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Securities Trading Act
(*Wertpapierhandelsgesetz* – WpHG)

- unofficial text -

as published in the announcement of 9 September 1998 (Federal Law Gazette I, p. 2708)

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Part 1
Scope of application, definitions

Section 1
Scope of application

(1) This Act shall apply to the provision of investment services and ancillary services, to on and off-exchange trading in financial instruments, to the conclusion of financial futures and forward transactions, to financial analyses and to changes in the percentage of voting rights held by shareholders of listed companies.

(2) The provisions in parts 3 and 4, as well as sections 30h, 30i, 34b and 34c are also applicable to actions and omissions performed outside of Germany, to the extent that they relate to financial instruments traded on a German stock exchange.

(3) The provisions of parts 3 and 4, as well as sections 34b and 34c shall not apply to transactions carried out for monetary policy purposes or within the framework of public debt management by the European Central Bank, the German Federal Government or one of its funds, a Federal State, the *Deutsche Bundesbank*, a foreign country or its central bank or another body commissioned to conduct such transactions or any person acting for their account.

Section 2
Definitions

(1) Securities within the meaning of this Act, whether or not represented by a certificate, are all categories of transferable securities with the exception of instruments of payment which are by their nature negotiable on the financial markets, in particular

1. shares in companies;

2. other investments equivalent to shares in German or foreign legal persons, partnerships and other enterprises as well as certificates representing shares; and

3. debt securities;

    a) in particular profit-participation certificates and bearer bonds and order bonds as well as certificates representing debt securities;

    b) other securities giving the right to acquire or sell securities specified in nos. 1 and 2 or giving rise to a cash settlement determined by reference to securities, currencies, interest rates or other yields, commodities, indices or measures.

Units in investment funds (*Investmentvermögen*) issued by an asset management company (*Kapitalanlagegesellschaft*) or a foreign investment company (*Investmentgesellschaft*) are also deemed to be securities.

(1a) Money market instruments within the meaning of this Act are any categories of receivables which do not come under the provisions of subsection (1) and are usually traded on the money market with the exception of instruments of payment.

(2) Derivatives within the meaning of this Act are

1. firm contracts or option contracts in the form of acquisitions, swaps or in other forms which are to be settled at a future date and whose values are derived directly or indirectly from the price or value measure of an underlying instrument (futures and forward transactions) relating to the following underlying instruments:

    a. securities or money market instruments;

    b. foreign exchange or units of account;

    c. interest rates or other yields;

    d. indices of the underlying instruments specified in (a), (b) or (c), other financial indices or financial measures; or

    e. derivatives;

2. futures and forward transactions relating to commodities, freight rates, emission allowances, climatic or other physical variables, inflation rates or other economic variables or other assets, indices or measures as underlying instruments, provided

    a. they are cash-settled or grant the party to a contract the right to demand cash settlement without this right being contingent on default or another termination event;

    b. they are concluded on an organised market or a multilateral trading facility; or

    c. in accordance with Article 38 (1) of Commission Regulation (EC) No. 1287/2006 of 10 August 2006 implementing Directive 2004/39/EC of the European Parliament and of the Council as regards record-keeping obligations for investment firms, transaction reporting, market transparency, admission of financial instruments to trading, and defined terms for the purposes of that Directive (OJ EU no. L 241 p. 1), they have the characteristics of other derivatives and are not for commercial purposes and if the conditions set out in Article 38 (4) of this Regulation are not satisfied;

    and if they are not spot contracts within the meaning of Article 38 (2) of Regulation (EC) No. 1287/2006;

3. financial contracts for differences;

4. firm contracts or option contracts in the form of acquisitions, swaps or in other forms which are to be settled at a future date and are intended for the transfer of credit risk (credit derivatives);

5. futures and forward transactions relating to the underlying instruments set out in Article 39 of Regulation (EC) No. 1287/2006 if they satisfy the conditions of no. 2.

(2a) (Repealed)

(2b) Financial instruments within the meaning of this Act are securities within the meaning of subsection (1), money market instruments within the meaning of subsection (1a), derivatives within the meaning of subsection (2) and securities subscription rights.

(2c) Commodities within the meaning of this Act are economic goods of a fungible nature that are capable of being delivered; this includes metals, ores and alloys, agricultural products and energy such as electricity.

(3) Investment services within the meaning of this Act are

1. the purchase or sale of financial instruments in one's own name for the account of others (principal broking services);

2. the continuous offer to buy or sell financial instruments on an organised market or in a multilateral trading facility at prices defined by the offerors themselves, the dealing on own account outside an organised market or a multilateral trading facility on a frequent, organised and systematic basis by providing a system accessible to third parties in order to engage in dealings with them, or the purchase or sale of financial instruments for own account as a service for third parties (proprietary trading);

3. the purchase or sale of financial instruments in the name of a third party for the account of others (contract broking);

4. the brokering of transactions involving the purchase and sale of financial instruments (investment broking);

5. the underwriting of financial instruments at one's own risk for placement in the market or the assumption of equivalent guarantees (underwriting business);

6. the placing of financial instruments without a firm commitment basis (placing business);

7. the administration of individual or several portfolios invested in financial instruments for others on a discretionary basis (portfolio management);

8. the operation of a multilateral system which, in the system and in accordance with pre-determined provisions, brings together multiple third-party buying and selling interests in financial instruments in a way that results in a contract for the acquisition of these financial instruments (operation of a multilateral trading facility);

9. the provision of personal recommendations relating to transactions in certain financial instruments to clients or their representatives insofar as the recommendation is based on an evaluation of the investor's personal circumstances or is presented as being suitable for the investor and is not provided exclusively via distribution channels or for the general public (investment advice).

The purchase or sale of financial instruments for own account which does not constitute a service for third parties within the meaning of sentence 1 no. 2 shall also be deemed investment services (proprietary business). Investment management requiring authorisation pursuant to section 1 (1a) sentence 2 no. 11 of the Banking Act (*Kreditwesengesetz*) shall be deemed equivalent to portfolio management in respect of sections 9, 31 to 34 and 34b to 36b of this Act and to Articles 7 and 8 of Commission Regulation (EC) No. 1287/2006.

(3a) Ancillary investment services within the meaning of this Act are

1. the safe custody and administration of financial instruments for the account of others and services connected thereto (safe custody business);

2. the granting of credits or loans to others for the carrying out of investment services provided the enterprise granting the credits or loans is involved in these transactions;

3. the provision of advice to companies with respect to the capital structure and the industrial strategy as well as the provision of advice and services relating to the acquisition and mergers of undertakings;

4. foreign exchange transactions which are connected to investment services;

5. the production, distribution or communication of financial analyses or other information concerning financial instruments or their issuers which directly or indirectly contain a recommendation relating to a specific investment decision;

6. services which are connected to underwriting business;

7. services relating to an underlying instrument within the meaning of subsection (2) no. 2 or no. 5 and which are connected to investment services or ancillary services.

(4) Investment services enterprises within the meaning of this Act are credit institutions, financial services institutions and enterprises operating under section 53 (1) sentence 1 of the Banking Act which provide investment services alone or in connection with ancillary services on a commercial basis or on a scale which requires commercially organised business operations.

(5) An organised market within the meaning of this Act is a multilateral system operated or managed in Germany, another member state of the European Union or another signatory to the Agreement on the European Economic Area, authorised, regulated and supervised by public bodies, which, in the system and in accordance with pre-determined provisions, brings together or facilitates the bringing together of multiple third-party buying and selling interests in financial instruments admitted to trading on such a system in a way that results in a contract for the acquisition of these financial instruments.

(6) Issuers whose home country is the Federal Republic of Germany are

1. issuers of debt securities the denomination per unit of which is less than 1,000 euros or the value of such denomination per unit in another currency as at the date of issue, or of shares,

    a. who are domiciled in Germany and whose securities are admitted to trading on an organised market in Germany or in another member state of the European Union or another signatory to the Agreement on the European

Economic Area; or

b. who are domiciled in a country which is neither a member state of the European Union nor a signatory to the Agreement on the European Economic Area (third country) and whose securities are admitted to trading on an organised market in Germany or in another member state of the European Union or another signatory to the Agreement on the European Economic Area, if the annual document within the meaning of section 10 of the Securities Prospectus Act (*Wertpapierprospektgesetz*) is to be filed with the Supervisory Authority;

2. issuers who do not issue financial instruments within the meaning of no. 1, if they are domiciled in Germany or a third country and their financial instruments are admitted to trading on an organised market in Germany but not in another member state of the European Union or another signatory to the Agreement on the European Economic Area;

3. issuers who do not issue financial instruments within the meaning of no. 1 and who do not fall within the scope of no. 2

   a. if they are domiciled in Germany and their financial instruments are admitted to trading on an organised market also, or exclusively, in one or several other member states of the European Union or in one or several other signatories to the Agreement on the European Economic Area; or

   b. if they are domiciled in another member state of the European Union or in another signatory to the Agreement on the European Economic Area and their financial instruments are admitted to trading on an organised market also, or exclusively, in Germany; or

   c. if they are domiciled in a third country and their financial instruments are admitted to trading on an organised market in Germany and in one or several other member states of the European Union or one or several other signatories to the Agreement on the European Economic Area,

and if they have chosen the Federal Republic of Germany as their home country pursuant to section 2b. The Federal Republic of Germany shall be deemed the home country for issuers who fall within the scope of (a) but have not made a choice; the same applies to issuers who fall within the scope of (c) but have not chosen a home country, if the annual document within the meaning of section 10 of the Securities Prospectus Act is to be filed with the Supervisory Authority.

(7) Domestic issuers are

1. issuers whose home country is the Federal Republic of Germany, with the exception of those issuers whose securities are not admitted in Germany but only in another member state of the European Union or another signatory to the Agreement on the European Economic Area, to the extent that they are subject to the disclosure and notification requirements pursuant to Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market (*regulierter Markt*) and amending Directive 2001/34/EC (OJ EU no. L 390 p. 38); and

2. issuers whose home country is not the Federal Republic of Germany but another member state of the European Union or another signatory to the Agreement on the European Economic Area and whose securities are only admitted to trading on an organised market in Germany.

(8) Home member state within the meaning of this Act is

1. in the case of an investment services enterprise, the member state in which its head office is located;

2. in the case of an organised market, the member state in which the organised market is registered or authorised or, if under the law of that member state it has no registered office, the member state in which the head office of the organised market is situated.

(9) Host member state within the meaning of this Act is

1. in the case of an investment services enterprise, the member state in which it has a branch or in which it conducts its operations under the freedom to provide cross-border services;

2. in the case of an organised market, the member state in which the organised market provides appropriate arrangements so as to facilitate access to trading on its system by market participants established in that same member state.

(10) A systematic internaliser within the meaning of this Act is a company which, in accordance with Article 21 of Commission Regulation (EC) No. 1287/2006, engages in proprietary trading outside organised markets and multilateral trading facilities on a frequent, organised and systematic basis.

Section 2a
Exceptions

(1) The following are not deemed to be investment services enterprises:

1. enterprises which provide investment services within the meaning of section 2 (3) sentence 1 solely for their parent enterprise or their subsidiaries or sister enterprises within the meaning of section 1 (6) and (7) of the Banking Act (*Kreditwesengesetz*);

2. enterprises which provide investment services for others that only involve the administration of an employee participation scheme of their own or of affiliated enterprises;

3. enterprises which provide investment services only within the meaning of both nos. 1 and 2;

4. insurance undertakings under public or private law;

5. the public debt management of the Federal Government or one of its funds, of a Federal State, of another member state of the European Union or another signatory to the Agreement on the European Economic Area, the *Deutsche Bundesbank* and other members of the European System of Central Banks or the central banks of the

other signatories;

6. members of independent professions who provide investment services as self-employed persons on behalf of clients only occasionally, and who are members of a professional organisation in the form of a corporate body under public law the professional rules and regulations of which do not exclude the provision of investment services;

7. enterprises which provide others with investment services consisting solely of investment advice and investment broking between clients and

    a. institutions within the meaning of the Banking Act;

    b. institutions or financial enterprises domiciled in another state of the European Economic Area which fulfil the requirements specified in section 53b (1) sentence 1 or subsection (7) of the Banking Act;

    c. enterprises which by virtue of a Regulation pursuant to section 53c of the Banking Act are subjected to or exempted from the provisions of that Act; or

    d. asset management companies (*Kapitalanlagegesellschaften*), investment stock corporations (*Investmentaktiengesellschaften*) or foreign investment companies (*Investmentgesellschaften*)

    to the extent that these investment services are limited to units in investment funds (*Investmentvermögen*) which are issued by a German investment management company or asset management companies, investment stock corporations or foreign investment companies within the meaning of sections 96 to 111a of the Investment Act (*Investmentgesetz*), or limited to foreign investment units which may be sold to the public pursuant to the Investment Act, and to the extent that the companies are not authorised to obtain ownership or possession of monies or shares from clients in the course of providing these investment services, unless the company has filed for and obtained a corresponding authorisation pursuant to section 32 (1) of the Banking Act; units in funds (*Sondervermögen*) with additional risks pursuant to section 112 of the Investment Act are not deemed units in investment funds (*Investmentvermögen*) within the meaning of this provision;

8. enterprises whose investment service consists exclusively in providing one or several of the following services:

    a. proprietary business on a German stock exchange or on multilateral trading facilities in Germany where derivatives are traded (derivatives markets), and on cash markets for the sole purpose of hedging these positions;

    b. proprietary trading, principal broking services or contract broking on derivatives markets exclusively on behalf of other members of those markets;

    c. quotation of prices as market maker within the meaning of section 23 (4) while engaging in proprietary trading on behalf of other members of those derivatives markets;

to the extent that responsibility for ensuring the performance of contracts entered into by these enterprises on such markets or multilateral trading facilities is assumed by clearing members of the same markets or trading facilities;

9. enterprises conducting proprietary business in financial instruments or providing investment services in derivatives within the meaning of section 2 (2) nos. 2 and 5 provided that

   a. they are not part of a group whose main business is the provision of investment services or banking services within the meaning of section 1 (1) sentence 2 no. 1, 2, 8 or 11 of the Banking Act;

   b. these investment services are ancillary activities to their main business when considered on a group basis; and

   c. the investment services in derivatives within the meaning of section 2 (2) nos. 2 and 5 are provided exclusively to the clients of their main business in connection with transactions conducted in their main business;

10. enterprises which do not provide any investment services other than proprietary business provided they do not

    a. offer on a continuous basis to buy or sell financial instruments on an organised market or in a multilateral trading facility by way of proprietary trading at prices defined by them; or

    b. engage in proprietary trading outside an organised market or a multilateral trading facility on an organised, frequent and systematic basis by providing a system accessible to third parties in order to engage in dealings with them;

11. enterprises which, in the course of providing another professional activity, provide investment services consisting solely of investment advice which is not specifically remunerated;

12. enterprises whose main business is to conduct proprietary business and proprietary trading in commodities or derivatives within the meaning of section 2 (1) no. 2 relating to commodities, provided that they are not part of a group whose main business is the provision of investment services or banking services within the meaning of section 1 (1) sentence 2 no. 1, 2, 8 or 11 of the Banking Act; and

13. stock exchange operators or operators of organised markets which do not provide any other investment services within the meaning of section 2 (3) sentence 1 beside the operation of a multilateral trading facility.

14. (repealed)

(2) An enterprise which, as a tied agent within the meaning of section 2 (10) sentence 1 of the Banking Act, provides investment services consisting solely of contract broking, investment broking, placing of financial instruments without a firm commitment basis or investment advice is not deemed to be an investment services enterprise. Its business activities are attributed to the institution or enterprise for the account and under the liability of which it provides its services.

(3) (Repealed)

Section 2b
Choice of home country

(1) An issuer within the meaning of section 2 (6) no. 3 (a) to (c) may choose the Federal Republic of Germany as his home country if he has not chosen another country as his home country within the past three years. The choice shall be valid for a minimum period of three years unless the issuer's financial instruments are no longer admitted to trading on an organised market in a member state of the European Union or in another signatory to the Agreement on the European Economic Area. The choice must be published and transmitted to the company register within the meaning of section 8b of the Commercial Code (*Handelsgesetzbuch*) to be stored there. The choice shall become effective with its publication.

(2) The Federal Ministry of Finance may, by means of a Regulation not requiring the consent of the *Bundesrat,* issue more detailed provisions concerning the publication of the choice of home country.

Part 2
Federal Financial Supervisory Authority (*Bundesanstalt für Finanzdienstleistungsaufsicht*)

Section 3

(Repealed)

Section 4
Functions and powers

(1) The Federal Financial Supervisory Authority (Supervisory Authority) shall exercise supervision in accordance with the provisions of this Act. Within the framework of the functions assigned to it, the Supervisory Authority shall counteract undesirable developments which may adversely affect the orderly conduct of trading with financial instruments or the provision of investment services or ancillary services or which may result in serious disadvantages for the financial market. It may issue orders that are appropriate and necessary to eliminate or prevent such undesirable developments.

(2) The Supervisory Authority monitors compliance with the prohibitions and requirements of this Act, and may issue orders appropriate and necessary for its enforcement. It may temporarily suspend trading with individual or several financial instruments or order suspension of individual or several financial instruments from trading in markets on which financial instruments are traded, to the extent that this is necessary for the enforcement of the prohibitions and requirements of this Act or for the elimination or prevention of undesirable developments in accordance with subsection (1).

(3) The Supervisory Authority may require the provision of information, submission of documentation and surrender of copies from anyone, as well as summon and question persons, to the extent that these measures are necessary based on evidence for monitoring compliance with the prohibitions and requirements of this Act. In particular, it may require details concerning changes in holdings of financial instruments as well as information about

the identities of other persons, especially the principal and the persons acquiring rights or incurring liabilities from transactions. Statutory rights to provide or refuse to provide information as well as statutory obligations of confidentiality remain unaffected.

(4) During normal business hours, employees of the Supervisory Authority and the persons commissioned by it shall be permitted to enter the property and business premises of persons required to provide information pursuant to subsection (3) insofar as this is necessary for the performance of their functions. Outside of normal business hours or if the business premises are located in residential property, entry without permission shall be allowed and must be tolerated only to the extent that this is necessary to prevent imminent danger to public safety and order and if there is evidence indicating contravention of a prohibition or requirement of this Act by the person required to provide information. The basic right granted by Article 13 of the Basic Law (*Grundgesetz*) is, to this extent, restricted.

(5) The Supervisory Authority must without undue delay report facts giving rise to suspicion of a criminal offence pursuant to section 38 to the competent public prosecutor's office. It may communicate to the public prosecutor's office the personal data of any persons suspected of the offence or persons who may be required to act as witnesses, to the extent that this is necessary for criminal prosecution. The public prosecutor’s office shall decide on the necessary investigatory measures to be pursued, especially with regard to searches, in accordance with the provisions of the Code of Criminal Procedure (*Strafprozessordnung*). The powers of the Supervisory Authority pursuant to subsections (2) to (4) shall remain unaffected, to the extent that this is necessary for the implementation of administrative measures or the fulfilment of requests by foreign agencies in accordance with section 7 (2), subsection (2b) sentence 1 or subsection (7) and to the extent that this does not present a threat to the purpose of investigations by prosecuting authorities or the courts responsible for criminal cases.

(6) The Supervisory Authority may make publications or notifications in accordance with the provisions of this Act at the expense of the entity subject to the publication or notification requirement if it fails to comply with the requirement or complies with it incorrectly, incompletely or not in the prescribed form.

(7) Objections and actions to annul measures in accordance with subsections (1), (4) and (6) shall have no suspensive effect.

(8) Addressees of measures pursuant to subsections (2) to (4) which are taken by the Supervisory Authority in reaction to a possible contravention of a prohibition pursuant to section 14 or section 20a are prohibited from informing persons other than state agencies and such persons who, based on their profession, are subject to a statutory obligation of confidentiality, of the measures or of any preliminary proceedings initiated against them.

(9) A person obliged to furnish information may refuse to do so in respect of any questions, the answers to which would place himself or one of his relatives as designated in section 383 (1) nos. 1 to 3 of the Code of Civil Procedure (*Zivilprozessordnung*) at risk of criminal prosecution or proceedings under the Act on Breaches of Administrative Regulations (*Gesetz über Ordnungswidrigkeiten*). Persons obliged to furnish information shall be informed of the right to refuse and instructed that, in accordance with the Act, they are at all times free, including prior to questioning, to consult with a defence counsel of their choosing.

(10) The Supervisory Authority may only store, edit and use the personal data submitted to it for the purposes of fulfilling its supervisory functions and for international cooperation purposes in accordance with section 7.

(11) The Supervisory Authority may allow auditors or experts to carry out investigations or verifications to perform its functions.

Section 4 a
Powers to safeguard the financial system

(1) The Supervisory Authority may, in consultation with the Deutsche Bundesbank, issue orders that are appropriate and necessary to eliminate or prevent undesirable developments that may be detrimental to the stability of financial markets or undermine confidence in the proper functioning of financial markets. In particular, the Supervisory Authority may temporarily

1. prohibit trading in individual or several financial instruments, in particular

    a. order a ban on transactions in derivatives whose value is derived directly or indirectly from the price of shares or debt securities issued by central governments, regional governments or local authorities of member states of the European Union whose legal currency is the euro, provided such derivatives are admitted to trading on the regulated market of a German stock exchange, are equivalent, based on an economic view, to a short-selling transaction in such shares or debt securities in terms of structure and effect and do not result in a reduction in an existing market risk or in a market risk assumed in direct temporal connection with a derivative transaction; in this respect section 37 of the Exchange Act (*Börsengesetz*) shall not apply; or

    b. order a ban on the acquisition of rights attached to currency derivatives within the meaning of section 2 (2) no. 1 (b), (d) or (e) where the value of the derivatives is derived directly or indirectly from the exchange rate of the euro, unless it is to be expected that the market value of such rights decreases when the euro exchange rate appreciates, and the acquisition of such rights is used to hedge existing or expected own currency risks; such ban may also extend to legal obligations to enter into such transactions; or

2. order the suspension of trading in individual or several financial instruments on markets on which financial instruments are traded.

(2) The Supervisory Authority may order that persons who enter into transactions in financial instruments must publish their positions in such financial instruments and at the same time notify these to the Supervisory Authority. The Supervisory Authority may publish notifications pursuant to sentence 1 on its website.

(3) The provisions of section 4 (3), (4), (6), (9) and (10) shall apply *mutatis mutandis*.

(4) Measures pursuant to subsections (1) to (3) shall be limited to a maximum of 12 months. An extension of this period by up to 12 months shall be permitted. In this case, the Federal Ministry of Finance shall submit a report to the *Bundestag* within one month of the beginning of the extension. Objections and actions to annul measures in accordance with subsections (1) to (3) shall have no suspensive effect.

Section 5
Securities Council

(1) A Securities Council is established at the Supervisory Authority. It comprises representatives of the Federal States. Membership shall not be held in a personal capacity. Each Federal State shall appoint one representative. Representatives of the Federal Ministries of Finance, of Justice and of Economics and Technology, as well as the *Deutsche Bundesbank* shall be entitled to attend the meetings of the Securities Council. The Securities Council may consult experts, particularly from the stock exchanges, from amongst market participants, from business and from academics. The Securities Council shall draw up standing orders.

(2) The Securities Council shall assist with supervision. It shall advise the Supervisory Authority, in particular

1. on issuing Regulations and establishing guidelines for the supervisory activity of the Supervisory Authority;

2. concerning the effects of supervisory issues on stock exchange and market structures and on competition in trading with financial instruments and

3. on the demarcation of responsibilities between the Supervisory Authority and the stock exchange supervisory authorities as well as on issues of cooperation.

The Securities Council may submit proposals to the Supervisory Authority concerning the general development of supervisory practice. The Supervisory Authority shall report to the Securities Council at least once per year on its supervisory activities, on the development of supervisory practice and on international cooperation.

(3) The Securities Council shall be convened at least once each year by the President of the Supervisory Authority. It shall also be convened at the request of one third of its members. Any member shall be entitled to put forward proposals for consultation.

Section 6
Cooperation with other domestic authorities

(1) The stock exchange supervisory authorities shall act on behalf of the Supervisory Authority in implementing urgent measures as part of monitoring compliance with the prohibition of insider dealing pursuant to section 14 and the prohibition of market manipulation pursuant to section 20a on the stock exchanges subject to their supervision. The details shall be regulated in an administrative agreement between the Federal Government and the Federal States conducting stock exchange supervision.

(2) The Supervisory Authority, the *Deutsche Bundesbank* (in the course of its activities pursuant to the Banking Act (*Kreditwesengesetz*)), the *Bundeskartellamt* (Federal Cartel Office), the stock exchange supervisory authorities, the trading surveillance units, the Federal Network Agency (*Bundesnetzagentur*) in the course of its activities pursuant to the Energy Industry Act (*Energiewirtschaftsgesetz*) and the competent bodies responsible for the supervision of insurance intermediaries and brokers of units in investment funds (*Investmentvermögen*) shall communicate to each other any observations and findings, including personal data, which may be necessary for the performance of their functions.

(3) For the performance of its functions, the Supervisory Authority may, in an automated procedure, retrieve data stored with the *Deutsche Bundesbank* pursuant to sections 2 (10), 2c, 24 (1) nos. 1, 2, 5, 7 and 10 and subsection (3), section 25a (2), section 32 (1)

sentences 1 and 2 nos. 2, 6 (a) and (b) of the Banking Act. For purposes of monitoring data protection compliance, the *Deutsche Bundesbank* shall log the time, the details which enable the retrieved data records to be identified, and the person responsible for the retrieval. The recorded data may only be used for the purpose of data protection compliance, data security or for ensuring the proper functioning of the data processing equipment. The records shall be deleted at the end of the calendar year following the year in which they were stored.

(4) Public agencies are to ensure suitable and transparent procedures with regard to the publication of statistics which have the potential to significantly impact on financial markets. In particular, it must be guaranteed that no third parties receive informational advantages from the publications.

Section 7
Cooperation with competent authorities in other countries

(1) The Supervisory Authority is responsible for cooperation with the competent authorities responsible for the supervision of conduct of business and organisational requirements of companies providing investment services, of financial instruments and of markets on which financial instruments or commodities are traded in other member states of the European Union and the other signatories to the Agreement on the European Economic Area. Within the framework of its cooperation, for purposes of monitoring compliance with the prohibitions and requirements of this Act and of the countries specified in sentence 1 which are equivalent to those prohibitions and requirements of this Act or the Exchange Act (*Börsengesetz*), the Supervisory Authority may make use of all powers available to it by law, to the extent that this is suitable and necessary to honour the requests of the authorities specified in sentence 1. The Supervisory Authority may, upon request of the authorities specified in sentence 1, order the prohibition or suspension of trading on a domestic market pursuant to section 4 (2) sentence 2 only if this does not seriously jeopardise investors' interests or the orderly conduct of trading on the market concerned. This shall be without prejudice to the provisions of the Exchange Act relating to cooperation between the trading surveillance units and similar bodies or the boards of management of the exchanges in other countries.

(2) Upon request by the competent authorities named in subsection (1) sentence 1, the Supervisory Authority conducts investigations pursuant to Article 15 of Commission Regulation (EC) No. 1287/2006 and transmits all information without undue delay, to the extent that this is necessary for the supervision of organised markets or other markets for financial instruments, of credit institutions, financial services institutions, investment companies, financial enterprises or insurance undertakings or administrative or judicial proceedings related thereto. When transmitting information, the Supervisory Authority is obliged to instruct the recipient that, without prejudice to his prosecutorial obligations, the transmitted information, including personal data, is to be used only to fulfil supervisory duties in accordance with sentence 1 and in the context of administrative and judicial proceedings related thereto.

(2a) The Supervisory Authority takes reasonable steps to ensure effective cooperation, in particular with respect to those member states where the operations of a domestic stock exchange are of substantial importance for the functioning of the financial markets and the protection of investors pursuant to Article 16 of Commission Regulation (EC) No. 1287/2006, or whose organised markets are of substantial importance in Germany.

(2b) The Supervisory Authority may, upon request, allow representatives of competent authorities of other countries to participate in investigations conducted by the Supervisory

Authority. The competent authorities within the meaning of subsection (1) sentence 1 or entities commissioned by them may, after notifying the Supervisory Authority, examine directly at the branch the information required for monitoring whether the branch within the meaning of section 53b (1) sentence 1 of the Banking Act (*Kreditwesengesetz*) complies with the reporting requirements laid down in section 9, the conduct of business, organisational and transparency obligations specified in sections 31 to 34 or in the relevant foreign provisions.

(3) The Supervisory Authority may refuse an investigation, the transmission of information or the participation of representatives of foreign authorities within the meaning of subsection (1) sentence 1 if

1. this might adversely affect the sovereignty, security or public order of the Federal Republic of Germany or

2. judicial proceedings have already been initiated in respect of the same facts against the persons in question or if a final judgement has been passed.

In the event that the Supervisory Authority fails to comply with a request or exercises its right pursuant to sentence 1, it shall without undue delay notify the requesting authority and provide the grounds; in the case of a refusal pursuant to sentence 1 no. 2, exact information concerning the judicial proceedings or final judgement shall be communicated.

(4) In accordance with Article 15 of Commission Regulation (EC) No. 1287/2006, the Supervisory Authority requests the competent authorities named in subsection (1) to conduct investigations and transmit information suitable and necessary to perform its functions in accordance with the provisions of this Act. It may request that representatives of the Supervisory Authority be permitted to take part in investigations conducted by the competent authorities. The Supervisory Authority may, with the consent of the competent authority, conduct investigations abroad and commission auditors or experts to do so; where the Supervisory Authority conducts investigations of branches of domestic investment services enterprises in host member states, prior information of the competent authority abroad is sufficient. If the Supervisory Authority issues orders vis-à-vis companies domiciled abroad which are members of organised markets in Germany, it informs the authorities competent for the supervision of those companies. Without prejudice to its obligations in prosecutorial matters concerned with contraventions of prohibitions pursuant to the provisions of this Act, the Supervisory Authority may utilise information received from an authority of another country only for the purpose of performing its supervisory functions in accordance with subsection (2) sentence 1 and in the context of administrative and judicial proceedings related thereto. The Supervisory Authority may, in compliance with the purpose intended by the authority transmitting the information, transmit the information to the authorities specified in section 6 (2) if this is necessary for the performance of its functions. Any other use of the information is only permitted with the consent of the authority transmitting the information. With the exception of information related to insider trading and market manipulation, such consent may be waived in exceptional and duly justified cases if the authority transmitting the information is informed thereof without undue delay and the grounds for such waiver are indicated. In the event that a request by the Supervisory Authority pursuant to sentences 1 to 3 is not honoured within an appropriate period of time, or if the request is refused without adequate grounds, the Supervisory Authority may notify the Committee of European Securities Regulators of this fact.

(5) If the Supervisory Authority has sufficient evidence of a contravention of prohibitions or requirements of this Act or equivalent regulations of a foreign country mentioned in subsection (1) sentence 1, it shall notify the competent authorities of the country pursuant to subsection (1) sentence 1 on whose territory the unlawful action is being or was performed or on whose territory the financial instruments in question are traded on an organised market, or which is responsible for prosecuting such contravention under European Union law. If the Supervisory Authority receives such notification from competent foreign authorities, it shall inform them of the results of investigations commenced in response thereto. The Supervisory Authority informs the competent authorities of orders concerning the suspension, prohibition or removal of a financial instrument from trading pursuant to section 4 (2) sentence 2 of this Act and section 3 (5) no. 1 and section 25 (1) of the Exchange Act and, within one month following receipt of a notification pursuant to section 19 (10) of the Exchange Act, of the intention of the board of management of a stock exchange to grant market participants from such countries direct access to their trading systems.

(6) The above shall be without prejudice to provisions on international assistance in criminal matters.

(7) The Supervisory Authority may work in cooperation with the competent authorities of countries other than those mentioned in subsection (1) in accordance with subsections (1) to (6) and conclude agreements on the exchange of information. Subsection (4) sentences 5 and 6 shall apply subject to the proviso that information transmitted by these authorities may only be utilised in compliance with the purpose intended by the authority transmitting the information and may only be communicated to the *Deutsche Bundesbank* or the *Bundeskartellamt* (Federal Cartel Office) with the express consent of the authority transmitting the information if this is necessary for the performance of their functions. Subsection (4) sentence 8 shall not apply. Section 4b of the Federal Data Protection Act (*Bundesdatenschutzgesetz*) shall apply to the communication of personal data.

(8) The Federal Ministry of Finance may issue more detailed provisions for the purposes stated in subsections (2), (2a) and (4) by means of a Regulation not requiring the consent of the *Bundesrat*, concerning the transmission of information to foreign authorities, the conducting of investigations at the request of foreign authorities as well as requests to foreign authorities by the Supervisory Authority. The Federal Ministry of Finance may, by means of a Regulation, delegate this authority to the Federal Financial Supervisory Authority.

Section 8
Obligation of confidentiality

(1) Persons employed with the Supervisory Authority and persons commissioned in accordance with section 4 (3) of the Act Establishing the Federal Financial Supervisory Authority (*Finanzdienstleistungsaufsichtsgesetz*) may not without authorisation disclose or utilise facts which have come to their knowledge in the course of their activities, the secrecy of which is in the interests of an entity subject to this Act or a third party, especially business and trade secrets as well as personal data, even if the above persons have ceased employment or their activities have ended. The same shall apply with respect to other persons who may obtain knowledge of the information referred to in sentence 1 through official reporting. Disclosure or utilisation shall specifically not be deemed made without authorisation as defined in sentence 1 of this subsection, if facts are communicated to

1. public prosecutors' offices or courts having jurisdiction in criminal cases and administrative offence cases;

2. bodies, and persons commissioned by such bodies, entrusted by law or by order of public authorities with the supervision of stock exchanges or other markets on which financial instruments are traded, of trading in financial instruments or currencies, of credit institutions, financial services institutions, investment companies, financial enterprises, insurance undertakings, insurance intermediaries, investment advisers or brokers of units in investment funds (*Investmentvermögen*) within the meaning of section 2a (1) no. 7;

3. central banks, the European System of Central Banks or the European Central Bank in their capacity as monetary authorities and other state authorities entrusted with the supervision of payment systems;

4. bodies involved in the liquidation or the insolvency proceedings over the assets of an investment services enterprise, an organised market or the operator of an organised market

provided that these bodies require the information for the performance of their functions. The obligation of confidentiality as specified in sentence 1 shall apply *mutatis mutandis* to persons employed by such bodies. If the body is located in another country, the facts may be communicated only if that body and the persons commissioned by it are subject to an obligation of confidentiality equivalent to that specified in sentence 1.

(2) The provisions of sections 93, 97 and 105 (1), 111 (5) in conjunction with section 105 (1) and section 116 (1) of the Fiscal Code (*Abgabenordnung*) shall not apply to the persons referred to in subsection (1) sentence 1 or 2, to the extent that they are acting in a capacity to implement this Act. The requirements do apply, if the tax authorities require the information obtained for a proceeding arising from a criminal tax offence and a tax proceeding related thereto, if there is a compelling public interest in prosecuting the offence and provided such information does not include information which has been communicated to the persons referred to in subsection (1) sentence 1 or 2 by an authority of another country within the meaning of subsection (1) sentence 3 no. 2 or by persons commissioned by such an authority.

Section 9
Reporting requirements

(1) Investment services enterprises and branches within the meaning of section 53b of the Banking Act (*Kreditwesengesetz*) shall be required to report to the Supervisory Authority not later than the next working day (excluding Saturdays) after conclusion of the transaction, pursuant to subsection (2), any transaction in financial instruments which are admitted to trading on an organised market or are included in the regulated market (*regulierter Markt*) or the regulated unofficial market (*Freiverkehr*) of a German stock exchange. The requirement pursuant to sentence 1 shall also apply to the purchase or sale of securities subscription rights, if these securities are to be traded on an organised market or on the regulated unofficial market, and to transactions in shares and warrants in respect of which an application for admission to trading on an organised market or on the regulated unofficial market or for inclusion in the regulated market or the regulated unofficial market has been made or publicly announced. The requirements pursuant to sentences 1 and 2 shall also apply to domestic central counterparties within the meaning of section 1 (31) of the Banking Act with respect to transactions concluded by them. The requirements pursuant to sentences 1 and 2 shall also apply to undertakings domiciled in a country which is not a member state

of the European Union or a signatory to the Agreement on the European Economic Area and authorised to trade on a German stock exchange with respect to transactions in financial instruments concluded by them on that German stock exchange. The requirement pursuant to sentences 1 and 2 shall also apply to undertakings domiciled in another member state of the European Union or a signatory to the Agreement on the European Economic Area and authorised to trade on a German stock exchange, but only with respect to transactions in financial instruments concluded by them on that German stock exchange where these financial instruments are neither admitted to trading on an organised market nor included in the regulated market of a German stock exchange.

(1a) Exempt from the requirement pursuant to subsection (1) are building societies (*Bausparkassen*) within the meaning of section 1 (1) of the Building and Loan Associations Act (*Gesetz über Bausparkassen*) and enterprises within the meaning of section 2 (4) and (5) of the Banking Act, if they are not admitted to trading on a German stock exchange, as well as housing cooperatives with a savings scheme (*Wohnungsgenossenschaften mit Spareinrichtung*). The requirement pursuant to subsection (1) shall also not apply to transactions in units in investment funds (*Investmentvermögen*) issued by asset management companies (*Kapitalanlagegesellschaften*) or foreign investment companies (*Investmentgesellschaften*) which include a redemption obligation.

(2) The report must be transmitted to the Supervisory Authority by way of remote electronic data transfer unless the requirements of Article 12 of Commission Regulation (EC) No. 1287/2006 are satisfied according to which the report may be stored on a data medium. The report must contain, for each transaction, at least the information specified in Article 13 (1) in conjunction with Table 1 of Annex I to Commission Regulation (EC) No. 1287/2006 to the extent that the Supervisory Authority has made a declaration with respect to this information pursuant to Article 13 (1) of Commission Regulation (EC) No. 1287/2006. In addition, the report must contain:

1. an identifier for the securities account holder or the securities account, unless the securities account holder himself is obliged to submit a report in accordance with subsection (1);

2. an identifier for the principal, unless identical with the securities account holder

(3) The Supervisory Authority is the competent authority for the purposes of Articles 9 to 15 of Commission Regulation (EC) No. 1287/2006. It transmits the report pursuant to subsection (1), within the time limits specified in Article 14 (3) of Commission Regulation (EC) No. 1287/2006, to the competent authority of another member state of the European Union or of another signatory to the Agreement on the European Economic Area, if the most relevant market in terms of liquidity for the reported financial instrument within the meaning of Articles 9 and 10 of Commission Regulation (EC) No. 1287/2006 is situated in that state or if a request from a competent authority pursuant to Article 14 (1) (c) of Commission Regulation (EC) No. 1287/2006 has been submitted. Sentence 2 shall *apply mutatis mutandis* to notifications submitted to the Supervisory Authority by branches within the meaning of section 53b (1) sentence 1 of the Banking Act, unless the competent authority in the home country has waived the transmission. Transmission pursuant to sentence 2, also in conjunction with sentence 3, shall also be deemed made to the competent authority in the home country, if it is made to another body in agreement with that authority. Article 14 (2) and (3) of Commission Regulation (EC) No. 1287/2006 shall apply to the content, form and time limit for the transmission pursuant to sentences 2 to 4. Article 15 of Commission Regulation (EC) No. 1287/2006 shall apply to non-automated cooperation between the Supervisory Authority and the competent authority of another member state of the

European Union or another signatory to the Agreement on the European Economic Area in the field of reporting in accordance with this provision or comparable foreign provisions. In order to satisfy the obligations set forth in sentence 2, the Supervisory Authority shall establish a list of financial instruments pursuant to Article 11 of Commission Regulation (EC) No. 1287/2006 and may request reference data from domestic exchanges under the conditions specified in Article 11 of Commission Regulation (EC) No. 1287/2006. This is without prejudice to section 7.

(4) The Federal Ministry of Finance may, by means of a Regulation not requiring the consent of the *Bundesrat*,

1. issue more detailed provisions on the content, nature, scope and form of the report and on permitted data media and means of transmission;

2. prescribe additional information in addition to the information pursuant to subsection (2) to the extent that this is justified in the light of the special characteristics of the financial instrument which is the subject of the report, or of the special conditions prevailing in the trading venue, and to the extent that such additional information is necessary for the performance of the supervisory functions of the Supervisory Authority;

3. permit reports by those subject to these requirements to be made at their own expense by the stock exchange or by a suitable third party, and set forth the relevant details;

4. for transactions relating to bonds, permit the information specified in subsection (2) to be reported in summary form;

5. in the case of savings banks or credit cooperatives conducting transactions through a central giro institution, a cooperative central bank or a central credit institution, permit the report required pursuant to subsection (1) to be made by the central giro institution, cooperative central bank or central credit institution, if and to the extent that this does not detract from the intended purpose of the reporting requirement.

(5) The Federal Ministry of Finance may, by means of a Regulation, delegate the authority pursuant to subsection (3) to the Supervisory Authority.

Section 10
Reporting of suspicious transactions

(1) Investment services enterprises, other credit institutions, asset management companies (*Kapitalanlagegesellschaften*) and operators of off-exchange markets on which financial instruments are traded are obliged to notify the Supervisory Authority without undue delay of any facts giving rise to suspicion that a transaction with financial instruments is in contravention of a prohibition or requirement pursuant to section 14, section 20a, section 30h or section 30j. The above are prohibited from informing persons other than state agencies and such persons who, based on their profession, are subject to a statutory obligation of confidentiality, regarding the report or any investigation begun in response thereto.

(2) The Supervisory Authority is obliged to forward without undue delay reports pursuant to subsection (1) to the competent supervisory authorities of those organised markets within the European Union or the European Economic Area on which the financial instruments

pursuant to subsection (1) are traded. The content of the report pursuant to subsection (1) may only be utilised by the Supervisory Authority for performance of its supervisory functions. Beyond this, the information may only be used for the purposes of prosecuting criminal offences pursuant to section 38 and for criminal proceedings relating to a criminal offence subject to a maximum penalty of more than three years imprisonment. The Supervisory Authority may not provide access to the identity of a person filing a report pursuant to subsection (1) for anyone other than state authorities. The right of the Supervisory Authority pursuant to section 40b shall remain unaffected.

(3) Anyone filing a report pursuant to subsection (1) may not be held liable, unless the report is intentionally or negligently untrue.

(4) The Federal Ministry of Finance may, by means of a Regulation not requiring the consent of the *Bundesrat*, issue more detailed provisions concerning the form and content of a report pursuant to subsection (1). The Federal Ministry of Finance may, by means of a Regulation, delegate this authority to the Federal Financial Supervisory Authority.

Section 11
Duty of the insolvency administrator

(1) If insolvency proceedings are initiated over the assets of anyone obliged to perform an action under this Act, the insolvency administrator shall support the debtor in fulfilling his duties under this Act, in particular by providing the necessary funds from the assets involved in the insolvency proceedings.

(2) If a provisional insolvency administrator is appointed prior to the opening of insolvency proceedings, such provisional insolvency administrator shall support the debtor in fulfilling his duties, in particular by consenting to the funds being used by the obliged party or, if a general restraint on disposition has been imposed upon the obliged party, by providing the funds from the assets under his management.

Part 3
Insider surveillance

Section 12
Insider securities

Insider securities are financial instruments

1. admitted to trading on a German stock exchange or included in the regulated market (*regulierter Markt*) or the regulated unofficial market (*Freiverkehr*);

2. admitted to trading on an organised market in another member state of the European Union or signatory to the Agreement on the European Economic Area and

3. the prices of which depend directly or indirectly on financial instruments within the meaning of nos.1 or 2.

Securities shall be deemed admitted to trading on an organised market or included on the regulated market or the regulated unofficial market if the application for such admission or inclusion has been made or publicly announced.

Section 13
Inside information

(1) Inside information is any specific information about circumstances which are not public knowledge relating to one or more issuers of insider securities, or to the insider securities themselves, which, if it became publicly known, would likely have a significant effect on the stock exchange or market price of the insider security. Such a likelihood is deemed to exist if a reasonable investor would take the information into account for investment decisions. The term *circumstances* within the meaning of sentence 1 also applies to cases which may reasonably be expected to come into existence in the future. Specifically, inside information refers to information about circumstances which are not public knowledge within the meaning of sentence 1, which

1. is related to orders by third parties for the purchase or sale of financial instruments or

2. is related to derivatives within the meaning of section 2 (2) no. 2 relating to commodities and which market participants would expect to receive in accordance with the accepted practice of the markets in question.

(2) A valuation based solely on information about publicly known circumstances is not inside information, even if it could have a significant effect on the price of insider securities.

Section 14
Prohibition of insider dealing

(1) It is prohibited

1. to make use of inside information to acquire or dispose of insider securities for own account or for the account or on behalf of a third party;

2. to disclose or make available inside information to a third party without the authority to do so; or

3. to recommend, on the basis of inside information, that a third party acquire or dispose of insider securities, or to otherwise induce a third party to do so.

(2) Trading with own shares within the framework of a buy-back programme and price stabilisation measures for financial instruments shall in no case constitute a contravention of the prohibition pursuant to subsection (1), provided that this is performed in compliance with the provisions of Commission Regulation no. 2273/2003 of 22 December 2003 implementing Directive 2003/6/EC of the European Parliament and the Council - as regards exemptions for buy-back programmes and stabilisation of financial instruments (OJ EC No. L 336 p. 33). For financial instruments included in the regulated unofficial market (*Freiverkehr*) or regulated market (*regulierter Markt*), the provisions of Commission Regulation no. 2273/2003 apply *mutatis mutandis*.

Section 15
Notification, publication and transmission of inside information to the company register

(1) A domestic issuer of financial instruments must, without undue delay, publish all inside information which directly concerns that issuer; furthermore, the domestic issuer must transmit such inside information without undue delay, however not before its publication, to the company register within the meaning of section 8b of the Commercial Code (*Handelsgesetzbuch*) in order to be stored there. In accordance with this provision, an issuer shall also be deemed a domestic issuer if he has merely applied for admission of his financial instruments. In particular, inside information directly concerns an issuer if it relates to developments within the issuer's sphere of activity. Any issuer or person acting on behalf or for the account of an issuer, who as part of his function communicates or grants access to inside information to a third party, must at the same time publish the information in accordance with sentence 1 and transmit it to the company register within the meaning of section 8b of the Commercial Code in order to be stored there, unless the third party is legally obliged to observe confidentiality. In the event of inadvertent communication or granting of access to inside information pursuant to sentence 4, late publication and transmission must be made without undue delay. The key figures employed in the context of publication shall be those customarily used in business and must permit comparison with previously employed figures.

(2) Other information which obviously fails to meet the requirements of subsection (1) may not be published even in connection with information subject to the publication requirement pursuant to subsection (1). False information published pursuant to subsection (1) must be corrected without undue delay in a publication pursuant to subsection (1) even if the requirements in subsection (1) are not met.

(3) The issuer is exempt from the publication requirement pursuant to subsection (1) sentence 1 as long as necessary to protect his legitimate interests, provided there is no reason to expect a misleading of the public and the issuer is able to ensure that the inside information will remain confidential. Late publication must be effected without undue delay. Subsection (4) applies *mutatis mutandis*. The issuer is obliged to notify the Supervisory Authority regarding the grounds for exemption together with the notification pursuant to subsection (4) sentence 1, stating the time of the decision concerning the postponement of the publication.

(4) Before publishing the information referred to in subsection (1) or (2) sentence 2, the issuer shall notify

1. the management of the organised markets in Germany on which the financial instruments are admitted to trading;

2. the management of the organised markets in Germany on which derivatives are traded, which are based on the financial instruments and

3. the Supervisory Authority.

Subsection (1) sentence 6 as well as subsections (2) and (3) apply *mutatis mutandis*. Prior to publication, the management may only utilise the information provided to it pursuant to sentence 1 for the purpose of making the decision as to whether or not calculation of the stock exchange price is to be suspended or discontinued. The Supervisory Authority may permit issuers domiciled abroad to effect the notification pursuant to sentence 1 together with the publication, provided this does not impinge upon the decision of the management concerning suspension or discontinuation of calculation of the stock exchange price.

(5) Publication of inside information in a form other than that set forth in subsection (1) in conjunction with a Regulation pursuant to subsection (7) sentence 1 no. 1 may not be made prior to publication pursuant to subsection (1), sentence 1, 4 or 5, or subsection (2) sentence 2. Simultaneously with the publications pursuant to subsection (1) sentence 1, sentence 4 or sentence 5 or subsection (2) sentence 2, the domestic issuer shall make a notification to the management of the organised markets covered by subsection (4) sentence 1 nos. 1 and 2 and to the Supervisory Authority in respect of such publication; this obligation shall not apply if the Supervisory Authority has already granted permission pursuant to subsection (4) sentence 4 to make the notification under subsection (4) sentence 1 together with the publication.

(6) If the issuer fails to comply with the requirements pursuant to subsections (1) to (4), he shall only be liable to compensate any third party for damage resulting from such non-compliance subject to the conditions of sections 37b and 37c. This is without prejudice to claims for compensation having other legal bases.

(7) The Federal Ministry of Finance may, by means of a Regulation not requiring the consent of the *Bundesrat*, issue more detailed provisions concerning

1. the minimum content, nature, language, scope and form of the publication pursuant to subsection (1) sentence 1, 4, and 5 or subsection (2) sentence 2;

2. the minimum content, nature, language, scope and form of the notification pursuant to subsection (3) sentence 4, subsection (4) and subsection (5) sentence 2; and

3. legitimate interests of the issuer and the guarantee of confidentiality pursuant to subsection (3).

The Federal Ministry of Finance may, by means of a Regulation, delegate this authority to the Federal Financial Supervisory Authority.

Section 15a
Notification of transactions, publication and transmission to the company register

(1) Persons discharging managerial responsibilities within an issuer of shares are obliged to notify the issuer and the Supervisory Authority of own transactions in shares of the issuer or financial instruments based on them, in particular derivatives, within five business days (including Saturdays). The obligation pursuant to sentence 1 also applies to other parties who are closely associated with such persons. The obligation pursuant to sentence 1 applies only to issuers of such shares that

1. are admitted to trading on a domestic stock exchange; or

2. are admitted to trading on a foreign organised market if the issuer is domiciled in Germany or if these shares are issued by an issuer domiciled outside the European Union and the European Economic Area and their home country within the meaning of the Securities Prospectus Act (*Wertpapierprospektgesetz*) is the Federal Republic of Germany.

The submission or public announcement of an application for admission is deemed equivalent to admission to trading on an organised market. The obligation pursuant to sentence 1 does not apply as long as the total sum of transactions by a person discharging

managerial responsibilities and parties closely associated with them is less than 5,000 euros by the end of the calendar year.

(2) Persons discharging managerial responsibilities within the meaning of subsection (1) sentence 1 are personally liable partners or members of the management, administrative or supervisory bodies of the issuer as well as other persons with regular access to inside information and who are authorised to make important managerial decisions.

(3) Parties within the meaning of subsection (1) sentence 2, which are closely associated with the persons referred to in subsection (2), are spouses, registered civil partners, dependent children and other relatives living in the same household as the person referred to in subsection (2) for a period of at least one year at the point when the transaction subject to disclosure was concluded. Legal persons for which persons discharge managerial responsibilities within the meaning of subsection (2) or sentence 1 are also deemed parties within the meaning of subsection (1) sentence 2. Such legal persons, companies and organisations which are controlled directly or indirectly by a person referred to in subsection (2) or sentence 1, which were established for the benefit of such persons or the economic interests of which are substantially equivalent to those of such a person, also fall within the scope of sentence 2.

(4) The domestic issuer shall, without undue delay, publish the information pursuant to subsection (1) and simultaneously notify the Supervisory Authority of the publication; furthermore, the domestic issuer shall transmit such information to the company register within the meaning of section 8b of the Commercial Code (*Handelsgesetzbuch*) without undue delay, however not before its publication, to be stored there. Section 15 (1) sentence 2 shall apply *mutatis mutandis*, provided that the public announcement of an application for admission is deemed equivalent to the submission of an application for admission.

(5) The Federal Ministry of Finance may, by means of a Regulation not requiring the consent of the *Bundesrat*, issue more detailed provisions about the minimum content, nature, language, scope and form of the disclosure pursuant to subsection (1) and subsection (4) sentence 1 as well as the publication pursuant to subsection (4). The Federal Ministry of Finance may, by means of a Regulation, delegate this authority to the Federal Financial Supervisory Authority.

Section 15b
Maintenance of insider lists

(1) Issuers pursuant to section 15 (1) sentence 1 or sentence 2 and persons acting on behalf or for the account of the issuer are required to maintain lists of persons working for them who have access to inside information as part of their function. Those subject to the requirement set forth in sentence 1 are obliged to update these lists without undue delay and submit them to the Supervisory Authority upon request. The issuer is obliged to inform the persons included in the list regarding the legal obligations associated with access to inside information, and the legal consequences of violations. The persons named in section 323 (1) sentence 1 of the Commercial Code (*Handelsgesetzbuch*) are not deemed to be persons acting on behalf of the issuer.

(2) The Federal Ministry of Finance may, by means of a Regulation not requiring the consent of the *Bundesrat*, issue more detailed provisions concerning

1. the scope and form of the lists;

2. the data included in the lists;

3. updating and maintenance of the data in the lists;

4. the period of time for which the lists must be retained and

5. the deadlines for destruction of the lists.

The Federal Ministry of Finance may, by means of a Regulation, delegate this authority to the Federal Financial Supervisory Authority.

Section 16
Record-keeping obligations

Before executing orders relating to insider securities within the meaning of section 12, investment services enterprises as well as companies domiciled within Germany that are admitted to trading on a German stock exchange are required to establish and record in the case of natural persons the name, date of birth and address and in the case of companies the name and address of the principals and the persons or companies acquiring rights or incurring liabilities from the transactions. The information recorded pursuant to subsection (1) shall be retained for a period of at least six years. Section 257 (3) and (5) of the Commercial Code (*Handelsgesetzbuch*) shall apply *mutatis mutandis* to the retention of the records.

Section 16a
Monitoring of the transactions effected by the persons employed by the Supervisory Authority

(1) The Supervisory Authority must have adequate control mechanisms which are capable of preventing any contravention of the prohibitions as set out in section 14 by persons in the employ of the Supervisory Authority.

(2) The superior or the person commissioned by him may require the employees of the Supervisory Authority to furnish information and submit documents relating to transactions in insider securities which they have concluded for own account or for the account or on behalf of a third party. The provisions of section 4 (9) shall apply. Employees who in carrying out their official duties possess or may possess inside information are obliged to notify, without undue delay, the superior or the person commissioned by him in writing of any transactions in insider securities which they have concluded for own account or for the account or on behalf of a third party. The superior or the person commissioned by him shall designate the employees named in sentence 3.

Section 16b
Retention of call data

(1) Investment services enterprises and enterprises domiciled in Germany which are admitted to trading on a German stock exchange, as well as issuers of insider securities and enterprises affiliated with them which are domiciled in Germany or whose securities are admitted to trading on a German stock exchange or are included in the regulated market (*regulierter Markt*) or the regulated unofficial market (*Freiverkehr*), may be required by the Supervisory Authority in writing to retain existing call data on telecommunications for a certain group of persons, provided that the Supervisory Authority has evidence indicating contraventions of section 14 or section 20a by such persons of the particular company. The

basic right granted by Article 10 of the Basic Law (*Grundgesetz*) is, to this extent, restricted. The parties concerned shall be notified in accordance with section 101 (4) and (5) of the Criminal Procedure Code (*Strafprozessordnung*). The Supervisory Authority may not on the basis of sentence 1 require retention of future call data.

(2) The period of retention concerning existing data may be no longer than six months from receipt of the order to retain such data. If retention of the call data is no longer required to investigate suspected contraventions of a prohibition pursuant to section 14 or section 20a, the Supervisory Authority shall, without undue delay, inform the party required to retain such data of this fact and destroy existing documents without undue delay. The duty to destruct the documents without undue delay also applies to the party obliged to retain the data.

Part 3a
Credit rating agencies

Section 17
Monitoring of credit rating agencies

(1) The Supervisory Authority is the competent authority within the meaning of Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies (OJ L 302, 17.11.2009, p. 1). Unless otherwise provided in Regulation (EC) No 1060/2009, the provisions of Part 1 and Part 2 of this Act shall apply *mutatis mutandis* with the exception of section 7 (4) sentences 5 to 8, section 8 (1) sentence 3 and sections 9 and 10.

(2) The Supervisory Authority shall exercise the powers conferred on it by Regulation (EC) No 1060/2009 insofar as this is necessary for performing its functions and monitoring compliance with the obligations defined in Regulation (EC) No 1060/2009.

(3) Subject to the provisions of Article 15(3) of Regulation (EC) No 1060/2009, the documents to be submitted to the Supervisory Authority pursuant to the Regulation shall be prepared and submitted in German and, upon request by the Supervisory Authority, additionally in English. The Supervisory Authority may permit preparation and submission of the documents exclusively in English if the party subject to such obligation belongs to a group of credit rating agencies within the meaning of Article 3(1)(m) of Regulation (EC) No 1060/2009 or is a company domiciled in a third country.

(4) For the purpose of monitoring compliance with the obligations defined in Regulation (EC) No 1060/2009, the Supervisory Authority may conduct examinations without any particular reason at credit rating agencies, companies affiliated with them and persons or companies involved in the performance of credit rating activities.

(5) Without prejudice to subsection (4), credit rating agencies shall be examined annually for compliance with the obligations defined in Regulation (EC) No 1060/2009 by an auditor commissioned by the Supervisory Authority. The Supervisory Authority shall commission auditors or auditing firms that have sufficient knowledge relating to the subject matter to be examined. The Supervisory Authority shall determine the date on which the examination shall start and the reporting period. The Supervisory Authority may, upon request, waive the annual examination in full or in part if this appears appropriate for special reasons, in particular with respect to the nature and scale of the business conducted. The Supervisory Authority may participate in the examination. The Supervisory Authority may issue rules for the credit rating agencies with regard to the content of the examination and define points of

emphasis for the same which the auditor is required to observe. After conclusion of the examination, the auditor shall without undue delay file an examination report with the Supervisory Authority. The auditor shall without undue delay inform the Supervisory Authority of any serious contraventions of the obligations defined in Regulation (EC) No 1060/2009.

(6) Objections and actions to annul measures of the Supervisory Authority in accordance with subsections (2), (4) and (5), also in conjunction with Regulation (EC) No 1060/2009, shall have no suspensory effect.

(7) The Federal Ministry of Finance may, by means of a Regulation not requiring the consent of the *Bundesrat*, issue more detailed provisions concerning the nature, scope and time of the examination pursuant to subsections (4) and (5). The Federal Ministry of Finance may, by means of a Regulation and without requiring the consent of the *Bundesrat*, delegate this authority to the Federal Financial Supervisory Authority.

Section 18

(Repealed)

Section 19

(Repealed)

Section 20

(Repealed)

Part 4
Monitoring of compliance with the prohibition of stock exchange and market manipulation

Section 20a
Prohibition of market manipulation

(1) It is prohibited

1. to supply false or misleading information concerning circumstances that are of crucial importance for the valuation of financial instruments or to withhold such information in contravention of statutory provisions, if the provision or withholding of the information has the potential to influence the domestic stock exchange or market price of a financial instrument or the price of a financial instrument on an organised market in another member state of the European Union or another signatory to the Agreement on the European Economic Area,

2. to initiate transactions or issue purchase or sell orders that have the potential to generate false or misleading signals affecting supply, demand or the stock exchange

or market price of financial instruments or to create an artificial price level or

3. to execute any other deceptive act that has the potential to influence the domestic stock exchange or market price of a financial instrument or the price of a financial instrument on an organised market in another member state of the European Union or another signatory to the Agreement on the European Economic Area.

Sentence 1 applies to financial instruments that

1. are admitted to trading on a German stock exchange or included in the regulated market (*regulierter Markt*) or the regulated unofficial market (*Freiverkehr*); or

2. are admitted to trading on an organised market in another member state of the European Union or another signatory to the Agreement on the European Economic Area.

Securities shall be deemed admitted to trading on an organised market or included in the regulated market or the regulated unofficial market if the application for such admission or inclusion has been made or publicly announced.

(2) The prohibition pursuant to subsection (1) sentence 1 no. 2 does not apply if the action is in accordance with accepted market practice on the organised or regulated unofficial market in question and the initiator has legitimate grounds. Only such conduct which can be reasonably expected on the market in question qualifies as acceptable market practice and is recognised as such by the Supervisory Authority. A specific market practice is not assumed to be unacceptable simply because it has not been previously expressly accepted.

(3) Trading with own shares within the framework of a buy-back programme and price stabilisation measures for financial instruments shall in no case constitute a contravention of the prohibition pursuant to subsection (1) sentence 1, provided that this is performed in compliance with the provisions of Commission Regulation (EC) No. 2273/2003 of 22 December 2003 implementing Directive 2003/6/EC of the European Parliament and of the Council as regards exemptions for buy-back programmes and stabilisation of financial instruments (OJ EC No. L 336 p. 33). For financial instruments included in the regulated unofficial market or the regulated market, the provisions of Commission Regulation No. 2273/2003 apply *mutatis mutandis*.

(4) Subsections (1) to (3) apply *mutatis mutandis* to

1. commodities within the meaning of section 2 (2c);

2. emission allowances within the meaning of section 3 (4) sentence 1 of the Greenhouse Gas Emissions Trading Act (*Treibhausgas-Emissionshandelsgesetz*); and

3. foreign currencies within the meaning of section 51 of the Exchange Act (*Börsengesetz*)

which are traded on a German stock exchange or on a comparable market in another member state of the European Union or in another signatory to the Agreement on the European Economic Area.

(5) The Federal Ministry of Finance may, by means of a Regulation requiring the consent of the *Bundesrat*, issue more detailed provisions concerning

1. circumstances of crucial importance for the valuation of financial instruments;

2. false or misleading signals affecting supply and demand or the stock exchange or market price of financial instruments or the existence of an artificial price level;

3. other deceptive acts;

4. actions and omissions that shall in no case constitute a violation of the prohibition pursuant to subsection (1) sentence 1 and

5. actions deemed acceptable market practice and the recognition process for an acceptable market practice.

The Federal Ministry of Finance may, by means of a Regulation, delegate this authority to the Federal Financial Supervisory Authority. The latter shall issue the provisions in agreement with the stock exchange supervisory authorities of the Federal States.

(6) In respect of journalists acting in their professional capacity, judgement concerning the existence of the prerequisites pursuant to subsection (1) sentence 1 no. 1 must take into account the rules governing their profession, unless those persons derive, directly or indirectly, an advantage or profits from the distribution of such false or misleading information.

Section 20b

(Repealed)

Part 5
Notification, publication and transmission of changes in the percentage of voting rights to the company register

Section 21
Notification requirements applicable to the notifying party

(1) Any person (the notifying party) whose shareholding in an issuer whose home country is the Federal Republic of Germany reaches, exceeds or falls below 3 percent, 5 percent, 10 percent, 15 percent, 20 percent, 25 percent, 30 percent, 50 percent or 75 percent of the voting rights by purchase, sale or by any other means shall, without undue delay, and within four trading days at the latest, notify this to the issuer and simultaneously to the Supervisory Authority in compliance with section 22 (1) and (2). In respect of certificates representing shares, the notification requirement shall apply exclusively to the holder of the certificates. The notification period set forth in sentence 1 begins at the point when the notifying party learns or in consideration of the circumstances must have learned that his percentage of voting rights has reached, exceeded or fallen below the above-mentioned thresholds. It is assumed that the notifying party learns of this two trading days after reaching, exceeding or falling below the thresholds mentioned.

(1a) Any person who, at the time the shares are admitted to trading on an organised market for the first time, holds 3 percent or more of the voting rights in an issuer whose home country is the Federal Republic of Germany, shall notify this issuer and the Supervisory Authority pursuant to subsection (1) sentence 1. Subsection (1) sentence 2 shall apply *mutatis mutandis*.

(2) Domestic issuers and issuers whose home country is the Federal Republic of Germany within the meaning of this part are only those whose shares are admitted to trading on an organised market.

(3) The Federal Ministry of Finance may, by means of a Regulation not requiring the consent of the *Bundesrat*, issue more detailed provisions concerning the contents, nature, language, scope and form of the notification pursuant to subsection (1) sentence 1 and subsection (1a).

Section 22
Attribution of voting rights

(1) For the purpose of the notification requirements under section 21 (1) and (1a), the following voting rights attached to shares in the issuer whose home country is the Federal Republic of Germany shall be equivalent to the voting rights of the notifying party:

1. voting rights of a subsidiary of the notifying party;

2. voting rights of a third party which are held by such third party for the account of the notifying party;

3. voting rights which are assigned as security by the notifying party to a third party, unless such third party is authorised to exercise the voting rights attached to the shares and declares its intention to do so independently of the notifying party's instructions;

4. voting rights in respect of which usufruct has been created in favour of the notifying party;

5. voting rights which may be acquired by the notifying party by a declaration of intent;

6. voting rights which have been entrusted to the notifying party or which it may exercise by means of proxy voting, provided that the notifying party may exercise the voting rights attached to the shares at its own discretion in the absence of specific instructions from the shareholder.

For the purpose of attribution pursuant to sentence 1 nos. 2 to 6, subsidiaries of the notifying party shall be deemed equivalent to the notifying party. Any voting rights of a subsidiary shall be attributed in full to the notifying party.

(2) Any voting rights attached to shares in the issuer whose home country is the Federal Republic of Germany which belong to a third party shall also be attributed to the notifying party in full if the notifying party or its subsidiary coordinates with such third party, on the basis of an agreement or in another manner, its conduct in respect of the issuer; agreements in individual cases shall be excluded. Coordinated conduct requires that the notifying party or its subsidiary and the third party reach a consensus on the exercise of voting rights or collaborate in another manner with the aim of bringing about a permanent

and material change in the issuer's business strategy. Subsection (1) shall apply *mutatis mutandis* to the calculation of the percentage of voting rights held by the third party.

(3) Subsidiaries are companies which are deemed subsidiaries within the meaning of section 290 of the Commercial Code (*Handelsgesetzbuch*) or upon which a controlling influence can be exerted, irrespective of their legal form and domicile.

(3a) For the purpose of attribution of voting rights pursuant to this provision, an investment services enterprise shall not be deemed a subsidiary within the meaning of subsection (3) in respect of the holdings which are managed by such enterprise as part of an investment service pursuant to section 2 (3) sentence 1 no. 7, provided that the following conditions are satisfied:

1. the investment services enterprise may only exercise the voting rights attached to the shares concerned on the basis of instructions given in writing or by electronic means, or if it ensures by putting into place appropriate mechanisms that portfolio management services are conducted independently of any other services and under conditions equivalent to those provided for under Council Directive 85/611/EEC of 20 December 1985 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (OJ EC No. L 375 p. 3), last amended by Article 9 of Directive 2005/1/EC of the European Parliament and of the Council of 9 March 2005 (OJ EU No. L 79 p. 9);

2. the investment services enterprise exercises its voting rights independently from the notifying party;

3. the notifying party informs the Supervisory Authority of the name of the investment services enterprise and of the competent authority responsible for the supervision of the investment services enterprise or the lack of such authority; and

4. the notifying party declares to the Supervisory Authority that the conditions under no. 2 are satisfied.

However, in respect of the attribution of voting rights, an investment services enterprise shall be deemed a subsidiary within the meaning of subsection (3) if the notifying party or another subsidiary of the notifying party owns shares in holdings managed by the investment services enterprise, and the investment services enterprise may not exercise the voting rights attached to such holdings at its own discretion but only under direct or indirect instructions from the notifying party or another subsidiary of the notifying party.

(4) If in the case of subsection (1) sentence 1 no. 6 a proxy is granted for the exercise of the voting rights at one shareholders' meeting only, the notification requirement pursuant to section 21 (1) and (1a) in conjunction with subsection (1) sentence 1 no. 6 shall be deemed fulfilled if the notification is submitted upon conferral of the proxy. The notification must include information as to the date of the shareholders' meeting and the amount of the percentage of voting rights to be attributed to the person executing the proxy once the proxy or the voting rights discretion has expired.

(5) The Federal Ministry of Finance may, by means of a Regulation not requiring the consent of the *Bundesrat*, issue more detailed provisions concerning the circumstances under which, in the case of subsection (3a), the investment services enterprise is deemed to be independent from the notifying party, and concerning electronic means which may be used for giving instructions within the meaning of subsection (3a).

Section 23
Non-consideration of voting rights

(1) Voting rights attached to shares in an issuer whose home country is the Federal Republic of Germany shall remain unconsidered when calculating the percentage of voting rights if their holder

1. provides investment services as an undertaking domiciled in a member state of the European Union or another signatory to the Agreement on the European Economic Area;

2. holds or intends to hold the shares in question in its trading portfolio and if this holding does not exceed 5 percent of the voting rights; and

3. ensures that the voting rights attached to such shares are not exercised or otherwise used to exert influence over the management of the issuer.

(2) Voting rights attached to shares in an issuer whose home country is the Federal Republic of Germany shall remain unconsidered when calculating the percentage of voting rights if

1. the shares concerned are held for a maximum period of three trading days for the sole purpose of clearing and settlement, even if the shares are also traded outside an organised market; or

2. a custodian can only exercise the voting rights attached to the shares held in custody under instructions given in writing or by electronic means.

(3) Voting rights attached to shares provided to or by the members of the European System of Central Banks in carrying out their functions as monetary authorities shall remain unconsidered when calculating the percentage of voting rights in the issuer whose home country is the Federal Republic of Germany, if the above transactions are short-term deals and provided that the voting rights attached to such shares are not exercised. Sentence 1 shall apply in particular to voting rights attached to shares which are transferred as security from or to a member within the meaning of sentence 1, and to voting rights attached to shares provided to or by a member under a pledge or repurchase or similar agreement for liquidity granted for monetary policy purposes or within a payment system.

(4) For the notifying thresholds of 3 percent and 5 percent, the voting rights attached to those shares in an issuer whose home country is the Federal Republic of Germany shall remain unconsidered that are purchased or sold by a person who holds himself out on a market on a continuous basis as being willing to buy or sell, by way of proprietary trading, financial instruments at prices defined by him (market maker), if

1. this person acts in his capacity as market maker;

2. he holds a licence pursuant to section 32 (1) sentence 1 in conjunction with section 1 (1a) sentence 2 no. 4 of the Banking Act (*Kreditwesengesetz*);

3. he neither intervenes in the management of the issuer nor exerts any influence on the issuer to buy such shares or back the share price, and

4. he informs the Supervisory Authority without undue delay and within four trading days at the latest that he acts as market maker in the shares concerned; section 21 (1) sentences 3 and 4 shall apply *mutatis mutandis* to the beginning of the notification period.

The person may submit the notification at the time from which he intends to commence market making activities in the shares concerned.

(5) Voting rights attached to shares which, in accordance with subsections (1) to (4), remain unconsidered when calculating the percentage of voting rights, may not be exercised with the exception of subsection (2) no. 2.

(6) The Federal Ministry of Finance may, by means of a Regulation not requiring the consent of the *Bundesrat*,

1. determine a lower maximum period for holding shares pursuant to subsection (2) no. 1;

2. issue more detailed provisions concerning the non-consideration of voting rights of a market maker pursuant to subsection (4); and

3. issue more detailed provisions concerning the electronic means by which instructions may be given pursuant to subsection (2) no. 2.

Section 24
Notification by group companies

If the notifying party belongs to a group for which consolidated financial statements must be prepared in accordance with sections 290 and 340i of the Commercial Code (*Handelsgesetzbuch*), the notification requirements specified in section 21 (1) and (1a) may be met by the parent undertaking or, if the parent undertaking is itself a subsidiary, by its parent undertaking.

Section 25
Notification requirements relating to holdings in financial instruments

(1) Anyone holding, directly or indirectly, financial instruments that result in an entitlement to acquire, unilaterally and under a legally binding agreement, shares in an issuer whose home country is the Federal Republic of Germany that carry voting rights and have already been issued, must, without undue delay as specified in section 21 (1) sentence 1, notify this to the issuer and simultaneously to the Supervisory Authority if the thresholds set forth in section 21 (1) sentence 1 have been reached, exceeded or fallen below, with the exception of the three-percent threshold. Sections 23 and 24 shall apply *mutatis mutandis*. An aggregation with the holdings as specified in sections 21 and 22 shall take place; financial instruments within the meaning of section 22 (1) sentence 1 no. 5 shall be considered in the calculation only once. Where a notification pursuant to section 21, also in conjunction with section 22, is being or has been submitted, an additional notification in respect of an

aggregation within the meaning of sentence 3 shall only be necessary if, as a consequence, further thresholds mentioned under section 21 (1) sentence 1 are reached, exceeded or fallen below.

(2) If several financial instruments specified in subsection (1) refer to shares in the same issuer, the notifying party must aggregate the voting rights attached to those shares.

(3) The Federal Ministry of Finance may, by means of a Regulation not requiring the consent of the *Bundesrat*, issue more detailed provisions concerning the contents, nature, language, scope and form of the notification pursuant to subsection (1).

Section 26
Publication obligations of the issuer and transmission to the company register

(1) A domestic issuer shall publish information pursuant to section 21 (1) sentence 1, subsection (1a) and section 25 (1) sentence 1 or pursuant to equivalent provisions of other member states of the European Union or other signatories to the Agreement on the European Economic Area without undue delay, but not later than three trading days following receipt of the notification; furthermore, the domestic issuer shall transmit such information also to the company register within the meaning of section 8b of the Commercial Code (*Handelsgesetzbuch*) without undue delay, however not before its publication, to be stored there. Where a domestic issuer reaches, exceeds or falls below the thresholds of 5 percent or 10 percent through acquisition, disposal or otherwise in respect of his own shares, either the issuer himself or through a person acting in his own name but on the issuer's behalf, sentence 1 shall apply *mutatis mutandis* provided that, by way of derogation from sentence 1, a statement is to be published whose content shall be determined by section 21 (1) sentence 1, also in conjunction with a Regulation pursuant to section 21 (2), and that the publication is made not later than four trading days after having reached, exceeded or fallen below the thresholds specified; if the Federal Republic of Germany is the home country of the issuer, the three-percent threshold shall also apply.

(2) The domestic issuer shall make the publication pursuant to subsection (1) sentences 1 and 2 and simultaneously notify the Supervisory Authority of this publication.

(3) The Federal Ministry of Finance may, by means of a Regulation not requiring the consent of the *Bundesrat*, issue more detailed provisions concerning

1. the contents, nature, language, scope and form of the publication pursuant to subsection (1) sentence 1; and

2. the contents, nature, language, scope and form of the notification pursuant to subsection (2).

Section 26a
Publication of the total number of voting rights and transmission to the company register

A domestic issuer shall publish in the manner provided for in section 26 (1) sentence 1, also in conjunction with a Regulation pursuant to subsection (3) no. 1, the total number of voting

rights at the end of each calendar month during which the number of voting rights has increased or decreased, and simultaneously notify such publication to the Supervisory Authority in accordance with section 26 (2), also in conjunction with a Regulation pursuant to subsection (3) no. 2. Furthermore, the domestic issuer shall transmit such information without undue delay, however not before its publication, to the company register within the meaning of section 8b of the Commercial Code (*Handelsgesetzbuch*) to be stored there.

Section 27
Proof of reported holdings

Any person having made a notification pursuant to section 21 (1), (1a) or section 25 (1) must prove the existence of the reported holding if so requested by the Supervisory Authority or the issuer whose home country is the Federal Republic of Germany.

Section 27a
Notification requirements applicable to owners of qualifying holdings

(1) Any notifying party within the meaning of sections 21 and 22 whose shareholding reaches or exceeds the threshold of 10 percent, or a higher threshold, of voting rights attached to shares must, within 20 trading days after reaching or exceeding the threshold, inform the issuer whose home country is the Federal Republic of Germany of the aims underlying the purchase of the voting rights and of the origin of the funds used to purchase the voting rights. Any changes to the aims within the meaning of sentence 1 must be notified within 20 trading days. In respect of the aims underlying the purchase of the voting rights, the notifying party shall notify whether

1. the investment is aimed at implementing strategic objectives or at generating a trading profit;

2. it plans to acquire further voting rights within the next twelve months by means of a purchase or by any other means;

3. it intends to exert an influence on the appointment or removal of members of the issuer's administrative, managing and supervisory bodies and

4. it intends to achieve a material change in the company's capital structure, in particular as regards the ratio between own funds and external funds and the dividend policy.

With regard to the origin of the funds used, the notifying party must state whether these are own funds or external funds raised by the notifying party in order to finance the purchase of the voting rights. No notification requirement pursuant to sentence 1 shall apply if the threshold has been reached or exceeded as a result of an offer within the meaning of section 2 (1) of the Securities Acquisition and Takeover Act (*Wertpapiererwerbs- und Übernahmegesetz*). Moreover, no notification requirement shall apply to asset management companies, investment stock corporations as well as foreign management companies and investment companies within the meaning of Council Directive 85/611/EEC of 20 December 1985 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (OJ EC L 375 p. 3) which are subject to a prohibition pursuant to Article 25 (1) sentence 1 of Directive 85/611/EEC, to the extent that an investment threshold of 10 percent or less has

been determined; in addition, no notification requirement shall apply in the event of a permissible exception for exceeding investment thresholds in accordance with Article 26 (1) sentence 1 and (2) of Directive 85/611/EEC.

(2) The issuer shall publish the information received or the fact that the notification requirement pursuant to subsection (1) has not been fulfilled in accordance with section 26 (1) sentence 1 in conjunction with the Regulation pursuant to section 26 (3) no. 1.

(3) The articles of association of a domestic issuer may provide that subsection (1) does not apply. Moreover, subsection (1) shall not apply to issuers domiciled abroad whose articles of association or other provisions stipulate non-application.

(4) The Federal Ministry of Finance may, by means of a Regulation not requiring the consent of the *Bundesrat*, issue more detailed provisions concerning the contents, nature, language, scope and form of the notification pursuant to subsection (1).

Section 28
Loss of rights

Voting rights attached to shares held by or attributed to a notifying party pursuant to section 22 (1) sentence 1 no. 1 or 2 are not valid during the period for which the notification requirements pursuant to section 21 (1) or (1a) have not been met. This does not apply to claims under section 58 (4) and section 271 of the Stock Corporation Act (*Aktiengesetz*), provided that the notification was not deliberately omitted and was subsequently submitted. Where the percentage of the voting rights is concerned, the period under sentence 1 shall be extended by six months if the notification requirements have been breached intentionally or by gross negligence. Sentence 3 shall not apply if the actual percentage of voting rights is less than 10 percent higher or lower than the percentage of voting rights indicated in the previously submitted incorrect notification and if no notification is omitted relating to any threshold mentioned under section 21 being reached, exceeded or fallen below.

Section 29
Guidelines of the Supervisory Authority

The Supervisory Authority may establish guidelines which it shall use to judge in standard cases whether or not the preconditions are met for an action to fall under notification requirements or whether the prerequisites for an exemption from the notification requirements pursuant to section 21 (1) are fulfilled. The guidelines shall be published in the electronic Federal Gazette (*elektronischer Bundesanzeiger*).

Section 29a
Exemptions

(1) The Supervisory Authority may exempt domestic issuers domiciled in a third country from the duties set forth in section 26 (1) and section 26a if such issuers are subject to equivalent rules of a third country or if they submit to such rules.

(2) Issuers whom the Supervisory Authority has granted an exemption pursuant to subsection (1) must publish in the manner specified in section 26 (1) sentence 1, also in conjunction with a Regulation pursuant to subsection (3), and must simultaneously notify

the Supervisory Authority of information on circumstances which corresponds to the information specified in section 21 (1) sentence 1, subsection (1a), section 25 (1) sentence 1, section 26 (1) sentences 1 and 2 as well as section 26a and which must be made available to the public pursuant to the equivalent rules of a third country. Furthermore, such information must be transmitted without undue delay, however not before its publication, to the company register within the meaning of section 8b of the Commercial Code (*Handelsgesetzbuch*) in order to be stored there.

(3) For the purpose of the attribution of voting rights pursuant to section 22, a company domiciled in a third country which would have required a licence for conducting portfolio management services pursuant to section 32 (1) sentence 1 in conjunction with section 1 (1a) sentence 2 no. 3 of the Banking Act (*Kreditwesengesetz*) if it had its registered office or head office in Germany, shall not be deemed a subsidiary within the meaning of section 22 (3) in respect of the shares managed by such company as part of its portfolio management services. This presupposes that

1. the company complies with requirements concerning its independence that are equivalent to those governing investment services enterprises pursuant to section 22 (3a), also in conjunction with a Regulation pursuant to section 22 (5);

2. the notifying party informs the Supervisory Authority of the name of that company and of the competent authority responsible for the supervision of the company or the lack of such authority; and

3. the notifying party declares to the Supervisory Authority that the conditions under no. 1 are met.

(4) The Federal Ministry of Finance may, by means of a Regulation not requiring the consent of the *Bundesrat*, issue more detailed provisions concerning the equivalence of the rules of a third country and the exemption of issuers pursuant to subsection (1) and of companies pursuant to subsection (3).

Section 30
Trading days

(1) For the purpose of calculating the time limits for notifications and publications pursuant to this Part, all calendar days except Saturdays, Sundays or public holidays that are legally recognised in at least one Federal State shall be deemed trading days.

(2) The Supervisory Authority shall make available a calendar of trading days on its website.

Part 5a
Information necessary for exercising rights attached to securities

Section 30a
Issuers' obligations vis-à-vis security holders

(1) Issuers whose home country is the Federal Republic of Germany must ensure that

1. all holders of the admitted securities are treated equally under equal circumstances;

2. the facilities and information necessary to enable the holders of admitted securities to exercise their rights are made available to the public in Germany;

3. data on the holders of admitted securities are protected from unauthorised persons obtaining knowledge thereof;

4. for the entire duration of the admission of the securities, a minimum of one financial institution has been designated as paying agent in Germany where all necessary measures in respect of securities may be effected, or may be effected free of charge in the case of submission of the securities to this agent.

5. in the case of admitted shares, a form for granting a proxy for the shareholders' meeting is made available in writing to each person entitled to vote, together with the notice concerning the meeting or, upon request, after an announcement of the meeting;

6. in the case of admitted debt securities within the meaning of section 2 (1) sentence 1 no. 3 with the exception of securities that also fall within the scope of section 2 (1) sentence 1 no. 2 or that grant at least a contingent right to acquire securities pursuant to section 2 (1) sentence 1 no. 1 or 2, a form granting a proxy for a general meeting of debt securities holders is made available in writing and in a timely manner to each person entitled to vote, together with the notice concerning the meeting or, upon request, after an announcement of the meeting.

(2) An issuer of admitted debt securities within the meaning of subsection (1) no. 6 whose home country is the Federal Republic of Germany may hold the general meeting of debt securities holders in any member state of the European Union or another signatory to the Agreement on the European Economic Area. This presupposes that all the facilities and information necessary to exercise rights are made available to the debt securities holders in that member state, and that only holders of debt securities whose denomination per unit amounts to at least 50,000 euros or whose denomination per unit is, at the date of the issue, equivalent to at least 50,000 euros in another currency, are invited to the meeting.

(3) For the purpose of the provisions of subsection (1) nos. 1 to 5 as well as section 30b (3) no. 1, the holders of certificates representing shares shall be deemed equivalent to the holders of the shares represented.

Section 30b
Publication of notifications and transmission by way of remote data transfer

(1) The issuer of admitted shares whose home country is the Federal Republic of Germany must, without undue delay, publish in the electronic Federal Gazette (*elektronischer Bundesanzeiger*)

1. the convening of the shareholders' meeting, including the agenda, the total number of shares and voting rights at the time the meeting was convened as well as the shareholders' rights in respect of the participation in the shareholders' meeting; and

2. notifications on the distribution and payment of dividends, the issue of new shares and any arrangements for or exercise of conversion, cancellation and subscription rights.

If such publication in the electronic Federal Gazette is required also under other provisions, one single publication is sufficient.

(2) The issuer of debt securities within the meaning of section 30a (1) no. 6 whose home country is the Federal Republic of Germany must, without undue delay, publish in the electronic Federal Gazette

1. the place, time and agenda of the meeting of debt securities holders as well as notices concerning the right of those securities holders to participate therein; and

2. notices concerning the exercise of any conversion, subscription and cancellation rights as well as the payment of interest, repayments, drawings and units that have been cancelled or drawn but have not yet been redeemed.

Subsection (1) sentence 2 shall apply *mutatis mutandis*.

(3) Without prejudice to the publication requirements set forth in subsections (1) and (2), issuers whose home country is the Federal Republic of Germany may communicate information by way of remote data transfer to the holders of admitted securities if the costs entailed in such transmission are not imposed on the securities holders in contravention of the principle of equal treatment laid down in section 30a (1) no. 1, and if

1. in the case of admitted shares

a. the shareholders' meeting has given its consent thereto;

b. the choice concerning the type of the remote data transfer does not depend upon the location of the registered office or residence of the shareholders or the persons whose voting rights are attributed in the cases referred to in section 22;

c. mechanisms have been put into place for identifying and addressing in a safe manner the shareholders or those persons exercising the voting rights or who are entitled to issue instructions for the exercise of such voting rights; and

d. the shareholders, or in the cases of section 22 (1) sentence 1 nos. 1, 3, 4 and subsection (2) the persons entitled to exercise the voting rights, have given their explicit consent to the communication by means of remote data transfer or have not objected to a written request for consent within an appropriate period of time and have not revoked at a later point in time such consent which is thus deemed to have been given;

2. in the case of admitted debt securities within the meaning of section 30a (1) no. 6

a. a meeting of debt securities holders has given its consent thereto;

b. the choice concerning the type of the remote data transfer does not depend upon the location of the registered office or residence of the debt securities holders or their

proxies;

c. mechanisms have been put into place for identifying and addressing in a safe manner the debt securities holders;

d. the debt securities holders have given their explicit consent to the communication by means of remote data transfer or have not objected to a written request for consent within an appropriate period of time and have not revoked at a later point in time such consent which is thus deemed to have been given.

Section 30c
Amendments to the issuer's legal basis

The issuer of admitted securities whose home country is the Federal Republic of Germany must notify the Supervisory Authority and the Admission Offices of the domestic and foreign regulated markets (*regulierte Märkte*) on which his securities are admitted to trading of any intended amendments to his articles of association or any other legal basis that affect the rights of securities holders, without undue delay following the decision to present the draft amendments to the decision-making body that shall decide on the amendments, but at the time of convening the decision-making body at the latest.

Section 30d
Provisions relating to issuers from the European Union and the European Economic Area

The provisions of sections 30a to 30c shall also apply to issuers whose home country is not the Federal Republic of Germany but another member state of the European Union or another signatory to the Agreement on the European Economic Area, if their securities are admitted to trading on an organised market in Germany and if their home country does not set forth any provisions equivalent to those specified in sections 30a to 30c.

Section 30e
Publication of additional information and transmission to the company register

(1) A domestic issuer must publish without undue delay, and simultaneously notify the Supervisory Authority of such publication,

1. any change in the rights attached to the admitted securities; and

    a. in the case of admitted shares, in those rights attached to derivative securities issued by the issuer himself provided that they grant conversion or acquisition rights in respect of the issuer's admitted shares;

    b. in the case of securities other than shares, any changes in the terms of these securities, in particular changes in the interest rates or the conditions associated with them, provided that the rights attached to such securities are indirectly affected thereby;

c. in the case of securities which grant conversion or subscription rights to the creditors in respect of shares, any changes in the rights attached to those shares to which the conversion or subscription rights relate;

2. new loan issue with the exception of government bonds within the meaning of section 36 of the Exchange Act (*Börsengesetz*) and the guarantees assumed for such loan issues provided that the domestic issuer is not a public international body of which at least one member state of the European Union or another signatory to the Agreement on the European Economic Area is a member, or if he does not issue exclusively securities which are guaranteed by the Federal Government; and

3. information which he publishes in a third country and which may be of importance to the public in the European Union and the European Economic Area.

Furthermore, the domestic issuer shall transmit such information without undue delay, but not before such information has been published, to the company register within the meaning of section 8b of the Commercial Code (*Handelsgesetzbuch*) in order to be stored there.

(2) The Federal Ministry of Finance may, by means of a Regulation not requiring the consent of the *Bundesrat*, issue more detailed provisions concerning the minimum content, nature, language, scope and form of the publication and the notification pursuant to subsection (1) sentence 1.

Section 30f
Exemption

(1) The Supervisory Authority may exempt domestic issuers domiciled in a third country from the duties set forth in sections 30a, 30b and 30e (1) sentence 1 nos. 1 and 2 if such issuers are subject to equivalent rules of a third country or if they submit to such rules.

(2) Issuers whom the Supervisory Authority has granted an exemption pursuant to subsection (1) must publish, in accordance with section 30e (1) in conjunction with a Regulation pursuant to section 30e (2), information on circumstances within the meaning of section 30e (1) sentence 1 nos. 1 and 2 which must be made available to the public pursuant to the equivalent rules of a third country, and simultaneously notify the Supervisory Authority of such publication; furthermore, they must transmit such information without undue delay, however not before its publication, to the company register within the meaning of section 8b of the Commercial Code (*Handelsgesetzbuch*) in order to be stored there.

(3) The Federal Ministry of Finance may, by means of a Regulation not requiring the consent of the *Bundesrat*, issue more detailed provisions concerning the equivalence of the rules of a third country and the exemption of issuers pursuant to subsection 1.

Section 30g
Exclusion of appeal

A shareholders' resolution shall not be appealed on the grounds of a contravention of the provisions set forth in this part.

Part 5b
Short selling and derivatives transactions

Section 30h
Ban on naked short-selling transactions in shares and certain debt securities

(1) It shall be prohibited to perform naked short-selling transactions in

1. shares; or

2. debt securities issued by central governments, regional governments or local authorities of member states of the European Union whose legal currency is the euro,

which are admitted to trading on the regulated market of a German stock exchange. To this extent section 37 of the Exchange Act (*Börsengesetz*) shall not apply. The foregoing shall not apply to shares of companies domiciled abroad, unless the shares are exclusively admitted to trading on the regulated market of a German stock exchange. A transaction shall be deemed a naked short sale if, by the close of the day on which the respective transaction has been entered into, the seller of the securities referred to in sentence 1

1. does not own all of the securities sold; and

2. does not have any unconditionally enforceable claim under the law of obligations or under property law to be transferred title to a corresponding number of securities of the same class.

(2) Exempt from the ban under subsection (1) are transactions entered into by investment services enterprises or equivalent enterprises domiciled abroad, provided they

1. trade in shares or debt securities within the meaning of subsection (1) by way of proprietary trading and hold themselves out on a regular and continuous basis as being willing to buy or sell such financial instruments at prices defined by them; or

2. regularly and continuously carry out client orders and hedge the resulting positions;

and the underlying transaction in each case is necessary for the performance of this function. Also exempt are transactions that trading participants enter into with a client for settlement of a transaction in financial instruments at a fixed or determinable price (fixed price transaction). The intention to take up an activity described in sentence 1 must be reported to the Supervisory Authority without undue delay, providing details of the financial instruments concerned in each case.

(3) The Federal Ministry of Finance may, by means of a Regulation not requiring the consent of the *Bundesrat*,

1. issue more detailed provisions concerning the content, nature, scope and form of the reporting requirement under subsection (2) sentence 3; and

2. stipulate exceptions to the ban under subsection (1) for certain transactions.

The Federal Ministry of Finance may, by means of a Regulation and without requiring the consent of the *Bundesrat*, delegate the authority pursuant to sentence 1 no. 1 to the Supervisory Authority.

Section 30i will enter into force on 26 March 2012:

Section 30i
Notification and publication requirements for holders of net short-selling positions

(1) Net short-selling positions which reach, exceed or fall below 0.2 percent of a company's shares in issue which are admitted to trading on the regulated market of a German stock exchange, must be notified by their holder, rounded to two places after the decimal point, to the Supervisory Authority in accordance with subsection (3) by the close of the next trading day as defined in section 30 (1). Net short-selling positions which reach, exceed or fall below a threshold of 0.5 percent must be published by their holder in addition to the notification pursuant to sentence 1 in the electronic Federal Gazette (*elektronischer Bundesanzeiger*) within the period specified in sentence 1. As soon as a net short-selling position reaches, exceeds or falls below the threshold referred to in sentence 1 plus 0.1 percent or a multiple thereof, the holder of such position must, within the period specified in sentence 1,

1. make a further notification in accordance with subsection (3) in cases where sentence 1 applies; and

2. make a further notification and publication in the electronic Federal Gazette in cases where sentence 2 applies.

(2) A net short-selling position shall be deemed to exist when netting all of a holder's financial instruments, the holder's economic exposure in the company’s shares in issue is equivalent to a short-selling position in shares. The holder of the net short-selling positions is the legal entity or common fund that holds the netted financial instruments. For a common fund, the notification shall be effected by the person who is responsible for managing the common fund or who actually performs such management.

(3) Notifications pursuant to subsection (1) sentences 1 and 3 shall be made using a reporting channel stipulated by the Supervisory Authority.

(4) Exempt from the requirements under subsections (1) to (3) are net short-selling positions held by investment services enterprises or equivalent enterprises domiciled abroad, provided they

1. trade in shares within the meaning of subsection (1) by way of proprietary trading and hold themselves out on a regular and continuous basis as being willing to buy or sell such financial instruments at prices defined by them; or

2. regularly and continuously carry out client orders and hedge the resulting positions;

and the underlying transaction in each case is necessary for the performance of this function. The intention to take up an activity described in sentence 1 must be reported to the Supervisory Authority without undue delay, providing details of the financial instruments concerned in each case.

(5) The Federal Ministry of Finance may, by means of a Regulation not requiring the consent of the *Bundesrat*,

1. issue more detailed provisions concerning the content, nature, scope and form of the notification and publication, concerning the calculation of net short-selling positions, and concerning the permitted data media and means of transmission;

2. permit notifications or publications by those subject to these requirements to be made at their own expense by a suitable third party, and set forth the relevant details.

The Federal Ministry of Finance may, by means of a Regulation and without requiring the consent of the *Bundesrat*, delegate the authority pursuant to sentence 1 to the Supervisory Authority.

Section 30j
Ban on certain credit derivatives

(1) A protection buyer is prohibited from contracting a credit derivative as defined in section 2 (2) no. 4 or from entering into a transaction in respect of the same in Germany if

1. as part of such transaction the protection seller has an obligation, on occurrence of a previously specified credit event, to make a compensation payment to the protection buyer, regardless of whether the compensation payment is made in the amount of the nominal value against physical delivery of a reference liability, in the form of compensation of the difference to the residual value of a reference liability after occurrence of the credit event, or as a fixed amount (credit default swap), also to the extent that such amount is embedded in a credit-linked note or a total return swap; and

2. at least one reference liability is a liability of a central government, regional government or local authority of a member state of the European Union whose legal currency is the euro.

(2) Exempt from the ban under subsection (1) are transactions in which, based on an economic view, the conclusion of the credit derivative pursuant to subsection (1) is intended to achieve a more than insignificant reduction in the risk associated with

1. an existing position in a reference liability of the credit derivative pursuant to subsection (1), or a position in same that is assumed in direct temporal connection with conclusion of the credit derivative; or

2. another existing position in a different financial instrument, or a position in the same that is assumed in direct temporal connection with conclusion of the credit derivative, or another existing liability which may fall in value if the creditworthiness of the reference entity under subsection (1) no. 2 deteriorates.

(3) Also exempt from the ban under subsection (1) are transactions entered into by investment services enterprises or equivalent enterprises domiciled abroad, provided they

1. trade in credit derivatives within the meaning of subsection (1) by way of proprietary trading and hold themselves out on a regular and continuous basis as being willing to buy or sell such credit derivatives at prices defined by them; and

2. the underlying transaction in each case is necessary for the performance of this function.

The intention to take up an activity described in sentence 1 must be reported to the Supervisory Authority without undue delay, providing details of the relevant credit derivatives pursuant to subsection (1) in each case.

(4) The Federal Ministry of Finance may, by means of a Regulation not requiring the consent

of the *Bundesrat*,

1. issue more detailed provisions concerning the content, nature, scope and form of the reporting requirement under subsection (3) sentence 2; and

2. stipulate exceptions to the ban under subsection (1) for certain transactions.

The Federal Ministry of Finance may, by means of a Regulation not requiring the consent of the *Bundesrat*, delegate the authority pursuant to sentence 1 to the Supervisory Authority.

Part 6
Conduct of business obligations, organisational requirements, transparency obligations

Section 31
General rules of conduct

(1) Investment services enterprises shall be required

1. to provide investment services and ancillary services with the requisite degree of expertise, care and diligence in the interests of their clients and

2. to avoid conflicts of interest wherever possible and, prior to the execution of transactions for clients, clearly inform those clients of the general nature and the source of the conflicts of interest if the organisational arrangements pursuant to section 33 (1) sentence 2 no. 3 prove insufficient to prevent, with reasonable certainty, clients' interests from being prejudiced.

(2) All information, including marketing communications, which investment services enterprises make available to their clients must be fair, clear and not misleading. Marketing communications must be clearly identifiable as such. This is without prejudice to section 124 of the Investment Act (*Investmentgesetz*) and section 15 of the Securities Prospectus Act (*Wertpapierprospektgesetz*). Where information is provided on financial instruments or their issuers containing either directly or indirectly a general recommendation for a particular investment decision,

1. investment services enterprises must comply with the requirements set forth in section 33b (5) and (6) as well as section 34b (5), also in conjunction with a Regulation pursuant to section 34b (8), or with comparable foreign provisions; or

2. to the extent that, failing compliance with no. 1, the information is described as financial analysis or in similar terms, or is otherwise presented as an objective or independent explanation of the matters contained in the recommendation, the information must be clearly identified as a marketing communication and contain a statement that it does not meet all legal requirements designed to guarantee the independence of financial analyses and that it is not subject to any prohibition on dealing ahead of the publication of financial analyses.

(3) Investment services enterprises shall be required to provide clients in a comprehensible form and in a timely manner with information that is reasonably appropriate for these clients to understand the nature and risks of the types of financial instruments or investment

services that are being offered or demanded, and to take investment decisions on this basis. This information may be provided in a standardised format. The information must relate to

1. the investment services enterprise and its services;

2. the types of financial instruments and proposed investment strategies, including the risks associated therewith;

3. the execution venues; and

4. the costs and associated charges.

If an investment services enterprise distributes units in investment funds (*Investmentvermögen*) within the meaning of the Investment Act, the information contained in the simplified prospectus pursuant to section 121 (1) to (3) and section 123 of the Investment Act shall be deemed appropriate pursuant to sentence 1.

(4) An investment services enterprise that provides investment advice or financial portfolio management must obtain from the clients all necessary information regarding the clients' knowledge and experience with respect to transactions in specific types of financial instruments or investment services, their investment objectives and their financial situation so as to enable the enterprise to recommend to the clients financial instruments or investment services that are appropriate for them. The appropriateness shall be assessed in relation to whether the specific transaction recommended to the client, or the specific investment service provided as part of financial portfolio management, complies with the investment objectives of the client, whether the client is able financially to bear any related investment risks consistent with his investment objectives, and whether the client has the necessary experience and knowledge in order to understand the related risks. Where an investment services enterprise does not obtain the information required, it may not recommend a financial instrument when providing investment advice, nor make any recommendation when providing financial portfolio management.

(5) Prior to the provision of investment services other than those specified in subsection (4) the purpose of which is the execution of client orders, an investment services enterprise shall obtain from the clients information regarding the clients' knowledge and experience with respect to transactions in specific types of financial instruments or investment services, to the extent that such information is necessary to assess whether the financial instruments or investment services are appropriate for the clients. The appropriateness shall be assessed with regard to whether the client has the necessary knowledge and experience in order to reasonably assess the risks associated with such type of financial instruments and investment services. In case an investment services enterprise considers, on the basis of the information received under sentence 1, that the financial instrument or investment service requested by the client is not appropriate for the client, it shall inform the client thereof. In case the investment services enterprise does not obtain the information required, it shall inform the client that an assessment of the appropriateness within the meaning of sentence 1 is not possible. The information pursuant to sentence 3 and sentence 4 may be provided in a standardised format.

(6) If the information mentioned in subsections (4) and (5) is based on information provided by the client, the investment services enterprise shall not be responsible for the inaccuracy or incompleteness of such information, unless it is aware of the inaccuracy or incompleteness of the information provided by the client or is unaware of it as a result of gross negligence.

(7) The obligations set forth in subsection (5) shall not apply to the extent that the investment services enterprise

1. provides, at the initiative of the client, principal broking, proprietary trading, contract broking or investment broking services in respect of shares which are admitted to trading on an organised market or an equivalent market, in respect of money market instruments, bonds and other forms of securitised debt that does not embed a derivative, units in investment funds (*Investmentvermögen*) which meet the requirements of Directive 85/611/EC, or in respect of other non-complex financial instruments; and

2. informs the client that an appropriateness test within the meaning of subsection (5) is not carried out. The information may be provided in a standardised format.

(8) The clients must receive from the investment services enterprises adequate reports on the transactions undertaken or the financial portfolio management provided.

(9) In the case of professional clients within the meaning of section 31a (2), the investment services enterprise shall, as part of its obligations pursuant to subsection (4), be entitled to assume that the professional clients have the degree of knowledge and experience in respect of the products, transactions or services for which they are classified as professional clients which is necessary for them to understand the risks inherent in these transactions or in the financial portfolio management, and that the clients are able financially to bear such risks consistent with their investment objectives.

(10) Subsection (1) no. 1 and subsections (2) to (9) as well as sections 31a, 31b, 31d and 31e shall apply *mutatis mutandis* to enterprises domiciled in a third country which provide investment services or ancillary services for clients having their habitual residence or place of management in Germany, provided that the investment services or ancillary services and related ancillary services are not provided exclusively in a third country.

(11) The Federal Ministry of Finance may, by means of a Regulation not requiring the consent of the *Bundesrat*, issue more detailed provisions concerning

1. the nature, scope and form of the disclosure pursuant to subsection (1) no. 2;

2. the nature, content and time of, and the data carrier for, the information for clients that is required pursuant to subsections (2) and (3);

3. the nature of the information to be obtained from the clients pursuant to subsections (4) and (5);

4. the classification of other financial instruments as non-complex financial instruments within the meaning of subsection (7) no.1;

5. the nature, content and time of, and the data carrier for, the reporting obligations pursuant to subsection (8).

The Federal Ministry of Finance may, by means of a Regulation, delegate this authority to the Supervisory Authority.

Section 31a
Clients

(1) Clients within the meaning of this Act are any natural or legal persons for whom investment services enterprises provide or bring about investment services or ancillary services.

(2) Professional clients within the meaning of this Act are clients in respect of whom an investment services enterprise can assume they possess sufficient experience, knowledge and expertise to make their own investment decisions and properly assess the risks that they incur. Professional clients within the meaning of sentence 1 are

1. enterprises which, in order to be able to operate in the financial markets as

    a. investment services enterprises;

    b. other authorised or supervised financial institutions;

    c. insurance undertakings;

    d. collective investment undertakings and their management companies;

    e. pension funds and management companies of such funds;

    f. enterprises within the meaning of section 2a (1) no. 8;

    g. exchange traders and commodity derivatives dealers;

    h. other institutional investors whose main business is not covered by (a) to (g),

    are subject to authorisation or supervision requirements;

2. enterprises which are not subject to authorisation or supervision requirements under no. 1 and exceed at least two of the following three criteria:

    a. balance sheet total of €20,000,000;

    b. net turnover of €40,000,000;

    c. own funds of €2,000,000;

3. national and regional governments as well as public bodies that manage public debt;

4. Central Banks, international and supranational institutions such as the World Bank, the International Monetary Fund, the European Central Bank, the European Investment Bank and other similar international organisations;

5. other institutional investors which are not subject to authorisation or supervision requirements and whose main activity is to invest in financial instruments, and entities offering the securitisation of assets and other financing transactions.

They shall be deemed professional clients with respect to all financial instruments, investment services and ancillary services.

(3) Retail clients within the meaning of this Act are clients who are not professional clients.

(4) Eligible counterparties are enterprises within the meaning of subsection (2) no. 1 (a) to (f), organisations pursuant to subsection (2) nos. 3 and 4 as well as enterprises within the meaning of section 2a (1) no. 12. The following shall be deemed equivalent to eligible counterparties if they have agreed to be treated as eligible counterparties for all transactions or for individual transactions:

1. enterprises within the meaning of subsection (2) no. 2, domiciled in or outside of Germany;

2. enterprises domiciled in another member state of the European Union or another signatory to the Agreement on the European Economic Area which, under the law of the home country, are to be considered eligible counterparties in accordance with Article 24 (3) sentence 1 of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC (OJ EU No. L 145 p. 1, 2005 No. L 45 p. 18), as amended from time to time.

(5) An investment services enterprise may, notwithstanding subsections (2) and (4), categorise eligible counterparties as professional clients or retail clients, and professional clients as retail clients. The investment services enterprise must inform its clients of any changes in the categorisation.

(6) A professional client may agree with the investment services enterprise that he be categorised as retail client. The agreement regarding a change in categorisation shall be concluded in writing. Where the change is not intended to apply to all investment services, ancillary services and financial instruments, this shall be expressly stated. An investment services enterprise must inform professional clients within the meaning of subsection (2) sentence 2 no. 2 and subsection (7) at the beginning of a business relationship that they are categorised as professional clients and that it is possible to change this categorisation in accordance with sentence 1. Where an investment services enterprise has categorised clients in accordance with subsection (2) sentence 1 prior to 1 November 2007 on the basis of an assessment procedure that focuses on the clients' expertise, knowledge and experience, the categorisation shall remain valid after 1 November 2007. These clients are to be informed about the conditions for categorisation pursuant to subsections (2), (5) and (6), and about the possibility to change such categorisation pursuant to subsection (6) sentence 4.

(7) A retail client may be categorised as professional client upon request or if the investment services enterprises so determines. Prior to changing the categorisation, the investment services enterprise is required to conduct an assessment as to whether the client possesses the experience, knowledge and expertise to make an investment decision in general or with respect to a specific type of transaction, and if he is capable of adequately assessing the risks involved. A change in the categorisation shall only be considered if the retail client satisfies, as a minimum, two of the following three criteria:

1. the client has carried out transactions, in significant size, on the market on which the financial instruments are traded for which he is intended to be categorised as professional client, at an average frequency of 10 per quarter over the previous year;

2. the client's cash deposits and financial instruments exceed €500,000;

3. the client has worked in the capital market for at least one year in a professional position which requires knowledge of the transactions, investment services and ancillary services envisaged.

The investment services enterprise must inform the retail client in writing that, owing to the change in categorisation, the protection provisions relating to retail clients set forth in this Act no longer apply. The client must confirm in writing that he has been informed of this fact. Where a professional client within the meaning of sentence 1 or subsection (2) sentence 2 no. 2 does not keep the investment services enterprise informed about any change which may affect his categorisation as a professional client, any erroneous categorisation made on this basis shall not constitute a breach of duty on the part of the investment services enterprise.

(8) The Federal Ministry of Finance may, by means of a Regulation not requiring the consent of the *Bundesrat,* issue more detailed provisions concerning the provisions on categorisation pursuant to subsection (2) no. 2, the procedure and organisational arrangements which investment services enterprises have in place for changing the categorisation in accordance with subsection (5), and the criteria, procedure and organisational arrangements in place for changing or maintaining a classification pursuant to subsections (6) and (7). The Federal Ministry of Finance may, by means of a Regulation, delegate this authority to the Supervisory Authority.

Section 31b
Transactions executed with eligible counterparties

(1) Investment services enterprises which provide to eligible counterparties principal broking services, investment broking, contract broking and proprietary trading as well as ancillary services directly related thereto, shall not be subject to the provisions set out in section 31 (2), (3) and (5) to (7) as well as sections 31c, 31d and 33a. Sentence 1 shall not apply if the eligible counterparty has agreed with the investment services enterprise to be treated as a professional client or retail client in respect of all transactions or individual transactions.

(2) The Federal Ministry of Finance may, by means of a Regulation not requiring the consent of the *Bundesrat*, issue more detailed provisions concerning the form and content of the agreement pursuant to subsection (1) sentence 2 and the manner in which the parties express their agreement pursuant to section 31a (4) sentence 2. The Federal Ministry of Finance may, by means of a Regulation, delegate this authority to the Supervisory Authority.

Section 31c
Handling of client orders

(1) An investment services enterprise must take all reasonable steps to

1. execute, or transmit to third parties, client orders without undue delay and in a fair manner, relative to other client orders and the trading interests of the investment services enterprise;

2. execute comparable client orders in chronological order of reception or transmit such orders to third parties for the purpose of execution, subject to the prevailing market conditions or other client interests;

3. ensure that client money and clients' financial instruments are booked correctly;

4. safeguard the interests of all clients involved when aggregating client orders with other client orders or with the investment services enterprise's proprietary transactions;

5. ensure that information related to orders not yet executed is not misused;

6. inform each client involved about the aggregation of orders and about the risks related thereto, and inform without undue delay each retail client involved about any material problem known to it which arises from the execution of the order.

(2) In the case of a client limit order in respect of shares admitted to trading on an organised market which cannot be immediately executed due to prevailing market conditions, the investment services enterprise must, without undue delay, publish that client limit order in a manner which is easily accessible to other market participants, unless the client instructs otherwise. The obligation set forth in sentence 1 shall be deemed met if the orders are or have been transmitted to an organised market or a multilateral trading facility which complies with the provisions of Article 31 of Regulation (EC) No. 1287/2006. The Supervisory Authority may waive the obligation set forth in sentence 1 in respect of orders that are significantly larger in scale compared with normal market size.

(3) The Federal Ministry of Finance may, by means of a Regulation not requiring the consent of the *Bundesrat*, issue more detailed provisions concerning the obligations set forth in subsections (1) and (2) sentence 1 and concerning the conditions under which the Supervisory Authority may waive the obligation set forth in subsection (2) sentence 3. The Federal Ministry of Finance may, by means of a Regulation, delegate this authority to the Supervisory Authority.

Section 31d
Inducements

(1) An investment services enterprise may not, in relation to the provision of an investment or ancillary service, accept any inducement from third parties or provide any inducement to third parties that are not clients of this service, unless

1. the inducement is designed to enhance the quality of the service to the client and does not impair the proper provision of the service in the interest of the client in accordance with section 31 (1) no. 1; and

2. the existence, nature and scope of the inducement or, where the scope cannot be ascertained, the method of calculating that scope, is clearly disclosed to the client in a manner that is comprehensive, accurate and understandable, prior to the provision of the investment or ancillary service.

If the investment services enterprise accepts an inducement from a third party commissioned by the client, or if it grants such an inducement to such a third party, this shall not be deemed an inducement within the meaning of sentence 1.

(2) Inducements within the meaning of this provision are commissions, fees or other cash payments as well as any non-cash benefits.

(3) Pursuant to subsection (1) no. 2, the essential terms of the arrangements relating to the inducements may be disclosed in summary form, provided that the investment services

enterprise offers to disclose further details to the client and provides such details to the client upon request.

(4) If an inducement is accepted that relates to an investment service set out in section 2 (3) sentence 1 no. 9 or to general recommendations with respect to transactions in financial instruments, and if such services are provided in an unbiased manner despite such inducement, it may be presumed that the inducement is designed to enhance the quality of the investment service provided to the client.

(5) Fees or charges which allow or are necessary for the provision of investment services and which, by their nature, are not likely to jeopardise compliance with the obligations pursuant to section 31 (1) sentence 1 no. 1 shall be exempt from the prohibition set forth in subsection (1).

Section 31e
Provision of investment and ancillary services through another investment services enterprise

Where an investment services enterprise receives an order through another investment services enterprise to provide investment or ancillary services on behalf of a client, the enterprise receiving the order shall be responsible for performing the investment or ancillary service in compliance with the provisions of this part subject to the following proviso:

1. the investment services enterprise receiving the order shall not be responsible for verifying the completeness and accuracy of the client information and instructions transmitted by the other investment services enterprise;

2. the investment services enterprise receiving the order shall be able to rely on recommendations in respect of the investment or ancillary service provided by the other investment services enterprise to clients being in compliance with the legal requirements.

Section 31f
Operation of a multilateral trading facility

(1) The operator of a multilateral trading facility shall be obliged to

1. define rules for the access of trading participants to the multilateral trading facility which provide for at least the requirements for participating in exchange trading pursuant to section 19 (2) and (4) sentence 1 of the Exchange Act (*Börsengesetz*); section 19 (4) sentence 2 of the Exchange Act shall apply *mutatis mutandis*;

2. define rules for the inclusion of financial instruments, the orderly conduct of trading and determination of prices, the use of reference prices and the settlement of executed transactions in conformity with the contract; the rules concerning trading and determination of prices may not, however, grant the operator any discretionary powers;

3. have in place appropriate control mechanisms for monitoring compliance with the rules set out in no. 2 and for monitoring compliance with sections 14 and 20a;

4. ensure that the prices in the multilateral trading facility are fixed in accordance with the provisions of section 24 (2) of the Exchange Act;

5. ensure that the records pertaining to orders placed and transactions executed permit, on the multilateral trading facility, full and uninterrupted supervision by the Supervisory Authority; and

6. publish all information necessary for and relevant to the use of the multilateral trading facility, taking into account the nature of the users and the types of financial instruments traded.

(2) Issuers whose financial instruments have been included for trading on a multilateral trading facility without their consent shall not be required to publish information relating to these financial instruments with regard to that multilateral trading facility.

(3) The operator of a multilateral trading facility shall inform the Supervisory Authority of any serious contraventions of the trading rules and any other disruptions to market integrity; if there is evidence of a contravention of section 14 or section 20a, the Supervisory Authority shall be informed thereof without undue delay and be given full support in the performance of its investigations.

Section 31g
Pre-trade and post-trade transparency requirements for multilateral trading facilities

(1) The operator of a multilateral trading facility shall, in respect of shares and certificates representing shares admitted to trading on an organised market that are included in the facility, publish continuously throughout normal business hours and on reasonable commercial terms the price of the highest limited purchase order and of the lowest limited selling order and the volume tradable at these prices.

(2) Pursuant to Chapter IV Section 1 of Commission Regulation (EC) No. 1287/2006, the Supervisory Authority may grant the operators of multilateral trading facilities exemptions from the requirements set forth in subsection (1).

(3) The operator of a multilateral trading facility shall publish, on reasonable commercial terms and as close to real-time as possible, the market price, volume and time of the transactions executed in accordance with subsection (1).

(4) Pursuant to Chapter IV Section 3 of Commission Regulation (EC) No. 1287/2006, the Supervisory Authority may permit deferred publication of the information set forth in subsection (3), depending on the type and size of the transactions executed. The operator of a multilateral trading facility shall publish such deferral pursuant to sentence 1.

(5) Chapter IV Sections 1, 3 and 4 of Commission Regulation (EC) No. 1287/2006 governs the details of the publication requirements pursuant to subsections (1), (3) and (4).

Section 31h
Post-trade publication requirements for investment services enterprises

(1) Investment services enterprises which, in providing investment services pursuant to section 2 (3) sentence 1 nos. 1 to 4, conclude transactions in shares and certificates representing shares admitted to trading on an organised market outside an organised

market or multilateral trading facility are obliged to publish on reasonable commercial terms and as close to real-time as possible the volume and market price of these transactions and the time at which they were concluded.

(2) Pursuant to Chapter IV Section 3 of Commission Regulation (EC) No. 1287/2006, the Supervisory Authority may permit deferred publication of the information set forth in subsection (1), depending on the size of the transactions executed. The investment services enterprise shall publish such deferral pursuant to sentence 1.

(3) Chapter IV Sections 3 and 4 of Commission Regulation (EC) No. 1287/2006 governs the details of the publication requirements pursuant to subsections (1) and (2).

Section 32
Systematic internalisation

Sections 32a to 32d shall apply to systematic internalisers to the extent that they execute orders in shares and certificates representing shares admitted to trading on an organised market up to standard market size. Details are governed by Chapters III and IV Sections 2 and 4 of Commission Regulation (EC) No. 1287/2006. A market within the meaning of these provisions for each category of shares shall be comprised of all orders executed in the European Union in respect of that category of shares, excluding those large in scale compared to normal market size for that share.

Section 32a
Publication of quotes by systematic internalisers

(1) Systematic internalisers within the meaning of section 32 sentence 1 are obliged to publish their binding bid and ask quotes on a regular and continuous basis during normal trading hours and on reasonable commercial terms in respect of the categories of shares offered by them, to the extent that there is a liquid market for these categories of shares. Where no liquid market exists, the systematic internalisers shall be obliged to disclose quotes to their clients on request in accordance with sentence 1. The prices quoted shall reflect the prevailing market conditions.

(2) Systematic internalisers may determine the number of shares or the value (size) of their bid and ask quotes in those categories of shares for which they provide quotes. The bid and ask prices quoted per share shall reflect the prevailing market conditions.

(3) Systematic internalisers may update their quotes at any time and withdraw their quotes under exceptional market conditions.

(4) Chapter IV Sections 2 and 4 of Commission Regulation (EC) No. 1287/2006 governs the details of the publication requirements pursuant to subsection (1) sentences 1 and 2.

Section 32b
Determination of the standard market size and functions of the Supervisory Authority

(1) In order to determine the standard market size within the meaning of section 32 sentence 1, the Supervisory Authority shall determine at least annually, on the basis of the arithmetic average value of the orders executed in the market, the categories of shares which have their most relevant market in terms of liquidity in Germany.

(2) The Supervisory Authority publishes on its website the categories determined pursuant to subsection (1).

Section 32c
Execution of client orders by systematic internalisers

(1) A systematic internaliser within the meaning of section 32 sentence 1 shall be obliged to execute orders at the prices quoted at the time of reception of the order. The execution of orders received from retail clients must comply with the requirements set out in section 33a.

(2) A systematic internaliser may execute the orders received from professional clients at prices differing from those mentioned in subsection (1) sentence 1, provided that

1. the orders are executed at a better price that falls within a public range close to market conditions and the order volume exceeds 7,500 euros;

2. portfolio trades are executed in 10 or more securities that are part of one order; or

3. the orders are executed subject to conditions other than those applying to the current market price.

(3) Where a systematic internaliser who quotes only one quote or whose highest quote is lower than the standard market size receives a client order of a size bigger than his quotation size but lower than the standard market size, he may execute this order to the extent that it exceeds his quotation size, provided that it is executed at the quoted price. This is without prejudice to subsection (2).

(4) Where a systematic internaliser is quoting in different sizes, he may execute a client order received between those sizes at one of the quoted prices in accordance with subsections (1) to (3).

Section 32d
Access to quotes, terms of business of systematic internalisers

(1) A systematic internaliser within the meaning of section 32 sentence 1 shall give access to his quotes in an objective non-discriminatory way. His terms of business shall regulate access to his quotes in a clear manner.

(2) Furthermore, the terms of business may stipulate that

1. the systematic internaliser may refuse to enter into or continue business relationships with clients on the basis of commercial considerations, in particular the clients' credit status, the counterparty risk or the settlement of the transactions;

2. the systematic internaliser may limit, in a non-discriminatory way, the execution of the orders from a particular client provided that this is necessary to reduce the counterparty risk; and

3. the systematic internaliser may limit, in a non-discriminatory way and in compliance with the requirements of section 31c, the total number of orders from different clients to be executed at the same time provided that the number or volume of the orders considerably exceeds the norm.

Section 33
Organisational requirements

(1) Investment services enterprises must comply with the organisational requirements pursuant to section 25a (1) and (4) of the Banking Act (*Kreditwesengesetz*). Furthermore, they must

1. establish adequate policies, keep available resources and put in place procedures designed to ensure that the investment services enterprise itself and its employees comply with the requirements under this Act, and in particular establish a permanent and effective compliance function which may discharge its responsibilities independently;

2. take reasonable steps to ensure continuity and regularity in the performance of investment and ancillary services;

3. maintain permanent and effective arrangements with a view to taking all reasonable steps designed to identify conflicts of interest between the investment services enterprise itself, including its employees and any persons and enterprises directly or indirectly linked to it by control as defined by section 1 (8) of the Banking Act, and its clients or between one client and another that arise in the course of providing any investment or ancillary services, and to prevent such conflicts of interests from adversely affecting the interests of its clients;

4. have in place effective and transparent procedures for the reasonable and prompt handling of complaints received from retail clients and keep a record of each complaint and the measures taken for its resolution;

5. ensure that senior management and the supervisory function receive at appropriate intervals, at least annually, reports on the appropriateness and effectiveness of the policies, resources and procedures under no. 1 from the employees commissioned with the compliance function; such reports shall indicate in particular whether appropriate measures have been taken to remedy any contraventions by the investment services enterprise or its employees of the requirements under this Act, or to eliminate the risk of such contraventions;

6. monitor and periodically assess the appropriateness and effectiveness of the organisational measures taken in accordance with this part, and take the steps necessary to remedy any deficiencies.

As part of the arrangements to be established pursuant to sentence 2 no. 1, the investment services enterprise must take into consideration the nature, scale, complexity and risk content of its business as well as the nature and range of its investment services offered.

(2) An investment services enterprise must comply with the requirements set forth in section 25a (2) of the Banking Act when it outsources activities, processes and financial services. The outsourcing must not alter the legal relationship of the enterprise with its clients and its obligations towards its clients defined in this part. The outsourcing must not alter the conditions under which the investment services enterprise has been granted an authorisation under section 32 of the Banking Act.

(3) An investment services enterprise may outsource portfolio management for retail clients within the meaning of section 31a (3) to an enterprise domiciled in a third country only if

1. the company to which the service is outsourced is authorised or registered in that third country in respect of this service and is supervised by an authority which maintains an adequate cooperation agreement with the Supervisory Authority; or

2. the Supervisory Authority was notified of the outsourcing agreement and did not object to it within a reasonable period of time.

The Supervisory Authority publishes on its website a list of the foreign supervisory authorities with which it maintains adequate cooperation agreements within the meaning of sentence 1 no. 1, and the conditions under which it generally raises no objections to outsourcing agreements within the meaning of sentence 1 no. 2, including a statement of reasons explaining why this may ensure compliance with the provisions set out in subsection (2).

(4) The Federal Ministry of Finance may, by means of a Regulation not requiring the consent of the *Bundesrat*, issue more detailed provisions on the organisational requirements under subsection (1) sentence 2. The Federal Ministry of Finance may, by means of a Regulation, delegate this authority to the Supervisory Authority.

Section 33a
Best execution of client orders

(1) An investment services enterprise which executes client orders for the purchase or sale of financial instruments within the meaning of section 2 (3) sentence 1 nos. 1 to 3 must

1. take all reasonable steps, in particular by establishing an execution policy and annually reviewing such policy, to obtain the best possible result for its clients; and

2. ensure that each individual order is executed in accordance with this execution policy.

(2) The investment services enterprise must, when establishing its execution policy, take into account all relevant criteria for obtaining the best possible result, in particular the prices of the financial instruments, the costs related to the execution of the order, the speed, the likelihood of the execution and settlement of the order as well as the size and nature of the order, and weigh the criteria by taking into consideration the characteristics of the client, the client order, the financial instrument and the execution venue.

(3) Where an investment services enterprise executes orders on behalf of retail clients, its execution policy must contain arrangements allowing for the best possible results being determined in terms of the total consideration. The total consideration shall represent the price of the financial instrument and all costs related to execution. Where the execution policy allows for more than one competing venue to execute an order for a financial instrument, the costs shall also include the investment services enterprise's own commissions and fees charged to the client for an investment service. Investment services enterprises must not structure or charge their commissions in such a way as to discriminate unfairly between execution venues.

(4) Where an investment services enterprise executes an order following specific instructions from the client, the obligation to deliver the best possible result shall be deemed fulfilled in accordance with the scope of the order.

(5) The execution policy must include

1. in respect of each category of financial instruments, information on the different execution venues and the factors affecting the choice of the venue;

2. at least those execution venues that enable the investment services enterprise to obtain, on a consistent basis, the best possible result for the execution of client orders.

Where the execution policy within the meaning of subsection (1) no. 1 allows order execution also outside organised markets and multilateral trading facilities, the investment services enterprise must inform its clients thereof separately; furthermore it must obtain, prior to the execution of the client order on such venue, the express consent of its clients in general or in respect of individual transactions.

(6) The investment services enterprise must

1. inform its clients of its execution policy prior to the first-time provision of investment services and obtain the consent of its clients to that policy;

2. expressly inform its retail clients that, if a client instruction exists, it will execute the order following this instruction and that it is not obliged to execute the order in accordance with its execution policy which is aimed at obtaining the best possible results;

3. inform its clients without undue delay of material changes to the reasonable steps pursuant to subsection (1) no. 1.

(7) The investment services enterprise must be able to demonstrate to its clients, at their requests, that it has executed their orders in accordance with its execution policy.

(8) Where investment services enterprises transmit the orders of their clients to third parties for execution or provide portfolio management services without executing the orders or decisions themselves, subsections (1) to (7) shall apply *mutatis mutandis* subject to the proviso that

1. the reasonable steps taken shall take into account the execution policy to be complied with pursuant to subsections (2) and (3) when executing orders;

2. the execution policy to be established pursuant to subsection (1) no. 1 must identify, in respect of each category of financial instruments, the entities which the investment services enterprise commissions to execute its decisions or to which it transmits its client orders for execution; the investment services enterprise must ensure that the entities identified have arrangements in place that enable it to comply with its obligations under this subsection;

3. as part of its obligations under subsection (1) no. 2, the investment services enterprise must review its execution policy at least annually and monitor on a regular basis whether the commissioned entities execute the orders in compliance with the reasonable steps taken and, where appropriate, correct any deficiencies.

(9) The Federal Ministry of Finance may, by means of a Regulation not requiring the consent of the *Bundesrat*, issue more detailed provisions concerning the minimum requirements for establishing the execution policy pursuant to subsections (1) to (5), the execution policy within the meaning of subsection (8) no. 2, and the monitoring of the reasonable steps

pursuant to subsections (1) and (8) as well as the nature, scope and medium of the information concerning the execution policy pursuant to subsection (6). The Federal Ministry of Finance may, by means of a Regulation, delegate this authority to the Supervisory Authority.

Section 33b
Employees and personal account dealing

(1) The following shall be deemed employees of an investment services enterprise:

1. board members, personally liable partners and persons having equivalent status, executive directors as well as tied agents within the meaning of section 2 (10) sentence 1 of the Banking Act (*Kreditwesengesetz*);

2. board members, personally liable partners and persons having equivalent status as well as executive directors of tied agents;

3. all natural persons assisting the investment services enterprise or its tied agent in providing investment services, in particular under an employment contract, agency contract or service contract; and

4. all natural persons directly involved in the provision of services to the investment services enterprise or to its tied agent under an outsourcing arrangement for the purpose of the provision of investment services;

(2) Personal account dealing within the meaning of subsections (3) to (6) shall mean transactions in a financial instrument effected by an employee

1. for own account;

2. for the account of persons with whom he is closely associated within the meaning of section 15a (3) sentence 1, underage stepchildren or persons in whose successful transaction outcome the employee has at least an indirect material interest, other than a fee or commission for the execution of the transaction; or

3. for own account or for the account of others outside the scope of the activities he carries out in that capacity.

(3) Investment services enterprises must use adequate resources and procedures for the purpose of preventing an employee who is involved in activities that may give rise to a conflict of interest or who has access to inside information within the meaning of section 13 or to other confidential information relating to clients or transactions with or for clients by virtue of an activity carried out by him from

1. engaging in personal account dealing which

    a. may contravene a provision of this part or section 14; or

    b. involves the misuse or improper disclosure of that confidential information;

2. advising, other than in the proper course of his employment, any other person to enter into a transaction in financial instruments which, if it was personal account dealing,

a. would fulfil the requirements set out in no. 1 or subsection (5) no. 1 or no. 2; or

b. would contravene section 31c (1) no. 5;

or from inducing any other person to enter into such transaction;

3. granting, without prejudice to the prohibition pursuant to section 14 (1) no. 2 and other than in the proper course of his employment, any other person access to any opinion or information if he knows that as a result of that disclosure that other person would be induced to

   a. enter into a transaction which, if it was personal account dealing, would fulfil the requirements of no. 1 or subsection (5) no. 1 or no. 2 or contravene section 31c (1) no. 5; or

   b. advice another person to enter into a transaction under (a) or induce another person to enter into such transaction.

(4) The organisational arrangements under subsection (3) must at least be designed to ensure that

1. all employees covered by subsection (3) are aware of the restrictions on personal account dealing and of the arrangements established by the investment services enterprise pursuant to subsection (3);

2. the investment services enterprise is informed without undue delay of any personal account dealing by an employee pursuant to subsection (3), either by notification by the employee or by another procedure;

3. in the case of outsourcing arrangements within the meaning of section 25a (2) of the Banking Act, the enterprise to which the activity is outsourced maintains a record of personal account dealings effected by persons within the meaning of subsection (1) no. 4 who fulfil the requirements under subsection (3), and provides that information to the investment services enterprise upon request; and

4. the investment services enterprise keeps a record of all personal account dealing of which it becomes aware pursuant to no. 2 or no. 3, and any authorisation or prohibition in connection therewith.

(5) The organisational arrangements of investment services enterprises which under their own responsibility or under that of a member of their group produce, or arrange for the production of, financial analyses of financial instruments within the meaning of section 2 (2b) or of their issuers, with such analyses being intended or likely to be distributed to their clients or to the public, shall also be designed to ensure that

1. employees do not undertake transactions, other than as market makers acting in good faith and in the ordinary course of market making or in the execution of an unsolicited client order, for own account or for account of a third party, including the investment services enterprise, in financial instruments to which the financial analyses relate, or in any related financial instrument, if they are familiar with the contents and the likely timing of that financial analysis of financial instruments within the meaning of section 2 (2b) or of their issuers, where such analysis is not published or made available to clients and where its recommendation may not be anticipated by

third parties in view of publicly available information, until the recipients of the financial analyses have had a reasonable opportunity to act on it;

2. in cases not covered by no. 1, employees involved in the production of financial analyses of financial instruments within the meaning of section 2 (2b) or their issuers, engage in personal account dealing in financial instruments to which the financial analyses relate, or in any related financial instruments, contrary to current recommendations, only in exceptional circumstances and with the prior approval of the legal or compliance function.

(6) The requirements under subsection (5) shall also apply to investment services enterprises which distribute financial analyses produced by a third party to the public or to clients, unless

1. the third party which produces the financial analysis is not a member of the group; and

2. the investment services enterprise

    a. does not substantially alter the recommendations contained in the financial analysis;

    b. does not present the financial analysis as having been produced by it;

    c. verifies that the producer of the financial analysis is subject to requirements equivalent to the requirements under subsection (5), or has established a policy setting such requirements.

(7) Subsections (3) and (4) shall not apply to personal account dealing

1. effected under a portfolio management service where there is no prior communication between the portfolio manager and the employee or other person for whose account the transaction is executed;

2. in units in investment funds (*Investmentvermögen*) which

    a. comply with the provisions of Council Directive 85/611/EEC of 20 December 1985 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (OJ EC No. L 375 p. 3); or

    b. are supervised in Germany, another member state of the European Union or another signatory to the Agreement on the European Economic Area and must provide an equivalent level of risk spreading in their assets, where the employee or any other person for whose account the transactions are effected are not involved in the management of investment funds (*Investmentvermögen*).

Section 34
Record-keeping and retention obligations

(1) Without prejudice to the record-keeping obligations pursuant to Articles 7 and 8 of Commission Regulation (EC) No. 1287/2006, investment services enterprises must keep

records of the investment and ancillary services provided by them as well as records of the transactions undertaken by them so as to enable the Supervisory Authority to monitor compliance with the requirements set forth in this part.

(2) Investment services enterprises shall keep records of agreements with clients that set out the rights and obligations of the parties, and the other terms on which the investment services enterprise will provide investment and ancillary services to the client. Where investment services enterprises provide investment services other than investment advice to retail clients for the first time, the records within the meaning of sentence 1 must document the entering into a written basic agreement that sets out at least the essential rights and obligations of the investment services enterprise and the retail client. The rights and obligations set forth or agreed upon in other documents or legal texts may be incorporated into the basic agreement by reference. The basic agreement must be made available to the retail client on paper or in another durable medium. Durable medium shall mean any instrument which enables a client to store information addressed to that client in a way accessible for a period of time adequate for the purposes of the information and which allows the unchanged reproduction of the information.

(2a) Investment services enterprises must always take, in writing, the minutes when providing investment advice to retail clients. The minutes are to be signed by the person providing the investment advice; the client shall be provided with a copy of the minutes, on paper or in another durable medium, without undue delay after the conclusion of such investment advice and, in any case, prior to the conclusion of a transaction based on the investment advice. If a client chooses, for the investment advice and conclusion of the transaction, means of communication not allowing for the transmission of the minutes prior to the conclusion of the transaction, the investment services enterprise must send the client a copy of the minutes without undue delay after the conclusion of the investment advice. In this case, and at the express request of the client, the transaction may be concluded prior to the receipt of the minutes if the investment services enterprise expressly grants the client the right to withdraw from the transaction concluded on the basis of the investment advice if the minutes are not correct or not complete; this right must be exercised within one week after having received the minutes. The client must be informed of this right and of the period to withdraw from the transaction. If the investment services enterprise contests the right to withdraw from the transaction specified under sentence 4, it must furnish evidence that the minutes are correct and complete.

(2b) Clients may request from the investment services enterprise to be provided with a copy of the minutes as set forth in subsection (2a).

(3) All records required under this part shall be retained for a period of at least five years after they are made. Records relating to the rights and obligations of the investment services enterprise and its clients and to the terms on which the investment services enterprise provides investment and ancillary services shall be retained for at least the duration of the relationship with the client. In exceptional cases, the Supervisory Authority may set longer retention periods for individual or all records if, due to exceptional circumstances and in light of the nature of the financial instrument or transaction, this is necessary to enable the Supervisory Authority to exercise its supervisory functions. The Supervisory Authority may require the investment services enterprise to comply with the retention period under sentence 1 also if the authorisation of that enterprise terminates before the expiry of the period set forth in sentence 1.

(4) The Federal Ministry of Finance may, by means of a Regulation not requiring the consent of the *Bundesrat*, issue more detailed provisions concerning the record-keeping obligations

and suitability of the media to be used pursuant to subsections (1) to (2a). The Federal Ministry of Finance may, by means of a Regulation, delegate this authority to the Supervisory Authority.

(5) The Supervisory Authority publishes on its website a list of the minimum records investment services enterprises are required to keep under this Act in conjunction with a Regulation pursuant to subsection (4).

Section 34a
Segregation of assets

(1) Investment services enterprises which have no authorisation to conduct deposit business within the meaning of section 1 (1) sentence 2 no. 1 of the Banking Act (*Kreditwesengesetz*) shall without undue delay segregate client money held in safe custody, which they accept in connection with an investment service or ancillary service, from the money of the enterprise and from other clients' money in a trustee account with credit institutions, enterprises within the meaning of section 53b (1) sentence 1 of the Banking Act or comparable institutions domiciled in a third country and authorised to conduct deposit business, a central bank or a qualifying money market fund until the money is used for its intended purpose. A client may, by way of individual contractual stipulation, give any other instruction in respect of the segregation of client money if he has been informed of the protective purpose of the segregation of client money. Where client money is to be held in safe custody with a qualifying money market fund, the investment services enterprise shall seek prior consent of the client. Before giving the money into safe custody, the investment services enterprise shall disclose to the institution holding the money in safe custody that the money is deposited on a trust basis. It shall without undue delay inform the client with which institution and in which account the client money is deposited and whether or not the institution holding the client money is a member of a scheme designed to protect the claims of depositors and investors as well as the extent to which the client money is protected by any such scheme.

(2) Investment services enterprises which are not authorised to conduct deposit business within the meaning of section 1 (1) sentence 2 no. 5 of the Banking Act shall without undue delay pass on for safe custody securities which they accept in connection with an investment service or ancillary service to a credit institution authorised to conduct safe custody business in Germany or to an institution domiciled abroad which is authorised to conduct safe custody business and with which the client is granted a legal status equivalent to that under the Safe Custody Act (*Depotgesetz*). Subsection (1) sentence 5 shall apply *mutatis mutandis*.

(3) Investment services enterprises are obliged to provide each client at least annually and in a durable medium with a statement of the funds and financial instruments which are held in safe custody for that client pursuant to subsection (1) or subsection (2).

(4) Only under clearly defined conditions to which the client is to give his prior consent may investment services enterprises use, for own account or for the account of another client, financial instruments which are held in safe custody on behalf of a client in accordance with subsection (2) or the provisions of the Safe Custody Act, with such use being made in particular by way of agreements on securities financing transactions within the meaning of Article 2 (10) of Commission Regulation (EC) No. 1287/2006. Where financial instruments are held in an omnibus account with a third party and are to be used pursuant to sentence 1, all other clients of the omnibus account must have given their prior consent or the investment services enterprise must have in place systems and controls which ensure that only financial instruments are used to which consent has been given pursuant to sentence 1.

In the case of a retail client, the consent pursuant to sentences 1 and 2 must be evidenced by the client's signature or equivalent alternative mechanisms. In the cases of sentence 2, the investment services enterprise must keep records relating to clients on whose instructions the use of the financial instruments has been effected as well as the number of the financial instruments used belonging to each client who has given his consent, so as to enable the clear and correct allocation of any loss incurred in using the financial instrument.

(5) The Federal Ministry of Finance may, by means of a Regulation not requiring the consent of the *Bundesrat*, issue more detailed provisions on the extent of the obligations pursuant to subsections (1) to (4) and on the requirements applicable to qualifying money market funds within the meaning of subsection (1) in order to protect the client money or securities entrusted to an investment services enterprise. The Federal Ministry of Finance may, by means of a Regulation, delegate this authority to the Supervisory Authority.

Section 34b
Analysis of financial instruments

(1) Persons who, as part of their professional or business activities, prepare information concerning financial instruments or their issuers containing a direct or indirect recommendation for a particular investment decision and intended to be made available to an unspecified group of individuals (financial analysis) are obliged to do so with the requisite degree of expertise, care and diligence. Financial analyses may only be communicated or publicly distributed if they have been produced and presented in a fair manner, and

1. the identity of the person responsible for communicating or distributing the financial analysis; and

2. circumstances or relationships that could create conflicts of interest among the producers, the legal persons responsible for preparing the analysis or undertakings affiliated with these

are disclosed together with the financial analysis.

(2) A summary of a financial analysis produced by a third party may only be communicated if the contents of the analysis are presented in a clear and not-misleading manner, and if the summary makes reference to the source document and the place where the disclosure pursuant to subsection (1) sentence 2 related to the source document can be directly and easily accessed, provided this information has been publicly distributed.

(3) Financial instruments within the meaning of subsection (1) are only those which

1. are admitted to trading on a stock exchange in Germany or included in the regulated market (*regulierter Markt*) or the regulated unofficial market (*Freiverkehr*); or

2. are admitted to trading on an organised market in another member state of the European Union or another signatory to the Agreement on the European Economic Area.

Financial instruments shall be deemed admitted to trading on an organised market or included in the regulated market or regulated unofficial market if the application for such admission or inclusion has been filed or publicly announced.

(4) The provisions set forth in subsections (1), (2) and (5) do not apply to journalists, if they are subject to self-regulation, including effective control mechanisms, comparable to the regulation of subsections (1), (2) and (5) as well as of section 34c.

(5) Companies which produce or communicate financial analyses pursuant to subsection (1) sentence 1 must be organised in such a way that conflicts of interest within the meaning of subsection (1) sentence 2 are kept to a minimum. In particular, they must maintain appropriate control mechanisms capable of countering any contravention of the obligations set forth in subsection (1). In respect of investment services enterprises which, under their own responsibility or that of a member of their group, produce, or arrange for the production of, financial analyses that are intended or likely to be distributed to clients or to the public, sentence 1 shall also apply to financial analyses concerning financial instruments within the meaning of section 2 (2b) other than those mentioned under subsection (3), or to their issuers. Sentence 3 shall not apply to investment services enterprises within the meaning of section 33b (6).

(6) (Repealed)

(7) The powers of the Supervisory Authority pursuant to section 35 shall apply *mutatis mutandis* in relation to compliance with the requirements set forth in subsections (1), (2) and (5). Section 36 shall apply *mutatis mutandis* in the event that a financial analysis is produced, made accessible to others or publicly distributed by an investment services enterprise.

(8) The Federal Ministry of Finance may, by means of a Regulation not requiring the consent of the *Bundesrat*, issue more detailed provisions about the fair production and presentation of financial analyses, about circumstances or relationships that could create conflicts of interest, about their disclosure as well as appropriate organisation pursuant to subsection (5). The Federal Ministry of Finance may, by means of a Regulation, delegate this authority to the Federal Financial Supervisory Authority.

Section 34c
Notification obligation

Persons other than investment services enterprises, asset management companies (*Kapitalanlagegesellschaften*) or investment stock corporations (*Investmentaktiengesellschaften*), who, in the exercise of their profession or as part of their business activities, are responsible for producing or communicating financial analyses, must notify the Supervisory Authority of this without undue delay pursuant to sentence 3. Notification is also required for the termination of the activities described in sentence 1. The notification must include the name or company name and address of the party required to submit the notification. The party required to submit the notification must also disclose whether it is aware of facts that could produce conflicts of interest at affiliated enterprises. The Supervisory Authority must be notified of changes to the data and facts within four weeks. The exemption provided for under section 34b (4) shall apply *mutatis mutandis*.

Section 35
Monitoring of compliance with the reporting requirements and the rules of conduct

(1) For the purpose of monitoring compliance with the obligations set out in this part, the Supervisory Authority may audit the investment services enterprises, affiliated enterprises, branches within the meaning of section 53b of the Banking Act (*Kreditwesengesetz*), enterprises with which an outsourcing arrangement within the meaning of section 25a (2) of

the Banking Act is or was maintained, and other persons and enterprises commissioned to carry out tasks, without any particular reason.

(2) The Supervisory Authority may also require enterprises domiciled in a third country which provide investment services for clients having their habitual residence or place of management in Germany, to furnish information and submit documents, in order to monitor compliance with the obligations set out in this part, provided that the investment services and related ancillary services are not provided exclusively in a third country.

(3) Objections and actions to annul measures in accordance with subsections (1) and (2) shall have no suspensive effect.

(4) The Supervisory Authority may establish guidelines which it shall use in normal cases to judge, in accordance with Directive 2004/39/EC and Commission Directive 2006/73/EC of 10 August 2006 implementing Directive 2004/39/EC of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive (OJ EU No. L 241 p. 26), whether or not the obligations pursuant to this part have been met. The *Deutsche Bundesbank* and the central associations of the economic sectors concerned shall be consulted before the guidelines are issued. The guidelines shall be published in the electronic Federal Gazette (*elektronischer Bundesanzeiger*).

Section 36
Examination of reporting requirements and rules of conduct

(1) Without prejudice to section 35, compliance with the reporting requirements pursuant to section 9, the obligations set out in this part and the duties arising from Commission Regulation (EC) No. 1287/2006 shall be examined once a year by a suitable auditor. In the case of credit institutions which are engaged in safe custody business within the meaning of section 1 (1) sentence 2 no. 5 of the Banking Act (*Kreditwesengesetz*), the auditor shall examine this business particularly carefully; this examination shall also cover compliance with section 128 of the Stock Corporation Act (*Aktiengesetz*) on notification requirements and section 135 of the Stock Corporation Act on the exercise of voting rights. The Supervisory Authority may, upon application, fully or in part waive the requirement for an annual examination, with the exception of the examination with respect to compliance with the requirements set out in section 34a, also in conjunction with a Regulation pursuant to section 34a (5), if this is deemed appropriate for specific reasons, in particular due to the nature or scale of the business conducted. The investment services enterprise shall appoint the auditor not later than the end of the financial year to which the examination relates. In the case of credit institutions which are members of a cooperative auditing association (*genossenschaftlicher Prüfungsverband*) or which are audited by the auditing body of a savings bank and giro association (*Sparkassen- und Giroverband*), the examination shall be carried out by the competent auditing association or auditing body, to the extent that this is provided for by the law of the respective State in the latter case. Suitable auditors are also German certified accountants (*Wirtschaftsprüfer*), German sworn auditors *(vereidigte Buchprüfer)* as well as German accounting and auditing firms (*Wirtschaftsprüfungs- und Buchprüfungsgesellschaften)* which have sufficient knowledge relating to the subject matter to be examined. After conclusion of the examination, the auditor shall without undue delay file an examination report with the Supervisory Authority and the *Deutsche Bundesbank*. If the examinations pursuant to sentence 4 are conducted by cooperative auditing associations or auditing bodies of savings banks and giro associations, the auditing associations or auditing bodies shall be required to file the examination report only upon request of the Supervisory Authority or the *Deutsche Bundesbank*.

(2) Before appointing an auditor, the investment services enterprise shall notify the Supervisory Authority about the auditor. The Supervisory Authority may demand the appointment of a different auditor within a month after having received the notification if this is deemed necessary to achieve the purpose of the examination; objections and actions to annul any such measure shall have no suspensive effect. Sentences 1 and 2 shall not apply to credit institutions which are members of a cooperative auditing association or are audited by an auditing body of a savings bank or giro association.

(3) The Supervisory Authority may issue rules for the investment services enterprise with regard to the content of the examination, which the auditor is required to observe. In particular, it may determine main points of emphasis for the examination. The auditor shall without undue delay inform the Supervisory Authority of any serious contraventions of the reporting requirements pursuant to section 9 or of the obligations set forth in this part. The Supervisory Authority may participate in the examinations. To this end, the Supervisory Authority must be notified about the start of the examination in good time.

(4) In individual cases, the Supervisory Authority may replace the auditor and conduct the examination pursuant to subsection (1) itself or through an entity commissioned by it. The investment services enterprise shall be notified of this in good time.

(5) The Federal Ministry of Finance may, by means of a Regulation not requiring the consent of the *Bundesrat*, issue more detailed provisions on the nature, scope and time of the examination pursuant to subsection (1), insofar as this is necessary for the performance of the functions of the Supervisory Authority, and especially to counteract undesirable developments in trading with financial instruments, to ensure compliance with the reporting requirements pursuant to section 9 and the obligations set out in this part and to obtain consistent records for this purpose. The Federal Ministry of Finance may, by means of a Regulation, delegate this authority to the Federal Financial Supervisory Authority.

Section 36a
Enterprises, organised markets and multilateral trading facilities domiciled in another member state of the European Union or another signatory to the Agreement on the European Economic Area

(1) With the exception of section 31 (1) no. 2, sections 31f, 31g, 33, 33b, 34a and 34b (5) as well as section 34c, the rights and obligations set forth in this part shall apply *mutatis mutandis* to branches within the meaning of section 53b of the Banking Act (*Kreditwesengesetz*) which provide investment services. Enterprises domiciled in another member state of the European Union or another signatory to the Agreement on the European Economic Area, which provide investment services alone or in connection with ancillary services and which intend to establish a branch within the meaning of section 53b of the Banking Act in Germany, shall be informed by the Supervisory Authority within the period specified in section 53b (2) sentence 1 of the Banking Act about the reporting requirements pursuant to section 9 and about the rights and obligations applicable to branches pursuant to sentence 1.

(2) The Supervisory Authority may request branches to change the arrangements established to meet the obligations applicable to them, provided that the changes are necessary and proportionate so as to enable the Supervisory Authority to verify compliance with the obligations. If the Supervisory Authority finds that an enterprise fails to comply with the obligations applicable to its branch pursuant to subsection (1) sentence 1, it shall require the enterprise to comply with its obligations within a period of time to be specified by the Supervisory Authority. If the company fails to comply with the request, the Supervisory

Authority shall take all appropriate measures to ensure compliance with the obligations and inform the competent authorities of the home member state of the nature of the measures taken. If the company fails to remedy the deficiency, the Supervisory Authority may, after informing the competent authority of the home member state, take all measures to prevent or penalise further contraventions. Where necessary, the Supervisory Authority may prevent the enterprise concerned from initiating any further transactions in Germany. The Supervisory Authority shall inform the Commission of the European Communities without undue delay of the measures taken pursuant to sentences 4 and 5.

(3) If the Supervisory Authority finds that an enterprise within the meaning of subsection (1) sentence 2 which has established a branch in Germany contravenes provisions under this Act other than those set forth in subsection (1) sentence 1 or if the enterprise contravenes equivalent foreign provisions, it shall inform the competent authority of the home member state thereof pursuant to section 7 (5) sentence 1. If the measures subsequently taken by the competent authority of the home member state are inadequate or if the enterprise continues to contravene other provisions of this part for other reasons, thus jeopardising the interests of investors or the orderly functioning of the market, the Supervisory Authority shall, after informing the competent authority of the home member state, take all the measures needed in order to guarantee investor protection and the orderly functioning of the markets. Subsection (2) sentences 4 and 5 shall apply *mutatis mutandis*.

(4) Subsection (3) shall apply *mutatis mutandis* to any enterprise domiciled in another member state of the European Union or in another signatory to the Agreement on the European Economic Area which, under the freedom to provide cross-border services, provides investment or ancillary services to clients who have their habitual residence or place of management in Germany if such enterprise contravenes the provisions of this part or equivalent foreign provisions.

(5) Subsection (3) shall apply *mutatis mutandis* to operators of organised markets and multilateral trading facilities subject to the proviso that, with respect to measures taken by the Supervisory Authority vis-à-vis such operators, the provisions set forth in this part, in the Exchange Act (*Börsengesetz*) or in equivalent foreign provisions have been contravened and that measures pursuant to subsection (3) sentence 2 may include, in particular, prohibiting operators of organised markets or multilateral trading facilities from making available their trading facilities to members in Germany.

(6) The Supervisory Authority shall inform the enterprises or markets concerned of the measures taken pursuant to subsections (2) to (5), stating the reasons on which the measures are based.

Section 36b
Advertising by investment services enterprises

(1) In order to counter undesirable developments in respect of the advertising of investment services and ancillary services, the Supervisory Authority may prohibit certain types of advertising.

(2) Before general measures pursuant to subsection (1) are taken, the central associations of the economic sectors concerned and of consumer advocacy groups shall be heard.

Section 36c
(Repealed)

Section 37
Exceptions

The provisions of section 31 (1) no. 1 and subsections (2) to (8) as well as sections 31c, 31d and 33a shall not apply to transactions concluded on an organised market or in a multilateral trading facility between two investment services enterprises or between such investment services enterprises and other members or participants of these markets or facilities. If a transaction within the meaning of sentence 1 is concluded in the execution of a client order, the investment services enterprises must however comply with the obligations to its client which are set forth in section 31 (1) no. 1 and subsections (2) to (8) as well as sections 31c, 31d and 33a.

Section 37a
(Repealed)

Part 7
Liability for incorrect or omitted capital market information

Section 37b
Liability for damages due to failure to publish inside information without undue delay

(1) If an issuer of financial instruments that are admitted to trading on a German stock exchange fails to publish, without undue delay, inside information that directly affects that issuer, he shall be liable to compensate a third party for the damage resulting from the omission if the third party

1. has bought the financial instruments after the omission and still owns the financial instruments upon disclosure of the information or

2. has bought the financial instruments before the existence of the relevant insider fact and sells them after the omission

(2) Those issuers who can prove that the omission was made neither deliberately nor in an act of gross negligence shall not be liable for damages pursuant to subsection (1).

(3) Claims for damages pursuant to subsection (1) shall not exist if, in the case of subsection (1) no. 1, the third party knew about the undisclosed fact at the time of purchase and, in the case of subsection (1) no. 2, the third party knew about the undisclosed fact at the time of sale.

(4) Claims for damages pursuant to subsection (1) are subject to a limitation period of one year from the date on which the third party learned of the omission, but not more than three years after the omission.

(5) This is without prejudice to further contractual claims or claims in intentional tort which may be raised under the provisions of civil law.

(6) Any agreement which reduces the claims to be brought by an issuer against the members of the board of management based on claims for damages against the issuer pursuant to subsection (1) or which relieves the members of the board of management of such claims shall be deemed invalid.

Section 37c
Liability for damages based on the publication of false inside information

(1) If an issuer of financial instruments that are admitted to trading on a domestic stock exchange publishes false inside information that directly affects that issuer in a notification pursuant to section 15, he shall be liable to compensate a third party for the damage resulting from the fact that the third party relied on the accuracy of the inside information, if the third party

1. has bought the financial instruments after publication and still owns the financial instruments at the point in time at which it becomes publicly known that the information was inaccurate or

2. has bought the financial instruments before publication and sells them before it becomes clear that the information was inaccurate.

(2) Those issuers who can prove that they were not aware of the inaccuracy of the inside information and that such lack of awareness does not constitute an act of gross negligence shall not be liable for damages pursuant to subsection (1).

(3) Claims for damages pursuant to subsection (1) shall not exist if, in the case of subsection (1) no. 1, the third party knew that the inside information was inaccurate at the time of purchase and, in the case of subsection (1) no. 2, the third party knew that the information was incorrect at the time of sale.

(4) Claims for damages pursuant to subsection (1) are subject to a limitation period of one year from the date on which the third party learns of the inaccuracy, but no more than three years after publication.

(5) This is without prejudice to further contractual claims or claims in intentional tort which may be raised under the provisions of civil law.

(6) Any agreement which reduces the claims to be brought by an issuer against the members of the board of management on grounds of claims for damages pursuant to subsection (1) or which relieves the members of the board of management of such claims shall be deemed invalid.

Part 8
Financial futures and forward transactions

Section 37d
(Repealed)

Section 37e
Exclusion of the objection pursuant to section 762 of the Civil Code

Objections pursuant to section 762 of the Civil Code (*Bürgerliches Gesetzbuch*) may not be made against claims arising from financial futures and forward transactions involving at least one party which is an enterprise that concludes financial futures and forward transactions commercially or on a scale which requires commercially organised business operations or which purchases, sells or brokers financial futures and forward transactions. Financial futures and forward transactions within the meaning of sentence 1 and sections 37g and 37h are derivatives within the meaning of section 2 (2) and warrants.

Section 37f

(Repealed)

Section 37g
Prohibited financial futures and forward transactions

(1) The Federal Ministry of Finance may, by means of a Regulation, prohibit or impose a restriction on financial futures and forward transactions, insofar as this is necessary for the protection of investors.

(2) Any financial futures and forward transactions contravening a Regulation pursuant to subsection (1) (prohibited financial futures and forward transactions) are void. Sentence 1 shall apply *mutatis mutandis* to

1. the provision of margin for prohibited financial futures and forward transactions;

2. an agreement by means of which one party incurs a liability towards the other party for the purpose of meeting a liability from prohibited financial futures and forward transactions, in particular for an acknowledgement of debt;

3. the placing and acceptance of orders for the purpose of concluding prohibited financial futures and forward transactions and

4. associations established for the purpose of concluding prohibited financial futures and forward transactions.

Part 9
Arbitration agreements

Section 37h
Arbitration agreements

Arbitration agreements on future legal disputes relating to investment services, ancillary services or financial futures and forward transactions shall be binding only if both parties to

the agreement are merchants within the meaning of the Commercial Code (*Handelsgesetzbuch*) or legal persons under public law.

Part 10
Markets in financial instruments domiciled outside the European Union

Section 37i
Authorisation

(1) Markets in financial instruments domiciled outside Germany which are not organised markets or multilateral trading facilities within the meaning of this Act, or their operators, wishing to grant trading participants domiciled in Germany direct market access by means of an electronic trading system shall require written authorisation from the Supervisory Authority. The application for authorisation shall contain

1. the name and address of the management of the market or its operator;
2. information required in order to assess the reliability of the management;
3. a business plan showing the type of planned market access for the trading participants, the organisational structure and the internal control mechanisms of the market;
4. the name and address of an authorised recipient in Germany;
5. information about the bodies responsible for supervising the market and its trading participants in the home country and their powers of supervision and intervention;
6. information on the type of financial instruments which shall be traded by the trading participants by means of direct market access; and
7. the name and address of trading participants domiciled in Germany who shall be granted direct market access.

The Federal Ministry of Finance shall, by means of a Regulation not requiring the consent of the *Bundesrat*, provide details with regard to the information required under sentence 2 and the documents to be presented. The Federal Ministry of Finance may, by means of a Regulation, delegate this authority to the Federal Financial Supervisory Authority.

(2) The Supervisory Authority may grant the authorisation subject to conditions which must be consistent with the intended purpose of this Act. Prior to granting the authorisation, the Supervisory Authority shall afford the stock exchange supervisory authorities of the Federal States an opportunity to comment on the application within a period of four weeks.

(3) The Supervisory Authority shall announce the authorisation in the electronic Federal Gazette (*elektronischer Bundesanzeiger*).

(4) (Repealed)

Section 37j
Refusal of the authorisation

The authorisation shall be refused if

1. there is evidence indicating that the management is not reliable;

2. direct market access is to be granted to trading participants domiciled in Germany which fail to meet the requirements of section 19 (2) of the Exchange Act (*Börsengesetz*);

3. the home country fails to meet standards in supervision of the market or investor protection equivalent to those under German law; or

4. exchange of information is not guaranteed with the bodies responsible for supervising the market in the home country.

Section 37k
Revocation of the authorisation

(1) The Supervisory Authority may revoke the authorisation in addition to the possibility of revocation under the provisions of the Act on Administrative Procedure (*Verwaltungsverfahrensgesetz*) if

1. it learns of facts which warrant the refusal of the authorisation pursuant to section 37j; or

2. the market or its operator has persistently contravened provisions of this Act or the Regulations or orders issued to implement this Act.

(2) The Supervisory Authority shall announce the revocation of the authorisation in the electronic Federal Gazette (*elektronischer Bundesanzeiger*).

Section 37l
Prohibition

The Supervisory Authority may prohibit trading participants domiciled in Germany who offer investment services in Germany from executing client orders through an electronic trading system of a foreign market if such markets or their operators grant trading participants domiciled in Germany direct market access through this electronic trading system without being authorised to do so.

Section 37m

(Repealed)

Part 11
Monitoring of company financial statements, publication of financial reports

Sub-part 1
Monitoring of company financial statements

Section 37n
Auditing of company financial statements and reports

Pursuant to the provisions set forth in this part, subject to section 342b (2) sentence 3 nos. 1 and 3 of the Commercial Code (*Handelsgesetzbuch*), the Supervisory Authority is responsible for auditing the annual financial statements and the corresponding management report or the consolidated financial statements and the corresponding group management report as well as the condensed set of financial statements and the corresponding interim management report of companies whose securities within the meaning of section 2 (1) sentence 1 are admitted to trading on the regulated market (*regulierter Markt*) of a stock exchange in Germany, to ensure that they comply with the legal requirements including the German Generally Accepted Accounting Principles or other accounting standards permitted by law.

Section 37o
Ordering of an accounting audit and investigatory powers of the Supervisory Authority

(1) The Supervisory Authority orders an accounting audit if specific evidence exists of a contravention of accounting regulations; no order is issued if it is apparent that clarification of the case does not serve the public interest. The Supervisory Authority can also order an accounting audit without any particular reason (sampling). The scope of each individual audit shall be defined in the audit order. Only the most recent approved annual financial statements and the corresponding management report or the most recent approved consolidated financial statements and the corresponding group management report as well as the most recent published condensed set of financial statements and the corresponding interim management report are subject to the audit; without prejudice to this, in the case of section 37p (1) sentence 2, the Supervisory Authority may audit the financial statements which were examined by the enforcement panel within the meaning of section 342b (1) of the Commercial Code (*Handelsgesetzbuch*) (enforcement panel). If the Supervisory Authority orders an accounting audit after receiving a report from the enforcement panel pursuant to section 37p (1) sentence 2 no. 1, it may publish the order and the grounds pursuant to section 37p (1) sentence 2 no. 1 in the electronic Federal Gazette (*elektronischer Bundesanzeiger*). Sentence 2 shall not apply to the audit of the condensed set of financial statements and the corresponding interim management report.

(2) The annual financial statements and the corresponding management report are not audited by the Supervisory Authority if an action to declare the financial statements void within the meaning of section 256 (7) of the Stock Corporation Act (*Aktiengesetz*) is pending. If a special auditor has been appointed pursuant to section 142 (1) or (2) or section 258 (1) of the Stock Corporation Act, no audit is performed either, provided that the subject of the special audit, the audit report or a court decision concerning the ultimate findings by the special auditors are sufficient pursuant to section 260 of the Stock Corporation Act.

(3) In conducting the audit, the Supervisory Authority may make use of the enforcement panel as well as other institutions or persons.

(4) The company within the meaning of section 37n, the members of its bodies, its employees and its auditors are required to furnish, upon request, information and documentation to the Supervisory Authority and persons assisting the Supervisory Authority in fulfilling its functions, to the extent that this is required for the audit; the auditors' obligation to provide information is restricted to facts disclosed to them within the context of the audit. Sentence 1 also applies to subsidiaries that are to be included in the consolidated financial statements in accordance with the provisions of the Commercial Code. For the right

of refusal to furnish information and the obligation to inform affected persons of this right, section 4 (9) applies *mutatis mutandis*.

(5) Persons obliged to furnish information and documentation as set out in subsection (4) are required to grant employees of the Supervisory Authority and persons commissioned by it access to their property and business premises during normal business hours, to the extent that this is necessary for the performance of the functions of the Supervisory Authority. Section 4 (4) sentence 2 applies *mutatis mutandis*. The inviolability of the home (Article 13 of the Basic Law (*Grundgesetz*)) shall be restricted accordingly.

Section 37p
The Supervisory Authority's powers in the case of recognition of an enforcement panel

(1) If an enforcement panel is recognised pursuant to section 342b (1) of the Commercial Code (*Handelsgesetzbuch*), sampling is only carried out at the request of the enforcement panel. Furthermore, the Supervisory Authority may only exert the powers as defined in section 37o if

1. it is informed by the enforcement panel that a company refuses to cooperate in an audit or does not agree with the result of the audit, or

2. there are substantial doubts with regard to the accuracy of the enforcement panel's audit result or with regard to the proper conduct of the audit by the enforcement panel.

At the request of the Supervisory Authority, the enforcement panel must explain the result and the conduct of the audit and submit an audit report. Without prejudice to sentence 2, the Supervisory Authority may take over the audit at any time if it is also conducting or has conducted an audit pursuant to section 44 (1) sentence 2 of the Banking Act (*Kreditwesengesetz*) or section 83 (1) no. 2 of the Insurance Supervision Act (*Versicherungsaufsichtsgesetz*) and the audits concern the same subject.

(2) If the conditions of section 37o (1) sentence 1 are met, the Supervisory Authority may request that the enforcement panel commences an audit.

(3) The Supervisory Authority informs the enforcement panel of notifications pursuant to section 142 (7), section 256 (7) sentence 2 and section 261a of the Stock Corporation Act (*Aktiengesetz*) if the enforcement panel intends to or has commenced an audit of a company that is affected by such a notification.

Section 37q
Results of the audit by the Supervisory Authority or the enforcement panel

(1) If the audit by the Supervisory Authority establishes that accounting is faulty, the Supervisory Authority states that an error has been made.

(2) The Supervisory Authority orders the company to publish the error identified by the Supervisory Authority or the enforcement panel in agreement with the company, together with the primary grounds for identifying the error. The Supervisory Authority waives the order pursuant to sentence 1 if the publication does not serve the public interest. Upon request by the company, the Supervisory Authority may waive the order pursuant to sentence 1 if the publication is likely to damage the legitimate interests of the company. The publication must be made without undue delay in the electronic Federal Gazette (*elektronischer Bundesanzeiger*) as well as in either a national newspaper for statutory stock exchange announcements (*überregionales Börsenpflichtblatt*) or by way of an electronic system for the dissemination of information which is broadly used by credit institutions, enterprises operating under section 53 (1) sentence 1 of the Banking Act (*Kreditwesengesetz*), other enterprises domiciled in Germany which are admitted to trading on a German stock exchange and insurance undertakings.

(3) The Supervisory Authority informs the company in the event that the audit conducted by it results in no findings of fault.

Section 37r
Notifications to other authorities

(1) The Supervisory Authority must report facts giving reason to suspect a criminal offence in relation to the company's accounting to the competent prosecuting authority. It may communicate to these authorities the personal data of persons suspected of the offence, or persons who may be required to act as witnesses.

(2) The Supervisory Authority communicates all facts indicating the violation of professional obligations by the auditor to the German Chamber of Public Accountants (*Wirtschaftsprüferkammer*). The Supervisory Authority communicates all facts indicating a violation of exchange law provisions by the company to the competent exchange supervisory authority. Subsection (1) sentence 2 applies *mutatis mutandis*.

Section 37s
International cooperation

(1) The Supervisory Authority is responsible for cooperation with foreign authorities charged with investigating possible violations of accounting regulations by companies whose securities are admitted to trading on an organised market. To meet this obligation, it may communicate information to these authorities in accordance with section 7 (2) sentences 1 and 2, also in conjunction with subsection (7). Section 37o (4) and (5) applies *mutatis mutandis*, with the proviso that the powers regulated therein shall extend to all companies covered by the cooperation referred to in sentence 1, as well as all entities included in the consolidated financial statements of such companies.

(2) The Supervisory Authority may cooperate with the competent authorities of other member states of the European Union or signatories to the Agreement on the European

Economic Area in order to guarantee uniform implementation of international accounting standards. To this end, it may provide these authorities with transcripts of decisions that it or the enforcement panel have made in individual cases. The transcripts of decisions may only be made available in anonymous form.

(3) The Supervisory Authority's cooperation with international authorities as described in subsections (1) and (2) is carried out in consultation with the enforcement panel.

Section 37t
Objection procedure

(1) Before a complaint is filed, the legality and suitability of orders issued by the Supervisory Authority pursuant to the provisions of this part must be reviewed in an objection procedure. Such a review is not required if the remedial decision or the ruling on the objection contains a gravamen for the first time. Sections 68 to 73 and 80 (1) of the Rules of the Administrative Courts (*Verwaltungsgerichtsordnung*) apply *mutatis mutandis* to the objection procedure, unless otherwise provided for in this part.

(2) Objections against measures by the Supervisory Authority pursuant to section 37o (1) sentence 1, 2 and 5 as well as (4) and (5), section 37p (1) sentence 3 and 4 as well as (2), and section 37q (1) as well as (2) sentence 1 shall have no suspensive effect.

Section 37u
Complaints

(1) Complaints may be filed against orders by the Supervisory Authority pursuant to this part. Complaints shall have no suspensive effect.

(2) Sections 43 and 48 (2) to (4), section 50 (3) to (5) and sections 51 to 58 of the Securities Acquisition and Takeover Act (*Wertpapiererwerbs- und Übernahmegesetz*) apply *mutatis mutandis*.

Sub-part 2
Publication and transmission of financial reports to the company register

Section 37v
Annual financial report

(1) A company which issues securities as a domestic issuer shall prepare an annual financial report as per the end of each financial year and make such report available to the public four months after the end of each financial year at the latest if the company is not required pursuant to the provisions under commercial law to disclose the accounting documents specified in subsection (2). Prior to making the accounting documents specified in subsection (2) publicly available for the first time, any company which issues securities as a domestic issuer shall make a publication concerning the time and the website on which the accounting documents specified in subsection (2) will be publicly available in addition to their availability in the company register. Simultaneously with the publication of such announcement, the company shall notify the Supervisory Authority thereof and transmit the

announcement without undue delay, however not before its publication, to the company register within the meaning of section 8b of the Commercial Code (*Handelsgesetzbuch*) in order to be stored there. Furthermore, the company shall transmit without undue delay, but not before the publication of the announcement pursuant to sentence 2, the accounting documents specified in subsection (2) to the company register in order to be stored there, unless the transmission is effected pursuant to section 8b (2) no. 4 in conjunction with subsection (3) sentence 1 no. 1 of the Commercial Code.

(2) The annual financial report shall at least contain

1. the annual financial statements prepared and audited in accordance with the national law of the member state in which the company is registered;

2. the management report;

3. a statement made in accordance with the provisions of section 264 (2) sentence 3, section 289 (1) sentence 5 of the Commercial Code; and

4. a certificate of registration of the auditor issued by the Chamber of German Public Auditors (*Wirtschaftsprüferkammer*) pursuant to section 134 (2a) of the Act on the Profession of Auditors (*Wirtschaftsprüferordnung*) or a certification of exemption from the registration obligation issued by the Chamber of German Public Auditors pursuant to section 134 (4) sentence 8 of the Act on the Profession of Auditors.

(3) In agreement with the Federal Ministry of Justice, the Federal Ministry of Finance may, by means of a Regulation not requiring the consent of the *Bundesrat*, issue more detailed provisions concerning

1. the minimum content, nature, language, scope and form of the publication pursuant to subsection (1) sentence 2;

2. the minimum content, nature, language, scope and form of the notification pursuant to subsection (1) sentence 3;

3. how long the information specified in subsection (2) must generally remain available in the company register and when it is to be deleted; and

4. a coordinated procedure according to which the annual financial report and the annual document pursuant to section 10 of the Securities Prospectus Act (*Wertpapierprospektgesetz*) shall be made known to the Supervisory Authority.

Section 37w
Half-yearly financial report

(1) A company which, as a domestic issuer, issues shares or debt securities within the meaning of section 2 (1) sentence 1 shall prepare a half-yearly financial report covering the first six months of each financial year and make such report available to the public without undue delay, but two months after the end of the relevant reporting period at the latest, unless the admitted securities are debt securities that fall within the scope of section 2 (1) sentence 1 no. 2, or that grant at least a contingent right to acquire securities pursuant to section 2 (1) sentence 1 no. 1 or 2. Furthermore, prior to making the half-yearly financial

report publicly available for the first time, the company shall publish an announcement concerning the time and the website on which the report will be publicly available in addition to its availability in the company register. Simultaneously with the publication of such announcement, the company shall notify the Supervisory Authority thereof and transmit the announcement without undue delay, however not before its publication, to the company register within the meaning of section 8b of the Commercial Code (*Handelsgesetzbuch*) in order to be stored there. Moreover, the company shall transmit without undue delay, but not before the publication of the announcement pursuant to sentence 2, the half-yearly financial report to the company register in order to be stored there.

(2) The half-yearly financial report shall at least contain

1. the condensed set of financial statements;

2. an interim management report; and

3. a statement made in accordance with section 264 (2) sentence 3, section 289 (1) sentence 5 of the Commercial Code.

(3) The condensed set of financial statements shall at least contain a condensed balance sheet, a condensed profit and loss account and notes. The condensed set of financial statements shall be prepared in accordance with the accounting standards applicable to the annual financial statements. Where, in the case of publication, the annual financial statements are replaced by separate financial statements within the meaning of section 325 (2a) of the Commercial Code, the condensed set of financial statements shall be prepared in accordance with the international accounting standards and provisions specified in section 315a (1) of the Commercial Code.

(4) The interim management report shall at least include an indication of important events that have occurred during the reporting period in the issuer's company and their impact on the condensed set of financial statements as well as a description of the principal opportunities and risks for the six months of the financial year following the reporting period. In respect of companies that issue shares as domestic issuers, the interim management report shall include major related parties transactions; such data may be provided in the notes to the half-yearly financial report instead.

(5) The condensed set of financial statements and the interim management report may be reviewed by auditors. The provisions concerning the appointment of the auditor shall apply *mutatis mutandis* to the auditors' review. The auditors' review shall be effected in such way that, when conscientiously exercising the profession, it can be excluded that the condensed set of financial statements and the interim management report are inconsistent with the applicable accounting standards in material aspects. The auditor shall summarise the findings of his review in a certification in respect of the half-yearly financial report and publish such certification together with the half-yearly financial report. If the condensed set of financial statements and the interim management report have been audited in accordance with section 317 of the Commercial Code, the auditors' report or the non-affirmative auditors' report shall be reproduced in full and published together with the half-yearly financial report. If the condensed set of financial statements and half-yearly financial report have not been reviewed by auditors or audited in accordance with section 317 of the Commercial Code, a statement to that effect shall be made in the half-yearly financial report. Sections 320 and 323 of the Commercial Code shall apply *mutatis mutandis*.

(6) In agreement with the Federal Ministry of Justice, the Federal Ministry of Finance may, by means of a Regulation not requiring the consent of the *Bundesrat*, issue more detailed provisions concerning

1. the content and the auditors' review of the half-yearly financial report;

2. the minimum content, nature, language, scope and form of the publication pursuant to subsection (1) sentence 2;

3. the minimum content, nature, language, scope and form of the notification pursuant to subsection (1) sentence 3; and

4. how long the half-yearly financial report must remain publicly available in the company register and when it is to be deleted.

Section 37x
Interim management statement

(1) A company which issues shares as a domestic issuer shall make publicly available an interim statement by its management in a period between ten weeks after the beginning and six weeks before the end of the first half of the financial year and another statement in a period between ten weeks after the beginning and six weeks before the end of the second half of the financial year. Prior to this, the company must publish an announcement concerning the time and website on which the interim management statement will be made publicly available in addition to its availability in the company register. The company shall notify the Supervisory Authority of the announcement simultaneously with its publication and transmit it without undue delay, however not before its publication, to the company register within the meaning of section 8b of the Commercial Code (*Handelsgesetzbuch*) in order to be stored there. Furthermore, the company shall without undue delay, but not before the publication of the announcement pursuant to sentence 2, transmit the interim management statement to the company register in order to be stored there.

(2) The interim management statement shall contain information covering the period between the beginning of the relevant half of the financial year and the time at which the statement will be made publicly available in accordance with subsection (1) sentence 1; such information shall allow to assess how the issuer's business performed during the three months prior to the expiry of the period covered by the interim statement. The interim management statement shall contain an explanation of the material events and transactions that have taken place at the issuer's company during the period covered by the interim statement and their impact on the financial position of the issuer, and a description of the financial position and performance of the issuer during the period covered by the interim statement.

(3) The obligation set forth in subsection (1) shall not apply if a quarterly financial report is prepared and published in accordance with the provisions laid down in section 37w (2) nos. 1 and 2, subsections (3) and (4). The quarterly financial report shall be transmitted to the company register without undue delay, however not before its publication. If the quarterly financial report is reviewed by auditors, sections 320 and 323 of the Commercial Code shall apply *mutatis mutandis*.

(4) In agreement with the Federal Ministry of Justice, the Federal Ministry of Finance may, by means of a Regulation not requiring the consent of the *Bundesrat*, issue more detailed provisions concerning

1. the minimum content, nature, language, scope and form of the publication pursuant to subsection (1) sentence 2; and

2. the minimum content, nature, language, scope and form of the notification pursuant to subsection (1) sentence 3.

Section 37y
Consolidated financial statements

If a parent enterprise has the obligation to prepare consolidated financial statements and a group management report, sections 37v to 37x shall apply subject to the following proviso:

1. The annual financial report shall also contain the audited consolidated financial statements prepared in accordance with Regulation (EC) No. 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards (OJ EC No. L 243, p. 1), the group management report, a statement made in accordance with the provisions set forth in section 297 (2) sentence 3, section 315 (1) sentence 6 of the Commercial Code (*Handelsgesetzbuch*) and a certificate of registration of the auditor issued by the Chamber of German Public Auditors (*Wirtschaftsprüferkammer*) pursuant to section 134 (2a) of the Act on the Profession of Auditors (*Wirtschaftsprüferordnung*) or a certification of exemption from the registration obligation issued by the Chamber of German Public Auditors pursuant to section 134 (4) sentence 8 of the Act on the Profession of Auditors.

2. The statutory representatives of the parent enterprise shall prepare and publish the half-yearly financial report for the parent enterprise and the subsidiaries to be included in the consolidation taken as a whole. Section 37w (3) shall apply *mutatis mutandis* if the parent enterprise has the obligation to prepare the consolidated financial statements in accordance with the international accounting standards and provisions specified in section 315a (1) of the Commercial Code.

3. The information provided in the interim management statement of a parent enterprise pursuant to section 37x (2) sentence 2 shall refer to the parent enterprise and the subsidiaries to be included in the consolidation taken as a whole.

Section 37z
Exemptions

(1) Sections 37v to 37y shall not apply to companies that exclusively issue debt securities admitted to trading on an organised market, the denomination per unit of which is at least 50,000 euros or the value of such denomination per unit in another currency at the date of the issue.

(2) Section 37w shall not apply to credit institutions that issue securities as domestic issuers if their shares are not admitted to trading on an organised market and if they have, in a continuous or repeated manner, exclusively issued debt securities whose total nominal amount remains below 100 million euros, and for which a prospectus under the Securities Prospectus Act (*Wertpapierprospektgesetz*) has not been published.

(3) Section 37w shall also not apply to companies that issue securities as domestic issuers if they already existed on 31 December 2003 and exclusively issue debt securities admitted to trading on an organised market which are unconditionally and irrevocably guaranteed by the

Federal Government or one of the Federal States, or by one of the regional or local authorities.

(4) The Supervisory Authority may exempt a company domiciled in a third country that issues securities as a domestic issuer from the requirements set forth in sections 37v to 37y, also in conjunction with a Regulation pursuant to section 37v (3), section 37w (6) or section 37x (4), if such issuers are subject to equivalent rules of a third country or if they submit to such rules. However, the information to be prepared pursuant to the provisions of a third country shall be made available to the public, published and simultaneously notified to the Supervisory Authority in the manner prescribed in section 37v (1) sentences 1 and 2, section 37w (1) sentences 1 and 2, and section 37x (1) sentences 1 and 2, each of which also in conjunction with a Regulation pursuant to section 37v (3), section 37w (6) or section 37x (4). Furthermore, the information shall be transmitted to the company register within the meaning of section 8b of the Commercial Code (*Handelsgesetzbuch*) without undue delay, however not before its publication, in order to be stored there. The Federal Ministry of Finance may, by means of a Regulation not requiring the consent of the *Bundesrat*, issue more detailed provisions concerning the equivalence of a third country's rules and the exemption of companies under sentence 1.

(5) By way of derogation from subsection (4), companies domiciled in a third country shall be exempted from preparing their annual financial statements in accordance with sections 37v and 37w with regard to financial years starting before 1 January 2007 if such companies prepare their annual financial statements in accordance with the internationally accepted standards referred to in Article 9 of Regulation (EC) No. 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards (OJ EC No. L 243, p. 1).

Part 12
Provisions concerning criminal penalties and administrative fines

Section 38
Provisions concerning criminal penalties

(1) Any person who

1. acquires or disposes of an insider security in contravention of a prohibition pursuant to section 14 (1) no. 1; or

2.
    a. by virtue of his membership of the management or supervisory body of the issuer, or as a personally liable partner of the issuer or of an undertaking affiliated with the issuer;

    b. by virtue of his holding in the capital of the issuer or a company affiliated with the issuer;

    c. by virtue of his profession, activities or duties performed as part of his function; or

    d. due to the preparation or perpetration of a criminal offence

is privy to inside information and in using such inside information commits any intentional act named in section 39 (2) no. 3 or 4 shall be liable to imprisonment for a term not exceeding five years or to a criminal fine.

(2) Any person who commits intentional tort as named in section 39 (1) no. 1 or 2 or section 39 (2) no. 11 and thereby exerts an influence

1. on the domestic stock exchange or market price of a financial instrument, a commodity within the meaning of section 2 (2c), an emission allowance within the meaning of section 3 (4) sentence 1 of the Greenhouse Gas Emissions Trading Act (*Treibhausgas-Emissionshandelsgesetz*) or a foreign currency within the meaning of section 51 of the Exchange Act (*Börsengesetz*);

2. on the price of a financial instrument as quoted on an organised market in another member state of the European Union or another signatory to the Agreement on the European Economic Area;

3. on the price of a commodity within the meaning of section 2 (2c), an emission allowance within the meaning of section 3 (4) sentence 1 of the Greenhouse Gas Emissions Trading Act or a foreign currency within the meaning of section 51 of the Exchange Act on a market comparable to a domestic stock exchange in another member state of the European Union or in another signatory to the Agreement on the European Economic Area

shall also be subject to punishment.

(3) For the cases listed in subsection (1), the attempt is punishable.

(4) If an offence given in subsection (1) no. 1 is committed through negligence, the punishment shall be a term of imprisonment not exceeding one year or a criminal fine.

(5) In the cases listed in subsection (1) no. 1 or 2 in conjunction with section 39 (2) no. 3 or 4 or in subsection (2) in conjunction with section 39 (1) no. 1 or 2 or in subsection (2) no. 11, a foreign prohibition shall also be deemed a prohibition.

Section 39
Provisions concerning administrative fines

(1) An administrative offence shall be deemed to be committed by any person who

1. in contravention of section 20a (1) sentence 1 no. 2, also in conjunction with subsection (4), each of which in conjunction with a Regulation pursuant to subsection (5) sentence 1 no. 2 or no. 5, enters into a transaction or issues a buy or sell order;

2. in contravention of section 20a (1) sentence 1 no. 3, also in conjunction with subsection (4), or a Regulation pursuant to subsection (5) sentence 1 no. 3, carries out an action aimed at deception;

3. in contravention of section 31g (1) fails to effect a publication, or fails to effect a publication correctly, completely or within the prescribed period;

4. in contravention of section 32d (1) sentence 1 fails to grant access;

5. in contravention of section 34b (1) sentence 2 in conjunction with a Regulation pursuant to subsection (8) sentence 1 communicates or publicly distributes a financial analysis; or

6. in contravention of section 34b (2) in conjunction with a Regulation pursuant to subsection (8) sentence 1 communicates a summary of a financial analysis.

(2) An administrative offence shall be deemed to be committed by any person who wilfully or negligently,

1. in contravention of section 4 (8) or section 10 (1) sentence 2, provides information to an individual;

2. in contravention of

    a. section 9 (1) sentence 1, also in conjunction with sentence 2, each of which in conjunction with sentence 3, 4 or 5, each of which in conjunction with a Regulation pursuant to subsection (4) no. 1 or 2;

    b. section 10 (1) sentence 1, also in conjunction with a Regulation pursuant to subsection (4) sentence 1;

    c. section 15 (3) sentence 4, subsection (4) sentence 1, or subsection (5) sentence 2, each of which also in conjunction with a Regulation pursuant to subsection (7) sentence 1 no. 2;

    d. section 15a (1) sentence 1, also in conjunction with sentence 2, subsection (4) sentence 1, each of which also in conjunction with a Regulation pursuant to subsection (5) sentence 1;

    e. section 21 (1) sentence 1 or 2 or subsection (1a), each of which also in conjunction with a Regulation pursuant to section 21 (3);

    f. section 25 (1) sentence 1, also in conjunction with a Regulation pursuant to section 25 (3);

    g. section 26 (2), also in conjunction with a Regulation pursuant to section 26 (3) no. 2;

    h. section 26a sentence 1;

    i. section 29a (2) sentence 1;

    j. section 30c, also in conjunction with section 30d;

    k. section 30e (1) sentence 1, also in conjunction with a Regulation pursuant to section 30e (2);

    l. section 30f (2);

m. section 30i (1) sentence 1 or sentence 3 no. 1, each of which also in conjunction with a Regulation pursuant to section 30i (5) sentence 1 no. 1;

n. section 37v (1) sentence 3, also in conjunction with section 37y, each of which also in conjunction with a Regulation pursuant to section 37v (3) no. 2;

o. section 37w (1) sentence 3, also in conjunction with section 37y, each of which also in conjunction with a Regulation pursuant to section 37w (6) no. 3;

p. section 37x (1) sentence 3, also in conjunction with section 37y, each of which also in conjunction with a Regulation pursuant to section 37x (4) no. 2; or

q. section 37z (4) sentence 2

fails to make a notification or makes such notification incorrectly, incompletely, not in the prescribed form or not within the prescribed period;

3. discloses or makes available inside information in violation of section 14 (1) no. 2;

4. recommends that a third party acquire or dispose of insider securities, or otherwise induces a third party to do so, in violation of section 14 (1) no. 3;

5. in contravention of

a. section 15 (1) sentence 1, also in conjunction with sentence 2, section 15 (1) sentence 4 or 5, each of which also in conjunction with a Regulation pursuant to subsection (7) sentence 1 no. 1;

b. section 15a (4) sentence 1 in conjunction with a Regulation pursuant to subsection (5) sentence 1;

c. section 26 (1) sentence 1, also in conjunction with sentence 2, each of which also in conjunction with a Regulation pursuant to section 26 (3) no. 1, or in contravention of section 26a sentence 1 or section 29a (2) sentence 1;

d. section 30b (1) or (2), each of which also in conjunction with section 30d;

e. section 30e (1) sentence 1 in conjunction with a Regulation pursuant to section 30e (2) or in contravention of section 30f (2);

f. section 30i (1) sentence 2 or sentence 3 no. 2, each of which also in conjunction with a Regulation pursuant to section 30i (5) sentence 1 no. 1;

g. section 37v (1) sentence 2 in conjunction with a Regulation pursuant to section 37v (3) no. 1, each of which also in conjunction with section 37y, or in contravention of section 37z (4) sentence 2;

h. section 37w (1) sentence 2 in conjunction with a Regulation pursuant to section 37w (6) no. 2, each of which also in conjunction with section 37y; or

i. section 37x (1) sentence 2 in conjunction with a Regulation pursuant to section 37x (4) no. 1, each of which also in conjunction with section 37y

fails to make a publication or makes such publication incorrectly, incompletely, not in the prescribed form or within the prescribed period or either fails to rectify these shortcomings or to rectify them in a timely manner;

6. fails to transmit information or an announcement or fails to do so within the prescribed period in contravention of section 15 (1) sentence 1, section 15a (4) sentence 1, section 26 (1) sentence 1, section 26a sentence 2, section 29a (2) sentence 2, section 30e (1) sentence 2, section 30f (2), section 37v (1) sentence 3, section 37w (1) sentence 3 or section 37x (1) sentence 3, each of which also in conjunction with section 37y, or in contravention of section 37z (4) sentence 3;

7. effects a publication in contravention of section 15 (5) sentence 1;

8. fails to keep a list or keeps such a list incorrectly or incompletely in contravention of section 15b (1) sentence 1 in conjunction with a Regulation pursuant to subsection (2) sentence 1 no. 1 or 2;

9. fails to submit this list or fails to submit it within the prescribed period in contravention of section 15b (1) sentence 2;

10. fails to record information, or fails to record it correctly, completely or within the prescribed period in contravention of

    a) section 16 sentence 1; or

    b) section 34 (1) or (2) sentence 1 or 2, each of which also in conjunction with a Regulation pursuant to section 34 (4) sentence 1;

11. supplies or withholds information in contravention of section 20a (1) sentence 1 no. 1, also in conjunction with subsection (4) or a Regulation pursuant to subsection (5) sentence 1 no. 1;

12. fails to ensure that facilities and information are publicly available in Germany in contravention of section 30a (1) sentence 1 no. 2, also in conjunction with subsection (3) or section 30d;

13. fails to ensure that data are protected from unauthorised persons obtaining knowledge thereof in contravention of section 30a (1) no. 3, also in conjunction with subsection (3) or section 30d;

14. fails to ensure that an institution mentioned there has been designated in contravention of section 30a (1) no. 4, also in conjunction with subsection (3) or section 30d;

14a. engages in a naked short-selling transaction in contravention of section 30h (1) sentence 1, also in conjunction with a Regulation pursuant to section 30h (3) sentence 1 no. 2;

14b. engages in a credit derivatives transaction in contravention of section 30j (1), also in conjunction with a Regulation pursuant to section 30j (4) sentence 1 no. 2;

15. fails to disclose a conflict of interest, or fails to disclose it correctly, completely or within the prescribed period in contravention of section 31 (1) no. 2;

16. recommends a financial instrument or makes a recommendation when providing financial portfolio management services in contravention of section 31 (4) sentence 3;

17. fails to provide information, or fails to provide it within the prescribed period in contravention of section 31 (5) sentence 3 or 4;

18. fails to provide information, or fails to provide it within the prescribed period, or fails to obtain consent, or fails to obtain it within the prescribed period in contravention of section 33a (5) sentence 2 or subsection (6) no. 1 or 2;

19. fails to make a notification correctly or completely in contravention of section 33a (6) no. 3;

19a. fails to take the minutes, or fails to do so correctly or within the prescribed period in contravention of section 34 (2a) sentence 1 in conjunction with a Regulation pursuant to section 34 (4) sentence 1;

19b. fails to provide the client with a copy of the minutes, or provides an incomplete copy or fails to provide the copy in the prescribed form or within the prescribed period in contravention of section 34 (2a) sentence 2;

19c. fails to send the copy of the minutes, or sends an incomplete copy or fails to send the copy in the prescribed form or within the prescribed period in contravention of section 34 (2a) sentences 3 and 5 in conjunction with a Regulation pursuant to section 34 (4) sentence 1;

20. fails to retain a record, or fails to do so for a minimum period of five years in contravention of section 34 (3) sentence 1;

21. fails to comply with a provision on segregation of assets under section 34a (1) sentence 1, 3, 4 or 5, also in conjunction with subsection (2) sentence 2, or under section 34a (2) sentence 1, each of which also in conjunction with a Regulation pursuant to section 34a (5) sentence 1 or section 34a (4);

22. fails to make a notification or fails to do so within the prescribed period, or makes such notification incorrectly or incompletely in contravention of section 34c sentence 1, 2 or 4 or section 36 (2) sentence 1;

23. fails to appoint an auditor or fails to do so within the prescribed period in contravention of section 36 (1) sentence 4;

24. fails to make available an annual financial report including a statement in accordance with section 37v (2) no. 3 and the certificate of registration or the certification pursuant to section 37v (2) no. 4, a half-yearly financial report including a statement

in accordance with section 37w (2) no. 3 or an interim management statement, or fails to do so within the prescribed period in contravention of section 37v (1) sentence 1, section 37w (1) sentence 1 or section 37x (1) sentence 1, each of which also in conjunction with section 37y; or

25. fails to transmit an annual financial report including a statement in accordance with section 37v (2) no. 3 and the certificate of registration or the certification pursuant to section 37v (2) no. 4, a half-yearly financial report including a statement in accordance with section 37w (2) no. 3 or an interim management report, or fails to do so within the prescribed period in contravention of section 37v (1) sentence 4, section 37w (1) sentence 4 or section 37x (1) sentence 4, each of which also in conjunction with section 37y.

(2a) An administrative offence shall be deemed to be committed by any person who wilfully or negligently fails to make a record or makes such record incorrectly, incompletely or not within the prescribed period, in contravention of Article 7 or Article 8 of Commission Regulation (EC) No. 1287/2006 of 10 August 2006 implementing Directive 2004/39/EC of the European Parliament and of the Council as regards record-keeping obligations for investment firms, transaction reporting, market transparency, admission of financial instruments to trading, and defined terms for the purposes of that Directive (OJ EC No. L 241 p. 1).

(2b) An administrative offence shall be deemed to be committed by any person who acts in contravention of Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies (OJ L 302, 17.11.2009, p. 1) by wilfully or negligently

1. failing to make a notification or making a notification incorrectly, incompletely or not within the prescribed period in contravention of Article 6(2) in conjunction with point (a), (b), (c) or (d) of sentence 1 of paragraph 3 of Section B of Annex I or sub-paragraph 2 of Article 14(3);

2. failing to make a publication or making a publication incorrectly, incompletely, not in the prescribed form or within the prescribed period, or failing to rectify these shortcomings in a timely manner in contravention of Article 6(2) in conjunction with paragraph 2 of Section B of Annex I or Article 12;

3. failing to make a record or making a record incorrectly or incompletely in contravention of Article 6(2) in conjunction with paragraph 7(a), (b), (c), (d), (e), (f), (g) or (h) of Section B of Annex 1;

4. failing to retain a record or failing to retain a record for a minimum period of five years in contravention of Article 6(2) in conjunction with sub-pragraph 1 of paragraph 8 of Section B of Annex 1;

5. using a credit rating for regulatory purposes in contravention of sub-paragraph 1 of Article 4(1);

6. failing to ensure that the information referred to in sub-paragraph 2 of Article 4(1) is included in the prospectus in contravention of this Article;

7. failing to identify a credit rating in contravention of Article 4(2) or sub-paragraph 2 of Article 10(5);

8. endorsing a credit rating issued in a third country in contravention of Article 4(3);

9. failing to ensure that the compliance function is able to discharge its responsibilites properly and independently in contravention of Article 6(2) in conjunction with paragraph 6 of Section A of Annex I;

10. failing to disclose conflicts of interest or disclosing such conflicts of interest incorrectly or incompletely in contravention of Article 6(2) in conjunction with paragraph 1 of Section B of Annex I;

11. issuing a credit rating in contravention of Article 6(2) in conjunction with sentence 1 of paragraph 3 of Section B of Annex I;

12. providing consultancy or advisory services in contravention of Article 6(2) in conjunction with sentence 1 of sub-paragraph 1 of paragraph 4 of Section B of Annex I;

13. failing to disclose any ancillary services or disclosing such ancillary services incorrectly or incompletely in contravention of Article 6(2) in conjunction with sub-paragraph 3 of paragraph 4 of Section B of Annex I;

14. failing to retain a record or failing to retain a record for a minimum period of three years in contravention of Article 6(2) in conjunction with sub-paragraph 2 of paragraph 8 of Section B of Annex I;

15. failing to retain a record or failing to retain a record for the prescribed period set forth in Article 6(2) in conjunction with paragraph 9 of Section B of Annex I in contravention of this Article;

16. failing to ensure that a person referred to in Article 7(1) has appropriate knowledge and experience in contravention of this Article;

17. failing to ensure that a person referred to in Article 7(2) does not initiate or participate in negotiations regarding fees or payments in contravention of this Article;

18. failing to ensure that a person referred to in Article 7(3) in conjunction with paragraph 1 of Section C of Annex I neither buys nor sells any financial instrument nor enganges in any transaction in any financial instrument in contravention of this Article;

19. failing to ensure that a person referred to in Article 7(3) in conjunction with paragraph 2 of Section C of Annex I neither participates in nor influences the determination of a credit rating in contravention of this Article;

20. failing to ensure that a person referred to in Article 7(3) in conjunction with paragraph 3(b), (c) or (d) of Section C of Annex I does not disclose, share or use information in contravention of this Article;

21. failing to ensure that a person referred to in Article 7(3) in conjunction with paragraph 4 of Section C of Annex I neither solicits nor accepts money, gifts and favours in contravention of this Article;

22. failing to ensure that a person referred to in Article 7(3) in conjunction with paragraph 5 of Section C of Annex I reports the conduct of any person in

contravention of this Article;

23. failing to ensure that a person referred to in Article 7(3) in conjunction with paragraph 7 of Section C of Annex I does not take up a key position in contravention of this Article;

24. failing to ensure that a lead rating analyst is not involved in credit rating activities for a period exceeding four years in contravention of Article 7(4) in conjunction with sub-paragraph 1(a) of paragraph 8 of Section C of Annex I;

25. failing to ensure that a rating analyst is not involved in credit rating activities for a period exceeding five years in contravention of Article 7(4) in conjunction with sub-paragraph 1(b) of paragraph 8 of Section C of Annex I;

26. failing to ensure that a person approving credit ratings is not involved in credit rating activities for a period exceeding seven years in contravention of Article 7(4) in conjunction with sub-paragraph 1(c) of paragraph 8 of Section C of Annex I;

27. failing to ensure that a person referred to in Article 7(4) in conjunction with sub-paragraph 2 of paragraph 8 of Section C of Annex I is not involved in credit rating activities within the period set forth in this Article;

28. taking the amount of revenue referred to in Article 7(5) as a basis for compensation or performance evaluation in contravention of this Article;

29. failing to make a disclosure or making a disclosure incorrectly, incompletely or not within the prescribed period in contravention of Article 8(1), Article 10(2) or (4), each of which also in conjunction with paragraph 4 of Part II of Section D of Annex I or sentence 1 of point 1 of Part II of Section E of Annex I;

30. refusing to issue a credit rating in contravention of sub-paragraph 1 of Article 8(4);

31. failing to provide documentation or providing documentation incorrectly or incompletely in contravention of sub-paragraph 2 of Article 8(4);

32. failing to monitor or review credit ratings and methodologies or failing to do so within the prescribed period in contravention of sentence 1 of Article 8(5);

33. failing to make a disclosure or making a disclosure incorrectly, incompletely or not within the prescribed period in contravention of Article 8(6)(a), sentence 1 of sub-paragraph 1 of Article 10(1), also in conjunction with sub-paragraph 2, or Article 11(1), also in conjunction with Part I of Section E of Annex I;

34. failing to review a credit rating or failing to review a credit rating within the prescribed period in contravention of Article 8(6)(b);

35. failing to re-rate a credit rating or failing to re-rate a credit rating within the prescribed period in contravention of Article 8(6)(c);

36. failing to ensure that a credit rating is presented in accordance with the requirements set out in Article 10(2) in conjunction with paragraph 1, points (a), (b), (c), (d) or (e) of paragraph 2 of Part I of Section D of Annex I, sub-paragraph 1 of paragraph 4 or paragraph 5 or paragraph 1, 2 or 3 of Part II in contravention of this Article;

37. failing to provide information or providing information incorrectly or incompletely or not within the prescribed period in contravention of Article 10(2) in conjunction with paragraph 3 of Part I of Section D of Annex I;

38. issuing a credit rating or failing to withdraw a credit rating in contravention of Article 10(2) in conjunction with sub-paragraph 2 of paragraph 4 of Part I of Section D of Annex I;

39. failing to ensure that an additional symbol is used in contravention of Article 10(3);

40. failing to provide a statement or providing a statement incorrectly or incompletely in contravention of sub-paragraph 1 of Article 10(5);

41. failing to make available information or making information available incorrectly or incompletely or not within the prescribed period in contravention of Article 11(2);

42. failing to provide information or providing information incorrectly or incompletely or not within the prescribed period in contravention of Article 11(3) in conjunction with point 2 of Part II of Section E of Annex I.

(3) An administrative offence shall be deemed to be committed by any person who wilfully or negligently

1. fails to comply with an enforceable order pursuant to

    a. section 4 (3) sentence 1;

    b. section 36b (1);

    c. section 37o (4) sentence 1 or section 37q (2) sentence 1;

2. fails to allow or tolerate entry in contravention of section 4 (4) sentence 1 or 2 or section 37o (5) sentence 1;

3. outsources portfolio management services in contravention of section 33 (3) sentence 1 no. 2.

(3a) An administrative offence shall be deemed to be committed by any person who acts in contravention of Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies (OJ L 302, 17.11.2009, p. 1) by wilfully or negligently failing to comply with an enforceable order pursuant to

1. Article 6(2) in conjuction with sub-paragraph 1 of paragraph 8 of Section B of Annex I;

2. Article 6(2) in conjuction with sub-paragraph 7 of paragraph 2 of Section A of Annex I;

3. points (a), (b), (c) or (d) of sub-paragraph 1 of Article 23(3);

4. points (b), (c) or (d) of Article 24(1).

(4) The administrative offence is punishable by a fine not exceeding one million euros in the cases referred to in subsection (1) nos. 1 and 2 and subsection (2) no. 5 (a), nos. 7 and 11, by a fine not exceeding five hundred thousand euros in the cases referred to in subsection (2) nos. 14a and 14b, by a fine not exceeding two hundred thousand euros in the cases referred to in subsection (1) nos. 3 and 5 and subsection (2) no. 2 (c), (e) to (i) and (m) to (q), nos. 3, 4 and 5 (c) to (i) and nos. 6, 18, 24 and 25, and subsection (3) no. 3, by a fine not exceeding one hundred thousand euros in the cases referred to in subsection (2) no. 2 (d), no. 5 (b), nos. 12 to 14 and 16, and subsection (3) no. 1 (b), and by a fine not exceeding fifty thousand euros in all other cases.

(5) The provisions set forth in subsection (2) no. 2 (a), no. 10 (b), nos. 15, 16, 18 to 20, 22 and 23, subsection (2a) and subsection (3) no. 1 (b) and no. 3, each of which also in conjunction with subsection (4), shall also apply to investment management requiring authorisation within the meaning of section 2 (3) sentence 3.

Section 40 Competent administrative authority

The administrative authority *(Verwaltungsbehörde)* within the meaning of section 36 (1) no. 1 of the Act on Breaches of Administrative Regulations (*Gesetz über Ordnungswidrigkeiten*) shall be the Federal Financial Supervisory Authority.

Section 40a
Involvement of the Supervisory Authority and information in criminal cases

(1) The public prosecutor’s office shall inform the Supervisory Authority of preliminary proceedings relating to criminal offences in accordance with section 38. If experts are required for these preliminary proceedings, competent staff members of the Supervisory Authority may be called upon. The Supervisory Authority must be informed of the indictment and the application for an order imposing punishment. If the public prosecutor's office intends to discontinue prosecution, it is required to hear the Supervisory Authority.

(2) The court shall inform the Supervisory Authority of the date of the main proceedings relating to criminal offences in accordance with section 38.

(3) The Supervisory Authority shall be granted access to the files at its request unless this is contrary to warranted interests of the party concerned or would endanger the success of the investigations.

(4) If public action is brought in criminal proceedings against the owners or managers of investment services enterprises or their legal representatives or personally liable partners because of criminal offences to the disadvantage of clients in respect of or in connection with operating the investment services enterprise, furthermore in criminal proceedings concerned with criminal offences pursuant to section 38, the Supervisory Authority shall be provided with

1. the indictment or the petition in lieu of an indictment;

2. the application for the issuing of a summary order; and

3. the decision concluding the proceedings together with the grounds for the decision;

if an appeal has been lodged against the decision, the decision shall be transmitted together with a reference to the appeal that has been lodged. In the case of proceedings in respect of criminal offences that have been committed by negligence, the communications set forth in nos. 1 and 2 shall only be made if, in the view of the authority making the communication, it is deemed necessary that the Supervisory Authority takes decisions or other measures without undue delay.

(5) If in criminal proceedings other facts indicating irregularities in the business operations of an investment services enterprise become known and if in the view of the authority making the communication the knowledge thereof is necessary for the Supervisory Authority to take measures pursuant to this Act, the court or the prosecuting or enforcement authority shall also communicate such facts, if it is not obvious to the authority making the communication that warranted interests of the persons concerned prevail. In this case it must be taken into consideration to which extent the information to be communicated is reliable.

Section 40b
Publication of measures

The Supervisory Authority may make publicly known incontestable measures that it has adopted due to contraventions of prohibitions or requirements of this Act on its website, provided that this is suitable and necessary to resolve or avoid irregularities in accordance with section 4 (1) sentence 2, unless such publication would place the financial markets in considerable danger or would cause disproportionate damage to the parties involved. The Supervisory Authority shall publish on its website without undue delay any orders pursuant to section 4 (2).

Part 13
Transitional provisions

Section 41
Transitional provisions concerning notification and publication requirements

(1) Enterprises within the meaning of section 9 (1) sentence 1 which exist on 1 August 1997 and have not been subject to the reporting requirement pursuant to section 9 (1) before this date, shall conduct reporting pursuant to this provision for the first time on 1 February 1998.

(2) Any person who, taking account of section 22 (1) and (2), holds, on 1 April 2002, five percent or more of the voting rights of a listed company must without undue delay, and within seven calendar days at the latest, notify the company and the Supervisory Authority in writing, stating his address, of the size of his percentage of the voting capital; the voting rights to be attributed to the notifying party shall be stated separately for each item in this notification. An obligation pursuant to sentence 1 shall not exist if a notification pursuant to section 21 (1) or (1a) was made after 1 January 2002 and prior to 1 April 2002.

(3) The company must publish any notifications pursuant to subsection (2) within one month of receipt pursuant to section 25 (1) sentences 1 and 2 and (2), and must without undue delay send the Supervisory Authority documentary evidence of such publication.

(4) The provisions of sections 23, 24, 25 (3) sentence 2, subsection (4) and sections 27 to 30 shall apply *mutatis mutandis* to the obligations pursuant to subsections (2) and (3).

(4a) Anyone who as per 20 January 2007 holds a percentage of voting rights attached to shares which reaches, exceeds or falls below the thresholds of 15, 20 or 30 percent, also in consideration of section 22 as amended prior to 19 August 2008, shall notify the issuer whose home country is the Federal Republic of Germany of his percentage of voting rights by no later than 20 March 2007. This does not apply if he submitted to the issuer prior to 20 January 2007 a notification containing equivalent information; the content of the notification shall be in compliance with section 21 (1), also in conjunction with a Regulation pursuant to subsection (2). Anyone who as per 20 January 2007 is entitled to a percentage of voting rights of five percent or more in an issuer whose home country is the Federal Republic of Germany on the basis of attribution pursuant to section 22 (1) sentence 1 no. 6 must notify the issuer by no later than 20 March 2007. This does not apply if he submitted to the issuer prior to 20 January 2007 a notification containing equivalent information and if he was not attributed the voting rights pursuant to section 22 (1) sentence 1 no. 6 as amended prior to 20 January 2007; the content of the notification shall be in compliance with section 21 (1), also in conjunction with a Regulation pursuant to subsection (2). Anyone who as per 20 January 2007 holds financial instruments within the meaning of section 25 as amended prior to 1 March 2009 must notify the issuer whose home country is the Federal Republic of Germany by no later than 20 March 2007 of the percentage of voting rights he would hold if he held, instead of financial instruments, those shares that may be acquired under the legally binding agreement, unless his percentage of voting rights was below 5 percent. This does not apply if he submitted a notification containing equivalent information to the issuer prior to 20 January 2007; the content of the notification shall be in compliance with section 25 (1) as amended prior to 1 March 2009, also in conjunction with sections 17 and 18 of the Securities Trading Reporting and Insider List Ordinance (*Wertpapierhandelsanzeige- und Insiderverzeichnisverordnung*) as amended prior to 1 March 2009. If a domestic issuer receives a notification pursuant to sentence 1, 3 or 5 he must publish it by no later than 20 April 2007 pursuant to section 26 (1) sentence 1, also in conjunction with a Regulation pursuant to subsection (3). Furthermore, he shall transmit such information without undue delay, however not before its publication, to the company register within the meaning of section 8b of the Commercial Code (*Handelsgesetzbuch*) in order to be stored there. He shall simultaneously with the publication pursuant to sentence 7 notify the Supervisory Authority pursuant to section 26 (2), also in conjunction with a Regulation pursuant to subsection (3) no. 2. Sections 23, 24, 27 to 29 and 29a (3) shall apply *mutatis mutandis* to the obligations pursuant to sentences 1 to 9. Section 29a (1) and (2) shall apply *mutatis mutandis* to the obligations pursuant to sentence 4.

(4b) Anyone who, also in consideration of section 22, holds a percentage of voting rights attached to shares as well as financial instruments within the meaning of section 25 shall not be required to submit a notification on the reaching or exceeding of the thresholds set forth in section 25 if he has reached or exceeded these thresholds on 1 March 2009, by way of aggregation pursuant to section 25 (1) sentence 3, exclusively on the basis of the amendment to section 25 taking effect on 1 March 2009. Such notification shall be submitted only after again reaching, exceeding or falling below a threshold under section 25. The notification requirements pursuant to section 25 in the version in force up to 1 March 2009 which were not fulfilled or were fulfilled incorrectly or incompletely or not in the prescribed manner are to be fulfilled in consideration of section 25 (1) sentence 3.

(4c) Anyone who, also in consideration of section 22, holds a percentage of voting rights attached to shares shall not be required to submit a notification on the reaching or exceeding of the thresholds set forth in section 21 if he has reached or exceeded these thresholds on 19 August 2008 exclusively by way of attribution of voting rights on the basis of the amendment to section 22 (2) taking effect on 19 August 2008. Such notification shall be submitted only after again reaching, exceeding or falling below a threshold under section

21. Sentences 1 and 2 shall apply *mutatis mutandis* to the notification requirement under section 25 subject to the proviso that the thresholds set forth in section 25 are authoritative.

(5) An administrative offence shall be deemed to be committed by any person who wilfully or negligently

1. fails to make a notification, fails to do so within the prescribed period or makes such notification incorrectly, incompletely or not in the prescribed manner in contravention of subsection (2) sentence 1 or subsection (4a) sentence 1, 3, 5 or 9; or

2. fails to effect publication, fails to do so within the prescribed period, or effects such publication incorrectly, incompletely or not in the prescribed manner, fails to forward documentary evidence or fails to do so within the prescribed period, or fails to communicate information or fails to do so within the prescribed period in contravention of subsection (3) or subsection (4a) sentence 7 or 8.

(6) The administrative offence is punishable by a fine not exceeding two hundred thousand euros in the cases referred to in subsection (5).

Section 42
Transitional provisions concerning the obligation to reimburse costs pursuant to section 11

(1) The parties obliged to reimburse the costs to the Supervisory Authority pursuant to section 11 (1) sentence 1 of the Act of 26 July 1994 (Federal Law Gazette I, p. 1749) may also prove the volume of the transactions in securities and derivatives for the time up until the end of 1996 and for the year 1997 on the basis of the number of transactions reported pursuant to section 9 in 1996 and 1997 respectively.

(2) Section 11 as amended prior to the entry into force of the Act Establishing the Federal Financial Supervisory Authority (*Gesetz über die integrierte Finanzdienstleistungsaufsicht*) of 22 April 2002 (Federal Law Gazette I, p. 1310) shall apply for the period up until 30 April 2002 to the costs incurred by the Supervisory Authority.

Section 42a
Transitional provision governing the ban on naked short-selling transactions in shares and certain debt securities under section 30h

Exempt from the ban under section 30h are transactions that were already concluded prior to 27 July 2010, provided they are not prohibited under any other provision.

Section 42b
Transitional provision governing the notification and publication requirements for holders of net short-selling positions under section 30i

(1) Any person who, on 26 March 2012 holds net short-selling positions as defined in section 30i (1) sentence 1 of 0.2 percent or more shall notify the Supervisory Authority hereof in accordance with section 30i (3), also in conjunction with a Regulation pursuant to section 30i (5), by the close of the next trading day. The holder of a net short-selling position as defined in section 30i (1) sentence 2 of 0.5 percent or more shall, in addition to the notification under sentence 1, publish the position in the electronic Federal Gazette (*elektronischer Bundesanzeiger*) in accordance with section 30i (3), also in conjunction with a Regulation

pursuant to section 30i (5), within the period specified in sentence 1; no such obligation exists if a comparable notification has already been made prior to 26 March 2012.

(2) An administrative offence shall be deemed to be committed by any person who wilfully or negligently

1. fails to make a notification, or makes such notification incorrectly or incompletely or not in the prescribed manner or within the prescribed period in contravention of subsection (1) sentence 1; or

2. fails to effect a publication, or effects such publication incorrectly or incompletely or not in the prescribed manner or within the prescribed period in contravention of subsection (1) sentence 2 first half-sentence.

(3) The administrative offence is punishable by a fine not exceeding two hundred thousand euros in the cases referred to in subsection (2).

Section 42c
Transitional position governing the ban on credit derivatives under section 30j

Exempt from the ban under section 30j are transactions used to close out positions in a credit derivative within the meaning of section 30j (1) no. 1 under which the protection buyer was already vested with rights and obligations prior to 27 July 2010, as well as transactions in credit-linked notes already issued prior to 27 July 2010.

Section 43
Transitional provisions concerning the limitation of claims for damages pursuant to section 37a

Section 37a in the version in force up to 4 August 2009 shall apply to claims for damages which have arisen from 1 April 1998 up to and including 4 August 2009.

Section 44
Transitional provisions concerning foreign organised markets

(1) Organised markets requiring an authorisation pursuant to section 37i which on 1 July 2002 granted trading participants domiciled in Germany direct market access by means of an electronic trading system, shall notify the Supervisory Authority thereof by 31 December 2002 and file an application for authorisation by 30 June 2003.

(2) Organised markets obliged to submit a notification pursuant to section 37m which granted trading participants domiciled in Germany direct market access by means of an electronic trading system shall notify the Supervisory Authority thereof and of their intention to maintain such market access by 31 December 2002.

Section 45
Application of part 11

The provisions of part 11 in the version in force since 21 December 2004 shall apply for the first time to financial statements for the financial year ending on 31 December 2004 or later.

The Supervisory Authority shall begin to execute the duties assigned to it in part 11 as of 1 July 2005.

Section 46
Application of the Transparency Directive Implementation Act (*Transparenzrichtlinie-Umsetzungsgesetz*)

(1) Sections 37n and 37o (1) sentence 4 as well as the provisions under part 11 sub-part 2 as amended on 20 January 2007 shall apply for the first time to financial reports covering the financial year which commences after 31 December 2006.

(2) In respect of issuers of whom only debts securities are admitted to trading on an organised market within the meaning of Article 4 (1) No. 14 of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments (OJ EU No. L 145 p. 1) in a member state of the European Union or another signatory to the Agreement on the European Economic Area, and in respect of issuers whose securities are admitted to trading in a third country and who have been applying the internationally accepted accounting standards for this purpose since the financial year that commenced prior to 11 September 2002, sections 37w (3) sentence 2 and section 37y no. 2 as amended on 20 January 2007 shall apply under the proviso that the issuer may apply the accounting standards of the prior-year financial statements to the financial years commencing prior to 31 December 2007.

(3) Section 30b (3) no. 1 (a) as amended on 20 January 2007 shall apply for the first time to information which is communicated after 31 December 2007.

(4) Publications pursuant to section 30b (1) and (2) shall be effected, in addition to their publication in the electronic Federal Gazette (*elektronischer Bundesanzeiger*), in a national newspaper for statutory stock exchange announcements (*überregionales Börsenpflichtblatt*) up until 31 December 2010.

Section 47
Application of section 34

Section 34 in the version in force from 5 August 2009 shall apply for the first time to investment advice provided after 31 December 2009.

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[1]
Pursuant to Article 23 of the Law of 21 June 2002, as published in the announcement of 27 June 2002 (Federal Law Gazette I, p. 2316), section 9 (2) nos. 7 and 8 do not enter into force until 1 April 2003.

[2]

Important note:

1) A transitional provision for the obligation to reimburse costs pursuant to section 11 is set forth in section 42 (2) WpHG:
Section 11 as amended prior to the entry into force of the Act Establishing the Federal Financial Supervisory Authority (*Gesetz über die integrierte Finanzdienstleistungsaufsicht*) of 22 April 2002 (Federal Law Gazette I, p. 1310) shall apply for the period up until 30 April 2002 to the costs incurred by the Supervisory Authority.

Allocation of Costs and Costs

(1) The Federal Government is to be reimbursed for the costs of the Supervisory Authority as follows:

1. 68 percent by credit institutions and enterprises operating under section 53 (1) sentence 1 of the Banking Act (*Kreditwesengesetz*), insofar as these credit institutions or enterprises are authorised to provide investment services within the meaning of section 2 (3) nos. 1, 2 or 5 in Germany;
2. 4 percent by official exchange brokers and other enterprises admitted to trading on a German stock exchange and which do not come under the provisions of number 1 above;
3. 9 percent by financial services institutions and enterprises operating under section 53 (1) sentence 1 of the Banking Act, insofar as these financial services institutions or enterprises are authorised to provide investment services within the meaning of section 2 (3) nos. 3, 4 or 6 in Germany, and do not come under the provisions of numbers 1 or 2 above;
4. 9 percent by issuers domiciled in Germany, whose securities are admitted to trading on a German stock exchange or are traded on the regulated unofficial market (*Freiverkehr*) with their consent.

In the case of sentence 1 numbers 1 and 2, the costs are allocated proportionally based on the volume of transactions reported pursuant to section 9 (1); the number of transactions is the determining criterion in this context, with only a third of the transactions to be taken into account for bonds. In the case of sentence 1 number 3, the costs are allocated proportionally based on the result from ordinary activities or, in cases where corresponding evidence is submitted, based on the gross proceeds from investment services or proprietary trading. In the case of sentence 1 number 4, the costs are allocated to the issuers proportionally based on the stock exchange turnover of their securities admitted to trading or traded on the regulated unofficial market. The costs shall also include refundable amounts that could not be collected and shortfalls from the cost allocation of the previous year for which costs are to be reimbursed; refunds or shortfalls on which no final or incontestable judgement has yet been made shall be excepted from this provision. The refundable amounts and shortfalls shall be added in full to the respective proportion of the costs arrived at based on sentence 1.

(2) The parties subject to cost allocation pursuant to subsection 1 sentence 1 above and the German stock exchanges are required upon request to furnish the Supervisory Authority with information concerning the volume of transactions, the result from ordinary activities or the gross proceeds and stock exchange turnover. The cost allocation shall be enforced by the Supervisory Authority pursuant to the provisions of the Act on Administrative Enforcement (*Verwaltungsvollstreckungsgesetz*).

(3) Details concerning the allocation of the costs, in particular the allocation key and measurement date, the minimum allocation amount, the allocation procedure including a

suitable method of estimation, the payment deadlines and the amount of late payment penalties, and concerning collection shall be determined by the Federal Ministry of Finance by means of a Regulation not requiring the consent of the *Bundesrat*; such Ordinance may also include provisions governing the provisional determination of the allocation amount. The Federal Ministry of Finance may, by means of a Regulation, delegate this authority to the Supervisory Authority.

(4) The costs incurred by the Federal Government from the audit pursuant to section 35 (1) and section 36 (4) shall be reimbursed separately by the enterprises concerned and shall be paid in advance if so requested by the Supervisory Authority.