

European Securities and Markets Authority, ESMA  
11-13, Avenue de Friedland  
F-75008 Paris  
France

– submitted online via ESMA's website –

25 February 2011

## **Comments of the EAPB on the ESMA Call for Evidence – Request for technical advice on possible delegated acts concerning the Prospectus Directive – ESMA/2011/35**

Dear Madam or Sir,

The European Association of Public Banks (EAPB) welcomes the opportunity to respond to the ESMA Call for Evidence on its technical advice to the European Commission on possible delegated acts concerning the Prospectus Directive (2003/71/EC) as amended by the Directive 2010/73/EU.

### **I. Format of the final terms to the base prospectus (Article 5(5))**

#### **1. Format of Final Terms**

From a practical point of view, it is not necessary to issue detailed specifications for the format of the final terms. It is also not justifiable to issue specific content guidelines concerning which parts of the securities note should be included in the final terms. This would prove fruitless as the products that can be issued in a base prospectus can vary considerably in practice. In-depth content guidelines would not reflect this. There is a risk that product innovations would not be aligned with legal guidelines and would thus no longer be accessible through the base prospectus. The current approach to supervision, featuring an evaluation of the content of the final terms using the regulations of Article 22 (2) of the Prospectus Regulation, so far has dealt very well with this situation.

In addition, it should be noted that the regulations for base prospectuses and the regulations relating to the final terms have remained unchanged by Directive 2010/73/EU. The Commission has obviously not identified any shortcomings in the regulations in this respect that would require a change in a system that has functioned well in practice. Possible proposals from ESMA should also be aligned with this.

## **2. Addendum vs. Final Terms**

Furthermore, the demarcation that has existed thus far between the obligation to make an addendum and the obligation to lay down final terms should be retained. Directive 2010/73/EU has also not brought about any material changes in this respect. The description of the issuer and the securities is contained as previously in the base prospectus, which is to be subsequently amended if necessary in the event that fundamental changes occur. Only details that are related to the security note and which are not available at the time of publication of the base prospectus may be included in the final terms. In the past, cases of doubt were resolved in a practical way at the national level and through the recommendations of the CESR in their FAQ on the prospectus guidelines. Further regulation is not required.

## **3. Integration of the summary in the final terms**

Future key information should be supplemented by means of the final terms (see recital 17 of Directive 2010/73/EU). The final terms already represent the central and practically-oriented vehicle for supplementing securities-related information that was not known at the time of approval of the prospectus. They should also be used in the case of key information. Inclusion of the entire summary in the final conditions would not be suitable in practice as a whole range of information from the prospectus would be repeated.

For this, we have developed a proposal that enables a practical arrangement of the "Summary – key information" paragraph in the base prospectus, taking into consideration the specifications of Directive 2010/73/EU. This proposal is shown in the annex to this document.

## **II. Format of the summary of the prospectus and detailed content and specific form of the key information to be included in the summary (Article 5(5))**

Within the context of the ongoing discussion concerning the improvement of investor protection, Directive 2010/73/EU sets out new requirements for the summary. In accordance with Article 5 (2), prospectuses shall in future contain not only summaries that, in combination with the prospectus, provide appropriate information about fundamental aspects of the relevant securities, the risks and the issuers, but also so-called key information about the relevant securities in order to provide assistance to investors in helping decide whether they should invest in these securities. A more detailed description of what is meant by "key information" is contained in the new Article 2 (1s). Questions are raised by Article 2 (1s(iii)), since an estimation of the costs charged to the investor by the issuer or the provider is envisaged. The issuer is often not aware of the costs charged to the investor by the provider. It is unclear how an estimation of the costs can be carried out in

such cases, for example, using average values for normal costs such as transaction and deposit costs.

Article 2 (1s) means that the future content of the summary, which is to be supplemented in base prospectuses by the final terms with reference to the specific issue, is already defined as an outline by European legislators. Taking this into account, the provisions to be established on level 2 should give enough flexibility for them to be able to be applied to various product types. It must be possible to assimilate the specifics of respective products in the key information. Since product types are different in terms of their characteristics, it is not possible to issue detailed provisions with regard to the content of the key information. The comparability of products can primarily be established by uniform format specifications. The provisions on the format should be formulated by taking the PRIIPs initiatives into account and thus be generally applicable so that products which simultaneously fall under the PRIIPs legislation can satisfy these. In this regard, it is imperative for the ESMA to be in line with the Commission.

If one proceeds as proposed here, it is possible that a prospectus summary that contains key information in terms of PRIIPs will make it unnecessary to publish a further key information document. However, should two documents be published anyway, the key information at least would be identical.

When establishing the specifications for key information, the fundamental principles for summaries applicable thus far should remain in place. The objective is for the investor to receive, overall, sufficient information about the issuer and the securities on offer in an understandable and concise form. This does not release the investor from the duty to read the prospectus in its entirety.

### **III. The consent to use a prospectus in a retail cascade (Articles 3 and 7)**

Directive 2010/73/EU makes it unnecessary to publish a further prospectus in the case of a subsequent resale of securities (retail cascade) if a valid prospectus exists and the issuer or a person responsible for drawing up the prospectus has agreed in writing to it being used. What is new is the approval requirement, which is now to be specified in a delegated legal act. In our opinion, it is not necessary to have detailed regulation for the format and modality of consent. The text of the Directive itself is sufficiently specific. Further, it must be ensured that approval for use of the prospectus can be granted at any time, thus the circle of those entitled to use it can be extended at any time.

In addition, the requirement for the consent to be made public should not be compulsory, since it relates to the content of a bilateral agreement between the issuer, or the person responsible for drawing up the prospectus, and the respective financial intermediary engaged by them for sales. Recital (10) of Directive 2010/73/EU also starts purely from the premise that the "relevant parties" must be able to check the agreement (enabling

assessment by relevant parties...), in terms of whether a resale or final placing is commensurate with the agreements reached.

It is possible for the responsible supervisory authorities to carry out checks without there being a publication obligation. In this regard, the supervisory authorities can, where necessary, obtain information from the relevant parties.

#### **IV. Review of the provisions of the Prospectus Regulation (Articles 5 and 7)**

The clarification proposed under the first bullet point in relation to prospectus details in respect of tax questions (Items 4.11 of Annex III, 4.14 of Annex V, 27.11 and 28.11 of Annex X, and 4.1.14 of Annex XII of the Prospectus Regulation) is essential. A clarification to that effect should be provided by the answer to FAQ 45 published by the CESR, "Frequently asked questions regarding prospectuses". We would like to suggest to adopt further stances of the CESR FAQ in the level 2 regulations. Equally, we support the proposal under the second bullet point that, when drawing up prospectuses for derivative securities (annex XII of the Prospectus ordinance) under item 4.2.2, it is also sufficient if reference is simply made as to where information about the underlying asset can be found instead of reproducing this information in the prospectus, if the issuer itself does not also issue the underlying asset anyway.

Profit forecasts or estimates should not need to be accompanied by an auditor's report in order to confirm that they have been properly drawn up. The preliminary figures, which are regularly made public at the balance sheet press conference in advance of publication of the audited financial statements, are not subject to any audit inspection. And the imperative to be up-to-date demands that these preliminary figures are included in the prospectus. The impracticable requirement for an audit report relating to this should be deleted.

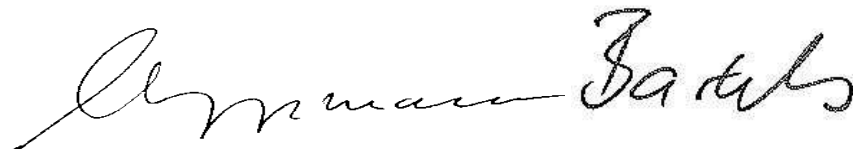
Further, we support the ESMA proposal whereby historical financial information (Item 20.1 of annexes I and X) is to be reduced to include only the previous two business years and only for initial public offerings do the previous three business years have to be included. This information is sufficient for the investor and, at the same time, reduces the workload for the issuer.

#### **V. Comparative table of the liability regimes**

We are in favour of the proposal that there should be a comparative table of the prospectus liability regimes in the various Member States. There should also be effort made to harmonise the national prospectus liability regimes. This would help create uniformity in terms of access requirements relating to the capital markets of the respective Member States.

Should you have additional questions or comments, please do not hesitate to contact us.

Kind regards,

Two handwritten signatures in black ink. The first signature, 'Henning Schoppmann', is written in a cursive style. The second signature, 'Boris Bartels', is also in cursive and appears more stylized.

Henning Schoppmann

EAPB

Boris Bartels

EAPB

*The European Association of Public Banks (EAPB) represents the interests of 35 public banks, funding agencies and associations of public banks throughout Europe, which together represent some 100 public financial institutions. The latter have a combined balance sheet total of about EUR 3,500 billion and represent about 190,000 employees, i.e. covering a European market share of approximately 15%.*

– Annex –

## **Annex**

The following sample "Summary" refers to traditional notes of an issuer. It intends to outline a short and clear introduction to the Base Prospectus. The length of and the description in the sample "Summary" will substantially depend on the final version of the Commission Regulation (EC) No 809/2004 of 29 April 2004 based on the Prospectus Directive, which is still to be amended; this also applies to a debt issuance programme to be arranged for one or more issuers and to enable the issuance of further securities, for example Pfandbriefe and/or certificates.

**The following sample "Summary" should be amended, accordingly, for other products, for example certificates or warrants.**

## Sample "Summary"

The following contains key information concerning the characteristics and risks associated with the Issuer and the Notes to be issued under this Programme ("**Summary**"). This Summary should be read as an introduction to this Base Prospectus ("**Prospectus**"). Any decision by an investor to invest in any Tranche of the Notes should be based on consideration of this Prospectus as a whole, including the documents incorporated by reference, any supplement to this Prospectus and the applicable Final Terms. Where a claim relating to the information contained in this Prospectus, the documents incorporated by reference, any supplement to this Prospectus and the applicable Final Terms is brought before a court, the plaintiff investor might, under the national legislation of such court, have to bear the costs of translating this Prospectus, the documents incorporated by reference, any supplement to this Prospectus and the applicable Final Terms before the legal proceedings are initiated. Civil liability attaches to the Issuer, who has tabled this Summary (including any translation thereof) and applied for its notification, but only if this Summary is misleading, inaccurate or inconsistent when read together with the other parts of this Prospectus.

The following Summary does not purport to be complete and is taken from and qualified in its entirety by the remainder of this Prospectus and, in relation to the terms and conditions of the relevant Tranche of Notes, the applicable Final Terms.

| 1    | Summary regarding the Programme                       |                                                                                                                                                                                                                                                                       |
|------|-------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1.1  | <b>Name of the programme</b>                          | EUR XX Debt Issuance Programme („ <b>Programme</b> ")                                                                                                                                                                                                                 |
| 1.2  | <b>Name of the issuer</b>                             | XY-Bank Aktiengesellschaft („ <b>XY-Bank</b> ")                                                                                                                                                                                                                       |
| 1.3  | <b>Type of issuer</b>                                 | Monetary financial institution                                                                                                                                                                                                                                        |
| 1.4  | <b>Guarantor</b>                                      | None                                                                                                                                                                                                                                                                  |
| 1.5  | <b>Arranger</b>                                       | A-Bank                                                                                                                                                                                                                                                                |
| 1.6  | <b>Dealers</b>                                        | XY-Bank, A-Bank, B-Bank, C-Bank                                                                                                                                                                                                                                       |
| 1.7  | <b>Purpose of the programme</b>                       | The Programme will be used for refinancing the business activities of the XY-Bank by issuance of unsecured and unsubordinated Notes.                                                                                                                                  |
| 1.8  | <b>Maximum outstanding aggregate principal amount</b> | EUR XX                                                                                                                                                                                                                                                                |
| 1.9  | <b>Characteristics and form of the notes</b>          | <p>The Notes are issued in bearer form and represented by one or more global notes. Definitive Notes and interest coupons will not be issued.</p> <p>The Notes will be issued in Tranches on a continuing basis. One or more Tranches may form a Series of Notes.</p> |
| 1.10 | <b>Maturity of the notes</b>                          | The maturity of the Notes is freely selectable, subject to such minimum and/or maximum maturities as may be allowed or required by the relevant central bank or any laws or regulations applicable to the Issuer or the relevant currency.                            |
| 1.11 | <b>Interest</b>                                       | The Notes may either be issued on a fixed rate, floating rate, interest-structured floating rate, index-linked, inflation-related or such other type of interest bearing basis.                                                                                       |
| 1.12 | <b>Redemption</b>                                     | Under the Programme only Notes may be issued, which shall be redeemed at their principal amount (100 per cent).                                                                                                                                                       |
| 1.13 | <b>Currencies of issue of the notes</b>               | Euro or such other currency, subject in each case to compliance with the laws and regulations as well as the guidelines of the competent central bank or other competent bodies applicable to the chosen currency.                                                    |
| 1.14 | <b>Minimum denomination of the notes</b>              | The minimum denomination of the Notes will be, if in euro, EUR 1,000 or, if in                                                                                                                                                                                        |

|      |                                                                                  |                                                                                                                                                                                                                                                                                                      |
|------|----------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|      |                                                                                  | any other currency, in an amount in such other currency equal to or exceeding the equivalent of EUR 1,000 at the time of the issue.                                                                                                                                                                  |
| 1.15 | <b>Status of the notes / negative pledge</b>                                     | <p>The Notes will constitute unsecured and unsubordinated obligations of the Issuer.</p> <p>The Conditions of Notes will not contain a negative pledge provision.</p>                                                                                                                                |
| 1.16 | <b>Governing law</b>                                                             | The Notes will be governed by German law.                                                                                                                                                                                                                                                            |
| 1.17 | <b>Admission to trading and listing of the notes issued under this programme</b> | <p><b>Admission:</b> Regulated Market "<i>Bourse de Luxembourg</i>" / <b>Listing:</b> Official List.</p> <p>The Notes may also be listed on other or further stock exchanges or may not be listed at all.</p>                                                                                        |
| 1.18 | <b>Clearing systems</b>                                                          | Clearstream Banking AG, Frankfurt am Main, Federal Republic of Germany / Clearstream Banking, société anonyme, Luxembourg, Grand Duchy of Luxembourg / Euroclear Bank SA/NV, Brussels, Kingdom of Belgium                                                                                            |
| 1.19 | <b>Rating</b>                                                                    | <p>As at the date of approval of this Prospectus the ratings<sup>1</sup> assigned to XY-Bank were as follows:</p> <p>Moody's Investors Service, Inc.<sup>2</sup>:</p> <p>long-term rating: <b>Aa3</b>;<br/>short-term rating: <b>P-1</b>.</p> <p>Notes issued under this Programme may be rated.</p> |

<sup>1</sup> A rating is not a recommendation to buy, sell or hold Notes issued under this Programme and may be subject to suspension, reduction or withdrawal at any time by the assigning rating agency. A suspension, reduction or withdrawal of the rating assigned to the Issuer may adversely affect the market price of the Notes issued under this Programme. The current ratings may be obtained from XY-Bank website "[www.xy-bank.de](http://www.xy-bank.de)".

<sup>2</sup> Moody's is established in the European Community and registered under Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies.

|      |                                            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
|------|--------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1.20 | <b>Selling restrictions</b>                | United States of America, United Kingdom of Great Britain and Northern Ireland, Japan; furthermore, all applicable regulations with respect to securities in any jurisdiction in which the Notes are purchased, offered, sold or delivered must be complied with.                                                                                                                                                                                                                                                                                                     |
| 1.21 | <b>Taxation</b>                            | <p>The respective Series of Notes may provide for a compensation of withholding tax with respect to the Federal Republic of Germany by payment of additional amounts by the Issuer. In such a case the Issuer shall be entitled to early redemption for reasons of taxation of the respective Series of Notes</p> <p>Holders of Notes should consider that, regularly <b>no</b> additional amounts shall be payable by the Issuer as compensation of flat income tax (<i>Abgeltungsteuer</i>) applicable in the Federal Republic of Germany since 1 January 2009.</p> |
| 1.22 | <b>Involvement of national authorities</b> | The approval of the Base Prospectus was granted by the <i>Commission de Surveillance du Secteur Financier</i> („ <b>CSSF</b> “) of the Grand Duchy of Luxembourg, which also effected its notification in Germany and Austria. During the term of this Programme the Issuer may request the CSSF to provide competent authorities in additional member states within the European Economic Area with a notification.                                                                                                                                                  |

|             |                                                                      |                                                                                                                                                                                                                                                                                                                                                                                                                                               |
|-------------|----------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>2</b>    | <b>Summary regarding the Issuer</b>                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| <b>2.1</b>  | <b>Legal name</b>                                                    | XY-Bank Aktiengesellschaft ( <b>"XY-Bank"</b> )                                                                                                                                                                                                                                                                                                                                                                                               |
| <b>2.2</b>  | <b>Legal form</b>                                                    | XY-Bank is a stock corporation ( <i>Aktiengesellschaft</i> ) organised under German law and is supervised by the German Central Bank ( <i>Deutsche Bundesbank</i> ) and the Federal Financial Supervisory Authority ( <i>Bundesanstalt für Finanzdienstleistungsaufsicht</i> ).                                                                                                                                                               |
| <b>2.3</b>  | <b>Date of incorporation</b>                                         | <i>day, month, year</i>                                                                                                                                                                                                                                                                                                                                                                                                                       |
| <b>2.4</b>  | <b>Registered office</b>                                             | <i>street, postal code, city</i> ; Federal Republic of Germany                                                                                                                                                                                                                                                                                                                                                                                |
| <b>2.5</b>  | <b>Registration number, place of registration</b>                    | HRB XX, commercial register ( <i>Handelsregister</i> ) of the local court ( <i>Amtsgericht</i> ) in <i>city</i>                                                                                                                                                                                                                                                                                                                               |
| <b>2.6</b>  | <b>Company's purpose</b>                                             | Pursuant to its Articles of Incorporation XY-Bank's purpose is the handling of all permissible transactions in accordance with the terms of the Banking Act ( <i>Gesetz über das Kreditwesen</i> ). XY-Bank may engage in all types of banking transactions, including the acquisition of equity investments. The Bank may establish subsidiary offices.                                                                                      |
| <b>2.7</b>  | <b>Summarised description of current activities</b>                  | <p>In addition to XY-Bank as parent company, the group consists of X subsidiaries. XY-Bank and its subsidiaries are primarily active in Germany and other European countries as an Allfinanz-group. XY-Bank has X branches in Germany and Y foreign branches.</p> <p>The business units of XY-Bank are payment systems, SME corporate clients and large corporate clients business as well as money markets and capital markets business.</p> |
| <b>2.8</b>  | <b>Capital of XY-Bank</b>                                            | <p>As at 31 December 2009 the <b>equity</b> of XY-Bank amounted to EUR XX, composed of EUR XX subscribed capital, EUR XX capital reserve, EUR XX revenue reserves and EUR XX distributable profit.</p> <p>The <b>subscribed capital</b> in the amount of EUR XX is divided into XX fully paid-up registered shares with restricted transferability, with a notional share in the subscribed capital of EUR XX per no par share.</p>           |
| <b>2.9</b>  | <b>Major shareholders</b>                                            | Approximately XX per cent of the subscribed capital is held by banks and approximately XX per cent by other companies of the banking sector. None of the shareholders holds more than XX per cent of the registered shares with restricted transferability.                                                                                                                                                                                   |
| <b>2.10</b> | <b>Listing of the shares of XY-Bank</b>                              | The registered shares with restricted transferability are not admitted to listing on any domestic nor any foreign stock exchange.                                                                                                                                                                                                                                                                                                             |
| <b>2.11</b> | <b>Trend information / statement of "no material adverse change"</b> | There has been no material adverse change in the prospects of XY-Bank since 31 December 2009 (the date of the last published audited financial statements).                                                                                                                                                                                                                                                                                   |
| <b>2.12</b> | <b>Board of management / supervisory</b>                             | The <b>Board of Management</b> currently consists of five members. X is                                                                                                                                                                                                                                                                                                                                                                       |

|      |                                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
|------|------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|      | <b>board / conflict of interests</b>     | <p>Chairman of the Board of Management.</p> <p>Pursuant to XY-Bank's Articles of Incorporation the <b>Supervisory Board</b> consists of XX members, XX of whom shall be elected by the General Meeting and XX of whom shall be elected by the employees. Y, President of the Z Association, is Chairman of the Supervisory Board.</p> <p>There are no potential <b>conflicts of interests</b> between any duties to XY-Bank of the members of the Board of Management and the Supervisory Board and their private interests and/or other duties.</p>                                                                                                                                                                                                    |
| 2.13 | <b>Legal and arbitration proceedings</b> | <p>There are no governmental, legal or arbitration proceedings (including any such proceedings which are pending or threatened of which the Issuer is aware) during a period covering at least the previous 12 months which may have, or have had in the recent past, significant effects on XY-Bank's and/or XY-Bank Group's financial position or profitability.</p>                                                                                                                                                                                                                                                                                                                                                                                  |
| 2.14 | <b>Accounting method</b>                 | <p>XY-Bank's <b>non-consolidated financial statements</b> for the financial year ended 31 December 2009 have been prepared in accordance with the provisions of the Commercial Code (<i>Handelsgesetzbuch</i>) in conjunction with the accounting regulation for banks and financial service institutions (<i>Verordnung über die Rechnungslegung der Kreditinstitute</i>)</p> <p>Pursuant to Regulation (EC) 1606/2002 of the European Parliament and of the Council of 19 July 2002, the <b>consolidated financial statements</b> of XY-Bank for the financial year ended 31 December 2009 have been prepared in accordance with the provisions of the International Financial Reporting Standards (IFRS), as adopted by the European Union (EU).</p> |

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|--------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>3</b>     | <p align="center"><b>Summary regarding the Notes<br/>(Key Product Information Document)</b></p> <p>The "Summary regarding the Notes (Key Product Information Document)" forms an integral part of the applicable final terms for the relevant Tranche of Notes ("Final Terms"). The following information is a general description. The characteristics of the relevant Tranche of Notes will be specified and published in the applicable Final Terms. With respect to the relevant Tranche of Notes the contents of the following information will be amended accordingly and may, therefore, differ from the following wording.</p> |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| <b>3.1.1</b> | <b>Product name</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | <i>The relevant product name of each particular Tranche/Series of Notes issued by the Issuer will be specified in the applicable Final Terms ("Issue").</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| <b>3.1.2</b> | <b>Issuer</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | XY-Bank Aktiengesellschaft<br><i>street</i><br><i>postal code, city,</i><br>Federal Republic of Germany                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| <b>3.1.3</b> | <b>Product type</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | Bearer Notes                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| <b>3.1.4</b> | <b>Product description</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | The Issue consists of unsecured and unsubordinated Notes in bearer form. The potential purchaser has a claim on interest against XY-Bank. The Issue and thus the amount invested by the potential purchaser shall be redeemed at 100 per cent.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| <b>3.2</b>   | <b>Key product characteristics</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | <p><i>The following characteristics will be specified in the applicable Final Terms:</i></p> <p><b>ISIN:</b> <i>the International Securities Identification Number uniquely identifies a Series of Notes;</i></p> <p><b>Rating<sup>3</sup>:</b> <i>The Notes may be rated or not rated. Generally, the issue rating corresponds to the long-term rating of the Issuer;</i></p> <p><b>Currency:</b> <i>Euro or such other currency;</i></p> <p><b>Aggregate Principal Amount:</b> <i>The aggregate principal amount specifies the nominal issue volume of a Tranche of Notes, expressed in euro or any other currency;</i></p> <p><b>Issue Price:</b> <i>The Notes may be issued at an issue price at par or at a discount to, or premium over, par. The issue price is free of trade;</i></p> <p><b>Issue Date:</b> <i>The issue date is the date of settlement and payment of the Notes (generally "payment against delivery");</i></p> <p><b>Interest:</b> <i>The Notes may either be issued on a fixed rate, floating rate, interest-structured floating rate, index-linked, inflation-related or such other type of interest bearing basis;</i></p> <p><b>Maturity Date:</b> <i>The maturity date is the date of payment of the redemption amount of 100 per cent by the Issuer to the relevant clearing system, at the end of the maturity of the Notes, for subsequent transfer to the holders;</i></p> <p><b>Denomination:</b> <i>The minimum denomination of the Notes will be, if in euro, EUR 1,000 or, if in any other currency, in an amount in such other currency equal to or exceeding the equivalent of EUR 1,000 at the time of the issue;</i></p> <p><b>Admission to trading/Listing:</b> <i>Admission: Regulated Market "Bourse de Luxembourg"/Listing: Official List; the Notes may also be listed on other or further stock exchanges or may not be listed at all.</i></p> |
| <b>3.3.1</b> | <b>Key risks regarding the Issuer</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | The Issue entails an issuer risk, also referred to as debtor risk or credit risk. An issuer risk is the risk that the Issuer becomes temporarily or                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |

<sup>3</sup> A rating is not a recommendation to buy, sell or hold Notes issued under this Programme and may be subject to suspension, reduction or withdrawal at any time by the assigning rating agency. A suspension, reduction or withdrawal of the rating assigned to the Notes may adversely affect the market price of the Notes issued under this Programme.

|       |                               |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
|-------|-------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|       |                               | <p>permanently insolvent and will not be able to meet its obligations to pay interest and/or the redemption amount. The issuer risk will be borne by the potential purchaser.</p> <p>XY-Bank is a member of the Protection Scheme of the X-banking sector (the "<b>Protection Scheme</b>"). Within the scope of the Institution Protection Scheme (<i>Institutsschutz</i>) all securitised liabilities issued in form of unsubordinated notes by the participating institutions and held by non-banks are protected without any limitation. Neither the participating institutions nor the holders of such unsubordinated notes do have any legal claim to assistance from the Protection Scheme or to the assets of the Protection Scheme.</p> |
| 3.3.2 | Key risks regarding the Notes | <p><i>Potential purchasers should only invest in Notes which may be complex financial instruments subject to their characteristics, if the potential purchasers are able to assess the characteristics and thus are prepared to bear the inherent risks.</i></p> <p>Generally, the Notes may be exposed to a liquidity risk, market price risk, risk of early redemption by the Issuer, interest rate risk and currency risk. The individual risks or the combination of the above mentioned risks may have an increasing impact on the value of a Tranche of Notes and a negative impact on the value of the investment. Under certain circumstances the potential purchaser may sustain substantial interest losses and price losses.</p>     |
| 3.4   | Charges                       | <p>The <b>total expenses</b> of an issue (including the expenses related to admission to trading on a stock exchange) shall be borne by the Issuer;</p> <p><i>If applicable to the relevant Tranche of Notes, the charges levied when purchasing, disposing of and/or holding the Notes as well as the inducements, if any, will be specified in the applicable Final Terms.</i></p> <p>If a potential purchaser acquires the Notes from a third party, then the purchase price payable by the potential purchaser may contain <b>third-party proceeds</b> the amount of which is specified by the third party.</p>                                                                                                                             |
| 3.5   | Taxation                      | <p>In Germany payments of interests and capital gains are subject to income tax (<i>Einkommensteuer</i>), which is generally levied as a flat tax (<i>Abgeltungsteuer</i>) plus solidarity surcharge plus, if applicable, church tax (<i>Kirchensteuer</i>).</p> <p>Potential purchasers of Notes are advised to consult their own tax advisors as to the consequences of the purchase, holding and disposition of Notes, including the effect of any state or local taxes, under the tax laws applicable in the Federal Republic of Germany and each country of which they are residents.</p>                                                                                                                                                  |
| 3.6   | Miscellaneous                 | <p>The information contained in this Key Product Information Document does not constitute investment advice but constitutes a summary regarding the Notes. Complete information on XY-Bank, the Notes and the risks regarding the Issuer and the Notes is contained in this Prospectus, the documents incorporated by reference, any supplement to this Prospectus and the applicable Final Terms. This Prospectus, the documents incorporated by</p>                                                                                                                                                                                                                                                                                           |

|  |  |                                                                                                                                                                                          |
|--|--|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|  |  | reference, any supplement to this Prospectus and the applicable Final Terms may be obtained without charge from XY-Bank, <i>street, postal code, city</i> , Federal Republic of Germany. |
|--|--|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

## NOTE

**PART I** of these Final Terms corresponds to Recital (17) and Articles 2 (1) (ii) (s) and 5 (2) of Directive 2010/73/EU of 24 November 2010

Provided that no changes and amendments will be made, **PART II** and **PART III** of these Final Terms correspond to Annexes V, XII and XIII of Commission Regulation (EC) No 809/2004 of 29 April 2004

In case of Notes listed on the Official List of the Luxembourg Stock Exchange and traded on the Regulated Market "Bourse de Luxembourg" or publicly offered in the Grand Duchy of Luxembourg, the Final Terms will be displayed on the website of the Luxembourg Stock Exchange ([www.bourse.lu](http://www.bourse.lu)). In case of Notes listed on any other stock exchange or traded on any other regulated market or or publicly offered in one or more member states of the European Economic Area excluding the Grand Duchy of Luxembourg, the Final Terms will be available in printed form, free of charge, at the registered office of the Issuer specified below.

## FORM OF FINAL TERMS

[Date]

### Final Terms

[Title of relevant Series of Notes]  
[(to be consolidated, form a single issue with and increase the aggregate principal amount of the [Title of relevant Series of Notes] issued on •)]<sup>1</sup>

issued pursuant to the

**EUR XX,000,000,000**  
**Debt Issuance Programme**

Dated XX May 2011

of

**XY-Bank Aktiengesellschaft**

(having its registered seat and office at [street, postal code, city, Federal Republic of Germany])

Issue Price: [ ] per cent [free of trade] [plus accrued interest]<sup>1</sup>

Issue Date: [ ]<sup>2</sup>

Series No.: [ ]

[Tranche No.: [ ]]

Maturity Date: [ ]

<sup>1</sup> Include only in the case of increase of the initial issue.

<sup>2</sup> The Issue Date is the date of payment and settlement of the Notes. In the case of free delivery, the Issue Date is the delivery date.

## FINAL TERMS / GENERAL

These are the Final Terms of an issue of Notes under the EUR XX,000,000,000 Debt Issuance Programme (“**Programme**”) of XY-Bank Aktiengesellschaft (“**XY-Bank**”). Full information on XY-Bank and the offer of the Notes is only available on the basis of the combination of the Debt Issuance Programme Prospectus dated XX May 2011 pertaining to the Programme and any supplement, if any, thereto pursuant to Article 16 of the Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 (and amendments thereto, including the Directive 2010/73/EU of the European Parliament and of the Council of 24 November 2010) (“**Prospectus**”) and these Final Terms. The Prospectus is available for viewing in electronic form on the website of the Luxembourg Stock Exchange (*www.bourse.lu*). Copies may be obtained without charge from XY-Bank [street, postal code, city, Federal Republic of Germany].

Sub-sections immediately following and referring to those variable items in the Final Terms which have not been selected may be deleted.

### PART I

#### FINAL TERMS / KEY PRODUCT INFORMATION DOCUMENT

This Key Product Information Document forms an integral part of these Final Terms for the below mentioned Tranche of Notes. The following information of this PART I is a general description. Full information on XY-Bank and the offer of the Notes is only available on the basis of the combination of the Prospectus and the following PARTS II and III of these Final Terms.

|                                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
|------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Product name</b>                | EUR XX,000,000 • per cent Notes, due 20••<br>(“ <b>Notes</b> ” or “ <b>Issue</b> ”)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| <b>Issuer</b>                      | XY-Bank Aktiengesellschaft<br>street<br>postal code, city,<br>Federal Republic of Germany                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| <b>Product type</b>                | Bearer Notes                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| <b>Product description</b>         | The Issue consists of unsecured and unsubordinated Notes in bearer form. The potential purchaser has a claim on interest against XY-Bank. The Issue and thus the amount invested by the potential purchaser shall be redeemed at 100 per cent.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| <b>Key product characteristics</b> | <p>ISIN: [       ];</p> <p><b>Rating</b><sup>3</sup>: [       ] [in case of Notes with a specified denomination of less than EUR 100,000, need to include a brief explanation of the meaning of the rating if this has been previously published by the rating agency]. [name of the rating agency] is established in the European Community and registered under Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies;</p> <p><b>Currency</b>: [       ];</p> <p><b>Aggregate Principal Amount</b>: [       ];</p> <p><b>Issue Price</b>: [       ] per cent [free of trade] [plus accrued interest];</p> <p><b>Issue Date</b>: [       ];</p> <p><b>Interest</b>: [       ];</p> <p><b>Maturity Date</b>: [       ];</p> <p><b>Redemption Amount</b>: 100 per cent;</p> <p><b>Denomination</b>: [       ];</p> <p><b>Admission to trading/Listing</b>: <b>Admission</b>: Regulated Market “Bourse de</p> |

<sup>3</sup> A rating is not a recommendation to buy, sell or hold Notes issued under this Programme and may be subject to suspension, reduction or withdrawal at any time by the assigning rating agency. A suspension, reduction or withdrawal of the rating assigned to the Notes may adversely affect the market price of the Notes issued under this Programme.

|                                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
|---------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                       | Luxembourg“ <b>Listing</b> : Official List.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| <b>Key risks regarding the Issuer</b> | <p>The Issue entails an issuer risk, also referred to as debtor risk or credit risk. An issuer risk is the risk that the Issuer becomes temporarily or permanently insolvent and will not be able to meet its obligations to pay interest and/or the redemption amount. The issuer risk will be borne by the potential purchaser.</p> <p>XY-Bank is a member of the Protection Scheme of the X-banking sector (the “<b>Protection Scheme</b>”). Within the scope of the Institution Protection Scheme (<i>Institutsschutz</i>) all securitised liabilities issued in form of unsubordinated notes by the participating institutions and held by non-banks are protected without any limitation. Neither the participating institutions nor the holders of such unsubordinated notes do have any legal claim to assistance from the Protection Scheme or to the assets of the Protection Scheme.</p> |
| <b>Key risks regarding the Notes</b>  | <p><i>Potential purchasers should only invest in Notes which may be complex financial instruments subject to their characteristics, if the potential purchasers are able to assess the characteristics and thus are prepared to bear the inherent risks.</i></p> <p>Generally, the Notes may be exposed to a liquidity risk, market price risk, risk of early redemption by the Issuer, interest rate risk and currency risk. The individual risks or the combination of the above mentioned risks may have an increasing impact on the value of a Tranche of Notes and a negative impact on the value of the investment. Under certain circumstances the potential purchaser may sustain substantial interest losses and price losses.</p>                                                                                                                                                         |
| <b>Charges</b>                        | <p>The <b>total expenses</b> of an issue (including the expenses related to admission to trading on a stock exchange) shall be borne by the Issuer;</p> <p><i>The charges levied when purchasing, disposing of and/or holding the Notes as well as the inducements, if any,[None] [specify details here].</i></p> <p>If a potential purchaser acquires the Notes from a third party, then the purchase price payable by the potential purchaser may contain <b>third-party proceeds</b> the amount of which is specified by the third party.</p>                                                                                                                                                                                                                                                                                                                                                    |
| <b>Taxation</b>                       | <p>In Germany payments of interests and capital gains are subject to income tax (<i>Einkommensteuer</i>), which is generally levied as a flat tax (<i>Abgeltungsteuer</i>) plus solidarity surcharge plus, if applicable, church tax (<i>Kirchensteuer</i>).</p> <p>Potential purchasers of Notes are advised to consult their own tax advisors as to the consequences of the purchase, holding and disposition of Notes, including the effect of any state or local taxes, under the tax laws applicable in the Federal Republic of Germany and each country of which they are residents.</p>                                                                                                                                                                                                                                                                                                      |
| <b>Miscellaneous</b>                  | <p>The information contained in this Key Product Information Document does not constitute investment advice but constitutes a summary regarding the Notes. Complete information on XY-Bank, the Notes and the risks regarding the Issuer and the Notes is contained in the Prospectus, the documents incorporated by reference, any supplement to the Prospectus and these Final Terms. The Prospectus, the documents incorporated by reference, any supplement to the Prospectus and the these Final Terms may be obtained without charge from XY-Bank, <i>street, postal code, city</i>, Federal Republic of Germany.</p>                                                                                                                                                                                                                                                                         |

## PART II

|                                           |
|-------------------------------------------|
| <b>FINAL TERMS / TERMS AND CONDITIONS</b> |
|-------------------------------------------|

**[In case of Long-Form Conditions, insert:**

This PART II of these Final Terms is to be read in conjunction with the Terms and Conditions of Notes (the “**Terms and Conditions**”) set forth in the Prospectus. Capitalised terms not otherwise defined herein shall have the same meanings specified in the Terms and Conditions.

All references in this PART I of these Final Terms to numbered paragraphs and subparagraphs are to paragraphs and subparagraphs of the Terms and Conditions.

All provisions in the Terms and Conditions corresponding to items in these Final Terms which are either not selected or completed or which are deleted shall be deemed to be deleted from the terms and conditions applicable to the Notes (the “**Conditions**”).]

**[In case of Integrated Conditions, insert:**

The Integrated Conditions applicable to the Notes (the “**Conditions**”) and the German or English language translation thereof, if any, are attached hereto and replace in full the Terms and Conditions of Notes as set out in the Prospectus and take precedence over any conflicting provisions set forth in PART II of these Final Terms.]

**[The following alternative language applies, if the first tranche of an issue which is being increased, was issued under [an Information Memorandum] [a Prospectus] [a Debt Issuance Programme Prospectus] with an earlier date:**

Terms used herein shall be deemed to be defined as such for the purposes of the Terms and Conditions set forth in the Prospectus. These are the Final Terms of the Notes and must be read in conjunction with the Prospectus, save in respect of the Terms and Conditions which are extracted from the [Information Memorandum] [Prospectus] [Debt Issuance Programme Prospectus] dated • and are attached hereto.]

**Issuer**

**XY-Bank Aktiengesellschaft**

**Form of Conditions<sup>4</sup>**

- ☐ Long-Form Conditions
- ☐ Integrated Conditions

**Language of Conditions<sup>5</sup>**

- ☐ German only
- ☐ English only

---

<sup>4</sup> To be determined in consultation with the Issuer. It is anticipated that Long-Form Conditions will generally be used for Notes which are neither publicly offered nor distributed, in whole or in part, to non-qualified investors. Integrated Conditions will be required where the Notes are to be publicly offered, in whole or in part, or to be initially distributed, in whole or in part, to non-qualified investors.

<sup>5</sup> To be determined in consultation with the Issuer. It is anticipated that, subject to any stock exchange or legal requirements applicable from time to time, and unless otherwise agreed, in the case of Notes publicly offered, in whole or in part, in the Federal Republic of Germany, or distributed, in whole or in part, to non-qualified investors in the Federal Republic of Germany, German will be the controlling language. If, in the event of such public offer or distribution to non-qualified investors, however, English is chosen as the controlling language, a German language translation of the Conditions will be available from the principal office of the Fiscal Agent and XY-Bank Aktiengesellschaft.

- ☐ German and English (German text controlling and binding)
- ☐ English and German (English text controlling and binding)

## **CURRENCY, DENOMINATION, FORM, CERTAIN DEFINITIONS (§1)<sup>6</sup>**

### **Currency and Denomination**

Specified Currency [      ]

Aggregate Principal Amount [      ]

Specified Denomination(s) [      ]

Number of Notes to be issued in each Specified Denomination [      ]

**New Global Note** [Yes/No]

#### ☐ **TEFRA C**

- ☐ Permanent Global Note

#### ☐ **TEFRA D**

- ☐ Temporary Global Note exchangeable for a Permanent Global Note

#### ☐ **Neither TEFRA D nor TEFRA C<sup>7</sup>**

- ☐ Permanent Global Note

### **Certain Definitions**

#### **Definitionen**

Clearing System

- ☐ Clearstream Banking AG  
Neue Börsenstraße 1  
60487 Frankfurt am Main  
Federal Republic of Germany
- ☐ Clearstream Banking, société anonyme  
42 Avenue JF Kennedy  
1855 Luxembourg  
Grand Duchy of Luxembourg
- ☐ Euroclear Bank SA/NV  
1 Boulevard du Roi Albert II  
1210 Brussels  
Kingdom of Belgium
- ☐ Specify other [      ]

<sup>6</sup> The minimum denomination of the Notes will be, if in euro, EUR 1,000, if in any currency other than euro, in an amount in such other currency equal to or exceeding the equivalent of EUR 1,000 at the time of the issue of the Notes.

<sup>7</sup> Applicable only if Notes have an initial maturity of one year or less.

## INTEREST (§ 3)

### ☐ Fixed Rate Notes

#### Rate of Interest and Interest Payment Dates

|                                                      |                              |
|------------------------------------------------------|------------------------------|
| Rate of Interest                                     | [       ] per cent per annum |
| Interest Commencement Date                           | [       ]                    |
| Fixed Interest Date(s)                               | [       ]                    |
| First Interest Payment Date                          | [       ]                    |
| Initial Broken Amount(s) per Specified Denomination  | [       ]                    |
| Initial Broken Amount per aggregate principal amount | [       ]                    |
| Fixed Interest Date preceding the Maturity Date      | [       ]                    |
| Final Broken Amount(s) per Specified Denomination    | [       ]                    |
| Final Broken Amount per aggregate principal amount   | [       ]                    |

#### Business Day Convention<sup>8</sup>

|                                                                     |                                    |
|---------------------------------------------------------------------|------------------------------------|
| <input type="checkbox"/> Modified Following Business Day Convention |                                    |
| <input type="checkbox"/> FRN Convention (specify period(s))         | [       ] [months/other – specify] |
| <input type="checkbox"/> Following Business Day Convention          |                                    |
| <input type="checkbox"/> Preceding Business Day Convention          |                                    |
| Adjustment of Interest                                              | [Yes/No]                           |

### ☐ Floating Rate Notes

#### Interest Payment Dates

|                                    |                                          |
|------------------------------------|------------------------------------------|
| Interest Commencement Date         | [       ]                                |
| Specified Interest Payment Date(s) | [       ]                                |
| Specified Interest Period(s)       | [       ] [weeks/months/other – specify] |

---

<sup>8</sup> Only to be completed in case of Fixed Rate Notes which provide for an additional interest calculation type.

**Business Day Convention**

☐ Modified Following Business Day Convention

☐ FRN Convention (specify period(s)) [ ] [months/other – specify]

☐ Following Business Day Convention

☐ Preceding Business Day Convention

Adjustment of Interest [Yes/No]

Relevant Financial Centre(s) [specify all] [ ]

**Rate of Interest**

☐ Screen Rate Determination

☐ EURIBOR (11.00 a.m. Brussels time/TARGET2 Business Day/EURIBOR Panel/Interbank Market in the Euro-Zone) Screen page [ ]

☐ LIBOR (London time/London Business Day/ London Interbank Market) Screen page [ ]

☐ Specify other [ ]

☐ Screen page(s) [ ]

**Margin**

☐ plus  
plus

☐ minus  
minus

**Interest Determination Date**

☐ second Business Day prior to commencement of the relevant Interest Period

☐ Specify other [ ]

**Interest Amount**

☐ calculated by applying the Rate of Interest to the aggregate principal amount

☐ calculated by applying the Rate of Interest to each Specified Denomination

Reference Banks (if other than as specified in § 3(2)) (specify) [ ]

**Minimum and Maximum Rate of Interest**

☐ Minimum Rate of Interest [ ] per cent per annum

☐ Maximum Rate of Interest [ ] per cent per annum

**☐ Zero Coupon Notes**

**Accrual of Interest**

Amortisation Yield [ ] per cent per annum]]

**☐ Index-linked Interest Notes**

[ ]

(set forth details in full here (including index/formula, basis for calculating interest and fall back provisions))]

**Day Count Fraction<sup>9</sup>**

- ☐ Actual/Actual (ICMA Rule 251)
- ☐ Actual/Actual (ISDA) (Actual/365)
- ☐ Actual/365 (Fixed)
- ☐ Actual/360
- ☐ 30/360 or 360/360 (Bond Basis)
- ☐ 30E/360 (Eurobond Basis)
- ☐ Other

**PAYMENTS (§ 4)**

**Payment Business Day**

Relevant Financial Centre(s) (specify all) [ ]

**REDEMPTION (§ 5)**

**Final Redemption**

Maturity Date [ ]

Redemption Month [ ]

Final Redemption Amount [ ]

☐ Principal amount

☐ Final Redemption Amount (per Specified Denomination) [ ]

**Early Redemption**

**Early Redemption for Reasons of Taxation** [Yes/No]

**Early Redemption at the Option of the Issuer** [Yes/No]

Minimum Redemption Amount [ ]

Higher Redemption Amount [ ]

---

<sup>9</sup> Complete for all Notes.

|                                         |         |
|-----------------------------------------|---------|
| Call Redemption Date(s)                 | [     ] |
| Call Redemption Amount(s)               | [     ] |
| Minimum Notice to Holders <sup>10</sup> | [     ] |
| Maximum Notice to Holders               | [     ] |

**Early Redemption at the Option of a Holder** [Yes/No]

|                                                    |              |
|----------------------------------------------------|--------------|
| Put Redemption Date(s)                             | [     ]      |
| Put Redemption Amount(s)                           | [     ]      |
| Minimum Notice to Issuer <sup>11</sup>             | [     ] days |
| Maximum Notice to Issuer (never more than 60 days) | [     ] days |

### Early Redemption Amount

Zero Coupon Notes:

|                                         |         |
|-----------------------------------------|---------|
| <input type="checkbox"/> Discount Basis | [     ] |
| <input type="checkbox"/> Accrued Basis  | [     ] |
| Reference Price                         | [     ] |
| Amortisation Yield                      | [     ] |

### FISCAL AGENT [,] [AND] [PAYING AGENT[S]] [AND CALCULATION AGENT] (§ 6)

Fiscal Agent

Calculation Agent/specified office

|                                                                                             |         |
|---------------------------------------------------------------------------------------------|---------|
| <input type="checkbox"/> A-Bank<br>[street, postal code, city, Federal Republic of Germany] |         |
| <input type="checkbox"/> Other (specify)                                                    | [     ] |
| Required location of Calculation Agent (specify)                                            | [     ] |
| <input type="checkbox"/> Additional Paying Agent(s)/specified office(s)                     | [     ] |

### TAXATION (§ 7)

|                    |          |
|--------------------|----------|
| Gross-up provision | [Yes/No] |
|--------------------|----------|

### NOTICES (§ 12)

#### Place and medium of publication

☐ Federal Republic of Germany (electronic Federal Gazette)

<sup>10</sup> Euroclear Bank SA/NV requires a minimum notice period of 5 business days.

<sup>11</sup> Euroclear Bank SA/NV requires a minimum notice period of 5 business days.

☐ Grand Duchy of Luxembourg [(Luxemburger Wort) / (Tageblatt (Luxembourg))]

☐ Other (specify) [ ]

☐ Website of the Luxembourg Stock Exchange (*www.bourse.lu*)

**Governing Law**

German Law

### PART III / 1

|                                                                                                                         |
|-------------------------------------------------------------------------------------------------------------------------|
| <b>FINAL TERMS / ADDITIONAL INFORMATION RELATED TO NOTES WITH A SPECIFIED<br/>DENOMINATION OF LESS THAN EUR 100,000</b> |
|-------------------------------------------------------------------------------------------------------------------------|

#### A. ADDITIONAL RISK FACTORS<sup>12</sup>

[not applicable] [insert details]

#### B. IMPORTANT INFORMATION

##### Interest of natural and legal persons involved in the issue/offer

☐ Save as discussed in the Prospectus under “Interests of Natural and Legal Persons involved in the Issue/Offer”, so far as the Issuer is aware, no person involved in the issue of the Notes has an interest material to the offer.

☐ Other interest (specify)

[None] [specify details]

##### Reasons for the offer<sup>13</sup>

[None] [specify details]

Estimated net amount of the proceeds [ ]

Estimated total expenses of the issue [ ]

#### C. INFORMATION CONCERNING THE NOTES TO BE OFFERED/ADMITTED TO TRADING

##### Eurosystem eligibility

☐ Intended to be held in a manner which would allow Eurosystem eligibility (NGN)

☐ Intended to be held in a manner which would allow Eurosystem eligibility (CGN)

☐ Not applicable

<sup>12</sup> Unless specified in the Prospectus.

<sup>13</sup> See “Use of Proceeds” wording in the Prospectus. If reasons for the offer are different from making profit and/or hedging certain risks include those reasons here.

## Securities Identification Numbers

Common Code [ ]

ISIN Code [ ]

German Securities Code [ ]

Any other securities number [ ]

**Yield** [ ]

[(if Notes are not redeemed prior to maturity)]<sup>14</sup>

Method of calculating the yield

☐ ICMA method: The ICMA method determines the effective interest rate of notes taking into account accrued interest on a daily basis

☐ Specify other method  
*Andere Methode angeben*

☐ **Historic Interest Rates**<sup>15</sup>

Details of historic [EURIBOR] [EURO-LIBOR] [LIBOR] [OTHER] rates can be obtained from [insert relevant Screen Page]

☐ **Details Relating to the interest-related Underlying and to the Performance of the [Index] [Formula] [Other Variable]. Explanation of Effect on Value of Investment and Associated Risks and other Information concerning the interest-related Underlying**<sup>16</sup>

[None] [specify details here]

**[Underlying is a Security]**<sup>17</sup>

## Securities Identification Numbers

Common Code [ ]

ISIN [ ]

German Securities Code [ ]

Any other securities number [ ]

Details of where information about the security can be obtained [ ]

## **[Underlying is an Index]**

Name of index [ ]

<sup>14</sup> Only applicable for Fixed Rate Notes.

<sup>15</sup> Only applicable for Floating Rate Notes.

<sup>16</sup> Only applicable for Index-linked Interest or other Variable Linked Notes: Need to include details of where information relating to past and future performance and volatility of the index/formula/other variable can be obtained. Need to include a clear and comprehensive explanation of how the value of the investment is affected by the underlying and the circumstances when risks are most evident.

<sup>17</sup> Insert name of relevant issuer.

[Description of index<sup>18</sup>] / [Details of where information about the index can be obtained<sup>19</sup>] [ ]

[insert details here]]

**[Underlying is an Interest Rate**

Description of interest rate / Details of where information about the interest rate can be obtained [ ]

[insert details here]]

**[Underlying is a Basket of Underlyings**

Weightings of each underlying in the basket<sup>20</sup>

[insert details here]]

**Comprehensive explanation of how the value of the investment is affected by the underlying and the circumstances when risks are most evident**

[insert details here]

**Market disruption or settlement disruption events that may affect the underlying<sup>21</sup>**

[insert details here]

**Adjustment rules with relation to events concerning the underlying**

[insert details here]

☐ **Details Relating to the Performance of Rate(s) of Exchange and Explanation of Effect on Value of Investment<sup>22</sup>**

[specify details here]

**Restrictions on the free transferability of the Notes**

[None]

**Settlement procedure**

[specify details]

**Method of return payments, payment/delivery date, method of calculation**

[specify details]

---

<sup>18</sup> Only applicable, if the index is composed by the Issuer.

<sup>19</sup> Only applicable, if the index is not composed by the Issuer.

<sup>20</sup> Where the underlying does not fall within the categories Index/Interest Rate/Basket of Underlyings, include equivalent information.

<sup>21</sup> To be completed only if applicable.

<sup>22</sup> Only applicable for Dual Currency Notes. Need to include details of where past and future performance and volatility of the relevant rate(s) can be obtained. Need to include a clear and comprehensive explanation of how the value of the investment is affected by the underlying and the circumstances when the risks are most evident.

#### **D. TERMS AND CONDITIONS OF THE OFFER**

Conditions to which the offer is subject

[None] [specify details]

Total amount of the issue/offer and description of the arrangements and time for announcing to the public the amount of the offer

[not applicable] [specify details]

Time period, including any possible amendments, during which the offer will be open

[not applicable] [specify details]

Description of the application process

[not applicable] [specify details]

A description of the possibility to reduce subscriptions and the manner for refunding excess amount paid by applicants

[not applicable] [specify details]

Details of the minimum and/or maximum amount of application, (whether in number of Notes or aggregate amount to invest)

[not applicable] [specify details]

Method and time limits for paying up the Notes and for delivery of the Notes

[not applicable] [specify details]

Manner and date in which results of the offer are to be made public

[not applicable] [specify details]

The procedure for the exercise of any right of pre-emption, the negotiability of subscription rights and the treatment of subscription rights not exercised

[not applicable] [specify details]

Various categories of potential investors to which the Notes are offered

☐ Qualified Investors

☐ Non-qualified Investors

☐ Qualified and Non-qualified Investors

If the offer is being made simultaneously in the markets of two or more countries and if a tranche has been or is being reserved for certain of these, indicate any such tranche

[not applicable] [specify details]

Process for notification to applicants of the amount allotted and indication whether dealing may begin before notification is made

[not applicable] [specify details]

Method of determining the offered price and the process for its disclosure. Indicate the amount of any expenses and taxes specifically charged to the subscriber or purchaser

[not applicable] [specify details]

Expected price at which the Notes will be offered/method of determining the price and the process for its disclosure and amount of any expenses and taxes specifically charged to the subscriber or purchaser

[not applicable] [specify details]

Name and address of the co-ordinator(s) of the global offer or of single parts of the offer and, to the extent known to the Issuer or the offeror, or the placers in the various countries where the offer takes place

[not applicable] [specify details]

**Method of distribution**

[insert details]

☐ Non-syndicated

☐ Syndicated

**Management Details including form of commitment**

Specify Management Group or Dealer(s) (including address) [ ]

- firm commitment [ ]

- no firm commitment / best efforts arrangements [ ]

**Commissions**

Management/Underwriting Commission (specify) [ ]

Selling Concession (specify) [ ]

Listing Commission (specify) [ ]

Specify other [ ]

**Stabilising Dealer/Manager**

[None/insert details]

**Subscription Agreement** [ ]

- Date of Subscription Agreement

- General features of the Subscription Agreement

**Date when the oral agreement on the issue of the Notes has been reached** [ ]

## E. ADMISSION TO TRADING, LISTING AND DEALING ARRANGEMENTS

### Admission(s) to Trading and Listing(s)

[Yes/No]

☐ Luxembourg Stock Exchange

☐ Admission: Regulated Market “*Bourse de Luxembourg*” / Listing: Official List

☐ Euro MTF (the exchange regulated market operated by Luxembourg Stock Exchange)

☐ Frankfurt Stock Exchange

☐ Regulated Market

☐ Other (insert details)

[ ]

**Date of admission**<sup>23</sup>

[ ]

All markets appearing on the list of regulated markets issued by the European Commission or equivalent markets on which, to the knowledge of the Issuer, Notes of the same class of the Notes to be offered or admitted to trading are already admitted to trading<sup>24</sup>

☐ Luxembourg Stock Exchange (*Bourse de Luxembourg*)  
*Luxemburger Wertpapierbörse (Bourse de Luxembourg)*

☐ Frankfurt Stock Exchange

☐ Other (insert details)

Name and address of the entities which have a firm commitment to act as intermediaries in secondary trading, providing liquidity through bid and offer rates and description of the main terms of their commitment

[not applicable] [specify details]

## PART III / 2

|                                                                                                                        |
|------------------------------------------------------------------------------------------------------------------------|
| <b>FINAL TERMS / ADDITIONAL INFORMATION RELATED TO NOTES WITH A SPECIFIED<br/>DENOMINATION OF AT LEAST EUR 100,000</b> |
|------------------------------------------------------------------------------------------------------------------------|

### A. ADDITIONAL RISK FACTORS<sup>25</sup>

[None] [specify details]

### B. IMPORTANT INFORMATION

#### Interests of natural and legal persons involved in the issue/offer

☐ Save as discussed in the Prospectus under “Interests of Natural and Legal Persons involved in the Issue/Offer”, so far as the Issuer is aware, no person involved in the issue of the Notes has an interest material to the offer.

☐ Other interest (specify)

<sup>23</sup> To be completed only if known.

<sup>24</sup> Only to be completed in case of increase(s) of the initial issue.

<sup>25</sup> Unless specified in the Prospectus.

## C. INFORMATION CONCERNING THE NOTES TO BE ADMITTED TO TRADING

### Eurosystem eligibility

- ☐ Intended to be held in a manner which would allow Eurosystem eligibility (NGN)
- ☐ Intended to be held in a manner which would allow Eurosystem eligibility (CGN)
- ☐ Not applicable

### Securities Identification Numbers

Common Code [       ]

ISIN Code [       ]

German Securities Code [       ]

Any other securities number [       ]

Yield on issue price<sup>26</sup> [       ]

Restrictions on the free transferability of the Notes [None]

Method of distribution [insert details]

☐ Non-syndicated

☐ Syndicated

### Management Details

Dealer(s)/Management Group (specify) [insert name and adress]

### Commissions

Management/Underwriting Commission (specify) [       ]

Selling Concession (specify) [       ]

Listing Commission (specify) [       ]

Other (specify)

Stabilising Manager [None/insert details]

Stabilisation Period<sup>27</sup> [insert commencement and end of the Stabilisation Period]

## D. ADMISSION TO TRADING, LISTING AND DEALING ARRANGEMENTS

Admission(s) to Trading and Listing(s) [Yes/No]

☐ Luxembourg Stock Exchange

☐ Admission: Regulated Market "*Bourse de Luxembourg*"/Listing: Official List

☐ Euro MTF (the exchange regulated market operated by Luxembourg Stock Exchange)

<sup>26</sup> Only applicable for Fixed Rate Notes. The calculation of yield is carried out on the basis of the Issue Price.

<sup>27</sup> Complete only in respect of any stabilisation action to which the laws of the Federal Republic of Germany apply.

☐ Frankfurt Stock Exchange

☐ Regulated Market

☐ Other (insert details) [ ]

Estimate of the total expenses related to admission to trading [ ]

### PART III / 3

#### FINAL TERMS / ADDITIONAL INFORMATION RELATED TO ALL NOTES

##### [Post-issuance Information]

The Issuer will not provide any post-issuance information as from [insert Issue Date for the Notes], with regard to the interest-related Underlying, except if required by any applicable laws and regulations.]

**The Selling Restrictions set out in the Prospectus shall apply.**

☐ TEFRA C

☐ TEFRA D

☐ Neither TEFRA C nor TEFRA D

Non-exempt Offer [not applicable] [applicable]<sup>28</sup>

Additional Selling Restrictions (specify) [ ]

**Other relevant terms and conditions (specify)** [ ]

[If a potential purchaser acquires the Notes from a third party, then the purchase price payable by the potential purchaser may contain third-party proceeds the amount of which is specified by the third party.]

**Rating**<sup>29</sup> [ ]

[Insert name of the rating agency] is established in the European Community and registered under Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies.

<sup>28</sup> Not applicable under German law. If applicable in the relevant jurisdiction, insert: "An offer of the Notes may be made by the Dealers [and [specify, if applicable]] other than pursuant to Article 3 (2) of the Prospectus Directive in [specify relevant Member State(s) – which must be jurisdictions where the Prospectus and any supplements have been passported] during the period from [•] until [•]".

<sup>29</sup> Do not complete, if the Notes are not rated on an individual basis. In case of Notes with a Specified Denomination of less than EUR 100,000, need to include a brief explanation of the meaning of the ratings if this has been previously published by the rating agency.

**[Listing:**<sup>30</sup>

The above Final Terms comprise the details required to list this issue of Notes pursuant to the EUR XX,000,000,000 Debt Issuance Programme of XY-Bank Aktiengesellschaft (as from **[insert Issue Date for the Notes]**).

**Responsibility:**

The Issuer accepts responsibility for the information contained in these Final Terms as set out in the section “Responsibility Statement” of the Prospectus on page •, provided that, with respect to any information included herein and specified to be sourced from a third party (i) the Issuer confirms that any such information has been accurately reproduced and as far as the Issuer is aware and is able to ascertain from information available to it from such third party, no facts have been omitted which would render the reproduced information inaccurate or misleading and (ii) the Issuer has not independently verified any such information and accepts no responsibility for the accuracy thereof.

**XY-Bank Aktiengesellschaft**

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**[Name & title of signatory]**

***[Name und Titel des Unterzeichnenden]***

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<sup>30</sup> Include only in the version of the Final Terms which is submitted to the relevant stock exchange in the case of Notes to be listed on such stock exchange.