

**We invest in winners.** That means we invest in strong companies that create value for their shareholders with sustainable business models, solid balance sheets and high margins. We keep the risks low and invest when our position is fuelled by a positive event. We refer to that as the combination of value and event.

### **Eurohypo Capital Funding Trust I**

With total assets of about € 200bn, Eurohypo AG is Germany's largest mortgage bank. It has been posting losses for four years. The result for 2011 is burdened by write-downs on Greek bonds. After the European Commission made government support for Commerzbank conditional upon the requirement that the bank must divest its wholly-owned subsidiary Eurohypo AG by the end of 2014, the government financing business, which is worth around € 100bn, is being run down and discontinued.

In 2003 Eurohypo AG issued profit-linked hybrid bonds through a US "trust" ('trust securities') in a total nominal amount of € 900m. The terms of issue provide for an annual coupon of 6.445% if the bank has "distributable profits", in other words a balance sheet profit. In 2007 a control agreement was concluded between Eurohypo AG and Commerzbank Inlandsbanken GmbH under which Eurohypo AG, as part of a contract-based group, lost its business independence and has been placed since under the direction of the parent company. At the same time a profit and loss transfer agreement was concluded between the two companies. This agreement places Eurohypo AG under the obligation to transfer its profits and Commerzbank Inlandsbanken GmbH under the obligation pursuant to Section 302 paragraph 1 of the German Stock Corporation Act (AktG) to square any losses

during the term of the agreement. This contractually agreed surrender of its independence and the right to generate profits of its own was in breach of the contractual obligations to the 'trusts' and the holders of the 'trust securities'.

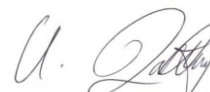
While the coupons for 2008 were still paid despite a loss for the year (before the loss was squared by the parent company), they were not paid for 2009 and the years thereafter in order to ensure that the bonds qualified as part of the bank's regulatory equity capital. In our view, the passing-up of the coupon payments is contrary to law because Eurohypo AG cannot make profits or losses but only a zero result during the term of the agreements. The creditors merit just as much protection as the shareholders. The latter received protection in 2007 through compensation (Section 304 AktG) and indemnity (Section 305 AktG) on the basis of the positive budget planning figures unaffected by the control and profit and loss transfer. These figures include the coupon payments for the holders of the hybrid bonds.

We are therefore very confident that the US class actions will be successful and that we will be entitled to the passed-up and future coupons. A liquidation of the bond at par is also conceivable. Commerzbank's voluntary offer in January 2011 to buy back the bonds at 57% is not reasonable. The current price of 35% falls even further short of that.

Sincerely yours



J. Henrik Muhle



Dr. Uwe Rathausky