BaFin

Bundesanstalt für Finanzdienstleistungsaufsicht

Securities Trading Act (WpHG)

09 September 1998 (Federal Law Gazette I, p. 2708)

last change by: Article 1 of the Act of 5 January 2007 (Federal Law Gazette I, p. 10)

- Part 1 Scope of application, definitions
  - Section 1 Scope of application
  - Section 2 Definitions
  - Section 2a Exceptions
  - Section 2b Choice of home country
- Part 2 Federal Financial Supervisory Authority (Bundesanstalt für Finanzdienstleistungsaufsicht)
  - Section 3
  - Section 4 Functions and powers
  - Section 5 Securities Council
  - Section 6 Cooperation with other domestic authorities
  - Section 7 Cooperation with competent authorities in other countries
  - Section 8 Obligation to observe secrecy
  - Section 9 Reporting requirements
  - Section 10 Reporting of suspicious transactions
  - Section 11 Duty of the insolvency administrator
- Part 3 Insider surveillance
  - Section 12 Insider securities
  - Section 13 Inside information
  - Section 14 Prohibition of insider dealing
  - Section 15 Notification, publication and transmission of inside information to the company register
  - Section 15a Notification of transactions, publication and transmission to the company register
  - Section 15b Maintenance of insider lists
  - Section 16 Record-keeping obligations
  - Section 16a Monitoring of the transactions effected by the persons employed by the Supervisory Authority
  - Section 16b Retention of call data
  - Section 17
  - Section 18
  - Section 19
  - Section 20

- Part 4 Monitoring of compliance with the prohibition of stock exchange and market price manipulation
  - Section 20a Prohibition of market manipulation
  - Section 20b
- Part 5 Notification, publication and transmission of changes in the percentage of voting rights to the company register
  - Section 21 Notification requirements applicable to the notifying party
  - Section 22 Attribution of voting rights
  - Section 23 Non-consideration of voting rights
  - Section 24 Notification by group companies
  - Section 25 Notification requirements relating to holdings in financial instruments
  - Section 26 Publication obligations of the issuer and transmission to the company register
  - Section 26a Publication of the total number of voting rights and transmission to the company register
  - Section 27 Proof of reported holdings
  - Section 28 Loss of rights
  - Section 29 Guidelines of the Supervisory Authority
  - Section 29a Exemptions
  - Section 30 Trading days
- Part 5a Information necessary for exercising rights attached to securities
  - Section 30a Issuers' obligations vis-à-vis security holders
  - Section 30b Publication of notifications and transmission by way of remote data transfer
  - Section 30c Amendments to the issuer's legal basis
  - Section 30d Provisions relating to issuers from the European Union and the European Economic Area
  - Section 30e Publication of additional information and transmission to the company register
  - Section 30f Exemption
  - Section 30g Exclusion of appeal
- Part 6 Rules of conduct for investment services enterprises and regarding financial analyses and limitation of compensation claim rights
  - Section 31 General rules of conduct
  - Section 32 Special rules of conduct
  - Section 33 Organisational obligations
  - Section 34 Requirements for record keeping and retention
  - Section 34a Segregation of assets
  - Section 34b Analysis of financial instruments
  - Section 34c Notification obligation
  - Section 35 Monitoring of compliance with the reporting requirements and the rules of conduct
  - Section 36 Examination of reporting requirements and rules of conduct
  - Section 36a Enterprises domiciled in another member state of the European Union or another signatory to the Agreement on the European Economic Area
  - Section 36b Advertising by investment services enterprises
  - Section 36c Cooperation with competent authorities in other countries
  - Section 37 Exceptions

- Section 37a Limitation of damage claims
- Part 7 Liability for incorrect or omitted capital market information
  - Section 37b Liability for damages due to failure to publish inside information without undue delay
  - Section 37c Liability for damages based on the publication of false inside information
- Part 8 Financial futures transactions
  - Section 37d Information on financial futures transactions
  - Section 37e Exclusion of the objection pursuant to section 762 of the Civil Code
  - Section 37f Monitoring of compliance with the duty to provide information
  - Section 37g Prohibited financial futures transactions
- Part 9 Arbitration agreements
  - Section 37h Arbitration agreements
- Part 10 Foreign organised markets
  - Section 37i Authorisation
  - Section 37j Refusal of the authorisation
  - Section 37k Revocation of the authorisation
  - Section 37l Prohibition
  - Section 37m Notification
- Part 11 Monitoring of company financial statements, publication of financial reports, Sub-part 1 Monitoring of company financial statements
  - Section 37n Auditing of company financial statements and reports
  - Section 37o Ordering of an accounting audit and the investigatory powers of the Supervisory Authority
  - Section 37p The Supervisory Authority's powers in the case of recognition of an enforcement panel
  - Section 37q Results of the audit by the Supervisory Authority or the enforcement panel
  - Section 37r Notifications to other authorities
  - Section 37s International cooperation
  - Section 37t Objection procedure
  - Section 37u Complaints
- Part 11 Monitoring of company financial statements, publication of financial reports, Sub-part 2 Publication and transmission of financial reports to the company register
  - Section 37v Annual financial report
  - Section 37w Half-yearly financial report
  - Section 37x Interim management statement
  - Section 37y Consolidated financial statements
  - Section 37z Exemptions
- Part 12 Provisions concerning criminal penalties and administrative fines
  - Section 38 Provisions concerning criminal penalties
  - Section 39 Provisions concerning administrative fines
  - Section 40 Competent administrative authority
  - Section 40a Involvement of the Supervisory Authority and information in criminal cases
- Part 13 Transitional provisions
  - Section 41Transitional provisions concerning notification and publication requirements

- Section 42 Transitional provisions concerning the obligation to reimburse costs pursuant to section 11
- Section 43 Transitional provisions concerning the limitation of damage claims pursuant to section 37a
- Section 44 Transitional provisions concerning foreign organised markets
- Section 45 Application of part 11
- Section 46 Application of the Transparency Directive Implementation Act

- BaFin – Translation -
The present English text is furnished for information purposes only.
The original German text is binding in all respects.

- unofficial text -

Part 1
Scope of application, definitions

back to top

Section 1
Scope of application

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

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

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

back to top

Section 2
Definitions

(1) Securities within the meaning of this Act, whether or not represented by a certificate, are

1. shares,
2. investment securities which are comparable to shares and certificates representing shares, and
3. debt securities, in particular bearer bonds and order bonds including profit-participation certificates, warrants and certificates representing debt securities,

if they can be traded on a market. Investment fund units issued by a German investment company or a foreign investment company are also deemed to be securities.

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

(2) Derivatives within the meaning of this Act are forward transactions in the form of futures 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. interest rates or other returns;
4. the stock exchange or market price of commodities or precious metals or
5. currency prices.

(2a) Financial futures transactions within the meaning of this Act are derivatives within the meaning of subsection (2) and warrants.

(2b) Financial instruments within the meaning of this Act are securities within the meaning of subsection (1), money market instruments within the meaning of subsection (1a), derivatives within the meaning of subsection (2) and securities subscription rights. Additionally, other instruments admitted to trading on an organised market within the meaning of subsection (5) in Germany or another member state of the European Union, or for which such admission has been requested, are also deemed financial instruments.

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

1. the purchase and sale of financial instruments in one's own name for the account of others;
2. the purchase and sale of financial instruments on an own-account basis for others;
3. the purchase and sale of financial instruments in the name of a third party for the account of others;
4. the brokering or documentation of transactions involving the purchase and sale of financial instruments;
5. the underwriting of financial instruments at one's own risk for placement in the market or the assumption of equivalent guarantees or
6. the management of individual assets invested in financial instruments for others on a discretionary basis.

(3a) Non-core investment services within the meaning of this Act are

1. the safekeeping and management of securities on behalf of third parties, provided the German Safe Custody Act (Depotgesetz) does not apply;
2. the granting of credit or loans to others for the carrying out of investment services by the credit or loan granting enterprise;
3. the provision of advice with respect to investments in financial instruments or
4. the activities referred to in subsection (3) nos. 1 to 4, to the extent that they are concerned with foreign exchange transactions and are related to investment services.

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

(5) An organised market within the meaning of this Act is a market which is regulated and supervised by state-approved bodies, is held on a regular basis and is directly or indirectly accessible to the public.

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

1. issuers of debt securities the denomination per unit of which is less than 1,000 euros or the value of such denomination per unit in another currency as at the date of issue, or of shares,
    a. who are domiciled in Germany and whose securities are admitted to trading on an organised market in Germany or in another member state of the European Union or another signatory to the Agreement on the European Economic Area; or

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

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

   a. if they are domiciled in Germany and their financial instruments are admitted to trading on an organised market also, or exclusively, in one or several other member states of the European Union or in one or several other signatories to the Agreement on the European Economic Area; or
   b. if they are domiciled in antoher member state of the European Union or in another signatory to the Agreement on the European Economic Area and their financial instruments are admitted to trading on an organised market also, or exclusively, in Germany; or
   c. if they are domiciled in a third country and their financial instruments are admitted to trading on an organised market in Germany and in one or several other member states of the European Union or one or several other signatories to the Agreement on the European Economic Area, and if they have chosen the Federal Republic of Germany as their home country pursuant to section 2b. The Federal Republic of Germany shall be deemed the home country for issuers who fall within the scope of (a) but have not made a choice; the same applies to issuers who fall within the scope of (c) but have not chosen a home country, if the annual document within the meaning of section 10 of the Securities Prospectus Act (Wertpapierprospektgesetz) is to be filed with the Supervisory Authority.

(7) Domestic issuers are.

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

back to top

Section 2a
Exceptions

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

1. enterprises which provide investment services solely for their parent enterprise or their subsidiaries or sister enterprises within the meaning of section 1 (6) and (7) of the Banking Act;
2. enterprises which provide investment services that only involve the administration of an employee participation scheme of their own or of affiliated enterprises;

3. enterprises which provide investment services only within the meaning of both nos. 1 and 2;
4. insurance undertakings under public or private law;
5. the public debt management of the Federal Government or one of its special funds, of a Federal State, of another member state of the European Union or another signatory to the Agreement on the European Economic Area, the Deutsche Bundesbank or the central banks of the other member states or signatories;
6. members of independent professions who provide investment services only occasionally in the course of their professional activities and who are members of a professional organisation in the form of a corporate body under public law the professional rules and regulations of which do not exclude the provision of investment services;
7. enterprises which provide investment services consisting only in forwarding purchase or sell orders for units of investment funds issued by an investment company, or foreign investment units which may be sold publicly pursuant to the German Investment Act (Investmentgesetz) to
    a. a credit institution or financial services institution,
    b. an enterprise operating pursuant to section 53b (1) sentence 1 or (7) of the Banking Act,
    c. an enterprise which by virtue of an Ordinance pursuant to section 53c of the Banking Act is subjected to or exempted from the provisions of that Act or
    d. a foreign investment company, to the extent that it is not authorised to obtain ownership or possession of monies or shares from customers in the course of providing these investment services; units of investment funds with additional risks pursuant to section 112 of the Investment Act are not deemed units of investment funds within the meaning of this provision;
8. enterprises which provide investment services solely on an organised market where only derivatives are traded on behalf of other market participants and whose liabilities are covered by a system ensuring the settlement of the transactions effected on the market and
9. enterprises whose main business consists in effecting transactions in commodities with enterprises of the same kind or with the producers or professional users of such commodities and which provide investment services only to such counterparties and only insofar as this is necessary for their main business.

(2) If an enterprise provides investment services within the meaning of section 2 (3) nos. 3 and 4 solely for the account and under the liability of a credit institution or financial services institution or of an enterprise operating under section 53b (1) sentence 1 or subsection (7) of the Banking Act, or under the joint and several liability of such institutions or enterprises without providing any other investment services, it is not deemed to be an investment services enterprise. Its business activities are attributed to the institutions or enterprises for the account and under the liability of which it provides its services.

back to top

Section 2b
Choice of home country

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

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

back to top

Part 2
Federal Financial Supervisory Authority (Bundesanstalt für Finanzdienstleistungsaufsicht)

back to top

Section 3

(Repealed)

back to top

Section 4
Functions and powers

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

(2) The Supervisory Authority monitors compliance with the prohibitions and requirements of this Act, and may issue orders appropriate and necessary for its enforcement. It may temporarily suspend trading with individual or several financial instruments or order trading with individual or several financial instruments suspended in markets on which financial instruments are traded, to the extent that this is necessary for the enforcement of the prohibitions pursuant to section 14 or section 20a or for the elimination or prevention of undesirable developments in accordance with subsection (1).

(3) The Supervisory Authority may require the provision of information, submission of documentation and surrender of copies from anyone, as well as summon and question persons, to the extent that these measures are necessary based on evidence for monitoring compliance with the prohibitions and requirements of this Act. In particular, it may require details concerning changes in holdings of financial instruments as well as information about the identities of other persons, especially the principal and the persons acquiring rights or incurring liabilities from transactions. Statutory rights to provide or refuse to provide information as well as statutory obligations to confidentiality remain unaffected.

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

(5) The Supervisory Authority must without undue delay report facts giving rise to suspicion of a criminal offence pursuant to section 38 to the competent public prosecutor's office. It may communicate to the public prosecutor's office the personal data of any persons suspected of the offence or persons who may be required to act as witnesses, to the extent that this is necessary for criminal prosecution. The public prosecutor's office shall decide on the necessary investigatory measures to be pursued, especially with regard to searches, in accordance with the provisions of the German Code of Criminal Procedure (Strafprozessordnung). The powers of the Supervisory Authority pursuant to subsections (2) to (4) shall remain unaffected, to the extent that this is necessary for the implementation of administrative measures or the fulfilment of requests by foreign agencies in accordance with section 7 (2) or section 7 (7)

and if this does not present a threat to the purpose of investigations by prosecuting authorities or the courts responsible for criminal cases.

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

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

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

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

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

back to top

Section 5
Securities Council

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

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

1. on issuing Ordinances and establishing guidelines for the supervisory activity of the Supervisory Authority;
2. concerning the effects of supervisory issues on stock exchange and market structures and on competition in trading with financial instruments and
3. on the demarcation of responsibilities between the Supervisory Authority and the stock exchange supervisory authorities as well as on issues of cooperation.

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

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

back to top

Section 6
Cooperation with other domestic authorities

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

(2) The Supervisory Authority, the Deutsche Bundesbank (in the course of its activities pursuant to the Banking Act), the Bundeskartellamt (Federal Cartels Office) and the stock exchange supervisory authorities shall communicate to each other any observations and findings, including personal data, which may be necessary for the performance of their functions.

(3) For the performance of its functions, the Supervisory Authority may, in an automated procedure, retrieve data stored with the Deutsche Bundesbank pursuant to sections 2 (10), 2c, 24 (1) nos. 1, 2, 5, 7 and 10 and subsection (3), section 25a (2), section 32 (1) sentences 1 and 2 nos. 2, 6 (a) and (b) of the Banking Act. For purposes of monitoring data protection compliance, the Deutsche Bundesbank shall log the time, the details which enable the retrieved data records to be identified, and the person responsible for the retrieval. The recorded data may only be used for the purpose of data protection compliance, data security or for ensuring the proper functioning of the data processing equipment. The records shall be deleted at the end of the calendar year following the year in which they were stored.

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

back to top

Section 7
Cooperation with competent authorities in other countries

(1) The Supervisory Authority is responsible for cooperation with the authorities competent for the supervision of financial instruments and of markets on which financial instruments are traded in other member states of the European Union and the other signatories of the Agreement on the European Economic Area. Within the framework of its cooperation, for purposes of monitoring compliance with the prohibitions and requirements of this Act and equivalent prohibitions and requirements of these countries, the Supervisory Authority makes use of all powers available to it by law, to the extent that this is suitable and necessary to honour the requests of the authorities named in sentence 1. This shall be without prejudice to the provisions of the German Stock Exchange Act (Börsengesetz) and the German Prospectus Act (Verkaufsprospekt-Gesetz) relating to cooperation between the stock exchange admission boards and similar bodies in other countries.

(2) Upon request by the competent authorities named in subsection (1) sentence 1, the Supervisory Authority conducts investigations and transmits all information without undue delay, to the extent that this is necessary for the supervision of organised markets or other markets for financial instruments, of credit institutions, financial services institutions, investment companies, financial enterprises or insurance undertakings or administrative or judicial proceedings related thereto. When transmitting information, the Supervisory Authority is obliged to instruct the recipient that, without prejudice to his prosecutorial obligations, the transmitted information, including personal data, is to be used only to fulfil supervisory duties in accordance with sentence 1 and in the context of administrative and judicial proceedings relating thereto. The Supervisory Authority may allow representatives of foreign authorities within the meaning of subsection (1) sentence 1 to participate in its investigations.

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

1. this might adversely affect the sovereignty, security or public order of the Federal Republic of Germany or
2. judicial proceedings have already been initiated in respect of the same facts against the persons in question or if a final judgement has been passed.

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

(4) The Supervisory Authority requests the competent authorities named in subsection (1) to conduct investigations and transmit information suitable and necessary to perform its functions in accordance with the provisions of this Act. It may request that representatives of the Supervisory Authority be permitted to take part in investigations conducted by the foreign authorities. Without prejudice to its obligations in prosecutorial matters concerned with contraventions of prohibitions pursuant to the provisions of this Act, the Supervisory Authority may disclose or utilise the information received from an agency of a foreign country only to perform its supervisory functions in accordance with subsection (2) sentence 1 and in the context of administrative or judicial proceedings relating thereto. The Supervisory Authority may communicate the information to the stock exchange supervisory authorities and the trading surveillance units of the stock exchanges in compliance with the purpose specified. Any other use of the information is only permitted with the consent of the communicating authority. In the event that a request by the Supervisory Authority is not honoured within an appropriate period of time, or if the request is refused without adequate grounds, the Supervisory Authority may notify the Committee of European Securities Regulators of this fact.

(5) If the Supervisory Authority has sufficient evidence of a contravention of prohibitions or requirements of this Act or equivalent regulations of a foreign country mentioned in subsection (1) sentence 1, it shall notify the competent authorities of the country pursuant to subsection (1) sentence 1 on whose territory the unlawful action is being or was performed or on whose territory the financial instruments in question are traded on an organised market, or which is responsible for prosecuting such contravention under European Union law. If the Supervisory Authority receives such notification from competent foreign authorities, it shall inform these concerning the results of investigations commenced in response thereto.

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

(7) The Supervisory Authority may work in cooperation with the competent authorities of countries other than those mentioned in subsection (1) in accordance with subsections (1) to (6). Information transmitted by these authorities may only be utilised for the performance of supervisory functions pursuant to subsection (2) sentence 1 and in the context of administrative and judicial proceedings relating thereto, in compliance with any purpose specified by the foreign agency. Section 4b of the German Federal Data Protection Act (Bundesdatenschutzgesetz) shall apply to the communication of personal data.

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

back to top

Section 8
Obligation to observe secrecy

(1) Persons employed with the Supervisory Authority and persons commissioned in accordance with section 4 (3) of the Act Establishing the Federal Financial Supervisory Authority (Finanzdienstleistungsaufsichtsgesetz - FinDAG) may not without authorisation disclose or utilise facts which have come to their knowledge in the course of their activities, the secrecy of which is in the interests of an entity subject to this Act or a third party, especially business and trade secrets as well as personal data, even if the above persons have ceased employment or their activities have ended. The same shall

apply with respect to other persons who may obtain knowledge of the information referred to in sentence 1 through official reporting. Disclosure or utilisation shall specifically not be deemed made without authorisation as defined in sentence 1 of this subsection, if facts are communicated to

1. public prosecutors' offices or courts having jurisdiction in criminal cases and administrative offence cases or
2. bodies, and persons commissioned by such bodies entrusted by law or by order of public authorities with the supervision of stock exchanges or other markets on which financial instruments are traded, of trading in financial instruments or currencies, of credit institutions, financial services institutions, investment companies, financial enterprises or insurance undertakings,

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

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

back to top

Section 9
Reporting requirements

(1) Credit institutions, financial services institutions authorised to conduct trading for own account, enterprises domiciled in a country which is neither a member state of the European Union nor a signatory to the Agreement on the European Economic Area operating under section 53 (1) sentence 1 of the Banking Act and enterprises domiciled within Germany and admitted to trading on a German stock exchange shall be required to report to the Supervisory Authority not later than the next working day (excluding Saturdays) after conclusion of the transaction, in accordance with subsection (2), any transaction in securities or derivatives which are admitted to trading on an organised market in a member state of the European Union or another signatory to the Agreement on the European Economic Area or are traded on the regulated market (Geregelter Markt) or the regulated unofficial market (Freiverkehr) of a German stock exchange, if the transaction is concluded in connection with an investment service or for own account. The requirement pursuant to sentence 1 shall also apply to the purchase or sale of securities subscription rights, if these securities are to be traded on an organised market, and to transactions in shares and warrants in respect of which an application for admission to trading on an organised market or for admission to trading on the regulated market (Geregelter Markt) or the regulated unofficial market (Freiverkehr) has been made or publicly announced. The requirements pursuant to sentences 1 and 2 shall also apply to domestic entities which operate a system ensuring the settlement of transactions effected on an organised market, for transactions concluded by them. The requirements pursuant to sentences 1 and 2 shall also apply to undertakings domiciled abroad and authorised to trade on a German stock exchange, in respect of transactions concluded by them on a German stock exchange or on the regulated unofficial market (Freiverkehr) in connection with an investment service or for own account.

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

(2) The report must be made on media which can be processed by automated means or by way of remote electronic data transmission. It must include the following information on each transaction:

1. a description of the security or derivative and securities identification number (WKN);
2. the date and time of the transaction or the relevant price determination;
3. the price, quantity and face value of the securities or derivatives;
4. the institutions and enterprises within the meaning of subsection (1) which were involved in the transaction;
5. the stock exchange or the stock exchange's electronic trading system, if the transaction is concluded on a stock exchange;
6. an identifier for the transaction;
7. an identifier for the securities account holder or the securities account, unless the securities account holder is itself obliged to submit a report in accordance with subsection (1) and
8. an identifier for the principal, unless identical with the securities account holder.[1]

Transactions for own account shall be marked individually.

(3) The Federal Ministry of Finance may, by means of an Ordinance not requiring the consent of the Bundesrat,

1. issue more detailed provisions on the content, nature, scope and form of the report and on permitted data media and means of transmission;
2. prescribe additional information as necessary for performance of the supervisory functions of the Supervisory Authority;
3. permit reports by those subject to these requirements to be made at their own expense by the stock exchange or by a suitable third party, and set forth the relevant details;
4. for transactions relating to bonds or certain types of derivatives, permit the information specified in subsection (2) to be omitted or reported in summary form;
5. exempt institutions and enterprises within the meaning of subsection (1) from the reporting requirement pursuant to subsection (1) in the case of transactions concluded on an organised market in another member state of the European Union or another signatory to the Agreement on the European Economic Area, provided that there are equivalent reporting requirements in that country and
6. in the case of savings banks or credit cooperatives conducting transactions through a central giro institution, a cooperative central bank or a central credit institution, permit the report required pursuant to subsection (1) to be made by the central giro institution, cooperative central bank or central credit institution, if and to the extent that this does not detract from the intended purpose of the reporting requirement.

(4) The Federal Ministry of Finance may, by means of an Ordinance, delegate the authority pursuant to subsection (3) to the Supervisory Authority.

back to top

Section 10
Reporting of suspicious transactions

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

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

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

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

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

back to top

Section 11
Duty of the insolvency administrator

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

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

back to top

Part 3
Insider surveillance

back to top

Section 12
Insider securities

Insider securities are financial instruments

1. admitted to trading on a German stock exchange or included on the regulated market (Geregelter Markt) or the regulated unofficial market (Freiverkehr);
2. admitted to trading on an organised market in another member state of the European Union or signatory to the Agreement on the European Economic Area and
3. the prices of which depend directly or indirectly on financial instruments within the meaning of nos. 1 or 2.

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

back to top

Section 13

Inside information

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

1. is related to orders by third parties for the purchase or sale of financial instruments or
2. is related to derivatives within the meaning of section 2 (2) no. 4 and which market participants would expect to receive in accordance with the accepted practice of the markets in question.

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

back to top

Section 14
Prohibition of insider dealing

(1) It is prohibited

1. to make use of inside information to acquire or dispose of insider securities for own account or for the account or on behalf of a third party;
2. to disclose or make available inside information to a third party without the authority to do so or
3. to recommend, on the basis of inside information, that a third party acquire or dispose of insider securities, or to otherwise induce a third party to do so.

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

back to top

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

(1) A domestic issuer of financial instruments must, without undue delay, publish all inside information which directly concerns that issuer; furthermore, the domestic issuer must transmit such inside information without undue delay, however not before its publication, to the company register within the meaning of section 8b of the Commercial Code (Handelsgesetzbuch) in order to be stored there. In accordance with this provision, an issuer shall also be deemed a domestic issuer if he has merely applied for admission of its financial instruments. In particular, inside information directly concerns an issuer if it relates to developments within the issuer's sphere of activity. Any issuer or person acting on behalf or for the account of an issuer, who as part of his function communicates or grants access to inside information for a third party, must at the same time publish the information in accordance with sentence 1 and transmit it to the company register within the meaning of section 8b of the Commercial Code in order to be stored there, unless the third

party is legally obliged to observe confidentiality. In the event of inadvertent communication or granting of access to inside information pursuant to sentence 4, late publication and transmission must be made without undue delay. The key figures employed in the context of publication shall be those customarily used in business and must permit comparison with previously employed figures.

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

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

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

1. the management of the organised markets in Germany on which the financial instruments are admitted to trading;
2. the management of the organised markets in Germany on which derivatives are traded, which are based on the financial instruments and
3. the Supervisory Authority.

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

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

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

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

1. the minimum content, nature, language, scope and form of the publication pursuant to subsection (1) sentence 1, 4, and 5 or subsection (2) sentence 2;
2. the minimum content, nature, language, scope and form of the notification pursuant to subsection (3) sentence 4, subsection (4) and subsection (5) sentence 2; and
3. legitimate interests of the issuer and the guarantee of confidentiality pursuant to subsection (3).

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

back to top

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

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

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

The submission or public announcement of an application for admission is deemed equivalent to admission to trading on an organised market. The obligation pursuant to sentence 1 does not apply as long as the total sum of transactions by a person discharging managerial responsibilities and parties closely associated with them is less than 5,000 euros by the end of the calendar year.

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

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

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

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

back to top

Section 15b
Maintenance of insider lists

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

acting on behalf of the issuer.

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

1. the scope and form of the lists;
2. the data included in the lists;
3. updating and maintenance of the data in the lists;
4. the period of time for which the lists must be retained and
5. the deadlines for destruction of the lists.

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

back to top

Section 16
Record-keeping obligations

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

back to top

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

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

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

back to top

Section 16b
Retention of call data

(1) Investment services enterprises and enterprises domiciled in Germany which are admitted to trading on a German stock exchange, as well as issuers of insider securities and enterprises affiliated with them which are domiciled in Germany or whose securities are admitted to trading on a German stock exchange or are traded on the regulated market (Geregelter Markt) or the regulated unofficial market (Freiverkehr), may be required by the Supervisory Authority in writing to retain existing call data on telecommunications for a certain group of persons, provided that the Supervisory

Authority has evidence indicating contraventions of section 14 or section 20a by such persons of the particular company. The basic right granted by Article 10 of the Basic Law is, to this extent, restricted. The parties concerned shall be notified in accordance with section 101 of the Criminal Procedure Code. The Supervisory Authority may not on the basis of sentence 1 require retention of future call data.

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

back to top

Section 17

(Repealed)

back to top

Section 18

(Repealed)

back to top

Section 19

(Repealed)

back to top

Section 20

(Repealed)

back to top

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

back to top

Section 20a
Prohibition of market manipulation

(1) It is prohibited

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

signals affecting supply, demand or the stock exchange or market price of financial instruments or to create an artificial price level or

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

Sentence 1 applies to financial instruments that

1. are admitted to trading on a German stock exchange or traded on the regulated market (Geregelter Markt) or the regulated unofficial market (Freiverkehr) or
2. admitted to trading on an organised market in another member state of the European Union or another signatory to the Agreement on the European Economic Area.

Securities shall be deemed admitted to trading on an organised market or traded on the regulated market (Geregelter Markt) or the regulated unofficial market (Freiverkehr) if the application for such admission or for such trading has been made or publicly announced.

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

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

(4) Subsections (1) to (3) apply mutatis mutandis to commodities and foreign currencies within the meaning of section 63 (2) of the Stock Exchange Act, which are traded on an organised market.

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

1. circumstances of crucial importance for the valuation of financial instruments;
2. untrue or misleading signals affecting supply and demand or the stock exchange or the market price of financial instruments or the existence of an artificial price level;
3. other acts of deception;
4. actions and omissions that shall in no case constitute a violation of the prohibition pursuant to subsection (1) sentence 1 and
5. actions deemed acceptable market practice and the recognition process for an acceptable market practice.

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

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

back to top

Section 20b

(Repealed)

back to top

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

back to top

Section 21
Notification requirements applicable to the notifying party

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

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

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

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

back to top

Section 22
Attribution of voting rights

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

1. voting rights of a subsidiary of the notifying party;
2. voting rights of a third party which are held by such third party for the account of the notifying party;
3. voting rights which are assigned as security by the notifying party to a third party, unless such third party is authorised to exercise the voting rights attached to the shares and declares its intention to do so independently of the notifying party's instructions;
4. voting rights in respect of which usufruct has been created in favour of the notifying party;

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

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

(2) Any voting rights attached to shares in the issuer whose home country is the Federal Republic of Germany which belong to a third party shall also be attributed to the notifying party in full if the notifying party or its subsidiary coordinates its conduct in respect of the issuer with such third party on the basis of an agreement or in another manner; agreements on the exercise of voting rights in individual cases shall be excluded. Subsection (1) shall apply mutatis mutandis to the calculation of the percentage of voting rights held by the third party.

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

(3a) For the purpose of attribution of voting rights pursuant to this provision, an investment services enterprise shall not be deemed a subsidiary within the meaning of subsection (3) in respect of the holdings which are managed by such enterprise as part of an investment service pursuant to section 2 (3) no. 6, provided that the investment services enterprise

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

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

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

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

back to top

Section 23
Non-consideration of voting rights

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

1. provides investment services as an undertaking domiciled in a member state of the European Union or another signatory to the Agreement on the European Economic Area;
2. holds or intends to hold the shares in question in its trading portfolio and if this holding does not exceed 5 percent of the voting rights; and
3. ensures that the voting rights attached to such shares are not exercised or otherwise used to exert influence over the management of the issuer.

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

1. the shares concerned are held for a maximum period of three trading days for the sole purpose of clearing and settlement, even if the shares are also traded outside an organised market; or
2. a custodian can only exercise the voting rights attached to the shares held in custody under instructions given in writing or by electronic means.

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

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

1. acts in his capacity as market maker;
2. holds a licence pursuant to section 32 (1) sentence 1 in conjunction with section 1 (1a) sentence 2 no. 4 of the Banking Act (Kreditwesengesetz); and
3. neither intervenes in the management of the issuer nor exerts any influence on the issuer to buy such shares or back the share price.

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

(6) The Federal Ministry of Finance may, by means of an Ordinance not requiring the consent of the Bundesrat,

1. determine a lower maximum period for holding shares pursuant to subsection (2) no. 1;
2. issue more detailed provisions concerning the non-consideration of voting rights of a market maker pursuant to subsection (4); and
3. issue more detailed provisions concerning the electronic means by which instructions may be given pursuant to subsection (2) no. 2.

back to top

Section 24
Notification by group companies

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

undertaking.

back to top

Section 25
Notification requirements relating to holdings in financial instruments

(1) Anyone holding, directly or indirectly, financial instruments that result in an entitlement to acquire, on one's own initiative alone and under a legally binding agreement, shares in an issuer whose home country is the Federal Republic of Germany that carry voting rights and have already been issued, must, without undue delay as specified in section 21 (1) sentence 1, notify this to the issuer and simultaneously to the Supervisory Authority if the thresholds set forth in section 21 (1) sentence 1 have been reached, exceeded or fallen below, with the exception of the three-percent threshold. Sections 23 and 24 shall apply mutatis mutandis. Unless required otherwise, an aggregation with the holdings as specified in sections 21 and 22 shall not take place.

(2) If several financial instruments specified in subsection (1) refer to shares in the same issuer, the notifying party must aggregate the voting rights attached to those shares. If a notification under section 21 has already been issued in respect of an attribution pursuant to section 22 (1) sentence 1 no. 5, an additional notification under this provision shall not be necessary.

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

back to top

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

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

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

(3) The Federal Ministry of Finance may, by means of an Ordinance not requiring the consent fo the Bundesrat, issue more detailed provisions concerning

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

back to top

Section 26a

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

A domestic issuer shall publish in the manner provided for in section 26 (1) sentence 1, also in conjunction with an Ordinance pursuant to subsection (3) no. 1, the total number of voting rights at the end of each calendar month during which the number of voting rights has increased or decreased, and simultaneously notify such publication to the Supervisory Authority in accordance with section 26 (2), also in conjunction with an Ordinance pursuant to subsection (3) no. 2. Furthermore, the domestic issuer shall transmit such information without undue delay, however not before its publication, to the company register within the meaning of section 8b of the Commercial Code (Handelsgesetzbuch) to be stored there.

back to top

Section 27
Proof of reported holdings

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

back to top

Section 28
Loss of rights

Voting rights attached to shares held by or attributed to a notifying party pursuant to section 22 (1) sentence 1 nos. 1 or 2 are not valid during the period for which the notification requirements pursuant to section 21 (1) or (1a) have not been met. This does not apply to claims under section 58 (4) and section 271 of the German Stock Corporation Act (Aktiengesetz), provided that the notification was not deliberately omitted and was made after the fact.

back to top

Section 29
Guidelines of the Supervisory Authority

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

back to top

Section 29a
Exemptions

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

(2) Issuers who have been granted an exemption pursuant to subsection (1) by the Supervisory Authority must publish in the manner specified in section 26 (1) sentence 1, also in conjunction with an Ordinance pursuant to subsection (3), and must simultaneously notify the Supervisory Authority of information on circumstances which corresponds to the information specified in section 21 (1) sentence 1, subsection (1a), section 25 (1) sentence 1, section 26 (1) sentences 1 and

2 as well as section 26a and which must be made available to the public pursuant to the equivalent rules of a third country. Furthermore, such information must be transmitted without undue delay, however not before its publication, to the company register within the meaning of section 8b of the Commercial Code (Handelsgesetzbuch) to be stored there.

(3) For the purpose of the attribution of voting rights pursuant to section 22, a company domiciled in a third country which would have required a licence for conducting portfolio management services pursuant to section 32 (1) sentence 1 in conjunction with section 1 (1a) sentence 2 no. 3 of the Banking Act (Kreditwesengesetz) if it had its registered office or head office in Germany, shall not be deemed a subsidiary within the meaning of section 22 (3) in respect of the shares managed by such company as part of its portfolio management services. This presupposes that the company complies with requirements concerning its independence that are equivalent to those governing investment services enterprises pursuant to section 22 (3a), also in conjunction with an Ordinance pursuant to section 22 (5).

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

back to top

Section 30
Trading days

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

(2) The Supervisory Authority shall make available a calendar of trading days under its Internet address.

back to top

Part 5a
Information necessary for exercising rights attached to securities

back to top

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

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

1. all holders of the admitted securities are treated equally under equal circumstances;
2. the facilities and information necessary to enable the holders of admitted securities to exercise their rights are made available to the public in Germany;
3. data on the holders of admitted securities are protected from unauthorised persons obtaining knowledge thereof;
4. for the entire duration of the admission of the securities, a minimum of one financial institution has been designated as paying agent in Germany where all necessary measures in respect of securities may be effected, or may be effected free of charge in the case of submission of the securities to this agent;
5. in the case of admitted shares, a form for granting a proxy for the shareholders' meeting is made available in writing to each person entitled to vote, together with the notice concerning the meeting or, upon request, after an announcement of the meeting;
6. in the case of admitted debt securities within the meaning of section 2 (1) sentence 1 no. 3 with the exception of securites that also fall within the scope of section 2 (1) sentence 1 no. 2 or that grant at least a contingent right to acquire securities pursuant to section 2 (1) sentence 1 no. 1 or 2, a form granting a proxy for a general meeting of

debt securities holders is made available in writing and in a timely manner to each person entitled to vote, together with the notice concerning the meeting or, upon request, after an announcement of the meeting.

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

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

back to top

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

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

1. the convening of the shareholders' meeting, including the agenda, the total number of shares and voting rights at the time the meeting was convened as well as the shareholders' rights in respect of the participation in the shareholders' meeting; and
2. notifications on the distribution and payment of dividends, the issue of new shares and any arrangements for or exercise of conversion, cancellation and subscription rights.

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

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

1. the place, time and agenda of the meeting of debt securities holders as well as notices concerning the right of those securities holders to participate therein; and
2. notices concerning the exercise of any conversion, subscription and cancellation rights as well as the payment of interest, repayments, drawings and units that have been cancelled or drawn but have not yet been redeemed.

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

1. in the case of admitted shares
    a. the shareholders' meeting has given its consent thereto;
    b. the choice concerning the type of the remote data transfer does not depend upon the location of the registered office or residence of the shareholders or the persons whose voting rights are attributed in the cases referred to in section 22;
    c. mechanisms have been put into place for identifying and addressing in a safe manner the shareholders or those persons exercising the voting rights or who are entitled to issue instructions for the exercise of such voting rights; and
    d. the shareholders, or in the cases of section 22 (1) sentence 1 nos. 1, 3, 4 and subsection (2) the persons entitled to exercise the voting rights, have given their explicit consent to the communication by means of remote data transfer or have not objected to a written request for consent within an appropriate period of

time and have not revoked at a later point in time such consent which is thus deemed to have been given;

2. in the case of admitted debt securities within the meaning of section 30a (1) no. 6
    a. a meeting of debt securities holders has given its consent thereto;
    b. the choice concerning the type of the remote data transfer does not depend upon the location of the registered office or residence of the debt securities holders or their proxies;
    c. mechanisms have been put into place for identifying and addressing in a safe manner the debt securities holders;
    d. the debt securities holders have given their explicit consent to the communication by means of remote data transfer or have not objected to a written request for consent within an appropriate period of time and have not revoked at a later point in time such consent which is thus deemed to have been given.

back to top

Section 30c
Amendments to the issuer's legal basis

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

back to top

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

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

back to top

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

(1) A domestic issuer must make public without undue delay and simultaneously notify the Supervisory Authority of such publication concerning

1. any change in the rights attached to the admitted securities; and
    a. in the case of admitted shares, those rights attached to derivative securities issued by the issuer himself provided that they grant conversion or acquisition rights in respect of the issuer's admitted shares;
    b. in the case of securities other than shares, any changes in the terms of these securities, in particular changes in the interest rates or the conditions associated with them, provided that the rights attached to such securities are indirectly affected thereby;
    c. in the case of securities which grant conversion or subscription rights to the creditors in respect of shares, any changes in the rights attached to those shares to which the conversion or subscription rights relate;
2. new loan issue with the exception of government bonds within the meaning of section 36 of the German Stock

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

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

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

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

back to top

Section 30f
Exemption

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

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

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

back to top

Section 30g
Exclusion of appeal

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

back to top

Part 6
Rules of conduct for investment services enterprises and regarding financial analyses and limitation of compensation claim rights

back to top

Section 31
General rules of conduct

(1) Investment services enterprises shall be required

1. to provide investment services and non-core investment services with the requisite degree of expertise, care and diligence in the interests of their customers and
2. to avoid conflicts of interest wherever possible and to ensure that, in the event of unavoidable conflicts of interest, customers' orders are executed with due regard to customers' interests.

(2) They shall further be required

1. to demand from their customers, details concerning their experience or knowledge of transactions intended as the subject of investment services or non-core investment services, of the aims pursued with those transactions and about their financial situation and
2. to furnish their customers with all pertinent information,

insofar as this is necessary to protect their customers' interests and with regard to the type and scope of the intended transactions. The customers are not obliged to furnish information requested pursuant to sentence 1 no. 1.

(3) Subsections (1) and (2) shall also apply to enterprises domiciled abroad which provide investment services or non-core investment services for customers having their ordinary residence or registered office in Germany, provided that the investment services or non-core investment services and related ancillary services are not provided exclusively abroad.

back to top

Section 32
Special rules of conduct

(1) Investment services enterprises or affiliated enterprises shall be prohibited from.

1. advising customers of the investment services enterprise to purchase or sell financial instruments if and to the extent that such advice does not conform to the customers' interests;
2. advising customers of the investment services enterprise to purchase or sell financial instruments in order to cause the prices to move in a specific direction for the purpose of transactions for the account of the investment services enterprise or an affiliated enterprise or
3. concluding transactions for own account based on knowledge of an investment services enterprise customer's buy or sell orders relating to financial instruments, which could prove detrimental to the principal.

(2) The proprietors of an investment services enterprise operated in the form of a sole proprietorship, in the case of other investment services enterprises the persons empowered by law or by the partnership agreement or articles of association to manage the business of and to represent the enterprise, and the employees of an investment services enterprise who are entrusted with executing transactions in financial instruments, conducting financial analysis or giving investment advice, shall be prohibited from

1. advising customers of the investment services enterprise to purchase or sell financial instruments under the conditions of subsection (1) no. 1 or in order to cause the prices of financial instruments to move in a specific direction for the purpose of concluding transactions for own account or on behalf of third parties and
2. concluding transactions for own account or on behalf of a third party, based on knowledge of an investment services enterprise customer's buy or sell orders relating to financial instruments, which could prove detrimental to the principal.

(3) Subject to the conditions set out in section 31 (3), subsections (1) and (2) shall also apply to enterprises domiciled abroad.

back to top

Section 33

Organisational obligations

(1) Investment services enterprises

1. shall be obliged to maintain and use effectively the resources and procedures required for the proper conduct of the investment service and non-core investment service;
2. must be organised in such a way that, in providing the investment service and non-core investment service, conflicts of interest between the investment services enterprise and its customers or between different customers of the investment services enterprise are kept to the unavoidable minimum and
3. must have adequate internal controlling procedures capable of preventing any contravention of the requirements set out in this Act.

(2) Areas which are important for the provision of investment services or non-core investment services may only be outsourced to another undertaking if this neither adversely affects the proper conduct of such services, nor the performance of the duties pursuant to subsection (1), nor the respective investigation rights and monitoring powers of the Supervisory Authority. In particular, the investment services enterprise is required to secure for itself by way of contract the necessary directing powers and to include the outsourced areas in its internal controlling mechanisms.

back to top

Section 34
Requirements for record keeping and retention

(1) In carrying out investment services, investment services enterprises shall be obliged to keep a record of

1. the order and pertinent instructions of the customer as well as the execution of the order;
2. the name of the employee who accepted the customer's order and the time at which the order was given and executed;
3. the commissions and fees charged to the customer for the order;
4. the instructions given by the customer as well as the placement of the order with a third party, to the extent that asset management within the meaning of section 2 (3) no. 6 is concerned and
5. the placement of an order for own account with a third party investment services enterprise, insofar as the transaction is not subject to the reporting requirement pursuant to section 9; orders for own account shall be expressly indicated.

(2) The Federal Ministry of Finance may, by means of an Ordinance not requiring the consent of the Bundesrat and after consulting the Deutsche Bundesbank, require investment services enterprises to keep additional records, provided such records are necessary for monitoring by the Supervisory Authority of compliance with the requirements imposed on investment services enterprises. The Federal Ministry of Finance may, by means of an Ordinance, delegate this authority to the Supervisory Authority.

(3) The records specified in subsections (1) and (2) shall be retained for a minimum period of six years following their date of creation. Section 257 (3) and (5) of the Commercial Code shall apply mutatis mutandis to the retention of the records.

back to top

Section 34a
Segregation of assets

(1) Investment services enterprises which are not deposit-taking credit institutions within the meaning of section 1 (3d) sentence 1 of the Banking Act shall without undue delay segregate client money held in safe custody which they accept in connection with an investment service or non-core investment service and which they use in their own name and for the

account of their customers from the money of the enterprise and from other clients' money in a trustee account with a credit institution authorised to conduct deposit-taking business in Germany or a suitable credit institution domiciled abroad and authorised to conduct deposit-taking business. Before giving the money into safe custody, the investment services enterprise shall disclose to the credit institution that the money is deposited for the account of a third party. It shall without undue delay inform the customer regarding the account in which the client money is deposited and as to whether or not the credit institution holding the client money is a member of a scheme designed to protect the claims of depositors and investors as well as the extent to which the client money is protected by any such scheme.

(2) Investment services enterprises which are not authorised to conduct deposit business within the meaning of section 1 (1) sentence 2 no. 5 of the Banking Act shall without undue delay pass on for safe custody, securities which they accept in connection with an investment service or non-core investment service to a credit institution authorised to conduct safe custody business in Germany or to a credit institution domiciled abroad which is authorised to conduct safe custody business and with which the customer is granted a legal status equivalent to that under the Safe Custody Act. Subsection (1) sentence 3 shall apply mutatis mutandis.

(3) The Federal Ministry of Finance may, by means of an Ordinance not requiring the consent of the Bundesrat, issue more detailed provisions on the extent of the obligations pursuant to subsections (1) and (2) in order to protect the client money or securities entrusted to an investment services enterprise. The Federal Ministry of Finance may, by means of an Ordinance, delegate this authority to the Supervisory Authority.

back to top

Section 34b
Analysis of financial instruments

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

1. the identity of the person responsible for communicating or distributing the financial analysis as well as
2. circumstances or relationships that could produce conflicts of interest among the authors, the legal persons responsible for preparing the analysis or undertakings affiliated with these

are disclosed together with the financial analysis.

(2) A summary of a financial analysis prepared by a third party may only be communicated if the contents of the analysis are presented in a clear and not-misleading fashion, and if the summary makes reference to the source document and the place where the associated disclosure has been made directly and easily accessible, pursuant to subsection (1) sentence 2 , provided this information has been made public.

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

1. are admitted to trading on an organised market within Germany or traded on the regulated market (Geregelter Markt) or the regulated unofficial market (Freiverkehr) or
2. are admitted to trading on an organised market in another member state of the European Union or another signatory to the Agreement on the European Economic Area.

Financial instruments shall be deemed admitted to trading on an organised market or traded on the regulated market (Geregelter Markt)or regulated unofficial market (Freiverkehr)if the application for such admission or for such trading has been made or publicly announced.

(4) The provisions given in subsections (1), (2) and (5) do not apply for journalists, if they are subject to a system of self-regulation and effective controlling mechanisms, similar to the arrangements of subsections (1), (2) and (5) as well as of section 34c.

(5) Companies which prepare or communicate financial analyses according to subsection (1) sentence 1 have to be organised in such a way that conflicts of interest, within in the meaning of subsection (1) sentence 2, are kept to the unavoidable minimum. In particular, they must maintain appropriate controlling mechanisms capable of countering any contravention of the obligations set forth in subsection (1).

(6) Investment services enterprises which make information concerning financial instruments or their issuers available to others, that contains a direct or indirect recommendation for a particular investment decision, must present this information with the requisite expertise, care and diligence, and disclose any circumstances or relationships that could produce conflicts of interest among the authors, the legal persons responsible for preparing the analysis or undertakings affiliated with these. The organisational requirements given in subsection (5) shall apply mutatis mutandis.

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

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

back to top

Section 34c
Notification obligation

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

back to top

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

(1) For the purpose of monitoring compliance with the obligations set out in this part, the Supervisory Authority may audit the investment services enterprises, affiliated enterprises, the persons designated in section 32 (2) and other persons and enterprises commissioned to carry out tasks, without immediate cause.

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

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

(4) The Supervisory Authority may establish guidelines which it shall use in normal cases, to judge whether or not the obligations pursuant to sections 31 to 33 have been met. The Deutsche Bundesbank and the central associations of the economic sectors concerned shall be consulted before the guidelines are issued. The guidelines shall be published in the

electronic Federal Gazette (elektronischer Bundesanzeiger).

back to top

Section 36
Examination of reporting requirements and rules of conduct

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

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

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

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

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

back to top

Section 36a
Enterprises domiciled in another member state of the European Union or another signatory to the Agreement on the European Economic Area

(1) Enterprises domiciled in another member state of the European Union or another signatory to the Agreement on the European Economic Area, which provide investment services alone or in connection with non-core investment services and which intend to establish a branch in Germany or to provide investment services and non-core investment services to customers having their ordinary residence or place of management in Germany, shall be informed by the Supervisory Authority within the period specified in section 53b (2) sentence 1 of the Banking Act about the reporting requirements pursuant to section 9 and about the obligations set forth in this part.

(2) If the Supervisory Authority finds that an enterprise within the meaning of subsection (1) which has a branch in Germany or which provides investment services or non-core investment services to the customers designated in subsection (1) fails to comply with the reporting requirements pursuant to section 9 or with the obligations set forth in this part, it shall require the enterprise to comply with its obligations within a period of time to be specified by the Supervisory Authority. If the company fails to comply with the request, the Supervisory Authority shall inform the competent authorities of the home country.

back to top

Section 36b
Advertising by investment services enterprises

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

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

back to top

Section 36c
Cooperation with competent authorities in other countries

For the purpose of monitoring compliance with the obligations set forth in this part, the Supervisory Authority works in cooperation with the competent foreign authorities in accordance with section 7 of this Act. By way of derogation from section 7, the competent authorities of the home country or an entity commissioned by them may, after notifying the Supervisory Authority, examine the documents required for the securities supervision of the branch directly at the branch itself.

back to top

Section 37
Exceptions

(1) The provisions of sections 31, 32 and 34 shall not apply to transactions concluded on a stock exchange between two investment services enterprises and resulting in stock exchange prices. Investment services enterprises acting as commission agents which conclude a transaction on a stock exchange shall to that extent be subject to the requirements pursuant to section 34.

(2) The provisions of section 33 shall not apply to an investment services enterprise which concludes solely the transactions referred to in subsection (1) sentence 1.

(3) Section 33 (1) nos. 2 and 3 and subsection (2) as well as sections 34, 34a and 34b (5) shall not apply to branches of enterprises within the meaning of section 53b (1) sentence 1 of the Banking Act.

(4) The Federal Ministry of Finance may, by means of an Ordinance not requiring the consent of the Bundesrat, determine further exceptions to the duties pursuant to this part with which enterprises domiciled in another member state of the European Union or another signatory to the Agreement on the European Economic Area must comply. The Federal Ministry of Finance may, by means of an Ordinance, delegate this authority to the Federal Financial Supervisory Authority.

back to top

Section 37a
Limitation of damage claims

Damage claims by a customer against an investment services enterprise for failure to comply with the obligation to furnish information and for having given wrong advice in connection with an investment service or non-core investment service are subject to a period of limitation of three years from the point at which the claim arose.

back to top

Part 7
Liability for incorrect or omitted capital market information

back to top

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

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

1. has bought the financial instruments after the omission and still owns the financial instruments upon disclosure of the information or
2. has bought the financial instruments before the existence of the relevant insider fact and sells them after the omission

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

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

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

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

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

back to top

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

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

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

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

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

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

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

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

back to top

Part 8
Financial futures transactions

back to top

Section 37d
Information on financial futures transactions

(1) Enterprises which conduct financial futures transactions commercially or on a scale which requires commercially organised business operations, or which purchase, sell, broker or document such transactions, are required to inform a consumer in writing before conclusion of a contract

1. that the time-limited rights acquired in connection with a financial futures transaction may expire or suffer a decrease in value;
2. that the possibility exists that the risk of loss cannot be determined and may exceed any margin provided;
3. of the possibility that transactions intended to exclude or limit the risks involved in the financial futures transactions may not be concluded or only at a price resulting in a loss and
4. that the risk of loss increases if borrowed funds are used to meet the obligations arising from financial futures transactions or if the obligations arising from financial futures transactions or the consideration to be claimed

from such transactions are denominated in a foreign currency or in units of account.

Such written information must include only information on the financial futures transactions and the risks involved and shall be signed by the consumer. The consumer shall receive new written information before each subsequent period of two years has elapsed.

(2) This duty to provide information does not apply to the allocation of subscription rights resulting from a legal obligation.

(3) If the consumer is represented by a third party when placing orders for financial futures transactions or when concluding such transactions, subsections (1) and (2) sentence 1 shall apply as appropriate to the party representing the consumer. An information requirement towards the party representing the consumer shall not exist if the enterprise has informed the consumer in accordance with subsection (1).

(4) If the enterprise has violated its duty to provide information pursuant to subsection (1) or (3) sentence 1, it shall be liable to compensate the consumer for the damage resulting from such violation. In case of dispute among the parties as to whether or not the enterprise has met the obligations pursuant to subsection (1) or (3) or whether or not it is responsible for the violation, the burden of proof shall rest with the enterprise. The consumer's damage claim shall be subject to a limitation period of three years from the date on which the claim arises.

(5) This shall be without prejudice to the duty pursuant to section 31 subsection (2) sentence 1 no. 2.

(6) Subsections (1) to (5) shall also apply to enterprises domiciled abroad which conclude financial futures transactions or purchase, sell, broker or document such transactions, provided the consumer has his ordinary residence or place of management in Germany. This shall not apply if the services, and associated non-core services, are provided exclusively abroad.

back to top

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

Objections pursuant to section 762 of the German Civil Code (Bürgerliches Gesetzbuch) may not be made against claims arising from financial futures transactions involving at least one party which is an enterprise that concludes financial futures transactions commercially or on a scale which requires commercially organised business operations or which purchases, sells or brokers financial futures transactions.

back to top

Section 37f
Monitoring of compliance with the duty to provide information

The Supervisory Authority shall monitor compliance by investment services enterprises with the requirement to provide information pursuant to section 37d. Section 35 subsection (1) shall apply mutatis mutandis. The examination pursuant to section 36 (1) shall also encompass compliance with the requirement to provide information pursuant to section 37d.

back to top

Section 37g
Prohibited financial futures transactions

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

(2) Any financial futures transaction contravening an Ordinance pursuant to subsection (1) (prohibited financial futures

transaction) is void. Sentence 1 shall apply mutatis mutandis to

1. the provision of margin for a prohibited financial futures transaction;
2. an agreement by means of which one party incurs a liability towards the other party for the purpose of meeting a liability from a prohibited financial futures transaction, in particular for an acknowledgement of debt;
3. the placing and acceptance of orders for the purpose of concluding prohibited financial futures transactions and
4. associations established for the purpose of concluding prohibited financial futures transactions.

back to top

Part 9
Arbitration agreements

back to top

Section 37h
Arbitration agreements

Arbitration agreements on future legal disputes relating to investment services, non-core investment services or financial futures transactions shall be binding only if both parties to the agreement are merchants within the meaning of the Commercial Code or legal persons under public law.

back to top

Part 10
Foreign organised markets

back to top

Section 37i
Authorisation

(1) Foreign organised markets or their operators wishing to grant trading participants domiciled in Germany direct market access by means of an electronic trading system shall require written authorisation from the Supervisory Authority. The application for authorisation shall contain

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

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

Authority.

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

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

(4) Subsection (1) shall not apply to foreign organised markets in another member state of the European Union or another signatory to the Agreement on the European Economic Area on which financial instruments within the meaning of section 2 (2a) are traded.

back to top

Section 37j
Refusal of the authorisation

The authorisation shall be refused if

1. there is evidence indicating that the management is not reliable;
2. direct market access is to be granted to trading participants domiciled in Germany which fail to meet the requirements of section 16 (2) of the Stock Exchange Act;
3. the home country fails to meet standards in surveillance of the organised market or investor protection equivalent to those under German law or
4. exchange of information is not guaranteed with the bodies responsible for supervising the organised market in the home country.

back to top

Section 37k
Revocation of the authorisation

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

1. it learns of facts which warrant the refusal of the authorisation pursuant to section 37j or
2. the organised market or its operator has persistently contravened provisions of this Act or the Ordinances or orders issued to implement this Act.

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

back to top

Section 37l
Prohibition

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

back to top

Section 37m
Notification

If foreign organised markets in another member state of the European Union or another signatory to the Agreement on the European Economic Area on which financial instruments within the meaning of section 2 (2a) are traded, or their operators grant direct market access by means of an electronic trading system to trading participants domiciled in Germany, they shall notify the Supervisory Authority accordingly. The notification shall contain the following information:

1. the name and address of the management of the organised market or its operator;
2. a business plan showing the type of planned market access for the trading participants, the organisational structure and the internal controlling mechanisms of the organised market;
3. information on the financial instruments which shall be traded by the trading participants by means of direct market access and
4. the name and address of trading participants domiciled in Germany who shall be granted direct market access.

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

back to top

Part 11
Monitoring of company financial statements, publication of financial reports,
Sub-part 1
Monitoring of company financial statements

back to top

Section 37n
Auditing of company financial statements and reports

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

back to top

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

(1) The Supervisory Authority orders an audit of accounting if specific evidence exists of a violation against accounting regulations; no order is issued if it is apparent that clarification of the case does not serve the public interest. The Supervisory Authority can also order an audit of accounting procedures without immediate cause (spot check). The scope

of each individual audit shall be defined in the audit order. Only on the most recent approved annual financial statements and the corresponding management report or the most recent approved consolidated financial statements and the corresponding group management report as well as the most recent published condensed set of financial statements and the corresponding interim management report are subject to the audit; without prejudice to this, in the case of section 37p (1) sentence 2, the Supervisory Authority may audit the financial statements which were the subject of the examination by the enforcement panel within the meaning of section 342b (1) of the Commercial Code (enforcement panel). If the Supervisory Authority orders an accounting audit after receiving a report from the enforcement panel pursuant to section 37p (1) sentence 2 no. 1, it may make publicly known the order and the grounds pursuant to section 37p (1) sentence 2 no. 1 in the electronic Federal Gazette (elektronischer Bundesanzeiger). Sentence 2 shall not apply to the audit of the condensed set of financial statements and the corresponding interim management report.

(2) The annual financial statements and the corresponding management report are not audited by the Supervisory Authority if action to annul within the meaning of section 256 (7) of the Stock Corporation Act is pending. If in accordance with section 142 (1) or (2) or section 258 (1) of the Stock Corporation Act a special auditor has been appointed, no audit is performed as well, provided that the subject of the special audit, the audit report or a court decision concerning the ultimate findings by the special auditor are adequate pursuant to section 260 of the Stock Corporation Act.

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

(4) The company as defined in section 37n, the members of its bodies, its employees and its auditors are required to furnish, upon request, information and documentation to the Supervisory Authority and persons used by the Supervisory Authority in conducting its activities, to the extent that this is required for the audit; the auditors' obligation to provide information is restricted to facts disclosed within the context of the audit. Sentence 1 also applies to subsidiaries that are to be included in the consolidated financial statements in accordance with the provisions of the Commercial Code. For the right of refusal to furnish information and the obligation to inform affected persons of this right, section 4 (9) applies mutatis mutandis.

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

back to top

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

(1) If an enforcement panel is recognised pursuant to section 342b (1) of the Commercial Code (Handelsgesetzbuch), spot check examinations are only carried out upon initiation by the enforcement panel. Furthermore, the Supervisory Authority is only granted the powers as defined in section 37o if

1. it is informed by the enforcement panel that a company has refused to cooperate in an audit or does not agree with the result of the audit, or
2. substantial uncertainty arises with regard to the accuracy of the audit result arrived at by the enforcement panel or with the proper conduct of the audit by the enforcement panel.

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

(2) Subject to the provisions in section 370 (1) sentence 1, the Supervisory Authority can request that the enforcement panel commences an audit.

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

back to top

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

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

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

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

back to top

Section 37r
Notifications to other authorities

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

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

back to top

Section 37s
International cooperation

(1) The Supervisory Authority is responsible for cooperation with foreign authorities charged with investigating possible violations of accounting regulations by companies whose securities are admitted to trading on an organised market. To meet this obligation, it may communicate information to these authorities in accordance with section 7 (2) sentences 1 and 2, also in conjunction with subsection (7). Section 370 (4) and (5) applies mutatis mutandis, with the proviso that the powers regulated therein shall extend to all companies covered by the cooperation referred to in sentence 1, as well as all entities included in the consolidated financial statements of such companies.

(2) The Supervisory Authority may cooperate with the competent authorities of other member states of the European

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

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

back to top

Section 37t
Objection procedure

(1) Before a complaint is filed, an objection procedure is required to review the legality and suitability of orders issued by the Supervisory Authority pursuant to the provisions of this part. Such a review is not required if the remedial decision or the ruling on the objection contain an additional burden for the first time. Sections 68 to 73 and 80 (1) of the German Code of Administrative Court Procedure (Verwaltungsgerichtsordnung) apply mutatis mutandis to the objection procedure, unless otherwise provided for in this part.

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

back to top

Section 37u
Complaints

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

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

back to top

Part 11
Monitoring of company financial statements, publication of financial reports,
Sub-part 2
Publication and transmission of financial reports to the company register

back to top

Section 37v
Annual financial report

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

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

(2) The annual financial report shall at least contain

1. the annual financial statements prepared and audited in accordance with the national law of the member state in which the company is registered;
2. the management report; and
3. a statement made in accordance with the provisions of section 264 (2) sentence 3, section 289 (1) sentence 5 of the Commercial Code.

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

1. the minimum content, nature, language, scope and form of the publication pursuant to subsection (1) sentence 2;
2. the minimum content, nature, language, scope and form of the notification pursuant to subsection (1) sentence 3;
3. how long the information specified in subsection (2) must generally remain available in the company register and when it is to be deleted; and
4. a coordinated procedure according to which the annual financial report and the annual document pursuant to section 10 of the Securities Prospectus Act (Wertpapierprospektgesetz) shall be made known to the Supervisory Authority.

back to top

Section 37w
Half-yearly financial report

(1) A company which, as a domestic issuer, issues shares or debt securities within the meaning of section 2 (1) sentence 1 shall prepare a half-yearly financial report covering the first six months of each financial year and make such report available to the public without undue delay, but at the latest two months after the end of the relevant reporting period, unless the admitted securities are debt securities that fall within the scope of section 2 (1) sentence 1 no. 2, or that grant at least a contingent right to acquire securities pursuant to section 2 (1) sentence 1 no. 1 or 2. Furthermore, prior to making the half-yearly financial report publicly available for the first time, the company shall publish an announcement concerning the time at which and the website on which the report will be available to the public in addition to its availability in the company register. Simultaneously with the publication of such announcement, the company shall notify the Supervisory Authority thereof and transmit the announcement without undue delay, however not before its publication, to the company register within the meaning of section 8b of the Commercial Code (Handelsgesetzbuch) in order to be stored there. Moreover, the company shall transmit without undue delay, but not before the publication of the announcement pursuant to sentence 2, the half-yearly financial report to the company register in order to be stored there.

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

1. the condensed set of financial statements;
2. an interim management report; and
3. a statement made in accordance with section 264 (2) sentence 3, section 289 (1) sentence 5 of the Commercial Code.

(3) The condensed set of financial statements shall at least contain a condensed balance sheet, a condensed profit and loss account and explanatory notes. The condensed set of financial statements shall be prepared in accordance with the

accounting standards applicable to the annual financial statements. Where, in the case of publication, the annual financial statements are replaced by separate financial statements within the meaning of section 325 (2a) of the Commercial Code, the condensed set of financial statements shall be prepared in accordance with the international accounting standards and provisions specified in section 315a (1) of the Commercial Code.

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

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

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

1. the content and the auditors' review of the half-yearly financial report;
2. the minimum content, nature, language, scope and form of the publication pursuant to subsection (1) sentence 2;
3. the minimum content, nature, language, scope and form of the notification pursuant to subsection (1) sentence 3; and
4. how long the half-yearly financial report must remain publicly available in the company register and when it is to be deleted.

back to top

Section 37x
Interim management statement

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

(2) The interim management statement shall contain information covering the period between the beginning of the relevant half of the financial year and the time at which the statement will be made publicly available in accordance with subsection (1) sentence 1; such information shall allow to assess how the issuer's business performed during the three months prior to the expiry of the notification period. The interim management statement shall contain an explanation of

the material events and transactions that have taken place at the issuer's company during the notification period and their impact on the financial position of the issuer, and a description of the financial position and performance of the issuer during the notification period.

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

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

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

back to top

Section 37y
Consolidated financial statements

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

1. The annual financial report shall also contain the audited consolidated financial statements prepared in accordance with Regulation (EC) No. 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards (OJ EC No. L 243, p. 1), the group management report and a statement made in accordance with the provisions set forth in section 297 (2) sentence 3, section 315 (1) sentence 6 of the Commercial Code (Handelsgesetzbuch).
2. The statutory representatives of the parent enterprise shall prepare and publish the half-yearly financial report for the parent enterprise and the subsidiaries to be included in the consolidation taken as a whole. Section 37w (3) shall apply mutatis mutandis if the parent enterprise has the obligation to prepare the consolidated financial statements in accordance with the international accounting standards and provisions specified in section 315a (1) of the Commercial Code.
3. The information provided in the interim management statement of a parent enterprise pursuant to section 37x (2) sentence 2 shall refer to the parent enterprise and the subsidiaries to be included in the consolidation taken as a whole.

back to top

Section 37z
Exemptions

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

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

(3) Section 37w shall also not apply to companies that issue securities as domestic issuers if they already existed on 31

December 2003 and exclusively issue debt securities admitted to trading on an organised market which are unconditionally and irrevocably guaranteed by the Federal or one of the Länder Governments, or by one of the regional or local authorities.

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

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

back to top

Part 12
Provisions concerning criminal penalties and administrative fines

back to top

Section 38
Provisions concerning criminal penalties

(1) Any person who

1. acquires or disposes of an insider security in contravention of a prohibition pursuant to section 14 (1) no. 1; or
2.
    a. by virtue of his membership of the management or supervisory body of the issuer, or as a personally liable partner of the issuer or of an undertaking affiliated with the issuer,
    b. on the basis of his holding in the capital of the issuer or a company affiliated with the issuer,
    c. on the basis of profession, activities or duties performed as part of their function or
    d. on the basis of conspiracy to perpetrate or perpetration of a crime

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

(2) Any person who commits intentional tort as named in section 39 (1) no. 1 or 2 or section 39 (2)no. 11 and thereby exerts an influence on the domestic stock exchange or market price of a financial instrument or on the price of a financial instrument as quoted on an organised market in another member state of the European Union or another signatory to the Agreement on the European Economic Area, shall also be subject to punishment.

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

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

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

back to top

Section 39
Provisions concerning administrative fines

(1) An administrative offence is deemed to be committed by a person who

1. in contravention of section 20a (1) sentence 1 no. 2, also in conjunction with subsection (4), each of which in conjunction with an Ordinance pursuant to subsection (5) sentence 1 no. 2 or no. 5, enters into a transaction or issues a buy or sell order;
2. in contravention of section 20a (1) sentence 1 no. 3, also in conjunction with subsection (4), or an Ordinance pursuant to subsection (5) sentence 1 no. 3, carries out an action aimed at deception;
3. in contravention of section 32 (1) or (2), gives advice or concludes a transaction;
4. in contravention of section 34b (1) sentence 2 in conjunction with an Ordinance pursuant to subsection (8) sentence 1, disseminates or publicly distributes a financial analysis;
5. in contravention of section 34b (2) in conjunction with an Ordinance pursuant to subsection (8) sentence 1, disseminates a summary of a financial analysis or
6. presents information in contravention of section 34b (6) sentence 1 in conjunction with an Ordinance pursuant to subsection (8) sentence 1.

(2) An administrative offence is committed by any person who wilfully or negligently,

1. in contravention of section 4 (8) or section 10 (1) sentence 2, provides information to an individual;
2. in contravention of
    a. section 9 (1) sentence 1, also in conjunction with sentence 2, each of which in conjunction with sentence 3 or 4, each of which in conjunction with an Ordinance pursuant to subsection (3) no. 1 or 2;
    b. section 10 (1) sentence 1, also in conjunction with an Ordinance pursuant to subsection (4) sentence 1;
    c. section 15 (3) sentence 4, subsection (4) sentence 1, or subsection (5) sentence 2, each of which also in conjunction with an Ordinance pursuant to subsection (7) sentence 1 no. 2;
    d. section 15a (1) sentence 1, also in conjunction with sentence 2, subsection (4) sentence 1, each of which also in conjunction with an Ordinance pursuant to subsection (5) sentence 1;
    e. section 21 (1) sentence 1 or 2 or subsection (1a), each of which also in conjunction with an Ordinance pursuant to section 21 (3);
    f. section 25 (1) sentence 1, also in conjunction with an Ordinance pursuant to section 25 (3);
    g. section 26 (2), also in conjunction with an Ordinance pursuant to section 26 (3) no. 2;
    h. section 26a sentence 1;
    i. section 29a (2) sentence 1;
    j. section 30c, also in conjunction with section 30d;
    k. section 30e (1) sentence 1, also in conjunction with an Ordinance pursuant to section 30e (2);
    l. section 30f (2);
    m. section 37v (1) sentence 3, also in conjunction with section 37y, each of which also in conjunction with an

Ordinance pursuant to section 37v (3) no. 2;

n. section 37w (1) sentence 3, also in conjunction with section 37y, each of which also in conjunction with an Ordinance pursuant to section 37w (6) no. 3;

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

p. section 37z (4) sentence 2

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

3. discloses or makes available inside information in violation of section 14 (1) no. 2;
4. recommends that a third party acquire or dispose of insider securities, or otherwise induces a third party to do so, in violation of section 14 (1) no. 3;
5. in contravention of

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

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

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

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

   e. section 30e (1) sentence 1 in conjunction with an Ordinance pursuant to section 30e (2) or in contravention of section 30f (2);

   f. section 37v (1) sentence 2 in conjunction with an Ordinance pursuant to section 37v (3) no. 1, each of which also in conjunction with section 37y, or in contravention of section 37z (4) sentence 2;

   g. section 37w (1) sentence 2 in conjunction with an Ordinance pursuant to section 37w (6) no. 2, each of which also in conjunction with section 37y; or

   h. section 37x (1) sentence 2 in conjuction with an Ordinance pursuant to section 37x (4) no. 1, each of which also in conjunction with section 37y

   fails to make a publication or makes such publication incorrectly, incompletely, not in the prescribed form or within the prescribed period or either fails to rectify these shortcomings or to rectify them in a timely manner;

6. fails to transmit information or an announcement or fails to do so within the prescribed period in contravention of section 15 (1) sentence 1, section 15a (4) sentence 1, section 26 (1) sentence 1, section 26a sentence 2, section 29a (2) sentence 2, section 30e (1) sentence 2, section 30f (2), section 37v (1) sentence 3, section 37w (1) sentence 3 or section 37x (1) sentence 3, each of which also in conjunction with section 37y, or in contravention of section 37z (4) sentence 3;
7. effects a publication in contravention of section 15 (5) sentence 1;
8. fails to forward a publication or documentary evidence or fails to do so within the prescribed period in contravention of section 15 (5) sentence 2, section 15a (4) sentence 2 or section 25 (3) sentence 1, also in conjunction with section 26 (2);
9. fails to keep a list or keeps such a list incorrectly or incompletely in contravention of section 15b (1) sentence 1 in conjunction with an Ordinance pursuant to subsection (2) sentence 1 no. 1 or 2;
10. in contravention of section 15b (1) sentence 2, does not submit this list or does not submit it within the prescribed period;
11. fails to record information, does not record it correctly, does not record it in full or does not record it in time, in violation of section 16 sentence 1 or section 34 (1), also in conjunction with an Ordinance pursuant to section 34 (2) sentence 1;

12. in contravention of section 30a (1) sentence 1 no. 2, also in conjunction with subsection (3) or section 30d, fails to ensure that facilities and information are available to the public in Germany;
13. in contravention of section 30a (1) no. 3, also in conjunction with subsection (3) or section 30d, fails to ensure that data are protected from unauthorised persons obtaining knowledge thereof;
14. in contravention of section 30a (1) no. 4, also in conjunction with subsection (3) or section 30d fails to ensure that an institution mentioned there has been designated;
15. retains a record or fails to do so for a minimum period of six years in contravention of section 34 (3) sentence 1;
16. fails to comply with a provision on segregation of assets under section 34a (1) sentences 1, 2 or 3, also in conjunction with subsection (2) sentence 2, or under section 34a (2) sentence 1, each of which also in conjunction with an Ordinance pursuant to section 34a (3) sentence 1;
17. fails to make a notification or fails to do so within the prescribed period, or makes such notification incorrectly or incompletely in contravention of section 34c sentence 1, 2 or 4 or section 36 (2) sentence 1;
18. fails to appoint an auditor or fails to do so within the prescribed period in contravention of section 36 (1) sentence 3.
19. in contravention of section 37v (1) sentence 1, section 37w (1) sentence 1 or section 37x (1) sentence 1, each of which also in conjuction with section 37y, fails to make available an annual financial report including a statement in accordance with section 37v (2) no. 3, a half-yearly financial report including a statement in accordance with section 37w (2) no. 3 or an interim management statement, or fails to do so within the prescribed period; or
20. in contravention of section 37v (1) sentence 4, section 37w (1) sentence 4 or section 37x (1) sentence 4, each of which also in conjunction with section 37y, fails to transmit an annual financial report including a statement in accordance with section 37v (2) no. 3, a half-yearly financial report including a statement in accordance with section 37w (2) no. 3 or an interim management report, or fails to do so within the prescribed period.

(3) An administrative offence is committed by any person who wilfully or negligently

1. fails to comply with an enforceable order pursuant to
   a. section 4 (3) sentence 1 or
   b. section 36b (1)

   or
2. fails to allow or tolerate entry in contravention of section 4 (4) sentence 1 or 2 or section 37o (5) sentence 1.

(4) The administrative offence is punishable by a fine not exceeding one million euros in the cases referred to in subsection (1) nos. 1 and 2 , subsection (2) no. 5 (a), no. 6 and no. 11, by a fine not exceeding two hundred thousand euros in the cases referred to in subsection (1) nos. 3 and 4 and subsection (2) no. 2 (c), (e) to (i) and (m) to (p), nos. 3 and 4, no. 5 (c) to (h) and nos. 6, 19 and 20 by a fine not exceeding one hundred thousand euros in the cases referred to in subsection (2) no. 2 (d) and no. 5 (b) and nos. 12 to 14 and no. 16 and subsection (3) no. 1 (b), and by a fine not exceeding fifty thousand euros in all other cases.

back to top

Section 40
Competent administrative authority

The administrative authority (Verwaltungsbehörde) within the meaning of section 36 (1) no. 1 of the Act on Breaches of Administrative Regulations shall be the Federal Financial Supervisory Authority.

back to top

Section 40a

Involvement of the Supervisory Authority and information in criminal cases

(1) The public prosecutor's office shall inform the Supervisory Authority of investigative proceedings relating to criminal offences in accordance with section 38. If experts are required for these investigative proceedings, competent staff members of the Supervisory Authority may be called upon. The Supervisory Authority must be informed of the indictment and the application for an order imposing punishment. If the public prosecutor's office intends to discontinue prosecution, it is required to hear the Supervisory Authority.

(2) The court shall inform the Supervisory Authority of the date of the main proceedings relating to criminal offences in accordance with section 38.

(3) The Supervisory Authority shall be granted access to the files at its request unless this is contrary to warranted interests of the party concerned or would endanger the success of the investigations.

(4) If public action is brought in criminal proceedings against the owners or managers of investment services enterprises or their legal representatives or personally liable partners because of criminal offences to the disadvantage of customers in respect of or in connection with operating the investment services enterprise, furthermore in criminal proceedings concerned with criminal offences pursuant to section 38, the Supervisory Authority shall be provided with

1. the indictment or the petition in lieu of an indictment;
2. the application for the issuing of a summary order and
3. the decision concluding the proceedings together with the grounds for the decision;

if an appeal has been lodged against the decision, the decision shall be transmitted together with a reference to the appeal that has been lodged. In the case of proceedings in respect of criminal offences that have been committed by negligence, the communications set forth in nos. 1 and 2 shall only be made if, in the view of the authority making the communication, it is deemed necessary that the Supervisory Authority takes decisions or other measures without undue delay.

(5) If in criminal proceedings other facts indicating irregularities in the business operations of an investment services enterprise become known and if in the view of the authority making the communication the knowledge thereof is necessary for the Supervisory Authority to take measures pursuant to this Act, the court or the prosecuting or enforcement authority shall also communicate such facts, if it is not obvious to the authority making the communication that warranted interests of the persons concerned prevail. In this case it must be taken into consideration to which extent the information to be communicated is reliable.

back to top

Part 13
Transitional provisions

back to top

Section 41
Transitional provisions concerning notification and publication requirements

(1) Enterprises within the meaning of section 9 (1) sentence 1 which exist on 1 August 1997 and have not been subject to the reporting requirement pursuant to section 9 (1) before this date, shall conduct reporting pursuant to this provision for the first time on 1 February 1998.

(2) Any person who, taking account of section 22 (1) and (2), holds, on 1 April 2002, five percent or more of the voting rights of a listed company must without undue delay, and within seven calendar days at the latest, notify the company and the Supervisory Authority in writing, stating his address, of the size of his percentage of the voting capital; the voting rights to be attributed to the notifying party shall be stated separately for each item in this notification. An obligation

pursuant to sentence 1 shall not exist if a notification pursuant to section 21 (1) or (1a) was made after 1 January 2002 and prior to 1 April 2002.

(3) The company must publish any notifications pursuant to subsection (2) within one month of receipt pursuant to section 25 (1) sentences 1 and 2 and (2), and must without undue delay send the Supervisory Authority documentary evidence of such publication.

(4) The provisions of sections 23, 24, 25 (3) sentence 2, subsection (4) and sections 27 to 30 shall apply mutatis mutandis to the obligations pursuant to subsections (2) and (3).

(4a) Anyone who as per 20 January 2007 holds a percentage of voting rights attached to shares which reaches, exceeds or falls below the thresholds of 15, 20 or 30 percent, also in consideration of section 22, shall notifiy the issuer whose home country is the Federal Republic of Germany of his percentage of voting rights by no later than 20 March 2007. This does not apply if he submitted to the issuer prior to 20 January 2007 a notification containing equivalent information; the content of the notification shall be in compliance with section 21 (1), also in conjunction with an Ordinance pursuant to subsection (2). Anyone who as per 20 January 2007 is entitled to a percentage of voting rights of five percent or more in an issuer whose home country is the Federal Republic of Germany on the basis of attribution pursuant to section 22 (1) sentence 1 no. 6 must notify the issuer by no later than 20 March 2007. This does not apply if he submitted to the issuer prior to 20 January 2007 a notification containing equivalent information and if he was not attributed the voting rights pursuant to section 22 (1) sentence 1 no. 6 in the version applicable prior to 20 January 2007; the content of the notification shall be in compliance with section 21 (1), also in conjunction with an Ordinance pursuant to subsection (2). Anyone who as per 20 January 2007 holds financial instruments within the meaning of section 25 must notify the issuer whose home country is the Federal Republic of Germany by no later than 20 March 2007 of the percentage of voting rights he would hold if he held, instead of financial instruments, those shares that may be acquired under the legally binding agreement, unless his percentage of voting rights was below 5 percent. This does not apply if he submitted a notification containing equivalent information to the issuer prior to 20 January 2007; the content of the notification shall be in compliance with section 21 (1), also in conjunction with an Ordinance pursuant to subesection (3). If a domestic issuer receives a notification pursuant to sentence 1, 3 or 5 he must publish it by no later than 20 April 2007 pursuant to section 26 (1) sentence 1, also in conjunction with an Ordinance pursuant to subsection (3). Furthermore, he shall transmit such information without undue delay, however not before its publication, to the company register within the meaning of section 8b of the Commercial Code (Handelsgesetzbuch) in order to be stored there. He shall simultaneously with the publication pursuant to sentence 7 notify the Supervisory Authority pursuant to section 26 (2), also in conjunction with an Ordinance pursuant to subsection (3) no. 2. Sections 23, 24, 27 to 29 and 29a (3) shall apply mutatis mutandis to the obligations pursuant to sentence 1 to 9. Section 29a (1) and (2) shall apply mutatis mutandis to the obligations pursuant to sentence 4.

(5) An administrative offence is committed by any person who wilfully or negligently

1. fails to make a notification, fails to do so within the prescribed period or makes such notification incorrectly, incompletely or not in the prescribed manner in contravention of subsection (2) sentence 1 or subsection (4a) sentence 1, 3, 5 or 9; or
2. fails to effect publication, fails to do so within the prescribed period, or effects such publication incorrectly, incompletely or not in the prescribed manner, fails to forward documentary evidence or fails to do so within the prescribed period, or fails to communicate information or fails to do so within the prescribed period in contravention of subsection (3) or subsection (4a) sentence 7 or 8.

(6) The administrative offence is punishable by a fine not exceeding two hundred thousand euros in the cases referred to in subsection (5).

back to top

Section 42
Transitional provisions concerning the obligation to reimburse costs pursuant to section 11

(1) The parties obliged to reimburse the costs to the Supervisory Authority pursuant to section 11 (1) sentence 1 of the Act of 26 July 1994 (BGBl. I, p. 1749) may also prove the volume of the transactions in securities and derivatives for the time up until the end of 1996 and for the year 1997 on the basis of the number of transactions reported pursuant to section 9 in 1996 and 1997 respectively.

(2) Section 11 as amended prior to the entry into force of the Act Establishing the Federal Financial Supervisory Authority (Gesetz über die integrierte Finanzdienstleistungsaufsicht) of 22 April 2002 (BGBl. I, p. 1310) shall apply for the period up until 30 April 2002 to the costs incurred by the Federal Securities Supervisory Office.

back to top

Section 43
Transitional provisions concerning the limitation of damage claims pursuant to section 37a

Section 37a shall not apply to damage claims against investment services enterprises for having failed to comply with the obligation to furnish information and for having given wrong advice in connection with an investment service or non-core investment service which arose before 1 April 1998.

back to top

Section 44
Transitional provisions concerning foreign organised markets

(1) Organised markets requiring an authorisation pursuant to section 37i which on 1 July 2002 granted trading participants domiciled in Germany direct market access by means of an electronic trading system, shall notify the Supervisory Authority thereof by 31 December 2002 and file an application for authorisation by 30 June 2003.

(2) Organised markets obliged to submit a notification pursuant to section 37m which granted trading participants domiciled in Germany direct market access by means of an electronic trading system shall notify the Supervisory Authority thereof and of their intention to maintain such market access by 31 December 2002.

back to top

Section 45
Application of part 11

The provisions of part 11 in the version in force since 21 December 2004 shall apply for the first time to financial statements for the financial year ending on 31 December 2004 or later. The Supervisory Authority shall begin to execute the duties assigned to it in part 11 as of 01 July 2005.

back to top

Section 46
Application of the Transparency Directive Implementation Act

(1) Sections 37n and 37o (1) sentence 4 as well as the provisions under part 11 sub-part 2 as amended on 20 January shall apply for the first time to financial reports covering the financial year which commences after 31 December 2006.

(2) In respect of issuers of whom only debts securities are admitted to trading on an organised market within the meaning of Article 4 (1) No. 14 of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments (OJ EU No. L 145 p. 1) in a member state of the European Union or another signatory to the Agreement on the European Economic Area, and in respect of issuers whose securities are admitted to trading in a third country and who have been applying the internationally accepted accounting standards for this purpose

since the financial year that commenced prior to 11 September 2002, sections 37w (3) sentence 2 and section 37y no. 2 as amended on 20 January 2007 shall apply under the proviso that the issuer may apply the accounting standards of the prior-year financial statements to the financial years commencing prior to 31 December 2007.

(3) Section 30b (3) no. 1 (a) as amended on 20 January 2007 shall apply for the first time to information which is communicated after 31 December 2007.

(4) Publications pursuant to section 30b (1) and (2) shall be effected, in addition to their publication in the electronic Federal Gazette (elektronischer Bundesanzeiger), in a national official stock exchange gazette up until 31 December 2008.

[1]

Pursuant to Article 23 of the Law of 21 June 2002, as published in the announcement of 27 June 2002 (BGBl. I p. 2316), section 9 (2) nos. 7 and 8 do not enter into force until 01 April 2003.

[2] Important note:

1) A transitional provision for the obligation to reimburse costs pursuant to section 11 is set forth in section 42 (2) WpHG: Section 11 as amended prior to the entry into force of the Act Establishing the Federal Financial Supervisory Authority (Gesetz über die integrierte Finanzdienstleistungsaufsicht) of 22 April 2002 (BGBl. I, p. 1310) shall apply for the period up until 30 April 2002 to the costs incurred by the Federal Securities Supervisory Office.

Allocation of Costs and Costs

(1) The Federal Government is to be reimbursed for the costs of the Federal Supervisory Office as follows:

1. 68 percent by credit institutions and enterprises operating under section 53 (1) sentence 1 of the Banking Act, insofar as these credit institutions or enterprises are authorised to provide investment services within the meaning of section 2 (3) nos. 1, 2 or 5 in Germany;
2. 4 percent by official exchange brokers and other enterprises admitted to trading on a German stock exchange and which do not come under the provisions of number 1 above;
3. 9 percent by financial services institutions and enterprises operating under section 53 (1) sentence 1 of the Banking Act, insofar as these financial services institutions or enterprises are authorised to provide investment services within the meaning of section 2 (3) nos. 3, 4 or 6 in Germany, and do not come under the provisions of numbers 1 or 2 above;
4. 9 percent by issuers domiciled in Germany, whose securities are admitted to trading on a German stock exchange or are traded on the regulated unofficial market (Freiverkehr) with their consent.

In the case of sentence 1 numbers 1 and 2, the costs are allocated proportionally based on the volume of transactions reported pursuant to section 9 (1); the number of transactions is the determining criterion in this context, with only a third of the transactions to be taken into account for bonds. In the case of sentence 1 number 3, the costs are allocated proportionally based on the result from ordinary activities or, in cases where corresponding evidence is submitted, based on the gross proceeds from investment services or own account transactions. In the case of sentence 1 number 4, the costs are allocated to the issuers proportionally based on the stock exchange turnover of their securities admitted to trading or traded on the regulated unofficial market (Freiverkehr). The costs shall also include refundable amounts that could not be collected and shortfalls from the cost allocation of the previous year for which costs are to be reimbursed; refunds or shortfalls on which no final or incontestable judgement has yet been made shall be excepted from this provision. The refundable amounts and shortfalls shall be added in full to the respective proportion of the costs arrived at based on sentence 1.

(2) The parties subject to cost allocation pursuant to subsection 1 sentence 1 above and the German stock exchanges are required upon request to furnish the Federal Supervisory Office with information concerning the volume of transactions, the result from ordinary activities or the gross proceeds and stock exchange turnover. The cost allocation shall be enforced by the Federal Supervisory Office pursuant to the provisions of the German Act on Administrative Enforcement

3) Details concerning the allocation of the costs, in particular the allocation key and measurement date, the minimum allocation amount, the allocation procedure including a suitable method of estimation, the payment deadlines and the amount of late payment penalties, and concerning collection shall be determined by the Federal Ministry of Finance by means of an Ordinance not requiring the consent of the Bundesrat; such Ordinance may also include provisions governing the provisional determination of the allocation amount. The Federal Ministry of Finance may, by means of an Ordinance, delegate this authority to the Federal Supervisory Office.

(4) The costs incurred by the Federal Government from the audit pursuant to section 35 (1) and section 36 (4) shall be reimbursed separately by the enterprises concerned and shall be paid in advance if so requested by the Federal Supervisory Office.

back