

Press Release:

Judgment by Bonn Regional Court does not take role of custodian banks into account; further clarification needed

- **M.M. Warburg & CO Gruppe GmbH (“the Warburg Group”) considering remedies**
- **Claim for confiscation covered by provisions and by principal shareholders’ assumption of personal liability**

Hamburg, March 18, 2020 - **The Warburg Group will consider the remedies available to it against the confiscation order issued together with today’s judgment by the Bonn Regional Court, and may lodge an appeal. The proceedings did not result in the necessary clarification involving all companies and individuals involved in the transactions. The financial risks from the order are fully covered by provisions, with the consent of the supervisory authorities. Warburg Bank continues to meet all regulatory capital requirements. The Court did not make any findings regarding criminal activities by the Warburg Group or its representatives.**

In the Warburg Group’s opinion, the confiscation ordered by the Bonn Regional Court in connection with the conviction of two London-based share traders is wrong. The Group was treated as a secondary party (Nebenbeteiligte) to the proceedings from whom the Court can order the confiscation of so-called “proceeds of crime” even though the party was not a perpetrator or participant (section 73b of the Strafgesetzbuch (StGB – German Penal Code)). The Court has now issued a confiscation order together with its judgment without making any findings regarding the Warburg Group’s guilt or that of the representatives acting on its behalf. Since the judgment did not take into account the role of the domestic custodian banks, among other things, the chance to fully clarify the cum-ex trading scheme was missed.

The facts of the case are as follows:

Between 2007 and 2011, Warburg Bank – a Warburg Group company – executed transactions involving German shares over the dividend date for which Deutsche Bank acted as the domestic custodian bank on behalf of the foreign seller of the shares, ICAP. The profits generated during these five years from the futures and, in individual cases, as a result of the purchase and sale of the shares totaled approximately EUR 68 million (EUR 46 million after tax), while the investment income tax credited totaled EUR 169 million.

The Warburg Group paid the full purchase price for the shares, including the portion of the investment income tax whose entire amount is now the subject of the confiscation order, to Deutsche Bank AG (Frankfurt) in its capacity as the seller’s domestic custodian bank. As the institution executing the sell order, the latter would have been required in the case of short sales by section 44(1) sentence 3 of the Einkommensteuergesetz (EStG – German Income

Tax Act) (old version) to remit the tax included in the gross purchase price received to the tax authorities before transmitting the remainder abroad as part of ICAP's cover transaction.

The substantial difference between the profits and the investment income tax alone shows that the question of where these sums ended up should have been taken into account in order to arrive at a correct decision. The final report of the German Parliament's committee of inquiry on the cum-ex transactions, which was published in June 2017, already demanded clarification of the role played by the domestic custodian banks that were responsible for remitting the investment income tax. However, Deutsche Bank, which in this case was required to withhold and remit the tax, was not made a party to the proceedings. As a result, the proceedings did not clarify whether the custodian banks will be held liable for failing to comply with their duties under the Jahressteuergesetz 2007 (German Annual Tax Act 2007) and whether failures by official bodies contributed to this. It is questionable whether the judgment does justice to these political dimensions. The fact that the Court did not fully grant the Warburg Group's applications to admit evidence and decided to curtail the proceedings is particularly regrettable.

At no point did the Warburg Group intend to engage in or facilitate share transactions contravening tax law, or to participate in any collusion to this effect. In particular, there was never any intention of making incorrect declarations to the tax authorities or of asserting unjustified claims for tax refunds. Quite apart from questions of substantive criminal law, it is important to the Warburg Group that it should not benefit in any way from share transactions that are considered to have been in breach of tax law. An explicit declaration to this effect was also made to the Bonn Regional Court. In agreement with the German tax authorities, a payment of approximately EUR 50 million will be made in the next few days in relation to the tax returns for 2010 and 2011; this was not taken into account although the Court was aware of it.

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