



EUROPEAN COMMISSION

Brussels, 22.8.2013
C(2013) 5515 final

<p>In the published version of this decision, some information has been omitted, pursuant to articles 24 and 25 of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty, concerning non-disclosure of information covered by professional secrecy. The omissions are shown thus [...].</p>		<p>PUBLIC VERSION</p> <p>This document is made available for information purposes only.</p>
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**Subject: State aid n° SA.34381 (2013/N-2) – Germany
Amendment to the restructuring plan of NORD/LB**

Sir,

I. PROCEDURE

- (1) By decision of 25 July 2012 (hereinafter: the “2012 decision”)¹ the Commission approved restructuring aid in favor of Norddeutsche Landesbank Girozentrale group² (hereinafter: “NORD/LB” or “the bank”) in case SA.34381 (N/2012), consisting of a EUR 2.6 billion capital increase and the EUR 700 million aid element in a contingent asset guarantee measure, in the light of commitments made by Germany.
- (2) On 2 August 2012, in response to questions from the Commission's services, Germany confirmed that on 23 July 2012 NORD/LB had amended the so-called "Fürstenberg contracts". At the request of the Commission Germany submitted further information on 9

¹ OJ C 138, 13.05.2013, p. 3.

² Comprising of Norddeutsche Girozentrale AöR (Anstalt des öffentlichen Rechts – institution under public law) and its subsidiaries, which together submit consolidated accounts as a group.

Seiner Exzellenz Herrn Dr. Guido WESTERWELLE
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November 2012 and 5 February 2013. Several information exchanges also took place during teleconferences between March and June 2013.

- (3) On 1 July 2013, Germany officially notified a commitment catalogue and an updated submission arguing that the additional payments on hybrid coupons did not endanger the viability of the bank.
- (4) On 21 June 2013, Germany informed the Commission that it exceptionally accepts that this decision is adopted in the English language.

II. FACTS

1. The beneficiary

- (5) The NORD/LB is the third-largest Landesbank in Germany which serves as the central institution of the savings banks in the Länder of Niedersachsen, Sachsen-Anhalt and Mecklenburg-Vorpommern. NORD/LB is a group comprised of NORD/LB AöR and its participations. The bank is owned by the Land Niedersachsen (before the capital increase 41.75%, after 59.1%), the Land Sachsen-Anhalt (before 8.25%, after 5.6%) and Sparkassen Associations (the remainder)³.

2. The 2012 Decision

- (6) By decision of 25 July 2012 the Commission approved restructuring aid in favour of NORD/LB on the basis of a restructuring plan that was submitted on 19 March 2012.
- (7) That restructuring plan, which is described in detail in recitals (48) to (95) of the 2012 decision, includes a set of behavioural commitments amongst which are a dividend ban (applying for 2012 and 2013) and a hybrid coupon ban. The hybrid coupon ban included in the commitments catalogue annexed to the 2012 decision stipulates that the bank will not pay coupon on hybrids, unless it is legally obliged to do so and is able to pay them out of profit for a given year⁴.

3. The Fürstenberg Hybrid

- (8) NORD/LB has four silent participation contracts (the "Fürstenberg hybrids") with single purpose companies, the so-called Fürstenberg companies. Fürstenberg hybrids are recognised as tier-1 instruments. The coupon payments on those instruments give a return

³ For further information see recital 8 of the 2012 decision.

⁴ The precise wording of the coupon ban is as follows: "[Hybrids] NORD/LB will not service hybrid capital instruments unless it is under a legal obligation to do so and does not need to release reserves and special items in accordance with Section 340(f) and (g) of the German Commercial Code. In this context hybrid capital instruments include all subordinate capital instruments that are serviced contractually or according to their terms of issue only if for the given period there are sufficient earnings before taxes or consolidated profit in accordance with the German Commercial Code."

from 5.344% to 10.25%, amount to EUR 90-95 million annually⁵ and are not cumulative, i.e. if not paid for a given year, they are lost as they will not be paid at any later stage.

- (9) The Fürstenberg companies have refinanced their investment in NORD/LB by means of debt issuance on the capital market (the "Capital Notes")⁶. The coupon and redemption payments due for the Capital Notes are dependent on the coupon and redemption payments due for the Fürstenberg hybrids. Three of the four tranches of the Capital Notes total EUR 500 million and trade currently around 60%-70% of nominal value.
- (10) The debt instruments issued by Fürstenberg Capital Erste GmbH, one of the Fürstenberg companies, was designed to be acquired by retail customers. So far as the bank is aware, that goal was achieved although it lacks precise information as to the identity of the individual investors. The other two Fürstenberg companies' instruments were sold to institutional investors.
- (11) The remaining issuance of Fuerstenberg Capital International S. à. R. l. & Cie., the last of the Fürstenberg companies, totals USD 500 million and trades at around 100% of nominal value. Those notes are not subject to the buy-back programme.
- (12) The original terms of all Fürstenberg hybrids stipulated that a coupon payment for a given period is excluded if: i) the bank is legally not able to pay a dividend for the same year to its public shareholders (or if, due to coupon payment on Fürstenberg hybrids, no profit remains to pay dividend), or ii) the profit for the year is not sufficient to cover the coupon payment⁷.
- (13) The latter provision is a standard regulatory condition, necessary for the Fürstenberg hybrids to qualify as a tier-1 instrument. However, the former provision is not mandatory from the regulatory perspective. It was included in the Fürstenberg hybrids' terms at the explicit request of the bank's public shareholders which originally had held part of the Capital Notes. They had decided to take up those non-voting instruments in order not to dilute the other public shareholders. The former provision was supposed to prevent a situation in which the public owners of the bank, who at the same time held the Capital Notes, would be treated more favourably than other equity holders. It was therefore a tailor-made solution to specific needs of the bank and its owners.

⁵ The total amount of coupons due for 2012 is EUR 92 million (of which EUR 23 million are attributable to the Fürstenberg hybrids already held by NORD/LB itself), coupons due for 2013 amount to EUR 94 million (of which EUR 23 million on hybrids held by NORD/LB itself). Therefore, the total amount of coupons which, following the change of the terms of the Fürstenberg hybrids, would effectively be paid out by NORD/LB to investors is EUR 140 million.

⁶ The Capital Notes refer to the following issuances: (1) Issuance of Fürstenberg Capital Erste GmbH: EUR 300 million Capital Notes; ISIN Code XS0216072230, WKN: A0EKD5, still out-standing EUR 110 million, currently trading at around 60%; (2) Issuance of Fürstenberg Capital II GmbH: EUR 550 million Capital Notes; ISIN Code DE000A0EUBN9, WKN: A0EUBN, still out-standing EUR 340 million, currently trading at around 70%; (3) Issuance of Fürstenberg Capital Dritte GmbH: EUR 50 million Capital Notes; ISIN Code DE000A0EUB29, WKN: A0EUB2; (4) Issuance of Fuerstenberg Capital International S.à.r.l. & Cie. SECS: USD 500 million Capital Notes, ISIN Code XS0456513711, WKN: A1ANM6, currently trading at around 100%.

⁷ The precise wording of that term is "...if the coupon payment would lead to or increase a balance sheet loss for the period".

- (14) Due to the change of regulatory conditions, the Fürstenberg hybrids have lost their quality as core tier-1 capital for the purposes of the European Banking Authority. As it had been decided in the context of the restructuring of the bank to convert all Fürstenberg silent participations held (indirectly) by the public shareholders into equity, there is no longer any object to the provision that if the bank were legally not entitled to pay dividend, it would not pay a coupon on those hybrids. In that context, on 23 July 2012 NORD/LB amended the terms of the Fürstenberg hybrids as a result of which the payment of the coupon is now independent of the dividend payment and the bank has to pay the coupon whenever it generates sufficiently high profits, which is projected throughout the whole restructuring period.
- (15) The payment of the coupons on the Fürstenberg hybrids were included in the financial planning of the bank, which represent an integral part of the restructuring plan approved on 25 July 2012. Nevertheless, in the course of the extensive exchange of information that took place during the preparation of the 2012 decision the Commission was not informed that part of the projected hybrid coupon payments was attributable to instruments for which the bank was going to surrender its discretion at its own initiative.

4. The position of Germany

- (16) Germany requests the Commission to approve an amendment of the 2012 decision on the basis of additional commitments to make up for the payment of coupons on the Fürstenberg hybrids so as to ensure compatibility of the aid to NORD/LB.
- (17) Germany argues that the additional payment of the coupons did however not constitute an advantage for the hybrid holders but was based on a decision by the bank and its shareholders solely for the benefit of the bank. By making the change to the terms of the Fürstenberg hybrids NORD/LB decided to prevent harm to its reputation on the capital market which could have led to higher refinancing costs and difficulties in access to future funding for the bank.
- (18) Further, Germany claims that the change was purely motivated by a management decision in order to avoid the risk of litigation by the Fürstenberg companies and by third-party investors holding the Capital Notes. In the context of the 2012 decision the bank on its own discretion had committed itself not to pay dividends. Potential claims could have been based on the bank's fiduciary responsibility not to prejudice its hybrid holders on instruments whose performance mainly depended on the Fürstenberg hybrids' performance. A high likelihood of such litigation and its success was confirmed by a legal opinion of a major law firm.
- (19) Germany further submits that it never was the bank's intention to privilege the hybrid investors as such a measure would not have been in the interest of the bank or its shareholders ("Träger"). In fact, Germany argues that, given that the instruments were sold by the Fürstenberg companies on the market to retail and institutional investors, the potential beneficiaries are normally not even known to the bank.

- (20) Thus the decision was clearly a management decision determined by commercial considerations and in no case influenced by the Member State. On the latter element, the by-laws (“Satzung”) of the bank required that its shareholders formally had to be asked for approval before the measure was taken. However, Germany denies that the State actively influenced the decision-making process or was decisively involved in the course of the action. Although NORD/LB is a corporate body organized under public law, its by-laws stipulate that it has to conduct the banking business independently from public authorities and must be operated like a private sector company. Its organizational structure is aligned with the provisions of the German Stock Corporate Law (“Aktengesetz”). Thus, the governmental influence on the bank is limited to the control and approval rights assigned to the supervisory board (“Aufsichtsrat”) and the shareholders meeting (“Trägerversammlung”) whereas the business management (“Geschäftsführung”) is to the responsibility of the executive board, which independently carries out its tasks and does not have to act upon instructions.
- (21) Further, Germany argues that NORD/LB, because of its character as a corporate body organized under public law, is limited in its access to the capital market. Hybrid capital instruments rank among the few possibilities for the bank to obtain financing on the capital market. To refuse to service the coupons would have strongly endangered that possibility. In the worst case the bank would have been cut off from that source of funding and thus become wholly dependent on the funding to be provided by its public shareholders. That solution was considered unacceptable from a State aid point of view.
- (22) In addition, Germany submits that even if the decision was imputable to the State, *quod non*, it would most likely not relate to undertakings (as most investors are retail investors) or else would be *de minimis*. The issuance of the first Fürstenberg hybrid carries a coupon of 5.344% p. a., so an investor would need an investment volume of EUR 1.24 million to exceed the *de minimis* threshold. The issuance of the second carries a coupon of 5.625% p. a. which means that an investor would need an investment of at least EUR 1.18 million to exceed the *de minimis* threshold. Both scenarios are highly unlikely in the view of the daily amounts of transactions the bank observes.

5. Additional commitments to remedy the effect of the change

- (23) In order to remedy the effect of the changes of the hybrid contracts, Germany provided an amended catalogue of commitments (hereinafter: "the new commitment") which is to be found in the Annex.

The new commitment in detail is:

- a. Commitment to launch a buyback offer of the EUR-denominated Fürstenberg hybrids⁸ in line with Commission guidance⁹.

⁸ That buyback would affect around half of all the hybrids, as some of the EUR-denominated Fürstenberg instruments are already held by NORD/LB.

⁹ USD-denominated hybrids trade at par. Hence, there is no possibility of buying them back in line with the Commission’s decisional practice on hybrids.

To that end, the bank will set up three one-time purchase programmes with the task of purchasing (either against cash or in exchange for other financial instruments issued by NORD/LB) the outstanding Capital Notes¹⁰ linked to silent participations in NORD/LB up to an amount of EUR 500 million¹¹. That transaction implies the redemption of silent participations of the so-called Fürstenberg Capital-Gesellschaften in a volume equivalent to the buy-back of the Capital Notes.

The redemption price will be determined in line with the market conditions. To that end, NORD/LB will take as a basis the stock-market quotation at the moment of the offering.

NORD/LB further intends to buy back as many Capital Notes as possible. To achieve the capital strengthening effect, however, the buy-back will take place at a price not higher than 80% of the nominal value of the Capital Notes.

Furthermore, NORD/LB will balance any difference between the capital effect of the repurchase programmes with regard to the capital notes and a target figure of EUR 140 million¹² by reducing its RWA or divesting additional participations accordingly by the end of 2014. For that purpose NORD/LB will reduce its RWA-limits by 2016 as stipulated in point 3 of the Annex by the amount of RWA necessary to balance the difference.¹³

In the case of the exchange of the Capital Notes for another capital instrument yet to be issued by the bank, the new coupon will be adjusted to the then given market conditions for comparable financial instruments.

Furthermore, the investors will not be offered a premium in excess of 10% above the market quotation of the instruments to be bought back.

Finally, Germany has committed that the adherence to the 2012 decision and the course of action of the programme will be monitored by the monitoring trustee.

- b. Prolongation of the acquisition ban until the end of the restructuring period i.e. 2016 (a prolongation as compared with the current version of that commitment by a year and a half);

¹⁰ Fürstenberg Capital Dritte GmbH is a private placement and thus not listed on a stock exchange. The bank therefore reserves the right to exchange those capital notes for another existing or (still to be issued) new capital instrument of NORD/LB instead of buying back the notes for cash.

¹¹ This commitment does not include the USD-denominated issuance of Fuerstenberg Capital International S-á. R. I. Cie. SECS in the volume of USD 500.000.000 which are not included in the buyback programme.

¹² See footnote 6.

¹³ If NORD/LB divests a participation with a capital release effect in the years 2015 or 2016, NORD/LB will be allowed to increase its RWA-limit to the extent of the released capital due to the divestment(s) up to the maximum of the RWA-limits as stipulated in point 3 of the Annex.

- c. Additional divestments with a capital effect of EUR [1-2]* million;
- d. Commitment to reduce the balance sheet by additional EUR [5-10] billion (instead of the currently committed EUR [1-5] billion) if the asset guarantee is activated by the bank.

III. ASSESSMENT

- (24) By changing the term of the Fürstenberg hybrids, the bank made several hybrid instruments eligible for coupon payment. According to the original terms of the Fürstenberg hybrids the legal possibility of coupon payment was directly interlinked with the dividend payment for the same period. Therefore, if those terms had been left unaltered, under the 2012 decision the hybrid investors would have been deprived from a coupon for the next two years while the dividend ban was in effect.
- (25) Under the changed terms, those investors will probably receive coupon payments every year in the near future, because the bank is expected to remain sufficiently profitable to make those payments. As such, the existence of the coupon ban will not affect the hybrid investors for the years 2012 and 2013.

1. Existence of aid to the Fürstenberg companies and the Notes holders

- (26) The Commission must first assess whether the change in the coupon terms constitutes State aid to the Fürstenberg companies or the holders of the Capital Notes. Even though it is evident that the note holders received a benefit, the Commission has found no evidence that the provision of that advantage was imputable to the State.
- (27) The Court of Justice in *Stardust Marine*¹⁴ ruled that not every measure conducted by a public-sector undertaking is necessarily imputable to the State. A *sine qua non* for imputability is that the State has actively exerted its influence and control on the undertaking and was significantly involved in taking the measure. Evidence to establish imputability could not be found in the present case.
- (28) First, imputability is not self-evident because NORD/LB is not part of the State as such but only a public undertaking organized under public law. Its by-laws stipulate that it must conduct the banking business independently from public authorities and must be operated like a private sector company. Its organizational structure is aligned with the provisions of the German Stock Corporate Law. Thus, the governmental influence on the bank is limited to the control and approval rights assigned to the supervisory board (“Aufsichtsrat”) and the shareholders meeting (“Trägerversammlung”) whereas the business management is to the responsibility of the executive board (“Geschäftsführung”) which independently carries out its tasks and does not in principle have to act upon instructions.

* Confidential information.

¹⁴ Case C-482/99 *France v Commission* [2002] ECR I-4397.

- (29) Second, the Commission found no evidence that the State actively influenced the decision-making process or was decisively involved in the course of the action. In the present case the initiative for the proposal came from the management. The management board of NORD/LB claims that it was only concerned about the bank's future access to external refinancing given its limited access to the capital market. Its objective was to preserve the bank's ability to refinance its activities on the capital market and to shield it from damage claims for non-performance that otherwise would become public.
- (30) Beyond that the Commission has no evidence that would put it in a position to show in this case that the management decision was determined by anything other than purely commercial considerations.
- (31) Finally with regard to the traded issuances of Fürstenberg Capital Erste GmbH and Fürstenberg Capital II, the Commission's services by consulting information available through Bloomberg could not confirm that any investor had indeed held an amount of Capital Notes for which the coupon payments due in 2012 and 2013 would exceed the *de minimis* threshold.
- (32) For that reason, the Commission has no evidence of the existence of State aid to the benefit of the Fürstenberg companies or the holders of the Capital Notes.

2. Compatibility of the aid to NORD/LB

- (33) Secondly it needs to be assessed whether the amendment of the terms of the Fürstenberg hybrids affects the compatibility of the State aid granted to NORD/LB.
- (34) It can first be observed that the change does not constitute a misuse of aid for the purposes of Article 16 of Regulation No 659/1999.¹⁵ NORD/LB changed those terms before the 2012 decision was taken. Therefore, paying the coupon does not strictly speaking deviate from the 2012 decision which allows for an exception from the coupon ban where the bank is legally obliged to pay coupon. Hence, the payment of the coupon does as such not constitute a breach of the 2012 decision and thus is not to be followed up as a misuse of aid.
- (35) The change of the terms of the Fürstenberg hybrids is, however, problematic for the compatibility of the aid because it is in contradiction with the principle of burden-sharing, and was an element was not brought to the Commission's attention when the 2012 decision was taken.
- (36) The Commission's case practice on burden-sharing, which is reflected in point 26 of the Restructuring Communication¹⁶, has been clearly summarized in the Commission's 2009 memorandum on hybrids. That memorandum points out that "in a restructuring context, measures which reduce the total amount of own funds (payments on hybrid instruments,

¹⁵ Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty, OJ L 83, 27.03.1999, p. 1.

¹⁶ Commission communication on the return to viability and the assessment of restructuring measures in the financial sector in the current crisis under the State aid rules OJ 2009 C 195, 19.8.2009, p. 4.

avoidance of loss absorption, buy-backs, exercise of call options) are in principle not compatible with the objective of "burden sharing" (i.e. banks must pay a significant share of the costs of restructuring) and the "minimum necessary" requirement (i.e. the amount of state aid must not exceed the minimum necessary to allow the bank to restructure) ...".

- (37) By changing the terms of the Fürstenberg hybrids, the bank surrendered a possibility to retain part of its profits in the future (approximately EUR [120-140] million)¹⁷ and so cover part of its restructuring costs using its resources. The bank thus reduced the total amounts of own funds, which is normally not compatible with the principle of burden-sharing. In the case practice of the Commission such a reduction of own funds before a decision was taken has been considered as an aggravating factor.¹⁸
- (38) Since NORD/LB failed to bring the alteration of the Fürstenberg hybrids' terms to the Commission's attention before the adoption of the 2012 decision, the factual basis of that decision was derived from misleading information. The concealment regarding the scope of existing and of the planned coupon payment obligations could therefore be considered "incorrect information supplied during the procedure which was a determining factor for the decision" for the purposes of Article 9 of Regulation No 659/1999. Pursuant to that provision the Commission may revoke a decision in such circumstances. If that were to occur in this case, the compatibility of the aid would have to be examined again. As there is probably no possibility to reverse the deletion of a link with a dividend ban, additional measures to reduce burden-sharing and to mitigate the additional distortion would have to be sought.
- (39) Given that Germany has indicated its readiness to propose modifications to the constraints and terms surrounding the aid measures there is, however, no need to take a revocation decision, if the content of those proposals is acceptable in so far as it would continue to ensure compatibility of the aid to NORD/LB.
- (40) In fact, Germany addressed the lack of burden-sharing on part of Fürstenberg investors by implementing the additional commitments set out in recital (23). They can be considered sufficient in nature and extent to neutralise the changes made, i.e. the alteration of the terms of the Fürstenberg hybrids, and so ensure the compatibility of the aid notwithstanding the aggravating circumstances, for the following reasons.
- (41) First, NORD/LB agreed to a prolongation of the acquisition ban. The prolongation of an acquisition ban by eighteen months is equivalent to the prolongation of acquisition bans in several other amendment decisions, for example the Commerzbank case, where such a prolongation was introduced on the abrogation of the main divestment obligation.¹⁹ In the

¹⁷ See footnote 6

¹⁸ For example, it was considered an aggravating factor when ING at its own initiative called its hybrids in autumn 2009 and thereby released funds and reduced the burden-sharing by its investors. See Commission Decision C(2012) 3150 final of 11 May 2012, SA.28855 (ex N373/2009, ex C10/2009, ex N528/2008) – The Netherlands - ING – restructuring aid, OJ C 260, 29.8.2012, p. 1, recital 196.

¹⁹ See, e.g. Commission Decision C(2012) 2227 final of 30 March 2012, State aid n° SA.34539 (2012/N) – Germany – Amendment to the restructuring plan of Commerzbank, OJ C 177, 21.03.2012, p. 17 and Commission Decision C(2012) 8238 final of 16 November 2012, State aid SA.33305 (2012/C) and SA.29832 (2012/C) implemented by Netherlands for ING, not yet published

present case, the prolonged acquisition ban preserves the resources of the bank for its restructuring for an additional period which is more than 50% longer than was originally foreseen and which restricts during the entire period the bank's opportunities to grow externally.

- (42) Further, the Commission observes that the bank has committed to carry out several additional structural measures. Not only has the bank agreed to make additional divestments but it has also committed to reduce its balance sheet by a further EUR [5-10] billion (which is an additional EUR [1-5] billion compared to the commitment currently in place) if the bank activates the asset guarantee measure. The Commission considers that combination of strong additional behavioural safeguards and the commitment to take additional structural measures as an effective deterrent to prevent the change in the terms of the bonds becoming a precedent.
- (43) Second, in quantitative terms, the package proposed is an adequate measure to remedy the outflow of own funds. This stems partly from the additional divestments, which will improve the bank's capital position by EUR [1-2] million. In addition, assuming that NORD/LB will endeavour to buy back all Fürstenberg hybrids that trade well under par and a 60%²⁰ acceptance rate, there will be an estimated capital gain of EUR 75 million pre-tax. Additionally, the coupons due on those Fürstenberg hybrids will be retained (approximately EUR 17.6 million for the year 2013). Moreover, it will contribute to the strengthening of the bank's capital basis in qualitative terms, as a tier-1 instrument which is to be phased out will be partially replaced by a core-tier-1 capital gain (at the moment of buy-back) and retained earnings (coupons not paid out in the future).
- (44) Third, NORD/LB will additionally balance any difference between the pre-tax effect of the buy-back of the Fürstenberg hybrids which it will acquire and a target figure of EUR 140 million by reducing its RWA or divesting additional participations accordingly by the end of 2014. As a consequence, NORD/LB's RWA-limits which are valid until 2016 as set out in point 3 of the Annex will be reduced by the amount of RWA necessary to balance the difference.
- (45) Fourth, it is to be noted that the buy-back is to the extent possible targeted at those holders of Fürstenberg hybrids who benefited from the change of the terms. By accepting the buy-back, they will realize a loss of approximately 20-30% of their principle and will surrender the possibility to receive coupons in the future.
- (46) In conclusion, the package proposed by the Member State not only tackles moral hazard but is precisely targeted at those investors who did not contribute sufficiently in first place to the restructuring of the bank. Additionally, it contains measures aiming at strengthening the capital basis of the bank and reducing its complexity (disincentive from using the contingent asset guarantee).

²⁰ Estimation of the likely acceptance rate provided by NORD/LB.

IV. DECISION

- (47) Based on the new commitments, the proposed amendment of the 2012 decision continues to ensure the compatibility of the restructuring aid granted to NORD/LB.
- (48) The Commission notes that Germany exceptionally accepts the decision to be adopted in the English language.
- (49) If this letter contains confidential information which should not be disclosed to third parties, please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, you will be deemed to agree to the disclosure to third parties and to the publication of the full text of the letter in the authentic language on the Internet site: <http://ec.europa.eu/competition/elojade/isef/index.cfm>.

Your request should be sent by registered letter or fax to:

European Commission
Directorate-General for Competition
State Aid Greffe
Place Madou, 1
B-1049 Brussels
Fax No: +32-2-296 12 42

Yours faithfully,
For the Commission

Joaquín ALMUNIA
Vice-President

Annex - COMMITMENTS TO THE EUROPEAN COMMISSION

The Federal Government of Germany and NORD/LB commit the following measures:

- 1 **[Restructuring phase]** The restructuring phase will end on 31 December 2016. The following commitments apply during the restructuring phase, provided they do not specifically define a different period.
- 2 **[Monitoring Trustee]** Full and proper implementation of all commitments will be continuously and thoroughly monitored and verified in detail by an independent of NORD/LB and suitably qualified monitoring trustee, preferably a qualified auditor. The mandate will end when the restructuring phase finishes.
- 3 **[Reduction of balance sheet total]** Coming from NORD/LB group's audited balance sheet total of around EUR 228 billion on 31 December 2011, it will reduce its balance sheet assets to around EUR 210 billion by 31 December 2014. The balance sheet assets will be reduced further to EUR 195 billion by 31 December 2016. Sub-segments that belonged to the Financial Markets segment until 31 December 2011 account for at least EUR 20 billion of this reduction of the balance sheet total. This reduction is also reflected in a restriction of the risk-weighted assets (RWA): NORD/LB commits to restricting its RWA to EUR [85-90] billion²¹ by the end of 2014 and EUR [<85] billion by the end of 2016. The requirements for the group are considered as a fixed maximum limit. The monitoring trustee checks the individual business segments for deviations of more than 10% from the RWA restriction in the restructuring plan.
- 4 **[Restriction of business activities]** In its core areas mentioned below NORD/LB commits, with regard to new business, to implement a business policy that is tailored to the region and its target customers according to the following principles:
 - 4.1 In the **private and corporate customers** business segment NORD/LB will generate new business only in Germany until the end of 2014. NORD/LB Luxembourg, the private banking competence centre for the entire group, will concentrate on acquiring new customers in the German-speaking region (at least 80% from Germany, Austria, Switzerland and Luxembourg).
 - 4.2 In the **corporate banking segment** NORD/LB commits until the end of 2014 to restrict new business to the following activities linked to the criteria mentioned below:
 - (i) the customer or its parent company or a significant subsidiary has/have its/their registered office in Germany, or
 - (ii) the financing operation is connected with import/export transactions involving export credit agencies (e.g. Hermes), or the customer to be financed is the offtaker (i.e. purchaser/supplier with stable commercial relations) of a customer with connections to Germany as stated under (i).

²¹ According to CRD IV

4.3 In the **real estate customer segment**, the following restrictions apply to new business:

- (i) the real estate to be financed is situated in Germany or in the key European markets of France, Great Britain, Belgium, Luxembourg, the Netherlands or Poland; or
- (ii) the customer, its parent company or a subsidiary that is of significance to the transaction has/have its/their registered office in Germany, or in one of the above-mentioned key European markets.

Financing operations with links to Germany are to account for at least 60% of new business in the case of commercial real estate in the group. European financing operations outside the above-mentioned key markets will take place only with a financing volume of no more than EUR [230-270] million per year.

For the rest, NORD/LB commits to allow existing real estate financing operations in the USA and Spain to run off, and not to generate any new business. NORD/LB (including the Deutsche Hypothekenbank) will cease its presence in the Asian market. The corresponding residual portfolios will gradually run off.

The business volume in the NORD/LB group's commercial real estate business in Great Britain will be restricted to the currently existing business volume of EUR [ca. 2] billion.

In addition, NORD/LB commits to restrict its segment assets (lending operations without commitments) to EUR [16-21] billion in total.

4.4 In the **energy and infrastructure customers segment** NORD/LB commits to the following until the end of 2014:

4.4.1 In the **energy** sub-segment at least 75% of NORD/LB's new business will be in projects or transactions that have a regional link to Germany or Scandinavia (Denmark, Sweden, Norway, Finland). Such a link exists if

- (i) the customer or its parent company or a significant subsidiary has/have its/their registered office in Germany or Scandinavia, or
- (ii) the project to be financed is located in Germany or Scandinavia, or
- (iii) the installations to be financed are constructed by a group that constructs a significant part of its installations in Germany or Scandinavia.

4.4.2 In the **infrastructure** sub-segment at least 75% of NORD/LB's new business will be in projects located in Europe.

4.4.3 At least 75% of new business connected with **import/export transactions** will involve a German or European export credit agencies (e.g. Hermes), or the customer to be financed will be the offtaker (i.e. purchaser/supplier with stable commercial relations) of a customer with connections to Germany.

4.4.4 In the energy and infrastructure customers segment, the risk-weighted assets (RWA), as indicated by supervisory reporting, attributable to this business segment

will be restricted to EUR [~8.6] billion by the end of 2014, and EUR [~9] billion by the end of 2016.

- 4.5 New business is considered to be all business that is generated after the coming into effect of the approval of the restructuring plan. Agreements under which obligations already undertaken or loans already granted are extended, or their conditions are renegotiated, are not considered to be new business. Additions to obligations already undertaken or increases in loans already granted are not considered to be new business provided that they are necessary from a commercial point of view in each case (for example, obtaining a much better security through minor credit growth or expedient asset enhancing investments in the real estate segment).
- 4.6 Assets in the **shipping and aviation customers segment** will be reduced to EUR [<25] billion by the end of 2016.
- 4.7 Assets in the **financial markets** segment will be reduced to EUR [<130] billion by the end of 2014, and EUR [<120] billion by the end of 2016.

5 [Disposal of participations]

- 5.1 NORD/LB will divest the following participations if not already (partially) divested, at the very latest within the deadlines set out below at the best possible price and with a view to preserving the company's assets. Thereby the main value-determining elements of the holdings' present volume of business will be preserved until they are offered for sale.
- (a) Sale of participation in DekaBank Deutsche Girozentrale in 2011 (approx. 10 %, of which 7.4 % NORD/LB and 2.9 % BLB);
 - (b) [...];
 - (c) [...];
 - (d) Sale of the following participations by the end of 2013: stakes in BHS Berlin-Hannoversche Software GmbH, VISA Inc, Bürohaus Petuelring GmbH & Co Vermietungs-KG, Combined operations Inc, CeWe Color Holding AG, Invest in Mecklenburg-Vorpommern GmbH, Martis Beteiligungs GmbH & Co KG and NORD/LB Financial Services LLC.
 - (e) Sale or cancellation of the following participations by the end of 2016: stakes in Vermögensverwaltungsgesellschaft Thiede GmbH & Co. Tiefgarage Stade, Braunschweiger Wiederaufbau eG, Projektgesellschaft Schulen Magdeburg Paket 1 GmbH, HMG-Beteiligungs-GbR der S-Finanzgruppe, Themis 2 LLC, Themis 3 LLC, Themis 4 LLC, Rainbow LS Shipping Ltd., Flying Sun Shipping Ltd.

- 5.2 NORD/LB may postpone a sale of the participations referred to in point 5.1 for not more than 12 months if it can demonstrate that the price that would be obtained by the transaction is lower than the book value of the participations in NORD/LB's individual accounts drawn up in accordance with the German Commercial Code (Handelsgesetzbuch; "HGB"), or would result in losses in the group accounts in accordance with International Financial Reporting Standards.

If NORD/LB has not concluded a sales agreement by the end of the divestiture period, it will grant the divestiture trustee an exclusive mandate to sell the divestment business within the trustee divestiture period. Should the divestiture trustee not succeed in securing the best possible price for NORD/LB within its divestiture period, then NORD/LB will be entitled to propose alternative divestiture measures to the Commission. The price negotiated by the divestiture trustee will not be deemed the best possible if it is below [80-85]% of the minimum value threshold described in the first sentence.

- 6 **[Closure of representative offices]** NORD/LB will close the following representative offices as soon as possible, but no later than 31 December 2013:

- (a) Beijing (Representative office of NORD/LB AöR)
- (b) Madrid (Representative office of Deutsche Hypo)
- (c) Mumbai (Representative office of NORD/LB AöR)

- 7 **[Financial Markets/Proprietary Trading]** In addition to the commitment in point 3, NORD/LB commits to cease all opportunistic proprietary trading. This means that NORD/LB will carry on only those trading transactions that are indicated in its trading book ("transactions") that are effected either

- (a) for accepting, transferring and executing the sales and purchase orders of its customers (i.e. trading with financial instruments as a service without creating a position on its own account), or
- (b) for hedging customer business, for market management of customer products and in support of interest-rate, liquidity and cover management, or
- (c) in the context of risk-weighted assets (RWA) management.

Under no circumstances will NORD/LB carry out transactions that serve purely to make a profit apart from the purposes mentioned in (a), (b) or (c).

The total risk of the transactions identified in (a), (b) and (c); is to be limited to a value at risk of EUR [40-45] million the value at risk will be calculated on the basis of a one-day holding period and a confidence level of 99 %. Information about the risk evolution of

individual portfolios will be consolidated centrally within the group, in order to enable the monitoring trustee to review and monitor it.

- 8 **[Ban on acquisitions]** NORD/LB commits to refrain from purchasing shares in other companies. This concerns both the acquisition of companies as well as shares in companies. This commitment is valid until the end of 2016. Acquisitions with a purchase price up to EUR 20 million are exempt from the ban, as long as their cumulative value does not exceed EUR 50 million during the restructuring phase. Also exempt are acquisitions that are part of usual banking business, in particular (a) emergency acquisitions in the case of non-performing loans and (b) acquisition of LBS or LHI shares in the event that their joint owners divest their shares and thereby threaten to impair the value of NORD/LB's assets.
- 9 **[Hybrids]** NORD/LB will not service hybrid capital instruments unless it is under a legal obligation to do so and does not need to release reserves and special items in accordance with Section 340(f) and (g) of the German Commercial Code. In this context hybrid capital instruments include all subordinate capital instruments that are serviced contractually or according to their terms of issue only if for the given period there are sufficient earnings before taxes or consolidated profit in accordance with the German Commercial Code.
- 10 **[Payment of dividends/Retention]** NORD/LB agrees not to pay dividends for the financial years 2012 and 2013. The retention of dividends also applies to BLB.
- 11 **[Ban on advertising]** NORD/LB will not use the granting of the aid measures or any advantages over competitors arising therefrom for advertising purposes.
- 12 **[Sustainable commercial policy]** NORD/LB's commercial policy will stay prudent, sound and oriented towards sustainability. In its lending and investment activities it will take into account the credit requirements of business, especially small and medium-sized enterprises, by offering generally accepted market terms which are appropriate for regulatory and banking purposes.
- 13 **[Cost reductions]** The company's administrative expenses ('operative Betriebskosten') (excluding "special items" ('Sondereffekte'),) will be reduced to EUR [$<1\ 110$] million by the end of 2016.
- 14 **[Remuneration]** NORD/LB AöR commits to limit the total remuneration of its board members to an appropriate level for the duration of the dividend ban according to point 10. In principle, annual remunerations ('monetäre Vergütung') in excess of EUR 500 000 per board member are deemed inappropriate. This limitation applies in principle also to NORD/LB Group.
- 15 **[Commitments to the guarantee programme]** With regard to the guarantee programme, NORD/LB makes the following commitments:

- NORD/LB commits to pay guarantee fee compensation of 6.27 % for the guaranteed mezzanine tranche of EUR 700 million. This is equivalent to guarantee compensation of 10.75 % for the capital relief effect, which initially amounts to EUR 400 million.
- NORD/LB commits to pay the above guarantee fee from the start of the guarantee contract's duration, that is, from the beginning of the availability period.
- The availability period will end no later than on 31 December 2014.
- Should the guarantee be activated ("gezogen") NORD/LB undertakes to limit its balance sheet total in 2016 by a further EUR [5-10] billion to EUR [180-190] billion.
- If the guarantee is activated the dividend ban under point 10 will be extended by further two years, to the 2015 financial year.

16 [Buyback of capital notes and reduction of respective silent partnership contributions] NORD/LB commits to set up three one-time purchase programmes with the task of purchasing (either against cash or in exchange for other financial instruments issued by NORD/LB) outstanding Capital Notes linked to silent participations in NORD/LB up to an amount of EUR 500 million. Such one-time purchase programmes will be operated in accordance with the conditions set out by the European Commission on buybacks of hybrid securities by banks under restructuring and will therefore be subject to the following conditions:

- The Capital Notes shall be purchased with reference to market price;
- The premium to market price reflected in the purchase price shall not exceed 10 percentage points of principal;
- The purchase prices shall not exceed 80% of principal.

The purchase programmes will be tendered for about two weeks and will be completed (subject to market conditions) by the end of 2013 at the latest. NORD/LB commits to purchase as many Capital Notes as possible during the term of the respective programme under the described conditions.

Furthermore, NORD/LB commits to reduce subsequently the silent participations linked to the Capital Notes to the extent that Capital Notes are purchased by NORD/LB in the purchase programmes as soon as all necessary approvals have been obtained.

17 [Further reduction of RWA or divestment of participations after the buy-back of the capital notes] NORD/LB commits to balance any difference between the capital effect of the purchase programmes with regard to the capital notes and the target figure of a capital

effect of EUR 140 million by reducing its RWA or divesting additional participations accordingly until the end of 2014. For this purpose, NORD/LB will reduce its RWA-limits until 2016 as stipulated in number 3 of this annex by the amount of the RWA necessary to balance the difference. If NORD/LB divests a participation with a capital release effect in the years 2015 and/or 2016, NORD/LB will be allowed to increase its RWA-limit to the extent of the released capital due to the divestment(s) up to the maximum of the RWA-limits as stipulated in number 3 of this annex.

The assurances have been drafted on the basis of the following assumptions:

- 1 During the planning period, the inflation rate and the salary increase average 2 % per annum.
- 2 The EUR/USD exchange rate is 1.25. The effects of exchange rate fluctuations on the risk-weighted assets (RWA) as per supervisory notice and on the balance sheet total (positive as well as negative) will therefore not be taken into account. NORD/LB intends to present these effects to the monitoring trustee (or the Commission) separately.
- 3 Significant changes in the regulatory rules on the determination of the risk-weighted assets (RWA) as per supervisory notice, at least in areas where commitments are made based on risk weighted assets, will not be taken into account. This also applies to changes brought about by the implementation of a new calculation method (e.g. IRBA). NORD/LB intends to present these effects to the monitoring trustee (or the Commission) separately.
- 4 The gradual reduction of risk weighted assets shall be carried out with a view to preserving the company's assets.

duly authorised for and on behalf of

Federal Republic of Germany