

Project Neptun

dated 28 November 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

CLOSING AGREEMENT

relating to the Share Purchase Agreement dated 28 February 2018

Closing 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**".

Whereas:

- (A) HSH Nordbank AG ("**HSH Nordbank**") is a stock corporation under German law (*Aktiengesellschaft – AG*) 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.
- (B) 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 (Register of Deeds No. 332/2018 dated 28 February 2018 of the Notary Public Dr Axel Pfeifer, hereinafter referred to as "**Share Purchase Agreement**").
- (C) Today, on 28th November 2018 the Closing of the transactions set out in the Share Purchase Agreement shall take place. Clause 10.2.5 of the Share Purchase Agreement provides that the Parties shall confirm to each other, 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. The Parties have agreed to enter into this agreement (the "**Closing Agreement**") to set forth all confirmations and related declarations in connection with the Closing of the transactions set out in the Share Purchase Agreement.

The Parties agree the following:

1 Interpretation

- 1.1** Except as otherwise expressly provided in this Closing Agreement, Clause 1 of the Share Purchase Agreement (*Interpretation*) shall apply to this Closing Agreement *mutatis mutandis*. In particular, capitalized terms used but not defined herein shall have the meaning ascribed to them in the Share Purchase Agreement, unless the context requires otherwise, or this Closing Agreement contains a different definition.
- 1.2** References to Sections and Annexes are to sections and annexes of this Closing Agreement, unless stated otherwise. References to Clauses and Schedules are to clauses and schedules to 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 in accordance with the Share Purchase Agreement, in particular:

- 2.1** Closing Condition pursuant to Clause 7.1.1 of the Share Purchase Agreement
 - 2.1.1** On 17 April 2018, the German Federal Cartel Office (*Bundeskartellamt*), after the submission of the complete merger control filing, has notified 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*).
 - 2.1.2** Copies of the respective notifications are attached to this Closing Agreement as Annex 2.1.2.

- 2.2** Closing Condition pursuant to Clause 7.1.2 of the Share Purchase Agreement
- 2.2.1** On 26 April 2018, the Statutory Parties confirmed pursuant to section 11 para 4 of the Austrian Cartel Act that no request for in-depth scrutiny of the acquisition of the Sold Shares had been filed with the Cartel Court.
- 2.2.2** Copies of the respective notifications are attached to this Closing Agreement as Annex 2.2.2.
- 2.3** Closing Condition pursuant to Clause 7.1.3 of the Share Purchase Agreement
- The Seller and the Purchasers are in agreement that the transactions contemplated by the Share Purchase Agreement do not require approval by any other competent merger control authority prior to the Closing.
- 2.4** Closing Condition pursuant to Clause 7.1.4 of the Share Purchase Agreement
- 2.4.1** On 13 June 2018, the state parliament of FHH (*Hamburgische Bürgerschaft*) has approved the sale of the Sold Shares on the terms and conditions of the Share Purchase Agreement.
- 2.4.2** An excerpt of the copy of the respective minutes is attached to this Closing Agreement as Annex 2.4.2.
- 2.5** Closing Condition pursuant to Clause 7.1.5 of the Share Purchase Agreement
- 2.5.1** On 26 April 2018, the state parliament of LSH (*Schleswig-Holsteinischer Landtag*) has approved the sale of the Sold Shares on the terms and conditions of the Share Purchase Agreement.
- 2.5.2** An excerpt of the copy of the respective minutes is attached to this Closing Agreement as Annex 2.5.2.
- 2.6** Closing Condition pursuant to Clause 7.1.6 of the Share Purchase Agreement
- 2.6.1** On 21 November 2018, the European Central Bank has taken the final decision to not prohibit the proposed direct or indirect acquisition of a qualified holding in HSH Nordbank caused by the acquisition of the Sold Shares.
- 2.6.2** Copies of the respective notifications are attached to this Closing Agreement as Annex 2.6.2.
- 2.7** Closing Condition pursuant to Clause 7.1.7 of the Share Purchase Agreement
- 2.7.1** On 26 November 2018, 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).
- 2.7.2** A copy of the respective notification is attached to this Closing Agreement as Annex 2.7.2.
- 2.8** Closing Condition pursuant to Clause 7.1.8 of the Share Purchase Agreement
- 2.8.1** On 21 November 2018, the European Central Bank has taken the final decision to not object to the Purchasers as acquirers as a result of the Closing.
- 2.8.2** Copies of the respective notifications are attached to this Closing Agreement as Annex 2.8.2.
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- 2.9** Closing Condition pursuant to Clause 7.1.9 of the Share Purchase Agreement
- 2.9.1** The DSGV has 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*) for the first three (3) years following the Closing.
- 2.9.2** A copy of the respective notification is attached to this Closing Agreement as Annex 2.9.2.
- 2.10** Closing Condition pursuant to Clause 7.1.10 of the Share Purchase Agreement
- 2.10.1** The BaFin has decided to not prohibit the indirect acquisition of a significant participation in Altstadt GmbH caused by the acquisition of the Sold Shares.
- 2.10.2** Copies of the respective notifications are attached to this Closing Agreement as Annex 2.10.2.
- 2.11** Closing Condition pursuant to Clause 7.1.11 of the Share Purchase Agreement
- 2.11.1** On 13 November 2018, Finfo has provided written confirmation to HSH Nordbank and the Purchasers that the Sunrise Settlement Amount is an amount of EUR 10.0 billion and that no portion of such amount is subject to any "claw-back" rights of Finfo.
- 2.11.2** A copy of the respective confirmation is attached to this Closing Agreement as Annex 2.11.2.
- 2.12** As a matter of precaution, the Parties hereby expressly waive, to the extent legally permissible, the fulfilment of the Closing Conditions.

3 Sold Shares Allocation

- 3.1** In accordance with Clause 2.1 of the Share Purchase Agreement, the Seller agreed to sell to Cerberus Purchaser 1, Cerberus Purchaser 2 and Cerberus Purchaser 3 in total 121,732,030 of the Sold Shares for which Cerberus Purchaser 1, Cerberus Purchaser 2 and Cerberus Purchaser 3 agreed to pay their corresponding purchase price portion in the total amount of EUR [REDACTED].
- 3.2** Cerberus Purchaser 1, Cerberus Purchaser 2 and Cerberus Purchaser 3 have since agreed that although the total numbers stated above shall remain unchanged (i) the number of Sold Shares to be transferred to each of Cerberus Purchaser 1, Cerberus Purchaser 2 and Cerberus Purchaser 3 pursuant to the Share Purchase Agreement; and (ii) the Individual Purchase Price Portion payable by each of Cerberus Purchaser 1, Cerberus Purchaser 2 and Cerberus Purchaser 3, shall be as follows (the "**Updated Share Allocation**"):
- 3.2.1** 28,315,290 of the Sold Shares to Cerberus Purchaser 1 for an Individual Purchase Price Portion to be paid by Cerberus Purchaser 1 in the amount of EUR [REDACTED] (corresponding to a Cerberus Percentage 1 of [REDACTED] %);
- 3.2.2** 39,765,880 of the Sold Shares to Cerberus Purchaser 2 for an Individual Purchase Price Portion to be paid by Cerberus Purchaser 2 in the amount of EUR [REDACTED] (corresponding to a Cerberus Percentage 2 of [REDACTED] %); and

3.2.3 53,650,860 of the Sold Shares to Cerberus Purchaser 3 for an Individual Purchase Price Portion to be paid by Cerberus Purchaser 3 in the amount of EUR [REDACTED] (corresponding to a Cerberus Percentage 3 of [REDACTED]%).

3.3 The Parties hereby agree to the Updated Share Allocation and to correspondingly amend Clauses 2.1.2, 2.1.3, 2.1.4 and Schedule 2.2 of the Share Purchase Agreement with regard to the number of Sold Shares and Schedule 1.1 of the Share Purchase Agreement with regard to the specific definitions of Cerberus Percentage 1, Cerberus Percentage 2 and Cerberus Percentage 3, in each case, in accordance with Clause 18.5 of the Share Purchase Agreement.

4 Closing Date

In accordance with Clause 10.1 of the Share Purchase Agreement, the Parties agree that the Closing under the Share Purchase Agreement takes place today and that as a consequence, the Closing Date under the Share Purchase Agreement shall be today, 12:40 CET.

5 Pre-Closing Actions

5.1 In accordance with the provisions of the Share Purchase Agreement, the following declarations and notifications have been made by the Seller:

5.1.1 in accordance with Clause 4.4.1 of the Share Purchase Agreement, the Seller informed the JCF Companies about the conclusion of the Share Purchase Agreement and offered the JCF-Companies to sell the Tag-Along Shares to the Purchasers by Tag-Along-Notice dated 28 February 2018 (attached as Annex 5.1.1);

5.1.2 in accordance with Clause 3.3 of the Share Purchase Agreement, by letter dated 13 November 2018 (attached as Annex 5.1.2), the Seller notified the Purchasers in writing – following an in-depth consultation with the management board of HSH Nordbank AG – that the Sunrise Guarantee Adjustment Amount determined in accordance with the terms of the Sunrise Guarantee Settlement Agreement amounts to EUR 0.00;

5.1.3 in accordance with Clause 8.4.1 of the Share Purchase Agreement, by letter dated 13 November 2018 (attached as Annex 5.1.3), the Seller confirmed to the Purchasers that there has been no breach of the provisions of Clause 8 and the obligations of the Seller pursuant to Clause 7.2, Clause 15.6.2 and Clause 15.6.3 of the Share Purchase Agreement;

5.1.4 in accordance with Clause 8.6 of the Share Purchase Agreement, the Seller ensured that the relevant counterparties under the CoC-Relevant Agreements are informed that a change of control will take place upon completion of the Share Purchase Agreement, the relevant letters of HSH Nordbank and the respective replies of the contractual counterparties are attached as Annex 5.1.4; and

5.1.5 in accordance with Clause 8.7 of the Share Purchase Agreement, the Seller submitted to the Purchasers the Updated Disclosure Letter dated 27 November 2018 as attached as Annex 5.1.5.

The Parties are in agreement that the Seller fulfilled its contractual pre-closing obligations under the Share Purchase Agreement with respect to the delivery of declarations and notifications set out in this Section 5.1.

5.2 In accordance with the provisions of the Share Purchase Agreement, the following declarations and notifications have been made by the Purchasers:

5.2.1 in accordance with Clause 4.4.1 of the Share Purchase Agreement, the Purchasers implemented the acquisition of the Tag-Along Shares by execution of the JCF Share Purchase Agreement dated 22 November 2018, a copy of which is attached as Annex 5.2.1; and

5.2.2 in accordance with Clause 12.6.2 of the Share Purchase Agreement, the Purchasers provided proper evidence of the conclusion of the W&I Insurance, a copy of which is attached as Annex 5.2.2.

The Parties are in agreement that the Purchasers fulfilled their contractual pre-closing obligations with respect to the delivery of declarations and notifications set out in this Section 5.2.

5.3 The Parties are in agreement that they cooperated in good faith in analysing and structuring the CTA prior to the Closing Date in accordance with Clause 15.5 of the Share Purchase Agreement. The Parties determine that the CTA cannot be implemented without having an adverse negative effect on HSH Nordbank and/or the Purchasers and that they have not identified another solution to the GTH Liabilities prior to the Closing Date.

5.4 The Parties confirm to each other that as of the date of this Closing Agreement, neither Party is aware of any fact that (i) the Seller with respect to its obligations referred to in Clause 5.1 and (ii) the Purchasers with respect to their obligations referred to in Clause 5.2 have breached any of their respective contractual pre-closing obligations under the Share Purchase Agreement.

6 Closing Actions

The Seller and the Purchasers now take the following actions (the "**Closing Actions**") simultaneously (*Zug um Zug*):

6.1 In accordance with Clause 3.2 of the Share Purchase Agreement and taken into account that, as set out in Clause 12.6.2 in the Share Purchase Agreement, the Parties agreed that the Relevant Percentage of each Purchaser's W&I Insurance reimbursement claim (EUR 3,250,000 in total) is set-off (*aufgerechnet*) at Closing against the Seller's claim vis-à-vis such Purchaser for the Sold Shares Purchase Price, the Purchasers pay out an amount of EUR 996,996,000 to the bank account of the Seller (IBAN: [REDACTED]), which is allocated between the Purchasers as follows:

6.1.1 by the JCF Purchaser an amount of EUR [REDACTED];

6.1.2 by the Cerberus Purchaser 1 an amount of EUR [REDACTED];

6.1.3 by the Cerberus Purchaser 2 an amount of EUR [REDACTED];

6.1.4 by the Cerberus Purchaser 3 an amount of EUR [REDACTED];

6.1.5 by the BAWAG Purchaser an amount of EUR [REDACTED];

6.1.6 by the Goldentree Purchaser an amount of EUR [REDACTED];

6.1.7 by the Centaurus Purchaser an amount of EUR [REDACTED].

The respective bank confirmation confirming that the amount of EUR 996,996,000 has been fully paid is attached as Annex 6.1.

6.2 The Seller and each of the Purchasers execute a share transfer agreement regarding the respective Sold Shares in accordance with Clause 2.2 of the Share Purchase Agreement. The execution of the share transfer takes place by notarisation of this deed including the Share Transfer Agreement contained in Appendix B of this deed.

6.3 The Seller delivers to the Purchasers copies of the letters of resignation by the members of the supervisory board of HSH Nordbank listed in Schedule 10.2.3 of the Share Purchase Agreement (giving effect to Clause 3 of the Closing Agreement), with effect as of the Closing Date. The respective letters are attached as Annex 6.3.

6.4 The Seller submits to the Purchasers an Updated Disclosure Letter with regard to the Fundamental Warranties. Such Updated Disclosure Letter is attached as Annex 6.4.

7 Confirmation of Closing

Without prejudice to any rights or obligations of any Party under the Share Purchase Agreement, the Parties are in agreement that, upon execution of this Closing Agreement, all Closing Conditions have been fulfilled, and all Closing Actions have been taken in accordance with the Share Purchase Agreement and that consequently, on this 28th November 2018 12:40 CET, title to the Sold Shares has transferred to the Purchasers. The Parties also agree that the closing minutes have been incorporated into this Closing Agreement and that the signing of this Closing Agreement shall satisfy any requirement to sign the draft closing minutes attached as Schedule 10.2.5 of the Share Purchase Agreement.

8 Miscellaneous Provisions

8.1 With the exception of Clause 18.1 (Account Details), Clause 18 of the Share Purchase Agreement (Miscellaneous Provisions) shall apply to this Closing Agreement *mutatis mutandis*.

Anmerkung

Auf die Veröffentlichung der Annexe zum Closing Agreement wurde auch nach Abwägung aller Interessen verzichtet, da diese vielfältige Geschäftsgeheimnisse bzw. datenschutzrechtlich sensitive Informationen enthalten und der Gegenstand der entsprechenden Annexe dem Closing Agreement selbst zu entnehmen ist.