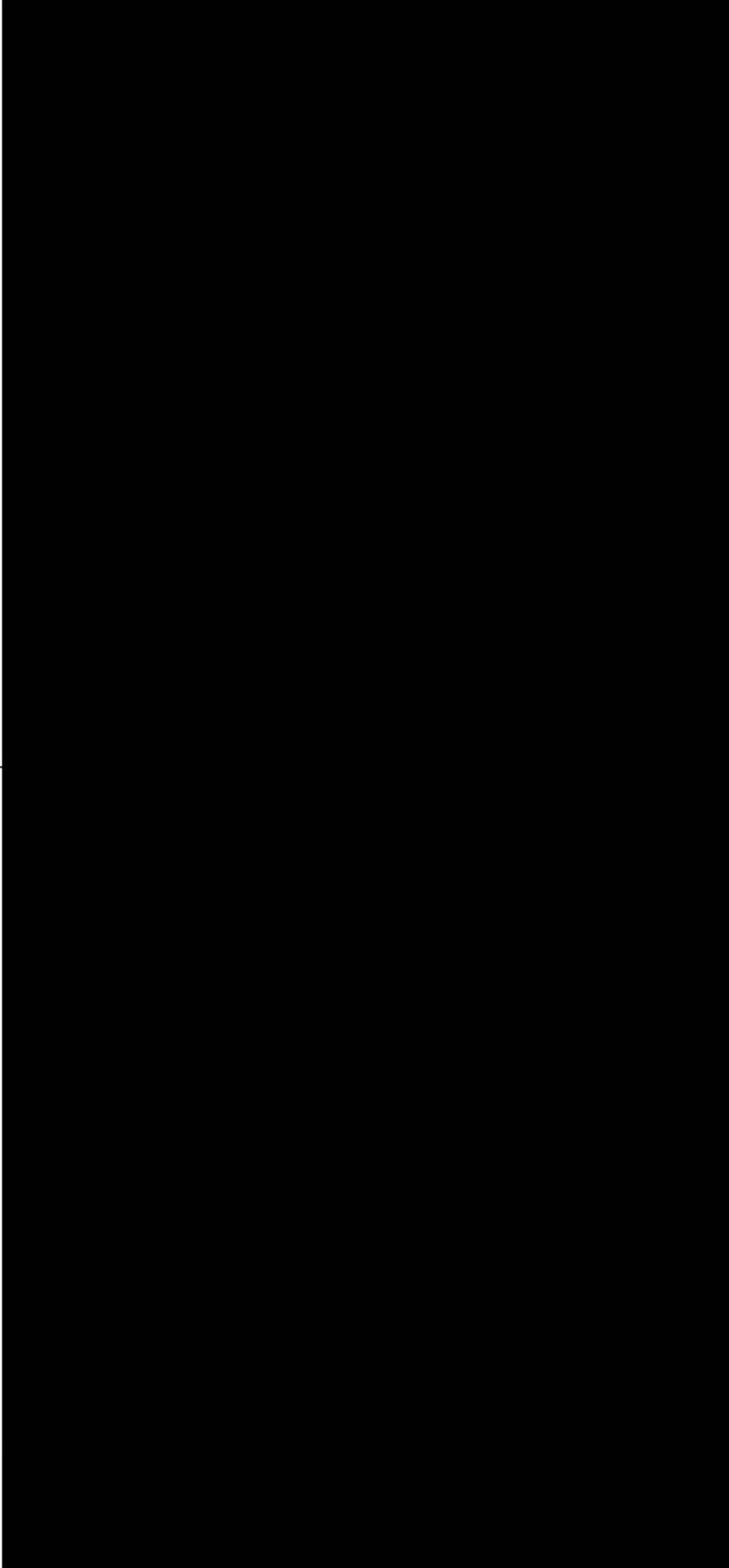
Rights of Third Parties to Shares in HSH Nordbank's Subsidiaries

Project Neptun

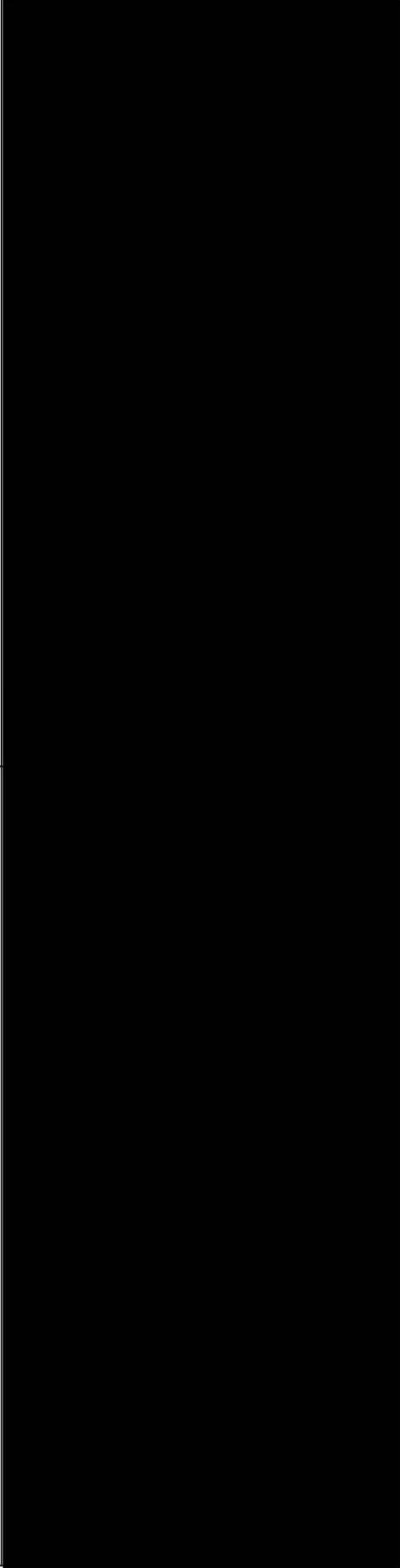
Schedule 11.4.2

Encumbrances and other rights of third parties

1 Pledges and pre-emption rights

Subsidiary	Comments
	

Project Neptun

Subsidiary	Comments
	

**Project Neptun**

- 2 Other rights**  
N/A

# **Schedule 11.4.3**

Insolvent Subsidiaries or Subsidiaries Threatened with Insolvency

## Project Neptun

## Schedule 11.4.3

## Insolvency proceedings, over-indebtedness, inability to pay its due debts or dissolution of subsidiaries

Subsidiary	Shareholdings or partnership interests (as applicable) in %	Voting share in %	Over-indebted	Unable to pay its due debts	Dissolved	Commercial register details
2200 Victory LLC	100.00	100.00	no	no	Liquidation envisaged for 2018	State of Delaware, Secretary of State, Division of Corporations, 1200974776-5101565
Avia Management S.á r.l.	100.00	100.00	over-indebted	no	no	Registre des Commerce et des Sociétés, Luxembourg, B 125579
Amentum Aircraft Leasing No. Five Limited	49.00	49.00	no	no	no	Dublin, Ireland Companies Registration Office 464287
Amentum Aircraft Leasing No. Seven Limited	49.00	49.00	no	no	no	Dublin, Ireland Companies Registration Office 470890
Amentum Aircraft Leasing No. Six Limited	49.00	49.00	no	no	no	Dublin, Ireland Companies Registration Office 464288
Next Generation Aircraft Finance 2 S.á r.l.	49.00	49.00	over-	no	no	Registre des Commerce et des Sociétés,

## Project Neptun

Subsidiary	Shareholdings or partnership interests (as applicable) in %	Voting share in %	Over-indebted	Unable to pay its due debts	Dissolved	Commercial register details
			indebted			Luxembourg, B 131695
Next Generation Aircraft Finance 3 S.à.r.l.	49.00	49.00	over-indebted	no	no	Registre des Commerce et des Sociétés, Luxembourg, B 131951
BINNENALSTER-Beteiligungsgesellschaft mbH	100.00	100.00	no	no	no	Handelsregister Hamburg, Deutschland, HRB 40057
GmbH Altstadt Grundstücksgesellschaft	50.00	50.00	over-indebted	no	no	Handelsregister Mainz, Deutschland, HRB 45803
Bu Wi Beteiligungsholding GmbH	100.00	100.00	no	no	no	Handelsregister Hamburg, Deutschland, HRB 104043
Ilex Integra GmbH	100.00	100.00	over-indebted	no	no	Handelsregister Hamburg, Deutschland, HRB 134426
GODAN GmbH	100.00	100.00	over-indebted	no	no	Handelsregister Hamburg, Deutschland, HRB 79687
FSL Holdings Pte. Ltd.	100.00	100.00	over-indebted	no	no	Registrar of companies and business names, Singapore, Registration

Project Neptun

Subsidiary	Shareholdings or partnership interests (as applicable) in %	Voting share in %	Over-indebted	Unable to pay its due debts	Dissolved	Commercial register details
FSL Asset Management Pte. Ltd.	100.00	100.00	no	no	no	No. 200615503E Registrar of companies and business names, Singapore, Registration No. 200918791G
FSL Trust Management Pte. Ltd.	100.00	100.00	no	no	no	Registrar of companies and business names, Singapore, Registration No. 200702285R
HSH Auffang- und Holdinggesellschaft mbH & Co. KG	100.00	100.00	no	no	no	Handelsregister Hamburg, Deutschland, HRA 100657
HSH Facility Management GmbH	100.00	100.00	no	no	no	Handelsregister Hamburg, Deutschland, HRB 121115
HSH Care+Clean GmbH	51.00	51.00	no	no	no	Handelsregister Hamburg, Deutschland, HRB 105983
HSH Gastro+Event GmbH	100.00	100.00	no	no	no	Handelsregister Hamburg, Deutschland, HRB 90907
HSH Move+More GmbH	51.00	51.00	no	no	no	Handelsregister Kiel,

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## Project Neptun

Subsidiary	Shareholdings or partnership interests (as applicable) in %	Voting share in %	Over-indebted	Unable to pay its due debts	Dissolved	Commercial register details
HSH N Finance (Guernsey) Limited	100.00	100.00	no	no	no	Guernsey, St. Peter Port, numberg 33554
HSH N Funding II	56.33	100.00	no	no	no	Companies Registrar Cayman Islands No. 149519
HSH N Residual Value Ltd.	100.00	100.00	no	no	no	Registrar of companies, Bermuda, Registration No. 38296
HSH Nordbank Securities S.A.	100.00	100.00	no	no	no	Registre des Commerce et des Sociétés, Luxembourg, B 14784
RESPARCS Funding Limited Partnership I	0.01	100.00	over-indebted	no	no	Companies Registrar in Hong Kong, number 346
RESPARCS Funding II Limited Partnership	0.01	100.00	over-indebted	no	no	Jersey Financial Services Commission
HSH Private Equity GmbH	100.00	100.00	no	no	no	Handelsregister Hamburg, Deutschland, HRB 95159
Capcellence Holding GmbH & Co. KG	100.00	100.00	no	no	no	Handelsregister Hamburg, Deutschland,



## Project Neptun

Subsidiary	Shareholdings or partnership interests (as applicable) in %	Voting share in %	Over-indebted	Unable to pay its due debts	Dissolved	Commercial register details
CAPCELLENCE Vintage Year 13 Beteiligungen GmbH & Co. KG	90.91	99.47	no	no	no	Handelsregister Hamburg, Deutschland, HRA 115723
CAPCELLENCE Vintage Year 16 Beteiligungen GmbH & Co. KG	83.33	99.99	no	no	no	Handelsregister Hamburg, Deutschland, HRA 120026
Capcellence Vintage Year 06/07 Beteiligungen GmbH & Co. KG	83.33	99.91	no	no	no	Handelsregister Hamburg, Deutschland, HRA 110400
CAPCELLENCE Erste Fondsbeteiligung GmbH	100.00	100.00	no	no	no	Handelsregister Hamburg, Deutschland, HRB 115425
Capcellence Vintage Year 07/08 Beteiligungen GmbH & Co. KG	90.91	99.99	no	no	no	Handelsregister Hamburg, Deutschland, HRA 110398
CAPCELLENCE Dritte Fondsbeteiligung GmbH	100.00	100.00	no	no	no	Handelsregister Hamburg, Deutschland, HRA 115351
CAPCELLENCE Zweite Fondsbeteiligung GmbH	100.00	100.00	no	no	no	Handelsregister Hamburg, Deutschland, HRB 115375

## Project Neptun

Subsidiary	Shareholdings or partnership interests (as applicable) in %	Voting share in %	Over-indebted	Unable to pay its due debts	Dissolved	Commercial register details
Capcellence Vintage Year 11 Beteiligungen GmbH & Co. KG	83.33	99.99	no	no	no	Handelsregister Hamburg, Deutschland, HRA 112573
Neptune Finance Partner II S.à.r.l.	100.00	100.00	no	no	no	Registre des Commerce et des Sociétés, Luxembourg, B 143791
Neptune Finance Partner S.à.r.l.	100.00	100.00	no	no	no	Registre des Commerce et des Sociétés, Luxembourg, B 137428

# **Schedule 11.5.1**

Accounts not provided

Project Neptun

Schedule 11.5.1

Annual Accounts

Name of entity	Address	Register
Avia Management S.à r.l.	6, rue Adolphe, 1116 Luxembourg	Registre des Commerce et des Sociétés, Luxembourg, B 125579
2200 Victory LLC	874 Walker Road, Suite C, Dover DE 19904 (Kent County)	State of Delaware, Secretary of State, Division of Corporations, 1200974776-5101565

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# **Schedule 11.6**

Agreements with Affiliates

## Project Neptun

## Schedule 11.6

## Agreements with Affiliates

## 1 Contracts with Seller

Contract	Parties	Date
Debt assumption agreement to implement the decision of the EU Commission (02/05/2016, C(2016) 2689 final) <i>(Schuldübernahmevereinbarung zur Umsetzung der Entscheidung der EU-Kommission (02/05/2016, C(2016) 2689 final))</i>	Seller Finfo, HSH Nordbank	29/06/2016
Framework agreement regarding the conclusion of Service Level Agreements (SLA) <i>(Rahmenvertrag im Hinblick auf den Abschluss von Service Level Agreements (SLA))</i>	Seller HSH Nordbank	03/04/2017
Service Level Agreement on accounting and tax work <i>(Service Level Agreement über Buchführungs-, Steuer- und Bilanzierungstätigkeiten)</i>	Seller HSH Nordbank	03/04/2017
Cost assumption agreement within the framework of the audit review or group audit of HSH Beteiligungs Management GmbH for the purpose of reports required by supervisory law on the level of the financial holding group. <i>(Kostenübernahmevereinbarung im Rahmen der prüferischen Durchsicht oder Konzernabschlussprüfung der HSH Beteiligungs Management GmbH für Zwecke aufsichtsrechtlicher Meldungen auf Ebene der Finanzholding-Gruppe)</i>	Seller HSH Nordbank	06/12/2017

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## 2 Contracts with Finfo

Contract	Parties	Date
Debt assumption agreement to implement the decision of the EU Commission (02/05/2016, C(2016) 2689 final) (Schuldübernahmevereinbarung zur Umsetzung der Entscheidung der EU-Kommission (02/05/2016, C(2016) 2689 final))	Seller Finfo, HSH Nordbank	29/06/2016
Contract on the provision of a guarantee facility (Sunrise Guarantee) (Vertrag über die Bereitstellung eines Garantierahmens (Sunrise-Garantie))	HSH Nordbank Finfo	02/06/2009
First amendment agreement 2011 (Erste Änderungsvereinbarung 2011)	HSH Nordbank Finfo	12/12/2011
Second amendment agreement 2013 (Zweite Änderungsvereinbarung 2013)	HSH Nordbank Finfo	25/06/2013
First specification agreement (Erste Konkretisierungsvereinbarung)	HSH Nordbank Finfo	16/08/2010
Second specification agreement (Zweite Konkretisierungsvereinbarung)	HSH Nordbank Finfo	11/01/2011
Third specification agreement (Dritte Konkretisierungsvereinbarung)	HSH Nordbank Finfo	24/06/2016
Transfer agreement (Einbringungsvertrag)	HSH Nordbank Finfo	26/01/2012
Agreement on the establishment of a right to a one-off payment (Vereinbarung zur Begründung des Anspruchs auf eine Einmalzahlung)	HSH Nordbank Finfo	12/12/2011
Current account agreement Kto. No. [REDACTED] (Kontokorrentvertrag Kto. Nr. [REDACTED])	HSH Nordbank Finfo	31/05/2016
Service Agreement associated with emission services (Geschäftsbesorgungsvertrag über Dienstleistungen im Rahmen eines Emissionservices) <b>Data room reference: 1.7.87</b>	HSH Nordbank Finfo	31/05/2016

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## 3 Contracts with hsh portfoliomanagement AöR

Contract	Parties	Date
Spin-off agreement ( <i>Ausgliederungsvertrag</i> )	HSH Nordbank, hsh portfoliomanagement AöR	30/06/2016
Asset owner contract ( <i>Asset-Owner-Vertrag</i> )	HSH Nordbank, hsh portfoliomanagement AöR	30/06/2016
Outsourcing agreement ( <i>Auslagerungsvertrag</i> )	HSH Nordbank, hsh portfoliomanagement AöR	28/06/2016
Amendment / Supplementary agreement to the outsourcing agreement regarding various annexes ( <i>Änderungs-/ Ergänzungsvereinbarung zum Auslagerungsvertrag betreffend diverse Anlagen</i> )	HSH Nordbank, hsh portfoliomanagement AöR	15/03/2017
Amendment agreement to the outsourcing agreement regarding annex 2.1.3(i) (LS Loan und Collateral Management) chapter 29 and chapter 20 ( <i>Änderungsvereinbarung zum Auslagerungsvertrag betreffend Anlage 2.1.3(i) (LS Loan und Collateral Management) Kapitel 29 und Kapitel 20</i> )	HSH Nordbank, hsh portfoliomanagement AöR	13/06/2017
Amendment agreement to the outsourcing agreement regarding annex 2.1.3(iii) (LS Operations) and annex 2.1.3(vii) service certificate ( <i>Leistungsschein</i> ) recording of payments ( <i>Änderungsvereinbarung zum Auslagerungsvertrag betreffend Anlage 2.1.3(iii) (LS Operations) und Anlage 2.1.3(vii) Leistungsschein Zahlungserfassung</i> )	HSH Nordbank, hsh portfoliomanagement AöR	13/07/2017
Amendment agreement to the outsourcing agreement to the outsourcing agreement regarding annex 2.1.3(i) (LS Loan und Collateral Management) chapter 7 ( <i>Änderungsvereinbarung zum Auslagerungsvertrag betreffend Anlage 2.1.3(i) (LS Loan und Collateral Management) Kapitel 7</i> )	HSH Nordbank, hsh portfoliomanagement AöR	27/09/2017
Amendment agreement to the outsourcing agreement regarding schedule 12.1.2. key positions, schedule 18 cooperation and schedule 2.1.3(viii) (LS Steuerung) ( <i>Änderungsvereinbarung zum Auslagerungsvertrag betreffend Anlage 12.1.2 Schlüsselpositionen, Anlage 18 Zusammenarbeit und Anlage 2.1.3(viii) (LS Steuerung)</i> )	HSH Nordbank, hsh portfoliomanagement AöR	18/12/2017

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Contract	Parties	Date
Amendment agreement to the outsourcing agreement regarding schedule 2.1.3(i) (LS Loan und Collateral Management) chapter 29 (Änderungsvereinbarung zum Auslagerungsvertrag betreffend Anlage 2.1.3(i) (LS Loan und Collateral Management) Kapitel 29)	HSH Nordbank, hsh portfoliomanagement AöR	11/01/2018
Contract on the transfer of a portfolio of financing agreements (Vertrag über die Übertragung eines Portfolios von Finanzierungsverträgen)	HSH Nordbank, hsh portfoliomanagement AöR	30/06/2016
Guarantee and standstill agreement (Garantie- und Stillhaltevertrag)	HSH Nordbank, hsh portfoliomanagement AöR	30/06/2016
Protocol on the documentation of currency conversions (Protokoll zur Dokumentation von Währungsumrechnungen)	HSH Nordbank, hsh portfoliomanagement AöR	30/06/2016
Transfer Deed relating to a facility agreement dated 20/06/2016	HSH Nordbank, hsh portfoliomanagement AöR, [REDACTED]	20/09/2017
Transfer Deed relating to a credit agreement dated 05/12/2007	HSH Nordbank, hsh portfoliomanagement AöR, [REDACTED]	20/09/2017
Transfer Deed relating to a credit agreement dated 05/12/2007	HSH Nordbank, hsh portfoliomanagement AöR, [REDACTED]	20/09/2017

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Contract	Parties	Date
Transfer Deed relating to a credit agreement dated 09/02/2007	HSH Nordbank, hsh portfoliomanagement AöR, [REDACTED]	20/09/2017
Transfer Agreement relating to certain facility and security agreements ([REDACTED])	HSH Nordbank, hsh portfoliomanagement AöR	20/09/2017
Transfer Agreement relating to certain facility and security agreements ([REDACTED])	HSH Nordbank, hsh portfoliomanagement AöR	20/09/2017
Transfer Agreement relating to certain facility and security agreements ([REDACTED])	HSH Nordbank, hsh portfoliomanagement AöR	12/10/2017
Transfer Agreement relating to certain facility and security agreements ([REDACTED])	HSH Nordbank, hsh portfoliomanagement AöR,	17/10/2017
Transfer Agreement relating to certain facility and security agreements ([REDACTED])	HSH Nordbank, hsh portfoliomanagement AöR	17/10/2017
Assignment agreement relating to participation limited partnership [REDACTED] [REDACTED] [REDACTED] (Abtretungsvertrag bzgl. Beteiligungs-Kommanditgesellschaft [REDACTED] & [REDACTED] [REDACTED])	HSH Nordbank, hsh portfoliomanagement AöR	28/09/2017

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Contract	Parties	Date
Transfer Agreement relating to certain facility and security agreements (██████████)	HSH Nordbank, hsh portfoliomanagement AöR	07/11/2017
Current account agreement account No. ██████████ (Kontokorrentvertrag Kto. Nr. ██████████)	HSH Nordbank, hsh portfoliomanagement AöR	25/05/2016
Current account agreement account No. ██████████ (Kontokorrentvertrag Kto. Nr. ██████████)	HSH Nordbank, hsh portfoliomanagement AöR	25/05/2016
Current account agreement account No. ██████████ (Kontokorrentvertrag Kto. Nr. ██████████)	HSH Nordbank, hsh portfoliomanagement AöR	13/06/2017
Current account agreement account No. ██████████ (Kontokorrentvertrag Kto. Nr. ██████████)	HSH Nordbank, hsh portfoliomanagement AöR	25/05/2016
Current account agreement account No. ██████████ (Kontokorrentvertrag Kto. Nr. ██████████)	HSH Nordbank, hsh portfoliomanagement AöR	25/05/2016
Current account agreement account No. ██████████ (Kontokorrentvertrag Kto. Nr. ██████████)	HSH Nordbank, hsh portfoliomanagement AöR	25/05/2016
Current account agreement account No. ██████████ (Kontokorrentvertrag Kto. Nr. ██████████)	HSH Nordbank, hsh portfoliomanagement AöR	25/05/2016

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Contract	Parties	Date
Current account agreement account No. [REDACTED] (Kontokorrentvertrag Kto. Nr. [REDACTED])	HSH Nordbank, hsh portfoliomanagement AöR	25/05/2016
Current account agreement account No. [REDACTED] (Kontokorrentvertrag Kto. Nr. [REDACTED])	HSH Nordbank, hsh portfoliomanagement AöR	25/05/2016
Current account agreement account No. [REDACTED] (Kontokorrentvertrag Kto. Nr. [REDACTED])	HSH Nordbank, hsh portfoliomanagement AöR	13/06/2017
Service Agreement associated with emission services (Geschäftsbesorgungsvertrag über Dienstleistungen im Rahmen eines Emissionsservices) <b>Data room reference: 1.7.88</b>	HSH Nordbank, hsh portfoliomanagement AöR	31/05/2016
Side agreement to the service agreement dated 25/05/ and 31/05/2016 (Nebenabrede vom 15.09.2016) <b>Data room reference: 1.7.85</b>	HSH Nordbank, hsh portfoliomanagement AöR	15/09/2016
Software license agreement Sfirm Basic (Softwarenutzungsvertrag Sfirm Basic) <b>Data room reference: 1.7.65</b>	HSH Nordbank, hsh portfoliomanagement AöR	25/05/ und 01/06/2016

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## 4 Contract with HGV Hamburger Gesellschaft für Vermögens- und Beteiligungsmanagement mbH

Contract	Parties	Date
Current account agreement account No. [REDACTED] (Kontokorrentvertrag Kto. Nr. [REDACTED])	HGV Hamburger Gesellschaft für Vermögens- und Beteiligungsman agement mbH, HSH Nordbank	15/03/1973
Current account agreement Kto. No. [REDACTED] (Kontokorrentvertrag Kto. Nr. [REDACTED])	HGV Hamburger Gesellschaft für Vermögens- und Beteiligungsman agement mbH, HSH Nordbank	24/02/2003
Current account agreement account No. [REDACTED] (Kontokorrentvertrag Kto. Nr. [REDACTED])	HGV Hamburger Gesellschaft für Vermögens- und Beteiligungsman agement mbH, HSH Nordbank	29/12/2000
eBanking contract client-ID [REDACTED] (eBanking-Vertrag Kunden-ID [REDACTED])	HGV Hamburger Gesellschaft für Vermögens- und Beteiligungsman agement mbH, HSH Nordbank	28/03/1995
Software license agreement Sfirm Basic (Softwarenutzungsvertrag Sfirm Basic)	HGV Hamburger Gesellschaft für Vermögens- und Beteiligungsman agement mbH, HSH Nordbank	10/07/2015
Securites account agreement account No. [REDACTED] (Wertpapierdepoteröffnung/-vertrag Kto. Nr. [REDACTED])	HGV Hamburger Gesellschaft für Vermögens- und Beteiligungsman	09/07/1974



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Contract	Parties	Date
	agement mbH, HSH Nordbank	
<p>Agreement on the paying agent fee relating to the paying agency agreements, framework paying agency agreements for a variety of individual tranches SSD/NSV or individual paying agency agreements respectively, the individual tranches being 1-6; 16; 17; 2011/01; 2012/01-2012/08; 2012/16; 2012/17; 2012/23-2012/29; 2013/01-2013/04; 2014/02-2014/15; 2015/01-2015/09; 2016/01-2016/06; 2017/01-2017/06.</p> <p><i>(Vereinbarung über die Zahlstellengebühr zu den Zahlstellenvereinbarungen, Rahmenzahlstellenvereinbarung für eine Vielzahl von Einzeltranchen SSD/NSV bzw. Einzelzahlstellenvereinbarungen; im Einzelnen Tranchen 1-6; 16; 17; 2011/01; 2012/01-2012/08; 2012/16; 2012/17; 2012/23-2012/29; 2013/01-2013/04; 2014/02-2014/15; 2015/01-2015/09; 2016/01-2016/06; 2017/01-2017/06.)</i></p>	HGV Hamburger Gesellschaft für Vermögens- und Beteiligungsman agement mbH, HSH Nordbank	08 and 16/09/2015
<p>Framework facility agreement no. [REDACTED] of EUR 127 million.</p> <p><i>(Rahmenkreditvertrag Nr. [REDACTED] über EUR 127,0 Mio.)</i></p>	HGV Hamburger Gesellschaft für Vermögens- und Beteiligungsman agement mbH, HSH Nordbank	25/06 and 18/07/2007
<p>Framework facility agreement 25.06./18.08.2007 – Amendment of conditions for advances on current account on EONIA basis.</p> <p><i>(Rahmenkreditvertrag 25.06./18.08.2007 – Konditionsanpassung für laufende Kreditinanspruchnahmen auf EONIA-Basis)</i></p>	HGV Hamburger Gesellschaft für Vermögens- und Beteiligungsman agement mbH, HSH Nordbank	13 and 19/03/2009

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## 5 Contracts with SGVSH

Contract	Parties	Date
	HSH Nordbank SGVSH	27/11/1982
	HSH Nordbank SGVSH	27/11/1982
	HSH Nordbank SGVSH	01/07/2013
	HSH Nordbank SGVSH	01/07/2013
	HSH Nordbank SGVSH	02/07/2013
	HSH Nordbank SGVSH	
	HSH Nordbank SGVSH	
	HSH Nordbank SGVSH	26/05/2006
	HSH Nordbank SGVSH	30/10/2013
	HSH Nordbank SGVSH	14 und 21/12/2015

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- 6 Contracts with FHH**  
N/A

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- 7 Contracts with LSH**  
N/A

# **Schedule 11.7.1**

Management Board Members of HSH Nordbank

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## Schedule 11.7.1

## Board Members of HSH Nordbank

**1 Management Board Members**

Position	Name
CEO	Stefan Ermisch
CFO	Oliver Gatzke
CRO	Ulrik Lackschewitz
Markt	Torsten Temp

**2 Supervisory Board Members****2.1 Shareholder's Representatives**

Dr. Thomas Mirow (Chairman)
Silke Grimm
Stefan Jütte
Dr. Rainer Klemmt-Nissen
Dr. Philipp Nimmermann
Dr. David Morgan
Elke Weber-Braun
Jörg Wöhlens

**2.2 Employee's Representatives**

Olaf Behm (Vice Chairman)
Peter Axmann
Simone Graf
Cornelia Hintz, ver.di
Rieka Meetz-Schawaller
Bert Michels
Stefan Schlattermund
Klaus-Dieter Schwetscher, ver.di

# **Schedule 11.7.2**

Terminated Service Agreements of Management Board Members  
of HSH Nordbank

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**Schedule 11.7.2**

**Terminations of executive employment or service agreement**

No Executives have given or received notice of termination of their employment or service agreement (*Anstellungs- oder Dienstvertrag*). Furthermore, no Executive (i) has entered into a termination agreement (*Aufhebungsvereinbarung*) or (ii) has made or received an offer to enter into a termination agreement.

# **Schedule 11.7.3**

List of Company Bargaining Agreements,  
Collective Bargaining Agreements, Shop Agreements

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Schedule 11.7.3

Overview of company bargaining agreements (*Firmentarifverträge*), Collective bargaining agreements (*Tarifverträge*), and shop agreements (*Betriebsvereinbarungen*)

1 Shop agreements

No	Abbreviation	Title	Annexes and Amendments
1	BV	BV no. 01 Shop agreement on the internal tender of free jobs and the selection process for free jobs at HSH Nordbank AG ( <i>Betriebsvereinbarung Nr. 1 über die innerbetriebliche Ausschreibung von freien Arbeitsplätzen und das Auswahlverfahren bei der Besetzung von freien Arbeitsplätzen in der HSH Nordbank AG</i> )	Annex 1: Job advertisement Annex 2: Information on the tender procedure

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2 Work agreements (*Dienstvereinbarungen*)

No	Abbreviation	Title	Annexes and Amendments
5	DV [KI]	DV 5 Supplemental insurance from Provinzial-Lebensversicherung for employees employed as from 1 January 1985 ( <i>Zusatzversicherung bei der Provinzial-Lebensversicherung für Mitarbeiter mit Dienstantritt ab dem 01. Januar 1985</i> )	
5a	DV [KI]	DV 5a Additional provision at Provinzial-Lebensversicherung for employees employed from 1 January 1985 onwards ( <i>Zusatzversicherung bei der Provinzial-Lebensversicherung für Mitarbeiter mit Dienstantritt ab dem 01. Januar 1985</i> )	
13	DV [HH]	DV no. 13 Work agreement on the introduction of a pension scheme for employees employed after the 31 December 1982 ( <i>Dienstvereinbarung über die Einführung einer Versorgungsordnung für nach dem 31.12.1982 eingetretene Mitarbeiterinnen und Mitarbeiter</i> )	Pension scheme ( <i>Versorgungsordnung</i> )
37	DV [HH]	DV no. 37 Pension scheme of the Hamburgischen Landesbank Girozentrale for employees employed prior to 1 January 1983 ( <i>Ruhegeldordnung der Hamburgischen Landesbank Girozentrale für vor dem 01. Januar 1983 eingetretene Mitarbeiterinnen und Mitarbeiter</i> )	

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No	Abbreviation	Title	Annexes and Amendments
40	DV [HH]	DV no. 40 Work agreement on the introduction of a company pension scheme for employees employed at the bank after 31 December 2001 and for future employees of the bank ( <i>Dienstvereinbarung über die Einführung einer betrieblichen Altersversorgung für Mitarbeiterinnen und Mitarbeiter, die nach dem 31.12.2001 in die Dienste der Bank eingetreten sind bzw. künftig eintreten werden</i> )	<b>Annex 1:</b> Amendment of work agreements no. 21 und no 40
1	DV [KI]	DV no. 01 Work agreement on the provision in case of occupational disability as well as on the pension scheme and the provision for dependants (provision) ( <i>Dienstvereinbarung über die Versorgung im Falle der Berufs- und Erwerbsunfähigkeit sowie über die Alters- und Hinterbliebenenversorgung (Versorgung)</i> )	
2	DV [KI]	DV no. 02 Work agreement on benefits which the Landesbank grants on a case-by-case basis. ( <i>Dienstvereinbarung über Unterstützungen, welche die Landesbank von Fall zu Fall gewährt</i> )	<b>Annex 1:</b> Execution guidelines on the granting of benefits on a case-by-case basis <b>Annex 2:</b> Benefit principles
4	DV [KI]	DV no. 04 Work agreement on the pension scheme for employees employed as of 1 January 1985 ( <i>Dienstvereinbarung über die Versorgungsordnung für Mitarbeiter mit Dienstantritt ab 01. Januar 1985</i> )	<b>Complement:</b> Addendum to DV no. 4
21	DV [KI]	DV no. 21 Work agreement on the introduction of a company pension scheme for employees employed at the bank after the 31 December 2001 and for future employees of the bank ( <i>Dienstvereinbarung über die Einführung einer betrieblichen Altersversorgung für Mitarbeiterinnen und Mitarbeiter, die nach</i>	Addendum to DV no. 21 Amendment of DV no. 21 and no. 40

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No	Abbreviation	Title	Annexes and Amendments
		dem 31.12.2001 in die Dienste der Bank eingetreten sind bzw. künftig eintreten werden)	

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3 Company-wide shop agreements (*Gesamtbetriebsvereinbarungen*)

No.	Abbreviation	Title	Annexes and Amendments
9	GBV	Company-wide shop agreement "flexible working hours" – GBV No. 9 – GBV is terminated and has only after-effects ( <i>Gesamtbetriebsvereinbarung "Flexible Arbeitszeiten" - GBV Nr. 9 - GBV ist gekündigt, befindet sich in der Nachwirkung</i> )	
15	GBV	GBV no. 15 Shop agreement on the employee-financed company pension scheme (Deferred Compensation) – terminated, valid until 31 March 2018 ( <i>Betriebsvereinbarung zur arbeitsnehmerfinanzierten betrieblichen Altersversorgung (Deferred Compensation) - gekündigt, noch wirksam bis zum 31.03.2018 -</i> )	
20a	GBV	GBV no. 20a Company-wide shop agreement on the hiring and first categorisation of apprentices and dual students finishing their training ( <i>Gesamtbetriebsvereinbarung über die Übernahme und Einstufung auslernender Auszubildender und dual Studierender</i> )	Annex 1: Overall impression
27a	GBV	Company-wide shop agreement long term account – GBV no. 27a ( <i>Gesamtbetriebsvereinbarung Langzeitkonten - GBV Nr. 27a</i> )	
32	GBV	GBV no. 32 Company-wide shop agreement on the harmonisation of social security benefits ( <i>Gesamtbetriebsvereinbarung zur Harmonisierung der Sozialleistungen</i> )	Annex: Special leave days
39	GBV	GBV no. 39 Voluntary company-wide shop agreement on the compensation scheme for disadvantages during cross-location	Complementation: Addendum to voluntary GBV no. 39

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No.	Abbreviation	Title	Annexes and Amendments
44	GBV	<p>transfers (mobility-GBV)  <i>(Freiwillige Gesamtbetriebsvereinbarung zum Nachteilsausgleich bei standortübergreifenden Versetzungen (Mobilitäts-GBV))</i></p> <p>GBV no. 44 Company-wide shop agreement for spin-off projects of the HSH Nordbank AG with regard to the FMH group  <i>(Gesamtbetriebsvereinbarung für Ausgründungsvorhaben der HSH Nordbank AG in die FMH-Gruppe)</i></p>	<p><b>Annex 1:</b> Specification of the transfer of business  <i>(Konkretisierung des Betriebsübergangs)</i>  <b>Annex 2:</b> Transferring shop agreements <i>(Übergehende Betriebsvereinbarungen)</i></p>
53a	GBV	<p>GBV no. 53a Company-wide shop agreement on the structure of the variable compensation schemes of HSH Nordbank  <i>(Gesamtbetriebsvereinbarung über die Ausgestaltung der variablen Vergütungssysteme der HSH Nordbank)</i></p>	<p><b>Annex 1:</b> Annex for illustration – payment system  <b>Complementation:</b> Addendum no. 1 to GBV no. 53a</p>
-	GBV	<p>Agreement on the Restructuring Unit  <i>(Vereinbarung zur Restructuring Unit)</i></p>	
-	GBV	<p>Application of special condition for employees of the former Restructuring Unit (RU)  <i>(Geltung von Sonderkonditionen für Mitarbeiterinnen und Mitarbeiter der ehemaligen Restructuring Unit (RU))</i></p>	<p>Protocol notice to shop agreement on the former Restructuring Unit (RU)  <i>(Protokollnotiz zur BV zur ehemaligen Restructuring Unit (RU))</i></p>

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4 Group-wide shop agreements (Konzernbetriebsvereinbarungen)

No.	Abbreviation	Title	Annexes and Amendments
-	KBV	Group-wide shop agreement on the granting of an additional pension and of one-off contribution for employees of the former HILB <i>(Konzernbetriebsvereinbarung über die Gewährung einer zusätzlichen (Alters-)Versorgung und von Einmalbeiträgen für Mitarbeiter/innen der ehemaligen HILB)</i>	Annex 1: Basis of provision <i>(Versorgungsgrundlage)</i>
-	KBV	Reconciliation of interest via a shop agreement on restructurings of the HSH Nordbank group during the years 2016 – 2018 <i>(Interessenausgleich in Form einer Betriebsvereinbarung über Umstrukturierungen des HSH Nordbank-Konzerns in den Jahren 2016 – 2018)</i>	Annex 1: Action description per UB <i>(Maßnahmenbeschreibungen, je UB)</i> Annex 2: Implementation of a procedure for volunteers <i>(Durchführung eines Freiwilligenverfahrens)</i> Annex 3: Objective programs <i>(Zielorganigramme)</i> Annex 4: Casting workshop "2018PLUS" <i>(Besetzungsworkshops "2018PLUS")</i> Annex 5: Dismantling tracking 2018PLUS <i>(Abbau Tracking 2018PLUS)</i> Annex 6: Transformation Reloaded III
-	KBV	Shop agreement framework social plan Addendum agreement to the shop agreement framework social plan Side agreement to the framework social plan dated 29 July 2016 <i>(Betriebsvereinbarung Rahmensozialplan Ergänzungsvereinbarung zur Betriebsvereinbarung Rahmensozialplan Begleitvereinbarung zum Rahmensozialplan vom 29.07.2016)</i>	Annex 1: Transfer company Addendum agreement to shop agreement framework social plan dated 15 December 2011 Side agreement to framework social plan dated 29 July 2016 – Annex 1: Separation list

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5 Speaker committee directives (*Sprecherausschussrichtlinien*)

No.	Abbreviation	Title	Annexes and Amendments
-	SprARL	Speaker committee directive on the granting of an additional pension and of an one-off contribution for executives within the meaning of Sec. 5 (3) of the German Works Constitution Act ( <i>BetriVG</i> ) in Germany (Executives) of the former HLB ( <i>SprecherausschussRL über die Gewährung einer zusätzlichen (Alters-) Versorgung und von Einmalbeihilfen für leitende Angestellte im Sinne von §5 Abs. 3 BetrVG in Deutschland ("Leitende Angestellte") der ehemaligen HLB</i> )	Annex 1; Basis of provision ( <i>Versorgungsgrundlage</i> )
2	SprARL	Company-wide shop agreement on the employee-financed company pension scheme (Deferred Compensation) – terminated, valid until 31 March 2018 ( <i>Gesamtbetriebsvereinbarung zur arbeitnehmerfinanzierten betrieblichen Altersversorgung (Deferred Compensation) - gekündigt, noch wirksam bis zum 31.03.2018 -</i> )	
3	SprARL	Directive no. 3 Harmonisation of social security benefits (according to GBV no. 32) ( <i>Richtlinie Nr. 3 Harmonisierung der Sozialleistungen (gem. GBV Nr. 32)</i> )	
7	SprARL	Directive no. 7 Compensation scheme for disadvantages during cross-location	

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No.	Abbreviation	Title	Annexes and Amendments
12	SprARL	<p>Transfers (mobility-GBV) (according to GBV no. 39) (Richtlinie Nr. 7)</p> <p>Nachteilsausgleich bei standortübergreifenden Versetzungen (Mobilitäts-GBV) (gem. GBV Nr. 39)</p> <p>Speaker committee directive no. 12 on the implementation of legal and supervisory provisions for employee trading (Sprecherausschussrichtlinie Nr. 12 zur Umsetzung gesetzlicher und aufsichtsrechtlicher Regelungen zu Mitarbeitergeschäften)</p> <p>Addendum agreement to SprARL no. 22 and no. 23 as well as to „Agreement on the Restructuring Unit“ (Ergänzungsvereinbarung zur SprARL Nr. 22 und Nr. 23 sowie zur „Vereinbarung zur Restructuring Unit“)</p>	
18	SprARL	<p>Speaker committee directive no. 18 on the implementation of an external top management audit for executives (Sprecherausschussrichtlinie Nr. 18 über die Durchführung eines externen Top Management Audit für Leitende Angestellte)</p>	
22	SprARL	<p>Speaker committee directive no. 22 according to Sec. 29 (2) of the German Act on Speaker Committees of Executives (SprAuG) resignation against severance payment as well as conclusion of early and partial retirement contracts (Sprecherausschussrichtlinie Nr. 22 gem. § 28 Abs. 2 SprAuG Ausscheiden gegen Abfindungszahlung sowie Abschluss von Vorruhestands- und Altersteilzeitverträgen)</p>	<p><b>Annex:</b> Supplementary agreement to SprARL no. 22 and no. 23 and "Agreement on the Restructuring Unit"</p>
23	SprARL	<p>Speaker committee directive no. 23 according to Sec. 28 (2) SprAuG</p> <p>"Agreement on the Restructuring Unit"</p>	<p><b>Annex:</b> Supplementary agreement to SprARL no. 22 and no. 23 and "Agreement on the Restructuring Unit"</p>

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No.	Abbreviation	Title	Annexes and Amendments
27a	SprARL	<p>(Sprecherausschussrichtlinie Nr. 23 gem. §28 Abs. 2 SprAuG "Vereinbarung zur Restricting Unit")</p> <p>Speaker committee directive no. 27a on the design of the variable compensation scheme of the HSH Nordbank</p> <p>(Sprecherausschussrichtlinie Nr. 27a über die Ausgestaltung der variablen Vergütungssysteme der HSH Nordbank)</p>	<p><b>Annex:</b> Illustration -- Payment system</p> <p><b>Complementation:</b> Addendum no. 1 to SprARL no. 27a</p>

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6 Collective bargaining agreements (Tarifverträge)

No.	Abbreviation	Title	Annexes and Amendments
-	TV	Collective bargaining agreements for the private banking business and public banks (status: July 2016) ( <i>Tarifverträge für das private Bankgewerbe und die öffentlichen Banken (Stand: Juli 2016)</i> )	

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7 Directives

No.	Abbreviation	Title	Annexes and Amendments
-	RL	Pension directives of the "Unterstützungsgesellschaft der Hamburgischen Landesbank m.b.H." for employees employed prior to 1 January 1983 ( <i>Ruhegeld-Richtlinien der Unterstützungsgesellschaft der Hamburgischen Landesbank m.b.H. für vor dem 01.01.1983 eingetretenen Mitarbeiterinnen und Mitarbeiter</i> )	

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# **Schedule 11.8**

Overview of Court, Arbitration or Administrative Proceedings  
against HSH Nordbank

Project Neptun

## Schedule 11.8

## Court and arbitration proceedings

## 1 Ongoing court proceedings

Beginning of proceedings	Court / File No.	HSH Plaintiff (P) or Defendant (D)	Litigation value in EUR (Streitwert)	Number of the General Litigation List (VDR RED 11.2.4.1.51)
2017/08	LG Berlin 4 O 150/17	D	1,153,875.08	157
2017/06	Court of Appeal Catanzaro (Italy)	D	No litigation value assessed ( <i>keine Streitwertfestsetzung</i> ). economic value approx. 245,5 million	154
2017/06	LG Hamburg 301 O 141/17	D	1,214,318.27	153
2017/01	LG Kiel 9 O 6/17	D	2,397,171.18	146
2017/01	LG Kiel 6 O 447/16	D	2,397,171.18	145
2017/01	LG Kiel 5 O 381/16	D	4,794,342.37	144

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Beginning of proceedings	Court / File No.	HSH Plaintiff (P) or Defendant (D)	Litigation value in EUR (Streitwert)	Number of the General Litigation List (VDR RED 11.2.4.1.51)
2016/12	LG Kiel 5 O 345/16	D	1,846,322.47	143
2016/08	LG Hamburg 333 O 157/16	D	2,770,819.50	133
2016/04	LG Köln 87 O 40/2016	P	22,798,362.89	124
2015/09	LG Darmstadt 16 O 153/15	P	2,459,107.39	65
2015/10	ICSID Washington ARB/15/45	P	According to expert report dated 16 March 2017: 95.700,000.00	67
2006/02	Istanbul 17th Commercial Court of First Instance 2014/420 E (Decision file no. 2014/469), new file no. in appeal proceedings 2015/5521 11th Civil Chamber of the Court of Appeal	D	1,482,656.00	68
2013/05	Istanbul 16th (now 17th) Commercial	D	454.464.96 Partial claim, risk of increase of claim up to USD 100 million	69

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Beginning of proceedings	Court / File No.	HSH Plaintiff (P) or Defendant (D)	Litigation value in EUR (Streitwert)	Number of the General Litigation List (VDR RED 11.2.4.1.51)
	Court of First Instance 2013/150 (now 2016/512 E); as of October 2017 in addition: 2017/356 E.			
2014/12	European Court of Human rights - Court assesses currently the pendency ( <i>Anhängigkeit</i> ) -	P	56,236,203.00	71
2010/02	The Court of First Instance of Arganda del Rey / Spain 183/2010	P	29,996,734.00	74
2010/12	LG München I, LG Hamburg, LG Konstanz, LG Stuttgart, LG Frankfurt, amongst others	D	1,712,673.79	78
2011/01	Commercial Court No. 8 file no: 609/2012	D	3,200,000.00	79
2012/12	LG Hamburg	D	6,614,000.00	

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Beginning of proceedings	Court / File No.	HSH Plaintiff (P) or Defendant (D)	Litigation value in EUR (Stre/twert)	Number of the General Litigation List (VDR RED 11.2.4.1.51)
	417 HKO 206/12			
2013/01	LG Hamburg 302 O 209/13	P	4.420.420,95	86
2013/09	LG Hamburg, 404 HKO 33/14 OLG Hamburg: 13 U 124/14 BGH (non-admission complaint (Nichtzulassungs- beschwerde)); XI ZR 65/16	D	3.260.282,85	89
2014/03	High Court of Judicature, Mumbai	P	20.000.000,00 (equivalent value)	92
2014/10	High Court of Justice, London / Queen's Bench Division / Commercial Court / 2014-1086	D	246.300.000,00	96
2015/01	LG Hamburg 411 HKO 14/17	D	quantified 197.000.000,00	104
2015/03	BGH IV ZR 143/17 (prior OLG Bremen 2 U 124/16 and LG	P	1.086.025,50	106

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Beginning of proceedings	Court / File No.	HSH Plaintiff (P) or Defendant (D)	Litigation value in EUR (Streitwert)	Number of the General Litigation List (VDR RED 11.2.4.1.51)
	Bremen 13 O 23/15)			
2015/07	LG Hamburg 333 O 92/15	D	4,565,462.10	110
2018/01	LG Kiel 8 O 18/18	D	4,716,677.96	161
2018/01	LG Kiel 8 O 20/18	D	Higher than 30,000,000.00	162
2017/02	AG Kiel 1 Ca 173 d/17	P	1,000,000.00	32a
2017/01	AG Kiel 1 Ca 75 d/17	P	65,300,000.00	32b

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## Project Neptun

## 2 Arbitration proceedings

Begin of proceedings	Court	HSH Claimant (C) or Defendant (D)	Litigation value in EUR (Streitwert)	Number of Arbitration List in the black DR
2015/11	Arbitration court	C	35,000,000.00	7
2015/02	Arbitration court	C	63,193,601.14 and 15,435,492.18	8
2014/12	Arbitration court	C	44,949,392.33 and 7,000,000.00	9
2009/11	Arbitration court	C/D	51,250,000.00	11
2009/11	Arbitration court	C/D	16,700,000.00	12
2011/02	Arbitration court	C	40,000,000.00	14

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## 3 Proceedings threatened in writing vis-à-vis HSH Nordbank

Potential claimant	Preliminary litigation value in EUR (Streitwert)	Matter
Client of HSH	1,300,000.00	Client disputes the validity of a settlement on the basis of which he paid EUR 1,3 million, which he now claims back.
Silent Participant 1	1,160,000.00	Silent Participant 1 disputes the correctness of its loss participations since 2009.
Silent Participant 2	4,710,000.00	Silent Participant 2 disputes the correctness of its loss participations since 2009.
Silent Participant 3	4,710,000.00	Silent Participant 3 disputes the correctness of its loss participations since 2009.
Silent Participant 4	4,710,000.00	Silent Participant 4 disputes the correctness of its loss participations since 2009.
Silent Participant 5	47,100,000.00	Silent Participant 5 disputes the correctness of its loss participations since 2009.
Silent Participant 6	2,360,000.00	Silent Participant 6 disputes the correctness of its loss participations since 2009.
Client of HSH	1,800,000.00	Client maintains faulty advice in connection with a swap agreement.
Client of HSH	20,000,000.00	Client maintains faulty advice and a conflict of interest of the bank in connection with a swap agreement.

# **Schedule 11.10**

Potential Orders of Financial Supervisory Authority

## Project Neptun

## Schedule 11.10

## Potential orders

No.	Potential orders
1	Review of the supervisory assessment of the transfer of the significant credit risk regarding the sunrise guarantee
2	BaFin as national resolution agency intends to make an administrative decision to implement the determination of MREL by SRB according to Article 12 sec. 14 and Article 29 SRMR in conjunction with Sec. 50 subsec.1 of the German Recovery and Resolution Act ( <i>Sanierungs- und Abwicklungsgesetz</i> )
3	Final letter of BaFin regarding the verification of coverage of covered bonds( <i>Deckungsprüfung</i> ) for 2017 according to Sec. 44 of the German Banking Act ( <i>Kreditwesengesetz – KWG</i> ) and Sec. 3 of the Act on Covered Bonds ( <i>Pfandbriefgesetz – PfandBG</i> )
4	Audit report / ECB recommendation relating to the ordered, but still outstanding ECB assessment on “Internal Model Investigation on SSM initiative related to Credit risk (LGD; PD/LGD) for the following exposure class(es): Corporate - SME; Corporate - Specialised lending” (Focus on credit risk LGD / CCF)
5	Audit report / Conclusion letter to the ordered, but still outstanding assessment by the Federal Bank ( <i>Bundesbank</i> ) on “foreign trade / financial transactions” according to Sec. 23 of the Foreign Trade and Payments Act ( <i>Außenwirtschaftsgesetz – AWG</i> )
6	Audi report / ECB recommendations regarding the ECB assessment “Internal Governance – Risk Control Function” which was announced for the second half year of 2018, but is not yet ordered.
7	BaFin assessment regarding the announcement of the annual accounts 2015.

# **Schedule 11.11**

Real Property, Rights Equivalent to Real Property and Buildings  
owned by HSH Nordbank

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Schedule 11.11 - Real property and rights equivalent to real property

1 Overview of all directly owned buildings by HSH Nordbank AG

Country	City	Address	Type of Use and Location	Land Register (Grundbuch)	Plot (Flur) / Land parcel (Flurstücke)	Type of ownership
Germany	Hamburg	Rosenstraße 9/11, Lilienstraße 14	Building and open area	Land register of Altstadt-Nord, local court Hamburg, Volume 32, folio 1497	Land parcel 1858	Freehold
Germany	Kiel	Faulstraße 25, 27, Küsterstraße 30	Building and open area	Land register of Kiel, local court Kiel, folios 56620, 56622, 56626, 56799, 17803, 56619, 56763	Plot 17 / Land parcels 307, 486, 521, 522, 301, 462, 461	Freehold
Germany	Kiel	Faulstraße 27	Building and open area	Land register of Kiel, local court Kiel, folio 56784	Plot 17 / Land parcel 463	Freehold
Germany	Kiel	Faulstraße 17	Building and open area	Land register of Kiel, local court Kiel, folio 64567	Plot 17 / Land parcel 580	Freehold
Germany	Kiel	Haßstraße 13, 15	Building and open area	Land register of Kiel, local court Kiel, folio 49997	Plot 17 / Land parcel 883	Freehold
Germany	Kiel	Schlossgarten	Building and open area	Land register of Kiel,	Plot N 18 / Land	Freehold

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Country	City	Address	Type of Use and Location	Land Register (Grundbuch)	Plot (Flur) / Land parcel (Flurstücke)	Type of ownership
		14		local court Kiel, folio 14434	parcel 465	
Germany	Kiel	Martensdamm, 4, 6, Faulstraße 17	Building and open area	Land register of Kiel, local court Kiel, folio 62127	Plot 17 / Land parcels 402, 405.	Freehold
Germany	Kiel	Martensdamm 4	Building and open area	Land register of Kiel, local court Kiel, folio 64566	Plot 17 / land parcel 241	Freehold
Germany	Seevetal	Im Stuck, Ahler Weg	Grassland, path, gardening land	Land register of Maschen, local court Winsen (Luhe), folio 2393	Plot 14 / Land parcels 17/2, 17/3, 17/4	Freehold

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**2 Other real property and rights equivalent to real property**

N/A

# **Schedule 11.12.1**

Material Intellectual Property Rights

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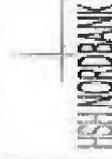
## Schedule 11.12.1

## Material Intellectual Property Rights

## 1 Trademarks

Graphic reproduction	Wording of trademark	Trade-mark office	Designated territory	Registration no. (Anmelde-nummer) / Registered no. (Eintragungs-nummer)	Trade-mark status	Type of trade-mark	Name of applicant	Nizza-class	Applica-tion date	No. of Vienna-classifi-cation	Revo-cation time period	Date of registration	Expira-tion of term of protec-tion
	Nordic Perspective	DE	DE	303667273 / 30366727	Regis-tered	Word	HSH Nordbank AG	36	17/12/2003			13/02/2004	31/12/2023
	Nordic Horizon	DE	DE	303667265 / 30366726	Regis-tered	Word	HSH Nordbank AG	36	17/12/2003			13/02/2004	31/12/2023
	Nordic Vision	DE	DE	303667249 / 30366724	Regis-tered	Word	HSH Nordbank AG	36	17/12/2003			13/02/2004	31/12/2023

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Graphic reproduction	Wording of trademark	Trade-mark office	Designated territory	Registration no. (Anmelde-nummer) / Registered no. (Eintragungs-nummer)	Trade-mark status	Type of trade-mark	Name of applicant	Nizza-class	Application date	No. of Vienna-classification	Revocation time period	Date of registration	Expiration term of protection
	Nordic View	DE	DE	303667281 / 30366728	Registered	Word	HSH Nordbank AG	36	17/12/2003			13/02/2004	31/12/2023
	Nordic Sky	DE	DE	303667257 / 30366725	Registered	Word	HSH Nordbank AG	36	17/12/2003			13/02/2004	31/12/2023
	HSH NORDBANK	DE	DE	303161256 / 30316125	Registered	Combined	HSH Nordbank AG	36	26/02/2003	26/03/23 27/05/08 29/01/12		08/07/2003	28/02/2023
	HSH Nordbank	DE	DE	303058374 / 30305837	Registered	Word	HSH Nordbank AG	35,36,38	04/02/2003			04/04/2003	28/02/2023

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Graphic reproduction	Wording of trademark	Trade-mark office	Designated territory	Registration no. (Anmelde- nummer) / Registered no. (Eintragungs- nummer)	Trade-mark status	Type of trade-mark	Name of applicant	Nizza-class	Application date	No. of Vienna-classification	Revocation time period	Date of registration	Expiration of term of protection
	Blue Real Race	DE	DE	302008027 5855 / 302008027 585	Registered	Word	HSH Nordbank AG	25,4,1,4 3	25/04/ 2008		12/09/ 2008 – 12/12/ 2008	12/08/ 2008	30/04/ 2018
	HSH Nordbank Ruin	DE	DE	302008027 5847 / 302008027 584	Registered	Word	HSH Nordbank AG	6,14,16, 18,24,2 5,26,28, 35,41,4 3	25/04/ 2008		12/09/ 2008 – 12/12/ 2008	12/08/ 2008	30/04/ 2018
 VIA Valid Investment Approach	VIA Valid Investment Approach	DE	DE	307190331 / 30719033	Registered	Combined	HSH Nordbank AG	36	19/03/ 2007	27.05.10, 27.05.15.	06/07/ 2007 – 08/10/ 2007	01/06/ 2007	31/03/ 2027
 HSH NORDBANK ARENA	HSH NORDBANK ARENA	DE	DE	307264866 / 30726486	Registered	Combined	HSH Nordbank AG	6,9,14,1 6,18,21, 24,25,2 6,28,35, 35,38,4 1,42,43, 45	20/04/ 2007	26.04.04, 26.11.12, 27.05.01, 29.01.12	31/08/ 2007 – 30/11/ 2007	01/08/ 2007	30/04/ 2017

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Graphic reproduction	Wording of trademark	Trade-mark office	Designated territory	Registration no. (Anmelde-nummer) / Registered no. (Eintragungs-nummer)	Trade-mark status	Type of trade-mark	Name of applicant	Nizza-class	Application date	No. of Vienna-classification	Revocation time period	Date of registration	Expiration of term of protection
	undefined	DE	DE	302011066 2428 / 302011066 242	Registered	Figurative	HSH Nordbank AG	36	09/12/2011	24.11.25	17/02/2012 – 18/05/2012	13/01/2012	31/12/2021
	HSH NORDBANK	DE	DE	302011066 2479 / 302011066 247	Registered	Combined	HSH Nordbank AG	36	09/12/2011	27.05.01	17/02/2012 – 18/05/2012	13/01/2012	31/12/2021
	HSH NORDBANK	DE	DE	302011066 2460 / 302011066 246	Registered	Combined	HSH Nordbank AG	36	09/12/2011	27.05.01, 24.11.25	17/02/2012 – 18/05/2012	13/01/2012	31/12/2021
	HSH	DE	DE	307061477 / 30706147	Registered	Word	HSH Nordbank AG	36	29/01/2007		13/04/2007 – 13/07/2007	14/03/2007	31/01/2027

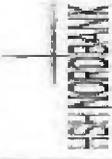
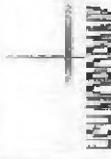
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	SKYLINE	GB	GB	UK0000150 6040 / UK0000150 6040	Registered	Word	HSH Nordbank AG	36	10/07/ 1992		18/06/ 1993 – 22/09/ 1993	12/11/ 1993	10/07/ 2019
	HSH NORDBANK	GB	GB	UK0000232 3251 / UK0000232 3251	Registered	Word	HSH Nordbank AG	35,36,3 8	11/02/ 2003		30/05/ 2003 – 12/09/ 2003	12/09/ 2003	11/02/ 2023
	HSH NORDBANK	DK	DK	VA 2003 00589 / VR 2004 00408	Registered	Word	HSH Nordbank AG	35,36,3 8	11/02/ 2003		05/02/ 2004 – 05/04/ 2004	05/02/ 2004	05/02/ 2024
	HSH	WO	CH,SG ,VN	939326 / 939326	Registered	Word	HSH Nordbank AG	36	18/07/ 2007			18/07/ 2007	18/07/ 2027

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Graphic reproduction	Wording of trademark	Trade-mark office	Designated territory	Registration no. (Anmelde- nummer) / Registered no. (Eintrag- ungs- nummer)	Trade-mark status	Type of trade-mark	Name of applicant	Nizza class	Applica- tion date	No. of Vienna- classifi- cation	Revo- cation time period	Date of registrati on	Expira- tion of term of protec- tion
	HSH NORDBANK	WO	LU,NL, BE,CN	818996 / 818996	Regis- tered	Figura- tive	HSH Nordbank AG	36	26/08/ 2003	01.01.01, 28.11.02, 27.05.01, 29.01.04, 29.01.08		26/08/ 2003	26/08/ 2023
	HSH NORDBANK	WO	SG,GB DK	813078 / 813078	Regis- tered	Figura- tive	HSH Nordbank AG	36	17/05/ 2003	24.13.09, 27.05.01, 29.01.12		17/05/ 2003	17/05/ 2023
	undefined	WO	US,GR SG,D K	1137523 / 1137523	Regis- tered	Figura- tive	HSH Nordbank AG	36	11/06/ 2012	26.04.03, 26.04.24, 26.05.01		11/06/ 2012	11/06/ 2023
	HSH NORDBANK	WO	US,GR SG,D K	1137524 / 1137524	Regis- tered	Figura- tive	HSH Nordbank AG	36	11/06/ 2012	27.05.10		11/06/ 2012	11/06/ 2023

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Graphic reproduction	Wording of trademark	Trade-mark office	Designated territory	Registration no. (Anmelde- / nummer) / Registered no. (Eintragungsnummer)	Trade-mark status	Type of trade-mark	Name of applicant	Nizza-class	Application date	No. of Vienna-classification	Revocation time period	Date of registration	Expiration term of protection
	HSH NORBANK	WO	US,GR ,SG,D K	1137522 / 1137522	Registered	Figurative	HSH Nordbank AG	36	11/06/ 2012	26.05.01, 27.05.10		11/06/ 2012	26/08/ 2023
	HSH	EM	LV,LU, LT,GB, HR,R O,HU, BG,FR ,BE,D E,DK, FI,IE,C Z,AT,C Y,SE,S I,SK,IT ,MT,PL ,PT,E M,GR, ES,NL, EE	005650387 / 005650387	Registered	Word	HSH Nordbank AG	36	30/01/ 2007		16/07/ 2007 – 16/10/ 2007	04/02/ 2008	30/01/ 2027

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## Project Neptun

Graphic reproduction	Wording of trademark	Trade-mark office	Designated territory	Registration no. (Anmelde- nummer) / Registered no. (Eintrag- ungsnummer)	Trade-mark status	Type of trade-mark	Name of applicant	Nizza-class	Applica- tion date	No. of Vienna-classification	Revo- cation time period	Date of registration	Expira- tion of term of protec- tion
	HSH NORDBANK	US	US	78241213 / 3283449	Regis- tered	Word	HSH NORDBAN K AG	36	23/04/ 2003			21/08/ 2007	28/09/ 2027
	HSH NORDBANK	BX	LU, NL, BE	1030067 / 736975	Regis- tered	Word	HSH Nordbank AG	36	17/05/ 2003				28/03/ 2023

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## Project Neptun

## 2 Software

Name	Category
Konzentrator	Bank operations
SAP HCM	Bank operations
Siron AML/KYC	Bank operations
IDL KONSIS	Finance
IFRS INTERN	Finance
SAP BA	Finance
SAP FI/CO/MM/PS	Finance
BABE	Financing
Global Format	Financing
SAP BW (GE)	Financing
SAP CML	Financing
SAP CMS	Financing
TXSUITE	Financing
WEB-MARZIPAN	Financing
Calypso	Capital market
K+TP	Capital market
Kondor+	Capital market
WPDIRECT/WP2	Capital market
SAP DM	Account

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## Project Neptun

Name	Category
CSC	Marketing and distribution
SAP CRM	Marketing and distribution
TRIPLE A (AAA)	Marketing and distribution
Asset Control	Provision of market and master data (Markt- und Stammdatenbereitstellung)
LB Rating	Provision of market and master data (Markt- und Stammdatenbereitstellung)
LeDIS	Provision of market and master data (Markt- und Stammdatenbereitstellung)
Reuters RMDS	Provision of market and master data (Markt- und Stammdatenbereitstellung)
SAP GP	Provision of market and master data (Markt- und Stammdatenbereitstellung)
SignPlus	Provision of market and master data (Markt- und Stammdatenbereitstellung)
MELDEWESEN-ENGINE	Reporting system (Meldewesen)
SAP BW	Reporting
Abacus	Risk
Calypto Risk	Risk
CLD	Risk
KONDOR GLOBAL RISK (KGR)	Risk
P&L DB	Risk

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## Project Neptun

Name	Category
RISIKO-DATENBANK	Risk
SAP SEM	Risk
LOTUS NOTES	Support tools ( <i>Unterstützungswerkzeuge</i> )
BCB Systeme	Payment transactions
BIS - BUCHUNGSINFRASTRUKTUR	Payment transaction
MIDAS SINGAPORE	Foreign countries ( <i>Ausland</i> )
IBSY - INTEGRATED BANKING SYSTEM	Foreign countries ( <i>Ausland</i> )
Zentrale Datenplattform zDP	Data management

2-1

Project Neptun

3 Domains

hsh.bank
nord.bank
abc147.de
abc156.de
bank-des-nordens.de
bankn.de
blue-race.de
bank-n.de
bank-zu-bank.de
abc155.com
bank-n.biz
bank-n.info
bankn.info
blue-race.org
blue-race.info
abc156.com
bankn.net
blue-race.net
bankn.org
blue-race.com

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## Project Neptun

blue-repair-service.org
blue-repair-service.net
hsh-securities.com
hsh-im.com
hsh-nordbank-pb.com
hsh-pblux.com
hsh-nordbank-privatebanking.com
sophienterrasse-hamburg.com
smartfinancefamily.com
sterna-kapital-partners.com
sophienterrasse.com
nord-bank.biz
nordmare-bank.biz
nordmarebank.biz
swift-capital-partners.com
wertpapierservicebank.com
northbank.biz
nordeuropabank.biz
nord-euro-bank.biz
north-bank.biz
swiftkapitalpartners.com

R

## Project Neptun

swiftcapitalpartners.com
nordkurs-bank.biz
wertpapierservices.com
swift-kapital.com
swift-kapital-partners.com
nordkursbank.biz
nord-europa-bank.biz
nordbank.biz
hshnordbankag.biz
sternkapital.com
hsh-nordbank-ag.biz
sterna-kapital.com
swiftkapital.com
nordeuro-bank.biz
hshnorthbank.biz
swift-capital.com
hsh-northbank.biz
hsh-nord-bank.biz
lb-kiel.biz
hshnordbank.biz
hshn.biz

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## Project Neptun

hsh-n.biz
hamburglb.biz
lbkiel.biz
euro-nord-bank.biz
hshnb.biz
hsh-bank.biz
nordeurobank.biz
landesbank-kiel.biz
hsh-nordbank.biz
hsh-nb.biz
hshbank.biz
euronord-bank.biz
landesbankkiel.biz
euronordbank.biz
wp-abwicklung.de
wertpapiertransaktionsbank.de
wertpapierservices.de
wertpapierservicebanken.de
wertpapierservice-bank.de
wertpapierservice-hamburg.de
vonbankzubank.de

## Project Neptun

wertpapier-abwicklung.de
swiftkapitalpartners.de
swiftkapital.de
von-bank-zu-bank.de
sws-systemhaus.de
switkabitai.de
swiftcapitalpartners.de
swiftcapital.de
swit-kapital-partners.de
swift-kapital.de
swift-capital-partners.de
swift-kabitai.de
swift-capital.de
sterna-kapital.de
sophienterrasse-hamburg.de
sterna-kapital-partners.de
sternakapital.de
sophienterrasse.de
sirkapital.de
smartfinancfamily.de
sirpartners.de

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## Project Neptun

sir-partners.de
sircapital.de
sir-kapital.de
restructuring-unit.de
sir-capital.de
race-repairservice.de
racerepairservice.de
restructuring-unit.com
orcacapital.de
orcapartners.de
sc-partners.com
racerepairservice.com
race-repair-service.com
race-repair-service.de
scandinotes.com
plusbank-ag.com
orca-partners.de
hamburglb-singapore.com
plus-bank.com
hsh-nordbank-mehrerwarten.com
hsh-nordbank-marktdatenmeeting.com

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## Project Neptun

hsh-n.com
hsh-nordbankarena.com
hamburglb.com
hsh-nordbank-hypo.com
hshn-fs.com
orca-kapital.com
hsh-nordbank-mehr-erwarten.com
hsh-nordbank-private-banking.com
hsh-nordbank-race-repairservice.com
nordkursbank.com
lux-net.com
fms-hsh.com
hsh-nordbank-blue-race.com
hamburglb-london.com
hamburglb-guernsey.com
hamburglb-shanghai.com
hshgudme.com
hsh-nordbank-race-repair-service.com
hshn-fms-holding.com
hsh-nordbank-ag.com
hshn-fm.com

fsh

Project Neptun

hamburgische-landesbank.com
sif-partners.com
hsh-nordbank-asia.com
hsh-nordbank-bluerace.com
sif-capital.com
hamburglb-miami.com
race-repairservice.com
norship-italia.com
hshn-baltic-sea.com
orcakapital.com
hamburglb-hongkong.com
hsh-nordbank-blurepairservice.com
hsh-nord-bank-hypo.com
hamburglb-warsaw.com
hsh-nordbank-pre-race.com
ice-immobilien.com
hsh-n-kapital.com
hsh-kuko.com
sircapital.com
hshn-flinsec.com
hib-immoholding.com

fn

## Project Neptun

hshn-pfs.com
hamburglb-ny.com
nordkurs-bank.com
orca-kapital.de
orca-partners.com
hshn-gastro-event.com
hshcf.com
hshn-financial-securities.com
hsh-nordbank-restructuring-unit.com
hsh-nordbank-expectmore.com
hsh-bank.com
hsh-nib.com
nordeuro-bank.com
hshnv.com
hshn-residualvalue.com
hsh-facility-management.com
hsh-securities.com
sir-kapital.com
hshn-fma.com
hsh-gudme.com
hsh-n-bank.com

fy

## Project Neptun

hshn-financialsecurities.com
hshn-print-logistics.com
hshn-tv.com
hsh-nordbank-blue-repair-service.com
nordeurobank.com
sirpartners.com
hsh-nord-bank.com
hansebank.com
hsh-rechnungswesen.com
sirkapital.com
bluerepairservice.com
hsh-gfb.com
nordeuropabank.com
hsh-security.com
nord-europa-bank.com
hshbank.com
marebaltic.com
lb-kiel.com
hshn-residual-value.com
nord-bank.com
hshnordbankag.com

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Project Neptun

hamburglb-hanoi.com
fm-elbphilharmony.com
hamburglb-newyork.com
euronordbank.com
hsh-nordbank-expect-more.com
hshnorthbank.com
hsh-portfolio-management.com
elbphilharmony-fm.com
nordmare-bank.com
hsh-fs.com
hshnbank.com
mehrenwarten.com
hsh-nordbank-races.com
ewsplus.com
nord-euro-bank.com
hshnordbankarena.com
blue-repair-service.com
mehr-erwarten.com
hshnfs.com
hsh-northbank.com
hshnb.com

fu

Project Neptun

fma-ag.com
hsh-fma.com
ews-plus.com
nordmarebank.com
fm-elbphilharmonie.com
north-bank.de
norship-italia.de
hsh-nordbank-racerepairservice.com
crefinancialgroup.com
elbphilharmonie-fm.com
hshnordbank.com
fma-sa.com
hsh.ncf.com
northbank.de
hshnbr.com
fms-hsh-nordbank.com
fma-se.com
hshnfinsec.com
euro-nord-bank.com
hshnordbank-arena.com
hshn-ger.com

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Project Neptun

norship.de
euromord-bank.com
nordmare-bank.de
nordkursbank.de
nordmarebank.de
nordkurs-bank.de
nordeurobank.de
nordeuropabank.de
nord-europa-bank.de
nordeuro-bank.de
nord-euro-bank.de
nord-bank.de
mehrerwarten.de
mehr-erwarten.de
lbsh.de
lbkiel.de
lbkhcf.de
landesbankkiel.de
landesbank-online.de
landesbank-trends.de
lb-kiel.de

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## Project Neptun

landesbank-personal.de
landesbank-onlinebanking.de
landesbank-wertpapierorder.de
landesbank-kultur.de
landesbank-mobl.de
landesbank-privat.de
landesbank-kiel.de
landesbank-info.de
landesbank-hamburg.de
landesbank-depot.de
landesbank-boerse.de
landesbank-banking.de
landesbank-aktuell.de
landesbank-analyse.de
ice-immobilien.de
hshnorthbank.de
landesbank-aktienanalysen.de
impulsbank.de
hshnordbank.de
hshnb.de
hshn-tsmip01.de

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## Project Neptun

impuls-bank.de
hshnfs.de
hshnbr.de
hshnordbank-arena.de
hshncl.de
hshn-ger.de
hshn-print-logistics.de
hshn-immoholding.de
hshn-gastro-event.de
hshn-fms-holding.de
hshn-fs.de
hshn-fma.de
hshn-fm.de
hshn-development.de
hshn-asset-management.de
hshcl.de
hshn-baltic-sea.de
hsh-northbank.de
hsh-nordbank-races.de
hshgudme.de
hsh-nordbank-restructuring-unit.de

ln

## Project Neptun

hsh-nordbank-werbemittel.de
hshn-am.de
hsh-nordbank-racerepairservice.de
hsh-shopping-passage.de
hsh-nordbank-race-repair-service.de
hsh-nordbank-privatebanking.de
hsh-nordbank-race-repairservice.de
hsh-nordbank-private-banking.de
hsh-nordbank-poi.de
hsh-nordbank-pb.de
hsh-nordbank-online.de
hsh-nordbank-mehrewarten.de
hsh-nordbank-bluerpairservice.de
hsh-nordbank-hypo.de
hsh-nordbank-mehr-erwarten.de
hsh-nordbank-expectmore.de
hsh-nordbank-ag.de
hsh-nordbank-expect-more.de
hsh-nordbank-bluerace.de
hsh-nordbank-blue-repair-service.de
hsh-nordbank-blue-race.de

fy

Project Neptun

hsh-nord-bank-hypo.de
hsh-nordbank-arena.de
hsh-nord-bank.de
hsh-n.de
hsh-holding.de
hsh-gudime.de
hsh-nb.de
hsh-fma.de
hsh-asset-management.de
hsh-immoholding.de
hsh-facility-management.de
hsh-fs.de
hansebank.de
hamburglb.de
hamburglb-mobil.de
hamburgischelandesbank.de
hamburglb-banking.de
hamburgerlandesbank.de
hamburgische-landesbank.de
fmskiel.de
fma-se.de

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## Project Neptun

fm-elbphilharmony.de
fma-sa.de
fms-kiel.de
fm-elbphilharmonie.de
ewsplus.de
fma-ag.de
euronordbank.de
ews-plus.de
euronord-bank.de
elbphilharmony-fm.de
euro-nord-bank.de
elbphilharmonie-fm.de
dietrich-zuemker.de
cultessa.de
bluerepairservice.de
blue-repair-service.de
swift-kapital.net
swiftkapitalpartners.net
sir-kapital.net
wp-service.net
wertpapierservicebank.net

R-1

## Project Neptun

swiftkapital.net
swiftcapital.net
euronordbank.net
swiftcapitalpartners.net
sir-partners.net
hsh-nordbank.net
sc-partners.net
hsh-n.net
race-repairservice.net
sterna-kapital.net
swift-capital-partners.net
wertpapierservice.net
sternkapital.net
hsh-nb.net
ews-plus.net
sterna-kapital-partners.net
restructuring-unit.net
sirkapital.net
race-repair-service.net
swift-capital.net
sircapital.net

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## Project Neptun

hshnorthbank.org
hshnordbankag.nl
hshnbr.net
swift-kapital-partners.net
hshnordbank-arena.net
bluerepairservice.net
plus-bank.net
orcpartners.net
orca-partners.net
hsh-nord-bank.net
orcakapital.net
euro-nord-bank.net
nordeuropabank.net
ewsplus.net
hshnordbank.net
nordeuro-bank.net
hshbank.net
hshnb.net
north-bank.net
hshn.net
restructuring-unit.org

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## Project Neptun

wp-service.org
hsh-nordbankarena.net
sir-capital.net
werpapierservice.org
nord-europa-bank.net
euronord-bank.net
hshnordbank.nl
racerepairservice.net
hsh-nb.org
race-repair-service.org
nordeurobank.net
nordmare-bank.net
plusbank-ag.net
race-repairservice.org
hsh-nordbank-bluerace.net
sirpartners.net
lilux.net
hsh-bank.net
north-bank.org
bluerace.net
nordmarebank.org

f

Project Neptun

nordkurs-bank.org
nordkurs-bank.net
hsh-nordbank-ag.net
nordbank.org
plusbank.org
landesbank.net
nord-bank.org
hsh-nordbank-arena.net
ib-kiel.org
nord-bank.net
nordmarebank.net
hshnordbankag.net
nordkursbank.org
nordeuro-bank.org
nord-euro-bank.org
hsh-nordbank-ag.nl
orca-kapitel.net
hshnorthbank.net
hsh-northbank.net
nordeuropabank.org
nord-euro-bank.net

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## Project Neptun

hshnordbanksalling.org
nord-europa-bank.org
nordkursbank.net
hshnordbankag.org
landesbank.org
lb-kiel.net
hshnordbankhypoc.org
hsh-nordbank-blue-race.net
hshnordbankarena.org
hshbank.org
racerepairservice.org
hshnbi.org
hsh-nordbank-pre-blue-race.org
hshnordbankhypobank.org
plusbank-ag.org
hsh-northbank.org
hsh-nordbank-hypobank.org
hshnordbank.org
hshnordbankarena.net
hsh-nordbank-hypo.org
hsh-nordbank-arena.org

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## Project Neptun

hsh-nordbank-segeln.org
plus-bank.org
ews-plus.org
euronord-bank.org
hsh-nordbank-pre-race.org
nordeurobank.org
hsh-nordbank-sailing.org
euronordbank.org
nordmare-bank.org
hsh-nordbank-ag.org
hsh-nord-bank.org
hsh-nordbank.nl
hsh-bank.org
hshnordbankraces.org
hshnb.org
hsh-nordbankhypo.org
hsh-nordbankhypobank.org
hshnordbank-arena.org
hsh-nordbank-blue-race.org
hsh-nordbank-races.org
hsh-nordbank-pre-blue.org

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## Project Neptun

hsh-nordbank-bluerace.org
ewsplus.org
hsh-nordbankarena.org
euro-nord-bank.org
hsh-nordbank.org
hsh-n.org
nordmarebank.us
nordmare-bank.us
bluerepairservice.org
hshnordbank.tv
hsh-nordbank-ag.us
bluerace.org
hshn.us
nordkursbank.us
nordkurs-bank.us
hsh-northbank.us
hshbank.us
hsh-nord-bank.us
hsh-nordbank.us
hsh-n.us
north-bank.us

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## Project Neptun

hsh-nordbank.tv
nordeurobank.us
hsh-nb.us
hsh-bank.us
lb-kiel.us
nordbank.us
hshnordbank.us
nord-bank.us
hshnorthbank.us
hshnb.us
nordeuro-bank.us
hshnordbankag.us
hshnordbank.info
hsh-nord-bank.info
hsh-nordbank.in
hshnb.info
hshnordbankag.info
nordmarebank.info
hshn.info
hshnb.info
hsh-nordbank-bluerace.info

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## Project Neptun

bluerace.info
hsh-nordbank.info
hshbank.info
racerepairservice.info
race-repairservice.info
euro-nord-bank.info
north-bank.info
hsh-nordbank-blue-race.info
race-repair-service.info
northbank.info
fm-elbphilharmonie.info
nordkurs-bank.info
nordmare-bank.info
nord-euro-bank.info
nordkursbank.info
nordeuropabank.info
nordeuro-bank.info
nord-bank.info
lbkie.info
nordeurobank.info
nordbank.info

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## Project Neptun

hshnorthbank.info
nord-europa-bank.info
hshnordbank-arena.info
landesbankkiel.info
hsh-nordbank-arena.info
landesbank-kiel.info
hsh-nordbankarena.info
hsh-nordbank-ag.info
hsh-northbank.info
fm-elbphilharmony.info
hshnordbankarena.info
hamburgfb.info
elbphilharmony-fm.info
euronord-bank.info
elbphilharmonie-fm.info
euronordbank.info
bluerepairservice.info
hsh-bank.info
blue-repair-service.info
hsh-nb.info
hsh-n.info

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## Project Neptun

fma-se.eu
fma-ag.eu
hshnordbank-arena.eu
hsh-fma.eu
hsh-nordbank-arena.eu
hshn-securities.eu
restructuring-unit.eu
hshnordbank.eu
fma-sa.eu
hsh-asset-management.eu
hsh-securities.eu
hsh-nordbankarena.eu
hshbank.eu
hsh-nordbank-privatebanking.eu
hsh-nordbank-pb.eu
hsh-nordbank.eu
hsh-bank.eu
hshn-pbanking.eu
hshn-asset-management.eu
elbphilharmony-fm.eu
fm-elbphilharmony.eu

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## Project Neptun

hshn-am.eu
fm-elbphilharmonie.eu
hshnordbankarena.eu
elbphilharmonie-fm.eu
hsh-bank.de
abc155.de
bluerepairservice.pl
bluerace.pl
blue-race.pl
blue-repair-service.pl
hsh-nord-bank.pl
hsh-nordbank-ag.pl
hsh-nordbank.pl
hshntr.pl
hsh-northbank.pl
hshnordbank.pl
hshnordbankag.pl
hshnorthbank.pl
nordeuro-bank.pl
nordeurobank.pl
nordkurs-bank.pl

p-1

## Project Neptun

nordkursbank.pl
nordmare-bank.pl
nordmarebank.pl
race-repair-service.pl
race-repairservice.pl
racerepairservice.pl
hsh-nordbank.ag
hshnordbank.ag
hsh-nord-bank.ag
hshnorthbank.ag
hsh-northbank.ag
hsh-nordbank.asia
hshnordbank.asia
hsh-nordbank.it
blue-repair-service.it
bluerace.it
hshnord.it
hshnordbank.it
hsh-nordbank-ag.it
norship.it
norship-italia.it

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## Project Neptun

bluerepairservice.it
race-repairservice.it
hshnordbankag.it
racerepairservice.it
blue-race.it
race-repair-service.it
bluerace.se
blue-race.se
hsh-gudme.se
hshcf.se
hshgudme.se
hsh-nordbank.se
bluerepairservice.se
hshg.se
hshnordbank.se
hsh-nbank.se
scandinotes.se
race-repair-service.se
blue-repair-service.se
hshn.se
hshnbr.se

f. u. l.

Project Neptun

racerepairservice.se
race-repairservice.se
hshnbank.se
hsh-n-bank.se
hshnordbankag.gr
hsh-nordbank-ag.gr
hsh-nordbank.gr
hshnordbank.gr
hsh-nordbank.lv
hsh-nordbank-ag.cn
hsh-nord-bank.com.cn
hsh-nordbank.com.tw
hshnordbankag.cn
hsh-nordbank-ag.com.cn
hshnordbank.com.tw
hshnordbankag.com.cn
hsh-nordbank.org.cn
hshnordbank.net.cn
hshnordbank.org.cn
hsh-nordbank.net.cn
hsh-nord-bank.cn

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## Project Neptun

blue-race.co.uk
blue-repair-service.co.uk
hsh-n.co.uk
hsh-bank.co.uk
bluerace.co.uk
bluerepairservice.co.uk
hsh-nb.co.uk
hsh-nordbank.co.uk
hsh-nordbank-ag.co.uk
hsh-nord-bank.co.uk
hsh-northbank.co.uk
hshnb.co.uk
hshbank.co.uk
hshn.co.uk
hshnbr.co.uk
hshn-securities.co.uk
hshnordbank.co.uk
hshnorthbank.co.uk
hshnordbankag.co.uk
nord-bank.co.uk
nordeuro-bank.co.uk

2-1

## Project Neptun

nordeurobank.co.uk
nordkursbank.co.uk
nordkurs-bank.co.uk
nordmare-bank.co.uk
nordmarebank.co.uk
race-repair-service.co.uk
race-repairservice.co.uk
racerepairservice.co.uk
hshnordbank.cc
hsh-nordbank.cc
scandinotes.gg
scandinotes.co.gg
marebaltic.gg
marebaltic.co.gg
scandinotes.co.uk
hshnr.fr
bluerace.fr
race-repair-service.fr
race-repairservice.fr
blue-race.fr
bluerepairservice.fr

f-1

Project Neptun

hsh-nordbank.fr
hshnordbank.fr
blue-repair-service.fr
rrs.fr
racerepairservice.fr
hsh-da.dk
hsh-debt-advisory.dk
hsh-real-estate-debt-advisory.dk
hsh-ra.dk
hsh-debtadvisory.dk
hsh-realestate-debtadvisory.dk
hsh-restructuringadvisory.dk
hsh-realestatedebtadvisory.dk
hsh-restructuring-advisory.dk
hshda.dk
hshdebtadvisory.dk
hshrealestatedebtadvisory.dk
hshrealestate-debtadvisory.dk
hsh-reda.dk
hshreda.dk
hshrestructuringadvisory.dk

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Project Neptun

hshra.dk
bluerepairservice.dk
hshnbr.dk
blue-race.dk
bluerace.dk
blue-repair-service.dk
racerepairservice.dk
race-repair-service.dk
race-repairservice.dk
hshnordbank.dk
hsh-nordbank.dk
cibor-laan.dk
cibor.dk
lb-kiel.dk
hshcf.dk
xn-ciborln-jxa.dk
xn-cibor-ln-g0a.dk
hsh-nordbank.de
hsh-nordbank.com
hsh-nordbank-trader.com
ilux-net.lu

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Project Neptun

hsh-nord-bank.lu
hsh-nordbank-int.lu
hsh-securities.lu
hsh-nordbank-ag.lu
hsh-nord-bank-int.lu
hsh-nordbank-pb.lu
hshnordbank-ag.lu
lux-net.lu
hshnordbank.lu
hshnordbank-int.lu
hsh-nordbank-privatebanking.lu
hsh-northbank.lu
sc-partners.lu
hshnorthbank.lu
scpartners.lu
scandinotes.de
hsh-im.lu
lb-kiel.lu
hsh-nordbank.lu
hshn-securities.lu
hsh-pb.lu

hsh

## Project Neptun

nordkurs-bank.dk
nordmarebank.dk
nordkursbank.dk
nordmare-bank.dk
ib-kiel.info
service-hsh-nordbank.de
hsh-nordbank-service.de
hsh-nord-bank-hypo.ag
hsh-nord-bank-hypo.biz
hsh-nord-bank-hypo.info
hsh-nord-bank-hypo.net
hsh-nord-bank-hypo.org
hsh-nord-bank-hypobank.ag
hsh-nord-bank-hypobank.biz
hsh-nord-bank-hypobank.com
hsh-nord-bank-hypobank.info
hsh-nord-bank-hypobank.net
hsh-nord-bank-hypobank.org
hsh-nordbank-ar2006.com
hsh-nordbank-ar2007.com
hsh-nordbank-ar2008.com
hsh-nordbank-blue-face.it
hsh-nordbank-blue-repair-service.info
hsh-nordbank-blue-repair-service.net

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## Project Neptun

hsh-nordbank-blue-repair-service.org
hsh-nordbank-blue-sailing.com
hsh-nordbank-bluerepairservice.info
hsh-nordbank-bluerepairservice.net
hsh-nordbank-bluerepairservice.org
hsh-nordbank-hypo.ag
hsh-nordbank-hypo.biz
hsh-nordbank-hypo.info
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hsh-nordbank-hypobank.ag
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hsh-nordbank-hypobank.info
hsh-nordbank-hypobank.net
hsh-nordbank-pre-blue-race.com
hsh-nordbank-pre-blue.com
hsh-nordbank-race-repair-service.it
hsh-nordbank-race-repair-service.net
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hsh-nordbank.ee
hsh-nordbank.no

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hsh-nordbankhypo.ag
hsh-nordbankhypo.biz
hsh-nordbankhypo.com
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hshnordbankhypo.ag
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hshnordbankhypobank.info
hshnordbankhypobank.net
hshnordbankraces.com
hshnordbanksailing.com
hshnordbanksegein.com
hshnordbanksegein.org
kontora-advisory.com

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# **Schedule 11.12.2**

Material Intellectual Property Rights subject to proceedings

Project Neptun

**Schedule 11.12.2**

**Cancellation, revocation of or opposition to Material Intellectual Property Rights**

N/A

# **Schedule 11.13.1**

List of Insurance Agreements

## Project Neptun

## Schedule 11.13.1

1. Overview of existing insurance contracts of HSH Nordbank AG, which are not connected to the traditional banking business (*originäres Bankgeschäft*), excluding D&O insurances

Insured Party	Risk description	Expiration of contract (predominantly automatic renewal clauses included)
HSH Nordbank AG	Building insurance, including terror risks ( <i>Gebäudeversicherung inkl. Terrorgefahren</i> )	01/01/2019
HSH Nordbank AG	Building insurance, excluding terror risks ( <i>Gebäudeversicherung ohne Terrorgefahren</i> )	01/01/2019
HSH Nordbank AG	Contents insurance ( <i>Inhaltsversicherung</i> )	01/01/2019
HSH Nordbank AG	Excedents content insurance ( <i>Excedenten-Inhaltsversicherung</i> )	01/01/2019
HSH Nordbank AG	Elementary insurance (all risk coverage building Hamburg) ( <i>Elementarversicherung (All Risk Deckung Gebäude Hamburg)</i> )	01/01/2019
HSH Nordbank AG	Terror insurance ( <i>Terrorversicherung</i> ) building Schloßgarten 14, 24103 Kiel; Martensdamm 6, 24103 Kiel; Gerhart-Hauptmann-Platz 50, 20095 Hamburg and values of content (core bank)	31/12/2018
HSH Nordbank AG	Electronics insurance ( <i>Elektronikversicherung</i> )	01/01/2019
HSH Nordbank AG	Travel baggage insurance ( <i>Reisegepäckversicherung</i> )	01/01/2019
HSH Nordbank AG	Securities insurance ( <i>Valorenversicherung</i> )	01/01/2019
HSH Nordbank AG	Art exhibition insurance ( <i>Kunst-Ausstellungsversicherung</i> )	01/01/2019
HSH Nordbank AG	General liability insurance ( <i>Betriebshaftpflichtversicherung</i> )	01/01/2019
HSH Nordbank AG	Business-Trip-Accident insurance ( <i>Dienstreise-Unfallversicherung</i> )	01/01/2019
HSH Nordbank AG	Group Accident insurance ( <i>Gruppen-Unfallversicherung</i> )	01/01/2019

Project Neptun

Insured Party	Risk description	Expiration of contract (predominantly automatic renewal clauses included)
HSH Nordbank AG	Penal-Law-insurance ( <i>Straf-Rechtsschutzversicherung Compliance Officers</i> )	01/10/2018
HSH Nordbank AG	Direct insurance as a form of life and pension insurance which the HSH Nordbank as policy holder completes for some of their employees	Several different expiration dates
HSH Nordbank AG	Business-Trip damage insurance ( <i>Dienstreisekaskoversicherung</i> )	01/01/2019
HSH Nordbank AG	Motor insurances ( <i>Kfz-Versicherungen</i> )	01/01/2019
HSH Nordbank AG	Contractors all risk insurance facade Kiel ( <i>Bauleistungsversicherung Fassade Kiel</i> )	28/08/2018
HSH Nordbank AG	Foreign Travel health insurance ( <i>Auslandsreisekrankenversicherung</i> )	31/12/2018
HSH Nordbank AG, New York	General liability insurance ( <i>Haftpflichtversicherung</i> )	30/06/2018
HSH Facility Management GmbH including subsidiaries HSH Care+Clean, HSH Move+More und HSH Gastro+Event	General liability insurance ( <i>Betriebshaftpflichtversicherung</i> )	01/01/2019
HSH Facility Management GmbH	General liability insurance / Architect business liability insurance ( <i>Betriebshaftpflichtversicherung/Architektenhaftpflichtversicherung</i> )	01/01/2019
HSH Facility Management GmbH	Group accident insurance ( <i>Gruppen-Unfallversicherung</i> )	01/01/2019
HSH Facility Management GmbH	Motor insurances ( <i>Kfz-Versicherungen</i> )	01/01/2019

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Insured Party	Risk description	Expiration of contract (predominantly automatic renewal clauses included)
HSH Facility Management GmbH	Membership in the pension protection fund, insolvency protection of the company pension scheme according to Section 10 BetrAVG ( <i>Mitgliedschaft im Pensionsversicherungsverein, Insolvenzversicherung der betrieblichen Altersversicherung gem. §10 BetrAVG</i> )	Renewal, as long of pensions obligations exist.
HSH Care+Clean	Membership in the pension protection fund, insolvency protection of the company pension scheme according to Section 10 BetrAVG ( <i>Mitgliedschaft im Pensionsversicherungsverein, Insolvenzversicherung der betrieblichen Altersversicherung gem. §10 BetrAVG</i> )	Renewal, as long of pensions obligations exist.
HSH Gastro+Event	Membership in the pension protection fund, insolvency protection of the company pension scheme according to Section 10 BetrAVG ( <i>Mitgliedschaft im Pensionsversicherungsverein, Insolvenzversicherung der betrieblichen Altersversicherung gem. §10 BetrAVG</i> )	Renewal, as long of pensions obligations exist.

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Project Neptun

2. Overview of current D&O insurance contracts and purchased extended reporting periods of HSH Nordbank AG

Insured Party	Risk description	Expiration	Comments
HSH Nordbank AG	D&O base contract	31/03/2018	Ongoing insurance programme
HSH Nordbank AG	D&O 1. excedent	31/03/2018	Ongoing insurance programme
HSH Nordbank AG	D&O 2. excedent	31/03/2018	Ongoing insurance programme
HSH Nordbank AG	D&O 3. excedent	31/03/2018	Ongoing insurance programme
HSH Nordbank AG	D&O 4. excedent	31/03/2018	Ongoing insurance programme
HSH Nordbank AG	D&O 2. and 4. excedent	31/07/2024	Purchase of extended reporting period due to an insurer exit out of the insurance programme
HSH Nordbank AG	Basic contract and excedents	31/03/2026	Purchase of extended reporting period for the whole insurance programme on the basis of the conclusion of a new insurance programme as of 31 August 2016

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Project Neptun

3. Overview of current insurance contracts of HSH Nordbank, which are connected to the traditional banking business, however excluding foreign subsidiaries and branches

Insured party	Risk description	Expiration (predominately automatic renewal clauses included)
HSH Nordbank AG	MII/MAP insurance	17/06/2018
HSH Nordbank AG	Mortgages loss insurance, bond ( <i>Hypothekenausfallversicherung, Pfandbrief</i> )	01/01/2019
HSH Nordbank AG	Mortgages loss insurance, 50% residentially used objects ( <i>Hypothekenausfallversicherung, 50% wohnwirtschaftlich genutzter Objekte</i> )	01/01/2019
HSH Nordbank AG	Cards and online banking insurance ( <i>Karten- und Onlinebanking-Versicherung</i> )	31/12/2020
HSH Nordbank AG	Pecuniary damage liability insurance, real estate valuation ( <i>Vermögensschadenhaftpflichtversicherung Immobilienbewertung</i> )	13/10/2019
HSH Nordbank AG	Airplane liability and hull insurance ( <i>Flugzeughaftpflicht- und -kaskoversicherung</i> )	30/04/2018
HSH Nordbank AG	Insurances with regard to the Aviation Business of the Bank	In the normal course of business HSH in its various capacities (Agent, Security Trustee, Lender etc.) is insured or co-insured in many insurance policies for aircraft. This is also the case for transactions which have already been repaid or prepaid (run-off insurance for 2 years).

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4. Overview of current insurance contracts of foreign subsidiaries and branches

Insured party	Risk description	Expiration
HSH Nordbank AG, Singapore	Combined policy, liability, content and rent property damages insurance ( <i>Kombipolice, Haftpflicht, Inhalts- und Mietsachschädenversicherung</i> )	31/12/2018
HSH Nordbank AG, Singapore	Travel insurance ( <i>Reiseversicherung</i> )	31/05/2018
HSH N Sec., Luxembourg	Server insurance ( <i>Server Versicherung</i> )	31/12/2018
HSH N Sec., Luxembourg	Travel baggage insurance ( <i>Reisegepäckversicherung</i> )	31/12/2018
HSH N Sec., Luxembourg	Group Accident insurance ( <i>Gruppenunfallversicherung</i> )	31/12/2018
HSH N Sec., Luxembourg	Business-Trip damage insurance ( <i>Dienstreisekaskoversicherung</i> )	31/12/2018
HSH N Sec., Luxembourg	Accident insurance ( <i>Unfallversicherung</i> ) for employees	31/12/2016
HSH N Sec., Luxembourg	Company pension scheme ( <i>Betriebliche Versorgungsordnung</i> )	31/12/2018
HSH N Sec. Luxembourg	Motor insurance ( <i>Kfz-Versicherung</i> )	31/12/2018
HSH Luxembourg Branch	General liability insurance ( <i>Betriebshaftpflichtversicherung</i> )	31/12/2018
HSH Luxembourg Branch	Household and content insurance ( <i>Hausrat-/Inhaltsversicherung</i> )	31/12/2018
HSH Luxembourg Branch	Group accident insurance ( <i>Gruppenunfallversicherung</i> )	31/12/2018
HSH Luxembourg Branch	Company pension scheme ( <i>Betriebliche Versorgungsordnung</i> )	31/12/2018

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# **Schedule 11.13.2**

Overview of Insurable Damage

Project Neptun

Schedule 11.13.2

Overview of open insurance damages relating to the insurances of HSH Nordbank AG, damage volume > EUR 1.0 million and cover disputed by the relevant insurer

Insured Party	Insurance Contracts	Case/subject	Comments
HSH Nordbank AG	D&O insurance	Omega 55	
HSH Nordbank AG	D&O insurance	Omega 52	
HSH Nordbank AG	D&O insurance	STCDO business plan (framework decision/resolution) and decision/resolution on increase	
HSH Nordbank AG	D&O insurance	Damage claims based on an irregular termination under participation of a management board member	
HSH Nordbank AG	D&O insurance	Cum Ex	
HSH Nordbank AG	D&O insurance	Structured Transactions	
HSH Nordbank AG	D&O insurance	Nordic Tool	
HSH Nordbank AG	D&O insurance	Charge	
HSH Nordbank AG	MII/MAP insurance	Total loss of a vessel	

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# **Schedule 11.14.1**

Project plan GDPR

**Project Neptun****Schedule 11.14.1****High-level project description****High-level status description**

- The European General Data Protection Regulation (GDPR) soon applies in all EU states.
- In Germany, a new Federal Data Protection Act (*Bundesdatenschutzgesetz – BDSG*) enters simultaneously into force, which was announced in July 2017. It complements the GDPR in areas, where the GDPR leaves leeway.
- The new requirements of BDSG and GDPR apply as of 25 May 2018.
- Important novelties to the current data protection are
  - additional formal requirements,
  - significantly aggravated fines as well as
  - additional rights for the concerned persons (data subjects), these include e.g. extended information obligations of the bank, information rights as well as the right to data portability of the clients and the employees with regard to their data stored by the bank.
- For the implementation of the requirements a risk-based approach was developed. Core of the procedure is an implementation plan with the aim to implement primarily the measures, which result from the changes of the legal data protection requirements in comparison with the previously applicable law.
- The implementation project regarding the GDPR is managed under the governance of the Project-Portfolio-Board.
- For the implementation project, which includes the preparation of the requirements for the concerned consolidated subsidiaries, a budget of approx. EUR 2 million is currently estimated until autumn 2018.
  - **Phase 1** (presumably until 25 May 2018): Implementation of the new legal requirements as part of the risk-based approach
  - **Phase 2** (presumably until 30 September 2018): Optimisation of the technical procedure (e.g. electronic processing directory, deletions)
- The approach with regard to the concerned subsidiaries is pursued in a manner corresponding to the implementation of other regulatory requirements, which concern the subsidiaries as well.

# **Schedule 11.14.2**

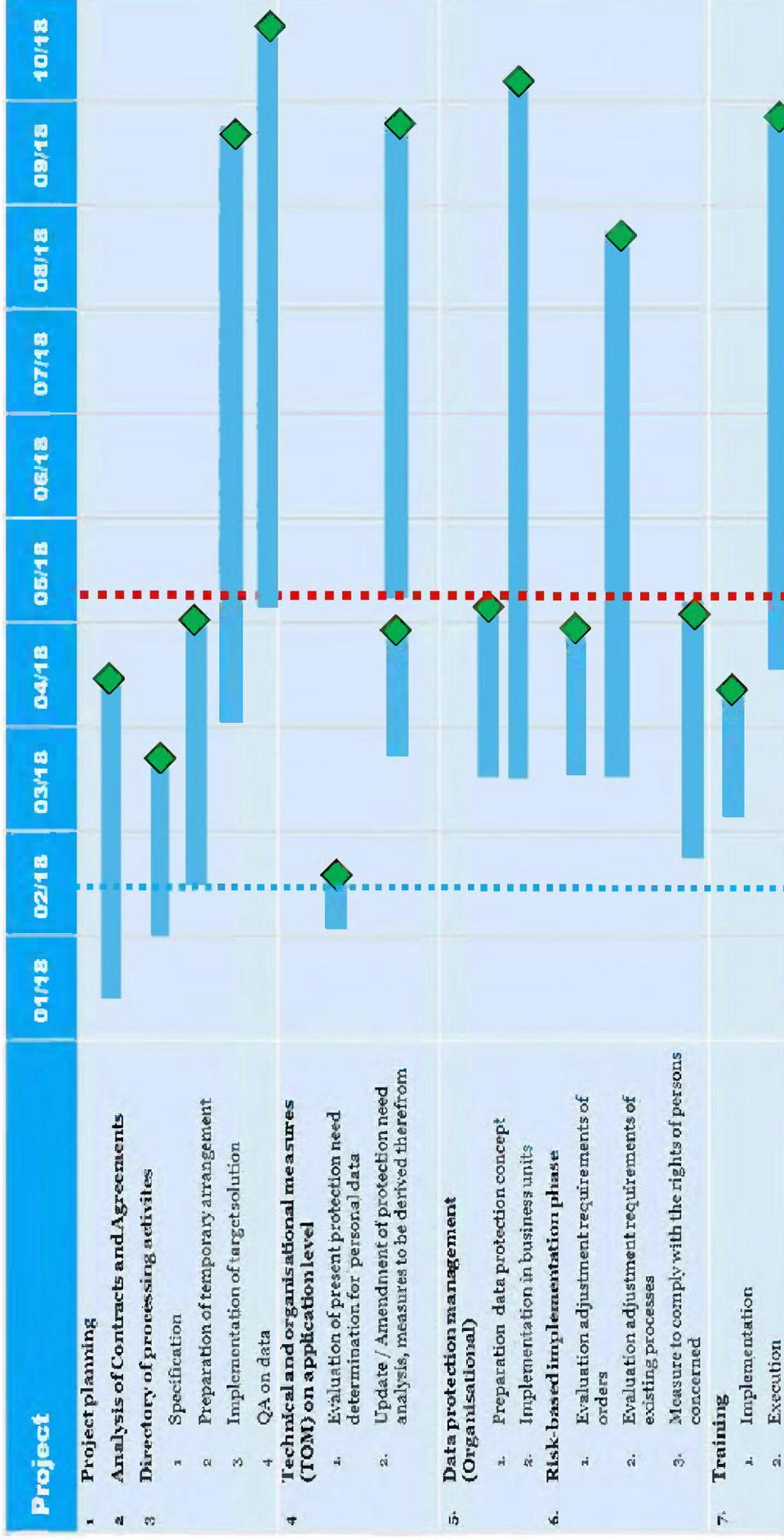
Status of project GDPR

**Project Neptun**

**Schedule 11.14.2**

**Mile Stone Plan**

Project Neptun



Project Neptun

Key



- on time
- critical issues – counter measures defined
- critical issues – intervention necessary



completed



- shift (to last status)



today



Entry into force GDPR

# **Schedule 11.15**

CoC-Relevant Agreements

## Project Neptun

## Schedule 11.15

## Further CoC-Relevant Agreements

Contract	Parties	Date
Framework agreement regarding the conclusion of Service Level Agreements (SLA) <i>(Rahmenvertrag im Hinblick auf den Abschluss von Service Level Agreements (SLA))</i> <b><u>Data room reference: 1.7.4 / 1.7.35</u></b>	Seller HSH Nordbank	03/04/2017
Service Level Agreement on accounting and tax work <i>(Service Level Agreement über Buchführungs-, Steuer- und Bilanzierungstätigkeiten)</i> <b><u>Data room reference: 1.7.6 / 1.7.36</u></b>	Seller HSH Nordbank	03/04/2017

# **Schedule 11.16.1**

Tax Returns

## Project Neptun

## Schedule 11.16.1

## Tax Returns

**1 Material Tax Returns**

The following material Tax Returns have not yet been filed with the competent Tax Authority although they are due for filing (taking into account any extensions granted by the relevant Tax Authority):

<b>Company</b>	<b>Tax assessment period</b>	<b>Tax Return</b>
HSH Nordbank AG	2015	corporate income tax
HSH Nordbank AG	2015	trade tax
HSH Nordbank AG	2016	corporate income tax
HSH Nordbank AG	2016	trade tax
HSH Nordbank AG	2016	value added tax
HSH Private Equity GmbH	2016	corporate income tax
HSH Private Equity GmbH	2016	trade tax

Currently, extensions of the filing date for the 2016 returns are in place until 30 April 2018. The returns are included in the schedule as a matter of precaution.

In the past, other material Tax Returns were not filed with the competent Tax Authority when due but have been filed in the meantime.

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## 2 Deviations of Tax Returns from applicable tax law and/or administrative guidance of the tax authorities

The overview is limited to fiscal years starting 2012 and to potentially material aspects (potential tax effect of more than EUR 1 million); the column "tax base" shows the amounts considered in the tax returns

<b>Fiscal Year</b>	<b>Item</b>	<b>Rational for deviation</b>	<b>Relevant for</b>	<b>Tax base declared (m EUR)</b>
2013 / 2014	Trade Tax deduction of the amount taxable according to the CFC rules ("AStG-Hinzurechnungsbetrag")	Deduction in accordance with a ruling of the Federal Fiscal Court issued in 2015 (I R 10/14, BStBl. II 2015, p. 1049) but against the administrative guidance (Identical Circular of the Federal States' Tax Authorities, 14 Dec 2015; BStBl. I 2015, p. 1090)	Trade Tax	65 (2013) 64 (2014)
2012 / 2013	Deduction of final losses of the permanent establishments in Copenhagen (2012) and London (2013)	Deduction in accordance with rulings of the Federal Fiscal Court and the European Court of Justice but against the tax authorities' interpretation of a ruling of the European Court of Justice issued in.  The deductions were denied by the tax office in the assessment for 2012 and 2013; HSH has filed appeals.	Corporate Income Tax / Trade Tax	./ 592 (2012) ./ 578 (2013)

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**Note:** Words in capital terms in this document shall have the meaning as defined in the share purchase agreement to which it is attached as Schedule 11.16.1.

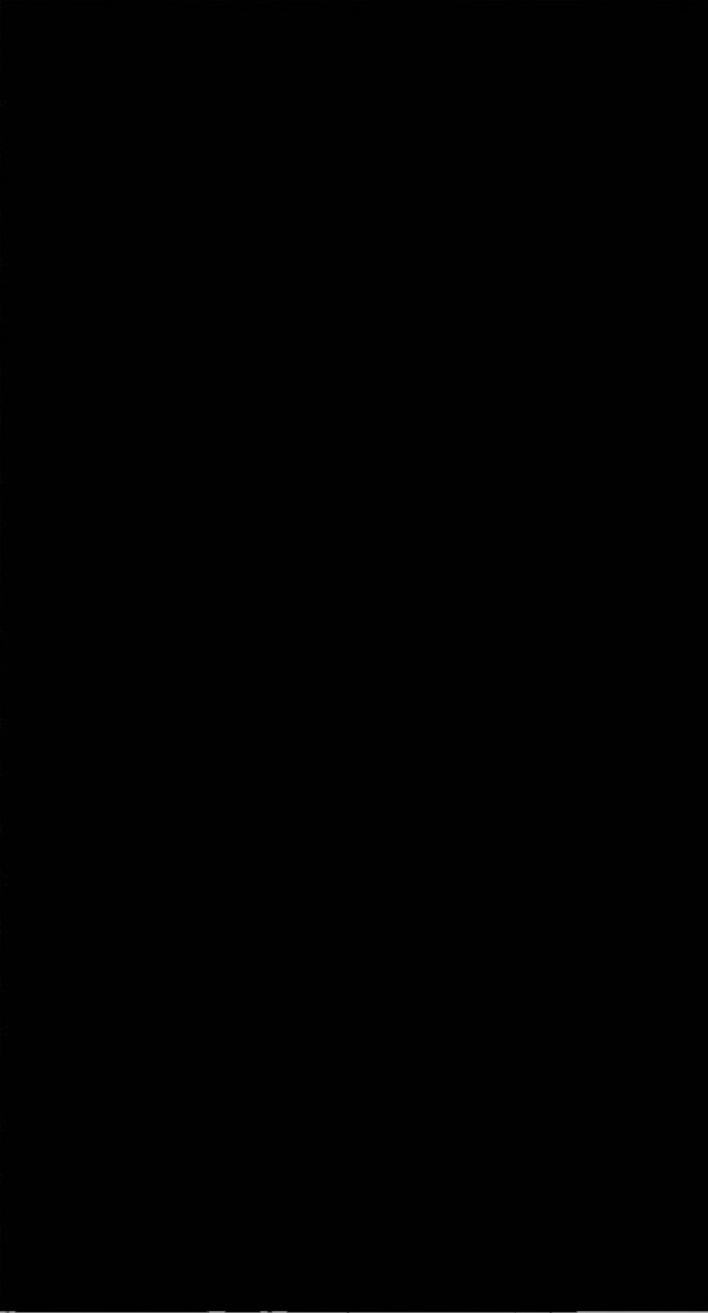
# **Schedule 12.2**

Seller's Knowledge Persons

Project Neptun

Schedule 12.2

Seller's Knowledge

Business division	Head
COO	
UB Kommunikation	
UB Recht & Steuern	
UB Strategie & Vorstandsstab	
UB Personal	
UB IT	
UB Transaction Banking	
UB Unternehmenskunden	
UB Shipping	
UB Immobilienkunden	
UB Treasury & Markets	
UB Group Risk Management	
UB Loan and Collateral Management	
UB Spezialkreditmanagement	
UB Kreditrisikomanagement	
UB Finanzen	
UB Banksteuerung	
UB Compliance	
UB Interne Revision	
Direct Report Market Management	
Strategic Projects / M&A	
Managing Director of Facilities	
Head of Cost Management Board	

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# **Schedule 12.4.4(iii)**

Black Data Room Rules

Project Neptun

Schedule 12.4.4 (iii)

**Black Data Room Rules**

These data room rules (the "**Black Data Room Rules**") set forth the terms and conditions with regard to the access to and behaviour in a physical data room located at the office of Linklaters LLP, Taunusanlage 8, 60329 Frankfurt am Main, (the "**Black Data Room**") for any visitor to the Black Data Room (the "**User**") in connection with the envisaged disposal of the shares of HSH Nordbank AG ("**HSH**") held by HSH Beteiligungs Management GmbH (the "**Seller**"), a holding company whose shareholders are hsh finanzfonds AöR, the federal states of Hamburg and Schleswig-Holstein, HGV Hamburger Gesellschaft für Vermögens- und Beteiligungsmanagement mbH as well as Sparkassen- und Giroverband für Schleswig-Holstein (together the "**Shareholders**"), (the "**Transaction**"). The Seller may change these Black Data Room Rules at its sole discretion at any time; Users will be informed accordingly when accessing the Black Data Room.

**1 Use of the Black Data Room/Confidentiality**

**1.1** All information, documents and other materials made available in the Black Data Room (the "**Confidential Information**") as well as reports, analyses, compilations, studies or other information, material or documents prepared by the User, to the extent that they relate to or include Confidential Information, constitute confidential information and are therefore subject to the nondisclosure/confidentiality agreement that the party at whose request the User has been admitted to the Black Data Room entered into with the Seller with regard to the Transaction (the "**Nondisclosure/Confidentiality Agreement**").

**1.2** In accepting the Black Data Room Rules, the User agrees (among others) to the following:

- The User confirms to be aware of and to accept the content of the Non-Disclosure/Confidentiality Agreement and to comply with all obligations thereunder.
- The User agrees to use the Confidential Information exclusively for the purpose of evaluating the Transaction.
- The User agrees to keep the Confidential Information and the Transaction strictly confidential in accordance with the terms of the Non-Disclosure/Confidentiality Agreement.
- The User confirms that the User is acting for the party at whose request he/she has been admitted to the Black Data Room.
- The User must not scan, copy, take any photographs or otherwise reproduce or capture (other than by taking notes in writing) in whole or in part any Confidential Information.
- The User agrees to handle all folders, binders and documents provided in the Black Data Room with the appropriate care and not to damage, change or alter such folders, binders and documents (including by changing the sequence thereof). The User agrees not to remove documents from their respective folder or binder and to return such folders, binders and documents to their proper location before leaving the Black Data Room.
- Confidential Information may only be disclosed by any User subject to such information being presented only in an aggregated and anonymous manner. Further

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details regarding the disclosure of Confidential Information are set out below in section "Disclosure of Confidential Information".

- The User acknowledges that any breach of the Black Data Room Rules may lead to the exclusion of the User and other Users from the Black Data Room.
- The User is responsible for reading and acknowledging not only the section "Use of the Black Data Room/Confidentiality" but also the remaining sections of the Black Data Room Rules. In accepting the Black Data Room Rules, the User accepts all sections of the Black Data Room Rules.

- 1.3** The Seller reserves the sole discretion to deny or revoke a User's access to the Black Data Room at any point in time without giving any reason and without accepting any liability. In particular, if a bidder withdraws from the sales process, access to the Black Data Room will be denied or revoked.
- 1.4** In addition, the Seller or HSH may have independent rights to claims of damages as well as claims of return and injunctive relief.
- 1.5** Nothing contained in these Black Data Room Rules shall be construed as prohibiting the Seller or HSH from pursuing any remedies (including, but not limited to, such under statutory law) available to each of them in connection with any breach or alleged breach of these Black Data Room Rules.

## **2 Access to the Black Data Room/Appointment**

- 2.1** The Black Data Room contains information which will be made available exclusively to designated external lawyers, tax advisers and accountants subject to the duty of confidentiality according to Sec. 203 (1) no. 3, (3) German Criminal Code (*Strafgesetzbuch*) and, furthermore, subject to the condition precedent that these external lawyers, tax advisers and accountants have agreed in writing to comply with these Black Data Room Rules and the procedures set forth herein. Subject to the other terms of these Black Data Room Rules, Confidential Information may only be disclosed by any User to other external lawyers, tax advisers and accountants (subject to the duty of confidentiality according to Sec. 203 (1) no. 3, (3) German Criminal Code) that were engaged by the same party as the respective User. The Seller will decide in its sole discretion whether access to the Black Data Room will be granted or subsequently cancelled.
- 2.2** The Black Data Room will be open for inspection as set out in the process letter for phase IIb of this Transaction.

## **3 Admission**

- 3.1** During normal office hours, on arrival Users should proceed to the reception area at the office of Linklaters LLP, Taunusanlage 8, 60329 Frankfurt am Main (telephone +49 (0) 69 71003222), check-in with the receptionist and ask to see the Black Data Room for Project Neptune.
- 3.2** Users will be required to sign in, produce an official identification document and enter their details into a Black Data Room visits register. In addition, Users from the same company must appoint a representative in relation to all questions and requests submitted during a visit (a "**Representative**").

**Project Neptun**

- 3.3 The maximum capacity of the Black Data Room is five persons although higher numbers may be accommodated if prior notice is given.
- 3.4 It is of vital importance that confidentiality is observed. Therefore, Users may leave the Black Data Room at any time but must, in no circumstances, enter any part of the office of Linklaters LLP other than the Black Data Room and the public areas of the building. For assistance at any time, please contact [REDACTED]. Users must sign out with the Black Data Room visits register upon leaving, including at the end of each day.
- 3.5 Users must comply with all requests made by Linklaters LLP in relation to visits to the Black Data Room, including a request to leave the Black Data Room.
- 3.6 Users must submit to any reasonable security regulations and procedures required from time to time.

**4 Documentation**

- 4.1 No documents in the Black Data Room may be either removed from the Data Room or copied.
- 4.2 Requests to copy the visitors' own materials will not be carried out.
- 4.3 No documents may be marked, altered, modified, damaged or destroyed in any way. They are being provided purely for inspection. Visitors will be required to confirm prior to departure (on a form to be found in the Black Data Room, a "**Data Room Check-Out Form**") that all documents in the Black Data Room have been returned to their original location and in their original condition.
- 4.4 Mobile phones, calculators, voice recorders and lap top computers may be used in the Black Data Room but no scanning, photocopying, downloading or transfers of images of documents, whether using mobile phones, memory sticks or any other device, is permitted. Linklaters accepts no responsibility for any property brought by visitors into the Black Data Room and visitors should remove all such property at the end of each visit.

**5 Further assistance**

- 5.1 Any Linklaters' and HSH representative in attendance in the Black Data Room is there to supervise the operation of the Black Data Room and to deal with questions of an administrative nature only. Users must comply with the instructions of such representative.
- 5.2 Any questions arising in connection with the Confidential Information or requests for additional information must be submitted via e mail to the following Linklaters contacts:

[REDACTED]

The total maximum number of questions that can be asked by one bidder with regard to the Confidential Information in the Black Data Room is 100.

- 5.3 Under no circumstances should any contact be made with the management or employees of the Seller or HSH in relation to the Information.

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**6 Additional information**

Additional information or documents may be added to the Black Data Room from time to time. It is intended that the User will be notified of material changes to the documents contained in the Black Data Room. However, neither the Seller nor the Shareholders nor any of their respective affiliates, representatives, directors, employees or advisors (including the advisors of any of their affiliates) shall be under any duty to ensure that all Users receive notice of any such additional documents being available. In making information available, no obligation is undertaken to provide any additional information or to update Confidential Information.

**7 Basis of Disclosure**

- 7.1** Neither the Seller, its Shareholders nor their advisors, directors, officers and representatives make any representation or give any warranty (express or implied) with respect to the correctness, completeness, accuracy or adequacy of the Confidential Information or assume any obligation to review or update the Confidential Information.
- 7.2** The Confidential Information, or any part thereof, does not constitute an offer or proposal by or on behalf of the Seller or the Shareholders, nor shall be construed as the Seller's acceptance of any specific provision in a later transaction document to be negotiated.
- 7.3** The User agrees that, except for cases of wilful behaviour (*Vorsatz*), neither the Seller nor the Shareholders nor any of their respective affiliates, directors, officers, employees, representatives or advisors (including the advisors of any of their affiliates) shall be liable for the correctness and completeness of the information, conclusions and predictions contained in the Confidential Information.
- 7.4** The Seller reserves the right to withhold or withdraw any information from the Black Data Room at any time during the process at its sole discretion and without giving any notice or reason.

**8 Documents prepared by third parties**

- 8.1** The Black Data Room may contain information prepared by third parties for HSH. Access to these documents within the Black Data Room may be subject to the acceptance of release letters prepared by third parties and use of such documents prepared by third parties may be subject to the provisions of the respective release letters.
- 8.2** In any case, the information prepared by third parties is provided to the User under the prerequisite that the User may not rely on, and the third parties accept no duty, liability or responsibility to the User or to any other person in respect of the documents prepared by the third parties for HSH; in particular no representation or warranty is made by any person as to the accuracy, reliability or completeness of the third party information and the User agrees that neither the third parties nor HSH shall have any liability whatsoever to the User or any other person resulting from the use of the third party information by the User or any other person.
- 8.3** For the avoidance of doubt, the User may not rely on, and neither HSH nor the Seller accept any duty, liability or responsibility to the User in respect of documents prepared by third parties for HSH. No representation or warranty is made by HSH or the Seller as to the accuracy, reliability or completeness of the documents prepared by a third party and the User agrees that neither HSH, nor the Seller shall have any liability whatsoever to the User

**Project Neptun**

or any other person resulting from the use of the documents prepared by a third party by the User or any other person.

**9 Disclosure of Confidential Information**

Any information contained in the Black Data Room may only be disclosed by any User subject to (i) the terms of the Non-Disclosure/Confidentiality Agreement and (ii) such information being presented only in an aggregated and anonymous manner in writing ("**High Level Summary**"). Any High Level Summary must not enable the recipient to draw inferences as to (a) information on customers of HSH that is subject to banking and/or insurance secrecy or (b) personal data protected by the German Federal Data Protection Act.

**10 Disclaimer**

No liability is accepted by the Seller, the Shareholders or any of their respective affiliates, representatives, directors, employees or advisors (including the advisors of any of their affiliates) for any damage of any sort which may be caused.

**11 Miscellaneous**

- 11.1** No amendment or waiver of any of the provisions of the Black Data Room Rules shall be effective and valid unless expressly made in writing by the Seller.
- 11.2** No failure or delay by the Seller in exercising any right or privilege under the Black Data Room Rules shall operate as a waiver thereof.
- 11.3** Should any provision contained in the Black Data Room Rules be held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the remaining provisions of the Black Data Room Rules. In such a case, the invalid provision in question shall be replaced by a valid provision which is similar to the original in spirit and purpose as much as possible. The same applies to potential omissions in the Black Data Room Rules.
- 11.4** These Black Data Room Rules are governed in all respects, including as to validity, interpretation and effect by the laws of the Federal Republic of Germany excluding the conflict of law provisions. The courts of Hamburg shall have exclusive jurisdiction for any dispute arising in connection with these Black Data Room Rules.

I hereby confirm that I have read the Black Data Room Rules set out above and that I agree with its terms.

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**Project Neptun**

Signature

\_\_\_\_\_  
Name (full written, no abbreviation)

\_\_\_\_\_  
Title / Position

\_\_\_\_\_  
Company/Institution

\_\_\_\_\_  
Place / Date

# **Schedule 12.4.4(v)**

Management Presentations, Expert Calls and Sessions



#### **Anlage 12.4.4(vii) – Datenraumindex (separate Ordner)**

Anlage 12.4.4(viii) enthält die Inhaltsverzeichnisse der vier elektronischen Datenräume und des physischen („schwarzen“) Datenraums, welche die HSH Nordbank während der sog. Due-Diligence-Phase den Bietern bzw. den Erwerbern zur Verfügung gestellt hatte. Aufgrund des erheblichen Umfangs der Anlage 12.4.4(vii) von über 1000 Seiten wird auf eine vollständige Vorlage verzichtet.

In der beigefügten Ordnerübersicht findet sich ein komprimierter Überblick über die Themenfelder, zu denen in den Datenräumen Informationen bereitgestellt worden sind.

## Komprimierte Ordnerübersicht der Datenraumindizes (Anlage 12.4.4(vii))

Project: Neptun GREEN		
Datenraum	Index Nummer	Titel des Ordners bzw. Unterordners
Neptun_GREEN	1	Corporate & Organizational Structure
Neptun_GREEN	1.1	Company Overview
Neptun_GREEN	1.2	General Corporate Information
Neptun_GREEN	1.3	Subsidiaries and Participations
Neptun_GREEN	1.4	Corporate Governance
Neptun_GREEN	1.5	HSH Owned & Leased Assets
Neptun_GREEN	1.6	HoldCo
Neptun_GREEN	1.7	Contracts with public sector
Neptun_GREEN	2	Operating Model
Neptun_GREEN	2.1	Strategy
Neptun_GREEN	2.2	Business Model
Neptun_GREEN	3	Business Plan
Neptun_GREEN	3.1	Overview and Planning Process
Neptun_GREEN	3.2	Group and Segment Planning
Neptun_GREEN	3.3	Capital Planning
Neptun_GREEN	3.4	Tax Planning
Neptun_GREEN	3.5	Funding Planning
Neptun_GREEN	3.6	Scenario Analysis
Neptun_GREEN	3.7	Forecast Update
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Neptun_GREEN	5	Portfolio Information & Credit Documentation
Neptun_GREEN	5.1	IM
Neptun_GREEN	5.2	Top 10 Engagements
Neptun_GREEN	5.9	Portfolio Transactions
Neptun_GREEN	6	Funding
Neptun_GREEN	6.1	Funding Strategy
Neptun_GREEN	6.2	Funding Plan
Neptun_GREEN	6.3	Funding Costs
Neptun_GREEN	6.4	Deposits
Neptun_GREEN	6.5	Covered Bond Issues
Neptun_GREEN	6.6	DIP Prospectus
Neptun_GREEN	6.7	Förderbankengeschäft
Neptun_GREEN	6.8	ALM Policy
Neptun_GREEN	6.9	Funding Structure
Neptun_GREEN	6.10	Asset Based Funding
Neptun_GREEN	6.11	Funding Data Tapes
Neptun_GREEN	7	Tax

Neptun_GREEN	7.1	Overarching Issues
Neptun_GREEN	7.2	HSH AG
Neptun_GREEN	7.3	HSH Private Equity GmbH
Neptun_GREEN	7.4	HSH Facility Management GmbH
Neptun_GREEN	7.5	HSH Move+More GmbH
Neptun_GREEN	7.6	HSH Care+Clean GmbH
Neptun_GREEN	7.7	HSH Gastro+Event GmbH
Neptun_GREEN	7.8	Foreign Entities and Permanent Establishments
Neptun_GREEN	8	Risk Management & Guarantee
Neptun_GREEN	8.1	Risk Management Framework
Neptun_GREEN	8.2	Group Risk Reports
Neptun_GREEN	8.3	Credit Risk
Neptun_GREEN	8.4	Market Risk
Neptun_GREEN	8.5	Operational Risk
Neptun_GREEN	8.6	Liquidity Risk
Neptun_GREEN	8.7	Other Risks
Neptun_GREEN	8.8	Sunrise Guarantee
Neptun_GREEN	8.9	Horizon Guarantee
Neptun_GREEN	9	Internal Audit
Neptun_GREEN	9.1	Internal Audit Overview and Process
Neptun_GREEN	9.2	Internal Audit Plan
Neptun_GREEN	9.3	Internal Audit Reports
Neptun_GREEN	9.4	Internal Audit Reporting of Measures
Neptun_GREEN	10	Compliance
Neptun_GREEN	10.1	Compliance Framework
Neptun_GREEN	11	Legal
Neptun_GREEN	11.1	Trademark Rights
Neptun_GREEN	11.2	Litigations & Legal Disputes & Court Decisions
Neptun_GREEN	11.3	Legal costs
Neptun_GREEN	12	Operations & IT
Neptun_GREEN	12.1	Operations
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Neptun_GREEN	13.3	Employees
Neptun_GREEN	13.4	Compensation & Benefits & Pension Schemes
Neptun_GREEN	14	External Rating
Neptun_GREEN	14.1	Rating Reports
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Neptun_GREEN	15.2	Regulatory Liquidity Position

Neptun_GREEN	15.3	Regulatory Filings and Reports
Neptun_GREEN	15.4	Regulatory Affairs
Neptun_GREEN	15.5	State Aid / EU Commission
Neptun_GREEN	16	Data Tapes for Download
Neptun_GREEN	16.1	Fact Book Loan Tape
Neptun_GREEN	16.2	Bank Borrower Tape
Neptun_GREEN	16.3	Sample Borrower Tape
Neptun_GREEN	16.4	Funding Tape
Neptun_GREEN	16.5	Maturity and Liquidity Tape
Neptun_GREEN	16.6	Derivatives Tape
Neptun_GREEN	16.7	Financial Assets Tape
Neptun_GREEN	16.8	Financial Fact Book
Neptun_GREEN	17	Expert Sessions
Neptun_GREEN	19	Q&A Lists
Neptun_GREEN	19.1	Phase 2a
Neptun_GREEN	19.2	Phase 2b
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Neptun_GREEN	19.4	Phase 2d

Project: Neptun Credit Files GREEN		
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Neptun Credit Files GREEN	1	IM
Neptun Credit Files GREEN	1.1	Core Bank Sample
Neptun Credit Files GREEN	1.2	Non-Core Bank Sample
Neptun Credit Files GREEN	2	Top 10 Engagements
Neptun Credit Files GREEN	2.1	GvK 1
Neptun Credit Files GREEN	2.2	GvK 2
Neptun Credit Files GREEN	2.3	GvK 3
Neptun Credit Files GREEN	2.4	GvK 4
Neptun Credit Files GREEN	2.5	GvK 5
Neptun Credit Files GREEN	2.6	GvK 6
Neptun Credit Files GREEN	2.7	GvK 7
Neptun Credit Files GREEN	2.8	GvK 8
Neptun Credit Files GREEN	2.9	GvK 9
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Neptun Credit Files GREEN	3.1	TU_00112
Neptun Credit Files GREEN	3.2	TU_00115
Neptun Credit Files GREEN	3.3	TU_00464
Neptun Credit Files GREEN	3.4	TU_00578
Neptun Credit Files GREEN	3.5	TU_00719
Neptun Credit Files GREEN	3.6	TU_00830
Neptun Credit Files GREEN	3.7	TU_00850
Neptun Credit Files GREEN	3.8	TU_00874
Neptun Credit Files GREEN	3.9	TU_00902
Neptun Credit Files GREEN	3.10	TU_00939
Neptun Credit Files GREEN	3.11	TU_01103
Neptun Credit Files GREEN	3.12	TU_01214

Neptun Credit Files GREEN	3.13	TU_01332
Neptun Credit Files GREEN	3.14	TU_01367
Neptun Credit Files GREEN	3.15	TU_01397
Neptun Credit Files GREEN	3.16	TU_01423
Neptun Credit Files GREEN	3.17	TU_01426
Neptun Credit Files GREEN	3.18	TU_01430
Neptun Credit Files GREEN	3.19	TU_01497
Neptun Credit Files GREEN	3.20	TU_01515
Neptun Credit Files GREEN	3.21	TU_01600
Neptun Credit Files GREEN	3.22	TU_01631
Neptun Credit Files GREEN	3.23	TU_01640
Neptun Credit Files GREEN	3.24	TU_01672
Neptun Credit Files GREEN	3.25	TU_01691
Neptun Credit Files GREEN	3.26	TU_01744
Neptun Credit Files GREEN	3.27	TU_01745
Neptun Credit Files GREEN	3.28	TU_01770
Neptun Credit Files GREEN	3.29	TU_01934
Neptun Credit Files GREEN	3.30	TU_01944
Neptun Credit Files GREEN	3.31	TU_01963
Neptun Credit Files GREEN	3.32	TU_01964
Neptun Credit Files GREEN	3.33	TU_01967
Neptun Credit Files GREEN	3.34	TU_02073
Neptun Credit Files GREEN	3.35	TU_02081
Neptun Credit Files GREEN	3.36	TU_03275
Neptun Credit Files GREEN	3.37	TU_03722
Neptun Credit Files GREEN	3.38	TU_04065
Neptun Credit Files GREEN	3.39	TU_05872

Neptun Credit Files GREEN	3.40	TU_05941
Neptun Credit Files GREEN	3.41	TU_05990
Neptun Credit Files GREEN	3.42	TU_06049
Neptun Credit Files GREEN	3.43	TU_06061
Neptun Credit Files GREEN	3.44	TU_06065
Neptun Credit Files GREEN	3.45	TU_06157
Neptun Credit Files GREEN	3.46	TU_06259
Neptun Credit Files GREEN	3.47	TU_06659
Neptun Credit Files GREEN	3.48	TU_06831
Neptun Credit Files GREEN	3.49	TU_06911
Neptun Credit Files GREEN	3.50	TU_07015
Neptun Credit Files GREEN	3.51	TU_07020
Neptun Credit Files GREEN	3.52	TU_07145
Neptun Credit Files GREEN	3.53	TU_07227
Neptun Credit Files GREEN	3.54	TU_07262
Neptun Credit Files GREEN	3.55	TU_07278
Neptun Credit Files GREEN	3.56	TU_07384
Neptun Credit Files GREEN	3.57	TU_07464
Neptun Credit Files GREEN	3.58	TU_07531
Neptun Credit Files GREEN	3.59	TU_07693
Neptun Credit Files GREEN	3.60	TU_07736
Neptun Credit Files GREEN	3.61	TU_07769
Neptun Credit Files GREEN	3.62	TU_07802
Neptun Credit Files GREEN	3.63	TU_07839
Neptun Credit Files GREEN	3.64	TU_07889
Neptun Credit Files GREEN	3.65	TU_07890
Neptun Credit Files GREEN	3.66	TU_07916

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Neptun Credit Files GREEN	3.68	TU_08257
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Neptun Credit Files GREEN	4	Real Estate
Neptun Credit Files GREEN	4.1	TU_00416
Neptun Credit Files GREEN	4.2	TU_00709
Neptun Credit Files GREEN	4.3	TU_00738
Neptun Credit Files GREEN	4.4	TU_00802
Neptun Credit Files GREEN	4.5	TU_01025
Neptun Credit Files GREEN	4.6	TU_01088
Neptun Credit Files GREEN	4.7	TU_01090
Neptun Credit Files GREEN	4.8	TU_01170
Neptun Credit Files GREEN	4.9	TU_01438
Neptun Credit Files GREEN	4.10	TU_01457
Neptun Credit Files GREEN	4.11	TU_01467
Neptun Credit Files GREEN	4.12	TU_05776
Neptun Credit Files GREEN	4.13	TU_05902
Neptun Credit Files GREEN	4.14	TU_06592
Neptun Credit Files GREEN	4.15	TU_00730
Neptun Credit Files GREEN	4.16	TU_00926
Neptun Credit Files GREEN	4.17	TU_00866
Neptun Credit Files GREEN	5	Aviation
Neptun Credit Files GREEN	5.1	TU_00527
Neptun Credit Files GREEN	5.2	TU_01648
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Neptun Credit Files GREEN	5.4	TU_01654
Neptun Credit Files GREEN	5.5	TU_01655
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Neptun Credit Files GREEN	5.7	TU_01814
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Neptun Credit Files GREEN	6	Energy
Neptun Credit Files GREEN	7	Corporates
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Neptun Credit Files GREEN	7.2	TU_00910
Neptun Credit Files GREEN	7.3	TU_00915
Neptun Credit Files GREEN	7.4	TU_00983
Neptun Credit Files GREEN	7.5	TU_01086
Neptun Credit Files GREEN	7.6	TU_01129
Neptun Credit Files GREEN	7.7	TU_01173
Neptun Credit Files GREEN	7.8	TU_01209
Neptun Credit Files GREEN	7.9	TU_01217
Neptun Credit Files GREEN	7.10	TU_01266
Neptun Credit Files GREEN	7.11	TU_01862
Neptun Credit Files GREEN	7.12	TU_01976
Neptun Credit Files GREEN	7.13	TU_03764
Neptun Credit Files GREEN	7.14	TU_03979
Neptun Credit Files GREEN	7.15	TU_04057
Neptun Credit Files GREEN	7.16	TU_04102
Neptun Credit Files GREEN	7.17	TU_04195
Neptun Credit Files GREEN	7.18	TU_05131
Neptun Credit Files GREEN	7.19	TU_05224

Neptun Credit Files GREEN	7.20	TU_05410
Neptun Credit Files GREEN	7.21	TU_05811
Neptun Credit Files GREEN	7.22	TU_05918
Neptun Credit Files GREEN	7.23	TU_06347
Neptun Credit Files GREEN	7.24	TU_06509
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Neptun Credit Files GREEN	7.26	TU_06950
Neptun Credit Files GREEN	7.27	TU_08193
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Neptun Credit Files GREEN	8.1	TU_00120
Neptun Credit Files GREEN	8.2	TU_00337
Neptun Credit Files GREEN	8.3	TU_00414
Neptun Credit Files GREEN	8.4	TU_00471
Neptun Credit Files GREEN	8.5	TU_00536
Neptun Credit Files GREEN	8.6	TU_00581
Neptun Credit Files GREEN	8.7	TU_00595
Neptun Credit Files GREEN	8.8	TU_00623
Neptun Credit Files GREEN	8.9	TU_00639
Neptun Credit Files GREEN	8.10	TU_00648
Neptun Credit Files GREEN	8.11	TU_00649
Neptun Credit Files GREEN	8.12	TU_00662
Neptun Credit Files GREEN	8.13	TU_00667
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Neptun Credit Files GREEN	8.15	TU_00678
Neptun Credit Files GREEN	8.16	TU_00701
Neptun Credit Files GREEN	8.17	TU_00702
Neptun Credit Files GREEN	8.18	TU_00708

Neptun Credit Files GREEN	8.19	TU_00711
Neptun Credit Files GREEN	8.20	TU_00712
Neptun Credit Files GREEN	8.21	TU_00725
Neptun Credit Files GREEN	8.22	TU_00745
Neptun Credit Files GREEN	8.23	TU_00746
Neptun Credit Files GREEN	8.24	TU_00747
Neptun Credit Files GREEN	8.25	TU_00793
Neptun Credit Files GREEN	8.26	TU_00835
Neptun Credit Files GREEN	8.27	TU_00862
Neptun Credit Files GREEN	8.28	TU_00873
Neptun Credit Files GREEN	8.29	TU_00930
Neptun Credit Files GREEN	8.30	TU_00935
Neptun Credit Files GREEN	8.31	TU_00936
Neptun Credit Files GREEN	8.32	TU_00993
Neptun Credit Files GREEN	8.33	TU_01022
Neptun Credit Files GREEN	8.34	TU_01034
Neptun Credit Files GREEN	8.35	TU_01035
Neptun Credit Files GREEN	8.36	TU_01043
Neptun Credit Files GREEN	8.37	TU_01071
Neptun Credit Files GREEN	8.38	TU_01075
Neptun Credit Files GREEN	8.39	TU_01099
Neptun Credit Files GREEN	8.40	TU_01208
Neptun Credit Files GREEN	8.41	TU_01259
Neptun Credit Files GREEN	8.42	TU_01262
Neptun Credit Files GREEN	8.43	TU_01279
Neptun Credit Files GREEN	8.44	TU_01280
Neptun Credit Files GREEN	8.45	TU_01286

Neptun Credit Files GREEN	8.46	TU_01297
Neptun Credit Files GREEN	8.47	TU_01436
Neptun Credit Files GREEN	8.48	TU_01482
Neptun Credit Files GREEN	8.49	TU_03370
Neptun Credit Files GREEN	8.50	TU_04022
Neptun Credit Files GREEN	8.51	TU_05376
Neptun Credit Files GREEN	8.52	TU_05592
Neptun Credit Files GREEN	8.53	TU_05673
Neptun Credit Files GREEN	8.54	TU_05714
Neptun Credit Files GREEN	8.55	TU_05915
Neptun Credit Files GREEN	8.56	TU_06227
Neptun Credit Files GREEN	8.57	TU_06242
Neptun Credit Files GREEN	8.58	TU_06359
Neptun Credit Files GREEN	8.59	TU_06373
Neptun Credit Files GREEN	8.60	TU_06393
Neptun Credit Files GREEN	8.61	TU_06464
Neptun Credit Files GREEN	8.62	TU_06588
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Neptun Credit Files GREEN	9	Portfolio Transactions
Neptun Credit Files GREEN	10	Other Assets
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Neptun_RED	1.3	Subsidiaries and Participations
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Neptun_RED	1.6	HoldCo_G
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Neptun_RED	2.2	Business Model
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Neptun_RED	3.6	Scenario Analysis
Neptun_RED	3.7	Forecast Update
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Neptun_RED	4.1	External
Neptun_RED	4.2	Internal Management Reports_G
Neptun_RED	5	Portfolio Information & Credit Documentation
Neptun_RED	5.1	IM_G
Neptun_RED	5.2	Top 10 Engagements_R
Neptun_RED	5.9	Portfolio Transactions_R
Neptun_RED	6	Funding
Neptun_RED	6.1	Funding Strategy_G
Neptun_RED	6.2	Funding Plan_G
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Neptun_RED	6.4	Deposits_G
Neptun_RED	6.5	Covered Bond Issues_G
Neptun_RED	6.6	DIP Prospectus_G
Neptun_RED	6.7	Förderbankengeschäft_G
Neptun_RED	6.8	ALM Policy_G
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Neptun_RED	6.10	Asset Based Funding_R
Neptun_RED	6.11	Funding Data Tapes
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Neptun_RED	7	Tax
Neptun_RED	7.1	Overarching Issues
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Neptun_RED	7.3	HSH Private Equity GmbH_R
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Neptun_RED	7.6	HSH Care+Clean GmbH_R
Neptun_RED	7.7	HSH Gastro+Event GmbH_R
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Neptun_RED	8	Risk Management & Guarantee
Neptun_RED	8.1	Risk Management Framework
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Neptun_RED	13	Human Resources
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Neptun_RED	13.2	HR Governance
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Neptun_RED	15.4	Regulatory Affairs_R
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Neptun_RED	16	Data Tapes for Download_G
Neptun_RED	16.1	Fact Book Loan Tape
Neptun_RED	16.2	Bank Borrower Tape
Neptun_RED	16.3	Sample Borrower Tape
Neptun_RED	16.4	Funding Tape
Neptun_RED	16.5	Maturity and Liquidity Tape
Neptun_RED	16.6	Derivatives Tape
Neptun_RED	16.7	Financial Assets Tape
Neptun_RED	16.8	Financial Fact Book
Neptun_RED	17	Expert Sessions
Neptun_RED	19	Q&A Lists
Neptun_RED	19.1	Phase 2a
Neptun_RED	19.2	Phase 2b
Neptun_RED	19.3	Phase 2c
Neptun_RED	19.4	Phase 2d

Project: Neptun Credit Files RED		
Datenraum	Index Nummer	Titel des Ordners bzw. Unterordners
Neptun Credit Files RED	1	IM
Neptun Credit Files RED	1.1	Core Bank Sample
Neptun Credit Files RED	1.2	Non-Core Bank Sample
Neptun Credit Files RED	2	Top 10 Engagements
Neptun Credit Files RED	2.1	GvK 1
Neptun Credit Files RED	2.2	GvK 2
Neptun Credit Files RED	2.3	GvK 3
Neptun Credit Files RED	2.4	GvK 4
Neptun Credit Files RED	2.5	GvK 5
Neptun Credit Files RED	2.6	GvK 6
Neptun Credit Files RED	2.7	GvK 7
Neptun Credit Files RED	2.8	GvK 8
Neptun Credit Files RED	2.9	GvK 9
Neptun Credit Files RED	2.10	GvK 10
Neptun Credit Files RED	3	Shipping
Neptun Credit Files RED	3.1	One Pager_171220_Non-sample
Neptun Credit Files RED	3.2	TU_00083 & TU_00127
Neptun Credit Files RED	3.3	TU_00208
Neptun Credit Files RED	3.4	TU_00211
Neptun Credit Files RED	3.5	TU_00231
Neptun Credit Files RED	3.6	TU_00249
Neptun Credit Files RED	3.7	TU_00276
Neptun Credit Files RED	3.8	TU_00278
Neptun Credit Files RED	3.9	TU_00290
Neptun Credit Files RED	3.10	TU_00292
Neptun Credit Files RED	3.11	TU_00317

Neptun Credit Files RED	3.12	TU_00333
Neptun Credit Files RED	3.13	TU_00343
Neptun Credit Files RED	3.14	TU_00344
Neptun Credit Files RED	3.15	TU_00345
Neptun Credit Files RED	3.16	TU_00346
Neptun Credit Files RED	3.17	TU_00347
Neptun Credit Files RED	3.18	TU_00354
Neptun Credit Files RED	3.19	TU_00369
Neptun Credit Files RED	3.20	TU_00370
Neptun Credit Files RED	3.21	TU_00380
Neptun Credit Files RED	3.22	TU_00381
Neptun Credit Files RED	3.23	TU_00415
Neptun Credit Files RED	3.24	TU_00425
Neptun Credit Files RED	3.25	TU_00441
Neptun Credit Files RED	3.26	TU_00446
Neptun Credit Files RED	3.27	TU_00448
Neptun Credit Files RED	3.28	TU_00449
Neptun Credit Files RED	3.29	TU_00465
Neptun Credit Files RED	3.30	TU_00466
Neptun Credit Files RED	3.31	TU_00472
Neptun Credit Files RED	3.32	TU_00532
Neptun Credit Files RED	3.33	TU_00550
Neptun Credit Files RED	3.34	TU_00571
Neptun Credit Files RED	3.35	TU_00574
Neptun Credit Files RED	3.36	TU_00586
Neptun Credit Files RED	3.37	TU_00587
Neptun Credit Files RED	3.38	TU_00601

Neptun Credit Files RED	3.39	TU_00612
Neptun Credit Files RED	3.40	TU_00613
Neptun Credit Files RED	3.41	TU_00617
Neptun Credit Files RED	3.42	TU_00624
Neptun Credit Files RED	3.43	TU_00634
Neptun Credit Files RED	3.44	TU_00666
Neptun Credit Files RED	3.45	TU_00673
Neptun Credit Files RED	3.46	TU_00674
Neptun Credit Files RED	3.47	TU_00690
Neptun Credit Files RED	3.48	TU_00716
Neptun Credit Files RED	3.49	TU_00726
Neptun Credit Files RED	3.50	TU_00727
Neptun Credit Files RED	3.51	TU_00744
Neptun Credit Files RED	3.52	TU_00769
Neptun Credit Files RED	3.53	TU_00771
Neptun Credit Files RED	3.54	TU_00792
Neptun Credit Files RED	3.55	TU_00796
Neptun Credit Files RED	3.56	TU_00814
Neptun Credit Files RED	3.57	TU_00815
Neptun Credit Files RED	3.58	TU_00817
Neptun Credit Files RED	3.59	TU_00845
Neptun Credit Files RED	3.60	TU_00846
Neptun Credit Files RED	3.61	TU_00849
Neptun Credit Files RED	3.62	TU_00864
Neptun Credit Files RED	3.63	TU_00868
Neptun Credit Files RED	3.64	TU_00877
Neptun Credit Files RED	3.65	TU_00878

Neptun Credit Files RED	3.66	TU_00879
Neptun Credit Files RED	3.67	TU_00889
Neptun Credit Files RED	3.68	TU_00898
Neptun Credit Files RED	3.69	TU_00899
Neptun Credit Files RED	3.70	TU_00900
Neptun Credit Files RED	3.71	TU_00901
Neptun Credit Files RED	3.72	TU_00945
Neptun Credit Files RED	3.73	TU_01008
Neptun Credit Files RED	3.74	TU_01009
Neptun Credit Files RED	3.75	TU_01011
Neptun Credit Files RED	3.76	TU_01053
Neptun Credit Files RED	3.77	TU_01055
Neptun Credit Files RED	3.78	TU_01056
Neptun Credit Files RED	3.79	TU_01057
Neptun Credit Files RED	3.80	TU_01096
Neptun Credit Files RED	3.81	TU_01133
Neptun Credit Files RED	3.82	TU_01136
Neptun Credit Files RED	3.83	TU_01140
Neptun Credit Files RED	3.84	TU_01157
Neptun Credit Files RED	3.85	TU_01167
Neptun Credit Files RED	3.86	TU_01168
Neptun Credit Files RED	3.87	TU_01169
Neptun Credit Files RED	3.88	TU_01177
Neptun Credit Files RED	3.89	TU_01188

<b>Project: Neptun BLACK</b>		
<b>Datenraum</b>	<b>Index Nummer</b>	<b>Titel des Ordners bzw. Unterordners</b>
Neptun_BLACK		Ausgewählte streng vertrauliche Vorstandssitzungsprotokolle aus 2014-2016 inklusive streng vertrauliche Zusatzprotokolle sowie Umlaufbeschlüsse
Neptun_BLACK		Anstellungsverträge und Dienstverträge mit den aktuellen Vorstandsmitglieder
Neptun_BLACK		List of all existing insurance policies of the Companies (distinguish group cover from separate cover) including details of insured risk, premium, renewal date and cover amount.
Neptun_BLACK	01	Schiedsverfahren (D&O)
Neptun_BLACK	02	Omega 52
Neptun_BLACK	03	Omega 55
Neptun_BLACK	04	CumEx (einschließlich "Projekt Saturn")
Neptun_BLACK	05	Schnellankaufverfahren
Neptun_BLACK	06	Wertpapierleihe ("Charge" und "Nordic Tool")
Neptun_BLACK	07	Strukturierte Transaktionen
Neptun_BLACK	08	Luxemburg: Briefkastenfirmen in Steueroasen ("Südsee")
Neptun_BLACK	09	Effiziente Wertpapierdarlehen
Neptun_BLACK	10	Rechtsstreit Karahasan
Neptun_BLACK		Arbeitsverträge und Sideletter aller Geschäftsführer und Inhaber von Schlüsselfunktionen
Neptun_BLACK	11	Treuhänderberichte

# **Schedule 12.6.1**

Insurance Policy of the W&I Insurance

## **Anlage 12.6.1 - Versicherungspolice W&I Versicherung**

Bei Anlage 12.6.1 zum SPA handelt es sich um die Versicherungspolice für die Warranty&Insurance-Versicherung („Gewährleistungsversicherung“), welche die Erwerber der HSH Nordbank gemäß Ziff. 12.6 des Anteilskaufvertrages mit Versicherungsunternehmen abgeschlossen haben. Die Urkunde konkretisiert die Vereinbarungen, die im Anteilskaufvertrag unter Ziff. 12.6 beschrieben worden sind.

Auf eine Vorlage der Originalurkunde wird hier verzichtet, da die Vereinbarungen unmittelbar zwischen den Erwerbern und den Versicherungsunternehmen abgeschlossen worden sind; die Verkäuferin oder die Länder sind nicht Partei dieser vertraulichen Vereinbarungen.

# **Schedule 15.3.1(ii)**

Draft Trademark and Domain Transfer and Licence-Back Agreement

## Transfer and licence-back agreement ("Agreement")

between

- (1) **HSH Nordbank AG**, a stock corporation (*Aktiengesellschaft – AG*) under German law having its registered offices in Hamburg and Kiel, registered in the commercial register of the Local Court (*Amtsgericht – AG*) of Hamburg under HRB 87366 and in the commercial register of the Local Court of Kiel under HRB 6127 KI, with business addresses at Gerhart-Hauptmann-Platz 50, 20095 Hamburg and Martensdamm 6, 24103 Kiel, Germany

("HSH Nordbank")

and

- (2) **HSH Beteiligungs Management GmbH**, a company under German law having its seat in Hamburg, registered in the commercial register of the Local Court of Hamburg under HRB 141769, with business address at Besenbinderhof 37, 20097 Hamburg, Germany

("HSH BM").

HSH Nordbank and HSH BM are also collectively referred to as the "**Parties**" and each individually as a "**Party**".

### Whereas:

- (A) HSH BM is the majority shareholder of HSH Nordbank. In its final decision of 2 May 2016 (State aid SA.29338, OJ EU 2016 L 319/13, "**HSH Decision of 2016**"), the European Commission approved the re-increase of the Sunrise Guarantee on the basis of the list of commitments submitted on 21 March 2016. Among other things, the decision provides that HSH BM will sell its shares in HSH Nordbank to an acquirer independent of HSH Nordbank and the public sector. For this purpose, HSH BM intends to sell its shares in HSH Nordbank under a share purchase agreement ("**Share Purchase Agreement**").
- (B) The HSH Decision of 2016 further provides that HSH Nordbank will adopt a new name within three months after the conclusion of the sale process. Under the Share Purchase Agreement, the acquirer will be obliged to determine the new name and to change the company's name.
- (C) HSH Nordbank is the owner of trademark rights and domains which contain the designation "HSH Nordbank", parts thereof or similar designations. In order to ensure that the requirement under the HSH Decision of 2016 is fulfilled and that the use of the designation "HSH Nordbank" is discontinued, the Share Purchase Agreement provides that HSH Nordbank will transfer the relevant trademarks and domains to HSH BM. This is the purpose for which the Parties enter into this Agreement. It is one of the Closing Actions set out in the Share Purchase Agreement. This Agreement is attached as a Schedule to the Share Purchase Agreement.
- (D) HSH BM will grant HSH Nordbank a licence back for the trademark rights and domains so that HSH Nordbank will be able to use them in the course of its business during a transition

period. This licence back will cover the duration of the transition period only and will expire thereafter.

Therefore, the Parties agree as follows:

## 1 Commitment and transfer

- 1.1 HSH Nordbank and HSH BM agree that the IP Rights defined below are to be transferred for no consideration.
- 1.2 HSH Nordbank hereby assigns and transfers to HSH BM, at the time of the last signature of this Agreement ("**Closing Date**"), the intellectual property rights ("**IP Rights**") defined below and any rights and claims related thereto or resulting therefrom, including those resulting from a violation of the IP Rights by a third party.

HSH BM accepts this assignment and transfer by HSH Nordbank. The IP Rights consist of the following rights of HSH Nordbank:

- 1.2.1 all trademarks, trademark applications, trademark registrations, unregistered trademarks and rights to trademarks, get-ups and logos, including the rights to the relevant goodwill, listed in **Schedule 1.2.1** (hereinafter referred to as "**Trademarks**");
- 1.2.2 all transferable rights to a name, corporate names, in particular working titles, trade names, registered trade names and registrations for trade names, names, logos and trade signs of HSH Nordbank and any other designations of HSH Nordbank which are intended to differentiate the entity from other entities, including all transferable rights to the designation "HSH Nordbank", including in each case the rights to the relevant goodwill (hereinafter referred to as "**Rights to a Name**");
- 1.2.3 all Internet domains listed in **Schedule 1.2.3** (hereinafter referred to as "**Domains**").
- 1.3 If it is legally impossible under the laws of an applicable jurisdiction to transfer or assign the IP Rights or related rights under Clause 1.2, HSH Nordbank hereby irrevocably grants HSH BM a right to use and exploit the IP Rights which is indefinite in term, exclusive, perpetual, without territorial restriction and unlimited, royalty-free, transferable, freely sublicensable and fully paid-up, for unrestricted use and exploitation of the IP Rights that are not assignable, without any restrictions and at the sole discretion of the acquirer. It is intended that the licence will be as close to a valid full assignment as possible. HSH BM hereby accepts such granting of the licence.
- 1.4 HSH Nordbank will not assert against HSH BM any rights to the designation "HSH Nordbank" resulting from its corporate name, its business designation or their use for business purposes or based on similar legal grounds.

## 2 Change of registration of the Trademarks and Rights to a Name

HSH Nordbank will perform all acts and execute all documents to ensure that HSH BM will be registered in all relevant public registers as the owner of the Trademarks and (if registered) of the Rights to a Name.

The following applies in particular:

- 2.1** HSH Nordbank consents to the registration of the change of owner in the registers of the relevant patent and trademark offices. In particular, HSH Nordbank will, for this purpose, issue, without undue delay (*unverzüglich*), a declaration of approval of the change of registration of the Trademarks and the Rights to a Name in the form set out in **Schedule 2.1** (German and English version); it will perform any other acts that may be necessary for the change of registration and will execute any documents, in each case in the relevant form required in each jurisdiction. HSH Nordbank will furthermore make any declarations required in each relevant jurisdiction to achieve the transfer of the Trademarks and the Rights to a Name or to register the change of owner (for example, changes of registration following assignment and transfer).
- 2.2** HSH Nordbank hereby irrevocably authorises HSH BM to perform any acts and to make any declarations on its behalf which are necessary or appropriate under the applicable laws of the relevant jurisdiction to ensure the transfer of the Trademarks and Rights to a Name or the change of registration.
- 2.3** HSH Nordbank will deliver to HSH BM, without undue delay (*unverzüglich*), all documents that are related to the registered IP Rights, in particular any correspondence with the trademark and patent offices, other owners of intellectual property rights or other third parties relating to the legal validity of the Trademarks and Rights to a Name.
- 2.4** HSH Nordbank will provide HSH BM, upon written request and to the extent necessary and appropriate for maintaining and defending the Trademarks and Rights to a Name, with information on the nature and scope of the Trademarks' and Rights to a Name's use.
- 2.5** HSH Nordbank and HSH BM will bear the costs in connection with the registration of the change of owner of the registered Trademarks and Rights to a Name, in particular all fees that are required for the registration and change of registration of the registered Trademarks and Rights to a Name in equal parts.

### **3 Change of registration of the Domains**

- 3.1** HSH Nordbank will inform the relevant providers, domain name registrars or domain name registries or other third parties of the transfer of the Domains and, to the extent necessary, apply for registration of the change of registrant. HSH BM undertakes to perform all acts in relation to the relevant provider, domain name registrar or domain name registry which are necessary to transfer the Domains.
- 3.2** HSH Nordbank consents to the registration of the change of registrant in the relevant domain registers and with the relevant domain registries (e.g. DENIC eG). For this purpose, HSH Nordbank, to the extent necessary, will sign any relevant declaration of approval and make any declaration which are necessary for implementing and registering the change of registrant.
- 3.3** The Parties will mutually agree the change of registration of the Domains and seek to procure that the existing server addresses at which the Domains may currently be accessed will not be changed as a result of the change of registration so that the website and contents currently available at the Domains will continue to be accessible and HSH Nordbank may continue, for the time being, to control the websites and contents (in line with the licence granted under Clause 4). Following the expiry of the licence granted under Clause 4, HSH BM will be entitled to remove the connection of the existing servers under the Domains and to connect the Domains, in HSH BM's absolute discretion, to other

servers or to make the Domains inaccessible, HSH Nordbank will support HSH BM in this context to the extent necessary.

- 3.4 HSH Nordbank and HSH BM will bear the costs in connection with registering the change of the Domains' registrant, in particular all necessary fees of changing the registration of the Domains and transferring the Domains in equal parts.

#### 4 Licensing back

- 4.1 Upon the Closing Date, HSH BM hereby grants HSH Nordbank an exclusive, royalty-free, fully paid-up licence without territorial restriction for the IP Rights, limited to the existing scope of use, including use by HSH Nordbank's Subsidiaries (as defined in the Share Purchase Agreement), but subject to the condition that HSH Nordbank and its subsidiaries (as defined above) change their company names (*umfirmieren*) **within three months** after closing of the Share Purchase Agreement, so that the designation "HSH Nordbank" or parts thereof are no longer part of the company name (*Firma*), as well as subject to the condition that HSH Nordbank and its subsidiaries (as defined above) cease to use the IP Rights as soon as possible after the closing of the Share Purchase Agreement and in particular cease to use the IP Rights after the three month period following closing of the Share Purchase Agreement in the course of trade to acquire new business. This includes, in particular, ceasing to use the IP Rights in letterheads, other correspondence, advertisements, on internet pages or in internal and external documents. This licence does not grant any right to issue further sub-licences or to transfer the licence. This licence is limited in terms of time to a **period of 6 months** following closing of the Share Purchase Agreement and will automatically expire thereafter. Furthermore, it will expire if all IP Rights have expired or otherwise ceased to be valid. HSH Nordbank hereby accepts such granting of license.

Following the expiry of the licence, any use of the IP Rights must be discontinued except for the use for designating product names for products of HSH Nordbank, which were issued before the change of name of HSH Nordbank. For the avoidance of doubt, such product names may be used unchanged until the end of the respective product term. However, the right of continued use does not only apply in case of an active restructuring of the products or their financing structure which requires a new business or credit decision of HSH Nordbank [(*active roll-overs*)] and which is not already structurally provided for in the agreements concluded by HSH Nordbank at the time of closing of the Share Purchase Agreement. In this case, the IP Rights shall no longer be used and respective designations shall be deleted from the product name.

Notwithstanding the end of the license term according to this Clause 4.1, HSH Nordbank retains the right to (i) make accessible in unaltered form documentation and documents which relate to the period before the change of the company name (e.g. business reports) and which contain images or mentions of the IP Rights, and (ii) to communicate the fact that the company name has been changed to clients and other interested parties and to refer clients and other interested parties to new websites and other appearances.

- 4.2 HSH BM is not obliged to maintain or extend the IP Rights or to defend them against third parties challenging their validity.

- 4.2.1 If HSH BM decides to extend the IP Rights, HSH Nordbank will bear all costs and expenses becoming due or being incurred during the term of the licence under Clause 4.1 in connection with maintaining the IP Rights, in particular any renewal fees and lawyers' fees.

- 4.2.2 If HSH BM decides to defend the IP Rights against third parties challenging their validity, HSH Nordbank undertakes to support HSH BM upon HSH BM's request. Any costs and expenses of defending against such third-party challenges, in particular any official and court costs and lawyers' fees, and any costs of support provided by HSH Nordbank will be borne by HSH Nordbank, provided that such costs are incurred during the term of the licence under Clause 4.1.
- 4.3 HSH Nordbank will inform HSH BM in writing and without undue delay (*unverzüglich*) of any circumstances which may reasonably be deemed to constitute a violation of the IP Rights. HSH BM may decide in its sole discretion whether it will take any action against violations of the IP Rights. With HSH BM's prior written consent, HSH Nordbank will be entitled during the term of the licence under Clause 4.1 to initiate proceedings at its own expense. However, HSH Nordbank may not settle or otherwise prejudice any such proceedings without HSH BM's prior written consent. HSH BM may at any time assume control of the proceedings at its own expense.
- 4.4 Should a third party allege that, by exercising the licence under Clause 4.1, HSH Nordbank violates such third party's intellectual property rights, HSH Nordbank will inform HSH BM without undue delay (*unverzüglich*) and take any defence measures which may reasonably be expected. HSH Nordbank will inform HSH BM on a regular basis of the progress of such dispute and make available any documents requested by HSH BM.
- 4.5 HSH Nordbank indemnifies and holds harmless HSH BM against any third-party claims arising from the IP Rights being used by HSH Nordbank or from granting the licence under Clause 4.1. The Parties agree that HSH Nordbank alone will be responsible for using the IP Rights prior to the transfer to HSH BM. The Parties further agree that HSH BM itself will be responsible for using the IP Rights itself after the expiry of the licence under Clause 4.1. This will not apply if HSH Nordbank continues to use them on an unauthorised basis.

## 5 Use of IP Rights by HSH BM

HSH BM hereby undertakes not to transfer, change the registration, license or use for itself (except for the licensing back to HSH Nordbank according to Clause 4) the IP Rights during the period of the license according to Clause 4.1 or at any time thereafter. This does not apply for any transfer, change of registration or license grant in case of a transformation measure (*Umwandlungsmaßnahme*) or restructuring (including the liquidation) relating to HSH BM. In this case, HSH BM shall impose the obligations of this clause 5 on the acquirer of the IP Rights.

The provision in Clause 4.2 of this Agreement remains unaffected.

## 6 Warranties

Subject to any mandatory legal provisions, in particular section 123 (fraudulent misrepresentation (*arglistige Täuschung*)) or section 276 para. 3 (wilful misconduct (*Vorsatz*)) of the German Civil Code (*Bürgerliches Gesetzbuch – BGB*), the Parties agree that they will not issue any representations, warranties and guarantees and that all rights and claims to which the Parties would be entitled under applicable law or otherwise are hereby expressly excluded and that they waive such rights and claims and their exercising, except for cases of gross negligence (*grobe Fahrlässigkeit*) or wilful misconduct on the part of the relevant other Party. Accordingly, HSH Nordbank in particular does not in connection with the assignment under Clause 1, and HSH BM in particular does not in connection with granting back the licence under Clause Fehler! Verweisquelle konnte nicht gefunden

werden., issue any representation, warranty or guarantee that the IP Rights exist or are legally valid (*rechtsbeständig*) or that using the IP Rights will not violate any third-party rights or that the IP Rights are free from defects.

## **7 Assignability**

The Parties are not allowed to assign or otherwise transfer any rights or obligations under or in connection with this Agreement without the other Party's consent.

## **8 Governing law and jurisdiction**

8.1 This Agreement and any contractual and non-contractual claims under or in connection with this Agreement and its performance, including any disputes on its validity, are subject to the laws of the Federal Republic of Germany excluding its conflict of law rules. Application of the United Nations Convention on Contracts for the International Sale of Goods is excluded.

8.2 The exclusive place of jurisdiction for any contractual and non-contractual claims under or in connection with this Agreement and its performance, including any disputes on its validity, will be Hamburg.

## **9 Miscellaneous**

9.1 Any amendment or supplement to this Agreement must be made in writing. This applies also to any amendment or cancellation of this written form requirement.

9.2 Any waiver of rights under or in connection with this Agreement may only be declared expressly and in writing. Any failure to assert a claim or right under or in connection with this Agreement will not be deemed to constitute a waiver thereof.

9.3 This Agreement, including any schedules hereto, includes the entire agreement of the Parties on the subject of the Agreement. It replaces any previous agreements and arrangements. Verbal side agreements do not exist.

9.4 Should any provision of this Agreement be or become legally invalid or unenforceable, the validity of the remaining provisions of this Agreement will not be affected. The same applies if it turns out that this Agreement contains an omission. The Parties agree to replace the invalid or unenforceable provision or such omission by a reasonable provision which is – to the extent legally possible – as close as possible in economic terms to what the Parties intended or would have agreed if they had been aware of such invalidity or omission.

**For HSH Nordbank:**

\_\_\_\_\_  
place, date

\_\_\_\_\_  
name, title

\_\_\_\_\_  
signature

\_\_\_\_\_  
place, date

\_\_\_\_\_  
name, title

\_\_\_\_\_  
signature

**For HSH BM:**

\_\_\_\_\_  
place, date

\_\_\_\_\_  
name, title

\_\_\_\_\_  
signature

\_\_\_\_\_  
place, date

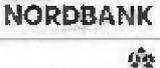
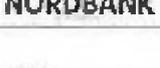
\_\_\_\_\_  
name, title

\_\_\_\_\_  
signature

### Schedule 1.2.1 – Trademarks

Trademark	Country	Designated territory	Application number / registration number	Registration date	Classes	Status
HSH NORDBANK	DE	DE	303161256 / 30316125	13-02-2004	36	Registered
HSH Nordbank	DE	DE	303058374 / 30305837	08-07-2003	35,36,38	Registered
HSH Nordbank Run	DE	DE	302008027584 7 / 302008027584	12-08-2008	6,14,163,1 8,24,25,26, 28,35,41,4 3	Registered
HSH Nordbank-Arena	DE	DE	307215210 / 30721521	26-09-2007	6,9,14,16,1 8,21,24,25, 26,28,35,3 6,38,41,42, 43,45	Registered
HSH NORDBANK ARENA	DE	DE	307264866 / 30726486	01-08-2007	6,9,14,16,1 8,21,24,25, 26,28,35,3 6,38,41,42, 43,45	Registered
 HSH NORDBANK	DE	DE	302011065247 9 / 302011065247	13-01-2012	36	Registered
 HSH NORDBANK	FR	FR	3337578 / -	-	36	Registered
 HSH NORDBANK	DE	DE	302011066246 0 / 302011066246	13-01-2012	36	Registered
HSH	DE	DE	307061477 / 30706147	14-03-2007	36	Registered
HSH Nordbank - Mehr erwarten	DE	DE	306442299 / 30644229	28-09-2006	36	Registered
HSH Money	DE	DE	307202119 / 30720211	18-07-2007	36	Registered
HSH NORDBANK	GB	GB	UK000023232 51 / UK000023232 51	12-09-2003	35,36,38	Registered
HSH NORDBANK	DK	DK	VA 2003 00589 / VR 2004 00408	05-02-2004	35,36,38	Registered
HSH	WO	CH, SG, VN	939326 / 939326	18-07-2007	36	Registered

*ly*

Trademark	Country	Designated territory	Application number / registration number	Registration date	Classes	Status
	WO	LU, NL, BE, CN	818996 / 818996	26-08-2003	36	Registered
	WO	SG, GB, DK	813078 / 813078	15-05-2003	36	Registered
	WO	US, GR, SG, DK	1137524 / 1137524	11-06-2012	36	Registered
	WO	US, GR, SG, DK	1137522 / 1137522	11-06-2012	36	Registered
HSH	EM	EU	005650387 / 005650387	04-02-2008	36	Registered
HSH NORDBANK	US	US	78241213 / 3283449	21-08-2007	36	Registered
HSH Nordbank	BX	BX	01030067 / 0738975	28-03-2023	35,36,38	Registered

### Schedule 1.2.3 – Domains

Domain
hshda.dk
hsh-nordbank-trader.com
hshnbr.com
hshnbr.info
hshnbr.net
hshnbr.org
hsh-nordbank-blue-race.com
hsh-nordbank-blue-race.info
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landesbank-privat.de
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hshdebtadvisory.dk
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hsh-security.com
hsh-gfb.com
hsh-kuko.com
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hsh-facility-management.de
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hsh-nordbank-online.de
hsh-restructuring-advisory.dk
hsh.bank
nord.bank
hsh-portfolio management.com
hsh-nordbank-werbemittel.de
hamburgerlandesbank.de
hamburgische-landesbank.com
hamburgischelandesbank.de
hamburglb-banking.de
hamburglb-guernsey.com
hamburglb-hanoi.com
hamburglb-hongkong.com
hamburglb-london.com
hamburglb-miami.com
hamburglb-newyork.com
hamburglb-ny.com

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hamburglb-singapore.com
hamburglb-warsaw.com
hamburglb.biz
hamburglb.com

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hamburglb.de
hamburglb.info
hlb-immoholding.com
hlb-immoholding.de

DRAFT

**Schedule 2.1 Form of deed of assignment (English version)**

**DEED OF ASSIGNMENT**

The undersigning company

**HSH Nordbank AG,**  
Gerhart-Hauptmann-Platz 50, 20095 Hamburg / Martensdamm 6, 24103 Kiel,  
GERMANY

has irrevocably assigned, transferred and conveyed to

**HSH Beteiligungs Management GmbH,**  
Besenbinderhof 37,  
20097 Hamburg,  
GERMANY

and **HSH Beteiligungs Management GmbH** has accepted, all rights, title and interest in the below listed trademarks and trademark applications and all the goodwill connected with the use thereof, and symbolized thereby, and all rights of any kind whatsoever accruing under any of the foregoing provided by applicable law of any jurisdiction, by international conventions and treaties and otherwise throughout the world, any and all claims and causes of action with respect to any of the foregoing, whether accruing before, on or after the date hereof:

**[Insert respective trade mark here]**

**HSH Nordbank AG** hereby agrees to the assignment being registered with the respective trademark registers in the respective jurisdictions and authorizes and requests the trademark offices to record and register this assignment.

**IN WITNESS WHEREOF, HSH Nordbank AG** has executed and delivered this deed of assignment:

\_\_\_\_\_  
Place, Date

\_\_\_\_\_  
Name, Position

\_\_\_\_\_  
Signature

**AGREED TO AND ACCEPTED (HSH Beteiligungs Management GmbH):**

---

Place, Date

---

Name, Position

---

Signature

**Schedule 2.1 Form of deed of assignment (German version)**

**Übertragungserklärung**

Die unterzeichnende Gesellschaft

**HSH Nordbank AG,**  
Gerhart-Hauptmann-Platz 50, 20095 Hamburg / Martensdamm 6, 24103 Kiel,  
DEUTSCHLAND

hat die folgenden Marken und Markenmeldungen:

**[Entsprechende Marken hier einfügen]**

und alle daran bestehenden Rechte, einschließlich des mit deren jeweiliger Verwendung verbundenen und dadurch symbolisierten „Goodwill“ sowie alle Rechte und Ansprüche, die sich aus den Marken und Markenmeldungen unter dem anwendbaren Recht jeglicher Rechtsordnungen oder internationaler Verträge vor oder nach dem Datum dieser Erklärung weltweit daraus ergeben können, übertragen und abgetreten an:

**HSH Beteiligungs Management GmbH,**  
Besenbinderhof 37,  
20097 Hamburg,  
DEUTSCHLAND

und die **HSH Beteiligungs Management GmbH** hat diese Übertragung und Abtretung angenommen.

Die **HSH Nordbank AG** erklärt sich hiermit damit einverstanden, dass diese Abtretung und Übertragung in den jeweiligen Markenregistern der jeweiligen Rechtsordnungen eingetragen wird und ermächtigt und beantragt bei den Markenämtern, diese Abtretung und Übertragung im Register einzutragen.

**Für HSH Nordbank AG:**

\_\_\_\_\_  
Ort, Datum

\_\_\_\_\_  
Name, Position

\_\_\_\_\_  
Unterschrift

**Angenommen und akzeptiert (HSH Beteiligungs Management GmbH):**

---

Ort, Datum

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Name, Position

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Unterschrift

# **Schedule 15.5**

CTA

## Project Neptun

### Schedule 15.5

#### Establishment of a Contractual Trust Arrangement

In order to finalize the analysis and in the endeavour to develop a structure for the contractual trust arrangement (“**CTA**”) on or prior to the Closing Date in accordance with Clause 15.5 of the Share Purchase Agreement, the Parties have discussed and agreed the following key principles and milestones.

#### 1 Overview

##### 1.1 Key Principles

The Seller and the Purchasers agree that the goal of the implementation of the CTA is to reduce the liability risks of the Länder under the guarantor liability (*Gewährträgerhaftung*) of the States pursuant to section 2 of the HSH State Treaty 2003 on the one hand, avoiding adverse negative effects on HSH Nordbank on the other hand.

##### 1.2 Overview on Structure

1.2.1 By way of the CTA, certain assets of HSH Nordbank shall be “earmarked” to serve the purpose of fulfilling the GTH liabilities in case of an insolvency of HSH Nordbank, thus avoiding that creditors turn to the Länder. An overview of the contemplated CTA structure is set out below:



1.2.2 The trustee for the CTA structure shall be established as a registered society (*eingetragener Verein*) to be founded by seven persons (some of which may resign after the establishment) or in a different legal form if such will be more suitable for the CTA. The board members of the registered society shall be appointed by the members of the registered society upon the proposal of HSH Nordbank. To be

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explored whether the Seller shall have the right to also propose the appointment of one board member.

- 1.2.3 The CTA comprises both the trust agreement 1 between HSH Nordbank and the trustee as well as the trust agreement 2 which will be for the benefit of the GTH Creditors by way of a contract for the benefit of third parties in accordance with section 328 BGB.

### 1.3 General features of the CTA structure

- 1.3.1 Assets transferred to the trustee under the CTA structure remain economically allocated to HSH Nordbank, thus generally no change on the balance sheet level apart from a potential set-off of any pension liabilities (as far as forming part of the GTH liabilities) with respective assets held in trust as far as plan assets are created via the CTA structure (to be confirmed by accountants).
- 1.3.2 Transfer of assets to the trustee at book value also for tax purposes as the economic ownership of the assets remains with HSH Nordbank (to be confirmed; obtaining a tax ruling on the structure to be discussed).
- 1.3.3 Income of the assets will be attributed to HSH Nordbank.
- 1.3.4 Assets held in trust under the CTA structure are "earmarked" and thus reserved to fulfil GTH liabilities in case of a defined security event, e.g. the earlier of (i) the commencement of insolvency proceedings over HSH Nordbank's assets, and (ii) a reorganisation measure, a write-down or conversion measure or a resolution scheme with respect to HSH Nordbank is adopted, provided that in case of (ii), assets will only be made available if and to the extent that such measure or scheme results in any relevant claim of a GTH Creditor being impaired.

## 2 Milestones for Implementation

### 2.1 Meetings for further analysis and preparation of term sheet and steps plan

Following the signing of the Share Purchase Agreement (the "**Signing**"), the Seller and the Purchasers shall form a working group (including HSH Nordbank), and within the first month after Signing, the working group shall meet and discuss on a regular basis to further analyse and structure the CTA (including an analysis regarding the eligibility of the GTH debt to remain eligible for MREL and as buffer for Moody's Loss Given Failure analysis, the tax implications and the steps to obtain a binding tax ruling (*verbindliche Auskunft*), accounting impacts and the economic impact on HSH Nordbank) with a view to prepare a detailed term sheet and steps plan setting out, in particular:

- 2.1.1 the key terms of the CTA agreements and further documentation, defining in particular
- (i) the liabilities to be secured and to be covered by the CTA;
  - (ii) the assets (including cash) which shall be transferred to the trustee and the criteria to identify such assets (e.g. creditworthy, but illiquid portfolios that cannot be used for funding purposes, taking into consideration the needs of HSH Nordbank, however, taking also into account that such assets shall serve as sufficiently liquid security in case of a security event) (the "**CTA Assets**");

### **Project Neptun**

- (iii) the guidelines for the investment and management of such CTA Assets;
  - (iv) measures to prevent underfunding throughout CTA lifetime;
  - (v) the events in which CTA Assets may be released from the CTA, especially compensation for payments made by HSH Nordbank on GTH liabilities, overfunding above a threshold to be defined, return of remaining funds after fulfilment of all GTH liabilities;
  - (vi) the security events (including any potential limitations); and
  - (vii) measures to avoid or mitigate negative adverse effects on HSH Nordbank in connection with the establishment of a CTA structure;
- 2.1.2** a steps plan (including a timeline) based on the results of the analysis set out above, in particular for
- (i) assessing legal, tax, rating and accounting implications of CTA structure and analysing the implications on eligibility for own funds and MREL purposes;
  - (ii) implementing and setting up of the CTA structure (including the timing for the application for a binding tax ruling);
  - (iii) identifying CTA Assets (taking into account regulatory requirements); and
  - (iv) the actual transfer of the CTA Assets to the trustee;
- 2.1.3** coordination with the supervisory authorities on the implementation of the CTA and the transfer of the CTA Assets regarding necessary approvals and/or licensing requirements and to receive a waiver in accordance with sec. 2 para 4 German Banking Act (KWG) as well as draft of a steps plan (including a timeline) to obtain such approval, license and/or waiver; and
- 2.1.4** an agreement on costs for the implementation of the CTA (avoiding that the cost bearing materially adversely affects HSH Nordbank).

## **2.2 Further Measures**

Based on the analysis and evaluation of the CTA structure, the term sheet and the steps plan, which the Seller and the Purchasers endeavour to achieve within two months after Signing, the Seller and the Purchasers will discuss the further measures to take in a timely manner.

# **Schedule C**

Business Plan

## **Anlage (C) – Business Plan**

Der Business Plan enthält die Geschäftsstrategie der Erwerber für die privatisierte Bank. Die darin erläuterten strategischen Überlegungen der Erwerber sind unmittelbar wettbewerbs-erheblich und lassen weitgehende Rückschlüsse auf das zukünftige Geschäftsgebaren der privatisierten Bank zu. Vor dem Hintergrund des in Art. 12 Abs. 1 Grundgesetz verankerten Schutzes von Betriebs- und Geschäftsgeheimnissen wird daher von einer Offenlegung des Plans abgesehen.



# Rating Perspectives “New Bank”

**HSH NORDBANK**  
**HAMBURG FEBRUARY 2018**

This document is  
confidential and contains  
business secrets

## Agenda

1. Strategic perspectives and business model
  2. Key aspects of new owner and transaction structure
  3. Key financials of business plan
  4. Liquidity management
  5. Risk positioning
- Appendix