



Securities and Exchange Commission
Division of Corporation Finance
Office of Mergers and Acquisitions
100 F Street, NE
Washington, DC 20549
United States of America
Attention: Michele Anderson, Esq.
Daniel Duchovny, Esq.
Christina Chalk, Esq.

FRANKFURT AM MAIN
Bockenheimer Anlage 44
60322 Frankfurt am Main
T+ 49 69 27 30 80
Direct T+ 49 69 27 30 88 26
F+ 49 69 23 26 64
Direct F+ 49 69 27 30 85 8857
E mark.strauch@freshfields.com
W freshfieldsbruckhausderinger.com
DOC ID DAC4916554/50+
OUR REF MGS 152806-0003
YOUR REF

April 15, 2009

**Re: Hypo Real Estate Holding AG – Request for exemptive relief
from the provision of Rule 14e-1(a) promulgated under the
Securities Exchange Act of 1934, as amended**

Dear Ms. Anderson:

We are writing on behalf of the Federal Republic of Germany (*Bundesrepublik Deutschland*) (the “**German Government**”), acting through the Financial Market Stabilization Fund (*Finanzmarktstabilisierungsfonds* or *SoFFin*) (the “**Stabilization Fund**”) represented by the Financial Market Stabilization Agency (*Finanzmarktstabilisierungsanstalt*), to request that the Securities and Exchange Commission (the “**Commission**”) grant exemptive relief from Rule 14e-1(a) under the Securities Exchange Act of 1934, as amended (the “**Exchange Act**”), if a cash tender offer (the “**Tender Offer**”) for all of the outstanding ordinary shares (the “**Ordinary Shares**”) of Hypo Real Estate Holding AG (“**Hypo Real Estate**”), is conducted in the manner described below.

On April 9, 2009, as part of its plan to stabilize the financial markets in Germany, the German Government (acting through the Stabilization Fund) published its decision to launch the Tender Offer. Hypo Real Estate, in particular, is of “systemic relevance” to the German

Freshfields Bruckhaus Deringer LLP is a limited liability partnership registered in England and Wales at 65 Fleet Street, London EC4Y 1HS (number OC334789). It is regulated by the Solicitors Regulation Authority. For regulatory information please refer to www.freshfields.com/support/legalnotice.

Abu Dhabi Amsterdam Bahrain Barcelona Beijing Berlin Bratislava Brussels Cologne Dubai Düsseldorf
Frankfurt am Main Hamburg Hanoi Ho Chi Minh City Hong Kong London Madrid Milan
Moscow Munich New York Paris Rome Shanghai Tokyo Vienna Washington



financial system. The German Government believes that further capital infusions and a comprehensive restructuring of the business of Hypo Real Estate is urgently needed in order to stabilize it and consequently the financial markets in Germany. Ownership of all of the Ordinary Shares would put the German Government and the Stabilization Fund in the best position to control its operations and to make informed strategic decisions for the required stabilization and restructuring of Hypo Real Estate. While the German Government and the Stabilization Fund wish to structure the takeover of Hypo Real Estate as a tender offer for the Ordinary Shares, since they view this process as the most likely to produce a fair result for investors, they have determined that an offer period of four weeks, which is the minimum normally required under German law, is in the interest of the stabilization of the financial markets too long in view of the current market situation and the political climate surrounding the transaction currently being considered. Therefore, the Stabilization Fund currently envisages to limit the Tender Offer period to 11 business days in the United States based upon the amendment of the German tender offer rules that took effect on April 9, 2009.¹ This shortened tender offer period is designed to give the German Government the ability to acquire Hypo Real Estate in a tender offer using procedures familiar to investors. Absent the shortened tender offer period, it would, in light of the overall timetable, legally and practically not be viable for the German Government to provide the shareholders of Hypo Real Estate the opportunity to sell their Ordinary Shares to the Stabilization Fund on the basis of a tender offer prior to a squeeze-out or to a potential expropriation of the Ordinary Shares later in the process.

As previously discussed with members of the staff of the Commission (the “**Staff**”), we, as counsel to the German Government, acting through the Stabilization Fund, in connection with the Tender Offer, are respectfully requesting exemptive relief from the provisions of Rule 14e-1(a) of the Exchange Act (to permit the Stabilization Fund to keep the Tender Offer open for less than 20 business days) in order to allow for the participation of U.S. shareholders of Hypo Real Estate in the Tender Offer. We believe that the Stabilization Fund’s status as an agency of a sovereign government, the German government’s stated goal

¹ Due to the time difference between Germany and the United States, the Tender Offer period will include approximately 14 hours (in the Eastern Standard Time zone) on the date that the Tender Offer commences and 18 hours (in the Eastern Standard Time zone) on the date that the Tender Offer ends, which do not constitute full business days in the United States.

of stabilizing its financial markets (in part through the Stabilization Fund's proposed acquisition of Hypo Real Estate) and the unusual level of domestic political sensitivity to the proposed transaction, constitute unique circumstances that implicate important public policy concerns and argue strongly in favor of exemptive relief in this instance.

BACKGROUND

Hypo Real Estate

Hypo Real Estate is a foreign private issuer, as defined in Rule 3b-4(c) under the Exchange Act. Hypo Real Estate does not have any class of equity securities registered pursuant to Section 12 of the Exchange Act, is not required to file periodic reports pursuant to Section 15(d) of the Exchange Act and is not a closed-end investment company registered under the Investment Company Act of 1940. To the Stabilization Fund's knowledge, Hypo Real Estate has never directly accessed the U.S. markets through the offer and sale of Ordinary Shares in an offering exempt from the registration requirements of the Securities Act of 1933, as amended (the "**Securities Act**"), or in any public offering in the United States that was either registered or which should have been registered pursuant to the Securities Act.

Hypo Real Estate is a German stock corporation (*Aktiengesellschaft*) with its seat (*Sitz*) in Munich and is registered in the commercial register of the Local Court of Munich under HRB 149393. Hypo Real Estate was initially formed to own and operate the majority of the commercial real estate financing business and certain other operations of Bayerische Hypo- und Vereinsbank AG. Hypo Real Estate was spun-off as of September 29, 2003 and is today an international financial service provider for commercial real estate lending, public finance and infrastructure finance and is the largest mortgage lender in the German market.

The entire registered share capital of Hypo Real Estate, in the amount of € 693,253,560, divided into 231,084,520 Ordinary Shares, is listed on the Regulated Market Segment (*regulierter Markt*) of the Frankfurt Stock Exchange. Hypo Real Estate has a sponsored program in place for American Depositary Receipts (the "**ADR**") evidencing the Ordinary Shares, which was established at the time of the spin-off of Hypo Real Estate to mirror the



ADR program of Bayerische Hypo- und Vereinsbank AG existing at the time.² Based upon information provided by the depositary of the ADRs, there were approximately 761,117 ADRs outstanding as of March 2009, each of which represents one Ordinary Share, which is less than 8% of the number of ADRs outstanding immediately following the spin-off in 2003. Of the amount of ADRs outstanding as of March 2009, approximately 761,100 ADRs are held by institutional investors and mutual funds. We understand that Hypo Real Estate has never conducted any investor relations activities targeting retail investors in the United States. Furthermore, we understand that Hypo Real Estate is current in its Rule 12g3-2(b) English-language disclosure obligations.

As discussed further below, 20,000,000 new Ordinary Shares have been issued to the Stabilization Fund as part of the restructuring of Hypo Real Estate with effect as of March 31, 2009. Accordingly, the Stabilization Fund currently holds approximately 8.65% of the outstanding Ordinary Shares of Hypo Real Estate. As the Ordinary Shares are in bearer form, it is not possible to identify all of the beneficial owners of the Ordinary Shares. Based upon a shareholder analysis conducted by D.F. King & Co. Inc., however, we believe that approximately 10.1% of the Ordinary Shares, excluding those Ordinary Shares held by the Stabilization Fund, are currently held beneficially by investors in the United States. Because only approximately half of the holders of the Ordinary Shares were identified, the German Government, acting through the Stabilization Fund, cannot rely on the exemptive relief provided under Rule 14d-1(c) under the Exchange Act. An investor group coordinated by J.C. Flowers made a voluntary tender offer for up to 24.9% of the outstanding Ordinary Shares of Hypo Real Estate, which was completed in June 2008. Of such investor group, approximately 15.7% of the Ordinary Shares, excluding those Ordinary Shares held by the Stabilization Fund, are held by certain trusts in the Cayman Islands. Based upon public filings made, it is not certain whether such shares would be considered to be beneficially owned by a US person, specifically by J.C. Flowers or by J.C. Flowers & Co. LLC, pursuant to the Commission's tender offer and beneficial ownership rules under Rule 14d-1(g) and Rule 13d-3, respectively, of the Exchange Act. Because the Ordinary Shares are bearer shares for which information on the beneficial owners of such Ordinary Shares is difficult to

² The ADRs were issued under a Deposit Agreement dated August 27, 2003 among Hypo Real Estate and JPMorgan Chase Bank, as depositary, and the holders of American Depositary Receipts.



obtain, the German Government, acting through the Stabilization Fund, is relying on the exemptive relief provided by Rule 14d-1(d) under the Exchange Act.

The Stabilization Fund

The Financial Market Stabilization Act (*Finanzmarktstabilisierungsgesetz*) (the “**Stabilization Act**”), which implements measures for the stabilization of the financial market in Germany, entered into force on October 18, 2008. The Stabilization Act created the Stabilization Fund as a special estate of the Federal Republic of Germany for which Germany is fully liable. The Stabilization Act authorizes the Stabilization Fund to issue guarantees, to invest in financial instruments of the subject financial sector company in the context of a recapitalization, and to assume risk positions in companies as may be necessary to achieve financial market stabilization.

Rescue of Hypo Real Estate

In September 2008, Hypo Real Estate experienced acute distress due to the worldwide financial crisis and the resulting liquidity shortages in the interbank money market. Subsequently, the German Federal Bank (*Deutsche Bundesbank*) and a consortium of German financial institutions as well as the Stabilization Fund took various measures to ensure that the short- and medium-term liquidity needs of Hypo Real Estate were met.

- (a) Measures taken by the German Federal Bank and the consortium of private German financial institutions

In order to meet the short-term liquidity needs of Hypo Real Estate, the German Federal Bank extended an emergency liquidity facility guaranteed by the German Government in the amount of € 35 billion on September 30, 2008 and a € 15 billion bridge facility guaranteed by the Stabilization Fund on October 29, 2008 (the “**Emergency Liquidity Facilities**”).

On November 13, 2008, the German Federal Bank and a consortium of German financial institutions granted Hypo Real Estate a liquidity facility totalling € 50 billion, € 35 billion of which was guaranteed by the German Government until March 31, 2009 (“**Medium-term**



Liquidity Facility”). The Medium-term Liquidity Facility consisted of the following components:

- Measures with the participation of the German Government: (i) liquidity facility totalling € 20 billion from the German Federal Bank, secured by a federal guarantee in the corresponding amount; (ii) bearer bond in the amount of € 15 billion issued by a consortium of German financial institutions, secured by a federal guarantee in the corresponding amount.
- Measure without the participation of the German Government: collateralized bank bond in the amount of € 15 billion issued by a consortium of German financial institutions, secured by assets of Hypo Real Estate.

The granting of the Medium-term Liquidity Facility on November 13, 2008 ended the Emergency Liquidity Facilities provided by the German Federal Bank in September/October 2008.

On March 17, 2009, the term of the federal guarantee in the amount of € 15 billion securing the bearer bond subscribed by a consortium of German financial institutions was extended until December 31, 2009; due to this extension of the term of the federal guarantee, not only the term of the guaranteed bond but also the term of the collateralized bank bond in the amount of € 15 billion subscribed by the consortium of German financial institutions was automatically extended. In addition, on March 26, 2009, the term of the federal guarantee in the amount of € 20 billion was extended until December 31, 2009; this guarantee framework can be used henceforth by Hypo Real Estate on a revolving basis to secure bonds. By these measures, the term of the aggregate Medium-term Liquidity Facility in the amount of € 50 billion was extended until December 2009.

(b) Measures taken by the Stabilization Fund

In addition to the measures taken by the German Federal Bank and the consortium of German financial institutions, Hypo Real Estate was the recipient from November 2008 onward of additional stabilization measures under Stabilization Act in the form of guarantees by the Stabilization Fund aimed at shoring up its liquidity situation in various steps totalling € 52 billion to date. This guarantee framework furnished by the Stabilization Fund relates to



guarantees in the aggregate amount of € 30 billion up to April 15, 2009 and in the aggregate amount of € 22 billion up to June 12, 2009.

Systemic Relevance of Hypo Real Estate

Due to the size and nature of Hypo Real Estate's business, Hypo Real Estate is a bank of "systemic relevance" to the German financial system and its continued instability threatens to impose unacceptably high costs throughout the entire financial system in Germany if Hypo Real Estate is not stabilized in a timely manner. The German Government believes that further capital infusions and a comprehensive restructuring of the business of Hypo Real Estate is urgently needed to enable it to become a viable concern going forward. This restructuring would include, among other possible measures, closing certain offices and branches, reducing leverage and reducing the total number of employees. While the German Government has attempted to stabilize Hypo Real Estate through other means, it now believes that gaining complete control over Hypo Real Estate is the only alternative that would permit it to exercise the necessary oversight of the restructuring process and to timely and cost-effectively provide Hypo Real Estate with such liquidity as it may need on an ongoing basis. In view of the amount of capital and guarantees already provided by the German Government to Hypo Real Estate (the amount of which will almost certainly increase substantially in the near future), it would be politically and legally unacceptable for the German Government not to have complete control of the stabilization and restructuring process with respect to Hypo Real Estate going forward.

Therefore, the German Government, acting through the Stabilization Fund, has published its decision to launch a Tender Offer for all of the Ordinary Shares of Hypo Real Estate not already owned by it. A general shareholders meeting of Hypo Real Estate is expected to take place following the settlement of the Tender Offer to consider a capital increase (potentially following a capital decrease), which would be designed to allow the Stabilization Fund to own more than 90% of the outstanding Ordinary Shares and in turn be able to squeeze out the remaining shareholders. Should the German Government, acting through the Stabilization Fund following the Tender Offer and the capital increase (potentially following a capital decrease) to be subsequently considered not be in a position to squeeze-out all remaining shareholders and thereby gain complete control over Hypo Real Estate, it would be prepared to initiate an expropriation procedure concerning Hypo Real



Estate and through such expropriation to take over the Ordinary Shares not owned by it. In the interest of stabilizing the financial markets and in view of the current market situation and the political climate surrounding the considered transaction, it is imperative that the German Government implement the overall transaction expeditiously.

Applicable German Law

Generally, a tender offer conducted in Germany must provide for an acceptance period of not less than four weeks (§16 of the German Securities Acquisition and Takeover Act (*Wertpapiererwerbs- und Übernahmegesetz*), the “**German Takeover Act**”). Under German law, an offer commences on the first day on which both the Offer Document and the Initial Announcement (as defined below) are publicly available.

On April 9, 2009, a piece of legislation concerning an amendment of the Stabilization Act (the “**Amendment**”) has entered into force. Among other matters, the Amendment provides that the acceptance period may be as short as two weeks (§12(3) of the Amendment) in connection with a tender offer by the German Government or the Stabilization Fund or one of its affiliates as part of a stabilization program permitted under the Stabilization Act. The shortened tender offer period is designed to give the German Government the ability to acquire a financial institution in a tender offer on the open market using procedures familiar to investors while reducing the market and political risks associated with having a minimum offering period of four weeks. Absent a viable tender offer procedure, the German Government could be forced to resort to taking over Hypo Real Estate by the expropriation of the Ordinary Shares should the German Government, acting through the Stabilization Fund, following the Tender Offer and the capital increase (potentially following a capital decrease) to be subsequently considered not be in a position to squeeze-out all remaining shareholders and thereby gain complete control over Hypo Real Estate.

Should the German Government avail itself of expropriating any shares that it may not already own, acting through the Stabilization Fund, the German Government would initiate an expropriation procedure prior to June 30, 2009, which is accomplished by the German Government deciding to carry out an expropriation (the “**Opening Decision**”). The German Government would need to issue a regulation that specifies, among other things, the entity to receive the expropriated shares, the effective date of the expropriation and (to the extent it



has been determined at that point in time) the amount of compensation due to shareholders in the expropriation (the “**Regulation**”). The Regulation could be issued without the consent of the federal council representing the German states (*Bundesrat*). However, the German Government would need to issue the Regulation no later than October 31, 2009. In the event that the amount of compensation due to shareholders in the expropriation has not been determined upon issuance of the Regulation, a separate announcement to this effect will be made at a later time.

The compensation to be determined in connection with an expropriation, if necessary, would be calculated according to the following principles:

- The amount of the compensation is determined using the market value of the Ordinary Shares, determined based on its weighted average domestic stock exchange price during the last two weeks prior to the date of the Opening Decision, unless the average price during the last three days prior to the date of the Opening Decision is lower. If the intention to expropriate the shares becomes public prior to the date of the Opening Decision, then the reference date for calculating the market value of the Ordinary Shares would be the date when the intention to expropriate the shares became public.
- If, however, there is reason to believe that the market value calculated according to a company valuation would differ substantially from the value determined by reference to the stock exchange price, then a company valuation of Hypo Real Estate must be undertaken. If this company valuation results in a value for the Ordinary Shares that differs substantially from the value determined by reference to the stock exchange price, then the determination of the market value of the Ordinary Shares should generally be based on the company valuation.

The authority of the Stabilization Fund to effect takeovers of financial institutions as part of its stabilization efforts is very limited in scope. The Amendment has entered into force on



April 9, 2009. Under the Stabilization Act, the Stabilization Fund is only able to commence a tender offer for shares in a financial institution through December 31, 2009.³

Takeover of Hypo Real Estate

The German Government, acting through the Stabilization Fund, has acquired 20,000,000 new Ordinary Shares through a capital increase (excluding subscription rights) with effect as of March 31, 2009. On April 9, 2009, the German Government, acting through the Stabilization Fund, announced that it will commence a Tender Offer for all of the outstanding Ordinary Shares of Hypo Real Estate. Following the conclusion of the Tender Offer, a general shareholders meeting of Hypo Real Estate would take place to potentially consider a capital decrease (to reflect the cumulative losses that have impaired Hypo Real Estate's stated capital) and a subsequent capital increase (to be consummated immediately following the capital decrease) to be subscribed to by the German Government, acting through the Stabilization Fund. The capital increase (potentially following a capital decrease) would be designed to allow the German Government, acting through the Stabilization Fund to own more than 90% of the outstanding Ordinary Shares and in turn be able to squeeze out the remaining shareholders. If approved, the capital increase (potentially following a capital decrease) would be documented in the commercial register of Hypo Real Estate by the middle of June 2009. In the event that by June 30, 2009 the German Government, acting through the Stabilization Fund, would, following the above-described transactions, not be in a position to acquire all remaining Ordinary Shares through a squeeze-out procedure, the Stabilization Fund currently expects that, if allowed under the Amendment, it would initiate an expropriation procedure to expropriate the Ordinary Shares that it does not already own.

On the April 9, 2009, the German Government, acting through the Stabilization Fund, announced that it would be offering € 1.39 per Ordinary Share (the "**Offer Price**") of Hypo Real Estate. Under the German Takeover Act (as modified by the Amendment) the

³ Generally, such power of the Stabilization Fund expires on December 31, 2009, except in limited circumstances where the Stabilization Fund makes a tender offer for a financial institution that the Stabilization Fund already owns shares in, which were acquired through stabilization measures, and only to the extent required to maintain the Stabilization Fund's capital participation in such company or to secure any stabilization measures that have already been granted.



minimum offer price must be at least equivalent to the weighted average domestic stock exchange price of the Ordinary Shares during the last two weeks prior to publication of the announcement of the Tender Offer, unless this value exceeds the weighted average domestic stock exchange price of the Ordinary Shares during the period from February 1, 2009 to February 15, 2009, in which case the latter value is the applicable minimum price. Because the weighted average domestic stock exchange price of the Ordinary Shares during the period from February 1, 2009 to February 15, 2009 is the lower amount, the minimum price required under the German Takeover Act (as modified by the Amendment) is € 1.26 per Ordinary Share.

In conjunction with the cash consideration for the Ordinary Shares, the German Government, acting through the Stabilization Fund, is offering two voluntary improvements.

In the event that the other holders of Ordinary Shares of Hypo Real Estate are expropriated in accordance with the provisions of the Amendment and the compensation to be granted per Ordinary Share in an expropriation procedure pursuant to the provisions of the Amendment exceeds the Offer Price, the German Government, acting through the Stabilization Fund, will make a cash payment to those holders of Ordinary Shares who have tendered their shares in the Tender Offer in the amount of the difference between the amount of such expropriation compensation per Ordinary Share and the Offer Price (the “**Voluntary Improvement 1**”).

Immediately upon completion of an expropriation procedure under the Amendment, the German Government, acting through the Stabilization Fund, will determine the amount of Voluntary Improvement 1, publish such amount by way of announcement and then within six German banking days disburse such amount to the holders of Ordinary Shares that have tendered their shares in the Tender Offer. The right to receive the Voluntary Improvement 1 will not be certificated and will not be transferable, except as claims generally may be assigned under German statutory law.⁴

⁴ While the right to receive a possible future payment pursuant to the Voluntary Improvement 1 is not considered to be a security under German law and it is unlikely that any market or trading activity would develop in any such rights, under provisions of German statutory law, a person generally may enter into a contract with a third party which provides that such third party shall receive the benefit of a possible future payment. This would be a private contractual agreement and as such would be unrelated to the Tender Offer.



In the event that the German Government, acting through the Stabilization Fund, acquires Ordinary Shares on or off the stock exchange after publication of the Offer Document (as defined below) and before publication of the notice of the final results of the Tender Offer (the “**Final Results Publication**”), or acquires Ordinary Shares off the stock exchange within one year following publication of the Final Results Publication, and the German Government, acting through the Stabilization Fund, grants or agrees to a consideration in exchange thereof that exceeds the Offer Price, the German Government, acting through the Stabilization Fund, will make a cash payment in the amount of the difference (the “**Voluntary Improvement 2**”) to those holders of Ordinary Shares who have tendered their shares in the Tender Offer. The German Government, acting through the Stabilization Fund, will not acquire Ordinary Shares outside the Tender Offer.

Immediately upon acquisition of any Ordinary Shares outside the Tender Offer, the German Government, acting through the Stabilization Fund, will determine the amount of Voluntary Improvement 2, publish such amount by way of announcement and then within six German banking days disburse such amount to the holders of Ordinary Shares that have tendered their shares in the Tender Offer. The right to receive the Voluntary Improvement 2 will not be certificated and will not be transferable, except as claims generally may be assigned under German statutory law.⁵

To illustrate the timing of the proposed acquisition of Hypo Real Estate, including the Tender Offer, the Stabilization Fund estimates that the timetable of events (which is subject to change) relating to the Tender Offer being considered would be substantially as follows:

⁵ While the right to receive a possible future payment pursuant to the Voluntary Improvement 2 is not considered to be a security under German law and it is unlikely that any market or trading activity would develop in any such rights, under provisions of German statutory law, a person generally may enter into a contract with a third party which provides that such third party shall receive the benefit of a possible future payment. This would be a private contractual agreement and as such would be unrelated to the Tender Offer.



| | |
|----------------------------|--|
| March 31, 2009 | Capital increase of Hypo Real Estate of 20,000,000 Ordinary Shares (completed) |
| April 9, 2009 | Approval of the Amendment (completed) |
| April 9, 2009 | Announcement of the Tender Offer (completed) |
| April 17, 2009 | Publication of Offer Document, commencement of the acceptance period |
| End of April 2009 | Announcement of general shareholders meeting of Hypo Real Estate |
| May 4, 2009 | End of the acceptance period |
| May 7, 2009 | Closing and Settlement of the Tender Offer, payment of the purchase price |
| (Expected) Early June 2009 | General shareholders meeting of Hypo Real Estate for consideration of a capital increase and potentially a capital decrease |
| (Expected) Mid-June 2009 | Entry into the Commercial Register of capital increase (potentially following a capital decrease) of Hypo Real Estate |
| June 30, 2009 | Expiration of authority of the Stabilization Fund (provided by the amendment to the Stabilization Act) to commence the expropriation of a failing German financial institution |

The foregoing schedule is dependent on a variety of German legal and regulatory considerations and solely reflects the intention of the German Government, acting through the Stabilization Fund. Although the dates may change, unless otherwise noted herein, any change would involve a shift in the entire schedule, with the intervals between each of the elements of the Tender Offer remaining substantially the same.

Structure of the Tender Offer

The Tender Offer is structured as a single offer made pursuant to a tender offer document (the German language document having been approved by the BaFin and an English translation thereof, together the “**Offer Document**”) concurrently in all jurisdictions in which the Tender Offer may be legally extended. Subject to the granting of the requested exemptive relief, the German Government, acting through the Stabilization Fund intends to allow U.S. holders of Ordinary Shares to participate fully in the Tender Offer in the same manner as German holders of Ordinary Shares. The Tender Offer is structured to comply with (i) the applicable rules and regulations of the German Takeover Act (as modified by the Amendment) and (ii) except as otherwise requested herein, the requirements of Section 14(e) of the Exchange Act and the rules and regulations promulgated thereunder. The Tender Offer is not subject to Section 14(d) of the Exchange Act or Regulation 14D thereunder, because no class of securities of Hypo Real Estate is registered under Section 12 of the Exchange Act. The Offer Document complies with the German Takeover Act (as modified by the Amendment) and, to the extent applicable, the Exchange Act. The Tender Offer is not subject to any conditions. Pursuant to the Amendment, the Tender Offer must remain open for at least two weeks, although it is currently contemplated that it will remain open for 11 business days in the United States.

On April 17, 2009, following the approval by the German Federal Agency for the Supervision of Financial Services (*Bundesanstalt für Finanzdienstleistungsaufsicht*, the “**BaFin**”) of the German language Offer Document, the German Government acting through the Stabilization Fund would publish a notice (*Hinweisbekanntmachung*, the “**Initial Announcement**”) announcing the commencement of the Tender Offer in the Electronic Federal Gazette, a German web-based service to which mandatory publications made under the German Takeover Act and other German laws are posted, and in the U.S. edition of The Wall Street Journal. The Tender Offer would be communicated by means of the Offer Document, which would be published on the Stabilization Fund’s website in the German language together with an unofficial English language translation provided for the convenience of non-German shareholders of Hypo Real Estate (at www.soffin.de). The foregoing procedure for making the Offer Document available to U.S. holders of Ordinary Shares is customary in such offers in Germany (*see, e.g.*, The Third Supplement to the SEC Manual of Publicly Available Telephone Interpretations, II. D. Q.1, at



www.sec.gov/interps/telephone/phonesupplement3.htm). The German Government, acting through the Stabilization Fund, will deliver to the depository of ADRs for receipt no later than Monday, April 19, 2009, a sufficient number of copies of the Offer Document to distribute to the holders of ADRs and will instruct and coordinate with such depository to forward such copies to the holders of ADRs for receipt by such holders not later than Tuesday, April 20, 2009. In order to provide the maximum assurance possible that this distribution schedule is met, the German Government, acting through the Stabilization Fund (or its agent), will, to the extent necessary, cover the costs of copying and delivery of the copies of the Offer Document to be provided to the holders of ADRs. The German Government, acting through the Stabilization Fund, will also distribute copies of the Offer Document to institutions that have requested copies of the Offer Document for the beneficial owners of the Ordinary Shares.

The Ordinary Shares are uncertificated and held in book entry form through Clearstream Banking AG, as is commonly the case with listed German companies. Accordingly, upon commencement of the Tender Offer in Germany, a shareholder would accept the offer by informing the bank, financial institution, brokerage or intermediary (an “**Intermediary**”) at which the shareholder maintains an account for Ordinary Shares he or she holds, at any time on or prior to the expiration date of the Tender Offer, of the shareholder’s desire to tender the shares and instruct their Intermediary to re-book such shares into a specified German Securities Identification Number at Clearstream Banking AG.

Payment of the purchase price to the Intermediary would take place in exchange for (*Zug um Zug gegen*) the transfer of the tendered Ordinary Shares into the deposit account of a designated German bank at Clearstream Banking AG for transfer to the Stabilization Fund. The designated German bank would then transfer the purchase price to the Intermediary promptly after the tendered Ordinary Shares have been placed at its disposal, currently anticipated to be three banking days in Frankfurt am Main following expiration of the Tender Offer.

Credit of the purchase price at the Intermediary would constitute fulfillment by the Stabilization Fund of its obligation for payment of the purchase price. The Intermediary would be responsible for crediting the purchase price to the relevant shareholder.



Applicable U.S. law

Section 14(e) of the Exchange Act and its related rules apply to, among others, securities not registered under Section 12 of the Exchange Act. Rule 14e-1(a) under the Exchange Act provides in relevant part that no person who makes a tender offer shall hold “such tender offer open for less than twenty business days from the date such tender offer is first published or sent to security holders.” The primary reasons for this minimum tender offer period is to provide investors with sufficient time to make a well-informed, unpressured investment decision and minimize investor confusion created when different offering periods apply to issuer, defensive issuer and third party tender offers. *See SEC Final Rule Release 33-6618* (January 14, 1986) (regarding implementation of minimum tender period of 20 business days for issuer tender offers).

In 1999, the Commission adopted certain exemptions to the U.S. tender offer requirements. The Commission expanded these exemptions through an amendment in 2008. *See Commission Guidance and Revisions to the Cross-Border Tender Offer, Exchange Offer, Rights Offerings, and Business Combination Rules and Beneficial Ownership Reporting Rules for Certain Foreign Institutions Release No. 34-58597* (Sep. 19, 2008) (the “**Cross-Border Release**”). As noted in the Cross Border Release, the primary reason for the adoption of these U.S. cross-border exemptions and the expansion of these exemptions in 2008 is to “address conflicts between U.S. and foreign regulation, thereby facilitating the inclusion of U.S. investors in cross-border transactions.” The Commission recognized in the Cross-Border Release that the amendment would not “eliminate all conflicts in law or practice presented by cross-border business combination transactions” and noted that its staff would “continue to address those issues not covered by the... revisions on a case-by-case basis”

DISCUSSION

Rule 14e-1(a) under the U.S. securities laws requires that any person who makes a tender offer hold it open for at least 20 business days from when the tender offer is first published or sent to security holders. Generally, as discussed above, the U.S. rules requiring a minimum 20 business day tender offer period do not conflict with the corresponding German rules, which generally require a minimum four week tender offer period. Under the



Amendment, however, the Stabilization Fund is allowed to conduct a tender offer with an acceptance period as short as two weeks as part of stabilization measures. In addition, the Stabilization Fund also has a limited time period to effectuate the nationalization of Hypo Real Estate before its authority to commence the expropriation of a failing German financial institution expires on June 30, 2009. The Stabilization Fund therefore needs to avail itself of the shortened tender offer acceptance period of 11 business days in the United States in order to complete the nationalization of Hypo Real Estate through a public tender offer prior to June 30, 2009.

Subject to the confirmation requested herein, the German Government, acting through the Stabilization Fund wishes to extend the Tender Offer to U.S. holders of Ordinary Shares in the interest of treating all shareholders equally. Should an exemption from the requirement that a tender offer be open for 20 business days not be provided, however, it is likely that the German Government, acting through the Stabilization Fund would exclude all U.S. holders of the Ordinary Shares from the Tender Offer, which would frustrate the primary purpose of the U.S. cross-border tender offer exemptions that seek to resolve conflicts with foreign law to ensure U.S. security holders are included in tender offers.

We believe that any disadvantage to the small number of U.S. retail investors in the Ordinary Shares presented by a tender offer period of as short as two weeks is outweighed by the likely detrimental effect to such investors and other U.S. holders of the Ordinary Shares should they be excluded from the Tender Offer. Should U.S. holders of Ordinary Shares be excluded, they would be deprived of the opportunity to receive the purchase price for their Ordinary Shares provided by the Tender Offer and likely be forced to surrender their shares in a squeeze-out or a possible expropriation that is expected to take place after the Tender Offer. In addition, if the U.S. holders of the Ordinary Shares are excluded from participating in the proposed Tender Offer, it could make it harder for the German Government, acting through the Stabilization Fund to obtain the required voting majority in the general shareholders meeting to approve a capital increase (potentially following a capital decrease) that would subsequently allow the German Government, acting through the Stabilization Fund to own the minimum 90% of the Ordinary Shares needed to permit a squeeze-out of the remaining shareholders. If the German Government, acting through the Stabilization Fund is unable to squeeze-out the remaining shareholders, the Stabilization Fund (or another entity of the German Government) currently would expect to commence the expropriation of the



outstanding Ordinary Shares that it would not already own under the Amendment. If the Ordinary Shares are expropriated, the holders of such shares, including those in the United States, could be forced to accept an amount for their shares less than the purchase price offered in the Tender Offer and any payment they would receive would be much later than if they had been permitted to participate in the Tender Offer.

The Staff has granted no-action relief from Rule 14e-1(a)'s minimum 20 business day tender offer period requirement in certain instances, in particular, in the context of issuer tender offers for nonconvertible investment-grade debt securities. *See, e.g., Salomon Brothers Inc* (avail. Mar. 12, 1986) (the "**Salomon No-Action Letter**"); *Goldman Sachs & Co.* (avail. Mar 26, 1986); *Salomon Brothers Inc* (avail. Oct. 1, 1990); *Goldman, Sachs & Co.* (avail. Dec. 3, 1993). Even though the Staff stated that the considerations for providing such relief in the context of issuer debt tender offers may not be present in the context of tender offers for equity securities, we believe that the reasoning and the balancing of the competing interests for such allowance also apply in the current proposed Tender Offer. In the Salomon No-Action Letter, the Commission accepted the reasoning of the issuer's counsel that relief from the minimum 20 business day offer period should be granted, because not granting the relief could cause the issuer to forego a public tender offer, which could disadvantage non-institutional debtholders. In allowing for the shortened tender offer period, the Staff believed that participation in the tender offer by individual non-institutional debtholders would not be materially increased by requiring the tender offer to be open for at least 20 business days.

We believe that the detrimental effect to U.S. holders of Ordinary Shares of not granting relief from the minimum 20 business day tender offer period requirement is likely to be as large if not significantly larger than was the case for which relief was granted in the Salomon Brother's No-Action Letter. As mentioned above, not only would a failure to grant the relief requested herein deprive U.S. holders from choosing to participate in the Tender Offer and receiving the purchase price offered therein, it could also lead to such holders receiving much later a lower consideration or compensation, as the case may be, for their Ordinary Shares either through a squeeze-out or possibly through an expropriation of Hypo Real Estate commenced by the Stabilization Fund (or another entity of the German Government) given an unsuccessful Tender Offer.



Moreover, we believe the added benefit to U.S. holders of Ordinary Shares of requiring a minimum 20 business day offer period is equally as low to what it would have been for the debtholders that were the subject of the Salomon Brother's No-Action Letter. In particular, we believe participation by holders of the Ordinary Shares will not necessarily be materially increased by having a full 20 business day acceptance period, because the Tender Offer is part of an effective nationalization of a financial institution experiencing financial distress. In such a tender offer, shareholders have less to decide than, for example, in tender offers made in the context of a merger. In effect, holders of Ordinary Shares can either tender their shares or surrender them at a later point in time as part of a squeeze-out or a possible expropriation. The main consideration such shareholders will be required to make is whether the purchase price offered pursuant to the Tender Offer is higher than any consideration or compensation, as the case may be, that might be paid as part of the squeeze-out or a possible expropriation, if allowed under the Amendment.

There are also strong policy reasons for granting our request for relief from the minimum 20 business day tender offer requirement given that this request for relief is based on participation of a sovereign government in the contemplated nationalization of Hypo Real Estate as part of the German Government's stated goal of stabilizing its financial markets. The German Government believes that further capital infusions and a comprehensive restructuring of the business of Hypo Real Estate is urgently needed in order to stabilize both the Company and the German financial markets. In order to stabilize Hypo Real Estate, the nationalization of Hypo Real Estate resulting in the ownership of all of the Ordinary Shares would put the German Government and the Stabilization Fund in the best position to control operations and to make informed strategic decisions for the required restructuring of Hypo Real Estate. Such a request for relief is consistent with the no-action relief that the Staff has recently granted from the technical application of U.S. securities laws and regulations "based . . . in particular [on] the emergency nature of [a foreign] government's action" to nationalize a large international banking, insurance and financial services company with the aim of providing economic stability during the current global financial crisis. *See The Fortis Group, et al.* (avail. Jan. 27, 2009) (regarding Sections 15(a) and 15(c) of the Investment Company Act of 1940).

CONCLUSION

Accordingly, we request that the Commission grant the exemptive relief from Rule 14e-1(a) under the Exchange Act if the Tender Offer is conducted in the manner described herein.

In light of the Stabilization Fund's short timetable, we respectfully request that the Commission grant the requested exemptive relief as soon as practicable. If you have any questions relating to the foregoing or require any further information with respect to this request, please do not hesitate to contact the undersigned at 011-49-69-2730 8826. Alternatively, you may call Freshfields Bruckhaus Deringer LLP in Washington under (202) 777-4500 and ask to be connected.

Yours sincerely



Mark Strauch

cc: Bernd Giersberg
Financial Market Stabilization Fund (*Finanzmarktstabilisierungsfonds*)