

# McGladrey & Pullen

Certified Public Accountants

## **DZ BANK Capital Funding Trust III**

Consolidated Financial Report

December 31, 2009

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# McGladrey & Pullen

Certified Public Accountants

## Independent Auditor's Report

To the Board of Directors  
DZ BANK Capital Funding Trust III  
New York, New York

We have audited the accompanying consolidated balance sheets of DZ BANK Capital Funding Trust III and subsidiary (the "Company") as of December 31, 2009 and 2008, and the related consolidated statements of income, changes in equity and cash flows for the years then ended. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of DZ BANK Capital Funding Trust III and subsidiary as of December 31, 2009 and 2008, and the results of their operations and their cash flows for the years then ended in conformity with accounting principles generally accepted in the United States of America.

*McGladrey & Pullen, LLP*

New York, New York  
March 19, 2010

## DZ BANK Capital Funding Trust III

### Consolidated Balance Sheets

December 31, 2009 and 2008

(in Euros and thousands, except share and per share amounts)

	2009	2008
<b>ASSETS</b>		
Subordinated Note Receivable From DZ BANK	€ 350,003	€ 350,003
Accrued Interest on Subordinated Note Receivable from DZ BANK	<u>540</u>	<u>1,206</u>
<b>Total assets</b>	<b><u>€ 350,543</u></b>	<b><u>€ 351,209</u></b>
<b>EQUITY</b>		
Shareholders' Equity:		
Preferred securities, liquidation preference €1,000 per security; 350,000 securities authorized, issued and outstanding at December 31, 2009 and 2008	€ 350,000	€ 350,000
Common security, €1,000 par value; one security authorized, issued and outstanding, at December 31, 2009 and 2008	1	1
Retained earnings	<u>540</u>	<u>1,206</u>
<b>Total shareholders' equity</b>	<b>350,541</b>	<b>351,207</b>
Noncontrolling interest	<u>2</u>	<u>2</u>
<b>Total equity</b>	<b><u>€ 350,543</u></b>	<b><u>€ 351,209</u></b>

See Notes to Consolidated Financial Statements.

**DZ BANK Capital Funding Trust III**

**Consolidated Statements of Income**  
**Years Ended December 31, 2009 and 2008**  
**(in Euros and thousands)**

	<b>2009</b>	2008
Interest Income on Subordinated Note Receivable from DZ BANK	<u>€ 11,241</u>	<u>€ 22,086</u>
<b>Net income</b>	<u><u>€ 11,241</u></u>	<u><u>€ 22,086</u></u>

See Notes to Consolidated Financial Statements.

DZ BANK Capital Funding Trust III

Consolidated Statements of Changes in Equity  
 Years Ended December 31, 2009 and 2008  
 (in Euros and thousands, except per share)

	Preferred Securities	Common Security	Retained Earnings	Noncontrolling Interest	Total
Balance, January 1, 2008	€ 350,000	€ 1	€ 1,545	€ 2	€ 351,548
Net Income	-	-	22,086	-	22,086
Cash Dividends Declared:					
Preferred securities (€64.07 per share)	-	-	(22,425)	-	(22,425)
Trust common security (€64.07 per share)	-	-	-	-	-
Balance, December 31, 2008	350,000	1	1,206	2	351,209
Net Income	-	-	11,241	-	11,241
Cash Dividends Declared:					
Preferred securities (€34.02 per share)	-	-	(11,907)	-	(11,907)
Trust common security (€34.02 per share)	-	-	-	-	-
<b>Balance, December 31, 2009</b>	<b>€ 350,000</b>	<b>€ 1</b>	<b>€ 540</b>	<b>€ 2</b>	<b>€ 350,543</b>

See Notes to Consolidated Financial Statements.

## DZ BANK Capital Funding Trust III

### Consolidated Statements of Cash Flows Years Ended December 31, 2009 and 2008 (in Euros and thousands)

	2009	2008
Cash Flows From Operating Activities:		
Net income	€ 11,241	€ 22,086
Adjustments to reconcile net income to net cash provided by operating activities:		
Accrued interest on subordinated note receivable	<u>666</u>	<u>339</u>
<b>Net cash provided by operating activities</b>	<u>11,907</u>	<u>22,425</u>
Cash Flows From Financing Activity - Cash dividends paid	<u>(11,907)</u>	<u>(22,425)</u>
<b>Net cash used in financing activity</b>	<u>(11,907)</u>	<u>(22,425)</u>
<b>Change in cash and cash equivalents</b>	-	-
Cash and Cash Equivalents:		
Beginning	<u>-</u>	<u>-</u>
Ending	<u>€ -</u>	<u>€ -</u>

See Notes to Consolidated Financial Statements.

## DZ BANK Capital Funding Trust III

### Notes to Consolidated Financial Statements

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#### Note 1. Organization and Basis of Presentation

DZ BANK Capital Funding Trust III (the "Trust") is a statutory trust under Chapter 38 of Title 12 of the Delaware Code formed on February 16, 2005 for the purpose of entering into various agreements, to issue and sell common and preferred securities, and to use the proceeds from the issuance of common and preferred securities to acquire, hold and distribute preferred securities issued by DZ BANK Capital Funding LLC III as defined in the Amended and Restated Trust Agreement of DZ BANK Capital Funding Trust III dated as of June 6, 2005 (the "Trust Agreement"). The Trust's common security is owned by DZ BANK AG ("DZ BANK" or the "Parent"), a German banking corporation rated A+ by Standard & Poor's at both December 31, 2009 and 2008.

The Trust was initially capitalized on June 6, 2005 with the issuance to DZ BANK of one share of the Trust's common security, €1,000 par value (the "Trust Common Security"), raising capital of €1,000. In June 2005, the Trust commenced operations concurrent with the offering and issuance of 200,000 noncumulative Trust Preferred Securities, liquidation preference €1,000 per security, (the "Trust Preferred Securities") to various institutional buyers. The entire capital was used to acquire Class B Preferred Securities issued by DZ BANK Capital Funding LLC III (the "LLC Class B Preferred Securities"). DZ BANK Capital Funding LLC III in turn used the proceeds to acquire subordinated notes issued by DZ BANK. In July 2005, DZ BANK issued an additional subordinated note in the amount of €100,000,000. Simultaneously, DZ BANK Capital Funding LLC III issued an additional 100,000 shares of LLC Preferred Securities. These LLC Preferred Securities were acquired by the Trust and funded through an additional issuance of 100,000 shares of Trust Preferred Securities with identical terms to the authorized, issued and outstanding Trust Preferred Securities (first increase). In October 2005, DZ BANK issued a subordinated note in the amount of €50,000,000. Simultaneously, DZ BANK Capital Funding LLC III issued an additional 50,000 shares of LLC Class B Preferred Securities. These LLC Class B Preferred Securities were acquired by the Trust and funded through an additional issuance of 500,000 shares of Trust Preferred Securities with identical terms to the authorized, issued and outstanding Trust Preferred Securities (second increase). There have not been any changes in the holder of the common security for the years ended December 31, 2009 and 2008.

The LLC Class B Preferred Securities are redeemable at the option of DZ BANK Capital Funding LLC III, in whole but not in part, on the Initial Redemption Date on June 6, 2012, or on any payment date thereafter, at the Redemption Amount in accordance with the Amended and Restated Limited Liability Company Agreement of DZ BANK Capital Funding LLC III dated June 6, 2005 (the "LLC Agreement"). Subject to the provisions contained in the Trust Agreement, upon redemption of the LLC Class B Preferred Securities, the Trust shall apply the Redemption Amount received in connection therewith to redeem pro rata the Trust Common Security and the Trust Preferred Securities. Prior to the Initial Redemption Date, upon the occurrence of a Special Redemption Event, as defined in the Trust Agreement as (i) a regulatory event with respect to the Trust or DZ BANK Capital Funding LLC III, (ii) a tax event solely with respect to DZ BANK Capital Funding LLC III or (iii) an investment company act event solely with respect to DZ BANK Capital Funding LLC III, the Trust Preferred Securities may be redeemed in full at any time upon at least 30 days' prior notice to holders of the Trust Preferred Securities. There was no Special Redemption Event as of December 31, 2009 and 2008.

The consolidated financial statements are presented in Euros, which is the functional currency of the Trust, DZ BANK Capital Funding LLC III and the Trust's Parent, since its operations are a direct and integral component or extension of the Parent's operations.

#### Note 2. Summary of Significant Accounting Policies

Principles of Consolidation: The consolidated financial statements include the accounts of the Trust and DZ BANK Capital Funding LLC III, collectively referred to as the "Company". The Trust consolidates entities in which the Trust absorbs a majority of the entity's expected losses or, if no party absorbs a majority of the expected losses, when the Trust receives a majority of the entity's expected residual return. All material intercompany transactions and accounts have been eliminated.



## DZ BANK Capital Funding Trust III

### Notes to Consolidated Financial Statements

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#### Note 2. Summary of Significant Accounting Policies (Continued)

Subordinated Note Receivable from DZ BANK: This represents €350,003,000 subordinated notes issued by DZ BANK, a related party, and are due June 6, 2035. Interest accrues on a quarterly basis for each distribution period based on the applicable 3-month EURIBOR plus 1.5%. The Subordinated Note Receivable from DZ BANK is carried at amortized cost.

Dividend Distributions: The holders of the Trust Common Security and the Trust Preferred Securities (together, the "Trust Securities") are entitled to receive cash distributions when the Trust receives distributions on the Subordinated Note Receivable from DZ BANK. These cash distributions are payable on a noncumulative basis quarterly in arrears.

Distributions on the Trust Securities will be calculated by the calculation agent on the liquidation preference of the Trust Securities on a quarterly basis for each distribution period on the applicable 3-month EURIBOR plus 1.5% and any additional adjustments, as defined in the Trust Agreement. The right of the holders of the Trust Securities to receive distributions is noncumulative.

For the year ended December 31, 2009, the Trust has made dividend distributions on Trust Preferred Securities and Trust Common Security of €11,907,000 and €34, respectively. For the year ended December 31, 2008, the Trust has made dividend distributions on Trust Preferred Securities and Trust Common Security of €22,424,500 and €64, respectively.

Allocation of Net Income: Net income is allocated to the Trust Common Security and Trust Preferred Securities as defined in the Trust Agreement. The undistributed retained earnings of €539,588 and €1,206,103 as of December 31, 2009 and 2008, respectively, will be allocated on a pro-rata basis to the Trust Common Security, the Trust Preferred Securities and the noncontrolling interest.

Noncontrolling Interest: As of January 1, 2009, the Company adopted new accounting guidance (codified as Financial Accounting Standards Board ("FASB") Accounting Standards Codification (the "Codification" or "ASC") 810 and formerly Statements of Financial Accounting Standards ("SFAS") No. 160, *Noncontrolling Interests in Consolidated Financial Statements - An Amendment of ARB No. 51*), that clarifies that a noncontrolling interest in a subsidiary is an ownership interest in the consolidated entity that should be reported as equity in the consolidated financial statements. Dividend distributions have been made on noncontrolling interest of €68 and €128 for the years ended December 31, 2009 and 2008, respectively.

Income Taxes: The Trust expects to be treated as a grantor trust for U.S. federal income tax purposes, and not as a business entity subject to tax as a corporation. For United States federal income tax purposes, holders of the Trust Preferred Securities are considered the owners of the LLC Preferred Securities held by the Trust. Each United States holder of Trust Preferred Securities is required to include in its gross income its distributive share of the gross income attributable to the LLC Preferred Securities.

DZ BANK Capital Funding LLC III expects to be treated as a partnership for U.S. federal income tax purposes. As a partnership is not a taxable entity, DZ BANK Capital Funding LLC III is not subject to U.S. federal, state and local income tax on its income. Instead, each holder of a security is required to take into account its allocable share of income, gain, loss and deduction of the partnership in computing its U.S. federal tax liability.

Accordingly, the Company has made no provision for income taxes in the accompanying consolidated statements of income.

## DZ BANK Capital Funding Trust III

### Notes to Consolidated Financial Statements

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#### Note 2. Summary of Significant Accounting Policies (Continued)

The FASB issued new guidance on accounting for uncertainty in income taxes. The Company adopted this new guidance for the year ended December 31, 2009. Management evaluated the Company's tax positions and concluded that the Company had taken no uncertain tax positions that require adjustment to the consolidated financial statements to comply with the provisions of this guidance. With few exceptions, the Company is no longer subject to income tax examinations by the U.S. federal, state or local tax authorities for years before 2006.

Use of Estimates in the Preparation of Financial Statements: The consolidated financial statements are prepared in conformity with accounting principles generally accepted in the United States of America, which require management to make estimates and assumptions, including those regarding financial instrument valuations, that affect the related amounts reported in the consolidated financial statements and accompanying notes. Actual results could differ materially from these estimates.

Statements of Cash Flows: For purposes of reporting cash flows, cash and cash equivalents include cash due from banks, and short-term investments with original maturities of three months or less. At December 31, 2009 and 2008, the Company did not have any cash and cash equivalents.

Recent Accounting Pronouncements: In April 2009, the FASB issued Staff Position FAS 107-1 and APB 28-1, *Interim Disclosures about Fair Value of Financial Instruments* ("FSP FAS 107-1" and "APB 28-1"), now included in the Codification as part of FASB ASC 270-10-05. This standard requires disclosures about fair value of financial instruments in interim and annual financial statements. The Company adopted this standard as of January 1, 2009. The adoption did not have an impact on the Company's consolidated financial position or results of operations.

In June 2009, the FASB issued SFAS No. 167, *Amendments to FASB Interpretation No. 46(R)*, now included in the Codification as part of FASB ASC 810-10 and amended by Accounting Standards Update ("ASU") No. 2009-17, *Improvements to Financial Reporting by Enterprises Involved with Variable Interest Entities*, to amend certain requirements of FASB Interpretation No. 46 (revised December 2003), *Consolidation of Variable Interest Entities*, to improve financial reporting by enterprises involved with Variable Interest Entities and to provide more relevant and reliable information to users of financial statements. The statement is effective as of the beginning of each reporting entity's first annual reporting period that begins after November 15, 2009, for interim periods within that first annual reporting period, and for interim and annual reporting periods thereafter. Earlier application is prohibited. The Company is reviewing the requirements of FASB No. 167 and is assessing the impact that the adoption of this statement will have on the Company's consolidated financial statements.

In June 2009, the FASB issued SFAS No. 168, *The FASB Accounting Standards Codification and the Hierarchy of Generally Accepted Accounting Principles – a replacement of FASB Statement No. 162*. The change initiated by this statement is now included in the Codification as FASB ASC 105-10-10 and establishes the Codification as the source of authoritative principles and standards recognized by the FASB to be applied by nongovernmental entities in the preparation of financial statements in conformity with generally accepted accounting principles ("GAAP"). Rules and interpretive releases of the Securities and Exchange Commission (the "SEC") under authority of federal securities laws are also sources of authoritative GAAP for SEC registrants. On the effective date of this standard, the Codification superseded all then-existing non-SEC accounting and reporting standards. All other non-grandfathered non-SEC accounting literature not included in the Codification became non-authoritative. This standard is effective for financial statements issued for interim and annual periods ending after September 15, 2009. In the FASB's view, the Codification does not change GAAP, except for those nonpublic nongovernmental entities that must apply the American Institute of Certified Public Accountants Technical Inquiry Service Section 5100, *Revenue Recognition*, paragraphs 38-76, now included as part of FASB ASC Topic 985. The Company adopted FASB ASC Topic 105-10-10 effective as of January 1, 2009. The adoption did not have an impact on the Company's consolidated financial position or results of operations.

## DZ BANK Capital Funding Trust III

### Notes to Consolidated Financial Statements

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#### Note 2. Summary of Significant Accounting Policies (Continued)

In January 2010, the FASB issued ASU No. 2010-06, *Fair Value Measurements and Disclosures*, to amend certain requirements of FASB ASC 820-10, *Fair Value Measurements and Disclosures*, to improve disclosure requirements that will result in increased transparency in financial reporting. The amendment is effective for interim and annual reporting periods beginning after December 15, 2009, except for the disclosures about purchases, sales, issuances, and settlements in the roll forward of activity in Level 3 fair value measurements. Those disclosures are effective for fiscal years beginning after December 15, 2010, and for interim periods within those fiscal years. Earlier application is permitted. The Company does not believe that the adoption of this amendment will have a material impact on its consolidated financial statements.

Correction of Prior Year's Presentation: The December 31, 2008 financial statements have been restated to reflect consolidation of a previously unconsolidated Variable Interest Entity (the "VIE"). The December 31, 2008 financial statements originally reflected a \$351,207,103 equity investment in the VIE accounted for under the cost method. The VIE had no debt and its sole assets were a \$350,003,000 subordinated note receivable and related accrued interest of \$1,206,110 from DZ BANK. Accordingly, the restated December 31, 2008 consolidated financial statements now reflect \$351,209,110 of subordinated note receivable and related accrued interest from DZ BANK rather than a \$351,207,103 equity investment accounted for under the cost method. There was no effect on net income for the year ended December 31, 2008 or shareholders' equity at December 31, 2008. Consistent with the restated December 31, 2008 consolidated financial statements, the December 31, 2009 consolidated financial statements also reflect consolidation of this VIE. See Note 5 for further details.

#### Note 3. Shareholders' Equity

The Company's noncumulative preferred securities consist of 350,000 shares authorized, issued and outstanding at December 31, 2009 and 2008, each having a liquidation preference, as defined in the Trust Agreement, of €1,000.

The Company's common security consists of one share authorized at €1,000 and outstanding at December 31, 2009 and 2008.

#### Note 4. Related Party Transactions

The Trust's regular trustees, Dr. Florian Straßberger, Carl Amendola, Norah McCann and Tobias Sagan, are employees of DZ BANK New York, and act as managers, as defined in the Trust Agreement. DZ BANK New York provides administrative services to the Company. Currently, the Company does not reimburse DZ BANK New York for these services.

The activities are substantially governed by DZ BANK New York who provides ongoing administrative support. Therefore, the Company's financial condition and results of operations may not necessarily be indicative of those which would have resulted if the Company had operated as an unaffiliated company.

#### Note 5. Variable Interest Entities

In accordance with FASB Interpretation No. 46, Revised ("FIN 46R"), *Consolidation of Variable Interest Entities* (FIN 46R has been incorporated into ASC 810-10), a VIE is defined as an entity with one or more of the following characteristics:

- The equity investment at risk is not sufficient to permit the entity to finance its activities without additional subordinated financial support from other parties;

## DZ BANK Capital Funding Trust III

### Notes to Consolidated Financial Statements

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#### Note 5. Variable Interest Entities (Continued)

- Equity holders either (a) lack direct or indirect ability to make decisions about the entity, (b) are not obligated to absorb expected losses of the entity or (c) do not have the rights to receive expected residual returns of the entity if they occur; or
- Equity holders have voting rights that are not proportionate to their economic interests, and the activities of the entity involve or are conducted on behalf of an investor with a disproportionately small voting interest.

If an entity is deemed to be a VIE, an enterprise that absorbs a majority of the expected losses of the entity is considered the primary beneficiary and must consolidate the VIE.

The Trust purchased LLC Class B Preferred Securities issued by DZ BANK Capital Funding LLC III whose purpose was to acquire subordinated notes issued by DZ BANK. For further details on the transactions, see Note 1. As of December 31, 2009 and 2008, the Trust has determined that its investee is a VIE under ASC 810-10. Furthermore, the Trust has concluded that it is the primary beneficiary of the VIE and, therefore, the Trust has consolidated the VIE under ASC 810-10.

#### Note 6. Fair Value of Financial Instruments

Effective January 1, 2008, the Company adopted FASB ASC No. 820-10, formerly known as SFAS No. 157, *Fair Value Measurements*, which, defines fair value, establishes a framework for measuring fair value under GAAP, and expands disclosures about fair value measurements. As defined in ASC No. 820-10, fair value is the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date.

The following methods and assumptions to determine fair value were used to estimate the fair value of each class of financial instruments for which it is practicable to estimate that value in accordance with ASC No. 825-10 formerly known as SFAS No. 107, *Disclosures About Fair Values of Financial Instruments*:

**Accrued Interest Receivable:** The carrying amount is a reasonable estimate of fair value.

**Subordinated Note Receivable from DZ BANK:** The fair value is based on the quoted market price of the Trust Preferred Securities, which are financial instruments that react to changes in market conditions in a similar way as the Subordinated Note Receivable from DZ BANK.

## DZ BANK Capital Funding Trust III

### Notes to Consolidated Financial Statements

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#### Note 6. Fair Value of Financial Instruments (Continued)

The estimated fair values of the Company's financial instruments as of December 31, 2009 and 2008 are as follows:

	December 31, 2009	
	<u>Carrying Amount</u>	<u>Fair Value</u>
Subordinated Note Receivable from DZ BANK	€ 350,003,000	€ 225,751,935

	December 31, 2008	
	<u>Carrying Amount</u>	<u>Fair Value</u>
Subordinated Note Receivable from DZ BANK	€ 350,003,000	€ 192,501,650

ASC 825-10 requires disclosure of fair value information about financial instruments, whether or not recognized in the consolidated balance sheets, for which it is practicable to estimate that value. ASC 825-10 excludes certain financial instruments from its disclosure requirements. The aggregate fair value amounts presented do not represent the underlying value of the Company.

The estimated fair value amounts for 2009 and 2008 have been measured as of their respective year-ends and have not been reevaluated or updated for purposes of these consolidated financial statements subsequent to those respective dates. As such, the estimated fair values of these financial instruments subsequent to the respective reporting dates may be different than amounts reported at each year-end.

#### Note 7. Subsequent Events

In preparing these consolidated financial statements, the Company has evaluated events and transactions for potential recognition or disclosure through the date the consolidated financial statements are issued.