Banking Act (Kreditwesengesetz, KWG)

Long title: **Gesetz über das Kreditwesen**

In the amended text of the Announcement of September 9, 1998 (Federal Law Gazette I, page 2776), as last amended by Article 3 of the Act amending insolvency and banking law provisions (Gesetz zur Änderung insolvenzrechtlicher und kreditwesenrechtlicher Vorschriften*) of December 8, 1999 (Federal Law Gazette I No. 54, page 2384).

> * This Act serves to implement Directive 98/26/EC of the European Parliament and Council of May 19, 1998 on settlement finality in payment and securities settlement systems (Official Journal of the European Communities No. L 166 page 45)

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Entry into force

Part I General Provisions

Division 1. Credit institutions, financial services institutions, financial holding companies and financial enterprises

1. Definitions

(1) Credit institutions are enterprises which conduct banking business commercially or on a scale which requires a commercially organised business undertaking. Banking business comprises

1. the acceptance of funds from others as deposits or of other repayable funds from the public unless the claim to repayment is securitised in the form of bearer or order debt certificates, irrespective of whether or not interest is paid (deposit business),

2. the granting of money loans and acceptance credits (lending business),

3. the purchase of bills of exchange and cheques (discount business),

4. the purchase and sale of financial instruments in the credit institution's own name for the account of others (principal broking services),

5. the safe custody and administration of securities for the account of others (safe custody business),

6. the business specified in section 1 of the Act on Investment Companies (Gesetz über Kapitalanlagegesellschaften) (investment fund business),

7. the incurrence of the obligation to acquire claims in respect of loans prior to their maturity,

8. the assumption of guarantees and other warranties on behalf of others (guarantee business),

9. the execution of cashless payment and clearing operations (giro business),

10. the purchase of financial instruments at the credit institution's own risk for placing in the market or the assumption of equivalent guarantees (underwriting business),

11. the issuance of prepaid cards for payment purposes, unless the card issuer is also the service provider and hence the recipient of the payment made using the card (prepaid card business), and

12. the creation and administration of units of payment in computer networks (network money business).

(1a) Financial services institutions are enterprises which provide financial services to others commercially or on a scale which requires a commercially organised business undertaking, and which are not credit institutions. Financial services are

1. the brokering of business involving the purchase and sale of financial instruments or their documentation (investment broking),

2. the purchase and sale of financial instruments in the name of and for the account of others (contract broking),

3. the administration of individual portfolios of financial instruments for others on a discriminatory basis (portfolio management),

4. the purchase and sale of financial instruments on an own-account basis for others (own-account trading),

5. the brokering of deposit business with enterprises domiciled outside the European Economic Area (non-EEA deposit broking),

6. the execution of payment orders (money transmission services), and

7. dealing in foreign notes and coins (foreign currency dealing).

(1b) For the purpose of this Act, "institutions" are credit institutions and financial services institutions.

(2) For the purposes of this Act, managers (Geschäftsleiter) are those natural persons who are appointed by law, articles of association or partnership agreement to manage the business of and represent an institution organised in the form of a legal person or partnership. In exceptional cases the Federal Banking Supervisory Office may also revocably designate as manager another person entrusted with the management of an institution's business and authorised to represent it if that person is trustworthy and has the necessary professional qualifications; section 33 (2) applies. If the institution is operated by a sole proprietor, a person whom the proprietor has entrusted with the management of the institution's business and authorised to represent it may be revocably designated as manager in exceptional cases on the conditions specified in sentence 2. If a person is designated as manager by virtue of an application by the institution, the designation shall be revoked upon the application of the institution or the manager.

(3) Financial enterprises are enterprises which are not institutions and whose main activities comprise

1. acquiring participating interests,

2. acquiring money claims against payment,

3. concluding leasing contracts,

4. issuing or administering credit cards or travellers' cheques,

5. trading in financial instruments for their own account,

6. advising others on investing in financial instruments (investment advice),

7. advising enterprises on their capital structure, their industrial strategy and associated issues; advising them and offering them services in the event of corporate mergers and acquisitions, or

8. arranging loans between credit institutions (money-broking business).

The Federal Ministry of Finance, after having consulted the Deutsche Bundesbank, may designate by regulation other enterprises as financial enterprises, whereby the list in the appendix to Council Directive 89/646/EEC of December 15, 1989 on the coordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of credit institutions and amending

Directive 77/780/EEC (Official Journal of the European Communities No. L 386, page 1) (Second Banking Coordination Directive) is extended.

(3a) Financial holding companies are financial enterprises whose subsidiaries are exclusively or primarily institutions or financial enterprises, with at least one subsidiary being a deposit-taking credit institution or a securities trading firm.

(3b) Mixed-activity holding companies are enterprises which are neither financial holding companies nor institutions, with at least one subsidiary being a deposit-taking credit institution or a securities trading firm.

(3c) Ancillary banking services enterprises are enterprises which are neither institutions nor financial enterprises and whose main activity comprises administering real estate, operating computer centres or performing other activities which are ancillary activities relative to the main activity of one or more institutions.

(3d) Deposit-taking credit institutions are credit institutions which receive deposits or other repayable funds from the public and conduct lending business. Securities trading firms are institutions which are not deposit-taking credit institutions and which conduct banking business within the meaning of subsection (1) sentence 2 numbers 4 or 10 or which provide financial services within the meaning of subsection (1a) sentence 2 numbers 1 to 4 unless the banking business or financial services are confined to foreign exchange, units of account or derivatives within the meaning of subsection (11) sentence 4 number 5. Securities trading banks are credit institutions which are not deposit-taking credit institutions and which conduct banking business within the meaning of subsection (1) sentence 2 numbers 4 or 10 or provide financial services within the meaning of subsection (1a) sentence 2 numbers 1 to 4.

(3e) Stock exchanges or financial futures exchanges within the meaning of this Act are stock markets or financial futures markets which are regulated and supervised by publicly approved agencies, are held regularly and are accessible to the general public either directly or indirectly, including their systems for safeguarding settlement of the trades in these markets (clearing houses) that are regulated and supervised by publicly approved agencies.

(4) The home state is the state in which the head office of an institution is registered.

(5) The host state is the state in which an institution maintains a branch or provides cross-border services outside its home state.

(5a) The European Economic Area (EEA) within the meaning of this Act designates the states of the European Communities and the contracting states to the Agreement on the European Economic Area. Non-EEA states within the meaning of this Act are all other states.

(5b) Zone A comprises all states of the European Economic Area, the full member states of the Organisation for Economic Cooperation and Development, unless they have rescheduled their external debt within the past five years or faced comparable balance of payments difficulties, and the states which have concluded special lending arrangements with the International Monetary Fund under the Fund's General Arrangements to Borrow. Zone B comprises all other states.

(6) Parent enterprises are enterprises which are deemed to be parent enterprises for the purposes of section 290 of the German Commercial Code (Handelsgesetzbuch) or which can exercise a dominant influence, irrespective of their legal form and domicile.

(7) Subsidiaries are enterprises which are deemed to be subsidiaries for the purposes of section 290 of the Commercial Code or on which a dominant influence can be exercised, irrespective of their legal form and domicile. Affiliated enterprises are enterprises which have a common parent company.

(8) Control is deemed to exist if an enterprise is considered to be a parent enterprise relative to another enterprise, or if a similar relationship obtains between a natural person or a legal person and an enterprise.

(9) A qualified participating interest is deemed to exist if at least ten per cent of the capital of, or the voting rights in, an enterprise is held directly or indirectly through one or more subsidiaries or a similar relationship or through collaboration with other persons or enterprises, or if a significant influence can be exercised on the management of the enterprise in which a participating interest is held. For calculating the share of the voting rights, section 22 (1) and (3) of the Securities Trading Act (Wertpapierhandelsgesetz) applies. Participating interests which are held indirectly are to be attributed in full to the persons and enterprises holding the indirect participating interest.

(10) A close association is deemed to exist if an institution and another natural person or another enterprise are linked

1. through the direct or indirect holding of at least twenty per cent of the capital or the voting rights, or

2. as parent enterprise and subsidiary, through a similar relationship or as affiliated enterprises.

(11) Financial instruments within the meaning of this Act are securities, money market instruments, foreign exchange or units of account and derivatives. Securities are the following, irrespective of whether they are evidenced by certificates:

1. shares, certificates representing shares, debt securities, participation certificates, warrants, and

2. other securities that are comparable to shares or debt securities if they can be traded on a market; securities also comprise share certificates issued by an investment company or a foreign collective investment company. Money market instruments are claims that are not covered by sentence 2 and which are customarily traded in the money market.

Derivatives are outright forward transactions or option contracts whose price depends directly or indirectly on

1. the stock exchange or market price of securities,

2. the stock exchange or market price of money market instruments,

3. the exchange rate of foreign exchange or units of account,

4. interest rates or other income streams, or

5. the stock exchange or market price of commodities or precious metals.

(12) For the purposes of determining the trading book risk positions and calculating the relevant capital charges, the following shall be deemed to be part of the trading book within the meaning of this Act:

1. financial instruments, marketable assets and equities which the institution holds as proprietary positions with a view to reselling them or which are taken on by the institution with the intention of profiting in the short term from existing or expected differences between buying and selling prices or variations in prices or interest rates, 2. portfolios and transactions which serve the purpose of hedging market risk arising from the trading book, and any associated refinancing transactions,

3. name-to-follow deals, and

4. assets in the form of fees, commissions, interest, dividends and margin payments that are directly associated with the trading book positions.

The trading book shall further be deemed to include securities repurchase agreements, loan transactions and comparable transactions relating to positions of the trading book. It shall not include foreign exchange, units of account and derivatives within the meaning of subsection (11) sentence 4 number 5. The banking book comprises all an institution's transactions that do not form part of the trading book. Positions are to be assigned to the trading book according to internal, verifiable criteria of which the Federal Banking Supervisory Office and the Deutsche Bundesbank must be notified; any changes to these criteria must be reported immediately to the Federal Banking Supervisory Office and the Deutsche Bundesbank, stating the reasons. The reclassification and transfer of positions to the trading book or the banking book shall be verifiably documented and substantiated in the institution's documents. Compliance with the internal classification criteria shall be checked and confirmed by the external auditors as part of their audit of the annual accounts.

2. Exceptions

(1) Subject to the provisions of subsections (2) and (3), the following are deemed not to be credit institutions:

1. the Deutsche Bundesbank;

2. the Reconstruction Loan Corporation (Kreditanstalt für Wiederaufbau - KfW);

3. the social security funds and the Federal Labour Office (Bundesanstalt für Arbeit);

4. private and public insurance enterprises;

5. enterprises engaged in pawnbroking, insofar as they conduct this business by granting loans against pledges;

6. enterprises recognised under the Act Concerning Risk Capital Investment Companies (Gesetz über Unternehmensbeteiligungsgesellschaften) as risk capital investment companies;

7. enterprises which conduct banking business solely with their parent enterprise or with their subsidiaries or with affiliated enterprises;

8. enterprises which provide brokerage services solely on a stock exchange, on which exclusively derivatives are traded, for other members of that exchange and whose liabilities are covered by a system that guarantees the settlement of trades on that exchange.

(2) The Reconstruction Loan Corporation is subject to section 14 and to action taken by virtue of section 47 (1) 2 and section 48; the social security funds, the Federal Labour Office, insurance enterprises and risk capital investment companies are subject to section 14.

(3) Enterprises of the types specified in subsection (1) 4 to 6 are subject to the provisions of this Act insofar as they conduct banking business which is not part of their characteristic business.

(4) The Federal Banking Supervisory Office may rule in particular cases that an institution is not subject to the provisions of sections 10 to 18, 24, 24a, 25 to 38, 45, 46 to 46c and 51 (1) of this Act, taken as a whole, as long as the enterprise does not require supervision, given the nature of the business it conducts. Such a ruling shall be published in the Federal Gazette (Bundesanzeiger).

(5) The Federal Banking Supervisory Office may rule in particular cases, in consultation with the Deutsche Bundesbank, that an enterprise which solely conducts prepaid card business is not subject to the provisions of sections 10 to 18, 24, 32 to 38, 45, 46 to 46c and 51 (1) of this Act or of section 112 (2) of the Composition Code (Vergleichsordnung), taken as a whole, if the prepared cards have a limited use and dissemination which suggests that they are unlikely to pose a threat to the payment system. Such a ruling shall be published in the Federal Gazette. The Federal Ministry of Finance may, through a regulation to be issued in consultation with the Deutsche Bundesbank, specify detailed provisions for qualifying for exemption under sentence 1. The Federal Ministry of Finance may delegate this authority by regulation to the Federal Banking Supervisory Office provided that the regulation is issued in consultation with the Deutsche Bundesbank.

(6) The following are deemed not to be financial services institutions:

1. the Deutsche Bundesbank;

2. the Reconstruction Loan Corporation;

3. the public debt administration of the Federal Government, of one of its special funds, of a Land Government or of another state of the European Economic Area and its central banks;

4. private and public insurance enterprises;

5. enterprises which provide financial services solely for their parent enterprise or for their subsidiaries or for affiliated enterprises;

6. enterprises whose financial service consists solely in the administration of a system of employee participations in themselves or their affiliated enterprises;

7. enterprises which solely provide financial services within the meaning of both number 5 and number 6;

8. enterprises which provide financial services within the meaning of section 1 (1a) sentence 2 numbers 1 to 4 that consist solely of investment broking and contract broking between customers and

(a) an institution,

(b) an enterprise operating in accordance with section 53b (1) sentence 1 or (7),

(c) an enterprise that is treated as an EEA enterprise or that is granted exemption from the provisions by means of a regulation pursuant to section 53c, or

(d) a foreign collective investment company, as long as these financial services are confined to share certificates of investment companies or to foreign investment fund certificates whose distribution is permitted under the Foreign Investment Fund Act (Auslandinvestment-Gesetz) and the enterprises are not authorised to acquire ownership or possession of funds, certificates or shares of customers in providing such financial services;

9. enterprises which provide financial services solely on a stock exchange, on which exclusively derivatives are traded, for other members of that exchange and whose liabilities are covered by a system that guarantees the settlement of trades on that exchange;

10. members of free professions who provide financial services only occasionally within the framework of their professional activities and who belong to a professional chamber having the legal form of a public corporation whose professional rules do not exclude the performance of financial services;

11. enterprises whose main business is trading in commodities with similar enterprises, with producers or commercial users of the commodities and which perform financial services only for these persons and only to the extent necessary for their main business;

12. enterprises whose sole financial service is dealing in foreign notes and coins unless their main business is foreign currency dealing.

The provisions of this Act shall apply to institutions and enterprises within the meaning of sentence 1 numbers 3 and 4 insofar as they provide financial services which do not form part of their characteristic business.

(7) The provisions of section 2a (2), sections 10 to 18 and 24 (1) 10, sections 24a and 33 (1) sentence 1 number 1, section 35 (2) 5 and sections 45 and 46 to 46c shall not apply to financial services institutions which provide no financial services apart from non-EEA deposit broking, money transmission services and dealing in foreign notes and coins. (8) The provisions of section 2a (2), sections 10, 11 and 12 (1), sections 13, 13a, 14 to 18 and 24 (1) 10 and sections 45 and 46 to 46c shall not apply to investment brokers and contract brokers who in the course of providing financial services are not authorised to obtain ownership or possession of funds or securities of customers and who do not trade in financial instruments for their own account.

(9) The provisions of section 24a on the establishment of a branch and on cross-border services shall not apply to investment brokers and contract brokers who, instead of the initial capital, can demonstrate that they have taken out suitable insurance pursuant to section 33 (1) sentence 2.

(10) An enterprise shall be deemed not to be a financial services institution if it conducts the investment broking or contract broking solely for the account and under the liability of a deposit-taking credit

institution or securities trading firm domiciled in Germany, or of an enterprise operating in accordance with section 53b (1) sentence 1 or (7), or if it conducts such business under the joint and several liability of such institutions or enterprises, without providing any other financial services and if this is reported to the Federal Banking Supervisory Office by one of these liable institutions or enterprises. Its activities shall be regarded as forming part of those of the institutions or enterprises for whose account and under whose liability it operates. If there is any change in the circumstances reported by the liable institutions or enterprises, the new circumstances shall be reported immediately to the Federal Banking Supervisory Office. The Federal Banking Supervisory Office will forward the reports pursuant to sentences 1 and 3 to the Deutsche Bundesbank and the Federal Supervisory Office for Securities Trading (Bundesaufsichtsamt für den Wertpapierhandel).

(11) An institution is not required to apply the provisions of this Act concerning trading book business if

1. the share of the institution's trading book activities as a rule does not exceed five per cent of the aggregate total of its on and off-balance-sheet business,

2. the aggregate total of the individual trading book positions as a rule does not exceed the equivalent of ECU 15 million, and

3. the share of its trading book business at no time exceeds six per cent of the aggregate total of its on and off-balance-sheet business and the aggregate total of the trading book positions at no time exceeds the equivalent of ECU 20 million. For the purpose of determining the share of the trading book business, derivatives shall be valued according to the nominal value or the market price of the respective underlying instruments, and the other financial instruments at their nominal value or market price; short and long positions shall be aggregated irrespective of whether they are positive or negative. Further details shall be defined by means of a regulation pursuant to section 22. The institution shall notify the Federal Banking Supervisory Office and the Deutsche Bundesbank immediately if it makes use of the option provided for in sentence 1, if it has exceeded one of the limits laid down in sentence 1 number 3, or if it applies the provisions concerning trading book business even though it meets the exemption conditions laid down in sentence 1.

2a. Legal form

(1) Credit institutions requiring a licence in accordance with section 32 (1) may not be operated in the form of a sole proprietorship.

(2) In the case of securities trading firms in the form of a sole proprietorship or partnership, the risk assets of the proprietor or general partners shall be included in the assessment of the institution's solvency pursuant to section 10 (1); however, the personal assets of the proprietor or partners shall be excluded for the purpose of calculating the institution's own funds. If such an institution is operated in the form of a sole proprietorship, the proprietor shall take appropriate precautions to protect his customers in the event that the institution ceases trading owing to his death, his incapacity to continue the business or other reasons.

2b. Holders of qualified participating interests

(1) Anyone who intends to acquire a qualified participating interest in an institution shall report the amount of the intended participating interest immediately to the Federal Banking Supervisory Office and the Deutsche Bundesbank in accordance with sentences 2 and 4. In his report pursuant to sentence 1 he

shall state the facts germane to assessing his trustworthiness, which facts shall be specified in more detail by regulation in accordance with section 24 (4) sentence 1, and name the i ndividuals and enterprises from whom or from which he intends to acquire the corresponding shares. At the request of the Federal Banking Supervisory Office, the records specified in section 32 (1) sentence 3 number 6 (d) and (e) shall be submitted. If the purchaser is a legal person or partnership, the report pursuant to sentence 1 must contain the facts germane to assessing the trustworthiness of its legal representatives or general partners. As long as the qualified participating interest is held, every newly appointed legal representative or new general partner shall be reported immediately to the Federal Banking Supervisory Office and the Deutsche Bundesbank, together with the facts germane to assessing his trustworthiness.

The holder of a qualified participating interest shall, moreover, notify the Federal Banking Supervisory Office and the Deutsche Bundesbank immediately if he intends to increase the amount of the qualified participating interest in such a way that the thresholds of twenty per cent, thirty-three per cent or fifty per cent of the voting rights or capital are reached or exceeded, or that the institution comes under his control. The Federal Banking Supervisory Office will forward one copy of each report pursuant to sentences 1 and 6 to the Federal Supervisory Office for Securities Trading.

(1a) Within three months of the receipt of the full report pursuant to subsection (1) sentence 1 or 6, the Federal Banking Supervisory Office may prohibit the intended acquisition of, or increase in, the qualified participating interest if facts are known which warrant the assumption that

1. the party submitting the report or, if it is a legal person, a legal representative, or, if it is a partnership, a partner is not trustworthy or for any other reason does not meet the demands required in the interest of ensuring a sound and prudent management of the institution,

2. the acquisition of, or increase in, the qualified participating interest would integrate the institution into a corporate association with the holder of the qualified participating interest which would hamper effective supervision of the institution, or

3. the acquisition of, or increase in, the qualified participating interest would make the institution a subsidiary of an institution domiciled abroad that is not effectively supervised in the state where it is registered or has its head office or whose appropriate supervisory body is not prepared to cooperate satisfactorily with the Federal Banking Supervisory Office.

If such acquisition is not prohibited, the Federal Banking Supervisory Office may set a period after the expiry of which the person or partnership who has submitted the report pursuant to subsection (1) sentence 1 or 6 shall inform that Office whether or not the intended acquisition has been carried out. After the expiry of this period, the person or partnership shall submit the report to the Federal Banking Supervisory Office immediately.

(2) The Federal Banking Supervisory Office may prohibit the holder of a qualified participating interest and the enterprises he controls from exercising his voting rights and stipulate that the shares may be used only with the Office's assent if

1. the prerequisites exist for a prohibition pursuant to subsection (1a) sentence 1,

2. the holder of the qualified participating interest has not fulfilled his duty pursuant to subsection (1) to notify the Federal Banking Supervisory Office and the Deutsche Bundesbank beforehand and has not subsequently made such notification after a period of

time set by the Federal Banking Supervisory Office, or

3. if the participating interest has been acquired or increased notwithstanding an enforceable prohibition pursuant to subsection (1a) sentence 1. In the cases specified in sentence 1, the exercise of voting rights may be transferred to a trustee; in exercising the voting rights, the trustee shall take due account of the interests of a sound and prudent management of the institution. In the cases specified in sentence 1 numbers 1 and 3, the Federal Banking Supervisory Office may, over and above the measures specified in sentence 1, charge a trustee to sell the shares where they constitute a qualified participating interest if the holder of the qualified participating interest does not furnish proof of a trustworthy buyer to the Federal Banking Supervisory Office within an appropriate period to be set by that Office; the holders of the shares shall cooperate in the sale to the extent necessary. The trustee is appointed by the court having jurisdiction at the domicile of the institution at the request of the institution, the holder of a participating interest in it or the Federal Banking Supervisory Office. If the prerequisites specified in sentence 1 no longer exist, the Federal Banking Supervisory Office shall apply for the revocation of the appointment of the trustee. The trustee is entitled to the reimbursement of reasonable expenses and to remuneration for his activities. The court determines such expenses and remuneration at the request of the trustee; no further appeal is permissible. The Federal Government advances such expenses and remuneration; the holder of the qualified participating interest concerned and the institution are jointly and severally liable to the Federal Government i n respect of its outlays.

(3) Before taking measures in accordance with subsection (1a) sentence 1, the Federal Banking Supervisory Office shall consult the appropriate authorities of the other state of the European Economic Area if the purchaser of the qualified participating interest is a deposit-taking credit institution or securities trading firm licensed in the other state, a parent enterprise of a deposit-taking credit institution or securities trading firm licensed in the other state or a person controlling a deposit-taking credit institution or securities trading firm licensed in the other state, and if, as a result of the acquisition, the institution in which the purchaser intends to hold a participating interest would come under the control of the purchaser. The Federal Banking Supervisory Office shall inform the appropriate authorities of the other state of measures taken in accordance with subsection (2) sentence 1 in relation to purchasers within the meaning of sentence 1; it is to consult them beforehand if there are no grounds for fearing that such delay will nullify or significantly impair the efficacy of the measures.

(4) Anyone who intends to relinquish a qualified participating interest in an institution or to reduce the amount of his qualified participating interest below the thresholds of twenty per cent, thirty-three per cent or fifty per cent of the voting rights or the capital, or to change the participating interest in such a way that the institution is no longer a controlled enterprise, shall report this to the Federal Banking Supervisory Office and the Deutsche Bundesbank immediately. The intended residual level of the participating interest shall be indicated in the report. The Federal Banking Supervisory Office may set a period after the expiry of which the person or partnership who has submitted the report pursuant to sentence 1 shall notify that Office whether or not the intended reduction or change has been carried out. After the expiry of this period, the person or partnership who has submitted the report pursuant to sentence 1 shall submit the notification to the Federal Banking Supervisory Office immediately.

(5) The Federal Banking Supervisory Office shall temporarily prohibit or limit the acquisition of a direct or indirect participating interest in an institution, through which the institution would become a subsidiary of an enterprise domiciled outside the European Communities, if the Commission or Council of the European Communities has passed a corresponding decision in accordance with Article 22 (2) of the Second Banking Coordination Directive or Article 7 (5) of Council Directive 93/22/EEC of May 10,

1993 on investment services in the securities field - Official Journal of the European Communities No. L. 141 page 27 - (Investment Services Directive). The temporary prohibition or limitation may not last longer than three months from the date of the decision. If the Council of the European Communities decides to prolong the period pursuant to sentence 2, the Federal Banking Supervisory Office shall take due account of this prolongation and prolong the temporary prohibition or limitation accordingly.

3. Prohibited business

The following are prohibited:

1. the conduct of deposit business if the majority of the depositors are persons employed by the enterprise (employee savings banks - Werksparkassen), unless other banking business is conducted which exceeds the scale of such deposit business;

2. the acceptance of sums of money if the majority of the lenders have a legal right to loans being granted to them or objects being supplied to them on credit out of these sums of money (savings enterprises for specific purposes - Zwecksparunternehmen); this does not apply to building and loan associations; 3. the conduct of lending business or deposit business if, by agreement or in line with normal business practice, it is impossible or very difficult to withdraw the amount of the loan or the deposits in cash.

4. Decision by the Federal Banking Supervisory Office

In doubtful cases, the Federal Banking Supervisory Office decides whether an enterprise is subject to the provisions of this Act. Its decisions are binding upon the administrative authorities.

Division 2. Federal Banking Supervisory Office

5. Organisation

(1) The Federal Banking Supervisory Office (Bundesaufsichtsamt für das Kreditwesen) is established as an independent superior Federal authority (Bundesoberbehörde). It is domiciled in Bonn.

(2) The President of the Federal Banking Supervisory Office is nominated by the Federal Government and appointed by the President of the Federal Republic; the Federal Government shall consult the Deutsche Bundesbank regarding such nomination.

6. Functions

(1) The Federal Banking Supervisory Office exercises supervision over institutions in accordance with the provisions of this Act.

(2) The Federal Banking Supervisory Office shall counteract undesirable developments in the banking and financial services sector which may endanger the safety of the assets entrusted to institutions, impair the proper conduct of banking business or provision of financial services or involve serious disadvantages for the national economy, except in cases for which the Federal Supervisory Office for Securities Trading has responsibility under the Securities Trading Act.

(3) The Federal Banking Supervisory Office may, as part of its brief, issue instructions to the institution and its managers that are appropriate and necessary to prevent or overcome undesirable developments at

the institution which could endanger the safety of the assets entrusted to the institution or could impair the proper conduct of its banking business or provision of financial services.

(4) The Federal Banking Supervisory Office performs the functions assigned to it under this Act and under other Acts in the public interest only.

7. Cooperation with the Deutsche Bundesbank

(1) The Federal Banking Supervisory Office and the Deutsche Bundesbank cooperate as provided in this Act. The Deutsche Bundesbank and the Federal Banking Supervisory Office shall communicate to each other any observations and findings which are necessary for the performance of their respective functions. To this end, the Deutsche Bundesbank shall make available to the Federal Banking Supervisory Office the information it obtains from statistics collected in accordance with section 18 of the Bundesbank Act (Gesetz über die Deutsche Bundesbank). Before ordering the collection of such statistics, the Deutsche Bundesbank shall consult the Federal Banking Supervisory Office; section 18 sentence 5 of the Bundesbank Act applies as appropriate.

(2) The cooperation and communications pursuant to subsection (1) include the communication of personal data. The Federal Banking Supervisory Office and the Deutsche Bundesbank are authorised to automatically access one another's database maintained for the purpose of performing their functions under this Act. Every tenth time that the Federal Banking Supervisory Office calls up data from the Deutsche Bundesbank's database, the Deutsche Bundesbank shall, for the purpose of safeguarding data protection, log the time, the details which enable the data records called up to be ascertained and the identity of the person calling up the data. The data so logged are to be used solely for the purpose of safeguarding data protection, data security or for ensuring the proper functioning of the data processing system. The log files are to be deleted at the end of the calendar year following that in which the data were stored. Sentences 3 to 5 apply as appropriate to data retrievals by the Deutsche Bundesbank from the database of the Federal Banking Supervisory Office.

(3) The President of the Federal Banking Supervisory Office or, if he is unable to attend, his deputy is entitled to take part in the deliberations of the Central Bank Council of the Deutsche Bundesbank whenever matters within his field of responsibility are being discussed. He has no right to vote, but may propose motions.

8. Cooperation with other bodies

(1) The Federal Banking Supervisory Office may enlist the services of other persons and institutions to assist it in the performance of its functions.

(2) If tax evasion proceedings are instituted against proprietors or managers of institutions, section 30 of the Tax Code (Abgabenordnung) does not preclude communication of the proceedings and the underlying facts to the Federal Banking Supervisory Office; the same applies if the proceedings are directed against persons who committed the offence while in the employment of an institution.

(3) When supervising institutions which conduct banking business or provide financial services in another state of the European Economic Area and when supervising institutions as provided in Council Directive 92/30/EEC of April 6, 1992 on the supervision of credit institutions on a consolidated basis - (Journal of the European Communities No. L 110, page 52) - (Consolidation Directive), the Federal Banking Supervisory Office and - insofar as it is acting under this Act - the Deutsche Bundesbank cooperate with the appropriate authorities of the state concerned. Communications from the appropriate

authorities of the other state may be used for the following purposes only:

1. for checking an institution's licence to conduct business,

2. for supervising the operations of institutions on an individual basis or a consolidated basis,

3. for orders by the Federal Banking Supervisory Office and for the prosecution and punishment by the Federal Banking Supervisory Office of breaches of administrative regulations,

4. in the context of administrative proceedings regarding legal remedies against a decision by the Federal Banking Supervisory Office, or

5. in the context of proceedings before administrative courts, insolvency courts, public prosecutors' offices or courts having jurisdiction in criminal cases or administrative fine cases.

If an institution's licence to conduct banking business or provide financial services is revoked, the Federal Banking Supervisory Office informs the appropriate authorities of the other states of the European Economic Area in which the institution has established branches or has been providing cross-border services.

(4) The Federal Banking Supervisory Office notifies the appropriate authorities of the host state of the measures it will take to terminate infringements by an institution of legal provisions issued by the host state of which the Federal Banking Supervisory Office has been informed by the appropriate authorities of the host state. 8a.Responsibility for supervision on a consolidated basis

(1) The Federal Banking Supervisory Office may abstain from supervising a group of institutions or a financial holding group within the meaning of section 10a (2) to (5), and revocably exempt the parent enterprise from the provisions of this Act governing supervision on a consolidated basis, if,

1. in the case of groups of institutions, the parent enterprise is a subsidiary of a deposit-taking credit institution or a securities trading firm domiciled in another state of the European Economic Area and, in that other state, is included in supervision on a consolidated basis in accordance with the Consolidation Directive, or if,

2. in the case of financial holding groups, these groups are supervised on a consolidated basis in accordance with the Consolidation Directive by the appropriate authorities of another state of the European Economic Area.

A precondition of such exemption is an agreement of the Federal Banking Supervisory Office with the appropriate authorities of the other state. The Commission of the European Communities is to be informed of the existence and contents of such agreements.

(2) In addition to the cases regulated by section 10a (3), the Federal Banking Supervisory Office may rule a group of enterprises to be a financial holding group and an institution of the group to be the parent enterprise, as provided in Article 4 (2) to (4) of the Consolidation Directive; in that case, the provisions of this Act governing supervision on a consolidated basis apply as appropriate.

9. Secrecy

(1) Persons employed by the Federal Banking Supervisory Office and persons com- missioned under section 8 (1), supervisors appointed under section 46 (1) sentence 2 number 4, the liquidators appointed under section 37 sentence 2 and section 38 (2) sentences 2 and 4 and persons employed by the Deutsche Bundesbank, insofar as they are acting to implement this Act, may not disclose or use without authorisation facts which have come to their notice in the course of their duties and which should be kept secret in the interests of the institution or a third party (especially business and trade secrets), not even after they have left such employment or their duties have ended. The same applies to other persons who learn of the facts specified in sentence 1 as a result of official reports. In particular, it is deemed not to be such disclosure or use without authorisation within the meaning of sentence 1 if facts are passed on

1. to public prosecutors' offices or courts having jurisdiction in criminal cases and administrative fine cases,

2. to agencies which, by virtue of an act of parliament or by official order, are entrusted with the supervision of institutions, collective investment companies, financial enterprises, insurance enterprises, the financial markets or the payments system, and to persons commissioned by such agencies,

3. to agencies dealing with an institution's liquidation or the initiation of insolvency proceedings over its assets,

4. to persons entrusted with the statutory auditing of the accounts of institutions or financial enterprises and to agencies which supervise such persons,

5. to a deposit guarantee scheme or an investor compensation scheme, or

6. stock markets or financial futures exchanges, insofar as these agencies require the information for the performance of their functions. Secrecy in accordance with sentence 1 applies as appropriate to persons employed by these agencies. If the agency is located in another state, the facts may be passed on only if that agency and the persons commissioned by it are subject to secrecy requirements corresponding to those specified in sentence 1. The foreign agency is to be informed that it may use information solely for the purpose for which it has been passed on to it. The agencies specified in sentence 3 numbers 3 to 6 which directly or indirectly obtain information from appropriate authorities in other states may forward such information only with the express permission of the agencies passing on the information.

(2) Sections 93, 97, 105 (1), section 111 (5), read in conjunction with section 105 (1), and section 116 (1) of the Tax Code do not apply to the persons specified in subsection (1) insofar as they are acting to implement this Act. This does not apply if the fiscal authorities require the information for instituting proceedings for tax evasion and the associated tax assessment proceedings in the prosecution of which there is a pressing public interest, or if the person required to provide information or the persons acting on his behalf have intentionally supplied incorrect information. Sentence 2 does not apply if the facts involved were communicated to the persons specified in subsection (1) sentence 1 or 2 by the appropriate supervisory agency of another state or by persons commissioned by that agency.

Part II Provisions for Institutions

Division 1. Own funds and liquidity

10. Provision with own funds

(1) In order to meet their obligations to their creditors, and particularly in order to safeguard the assets entrusted to them, institutions must have adequate own funds. The Federal Banking Supervisory Office, acting in agreement with the Deutsche Bundesbank, draws up Principles by which it assesses in the normal case whether the requirements of sentence 1 have been satisfied; the central associations of the institutions shall be con- sulted beforehand. The Principles shall be published in the Federal Gazette. Institutions shall submit to the Federal Banking Supervisory Office and the Deutsche Bundesbank at monthly intervals the data required in accordance with the Principles for monitoring the ad- equacy of their own funds. They shall set up a proper organisation and appropriate internal monitoring procedures to ensure that the data required pursuant to sentence 4 are duly processed and passed on. If the provisions of this Act require a position to be backed by liable capital or tier 3 capital, the relevant amount of the own funds is not available for the backing of other positions; in particular, this amount of the own funds may not be included for the purpose of determining the adequacy of the own funds according to the Principles pursuant to section 10 (1) sentence 2 and section 10a (1) sentence 2. Own funds made available by third parties may be included only if they have actually been transferred to the institution. The acquisition of own funds of the institution by a third party acting for the institution's account, by a subsidiary of the institution or by a third party acting for the account of a subsidiary of the institution shall be deemed for the purpose of inclusion to be equivalent to an acquisition by the institution unless the institution can prove that the own funds were actually transferred to it; this rule applies as appropriate to receipts of collateral pledged as security.

(1a) In determining the adequacy of the own funds pursuant to section 10 (1) and section 10a (1), a counterparty-related weighting of zero per cent may be assigned to loans constituting claims on, or carrying the explicit guarantee of,

1. a central government, central bank, regional government or local authority in another state of the European Economic Area, or

2. a central government or central bank in a non-EEA state if enterprises domiciled in that non-EEA state are exempted in full or in part from the provisions of section 53 by virtue of a regulation pursuant to section 53c, as long as the Federal Banking Supervisory Office has not announced a different applicable weighting and the loans are given a zero weighting by the appropriate authority of the other state or non-EEA state. Loans granted prior to the announcement of a different applicable weighting may continue to be given a weighting of zero per cent until the end of the term of the loan.

(2) The own funds consist of liable capital and tier 3 capital. The liable capital is the sum of core capital and additional capital less the positions listed in subsection (6) sentence 1.

(2a) The following shall be regarded as core capital after deducting the positions listed in sentence 2:

1. in the case of sole proprietorships (Einzelkaufleute), general partnerships (offene Handelsgesellschaften) and limited partnerships (Kommanditgesellschaften): the paid-up capital and the reserves, less withdrawals by the proprietor or the general partners and loans granted to them, and less any net debt in the proprietor's unencumbered personal assets;

2. in the case of public limited companies (Aktiengesellschaften), limited companies with

one or more general partners (Kommanditgesellschaften auf Aktien) and private limited companies (Gesellschaften mit beschränkter Haftung): the paid-up capital, less the cumulative preferential shares, and the reserves; in the case of limited companies with one or more general partners: also assets contributed by the general partners but not paid into the capital, less withdrawals by the general partners and loans granted to them;

3. in the case of registered cooperative societies (eingetragene Genossenschaften): the amounts paid up on members' shares and the reserves; amounts paid up on the shares of members who are retiring at the end of the financial year and their rights to the outpayment of a share in the cooperative society's revenue reserves, as shown separately in the balance sheet by registered cooperative societies in accordance with section 73 (3) of the Act Concerning Industrial and Trading Cooperative Societies (Gesetz betreffend die Erwerbs- und Wirtschaftsgenossenschaften), shall be deducted;

4. in the case of public savings banks and private savings banks recognised as public savings banks: the reserves;

5. in the case of public credit institutions not coming under the provisions of number 4: the paid-up endowment capital (Dotationskapital) and the reserves;

6. in the case of credit institutions organised in any other form: the paid-up capital and the reserves;

7. the special items for general banking risks pursuant to section 340g of the Commercial Code;

8. the contributions to capital by silent partners within the meaning of subsection (4).

The positions to be deducted in accordance with sentence 1 are

1. the loss for the financial year,

2. the intangible fixed assets,

3. the adjustment item pursuant to subsection (3b),

4. loans to limited partners, to shareholders in a private or public limited company or a limited company with one or more general partners, or to shareholders in a public institution who own more than twenty-five per cent of the capital (nominal capital, total amount of capital shares) of the institution, or who hold more than twenty-five per cent of the voting rights, if they have not been granted on market terms or if they are not adequately secured in line with banking practice, and

5. loans to silent partners within the meaning of subsection (4) whose contribution to the capital amounts to more than twenty-five per cent of the core capital, excluding the capital contributions of silent partners, if they have not been granted on market terms or if they are not adequately secured in line with banking practice. Section 16 (2) to (4) of the Companies Act (Aktiengesetz) applies as appropriate to the calculation of the percentages pursuant to sentence 2 numbers 4 and 5.

(2b) The additional capital consists of the following, after deducting the adjustment items pursuant to subsection (3b):

1. contingency reserves in accordance with section 340f of the Commercial Code,

2. preferential shares,

3. reserves pursuant to section 6b of the Income Tax Act (Einkommensteuergesetz) up to the amount of forty-five per cent, insofar as these reserves were formed by the transfer of the profits from the sale of land, rights equivalent to land, and buildings,

4. liabilities represented by participation rights within the meaning of subsection (5),

5. longer-term subordinated liabilities within the meaning of subsection (5a),

6. the unrealised reserves shown in the notes to the last set of approved annual accounts pursuant to subsections (4a) and (4b) in the case of land, rights equivalent to land, and buildings up to the amount of forty-five per cent of the difference between the book value and the loan value,

7. the unrealised reserves shown in the notes to the last set of approved annual accounts pursuant to subsections (4a) and (4c) in the case of banking book positions up to the amount of thirty-five per cent of the difference between the book value, including contingency reserves, and

(a) the market price of securities which are tradeable on a stock exchange,

(b) the value to be ascertained pursuant to section 11 (2) of the Valuation Act (Bewertungsgesetz) of unlisted securities evidencing shares in incorporated enterprises with a balance sheet total of at least twenty million Deutsche Mark and belonging to the association of credit cooperatives or savings banks, (c) the published repurchase price of shares in a special fund within the meaning of the Act on Investment Companies, or of shares in a special securities fund issued by a collective investment company domiciled in another state of the European Economic Area in accordance with the provisions of Council Directive 85/611/EEC of December 20, 1985 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (Official Journal of the European Communities No. L 375, page 3) (UCITS Directive), and

8. in the case of registered cooperative societies, the additional sum to be set by regulation by the Federal Ministry of Finance, after having consulted the Deutsche Bundesbank, to take account of the uncalled commitments of members. For the purpose of calculating the liable capital, additional capital may only be included up to the level of the core capital. Moreover, the amount of additional capital included in the calculation consisting of longer-term subordinated liabilities and the uncalled commitments of members may not exceed fifty per cent of the core capital. The Federal Ministry of Finance may by regulation transfer its authority under sentence 1 number 8 to the Federal Banking Supervisory Office.

(2c) Tier 3 capital is

1. the pro rata profit that would arise from the notional closing of all trading book positions, less all identifiable expenses and disbursements and less the probable losses from banking book business in the event of a liquidation of the enterprise, unless these are already included in the adjustment items in accordance with subsection (3b) (net profit), and

2. the short-term subordinated liabilities within the meaning of subsection (7). The net profit and the short-term subordinated liabilities may only be included as tier 3 capital up to an amount which, together with that part of the additional capital which is not needed to back the risk arising from banking book business under the provisions of this Act (free additional capital), does not exceed two hundred and fifty per cent of the core capital not needed to back the risk arising from banking book business under the provisions of this Act (free core capital). Insofar as the institution does not exhaust the limit of two hundred and fifty per cent through short-term subordinated liabilities, it can replace the latter by positions which cannot be included as additional capital solely because of capping pursuant to subsection (2b) sentences 2 and 3. For securities trading firms the limit stipulated in sentence 2 is two hundred per cent of the free core capital, unless the illiquid assets within the meaning of sentence 5, where these have not been deducted from the liable capital in accordance with subsection (6) sentence 1 number 1, and the losses of its subsidiaries are deducted from the tier 3 capital.

Illiquid assets are

1. tangible fixed assets,

2. shares and claims arising from capital contributions of silent partners, participation rights or subordinated liabilities, if they are not evidenced by securities that are tradeable on a stock exchange and if they do not form part of trading book business,

3. loans and non-marketable debt securities with a remaining period to maturity of more than ninety days, and

4. stocks of commodities, if they do not have to be backed by own funds in accordance with the Principles pursuant to subsection (1) sentence 2 and section 10a (1) sentence 2; margin payments on forward or futures transactions concluded on a stock market or financial futures exchange are not deemed to be illiquid assets.

(3) If an institution draws up a set of interim accounts that satisfy the requirements of the annual accounts, those interim accounts shall be deemed comparable to the annual accounts for the purpose of calculating the own funds; interim profits shall be assigned to the core capital insofar as they are not earmarked for anticipated profit distributions or tax payments. Losses arising from interim accounts are to be deducted from the core capital. An institution which assigns interim profits to its core capital must draw up a set of interim accounts for at least five consecutive years. If an institution ceases to draw up interim accounts, it may not restart assigning interim profits to its core capital until after five years, at the earliest. The institution shall submit the interim accounts immediately to both the Federal Banking Supervisory Office and the Deutsche Bundesbank. The external auditors shall submit their audit report on the interim accounts (interim audit report) to the Federal Banking Supervisory Office and the Deutsche Bundesbank immediately after concluding the audit. A truncated set of annual accounts covering a period of less than twelve months and drawn up in the wake of a merger does not constitute a set of interim accounts within the meaning of this subsection.

(3a) Reserves within the meaning of subsection (2a) sentence 1 comprise only the amounts designated as such in the balance sheet in the last approved annual accounts for the end of a financial year, with the exception of liability-side items that will be liable to tax only after they have been released. Amounts designated as reserves that have been formed from income which will become liable to tax only after a future event occurs may be counted only up to the level of forty-five per cent. Reserves which are formed as a result of premium income obtained through a share issue or through some other inflow of external resources can be included from the time of their inflow.

(3b) The Federal Banking Supervisory Office may decide to adjust the liable capital by an adjustment item, particularly in order to take account of losses which have not yet affected the balance sheet. Such adjustment shall be rendered null and void by the next approved balance sheet covering the end of a financial year. Upon the institution's request, the Federal Banking Supervisory Office shall rescind its adjustment insofar as the reasons for it no longer apply.

(4) Assets contributed by silent partners shall be counted as part of the liable capital if

1. they share fully in any loss and the institution is entitled to defer interest payments in the event of a loss,

2. it has been agreed that, in the event of the initiation of insolvency proceedings over the institution's assets or of the institution's liquidation, they will not be repaid until all creditors have been satisfied,

3. they have been made available to the institution for a period of at least five years,

4. the claim to repayment does not, or, under the terms of the partnership agreement, cannot, fall due within less than two years,

5. the partnership agreement contains no debtor warrant clauses according to which the reduction in the repayment claim caused by losses during the period to maturity of the capital contribution can be offset by profits which arise more than four years after the repayment claim has matured, and

6. the institution, when establishing the silent partnership, referred explicitly and in writing to the legal consequences specified in sentences 2 and 3. Subsequently, participation in any loss cannot be changed to the detriment of the institution, the subordination of claims cannot be limited, and neither the period to maturity nor the period of notice can be shortened. Any premature repayment shall be returned to the institution, notwithstanding any arrangements to the contrary, unless the capital has been replaced by the inpayment of other liable capital of at least equivalent status or the Federal Banking Supervisory Office has agreed to the premature repayment.

(4a) Unrealised reserves may be counted as part of the liable capital only if the core capital makes up at least four point four per cent of the institution's risk assets, weighted in ac- cordance with the Principles of the Federal Banking Supervisory Office pursuant to subsection (1) sentence 2; unrealised reserves may be counted as part of the liable capital only up to one point four per cent of such risk-weighted assets. For the purpose of these calculations, trading book positions may be considered banking book positions. Unrealised reserves may be included only if all assets pursuant to subsection (2b) sentence 1 number 6 or 7 are incorporated in the calculation of the difference. The calculation of the unrealised reserves is to be disclosed to the Federal Banking Supervisory Office and the Deutsche Bundesbank

immediately after its completion, indicating the relevant valuations.

(4b) Section 12 (1) and (2) of the Mortgage Bank Act (Hypothekenbankgesetz) applies as appropriate to the calculation of the loan values of land, rights equivalent to land, and buildings. These values shall be determined by means of expert valuations at least every three years. The institution shall appoint a committee of experts consisting of at least three members for calculating the loan values. Section 32 (2) and (3) of the Act on Investment Companies applies as appropriate. If the loan value is below the book value, this negative difference shall be deducted from the unrealised reserves.

(4c) The market value of securities defined in subsection (2b) sentence 1 number 7 (a) depends on the price on the balance sheet date. If the average of that price and the prices ascertained on the previous three balance sheet dates is below that price, the average price applies. If no price is available on a balance sheet date, the last price ascertained within thirty days before the balance sheet date applies. If securities are treated in accordance with the principles for fixed assets, the difference between the relevant market value and the higher book value shall be deducted from the unrealised reserves. The pro- cedure described in sentences 1, 2 and 4 shall be applied as appropriate to the deter- mination of the value of securities defined in subsection (2b) sentence 1 number 7 (b) pursuant to section 11 (2) of the Valuation Act, and to the determination of the repurchase price of shares in a special fund.

(5) Capital paid up against the issue of participation rights (liabilities represented by participation rights) shall be counted as part of the liable capital if

1. it shares fully in any loss, and if the institution i s entitled to defer interest payments in the event of a loss,

2. it has been agreed that, in the event of the initiation of insolvency proceedings over the institution's assets or of the institution's liquidation, it will not be repaid until all non-subordinated creditors have been satisfied,

3. it has been made available to the institution for a period of at least five years,

4. the claim to repayment does not, or, under the terms of the agreement, cannot, fall due within less than two years,

5. the agreement governing the contribution of capital in the form of participation rights contains no debtor warrant clauses according to which the reduction in the repayment claim caused by losses during the period to maturity of the contribution can be offset by profits which arise more than four years after the repayment claim has matured, and

6. the institution, when concluding the agreement, referred explicitly and in writing to the legal consequences specified in sentences 3 and 4. The institution may reserve the right to terminate the liability without notice in the event that a change in taxation gives rise to additional payments to the party acquiring the participation rights. Subsequently, participation in any loss cannot be changed to the detriment of the institution, the subordination of claims cannot be limited, and neither the period to maturity nor the period of notice can be shortened. Except in the cases described in sentence 6, any premature reacquisition of the participation rights or other repayment shall be returned to the institution, notwithstanding any arrangements to the contrary, unless the capital has been replaced by the inpayment of other liable capital of at least equivalent status or the Federal Banking Supervisory Office has agreed to the premature repayment; the institution may

reserve such a right contractually. If securities are issued in respect of the participation rights, the legal consequences specified in sentences 3 and 4 shall be specified in the subscription and issue terms only. An institution may purchase securitised participation rights issued by itself up to three per cent of the total nominal amount of an issue, for market-smoothing purposes, or if it is thereby carrying out instructions to buy on a commission basis. The Federal Banking Supervisory Office and the Deutsche Bundesbank shall be notified immediately of an institution's intention to take advantage of the market-smoothing option in accordance with sentence 6.

(5a) Capital which has been paid up by virtue of the incurrence of subordinated liabilities shall be counted towards the liable capital as longer-term subordinated liabilities if

1. it has been agreed that in the event of the initiation of insolvency proceedings over the institution's assets or of the institution's liquidation, it will not be repaid until all non-subordinated creditors have been satisfied,

2. it has been made available to the institution for a period of at least five years, and

3. offsetting the repayment claim against claims of the institution is excluded and no contractual collateral for the liabilities is provided by the institution or third parties.

If the claim to repayment falls, or, under the terms of the agreement, can fall, due within less than two years, only two-fifths of the liabilities are counted as part of the liable capital. The institution may reserve the right to terminate the liability without notice in the event that a change in taxation gives rise to additional payments to the party acquiring the subordinated claims. Subsequently, the subordination of claims cannot be limited, and neither the period to maturity nor the period of notice can be shortened. Except in the cases described in sentence 6, any premature reacquisition of the claim or other repayment shall be returned to the institution, notwithstanding any arrangements to the contrary, unless the capital has been replaced by the inpayment of other liable capital of at least equivalent status or the Federal Banking Supervisory Office has agreed to the premature repayment; the institution may reserve such a right contractually. An institution may purchase securitised subordinated liabilities issued by itself up to three per cent of the total nominal amount of an issue, for market-smoothing purposes, or if it is thereby carrying out instructions to buy on a commission basis. The Federal Banking Supervisory Office and the Deutsche Bundesbank shall be notified immediately of an institution's intention to take advantage of the market-smoothing option in accordance with sentence 6. Upon conclusion of the agreement, the institution shall refer explicitly and in writing to the legal consequences specified in sentences 4 and 5; if securities are issued in respect of the subordinated liabilities, the aforementioned legal consequences shall be specified in the subscription and issue terms only. Section 11 number 3 of the Act to Regulate the Law Governing General Terms and Conditions (Gesetz zur Regelung des Rechts der Allgemeinen Ge- schäftsbedingungen) concerning the ban on netting does not apply to claims arising from the institution's subordinated liabilities. No designation may be used for subordinated liabilities, or for advertising for subordinated liabilities, which contains the word "saving", or which is otherwise liable to deceive as to the subordinated status in the event of the initiation of insolvency proceedings or liquidation; this does not apply, however, insofar as a credit institution uses its firm-name as protected under section 40. In deviation from sentence 1 number 3, an institution may provide subordinated collateral for subordinated liabilities incurred by a subsidiary of the institution that was established for the sole purpose of raising capital.

(6) The following shall be deducted from the sum of core and additional capital:

1. participating interests in institutions, other than investment companies, and financial enterprises amounting to more than ten per cent of the capital of these enterprises; at the request of the institution, the Federal Banking Supervisory Office may permit exceptions if the institution temporarily holds participating interests in another institution or a financial enterprise in order to give financial support to that enterprise;

2. claims arising from subordinated liabilities within the meaning of subsection (5a) on institutions, other than investment companies, and financial enterprises in which the institution holds more than ten per cent of these enterprises' capital;

3. claims arising from participation rights in respect of enterprises pursuant to number 2;

4. assets contributed by silent partners to enterprises pursuant to number 2;

5. the total amount of the following participating interests and claims insofar as it exceeds ten per cent of the institution's liable capital before deduction of the amounts pursuant to numbers 1 to 4 and pursuant to this number:

(a) participating interests in institutions, other than investment companies, and financial enterprises amounting to not more than ten per cent of these enterprises' capital;

(b) claims arising from subordinated liabilities on institutions, other than investment companies, and financial enterprises in which the institution holds no participating interest or in which the participating interest amounts to not more than ten per cent of these enterprises' capital;

(c) claims arising from participation rights in respect of enterprises pursuant to letter (b);

(d) assets contributed by silent partners to enterprises pursuant to letter (b). Participating interests which an institution or its parent enterprise is required to include in the consolidation pursuant to section 10a, pursuant to section 13b (3) sentence 1 and - with respect to the stock of participating interests existing on January 1, 1993 (subject to section 64a) - pursuant to section 12 (2) sentences 1 and 2, need not be deducted from its liable capital. This provision applies as appropriate to the participating interests which the institution or its parent enterprise voluntarily includes in the consolidation pursuant to section 10a, pursuant to section 13b (3) sentence 1 and - with respect to the stock of parti- cipating interests existing on January 1, 1993 (subject to section 64a) - pursuant to section 12 (2) sentences 1 and 2, or which it consolidates voluntarily in accordance with these provisions.

(7) Capital which has been paid up by virtue of the incurrence of subordinated liabilities shall be counted towards tier 3 capital as short-term subordinated liabilities if

1. it has been agreed that, in the event of the initiation of insolvency proceedings over the institution's assets or of the institution's liquidation, it will not be repaid until all non-subordinated creditors have been satisfied,

2. it has been made available to the institution for a period of at least two years,

3. offsetting the repayment claim against claims of the institution is expressly excluded and expressly no contractual collateral for the liabilities is provided by the institution or third parties, and

4. it is expressly stated in the terms of the contract that

(a) neither repayments of principal nor payments of interest in respect of the liability need to be made if this would imply that the institution's own funds would no longer meet the statutory requirements, and

(b) premature repayments of principal or payments of interest made by the institution shall be returned to it, notwithstanding any arrangements to the contrary. Subsequently, the subordination of claims cannot be limited, and neither the period to maturity nor the period of notice can be shortened. Except in the cases described in sentence 5, any premature reacquisition of the claim or other repayment shall be returned to the institution, notwithstanding any arrangements to the contrary, unless the capital has been replaced by the inpayment of other own funds of at least equivalent status or the Federal Banking Supervisory Office has agreed to the premature repayment; the institution may reserve such a right contractually. Upon conclusion of the agreement, the institution shall refer explicitly and in writing to the legal consequences specified in sentences 2 and 3; if securities are issued in respect of the subordinated liabilities, the aforementioned legal consequences shall be specified in the subscription and issue terms only. An institution may purchase securitised subordinated liabilities issued by itself up to three per cent of the total nominal amount of an issue, for market-smoothing purposes, or if it is thereby carrying out instructions to buy on a commission basis. The Federal Banking Supervisory Office and the Deutsche Bundesbank shall be notified immediately of an institution's intention to take advantage of the market-smoothing option in accordance with sentence 5. An institution shall notify the Federal Banking Supervisory Office and the Deutsche Bundesbank immediately if its own funds fall below one hundred and twenty per cent of the sum total of the appropriate own funds pursuant to subsection (1) sentence 1 on account of repayments of principal or payments of interest in respect of the short-term subordinated liabilities.

(8) An institution shall report immediately to the Federal Banking Supervisory Office and the Deutsche Bundesbank pursuant to sentence 2 those loans which are to be deducted in accordance with subsection (2a) sentence 2 number 4 or 5. It must also specify the collateral provided and the terms of the loans. Such loans which it has reported pursuant to sentence 1 shall be reported immediately once again to the Federal Banking Supervisory Office and the Deutsche Bundesbank if the collateral provided or the terms of the loans are changed by a legal transaction, together with the corresponding changes. The Federal Banking Supervisory Office may require institutions to submit to itself and to the Deutsche Bundesbank every five years a summary report of the loans to be reported in accordance with sentence 1.

(9) A securities trading firm must have own funds amounting at least to one-quarter of its costs shown in the profit and loss account of the last set of annual accounts under general administrative expenses, depreciation of tangible and intangible fixed assets and value adjustments. If a set of annual accounts has not yet been drawn up for the first full financial year, the corresponding estimates for these items contained in the business plan for the current year shall be indicated. The Federal Banking Supervisory Office may raise the requirements pursuant to sentences 1 and 2 if this appears appropriate in view of an expansion of the institution's business activity.

10a. Own funds of groups of institutions and financial holding groups

(1) A group of institutions or a financial holding group (group), taken as a whole, must have adequate own funds. Section 10 on the own funds of individual institutions applies as appropriate.

(2) For the purposes of this provision, a group of institutions consists of the parent enterprise domiciled in Germany and the subordinated enterprises (enterprises belonging to the group). For the purposes of this provision, subordinated enterprises are the subsidiaries of an institution which themselves are

institutions, financial enterprises or ancillary banking services enterprises. The parent enterprise of the group is the institution which is not subordinated to any other institution domiciled in Germany. If, in the case of mutual cross-shareholdings, no institution within the group meets this condition, the Federal Banking Supervisory Office shall determine which is to be deemed the group's parent enterprise. If only ancillary banking services enterprises are subordinated to an institution, a group of institutions is deemed not to exist.

(3) For the purposes of this provision, a financial holding group is deemed to exist if a financial holding company domiciled in Germany has subordinated enterprises within the meaning of subsection (2) sentence 2, of which at least one deposit-taking credit institution or securities trading firm domiciled in Germany is a subsidiary of the financial holding company, unless the financial holding company for its part

1. is a subsidiary of a deposit-taking credit institution, a securities trading firm or a financial holding company domiciled in Germany, or

2. is a subsidiary of a deposit-taking credit institution or a securities trading firm domiciled in another state of the European Economic Area. If the financial holding company is domiciled in another state of the European Economic Area, a financial holding group is deemed to exist, subject to sentence 1 numbers 1 and 2, if

1. at least one deposit-taking credit institution or securities trading firm domiciled in Germany is a subsidiary of the financial holding company, and if neither a deposit- taking credit institution nor a securities trading firm domiciled in the financial holding company's country of domicile is a subsidiary of the financial holding company, and

2. the deposit-taking credit institution or the securities trading firm domiciled in Germany has a larger balance sheet total than any other deposit-taking credit institution that is a subsidiary of the financial holding company and than any other securities trading firm that is a subsidiary of the financial holding company which are domiciled in another state of the European Economic Area; in the event of identical balance sheet totals, the domicile at which the licence was granted first shall take precedence. In the case of a financial holding group, that deposit-taking credit institution or securities trading firm belonging to the group and domiciled in Germany which itself is not subordinated to any other institution belonging to the group and domiciled in Germany is deemed to be the parent enterprise. If several deposit-taking credit institutions or securities trading firms domiciled in Germany satisfy these requirements, or - in the case of mutual cross-shareholdings - no institution domiciled in Germany satisfies these requirements, the Federal Banking Supervisory Office shall determine which is to be deemed the group's parent enterprise.

(4) Institutions, financial enterprises or ancillary banking services enterprises domiciled in Germany or abroad are likewise deemed to be subordinated enterprises if an enterprise belonging to the group holds directly or indirectly at least twenty per cent of the capital shares in such an enterprise, if it manages the institutions or enterprises together with other enterprises and if it is liable for the obligations of those institutions or enterprises up to the amount of its capital shares. Directly or indirectly held capital shares and capital shares held by a third party for the account of an enterprise belonging to the group shall be aggregated. Indirectly held capital shares shall be disregarded if they are mediated by an enterprise which is not a subsidiary of the parent institution or of the financial holding company. That also applies as appropriate to indirectly held capital shares which are mediated by more than one enterprise. Voting rights are equivalent to capital shares. Section 16 (2) and (3) of the Companies Act applies as appropriate.

(5) Investment companies are deemed not to be subordinated enterprises.

(6) Whether or not enterprises belonging to a group, taken as a whole, have adequate own funds shall be determined on the basis of a consolidation of their own funds, including the shares of other partners and the other items relevant under the Principles in accordance with subsection (1) sentence 2, read in conjunction with section 10 (1) sentence 2; in the case of enterprises belonging to a group, the items corresponding to those recognised under section 10 are deemed to be own funds. For the consolidation, the parent enterprise shall combine its relevant items with those of the other enterprises belonging to the group. The following shall be deducted from the own funds to be consolidated in accordance with sentence 2:

1. the book values, as shown by the parent enterprise and the other enterprises belonging to the group (and accounted for by the enterprises belonging to the group),

(a) of the capital shares,

(b) of the assets contributed by silent partners in accordance with section 10 (4) sentence 1,

(c) of the participation rights in accordance with section 10 (5) sentence 1,

(d) of the longer-term subordinated liabilities in accordance with section 10 (5a) sentence 1, and

(e) of the short-term subordinated liabilities in accordance with section 10 (7) sentence 1, as well as

2. the unrealised reserves included by the parent enterprise or another enterprise belonging to the group in accordance with section 10 (2b) sentence 1 numbers 6 and 7, insofar as they are accounted for by enterprises belonging to the group. The capital shares, but subject to the provision concerning the capitalised consolidation difference in accordance with sentences 6 and 7, and the assets contributed by silent partners shall be deducted from the core capital, the longer-term subordinated liabilities from the additional capital components as specified in section 10 (2b) sentence 3, the liabilities represented by participation rights and the unrealised reserves from the sum total of the additional capital components, in each case before the capping specified in section 10 (2b) sentences 2 and 3, and the short-term subordinated liabilities from the tier 3 capital as specified in section 10 (2c) sentence 1, before the capping specified in section 10 (2c) sentences 2 and 4. In the case of participating interests mediated by enterprises not belonging to the group, such book values and unrealised reserves shall be deducted on a pro rata basis to the extent of the share which corresponds to the arithmetical capital share. If the book value of a participating interest is higher than the pro rata share of the capital and the reserves of the subordinated enterprise to be consolidated in accordance with sentence 2, the parent enterprise shall deduct the difference in equal parts from the group's core capital and additional capital. The capitalised consolidation difference may be treated as a participating interest in an enterprise outside the group, with an amount that decreases by at least one-tenth each year. The items which derive from the legal relationships between enterprises belonging to the group shall be disregarded. Market-risk positions of different enterprises belonging to a group cannot be netted with one another, unless the enterprises are included in the parent enterprise's central risk management system, the own funds are appropriately distributed across the group and,

in the case of subordinated enterprises domiciled in non-EEA countries, it is ensured that the local legal and administrative regulations do not hinder the free transfer of capital to other enterprises belonging to the group. The Federal Ministry of Finance, acting in consultation with the Deutsche Bundesbank, may issue supplementary provisions by regulation, in particular also in order to specify in greater detail the application of regulations concerning trading book business within the group, the requirements that the parent enterprise's central risk management system must satisfy and the appropriateness of the distribution of own funds within the group and to issue more detailed provisions concerning the offsetting of positions subject to market risk. The Federal Ministry of Finance may delegate by regulation this authority to the Federal Banking Supervisory Office subject to the condition that the regulation must be issued in agreement with the Deutsche Bundesbank. The central associations of the institutions shall be consulted prior to the issue of such regulation.

(7) In the case of subordinated enterprises which are not subsidiaries, the parent enterprise shall consolidate its own funds and the other relevant items under the Principles in accordance with subsection (1) sentence 2, read in conjunction with section 10 (1) sentence 2, with the own funds and the other relevant items of the subordinated enterprises on a pro rata basis in each case, in the amount of the share corresponding to its capital share in the subordinated enterprise. For the rest, subsection (6) applies.

(8) The parent enterprise is responsible for ensuring that the group has adequate own funds. To fulfil its obligations in accordance with sentence 1, it may, however, exercise an influence over enterprises belonging to the group only insofar as this does not contravene current company law. Section 10 (1) sentence 4 applies as appropriate.

(9) The enterprises belonging to the group shall set up a proper organisation and appropriate internal monitoring procedures to ensure that the data required for the con- solidation in accordance with subsections (6) and (7) are duly processed and passed on. They are required to transmit the data needed for the consolidation to the parent enterprise. If a parent enterprise is unable to obtain the requisite data relating to individual enterprises belonging to the group, the book values specified in subsection (6) sentence 3 accounted for by the enterprise belonging to the group shall be deducted from the own funds of the parent enterprise.

(10) Subsections (1) and (6) to (8) do not apply to a parent enterprise which itself is subordinated to an institution domiciled in Germany to which subsections (1) and (6) to (8) apply.

11. Liquidity

Institutions must invest their funds in such a way as to ensure that adequate liquidity for payment purposes is guaranteed at all times. The Federal Banking Supervisory Office, acting in agreement with the Deutsche Bundesbank, draws up Principles by which it as- sesses in the normal case whether an institution's liquidity is adequate; the central associations of the institutions shall be consulted beforehand. The Principles shall be published in the Federal Gazette. The Principles shall conform to the definition of savings deposits, and particularly of a passbook, given in the Regulation on the Accounting of Institutions (Verordnung über die Rechnungslegung der Institute), which to this extent is subject to the approval of the Deutscher Bundestag. Institutions shall submit at monthly intervals to the Federal Banking Supervisory Office and the Deutsche Bundesbank the data needed in accordance with the Principles for assessing liquidity.

12. Limitation of qualified participating interests

(1) A deposit-taking credit institution may not hold a qualified participating interest whose share in the nominal capital, in terms of the amount, exceeds fifteen per cent of its liable capital in an enterprise which is neither an institution, a financial enterprise or an insurance enterprise nor an ancillary banking services enterprise. A deposit-taking credit institution may not hold qualified participating interests whose aggregate share in the nominal capital, in terms of the amount, exceeds sixty per cent of its liable capital in enterprises described in sentence 1. Shares in the capital which are not intended to serve the institution's own business operations by creating lasting ties shall not be included in the computation of the level of the qualified participating interest. The deposit-taking credit institution may exceed the limits laid down in sentence 1 or 2 with the approval of the Federal Banking Supervisory Office. The Federal Banking Supervisory Office may grant such approval only if the deposit-taking credit institution backs that part of the participating interests that exceeds the limit by liable capital; if both the limits are exceeded, the larger amount shall be backed by liable capital.

(2) An institution which is a parent enterprise of a group (section 10a (2) or (3)) that includes at least one deposit-taking credit institution shall ensure that the group does not hold qualified participating interests in an enterprise within the meaning of subsection (1) sentence 1 whose share in the nominal capital, in terms of the amount, exceeds fifteen per cent of the group's liable capital. It shall further ensure that the group in the aggregate does not hold qualified participating interests in enterprises within the meaning of subsection (1) sentence 1 whose share in the nominal capital, in terms of the amount, exceeds sixty per cent of the group's liable capital. Subsection (1) sentence 3 applies. The institution may allow the group to exceed the limits laid down in sentence 1 or 2 with the approval of the Federal Banking Supervisory Office. The Federal Banking Supervisory Office may grant such approval only if the institution backs that part of the participating interests that exceeds the limit by the group's liable capital; if both the limits are exceeded, the larger amount shall be backed by the group's liable capital.

12a. Establishment of corporate ties

(1) An institution or a financial holding company, when acquiring a participating interest in an enterprise domiciled abroad, or when establishing corporate ties with such an enterprise by virtue of which the enterprise becomes a subordinated enterprise within the meaning of section 10a (2) to (5) or section 13b (2), shall ensure that it or, in the case of a financial holding company, the parent enterprise responsible for the consolidation receives the data required for discharging the various duties specified in sections 10a, 13b and 25 (2). Sentence 1 does not apply to the data required for discharging the duties specified in sections 10a and 13b if due account is taken of the risk arising from the establishment of the participating interest or from the corporate ties by the deduction of the book values, to be effected pursuant to section 10a (9) sentence 3 in a way comparable to the consolida- tion in accordance with section 10a (6) or (7) and section 13b (3), and if the Federal Banking Supervisory Office is enabled to monitor compliance with this condition. The institution or the financial holding company shall report the establishment, modification or discontinuation of a participating interest or of corporate ties, as specified in sentence 1, to the Federal Banking Supervisory Office and the Deutsche Bundesbank immediately.

(2) The Federal Banking Supervisory Office may prohibit the continuation of the participating interest or of the corporate ties if the parent enterprise does not receive the data required for discharging the duties specified in sections 10a, 13b or 25 (2). The exception pursuant to subsection (1) sentence 2 applies as appropriate to the powers of prohibition conferred by sentence 1.

Division 2. Lending business

13. Large exposures of non-trading book institutions

(1) An institution which is exempted from the provisions relating to trading book business pursuant to section 2 (11) (non-trading book institution) shall notify the Deutsche Bundesbank immediately if its exposures to a single borrower in the aggregate amount to or exceed ten per cent of its liable capital (large exposure). The regulation pursuant to section 24 (4) sentence 1 may provide for the possibility of regular summary reports instead of an immediate report stipulated in sentence 1. The Deutsche Bundesbank passes on these reports, together with its comments, to the Federal Banking Supervisory Office; the latter may waive its right to the have certain reports forwarded to it.

(2) Without prejudice to the validity of the transactions, a non-trading book institution or- ganised in the form of a legal person or partnership may incur a large exposure only by virtue of a unanimous decision by all its managers. The decision should be taken before the exposure is incurred. If in individual cases this is impossible because of the urgency of the transaction, the decision shall be taken immediately afterwards. The decision shall be placed on record. If the large exposure has been incurred without a prior unanimous decision by all the managers and if such decision has not been retrospectively made within one month after the exposure has been incurred, the non-trading book institution shall report this fact to the Federal Banking Supervisory Office and the Deutsche Bundesbank. If an exposure already incurred becomes a large exposure owing to a reduction in the liable capital, this exposure may continue, without prejudice to the validity of the transaction, only by virtue of a unanimous decision to be taken immediately by all its managers. The decision shall be placed on record. If the decision has not been retrospectively taken within one month after the point in time at which the exposure became a large exposure, the non- trading book institution shall report this fact to the Federal Banking Supervisory Office and the Deutsche Bundesbank.

(3) Without prejudice to the validity of the transactions, a non-trading book institution may not incur exposures to a single borrower, without the approval of the Federal Banking Supervisory Office, which in the aggregate exceed twenty-five per cent of the liable capital of the non-trading book institution (individual large exposure limit). Irrespective of whether the Federal Banking Supervisory Office grants its approval, the non-trading book institution shall notify the Federal Banking Supervisory Office and the Deutsche Bundesbank immediately if the individual large exposure limit is exceeded and shall back the amount by which the large exposure exceeds the individual large exposure limit by liable capital. Exposures to an affiliated enterprise that neither belongs to a group within the meaning of section 13b (2) nor is consolidated by the appropriate authorities of another state of the European Economic Area as provided in Council Directive 92/121/EEC of December 21, 1992 on the monitoring and control of large exposures of credit institutions (Official Journal of the European Communities 1993 No. L 29, page 1) (Large Exposures Directive) may not exceed, without the approval of the Federal Banking Supervisory Office, twenty per cent of the non-trading book institution's liable capital. Sentence 2 applies as appropriate. The non-trading book institution shall ensure that all large exposures in the aggregate do not exceed, without the approval of the Federal Banking Supervisory Office, eight hundred per cent of its liable capital (overall large exposure limit). Irrespective of whether the Federal Banking Supervisory Office grants its approval, the non-trading book institution shall notify the Federal Banking Supervisory Office and the Deutsche Bundesbank immediately if the overall large exposure limit is exceeded and shall back the amount by which its large exposures in the aggregate exceed the overall large exposure limit by liable capital. A non- trading book institution which exceeds both the individual large exposure limit with respect to one or more borrowers and the overall large exposure limit shall back only the larger amount by which the respective limit is exceeded by liable capital. The Federal Banking Supervisory Office may grant approval in accordance with sentences 1, 3 and 5 at its own discretion. In exceptional circumstances the Federal Banking Supervisory Office may temporarily exempt a non-trading book institution from the requirement to back the excessive amount by liable capital in accordance with sentence 2, also read in conjunction with sentence 4, if the limit was exceeded due to

the merging of borrowers or comparable occurrences and this could not have been anticipated by the non-trading book institution. (4) Subsections (1) and (2) also apply to general credit lines committed, provided that the reports required under subsection (1) are to be filed on the dates specified by a regulation in accordance with section 24 (4) sentence 1.

13a. Large exposures of trading book institutions

(1) An institution which is not exempted from the provisions relating to trading book business pursuant to section 2 (11) (trading book institution) shall report large exposures as defined in sentence 3 to the Deutsche Bundesbank. Section 13 (1) sentence 3 applies as appropriate. A trading book institution has incurred a large exposure from overall business if the sum total of all its exposures to a single borrower (individual total position from overall business) amounts to or exceeds ten per cent of the institution's own funds; a trading book institution has incurred a large exposure from banking book business if the sum total of its exposures to a single borrower excluding the individual total position from trading book business (individual total position from banking book business) amounts to or exceeds ten per cent of the institution's liable capital. The individual total position from trading book business comprises all exposures to a single borrower that are assigned to the trading book.

(2) Section 13 (2) concerning the unanimous decision for large exposures incurred by non-trading book institutions applies as appropriate to trading book institutions.

(3) Without prejudice to the validity of the transactions, a trading book institution shall ensure that the individual total position from banking book business does not exceed, without the approval of the Federal Banking Supervisory Office, twenty-five per cent of its liable capital (individual large exposure limit for banking book business). Irrespective of whether the Federal Banking Supervisory Office grants its approval, the trading book institution shall notify the Federal Banking Supervisory Office and the Deutsche Bundesbank if the individual large exposure limit for banking book business is exceeded and shall back the amount by which the limit is exceeded by liable capital. The individual total position from banking book business vis-à-vis an affiliated enterprise within the mean- ing of section 13 (3) sentence 3 may not exceed, without the approval of the Federal Banking Supervisory Office, twenty per cent of the trading book institution's liable capital. Sentence 2 applies as appropriate. The trading book institution shall ensure that all large exposures from banking book business in the aggregate do not exceed, without the approval of the Federal Banking Supervisory Office, eight hundred per cent of its liable capital (aggregate large exposure limit for banking book business). Irrespective of whether the Federal Banking Supervisory Office grants its approval, the trading book institution shall notify the Federal Banking Supervisory Office and the Deutsche Bundesbank if the aggregate large exposure limit for banking book business is exceeded and shall back the amount by which the limit is exceeded by liable capital. Section 13 (3) sentence 7 applies as appropriate. The Federal Banking Supervisory Office may grant approval in accordance with sentences 1, 3 and 5 at its own discretion. Section 13 (3) sentence 9 applies as appropriate.

(4) The trading book institution shall ensure that the individual total position from overall business does not exceed, without the approval of the Federal Banking Supervisory Office, twenty-five per cent of its own funds (individual large exposure limit for overall business).

Irrespective of whether the Federal Banking Supervisory Office grants its approval, the trading book institution shall notify the Federal Banking Supervisory Office and the Deutsche Bundesbank if the individual large exposure limit for overall business is exceeded and shall back the amount by which the limit is exceeded by own funds as laid down in the regulation pursuant to section 22 sentence 1. The individual total position from overall business vis-à-vis an affiliated enterprise within the meaning of section 13 (3) sentence 3 may not exceed twenty per cent of the trading book institution's own funds.

Sentence 2 applies as appropriate. The trading book institution shall ensure that all large exposures from overall business in the aggregate do not exceed, without the approval of the Federal Banking Supervisory Office, eight hundred per cent of its own funds (aggregate large exposure limit for overall business). Irrespective of whether the Federal Banking Supervisory Office grants its approval, the trading book institution shall notify the Federal Banking Supervisory Office and the Deutsche Bundesbank if the aggregate large exposure limit for overall business is exceeded and shall back the amount by which the limit is exceeded by own funds as laid down in the regulation pursuant to section 22 sentence 1. Section 13 (3) sentence 7 applies as appropriate. The Federal Banking Supervisory Office may grant approval in accordance with sentences 1, 3 and 5 at its own discretion; approval as laid down in sentence 1 or 3 shall be deemed not to have been granted if the individual total position from banking book business exceeds the relevant limit as laid down in subsection (3) sentence 1 or 3.

(5) Even if the limit laid down in subsection (4) sentence 1 or 3 is exceeded with the approval of the Federal Banking Supervisory Office, the individual total position from trading book business of a trading book institution may not exceed five hundred per cent of that portion of the trading book institution's own funds that are not required for the purpose of backing risks arising from banking book business. If this limit is exceeded, the trading book institution shall report this immediately to the Federal Banking Supervisory Office and the Deutsche Bundesbank and shall back the amount by which the limit is exceeded by own funds as laid down in the regulation pursuant to section 22 sentence 1. All individual total positions from overall business which exceed the limit laid down in subsection (4) sentence 1 or 3 for more than ten days may not exceed in the aggregate, after deducting the amounts that do not exceed these limits (aggregate excess position), six hundred per cent of that portion of the trading book institution's own funds that are not required for the purpose of backing risks arising from banking book business. If this limit is exceeded, the trading book institution shall report this immediately to the Federal Banking Supervisory Office and the Deutsche Bundesbank and shall back the amount by which the limit is exceeded by own funds as laid down in the regulation pursuant to section 22 sentence 1.

(6) Subsections (1) and (2) also apply to general credit lines committed, provided that the reports required under subsection (1) are to be filed on the dates specified by a regulation in accordance with section 24 (4) sentence 1.

13b. Large exposures of groups of institutions and of financial holding groups

(1) Section 13 (1), (3) and (4) and section 13a (1) and (3) to (6) on large exposures incurred by individual institutions apply as appropriate to the exposures incurred in the aggregate by the enterprises belonging to a group of institutions or a financial holding group.

(2) For the definition of a group within the meaning of this provision, section 10a (2) to (5) applies as appropriate.

(3) Whether or not enterprises belonging to a group have in the aggregate incurred a large exposure and are complying with the limits specified in sections 13 and 13a shall be determined by virtue of a consolidation of their own funds, including the shares of other partners, and the exposures to a single borrower, if, vis-à-vis one of the enterprises belonging to the group, the individual total position from overall business incurred by that enterprise amounts to or exceeds five per cent of its liable capital. Section 10a (6) sen- tences 2 to 15 and (7) applies as appropriate.

(4) The parent enterprise shall satisfy the reporting requirements in accordance with subsection (1), read in conjunction with sections 13 and 13a. It is responsible for ensuring that the enterprises belonging to the group, taken as a whole, comply with the limits specified in sections 13 and 13a. To fulfil its

obligations in accordance with sentence 2, it may, however, exercise an influence over enterprises belonging to the group only insofar as this does not contravene current company law.

(5) Section 10a (9) and (10) applies as appropriate.

14. Loans of three million Deutsche Mark or more

(1) A credit institution, a financial services institution within the meaning of section 1 (1a) sentence 2 number 4 and a financial enterprise within the meaning of section 1 (3) sentence 1 number 2 shall report to the Deutsche Bundesbank by the fifteenth day of January, April, July and October those borrowers whose indebtedness to them amounted to three million Deutsche Mark or more at any time during the three calendar months preceding the reporting date. At the same time, parent enterprises within the meaning of section 13b (2) shall report in respect of the enterprises belonging to the group within the meaning of section 13b (2) these enterprises' borrowers within the meaning of sentence 1, which is to be applied as appropriate. This does not apply insofar as those enterprises are themselves required to submit reports pursuant to sentence 1. Those enterprises belong- ing to the group which are not themselves required to submit reports pursuant to sentence 1 shall transmit the requisite data to the parent enterprise. In the case of syndicated loans of three million Deutsche Mark or more, sentence 1 applies even if the share of the individual enterprise does not amount to three million Deutsche Mark. The report must indicate the amount drawn down by the borrower as of the reporting date. Section 13 (1) sentence 3 applies as appropriate.

(2) If it is found that loans of three million Deutsche Mark or more have been granted to a single borrower by more than one enterprise, the Deutsche Bundesbank shall notify the reporting enterprises. The notification may indicate only the total indebtedness of the borrower and the number of enterprises involved. In the notification, the indebtedness to the lenders involved shall be broken down into

1. loans within the meaning of section 19 (1) sentence 2,

2. derivatives that are loans within the meaning of section 19 (1) sentence 1,

3. loans within the meaning of section 19 (1) sentence 3 numbers 3 to 5, 7, 9 and 12,

4. loans which are guaranteed or secured in some other way by the Federal Government, a Federal special fund, a Land Government, a local authority or a local authority association (publicly guaranteed loans),

5. loans which satisfy the conditions of sections 11 and 12 (1) and (2) of the Mortgage Bank Act (mortgage loans),

6. loans within the meaning of section 20 (3) sentence 2 number 2, and

7. loans within the meaning of section 19 (1) sentence 2 number 9 and claims arising from the purchase of money claims.

The Deutsche Bundesbank will notify the indebtedness of a customer to an enterprise required to submit reports upon the latter's request if the enterprise intends to grant that customer a loan of three million Deutsche Mark or more or to increase a loan that has already been granted to three million Deutsche Mark or more and the customer has given his assent to such notification. Persons employed by an enterprise required to submit reports may not disclose to third parties information notified to the

enterprise under this subsection and may not exploit such information.

(3) If pursuant to section 19 (2) several debtors are deemed to be a single borrower, the indebtedness of the individual debtors shall also be indicated in the reports in accordance with subsection (1). In the notification pursuant to subsection (2), the total indebtedness of the debtors deemed to be a single borrower shall be stated. The indebtedness of individual debtors shall be notified only to those enterprises which themselves, or whose subordinated enterprises within the meaning of subsection (1) sentences 3 and 4, have incurred exposures to these debtors.

(4) After the conclusion of international agreements or after the entry into force of a Directive of the European Communities on credit reports within the meaning of this provision, the Deutsche Bundesbank is authorised to forward the reports specified in subsection (1) in the aggregated form provided for in subsection (2) sentences 2 and 3 to the agencies named in the international agreement or in the Directive of the European Communities for notification to the enterprises concerned that are domiciled abroad, and also to notify the enterprises concerned in accordance with subsection (2) about the indebtedness of borrowers to enterprises domiciled abroad.

15. Loans to managers, etc.

(1) Loans to

1. managers of the institution,

2. partners (Gesellschafter) of the institution who are not managers if the institution is organised in the form of a partnership or private limited company, and general partners of an institution who are not managers if the institution is organised in the form of a limited company with one or more general partners,

3. members of a body of the institution appointed to supervise the conduct of its business if the supervisory powers of the body are regulated by law (supervisory body),

4. holders of a special statutory authority (Prokuristen), and agents of the institution with authority to represent it in all aspects of its business (zum gesamten Geschäftsbetrieb ermächtigte Handlungsbevollmächtigte),

5. spouses and under-age children of the persons specified in numbers 1 to 4,

6. silent partners of the institution,

7. enterprises organised in the form of a legal person or partnership if a manager, a holder of a special statutory authority or an agent of the institution with authority to represent it in all aspects of its business is a legal representative or a member of the supervisory body of the legal person or a partner in the partnership,

8. enterprises organised in the form of a legal person or partnership if a legal representative of the legal person, a partner in the partnership, a holder of a special statutory authority or an agent of the enterprise with authority to represent it in all aspects of its business is a member of the supervisory body of the institution,

9. enterprises in which the institution or a manager holds a participating interest amounting

to more than ten per cent of the enterprise's capital or in which the institution or a manager is a general partner,

10. enterprises which hold a participating interest in the institution amounting to more than ten per cent of its capital, and

11. enterprises organised in the form of a legal person or partnership if a legal representative of the legal person or a partner in the partnership holds a participating interest in the institution amounting to more than ten per cent of its capital, may be granted only by virtue of a unanimous decision by all managers of the institution, and only with the explicit approval of the supervisory body. A participating interest within the meaning of sentence 1 numbers 9 to 11 is deemed to be any holding of shares in the enterprise amounting to not less than one-quarter of the capital (nominal capital, total amount of capital shares), irrespective of the duration of the holding. The authorisation of withdrawals in excess of the remuneration due to a manager or a member of the supervisory body, and in particular the authorisation of advances on such remuneration, are deemed to be equivalent to the granting of a loan.

(2) Subsection (1) applies as appropriate to the granting of loans to general partners, managers, members of the executive board or supervisory body, holders of a special statutory authority and agents of an enterprise dependent on or controlling the institution with authority to represent the enterprise in all aspects of its business, as well as to their spouses and under-age children. In such cases the explicit approval of the supervisory body of the controlling enterprise must have been given.

(3) Subsections (1) and (2) do not apply to

1. loans to holders of a special statutory authority or to agents of an institution with authority to represent it in all aspects of its business, or to their spouses and under-age children, if the loan does not exceed one annual salary of the holder of the special statutory authority or of the agent of the institution with authority to represent it in all aspects of its business,

2. loans to the persons or enterprises specified in subsection (1) sentence 1 numbers 6 to 11, if the loan amounts to less than one per cent of the liable capital of the institution or to less than one hundred thousand Deutsche Mark, and

3. loans which are increased by not more than ten per cent of the amount approved in accordance with subsection (1) sentence 1.

(4) The decision by the managers and the decision on approval shall be taken before the loan is granted. The decisions must include provisions on the interest payable on, and the repayment of, the loan. They shall be placed on record. If a loan to be granted pursuant to subsection (1) sentence 1 numbers 6 to 11 is urgent, it is sufficient if all the managers and the supervisory body approve the granting of the loan immediately afterwards. If the decision by the managers has not been taken within two months, or if the decision by the supervisory body has not been taken within four months, of the date on which the loan was granted, the institution shall report this fact to the Federal Banking Supervisory Office immediately. For certain lending operations and types of lending operations, the decision by the managers and the decision on the approval of loans to the persons specified in subsection (1) sentence 1 numbers 1 to 5 and subsection (2) may be taken in advance, but no more than one year in advance.

(5) If, contrary to the provisions of subsections (1), (2) or (4), a loan is granted to a person specified in subsection (1) sentence 1 numbers 1 to 5 or subsection (2), it shall be repaid immediately, notwithstanding any arrangements to the contrary, unless all the managers and the supervisory body subsequently approve the granting of the loan.

16. (Rescinded)

17. Liability

(1) If a loan is granted contrary to the provisions of section 15, the managers who thereby fail to do their duty and the members of the supervisory body who, in defiance of their duty, take no action to prevent the granting of an intended loan despite having knowledge thereof, are jointly and severally liable to the institution for any loss arising; the managers and the members of the supervisory body have to prove that they did not act culpably.

(2) The institution's right to compensation may also be asserted by its creditors insofar as they cannot obtain satisfaction from the institution. The li ability to compensate the creditors is not annulled by a waiver or by composition on the part of the institution nor, in the case of institutions organised in the form of a legal person, by the fact that the loan was granted by virtue of a decision by the supreme body of the institution (shareholders' meeting, general meeting, partners' meeting).

(3) Claims under subsection (1) are barred under the Statute of Limitations after five years.

18. Information required of borrowers

A credit institution may grant loans to a single borrower amounting in the aggregate to more than five hundred thousand Deutsche Mark only if it requires that borrower to disclose his financial circumstances, in particular by submitting his annual accounts. The credit institution may abstain from doing so if, in the light of the collateral provided or of the co-obligors, there is manifestly no reason to require such disclosure. The credit institution may abstain from ongoing disclosure if

1. the loan is secured by mortgages on residential property that is used by the borrower himself,

2. the loan does not exceed four-fifths of the loan value of the pledged property within the meaning of section 12 (1) and (2) of the Mortgage Bank Act, and

3. the borrower regularly effects the interest payments and principal repayments owed by him.

Disclosure is not required in the case of loans to a foreign public authority within the meaning of section 20 (2) number 1 (b) to (d).

19. The concepts of "exposure" in sections 13 to 14, and of "borrower"

(1) For the purposes of sections 13 to 14, exposures are asset items, derivatives (other than written option positions) and the guarantees assumed in respect thereof, and other off-balance-sheet transactions. Asset items within the meaning of sentence 1 are:

1. balances with central banks and postal giro offices,

2. debt instruments issued by public authorities and bills of exchange eligible for refinancing at central banks,

3. items in the course of collection, for which the relevant payments have already been advanced,

4. loans and advances to credit institutions and customers (including the trade receivables of credit institutions conducting business in goods),

5. debt securities and other fixed-income securities, unless they evidence titles coming under the derivatives specified in sentence 1,

6. shares and other non-fixed-income securities, unless they evidence titles coming under the derivatives specified in sentence 1,

7. participating interests,

8. shares in affiliated enterprises,

9. assets in respect of which the lessor has concluded leasing contracts, irrespective of how they are shown in the balance sheet, and

10. other assets, insofar as they are subject to a counterparty risk.

For the purposes of sentence 1, the following are deemed to be other off-balance-sheet transactions:

1. bills of exchange in circulation drawn by the bank, discounted and credited to borrowers,

2. endorsement liabilities arising from rediscounted bills,

3. guarantees and warranties in respect of asset items,

4. performance bonds and other guarantees and warranties other than those specified in number 3, unless they relate to the derivatives specified in sentence 1,

5. the issuing and confirmation of letters of credit,

6. unconditional commitments by building and loan associations for the settlement of third-party interim and bridging loans,

7. the liability arising from the provision of collateral for third-party debts,

8. assets deducted from the borrower's portfolio which the borrower has transferred to a third party subject to an agreement that he shall repurchase them on request,

9. sales of assets with recourse in respect of which the credit risk continues to be borne by the selling institution,

10. assets purchased under outright forward purchase agreements,

11. the forward placing of time deposits,

12. purchase and refinancing commitments,

13. loans committed but not yet drawn down which have an original period to maturity of more than one year and which cannot be terminated by the institution without notice and unconditionally at any time, and

14. loans committed but not yet drawn down which have an original period to maturity of up to one year or which can be terminated by the institution without notice and unconditionally at any time.

(2) For the purposes of sections 10 and 13 to 18, the following are deemed to be a single borrower: two or more natural or legal persons or partnerships which form a unit insofar as one of them can exercise a direct or indirect dominant influence over the other or others, or which, in the absence of such a dominant influence, are to be regarded as a risk unit since their mutual dependencies make it appear likely that, if one of these borrowers encounters financial problems, this will lead to payment difficulties on the part of the others, too. This applies, in particular, in the case of

1. all enterprises belonging to the same group or connected by agreements which provide that one enterprise is required to transfer its entire profit to another, and majority-owned enterprises and the enterprises or persons holding a majority interest in them, other than

(a) the Federal Government, a Federal special fund, a Land Government, a local authority or a local authority association,

(b) the European Communities,

(c) foreign central governments,

(d) regional governments and local authorities in other states of the European Economic Area for which a zero weighting has been announced in accordance with Article 7 of Council Directive 89/647/EEC of December 18, 1989 on a solvency ratio for credit institutions (Official Journal of the European Communities No. L 386, page 14) (Solvency Ratio Directive),

2. partnerships and each general partner, and joint associations (Partnerschaften) and each member of a joint association, and

3. persons and enterprises for whose account a loan is raised and the parties that raise this loan in their own name.

When applying sections 13 and 13a, sentence 1 does not apply to exposures within a group as defined in section 13b (2) to enterprises which are included in the consolidation pursuant to section 13b (3). Sentence 3 applies as appropriate to exposures to parent enterprises domiciled in another state of the European Economic Area, as well as to those enterprises' other subsidiaries, if the institution, its parent enterprise and their other subsidiaries are included in the monitoring of large exposures on a consolidated basis, as provided in the Large Exposures Directive, by the appropriate authorities of the other state.

(3) In the case of loans from public promotional resources which the promotional in- stitutions of the Federal and Länder Governments transmit to final borrowers on the basis of autonomous loan agreements via principal bankers, and possibly via further transmission institutions, on predefined terms (principal banker principle), for the institutions concerned, with respect to sections 13 to 13b, the individual final borrowers are deemed to be the borrowers of the interbank loan granted by them if the claims arising from the loan are assigned to them as collateral. This applies as appropriate to subsidised loans granted by the promotional institutions out of their own or public resources in accordance with the principal banker principle (own resources programmes), as well as to loans granted out of non-public funds which a credit institution transmits to final borrowers via principal bankers (and possibly via further transmission institutions), in accordance with statutory provisions.

(4) For the purposes of applying sections 13 to 13b, in the case of loans which central credit institutions transmit to final borrowers via their affiliated regional institutions or via registered cooperative societies or savings banks affiliated thereto, the individual final borrowers are deemed to be the borrowers from the central credit institution if the claims arising from the loan are assigned to the central credit institution as collateral.

(5) In the case of a purchase of money claims, the seller of the claims is deemed to be the borrower within the meaning of sections 13 to 18 if he is liable for the satisfaction of the claim sold or is obliged to repurchase it if the purchaser so demands; in all other cases the debtor is deemed to be the borrower.

(6) If a domestic credit institution or a deposit-taking credit institution domiciled in another state of the European Economic Area is liable as a principal debtor for a loan with a remaining period to maturity of not more than one year to a third party which itself is not such an institution, for the purposes of sections 13 to 14 the domestic credit institution or the deposit-taking credit institution domiciled in another state of the European Economic Area will be deemed to be the borrower instead of the third party.

20. Exceptions to the requirements of sections 13 to 14

(1) For the purposes of sections 13 to 13b, the following are deemed not to be exposures:

1. advance payments in exchange rate transactions which are settled within two business days of the advance payment under the usual clearing procedure;

2. advance payments in securities transactions which are settled within five business days of the advance payment under the usual clearing procedure;

3. asset items which are deducted from the liable capital in accordance with section 10 (6) sentence 1 numbers 1 to 4, section 10a (9) sentence 3 or section 13b (5);

4. exposures written off.

(2) In the reports pursuant to section 13 (1), section 13a (1) and section 13b (1), the following shall not be included:

1. exposures to

(a) the Federal Government, the Deutsche Bundesbank, a legally dependent special fund of the Federal Government or of a Land Government, a Land Government, a local authority or a local authority association,

(b) the central government or central bank in another zone A country,

(c) the European Communities,

(d) a regional government or a local authority in another state of the European Economic Area for which the weighting "zero" has been announced in accordance with Article 7 of the Solvency Ratio Directive, and

(e) other borrowers insofar as the exposures are explicitly guaranteed by one of the agencie stipulated in letters (a) to (d), and

2. exposures insofar as they are secured by collateral in the form of

(a) securities issued by one of the borrowers specified in number 1,

(b) cash deposits with the lending institution, or

(c) certificates of deposit or similar instruments issued by and deposited with the lending institution.

If an exposure, after deducting the amounts that are not to be included pursuant to sentence 1, does not reach the level qualifying as a large exposure in accordance with section 13 (1) sentence 1, also read in conjunction with section 13b (1), the reporting requirement does not apply.

(3) Exposures within the meaning of subsection (2) shall not be included in the com- putation of the amount of exposure for the purposes of the limits in accordance with section 13 (3) and section 13a (3) to (5). The following shall likewise not be included:

1. exposures to a central government or central bank in a zone B country if the exposures are denominated in the currency of the debtor or issuer concerned and have been financed in that currency;

2. exposures with remaining periods to maturity of up to one year to credit institutions domiciled in Germany or to deposit-taking credit institutions domiciled in another zone A country; claims of registered cooperative societies on their regional institutions, of savings banks on their regional institutions and of such regional institutions on their central credit institutions which serve liquidity-adjustment purposes within the network may have a longer period to maturity;

3. debt securities which meet the conditions of Article 22 (4) sentences 1 and 2 of the UCITS Directive;

4. exposures secured by mortgages on residential property which is currently or will be in future used or let by the borrower himself, or in respect of which the borrower, as the lessor, has concluded leasing contracts with a purchase option on the part of the lessee, and which remains his property as long as the lessee or tenant has not exercised his purchase option, insofar as such exposures do not exceed fifty per cent of the value of the property and if the value of the property is ascertained every year in accordance with valuation provisions laid down by the Federal Banking Supervisory Office;

5. exposures incurred before January 1, 2002 which satisfy the requirements of section 12 (1) and (2) of the Mortgage Bank Act, unless they exceed fifty per cent of the value of the property.

Legally independent promotional institutions of the Federal Government and the Länder Governments within the meaning of section 5 (1) 2 of the Corporation Tax Act (Körperschaftsteuergesetz) may, in deviation from sentence 2 number 2, apply a weighting of twenty per cent to exposures constituting claims on other credit institutions domiciled in Germany, irrespective of their maturity, when computing the amount of exposure for the purposes of the limit for large exposures in accordance with section 13 (3) and section 13a (3) to (5). If the promotional institution makes use of this weighting option, it shall report the fact to the Federal Banking Supervisory Office and shall continue to make use of the weighting option for a period of at least five years from the date on which the report reaches the Federal Banking Supervisory Office.

(4) Exposures pursuant to subsections (2) and (3) sentence 2 and exposures pursuant to section 19 (1) sentence 3 number 14 shall not be included in the computation of the amount of exposure for the purposes of the overall large exposure limit pursuant to section 13 (3) sentence 5 and section 13a (3) sentence 5, of the extended overall large exposure limit pursuant to section 13a (4) sentence 5, in the computation of the individual total position from trading book business pursuant to section 13a (5) sentence 1 and in the computation of the aggregate excess position pursuant to section 13a (5) sentence 3.

(5) Section 13 (2) and (4) and section 13a (2) and (6) on decisions to incur large exposures do not apply to exposures pursuant to subsections (2) and (3) sentence 2 numbers 2 and 3.

(6) The following are deemed not to be exposures within the meaning of section 14:

1. exposures pursuant to subsection (1) 1, 2 and 4;

2. exposures to

   (a) the Federal Government, the Deutsche Bundesbank, a legally dependent special fund of the Federal Government or of a Land Government, a Land Government, a local authority or a local authority association,

   (b) the European Communities,

   (c) the European Investment Bank, or

   (d) a public-law legal person which is backed by the Federal Government, a Land Government or one of the legal persons specified in letter (a) and which is a non- profit organisation, or a non-profit enterprise owned by the Federal Government, a Land Government or one of the legal persons specified in letter (a);

3. shares in other enterprises, irrespective of how they are shown in the balance sheet;

4. securities in the trading portfolio.

21. The concept of "exposure" in sections 15 to 18

(1) For the purposes of sections 15 to 18, the following are deemed to be exposures:

1. money loans of all kinds, money claims purchased, acceptance credits and claims in respect of registered debt securities, other than registered mortgage bonds and communal bonds;

2. the discounting of bills of exchange and cheques;

3. money claims arising from a credit institution's other commercial transactions, other than credit cooperatives' claims in respect of transactions in goods, unless these claims are prolonged beyond the customary period;

4. an institution's guarantees and other warranties and an institution's li ability arising from the provision of collateral for third-party debts;

5. the obligation to meet money claims sold or to buy them back at the purchaser's request;

6. an institution's holding of shares in another enterprise amounting to not less than one-quarter of the enterprise's capital (nominal capital, total amount of capital shares), irrespective of the duration of the holding;

7. assets in respect of which an institution, as the lessor, has concluded leasing contracts, less items formed on account of the settlement or sale of claims arising from such leasing contracts; such an item may be deducted only up to the book value of the respective asset leased.

Any collateral provided to, and balances maintained with, the institution by the borrower are left out of account.

(2) For the purposes of sections 15 to 18, the following are deemed not to be exposures:

1. loans granted to the Federal Government, a legally dependent special fund of the Federal Government or of a Land Government, a Land Government, a local authority or a local authority association;

2. unsecured claims on other institutions arising from balances maintained with those institutions and serving the purpose of financial investment only, which fall due within three months at the latest; claims of registered cooperative societies on their regional institutions, of savings banks on their regional institutions, and of such regional institutions on their central credit institutions may fall due later;

3. bills of exchange purchased from other institutions which an institution has accepted, endorsed or issued as promissory notes and which have a period to maturity of not more than three months and are normally traded in the money market;

4. loans written off.

(3) Section 15 (1) sentence 1 numbers 6 to 11 and section 18 do not apply to

1. mortgages;

2. loans with periods to maturity not exceeding fifteen years against the provision of ship mortgages if they satisfy the requirements of section 10 (1), (2) sentence 1 and (4) sentence 2, section 11 (1) and (4) and section 12 (1) and (2) of the Ship Mortgage Bank Act;

3. loans granted to a domestic public-law legal person not specified in subsection (2) 1, the European Communities or the European Investment Bank;

4. loans guaranteed by one of the borrowers specified in subsection (2) 1.

(4) Loans arising from the purchase for money of a claim in respect of trading transactions in the context of non-banking business are deemed not to be exposures within the meaning of section 18 if

1. claims on the respective debtor are acquired on a continuous basis,

2. the seller of the claim is not answerable for its performance, and

3. the claim falls due within three months after the date on which it was purchased.

22. Authority to issue regulations on exposures

The Federal Ministry of Finance stipulates, by means of a regulation governing large exposures and loans of three million Deutsche Mark or more consistent with the Large Exposures Directive, the Solvency Ratio Directive and the Council Directive 93/6/EEC of March 15, 1993 on the capital adequacy of investment firms and credit institutions - Official Journal of the European Communities No. L 141 page 1 (Capital Adequacy Directive) - to be issued in consultation with the Deutsche Bundesbank, the following:

1. the determination of the credit amounts,

2. the determination of the credit equivalent amounts of derivatives, securities repurchase transactions and stock lending transactions and of other comparable business and of the guarantees assumed in connection with such business, and

3. the determination of the total position from trading book business. The regulation may also contain, in keeping with the aforementioned Directives and over and above section 19 (3) to (5) and section 20 (2) to (5), provisions concerning

1. the assignment of exposures to borrowers,

2. the counting of exposures towards the large exposure limits and within the framework of reports on loans of three million Deutsche Mark or more, and

3. the decision-making requirements that are to be complied with in connection with the incurrence of large exposures.

The Federal Ministry of Finance may, by regulation, delegate the authority to the Federal Banking Supervisory Office provided that the regulation is issued in agreement with the Deutsche Bundesbank. The central associations of the institutions shall be consulted before the regulation is issued.

Division 3. (Repealed)

Division 4. Advertising, and information requirements of institutions

23. Advertising

(1) To counteract misleading advertising by institutions, the Federal Banking Supervisory Office may prohibit certain kinds of advertising wherever this does not come within the responsibilities of the Federal Supervisory Office for Securities Trading pursuant to section 36b of the Securities Trading Act.

(2) Before general measures are taken under subsection (1), the central associations of the institutions and the consumer protection federations shall be consulted.

23a. Guarantee scheme

(1) An institution which conducts banking business within the meaning of section 1 (1) sentence 2 numbers 1, 4 or 10 or which provides financial services within the meaning of section 1 (1a) sentence 2 numbers 1 to 4 shall inform customers who are not institutions in its price list of its membership of a scheme designed to safeguard the claims of depositors and investors (guarantee scheme). In addition, the institution shall inform customers who are not institutions, in a written and easily comprehensible form, prior to commencing a commercial relationship about the guarantee provisions, including the scope and amount of the guarantee. If deposits and other repayable funds are not guaranteed, the institution shall draw attention to this fact in its General Terms and Conditions, in its price list and in a prominent position in the contract documents before the commercial relationship commences, unless the repayable funds are secured by mortgage bonds, communal bonds or other debt securities which satisfy the conditions of Article 22 (4) sentences 1 and 2 of the UCITS Directive. The information in the contract documents in accordance with sentence 3 shall not include any other statements, and must be signed separately by the customer. In addition, information must be available upon request on the terms and conditions of the guarantee scheme, including the requisite formalities for asserting compensation claims.

(2) If an institution withdraws from a guarantee scheme, it shall report this fact immediately and in writing to its customers who are not institutions, to the Federal Banking Supervisory Office and to the Deutsche Bundesbank. The Federal Banking Supervisory Office will send a copy of this report to the Federal Supervisory Office for Securities Trading. Division 5. Special duties of institutions, their managers, financial holding com- panies and mixed-activity holding companies

24. Reports

(1) An institution shall report immediately to the Federal Banking Supervisory Office and the Deutsche Bundesbank

1. the intention to appoint a manager or to authorise a person to represent the institution in all aspects of its business, stating the facts which are germane to assessing his trustworthiness and professional qualifications, as well as the realisation of such an intention;

2. the retirement of a manager and the revocation of the authorisation to represent the institution in all aspects of its business;

3. the acquisition and disposal of a direct participating interest in another enterprise, and changes in the amount of the participating interest; a direct participating interest is deemed

to be the holding of at least ten per cent of the capital or voting rights of the other enterprise;

4. changes in the legal form, unless a licence is required under section 32 (1), and changes in the firm-name;

5. a loss amounting to twenty-five per cent of the liable capital;

6. the relocation of the office or domicile;

7. the establishment, relocation and closure of a branch in a non-EEA state;

8. the termination of business;

9. the commencement and termination of business other than banking business or financial services or of business for which the licence is deemed to have been granted pursuant to section 64e (1);

10. a fall in the initial capital below the minimum requirements defined in section 33 (1) sentence 1 number 1, and the discontinuation of an appropriate insurance pursuant to section 33 (1) sentence 2;

11. the acquisition or disposal of a qualified participating interest in the reporting institution, the reaching, overshooting or undershooting of the thresholds for par- ticipating interests of twenty per cent, thirty-three per cent and fifty per cent of the voting rights or capital, and the fact that the institution becomes or ceases to be the subsidiary of another enterprise, if the change in these participatory relationships comes to the institution's attention;

12. each case in which the counterparty to a securities repurchase agreement or a securities lending or borrowing transaction did not discharge his settlement obligations;

13. the existence of, change in or termination of a close association with another natural person or another enterprise.

(1a) An institution shall report to the Federal Banking Supervisory Office and the Deutsche Bundesbank once a year

1. its indirect participating interests in other enterprises,

2. the name and address of any holder of a qualified participating interest in the reporting institution and in the enterprises subordinated to it as described in section 10a that are domiciled abroad, as well as the amounts of these participating interests, and

3. the establishment, relocation or closure of a domestic branch. The existence of an indirect participating interest within the meaning of sentence 1 number 1 shall be determined within the framework of the regulation in accordance with subsection (4).

(2) A institution intending to merge with another institution shall report this fact immediately to the Federal Banking Supervisory Office and the Deutsche Bundesbank.

(3) A manager of an institution shall report immediately to the Federal Banking Supervisory Office and the Deutsche Bundesbank

1. the commencement and termination of activities as a manager or member of the supervisory board or administrative board of another enterprise, and

2. the acquisition and disposal of a direct participating interest in an enterprise, as well as any changes in the amount of such a participating interest. A direct participating interest within the meaning of sentence 1 number 2 is deemed to be the holding of shares in the capital of the enterprise amounting to at least twenty-five per cent of the capital.

(3a) A financial holding company shall submit to the Federal Banking Supervisory Office and the Deutsche Bundesbank once a year a summary report of those institutions, financial enterprises and ancillary banking services enterprises which are subordinated enterprises within the meaning of section 10a (3) to (5). The Federal Banking Supervisory Office communicates a list of these to the appropriate authorities of the other states of the European Economic Area and to the Commission of the European Communities. The establishment, modification or discontinuation of such participating interests or corporate relationships shall be reported to the Federal Banking Supervisory Office and the Deutsche Bundesbank immediately.

(4) The Federal Ministry of Finance, acting in consultation with the Deutsche Bundesbank, may issue by regulation more detailed provisions on the nature, scope and timing of the reports, and on the submission of the documentation, provided for in this Act, and may supplement the existing reporting requirements by the obligation to submit summary reports and lists, insofar as this is necessary for the performance of the functions of the Federal Banking Supervisory Office and especially to enable it to obtain consistent records for assessing the banking business conducted and financial services provided by institutions. It may delegate this authority by regulation to the Federal Banking Supervisory Office, provided that regulations of the Federal Banking Supervisory Office are issued in agreement with the Deutsche Bundesbank. The central associations of the institutions shall be consulted before the regulation is issued.

24a. Establishment of a branch and provision of cross-border services in other states of the European Economic Area

(1) A deposit-taking credit institution and a securities trading firm shall report the intention to establish a branch in another state of the European Economic Area to the Federal Bank- ing Supervisory Office and the Deutsche Bundesbank immediately in accordance with sentence 2. The report shall contain the following particulars:

1. the name of the member state in which the branch is to be established,

2. a business plan indicating the nature of the planned business and the organisational structure of the branch,

3. the address at which the records of the institution can be requested in the host member state, and to which documents can be delivered, and

4. the name of the manager of the branch.

(2) If there is no reason to doubt the suitability of the organisational structure and financial standing of

the institution, the Federal Banking Supervisory Office forwards the particulars pursuant to subsection (1) sentence 2 to the appropriate authorities of the host state within two months of the receipt of the complete documentation, and advises the reporting institution accordingly. The Federal Banking Supervisory Office also informs the appropriate authorities of the host state about the amount of the own funds and the adequacy of the capital base and, if applicable, about the deposit guarantee scheme or investor compensation scheme to which the institution belongs or about its comparable protection arrangements within the meaning of section 23a (2) sentence 1. If the Federal Banking Supervisory Office does not forward the particulars pursuant to subsection (1) sentence 2 to the appropriate authorities of the host state, it notifies the institution of its reasons for not doing so within two months of the receipt of all the particulars pursuant to subsection (1) sentence 2 and also informs the Federal Supervisory Office for Securities Trading.

(3) Subsection (1) sentence 1 applies as appropriate to the intention, by providing cross- border services, to conduct banking business other than investment fund business, to provide financial services within the meaning of section 1 (1a) sentence 2 numbers 1 to 4 or to engage in activities pursuant to section 1 (3) sentence 1 numbers 2 to 8 or to provide credit reports or offer to rent out safe deposit boxes in another EEA state. The report shall specify the state in which the cross-border service is to be provided and shall contain a business plan specifying the intended activities. The Federal Banking Supervisory Office informs the appropriate authorities of the host state within one month of the receipt of the report.

(4) If the situation reported in accordance with subsection (1) sentence 2 or subsection (3) sentence 2 changes, the institution shall notify the Federal Banking Supervisory Office, the Deutsche Bundesbank and the appropriate authorities of the host state of the changes in writing at least one month before the changes become effective. An institution which has established a branch in accordance with subsection (1) shall report any changes in the situation regarding the deposit guarantee scheme or investor compensation scheme or the comparable protection arrangements within the meaning of section 23a (2) sentence 1 to the Federal Banking Supervisory Office, the Deutsche Bundesbank and the appropriate authorities of the host state at least one month before the changes become effective. The Federal Banking Supervisory Office informs the appropriate authorities of the host state of the changes in accordance with sentence 2.

(5) The Federal Ministry of Finance is authorised to rule by regulation that subsections (2) and (4) apply as appropriate to the establishment of a branch in a non-EEA state, insofar as this is necessary in the field of the right of establishment under agreements of the European Communities with non-EEA states.

(6) The Federal Banking Supervisory Office forwards copies of the reports pursuant to subsection (1) sentence 1, subsection (3) sentence 1 and subsection (4) sentence 1 to the Federal Supervisory Office for Securities Trading.

24b Participation in payment and securities transfer and settlement systems

(1) An institution shall report the intention to operate a system as provided for in Article 2 of Directive 98/26/EG of the European Parliament and Council of May 19, 1998 on settlement finality in payment and securities settlement systems (Official Journal of the European Communities No. L 166 page 45) immediately to the Federal Banking Supervisory Office and the Deutsche Bundesbank and shall name the participants. This also applies to any subsequent change in the participants. The Deutsche Bundesbank will notify the Commission of the European Communities of the systems reported to it after having satisfied itself of the appropriateness of the rules governing the system.

(2) An institution shall provide information on the systems within the meaning of subsection (1) in

which it is involved and on the basic rules governing their mode of operation to all parties which can demonstrate that they have a legitimate interest in the matter.

(3) The Federal Ministry of Finance is authorised to issue a Regulation in consultation with the Deutsche Bundesbank regulating the details of the reporting requirements, notification of the Commission of the European Communities pursuant to subsection (1) and the right to information pursuant to subsection (2).

(4) Subsections (1) to (3) apply as appropriate to system operators which are not an institution.

25. Monthly returns and other particulars

(1) Institutions sha ll submit a monthly return to the Deutsche Bundesbank immediately after the end of each month. The Deutsche Bundesbank passes on the monthly returns, along with its comments, to the Federal Banking Supervisory Office; the latter may waive its right to the forwarding of certain monthly returns. If monthly balance sheet statistics are collected in accordance with section 18 of the Bundesbank Act, the returns to be submitted for that purpose are deemed to be monthly returns within the meaning of sentence 1.

(2) Parent enterprises within the meaning of section 13b (2) shall also submit a consol- idated monthly return to the Deutsche Bundesbank immediately after the end of each month. Subsection (1) sentence 2 and section 10a (6) and (7) on the consolidation procedure, subsection (9) on the requirement to provide data, and subsection (10) on exceptions from consolidation apply as appropriate.

(3) The Federal Ministry of Finance, acting in consultation with the Deutsche Bundesbank, may issue by regulation more detailed provisions on the nature and scope of the monthly returns, insofar as monthly balance sheet statistics are not collected in accordance with section 18 of the Bundesbank Act, especially to gain an insight into the trend in institutions' assets and liabilities position and profit and loss position, and on other particulars, insofar as this is necessary for the performance of the functions of the Federal Banking Supervisory Office. The particulars may also relate to subordinated enterprises within the meaning of section 13b (2), to subsidiaries domiciled in Germany or abroad which are not included in supervision on a consolidated basis and to mixed-activity holding companies which have subordinate institutions; the mixed-activity holding companies shall transmit the requisite data to the institutions. The Federal Ministry of Finance may, by regulation, delegate the authority to issue a regulation to the Federal Banking Supervisory Office provided that the regulation is issued in agreement with the Deutsche Bundesbank.

25a. Particular organisational duties of institutions

(1) An institution must

1. have in place suitable arrangements for managing, monitoring and controlling risks and appropriate arrangements by means of which the institution's financial situation can be gauged with sufficient accuracy at all times;

2. have a proper business organisation, an appropriate internal control system and adequate security precautions for the deployment of electronic data processing;

3. ensure that the records of executed business transactions permit full and unbroken supervision by the Federal Banking Supervisory Office for its area of responsibility; the

requisite records shall be retained for six years; section 257 (3) and (5) of the Commercial Code applies as appropriate.

(2) The outsourcing to another enterprise of operational areas that are essential for conducting banking business or providing financial services must impair neither the orderliness of such business or services nor the managers' ability to manage and monitor them nor the Federal Banking Supervisory Office's right to audit and ability to monitor them. In particular, the institution shall ensure by contractual means that it has the required powers to give instructions to the contractor in question and shall include the outsourced areas in its internal monitoring procedures. The institution shall report its intention to outsource operational areas, as well as the realisation of its intention, to the Federal Banking Supervisory Office and the Deutsche Bundesbank immediately. The Federal Banking Supervisory Office forwards a copy of the report to the Federal Supervisory Office for Securities Trading.

Division 5a. Submission of accounting records

26. Submission of annual accounts, management report and auditor's reports

(1) Institutions shall draw up their annual accounts for the previous financial year in the first three months of their financial year, and shall submit their annual accounts as drawn up, and subsequently also as approved, and their management report to the Federal Banking Supervisory Office and the Deutsche Bundesbank immediately in accordance with sentence 2. The annual accounts shall bear a certificate of audit (Bestätigungsvermerk) or a note accounting for the withholding of such a certificate. The auditor shall submit his report on the auditing of the annual accounts (auditor's report) to the Federal Banking Supervisory Office and the Deutsche Bundesbank immediately after the completion of the audit. In the case of credit institutions which belong to a credit cooperative audit association or are audited by the audit office of a savings bank and giro association, the auditor shall submit the audit report only if requested to do so by the Federal Banking Supervisory Office.

(2) If an additional audit has taken place in connection with a guarantee scheme, the auditor or audit association shall submit the report on this audit to the Federal Banking Supervisory Office and the Deutsche Bundesbank immediately.

(3) An institution which draws up a set of group accounts or a group management report shall submit these documents to the Federal Banking Supervisory Office and the Deutsche Bundesbank immediately. If an audit report is written by an auditor of the group accounts, he shall submit that audit report to the Federal Banking Supervisory Office and the Deutsche Bundesbank immediately after the completion of the audit. In the case of credit institutions which belong to a credit cooperative audit association or are audited by the audit office of a savings bank and giro association, the auditor shall submit the audit report only if requested to do so by the Federal Banking Supervisory Office.

Division 6. Audits and the appointment of auditors

27. (Rescinded)

28. Appointment of the auditor in special cases

(1) Institutions shall notify the Federal Banking Supervisory Office and the Deutsche Bundesbank of the auditor they have appointed immediately after making the appointment. Within one month of the receipt of such notification, the Federal Banking Supervisory Office may request the appointment of a different auditor if this appears necessary to achieve the object of the audit; objections to and appeals against such

requests have no postponing effect.

(2) The court of registration having jurisdiction at the domicile of the institution shall appoint an auditor at the request of the Federal Banking Supervisory Office if

1. the notification in accordance with subsection (1) sentence 1 is not effected im- mediately after the end of the financial year;

2. the institution does not comply immediately with the request to appoint a different auditor in accordance with subsection (1) sentence 2;

3. the auditor chosen has declined to accept the auditing mandate, is no longer active, or is unable to conclude the audit in time, and the institution has not appointed a different auditor immediately.

The appointment by the court is final. Section 318 (5) of the Commercial Code applies as appropriate. The court of registration, at the request of the Federal Banking Supervisory Office, may terminate the appointment of an auditor appointed in accordance with sentence 1.

(3) Subsections (1) and (2) do not apply to credit institutions which belong to a credit co- operative audit association or are audited by the audit office of a savings bank and giro association.

29. Special duties of the auditor

(1) When auditing the annual accounts or interim accounts, the auditor shall likewise examine the financial circumstances of the institution. When auditing the annual accounts, he shall ascertain in particular whether the institution has complied with the reporting requirements pursuant to sections 10, 12a, 13 to 13b and 14 (1), sections 15, 24 and 24a, in each case also read in conjunction with a regulation in accordance with section 24 (4) sentence 1, in the case of section 24a also read in conjunction with a regulation in accordance with subsection (5), and also whether the institution has satisfied the requirements pursuant to sections 10, 10a, 12, 13 to 13b, 18 and 25a, in the case of sections 13 to 13b and 14 (1) also read in conjunction with a regulation in accordance with section 22. If unrealised reserves are included in the institution's liable capital, the auditor, when auditing the annual accounts, shall likewise examine whether section 10 (4a) to (4c) was complied with when ascertaining those reserves. The findings shall be included in the auditor's report.

(2) The auditor shall likewise examine whether the institution has complied with its obligations under the Money Laundering Act (Geldwäschegesetz). In the case of institutions engaged in safe custody business he shall audit that business particularly carefully; this audit shall also cover compliance with section 128 of the Companies Act on disclosure requirements and section 135 of the Companies Act on the exercising of voting rights. The auditor shall report separately on the items mentioned in sentence 1 and sentence 2, respectively; section 26 (1) sentence 3 applies as appropriate.

(3) If, in the course of his audit, the auditor learns of facts which might warrant the qualification or withholding of the certificate of audit, jeopardise the existence of the institution or seriously impair its development, or which indicate that the managers have severely infringed the law, the articles of association or the partnership agreement, he shall report this immediately to the Federal Banking Supervisory Office and the Deutsche Bundesbank. At the request of the Federal Banking Supervisory Office or the Deutsche Bundesbank, the auditor shall elucidate the auditor's report to them, and communicate any other facts which have come to his attention in the course of the audit and which

suggest that the business of the institution has not been conducted properly. The auditor shall not be held accountable for the accuracy of facts which he reports in good faith in accordance with this subsection.

(4) The Federal Ministry of Finance, in agreement with the Federal Ministry of Justice and after having consulted the Deutsche Bundesbank, may issue by regulation more detailed provisions on the object of the audit, the time at which it is carried out and the contents of auditor's reports, insofar as this is necessary for the performance of the functions of the Federal Banking Supervisory Office, and especially in order to enable it to identify irregularities which may jeopardise the safety of the assets entrusted to the institution or which may impair the proper execution of banking business or provision of financial services, and to obtain consistent records for assessing the business conducted by institutions. It may delegate this authority by regulation to the Federal Banking Supervisory Office.

30. (Rescinded)

Division 7. Exemptions

31. Exemptions

(1) The Federal Ministry of Finance, after having consulted the Deutsche Bundesbank, may by regulation exempt

1. all institutions, or certain types or categories of institutions, from the duty to report specific exposures and facts in accordance with section 10 (8) sentence 3, section 13 (1), section 13a (1), section 14 (1) and section 24 (1) 1 to 5, 7 and 9 and (1a), certain types or categories of institutions from the duty to submit monthly returns in accordance with section 25 or from the obligation under section 26 (1) sentence 2 to elucidate the annual accounts in notes thereon, and the managers of an institution from the duty to report participating interests in accordance with section 24 (3) 2, if these particulars are immaterial for supervisory purposes;

2. certain types or categories of institutions from compliance with the provisions of section 13 (3) and section 26, if this is warranted by the particular nature of their business.

The Federal Ministry of Finance may delegate this authority by regulation to the Federal Banking Supervisory Office provided that the regulation is issued in consultation with the Deutsche Bundesbank.

(2) The Federal Banking Supervisory Office may exempt individual institutions from the requirements of section 13 (1) and (2), section 13a (1) and (2), section 15 (1) sentence 1 numbers 6 to 11 and (2), section 24 (1) 1, 2, 4 and 5 and sections 25, 26 and 29 (2) sentence 2 if this appears desirable for particular reasons, and especially because of the nature or scale of the business conducted. The Federal Banking Supervisory Office may exempt individual parent enterprises within the meaning of section 10a (2) to (5) and section 13b (2) from the requirements of section 10a (6) to (8), section 12a (1) sentence 1 and section 13b (3) and (4) in respect of individual subordinated enterprises within the meaning of section 10a (2) to (5) and section 13b (2) if and as long as the balance sheet total of the individual subordinated enterprise amounts to less than ten million ECU and less than one per cent of the balance sheet total of the parent enterprise of a group of institutions or of the financial holding company holding the participating interest, if the inclusion of these enterprises is immaterial for supervision on a consolidated basis, and if the Federal Banking Supervisory Office is enabled to monitor compliance with these conditions. The Federal Banking Supervisory Office shall refrain from granting exemption in accordance with sentence 2 if several enterprises belonging to a group satisfy the conditions for

exemption, but the totality of these enterprises are not of minor significance for supervision on a consolidated basis. Exemption is likewise permissible for individual enterprises belonging to a group if, in the opinion of the Federal Banking Supervisory Office, their inclusion in supervision on a consolidated basis would be inappropriate or misleading.

Part III Provisions for the supervisions of institutions

Division 1. Licence to conduct business

32. Granting the licence

(1) Anyone wishing to conduct banking business or to provide financial services in Germany commercially or on a scale which requires a commercially organised business undertaking requires a written licence from the Federal Banking Supervisory Office. The application for the licence must contain the following particulars:

1. suitable evidence of the resources needed for business operations;

2. the names of the managers;

3. the information which is necessary for assessing the trustworthiness of the applicants and of the persons specified in section 1 (2) sentence 1;

4. the information which is necessary for assessing the professional qualifications, as required for managing the institution, of the proprietors and of the persons specified in section 1 (2) sentence 1;

5. a viable business plan showing the nature of the planned business, the organisational structure and the planned internal monitoring procedures of the institution;

6. if qualified participating interests are held in the institution:

   (a) the names of the holders of the qualified participating interests,

   (b) the amount of these participating interests,

   (c) the data required for assessing the trustworthiness of these holders or of the legal representatives or of the general partners,

   (d) if these holders are required to draw up annual accounts: their annual accounts for the last three financial years, along with the auditor's reports compiled by independent external auditor if such reports are to be prepared, and

   (e) if these holders belong to a group: particulars of the structure of the group and, if such accounts are to be drawn up, the consolidated group accounts for the last three financial years, along with the auditor's reports compiled by independent external auditor if such reports are to be prepared;

7. the facts indicating a close relationship between the institution and other natural persons

or other enterprises.

The reports and documents to be submitted pursuant to sentence 2 shall be specified in detail by regulation in accordance with section 24 (4). The requirements under sentence 2 (6) (d) and (e) do not apply to financial services institutions.

(2) The Federal Banking Supervisory Office may make the granting of the licence subject to conditions which must be consistent with the purpose pursued by this Act. It may limit the licence to certain types of banking business or financial services.

(3) Before granting the licence, the Federal Banking Supervisory Office shall consult the guarantee scheme appropriate for the institution.

(3a) On being granted the licence, the institution, if it is liable to pay contributions under section 8 (1) of the Deposit Guarantee and Investor Compensation Act (Einlagensicherungs- und Anlegerentschädigungsgesetz), shall be informed of the compensation scheme to which the institution is assigned.

(4) The Federal Banking Supervisory Office shall publicise the granting of the licence in the Federal Gazette and shall also notify the Federal Supervisory Office for Securities Trading.

33. Refusing the licence

(1) The licence shall be refused if

1. the resources needed for business operations, in particular adequate initial capital within the meaning of section 10 (2a) sentence 1 numbers 1 to 7, are not available in Germany; the initial capital which must be available is as follows:
(a) in the case of investment brokers, contract brokers and portfolio managers who in the course of providing financial services are not authorised to obtain ownership or possession of funds or securities of customers and who do not trade in financial instruments for their own account: an amount equivalent to at least fifty thousand ECU,

(b) in the case of other financial services institutions which do not trade in financial instruments for their own account: an amount equivalent to at least one hundred and twenty-five thousand ECU,

(c) in the case of financial services institutions which trade in financial instruments for their own account and in the case of securities trading banks: an amount equivalent to at least seven hundred and thirty thousand ECU, and

(d) in the case of deposit-taking credit institutions: an amount equivalent to at least five million ECU;

2. facts are known which suggest that an applicant or one of the persons specified in section 1 (2) sentence 1 is not trustworthy;

3. facts are known which warrant the assumption that the holder of a qualified participating interest in the institution or a general partner or legal representative of the enterprise

concerned is not trustworthy or for other reasons fails to satisfy the requirements to be set in the interests of the sound and prudent management of the institution;

4. facts are known which suggest that the proprietor or one of the persons specified in section 1 (2) sentence 1 does not have the professional qualifications necessary for managing the institution and if no other person has been designated as manager in accordance with section 1 (2) sentence 2 or 3;

5. a credit institution or a financial services institution which, in the course of providing financial services, is authorised to obtain ownership or possession of funds or securities of customers does not have at least two managers who work for the institution not merely in an honorary capacity;

6. the institution has its head office outside Germany;

7. the institution is not prepared or not in a position to make the organisational arrangements necessary for the proper operation of the business for which it is seeking a licence.

An investment broker or a contract broker who in the course of providing financial services is not authorised to obtain ownership or possession of funds or securities of customers and who does not trade in financial instruments for his own account shall not be refused a licence in accordance with sentence 1 (a) if, instead of the initial capital, he can demonstrate that he has taken out appropriate insurance for the protection of customers.

(2) A prerequisite of the professional qualifications for managing an institution needed by the persons specified in subsection (1) sentence 1 number 4 is that they have adequate theoretical and practical knowledge of the business concerned, as well as managerial experience. A person shall normally be assumed to have the professional qualifications necessary for managing an institution if he can demonstrate three years' managerial ex- perience at an institution of comparable size and type of business.

(3) The Federal Banking Supervisory Office may refuse the licence if

1. facts are known which warrant the assumption that the institution is associated with other individuals or enterprises through corporate ties which impair the effective supervision of the institution;

2. (rescinded)

3. facts are known which warrant the assumption that the institution is a subsidiary of an institution domiciled abroad that is not effectively supervised in the state where it is registered or has its head office or whose appropriate supervisory body is not prepared to cooperate satisfactorily with the Federal Banking Supervisory Office;

4. contrary to section 32 (1) sentence 2, the application does not contain adequate information or documents.

(4) The licence may not be refused for reasons other than those specified in subsections (1) and (3).

33a. Deferring or qualifying the licence in the case of enterprises domiciled outside the European Communities

The Federal Banking Supervisory Office shall defer the decision on an application for a licence by enterprises domiciled outside the European Communities or by subsidiaries of such enterprises, or shall qualify the licence, if a decision to this effect has been taken by the Commission or the Council of the European Communities under Article 22 (2) of the Second Banking Coordination Directive. The deferral or qualification may not exceed three months from the date of the decision. Sentences 1 and 2 also apply to applications for a licence submitted after the date of the decision. If the Council of the European Communities decides to extend the period specified in sentence 2, the Federal Banking Supervisory Office shall take due account of this extension and shall prolong the deferral or qualification accordingly.

33b. Consultation of the appropriate authorities of another state of the European Economic Area

If a licence is to be granted to conduct banking business pursuant to section 1 (1) sentence 2 numbers 1, 2, 4 or 10 or to provide financial services pursuant to section 1 (1a) sentence 2 numbers 1 to 4 to an enterprise which

1. is a subsidiary or an affiliated enterprise of a deposit-taking credit institution or a securities trading firm and whose parent enterprise is licensed in another state of the European Economic Area, or

2. is controlled by the same natural persons or enterprises which control a deposit-taking credit institution or a securities trading firm domiciled in another state of the European Economic Area, the Federal Banking Supervisory Office shall consult the appropriate authorities in the home state before granting the licence.

34. Substitution and continuation in the event of death

(1) Section 45 of the Industrial Code (Gewerbeordnung) does not apply to institutions. (2) After the death of the holder of the licence, the institution may be continued without a licence on behalf of the heirs by two substitutes for a period not exceeding one year. The substitutes shall be appointed immediately after the licence-holder's death; they are deemed to be managers. If a substitute is not trustworthy or does not have the necessary professional qualifications, the Federal Banking Supervisory Office may prohibit the continuation of business. The Federal Banking Supervisory Office may prolong the period specified in sentence 1 if there are special reasons for doing so. One substitute suffices in the case of financial services institutions which in the course of providing financial services are not authorised to obtain ownership or possession of funds or securities of customers.

35. Expiry and revocation of the licence

(1) The licence expires if no use is made of it within one year from the date it is granted. The licence likewise expires if the institution has been excluded from the compensation scheme pursuant to section 11 of the Deposit Guarantee and Investor Compensation Act.

(2) The Federal Banking Supervisory Office may revoke the licence pursuant to the pro- visions of the Act on Administrative Procedures (Verwaltungsverfahrensgesetz) and also if

1. the business to which the licence relates has not been conducted for more than six

months;

2. a credit institution is operated in the form of a sole proprietorship;

3. the Office learns of facts which would warrant the refusal of the licence under section 33 (1) sentence 1 numbers 1 to 7 or (3) 1 to 3;

4. the discharge of an institution's obligations to its creditors, and particularly the safety of the assets entrusted to it, is endangered, and the danger cannot be averted by taking other measures under this Act; the safety of the assets entrusted to the institution is endangered, inter alia, by

(a) a loss amounting to one-half of its liable capital calculated in accordance with section 10, or

(b) a loss amounting to more than ten per cent of its liable capital calculated in accordance with section 10 in each of at least three successive financial years;

5. the own funds of a securities trading firm do not amount to at least one-quarter of its costs within the meaning of section 10 (9);

6. the institution has persistently contravened provisions of this Act, of the Securities Trading Act or the regulations or orders issued to implement these Acts.

(3) Section 48 (4) sentence 1 and section 49 (2) sentence 2 of the Act on Administrative Procedures concerning the period of one year do not apply.

36. Dismissal of managers

(1) In the cases specified in section 35 (2) 3, 4, and 6 the Federal Banking Supervisory Office, instead of revoking the licence, may demand the dismissal of the managers responsible and may also prohibit these managers from carrying out their activities at institutions organised in the form of a legal person.

(2) The Federal Banking Supervisory Office may also demand the dismissal of a ma- nager, and may also prohibit that manager from carrying out his activities at institutions organised in the form of a legal person, if he has intentionally or recklessly contravened the provisions of this Act or of the Securities Trading Act, the regulations issued to implement these Acts or orders issued by the Federal Banking Supervisory Office or by the Federal Supervisory Office for Securities Trading, and if he persists in such behaviour in spite of having been duly warned by the Federal Banking Supervisory Office or the Federal Supervisory Office for Securities Trading. The Federal Banking Supervisory Office notifies the Federal Supervisory Office for Securities Trading of such dismissal.

37. Action to stop unlawful business

If banking business is being conducted or financial services are being provided without the licence required under section 32 or if business prohibited under section 3 is being conducted, the Federal Banking Supervisory Office may order the immediate cessation of the business operations and the prompt liquidation of this business. It may issue instructions for the liquidation and appoint a suitable person as the liquidator. It may publicise the measures it takes in accordance with sentences 1 and 2.

38. Consequences of the revocation and expiry of the licence; measures in the event of liquidation

(1) If the Federal Banking Supervisory Office revokes the licence or if the licence expires, the Office may rule in the case of legal persons and partnerships that the institution be liquidated. Its decision has the effect of a winding-up order (Auflösungsbeschluss). The decision shall be communicated to the court of registration and entered by the latter in the Commercial Register (Handelsregister) or Register of Cooperative Societies (Genossenschaftsregister).

(2) The Federal Banking Supervisory Office may issue general instructions regarding the liquidation of an institution. The court of registration shall appoint liquidators at the request of the Federal Banking Supervisory Office if the persons otherwise appointed to liquidate the institution afford no guarantee of proper li quidation. An immediate appeal against the order of the court of registration is permissible. If the matter is outside the court of registration's responsibility, the Federal Banking Supervisory Office appoints the liquidator.

(3) The Federal Banking Supervisory Office shall publicise the revocation or expiry of the licence in the Federal Gazette and shall inform the Federal Supervisory Office for Securities Trading of this. It shall inform the appropriate authorities of the other states of the European Economic Area in which the institution has established branches or has been providing cross-border services.

(4) Subsections (1) and (2) do not apply to public-law legal persons.

Division 2. Protection of certain designations

39. The terms "bank" and "banker"

(1) Except as otherwise provided by legislation, the term "bank" or "banker", or a term in which the word "bank" or "banker" appears, may be used in the firm-name or as an addition thereto or to describe the object of the business or for advertising purposes only by

1. credit institutions holding a licence in accordance with section 32 or branches of enterprises in accordance with section 53b (1) sentence 1 or (7);

2. other enterprises which, when this Act came into force, were legitimately using such a term under the former regulations.

(2) The term "people's bank" (Volksbank), or a term in which the words "people's bank" appear, may be newly used only by credit institutions organised in the form of a registered cooperative society and belonging to an audit association.

(3) The Federal Banking Supervisory Office may rule when granting the licence that the terms specified in subsection (1) may not be used if, in the accepted view, the nature or scale of the credit institution's business does not warrant their use.

40. The term "savings bank"

(1) The term "savings bank" (Sparkasse), or a term in which the words "savings bank" appear, may be used in the firm-name or as an addition thereto or to describe the purpose of the business or for advertising purposes only by

1. public savings banks holding a licence in accordance with section 32;

2. other enterprises which, when this Act came into force, were legitimately using such a term under the former regulations;

3. enterprises which are newly established by the restructuring of the enterprises specified in number 2 as long as, by virtue of their articles of association, they display special features (in particular, business objectives geared to the common weal and a restriction of their principal activities to the economic locality in which the enterprise is domiciled) to the same extent as before the restructuring.

(2) Credit institutions within the meaning of section 1 of the Act on Building and Loan Associations (Gesetz über Bausparkassen) may use the term "building and loan association" (Bausparkasse), and registered cooperative societies belonging to an audit association may use the term "savings and loan bank" (Spar- und Darlehenskasse).

41. Exceptions

Sections 39 and 40 do not apply to enterprises which use the words "bank", "banker" or "savings bank" in a context which precludes the impression that they conduct banking business. Credit institutions domiciled abroad may use the terms specified in section 39 (2) and in section 40 in their firm-name or as an addition thereto or to describe the object of the business or for advertising purposes in connection with their domestic operations if they are entitled to use these terms in their country of domicile and include a clarifying addition in their firm-name which refers to their country of domicile.

42. Decision by the Federal Banking Supervisory Office

In doubtful cases, the Federal Banking Supervisory Office decides whether an enterprise is entitled to use the terms specified in sections 39 and 40. It shall communicate its decisions to the court of registration.

43. Registration provisions

(1) If the conduct of banking business or the provision of financial services is subject to a licence in accordance with section 32, entries in public registers may be made only if the court of registration has been furnished proof that such a licence is held.

(2) If an enterprise uses a firm-name or an addition thereto which is impermissible under sections 39 to 41, the court of registration shall officially cancel such firm-name or addition; section 142 (1) sentence 2, (2) and (3) and section 143 of the Act on Matters Relating to Voluntary Jurisdiction (Gesetz über die Angelegenheiten der freiwilligen Gerichtsbarkeit) apply as appropriate. The enterprise shall be induced to discontinue the use of the firm-name or addition thereto by the imposition of administrative fines; section 140 of the Act on Matters Relating to Voluntary Jurisdiction applies as appropriate.

(3) In proceedings before the court of registration concerning the entry or changing of the legal status or firm-name of credit institutions or enterprises which are using impermissible terms under sections 39 to 41, the Federal Banking Supervisory Office is entitled to enter petitions and also to seek the legal remedies permissible under the Act on Matters Relating to Voluntary Jurisdiction.

Division 3. Information and audits

44. Information from and audits of institutions, ancillary banking services enterprises, financial holding companies and enterprises included in supervision on a consolidated basis

(1) An institution and the members of its governing bodies shall upon request provide information about all business activities and present documentation to the Federal Banking Supervisory Office, to the persons and agencies the Federal Banking Supervisory Office uses in performing its functions and to the Deutsche Bundesbank. The Federal Banking Supervisory Office may carry out audits at the institutions even if there is no special reason for them. The staff of the Federal Banking Supervisory Office and the persons it deploys to perform the audits may enter and inspect the institution's business premises for this purpose during customary office and business hours. The parties affected shall tolerate the measures taken under sentences 2 and 3.

(2) A subordinated enterprise within the meaning of section 10a (2) to (5), a financial holding company at the head of a financial holding group within the meaning of section 10a (3) and a member of a governing body of such an enterprise shall upon request provide information and present documentation to the Federal Banking Supervisory Office, to the persons and agencies the Federal Banking Supervisory Office uses in performing its functions and to the Deutsche Bundesbank to enable them to check the accuracy of the information or data supplied and which are required for supervision on a consolidated basis or which are to be supplied in connection with a regulation pursuant to section 25 (3) sentence 1. The Federal Banking Supervisory Office may, likewise without requiring a specific reason, carry out audits at these enterprises. The staff of the Federal Banking Supervisory Office and the persons it deploys to perform the audits may enter and inspect the institution's business premises for this purpose during customary office and business hours. The parties affected shall tolerate the measures taken under sentences 2 and 3. Sentences 1 to 4 apply as appropriate to a subsidiary not included in the consolidation and to a mixed-activity holding company and its subsidiaries.

(3) Enterprises domiciled abroad which are included in the consolidation shall upon request allow the Federal Banking Supervisory Office to carry out the audits permitted under this Act, in particular checks of the accuracy of the data supplied for the consolidation pursuant to section 10a (6) and (7), section 13b (3) and section 25 (2) and (3), to the extent necessary to enable the Federal Banking Supervisory Office to perform its functions and to the extent permissible under the laws of the other state. This also applies to subsidiaries domiciled abroad which are not included in the consolidation.

(4) The Federal Banking Supervisory Office may send representatives to shareholders' meetings, general meetings or partners' meetings, as well as to meetings of the supervisory bodies of institutions organised in the form of a legal person. They may address these meetings. The parties affected shall tolerate the measures taken under sentences 1 and 2.

(5) Institutions organised in the form of a legal person shall, at the request of the Federal Banking Supervisory Office, convene the meetings specified in subsection (4) sentence 1, convene meetings of the administrative and supervisory bodies and announce subjects on which decisions are to be taken. The Federal Banking Supervisory Office may send representatives to a meeting convened in accordance with sentence 1. They may address the meeting. The parties affected shall tolerate the measures taken under sentences 2 and 3. This is without prejudice to subsection (4).

(6) The person required to provide information may refuse to answer questions the replies to which would expose him or one of the relatives specified in section 383 (1) 1 to 3 of the Code of Civil Procedure (Zivilprozessordnung) to the risk of criminal prosecution or of proceedings under the Act on Breaches of Administrative Regulations (Gesetz über Ordnungswidrigkeiten).

44a. Cross-border information and audits

(1) Legislation that restricts the transmission of data does not apply to the transmission of data between an institution, a financial enterprise, a financial holding company, an ancillary banking services enterprise or an enterprise not included in the consolidation and an enterprise domiciled abroad which directly or indirectly holds at least twenty per cent of the capital shares or voting rights in the enterprise, is a parent enterprise or can exercise a dominant influence, or between a mixed-activity holding company and its subsidiaries domiciled abroad, if such transmission of data is necessary to comply with the prudential provisions on the enterprise domiciled abroad, as provided in the Consolidation Directive. The Federal Banking Supervisory Office may prohibit an institution from transmitting data to a non-EEA state.

(2) At the request of an authority responsible for exercising supervision over an enterprise domiciled in another state of the European Economic Area, the Federal Banking Supervisory Office shall check the accuracy of the data transmitted by an enterprise within the meaning of subsection (1) sentence 1 for the supervisory authority as provided in the Consolidation Directive, or shall permit the authority making the request, an auditor or an expert to check such data. Section 5 (2) of the Act Concerning Administrative Procedures, regarding the limits to administrative assistance, applies as appropriate. Enterprises within the meaning of subsection (1) sentence 1 shall tolerate the audit. This is without prejudice to the granting of audit rights for banking supervisory authorities by virtue of international agreements.

(3) The Federal Banking Supervisory Office may request from deposit-taking credit institutions, securities trading firms or financial holding companies domiciled in another state of the European Economic Area information that facilitates the supervision of institutions which are subsidiaries of these enterprises and which are not included in supervision on a consolidated basis by the appropriate authorities of the other state for reasons corresponding to those specified in section 31 (2) sentence 2 or 4.

44b. Information from and audits of the holders of qualified participating interests

(1) The obligations towards the Federal Banking Supervisory Office and the Deutsche Bundesbank to provide information and present documentation specified in section 44 (1) sentence 1 also apply to

1. persons and enterprises who report the intention to acquire a participating interest in accordance with section 2b or who are named as holders of qualified participating interests in connection with an application for a licence pursuant to section 32 (1) sentence 2 number 6 or a supplementary report pursuant to section 64e (2) sentence 4,

2. the holders of a qualified participating interest in an institution and the enterprises controlled by them,

3. persons and enterprises about whom facts are known which warrant the assumption that they are persons or enterprises within the meaning of number 2, and

4. persons and enterprises who are associated with a person or an enterprise within the meaning of numbers 1 to 3 pursuant to section 15 of the Companies Act.

(2) The Federal Banking Supervisory Office and the Deutsche Bundesbank may take measures in accordance with section 44 (1) sentences 2 and 3 in respect of the persons and enterprises specified in

subsection (1) if there are indications which might warrant grounds for a refusal in accordance with section 2b (1a) sentence 1 numbers 1 to 3. The parties affected shall tolerate these measures.

44c. Prosecution of unauthorised banking business and financial services

(1) An enterprise about which facts are known which warrant the assumption that it is an institution or is conducting business prohibited under section 3, a member of its governing bodies and an employee of this enterprise shall upon request provide information on the enterprise's business activities and present documentation to the Federal Banking Supervisory Office and the Deutsche Bundesbank. A member of a governing body and an employee shall upon request provide information even after they have left the governing body or the enterprise.

(2) The Federal Banking Supervisory Office may carry out inspections on the premises of the enterprise to the extent necessary to determine the nature or scope of business or activities. To this end the staff of the Federal Banking Supervisory Office and the Deutsche Bundesbank may enter and inspect these premises during customary office and business hours. In order to avert imminent risks to public order and safety, they are authorised to enter and inspect these premises also outside the customary office and business hours and may also enter and inspect areas which also serve as residential quarters; the basic right enshrined in Article 13 of the Constitution is thereby restricted to this extent.

(3) The staff of the Federal Banking Supervisory Office and the Deutsche Bundesbank may search these premises of the enterprise. The basic right enshrined in Article 13 of the Constitution is thereby restricted to this extent. Searches of business premises shall require a judicial warrant except in the event of imminent risk. Searches of areas which also serve as residential quarters shall require a judicial warrant. The district court (Amtsgericht) responsible for issuing the warrant is the one in whose area of jurisdiction the premises are located. An appeal may be lodged against the decision to issue a judicial warrant; sections 306 to 310 and 311a of the Criminal Code (Strafprozessordnung) apply as appropriate. A written record shall be made of the search. It must specify which agency carried out the search, the reason, time and place of the search and its outcome and, if no judicial warrant was issued, the facts substantiating the presumption of imminent risk.

(4) The staff of the Federal Banking Supervisory Office and the Deutsche Bundesbank may secure items which could be of importance as evidence in their investigations.

(5) The parties affected shall tolerate the measures taken in accordance with subsection (2), (3) sentence 1 and (4). Section 44 (6) applies.

Division 4. Measures in special cases

45. Measures in cases of inadequate own funds or inadequate liquidity

(1) If, at any institution,

1. the own funds fail to satisfy the requirements of section 10 (1), or

2. the investment of its funds fails to satisfy the requirements of section 11 sentence 1, the Federal Banking Supervisory Office may prohibit or limit withdrawals by the proprietors or partners, the distribution of profits and the granting of loans (section 19 (1)). Sentence 1 applies as appropriate to parent enterprises within the meaning of section 10a (2) to (5) if the consolidated own funds of the enterprises belonging to the group fail to satisfy the

requirements of section 10a (1).

(2) The Federal Banking Supervisory Office may issue the orders specified in subsec- tion (1) only if the institution has failed to remedy the deficiency within a period set by the Office. Decisions on the distribution of profits are invalid insofar as they contradict an order issued in accordance with subsection (1).

45a. Measures relating to financial holding companies

(1) If a financial holding company at the head of a financial holding group within the meaning of section 10a (3) sentence 1 or 2 or section 13b (2) fails to transmit to the parent enterprise the data in accordance with section 10a (9) sentence 2 or section 13b (5), read in conjunction with section 10a (9) sentence 2, needed for the consolidation pursuant to section 10a or section 13b, the Federal Banking Supervisory Office may prohibit the financial holding company from exercising its voting rights in the institution and the other subordinated enterprises domiciled in Germany unless the prudential consolidation requirements can be satisfied in some other way.

(2) In the case of a prohibition in accordance with subsection (1) and at the request of the Federal Banking Supervisory Office, the court having jurisdiction at the domicile of the parent enterprise shall appoint a trustee to whom it transfers the exercise of the voting rights. In exercising the voting rights, the trustee shall take due account of the interest in a sound management of the enterprises concerned, in conformity with the requirements of banking supervision. For good reason, the Federal Banking Supervisory Office may request the appointment of a different trustee. If the conditions specified in subsection (1) no longer obtain, the Federal Banking Supervisory Office shall request the revocation of the trustee's appointment. The trustee is entitled to the reimbursement of reasonable expenses and to remuneration for his activities. The court determines such expenses and remu- neration at the request of the trustee; no further appeal is permissible. The Federal Government advances such expenses and remuneration; the financial holding company and the enterprises concerned are jointly and severally liable to the Federal Government in respect of its outlays.

(3) As long as the prohibitory injunction specified in subsection (1) is enforceable, the enterprises concerned are not deemed to be subordinated enterprises of the financial holding company within the meaning of sections 10a and 13b.

46. Measures in cases of danger

(1) If the discharge of an institution's obligations to its creditors, and especially the safety of the assets entrusted to it, is endangered or if there are grounds for suspecting that effective supervision of the institution is not possible (section 33 (3) 1 to 3), the Federal Banking Supervisory Office may take temporary measures to avert the danger. In particular, it may

1. issue instructions on the management of the institution's business,

2. prohibit the taking of deposits or funds or securities of customers and the granting of loans (section 19 (1)),

3. prohibit proprietors and managers from carrying out their activities, or limit such activities, and

4. appoint supervisors.

Decisions on the distribution of profits are invalid insofar as they contradict any order issued in accordance with sentences 1 and 2. In the case of institutions organised in a form other than that of a sole proprietorship, managers who have been prohibited from carrying out their activities are barred from the management and representation of the institution for the duration of the prohibition. Regarding the claims arising from the employment contract or from other provisions governing the activities of the manager, the general regulations apply. Rights permitting a manager to participate as a partner or in other ways in decisions on measures affecting the management of the institution may not be exercised for the duration of the prohibition.

(2) If managers have been prohibited from carrying out their activities in accordance with subsection (1) sentence 2 number 3, the court having jurisdiction at the domicile of the institution shall, at the request of the Federal Banking Supervisory Office, appoint the necessary persons authorised to manage the institution's business and to represent it if, owing to the prohibition, the institution no longer has the requisite number of persons authorised to manage its business and represent it. Section 46a (2) sentences 2 to 4, (3) sentence 1 and (4) to (7) applies as appropriate.

46a. Measures in cases of a danger of insolvency; appointment of persons authorised to represent the institution

(1) If the conditions specified in section 46 (1) sentence 1 obtain, the Federal Banking Supervisory Office may, to avert insolvency proceedings, temporarily

1. issue a ban on sales and payments by the institution,

2. order the institution to be closed for business with customers, and

3. prohibit the acceptance of payments not intended for the discharge of debts to the institution, unless the appropriate deposit guarantee scheme or investor compensation scheme undertakes to satisfy in full all those entitled to satisfaction.

The deposit guarantee scheme or investor compensation scheme may make its commitment subject to the condition that incoming payments not intended for the discharge of debts to the institution are held and administered, in favour of the scheme, separately from the institution's assets in existence at the time of the issuing of the ban on sales and payments in accordance with sentence 1 number 1. After the issuing of the ban on sales and payments in accordance with sentence 1 number 1, the institution may complete the transactions in progress at the time of the issuing of the ban and enter into new transactions insofar as these are necessary for completing the former transactions, provided that and insofar as the appropriate deposit guarantee scheme or investor compensation scheme supplies the funds required for the purpose or undertakes to compensate the institution for any diminution in its assets resulting from these transactions as a whole, insofar as such compensation is needed for the full satisfaction of all creditors. Moreover, the Federal Banking Supervisory Office may authorise exceptions to the ban on sales and payments in accordance with sentence 1 number 1 insofar as this is necessary for the administration of the institution. Judicial enforcements on, seizures of and temporary injunctions against the assets of the institution are not permissible for the duration of measures in accordance with sentence 1. The provisions of the Insolvency Code (Insolvenzordnung) relating to the protection of payment and securities transfer and settlement systems and of collateral security of central banks apply as appropriate.

(2) If, in the case of institutions organised in a form other than that of a sole proprietorship, measures in accordance with subsection (1) sentence 1 have been ordered, and if managers have been prohibited from carrying out their activities, the court having jurisdiction at the domicile of the institution, at the

request of the Federal Banking Supervisory Office, shall appoint the necessary persons authorised to manage the institution's business and to represent it if, owing to the prohibition, the institution no longer has the requisite number of persons authorised to manage its business and represent it. In the case of institutions entered in a public register, the appointment or dismissal by the court of persons authorised to represent the institution, the scope of their representational authority and the termination of their tenure of office are recorded officially. The persons authorised to represent the institution shall deposit specimen signatures with the court. For the duration of the conditions specified in sentence 1, the persons or governing bodies entitled to do so under other legislation may not exercise their right to appoint persons authorised to manage the institution's business and to represent it.

(3) The representational authority of a person appointed by the court is dependent on the representational authority of the manager in whose stead this person has been appointed. This person's authority to manage the institution's business - unless it is extended by the appropriate governing bodies of the institution - is limited to the execution of the measures necessary to avert insolvency proceedings and protect creditors.

(4) The person authorised to manage the institution's business and to represent it whom the court has appointed is entitled to the reimbursement of reasonable cash expenses and to remuneration for his activities. The court having jurisdiction at the domicile of the institution determines such expenses and remuneration at the request of the person authorised to manage the institution's business and to represent it whom the court has appointed. No further appeal is permissible. The final and absolute judicial decision results in judicial enforcement in accordance with the Code of Civil Procedure.

(5) For the duration of measures in accordance with subsection (1) sentence 1, a person authorised to manage the institution's business and to represent it whom the court has appointed may be dismissed only by the court, at the request of the Federal Banking Supervisory Office or of the institution's governing body responsible for the debarment of partners from the management and representation of the institution or for the dismissal of persons authorised to manage the institution's business or to represent it, and only if there is good reason for doing so.

(6) The tenure of office of a person authorised to manage the institution's business and to represent it whom the court has appointed expires in any event if the measures in accordance with subsection (1) sentence 1 and the order prohibiting the manager in whose stead the person was appointed from carrying out his activities are revoked. If only the measures in accordance with subsection (1) sentence 1 are revoked, the tenure of office of a person authorised to manage the institution's business and to represent it whom the court has appointed expires as soon as the persons or governing bodies entitled to do so under other legislation have appointed a person authorised to manage the institution's business and to represent it, and as soon as a licence has been granted to this person, if necessary, in accordance with section 32.

(7) Subsections (2) to (6) do not apply to public-law legal persons.

46b. Insolvency petition

(1) If an institution becomes insolvent or overindebted, the managers and, in the case of an institution organised in the form of a sole proprietorship, the proprietor shall report this fact immediately to the Federal Banking Supervisory Office. Insofar as these persons are required under other legislation to file a petition for the initiation of insolvency proceedings in the event of insolvency or overindebtedness, the reporting requirement in accordance with sentence 1 takes the place of the requirement to file such a petition. Insolvency proceedings over an institution's assets are initiated in the event of insolvency or

overindebtedness. The petition for the initiation of insolvency proceedings over the institution's assets may be filed by the Federal Banking Supervisory Office only. The court order to initiate insolvency proceedings shall be specially communicated to the Federal Banking Supervisory Office.

(2) If insolvency proceedings are initiated in respect of an institution which is a participant in a system within the meaning of section 24b (1), the Federal Banking Supervisory Office shall immediately notify the agencies whose names have been communicated by the other states of the European Economic Area to the Commission of the European Communities. Sentence 1 applies as appropriate to system operators within the meaning of section 24b (4).

46c. Calculation of prescribed periods

The periods to be calculated, in accordance with sections 88 and 130 to 136 of the Insolvency Code and with section 32b sentence 1 of the Act Concerning Private Limited Companies (Gesetz betreffend die Gesellschaften mit beschränkter Haftung), from the date of filing the petition for the initiation of insolvency proceedings shall be calculated from the date on which a measure in accordance with section 46a (1) is ordered.

47. Moratorium, suspension of banking and stock market business

(1) If there is reason to fear that credit institutions may encounter financial difficulties which are likely to pose grave dangers to the national economy, and particularly to the proper functioning of the general payments system, the Federal Government may by regulation

1. grant a credit institution an extension of time to discharge its obligations, and order that judicial enforcements, seizures and temporary injunctions against the credit institution, as well as the initiation of insolvency proceedings over the credit institution's assets, are impermissible for the duration of the extension;

2. order that credit institutions be temporarily closed for business with customers and that they may neither make nor accept payments and credit transfers connected with such business; it may limit this order to certain types or categories of credit institutions and to particular types of banking business;

3. order that stock exchanges within the meaning of the German Stock Exchange Act (Börsengesetz) be temporarily closed.

(2) Before taking measures in accordance with subsection (1) the Federal Government shall consult the Deutsche Bundesbank.

(3) If the Federal Government takes measures in accordance with subsection (1), it shall specify by regulation the legal consequences of these measures for prescribed periods and deadlines in the fields of civil law, commercial law, company law, bill of exchange law, cheque law and procedural law.

48. Resumption of banking and stock market business

(1) For the period after a temporary closure of credit institutions and stock exchanges in accordance with section 47 (1) 2 and 3, the Federal Government, after having consulted the Deutsche Bundesbank, may issue by regulation provisions on the resumption of payments, credit transfers and stock market business. In particular, it may rule that the withdrawal of credit balances is subject to temporary

restrictions. Such restrictions may not be imposed in respect of sums of money accepted after a temporary closure of credit institutions.

(2) The regulations issued in accordance with subsection (1) and section 47 (1) cease to have effect three months after promulgation if they have not been revoked earlier. Division 5. Enforceability, sanctions, costs and charges

49. Immediate enforceability

Objections to and appeals against measures taken by the Federal Banking Supervisory Office on the basis of section 2b (1a) sentence 1 and (2) sentence 1, section 12a (2), section 13 (3), section 13a (3) to (5), in each case also read in conjunction with section 13b (4) sentence 2, of section 28 (1), section 35 (2) 2 to 4, sections 36, 37, and 44 (1), also read in conjunction with section 44b, and (2), of section 44a (2) sentence 1, sections 44c, 45 and 45a (1), sections 46 and 46a (1) and section 46b have no postponing effect.

50. Sanctions

(1) The Federal Banking Supervisory Office may impose sanctions in accordance with the provisions of the Administration Enforcement Act (Verwaltungsvollstreckungs-gesetz) to enforce compliance with the orders it issues by virtue of its statutory powers. It may likewise impose sanctions on institutions which are public-law legal persons.

(2) Such a sanctionary fine may be levied up to the amount of five hundred thousand Deutsche Mark in the cases of measures pursuant to section 2b (1a) sentence 1, (2) sentence 1, sections 37 and 44c, up to two hundred and fifty thousand Deutsche Mark in the case of measures pursuant to sections 46 and 46a and up to one hundred thousand Deutsche Mark in the case of other measures.

51. Costs and charges

(1) Institutions shall refund to the Federal Government ninety per cent of the costs incurred by the Federal Banking Supervisory Office that are not covered by charges or special refunds in accordance with subsection (3). The costs are apportioned among the individual institutions in accordance with the scale of their business, and are collected by the Federal Banking Supervisory Office as provided in the Administration Enforcement Act. Detailed provisions on such apportionment and collection are issued by regulation by the Federal Ministry of Finance; it may set minimum amounts in the regulation. It may transfer such authority by regulation to the Federal Banking Supervisory Office.

(2) For decisions pursuant to section 2 (4) or (5), section 10 (3b) sentence 1, section 31 (2), sections 32 and 34 (2) and sections 35 to 37, the Federal Banking Supervisory Office may levy charges of between five hundred Deutsche Mark and one hundred thousand Deutsche Mark. The sum charged should depend in each case on the amount of work required for the decision and the scale of business of the enterprise concerned.

(3) The costs incurred by the Federal Government as a result of appointing a liquidator under section 37 sentence 2 and section 38 (2) sentences 2 and 4, a supervisor under section 46 (1) sentence 2, as a result of an announcement under section 32 (4), section 37 sentence 3 or section 38 (3) or of an audit carried out under section 44 (1) or (2), section 44b sentence 2 or section 44c (2) shall be refunded separately by the enterprise concerned, and at the request of the Federal Banking Supervisory Office they shall be paid in advance. The costs incurred by the Federal Government as a result of checks pursuant to section 44

(3) of the accuracy of the data transmitted for the consolidation in accordance with section 10a (6) and (7), section 13b (3) and section 25 (2) shall be refunded separately by the parent institution required to effect the consolidation, and at the request of the Federal Banking Supervisory Office they shall be paid in advance.

Part IV Special Provisions

52. Special supervision

Insofar as institutions are subject to any other government supervision, this remains in effect alongside supervision by the Federal Banking Supervisory Office.

53. Branches of enterprises domiciled abroad

(1) If an enterprise domiciled abroad maintains a branch in Germany which conducts banking business or provides financial services, that branch is deemed to be a credit institution or a financial services institution. If the enterprise maintains several branches within the meaning of sentence 1, they are deemed to be a single institution.

(2) This Act applies to the institutions specified in subsection (1) subject to the following provisos:

1. The enterprise shall appoint at least two natural persons residing in Germany who are authorised to manage the enterprise's business and to represent it in respect of the institution's field of business insofar as the institution conducts banking business or provides financial services and, in the course of providing financial services, is authorised to obtain ownership or possession of funds or securities of customers. These persons are deemed to be managers. Their names shall be reported for entry in the Commercial Register.

2. The institution is required to keep separate books and render separate accounts to the Federal Banking Supervisory Office and the Deutsche Bundesbank in respect of the business it conducts and the assets of the enterprise used in its business. To this extent, the provisions of the Commercial Code on books of account apply as appropriate. On the liabilities side of the annual statement of assets and liabilities the amount of working capital supplied to the institution by the enterprise and the amount of operating profit retained by the institution to bolster its own resources shall be shown separately. The amount by which the liability items exceed the asset items or by which the asset items exceed the liability items shall be shown separately and in a single sum at the end of the statement of assets and liabilities.

3. The statement of assets and liabilities to be drawn up as at the end of each financial year in accordance with number 2, together with a statement of income and expenses and notes thereon, is deemed to constitute the annual accounts (section 26). Section 340k of the Commercial Code applies as appropriate to the auditing of the annual accounts, provided that the auditor is chosen and appointed by the managers. The annual accounts of the enterprise for the same financial year shall be submitted along with the annual accounts of the institution.

4. The sum total of the amounts shown in the monthly return in accordance with sec- tion 25 as working capital supplied to the institution by the enterprise and operating profit

retained by the institution to bolster its own resources, less the amount of a credit balance on inter-branch settlement account, if any, is deemed to constitute the institution's own funds. In addition, capital paid up against the issue of participation rights or on account of the incurrence of longer-term subordinated liabilities or short- term subordinated liabilities, and net profits (section 10 (2c) sentence 1 number 1) shall be counted as part of the institution's liable capital or tier 3 capital if the conditions stipulated in section 10 (5), (5a) or (7) relate in each case to the entire enterprise; section 10 (1), (2b) sentences 2 and 3, (2c) sentences 2 to 5, (3b), (6) and (9) applies as appropriate provided that the own funds in accordance with sentence 1 count as core capital. The amount of own funds is calculated on the basis of the most recent monthly return.

5. The commencement of business by any branch of the enterprise requires a licence. The licence may be refused if, inter alia, reciprocity on the basis of international agreements is not assured. The licence shall be revoked if and insofar as the enterprise's licence to conduct banking business or provide financial services has been revoked by the authority responsible for supervising the enterprise abroad.

6. For the purposes of section 36 (1) the institution is deemed to be a legal person. (2a) For the provisions of this Act relating to an institution which is a subsidiary of an enterprise domiciled abroad, the branch is deemed to be a wholly owned subsidiary of the institution's head office domiciled abroad.

(3) For legal proceedings relating to the business of a branch within the meaning of subsection (1), the place of jurisdiction of the branch, in accordance with section 21 of the Code of Civil Procedure, may not be contractually barred.

(4) Subsections (2) to (3) do not apply if barred by international agreements approved by Parliament in the form of a Federal Act.

53a. Representative offices of institutions domiciled abroad

An institution domiciled abroad may establish or continue a representative office in Germany if it is authorised to conduct banking business or provide financial services in its home state and if it has its head office there. The institution shall notify the Federal Banking Supervisory Office and the Deutsche Bundesbank immediately of its intention to establish a representative office, as well as the realisation of that intention. The Federal Banking Supervisory Office will confirm to the institution the receipt of such a notification. The representative office may commence its activities only after the institution has received the confirmation from the Federal Banking Supervisory Office. The institution shall report the relocation or closure of the representative office to the Federal Banking Supervisory Office and the Deutsche Bundesbank immediately.

53b. Enterprises domiciled in another state of the European Economic Area

(1) A deposit-taking credit institution or securities trading firm domiciled in another state of the European Economic Area may conduct banking business, except for investment fund business, or provide financial services in Germany, either through a branch or by providing cross-border services, without a licence from the Federal Banking Supervisory Office if the enterprise is licensed by the appropriate authorities of the home state, the business it conducts is covered by the licence and the enterprise is supervised by the appropriate authorities in accordance with the Directives issued by the European Communities. Section 53 does not apply in this case. This is without prejudice to section 14 of

the Industrial Code.

(2) The Federal Banking Supervisory Office shall notify an enterprise within the meaning of subsection (1) sentence 1 intending to establish a branch in Germany, within two months of receipt of the documents relating to the intended establishment of the branch transmitted by the appropriate authorities of the home state, of the reports to the Federal Banking Supervisory Office and the Deutsche Bundesbank prescribed for its operations, and shall specify the conditions applying pursuant to subsection (3) sentence 1, on grounds of general interest, to the performance of the operations planned by the branch. After receipt of the notification from the Federal Banking Supervisory Office and the notification from the Federal Supervisory Office for Securities Trading pursuant to section 36a (1) of the Securities Trading Act, but not later than after the expiry of the period specified in sentence 1, the branch can be established and commence operations.

(2a) The Federal Banking Supervisory Office shall notify an enterprise within the meaning of subsection (1) sentence 1 intending to engage in operations in Germany by providing cross-border services, within two months of receipt of the documents relating to the intended commencement of the cross-border services transmitted by the appropriate authorities of the home state, of the conditions, on grounds of general interest, under which it may conduct its intended operations in accordance with subsection (3) sentence 2. (3) Sections 3 and 6 (2), sections 11, 14, 22, 23, 23a and 24 (1) 6 to 9, sections 24b, 25 and 25a (1) 3, sections 37, 39 to 42 and 43 (2) and (3), section 44 (1) and (6), section 44a (1) and (2) and sections 44c and 46 to 50 apply as appropriate to branches within the meaning of subsection (1) sentence 1, provided that one or more branches of the same enterprise are deemed to be a single credit institution or financial services institution. Sections 3, 23a and 37, section 44 (1) and sections 44c, 49 and 50 apply as appropriate to the operations constituting cross-border services in accordance with subsection (1) sentence 1.

(4) If the Federal Banking Supervisory Office finds that an enterprise within the meaning of subsection (1) sentence 1 does not comply with its obligations pursuant to subsection (3), and in particular that its liquidity is inadequate, it requests the enterprise to remedy the deficiency within a specified period. If the enterprise fails to comply with this request, the Federal Banking Supervisory Office notifies the appropriate authorities of the home state. If the home state fails to take any measures, or if its measures prove to be insufficient or if the Federal Banking Supervisory Office has been informed in accordance with section 36a (2) of the Securities Trading Act, the Federal Banking Supervisory Office, after having informed the appropriate authorities of the home state, may take the necessary measures; if necessary, the Federal Banking Supervisory Office may prohibit the conduct of new business in Germany.

(5) In urgent cases the Federal Banking Supervisory Office may take the necessary measures before initiating the procedure provided for in subsection (4). It shall notify the Commission of the European Communities and the appropriate authorities of the home state thereof immediately. The Federal Banking Supervisory Office shall modify or revoke the measures if the Commission, after having consulted the appropriate authorities of the home state and the Federal Banking Supervisory Office, so rules.

(6) The appropriate authorities of the home state, after having notified the Federal Banking Supervisory Office beforehand, may check the particulars needed for the prudential supervision of the branch at the branch concerned, either themselves or through their agents.

(7) An enterprise domiciled in another state of the European Economic Area which conducts banking business within the meaning of section 1 (1) sentence 2 numbers 1 to 3, 5, 7 to 9, provides financial services within the meaning of section 1 (1a) sentence 2 number 7 or operates as a financial enterprise within the meaning of section 1 (3) may conduct these operations, in deviation from section 32, without

a licence from the Federal Banking Supervisory Office through a branch or by providing cross-border services in Germany if

1. the enterprise is a subsidiary of a deposit-taking credit institution or a joint subsidiary of several deposit-taking credit institutions,

2. its articles of association permit such operations,

3. the parent enterprise(s) is (are) licensed as a deposit-taking credit institution in that state in which the enterprise is domiciled,

4. the operations performed by the enterprise are likewise conducted in the home state,

5. the parent enterprise(s) hold(s) at least ninety per cent of the voting rights in the subsidiary,

6. the parent enterprise(s) has (have) submitted convincing evidence of the prudent management of the enterprise to the appropriate authorities of the enterprise's home state and, with the approval of these appropriate authorities of the home state, have jointly and severally guaranteed the obligations incurred by the subsidiary, if appropriate, and

7. the enterprise is included in the supervision of the parent enterprise on a consolidated basis.

Sentence 1 applies as appropriate to subsidiaries of enterprises specified in sentence 1 which satisfy the aforementioned conditions. Subsections (2) to (6) apply as appropriate.

53c. Enterprises domiciled in a non-EEA state

The Federal Ministry of Finance is authorised

1. to prescribe by regulation that the provisions of this Act concerning foreign enterprises domiciled in another state of the European Economic Area shall likewise be applied to enterprises domiciled in non-EEA states insofar as this is necessary in the context of the freedom of establishment or of service transactions or for the purpose of supervision on a consolidated basis by virtue of agreements of the European Communities with non-EEA states;

2. to order by regulation that the provisions of section 53b be applied in full or in part, with full or partial exemption from the provisions of section 53, to enterprises domiciled in non-EEA states if reciprocity is assured and if

(a) the enterprises are supervised in their country of domicile in the areas covered by the exemption in accordance with internationally accepted principles,

(b) branches of corresponding enterprises domiciled in Germany are afforded comparable exemptions in that state, and

(c) the appropriate authorities of the country of domicile are willing to

cooperate satisfactorily with the Federal Banking Supervisory Office, and if this is ensured by means of an international agreement.

53d. Reports to the Commission of the European Communities

The Federal Banking Supervisory Office reports to the Commission of the European Communities

1. the granting of a licence to a deposit-taking credit institution or a securities trading firm;

2. the granting of a licence in accordance with section 32 (1) to the subsidiary of an enterprise domiciled in a non-EEA state; the structure of the group shall be outlined in the report;

3. the acquisition of a participating interest in a deposit-taking credit institution or securities trading firm through which the deposit-taking credit institution or securities trading firm becomes a subsidiary of an enterprise domiciled in a non-EEA state;

4. the number and nature of the cases in which the establishment of a branch in another state of the European Economic Area has foundered because the Federal Banking Supervisory Office has failed to forward the information specified in section 24a (1) sentence 2 to the appropriate authorities of the host state;

5. the number and nature of the cases in which measures have been taken in accord- ance with section 53b (4) sentence 3 and (5) sentence 1;

6. the general difficulties which deposit-taking credit institutions or securities trading firms face in establishing branches, setting up subsidiaries, conducting banking business, providing financial services or in performing the activities specified in section 1 (3) sentence 1 numbers 2 to 8 in a non-EEA state;

7. the application for a licence submitted by the subsidiary of an enterprise domiciled in a non-EEA state;

8. the intention (reported in accordance with section 2b) to acquire a participating interest within the meaning of number 3.

The reports specified in sentence 1 numbers 7 and 8 shall be submitted only at the Com- mission's request.

Part V Provisions on penalties and fines

54. Prohibited business, operating without a licence

(1) Anyone who

1. conducts business which is prohibited under section 3, also read in conjunction with section 53b (3) sentence 1 or 2, or

2. conducts banking business or provides financial services without the licence required under section 32 (1) sentence 1,

will be punished by a term of imprisonment not exceeding three years or by a fine.

(2) If the culprit behaves in this way through negligence, the punishment is a term of im- prisonment not exceeding one year or a fine.

55. Violation of the duty to report insolvency or overindebtedness

(1) Anyone who, as a manager of an institution, or as the proprietor of an institution organised in the form of a sole proprietorship, fails to report insolvency or overindebtedness to the Federal Banking Supervisory Office, in violation of section 46b sentence 1, also read in conjunction with section 53b (3) sentence 1, will be punished by a term of imprisonment not exceeding three years or a fine.

(2) If the culprit behaves in this way through negligence, the punishment is a term of imprisonment not exceeding one year or a fine.

55a. Unauthorised use of data on loans of three million Deutsche Mark or more

(1) Anyone who uses data in violation of section 14 (2) sentence 5 will be punished by a term of imprisonment not exceeding two years or a fine.

(2) The violation will be investigated only upon application.

55b. Unauthorised public disclosure of data on loans of three million Deutsche Mark or more

(1) Anyone who publicly discloses data in violation of section 14 (2) sentence 5 will be punished by a term of imprisonment not exceeding one year or a fine.

(2) If the culprit commits the violation for monetary consideration or with the intention of enriching himself or a third party or in order to damage a third party, the punishment will be a term of imprisonment not exceeding two years or a fine.

(3) The violation will be investigated only upon application.

56. Provisions governing fines

(1) A breach of administrative regulations is committed by anyone who violates an enforceable order pursuant to section 36 (1) or (2) sentence 1.

(2) A breach of administrative regulations is committed by anyone who intentionally or recklessly

1. fails to submit a report, does not submit it correctly, does not submit it in full or does not submit it in time, in violation of section 2b (1) sentence 1, 5 or 6, in each case also read in conjunction with a regulation pursuant to section 24 (4) sentence 1,

2. fails to submit a document, does not submit it correctly, does not submit it in full or does not submit it in time, in violation of section 2b (1) sentence 3, also read in conjunction with a regulation pursuant to section 24 (4) sentence 1,

3. violates an enforceable prohibition or order pursuant to

(a) section 2b (1a) sentence 1 or (2) sentence 1, or

(b) section 12a (2) sentence 1,

4. fails to submit a report, does not submit it correctly, does not submit it in full or does not submit it in time, in violation of section 2b (1) sentence 10, (4) sentence 1 or 4, section 10 (8) sentence 1 or 3, section 12a (1) sentence 3, section 13 (1) sentence 1 (also read in conjunction with subsection (4)), (2) sentence 4 or 7, in each case also read in conjunction with section 13a (2), of section 13 (3) sentence 2 or 6, section 13a (1) sentence 1 (also read in conjunction with subsection (6)), (3) sentence 2 or 6, section 14 (1) sentence 1 or 2, in each case also read in conjunction with section 53b (3) sentence 1, section 15 (4) sentence 5, section 24 (1) numbers 6 to 9, in each case also read in conjunction with section 53b (3) sentence 1, section 24 (1a) sentence 1, section 24 (3) sentence 1 or (3a) sentence 1, section 24a (1) sentence 1, also read in conjunction with (3) sentence 1, or (4) sentence 1, in each case also read in conjunction with a regulation pursuant to section 24a (5), section 25a (2) sentence 3, section 28 (1) sentence 1 or section 53a sentence 2 or 5, in each case also read in conjunction with a regulation pursuant to section 24 (4) sentence 1,

5. fails to submit a set of interim accounts, an interim auditor's report, a monthly return, a set of annual accounts, a management report, an auditor's report, a set of group accounts or a group management report, or does not submit it correctly, does not submit it in full or does not submit it in time, in violation of section 10 (3) sentence 5 or 6, section 25 (1) sentence 1 or (2) sentence 1, in each case read in conjunction with a regulation pursuant to (3) sentence 1, in each case also read in conjunction with section 53b (3) sentence 1, or in violation of section 26 (1) sentence 1, 3 or 4 or (3),

6. incurs an exposure or fails to ensure that exposures do not exceed the specified limit, in violation of section 13 (3) sentence 1 or section 13a (3) sentence 1,

7. fails to ensure that large exposures do not exceed the specified limit, in violation of section 13 (3) sentence 5 or section 13a (3) sentence 5, or

8. commences activities, in violation of section 53a sentence 4.

(3) A breach of administrative regulations is committed by anyone who intentionally or negligently

1. fails to submit a report, does not submit it correctly, does not submit it in full or does not submit it in time, in violation of section 10 (5) sentence 7 or (5a) sentence 7, in each case also read in conjunction with a regulation pursuant to section 24 (4) sentence 1,

2. holds a qualified participating interest, in violation of section 12 (1) sentence 1 or 2,

3. fails to ensure that the group does not hold a qualified participating interest, in violation of section 12 (2) sentence 1 or 2,

4. grants a loan, in violation of section 18 sentence 1,

5. violates an enforceable order pursuant to section 23 (1), also read in conjunction with section 53b (3) sentence 1, or section 45 (1) sentence 1 or 2,

6. fails to draw attention to the fact in question, does not do so correctly, does not do so in full, does not do so in the prescribed manner or does not do so in time, in violation of section 23a (1) sentence 3, also read in conjunction with section 53b (3),

7. fails to inform a customer, the Federal Banking Supervisory Office or the Deutsche Bundesbank, does not do so correctly, does not do so in full, does not do so in the prescribed manner or does not do so in time, in violation of section 23a (2), also read in conjunction with section 53b (3),

8. violates an enforceable condition pursuant to section 32 (2) sentence 1,

9. fails to provide information, does not provide it correctly, does not provide it in full or does not provide it in time or fails to submit a document, does not submit it correctly, does not submit it in full or does not submit it in time, in violation of section 44 (1) sentence 1, also read in conjunction with section 44b (1) or section 53b (3) sentence 1, section 44 (2) sentence 1 or section 44c (1), also read in conjunction with section 53b (3) sentence 1,

10. fails to tolerate a measure, in violation of section 44 (1) sentence 4, also read in conjunction with section 44b (2) or section 53b (3), subsection (2) sentence 4, (4) sentence 3, (5) sentence 4 or section 44c (5) sentence 1, also read in conjunction with section 53b (3),

11. fails to take a specified measure or to take it in time, in violation of section 44 (5) sentence 1,

12. violates an enforceable order pursuant to section 46 (1) sentence 1 or section 46a (1) sentence 1, in each case also read in conjunction with section 53b (3) sentence 1, or

13. violates a regulation pursuant to section 47 (1) 2 or 3 or section 48 (1) sentence 1 insofar as, for a specified offence, it refers to this provision to impose a fine.

(4) A breach of administrative regulations may be punished by a fine not exceeding one million Deutsche Mark in the cases described in subsection (1), subsection (2) 3 (a), 6 and 7 and subsection (3) 12, a fine not exceeding three hundred thousand Deutsche Mark in the cases described in subsection (2) 1, 2 and 3 (b) and subsection (3) 4 to 10, and by a fine not exceeding one hundred thousand Deutsche Mark in the other cases described.

57. and 58. (Repealed)

59. Fines imposed on enterprises

Section 30 of the Act on Breaches of Administrative Regulations applies to institutions organised in the form of a legal person or partnership, or to enterprises within the meaning of section 53b (1) sentence 1, (7) sentence 1 operating through a branch or by providing cross-border services in Germany, even if a manager who is not appointed by law, the articles of association or partnership agreement to represent the enterprise has committed a criminal offence or a breach of administrative regulations.

60. Appropriate administrative authority

The administrative authority (Verwaltungsbehörde) for the purposes of section 36 (1) 1 of the Act on Breaches of Administrative Regulations is the Federal Banking Supervisory Office.

60a. Notifications in cases of criminal prosecution

(1) In criminal proceedings initiated against the proprietors or managers of institutions and against holders of qualified participating interests in institutions or their legal representatives or general partners on account of violating their professional duties or committing other criminal acts in carrying out or in connection with carrying out a trade or profession or with operating any other kind of business enterprise, as well as in criminal proceedings relating to criminal acts described in section 54 of this Act, the court, the criminal prosecution authority or the penal enforcement authority shall, if a public action is brought, transmit to the Federal Banking Supervisory Office

1. the indictment or the petition in lieu of an indictment,

2. the application for the issue of a summary penal order, and

3. the decision concluding the proceedings together with a substantiation of the decision;

if an appeal has been lodged against the decision, the decision shall be transmitted together with a reference to the fact that an appeal has been lodged. In the case of proceedings concerning criminal acts caused by negligence, the information to be transmitted under numbers 1 and 2 will be transmitted only if the transmitting authority believes that decisions or other measures need to be taken by the Federal Banking Supervisory Office immediately.

(2) If, in the course of criminal proceedings, facts become otherwise known which point to irregularities in an institution's business operations, and if the transmitting authority believes that these need to be made known to the Federal Banking Supervisory Office in order that it can take measures in accordance with this Act, the court, the criminal prosecution authority or the penal enforcement authority shall likewise transmit these facts, unless the transmitting authority is aware that protecting the interests of the party concerned should take precedence. Due consideration should be given in this context to the reliability of the findings to be transmitted.

Part VI Transitional and Final Provisions

61. Licence for existing credit institutions

If a credit institution was permitted to conduct banking business on the scale specified in section 1 (1) at the time this Act came into force, the licence required under section 32 is deemed to have been granted. The period specified in section 35 (1) begins with the entry into force of this Act.

62. Transitional provisions

(1) The legislation already existing in the field of banking and the orders issued by virtue of the existing legislation remain in force, except as otherwise provided by this Act. This is without prejudice to legislation prescribing requirements stricter than those embodied in this Act for the business activities of certain categories of credit institutions.

(2) Functions and powers assigned under Federal legislation to the banking supervisory authority devolve upon the Federal Banking Supervisory Office.

(3) This is without prejudice to the responsibilities of the Länder Governments for recognition as a relocated financial institution in accordance with the Thirty-fifth Regulation Implementing the

Conversion Act (Fünfunddreissigste Durchführungsverordnung zum Umstellungsgesetz) , for confirmation of the conversion account and the old bank account, and for functions and powers under the Securities Validation Acts (Wertpapierberei- nigungsgesetze) and the Act on the Validation of German External Bonds (Bereini- gungsgesetz für deutsche Auslandsbonds).

63. (Legislation rescinded and amended)

63a. Special provisions relating to the territory specified in Article 3 of the Unification Treaty (Einigungsvertrag)

(1) If a credit institution domiciled in the German Democratic Republic including Berlin (East) was allowed on July 1, 1990 to conduct banking business on the scale specified in section 1 (1), the licence pursuant to section 32 is deemed to have been granted.

(2) The Federal Banking Supervisory Office may exempt certain categories of credit institutions or individual credit institutions domiciled in the territory specified in Article 3 of the Unification Treaty from obligations under this Act if this appears to be advisable for special reasons, in particular because the law of the territory specified in Article 3 of the Unification Treaty has not yet been brought into line with the law of the Federal Republic of Germany.

64. Successor enterprises to Deutsche Bundespost

(1) From January 1, 1995 the licence pursuant to section 32 is deemed to have been granted to POSTBANK, a successor enterprise to Deutsche Bundespost. For the purpose of aggregation pursuant to section 19 (2) sentence 1, shares which are held in the successor enterprises to Deutsche Bundespost by the Bundesanstalt für Post und Telekommunikation Deutsche Bundespost will be disregarded until December 31, 2002.

64a. Limits on investments by existing credit institutions

If a credit institution or a group of credit institutions fails to comply on January 1, 1993 with the limits laid down in section 12 (1), the credit institution or group of credit institutions must comply with that provision within a period of ten years from that date. 64b. Capital of existing credit institutions

(1) Deposit-taking credit institutions which are licensed in accordance with section 32 on January 1, 1993, may have at their disposal an initial capital, in deviation from section 33 (1) sentence 1 number 1 (d), which is lower than the equivalent of five million ECU. In this case the initial capital may not fall below the level available on December 31, 1990. In the case of deposit-taking credit institutions licensed after December 31, 1990, the initial capital may not fall below the level available at the time the licence was granted.

(2) If the preconditions of subsection (1) are met, section 35 (2) 3, read in conjunction with section 33 (1) sentence 1 number 1 (d), on the revocation of the licence does not apply.

(3) If control over a credit institution which has taken advantage of the preferential treatment specified in subsection (1) changes, section 33 (1) sentence 1 number 1 (d) on the amount of the capital applies to that credit institution.

(4) In the case of a merger between two or more credit institutions which have taken advantage of the preferential treatment specified in subsection (1), the initial capital of the credit institution resulting from

the merger may be below the equivalent of five million ECU, subject to the approval of the Federal Banking Supervisory Office, if the discharge of the credit institution's obligations to its creditors is not endangered. However, in this case the initial capital of the merged credit institution must at least equal the total amount of the initial capital of the merging credit institutions available at the time of the merger.

(5) The Federal Banking Supervisory Office may grant the credit institution a period within which it must comply with the capital requirements specified in subsection (1) sentence 2 or 3 or (4) sentence 2, or discontinue its activities. If a credit institution lastingly fails to satisfy these capital requirements, section 35 (2) 3 on the revocation of the licence applies as appropriate.

64c. Transitional arrangement for asset-side balances

If the book value of a participating interest which has been acquired by December 31, 1993 is higher than that part of the subordinated enterprise's capital and reserves which is to be consolidated in accordance with section 10a (6), the institution, in deviation from section 10a, need not include the difference, arising on first-time consolidation, in the de- duction pursuant to section 10a (6) sentence 3 for a period not exceeding ten years, at an amount decreasing by at least one-tenth each year, but may treat it like a participating interest in an enterprise not belonging to the group.

64d. Transitional arrangement for large exposures

Until December 31, 1998 the reporting threshold for large exposures as specified in section 13 (1) sentence 1 and for the large exposure limit for overall business as specified in section 13a (1) sentence 3 shall be fifteen per cent instead of ten per cent, and the individual large exposure limit as specified in section 13 (3) sentence 1 or 3, the individual large exposure limit from banking book business as specified in section 13a (3) sentence 1 or 3 and the individual large exposure limit from overall business as specified in section 13a (4) sentence 1 or 3 and 4 shall be forty per cent instead of twenty-five per cent or thirty per cent instead of twenty per cent, respectively. The exposures shall be reduced to the individual large exposure limits specified in section 13 (3) sentence 1 or 3 and section 13a (4) sentence 1 or 3 by December 31, 2001. Sentence 2 does not apply to exposures which were incurred before January 1, 1996 and which, by virtue of the contractual conditions, do not fall due until after December 31, 2001. In the case of institutions whose liable capital did not exceed seven million ECU on February 5, 1993, the periods specified in sentences 1 and 2 are extended by five years in each case; sentence 3 applies as appropriate. Sentence 4 does not apply if such an institution was or will be merged with another institution after February 5, 1993 and if the liable capital of the merged credit institutions exceeds seven million ECU.

64e. Transitional provisions for the Sixth Act Amending the Banking Act

(1) For a credit institution which on January 1, 1998 holds a licence to conduct business as a deposit-taking credit institution, the licence to conduct principal broking services, underwriting business, prepaid card business and network money business and to provide financial services shall be deemed to have been granted as of this date.

(2) Financial services institutions and securities trading banks which were legitimately operating on January 1, 1998 without a licence from the Federal Banking Supervisory Office shall report their activities which require a licence under this Act and their intention to continue such activities to the Federal Banking Supervisory Office and the Deutsche Bundesbank by April 1, 1998. If the report is submitted by this date, the licence pursuant to section 32 shall be deemed to have been granted for the

scope specified. The Federal Banking Supervisory Office confirms the activities licensed within three months of receipt of the report. Within three months of receipt of the confirmation from the Federal Banking Supervisory Office the institution shall submit a supplementary report to the Federal Banking Supervisory Office and the Deutsche Bundesbank which satisfies the contents of the requirements under section 32. If the supplementary report is not submitted in time, the Federal Banking Supervisory Office may revoke the licence granted in accordance with sentence 2; this is without prejudice to section 35. The Federal Banking Supervisory Office forwards one copy each of the report in accordance with sentence 1, the confirmation in accordance with sentence 3, the supplementary report in accordance with sentence 4 and the notice of revocation of the licence in accordance with sentence 5 to the Federal Supervisory Office for Securities Trading.

(3) Section 35 (2) 3, read in conjunction with section 33 (1) sentence 1 number 1 (a) to (c) and section 24 (1) 10 on the initial capital are to be applied only as from January 1, 2003 to institutions for which a licence is deemed to have been granted pursuant to subsection (2). As long as the initial capital of the institutions described in sentence 1 is smaller than the amount required under section 33 (1) sentence 1 number 1, it may not fall below the average level over the preceding six months; the average level is to be calculated every six months and reported to the Federal Banking Supervisory Office. If the average level in accordance with sentence 2 is not achieved, the Federal Banking Supervisory Office may revoke the licence. Section 10 (1) to (8) and sections 10a, 11 and 13 to 13b are to be applied to institutions described in sentence 1 only as from January 1, 1999, unless they establish a branch or provide cross-border services in other states of the European Economic Area pursuant to section 24a. Securities trading firms for which a licence is deemed to have been granted pursuant to subsection (2) and which do not apply section 10 (1) to (8) and sections 10a, 11 and 13 to 13b shall inform their customers that they may not establish a branch or provide cross-border services in other states of the European Area pursuant to section 24a. Institutions for which a licence is deemed to have been granted pursuant to subsection (2) shall notify the Federal Banking Supervisory Office and the Deutsche Bundesbank as to whether they apply section 10 (1) to (8) and sections 10a, 11 and 13 to 13b.

(4) Credit institutions which on January 1, 1998 hold a licence pursuant to section 32 are required to apply sections 10, 10a and 13 to 13b only as from October 1, 1998. Up to this date credit institutions which do not apply sections 10, 10a and 13 to 13b shall apply the provisions of sections 10, 10a, 13 and 13a in the version announced on January 22, 1996 (Federal Law Gazette I page 64). Insofar as the credit institutions described in sentence 1 apply sections 10, 10a and 13 to 13b, they shall report this fact to the Federal Banking Supervisory Office and the Deutsche Bundesbank immediately.

(5) Proven, unencumbered personal assets of the proprietor or of the general partners of a credit institution which on January 1, 1998 holds a licence pursuant to section 32 may, upon application, be counted as part of the liable capital, to an extent to be determined by the Federal Banking Supervisory Office.

Entry into force

Pursuant to Article 4 of the Act implementing EC guidelines on the harmonisation of prudential regulations applying to banks and securities trading firms (Gesetz zur Umsetzung von EG-Richtlinien zur Harmonisierung bank- und wertpapieraufsichtsrechtlicher Vorschriften), section 10a (6) sentences 14 and 15, sections 12, 16, 18, 22, 24, 25 (3) and 29 (4) of this Act entered into force on October 29, 1997. The other provisions of this Act, except for section 60a, entered into force on January 1, 1998. Section 60a entered into force on June 1, 1998.

Pursuant to section 64e (4) sentence 1 of this Act, credit institutions which on January 1, 1998 held a licence pursuant to section 32 werre required to apply sections 10, 10a and 13 to 13b of this Act only as

from October 1, 1998.

In addition, attention is drawn to the transitional arrangements under section 64d and to further transitional provisions under section 64e

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