

Exhibit A-1: Location, history, size, ownership and corporate structure, governance and committee structure, current or anticipated presence of offices or staff in the United States, and anticipated volume of business emanating from members and other participants that will be provided direct access to the foreign board of trade's trading system.

1. Location, History, Size

The European Energy Exchange (EEX) is located in the city of Leipzig, Germany, and has been operating as an energy exchange since the year 2002. As of July 2016, the total number of full-time employees at EEX amounted to around 150 (not including employees in partial retirement, trainees, student interns, the members of the Management Board, or employees on parental leave).

EEX operates a regulated trading platform (i.e. a trading platform which is subject to state supervision) for a broad range of energy, energy related products and other commodities such as power, coal, environmental products (emission rights and guarantees of origin) and agricultural products (potatoes, dairy products, livestock and meat). Emission rights are traded both on a short-term basis on the Spot Market and on a long-term basis on the Derivatives Market with a time horizon of the next six full years. Power, coal, guarantees of origin and agricultural products are traded as futures with financial settlement. Fertilisers, freight (dry bulk freight, container), fuel oil and metals (iron ore, steel) are only available for Trade Registration. However, these products are treated as exchange traded products from a European regulatory perspective. All products except emission rights are financially settled.

With more than 240 trading participants from over 25 countries (as of July 2016) EEX is the energy exchange in continental Europe with the highest number of participants. EEX's clearing house, the European Commodity Clearing AG (ECC AG hereinafter), operates throughout Europe and guarantees the secure and efficient settlement of all transactions. ECC AG is a subsidiary of EEX and also incorporated under German law with registered offices in Leipzig. In 2006, EEX outsourced its former clearing department into ECC AG. ECC AG provides clearing and settlement services for all transactions at EEX as well as for transactions on ten other exchanges, including APX in the Netherlands and the UK, Belpex in Belgium, Gaspoin Nordic in Denmark, Powernext and Epex Spot in France, CEGH in Austria, HUPX in Hungary, PXE in the Czech Republic, Norexco in Norway and SEEPEX in Serbia. ECC AG is licensed as a Central Counterparty under the German Banking Act and as such supervised by the Federal Financial Supervisory Authority (BaFin). At the same time ECC AG has been granted a license as a Central Counterparty under Regulation 648/2012 (EMIR), which allows ECC AG to operate within Europe without the need for additional licensing. The supervisory authority for ECC AG as an EMIR-licensed CCP is also BaFin as the local financial supervisory authority.

EEX, together with ECC AG, offers comprehensive services in all areas of energy and many areas of commodity trading to all participants. These services include trading and clearing services, as well as the transmission of information regarding the relevant markets on its website. The futures markets are either financially or physically settled. For an overview of the Market and Products offered by EEX please refer to the [Markets & Products Brochure 2016](#).

2. Explanation of the relationship between the public exchange (EEX) and the private operator (EEX AG).

Similar to other exchanges in the Federal Republic of Germany, the exchange EEX is an entity under public law pursuant to the German Exchange Act (Boersengesetz) and supervised by the Exchange

Supervisory Authority.¹ The operator of EEX, EEX AG, is a company incorporated under German law and its offices are located in Leipzig (headquarters), Berlin, Milan, London, Oslo and Brussels. EEX AG is obliged by law to provide financial, personnel and material resources for EEX.

EEX is both a private and a public entity – an individual particularity based on the German Exchange Act. It is codified in the German Exchange Act that the operator of an exchange is not only entitled but also obliged to establish and commercially operate the exchange after having received permission to operate an exchange from the Exchange Supervisory Authority (Section 5 par. 1 of the German Exchange Act). In doing so, the operator of an exchange cannot legally exercise its influence on the operation and development of the exchange itself. All major authority over decisions concerning the organization and execution of the exchange lies with the bodies of the exchange. On the other hand, the bodies of the exchange may not take any actions to influence the business policy of the operator, so long as the operator does not take any measures that infringe its obligation to operate the exchange.

Despite the distinction made between the public EEX and the private EEX AG in this section, we refer to both as a single entity by using the term “EEX”, unless specifically stated otherwise.

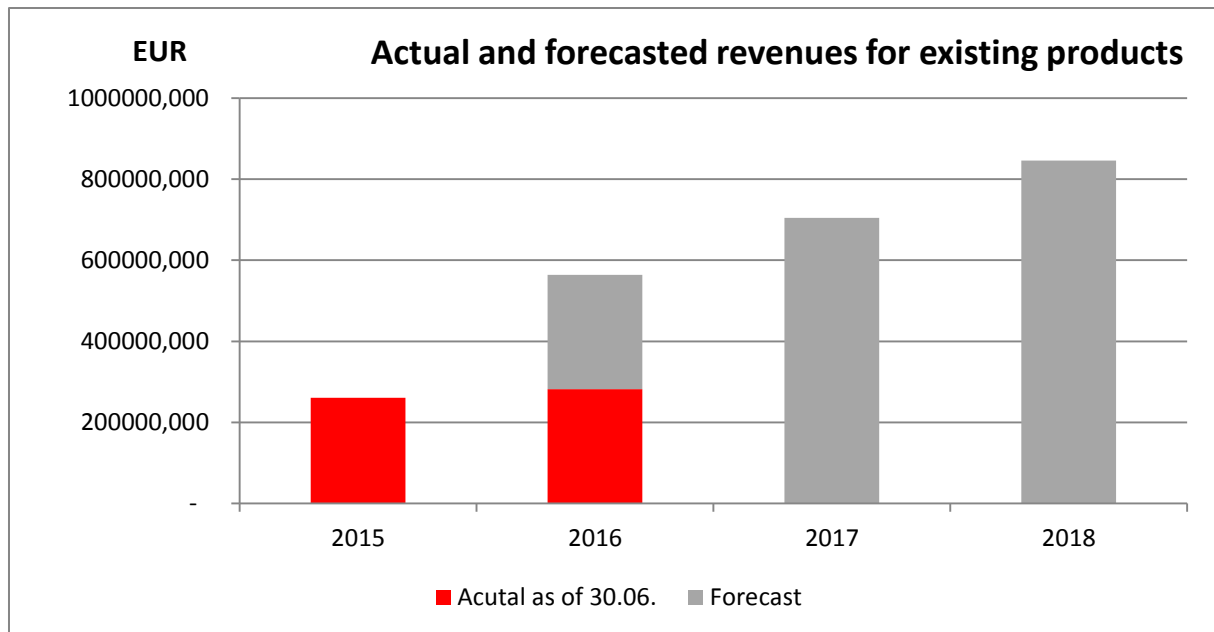
3. Current or anticipated presence of offices or staff in the United States

EEX represents that it does not have a subsidiary or affiliate in the United States, nor does it intend to should it become a registered foreign board of trade. EEX has not participated in any market fair as an exhibitor nor carried out any mailing or merchandizing campaigns in the United States. However, addressees located in the United States may read information distributed by EEX via email. Information in English published on EEX’s website is accessible to, but is not designed specifically for, potential market participants in the United States. EEX further represents that it does not perform any trade processing or clearing functions in the United States. However, as notified to the CFTC already EEX has engaged with DRX E3 - a company which provides sales support and consultancy services to EEX from the U.S. DRX E3’s task is to acquire new trading participants for EEX within the US. However, DRX E3 will not make firm commitments or legally binding declarations on behalf or in the name of EEX.

4. Anticipated Volume of Business

The European Energy Exchange was granted a No Action Relief Letter by the CFTC in 2004 and has maintained this license ever since. Based on the past twelve years during which EEX has operated under the provisions laid forth in the No-Action Relief Letter along with an increasing interest in European commodity markets, EEX expects an increase in trade volume following the FBOT registration for its already existing product suite.

¹ Exchanges such as the EEX are organized under the German Exchange Act (Boersengesetz), which enables exchanges to be formed and provides for comprehensive exchange rules, serving a purpose similar to a private cooperation’s charter and articles of association. The German Exchange Act contemplates that the exchange will be managed by an operator (in this case, EEX AG, which is a private corporation), in accordance with the German Exchange Act. Under German law, public entities such as exchanges are limited in their ability to pursue or comply with private law rights and obligations, which are therefore assumed by the operator of the exchange. Thus, it is through the combination of both the exchange and the operator that EEX and EEX AG can carry out all necessary activities and fulfill their duties under public and private civil law.



With the acquisition of Cleartrade Exchange end of 2013, EEX on took over three US based fertilizer futures (NOLA Urea, NOLA DAP, Tampa DAP). These products are now listed for trade registration only at EEX as well and marketed to the existing EEX client base as well as new clients based in the US and thus being obviously the major prospects.

Furthermore, EEX follows the strategic direction of its management to become one of the global commodity exchanges. For this, an enlargement of the range of commodities offered for trading is vital. Therefore, EEX currently analyses a new product initiative for the following US commodity markets:

- Power
- Carbon Emissions
- Coal
- Fuel Oil
- Gasoil

For all of these products and the underlying corporate growth strategy a FBOT registration is inevitable.

5. Ownership, Corporate, Governance and committee structure

EEX has stipulated general objectives in fundamental governance arrangements that ensure a high priority on functional capability, safety and efficiency of the exchange by establishing a two-tiered board structure with an explicit control function and clearly defined, direct lines of responsibility and accountability. The governance level handling the control function has the necessary independent powers and an adequate balance of stakeholders to avoid conflicts of interest.

EEX is a company lawfully incorporated under the relevant German law. It is entitled to do business based on the corresponding specifications described in the company's articles of association and statutes. In accordance with internationally acknowledged standards, these documented governance arrangements of the exchange are made available to all owners, regulatory or other relevant authorities, participants and, at a more general level, to the public on request.

In Germany, companies are governed by two separate bodies: a Supervisory Board and a Management Board. In accordance with the German Stock Corporation Act, EEX is characterized by a

clear separation between Supervisory Board and Management Board. The EEX Supervisory Board predominantly performs control functions and is accountable for the election and appointment of the Management Board members as well as the adoption and amendment of rules of procedure for the company's executive bodies. The executive directors of the EEX Management Board are in charge of managing the day-to-day operations of the company. This fundamental division of executive bodies can be found in the articles of association.

In accordance with international governance requirements all boards within the EEX Group exercise multiple roles and responsibilities. Against the background of the above depicted two-tier board system, EEX has expressly specified the distinction of those roles, functions and areas of responsibilities between the companies' executive bodies.

This separation of roles and duties which serves to promote accountability is strictly prescribed in the company's articles of incorporation, the rules of procedure and the bylaws for the Management and Supervisory Board of EEX AG. Next to this, also direct reporting lines between the Supervisory Board and the Management Board are clearly defined in the basic governance arrangements of the EEX AG. In particular, matters and decisions proposed by the Management Board whose resolutions require the involvement of the Supervisory Board are precisely determined.

The Supervisory Board independently performs its consulting and monitoring functions and is not bound by any instructions of the executive directors of EEX AG. The members of the Supervisory Board are actively included in significant business development processes at EEX Group which require the Supervisory Board's consent and/or approval. This proves particularly true for the Supervisory Board's role in passing resolutions on major business, strategic and legal transactions which are proposed by the Management Board.

Furthermore, the members of the Supervisory Board may exercise their right to information by requesting reports on the current situation of EEX, its assets and its affiliate companies. This also includes reports on the external development, on the company's relations with affiliates and other business circumstances substantially impacting EEX AG.

Moreover, the Supervisory Board has a material right to inspect, review and audit the companies' books and records. As regards the Supervisory Boards' monitoring and control functions, the board members also hold a right to veto and may not give their support to proposals of the Management Board concerning e.g. the reallocation of areas of responsibilities. In addition to that, the Supervisory Board may delegate functions and responsibilities to newly established committees or individual board members.

The members of the Management Board are responsible for all executive functions and take the overall responsibility for the company. The Management Board ensures that the design, rules, overall strategy, and major decisions reflect appropriately the legitimate interests of all direct, indirect and other relevant stakeholders. Major decisions are clearly disclosed to relevant stakeholders and, where there is a broad market impact, the public.

The chairman of the Management Board is of major importance concerning the proper functioning of the company and the daily operations, the adequate representation of the company towards the public and the trustworthy cooperation with the Supervisory Board based on clear and continuous communication. The chairman of the Management Board pays heed to a uniform orientation of all board members as regards the compliance with agreed objectives and their achievement as well as the implementation of consent-based resolutions. The Management Board is obliged to provide comprehensive information and submit certain matters to the Supervisory Board allowing for a sufficient participation in decision-making processes. In particular, this obligation applies to major business-related, material, legal and financial transactions as e.g. the acquisition, sale or encumbrance of interests or real property and the transfer of shares. In addition to this, also significant transactions applicable to affiliates and external invested-in companies of EEX-Group are

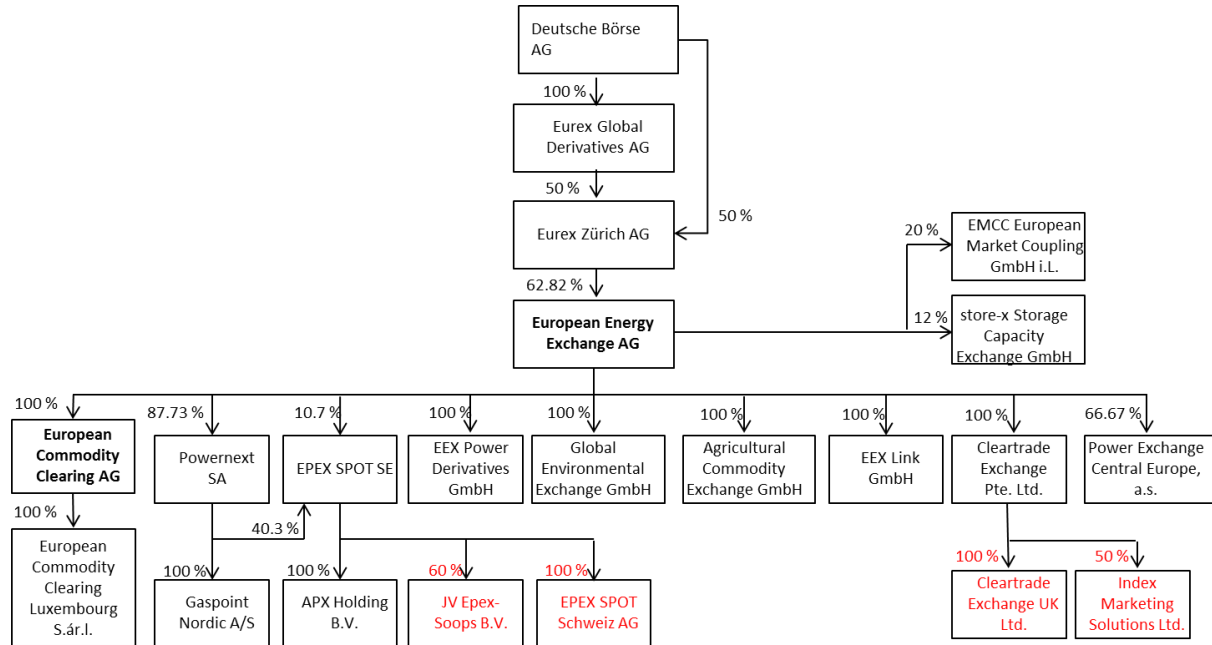


included. Moreover, the Management Board is responsible for informing the Supervisory Board on issues concerning the taking up of financial loans, securities and guarantees.

I. Ownership structure of EEX

EEX AG is organized as a stock corporation (Aktiengesellschaft). EEX AG operates the exchange European Energy Exchange (EEX). The majority of 62.82% of EEX AG is held indirectly by Deutsche Boerse AG. The legal predecessors of EEX are LPX Leipzig Power Exchange in Leipzig and European Energy Exchange in Frankfurt (Main), Germany. The operators of these two exchanges merged in 2002 to form EEX AG. Currently, EEX AG’s largest shareholders are Eurex Zurich AG, located in Zurich, Switzerland (62.82 %), 50Hertz Transmission GmbH (8.66 %), LVV Leipziger Versorgungs- und Verkehrsgesellschaft GmbH (7.38 %), Uniper Global Commodities SE (5.67 %) and the Federal State of Saxony (4.51 %). The remaining shares are distributed among 13 other entities (including EEX AG’s own shares of 0.15%) from different stakeholder groups, none of which holds more than 4.5 percent.

Graph: Ownership structure



* the companies highlighted in red are specifically listed on the EEX website.

EEX AG is the sole shareholder of ECC AG, the Central Counterparty licensed by Bafin and under EMIR. Short-term power trading is operated by EPEX Spot SE in Paris, of which EEX directly and indirectly holds a majority stake of 51%. The natural gas markets of EEX group are operated by Powernext S.A. (Powernext) in Paris under the “PEGAS” brand. EEX AG holds a majority share of 87,73% in Powernext. With a stake of 66,67% EEX is also the majority shareholder of Power Exchange Central Europe (PXE). This company is based in Prague and offers trading in Czech, Slovak, Hungarian, Polish and Romanian electricity and operates the CEGH Czech Gas Futures Market in cooperation with the Austrian Central European Gas Hub AG (CEGH). In addition, EEX is the sole shareholder of Cleartrade Pte Ltd. (CLTX), a derivatives market operator regulated by the Singaporean financial supervisory authority (MAS) and also a holder of an FBOT license and offering a global electronic market platform for commodity derivatives for freight, iron ore, fuel oil, fertilisers, coal, steel and container contracts. EEX AG also holds a 100% share in EEX Link GmbH, an intermarket-liquidity-provider.

Economically, the power derivatives business is concentrated within EEX Power Derivatives GmbH in Leipzig which is fully owned by EEX AG. The spot and derivatives markets for CO₂ emission

allowances are pooled within the wholly owned EEX subsidiary Global Environmental Exchange GmbH (GEEX). The agricultural business is concentrated in the wholly owned EEX subsidiary Agricultural Commodity Exchange GmbH (ACEX).

As demonstrated below, EEX AG also holds a minor interest in Store-x GmbH (Storage Capacity Exchange), an online platform for secondary trading in storage capacities for natural gas, and in EMCC GmbH (European Market Coupling Company), a company which carried out capacity management on the German-Danish border but is going to be dissolved in the course of 2016.

II. Governance and committee structure of EEX AG

The committee structure at EEX AG is divided into the Executive Board, a Supervisory Board, and the shareholders' meeting.

The **Executive Board** (or Management Board) of the company may consist of one or several members. The Supervisory Board determines the number of members on the Management Board. If the Management Board consists of only one member, this member shall represent the company alone. If the Management Board is comprised by two or more members, the company shall be legally represented by two members of the Management Board, or by one member of the Management Board and an executive holding statutory power of attorney (Prokurist). The Management Board manages the business of the company in accordance with the law, the articles of association, and the rules of procedure for the Management Board.

The current Management Board is composed of the following members:

Reitz, Peter

Chief Executive Officer

Peter Reitz has been chairman of the EEX Management Board since 1 August 2011. After attaining a degree in mathematics, he started his career as a product manager at Deutsche Boerse AG in Frankfurt. From 2000 to 2001, he worked at Dow Jones Indexes in New York before he became a member of the Eurex Management Board. Since 2007, he has accompanied the development of the EEX as a member of the EEX Supervisory Board.

Köhler, Steffen

Chief Market Officer

Steffen Köhler has been a member of the EEX Management Board since 1 March 2012. After having worked for several companies in the financial sector, Steffen Köhler started working as a Senior Expert in the Product Development Clearing Business and OTC division of Eurex Clearing in 2003. From 2006, he made a decisive contribution to the cooperation between EEX and Eurex in his capacity as the Executive Director of the Eurex Market Development.

Paulun, Tobias

Chief Strategy Officer

Dr Dr Tobias Paulun has been a member of the EEX Management Board since 1 January 2015. Starting in August 2009, he worked for EEX and ECC AG in the areas of product development and strategy. Moreover, he was Managing Director Exchange and member of the Board of EPEX SPOT. In these functions, he contributed to the strategic development of EEX Group with special focus on the regulatory market environment and European energy market design. As Chief Strategy Officer of EEX, Tobias Paulun coordinates the strategic direction of EEX Group.

Siegl, Thomas

Chief Risk Officer

Dr Thomas Siegl has been a member of the Management Board of the EEX since 1 September 2012. After graduating in technical mathematics and attaining a doctorate in technical science he worked at Graz University of Technology. Afterwards, he joined Arthur Andersen in Frankfurt in the field of Financial and Commodity Risk Consulting, where he worked until 1999, and later he headed the central Risk Management Division of BHF-BANK AG in Frankfurt. Since 2010 he has been a member of the Management Board of the ECC AG.

Weidinger, Iris

Chief Financial Officer

Ms. Weidinger was appointed a member of the management board of EEX on 15 August 2008. Prior to her current appointment, she was EEX AG's chief representative for the finance and human resource functions and authorized signatory of ECC AG. Following her training as an expert in business management and as a tax consultant she worked in the commercial trainee program of E. Breuninger GmbH & Co., Stuttgart and PwC Deutsche Revision AG, Leipzig.

Conil-Lacoste, Jean-François

Executive Director Power Spot Markets

Jean-François Conil-Lacoste has been a member of the EEX Management Board since 1 January 2015. As Chief Executive Officer of EPEX SPOT SE and Executive Director Power Spot Markets at EEX Group, he is in charge of the Power Spot Markets of the group which are operated by EPEX SPOT SE. Graduated from ESSEC Business School in 1976, he spent ten years as a commodity trader at Louis-Dreyfus in Paris and Buenos-Aires until 1986 before managing stockbroker Ferri's fixed income department. He joined Euronext in 1997 to create and manage the London office as well as the French derivatives activities.

Laege, Egbert

Executive Director Gas Market

Dr Egbert Laege has been a member of the EEX Management Board since 1 January 2015. As well as being a member of the EEX Management Board in his capacity as Executive Director - Gas Markets, Egbert is also Chief Executive Officer of Powernext SA, which controls the gas market business within EEX Group. Egbert started his career as Research Fellow and Program Director at the Institute for Energy Economics of the University of Stuttgart. In 1999, he moved over to E.ON where he passed through different stages of the trading, portfolio management and asset optimization divisions. Prior to this new position at EEX Group, he worked as Chief Commercial Officer Asset Optimization at E.ON Global Commodities until 30 November 2013.

The **Supervisory Board** of EEX AG consists of 18 members. As a shareholder of the company, Eurex Zürich AG, Zurich (Switzerland) has the right to appoint four members to the Supervisory Board. Further, as shareholders of the company, the Free State of Saxony and the City of Leipzig each have the right to appoint one member to the Supervisory Board. The term of office of these appointed six members of the Supervisory Board corresponds to the term of office of the members of the Supervisory Board to be elected by the shareholders' meeting. The members of the Supervisory Board who are not appointed by the aforementioned parties shall be elected by the shareholders' meeting by a qualified majority of 80 % of the votes cast for a period that ends upon the conclusion of the shareholders' meeting which decides on the discharge of the board members for the second financial year after commencement of the term of office, unless stipulated otherwise by law or resolution of the shareholders' meeting, which must take into account the maximum legal duration. The financial year in which the term of office commences shall be disregarded.

Current members of the Supervisory Board include:

Dr Hans-Joachim Arnold	Katja Mayer
Dr Dirk Biermann	Prof Harald R. Pfab
Heike Eckert	Andreas Preuß
Dr Nigel Hawkins	Dr Michael Redanz
Ulf Heitmüller	Klaus Rohatsch
Burkhard Jung	Hans E. Schweickardt, Deputy Chairman
Dr Jürgen Kroneberg, Chairman	Uwe Schweickert
Mike Lockett	Jürg Spillmann, Deputy Chairman
Dr Hartmut Mangold, Deputy Chairman	Marco Steeg

The Supervisory Board is responsible for the supervision of the Management Board as well as for the appointment and removal of members of the Management Board. The Supervisory Board may determine the types of transactions for which the Management Board – notwithstanding its authority of representation in the normal course of business – requires the prior approval of the Supervisory Board.

The Supervisory Board may delegate the preparation and implementation of its resolutions or the performance of individual monitoring tasks to **committees**, which shall be composed of at least three members. Currently, the supervisory board of EEX AG has formed three committees:

- 1) **Personnel Committee (4 members):** The Personnel Committee prepares the decisions of the Supervisory Board on appointing and removing members of the Management Board and on determining the remuneration of members of the Management Board (salary, profit-sharing bonuses, expense allowances, insurance payments, commissions, commitments regarding incentive-based compensation, target agreements and fringe benefits of all kinds). The Personnel Committee submits the prepared proposals for remuneration-related decisions on the conclusion of or amendments to contracts of Management Board members to the Supervisory Board. In its proposals, the Personnel Committee shall set forth reasons determining the Management Board member's overall compensation in accordance with Section 87 par. 1 of the German Stock Corporation Act. In addition, the Personnel Committee may decide, to the extent that such decision does not constitute a remuneration-related decision, on
 - nominations submitted to the Supervisory Board for the election of members of EEX's Management Board,
 - proposals submitted to the Supervisory Board for the conclusion, amendment, or termination of service agreements with Management Board members,
 - in the stead of the Supervisory Board, the Personnel Committee may
 - determine other legal transactions with Management Board members pursuant to Section 112 of the German Stock Corporation Act,
 - consent to other activities of a Management Board member pursuant to Section 88 of the German Stock Corporation Act,

- grant loans to the groups of persons specified in Sections 89 and 115 of the German Stock Corporation Act,
- consent to agreements with Supervisory Board members pursuant to Section 114 of the German Stock Corporation Act as well as
- consent to side activities of Management Board members, in particular holding an office as a supervisory board member in companies other than EEX's affiliates.

2) Executive Committee (4 members): The Executive Committee is responsible for preparing the meetings of the Supervisory Board and the meetings of any committees other than the Personnel Committee. The preparation of such meetings includes the preparation of the decision-making processes. The Executive Committee issues recommendations in that respect.

Shareholders' meetings take the form of a general assembly which convenes at least on a yearly basis usually at the EEX main office in Leipzig, Germany. The responsibilities of the Shareholders' meeting are defined in Section 119 of German Stock Corporation Act. These include the preparation of the annual financial statements of EEX, decisions on the appropriation of the balance sheet profits, approval of the activities of the members of the Management Board and the Supervisory Board, appointment of the annual auditor, decisions regarding adoption and changes of the articles of association, among others. For a complete list of EEX shareholders, please reference Exhibit A-2.

III. Corporate, governance, and committee structure of the Exchange

In Germany, an exchange is established as a public institution with a partial legal capacity upon the granting of the corresponding exchange license by the Exchange Supervisory Authority. The Exchange Supervisory Authority, which is in charge of supervising the activities of EEX, is the Saxon Ministry for Economic Affairs and Labor (SMWA), located in Dresden. The corporate structure at EEX is determined by the German Exchange Act and composed of the Exchange Council, the Management Board of the Exchange, the Market Surveillance Department and the Sanctions Committee.

According to Section 12 of the German Exchange Act, each exchange in Germany must establish an **Exchange Council** which is responsible for, among other things, the adoption of Exchange Rules, the supervision of the Exchange Management Board, and the appointment and removal of members of the Exchange Management Board, the Head of the Market Surveillance Department – both in consultation with the Exchange Supervisory Authority – and the members of the Sanctions Committee. However, the Exchange Council does neither possess access of any kind to member or trade information nor the ability to influence trading activities. In detail:

The Exchange Council is one of the four executive bodies of the Exchange. As such, it is in charge of three fields of tasks: legislative competence, supervision of the Exchange Management Board, and human resources competence. The legislative competence comprises in particular the right to adopt the rules and regulations of the exchange, mainly consisting of the Exchange Rules, the Trading Conditions, the Contract Specifications, Trade Registration Rules and the Admission Rules. The right to adopt the Exchange Rules, which may only be exercised with the approval by or under supervision of the Exchange Supervisory Authority, is a sign of the autonomy of exchanges as laid down in the German Exchange Act and according to which an exchange can regulate the matters concerning the exchange on its own.

The supervisory function of the Exchange Council comprises continuous monitoring of the Management Board of the Exchange as well as involvement of the Exchange Council with regard to certain essential measures for the management of business operations. The requirement to obtain an approval for the introduction or change of the trading and settlement systems as well as the right to a prior hearing in the case of merger or co-operation agreements and in the case of outsourcing of activities related to the exchange is provided for in the German Exchange Act.

The Exchange Council exercises the human resources competence with regard to certain positions within the exchange together with the Exchange Supervisory Authority which has been granted a right of veto. The human resources competence comprises the appointment, re-appointment, and dismissal of the Management Board of the Exchange, the members of the Sanctions Committee as well as of the head of the Market Surveillance Department. The Management Board of the Exchange is entitled to the right of nomination of the Head of the Market Surveillance Department.

In the case of EEX, the members of the Exchange Council who are elected represent the energy companies licensed to trade on the exchange with the following subgroups:

- a) Multi-utilities and trading companies – ten seats
- b) Public utilities and regional suppliers – three seats,
- c) Financial Institutions licensed to trade on the exchange with the following subgroups:
 - Credit institutions and Financial Service Providers - four seats,
 - Energy Brokers – one seat,
- d) Commercial Consumers – one seat
- e) other business groups concerned i.e. associations – four seats (not elected! The associations have a nomination right).
- f) Independent Representative from the energy science – unless such is not elected – one seat.

The exact composition of the Exchange Council is provided for in the Saxon Exchange Act Execution Ordinance (SaechsBoersDVO). Members of the Exchange Council must have extensive experience in and profound knowledge of the business.

The current members of the Exchange Council are:

Ballarin, Matteo	Bonde, Michael
Dawson, Paul	Fleischer, Werner
Göbel, Jens (deputy chairman)	Grey, John
Guesry, Pierre	Haizmann, Dr Jan
Hauck, Heribert	Henze, Ralf
LaBrooy, Jason	Le Bouhellec, Bastien
Ludwig, Kerstin	Poppinga, Dr Carsten
Redanz, Dr Michael (chairman)	Sentker, Dr Peter
Siri, Andrea Vittorio (deputy chairman)	Testard, Hugo
Tuschek, Dr Anke	van Lith, Vincent
von Bernuth, Dr Wolf	Walter, Dr Bernhard (deputy chairman)
Weber, Prof. Dr Christoph	Zannella, Leonardo

Under Section 15 of the German Exchange Act, the **Management Board of the Exchange** manages the day-to-day business operations of the Exchange through its own responsibility.

Generally, the Management Board of the Exchange fulfills duties and exercises powers assigned to it by the German Exchange Act in order to further public interest and is responsible for all duties that are not expressly allocated to the other governing bodies of the exchange. The Exchange

Management Board may take all actions necessary for proper trading on EEX and the handling of exchange transactions. Companies and persons permitted to execute transactions on the exchange must comply with the instructions issued by the Exchange Board. Companies and individuals who breach existing regulations or do not observe such instructions can be temporarily suspended from trading if and for as long as they disrupt orderly trading procedures. The Exchange Board has the authority to withdraw, revoke, or suspend admission and to exclude from trading.

The current Management Board of the Exchange is comprised by Dr Dr Tobias Paulun, Steffen Köhler and Timothy Greenwood.

Pursuant to Section 7 German Exchange Act, EEX is under the obligation to operate an independent **Market Surveillance Department** which is responsible for continuous and comprehensive monitoring of the market behaviour and the compliance with applicable laws and the rules and regulations of the exchange. Subjects to this supervision are the exchange itself, the clearing house and the direct and indirect (i.e. customers/economic beneficiaries of a transaction) market participants. Objects are trading on the exchange and the settlement of exchange transactions in accordance with the requirements of the German Exchange Act and the derived rules and regulations of the exchange. The Market Surveillance Department systematically and thoroughly records and evaluates data regarding exchange trading and the settlement of transactions and also conducts any necessary investigations. The Exchange Supervisory Authority may issue instructions to the Market Surveillance Department and take over such investigations. The Management Board of the Exchange may also instruct the Market Surveillance Department to conduct investigations but has no other instruction rights towards the independent Market Surveillance Department. The head of Market Surveillance reports regularly to the Exchange Supervisory Authority and several other authorities in Germany and abroad (including several national and supranational financial supervisory authorities or energy regulators in and outside the EU).

The Market Surveillance Department may exercise the authority of the Exchange Supervisory Authority in many areas. It may request information and documentation from the exchange, the clearing house, the exchange members and its exchange traders admitted to the exchange for trading, and may also conduct inspections. If there is any evidence supporting the conclusion that exchange law provisions or orders have been violated or that any irregularities exist that would impair exchange trading or the settlement of exchange transactions, the Market Surveillance Department has far reaching disclosure rights towards the trading participants (Section 7 in connection with Section 3 German Exchange Act) and anybody else who may be economic beneficiary of an exchange transaction.

To the extent necessary to perform the duties of the Exchange Supervisory Authority and/or the Market Surveillance Department, the exchange and the trading participants must permit personnel from those entities to enter their property and business premises during normal working hours (Section 3 par. 4 and Section 7 par. 3 German Exchange Act). According to Section 7 par. 4 of the German Exchange Act, the Market Surveillance Department may transmit data with respect to the execution of transactions to the Management Board of the Exchange and the Market Surveillance Department of another exchange to the extent necessary for the fulfilment of the duties of the recipient. It may also transmit data with respect to the execution of transactions to those authorities responsible for monitoring trading on foreign exchanges, and receive data from them, to the extent that this is necessary to ensure orderly trading and settlement of exchange transactions. Such data may only be transmitted to the authorities if they and the individuals commissioned by them are bound by an obligation of confidentiality and are aware that they may only use the information for its intended purpose. The Market Surveillance Department must inform the Exchange Supervisory Authority, the Management Board of the Exchange, and the BaFin of what data it intends to exchange with authorities in other countries.

The **Sanctions Committee** is the youngest exchange body of EEX. The ordinance by the Saxon Ministry for Economic Affairs and Labor of 19 January 2009 paved the way for its establishment. The tasks of the Sanctions Committee are laid down in Section 22 of the German Exchange Act and the Saxon Exchange Act Execution Ordinance (SaechsBoersDVO). According to the German Exchange Act, the Sanctions Committee can penalize a trading participant with a reprimand, a fine of up to EUR 250,000, or the exclusion from the exchange for up to 30 trading days in case the trading participant or its auxiliary person intentionally or negligently violate regulatory provisions under exchange legislation. The punishment of a given behavior by the Sanctions Committee does not preclude its further prosecution under criminal, regulatory or civil law. The Sanctions Committee exercises its tasks and competences exclusively in the public interest.

At the moment, the Sanctions Committee of EEX has seven committee members who carry out their tasks on a voluntary basis and who are neither employees of the exchange nor employees of the Exchange Supervisory Authority. The Sanctions Committee takes action at the request of the Management Board of the Exchange or of the Exchange Supervisory Authority and establishes the facts and circumstances of the respective case *ex officio*.

The Sanctions Committee's independence is also safeguarded by a far-reaching provision regarding conflicts of interest, which establishes that members of the Sanctions Committee are not allowed to participate in decisions in the event that they are affected by such or that they are involved in the matter on which such decision is based, among others. Article 23 par. 3 of the Saxon Ordinance clearly states that members of the Sanctions Committee may not be members of other bodies of the exchange or employees of the Exchange Supervisory Authority. The current composition of the Sanctions Committee is as follows:

Chairperson:

Klingspor, Jutta, former Chief Judge at Administrative Court of Wiesbaden

Committee Members:

Chevalier, Pierre, DB Energie GmbH

Fleischer, Werner, Verbund Trading AG









von Bernuth, Dr Wolf, Energy & More Energiebroker GmbH und Co. KG

Henze, Ralf, Stadtwerke Hannover AG




Solere, Christophe, Susquehanna Ireland Ltd.

Walter, Dr Bernhard, EnBW Trading GmbH

Attachments for I. Membership Agreements

Key Words	Subject matter	Date	Document	Attachment
EEX Admission Rules	Rules of European Energy Exchange AG for admission as exchange trader	2015-02-15	 20150224_EEX_Admission_Rules_006a_e_	1
Form A01	Application for Admission as Exchange Participant to the markets of EEX	2016-01-26	 A01.pdf	2
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Attachments for II. Clearing Agreements

Key Words	Subject matter	Date	Document	Attachment
Clearing Conditions	Clearing Conditions of European Commodity Clearing AG	2016-08-01	 ECC Clearing Conditions v34b.pdf	1
NCM Agreement	Trilateral Agreement between Clearing Member, Non-Clearing Member and ECC.	2015-09-03	 NCM Agreement.pdf	2
NCM Application Form	Application for admission as Non-Clearing-Member	2016-05-20	 NCM Application Form.pdf	3



The English version is for informal use only. The German version is legally binding.



EEX-Admission Rules

Date **24.02.2015**

Place **Leipzig**

Document Release **006a**

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2. General Rules

§ 1 Scope

- (1) The following Admission Rules govern the prerequisites for the admission as an exchange trader, the procedure and the prerequisites for admission to and the content of the traders' examination furnishing proof of professional qualification according to Sect. 19 paragraph 6 BörsG¹ (Traders Examination). The proof of professional qualification constitutes the precondition for admission to the European Energy Exchange (EEX) as an exchange trader.

¹ Exchange Act of 16th July 2007 (Federal Law Gazette, vol. I, p. 1330)

3. Admission

§ 2 Admission of Exchange traders

- (1) Persons entitled to trade on the EEX Spot and/or Derivatives Market (Exchange trader) shall be admitted by EEX if they are reliable and have the necessary professional qualifications in accordance with the detailed provision in the rules for admission.
- (2) The admission entitles the Exchange trader to trade only the products or group of products he is admitted to and only on the trading platform for which such Exchange trader has the required technical knowledge.

§ 3 Proof of Reliability

The applicant proves his personal reliability through the sending of the duly completed and signed document „Declaration of personal reliability“. The Board of Management may request from the applicant additional documents or information.

§ 4 Proof of professional qualification

- (1) Professional qualification shall be assumed if the required practical experience and specialised knowledge necessary for trading on the EEX are satisfactorily shown.
- (2) Practical experience is considered proven if the applicant
 - (a) has successfully taken part in a systems training course according to Sect. 11 or
 - (b) can furnish proof of existing experience regarding the trading systems of EEX over a period of at least six months over the past two years before the application is submitted.
- (3) Evidence of the required specialised knowledge is particularly supplied by passing an examination leading to the qualification of an Exchange trader on the EEX. Details of the examination procedure are stipulated in Subsections 4 and 5.
- (4) The management of the exchange may in its own discretion refrain from the proof of passing the exams mentioned in sections 4 and 5 and may generally accept specific trainings and exams of other exchanges and institutions (foreign certificates) as a proof of professional qualification, this acceptance of foreign certificates has to be published.

§ 5 Admission procedure

- (1) Decisions regarding the admission of persons as Exchange traders are made by the Board of Management of EEX upon written application pursuant to Sect. 19 BörsG. The decision is made by the Board of Management of the Exchange in written form. It is permitted to refuse an incomplete application. The existing Exchange participants may be informed of the admission of a new Exchange participant conveniently.
- (2) Evidence of fulfilment of the conditions for admission of Exchange traders must be furnished by the respective participant. The Board of Management may request from the applicant additional documents or information at any time and within a certain time limit.

4. Board of Examiners

§ 6 Appointment

- (1) The Board of Management appoints a Board of Examiners to administer the examination for the purpose of evidencing the professional qualifications of exchange traders. This Board of Examiners consists of three members; such members elect a chairperson and a deputy chairperson. The Board of Examiners shall determine, by a majority of the votes cast, the results of such examination. Should the vote end in a tie, the respective chairperson shall have the casting vote.
- (2) The composition of the Board of Examiners is published on the website of EEX.
- (3) The Board of Management may appoint one or several deputy members for the Board of Examiners.
- (4) The Board of Management shall appoint and dismiss the members of the Board of Examiners and, where required, the deputies. The appointment may be limited in time. A re-appointment is permissible.

§ 7 Confidentiality

- (1) The members of the Board of Examiners shall keep confidential from third parties all examination proceedings, including the documents transmitted by participants in the examination.
- (2) Members of the Board of Management and the Exchange Council are not considered as third parties in terms of the above mentioned paragraph.

§ 8 Partiality

- (1) Members of the Board of Examiners who are or were related by blood or marriage to an examination candidate, or who are very close to such candidate in another way, should not be involved neither in the examination process nor in the admission to an examination.
- (2) If any concerns regarding partiality of a member of the Board of Examiners are raised by an examination candidate, the remaining members of the Board of Examiners shall determine whether or not to exclude the member concerned from administration of the examination.
- (3) If an examination candidate is concerned that a member of the Board of Examiners is partial, this shall be raised vis-à-vis the Board of Examiners in writing no later than two weeks after the application for the examination and the announcement of the members of the Board of Examiners.

5. Examination Process

§ 9 Application

- (1) The application for admission to the examination as exchange trader on EEX shall be filed in text form.
- (2) The application may be filed by enterprises which intend to participate in EEX as exchange participants or by the individuals to be examined.

§ 10 Admission to Examination

- (1) Individuals shall be admitted to the traders examination who
 - have filed an application for participation in the traders' examination,
 - attend a suitable preparation course (EEX Systems Training) which is recognised by the Board of Management for such purposes or who can demonstrate by any other means in writing that they have acquired the necessary knowledge imparted in the EEX Systems Training within the scope of another vocational training course or by admission to another exchange, and
 - have paid the fees charged to their account.
- (2) The Board of Examiners shall determine admission to the examination on the basis of the certificates provided.
- (3) If the number of applicants admitted for the examination exceeds the number of available places on a particular examination date, the receipt of the applications shall decide on the order of the applicants to be admitted to the examination date in question.

§ 11 EEX Systems Training Course

- (1) Evidence of the required practical experience of the applicant is furnished through the successful participation in an EEX Systems Training course.
- (2) The EEX Systems Training course shall take sufficient account of the actual trading process of the EEX systems. The type, content, process and duration of the systems training course shall be specified by the Board of Management.

§ 12 Examination Date, Place of Examination

- (1) The traders' exam shall be held sufficiently frequently, however, at least, once a quarter.
- (2) The Board of Management of the exchange shall decide on the examination dates and the respective place of examination in accordance with the Board of Examiners and announce these on the EEX website.

§ 13 Objective of the Examination

- (1) Objective of the examination shall be the determination of the specialised knowledge of the candidate for participation in the EEX exchange trading.
- (2) Evidence within the meaning of subparagraph (1) shall be furnished by the passing of the respective traders' examination according to these Exchange Rules.
- (3) Passing the traders examination does not - as a rule - constitute proof of specialised knowledge if the examination was taken more than three years prior to the first admittance as an exchange trader on EEX or the trader has not been active as a trader on EEX or a comparable market during the last three years.

§ 14 Examination Topics

- (1) The traders examination comprises the following examination topics:
 - Examination topic 1:
General legal foundations of exchange and electricity trading; legal foundations of exchange and electricity trading on EEX, organizational structure of EEX
 - Examination topic 2:
Practice of general trading, EEX products, trading procedure as well as collateral and settlement (clearing) of transactions concluded on EEX,
- (2) Generally, the examination candidate's knowledge in all concerning examination topics can be tested.

§ 15 Examination Tasks

The scope of the examination in terms of Sect. 13 in combination with Sect. 14 shall be the basis for the preparation of the examination tasks.

§ 16 Examination Requirements Committee

The Board of Examiners may form a committee which shall determine the content of the exchange traders' examinations (Examination Requirements Committee). The decision shall be based on the examination requirements pursuant to Sect. 13 in combination with Sect. 14.

§ 17 Conducting the Traders' Examination

- (1) The traders' examination shall be conducted electronically or in writing and in German or another language.
- (2) The examination time shall be determined by the Board of Examiners and the examination candidates shall be informed of the examination time in advance.
- (3) The traders' examinations are not of a public nature. Members or representatives of the Board of Management of EEX are permitted to be present at the examination.

- (4) The Board of Management regulates the monitoring of the traders examination, in agreement with the Board of Examiners, which shall guarantee that the candidates work independently and only with permitted aids.
- (5) Candidates for examination shall bring a valid identification card or passport and provide it at request of the examination supervisor.
- (6) Candidates for examination shall be instructed by the examination supervisor prior to the commencement of the traders examination regarding the examination procedure, the time available and of tools and examination aids which may be used as well as of the consequences of deception.

§ 18 Deception and Breach of Rules

- (1) Participants engaging in deceptive practices, such as the use of working aids which are not permitted, the impermissible aid of third parties or other deceptive practices, maybe permitted from further participation in the traders' examination under reservation of exclusion by the examination supervisor. The same applies to disruptions of the examination procedure.
- (2) The Board of Examiners shall determine the final exclusion and consequences after having afforded the examination candidate an opportunity to be heard. In serious cases, particularly in the case of premeditated deception, the traders' examination may be declared to have been failed. The same shall apply to deceptions subsequently discovered within one year.

§ 19 Withdrawal

- (1) The examination candidate may withdraw by written declaration prior to the commencement of the traders' examination. In such case, the traders' examination shall be considered not to have been taken.
- (2) If the examination candidate withdraws after the commencement of the traders' examination without cause, he/she shall be considered to have failed the examination. The same shall apply if the candidate does not appear for the examination despite of his/her admission.
- (3) Upon good cause for the withdrawal, the traders' examination shall be considered not to have been taken. The Board of Examiners shall determine the existence of such cause.

§ 20 Passing of the Traders Examination, Announcement of Results

- (1) Only the members of the Board of Examiners shall take part in the discussion of the examination results. The Board of Examiners determines, by a majority of the votes cast, the results of the respective traders' examination.
- (2) The traders' examination shall be deemed to have been passed if a percentage of the points to be attained in the individual examination topics determined by the Board of Management for the examination in question was attained. The percentage to be determined shall not fall below 50 of 100. No special grading is granted for performance between the required percentage for the passing of the examination and 100 % of the attainable points.

-
- (3) The Board of Examiners/Board of Management shall promptly distribute a certificate reflecting satisfactory completion of the examination after evaluation of the results of the traders' examination.

§ 21 Failing and Retaking the Traders Examination

- (1) After the evaluation of the examination results, the Board of Examiners shall promptly inform the examination candidate of the decision regarding the failure to pass a traders' examination in a notification.
- (2) Traders' examinations can be re-taken.

§ 22 Legal Remedy

An appeal against a decision based on these Examination Rules may be submitted to the Board of Management of EEX within one month after the announcement. Opposition proceedings shall be carried out according to the Administrative Court Rules.

§ 23 Costs

Fees may be charged to the examination candidate's account for participating in traders' exams and EEX systems training courses as well as repeat examinations.

6. Final Provisions

§ 24 Date of Effectiveness

The Examination Rules as well as changes to the Examination Rules shall take effect on the day after their publication or -if it is decreed- at a later date.



A01

**Application for Admission as Exchange participant
to the Markets of the European Energy Exchange**

Date	26.01.2016
Place	Leipzig
Document Number	A01_E
Document Release	020

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2. Preliminary note

This application form is used to apply for admission as an Exchange participant to the markets of EEX. The admission procedure consists of the following steps:

1. Please return legally signed application for admission as an Exchange participant including relevant documentation to:

Member Readiness
European Commodity Clearing AG
Augustusplatz 9
04109 Leipzig
Deutschland

Phone: +49 341 2156-261
Fax: +49 341 2156-559
E-mail: MemberReadiness@ecc.de

2. In order to receive admission to the Exchange, the clearing house of EEX, European Commodity Clearing AG ("ECC AG") must provide recognition that the applicant is a recognized trading participant. Required forms can be downloaded on ECC AG website www.ecc.de.
3. The trading of power on the Spot Market takes place at EPEX Spot. Therefore separate admission to EPEX Spot is necessary for trading power on the Spot Market. For information on the admission procedure, please contact EPEX Spot SE directly. For further information and the relevant contact details please see www.epexspot.com.
4. The management board of the Exchange shall inform the applicant in writing of its decision in respect of this application to the Exchange.

3. Application

3.1. Membership application

We hereby apply for the membership as an Exchange participant to the following markets and products:

Spot Market	<input type="checkbox"/>	Derivatives Market	<input type="checkbox"/>
Emission rights (Primary Auctions and Secondary Market)	<input type="checkbox"/>	all products	<input type="checkbox"/>
		Emission rights	<input type="checkbox"/>
		Guarantees of Origin	<input type="checkbox"/>
		Power ¹	<input type="checkbox"/>
		Coal ²	<input type="checkbox"/>
		Freight ³	<input type="checkbox"/>
		Crude Oil and Refined Products ³	<input type="checkbox"/>
		Fertilizer ³	<input type="checkbox"/>
		Iron Ore ³	<input type="checkbox"/>
	Agricultural Products	<input type="checkbox"/>	

as soon as possible

as of requested date (dd.mm.yyyy): _____

The admission for trading also includes the authorisation to register transactions for clearing within the trading system, for which Trade Registration functionality is offered.

¹ Trade Registration and Exchange Trading

² Trade Registration (EUR, US\$) and Exchange Trading (US\$)

³ only Trade Registration

3.2. The legal basis

The legal basis for admission and participation on the Exchange is based upon:

1. The Exchange Act of the Federal Republic of Germany.
2. The rules and regulations of EEX in its current form, in particular:
 - Exchange Rules,
 - Trading Conditions,
 - Contract Specifications,
 - Code of Conduct,
 - EEX Trade Registration Rules (incl. TR Contract Specification),
 - EEX-Implementation Regulations as well as
 - Admission Rules.

The above mentioned legal basis is completed by the relationship between the applicant, the Exchange operating companies of the respective markets and the clearing house of the EEX, European Commodity Clearing AG, as well as a legal relationship between the applicant and its clearing member. This affects in particular:

- ECC Clearing Conditions,
- NCM CM Clearing Agreement
- Price lists of the EEX group and, if applicable, the operating company of the respective markets and ECC AG and
- Contracts for technical accesses.

By signing this application we assure that we are familiar and abide with the above mentioned rules and regulations. Especially we agree with the validity of the price lists of the EEX Group. All current documentation can be downloaded from the websites www.eex.com and www.ecc.de

4. General data of the applicant

4.1. Applicant

Name of the Company and Company Register	
Name of the Company according to Company Register	Legal Status
Sector	
Company Registration No.	Place of Registration
Address of the Trading Participant	
Country	Address
Post Code	City
Correspondence Address (only if different to the above address)	
Country	Address
Post Code	City
Address of the Front office (only if different to the above address)	
Country	Address
Post Code	City

Persons who are entrusted with the management and the representation of the company's business by law, articles of association or shareholders' agreement (for example proprietor, management director, board member, but not proxy holder or other authorised representatives):

	Name	First Name
1		
2		
3		

We hereby declare, that the below mentioned person(s) as business owner(s) or in another position entrusted with the management of our business according to law, regulations or firm's contract is/are entitled to represent it and has/have the necessary professional qualification for the Exchange trading in forms of § 18 (3) of the Exchange Rules.

We provide proof of the personal reliability of all persons referred to in Section 4.1, who are entrusted with the management and the representation of the company's business by law, articles of association or shareholder's agreement by submitting certificates of good conduct or by signing form E01 "Declaration of Personal Reliability (Member of Management Board)".

We enclose the copies of the ID cards.

Correspondence and invoices will be sent in English.

4.2. Persons entitled to sign vis-à-vis EEX

The following persons are authorised to represent and to sign for all Exchange or Exchange membership related matters. This does not include the authorisation to participate in trading, since the admission to the EEX as an Exchange Trader is necessary.

Persons entitled to sign EEX zeichnungsberechtigte Personen					
	Name	First Name	Specimen signature	Entitled to sign on his/her own	Only allowed to sign together with No.
1				<input type="checkbox"/>	
2				<input type="checkbox"/>	
3				<input type="checkbox"/>	
4				<input type="checkbox"/>	

Please see the attached signature list for authorised representatives.

4.3. Central Coordinator

The Central Coordinator is the main contact person and authorised to receive all Exchange related matters. This person is responsible for the internal distribution of all EEX information.

Central Coordinator					
	Name	First Name	Phone	Fax	Email
<input type="checkbox"/> Ms. <input type="checkbox"/> Mr.					
<input type="checkbox"/> Ms. <input type="checkbox"/> Mr.					

4.4. Contact person(s) for technical requirements and invoicing

Contact person(s) IT

Contact Persons - IT					
	Name	First Name	Phone	Fax	Email
<input type="checkbox"/> Ms. <input type="checkbox"/> Mr.					
<input type="checkbox"/> Ms. <input type="checkbox"/> Mr.					

Contact person(s) invoicing

Contact Persons - Invoicing (Invoice Recipient)					
	Name	First Name	Phone	Fax	Email
<input type="checkbox"/> Ms. <input type="checkbox"/> Mr.					
<input type="checkbox"/> Ms. <input type="checkbox"/> Mr.					

4.5. Technical connection to the trading systems

For technical access several alternatives are provided depending on the technical infrastructure of the applicant. Regarding questions which connection type is the best solution for the Exchange participant, please do not hesitate to contact the Service Desk Connectivity (+49 341 2156-466).

To order this connection the form T01 has to be filled in completely and signed by a legal representative of the company. By signing T01 a contract of technical access is arranged between EEX AG and the Exchange participant. The connection is established once the participant has sent the respective document. The fees will be charged according to the price list of EEX AG.

4.6. Exchange trader

The Exchange traders mentioned in form E03 "Application for Setup/Deletion of EEX User IDs" shall be entitled to act for us on the EEX markets.

We enclose the respective proofs of personal reliability according to para 19 (5) Exchange Act (Form E04 "Declaration of personal reliability (Exchange Trader/Trader Assistants)") and copies of the ID cards.

4.7. Assurances / Statements

1. We assure that we are familiar with the rules and regulations of EEX and the ECC AG listed in section 3.2 and that we shall acknowledge and observe them.
2. We assure that all necessary national, supranational and/or international authorisations, licenses and permissions have been collected in order to take part on the markets of the EEX. We also assure that trading on the markets of the EEX does not contravene our bylaws or obligations which are known to us.
3. In the event that screens necessary for trading are not installed in the applicant's premises, by signing this application we assure that agreements were made, entitling EEX to check the observance of the requirements for installation and operation of a participant front end installation in the third party's office.
4. We herewith consent to allow representatives of EEX or persons acting on their behalf, to monitor (on the premises of the applicant) at any time compliance with the Rules and Regulations of the EEX as amended from time to time and with the obligations and assurances of the applicant vis-à-vis EEX and their governing bodies.
5. We assure to promptly inform the EEX about changes to the entries, confirmations and declarations, which have been given in context with this application, and to prove such entries, confirmations and declarations.
6. In case we have provided a fax number in the USA to the EEX, we agree to the conveyance of faxes to this number.
7. We agree to the publication of our company as an Exchange Participant.
8. We hereby give permission and authorise EEX to record our calls with the market supervision of EEX in order to ensure the orderly operation of the exchange. We assure, that we will inform the employees concerned about this practice.
9. We give our consent, that extensions of our admission for markets and products of EEX may, in addition to the authorised signatories listed in section 4.2., also be applied for by the central coordinator(s) listed in section 4.3., by sending the request for extension of our admission for market and products of EEX from one of the e-mail addresses listed in section 4.3. We will inform EEX about any modification of this consent immediately. We are aware of the fact that an extension of the admission is subject to a respective approval by ECC.

4.8. Admission documents ECC AG

We are aware that admission for trading on one of the EEX markets can only occur after ECC AG has confirmed recognition of the applicant as a trading participant. Documentation required by the ECC AG can be submitted together with the required EEX documentation.

4.9. Authorisation for the Exchange of information within the EEX Group

We authorise the Management Board of the Exchange and the operating company of the Exchange to exchange information and data regarding the Exchange membership within the EEX group, with EPEX Spot SE as well as within the Deutsche Börse group. The authorisation for the exchange of information and data also includes the exchange of personal data and information of the persons named in section 4.1. We confirm that these persons have granted their approval for exchanging information and data within the EEX group, with EPEX Spot SE and within Deutsche Börse group. We will inform EEX about any modification of this authorisation immediately.

4.10. Signature(s) for the application for admission as Exchange participant to the Spot and/or Derivatives Markets of the European Energy Exchange

Legally binding signature(s) for the whole application and the general data given in Section 4:

Place	Date dd.mm.yyyy	Company stamp and legally binding signature(s) of applicant



E01
Declaration of Personal Reliability
(Member of the Management Board)

– Please send the scanned version to MemberReadiness@ecc.de –

Date	16.03.2016
Place	Leipzig
Document Number	E01_E
Document Release	004

Declaration of the Personal Reliability (Member of the Management Board)

Company submitting the application: _____

Name of authorised representative: _____

1. I assure that there are no preliminary or main proceedings pending against me for punishable acts related to assets, taxes or other in connection with my previous occupation or my participation in exchange dealings as well as no such proceedings have been pending against me within the last five years. Statements about proceedings resulting in an acquittal or a discontinuation in accordance with para 170 StPO (German Code of Criminal Procedure) are not necessary.
2. Furthermore, I confirm that I will inform the Management Board of the Exchange as soon as possible if there are any changes in the confirmations given under item 1.
3. The Management Board of the Exchange may request further documents that are relevant for the evaluation of my reliability.
4. If the statement under point 1. cannot be agreed to in its entirety, then the relevant wording should be marked up and further details provided on a supplementary sheet.

Place	Date dd.mm.yyyy	Signature (person entitled to represent the applicant)



Please send to:

Member Readiness
European Commodity Clearing AG
Augustusplatz 9
04109 Leipzig

GERMANY



E03

Application for Setup/Deletion of EEX User IDs

Date	15.08.2016
Place	Leipzig
Document Number	E03_E
Document Release	027



Please send to:
 Member Readiness
 European Commodity Clearing AG
 Augustusplatz 9
 04109 Leipzig
 Deutschland

Telefon: +49 341 2156-261
 Fax: +49 341 2156-559
 E-Mail: MemberReadiness@ecc.de

Application for Setup / Deletion of User IDs

Necessary fields

Company submitting the application:		Member ID (if known): <input style="width: 20px; height: 20px;" type="text"/> <input style="width: 20px; height: 20px;" type="text"/> <input style="width: 20px; height: 20px;" type="text"/> E X	
<input type="checkbox"/> Setup <input type="checkbox"/> Deletion <input type="checkbox"/> Modification	<input type="checkbox"/> Exchange Trader ¹ <input type="checkbox"/> Exchange Trader ¹ (Trade Registration Only) <input type="checkbox"/> Trader Assistant ¹ (max. 6 months) <input type="checkbox"/> Back Office User ² <input type="checkbox"/> Security Administrator ³ <input type="checkbox"/> Info User (view only)	<input type="checkbox"/> asap <input type="checkbox"/> on (dd.mm.yyyy) -----	<input type="checkbox"/> Ms. First name: <input type="checkbox"/> Mr. Last name:
		E-Mail:	
		Phone:	Date of Birth:
		User ID (if known):	
		IM / Eikon™ ID (optional):	
		Following information about the responsible trader is only required in the case of <u>setup of trader assistants</u>.	
		Name of the responsible trader:	Signature of the responsible trader:
		User ID of the responsible trader: <input style="width: 20px; height: 20px;" type="text"/> <input style="width: 20px; height: 20px;" type="text"/> <input style="width: 20px; height: 20px;" type="text"/> <input style="width: 20px; height: 20px;" type="text"/> <input style="width: 20px; height: 20px;" type="text"/> <input style="width: 20px; height: 20px;" type="text"/>	
Remarks:			

Please see EEX Rules and Regulations for descriptions of user types and EEX price list for emerging coasts.

The exchange participant hereby acknowledges that in the case of the application of a trader assistant, the above individual will be promoted to full trader status upon the successful completion of the relevant EEX / Eurex exam.

Please send this form for the admission of Exchange Traders and Trader Assistants as **original** to the above mentioned address. For the setup of Back Office Users, Security Administrators and Info Users a **scan** of the form to MemberReadiness@ecc.de is sufficient. For deletions a **scan** of the form is always sufficient.



Member ID: E X

Name of person:

PRODUCT	Exchange Trading	Trade Registration	TECHNICAL ACCESS
Exchange Trader, Trader Assistant, Info User – Derivatives market:⁴			
Phelix and other Financial Power Futures / Options	<input type="checkbox"/>	<input type="checkbox"/>	TT Screen <input type="checkbox"/>
German Intraday Cap Future	<input type="checkbox"/>	<input type="checkbox"/>	Trayport Trading Gateway (Exchange Trading only) <input type="checkbox"/>
Physical Power Futures	<input type="checkbox"/>	<input type="checkbox"/>	T7 GUI / EUREX Clearing GUI <input type="checkbox"/>
Agricultural Products	<input type="checkbox"/>	<input type="checkbox"/>	STP (Trade Registration only, with STP Always setup) <input type="checkbox"/>
Coal Futures (USD)	<input type="checkbox"/>	<input type="checkbox"/>	
Futures on Emission Rights	<input type="checkbox"/>	<input type="checkbox"/>	
Guarantees of Origin Futures	<input type="checkbox"/>	<input type="checkbox"/>	
Freight		<input type="checkbox"/>	
Crude Oil and Refined Products		<input type="checkbox"/>	
Fertilizer		<input type="checkbox"/>	
Exchange Trader, Trader Assistant, Info User – Spot market:			
EUA Spot Primary Auctions	<input type="checkbox"/>		Comtrader <input type="checkbox"/>
EUA Spot Secondary Market	<input type="checkbox"/>		T7 GUI <input type="checkbox"/> TT Screen <input type="checkbox"/> Trayport Trading Gateway <input type="checkbox"/>

Place and Date	Legally binding signature(s) of exchange participant ⁵
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⁴ After formal admission the initial product assignments may be amended via email to MemberReadiness@ecc.de, in accordance with the products listed in the admission notification.

⁵ These are the nominated authorised signatories, not typically the trader or trader assistant being set up.



E03a
Declaration of Professional Qualification

– Please send the scanned version to MemberReadiness@ecc.de –

Date	18.03.2016
Place	Leipzig
Document Number	E03a_E
Document Release	004



Declaration of Professional Qualification

Name of Exchange Trader: _____

Date of Birth of Exchange Trader: _____

I have passed the following Trader Exam:

- EEX Trader Exam
- Eurex Trader Exam (a copy of the Eurex Trader certificate is attached hereto)
- EEX Trade Registration Exam

Herewith I declare that I have been admitted as authorised trader at the following markets during the last three years. (Please name exchanges and brokers with the respective time period):

Spot Market:

- Commodity / Financial Exchanges:

- Screen-based Brokers:

Derivatives Market:

- Commodity / Financial Exchanges:

- Screen-based Brokers:

Place	Date dd.mm.yyyy	Signature (Exchange Trader)



E04
Declaration of Personal Reliability
(Exchange Trader/Trader Assistants)

– Please send the scanned version to MemberReadiness@ecc.de –

Date	18.03.2016
Place	Leipzig
Document Number	E04_E
Document Release	008

Declaration of Personal Reliability (Exchange Trader/Trader Assistant)

Name of
Exchange Trader/Trader Assistant: _____

Date of birth of
Exchange Trader/Trader Assistant: _____

1. I assure that there are no preliminary or main proceedings pending against me for punishable acts related to assets, taxes or otherwise in connection with my previous occupation or my participation in exchange dealings.
2. I assure that no such proceedings have been pending against me within the last five years. Statements about proceedings resulting in an acquittal or a discontinuation in accordance with para 170 StPO (German Code of Criminal Procedure) are not necessary.
3. I assure that within the last three years I have not violated the trading and consulting regulations, the guidelines for own securities business of staff members of credit institutions or comparable internal regulations, regulations of the Securities Trading Act, in particular the insider regulations and the rules of good behavior, the German Exchange Act and the Exchange rules and regulations and that no corresponding proceedings are pending against me.
4. I hereby authorise the last enterprise I was employed by to inform the exchange management of facts in accordance with item 1. - 3. that are relevant for the evaluation of my reliability.
5. Furthermore, I confirm that I will inform the exchange management as soon as possible if there are any changes in the confirmations given under item 1.
6. The exchange management may request further documents that are relevant for the evaluation of my reliability.
7. If a statement to be made under 1. - 4. cannot be made or can only be made with reservations, this has to be marked and requires a comment to the item in question on a separate sheet.
8. I hereby give my permission and authorise EEX to record my calls with the Market Supervision of EEX in order to ensure the orderly operation of the Exchange.
9. I hereby agree to the collection, processing, and use of my personal information and data as far as it is carried out to create, execute or terminate the admission to EEX and for the respective fulfillment of tasks by EEX. I authorise EEX to exchange my personal data within EEX group and Deutsche Boerse group. I hereby authorize EEX to transfer my personal information and data to other third parties as far as it is necessary for the purpose of the fulfillment of tasks performed by third parties for EEX and if the respective third party has committed itself to strict confidentiality.
10. In case my exam for Derivatives Markets is to serve as proof for the professional qualification for the admission as an Exchange Trader at the EEX Spot Markets, I herewith ensure that I acquired the product specific knowledge of the EEX Spot Markets.
11. I am aware of and will obey the rules and regulations of EEX and the clearing house of EEX, ECC AG (available under www.eex.com and www.ecc.de).

Place	Date	Signature (Exchange Trader/Trader Assistant)



- Only required for applicants with a registered office outside the Federal Republic of Germany -



E07
Mail Authority

– Please send the scanned version to MemberReadiness@ecc.de –

Date	18.03.2016
Place	Leipzig
Document Number	E07_E
Document Release	005

Mail Authority

Name of Exchange Participant:	Member-ID (if known):
	<input type="text"/> <input type="text"/> <input type="text"/> <input type="text" value="E"/> <input type="text" value="X"/>

Appointment as Authorised Recipient

In accordance with para 17(3) of the Exchange Rules, Exchange participants that are not domiciled in the Federal Republic of Germany have to appoint an Authorised Recipient who is a resident of the Federal Republic of Germany prior to their admission as an Exchange participant of at least one of the markets of the EEX-Group. For this reason, the aforementioned Exchange participant authorises the person/company named below to receive all mail addressed to the Exchange participant and to the Exchange traders admitted on behalf of the applicant in connection with participation as Exchange participant on at least one of the markets of the EEX group (including mail from the Exchange Supervisory Authority and mail to be delivered to the addressee only).

This authorisation shall also be valid for deliveries on the basis of legal proceedings at German courts. The Exchange traders acting on behalf of our company have duly agreed to this power of attorney.

A legally binding termination of the function as Authorised Recipient can only be executed if another Authorised Recipient residing in the Federal Republic of Germany is appointed at the same time. The appointment is to be issued with the approval of the Exchange Participant.

Name of the Authorised Recipient (when indicated contact person / responsible department)

Street

Post Code, City

Place	Date dd.mm.yyyy	Company stamp and legally binding signature Exchange participant

Confirmation of receipt of authority from the above mentioned person/company

I/We have been informed of the conferring of authority mentioned above and agree to this appointment. I/we hereby assure that I/we have been assigned by the Exchange Participant, legally binding and without restrictions, to function as their Authorised Recipient. I/we have accepted this assignment.

I/we will inform you instantly if my/our aforementioned address has changed.

I/we enclose a copy of my/our ID as well as a copy of the certificate of registration in order to prove the legitimacy.

Place	Date dd.mm.yyyy	Company stamp and legally binding signature Authorised Recipient
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T01

Order of technical access to the trading platforms
of the EEX

Spot- and Derivatives Markets

– Please send the scanned version to MemberReadiness@ecc.de –

Date	15.07.2016
Place	Leipzig
Document Number	T01
Document Release	018

Order of technical access to the trading platforms of the EEX Spot- and Derivatives Market

European Commodity Clearing AG
Member Readiness
Telefon: +49 341 2156-261
Fax: +49 341 2156-559
E-Mail: MemberReadiness@ecc.de

Phone Contact
for technical questions
EEX Service Desk Connectivity:
+49-(0)341-2156-466
technology@eex.com

Sender

Company name

Department

Name of technical contact

Street or P.O.B.

Postal code, City, Country

Building, Floor, Room

Phone

Fax

Email address of a technical responsible person

Email address for certificate delivery / login data

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Member-ID (if known)

Description:

The specified data is for technical connections and the technical contact for support used. The delivery point of leased lines may be given separately under point connectivity. The e-mail addresses are used to contact and for provision of certificates and login data if applicable.

Type of request

Setup as soon as possible

Requested Date (DD/MM/YYYY)

Cancellation as soon as possible

Requested Date (DD/MM/YYYY)

Trading Screens

Trading Screens	Description	Order	Cancellation
ComTrader	ComTrader provides easy access to Auction System (CAS).	<input type="checkbox"/> *	<input type="checkbox"/>
EEX TT Screen	The EEX TT screen provides the ability to view and execute futures market (Eurex) trades, including trade registration for clearing.	<input type="checkbox"/> *	<input type="checkbox"/>
Eurex T7 Trading GUI	The Eurex T7 GUI provides easy access to trading the EEX products on the Derivatives Market, including trade registration for clearing. Recommendation: simultaneous use of 3 GUIs requires 1Mbit bandwidth	<input type="checkbox"/> *	<input type="checkbox"/>
EEX Trading Gateway	This interface enables the user of a Trayport Trading Gateway to connect the EEX trading systems.	<input type="checkbox"/> *	<input type="checkbox"/>
Eurex Clearing GUI	The Eurex Clearing GUI offers a complete access to clearing functionalities, such as Position management.	<input type="checkbox"/> *	<input type="checkbox"/>
Service Provider (Third Party Front Ends)	<p>Use of a third party front-end to trade the EEX markets. These front-ends may already be installed and in use at your company. These front-end solutions are based on standardized EEX interfaces:</p> <p>_____</p> <p>Name of technical contact</p> <p>_____</p> <p>Email address of a technical responsible person</p> <p>_____</p> <p>Telephone of a technical responsible person</p> <p>_____</p> <p>ISV Name</p> <p>_____</p> <p>ISV – Name of a technical responsible person for ISV solution</p> <p>_____</p> <p>ISV – Email and contact telephone number of a technical responsible person</p> <p>_____</p> <p>Vendor Name</p> <p>Vendor Member ID: <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/></p> <p>_____</p> <p>Location 1</p> <p>_____</p> <p>Location 2</p> <p>(ISV=Independent Software Vendor)</p>	<input type="checkbox"/> *	<input type="checkbox"/>

* Please add the form E03, E04 and passport copy for every new user and a formless written notice including the names and the contact details for existing user!

Connectivity

Connectivity	Description	Order	Cancellation
Option 1 Internet	Easy to configure, with a short delivery period. This is ideal for customers who require a cheap an effective solution without the need of high-availability and additional IP security.	<input type="checkbox"/>	<input type="checkbox"/>
Option 2 VPN	<p>A VPN (Virtual Private Network) provides customers with an increased need for security, the possibility of network connectivity via an encrypted internet connection. There is an additional cost for this form of connection. Note that administration of this connection is managed by himself. (Please see special hardware requirements)</p> <p>_____</p> <p>Name of Service Provider</p> <p>_____</p> <p>Public IP address (delivered from your Service Provider)</p> <p>_____</p> <p>Router Hardware</p> <p>_____</p> <p>Cisco Router Type / IOS Version</p> <p>_____</p> <p>mail: technical contact person</p> <p>_____</p> <p>phone: technical contact person</p> <p>_____</p> <p>contact responsible line</p> <p>_____</p> <p>Room descr. / Part of building / Floor / Room no. / Rack no.</p> <p>_____</p> <p>Media (10-100 Mbit Copper, TX / RJ45 or 1 Gigabit Fibre, SingleMode / SC)</p> <p>_____</p> <p>Installation within/out of business hours</p> <p>_____</p> <p>Address for separate cable entry</p> <p>_____</p> <p>Router and end facility are located in different rooms</p> <p>_____</p> <p>Desktop-device / Rack-mountable</p>	<input type="checkbox"/>	<input type="checkbox"/>

Connectivity

Connectivity	Description	Order	Cancellation
<p>Option 3 Leased Line 1 Location 1</p>	<p>Leased lines are recommended for customers with a need for maximum security and availability. No network traffic will be routed through the public internet and also offers the highest possible availability</p> <p>Number of leased lines: <input type="text"/> <input type="text"/></p> <p>(Physical address of the handover point of the leased line no. 1)</p> <p>Bandwidth in Mbit/s: <input type="text"/> <input type="text"/></p> <p>(The Bandwidth depends on the requirements of the services/ GUI's on the line)</p> <p>_____</p> <p>Street</p> <p>_____</p> <p>Postal code and City</p> <p>_____</p> <p>Service Provider Name</p> <p>_____</p> <p>Router Hardware</p> <p>_____</p> <p>Cisco Router Type / IOS Version</p> <p>_____</p> <p>mail: technical contact person</p> <p>_____</p> <p>phone: technical contact person</p> <p>_____</p> <p>Contact responsible line</p> <p>_____</p> <p>Room description. / Part of building / Floor / Room no. / Rack no.</p> <p>_____</p> <p>Media (10-100 Mbit Copper, TX / RJ45 or 1 Gigabit Fibre, SingleMode / SC)</p> <p>_____</p> <p>Installation within/out of business hours</p> <p>_____</p> <p>Address for separate cable entry</p> <p>_____</p> <p>Router and end facility are located in different rooms</p> <p>_____</p> <p>Desktop-device / Rack-mountable</p>	<p><input type="checkbox"/></p>	<p><input type="checkbox"/></p>

Connectivity

Connectivity	Description	Order	Cancellation
Leased Line 2 Location 2	<p>Please provide the details of the second handover point in different from the first. Please note that the establishment of a dedicated leased line from ensuring operational safety aspects only in two different hand-over points of the highest possible redundancy of line availability.</p> <p>You can also combine the combination of a dedicated leased line and an internet based VPN solution.</p> <p>Number of leased lines: <input type="text"/> <input type="text"/></p> <p>(Physical address of the handover point of the leased line no. 2)</p> <p>Bandwidth in Mbit/s: <input type="text"/> <input type="text"/></p> <p>(The Bandwidth depends on the requirements of the services/ GUI's on the line)</p> <p>_____</p> <p>Street</p> <p>_____</p> <p>Postal code and City</p> <p>_____</p> <p>Service Provider Name</p> <p>_____</p> <p>Router Hardware</p> <p>_____</p> <p>Cisco Router Type / IOS Version</p> <p>_____</p> <p>mail: technical contact person</p> <p>_____</p> <p>phone: technical contact person</p> <p>_____</p> <p>Contact responsible line</p> <p>_____</p> <p>Room description. / Part of building / Floor / Room no. / Rack no.</p> <p>_____</p> <p>Media (10-100 Mbit Copper, TX / RJ45 or 1 Gigabit Fibre, SingleMode / SC)</p> <p>_____</p> <p>Installation within/out of business hours</p> <p>_____</p> <p>Address for separate cable entry</p> <p>_____</p> <p>Router and end facility are located in different rooms</p> <p>_____</p> <p>Desktop-device / Rack-mountable</p>	<input type="checkbox"/>	<input type="checkbox"/>

Interfaces

Interfaces	Description	Order	Cancellation
T7 EUREX ETI Session	Eurex ETI Low Frequency Light Session (max. 50 Transactions/Second)*	<input type="checkbox"/> *	<input type="checkbox"/>
	Eurex ETI High Frequency Light Session (max. 150 Transactions/Second)*	<input type="checkbox"/> *	<input type="checkbox"/>
	Eurex ETI High Frequency Full Session (max. 150 Transactions/Second)* * Depicts the representation of the appropriate session/capacity	<input type="checkbox"/> *	<input type="checkbox"/>
T7 Eurex FIX Session	Eurex FIX Trading Session (max. 50 Transactions/Second)	<input type="checkbox"/> *	<input type="checkbox"/>
Special Configuration	For a cancellation of your current access please describe exactly what you wish to cancel and what you wish to remain active:	<input type="checkbox"/> *	<input type="checkbox"/>

* Please add the form E03, E04 and passport copy for every new user and a formless written notice including the names and the contact details for existing users!

Note: Please note that the granting of the technical connections to the EEX Markets system leads to fees for technical access according to the price list of the European Energy Exchanges AG. These fees are payable at the time when EEX has received the order for the technical access and is independent of admission to trading at the EEX Markets. By signing this document you accept these charges. The cancellation period of the technical connection is also outlined in the price list of the European Energy Exchange AG. The cancellation process commences upon receipt of this form. We authorize the management board of the exchange and the operating companies of the exchange to exchange information and data regarding the exchange membership within the EEX Group, EPEX Spot SE, Powernext SA and ECC AG.

City _____	Date _____ / _____ / 20 ____	Company stamp and legally binding signature(s) of applicant _____
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<p>End User License Agreement ("Agreement") between the respective User (hereafter referred to as "User") and European Energy Exchange AG, Augustusplatz 9, 04109 Leipzig (EEX)</p>	<p>Endbenutzer-Lizenzvereinbarung ("Vereinbarung") zwischen dem jeweiligen Nutzer (im Folgenden als "Nutzer" bezeichnet) und European Energy Exchange AG, Augustusplatz 9, 04109 Leipzig (EEX)</p>
<p>The Parties agree in respect to the service ("Service"), which is defined as the front end trading screen, software, related services and documentation that is provided by Trading Technologies International, Inc. ("TT") via EEX. The Service provides access to Trading Data from EEX group's and partner's exchanges and the ability to enter orders to buy and sell tradable instruments on such platform.</p> <p>The parties agree to the following:</p> <ol style="list-style-type: none"> 1. This Agreement forms a binding legal contract between User and EEX. By accepting this Agreement User will be bound by the terms of this Agreement. By making a Service available to User, EEX is not recommending, promoting or endorsing any particular investment, market data, or trading strategies. 2. User shall have a limited right to use the Services in Accordance with this Agreement. EEX grants User a revocable, nontransferable, personal, nonexclusive license to use and install the Service and any accompanying documentation for User's internal use only. TT and its licensors retain all right, title and interest in the Service, all copies thereof, and all intellectual property and proprietary rights in the Software, including copyrights, patents, trademarks and trade secret rights. 3. User may not copy, rebroadcast, redistribute or disseminate the Service or the information and data contained therein, including trading Data, without prviously obtaining EEX and TT's expsress written consent. <p>Except to the extent expressly permitted by applicable law or as otherwise permitted hereunder User may not reverse engineer, decompile, disassemble, modify or create works derivative of the Service. User may not assign, sublicense, rent, timeshare, loan, lease or otherwise transfer any of the Services, or directly or indirectly permit any third party to use or copy the Services. User may not remove any proprietary notices (e.g., copyright and trademark notices) from the Services.</p> <ol style="list-style-type: none"> 4. EEX and TT shall not be liable for any Users misuse of the Service. 5. User systems and networks must meet the minimum technical requirements and specifications required in accordance with the Documentation. 6. EEX or TT may terminate, modify, limit or suspend Users access to EEX if requested by regulatory entity or according to the regulations of EEX or requested by Market Surveillance of EEX. 	<p>Die Parteien schließen diese Vereinbarung im Hinblick auf den Service ("Service"), der als Front-End Handelsbildschirm, als Software, als damit verbundene Dienstleistungen und Dokumentation definiert wird und über EEX von Trading Technologies International, Inc. ("TT") zur Verfügung gestellt wird. Der Service gewährt Zugang zu den Handelsdaten der Börsen der EEX Gruppe bzw. der Partnerbörsen und ermöglicht die Eingabe von Aufträgen für den Kauf bzw. Verkauf handelbarer Instrumente auf einer solchen Plattform.</p> <p>Die Parteien vereinbaren das Folgende:</p> <ol style="list-style-type: none"> 1. Die vorliegende Vereinbarung bildet einen verbindlichen Vertrag zwischen Nutzer und EEX. Durch die Annahme dieser Vereinbarung ist der Nutzer an die Bestimmungen der Vereinbarung gebunden. Die Bereitstellung des Services für den Nutzer stellt keine Empfehlung oder Förderung oder Unterstützung einer bestimmten Investition, von Marktdaten oder von Handelsstrategien für den Nutzer dar. 2. Nutzer verfügt über das beschränkte Recht, die Services in Übereinstimmung mit dieser Vereinbarung zu nutzen. EEX gewährt dem Nutzer eine widerrufliche, nicht übertragbare, persönliche, nicht exklusive Lizenz, den Service sowie sämtliche zugehörige Dokumentationen ausschließlich zur internen Verwendung zu nutzen und zu installieren. TT und deren Lizenzgeber behalten sämtliche Rechte, Rechtsansprüche und Ansprüche an dem Service, an sämtlichen Kopien, an sämtlichen geistigen Eigentum und an sämtlichen Eigentumsrechten an der Software, einschließlich Urheberrechten, Patenten, Marken und Rechten an Geschäftsgeheimnissen. 3. Nutzer darf den Service sowie die darin enthaltenen Informationen und Daten, einschließlich Handelsdaten nicht ohne die vorherige Einholung der ausdrücklichen schriftlichen Zustimmung von EEX und TT kopieren, weiterleiten, weiterverteilen oder weiterverbreiten. <p>Außer in dem Umfang, in dem es nach dem anwendbaren Recht ausdrücklich zulässig oder anderweitig hiernach zulässig ist, darf der Nutzer den Service nicht rückentwickeln, dekompile, zerlegen oder modifizieren bzw. aus dem Service abgeleitete Leistungen schaffen. Der Nutzer darf keine der Leistungen abtreten, unterlizenzieren, vermieten, als Teilnutzungsrechte vergeben, ausleihen, verpachten oder anderweitig übertragen bzw. einem Dritten direkt oder indirekt die Verwendung oder das Kopieren der Services gestatten. Der Nutzer darf keine Eigentumsvermerke (z.B. Urheberrechts- und Warenzeichenhinweise) von den Services entfernen.</p> <ol style="list-style-type: none"> 4. EEX und TT haften nicht für missbräuchliche Verwendung des Services durch den Nutzer. 5. Die Systeme und Netze des Nutzers müssen die rechnischen Mindestnforderungen und Spezifikationen so, wie sie in der Dokumentation gefordert werden, erfüllen. 6. EEX und TT ist es erlaubt, auf eine Forderung durch eine regulatorische Körperschaft oder gemäß dem Regelwerk der EEX bzw. einer Forderung durch die Handelsüberwachungsstelle der EEX hin den Zugriff des Nutzers auf EEX beenden, abändern, begrenzen oder aussetzen zu dürfen.

<p>Services are provided on an “as is available”, “as is” basis to the maximum extent permitted by law, EEX and its suppliers and vendors disclaim all other warranties with respect to the Services, including, but not limited to, the implied warranties of non-infringement, title, merchantability, quiet enjoyment, infringement, title, merchantability, quiet enjoyment, quality of information and fitness for a particular purpose.</p> <p>7. User may provide Feedback to EEX and/or TT. Feedback is voluntary and EEX and/or TT is not required to hold it in confidence.</p> <p>8. EEX and TT may transfer, store and process User data in the United States of America or any other country in which EEX or TT or its agents or vendors maintain facilities.</p> <p>9. EEX and TT will collect “Usage Data”. Usage Data means statistical and other aggregated data derived from Users use of the Service. Usage Data does not include any information identifying User, any identifiable individual or any other User-concerning confidential information. For avoidance of doubt Usage Data does not include individually identified trades.</p> <p>User grants EEX und TT a non-exclusive, perpetual, irrevocable, fully-paid-up, royalty free license to use, copy, distribute, and otherwise exploit the Usage Date for EEX and TT’s internal business purposes, including the provision of products and services to EEX and TT’s customers. Except as necessary or otherwise required for EEX’s performance of its obligations under this Agreement and subject to obligations of confidentiality, EEX and TT will not make any Usage Data available to any third parties.</p> <p>10. During the term and for up to three years after the expiration or termination hereof, EEX may, on reasonable written notice, audit User’s compliance with the terms and conditions of this Agreement. User shall reasonably cooperate in the audits, including making relevant personnel and records available for EEX’s review.</p> <p>11. User may not export, directly or indirectly, the Services to any country for which the United States requires any export license or other governmental approval without first obtaining such license or approval.</p> <p>12. This Agreement is governed by and construed in and shall be interpreted in accordance with the laws of the Federal Republic of Germany without conflict rules. The UN Convention on Contracts for the International Sale of Goods shall not apply. Legal terms used in this Agreement shall be construed with respect to Germany law. The courts of Frankfurt/Main, Germany, shall have exclusive jurisdiction.</p> <p>The English version is binding, the German version is just for information purposes.</p>	<p>Die Services werden “wie verfügbar“, zum maximal zulässigen Maß im “Istzustand“ erbracht; EEX sowie deren Lieferanten und Verkäufer lehnen jede weitere Garantie im Hinblick auf den Service, einschließlich implizierter Garantien der Nicht-Verletzung, solcher Garantien im Hinblick auf Rechtsmängel, die Gewährleistung der Marktfähigkeit, den ungestörten Besitz, oder die Verletzungen von Rechten, vom Rechtsstil, die Gewährleistung der Marktfähigkeit, den ungestörten Besitz, die Qualität von Informationen sowie die Eignung für einen bestimmten Zweck, allerdings ohne Beschränkung auf diese Aufzählung von Garantien, ab.</p> <p>7. Der Nutzer kann EEX und/oder TT ein Feedback geben. Ein solches Feedback ist freiwillig, wobei EEX bzw. TT dieses nicht vertraulich behandeln müssen.</p> <p>8. EEX und TT können Nutzerdaten in die Vereinigten Staaten von Amerika oder jedes andere Land, in dem EEX oder TT bzw. deren Beauftragte oder Zulieferer Einrichtungen unterhalten, übertragen sowie speichern und bearbeiten.</p> <p>9. EEX und TT erfassen “Nutzungsdaten“. Nutzungsdaten bezeichnen statistische und andere aggregierte Daten, die aus der Nutzung des Service durch den Nutzer hergeleitet werden. Nutzungsdaten umfassen keine Informationen, die den Nutzer identifizieren, sowie keine identifizierbaren individuellen Informationen oder andere, den Nutzer betreffende vertraulichen Informationen. Klarstellend gilt, dass die Nutzungsdaten keine einzeln identifizierten Trades umfassen.</p> <p>Der Nutzer gewährt EEX und TT eine nicht exklusive, dauerhafte, unwiderrufliche, vollständig bezahlte, gebührenfreie Lizenz für die Nutzung, das Kopieren, die Verteilung sowie anderweitige Verwendung der Nutzungsdaten für interne Geschäftszwecke von EEX und TT, einschließlich der Bereitstellung von Produkten und Dienstleistungen für Kunden von EEX und TT. Nur wenn es notwendig oder für die Pflichterfüllung von EEX nach dieser Vereinbarung anderweitig erforderlich ist, sowie vorbehaltlich der Vertraulichkeitspflichten, stellen EEX und TT die Benutzungsdaten Dritten zur Verfügung.</p> <p>10. Während der Laufzeit sowie im Zeitraum von drei Jahren nach Ablauf oder Kündigung dieser Vereinbarung kann EEX mit einer hinreichenden schriftlichen Ankündigung die Einhaltung der Bedingungen und Konditionen dieser Vereinbarung durch den Nutzer überprüfen. Der Nutzer wirkt angemessen an den Prüfungen mit, wobei dies die Bereitstellung des entsprechenden Personals sowie der relevanten Unterlagen für die Prüfung durch EEX umfasst.</p> <p>11. Der Nutzer darf den Service nicht direkt oder indirekt in ein Land exportieren, für das die Vereinigten Staaten von Amerika eine Ausfuhrgenehmigung oder sonstige staatliche Genehmigung fordern, ohne zunächst eine Lizenz oder Genehmigung dafür einzuholen.</p> <p>12. Für die vorliegende Vereinbarung sind die Gesetze der Bundesrepublik Deutschland unter Ausschluss der Kollisionsrechts maßgeblich, die Vereinbarung ist im Einklang mit diesen auszulegen und zu interpretieren. Das UN-Kaufrechtsabkommen ist nicht anwendbar. In dieser Vereinbarung verwendete Rechtsbegriffe sind in Bezug auf deutsches Recht auszulegen. Gerichtsstand ist ausschließlich Frankfurt/Main, Deutschland.</p> <p>Die englische Fassung ist bindend, die deutsche Fassung dient nur zu Informationszwecken.</p>
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City	Date	Company stamp and legally binding signature(s) of applicant
_____	_____ / _____ / 20__	_____

§ 4

Wertpapierhandelsgesetz (WpHG)

Securities Trading Act

von

Anja Breilmann

Dr. Sven Zeller

Clifford Chance,

Frankfurt am Main

Stand: November 2011

Wertpapierhandelsgesetz – WpHG

in der Fassung der Bekanntmachung vom
9. September 1998 (BGBl. I S. 2708), zuletzt
geändert durch Artikel 3 des Gesetzes vom
22. Juni 2011 (BGBl. I S. 1126)

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Securities Trading Act – WpHG

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Abschnitt 1 Anwendungsbereich, Begriffsbestimmungen

§ 1 Anwendungsbereich

(1) Dieses Gesetz ist anzuwenden auf die Erbringung von Wertpapierdienstleistungen und Wertpapiernebenleistungen, den börslichen und außerbörslichen Handel mit Finanzinstrumenten, den Abschluss von Finanztermingeschäften, auf Finanzanalysen sowie auf Veränderungen der Stimmrechtsanteile von Aktionären an börsennotierten Gesellschaften.

(2) Die Vorschriften des dritten und vierten Abschnitts sowie die §§ 30 h, 30 i, 34 b und 34 c sind auch anzuwenden auf Handlungen und Unterlassungen, die im Ausland vorgenommen werden, sofern sie Finanzinstrumente betreffen, die an einer inländischen Börse gehandelt werden.

(3) Die Vorschriften des dritten und vierten Abschnitts sowie die §§ 34 b und 34 c sind nicht anzuwenden auf Geschäfte, die aus geld- oder währungspolitischen Gründen oder im Rahmen der öffentlichen Schuldenverwaltung von der Europäischen Zentralbank, dem Bund, einem seiner Sondervermögen, einem Land, der Deutschen Bundesbank, einem ausländischen Staat oder dessen Zentralbank oder

Chapter 1 Scope and definitions

§ 1 Scope

(1) This Act applies to the provision of investment services and ancillary investment services, trading in financial instruments on stock exchanges and outside stock exchanges, the conclusion of financial future or forward transactions, investment research and changes to the shareholders' voting rights in listed companies.

(2) The provisions of Chapters 3 and 4 as well as §§ 30 h, 30 i, 34 b and 34 c also apply to actions and omissions committed outside of Germany if they relate to financial instruments listed on a German stock exchange.

(3) The provisions of Chapters 3 and 4 as well as §§ 34 b and 34 c do not apply to transactions executed for reasons of money or currency policy or within the context of public debt management of the European Central Bank, the German Federation, one of its special funds, a federal state, the Deutsche Bundesbank, a foreign state or its central bank or any other organisation instructed to execute those

einer anderen mit diesen Geschäften beauftragten Organisation oder mit für deren Rechnung handelnden Personen getätigt werden.

§ 2 Begriffsbestimmungen

(1) Wertpapiere im Sinne dieses Gesetzes sind, auch wenn keine Urkunden über sie ausgestellt sind, alle Gattungen von übertragbaren Wertpapieren mit Ausnahme von Zahlungsinstrumenten, die ihrer Art nach auf den Finanzmärkten handelbar sind, insbesondere

1. Aktien,
2. andere Anteile an in- oder ausländischen juristischen Personen, Personengesellschaften und sonstigen Unternehmen, soweit sie Aktien vergleichbar sind, sowie Zertifikate, die Aktien vertreten,
3. Schuldtitel,
 - a) insbesondere Genussscheine und Inhaberschuldverschreibungen und Orderschuldverschreibungen sowie Zertifikate, die Schuldtitel vertreten,
 - b) sonstige Wertpapiere, die zum Erwerb oder zur Veräußerung von Wertpapieren nach den Nummern 1 und 2 berechneten oder zu einer Barzahlung führen, die in Abhängigkeit von Wertpapieren, von Währungen, Zinssätzen oder anderen Erträgen, von Waren, Indices oder Messgrößen bestimmt wird.

Wertpapiere sind auch Anteile an Investmentvermögen, die von einer Kapitalanlagegesellschaft oder einer ausländischen Investmentgesellschaft ausgegeben werden.

(1a) Geldmarktinstrumente im Sinne dieses Gesetzes sind alle Gattungen von Forderungen, die nicht unter Absatz 1 fallen und die üblicherweise auf dem Geldmarkt gehandelt werden, mit Ausnahme von Zahlungsinstrumenten.

(2) Derivate im Sinne dieses Gesetzes sind

1. als Kauf, Tausch oder anderweitig ausgestaltete Festgeschäfte oder Optionsgeschäfte, die zeitlich verzögert zu erfüllen sind und deren Wert sich unmittel-

transaktionen or transactions executed with any entry acting for their account.

§ 2 Definitions

(1) Securities within the meaning of this Act mean all classes of transferable securities, even where they are not issued in securitised form, which can be traded on financial markets due to their type with the exception of payment instruments. This includes in particular

1. shares,
2. other participations to the extent they are equivalent to shares in German and foreign legal entities, partnerships or other undertakings and certificates representing shares,
3. debt instruments,
 - a) in particular profit participation certificates and bearer bonds and registered bonds as well as certificates representing debt instruments,
 - b) any other securities giving the right to acquire or sell any such securities pursuant to number 1 or 2 or giving rise to a cash settlement determined by reference to securities, currencies, interest rates or other yields, commodities, indices or measures.

Units in investment funds issued by an investment management company or a foreign investment company also qualify as securities.

(1a) Money market instruments for purposes of this Act mean all classes of receivables which do not fall within the scope of paragraph 1 and are normally dealt in on the money market with the exception of payment instruments.

(2) Derivatives for purposes of this Act mean

1. fixed forward transactions or options in the form of acquisitions, swaps or other forms which are to be executed at a future date, whose value is directly or

telbar oder mittelbar vom Preis oder Maß eines Basiswertes ableitet (Termingeschäfte) mit Bezug auf die folgenden Basiswerte:

- a) Wertpapiere oder Geldmarktinstrumente,
- b) Devisen oder Rechnungseinheiten,
- c) Zinssätze oder andere Erträge,
- d) Indices der Basiswerte der Buchstaben a, b oder c, andere Finanzindices oder Finanzmessgrößen oder
- e) Derivate;

2. Termingeschäfte mit Bezug auf Waren, Frachtsätze, Emissionsberechtigungen, Klima- oder andere physikalische Variablen, Inflationsraten oder andere volkswirtschaftliche Variablen oder sonstige Vermögenswerte, Indices oder Messwerte als Basiswerte, sofern sie

- a) durch Barausgleich zu erfüllen sind oder einer Vertragspartei das Recht geben, einen Barausgleich zu verlangen, ohne dass dieses Recht durch Ausfall oder ein anderes Beendigungsereignis begründet ist,
- b) auf einem organisierten Markt oder in einem multilateralen Handelssystem geschlossen werden oder
- c) nach Maßgabe des Artikels 38 Abs. 1 der Verordnung (EG) Nr. 1287/2006 der Kommission vom 10. August 2006 zur Durchführung der Richtlinie 2004/39/EG des Europäischen Parlaments und des Rates betreffend die Aufzeichnungspflichten für Wertpapierfirmen, die Meldung von Geschäften, die Markttransparenz, die Zulassung von Finanzinstrumenten zum Handel und bestimmte Begriffe im Sinne dieser Richtlinie (ABl. EU Nr. L 241 S. 1) Merkmale anderer Derivate aufweisen und nicht die zentralen Zwecken dienen und nicht die Voraussetzungen des Artikels 38 Abs. 4 dieser Verordnung gegeben sind, und sofern sie keine Kassageschäfte im Sinne des Artikels 38 Abs. 2 der Verordnung (EG) Nr. 1287/2006 sind;

indirectly based on the price or measure of an underlying (future or forward transactions) with regard to the following underlyings:

- a) securities or money market instruments,
- b) foreign exchange or units of account,
- c) interest rates or other yields,
- d) indices with an underlying listed in letters a, b or c, other financial indices or financial measurements or
- e) derivatives;

2. future or forward transactions relating to commodities, freight rates, emissions allowances, climatic or other physical variables, inflation rates or other economic variables, or other assets, indices or measurements as underlyings to the extent that they

- a) are to be settled in cash or give or party the option to request cash settlement without this right being based on default or other termination event,
- b) are concluded on a regulated market or a multilateral trading facility or
- c) have the characteristics of other derivatives and are not for commercial purposes according to article 39 para. 1 of Commission Regulation (EC) No. 1287/2006 of 10 August 2006 implementing Directive 2004/39/EC of the European Parliament and of the Council as regards recording obligations for investment firms, transaction reporting, market transparency, admission of financial instruments to trading, and define terms for the purposes of that Directive (OJ EU No. L 241 p. 1) if the requirements of article 38 para. 4 of this Regulation are not met and to the extent that they are not spot contracts as defined in article 38 para. 4 of Regulation (EC) No. 1287/2006;

- 3. finanzielle Differenzgeschäfte;
- 4. als Kauf, Tausch oder anderweitig ausgestaltete Festgeschäfte oder Optionsgeschäfte, die zeitlich verzögert zu erfüllen sind und dem Transfer von Kreditrisiken dienen (Kreditderivate);
- 5. Termingeschäfte mit Bezug auf die in Artikel 39 der Verordnung (EG) Nr. 1287/2006 genannten Basiswerte, sofern sie die Bedingungen der Nummer 2 erfüllen.

(2a) (aufgehoben)

(2b) Finanzinstrumente im Sinne dieses Gesetzes sind Wertpapiere im Sinne des Absatzes 1, Geldmarktinstrumente im Sinne des Absatzes 1a, Derivate im Sinne des Absatzes 2 und Rechte auf Zeichnung von Wertpapieren.

(2c) Waren im Sinne dieses Gesetzes sind fungible Wirtschaftsgüter, die geliefert werden können; dazu zählen auch Metalle, Erze und Legierungen, landwirtschaftliche Produkte und Energien wie Strom.

(3) Wertpapierdienstleistungen im Sinne dieses Gesetzes sind

- 1. die Anschaffung oder Veräußerung von Finanzinstrumenten im eigenen Namen für fremde Rechnung (Finanzkommissionsgeschäft),
- 2. das kontinuierliche Anbieten des Kaufs oder Verkaufs von Finanzinstrumenten an einem organisierten Markt oder in einem multilateralen Handelssystem zu selbst gestellten Preisen, das häufige organisierte und systematische Betreiben von Handel für eigene Rechnung außerhalb eines organisierten Marktes oder eines multilateralen Handelssystems, indem ein für Dritte zugängliches System angeboten wird, um mit ihnen Geschäfte durchzuführen, oder die Anschaffung oder Veräußerung von Finanzinstrumenten für eigene Rechnung als Dienstleistung für andere (Eigenhandel),
- 3. die Anschaffung oder Veräußerung von Finanzinstrumenten in fremdem Namen für fremde Rechnung (Abschlussvermittlung),

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

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- 3. financial contracts for difference;
- 4. fixed forward transactions or options in the form of acquisitions, swaps or other forms which are to be executed at a future date and whose purpose it is to transfer credit risks (credit derivatives);
- 5. future or forward transactions relating to the underlyings listed in article 39 of Regulation (EC) No. 1287/2006 if they meet the criteria listed in no. 2.

(2a) (revoked)

(2b) Financial instruments for the purposes of this Act mean securities as defined by paragraph 1, money market instruments as defined by paragraph 1a, derivatives as defined by paragraph 2 and rights to subscribe for securities.

(2c) Commodities for purposes of this Act mean fungible assets which can be delivered. This includes, but is not limited to metals, ores and alloys, agricultural products and energy such as electricity.

(3) Investment services for purposes of this Act mean

- 1. the purchase and sale of financial instruments in one's own name, but for the account of others (principal broking business),
- 2. continually offering the purchase or sale of financial instruments on a regulated market or a multilateral trading facility at prices quoted, the frequent organised and systematic trading for own account outside of a regulated market or a multilateral trading facility by offering a system accessible to third parties to execute trades with them or the purchase or sale of financial instruments for own account as service for others (trading for own account),

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

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4. die Vermittlung von Geschäften über die Anschaffung und die Veräußerung von Finanzinstrumenten (Anlagevermittlung),

5. die Übernahme von Finanzinstrumenten für eigenes Risiko zur Platzierung oder die Übernahme gleichwertiger Garantien (Emissionsgeschäft),

6. die Platzierung von Finanzinstrumenten ohne feste Übernahmeverpflichtung (Platzierungsgeschäft),

7. die Verwaltung einzelner oder mehrerer Finanzinstrumenten angelegter Vermögen für andere mit Entscheidungsspielraum (Finanzportfolioverwaltung),

8. der Betrieb eines multilateralen Systems, das die Interessen einer Vielzahl von Personen am Kauf und Verkauf von Finanzinstrumenten innerhalb des Systems und nach festgelegten Bestimmungen in einer Weise zusammenbringt, die zu einem Vertrag über den Kauf dieser Finanzinstrumente führt (Betrieb eines multilateralen Handelssystems),

9. die Abgabe von persönlichen Empfehlungen an Kunden oder deren Vertreter, die sich auf Geschäfte mit bestimmten Finanzinstrumenten beziehen, sofern die Empfehlung auf eine Prüfung der persönlichen Umstände des Anlegers gestützt oder als für ihn geeignet dargestellt wird und nicht ausschließlich über Informationsverbreitungskanäle oder für die Öffentlichkeit bekannt gegeben wird (Anlageberatung).

Als Wertpapierdienstleistung gilt auch die Anschaffung und Veräußerung von Finanzinstrumenten für eigene Rechnung, die keine Dienstleistung für andere im Sinne des Satzes 1 Nr. 2 darstellt (Eigengeschäft). Der Finanzportfolioverwaltung gleichgestellt ist hinsichtlich der §§ 9, 31 bis 34 und 34b bis 36b dieses Gesetzes sowie der Artikel 7 und 8 der Verordnung (EG) Nr. 1287/2006 die erlaubnispflichtige Anlageverwaltung nach § 1 Abs. 1a Satz 2 Nr. 11 des Kreditwesengesetzes.

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4. broking transactions relating to the purchase or sale of financial instruments (investment broking),

5. underwriting of financial instruments at own risk to place them or assume similar guarantees (underwriting business),

6. placing of financial instruments without a firm commitment basis (placement business),

7. managing one or more asset pools invested in financial instruments for the account of others with discretion: decision powers (financial portfolio management),

8. operating a multilateral system which brings together interests of a number of persons in buying and selling financial instruments in the system and according to non-discretionary rules in a way that results in a contract on the purchase of these financial instruments (operating a multilateral trading facility),

9. providing personal recommendations to clients or their agents relating to transactions in specified financial instruments to the extent that the recommendation is based on an assessment of the investor's individual circumstances or is presented as suitable for him and is not solely published through information publishing channels or the public (investment advice).

The purchase and sale of financial instruments for own account which is not a service to others is deemed to be an investment service as defined by sentence no. 2 (proprietary trading). Investment management requiring a licence as defined by § 1 para. 1a sentence 2 no. 11 of the Banking Act is treated in the same way as financial portfolio management for purposes of §§ 9, 31 through 34 and 34b through 36b of this Act and Articles 7 and 8 of Regulation (EC) No. 1287/2006.

(3a) Wertpapiernebenleistungen im Sinne dieses Gesetzes sind

1. die Verwahrung und die Verwaltung von Finanzinstrumenten für andere und damit verbundene Dienstleistungen (Depotgeschäft),
 2. die Gewährung von Krediten oder Darlehen an andere für die Durchführung von Wertpapierdienstleistungen, sofern das Unternehmen, das den Kredit oder das Darlehen gewährt, an diesen Geschäften beteiligt ist,
 3. die Beratung von Unternehmen über die Kapitalstruktur, die industrielle Strategie sowie die Beratung und das Angebot von Dienstleistungen bei Unternehmenskäufen und Unternehmenszusammenschlüssen,
 4. Devisengeschäfte, die in Zusammenhang mit Wertpapierdienstleistungen stehen,
 5. die Erstellung, Verbreitung oder Weitergabe von Finanzanalysen oder anderen Informationen über Finanzinstrumente oder deren Emittenten, die direkt oder indirekt eine Empfehlung für eine bestimmte Anlageentscheidung enthalten,
 6. Dienstleistungen, die im Zusammenhang mit dem Emissionsgeschäft stehen,
 7. Dienstleistungen, die sich auf einen Basiswert im Sinne des Absatzes 2 Nr. 2 oder Nr. 5 beziehen und im Zusammenhang mit Wertpapierdienstleistungen oder Wertpapiernebenleistungen stehen.
- (4) Wertpapierdienstleistungsunternehmen im Sinne dieses Gesetzes sind Kreditinstitute, Finanzdienstleistungsinstitute und nach § 53 Abs. 1 Satz 1 des Kreditwesengesetzes tätige Unternehmen, die Wertpapierdienstleistungen allein oder zusammen mit Wertpapiernebenleistungen gewerbsmäßig oder in einem Umfang erbringen, der einen in kaufmännischer Weise eingerichteten Geschäftsbetrieb erfordert.
- (5) Organisierter Markt im Sinne dieses Gesetzes ist ein im Inland, in einem anderen

(3a) Ancillary investment services for purposes of this Act mean

1. safekeeping and administration of financial instruments for the account of others, including services connected thereto (custody business),
 2. granting credits or loans to others for the purpose of providing investment services to the extent that the undertaking granting the credit or loan is involved in these transactions,
 3. advice to undertakings on capital structure, industrial strategy and advice and offering services relating to the purchase of undertakings and mergers of undertakings,
 4. foreign currency transactions which are in the context of the provision of investment services,
 5. producing, distributing or passing on of investment research or other information on financial instruments or their issuers directly or indirectly containing a recommendation for a specific investment decision,
 6. services related to underwriting business,
 7. services relating to underlyings as defined in para. 2 no. 2 or no. 5 and connected to the provision of investment services or ancillary investment services.
- (4) Investment services undertakings for the purpose of this Act mean credit institutions, financial services institutions and undertakings operating according to § 53 para. 1 sentence 1 of the Banking Act which provide investment services exclusively or together with ancillary investment services commercially or on a scale requiring a commercially organised business.
- (5) Regulated market for the purposes of this Act means a multilateral system

ren Mitgliedstaat der Europäischen Union oder einem anderen Vertragsstaat des Abkommens über den Europäischen Wirtschaftsraum betriebenes oder verwaltetes, durch staatliche Stellen genehmigtes, reguliertes und überwachtes multilaterales System, das die Interessen einer Vielzahl von Personen am Kauf und Verkauf von dort zum Handel zugelassenen Finanzinstrumenten innerhalb des Systems und nach festgelegten Bestimmungen in einer Weise zusammenbringt oder das Zusammenbringen fördert, die zu einem Vertrag über den Kauf dieser Finanzinstrumente führt.

(6) Emittenten, für die die Bundesrepublik Deutschland der Herkunftsstaat ist, sind

1. Emittenten von Schuldtiteln mit einer Stückelung von weniger als 1000 Euro oder dem am Ausgabebetrag entsprechenden Gegenwert in einer anderen Währung oder von Aktien,
 - a) die ihren Sitz im Inland haben und deren Wertpapiere zum Handel an einem organisierten Markt im Inland oder in einem anderen Mitgliedstaat der Europäischen Union oder einem anderen Vertragsstaat des Abkommens über den Europäischen Wirtschaftsraum zugelassen sind, oder
 - b) die ihren Sitz in einem Staat haben, der weder Mitgliedstaat der Europäischen Union noch Vertragsstaat des Abkommens über den Europäischen Wirtschaftsraum ist (Drittstaat), und deren Wertpapiere zum Handel an einem organisierten Markt im Inland oder in einem anderen Mitgliedstaat der Europäischen Union oder einem anderen Vertragsstaat des Abkommens über den Europäischen Wirtschaftsraum zugelassen sind, oder
- (6) Issuers for whom the Federal Republic of Germany is the home state are
1. issuers of debt instruments the denomination per unit of which is less than EUR 1,000 or the equivalent value in another currency or shares at the date of the issue
 - a) which have their registered office in Germany and whose securities are admitted to trading on a regulated market in Germany or another member state of the European Union or another contracting state of the European Economic Area, or
 - b) which have their registered office in a country that is not a member state of the European Union nor another contracting state of the European Economic Area (third country) and whose securities are admitted to trading on a regulated market in Germany or another member state of the European Union or another contracting state of the European Economic Area if the annual document as defined in § 10 of the Securities Prospectus Act must be deposited with the Bundesanstalt,
2. Emittenten, die keine Finanzinstrumente im Sinne der Nummer 1 begeben, wenn sie im Inland oder in einem Drittstaat ihren Sitz haben und ihre Finanzinstrumente zum Handel an einem or-

operated or managed in Germany, in another member state of the European Union or another contracting state of the European Economic Area, which is authorised, regulated and supervised by public bodies, which brings together facilities bringing together interests of a number of persons in buying and selling financial instruments admitted to trading in its systems, according to its non-disciplinary rules in a way that results in a contract on the purchase of these financial instruments.

(6) Issuers for whom the Federal Republic of Germany is the home state are

1. issuers of debt instruments the denomination per unit of which is less than EUR 1,000 or the equivalent value in another currency or shares at the date of the issue
 - a) which have their registered office in Germany and whose securities are admitted to trading on a regulated market in Germany or another member state of the European Union or another contracting state of the European Economic Area, or
 - b) which have their registered office in a country that is not a member state of the European Union nor another contracting state of the European Economic Area (third country) and whose securities are admitted to trading on a regulated market in Germany or another member state of the European Union or another contracting state of the European Economic Area if the annual document as defined in § 10 of the Securities Prospectus Act must be deposited with the Bundesanstalt,
2. issuers not issuing financial instruments as defined in number 1 if they have their registered office in Germany or in another member state of the European Union or another contracting state of the European Economic Area and their financial instruments are admitted to trading on

ganisierten Markt im Inland, nicht aber in einem anderen Mitgliedstaat der Europäischen Union oder in einem Vertragsstaat des Abkommens über den Europäischen Wirtschaftsraum zugelassen sind,

3. Emittenten, die keine Finanzinstrumente im Sinne der Nummer 1 begeben und nicht unter Nummer 2 fallen,

a) wenn sie im Inland ihren Sitz haben und ihre Finanzinstrumente zum Handel an einem organisierten Markt auch oder ausschließlich in einem oder mehreren anderen Mitgliedstaaten der Europäischen Union oder in einem oder mehreren anderen Vertragsstaaten des Abkommens über den Europäischen Wirtschaftsraum zugelassen sind oder

b) wenn sie ihren Sitz in einem anderen Mitgliedstaat der Europäischen Union oder in einem anderen Vertragsstaat des Abkommens über den Europäischen Wirtschaftsraum haben und ihre Finanzinstrumente zum Handel an einem organisierten Markt auch oder ausschließlich im Inland zugelassen sind oder

c) wenn sie ihren Sitz in einem Drittstaat haben und ihre Finanzinstrumente zum Handel an einem organisierten Markt im Inland und in einem oder mehreren anderen Mitgliedstaaten der Europäischen Union oder in einem oder mehreren anderen Vertragsstaaten des Abkommens über den Europäischen Wirtschaftsraum zugelassen sind,

und sie die Bundesrepublik Deutschland nach Maßgabe des § 2 b als Herkunftstaat gewählt haben. Für Emittenten, die unter Buchstabe a fallen, aber keine Wahl getroffen haben, ist die Bundesrepublik Deutschland der Herkunftstaat; das Gleiche gilt für Emittenten, die unter Buchstabe c fallen, aber keine Wahl getroffen haben, wenn das jährliche Dokument im Sinne des § 10 des Wertpapierprospektgesetzes bei der Bundesanstalt zu hinterlegen ist.

(7) Inlandsemittenten sind

1. Emittenten, für die die Bundesrepublik Deutschland der Herkunftstaat ist, mit Ausnahme solcher Emittenten, deren Wertpapiere nicht im Inland, sondern lediglich in einem anderen Mitgliedstaat der Europäischen Union oder einem anderen Vertragsstaat des Abkommens über den Europäischen Wirtschaftsraum zugelassen sind, soweit sie in diesem anderen Staat Veröffentlichungs- und Mitteilungsspflichten nach Maßgabe der Richtlinie 2004/109/EG des Europäischen Parlaments und des Rates vom 15. Dezember 2004 zur Harmonisierung der Transparenzanforderungen in Bezug auf Informationen über Emittenten, deren Wertpapiere zum Handel auf einem regulierten Markt zugelassen sind, und zur Änderung der Richtlinie 2001/34/EG (ABl. EU Nr. L 390 S. 38) unterliegen, und

2. Emittenten, für die nicht die Bundesrepublik Deutschland, sondern ein anderer Mitgliedstaat der Europäischen Union oder ein anderer Vertragsstaat des Abkommens über den Europäischen Wirtschaftsraum der Herkunftstaat ist, deren Wertpapiere aber nur im Inland zum Handel an einem organisierten Markt zugelassen sind.

(8) Herkunftsmittelstaat im Sinne dieses Gesetzes ist

1. für ein Wertpapierdienstleistungsunternehmen der Mitgliedstaat, in dem sich seine Hauptniederlassung befindet;

2. für einen organisierten Markt der Mitgliedstaat, in dem der organisierte Markt registriert oder zugelassen ist, oder, sofern er nach dem Recht dieses Mitgliedstaates keinen Sitz hat, der Mitgliedstaat, in dem sich die Hauptniederlassung des organisierten Marktes befindet.

(9) Aufnahmemittelstaat im Sinne dieses Gesetzes ist

1. für ein Wertpapierdienstleistungsunternehmen der Mitgliedstaat, in dem es eine Zweigniederlassung unterhält oder im Wege des grenzüberschreitenden Dienstleistungsverkehrs tätig wird;

(7) Domestic issuers mean

1. any issuers for which the Federal Republic of Germany is the home state with the exception of such issuers whose securities are not admitted to trading in Germany, but only in another member state of the European Union or another contracting state of the European Economic Area to the extent that they are subject to publication and notification requirements according to Directive 2004/109/EC of the European Parliament and of the European 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 page 38), and

2. any issuers for which the Federal Republic of Germany is not the home state, but another member state of the European Union or another contracting state of the European Economic Area whose securities are admitted to trading solely on a regulated market in Germany.

(8) Home member state for purposes of this Act means

1. in relation to an investment services undertaking, the member state in which it has its head office;

2. in relation to a regulated market, the member state in which the regulated market is registered or authorised, or if it has no registered office under the laws of the relevant member state, the member state in which the regulated market has its head office.

(9) Host member state for purposes of this Act means

1. in relation to an investment services undertaking, the member state in which it has its branch or in which it provides cross-border services;

2. für einen organisierten Markt der Mitgliedstaaten, in dem er geeignete Vorkehrungen bietet, um in diesem Mitgliedstaat niedergelassenen Marktteilnehmern den Zugang zum Handel über sein System zu erleichtern.

(10) Systematischer Internalisierer im Sinne dieses Gesetzes ist ein Unternehmen, das nach Maßgabe des Artikels 21 der Verordnung (EG) Nr. 1287/2006 häufig regelmäßig und auf organisierte und systematische Weise Eigenhandel außerhalb organisierter Märkte und multilateraler Handelssysteme betreibt.

§ 2 a Ausnahmen

(1) Als Wertpapierdienstleistungsunternehmen gelten nicht

1. Unternehmen, die Wertpapierdienstleistungen im Sinne des § 2 Abs. 3 Satz 1 ausschließlich für ihr Mutterunternehmen oder ihre Tochter- oder Schwesterunternehmen im Sinne des § 1 Abs. 6 und 7 des Kreditwesengesetzes erbringen,
2. Unternehmen, deren Wertpapierdienstleistung für andere ausschließlich in der Verwaltung eines Systems von Arbeitnehmerbeteiligungen an den eigenen oder an mit ihnen verbundenen Unternehmen besteht,
3. Unternehmen, die ausschließlich Wertpapierdienstleistungen sowohl nach Nummer 1 als auch nach Nummer 2 erbringen,
4. private und öffentlich-rechtliche Versicherungsunternehmen,
5. die öffentliche Schuldenverwaltung des Bundes, eines Landes, eines anderen Mitgliedstaates der Europäischen Union oder eines anderen Vertragsstaates des Abkommens über den Europäischen Wirtschaftsraum, die Deutsche Bundesbank und andere Mitglieder des Europäischen Systems der Zentralbanken sowie die Zentralbanken der anderen Vertragsstaaten,
6. Angehörige freier Berufe, die Wertpapierdienstleistungen nur gelegentlich

2. in relation to a regulated market, the member state in which it has made appropriate arrangements to facilitate access to trading on its system for market participants established in that member state.

(10) Systematic internaliser for purposes of this Act means an undertaking which, frequently continuously and in an organised and systematic manner, trades on its own account outside regulated markets or multilateral trading facilities according to article 21 of Regulation (EC) No. 1287/2006.

§ 2 a Exemptions

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

1. undertakings which provide investment services as defined in § 2 para. 3 sentence 1 exclusively for their parent undertakings or for their subsidiaries or sister companies as defined in § 1 para. 6 and 7 of the Banking Act,
2. undertakings which only provide as an investment service to others the administration of employee participation schemes for their own undertaking or affiliated undertakings,
3. undertakings which do not provide any investment services other than investment services pursuant to number 1 and number 2,
4. private and public law insurance undertakings,
5. public bodies charged with the management of the public debt of the German Federation, one of its special funds, a federal state, another member state of the European Union or a contracting state of the European Economic Area, the Deutsche Bundesbank and other members of the European system of central banks as well as the central banks of other contracting states,
6. persons of liberal professions occasionally providing investment services

im Rahmen eines Mandatsverhältnisses als Freiberufler erbringen und einer Berufskammer in der Form der Körperschaft des öffentlichen Rechts angehören, deren Berufsrecht die Erbringung von Wertpapierdienstleistungen nicht ausschließt,

7. Unternehmen, die als Wertpapierdienstleistung für andere ausschließlich die Anlageberatung und die Anlagevermittlung zwischen Kunden und a) Instituten im Sinne des Kreditwesengesetzes,

b) Instituten oder Finanzunternehmen mit Sitz in einem anderen Staat des Europäischen Wirtschaftsraums, die die Voraussetzungen nach § 53 b Abs. 1 Satz 1 oder Abs. 7 des Kreditwesengesetzes erfüllen,

c) Unternehmen, die aufgrund einer Rechtsverordnung nach § 53 c des Kreditwesengesetzes gleichgestellt oder freigestellt sind, oder

d) Kapitalanlagegesellschaften, Investmentaktiengesellschaften oder ausländischen Investmentgesellschaften

betreiben, sofern sich diese Wertpapierdienstleistungen auf Anteile an Investmentvermögen, die von einer inländischen Kapitalanlagegesellschaft oder Kapitalanlagegesellschaft, Investmentaktiengesellschaft oder ausländischen Investmentgesellschaft im Sinne der §§ 96 bis 111 a des Investmentgesetzes ausgegeben werden, oder auf ausländische Investmentanteile, die nach dem Investmentgesetz öffentlich vertrieben werden dürfen, beschränken und die Unternehmen nicht befugt sind, sich bei der Erbringung dieser Finanzdienstleistungen Eigentum oder Besitz an Geldern oder Anteilen von Kunden zu verschaffen, es sei denn, das Unternehmen beantragt und erhält eine entsprechende Erlaubnis nach § 32 Abs. 1 des Kreditwesengesetzes; An-

in the course of a client relationship in their capacity as persons of liberal professions and who are members of a professional chamber established as a corporation under public law and whose professional laws do not exclude the provision of investment services,

7. undertakings which do not provide any investment services other than investment advice and investment broking between clients and

a) institutions as defined in the Banking Act,

b) institutions or financial undertakings with a registered office in another contracting state of the European Economic Area which meet the requirements pursuant to § 53 b para. 1 sentence 1 or para. 7 of the Banking Act,

c) undertakings which are treated in the same way or are exempted according to a regulation according to § 53 c of the Banking Act, or

d) investment management companies, investment stock corporations or foreign investment companies

provided that these investment services relate to units in investment funds issued by a German investment management company, investment management companies, investment stock corporations or foreign investment companies as defined in §§ 96 through 111 a of the Investment Act or foreign investment fund units which may be distributed publicly in Germany under the Investment Act, and provided that the undertakings are not permitted to obtain ownership or possession of client monies or client units when providing these financial services unless the undertaking applies for and receives a respective licence according to § 32 para. 1 of the Banking Act; units in investment funds with additional risks according to § 112 of the Investment Act are not

teile an Sondervermögen mit zusätzlichen Risiken nach § 112 des Investmentgesetzes gelten nicht als Anteile an Investmentvermögen im Sinne dieser Vorschrift,

8. Unternehmen, deren Wertpapierdienstleistung ausschließlich in der Erbringung einer oder mehrerer der folgenden Dienstleistungen besteht:

- a) Eigengeschäfte an inländischen Börsen oder in multilateralen Handelssystemen im Inland, an oder in denen Derivate gehandelt werden (Derivatmärkte), und an Kassamärkten nur zur Absicherung dieser Positionen,
- b) Eigenhandel, Finanzkommissionsgeschäft oder Abschlussvermittlung an Derivatmärkten nur für andere Mitglieder dieser Märkte,
- c) Preisstellung als Market Maker im Sinne des § 23 Abs. 4 im Rahmen des Eigenhandels für andere Mitglieder dieser Derivatmärkte, sofern für die Erfüllung der Verträge, die diese Unternehmen an diesen Märkten oder in diesen Handelssystemen schließen, Clearingmitglieder derselben Märkte oder Handelssysteme haften,

9. Unternehmen, die Eigengeschäfte in Finanzinstrumenten betreiben oder Wertpapierdienstleistungen in Bezug auf Derivate im Sinne des § 2 Abs. 2 Nr. 2 und 5 erbringen, sofern

- a) sie nicht Teil einer Unternehmensgruppe sind, deren Haupttätigkeit in der Erbringung von Wertpapierdienstleistungen oder Bankgeschäften im Sinne des § 1 Abs. 1 Satz 2 Nr. 1, 2, 8 oder 11 des Kreditwesengesetzes besteht,
- b) diese Wertpapierdienstleistungen auf Ebene der Unternehmensgruppe von untergeordneter Bedeutung im Verhältnis zur Haupttätigkeit sind und
- c) die Wertpapierdienstleistungen in Bezug auf Derivate im Sinne des

units in investment funds for purposes of this provision,

8. undertakings which do not provide any investment services other than one or several of the following services:

- a) proprietary trading on German stock exchanges or German multilateral trading facilities where derivatives are traded (derivative markets) and, for the sole purpose of hedging respective exposures, on spot markets,
- b) trading for own account, principal broking business or contract broking on derivative markets exclusively for other members of these markets,
- c) quoting prices as market maker as defined in § 23 para. 4 within the context of trading for own account for other members of these derivative markets, provided that clearing members of the same markets or trading systems are liable for the settlement of the contracts which are entered into by these undertakings on these markets or trading systems,

9. undertakings which engage in proprietary trading in financial instruments or provide investment services relating to derivatives as defined in § 2 para. 2 no. 2 and 5, to the extent that

- a) they are not part of a group of undertakings whose main business is the provision of investment services or banking business as defined in § 1 para. 1 sentence 2 no. 1, 2, 8 or 11 of the Banking Act,
- b) these investment services are, on a group-wide basis, of minor importance compared to the main business, and

c) the investment services relating to derivatives as defined in § 2 para. 2

§ 2 Abs. 2 Nr. 2 und 5 nur für Kunden ihrer Haupttätigkeit im sachlichen Zusammenhang mit Geschäften der Haupttätigkeit erbracht werden,

10. Unternehmen, die als einzige Wertpapierdienstleistung Eigengeschäfte betreiben, sofern sie nicht

- a) an einem organisierten Markt oder in einem multilateralen Handelssystem kontinuierlich den Kauf oder Verkauf von Finanzinstrumenten im Wege des Eigenhandels zu selbst gestellten Preisen anbieten oder
- b) in organisierter und systematischer Weise häufig für eigene Rechnung außerhalb eines organisierten Marktes oder eines multilateralen Handelssystems Handel treiben, indem sie ein für Dritte zugängliches System anbieten, um mit ihnen Geschäfte durchzuführen,

11. Unternehmen, die als Wertpapierdienstleistung ausschließlich die Anlageberatung im Rahmen einer anderen beruflichen Tätigkeit erbringen, ohne sich die Anlageberatung gesondert vergüten zu lassen,

12. Unternehmen, soweit sie als Haupttätigkeit Eigengeschäfte und Eigenhandel mit Waren oder Derivaten im Sinne des § 2 Abs. 1 Nr. 2 in Bezug auf Waren betreiben, sofern sie nicht einer Unternehmensgruppe angehören, deren Haupttätigkeit in der Erbringung von Wertpapierdienstleistungen oder dem Betreiben von Bankgeschäften im Sinne des § 1 Abs. 1 Satz 2 Nr. 1, 2, 8 oder 11 des Kreditwesengesetzes besteht, und

13. Börsenträger oder Betreiber organisierter Märkte, die neben dem Betrieb eines multilateralen Handelssystems keine anderen Wertpapierdienstleistungen im Sinne des § 2 Abs. 3 Satz 1 erbringen.

14. (aufgehoben)

(2) Ein Unternehmen, das als vertraglich gebundener Vermittler im Sinne des

no. 2 and 5 are only provided to the clients of their main services in factual connection with such main services,

10. undertakings which do not provide any investment services other than proprietary trading to the extent that they do not

- a) continuously offer the purchase or sale of financial instruments by way of trading for own account at prices quoted by them on a regulated market or a multilateral trading facility or
- b) frequently trade on own account outside a regulated market or a multilateral trading facility in an organized and systematic manner by providing a system accessible to third parties in order to engage in transactions with them,

11. undertakings providing as investment service exclusively investment advice in the course of providing another professional activity without being remunerated separately for the provision of investment advice,

12. undertakings whose main business is proprietary trading and trading for own account with commodities or derivatives as defined in § 2 para. 1 no. 2 relating to commodities provided that they are not part of a group of companies whose main business is the provision of investment services or conducting banking business as defined in § 1 para. 1 sentence 2 no. 1, 2, 8 or 11 of the Banking Act, and

13. operators of stock exchanges or regulated markets which, besides operating a multilateral trading facility, do not provide other investment services as defined in § 2 para. 3 sentence 1.

14. (revoked)

(2) An undertaking providing as investment services only contract broking,

§ 2 Abs. 10 Satz 1 des Kreditwesengesetzes als Wertpapierdienstleistung, nur die Abschlussvermittlung, Anlagevermittlung, das Platzieren von Finanzinstrumenten ohne feste Übernahmeverpflichtung oder Anlageberatung erbringt, gilt nicht als Wertpapierdienstleistungsunternehmen. Seine Tätigkeit wird dem Institut oder Unternehmen zugerechnet, für dessen Rechnung und unter dessen Haftung es seine Tätigkeit erbringt.

(3) (aufgehoben)

§ 2 b Wahl des Herkunftsstaates

(1) Ein Emittent im Sinne des § 2 Abs. 6 Nr. 3 Buchstabe a bis c kann die Bundesrepublik Deutschland als Herkunftsstaat wählen, wenn er nicht innerhalb der letzten drei Jahre einen anderen Staat als Herkunftsstaat gewählt hat. Die Wahl ist mindestens drei Jahre gültig, es sei denn, die Finanzinstrumente des Emittenten sind an keinem organisierten Markt in einem Mitgliedstaat der Europäischen Union oder in einem anderen Vertragsstaat des Abkommens über den Europäischen Wirtschaftsraum mehr zum Handel zugelassen. Die Wahl ist zu Veröffentlichung und dem Unternehmensregister im Sinne des § 8 b des Handelsgesetzbuchs zur Speicherung zu übermitteln. Mit der Veröffentlichung wird die Wahl wirksam.

(2) Das Bundesministerium der Finanzen kann durch Rechtsverordnung, die nicht der Zustimmung des Bundesrates bedarf, nähere Bestimmungen zur Veröffentlichung der Wahl des Herkunftsstaates treffen.

Abschnitt 2

Bundesanstalt für Finanzdienstleistungsaufsicht

§ 3 (aufgehoben)

§ 4 Aufgaben und Befugnisse

(1) Die Bundesanstalt für Finanzdienstleistungsaufsicht (Bundesanstalt) übt die Aufsicht nach den Vorschriften dieses Ge-

investment broking, placing of financial instruments without a firm commitment basis or investment advice in its capacity as a tied agent as defined in § 2 para. 10 sentence 1 of the Banking Act is not deemed to be an investment services undertaking. Its services are attributed to the institution or undertaking for the account of which and under whose liability it provides its service.

(3) (revoked)

§ 2 b Choice of home state

(1) An issuer as defined in § 2 para. 6 no. 3 lits. a to c may choose the Federal Republic of Germany as its home state if it has not chosen another home state within the last three years. The choice is valid for at least three years unless the issuer's financial instruments are no longer admitted to trading on any regulated market in a member state of the European Union or another contracting state of the European Economic Area. The choice must be published and transmitted to the Company Register as defined in § 8 b of the Commercial Code for purposes of storage. The choice becomes valid with its publication.

(2) The Federal Ministry of Finance may by way of issuing a regulation which does not require the approval of the Bundesrat stipulate detailed provisions on the publication of the choice of the home state.

Chapter 2

Bundesanstalt für Finanzdienstleistungsaufsicht

§ 3 (revoked)

§ 4 Tasks and powers

(1) The Bundesanstalt für Finanzdienstleistungsaufsicht (Bundesanstalt) carries out its supervisory functions according to

setzes aus. Sie hat im Rahmen der ihr zugewiesenen Aufgaben Missständen entgegenzuwirken, welche die ordnungsgemäße Durchführung des Handels mit Finanzinstrumenten oder von Wertpapierdienstleistungen oder Wertpapiernebenleistungen beeinträchtigen oder erhebliche Nachteile für den Finanzmarkt bewirken können. Sie kann Anordnungen treffen, die geeignet und erforderlich sind, diese Missstände zu beseitigen oder zu verhindern.

(2) Die Bundesanstalt überwacht die Einhaltung der Verbote und Gebote dieses Gesetzes und kann Anordnungen treffen, die zu ihrer Durchsetzung geeignet und erforderlich sind. Sie kann den Handel mit einzelnen oder mehreren Finanzinstrumenten vorübergehend untersagen oder die Aussetzung des Handels in einzelnen oder mehreren Finanzinstrumenten an Märkten, an denen Finanzinstrumente gehandelt werden, anordnen, soweit dies zur Durchsetzung der Verbote und Gebote dieses Gesetzes oder zur Beseitigung oder Verhinderung von Missständen nach Absatz 1 geboten ist.

(3) Die Bundesanstalt kann von jedermann Auskünfte, die Vorlage von Unterlagen und die Überlassung von Kopien verlangen sowie Personen laden und verpflichten, soweit dies auf Grund von Anhaltspunkten für die Überwachung der Einhaltung eines Verbots oder Gebots dieses Gesetzes erforderlich ist. Sie kann insbesondere die Angabe von Bestandsveränderungen in Finanzinstrumenten sowie Auskünfte über die Identität weiterer Personen, insbesondere der Auftraggeber und der aus Geschäften berechtigten oder verpflichteten Personen, verlangen. Gesetzliche Auskunfts- oder Aussageverweigerungsrechte sowie gesetzliche Verschwiegenheitspflichten bleiben unberührt.

(4) Während der üblichen Arbeitszeit ist Bediensteten der Bundesanstalt und den von ihr beauftragten Personen, soweit dies zur Wahrnehmung ihrer Aufgaben erforderlich ist, das Betreten der Grundstücke und Geschäftsräume der nach Absatz 3 auskunftspflichtigen Personen zu gestattet.

(4) During usual business hours, employees of the Bundesanstalt and persons appointed by it must be given access to the property and business premises of persons who are required to provide information according to paragraph 3 to the extent that is required for the performance of their

the provisions of this Act. As part of its assigned tasks, it must counteract undesirable developments which impair the orderly functioning of trading in financial instruments or provision of investment services or ancillary investment services or which might cause significant damage to the financial market. It may issue orders that are appropriate and necessary to resolve or prevent those undesirable developments.

(2) The Bundesanstalt supervises compliance with the prohibitions and requirements of this Act and may issue orders that are appropriate and necessary to enforce them. It may temporarily prohibit the trading in individual or several financial instruments or may suspend trading in individual or several financial instruments in markets where these financial instruments are traded, to the extent this is needed to enforce the prohibitions or requirements pursuant to this Act or to resolve or to prevent undesirable developments pursuant to paragraph 1.

(3) The Bundesanstalt may request anyone to provide information, present documents and surrender copies as well as summon and question persons, to the extent that this is necessary based on indications in order to supervise compliance with prohibitions or requirement pursuant to this Act. In particular, it may request information on changes in holdings of financial instruments as well as information on the identity of further persons, in particular principals and persons having rights or obligations based on these transactions. Statutory rights to provide or refuse to provide information as well as statutory confidentiality obligations remain unaffected.

(4) During usual business hours, employees of the Bundesanstalt and persons appointed by it must be given access to the property and business premises of persons who are required to provide information according to paragraph 3 to the extent that is required for the performance of their

ten. Das Betreten außerhalb dieser Zeit oder wenn die Geschäftsräume sich in einer Wohnung befinden, ist ohne Einverständnis nur zulässig und insoweit zu dulden, wie dies zur Verhütung von dringenden Gefahren für die öffentliche Sicherheit und Ordnung erforderlich ist und bei der Auskunftsspflichtigen Person Anhaltspunkte für einen Verstoß gegen ein Verbot oder Gebot dieses Gesetzes vorliegen. Das Grundrecht des Artikels 13 des Grundgesetzes wird insoweit eingeschränkt.

(5) Die Bundesanstalt hat Tatsachen, die den Verdacht einer Straftat nach § 38 begründen, der zuständigen Staatsanwaltschaft unverzüglich anzuzeigen. Sie kann die personenbezogenen Daten der Betroffenen, gegen die sich der Verdacht richtet oder die als Zeugen in Betracht kommen, der Staatsanwaltschaft übermitteln, soweit dies für Zwecke der Strafverfolgung erforderlich ist. Die Staatsanwaltschaft entscheidet über die Vornahme der erforderlichen Ermittlungsmaßnahmen, insbesondere über Durchsuchungen, nach den Vorschriften der Strafprozessordnung. Die Befugnisse der Bundesanstalt nach den Absätzen 2 bis 4 bleiben hiervon unberührt, soweit dies für die Vornahme von Verwaltungsmaßnahmen oder zur Erfüllung von Ersuchen ausländischer Stellen nach § 7 Abs. 2, Abs. 2 Satz 1 oder Abs. 7 erforderlich ist und soweit eine Gefährdung des Untersuchungszwecks von Ermittlungen der Strafverfolgungsbehörden oder der für Strafsachen zuständigen Gerichte nicht zu besorgen ist.

(6) Die Bundesanstalt kann eine nach den Vorschriften dieses Gesetzes gebotene Veröffentlichung oder Mitteilung auf Kosten des Pflichtigen vornehmen, wenn die Veröffentlichungs- oder Mitteilungspflicht nicht, nicht richtig, nicht vollständig oder nicht in der vorgeschriebenen Weise erfüllt wird.

(7) Widerspruch und Anfechtungsklage gegen Maßnahmen nach den Absätzen 1 bis 4 und 6 haben keine aufschiebende Wirkung.

(8) Adressaten von Maßnahmen nach den Absätzen 2 bis 4, die von der Bundes-

tasks. Access outside of these times or access to business premises where they are located in residences is only allowed and to be tolerated without consent if this is necessary to prevent imminent danger to public safety and order and if there is information to suggest that the person required to provide information has violated a prohibition or requirement of this Act. The constitutional right according to Article 13 of the Constitution of the Federal Republic of Germany is limited to this extent.

(5) The Bundesanstalt has to report without undue delay to the competent public prosecutors information on facts leading to the suspicion that a criminal offence according to § 38 may have been committed. It may transfer personal data of the relevant persons under suspicion or contemplated to act as witnesses to the public prosecutors to the extent that this is required for purposes of criminal prosecution. The public prosecutor may decide on necessary investigation measures, in particular searches, according to the provisions of the Code of Criminal Procedure. The powers of the Bundesanstalt according to para. 2 to 4 remain unaffected to the extent required to take administrative action or to comply with requests by foreign bodies according to § 7 para. 2, para. 2b sentence 1 or para. 7 and to the extent that this does not endanger the purpose of investigations by prosecuting authorities or the courts competent for criminal procedures.

(6) The Bundesanstalt may effect a publication or notification required according to this Act at the expense of the obliged undertaking if the publication or notification requirement is not, not correctly, not completely or not as required complied with.

(7) Objections and actions for rescission in respect of measures according to paragraphs 1, 4 and 6 will not have the effect of suspension.

(8) Addressees of measures according to paragraphs 2 to 4, that are taken by the

anstalt wegen eines möglichen Verstoßes gegen ein Verbot nach § 14 oder nach § 20 a vorgenommen werden, dürfen andere Personen als staatliche Stellen und solche, die auf Grund ihres Berufs einer gesetzlichen Verschwiegenheitspflicht unterliegen, von diesen Maßnahmen oder von einem daraufhin eingeleiteten Ermittlungsverfahren nicht in Kenntnis setzen.

(9) Der zur Erteilung einer Auskunft Verpflichtete kann die Auskunft auf solche Fragen verweigern, deren Beantwortung ihn selbst oder einen der in § 383 Abs. 1 Nr. 1 bis 3 der Zivilprozessordnung bezeichneten Angehörigen der Gefahr strafgerichtlicher Verfolgung oder eines Verfahrens nach dem Gesetz über Ordnungswidrigkeiten aussetzen würde. Der Verpflichtete ist über sein Recht zur Verweigerung der Auskunft zu belehren und darauf hinzuweisen, dass es ihm nach dem Gesetz freistehe, jederzeit, auch schon vor seiner Vernehmung, einen von ihm zu wählenden Verteidiger zu befragen.

(10) Die Bundesanstalt darf ihr mitgeteilte personenbezogene Daten nur zur Erfüllung ihrer aufsichtlichen Aufgaben und für Zwecke der internationalen Zusammenarbeit nach Maßgabe des § 7 spezialern, verändern und nutzen.

(11) Die Bundesanstalt kann zur Erfüllung ihrer Aufgaben auch Wirtschaftsprüfer oder Sachverständige bei Ermittlungen oder Überprüfungen einsetzen.

§ 4 a Befugnisse zur Sicherung des Finanzsystems

(1) Die Bundesanstalt kann im Benehmen mit der Deutschen Bundesbank Anordnungen treffen, die geeignet und erforderlich sind, Missstände, die Nachteile für die Stabilität der Finanzmärkte bewirken oder das Vertrauen in die Funktionsfähigkeit der Finanzmärkte erschüttern können, zu beseitigen oder zu verhindern. Insbesondere kann die Bundesanstalt vorübergehend:

- 1. den Handel mit einzelnen oder mehreren Finanzinstrumenten untersagen, insbesondere

Bundesanstalt based on a potential violation of a prohibition pursuant to § 14 or § 20 a, will not be allowed to inform persons other than public bodies and those who are subject to a statutory professional confidentiality obligation about these measures or any subsequently opened investigation procedures.

(9) A person required to provide information may refuse to respond to such queries the response to which would put them or relatives as designated in § 383 para. 1 nos. 1 to 3 of the Code of Civil Procedure at risk of criminal prosecution or a procedure according to the Act on Administrative Offences. The person required to provide information will be informed of the right to refuse to provide information and will be informed that by virtue of law they remain free to consult at any time, also prior to a questioning, with a defence counsel that they have chosen.

(10) The Bundesanstalt may store, modify and use personal data provided to it only for purposes of performing its supervisory tasks and for purposes of international cooperation, according to § 7.

(11) To perform its duties, the Bundesanstalt may commission certified accountants or experts for purposes of investigations or examinations.

§ 4 a Powers to protect the financial system

(1) Subject to consultation with Deutsche Bundesbank, the Bundesanstalt may issue orders which are appropriate and necessary to correct or prevent undesirable developments which may lead to damages to the stability of the financial markets or affect the trust in the functioning of the financial markets. The Bundesanstalt may, in particular, temporarily

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

a) ein Verbot von Geschäften in Derivaten anordnen, deren Wert sich unmittelbar oder mittelbar vom Preis von Aktien oder Schuldtiteln, die von Zentralregierungen, Regionalregierungen und örtlichen Gebietskörperschaften von Mitgliedsstaaten der Europäischen Union, deren gesetzlicher Währung der Euro ist, ausgegeben wurden, ableitet, soweit diese an einer inländischen Börse zum Handel im regulierten Markt zugelassen sind, bei wirtschaftlicher Betrachtungsweise in Struktur und Wirkung einem Leerverkauf in diesen Aktien oder Schuldtiteln entsprechen und nicht zur Reduktion eines bestehenden oder im unmittelbaren zeitlichen Zusammenhang mit dem Geschäft in einem Derivat übernommenen Marktrisiko führen, wobei § 37 des Börsengesetzes insoweit nicht anzuwenden ist, oder

b) ein Verbot des Erwerbs von Rechten aus Währungsderivaten im Sinne des § 2 Absatz 2 Nummer 1 Buchstabe b, d oder e anordnen, deren Wert sich unmittelbar oder mittelbar vom Devisenpreis des Euro ableitet, soweit zu erwarten ist, dass der Marktwert dieser Rechte bei einem Kursrückgang des Euro steigt, und der Erwerb der Rechte nicht der Absicherung eigener bestehender oder erwarteter Währungsrisiken dienen, wobei das Verbot auch auf den rechtsgeschäftlichen Eintritt in solche Geschäfte erstreckt werden kann, oder

2. die Aussetzung des Handels in einzelnen oder mehreren Finanzinstrumenten an Märkten, an denen Finanzinstrumente gehandelt werden, anordnen.

(2) Die Bundesanstalt kann anordnen, dass Personen, die Geschäfte in Finanzinstrumenten tätigen, ihre Positionen in diesen Finanzinstrumenten veröffentlichten und gleichzeitig der Bundesanstalt mitteilen müssen. Die Bundesanstalt kann Mitteilungen nach Satz 1 auf ihrer Internetseite öffentlich bekannt machen.

a) impose a prohibition of transactions in derivatives the value of which is directly or indirectly derived from the price of shares or debt instruments issued by central governments, regional governments and local authorities of member states of the European Union whose legal currency is the Euro, insofar as they are admitted to trading on a German stock exchange in the regulated market and insofar as they economically correspond, in terms of their structure and effect, to a short sale in these shares or debt instruments and do not result in a reduction of an existing market risk or a market risk taken over in a direct time relationship with such transaction in a derivative, whereby in that respect § 37 of the Stock Exchange Act is not to be applied, or

b) impose a prohibition of acquisitions of rights from currency derivatives as defined in § 2 para. 2 no. 1 lits. b, d or e the value of which is derived directly or indirectly from the currency price of the Euro insofar as it is to be expected that the market value of these rights will increase in the event of a price decrease of the Euro and the acquisition of the rights does not serve the purpose of hedging own existing or anticipated currency risks, whereby the prohibition can also extend to the contractual accession to such transactions, or

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

(2) The Bundesanstalt may impose that persons who conduct transactions in financial instruments publish their positions in these financial instruments and at the same time must notify the Bundesanstalt of these. The Bundesanstalt may publish notifications according to sentence 1 on its website.

(3) § 4 Absatz 3, 4, 6, 9 und 10 ist entsprechend anzuwenden.

(4) Maßnahmen nach den Absätzen 1 bis 3 sind auf höchstens zwölf Monate zu befristet. Eine Verlängerung über diesen Zeitraum hinaus um bis zu zwölf weitere Monate ist zulässig. In diesem Falle legt das Bundesministerium der Finanzen dem Deutschen Bundestag innerhalb eines Monats nach erfolgter Verlängerung einen Bericht vor. Widerspruch und Anfechtungsklage gegen Maßnahmen nach den Absätzen 1 bis 3 haben keine aufschiebende Wirkung.

§ 5 Wertpapierrat

(1) Bei der Bundesanstalt wird ein Wertpapierrat gebildet. Er besteht aus Vertretern der Länder. Die Mitgliedschaft ist nicht personengebunden. Jedes Land entsendet einen Vertreter. An den Sitzungen können Vertreter der Bundesministerien der Finanzen, der Justiz und für Wirtschaft und Technologie sowie der Deutschen Bundesbank teilnehmen. Der Wertpapierrat kann Sachverständige insbesondere aus dem Bereich der Börsen, der Marktteilnehmer, der Wirtschaft und der Wissenschaft anhören. Der Wertpapierrat gibt sich eine Geschäftsordnung.

(2) Der Wertpapierrat wirkt bei der Aufsicht mit. Er berät die Bundesanstalt, insbesondere

1. bei dem Erlass von Rechtsverordnungen und der Aufstellung von Richtlinien für die Aufsichtstätigkeit der Bundesanstalt,
2. hinsichtlich der Auswirkungen von Aufsichtsrufen auf die Börsen- und Marktstrukturen sowie den Wettbewerb im Handel mit Finanzinstrumenten,
3. bei der Abgrenzung von Zuständigkeiten zwischen der Bundesanstalt und den Börsenaufsichtsbehörden sowie bei Fragen der Zusammenarbeit.

Der Wertpapierrat kann bei der Bundesanstalt Vorschläge zur allgemeinen Wei-

(3) § 4 paragraphs 3, 4, 6, 9 and 10 must be applied *mutatis mutandis*.

(4) Measures according to paragraphs 1 to 3 shall be limited to a maximum of 12 months. An extension beyond this period by up to 12 additional months is admissible. In this case, the Federal Ministry of Finance must submit a report to the Deutsche Bundestag within one month of the extension. Objections and actions for rescission against measures according to paragraphs 1 to 3 do not have the effect of suspension.

§ 5 Securities Committee

(1) A Securities Committee is established at the Bundesanstalt. Its members are representatives of the federal states. The membership is not linked to a specific person. Each federal state sends one representative. Representatives of the Federal Ministries of Finance, Justice and Economics and Technology as well as of Deutsche Bundesbank may attend meetings. The Securities Committee may consult experts in particular from areas of the stock exchanges, market participants, economy and academia. The Securities Committee adopts own rules of procedure.

(2) The Securities Committee assists for purposes of supervision. It advises the Bundesanstalt, in particular

1. with regard to issuing regulations and establishing guidelines for purposes of the supervisory activities of the Bundesanstalt,
2. with regard to the effects of supervisory issues on the stock exchange and market structures as well as on the competition in trading with financial instruments,
3. with regard to the separation of responsibilities between the Bundesanstalt and the stock exchange supervisory authorities as well as with regard to questions on the cooperation between them.

The Securities Committee may make proposals to the Bundesanstalt with regard to

terentwicklung der Aufsichtspraxis einbringen. Die Bundesanstalt berichtet dem Wertpapierrat mindestens einmal jährlich über die Aufsichtstätigkeit, die Weiterentwicklung der Aufsichtspraxis sowie über die internationale Zusammenarbeit.

(3) Der Wertpapierrat wird mindestens einmal jährlich vom Präsidenten der Bundesanstalt einberufen. Er ist ferner auf Verlangen von einem Drittel seiner Mitglieder einzuberufen. Jedes Mitglied hat das Recht, Beratungsvorschläge einzubringen.

§ 6 Zusammenarbeit mit anderen Behörden im Inland

(1) Die Börsenaufsichtsbehörden werden im Wege der Organleihe für die Bundesanstalt bei der Durchführung von eilbedürftigen Maßnahmen im Rahmen der Überwachung der Verbote von Insidergeschäften nach § 14 und des Verbots der Marktmanipulation nach § 20a an den ihrer Aufsicht unterliegenden Börsen tätig. Das Nähere regelt ein Verwaltungsabkommen zwischen dem Bund und den börsenaufsichtsführenden Ländern.

(2) Die Bundesanstalt, die Deutsche Bundesbank im Rahmen ihrer Tätigkeit nach Maßgabe des Kreditwesengesetzes, das Bundeskartellamt, die Börsenaufsichtsbehörden, die Handelsüberwachungsstellen, die Bundesnetzagentur im Rahmen ihrer Tätigkeit nach Maßgabe des Energiewirtschaftsgesetzes sowie die für die Aufsicht über Versicherungsvermittler und die Vermittler von Anteilen an Investmentvermögen zuständigen Stellen haben einander Beobachtungen und Feststellungen einschließlich personenbezogener Daten mitzuteilen, die für die Erfüllung ihrer Aufgaben erforderlich sind.

(3) Die Bundesanstalt darf zur Erfüllung ihrer Aufgaben die nach § 2 Abs. 10, §§ 2c, 24 Abs. 1 Nr. 1, 2, 5, 7 und 10 und Abs. 3, § 25a Abs. 2, § 32 Abs. 1 Satz 1 und 2 Nr. 2 und 6 Buchstabe a und b des Kreditwesengesetzes bei der Deutschen Bundesbank gespeicherten Daten im automatisierten Verfahren abrufen. Die

the general development of supervisory practice. The Bundesanstalt reports to the Securities Committee at least once a year on supervisory activities, the development of supervisory practice and on international cooperation.

(3) The Securities Committee meets at least once a year by request of the president of the Bundesanstalt. A meeting must also be called on request of at least a third of its members. Each member has the right to make discussion proposals.

§ 6 Cooperation with other German authorities

(1) The stock exchange supervisory authorities act on the stock exchanges they supervise by way of administrative mandate for the Bundesanstalt when executing urgent measures within the context of supervision of insider dealing prohibitions according to § 14 and the prohibition of market manipulation according to § 20a. Further details are set forth by an administrative agreement between the German Federation and the federal states supervising stock exchanges.

(2) The Bundesanstalt, the Deutsche Bundesbank in the course of their activities according to the Banking Act, the Bundeskartellamt, the stock exchange supervisory authorities, the trading surveillance bodies, the Federal Network Agency in the course of their activities according to the Energy Industry Act as well as the bodies competent for the supervision of insurance intermediaries and brokers for units in investment funds must keep each other informed on observations and findings including personal data which are necessary to perform their tasks.

(3) The Bundesanstalt is allowed to retrieve data stored according to § 2 para. 10, §§ 2c, 24 para. 1 nos. 1, 2, 5, 7 and 10 and para. 3, § 25a para. 2, § 32 para. 1 sentence 1 and 2 nos. 2 and 6 lit. a and b of the Banking Act with the Deutsche Bundesbank in an automated procedure to perform its tasks. For pur-

Deutsche Bundesbank hat für Zwecke der Datenschutzzkontrolle den Zeitpunkt, die Angaben, welche die Feststellung der aufgerufenen Datensätze ermöglichen, sowie die für den Abruf verantwortliche Person zu protokollieren. Die protokollierten Daten dürfen nur für Zwecke der Datenschutzzkontrolle, der Datensicherung oder zur Sicherstellung eines ordnungsmäßigen Betriebs der Datenverarbeitungsanlage verwendet werden. Die Protokoll Daten sind am Ende des auf die Speicherung folgenden Kalenderjahres zu löschen.

(4) Öffentliche Stellen haben bei der Veröffentlichung von Statistiken, die zu einer erheblichen Einwirkung auf die Finanzmärkte geeignet sind, sachgerecht und transparent vorzugehen. Insbesondere muss dabei gewährleistet sein, dass hierbei keine Informationsvorsprünge Dritter erzeugt werden können.

§ 7 Zusammenarbeit mit zuständigen Stellen im Ausland

(1) Der Bundesanstalt obliegt die Zusammenarbeit mit den für die Überwachung von Verhaltens- und Organisationspflichten von Unternehmen, die Wertpapierdienstleistungen erbringen, von Finanzinstrumenten und von Märkten, an denen Finanzinstrumente oder Waren gehandelt werden, zuständigen Stellen der anderen Mitgliedstaaten der Europäischen Union und der anderen Vertragsstaaten des Abkommens über den Europäischen Wirtschaftsraum. Die Bundesanstalt kann im Rahmen ihrer Zusammenarbeit zum Zwecke der Überwachung der Einhaltung der Verbote und Gebote dieses Gesetzes sowie der Verbote und Gebote der in Satz 1 genannten Staaten, die denen dieses Gesetzes oder des Börsengesetzes entsprechenden, von allen ihr nach diesem Gesetz zustehenden Befugnissen Gebrauch machen, soweit dies geeignet und erforderlich ist, den Ersuchen der in Satz 1 genannten Stellen nachzukommen. Sie kann auf ein Ersuchen der in Satz 1 genannten Stellen die Untersagung oder Aussetzung des Handels nach § 4 Abs. 2 Satz 2 an einem inländischen Markt nur anordnen, sofern die In-

poses of data protection controls, the Deutsche Bundesbank has to record the time, information required to identify data retrieved as well as the person responsible for the retrieval. Such recorder data may only be used for purposes of data protection control, data security or for ensuring due operation of the data processing equipment. The recorded data is to be deleted at the end of the calendar year following the storage.

(4) Public bodies must act properly and transparently when publishing statistics which are able to have a significant impact on financial markets. In particular, it must be ensured that no information advantages of third parties can be created thereby.

§ 7 Cooperation with competent bodies outside of Germany

(1) The Bundesanstalt is responsible for the cooperation with other competent bodies of member states of the European Union or contracting states of the European Economic Area with respect to the supervision of rules of conduct and organisational requirements of undertakings providing investment services, of financial instruments and markets on which financial instruments or commodities are traded. The Bundesanstalt can make use of all its powers under this Act within the context of cooperating for purposes of the supervision of the compliance with prohibitions and requirements under this Act and prohibitions and requirements of the countries mentioned in sentence 1 which are equivalent to those in this Act or the Stock Exchange Act to the extent this is appropriate and necessary to comply with requests of authorities as defined in sentence 1. Upon request of the authorities mentioned in sentence 1. It may only prohibit or suspend trading according to § 4 para. 2 sentence 2 on a regulated German market to the extent this does not substantially endanger the interest of the in-

teressen der Anleger oder der ordnungsgemäße Handel an dem betreffenden Markt nicht erheblich gefährdet werden. Die Vorschriften des Börsengesetzes über die Zusammenarbeit der Handelsüberwachungsstellen mit entsprechenden Stellen oder Börsengeschäftsführungen anderer Staaten bleiben hiervon unberührt.

(2) Auf Ersuchen der in Absatz 1 Satz 1 genannten zuständigen Stellen führt die Bundesanstalt nach Maßgabe des Artikels 15 der Verordnung (EG) Nr. 1287/2006 Untersuchungen durch und übermittelt unverzüglich alle Informationen, soweit dies für die Überwachung von organisierten Märkten oder anderen Märkten für Finanzinstrumente, von Kreditinstituten, Finanzdienstleistungsinstituten, Investmentgesellschaften, Finanzunternehmen oder Versicherungsunternehmen oder datenschutzrechtlich zusammenhängender Verwaltung oder Gerichtsverfahren erforderlich ist. Bei der Übermittlung von Informationen hat die Bundesanstalt den Empfänger darauf hinzuweisen, dass er unbeschadet seiner Verpflichtungen im Rahmen von Strafverfahren die übermittelten Informationen einschließlich personenbezogener Daten nur zur Erfüllung von Überwachungsaufgaben nach Satz 1 und für datenschutzrechtlich zusammenhängende Verwaltung und Gerichtsverfahren verwenden darf.

(2a) Die Bundesanstalt trifft angemessene Vorkehrungen für eine wirksame Zusammenarbeit insbesondere gegenüber solchen Mitgliedstaaten, in denen die Gesetze einer inländischen Börse eine wesentliche Bedeutung für das Funktionieren der Finanzmärkte und den Anlegerschutz nach Maßgabe des Artikels 16 der Verordnung (EG) Nr. 1287/2006 haben oder deren organisierte Märkte eine solche Bedeutung im Inland haben.

(2b) Die Bundesanstalt kann Bediensteten der zuständigen Stellen anderer Staaten auf Ersuchen die Teilnahme an den von der Bundesanstalt durchgeführten Untersuchungen gestatten. Nach vorheriger Unterrichtung der Bundesanstalt sind die zuständigen Stellen im Sinne des Absatzes 1 Satz 1 befugt, selbst oder durch ihre

Beauftragten die Informationen, die für eine Überwachung der Einhaltung der Meldepflichten nach § 9, der Verhaltens-, Organisations- und Transparenzpflichten nach den §§ 31 bis 34 oder entsprechenden der ausländischer Vorschriften durch eine Zweigniederlassung im Sinne des § 53b Abs. 1 Satz 1 des Kreditwesengesetzes erforderlich sind, bei dieser Zweigniederlassung zu prüfen.

(3) Die Bundesanstalt kann eine Untersuchung, die Übermittlung von Informationen oder die Teilnahme von Bediensteten zuständiger ausländischer Stellen im Sinne von Absatz 1 Satz 1 verweigern, wenn

1. hierdurch die Souveränität, die Sicherheit oder die öffentliche Ordnung der Bundesrepublik Deutschland beeinträchtigt werden könnte oder

2. auf Grund desselben Sachverhalts gegen die betreffenden Personen bereits ein gerichtliches Verfahren eingeleitet worden oder eine unanfechtbare Entscheidung ergangen ist.

Kommt die Bundesanstalt einem Ersuchen nicht nach oder macht sie von ihrem Recht nach Satz 1 Gebrauch, so teilt sie dies der ersuchenden Stelle unverzüglich mit und legt die Gründe dar; im Falle einer Verweigerung nach Satz 1 Nr. 2 sind genaue Informationen über das gerichtliche Verfahren oder die unanfechtbare Entscheidung zu übermitteln.

(4) Die Bundesanstalt ersucht die in Absatz 1 genannten zuständigen Stellen nach Maßgabe des Artikels 15 der Verordnung (EG) Nr. 1287/2006 um die Durchführung von Untersuchungen und die Übermittlung von Informationen, die für die Erfüllung ihrer Aufgaben nach den Vorschriften dieses Gesetzes geeignet und erforderlich sind. Sie kann die zuständigen Stellen ersuchen, Bediensteten der Bundesanstalt die Teilnahme an den Untersuchungen zu gestatten. Mit Einverständnis der zuständigen Stellen kann die Bundesanstalt Untersuchungen im Ausland durchführen und hierfür Wirtschaftsprüfer oder Sachverständige beauftragen; bei Untersuchung einer Zweigniederlassung

pointed persons the information required for monitoring compliance with the reporting requirements according to § 9, the conduct, organisational or transparency requirements according to §§ 31 to 34 or equivalent foreign provisions by a branch as defined in § 53b para. 1 sentence 1 of the Banking Act.

(3) The Bundesanstalt may refuse an investigation, the transmission of information or the participation of employees of competent foreign bodies as defined in para. 1 sentence 1 if

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

2. based on the same facts judicial proceedings have already been initiated or a final judgment has already been delivered in respect of the relevant persons.

If the Bundesanstalt does not comply with a request or if it makes use of its right according to sentence 1, it informs the requesting body without undue delay and states the reasons for this; in case of refusal according to sentence 1 no. 2, detailed information on the judicial proceedings or the final judgment must be provided.

(4) The Bundesanstalt requests the competent bodies as defined in paragraph 1 according to article 15 of the Regulation (EC) No. 1287/2006 to carry out investigations and provide information required and appropriate to perform its duties under the provisions of this Act. It can request the competent bodies to allow employees of the Bundesanstalt to take part in investigations. With the approval of these competent bodies the Bundesanstalt may carry out investigations outside of Germany and appoint certified accountants or experts for this purpose; when the Bundesanstalt is investigating a branch of a German investment services undertaking in a host member

eines inländischen Wertpapierdienstleistungsunternehmens in einem Aufnahmemitgliedstaat durch die Bundesanstalt gemäß einer vorherige Unterrichtung der zuständigen Stelle im Ausland. Trifft die Bundesanstalt Anordnungen gegenüber Unternehmen mit Sitz im Ausland, die Mitglieder inländischer organisierter Märkte sind, unterrichtet sie die für die Überwachung dieser Unternehmen zuständigen Stellen. Werden der Bundesanstalt Informationen mitgeteilt, so darf sie diese unbeschadet ihrer Verpflichtungen in strafrechtlichen Angelegenheiten, die Verstöße gegen Verbote nach den Vorschriften dieses Gesetzes zum Gegenstand haben, nur zur Erfüllung von Überwachungsaufgaben nach Absatz 2 Satz 1 und für damit zusammenhängende Verwaltungsaufgaben nach Absatz 2 Satz 1 und 2 unter Beachtung der Zweckbestimmungen unter Beachtung dieser Informationen unter Beachtung der Stelle den in § 6 Abs. 2 genannten Stellen mitteilen, sofern dies für die Erfüllung ihrer Aufgaben erforderlich ist. Eine anderweitige Verwendung der Informationen ist nur mit Zustimmung der übermittelnden Stelle zulässig. Außer bei Informationen im Zusammenhang mit Insiderhandel oder Marktmanipulation kann in begründeten Ausnahmefällen auf diese Zustimmung verzichtet werden, sofern dieses der übermittelnden Stelle unverzüglich unter Angabe der Gründe mitgeteilt wird. Wird ein Ersuchen der Bundesanstalt nach den Sätzen 1 bis 3 nicht innerhalb angemessener Frist Folge geleistet oder wird es ohne hinreichende Gründe abgelehnt, kann die Bundesanstalt den Ausschuss der Europäischen Wertpapierregulierungsbehörden hiervon in Kenntnis setzen.

(5) Hat die Bundesanstalt hinreichende Anhaltspunkte für einen Verstoß gegen Verbote oder Gebote nach den Vorschriften dieses Gesetzes oder nach entsprechenden ausländischen Vorschriften der in Absatz 1 Satz 1 genannten Staaten, so teilt sie diese den nach Absatz 1 Satz 1 zuständigen Stellen des Staates mit, auf dessen

state, prior information of the competent body outside of Germany is sufficient. Where the Bundesanstalt issues orders against undertakings with registered office outside of Germany which are members of German regulated markets, it informs the bodies responsible for the supervision of these undertakings. If the Bundesanstalt is provided with information by a body of another country, it may, notwithstanding its duties for purposes of criminal proceedings the subject of which are violations of prohibitions according to the provisions of this Act, only use this information in the course of performing supervisory duties according to paragraph 2 sentence 1 and for related administrative or court proceedings. The Bundesanstalt may provide this information to the bodies mentioned in § 6 para. 2 to the extent that this is required to comply with its duties taking into account the purposes intended by the body which submitted the information. Any other use of the information is only permitted with prior approval of the submitting bodies. Unless information is in connection with insider trading or market manipulation, prior approval can be relinquished in exceptional duly justified cases if the submitting bodies are informed of this without undue delay while stating the reasons for this. If a request by the Bundesanstalt according to sentences 1 to 3 is not complied with within an appropriate period of time or if it is refused without due reason, the Bundesanstalt may inform the Committee of European Securities Regulators.

(5) If the Bundesanstalt has sufficient evidence to suspect a violation of the prohibitions or requirements of the provisions of this Act or equivalent foreign provisions of other countries defined in paragraph 1 sentence 1, it notifies the competent bodies defined in paragraph 1 sentence 1 of the other country on whose

Gebiet die vorschriftswidrige Handlung stattfindet oder stattgefunden hat oder auf dessen Gebiet die betroffenen Finanzinstrumente an einem organisierten Markt gehandelt werden oder der nach dem Recht der Europäischen Union für die Verfolgung des Verstoßes zuständig ist. Erhält die Bundesanstalt eine entsprechende Mitteilung von zuständigen ausländischen Stellen, so unterrichtet sie diese über Ergebnisse daraufhin eingeleiteter Untersuchungen. Die Bundesanstalt unterrichtet die zuständigen Stellen nach Satz 1 über Anordnungen zur Aussetzung, Untertersagung oder Einstellung des Handels nach § 4 Abs. 2 Satz 2 dieses Gesetzes sowie § 3 Abs. 5 Nr. 1 und § 25 Abs. 1 des Börsengesetzes sowie innerhalb eines Monats nach Erhalt einer Mitteilung nach § 19 Abs. 10 des Börsengesetzes von der Absicht der Geschäftsführung einer Börse, Handelsteilnehmern aus diesen Staaten einen unmittelbaren Zugang zu ihrem Handelssystem zu gewähren.

(6) Die Regelungen über die internationale Rechtshilfe in Strafsachen bleiben unberührt.

(7) Die Bundesanstalt kann mit den zuständigen Stellen anderer als der in Absatz 1 genannten Staaten entsprechend den Absätzen 1 bis 6 zusammenarbeiten und Vereinbarungen über den Informationsaustausch abschließen. Absatz 4 Satz 5 und 6 findet mit der Maßgabe Anwendung, dass Informationen, die von diesen Stellen übermittelt werden, nur unter Beachtung einer Zweckbestimmung der übermittelnden Stelle verwendet und nur mit ausdrücklicher Zustimmung der übermittelnden Stelle der Deutschen Bundesbank oder dem Bundeskartellamt mitgeteilt werden dürfen, sofern dies für die Erfüllung ihrer Aufgaben erforderlich ist. Absatz 4 Satz 8 findet keine Anwendung. Für die Übermittlung personenbezogener Daten gilt § 4 b des Bundesdatenschutzgesetzes.

(8) Das Bundesministerium der Finanzen kann durch Rechtsverordnung, die nicht der Zustimmung des Bundesrates bedarf, zu den in den Absätzen 2, 2 a und 4 genannten

territory the undue acts are or have been taking place or on whose territory the relevant financial instruments are traded on a regulated market or which is responsible for prosecuting such violation according to the laws of the European Union. If the Bundesanstalt receives such a notification by competent foreign bodies, it informs them of the results of the investigations initiated based on this. The Bundesanstalt informs the competent bodies according to sentence 1 with regard to orders for suspension, prohibition or termination of trading according to § 4 para. 2 sentence 2 of this Act as well as § 3 para. 5 no. 1 and § 25 para. 1 of the Stock Exchange Act and within one month after receiving a notification according to § 19 para. 10 of the Stock Exchange Act of the intention of the stock exchange management to allow market participants from those countries direct access to their trading system.

(6) The provisions on international cooperation in criminal matters remain unaffected.

(7) The Bundesanstalt may cooperate with the competent bodies of countries other than those mentioned in paragraph 1 in the manner set out in paragraphs 1 to 6 and enter into an agreement for the exchange of information. Paragraph 4 sentences 5 and 6 apply subject to the proviso that information provided by these bodies may only be used taking into account the purposes intended by the body which submitted the information and may only be passed on to the Deutsche Bundesbank or the Bundeskartellamt with express consent of such bodies to the extent that is required to perform their duties. Paragraph 4 sentence 8 does not apply. § 4 b of the Federal Data Protection Act applies to the provision of personal data.

(8) The Federal Ministry of Finance may, by way of a regulation which does not require the approval of the Bundesrat, and for the purposes mentioned in para-

ten Zwecken nähere Bestimmungen über die Übermittlung von Informationen an ausländische Stellen, die Durchführung von Untersuchungen auf Ersuchen ausländischer Stellen sowie Ersuchen der Bundesanstalt an ausländische Stellen erlassen. Das Bundesministerium der Finanzen kann die Ermächtigung durch Rechtsverordnung auf die Bundesanstalt für Finanzdienstleistungsaufsicht übertragen.

§ 8 Verschwiegenheitspflicht

(1) Die bei der Bundesanstalt Beschäftigten und die nach § 4 Abs. 3 des Finanzdienstleistungsaufsichtsgesetzes beauftragten Personen dürfen die ihnen bei ihrer Tätigkeit bekannt gewordenen Tatsachen, deren Geheimhaltung im Interesse eines nach diesem Gesetz Verpflichteten oder eines Dritten liegt, insbesondere Geschäfts- und Betriebsgeheimnisse sowie personenbezogene Daten, nicht unbefugt offenbaren oder verwenden, auch wenn sie nicht mehr im Dienst sind oder ihre Tätigkeit beendet ist. Dies gilt auch für andere Personen, die durch dienstliche Bezieherstatung Kenntnis von den in Satz 1 bezeichneten Tatsachen erhalten. Ein unbefugtes Offenbaren oder Verwenden im Sinne des Satzes 1 liegt insbesondere nicht vor, wenn Tatsachen weitergegeben werden an

1. Strafverfolgungsbehörden oder für Straf- und Bußgeldsachen zuständige Gerichte,
2. kraft Gesetzes oder im öffentlichen Auftrag mit der Überwachung von Börsen oder anderen Märkten, an denen Finanzinstrumente gehandelt werden, des Handels mit Finanzinstrumenten oder Devisen, von Kreditinstituten, Finanzdienstleistungsinstituten, Investmentgesellschaften, Finanzunternehmungen, Versicherungsunternehmen, Versicherungsvermittlern, Anlageberatern oder Vermittlern von Anteilen an Investmentvermögen im Sinne von § 2 a Abs. 1 Nr. 7 betraute Stellen sowie von diesen beauftragte Personen,
3. Zentralbanken, das Europäische System der Zentralbanken oder die Euro-

graphs 2, 2 a and 4 issue further provisions on the provisions of information to foreign bodies, carrying out of investigations upon request of foreign bodies as well as on the Bundesanstalt's requests to foreign bodies. The Federal Ministry of Finance may delegate the authority to the Bundesanstalt für Finanzdienstleistungsaufsicht by way of a regulation.

§ 8 Confidentiality obligation

(1) Persons who work for the Bundesanstalt and persons appointed pursuant to § 4 para. 3 of the Financial Services Supervisory Act may not unduly disclose or use information on facts, in particular commercial and industrial secrets as well as personal data, which they have been made aware of in the course of their work if keeping them secret is in the interest of a person subject to this Act or a third party; this also applies where they have ceased employment or their activities have ended. This also applies to other persons who have knowledge of the facts mentioned in sentence 1 by virtue of work-related reports. Undue disclosure or use as defined in sentence 1 does not include, in particular, passing on facts to

1. criminal prosecution authorities or courts competent for criminal and administrative offences,
2. bodies charged by virtue of law or by public appointment with the supervision of stock exchanges or other markets on which financial instruments are traded, of trading in financial instruments or currencies, credit institutions, financial services institutions, investment companies, financial undertakings, insurance undertakings, insurance intermediaries, investment advisors or intermediaries for units in investment funds as defined by § 2 a para. 1 no. 7 or persons appointed by them,
3. central banks, the European System of Central Banks or the European Central

päische Zentralbank in ihrer Eigenschaft als Währungsbehörden sowie an andere staatliche Behörden, die mit der Überwachung der Zahlungssysteme betraut sind,

4. mit der Liquidation oder dem Insolvenzverfahren über das Vermögen eines Wertpapierdienstleistungsunternehmens, eines organisierten Marktes oder des Betreibers eines organisierten Marktes befasste Stellen, soweit diese Stellen die Informationen zur Erfüllung ihrer Aufgaben benötigen. Für die bei diesen Stellen beschäftigten Personen gilt die Verschwiegenheitspflicht nach Satz 1 entsprechend. An eine Stelle eines anderen Staates dürfen die Tatsachen nur weitergegeben werden, wenn diese Stelle und die von ihr beauftragten Personen einer dem Satz 1 entsprechenden Verschwiegenheitspflicht unterliegen.

(2) Die Vorschriften der §§ 93, 97 und 105 Abs. 1, § 111 Abs. 5 in Verbindung mit § 105 Abs. 1 sowie § 116 Abs. 1 der Abgabenordnung gelten nicht für die in Absatz 1 Satz 1 oder 2 genannten Personen, soweit sie zur Durchführung dieses Gesetzes tätig werden. Sie finden Anwendung, soweit die Finanzbehörden die Kenntnisse für die Durchführung eines Verfahrens wegen einer Steuertraft sowie eines damit zusammenhängenden Besteuerungsverfahrens benötigen, an deren Verfolgung ein zwingendes öffentliches Interesse besteht, und nicht Tatsachen betroffen sind, die den in Absatz 1 Satz 1 oder 2 bezeichneten Personen durch eine Stelle eines anderen Staates im Sinne des Absatzes 1 Satz 3 Nr. 2 oder durch von dieser Stelle beauftragte Personen mitgeteilt worden sind.

§ 9 Meldepflichten

(1) Wertpapierdienstleistungsunternehmen und Zweigniederlassungen im Sinne des § 53 b des Kreditwesengesetzes sind verpflichtet, der Bundesanstalt jedes Geschäft in Finanzinstrumenten, die zum Handel an einem organisierten Markt zugelassen oder in den regulierten Markt

Bank in their capacity as monetary authorities, and to other public authorities charged with supervising payment systems,

4. bodies responsible for the liquidation or insolvency proceedings for the estate of an investment services undertaking, a regulated market or an operator of a multilateral trading facility, to the extent that the bodies require this information to perform their duties. The confidentiality obligation according to sentence 1 applies *mutatis mutandis* to all persons employed by these bodies. Facts may only be provided to bodies of another country if these authorities and persons appointed by it are subject to a confidentiality obligation equivalent to sentence 1.

(2) The provisions of §§ 93, 97 and 105 para. 1, § 111 para. 5 in conjunction with § 105 para. 1 as well as § 116 para. 1 of the Fiscal Code do not apply to persons mentioned in paragraph 1 sentences 1 or 2 to the extent they act for the enforcement of this Act. They apply to the extent that fiscal authorities require the knowledge for proceedings involving a tax offence or any related taxation procedures, if there is a compelling public interest in prosecuting the offence and provided this does not concern facts which have been provided to the persons mentioned in paragraph 1 sentences 1 or 2 by a body of another country as defined by paragraph 1 sentence 3 no. 2 or persons appointed by this body.

§ 9 Reporting requirements

(1) Investment services undertakings and branches as defined in § 53 b of the Banking Act are required to report to the Bundesanstalt each transaction in financial instruments which are admitted to trading on a regulated market or have been included to trading on a regulated

er den Freiverkehr einer inländischen Wertschrift, spätestens an dem Tag des Geschäftsabschlusses folgend, der kein Samstag ist, die Maßgabe des Absatzes 2 mitzuteilen. Die Verpflichtung nach Satz 1 gilt auch für den Erwerb und die Veräußerung von Wertpapieren, sofern diese Wertpapiere an einem organisierten Markt oder im Freiverkehr handeln werden sollen, sowie für Gewinne in Aktien und Optionsscheinen, in denen ein Antrag auf Zulassung zum Handel an einem organisierten Markt oder im Freiverkehr oder auf Einbeziehung in den regulierten Markt oder den Freiverkehr gestellt oder öffentlich angegeben ist. Die Verpflichtung nach den Absätzen 1 und 2 gilt auch für inländische Kontrahenten im Sinne des § 1 Abs. 31 des Kreditwesengesetzes hinsichtlich der von ihnen abgeschlossenen Geschäfte. Die Verpflichtung nach den Absätzen 1 und 2 gilt auch für Unternehmen, deren Sitz in einem Staat haben, der Mitgliedstaat der Europäischen Union oder Vertragsstaat des Abkommens über den Europäischen Wirtschaftsraum ist, und an einer inländischen Börse zur Aufnahme am Handel zugelassen sind, hinsichtlich der von ihnen an dieser inländischen Börse geschlossenen Geschäfte in Finanzinstrumenten. Die Verpflichtung nach den Absätzen 1 und 2 gilt auch für Unternehmen, die ihren Sitz in einem anderen Mitgliedstaat der Europäischen Union oder einem anderen Vertragsstaat des Abkommens über den Europäischen Wirtschaftsraum haben und an einer inländischen Börse zur Teilnahme am Handel zugelassen sind, jedoch nur hinsichtlich der von ihnen an dieser inländischen Börse geschlossenen Geschäfte in solchen Finanzinstrumenten, die weder zum Handel an einem organisierten Markt zugelassen sind, noch in den regulierten Markt einer inländischen Börse einbezogen sind.

(1a) Von der Verpflichtung nach Absatz 1 ausgenommen sind Bausparkassen im Sinne des § 1 Abs. 1 des Gesetzes über Bausparkassen und Unternehmen im Sinne

markt oder the unofficial open market of a German stock exchange no later than the close of the working day, which is not a Saturday, following the day of the conclusion of the transaction according to paragraph 2. The requirement according to sentence 1 also applies to the purchase and sale of rights to subscribe for securities to the extent that these securities are to be traded on a regulated market or the unofficial open market as well as to transactions in shares or warrants for which an application for admission to trading on a regulated market or the unofficial open market or for inclusion into trading on a regulated market or the unofficial open market has been made or has been publicly announced. The requirement according to sentences 1 and 2 also applies to German central counterparties as defined in § 1 para. 31 of the Banking Act with regard to transactions concluded by them. The requirement according to sentences 1 and 2 also applies to undertakings which have their registered office in a country other than a member state of the European Union or a contracting state of the European Economic Area and are admitted as participants to trading on a German stock exchange, with regard to the transactions in financial instruments they have concluded on that German stock exchange. The requirement according to sentences 1 and 2 also applies to undertakings which have their registered seat in another member state of the European Union or another contracting state to the European Economic Area and that are admitted as participants to trading on a German stock exchange, but only with regard to transactions concluded by them at this German exchange in financial instruments that are neither admitted to trading on an organised market nor included in trading to a regulated market of a German stock exchange.

(1a) Home loan and savings associations as defined in § 1 para. 1 of the Act on Home Loan and Savings Associations and undertakings defined in § 2 paras. 4

ne des § 2 Abs. 4 und 5 des Kreditwesengesetzes, sofern sie nicht an einer inländischen Börse zur Teilnahme am Handel zugelassen sind, sowie Wohnungsgenossenschaften mit Spareinrichtung. Die Verpflichtung nach Absatz 1 findet auch keine Anwendung auf Geschäfte in Anteilen an Investmentvermögen, die von einer Kapitalanlagegesellschaft oder einer ausländischen Investmentgesellschaft ausgegeben werden, bei denen eine Rücknahmeverpflichtung der Gesellschaft besteht.

(2) Die Mitteilung ist der Bundesanstalt im Wege der Datenfernübertragung zu übermitteln, es sei denn, es liegen die Voraussetzungen des Artikels 12 der Verordnung (EG) Nr. 1287/2006 vor, unter denen eine Speicherung auf einem Datenträger erfolgen kann. Die Mitteilung muss für jedes Geschäft mindestens die Angaben nach Artikel 13 Abs. 1 Satz 1 in Verbindung mit Tabelle 1 des Anhangs I der Verordnung (EG) Nr. 1287/2006 enthalten, soweit die Bundesanstalt im Hinblick auf diese Angaben eine Erklärung nach Artikel 13 Abs. 1 Satz 2 der Verordnung (EG) Nr. 1287/2006 abgegeben hat. Die Mitteilung muss darüber hinaus enthalten:

1. Kennzeichen zur Identifikation des Depotinhabers oder des Depots, sofern der Depotinhaber nicht selbst nach Absatz 1 zur Meldung verpflichtet ist,

2. Kennzeichen für Auftraggeber, sofern dieser nicht mit dem Depotinhaber identisch ist.

(3) Die Bundesanstalt ist zuständige Behörde für die Zwecke der Artikel 9 bis 15 der Verordnung (EG) Nr. 1287/2006. Sie übermittelt Mitteilungen nach Absatz 1 innerhalb der in Artikel 14 Abs. 3 der Verordnung (EG) Nr. 1287/2006 genannten Frist an die zuständige Behörde eines anderen Mitgliedstaates der Europäischen Union oder eines anderen Vertragsstaates des Abkommens über den Europäischen Wirtschaftsraum, wenn sich in diesem Staat der unter Liquiditätsaspekten wichtigste Markt für das gemeldete Finanzinstrument im Sinne der Artikel 9 und 10 der Verordnung (EG) Nr. 1287/2006 be-

and 5 of the Banking Act to the extent that they are not admitted to trading on a German stock exchange, and housing associations with savings facilities are exempted from the requirement according to paragraph 1. The requirement defined in paragraph 1 does not apply to transactions in units in investment funds which have been issued by an investment management company or a foreign investment company for which a redemption obligation exists.

(2) The report must be transmitted to the Bundesanstalt by means of electronic data telecommunication transmission except where the requirements of article 12 of the Regulation (EC) No. 1287/2006 apply which allow for the storing of the information on a data carrier. The report must contain, for each transaction, at least the information according to article 13 para. 1 sentence 1 in connection with Table 1 of Annex I of the Regulation (EC) No. 1287/2006 to the extent the Bundesanstalt has made a declaration according to article 13 para. 1 sentence 2 of the Regulation (EC) No. 1287/2006 with respect to this information. The report must also contain:

1. data to identify the account holder or the account if the account holder himself is not required to make a report according to paragraph 1,

2. data to identify the principal if he is not identical with the account holder.

(3) The Bundesanstalt is the competent authority for purposes of articles 9 to 15 of the Regulation (EC) No. 1287/2006. It transmits reports according to paragraph 1 within the timelines as defined in article 14 para. 3 of the Regulation (EC) No. 1287/2006 to the competent authority of another member state of the European Union or another contracting state of the European Economic Area if the most relevant market in terms of liquidity for the financial instrument reported as defined in articles 9 and 10 of the Regulation (EC) No. 1287/2006 is located in that country or a request by a competent

findet oder eine Anforderung einer zuständigen Behörde nach Artikel 14 Abs. 1 Buchstabe c der Verordnung (EG) Nr. 1287/2006 vorliegt. Satz 2 gilt entsprechend für Mitteilungen einer Zweigniederlassung im Sinne des § 53b Abs. 1 Satz 1 des Kreditwesengesetzes an die Bundesanstalt, falls die zuständige Behörde des Herkunftsmitgliedstaates nicht auf eine Übermittlung verzichtet hat. Eine Übermittlung nach Satz 2, auch in Verbindung mit Satz 3, gilt auch dann als an die zuständige Behörde im Herkunftsmitgliedstaat übermittelt, wenn sie im Einvernehmen mit dieser Behörde an eine andere Einrichtung übermittelt wird. Für Inhalt, Form und Frist der Übermittlungen nach den Sätzen 2 bis 4 gilt Artikel 14 Abs. 2 und 3 der Verordnung (EG) Nr. 1287/2006. Für die nicht automatisierte Zusammenarbeit der Bundesanstalt mit der zuständigen Behörde eines anderen Mitgliedstaates der Europäischen Union oder eines anderen Vertragsstaates des Abkommens über den Europäischen Wirtschaftsraum auf dem Gebiet des Meldewesens nach dieser Vorschrift oder vergleichbaren ausländischen Vorschriften gilt Artikel 15 der Verordnung (EG) Nr. 1287/2006. Zur Erfüllung der Pflichten nach Satz 2 erstellt die Bundesanstalt eine Liste der Finanzinstrumente nach Maßgabe des Artikels 11 der Verordnung (EG) Nr. 1287/2006 und kann unter den dort geregelten Voraussetzungen Referenzdaten von inländischen Börsen anfordern. § 7 bleibt unberührt.

(4) Das Bundesministerium der Finanzen kann durch Rechtsverordnung, die nicht der Zustimmung des Bundesrates bedarf,

1. nähere Bestimmungen über Inhalt, Art, Umfang und Form der Mitteilung und über die zulässigen Datenträger und Übertragungswege erlassen,
2. neben den Angaben nach Absatz 2 zusätzliche Angaben vorschreiben, soweit dies aufgrund der besonderen Eigenschaften des Finanzinstruments, das Gegenstand der Mitteilung ist, oder der besonderen Bedingungen an dem Han-

authority according to article 14 para. 1 lit. c of the Regulation (EC) No. 1287/2006 has been received. Sentence 2 applies *mutatis mutandis* to reports of branches as defined in § 53b para. 1 sentence 1 of the Banking Act to the Bundesanstalt if the competent home member state authority has not waived the transmission obligation. A transmission according to sentence 2, also in conjunction with sentence 3, is deemed to be made to the competent authority in the home state if it is transmitted to another body with the consent of the competent authority. As regards content, form and time for transmission according to sentences 2 to 4, article 14 paras. 2 and 3 of the Regulation (EC) No. 1287/2006 apply. Article 15 of the Regulation (EC) No. 1287/2006 applies to non-automated cooperation as regards the area of reports under this provision or equivalent foreign provisions between the Bundesanstalt and the competent authority of another member state of the European Union or a contracting state of the European Economic Area. To comply with its duties under sentence 2, the Bundesanstalt compiles a list of financial instruments according to article 11 of the Regulation (EC) No. 1287/2006 and may request reference data from German stock exchanges in compliance with the requirements set forth therein. § 7 remains unaffected.

(4) The Federal Ministry of Finance may, by way of a regulation that does not require the approval of the Bundesrat,

1. issue further details of content, type, scope and form of reports and permissible data carrier and reporting channels,
2. impose additional requirements to those defined in para. 2 to the extent that is required due to special characteristics of the particular financial instrument subject to the report or due to special conditions applying at the exe-

decisplatz, an dem das Geschäft ausgeführt wurde, gerechtfertigt ist und die zusätzlichen Angaben zur Erfüllung der Aufsichtsaufgaben der Bundesanstalt erforderlich sind,

3. zulassen, dass die Mitteilungen der Veranwortlichen auf deren Kosten durch die Börse oder einen geeigneten Dritten erfolgen, und die Einzelheiten hierzu festlegen,
4. für Geschäfte, die Schuldverschreibung zum Gegenstand haben, zulassen, dass Angaben nach Absatz 2 in einer zusammengefassten Form mitgeteilt werden,
5. bei Sparkassen und Kreditgenossenschaften, die sich zur Ausführung des Geschäfts einer Girozentrale oder einer genossenschaftlichen Zentralbank oder des Zentralkreditinstituts bedienen, zulassen, dass die in Absatz 1 vorgeschriebenen Mitteilungen durch die Girozentrale oder die genossenschaftliche Zentralbank oder das Zentralkreditinstitut erfolgen, wenn und soweit der mit den Mitteilungspflichten verfolgte Zweck dadurch nicht beeinträchtigt wird.

(5) Das Bundesministerium der Finanzen kann die Ermächtigung nach Absatz 4 durch Rechtsverordnung auf die Bundesanstalt für Finanzdienstleistungsaufsicht übertragen.

§ 10 Anzeige von Verdachtsfällen

(1) Wertpapierdienstleistungsunternehmen, andere Kreditinstitute, Kapitalanlagegesellschaften und Betreiber von außerbörslichen Märkten, an denen Finanzinstrumente gehandelt werden, haben bei der Feststellung von Tatsachen, die den Verdacht begründen, dass mit einem Geschäft über Finanzinstrumente gegen ein Verbot oder Gebot nach § 14, § 20 a, § 30 h oder § 30 j verstoßen wird, diese unverzüglich der Bundesanstalt mitzuteilen. Sie dürfen andere Personen als staatliche Stellen und solche, die auf Grund ihres Berufs einer gesetzlichen Verschwiegenheitspflicht unterliegen, von der Anzeige oder von einer daraufhin eingeleiteten Untersuchung nicht in Kenntnis setzen.

duction venue where the transaction has been executed and where the additional information is necessary for the performance of the Bundesanstalt's supervisory tasks,

3. allow for reports to be made for the person required to report at their cost by stock exchanges or other qualified third parties, and set forth further details thereon,
4. for transactions in debt instruments, allow for information pursuant to paragraph 2 to be reported in summarised form,
5. for savings banks and credit cooperatives which use a giro centre or a cooperative central bank or central credit institution for the execution of the transaction, allow for making the reports required under paragraph 1 through the giro centre or a cooperative central bank or central credit institution if and to the extent this does not impair the purpose of the reporting requirements.

(5) The Federal Ministry of Finance may delegate the authority under paragraph 4 to the Bundesanstalt für Finanzdienstleistungsaufsicht by means of a regulation.

§ 10 Reporting of suspicious transactions

(1) Investment services undertakings, other credit institutions, investment management companies and operators of markets other than stock exchanges on which financial instruments are traded must notify the Bundesanstalt without undue delay if they determine facts that give rise to the suspicion that a transaction in financial instruments violates a prohibition or requirement according to § 14, § 20 a, § 30 h or § 30 j. They are not permitted to inform persons other than public bodies or persons who are subject to a statutory confidentiality obligation due to their profession of the report or any investigation initiated based on this.

(2) Die Bundesanstalt hat Anzeigen nach Absatz 1 unverzüglich an die zuständigen Aufsichtsbehörden derjenigen organisierten Märkte innerhalb der Europäischen Union oder des Europäischen Wirtschaftsraums weiterzuleiten, an denen die Finanzinstrumente nach Absatz 1 gehandelt werden. Der Inhalt einer Anzeige nach Absatz 1 darf von der Bundesanstalt nur zur Erfüllung ihrer Aufgaben verwendet werden. Im Übrigen darf er nur zum Zweck der Verfolgung von Straftaten nach § 38 sowie für Strafverfahren wegen einer Straftat, die im Höchstmaß mit einer Freiheitsstrafe von mehr als drei Jahren bedroht ist, verwendet werden. Die Bundesanstalt darf die Identität einer anzeigenden Person nach Absatz 1 anderen als staatlichen Stellen nicht zugänglich machen. Das Recht der Bundesanstalt nach § 40b bleibt unberührt.

(3) Wer eine Anzeige nach Absatz 1 erstattet, darf wegen dieser Anzeige nicht verantwortlich gemacht werden, es sei denn, die Anzeige ist vorsätzlich oder grob fahrlässig unwahr erstattet worden.

(4) Das Bundesministerium der Finanzen kann durch Rechtsverordnung, die nicht der Zustimmung des Bundesrates bedarf, nähere Bestimmungen erlassen über die Form und den Inhalt einer Anzeige nach Absatz 1. Das Bundesministerium der Finanzen kann die Ermächtigung durch Rechtsverordnung auf die Bundesanstalt für Finanzdienstleistungsaufsicht übertragen.

§ 11 Verpflichtung des Insolvenzverwalters

(1) Wird über das Vermögen eines nach diesem Gesetz zu einer Handlung Verpflichteten ein Insolvenzverfahren eröffnet, hat der Insolvenzverwalter den Schuldner bei der Erfüllung der Pflichten nach diesem Gesetz zu unterstützen, insbesondere indem er aus der Insolvenzmasse die hierfür erforderlichen Mittel bereitstellt.

(2) Wird vor Eröffnung des Insolvenzverfahrens ein vorläufiger Insolvenzver-

(2) The Bundesanstalt must transmit without undue delay reports according to paragraph 1 to the competent supervisory authorities of those regulated markets within the European Union or the European Economic Area on which the financial instruments according to paragraph 1 are traded. The content of a report pursuant to paragraph 1 may only be used by the Bundesanstalt to perform its duties. Apart from that, it may also be used for purposes of prosecuting criminal offences according to § 38 and for purposes of criminal proceedings due to a criminal offence which is punishable by a maximum term of imprisonment of not less than three years. The Bundesanstalt may not disclose the identity of a person filing a report according to paragraph 1 to others than public bodies. The Bundesanstalt's right according to § 40b remains unaffected.

(3) Anyone filing a report according to paragraph 1 may not be held responsible based on this report unless the report has been filed incorrectly with wilful intent or gross negligence.

(4) The Federal Ministry of Finance may, by way of a regulation which does not require the approval of the Bundesrat, issue further provisions on the form and the content of a report according to paragraph 1. The Federal Ministry of Finance may delegate the authority to the Bundesanstalt für Finanzdienstleistungsaufsicht by means of a regulation.

§ 11 Duties of the insolvency administrator

(1) If insolvency proceedings are opened over the assets of a person required to take action under this Act, the insolvency administrator must assist the debtor in complying with the requirements under this Act, in particular, by making available necessary funds out of the insolvency estate.

(2) If a preliminary insolvency administrator has been appointed prior the open-

walter bestellt, hat dieser den Schuldner bei der Erfüllung seiner Pflichten zu unterstützen, insbesondere indem er der Verwendung der Mittel durch den Verpflichteten zustimmt oder, wenn dem Verpflichteten ein allgemeines Verfügungsverbot auferlegt wurde, indem er die Mittel aus dem von ihm verwalteten Vermögen zur Verfügung stellt.

Abschnitt 3 Insiderüberwachung

§ 12 Insiderpapiere

Insiderpapiere sind Finanzinstrumente,

1. die an einer inländischen Börse zum Handel zugelassen oder in den regulierten Markt oder in den Freiverkehr einbezogen sind,
2. die in einem anderen Mitgliedstaat der Europäischen Union oder einem anderen Vertragsstaat des Abkommens über den Europäischen Wirtschaftsraum zum Handel an einem organisierten Markt zugelassen sind oder
3. deren Preis unmittelbar oder mittelbar von Finanzinstrumenten nach Nummer 1 oder Nummer 2 abhängt.

Der Zulassung zum Handel an einem organisierten Markt oder der Einbeziehung in den regulierten Markt oder in den Freiverkehr steht gleich, wenn der Antrag auf Zulassung oder Einbeziehung gestellt oder öffentlich angekündigt ist.

§ 13 Insiderinformation

(1) Eine Insiderinformation ist eine konkrete Information über nicht öffentlich bekannte Umstände, die sich auf einen oder mehrere Emittenten von Insiderpapieren oder auf die Insiderpapiere selbst beziehen und die geeignet sind, im Falle ihres öffentlichen Bekanntwerdens den Börsen- oder Marktpreis der Insiderpapiere erheblich zu beeinflussen. Eine solche Eignung ist gegeben, wenn ein verständiger Anleger die Information bei seiner Anlageentscheidung berücksichtigen würde.

ing of insolvency proceedings, the administrator must assist the debtor in complying with his requirements, in particular, by agreeing to the use of the funds by the relevant person, or if a general disposition prohibition has been imposed on the person, by making available funds out of the assets administered by it.

Chapter 3 Insider surveillance

§ 12 Insider securities

Insider securities mean financial instruments

1. admitted to trading on a German stock exchange or included in a regulated market or in the unofficial open market,
2. admitted to trading on a regulated market in another member state of the European Union or another contracting state of the European Economic Area or
3. the price of which directly or indirectly depends on financial instruments according to number 1 or number 2.

The application for admission or inclusion which has been made or has been publicly announced is equivalent to admission to trading on a regulated market or the inclusion in a regulated market or in the unofficial open market.

§ 13 Inside information

(1) Inside information means precise information on circumstances not publicly known, relating to one or more issuers of insider securities or the insider securities themselves and which, if it were made public, would have the ability to have a significant effect on the stock exchange or market price of the insider securities. Such ability exists if a reasonable investor would consider the information for his investment decision. Circumstances as defined in sentence 1 also include such cir-

Als Umstände im Sinne des Satzes 1 gelten auch solche, bei denen mit hinreichender Wahrscheinlichkeit davon ausgegangen werden kann, dass sie in Zukunft eintreten werden. Eine Insiderinformation ist insbesondere auch eine Information über nicht öffentlich bekannte Umstände im Sinne des Satzes 1, die sich

1. auf Aufträge von anderen Personen über den Kauf oder Verkauf von Finanzinstrumenten bezieht oder
2. auf Derivate nach § 2 Abs. 2 Nr. 2 mit Bezug auf Waren bezieht und bei der Marktteilnehmer erwarten würden, dass sie diese Information in Übereinstimmung mit der zulässigen Praxis an den betreffenden Märkten erhalten würden.

(2) Eine Bewertung, die ausschließlich auf Grund öffentlich bekannter Umstände erstellt wird, ist keine Insiderinformation, selbst wenn sie den Kurs von Insiderpapieren erheblich beeinflussen kann.

§ 14 Verbot von Insidergeschäften

(1) Es ist verboten,

1. unter Verwendung einer Insiderinformation Insiderpapiere für eigene oder fremde Rechnung oder für einen anderen zu erwerben oder zu veräußern,
2. einem anderen eine Insiderinformation unbefugt mitzuteilen oder zugänglich zu machen,
3. einem anderen auf der Grundlage einer Insiderinformation den Erwerb oder die Veräußerung von Insiderpapieren zu empfehlen oder einen anderen auf sonstige Weise dazu zu verleiten.

(2) Der Handel mit eigenen Aktien im Rahmen von Rückkaufprogrammen und Maßnahmen zur Stabilisierung des Preises von Finanzinstrumenten stellen in keinem Fall einen Verstoß gegen das Verbot des Absatzes 1 dar, soweit diese nach Maßgabe der Vorschriften der Verordnung (EG) Nr. 2273/2003 der Kommission vom 22. Dezember 2003 zur Durchführung der Richtlinie 2003/6/EG des Europäischen Parlaments und des Rates – Ausnahmeregelungen für Rückkaufprogramme und

cumstances which can be expected with reasonable certainty to occur in the future. Inside information includes, in particular, information on circumstances which are not publicly known as defined in sentence 1 and which relate to

1. orders of other persons for the purchase or sale of financial instruments or
2. derivatives as defined in § 2 para. 2 no. 2 relating to commodities and in relation to which market participants expect to receive this information in compliance with accepted market practices in the relevant markets.

(2) A valuation based solely on publicly available circumstances does not qualify as inside information even if it has the ability to have a significant effect on the prices of insider securities.

§ 14 Prohibition of insider transactions

(1) It is prohibited,

1. to use inside information to purchase or sell insider securities for own account or the account of others or for any other person,
2. to unduly disclose or make available inside information to any other person,
3. to recommend to another person or otherwise lead that person to purchase or sell insider securities on the basis of inside information.

(2) Trading in own shares in buy-back programmes or measures for the stabilisation of the price of financial instruments is in no event a violation of the prohibition in paragraph 1 to the extent that these are carried out according to the provisions of Commission Regulation (EC) No. 2273/2003 of 22 December 2003 implementing Directive 2003/6/EC of the European Parliament and of the Council as regards exemptions for buy-back programmes and stabilisation of financial instruments (OJ

Kursstabilisierungsmaßnahmen (ABl. EU Nr. L 336 S. 33) erfolgen. Für Finanzinstrumente, die in den Freiverkehr oder in den regulierten Markt einbezogen sind, gelten die Vorschriften der Verordnung (EG) Nr. 2273/2003 entsprechend.

§ 15 Mitteilung, Veröffentlichung und Übermittlung von Insiderinformationen an das Unternehmensregister

(1) Ein Inlandsemitent von Finanzinstrumenten muss Insiderinformationen, die ihn unmittelbar betreffen, unverzüglich veröffentlichen; er hat sie außerdem unverzüglich, jedoch nicht vor ihrer Veröffentlichung dem Unternehmensregister im Sinne des § 8 b des Handelsgesetzbuchs zur Speicherung zu übermitteln. Als Inlandsemitent gilt im Sinne dieser Vorschrift auch ein solcher, für dessen Finanzinstrumente erst ein Antrag auf Zulassung gestellt ist. Eine Insiderinformation betrifft den Emittenten insbesondere dann unmittelbar, wenn sie sich auf Umstände bezieht, die in seinem Tätigkeitsbereich eingetreten sind. Wer als Emittent oder als eine Person, die in dessen Auftrag oder auf dessen Rechnung handelt, im Rahmen seiner Befugnis einem anderen Insiderinformationen mitteilt oder zugänglich macht, hat diese gleichzeitig nach Satz 1 zu veröffentlichen und dem Unternehmensregister im Sinne des § 8 b des Handelsgesetzbuchs zur Speicherung zu übermitteln, es sei denn, der andere ist rechtl. zur Vertraulichkeit verpflichtet. Erfolgt die Mitteilung oder Zugänglichmachung der Insiderinformation nach Satz 4 unwissentlich, so ist die Veröffentlichung und die Übermittlung unverzüglich nachzuholen. In einer Veröffentlichung genutzte Kennzahlen müssen im Geschäftsverkehr üblich sein und einen Vergleich mit den zuletzt genutzten Kennzahlen ermöglichen.

(2) Sonstige Angaben, die die Voraussetzungen des Absatzes 1 offensichtlich nicht erfüllen, dürfen, auch in Verbindung mit veröffentlichungspflichtigen Informationen im Sinne des Absatzes 1, nicht veröffentlicht werden. Unwahre Informationen-

EU no. L 336 p. 33). The provisions of Regulation (EC) No. 2273/2003 apply *mutatis mutandis* to financial instruments included in an unofficial open market or a regulated market.

§ 15 Reports, publications and transmissions of inside information to the Company Register

(1) A domestic issuer of financial instruments must publish without undue delay inside information which directly concerns it; it must also transmit this information without undue delay, but not before it has been published, for purposes of storage to the Company Register as defined in § 8 b of the Commercial Code. An issuer for whose financial instruments an application for admission to trading has been made also qualifies as domestic issuer for purposes of this provision. In particular, inside information directly concerns the issuer if it relates to circumstances occurring in its area of activity. Any issuer or a person acting on its behalf or for its account who, in the normal course of its tasks, discloses or makes accessible inside information to any third party must publish that information according to sentence 1 contemporaneously and transmit it to the Company Register as defined in § 8 b of the Commercial Code for purposes of storage unless the other person is legally obliged to confidentiality. In the case of unwitting notifying or making accessible inside information according to sentence 4, the publication and transmission must be made up without undue delay. Reference data used for publication must be customary in business practice and allow for a comparison with the reference data last used.

(2) Other information that clearly does not meet the requirements pursuant to paragraph 1 must not be published, even if published together with information to be published according to paragraph 1. Untrue information which has been pub-

en, die nach Absatz 1 veröffentlicht werden, sind unverzüglich in einer Veröffentlichung nach Absatz 1 zu berichtigen, auch wenn die Voraussetzungen des Absatzes 1 nicht vorliegen.

(3) Der Emittent ist von der Pflicht zur Veröffentlichung nach Absatz 1 Satz 1 solange befreit, wie es der Schutz seiner berechtigten Interessen erfordert, keine Irreführung der Öffentlichkeit zu befürchten ist und der Emittent die Vertraulichkeit der Insiderinformation gewährleisten kann. Die Veröffentlichung ist unverzüglich nachzuholen. Absatz 4 gilt entsprechend. Der Emittent hat die Gründe für die Befreiung zusammen mit der Mitteilung nach Absatz 4 Satz 1 der Bundesanstalt unter Angabe des Zeitpunktes der Entscheidung über den Aufschub der Veröffentlichung mitzuteilen.

(4) Der Emittent hat die nach Absatz 1 der Absatz 2 Satz 2 zu veröffentlichende Information vor der Veröffentlichung

der Geschäftsführung der inländischen organisierten Märkte, an denen die Finanzinstrumente zum Handel zugelassen sind, der Geschäftsführung der inländischen organisierten Märkte, an denen Derivate gehandelt werden, die sich auf die Finanzinstrumente beziehen, und der Bundesanstalt

mitzuteilen. Absatz 1 Satz 6 sowie die Absätze 2 und 3 gelten entsprechend. Die Geschäftsführung darf die ihr nach Satz 1 mitgeteilte Information vor der Veröffentlichung nur zum Zweck der Entscheidung verwenden, ob die Ermittlung des Börsenpreises aussetzen oder einzustellen ist. Die Bundesanstalt kann gestatten, dass Emittenten mit Sitz im Ausland die Mitteilung nach Satz 1 gleichzeitig mit der Veröffentlichung vornehmen, wenn dadurch die Entscheidung der Geschäftsführung über die Aussetzung oder Einstellung der Ermittlung des Börsenpreises nicht beeinträchtigt wird.

(5) Eine Veröffentlichung von Insiderinformationen in anderer Weise als nach

lished pursuant to paragraph 1 must be corrected without undue delay by a publication according to paragraph 1 even if the requirements pursuant to paragraph 1 are not met.

(3) The issuer is exempted from the duty to publish information according to paragraph 1 sentence 1, as long as this is necessary for the protection of its legitimate interests, such omission is not to be expected to mislead the public and the issuer is able to ensure the confidentiality of the inside information. The publication must be made up without undue delay. Paragraph 4 applies *mutatis mutandis*. The issuer must submit the reasons for the exemption together with the notification pursuant to paragraph 4 sentence 1 to the Bundesanstalt stating the time of the decision to delay the publication.

(4) The issuer must provide the information to be published according to paragraph 1 or paragraph 2 sentence 2 prior to publication to

1. the management of German regulated markets on which the relevant financial instruments are admitted to trading, 2. the management of German regulated markets on which derivatives are traded which relate to the relevant financial instruments, and 3. the Bundesanstalt

Paragraph 1 sentence 6 as well as paragraphs 2 and 3 apply *mutatis mutandis*. The stock exchange management may use information reported to it according to sentence 1 prior to publication solely for purposes of deciding whether the calculation of the stock exchange price is to be suspended or terminated. The Bundesanstalt may allow issuers with a registered office outside of Germany to report according to sentence 1 contemporaneously with the publication if this does not impair the stock exchange management's decision on suspending or terminating the calculation of the stock exchange price.

(5) Any publication of inside information by other means than those specified in

Absatz 1 in Verbindung mit einer Rechtsverordnung nach Absatz 7 Satz 1 Nr. 1 darf nicht vor der Veröffentlichung nach Absatz 1 Satz 1, 4 oder 5 oder Absatz 2 Satz 2 vorgenommen werden. Der Emittent hat gleichzeitig mit den Veröffentlichungen nach Absatz 1 Satz 1, Absatz 4 oder Absatz 5 oder Absatz 2 Satz 2 diese der Geschäftsführung der in Absatz 4 Satz 1 Nr. 1 und 2 erfassten organisierten Märkte und der Bundesanstalt mitzuteilen; diese Verpflichtung entfällt, soweit die Bundesanstalt nach Absatz 4 Satz 4 gestatter hat, bereits die Mitteilung nach Absatz 4 Satz 1 gleichzeitig mit der Veröffentlichung vorzunehmen.

(6) Verstößt der Emittent gegen die Verpflichtungen nach den Absätzen 1 bis 4, so ist er einem anderen nur unter den Voraussetzungen der §§ 37b und 37c zum Ersatz des daraus entstehenden Schadens verpflichtet. Schadensersatzansprüche, die auf anderen Rechtsgrundlagen beruhen, bleiben unberührt.

(7) Das Bundesministerium der Finanzen kann durch Rechtsverordnung, die nicht der Zustimmung des Bundesrates bedarf, nähere Bestimmungen erlassen über

1. den Mindestinhalt, die Art, die Sprache, den Umfang und die Form der Veröffentlichung nach Absatz 1 Satz 1, 4 und 5 sowie Absatz 2 Satz 2,
2. den Mindestinhalt, die Art, die Sprache, den Umfang und die Form einer Mitteilung nach Absatz 3 Satz 4, Absatz 4 und Absatz 5 Satz 2 und
3. berechnete Interessen des Emittenten und die Gewährleistung der Vertraulichkeit nach Absatz 3.

Das Bundesministerium der Finanzen kann die Ermächtigung durch Rechtsverordnung auf die Bundesanstalt für Finanzdienstleistungsaufsicht übertragen.

§ 15 a Mitteilung von Geschäften, Veröffentlichung und Übermittlung an das Unternehmensregister

(1) Personen, die bei einem Emittenten von Aktien Führungsaufgaben wahrneh-

paragraph 1 in conjunction with a regulation pursuant to paragraph 7 sentence 1 no. 1 may not be made prior to a publication pursuant to paragraph 1 sentence 1, 4 or 5 or paragraph 2 sentence 2. The domestic issuer must contemporaneously submit the publications made according to paragraph 1 sentence 1, sentence 4 or sentence 5 or paragraph 2 sentence 2 to the management of the regulated markets according to paragraph 4 sentence 1 nos. 1 and 2 and to the Bundesanstalt; this duty does not apply to the extent the Bundesanstalt has consented according to paragraph 4 sentence 4 to the report pursuant to paragraph 4 sentence 1 being made contemporaneously with the publication.

(6) If the issuer violates the obligations as defined in paragraphs 1 to 4, it will only be liable to others for compensation of the resulting damages if the requirements pursuant to §§ 37b and 37c are met. Compensation claims based on other legal grounds remain unaffected.

(7) The Federal Ministry of Finance may stipulate, by way of a regulation which does not require the approval of the Bundesrat, detailed provisions on

1. minimum content, type, language, scope and form of the publication pursuant to paragraph 1 sentences 1, 4 and 5 and paragraph 2 sentence 2,
2. minimum content, type, language, scope and form of the report pursuant to paragraph 3 sentence 4, paragraph 4 and paragraph 5 sentence 2 and
3. the issuer's legitimate interests and ensuring confidentiality according to paragraph 3.

The Federal Ministry of Finance may delegate the authority to the Bundesanstalt für Finanzdienstleistungsaufsicht by means of a regulation.

§ 15 a Notification of transactions, publication and transmission to the Company Register

(1) Persons discharging managerial responsibilities within an issuer of shares

haben eigene Geschäfte mit Aktien emittenten oder sich darauf beziehten Finanzinstrumenten, insbesondere in dem Emittenten und der Bundesanstalt innerhalb von fünf Werktagen teilen. Die Verpflichtung nach Satz 1 trifft auch Personen, die mit einer Person in einer engen Beziehung stehen. Die Verpflichtung nach Satz 1 gilt bei Emittenten solcher Aktien, die in einer inländischen Börse zum Handel zugelassen sind oder im Handel an einem ausländischen organisierten Markt zugelassen sind, sofern der Emittent seinen Sitz im Inland hat oder es sich um Aktien eines Emittenten mit Sitz außerhalb der Europäischen Union und des Europäischen Wirtschaftsraums handelt, für welche die Bundesrepublik Deutschland der Heimatstaat im Sinne des Wertpapierprospektgesetzes ist. Zulassung zum Handel an einem organisierten Markt stellt es gleich, wenn Antrag auf Zulassung gestellt oder öffentlich angekündigt ist. Die Pflicht nach Absatz 1 besteht nicht, solange die Gesamtheit der Geschäfte einer Person mit den Aufgaben und der mit dieser Personen in einer engen Beziehung stehenden Personen insgesamt einen Betrag von 10 Euro bis zum Ende des Kalenderjahres nicht erreicht.

Personen mit Führungsaufgaben im Sinne des Absatzes 1 Satz 1 sind persönlich haftende Gesellschafter oder Mitglieder eines Leitungs-, Verwaltungs- oder Aufsichtsgans des Emittenten sowie sonstige Personen, die regelmäßig Zugang zu Insiderinformationen haben und zu Insiderinformationen haben und zu Insiderinformationen ermächtigt sind.

Personen im Sinne des Absatzes 1 Satz 2, die mit den in Absatz 2 genannten Personen in einer engen Beziehung stehen, sind deren Ehepartner, eingetragene Lebenspartner, unterhaltsberechtigter Kinder anderer Verwandte, die mit den in Absatz 2 genannten Personen zum Zeitpunkt des Abschlusses des meldepflichtigen Geschäfts seit mindestens einem Jahr im sel-

ben must notify the issuer and the Bundesanstalt within five working days of their own transactions in shares of the issuer or related financial instruments, in particular derivatives. The requirement according to sentence 1 also applies to persons closely associated with such person. The requirement according to sentence 1 only applies in relation to issuers of shares which

1. are admitted to trading on a German stock exchange or
2. which are admitted to trading on a foreign regulated market to the extent that the issuer has its registered office in Germany or the transaction relates to shares of an issuer which has its registered office outside of the European Union or the European Economic Area and for whom the Federal Republic of Germany is the home state as defined in the Securities Prospectus Act.

It is equivalent to admission to trading on a regulated market if an application for admission has been made or has been publicly announced. The requirement according to sentence 1 does not apply as long as the aggregate amount of transactions of the person discharging managerial responsibilities or persons closely associated with them does not exceed in aggregate EUR 5,000 until the end of the calendar year.

Persons discharging managerial responsibilities as defined in paragraph 1 sentence 1 mean personally liable partners or members of the management, administration or supervisory body of the issuer as well as other persons regularly having access to inside information and who have the authority to take material entrepreneurial decisions.

Persons as defined in paragraph 1 sentence 2 closely associated with persons defined in paragraph 2 are their spouses, registered partners, children entitled to maintenance and other relatives who are living in the same household with the persons defined in paragraph 2 at the time of the conclusion of the transaction to be reported since at least one year. Legal per-

ben Haushalt leben. Juristische Personen, bei denen Personen im Sinne des Absatzes 2 oder des Satzes 1 Führungsaufgaben wahrnehmen, gelten ebenfalls als Personen im Sinne des Absatzes 1 Satz 2. Unter Satz 2 fallen auch juristische Personen, Gesellschaften und Einrichtungen, die direkt oder indirekt von einer Person im Sinne des Absatzes 2 oder des Satzes 1 kontrolliert werden, die zugunsten einer solchen Person gegründet wurden oder deren wirtschaftliche Interessen weitgehend denen einer solchen Person entsprechen.

(4) Ein Inlandsemitent hat Informationspflichten nach Absatz 1 unverzüglich zu veröffentlichen und gleichzeitig der Bundesanstalt die Veröffentlichung mitzuteilen; er übermittelt sie außerdem unverzüglich, jedoch nicht vor ihrer Veröffentlichung dem Unternehmensregister im Sinne des § 8 b des Handelsgesetzbuchs zur Speicherung. § 15 Abs. 1 Satz 2 gilt entsprechend mit der Maßgabe, dass die öffentliche Ankündigung eines Antrags auf Zulassung einem gestellten Antrag auf Zulassung gleichsteht.

(5) Das Bundesministerium der Finanzen kann durch Rechtsverordnung, die nicht der Zustimmung des Bundesrates bedarf, nähere Bestimmungen erlassen über den Mindestinhalt, die Art, die Sprache, den Umfang und die Form der Mitteilung nach Absatz 1 und Absatz 4 Satz 1 sowie der Veröffentlichung nach Absatz 4. Das Bundesministerium der Finanzen kann die Ermächtigung durch Rechtsverordnung auf die Bundesanstalt für Finanzdienstleistungsaufsicht übertragen.

§ 15b Führung von Insiderverzeichnissen

(1) Emittenten nach § 15 Abs. 1 Satz 1 oder Satz 2 und in ihrem Auftrag oder für ihre Rechnung handelnde Personen haben Verzeichnisse über solche Personen zu führen, die für sie tätig sind und bestimmungsgemäß Zugang zu Insiderinformationen haben. Die nach Satz 1 Verpflichteten müssen diese Verzeichnisse unverzüglich aktualisieren und der Bundesanstalt auf Verlangen übermitteln. Die in den

sons within which persons as defined in paragraph 2 or sentence 1 discharge managerial responsibilities are also deemed persons as defined in paragraph 1 sentence 2. Sentence 2 also applies to legal persons, companies or entities which are directly or indirectly controlled by a person as defined in paragraph 2 or sentence 1, which have been set up for the benefit of such a person or whose economic interests are substantially identical with those of such a person.

(4) A domestic issuer must publish without undue delay information according to paragraph 1 and contemporaneously report the publication to the Bundesanstalt; it also transmits the information without undue delay, but not prior to publication to the Company Register as defined in § 8 b of the Commercial Code for storage. § 15 para. 1 sentence 2 applies *mutatis mutandis* with the proviso that the public announcement of an application for admission is equivalent with an application for admission.

(5) The Federal Ministry of Finance may stipulate, by way of a regulation which does not require the approval of the Bundesrat, detailed provisions on the minimum content, type, language, volume and form of the report pursuant to paragraph 1 and paragraph 4 sentence 1 as well as the publication according to paragraph 4. The Federal Ministry of Finance may delegate the authority to the Bundesanstalt für Finanzdienstleistungsaufsicht by means of a regulation.

§ 15b Maintaining insider lists

(1) Issuers defined in § 15 para. 1 sentence 1 or sentence 2 and persons acting on their behalf or for their account must draw up lists of those persons working for them and having due access to inside information. Persons obliged under sentence 1 must update these lists without undue delay and transmit them to the Bundesanstalt upon request. Persons entered in such lists are to be informed by the issuer on

zeichnen geführten Personen sind die Emittenten über die rechtlichen Pflichten, die sich aus dem Zugang zu Informationen ergeben, sowie über Rechtsfolgen von Verstößen aufzuklären. Als im Auftrag oder für Rechnung Emittenten handelnde Personen gelten die in § 323 Abs. 1 Satz 1 des Handelsgesetzbuchs genannten Personen.

Das Bundesministerium der Finanzen durch Rechtsverordnung, die nicht Zustimmung des Bundesrates bedarf, Bestimmungen erlassen über Umfang und Form der Verzeichnisse, die in den Verzeichnissen enthaltenen Daten,

die Aktualisierung und die Datenpflege bezüglich der Verzeichnisse, den Zeitraum, über den die Verzeichnisse aufbewahrt werden müssen und Kriterien für die Vernichtung der Verzeichnisse.

Bundesministerium der Finanzen die Ermächtigung durch Rechtsverordnung auf die Bundesanstalt für Finanzdienstleistungsaufsicht übertragen.

Aufzeichnungspflichten

Wertpapierdienstleistungsunternehmen die Unternehmen mit Sitz im Inland, an einer inländischen Börse zur Teilnahme am Handel zugelassen sind, haben Durchführung von Aufträgen, die Inhaberpapiere im Sinne des § 12 zum Gegenstand haben, bei natürlichen Personen Namen, das Geburtsdatum und die Anschrift, bei Unternehmen die Firma und Anschrift der Auftraggeber und der Verpflichteten oder verpflichteten Personen Unternehmen festzustellen und diese Angaben aufzuzeichnen. Die Aufzeichnungen nach Satz 1 sind mindestens sechs Jahre aufzubewahren. Für die Aufbewahrung gilt § 257 Abs. 3 und 5 des Handelsgesetzbuchs entsprechend.

Überwachung der Geschäfte der bei der Bundesanstalt Beschäftigten

Die Bundesanstalt muss über angemessene interne Kontrollverfahren verfü-

die legal obligations resulting from the access to inside information as well as on legal consequences of violations. Persons defined in § 323 para. 1 sentence 1 of the Commercial Code are not deemed to be persons acting on behalf or for the account of the issuer.

The Federal Ministry of Finance may stipulate, by way of a regulation which does not require the approval of the Bundesrat, detailed provisions on

1. the scope and form of the lists,
2. data to be contained in the lists,
3. updating and data maintenance in relation to the lists,
4. the period for which the lists must be retained and
5. deadlines for destroying the lists.

The Federal Ministry of Finance may delegate the authority to the Bundesanstalt für Finanzdienstleistungsaufsicht by means of a regulation.

Record keeping duties

Investment services undertakings and undertakings with their registered office in Germany which are admitted as participants to trading on a German stock exchange will, prior to executing orders relating to insider securities as defined in § 12, determine the name, the birth date and the address of natural persons and, for undertakings, the firm name and address of the principals and of the persons or undertakings benefiting or being obliged from the transaction and record this information. Records pursuant to sentence 1 must be retained for at least six years. § 257 paras. 3 and 5 of the Commercial Code apply *mutatis mutandis* to the retention.

Surveillance of transactions of employees of the Bundesanstalt

The Bundesanstalt must maintain appropriate internal control procedures

gen, die geeignet sind, Verstößen der bei der Bundesanstalt Beschäftigten gegen die Verbote nach § 14 entgegenzuwirken.

Der Dienstvorsetzte oder die von ihm beauftragte Person kann von den bei der Bundesanstalt Beschäftigten die Erteilung von Auskünften und die Vorlage von Unterlagen über Geschäfte in Insiderpapieren verlangen, die sie für eigene oder fremde Rechnung oder für einen anderen abgeschlossen haben. § 4 Abs. 9 ist anzuwenden. Beschäftigte, die bei ihm Dienstgeschäften bestimmungsgemäß Kenntnis von Insiderinformationen haben oder haben können, sind verpflichtet, Geschäfte in Insiderpapieren, die sie für eigene oder fremde Rechnung oder für einen anderen abgeschlossen haben, unverzüglich dem Dienstvorsetzten oder der von ihm beauftragten Person schriftlich anzuzeigen. Der Dienstvorsetzte oder die von ihm beauftragte Person bestimmt die in Satz 3 genannten Beschäftigten.

Aufbewahrung von Verbindungsdaten

Die Bundesanstalt kann von einem Wertpapierdienstleistungsunternehmen sowie von einem Unternehmen mit Sitz im Inland, die an einer inländischen Börse zur Teilnahme am Handel zugelassen sind, und von einem Emittenten von Insiderpapieren sowie mit diesem verbundenen Unternehmen, die ihren Sitz im Inland haben oder deren Wertpapiere an einer inländischen Börse zum Handel zugelassen oder in den regulierten Markt oder Freiverkehr einbezogen sind, für einen bestimmten Personenkreis schriftlich die Aufbewahrung von bereits existierenden Verbindungsdaten über den Fernmeldeverkehr verlangen, sofern bezüglich dieser Personengruppen ein Verstoß gegen § 14 oder § 20a besteht. Das Grundrecht des Artikels 10 des Grundgesetzes wird insoweit eingeschränkt. Die Betroffenen sind entsprechend § 101 Abs. 4 und 5 der Strafprozessordnung zu benachrichtigen. Die Bundesanstalt kann auf der Grundlage von Satz 1 nicht die Aufbewahrung von

which are suitable to counteract violations by the Bundesanstalt's employees of the prohibitions according to § 14.

The superior or the person appointed by him may request the Bundesanstalt's employees to provide information or present documents on transactions in insider securities which they have executed for their own account, for the account of others or for another person. § 4 para. 9 is to be applied. Employees who have or may have due knowledge of inside information in the course of their professional activities are obliged to report without undue delay and in writing transactions in insider securities which they execute for their own account or for the account of others or for another person to the superior or the person appointed by him. The superior or the person appointed by him determines who are employees according to sentence 3.

Retention of connection data

The Bundesanstalt may request in writing from investment services undertakings as well as undertakings with their registered office in Germany which are admitted as participants to trading on a German stock exchange and from issuers of insider securities as well as their affiliated undertakings which have their registered office in Germany or whose securities are admitted to trading on a German stock exchange or included on a regulated market or an unofficial open market to retain existing connection data regarding telecommunication traffic for a particular group of persons if there are reasons to suspect that these persons of the specific undertaking have violated a prohibition according to § 14 or § 20a. The constitutional right according to Article 10 of the Constitution of the Federal Republic of Germany is limited to this extent. Persons affected must be informed according to § 101 paras. 4 and 5 of the Code of Criminal Procedure. The Bundesanstalt may not request based on sentence 1 that

ist zukünftig zu erhebenden Verbindungsdaten verlangen.

(2) Die Frist zur Aufbewahrung der bereits existierenden Daten beträgt vom Tage des Zugangs der Aufforderung an höchstens sechs Monate. Ist die Aufbewahrung der Verbindungsdaten über den ermeldeverkehr zur Prüfung des Verachts eines Verstoßes gegen ein Verbot nach § 14 oder § 20 a nicht mehr erforderlich, hat die Bundesanstalt den Aufbewahrungspflichtigen hiervon unverzüglich in Kenntnis zu setzen und die dazu vorhandenen Unterlagen unverzüglich zu vernichten. Die Pflicht zur unverzüglichen Ermächtigung der vorhandenen Daten gilt auch für den Aufbewahrungspflichtigen.

Abschnitt 3 a Ratingagenturen

17 Überwachung von Ratingagenturen

(1) Die Bundesanstalt ist zuständige Behörde im Sinne der Verordnung (EG) Nr. 1060/2009 des Europäischen Parlaments und des Rates vom 16. September 2009 über Ratingagenturen (ABl. L 302 vom 17. 11. 2009, S. 1). Soweit in der Verordnung (EG) Nr. 1060/2009 nichts Abweichendes geregelt ist, gelten die Vorschriften der Abschnitte 1 und 2 dieses Gesetzes, mit Ausnahme des § 7 Absatz 4 Satz 5 bis 8, des § 8 Absatz 1 Satz 3 und der §§ 9 und 10, entsprechend.

(2) Die Bundesanstalt übt die ihr nach Absatz 1 Satz 1 in Verbindung mit der Verordnung (EG) Nr. 1060/2009 übertragenen Befugnisse aus, soweit dies für die Wahrnehmung ihrer Aufgaben und die Überwachung der Einhaltung der in der Verordnung (EG) Nr. 1060/2009 geregelten Pflichten erforderlich ist.

(3) Der Bundesanstalt nach der Verordnung (EG) Nr. 1060/2009 vorzulegende Unterlagen sind, vorbehaltlich des Artikels 5 Absatz 3 dieser Verordnung, in deutscher Sprache und auf Verlangen der Bundesanstalt zusätzlich in englischer Sprache zu erstellen und vorzulegen. Die

connection data to be recorded in the future is retained.

(2) The period for retention of existing data will not exceed six months as of the date of receiving the request. If the retention of connection data regarding telecommunication traffic is no longer necessary to examine the suspicion of a violation of a prohibition according to § 14 or § 20 a, the Bundesanstalt will inform without undue delay the person obliged to retain the data and destroy without undue delay existing documents on this. The obligation to destroy without undue delay the relevant data also applies to the person required to retain the data.

Chapter 3 a Rating agencies

§ 17 Supervision of rating agencies

(1) The Bundesanstalt is the competent authority as defined in Regulation (EC) No. 1060/2009 of the European Parliament and the Council of 16 September 2009 on rating agencies (OJEU L 302 of 17 November 2009, p. 1). Unless otherwise stipulated in Regulation (EC) No. 1060/2009, the provisions of Chapters 1 and 2 of this Act with the exception of § 7 paragraph 4 sentences 5 to 8, § 8 paragraph 1 sentence 3 and §§ 9 and 10 apply *mutatis mutandis*.

(2) The Bundesanstalt uses the authority given to it according to paragraph 1 sentence 1 in conjunction with the Regulation (EC) No. 1060/2009 to the extent this is required to perform its tasks and to monitor compliance with the requirements set forth by Regulation (EC) No. 1060/2009.

(3) Documents to be filed with the Bundesanstalt according to Regulation (EC) No. 1060/2009 are to be drawn up and filed in German and additionally in English upon request by the Bundesanstalt, notwithstanding Article 15 para. 3 of this Regulation. The Bundesanstalt may

Bundesanstalt kann eine Erstellung und Vorlegung ausschließlich in englischer Sprache gestatten, wenn der Vorlagepflichtige einer Gruppe von Ratingagenturen im Sinne des Artikels 3 Absatz 1 Buchstabe m der Verordnung (EG) Nr. 1060/2009 angehört oder ein Unternehmen mit Sitz in einem Drittstaat ist.

(4) Die Bundesanstalt kann zur Überwachung der Einhaltung der in der Verordnung (EG) Nr. 1060/2009 geregelten Pflichten bei Ratingagenturen, bei mit diesen verbundenen Unternehmen und bei zur Durchführung von Ratingtätigkeiten eingeschalteten Personen oder Unternehmen auch ohne besonderen Anlass Prüfungen vornehmen.

(5) Unbeschadet des Absatzes 4 haben die Ratingagenturen die Einhaltung der in der Verordnung (EG) Nr. 1060/2009 geregelten Pflichten einmal jährlich durch einen von der Bundesanstalt beauftragten Prüfer prüfen zu lassen. Die Bundesanstalt beauftragt als Prüfer Wirtschaftsprüfer oder Wirtschaftsprüfungsgesellschaften, die hinsichtlich des Prüfungsgegenstandes über ausreichende Kenntnisse verfügen. Die Bundesanstalt legt das Datum des Prüfungsbeginns und den Berichtszeitraum fest. Die Bundesanstalt kann auf Antrag von der jährlichen Prüfung ganz oder teilweise absehen, soweit dies aus besonderen Gründen, insbesondere wegen der Art und des Umfangs der betriebenen Geschäfte, angezeigt ist. Die Bundesanstalt kann an der Prüfung teilnehmen. Die Bundesanstalt kann gegenüber den Ratingagenturen Bestimmungen über den Inhalt der Prüfung treffen und Schwerpunkte für die Prüfung festlegen, die vom Prüfer zu berücksichtigen sind. Der Prüfer hat der Bundesanstalt unverzüglich nach Beendigung der Prüfung einen Prüfungsbericht einzureichen. Über schwerwiegende Verstöße gegen die in der Verordnung (EG) Nr. 1060/2009 geregelten Pflichten hat der Prüfer die Bundesanstalt unverzüglich zu unterrichten.

(6) Widerspruch und Anfechtungsklage gegen Maßnahmen der Bundesanstalt nach den Absätzen 2, 4 und 5, auch in

allow that documents are drawn up and filed solely in English if the entity required to file documents is part of a group of rating agencies as defined in Article 3 paragraph 1 lit. m of Regulation (EC) No. 1060/2009 or an undertaking having its registered office in a third country.

(4) The Bundesanstalt may, for the purpose of monitoring compliance with the requirements set forth by Regulation (EC) No. 1060/2009, initiate without specific reason audits of rating agencies or their affiliated undertakings as well as of persons or undertakings appointed for purposes of rating activities.

(5) Notwithstanding paragraph 4, rating agencies must have audited at least once a year compliance with the requirements set forth in Regulation (EC) No. 1060/2009 by an auditor appointed by the Bundesanstalt. The Bundesanstalt appoints as auditor certified accountants or companies of certified accountants which have sufficient expertise regarding the auditing objective. The Bundesanstalt sets the beginning date of audit and the reporting period. The Bundesanstalt may upon request waive the yearly audit fully or in part to the extent this is in order due to exceptional reasons, in particular due to the nature and the scope of the business operated. The Bundesanstalt may take part in the audit. The Bundesanstalt may determine vis-à-vis the rating agencies the content of the audit and determine focal points of audit which must be taken into account by the auditor. The auditor must submit without undue delay an audit report to the Bundesanstalt after the completion of the audit. The auditor must inform the Bundesanstalt without undue delay of serious violations of requirements set forth by Regulation (EC) No. 1060/2009.

(6) Objections and actions for rescission in respect of measures taken by the Bundesanstalt pursuant to paragraphs 2, 4

Verbindung mit der Verordnung (EG) Nr. 1060/2009, haben keine aufschiebende Wirkung.

(7) Das Bundesministerium der Finanzen kann durch Rechtsverordnung, die nicht der Zustimmung des Bundesrates bedarf, nähere Bestimmungen über Art, Umfang und Zeitpunkt der Prüfungen nach den Absätzen 4 und 5 erlassen. Das Bundesministerium der Finanzen kann die Ermächtigung durch Rechtsverordnung ohne Zustimmung des Bundesrates auf die Bundesanstalt für Finanzdienstleistungsaufsicht übertragen.

§ 18 bis 20 (aufgehoben)

**Abschnitt 4
Überwachung des Verbots der Marktmanipulation**

§ 20a Verbot der Marktmanipulation

(1) Es ist verboten, unrichtige oder irreführende Angaben über Umstände zu machen, die für die Bewertung eines Finanzinstruments erheblich sind, oder solche Umstände entgegen bestehenden Rechtsvorschriften zu verschweigen, wenn die Angaben oder das Verschweigen geeignet sind, auf den inländischen Börsen- oder Marktpreis eines Finanzinstruments oder auf den Preis eines Finanzinstruments an einem organisierten Markt in einem anderen Mitgliedstaat der Europäischen Union oder in einem anderen Vertragsstaat des Abkommens über den Europäischen Wirtschaftsraum einzuwirken,

1. Geschäfte vorzunehmen oder Kauf- oder Verkaufsaufträge zu erteilen, die geeignet sind, falsche oder irreführende Signale für das Angebot, die Nachfrage oder den Börsen- oder Marktpreis von Finanzinstrumenten zu geben oder ein künstliches Preisniveau herbeizuführen oder

2. sonstige Täuschungshandlungen vorzunehmen, die geeignet sind, auf den in-

ländischen Börsen- oder Marktpreis eines Finanzinstruments oder auf den Preis eines Finanzinstruments an einem organisierten Markt in einem anderen Mitgliedstaat der Europäischen Union oder in einem anderen Vertragsstaat des Abkommens über den Europäischen Wirtschaftsraum einzuwirken.

Satz 1 gilt für Finanzinstrumente, die

1. an einer inländischen Börse zum Handel zugelassen oder in den regulierten Markt oder in den Freiverkehr einbezogen sind oder

2. in einem anderen Mitgliedstaat der Europäischen Union oder einem anderen Vertragsstaat des Abkommens über den Europäischen Wirtschaftsraum zum Handel an einem organisierten Markt zugelassen sind.

Der Zulassung zum Handel an einem organisierten Markt oder der Einbeziehung in den regulierten Markt oder in den Freiverkehr steht es gleich, wenn der Antrag auf Zulassung oder Einbeziehung gestellt oder öffentlich angekündigt ist.

(2) Das Verbot des Absatzes 1 Satz 1 Nr. 2 gilt nicht, wenn die Handlung mit der zulässigen Marktpraxis auf dem betreffenden organisierten Markt oder in dem betreffenden Freiverkehr vereinbar ist und der Handelnde hierfür legitime Gründe hat. Als zulässige Marktpraxis gelten nur solche Gepflogenheiten, die auf dem jeweiligen Markt nach vernünftigem Ermessen erwartet werden können und von der Bundesanstalt als zulässige Marktpraxis im Sinne dieser Vorschrift anerkannt werden. Eine Marktpraxis ist nicht bereits deshalb unzulässig, weil sie zuvor nicht ausdrücklich anerkannt wurde.

(3) Der Handel mit eigenen Aktien im Rahmen von Rückkaufprogrammen sowie Maßnahmen zur Stabilisierung des Preises von Finanzinstrumenten stellen in keinem Fall einen Verstoß gegen das Verbot des Absatzes 1 Satz 1 dar, soweit diese nach Maßgabe der Verordnung (EG) Nr. 2273/2003 der Kommission vom 22. Dezember 2003 zur Durchführung der Richtlinie

on the German stock exchange or market price of a financial instrument or the price of a financial instrument on a regulated market in another member state of the European Union or in another contracting state of the European Economic Area.

Sentence 1 applies to financial instruments which

1. are admitted to trading on a German stock exchange or included in trading in a regulated market or an unofficial open market or

2. are admitted to trading on a regulated market in another member state of the European Union or another contracting state of the European Economic Area.

It is equivalent to admission to trading on a regulated market or inclusion in trading in a regulated market or the unofficial open market if an application for admission or inclusion has been made or has been publicly announced.

(2) The prohibition according to paragraph 1 sentence 1 no. 2 does not apply if the actions conform to accepted market practices on the relevant regulated market or the relevant unofficial open market and the relevant person has legitimate reasons for his actions. Only such practices are deemed accepted market practices which can reasonably be expected on the relevant market and which have been accepted by the Bundesanstalt as accepted market practices as defined by this provision. A market practice is not unacceptable simply because it has not been previously expressly accepted.

(3) Trading in own shares within the context of buy-back programmes or measures for the stabilisation of the price of financial instruments are in no event a violation of the prohibition in paragraph 1 sentence 1 provided this is carried out according to the provisions of Commission Regulation (EC) No. 2273/2003 of 22 December 2003 implementing Di-

03/6/EG des Europäischen Parlaments und des Rates – Ausnahmeregelungen für Rückkaufprogramme und Kursstabilisierungsmaßnahmen (ABl. EU Nr. L 336 33) erfolgen. Für Finanzinstrumente, die in den Freiverkehr oder in den regulierten Markt einbezogen sind, gelten die Vorschriften der Verordnung (EG) Nr. 2273/2003 entsprechend.

(4) Die Absätze 1 bis 3 gelten entsprechend für

Waren im Sinne des § 2 Abs. 2 c, Emissionsberechtigungen im Sinne des § 3 Abs. 4 Satz 1 des Treibhausgas-Emissionshandelsgesetzes und ausländische Zahlungsmittel im Sinne des § 51 des Börsengesetzes, die an einer inländischen Börse oder einem vergleichbaren Markt in einem anderen Mitgliedstaat der Europäischen Union oder in einem anderen Vertragsstaat des Abkommens über den Europäischen Wirtschaftsraum gehandelt werden.

(5) Das Bundesministerium der Finanzen kann durch Rechtsverordnung, die der Zustimmung des Bundesrates bedarf, nähere Bestimmungen erlassen über

Umstände, die für die Bewertung von Finanzinstrumenten erheblich sind, falsche oder irreführende Signale für das Angebot, die Nachfrage oder den Börsen- oder Marktpreis von Finanzinstrumenten oder das Vorliegen eines künstlichen Preisniveaus,

das Vorliegen einer sonstigen Täuschungshandlung,

Handlungen und Unterlassungen, die in keinem Fall einen Verstoß gegen das Verbot des Absatzes 1 Satz 1 darstellen, und

Handlungen, die als zulässige Marktpraxis gelten, und das Verfahren zur Anerkennung einer zulässigen Marktpraxis.

Das Bundesministerium der Finanzen kann die Ermächtigung durch Rechtsverordnung auf die Bundesanstalt für Finanzdienstleistungsaufsicht übertragen.

rective 2003/6/EC of the European Parliament and of the Council as regards exemptions for buy-back programmes and stabilisation of financial instruments (OJEU no. L 336 p. 33). The provisions of Regulation (EC) No. 2273/2003 apply *mutatis mutandis* to financial instruments included in the unofficial open market or the regulated market.

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

1. commodities as defined in § 2 para. 2 c, 2. emission allowances as defined in § 3 para. 4 sentence 1 of the Greenhouse Gas Emissions Trading Act and 3. foreign currencies as defined in § 51 of the Stock Exchange Act, which are traded on a German exchange or a comparable market in another member state of the European Union or in another contracting state of the European Economic Area.

(5) The Federal Ministry of Finance may, by way of a regulation which does not require the approval of the Bundesrat, stipulate provisions detailing

1. circumstances which are significant for the valuation of financial instruments, 2. false or misleading signals as to the offer, demand for or as to a stock exchange or market price of financial instruments and the existence of an artificial price level,

3. the existence of other deceptive actions,

4. actions or omissions which in no event constitute a violation of the prohibition pursuant to paragraph 1 sentence 1, and

5. actions deemed accepted market practice and the procedure for recognising accepted market practice.

The Federal Ministry of Finance may delegate the authority to the Bundesanstalt für Finanzdienstleistungsaufsicht by means of a regulation. The latter will issue

Diese erlässt die Vorschriften im Einvernehmen mit den Börsenaufsichtsbehörden der Länder.

(6) Bei Journalisten, die in Ausübung ihres Berufes handeln, ist das Vorliegen der Voraussetzungen nach Absatz 1 Satz 1 Nr. 1 unter Berücksichtigung ihrer beruflichen Regeln zu beurteilen, es sei denn, dass diese Personen aus den unrichtigen oder irreführenden Angaben direkt oder indirekt einen Nutzen ziehen oder Gewinne schöpfen.

§ 20 b (aufgehoben)

Abschnitt 5

Mitteilung, Veröffentlichung und Übermittlung von Veränderungen des Stimmrechtsanteils an das Unternehmensregister

§ 21 Mitteilungspflichten des Meldepflichtigen

(1) Wer durch Erwerb, Veräußerung oder auf sonstige Weise 3 Prozent, 5 Prozent, 10 Prozent, 15 Prozent, 20 Prozent, 25 Prozent, 30 Prozent, 50 Prozent oder 75 Prozent der Stimmrechte an einem Emittenten, für den die Bundesrepublik Deutschland der Herkunftsstaat ist, erreicht, überschreitet oder unterschreitet (Meldepflichtiger), hat dies unverzüglich dem Emittenten und gleichzeitig der Bundesanstalt, spätestens innerhalb von vier Handelstagen unter Beachtung von § 22 Abs. 1 und 2 mitzuteilen. Bei Zertifikaten, die Aktien vertreten, trifft die Mitteilungspflicht ausschließlich den Inhaber der Zertifikate. Die Frist des Absatzes 1 beginnt mit dem Zeitpunkt, zu dem der Meldepflichtige Kenntnis davon hat oder nach den Umständen haben mußte, daß sein Stimmrechtsanteil die genannten Schwellen erreicht, überschreitet oder unterschreitet. Es wird vermutet, dass der Meldepflichtige zwei Handelstage nach dem Erreichen, Überschreiten oder Unterschreiten der genannten Schwellen Kenntnis hat.

the provisions in agreement with the stock exchange supervisory authorities of the federal states.

(6) In respect of journalists acting in their professional capacity, the existence of the requirements of paragraph 1 sentence 1 no. 1 has to be determined taking into account the rules governing their profession, unless these persons derive, directly or indirectly, a benefit or profits from incorrect or misleading information.

§ 20 b (revoked)

Chapter 5

Notification, publication and transmission of changes in the proportion of voting rights to the Company Register

§ 21 Notification requirements of notifying persons

(1) Anyone who by way of acquisition, sale or in another manner reaches, exceeds or falls below the thresholds of 3 percent, 5 percent, 10 percent, 15 percent, 20 percent, 25 percent, 30 percent, 50 percent and 75 percent of voting rights in an issuer for whom the Federal Republic of Germany is the home state (notifying person) must notify the issuer and contemporaneously the Bundesanstalt without undue delay, but not later than within four trading days, taking due account of § 22 paras. 1 and 2. With respect to certificates representing shares, the notification requirement solely applies to the holder of the certificates. The deadline according to sentence 1 starts at the time the notifying person has knowledge or, having regard to the circumstances, should have had knowledge of his proportion of voting rights reaching, exceeding or falling below the aforementioned thresholds. It is assumed that the notifying person has knowledge two trading days after reaching, exceeding or falling below the aforementioned thresholds.

sind, nur aufgrund von in schriftlicher Form oder über elektronische Hilfsmittel erteilten Weisungen ausüben oder stellt durch geeignete Vorkehrungen sicher, dass die Finanzportfoliowahlverwaltung unabhängig von anderen Dienstleistungen und unter Bedingungen, die denen der Richtlinie 2009/65/EG des Europäischen Parlaments und des Rates vom 13. Juli 2009 zur Koordinierung der Rechts- und Verwaltungsvorschriften betreffend bestimmte Organismen für gemeinsame Anlagen in Wertpapieren (OGAW) (ABl. L 302 vom 17. 11. 2009, S. 32) in der jeweils geltenden Fassung, gleichwertig sind, erfolgt,

2. das Wertpapierdienstleistungsunternehmen übt die Stimmrechte unabhängig vom Meldepflichtigen aus,
3. der Meldepflichtige teilt der Bundesanstalt den Namen dieses Wertpapierdienstleistungsunternehmens und die für dessen Überwachung zuständige Behörde oder das Fehlen einer solchen mit und
4. der Meldepflichtige erklärt gegenüber der Bundesanstalt, dass die Voraussetzungen der Nummer 2 erfüllt sind.

Ein Wertpapierdienstleistungsunternehmen gilt jedoch dann für die Zurechnung nach dieser Vorschrift als Tochterunternehmen im Sinne des Absatzes 3, wenn der Meldepflichtige oder ein anderes Tochterunternehmen des Meldepflichtigen seinerseits Anteile an der von dem Wertpapierdienstleistungsunternehmen verwalteten Beteiligung hält und das Wertpapierdienstleistungsunternehmen die Stimmrechte, die mit diesen Beteiligungen verbunden sind, nicht nach freiem Ermessen, sondern nur aufgrund unmittelbarer oder mittelbarer Weisungen ausüben kann, die ihm vom Meldepflichtigen oder von einem anderen Tochterunternehmen des Meldepflichtigen erteilt werden.

(4) Wird eine Vollmacht im Falle des Absatzes 1 Satz 1 Nr. 6 nur zur Ausübung der Stimmrechte für eine Hauptversammlung erteilt, ist es für die Erfüllung der Mitteilungspflicht nach § 21 Abs. 1 und 1a in Verbindung mit Absatz 1 Satz 1 Nr. 6 aus-

according to instructions provided in written form or via electronic means or if it ensures by way of adequate mechanisms that the financial portfolio management is performed independently of other services and subject to conditions equivalent to those set out in Directive 2009/65/EC of the European Parliament and the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (OJEU No. L 302 of 17 November 2009, p. 32) in its current amended version;

2. the investment services undertaking exercises the voting rights independently of the notifying person;
3. the notifying person notifies the Bundesanstalt of the name of the investment services undertaking and the authority competent of the supervision for it or of the fact that there is no relevant supervision; and
4. the notifying person declares to the Bundesanstalt that the requirements pursuant to number 2 are met.

An investment services undertaking is, however, deemed to be a subsidiary as defined in paragraph 3 for the purposes of attribution under this provision if the notifying person or another subsidiary of the notifying person itself holds shares in the shareholding managed by the investment services undertaking and the investment services undertaking is not able to exercise the voting rights attached to this shareholding according to its own discretion but rather only subject to direct or indirect instructions provided by the notifying person or another subsidiary of the notifying person.

(4) If in the case of paragraph 1 sentence 1 no. 6, a proxy is only provided for the purpose of exercising the voting rights at a general meeting, it is sufficient for the fulfilment of the notification requirements according to § 21 paras. 1 and 1a, in con-

reichend, wenn die Mitteilung lediglich bei Erteilung der Vollmacht abgegeben wird. Die Mitteilung muss die Angabe enthalten, wann die Hauptversammlung stattfindet und wie hoch nach Erlöschen der Vollmacht oder des Ausübungsermessens der Stimmrechtsanteil sein wird, der dem Bevollmächtigten zugerechnet wird.

(5) Das Bundesministerium der Finanzen kann durch Rechtsverordnung, die nicht der Zustimmung des Bundesrates bedarf, nähere Bestimmungen erlassen über die Umstände, unter welchen im Falle des Absatzes 3a eine Unabhängigkeit des Wertpapierdienstleistungsunternehmens vom Meldepflichtigen gegeben ist, und über elektronische Hilfsmittel, mit denen Weisungen im Sinne des Absatzes 3a erteilt werden können.

§ 23 Nichtberücksichtigung von Stimmrechten

(1) Stimmrechte aus Aktien eines Emittenten, für den die Bundesrepublik Deutschland der Herkunftsstaat ist, bleiben bei der Berechnung des Stimmrechtsanteils unberücksichtigt, wenn ihr Inhaber

1. ein Unternehmen mit Sitz in einem Mitgliedstaat der Europäischen Union oder in einem anderen Vertragsstaat des Abkommens über den Europäischen Wirtschaftsraum ist, das Wertpapierdienstleistungen erbringt,
2. die betreffenden Aktien im Handelsbestand hält oder zu halten beabsichtigt und dieser Anteil nicht mehr als 5 Prozent der Stimmrechte beträgt und
3. sicherstellt, dass die Stimmrechte aus den betreffenden Aktien nicht ausgeübt und nicht anderweitig genutzt werden, um auf die Geschäftsführung des Emittenten Einfluss zu nehmen.

(2) Stimmrechte aus Aktien eines Emittenten, für den die Bundesrepublik Deutschland der Herkunftsstaat ist, bleiben bei der Berechnung des Stimmrechtsanteils unberücksichtigt, sofern

1. die betreffenden Aktien ausschließlich für den Zweck der Abrechnung und

junction with paragraph 1 sentence 1 no. 6, if the notification is only given when the proxy is given. The notification must contain details of when the general meeting is to take place and how high the proportion of voting rights attributable to the proxy will be once the proxy or discretion has expired.

(5) The Federal Ministry of Finance may, by way of issuing a regulation, which does not require the approval of the Bundesrat, stipulate further provisions on the circumstances under which, in the case of paragraph 3 a, the investment services undertaking is independent from the notifying person, and on the electronic means by which instructions as defined in paragraph 3 a can be issued.

§ 23 Disregarding of voting rights

(1) Voting rights arising from shares in an issuer for whom the Federal Republic of Germany is the home state will be disregarded for purposes of the calculation of the proportion of voting rights if their holder:

1. is an undertaking with registered office in a member state of the European Union or in another contracting state of the European Economic Area, which provides investment services;
2. holds or intends to hold the relevant shares in the trading book and this proportion does not exceed 5 percent of the voting rights; and
3. ensures that the voting rights arising from the relevant shares are not exercised and not otherwise used to exercise influence over the management of the issuer.

(2) Voting rights arising from shares in an issuer for whom the Federal Republic of Germany is the home state will be disregarded in the calculation of the proportion of voting rights insofar as:

1. the relevant shares are exclusively held for the purpose of clearing and settle-

Abwicklung von Geschäften für höchstens drei Handelstage gehalten werden, selbst wenn die Aktien auch außerhalb eines organisierten Marktes gehandelt werden, oder

2. eine mit der Verwahrung von Aktien betraute Stelle die Stimmrechte aus den verwahrten Aktien nur aufgrund von Weisungen, die schriftlich oder über elektronische Hilfsmittel erteilt wurden, ausüben darf.

(3) Stimmrechte aus Aktien, die die Mitglieder des Europäischen Systems der Zentralbanken bei der Wahrnehmung ihrer Aufgaben als Währungsbehörden zur Verfügung gestellt bekommen oder die sie bereitstellen, bleiben bei der Berechnung des Stimmrechtsanteils am Emittenten, für den die Bundesrepublik Deutschland der Herkunftsstaat ist, unberücksichtigt, soweit es sich bei den Transaktionen um kurzfristige Geschäfte handelt und die Stimmrechte aus den betreffenden Aktien nicht ausgeübt werden. Satz 1 gilt insbesondere für Stimmrechte aus Aktien, die einem oder von einem Mitglied im Sinne des Satzes 1 zur Sicherheit übertragen werden, und für Stimmrechte aus Aktien, die dem Mitglied als Pfand oder im Rahmen eines Pensionsgeschäfts oder einer ähnlichen Vereinbarung gegen Liquidität für geldpolitische Zwecke oder innerhalb eines Zahlungssystems zur Verfügung gestellt oder von diesem bereitgestellt werden.

(4) Für die Meldeschwellen von 3 Prozent und 5 Prozent bleiben Stimmrechte aus solchen Aktien eines Emittenten, für den die Bundesrepublik Deutschland der Herkunftsstaat ist, unberücksichtigt, die von einer Person erworben oder veräußert werden, die an einem Markt dauerhaft anbietet, Finanzinstrumente im Wege des Eigenhandels zu selbst gestellten Preisen zu kaufen oder zu verkaufen (Market Maker), wenn

1. diese Person dabei in ihrer Eigenschaft als Market Maker handelt,
2. sie eine Zulassung nach § 32 Abs. 1 Satz 1 in Verbindung mit § 1 Abs. 1 a Satz 2 Nr. 4 des Kreditwesengesetzes hat,

ment of transactions for no more than three trading days, even if the shares are also traded outside of a regulated market; or

2. an entity charged with custody of the shares can only exercise the voting rights arising from the shares in its custody according to instructions which are provided in written form or via electronic means.

(3) Voting rights arising from shares provided to or provided by members of the European System of Central Banks in performing their duties as monetary authorities, are disregarded in the calculation of the proportion of voting rights of an issuer for whom the Federal Republic of Germany is the home state, insofar as the transactions are short-term transactions and the voting rights arising from the relevant shares are not exercised. Sentence 1 is particularly applicable for voting rights arising from shares which are provided to or provided by a member as defined in sentence 1 as security, and for voting rights from shares provided to or provided by the member as a pledge or in the context of a repurchase agreement or similar agreement for liquidity granted for monetary policy purposes or within a payment system.

(4) For the notification thresholds of 3 percent and 5 percent, voting rights from those shares of an issuer for whom the Federal Republic of Germany is the home state are disregarded which have been acquired or disposed of by a person who continuously holds himself out in a market to purchase or sell financial instruments by way of trading for own account and at prices quoted by him (Market Maker), if

1. it thereby acts in its capacity as a Market Maker;
2. it has a licence pursuant to § 32 para. 1 sentence 1 in conjunction with § 1 para. 1 a sentence 2 no. 4 of the Banking Act,

3. sie nicht in die Geschäftsführung des Emittenten eingreift und keinen Einfluss auf ihn dahingehend ausübt, die betreffenden Aktien zu kaufen oder den Preis der Aktien zu stützen und

4. sie der Bundesanstalt unverzüglich, spätestens innerhalb von vier Handelstagen mitteilt, dass sie hinsichtlich der betreffenden Aktien als Market Maker tätig ist; für den Beginn der Frist gilt § 21 Abs. 1 Satz 3 und 4 entsprechend.

Die Person kann die Mitteilung auch schon zu dem Zeitpunkt abgeben, an dem sie beabsichtigt, hinsichtlich der betreffenden Aktien als Market Maker tätig zu werden.

(5) Stimmrechte aus Aktien, die nach den Absätzen 1 bis 4 bei der Berechnung des Stimmrechtsanteils unberücksichtigt bleiben, können mit Ausnahme von Absatz 2 Nr. 2 nicht ausgeübt werden.

(6) Das Bundesministerium der Finanzen kann durch Rechtsverordnung, die nicht der Zustimmung des Bundesrates bedarf,

1. eine geringere Höchstdauer für das Halten der Aktien nach Absatz 2 Nr. 1 festlegen,
2. nähere Bestimmungen erlassen über die Nichtberücksichtigung der Stimmrechte eines Market Maker nach Absatz 4 und

3. nähere Bestimmungen erlassen über elektronische Hilfsmittel, mit denen Weisungen nach Absatz 2 Nr. 2 erteilt werden können.

§ 24 Mitteilung durch Konzernunternehmen

Gehört der Meldepflichtige zu einem Konzern, für den nach den §§ 290, 340 i des Handelsgesetzbuchs ein Konzernabschluss aufgestellt werden muß, so können die Mitteilungspflichten nach § 21 Abs. 1 und 1 a durch das Mutterunternehmen oder, wenn das Mutterunternehmen selbst ein Tochterunternehmen ist, durch dessen Mutterunternehmen erfüllt werden.

3. it does not interfere in the management of the issuer and does not exercise any influence on it to acquire the relevant shares or back the price of the shares; and

4. it notifies the Bundesanstalt without undue delay, at the latest within four trading days, that it is acting as a Market Maker with respect to the relevant shares; § 21 para. 1 sentences 3 and 4 apply *mutatis mutandis* to the commencement of the period.

The person can also make the notification at the point in time at which it intends to commence acting as a Market Maker for the relevant shares.

(5) Voting rights arising from shares that are disregarded according to paragraphs 1 to 4 for purposes of calculating the proportion of voting rights cannot to be exercised with the exception of paragraph 2 no. 2.

(6) The Federal Ministry of Finance may, by way of a regulation that does not require the approval of the Bundesrat,

1. determine a lower maximum period for the holding of shares according to paragraph 2 no. 1;
2. issue further conditions on the disregarding of the voting rights of a Market Maker according to paragraph 4;

and

3. issue further conditions on electronic means by which instructions according to paragraph 2 no. 2 can be provided.

§ 24 Notification by a group undertaking

If the notifying person belongs to a group of consolidated companies for which consolidated annual accounts according to §§ 290, 340 i of the Commercial Code have to be prepared, the notification requirements according to § 21 paras. 1 and 1 a can be complied with by the parent undertaking or if the parent undertaking is itself a subsidiary by its parent undertaking.

§ 25 Mitteilungspflichten beim Halten von Finanzinstrumenten

(1) Wer unmittelbar oder mittelbar Finanzinstrumente hält, die ihrem Inhaber das Recht verleihen, einseitig im Rahmen einer rechtlich bindenden Vereinbarung mit Stimmrechten verbundene und bereits ausgegebene Aktien eines Emittenten, für den die Bundesrepublik Deutschland der Herkunftsstaat ist, zu erwerben, hat dies bei Erreichen, Überschreiten oder Unterschreiten der in § 21 Abs. 1 Satz 1 genannten Schwellen mit Ausnahme der Schwelle von 3 Prozent entsprechend § 21 Abs. 1 Satz 1 unverzüglich dem Emittenten und gleichzeitig der Bundesanstalt mitzuteilen. Die §§ 23 und 24 gelten entsprechend. Eine Zusammenrechnung mit den Beteiligungen nach den §§ 21 und 22 findet statt; Finanzinstrumente im Sinne des § 22 Abs. 1 Satz 1 Nr. 5 werden bei der Berechnung nur einmal berücksichtigt. Soweit bereits eine Mitteilung nach § 21, auch in Verbindung mit § 22, erfolgt oder erfolgt ist, ist eine zusätzliche Mitteilung auf Grund der Zusammenrechnung im Sinne des Satzes 3 nur erforderlich, wenn hierdurch eine weitere der in § 21 Abs. 1 Satz 1 genannten Schwellen erreicht, überschritten oder unterschritten wird.

(2) Beziehen sich verschiedene der in Absatz 1 genannten Finanzinstrumente auf Aktien des gleichen Emittenten, muss der Mitteilungspflichtige die Stimmrechte aus diesen Aktien zusammenrechnen.

(3) Das Bundesministerium der Finanzen kann durch Rechtsverordnung, die nicht der Zustimmung des Bundesrates bedarf, nähere Bestimmungen erlassen über den Inhalt, die Art, die Sprache, den Umfang und die Form der Mitteilung nach Absatz 1.

§ 26 Veröffentlichungspflichten des Emittenten und Übermittlung an das Unternehmensregister

(1) Ein Inlandsemitrent hat Informationen nach § 21 Abs. 1 Satz 1, Abs. 1 a und § 25 Abs. 1 Satz 1 oder nach entsprechenden Vorschriften anderer Mitgliedstaaten der Europäischen Union oder anderer

§ 25 Notification requirements relating to the holding of financial instruments

(1) A person directly or indirectly holding financial instruments which provide the holder with the entitlement to unilaterally acquire, in the framework of a legally binding agreement, shares in an issuer for whom the Federal Republic of Germany is the home state that have already been issued and that already have voting rights attached, is required to notify without undue delay both the Bundesanstalt and the issuer when reaching, exceeding or falling below the thresholds set out in § 21 para. 1 sentence 1, with the exception of the 3 percent threshold according to § 21 para. 1 sentence 1, §§ 23 and 24 apply *mutatis mutandis*. An aggregation with the holdings pursuant to §§ 21 und 22 is done; financial instruments as defined in § 22 para. 1 sentence 1 no. 5 are taken into consideration for the calculation only once. Insofar as a notification pursuant to § 21, also in conjunction with § 22, already occurs or has occurred, a further notification due to the aggregation pursuant to sentence 3 is only required if thereby a further threshold referred to in § 21 para. 1 sentence 1, is reached, exceeded or no longer reached.

(2) If various of the financial instruments referred to in paragraph 1 are related to shares in the same issuer, the notifying person must aggregate the voting rights from these shares.

(3) The Federal Ministry of Finance may, by way of a regulation, which does not require the approval of the Bundesrat, stipulate further provisions on content, type, language, scope and form of the notification according to paragraph 1.

§ 26 Publication obligations of the issuer and transmission to the Company Register

(1) A domestic issuer must publish information pursuant to § 21 para. 1 sentence 1, para. 1 a and § 25 para. 1 sentence 1 or according to the relevant provisions of another member state of the

Vertragsstaaten des Abkommens über den Europäischen Wirtschaftsraum unverzüglich, spätestens drei Handelstage nach Zugang der Mitteilung zu veröffentlicht; er übermittelt sie außerdem unverzüglich, jedoch nicht vor ihrer Veröffentlichung dem Unternehmensregister im Sinne des § 8 b des Handelsgesetzbuchs zur Speicherung. Erreicht, überschreitet oder unterschreitet ein Inlandsemitrent in Bezug auf eigene Aktien entweder selbst oder über eine in eigenem Namen, aber für Rechnung dieses Emittenten handelnde Person die Schwellen von 5 Prozent oder 10 Prozent durch Erwerb, Veräußerung oder auf sonstige Weise, gilt Satz 1 entsprechend mit der Maßgabe, dass abweichend von Satz 1 eine Erklärung zu veröffentlichten ist, deren Inhalt sich nach § 21 Abs. 1 Satz 1, auch in Verbindung mit einer Rechtsverordnung nach § 21 Absatz 3 bezieht, und die Veröffentlichung spätestens vier Handelstage nach Erreichen, Überschreiten oder Unterschreiten der genannten Schwellen zu erfolgen hat; wenn für den Emittenten die Bundesrepublik Deutschland der Herkunftsstaat ist, ist außerdem die Schwelle von 3 Prozent maßgeblich.

(2) Der Inlandsemitrent hat gleichzeitig mit der Veröffentlichung nach Absatz 1 Satz 1 und 2 diese der Bundesanstalt mitzuteilen.

(3) Das Bundesministerium der Finanzen kann durch Rechtsverordnung, die nicht der Zustimmung des Bundesrates bedarf, nähere Bestimmungen erlassen über

1. den Inhalt, die Art, die Sprache, den Umfang und die Form der Veröffentlichung nach Absatz 1 Satz 1 und
2. den Inhalt, die Art, die Sprache, den Umfang und die Form der Mitteilung nach Absatz 2.

§ 26 a Veröffentlichung der Gesamtzahl der Stimmrechte und Übermittlung an das Unternehmensregister

Ein Inlandsemitrent hat die Gesamtzahl der Stimmrechte am Ende eines jeden Kalendermonats, in dem es zu einer Zu- oder

European Union or another contracting state of the European Economic Area, without undue delay at the latest three trading days following receipt of the notification; it also transmits this information without undue delay to the Company Register as defined in § 8 b of the Commercial Code for storage, but not prior to publication. If, with respect to its own shares, the domestic issuer reaches, exceeds or falls below the thresholds of 5 or 10 percent either itself or by way of a person acting in its own name but for the issuer's account, by way of acquisition, sale or in another manner, sentence 1 applies *mutatis mutandis* with the proviso that deviating from sentence 1, a statement must be published the content of which is determined by § 21 para. 1 sentence 1, also in conjunction with a regulation pursuant to § 21 paragraph 3, and the publication must occur at the latest four trading days following the reaching, exceeding or falling below the relevant threshold; if the Federal Republic of Germany is the home state for the issuer, the threshold of 3 percent is also applicable.

(2) The domestic issuer must notify the Bundesanstalt contemporaneously with the publication pursuant to paragraph 1 sentences 1 and 2.

(3) The Federal Ministry of Finance may stipulate, by way of a regulation which does not require the approval of the Bundesrat, detailed provisions on

1. content, type, language, scope and form of the publication pursuant to paragraph 1 sentence 1; and
2. content, type, language, scope and form of the notification pursuant to paragraph 2.

§ 26 a Publication of the total number of voting rights and transmission to the Company Register

At the end of each calendar month in which an increase or decrease in voting rights has occurred, a domestic issuer

Abnahme von Stimmrechten gekommen ist, in der in § 26 Abs. 1 Satz 1, auch in Verbindung mit einer Rechtsverordnung nach Absatz 3 Nr. 1, vorgesehener Weise zu veröffentlichen und gleichzeitig der Bundesanstalt entsprechend § 26 Abs. 2, auch in Verbindung mit einer Rechtsverordnung nach Absatz 3 Nr. 2, die Veröffentlichung mitzuteilen. Er übermittelt die Information außerdem unverzüglich, jedoch nicht vor ihrer Veröffentlichung dem Unternehmensregister im Sinne des § 8 b des Handelsgesetzbuchs zur Speicherung.

§ 27 Nachweis mitgeteilter Beteiligungen

Wer eine Mitteilung nach § 21 Abs. 1, 1 a oder § 25 Abs. 1 abgegeben hat, muß auf Verlangen der Bundesanstalt oder des Emittenten, für den die Bundesrepublik Deutschland der Herkunftsstaat ist, das Bestehen der mitgeteilten Beteiligung nachweisen.

§ 27 a Mitteilungspflichten für Inhaber wesentlicher Beteiligungen

- (1) Ein Meldepflichtiger im Sinne der §§ 21 und 22, der die Schwelle von 10 Prozent der Stimmrechte aus Aktien oder eine höhere Schwelle erreicht oder überschreitet, muss dem Emittenten, für den die Bundesrepublik Deutschland Herkunftsstaat ist, die mit dem Erwerb der Stimmrechte verfolgten Ziele und die Herkunft der für den Erwerb verwendeten Mittel innerhalb von 20 Handelstagen nach Erreichen oder Überschreiten dieser Schwellen mitteilen. Eine Änderung der Ziele im Sinne des Satzes 1 ist innerhalb von 20 Handelstagen mitzuteilen. Hinsichtlich der mit dem Erwerb der Stimmrechte verfolgten Ziele hat der Meldepflichtige anzugeben, ob
1. die Investition der Umsetzung strategischer Ziele oder der Erzielung von Handelsgewinnen dient,
 2. er innerhalb der nächsten zwölf Monate weitere Stimmrechte durch Erwerb oder auf sonstige Weise zu erlangen beabsichtigt,
 3. er eine Einflussnahme auf die Besetzung von Verwaltungs-, Leitungs- und Auf-

must publish the total number of voting rights in the manner set out in § 26 para. 1 sentence 1, also in conjunction with a regulation pursuant to paragraph 3 no. 1, and to contemporaneously notify the Bundesanstalt of the publication pursuant to § 26 para. 2, also in conjunction with a regulation pursuant to paragraph 3 no. 2. It also must provide the information, without undue delay however not prior to publication, to the Company Register as defined in § 8 b of the Commercial Code for storage.

§ 27 Proof of notified holdings

Anyone who has made a notification pursuant to § 21 para. 1, 1 a or § 25 para. 1, must upon request by the Bundesanstalt or the issuer for whom the Federal Republic of Germany is the home state, prove the existence of the notified holdings.

§ 27 a Notification requirements for holders of substantial holdings

- (1) A notifying person according to §§ 21 and 22, who has reached or exceeded the 10 percent threshold or a higher threshold of voting rights arising from shares must notify the issuer for whom the Federal Republic of Germany is the home state, of the aims pursued by the acquisition of the voting rights and the origin of the means used for the acquisition within 20 trading days following the reaching or exceeding of these thresholds. A change of the aim as defined in sentence 1 must be notified within 20 trading days. With respect to the aims pursued by the acquisition of the voting rights, the notifying person must state whether:
1. the investment is for purposes of the implementation of strategic aims or the attainment of trading profits;
 2. it intends to obtain further voting rights by way of acquisition or in another manner within the next twelve months;
 3. it is seeking to exercise influence on the appointment of members of the ad-

sichtsorganen des Emittenten anstrebt und

4. er eine wesentliche Änderung der Kapitalstruktur der Gesellschaft, insbesondere im Hinblick auf das Verhältnis von Eigen- und Fremdfinanzierung und die Dividendenpolitik anstrebt.

Hinsichtlich der Herkunft der verwendeten Mittel hat der Meldepflichtige anzugeben, ob es sich um Eigen- oder Fremdmittel handelt, die der Meldepflichtige zur Finanzierung des Erwerbs der Stimmrechte aufgenommen hat. Eine Mitteilungspflicht nach Satz 1 besteht nicht, wenn der Schwellenwert auf Grund eines Angebots im Sinne des § 2 Abs. 1 des Wertpapierwerbs- und Übernahmegesetzes erreicht oder überschritten wurde. Die Mitteilungspflicht besteht ferner nicht für Kapitalanlagegesellschaften, Investmentaktiengesellschaften sowie ausländische Verwaltungsgesellschaften und Investmentgesellschaften im Sinne der Richtlinie 2009/65/EG, die einem Artikel 56 Absatz 1 Satz 1 der Richtlinie 2009/65/EG entsprechenden Verbot unterliegen, sofern eine Anlagegrenze von 10 Prozent oder weniger festgelegt worden ist; eine Mitteilungspflicht besteht auch dann nicht, wenn eine Artikel 57 Absatz 1 Satz 1 und Absatz 2 der Richtlinie 2009/65/EG entsprechende zulässige Ausnahme bei der Überschreitung von Anlagegrenzen vorliegt.

(2) Der Emittent hat die erhaltene Information oder die Tatsache, dass die Mitteilungspflicht nach Absatz 1 nicht erfüllt wurde, entsprechend § 26 Abs. 1 Satz 1 in Verbindung mit der Rechtsverordnung nach § 26 Abs. 3 Nr. 1 zu veröffentlichen.

(3) Die Satzung eines Emittenten mit Sitz im Inland kann vorsehen, dass Absatz 1 keine Anwendung findet. Absatz 1 findet auch keine Anwendung auf Emittenten mit Sitz im Ausland, deren Satzung oder sonstige Bestimmungen eine Nichtanwendung vorsehen.

(4) Das Bundesministerium der Finanzen kann durch Rechtsverordnung, die nicht der Zustimmung des Bundesrates

ministration, management and supervisory bodies of the issuer; and

4. it is seeking a significant change to the capital structure of the company, in particular with respect to the ratio between equity and debt financing and the dividend policy.

With respect to the origin of the means used, the notifying person must state whether these are own resources or external funds that the notifying person used to finance the acquisition of the voting rights. A notification requirement pursuant to sentence 1 does not apply if the threshold was reached or exceeded due to an offer as defined in § 2 para. 1 of the Securities Acquisition and Takeover Act. The notification requirement does not apply to investment management companies, investment stock corporations as well as foreign management companies and foreign investment companies as defined in Directive 2009/65/EC, who are subject to a prohibition equivalent to Article 56 paragraph 1 sentence 1 of Directive 2009/65/EC, insofar as an investment threshold of 10 percent or less has been set; a notification requirement also does not exist if an exception admissible pursuant to Article 57 paragraph 1 sentence 1 and paragraph 2 of Directive 2009/65/EC with respect to exceeding investment limits applies.

(2) The issuer is required to publish the information received, or the fact that the notification requirement pursuant to paragraph 1 has not been complied with, according to § 26 para. 1 sentence 1 in conjunction with the regulation pursuant to § 26 para. 3 no. 1.

(3) The articles of incorporation of an issuer with its registered office in Germany can provide that paragraph 1 does not apply. Paragraph 1 also does not apply to issuers with registered office outside of Germany, where its articles of incorporation or other regulations provide that it is not applicable.

(4) The Federal Ministry of Finance may, by way of a regulation, which does not require the approval of the Bundesrat,

bedarf, nähere Bestimmungen über den Inhalt, die Art, die Sprache, den Umfang und die Form der Mitteilungen nach Absatz 1 erlassen.

§ 28 Rechtsverlust

Rechte aus Aktien, die einem Meldepflichtigen gehören oder aus denen ihm Stimmrechte gemäß § 22 Abs. 1 Satz 1 Nr. 1 oder 2 zugerechnet werden, bestehen nicht für die Zeit, für welche die Mitteilungspflichten nach § 21 Abs. 1 oder 1a nicht erfüllt werden. Dies gilt nicht für Ansprüche nach § 58 Abs. 4 des Aktiengesetzes und § 271 des Aktiengesetzes, wenn die Mitteilung nicht vorsätzlich unterlassen wurde und nachgeholt worden ist. Sofern die Höhe des Stimmrechtsanteils betroffen ist, verlängert sich die Frist nach Satz 1 bei vorsätzlicher oder grob fahrlässiger Verletzung der Mitteilungspflichten um sechs Monate. Satz 3 gilt nicht, wenn die Abweichung bei der Höhe der in der vorangegangenen unrichtigen Mitteilung angegebenen Stimmrechte weniger als 10 Prozent des tatsächlichen Stimmrechtsanteils beträgt und keine Mitteilung über das Erreichen, Überschreiten oder Unterschreiten einer der in § 21 genannten Schwellen unterlassen wird.

§ 29 Richtlinien der Bundesanstalt

Die Bundesanstalt kann Richtlinien aufstellen, nach denen sie für den Regelfall beurteilt, ob die Voraussetzungen für einen mitteilungspflichtigen Vorgang oder eine Befreiung von den Mitteilungspflichten nach § 21 Abs. 1 gegeben sind. Die Richtlinien sind im elektronischen Bundesanzeiger zu veröffentlichen.

§ 29 a Befreiungen

(1) Die Bundesanstalt kann Inlands-emittenten mit Sitz in einem Drittstaat von den Pflichten nach § 26 Abs. 1 und § 26 a freistellen, soweit diese Emittenten gleichwertigen Regeln eines Drittstaates unterliegen oder sich solchen Regeln unterwerfen.

stipulate further provisions on the content, type, language, scope and form of the notifications pursuant to paragraph 1.

§ 28 Loss of rights

Rights arising from shares that belong to a notifying person or from which voting rights are attributed to it according to § 22 para. 1 sentence 1 no. 1 or 2, do not exist for the period of time during which the notification requirements pursuant to § 21 para. 1 or 1a have not been complied with. This does not apply to claims pursuant to § 58 para. 4 of the Stock Corporation Act and § 271 of the Stock Corporation Act, if the notification was not willfully omitted and has since been made. Insofar as the amount of the percentage of voting rights is affected, the deadline according to sentence 1 is extended by six months in the case of wilful or grossly negligent breach of the notification requirement. Sentence 3 does not apply if the variation in the amount of the voting rights given in the preceding incorrect notification was less than 10 percent of the actual voting right proportion and no notification with respect to reaching, exceeding or falling below a threshold referred to in § 21 has been omitted.

§ 29 Bundesanstalt guidelines

The Bundesanstalt may issue guidelines according to which it assesses as a rule whether the requirements for an event requiring notification or the release from the notification requirements pursuant to § 21 para. 1 have been fulfilled. The guidelines must be published in the electronic Federal Gazette.

§ 29 a Exemptions

(1) The Bundesanstalt may exempt domestic issuers with registered office in a third country from the requirements pursuant to §§ 26 para. 1 and 26 a provided that these issuers are subject to equivalent requirements applicable in that third country or choose to comply with such requirements.

(2) Emittenten, denen die Bundesanstalt eine Befreiung nach Absatz 1 erteilt hat, müssen Informationen über Umstände, die denen des § 21 Abs. 1 Satz 1, Abs. 1 a, § 25 Abs. 1 Satz 1, § 26 Abs. 1 Satz 1 und 2 und § 26 a entsprechen und die nach den gleichwertigen Regeln eines Drittstaates der Öffentlichkeit zur Verfügung zu stellen sind, in der in § 26 Abs. 1 Satz 1, auch in Verbindung mit einer Rechtsverordnung nach Absatz 3, geregelten Weise veröffentlichten und gleichzeitig der Bundesanstalt mitteilen. Die Informationen sind außerdem unverzüglich, jedoch nicht vor ihrer Veröffentlichung dem Unternehmensregister im Sinne des § 8 b des Handelsgesetzbuchs zur Speicherung zu übermitteln.

(3) Für die Zurechnung der Stimmrechte nach § 22 gilt ein Unternehmen mit Sitz in einem Drittstaat, das nach § 32 Abs. 1 Satz 1 in Verbindung mit § 1 Abs. 1 a Satz 2 Nr. 3 des Kreditwesengesetzes einer Zulassung für die Finanzportfolioverwaltung bedürfte, wenn es seinen Sitz oder seine Hauptverwaltung im Inland hätte, hinsichtlich der Aktien, die von ihm im Rahmen der Finanzportfolioverwaltung gehalten werden, nicht als Tochterunternehmen im Sinne von § 22 Abs. 3. Das setzt voraus, dass

1. es bezüglich seiner Unabhängigkeit Anforderungen genügt, die denen für Wertpapierdienstleistungsunternehmen nach § 22 Abs. 3 a, auch in Verbindung mit einer Rechtsverordnung nach § 22 Abs. 5, gleichwertig sind,
 2. der Meldepflichtige der Bundesanstalt die Namen dieses Unternehmens und die für dessen Überwachung zuständige Behörde oder das Fehlen einer solchen mitteilt und
 3. der Meldepflichtige gegenüber der Bundesanstalt erklärt, dass die Voraussetzungen der Nummer 1 erfüllt sind.
- (4) Das Bundesministerium der Finanzen wird ermächtigt, durch Rechtsverordnung, die nicht der Zustimmung des Bundesrates bedarf, nähere Bestimmungen

(2) Issuers for which the Bundesanstalt has granted an exemption according to para. 1 must publish information on the circumstances which are equivalent to those § 21 para. 1 sentence 1, para. 1 a, § 25 para. 1 sentence 1, § 26 para. 1 sentences 1 and 2 und § 26 a and which must be made available to the public according to the equivalent requirements of a third country in the manner defined in § 26 para. 1 sentence 1 also in conjunction with a regulation according to paragraph 3 and contemporaneously inform the Bundesanstalt of this publication. The information must also be transmitted without undue delay, to the Company Register as defined in § 8 b of the Commercial Code for storage, but not prior to publication.

(3) For the attribution of voting rights according to § 22, an undertaking with registered office in a third country which would require an authorisation according to § 32 para. 1 sentence 1 in conjunction with § 1 para. 1 a sentence 2 no. 3 of the Banking Act for financial portfolio management if it had its registered office or main management in Germany is not treated as a subsidiary according to § 22 para. 3 with respect to shares which are managed by it in the course of financial portfolio management services. This requires that

1. it complies with requirements regarding its independence which are equivalent to those applying to investment services undertakings according to § 22 para. 3 a, also in conjunction with a regulation according to § 22 para. 5;
 2. the notifying person informs the Bundesanstalt on the name of this undertaking and the authority competent for its supervision or the lack thereof;
 3. the notifying person declares vis-à-vis the Bundesanstalt that the requirements according to number 1 are met.
- (4) The Federal Ministry of Finance is empowered to stipulate, by issuing a regulation that does not require the approval of the Bundesrat, detailed provisions on

über die Gleichwertigkeit von Regeln eines Drittstaates und die Freistellung von Emittenten nach Absatz 1 und Unternehmens nach Absatz 3 zu erlassen.

§ 30 Handelstage

- (1) Für die Berechnung der Mitteilungs- und Veröffentlichungsfristen nach diesem Abschnitt gelten als Handelstage alle Kalenderstage, die nicht Sonnabende, Sonntage oder zumindest in einem Land landeseinheitliche gesetzlich anerkannte Feiertage sind.
- (2) Die Bundesanstalt stellt im Internet unter ihrer Adresse einen Kalender der Handelstage zur Verfügung.

Abschnitt 5 a

Norwendige Informationen für die Wahrnehmung von Rechten aus Wertpapieren

§ 30 a Pflichten der Emittenten gegenüber Wertpapierinhabern

- (1) Emittenten, für die die Bundesrepublik Deutschland der Herkunftsstaat ist, müssen sicherstellen, dass
1. alle Inhaber der zugelassenen Wertpapiere unter gleichen Voraussetzungen gleich behandelt werden;
 2. alle Einrichtungen und Informationen, die die Inhaber der zugelassenen Wertpapiere zur Ausübung ihrer Rechte benötigen, im Inland öffentlich zur Verfügung stehen;
 3. Daten zu Inhabern zugelassener Wertpapiere vor einer Kenntnisnahme durch Unbefugte geschützt sind;
 4. für die gesamte Dauer der Zulassung der Wertpapiere mindestens ein Finanzinstitut als Zahlstelle im Inland bestimmt ist, bei der alle erforderlichen Maßnahmen hinsichtlich der Wertpapiere, im Falle der Vorlegung der Wertpapiere bei dieser Stelle kostenfrei, bewirkt werden können;
 5. im Falle zugelassener Aktien jeder stimmberechtigten Person zusammen

the equivalence of third country regulations and the exemption of issuers according to para. 1 and undertakings according to paragraph 3.

§ 30 Trading days

- (1) For the calculation of the notification and publication deadlines for this chapter, trading days are considered to be all calendar days, which are not Saturdays, Sundays or, in at least one federal state, public holidays applying to the entire federal state.
- (2) The Bundesanstalt provides a calendar of trading days in the internet at its internet address.

Chapter 5 a

Information required to use rights arising out of securities

§ 30 a Issuer duties regarding securities holders

- (1) Issuers for whom the Federal Republic of Germany is the home state must ensure that
1. all holders of admitted securities are treated in the same way when the same requirements apply;
 2. all facilities and information which holders of admitted securities require for the purpose of exercising their rights are publicly available in Germany;
 3. the data of holders of admitted securities is preserved against compromise;
 4. there is, during the entire period during which the securities are admitted to trading, at least one financial institution acting as payment agent in Germany at which all necessary measures in relation to the securities can be effected free of charge in case the securities are presented;
 5. in the case of shares admitted to trading, upon request a proxy form on pa-

mit der Einladung zur Hauptversammlung oder nach deren Anberaumung auf Verlangen in Textform ein Formular für die Erteilung einer Vollmacht für die Hauptversammlung übermittelt wird;

6. im Falle zugelassener Schuldtitel im Sinne des § 2 Abs. 1 Satz 1 Nr. 3 mit Ausnahme von Wertpapieren, die zugleich unter § 2 Abs. 1 Satz 1 Nr. 2 fallend oder die ein zumindest bedingtes Recht auf den Erwerb von Wertpapieren nach § 2 Abs. 1 Satz 1 Nr. 1 oder Nr. 2 begründen, jeder stimmberechtigten Person zusammen mit der Einladung zur Gläubigerversammlung oder nach deren Anberaumung auf Verlangen gleichzeitig in Textform ein Formular für die Erteilung einer Vollmacht für die Gläubigerversammlung übermittelt wird.

(2) Ein Emittent von zugelassenen Schuldtiteln im Sinne von Absatz 1 Nr. 6, für den die Bundesrepublik Deutschland der Herkunftsstaat ist, kann die Gläubigerversammlung in jedem Mitgliedstaat der Europäischen Union oder anderen Vertragsstaat des Abkommens über den Europäischen Wirtschaftsraum abhalten. Das setzt voraus, dass in dem Staat alle für die Ausübung der Rechte erforderlichen Einrichtungen und Informationen für die Schuldtitelinhaber verfügbar sind und zur Gläubigerversammlung ausschließlich Schuldtitelinhaber mit einer Mindestrücklage von 50 000 Euro oder dem am Ausgabebetrag entsprechenden Gegenwert in einer anderen Währung eingeladen werden.

(3) Für die Bestimmungen nach Absatz 1 Nr. 1 bis 5 sowie nach § 30 b Abs. 3 Nr. 1 stehen die Inhaber Aktien vertretender Zertifikate den Inhabern der vertretenen Aktien gleich.

§ 30 b Veröffentlichung von Mitteilungen und Übermittlung im Wege der Datenerföbertragung

- (1) Der Emittent von zugelassenen Aktien, für den die Bundesrepublik Deutschland der Herkunftsstaat ist, muss
1. die Einberufung der Hauptversammlung einschließlich der Tagesordnung,

per to grant power of attorney for the general meeting is provided to each person entitled to vote together with the notice for the general meeting or after its convention;

6. in the case of admitted debt instruments as defined in § 2 para. 1 sentence 1 no. 3 with the exception of securities which also fall within the scope of § 2 para. 1 sentence 1 no. 2 or which establish at least a conditional right to acquire securities as defined in § 2 para. 1 sentence 1 no. 1 or no. 2, upon request a proxy form on paper to grant power of attorney for the general creditors meeting is provided to each person entitled to vote, together with the notice concerning the meeting or after its convention.

(2) An issuer of admitted debt instruments as defined in paragraph 1 no. 6 for whom the Federal Republic of Germany is the home state can hold the creditors meeting in each member state of the European Union or another contracting state of the European Economic Area. This only applies if in that country all facilities and information which holders of debt instruments require for the purpose of exercising their rights are available and only holders of debt instruments with a denomination per unit of at least EUR 50,000 or the equivalent on the day of issue in another currency are invited.

(3) With regard to the provisions in paragraph 1 nos. 1 to 5 as well as § 30 b para. 3 no. 1 holders of certificates representing shares are treated in the same way as holders of shares.

§ 30 b Publication of notifications and transmission by way of electronic data communication

- (1) An issuer of shares for whom the Federal Republic of Germany is the home state must publish
1. information on the convention of the general meeting, including the agenda,

die Gesamtzahl der Aktien und Stimmrechte im Zeitpunkt der Einberufung der Hauptversammlung und die Rechte der Aktionäre bezüglich der Teilnahme an der Hauptversammlung sowie

2. Mitteilungen über die Ausschüttung und Auszahlung von Dividenden, die Ausgabe neuer Aktien und die Vereinbarung oder Ausübung von Umtausch-, Bezugs-, Einziehung- und Zeichnungsrechten unverzüglich im elektronischen Bundesanzeiger veröffentlichten. Soweit eine entsprechende Veröffentlichung im elektronischen Bundesanzeiger auch durch sonstige Vorschriften vorge-schrieben wird, ist eine einmalige Veröffentlichung ausreichend.

(2) Der Emittent zugelassener Schuld-titel im Sinne von § 30a Abs. 1 Nr. 6, für den die Bundesrepublik Deutschland der Herkunftsstaat ist, muss

1. den Ort, den Zeitpunkt und die Tages-ordnung der Gläubigerversammlung und Mitteilungen über das Recht der Schuldtitelinhaber zur Teilnahme daran sowie

2. Mitteilungen über die Ausübung von Umtausch-, Zeichnungs- und Kündi-gungsrechten sowie über die Zinszah-lungen, die Rückzahlungen, die Auslo-sungen und die bisher gekündigten oder ausgelosten, noch nicht eingelösten Stücke unverzüglich im elektronischen Bundesanzeiger veröffentlichten. Ab-satz 1 Satz 2 gilt entsprechend.

(3) Unbeschadet der Veröffentlichungs-pflichten nach den Absätzen 1 und 2 dürfen Emittenten, für die die Bundes-republik Deutschland der Herkunftsstaat ist, Informationen an die Inhaber zuge-lassener Wertpapiere im Wege der Daten-fernübertragung übermitteln, wenn die dadurch entstehenden Kosten nicht un-ter Verletzung des Gleichbehandlungs-grundsatzes nach § 30a Abs. 1 Nr. 1 den Wertpapierinhabern auferlegt werden und

1. im Falle zugelassener Aktien

a) die Hauptversammlung zugestimmt hat,

the total number of shares and voting rights at the time of the convention of the general meeting and the rights of shareholders regarding the attention of the general meeting as well as

2. notifications on the distribution and payment of dividends, the issue of new shares and arrangements or exercise of conversion, subscription, cancellation and subscription rights without undue delay in the electronic Federal Gazette. Insofar as a respective publication in the electronic Federal Gazette is also required according to other provisions, one publication is sufficient.

(2) The issuer of admitted debt instru-ments as defined in § 30a para. 1 no. 6 for whom the Federal Republic of Ger-many is the home state must publish

1. the place, time and the agenda of a creditors meeting and notifications on the rights of holders of debt instru-ments to attend the meeting as well as

2. information on the exercise of conver-sion, subscription, and termination rights as well as on interest payments, redemptions and the allotments as well as instruments cancelled or allotted but not yet redeemed without undue delay in the electronic Federal Gazette. Para-graph 1 sentence 2 applies *mutatis mu-tandis*.

(3) Notwithstanding the publication re-quirements pursuant to paragraphs 1 and 2, issuers for whom the Federal Republic of Germany is the home state may trans-mit information to the holders of admit-ted securities by way of electronic data communication if the costs incurred by this are not to be borne by securities hold-ers in violation of the principle of equal treatment according to § 30a para. 1 no. 1 and

1. regarding admitted shares

a) the general meeting has approved this,

b) die Wahl der Art der Datenfernüber-tragung nicht vom Sitz oder Wohn-sitz der Aktionäre oder der Per-sonen, denen Stimmrechte in den Fällen des § 22 zugerechnet werden, abhängt,

c) Vorkehrungen zur sicheren Identifi-zierung und Adressierung der Aktio-näre oder derjenigen, die Stimmrech-te ausüben oder Weisungen zu deren Ausübung erteilen dürfen, getroffen worden sind und

d) die Aktionäre oder in Fällen des § 22 Abs. 1 Satz 1 Nr. 1, 3, 4 und Abs. 2 die zur Ausübung von Stimmrechten Berechtigten in die Übermittlung im Wege der Datenfernübertragung ausdrücklich eingewilligt haben oder einer Bitte in Textform um Zustim-mung nicht innerhalb eines ange-messenen Zeitraums widersprochen und die dadurch als erteilt geltende Zustimmung nicht zu einem späte-ren Zeitpunkt widerrufen haben,

2. im Falle zugelassener Schuldtitel im Sinne von § 30a Abs. 1 Nr. 6

a) eine Gläubigerversammlung zuge-stimmt hat,

b) die Wahl der Art der Datenfernüber-tragung nicht vom Sitz oder Wohn-sitz der Schuldtitelinhaber oder de-ren Bevollmächtigten abhängt,

c) Vorkehrungen zur sicheren Identifi-zierung und Adressierung der Schuldtitelinhaber getroffen worden sind,

d) die Schuldtitelinhaber in die Über-mittlung im Wege der Datenfern-übertragung ausdrücklich eingewil-ligt haben oder einer Bitte in Text-form um Zustimmung nicht innerhalb eines angemessenen Zeit-raums widersprochen und die da-durch als erteilt geltende Zustim-mung nicht zu einem späteren Zeit-punkt widerrufen haben.

b) the choice of the type of electronic data communication does not de-pend upon the place of the registered office or the place of residence of the shareholders or of persons to whom voting rights are attributed, in the cases referred to in § 22;

c) arrangements for safe identification and addressing shareholders or the persons entitled to exercise voting rights or give instructions for their exercise have been put in place, and

d) the shareholders, or in the cases re-ferred to in § 22 para. 1 sentence 1 nos. 1, 3, 4 and para. 2 the persons entitled to exercise voting rights have given their express consent for the transmission by way of elec-tronic data communication or have not objected within a reasonable pe-riod of time to a written request for consent and have not rescinded their consent deemed to be granted by this at a later point in time,

2. regarding admitted debt instruments as defined in § 30a para. 1 no. 6

a) the general creditors meeting has approved this,

b) the choice of the type of electronic data communication does not de-pend upon the place of the registered office or the place of residence of the holder of debt instruments or their proxies;

c) arrangements for safe identification of and addressing the holders of debt instruments have been put in place;

d) the holders of debt instruments have given their express consent for the transmission by way of electronic data communication or have not ob-jected within a reasonable period of time to a written request for consent and have not rescinded their consent deemed to be granted by this at a later point in time,

§ 30 c Änderungen der Rechtsgrundlage des Emittenten

Der Emittent zugelassener Wertpapiere, für den die Bundesrepublik Deutschland der Herkunftsstaat ist, muss beabsichtigte Änderungen seiner Satzung oder seiner sonstigen Rechtsgrundlagen, die die Rechte der Wertpapierinhaber betreffen, der Bundesanstalt und den Zulassungsstellen inländischen oder ausländischen organisierten Märkte, an denen seine Wertpapiere zum Handel zugelassen sind, unverzüglich nach der Entscheidung, den Änderungsentswurf dem Beschlussorgan, das über die Änderung beschließen soll, vorlegen, spätestens aber zum Zeitpunkt der Einberufung des Beschlussorgans mitteilen.

§ 30 d Vorschriften für Emittenten aus der Europäischen Union und dem Europäischen Wirtschaftsraum

Die Vorschriften der §§ 30 a bis 30 c finden auch Anwendung auf Emittenten, für die nicht die Bundesrepublik Deutschland, sondern ein anderer Mitgliedstaat der Europäischen Union oder Vertragsstaat des Abkommens über den Europäischen Wirtschaftsraum der Herkunftsstaat ist, wenn ihre Wertpapiere zum Handel an einem inländischen organisierten Markt zugelassen sind und ihr Herkunftsstaat für sie keine den §§ 30 a bis 30 c entsprechenden Vorschriften vorsieht.

§ 30 e Veröffentlichung zusätzlicher Angaben und Übermittlung an das Unternehmensregister

(1) Ein Inlandsemittent muss

jede Änderung der mit den zugelassenen Wertpapieren verbundenen Rechte sowie

a) im Falle zugelassener Aktien der Rechte, die mit derivativen vom Emittenten selbst begebenen Wertpapieren verbunden sind, sofern sie ein Umtausch- oder Erwerbsrecht auf die zugelassenen Aktien des Emittenten verschaffen,

§ 30 c Changes to the constitutional documents of the issuer

The issuer of admitted securities for whom the Federal Republic of Germany is the home state must inform the Bundesanstalt and admission offices of the German or foreign regulated markets on which its securities are admitted to trading on intended amendments of its articles of incorporation or other constitutional documents without undue delay after taking the decision to submit the draft amendments to its decision making body which shall decide on the amendment, however, at the latest at the time the meeting of the decision making body is convened.

§ 30 d Provisions for issuers from the European Union or the European Economic Area

The provisions in §§ 30 a to 30 c also apply *mutatis mutandis* to issuers for whom the Federal Republic of Germany is not the home state but another member state of the European Union or contracting state of the European Economic Area where their securities are admitted to trading on a German regulated market and their home state has not implemented provisions equivalent to §§ 30 a to 30 c for them.

§ 30 e Publication of additional information and transmission to the Company Register

(1) A domestic issuer must publish without undue delay

1. each change in the rights attached to the admitted securities and

a) in the case of admitted shares, changes to the rights attached to the derivative securities issued by that issuer itself if they give a right to convert or acquire the issuer's admitted shares,

b) im Falle anderer Wertpapiere als Aktien Änderungen der Ausstattung dieser Wertpapiere, insbesondere von Zinssätzen, oder der damit verbundenen Bedingungen, soweit die Rechte hiervon indirekt betroffen sind,

c) bei Wertpapieren, die den Gläubigern ein Umtausch- oder Bezugsrecht auf Aktien einräumen, alle Änderungen der Rechte, die mit den Aktien verbunden sind, auf die sich das Umtausch- oder Bezugsrecht bezieht,

2. die Aufnahme von Anleihen mit Ausnahme staatlicher Schuldverschreibungen im Sinne des § 36 des Börsengesetzes sowie die für sie übernommenen Gewährleistungen, sofern er nicht eine internationale öffentliche Einrichtung ist, der mindestens ein Mitgliedstaat der Europäischen Union oder ein anderer Vertragsstaat des Abkommens über den Europäischen Wirtschaftsraum angehört, oder er nicht ausschließlich Wertpapiere begibt, die durch den Bund garantiert werden, und

3. Informationen, die er in einem Drittstaat veröffentlicht und die für die Öffentlichkeit in der Europäischen Union und dem Europäischen Wirtschaftsraum Bedeutung haben können, unverzüglich veröffentlicht und gleichzeitig der Bundesanstalt diese Veröffentlichung mitteilt. Er übermittelt diese Informationen außerdem unverzüglich, jedoch nicht vor ihrer Veröffentlichung dem Unternehmensregister im Sinne des § 8 b des Handelsgesetzbuchs zur Speicherung.

(2) Das Bundesministerium der Finanzen wird ermächtigt, durch Rechtsverordnung, die nicht der Zustimmung des Bundesrates bedarf, nähere Bestimmungen zu erlassen über den Mindestinhalt, die Art, die Sprache, den Umfang und die Form der Veröffentlichung und der Mitteilung nach Absatz 1 Satz 1.

b) in the case of securities other than shares, changes to the terms of these securities, in particular of interest rights or conditions connected to this, to the extent that rights attached to the securities are indirectly affected by this,

c) in the case of securities giving creditors a right to convert to or subscribe shares, all changes to the rights attached to the shares to which the right to convert or subscribe relates,

2. any new debt security issue, with the exception of government debt instruments as defined in § 36 of the Stock Exchange Act, and guarantees assumed for them to the extent that the issuer is not an international public entity of which at least one member state of the European Union or another contracting state of the European Economic Area is a member or if it does not solely issue securities guaranteed by the German Federation, and

3. information it publishes in a third country and which might be of relevance to the public in the European Union and the European Economic Area, and contemporaneously inform the Bundesanstalt of this publication. Furthermore, it transmits this information without undue delay to the Company Register as defined in § 8 b of the Commercial Code for storage, but not prior to publication.

(2) The Federal Ministry of Finance is empowered to issue, by way of a regulation which does not require the approval of the Bundesrat, detailed provisions on the minimum content, type, language, scope and form of the publication and notification according to paragraph 1 sentence 1.

§ 30 f Befreiung

(1) Die Bundesanstalt kann Inlands-emittenten mit Sitz in einem Drittstaat von den Pflichten nach den §§ 30 a, 30 b und 30 e Abs. 1 Satz 1 Nr. 1 und 2 freistellen, soweit diese Emittenten gleichwertigen Regeln eines Drittstaates unterliegen oder sich solchen Regeln unterwerfen.

(2) Emittenten, denen die Bundesanstalt eine Befreiung nach Absatz 1 erteilt hat, müssen Informationen über Umstände im Sinne des § 30 e Abs. 1 Satz 1 Nr. 1 und 2, die nach den gleichwertigen Regeln eines Drittstaates der Öffentlichkeit zur Verfügung zu stellen sind, nach Maßgabe des § 30 e Abs. 1 in Verbindung mit einer Rechtsverordnung nach § 30 e Abs. 2 veröffentlichen und die Veröffentlichung gleichzeitig der Bundesanstalt mitteilen; sie müssen die Informationen außerdem unverzüglich, jedoch nicht vor der Veröffentlichung dem Unternehmensregister im Sinne des § 8 b des Handelsgesetzbuchs zur Speicherung übermitteln.

(3) Das Bundesministerium der Finanzen wird ermächtigt, durch Rechtsverordnung, die nicht der Zustimmung des Bundesrates bedarf, nähere Bestimmungen über die Gleichwertigkeit von Regeln eines Drittstaates und die Freistellung von Emittenten nach Absatz 1 zu erlassen.

§ 30 g Ausschluss der Anfechtung

Die Anfechtung eines Hauptversammlungsbeschlusses kann nicht auf eine Verletzung der Vorschriften dieses Abschnitts gestützt werden.

Abschnitt 5 b
Leerverkäufe und Geschäfte
in Derivaten§ 30 h Verbot ungedeckter Leerverkäufe
in Aktien und bestimmten Schuldtiteln

(1) Es ist verboten, ungedeckte Leerverkäufe in
1. Aktien oder

§ 30 f Exemption

(1) The Bundesanstalt may exempt domestic issuers with registered office in a third country from the requirements pursuant to §§ 30 a, 30 b and 30 e para. 1 sentence 1 nos. 1 and 2 provided that these issuers are subject to equivalent requirements applicable in that third country or choose to comply with such requirements.

(2) Issuers for which the Bundesanstalt has granted an exemption according to paragraph 1 must publish information on the circumstances as defined in § 30 e para. 1 sentence 1 nos. 1 and 2 which must be made available to the public according to the equivalent requirements of a third country according to § 30 e para. 1 in conjunction with a regulation accordingly to § 30 e para. 2 and contemporaneously inform the Bundesanstalt of this publication; they must also transmit this information without undue delay, to the Company Register as defined in § 8 b of the Commercial Code for storage, but not prior to publication.

(3) The Federal Ministry of Finance is empowered to stipulate, by issuing a regulation that does not require the approval of the Bundesrat, detailed provisions on the equivalence of third country regulations and the exemption of issuers according to paragraph 1.

§ 30 g Exclusion of appeal

A general meeting resolution cannot be appealed based on a violation of the provisions of this Chapter.

Chapter 5 b
Short selling transactions and
transaction in derivatives§ 30 h Prohibition of naked short-selling
transaction in shares and certain
debt instruments

(1) Naked short-selling in
1. shares or

2. Schuldtiteln, die von Zentralregierungen, Regionalregierungen und örtlichen Gebietskörperschaften von Mitgliedstaaten der Europäischen Union, deren gesetzliche Währung der Euro ist, ausgeben wurden,

die an einer inländischen Börse zum Handel im regulierten Markt zugelassen sind, soweit nicht anzuwenden. Dies gilt nicht für Aktien von Unternehmen mit Sitz im Ausland, sofern die Aktien nicht ausschließlich an einer inländischen Börse zum Handel im regulierten Markt zugelassen sind. Ein ungedeckter Leerverkauf liegt vor, wenn der Verkäufer der in Satz 1 genannten Wertpapiere am Ende des Tages, an welchem das jeweilige Geschäft abgeschlossen wurde,

1. nicht Eigentümer sämtlicher verkauften Wertpapiere ist und
2. keinen schuldrechtlich oder sachenrechtlich unbedingt durchsetzbaren Anspruch auf Übereignung einer entsprechenden Anzahl von Wertpapieren gleicher Gattung hat.

(2) Ausgenommen von den Verboten nach Absatz 1 sind Geschäfte von Wertpapierdienstleistungsunternehmen oder vergleichbaren Unternehmen mit Sitz im Ausland, soweit sie

1. im Wege des Eigenhandels mit Aktien oder Schuldtiteln im Sinne des Absatzes 1 handeln und regelmäßig und dauerhaft anbieten, diese zu selbst gestellten Preisen zu kaufen oder zu verkaufen, oder

2. regelmäßig und dauerhaft Kundenaufträge erfüllen und die hieraus entstehenden Positionen absichern

und das jeweils zugrunde liegende Geschäft zur Erfüllung dieser Tätigkeit erforderlich ist. Ausgenommen sind daneben auch Geschäfte, welche Handelsteilnehmer zur Erfüllung eines zu einem festem oder bestimmtem Preis abgeschlossenen Geschäfts in Finanzinstrumenten mit einem Kunden (Festpreisgeschäft) vereinbaren. Der Bundesanstalt ist die Absicht der Aufnahme einer Tätigkeit

2. debt instruments which are issued by central governments, regional governments and local administrative authorities of member states of the European Union whose legal currency is the Euro

which are admitted to trading on a regulated market of a German stock exchange is prohibited. § 37 of the Stock Exchange Act does not apply in that respect. This does not apply to shares of undertakings with registered office outside Germany if the shares are not exclusively admitted to trading on the regulated market of a German stock exchange. Naked short selling means that at the end of the day on which the respective transaction has been concluded, the seller of the securities defined in sentence 1

1. is not the owner of all securities sold and
2. does not have any unconditionally enforceable claim under the law of obligations or under property law to a transfer of title in a corresponding number of securities of the same class.

(2) Transactions of investment services undertakings or comparable undertakings with registered office outside Germany are exempt from the prohibitions according to paragraph 1 to the extent that they

1. trade by way of trading for own account in shares or debt instruments as defined in paragraph 1 and regularly and continuously offer to purchase or sell them at prices quoted by them or

2. regularly and continuously execute client orders and hedge the resulting positions

and the relevant underlying transaction is necessary to perform this activity. Transactions which trading participants conclude with a client for settlement of a transaction in financial instruments at a fixed or definable price (firm price transaction) are also exempt. The Bundesanstalt must be informed without undue delay of the intention to commence an activity according to sentence 1, stating the

financial instruments concerned in each case.

(3) The Federal Ministry of Finance may, by way of a regulation that does not require the approval of the Bundesrat,

1. issue detailed provisions on content, type, scope and form of the reporting requirement as defined in paragraph 2 sentence 3 and

2. provide for exemptions from the prohibition of paragraph 1 for certain transactions.

The Federal Ministry of Finance may delegate the authority pursuant to sentence 1 to the Bundesanstalt by means of a regulation without the approval of the Bundesrat.

§ 30 i (first applies as of 26 March 2012)

§ 30 j Prohibition of certain credit derivatives

(1) A protection buyer is prohibited from contracting a credit derivative as defined in § 2 paragraph 2 number 4 in Germany or from entering into such a transaction by way of legal transaction, if

1. as part of such a transaction upon occurrence of a previously specified credit event, the protection seller must pay a compensation to the protection buyer regardless of whether the compensation payment is made in the amount of the nominal value against physical delivery of a reference liability, in the form of compensation of the difference to the residual value of a reference liability after occurrence of the credit event or as a fixed agreed amount (credit default swap), also if such amount is embedded in a credit linked note or a total return swap, and

2. at least one liability of central governments, regional governments and local territorial authorities of member states of the European Union whose legal currency is the Euro also serves as a reference liability.

ch Satz 1 unverzüglich unter Angabe r jeweils betroffenen Finanzinstrumente zuzeigen.

(3) Das Bundesministerium der Finanzen kann durch Rechtsverordnung, die nicht der Zustimmung des Bundesrates bedarf, nähere Bestimmungen über Inhalt, Art, Umfang und Form der Anzeigepflicht des Absatzes 2 Satz 3 erlassen und

für bestimmte Geschäfte Ausnahmen vom Verbot des Absatzes 1 vorsehen.

Das Bundesministerium der Finanzen kann die Ermächtigung des Satzes 1 Nummer 1 durch Rechtsverordnung ohne Zustimmung des Bundesrates auf die Bundesanstalt übertragen.

30 i (ab dem 26. März 2012 in Kraft)

30 j Verbot von bestimmten Kreditderivaten

(1) Es ist für Sicherungsnehmer verboden, Kreditderivate im Sinne des § 2 Absatz 2 Nummer 4 im Inland zu begründen oder rechtsgeschäftlich in solche einzutreten, soweit

1. im Rahmen eines solchen Geschäfts der Sicherungsgeber dem Sicherungsnehmer bei Eintritt eines vorab spezifizierten Kreditereignisses eine Ausgleichszahlung zu leisten hat, unabhängig davon, ob die Ausgleichszahlung in Höhe des Nominalwertes gegen physische Lieferung einer Referenzverbindlichkeit, in Form eines Differenzausgleichs zu dem Restwert einer Referenzverbindlichkeit nach Eintritt des Kreditereignisses oder als fest vereinbarter Betrag erfolgt (Credit Default Swap), auch soweit dieser in eine Credit Linked Note oder einen Total Return Swap eingebettet ist, und

2. als Referenzverbindlichkeit zumindest auch eine Verbindlichkeit von Zentralregierungen, Regionalregierungen und örtlichen Gebietskörperschaften von Mitgliedstaaten der Europäischen Union, deren gesetzliche Währung der Euro ist, dient.

(2) Ausgenommen von dem Verbot nach Absatz 1 sind Geschäfte, bei denen nach dem Abschluss des Kreditderivats nach Absatz 1 bei wirtschaftlicher Betrachtungsweise eine nicht nur unwesentliche Reduktion des Risikos aus

1. einer bestehenden oder im unmittelbaren zeitlichen Zusammenhang mit dem Abschluss des Kreditderivats übernommenen Position in einer Referenzverbindlichkeit des Kreditderivats nach Absatz 1 oder

2. einer sonstigen bestehenden oder im unmittelbaren zeitlichen Zusammenhang mit dem Abschluss des Kreditderivats übernommenen Position in einem anderen Finanzinstrument oder in einer sonstigen bestehenden Verbindlichkeit, die an Wert verlieren kann, wenn sich die Bonität des Schuldners der Referenzverbindlichkeit nach Absatz 1 Nummer 2 verschlechtert, bewirkt werden soll.

(3) Ausgenommen von dem Verbot nach Absatz 1 sind zudem Geschäfte von Wertpapierdienstleistungsunternehmen oder vergleichbaren Unternehmen mit Sitz im Ausland, soweit

1. sie im Wege des Eigenhandels mit Kreditderivaten im Sinne von Absatz 1 handeln und regelmäßig und dauerhaft anbieten, diese zu selbst gestellten Preisen zu kaufen oder zu verkaufen, und

2. das jeweils zugrunde liegende Geschäft zur Erfüllung dieser Tätigkeit erforderlich ist.

Der Bundesanstalt ist die Absicht der Aufnahme einer Tätigkeit nach Satz 1 unverzüglich unter Angabe der jeweils betroffenen Kreditderivate nach Absatz 1 anzuzeigen.

(4) Das Bundesministerium der Finanzen kann durch Rechtsverordnung, die nicht der Zustimmung des Bundesrates bedarf,

1. nähere Bestimmungen über Inhalt, Art, Umfang und Form der Anzeigepflicht des Absatzes 3 Satz 2 erlassen und

(2) Transactions in which the conclusion of the credit derivative pursuant to paragraph 1 is aimed at achieving a more than insignificant reduction in the risk when assessing this economically resulting from

1. an existing position or a position in a direct time relationship with the position taken over with the conclusion of the credit derivative in a reference liability of the derivative pursuant to paragraph 1 or

2. another existing position or a position taken over in a direct time relationship with the conclusion of the credit derivative in another financial instrument or another existing liability which can decrease in value if the creditworthiness of the debtor of the reference liability according to paragraph 1 number 2 deteriorates

are exempted from the prohibition set forth in paragraph 1.

(3) Transactions of investment services undertakings or comparable undertakings with their registered office outside of Germany are also exempt from the prohibition according to paragraph 1 if

1. they trade by way of trading for own account in credit derivatives as defined in paragraph 1 and regularly and continuously offer to purchase or sell them at prices quoted by them and

2. the respective underlying transaction is necessary to perform this activity.

The Bundesanstalt must be informed without undue delay of the intention to commence an activity according to sentence 1, stating the credit derivatives pursuant to paragraph 1 concerned in each case.

(4) The Federal Ministry of Finance may, by way of a regulation that does not require the approval of the Bundesrat,

1. issue detailed provisions on content, type, scope and form of the reporting requirement as defined in paragraph 3 sentence 2 and

2. für bestimmte Geschäfte Ausnahmen vom Verbot des Absatzes 1 vorsehen.

Das Bundesministerium der Finanzen kann die Ermächtigung des Satzes 1 durch Rechtsverordnung ohne Zustimmung des Bundesrates auf die Bundesanstalt übertragen.

Abschnitt 6 Verhaltenspflichten, Organisationspflichten, Transparenzpflichten

§ 31 Allgemeine Verhaltensregeln

(1) Ein Wertpapierdienstleistungsunternehmen ist verpflichtet,

1. Wertpapierdienstleistungen und Wertpapiernebenleistungen mit der erforderlichen Sachkenntnis, Sorgfalt und Gewissenhaftigkeit im Interesse seiner Kunden zu erbringen,

2. sich um die Vermeidung von Interessenkonflikten zu bemühen und vor Durchführung von Geschäften für Kunden diesen die allgemeine Art und Herkunft der Interessenkonflikte eindeutig darzulegen, soweit die organisatorischen Vorkehrungen nach § 33 Abs. 1 Satz 2 Nr. 3 nicht ausreichen, um nach vernünftigem Ermessen das Risiko der Beeinträchtigung von Kundeninteressen zu vermeiden.

(2) Alle Informationen einschließlich Werbemittlungen, die Wertpapierdienstleistungsunternehmen Kunden zugänglich machen, müssen redlich, eindeutig und nicht irreführend sein. Werbemittlungen müssen eindeutig als solche erkennbar sein. § 124 des Investmentgesetzes und § 15 des Wertpapierprospektgesetzes bleiben unberührt. Sofern Informationen über Finanzinstrumente oder deren Emittenten gegeben werden, die direkt oder indirekt eine allgemeine Empfehlung für eine bestimmte Anlageentscheidung enthalten, müssen

1. die Wertpapierdienstleistungsunternehmen den Anforderungen des § 33 b

2. provide for exemptions from the prohibition of paragraph 1 for certain transactions.

The Federal Ministry of Finance may, without the Bundesrat's approval, delegate the authority pursuant to sentence 1 to the Bundesanstalt by means of a regulation.

Chapter 6 Rules of conduct, organisational requirements, transparency requirements

§ 31 General rules of conduct

(1) An investment services undertaking is required to

1. provide investment services and ancillary investment services with the necessary expertise, care and diligence in the interest of its clients,

2. endeavour to prevent conflicts of interest and to the extent organisational measures pursuant to § 33 para. 1 sentence 2 no. 3 are not sufficient to reasonably ensure that the risk of impairment of client interests will be prevented, clearly disclose the general nature and source of conflicts of interest to the clients prior to the execution of transactions for them.

(2) All information, including marketing communications, made available by investment services undertakings to clients must be fair, clear and not misleading. Marketing communications must be clearly identifiable as such. § 124 of the Investment Act and § 15 of the Securities Prospectus Act remain unaffected. To the extent that information on financial instruments or their issuers is provided which contains, directly or indirectly, a general recommendation for a specific investment decision,

1. investment services undertakings must comply with the requirements in § 33 b

Abs. 5 und 6 sowie des § 34 b Abs. 5, auch in Verbindung mit einer Rechtsverordnung nach § 34 b Abs. 8, oder vergleichbaren ausländischen Vorschriften entsprechen oder

2. die Informationen, sofern sie ohne Einhaltung der Nummer 1 als Finanzanalyse oder Ähnliches beschrieben oder als objektive oder unabhängige Erläuterung der in der Empfehlung enthaltenen Punkte dargestellt werden, eindeutig als Werbemitteilung gekennzeichnet und mit einem Hinweis versehen sein, dass sie nicht allen gesetzlichen Anforderungen zur Gewährleistung der Unvoreingenommenheit von Finanzanalysen genügen und dass sie einem Verbot des Handels vor der Veröffentlichung von Finanzanalysen nicht unterliegen.

(3) Wertpapierdienstleistungsunternehmen sind verpflichtet, Kunden rechtzeitig und in verständlicher Form Informationen zur Verfügung zu stellen, die angemessen sind, damit die Kunden nach vernünftigem Ermessen die Art und die Risiken der ihnen angebotenen oder von ihnen nachgefragten Arten von Finanzinstrumenten oder Wertpapierdienstleistungen verstehen und auf dieser Grundlage ihre Anlageentscheidungen treffen können. Die Informationen können auch in standardisierter Form zur Verfügung gestellt werden. Die Informationen müssen sich beziehen auf

1. das Wertpapierdienstleistungsunternehmen und seine Dienstleistungen,

2. die Arten von Finanzinstrumenten und vorgeschlagene Anlagestrategien einschließlich damit verbundener Risiken,

3. Ausführungsplätze und

4. Kosten und Nebenkosten.

(3a) Im Falle einer Anlageberatung ist dem Kunden rechtzeitig vor dem Abschluss eines Geschäfts über Finanzinstrumente ein kurzes und leicht verständliches Informationsblatt über jedes Finanzinstrument zur Verfügung zu stellen, auf das sich eine Kaufempfehlung bezieht. Die Angaben in den Informationsblättern nach Satz 1 dürfen weder unrichtig noch

paras. 5 and 6 and § 34 b para. 5 also in conjunction with a regulation according to § 34 b para. 8 or comparable foreign provisions or

2. the information to the extent that it is described as investment research or similar, or is presented as an objective or independent explanation of the issues contained in the recommendation without complying with the requirements pursuant to number 1 must be clearly labelled as marketing communication and contain a statement that it does not comply with all legal requirements designed to ensure the independence of investment research, and that it is not subject to any prohibition on dealing ahead of the publication of investment research.

(3) Investment services undertakings are required to provide clients in time and in a comprehensible form with information that is appropriate so that clients are reasonably able to understand the nature and risks of the financial instruments or investment services being offered to them or requested by them and take their investment decisions on this basis. This information may also be provided in standardised form. The information must relate to

1. the investment services undertaking and its services,

2. the types of financial instruments and proposed investment strategies including risks related to them

3. execution venues, and

4. costs and associated charges.

(3a) In the case of investment advice, the client is to have placed at his disposal prior to the conclusion of a transaction in financial instruments, a short and easily understandable information sheet with respect to each financial instrument in respect of which a purchase recommendation is made. The details contained in the information sheet according to sentence 1

irreführend sein und müssen mit den Angaben des Prospekts vereinbar sein. An die Stelle des Informationsblattes treten bei Anteilen an inländischen Investmentvermögen die wesentlichen Anlegerinformationen nach § 42 Absatz 2 des Investmentgesetzes, bei ausländischen Anlagevermögen die wesentlichen Anlegerinformationen nach § 137 Absatz 2 des Investmentgesetzes sowie bei EU-Investmentanteilen die wesentlichen Anlegerinformationen, die nach § 122 Absatz 1 Satz 2 des Investmentgesetzes in deutscher Sprache veröffentlicht worden sind.

(4) Ein Wertpapierdienstleistungsunternehmen, das Anlageberatung oder Finanzportfolioverwaltung erbringt, muss von den Kunden alle Informationen einholen über Kenntnisse und Erfahrungen der Kunden in Bezug auf Geschäfte mit bestimmten Arten von Finanzinstrumenten oder Wertpapierdienstleistungen, über die Anlageziele der Kunden und über ihre finanziellen Verhältnisse, die erforderlich sind, um den Kunden ein für sie geeignetes Finanzinstrument oder eine für sie geeignete Wertpapierdienstleistung empfehlen zu können. Die Geeignetheit beurteilt sich danach, ob das konkrete Geschäft, das dem Kunden empfohlen wird, oder die konkrete Wertpapierdienstleistung im Rahmen der Finanzportfolioverwaltung den Anlagezielen des betreffenden Kunden entspricht, die hieraus erwachsenden Anlage Risiken für den Kunden seinen Anlagezielen entsprechend finanziell tragbar sind und der Kunde mit seinen Kenntnissen und Erfahrungen die hieraus erwachsenden Anlage Risiken verstehen kann. Erlangt das Wertpapierdienstleistungsunternehmen die erforderlichen Informationen nicht, darf es im Zusammenhang mit einer Anlageberatung kein Finanzinstrument empfehlen oder im Zusammenhang mit einer Finanzportfolioverwaltung keine Empfehlung abgeben.

(4a) Ein Wertpapierdienstleistungsunternehmen, das die in Absatz 4 Satz 1 ge-

must not be incorrect or misleading and given in the prospectus. In the case of units in German investment funds, the key investor information according to § 42 paragraph 2 of the Investment Act takes the place of the information sheet; in the case of a foreign investment fund the key investor information pursuant to § 137 paragraph 2 of the Investment Act takes the place of the information sheet; and in the case of EU investment units, the key investor information which is published in the German language pursuant to § 122 paragraph 1 sentence 2 of the Investment Act takes the place of the information sheet.

(4) An investment services undertaking which provides investment advice or financial portfolio management, must obtain all information from clients regarding the clients' knowledge and experience with regard to transactions in specific types of financial instruments or investment services, the clients' investment objectives and their financial situation which are necessary in order to be able to recommend to the clients a financial instrument suitable for them or an investment service suitable for them. Suitability is to be assessed based on whether the relevant transaction recommended to the client or the relevant investment service within the context of financial portfolio management meets the investment objectives of the clients in question, the resulting investment risks are bearable financially by the client consistent with his investment objectives, and the client is able to understand the risks involved based on his experience and knowledge. If the investment services undertaking does not obtain the information required, it may not recommend a financial instrument in the context of investment advice or make a recommendation in the context of financial portfolio management.

(4a) An investment services undertaking which provides the investment services

nannten Wertpapierdienstleistungen erbringen, darf seinen Kunden nur Finanzinstrumente und Wertpapierdienstleistungen empfehlen, die nach den eingeholten Informationen für den Kunden geeignet sind. Die Geeignetheit beurteilt sich nach Absatz 4 Satz 2.

(5) Vor der Erbringung anderer als der in Absatz 4 genannten Wertpapierdienstleistungen zur Ausführung von Kundenaufträgen hat ein Wertpapierdienstleistungsunternehmen von den Kunden Informationen über Kenntnisse und Erfahrungen der Kunden in Bezug auf Geschäfte mit bestimmten Arten von Finanzinstrumenten oder Wertpapierdienstleistungen einzuholen, soweit diese Informationen erforderlich sind, um die Angemessenheit der Finanzinstrumente oder Wertpapierdienstleistungen für die Kunden beurteilen zu können. Die Angemessenheit beurteilt sich danach, ob der Kunde über die erforderlichen Kenntnisse und Erfahrungen verfügt, um die Risiken in Zusammenhang mit der Art der Finanzinstrumente, Wertpapierdienstleistungen angemessen beurteilen zu können. Gelangt ein Wertpapierdienstleistungsunternehmen aufgrund der nach Satz 1 erhaltenen Informationen zu der Auffassung, dass das vom Kunden gewünschte Finanzinstrument oder die Wertpapierdienstleistung für den Kunden nicht angemessen ist, hat es den Kunden darauf hinzuweisen. Erlangt das Wertpapierdienstleistungsunternehmen nicht die erforderlichen Informationen, hat es den Kunden darüber zu informieren, dass eine Beurteilung der Angemessenheit im Sinne des Satzes 1 nicht möglich ist. Der Hinweis nach Satz 3 und die Information nach Satz 4 können in standardisierter Form erfolgen.

(6) Soweit die in den Absätzen 4 und 5 genannten Informationen auf Angaben des Kunden beruhen, hat das Wertpapierdienstleistungsunternehmen die Fehlerhaftigkeit oder Unvollständigkeit der Angaben seiner Kunden nicht zu vertreten, es sei denn, die Unvollständigkeit oder Unrichtigkeit der Kundenangaben ist ihm bekannt oder infolge grober Fahrlässigkeit unbekannt.

set out in paragraph 4 sentence 1, is only permitted to recommend financial instruments and investment services to its clients which are, pursuant to the information obtained, suitable for the client. The suitability is determined according to paragraph 4 sentence 2.

(5) Prior to providing investment services other than those referred to in paragraph 4 to execute client orders, an investment services undertaking must obtain information from the clients regarding the clients' knowledge and experience with regard to transactions in specific types of financial instruments or investment services to the extent this information is necessary to assess the appropriateness of financial instruments or investment services for the client. Appropriateness is to be assessed based on whether the client has the necessary experience and knowledge in order to reasonably assess the risks involved in relation to the type of financial instruments or investment services. If the investment services undertaking reaches the conclusion, on the basis of the information obtained pursuant to sentence 1, that the financial instrument or the investment service requested by the client are not appropriate for the client, it has to inform the client thereof. If the investment services undertaking does not obtain the information required, it must inform the client that an assessment of appropriateness as defined in sentence 1 is not possible. The information according to sentence 3 and the information according to sentence 4 may be provided in standardised form.

(6) If the information as referred to in paragraphs 4 and 5 is based on information provided by the client, the investment services undertaking is not accountable for the inaccuracy or incompleteness of information by its clients unless it is aware or due to gross negligence unaware of the inaccuracy or incompleteness of the information.

(7) Die Pflichten nach Absatz 5 gelten nicht, soweit das Wertpapierdienstleistungsunternehmen

1. auf Veranlassung des Kunden Finanzkommissionsgeschäft, Eigenhandel, Abschlussvermittlung oder Anlagevermittlung in Bezug auf Aktien, die zum Handel an einem organisierten Markt oder einem gleichwertigen Markt zugelassen sind, Geldmarktinstrumente, Schuldverschreibungen und andere verbrieftete Schuldtitel, in die kein Derivat eingebettet ist, den Anforderungen der Richtlinie 2009/65/EG entsprechende Anteile an Investmentvermögen oder in Bezug auf andere nicht komplexe Finanzinstrumente erbringt und

2. den Kunden darüber informiert, dass keine Angemessenheitsprüfung im Sinne des Absatzes 5 vorgenommen wird. Die Information kann in standardisierter Form erfolgen.

(8) Wertpapierdienstleistungsunternehmen müssen ihren Kunden in geeigneter Form über die ausgeführten Geschäfte oder die erbrachte Finanzportfolioverwaltungen berichten.

(9) Bei professionellen Kunden im Sinne des § 31 a Abs. 2 ist das Wertpapierdienstleistungsunternehmen im Rahmen seiner Pflichten nach Absatz 4 berechtigt, davon auszugehen, dass sie für die Produkte, Geschäfte oder Dienstleistungen, für die sie als professionelle Kunden eingestuft sind, über die erforderlichen Kenntnisse und Erfahrungen verfügen, um die mit den Geschäften oder der Finanzportfolioverwaltung einhergehenden Risiken zu verstehen, und dass für sie etwaige mit dem Geschäft oder der Finanzportfolioverwaltung einhergehende Anlagerisiken entsprechend ihren Anlagezielen finanziell tragbar sind. Ein Informationsblatt nach Absatz 3 a Satz 1 oder Dokument gemäß Absatz 3 a Satz 3 muss professionellen Kunden im Sinne des § 31 a Absatz 2 nicht zur Verfügung gestellt werden.

(10) Absatz 1 Nr. 1 und die Absätze 2 bis 9 sowie die §§ 31 a, 31 b, 31 d und 31 e gelten entsprechend auch für Unternehmen mit Sitz in einem Drittstaat, die

Wertpapierdienstleistungen oder Wertpapiernebenleistungen gegenüber Kunden erbringen, die ihren gewöhnlichen Aufenthalt oder ihre Geschäftsleitung im Inland haben, sofern nicht die Wertpapierdienstleistung oder Wertpapiernebenleistung einschließlich der damit im Zusammenhang stehenden Nebenleistungen ausschließlich in einem Drittstaat erbracht wird.

(11) Das Bundesministerium der Finanzen kann durch Rechtsverordnung, die nicht der Zustimmung des Bundesrates bedarf, nähere Bestimmungen erlassen

1. zu Art, Umfang und Form der Offenlegung nach Absatz 1 Nr. 2 Satz 1 bis 3,

2. zu Art, inhaltlicher Gestaltung, Zeitpunkt und Datenträger der nach den Absätzen 2 und 3 Satz 1 bis 3 notwendigen Informationen für die Kunden,

2 a. im Einvernehmen mit dem Bundesministerium für Ernährung, Landwirtschaft und Verbraucherschutz, zu Inhalt und Aufbau der Informationsblätter im Sinne des Absatzes 3 a Satz 1 und der Art und Weise ihrer Zurverfügungstellung,

3. zur Art der nach den Absätzen 4 und 5 von den Kunden einzuholenden Informationen,

4. zur Zuordnung anderer Finanzinstrumente zu den nicht komplexen Finanzinstrumenten im Sinne des Absatzes 7 Nr. 1,

5. zu Art, inhaltlicher Gestaltung, Zeitpunkt und Datenträger der Berichtspflichten nach Absatz 8.

Das Bundesministerium der Finanzen kann die Ermächtigung durch Rechtsverordnung auf die Bundesanstalt übertragen.

§ 31 a Kunden

(1) Kunden im Sinne dieses Gesetzes sind alle natürlichen oder juristischen Personen, für die Wertpapierdienstleistungsunternehmen Wertpapierdienstleistungen oder Wertpapiernebenleistungen erbringen oder anbahnen.

try providing investment services or ancillary investment services to clients having their usual place of residence or management in Germany unless the investment service or ancillary investment service including any other related ancillary services are exclusively provided in a third country.

(11) The Federal Ministry of Finance may, by issuing a regulation that does not require the approval of the Bundesrat, stipulate detailed provisions on the

1. type, scope and form of disclosure according to paragraph 1 no. 2 sentences 1 to 3,

2. type, design of content, time and data carrier of client information required according to paragraphs 2 and 3 sentences 1 to 3,

2 a. contents and structure of the information sheets according to paragraph 3 a sentence 1 and the nature and manner of their provision in consultation with the Federal Ministry for Food, Agriculture and Consumer Protection,

3. type of information to be obtained from clients according to paragraphs 4 and 5,

4. qualification of other financial instruments as non-complex financial instruments as defined in paragraph 7 no. 1,

5. type, design of content, time and data carrier in relation to reporting requirements pursuant to paragraph 8.

The Federal Ministry of Finance may delegate the authority to the Bundesanstalt by means of a regulation.

§ 31 a Clients

(1) Clients for purposes of this Act mean all natural and legal persons to whom investment services undertakings provide or initiate investment services or ancillary investment services.

(2) Professionelle Kunden im Sinne dieses Gesetzes sind Kunden, bei denen das Wertpapierdienstleistungsunternehmen davon ausgehen kann, dass sie über ausreichende Erfahrungen, Kenntnisse und Sachverstand verfügen, um ihre Anlageentscheidungen zu treffen und die damit verbundenen Risiken angemessen beurteilen zu können. Professionelle Kunden im Sinne des Satzes 1 sind

- a) Unternehmen, die als Wertpapierdienstleistungsunternehmen,
 - b) sonstige zugelassene oder beaufsichtigte Finanzinstitute,
 - c) Versicherungsunternehmen,
 - d) Organismen für gemeinsame Anlagen und ihre Verwaltungsgesellschaften,
 - e) Pensionsfonds und ihre Verwaltungsgesellschaften,
 - f) Unternehmen im Sinne des § 2 a Abs. 1 Nr. 8,
 - g) Börsenhändler und Warenderivatehändler,
 - h) sonstige institutionelle Anleger, deren Haupttätigkeit nicht von den Buchstaben a bis g erfasst wird, im Inland oder Ausland zugelassungs- oder aufsichtspflichtig sind, um auf den Finanzmärkten tätig werden zu können,
2. nicht im Sinne der Nummer 1 zugelassungs- oder aufsichtspflichtige Unternehmen, die mindestens zwei der drei nachfolgenden Merkmale überschreiten:
- a) 20 000 000 Euro Bilanzsumme,
 - b) 40 000 000 Euro Umsatzerlöse,
 - c) 2 000 000 Euro Eigenmittel;
3. nationale und regionale Regierungen sowie Stellen der öffentlichen Schuldenverwaltung;
4. Zentralbanken, internationale und überstaatliche Einrichtungen wie die Weltbank, der Internationale Währungsfonds, die Europäische Zentralbank, die Europäische Investmentbank

und andere vergleichbare internationale Organisationen;

5. andere nicht im Sinne der Nummer 1 zulassungs- oder aufsichtspflichtige institutionelle Anleger, deren Haupttätigkeit in der Investition in Finanzinstrumente besteht, und Einrichtungen, die die Verbriefung von Vermögenswerten und andere Finanzierungsgeschäfte betreiben.

Sie werden in Bezug auf alle Finanzinstrumente, Wertpapierdienstleistungen und Wertpapiernebenleistungen als professionelle Kunden angesehen.

(3) Privatkunden im Sinne dieses Gesetzes sind Kunden, die keine professionellen Kunden sind.

(4) Geeignete Gegenparteien sind Unternehmen im Sinne des Absatzes 2 Nr. 1 Buchstabe a bis f, Einrichtungen nach Absatz 2 Nr. 3 und 4 sowie Unternehmen im Sinne des § 2 a Abs. 1 Nr. 12. Den geeigneten Gegenparteien stehen gleich

1. Unternehmen im Sinne des Absatzes 2 Nr. 2 mit Sitz im In- oder Ausland,
2. Unternehmen mit Sitz in einem anderen Mitgliedstaat der Europäischen Union oder einem anderen Vertragsstaat des Abkommens über den Europäischen Wirtschaftsraum, die nach dem Recht des Herkunftsmitgliedstaates als geeignete Gegenparteien im Sinne des Artikels 24 Abs. 3 Satz 1 der Richtlinie 2004/39/EG des Europäischen Parlaments und des Rates vom 21. April 2004 über Märkte für Finanzinstrumente, zur Änderung der Richtlinien 85/611/EWG und 93/6/EWG des Rates und der Richtlinie 2000/12/EG des Europäischen Parlaments und des Rates und zur Aufhebung der Richtlinie 93/22/EWG des Rates (ABl. EU Nr. L 145 S. 1, 2005 Nr. L 45 S. 18) in der jeweils geltenden Fassung anzusehen sind, wenn diese zugestimmt haben, für alle oder einzelne Geschäfte als geeignete Gegenpartei behandelt zu werden.
- (5) Ein Wertpapierdienstleistungsunternehmen kann ungeachtet der Absätze 2 und

comparable international organisations;

5. other institutional investors which are not required to be licensed or regulated as defined in number 1 whose main activity is the investment in financial instruments, and entities conducting the securitisation of assets or other financing transactions.

They are deemed to be professional clients in respect of all financial instruments, investment services and ancillary investment services.

(3) Retail clients for purposes of this Act are clients other than professional clients.

(4) Eligible counterparties are undertakings as defined in paragraph 2 no. 1 lit. a to f, entities as defined in paragraph 2 nos. 3 and 4 and undertakings as defined in § 2 a para. 1 no. 12. The following are equivalent to eligible counterparties

1. undertakings as defined in paragraph 2 no. 2 with registered office in Germany or outside of Germany,
 2. undertakings with registered office in another member state of the European Union or another contracting state of the European Economic Area which according to the law of their home member state are to be qualified as eligible counterparties as defined in Article 24 para. 3 sentence 1 of Directive 2004/39/EC of the European Parliament and the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC (OJ EU No. L 145 page 1, 2005 No. L 45 page 18) as amended,
- if they have agreed to be treated as eligible counterparties for all or individual transactions.
- (5) Notwithstanding paragraphs 2 to 4, an investment services undertaking can

4 geeignete Gegenparteien als professionelle Kunden oder Privatkunden und professionelle Kunden als Privatkunden einstufen. Das Wertpapierdienstleistungsunternehmen muss seine Kunden über eine Änderung der Einstufung informieren.

(6) Ein professioneller Kunde kann mit dem Wertpapierdienstleistungsunternehmen eine Einstufung als Privatkunde vereinbaren. Die Vereinbarung über die Änderung der Einstufung bedarf der Schriftform. Soll die Änderung nicht alle Wertpapierdienstleistungen, Wertpapiernebenleistungen und Finanzinstrumente betreffen, ist dies ausdrücklich festzulegen. Ein Wertpapierdienstleistungsunternehmen muss professionelle Kunden im Sinne des Absatzes 2 Satz 2 Nr. 2 und des Absatzes 7 am Anfang einer Geschäftsbeziehung darauf hinweisen, dass sie als professionelle Kunden eingestuft sind und die Möglichkeit einer Änderung der Einstufung nach Satz 1 besteht. Hat ein Wertpapierdienstleistungsunternehmen Kunden vor dem 1. November 2007 auf der Grundlage eines Bewertungsverfahrens, das auf den Sachverstand, die Erfahrungen und Kenntnisse der Kunden abstellt, im Sinne des Absatzes 2 Satz 1 eingestuft, hat die Einstufung nach dem 1. November 2007 Bestand. Diese Kunden sind über die Voraussetzungen der Einstufung nach den Absätzen 2, 5 und 6 und die Möglichkeit der Änderung der Einstufung nach Absatz 6 Satz 4 zu informieren.

(7) Ein Privatkunde kann auf Antrag oder durch Festlegung des Wertpapierdienstleistungsunternehmens als professioneller Kunde eingestuft werden. Der Änderung der Einstufung hat eine Bewertung durch das Wertpapierdienstleistungsunternehmen vorauszugehen, ob der Kunde aufgrund seiner Erfahrungen, Kenntnisse und seines Sachverstandes in der Lage ist, generell oder für eine bestimmte Art von Geschäften eine Anlageentscheidung zu treffen und die damit verbundenen Risiken angemessen zu beurteilen. Eine Änderung der Einstufung kommt nur in Betracht, wenn der Privatkunde mindestens zwei der drei folgenden Kriterien erfüllt:

classify eligible counterparties as professional clients or retail clients and professional clients as retail clients. The investment services undertaking must inform its clients on the change in classification.

(6) A professional client can agree with the investment services undertaking to be classified as a retail client. The agreement on the change in classification requires the written form. If the change in classification is not to cover all investment services, ancillary investment services and financial instruments, this must be expressly stipulated. An investment services undertaking must inform professional clients as defined in paragraph 2 sentence 2 no. 2 and paragraph 7 at the beginning of a client relationship that they have been classified as professional clients and that there is the possibility to change the classification according to sentence 1. If an investment services undertaking has classified clients as defined in paragraph 2 sentence 1 prior to 1 November 2007 based on an evaluation procedure which was based on the clients' expertise, experience and knowledge, this classification remains valid after 1 November 2007. These clients must be informed on the requirements for classifications according to paragraphs 2, 5 and 6 and the possibility to change the classification according to paragraphs 6 sentence 4.

(7) Retail clients can be classified as professional clients upon request or by determination of the investment services undertakings. An assessment by the investment services undertaking whether the client based on his experience, knowledge and his expertise is able to take an investment decision for a particular kind of transactions and reasonably assess the respective risks involved must precede the change in classification. A change in classification can only be considered if the retail client meets at least two of the three following criteria:

1. der Kunde hat an dem Markt, an dem die Finanzinstrumente gehandelt werden, für die er als professioneller Kunde eingestuft werden soll, während des letzten Jahres durchschnittlich zehn Geschäfte von erheblichem Umfang im Quartal getätigt;

2. der Kunde verfügt über Bankguthaben und Finanzinstrumente im Wert von mehr als 500.000 Euro;

3. der Kunde hat mindestens für ein Jahr einen Beruf am Kapitalmarkt ausgeübt, deren Kenntnisse über die in Betracht kommenden Geschäfte, Wertpapierdienstleistungen und Wertpapiernebenleistungen voraussetzt.

Das Wertpapierdienstleistungsunternehmen muss den Privatkunden schriftlich darauf hinweisen, dass mit der Änderung der Einstufung die Schutzvorschriften dieses Gesetzes für Privatkunden nicht mehr gelten. Der Kunde muss schriftlich bestätigen, dass er diesen Hinweis zur Kenntnis genommen hat. Informiert ein professioneller Kunde im Sinne des Satzes 1 oder des Absatzes 2 Satz 2 Nr. 2 das Wertpapierdienstleistungsunternehmen nicht über alle Änderungen, die seine Einstufung als professioneller Kunde beeinflussen können, begründet eine darauf beruhende fehlerhafte Einstufung keinen Pflichtverstoß des Wertpapierdienstleistungsunternehmens.

(8) Das Bundesministerium der Finanzen kann durch Rechtsverordnung, die nicht der Zustimmung des Bundesrates bedarf, nähere Bestimmungen erlassen zu den Vorgaben an eine Einstufung gemäß Absatz 2 Nr. 2, dem Verfahren und den organisatorischen Vorkehrungen der Wertpapierdienstleistungsunternehmen bei einer Änderung der Einstufung nach Absatz 5 und den Kriterien, dem Verfahren und den organisatorischen Vorkehrungen bei einer Änderung oder Beibehaltung der Einstufung nach den Absätzen 6 und 7. Das Bundesministerium der Finanzen kann die Ermächtigung durch Rechtsverordnung auf die Bundesanstalt übertragen.

1. the client has carried out an average of ten transactions per quarter of significant size on the relevant market on which the financial instruments with respect to which he is to be classified as a professional client are traded during the past year;

2. the client disposes of cash deposits and financial instruments in a value of at least EUR 500,000;

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

The investment services undertaking must inform the retail client in writing that the protective provisions of this Act applying to retail clients do not apply any longer if the classification is changed. The client must confirm in writing that he has taken notice of this information. If the professional client as defined in sentence 1 or paragraph 2 sentence 2 no. 2 does not inform the investment services undertaking of all changes which may have an effect on his classification as a professional client, an incorrect classification based on this does not constitute a violation of duty for the investment services undertaking.

(8) The Federal Ministry of Finance may, by issuing a regulation that does not require the approval of the Bundesrat, stipulate detailed provisions on the requirements for classification of clients according to paragraph 2-no. 2, the procedure and the organisational measures to be taken by the investment services undertaking when changing a classification according to paragraph 5 and the criteria, the procedure and the organisational measures for a change or a continuation of the classification according to paragraphs 6 and 7. The Federal Ministry of Finance may delegate the authority to the Bundesanstalt by means of a regulation.

§ 31 b Geschäfte mit geeigneten Gegenparteien

(1) Wertpapierdienstleistungsunternehmen, die das Finanzkommissionsgeschäft, die Anlage- und Abschlussvermittlung und den Eigenhandel sowie damit in direktem Zusammenhang stehende Wertpapiernebenleistungen gegenüber geeigneten Gegenparteien erbringen, sind nicht an die Vorgaben des § 31 Abs. 2, 3 und 5 bis 7 sowie die §§ 31 c, 31 d und 33 a gebunden. Satz 1 ist nicht anwendbar, sofern die geeignete Gegenpartei mit dem Wertpapierdienstleistungsunternehmen für alle oder für einzelne Geschäfte vereinbart hat, als professioneller Kunde oder als Privatkunde behandelt zu werden.

(2) Das Bundesministerium der Finanzen kann durch Rechtsverordnung, die nicht der Zustimmung des Bundesrates bedarf, nähere Bestimmungen erlassen über die Form und den Inhalt einer Vereinbarung nach Absatz 1 Satz 2 und die Art und Weise der Zustimmung nach § 31 a Abs. 4 Satz 2. Das Bundesministerium der Finanzen kann die Ermächtigung durch Rechtsverordnung auf die Bundesanstalt übertragen.

§ 31 c Bearbeitung von Kundenaufträgen

(1) Ein Wertpapierdienstleistungsunternehmen muss geeignete Vorkehrungen treffen, um

1. Kundenaufträge unverzüglich und redlich im Verhältnis zu anderen Kundenaufträgen und den Handelsinteressen des Wertpapierdienstleistungsunternehmens auszuführen oder an Dritte weiterzuleiten,
2. vergleichbare Kundenaufträge der Reihenfolge ihres Eingangs nach auszuführen oder an Dritte zum Zwecke der Ausführung weiterzuleiten, vorbehaltlich vorherrschender Marktbedingungen oder eines anderweitigen Interesses des Kunden,
3. sicherzustellen, dass Kundengelder und Kundenfinanzinstrumente korrekt verbucht werden,

§ 31 b Transactions with eligible counterparties

(1) Investment services undertakings providing services of principal broking business, investment and contract broking and trading for own account and any ancillary investment services which directly relate to them to eligible counterparties do not have to comply with the requirements pursuant to § 31 paras. 2, 3 and 5 to 7 and §§ 31 c, 31 d and 33 a. Sentence 1 does not apply to the extent the eligible counterparty has agreed with the investment services undertaking for all or individual transactions to be treated as a professional client or retail client.

(2) The Federal Ministry of Finance may, by issuing a regulation that does not require the approval of the Bundesrat, stipulate detailed provisions on the form and content of an agreement according to paragraph 1 sentence 2 and the type and manner of approval according to § 31 a para. 4 sentence 2. The Federal Ministry of Finance may delegate the authority to the Bundesanstalt by means of a regulation.

§ 31 c Client order handling

(1) An investment services undertaking must take appropriate measures to

1. execute client orders or transmit them to third parties without undue delay and fairly relative to other client orders and trading interests of the investment services undertaking,
2. execute comparable client orders or transmit them to third parties for purposes of order execution in the order they have been received, notwithstanding prevailing market conditions or any differing interest of the client,
3. ensure that client monies and client financial instruments are accurately booked,

4. bei der Zusammenlegung von Kundenaufträgen mit anderen Kundenaufträgen oder mit Aufträgen für eigene Rechnung des Wertpapierdienstleistungsunternehmens die Interessen aller beteiligten Kunden zu wahren,

5. sicherzustellen, dass Informationen im Zusammenhang mit noch nicht ausgeführten Kundenaufträgen nicht missbraucht werden,

6. jeden betroffenen Kunden über die Zusammenlegung der Aufträge und damit verbundene Risiken und jeden betroffenen Privatkunden unverzüglich über alle ihm bekannten wesentlichen Probleme bei der Auftragsausführung zu informieren.

(2) Können limitierte Kundenaufträge in Bezug auf Aktien, die zum Handel an einem organisierten Markt zugelassen sind, aufgrund der Marktbedingungen nicht unverzüglich ausgeführt werden, muss das Wertpapierdienstleistungsunternehmen diese Aufträge unverzüglich so bekannt machen, dass sie anderen Marktteilnehmern leicht zugänglich sind, soweit der Kunde keine andere Weisung erteilt. Die Verpflichtung nach Satz 1 gilt als erfüllt, wenn die Aufträge an einen organisierten Markt oder ein multilaterales Handelssystem weitergeleitet worden sind oder werden, die den Vorgaben des Artikels 31 der Verordnung (EG) Nr. 1287/2006 entsprechen. Die Bundesanstalt kann die Pflicht nach Satz 1 in Bezug auf solche Aufträge, die den marktüblichen Geschäftsumfang erheblich überschreiten, aufheben.

(3) Das Bundesministerium der Finanzen kann durch Rechtsverordnung, die nicht der Zustimmung des Bundesrates bedarf, nähere Bestimmungen zu den Verpflichtungen nach den Absätzen 1 und 2 Satz 1 sowie zu den Voraussetzungen, unter denen die Bundesanstalt die Verpflichtung nach Absatz 2 Satz 3 aufheben kann, erlassen. Das Bundesministerium der Finanzen kann die Ermächtigung durch Rechtsverordnung auf die Bundesanstalt übertragen.

4. protect the interests of all clients involved when aggregating client orders with other client orders or with orders for the account of the investment services undertaking,

5. ensure that information on client orders not yet executed is not misused,

6. inform each client concerned on the aggregation of orders and risks involved and inform each retail client concerned without undue delay of all significant problems in executing client orders of which the investment services undertaking is aware.

(2) If client limit orders with respect to shares admitted to trading on a regulated market cannot be executed without undue delay due to prevailing market conditions, the investment services undertaking must make these orders publicly available without undue delay in a manner so that they are easily accessible to other market participants unless the client has given a different instruction. The requirement as defined in sentence 1 is deemed complied with if the orders have been or will be transmitted to a regulated market or multilateral trading facility which comply with the requirements defined in Article 31 of the Regulation (EC) No. 1287/2006. The Bundesanstalt may waive the obligation according to sentence 1 with respect to such orders which significantly exceed normal market size.

(3) The Federal Ministry of Finance may, by issuing a regulation that does not require the approval of the Bundesrat, stipulate detailed provisions on the requirements pursuant to paragraphs 1 and 2 sentence 1 and on the requirements which must be met in order for the Bundesanstalt to be able to waive the requirements pursuant to paragraph 2 sentence 3. The Federal Ministry of Finance may delegate the authority to the Bundesanstalt by means of a regulation.

§ 31 d Zuwendungen

(1) Ein Wertpapierdienstleistungsunternehmen darf im Zusammenhang mit der Erbringung von Wertpapierdienstleistungen oder Wertpapiernebenleistungen keine Zuwendungen von Dritten annehmen oder an Dritte gewähren, die nicht Kunden dieser Dienstleistung sind, es sei denn,

1. die Zuwendung ist darauf ausgelegt, die Qualität der für den Kunden erbrachten Dienstleistung zu verbessern und steht der ordnungsgemäßen Erbringung der Dienstleistung im Interesse des Kunden im Sinne des § 31 Abs. 1 Nr. 1 nicht entgegen und
2. Existenz, Art und Umfang der Zuwendung oder, soweit sich der Umfang noch nicht bestimmen lässt, die Art und Weise seiner Berechnung, wird dem Kunden vor der Erbringung der Wertpapierdienstleistung oder Wertpapiernebenleistung in umfassender, zureichender und verständlicher Weise deutlich offen gelegt. Eine Zuwendung im Sinne des Satzes 1 liegt nicht vor, wenn das Wertpapierdienstleistungsunternehmen diese von einem Dritten, der dazu von dem Kunden beauftragt worden ist, annimmt oder sie einem solchen Dritten gewährt.

(2) Zuwendungen im Sinne dieser Vorschrift sind Provisionen, Gebühren oder sonstige Geldleistungen sowie alle geldwerten Vorteile.

(3) Die Offenlegung nach Absatz 1 Nr. 2 kann in Form einer Zusammenfassung der wesentlichen Bestandteile der Vereinbarungen über Zuwendungen erfolgen, sofern das Wertpapierdienstleistungsunternehmen dem Kunden die Offenlegung näherer Einzelheiten anbietet und auf Nachfrage gewährt.

(4) (aufgehoben)

(5) Gebühren und Entgelte, die die Erbringung von Wertpapierdienstleistungen erst ermöglichen oder dafür notwendig sind, und die ihrer Art nach nicht geeignet sind, die Erfüllung der Pflicht nach § 31 Abs. 1 Satz 1 Nr. 1 zu gefährden,

§ 31 d Inducements

(1) In the context of providing investment services or ancillary investment services, investment services undertakings may not accept any inducement from third parties or pay one to third parties who are not clients of this service, unless

1. the inducement is designed to enhance the quality of the service provided to the client and is not contrary to the orderly performance of the service in the interest of the client as defined in § 31 para. 1 no. 1 and
2. the existence, nature and amount of the inducement or, to the extent the amount cannot be ascertained, the type and method of its calculation is comprehensively, accurately and understandably disclosed to the client prior to the provision of the investment service or ancillary investment service. It does not qualify as an inducement as defined in sentence 1, if the investment services undertaking accepts this from a third party appointed to this end by the client or pays this to such a third party.

(2) Inducements as defined in this provision mean any commissions, fees or any other cash benefits or any non-monetary benefits.

(3) The disclosure according to paragraph 1 no. 2 may be made by way of disclosing a summary of the essential terms of the arrangements relating to inducements if the investment services undertaking offers the disclosure of further details to the client and provides them at the request of the client.

(4) (revoked)

(5) Fees and considerations which enable or are necessary for the provision of investment services and which, by their nature, are not fit to endanger compliance with the obligation according to § 31 para. 1 sentence 1 no. 1, are exempt

sind von dem Verbot nach Absatz 1 ausgenommen.

§ 31 e Erbringung von Wertpapierdienstleistungen und Wertpapiernebenleistungen über ein anderes Wertpapierdienstleistungsunternehmen

Erhält ein Wertpapierdienstleistungsunternehmen über ein anderes Wertpapierdienstleistungsunternehmen einen Auftrag, Wertpapierdienstleistungen oder Wertpapiernebenleistungen für einen Kunden zu erbringen, ist das entgegennehmende Unternehmen mit folgenden Maßgaben verantwortlich für die Durchführung der Wertpapierdienstleistung oder Wertpapiernebenleistung im Einklang mit den Bestimmungen dieses Abschnitts:

1. das entgegennehmende Wertpapierdienstleistungsunternehmen ist nicht verpflichtet, Kundenangaben und Kundenanweisungen, die ihm von dem anderen Wertpapierdienstleistungsunternehmen übermittelt werden, auf ihre Vollständigkeit und Richtigkeit zu überprüfen,
2. das entgegennehmende Wertpapierdienstleistungsunternehmen darf sich darauf verlassen, dass Empfehlungen in Bezug auf die Wertpapierdienstleistung oder Wertpapiernebenleistung dem Kunden von dem anderen Wertpapierdienstleistungsunternehmen im Einklang mit den gesetzlichen Vorschriften gegeben wurden.

§ 31 f Betrieb eines multilateralen Handelssystems

(1) Der Betreiber eines multilateralen Handelssystems ist verpflichtet,

1. Regelungen für den Zugang von Handelsteilnehmern zu dem multilateralen Handelssystem festzulegen, die mindestens die Anforderungen für eine Teilnahme am Börsenhandel nach § 19 Abs. 2 und 4 Satz 1 des Börsengesetzes vorsehen; § 19 Abs. 4 Satz 2 des Börsengesetzes gilt entsprechend,

from the prohibition according to paragraph 1.

§ 31 e Provision of investment services and ancillary investment services through the medium of another investment services undertaking

Where an investment services undertaking receives an instruction to perform investment services or ancillary investment services for a client through another investment services undertaking, the receiving undertaking is responsible for the performance of the investment service or ancillary investment service in compliance with the provisions of this Chapter with the proviso that

1. the receiving investment services undertaking is not required to assess client information and client orders which have been transmitted to it by another investment services undertaking as to their completeness and accuracy,
2. the receiving investment services undertaking can rely on any recommendations in respect of the investment service or ancillary investment service having been provided by the other investment services undertaking to the client in compliance with legal requirements.

§ 31 f Operating a multilateral trading facility

(1) The operator of a multilateral trading facility is required

1. to establish rules for the access to the multilateral trading facility for market participants which at least provide for requirements for participating in stock exchange trading according to § 19 paras. 2 and 4 sentence 1 of the Stock Exchange Act; § 19 para. 4 sentence 2 of the Stock Exchange Act applies *mutatis mutandis*,

2. Regelungen für die Einbeziehung von Finanzinstrumenten, die ordnungsgemäße Durchführung des Handels und der Preisermittlung, die Verwendung von einbezogenen Referenzpreisen und die vertragsgemäße Abwicklung der abgeschlossenen Geschäfte festzulegen, wobei die Regelungen zum Handel und der Preisermittlung dem Betreiber keinen Ermessensspielraum einräumen dürfen,
3. über angemessene Kontrollverfahren zur Überwachung der Einhaltung der Regelungen nach Nummer 2 und zur Überwachung der Einhaltung der §§ 14 und 20 a zu verfügen,
4. sicherzustellen, dass die Preise im multilateralen Handelssystem entsprechend den Regelungen des § 24 Abs. 2 des Börsengesetzes zustande kommen,
5. dafür Sorge zu tragen, dass die Aufzeichnungen über die erteilten Aufträge und abgeschlossenen Geschäfte im multilateralen Handelssystem eine lückenlose Überwachung durch die Bundesanstalt gewährleisten, und
6. unter Berücksichtigung der Art der Nutzer und der gehandelten Finanzinstrumente alle für die Nutzung des multilateralen Handelssystems erforderlichen und zweckdienlichen Informationen öffentlich bekannt zu geben.
- (2) Emittenten, deren Finanzinstrumente ohne ihre Zustimmung in den Handel in einem multilateralen Handelssystem einbezogen worden sind, können nicht dazu verpflichtet werden, Informationen in Bezug auf diese Finanzinstrumente für dieses multilaterale Handelssystem zu veröffentlichen.
- (3) Der Betreiber eines multilateralen Handelssystems hat der Bundesanstalt schwerwiegende Verstöße gegen die Handelsregeln und Störungen der Marktintegrität mitzuteilen; bei Anhaltspunkten für einen Verstoß gegen § 14 oder § 20 a ist die Bundesanstalt unverzüglich zu unterrichten und bei ihren Untersuchungen umfassend zu unterstützen.
2. to establish rules for inclusion of financial instruments, orderly carrying out of trading and price building, use of included reference prices and execution of concluded transactions in compliance with contractual obligations, provided that the rules on trading and price building do not leave to the operator any room for discretion,
3. to maintain appropriate control procedures to monitor compliance with the requirements defined in number 2 and to monitor compliance with §§ 14 and 20 a,
4. to ensure that prices on the multilateral trading facility are built in compliance with the provisions of § 24 para. 2 of the Stock Exchange Act,
5. to ensure that the records of orders given and transactions concluded on the multilateral trading facility allow for complete supervision by the Bundesanstalt, and
6. to make publicly available all information required and useful for using the multilateral trading facility taking into account both the nature of the users and the financial instruments traded.
- (2) Issuers whose financial instruments have been included in trading on a multilateral trading facility without their consent, cannot be obliged to publish information in relation to these financial instruments for purposes of the multilateral trading facility.
- (3) The operator of a multilateral trading facility must report to the Bundesanstalt significant violations of the trading rules and disruptions of market integrity; if there is evidence for a violation of § 14 or § 20 a, the Bundesanstalt must be informed without undue delay and supported comprehensively in its investigations.

§ 31 g Vor- und Nachhandels TRANSPARENZ für multilaterale Handelssysteme

(1) Der Betreiber eines multilateralen Handelssystems hat für in das System einbezogene Aktien und Aktien vertretende Zertifikate, die zum Handel an einem organisierten Markt zugelassen sind, den Preis des am höchsten limitierten Kaufauftrags und des am niedrigsten limitierten Verkaufauftrags und das zu diesen Preisen handelbare Volumen kontinuierlich während der üblichen Geschäftszeiten zu angemessenen kaufmännischen Bedingungen zu veröffentlichen.

(2) Die Bundesanstalt kann nach Maßgabe des Kapitels IV Abschnitt 1 der Verordnung (EG) Nr. 1287/2006 Bestimmungen von multilateralen Handelssystemen Ausnahmen von der Verpflichtung nach Absatz 1 gestatten.

(3) Der Betreiber eines multilateralen Handelssystems hat den Marktpreis, das Volumen und den Zeitpunkt für nach Absatz 1 abgeschlossene Geschäfte zu angemessenen kaufmännischen Bedingungen und so weit wie möglich auf Echtzeitbasis zu veröffentlichen.

(4) Die Bundesanstalt kann nach Maßgabe von Kapitel IV Abschnitt 3 der Verordnung (EG) Nr. 1287/2006 je nach Art und Umfang der abgeschlossenen Geschäfte eine verzögerte Veröffentlichung von Informationen nach Absatz 3 gestatten. Der Betreiber eines multilateralen Handelssystems hat eine Verzögerung nach Satz 1 zu veröffentlichen.

(5) Die Einzelheiten der Veröffentlichungspflichten nach den Absätzen 1, 3 und 4 regelt Kapitel IV Abschnitt 1, 3 und 4 der Verordnung (EG) Nr. 1287/2006.

§ 31 h Veröffentlichungspflichten von Wertpapierdienstleistungsunternehmen nach dem Handel

(1) Wertpapierdienstleistungsunternehmen, die Geschäfte im Rahmen von Wertpapierdienstleistungen nach § 2 Abs. 3 Satz 1 Nr. 1 bis 4 mit zum Handel an einem organisierten Markt zugelassenen Aktien und Aktien vertretenden Zertifikaten außerhalb eines organisierten Marktes

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

(1) The operator of a multilateral trading facility must continuously publish on a reasonable commercial basis throughout normal trading hours in relation to shares and certificates representing shares which are included in the system and admitted to trading on a regulated market the price of the bid order with the highest order limit and the ask order with the lowest order limit and the volume tradable at these prices.

(2) The Bundesanstalt may allow exemptions from the requirement defined in paragraph 1 for operators of multilateral trading facilities according to chapter IV section 1 of the Regulation (EC) No. 1287/2006.

(3) The operator of a multilateral trading facility must publish on a reasonable commercial basis and as close to real-time as possible the market price, volume and time of transactions concluded according to paragraph 1.

(4) According to chapter IV section 3 of the Regulation (EC) No. 1287/2006, the Bundesanstalt may authorise deferred publication of information defined in paragraph 3 based on the type or size of the transactions concluded. The operator of a multilateral trading facility must publish a deferral according to sentence 1.

(5) Details of the publication requirements according to paragraphs 1, 3 and 4 are stipulated in chapter IV sections 1, 3 and 4 of the Regulation (EC) No. 1287/2006.

§ 31 h Post-trade publication requirements for investment services undertakings

(1) Investment services undertakings which conclude transactions in shares and certificates representing shares which are admitted to trading on a regulated market, outside of a regulated market or a multilateral trading facility in the course of investment services according to § 2

oder eines multilateralen Handelssystems abschließen, sind verpflichtet, das Volumen, den Marktpreis und den Zeitpunkt des Abschlusses dieser Geschäfte zu angemessenen kaufmännischen Bedingungen und so weit wie möglich auf Echtzeitbasis zu veröffentlichen.

(2) Die Bundesanstalt kann nach Maßgabe von Kapitel IV Abschnitt 3 der Verordnung (EG) Nr. 1287/2006 je nach Umfang der abgeschlossenen Geschäfte eine verzögerte Veröffentlichung von Informationen nach Absatz 1 gestatten. Das Wertpapierdienstleistungsunternehmen hat eine Verzögerung nach Satz 1 zu veröffentlichen.

(3) Die Einzelheiten der Veröffentlichungspflichten nach den Absätzen 1 und 2 regelt Kapitel IV Abschnitt 3 und 4 der Verordnung (EG) Nr. 1287/2006 der Kommission.

§ 32 Systematische Internalisierung

Die §§ 32 a bis 32 d gelten für systematische Internalisierer, soweit sie Aufträge in Aktien und Aktien vertretenden Zertifikaten, die zum Handel an einem organisierten Markt zugelassen sind, bis zur standardmäßigen Marktgröße ausführen. Einzelheiten sind in den Kapiteln III und IV Abschnitt 2 und 4 der Verordnung (EG) Nr. 1287/2006 geregelt. Ein Markt im Sinne dieser Vorschriften besteht für eine Aktiengattung aus allen Aufträgen, die in der Europäischen Union im Hinblick auf diese Aktiengattung ausgeführt werden, ausgenommen jene, die im Vergleich zur normalen Marktgröße für diese Aktien ein großes Volumen aufweisen.

§ 32 a Veröffentlichung von Quotes durch systematische Internalisierer

(1) Ein systematischer Internalisierer im Sinne des § 32 Satz 1 ist verpflichtet, regelmäßig und kontinuierlich während der üblichen Handelszeiten für die von ihm angebotenen Aktiengattungen zu angemessenen kaufmännischen Bedingungen verbindliche Kauf- und Verkaufsangebote (Quotes) zu veröffentlichen, sofern es hierfür einen liquiden Markt gibt. Besteht

para. 3 sentence 1 nos. 1 to 4, must publish the volume, market price and time of conclusion of these transactions on a reasonable commercial basis and as close to real-time as possible.

(2) According to Chapter IV section 3 of the Regulation (EC) No. 1287/2006, the Bundesanstalt may authorise deferred publication of the information defined in paragraph 1 based on the size of the transactions concluded. The investment services undertaking must publish a deferral according to sentence 1.

(3) Details of the publication requirements according to paragraphs 1 and 2 are stipulated in Chapter IV sections 3 and 4 of the Regulation (EC) No. 1287/2006.

§ 32 Systematic internalisation

§§ 32 a to 32 d apply to systematic internalisers if they execute orders in shares and certificates representing shares which are admitted to trading on a regulated market for sizes up to standard market size. Details are stipulated in Chapters III and IV sections 2 and 4 of the Regulation (EC) No. 1287/2006. For purposes of these provisions, a market for a class of shares consists of all orders executed in the European Union in respect of that class of shares with the exception of those having a volume large in scale compared to normal market size for these shares.

§ 32 a Publication of quotes by systematic internalisers

(1) A systematic internaliser as defined in § 32 sentence 1 is required to publish regularly and continuously throughout normal trading hours bid and offer prices (quotes) in those classes of shares which it offers on a reasonable commercial basis to the extent that there is a liquid market. If there is no liquid market, it is required to disclose quotes according to sentence 1

kein liquider Markt, ist er verpflichtet, auf Anfrage seiner Kunden Quotes nach Maßgabe des Satzes 1 zu veröffentlichen. Die Preise der veröffentlichten Quotes müssen die vorherrschenden Marktbedingungen widerspiegeln.

(2) Der systematische Internalisierer kann die Stückzahl der Aktien oder den auf einen Geldbetrag gerechneten Wert (Größe) für seine Kauf- oder Verkaufsangebote in den Aktiengattungen festlegen, zu denen er Quotes veröffentlicht. Die Kauf- und Verkaufspreise pro Aktie in einem Quote müssen die vorherrschenden Marktbedingungen widerspiegeln.

(3) Der systematische Internalisierer kann die von ihm veröffentlichten Quotes jederzeit aktualisieren und im Falle außergewöhnlicher Marktumstände zurückziehen.

(4) Die Einzelheiten der Veröffentlichungspflichten nach Absatz 1 Satz 1 und 2 regelt Kapitel IV Abschnitt 2 und 4 der Verordnung (EG) Nr. 1287/2006.

§ 32 b Bestimmung der standardmäßigen Marktgröße und Aufgaben der Bundesanstalt

(1) Die Bundesanstalt legt zur Bestimmung der standardmäßigen Marktgröße im Sinne des § 32 Satz 1 auf Basis des rechnerischen Durchschnittswerts der auf dem Markt ausgeführten Geschäfte mindestens einmal jährlich die Klassen für die Aktiengattungen fest, welche ihren unter Liquiditätsaspekten wichtigsten Markt im Inland haben.

(2) Die Bundesanstalt veröffentlicht die nach Absatz 1 ermittelten Klassen auf ihrer Internetseite.

§ 32 c Ausführung von Kundenaufträgen durch systematische Internalisierer

(1) Ein systematischer Internalisierer im Sinne des § 32 Satz 1 ist verpflichtet, Aufträge zu dem Zeitpunkt des Auftragsangehens veröffentlichten Preis auszuführen. Die Ausführung von Aufträgen für Privatkunden muss den Anforderungen des § 33 a genügen.

upon request of its clients. The prices of the published quotes must reflect prevailing market conditions.

(2) The systematic internaliser may decide on the number of shares or the value calculated on a money amount (size) for its bid and offer prices in the class of shares for which it publishes quotes. The bid and offer price per share in a quote must reflect prevailing market conditions.

(3) The systematic internaliser can update its published quotes at any time and may withdraw them in the event of exceptional market conditions.

(4) Details of the publication requirements according to paragraph 1 sentences 1 and 2 are stipulated in Chapter IV sections 2 and 4 of Regulation (EC) No. 1287/2006.

§ 32 b Determination of the standard market size and duties of the Bundesanstalt

(1) The Bundesanstalt defines, for purposes of the determination of the standard market size as defined in § 32 sentence 1 on the basis of the arithmetic average value of the transactions executed in the market, at least annually the classes for the classes of shares, for which the most relevant market in terms of liquidity is in Germany.

(2) The Bundesanstalt publishes the classes determined according to paragraph 1 on its website.

§ 32 c Execution of client orders by systematic internalisers

(1) A systematic internaliser as defined in § 32 sentence 1 is required to execute orders at the quoted price published at the time of the receipt of the order. The execution of retail client orders must comply with the requirements defined in § 33 a.

(2) Der systematische Internalisierer kann die Aufträge professioneller Kunden zu einem anderen als dem in Absatz 1 Satz 1 genannten Preis ausführen, wenn die Auftragsausführung

1. zu einem besseren Preis erfolgt, der innerhalb einer veröffentlichten, markt-nahen Bandbreite liegt und das Volumen des Auftrags einen Betrag von 7500 Euro übersteigt,
2. eines Portfoliogeschäftes in mindestens zehn verschiedenen Wertpapieren erfolgt, die Teil eines einzigen Auftrags sind, oder
3. zu anderen Bedingungen erfolgt, als denjenigen, die für den jeweils geltenden Marktpreis anwendbar sind.

(3) Hat der systematische Internalisierer einen Quote veröffentlicht oder liegt sein größter Quote unter der standardmäßigen Marktgröße, so kann er einen Kundenauftrag, der über der Größe seines Quotes und unter der standardmäßigen Marktgröße liegt, auch insoweit ausführen, als dieser die Größe seines Quotes übersteigt, wenn die Ausführung zum quotierten Preis erfolgt. Absatz 2 bleibt unberührt.

(4) Hat der systematische Internalisierer Quotes für verschiedene Größen veröffentlicht, so kann er einen Kundenauftrag, der zwischen diesen Größen liegt, nach Maßgabe der Absätze 1 bis 3 zu einem der quotierten Preise ausführen.

§ 32 d Zugang zu Quotes, Geschäftsbedingungen bei systematischer Internalisierung

(1) Ein systematischer Internalisierer im Sinne des § 32 Satz 1 hat den Zugang zu den von ihm veröffentlichten Quotes in objektiver und nicht diskriminierender Weise zu gewähren. Er hat die Zugangsgewährung in eindeutiger Weise in seinen Geschäftsbedingungen zu regeln.

(2) Die Geschäftsbedingungen können ferner vorsehen, dass

1. die Aufnahme und Fortführung einer Geschäftsbeziehung mit Kunden abgelehnt werden kann, sofern dies auf-

(2) The systematic internaliser may execute professional client orders at a price other than the one referred to in paragraph 1 sentence 1 if the order execution

1. is at a better price which is within a published near market band and the volume of the order exceeds an amount of EUR 7,500,
2. of a portfolio trade involves at least ten different securities which are part of one single order, or
3. subject to conditions other than the ones which apply to the relevant applicable market price.

(3) If the systematic internaliser has only published one quote or if its highest quote is below standard market size, it can execute a client order which exceeds the size of its quote and is below standard market size also to the extent that it exceeds the size of its quote if it is executed at the quoted price. Paragraph 2 remains unaffected.

(4) If the systematic internaliser has published quotes for different sizes, it can execute a client order which is between these sizes according to paragraphs 1 to 3 at one of the quoted prices.

§ 32 d Access to quotes, terms and conditions for purposes of systematic internalisation

(1) A systematic internaliser as defined in § 32 sentence 1 must give access to its published quotes in an objective and non-discriminatory manner. It must regulate access in its terms and conditions in clear manner.

(2) The terms and conditions may further stipulate that

1. the entry into or continuation of a business relationships with clients may be refused if this is in order based on

grund wirtschaftlicher Erwägungen, insbesondere der Bonität des Kunden, dem Gegenparteiensrisiko oder der Abwicklung der Geschäfte geboten ist,

2. die Ausführung von Aufträgen eines Kunden in nicht diskriminierender Weise beschränkt werden kann, sofern dies zur Verminderung des Ausfallrisikos notwendig ist, und
3. unter Berücksichtigung der Anforderungen des § 31 c die Gesamtzahl der gleichzeitig von mehreren Kunden auszuführenden Aufträge in nicht diskriminierender Weise beschränkt werden kann, sofern die Anzahl oder das Volumen der Aufträge erheblich über der Norm liegt.

§ 33 Organisationspflichten

(1) Ein Wertpapierdienstleistungsunternehmen muss die organisatorischen Pflichten nach § 25 a Abs. 1 und 4 des Kreditwesengesetzes einhalten. Darüber hinaus muss es

1. angemessene Grundsätze aufstellen, Mittel vorhalten und Verfahren einrichten, die darauf ausgerichtet sind, sicherzustellen, dass das Wertpapierdienstleistungsunternehmen selbst und seine Mitarbeiter den Verpflichtungen dieses Gesetzes nachkommen, wobei insbesondere eine dauerhafte und wirksame Compliance-Funktion einzurichten ist, die ihre Aufgaben unabhängig wahrnehmen kann;

2. angemessene Vorkehrungen treffen, um die Kontinuität und Regelmäßigkeit der Wertpapierdienstleistungen und Wertpapiernebenleistungen zu gewährleisten;

3. auf Dauer wirksame Vorkehrungen für angemessene Maßnahmen treffen, um Interessenkonflikte bei der Erbringung von Wertpapierdienstleistungen oder Wertpapiernebenleistungen zwischen dem selbst einschließlich seiner Mitarbeiter und der mit ihm direkt oder indirekt durch Kontrolle im Sinne des § 1 Abs. 8 des Kreditwesengesetzes verbundenen Personen und Unterneh-

commercial considerations, in particular the client credit quality, the counterparty risk or the settlement of transactions,

2. the execution of the orders of a client may be limited in a non-discriminatory manner if this is required to reduce the risk of default, and
3. the total numbers of orders executed simultaneously for several clients may be limited in a non-discriminatory manner according to the requirements of § 31 c if the number or the volume of orders considerably exceeds the norm.

§ 33 Organisational requirements

(1) An investment services undertaking must comply with the organisational requirements according to § 25 a para. 1 and 4 of the Banking Act. Furthermore it must

1. establish adequate principles, maintain the means and implement procedures designed to ensure compliance of the investment services undertaking itself and its employees with the requirements set forth in this Act and in particular implement a permanent and effective compliance function which is able to operate its tasks independently;

2. take adequate measures to secure continuity and regularity of investment services and ancillary investment services;

3. maintain permanently effective arrangements for the purpose of taking all reasonable measures to detect conflicts of interest between the investment services undertaking including its employees and persons or undertakings which are linked to it directly or indirectly by control as defined in § 1 para. 8 of the Banking Act and its clients or between its clients and to pre-

men und seinen Kunden oder zwischen seinen Kunden zu erkennen und eine Beeinträchtigung der Kundeninteressen zu vermeiden;

3a. im Rahmen der Vorkerhungen nach Nummer 3 Grundsätze oder Ziele, die den Umsatz, das Volumen oder den Ertrag der im Rahmen der Anlageberatung empfohlenen Geschäfte unmittelbar oder mittelbar betreffen (Vertriebsvorgaben), derart ausgestalten, umsetzen und überwachen, dass Kundeninteressen nicht beeinträchtigt werden;

4. wirksame und transparente Verfahren für eine angemessene und unverzöglichte Bearbeitung von Beschwerden durch Privatkunden vorhalten und jede Beschwerde sowie die zu ihrer Abhilfe getroffenen Maßnahmen dokumentieren;

5. sicherstellen, dass die Geschäftsleitung und das Aufsichtsorgan in angemessenen Zeitabständen, zumindest einmal jährlich, Berichte der mit der Compliance-Funktion betrauten Mitarbeiter über die Angemessenheit und Wirksamkeit der Grundsätze, Mittel und Verfahren nach Nummer 1 erhalten, die insbesondere angeben, ob zur Behebung von Verstößen des Wertpapierdienstleistungsunternehmens oder seiner Mitarbeiter gegen Verpflichtungen dieses Gesetzes oder zur Beseitigung des Risikos eines solchen Verstößes geeignete Maßnahmen ergriffen wurden;

6. die Angemessenheit und Wirksamkeit der nach diesem Abschnitt getroffenen organisatorischen Maßnahmen überwachen und regelmäßig bewerten sowie die erforderlichen Maßnahmen zur Beseitigung von Unzulänglichkeiten ergreifen.

Im Rahmen der nach Satz 2 Nr. 1 zu treffenden Vorkerhungen muss das Wertpapierdienstleistungsunternehmen Art, Umfang, Komplexität und Risikogehalt seines Geschäfts sowie Art und Spektrum der von ihm angebotenen Wertpapierdienstleistungen berücksichtigen.

(2) Ein Wertpapierdienstleistungsunternehmen muss bei einer Auslagerung von

vent an impairment of the interests of its clients when providing investment services or ancillary investment services;

3a. within the context of measures according to no. 3 design, implement and monitor principles or goals directly or indirectly relation to the turnover, volume or profit of transactions recommended within the context of investment advice in a manner which does not adversely affect client interests.

4. maintain effective and transparent procedures for the reasonable and prompt handling of complaints of retail clients and record each complaint and measures taken for to resolve them;

5. ensure that the management and the supervisory body receive reports by the employees charged with the compliance function on the adequacy and effectiveness of the principles, means and procedures according to number 1 at adequate intervals, but at least once a year, which state in particular whether adequate measures have been taken to resolve violations of the investment services undertaking or its employees of requirements under this Act or to eliminate the risk of such violation;

6. monitor and regularly assess the adequacy and effectiveness of the organisational measures put in place according to this Chapter and take necessary measures to resolve deficiencies.

In the context of the measures to be implemented according to sentence 2 no. 1 the investment services undertaking must take into account the nature, scale, complexity and risk of its business, and the nature and range of investment services offered by it.

(2) An investment services undertaking must comply with the requirements set

Aktivitäten und Prozessen sowie von Finanzdienstleistungen die Anforderungen nach § 25 a Abs. 2 des Kreditwesengesetzes einhalten. Die Auslagerung darf nicht die Rechtsverhältnisse des Unternehmens zu seinen Kunden und seine Pflichten, die nach diesem Abschnitt gegenüber den Kunden bestehen, verändern. Die Auslagerung darf die Voraussetzungen, unter denen dem Wertpapierdienstleistungsunternehmen eine Erlaubnis nach § 32 des Kreditwesengesetzes erteilt worden ist, nicht verändern.

(3) Ein Wertpapierdienstleistungsunternehmen darf die Finanzportfolioverwaltung für Privatkunden im Sinne des § 31 a Abs. 3 nur dann an ein Unternehmen mit Sitz in einem Drittstaat auslagern, wenn

1. das Auslagerungsunternehmen für diese Dienstleistung im Drittstaat zugelassen oder registriert ist und von einer Behörde beaufsichtigt wird, die mit der Bundesanstalt eine hinreichende Kooperationsvereinbarung unterhält, oder
2. die Auslagerungsvereinbarung bei der Bundesanstalt angezeigt und von ihr nicht innerhalb eines angemessenen Zeitraums beanstandet worden ist.

Die Bundesanstalt veröffentlicht auf ihrer Internetseite eine Liste der ausländischen Aufsichtsbehörden, mit denen sie eine angemessene Kooperationsvereinbarung im Sinne des Satzes 1 Nr. 1 unterhält und die Bedingungen, unter denen sie Auslagerungsvereinbarungen nach Satz 1 Nr. 2 in der Regel nicht beanstandet, einschließlich einer Begründung, weshalb damit die Einhaltung der Vorgaben nach Absatz 2 gewährleistet werden kann.

(4) Das Bundesministerium der Finanzen kann durch Rechtsverordnung, die nicht der Zustimmung des Bundesrates bedarf, nähere Bestimmungen zu den organisatorischen Anforderungen nach Absatz 1 Satz 2 erlassen. Das Bundesministerium der Finanzen kann die Ermächtigung durch Rechtsverordnung auf die Bundesanstalt übertragen.

forth in § 25 a para. 2 of the Banking Act when outsourcing activities and procedures as well as financial services. The outsourcing must not change the undertaking's legal relationship to its clients nor its obligations which it has vis-à-vis clients under this Chapter. The outsourcing may not change the requirements subject to which the licence according to § 32 of the Banking Act has been issued to the investment services undertaking.

(3) An investment services undertaking may only outsource financial portfolio management services provided to retail clients as defined in § 31 a para. 3 to undertakings with a registered office in third countries if

1. the outsourcing undertaking is authorised or registered in a third country to provide that service and is subject to supervision by an authority which maintains an adequate cooperation agreement with the Bundesanstalt or
2. the outsourcing agreement has been notified to the Bundesanstalt and the Bundesanstalt has not objected to it within a reasonable time period.

The Bundesanstalt publishes on its website a list of the foreign supervisory authorities with which it maintains an adequate cooperation agreement as defined in sentence 1 no. 1 and any conditions subject to which it does usually not object to outsourcing agreements as defined in sentence 1 no. 2 including a reasoning why this may ensure compliance with the requirements under paragraph 2.

(4) The Federal Ministry of Finance may, by issuing a regulation that does not require the approval of the Bundesrat, stipulate detailed provisions on the organisational requirements pursuant to paragraph 1 sentence 2. The Federal Ministry of Finance may delegate the authority to the Bundesanstalt by means of a regulation.

§ 33 a Bestmögliche Ausführung von Kundenaufträgen

(1) Ein Wertpapierdienstleistungsunternehmen, das Aufträge seiner Kunden für den Kauf oder Verkauf von Finanzinstrumenten im Sinne des § 2 Abs. 3 Satz 1 Nr. 1 bis 3 ausführt, muss

1. alle angemessenen Vorkehrungen treffen, insbesondere Grundsätze zur Auftragsausführung festlegen und mindestens jährlich überprüfen, um das bestmögliche Ergebnis für seine Kunden zu erreichen und
2. sicherstellen, dass die Ausführung jedes einzelnen Kundenauftrags nach Maßgabe dieser Grundsätze vorgenommen wird.

(2) Das Wertpapierdienstleistungsunternehmen muss bei der Aufstellung der Ausführungsgrundsätze alle relevanten Kriterien zur Erzielung des bestmöglichen Ergebnisses, insbesondere die Preise der Finanzinstrumente, die mit der Auftragsausführung verbundenen Kosten, die Geschwindigkeit, die Wahrscheinlichkeit der Ausführung und die Abwicklung des Auftrags sowie den Umfang und die Art des Auftrags berücksichtigen und die Kriterien unter Berücksichtigung der Merkmale des Kunden, des Kundenauftrags, des Finanzinstrumentes und des Ausführungsplatzes gewichten.

(3) Führt das Wertpapierdienstleistungsunternehmen Aufträge von Privatkunden aus, müssen die Ausführungsgrundsätze Vorkehrungen dafür enthalten, dass sich das bestmögliche Ergebnis am Gesamtgelt orientiert. Das Gesamtgelt ergibt sich aus dem Preis für das Finanzinstrument und sämtlichen mit der Auftragsausführung verbundenen Kosten. Kann ein Auftrag über ein Finanzinstrument nach Maßgabe der Ausführungsgrundsätze des Wertpapierdienstleistungsunternehmens an mehreren konkurrierenden Plätzen ausgeführt werden, zählen zu den Kosten auch die eigenen Provisionen oder Gebühren, die das Wertpapierdienstleistungsunternehmen dem Kunden für eine Wertpapierdienstleistung in Rechnung stellt. Die Wertpapierdienstleis-

tungsunternehmen dürfen ihre Provisionen nicht in einer Weise strukturieren oder in Rechnung stellen, die eine sachlich nicht gerechtfertigte Ungleichbehandlung der Ausführungsplätze bewirkt.

(4) Führt das Wertpapierdienstleistungsunternehmen einen Auftrag gemäß einer ausdrücklichen Kundenweisung aus, gilt die Pflicht zur Erzielung des bestmöglichen Ergebnisses entsprechend dem Umfang der Weisung als erfüllt.

(5) Die Grundsätze zur Auftragsausführung müssen

1. Angaben zu den verschiedenen Ausführungsplätzen in Bezug auf jede Gattung von Finanzinstrumenten und die ausschlaggebenden Faktoren für die Auswahl eines Ausführungsplatzes,
2. mindestens die Ausführungsplätze, an denen das Wertpapierdienstleistungsunternehmen gleichbleibend die bestmöglichen Ergebnisse bei der Ausführung von Kundenaufträgen erzielen kann, enthalten. Lassen die Ausführungsgrundsätze im Sinne des Absatzes 1 Nr. 1 auch eine Auftragsausführung außerhalb organisierter Märkte und multilateraler Handelssysteme zu, muss das Wertpapierdienstleistungsunternehmen seine Kunden auf diesen Umstand gesondert hinweisen und deren ausdrückliche Einwilligung generell oder in Bezug auf jedes Geschäft einholen, bevor die Kundenaufträge an diesen Ausführungsplätzen ausgeführt werden.

(6) Das Wertpapierdienstleistungsunternehmen muss

1. seine Kunden vor der erstmaligen Erbringung von Wertpapierdienstleistungen über seine Ausführungsgrundsätze informieren und seine Zustimmung zu diesen Grundsätzen einholen,
2. seine Privatkunden ausdrücklich darauf hinweisen, dass im Falle einer Kundenweisung das Wertpapierdienstleistungsunternehmen den Auftrag entsprechend der Kundenweisung ausführt und insoweit nicht verpflichtet ist, den Auftrag entsprechend seinen Grundsätzen zur Auftragsausführung zum bestmöglichen Ergebnis auszuführen,

(4) If an investment services undertaking executes an order according to a specific client instruction, the obligation to obtain the best possible result is deemed to be complied with according to the scope of the instruction.

(5) The order execution principles must contain

1. information on the different execution venues in relation to each class of financial instrument and the determining criteria for selecting an execution venue,
2. at least a list of the execution venues on which the investment services undertaking can obtain on a consistent basis the best possible result for the purpose of executing client orders.

Where the order execution principles as defined in paragraph 1 no. 1 also allow order execution outside regulated markets and multilateral trading facilities, the investment services undertaking must specifically inform its clients on this and obtain their express consent generally or in relation to each transaction prior to executing the client orders at this execution venue.

(6) The investment services undertaking must

1. inform its clients prior to the first provision of investment services on its order execution principles and obtain their consent to the principles,
2. expressly inform its retail clients that in the case of a client instruction the investment services undertaking executes the order according to the client instruction and is to this extent not required to execute the order in compliance with its order execution principles to obtain the best possible result,

3. seinen Kunden wesentliche Änderungen der Vorkahrungen nach Absatz 1 Nr. 1 unverzüglich mitteilen.
- (7) Das Wertpapierdienstleistungsunternehmen muss in der Lage sein, einem Kunden auf Anfrage darzulegen, dass sein Auftrag entsprechend den Ausführungsgrundsätzen ausgeführt wurde.
- (8) Für Wertpapierdienstleistungsunternehmen, die Aufträge ihrer Kunden an Dritte zur Ausführung weiterleiten oder Finanzportfolioverwaltung betreiben, ohne die Aufträge oder Entscheidungen selbst auszuführen, gelten die Absätze 1 bis 7 mit folgender Maßgabe entsprechend:
- im Rahmen der angemessenen Vorkahrungen ist den Vorgaben Rechnung zu tragen, die bei der Auftragsausführung nach den Absätzen 2 und 3 zu beachten sind,
 - die nach Absatz 1 Nr. 1 festzulegenden Grundsätze müssen in Bezug auf jede Gruppe von Finanzinstrumenten die Einrichtungen nennen, die das Wertpapierdienstleistungsunternehmen mit der Ausführung seiner Entscheidungen beauftragt oder an die es die Aufträge seiner Kunden zur Ausführung weiterleitet; das Wertpapierdienstleistungsunternehmen muss sicherstellen, dass die von ihm ausgewählten Unternehmen Vorkahrungen treffen, die es ihm ermöglichen, seinen Pflichten nach diesem Absatz nachzukommen,
 - im Rahmen seiner Pflichten nach Absatz 1 Nr. 2 muss das Wertpapierdienstleistungsunternehmen mindestens einmal jährlich seine Grundsätze überprüfen und regelmäßig überwachen, ob die beauftragten Einrichtungen die Aufträge im Einklang mit den getroffenen Vorkahrungen ausführen und bei Bedarf etwaige Mängel beheben.
- (9) Das Bundesministerium der Finanzen kann durch Rechtsverordnung, die nicht der Zustimmung des Bundesrates bedarf, nähere Bestimmungen erlassen über Mindestanforderungen zur Aufstellung der Ausführungsgrundsätze nach den
3. inform its clients without undue delay of significant changes to the measures according to paragraph 1 no. 1.
- (7) The investment services undertaking must be in a position to demonstrate to a client upon request that it has executed his order according to the order execution principles.
- (8) The paragraphs 1 to 7 apply *mutatis mutandis* to investment services undertakings transmitting client orders to third parties for execution or providing the service of financial portfolio management without themselves executing the order or decisions with the following proviso:
- in the context of adequate measures the requirements which have to be considered when executing orders according to paragraphs 2 and 3 are to be taken into account,
 - the order execution principles to be established according to paragraph 1 no. 1 must list in relation to each group of financial instruments the entities which the investment services undertaking has appointed to execute its dealings or to which it transmits client orders; the investment services undertaking must ensure that the undertakings it selects take measures which enable it to comply with its requirements under this paragraph,
 - in the context of its obligations according to paragraph 1 no. 2, the investment services undertaking must review its principles at least once a year and regularly monitor whether the entities appointed execute the orders according to the measures taken and if necessary resolve deficiencies.
- (9) The Federal Ministry of Finance may, by issuing a regulation that does not require the approval of the Bundesrat, stipulate minimum requirements on establishing the order execution principles as defined in paragraphs 1 to 5, on the prin-

Absätzen 1 bis 5, über die Grundsätze im Sinne des Absatzes 8 Nr. 2 und die Überprüfung der Vorkahrungen nach den Absätzen 1 und 8 sowie Art, Umfang und Datenträger der Information über die Ausführungsgrundsätze nach Absatz 6. Das Bundesministerium der Finanzen kann die Ermächtigung durch Rechtsverordnung auf die Bundesanstalt übertragen.

§ 33b Mitarbeiter und Mitarbeitergesellschaften

(1) Mitarbeiter eines Wertpapierdienstleistungsunternehmens sind

- die Mitglieder der Leitungsorgane, die persönlich haftenden Gesellschafter und vergleichbare Personen, die Geschäftsführer sowie die vertraglich gebundenen Vermittler im Sinne des § 2 Abs. 10 Satz 1 des Kreditwesengesetzes,
- die Mitglieder der Leitungsorgane, die persönlich haftenden Gesellschafter und vergleichbare Personen sowie die Geschäftsführer der vertraglich gebundenen Vermittler,
- alle natürlichen Personen, deren sich das Wertpapierdienstleistungsunternehmen oder dessen vertraglich gebundene Vermittler bei der Erbringung von Wertpapierdienstleistungen, insbesondere aufgrund eines Arbeits-, Geschäftsbesorgungs- oder Dienstverhältnisses, bedienen, und
- alle natürlichen Personen, die im Rahmen einer Auslagerungsvereinbarung unmittelbar an Dienstleistungen für das Wertpapierdienstleistungsunternehmen oder dessen vertraglich gebundene Vermittler zum Zweck der Erbringung von Wertpapierdienstleistungen beteiligt sind.

(2) Mitarbeitergesellschaften im Sinne der Absätze 3 bis 6 sind Geschäfte mit einem Finanzinstrument durch Mitarbeiter

- für eigene Rechnung,
- für Rechnung von Personen, mit denen sie im Sinne des § 15 a Abs. 3 Satz 1 in enger Beziehung stehen, von minder-

ciples as defined in paragraph 8 no. 2 and the monitoring of the measures according to paragraphs 1 and 8 as well as on nature, scope and data carrier of the information on the order execution principles according to paragraph 6. The Federal Ministry of Finance may delegate the authority to the Bundesanstalt by means of a regulation.

§ 33b Employees and employee transactions

(1) Employees of an investment services undertaking are

- members of managing bodies, personally liable partners and comparable persons, managing directors as well as tied agents as defined in § 2 para. 10 of the Banking Act,
- members of managing bodies, personally liable partners and comparable persons, as well as managing directors of tied agents,
- all natural persons, the investment services undertaking or its tied agents use when providing investment services, in particular based on an employment contract, services contract or other employment, and
- all natural persons who are directly involved in services for the investment services undertaking or its tied agents in the context of an outsourcing agreement for the purpose of providing investment services.

(2) Employee transactions as defined in paragraphs 3 to 6 are transactions in relation to a financial instrument by employees

- for own account,
- for the account of persons with whom they are closely associated as defined in § 15 a para. 3 sentence 1, underage

hrigen Stiefkindern oder Personen, an deren Geschäftserfolg der Mitarbeiter zumindest mittelbares wesentliches Interesse hat, welches nicht in einer Gebühr oder Provision für die Ausführung des Geschäfts besteht, oder innerhalb des ihnen zugewiesenen Aufgabenbereichs für eigene oder fremde Rechnung.

1. Wertpapierdienstleistungsunternehmen müssen angemessene Mittel und Verfahren einsetzen, die bezwecken, Mitarbeitern, deren Tätigkeit Anlass zu einem Interessenkonflikt geben könnte oder die und ihrer Tätigkeit Zugang haben zu Informationen nach § 13 oder zu vertraulichen Informationen über den oder solche Geschäfte, die mit für Kunden getätigt werden, daran hindern,

1. Mitarbeitergeschäft zu tätigen, welches gegen eine Vorschrift dieses Abschnitts oder § 14 verstoßen könnte oder mit dem Missbrauch oder der vor schriftswidrigen Weitergabe vertraulicher Informationen verbunden ist, außerhalb ihrer vorgesehenen Tätigkeit Mitarbeiter einem anderen ein Geschäft über Finanzinstrumente zu empfehlen, welches als Mitarbeitergeschäft

die Voraussetzungen der Nummer 1 oder des Absatzes 5 Nr. 1 oder Nr. 2 erfüllte oder

gegen § 31 c Abs. 1 Nr. 5 verstieße er einen anderen zu einem solchen Geschäft zu verleiten,

beschadet des Verbots nach § 14 Abs. 1 Nr. 2, außerhalb ihrer vorgesehenen Tätigkeit als Mitarbeiter einem anderen Meinungen oder Informationen in dem Bewusstsein zugänglich zu machen, dass der andere hierdurch verletzt werden dürfte,

ein Geschäft zu tätigen, welches als Mitarbeitergeschäft die Voraussetzungen der Nummer 1 oder des Ab-

stepchildren or persons in whose business success the employee has at least a significant indirect interest which does not consist of a fee or commission for the execution of the transaction, or

3. outside of their assigned tasks for their own account or for the account of others.

(3) Investment services undertakings must use adequate means and procedures designed to prevent employees the work of whom may give rise to conflicts of interest or who have access to inside information as defined in § 13 or other confidential information in relation to clients or such transactions executed with or for clients due to their work,

1. from entering into an employee transaction which

a) could violate a provision of this Chapter or § 14 or

b) involves the abuse or unduly passing on of confidential information,

2. from recommending to another person outside of their intended work as employee a transaction in financial instruments which as an employee transaction would

a) meet the requirements of number 1 or paragraph 5 no. 1 no. 2 or

b) violate § 31 c para. 1 no. 5 or induce another person to such a transaction,

3. notwithstanding the prohibition in § 14 para. 1 no. 2 from making available opinions or information to another person outside of their intended work as employee being aware that the other person might be induced to,

a) enter into a transaction which as an employee transaction would meet the requirements of number 1 or

satzes 5 Nr. 1 oder Nr. 2 erfüllte oder gegen § 31 c Abs. 1 Nr. 5 verstieße, oder

b) einem Dritten ein Geschäft nach Buchstabe a zu empfehlen oder ihn zu einem solchen zu verleiten.

(4) Die organisatorischen Vorkehrungen nach Absatz 3 müssen zumindest darauf ausgerichtet sein, zu gewährleisten, dass

1. alle von Absatz 3 erfassten Mitarbeiter die Beschränkungen für Mitarbeitergeschäfte und die Vorkehrungen des Wertpapierdienstleistungsunternehmens nach Absatz 3 kennen,

2. das Wertpapierdienstleistungsunternehmen von jedem Mitarbeitergeschäft eines Mitarbeiters im Sinne des Absatzes 3 entweder durch Anzeige des Mitarbeiters oder ein anderes Feststellungsverfahren unverzüglich Kenntnis erhalten kann,

3. im Rahmen von Auslagerungsvereinbarungen im Sinne des § 25 a Abs. 2 des Kreditwesengesetzes die Mitarbeitergeschäfte von Personen nach Absatz 1 Nr. 4, welche die Voraussetzungen des Absatzes 3 erfüllen, durch das Auslagerungsunternehmen dokumentiert und dem Wertpapierdienstleistungsunternehmen auf Verlangen vorgelegt werden und

4. das Wertpapierdienstleistungsunternehmen alle Mitarbeitergeschäfte, von denen es nach Nummer 2 oder Nummer 3 Kenntnis erhält, und alle Erlaubnisse und Verbote, die hierzu erteilt werden, dokumentiert.

(5) Die organisatorischen Vorkehrungen von Wertpapierdienstleistungsunternehmen, die auf eigene Verantwortung oder auf Verantwortung eines Mitglieds ihrer Unternehmensgruppe Finanzanalysen über Finanzinstrumente im Sinne des § 2 Abs. 2 b oder deren Emittenten erstellen oder erstellen lassen, die unter ihren Kunden oder in der Öffentlichkeit verbreitet werden sollen oder deren Verbreitung wahrscheinlich ist, müssen zudem darauf ausgerichtet sein, zu gewährleisten, dass

paragraph 5 no. 1 no. 2 or violate § 31 c para. 1 no. 5, or

b) recommend to a third person a transaction as defined in lit. a or induce that person to such transaction.

(4) The organisational measures according to paragraph 3 must at least be designed to ensure that

1. all employees within the scope of paragraph 3 are aware of the restrictions on employee transactions, and of the measures established by the investment services undertaking according to paragraph 3,

2. the investment services undertaking is informed on each employee transaction as defined in paragraph 3 without undue delay either by a report of that employee or another detection procedure,

3. in the context of an outsourcing agreement as defined in § 25 a para. 2 of the Banking Act an employee transaction of persons as defined in paragraph 1 no. 4 meeting the requirements of paragraph 3 is recorded by the outsourcing service provider and is submitted to the investment services undertaking upon request, and

4. the investment services undertaking records all employee transactions it is informed on according to number 2 or number 3 and all permissions and prohibitions which are issued in this context.

(5) Furthermore, the organisational measures of investment services undertakings which under their own responsibility or the responsibility of a member of their group of undertakings produce or arrange for the production of investment research in relation to financial instruments as defined in § 2 para. 2 b or their issuers intended or likely to be subsequently disseminated to their clients or to the public must be designed to ensure that

Mitarbeiter, die den Inhalt und wahrscheinlichsten Zeitplan von Finanzanalysen über Finanzinstrumente im Sinne des § 2 Abs. 2 b oder deren Emittenten kennen, die weder veröffentlicht noch für Kunden zugänglich sind und deren Empfehlung Dritte nicht bereits aufgrund öffentlich verfügbarer Informationen erwarten würden, für eigene Rechnung oder für Rechnung Dritter, einschließlich des Wertpapierdienstleistungsunternehmens, keine Geschäfte mit Finanzinstrumenten tätigen, auf die sich die Finanzanalysen beziehen, oder damit verbundenen Finanzinstrumenten, bevor die Empfänger der Finanzanalysen oder Anlageempfehlungen ausreichend Gelegenheit für eine Reaktion hatten, es sei denn, die Mitarbeiter handeln in ihrer Eigenschaft als Market Maker nach Treu und Glauben und im üblichen Rahmen oder in Ausführung eines nicht selbst initiierten Kundenauftrags,

n nicht unter Nummer 1 erfassten Fällen Mitarbeiter, die an der Erstellung von Finanzanalysen über Finanzinstrumente im Sinne des § 2 Abs. 2 b oder deren Emittenten beteiligt sind, nur in Ausnahmefällen und mit vorheriger Zustimmung der Rechtsabteilung oder der Compliance-Funktion ein Mitarbeitergeschäft über Finanzinstrumente, auf die sich die Finanzanalysen beziehen, oder damit verbundene Finanzinstrumente, entgegen den aktuellen Empfehlungen tätigen.

6) Die Pflichten des Absatzes 5 gelten für Wertpapierdienstleistungsunternehmen, die von einem Dritten erstellte Finanzanalysen öffentlich verbreiten oder ihre Kunden weitergeben, es sei denn, der Dritte, der die Finanzanalyse erstellt, gehört nicht zur selben Unternehmenseinheit und

7) ändert die in der Finanzanalyse enthaltenen Empfehlungen nicht wesentlich ab,

1. employees having knowledge of the content and likely timetable of investment research in relation to financial instruments as defined in § 2 para. 2 b or their issuers which have not been published nor made available to clients and the recommendations of which third parties do not already expect due to publicly available information, do not enter into transactions in financial instruments the investment research relate to for their own account or the account of third parties, including the investment services undertaking, prior to the receipt of the investment research having sufficient opportunity for a reaction unless the employees act in good faith in their capacity as market maker and within the usual scope or in carrying out a client order they have not themselves initiated,

2. in cases not covered by number 1 employees who are involved in producing investment research in relation to financial instruments as defined in § 2 para. 2 b or their issuers carry out an employee transaction in relation to financial instruments the investment research relates to or connected financial instruments contrary to the current recommendation only in exceptional cases and only with consent of the legal department or the compliance function.

(6) The obligations of paragraph 5 also apply to investment services undertakings distributing publicly or disseminating to their clients investment research prepared by a third party unless,

1. the third party having produced the investment research is not a member of the same group of undertakings and

2. the investment services undertaking a) does not significantly change the recommendations contained in the investment research,

b) stellt die Finanzanalyse nicht als von ihm erstellt dar und

c) vergewissert sich, dass für den Ersteller der Finanzanalyse Bestimmungen gelten, die den Anforderungen des Absatzes 5 gleichwertig sind, oder dieser Grundsätze im Sinne dieser Anforderungen festgelegt hat.

(7) Von den Absätzen 3 und 4 ausgenommen ist ein Mitarbeitergeschäft

1. im Rahmen der Finanzportfoliowahl, sofern vor dem jeweiligen Geschäftsabschluss kein Kontakt zwischen dem Portfoliowalter und dem Mitarbeiter oder demjenigen besteht, für dessen Rechnung dieser handelt,

2. mit Anteilen an Investmentvermögen, die

a) den Vorgaben der Richtlinie 2009/65/EG in der jeweils geltenden Fassung entsprechen oder

b) im Inland, in einem anderen Mitgliedsstaat der Europäischen Union oder einem anderen Vertragsstaat des Abkommens über den Europäischen Wirtschaftsraum beaufsichtigt werden und ein gleich hohes Maß an Risikostreuung aufweisen müssen, wenn der Mitarbeiter oder eine andere Person, für deren Rechnung gehandelt wird, an der Verwaltung des Investmentvermögens nicht beteiligt sind.

§ 34 Aufzeichnungs- und Aufbewahrungspflicht

(1) Ein Wertpapierdienstleistungsunternehmen muss, unbeschadet der Aufzeichnungspflichten nach den Artikeln 7 und 8 der Verordnung (EG) Nr. 1287/2006, über die von ihm erbrachten Wertpapierdienstleistungen und Wertpapiernebenleistungen sowie die von ihm getätigten Geschäftsaufzeichnungen erstellen, die es der Bundesanstalt ermöglichen, die Einhaltung der in diesem Abschnitt geltenden Pflichten zu prüfen.

(2) Das Wertpapierdienstleistungsunternehmen hat Aufzeichnungen zu erstellen

b) discloses that the investment research has not been prepared by itself and

c) makes sure that requirements apply to the producer of the investment research which are equivalent to the requirements of paragraph 5 or that it has established principles for the purpose of these requirements.

(7) The following employee transactions are exempted from the requirements defined in paragraphs 3 and 4

1. in the context of financial portfolio management where there is no contact prior to the execution of the relevant transaction between the financial portfolio manager and the employee or the person on whose account he acts,

2. in units in investment funds which

a) comply with the requirements of Directive 2009/65/EC as amended or

b) are supervised in Germany, in another member state of the European Union or a another contracting state of the European Economic Area and require an equivalent level of risk spreading if the employee or another person on whose account he acts are not involved in the management of the investment fund.

§ 34 Record and record retention requirements

(1) An investment services undertaking must notwithstanding the record requirements according to Articles 7 and 8 of the Regulation (EC) No. 1287/2006 record the investment services and ancillary investment services provided by it and transactions it has executed to enable the Bundesanstalt to monitor compliance with the requirements set forth by this Chapter.

(2) The investment services undertaking has to prepare records on agreements with

len über Vereinbarungen mit Kunden, die die Rechte und Pflichten der Vertragspartien sowie die sonstigen Bedingungen festlegen, zu denen das Wertpapierdienstleistungsunternehmen Wertpapierdienstleistungen oder Wertpapiernebenleistungen für den Kunden erbringt. Bei der erstmaligen Erbringung einer Wertpapierdienstleistung für einen Privatkunden, die nicht Anlageberatung ist, muss die Aufzeichnung nach Satz 1 den Abschluss einer schriftlichen Rahmenvereinbarung, die mindestens die wesentlichen Rechte und Pflichten des Wertpapierdienstleistungsunternehmens und des Privatkunden enthält, dokumentieren. In anderen Dokumenten oder Rechtstexten normierte oder vereinbarte Rechte und Pflichten können durch Verweis in die Rahmenvereinbarung einbezogen werden. Die Rahmenvereinbarung muss dem Privatkunden in Papierform oder auf einem anderen dauerhaften Datenträger zur Verfügung gestellt werden. Ein dauerhafter Datenträger ist jedes Medium, das dem Kunden die Speicherung der für ihn bestimmten Informationen in der Weise gestattet, dass er die Informationen für eine ihrem Zweck angemessene Dauer einsehen und unverändert wiedergeben kann.

(2a) Ein Wertpapierdienstleistungsunternehmen muss über jede Anlageberatung bei einem Privatkunden ein schriftliches Protokoll anfertigen. Das Protokoll ist von demjenigen zu unterzeichnen, der die Anlageberatung durchgeführt hat; eine Ausfertigung ist dem Kunden unverzüglich nach Abschluss der Anlageberatung, jedenfalls vor einem auf der Beratung beruhenden Geschäftsabschluss, in Papierform oder auf einem anderen dauerhaften Datenträger zur Verfügung zu stellen. Wählt der Kunde für Anlageberatung und Geschäftsabschluss Kommunikationsmittel, die die Übermittlung des Protokolls vor dem Geschäftsabschluss nicht gestatten, muss das Wertpapierdienstleistungsunternehmen eine Ausfertigung des Protokolls dem Kunden unverzüglich nach Abschluss der Anlageberatung zusenden. In diesem Fall kann der Geschäftsab-

clients which stipulate the rights and duties of the contractual parties as well as other terms on which the investment services undertaking provides investment services and ancillary investment services to the client. When providing an investment service other than investment advice to a retail client for the first time the record according to sentence 1 must include the execution of a written master agreement setting out at least the essential rights and obligations of the investment services undertaking and the retail client. The rights and duties regulated or agreed in other documents or legal texts may be incorporated into the master agreement by reference. The master agreement must be provided to the retail client on paper or another durable medium. Durable medium means any medium which allows the client storing information meant for that client in a manner that the client can access the information for a period of time adequate for its purpose and reproduce it unchanged.

(2a) An investment services undertaking must produce a written record in relation to each investment advice provided to a retail client. The record has to be signed by the person who has provided the investment advice; a copy in paper or another durable medium must be provided to the client after the conclusion of the investment advice without undue delay, but in any event prior to the conclusion of a transaction based on the advice. If the client chooses means of communication for investment advice and communication of the transaction which do not allow for the transmission of a copy of the record prior to the conclusion of the transaction, the investment services undertaking has to send a copy of the record to the client without undue delay after the conclusion of the transaction. In this case, the conclusion of the transaction can occur upon

schluss auf ausdrücklichen Wunsch des Kunden vor Erhalt des Protokolls erfolgen, wenn das Wertpapierdienstleistungsunternehmen dem Kunden für den Fall, dass das Protokoll nicht richtig oder nicht vollständig ist, ausdrücklich ein innerhalb von einer Woche nach dem Zugang des Protokolls ausübendes Recht zum Rücktritt von dem auf der Beratung beruhenden Geschäft einräumt. Der Kunde muss auf das Rücktrittsrecht und die Frist hingewiesen werden. Bestreitet das Wertpapierdienstleistungsunternehmen das Recht zum Rücktritt nach Satz 4, hat es die Richtigkeit und die Vollständigkeit des Protokolls zu beweisen.

(2b) Der Kunde kann von dem Wertpapierdienstleistungsunternehmen die Herausgabe einer Ausfertigung des Protokolls nach Absatz 2 a verlangen.

(3) Alle nach diesem Abschnitt erforderlichen Aufzeichnungen sind mindestens fünf Jahre ab dem Zeitpunkt ihrer Erstellung aufzubewahren. Aufzeichnungen über Rechte und Pflichten des Wertpapierdienstleistungsunternehmens und seiner Kunden sowie sonstige Bedingungen, zu denen Wertpapierdienstleistungen und Wertpapiernebenleistungen erbracht werden, sind mindestens für die Dauer der Geschäftsbeziehung mit dem Kunden aufzubewahren. In Ausnahmefällen kann die Bundesanstalt für einzelne oder alle Aufzeichnungen längere Aufbewahrungsfristen festsetzen, wenn dies aufgrund außergewöhnlicher Umstände unter Berücksichtigung der Art des Finanzinstruments oder des Geschäfts für die Überwachungs-tätigkeit der Bundesanstalt erforderlich ist. Die Bundesanstalt kann die Einhaltung der Aufbewahrungsfrist nach Satz 1 auch für den Fall verlangen, dass die Erlaubnis eines Wertpapierdienstleistungsunternehmens vor Ablauf der in Satz 1 genannten Frist endet.

(4) Das Bundesministerium der Finanzen kann durch Rechtsverordnung, die nicht der Zustimmung des Bundesrates bedarf, nähere Bestimmungen zu den Aufzeichnungspflichten und zu der Geeignetheit von Datenträgern nach den Absatz-

express request of the client prior to receipt of the record if the investment services undertaking gives the client an express right to rescind the transaction based on the advice which has to be used within one week after receipt of the record if the record is not correct or not complete. The client has to be informed on the rescission right and the deadline. If the investment services undertaking challenges the right to rescind the transaction according to sentence 4, it has to prove the correctness and completeness of the record.

(2b) The client has the right to demand from the investment services undertaking the handing over of a copy of the record according to paragraph 2 a.

(3) All records required according to this Chapter must be retained for a period of at least five years as of the time they have been produced. Records which set out the respective rights and obligations of the investment services undertaking and its clients as well as other terms on which investment services and ancillary investment services are provided must be retained for at least the duration of the business relationship with the client. In exceptional circumstances, the Bundesanstalt may issue longer retention periods for individual or all records if this is required due to exceptional circumstances taking into account the nature of the financial instrument or transaction for exercising the Bundesanstalt's supervisory functions. The Bundesanstalt may require compliance with the retention period according to sentence 1 even if the authorisation of an investment services undertaking ends prior to the lapse of the retention period defined in sentence 1.

(4) The Federal Ministry of Finance may, by issuing a regulation that does not require the approval of the Bundesrat, stipulate detailed provisions on record retention requirements or the suitability of data carriers according to paragraphs 1

zen 1 bis 2 a erlassen. Das Bundesministerium der Finanzen kann die Ermächtigung durch Rechtsverordnung auf die Bundesanstalt übertragen.

(5) Die Bundesanstalt veröffentlicht auf ihrer Internetseite ein Verzeichnis der Mindestaufzeichnungen, die die Wertpapierdienstleistungsunternehmen nach diesem Gesetz in Verbindung mit einer Rechtsverordnung nach Absatz 4 vorzunehmen haben.

§ 34 a Getrennte Vermögensverwahrung

(1) Ein Wertpapierdienstleistungsunternehmen, das über keine Erlaubnis für das Einlagengeschäft im Sinne des § 1 Abs. 1 Satz 2 Nr. 1 des Kreditwesengesetzes verfügt, hat Kundengelder, die es im Zusammenhang mit einer Wertpapierdienstleistung oder einer Wertpapiernebenleistung entgegennimmt, unverzüglich getrennt von den Geldern des Unternehmens und von anderen Kundengeldern auf Treuhandkonten bei solchen Kreditinstituten, Unternehmen im Sinne des § 53 b Abs. 1 Satz 1 des Kreditwesengesetzes oder vergleichbaren Instituten mit Sitz in einem Drittstaat, welche zum Betrieb des Einlagengeschäftes befugt sind, einer Zentralbank oder einem qualifizierten Geldmarktfonds zu verwahren, bis die Gelder zum vereinbarten Zweck verwendet werden. Der Kunde kann im Wege individueller Vertragsabrede hinsichtlich der Trennung der Kundengelder voneinander anderweitige Weisung erteilen, wenn er über den mit der Trennung der Kundengelder verfolgten Schutzzweck informiert wurde. Zur Verwahrung bei einem qualifizierten Geldmarktfonds hat das Wertpapierdienstleistungsunternehmen die vorherige Zustimmung des Kunden einzuholen. Das Wertpapierdienstleistungsunternehmen hat dem verwahrenden Institut vor der Verwahrung offen zu legen, dass die Gelder treuhänderisch eingelegt werden. Es hat den Kunden unverzüglich darüber zu unterrichten, bei welchem Institut und auf welchem Konto die Kundengelder verwahrt werden und ob das Institut, bei dem die Kundengelder verwahrt werden,

to 2 a. The Federal Ministry of Finance may delegate the authority to the Bundesanstalt by means of a regulation.

(5) The Bundesanstalt publishes a list of minimum records an investment services undertaking has to retain according to this Act and a regulation according to paragraph 4 on its website.

§ 34 a Separation of assets safeguarded

(1) An investment services undertaking that does not have a licence for deposit business as defined in § 1 para. 1 sentence 2 no. 1 of the Banking Act, has to separate without undue delay client monies that it receives in connection with an investment service or an ancillary investment service from monies of the undertaking or other client monies by depositing them on fiduciary accounts maintained with such credit institutions, undertakings as defined by § 53 b para. 1 of the Banking Act or comparable institutions with a registered office in a third country which are authorised to operate deposit business, with a central bank or a qualifying money market fund until the monies are used for the purpose agreed. The client can issue other instructions regarding the separation of client monies by way of individual contractual agreement if he has been informed on the protective purpose of the separation of client monies. Prior to placement with a qualifying money market fund, the investment services undertaking has to obtain express client consent. The investment services undertaking has to disclose to the deposit institution prior to depositing that the monies are deposited as fiduciary funds. It has to inform the client without undue delay with which institution and on which account the client monies are deposited and whether the institution with which the client monies are deposited is a member of a scheme intended to protect claims of depositors and investors and up to which level the client monies are protected by this scheme.

einer Einrichtung zur Sicherung der Ansprüche von Einlegern und Anlegern angehört und in welchem Umfang die Kundengelder durch diese Einrichtung gesichert sind.

(2) Ein Wertpapierdienstleistungsunternehmen ohne eine Erlaubnis zum Betrieb des Depotgeschäftes im Sinne des § 1 Abs. 1 Satz 2 Nr. 5 des Gesetzes über das Kreditwesen hat Wertpapiere, die es im Zusammenhang mit einer Wertpapierdienstleistung oder einer Wertpapiernebenleistung entgegennimmt, unverzüglich einem Kreditinstitut, das im Inland zum Betreiben des Depotgeschäftes befugt ist, oder einem Institut mit Sitz im Ausland, das zum Betreiben des Depotgeschäftes befugt ist und bei welchem dem Kunden eine Rechtsstellung eingeräumt wird, die derjenigen nach dem Depotgesetz gleichwertig ist, zur Verwahrung weitzuzuleiten. Absatz 1 Satz 5 gilt entsprechend.

(3) Das Wertpapierdienstleistungsunternehmen ist verpflichtet, jedem Kunden mindestens einmal jährlich auf einem dauerhaften Datenträger eine Aufstellung der Gelder und Finanzinstrumente zu übermitteln, die nach Absatz 1 oder Absatz 2 für ihn verwahrt werden.

(4) Ein Wertpapierdienstleistungsunternehmen darf Finanzinstrumente, die es nach Absatz 2 oder den Vorschriften des Depotgesetzes für Kunden hält, nur unter genau festgelegten Bedingungen, denen der Kunde im Voraus ausdrücklich zugestimmt hat, für eigene Rechnung oder für Rechnung eines anderen Kunden, insbesondere durch Vereinbarungen über Wertpapierfinanzierungsgeschäfte nach Artikel 2 Abs. 10 der Verordnung (EG) Nr. 1287/2006, nutzen. Werden die Finanzinstrumente auf Sammeldepots bei einem Dritten verwahrt, sind für eine Nutzung nach Satz 1 zusätzlich die ausdrückliche Zustimmung aller anderen Kunden des Sammeldepots oder Systeme und Kontrolleinrichtungen erforderlich, mit denen die Beschränkung der Nutzung auf Finanzinstrumente gewährleistet ist, für die eine Zustimmung nach Satz 1 vorliegt. Soweit es sich um Pri-

(2) An investment services undertaking that does not have a licence for custody business as defined in § 1 para. 1 sentence 2 no. 5 of the Banking Act, has to transfer without undue delay securities that it receives in connection with an investment service or an ancillary investment service to a credit institution which is licensed in Germany to operate custody business or an institution with registered office outside of Germany which is licensed to operate custody business and which grants the client a legal position which is equivalent to the legal position according to the Custody Act to keep them in custody. Paragraph 1 sentence 5 applies *mutatis mutandis*.

(3) The investment services undertaking is required to send at least once a year to each client a statement on a durable medium of those monies or financial instruments which are safeguarded for him according to paragraph 1 or paragraph 2.

(4) An investment services undertaking may only use financial instruments which it holds for clients according to paragraph 2 or the provisions of the Custody Act for own account or for the account of another client on the specified terms to which the client has previously expressly consented, in particular by way of arrangements for securities financing transactions as defined in Article 2 para. 10 of Regulation (EC) No 1287/2006. If financial instruments are deposited on omnibus accounts with a third party, the use according to sentence 1 further requires prior express consent of all clients of the omnibus account or systems and control facilities which ensure that the use is limited to financial instruments for which prior express consent has been obtained according to sentence 1. To the extent retail clients are concerned, consent accord-

vatkunden handelt, muss die Zustimmung nach den Sätzen 1 und 2 durch Unterschrift des Kunden oder auf gleichwertige Weise dokumentiert werden. In den Fällen des Satzes 2 muss das Wertpapierdienstleistungsunternehmen über Kunden, auf deren Weisung hin eine Nutzung der Finanzinstrumente erfolgt, und über die Zahl der von jedem einzelnen Kunden mit dessen Zustimmung genutzten Finanzinstrumenten Aufzeichnungen führen, die eine eindeutige und zutreffende Zuordnung der im Rahmen der Nutzung eingetretenen Verluste ermöglichen.

(5) Das Bundesministerium der Finanzen kann durch Rechtsverordnung, die nicht der Zustimmung des Bundesrates bedarf, zum Schutz der einem Wertpapierdienstleistungsunternehmen anvertrauten Gelder oder Wertpapiere der Kunden nähere Bestimmungen über den Umfang der Verpflichtungen nach den Absätzen 1 bis 4 sowie zu den Anforderungen an qualifizierte Geldmarktfonds im Sinne des Absatzes 1 erlassen. Das Bundesministerium der Finanzen kann die Ermächtigung durch Rechtsverordnung auf die Bundesanstalt übertragen.

§ 34b Analyse von Finanzinstrumenten

(1) Personen, die im Rahmen ihrer Berufs- oder Geschäftstätigkeit eine Information über Finanzinstrumente oder deren Emittenten erstellen, die direkt oder indirekt eine Empfehlung für eine bestimmte Anlageentscheidung enthält und einem unbestimmten Personenkreis zugänglich gemacht werden soll (Finanzanalyse), sind zu der erforderlichen Sachkenntnis, Sorgfalt und Gewissenhaftigkeit verpflichtet. Die Finanzanalyse darf nur weitergegeben oder öffentlich verbreitet werden, wenn sie sachgerecht erstellt und dargeboten wird und

1. die Identität der Person, die für die Weitergabe oder die Verbreitung der Finanzanalyse verantwortlich ist, und
2. Umstände oder Beziehungen, die bei den Erstellern, den für die Erstellung verantwortlichen juristischen Personen oder mit diesen verbundenen Unter-

ing to sentences 1 and 2 must be documented by the client's signature or by an equivalent alternative mechanism. In the cases of sentence 2, the investment services undertaking must maintain records on clients on whose instructions the use of the financial instruments has been effected, as well as the number of financial instruments used belonging to each client who has given his consent, so as to enable the distinct and correct allocation of losses having occurred when using them.

(5) The Federal Ministry of Finance may, by issuing a regulation that does not require the approval of the Bundesrat, stipulate detailed provisions for the protection of client monies or securities placed with an investment services undertaking on the scope of requirements according to paragraphs 1 to 4 as well as the requirements for qualifying money market funds as defined by paragraph 1. The Federal Ministry of Finance may delegate the authority to the Bundesanstalt by means of a regulation.

§ 34b Analysis of financial instruments

(1) Persons who in the exercise of their profession or the conduct of their business produce information on financial instruments or their issuers which contains directly or indirectly a recommendation for a specific investment decision and is intended to be disseminated to an undefined group of persons (investment research) are required to maintain the required expertise, care and diligence. The investment research may only be passed on and publicly distributed if it is produced and presented in a proper manner and

1. the identity of the person responsible for the passing on and distribution of the investment research and
2. all circumstances or relationships which may give rise to conflicts of interest with the producers, the legal persons responsible for the pro-

nehmen Interessenkonflikte begründen können, zusammen mit der Finanzanalyse offen gelegt werden.

(2) Eine Zusammenfassung einer von einem Dritten erstellten Finanzanalyse darf nur weitergegeben werden, wenn der Inhalt der Finanzanalyse klar und nicht irreführend wiedergegeben wird und in der Zusammenfassung auf das Ausgangsdokument sowie auf den Ort verwiesen wird, an dem die mit dem Ausgangsdokument verbundene Offenlegung nach Absatz 1 Satz 2 unmittelbar und leicht zugänglich ist, sofern diese Angaben öffentlich verbreitet wurden.

(3) Finanzinstrumente im Sinne des Absatzes 1 sind nur solche, die

1. zum Handel an einer inländischen Börse zugelassen oder in den regulierten Markt oder den Freiverkehr einbezogen sind oder
2. in einem anderen Mitgliedstaat der Europäischen Union oder einem anderen Vertragsstaat des Abkommens über den Europäischen Wirtschaftsraum zum Handel an einem organisierten Markt zugelassen sind.

Der Zulassung zum Handel an einem organisierten Markt oder der Einbeziehung in den regulierten Markt oder in den Freiverkehr steht es gleich, wenn der Antrag auf Zulassung oder Einbeziehung gestellt oder öffentlich angekündigt ist.

(4) Die Bestimmungen der Absätze 1, 2 und 5 gelten nicht für Journalisten, sofern diese einer mit den Regelungen der Absätze 1, 2 und 5 sowie des § 34c vergleichbaren Selbstregulierung einschließlich wirksamer Kontrollmechanismen unterliegen.

(5) Unternehmen, die Finanzanalysen nach Absatz 1 Satz 1 erstellen oder weitergeben, müssen so organisiert sein, dass Interessenkonflikte im Sinne des Absatzes 1 Satz 2 möglichst gering sind. Sie müssen insbesondere über angemessene Kontrollverfahren verfügen, die geeignet sind, Verstöße gegen Verpflichtungen nach Absatz 1 entgegenzuwirken. Für Wertpapierdienstleistungsunternehmen, die auf

duction or their affiliated undertakings, are disclosed together with the investment research.

(2) A summary of a investment research produced by a third party may only be passed on if the content of the investment research is reproduced in a fair and not misleading manner and if the summary contains a reference to the original document as well as the place where the disclosure according to paragraph 1 sentence 2 can be accessed directly and easily if the original document has been publicly disseminated.

(3) Financial instruments as defined in paragraph 1 means only those which

1. are admitted to trading on a German stock exchange or included in a regulated market or in the unofficial open market, or
2. are admitted to trading on a regulated market in another member state of the European Union or another contracting state of the European Economic Area.

An application for admission or inclusion which has been made or has been publicly announced is equivalent to admission to trading on a regulated market or the inclusion in a regulated market or in the unofficial open market.

(4) The requirements of paragraphs 1, 2 and 5 do not apply to journalists if they are subject to equivalent appropriate self regulation including effective control mechanisms equivalent to the requirements in paragraphs 1, 2 and 5 as well as § 34c.

(5) Undertakings producing or passing on investment research as defined in paragraph 1 sentence 1 must be organised so as to keep conflicts of interest as defined in paragraph 1 sentence 2 to a minimum. In particular, they must maintain proper control procedures which are adequate to counteract violations of requirements pursuant to paragraph 1. For investment services undertakings which under their own

eigene Verantwortung oder auf Verantwortung eines Mitglieds ihrer Unternehmensgruppe Finanzanalysen erstellen oder erstellen lassen, die unter ihren Kunden oder in der Öffentlichkeit verbreitet werden sollen oder deren Verbreitung wahrscheinlich ist, gilt Satz 1 auch in Bezug auf Finanzanalysen über Finanzinstrumente im Sinne des § 2 Abs. 2 b, die nicht unter Absatz 3 fallen, oder deren Emittenten. Satz 3 ist nicht auf Wertpapierdienstleistungsunternehmen im Sinne des § 33 b Abs. 6 anwendbar.

(6) (aufgehoben)

(7) Die Befugnisse der Bundesanstalt nach § 35 gelten hinsichtlich der Einhaltung der in den Absätzen 1, 2 und 5 genannten Pflichten entsprechend. § 36 gilt entsprechend, wenn die Finanzanalyse von einem Wertpapierdienstleistungsunternehmen erstellt, anderen zugänglich gemacht oder öffentlich verbreitet wird.

(8) Das Bundesministerium der Finanzen kann durch Rechtsverordnung, die nicht der Zustimmung des Bundesrates bedarf, nähere Bestimmungen über die sachgerechte Erstellung und Darbietung von Finanzanalysen, über Umstände oder Beziehungen, die Interessenkonflikte begründen können, über deren Offenlegung sowie über die angemessene Organisation nach Absatz 5 erlassen. Das Bundesministerium der Finanzen kann die Ermächtigung durch Rechtsverordnung auf die Bundesanstalt für Finanzdienstleistungsaufsicht übertragen.

§ 34 c Anzeigepflicht

Andere Personen als Wertpapierdienstleistungsunternehmen, Kapitalanlagegesellschaften oder Investmentaktiengesellschaften, die in Ausübung ihres Berufes oder im Rahmen ihrer Geschäftstätigkeit für die Erstellung von Finanzanalysen oder deren Weitergabe verantwortlich sind, haben dies gemäß Satz 3 der Bundesanstalt unverzüglich anzuzeigen. Die Einstellung der in Satz 1 genannten Tätigkeiten ist ebenfalls anzuzeigen. Die Anzeige muss Name oder Firma und Anschrift des Anzeigepflichtigen enthalten. Der An-

responsibility or the responsibility of a member of their group of undertakings produce or arrange for the production of investment research intended or likely to be subsequently disseminated to their clients or to the public, sentence 1 applies also in relation to investment research on financial instruments as defined in § 2 para. 2 b and which are not covered by paragraph 3 or their issuers. Sentence 3 does not apply to investment services undertakings as defined in § 33 b para. 6.

(6) (revoked)

(7) The Bundesanstalt's powers according to § 35 apply *mutatis mutandis* as regards compliance with the requirements set forth in paragraphs 1, 2 and 5. § 36 applies *mutatis mutandis* if the investment research is produced, made available to others or publicly disseminated by an investment services undertaking.

(8) The Federal Ministry of Finance may, by issuing a regulation that does not require the approval of the Bundesrat, stipulate detailed provisions on producing and presenting investment research in a proper manner, circumstances or relationships which may give rise to conflicts of interest, their disclosure and the adequate organisation as defined in paragraph 5. The Federal Ministry of Finance may delegate the authority to the Bundesanstalt für Finanzdienstleistungsaufsicht by means of a regulation.

§ 34 c Notification requirement

Persons other than investment services undertakings, investment management companies or investment stock corporations who are in the exercise of their profession or the conduct of their business responsible for the production of investment research or their passing on have to notify the Bundesanstalt without undue delay according to sentence 3. The discontinuation of activities as defined in sentence 1 has to be notified as well. The notification must contain the person's or the undertaking's name and the address of the en-

zeitpflichtige hat weiterhin anzuzeigen, ob bei ihm verbundenen Unternehmen Tatsachen vorliegen, die Interessenkonflikte begründen können. Veränderungen der angezeigten Daten und Sachverhalte sind innerhalb von vier Wochen der Bundesanstalt anzuzeigen. Die Ausnahmevorschrift des § 34 b Abs. 4 gilt entsprechend.

§ 34 d Einsatz von Mitarbeitern in der Anlageberatung, als Vertriebsbeauftragte oder als Compliance-Beauftragte

(1) bis (5) zum 1. November 2012 in Kraft

(6) Das Bundesministerium der Finanzen kann durch Rechtsverordnung, die nicht der Zustimmung des Bundesrates bedarf, die näheren Anforderungen an:

1. den Inhalt, die Art, die Sprache, den Umfang und die Form der Anzeigen nach den Absätzen 1, 2 oder 3,
2. die Sachkunde und die Zuverlässigkeit nach Absatz 1 Satz 1, Absatz 2 Satz 1 und Absatz 3 Satz 1 sowie

3. den Inhalt der Datenbank nach Absatz 5 und die Dauer der Speicherung der Einträge einschließlich des jeweiligen Verfahrens regeln.

In der Rechtsverordnung nach Satz 1 kann insbesondere bestimmt werden, dass Unternehmen ein schreibender Zugriff auf die für das Unternehmen einzureichenden Einträge in die Datenbank nach Absatz 5 eingeräumt und ihm die Verantwortlichkeit für die Richtigkeit und Aktualität dieser Einträge übertragen wird. Das Bundesministerium der Finanzen kann die Ermächtigung durch Rechtsverordnung ohne Zustimmung des Bundesrates auf die Bundesanstalt übertragen.

§ 35 Überwachung der Meldepflichten und Verhaltensregeln

(1) Die Bundesanstalt kann zur Überwachung der Einhaltung der in diesem

ity required to make the notification. Furthermore, the entity required to make the notification has to state whether there are facts in relation to its affiliated undertakings which may give rise to conflicts of interest. Changes to the data or facts which have been notified, must be notified to the Bundesanstalt within four weeks. The exemption of § 34 b para. 4 applies *mutatis mutandis*.

§ 34 d Assignment of employees as investment advisors, as sales officers or as compliance officers

Paragraphs 1 to 5 enter into force on 1 November 2012

(6) The Federal Ministry of Finance may, by issuing a regulation that does not require the approval of the Bundesrat, stipulate detailed provisions on:

1. the contents, manner, language, scope and form of the reports pursuant to paragraphs 1, 2 or 3;
2. the knowledge and reliability pursuant to paragraph 1 sentence 1, paragraph 2 sentence 1 and paragraph 3 sentence 1, as well as;
3. the contents of the database pursuant to paragraph 5, the period of the storage of the entries as well as the relevant procedures.

In the regulation pursuant to sentence 1 can, in particular, be determined that the respective investment services undertaking is provided with recording access to the entries to be made in the database for the undertaking pursuant to paragraph 5 and that the responsibility for the correctness and currentness of these entries can be transferred to it. The Federal Ministry of Finance may delegate the authority to the Bundesanstalt by means of a regulation without the consent of the Bundesrat.

§ 35 Monitoring of reporting requirements and rules of conduct

(1) The Bundesanstalt may carry out without specific reason audits of invest-

Abschnitt geregelten Pflichten bei den Wertpapierdienstleistungsunternehmen, den mit diesen verbundenen Unternehmen, den Zweigniederlassungen im Sinne des § 53b des Kreditwesengesetzes, den Unternehmen, mit denen eine Auslagerungsvereinbarung im Sinne des § 25a Abs. 2 des Kreditwesengesetzes besteht oder bestand, und sonstigen zur Durchführung eingeschalteten dritten Personen oder Unternehmen auch ohne besonderen Anlass Prüfungen vornehmen.

(2) Die Bundesanstalt kann zur Überwachung der Einhaltung der in diesem Abschnitt geregelten Pflichten Auskünfte und die Vorlage von Unterlagen auch von Unternehmen mit Sitz in einem Drittstaat verlangen, die Wertpapierdienstleistungen gegenüber Kunden erbringen, die ihren gewöhnlichen Aufenthalt oder ihre Geschäftsleitung im Inland haben, sofern nicht die Wertpapierdienstleistung einschließlich der damit im Zusammenhang stehenden Wertpapiernebenleistung ausschließlich in einem Drittstaat erbracht wird.

(3) Widerspruch und Anfechtungsklage gegen Maßnahmen nach den Absätzen 1 und 2 haben keine aufschiebende Wirkung.

(4) Die Bundesanstalt kann Richtlinien aufstellen, nach denen sie nach Maßgabe der Richtlinie 2004/39/EG und der Richtlinie 2006/73/EG der Kommission vom 10. August 2006 zur Durchführung der Richtlinie 2004/39/EG des Europäischen Parlaments und des Rates in Bezug auf die organisatorischen Anforderungen an Wertpapierfirmen und die Bedingungen für die Ausübung ihrer Tätigkeit sowie in Bezug auf die Definition bestimmter Begriffe für die Zwecke der genannten Richtlinie (ABl. EU Nr. L 241 S. 26) für den Regelfall beurteilt, ob die Anforderungen dieses Abschnitts erfüllt sind. Die Deutsche Bundesbank sowie die Spitzenverbände der betroffenen Wirtschaftskreise sind vor dem Erlass der Richtlinien anzuhören. Die Richtlinien sind im elektronischen Bundesanzeiger zu veröffentlichen.

ment services undertakings, undertakings affiliated with them, branches as defined by § 53 b of the Banking Act, entities with which an outsourcing agreement as defined by § 25 a para. 2 of the Banking Act exists or existed and other third persons or undertakings the services of which have been engaged for the purposes of monitoring compliance with the requirements set forth by this Chapter.

(2) The Bundesanstalt may, for the purposes of monitoring compliance with the duties set forth by this Chapter, request information and submission of documents also from undertakings with their registered office in a third country providing investment services or ancillary investment services to clients having their usual place of residence or management in Germany unless the investment services including any other ancillary investment services are exclusively provided in a third country.

(3) Objections and actions for rescission in respect of measures according to paragraphs 1 and 2 will not have the effect of suspension.

(4) The Bundesanstalt may issue guidelines according to which it assesses as a rule whether the requirements of this chapter are complied with according to Directive 2004/39/EC and Commission Directive 2006/73/EC of 10 August 2006 implementing Directive 2004/39/EC of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment services undertakings and defined terms for the purposes of that Directive (OJ No. L 241 p. 26). Deutsche Bundesbank and central associations of the business circles concerned have to be consulted prior to the issuing of the guidelines. The guidelines must be published in the electronic Federal Gazette.

§ 36 Prüfung der Meldepflichten und Verhaltensregeln

(1) Unbeschadet des § 35 ist die Einhaltung der Meldepflichten nach § 9, der in diesem Abschnitt geregelten Pflichten und der sich aus der Verordnung (EG) Nr. 1287/2006 ergebenden Pflichten einmal jährlich durch einen geeigneten Prüfer zu prüfen. Bei Kreditinstituten, die das Depotgeschäft im Sinne von § 1 Abs. 1 Satz 2 Nr. 5 des Kreditwesengesetzes betreiben, hat der Prüfer auch dieses Geschäft besonders zu prüfen; diese Prüfung hat sich auch auf die Einhaltung des § 128 des Aktiengesetzes über Mitteilungspflichten und des § 135 des Aktiengesetzes über die Ausübung des Stimmrechts zu erstrecken. Die Bundesanstalt kann auf Antrag von der jährlichen Prüfung, mit Ausnahme der Prüfung der Einhaltung der Anforderungen nach § 34 a, auch in Verbindung mit einer Rechtsverordnung nach § 34 a Abs. 5, ganz oder teilweise absehen, soweit dies aus besonderen Gründen, insbesondere wegen der Art und des Umfangs der betriebenen Geschäfte angezeigt ist. Das Wertpapierdienstleistungsunternehmen hat den Prüfer jeweils spätestens zum Ablauf des Geschäftsjahres zu bestellen, auf das sich die Prüfung erstreckt. Bei Kreditinstituten, die einem genossenschaftlichen Prüfungsverband angehören oder durch die Prüfungsstelle eines Sparkassen- und Giroverbandes geprüft werden, wird die Prüfung durch den zuständigen Prüfungsverband oder die zuständige Prüfungsstelle, soweit hinsichtlich letzterer das Landesrecht dies vorsieht, vorgenommen. Geeignete Prüfer sind darüber hinaus Wirtschaftsprüfer, vereidigte Buchprüfer sowie Wirtschaftsprüfungs- und Buchprüfungsgesellschaften, die hinsichtlich des Prüfungsgegenstandes über ausreichende Kenntnisse verfügen. Der Prüfer hat unverzüglich nach Beendigung der Prüfung der Bundesanstalt und der Deutschen Bundesbank einen Prüfungsbericht einzureichen. Soweit Prüfungen nach Satz 4 von genossenschaftlichen Prüfungsverbänden oder Prüfungsstellen von Sparkassen- und Giroverbänden durchgeführt

§ 36 Audit of reporting requirements and rules of conduct

(1) Notwithstanding § 35, the compliance with the reporting requirements as defined by § 9, the requirements as defined by this chapter and the requirements resulting from Regulation (EG) No. 1287/2006 must be audited by a suitable auditor once a year. For credit institutions, operating custody business as defined by § 1 para. 1 sentence 2 no. 5 of the Banking Act, the auditor must particularly audit this business; this audit has to include compliance with § 128 of the Stock Corporation Act on notification requirements and with § 135 of the Stock Corporation Act on exercising voting rights. The Bundesanstalt may upon request waive the yearly audit fully or in part, with the exception of the audit of compliance with the requirements defined in § 34 a, also in connection with a regulation according to § 34 a para. 5, to the extent this is in order due to exceptional reasons, in particular due to the nature and the scope of the business operated. The investment services undertaking must appoint the auditor at the latest at the end of the financial year to which the audit relates. Credit institutions which are members of a cooperative auditing association or which are audited by the auditing body of a savings banks and giro association are audited by the competent auditing association or auditing body to the extent that with respect to the latter this is prescribed for by federal state's law. Suitable auditors are furthermore certified accountants, sworn auditors and firms of certified accountants and auditors which have sufficient expertise regarding the auditing objective. The auditor must submit an audit report to the Bundesanstalt and Deutsche Bundesbank without undue delay after finishing the audit. To the extent audits according to sentence 4 are carried out by cooperative auditing associations or auditing bodies of savings banks and giro associations, the auditing associations or auditing bodies must only submit the report upon request by the Bundesanstalt or the Deutsche Bundesbank.

werden, haben die Prüfungsverbände oder Prüfungsstellen den Prüfungsbericht nur auf Anforderung der Bundesanstalt oder der Deutschen Bundesbank einzureichen.

(2) Das Wertpapierdienstleistungsunternehmen hat vor Erteilung des Prüferauftrags der Bundesanstalt den Prüfer anzuzeigen. Die Bundesanstalt kann innerhalb eines Monats nach Zugang der Anzeige die Bestellung eines anderen Prüfers verlangen, wenn dies zur Erreichung des Prüfungszweckes geboten ist; Widerspruch und Anfechtungsklage hiergegen haben keine aufschiebende Wirkung. Die Sätze 1 und 2 gelten nicht für Kreditinstitute, die einem genossenschaftlichen Prüfungsverband angehören oder durch die Prüfungsstelle eines Sparkassen- und Giroverbandes geprüft werden.

(3) Die Bundesanstalt kann gegenüber dem Wertpapierdienstleistungsunternehmen Bestimmungen über den Inhalt der Prüfung treffen, die vom Prüfer zu berücksichtigen sind. Sie kann insbesondere Schwerpunkte für die Prüfungen festlegen. Bei schwerwiegenden Verstößen gegen die Meldepflichten nach § 9 oder die in diesem Abschnitt geregelten Pflichten hat der Prüfer die Bundesanstalt unverzüglich zu unterrichten. Die Bundesanstalt kann an den Prüfungen teilnehmen. Hierfür ist der Bundesanstalt der Beginn der Prüfung rechtzeitig mitzuteilen.

(4) Die Bundesanstalt kann die Prüfung nach Absatz 1 auch ohne besonderen Anlass anstelle des Prüfers selbst oder durch Beauftragte durchführen. Das Wertpapierdienstleistungsunternehmen ist hierüber rechtzeitig zu informieren.

(5) Das Bundesministerium der Finanzen kann durch Rechtsverordnung, die nicht der Zustimmung des Bundesrates bedarf, nähere Bestimmungen über Art, Umfang und Zeitpunkt der Prüfung nach Absatz 1 erlassen, soweit dies zur Erfüllung der Aufgaben der Bundesanstalt erforderlich ist, insbesondere um Missständen im Handel mit Finanzinstrumenten entgegenzuwirken, um auf die Einhaltung der Meldepflichten nach § 9 und der in diesem Abschnitt geregelten Pflichten hin-

zuwirken und um zu diesem Zweck einheitliche Unterlagen zu erhalten. Das Bundesministerium der Finanzen kann die Ermächtigung durch Rechtsverordnung auf die Bundesanstalt für Finanzdienstleistungsaufsicht übertragen.

§ 36a Unternehmen, organisierte Märkte und multilaterale Handelssysteme mit Sitz in einem anderen Mitgliedstaat der Europäischen Union oder in einem anderen Vertragsstaat des Abkommens über den Europäischen Wirtschaftsraum

(1) Die in diesem Abschnitt geregelten Rechte und Pflichten sind mit Ausnahme des § 31 Abs. 1 Nr. 2, der §§ 31f, 31g, 33, 33b, 34a und 34b Abs. 5 sowie des § 34c und 34d auf Zweigniederlassungen im Sinne des § 53b des Kreditwesengesetzes, die Wertpapierdienstleistungen erbringen, entsprechend anzuwenden. Ein Unternehmen mit Sitz in einem anderen Mitgliedstaat der Europäischen Union oder in einem anderen Vertragsstaat des Abkommens über den Europäischen Wirtschaftsraum, das Wertpapierdienstleistungen allein oder zusammen mit Wertpapiernebenleistungen erbringt und das beabsichtigt, im Inland eine Zweigniederlassung im Sinne des § 53b des Kreditwesengesetzes zu errichten, ist von der Bundesanstalt innerhalb der in § 53b Abs. 2 Satz 1 des Kreditwesengesetzes bestimmten Frist auf die Meldepflichten nach § 9 und die nach Satz 1 für die Zweigniederlassung geltenden Rechte und Pflichten hinzuweisen.

(2) Die Bundesanstalt kann von der Zweigniederlassung Änderungen der getroffenen Vorkehrungen zur Einhaltung der für sie geltenden Pflichten verlangen, soweit die Änderungen notwendig und verhältnismäßig sind, um der Bundesanstalt die Prüfung der Einhaltung der Pflichten zu ermöglichen. Stellt die Bundesanstalt fest, dass das Unternehmen die nach Absatz 1 Satz 1 für seine Zweigniederlassung geltenden Pflichten nicht beachtet, fordert es das Unternehmen auf, seine Verpflichtungen innerhalb einer von

set forth in this Chapter and to receive uniform documents for this purpose. The Federal Ministry of Finance may delegate the authority to the Bundesanstalt für Finanzdienstleistungsaufsicht by means of a regulation.

§ 36a Undertakings, regulated markets and multilateral trading facilities with registered office in another member state of the European Union or another contracting state of the European Economic Area

(1) The rights and duties set forth by this Chapter apply *mutatis mutandis* to branches as defined by § 53b of the Banking Act providing investment services with the exception of § 31 para. 1 no. 2, §§ 31f, 31g, 33, 33b, 34a and 34b para. 5 as well as §§ 34c and 34d. An undertaking with registered office in another member state of the European Union or another contracting state of the European Economic Area providing exclusively investment services or together with ancillary investment services and intending to establish a branch as defined by § 53b of the Banking Act, must be informed by the Bundesanstalt as regards reporting requirements defined by § 9 and the requirements applying to the branch according to sentence 1 within the time frame defined by § 53b para. 2 of the Banking Act.

(2) The Bundesanstalt may request branches to change procedures established to comply with the requirements applying to them if these changes are necessary and appropriate to enable the Bundesanstalt to examine compliance with the requirements. If the Bundesanstalt determines that the undertaking does not comply with the requirements applying to its branch according to paragraph 1 sentence 1, it will request the undertaking to comply with its requirements within a time specified by the Bundesanstalt. If the un-

der Bundesanstalt zu bestimmten Fristen zu erfüllen. Kommt das Unternehmen der Aufforderung nicht nach, trifft die Bundesanstalt alle geeigneten Maßnahmen, um die Erfüllung der Verpflichtungen sicherzustellen und unterrichtet die zuständigen Behörden des Herkunftsmitgliedstaates über die Art der getroffenen Maßnahmen. Falls das betroffene Unternehmen den Mangel nicht behebt, kann die Bundesanstalt nach Unterrichtung der zuständigen Behörde des Herkunftsmitgliedstaates alle Maßnahmen ergreifen, um weitere Verstöße zu verhindern oder zu ahnden. Soweit erforderlich, kann die Bundesanstalt dem betroffenen Unternehmen die Durchführung neuer Geschäfte im Inland untersagen. Die Bundesanstalt unterrichtet die Kommission der Europäischen Gemeinschaften unverzüglich von Maßnahmen nach den Sätzen 4 und 5.

(3) Stellt die Bundesanstalt fest, dass ein Unternehmen im Sinne des Absatzes 1 Satz 2, das im Inland eine Zweigniederlassung errichtet hat, gegen andere als die in Absatz 1 Satz 1 genannten Bestimmungen dieses Gesetzes oder entsprechende ausländische Vorschriften verstößt, so teilt sie dies der zuständigen Stelle des Herkunftsmitgliedstaates nach Maßgabe des § 7 Abs. 5 Satz 1 mit. Sind die daraufhin getroffenen Maßnahmen der zuständigen Behörde des Herkunftsmitgliedstaates unzureichend oder verstößt das Unternehmen aus anderen Gründen weiter gegen die sonstigen Bestimmungen dieses Abschnitts und sind dadurch Anlegerinteressen oder die ordnungsgemäße Funktion des Marktes gefährdet, ergreift die Bundesanstalt nach vorheriger Unterrichtung der zuständigen Behörde des Herkunftsmitgliedstaates alle erforderlichen Maßnahmen, um den Anlegerschutz und die ordnungsgemäße Funktion der Märkte zu gewährleisten. Absatz 2 Satz 4 und 5 gilt entsprechend.

(4) Absatz 3 gilt entsprechend für ein Unternehmen mit Sitz in einem anderen Mitgliedstaat der Europäischen Union oder in einem anderen Vertragsstaat des

derdaking does not comply with the request, the Bundesanstalt takes all adequate measures to ensure compliance with the requirements and informs the competent authorities of the home member state on the nature of the measures taken. If the relevant undertaking does not resolve the deficiency, the Bundesanstalt may take all measures to prevent or punish further violations after informing the competent authority of the home member state. To the extent necessary the Bundesanstalt may prohibit the relevant undertaking from initiating any further transactions in Germany. The Bundesanstalt informs the Commission of the European Communities on measures according to sentences 4 and 5 without undue delay.

(3) If the Bundesanstalt determines that an undertaking as defined in paragraph 1 sentence 2 which has established a branch in Germany violates requirements of this Act other than the ones referred to in paragraph 1 sentence 1 or equivalent non-German legal requirements, it informs the competent authority of the home member state according to § 7 para. 5 sentence 1. If the measures taken by the competent authority of the home member state are inadequate or if the undertaking persists in violating other requirements of this Chapter and if this endangers investor interests or the orderly functioning of the market, the Bundesanstalt, after informing the competent authority of the home member state, takes all necessary measures to ensure investor protection and the orderly functioning of the markets. Paragraph 2 sentences 4 and 5 apply *mutatis mutandis*.

(4) Paragraph 3 applies *mutatis mutandis* to an undertaking with registered office in another member state of the European Union or another contracting state

Abkommens über den Europäischen Wirtschaftsraum, das Wertpapierdienstleistungen oder Wertpapiernebenleistungen im Wege des grenzüberschreitenden Dienstleistungsverkehrs gegenüber Kunden erbringt, die ihren gewöhnlichen Aufenthalt oder ihre Geschäftsleitung im Inland haben, wenn das Unternehmen gegen Bestimmungen dieses Abschnitts oder entsprechende ausländische Vorschriften verstößt.

(5) Absatz 3 gilt für Betreiber organisierter Märkte und multilateraler Handelssysteme entsprechend mit der Maßgabe, dass für Maßnahmen der Bundesanstalt gegenüber einem solchen Betreiber Verstöße gegen Bestimmungen dieses Abschnitts, des Börsengesetzes oder entsprechende ausländische Vorschriften vorliegen müssen und dass zu den Maßnahmen nach Absatz 3 Satz 2 insbesondere auch gehören kann, dem Betreiber des organisierten Marktes oder des multilateralen Handelssystems zu untersagen, sein System Mitgliedern im Inland zugänglich zu machen.

(6) Die Bundesanstalt unterrichtet die betroffenen Unternehmen oder Märkte von den jeweils nach den Absätzen 2 bis 5 getroffenen Maßnahmen unter Nennung der Gründe.

§ 36b Werbung der Wertpapierdienstleistungsunternehmen

(1) Um Missständen bei der Werbung für Wertpapierdienstleistungen und Wertpapiernebenleistungen zu begegnen, kann die Bundesanstalt den Wertpapierdienstleistungsunternehmen bestimmte Arten der Werbung untersagen.

(2) Vor allgemeinen Maßnahmen nach Absatz 1 sind die Spitzenverbände der betroffenen Wirtschaftskreise und des Verbraucherschutzes anzuhören.

§ 36c (aufgehoben)

§ 37 Ausnahmen

§ 31 Abs. 1 Nr. 1 und Abs. 2 bis 8 sowie die §§ 31 c, 31 d und 33 a gelten nicht

of the European Economic Area providing investment services or ancillary investment services by way of cross-border services to clients having their usual place of residence or management in Germany if the undertaking violates requirements of this Chapter or equivalent non-German legal requirements.

(5) Paragraph 3 applies *mutatis mutandis* to operators of regulated markets and multilateral trading facilities with the proviso that in order for the Bundesanstalt to take measures violations by such operator against requirements of this Chapter, the Stock Exchange Act or equivalent non-German legal requirements must exist and measures according to paragraph 3 sentence 2 include in particular prohibiting the operator of the regulated market and multilateral trading facility from making its system accessible to members in Germany.

(6) The Bundesanstalt informs the relevant undertakings or markets on the relevant measures taken according to paragraphs 2 to 5 and of the reasons.

§ 36b Marketing of investment services undertakings

(1) To counteract deficits relating to marketing for investment services and ancillary investment services, the Bundesanstalt may prohibit certain types of marketing for investment services undertakings.

(2) Prior to any general measures according to paragraph 1, the central associations of the business circles concerned and central associations for investor protection have to be consulted.

§ 36c (revoked)

§ 37 Exceptions

§ 31 para. 1 no. 1 and para. 2 to 8 as well as §§ 31 c, 31 d and 33 a, do not ap-

für Geschäfte, die an organisierten Märkten oder in multilateralen Handelssystemen zwischen Wertpapierdienstleistungsunternehmen oder zwischen diesen und sonstigen Mitgliedern oder Teilnehmern dieser Märkte oder Systeme geschlossen werden. Wird ein Geschäft im Sinne des Satzes 1 in Ausführung eines Kundenauftrags abgeschlossen, muss das Wertpapierdienstleistungsunternehmen jedoch den Verpflichtungen des § 31 Abs. 1 Nr. 1 und Abs. 2 bis 8 sowie der §§ 31 c, 31 d und 33 a gegenüber dem Kunden nachkommen.

§ 37 a (aufgehoben)

Abschnitt 7

Haftung für falsche und unterlassene Kapitalmarktinformationen

§ 37 b Schadenersatz wegen unterlassener unverzüglicher Veröffentlichung von Insiderinformationen

(1) Unterlässt es der Emittent von Finanzinstrumenten, die zum Handel an einer inländischen Börse zugelassen sind, unverzüglich eine Insiderinformation zu veröffentlichen, die ihn unmittelbar betrifft, ist er einem Dritten zum Ersatz des durch die Unterlassung entstandenen Schadens verpflichtet, wenn der Dritte

1. die Finanzinstrumente nach der Unterlassung erwirbt und er bei Bekanntwerden der Insiderinformation noch Inhaber der Finanzinstrumente ist oder

2. die Finanzinstrumente vor dem Entstehen der Insiderinformation erwirbt und nach der Unterlassung veräußert.

(2) Nach Absatz 1 kann nicht in Anspruch genommen werden, wer nachweist, dass die Unterlassung nicht auf Vorsatz oder grober Fahrlässigkeit beruht.

(3) Der Anspruch nach Absatz 1 besteht nicht, wenn der Dritte die Insiderinformation im Falle des Absatzes 1 Nr. 1 bei dem

ply to any transactions concluded on regulated markets or multilateral trading facilities between investment services undertakings or between these and other members of, or participants in, such markets or facilities. In the event of a transaction as defined by sentence 1 being concluded in execution of a client order, the investment services undertaking is still required to comply with the obligations vis-à-vis the client of § 31 para. 1 no. 1 and paras. 2 to 8, along with those of §§ 31 c, 31 d and 33 a.

§ 37 a (revoked)

Chapter 7

Liability for incorrect or omitted capital market information

§ 37 b Compensation for failure to publish inside information without undue delay

(1) Should an issuer of financial instruments admitted to trading on a German stock exchange fail to publish inside information relating to it directly without undue delay, it is obliged to compensate a third party for any damage incurred as a result of the omission if the third party

1. acquires the financial instruments after the omission and is still the holder of the financial instruments when such information becomes public or

2. acquires the financial instruments prior to the existence of the inside information and sells them following the omission.

(2) According to paragraph 1, no claims may be brought against party if this party demonstrates that the omission was not based on wilful intent or gross negligence.

(3) Any claim under paragraph 1 is excluded in the event that the third party was aware of the inside information at the

Erwerb oder im Falle des Absatzes 1 Nr. 2 bei der Veräußerung kannte.

(4) Der Anspruch nach Absatz 1 verjährt in einem Jahr von dem Zeitpunkt an, zu dem der Dritte von der Unterlassung Kenntnis erlangt, spätestens jedoch in drei Jahren seit der Unterlassung.

(5) Weitergehende Ansprüche, die nach Vorschriften des bürgerlichen Rechts auf Grund von Verträgen oder vorsätzlichen unerlaubten Handlungen erhoben werden können, bleiben unberührt.

(6) Eine Vereinbarung, durch die Ansprüche des Emittenten gegen Vorstandsmitglieder wegen der Inanspruchnahme des Emittenten nach Absatz 1 im Voraus ermäßigt oder erlassen werden, ist unwirksam.

§ 37 c Schadenersatz wegen Veröffentlichung unwahrer Insiderinformationen

(1) Veröffentlicht der Emittent von Finanzinstrumenten, die zum Handel an einer inländischen Börse zugelassen sind, in einer Mitteilung nach § 15 eine unwahre Insiderinformation, die ihn unmittelbar betrifft, ist er einem Dritten zum Ersatz des Schadens verpflichtet, der dadurch entsteht, dass der Dritte auf die Richtigkeit der Insiderinformation vertraut, wenn der Dritte

1. die Finanzinstrumente nach der Veröffentlichung erwirbt und er bei dem Bekanntwerden der Unrichtigkeit der Insiderinformation noch Inhaber der Finanzinstrumente ist oder

2. die Finanzinstrumente vor der Veröffentlichung erwirbt und vor dem Bekanntwerden der Unrichtigkeit der Insiderinformation veräußert.

(2) Nach Absatz 1 kann nicht in Anspruch genommen werden, wer nachweist, dass er die Unrichtigkeit der Insiderinformation nicht gekannt hat und die Unkenntnis nicht auf grober Fahrlässigkeit beruht.

time of acquisition in the case of paragraph 1 no. 1 or at the time of sale in the case of paragraph 1 no. 2.

(4) Any claim under paragraph 1 becomes statute-barred within a period of one year from the third party becoming aware of the omission, but no later than three years from such omission.

(5) Any further civil law claims which may be brought on the basis of the provisions of civil law based on contracts or intentional tort remain unaffected.

(6) Any agreement whereby the issuer's claims against members of the management body for claims having been brought against the issuer under paragraph 1 are mitigated or waived in advance is invalid.

§ 37 c Compensation for the disclosure of untrue inside information

(1) In the event of an issuer of financial instruments which are admitted to trading on a German stock exchange disclosing untrue inside information relating to it directly in a notification according to § 15, it is required to compensate a third party for any damage incurred as a result of reliance on the accuracy of such information in the event of such third party

1. acquiring the financial instruments following the disclosure of inside information and still holding the relevant financial instruments when the inaccuracy of such information becomes public or

2. acquiring the financial instruments prior to the disclosure of the inside information and selling them prior to the inaccuracy of such information becoming public.

(2) According to paragraph 1, no claims may be brought against any party if party demonstrates that the omission was not based on wilful intent or gross negligence.

(3) Der Anspruch nach Absatz 1 besteht nicht, wenn der Dritte die Unrichtigkeit der Insiderinformation im Falle des Absatzes 1 Nr. 1 bei dem Erwerb oder im Falle des Absatzes 1 Nr. 2 bei der Veräußerung kannte.

(4) Der Anspruch nach Absatz 1 verjährt in einem Jahr von dem Zeitpunkt an, zu dem der Dritte von der Unrichtigkeit der Insiderinformation Kenntnis erlangt, spätestens jedoch in drei Jahren seit der Veröffentlichung.

(5) Weitergehende Ansprüche, die nach Vorschriften des bürgerlichen Rechts auf Grund von Verträgen oder vorsätzlichen unerlaubten Handlungen erhoben werden können, bleiben unberührt.

(6) Eine Vereinbarung, durch die Ansprüche des Emittenten gegen Vorstandsmitglieder wegen der Inanspruchnahme des Emittenten nach Absatz 1 im Voraus ermäßigt oder erlassen werden, ist unwirksam.

§ 37 d (aufgehoben)

§ 37 e Ausschluss des Einwands nach § 762 des Bürgerlichen Gesetzbuchs

Gegen Ansprüche aus Finanztermingeschäften, bei denen mindestens ein Vertragsteil ein Unternehmen ist, das gewerbemäßig oder in einem Umfang, der einen in kaufmännischer Weise eingerichteten Geschäftsbetrieb erfordert, Finanztermingeschäfte abschließt oder deren Abschluss vermittelt oder die Anschaffung, Veräußerung oder Vermittlung von Finanztermingeschäften betreibt, kann der Einwand des § 762 des Bürgerlichen Gesetzbuchs nicht erhoben werden. Finanztermingeschäfte im Sinne des Satzes 1 und der §§ 37 g und 37 h sind die Derivate im Sinne des § 2 Abs. 2 und Optionsscheine.

§ 37 f (aufgehoben)

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§ 37 g Verbotene Finanztermingeschäfte

(1) Das Bundesministerium der Finanzen kann durch Rechtsverordnung Finanztermingeschäfte verbieten oder beschränken, soweit dies zum Schutz der Anleger erforderlich ist.

(2) Ein Finanztermingeschäft, das einer Rechtsverordnung nach Absatz 1 widerspricht (verbotenes Finanztermingeschäft), ist nichtig. Satz 1 gilt entsprechend für

1. die Bestellung einer Sicherheit für ein verbotenes Finanztermingeschäft,

2. eine Vereinbarung, durch die der eine Teil zum Zwecke der Erfüllung einer Schuld aus einem verbotenen Finanztermingeschäft dem anderen Teil gegenüber eine Verbindlichkeit eingeht, insbesondere für ein Schuldanerkenntnis,

3. die Erteilung und Übernahme von Aufträgen zum Zwecke des Abschlusses von verbotenen Finanztermingeschäften,

4. Vereinigungen zum Zwecke des Abschlusses von verbotenen Finanztermingeschäften.

Abschnitt 9

Schiedsvereinbarungen

§ 37 h Schiedsvereinbarungen

Schiedsvereinbarungen über künftige Rechtsstreitigkeiten aus Wertpapierdienstleistungen, Wertpapiernebenleistungungen oder Finanztermingeschäften sind nur verbindlich, wenn beide Vertragsteile Kaufleute oder juristische Personen des öffentlichen Rechts sind.

§ 37 g Prohibited financial future or forward transactions

(1) The Federal Ministry of Finance may by way of issuing a regulation prohibit or restrict financial future or forward transactions insofar as this is necessary for the protection of investors.

(2) Any financial future or forward transaction contravening any regulation pursuant to paragraph 1 (prohibited financial future or forward transaction) is null and void. Sentence 1 applies *mutatis mutandis* to

1. the granting of a security for a prohibited financial future or forward transaction,

2. any agreement under which one party accepts an obligation towards another party in order to satisfy a liability arising from a prohibited financial future or forward transaction, including for an acknowledgement of debt,

3. the placing and acceptance of orders for the purpose of concluding prohibited financial future or forward transactions,

4. associations for the purposes of concluding prohibited financial future or forward transactions.

Chapter 9

Arbitration agreements

§ 37 h Arbitration agreements

Arbitration agreements regarding future legal disputes arising from investment services, ancillary investment services or financial future or forward transactions only have binding effect if both parties are merchants or legal persons under public law.

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Abschnitt 10

Märkte für Finanzinstrumente mit Sitz außerhalb der Europäischen Union

§ 37i Erlaubnis

(1) Märkte für Finanzinstrumente mit Sitz im Ausland, die keine organisierten Märkte oder multilateralen Handelssysteme im Sinne dieses Gesetzes sind, oder ihre Betreiber bedürfen der schriftlichen Erlaubnis der Bundesanstalt, wenn sie Handelsteilnehmern mit Sitz im Inland über ein elektronisches Handelssystem einen unmittelbaren Marktzugang gewährleisten. Der Erlaubnisantrag muss enthalten:

- 1. Name und Anschrift der Geschäftsleitung des Marktes oder des Betreibers,
2. Angaben, die für die Beurteilung der Zuverlässigkeit der Geschäftsleitung erforderlich sind,
3. einen Geschäftsplan, aus dem die Art des geplanten Marktzugangs für die Handelsteilnehmer, der organisatorische Aufbau und die internen Kontrollverfahren des Marktes hervorgehen,
4. Name und Anschrift eines Zustellungsbevollmächtigten im Inland,
5. die Angabe der für die Überwachung des Marktes und seiner Handelsteilnehmer zuständigen Stellen des Herkunftsstaates und deren Überwachungs- und Eingriffskompetenzen,
6. die Angabe der Art der Finanzinstrumente, die von den Handelsteilnehmern über den unmittelbaren Marktzugang gehandelt werden sollen, sowie
7. Namen und Anschrift der Handelsteilnehmer mit Sitz im Inland, denen der unmittelbare Marktzugang gewährt werden soll.

Das Nähere über die nach Satz 2 erforderlichen Angaben und vorzulegenden Unterlagen bestimmt das Bundesministerium der Finanzen durch Rechtsverordnung, die nicht der Zustimmung des Bundesrates bedarf. Das Bundesministerium der Finanzen

kann die Ermächtigung durch Rechtsverordnung auf die Bundesanstalt für Finanzdienstleistungsaufsicht übertragen.

(2) Die Bundesanstalt kann die Erlaubnis unter Auflagen erteilen, die sich im Rahmen des mit diesem Gesetz verfolgten Zwecks halten müssen. Vor Erteilung der Erlaubnis gibt die Bundesanstalt den Börsenaufsichtsbehörden der Länder Gelegenheit, innerhalb von vier Wochen zum Antrag Stellung zu nehmen.

(3) Die Bundesanstalt hat die Erlaubnis im elektronischen Bundesanzeiger bekannt zu machen.

(4) (aufgehoben)

§ 37j Versagung der Erlaubnis

Die Erlaubnis ist zu versagen, wenn

- 1. Tatsachen vorliegen, aus denen sich ergibt, dass die Geschäftsleitung nicht zuverlässig ist,
2. Handelsteilnehmern mit Sitz im Inland der unmittelbare Marktzugang gewährt werden soll, die nicht die Voraussetzungen des § 19 Abs. 2 des Börsengesetzes erfüllen,
3. die Überwachung des Marktes oder der Anlegerschutz im Herkunftsstaat nicht dem deutschen Recht gleichwertig ist oder
4. der Informationsaustausch mit den für die Überwachung des Marktes zuständigen Stellen des Herkunftsstaates nicht gewährleistet erscheint.

§ 37k Aufhebung der Erlaubnis

(1) Die Bundesanstalt kann die Erlaubnis außer nach den Vorschriften des Verwaltungsverfahrensgesetzes aufheben, wenn

- 1. ihr Tatsachen bekannt werden, welche die Versagung der Erlaubnis nach § 37j rechtfertigen würden, oder
2. der Markt oder sein Betreiber nachhaltig gegen Bestimmungen dieses Gesetzes oder die zur Durchführung dieses Gesetzes erlassenen Verordnungen oder Anordnungen verstoßen hat.

nance may delegate the authority to the Bundesanstalt für Finanzdienstleistungsaufsicht by means of a regulation.

(2) The Bundesanstalt is entitled to issue the licence subject to certain requirements which must be within the framework of the purpose of this Act. The Bundesanstalt will give the stock exchange supervisory authorities of the federal states the opportunity to comment on the application within four weeks, prior to issuing the licence.

(3) The Bundesanstalt must publish the licence in the electronic Federal Gazette.

(4) (revoked)

§ 37j Refusal of licence

The licence is to be refused if

- 1. facts exist indicating that the management is not trustworthy,
2. direct market access is to be granted to trading participants with registered office in Germany which fail to meet the requirements of § 19 para. 2 Stock Exchange Act,
3. market supervision or investor protection in the home state is not equivalent to German law or
4. exchange of information with the bodies competent for the supervision of the market in the home state is not ensured.

§ 37k Revocation of licence

(1) The Bundesanstalt may to revoke the licence notwithstanding the provisions of the Act on Administrative Procedures if

- 1. it becomes aware of facts justifying the refusal of the licence according to § 37j, or
2. the market or its operator has consistently violated provisions of this Act or the regulations or orders issued in implementation of this Act.

(2) Die Bundesanstalt hat die Aufhebung der Erlaubnis im elektronischen Bundesanzeiger bekannt zu machen.

(2) The Bundesanstalt must publish any revocation of licence in the electronic Federal Gazette.

§ 37 i Untersagung
Die Bundesanstalt kann Handelsteilnehmern mit Sitz im Inland, die Wertpapierdienstleistungen im Inland erbringen, untersagen, Aufträge für Kunden über ein elektronisches Handelssystem eines ausländischen Marktes auszuführen, wenn diese Märkte oder ihre Betreiber Handelsteilnehmern im Inland einen unmittelbaren Marktzugang über dieses elektronische Handelssystem ohne Erlaubnis gewähren.

§ 37 i Prohibition
The Bundesanstalt may prohibit market participants with registered office in Germany providing investment services in Germany from executing orders for clients via an electronic trading system of a market outside of Germany if such markets or their operators provide market participants in Germany direct market access via this electronic trading system for which no licence has been issued.

§ 37 m (aufgehoben)

§ 37 m (revoked)

Abschnitt 11
Überwachung von Unternehmensabschlüssen, Veröffentlichung von Finanzberichten

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

Unterabschnitt 1
Überwachung von Unternehmensabschlüssen und -berichten

Subchapter 1
Monitoring of company financial statements

§ 37 n Prüfung von Unternehmensabschlüssen und -berichten
Die Bundesanstalt hat die Aufgabe, nach den Vorschriften dieses Abschnitts und vorbehaltlich § 342b Abs. 2 Satz 3 Nr. 1 und 3 des Handelsgesetzbuchs zu prüfen, ob der Jahresabschluss und der zugehörige Lagebericht oder der Konzernabschluss und der zugehörige Konzernlagebericht sowie der verkürzte Abschluss und der zugehörige Zwischenlagebericht von Unternehmen, deren Wertpapiere im Sinne des § 2 Abs. 1 Satz 1 an einer inländischen Börse zum Handel im regulierten Markt zugelassen sind, den gesetzlichen Vorschriften einschließlich der Grundsätze ordnungsmäßiger Buchführung oder den sonstigen durch Gesetz zugelassenen Rechnungslegungsstandards entspricht.

§ 37 n Auditing of company financial statements and reports
The Bundesanstalt is responsible for examining whether, according to the provisions of this Chapter and subject to the requirements of § 342.b para. 2 sentence 3 no. 1 and 3 of the Commercial Code, the annual financial statements and accompanying management report or the consolidated annual financial statements and report and the abbreviated financial statements and accompanying interim management report of those undertakings whose securities as defined by § 2 para. 1 sentence 1 are admitted to trading on the regulated market of a German stock exchange comply with the applicable statutory provisions, including the generally acceptable German accounting principles

or any other accounting standards accepted by law.

§ 37 o Anordnung einer Prüfung der Rechnungslegung und Ermittlungsbefugnisse der Bundesanstalt

§ 37 o Order to perform an accounting audit and investigatory powers of the Bundesanstalt

(1) Die Bundesanstalt ordnet eine Prüfung der Rechnungslegung an, soweit konkrete Anhaltspunkte für einen Verstoß gegen Rechnungslegungsvorschriften vorliegen; die Anordnung unterbleibt, wenn ein öffentliches Interesse an der Klärung offensichtlich nicht besteht. Die Bundesanstalt kann eine Prüfung der Rechnungslegung auch ohne besonderen Anlass anordnen (stichprobenartige Prüfung). Der Umfang der einzelnen Prüfung soll in der Prüfungsanordnung festgelegt werden. Geprüft wird nur der zuletzt festgestellte Jahresabschluss und der zugehörige Lagebericht oder der zuletzt gebilligte Konzernabschluss und der zugehörige Konzernlagebericht sowie der zuletzt veröffentlichte verkürzte Abschluss und der zugehörige Zwischenlagebericht; unbeschadet dessen darf die Bundesanstalt im Fall von § 37 p Abs. 1 Satz 2 den Abschluss prüfen, der Gegenstand der Prüfung durch die Prüfstelle im Sinne von § 342b Abs. 1 des Handelsgesetzbuchs (Prüfstelle) gewesen ist. Ordnet die Bundesanstalt eine Prüfung der Rechnungslegung an, nachdem sie von der Prüfstelle einen Bericht gemäß § 37 p Abs. 1 Satz 2 Nr. 1 erhalten hat, so kann sie ihre Anordnung und den Grund nach § 37 p Abs. 1 Satz 2 Nr. 1 im elektronischen Bundesanzeiger bekannt machen. Auf die Prüfung des verkürzten Abschlusses und des zugehörigen Zwischenlageberichts ist Satz 2 nicht anzuwenden.

(1) The Bundesanstalt will order an audit of accounting activities if there are specific grounds to suspect that applicable accounting provisions have been breached; no such instructions may be issued if there is no public interest in such review. The Bundesanstalt is also entitled to order an accounting audit without specific reason (random audit). The scope of any audit must be defined in the order issued to carry it out. The audit will cover the previously approved annual financial statements and accompanying management report or the previously approved consolidated annual financial statements and accompanying consolidated management report and the last published abbreviated financial statements and accompanying interim management report; notwithstanding the foregoing provisions, the Bundesanstalt is entitled in the case of § 37 p para. 1 sentence 2 to audit the annual financial statements which were examined by the review body as defined by § 342.b para. 1 of the Commercial Code (review body). In the event that the Bundesanstalt orders an accounting audit following receipt of a report from the review body pursuant to § 37 p para. 1 sentence 2 no. 1, it is entitled to announce its instructions and the corresponding grounds pursuant to § 37 p para. 1 sentence 2 no. 1 in the electronic Federal Gazette. Sentence 2 does not apply to the audit of the abbreviated annual financial statements and the accompanying interim management report.

(2) Eine Prüfung des Jahresabschlusses und des zugehörigen Lageberichts durch die Bundesanstalt findet nicht statt, solange eine Klage auf Nichtigkeit gemäß § 256 Abs. 7 des Aktiengesetzes anhängig ist. Wenn nach § 142 Abs. 1 oder Abs. 2 oder § 258 Abs. 1 des Aktiengesetzes ein Sonderprüfer bestellt worden ist, findet eine

(2) A review of the annual financial statements and the accompanying management report by the Bundesanstalt will not take place in the event that there is a pending nullity claim pursuant to § 256 para. 7 of the Stock Corporation Act. If a special auditor has been appointed pursuant to § 142 para. 1 or para. 2 or § 258

Prüfung ebenfalls nicht statt, soweit der Gegenstand der Sonderprüfung, der Prüfungsbericht oder eine gerichtliche Entscheidung über die abschließenden Feststellungen der Sonderprüfer nach § 260 des Aktiengesetzes reichen.

(3) Bei der Durchführung der Prüfung kann sich die Bundesanstalt der Prüfstelle sowie anderer Einrichtungen und Personen bedienen.

(4) Das Unternehmen im Sinne des § 37n, die Mitglieder seiner Organe, seine Beschäftigten sowie seine Abschlussprüfer haben der Bundesanstalt und den Personen, derer sich die Bundesanstalt bei der Durchführung ihrer Aufgaben bedient, auf Verlangen Auskünfte zu erteilen und Unterlagen vorzulegen, soweit dies zur Prüfung erforderlich ist; die Auskunftspflicht der Abschlussprüfer beschränkt sich auf Tatsachen, die ihnen im Rahmen der Abschlussprüfung bekannt geworden sind. Satz 1 gilt auch für die nach den Vorschriften des Handelsgesetzbuchs in Konzernabschlüssen einzubeziehenden Tochterunternehmen. Für das Recht zur Auskunftsverweigerung und die Befreiungspflicht gilt § 4 Abs. 9 entsprechend.

(5) Die zur Auskunft und Vorlage von Unterlagen nach Absatz 4 Verpflichteten haben den Bediensteten der Bundesanstalt oder den von ihr beauftragten Personen, soweit dies zur Wahrnehmung ihrer Aufgaben erforderlich ist, während der üblichen Arbeitszeit das Betreten ihrer Grundstücke und Geschäftsräume zu gestatten. § 4 Abs. 4 Satz 2 gilt entsprechend. Das Grundrecht der Unverletzlichkeit der Wohnung (Artikel 13 des Grundgesetzes) wird insoweit eingeschränkt.

§ 37 p Befugnisse der Bundesanstalt im Fall der Anerkennung einer Prüfstelle

(1) Ist nach § 342b Abs. 1 des Handelsgesetzbuchs eine Prüfstelle anerkannt, so finden stichprobenartige Prüfungen nur auf Veranlassung der Prüfstelle statt. Im Übrigen stehen der Bundesanstalt die Befugnisse nach § 37o erst zu, wenn

para. 1 of the Stock Corporation Act, an audit will not be performed if the subject of special audit, the audit report or a court ruling on the final findings of the special auditor under § 260 of the Stock Corporation Act is sufficient.

(3) The Bundesanstalt may use the review body and other institutions or persons in carrying out the audit.

(4) The undertaking as defined by § 37n, the members of its executive bodies, its employees and its auditors will provide the Bundesanstalt and any persons assisting the Bundesanstalt with the performance of its duties with any information and documentation necessary for the audit upon request; the auditors' disclosure duty is restricted to those facts of which they became aware during the audit procedure. Sentence 1 also applies to any subsidiaries to be included in the consolidated annual financial statements according to the provisions of the Commercial Code. § 4 para. 9 applies *mutatis mutandis* to the right of persons to refuse to provide information and to the obligation to inform them thereof.

(5) The persons obliged to provide information and submit documentation pursuant to paragraph 4 are required to grant employees of the Bundesanstalt or persons appointed by it access to their properties and premises during normal working hours where this is necessary for the performance of their duties. § 4 para. 4 sentence 2 will apply *mutatis mutandis*. The constitutional right of the inviolability of the home (Article 13 of the Constitution of the Federal Republic of Germany) is limited to this extent.

§ 37 p Powers of the Bundesanstalt in the case of the recognition of a review body

(1) If a review body is recognised according to § 342b para. 1 of the Commercial Code, random audits will only be carried out at the request of the review body. The Bundesanstalt only has the powers specified in § 37o once

1. ihr die Prüfstelle berichtet, dass ein Unternehmen seine Mitwirkung bei einer Prüfung verweigert oder mit dem Ergebnis der Prüfung nicht einverstanden ist, oder

2. erhebliche Zweifel an der Richtigkeit des Prüfungsergebnisses der Prüfstelle oder an der ordnungsgemäßen Durchführung der Prüfung durch die Prüfstelle bestehen.

Auf Verlangen der Bundesanstalt hat die Prüfstelle das Ergebnis und die Durchführung der Prüfung zu erläutern und einen Prüfbericht vorzulegen. Unbeschadet von Satz 2 kann die Bundesanstalt die Prüfung jederzeit an sich ziehen, wenn sie auch eine Prüfung nach § 44 Abs. 1 Satz 2 des Kreditwesengesetzes oder § 83 Abs. 1 Nr. 2 des Versicherungsaufsichtsgesetzes durchführt oder durchgeführt hat und die Prüfungen denselben Gegenstand betreffen.

(2) Die Bundesanstalt kann von der Prüfstelle unter den Voraussetzungen des § 37o Abs. 1 Satz 1 die Einleitung einer Prüfung verlangen.

(3) Die Bundesanstalt setzt die Prüfstelle von Mitteilungen nach § 142 Abs. 7, § 256 Abs. 7 Satz 2 und § 261a des Aktiengesetzes in Kenntnis, wenn die Prüfstelle die Prüfung eines von der Mittelteilung betroffenen Unternehmens beabsichtigt oder eingeleitet hat.

§ 37 q Ergebnis der Prüfung von Bundesanstalt oder Prüfstelle

(1) Ergibt die Prüfung durch die Bundesanstalt, dass die Rechnungslegung fehlerhaft ist, so stellt die Bundesanstalt den Fehler fest.

(2) Die Bundesanstalt ordnet an, dass das Unternehmen den von der Bundesanstalt oder den von der Prüfstelle im Einvernehmen mit dem Unternehmen festgestellten Fehler samt den wesentlichen Teilen der Begründung der Feststellung bekannt zu machen hat. Die Bundesanstalt sieht von einer Anordnung nach Satz 1 ab, wenn kein öffentliches Interesse

1. the review body has reported to it that an undertaking has refused to cooperate with an audit or is disputing the results of an audit, or

2. considerable doubts have arisen about the accuracy of the review body's audit results or about the proper performance of the audit by the review body.

At the request of the Bundesanstalt, the review body is required to explain the findings and implementation of the audit and to submit an audit report. Notwithstanding sentence 2, the Bundesanstalt may take over the audit at any time if it is also performing or has performed an audit pursuant to § 44 para. 1 sentence 2 of the Banking Act or § 83 para. 1 no. 2 of the Insurance Supervision Act and the audits relate to the same subject matter.

(2) The Bundesanstalt is entitled to demand that the review body institute an audit according to the requirements of § 37o para. 1 sentence 1.

(3) The Bundesanstalt will inform the review body of any notifications under § 142 para. 7, § 256 para. 7 sentence 2 and § 261a of the Stock Corporation Act in the event that the review body has instituted or intends to institute an audit of one of the undertakings affected by the notification.

§ 37 q Results of the audit by the Bundesanstalt or review body

(1) If the audit performed by the Bundesanstalt demonstrates that the accounting was inaccurate, the Bundesanstalt will declare the mistake.

(2) The Bundesanstalt requires that the undertaking publish the mistake declared by the Bundesanstalt or by the review body in conjunction with the undertaking, along with the key aspects of the grounds for the determination. The Bundesanstalt will not issue instructions in line with sentence 1 if the publication does not serve the public interest. At the request of the

an der Veröffentlichung besteht. Auf Antrag des Unternehmens kann die Bundesanstalt von einer Anordnung nach Satz 1 absehen, wenn die Veröffentlichung geeignet ist, den berechtigten Interessen des Unternehmens zu schaden. Die Bekanntmachung hat unverzüglich im elektronischen Bundesanzeiger sowie entweder in einem überregionalen Börsenpflichtblatt oder über ein elektronisch betriebenes Informationsverbreitungssystem, das bei Kreditinstituten, nach § 53 Abs. 1 Satz 1 des Kreditwesengesetzes tätigen Unternehmen, anderen Unternehmen, die ihren Sitz im Inland haben und die an einer inländischen Börse zur Teilnahme am Handel zugelassen sind, und Versicherungsunternehmen weit verbreitet ist, zu erfolgen.

(3) Ergibt die Prüfung durch die Bundesanstalt keine Beanstandungen, so teilt die Bundesanstalt dies dem Unternehmen mit.

§ 37r Mitteilungen an andere Stellen

(1) Die Bundesanstalt hat Tatsachen, die den Verdacht einer Straftat im Zusammenhang mit der Rechnungslegung eines Unternehmens begründen, der für die Verfolgung zuständigen Behörde anzuzeigen. Sie darf diesen Behörden personenbezogene Daten der Betroffenen, gegen die sich der Verdacht richtet oder die als Zeugen in Betracht kommen, übermitteln.

(2) Tatsachen, die auf das Vorliegen einer Berufspflichtverletzung durch den Abschlussprüfer schließen lassen, übermitteln die Bundesanstalt der Wirtschaftsprüferkammer. Tatsachen, die auf das Vorliegen eines Verstoßes des Unternehmens gegen börsenrechtliche Vorschriften schließen lassen, übermitteln sie der zuständigen Borsenaufsichtsbehörde. Absatz 1 Satz 2 gilt entsprechend.

§ 37s Internationale Zusammenarbeit

(1) Der Bundesanstalt obliegt die Zusammenarbeit mit den Stellen im Ausland, die zuständig sind für die Untersuchung möglicher Verstöße gegen Rechnungslegungsvorschriften durch Unternehmen,

deren Wertpapiere zum Handel an einem organisierten Markt zugelassen sind. Sie kann diesen Stellen zur Erfüllung dieser Aufgabe Informationen nach Maßgabe des § 7 Abs. 2 Satz 1 und 2, auch in Verbindung mit Abs. 7 übermitteln. § 37o Abs. 4 und 5 findet mit der Maßgabe entsprechende Anwendung, dass die dort genannten Befugnisse sich auf alle Unternehmen, die von der Zusammenarbeit nach Satz 1 umfasst sind, sowie auf alle Unternehmen, die in den Konzernabschluss eines solchen Unternehmens einbezogen sind, erstrecken.

(2) Die Bundesanstalt kann mit den zuständigen Stellen von Mitgliedstaaten der Europäischen Union oder von Vertragsstaaten des Abkommens über den Europäischen Wirtschaftsraum zusammenarbeiten, um eine einheitliche Durchsetzung internationaler Rechnungslegungsvorschriften grenzüberschreitend gewährleisten zu können. Dazu kann sie diesen Stellen auch den Wortlaut von Entscheidungen zur Verfügung stellen, die sie oder die Prüfstelle in Einzelfällen getroffen haben. Der Wortlaut der Entscheidungen darf nur in anonymisierter Form zur Verfügung gestellt werden.

(3) Die internationale Zusammenarbeit durch die Bundesanstalt nach den Absätzen 1 und 2 erfolgt im Benehmen mit der Prüfstelle.

§ 37t Widerspruchsverfahren

(1) Vor Einlegung der Beschwerde sind Rechtmäßigkeit und Zweckmäßigkeit der Verfügungen, welche die Bundesanstalt nach den Vorschriften dieses Abschnitts erlässt, in einem Widerspruchsverfahren nachzuprüfen. Einer solchen Nachprüfung bedarf es nicht, wenn der Abhilfebescheid oder der Widerspruchsbescheid erstmalig eine Beschwerde enthält. Für das Widerspruchsverfahren gelten die §§ 68 bis 73 und 80 Abs. 1 der Verwaltungsgerichtsordnung entsprechend, soweit in diesem Abschnitt nichts Abweichendes geregelt ist.

(2) Der Widerspruch gegen Maßnahmen der Bundesanstalt nach § 37o Abs. 1

are admitted to trading on a regulated market. It is entitled to provide these authorities with information according to § 7 para. 2 sentence 1 and 2, also in conjunction with para. 7, in performance of these duties. § 37o para. 4 and 5 will apply *mutatis mutandis*, subject to the condition that the powers provided for therein apply to all companies covered by the cooperation under sentence 1, as well as to all companies included in the consolidated annual financial statements of any such undertaking.

(2) The Bundesanstalt is entitled to cooperate with the relevant authorities of member state of the European Union or contracting states of the European Economic Area to ensure the internationally harmonised implementation of international accounting standards. It may also provide these authorities with the wording of decisions which it or the review body have made in individual cases. The wording of the decisions may only be made available in an anonymous form.

(3) The international cooperation by the Bundesanstalt under paragraphs 1 and 2 will take place in consultation with the review body.

§ 37t Opposition proceedings

(1) Prior to lodging an objection, opposition proceedings need to be held to examine the legality and suitability of the orders issued by the Bundesanstalt according to the provisions of this Chapter. Such examination is not necessary if the notice of remedy or objection contains a gravamen for the first time. § 68 to 73 and 80 para. 1 of the Administrative Court Procedures Code apply *mutatis mutandis* to the objection proceedings, unless otherwise provided for in this Chapter.

(2) Any objection to measures implemented by the Bundesanstalt pursuant to

Satz 1, 2 und 5 sowie Abs. 4 und 5, § 37p Abs. 1 Satz 3 und 4 sowie Abs. 2 und § 37q Abs. 1 sowie Abs. 2 Satz 1 hat keine aufschiebende Wirkung.

§ 37 u Beschwerde

(1) Gegen Verfügungen der Bundesanstalt nach diesem Abschnitt ist die Beschwerde statthaft. Die Beschwerde hat keine aufschiebende Wirkung.

(2) Die §§ 43 und 48 Abs. 2 bis 4, § 50 Abs. 3 bis 5 sowie die §§ 51 bis 58 des Wertpapiererwerbs- und Übernahmegesetzes gelten entsprechend.

Unterabschnitt 2 Veröffentlichung und Übermittlung von Finanzberichten an das Unternehmensregister

§ 37 v Jahresfinanzbericht

(1) Ein Unternehmen, das als Inlandsemittent Wertpapiere begibt, hat für den Schluss eines jeden Geschäftsjahrs einen Jahresfinanzbericht zu erstellen und spätestens vier Monate nach Ablauf eines jeden Geschäftsjahrs der Öffentlichkeit zur Verfügung zu stellen, wenn es nicht nach den handelsrechtlichen Vorschriften zur Offenlegung der in Absatz 2 genannten Rechnungslegungunterlagen verpflichtet ist. Außerdem muss jedes Unternehmen, das als Inlandsemittent Wertpapiere begibt, vor dem Zeitpunkt, zu dem die in Absatz 2 genannten Rechnungslegungunterlagen erstmals der Öffentlichkeit zur Verfügung stehen, eine Bekanntmachung darüber veröffentlichen, ab welchem Zeitpunkt und unter welcher Internetadresse die in Absatz 2 genannten Rechnungslegungunterlagen zusätzlich zu ihrer Verfügbarkeit im Unternehmensregister öffentlich zugänglich sind. Das Unternehmen teilt die Bekanntmachung gleichzeitig mit ihrer Veröffentlichung der Bundesanstalt mit und übermittelt sie unverzüglich, jedoch nicht vor ihrer Veröffentlichung dem Unternehmensregister im Sinne des § 8 b des Handelsgesetzbuchs zur Speicherung und zu

§ 37 o para. 1 sentence 1, 2 and 5 and para. 4 and 5, § 37 p para. 1 sentences 3 and 4 and para. 2 and § 37 q para. 1 and para. 2 sentence 1 will not have the effect of suspension.

§ 37 u Appeal

(1) Appeals may be lodged against orders issued by the Bundesanstalt according to this Chapter. Any such appeal will not have the effect of suspension.

(2) §§ 43 and 48 paras. 2 to 4, § 50 paras. 3 to 5 and § 51 to 58 of the Securities Acquisition and Takeover Act apply *mutatis mutandis*.

Subchapter 2 Publication and communication of financial reports to the Company Register

§ 37 v Annual financial report

(1) Any undertaking issuing securities as a domestic issuer must prepare an annual financial report at the end of each financial year and make it available to the public no later than four months following the end of each financial year if it is not required to disclose the accounting documents specified in paragraph 2 according to commercial law provisions. Any undertaking issuing securities as a domestic issuer must also publish a notice prior to the accounting documents specified in paragraph 2 becoming publicly available for the first time, stating when and on which website the accounting documents specified in paragraph 2 will be publicly available in addition to being available in the Company Register. Simultaneously with publication, the undertaking is required to inform the Bundesanstalt of the notice and to provide it without undue delay, however not prior to publication, to the Company Register for storage, pursuant to § 8 b of the Commercial Code. It is also required to provide the commercial register with the accounting documents specified in paragraph 2 for storage and to do so without undue

Es hat außerdem unverzüglich, jedoch nicht vor Veröffentlichung der Bekanntmachung nach Satz 2 die in Absatz 2 genannten Rechnungslegungunterlagen an das Unternehmensregister zur Speicherung zu übermitteln, es sei denn, die Übermittlung erfolgt nach § 8 b Abs. 2 Nr. 4 in Verbindung mit Abs. 3 Satz 1 Nr. 1 des Handelsgesetzbuchs.

(2) Der Jahresfinanzbericht hat mindestens

1. den gemäß dem nationalen Recht des Sitzstaats des Unternehmens aufgestellten und geprüften Jahresabschluss,

2. den Lagebericht,

3. eine den Vorgaben des § 264 Abs. 2 Satz 3, § 289 Abs. 1 Satz 5 des Handelsgesetzbuchs entsprechende Erklärung und

4. eine Bescheinigung der Wirtschaftsprüferkammer gemäß § 134 Abs. 2 a der Wirtschaftsprüferordnung über die Eintragung des Abschlussprüfers oder eine Bestätigung der Wirtschaftsprüferkammer gemäß § 134 Abs. 4 Satz 8 der Wirtschaftsprüferordnung über die Befreiung von der Eintragungspflicht

zu enthalten.

(3) Das Bundesministerium der Finanzen kann im Einvernehmen mit dem Bundesministerium der Justiz durch Rechtsverordnung, die nicht der Zustimmung des Bundesrates bedarf, nähere Bestimmungen erlassen über

1. den Mindestinhalt, die Art, die Sprache, den Umfang und die Form der Veröffentlichung nach Absatz 1 Satz 2,

2. den Mindestinhalt, die Art, die Sprache, den Umfang und die Form der Mitteilung nach Absatz 1 Satz 3,

3. wie lange die Informationen nach Absatz 2 im Unternehmensregister allgemein zugänglich bleiben müssen und wann sie zu löschen sind, und

delay, but not prior to publication according to sentence 2, unless the provision of such documents takes place according to § 8 b para. 2 no. 4 in conjunction with para. 3 sentence 1 no. 1 of the Commercial Code.

(2) The annual financial report must include at least

1. the annual financial statements prepared and audited according to the national law of the undertaking's home state,

2. the management report,

3. a declaration pursuant to the requirements of § 264 para. 2 sentence 3, § 289 para. 1 sentence 5 of the Commercial Code and

4. a certificate from the Chamber of Certified Accountants pursuant to § 134 para. 2 a of the Code on the Profession of Auditors regarding the registration of the auditor a confirmation from the Chamber of Certified Accountants pursuant to § 134 para. 4 sentence 8 of the Act on the Profession of Auditors regarding exemption from the registration requirement.

(3) In agreement with the Federal Ministry of Justice, the Federal Ministry of Finance may, by way of issuing a regulation that does not require the approval of the Bundesrat, issue detailed provisions on

1. the minimum content, nature, language, scope and form of the publication pursuant to paragraph 1 sentence 2,

2. the minimum content, nature, language, scope and form of the publication pursuant to paragraph 1 sentence 3.

3. the period of time for which the information under paragraph 2 needs to remain publicly accessible in the Company Register and when it is to be deleted, and

4. eine aufeinander abgestimmte Verfahrensweise, nach der der Jahresfinanzbericht und das jährliche Dokument nach § 10 des Wertpapierprospektgesetzes der Bundesanstalt zur Kenntnis gelangen.

§ 37 w Halbjahresfinanzbericht

(1) Ein Unternehmen, das als Inlandsemittent Aktien oder Schuldtitel im Sinne des § 2 Abs. 1 Satz 1 begibt, hat für die ersten sechs Monate eines jeden Geschäftsjahrs einen Halbjahresfinanzbericht zu erstellen und diesen unverzüglich, spätestens zwei Monate nach Ablauf des Berichtszeitraums der Öffentlichkeit zur Verfügung zu stellen, es sei denn, es handelt sich bei den zugelassenen Wertpapieren um Schuldtitel, die unter § 2 Abs. 1 Satz 1 Nr. 2 fallen oder die ein zumindest bedingtes Recht auf den Erwerb von Wertpapieren nach § 2 Abs. 1 Satz 1 Nr. 1 oder 2 begründen. Außerdem muss das Unternehmen vor dem Zeitpunkt, zu dem der Halbjahresfinanzbericht erstmals der Öffentlichkeit zur Verfügung steht, eine Bekanntmachung darüber veröffentlichen, ab welchem Zeitpunkt und unter welcher Internetadresse der Bericht zusätzlich zu seiner Verfügbarkeit im Unternehmensregister öffentlich zugänglich ist. Das Unternehmen teilt die Bekanntmachung gleichzeitig mit ihrer Veröffentlichung der Bundesanstalt mit und übermittelt sie unverzüglich, jedoch nicht vor ihrer Veröffentlichung dem Unternehmensregister im Sinne des § 8 b des Handelsgesetzbuchs zur Speicherung. Es hat außerdem unverzüglich, jedoch nicht vor Veröffentlichung der Bekanntmachung nach Satz 2 den Halbjahresfinanzbericht an das Unternehmensregister zur Speicherung zu übermitteln.

(2) Der Halbjahresfinanzbericht hat mindestens

1. einen verkürzten Abschluss,
2. einen Zwischenlagebericht und
3. eine den Vorgaben des § 264 Abs. 2 Satz 3, § 289 Abs. 1 Satz 5 des Handelsgesetzbuchs entsprechende Erklärung zu enthalten.

4. a coordinated procedure for making the Bundesanstalt aware of the annual financial report and the annual document pursuant to § 10 of the Securities Prospectus Act.

§ 37 w Semi-annual financial report

(1) Any undertaking issuing shares or debt instruments as defined by § 2 para. 1 sentence 1 as a domestic issuer, is required to prepare a semi-annual financial report covering the first six months of each financial year and make such report available to the public without undue delay, but no later than two months after the end of the relevant reporting period, unless the admitted securities are debt instruments that fall within the scope of § 2 para. 1 sentence 1 no. 2, or that grant at least a contingent right to acquire securities pursuant to § 2 para. 1 sentence 1 no. 1 or 2. Furthermore, prior to making the semi-annual financial report publicly available for the first time, the undertaking will publish an announcement concerning the time and the website on which the report will be publicly available in addition to its availability in the Company Register. Simultaneously with publication, the undertaking is required to inform the Bundesanstalt of the notice and to provide it without undue delay, however not prior to publication, to the Company Register for storage, pursuant to § 8 b of the Commercial Code. Moreover, the undertaking will transmit without undue delay, but not before the publication of the announcement pursuant to sentence 2, the semi-annual financial report to the Company Register for storage.

(2) The semi-annual report must at least contain

1. abbreviated financial statements,
2. an interim management report, and
3. a declaration pursuant to the requirements of § 264 para. 2 sentence 3, § 289 para. 1 sentence 5 of the Commercial Code.

(3) Der verkürzte Abschluss hat mindestens eine verkürzte Bilanz, eine verkürzte Gewinn- und Verlustrechnung und einen Anhang zu enthalten. Auf den verkürzten Abschluss sind die für den Jahresabschluss geltenden Rechnungslegungsgrundsätze anzuwenden. Tritt bei der Offenlegung an die Stelle des Jahresabschlusses ein Einzelabschluss im Sinne des § 325 Abs. 2 a des Handelsgesetzbuchs, sind auf den verkürzten Abschluss die in § 315 a Abs. 1 des Handelsgesetzbuchs bezeichneten internationalen Rechnungslegungsstandards und Vorschriften anzuwenden.

(4) Im Zwischenlagebericht sind mindestens die wichtigsten Ereignisse des Berichtszeitraums im Unternehmen des Emittenten und ihre Auswirkungen auf den verkürzten Abschluss anzugeben sowie die wesentlichen Chancen und Risiken für die dem Berichtszeitraum folgenden sechs Monate des Geschäftsjahrs zu beschreiben. Ferner sind bei einem Unternehmen, das als Inlandsemittent Aktien begibt, die wesentlichen Geschäfte des Emittenten mit nahe stehenden Personen anzugeben; die Angaben können stattdessen im Anhang des Halbjahresfinanzberichts gemacht werden.

(5) Der verkürzte Abschluss und der Zwischenlagebericht kann einer prüferischen Durchsicht durch einen Abschlussprüfer unterzogen werden. Die Vorschriften über die Bestellung des Abschlussprüfers sind auf die prüferische Durchsicht entsprechend anzuwenden. Die prüferische Durchsicht ist so anzulegen, dass bei gewisserhafter Berufsausübung ausgeschlossen werden kann, dass der verkürzte Abschluss und der Zwischenlagebericht in wesentlichen Belangen den anzuwendenden Rechnungslegungsgrundsätzen widersprechen. Der Abschlussprüfer hat das Ergebnis der prüferischen Durchsicht in einer Bescheinigung zum Halbjahresfinanzbericht zusammenzufassen, die mit dem Halbjahresfinanzbericht zu veröffentlichen ist. Sind der verkürzte Abschluss und der Zwischenlagebericht entspre-

(3) The abbreviated financial statements will, as the minimum, contain an abbreviated balance sheet, an abbreviated profit and loss account and an annex. The abbreviated financial statements will be prepared according to 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 as defined by § 325 para. 2 a of the Commercial Code, the abbreviated financial statements will be prepared according to the international accounting standards and provisions specified in § 315 a para. 1 of the Commercial Code.

(4) The interim management report will, as the minimum, include an indication of important events that have occurred during the reporting period in the issuer's undertaking and their impact on the abbreviated financial statements as well as a description of the key opportunities and risks for the six months of the financial year following the reporting period. In respect of undertakings that issue shares as domestic issuers, the interim management report will include major related parties transactions; such data may be provided in the annex to the semi-annual financial report instead.

(5) The abbreviated financial statements and the interim management report may be reviewed by auditors. The provisions concerning the appointment of the auditor apply *mutatis mutandis* to the auditors' review. The auditors' review will be effected in such way that, when applying due care and attention, it can be excluded that the abbreviated financial statements and the interim management report are inconsistent with the applicable accounting standards in material aspects. The auditor will summarise the findings of his review in a certification in respect of the semi-annual financial report and publish such certification together with the semi-annual financial report. If the abbreviated financial statements and the interim management report have been audited according to § 317 of the Commercial Code, the

chend § 317 des Handelsgesetzbuchs geprüft worden, ist der Bestätigungsvermerk oder der Vermerk über seine Versagung vollständig wiederzugeben und mit dem Halbjahresfinanzbericht zu veröffentlichen. Sind der verkürzte Abschluss und der Zwischenlagebericht weder einer prüferischen Durchsicht unterzogen noch entsprechend § 317 des Handelsgesetzbuchs geprüft worden, ist dies im Halbjahresfinanzbericht anzugeben. § 320 und § 323 des Handelsgesetzbuchs gelten entsprechend.

(6) Das Bundesministerium der Finanzen kann im Einvernehmen mit dem Bundesministerium der Justiz durch Rechtsverordnung, die nicht der Zustimmung des Bundesrates bedarf, nähere Bestimmungen erlassen über

1. den Inhalt und die prüferische Durchsicht des Halbjahresfinanzberichts,
2. den Mindestinhalt, die Art, die Sprache, den Umfang und die Form der Veröffentlichung nach Absatz 1 Satz 2,
3. den Mindestinhalt, die Art, die Sprache, den Umfang und die Form der Mitteilung nach Absatz 1 Satz 3 und
4. wie lange der Halbjahresfinanzbericht im Unternehmensregister allgemein zugänglich bleiben muss und wann er zu löschen ist.

§ 37 x Zwischenmitteilung der Geschäftsführung

(1) Ein Unternehmen, das als Inlandsemitrent Aktien begibt, hat in einem Zeitraum zwischen zehn Wochen nach Beginn und sechs Wochen vor Ende der ersten und zweiten Hälfte des Geschäftsjahrs jeweils eine Zwischenmitteilung der Geschäftsführung der Öffentlichkeit zur Verfügung zu stellen. Außerdem muss das Unternehmen vorher eine Bekanntmachung darüber veröffentlichen, ab welchem Zeitpunkt und unter welcher Internetadresse die Zwischenmitteilung der Geschäftsführung zusätzlich zu ihrer Verfügbarkeit im Unternehmensregister öffentlich zugänglich ist. Das Unternehmen teilt die Bekanntmachung gleichzeitig mit

audit certificate or the refusal of such audit certificate will be reproduced in full and published together with the semi-annual financial report. If the abbreviated financial statements and semi-annual financial report have not been reviewed by auditors or audited according to § 317 of the Commercial Code, a statement to that effect will be made in the semi-annual financial report. §§ 320 and 323 of the Commercial Code apply *mutatis mutandis*.

(6) In agreement with the Federal Ministry of Justice, the Federal Ministry of Finance may, by way of a regulation that does not require the approval of the Bundesrat, issue detailed provisions on

1. the content and the auditors' review of the semi-annual financial report,
2. the minimum content, nature, language, scope and form of the publication pursuant to para. 1 sentence 2,
3. the minimum content, nature, language, scope and form of the notification pursuant to para. 1 sentence 3, and
4. how long the semi-annual financial report must remain publicly accessible in the Company Register and when it is to be deleted.

§ 37 x Interim Management Statement

(1) An undertaking which issues shares as a domestic issuer is required to make public interim management statement in the time period between ten weeks following the beginning and six weeks prior to the end of both the first and second halves of the financial year, respectively. Additionally, prior to the publication of the interim management statement, the undertaking is to publish a notice as to when and at which website the interim management statement will be publicly available, as well as being published in the Company Register. Simultaneously with publication, the undertaking is required to inform the Bundesanstalt of the notice

ihrer Veröffentlichung der Bundesanstalt mit und übermittelt sie unverzüglich, jedoch nicht vor ihrer Veröffentlichung dem Unternehmensregister im Sinne des § 8 b des Handelsgesetzbuchs zur Speicherung. Es hat außerdem unverzüglich, jedoch nicht vor Veröffentlichung der Bekanntmachung nach Satz 2 die Zwischenmitteilung der Geschäftsführung an das Unternehmensregister zur Speicherung zu übermitteln.

(2) Die Zwischenmitteilung hat Informationen über den Zeitraum zwischen dem Beginn der jeweiligen Hälfte des Geschäftsjahrs und dem Zeitpunkt zu enthalten, zu welchem die Zwischenmitteilung der Öffentlichkeit im Sinne des Absatzes 1 Satz 1 zur Verfügung stehen; diese Informationen haben die Beurteilung zu ermöglichen, wie sich die Geschäftstätigkeit des Emittenten in den drei Monaten vor Ablauf des Mittelungszeitraums entwickelt hat. In der Zwischenmitteilung sind die wesentlichen Ereignisse und Geschäfte des Mittelungszeitraums im Unternehmen des Emittenten und ihre Auswirkungen auf die Finanzlage des Emittenten zu erläutern sowie die Finanzzahlen und das Geschäftsergebnis des Emittenten im Mittelungszeitraum zu beschreiben.

(3) Wird ein Quartalsfinanzbericht nach den Vorgaben des § 37 w Abs. 2 Nr. 1 und 2, Abs. 3 und 4 erstellt und veröffentlicht, entfällt die Pflicht nach Absatz 1. Der Quartalsfinanzbericht ist unverzüglich, jedoch nicht vor seiner Veröffentlichung an das Unternehmensregister zu übermitteln. Wird der Quartalsfinanzbericht einer prüferischen Durchsicht durch einen Abschlussprüfer unterzogen, gelten § 320 und § 323 des Handelsgesetzbuchs entsprechend.

(4) Das Bundesministerium der Finanzen kann im Einvernehmen mit dem Bundesministerium der Justiz durch Rechtsverordnung, die nicht der Zustimmung des Bundesrates bedarf, nähere Bestimmungen erlassen über

1. den Mindestinhalt, die Art, die Sprache, den Umfang und die Form der

and to provide it without undue delay, however not prior to publication, to the Company Register for storage, pursuant to § 8 b of the Commercial Code. It is also required, without undue delay, however not prior to publication of the notice according to sentence 2, to provide the interim management statement to the Company Register for storage.

(2) The interim management statement is required to include information with respect to the time period between the commencement of the relevant six-month period of the financial year and the period in time at which the interim management statement is made publicly available pursuant to paragraph 1 sentence 1; this information is required to make an assessment possible of how the business activities of the issuer have developed during the three months prior to the expiry of the statement period. The interim management statement is to describe the material events and transactions which have taken place at the issuer's undertaking during the relevant period and their impact on the financial position of the issuer as well as the financial position and performance of the issuer during the statement period.

(3) The requirement set out in paragraph 1 does not apply if a quarterly financial report is prepared and published according to the requirements in § 37 w para. 2 nos. 1 and 2, paras. 3 and 4. The quarterly financial report is to be provided to the Company Register without undue delay, however not prior to its publication. If the quarterly financial report is reviewed by an auditor, §§ 320 and 323 of the Commercial Code apply *mutatis mutandis*.

(4) In agreement with the Federal Ministry of Justice, the Federal Ministry of Finance may, by way of a regulation that does not require the approval of the Bundesrat, issue detailed provisions on

1. the minimum contents, nature, language, scope and form of the publica-

Veröffentlichung nach Absatz 1 Satz 2 und den Mindestinhalt, die Art, die Sprache, den Umfang und die Form der Mitteilung nach Absatz 1 Satz 3.

37 y Konzernabschluss

Ist ein Mutterunternehmen verpflichtet, einen Konzernabschluss und einen Konzernlagebericht aufzustellen, gelten § 37 v s § 37 x mit der folgenden Maßgabe:

Der Jahresfinanzbericht hat auch den geprüften, im Einklang mit der Verordnung (EG) Nr. 1606/2002 des Europäischen Parlaments und des Rates vom 19. Juli 2002 betreffend die Anwendung internationaler Rechnungslegungsstandards (ABl. EG Nr. L 243 S. 1) aufgestellten Konzernabschluss, den Konzernlagebericht, eine den Vorgaben des § 297 Abs. 2 Satz 3, § 315 Abs. 1 Satz 6 des Handelsgesetzbuchs entsprechende Erklärung und eine Bescheinigung der Wirtschaftsprüferkammer gemäß § 134 Abs. 2 a der Wirtschaftsprüferordnung über die Eintragung des Abschlussprüfers oder eine Bestätigung der Wirtschaftsprüferkammer gemäß § 134 Abs. 4 Satz 8 der Wirtschaftsprüferordnung über die Befreiung von der Eintragungspflicht zu enthalten.

Die gesetzlichen Vertreter des Mutterunternehmens haben den Halbjahresfinanzbericht für das Mutterunternehmen und die Gesamtheit der einzubeziehenden Tochterunternehmen zu erstellen und zu veröffentlichen. § 37 w Abs. 3 gilt entsprechend, wenn das Mutterunternehmen verpflichtet ist, den Konzernabschluss nach den in § 315 a Abs. 1 des Handelsgesetzbuchs bezeichneten internationalen Rechnungslegungsstandards und Vorschriften aufzustellen.

Die Angaben nach § 37 x Abs. 2 Satz 2 in der Zwischenmitteilung eines Mutterunternehmens haben sich auf das

1. The annual financial report is to include the audited consolidated financial statements drawn up according to Regulation (EC) No 1606/2002 of the European Parliament and the Council dated 19 July 2002 on the application of international accounting standards (OJ No. L 243 p. 1), the consolidated management report, a declaration pursuant to § 297 para. 2 sentence 3, § 315 para. 1 sentence 6 of the Commercial Code and a certificate from the Chamber of Certified Accountants pursuant to § 134 para. 2 a of the Code on the Profession of Auditors regarding the registration of the auditor or a confirmation from the Chamber of Certified Accountants pursuant to § 134 para. 4 sentence 8 of the Act on the Profession of Auditors regarding exemption from the registration requirement.
2. The legal representatives of the parent undertaking are required to prepare and publish the semi-annual financial report for the parent undertaking and the entirety of the relevant subsidiaries. § 37 w para. 3 applies *mutatis mutandis* if the parent undertaking is required to prepare consolidated financial statements according to the international accounting standards and regulations according to § 315 a para. 1 of the Commercial Code.
3. The details pursuant to § 37 x para. 2 sentence 2 of the interim management statement of a parent undertaking are

§ 37 y Consolidated Financial Statements

If a parent undertaking is required to prepare a consolidated financial statement and a consolidated management report, §§ 37 v to 37 x are applicable subject to the following proviso:

1. The annual financial report is to include the audited consolidated financial statements drawn up according to Regulation (EC) No 1606/2002 of the European Parliament and the Council dated 19 July 2002 on the application of international accounting standards (OJ No. L 243 p. 1), the consolidated management report, a declaration pursuant to § 297 para. 2 sentence 3, § 315 para. 1 sentence 6 of the Commercial Code and a certificate from the Chamber of Certified Accountants pursuant to § 134 para. 2 a of the Code on the Profession of Auditors regarding the registration of the auditor or a confirmation from the Chamber of Certified Accountants pursuant to § 134 para. 4 sentence 8 of the Act on the Profession of Auditors regarding exemption from the registration requirement.

2. The legal representatives of the parent undertaking are required to prepare and publish the semi-annual financial report for the parent undertaking and the entirety of the relevant subsidiaries. § 37 w para. 3 applies *mutatis mutandis* if the parent undertaking is required to prepare consolidated financial statements according to the international accounting standards and regulations according to § 315 a para. 1 of the Commercial Code.

3. The details pursuant to § 37 x para. 2 sentence 2 of the interim management statement of a parent undertaking are

Mutterunternehmen und die Gesamtheit der einzubeziehenden Tochterunternehmen zu beziehen.

§ 37 z Ausnahmen

(1) Die §§ 37 v bis 37 y finden keine Anwendung auf Unternehmen, die ausschließlich zum Handel an einem organisierten Markt zugelassene Schuldtitel mit einer Mindeststückelung von 50 000 Euro oder dem am Ausgabetermin entsprechenden Gegenwert einer anderen Währung begeben.

(2) § 37 w findet keine Anwendung auf Kreditinstitute, die als Inlandsemittenten Wertpapiere begeben, wenn ihre Aktien nicht an einem organisierten Markt zugelassen sind und sie dauernd oder wiederholt ausschließlich Schuldtitel begeben haben, deren Gesamtnennbetrag 100 Millionen Euro nicht erreicht und für die kein Prospekt nach dem Wertpapierprospektgesetz veröffentlicht wurde.

(3) § 37 w findet ebenfalls keine Anwendung auf Unternehmen, die als Inlandsemittenten Wertpapiere begeben, wenn sie zum 31. Dezember 2003 bereits existiert haben und ausschließlich zum Handel an einem organisierten Markt zugelassene Schuldtitel begeben, die vom Bund, von einem Land oder von einer seiner Gebietskörperschaften unbedingt und unwiderruflich garantiert werden.

(4) Die Bundesanstalt kann ein Unternehmen mit Sitz in einem Drittstaat, das als Inlandsemittent Wertpapiere begibt, von den Anforderungen der §§ 37 v bis 37 y, auch in Verbindung mit einer Rechtsverordnung nach § 37 v Abs. 3, § 37 w Abs. 6 oder § 37 x Abs. 4, ausnehmen, soweit diese Emittenten gleichwertigen Regeln eines Drittstaates unterliegen oder sich solchen Regeln unterwerfen. Die nach den Vorschriften des Drittstaates zu erstellenden Informationen sind jedoch in der in § 37 v Abs. 1 Satz 1 und 2, § 37 w Abs. 1 Satz 1 und 2 und § 37 x Abs. 1 Satz 1 und 2, jeweils auch in Verbindung mit einer Rechtsverordnung nach § 37 v Abs. 3, § 37 w Abs. 6 oder

required to relate to the parent undertaking and the entirety of the relevant subsidiaries.

§ 37 z Exceptions

(1) §§ 37 v to 37 y are not applicable to undertakings which are issuers exclusively of debt instruments admitted to trading on a regulated market, the minimum denomination of which is EUR 50,000 or an equivalent value in another currency on the date of issue.

(2) § 37 w is not applicable to credit institutions which issue securities as domestic issuers, if their shares are not admitted to trading on a regulated market and they have, in a continuous or repeated manner exclusively issued debt instruments the total nominal amount of which remains below EUR 100,000,000 and with regard to which a prospectus pursuant to the Securities Prospectus Act has not been published.

(3) § 37 w is also not applicable to undertakings that issue securities as a domestic issuer if they existed on 31 December 2003 already and if they exclusively issue debt instruments admitted to trading on a regulated market which are unconditionally and irrevocably guaranteed by the German Federation, a federal state or a local territorial authority thereof.

(4) The Bundesanstalt can exempt an undertaking with registered office in a third country, which issues securities as a domestic issuer from the requirements pursuant to §§ 37 v to 37 y, also in conjunction with a regulation pursuant to § 37 v para. 3, § 37 w para. 6 or § 37 x para. 4, insofar as this issuer is subject to or obeys the equivalent rules of a third country. The information to be prepared under the rules of the third country are, however, to be made publicly available in the manner set out in § 37 v para. 1 sentences 1 and 2, § 37 w para. 1 sentences 1 and 2 and § 37 x para. 1 sentences 1 and 2, each time also in conjunction with a regulation pursuant to § 37 v para. 3,

§ 37x Abs. 4, geregelten Weise der Öffentlichkeit zur Verfügung zu stellen, zu öffentlichen und gleichzeitig der Bundesanstalt mitzuteilen. Die Informationen sind außerdem unverzüglich, jedoch nicht oder ihrer Veröffentlichung dem Unternehmensregister im Sinne des § 8b des Handelsgesetzbuchs zur Speicherung zu übermitteln. Das Bundesministerium der Finanzen kann durch Rechtsverordnung, die nicht der Zustimmung des Bundesrates bedarf, nähere Bestimmungen über die Gleichwertigkeit von Regeln eines Drittstaates und die Freistellung von Unternehmen nach Satz 1 erlassen.

(5) Abweichend von Absatz 4 werden Unternehmen mit Sitz in einem Drittstaat auf der Erstellung ihrer Jahresabschlüsse nach § 37v und § 37w vor dem Geschäftsjahr, das am oder nach dem 1. Januar 2007 beginnt, ausgenommen, wenn die Unternehmen ihre Jahresabschlüsse nach den in Artikel 9 der Verordnung (EG) Nr. 1606/2002 des Europäischen Parlaments und des Rates vom 19. Juli 2002 betreffend die Anwendung internationaler Rechnungslegungsstandards (ABl. Nr. L 243 S. 1) genannten international anerkannten Standards aufstellen.

**Abschnitt 12
Straf- und Bußgeldvorschriften**

§ 38 Strafvorschriften

(1) Mit Freiheitsstrafe bis zu fünf Jahren oder mit Geldstrafe wird bestraft, wer

- a) entgegen § 14 Abs. 1 Nr. 1 ein Insiderpapier erwirbt oder veräußert oder
- a) als Mitglied des Geschäftsführungsaufsichtungsorgans oder als persönlich haftender Gesellschafter des Emittenten oder eines mit dem Emittenten verbundenen Unternehmens,
- b) auf Grund seiner Beteiligung am Kapital des Emittenten oder eines mit dem Emittenten verbundenen Unternehmens,

§ 37w para. 6 or § 37x para. 4, to be published and simultaneously to be provided to the Bundesanstalt. Additionally, the information is to be provided without undue delay, however not prior to publication, to the Company Register for storage pursuant to § 8b of the Commercial Code. The Federal Ministry of Finance may, by way of regulation which does not require the approval of the Bundesrat, issue further details on the equivalence of the rules of a third country and the exemption of undertakings as set out in sentence 1.

(5) Contrary to paragraph 4, companies with a registered office in a third country are exempted from the preparation of annual financial statements pursuant to §§ 37v and 37w for the financial year beginning on or after 1 January 2007, if the undertaking prepares its annual financial statements according to the internationally recognised standards set out in Article 9 of Regulation 1606/2002 of the European Parliament and Council of 19 July 2002 on the application of international accounting standards (OJ No. L 243 p. 1).

**Chapter 12
Criminal and Administrative Fine Provisions**

§ 38 Criminal Penalties

(1) A prison term of up to five years or a monetary penalty will be imposed upon a person who

1. contrary to § 14 para. 1 no. 1, acquire or dispose of insider securities or
2. a) as a member of the management or supervisory body or as a personally liable partner of the issuer or an affiliated undertaking;
- b) due to his capital participation in the issuer or an affiliated undertaking;

c) auf Grund seines Berufs oder seiner Tätigkeit oder seiner Aufgabe bestimmungsgemäß oder

d) auf Grund der Vorbereitung oder Begehung einer Straftat über eine Insiderinformation verfügt und unter Verwendung dieser Insiderinformation eine in § 39 Abs. 2 Nr. 3 oder 4 bezeichnete vorsätzliche Handlung begeht.

(2) Ebenso wird bestraft, wer eine in § 39 Abs. 1 Nr. 1 oder Nr. 2 oder Abs. 2 Nr. 11 bezeichnete vorsätzliche Handlung begeht und dadurch

1. auf den inländischen Börsen- oder Marktpreis eines Finanzinstruments, einer Ware im Sinne des § 2 Abs. 2c, einer Emissionsberechtigung im Sinne des § 3 Abs. 4 Satz 1 des Treibhausgas-Emissionshandlungsgesetzes oder eines ausländischen Zahlungsmittels im Sinne des § 51 des Börsengesetzes,

2. auf den Preis eines Finanzinstruments an einem organisierten Markt in einem anderen Mitgliedstaat der Europäischen Union oder in einem anderen Vertragsstaat des Abkommens über den Europäischen Wirtschaftsraum oder

3. auf den Preis einer Ware im Sinne des § 2 Abs. 2c, einer Emissionsberechtigung im Sinne des § 3 Abs. 4 Satz 1 des Treibhausgas-Emissionshandlungsgesetzes oder eines ausländischen Zahlungsmittels im Sinne des § 51 des Börsengesetzes an einem mit einer inländischen Börse vergleichbaren Markt in einem anderen Mitgliedstaat der Europäischen Union oder in einem anderen Vertragsstaat des Abkommens über den Europäischen Wirtschaftsraum einwirkt.

(3) In den Fällen des Absatzes 1 ist der Versuch strafbar.

(4) Handelt der Täter in den Fällen des Absatzes 1 Nr. 1 leichtfertig, so ist die Strafe Freiheitsstrafe bis zu einem Jahr oder Geldstrafe.

(5) Einer in Absatz 1 Nr. 1 oder 2 in Verbindung mit § 39 Abs. 2 Nr. 3 oder 4 oder in Absatz 2 in Verbindung mit § 39 Abs. 1 Nr. 1 oder 2 oder Abs. 2 Nr. 11

c) due to his profession or his activities or duties duly; or

d) due to the preparation or commitment of a crime; is in possession of insider information and using this insider information commits a deliberate act as set out in § 39 para. 2 nos. 3 or 4.

(2) Equally, a person who carries out a deliberate act as defined in § 39 para. 1 no. 1 or no. 2 or para. 2 no. 11 and thereby exerts influence upon:

1. a German stock exchange or market price of a financial instrument; a commodity pursuant to § 2 para. 2c; an emission allowance pursuant to § 3 para. 4 sentence 1 of the Greenhouse Gas Emissions Trading Act; or a foreign currency as defined in § 51 of the Stock Exchange Act;

2. the price of a financial instrument on a regulated market in another member state of the European Union or in another contracting state of the European Economic Area; or

3. the price of a commodity as defined in § 2 para. 2c; an emission allowance as defined in § 3 para. 4 sentence 1 of the Greenhouse Gas Emissions Trading Act; or a foreign currency as defined in § 51 of the Stock Exchange Act on an equivalent market to a German stock exchange in another member state of the European Union or in another contracting state of the European Economic Area.

(3) In the cases of paragraph 1, an attempt is punishable.

(4) If the perpetrator in the case of paragraph 1 no. 1 acts in a reckless manner, the penalty is a prison term of up to one year or a monetary penalty.

(5) A foreign prohibition is also deemed to be a prohibitory regulation as defined in paragraph 1 nos. 1 or 2, in conjunction with § 39 para. 2 nos. 3 or 4, or in

genannten Verbotsvorschrift steht ein entsprechendes ausländisches Verbot gleich.

§ 39 Bußgeldvorschriften

(1) Ordnungswidrig handelt, wer

1. entgegen § 20 a Abs. 1 Satz 1 Nr. 2, auch in Verbindung mit Abs. 4, jeweils in Verbindung mit einer Rechtsverordnung nach Absatz 5 Satz 1 Nr. 2 oder 5 ein Geschäft vornimmt oder einen Kauf- oder Verkaufsauftrag erteilt,
 2. entgegen § 20 a Abs. 1 Satz 1 Nr. 3, auch in Verbindung mit Abs. 4, oder einer Rechtsverordnung nach Absatz 5 Satz 1 Nr. 3, eine Täuschungshandlung vornimmt,
 3. entgegen § 31 g Abs. 1 eine Veröffentlichung nicht, nicht richtig, nicht vollständig oder nicht rechtzeitig vornimmt,
 4. entgegen § 32 d Abs. 1 Satz 1 einen Zugang nicht gewährt,
 5. entgegen § 34 b Abs. 1 Satz 2 in Verbindung mit einer Rechtsverordnung nach Absatz 8 Satz 1 eine Finanzanalyse weitertreibt oder öffentlich verbreitet oder
 6. entgegen § 34 b Abs. 2 in Verbindung mit einer Rechtsverordnung nach Absatz 8 Satz 1 eine Zusammenfassung einer Finanzanalyse weitertreibt.
- (2) Ordnungswidrig handelt, wer vorsätzlich oder leichtfertig

1. entgegen § 4 Abs. 8 oder § 10 Abs. 1 Satz 2 eine Person in Kenntnis setzt,
2. entgegen
 - a) § 9 Abs. 1 Satz 1, auch in Verbindung mit Satz 2, jeweils auch in Verbindung mit Satz 3, 4 oder 5, jeweils auch in Verbindung mit einer Rechtsverordnung nach Absatz 4 Nr. 1 oder 2,
 - b) § 10 Abs. 1 Satz 1, auch in Verbindung mit einer Rechtsverordnung nach Absatz 4 Satz 1,

para. 2. in conjunction with § 39 para. 1 nos. 1 or 2 or para. 2 no. 11.

§ 39 Administrative Fine Provisions

(1) An administrative offence is deemed to have been committed by someone who:

1. executes a transaction or gives orders to buy or sell contrary to § 20 a para. 1 sentence 1 no. 2, also in conjunction with para. 4, each in conjunction with a regulation pursuant to paragraph 5 sentence 1 nos. 2 or 5;
2. acts deceptively contrary to § 20 a para. 1 sentence 1 no. 3, also in conjunction with para. 4, or a regulation pursuant to paragraph 5 sentence 1 no. 3;
3. does not make a publication or does not make it correctly, completely or punctually contrary to § 31 g para. 1;
4. does not provide access contrary to § 32 d para. 1 sentence 1;
5. passes on or makes public investment research contrary to § 34 b para. 1 sentence 2 in conjunction with a regulation pursuant to paragraph 8 sentence 1;
6. passes on a summary of investment research contrary to § 34 b para. 2 in conjunction with a regulation pursuant to paragraph 8 sentence 1.

(2) An administrative offence is deemed to have been committed by someone who deliberately or recklessly:

1. provides information to a person contrary to § 4 para. 8 or § 10 para. 1 sentence 2;
2. contrary to:
 - a) § 9 para. 1 sentence 1, also in conjunction with sentence 2, in each case also in conjunction with sentences 3, 4 or 5, in each case also in conjunction with a regulation pursuant to paragraph 4 nos. 1 or 2;
 - b) § 10 para. 1 sentence 1, also in conjunction with a regulation pursuant to paragraph 4 sentence 1;

c) § 15 Abs. 3 Satz 4, Abs. 4 Satz 1 oder Abs. 5 Satz 2, jeweils auch in Verbindung mit einer Rechtsverordnung nach Absatz 7 Satz 1 Nr. 2,

d) § 15 a Abs. 1 Satz 1, auch in Verbindung mit Satz 2, Abs. 4 Satz 1, jeweils auch in Verbindung mit einer Rechtsverordnung nach Absatz 5 Satz 1,

e) § 21 Abs. 1 Satz 1 oder 2 oder Abs. 1 a, jeweils auch in Verbindung mit einer Rechtsverordnung nach § 21 Abs. 3,

f) § 25 Abs. 1 Satz 1, auch in Verbindung mit einer Rechtsverordnung nach § 25 Abs. 3,

g) § 26 Abs. 2, auch in Verbindung mit einer Rechtsverordnung nach § 26 Abs. 3 Nr. 2,

h) § 26 a Satz 1,

i) § 29 a Abs. 2 Satz 1,

j) § 30 c, auch in Verbindung mit § 30 d,

k) § 30 e Abs. 1 Satz 1, auch in Verbindung mit einer Rechtsverordnung nach § 30 e Abs. 2,

l) § 30 f Abs. 2,

m) § 30 i Absatz 1 Satz 1 oder Satz 3 Nummer 1 jeweils auch in Verbindung mit einer Rechtsverordnung nach § 30 i Absatz 5 Satz 1 Nummer 1,

n) § 37 v Abs. 1 Satz 3, auch in Verbindung mit § 37 y, jeweils auch in Verbindung mit einer Rechtsverordnung nach § 37 v Abs. 3 Nr. 2,

o) § 37 w Abs. 1 Satz 3, auch in Verbindung mit § 37 y, jeweils auch in Verbindung mit einer Rechtsverordnung nach § 37 w Abs. 6 Nr. 3,

p) § 37 x Abs. 1 Satz 3, auch in Verbindung mit § 37 y, jeweils auch in Verbindung mit einer Rechtsverordnung nach § 37 x Abs. 4 Nr. 2, oder

q) § 37 z Abs. 4 Satz 2

eine Mitteilung nicht, nicht richtig, nicht vollständig, nicht in der vorge-

c) § 15 para. 3 sentence 4, para. 4 sentence 1 or para. 5 sentence 2, in each case also in conjunction with a regulation pursuant to paragraph 7 sentence 1 no. 2;

d) § 15 a para. 1 sentence 1, also in conjunction with sentence 2, para. 4 sentence 1, each also in conjunction with a regulation pursuant to paragraph 5 sentence 1;

e) § 21 para. 1 sentences 1 or 2 or para. 1 a, each also in conjunction with a regulation pursuant to § 21 para. 3;

f) § 25 para. 1 sentence 1, also in conjunction with a regulation pursuant to § 25 para. 3,

g) § 26 para. 2, also in conjunction with a regulation pursuant to § 26 para. 3 no. 2;

h) § 26 a sentence 1;

i) § 29 a para. 2 sentence 1;

j) § 30 c, also in conjunction with § 30 d;

k) § 30 e para. 1 sentence 1, also in conjunction with a regulation pursuant to § 30 e para. 2;

l) § 30 f para. 2;

m) § 30 i para. 1 sentence 1 or sentence 3 no. 1, each also in conjunction with a regulation pursuant to § 30 i para. 5 sentence 1 no. 1;

n) § 37 v para. 1 sentence 3, also in conjunction with § 37 y, each also in conjunction with a regulation pursuant to § 37 v para. 3 no. 2;

o) § 37 w para. 1 sentence 3, also in conjunction with § 37 y, each also in conjunction with a regulation pursuant to § 37 w para. 6 no. 3;

p) § 37 x para. 1 sentence 3, also in conjunction with § 37 y, each also in conjunction with a regulation pursuant to § 37 x para. 4 no. 2; or

q) § 37 z para. 4 sentence 2,

does not make a notification, or does not make it correctly, completely,

schriebenen Weise oder nicht rechtzeitig macht,

3. entgegen § 14 Abs. 1 Nr. 2 eine Insiderinformation mitteilt oder zugänglich macht,

4. entgegen § 14 Abs. 1 Nr. 3 den Erwerb oder die Veräußerung eines Insiderpapiers empfiehlt oder auf sonstige Weise dazu verleitet,

5. entgegen

a) § 15 Abs. 1 Satz 1, auch in Verbindung mit Satz 2, § 15 Abs. 1 Satz 4 oder 5, jeweils in Verbindung mit einer Rechtsverordnung nach Abs. 7 Satz 1 Nr. 1,

b) § 15 a Abs. 4 Satz 1 in Verbindung mit einer Rechtsverordnung nach Abs. 5 Satz 1,

c) § 26 Abs. 1 Satz 1, auch in Verbindung mit Satz 2, jeweils in Verbindung mit einer Rechtsverordnung nach § 26 Abs. 3 Nr. 1, oder entgegen § 26 a Satz 1 oder § 29 a Abs. 2 Satz 1,

d) § 30 b Abs. 1 oder 2, jeweils auch in Verbindung mit § 30 d,

e) § 30 e Abs. 1 Satz 1 in Verbindung mit einer Rechtsverordnung nach § 30 e Abs. 2 oder entgegen § 30 f Abs. 2,

f) § 30 i Absatz 1 Satz 2 oder Satz 3 Nummer 2 jeweils auch in Verbindung mit einer Rechtsverordnung nach § 30 i Absatz 5 Satz 1 Nummer 1,

g) § 37 v Abs. 1 Satz 2 in Verbindung mit einer Rechtsverordnung nach § 37 v Abs. 3 Nr. 1, jeweils auch in Verbindung mit § 37 y, oder entgegen § 37 z Abs. 4 Satz 2,

h) § 37 w Abs. 1 Satz 2 in Verbindung mit einer Rechtsverordnung nach § 37 w Abs. 6 Nr. 2, jeweils auch in Verbindung mit § 37 y, oder

i) § 37 x Abs. 1 Satz 2 in Verbindung mit einer Rechtsverordnung nach

in the prescribed manner or punctually;

3. contrary to § 14 para. 1 no. 2 provides insider information or makes it accessible;

4. contrary to § 14 para. 1 no. 3 recommends the acquisition or disposal of insider securities or in some other way entices the acquisition or disposal thereof;

5. contrary to:

a) § 15 para. 1 sentence 1, also in conjunction with sentence 2, § 15 para. 1 sentences 4 or 5, each also in conjunction with a regulation pursuant to para. 7 sentence 1 no. 1;

b) § 15 a para. 4 sentence 1 in conjunction with a regulation pursuant to para. 5 sentence 1;

c) § 26 para. 1 sentence 1, also in conjunction with sentence 2, each in conjunction with a regulation pursuant to § 26 para. 3 no. 1, or contrary to § 26 a sentence 1 or § 29 a para. 2 sentence 1;

d) § 30 b paras. 1 or 2, in each case also in conjunction with § 30 d;

e) § 30 e para. 1 sentence 1 in conjunction with a regulation pursuant to § 30 e para. 2 or contrary to § 30 f para. 2;

f) § 30 i para. 1 sentence 2 or sentence 3 no. 2, in each case also in conjunction with a regulation pursuant to § 30 i para. 5 sentence 1 no. 1;

g) § 37 v para. 1 sentence 2 in conjunction with a regulation pursuant to § 37 v para. 3 no. 1, in each case also in conjunction with § 37 y, or contrary to § 37 z para. 4 sentence 2;

h) § 37 w para. 1 sentence 2 in conjunction with a regulation pursuant to § 37 w para. 6 no. 2, in each case also in conjunction with § 37 y; or

i) § 37 x para. 1 sentence 2 in conjunction with a regulation pursuant

§ 37 x Abs. 4 Nr. 1, jeweils auch in Verbindung mit § 37 y

eine Veröffentlichung nicht, nicht richtig, nicht vollständig, nicht in der vorgeschriebenen Weise oder nicht rechtzeitig vornimmt oder nicht oder nicht rechtzeitig nachholt,

6. entgegen § 15 Abs. 1 Satz 1, § 15 a Abs. 4 Satz 1, § 26 Abs. 1 Satz 1, § 26 a Satz 2, § 29 a Abs. 2 Satz 2, § 30 e Abs. 1 Satz 2, § 30 f Abs. 2, § 37 v Abs. 1 Satz 3, § 37 w Abs. 1 Satz 3 oder § 37 x Abs. 1 Satz 3, jeweils auch in Verbindung mit § 37 y, oder entgegen § 37 z Abs. 4 Satz 3 eine Information oder eine Bekanntmachung nicht oder nicht rechtzeitig übermittelt,

7. entgegen § 15 Abs. 5 Satz 1 eine Veröffentlichung vornimmt,

8. entgegen § 15 b Abs. 1 Satz 1 in Verbindung mit einer Rechtsverordnung nach Absatz 2 Satz 1 Nr. 1 oder 2 ein Verzeichnis nicht, nicht richtig oder nicht vollständig führt,

9. entgegen § 15 b Abs. 1 Satz 2 das Verzeichnis nicht oder nicht rechtzeitig übermittelt,

10. entgegen

a) § 16 Satz 1 oder

b) § 34 Abs. 1 oder Abs. 2 Satz 1 oder Satz 2, jeweils in Verbindung mit einer Rechtsverordnung nach § 34 Abs. 4 Satz 1,

eine Aufzeichnung nicht, nicht richtig, nicht vollständig oder nicht rechtzeitig erstellt,

11. entgegen § 20 a Abs. 1 Satz 1 Nr. 1, auch in Verbindung mit Abs. 4, oder einer Rechtsverordnung nach Absatz 5 Satz 1 Nr. 1, eine Angabe macht oder einen Umstand verschweigt,

12. entgegen § 30 a Abs. 1 Nr. 2, auch in Verbindung mit Abs. 3 oder § 30 d, nicht sicherstellt, dass Einrichtungen

to § 37 x para. 4 no. 1, in each case also in conjunction with § 37 y,

does not make a publication, or does not make it correctly, completely, in the prescribed manner or punctually or does not make good or does not make a publication.

6. contrary to § 15 para. 1 sentence 1, § 15 a para. 4 sentence 1, § 26 para. 1 sentence 1, § 26 a sentence 2, § 29 a para. 2 sentence 2, § 30 e para. 1 sentence 2, § 30 f para. 2, § 37 v para. 1 sentence 3, § 37 w para. 1 sentence 3 or § 37 x para. 1 sentence 3, in each case also in conjunction with § 37 y, or contrary to § 37 z para. 4 sentence 3, does not provide or does not punctually provide information or a notification;

7. contrary to § 15 para. 5 sentence 1, makes a publication;

8. contrary to § 15 b para. 1 sentence 1 in conjunction with a regulation pursuant to paragraph 2 sentence 1 nos. 1 or 2, does not keep a register or does not keep it correctly or completely;

9. contrary to § 15 b para. 1 sentence 2, does not provide the register or does not provide it punctually;

10. contrary to:

a) § 16 sentence 1; or

b) § 34 para. 1 or para. 2 sentence 1 or sentence 2, in each case also in conjunction with a regulation pursuant to § 34 para. 4 sentence 1;

does not keep a record, or does not keep it correctly, completely or punctually;

11. contrary to § 20 a para. 1 sentence 1 no. 1, also in conjunction with para. 4, or a regulation pursuant to para. 5 sentence 1 no. 1, makes a statement or conceals a circumstance;

12. contrary to § 30 a para. 1 no. 2, also in conjunction with para. 3 or § 30 d, does not ensure that institutions and

und Informationen im Inland öffentlich zur Verfügung stehen,

13. entgegen § 30a Abs. 1 Nr. 3, auch in Verbindung mit Abs. 3 oder § 30d, nicht sicherstellt, dass Daten vor der Kenntnisnahme durch Unbefugte geschützt sind,

14. entgegen § 30a Abs. 1 Nr. 4, auch in Verbindung mit Abs. 3 oder § 30d, nicht sicherstellt, dass eine dort genannte Stelle bestimmt ist,

14a. entgegen § 30h Absatz 1 Satz 1 einen ungedeckten Leerverkauf tätigt,

14b. entgegen § 30j Absatz 1 Kreditderivate begründet oder rechtsgeschäftlich in solche eintritt,

15. entgegen § 31 Abs. 1 Nr. 2 einen Interessenkonflikt nicht, nicht richtig, nicht vollständig oder nicht rechtzeitig darlegt,

15a. entgegen

a) § 31 Absatz 3 a Satz 1 in Verbindung mit einer Rechtsverordnung nach § 31 Absatz 11 Satz 1 Nummer 2a ein Informationsblatt oder

b) § 31 Absatz 3 a Satz 3 in Verbindung mit Satz 1 die wesentlichen Anlegerinformationen

nicht, nicht richtig, nicht vollständig oder nicht rechtzeitig zur Verfügung stellt,

16. entgegen § 31 Abs. 4 Satz 3 ein Finanzinstrument empfiehlt oder im Zusammenhang mit einer Finanzportfolioverwaltung eine Empfehlung abgibt,

16a. entgegen § 31 Absatz 4 a Satz 1 ein Finanzinstrument oder eine Wertpapierdienstleistung empfiehlt,

17. entgegen § 31 Abs. 5 Satz 3 oder 4 einen Hinweis oder eine Information nicht oder nicht rechtzeitig gibt,

17a. entgegen § 31d Absatz 1 Satz 1 eine Zuwendung annimmt oder gewährt,

information are publicly available in the Federal Republic of Germany;

13. contrary to § 30a para. 1 no. 3, also in conjunction with para. 3 or § 30d, does not ensure that data is protected from access by unauthorised persons;

14. contrary to § 30a para. 1 no. 4, also in conjunction with para. 3 or § 30d, does not ensure that an agent as set out in those provisions has been determined;

14a. contrary to § 30h para. 1 sentence 1, carries out a naked short sale;

14b. contrary to § 30j para. 1, contracts credit derivatives or enters into legal transactions relating thereto;

15. contrary to § 31 para. 1 no. 2, does not reveal a conflict of interest, or does not reveal it correctly, completely or punctually;

15a. does not provide, does not provide correctly, completely or punctually, contrary to:

a) § 31 para. 3a sentence 1, in conjunction with a regulation pursuant to § 31 para. 11 sentence 1 no. 2a, an information sheet, or

b) § 31 para. 3a sentence 3, in conjunction with sentence 1, key investor information,

16. contrary to § 31 para. 4 sentence 3, recommends a financial instrument or gives a recommendation in connection with financial portfolio management;

16a. contrary to § 31 para. 4a sentence 1, recommends a financial instrument or an investment service;

17. contrary to § 31 para. 5 sentences 3 or 4, does not provide a notice or information or does not provide it punctually;

17a. contrary to § 31d paragraph 1 sentence 1, accepts or grants an inducement;

17b. entgegen § 33 Absatz 1 Satz 2 Nummer 1, auch in Verbindung mit einer Rechtsverordnung nach § 33 Absatz 4, eine Compliance-Funktion nicht einrichtet,

17c. entgegen § 33 Absatz 1 Satz 2 Nummer 4, auch in Verbindung mit einer Rechtsverordnung nach § 33 Absatz 4, ein dort genanntes Verfahren nicht vorhält oder eine dort genannte Dokumentation nicht vornimmt,

18. entgegen § 33a Abs. 5 Satz 2 oder Abs. 6 Nr. 1 oder 2 einen Hinweis oder eine Information nicht oder nicht rechtzeitig gibt oder eine Einwilligung oder Zustimmung nicht oder nicht rechtzeitig einholt,

19. entgegen § 33a Abs. 6 Nr. 3 eine Mitteilung nicht richtig oder nicht vollständig macht,

19a. entgegen § 34 Absatz 2 a Satz 1 in Verbindung mit einer Rechtsverordnung nach § 34 Absatz 4 Satz 1 ein Protokoll nicht, nicht richtig oder nicht rechtzeitig anfertigt,

19b. entgegen § 34 Absatz 2 a Satz 2 eine Ausfertigung des Protokolls nicht, nicht vollständig, nicht in der vorgeschriebenen Weise oder nicht rechtzeitig zur Verfügung stellt,

19c. entgegen § 34 Absatz 2 a Satz 3 und 5 in Verbindung mit einer Rechtsverordnung nach § 34 Absatz 4 Satz 1 eine Ausfertigung des Protokolls nicht, nicht vollständig, nicht in der vorgeschriebenen Weise oder nicht rechtzeitig zusendet,

20. entgegen § 34 Abs. 3 Satz 1 eine Aufzeichnung nicht oder nicht mindestens fünf Jahre aufbewahrt,

21. entgegen § 34c Satz 1, 2 oder 4 eine Anzeige nicht, nicht richtig, nicht vollständig oder nicht rechtzeitig erstattet,

22. (zukünftig in Kraft)

23. entgegen § 36 Abs. 1 Satz 4 einen Prüfer nicht oder nicht rechtzeitig bestellt,

24. entgegen § 37v Abs. 1 Satz 4, § 37w Abs. 1 Satz 4 oder § 37x Abs. 1

17b. contrary to § 33 paragraph 1 sentence 2 number 1, also in conjunction with a regulation pursuant to § 33 paragraph 4, does not set up a compliance function;

17c. contrary to § 33 paragraph 1 sentence 2 number 4, also in conjunction with a regulation pursuant to § 33 paragraph 4, does not maintain a procedure or does not carry out a documentation as set out therein;

18. contrary to § 33a para. 5 sentence 2 or para. 6 nos. 1 or 2, does not give a notification or information or does not give it punctually or does not obtain an approval or consent or does not obtain it punctually;

19. contrary to § 33a para. 6 no. 3, does not correctly or completely make a notification;

19a. contrary to § 34 paragraph 2 a sentence 1, in conjunction with a regulation pursuant to § 34 paragraph 4 sentence 1, does not prepare a protocol or does not prepare it correctly or punctually;

19b. contrary to § 34 paragraph 2 a sentence 2, does not make a copy of the protocol available or does not make it available completely, in the prescribed manner or punctually;

19c. contrary to § 34 paragraph 2 a sentences 3 and 5, in conjunction with a regulation pursuant to § 34 paragraph 4 sentence 1, does not send out a copy of the protocol or does not send it out completely, in the prescribed manner or punctually;

20. contrary to § 34 para. 3 sentence 1, does not keep a record or does not keep it for at least five years;

21. contrary to § 34c sentences 1, 2 or 4, does not file a report or does not file it correctly, completely or punctually;

22. (enters into force in the future)

23. contrary to § 36 para. 1 sentence 4, does not appoint an auditor or does not appoint an auditor punctually;

24. contrary to § 37v para. 1 sentence 4, § 37w para. 1 sentence 4 or § 37x

Satz 4, jeweils auch in Verbindung mit § 37y, einen Jahresfinanzbericht einschließlich der Erklärung gemäß § 37v Abs. 2 Nr. 3 und der Eintragungsbeseitigung oder Bestätigung gemäß § 37v Abs. 2 Nr. 4, einen Halbjahresfinanzbericht einschließlich der Erklärung gemäß § 37w Abs. 2 Nr. 3 oder eine Zwischenmitteilung nicht oder nicht rechtzeitig übermittelt.

(2a) Ordnungswidrig handelt, wer vorsätzlich oder leichtfertig entgegen Artikel 7 oder Artikel 8 der Verordnung (EG) Nr. 1287/2006 der Kommission vom 10. August 2006 zur Durchführung der Richtlinie 2004/39/EG des Europäischen Parlaments und des Rates betreffend die Aufzeichnungspflichten für Wertpapierfirmen, die Meldung von Geschäften, die Markttransparenz, die Zulassung von Finanzinstrumenten zum Handel und bestimmte Begriffe im Sinne dieser Richtlinie (ABl. EU Nr. L 241 S. 1) eine Aufzeichnung nicht, nicht richtig, nicht vollständig oder nicht rechtzeitig erstellt.

(2b) Ordnungswidrig handelt, wer gegen die Verordnung (EG) Nr. 1060/2009 des Europäischen Parlaments und des Rates vom 16. September 2009 über Ratingagenturen (ABl. L 302 vom 17. 11. 2009, S. 1) verstößt, indem er vorsätzlich oder leichtfertig

- entgegen Artikel 6 Absatz 2 in Verbindung mit Anhang I Abschnitt B Absatz 3 Satz 1 Buchstabe a, b, c oder d oder Artikel 14 Absatz 3 Unterabsatz 2 eine Mitteilung nicht, nicht richtig, nicht vollständig oder nicht rechtzeitig macht,
- entgegen Artikel 6 Absatz 2 in Verbindung mit Anhang I Abschnitt B Absatz 2 oder Artikel 12 eine Veröffentlichung nicht, nicht richtig, nicht vollständig, nicht in der vorgeschriebenen Weise oder nicht rechtzeitig vornimmt oder nicht rechtzeitig nachholt,

para. 1 sentence 4, in each case also in conjunction with § 37y, does not provide an annual financial report including the declaration pursuant to § 37v para. 2 no. 3 and the certificate of registration or confirmation pursuant to § 37v para. 2 no. 4; a semi-annual financial report including the declaration pursuant to § 37w para. 2 no. 3 or an interim management statement or does not provide it punctually.

(2a) An administrative offence is deemed to have been committed by a person who deliberately or recklessly, contrary to Article 7 or Article 8 of Regulation (EC) No. 1287/2006 of the European Commission of 10 August 2006 implementing Directive 2004/39/EC of the European Parliament and Council on recordkeeping obligations for investment services undertakings, transaction reporting, market transparency, admission of financial instruments to trading and defined terms for the purposes of that Directive (OJ EU No. L 241 p. 1) does not create a record or does not create it correctly, completely or punctually.

(2b) An administrative offence is deemed to have been committed by a person who breaches Regulation (EC) No. 1060/2009 of the European Parliament and Council of 16 September 2009 on Rating Agencies (OJ No. L 302 of 17 November 2009, p. 1) by deliberately or recklessly:

- contrary to Article 6 paragraph 2 in conjunction with Annex I Section B paragraph 3 sentence 1 lit a, b, c or d or Article 14 paragraph 3 subparagraph 2 does not make a notification or does not make it correctly, completely or punctually;
- contrary to Article 6 paragraph 2 in conjunction with Annex I Section B paragraph 2 or Article 12, does not make a publication or does not make it correctly, completely, in the prescribed manner or punctually or does not make good or does not punctually make good a failure to make a publication;

3. entgegen Artikel 6 Absatz 2 in Verbindung mit Anhang I Abschnitt B Absatz 7 Buchstabe a, b, c, d, e, f, g oder h eine Aufzeichnung nicht, nicht richtig oder nicht vollständig erstellt,

4. entgegen Artikel 6 Absatz 2 in Verbindung mit Anhang I Abschnitt B Absatz 8 Unterabsatz 1 eine Aufzeichnung nicht oder nicht mindestens fünf Jahre aufbewahrt,

5. entgegen Artikel 4 Absatz 1 Unterabsatz 1 ein Rating für aufsichtsrechtliche Zwecke verwendet,

6. entgegen Artikel 4 Absatz 1 Unterabsatz 2 nicht gewährleistet, dass die dort genannten Informationen im Prospekt enthalten sind,

7. entgegen Artikel 4 Absatz 2 oder Artikel 10 Absatz 5 Unterabsatz 2 eine Kennzeichnung nicht vornimmt,

8. entgegen Artikel 4 Absatz 3 aus einem Drittstaat ein Rating übernimmt,

9. entgegen Artikel 6 Absatz 2 in Verbindung mit Anhang I Abschnitt A Absatz 6 nicht sicherstellt, dass die Compliance-Funktion ihre Aufgaben ordnungsgemäß und unabhängig wahrnehmen kann,

10. entgegen Artikel 6 Absatz 2 in Verbindung mit Anhang I Abschnitt B Absatz 1 einen Interessenkonflikt nicht, nicht richtig oder nicht vollständig offenlegt,

11. entgegen Artikel 6 Absatz 2 in Verbindung mit Anhang I Abschnitt B Absatz 3 Satz 1 ein Rating abgibt,

12. entgegen Artikel 6 Absatz 2 in Verbindung mit Anhang I Abschnitt B Absatz 4 Unterabsatz 1 Satz 1 eine Beratungsleistung erbringt,

13. entgegen Artikel 6 Absatz 2 in Verbindung mit Anhang I Abschnitt B Absatz 4 Unterabsatz 3 eine Nebenleistung nicht, nicht richtig oder nicht vollständig offenlegt,

14. entgegen Artikel 6 Absatz 2 in Verbindung mit Anhang I Abschnitt B

3. contrary to Article 6 paragraph 2 in conjunction with Annex I Section B paragraph 7 lit. a, b, c, d, e, f, g or h, does not create a record or does not create it correctly or completely;

4. contrary to Article 6 paragraph 2 in conjunction with Annex I Section B paragraph 8 subparagraph 1, does not keep a record or does not keep it for at least five years;

5. contrary to Article 4 paragraph 1 subparagraph 1, uses a rating for regulatory purposes;

6. contrary to Article 4 paragraph 1 subparagraph 2, does not ensure that the information listed therein is contained in the prospectus;

7. contrary to Article 4 paragraph 2 or Article 10 paragraph 5 subparagraph 2, does not identify a credit rating;

8. contrary to Article 4 paragraph 3, adopts a rating from a third country;

9. contrary to Article 6 paragraph 2, in conjunction with Annex I Section A paragraph 6, does not ensure that the compliance function is able to undertake its function properly and independently;

10. contrary to Article 6 paragraph 2, in conjunction with Annex I Section B paragraph 1, does not disclose a conflict of interest or does not disclose it properly or completely;

11. contrary to Article 6 paragraph 2, in conjunction with Annex I Section B paragraph 3 sentence 1, provides a rating;

12. contrary to Article 6 paragraph 2, in conjunction with Annex I Section B paragraph 4 subparagraph 1 sentence 1, provides an advisory service;

13. contrary to Article 6 paragraph 2, in conjunction with Annex I Section B paragraph 4 subparagraph 3, does not declare an ancillary service or does not disclose it properly or completely;

14. contrary to Article 6 paragraph 2, in conjunction with Annex I Section B

Absatz 8 Unterabsatz 2 eine Aufzeichnung nicht oder nicht mindestens drei Jahre aufbewahrt,

15. entgegen Artikel 6 Absatz 2 in Verbindung mit Anhang I Abschnitt B Absatz 9 eine Aufzeichnung nicht oder nicht für die dort vorgeschriebene Dauer aufbewahrt,

16. entgegen Artikel 7 Absatz 1 nicht sicherstellt, dass eine dort genannte Person über Kenntnisse und Erfahrungen verfügt,

17. entgegen Artikel 7 Absatz 2 nicht sicherstellt, dass eine dort genannte Person keine Verhandlungen über Entgelte oder Zahlungen einleitet oder an solchen Verhandlungen teilnimmt,

18. entgegen Artikel 7 Absatz 3 in Verbindung mit Anhang I Abschnitt C Absatz 1 nicht sicherstellt, dass eine dort genannte Person ein Finanzinstrument nicht kauft, verkauft oder sich nicht an einem Geschäft mit einem Finanzinstrument beteiligt,

19. entgegen Artikel 7 Absatz 3 in Verbindung mit Anhang I Abschnitt C Absatz 2 nicht sicherstellt, dass eine dort genannte Person sich nicht an der Festlegung eines Ratings beteiligt oder ein Rating nicht beeinflusst,

20. entgegen Artikel 7 Absatz 3 in Verbindung mit Anhang I Abschnitt C Absatz 3 Buchstabe b, c oder d nicht sicherstellt, dass eine dort genannte Person eine Information nicht veröffentlicht, weitergibt oder verwendet,

21. entgegen Artikel 7 Absatz 3 in Verbindung mit Anhang I Abschnitt C Absatz 4 nicht sicherstellt, dass eine dort genannte Person Geld, ein Geschenk oder einen Vorteil nicht akquiriert oder akzeptiert,

22. entgegen Artikel 7 Absatz 3 in Verbindung mit Anhang I Abschnitt C Absatz 5 nicht sicherstellt, dass eine dort genannte Person ein Verhalten meldet,

23. entgegen Artikel 7 Absatz 3 in Verbindung mit Anhang I Abschnitt C

paragraph 8 subparagraph 2, does not keep a record or does not keep it for at least three years;

15. contrary to Article 6 paragraph 2, in conjunction with Annex I Section B paragraph 9, does not keep a record or does not keep it for the period of time set out therein;

16. contrary to Article 7 paragraph 1, does not ensure that a person named therein has knowledge and experience;

17. contrary to Article 7 paragraph 2, does not ensure that a person named therein does not commence negotiations with respect to remuneration or payments or take part in such negotiations;

18. contrary to Article 7 paragraph 3, in conjunction with Annex I Section C paragraph 1, does not ensure that a person named therein does not acquire or dispose of financial instruments or does not participate in a transaction in financial instruments;

19. contrary to Article 7 paragraph 3, in conjunction with Annex I Section C paragraph 2, does not ensure that a person named therein does not participate in the determination of a rating or does not influence a rating;

20. contrary to Article 7 paragraph 3, in conjunction with Annex I Section C paragraph lit. b, c or d, does not ensure that a person named therein does not publish, pass on or use information;

21. contrary to Article 7 paragraph 3, in conjunction with Annex I Section C paragraph 4, does not ensure that a person named therein does not acquire or accept money, a gift or a benefit;

22. contrary to Article 7 paragraph 3, in conjunction with Annex I Section C paragraph 5, does not ensure that a person named therein reports certain conduct,

23. contrary to Article 7 paragraph 3, in conjunction with Annex I Section C

Absatz 7 nicht sicherstellt, dass eine dort genannte Person eine Schlüsselposition nicht annimmt,

24. entgegen Artikel 7 Absatz 4 in Verbindung mit Anhang I Abschnitt C Absatz 8 Unterabsatz 1 Buchstabe a nicht sicherstellt, dass ein führender Ratinganalyst nicht länger als vier Jahre an einer Ratingtätigkeit beteiligt ist,

25. entgegen Artikel 7 Absatz 4 in Verbindung mit Anhang I Abschnitt C Absatz 8 Unterabsatz 1 Buchstabe b nicht sicherstellt, dass ein Ratinganalyst nicht länger als fünf Jahre an einer Ratingtätigkeit beteiligt ist,

26. entgegen Artikel 7 Absatz 4 in Verbindung mit Anhang I Abschnitt C Absatz 8 Unterabsatz 1 Buchstabe c nicht sicherstellt, dass eine Person, die ein Rating genehmigt, nicht länger als sieben Jahre an einer Ratingtätigkeit beteiligt ist,

27. entgegen Artikel 7 Absatz 4 in Verbindung mit Anhang I Abschnitt C Absatz 8 Unterabsatz 2 nicht sicherstellt, dass eine dort genannte Person nicht innerhalb des dort genannten Zeitraumes an einer Ratingtätigkeit beteiligt ist,

28. entgegen Artikel 7 Absatz 5 eine Vergütung oder eine Leistungsbewertung von den dort genannten Einkünften abhängig macht,

29. entgegen Artikel 8 Absatz 1, Artikel 10 Absatz 2 oder Absatz 4, jeweils auch in Verbindung mit Anhang I Abschnitt D Teil II Absatz 4 oder Anhang I Abschnitt E Teil II Nummer 1 Satz 1, eine Offenlegung nicht, nicht richtig, nicht rechtzeitig oder nicht vollständig vornimmt,

30. entgegen Artikel 8 Absatz 4 Unterabsatz 1 die Abgabe eines Ratings ablehnt,

31. entgegen Artikel 8 Absatz 4 Unterabsatz 2 eine Dokumentation nicht, nicht richtig oder nicht vollständig erstellt,

paragraph 7, does not ensure that a person named therein does not take up a key position;

24. contrary to Article 7 paragraph 4, in conjunction with Annex I Section C paragraph 8 subparagraph 1 lit a, does not ensure that a lead rating analyst does not participate in a rating activity for longer than four years;

25. contrary to Article 7 paragraph 4, in conjunction with Annex I Section C paragraph 8 subparagraph 1 lit b, does not ensure that a rating analyst does not participate in a rating activity for longer than five years;

26. contrary to Article 7 paragraph 4, in conjunction with Annex I Section C paragraph 8 subparagraph 1 lit c, does not ensure that a person who approves a rating does not participate in a rating activity for longer than seven years;

27. contrary to Article 7 paragraph 4, in conjunction with Annex I Section C paragraph 8 subparagraph 2, does not ensure that a person named there does not participate in a rating activity within the time period set out therein;

28. contrary to Article 7 paragraph 5 makes a remuneration or performance appraisal dependent upon the earnings set out therein;

29. contrary to Article 8 paragraph 1, Article 10 paragraph 2 or paragraph 4, in each case also in conjunction with Annex I Section D Part II paragraph 4 or Annex I Section E Part II number 1 sentence 1, does not undertake the disclosure or does not undertake the disclosure correctly, punctually or completely;

30. contrary to Article 8 paragraph 4 subparagraph 1, refuses to issue a rating;

31. contrary to Article 8 paragraph 4 subparagraph 2, does not prepare a documentation or does not prepare it correctly or completely;

32. entgegen Artikel 8 Absatz 5 Satz 1 ein Rating oder eine Methode nicht oder nicht rechtzeitig überwacht oder überprüft,
33. entgegen Artikel 8 Absatz 6 Buchstabe a, Artikel 10 Absatz 1 Unterabsatz 1 Satz 1, auch in Verbindung mit Unterabsatz 2, oder Artikel 11 Absatz 1, auch in Verbindung mit Anhang I Abschnitt E Teil I, eine Bekanntgabe oder Unterrichtung nicht, nicht richtig, nicht vollständig oder nicht in der vorgeschriebenen Weise vornimmt,
34. entgegen Artikel 8 Absatz 6 Buchstabe b ein Rating nicht oder nicht rechtzeitig überprüft,
35. entgegen Artikel 8 Absatz 6 Buchstabe c ein neues Rating nicht oder nicht rechtzeitig durchführt,
36. entgegen Artikel 10 Absatz 2 in Verbindung mit Anhang I Abschnitt D Teil I Absatz 1, 2 Buchstabe a, b, c, d oder e, Absatz 4 Unterabsatz 1 oder Absatz 5 oder Teil II Absatz 1, 2 oder 3 nicht sicherstellt, dass ein Rating entsprechend den genannten Anforderungen präsentiert wird,
37. entgegen Artikel 10 Absatz 2 in Verbindung mit Anhang I Abschnitt D Teil I Absatz 3 eine Information nicht, nicht richtig, nicht vollständig oder nicht rechtzeitig erteilt,
38. entgegen Artikel 10 Absatz 2 in Verbindung mit Anhang I Abschnitt D Teil I Absatz 4 Unterabsatz 2 ein Rating abgibt oder ein Rating nicht zurückzieht,
39. entgegen Artikel 10 Absatz 3 nicht sicherstellt, dass ein zusätzliches Symbol verwendet wird,
40. entgegen Artikel 10 Absatz 5 Unterabsatz 1 einen Hinweis nicht, nicht richtig oder nicht vollständig abgibt,
41. entgegen Artikel 11 Absatz 2 eine Information nicht, nicht richtig, nicht rechtzeitig oder nicht vollständig zur Verfügung stellt oder
42. entgegen Artikel 11 Absatz 3 in Verbindung mit Anhang I Abschnitt E
32. contrary to Article 8 paragraph 5 sentence 1, does not supervise or verify a rating or rating methodology or does not supervise or verify it punctually;
33. contrary to Article 8 paragraph 6 lit a, Article 10 paragraph 1 subparagraph 1 sentence 1, also in conjunction with subparagraph 2, or Article 11 paragraph 1, in conjunction with Annex I Section E Part I, does not undertake a disclosure or information or does not undertake it correctly, completely or in the prescribed manner;
34. contrary to Article 8 paragraph 6 lit b, does not verify a rating or does not verify it punctually;
35. contrary to Article 8 paragraph 6 lit c, does not undertake a new rating or does not undertake it punctually;
36. contrary to Article 10 paragraph 2 in conjunction with Annex I Section D Part I paragraphs 1, 2 lit a, b, c, d or e, paragraph 4 subparagraph 1 or paragraph 5 or Part II paragraphs 1, 2 or 3, does not ensure that a rating is presented according to the given requirements;
37. contrary to Article 10 paragraph 2 in conjunction with Annex I Section D Part I paragraph 3, does not distribute information or does not distribute it correctly, completely or punctually;
38. contrary to Article 10 paragraph 2 in conjunction with Annex I Section D Part I paragraph 4 subparagraph 2, issues a rating or does not withdraw a rating;
39. contrary to Article 10 paragraph 3, does not ensure that an additional symbol is used;
40. contrary to Article 10 paragraph 5 subparagraph 1, does not give a notification or does not give it correctly or completely;
41. contrary to Article 11 paragraph 2, does not make information available or does not make it available correctly, punctually or completely; or
42. contrary to Article 11 paragraph 3, in conjunction with Annex I Section E

- Teil II Nummer 2 eine Angabe nicht, nicht richtig, nicht rechtzeitig oder nicht vollständig macht.
- (3) Ordnungswidrig handelt, wer vorsätzlich oder fahrlässig
1. einer vollziehbaren Anordnung nach
- a) § 4 Abs. 3 Satz 1,
- b) § 34 d Absatz 4 Satz 1 Nummer 1 oder Nummer 2 Buchstabe b,
- c) § 36 b Abs. 1,
- d) § 37 o Abs. 4 Satz 1 oder § 37 q Abs. 2 Satz 1 zuwiderhandelt,
2. entgegen § 4 Abs. 4 Satz 1 oder 2 oder § 37 o Abs. 5 Satz 1 ein Betreten nicht gestattet oder nicht duldet,
3. entgegen § 33 Abs. 3 Satz 1 Nr. 2 eine Portfolioverwaltung auslagert,
4. entgegen § 34 a Absatz 1 Satz 1, auch in Verbindung mit einer Rechtsverordnung nach § 34 a Absatz 5 Satz 1, Kundengelder nicht in der vorgeschriebenen Weise verwahrt,
5. entgegen § 34 a Absatz 1 Satz 3, auch in Verbindung mit einer Rechtsverordnung nach § 34 a Absatz 5 Satz 1, die Zustimmung des Kunden nicht oder nicht rechtzeitig einholt,
6. entgegen § 34 a Absatz 1 Satz 4, auch in Verbindung mit einer Rechtsverordnung nach § 34 a Absatz 5 Satz 1, eine treuhänderische Einlegung nicht offenlegt,
7. entgegen § 34 a Absatz 1 Satz 5, auch in Verbindung mit Absatz 2 Satz 2, jeweils auch in Verbindung mit einer Rechtsverordnung nach § 34 a Absatz 5 Satz 1, den Kunden nicht, nicht richtig oder nicht rechtzeitig unterrichtet,
8. entgegen § 34 a Absatz 2 Satz 1, auch in Verbindung mit einer Rechtsverordnung nach § 34 a Absatz 5 Satz 1,
- Part II number 2, does not make a statement or does not make it correctly, punctually or completely.
- (3) An administrative offence is deemed to have been committed by a person who deliberately or negligently:
1. acts contrarily to an executable order pursuant to:
- a) § 4 para. 3 sentence 1,
- b) § 34 d paragraph 4 sentence 1 number 1 or number 2 lit b,
- c) § 36 b para. 1,
- d) § 37 o para. 4 sentence 1 or § 37 q para. 2 sentence 1;
2. contrary to § 4 para. 4 sentence 1 or 2 or § 37 o para. 5 sentence 1, does not permit or tolerate entry;
3. contrary to § 33 para. 3 sentence 1 no. 2, outsources the management of a portfolio;
4. contrary to § 34 a paragraph 1 sentence 1, also in conjunction with a regulation pursuant to § 34 a paragraph 5 sentence 1, does not hold client money in the prescribed manner;
5. contrary to § 34 a paragraph 1 sentence 3, also in conjunction with a regulation pursuant to § 34 a paragraph 5 sentence 1, does not obtain the agreement of the client or does not obtain it punctually;
6. contrary to § 34 a paragraph 1 sentence 4, also in conjunction with a regulation pursuant to § 34 a paragraph 5 sentence 1, does not disclose that monies are being held on trust;
7. contrary to § 34 a paragraph 1 sentence 5, also in conjunction with paragraph 2 sentence 2, in each case also in conjunction with a regulation pursuant to § 34 a paragraph 5 sentence 1, does not inform the client, or does not inform the client correctly or punctually;
8. contrary to § 34 a paragraph 2 sentence 1, also in conjunction with a regulation pursuant to § 34 a para-

ein Wertpapier nicht oder nicht rechtzeitig zur Verwahrung weiterleitet,

9. entgegen § 34a Absatz 4 Satz 1, auch in Verbindung mit Satz 2, jeweils auch in Verbindung mit einer Rechtsverordnung nach § 34a Absatz 5 Satz 1, ein Wertpapier nutzt,

10. (*zukünftig in Kraft*)

11. entgegen § 36 Absatz 2 Satz 1 eine Anzeige nicht, nicht richtig, nicht vollständig oder nicht rechtzeitig erstattet oder

12. entgegen § 37v Absatz 1 Satz 1, § 37w Absatz 1 Satz 1 oder § 37x Absatz 1 Satz 1, jeweils auch in Verbindung mit § 37y, einen Jahresfinanzbericht, einen Halbjahresfinanzbericht oder eine Zwischenmitteilung nicht oder nicht rechtzeitig zur Verfügung stellt.

(3a) Ordnungswidrig handelt, wer gegen die Verordnung (EG) Nr. 1060/2009 des Europäischen Parlaments und des Rates vom 16. September 2009 über Ratingagenturen (Abl. L 302 vom 17. 11. 2009, S. 1) verstößt, indem er vorsätzlich oder fahrlässig einer vollziehbaren Anordnung nach

1. Artikel 6 Absatz 2 in Verbindung mit Anhang I Abschnitt B Absatz 8 Unterabsatz 1,

2. Artikel 6 Absatz 2 in Verbindung mit Anhang I Abschnitt A Absatz 2 Unterabsatz 7,

3. Artikel 23 Absatz 3 Unterabsatz 1 Buchstabe a, b, c oder d oder

4. Artikel 24 Absatz 1 Buchstabe b, c oder d

zuwiderhandelt.

(4) Die Ordnungswidrigkeit kann in den Fällen des Absatzes 1 Nummer 1 und 2, des Absatzes 2 Nummer 2 Buchstabe e und f, Nummer 5 Buchstabe a, Nummer 7 und 11 und des Absatzes 2b Nummer 11, 12, 35 und 38 mit einer Geldbuße bis zu

graph 5 sentence 1, does not pass a security on for custody or does not do so punctually;

9. contrary to § 34a paragraph 4 sentence 1, also in conjunction with sentence 2, in each case also in conjunction with a regulation pursuant to § 34a paragraph 5 sentence 1, uses a security;

10. (*enters into force in the future*)

11. contrary to § 36 paragraph 2 sentence 1, does not file a report or does not file it correctly, completely or punctually; or

12. contrary to § 37v paragraph 1 sentence 1, § 37w paragraph 1 sentence 1 or § 37x paragraph 1 sentence 1, in each case also in conjunction with § 37y, does not make an annual financial report, a semi-annual financial report or an interim management statement available or does not make them available punctually.

(3a) An administrative offence is deemed to have been committed by a person who breaches Regulation (EC) No. 1060/2009 of the European Parliament and Council of 16 September 2009 on Rating Agencies (OJ L No. 302 of 17 November 2009, p. 1) in that he intentionally or negligently acts contrarily to an executable order pursuant to:

1. Article 6 paragraph 2 in conjunction with Annex I Section B paragraph 8 subparagraph 1;

2. Article 6 paragraph 2 in conjunction with Annex I Section A paragraph 2 subparagraph 7;

3. Article 23 paragraph 3 subparagraph 1 lit a, b, c or d; or

4. Article 24 paragraph 1 lit b, c or d.

(4) The administrative offence can be punished by, in the case of paragraph 1 numbers 1 and 2, paragraph 2 number 2 lit e and f, number 5 lit a, numbers 7 and 11 and paragraph 2b numbers 11, 12, 35 and 38, an administrative fine of up to

einer Million Euro, in den Fällen des Absatzes 2 Nummer 2 Buchstabe g bis i sowie Nummer 14a und 14b mit einer Geldbuße bis zu fünfhunderttausend Euro, in den Fällen des Absatzes 1 Nummer 3 und 5, des Absatzes 2 Nummer 1, 2 Buchstabe a, c und m bis q, Nummer 3, 4 und 5 Buchstabe c bis i, Nummer 6, 16a, 17b, 17c, 18, 22 und 25, des Absatzes 2b Nummer 1 bis 10, 13 bis 34, 36, 37 und 39 bis 42, des Absatzes 3 Nummer 1 Buchstabe b, Nummer 3 und 12 und des Absatzes 3a mit einer Geldbuße bis zu zweihunderttausend Euro, in den Fällen des Absatzes 2 Nummer 2 Buchstabe d, Nummer 5 Buchstabe b, Nummer 12 bis 14 und Nummer 16 und 17a und des Absatzes 3 Nummer 1 Buchstabe c mit einer Geldbuße bis zu hunderttausend Euro, in den übrigen Fällen mit einer Geldbuße bis zu fünfzigtausend Euro geahndet werden.

(5) Die Bestimmungen des Absatzes 2 Nr. 2 Buchstabe a, Nr. 10 Buchstabe b, Nr. 15, 16, 18 bis 21, des Absatzes 2a sowie des Absatzes 3 Nummer 1 Buchstabe c, Nummer 3, 10 und 11, jeweils in Verbindung mit Absatz 4, gelten auch für die erlaubnispflichtige Anlageverwaltung im Sinne des § 2 Abs. 3 Satz 3.

§ 40 Zuständige Verwaltungsbehörde

Verwaltungsbehörde im Sinne des § 36 Abs. 1 Nr. 1 des Gesetzes über Ordnungswidrigkeiten ist die Bundesanstalt.

§ 40a Beteiligung der Bundesanstalt und Mitteilungen in Strafsachen

(1) Die Staatsanwaltschaft informiert die Bundesanstalt über die Einleitung eines Ermittlungsverfahrens, welches Straftaten nach § 38 betrifft. Werden im Ermittlungsverfahren Sachverständige benannt, können fachkundige Angehörige der Bundesanstalt herangezogen werden. Der Bundesanstalt sind die Anklageschrift und der Antrag auf Erlass eines Strafbefehls mitzuteilen. Erwägt die Staatsanwaltschaft, das Verfahren einzustellen, so hat sie die Bundesanstalt zu hören.

one million Euro; in the case of paragraph 2 number 2 lit g to i as well as numbers 14a and 14b with an administrative fine of up to five hundred thousand Euro; in the case of paragraph 1 numbers 3 and 5, paragraph 2 numbers 1, 2 lit a, c and m to q, number 3, 4 and 5 lit c to i, numbers 6, 16a, 17b, 17c, 18, 22 and 25, paragraph 2b numbers 1 to 10, 13 to 34, 36, 37 and 39 to 42, paragraph 3 number 1 lit b, numbers 3 and 12 and paragraph 3a with an administrative fine of up to two hundred thousand Euro; in the case of paragraph 2 number 2 lit d, number 5 lit b, number 12 to 14 and number 16 and 17a and paragraph 3 number 1 lit c with an administrative fine of up to one hundred thousand Euro; in the remaining cases it can be punished by an administrative fine of up to fifty thousand Euro.

(5) The provisions of paragraph 2 no. 2 lit a, no. 10 lit b, nos. 15, 16, 18 to 21, of paragraph 2a as well as paragraph 3 number 1 lit c, numbers 3, 10 and 11, each in conjunction with paragraph 4, are also applicable to the investment management requiring a licence as set out in § 2 para. 3 sentence 3.

§ 40 Competent Administrative Authority

The administrative authority as defined in § 36 para. 1 no. 1 of the Administrative Offences Act is the Bundesanstalt.

§ 40a Participation of the Bundesanstalt and Notifications in criminal cases

(1) The public prosecution department informs the Bundesanstalt of the commencement of investigation proceedings regarding criminal offences pursuant to § 38. If experts are required during the investigation proceedings, employees of the Bundesanstalt with the relevant knowledge can be called upon. The indictment and the application for the imposition of a criminal penalty are to be provided to the Bundesanstalt. If the public prosecution department is considering discontinuing the proceedings, it is required to take heed of the Bundesanstalt.

(2) Das Gericht teilt der Bundesanstalt in einem Verfahren, welches Straftaten nach § 38 betrifft, den Termin zur Hauptverhandlung mit.

(3) Der Bundesanstalt ist auf Antrag Akteneinsicht zu gewähren, sofern nicht schutzwürdige Interessen des Betroffenen entgegenstehen oder der Untersuchungserfolg der Ermittlungen gefährdet wird.

(4) In Strafverfahren gegen Inhaber oder Geschäftsleiter von Wertpapierdienstleistungsunternehmen oder deren gesetzliche Vertreter oder persönlich haftende Gesellschafter wegen Straftaten zum Nachteil von Kunden bei oder im Zusammenhang mit dem Betrieb des Wertpapierdienstleistungsunternehmens, ferner in Strafverfahren, die Straftaten nach § 38 zum Gegenstand haben, sind im Falle der Erhebung der öffentlichen Klage der Bundesanstalt

1. die Anklageschrift oder eine an ihre Stelle tretende Antragschrift,
2. der Antrag auf Erlass eines Strafbefehls und
3. die das Verfahren abschließende Entscheidung mit Begründung

zu übermitteln; ist gegen die Entscheidung ein Rechtsmittel eingelegt worden, ist die Entscheidung unter Hinweis auf das eingelegte Rechtsmittel zu übermitteln. In Verfahren wegen fahrlässig begangener Straftaten werden die in den Nummern 1 und 2 bestimmten Übermittlungen nur vorgenommen, wenn aus der Sicht der übermittelnden Stelle unverzüglich Entscheidungen oder andere Maßnahmen der Bundesanstalt geboten sind.

(5) Werden sonst in einem Strafverfahren Tatsachen bekannt, die auf Missständen in dem Geschäftsbetrieb eines Wertpapierdienstleistungsunternehmens hindeuten, und ist deren Kenntnis aus der Sicht der übermittelnden Stelle für Maßnahmen der Bundesanstalt nach diesem Gesetz erforderlich, soll das Gericht, die Strafverfolgungs- oder die Strafvollstreckungsbehörde diese Tatsachen ebenfalls mitteilen, soweit nicht für die übermittelnde Stelle erkennbar ist, dass schutzwürdige Interessen

(2) The court informs the Bundesanstalt of the date of the main hearing of a proceeding relating to offences pursuant to § 38.

(3) The Bundesanstalt is to be given access to the file upon application, unless this is contrary to the protectable interests of the involved parties or would endanger the success of the investigation.

(4) In criminal proceedings against owners or managers of investment services undertakings or their legal representatives or personally liable shareholders for criminal offences which occurred to the disadvantage of clients in or in connection with the operation of an investment services undertaking; and in criminal proceedings concerning offences pursuant to § 38, the following documents are to be provided to the Bundesanstalt in the case of bringing a public action:

1. the indictment or application in lieu thereof;
2. the application for the imposition of a criminal penalty; and
3. the decision concluding the proceedings, along with the reasons.

If an appeal has been lodged against the decision, the decision is to be provided including a notification of the appeal lodged. In proceedings due to negligent criminal acts, the documents set out in numbers 1 and 2 will only be provided if in the opinion of the authority providing the documents, it is necessary that the Bundesanstalt immediately make a decision or undertake other measures.

(5) If during a criminal proceeding other facts become known which indicate irregularities in the operation of an investment services undertaking and if knowledge thereof is required, in the opinion of the authority in possession of the information, for actions of the Bundesanstalt according to this Act, the court should also inform the prosecution office or the authority for penal execution of these facts, insofar as it is not clear to the authority making the notification that protectable interests of the af-

sen des Betroffenen überwiegen. Dabei ist zu berücksichtigen, wie gesichert die zu übermittelnden Erkenntnisse sind.

§ 40b Bekanntmachung von Maßnahmen Die Bundesanstalt kann unanfechtbare Maßnahmen, die sie wegen Verstößen gegen Verbote oder Gebote dieses Gesetzes getroffen hat, auf ihrer Internetseite öffentlich bekannt machen, soweit dies zur Beseitigung oder Verhinderung von Missständen nach § 4 Abs. 1 Satz 2 geeignet und erforderlich ist, es sei denn, diese Veröffentlichung würde die Finanzmärkte erheblich gefährden oder zu einem unverhältnismäßigen Schaden bei den Beteiligten führen. Anordnungen nach § 4 Abs. 2 hat die Bundesanstalt unverzüglich auf ihrer Internetseite zu veröffentlichen.

Abschnitt 13 Übergangsbestimmungen

§ 41 Erstmalige Mittelungs- und Veröffentlichungspflichten

(1) Ein Unternehmen im Sinne des § 9 Abs. 1 Satz 1, das am 1. August 1997 besteht und nicht bereits vor diesem Zeitpunkt der Meldepflicht nach § 9 Abs. 1 unterlag, muß Mittelungen nach dieser Bestimmung erstmals am 1. Februar 1998 abgeben.

(2) Wem am 1. April 2002 unter Berücksichtigung des § 22 Abs. 1 und 2 fünf Prozent oder mehr der Stimmrechte einer börsennotierten Gesellschaft zustehen, hat der Gesellschaft und der Bundesanstalt unverzüglich, spätestens innerhalb von sieben Kalendertagen, die Höhe seines Stimmrechtsanteils unter Angabe seiner Anschrift schriftlich mitzuteilen; in der Mitteilung sind die zuzurechnenden Stimmrechte für jeden Zurechnungsstand getrennt anzugeben. Eine Verpflichtung nach Satz 1 besteht nicht, sofern nach dem 1. Januar 2002 und vor dem 1. April 2002 bereits eine Mitteilung gemäß § 21 Abs. 1 oder 1a abgegeben worden ist.

ected parties prevail. In doing so it has to be taken into consideration how certain this information is.

§ 40b Notification of Measures The Bundesanstalt can publish incontestable measures which it has taken against breaches of prohibitions or requirements of this Act on its website, as long as this is suitable and necessary for the elimination or prevention of undesirable developments pursuant to § 4 para. 1 sentence 2, unless this publication would significantly endanger the financial markets or lead to disproportionate damage to the parties involved. The Bundesanstalt is required to publish orders made pursuant to § 4 para. 2 on its website without undue delay.

Chapter 13 Transitional Provisions

§ 41 First time notification and publication obligations

(1) An undertaking pursuant to § 9 para. 1 sentence 1, which existed on 1 August 1997 and which was not, prior to that point in time, subject to notification obligations pursuant to § 9 para. 1, is only required to commence making notifications pursuant to this provision on 1 February 1998.

(2) Whoever, on 1 April 2002 and under consideration of the provision in § 22 paras. 1 and 2, holds five percent or more of the voting rights of a listed undertaking, is required to inform the undertaking and the Bundesanstalt in writing and without undue delay, however at the latest within seven calendar days, of the total amount of his voting rights and of his address; in the notification the amount of the voting rights to be attributed shall be given separately in respect of each attribution rule A requirement pursuant to sentence 1 does not exist insofar as a notification pursuant to § 21 paras. 1 or 1a has been made after 1 January 2002 and prior to 1 April 2002.

(3) Die Gesellschaft hat Mitteilungen nach Absatz 2 innerhalb von einem Monat nach Zugang nach Maßgabe des § 25 Abs. 1 Satz 1 und 2, Abs. 2 zu veröffentlichten und der Bundesanstalt unverzüglich einen Beleg über die Veröffentlichung zu übersenden.

(4) Auf die Pflichten nach den Absätzen 2 und 3 sind die §§ 23, 24, 25 Abs. 3 Satz 2, Abs. 4, §§ 27 bis 30 entsprechend anzuwenden.

(4a) Wer am 20. Januar 2007, auch unter Berücksichtigung des § 22 in der vor dem 19. August 2008 geltenden Fassung, einen mit Aktien verbundenen Stimmrechtsanteil hält, der die Schwelle von 15, 20 oder 30 Prozent erreicht, überschreitet oder unterschreitet, hat dem Emittenten, für den die Bundesrepublik Deutschland der Herkunftsstaat ist, spätestens am 20. März 2007 seinen Stimmrechtsanteil mitzuteilen. Das gilt nicht, wenn er bereits vor dem 20. Januar 2007 eine Mitteilung mit gleichwertigen Informationen an den Emittenten gerichtet hat; der Inhalt der Mitteilung richtet sich nach § 21 Abs. 1, auch in Verbindung mit einer Rechtsverordnung nach Absatz 2. Wem am 20. Januar 2007 aufgrund Zurechnung nach § 22 Abs. 1 Satz 1 Nr. 6 ein Stimmrechtsanteil an einem Emittenten, für den die Bundesrepublik Deutschland der Herkunftsstaat ist, von 5 Prozent oder mehr zusteht, muss diesen dem Emittenten spätestens am 20. März 2007 mitteilen.

Dies gilt nicht, wenn er bereits vor dem 20. Januar 2007 eine Mitteilung mit gleichwertigen Informationen an diesen Emittenten gerichtet hat und ihm die Stimmrechtsanteile nicht bereits nach § 22 Abs. 1 Satz 1 Nr. 6 in der vor dem 20. Januar 2007 geltenden Fassung zugerechnet werden konnten; der Inhalt der Mitteilung richtet sich nach § 21 Abs. 1, auch in Verbindung mit einer Rechtsverordnung nach Absatz 2. Wer am 20. Januar 2007 Finanzinstrumente im Sinne des § 25 in der vor dem 1. März 2009 geltenden Fassung hält, muss dem Emittenten, für den die Bundesrepublik Deutschland der Herkunftsstaat ist, spä-

(3) The company is required to publish the notifications pursuant to paragraph 2 within one month of receipt according to § 25 para. 1 sentences 1 and 2, para. 2 and must transmit proof of publication to the Bundesanstalt without undue delay.

(4) The provisions of §§ 23, 24, 25 para. 3 sentence 2, para. 4, §§ 27 to 30 apply to the obligations set out in paragraphs 2 and 3 *mutatis mutandis*.

(4a) Whoever, on 20 January 2007, giving consideration to § 22 of this act applicable before 19 August 2008, held voting rights connected to shares which reached, exceeded or failed to reach the thresholds of 15, 20 or 30 percent, is required to inform the issuer for whom the Federal Republic of Germany is the home state, of the amount of his voting rights at the latest on 20 March 2007. This is not applicable if he had, prior to 20 January 2007, made a notification with the equivalent information to this issuer; the contents of the notification shall be as defined in § 21 para. 1, also in conjunction with a regulation pursuant to paragraph 2. Whoever, on 20 January 2007 due to an attribution pursuant to § 22 para. 1 sentence 1 no. 6 is entitled to five percent or more of the voting rights in an issuer for whom the Federal Republic of Germany is the home state, is required to notify the issuer of this at the latest on 20 March 2007. This is not applicable if he had, prior to 20 January 2007, made a notification with equivalent information to this issuer and the proportion of voting rights could not already have been attributed to him pursuant to § 22 para. 1 sentence 1 no. 6 of the version of this Act applicable prior to 20 January 2007; the contents of the notification is set out in § 21 para. 1, also in conjunction with a regulation pursuant to paragraph 2. Whoever on 20 January 2007 held financial instruments as defined in § 25 of the version of this Act applicable prior to 1 March 2009 is required to notify, at the latest on 20 March 2007, the issuer for whom the Federal Republic of Germany is the home

testens am 20. März 2007 mitteilen, wie hoch sein Stimmrechtsanteil wäre, wenn er statt der Finanzinstrumente die Aktien hielte, die aufgrund der rechtlich bindenden Vereinbarung erworben werden können, es sei denn, sein Stimmrechtsanteil läge unter 5 Prozent. Dies gilt nicht, wenn er bereits vor dem 20. Januar 2007 eine Mitteilung mit gleichwertigen Informationen an diesen Emittenten gerichtet hat; der Inhalt der Mitteilung richtet sich nach § 25 Abs. 1 in der vor dem 1. März 2009 geltenden Fassung, auch in Verbindung mit den §§ 17 und 18 der Wertpapierhandelsanzeige- und Insiderverzeichnissverordnung in der vor dem 1. März 2009 geltenden Fassung. Erhält ein Inlandsemit- so muss er diese bis spätestens zum 20. April 2007 nach § 26 Abs. 1 Satz 1, auch in Verbindung mit einer Rechtsverordnung nach Absatz 3, veröffentlichten. Er übermittelt die Information außerdem unverzüglich, jedoch nicht vor ihrer Veröffentlichung, dem Unternehmensregister im Sinne des § 8 b des Handelsgesetzbuchs zur Speicherung. Er hat gleichzeitig mit der Veröffentlichung nach Satz 7 diese der Bundesanstalt nach § 26 Abs. 2, auch in Verbindung mit einer Rechtsverordnung nach Absatz 3 Nr. 2, mitzuteilen. Auf die Pflichten nach Satz 1 bis 9 sind die §§ 23, 24, 27 bis 29 und 29 a Abs. 3 entsprechend anzuwenden. Auf die Pflichten nach Satz 4 ist § 29 a Abs. 1 und 2 entsprechend anzuwenden.

(4b) Wer, auch unter Berücksichtigung des § 22, einen mit Aktien verbundenen Stimmrechtsanteil sowie Finanzinstrumente im Sinne des § 25 hält, muss das Erreichen oder Überschreiten der für § 25 geltenden Schwellen, die er am 1. März 2009 ausschließlich auf Grund der Änderung des § 25 mit Wirkung vom 1. März 2009 durch Zusammenrechnung nach § 25 Abs. 1 Satz 3 erreicht oder überschreitet, nicht mitteilen. Eine solche Mitteilung ist erst dann abzugeben, wenn erneut eine der für § 25 geltenden Schwellen erreicht, überschritten oder unterschritten wird. Mitteilungspflichten nach § 25 in der bis

(4b) Whoever, also giving consideration to the provisions in § 22, holds voting rights attached to shares as well as financial instruments as defined in § 25, is not required to make a notification of the reaching or exceeding of the thresholds applicable pursuant to § 25, which he, on 1 March 2009, reached or exceeded purely on the basis of the amendment of § 25 with effect from 1 March 2009 by way of attribution according to § 25 para. 1 sentence 3. Such a notification must only then be made when the thresholds valid for § 25 is again reached, exceeded or no longer reached. Notification

(4b) Whoever, also giving consideration to the provisions in § 22, holds voting rights attached to shares as well as financial instruments as defined in § 25, is not required to make a notification of the reaching or exceeding of the thresholds applicable pursuant to § 25, which he, on 1 March 2009, reached or exceeded purely on the basis of the amendment of § 25 with effect from 1 March 2009 by way of attribution according to § 25 para. 1 sentence 3. Such a notification must only then be made when the thresholds valid for § 25 is again reached, exceeded or no longer reached. Notification

zum 1. März 2009 geltenden Fassung, die nicht, nicht richtig, nicht vollständig oder nicht in der vorgeschriebenen Weise erfüllt wurden, sind unter Berücksichtigung von § 25 Abs. 1 Satz 3 zu erfüllen.

(4c) Wer, auch unter Berücksichtigung des § 22, einen mit Aktien verbundenen Stimmrechtsanteil hält, muss das Erreichen oder Überschreiten der für § 21 geltenden Schwellen, die er am 19. August 2008 ausschließlich durch Zurechnung von Stimmrechten auf Grund der Neufassung des § 22 Abs. 2 mit Wirkung vom 19. August 2008 erreicht oder überschreitet, nicht mitteilen. Eine solche Mitteilung ist erst dann abzugeben, wenn erneut eine der für § 21 geltenden Schwellen erreicht, überschritten oder unterschritten wird. Die Sätze 1 und 2 gelten für die Mitteilungspflicht nach § 25 entsprechend mit der Maßgabe, dass die für § 25 geltenden Schwellen maßgebend sind.

(5) Ordnungswidrig handelt, wer vorsätzlich oder leichtfertig

1. entgegen Absatz 2 Satz 1 oder Absatz 4a Satz 1, 3, 5 oder 9 eine Mitteilung nicht, nicht richtig, nicht vollständig, nicht in der vorgeschriebenen Weise oder nicht rechtzeitig macht oder
2. entgegen Absatz 3 oder Absatz 4a Satz 7 oder 8 eine Veröffentlichung nicht, nicht richtig, nicht vollständig, oder nicht rechtzeitig vornimmt, einen Beleg nicht oder nicht rechtzeitig übersendet oder eine Information nicht oder nicht rechtzeitig übermittelt.

(6) Die Ordnungswidrigkeit kann in den Fällen des Absatzes 5 mit einer Geldbuße bis zu zweihunderttausend Euro geahndet werden.

§ 42 Übergangsregelung für die Kostenerstattungspflicht nach § 11

(1) Die nach § 11 Abs. 1 Satz 1 in der Fassung des Gesetzes vom 26. Juli 1994 (BGBl. I S. 1749) zur Erstattung der Kos-

requirements pursuant to § 25 in the legislative version applicable until 1 March 2009 that are not fulfilled, or not fulfilled correctly, completely or in the prescribed manner are to be fulfilled taking § 25 para. 1 sentence 3 into account.

(4c) Whoever, also having consideration to the provisions of § 22 holds voting rights attached to shares, is not required to notify the reaching or exceeding of a threshold to which § 21 is applicable, if the threshold was reached or exceeded on 19 August 2008 purely by way of attribution of voting rights due to the new version of § 22 para. 2 with effect from 19 August 2008. Such a notification must only then be made when one of the thresholds valid for § 21 is again reached, exceeded or no longer reached. Sentences 1 and 2 are applicable accordingly to the notification requirements according to § 25, with the thresholds applicable to § 25 being decisive.

(5) An administrative offence is deemed to have been committed by someone who deliberately or recklessly:

1. contrary to paragraph 2 sentence 1 or paragraph 4a sentences 1, 3, 5 or 9, does not make a notification or does not make it correctly, completely, in the prescribed manner or punctually; or
2. contrary to paragraph 3 or paragraph 4a sentences 7 or 8, does not make a publication or does not make it correctly, completely, in the prescribed manner or punctually, does not transmit a proof or does not transmit it punctually or does not provide information or does not provide it punctually.

(6) The administrative offences set out in paragraph 5 can be punished with an administrative fine of up to two hundred thousand Euro.

§ 42 Transitional provisions for the obligation to reimburse expenses pursuant to § 11

(1) Those persons obliged to reimburse expenses of the Bundesanstalt pursuant to § 11 para. 1 sentence 1 in the version of

ten der Bundesanstalt Verpflichteten können für die Zeit bis Ende 1996 den Nachweis über den Umfang der Geschäfte in Wertpapieren und Derivaten auch anhand der im Jahre 1996 und für 1997 anhand der Zahl der im Jahre 1997 gemäß § 9 mitgeteilten Geschäfte führen.

(2) § 11 ist für den Zeitraum bis zum 30. April 2002 in der bis zum Tag vor dem Inkrafttreten des Gesetzes über die integrierte Finanzdienstleistungsaufsicht vom 22. April 2002 (BGBl. I S. 1310) geltenden Fassung auf die angefallenen Kosten des Bundesaufsichtsamtes für den Wertpapierhandel anzuwenden.

§ 42a Übergangsregelung für das Verbot ungedeckter Leerverkäufe in Aktien und bestimmten Schuldtiteln nach § 30h

Ausgenommen von dem Verbot des § 30h sind Geschäfte, die bereits vor dem 27. Juli 2010 abgeschlossen wurden, sofern diese nicht auf Grund einer anderen Regelung verboten sind.

§ 42b Übergangsregelung für die Mitteilungs- und Veröffentlichungspflichten für Inhaber von Netto-Leerverkaufspositionen nach § 30i

(1) Wer am 26. März 2012 Inhaber einer Netto-Leerverkaufsposition nach § 30i Absatz 1 Satz 1 in Höhe von 0,2 Prozent oder mehr ist, hat diese zum Ablauf des nächsten Handelstages der Bundesanstalt nach § 30i Absatz 3, auch in Verbindung mit einer Rechtsverordnung nach § 30i Absatz 5, mitzuteilen. Der Inhaber einer Netto-Leerverkaufsposition nach § 30i Absatz 1 Satz 2 in Höhe von 0,5 Prozent oder mehr hat diese zusätzlich zu ihrer Mitteilung nach Satz 1 innerhalb der Frist des Satzes 1 nach § 30i Absatz 3, auch in Verbindung mit einer Rechtsverordnung nach § 30i Absatz 5, im elektronischen Bundesanzeiger zu veröffentlichen; eine solche Verpflichtung besteht nicht, sofern vor dem 26. März 2012 bereits eine gleichartige Mitteilung abgegeben worden ist.

this Act applicable from 26 July 1994 (BGBl. I p. 1749) may, for the period of time until the end of 1996 and for 1997, prove the volume of transactions in securities and derivatives also according to the number of transactions reported for each year respectively, pursuant to § 9.

(2) § 11 is to be applied to the costs incurred by the Federal Securities Trading Supervisory Authority for the period prior to 30 April 2002 in the version of this Act applicable until the day of the coming into force of the Act Establishing the Federal Financial Supervisory Authority of 22 April 2002 (BGBl. I p. 1310).

§ 42a Transitional provisions for the prohibition upon naked short selling in shares and certain debt instruments pursuant to § 30h

Transactions that were concluded prior to 27 July 2010 are excluded from the prohibition contained in § 30h, provided these transactions are not prohibited on the basis of another provision.

§ 42b Transitional provisions for the notification and publication obligations for holders of net short-selling positions pursuant to § 30i

(1) Whoever on 26 March 2012 is the holder of a net short-selling position pursuant to § 30i paragraph 1 sentence 1 in the amount of 0.2 percent or more is required to inform the Bundesanstalt of this fact prior to the end of the next trading day, pursuant to § 30i paragraph 3, also in conjunction with a regulation pursuant to § 30i paragraph 5. The holder of a net short-selling position pursuant to § 30i paragraph 1 sentence 2 in the amount of 0.5 percent or more is, in addition to the notification pursuant to sentence 1, required to publish this fact in the electronic Federal Gazette within the time period specified in the first sentence of § 30i paragraph 3, also in conjunction with a regulation pursuant to § 30i paragraph 5; such an obligation to publish does not, however, exist if a notification of the same was made prior to 26 March 2012.

(2) Ordnungswidrig handelt, wer vorsätzlich oder leichtfertig

- entgegen Absatz 1 Satz 1 eine Mitteilung nicht, nicht richtig, nicht vollständig, nicht in der vorgeschriebenen Weise oder nicht rechtzeitig macht oder
- entgegen Absatz 1 Satz 2 erster Halbsatz eine Veröffentlichung nicht, nicht richtig, nicht vollständig, nicht in der vorgeschriebenen Weise oder nicht rechtzeitig vornimmt.
- Die Ordnungswidrigkeit kann in den Fällen des Absatzes 2 mit einer Geldbuße bis zu zweihunderttausend Euro geahndet werden.

§ 42c Übergangsregelung für das Verbot von Kreditderivaten nach § 30j

Ausgenommen von dem Verbot des § 30j sind Geschäfte, die der Glattstellung von Positionen in einem Kreditderivat im Sinne des § 30j Absatz 1 Nummer 1 dienen, aus denen dem Sicherungsnehmer bereits vor dem 27. Juli 2010 Rechte und Pflichten erwachsen sind sowie Geschäfte in bereits vor dem 27. Juli 2010 emittierten Credit Linked Notes.

§ 42d Übergangsregelung für den Einsatz von Mitarbeitern nach § 34d

(1) Ein Wertpapierdienstleistungsunternehmen darf

- Mitarbeiter im Sinne des § 34d Absatz 1 Satz 1, die am 1. November 2012 mit der Anlageberatung betraut sind und die nicht die Anforderungen nach § 34d Absatz 1 Satz 1 in Verbindung mit der Rechtsverordnung nach § 34d Absatz 6 erfüllen,
- Vertriebsbeauftragte im Sinne des § 34d Absatz 2 Satz 1, die am 1. November 2012 mit der dort genannten Tätigkeit betraut sind und die nicht die Anforderungen nach § 34d Absatz 2 Satz 1 in Verbindung mit der Rechts-

verordnung nach § 34d Absatz 6 erfüllen, und

- Compliance-Beauftragte im Sinne des § 34d Absatz 3 Satz 1, die am 1. November 2012 mit der dort genannten Tätigkeit betraut sind und die nicht die Anforderungen nach § 34d Absatz 3 Satz 1 in Verbindung mit der Rechtsverordnung nach § 34d Absatz 6 erfüllen,

noch bis zum 31. Mai 2013 für diese jeweilige Tätigkeit einsetzen.

(2) Ein Wertpapierdienstleistungsunternehmen muss

- die Mitarbeiter im Sinne des Absatzes 1 Nummer 1,
- Vertriebsbeauftragte im Sinne des Absatzes 1 Nummer 2 und
- Compliance-Beauftragte im Sinne des Absatzes 1 Nummer 3,

unverzüglich anzeigen, sobald diese die für sie maßgeblichen Anforderungen nach § 34d Absatz 1 Satz 1, Absatz 2 Satz 1 oder Absatz 3 Satz 1 erfüllen. Für die Anzeigen gilt § 34d Absatz 1 Satz 2, Absatz 2 Satz 2 oder Absatz 3 Satz 2 entsprechend.

§ 42e Übergangsregelung für wesentliche Anlegerinformationen

§ 31 Absatz 3a in der ab dem 1. Juli 2011 geltenden Fassung ist auf eine Kaufempfehlung für EU-Investmentanteile erst anzuwenden, wenn für diese Anteile die wesentlichen Anlegerinformationen nach den Vorschriften des jeweiligen Herkunftsstaates erstellt und von der EU-Investmentgesellschaft gemäß § 122 Absatz 1 Satz 2 des Investmentgesetzes veröffentlicht worden sind, spätestens jedoch ab dem 1. Juli 2012. Bis zu diesem Zeitpunkt ist § 31 Absatz 3 Satz 4 in der bis zum 30. Juni 2011 geltenden Fassung auf den Vertrieb der jeweiligen EU-Investmentanteile weiter anzuwenden.

with the regulation pursuant to § 34d paragraph 6, and

- Compliance officers pursuant to § 34d paragraph 3 sentence 1, who on 1 November 2012 are entrusted with the activities set out therein and who do not fulfil the requirements pursuant to § 34d paragraph 3 sentence 1, in conjunction with the regulation pursuant to § 34d paragraph 6,

until 31 May 2013.

(2) An investment services undertaking must register

- employees as defined in para. 1 no. 1;
- sales representatives as defined in para. 1 no. 2; and
- compliance officers as defined in para. 1 no. 3.

without undue delay, as soon as they fulfil the requirements applicable to them pursuant to § 34d paragraph 1 sentence 1, paragraph 2 sentence 1 or paragraph 3 sentence 1. § 34d paragraph 1 sentence 2, paragraph 2 sentence 2 or paragraph 3 sentence 2 apply to the registration *mutatis mutandis*.

§ 42e Transitional provisions for key investor information

§ 31 para 3a in the version applicable from 1 July 2011 is only to be applied to purchase recommendations for EU investment fund units if key investor information according to the provisions of the relevant home state has been prepared for these units and published by the EU investment company according to § 122 para. 1 sentence 2 of the Investment Act, however no later than 1 July 2012. Until this time, § 31 para 3 sentence 4 in the version applicable until 30 June 2011 is to be applied for the distribution of the relevant EU investment fund units.

§ 43 Übergangsregelung für die Verjährung von Ersatzansprüchen nach § 37 a

§ 37 a in der bis zum 4. August 2009 geltenden Fassung ist auf Ansprüche anzuwenden, die in der Zeit vom 1. April 1998 bis zum Ablauf des 4. August 2009 entstanden sind.

§ 44 Übergangsregelung für ausländische organisierte Märkte

(1) Organisierte Märkte, die einer Erlaubnis nach § 37 i bedürfen und am 1. Juli 2002 Handelsteilnehmern mit Sitz im Inland über ein elektronisches Handelssystem einen unmittelbaren Marktzugang gewährt haben, haben dies der Bundesanstalt bis zum 31. Dezember 2002 anzuzeigen und einen Antrag auf Erlaubnis bis zum 30. Juni 2003 zu stellen.

(2) Organisierte Märkte, die eine Anzeige nach § 37 m abgeben müssen und die am 1. Juli 2002 Handelsteilnehmern mit Sitz im Inland über ein elektronisches Handelssystem einen unmittelbaren Marktzugang gewährt haben, haben dies und die Absicht, den Marktzugang aufrechtzuerhalten, der Bundesanstalt bis zum 31. Dezember 2002 anzuzeigen.

§ 45 Anwendungsbestimmung zum Abschnitt 11

Die Bestimmungen des Abschnitts 11 in der vom 21. Dezember 2004 an geltenden Fassung finden erstmals auf Abschlüsse des Geschäftsjahres Anwendung, das am 31. Dezember 2004 oder später endet. Die Bundesanstalt nimmt die ihr in Abschnitt 11 zugewiesenen Aufgaben ab dem 1. Juli 2005 wahr.

§ 46 Anwendungsbestimmung für das Transparenzrichtlinie-Umsetzungsgesetz

(1) § 37 n und § 37 o Abs. 1 Satz 4 sowie die Bestimmungen des Abschnitts 11 Unterabschnitt 2 in der vom 20. Januar 2007 an geltenden Fassung finden erstmals auf Finanzberichte des Geschäfts-

§ 43 Transitional provisions for the statute of limitations on claims for damages pursuant to § 37 a

§ 37 a in the version applicable until 4 August 2009 is applicable to claims that arose in the time period between 1 April 1998 until the end of 4 August 2009.

§ 44 Transitional provisions for foreign regulated markets

(1) Regulated markets, which require authorisation pursuant to § 37 i and on 1 July 2002 have provided market participants who have a registered office in Germany with an electronic trading system providing direct market access, are required to inform the Bundesanstalt of this fact by 31 December 2002 and to lodge an application for authorisation by 30 June 2003.

(2) Regulated markets which are required to inform the Bundesanstalt pursuant to § 37 m and on 1 July 2002 have provided market participants who have a registered office in Germany with an electronic trading system providing direct market access, are required to inform the Bundesanstalt by 31 December 2002 of both this fact and of their intention to continue to provide market access.

§ 45 Application of Chapter 11

The provisions of Chapter 11 in the version applicable from 21 December 2004 are only applicable to financial reports for the financial year ending 31 December 2004 or later. The Bundesanstalt will commence the activities assigned to it by Chapter 11 from 1 July 2005.

§ 46 Application of the Transparency Directive Implementation Act

(1) § 37 n and § 37 o para. 1 sentence 4, as well as the provisions of Chapter 11 Subchapter 2 in the version applicable from 20 January 2007, are first applicable to financial statements for financial

jahrs Anwendung, das nach dem 31. Dezember 2006 beginnt.

(2) Auf Emittenten, von denen lediglich Schuldrittel zum Handel an einem organisierten Markt im Sinne des Artikels 4 Abs. 1 Nr. 14 der Richtlinie 2004/39/EG des Europäischen Parlaments und des Rates vom 21. April 2004 über Märkte für Finanzinstrumente (ABl. EU Nr. L 145 S. 1) in einem Mitgliedstaat der Europäischen Union oder in einem anderen Vertragsstaat des Abkommens über den Europäischen Wirtschaftsraum zugelassen sind, sowie auf Emittenten, deren Wertpapiere zum Handel in einem Drittstaat zugelassen sind und die zu diesem Zweck seit dem Geschäftsjahr, das vor dem 11. September 2002 begann, international anerkannte Rechnungslegungsstandards anwenden, finden § 37 w Abs. 3 Satz 2 und § 37 y Nr. 2 in der vom 20. Januar 2007 an geltenden Fassung mit der Maßgabe Anwendung, dass der Emittent für vor dem 31. Dezember 2007 beginnende Geschäftsjahre die Rechnungslegungsgrundsätze des jeweiligen Vorjahresabschlusses anwenden kann.

(3) § 30 b Abs. 3 Nr. 1 Buchstabe a in der vom 20. Januar 2007 an geltenden Fassung findet erstmals auf Informationen Anwendung, die nach dem 31. Dezember 2007 übermittelt werden.

(4) Veröffentlichungen nach § 30 b Abs. 1 und 2 sind bis zum 31. Dezember 2010 zusätzlich zu der Veröffentlichung im elektronischen Bundesanzeiger auch in einem Börsenpflichtblatt vorzunehmen.

§ 47 Anwendungsbestimmung für § 34

§ 34 in der vom 5. August 2009 an geltenden Fassung ist erstmals auf Anlageberatungen anzuwenden, die nach dem 31. Dezember 2009 durchgeführt werden.

years that begin following 31 December 2006.

(2) § 37 w para. 3 sentence 2 and § 37 y no. 2 in the version applicable from 20 January 2007 are applicable to issuers, who only issue debt instruments admitted to trading on a regulated market as defined in Article 4 para. 1 no. 14 of Directive 2004/39/EC of the European Parliament and Council of 21 April 2004 on markets in financial instruments (OJ No. L 145 p. 1) in a member state of the European Union or in another contracting state of the European Economic Area, as well as issuers whose securities are admitted to trading in a third country and for this purpose have been applying internationally recognised accounting standards since the financial year which began prior to 11 September 2002, with the proviso that the issuer is able to apply the accounting principles of the respective previous annual financial statements for financial years commencing prior to 31 December 2007.

(3) § 30 b para. 3 no. 1 lit a in the version applicable from 20 January 2007 is first applicable to information which is provided following 31 December 2007.

(4) Publications pursuant to § 30 b paras. 1 and 2 are, until 31 December 2010, in addition to the publication in the electronic Federal Gazette, also to be published in national stock exchange gazette.

§ 47 Application of § 34

§ 34 in the version applicable from 5 August 2009 is first applicable to investment advice that is provided after 31 December 2009.

Stock Corporation Act

Translation as at 1 December 2011

FINANCIAL INSTITUTIONS · ENERGY · INFRASTRUCTURE, MINING AND COMMODITIES · TRANSPORT · TECHNOLOGY AND INNOVATION · PHARMACEUTICALS AND LIFE SCIENCES



Norton Rose Group

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Stock Corporation Act as of 6 September 1965

(BGBl. I p. 1089) FNA 4121-1

**Last amended by article six of the German Restructuring Act
(*Restrukturierungsgesetz*) dated 9 December 2010
(BGBl. I p. 1900)**

Book One. Stock Corporation
Division One. General Provisions

§ 1 Nature of the Stock Corporation

- (1) ¹The company is a stock corporation that constitutes a separate legal entity. ²Liability to creditors with respect to obligations of the company shall be limited to the company's assets.
 - (2) The company shall have a capital divided into shares.
-

§ 2 Number of Founders

One or more persons who subscribe to shares against contributions shall establish the company's articles of association (the articles).

§ 3 Commercial Enterprise; Listing

- (1) The company shall constitute a commercial enterprise even if the purpose of the enterprise does not comprise commercial activity.
 - (2) Stock exchange listed within the meaning of this law are those corporations whose shares have been admitted to a market that is regulated and supervised by state recognized authorities and that is directly or indirectly accessible to the public.
-

§ 4 Business Name

The business name of the company shall contain, even if it is continued according to § 22 of the Commercial Code or similar legal provisions, the designation "Aktiengesellschaft" or a generally understood abbreviation of this designation.

§ 5 Domicile

The company's domicile shall be the location designated in the articles.

§ 6 Share Capital

The share capital shall be denominated in Euro.

§ 7 Minimum Par Value of the Share Capital

The minimum par value of the share capital shall be fifty thousand euros.

§ 8 Form and Minimum Par Value of Shares

- (1) Shares may be established either as par or as non-par.
 - (2) ¹Par shares shall have a par value of at least one euro. ²Shares set at lower par value shall be null and void. ³The issuers shall be jointly and severally liable to the holders thereof for any damage resulting from such issue. ⁴Higher share par values shall be stated in multiples of one euro.
 - (3) ¹Non-par shares have no par value. ²Non-par shares of a company participate equally in its share capital. ³The portion of the share capital corresponding to one non-par share may not fall below one euro. ⁴(2) sentence 2 and 3 shall apply analogously.
 - (4) The proportion of the share capital is determined in the case of par shares according to the relationship of the par value to the share capital.
 - (5) Shares shall not be divisible.
 - (6) The foregoing provisions shall also apply to certificates (interim certificates) issued to shareholders prior to the issue of share certificates.
-

§ 9 Issue Price of Shares

- (1) Shares may not be issued at a price lower than par value or the proportionate amount of the share capital relating to the non par share (minimum issue price).
 - (2) Shares may be issued at a price higher than par value.
-

§ 10 Share Certificates and Interim Certificates

- (1) Share certificates may be in bearer or registered form.
- (2) ¹Share certificates shall be in registered form if they are issued prior to full payment of the issue price. ²The amount of partial payments shall be indicated on the share certificate.

- (3) Interim certificates shall be in registered form.
 - (4) ¹Interim certificates in bearer form shall be null and void. ²The issuers shall be jointly and severally liable to the holders thereof for any damage resulting from such issue.
 - (5) The articles may limit or exclude the right to demand individual certificates for the shares.
-

§ 11 Classes of Shares

¹Shares may confer different rights, in particular with regard to the distribution of profits and assets. ²Shares conferring identical rights shall constitute one class.

§ 12 Voting Rights. No Multiple Voting Rights

- (1) Each share shall confer voting rights. Preferred shares that confer no voting rights may be issued in accordance with the provisions of this Act.
 - (2) Multiple voting rights shall be prohibited.
-

§ 13 Signatures on Share Certificates

¹For share certificates and interim certificates, a facsimile signature shall be sufficient. ²The validity of the signature may be made contingent upon compliance with prescribed form requirements. ³Any such form requirements shall be set out in the certificate.

§ 14 Jurisdiction

Unless otherwise specified, references in this Act to the court shall be references to the court of the company's domicile.

§ 15 Affiliated Enterprises

Legally separate enterprises that with respect to each other are subsidiary and parent enterprise (§ 16), controlled or controlling enterprises (§ 17), members of a group (§ 18), enterprises with cross-shareholdings (§ 19), or parties to an enterprise agreement (§§ 291,292) shall constitute affiliated enterprises.

§ 16 Subsidiaries and Parent Enterprises

- (1) If the majority of shares in a legally separate enterprise are held by another enterprise or if another enterprise is entitled to the majority of the voting rights (majority holding), such enterprise shall constitute a subsidiary and the other enterprise shall constitute its parent enterprise.
 - (2) ¹The portion of shares that is held by an enterprise shall be determined, in the case of corporations, by the ratio of the aggregate par value of shares held to the nominal capital, and, in the case of companies with non-par shares, by the number of shares. ²In the case of corporations, own shares held by it shall be deducted from the nominal capital; in the case of companies with non-par shares, own shares held by it shall be deducted from the number of shares. ³Shares held by another person on behalf of the enterprise shall be deemed equivalent to own shares.
 - (3) ¹The portion of the voting rights to which an enterprise is entitled shall be determined by the ratio of the number of voting rights exercisable in respect to the shares held by such enterprise to the aggregate number of all voting rights. ²Voting rights arising from own shares held by the enterprise and shares deemed equivalent to such company shares pursuant to (2) sentence³, shall be deducted from the aggregate number of all voting rights.
 - (4) Shares held by a controlled enterprise or held by another person on behalf of the enterprise or an enterprise controlled by it and, if the owner of the enterprise is a sole proprietor, shares that constitute private property of the owner, shall be deemed to constitute shares held by the enterprise.
-

§ 17 Controlled and Controlling Enterprise

- (1) Legally separate enterprises over which another enterprise (controlling enterprise) is able to exert, directly or indirectly, a controlling influence, shall constitute controlled enterprises.
 - (2) A majority owned enterprise shall be presumed to be controlled by the enterprise with a majority shareholding in it.
-

§ 18 Groups and Members of Groups

- (1) ¹If a controlling and one or more controlled enterprises are subject to the common direction of the controlling enterprise, such enterprises shall constitute a group and the individual enterprises shall constitute members of such group. ²If enterprises are parties to a control agreement (§ 291) or if one enterprise has been integrated into the other (§ 319), such enterprises shall be deemed to be subject to common management. ³A controlled enterprise and its controlling enterprise shall be presumed to constitute a group.

- (2) If legally separate enterprises are subject to common direction, although none of such enterprises controls the other, such enterprises shall constitute a group and the individual enterprises shall constitute members of such group.
-

§ 19 Enterprises with Cross-Shareholdings

- (1) ¹Enterprises which have a domestic domicile that are organized as corporations and which are affiliated in such manner that each enterprise holds more than one fourth of the shares of the other, shall constitute enterprises with cross-shareholdings. ²§ 16 (2) sentence 1 and (4) shall apply in determining whether an enterprise holds more than one fourth of the shares of the other enterprise.
- (2) If one of the enterprises with cross-shareholdings has a majority holding in the other enterprise or if one of such enterprises is able to exert, directly or indirectly, a controlling influence over the other, one such enterprise shall constitute the controlling and the other the controlled enterprise.
- (3) If each of the enterprises with cross-shareholdings has a majority holding in the other enterprise, or if each is able to exert, directly or indirectly, a controlling influence over the other, each enterprise shall constitute a controlling and a controlled enterprise.
- (4) § 328 shall not apply to enterprises that constitute controlling or controlled enterprises pursuant to (2) or (3).
-

§ 20 Disclosure Obligations

- (1) ¹As soon as an enterprise holds more than one fourth of the shares of a company with domestic domicile, it shall promptly inform such company thereof in writing. ²§ 16 (2) sentence 1 and (4) shall apply in determining whether the enterprise holds more than one fourth of the shares.
- (2) For purposes of the disclosure requirement pursuant to (1), shares held by an enterprise shall be deemed to include:
- 1. shares whose transfer may be required by such enterprise, or an enterprise controlled by it, or any other person on behalf of such enterprise or an enterprise controlled by it;
 - 2. Shares that such enterprise, or an enterprise controlled by it, or any other person on behalf of such enterprise or an enterprise controlled by it, is obligated to acquire.

- (3) If such enterprise is organized as a corporation, it shall, as soon as it holds more than one fourth of the shares of a company, not including any shares attributable to it pursuant to (2), promptly inform such company thereof in writing.
- (4) As soon as any enterprise acquires a majority holding (§ 16 (1)), it shall promptly inform such company thereof in writing.
- (5) If the holding falls below the level requiring disclosure pursuant to (1), (3) or (4), the company shall be promptly informed thereof in writing.
- (6) ¹The company shall promptly announce in the company's journals the existence of a shareholding of which it has been informed pursuant to (1) to (4) disclosing the enterprise holding such shares. ²If the company has been informed that such shareholding has fallen below the level requiring disclosure pursuant to (1) or (4), such fact shall also be announced promptly in the company's journals.
- (7) ¹Rights arising from shares that are held by an enterprise that is required to make disclosure pursuant to (1) or (4) may not, for as long as such enterprise has not made such disclosure, be exercised by such enterprise, by an enterprise controlled by it or by any other person on behalf of such enterprise or an enterprise controlled by it. ²This shall not apply to claims according to § 58 (4) and § 271 if the notification was not intentionally omitted and has subsequently been made.
- (8) (1) to (7) shall not apply to shares of an issuer within the meaning of § 21 (2) of the Securities Trade Act.

§ 21 Disclosure Obligations of the Company

- (1) ¹As soon as the company holds more than one fourth of the shares of another corporation with domestic domicile, it shall promptly inform such enterprise thereof in writing. ²§ 16 (2) sentence 1 and (4) shall apply analogously in determining whether the company holds more than one fourth of the shares.
- (2) As soon as the company acquires a majority holding (§ 16 (1)) in another enterprise, it shall promptly inform such enterprise thereof in writing.
- (3) If the holding falls below the level requiring disclosure pursuant to (1) or (2), the company shall promptly inform the other enterprise thereof in writing.
- (4) ¹Rights arising from shares that are held by a company required to make disclosure pursuant to (1) or (2) may not be exercised for as long as the company has not made such disclosure. ²§ 20 (7) sentence 2 shall apply analogously.

(5) (1) to (4) shall not apply to shares of an issuer within the meaning of § 21 (2) of the Securities Trade Act.

§ 22 Proof of Disclosed Holdings

An enterprise to which disclosure has been made pursuant to § 20 (1), (3) or (4), or § 21 (1) or (2) may at any time require proof of the existence of the shareholding.

Division Two. Formation of the Company

§ 23 Establishment of the Articles

(1) ¹The articles shall be established in the form of a notarial deed.

²Attorneys-in-fact shall require a power of attorney certified by a notary.

(2) The deed shall specify:

- 1. the founders;
- 2. the par value of par-value shares, the issue price of non-par shares and, if more than one class of shares exists, the class of shares subscribed by each founder;
- 3. the paid-in amount of the share capital.

(3) The articles shall determine:

- 1. the company's business name and domicile;
- 2. the purpose of the enterprise; in particular in the case of enterprises engaged in industry and trade, the articles shall specify the kind of products and goods to be produced and traded;
- 3. the amount of the share capital;
- 4. the segmentation of the share capital either in par-value shares or in non-par shares; the par value of par-value shares and the number of shares of each par value; the number of non-par shares and, if more than one class of shares exists, the classes of shares and the number of shares in each class;
- 5. whether shares are to be issued in bearer or registered form;
- 6. the number of members of the management board or the rules for determining such number.

- (4) In addition, the articles shall contain provisions regarding the form of announcements by the company.
 - (5) ¹The articles may contain different provisions from the provisions of this Act only if this Act explicitly so permits. ²The articles may contain additional provisions, except as to matters that are conclusively dealt with in this Act.
-

§ 24 Change of Form of Share Certificate

The articles may provide that, upon request of a shareholder, his bearer share shall be exchanged for a registered share or his registered share shall be exchanged for a bearer share.

§ 25 Announcements by the Company

¹Whenever provisions of law or the articles determine that announcements by the company shall be made in the company's journals, such announcements shall be published in the Electronic Federal Gazette. ²In addition, the articles may stipulate other journals as the company's journals.

§ 26 Special Benefits. Formation Expenses

- (1) Any special benefit granted to a particular shareholder or a third party shall be stipulated in the articles and the beneficiary shall be identified.
 - (2) The aggregate amount of expenditures to be paid at the expense of the company to shareholders or other persons as compensation or remuneration for the formation or preparation thereof shall be separately stipulated in the articles.
 - (3) ¹Absent such stipulation, any relevant agreements and any transaction in execution thereof shall be unenforceable with respect to the company. ²Such unenforceability shall be incapable of being cured by amendment of the articles once the company has been registered in the commercial register.
 - (4) Such stipulations may only be amended after the company has been registered in the commercial register for five years.
 - (5) The provisions in the articles regarding such stipulations may only be deleted by means of amendment of the articles after the company has been registered in the commercial register for thirty years and all legal relationships that constituted the basis for such stipulations have been settled for not less than five years.
-

§ 27 Contributions in kind. Acquisition of Assets. Repayment of Contributions

- (1) ¹If shareholders are required to make contributions other than by cash payments of the issue price of the shares (Contributions in kind), or if the company is required to acquire existing or future facilities or other assets (acquisitions of assets), the articles shall stipulate the purpose of the contribution in kind or acquisition of assets, the person from whom the company is to acquire such object, and the par value or, in case of non-par shares, the number of shares to be issued for the contribution in kind or the consideration to be granted for the acquisition of assets. ²If the company is required to acquire an asset for which a consideration is to be granted which is to be applied towards the contribution payable by a shareholder, such acquisition shall be deemed a contribution in kind.
 - (2) Contributions in kind or acquisitions of assets may only comprise assets that have an ascertainable economic value; obligations to provide services may not be made the object of Contributions in kind or acquisitions of assets.
 - (3) ¹If a shareholder's cash contribution is to be evaluated as a contribution in kind in full or in part (disguised contribution in kind) from an economic point of view and due to an arrangement made in connection with the acquisition of the cash contribution, this does not release the shareholder from his obligation to make a contribution. ²However, any agreement regarding the contribution in kind and any transaction in execution thereof shall not be unenforceable. ³The value of the asset at the point in time of the filing of the company for registration with the commercial register or at the point in time of the surrender of the asset to the company, if this is done at a later point in time, shall be offset against the shareholder's continuing obligation to make a capital contribution. ⁴The set-off shall not be effected prior to the registration of the company in the commercial register. ⁵The burden of proof for the value of the asset lies with the shareholder.
 - (4) ¹If before the contribution a payment to the shareholder was agreed which, from an economic point of view, corresponds to the repayment of the contribution and which is not to be evaluated as a disguised contribution in kind within the meaning of (3), this only releases the shareholder from his obligation to make a capital contribution if the payment is covered by entitlement to full restitution which may fall due at any time or may become due by termination without notice by the company. ²Such payment or the agreement on such payment shall be stated in the filing pursuant to § 37.
 - (5) § 26 (4) shall apply to the amendment of lawfully made stipulations, § 26 (5) shall apply to the deletion of the relevant provisions in the articles.
-

§ 28 Founders

The shareholders who have established the articles shall be the founders of the company.

§ 29 Establishment of the Company

The company shall be established upon subscription of all shares by the founders.

§ 30 Appointment of the Supervisory Board, the Management and the External Auditors

- (1) ¹The founders shall appoint the first supervisory board of the company and the external auditors for the first full or partial fiscal year. ²Such appointments shall be made in the form of a notarial deed.
 - (2) The provisions governing the appointment of employee representatives to the supervisory board shall not apply to the composition and the appointment of the first supervisory board.
 - (3) ¹The members of the first supervisory board may not be appointed beyond the adjournment of the shareholders' meeting that is to resolve approval of the acts of management in respect of the first full or partial fiscal year. ²The management board shall, within a reasonable time prior to the expiration of the term of office of the first supervisory board, announce which statutory provisions in its opinion govern the composition of the successor supervisory board; §§ 96 to 99 shall apply.
 - (4) The supervisory board shall appoint the first management board.
-

§ 31 Appointment of the Supervisory Board in Case of Formation on the Basis of Contributions in kind or Acquisition of Assets

- (1) ¹If the articles provide for a contribution in kind or an acquisition of assets to be made by contribution or acquisition of an enterprise in whole or in part, the founders shall appoint only as many members of the supervisory board as the shareholders' meeting is to elect, without being bound by nominations pursuant to the statutory provisions that, in the opinion of the founders, govern the composition of the supervisory board following such contribution or acquisition. ²If, however, such procedure would result in only two members of the supervisory board being appointed, the founders shall appoint three members to the supervisory board.

- (2) A quorum for the supervisory board appointed pursuant to (1) sentence 1 shall exist if one half, but in no event less than three, of its members participate in the passing of resolutions, unless the articles provide otherwise.
- (3) ¹The management board shall promptly, upon such contribution or acquisition of an enterprise in whole or in part, announce which statutory provisions in its opinion govern the composition of the supervisory board. ²§§ 97 to 99 shall apply analogously. ³The term of office of the previous members of the supervisory board shall expire only if the supervisory board is required to be composed in accordance with statutory provisions other than those which the founders considered to be governing, or if the founders appointed three members of the supervisory board despite the fact that the supervisory board also is to include employee representatives.
- (4) (3) shall not apply if the enterprise or part thereof is contributed or acquired after the announcement by the management board pursuant to § 30 (3) sentence 2.
- (5) § 30 (3) sentence 1 shall not apply with respect to members of the supervisory board appointed by the employees pursuant to (3).
-

§ 32 Formation Report

- (1) The founders shall render a written report on the transactions in connection with the formation of the company (formation report).
- (2) ¹The formation report shall set forth the material facts in connection with the adequacy of Contributions in kind or acquisitions of assets. ²The following shall be stated
- 1. any preceding transactions entered into with a view to such contribution or acquisition;
 - 2. the costs of acquisition and production during the preceding two years;
 - 3. in case of the transfer of an enterprise to the company, the earnings for the last two fiscal years.
- (3) In addition, the formation report shall specify whether and to what extent shares have been subscribed at formation on behalf of a member of the management board or the supervisory board and whether and in which manner a member of the management board or the supervisory board has obtained a promise of any special benefit or any compensation or remuneration for the formation or preparation thereof.
-

§ 33 Formation Audit. General

- (1) The members of the management board and the supervisory board shall audit the transactions in connection with the formation of the company.
 - (2) In addition, an audit by one or more auditors (formation auditors) shall be made if:
 - 1. a member of the management board or the supervisory board is one of the founders; or
 - 2. shares have been subscribed at formation on behalf of a member of the management board or the supervisory board; or
 - 3. a member of the management board or the supervisory board has obtained a promise of any special benefits or compensation or remuneration for the formation or preparation thereof; or
 - 4. the formation involves Contributions in kind or acquisitions of assets.
 - (3) ¹In the cases of (2) numbers 1 and 2, the certifying notary (§ 23(1) sentence 1) may conduct the audit instead of a foundation auditor on behalf of the founders; the provisions on the formation audit shall apply analogously. ²If the notary does not conduct the audit, the court shall appoint the formation auditors. ³An appeal may be made against such decision.
 - (4) Unless the audit requires additional expertise, formation auditors shall be:
 - 1. persons who are sufficiently trained and experienced in accounting;
 - 2. auditing firms at least one of whose legal representatives is sufficiently trained and experienced in accounting.
 - (5) ¹No formation auditor may be appointed who does not qualify to serve as special auditor pursuant to § 143 (2). ²The foregoing shall apply with respect to persons and auditing firms over whose management the founders, or persons on whose behalf the founders have subscribed to shares, exert a substantial influence.
-

§ 33a Formation on the Basis of Contributions in kind or Acquisition of Assets without External Formation Audit

- (1) An audit by a formation auditor is not necessary in case of formation on the basis of Contributions in kind or acquisition of assets (§ 33 (2) No. 4) as far as the contribution consists of:
- 1. transferable securities or financial market instruments within the meaning of § 2 (1) sentence 1 and (1a) of the Securities Trade Act if they are evaluated with the weighted average price at which they were traded within the three months prior to their actual contribution on one or more organised markets within the meaning of § 2 (5) of the Securities Trade Act,
 - 2. assets other than those listed in No. 1 if an evaluation is applied that was established by an independent, sufficiently skilled and experienced authorised expert taking into account the generally accepted valuation principles and the fair value and if the valuation date was not more than six months before the date of the actual contribution.
- (2) (1) does not apply if the weighted average price of the securities or the financial market instruments ((1) No. 1) was materially influenced by extraordinary circumstances or if it has to be assumed that the fair value of the other assets ((1) No. 2) on the date of their actual contribution is considerably lower than the value assumed by the authorised expert due to circumstances that are new or that have newly emerged.
-

§ 34 Scope of the Formation Audit

- (1) The audit by the members of the management board and the supervisory board and the audit by the formation auditors shall extend in particular to:
- 1. whether the statements of the founders concerning the subscription of shares, the contributions to the share capital and the stipulations pursuant to §§ 26 and 27 are accurate and complete;
 - 2. whether the value of the assets contributed or acquired equals or exceeds the minimum issue price of the shares to be issued or the value of the consideration to be given for these.

- (2) ¹A written report concerning such matters shall be rendered in respect of each audit. ²Such report shall describe each asset which has been contributed or acquired and shall set out the valuation methods applied in ascertaining the value thereof. This and the statement pursuant to (1) No. 2 is not required for the audit report by the members of the management board and the supervisory board as far as an external formation audit is not required pursuant to § 33a.
 - (3) ¹One copy each of the report of the formation auditors shall be submitted to the court and the management board. ²The report shall be available for public inspection at the court.
-

§ 35 Differences of Opinion between Founders and Formation Auditors. Remuneration and Expenses of Formation Auditors

- (1) The formation auditors may require the founders to furnish them with all information and documentation necessary for a conscientious audit.
 - (2) ¹The court shall decide any differences of opinion between the founders and the formation auditors regarding the scope of information and documentation to be furnished by the founders. ²Such decision is not subject to a contesting action. ³The audit report shall not be rendered for so long as the founders refuse to comply with such decision.
 - (3) ¹The formation auditors shall be entitled to reimbursement of reasonable cash expenses and remuneration for their services. ²The court shall set such expenses and remuneration. ³An appeal may be made against such decision; appeals on points of law are not permitted. ⁴A decision that has become final and may not be appealed may be enforced in accordance with the provisions of the Code of Civil Procedure.
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§ 36 Registration of the Company

- (1) All founders and all members of the management board and the supervisory board shall file the company to the court for registration in the commercial register.
 - (2) Except in the case of Contributions in kind, such filing may be made only after the amount called on each share has been duly paid in (§ 54 (3)), and, to the extent not already utilised for the payment of taxes and fees arising in connection with the formation, is at the free disposal of the management board.
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§ 36a Shareholders' Contributions

- (1) In case of contributions in cash, the amount called (§ 36 (2)) must amount to at least one fourth of the minimum issue price and, in case shares were issued for a higher price, also include the surplus amount.
- (2) ¹Contributions in kind shall be made in full. ²If the contribution in kind consists of an obligation to transfer an asset to the company, such obligation shall be fulfilled within five years after the registration of the company in the commercial register. ³The value of the contribution in kind shall amount to the minimum issue price and, in case shares were issued for a higher price, also include the surplus amount.

§ 37 Contents of the Filing for Registration

- (1) ¹The filing shall state that the requirements of § 36 (2) and § 36a have been met and shall specify the price at which shares have been issued and the amount paid in. ²Proof shall be furnished that the amount paid in is definitely at the free disposal of the management board. ³If the amount has been paid in by crediting an account pursuant to § 54 (3), such proof shall consist of a written confirmation issued by the bank the account is kept with. ⁴Such bank shall be liable to the company for the accuracy of such confirmation. ⁵If taxes and fees have been defrayed from the amount paid in, evidence as to the nature and amount of such payments shall be furnished.
- (2) ¹The members of the management board shall certify in the filing that no circumstances prevail which preclude their appointment pursuant to § 76 (3) sentence 2 No. 2 and 3 as well as sentence 3 and that they have been advised of their obligation to make full disclosure to the court. ²The instruction pursuant to § 53 (2) of the Federal Central Registry Act may be given in writing; it may also be given by a notary or a notary appointed abroad, by a representative of a similar profession in the field of giving legal advice or a consular officer.
- (3) The filing shall furthermore specify:
 - 1. a business address in Germany,
 - 2. the manner and extent of the management board members' authority to represent.

- (4) The following shall be appended to the filing:
- 1. the articles and the deeds establishing the articles and concerning the subscription to the shares by the founders;
 - 2. in case of §§ 26 and 27, the agreements on which the stipulations are based or which were entered into in execution thereof, and an account of the formation expenses which are to be borne by the company; such account shall list the kind and amount of remuneration and the recipients thereof;
 - 3. the documents relating to the appointment of the management board and the supervisory board;
 - 3a. a list of members of the supervisory board stating each member's last name, first name, occupation, and place of residence;
 - 4. the formation report and the audit reports of the members of the management board and the supervisory board and of the formation auditors, together with underlying documentation.
- (5) For the submission of documents pursuant to this Act, 12(2) of the Commercial Code shall apply accordingly.
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§ 37a Filing for Registration in Case of Formation on the Basis of Contributions in kind or Acquisition of Assets without External Formation Audit

- (1) ¹If an external formation audit is omitted pursuant to § 33a, this fact has to be declared upon filing for registration. ²Each asset which has been contributed or acquired shall be described. ³The filing must include a declaration stating that the value of the assets contributed or acquired equals or exceeds the par value of the shares to be issued or the value of the consideration to be given for these. ⁴The value, the source of valuation and the valuation method applied shall be stated.
- (2) The persons making the filing shall additionally confirm in the filing that they have not gained knowledge about any extraordinary circumstances which might have considerably influenced the weighted average price of the securities or financial market instruments to be contributed within the sense of § 33a (1) No. 1 during the last three months preceding the day of their actual contribution and that they have not gained knowledge of any circumstances indicating that the fair value of the assets in the sense of § 33a (1) No. 2 is considerably lower on the day of their actual contribution due to new or newly discovered circumstances than the value determined by the expert.

- (3) The following shall be attached to the filing for registration:
- 1. documentation on the determination of the weighted average price at which the securities or financial market instruments to be contributed have been traded on an organised market during the last three months preceding the day of their actual contribution,
 - 2. each expert opinion based on the assessment in the cases of § 33a (1) No. 2.
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§ 38 Examination by the Court

- (1) ¹The court shall examine whether or not the company has been duly established and duly filed for registration. ²If the company has not been duly established and duly filed for registration, the court shall deny registration.
- (2) ¹The court may also deny registration if the formation auditors state, or if it is manifest, that the formation report or the audit report of the members of the management board and the supervisory board is inaccurate or incomplete or does not comply with statutory provisions. ²The foregoing shall also apply if the formation auditors state, or if the court is of the opinion, that the value of assets contributed or acquired is materially less than the minimum issue price of the shares to be issued or the value of the consideration to be given for these.
- (3) ¹If the filing contains the declaration pursuant to § 37a (1) sentence 1, the court shall, with regard to the value of the assets contributed or acquired, examine exclusively whether the conditions of § 37a have been met. ²The court may only refuse registration in case of an apparent and considerable overvaluation.
- (4) On the grounds of a deficient, missing or null provision of the articles, the court may only refuse registration according to (1), to the extent that such provision, its absence or invalidity:
- 1. relates to facts or legal relationships that according to § 23 (3) or other mandatory legal provisions must be determined in the articles or that must be registered in the commercial register or that must be published by the court;
 - 2. violates provisions that predominantly serve the protection of the company's creditors or are otherwise in the public interest, or
 - 3. results in the invalidity of the articles.
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§ 39 Contents of the Registration

- (1) ¹The registration entry of the company shall specify the company's business name and domicile, a business address in Germany, the purpose of the enterprise, the amount of the share capital, the date of establishment of the articles and the members of the management board. ²If a person, who is an authorised recipient of statements and services with legally binding effect on the company, is registered in the commercial register with a German address, such information shall also be stated; such authorisation to receive shall be deemed to exist for third parties until it is deleted from the commercial register and the deletion has been announced, unless the lack of authorisation to receive was known to the third party. ³In addition, the authority of the members of the management board to represent the company shall be registered.
 - (2) If the articles contain any provisions regarding the duration of the company or regarding the authorised capital, such provisions shall also be registered.
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§ 40 [repealed]

§ 41 Acts on behalf of the Company prior to Registration, Prohibition of Share Issues

- (1) ¹The stock corporation shall not exist as such prior to its registration in the commercial register. ²Any person who acts on behalf of the company prior to registration shall be personally liable; if more than one person so acts, such persons shall be jointly and severally liable.
 - (2) If the company assumes obligations entered into in its name prior to its registration by agreement with the debtor by substituting itself for such debtor, the validity of such assumption of obligations shall not require the consent of the creditor, provided that such assumption has been agreed upon, and communicated to the creditor by the company or the debtor, within three months from the date of registration of the company.
 - (3) In no event may the company assume obligations arising under agreements regarding special benefits, formation expenses, or Contributions in kind and acquisitions of assets that have not been stipulated in the articles.
 - (4) ¹Shares may not be transferred and share certificates and interim certificates may not be issued prior to registration of the company in the commercial register. ²Share certificates and interim certificates issued prior to such registration shall be null and void. ³The issuers shall be jointly and severally liable to the shareholders for any damage resulting from such issue.
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§ 42 One Person Companies

If all the shares belong to one shareholder solely or jointly with the company, then this fact together with the sole shareholder's surname, given name, date of birth and place of residence shall be notified to the court without delay.

§ 43, 44 [repealed]

- § 43 [repealed]
 - § 44 [repealed]
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§ 43 [repealed]

§ 44 [repealed]

§ 45 Transfer of Domicile

- (1) A transfer of the company's domicile within Germany shall be filed for registration to the court of the previous domicile.
 - (2) ¹If the company's domicile is transferred from the district of the court to the previous domicile, such court shall without further application promptly communicate such transfer to the court of the new domicile. ²The registration for the previous domicile as well as the deeds kept at the court of the previous domicile shall be appended to the notification; if the register is kept electronically, the registrations and documents shall be transferred electronically. ³The court of the new domicile shall examine whether the transfer has been duly resolved and whether § 30 of the Commercial Code has been complied with. ⁴If such transfer has been duly resolved and § 30 of the Commercial Code has been complied with the court shall register the transfer of domicile and enter in its commercial register the matters communicated to it without further examination. ⁵The transfer of domicile shall become effective upon registration. ⁶Such registration shall be communicated to the court of the previous domicile. ⁷Such court shall make the necessary cancellations without further application.
 - (3) ¹If the company's domicile is transferred to another location within the district of the court of the previous domicile, the court shall examine whether the transfer of domicile has been duly resolved and whether § 30 of the Commercial Code has been complied with. ²If such transfer of domicile has been duly resolved and § 30 of the Commercial Code has been complied with, such court shall register the transfer of domicile. ³The transfer of domicile shall become effective upon registration.
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§ 46 Liability of Founders

- (1) ¹The founders shall be jointly and severally liable to the company for the accuracy and completeness of the statements made for purposes of formation and relating to subscription to shares, payments on the shares, appropriation of amounts paid-in, special benefits, formation expenses, Contributions in kind and acquisitions of assets. ²The founders shall further be liable for ascertaining that the agency designated to receive subscription payments on share capital (§ 54 (3)) is qualified and that any amounts paid-in are at the free disposal of the management board. ³Without prejudice to their liability for compensation of other damages, they shall be required to make up any deficiencies in subscription payments and to reimburse any remuneration that was not included in the formation expenses.
- (2) If the founders intentionally or by gross negligence cause damage to the company through contributions, acquisitions of assets or formation expenses, all founders shall be jointly and severally liable to the company for damages.
- (3) A founder shall be relieved of such liability if the facts giving rise to liability were not known to him and could not have been known to him even if he had employed the diligence of a prudent businessman.
- (4) If the company shall suffer a loss as a result of a shareholder being insolvent or unable to make a contribution in kind, the founders who accepted the participation of such shareholder with knowledge of his insolvency or inability to make contributions shall be jointly and severally liable to the company for damages.
- (5) ¹Persons on whose behalf the founders have subscribed to shares shall have the same liability as the founders. ²Such persons shall not be excused for their own lack of knowledge of facts that a founder acting on their behalf knew or should have known.

§ 47 Liability of Persons other than the Founders

In addition to the founders and the persons on whose behalf the founders have subscribed to shares, the following persons shall be jointly and severally liable to the company for damages:

- 1. whoever receives remuneration which was not included in the formation expenses despite the fact that such remuneration is required to be so included by the applicable provisions and who knew or under the circumstances should have known that such receipt of remuneration was concealed or intended to be concealed or who knowingly participated in such concealment;

- 2. whoever knowingly participates in causing damage to the company intentionally or by gross negligence by means of contributions or acquisitions of assets;
- 3. whoever, prior to registration of the company in the commercial register or within two years from the date of the registration publicly advertises the shares for distribution and knew or, if he had employed the diligence of a prudent businessman, should have known of the inaccuracy or incompleteness of the statements rendered for purposes of formation (§ 46 (1)) or of damage to the company through contributions or acquisitions of assets.

§ 48 Liability of the Management Board and the Supervisory Board

¹Members of the management board and of the supervisory board who violate their obligations in connection with the formation of the company shall be jointly and severally liable to the company for any resulting damage; in particular, they shall be liable for ascertaining that the agency designated to receive payments on the shares (§ 54 (3)) is qualified and that any amounts paid in are at the free disposal of the management board. ²With respect to the duty of care and the liability of the members of the management board and the supervisory board in connection with the company's formation, §§ 93 and 116 shall also apply, with the exception of § 93 (4) sentences 3 and 4 and (6).

§ 49 Liability of Formation Auditors

§ 323 (1) to (4) of the Commercial Code regarding the liability of external auditors shall apply analogously.

§ 50 Waiver and Settlement

¹The company may not waive or compromise claims for damages against the founders, any other persons who are liable, and against members of the management board and the supervisory board (§§ 46 to 48) prior to the expiration of three years from the date of the registration of the company in the commercial register, and may only waive or compromise such claims if the shareholders' meeting consents thereto and no minority whose aggregate holding equals or exceeds one-tenth of the share capital records an objection in the minutes. ²The foregoing period of time shall not apply if the person liable for damages is insolvent and enters into a settlement with his creditors to avoid or terminate insolvency proceedings.

§ 51 Limitation Period of Damage Claims

¹Damage claims of the company pursuant to §§ 46 to 48 shall be time barred after expiration of a period of five years ²Such period shall commence upon the registration of the company in the commercial register or, if the act giving rise to the liability for damages has been committed thereafter, upon commission of such act.

§ 52 Post-Formation Acquisition

- (1) ¹Agreements entered into by the company which require it to acquire existing or future facilities or other assets for a consideration exceeding one-tenth of the share capital and which are entered into within two years from the date of registration of the company in the commercial register, shall become effective only upon the consent of the shareholders' meeting and registration of such agreements in the commercial register. ²Absent such consent and registration, any transaction in execution of such agreements shall be unenforceable.
- (2) ¹An agreement pursuant to (1) shall be made in writing and duly signed unless any other form is prescribed. ²Such agreement shall be displayed for inspection by shareholders at the offices of the company as from the date of notice of the shareholders' meeting resolving on such consent. ³On request, every shareholder is to be given a copy. ⁴The obligations pursuant to sentences 2 and 3 shall not arise if the agreement has been made accessible on the company's Internet page during the same period of time. ⁵The agreement shall be made accessible at the shareholders' meeting. ⁶The management board shall explain it at the beginning of the proceedings. ⁷The agreement shall be appended to the minutes.
- (3) ¹Prior to the passing of the resolution by the shareholders' meeting, the supervisory board shall examine the agreement and render a written report (report on post-formation acquisition). ²§ 32 (2) and (3) regarding the formation report shall apply analogously to the report on post-formation acquisition.
- (4) ¹In addition, prior to the passing of such resolution, an audit shall be made by one or more formation auditors. ²§ 33 (3) to (5), §§ 34 and 35 regarding the formation audit shall apply analogously. ³Under the conditions of § 33a an audit by the formation auditors may be omitted.
- (5) ¹The resolution of the shareholders' meeting shall require a majority of not less than three fourths of the share capital represented at the passing of the resolution. ²If the agreement has been entered into within the first year from the date of registration of the company in the commercial register, the shares of the consenting majority shall amount to not less than one fourth of the total share capital. ³The articles may provide for larger capital majorities and additional requirements.

- (6) ¹Upon consent of the shareholder's meeting, the management board shall file the agreement for registration in the commercial register. ²The agreement together with the report on post-formation acquisition and the report of the formation auditors shall be appended to the registration and all underlying documentation. ³If an external formation audit is omitted pursuant to (4) sentence 3, § 37a shall apply analogously.
- (7) ¹The court may deny registration if registration would be objectionable because the formation auditors state or it is manifest that the report on post-formation acquisition is inaccurate or incomplete or does not comply with statutory provisions, or that the consideration given for the assets to be acquired is unreasonably high. ²If the filing for registration contains the declaration pursuant to § 37a (1) sentence 1, § 38 (3) shall apply analogously.
- (8) The date when the agreement was concluded, the date of consent of the shareholders' meeting and the party or parties to the agreement entered into with the company shall be entered in the register.
- (9) The foregoing provisions shall not apply if it is the purpose of the enterprise to acquire such assets or if such assets are acquired in the course of judicial execution.
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§ 53 Damage Claims in Case of Post-Formation Acquisition

§§ 46, 47 and 49 to 51 regarding damage claims of the company shall apply analogously to post-formation acquisitions. ²With respect to such provisions the members of the management board and the supervisory board shall be substituted for the founders. ³They shall be required to employ the care of a diligent and conscientious manager. ⁴Whenever such provisions stipulate that periods shall commence on the date of registration of the company in the commercial register, such periods shall commence on the date of registration of the agreement regarding the post-formation acquisition.

Division Three. Legal Relationships of the Company and the Shareholders

§ 53a Equal Treatment of Shareholders

Shareholders shall be treated equally under equivalent circumstances.

§ 54 Principal Obligation of Shareholders

- (1) The obligation of the shareholders to make contributions shall be limited to the share issue price.

- (2) Unless the articles provide for Contributions in kind, the shareholders shall pay in the share issue price.
 - (3) ¹Any amount called prior to the company having been filed for registration in the commercial register may be put at the free disposal of the management board only in legal tender credit to an account maintained with a credit institution or an enterprise operating under § 53 (1) sentence 1 or § 53b (1) sentence 1 or (7) of the Banking Act in the name of the company or of the management board. ²Claims of the management board arising from such payments shall be deemed to constitute claims of the company.
 - (4) ¹The statute of limitation for claims of the company to receive capital contributions shall be ten years from the time such claims arose. ²Insolvency proceedings have been instituted over the company's assets, the statute of limitation shall not begin running prior to the expiration of six months from the date on which the insolvency proceedings were instituted.
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§ 55 Ancillary Obligations of Shareholders

- (1) ¹If the transfer of shares requires the consent of the company, the articles may impose upon shareholders, in addition to the obligation to make contributions to share capital, recurring obligations other than the payment of money. ²The articles shall specify whether such obligations are to be performed for consideration or without consideration. ³The share certificates and interim certificates shall specify the existence and scope of such obligations.
 - (2) The articles may provide for penalties in the event such obligation has not been performed or has been improperly performed.
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§ 56 No Subscription of Own Shares; Acquisition of Shares through a Controlled Enterprise or Subsidiary

- (1) The company may not subscribe own shares.
- (2) ¹A controlled enterprise may not acquire shares of the controlling enterprise, and a subsidiary may not acquire shares of its parent company, either as founder or subscriber or by exercising a conversion or subscription right granted in connection with a conditional capital increase. ²A violation of this provision shall not make such acquisition unenforceable.

- (3) ¹Any person who acquires a share, whether as founder or subscriber or by exercising a conversion or subscription right granted in connection with a conditional capital increase, on behalf of the company or a controlled enterprise or subsidiary, shall not be exempt from liability by virtue of the fact that he did not acquire such share on his own behalf. ²He shall be liable for the full contribution irrespective of any agreement with the company or the controlled enterprise or subsidiary. ³Such person shall have not rights arising from the share before he acquires the share on his own behalf.
- (4) ¹If, in the case of a capital increase, shares are subscribed in violation of (1) or (2), each member of the management board shall be liable to the company for the full contribution. ²The foregoing shall not apply if the member of the management board proves that he has not been at fault.
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§ 57 No Repayment of Capital, no Payment of Interest on Contributions

- (1) ¹Contributions may not be repaid to shareholders. ²The payment of the purchase price in case of a permitted acquisition of own shares shall not be deemed to constitute a repayment of contributions. ³Sentence 1 shall not apply to contribution payments made in case of existing control agreements or profit transfer agreements (§ 291) or covered by entitlement to full consideration or restitution towards the shareholder. ⁴Sentence 1 shall also not apply to the restitution of a shareholder loan and payments for claims from legal acts corresponding to a shareholder loan from an economic point of view.
- (2) Interest may be neither promised nor paid to shareholders.
- (3) Prior to the dissolution of the company, only distributable profits may be distributed to the shareholders.
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§ 58 Appropriation of Annual Net Profit

- (1) ¹The articles may provide, in respect of those cases where the shareholders' meeting is to approve the annual financial statements, that amounts of the annual net profit are to be transferred to other profit reserves. ²On the basis of such a provision of the articles, amounts not exceeding one half of the annual net profit may be transferred to other profit reserves. ³Amounts which are to be transferred to the legal reserve and losses carried forward shall first be deducted from the annual net profit.

- (2) ¹If the management board and the supervisory board approve the annual financial statements, they may transfer amounts not exceeding one half of the annual net profit to other reserves. ²The articles may provide that the management board and the supervisory board are authorised to transfer larger or smaller amounts, in the case of companies whose shares are traded on a public exchange, only a larger amount. ³On the basis of such authorisation the management board and the supervisory board may not transfer amounts to other profit reserves if the other profit reserves exceed, or upon such transfer would exceed, one half of the share capital. ⁴(1) sentence 3 shall apply analogously.
- (2a) ¹(1) and (2) notwithstanding, the management board and the supervisory board may transfer to other profit reserves the capitalized portion of the increase in value of fixed and current assets or liability items created in connection with the allocation of taxable income which may not be shown in the special items with reserve character. ²The amount of such reserves shall either be shown separately in the balance sheet or stated in the notes to the financial statements.
- (3) ¹In its resolution on the appropriation of distributable profit, the shareholders' meeting may transfer additional amounts to profit reserves or carry such amounts forward as profit. ²If the articles contain appropriate authorisation, the shareholders' meeting may also resolve on appropriation of distributable profit other than as provided by sentence 1 or other than by distribution to shareholders.
- (4) The shareholders shall be entitled to receive distributable profit to the extent such profit is not excluded from distribution to shareholders by law, the articles, a resolution of the shareholders' meeting pursuant to (3) or because such profit constitutes an additional expense pursuant to the resolution on the appropriation of profits.
- (5) To the extent provided by the articles, the shareholders meeting may also resolve a distribution in kind.

§ 59 Advance Payment of Distributable Profit

- (1) The articles may authorise the management board to make an advance payment on account of the estimated distributable profit to shareholders after the close of the fiscal year.
- (2) ¹The management board may make such advance payment only if preliminary financial statements for the past fiscal year show an annual net profit. ²The advance payment may not in any event exceed one half of the annual net profit after deducting amounts that are to be transferred to profit reserves pursuant to law or the articles. ³Moreover, the advance payment may not exceed one half of the distributable profit of the preceding year.

- (3) The payment of an advance shall require the consent of the supervisory board.
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§ 60 Distribution of Profit

- (1) The shareholder shall have a share in the profits of the company in proportion to their share in the share capital.
 - (2) ¹If contributions to share capital have not been made in the same proportion for all shares, shareholders shall first be paid from the distributable profit an amount of four per cent of the contributions made. ²If the profit is insufficient to make such payment, the amount to be paid shall be determined on the basis of an appropriately lower per centage. ³Contributions which have been made during the course of the fiscal year, shall be taken into account in proportion to the time which has elapsed since the date of such contributions.
 - (3) The articles may provide for another method of distributing profit.
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§ 61 Compensation of Ancillary Obligations

The company may pay consideration not exceeding the value of services performed for recurring obligations which shareholders are obligated to perform in addition to contributions to share capital, pursuant to the articles, irrespective of whether or not a distributable profit is shown in the balance sheet.

§ 62 Liability of Shareholders for Receipt of Prohibited Benefits

- (1) ¹Shareholders shall make restitution to the company for benefits received from the company contrary to the provisions of this Act. ²If they have received such benefits in the form of dividends, the obligation to make restitution shall exist only if they knew, or as a result of negligence did not know, that they were not entitled to such receipt.
 - (2) ¹The claim of the company may also be asserted by the company's creditors if they are unable to obtain satisfaction from the company. ²If insolvency proceedings have been instituted over the company's assets, the receiver in insolvency shall exercise the rights of the company's creditors against the shareholders during the course of the insolvency proceedings.
 - (3) ¹The statute of limitation for any claims pursuant to the foregoing provisions shall be ten years and begins running from the receipt of the benefit. ²§ 54 (4) sentence 2 shall apply accordingly.
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§ 63 Consequences of Delayed Subscription Payments

- (1) ¹Shareholders shall be required to pay contributions upon call by the management board. ²Such call shall be announced in the company's journals, unless the articles provide otherwise.
 - (2) ¹Shareholders who fail to make payment of the amount called within the requisite period of time shall be required to pay interest thereon from the due date at the rate of five per cent per annum. ²The right to claim further damages shall not be precluded.
 - (3) The articles may stipulate penalties for late payment.
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§ 64 Expulsion of Defaulting Shareholders

- (1) Shareholders who fail to make payment of amounts called within the requisite period of time may be granted a period of grace with the warning that upon the expiration of such period their shares and subscription payments will be declared forfeited.
 - (2) ¹Such grace period shall be announced three times in the company's journals. ²The first announcement shall be made no later than three months, the last no later than one month prior to expiration of such period. ³Not less than three weeks shall elapse between each announcement. ⁴If the transfer of shares requires the consent of the company, it shall suffice if a single notice is made to each defaulting shareholder in lieu of such announcements; provided that in such case a grace period shall be set which is not less than one month from the date of receipt of such notice.
 - (3) ¹Shareholders who nevertheless fail to pay amounts called shall be declared to have forfeited their shares and subscription payments in favour of the company by announcement in the company's journals. ²Such announcement shall specify the shares declared to have been forfeited by serial number and any other distinguishing features.
 - (4) ¹New certificates shall be issued in replacement of old certificates; such new certificates shall state the amount in default and all partial payments made. ²The expelled shareholder shall be liable to the company for any loss arising from such amount in default or amounts called subsequently.
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§ 65 Payment Obligation of Preceding Shareholders

- (1) ¹Each predecessor of the expelled shareholder entered in the share register shall be liable to the company for payment of the amount in default to the extent that such amount cannot be obtained from his successors. ²The company shall notify the immediate predecessor of any call for payment made to his successor. ³It shall be presumed that payment cannot be obtained if such payment has not been received within one month from the date of call for payment and notification of the predecessor. ⁴A new certificate shall be issued against payment of the amount in default.
- (2) ¹Each predecessor shall be liable only for payment of amounts that have been called within a period of two years. ²Such period shall commence on the date on which the transfer of the share has been filed for registration in the company's share register.
- (3) ¹If payment of the amount in default cannot be obtained from the predecessors, the company shall promptly sell the share at the official stock exchange quotation through a stockbroker and, in the absence of a stock exchange quotation, by means of public auction. ²If adequate results cannot be expected from an auction at the company's domicile, the share shall be sold at an appropriate location. ³The time, location and object of the auction shall be announced publicly. ⁴The expelled shareholder and his predecessors shall be notified separately; such notification need not be made if impracticable. ⁵Such announcement and notification shall be made not less than two weeks prior to the auction.

§ 66 No Release of Shareholders from their Obligations

- (1) ¹The shareholders and their predecessors may not be released from their payment obligations pursuant to §§ 54 and 65. ²A set-off against a claim of the company pursuant to §§ 54 and 65 shall not be permitted.
 - (2) (1) shall apply analogously to the obligation to make restitution for benefits received contrary to the provisions of this Act, the liability of expelled shareholders for losses and the liability of shareholders for damages resulting from not making a contribution in kind duly.
 - (3) Shareholders may be released from the obligation to make contributions by an ordinary capital reduction or by a capital reduction through redemption of shares, provided, however, that in the case of an ordinary capital reduction the amount of such release may not exceed the amount by which the share capital is reduced.
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§ 67 Registration in the Share Register

- (1) ¹Registered shares shall be entered in the company's share register stating the name, date of birth and address of the holder, as well as the number of shares or share number and in the case of par-value shares the amount. ²The holder shall be obligated to provide the information required pursuant to sentence 1 to the company. ³The articles may provide for further details regarding the conditions under which registrations of shares in one's own name, belonging to another person, is admissible. ⁴Shares belonging to domestic or foreign investment portfolios pursuant to the Investment Company Act, which are not exclusively kept by investors who are not natural persons, shall be considered shares of the domestic or foreign investment portfolio even if they are jointly owned by the investors; if the investment portfolio is not a separate legal entity, the shares shall be deemed shares of the management company of the investment portfolio.
- (2) ¹In relation to the company, only a person who has been registered as such in the share register shall be deemed a shareholder. ²There are however, no voting rights resulting from registrations exceeding a limit set out in the articles pursuant to (1) sentence 3 or with regard to the duty to disclose that the shares belong to another person set out in the articles is not fulfilled. ³Furthermore, there are no voting rights for shares as long as a disclosure request pursuant to (4) sentence 2 or sentence 3 has not been fulfilled after the expiration of the limitation period.
- (3) If the registered share is transferred to another person, deletion and the new entry shall occur upon notification and proof.
- (4) ¹Credit institutions participating in the transfer or custodianship of registered shares must provide the company with the necessary information to maintain the share register against repayment of the necessary costs. ²The registered person shall notify the company upon request within a reasonable time period to what extent he owns the shares for which he is registered as holder in the share register; as far as this is not applicable, the person shall provide the information set out in (1) sentence 1 on the person for whom he holds the shares. ³This shall apply accordingly for the person whose data is provided pursuant to sentence 2. (1) sentence 4 shall apply analogously; sentence 1 shall apply to the allocation of costs. ⁵If the holder of registered shares is not registered in the share register, the depository institution shall, upon request of the company, take the necessary steps to ensure that it is registered separately in the share register in lieu of the company against reimbursement by the company of all necessary expenses. ⁶§ 125 (5) shall apply analogously. ⁷If, in connection with the transfer of registered shares, a credit institution is temporarily entered separately into the share register, the entry shall not give rise to any obligations resulting from paragraph (2) or pursuant to § 128 and does not lead to the applicability of limits set out in the articles pursuant to (1) sentence 3.
- (5) ¹If, in the opinion of the company, a person has been wrongly registered as shareholder in the share register, the company may cancel the

registration only if it has previously notified the persons concerned of the intended cancellation and has granted them a reasonable period of time to make an objection. ²The cancellation may not be made if a person concerned objects thereto within such period.

- (6) ¹Each shareholder may demand from the company information about the data relating to him entered in the share register. ²In the case of unlisted companies, the articles may further provide for this. ³The company may utilise the register data as well as the data provided pursuant to (4) sentence 2 and 3 for its tasks in relationship to the shareholders. ⁴It may only use the data to advertise for the company to the extent that the shareholder does not object. ⁵The shareholders shall be appropriately informed of their right to object.
- (7) The foregoing provisions shall apply analogously to interim certificates.
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§ 68 Transfer of Registered Shares. Restriction on Transferability

- (1) ¹Registered shares shall also be transferable by endorsement. ²§§ 12, 13 and 16 of the Bills of Exchange Act shall apply analogously to the form of the endorsement, legitimation of the holder and his obligation to surrender.
- (2) ¹The articles may make the transfer subject to the consent of the company. ²Such consent shall be granted by the management board. ³The articles may, however, provide that the supervisory board or the shareholders' meeting shall resolve on the granting of consent. ⁴The articles may specify the reasons for which consent may be refused.
- (3) The company shall be obligated to verify the accuracy of the chain of endorsements and the declarations of assignment, but shall not be required to examine the signatures.
- (4) The foregoing provisions shall apply analogously to interim certificates.
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§ 69 Common Title to a Share

- (1) If more than one person is entitled to a share, they may exercise the rights arising from the share only through a common representative.
 - (2) Such persons shall be jointly and severally liable for the obligations in respect of the share.
 - (3) ¹If the company is required to make a statement with legal effect to shareholders and the persons sharing common title have failed to designate a common representative to the company, it shall suffice if such statement is made to any of the persons sharing common title. ²In the case of more than one heir of a shareholder, the foregoing shall only apply to such statements that are made no later than one month after succession to the inheritance.
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§ 70 Computation of the Period of Shareholding

¹If the exercise of rights arising from a share requires that the shareholder has been the holder of such share for a certain period of time, the right to demand transfer of title from a credit institution, a financial services institute, or an enterprise operating under § 53 (1) sentence 1 or § 53b (1) sentence 1 or (7) of the Banking Act shall be deemed equivalent to ownership. ²The period during which the share was owned by a predecessor shall be attributed to the shareholder, provided that he has acquired the share without consideration from his fiduciary, as a successor in legal interest by operation of law, in connection with the liquidation of a community of interest, or as a result of a transfer of assets pursuant to § 14 of the Insurance Supervision Act or § 14 of the Building Loan Associations Act.

§ 71 Acquisition of Own Shares

- (1) A company may only acquire own shares:
 - 1. if the acquisition is necessary to avert severe and imminent damage to the company;
 - 2. if the shares are to be offered for purchase to the employees or former employees of the company or of an affiliated enterprise;
 - 3. if the acquisition is made to compensate shareholders pursuant to § 305 (2), or § 320b or to § 29 (1), § 125 sentence 1 in connection with § 29 (1), § 207 (1) sentence 1 of the Transformation Law;
 - 4. if the acquisition is made without consideration or made by a credit institution in execution of a purchase order;

- 5. by universal succession;
- 6. on the basis of a resolution of the shareholders' meeting to redeem shares pursuant to the provisions governing a reduction of share capital; or
- 7. if it is a credit institution or finance institution on the basis of a resolution by the shareholders' meeting for the purposes of trading in securities. The resolution must determine that the trade volume of the shares to be acquired for this purpose may not exceed five per cent of the share capital; it must determine the highest and lowest price. The authorisation may not apply for more than five years; or
- 8. on the basis of an authorisation from the shareholders' meeting lasting no more than five years that sets the lowest and highest price and may not exceed 10 per cent of the share capital. Dealing in own shares shall be excluded as the purpose. § 53a shall apply to acquisition and disposal. Acquisition and disposal via the stock exchange shall be sufficient for fulfilment. The shareholders meeting may resolve a different disposal; § 186 (3), (4) and 193 (2) No. 4 shall apply analogously in such case. The shareholders' meeting may authorise the management board to cancel the own shares without a further resolution of the shareholders' meeting.

(2) ¹The shares acquired for the purposes under (1) Nos. 3, 7 and 8 together with other company shares that the company has already acquired may not represent more than 10 per cent of the share capital. Such acquisition is furthermore only permitted if the company can form, at the point in time of acquisition, a reserve in the amount of the expenses for the acquisition, without reducing the share capital or another reserve required by law or the articles that may not be used for payments to shareholders. ³In the cases of (1) Nos. 1, 2, 4, 7 and 8, the acquisition is only permitted if the nominal amount of the share has been paid in full.

(3) ¹In the cases of (1) Nos. 1 and 8, the management board shall inform the shareholders' meeting about the purpose of the acquisition, the number of shares acquired, the amount of the share capital that they represent, the proportion of the share capital, and the price for the shares. ²In the case of (1) No. 2, the shares must be given to the employees within one year of their acquisition.

(4) ¹A violation of (1) or (2) shall not make the acquisition of own shares ineffective. ²However, an obligation to acquire own shares is null and void to the extent that it violates (1) or (2).

§ 71a Evasive Transactions

- (1) ¹Any transaction providing for the grant of an advance or loan or the provisions of security by the company to another person for the purpose of acquiring shares in the company shall be null and void. ²The foregoing shall not apply to transactions in the ordinary course of business of credit institutions or financial services institutions nor to the grant of an advance or loan or the provision of security for the purpose of the purchase of shares by employees of the company or an affiliated enterprise; provided, however, that such transactions shall also be null and void if the company at the point in time of the acquisition of the shares would not be in a position to create the reserve for the acquisition without reducing either the share capital or any reserve which is required to be created by law or the articles and which may not be used for payments to shareholders. ³Sentence 1 shall also not apply to transactions in case of existing control agreements or profit transfer agreements (§ 291).
 - (2) Any transaction between the company and another person which entitles or obligates such other person to acquire shares in the company on behalf of the company or a controlled enterprise or a subsidiary shall be null and void if the acquisition of the shares by the company would violate § 71 (1) or (2).
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§ 71b Rights arising from Own Shares

The company shall have no rights in respect of own shares.

§ 71c Sale or Redemption of Own Shares

- (1) If the company has acquired own shares in violation of § 71 (1) or (2), such shares shall be sold within one year from the date of their acquisition.
 - (2) If the shares that a company has lawfully acquired pursuant to § 71 (1) and continues to hold represent more than 10 per cent of the company's share capital, the shares in excess of such per centage shall be sold not later than three years from the date of their acquisition.
 - (3) If own shares have not been sold within the periods provided in (1) and (2), they shall be redeemed in accordance with § 237.
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§ 71d Acquisition of Own Shares through Third Parties

¹A third party acting in its own name but on behalf of the company may acquire or hold shares in the company only if the company would be permitted to make such acquisition pursuant to § 71 (1) sentences 1 to 5 and 7 and 8(2). ²The foregoing shall apply to the acquisition or holding of shares in the company by a controlled enterprise or a subsidiary of the company and to the acquisition or holding by a third part acting in its own name but on behalf of a controlled enterprise or subsidiary of the company. ³For purposes of computing the share in the share capital pursuant to § 71 (2) sentence 1 and § 71 c (2), such shares shall be deemed to be shares of the company. ⁴For the rest, § 71 (3) and (4) and §§ 71a to 71c shall apply analogously. ⁵Such third party, controlled enterprise or subsidiary shall upon demand procure that the company receives title to such shares. ⁶The company shall reimburse the purchase price of the shares.

§ 71e Pledge of Own Shares

- (1) If the company takes own shares as a pledge, this shall be considered an acquisition of own shares pursuant to § 71 (1) and (2), § 71d. ²A credit institution or financial services institution, however, may take in the ordinary course of business a pledge of own shares in an amount not exceeding the portion of the share capital specified in § 71 (2) sentence 1. ³§ 71a shall apply analogously.
 - (2) ¹A violation of (1) shall make unenforceable the pledge of own shares if the issue price of the pledged shares has not been paid in full. ²A contract providing for the pledge of own shares shall be null and void if the acquisition of such shares would violate (1).
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§ 72 Cancellation of Share Certificates by Invalidation Proceedings

- (1) ¹A share certificate or interim certificate that has been lost or destroyed may be cancelled by means of invalidation proceedings in accordance with the Act on Court Procedure for Family Matters and Non-litigious Matters. ²§ 799 (2) and § 800 of the Civil Code shall apply analogously.
 - (2) The rights arising from dividend coupons issued to the bearer that are not yet due shall be cancelled on the date of the cancellation of the share certificate or interim certificate.
 - (3) The cancellation of a share certificate pursuant to §§ 73 or 226 shall not preclude the cancellation of the certificate pursuant to (1).
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§ 73 Cancellation of Share Certificates by the Company

- (1) ¹If the wording of share certificates has become inaccurate by reason of a change in legal circumstances, the company may, with the permission of the court, cancel the share certificates that have not been surrendered to it for correction or replacement despite request for surrender. ²If the inaccuracy arises from a change in the par value of the shares, such certificates may be cancelled only if the par value has been reduced to effect a reduction of share capital. ³Registered shares may not be cancelled solely by reason of the fact that the name of the shareholder is no longer correct. ⁴An appeal may be made against the decision of the court; a contesting action against a decision granting permission shall be precluded.
- (2) ¹The request to surrender share certificates shall give warning of cancellation and make reference to the permission of the court.
²Cancellation may be made only after such request has been announced in the manner prescribed for the period of grace pursuant to § 64 (2).
³Cancellation shall become effective upon publication in the company's journals. ⁴Such announcement shall designate the share certificates which have been cancelled in such a manner that it may be ascertained from the announcement itself whether a share certificate has been cancelled.
- (3) ¹In lieu of the cancelled share certificates, subject to provision in the articles according to § 10 (5), new share certificates shall be issued and delivered to the person entitled thereto or deposited with the court if the company is entitled to make such deposit. ²The court of the company's domicile shall be notified of such delivery or deposit.
- (4) § 226 shall apply if shares are consolidated in connection with a reduction of share capital.

§ 74 New Certificates in Lieu of Damaged or Defaced Certificates or Interim Certificates

¹If a share certificate or interim certificate has been damaged or defaced in such a manner that the certificate is no longer fit for circulation, the person entitled thereto may require the company to issue a new certificate against surrender of the old certificate, if the material contents and the distinguishing features of the certificate are still clearly recognizable. ²Such person shall bear and advance the expenses.

§ 75 New Dividend Coupons

New dividend coupons may not be issued to the holder of the coupon renewal certificate if the holder of the share certificate or of the interim certificate objects to such issue; such new dividend coupons shall be delivered to the holder of the share certificate or the interim certificate if he presents such certificate.

Division Four: Constitution of the Company
Section One. Management Board

§ 76 Leadership of the Stock Corporation

- (1) The management board shall have direct responsibility for the management of the company.
- (2) ¹The management board may comprise one or more persons. ²In the case of companies having a share capital of more than 3 million euros, the management board shall comprise not less than two persons, unless the articles provide that it shall comprise one person. ³The provisions governing the appointment of a labour director to the management board shall remain unaffected.
- (3) ¹Only a natural person with full legal capacity may be a member of the management board. ²A person may not be a member of the management board who:
- 1. is a person under guardianship who in managing his or her property is fully or partially subject to approval (§ 1903 of the Civil Code),
 - 2. has been prohibited by judicial decision or an enforceable administrative order from engaging in any profession, line of occupation, trade or branch of industry, as far as the purpose of the enterprise encompasses in whole or in part such prohibited activity.
 - 3. due to one or several wilfully committed crimes, has been convicted
 - a) of a failure to file for insolvency proceedings (delayed filing of insolvency),
 - b) of a criminal offence pursuant to §§ 283 to 283d of the Penal Code (insolvency offences),
 - c) of making false statements pursuant to § 399 of this Act or § 82 of the German Limited Liability Companies Act,
 - d) of any misrepresentation pursuant to § 400 of this Act, § 331 of the Commercial Code, § 313 of the Transformation Act or § 17 of the Transparency and Disclosure Act, and
 - e) and sentenced to a prison sentence of no less than one year pursuant to §§ 263 to 264a or §§ 265b to 266a of the Penal Code;

such exclusion shall apply for a period of five years from the date on which the judgment has become final, whereby such period shall not include any time during which the convicted person has been confined to an institution by order of the authorities.

³Sentence 2 No. 3 shall apply accordingly to convictions abroad due to offences comparable to the offences set out in sentence 2 No. 3.

§ 77 Management

- (1) ¹If the management board comprises more than one person, the members of the management board shall manage the company jointly. ²The articles or the bylaws for the management board may provide otherwise; however, the articles or by-laws may not provide that one or more members of the management board may resolve differences of opinion within the management board against the majority of its members.
 - (2) ¹The management board may issue by-laws of the management board unless the articles confer the authority to issue such by-laws upon the supervisory board or the supervisory board issues by-laws for the management board. ²The articles may make binding provisions in respect of specific matters relating to the by-laws. ³Resolutions of the management board regarding the by-laws shall require a unanimous vote.
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§ 78 Representation

- (1) ¹The management board shall represent the company in and out of court. ²If the company does not have a management board (rudderless management), the company shall be represented by the supervisory board in case declarations of intent are made towards the company or documents are sent to the company.
- (2) ¹If the management board comprises more than one person, the members of the management board shall represent the company jointly, unless the articles provide otherwise. ²If a statement with legal effect is to be given to the company, it shall suffice if such statement is made to one member of the management board or, in case of (1) sentence 2, to one member of the supervisory board. ³Declarations of intent towards the company may be made and documents for the company may be sent to the representatives of the company pursuant to (1) using the business address entered in the commercial register. ⁴Irrespective of the above, such declarations or documents may be made or sent, respectively, using the registered address of the person authorised to accept these pursuant to § 39 (1) sentence 2.

- (3) ¹The articles may also provide that particular members of the management board may represent the company by acting either solely or jointly with a registered authorised officer (*Prokurist*). ²The supervisory board may also so provide if authorised to do so by the articles. ³(2) sentence 2 shall apply analogously in such cases.
- (4) ¹Members of the management board authorised to represent the company by acting jointly may authorise individual liquidators to engage in certain transactions or kinds of transactions. ²The foregoing shall apply analogously if an individual member of the management board is authorised to represent the company by acting jointly with a registered authorised officer (*Prokurist*).
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§ 79 [repealed]

§ 80 Details on Business Letters

- (1) ¹All business letters which are directed to a specific recipient shall state the company's legal form and domicile, the court of registration of the company's domicile, the number under which the company has been registered in the commercial register as well as the surname and at least one forename in full of each member of the management board and of the chairman of the supervisory board. ²The chairman of the management board shall be designated as such. ³If information is provided regarding the company's capital, the amount of the share capital shall in any event be stated and, if the issue price has not been paid in full, the aggregate amount of the contributions outstanding.
- (2) The information pursuant to (1) sentences 1 and 2 need not be given in communications or reports which are made in the course of an existing business relationship and for which forms are customarily used in which only the particulars of the specific transaction need be inserted.
- (3) ¹Order forms shall be deemed to be business letters in the meaning of (1) sentence 1. (2) shall not apply thereto.
- (4) All letterheads and order forms used by a branch of a company with its seat abroad must indicate the register where the branch is registered and the registration number; for the rest, the provisions of 1 to 3 apply to information regarding head offices and branch offices, to the extent foreign law does not require deviations. ²If the foreign company is in liquidation then this fact and all the liquidators are to be indicated.
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§ 81 Change in the Management Board and its Members' Authority to Represent the Company

- (1) The management board shall file for registration in the commercial register any change in the management board or in the authority of a member of the management board to represent the company.

The documents concerning such changes shall be appended to each filing in original or officially certified copy.

- (3) The new members of the management board shall assure in the filing that no circumstances prevail which preclude their appointment pursuant to § 76 (3) sentence 2 No. 2 and 3 as well as sentence 3 and that they have been advised of their obligation to make full disclosure to the court. 2§ 37 (2) sentence 2 shall apply.

§ 82 Restrictions on the Authority to Represent and Manage

- (1) The authority of the management board to represent the company may not be restricted.
- (2) The members of the management board shall be obligated in the relationship to comply with the restrictions in respect of the authority to manage the company which, in accordance with the provisions, governing the stock corporation, are imposed by the articles, the supervisory board, the shareholder's meeting and the bylaws for the management board and the supervisory board.

§ 83 Preparation and Execution of Resolutions of Shareholders' Meeting

- (1) ¹The management board shall, at the request of the shareholders' meeting, be obligated to prepare any matter that falls within the competence of the shareholders' meeting. ²The foregoing shall apply to the preparation and execution of agreements that become effective only with the consent of the shareholders' meeting. ³The resolution of the shareholders' meeting regarding such preparation and execution shall require the same majority as is required for the resolution on the respective matter or, as the case may be, the granting of consent to such agreements.
 - (2) The management board shall be obligated to execute any resolution adopted by the shareholders' meeting in respect of matters falling within the competence of the shareholders' meeting.
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§ 84 Appointment and Removal of the Management Board

- (1) ¹The supervisory board shall appoint the members of the management board for a period not exceeding five years. ²Such appointment may be renewed or the term of office may be extended, provided that the term of each such renewal or extension shall not exceed five years. ³Such renewal or extension shall require a new resolution of the supervisory board, which may be adopted no more than one year prior to the expiration of the current term of office. ⁴The term of office may be extended without a new resolution of the supervisory board only in the case of an appointment for less than five years, provided that the aggregate term of office does not, as a result of such extension, exceed five years. ⁵The foregoing shall apply analogously to the contract of employment; such contract may provide, however, that in the event of an extension of the term of office, the contract shall continue in effect until the expiry of such term.
- (2) If more than one person is appointed as member of the management board, the supervisory board may appoint one member as chairman of the management board.
- (3) ¹The supervisory board may revoke the appointment of a member of the management board or the appointment of a member as chairman of the management board for cause. ²Such cause shall include in particular a gross breach of duties, inability to manage the company properly, or a vote of no confidence by the shareholders' meeting, unless such vote of no confidence was made for manifestly arbitrary reasons. ³The foregoing shall also apply to the management board appointed by the first supervisory board. ⁴Such revocation shall be enforceable until rendered unenforceable by a judicial decision that has become final and may not be appealed. ⁵Rights arising under the contract of employment shall be governed by general provisions of law.
- (4) The provisions of the Act on the Co-determination of Employees in the Supervisory Board and Management Boards in the Mining and Iron and Steel Producing Industries of May 21, 1951 (Federal Law Gazette I p. 347) – the “Coal and Steel Co-determination Act” – regarding the special majority requirements for resolutions of the supervisory board on the appointment of a labour director to the management board or the revocation of such appointment shall remain unaffected.

§ 85 Appointment by the Court

- (1) ¹If the management board does not have the required number of members, the court shall make, in urgent cases, the necessary appointments upon motion by a party concerned. ²An appeal may be made against such decision.

- (2) The office of a member of the management board appointed by the court shall terminate as soon as the vacancy is filled.
 - (3) ¹The member of the management board appointed by the court shall be entitled to reimbursement of reasonable cash expenses and remuneration for his services. ²If the member of the management board appointed by the court and the company do not reach agreement, the court shall fix the amount of expenses and remuneration. ³An appeal may be made against such decision; appeals on points of law are not permitted. ⁴A decision that has become final and may not be appealed may be enforced in accordance with the provisions of the Code of Civil Procedure.
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§ 86 [repealed]

§ 87 Principles Governing Remuneration of Members of the Management Board

- (1) ¹The supervisory board shall, in determining the aggregate remuneration of any member of the management board (salary, profit participation, reimbursement of expenses, insurance premiums, commissions, incentive-based compensation promises such as subscription rights and additional benefits of any kind), ensure that such aggregate remuneration bears a reasonable relationship to the duties and performance of such member as well as the condition of the company and that it does not exceed standard remuneration without any particular reasons. ²The remuneration system of listed companies shall be aimed at the company's sustainable development. ³The calculation basis of variable remuneration components should therefore be several years long; in case of extraordinary developments, the supervisory board shall agree on a possibility of remuneration limitation. ⁴Sentence 1 shall apply analogously to pensions, payments to surviving dependents and similar payments.
- (2) ¹If the situation of the company deteriorates after the determination so that a continued payment of remuneration under (1) would be unreasonable for the company, the supervisory board or, in case of § 85 (3), the court upon petition of the supervisory board shall reduce remuneration to a reasonable level. ²Pensions, payments to surviving dependents and similar payments may only be reduced pursuant to sentence 1 within the first three years after resignation from the company. ³Such reduction shall not affect the other terms of the contract of employment. ⁴The member of the management board may terminate, however, his contract of employment as of the end of the text calendar quarter upon giving six weeks' notice.

- (3) If insolvency proceedings have been instituted over the company's assets and the receiver in insolvency has given notice of termination of the contract of employment of a member of the management board, such member may claim compensation of damages arising as a result of such termination only for the period of two years following termination of such employment.
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§ 88 Prohibition of Competition

- (1) ¹Absent the consent of the supervisory board, members of the management board may neither engage in any trade nor enter into any transaction in the company's line of business on their own behalf or on behalf of others. ²Absent such consent, they may be neither a member of the management board, nor a manager or general partner of another commercial enterprise. ³The consent of the supervisory board may be granted only for a specific trade or business, a specific commercial enterprise, or for specific kinds of transactions.
- (2) ¹If a member of the management board violates such prohibition, the company may claim damages. ²In lieu thereof, the company may require that the member treat the transactions made for his own account as having been made on behalf of the company and remit any remuneration obtained for transactions made on behalf of another person or assign his claim to such remuneration.
- (3) ¹The Partnership has three months from the date on which the other members of the management board and the members of the supervisory board obtained knowledge, or without gross negligence should have obtained knowledge of the act giving rise to the damage claim, to make any claims. ²Irrespective of such knowledge or lack of knowledge as a result of gross negligence, the statute of limitation for such claims shall be five years from the time when they arose.
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§ 89 Grant of Credit to Members of the Management Board

- (1) ¹The company may grant credit to members of the management board only pursuant to a resolution of the supervisory board. ²Such resolution may authorise only the grant of specific credit transactions or kinds of credit transactions, and for not more than three months an advance. ³Such resolution shall make provision as to the payment of interest on, and repayment of, any loan. ⁴Permission to make drawings in excess of the remuneration due to the member of the management board, in particular permission to draw advances of remuneration shall constitute a grant of credit. ⁵The foregoing shall not apply to credits that do not exceed an amount equal to one month's salary.

- (2) ¹The company may grant credit to its registered authorised officers (*Prokuristen*) and general managers only with the consent of the supervisory board. ²A controlling company may grant credit to legal representatives, registered authorised officers (*Prokuristen*) or general managers of a controlled enterprise only with the consent of its supervisory board; a controlled company may grant credit to legal representatives, registered authorised officers (*Prokuristen*) or general managers of the controlling enterprise only with the consent of the supervisory board of the controlling enterprise. ³(1) sentences 2 to 5 shall apply analogously.
- (3) ¹(2) shall also apply to credits to the spouse or a minor child of a member of the management board, or other legal representatives, registered authorised officers (*Prokuristen*) or general managers. ²Moreover, such shall apply to credits granted to any third party acting on behalf of any such persons or on behalf of a member of the management board, other legal representative, registered authorised officers (*Prokuristen*) or general manager.
- (4) ¹If a member of the management board, registered authorised officer (*Prokurist*) or general manager is also a legal representative or member of the supervisory board of another legal entity or member of a commercial partnership, the company may grant credit to such legal entity or commercial partnership only with the consent of the supervisory board; (1) sentences 2 and 3 shall apply analogously. ²The foregoing shall not apply if such legal entity or commercial partnership is affiliated with the company or if the credit is granted to finance the payment of goods that the company supplies to such legal entity or commercial partnership.
- (5) Any credit granted in violation of the provisions of (1) to (4), shall be repaid immediately, irrespective of any agreement to the contrary, unless the supervisory board subsequently consents.
- (6) If the company is a credit institution or financial services institution to which § 15 of the Banking Act apply, the provisions of the Banking Act shall apply in lieu of (1) to (5).

§ 90 Reports to the Supervisory Board

- (1) ¹The management board shall report to the supervisory board on:
- 1. intended business policy and other fundamental matters regarding the future conduct of the company's business (in particular plans regarding financing, investment and personnel) responding to deviations of actual developments from objectives reported in the past and stating the reasons thereof;
 - 2. the profitability of the company, in particular the return on equity;

- 3. the state of business, in particular revenues, and the condition of the company;
- 4. transactions that may have a material impact upon the profitability or liquidity of the company.

²If the company is a parent enterprise (§ 290 (1), (2) of the Commercial Code), then the report shall also deal with the subsidiary enterprise and with joint enterprises (§ 319 (1) of the Commercial Code). ³In addition, reports to the chairman of the supervisory board shall be made on the occurrence of other significant developments, such significant developments shall also include circumstances concerning the business of an affiliated enterprise which become known to the management board and which may have a material impact upon the condition of the company.

(2) Reports pursuant to (1) sentence 1, Nos. 1 to 4, shall be made as follows:

- 1. reports pursuant to No. 1 not less than once a year, unless changes in circumstances or new matters necessitate an immediate report;
- 2. reports pursuant to No. 2 at the meeting of the supervisory board resolving an approval of the annual financial statements;
- 3. reports pursuant to No. 3 regularly, but not less than quarterly;
- 4. reports pursuant to No. 4 sufficiently early, if possible, to enable the supervisory board to express its opinion before such transactions entered into.

(3) ¹The supervisory board may require at any time a report from the management board on the affairs of the company, on the company's legal and business relationships with affiliated enterprises, and on the circumstances concerning the business of such enterprises that may have a material impact upon the condition of the company. ²Any member may also request such report, which shall, however, only be given to the supervisory board.

(4) ¹The report shall comply with the principles of conscientious and accurate reporting. ²They shall be made sufficiently early, if possible, and, with the exception of the report pursuant to (1) sentence 3, generally in text form.

(5) ¹Each member of the supervisory board shall have the right to take cognisance of the reports. ²If the reports have been made in writing, they shall be submitted to each member of the supervisory board upon demand, unless the supervisory board has resolved otherwise. ³The chairman of the supervisory board shall inform the members of the supervisory board of reports made pursuant to (1) sentence 2 no later than at the next following meeting of the supervisory board.

§ 91 Organisation; Accounting

- (1) The management board shall ensure that the requisite books of account are maintained.
 - (2) The management board shall take suitable measures, in particular surveillance measures, to ensure that developments threatening the continuation of the company are detected early.
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§ 92 Duties of the Management in the Event of Losses, Overindebtedness or Insolvency

- (1) If upon preparation of the annual balance sheet or an interim balance sheet it becomes apparent, or if in the exercise of proper judgment it must be assumed that the company has incurred a loss equal to one half of the share capital, the management board shall promptly call a shareholders' meeting and advise the meeting thereof.
 - (2) ¹If the company becomes insolvent or overindebted, the management board may not make any payments. ²The foregoing shall not apply to payments made after this time that are nonetheless compatible with the care of a diligent and conscientious manager. ³The same obligation shall apply to the managing board for payments to shareholders as far as such payments were bound to lead to the stock corporation's insolvency, unless this was unforeseeable even when employing the care set out § 93 (1) sentence 1.
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§ 93 Duty of Care and Responsibility of Members of the Management Board

- (1) ¹In conducting business, the members of the management board shall employ the care of a diligent and conscientious manager. ²They shall not be deemed to have violated the aforementioned duty if, at the time of taking the entrepreneurial decision, they had good reason to assume that they were acting on the basis of adequate information for the benefit of the company. ³They shall not disclose confidential information and secrets of the company, in particular trade and business secrets, which have become known to the members of the management board as a result of their service on the management board. ⁴The duty referred to in sentence 3 shall not apply with regard to a recognized auditing agency pursuant to § 342b of the Commercial Code within the scope of the audit.

- (2) ¹Members of the management board who violate their duties shall be jointly and severally liable to the company for any resulting damage. ²They shall bear the burden of proof in the event of a dispute as to whether or not they have employed the care of a diligent and conscientious manager. ³If the company takes out an insurance covering the risks of a member of the managing board arising from his work for the company, such insurance should provide for a deductible of no less than 10 per cent of the damage up to at least an amount equal to 1.5 times the fixed annual compensation of the managing board member.
- (3) The members of the management board shall in particular be liable for damages if, contrary to this Act:
- 1. contributions are repaid to shareholders;
 - 2. shareholders are paid interest or dividends;
 - 3. own shares or shares of another company are subscribed, acquired, taken as a pledge or redeemed;
 - 4. share certificates are issued before the issue price has been paid in full;
 - 5. assets of the company are distributed;
 - 6. payments are made contrary to § 92 (2),
 - 7. remuneration is paid to members of the supervisory board;
 - 8. credit is granted;
 - 9. in connection with a conditional capital increase, new shares are issued other than for the specified purpose or prior to full payment of the consideration.
- (4) ¹The members of the management board shall not be liable to the company for damages if they acted pursuant to a lawful resolution of the shareholders' meeting. ²Liability for damages shall not be precluded by the fact that the supervisory board has consented to the act. ³The company may waive or compromise a claim for damages not prior to the expiry of three years after the claim has arisen, provided that the shareholders' meeting consents thereto and no minority whose aggregate holding equals or exceeds one-tenth of the share capital records an objection in the minutes. ⁴The foregoing period of time shall not apply if the person liable for damages is insolvent and enters into a settlement with his creditors to avoid or terminate insolvency proceedings.

- (5) ¹The claim for damages of the company may also be asserted by the company's creditors if they are unable to obtain satisfaction from the company. ²However, in cases other than those set out in (3), the foregoing shall apply only if the members of the management board have manifestly violated the duty of care of a diligent and conscientious manager; (2) sentence 2 shall apply analogously. ³Liability for damages with respect to the creditors shall be extinguished neither by a waiver nor by a compromise of the company nor by the fact that the act that has caused the damage was based on a resolution of the shareholder's meeting. ⁴If insolvency proceedings have been instituted over the company's assets, the receiver in insolvency shall exercise the rights of the creditors against the members of the management board during the course of such proceedings.
- (6) For companies that are listed on a stock exchange at the point in time of the violation of duty, claims under the foregoing provisions shall be time barred after the expiration of a period of ten years; for other companies, claims under the foregoing provisions shall be time barred after the expiration of a period of five years.

§ 94 Deputies of Members of the Management Board

The provisions relating to members of the management board shall also apply to their deputies.

Section Two. Supervisory Board

§ 95 Number of Members of the Supervisory Board

¹The supervisory board shall comprise three members. ²The articles may provide for a specified higher number. ³Such number shall be divisible by three. ⁴The maximum number of members of the supervisory board for companies with a share capital of:

up to	1,500,000 euros	nine
more than	1,500,000 euros	fifteen
more than	10,000,000 euros	twenty-one

⁵The foregoing shall not affect provision to the contrary which are contained in the Employees Co-determination Act of May 4, 1976 (Federal Law Gazette I p. 1153), the Coal and Steel Co-determination Act and the Supplemental Act on the Co-determination of Employees in the Supervisory Boards and Management Boards in the Mining and the Iron and Steel Producing Industries of August 7, 1956 (Federal Law Gazette I p. 707) – (the Supplemental Co-determination Act).

§ 96 Composition of the Supervisory Board

(1) The supervisory board is composed of

in case of companies subject to the Co-determination Act, of supervisory board members of the shareholders and the employees,

in case of companies subject to the Coal and Steel Co-determination Act, of supervisory board members of the shareholders and the employees and of further members,

in case of companies subject to §§ 5 to 13 of the Supplemental Co-Determination Act, of supervisory board members of the shareholders and the employees and of one further member,

in case of companies subject to § 76 (1) of the One-Third Co-determination Act, of supervisory board members of the shareholders and the employees,

in case of companies subject to the Act on Employee Co-determination within Cross-border Mergers, of supervisory board members of the shareholders and the employees,

in case of other companies, only of supervisory board members of the shareholders.

(2) The supervisory board shall be composed in accordance with the statutory provisions last applied unless, pursuant to § 97 or § 98, other statutory provisions govern which have been specified in an announcement of the management board or in a judicial decision.

§ 97 Announcement Concerning the Composition of the Supervisory Board

(1) ¹If the management board is of the opinion that the composition of the supervisory board does not comply with applicable statutory provisions, it shall promptly announce such fact in the company's journals and at the same time by notices displayed in all designated offices of the company and the members of its group. ²The statutory provisions that are applicable in the opinion of the management board shall be specified in such announcement. ³Such announcement shall state that the supervisory board will be composed in accordance with such provisions, unless parties with standing pursuant to § 98 (2) make motion to the court having jurisdiction pursuant to § 98 (1) within one month from the date of the announcement in the electronic Federal Gazette.

- (2) ¹If no motion has been made to the court having jurisdiction pursuant to § 98 (1) within one month from the date of the announcement in the electronic Federal Gazette, the new supervisory board shall be composed in accordance with the statutory provisions specified in the announcement of the management board. ²The provisions of the articles regarding the composition of the supervisory board, the number of members of the supervisory board and the election, removal and delegation of members of the supervisory board shall, in so far as they conflict with the applicable statutory provisions, cease to be effective as at the adjournment of the first shareholders' meeting called after the expiration of such one month period, but in any event no more than six months after the expiration of such period. ³As at the same date the term of office of the previous members of the supervisory board shall expire. ⁴A shareholder's meeting held within such six month period may, by simple majority, substitute new provisions for those provisions in the articles that cease to be effective.
- (3) No announcement concerning the composition of the supervisory board may be made while judicial proceedings pursuant to § 98 and 99 are pending.
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§ 98 Judicial Decision Concerning the Composition of the Supervisory Board

- (1) If it is disputed or uncertain which statutory provisions shall apply to the composition of the supervisory board, the exclusive jurisdiction to decide such issue upon application shall lie with the regional court of the district in which the company is domiciled.
- (2) ¹The following shall have standing to make such motion
- 1. the management board,
 - 2. each member of the supervisory board,
 - 3. each shareholder,
 - 4. the central labour council of the company or, if the company has only one labour council, such labour council,
 - 5. the central managing employees council of the company or, if the company has only one managing employees council, such managing employees council,
 - 6. the central labour council of another enterprise whose employees participate directly or through electors in the election of members of the supervisory board of the company pursuant to the statutory provisions whose application is disputed or uncertain, or, if only one labour council exists in such other enterprise, such labour council;

- 7. the central managing employees council of another enterprise whose employees participate directly or through electors in the election of members of the supervisory board of the company pursuant to the statutory provisions whose application is disputed or uncertain, or, if only one managing employees council exists in such other enterprise, such managing employees council;
- 8. not less than one-tenth or one hundred of the employees who participate directly or through electors in the election of members of the supervisory board of the company pursuant to the statutory provisions whose application is disputed or uncertain;
- 9. the central organisations of the labour unions which would, pursuant to the statutory provisions whose application is disputed or uncertain, have a right to nominate members;
- 10. labour unions that would, pursuant to the statutory provisions whose application is disputed or uncertain, have a right to nominate members.

²If either the application of the Co-determination Act or the application of certain provisions of the Co-determination Act is disputed or uncertain, then in addition to those having standing to make motion pursuant to sentence 1, one-tenth of the workers who are entitled to vote, or one-tenth of the employees designated in § 3 (1) No. 1 of the Co-determination Act who are entitled to vote, or one-tenth of the managerial employees within the meaning of the Codetermination Act who are entitled to vote, shall also have standing to make motion hereunder.

(3) (1) and (2) shall apply analogously in the event of a dispute as to whether the external auditor has correctly determined the relevant revenue ratios pursuant to § 3 or § 16 of the Supplemental Co-Determination Act.

(4) ¹If the composition of the supervisory board does not comply with the judicial decision, the new supervisory board shall be composed in accordance with the statutory provisions specified in such decision.

²§ 97 (2) shall apply analogously, except that the six-month period shall commence on the date on which such decision becomes final and may not be appealed.

§ 99 Procedure

- (1) The procedure shall be governed by the provisions of the Act on Court Procedure in Family Matters and Non-litigious Matters, unless (2) to (5) provide otherwise.
- (2) ¹The regional court shall announce the motion in the company's journals. ²The management board, each member of the supervisory board, and the labour councils and central organisations that have standing to make motion pursuant to § 98 (2) shall be heard.
- (3) ¹The decision of the regional court shall be made by decree setting out the grounds on which the decision is based. ²Such decision of the regional court may be appealed. ³Such appeal may be based only on a violation of the law; § 72 (1) sentence 2 and § 74 (2) and (3) of the Act on Court Procedure in Family Matters and Non-litigious Matters as well as § 547 of the Code of Civil Procedure shall apply analogously. ⁴Such appeal may only be made by filing a notice of appeal signed by an attorney at law. ⁵The state government may by regulation transfer jurisdiction for several higher regional courts to one higher regional court if required to ensure uniformity of decisions. ⁶The state government may transfer such power to the state ministry of justice.
- (4) ¹The court shall serve its decision on the party having made motion and on the company. ²Furthermore, the court shall announce the decision in the company's journals without setting out the grounds on which the decision is based. ³Appeal may be made by each party having standing to make motion pursuant to § 98 (2). ⁴The period for filing the notice of appeal shall commence on the date on which the decision was announced in the electronic Federal Gazette, but, in the case of the party having made motion and the company, not prior to service of the decision.
- (5) ¹The decision shall become binding only when it has become final and may not be appealed. ²Such decision shall be binding for and against everyone. ³The management board shall promptly submit the binding decision to the commercial register.
- (6) ¹The costs of the proceedings shall be governed by the Act on Court Costs. ²In proceedings before the court of first instance, four times the full fee shall be charged. ³For appeal proceedings, the same fee shall be charged; the foregoing shall also apply if the appeal is successful. ⁴If the motion or appeal is withdrawn prior to a decision, the fee shall be reduced by one half. ⁵The court shall determine the value of the subject matter of the proceedings. ⁶Such value shall be determined in accordance with § 30 (2) of the Act on Court Costs, provided that such value shall as a rule be 50,000 euros. Debtor for the costs shall be the company. ⁸The party having made motion shall, however, be liable for the costs, in whole or in part, if equity so requires. ⁹The parties' own costs shall not be reimbursed.

§ 100 Personal Qualifications of Members of the Supervisory Board

- (1) ¹Only a natural person with full legal capacity may be a member of the supervisory board. ²A person under guardianship who in managing his or her property is fully or partially subject to approval (§ 1903 of the Civil Code) may not be a member of the supervisory board.
- (2) ¹A person may not be a member of the supervisory board who:
- 1. is already a member of the supervisory board in ten commercial enterprises which are required by law to form a supervisory board;
 - 2. is the legal representative of a controlled enterprise of the company; or
 - 3. is the legal representative of another corporation whose supervisory board includes a member of the management board of the company
 - 4. was a member of the management board of the same listed company during the past two years, unless he is elected upon nomination by shareholders holding more than 25 per cent of the voting rights in the company.
- ²In determining the maximum number for purpose of sentence 1, No. 1, no account shall be taken of up to five seats which a legal representative (or, in the case of a sole proprietorship, the owner) of the controlling enterprise of a group holds in supervisory boards of commercial enterprises which are members of such group and which are required by law to form a supervisory board. In determining the maximum number for the purpose of sentence 1, No. 1, supervisory board seats within the meaning of No. 1 for which the member was elected chairperson shall be taken into account twice.
- (3) The other personal qualifications of the supervisory board members of the employees and of the additional members shall be determined by the Co-determination Act, the Coal and Steel Co-determination Act, the Supplemental Co-determination Act, the One-Third Co-determination Act and the Act on Employee Co-determination within Cross-border Mergers
- (4) The articles may stipulate personal qualifications only for those members of the supervisory board who are elected by the shareholders' meeting without being bound by nominations, or who are appointed to the supervisory board pursuant to the articles.
- (5) In the case of companies within the meaning of § 264d of the Commercial Code, at least one independent member of the supervisory board has to have expertise knowledge in the fields of accounting or annual auditing.

§ 101 Appointment of the Members of the Supervisory Board

- (1) ¹The members of the supervisory board shall be elected by the shareholders' meeting, unless they are to be appointed to the supervisory board or elected as representatives of the employees pursuant to the Codetermination Act, the Supplemental Codetermination Act, the One-Third Co-determination Act or the Act on Employee Co-determination within Cross-border Mergers. ²The shareholders' meeting shall be bound by nominations only pursuant to § 6 to 8 of the Coal and Steel Co-determination Act.
- (2) ¹The right to appoint members to the supervisory board may only be granted by the articles and only to specific shareholders or the holders of specific shares. ²The right to appoint may be granted to holders of specific shares only if the shares are in registered form and if their transfer requires the consent of the company. ³Shares of holders of the right to appoint shall not be deemed to constitute a separate class. ⁴Rights to appoint may be granted only with respect to no more than one-third in aggregate of the shareholder representatives in the supervisory board as determined by law or the articles.
- (3) ¹It shall not be permitted to appoint deputies of members of the supervisory board. ²However, for each member of the supervisory board a substitute member may be appointed who shall become a member of the supervisory board if the regular member ceases to hold office prior to the expiration of his term of office, except for the additional member to be elected pursuant to the Coal and Steel Co-determination Act or the Supplemental Co-determination Act upon nomination by the other members of the supervisory board. ³Such substitute member may only be appointed at the same time as the respective regular member of the supervisory board. ⁴The provisions governing members of the supervisory board shall govern his appointment, the invalidity of such appointment and actions to set it aside.

§ 102 Term of Office of Members of the Supervisory Board

- (1) ¹The members of the supervisory board may not be appointed for a period of time extending beyond the adjournment of the shareholders' meeting resolving on ratification of the acts of management for the fourth fiscal year following the commencement of their respective term of office. ²The fiscal year in which such term of office commences shall not be taken into account.
 - (2) The term of office of a substitute member shall expire not later than the expiration of the term of office of the regular member of the supervisory board who has ceased to hold office.
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§ 103 Removal of Members of the Supervisory Board

- (1) ¹Members of the supervisory board who have been elected by the shareholders' meeting without being bound by nominations may be removed pursuant to resolution of the shareholders' meeting prior to the expiration of their term of office. ²Such resolution shall require a majority of not less than three-fourths of the votes cast. ³The articles may provide for another majority and additional requirements.
- (2) ¹A member of the supervisory board who has been appointed to the supervisory board pursuant to the articles may at any time be removed and replaced by another person by the person who has the right to appoint. ²If the requirements specified in the articles in respect of the right to appoint are no longer met, the shareholders' meeting may remove the appointed member by a simple majority of votes.
- (3) ¹Upon motion by the supervisory board, the court shall remove a member of the supervisory board, for cause relating to the person of such member. ²The supervisory board shall resolve on such motion by simple majority. ³If such member of the supervisory board has been appointed to the supervisory board pursuant to the articles, shareholders whose aggregate holding amounts to one-tenth of the share capital or represents an amount of the share capital corresponding to one million euros may also make such motion. ⁴An appeal may be made against such decision.
- (4) The Co-determination Act, the Coal and Steel Co-determination Act, the Supplemental Co-determination Act, the One-Third Co-determination Act, the Act on the Participation of Employees in a European Company and the Act on Employee Co-determination within Cross-border Mergers shall apply, in addition to (3), to the removal of members of the supervisory board who were neither elected by the shareholders' meeting without being bound by nominations, nor appointed to the supervisory board pursuant to the articles.
- (5) The provisions governing removal of a member of the supervisory board shall also apply to the removal of a substitute member.

§ 104 Appointment by the Court

- (1) ¹If the supervisory board does not have the requisite number of members to constitute a quorum, the court shall restore it to the requisite number upon motion by the management board, a member of the supervisory board or a shareholder. ²The management board shall be obligated to make such motion promptly, unless restoration to such number may be expected to occur prior to the next meeting of the supervisory board. ³If the supervisory board is required to include representatives of the employees, such motion may also be made by:

- 1. the company's central labour council or, if only one labour council exists in the company, such labour council, and, if the company is the controlling enterprise of a group, the group labour council,
- 2. the company's central managing employees labour council or, if only one managing employees council exists in the company, such managing employees council, and, if the company is the controlling enterprise of a group, the group managing employees council,
- 3. the central labour council of another enterprise whose employees participate directly or through electors in the election or, if such other enterprises has only one labour council, such labour council;
- 4. the central managing employees council of another enterprise whose employees participate directly or through electors in the election or, if such other enterprise has only one managing employees council, such managing employees council;
- 5. not less than one-tenth or one hundred of the employees who participate in the election directly or through electors;
- 6. the central organisations of labour unions which have the right to nominate representatives of the employees to the supervisory board;
- 7. labour unions which have the right to nominate the supervisory board representatives of the employees;

⁴If the supervisory board is required to include representatives of the employees pursuant to the Co-determination Act, then in addition to those parties having standing to make motion pursuant to sentence 3, one-tenth of the workers who are entitled to vote or one-tenth of the employees designated in § 3 (1) No. 1 of the Codetermination Act who are entitled to vote or one-tenth of the managerial employees within the meaning of the Codetermination Act, who are entitled to vote, shall also have standing to make such motion. ⁵An appeal may be made against such decision.

- (2) ¹If for a period of more than three months the number of members of the supervisory board has been less than the number required by law or the articles, the court shall upon motion restore it to the requisite number. ²In urgent cases the court shall, upon motion, restore the supervisory board to such number even before such period has expired. ³Standing to make a motion shall be governed by (1). ⁴An appeal may be made against such decision.
- (3) (2) shall apply to a supervisory board in which the employees are entitled to co-determination pursuant to the provision of the Codetermination Act, the Coal and Steel Co-determination Act or the Supplemental Co-determination Act, provided, however, that:

- 1. the court may not restore the supervisory board to the requisite number by appointing the additional member who is to be elected pursuant to the Coal and Steel Co-determination Act or the Supplemental Codetermination Act upon nomination by the other members of the supervisory board,
 - 2. if the supervisory board does not have the full number of members that it is required to comprise pursuant to the law or the articles, except for the additional member referred to in No. 1, it shall always constitute an urgent case.
- (4) ¹If the supervisory board is required to also include representatives of the employees, the court shall appoint members in such a manner that the numerical ratio required for the composition of the supervisory board is maintained or re-established. ²If appointments are to be made to the supervisory board to re-establish a quorum, the foregoing shall apply only if the number of members of the supervisory board required for a quorum permits such ratio to prevail. ³If a member of the supervisory board is to be replaced who must fulfil special personal qualifications pursuant to the law or the articles, the member of the supervisory board appointed by the court shall also fulfil such qualifications. ⁴If a member of the supervisory board is to be replaced whom a central organisation of labour unions, a labour union or the labour councils would have the right to nominate, the court shall take into account the nominations of such parties, unless appointment of the nominated person would contravene overriding interests of the company or the general public; in case the member of the supervisory board is to be elected by electors, the foregoing shall apply to joint nominations by the labour councils of the enterprises in which electors are to be elected.
- (5) The term of office of the member of the supervisory board appointed by the court shall expire in any event as soon as the deficiency in the composition of the supervisory board has been rectified.
- (6) ¹The member of the supervisory board appointed by the court shall be entitled to reimbursement of reasonable cash expenses and, if remuneration is granted to regular members of the supervisory board of the company, to remuneration for his services. ²Upon motion by such member of the supervisory board, the court shall stipulate the expenses and remuneration. ³An appeal may be made against such decision; appeals on points of law are not permitted. ⁴A decision that has become final and may not be appealed may be enforced in accordance with the provisions of the Code of Civil Procedure.
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§ 105 Incompatibility of Management and Supervisory Board Membership

- (1) A member of the supervisory board may not also be a member of the management board, a permanent deputy member of the management board, a registered authorised officer (*Prokurist*) or general manager of the company.
 - (2) ¹The supervisory board may appoint certain of its members as deputies for absent or incapacitated members of the management board for a predetermined period of time which may not in any event exceed one year. ²Such appointment may be renewed or the term of office extended, provided, however, that the aggregate term of office may not exceed one year. ³The members of the supervisory board may not exercise the functions of a member of the supervisory board during their term of office as deputy members of the management board. ⁴The prohibition of competition pursuant to § 88 shall not apply to such deputy members.
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§ 106 Announcement of Changes in the Supervisory Board

In the event of changes in the membership of the supervisory board, the management board shall promptly submit to the commercial register a list of members of the supervisory board stating each member's last name, first name, occupation and place of residence; in accordance with § 10 of the Commercial Code the court shall publish a notice on the submission of the list.

§ 107 Internal Organisation of the Supervisory Board

- (1) ¹The supervisory board shall elect from among its members a chairman and at least one deputy chairman in accordance with the applicable provisions of the articles. ²The management board shall file the details of persons elected with the commercial register. ³The deputy chairman shall have the rights and duties of the chairman only if the latter is incapacitated.
- (2) ¹Minutes shall be kept of the meetings of the supervisory board, which shall be signed by the chairman. ²The minutes shall state the place and date of the meeting, the persons attending, the items on the agenda, the essential contents of the proceedings, and the resolutions of the supervisory board. ³A violation of the provisions of sentence 1 or 2 shall not make unenforceable a resolution. ⁴A copy of the minutes of the meeting shall be provided upon request to each member of the supervisory board.

- (3) ¹The supervisory board may appoint from among its members one or more committees, in particular for purposes of preparing its deliberations and resolutions or for supervising the execution of its resolutions. ²It may in particular appoint an audit committee to deal with the supervision of the accounting process, the efficiency of the internal control system, the risk management system and the internal revision system as well as with the annual auditing, in particular with the independence of the external auditor and the additional services rendered by the external auditor. ³The duties pursuant to (1) sentence 1, § 59 (3), § 77 (2) sentence 1, § 84 (1) sentence 1 and 3, (2) and (3) sentence 1, § 87 (1) and (2) sentence 1 and 2, § 111 (3), §§ 171, 314 (2) and (3) as well as resolutions providing that specific types of transactions may be entered into only with the consent of the supervisory board, may not be referred to a committee to decide in lieu of the supervisory board. ⁴The supervisory board shall regularly be provided with reports on the activities of the committees.
- (4) If the supervisory board of a company within the meaning of § 264d of the Commercial Code sets up an audit committee within the meaning of (3) sentence 2, at least one member has to fulfil the prerequisites pursuant to § 100 (5).

§ 108 Resolutions of the Supervisory Board

- (1) The supervisory board shall decide by resolution.
- (2) ¹The quorum required for the supervisory board may, to the extent not determined by law, be set by the articles. ²If the quorum is set neither by law nor the articles, a quorum of the supervisory board shall only be present if not less than one-half of the number of members which it is required to comprise pursuant to law or the articles take part in the passing of the resolution. ³In any event at least three members shall be required to take part in the passing of a resolution. ⁴The presence of a quorum shall not be prejudiced by the fact that the supervisory board shall comprise fewer members than the number required by law or the articles, even if the numerical ratio required for its composition is not maintained.
- (3) ¹Members of the supervisory board who are not present may take part in the passing of a resolution of the supervisory board or of any committee thereof by causing votes in writing to be submitted to the meeting. ²Such votes may be submitted by other members of the supervisory board. ³They may also be submitted by persons who are not members of the supervisory board, provided that such persons are entitled to attend the meeting pursuant to § 109 (3).
- (4) Subject to more detailed regulation by the articles or the bylaws of the supervisory board, resolutions of the supervisory board or of any committee thereof may be adopted in writing, by telegraph or telephone if no member objects to such procedure.

§ 109 Attendance of Meetings of the Supervisory Board and Its Committees

- (1) ¹Persons who are not members of the supervisory board or the management board may not attend meetings of the supervisory board and its committees. ²Experts and persons needed to give information may be invited for consultation on individual matters.
 - (2) Members of the supervisory board who are not members of a committee may attend meetings of such committee, unless the chairman of the supervisory board determines otherwise.
 - (3) The articles may permit persons who are not members of the supervisory board to attend meetings of the supervisory board and its committees in lieu of members of the supervisory board who are unable to attend, provided that such members have authorised such persons to attend in writing.
 - (4) The foregoing shall not affect statutory provisions that provide otherwise.
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§ 110 Convening Supervisory Board Meetings

- (1) ¹Each member of the supervisory board or the management board may, upon stating the grounds for this, request that the chairman of the supervisory board promptly call a meeting of the supervisory board. ²The meeting shall be held within two weeks from the date on which notice thereof has been given.
 - (2) If any such request made by two or more members of the supervisory board or by the management board should not be complied with, such members may themselves call a meeting of the supervisory board upon stating these facts.
 - (3) ¹Meetings of the supervisory board should as a rule be called twice in every calendar half year. For unlisted companies, the supervisory board may determine that one meeting per calendar half year has to be held.
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§ 111 Duties and Rights of the Supervisory Board

- (1) The supervisory board shall supervise the management of the company.
- (2) ¹The supervisory board may inspect and examine the books and records of the company as well as the assets of the company, in particular cash, securities and merchandise. ²The supervisory board may also commission individual members or, with respect to specific assignments, special experts, to carry out such inspection and examination. ³It shall instruct the auditor as to the annual financial statements and consolidated financial statements according to § 290 of the Commercial Code.

- (3) ¹The supervisory board shall call a shareholder's meeting whenever the interests of the company so require. ²A simple majority shall suffice for such resolution.
- (4) ¹Management responsibilities may not be conferred on the supervisory board. ²However, the articles or the supervisory board have to determine that specific types of transactions may be entered into only with the consent of the supervisory board. ³If the supervisory board refuses to grant consent, the management board may request that a shareholders' meeting approve the grant. ⁴The shareholders meeting by which the shareholders' approves shall require a majority of not less than three-fourths of the votes cast. ⁵The articles may neither provide for any other majority nor prescribe any additional requirements.
- (5) Members of the supervisory board may not confer their responsibilities on other persons.

§ 112 Representation of the Company as against Members of the Management Board

¹The supervisory board shall represent the company both in and out of court as against the management board. ²§ 78(2) sentence 2 shall apply accordingly.

§ 113 Remuneration of the Members of the Supervisory Board

- (1) ¹The members of the supervisory board may receive remuneration for their services. ²Such remuneration may be determined in the articles or set by the shareholders' meeting. ³Such remuneration shall bear a reasonable relationship to the duties of the members of the supervisory board and to the condition of the company. ⁴If the remuneration is determined in the articles, the shareholders' meeting may, by simple majority, resolve on an amendment of the articles by which such remuneration is reduced.
- (2) ¹Remuneration of the members of the first supervisory board for their services may be granted only pursuant to resolution of the shareholders' meeting. ²Such resolution may be adopted only in the shareholders' meeting resolving on ratification of the acts of the members of the first supervisory board.
- (3) ¹If the members of the supervisory board are granted a share of the annual profit of the company, such share shall be computed on the basis of distributable profit, reduced by an amount of not less than four per cent of the contributions made minimum issue price of the shares. ²Conflicting determinations are void.

§ 114 Contracts with Members of the Supervisory Board

- (1) If a member of the supervisory board in addition to his services as a member of the supervisory board, enters into a contract with the company for provision of professional services which does not establish an employment relationship, or into a contract with the company to undertake a special assignment, any such contract shall require the consent of the supervisory board in order to be valid.
 - (2) ¹If the company pursuant to any such contract grants remuneration to a member of the supervisory board without the consent of the supervisory board, such member of the supervisory board shall repay such remuneration, unless the supervisory board subsequently approves such contract. ²A claim of the member of the supervisory board against the company for restitution of the enrichment obtained by the services performed shall remain unaffected; such claim may, however, not be set off against the company's entitlement to restitution.
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§ 115 Grant of Credit to Members of the Supervisory Board

- (1) ¹The company may grant credit to members of the supervisory board only with the consent of the supervisory board. ²A controlling company may grant credits to members of the supervisory board of a controlled enterprise only with the consent of its supervisory board; a controlled company may grant credits to members of the supervisory board of the controlling enterprise only with the consent of the supervisory board of the controlling enterprise. ³Such consent may be granted only for specific credit transactions or kinds of credit transactions, and for not more than three months in advance. ⁴The resolution on such consent shall make provision as to the payment of interest on, and repayment of, any loan. ⁵If the member of the supervisory board carries on a business as a sole proprietor, such consent shall not be required if the credit is granted to finance the payment of goods which the company supplies to his business.
- (2) (1) shall also apply to credits to the spouse or a minor child of a member of the supervisory board and to credits to any third party acting on behalf of any such person or on behalf of a member of the supervisory board.
- (3) ¹If a member of the supervisory board is also a legal representative of another legal entity or member of a commercial partnership, the company may grant credit to such legal entity or commercial partnership only with the consent of the supervisory board; (1), sentences 3 and 4 shall apply analogously. ²The foregoing shall not apply if such legal entity or commercial partnership is affiliated with the company or if the credit is grant to finance the payment of goods that the company supplies to such legal entity or commercial partnership.

- (4) Any credit granted in violation of the provisions of (1) to (3), shall be repaid immediately, irrespective of any agreement to the contrary, unless the supervisory board subsequently consents.
- (5) If the company is a credit institution or financial services institution to which § 15 of the Banking Act apply, the provisions of the Banking Act shall apply in lieu of (1) to (4).

§ 116 Duty of Care and Responsibility of Members of the Supervisory Board

§ 93 on the duty of care and responsibility of members of the management board shall, with the exception of (2) sentence 3, apply analogously to the duty of care and responsibility of the members of the supervisory board.

²The supervisory board members are particularly bound to maintain confidentiality as to confidential reports received or confidential consultations. ³They are in particular liable for damages if they determine unreasonable remuneration (§ 87 (1)).

Section Three. Exertion of Influence on the Company

§ 117 Liability for Damages

- (1) ¹Any person who, by exerting his influence on the company, induces a member of the management board or the supervisory board, a registered authorised officer (*Prokurist*) or an authorised signatory to act to the disadvantage of the company or its shareholders shall be liable to the company for any resulting damage. ²Such person shall also be liable to the shareholders for any resulting damage insofar as they have suffered damage in addition to any loss incurred as a result of the damage to the company.
- (2) ¹In addition to such person, the members of the management board and the supervisory board shall be jointly and severally liable if they have acted in violation of their duties. ²They shall bear the burden of proof in the event of a dispute as to whether or not they have employed the care of a diligent and conscientious manager. ³The members of the management board and the supervisory board shall not be liable to the company or the shareholders for damage if they acted pursuant to a lawful resolution of the shareholders' meeting. ⁴Liability for damages shall not be precluded by the fact that the supervisory board has consented to the act.
- (3) In addition to such person, any person who has wilfully caused undue influence to be exerted shall also be jointly and severally liable to the extent that he has obtained an advantage from the detrimental act.

- (4) § 93 (4) sentences 3 and 4 shall apply analogously to the extinguishment of liability for damages to the company.
- (5) ¹The claim for damages of the company may also be asserted by the company's creditors if they are unable to obtain satisfaction from the company. ²Liability for damages with respect to the creditors shall be extinguished neither by a waiver nor by a compromise of the company nor by the fact that the act that has caused the damage was based on a resolution of the shareholder's meeting. ³If insolvency proceedings have been instituted over the company's assets, the receiver in insolvency shall exercise the rights of the creditors during the course of such proceedings.
- (6) Claims under the foregoing provisions shall be time barred after expiration of a period of five years.
- (7) The foregoing provisions shall not apply if the member of the management board or the supervisory board, the registered authorised officer (*Prokurist*) or the authorised signatory was induced to engage in the act causing damage by the exercise of:
- 1. the right to direct under a control agreement; or
 - 2. the right to direct of an acquiring company (§ 319) into which the company has been integrated.

Section Four: Shareholders' Meeting

Subsection One. Rights of the Shareholders' Meeting

§ 118 General Provisions

- (1) ¹The shareholders shall exercise their rights with respect to the company at shareholders' meetings unless this Act provides otherwise. ²The articles may provide, or may authorise the management board to provide, that the shareholders may participate in the shareholders' meeting without being present on site and without having a proxy holder and may exercise all or individual rights in whole or in part by way of electronic communication.
- (2) The articles may provide, or may authorise the management board to provide, that shareholders may vote, without participating in the shareholders' meeting, in writing or by way of electronic communication (postal vote).
- (3) ¹The members of the management board and the supervisory board shall attend the shareholders' meeting. ²The articles may provide for certain cases where the attendance of supervisory board members may be by audio-visual transmission.

- (4) The articles or the bylaws of the shareholders' meeting according to § 129 (1) may provide, or may authorise the management board or the chairperson of the meeting to provide, that audio-visual transmission of the meeting is admitted.

§ 119 Rights of the Shareholders' Meeting

- (1) The shareholders' meeting shall resolve on all matters expressly stated in this Act or the articles, in particular with respect to:
- 1. The appointment of members of the supervisory board, to the extent they are not to be appointed to the supervisory board or be elected as representatives of employees pursuant to the Codetermination Act, the Supplemental Co-determination act, the One-Third Co-determination Act or the Act on Employee Co-determination within Cross-border Mergers.
 - 2. the appropriation of distributable profits;
 - 3. the ratification of the acts of the members of the management board and the supervisory board;
 - 4. the appointment of the auditor;
 - 5. amendments to the articles;
 - 6. measures to increase or reduce the share capital;
 - 7. the appointment of auditors for the examination of matters in connection with the formation or the management of the company;
 - 8. the dissolution of the company.
- (2) The shareholders' meeting may decide on matters concerning the management of the company only if required by the management board.

§ 120 Ratification of the Acts of Management; Vote on the Compensation Scheme

- (1) ¹The shareholders' meeting shall annually, during the first eight months of the fiscal year, resolve on ratification of the acts of the members of the management board and the supervisory board. ²A separate vote shall be taken with regard to the ratification of the acts of an individual member if so resolved by the shareholders' meeting or so requested by a minority, whose aggregate holding equals or exceeds one-tenth of the share capital or represents an amount of the share capital corresponding to 1 million euros.

- (2) ¹Such ratification shall constitute approval by the shareholders' meeting of the company's administration by the members of the management board and the supervisory board. ²Such ratification shall not constitute a waiver of claims for compensation of damage.
- (3) The deliberations on ratification shall be combined with the deliberations on the appropriation of distributable profits.
- (4) ¹The shareholders' meeting of a listed company may resolve on the approval of the compensation scheme. ²The resolution shall not give rise to any rights or obligations; in particular, the obligations of the supervisory board pursuant to § 87 shall remain unaffected. ³The resolution shall not be voidable pursuant to § 243.

Subsection Two. Notice of a Shareholders' Meeting

§ 121 General Provisions

- (1) A shareholders' meeting shall be called in all cases provided for in this Act or the articles or whenever required by the interests of the company.
- (2) ¹The shareholders' meeting shall be called by the management board, which shall resolve thereon by a simple majority of votes. ²Persons who are registered in the commercial register as members of the management board shall be deemed to have the requisite authority to call such meeting. ³The right of any other person based on law or the articles to call a shareholders' meeting shall remain unaffected.
- (3) ¹Notice of the shareholders' meeting shall contain the company's business name and domicile as well as the time and place of the shareholders' meeting. ²Moreover the agenda shall be stated therein. ³In case of public companies, the management board or, in case the supervisory board calls the meeting, the supervisory board shall state in the notice:
 - 1. the preconditions for participating in the meeting and exercising voting rights as well as, if applicable, the deadline for proofs pursuant to § 123 (3) sentence 3 and its relevance;
 - 2. the procedure for casting votes
 - a) by a proxy holder, whereby reference is made to the forms which have to be used for granting a voting proxy and to the manner in which proof of the appointment of a proxy holder may be transmitted electronically to the company; as well as
 - b) by postal vote or by way of electronic communication pursuant to § 118 (1) sentence 2, as far as the articles provide for a corresponding form of casting votes;

- 3. the rights of the shareholders pursuant to § 122 (2), § 126 (1), §§ 127, 131 (1); the statements may be limited to the deadlines for exercising these rights if the notice refers to further explanations on the company's Internet page.
 - 4. the company's Internet page via which the information pursuant to § 124a can be accessed.
- (4) ¹The notice of the shareholders' meeting shall be published in the company's journals. ²If the shareholders of the company are known by name, then the shareholders' meeting may be convened by registered letter; the day of dispatch shall be considered the day of publication. ³§§ 125 to 127 shall apply analogously.
- (4a) In case of listed companies which have not exclusively issued registered shares and which do not send the notice directly to the shareholders pursuant to (4) sentences 2 and 3, the notice shall, at the latest on the date of announcement, be published through media capable of distributing it in the entire European Union.
- (5) ¹Unless the articles provide otherwise, the shareholders' meeting shall be held at the company's domicile. ²If the company's shares are listed on a German stock exchange for trading in the regulated market, the shareholders' meeting may also be held at the domicile of such stock exchange, unless the articles provide otherwise.
- (6) If all shareholders have appeared or are represented, then the shareholders' meeting may make resolutions without adhering to the provisions of this subdivision provided no shareholder objects to the making of resolutions.
- (7) ¹In case of deadlines and dates which are calculated back from the date of the meeting, the day of the meeting itself shall not be included in the calculation. ²Adjourning the meeting from a Sunday, Saturday or a holiday to a preceding or following working day shall not be an option. ³§§ 187 to 193 of the German Civil Code shall not be applied analogously. ⁴In case of unlisted companies, the articles may provide for a different calculation of the deadline.
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§ 122 Calling of a Meeting at the Request of a Minority

- (1) ¹The shareholders' meeting shall be called if shareholders, whose holding in aggregate equals or exceeds one-twentieth of the share capital, demand such meeting in writing, stating the purpose and the reasons of such meeting; such demand shall be addressed to the management board. ²The articles may provide that the right to demand a shareholders' meeting shall require another form or the holding of a lower proportion of the share capital. ³§ 142(2) sentence 2 shall apply accordingly.
 - (2) ¹In the same manner, shareholders whose shares amount in aggregate to not less than one-twentieth of the share capital or represent an amount of the share capital corresponding to 500,000 euros, may demand that items are put on the agenda and published. ²Each new item shall be accompanied by an explanation or a draft proposal. ³The demand in the sense of sentence 1 shall be provided to the company at least 24 days, in case of listed companies at least 30 days, prior to the meeting; the day of receipt shall not be included in this calculation.
 - (3) ¹If any such demand is not complied with, the court may authorise the shareholders, who have made the demand, to call a shareholders' meeting or publish such items. ²At the same time, the court may appoint the chairman of the meeting. ³The notice of the meeting or the publication shall refer to such authorisation. ⁴An appeal may be made against such decision.
 - (4) The company shall bear the costs of the shareholders' meeting and, in the case of (3), also the court costs if the court has granted such motion.
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§ 123 Notice Period, Giving Notice of Attendance at the Shareholders' Meeting, Proof

- (1) ¹Notice of the shareholders' meeting shall be given no later than thirty days prior to the date of the meeting. ²The day the notice is given shall not be included in this calculation.
 - (2) ¹The articles may provide that attendance at the meeting or the exercise of voting rights shall require the shareholders giving notice of their attendance prior to the meeting. ²The notice of attendance must be delivered to the company at least six days prior to the shareholders' meeting at the address specified for this purpose in the notice calling the shareholders' meeting. ³The articles or the notice if authorised by the articles may provide for a shorter time limit which is to be calculated in days. ⁴The day of receipt shall not be included in this calculation. ⁵The minimum deadline under (1) shall be prolonged by the number of days of the deadline for giving notice of attendance under sentence 2.
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- (3) ¹For bearer shares the articles may also provide how proof of the right to attend the meeting or of the right to vote is to be given; paragraph (2) sentence 5 shall apply analogously in this case. ²In the case of companies whose shares are listed on a stock exchange, a certificate issued in textual form by the depository institution confirming the shareholder's share ownership shall constitute sufficient evidence. ³In the case of companies whose shares are listed on a stock exchange, such certificate shall make reference to the 21st day prior to the shareholders' meeting and must be delivered to the company within, at least, six days prior to the shareholders' meeting at the address specified in the notice calling the shareholders' meeting. ⁴The articles or the notice if authorised by the articles may provide for a shorter time limit which is to be calculated in days. ⁵The day of receipt shall not be included in this calculation. ⁶The only persons who will be treated as shareholders in relation to the company and may therefore attend the meeting or exercise voting rights are those shareholders who have presented a certificate in the manner described above.

§ 124 Publication of Requests for Supplements; Proposals for Resolutions

- (1) ¹If the minority has requested pursuant to § 122 (2) that items be added to the agenda, these items shall be published either upon calling the meeting or immediately following receipt of the request. ³§ 121 (4) shall apply analogously; moreover, § 121 (4a) shall apply analogously to listed companies. ⁴Publication and submission shall be made in the same way as applicable for calling the meeting.
- (2) ¹If the agenda includes the election of members of the supervisory board, the publication shall designate the statutory provisions governing the composition of the supervisory board and state whether or not the shareholders' meeting is bound by nominations. ²If the shareholders' meeting is required to resolve on an amendment of the articles or on an agreement which becomes effective only with the consent of the shareholders' meeting, the text of the proposed amendment of the articles or the essential contents of the agreement shall be published.

- (3) ¹With respect to each item on the agenda that is to be decided by the shareholders' meeting, the management board and the supervisory board, but in the case of the election of members of the supervisory board and auditors, only the supervisory board, shall in the publication make a proposal for the respective resolutions. ²In case of companies within the sense § 264d of the Commercial Code, the proposal of the supervisory board concerning the selection of the external auditor shall be based on the recommendation of the audit committee. ³Sentence 1 shall not apply if the shareholders' meeting is bound by nominations for the election of members of the supervisory board pursuant to § 6 of the Coal and Steel Co-determination Act, or if the subject matter of the resolution has been put on the agenda upon request by a minority. ⁴The proposal for the election of members of the supervisory board or auditors shall state their name, profession and place of residence. ⁵If the supervisory board is to comprise representatives of employees, any resolution of the supervisory board regarding proposals for the election of members of the supervisory board shall require only the majority of the votes of the representatives of the shareholders in the supervisory board; § 8 of the Coal and Steel Co-determination Act shall remain unaffected.
- (4) ¹No resolution may be adopted in respect of items on the agenda that have not been duly published. ²However, no such publication shall be required for the adoption of a resolution on a motion made to call a shareholders' meeting that is made in the meeting, for motions made in respect of items on the agenda, and for deliberations without resolution.

§ 124a Publications on the Company's Internet page

¹In the case of listed companies, the following shall be made available on the company's Internet page immediately after the convocation of the shareholders' meeting:

1. the content of the convocation;
2. an explanation if there is an item on the agenda which shall not be resolved upon;
3. the documents to be made available to the meeting;
4. the total amount of shares and of the voting rights at the point in time of the convocation, including separate information on the total amount with regard to each class of shares;
5. as the case may be, the forms to be used if the voting right is exercised by proxy or by postal vote unless such forms are provided to the shareholders directly.

²A demand of the shareholders within the meaning of § 122 (2) received by the company after the convocation of the meeting shall be made available in the same way immediately after it was received by the company.

§ 125 Communications to Shareholders and Members of the Supervisory Board

- (1) ¹The management board shall, at least 21 days before the meeting, communicate to those credit institutions and shareholders' associations which have exercised voting rights on behalf of shareholders in the preceding shareholders' meeting or which have requested such communication and the notice of the meeting. ²The date of notice shall not be taken into account. ³If the agenda is to be amended pursuant to § 122 (2), such amended agenda shall be communicated in the case of listed companies. ⁴Such communication shall point out that voting right may be exercised by a proxy holder or a shareholders' association. ⁵In case of listed companies details on the membership in other supervisory boards to be established pursuant to statutory provisions must be added to any nomination for the election of supervisory board members; details on their membership in comparable domestic and foreign controlling bodies of enterprises should be added.
- (2) ¹The management board shall provide the same information to shareholders who make such request or are registered as shareholders in the company's share register at the beginning of the 14th day before the meeting. ²The articles may limit transmission to electronic communication.
- (3) Each member of the supervisory board may request that the management board send the same communication to him.
- (4) Each shareholder and each member of the supervisory board may request that the management board advise him in writing of the resolutions adopted at a shareholders' meeting.
- (5) Financial services institutions and enterprises operating under § 53 (1) sentence 1 or § 53b (1) sentence 1 or (7) of the Banking Act are to be treated as credit institutions.

§ 126 Motions by Shareholders

- (1) ¹Motions by shareholders together with the shareholder's name, the grounds and any position taken by the management shall be made available to the persons entitled pursuant to § 125 (1)–(3) under the conditions stated therein if at least 14 days before the meeting the shareholder sends to the address indicated in the notice convening the meeting a motion counter to a proposal of the management board and supervisory board as to an item on the agenda. ²The date of receipt shall not be taken into account. ³In the case of listed companies, access shall be provided via the company's Internet page. ⁴§ 125 (3) shall apply analogously.

(2) ¹A counter-motion and the grounds for this need not be made available, if:

- 1. the management board would by reason of such communication become criminally liable;
- 2. the counter-motion would result in a resolution of the shareholders' meeting which would be illegal or would violate the articles;
- 3. the grounds contain statements which are manifestly false or misleading in material respects or which are libellous;
- 4. a counter-motion of such shareholder based on the same facts has already been communicated with respect to a shareholders' meeting of the company pursuant to § 125;
- 5. the same counter-motion of such shareholder on essentially identical grounds has already been communicated pursuant to § 125 to at least two shareholders' meetings of the company within the past five years and at such shareholders' meetings less than one-twentieth of the share capital represented has voted in favour of such counter-motion;
- 6. the shareholder indicates that he will neither attend nor be represented at the shareholders' meeting; or
- 7. within the past two years at two shareholders' meeting the shareholder has failed to make or cause to be made on his behalf a counter-motion communicated by him.

²The statement of the grounds need not be communicated if it exceeds one hundred words.

(3) If several shareholders make counter-motions for resolution in respect to the same subject matter, the management board may combine such counter-motions and the respective statements of the grounds.

§ 127 Nominations by Shareholders

¹§ 126 shall apply analogously to a nomination by a shareholder for the election of a member of the supervisory board or external auditors. ²Such nomination need not be supported by a statement of the grounds for this. ³The management board also need not communicate such nomination if it fails to contain the particulars required by § 124 (3) sentence 3 and § 125 (1) sentence 5.

§ 127a Shareholders' Forum

- (1) Shareholders or shareholders' associations may invite other shareholders in the shareholders' forum of the electronic Federal Gazette to act jointly or by proxy for the purpose of filing a motion or request in accordance with the provisions of this Act or for the purpose of exercising their voting rights at a shareholders' meeting.
- (2) Such invitation shall contain the following information:
 - 1. the shareholder's name and address, or the name and address of the shareholders' association
 - 2. the company name
 - 3. the motion, request, or proposal for the exercise of voting rights concerning an item on the agenda
 - 4. the date of the shareholders' meeting concerned.
- (3) The invitation may refer to a statement of reasons on the internet page of the person making the invitation, as well as that person's electronic address.
- (4) In the electronic Federal Gazette the company may refer to its internet page where comments on the invitation can be found.
- (5) The Federal Ministry of Justice is authorised to prescribe by regulation the presentation of the shareholders' forum as well as further details concerning the invitation, the references mentioned in paragraphs (3) and (4), fees, cancellation periods, the right of cancellation, cases of abuse and the right of inspection.

§ 128 Transmission of Communications

- (1) ¹A credit institution that has custody of bearer shares on behalf of shareholders of the company at the beginning of the 21st day the meeting or that is entered in the share register for shares that it does not own shall promptly transmit to such shareholders any communications received pursuant to § 125 (1). ²The company's articles may limit transmission to electronic communication; in such case the credit institution shall not be obliged otherwise for other reasons.
- (2) The credit institution's liability for any damages resulting from a violation of (1) may neither be waived nor limited in advance.

(3) ¹The Federal Ministry of Justice shall be authorised in agreement with the Federal Ministry of Economics and Technology and the Federal Ministry of Finance to prescribe by regulation that the company shall reimburse the credit institutions for:

- 1. the communication of the information according to § 67 (4); and
- 2. copying communications and transmitting them to shareholders.

²A lump-sum amount may be set to cover the expenses. ³The regulation does not require the approval of the Federal Council.

(4) § 125 (5) shall apply analogously.

Subsection Three. Minutes of the Meeting, Right to Information

§ 129 Bylaws of Shareholders' Meeting, List of Participants

(1) ¹The shareholders' meeting may resolve by a three quarters majority of the share capital represented at the meeting to establish bylaws for the shareholders' meeting with rules for the preparation and conduct of the shareholders' meeting. ²At the shareholders' meeting a list of shareholders present or represented and of the representatives of shareholders shall be prepared stating their name and place of residence, in the case of par shares, the amount, in the case of non-par shares the number, and the class of shares represented by each person.

(2) ¹If proxies to exercise voting rights have been granted to a credit institution or a person designated in § 135 (8) and if the holder of the proxy shall exercise voting rights on behalf of an undisclosed principal, the amount and class of the shares for which the proxies were granted shall be specified separately in the list. ²The names of the shareholders who have granted the proxies need not be mentioned.

(3) ¹A person who has been authorised by a shareholder to exercise voting rights in his own name in respect of shares that are not held by him, shall specify the amount and class of such shares separately for inclusion in the list. ²The foregoing shall apply also in respect of registered shares for which such authorised person is registered in the share register as shareholder.

(4) ¹The list shall be made available for inspection by all participants prior to the first vote. ²Each shareholder shall, upon request, be granted access to the list for review until up to two years after the shareholders' meeting.

(5) § 125 (5) shall apply analogously.

§ 130 Minutes

- (1) ¹Each resolution of the shareholders' meeting shall be recorded in minutes of the proceedings, which shall be in the form of a notarial deed. ²The same shall apply to any request by a minority pursuant to § 120 (1) sentence 2, § 137. ³If the shares are not admitted to trade on an exchange, the minutes signed by the chairman of the supervisory board will suffice provided no resolutions are passed where the law requires three-quarters are larger majorities.
- (2) ¹The minutes shall state the place and date of the meeting, the name of the notary, the form and result of the voting and any determinations of the chairman regarding resolutions. ²In case of listed companies, the determinations regarding resolutions shall also include for each resolution:
- 1. the number of shares for which valid votes have been cast
 - 2. the proportion of the nominal capital represented by the valid votes
 - 3. the number of votes cast for a resolution, the votes against such resolution and any abstentions.
- ³Contrary to sentence 2, the chairman of the meeting may limit the determinations regarding resolutions for each resolution on stating that the necessary majority has been reached if no shareholder requests full determination pursuant to sentence 2.
- (3) The list of participants and the documents regarding notice of the meeting shall be appended to the minutes. The documents regarding notice of the meeting need not be appended if their contents are recorded in the minutes.
- (4) ¹The minutes shall be signed by a notary. ²The presence of witnesses shall not be required.
- (5) The management board shall, promptly upon adjournment of the meeting, submit an officially certified copy of the minutes and the appendices, and in the case of (1) sentence 3 signed by the chairperson of the supervisory board, to the commercial register.
- (6) Listed companies shall, within seven days following the meeting, publish the determined results of the voting including the details pursuant to (2) sentence 2 on their Internet page.
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§ 131 Right of Shareholders to Information

- (1) ¹Each shareholder shall upon request be provided with information at the shareholders' meeting by the management board regarding the company's affairs, to the extent that such information is necessary to permit a proper evaluation of the relevant item on the agenda. ²The duty to provide information shall also extend to the company's legal and business relations with any affiliated enterprise. ³If a company makes use of the simplified procedure pursuant to § 266 (1) sentence 3, § 276 or § 288 of the Commercial Code, each shareholder may request that the annual financial statements be presented to him at the shareholders' meeting on such annual financial statements in the form which would have been used if such provisions on simplified procedure were not applied. ⁴A parent enterprise's (§ 290 (1) and (2) of the Commercial Code) management board's duty to inform in the shareholders' meeting that considers the consolidated financial statement and consolidated management report shall extend to the outlook of the group and the enterprises included in the consolidated financial statement.
- (2) ¹The information provided shall comply with the principles of conscientious and accurate accounting. ²The articles or the rules of procedure pursuant to § 129 may authorise the chairperson of the meeting to limit the number of questions and speaking time of shareholders as appropriate and to lay down general rules thereon.
- (3) ¹The management board may refuse to provide information:
- 1. to the extent that providing such information is, according to sound business judgment, likely to cause material damage to the company or an affiliated enterprise
 - 2. to the extent that such information relates to tax valuations or the amount of certain taxes
 - 3. with regard to the difference between the value at which items are shown in the annual balance sheet and the higher market value of such items, unless the shareholders' meeting is to approve the annual financial statements
 - 4. with regard to the methods of classification and valuation, if disclosure of such methods in the notes suffices to provide a clear view of the actual condition of the company's assets, financial position and profitability within the meaning of § 264 (2) of the Commercial Code; the foregoing shall not apply if the shareholders' meeting is to approve the annual financial statements
 - 5. if provision thereof would render the management board criminally liable

- 6. if in the case of a credit institution or financial services institution information about the applied balance sheet and valuation methods or calculations made in the annual financial statements, the management report, the consolidated annual financial statement or the group's management report need not be given
- 7. if the information is continuously available on the company's internet page seven or more days prior to the shareholders' meeting as well as during the meeting.

²The provision of information may not be denied for other reasons.

- (4) ¹If information has been provided outside a shareholders' meeting to a shareholder by reason of his status as a shareholder, such information shall upon request be provided to any other shareholder at the shareholders' meeting, even if such information is not necessary to permit a proper evaluation of an item on the agenda. ²The management board may not refuse to provide such information on the grounds of (3) sentence 1 Nos. 1 to 4. ³Sentences 1 and 2 shall not apply if a subsidiary (§ 290 (1), (2) of the Commercial Code), a cooperative enterprise (§ 310 (1) of the Commercial Code) or an affiliate (§ 311 (1) of the Commercial Code) provides the information to a parent company (§ 290 (1), (2) of the Commercial Code) for the purpose of inclusion in the consolidated annual financial statement of the parent company and the information is required for this purpose.
- (5) A shareholder who has been denied information may request that his question and the reason for which the information was denied be recorded in the minutes of the meeting.

§ 132 Judicial Decision on the Right to Information

- (1) The regional court of the district of the company's domicile shall have exclusive jurisdiction to decide upon motion whether or not the management board is required to provide information.
- (2) ¹Each shareholder who has been denied information requested and, if a resolution has been adopted on an item on the agenda for which information was requested, each shareholder who was present at the shareholders' meeting and who has recorded his objection in the minutes at the shareholders' meeting, shall have standing to make such motion. ²Such motion may be made within two weeks from the date of the shareholders' meeting in which the information was refused.
- (3) ¹§ 99 (1), (3) sentences 1, 2 and 4 to 6 as well as (5) sentences 1 and 3 shall apply accordingly. ²An appeal may be made against the decision only if the district court has granted leave to appeal in its decision. ³§ 70 (2) of the Act on Court Procedure in Family Matters and Non-litigious Matters shall apply accordingly.

- (4) ¹If the motion is granted, the information shall be provided even outside a shareholders' meeting. ²Such decision may be enforced in accordance with the provisions of the Code of Civil Procedure.
- (5) ¹The costs of the proceedings shall be governed by the Act on Court Costs. ²In proceedings before the court of first instance, twice the full fee shall be assessed. ³For appeal proceedings, the same fee shall be charged; the foregoing shall also apply if the appeal is successful. ⁴If the motion or the appeal is withdrawn before a decision is rendered or a settlement through the medium of the court has been made, the fees shall be reduced by one half. ⁵The court shall determine the value of the subject matter of the proceedings. ⁶Such value shall be determined in accordance with § 30 (2) of the Act on Court Costs, provided that such value shall as a rule be 5,000 euros. ⁷The court concerned with the proceedings shall determine at its reasonable discretion which party is to bear the costs of proceedings.

Subsection Four. Voting Rights

§ 133 Principle of Simple Majority of Votes

- (1) Resolutions of the shareholders' meeting shall require a majority of the votes cast (simple majority) unless the law or the articles provide for a larger majority or additional requirements.
- (2) The articles may provide for different rules in respect of elections.

§ 134 Voting Rights.

- (1) ¹Voting rights shall be exercised in proportion to the par value of shares. ²In case of a company not listed at a stock exchange, the articles may limit voting rights with respect to shareholders holding more than one share by setting a maximum par value or a sliding scale. ³The articles may also provide that shares held by any other person on behalf of a shareholder shall be deemed to be shares held by such shareholder. ⁴If a shareholder constitutes a business enterprise, the articles may further provide that those shares which are held by an enterprise which is controlled or controlling or affiliated in a group or which are held by a third party on behalf of any such enterprises, shall also be deemed to be shares of such shareholder. ⁵It may not be provided that any such limitation apply to specific shareholders only. ⁶Any limitation shall not be taken into account in the computation of a capital majority required by law or the articles.

- (2) ¹Voting rights shall arise as from the date on which contributions have been made in full. ²If the value of a contribution in kind does not correspond to the value stated in § 36a (2) sentence 3, this does not conflict the arising of the voting right; this does not apply if the difference in value is apparent. ²The articles may provide, however, that voting rights shall arise as from the date on which the minimum contribution provided by law, or a higher minimum contribution provided in the articles, has been paid. ⁵If the articles so provide, payment of the minimum contribution shall give rise to one vote, and, if payments exceed the minimum contribution, the voting rights shall be determined in accordance with the amounts of contributions paid. ⁵If the articles do not provide that voting rights arise prior to contributions having been paid in full and if contributions have not been paid in full in respect of any share, the voting rights shall be determined in relation to the amounts paid; in such event payment of the minimum contribution shall give rise to one vote. ⁶In such cases, fractions of votes shall be taken into account only to the extent they result in full votes for the shareholder entitled to vote. ⁷The articles may not make provisions pursuant to this that apply only to specific shareholders or to specific classes of shares.
- (3) ¹Voting rights may be exercised by a proxy holder. ²If the shareholder authorises more than one person, the company may reject on or more of such persons. ³The granting of proxy, its revocation and proof towards the company shall be made in written form and duly signed, unless the articles or the convocation notice based on an authorisation under the articles provides otherwise or, in the case of listed companies, facilitation is provided. ⁴The listed company at least has to offer to transmit such proof by electronic communication. ⁵If proxy holders are authorised by the company, the authorisations are to be kept by the company for review for three years; § 135 (5) shall apply analogously.
- (4) The method of exercising the voting rights shall be determined by the articles.

§ 135 Exercise of Voting Rights by Credit Institutions and Professional Agents

- (1) ¹A credit institution may only exercise or cause to be exercised, voting rights arising under bearer shares that it does not hold if it has been authorised to exercise such voting rights by proxy. ²A proxy may only be issued to a specified credit institution and shall be kept by such credit institution for review. ³The form of proxy shall be completed in full at the time the proxy is issued and may only contain statements related to the exercise of voting rights. ⁴If the shareholder does not give express instructions, a general proxy may only provide for the credit institution's entitlement to exercise the voting right

- 1. according to own proposals for voting ((2) and (3)) or
- 2. according to the proposals of the management board or the supervisory board or, in case such proposals deviate from each other, the proposals of the supervisory board (4).

⁵If the credit institution offers the exercise of the voting right pursuant to sentence 4 No. 1 or No. 2, it shall to a reasonable extent and until revoked also offer to provide the documents necessary for the exercise of the voting right to a shareholders' association or another representative to be chosen by the shareholder. ⁶Annually, the credit institution must clearly stress to the shareholder the possibility of revocation and alternative representation. ⁷The issue of instructions on individual items on the agenda, the issuance and revocation of a general proxy pursuant to sentence 4 and of an order pursuant to sentence 5 including any amendment shall be facilitated for the shareholder by using a form or online form.

- (2) ¹A credit institution which wishes to exercise the voting right on the basis of a proxy pursuant to (1) sentence 4 No. 1 shall provide the shareholder in time with its proposals for the execution of the voting right on the individual items of the agenda. ²With respect to these proposals, the credit institution shall bear in mind the shareholder's interests and shall ensure, at an organisational level, that the interests of its own operations do not interfere; it shall appoint a member of the management who shall supervise the observance of these duties as well as the due execution of the voting right and its documentation. ³Together with its proposals, the credit institution shall point out that it will exercise the voting right in accordance with its own interests, if the shareholder does not issue instructions to the contrary in time. ⁴If a member of the management board or an employee of the credit institution is a member of the supervisory board of the company or if a member of the management board or an employee of the company is a member of the supervisory board of the credit institution, the credit institution shall point out this circumstance. ⁵The same shall apply if the credit institution holds a stake in the company which must be notified according to § 21 of the Securities Trade Act, or if it belongs to a consortium that has taken up within the last five years securities issued by the company.

- (3) ¹If the shareholder has not given the bank instructions on the exercise of voting rights, the bank shall, in case of (1) sentence 4 No. 1, be required to exercise such voting rights in accordance with its own proposals, unless the bank may assume in view of the circumstances prevailing that the shareholder would, if he had knowledge of the facts, approve a different exercise of the voting rights. ²If the bank in exercising voting rights has not complied with the shareholders' instructions or, in case the shareholder has not given instructions, the bank has not complied with its own proposal, the bank shall inform the shareholder thereof and state the reasons for this. ³A bank may exercise voting rights at its own shareholders' meeting by virtue of such proxy only to the extent that a shareholder has given express instructions in respect of the various items on the agenda. ⁴The same shall apply in meetings of a company in which it holds a direct or indirect stake of more than 20 per cent of the nominal capital.
- (4) ¹A credit institution that wants to exercise the voting right in the shareholders' meeting based on a proxy pursuant to (1) sentence 4 No. 2, shall make available the management board's and the supervisory board's proposals to the shareholders, unless this is not done another way. ²(2) sentence 3 as well as (3) sentence 1 to 3 shall apply accordingly.
- (5) ¹If the proxy permits it, the credit institution may grant delegated authority to persons who are not employees of the credit institution. ²If the proxy does not provide otherwise, the credit institution exercises the voting rights on behalf of an undisclosed principal. ³If postal votes are permitted at the company, the authorised credit institution may use postal votes. ⁴In the case of listed companies, the presentation of a certificate pursuant to § 123 (3) shall suffice to prove the credit institution's right to vote to the company; for the rest, the requirements stipulated in the articles with regard to the exercise of voting rights shall be complied with.
- (6) ¹A credit institution may exercise voting rights arising under registered shares which it does not hold, but with respect to which the credit institution is registered in the share register as shareholder, only pursuant to a written authorisation. ²(1) to (5) shall apply accordingly to such authorisation or proxy.
- (7) The validity of votes cast shall not be impaired by a violation of (1) sentence 2 to 7 and (2) to (5).
- (8) (1) to (7) shall apply analogously for shareholders' associations and for persons who professionally offer shareholders their services in exercising voting rights at shareholders' meetings; the foregoing shall not apply if the person exercising the voting right is the legal representative or spouse of the shareholder or related by blood or marriage or in the fourth degree of kinship.

(9) The liability of a credit institution for damages resulting from a violation of (1) to (6) may neither be waived nor limited in advance.

(10) § 125 (5) shall apply analogously.

§ 136 Exclusion of Voting Rights

(1) ¹No person may exercise voting rights on his own behalf or on behalf of any other person in respect of a resolution concerning ratification of his acts, his discharge from a liability, or enforcement by the company of a claim against him. ²Voting rights arising from shares that may not be exercised by the shareholder himself pursuant to sentence 1 may also not be exercised by any other person.

(2) ¹An agreement whereby a shareholder undertakes to exercise voting rights in accordance with the instructions of the company, the management board or the supervisory board of the company or a controlled enterprise shall be null and void. ²An agreement whereby a shareholder undertakes to vote for the respective proposals of the management board or supervisory board of the company shall likewise be null and void.

§ 137 Voting on Nomination Made by Shareholders

If a shareholder has made a nomination for the election of members of the supervisory board pursuant to § 127 and moves at the shareholders' meeting for the election of the person nominated by him, such motions shall be resolved prior to acting on the proposal of the supervisory board, provided that a minority of shareholders whose holding in aggregate equals or exceeds one-tenth of the share capital represented at the meeting so requests.

Subsection Five. Separate Resolution

§ 138 Separate Meeting; Separate Voting

¹Where this Act or the articles provide for separate resolutions of certain shareholders, such resolutions shall be adopted either at a separate meeting of such shareholders or by a separate vote, unless the law provides otherwise. ²The provisions governing shareholders' meetings shall apply analogously to the calling of a separate meeting, attendance of such meeting, and the right to information; the provisions governing resolutions of shareholders' meetings shall apply analogously to such separate resolutions. ³If shareholders who are entitled to take part in the voting on a separate resolution request a separate meeting or announcement of a proposal to be voted on separately, it shall suffice if the shares with which they may take part in the voting on the separate resolution in aggregate equal or exceed one-tenth of the shares entitled to vote on such separate resolutions.

Subsection Six. Non-Voting Preferred Shares

§ 139 Nature

- (1) Shares that carry the benefit of a cumulative preference right with respect to the distribution of profits may be issued without voting rights (non-voting preferred shares).
 - (2) Non-voting preferred shares may be issued only up to an amount corresponding to half of the share capital.
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§ 140 Rights of Preferred Shareholders

- (1) Except for the right to vote, non-voting preferred shares shall convey the same rights as those enjoyed by the other shareholders.
 - (2) ¹If the preferred dividend is not paid or not paid in full in any given year and if the amounts in arrear are not paid in the next following year, together with the full preferred dividend for such year, the holders of preferred shares shall have voting rights until the amounts in arrear have been paid. ²In such case, the preferred shares shall also be taken into account in computing any capital majority required by law or the articles.
 - (3) The fact that a preferred dividend is not paid or not paid in full in any given year shall not give rise to a claim for any preferred dividend in arrear which is contingent upon later resolutions on distribution of profits, unless the articles provide otherwise.
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§ 141 Cancellation or Restriction of Preference Rights

- (1) Any resolution cancelling or restricting a preference right shall require the consent of the holders of preferred shares in order to be effective.
- (2) ¹Any resolution to issue preferred shares that are to enjoy priority over or the same rights as non-voting preferred shares in respect of the distribution of profits or assets, shall also require the consent of the holders of preferred shares. ²Such consent shall not be required if such issue was expressly reserved when the preference right was granted or, if the voting rights were later excluded, when such exclusion was made, provided, in any such case, that the subscription rights of the holders of preferred shares are not excluded.

- (3) ¹The holders of preferred shares shall, at a separate meeting, resolve on whether or not to grant such consent by separate resolution. ²Such resolution shall require a majority of not less than three-fourths of the votes cast. ³The articles may neither provide for any other majority nor prescribe any additional requirements. ⁴If the resolution to issue preferred shares which are to enjoy priority over or the same rights as non-voting preferred shares in respect of the distribution of profits or assets excludes the subscription rights of the holders of preferred shares to subscribe to such shares in whole or in part, § 186 (3) to (5) shall apply analogously to such resolution.
- (4) The shares shall carry voting rights if the preference is cancelled.

Subsection Seven. Special Audit; Damage Claims

§ 142 Appointment of Special Auditors

- (1) ¹The shareholders' meeting may, by simple majority, appoint auditors (special auditors) for the examination of matters relating to the formation of the company or the management of the company's business, and also, in particular, in connection with capital increases or capital reductions. ²No member of the management board or the supervisory board may vote on any such resolution either on his own behalf or on behalf of another person, if the audit concerns matters related to ratification of the acts of a member of the management board or the supervisory board or to the initiation of litigation proceedings between the company and a member of the management board or the supervisory board. ³If a member of the management board or the supervisory board shall not be entitled to vote pursuant to sentence 2, such person's voting rights may not be exercised by another person on his behalf.
- (2) ¹If the shareholders' meeting rejects a motion to appoint special auditors to audit any matter relating to the formation of the company or the management of the company's business affairs within the last five years, upon petition by shareholders whose aggregate holdings at the time of filing the petition equal or exceed one per cent of the share capital or amount to at least 100,000 euro, the court shall appoint special auditors, provided that facts exist which give reason to suspect that improprieties or gross breaches of the law or the articles have occurred in connection with such matter; the foregoing shall also apply to matters within the last ten years for companies that were listed on a stock exchange at the point in time the matter occurred. ²The petitioners must furnish evidence that they have been the holders of the shares for at least three months prior to the date of the shareholders' meeting and will continue to hold the shares until a decision on the petition is rendered. ³§ 149 shall apply accordingly to agreements that are concluded in order to avoid such special audit.

- (3) (1) and (2) shall not apply to matters which may be the subject of special audit pursuant to § 258.
- (4) ¹If the shareholders' meeting has appointed special auditors, upon petition by shareholders whose aggregate holdings at the time of filing the petition equal or exceed one per cent of the share capital or amount to at least 100,000 euros, the court shall appoint another special auditor if this appears necessary for reasons relating to the individual special auditor appointed, namely if such auditor lacks the expertise required for this subject matter of the special audit or if concerns as to his impartiality or doubts as to his reliability exist. ²Such motion shall be made within a period of two weeks from the date of the shareholders' meeting.
- (5) ¹The court shall hear, in addition to the parties concerned, the supervisory board and, in the case of (4), the special auditor appointed by the shareholders' meeting. ²An appeal may be made against such decision. ³The regional court of the company's registered seat shall decide on any petitions pursuant to paragraphs (2) and (4).
- (6) ¹Special auditors appointed by the court shall be entitled to reimbursement of reasonable cash expenses and remuneration for their services. ²The court shall set such expenses and remuneration. ³An appeal may be made against such decision; appeals on points of law shall be precluded. ⁴A decision that has become final and may not be appealed may be enforced in accordance with the provisions of the Code of Civil Procedure.
- (7) If the company has issued securities within the meaning of § 2(1) sentence 1 of the Securities Trading Act that are admitted to trading on a German stock exchange in the regulated market, then in the case of paragraph (1) sentence 1, the management board or, in the case of paragraph (2) sentence 1, the court shall inform the Federal Financial Supervisory Authority of the appointment of a special auditor and his audit report; furthermore, the court shall inform the Federal Financial Supervisory Authority of the receipt of a petition for the appointment of a special auditor.
- (8) The judicial proceedings pursuant to paragraphs (2) through (6) shall be governed by the provisions of the Act on Court Procedure in Family Matters and Non-litigious Matters unless this Act provides otherwise.

§ 143 Selection of Special Auditors

- (1) Unless the subject matter of the special audit requires additional expertise, special auditors shall be:
- 1. persons who are sufficiently trained and experienced in accounting;
 - 2. auditing firms at least one of whose legal representatives is sufficiently trained and experienced in accounting.

- (2) ¹No special auditor may be appointed who does not qualify to serve, or would not have qualified to serve at the time when the matter subject to the audit occurred, as external auditor pursuant to § 319 (2), (3), § 319a (1), § 319b of the Commercial Code. ²An auditing firm may not serve as special auditor if it does not qualify to serve, or would not have qualified to serve at the time when the matter subject to the audit occurred, as external auditor pursuant to § 319 (2), (3), § 319a (1), § 319b of the Commercial Code.
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§ 144 Responsibility of Special Auditors

§ 323 of the Commercial Code concerning the responsibility of external auditors shall apply analogously.

§ 145 Rights of Special Auditors; Audit Report

- (1) The management board shall permit the special auditors to audit the company's books, records, and its assets, in particular cash, securities and merchandise.
- (2) The special auditors may require from the members of the management board and the supervisory board all information and evidence required for a diligent audit of the relevant matters.
- (3) The special auditors shall have the rights pursuant to (2) also with respect to any member of the group and any controlled or controlling enterprises.
- (4) Upon petition of the management board the court shall permit that certain facts be omitted in the report provided that overriding interests of the company make their omission necessary and the disclosure of such facts is not required in order to prove the occurrence of improprieties or gross breaches pursuant to § 142 (2).
- (5) ¹The regional court of the company's registered seat shall decide on petitions pursuant to paragraph (4). ²§ 142 (5) sentence 2 and (8) shall apply accordingly.
- (6) ¹The special auditors shall render a written report on the result of the audit. ²The audit report shall include facts whose disclosure is apt to cause material damage to the company or an affiliated enterprise, provided that if knowledge of such facts required for the shareholders' meeting to form an opinion as to the matter subject to audit. ³The special auditors shall sign the report and promptly submit such report to the management board and the commercial register of the company's domicile. ⁴The management board upon request shall provide a copy of the audit report to each shareholder. ⁵The management board shall present the report to the supervisory board and, when the next shareholders' meeting is called, announce that such report will be an item on the agenda.
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§ 146 Costs

¹If the court appoints special auditors, the company shall bear the court costs and the expenses of the audit. ²If the petitioner has achieved the appointment of the special auditors by making false statements either intentionally or by gross negligence, he shall be required to reimburse the company for such costs.

§ 147 Assertion of Damage Claims

(1) ¹Claims of the company for damages against persons liable pursuant to §§ 46 to 48 and § 53 that have arisen in connection with the formation of the company, against members of the management board or supervisory board with respect to the management of the company or pursuant to § 117, shall be asserted if the shareholders' meeting so resolves by a simple majority of votes. ²Any damage claims must be brought within six months from the date of the shareholders' meeting.

(2) ¹The shareholders' meeting may appoint special representatives to assert a claim for damages. ²The court (§ 14) shall, upon petition by shareholders whose aggregate holdings amount to at least one-tenth of the share capital or one million Euro, appoint persons other than those appointed to represent the company pursuant to § 78, § 112 or sentence 1 as the company's representatives to assert the claim for damages if, in the opinion of the court, such appointment is appropriate for the proper assertion of such claim. ³If the court grants the motion, the company shall bear the court costs. ⁴An appeal may be made against such decision. ⁵The court-appointed representatives may request from the company reimbursement of reasonable cash expenses and remuneration for their services. ⁶The expenses and the remuneration shall be set by the court. ⁷An appeal may be made against such decision; appeals on point of law shall be precluded. ⁸A decision that has become final and may not be appealed may be enforced in accordance with the provisions of the Code of Civil Procedure.

§ 148 Court Procedure for Petitions Seeking Leave to File an Action for Damages

(1) ¹Shareholders whose aggregate holdings at the time of filing the petition equal or exceed one per cent of the share capital or amount to at least 100,000 euros, may file a petition for the right to assert the claims of the company for damages mentioned in § 147(1) sentence 1 in their own name. ²The court shall give them leave to file such action for damages if

- 1. the shareholders furnish evidence that they or, in the case of universal succession, their predecessors in title have acquired the shares before learning about the alleged breaches of duty or alleged damage from a publication;

- 2. the shareholders demonstrate that they in vain filed a petition to the company requesting to institute the necessary legal proceedings itself within an appropriate period of time;
 - 3. facts exist which give reason to suspect that the company has suffered a loss as a result of improprieties or gross breaches of the law or articles; and
 - 4. no overriding interests of the company exist which would prevent the assertion of such damage claim.
- (2) ¹The regional court of the company's registered seat shall decide on the petition seeking leave to file such action. ²If the regional court maintains a chamber for commercial matters, such chamber shall have jurisdiction in lieu of the chamber for civil matters. ³The state government may by regulation transfer jurisdiction for several regional courts to one regional court if such transfer is required to ensure uniformity of decisions. ⁴The state government may transfer such power to the state ministry of justice. ⁵The statute of limitation for the claim at issue is stayed by the filing of such petition until the petition has been dismissed by a final and binding decision or the period allowed for bringing an action has expired. ⁶Before rendering its decision, the court shall provide the other party with an opportunity to comment on the matter. ⁷Such decision may be appealed immediately. ⁸Appeals on points of law are not permitted. ⁹The company shall be made a party in the judicial proceedings deciding on the petition pursuant to paragraph (1) as well as in such action for damages.
- (3) ¹The company may assert its claims for damages itself at any time; as soon as the company files such action, all pending proceedings instituted by the shareholders concerning that particular damage claim become inadmissible. ²The company may decide to take over a pending action in which its own damage claims are being asserted by another party in its current state at the time when the action is taken over. ³In the event of sentences 1 and 2, all former petitioners or claimants shall be joined as parties.
- (4) ¹If the petition is granted, the action may only be brought before the court with jurisdiction pursuant to paragraph (2) within three months from the date on which the decision has become final and binding, provided that the shareholders have one more time to no avail requested the company to institute the necessary legal proceedings itself within an appropriate period of time. ²The action shall be brought against the persons specified in § 147(1) sentence 1 with the aim of obtaining compensation for the company. ³Interventions by shareholders are not permitted after the petition has been granted. ⁴If more than one such action is brought, they shall be consolidated in order to be heard and decided together.

- (5) ¹Such judgement shall be binding on the company and all other shareholders even if the action is dismissed in the judgement. ²The same shall apply to a settlement to be made pursuant § 149; however, such settlement shall only be effective in favour of or against the company after the permission to file an action has been granted.
- (6) ¹The person filing the petition shall bear the costs of the judicial proceedings if and to the extent that the petition is dismissed. ²If the petition is dismissed for reasons of opposing interests of the company, of which the company could have informed the petitioner prior to filing the petition but failed to do so, then the company shall reimburse the petitioner for the costs. ³In all other respects, a decision on the allocation on costs will be rendered in the final judgement. ⁴If the company files an action itself or takes over a pending action brought by shareholders, it shall bear all costs incurred by the petitioner until such time and may, except for the three-year waiting period, withdraw its action on the conditions set forth in § 93 (4) sentences 3 and 4 only. ⁵If the action is dismissed in whole or in part, the company shall reimburse the claimant for the costs to be borne by them unless the claimant obtained the court's permission to file an action by making false statements intentionally or by gross negligence. ⁶Shareholders acting jointly as petitioners or party shall only be reimbursed for the costs of one attorney unless the engagement of another attorney was necessary to prosecute the action.
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§ 149 Notices on Actions for Damages

- (1) As soon as the decision granting judicial leave to file an action for damages in accordance with § 148 has become final and binding, the company whose shares are listed on a stock exchange shall immediately publish notice of the petition as well as the termination of the proceedings in the company's journals.
- (2) ¹The notice of termination of the proceedings must contain the kind of settlement reached, the full wording of all agreements and ancillary restraints related thereto, as well as the names of the parties involved. ²Payments made by the company as well as payments by third parties which are attributable to the company shall be clearly pointed out and described separately. ³All payment obligations become effective only upon complete publication. ⁴The validity of any legal action terminating the proceedings is not affected by the publication of the notice. ⁵Payments may be reclaimed if they were made although the payment obligations were unenforceable.
- (3) The foregoing provisions apply analogously to agreements entered into for the purpose of avoiding litigation.
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Division Five. Statement of Accounts. Appropriation of Profits
Section One. Annual Accounts and Annual Report Declaration of Conformity

§ 150 Legal Reserve; Capital Reserve

- (1) A legal reserve shall be created in the balance sheet of the annual financial statements to be prepared pursuant to §§ 242 and 264 of the Commercial Code.
- (2) The amount to be transferred to such reserve shall be one-twentieth of annual net profit, after deducting any loss carried forward from the previous year, until the legal reserve and the capital reserves pursuant to § 272 (2) sentences 1 to 3 of the Commercial Code in aggregate amount to one-tenth of the share capital or any higher per centage set by the articles.
- (3) If the legal reserve and the capital reserves pursuant to § 272 (2) sentence 1 to 3 of the Commercial Code in aggregate do not exceed one-tenth of the share capital or any higher per centage set by the articles, such reserves may be used only:
 - 1. to offset an annual net loss to the extent such loss is not covered by profits carried forward from the previous year and cannot be offset by a transfer from other profit reserves;
 - 2. to offset a loss carried forward from the previous year to the extent such loss is not covered by an annual net profit and cannot be offset by a transfer from other profit reserves.
- (4) ¹If the legal reserve and the capital reserves pursuant to § 272 (2) sentence 1 to 3 of the Commercial Code in aggregate exceed one-tenth of the share capital or any higher per centage set by the articles, such excess may be used:
 - 1. to cover an annual net loss to the extent such loss is not covered by profits carried forward from the previous year;
 - 2. to cover a loss carried forward from the previous year to the extent such loss is not covered by annual net profit;
 - 3. for an increase of the share capital from the corporation's reserves under §§ 207 to 220.

²Such excess may not be used pursuant to Nos. 1 and 2 if at the same time transfers are made from profit reserves for the purpose of payment of dividends.

§§ 150a, 151 [repealed]

- § 150a [repealed]
 - § 151 [repealed]
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§ 150a [repealed]

§ 151 [repealed]

§ 152 Provisions regarding the Balance Sheet

- (1) ¹The share capital shall be shown in the balance sheet as subscribed capital. ²The portion of the share capital allocated to each class of shares shall be stated separately. ³Conditional capital shall be indicated at par value. ⁴If shares with multiple voting rights exist, the item subscribed capital shall indicate the aggregate number of votes of shares with multiple voting rights and other shares.
- (2) The item “capital reserve” shall specify in the balance sheet or in the notes
- 1. the amount that was transferred to such reserve during the fiscal year;
 - 2. the amount which was withdrawn during the fiscal year
- (3) The individual items for profit reserves shall specify in the balance sheet or in the notes:
- 1. the amounts which the shareholders’ meeting has transferred to such reserves from the distributable profits of the previous year;
 - 2. the amounts which are transferred to such reserves from the annual net profit for the fiscal year;
 - 3. the amounts which were withdrawn for the fiscal year.
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§ 153 [repealed]

§ 154 [repealed]

§ 155 [repealed]

§ 156 [repealed]

§ 157 [repealed]

§ 158 Provisions regarding the Profit and Loss Statement

- (1) ¹The profit and loss statement shall after the item Annual net profit/ annual net loss in consecutive numeration include the following items:
- 1. profit carried forward/loss carried forward from the previous year;
 - 2. withdrawals from the capital reserve;
 - 3. withdrawals from profit reserves
 - a) from the legal reserve
 - b) from the reserves for participations in a controlling enterprise or parent company
 - c) from reserves pursuant to the articles
 - d) from other profit reserves
 - 4. transfer to profit reserves
 - a) to the legal reserve
 - b) to the reserves for participations in a controlling enterprise or parent company
 - c) to reserve pursuant to the articles
 - d) to other profit reserves
 - 5. distributable profits/accumulated loss.

²The items in sentence 1 may also be stated in the notes.

- (2) ¹The compensation to be paid under a profit transfer agreement or agreement to transfer a portion of profits to outside shareholders shall be deducted from the income out of such agreement; if such compensation exceeds the income, the amount in excess shall be shown under expenses from losses. ²Other amounts may not be deducted.
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§ 159 [repealed]

§ 160 Provisions regarding the Notes

(1) The notes shall also include:

- 1. the shares previously held and acquired by a shareholder on behalf of the company or a controlled enterprise or subsidiary or by a controlled enterprise or subsidiary, as founder or subscriber or by exercise of a conversion or subscription right granted in connection with a conditional capital increase; if such shares were sold during the fiscal year, the sale shall also be reported stating the amount of the proceeds and the use thereof;
- 2. the own shares which the company or a controlled enterprise or subsidiary or another person on behalf of the company or a controlled enterprise or a subsidiary has acquired or taken as a pledge; the number of such shares and the portion of the share capital allocated to them as well as the portion of share capital represented by such shares, and in the case of shares acquired the date of acquisition and reasons for the acquisition shall be stated. If such shares were acquired or sold during the fiscal year, such acquisition or sale shall also be reported stating the number of such shares, the portion of share capital allocated to them, the portion of the share capital represented by such shares, the acquisition or sales price and the use of the proceeds;
- 3. the number and, in case of par-value shares, par value of such shares of each class, to the extent such information may not be derived from the balance sheet; shares which were subscribed during the fiscal year in connection with a conditional capital increase or an authorised issue of capital, shall be stated separately;
- 4. the authorised capital;
- 5. the number of warrant bonds according to § 192 (2) No. 3, convertible and comparable securities stating the rights which they represent;
- 6. participation rights, rights from conditional participation certificates and similar rights stating the nature and number of the respective rights and the rights newly issued during the fiscal year;
- 7. the existence of a cross-shareholding stating the enterprise concerned;
- 8. the existence of a shareholding in the company which has been communicated to it pursuant to § 20 (1) or (4) of this Act or § 21 (1) or (1a) of the Securities Trade Act; in doing so, the published content according to § 20 (6) of this Act or § 26 (1) of the Securities Trade Act shall be stated in the communication.

- (2) Such information shall be omitted to the extent the public interest of the Federal Republic of Germany or one of the states thereof so requires.

§ 161 Corporate Governance Codex Declaration

- (1) ¹The management board and supervisory board of the listed company shall declare annually that the recommendations of the “Government Commission German Corporate Governance Codex” published by the Federal Ministry of Justice in the official part of the electronic Federal Gazette has been and will be complied with or which recommendations have not been or will not be applied and why. ²The same shall apply to the management board and the supervisory board of a company which has exclusively issued other securities than shares for trading on an organised market within the sense of § 2 (5) of the Securities Trading Act and the issued shares of which shall, on the company’s own initiative, only be traded via a multilateral trading system within the sense § 2 (3) sentence 1 No. 8 of the Securities Trading Act.
- (2) The declaration shall be continuously available to the public on the company’s Internet page.

Section Two. Examination of Annual Financial Statements

Subsection One. Audit by External Auditors

§ 162 [repealed]

§ 163 [repealed]

§ 164 [repealed]

§ 165 [repealed]

§ 166 [repealed]

§ 167 [repealed]

§ 168 [repealed]

§ 169 [repealed]

Subsection Two. Examination by the Supervisory Board

§ 170 Submission to the Supervisory Board

- (1) ¹The management board shall promptly submit the annual financial statements and the annual report to the supervisory board upon completion. ²Sentence 1 shall apply accordingly to individual accounts pursuant to § 325 (2a) of the Commercial Code, as well as to the annual financial statements and the group management report of parent companies (§ 290 (1) and (2) of the Commercial Code).
- (2) ¹The management board shall at the same time submit to the supervisory board the proposal for appropriation of distributable profits that is intended to be presented to the shareholders’ meeting. ²The proposal shall, unless circumstances require otherwise, be set out as follows:
 - 1. dividends
 - 2. transfer to profit reserves
 - 3. profit carried forward
 - 4. distributable profits
- (3) ¹Every member of the supervisory board shall be entitled to take cognisance of the documents submitted. ²Such documents shall also be delivered to every member of the supervisory board or, to the extent the supervisory board has made such decision, to the members of a committee.

§ 171 Examination by the Supervisory Board

- (1) ¹The supervisory board shall examine the annual financial statements, the annual report and the proposal for appropriation of distributable profits, in the case of parent companies (section 290 (1), (2) of the Commercial Code) also the consolidated financial statement and consolidated annual report. ²If the financial statements are required to be audited by external auditors, the external auditors shall be present at the supervisory board’s or the audit committee’s deliberations regarding such statements and shall report on material results of their audit, in particular on major weaknesses in the internal control and risk management system with regard to the accounting process. ³The external auditor shall inform on circumstances which might give rise to concerns as to his impartiality and on services he provided in addition to those provided in connection with the audit.

- (2) ¹The supervisory board shall report on the results of its examination in writing to the shareholders' meeting. ²The supervisory board shall in such report state in which manner and to what extent it has examined the management of the company during the fiscal year; in case of listed companies it shall state, in particular, which committees have been set up and how many meetings the supervisory board or such committees have been held. ³If the annual financial statements are required to be audited by an external auditor, the supervisory board shall in addition state its opinion on the result of the audit of the annual financial statements by the external auditor. ⁴The supervisory board shall at the end of its report state whether or not objections are to be raised as a result of the definitive findings of its examination and whether it approves the annual financial statements as prepared by the management board. ⁵In the case of parent companies (section 290 (1), (2) of the Commercial Code), sentences 3 and 4 shall apply analogously to the consolidated financial statement.
- (3) ¹The supervisory board shall submit its report to the management board within one month after receipt of such statements. ²If the report has not been submitted to the management board within such period, the management board shall promptly set an additional period not exceeding one month for the supervisory board. ³If the report has not been submitted to the management board within such further period, the annual financial statements shall be deemed not approved by the supervisory board; in the case of parent companies (section 290 (1), (2) of the Commercial Code), the same shall apply to the consolidated financial statement.
- (4) ¹Paragraphs (1) through (3) shall also apply to the individual accounts pursuant to § 325 (2a) of the Commercial Code. ²The management board may disclose the individual accounts referred to in sentence 1 only after they have been approved by the supervisory board.

Section Three: Approval of the Annual Financial Statements Appropriation of Profits

Subsection One: Approval of the Annual Financial Statements

§ 172 Approval by Management Board and Supervisory Board

¹The annual financial statements shall be deemed to have been approved, upon approval thereof by the supervisory board, unless the management board and the supervisory board resolve that the annual financial statements are to be approved by the shareholders' meeting. ²Such resolution by the management board and supervisory board shall be included in the report of the supervisory board to the shareholders' meeting.

§ 173 Approval by the Shareholders' Meeting

- (1) ¹The annual financial statements shall be approved by the shareholders' meeting if the management board and the supervisory board have resolved that the annual financial statements are to be approved by the shareholders' meeting or if the supervisory board has not approved the annual financial statements. ²If the supervisory board of a parent enterprise (§ 290 (1), (2) of the Commercial Code) does not approve the consolidated financial statements, the shareholders' meeting may decide on the approval.
- (2) ¹The provisions governing the preparation of the annual financial statements shall apply to their approval. ²In connection with the approval of the annual financial statements, the shareholders' meeting may transfer to profit reserves only those amounts that are required to be transferred to such reserves pursuant to law or the articles.
- (3) ¹If the shareholders' meeting amends annual financial statements which have been audited by an external auditor in accordance with statutory requirements, resolutions on the approval of the annual financial statements and the appropriation of profits which have been adopted by the shareholders' meeting prior to the new audit pursuant to § 316 (3) Commercial Code, shall become effective only if, as a result of such new audit, an unqualified auditors' certificate has been given with respect to such amendments. ²Such resolutions shall become null and void if an unqualified auditors' certificate has not been provided with respect to such amendments within two weeks after the passing of such resolutions.

Subsection Two: Appropriation of Profits

§ 174 [Resolution on the Appropriation of Profits]

- (1) ¹The shareholders' meeting shall resolve on the appropriation of distributable profits. ²In such connection the annual financial statements as approved shall be binding on the shareholders' meeting.
- (2) Such resolution shall specify in detail the appropriation of distributable profits, including in particular the following:
 - 1. the amount of distributable profits;
 - 2. the amount to be distributed to shareholders;
 - 3. the amounts to be transferred to profit reserves;
 - 4. any profit carried forward;
 - 5. any additional expense resulting from such resolution.

- (3) Such resolution shall not be deemed to constitute an amendment to the annual financial statements as approved.

Subsection Three. Ordinary Shareholders' Meeting

§ 175 Notice

- (1) ¹The management board shall, promptly upon receipt of the report of the supervisory board, give notice of a shareholders' meeting to receive the approved annual financial statements and the annual report, the individual accounts pursuant to § 325(2a) of the Commercial Code which have been approved by the supervisory board and to resolve the appropriation of distributable profits, in the case of a parent company (Section 290 (1), (2) Commercial Code) also to receive the approved consolidated annual financial statements and the consolidated annual report. ²Such shareholders' meeting shall be held during the first eight months of the fiscal year.
- (2) ¹The annual financial statements, the individual accounts pursuant to § 325(2a) of the Commercial Code which have been approved by the supervisory board, the annual report, the report of the supervisory board and the proposal of the management board regarding the appropriation of distributable profits shall be displayed for inspection by shareholders at the company's offices as from the date of notice of the meeting. ²Each shareholder shall upon request be provided with a copy of such documents. ³In the case of a parent company (Section 290 (1), (2) Commercial Code), sentences 1 and 2 shall also apply to consolidated annual financial statement and the consolidated annual report, and the report of the supervisory board thereon. ⁴The duties in sentences 1 to 3 shall not arise if the documents referred to therein are accessible on the stock corporation's Internet page for the same period of time.
- (3) ¹If the shareholders' meeting is to approve the annual financial statements or the consolidated financial statements, (1) and (2) shall apply analogously to the notice of the shareholders' meeting for the approval of the annual financial statements or the consolidated financial statements and to making available the relevant documents and the provision of copies thereof. ²The deliberations on the approval of the annual financial statements and the appropriation of distributable profits should be combined.
- (4) ¹The management board and the supervisory board shall be bound by the statements regarding the annual financial statements contained in the report of the supervisory board (§§ 172, 173 (1)) as from the date of notice of the shareholders' meeting for receipt of the approved annual financial statements or, if the shareholders' meeting is to approve the annual financial statements, as from the date of the shareholders' meeting for approval of the annual financial statements. ²In the case of a parent company (Section 290 (1), (2) Commercial Code), sentence 1 shall apply to the supervisory board's declaration on the approval of the consolidated financial statement.
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§ 176 Documents to be Presented, Presence of the External Auditor

- (1) ¹The management board shall make available to the shareholders' meeting the documents specified in § 175 (2) and, in the case of listed companies, an explanatory report on the statements pursuant to § 289 (4), § 315 (4) of the Commercial Code. ²At the beginning of the meeting, the management board shall comment on the documents that have been presented by it and the chairman of the supervisory board shall comment on the report of the supervisory board. ³The management board shall in such connection also comment on any annual net loss or any loss that has materially adversely affected the annual result. ⁴Sentence 3 shall not apply to credit institution.
- (2) ¹If the annual financial statements are required to be audited by an external auditor, the external auditor shall be present at the deliberations on the approval of the annual financial statements. ²Sentence 1 shall apply accordingly to the deliberations on the approval of the consolidated financial statements. ³The external auditor shall not be obligated to provide information to any shareholder.

Section Four: Announcement of Annual Financial Statements

§ 177 [repealed]

§ 178 [repealed]

Division Six. Amendment of Articles, Measures to Increase or Reduce the Share Capital

Section One. Amendment of Articles

§ 179 Resolution of Shareholders' Meeting

- (1) ¹Any amendment of the articles shall require a resolution of the shareholders' meeting. ²The shareholders' meeting may confer upon the supervisory board the authority to make amendments that relate solely to the wording of the articles.
 - (2) ¹The resolution of the shareholders' meeting shall require a majority of not less than three fourths of the share capital represented at the passing of the resolution. ²The articles may provide for a different capital majority, however, in the case of an amendment of the purpose of the enterprise, only for a larger capital majority. ³The articles may provide for additional requirements.
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- (3) ¹If the existing relationship of more than one class of shares is to be amended to the disadvantage of any class, the resolution of the shareholders' meeting shall require the consent of the shareholders adversely affected in order to be effective. ²The shareholders adversely affected shall decide on such consent by adopting a separate resolution. ³(2) shall apply to such separate resolution.
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§ 179a Duty to Transfer the Entire Assets of the Company

- (1) ¹A contract by which a company binds itself to transfer the entirety of its assets and whereby the transfer does not fall under the provisions of the Transformation Act requires a resolution of the shareholders' meeting according to § 179 even if it does not involve a change in the company objects. ²The articles may only provide for a larger majority.
- (2) ¹The contract shall be presented for the review of the shareholders in the business premises of the company from the convocation of the shareholders' meeting that is to resolve its approval. ²On request, every shareholder is to be given a copy. ³The duties pursuant to sentences 1 and 2 shall not apply if the agreement is made available on the company's Internet page for the same period of time. ⁴The agreement shall be made available for inspection at the shareholders' meeting. ⁵The management board shall explain it at the beginning of the proceedings. ⁶The agreement shall be appended to the minutes.
- (3) If on the occasion of the transfer of the corporate assets the company is dissolved, then a publicly certified copy of the contract shall be attached to the notification of the dissolution.
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§ 180 Consent of Shareholders Concerned

- (1) Any resolution imposing ancillary obligations on shareholders shall require the consent of all shareholders concerned in order to be effective.
- (2) The foregoing shall apply to any resolution that makes the transfer of registered or interim share certificates subject to the company's consent.
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§ 181 Registration of Amendment of Articles

- (1) ¹The management board shall file the amendment of the articles for registration in the commercial register. ²The full text of the articles shall be appended to such filing; such text shall be provided with the certificate of a notary that the provisions of the articles which have been amended conform to the resolution to amend the articles and that the provisions which have not been amended conform to the full text of the articles last submitted to the commercial register.

- (2) Unless the amendment relates to the matters set out in § 39, a reference to the documents submitted to the court shall suffice for purposes of registration.
- (3) An amendment shall become effective only upon registration thereof in the commercial register of the company's domicile.

Section Two. Measures to Increase the Capital

Subsection One. Capital Increase against Contributions

§ 182 Requirements

- (1) ¹A resolution to increase the share capital against contributions shall require a majority of not less than three fourths of the share capital represented at the passing of the resolution. ²The articles may provide for a different capital majority, however, in the case of the issue of non-voting preferred shares, only for a larger capital majority. ³The articles may provide for additional requirements. ⁴The capital increase may only be carried out by issuance of new shares. ⁵In the case of companies with non-par shares, the number of shares must be increased proportionately to the share capital.
- (2) ¹If there is more than one class of shares, resolutions of the shareholders' meeting shall require the consent of the shareholders of each class in order to be effective. ²Such consent shall require a separate resolution by the shareholders of each class. ³(1) shall apply to such separate resolution.
- (3) If the new shares are to be issued for an amount exceeding the minimum issue price, the minimum price they shall be issued for shall be stipulated in the resolution on the share capital increase.
- (4) ¹The share capital shall not be increased for as long as contributions to share capital are still outstanding and collectible. ²In the case of insurance companies, the articles may provide otherwise. ³A share capital increase shall not be precluded if immaterial amounts of contributions are outstanding.

§ 183 Capital Increase against Contributions in kind; Repayment of Contributions

- (1) ¹In the case of a contribution in kind (§ 27 (1) and (2)), the resolution on the share capital increase shall stipulate the object, the person from whom the company is to acquire such object and the par value or, in case of non-par shares the number, of shares to be granted for the contribution in kind. ²Such resolution may only be adopted if the contribution in kind and the stipulations pursuant to sentence 1 have been explicitly and duly announced.

(2) § 27 (3) and (4) shall apply accordingly.

(3) ¹In the case of a capital increase against Contributions in kind, an audit shall be made by one or more auditors. ²§ 33 (3) to (5), §§ 34, 35 shall apply analogously.

§ 183a Capital Increase against Contributions in kind without Audit

(1) ¹If the requirements pursuant to § 33a are met, an audit of the contribution in kind (§ 183 (3)) may be refrained from. ²If this is the case, the following paragraphs shall apply.

(2) ¹The management board shall announce the date of the resolution on the capital increase as well as the statements pursuant to § 37a (1) and (2) in the company's journals. ²The implementation of the capital increase may not be registered with the commercial register before the expiration of four weeks since the announcement.

(3) ¹If the requirements pursuant to § 33a (2) are met, the local court shall appoint one or more auditors upon application of shareholders who held a total of five per cent of the share capital on the date of the resolution and are still holding a total of five per cent of the share capital on the date of application. ²The application may be filed up until the date of the registration of the implementation of the share capital increase (§ 189). ³The court shall hear the management board before deciding on the application. ⁴Such decision may be appealed against.

(4) § 33 (4) and (5), §§ 34, 35 shall apply accordingly to the further procedure.

§ 184 Filing for Registration of the Resolution

(1) ¹The management board and the chairman of the supervisory board shall file the resolution on the share capital increase for registration in the commercial register. ²Such filing for registration purposes shall state which contributions to existing share capital are still outstanding and why they are not collectible. ²If the capital contribution is not to be audited and if the date of the resolution on the capital increase has been announced in advance (§ 183a (2)), the persons filing for registration only need to assert in the filing for registration that they have not become aware of any circumstances within the meaning of § 37a (2) since the announcement.

(2) The audit report on the Contributions in kind (§ 183 (3)) or the attachments specified in § 37a (3) shall be appended to such filing.

- (3) ¹The court may reject registration if the value of the contribution in kind is not insignificantly lower than the minimum issue price of the shares to be granted for the contribution in kind. ²If the contribution in kind is not audited pursuant to § 183a (1), § 38 (3) shall apply accordingly.
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§ 185 Subscription to New Shares

- (1) ¹Subscription to new shares shall be effected by means of a written note (subscription form) specifying the number, par value and, if more than one class is being issued, class of shares to be subscribed. ²The subscription notice shall be executed in duplicate. ³It shall specify:
- 1. the date on which the resolution on the share capital increase was adopted;
 - 2. the share issue price, the amount of payments to be made and the scope of any ancillary obligations;
 - 3. the stipulations required in the case of a capital increase against Contributions in kind and, if more than one class is being issued, the portion of the share capital allocated to each class of shares;
 - 4. the date on which the subscription shall cease to be effective, if the completion of the share capital increase has not been registered prior thereto.
- (2) Any subscription notice which does not contain all such particulars or which contains limitations in respect of the obligation of the subscriber, other than the limitation pursuant to (1) No. 4, shall be null and void.
- (3) A subscriber may not assert the invalidity or non-binding nature of the subscription notice once the completion of the share capital increase has been registered if he has by virtue of the subscription notice exercised rights or performed obligations as a shareholder.
- (4) Any limitation not contained in the subscription notice shall be unenforceable with respect to the company.
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§ 186 Subscription Rights

- (1) ¹Each shareholder shall be entitled, upon demand, to subscribe to new shares in proportion to his holdings in the existing share capital. ²A period of not less than two weeks shall be set for exercising such subscription rights.

- (2) ¹The management board shall announce the issue price or the basis for setting it and the subscription period set in accordance with (1) in the company's journals. ²If only the basis is announced, then no later than three days before the end of the subscription period, the management board shall announce the price in the company's journals and through an electronic information service.
- (3) ¹Subscription rights may be excluded in whole or in part, however, only in the resolution on the share capital increase. ²In such an event the resolution shall require in addition to the requirements provided by law or the articles for such capital increase, a majority of not less than three fourths of the share capital represented at the passing of the resolution. ³The articles may provide for a larger capital majority and for additional requirements. ⁴An exclusion of subscription rights is permitted in particular if the capital increase against cash contributions does not exceed 10 per cent of the initial share capital and the issue price is not significantly below the stock exchange price.
- (4) ¹A resolution by which subscription rights are excluded in whole or in part may be adopted only if the proposed exclusion has been explicitly and duly announced. ²The management board shall make available to the shareholders' meeting a written report stating the grounds for the proposed exclusion, in whole or in part, of subscription rights; such report shall provide an explanation of the proposed issue price.
- (5) ¹A resolution providing that the new shares are to be acquired by a credit institution or an enterprise operating under § 53 (1) sentence 1 or § 53b (1) sentence 1 or (7) of the Banking Act with the obligation to offer such shares to the shareholders for subscription shall not be deemed to constitute an exclusion of subscription rights. ²The management board shall announce the subscription offer with the statements according to (2) sentence 1 and a final issue value according to (2) sentence 2; the foregoing shall apply if the new shares are to be acquired by a person other than a credit institution with the obligation to offer such shares to the shareholders for subscription.

§ 187 Offer of Rights to Subscribe to New Shares

- (1) Any offer of rights to subscribe to new shares may only be made subject to the subscription rights of the shareholders.
- (2) Any such offer made prior to the resolution on the share capital increase shall be unenforceable with respect to the company.
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§ 188 Filing and Registration of Implementation of Share Capital Increase

- (1) The management board and the chairman of the supervisory board shall file the implementation of the share capital increase for registration in the commercial register.
- (2) ¹§ 36 (2), § 36a and § 37 (1) shall apply analogously to such filing.
²Subscription payments may not be made by credit to an account in the name of the management board.
- (3) The following shall be appended to the filing:
 - 1. the duplicates of the subscription forms and a list of the subscribers signed by the management board and stating the shares issued to each subscriber and the payments made in respect thereof;
 - 2. in the case of a capital increase by Contributions in kind, the agreements on which the stipulations pursuant to § 183 were based or which have been entered into in execution thereof;
 - 3. a computation of the expenses which the company will incur through the issue of new shares;
- (4) The filing and registration of the completion of the share capital increase may be made together with the filing and registration of the resolution on such increase.

§ 189 Effectiveness of the Capital Increase

The increase of share capital shall become effective upon registration of the implementation of the share capital increase.

§ 190 [repealed]

§ 191 Prohibited issue of Share Certificates and Interim Certificates

¹The new shares may not be transferred and new share certificates and interim certificates may not be issued prior to registration of the completion of the share capital increase. ²New share certificates and interim certificates issued prior to such registration shall be null and void. ³The issuers shall be jointly and severally liable to the shareholders for any damage resulting from such Issue.

Subsection Two. Conditional Capital Increase

§ 192 Requirements

- (1) The shareholders' meeting may resolve upon an increase of share capital which shall be carried out only to the extent that conversion rights or stock warrants which obligate the company to issue new shares (new shares) are exercised (contingent capital increase).
 - (2) A resolution on a conditional capital increase may be adopted only for any of the following purposes:
 - 1. to grant conversion rights or stock warrants to holders of convertible bonds or warrant bonds;
 - 2. to prepare a merger of enterprises;
 - 3. to grant rights to employees of the company to subscribe to new shares against the contribution of amounts due to such employees under a profit sharing plan established by the company.
 - (3) ¹The par value of conditional capital may not exceed one half and the par value of the capital resolved according to (2) sentence 3 may not exceed one-tenth of the share capital as at the date of the adoption of the resolution on the conditional capital increase. ²§ 182 (1) sentence 5 shall apply analogously.
 - (4) A resolution of the shareholders' meeting which contravenes the resolution on the conditional capital increase shall be null and void.
 - (5) The following provisions regarding share warrants shall apply analogously to conversion rights.
-

§ 193 Requirements for the Resolution

- (1) ¹The resolution on the conditional capital increase shall require a majority of not less than three fourths of the share capital represented at the passing of the resolution. ²The articles may provide for a larger capital majority and additional requirements. ³§ 182 (2) and § 187 (2) shall apply.
- (2) The resolution shall also stipulate:
 - 1. the purpose of the conditional capital increase;
 - 2. the persons entitled to subscribe;
 - 3. the issue price or the basis on which such price is to be computed; in case of a conditional capital increase for the purposes of § 192

(2) No. 1 it shall be sufficient if the resolution or the associated resolution pursuant to § 221 determines the minimum issue price or the basis for the determination of the issue price or the minimum issue price; and

- 4. in the case of resolutions according to § 192 (2) No. 3 also to the allocation of subscription rights to members of the management board and employees, performance targets, acquisition and exercise periods and the waiting period for first exercise (at least four years).

§ 194 Conditional Capital Increase against Contributions in kind; Repayment of Contributions

(1) ¹In the case of a contribution in kind, the resolution on the conditional capital increase shall stipulate the object, the person from whom the company shall acquire the object and the par value of the shares to be granted for the contribution in kind. ²The delivery of bonds for conversion into new shares shall not be deemed to constitute a contribution in kind. ³The resolution may only be adopted if the proposed Contributions in kind have been explicitly and duly announced.

(2) § 27 (3) and (4) shall apply accordingly; the date of the filing for registration pursuant to § 27 (3) sentence 3 and the registration pursuant to § 27 (3) sentence 4 shall each be replaced by the date of issue of the new shares.

(3) (1) and (2) shall not apply to the contribution of amounts due to employees of the company under a profit-sharing plan established by the company.

(4) ¹In the case of a capital increase against Contributions in kind, an audit shall be made by one or more auditors. ²§ 33 (3) to (5), §§ 34, 35 shall apply accordingly.

(5) § 183a shall apply accordingly.

§ 195 Registration of the Resolution

(1) ¹The management board and the chairman of the supervisory board shall file the resolution on the conditional capital increase for registration in the commercial register. ²§ 184 (1) sentence 2 shall apply accordingly.

(2) The following shall be appended to the filing:

- 1. in the case of a conditional capital increase against Contributions in kind, the articles on which the stipulations pursuant to § 194 were based or which have been entered into in execution thereof and the report on the audit of Contributions in kind (§ 194 (4)) or the attachments specified in § 37a (3);

- 2. a computation of the expenses which the company will incur through the issue of new shares.
- (3) ¹The court may reject registration if the value of the contribution in kind is not insignificantly lower than the minimum issue price of the shares to be granted for the contribution in kind. ²If the contribution in kind is not audited pursuant to § 183a (1), § 38 (3) shall apply accordingly.
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§ 196 [repealed]

§ 197 Prohibited Issue of Shares

¹The new shares may not be issued prior to registration of the resolution on the conditional capital increase. ²A right to subscribe shall not arise prior to such date. ³New shares issued prior to such registration shall be null and void. ⁴The issuers shall be jointly and severally liable to the shareholders for any damage resulting from such Issue.

§ 198 Exercise Notice

- (1) ¹Rights to subscribe shall be exercised by means of a written notice. ²Such notice (exercise notice) shall be executed in duplicate. ³The exercise notice shall state the number, in case of par-value shares the par value and, if more than one class is being issued, the class of shares, the stipulations required pursuant to § 193 (2), the stipulations required pursuant to § 194 in respect of Contributions in kind, and the date on which the resolution on the conditional capital increase was adopted.
- (2) ¹The exercise note shall have the same effect as a subscription notice. ²Any exercise notice whose contents does not comply with (1) or which contain limitations in respect of the obligation of the person giving such notice shall be null and void.
- (3) If new shares are issued despite the exercise notice being null and void, the person who has given such notice may not assert the invalidity of the exercise notice if he has by virtue of such notice exercised rights or performed obligations as a shareholder.
- (4) Any limitation not contained in the exercise notice shall be unenforceable with respect to the company.
-

§ 199 Issue of New Shares

- (1) The management board may issue new shares only in fulfilment of the purpose stipulated in the resolution on the conditional capital increase and in no event prior to full performance of the price resulting from such resolution.

- (2) ¹The management board may issue new shares in exchange for convertible bonds or warrant bonds only if the difference between the issue price of the bonds surrendered for conversion and the higher minimum issue price of the new shares is offset by profit reserves which may be used for such purpose or by an additional payment from the person entitled to conversion. ²The foregoing shall not apply if the aggregate amount for which the bonds were issued equals or exceeds the minimum issue price of the new shares.
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§ 200 Effectiveness of the Conditional Capital Increase

The increase of the share capital shall become effective upon issue of the new shares.

§ 201 Registration of the Issue of New Shares

- (1) The management board shall, within one month after the expiration of each fiscal year, file for registration in the commercial register the extent to which new shares have been issued in the preceding fiscal year.
- (2) ¹Duplicates of the exercise notice and a list, signed by the management board, of the persons who have exercised the subscription rights, shall be appended to the report for filing. ²Such list shall state the shares granted to each shareholder and the contribution made in respect thereof.
- (3) The management board shall certify in filing that the new shares were issued solely in fulfilment of the purpose stipulated in the resolution on the conditional capital increase and in no event prior to full performance of the price resulting from such resolution.
-

Subsection Three. Authorised Capital

§ 202 Requirements

- (1) The articles may authorise the management board, for a period not exceeding five years after registration of the company, to increase the share capital up to a specified par value (authorised capital) by issuing new shares against contributions.
- (2) ¹Such authorisation may also be granted by amendment of the articles for a period not exceeding five years as from the date of registration of such amendment of the articles. ²The resolution of the shareholders' meeting shall require a majority of not less than three fourths of the share capital represented at the passing of the resolution. ³The articles may provide for a larger capital majority and for additional requirements. ⁴§ 182 (2) shall apply.

- (3) ¹The par value of the authorised capital may not exceed one half of the share capital as the date of such authorisation. ²The new shares may be issued only with the consent of the supervisory board. ³§ 182 (1) sentence 5 shall apply analogously.
 - (4) The articles may also provide that the new shares are to be issued to employees of the company.
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§ 203 Issue of New Shares

- (1) ¹§§ 185 to 191 relating to a capital increase against contributions shall apply analogously to the issue of new shares, unless the following provisions provide otherwise. ²In respect of §§ 185 to 191, the authorisation in the articles to issue new shares shall be substituted for the resolution on the share capital increase.
 - (2) ¹The authorisation may provide that the management board shall have the authority to exclude subscription rights. ²§ 186 (4) shall apply analogously if such authorisation is contained in an amendment of the articles.
 - (3) ¹The new shares shall not be issued as long as contributions to the previously existing share capital are still outstanding and collectible. ²In the case of insurance companies, the articles may provide otherwise. ³The issue of new shares shall not be precluded if immaterial amounts of contributions are outstanding. ⁴The first filing for registration of the completion of the share capital increase shall state which contributions to the previously existing share capital are still outstanding and why they are not collectible.
 - (4) (3) sentences 1 and 4 shall not apply if the shares are issued to employees of the company.
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§ 204 Conditions of Share Issues

- (1) ¹The management board shall, to the extent that the authorisation does not contain provisions thereon, decide as to the rights arising under shares and the conditions of the share issue. ²The decision of the management board shall require the consent of the supervisory board; the foregoing shall apply to the decision of the management board pursuant to § 203 (2) regarding the exclusion of the subscription rights.
- (2) If there are non-voting preferred shares, preferred shares that have priority to or equal standing with respect to the distribution of profits or assets may be issued only if the authorisation so provides.
- (3) ¹If the annual financial statements, which are provided with an unqualified auditors' certificate, show an annual net profit, shares may also be issued to employees of the company in such manner that the

contribution to be made thereupon is covered by that portion of the annual net profit which the management board and the supervisory board may transfer to other profit reserves pursuant to § 58 (2).²The provisions regarding a capital increase against contributions in cash shall, with the exception of § 188 (2), apply to the issue of new shares.³The approved annual financial statements that are provided with an auditors' certificate shall be appended to the filing for registration of the completion of the share capital increase.⁴The persons making such filing shall further certify as provided by § 210 (1) sentence 2.

§ 205 Issue against Contributions in kind; Repayment of Contributions

- (1) Shares may be issued against Contributions in kind only if the authorisation so provides.
 - (2) ¹Unless stipulated in the authorisation, the object of the contribution in kind, the person from whom the company is to acquire such object and the par value of the shares to be granted for contribution in kind shall be stipulated by the management board and stated in the subscription notice.²The management board shall make such stipulations only with the consent of the supervisory board.
 - (3) § 27 (3) and (4) shall apply accordingly.
 - (4) (2) and (3) shall not apply to the contribution of amounts due to employees of the company under a profit-sharing plan established by the company.
 - (5) ¹In the case of an issue of shares against Contributions in kind, an audit shall be made by one or more auditors; § 33 (3) to (5), §§ 34, 35 shall apply accordingly.²§ 183a shall be applied analogously.³Instead of the date of the resolution of the capital increase, the management board shall announce its decision on issuing new shares against Contributions in kind as well as the statements pursuant to § 37a (1) and (2) in the company's journals.
 - (6) As far as the contribution in kind is not audited, § 184 (1) sentence 3 and (2) shall also apply accordingly to the filing of the implementation of the capital increase for registration with the commercial register (§ 203 (1) sentence 1, § 188).
 - (7) ¹The court may reject registration if the value of the contribution in kind is not insignificantly lower than the minimum issue price of the shares to be granted for the contribution in kind.²If the contribution in kind is not audited pursuant to § 183a (1), § 38 (3) shall apply accordingly.
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§ 206 Agreements on Contributions in kind before Company's Registration

¹If prior to registration of the company, agreements have been entered into which provide for a contribution in kind to be made on the authorised capital, the articles must contain the stipulations which are required for an issue against Contributions in kind. ²§ 27 (3) and (5), §§ 32 to 35, § 37 (4) sentences 2, 4 and 5, §§ 37a, 38 (2) and (3) and § 49 regarding formation of the company shall apply analogously. ³In respect of such provisions the management board shall be substituted for the founders and the registration of the completion of the share capital increase shall be substituted for the registration of the company.

Subsection Four. Capital Increase from the Company's Reserves

§ 207 Requirements

- (1) The shareholders' meeting may resolve on an increase of the share capital by means of conversion of the capital reserve or profit reserves into share capital.
- (2) ¹§ 182 (1) and § 184 (1) shall apply analogously to the respective resolution and the registration of such resolution. ²Companies with non-par shares may increase their share capital without issuing new shares; the resolution on the increase must specify the type of increase.
- (3) The resolution shall be based on a balance sheet.

§ 208 Capital and Profit Reserves Qualifying for Conversion

- (1) ¹The capital reserve and the profit reserves which are to be converted into share capital must have been shown in the latest annual balance sheet and, if the resolution is based on a balance sheet other than the latest balance sheet, also in such balance sheet as capital reserve or profit reserves or, in the last resolution on the appropriation of the annual net profit or distributable profits, as transfer to such reserves. ²Subject to (2) other profit reserves and transfers thereto may be converted in full into share capital, however, the capital reserve and the legal reserve including transfers thereto only to the extent that in aggregate such items exceed one-tenth or a higher proportion of the previously existing share capital which has been determined by the articles.
 - (2) ¹The capital reserve and the profit reserves as well as transfers thereto may not be converted to the extent that the relevant balance sheet shows a loss, including a loss carried forward. ²Profit reserves and transfers thereto which are designated for a specific purpose may only be converted to the extent that such conversion is compatible with such designated purpose.
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§ 209 Balance Sheet to be based on

- (1) The resolution concerning conversion may be based on the latest balance sheet if such annual balance sheet has been audited and the approved annual balance sheet is provided with an unqualified auditors' certificate and if the balance sheet closing date is not more than eight months prior to the registrations of the resolution in the commercial register.
- (2) ¹If the resolution is not based on the latest annual balance sheet, the balance sheet shall comply with §§ 150 and 152 of this Act and §§ 242 to 256, 264 to 274 of the Commercial Code. ²The balance sheet closing date may be not more than eight months prior to the registration of the resolution in the commercial register.
- (3) ¹The balance sheet must be audited by an external auditor as to whether it complies with §§ 150 and 152 of this Act and §§ 242 to 256, 264 to 274 of the Commercial Code. ²Such balance sheet must be provided with an unqualified auditors' certificate.
- (4) ¹Unless the shareholders' meeting elects another auditor, the auditor who was elected by the shareholders' meeting to audit the latest annual financial statements or who was appointed by the court for such purpose shall be deemed to have been elected. ²Unless the special nature of the audit requires otherwise, § 318 (1) sentence 3 and 4, § 319 (1) to (4), §319a (1), §320 (1) and (2), §§ 321, 322 (7) and § 323 of the Commercial Code shall apply analogously to the audit.
- (5) ¹In the case of insurance companies, the auditor shall be appointed by the supervisory board; (4) sentence 1 shall apply analogously. ²Unless the special nature of the audit requires otherwise, § 341k of the Commercial Code shall apply to the audit.
- (6) In the case of (2) to (5), § 175 (2) shall apply analogously to making the balance sheet accessible for inspection and the distribution of copies.

§ 210 Filing and Registration of the Resolution

- (1) ¹The filing of the resolution for registration in the commercial register shall include the relevant balance sheet for the capital increase together with the auditors' certificate and, in the case of § 209 (2) to (6), in addition the latest annual balance sheet, if not already submitted pursuant to § 325 (1) of the Commercial Code. ²The persons filing shall declare to the court that, to their knowledge, no reduction in value of assets has occurred between the closing date of the relevant balance sheet and the date of filing which would preclude a capital increase if such resolution were to be adopted on the date of the filing.

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- 2) The court may register the resolution only if the record date of the balance sheet on which the capital increase was no later than eight months prior to the filing and a declaration in accordance with (1) sentence 2 has been given.
 - (3) The court need not examine whether the balance sheets comply with statutory provisions.
 - (4) The registration entry of the resolution shall state that the capital increase was made from the company's reserves.
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§ 211 Effectiveness of the Capital Increase

- (1) The increase of share capital shall become effective upon registration of the resolution on the share capital increase.
 - (2) [repealed]
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§ 212 Persons Entitled to New Shares

¹The new shares shall be allocated to the shareholders in proportion to their holdings of the previously existing share capital. ²Any resolution of the shareholders' meeting to the contrary shall be null and void.

§ 213 Fractional Shares

- (1) If the capital increase shall result in only a fraction of a new share being allocated to a holding of the previously existing share capital, such fractional share may be separately disposed of or inherited.
 - (2) The rights arising under a new share, including the right to receive a share certificate, may be exercised only if fractional shares that in aggregate comprise a full share are held by one person or if several persons, whose fractional shares comprise a full share, exercise such rights jointly.
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§ 214 Request to Shareholders

- (1) ¹After registration of the resolution on the share capital increase, the management board shall promptly request the shareholders to take delivery of the new share certificates. ²Such notice shall be published in the company's journals. ³Such publication shall state:
 - 1. the amount by which the share capital has been increased.
 - 2. the proportion in which new shares have been allocated for previously existing shares.

⁴Such announcement shall further state that the company may, after three warnings, sell any shares on behalf of the persons entitled thereto which have not been collected within one year after publication of the notice.

- (2) ¹Upon expiration of one year from the date of the notice, the company shall warn that any shares not collected may be sold. ²Such warning shall be published three times in intervals of not less than one month in the company's journals. ³The last publication must be made prior to the expiration of eighteen months from the date of publication of the notice.
- (3) ¹Upon expiration of one year from the date of the last publication of the warning, the company shall sell on behalf of the persons entitled thereto any shares not collected at the official stock exchange quotation through the intermediation of a stock broker and in the absence of a stock exchange quotation by public auction. ²§ 226 (3) sentences 2 to 6 shall apply analogously.
- (4) ¹(1) to (3) shall apply analogously to companies that have not issued share certificates. ²Such companies shall request the shareholders to accept the allocation of new shares.

§ 215 Own Shares. Partially Paid Shares

- (1) Own shares shall participate in any increase of share capital.
- (2) ¹Partially paid shares shall participate in any increase of share capital in proportion to their share in the share capital. ²In such cases, the capital increase may not be carried out by issuing new shares, in case of par-value shares, the par value shall be increased. ³If shares paid in full exist in addition of partially paid shares, the capital increase in respect to such shares paid in full may be carried out by increasing the par value of the shares and issuing new shares; the resolution on the share capital increase shall specify the manner of the increase. ⁴If the capital increase is carried out by increasing the par value of the shares, the amount of such capital increase shall be so computed that the amount allocated to each share is fully covered by the increase in the par value.

§ 216 Preservation of the Rights of Shareholders and Third Parties

- (1) The proportion of rights arising from shares shall not be affected by the capital increase.
- (2) ¹To the extent that specific rights arising from partially paid shares, in particular the right to participate in the distributions of profit or the right to vote, are determined by the contribution made in respect of each share, the shareholders shall have such rights, until performance of the

contributions still outstanding, only in proportion to the amount of the respective contributions made increased by the per centage increase in the share capital which was computed for the par value of the share capital.²If further contributions are made, such rights shall increase proportionately.³In the case of § 271 (3), the amounts of the increase shall be deemed to be paid in full.

- (3) ¹The financial terms of agreements between the company and third parties that are related to the distribution of the company's profits or the par value or market value of its share capital or the previously existing capital or profitability, shall not be affected by the capital increase.²The foregoing shall apply to the ancillary obligations of the shareholders.
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§ 217 Commencement of Participation in Profits

- (1) Unless otherwise provided, the new shares shall participate in profits of the entire fiscal year in which the resolution on the share capital increase was adopted.
- (2) ¹The resolution on the share capital increase may provide that the new shares also participate in the profits of the latest fiscal year ended prior to adoption of the resolution on the capital increase.²In such case the resolution on the share capital increase shall be adopted prior to adoption of the resolution on the appropriation of distributable profits of the last fiscal year ended prior to adoption of such resolution on the capital increase.³The resolution on the appropriation of the distributable profits of the last fiscal year ended prior to adoption of the resolution on the capital increase shall become effective only after the share capital has been increased.⁴The resolution on the share capital increase and the resolution on the appropriation of the distributable profits of the last fiscal year ended prior to adoption of the resolution on the capital increase shall be null and void if the resolution on the capital increase has not been registered in the commercial register within three months after adoption of the resolution.⁵The running of such period shall be tolled for as long as a contesting or invalidity action against the resolution is pending.
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§ 218 Conditional Capital

¹Conditional capital shall increase in the same proportion as share capital.
²If the purpose of the conditional capital is to grant conversion rights to holders of convertible or warrant bonds, a special reserve shall be created in an amount equal to the difference between the issue price of bonds of the higher minimum issue price of the new shares to be issued for these to the extent that additional payments by the persons entitled to conversion have not been agreed upon.

§ 219 Prohibited Issue of Share Certificates and Interim Certificates

New share certificates and interim certificates may not be issued prior to registration of the resolution on the share capital increase in the commercial register.

§ 220 Valuation Rates

¹The costs of acquisition of the shares acquired prior to the share capital increase and the new shares issued for these shall be deemed to be the amounts attributable to the individual shares after allocation of the costs of acquisition of the shares acquired to the share capital increase between such shares and the new shares issued for these in proportion to the respective share in the share capital. ²The additional shares may not be shown as newly acquired shares.

Subsection Five. Convertible or Warrant Bonds, Dividend Bonds

§ 221 [Convertible or Warrant Bonds, Dividend Bonds]

- (1) ¹Bonds which provide holders with a conversion right or share warrant (convertible or warrant bonds) and bonds in which the rights of the holders are related to dividends paid to shareholders (dividend bonds) may only be issued on the basis of a resolution of the shareholders' meeting. ²The resolution shall require a majority of not less than three fourths of the share capital represented at the passing of the resolution. ³The articles may provide for a different capital majority and additional requirements. ⁴§ 182 (2) shall apply.
 - (2) ¹The management board may be authorised for a period of not more than five years to issue convertible or warrant bonds. ²The management board and the chairman of the supervisory board shall submit to the commercial register the resolution on the issue of convertible or warrant bonds and a confirmation of their issue. ³An announcement as to the resolution and the confirmation of issue shall be published in the company's journals.
 - (3) (1) shall apply analogously to the issue of participation rights.
 - (4) ¹Shareholders shall have subscription rights with respect to convertible or warrant bonds, dividend bonds and participation rights. ²§§ 186 and 193 (2) number 4 shall apply accordingly.
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Section Three. Measures to Reduce the Share Capital Subsection One. Ordinary Capital Reduction

§ 222 Requirements

- (1) ¹A reduction of the share capital shall require a resolution that has been adopted by a majority or not less than three fourths of the share capital represented at the passing of the resolution. ²The articles may provide for a larger capital majority and additional requirements.
- (2) ¹If there is more than one class of share, resolutions of the shareholders' meeting shall require the consent of the shareholders of each class in order to be effective. ²Such consent shall require a separate resolution by the shareholders of each class. ³(1) shall apply to such separate resolution.
- (3) The resolution shall stipulate the purpose of the capital reduction, in particular whether part of the share capital is to be repaid.
- (4) ¹The reduction of the share capital of a company with par shares requires the reduction of the par value of the shares. ²To the extent that the corresponding proportion of the reduced share falls below the minimum value according to § 8(2) sentence 1 or (3) sentence 3, the reduction shall occur through consolidation of shares. ³The resolution must stipulate in which manner the capital reduction is to be made.

§ 223 Filing for Registration of the Resolution

The management board and the chairman of the supervisory board shall file the resolution on the reduction of the share capital for registration in the commercial register.

§ 224 Effectiveness of the Capital Reduction

The reduction of the share capital shall become effective upon registration of the resolution on the share capital reduction.

§ 225 Protection of Creditors

- (1) ¹Creditors whose claims arose prior to the date of the announcement of the registration of the resolution shall, upon request within six months of the date of such announcement be granted security to the extent that they may not demand satisfaction. ²In the announcement of registration, the creditors shall be advised of such right. ³Creditors who in the case of insolvency have a right to preferential satisfaction from a fund that has been established based on statutory provisions for their protection and is subject to governmental supervision shall not have the right to demand security.

- (2) ¹Payments to shareholders in connection with the reduction of share capital may only be made upon the expiration of six months from the date of the announcement of registration and after those creditors who have made a timely request have been satisfied or granted security. ²A release of shareholders from the obligation to make contributions shall not be effective prior to the aforementioned date and before the creditors who have made a timely request have been satisfied or granted security.
 - (3) The right of creditors to demand security shall not be conditional on payments having been made to shareholders in connection with the reduction of share capital.
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§ 226 Cancellation of Shares

- (1) ¹If share certificates are to be consolidated in connection with the reduction of share capital by exchanging or stamping share certificates or a similar procedure, the company may declare the share certificates that despite notice have been surrendered to have been cancelled. ²The foregoing shall apply to share certificates surrendered which are insufficient in number for replacement by new share certificates and which have not been submitted to the company for sale on behalf of the persons concerned.
 - (2) ¹The notice to surrender share certificates shall give warning of cancellation. ²Cancellation may be made only after such request has been announced in the manner prescribed for the grace period pursuant to § 64 (2). ³Cancellation shall become effective upon publication in the company's journals. ⁴Such announcement shall designate the share certificates which have been cancelled in such a manner that it may be ascertained from the announcement itself whether a share certificate has been cancelled.
 - (3) ¹The new share certificates that are to be issued in place of the cancelled share certificates shall be promptly sold by the company on behalf of the persons concerned at the official stock exchange quotation in the absence of a stock exchange quotation by public auction. ²If adequate results cannot be expected from an auction at the company's domicile, the shares shall be sold at an appropriate location. ³The time, location and object of the auction shall be announced publicly. ⁴The persons concerned shall be notified separately; such notification may be omitted if not feasible. ⁵Such announcement and notification shall be made not less than two weeks prior to the auction. ⁶The proceeds shall be paid to the persons concerned or, if a right to deposit exists, be deposited.
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§ 227 Filing of the Implementation of Share Capital Reduction

- (1) The management board shall file the completion of the share capital reduction for registration in the commercial register.
 - (2) The filing and registration of the completion of the share capital reduction may be made together with the filing and registration of the resolution on the reduction.
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§ 228 Reduction to Less than the Minimum Par Value

- (1) The share capital may be reduced to less than the minimum par value prescribed in § 7 if the minimum par value is restored by means of a capital increase which has been resolved upon at the same time as the capital reduction and for which Contributions in kind have not been stipulated.
 - (2) ¹Such resolution shall be null and void if the resolutions and the completion of the increase have not been registered in the commercial register within six months after the date of adoption of the resolutions. ²The running of such period shall be tolled for as long as a contesting or invalidity action against the resolution is pending. ³The resolutions and the completion of the share capital increase may only be registered at the same time in the commercial register.
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Subsection Two. Simplified Procedure for Capital Reduction

§ 229 Requirements

- (1) ¹A simplified procedure may be employed for a share capital reduction for the purpose of compensation for a decline in the value of assets, offsetting other losses or transferring amounts to the capital reserve. ²The resolution shall stipulate that the reduction is made for such purposes.
 - (2) ¹The simplified procedure for capital reduction may only be employed after any amount by which the sum of the legal reserve and the capital reserve exceeds 10 per cent of the share capital remaining after such reduction and any amounts in the profit reserves have been released. ²Such simplified procedure may not be employed for as long as profit carried forward is shown.
 - (3) § 222 (1), (2) and (4), §§ 223, 224 and 226 to 228 regarding the ordinary capital reduction shall apply analogously.
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§ 230 Prohibition of Payments to Shareholders

¹The amounts that are obtained from the release of the capital and profit reserves and the capital reduction may not be utilised for payments to shareholders or to exempt shareholders from their obligation to make contributions. ²Such amount may be utilised only to compensate for declines in the value of assets, to offset other losses and to transfer amounts to the capital reserve or the legal reserve. ³Such amounts may be utilised for such purpose only to the extent that the resolution states that such utilization is the purpose of the reduction.

§ 231 Limited Transfer to the Capital Reserve and the Legal Reserve

¹The transfer to the legal reserve of amounts obtained from the release of other profit reserves and to the capital reserve of amounts obtained from the capital reduction may be made only to the extent that the sum of the capital reserve and the legal reserve does not exceed 10 per cent of the share capital. ²In such case, the share capital shall be deemed to be the par value that results from the reduction but not less than the minimum par value prescribed in § 7. ³In comparing the amounts that may be transferred, amounts that are to be transferred to the capital reserve after the adoption of the resolution on the capital reduction shall not be taken into account even if such transfer is based on a resolution, which is adopted at the same time as the resolution on the capital reduction.

§ 232 Transfer of Amounts to the Capital Reserve in the case of Overestimated Losses

If it becomes apparent in connection with the preparation of the annual balance sheet for the fiscal year in which the resolution on the capital reduction was adopted or for one of the two following fiscal years that declines in the value of assets or other losses have not in fact occurred in the amount estimated when the resolution was adopted or have been offset, the amount of the differences shall be transferred to the capital reserve.

§ 233 Payments of Dividends. Creditor Protection

(1) ¹Dividends may not be paid for as long as the legal reserve and the capital reserve in aggregate do not amount to 10 per cent of the share capital. ²In such case, the share capital shall be deemed to be the par value that results from the reduction but not less than the minimum par value prescribed in § 7.

- (2) ¹A dividend exceeding four per cent may not be paid for a fiscal year beginning earlier than two years after the resolution on the capital reduction has been adopted. ²The foregoing shall not apply if creditors whose claims arose prior to announcement of the registration of such resolution have been satisfied or provided with security, if they have applied for this purpose within six months after publication of the annual financial statements which formed the basis for the resolution on the dividend. ³It is not necessary to secure creditors who in the case of insolvency have a right to preferential satisfaction from a fund that has been established pursuant to statutory provisions for their protection and is subject to governmental supervision. ⁴In the announcement pursuant to § 325 (1) sentence 2 of the Commercial Code the creditors shall be advised of such satisfaction or provision of security.
 - (3) The foregoing provisions do not permit the payment of dividends from amounts released from the capital and legal reserves or obtained in connection with the capital reduction.
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§ 234 Retroactive Effect of the Capital Reduction

- (1) In the annual financial statements for the latest fiscal year ended prior to adoption of the resolution on the capital reduction the subscribed capital and the capital and legal reserves may be shown in the respective amounts that will prevail upon completion of the capital reduction.
 - (2) ¹In such case, the shareholders' meeting shall resolve on approval of the annual financial statements. ²Such resolution should be adopted together with the resolution on the capital reduction.
 - (3) ¹The resolution shall be null and void if the resolution on the capital reduction has not been registered in the commercial register within three months of adoption of the resolution. ²The running of such period shall be tolled for as long as a contesting or invalidity action against the resolution is pending.
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§ 235 Retroactive Effect of a Simultaneous Capital Increase

- (1) ¹If in the case of § 234 a capital reduction and a share capital increase have been resolved upon at the same time, the capital increase may also be treated in the annual financial statements as having been completed. ²Such a resolution may only be adopted if the new shares have been subscribed, no Contributions in kind have been stipulated and the payment that is required to be made pursuant to § 188 (2) at the time of the filing for registration of the completion of the capital increase has been made with respect to each share. ³Proof of the subscription and such payment shall be submitted to the notary who records the resolution on the share capital increase.

- (2) ¹All resolutions shall be null and void if the resolutions on the capital reduction and the capital increase and the completion of the increase have not been registered in the commercial register within three months of the adoption of such resolutions. ²The running of such period shall be tolled for as long as a contesting or invalidity action against the resolution is pending. ³The resolutions and the completion of the share capital increase may only be registered at the same time in the commercial register.
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§ 236 Disclosure

Disclosure of the annual financial statements pursuant to § 325 of the Commercial Code may only be made in the case of § 234 after registration of the resolution on the capital reduction, in the case of § 235 after the resolutions on the capital reduction and capital increase and the completion of the capital increase have been registered.

Subsection Three. Capital Reduction through Redemption of Shares – Exception for non-par shares

§ 237 Requirements

- (1) ¹Shares may be cancelled by means of mandatory redemption or acquisition by the company. ²A mandatory redemption may only be made if prescribed or permitted in the original articles or an amendment of the articles prior to acquisition or subscription of the shares.
- (2) ¹The provisions regarding an ordinary capital reduction shall govern such cancellation. ²The conditions governing a mandatory redemption and the respective procedure shall be stipulated in the articles or the resolution of the shareholders' meeting. ³§ 225 (2) shall apply analogously to the payment of the consideration that is to be granted to shareholders in the case of a mandatory redemption or an acquisition of shares for the purpose of cancellation and to the release of such shareholders from the obligation to make contributions.
- (3) The provisions regarding an ordinary capital reduction need not be observed if shares with respect to which the issue price has been paid in full
- 1. are surrendered to the company free of charge; or
 - 2. are cancelled by a charge to distributable profits or another profit reserve, to the extent a charge against such items may be made for such purpose; or

- 3. are non-par shares and the resolution of the shareholders meeting provides that through the cancellation the share of the remaining shares in the share capital increases according to § 8 (3); if the management board is authorised to cancel shares, it may also be authorised to adjust the number indicated in the articles.
- (4) ¹In the cases of (3) also, a capital reduction by means of cancellation of shares shall require a resolution of the shareholders' meeting. ²A simple majority of votes shall suffice for such resolution. ³The articles may provide for a larger capital majority and additional requirements. ⁴The resolution shall stipulate the purpose of the capital reduction. ⁵The management board and the chairman of the supervisory board shall file the resolution for registration in the commercial register.
- (5) In the cases of (3) No. 1 and 2, an amount shall be transferred to the capital reserve that is equal to the portion of the share capital allocated to the shares cancelled.
- (6) ¹If a mandatory redemption is prescribed by the articles, a resolution of the shareholders' meeting shall not be required. ²In such case, with respect to applicability of the provisions regarding an ordinary capital reduction, the decision of the management board regarding cancellation shall be substituted for the resolution of the shareholders' meeting.
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§ 238 Effectiveness of the Capital Reduction

¹The reduction of the share capital by the amount allocated to the shares cancelled shall become effective upon registration of the resolution or, in the case of subsequent cancellation, upon cancellation. ²In the case of a mandatory redemption prescribed by the articles, the reduction of the share capital shall become effective upon such mandatory redemption, unless the shareholders' meeting resolves on such capital reduction. ³The cancellation shall require an act of the company that has the purpose of nullifying the rights arising with respect to specific shares.

§ 239 Filing of the Implementation of Share Capital Reduction

- (1) ¹The management board shall file the completion of the share capital reduction for registration in the commercial register. ²The foregoing shall also apply in the case of a mandatory redemption prescribed by the articles.
- (2) The filing and registration of the completion of the reduction may be combined with the filing and registration of the resolution on the reduction.
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Subsection Four. Presentation of Capital Reduction

§ 240 [Separate Presentation]

¹The amount obtained in connection with the capital reduction shall be shown separately in the profit and loss statement as “Income from capital reduction” after the item “Releases from profit reserves.” ²A transfer to the capital reserve pursuant to § 229 (1) and § 232 shall be shown separately as “Transfer to the capital reserve pursuant to the provisions governing simplified procedure for capital reduction”. ³The notes shall explain whether and to what extent the amounts received in connection with the capital reduction and the release of profit reserves have been utilised:

- 1. to offset a decline in the value of assets;
- 2. to offset other losses; or
- 3. for transfer to the capital reserve.

Division Seven. Annulment of Resolution of the Shareholders’ Meeting and the Approved Annual Financial Statements Special Audit due to Inadmissible Undervaluation

Section One. Annulment of Resolutions of the Shareholders’ Meeting

Subsection One. General Provisions

§ 241 Grounds for Invalidity

Except in the case of § 192 (4), §§ 212, 217 (2), § 228(2), § 234 (3) and § 235 (2) a resolution of the shareholders’ meeting shall be null and void only if it:

- 1. was adopted in a shareholders’ meeting which was not called pursuant to § 121 (2) and (3) sentence 1 or (4);
- 2. has not been recorded pursuant to § 130 (1) and (2) sentence 1 and (4);
- 3. is not compatible with the nature of the company or by its terms violates provisions which exist exclusively or primarily for the protection of the company’s creditors or otherwise in the public interest;
- 4. by its terms is unethical;
- 5. has been declared null and void by a judgment upon a contesting action which is final and not subject to appeal;
- 6. has been cancelled as null and void pursuant to § 398 of the Act on Court Procedure in Family Matters and Non-litigious Matters by virtue of a decision which is final and not subject to appeal.

§ 242 Curing of Invalidity

- (1) The invalidity of a resolution of the shareholders' meeting which contrary to § 130 (1) and (2) sentence 1 and (4) has not been recorded or has not been duly recorded, may no longer be asserted if the resolution has been registered in the commercial register.
 - (2) ¹If a resolution of the shareholders' meeting is null and void pursuant to § 241 numbers 1, 3 or 4, such invalidity may no longer be asserted if the resolution has been registered in the commercial register and three years have since lapsed. ²If upon expiration of such period an invalidity action against the resolution of the shareholders' meeting is pending, such period shall be extended until a decision on the action has been issued which is final and not subject to appeal or the action has been otherwise finally disposed of. ³A cancellation of the resolution as null and void without application pursuant to § 398 of the Act on Court Procedure in Family Matters and Non-litigious Matters shall not be precluded by the expiration of such period. ⁴If a shareholders resolution is null due to a violation of § 121 (4) sentence 2 according to § 241 No. 1, then the invalidity can no longer be asserted if the shareholder who did not receive notice approves the resolution. ⁵If a resolution of the shareholders' meeting is void pursuant to § 241 number 5 or § 249, the judgement may not be registered pursuant to § 248 (1) sentence 3 if in accordance with § 246a (1) it has been established in a final and binding manner that the deficiencies of the resolution do not affect the validity of the registration; § 398 of the Act on Court Procedure in Family Matters and Non-litigious Matters shall not apply.
 - (3) (2) shall apply analogously if in the case of § 217 (2), § 228(2), § 234(3) and § 235(2) the necessary registration entries have not been made within the periods prescribed.
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§ 243 Grounds for Contesting Action

- (1) A resolution of the shareholders' meeting may be set aside upon an action based on violation of law or the articles.
- (2) ¹A contesting action aside may also be based on the grounds that a shareholder has attempted by exercising voting rights to attain special benefits for himself or another person to the detriment of the company or other shareholders and that the resolution is apt to serve such purpose. ²The foregoing shall not apply if the resolution grants to other shareholders adequate compensation for their losses.
- (3) A contesting action cannot be based:
 - 1. on a violation of rights exercised electronically pursuant to § 118 (1) sentence 2, (2) and § 134 (3) where the violation was caused by a technical malfunction, unless the company can be accused of gross

negligence or intent; the articles may provide for a stricter standard of fault,

- 2. on a violation of § 121 (4a), § 124a or § 128,
- 3. on grounds which would justify proceedings pursuant to § 318(3) of the Commercial Code.

(4) ¹A contesting action may only be based on the grounds of incorrect, incomplete or refused information if a shareholder of rational and sound reasoning would have regarded the provision of the information as essential for its ability to exercise its participation and membership rights duly. ²A contesting action may not be based on the provision of incorrect, incomplete or insufficient information in the shareholders' meeting with respect to the determination, amount or appropriateness of compensation payments, additional payments or other payments if the law provides for a corporate appraisal procedure for complaints concerning such assessment matters.

§ 244 Ratification of Voidable Resolutions of the Shareholders' Meeting

¹A contesting action may no longer be brought if the shareholders' meeting has ratified a voidable resolution by a new resolution and a contesting action against such resolution has not been instituted within the period of limitation for such action or such contesting action has been denied in a decision which is final and not subject to appeal. ²If the claimant has a legal interest in having the voidable resolution declared null and void for the period of the resolution on ratification, he may continue to pursue such action for the purpose of having such voidable resolution declared null and void for such period.

§ 245 Standing to contest

The following persons shall have standing to institute a contesting action:

- 1. each shareholder who acquired the shares prior to the publication of the agenda and was present at the shareholders' meeting if he has objected to the resolution in the minutes;
- 2. each shareholder who was not present at the shareholders' meeting if he was wrongfully refused admission to the shareholders' meeting or if the meeting was not duly called or the object of the resolution was not duly announced;
- 3. in case § 243 (2) each shareholder, provided that he acquired the shares prior to publication of the agenda;

- 4. the management board;
 - 5. each member of the management board and supervisory board if by executing the resolution members of the management board or supervisory board would commit a criminal act or administrative offence or would be liable for damages.
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§ 246 Contesting Action

- (1) Any contesting action must be instituted within one month after adoption of the resolution.
 - (2) ¹The action shall be brought against the company. ²The company shall be represented by the management board and the supervisory board. ³If the action is brought by the management board or a member of the management board, the company shall be represented by the supervisory board; if the action is brought by a member of the supervisory board the company shall be represented by the management board.
 - (3) ¹The regional court in the district of which the dependent company has its seat shall have exclusive jurisdiction regarding the action. ²If the district court maintains a chamber for commercial matters, such chamber shall have jurisdiction in lieu of the chamber for civil matters. ³§ 148 (2) sentences 3 and 4 shall apply accordingly. ⁴No hearing shall be held prior to expiration of the one-month period in (1). Immediately after the expiration of the one-month period in (1), the company may ask to receive the statement of case filed even before the action is served and ask the court to provide extracts and copies. ⁵If more than one such action is brought such actions shall be consolidated in order to be heard and decided together.
 - (4) ¹The management board shall promptly announce the institution of any such action and the date for hearing in the company's journals. ²A shareholder may only join the action as party within one month of the publication of the notice.
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§ 246a Procedure Governing Petitions for Registration of Contested Resolutions of the Shareholders' Meeting

- (1) ¹If an action is brought against a resolution of the shareholders' meeting for a capital increase, a capital reduction (§§ 182 through 240) or an inter-company agreement (§§ 291 through 307), the court may find, upon petition by the company, that the bringing of the action does not prohibit the registration of the resolution and that its deficiencies do not affect the validity of the registration. ²As far not stipulated otherwise, § 247, §§ 82, 83 (1) and § 84 of the Code of Civil Procedure as well as the provisions of the Code of Civil Procedure applying to the proceedings of first instance at the regional courts shall apply to the proceedings on such action. ³The

senate of the higher regional court of the company's registered seat shall decide on such petition.

(2) A resolution pursuant to (1) is valid if

- 1. the action is deficient or manifestly unfounded,
- 2. the claimant has not documented proof within one week after serving of the petition that he has been holding shares representing an amount of at 1.000 euros since the publication of the convocation, or
- 3. the immediate effectiveness of the resolution of the shareholders' meeting should be given priority as, according to the court's opinion, the material disadvantages to the company and its shareholders as set forth by the claimant outweigh the disadvantages for the respondent, unless the infringement is particularly severe.

(3) ¹A transfer to a single judge shall be excluded; conciliatory hearings shall not be required. ²In urgent cases the proceedings may be conducted without an oral hearing. ³The facts that are submitted and are the basis on which the decision may be made, shall be supported by evidence. ⁴Such decision is incontestable. ⁵It is binding on the registration court; the validity of the registration thus established shall be binding on everyone. ⁶The decision of the court should be rendered no later than three months following the petition; delays in rendering the decision must be explained in a non-appealable judgement.

(4) ¹If the action proves to be founded, the company that has obtained the resolution shall compensate the opponent for any damages it has incurred due to the fact that the resolution of the shareholders' meeting has been registered as a result of the court decision. ²Any deficiencies concerning the resolution shall not affect its implementation after registration; it is not possible to demand as compensation that this effect of the registration be eliminated.

§ 247 Value in Dispute

(1) ¹The court shall use equitable discretion in determining the value in dispute by taking into consideration all circumstances of the individual case, in particular the importance of the matter for the parties. ²Such value in dispute shall, however, only exceed one-tenth of the share capital or, if such one-tenth exceeds 500,000 euros, exceed 500,000 euros if the importance of the matter for the claimant requires a higher valuation.

- (2) ¹If a party presents evidence that the assessment of court costs on the basis of the value in dispute pursuant to (1) would materially impair its financial condition, the court may upon motion order that the party's obligation to pay court costs shall be determined on the basis of a value which has been adjusted to reflect such financial condition. ²As a consequence of such order, the benefiting party shall only be required to pay attorney fees that have been determined on the basis of such adjusted value. ³If costs of litigation are imposed on or assumed by such party, such party shall be required only to reimburse the court costs and attorney fees which have been paid by the other party on the basis of such adjusted value. ⁴If costs other than court fees are imposed on or assumed by the other party, the attorney of the benefiting party may collect his fees from the other party on the basis of the value applicable to such other party.
- (3) ¹The motion pursuant to (2) may be made to the record of the court clerk. ²Such motion shall be made prior to the hearing of the subject matter. ³A subsequent motion may only be made if the amount in controversy that has been assumed or set is increased by the court. ⁴The other party shall be heard prior to any decision on such motion.
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§ 248 Effect of Judgment

- (1) ¹If the resolution has been declared null and void by a judgment that is final and not subject to appeal, such judgment shall be binding on all shareholders and the members of the management board and the supervisory board, even if such persons were not parties to the action. ²The management board shall promptly submit the judgment to the commercial register. ³If the resolution has been registered in the commercial register, the judgment shall likewise be registered. ⁴The registration of the judgment shall be announced in the same manner as the registration of the resolution.
- (2) If the resolution contained an amendment of the articles, the judgment shall be submitted to the commercial register together with the full text of the articles resulting from the judgment and all previous amendments to the articles together with a certification of a notary on such fact.
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§ 248a Notices on the Contesting Action

¹If the contesting action is terminated, the listed company shall without undue delay publish a notice regarding the termination of the action in the company's journals. ²§ 149 (2) and (3) shall apply accordingly.

§ 249 Invalidity Action

- (1) ¹If a shareholder, the management board or a member of the management board or supervisory board brings an action against the company to annul a resolution of the shareholders' meeting, § 246(2), § 246(3) sentences 1 through 5, § 246(4), §§ 246a, 247, 248 and 248a shall apply accordingly. ²The invalidity of such resolution may be asserted by means other than by bringing an action. ³If a resolution of the shareholders' meeting lays the foundation for a transformation pursuant to § 1 of the Transformation Act and the resolution for the transformation is registered, § 20(2) of the Transformation Act shall apply accordingly to the resolution of the shareholders' meeting.
- (2) ¹If more than one invalidity action has been instituted, such actions shall be consolidated in order to be heard and decided together. ²Actions to set aside and actions to annul may be consolidated.

Subsection Two. Invalidity of Certain Resolutions of the Shareholders' Meeting

§ 250 Invalidity of the Election of Members of the Supervisory Board

- (1) The election of a member of the supervisory board by the shareholders' meeting shall, except in the case of § 241 numbers 1, 2 and 5, only be null and void if:
 - 1. the supervisory board is composed in violation of § 96 (2), § 97 (2) sentence 1 or § 98 (4);
 - 2. the shareholders' meeting, although bound by nominations (§§ 6 and 8 of the Coal and Steel Co-determination Act), has elected a person that has not been nominated;
 - 3. as a result of the election, the maximum number of members of the supervisory board set by law has been exceeded (§ 95);
 - 4. the person elected may not serve as a member of the supervisory board pursuant to § 100(1) and (2) at the commencement of his term of office.
- (2) The following shall have standing to bring an action to declare the election of a member of the supervisory board to be null and void:
 - 1. the company's general labour council or, if only one labour council exists in the company, such labour council, and, if the company is the controlling enterprise of a group, the group labour council,

- 2. the general or the company's central managing employees labour council or, if only one managing employees council exists in the company, such managing employees council, and, if the company is the controlling enterprise of a group, the group managing employees council,
 - 3. the general labour council of another enterprise whose employees participate in the election of members of the supervisory board of the company directly or through electors or, if only one labour council exists in the other enterprise, such labour council,
 - 4. the general or the company's managing employees council of another enterprise whose employees participate in the election of members of the supervisory board of the company directly or through electors or, if only one managing employees council exists in the other enterprise, such managing employees council,
 - 5. each labour union represented in the company or in an enterprise whose employees participate directly or through electors in the election of members of the supervisory board of the company and the central organisation of the labour union.
- (3) ¹If a shareholder, the management board, or a member of the management board or the supervisory board or an organisation or representatives of the employees designated in (2) bring an action against the company to declare that the election of a member of the supervisory board is null and void, § 246 (2), (3) sentence 1 to 4, (4), §§ 247, 248 (1) sentence 2, §§248a and § 249 (2) shall apply analogously. ²The invalidity of such resolution may be asserted by means other than by bringing of an action.

§ 251 Contestation of the Election of Members of the Supervisory Board

- (1) ¹The election of a member of the supervisory board by the shareholders' meeting may be contested by bringing an action on the basis of a violation of law or the articles. ²Such contestation may also be based, where the shareholders' meeting is bound by nominations, on the nominations being made illegally. ³§ 243(4) and § 244 shall apply.
- (2) ¹§ 245 numbers 1, 2 and 4 shall apply to the standing to bring an action. ²The election of a member of the supervisory board, who has been elected on the basis of a nomination by the labour councils pursuant to the Coal and Steel Codetermination Act, may also be contested by any labour council of an business of the company, any labour union represented in the operations of the company or its central organisation. ³The election of an additional member, who has been elected on the basis of a nomination by the other members of the supervisory board pursuant to the Coal and Steel Codetermination Act or the Supplemental Codetermination Act may also be contested by any member of the supervisory board.

(3) §§ 246, 247, 248 (1) sentence 2 and § 248a shall apply to the contesting.

§ 252 Effect of Judgment

- (1) If a shareholder, the management board or a member of the management board or of the supervisory board or an organisation or representatives of the employees designated in § 250(2) bring an action against the company to declare the election of a member of the supervisory board by the shareholders' meeting to be null and void, a judgment which is final and not subject to appeal and which declares the election to be null and void shall be binding on all shareholders and employees of the company, all employees of other enterprises whose employees participate in the election of members of the supervisory board of the company directly or by electors, the members of the management board and the supervisory board and the organisations and the representatives of the employees designated in § 250(2), even if they were not parties to the proceedings.
- (2) ¹If the election of a member of the supervisory board by the shareholders' meeting has been declared null and void by a judgment which is final and not subject to appeal, such judgment shall be binding on all shareholders and members of the management board and the supervisory board, even if they were not parties to the proceedings. ²In the case of § 251(2) sentence 2 the judgment shall also be binding on the labour councils, labour unions and central organisations that pursuant to these provisions have standing to bring an action even if they were not parties to the proceedings.
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§ 253 Invalidity of a Resolution on the Appropriation of Distributable Profits

- (1) ¹A resolution on the appropriation of distributable profits shall except in the case of § 173(3), § 217(2) and § 241 only be null and void if the approval of the annual financial statements on which such resolution is based is null and void. ²The invalidity of such resolution for this reason may no longer be asserted if the invalidity of the approval of the annual financial statements may no longer be asserted.
- (2) § 249 shall apply to an action against the company to declare such resolution to be null and void.
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§ 254 Contesting a Resolution on the Appropriation of Distributable Profits

- (1) A resolution on the appropriation of distributable profits may, in addition to § 243, also be contested if the shareholders' meeting transfers amounts from distributable profits to profit reserves or carries such amounts forward as profit, and the payment of such amounts as dividends to the shareholders is not precluded by law or the articles, even though the transfer to reserves or carrying forward of profit is not necessary according to reasonable business judgment in order to secure the viability of the company for a period which is foreseeable with respect to economic and financial circumstances and therefore no dividend may be paid to shareholders in excess of four per cent of the share capital less any contributions not yet called.
 - (2) ¹§§ 244 to 246, 247 to 248a shall apply to the contestation. ²The period for such contestation shall commence on the date of adoption of the resolution even if the annual financial statements are to be reaudited pursuant to § 316(3) of the Commercial Code. ³Shareholders shall have standing to contest pursuant to (1) only if their aggregate shareholdings amount to one-twentieth of the share capital or represent an amount of the share capital corresponding to 500,000 euros.
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§ 255 Contestation of a Capital Increase against Contributions

- (1) A resolution on a capital increase against contributions may be contested pursuant to § 243.
 - (2) ¹A contestation may, if the pre-emptive rights of the shareholders have been excluded in whole or in part, also be based on the ground that the issue price resulting from the resolution on the increase or the minimum price for the issuance of new shares are unreasonably low. ²The foregoing shall not apply if the new shares are to be acquired by a third party subject to the obligation to offer the shares to the shareholders for subscription.
 - (3) §§ 244 to 248a shall apply to the contestation.
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Section Two. Invalidation of the Approved Annual Financial Statements

§ 256 Invalidation

- (1) Except in the case of § 173 (3), § 234 (3) and § 235 (2), the approved annual financial statements shall be null and void if:

- 1. by their terms, they violate provisions which exist exclusively or primarily for the protection of the company's creditors;
 - 2. in case of a statutory audit requirement, they have not been audited in accordance with § 316 (1) and (3) of the Commercial Code;
 - 3. in the event of a statutory audit requirement, they have been audited by persons who are not auditors pursuant to § 319 (1) of the Commercial Code or Article 25 of the Introductory Act to the Commercial Code or who were not appointed as auditors on other grounds than a violation of § 319 (2), (3) or (4) or § 319a (1) or § 319b (1) of the Commercial Code,
 - 4. in connection with their approval, the provisions of law or the articles regarding the transfer of amounts to the capital or profit reserves or regarding the release of amounts from the capital or profit reserves have been violated.
- (2) In cases other than (1), annual financial statements which have been approved by the management board and supervisory board shall only be null and void if the management board or the supervisory board has not duly taken part in the approval.
- (3) In cases other than (1), annual financial statements which have been approved by the shareholders' meeting shall only be null and void if the approval:
- 1. was resolved in a shareholders' meeting which was called in violation of § 121 (2) and (3) sentence 1 or (4);
 - 2. has not been recorded pursuant to § 130 (1) and (2) sentence 1 and (4);
 - 3. has been declared null and void by a judgment upon a contesting action which is final and not subject to appeal;
- (4) The annual financial statements shall only be null and void on the ground of a violation of the provisions on the structure of the annual financial statements or failure to observe forms for the structure of the annual financial statements if its clearness and clarity has been materially impaired thereby.
- (5) ¹The annual financial statements shall only be null and void for violation of the provisions of valuation if:
- 1. items have been overvalued; or
 - 2. items have been undervalued and the financial condition and profitability of the company has been intentionally misrepresented or distorted thereby.

²Asset items shall be deemed to be overvalued if they are shown at a higher value and liability items shall be deemed to be overvalued if they are shown at a lower value than permitted pursuant to § 253 to 256 of the Commercial Code. ³Asset items shall be deemed to be undervalued if they are shown at a lower value and liability items shall be deemed to be undervalued if they are shown at a higher value than permitted pursuant to § 253 to 256 of the Commercial Code. ⁴In the case of credit institution and financial services institutions as well as in the case of investment companies in the sense of § 2 (6) of the Investment Act, the valuation regulations shall not be violated to the extent that deviations are permissible according to the provisions applicable to such credit institutions and financial services institutions, in particular §§ 340e to 340g of the Commercial Code; the same shall apply to insurance companies according to the provisions applicable to such insurance companies, in particular 341b to 341h of the Commercial Code.

- (6) ¹An invalidity action pursuant to (1) numbers 1, 3 and 4, (2), (3) No. 1 and 2, (4) and (5) may no longer be brought if, in the case of (1) numbers 3 and 4, (2) and (3) numbers 1 and 2, six months have lapsed since publication pursuant to § 325 (2) of the Commercial Code or, in other cases, three years have lapsed. ²If, upon expiration of such period, an action to declare the annual financial statements null and void is pending, such period shall be extended until a decision on the action had been issued which is final and not subject to appeal or until the action has been otherwise finally disposed of.
- (7) ¹§ 249 shall apply analogously to an action against the company to declare the financial statements null and void. ²If the company has issued securities within the meaning of § 2 (1) sentence 1 of the Securities Trading Act that are admitted to trading on a German stock exchange in the regulated market, the court shall inform the Federal Financial Supervisory Authority of the receipt of an invalidity action as well as of all final and binding decisions regarding such action.

§ 257 Contesting the Approval of the Annual Financial Statements by the Shareholders' Meeting

- (1) ¹The approval of the annual financial statements by the shareholders' meeting may be contested pursuant to § 243. ²Such contestation may, however, not be based on the ground that the contents of the annual financial statements violate law or the articles.
- (2) ¹§§ 244 to 246, 247 to 248a shall apply to the contestation. ²The limitation period for such contestation shall commence on the date of adoption of the resolution even if the annual financial statements are to be reaudited pursuant to § 316 (3) of the Commercial Code.
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Section Three. Special Audit due to Inadmissible Undervaluation

§ 258 Appointment of Special Auditors

(1) ¹The court shall, upon motion, appoint special auditors if there is reason to assume that:

- 1. certain items in the approved financial statements have been materially undervalued (§ 256 (5) sentence 3); or
- 2. the notes do not or do not fully contain the required information and the management board has not furnished such missing information at the shareholders' meeting even though such information has been requested and the inclusion of the respective question in the minutes has been demanded.

²The special auditors shall examine the contested items as to whether they have been materially undervalued. ³Such auditors shall examine the notes as to whether the required information has not been or has not been fully furnished and whether the management board has not furnished the missing information even though such information has been requested and the inclusion of the respective question in the minutes has been demanded.

(1a) In the case of credit institution or financial services institutions as well as in the case of investment companies in the sense of § 2 (6) of the Investment Act, a special auditor cannot be appointed under (1) to the extent that the overvaluation or the missing information in the notes is due to the application of § 340f of the Commercial Code.

(2) ¹The motion must be made within one month after the shareholders' meeting on the annual financial statements. ²The foregoing shall also apply if the annual financial statements are to be reaudited pursuant to § 316 (3) of the Commercial Code. ³Such motion may only be made by shareholders whose aggregate holdings reach the threshold set forth in § 142 (2). ⁴The parties making motion shall deposit their shares until a decision on the motion has been rendered or submit a statement of the depository institution affirming that the shares will not be sold until such time, and furnish evidence that they have been holders of such shares for not less than three months prior to the date of the shareholders' meeting. ⁵An affidavit made before a notary shall constitute sufficient evidence.

(3) ¹Prior to such appointment, the court shall hear the management board, the supervisory board and the external auditors. ²An appeal may be made against such decision. ³The regional court of the company's registered seat shall decide on any motion pursuant to paragraph (1).

- (4) ¹Special auditors pursuant to (1) may only be certified public accountants and certified public accounting firms. ²§ 319 (2) to (4), § 319a (1) and § 319b (1) of the Commercial Code shall apply analogously to their selection. ³The company's external auditors and persons who have served as external auditors of the company during the last three years prior to such appointment may not serve as special auditors pursuant to (1).
- (5) ¹§ 142 (6) regarding the reimbursement of reasonable cash expenses and remuneration of court-appointed special auditors, § 145 (1) to (3) regarding the rights of special auditors, § 146 regarding the expenses of the special audit and § 323 of the Commercial Code regarding the responsibility of the external auditor shall apply analogously. ²The special auditors pursuant to (1) shall have the rights pursuant to § 145 (2) also against the company's external auditor.
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§ 259 Audit Report. Conclusive Findings

- (1) ¹The special auditors shall render a written report on the result of the audit. ²If the special auditors in carrying out their duties determine that items have been overvalued (§ 256 (5) sentence 2) or that the provisions governing the structure of the annual financial statements have been violated or the required forms have not been observed, they shall also include such findings in their report. ³§ 145 (4) to (6) shall apply analogously to the report.
- (2) ¹If the special auditors determine that the contested items have not been materially undervalued (§ 256 (5) sentence 3), they shall declare in the findings set out at the end of their report:
- 1. the minimum value at which the individual asset items should be shown and the maximum amount at which the individual liability items should be shown;
 - 2. the amount by which the annual net profit would have increased or the annual net loss would have decreased if such amounts had been applied.

²The special auditors shall base their opinion on the circumstances prevailing at the closing date of the annual financial statements. ³In determining the values and amounts in number 1, they shall apply the same valuation and depreciation methods that the company used in its last proper valuation of the items to be valued or similar items.

- (3) If the special auditors determine that the contested items have not been or have only been immaterially undervalued (§ 256 (5) sentence 3), the special auditors shall declare in the findings set out at the end of their report that, in their opinion and in accordance with the audit carried out with due professional diligence, the contested items have not been improperly undervalued.

- (4) ¹If the special auditors determine that the notes do not or do not fully contain the required information and the management board has not furnished the missing information at the shareholders' meeting, even though such information has been requested and the inclusion of the respective question in the minutes has been demanded, the special auditors shall furnish the missing information in their findings set out at the end of their report. ²If information regarding inconsistencies in valuation or depreciation methods has been omitted, the findings shall state the amount by which the annual net profit or annual net loss would have been higher or lower without the inconsistencies that were omitted to be mentioned. ³If the special auditors determine that no information pursuant to sentence 1 has been omitted, the special auditors shall declare in their findings that, in their opinion and in accordance with the audit carried out with due professional diligence, no information required to be given has been omitted in the notes.
- (5) The management board shall promptly publish the findings of the special auditors pursuant to (2) to (4) in the company's journals.

§ 260 Judicial Decision on the Conclusive Findings of the Special Auditors

- (1) ¹The company or shareholders whose shares in aggregate amount to one-twentieth of the share capital or represent an amount of the share capital corresponding to 500,000 euros may make motion to the court with jurisdiction pursuant to § 132 (1) for a decision against the conclusive findings of the special auditors pursuant to § 259 (2) and (3) within one month after publication in the electronic Federal Gazette. ²§ 258 (2) sentences 4 and 5 shall apply analogously. ³The motion shall seek determination of the minimum amount at which the asset items specified in the motion should have been shown or the maximum amount at which liability items specified in the motion should have been shown. ⁴The company's motion may also seek determination that the annual financial statements did not contain the undervaluations stated in the conclusive findings of the special auditors.
- (2) ¹The court shall at its discretion decide on the motion with due regard to all circumstances. ²§ 259 (2) sentence 2 and 3 shall apply. ³To the extent that a full investigation of all relevant circumstances would entail considerable difficulties, the court shall estimate the values or amounts to be shown.

- (3) ¹§ 99 (1), (2) sentence 1, (3) and (5) shall apply analogously. ²The court shall serve its decision on the company and, if shareholders have made motion pursuant to (1), also on such shareholders. ³Furthermore, the court shall announce the decision in the company's journals without setting out the grounds on which the decision is based. ⁴An appeal may be made by the company and shareholders whose shares in aggregate amount to one-twentieth of the share capital or represent an amount of the share capital corresponding to 500,000 euros. ⁵§ 258 (2) sentence 4 and 5 shall apply analogously. ⁶The period for appeal shall commence on the date of publication of the decision in the electronic Federal Gazette but, in the case of the company and shareholders who have made motion pursuant to (1), not prior to service of the decision.
- (4) ¹The costs of the proceedings shall be governed by the Act on Court Costs. ²In proceedings before the court of first instance, twice the full fee shall be charged. ³For appeal proceedings, the same fee shall be charged; the foregoing shall also apply if the appeal is successful. ⁴If the motion or appeal is withdrawn prior to a decision, the fee shall be reduced to one half. ⁵The court shall determine the value of the subject matter of the proceedings. ⁶The company shall be liable for the costs if the motion is granted, otherwise the party making motion shall be liable. ⁷§ 247 shall apply analogously.

§ 261 Decision on Income Based on Higher Valuation

- (1) ¹If the special auditors have determined in their conclusive findings that items have been undervalued, and no motion for judicial decision against such determination has been made within the period provided in § 260 (1), such items shall, in the first annual financial statements which are prepared after such period has lapsed, be shown at the amounts determined by the special auditors. ²The foregoing shall not apply to the extent that, by reason of changed circumstances, in particular, in the case of assets which are subject to wear and tear, by reason of such wear and tear in accordance with §§ 253 to 256 of the Commercial Code or generally accepted accounting principles, a lower amount should be shown for an asset item or a higher amount should be shown for a liability item. ³In such case, the grounds for this shall be specified in the notes and the means by which the amount pursuant to sentence 2 was computed from the amount determined by the special auditors shall be shown separately. ⁴If such assets no longer exist, the notes shall report such fact and the appropriation of the income from the disposal of such assets. ⁵Reference shall be made under the respective items in the annual balance sheet to the amounts by which asset items have been shown at an increased value or liability items have been shown at a decreased amount pursuant to sentences 1 and 2. ⁶The sum of such increases and decreases shall be shown separately on the liability side of the balance sheet and in the profit and loss statement as "Income Based on Higher Valuation in accordance with the Results of the Special Audit."

- (2) ¹If the court to which motion has been made pursuant to § 260 determines that items have been undervalued, (1) shall apply analogously to the valuation of items shown in the first annual financial statements prepared after the judicial decision has become final and not subject to appeal. ²The sum of such increases and decreases shall be shown separately as “Income Based on Higher Valuation in accordance with Judicial Decision.”
- (3) ¹The income based on higher valuation pursuant to (1) and (2) shall not be considered part of the annual net profit for the purpose of § 58. ²The shareholders’ meeting shall decide on the appropriation of such income less the taxes payable thereon, to the extent that the annual financial statements do not show a balance sheet loss which is not offset by capital or profit reserves.

§ 261a Notifications to the Federal Financial Supervisory Authority

The court shall inform the Federal Financial Supervisory Authority of the receipt of a petition for the appointment of a special auditor, all final and binding decisions on the appointment of special auditors, the audit report as well as a final and binding court decision pursuant to § 260 on the special auditors’ conclusive findings if the company has issued securities within the meaning of § 2 (1) sentence 1 of the Securities Trading Act that are admitted to trading on a German stock exchange in the regulated market.

Division Eight. Dissolution and Declaration of Annulment of the Company

Section One. Dissolution

Subsection One. Grounds for Dissolution and Filing

§ 262 Grounds for Dissolution

- (1) The stock corporation is dissolved:
- 1. upon expiration of the period set in the articles;
 - 2. upon resolution of the shareholders’ meeting; such resolution shall require a majority of not less than three-fourths of the share capital represented at the passing of the resolution; the articles may provide for a larger capital majority and additional requirements;
 - 3. upon institution of insolvency proceedings over the company’s assets;
 - 4. upon a decision which is final and not subject to appeal denying the institution of insolvency proceedings for lack of assets sufficient to cover the costs of the proceedings;

- 5. upon an order of the court for registration, which is final and not subject to appeal, by which a deficiency in the articles pursuant to § 399 of the Act on Court Procedure in Family Matters and Non-Litigious Matters is determined;
- 6. through cancellation of the company for lack of assets according to § 394 of the Act on Court Procedure in Family Matters and Non-Litigious Matters.

(2) The provisions of this section shall also apply if the company is dissolved for other grounds.

§ 263 Filing and Registration of the Dissolution

¹The management board shall file the dissolution of the company for registration in the commercial register. ²The foregoing shall not apply in the case of institution or denial of institution of insolvency proceedings (§ 262 (1) Nos. 3 and 4) or in the case of judicial determination of a deficiency in the articles (§ 262 (1) No. 5). ³In such cases, the court shall register the dissolution and the grounds therefor ex officio. ⁴In the case of a cancellation of the company (§ 262 (1) No. 6), entry of the dissolution shall be omitted.

Subsection Two. Liquidation

§ 264 Requirement of Liquidation

- (1) Upon dissolution of the company, liquidation shall take place unless insolvency proceedings have been instituted over the company's assets.
 - (2) ¹If the company has been dissolved by cancellation due to lack of assets, liquidation shall only take place if it becomes apparent after the cancellation that there are assets subject to distribution. ²Liquidators shall be appointed by the court upon application by a party involved.
 - (3) To the extent that this sub-paragraph or the purpose of the liquidation does not otherwise require, the provisions for undissolved companies shall apply to the company until completion of the liquidation.
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§ 265 Liquidators

- (1) The members of the management board shall carry out the liquidation as liquidators.
- (2) ¹The articles or a resolution of the shareholders' meeting may appoint other persons as liquidators. ²§ 76 (3) sentence 2 and 3 shall apply analogously to the selection of the liquidators. ³A legal entity may also act as liquidator.

- (3) ¹The court shall appoint or remove liquidators for cause upon motion by the supervisory board or a minority of shareholders whose shares in aggregate amount to one-twentieth of the share capital or represent an amount of the share capital corresponding to 500,000 euros. ²The shareholders shall provide evidence that they have been holders of the shares for not less than three months. ³An affidavit made before a court or a notary shall constitute sufficient evidence. ⁴An appeal may be made against such decision.
- (4) ¹The liquidators appointed by the court shall be entitled to reimbursement of reasonable cash expenses and remuneration for their services. ²If the liquidator appointed by the court and the company do not agree, the court shall stipulate the expenses and the remuneration. ³An appeal may be made against such decision; appeals on points of law shall be precluded. ⁴A decision that has become final and may not be appealed may be enforced in accordance with the provisions of the Code of Civil Procedure.
- (5) ¹Liquidators who have not been appointed by the court may be removed by the shareholders' meeting at any time. ²Claims arising under the contract of employment shall be governed by general provisions of law.
- (6) (2) to (5) shall not apply to the labour director to the extent that his appointment and removal are governed by the provisions of the Coal and Steel Co-determination Act.
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§ 266 Filing of the Liquidators for Registration

- (1) The management board shall file the first liquidators and their representative authorities, and the liquidators shall file every change in the liquidators and in their representative authorities for registration in the commercial register.
- (2) The records regarding the appointment or removal and the representative authority shall be appended to the filing in original or officially certified copy.
- (3) ¹In such filing, the liquidators shall affirm that no circumstances exist which preclude their appointment pursuant to § 265 (2) sentence 2 and that they have been informed of their obligation to make full disclosure to the court. ²§ 37 (2) sentence 2 shall apply.
- (4) The appointment or removal of liquidators by the court shall be registered by the court ex officio.
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§ 267 Notice to Creditors

¹The liquidators shall give notice to the company's creditors to file their claims, referring in such notice to the dissolution of the company. ²Such notice shall be published in the company's journals.

§ 268 Duties of the Liquidators

- (1) ¹The liquidators shall wind up all current transactions, collect claims, convert the remaining assets to cash and provide satisfaction to the creditors. ²To the extent required to carry out the liquidation, the liquidators may also enter into new transactions.
 - (2) ¹The liquidators shall otherwise have the same rights and duties as the management board within the scope of their assigned functions. ²The liquidators shall, in the same manner as the management board, be subject to the supervision of the supervisory board.
 - (3) The prohibition on competition of § 88 shall not apply to the liquidators.
 - (4) ¹All business letters which are addressed to a specific recipient shall state the company's legal form and domicile, the fact that the company is in liquidation, the court of registration of the company's domicile, the number under which the company has been registered in the commercial register, and the surname and at least one forename of all liquidators and the chairman of the supervisory board. ²If information is provided regarding the company's capital, the amount of the share capital shall be stated in any event and, if the issue price has not been paid in full, the aggregate amount of the contributions outstanding. ³The information pursuant to sentence 1 needs not be given in communications or reports which are made in the course of an existing business relationship and for which forms are customarily used in which only the details of the specific transaction need be added. ⁴Order forms shall be deemed to be business letters in the meaning of sentence 1; sentence 3 shall not apply thereto.
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§ 269 Representation by the Liquidators

- (1) The liquidators shall represent the company in and out of court.
- (2) ¹If more than one liquidator has been appointed, all liquidators shall only be authorised to represent the company jointly, unless the articles or the body with authority to make such appointment provide otherwise. ²If a statement with legally binding effect is to be made to the company, it shall suffice if such statement is made to one liquidator.

- (3) ¹The articles or the body with authority to make such appointment may also provide that individual liquidators are authorised to represent the company by acting solely or jointly with a registered authorised officer (*Prokurist*). ²The supervisory board may so provide if authorised to do so by the articles or a resolution of the shareholders' meeting. ³ (2) sentence 2 shall apply analogously in such cases.
- (4) ¹Liquidators authorised to represent the company by acting jointly may authorise individual liquidators to engage in certain transactions or kinds of transactions. ²The foregoing shall apply analogously if an individual liquidator is authorised to represent the company by acting jointly with a registered authorised officer (*Prokurist*).
- (5) The authority of the liquidators to represent the company may not be restricted.
- (6) Liquidators shall sign on behalf of the company by adding to the company's business name a reference to the liquidation and their signature.

§ 270 Opening Balance Sheet, Annual Financial Statement and Annual Report

- (1) The liquidators shall prepare a balance sheet as at the commencement of liquidation (opening balance sheet) and an explanatory report regarding the opening balance sheet, and, as at the end of each year, annual financial statements and an annual report.
- (2) ¹The shareholders' meeting shall resolve on the approval of the opening balance sheet and the annual financial statements and on the ratification of the acts of the liquidators and the members of the supervisory board. ²The provisions governing the annual financial statements shall apply analogously to the opening balance sheet and the explanatory report. ³Fixed assets shall, however, be shown in accordance with the valuation methods applicable to current assets to the extent that their sale is intended within a foreseeable period of time or such assets no longer serve the operation of the business; the foregoing shall also apply to the annual financial statements.
- (3) ¹The court may exempt the company from the requirement of an audit of the annual financial statements and the annual report by external auditors if the condition of the company is so readily apparent that an audit does not appear to be necessary in the interest of the creditors and the shareholders. ²An appeal may be made against such decision.
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§ 271 Distribution of the Assets

- (1) The assets of the company remaining after fulfilment of all liabilities shall be distributed among the shareholders.
 - (2) The assets shall be distributed in proportion to the shares in the share capital unless shares exist which grant different rights with respect to the distribution of the company's assets.
 - (3) ¹If the contributions to share capital have not been made in the same proportion with respect to all shares, the contributions made shall be refunded and any surplus remaining distributed in proportion to the shares in the share capital. ²If the assets do not suffice to refund the contributions, the shareholders shall bear the loss in proportion to the shares in the share capital; the contributions still outstanding shall, to the extent necessary, be collected.
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§ 272 Protection of Creditors

- (1) The assets may only be distributed if one year has elapsed from the date on which the notice to creditors has been published.
 - (2) If a known creditor does not answer, the amount owed shall be placed on deposit for him, if a right to such deposit exists.
 - (3) If a liability cannot be fulfilled for the time being or is disputed, the assets may only be distributed if security has been provided to the creditor.
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§ 273 Completion of the Liquidation

- (1) ¹If the liquidation has been completed and the final statement of accounts rendered, the liquidators shall file the completion of the liquidation for registration in the commercial register. ²The entry of the company in the commercial register shall be cancelled.
- (2) The company's books and records shall be deposited for safekeeping for ten years at a safe place to be designated by the court.
- (3) The court may permit shareholders and creditors to inspect the books and records.
- (4) ¹If it subsequently becomes apparent that further liquidation measures are necessary, the court shall upon motion by a party concerned reappoint the previous liquidators or appoint other liquidators. ²§ 265 (4) shall apply.

- (5) An appeal against the decisions pursuant to (2), (3) and (4) sentence 1 may be made.
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§ 274 Continuation of a Dissolved Company

- (1) ¹If a stock corporation has been dissolved by lapse of time or a resolution of the shareholders' meeting, the shareholders' meeting may resolve the continuation of the company if the distribution of assets among shareholders has not commenced. ²The resolution shall require a majority of at least three fourths of the share capital represented at the passing of the resolution. ³The articles may provide for a larger capital majority and for additional requirements.
- (2) The foregoing shall apply if the company:
- 1. has been dissolved by the institution of insolvency proceedings, but such insolvency proceedings were terminated upon motion by the debtor or cancelled following a confirmation of the insolvency plan providing for the continuation of the company;
 - 2. has been dissolved by a judicial finding of a deficiency in the articles pursuant to § 262 (1) No. 5, but an amendment to the articles which cures such deficiency has been resolved not later than the resolution for continuation of the company.
- (3) ¹The liquidators shall file the continuation of the company for registration in the commercial register. ²They shall furnish proof in connection with such filing that the distribution of the assets of the company among the shareholders has not yet commenced.
- (4) ¹The resolution on continuation shall only become effective upon registration in the commercial register of the company's domicile. ²In the case of (2) sentence 2, the resolution on continuation shall not be effective until it has been registered in the commercial register of the company's domicile together with the resolution on amendment of the articles; both resolutions shall only be registered in the commercial register together.
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Section Two. Declaration of Annulment of the Company

§ 275 Action for Declaration of Annulment

- (1) ¹If the articles do not contain provisions regarding the amount of the share capital or the company's purpose or if the provisions of the articles regarding the company's purpose are null and void, each shareholder and each member of the management board and the supervisory board may bring an action for declaration of annulment of the company. ²Such action may not be based on any other grounds.
 - (2) If the deficiency is capable of being cured pursuant to § 276, the action may only be instituted after a party with standing to bring such action has demanded that the company cure such deficiency and the company has failed to comply with such demand within three months.
 - (3) ¹Such action must be brought within three years after registration of the company. ²A cancellation of the registration of the company upon the court's own motion pursuant to § 397 (1) of the Act on Court Procedure in Family Matters and Non-litigious Matters shall not be precluded by the expiration of such period.
 - (4) ¹§ 246 (2) to (4), §§ 247, 248 (1) sentence 1, §§ 248a, 249 (2) shall apply analogously to a contesting action. ²The management board shall submit a certified copy of the complaint and a decision that is final and not subject to appeal to the commercial register. ³The annulment of the company by virtue of such judgment shall be registered.
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§ 276 Curing of Deficiencies

Any deficiency that relates to the provisions governing the company's purpose may be cured in accordance with the provisions of law and the articles regarding amendments of the articles.

§ 277 Effectiveness of Registration of Annulment

- (1) If the annulment of the company by virtue of a judgment which is final and not subject to appeal or a decision by the court of registration has been registered in the commercial register, liquidation shall be carried out in accordance with the provisions regarding liquidation in the case of dissolution.
 - (2) The validity of transactions entered into in the name of the company shall not be affected by the annulment.
 - (3) The shareholders shall make contributions to the extent necessary to fulfil the liabilities incurred.
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Book Two. Partnership Limited by Shares

§ 278 Nature of the Partnership Limited by Shares

- (1) The partnership limited by shares is a company which constitutes a separate legal entity, in which at least one partner has unlimited liability with regard to the creditors of the company (general partner) and the other shareholders are not personally liable for the obligations of the company (limited shareholders) participate in the share capital.
 - (2) The legal relations of the general partners among themselves and with respect to the body of limited shareholders and to third parties, in particular the authority of the general partners to manage the business and represent the company, shall be governed by the provisions of the Commercial Code regarding limited partnerships.
 - (3) For the rest, the provisions of Book One regarding the stock corporation shall apply analogously to the partnership limited by shares unless the following provisions or the absence of a management board necessitate otherwise.
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§ 279 Business Name

- (1) The business name of the partnership limited by shares, even if it is continued according to § 22 of the Commercial Code or similar legal provisions, shall contain the designation “Kommanditgesellschaft auf Aktien” or a generally understood abbreviation of this designation.
 - (2) If in the partnership no natural person is general partner, the business name shall contain a designation indicating the limitation of liability, even if it is continued according to § 22 of the Commercial Code or similar legal provisions.
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§ 280 Establishment of the Articles. Founders

- (1) ¹The articles shall be established in the form of a notarial deed. ²The deed shall specify the par value in case of par-value shares, the number of shares in case of no-par value shares, the issue price and, if there is more than one class of shares, the class of shares acquired by each party. ³Attorneys-in-fact shall require a power of attorney certified by a notary.
 - (2) ¹All general partners shall participate in the establishment of the articles. ²In addition to the general partners, the persons who as limited shareholders subscribe to shares against contributions shall participate in the establishment of the articles.
 - (3) The general partners and limited shareholders who have established the articles are the founders of the company.
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§ 281 Contents of the Articles

- (1) The articles shall contain, in addition to the stipulations pursuant to § 23 (3) and (4), the surname, forename and place of residence of each general partner.
 - (2) The articles shall stipulate the amount and kind of any contributions of assets by general partners that are not made against the issuance of share capital.
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§ 282 Registration of the General Partners

¹The registration of the company in the commercial register shall, in lieu of the members of the management board, designate the general partners.²In addition, the authority of the general partners to represent the company shall be registered.

§ 283 General Partners

The provisions governing the management board of the stock corporation with regard to the following subjects shall apply analogously to the general partners:

- 1. filings, submissions, declarations, and proof to be furnished to the commercial register and announcements;
- 2. the formation audit;
- 3. duty of diligence and responsibility;
- 4. duties in relation to the supervisory board;
- 5. permission to grant credit;
- 6. notice of a shareholders' meeting;
- 7. special audits;
- 8. assertion of claims for damages in connection with the management of the business;
- 9. preparation, submission and audit of the annual financial statements and the proposals for the appropriation of the net retained profits;
- 10. submission and audit of the annual report as well as the consolidated financial statements and group annual report;

- 11. submission, audit and disclosure of the individual accounts pursuant to § 325 (2a) of the Commercial Code;
 - 12. issuance of shares in the case of a conditional capital increase, authorised capital or a capital increase from the company's reserves;
 - 13. annulment and setting aside of a resolution of the shareholders' meeting;
 - 14. petition for institution of insolvency proceedings.
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§ 284 Prohibition of Competition

- (1) ¹A general partner may not without the express consent of the other general partners and of the supervisory board enter into transactions on his own behalf or on behalf of another person in the company's field of business or become member of the management board, manager or general partner of a similar commercial enterprise. ²The consent may only be granted for specific kinds of business or specific commercial enterprises.
- (2) ¹If a general partner violates such prohibition, the company may claim damages. ²In lieu thereof, the company may require that the partner treat the transactions made for his own account as having been made on behalf of the company and remit any remuneration obtained for transactions made on behalf of another person or assign his claim to such remuneration.
- (3) ¹The Partnership has three months from the date on which the other general partners and the members of the supervisory board obtained knowledge, or without gross negligence should have obtained knowledge of the act giving rise to the damage claim, to make any claims. ²Irrespective of such knowledge or lack of knowledge as a result of gross negligence, the statute of limitation for such claims shall be five years from the time when they arose.
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§ 285 Shareholders' Meeting

- (1) ¹In the shareholders' meeting, the general partners shall only have voting rights in respect of the shares held by them. ²They may not exercise voting rights on behalf of themselves or other persons in the case of resolutions regarding:
- 1. election or removal of the supervisory board;
 - 2. ratification of the acts of the general partners and members of the supervisory board;
 - 3. appointment of special auditors;

- 4. assertion of claims for damages;
- 5. waiver of claims for damages;
- 6. appointment of external auditors.

³In the case of resolutions regarding such matters, their voting rights may also not be exercised by any other person.

- (2) ¹The resolutions of the shareholders' meeting shall require the consent of the general partners to the extent that they relate to matters which in the case of a limited partnership require the consent of the general partners and the limited partners. ²Consent of the general partners shall not be required for the exercise of the authority of the shareholders' meeting or of a minority of limited shareholders to appoint auditors or assert claims of the company arising from the formation or management of the company.
- (3) ¹Resolutions of the shareholders' meeting that require the consent of the general partners may be submitted to the commercial register only after such consent has been granted. ²Such consent shall, in the case of resolutions that are required to be registered in the commercial register, be recorded in the minutes of the meeting or in an appendix to the minutes.

§ 286 Annual Accounts, Annual Report

- (1) ¹The shareholders' meeting shall resolve upon approval of the annual financial statements. ²Such resolution shall require the consent of the general partners.
- (2) ¹The capital participations of the general partners shall be shown separately in the annual balance sheet following the item Subscribed Capital. ²The share of a general partner in any loss for the fiscal year shall be deducted from such capital participation. ³If the amount of the loss exceeds such capital participation, such excess shall be shown separately on the asset side as on accounts receivable, designated Payment Obligation of General Partner, to the extent that a payment obligation exists; if no payment obligation exists, such excess shall be designated as Share of General Partners in Losses which are not Offset by Contributions of Assets and shown in accordance with § 268 (3) of the Commercial Code. ⁴Credits falling under § 89 that the company has granted to general partners, to their spouses or minor children or to third parties that are acting on behalf of such persons, shall be shown on the asset side under the appropriate items with the designation, of which credits granted to general partners and their relatives.
- (3) The profit or loss attributable to the capital participations of the general partners need not be shown separately in the profit and loss statement.

- (4) § 285 No. 9 lit. a and b of the Commercial Code shall apply to general partners, provided, however, that the profit attributable to the capital participation of a general partner need not be indicated separately.
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§ 287 Supervisory Board

- (1) The supervisory board shall carry out the resolutions of the limited shareholders unless the articles provide otherwise.
- (2) ¹The supervisory board shall represent the limited shareholders, unless the shareholders' meeting has elected special representatives, in the case of litigation by the limited shareholders as a body against the general partners or in the case of litigation by the general partners against the limited shareholders as a body. ²The company shall be liable for the costs of the litigation that are incurred by the limited shareholders irrespective of the company's right to recourse against the limited shareholders.
- (3) General partners may not also be members of the supervisory board.
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§ 288 Withdrawals by General Partners; Granting of Credits

- (1) ¹A general partner may not withdraw any profit with respect to his capital participation if his share of a loss exceeds his capital participation. ²He also may not withdraw any share of profits or cash for his capital participation as long as the sum of any balance sheet loss, any payment obligations, the share of general partners in any losses and any amounts owed under credits granted to general partners and their relatives exceeds the sum of any profit carried forward, the capital and profit reserves and the capital participations of the general partners.
- (2) ¹The company may not grant any credit falling under § 286 (2) sentence 4 as long as the conditions set forth in (1) sentence 2 apply. ²Any such credit that has been granted in violation of the foregoing shall be repaid immediately irrespective of any agreements to the contrary.
- (3) ¹The foregoing provisions shall not affect the claims of general partners for remuneration for services that are not related to profits. ³§ 87 (2) sentence 1 and 2 shall apply analogously to any reduction of such remuneration.
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§ 289 Dissolution

- (1) The grounds for dissolution of a partnership limited by shares and for the resignation of one or several general partners from the company shall be governed by the provisions of the Commercial Code regarding limited partnerships, unless (2) to (6) provide otherwise.

- (2) The partnership limited by shares shall also be dissolved:
- 1. upon a decision which is final and not subject to appeal denying the institution of insolvency proceedings for lack of assets sufficient to cover the costs of the proceedings;
 - 2. upon an order of the court for registration which is final and not subject to appeal determining a deficiency in the articles pursuant to § 399 of the Act on Court Procedure in Family Matters and Non-Litigious Matters;
 - 3. upon cancellation of the company for lack of assets according to § 394 of the Act on Court Procedure in Family Matters and in Non-Litigious Matters.
- (3) ¹The company shall not be dissolved by reason of the institution of insolvency proceedings over the assets of a limited shareholder. ²The creditors of a limited shareholder shall not be entitled to terminate the company.
- (4) ¹Termination of the company by the limited shareholders or their consent to the dissolution of the company shall require a resolution of the shareholders' meeting. ²The foregoing shall also apply to a motion for dissolution of the company by judicial decision. ³The resolution shall require a majority of not less than three fourths of the share capital represented at the passing of the resolution. ⁴The articles may provide for a larger capital majority and for additional requirements.
- (5) General partners may, except in the case of expulsion, resign only when the articles so permit.
- (6) ¹All general partners shall file the dissolution of the company or the resignation of a general partner for registration in the commercial register. ²§ 143 (3) of the Commercial Code shall apply analogously. ³In the cases of (2) the court shall register the dissolution and the reason for it ex officio. ⁴In the case of (2) No. 3, the registration of the dissolution may be omitted.

§ 290 Liquidation

- (1) All general partners and one or more persons elected by the shareholders' meeting shall carry out liquidation of the company as liquidators, unless the articles provide otherwise.
- (2) Each general partner may also make motion for the appointment or removal of liquidators by the court.

- (3) ¹If the company has been dissolved by cancellation due to lack of assets, liquidation shall only take place if it becomes apparent after the cancellation that there are assets subject to distribution. ²Liquidators shall be appointed by the court upon motion by a party involved.

Book Three. Affiliated Enterprises

Division One. Enterprise Agreements

Section One. Types of Enterprise Agreements

§ 291 Control Agreement, Profit Transfer Agreement

- (1) ¹An agreement in which a stock corporation or partnership limited by shares submits the direction of the company to another enterprise (control agreement) or undertakes to transfer its entire profits to another enterprise (profit transfer agreements) shall constitute enterprise agreements. ²An agreement in which a stock corporation or partnership limited by shares agrees to conduct its business on behalf of another enterprise shall also constitute a profit transfer agreement.
- (2) If enterprises that are not controlled by one another submit by agreement to common direction, without one of such enterprises becoming controlled by another contracting enterprise, such agreement shall not constitute a control agreement.
- (3) Payments made by a company in case of an existing control agreement or profit transfer agreement shall not constitute a violation of §§ 57, 58 and 60.

§ 292 Other Enterprise Agreements

- (1) Agreements in which a stock corporation or partnership limited by shares:
- 1. undertakes to pool its profits or the profits of certain operations in whole or in part with the profits of other enterprises or certain operations of other enterprises for the purpose of dividing the pool's profits (profit pool);
 - 2. undertakes to transfer a share of its profit or the profit of certain operations in whole in part to another person (agreement to transfer a share of profits);
 - 3. leases or otherwise surrenders the operation of its business to another person (agreement to lease operations, agreement to surrender operations)

shall also constitute enterprise agreements.

- (2) An agreement on profit sharing with members of the management board and the supervisory board or with individual employees of the company as well as an arrangement as to profit sharing under agreements entered into in the ordinary course of business or under licensing agreements shall not constitute an agreement to transfer a share of profits.
- (3) ¹The fact that an agreement violates §§ 57, 58 and 60 shall not render any agreement to lease or surrender operations, or the resolution by which the shareholders' meeting has consented to such agreement, null and void. ²Sentence 1 shall not preclude a contesting action against such resolution on the grounds that such agreement violates such provisions.

Section Two. Conclusion, Amendments and Termination of Enterprise Agreements

§ 293 Consent of the Shareholders' Meeting

- (1) ¹An enterprise agreement shall only become effective upon consent of the shareholders' meeting. ²The resolution shall require a majority of not less than three fourths of the share capital represented at the passing of the resolution. ³The articles may provide for a larger capital majority and for additional requirements. ⁴The provisions of law and the articles governing amendments to the articles shall not apply to such resolution.
- (2) ¹A control agreement or profit transfer agreement shall, if the other party to the agreement is a stock corporation or partnership limited by shares, become effective only if the shareholders' meeting of such other company also consents thereto. ²(1) sentences 2 to 4 shall apply analogously to any such resolution.
- (3) Any such agreement must be made in writing and duly signed.

§ 293a Report on the Enterprise Agreement

- (1) ¹The management board of any stock corporation or partnership limited by shares that is party to an enterprise agreement shall make, to the extent that the approval of the shareholders' meeting is required according to § 293, a comprehensive written report that explains and justifies legally and economically the conclusion of the enterprise agreement, its detailed provisions and especially the nature and the level of compensation according § 304 and of the settlement according to § 305; the management boards may make the report jointly. ²Special difficulties in the valuation of the contracting enterprises and the consequences for the shareholders' holdings must be indicated.
- (2) ¹The report need not include facts whose disclosure would be suited to cause considerable disadvantage to one of the contracting enterprises or an affiliated enterprise. ²In such case, the report must explain the reasons for not disclosing these facts.

- (3) The report need not be made if all shareholders of all contracting enterprises waive this right by a publicly certified declaration.
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§ 293b Examination of the Enterprise Contract

- (1) The enterprise contract shall be audited by one or more expert auditors (contract auditors) for each contracting stock corporation or partnership limited by shares, unless all shares in the dependent company are held by the dominant company.
- (2) § 293a (3) shall apply analogously.
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§ 293c Appointment of Contract Auditors

- (1) ¹The contract auditors are each to be selected and appointed by the court upon motion by the management boards of the contracting companies. ²Upon joint motion by the management boards, the auditors may be appointed jointly for all contracting parties. ³The Regional court in the district of which the dependent company has its seat shall have jurisdiction. ⁴If the Regional court has a commercial chamber, then this chamber shall decide instead of the civil chamber. ⁵§ 318 (5) of the Commercial Code shall apply for the reimbursement of the court appointed auditors and their remuneration.
- (2) § 10 (3) to (5) of the Transformation Act shall apply analogously.
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§ 293d Selection, Position and Accountability of the Contract Auditors

- (1) ¹For the selection and the information right of the contract auditors, § 319 (1) to (4), § 319a (1), §319b (1), § 320 (1) sentence 2 and (2) sentences 1 and 2 of the Commercial Code shall apply analogously. ²The information right exists with respect to the contracting enterprises and to a group enterprise as well as to a dependent and to a dominant enterprise.
- (2) ¹For the accountability of the contract auditors, their assistants and the legal representatives of any auditing company collaborating in the audit, § 323 of the Commercial Code shall apply analogously. ²They shall be accountable with respect to contracting enterprises and their shareholders.
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§ 293e Audit Report

- (1) ¹The contract auditors shall report in writing on the results of the audit.
²The audit report shall conclude with a recommendation as to whether the proposed compensation or the proposed settlement are adequate.
³The following must be indicated:
- 1. the methods by which compensation and settlement were determined;
 - 2. why the use of these methods is appropriate;
 - 3. what compensation or what settlement would have resulted in each case from the use of different methods, to the extent that several methods were used; at the same time, it must be indicated which weight was given to the various methods in determining the proposed compensation or settlement and the underlying assets and which special difficulties occurred in assessing the contracting enterprises.
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(2) § 293a (2) and (3) shall apply analogously.

§ 293f Preparation for the Shareholders' Meeting

- (1) From the convocation of the shareholders' meeting that is to resolve on the approval of the enterprise contract, the following must be laid out in the business premises of each of the participating stock corporations or companies limited by shares for review by the shareholders:
- 1. the enterprise contract;
 - 2. annual accounts and annual reports of the contracting enterprises for the preceding three years;
 - 3. the reports of the management boards made according to § 293a and the reports of the contract auditors made according to § 293e.
- (2) On request, each shareholder shall be given a copy of the documents listed in (1) without delay or charge.
- (3) The duties under (1) and (2) do not apply if the documents listed in (1) for the same periods of time are available on the company's Internet page.
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§ 293g Conduct of the Shareholders' Meeting

- (1) The documents listed in § 293f (1) shall be made available in the shareholders' meeting.
 - (2) ¹The management board shall orally explain the enterprise contract at the beginning of the meeting. ²It shall be attached to the minutes.
 - (3) Each shareholder shall also receive in the shareholders' meeting, on request, information about all matters relating to the other contracting party that are relevant to the conclusion of the contract.
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§ 294 Registration, Effectiveness

- (1) ¹The management board of the company shall file the existence and form of the enterprise agreement and the name of the other contracting party for registration in the commercial register; if there several agreements to transfer a share of profit, the name of the other contracting party may be replaced by another designation determining the respective agreement to transfer a share of profit. ²The agreement and, if such agreement only becomes effective upon the consent of the shareholders' meeting of the other contracting party, the minutes of such resolution including attachments shall be appended to the filing in original, duplicate or officially certified copy.
 - (2) The agreement shall only become effective upon registration in the commercial register of the company's domicile.
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§ 295 Amendment

- (1) ¹An enterprise agreement may only be amended with the consent of the shareholders' meeting. §§ 293 to 294 shall apply analogously.
 - (2) ¹The consent of the shareholders' meeting of the company to any amendment of the terms of the agreement which would obligate the company to pay compensation to its outside shareholders or to acquire their shares shall require a separate resolution of the outside shareholders in order to become effective. ²§ 293 (1) sentences 2 and 3 shall apply to such separate resolution. ³At the shareholders' meeting resolving upon such consent, each outside shareholder shall upon request be provided with information regarding all matters relating to the other contracting party that are material in the context of such amendment.
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§ 296 Cancellation

- (1) ¹An enterprise agreement may only be cancelled by mutual agreement at the end of the fiscal year or the accounting period otherwise contractually agreed upon. ²A retroactive cancellation is not admissible. ³Cancellation shall be made in writing and duly signed.
 - (2) ¹An agreement that obligates the company to pay compensation to outside shareholders or to acquire their shares may only be cancelled if the outside shareholders consent by separate resolution. ²§ 293 (1) sentences 2 and 3, § 295 (2) sentence 3 shall apply analogously to such separate resolution.
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§ 297 Termination

- (1) ¹An enterprise agreement may be terminated for cause without observing any period of notice. ²Cause shall in particular exist if it is likely that the other contracting party will not be able to fulfil its obligations arising from the agreement.
 - (2) ¹The management board of the company may only terminate without cause an agreement which obligates the company to pay compensation to the outside shareholders or to acquire their shares if the outside shareholders consent thereto by separate resolution. ²§ 293 (1) sentences 2 and 3, § 295 (2) sentence 3 shall apply analogously to such separate resolution.
 - (3) The notice of termination shall be made in written form.
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§ 298 Filing and Registration

The management board of the company shall without undue delay file the cancellation or termination of an enterprise agreement, the grounds and the date of cancellation or termination for registration in the commercial register.

§ 299 Prohibition of Instructions

An enterprise agreement may not serve as the basis for an instruction to the company to amend, continue, cancel or terminate the agreement.

Section Three. Protection of the Company and the Creditors

§ 300 Legal Reserve

The following amounts are to be transferred to the legal reserve in lieu of the amount specified in § 150 (2):

- 1. if a profit transfer agreement exists, that amount of the annual net profit accruing without such profit transfer, after deducting any loss carried forward from the previous year, which is required in order to fill up, during the first five fiscal years commencing during the term of such agreement or upon completion of a capital increase, the legal reserve, plus the amount of any capital reserve, in equal instalments to one-tenth of the share capital or a higher proportion specified by the articles, but in any event not less than the amount specified in number 2.
- 2. if an agreement to transfer a share of profits exists, that share of the annual net profit accruing without such profit transfer, after deducting any loss carried forward from the previous year, which would be transferred to the legal reserve pursuant to § 150 (2).
- 3. if a control agreement exists which does not obligate the company to transfer its entire profit, that amount which is required to fill up the legal reserve in accordance with No. 1, but in any event not less than the amount specified in § 150 (2) or, if the company is obligated to transfer a share of its profit, the amount specified in No. 2.

§ 301 Maximum Amount of Profit Transfer

¹Irrespective of any agreements made regarding the amount of profit to be transferred, a company may in no event transfer as profit an amount exceeding the annual net profit accruing without such profit transfer, after deducting any loss carried forward from the previous year, the amount to be transferred to the legal reserve pursuant to § 300 and the undistributable, restricted amount pursuant to § 268 (8) of the Commercial Code. ²If during the term of the agreement amounts have been transferred to other profit reserves, such amounts may be withdrawn from such other profit reserves and transferred as profit.

§ 302 Assumption of Losses

- (1) In the case of a control agreement or profit transfer agreement, the other contracting party shall compensate any annual net loss occurring during the term of the agreement to the extent that such loss is not compensated by withdrawing amounts from the other profit reserves which were transferred to such reserves during the term of the agreement.

- (2) If a controlled company has leased or otherwise surrendered the operation of its business to its controlling enterprise, such controlling enterprise shall compensate any annual net loss occurring during the term of the agreement to the extent that the consideration agreed upon for such lease or surrender of operation does not constitute adequate compensation.
 - (3) ¹The company may only waive or compromise any claim for compensation after the expiration of three years from the date on which the registration of the cancellation or termination of the agreement in the commercial register has been announced pursuant to § 10 of the Commercial Code. ²The foregoing shall not apply if the party obligated to compensate is insolvent and enters into settlement with his creditors to avoid insolvency proceedings. ³Such waiver or settlement shall only become effective if the outside shareholders consent thereto by separate resolution and no minority whose holding in aggregate equals or exceeds one-tenth of the share capital represented at the passing of the resolution has recorded an objection in minutes.
 - (4) The statute of limitation for any claims pursuant to the foregoing provisions shall be ten years starting from the day on which notice of the registration of termination of the agreement with the commercial register has been announced pursuant to § 10 of the Commercial Code.
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§ 303 Protection of Creditors

- (1) ¹If a control agreement or profit transfer agreement is cancelled or terminated, the other contracting part shall provide security to the creditors of the company whose claims arose prior to the date on which the registration of the cancellation or termination of the agreement in the commercial register has been announced pursuant to § 10 of the Commercial Code, provided that such creditors have applied to such contracting party for such purpose within six months from the date of the announcement of the registration. ²In the announcement of registration, the creditors shall be advised of such right.
 - (2) Creditors who in the case of insolvency proceedings have a right to preferential satisfaction from a fund that has been established pursuant to statutory provisions for their protection and is subject to governmental supervision shall not have the right to demand security.
 - (3) ¹The other contracting party may in lieu of security guarantee the claim. ²§ 349 of the Commercial Code, which excludes the benefit of discussion, shall not apply.
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Section Four. Protection of Outside Shareholders in Case of Control Agreements or Profit Transfer Agreements

§ 304 Adequate Compensation

- (1) ¹A profit transfer agreement shall provide for adequate compensation for outside shareholders by recurring payments in proportion to the shares in the share capital (compensation payment). ²A control agreement shall, if the company is not obligated to transfer its entire profit, guarantee to the outside shareholders as adequate compensation a certain annual share of profit in the same amount as the compensation payment. ³Adequate compensation only does not have to be determined if the company does not have any outside shareholders at the time of the adoption of the resolution of the shareholders' meeting on the agreement.
 - (2) ¹The annual amount to be provided as compensation payment shall be not less than the amount which could be expected to be distributed as the average dividend for each share in view of the past profitability of the company and its prospective profits, taking into account adequate depreciation and reserves for declines in value but exclusive of other profit reserves. ²If the other contracting party is a stock corporation or a partnership limited by shares, the amount to be provided as compensation payment may be the amount which is paid as dividend on shares of the other company achieving an appropriate conversion ratio. ³Such appropriate conversion ratio shall be determined by the proportion in which shares of the company, in the case of a merger, would be entitled to shares of the other company.
 - (3) ¹An agreement which contrary to (1) does not provide for any compensation payment shall be null and void. ²A contesting action against the resolution by which the shareholders' meeting of the company has consented to the agreement or to an amendment of the agreement falling under § 295 (2), may not be based on § 243 (2) or on the grounds that the compensation provided for in the agreement is inadequate. ³If the compensation provided for in the agreement is inadequate, the court with jurisdiction pursuant to § 2 of the Corporate Proceedings Act shall upon motion determine the contractually owed compensation and shall, if the agreement provides for a compensation payment computed pursuant to (2) sentence 2, determine the compensation pursuant to such provision.
 - (4) If the court determines the amount of the compensation payment, the other contracting party may terminate the agreement without complying with any notice period within two months of the date on which the decision has become final and may not be appealed.
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§ 305 Settlement

- (1) A control agreement or profit transfer agreement shall, in addition to the obligation to provide compensation pursuant to § 304, include the obligation of the other contracting party to acquire the shares of any outside shareholder upon demand by such shareholder against an adequate settlement specified in the agreement.
- (2) The agreement shall provide for the following settlement:
 - 1. if the other contracting party is a stock corporation or partnership limited by shares with seat in a member state of the European Union or another contracting state to the Agreement on the European Economic Area and is not a controlled enterprise or subsidiary, own shares of such other company,
 - 2. if the other contracting party is a stock corporation or partnership limited by shares which is a controlled enterprise or subsidiary and the controlling enterprise is a stock corporation or partnership limited by shares with seat in a member state of the European Union or another contracting company of the Agreement on the European Economic Area, either shares of the controlling enterprise or of the parent or a cash settlement;
 - 3. in all other cases, a cash settlement.
- (3) ¹If shares of another company are provided as settlement, such settlement shall be considered to be adequate if the shares are provided in the same proportion in which shares of the company would, in the case of a merger, be entitled to shares of the other company, provided that fractional amounts may be compensated by additional cash payments. ²The adequate cash settlement must take into account the condition of the company at the time of its shareholders' meeting resolving on the agreement. ³After expiry of the day on which the control agreement or the profit transfer agreement has become effective, interest shall accrue on the cash settlement at the annual rate of five per centage points over the basic rate according to § 247 of the Civil Code; claims for further damages are not excluded.
- (4) ¹The obligation to acquire shares may be limited to a specified period of time. ²Such period of time shall expire not earlier than two months after the date on which the registration of the agreement in the commercial register has been announced pursuant to § 10 of the Commercial Code. ³If motion has been made for determination of the amount of the compensation payment or settlement by the court with jurisdiction pursuant to § 2 Corporate Proceedings Act, such period of time shall expire not earlier than two months after the date on which the decision on the last motion disposed of has been announced in the electronic Federal Gazette.

- (5) ¹A contesting action against the resolution by which the shareholders' meeting of the company has consented to the agreement, or to an amendment thereto falling under § 295 (2), may not be based on the ground that the agreement does not provide for an adequate settlement. ²If the agreement does not provide for any settlement at all or for a settlement that does not comply with (1) to (3), the court with jurisdiction pursuant to § 2 Corporate Proceedings Act shall upon motion determine the amount of the settlement due under the agreement. ³In the case of (2) sentence 2, if the agreement provides for the granting of shares of the controlling enterprise or parent company, the court shall determine the ratio in which such shares are to be granted, and if the agreement does not provide for the granting of shares of the controlling enterprise or parent company, the court shall determine the appropriate cash settlement. ⁴§ 304 (4) shall apply analogously.

§ 306 [repealed]

§ 307 Termination of Agreement in the Interests of Outside Shareholders

If the company does not have any outside shareholder at the date of the resolution by its shareholders' meeting on a control agreement of profit transfer agreement, such agreement shall terminate no later than at the end of the fiscal year in which an outside shareholder acquires a shareholding in the company.

Division Two. Power to Direct and Liability in case of Interdependency on Enterprises

Section One. Power to Direct and Liability in case of a Control Agreement

§ 308 Power to Direct

- (1) ¹In the case of a control agreement, the controlling enterprise shall be entitled to issue instructions to the management board of the company with respect to management of the company. ²Unless otherwise provide in such agreement, instructions may be issued which are disadvantageous to the company, if they are advantageous to the controlling enterprise or to affiliated enterprises which are members of the same group as such controlling enterprise and such company.
- (2) ¹The management board shall be obligated to comply with the instructions of the controlling enterprise. ²The management board may not refuse compliance with an instruction on the grounds that such instruction does not in its opinion serve the interests of the controlling enterprise or of affiliated enterprises that are members of the same group as such controlling enterprises and such controlled company, unless such instructions manifestly do not serve such interests.

- (3) ¹If the management board has been instructed to undertake a transaction which requires the consent of the company's supervisory board, and such consent has not been granted within a reasonable period of time, the management board of the controlled company shall inform the controlling enterprise thereof. ²If after such notification the controlling enterprise renews its instruction, the consent of the supervisory board shall no longer be required; if the controlling enterprise has a supervisory board, such instruction may only be renewed with the consent of such supervisory board.
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§ 309 Liability of the Legal Representatives of the Controlling Enterprise

- (1) In the case of a control agreement, the legal representatives (in the case of a sole proprietor the owner) of the controlling enterprise shall, in issuing instructions to the company, employ the care of a diligent and conscientious manager.
- (2) ¹If such legal representatives violate their duties, they shall be jointly and severally liable to the company for any resulting damage. ²They shall bear the burden of proof in the event of a dispute as to whether or not they have employed the care of a diligent and conscientious manager.
- (3) ¹The company may waive or compromise any claim for damages not prior to the expiration of three years from the date on which such claim has arisen and only if the outside shareholders consent thereto by separate resolution and no minority whose holding in aggregate equals or exceeds one-tenth of the share capital represented at the passing of the resolution records an objection in the minutes. ²The foregoing limitation period shall not apply if the person liable for damages is insolvent and enters into a settlement with his creditors to avoid or terminate insolvency proceedings or if the liability for damages is regulated in an insolvency plan.
- (4) ¹Any claim of the company for damages may also be asserted by any shareholder. ²The shareholders may, however, only demand that compensation be paid to the company. ³Such claim for damages may furthermore be asserted by the creditors of the company as far as such creditors cannot obtain satisfaction from the company. ⁴Liability for damages with respect to the creditors shall neither be extinguished by a waiver nor by a settlement of the company. ⁵If insolvency proceedings have been instituted over the assets of the company, the receiver in insolvency shall exercise the rights of the shareholders and creditors to assert any claim of the company for damages during the course of such proceedings.
- (5) Claims under the foregoing provisions shall be time barred after expiration of a period of five years.
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§ 310 Liability of the Company's Board Members

- (1) ¹The members of the management board and the supervisory board of the company shall, in addition to any person liable pursuant to § 309, be jointly and severally liable if they have acted in violation of their duties. ²They shall bear the burden of proof in the event of a dispute as to whether or not they have employed the care of a diligent and conscientious manager.
- (2) The consent of the supervisory board to such act shall not preclude liability for damages.
- (3) The company's board members shall not be liable for damages if the act causing damage was based on an instruction that was binding pursuant to § 308 (2).
- (4) § 309 (3) to (5) shall apply.

Section Two. Liability in Case of no Control Agreement

§ 311 Limitation on the Exercise of Influence

- (1) In the absence of a control agreement, a controlling enterprise may not exercise its influence to cause a controlled stock corporation or partnership limited by shares to undertake or refrain from undertaking a disadvantageous transaction or act, unless any disadvantage is compensated.
 - (2) ¹If such compensation is not made during the fiscal year in which the controlled company is caused such disadvantage, the time and means by which such disadvantage shall be compensated shall be determined no later than the end of such fiscal year. ²The controlled company shall be granted an entitlement to the measures designated to serve as compensation.
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§ 312 Report of the Management Board on Relations with Affiliated Enterprises

- (1) ¹In the absence of a control agreement, the management board of a controlled company shall, within the first three months of each fiscal year, render a report on the company's relations with affiliated enterprises. ²Such report shall specify all transactions entered into by the company during the previous fiscal year with the controlling enterprise or any enterprise affiliated with such controlling enterprise or at the instruction or in the interest of any such enterprise and all other acts which the controlled company has undertaken or refrained from undertaking at the instruction or in the interest of any such enterprise. ³Such report shall, with regard to transactions, specify any consideration given or received and, with regard to acts undertaken, state the reasons for such acts and the advantages and disadvantages for the controlled company. ⁴If compensation for disadvantages was given, such report shall specify the manner in which such compensation was actually given during the fiscal year and for which measures the company has been granted an entitlement.
- (2) Such report shall comply with the principles of conscientious and accurate accounting.
- (3) ¹The management board shall, at the end of such reports, comment on whether the company, under the circumstance known to the board at the date on which the company entered into such transaction or undertook or refrained from undertaking such act, received adequate consideration for each such transaction or suffered any disadvantage by reason of undertaking or refraining from undertaking such act. ²If the company suffered any disadvantage, the management board shall further comment on whether such disadvantage has been compensated. ³Such comments shall be included in the annual report.

§ 313 Audit by External Auditors

- (1) ¹If the annual financial statements are to be audited by an external auditor, the report on relations with affiliated enterprises shall be submitted to the external auditor together with the annual financial statements and the annual report. ²The auditor shall examine whether:
 - 1. the statements in such report on relation with affiliated enterprises are accurate;
 - 2. the consideration given by the company for the transaction specified in such report was not unreasonably high in view of the circumstances known at the time such transactions were entered into; and, whether any disadvantages have been compensated;

- 3. there are no circumstances that would justify a different opinion in respect of the acts specified in the report than the opinion of the management board.

³§ 320 (1) sentence 2 and (2) sentences 1 and 2 of the Commercial Code shall apply analogously. ⁴The external auditor shall have the rights pursuant to the foregoing provisions also with respect to a member of an affiliated group or a controlled or controlling enterprise.

(2) ¹The external auditor shall report in writing on the findings of the audit. ²If the auditor finds in the course of the audit of the annual financial statements, the annual report and the report on the relations with affiliated enterprises that such report on relations with affiliated enterprises is incomplete, he shall also report thereon. ³The external auditor shall sign and submit the audit report to the supervisory board; prior to such submission the management board shall have the right to make a statement thereon.

(3) ¹If the conclusive findings of the audit do not give rise to any objections, the external auditor shall confirm this with the following note to the report on relations with affiliated enterprises:

- “On the basis of my/our diligent examination and judgment I/we hereby confirm that:
 - 1. the statements in such report on relation with affiliated enterprises are accurate;
 - 2. the consideration given by the company for the transactions specified in the report was not unreasonably high and any disadvantages incurred have been compensated;
 - 3. there are no circumstances that would justify a different opinion in respect of the acts specified in the report than the opinion of the management board.

²No. 2 may be omitted from such note if the report does not specify any transactions and No. 3 may be omitted from such note if the report does not specify any acts. ³If the external auditor has not determined that the consideration given by the company for any transaction specified in the report was unreasonably high, No. 2 of such note shall be limited to confirmation of such fact.

(4) ¹If objections are to be made or the external auditor has determined that the report on relations with affiliated enterprises is incomplete, the auditors shall either restrict the wording of the confirmation note or refuse to provide any confirmation. ²If the management board has stated that the company has suffered a disadvantage as a result of certain transactions or acts, and that such disadvantages have not been compensated, such fact shall be stated in the note and the note shall be restricted to any other transactions or acts.

- (5) ¹The external auditor shall sign the confirmation note stating the place and date of signature. ²Such note shall also be included in the audit report.
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§ 314 Examination by the Supervisory Board

- (1) ¹The management board shall submit to the supervisory board the report on relations with affiliated enterprises immediately after its preparation. ²This report and, if the annual financial statements are to be audited by an external auditor, the audit report of the external auditor shall be delivered to each member of the supervisory board and, if the supervisory board has so resolved, the members of a committee.
- (2) ¹The supervisory board shall examine the report on relations with affiliated enterprises and comment on the findings of such examination in its report to the shareholders' meeting (§ 171 (2)). ²If the annual financial statements are to be audited by an external auditor, the supervisory board shall in its report further comment on the findings of the audit of the report on relations with affiliated enterprises by the external auditor. ³The confirmation note of the external auditor shall be included in such report and the refusal to provide such note shall be explicitly stated.
- (3) The supervisory board shall, at the end of the report, state whether or not based on the findings of its examination, objections are to be made to the comments of the management board at the end of the report on relations with affiliated enterprises.
- (4) If the annual financial statements are to be audited by an external auditor, the external auditor shall attend the deliberations of the supervisory board or a committee regarding the report on relations with affiliated enterprises and provide a report on the material findings of his audit.
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§ 315 Special Audit

¹The court shall upon motion by a shareholder appoint special auditors to audit the business relations of the company with its controlling enterprise or an enterprise affiliated with such controlling enterprise if:

- 1. the external auditor has restricted or refused to provide a confirmation note on the report on relations with affiliated enterprises;
- 2. the supervisory board has stated that objections are to be made to the comments of the management board at the end of the report on relations with affiliated enterprises;

- 3. the management board has stated that the company has suffered a disadvantage as a result of certain transactions or acts, and such disadvantages have not been compensated.

²If other facts support the suspicion that the company has suffered an undue disadvantage, the petition may also be made by shareholders whose aggregate holdings reach the threshold set forth in § 142(2) if they furnish evidence that they have been the holders of the shares for at least three months prior to the date of filing the petition. ³The district court of the stock corporation's registered seat shall decide on such petition. ⁴§ 142 (8) shall apply accordingly. ⁴An appeal may be made against such decision. ⁶If the shareholders' meeting has appointed special auditors to audit the same matters, each shareholder may file a motion pursuant to § 142 (4).

§ 316 No Report on Relations with Affiliated Enterprises in the Case of a Profit Transfer Agreement

§§ 312 to 315 shall not apply if a profit transfer agreement between the controlled company and the controlling enterprise exists.

§ 317 Liability of the Controlling Enterprise and its Legal Representatives

- (1) ¹If a controlling enterprise causes a controlled company with which a control agreement does not exist to enter into a transaction or to undertake or refrain from undertaking any act which is disadvantageous for such controlled company, without compensating such disadvantage by the end of the fiscal year or granting to the controlled company an entitlement to any measures serving as compensation for this, such controlling enterprise shall be liable for any resulting damage to such controlled company. ²Such controlling enterprise shall also be liable to the shareholders of the controlled company for any resulting damage to the shareholders insofar as they have suffered damage in addition to any loss incurred as a result of the damage to the company.
- (2) The controlling enterprise shall not be liable if a prudent and a conscientious manager of an independent company would have entered into such transaction or undertaken or refrained from undertaking such act.
- (3) The legal representatives of the controlling enterprise who have caused the controlled company to enter into such transaction or undertake or refrain from undertaking such act shall, in addition to the controlling enterprise, be jointly and severally liable.
- (4) § 309 (3) to (5) shall apply analogously.

§ 318 Liability of the Board Members

- (1) ¹The members of the management board of the company shall be jointly and severally liable together with the persons liable pursuant to § 317, if, in violation of their duties, they have failed to include any disadvantageous transaction or act in their report on relations of the company with affiliated enterprises or to state that the company has suffered a disadvantage as a result of such transaction or act and that such disadvantage has not been compensated. ²They shall bear the burden of proof in the event of a dispute as to whether or not they have employed the care of a diligent and conscientious manager.
- (2) The members of the supervisory board of the company shall be jointly and severally liable together with persons liable pursuant to § 317, if, with respect to any disadvantageous transaction or act, they have violated their duty to examine the report on relations with affiliated enterprises and to report to the shareholders' meeting on the findings of such examination (§ 314); (1) sentence 2 shall apply analogously.
- (3) The board members shall not be liable to the company and the shareholders if any such act was based on a lawful resolution of the shareholders' meeting.
- (4) § 309 (3) to (5) shall apply analogously.

Section Three. Integrated Companies

§ 319 Integration

- (1) ¹The shareholders' meeting of a stock corporation may resolve to integrate the company into another stock corporation with domicile in Germany (principal company), if all shares of such company are held by the prospective principal company. ²The statutory provisions and the provisions of the articles governing amendments to the articles shall not apply to such resolution.
- (2) ¹The resolution on integration shall become effective only upon consent by the shareholders' meeting of the prospective principal company. ²The resolution on the consent shall require a majority of not less than three fourths of the share capital represented at the passing of the resolution. ³The articles may provide for a larger capital majority and for additional requirements. ⁴(1) sentence 2 shall apply.

- (3) ¹From the convocation of the shareholders' meeting of the prospective principal company that is to resolve the approval of the integration, the following must be presented in the business premises of this company for review by the shareholders:
- 1. a draft of the integration resolution;
 - 2. annual accounts and balance sheets of the participating companies for the preceding three years;
 - 3. a comprehensive written report by the management board of the prospective principal company in which the integration is explained and justified legally and economically (integration report).

²Upon request, each shareholder shall receive without delay and free of charge a copy of the documents referred to in sentence 1. ³The duties in sentences 1 to 2 shall not arise if the documents referred to in sentence 1 are accessible on the future principal company's Internet page for the same period of time. ⁴These documents shall be made accessible in the shareholders' meeting. ⁵Each shareholder shall upon request also receive in the shareholders' meeting information about all matters relating to the company to be integrated that are relevant in the context of the integration.

- (4) ¹The management board of the company to be integrated shall file the integration and the name of the principal company for registration in the commercial register. ²The minutes of the resolutions of the shareholders' meeting and the appendices thereto shall be appended to such filing in duplicate or officially certified copy.
- (5) ¹In the registration according to 4, the management board must declare that an action against the effectiveness of the resolution of the shareholders' meeting has not been raised or has not been raised within the time limits or that such an action has been denied finally and without recourse to appeal or that such an action has been withdrawn; the management board must also inform the registration court of such actions after the registration. ²If the declaration is not made, then the integration shall not be registered unless, through declarations certified by a notary, those shareholders with standing forfeit the action against the effectiveness of the resolution of the shareholders' meeting.

(6) ¹The declaration according to 5 sentence 1 is not necessary if, after the raising of an action against the effectiveness of the resolution by shareholders' meeting, the court holds, on application of the company against whose shareholders' meeting resolution the action is directed, that the raising of the action does not prevent the registration. ²§ 247, §§ 82, 83 (1) and § 84 of the Code of Civil Procedure as well as the provisions of the Code of Civil Procedure applicable with regard to proceedings at first instance before regional courts shall be applied to the proceedings unless stated otherwise. ³The order according to sentence 1 shall be issued if

- 1. the action is inadmissible or manifestly unfounded,
- 2. the claimant has not provided deeds within one week after service of the application which prove that he has been holding a proportionate amount of not less than 1,000 euros since notification of the meeting; or
- 3. it appears preferable that the resolution of the shareholders' meeting takes effect immediately, because the material disadvantages for the company and the shareholders as set forth by the stock corporation outweigh, in the court's opinion, the disadvantages for the opponent, unless the infringement is particularly severe.

⁴In urgent cases, the order can be issued without oral hearing. ⁵The decision should be rendered no later than three months following the petition; delays in rendering the decision must be explained in a non-appealable decision. ⁶The alleged facts according to which the order can be issued according to sentence 3 must be made credible. ⁷The senate of the higher regional court of the stock corporation's registered seat shall decide on such petition. ⁸A transfer of such power to decide to a single judge shall be excluded; conciliatory hearings shall not be required.

⁹The decision is not subject to a contesting action. ¹⁰If the action proves to be founded, then the company that caused issue of the order must compensate the opponent of the application for the loss incurred due to the registration based on the order. ¹¹Any deficiencies concerning the resolution shall not affect its implementation after registration; it is not possible to demand as compensation that this effect of the registration be eliminated.

(7) The integration of the company into the principal company shall become effective upon registration of the integration in the commercial register of the integrated company's domicile.

§ 320 Integration by Majority Resolution

(1) ¹The shareholders' meeting of a stock corporation may also resolve to integrate the company into another stock corporation with domicile in Germany if the prospective principal company holds shares of the company representing in aggregate ninety-five per cent of the share capital. ²Own shares and shares held by another person on behalf of such company shall be deducted from the share capital. ³(2) to (4) shall, in addition to § 319 (1) sentence 2, (2) to (7), apply to the integration.

(2) ¹ The announcement of the integration as an item on the agenda shall only be deemed duly made if:

- 1. such announcement includes the business name and domicile of the prospective principal company;
- 2. a statement of the prospective principal company has been appended to such announcement in which such prospective principal company offers own shares to shareholders of the company to be integrated as compensation for their shares, and, in the case of § 320b (1) sentence 3, an additional cash payment.

²Sentence 1 No. 2 shall also apply to the announcement of the prospective principal company.

(3) ¹The integration shall be audited by expert auditors (integration auditors).

²Such auditors shall be selected and appointed by the court upon petition of the management board of the prospective principal company. ³§ 293a (3), §§ 293c to 293e shall apply analogously.

(4) ¹The documents referred to in § 319 (3) sentence 1 and the audit report according to (3) shall be presented in the business premises of the company to be integrated and the prospective principal company for review by the shareholders as of the convocation of the shareholders' meeting that is to resolve the approval of the integration. ²The integration report shall explain and justify legally and economically the nature and level of the settlement according to § 320b; it shall indicate special difficulties in assessing the participating companies and the consequences for the holdings of the shareholders. ³§ 319 (3) sentences 2 to 5 applies analogously for shareholders of both companies.

§ 320a Effects of the Integration

¹Upon registration in the commercial register, all shares that are not held by the principal company are transferred to it. ²Any Certificates issued for these shares shall only guarantee the entitlement to settlement until their delivery to the principal company.

§ 320b Settlement for the Former Shareholders

- (1) ¹The former shareholders of the integrated company are entitled to an adequate settlement. ²They shall be granted own shares of the principal company as settlement. ³If the principal company is a dependent company, then the former shareholders shall be granted at their election own shares of the principal company or an appropriate cash settlement. ⁴If shares in the principal company are granted as settlement, the settlement shall be deemed adequate if the shares are issued in the proportion in which upon a merger a share of the company would be granted shares in the principal company, whereby fractional amounts can be compensated by additional cash payments. ⁵The cash settlement must take into account the condition of the company at the time of its shareholders' meeting resolving the integration. ⁶The cash settlement and additional cash payments shall accrue interest at the annual rate of five per centage points over the basic rate according to § 247 of the Civil Code from the end of the day on which the registration of the integration is published; claims for further damages are not excluded.
 - (2) ¹The challenge of the resolution by which the shareholders' meeting of the integrated company resolved the integration cannot be based on § 243 (2) or that the settlement offered by the principal company according to § 320 (2) No. 2 is not adequate. ²If the settlement offered is not adequate then the court determined by § 2 Corporate Proceedings Act shall on application determine the adequate settlement. ³The same applies if the principal company has not or has not duly offered a settlement and an action has not been raised within the time limits for a challenge, has been withdrawn or denied finally and without recourse to appeal.
-

§ 321 Protection of Creditors

- (1) ¹Creditors of the integrated company whose claims arose prior to the registration of the integration in the commercial register shall be provided with security insofar as they are not able to demand satisfaction, provided that they have made application for this purpose within six months after the date of such announcement. ²In the announcement of registration, the creditors shall be advised of such right.
 - (2) Creditors shall not be entitled to demand provision of security if they have a right to preferential satisfaction in the case of insolvency from a fund which has been created for their protection pursuant to statutory provisions and which is subject to governmental supervision.
-

§ 322 Liability of the Principal Company

- (1) ¹The principal company shall be liable to the creditors of the integrated company as joint and several debtor for the obligations of such company that have been incurred prior to such date. ²The principal company shall also be liable for all obligations of the integrated company that have been incurred after the integration. ³Any agreement to the contrary shall be ineffective towards third parties.
 - (2) If a claim is made against the principal company regarding an obligation of the integrated company, such principal company may raise defences other than those it has in its own right only if such defences may be raised by the integrated company.
 - (3) ¹The principal company may refuse to satisfy a creditor for as long as the integrated company has the right to rescind the transaction giving rise to such obligation. ²The principal company shall have the same right for as long as the creditor may obtain satisfaction by setting off against a claim of the integrated company that is due.
 - (4) A judgment or other judicial decision which is enforceable against the integrated company may not be enforced against the principal company.
-

§ 323 Principal Company's Power to Direct and Management Board Members' Liability

- (1) ¹The principal company shall be entitled to issue instructions to the management board of the integrated company regarding the management of the company. ²§ 308 (2) sentence 1, (3) §§ 309, 310 shall apply analogously. ³§§ 311 to 318 shall not apply.
 - (2) Payments and other forms of consideration given by the integrated company to the principal company shall not be deemed to constitute a violation of §§ 57, 58 and 60.
-

§ 324 Legal Reserve, Profit Transfer, Assumption of Losses

- (1) The statutory provisions governing the creation of a legal reserve, the use thereof and the transfer of amounts to the legal reserve shall not apply to integrated companies.
- (2) ¹§§ 293 to 296, 298 to 303 shall not apply to a profit transfer agreement, a profit sharing arrangement or an agreement to transfer a share of profits between an integrated company and the principal company. ²The agreement, any amendments thereto and the cancellation thereof shall be in writing and duly signed. ³The amount to be transferred as profit may not exceed the distributable profit accruing prior to the profit transfer. ⁴The agreement shall expire not later than at the end of the fiscal year in which the integration terminates.

- (3) The principal company shall be obligated to compensate any accumulated loss of the integrated company that may otherwise arise insofar as such loss exceeds the amount of the capital reserves and profit reserves.
-

§ 325 [repealed]

§ 326 Right of the Principal Company's Shareholders to Information

Each shareholder of the principal company shall be entitled to be provided with information regarding matters relating to the integrated company to the same extent he is entitled to be provided with information regarding matters relating to the principal company.

§ 327 Termination of Integration

- (1) Integration shall terminate:
- 1. upon resolution of the shareholders' meeting of the integrated company.
 - 2. if the principal company is no longer a stock corporation with domicile in Germany;
 - 3. if the principal company no longer holds all shares of the integrated company;
 - 4. upon dissolution of the principal company.
- (2) If the principal company no longer holds all shares of the integrated company, the principal company shall promptly advise the integrated company thereof in writing.
- (3) The management board of the previously integrated company shall promptly file the termination of integration, the reason for this and the date thereof for registration in the commercial register of such company's domicile.
- (4) ¹If the integration is terminated, the former principal company shall be liable for all liabilities the formerly integrated stock corporation has incurred until then, provided that the liabilities become due prior to the expiration of five years after the integration has been terminated and the claims against the former principal company are established in a manner as set forth in § 197(1) numbers 3 to 5 of the Civil Code or the court or

an authority enforces such claims or applies for their enforcement; in the case of public liabilities an administrative decision shall suffice.²The statute of limitation shall begin running from the date on which notice of registration of the termination of the integration has been given pursuant to § 10 of the Commercial Code.³For the statute of limitation, §§ 204, 206, 210, 211 and § 212 (2) and (3) of the Civil Code shall apply accordingly.⁴An establishment of the claim in respect of § 197(1) numbers 3 to 5 of the Civil Code is not necessary if the former principal company acknowledges the claim in writing.

Division Four. Squeeze-out of Minority Shareholders

§ 327a Transfer of Shares for Cash Compensation

- (1) ¹The shareholders meeting of a stock corporation or of partnership limited by shares may resolve upon request of a shareholder holding 95 per cent of the share capital (principal shareholder) the transfer of the other shareholders' (minority shareholders') shares to the principal shareholder against the payment of adequate cash compensation.²§ 285 (2) sentence 1 shall not apply.
- (2) For the determination of whether the principal shareholder holds 95 per cent of the share capital, § 16 (2) and (4) shall apply.

§ 327b Cash Compensation

- (1) ¹The principal shareholder sets the amount of the cash compensation; it must reflect the circumstances of the corporation at the time the resolution is adopted.²The management board shall make available to the principal shareholder all necessary documents and supply information to this end.
 - (2) Interest shall accrue on the cash compensation at the rate of five per centage points over the applicable base rate according to § 247 of the Civil Code from the publication of the transfer resolution's registration in the commercial register; the assertion of further claims for damage is not excluded.
 - (3) Before the shareholders meeting is convened, the principal shareholder must deliver to the management board the declaration of a credit institution authorised to operate within the territorial scope of this law by which the credit institution guarantees the performance of the principal shareholder's obligation to pay the minority shareholders the set cash compensation for the transferred shares immediately after registration of the transfer resolution.
-

§ 327c Preparation of the Shareholders' Meeting

- (1) Notice of the transfer as an item on the agenda must contain the following information:
 - 1. business name and domicile of the principal shareholder, in the case of natural persons name and address;
 - 2. the cash compensation set by the principal shareholder.
- (2) ¹The principal shareholder must provide the shareholders' meeting with a written report that sets out the preconditions for the transfer and explains and justifies the adequacy of the cash compensation. ²The adequacy of the cash compensation shall be reviewed by one or more expert auditors. ³These shall be selected and appointed by the court on application of the principal shareholder. ⁴§ 293a (2) and (3), § 293c (1) sentence 3 to 5, (2) and §§ 293d and 293e shall apply analogously.
- (3) From the convocation of the shareholders' meeting onward the following must be made available in the company's office for inspection by the shareholders:
 - 1. the draft of the transfer resolution;
 - 2. the annual financial statements and management reports for the last three business years;
 - 3. the report made by the principal shareholder according to (2) sentence 1;
 - 4. the audit report made according to (2) sentence 2 to 4.
- (4) On request, each shareholder shall without undue delay and free of charge be given a copy of the documents listed in (3).
- (5) The duties in (3) and (4) shall not arise if the documents referred to in (3) are accessible on the company's Internet page for the same period of time.

§ 327d Conduct of the Shareholders' Meeting

¹In the shareholders' meeting, the documents described in § 327c (3) shall be made accessible. The management board may give the principal shareholder opportunity to orally explain the draft of the transfer resolution and the setting of the amount of the cash compensation at the beginning of the meeting.

§ 327e Registration of the Transfer Resolution

- (1) ¹The management board shall file the transfer resolution for registration in the commercial register. ²The filing shall be accompanied by the written transfer resolution and its appendices in authentic original or notarized copy.
 - (2) § 319 (5) and (6) shall apply analogously.
 - (3) ¹Upon registration of the transfer resolution in the commercial register, all shares of the minority shareholders shall be transferred to the principal shareholder. ²Any share certificates issued for these shares only attest to the claim for cash compensation until their delivery to the principal shareholder.
-

§ 327f Judicial Review of the Compensation

¹The challenging of the transfer resolution cannot be based on § 243 (2) or on the fact that the cash compensation set by the principal shareholder is inadequate. ²If the cash compensation is inadequate, the court determined by § 2 of the Corporate Proceedings Act shall set the adequate cash compensation. ³The same applies if the principal shareholder has not or not duly offered a cash compensation and within the period for challenge a challenge was not raised, withdrawn or finally denied without recourse to appeal.

Division Five. Enterprises with Cross-Shareholdings

§ 328 Limitation of Rights

- (1) ¹If a stock corporation or partnership limited by shares and another enterprise constitute enterprises with cross-shareholdings, rights arising from shares which are held by any such enterprise in the other enterprise may not be exercised with respect to more than one-fourth of all shares of such other enterprise as from the date on which such other enterprise has received knowledge of the existence of such cross-shareholding or the other enterprise has given notice to such enterprise pursuant to § 20 (3) or § 21 (1). ²The foregoing shall not apply to the right to new shares in the case of a capital increase from the company's reserves. ³§ 16 (4) shall apply.
- (2) The restriction on exercise of rights pursuant to (1) shall not apply if such enterprise has given notice to the other enterprise pursuant to § 20 (3) or § 21 (1) prior to receiving such notice from the other enterprise and prior to having gained knowledge of the cross-shareholding.
- (3) In the shareholders' meeting of a listed company, an enterprise that is aware of a cross-shareholding according to (1) may not exercise its voting rights to elect members of the supervisory board.

(4) If a stock corporation or partnership limited by shares and another enterprise constitute enterprises with cross shareholdings, such enterprises shall promptly give notice in writing to one another of the amount of such holding and any change therein.

Division Six. Group Statement of Accounts

§§ 329, -393 [repealed]

§ 329 [repealed]

§ 330 [repealed]

§ 331 [repealed]

§ 332 [repealed]

§ 333 [repealed]

§ 334 [repealed]

§ 335 [repealed]

§ 336 [repealed]

§ 337 [repealed]

§ 338 [repealed]

§ 339 [repealed]

§ 340 [repealed]

§ 341 [repealed]

§ 342 [repealed]

§ 343 [repealed]

§ 344 [repealed]

§ 345 [repealed]

§ 346 [repealed]

§ 347 [repealed]

§ 348 [repealed]

§ 349 [repealed]

§ 350 [repealed]

§ 351 [repealed]

§ 352 [repealed]

§ 353 [repealed]

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§ 355 [repealed]

§ 356 [repealed]

§ 357 [repealed]

§ 358 [repealed]

§ 359 [repealed]

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§ 362 [repealed]

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§ 364 [repealed]

§ 365 [repealed]

§ 366 [repealed]

§ 367 [repealed]

§ 368 [repealed]

§ 369 [repealed]

§ 370 [repealed]

§ 371 [repealed]

§ 372 [repealed]

§ 373 [repealed]

§ 374 [repealed]

§ 375 [repealed]

§ 376 [repealed]

§ 377 [repealed]

§ 378 [repealed]

§ 379 [repealed]

§ 380 [repealed]

§ 381 [repealed]

§ 382 [repealed]

§ 383 [repealed]

§ 384 [repealed]

§ 385 [repealed]

§ 386 [repealed]

§ 387 [repealed]

§ 388 [repealed]

§ 389 [repealed]

§ 390 [repealed]

§ 391 [repealed]

§ 392 [repealed]

§ 393 [repealed]

Book Four. Special, Penal and Final Provisions

Division One. Special Provisions in Case of Participations of Local and Regional Authorities

§ 394 Reports of the Members of the Supervisory Board

¹Persons who have been elected or delegated to the supervisory board by a local or regional authority shall not be bound by a duty of secrecy with respect to reports that they are required to make to the local or regional authority. ²The foregoing shall not apply to confidential information and secrets of the company, in particular trade and business secrets, if knowledge thereof is not material in the context of such reports.

§ 395 Duty of Secrecy

- (1) Persons who are charged with administering the participations of a local or regional authority or auditing on behalf of a local or regional authority the company, the activities of the municipality in its capacity as shareholder or the activities of members in the supervisory board who have been elected or delegated by the municipality, shall not disclose any confidential information or secrets of the company, in particular trade or business secrets which have become known to them in connection with reports pursuant to § 394; the foregoing shall not apply to internal governmental communications.
 - (2) Confidential information and secrets of the company, in particular trade and business secrets, may not be disclosed when the findings of audits are published.
-

Division Two. Judicial Dissolution

§ 396 Requirements

- (1) ¹If a stock corporation or a partnership limited by shares endangers the common good as a result of unlawful conduct of its board members and the supervisory board or the shareholders' meeting do not arrange for the dismissal of such board members, the company may be dissolved by judicial decree upon motion by the appropriate highest authority of the state in which the company is domiciled. ²The regional court of the district in which the company is domiciled shall have exclusive jurisdiction with respect to any such action.
 - (2) ¹After dissolution, the company shall be liquidated pursuant to §§ 264 to 273. ²A motion to dismiss or appoint liquidators for cause may also be made by the authority designated in (1) sentence 1.
-

§ 397 Court Orders in Connection with Dissolution

If an action for dissolution has been brought, the court may upon motion by the authority designated in § 396 (1) sentence 1 issue any necessary orders by preliminary injunction.

§ 398 Registration

¹The decisions of the court shall be communicated to the court maintaining the commercial register. ²Such court shall enter such decisions in the commercial register to the extent that they concern legal relations requiring registration.

Division Three. Provisions as to Punishments and Fines, Final Provisions

§ 399 False Statements

(1) Whoever makes false statements or fails to disclose material facts:

- 1. as founder or member of the management board or supervisory board for the purpose of registration of the company, with respect to the acquisition of shares, payment of contributions, appropriation of contributions, the share issue price, special benefits, formation expenses, Contributions in kind and acquisitions of assets or in the statement to be made pursuant to § 37a (2);
- 2. as founder or member of the management board or supervisory board in the formation report, the report on post-formation acquisition or the audit report;
- 3. in the official announcement pursuant to § 47 No. 3;
- 4. as a member of the management board of a supervisory board, for purposes of registration of a share capital increase (§§ 182 to 206), with respect to contributions to the previously existing capital, subscription or contribution of the new capital, the share issue price, the issuance of new shares, Contributions in kind, in the announcement pursuant to § 183a (2) sentence 1 in connection with § 37a (2) or in the statement to be made pursuant to § 184 (1) sentence 3,
- 5. a liquidator, for purposes of registration of the continuation of the company, in connection with the proof to be furnished pursuant to § 274 (3); or

- 6. as a member of the management board of a stock corporation or the managing body of a foreign legal entity, in the statement to be made pursuant to § 37 (2) sentence 1 or § 81 (3) sentence 1 or as liquidator in the statement to be made pursuant to § 266 (3) sentence 1

shall be punished by imprisonment of up to three years or by fine.

- (2) Whoever, as member of the management board or the supervisory board, makes a false statement for purposes of registration of a share capital increase with respect to the statement required pursuant to § 210 (1) sentence 2 shall be punished in the same manner.

§ 400 Misrepresentation

- (1) Whoever as a member of the management board or of the supervisory board or as liquidator:
 - 1. misrepresents or conceals the condition of the company, including its relations with affiliated enterprises, in presentations or summaries on the financial condition of the company, statements or information provided at the shareholders' meeting, unless such act constitutes a criminal offence pursuant to § 331 No. 1 or 1a of the Commercial Code, or
 - 2. makes false statements or misrepresents or conceals the condition of the company in disclosures or statements which are required to be made to an auditor of the company or an affiliated enterprise pursuant to the provisions of this Act, unless such act constitutes a criminal offence pursuant to § 331 No. 4 of the Commercial Code

shall be punished by imprisonment of up to three years or by fine.

- (2) Whoever, as founder or shareholder, makes false statement or conceals material facts in disclosures or evidence which are required to be made to a formation auditor or other auditor pursuant to the provisions of this Act, shall be punished in the same manner.

§ 401 Violation of Duty in the Event of Loss of Capital, Overindebtedness or Insolvency

- (1) Whoever, as member of the management board, in violation of § 92 (1) fails to call a shareholders' meeting and to disclose at such meeting a loss equal to or exceeding one-half of the share capital shall be punished by imprisonment of up to three years or by a fine.
 - (2) If the offender acts negligently, the punishment shall be imprisonment up to one year or a fine.
-

§ 402 False Issuance of Certificates Confirming the Right to Vote

- (1) Whoever issues falsely or falsifies certificates which are to serve as proof at a shareholders' meeting or separate meeting, shall be punished by imprisonment of up to three years or by fine, unless such act is subject to a more severe punishment in other criminal provisions concerning documents.
 - (2) Whoever makes use of a false or falsified certificate of the kind specified in (1) for the purpose of exercising voting rights shall be punished in the same manner.
 - (3) The attempt shall also be punishable.
-

§ 403 Violation of Duty to Report

- (1) Whoever as auditor or assistant to an auditor renders a false report on findings of an audit or fails to disclose material facts in such report shall be punished by imprisonment up to three years or by fine.
 - (2) If the offender acted for remuneration or with the intent to enrich himself or another person or causing damage to another person, the punishment shall be imprisonment up to five years or a fine.
-

§ 404 Violation of the Duty of Confidentiality

- (1) Whoever without authorisation discloses a secret of the company, in particular a trade or business secret, shall be punished by imprisonment of up to one year, in case of a listed company up to two years, or by fine if such secret became known to him in his capacity as
 - 1. a member of the management board or supervisory board or a liquidator;
 - 2. auditor or assistant to an auditor

in the case of number 2, however, only if such act does not constitute a criminal offence pursuant to § 333 of the Commercial Code.

- (2) ¹If such offender acted for remuneration or with the intent to enrich himself or another person or causing damage to another person, the punishment shall be imprisonment of up to two years, in case of a listed company up to three years, or a fine. ²Whoever unlawfully uses a secret of the kind specified in (1), in particular a trade or business secret, which has become known to him under the circumstances of (1) shall be punished in the same manner.

- (3) ¹Such act shall be prosecuted only upon complaint by the company.
²Such complaint may be made by the supervisory board if a member of the management board or liquidator committed such act; such complaint may be made by the management board or the liquidators if a member of the supervisory board committed such act.
-

§ 405 Administrative Offences

- (1) Any member of the management board or management board or liquidator who
- 1. issues registered share certificates in which the amount of partial contributions is not stated or issues bearer shares prior to contribution in full of the issue price;
 - 2. issues share certificates or interim certificates prior to registration of the company or, in the case of a capital increase, the completion of the share capital increase, or, in the case of a conditional capital increase or a capital increase from the company's reserves, the resolution on the conditional capital increase or the capital increase from the company's reserves;
 - 3. issues share certificates or interim certificates which have a par value less than the minimum par value pursuant to § 8 (2) sentence 1 or which, in case of a company with no-par value shares, represent a lower par value than permitted as minimum amount pursuant to § 8 (3) sentence 3, or
 - 4.
 - a) acquires own shares in violation of § 71 (1) No. 1 to 4 or (2) or, in connection with § 71e (1), takes a pledge on such shares;
 - b) fails to offer own shares which are to be disposed of (§ 71c (1) and (2));
 - c) fails to take measures necessary for preparation of a resolution on the cancellation of own shares (§ 71c (3));

shall be guilty of an administrative offence.

- (2) Whoever as shareholder or proxy fails to provide or provides incorrectly the information to be included in the list pursuant to § 129 shall also be guilty of an administrative offence.
- (2a) Whoever contrary to § 67 (4) sentence 2, also in connection with sentence 3, fails to make a notice or does so incorrectly commits an offence.

(3) Whoever:

- 1. uses shares of another person, without authorisation to act as proxy and without the approval of such other person, to exercise rights at a shareholders' meeting or a separate meeting;
- 2. uses shares of another person which he has acquired by granting or promising special benefits to exercise rights at a shareholders' meeting or a separate meeting;
- 3. permits the use of shares to another person for the purpose specified in No. 2 against the grant or promise of special benefits;
- 4. uses another person's shares for which neither he nor the other person represented by him may exercise voting rights pursuant to § 135 to exercise voting rights;
- 5. permits the use of shares or uses such shares to exercise voting rights which neither he nor the other person represented by him may exercise pursuant to § 20 (7), § 21 (4), §§ 71b, 71d sentence 4, § 134 (1), §§ 135, 136, 142 (1) sentence 2 and § 285 (1);
- 6. demands special benefits, or demands a promise for or accepts such special benefits, as consideration for voting or refraining from voting in a prescribed manner at a shareholders' meeting or a separate meeting; or
- 7. offers, promises or grants special benefits as consideration to another person for voting or refraining from voting in a prescribed manner at a shareholders' meeting or a separate meeting

shall be guilty of an administrative offence.

(3a) Whoever

- 1. contrary to § 121 (4a) sentence 1, also in connection with § 124 (1) sentence 3, intentionally or recklessly fails to serve the notice or serves it incorrectly, incompletely or not in time; or
- 2. contrary to § 124a intentionally or recklessly fails to make statements accessible or makes them accessible incorrectly or incompletely

commits an administrative offence.

(4) The offence may be punished by a fine up to 25,000 euros.

§ 406 [repealed]

§ 407 Compliance Fines

- (1) ¹The court maintaining the commercial register shall threaten to impose fines in order to insure compliance by members of the management board and liquidators who fail to comply with § 52 (2) sentences 2 to 4, § 71c, § 73 (3) sentence 2, §§ 80, 90, 104 (1), § 111 (2), § 145, §§ 170, 171 (3) or (4) sentence 1 in connection with (3), §§ 175, 179a (2) sentence 1 to 3, § 214 (1), § 246 (4), §§ 248a, 259 (5), § 268 (4), §§ 270 (1), § 273 (2), § 293f, § 293g (1), § 312 (1), § 313 (1), § 314 (1); § 14 of the Commercial Code shall remain unaffected. ²Each such fine may not exceed five thousand euros.
- (2) Filings to the commercial register for registration pursuant to §§ 36, 45, 52, 181 (1), §§ 184, 188, 195, 210, 223, 237 (4), §§ 274, 294 (1), § 319 (3) may not be compelled by the setting of fines.
-

§ 408 Criminal Liability of General Partners of a Partnership Limited by Shares

- ¹§§ 399 to 407 shall apply analogously to partnerships limited by shares.
²Insofar as such provisions refer to members of the management board, such provisions shall in the case of a partnership limited by shares apply to the general partners.
-

§ 409 Berlin Clause

[vitiated]

§ 410 Entry into Force

This Act shall enter into force on January 1, 1966.

Disclaimer

The present translation is for convenience purposes only and intended to facilitate the understanding of the German law. Any liability with regard to the completeness and correctness of the contents shall be explicitly excluded. This document is not intended to give legal advice and, accordingly, it should not be relied upon. It should not be regarded as a comprehensive statement of the law and practice in this area. Readers must take specific legal advice on any particular matter which concerns them. If you require any advice or information, please speak to your usual contact at Norton Rose Group.

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Exhibit A-6: current rules, regulations, guidelines and bylaws of EEX

Attached please find the following documents –

1. **Exchange Rules**
2. **Admission Rules**
3. **Trading Conditions**
4. **Contract Specifications**
5. **Contract Specifications for Trade Registration**
6. **Code of Conduct**
7. **Implementation Regulation for the Order Transaction Ratio**
8. **Mistrade Rules (Implementation Regulation for § 10 of Trading Conditions)**
9. **Technical Implementation Regulation (Implementation Regulation pertaining to § 19 of the Exchange Rules)**

Attachments










Key Words	Subject matter	Date	Document	Attachment
Exchange Rules	The Exchange Rules govern the organization of the Spot and Derivatives Exchange	2016-07-04 v.0037a	 Exchange Rules.pdf	1
Admission Rules	The Admission Rules govern the prerequisites for the admission as an exchange trader	2015-02-24 v.006a	 Admission Rules.pdf	2
Trading Conditions	The Trading Conditions govern all Spot and Derivatives transactions, which are concluded on the EEX.	2016-07-04 v.0042a	 Trading Conditions.pdf	3
Contract Specifications	The Contract Specifications contain a legally binding description of the terms and conditions of all futures and option contracts tradable at EEX.	2016-09-02 v.0050a	 Contract Specs.pdf	4

EXHIBIT A GENERAL INFORMATION AND DOCUMENTATION



<p>Contract Specifications for Trade Registration</p>	<p>The Contract Specifications for Trad Registration contain a legally binding description of the terms and conditions of all futures and option available for Trade Registration.</p>	<p>2016-09-05 v.0018b</p>	<p> Contract Specs for Trade Registration.p</p>	<p>5</p>
<p>Code of Conduct</p>	<p>Rules of the EEX itself to make an active contribution to the requirements of the further developing internationalization of commodities trading and to strengthen the confidence which the market and the public have in the markets of EEX.</p>	<p>2016-07-04 v.002a</p>	<p> Code of Conduct.pdf</p>	<p>6</p>
<p>Implementation Regulation for the Order Transaction Ratio</p>	<p>Due to the implementation of the High Frequency Trading into the Exchange Act EEX has to enact more detailed provisions regarding an adequate Order Transaction Ratio.</p>	<p>2016-07-02 v.001b</p>	<p> OTR Implementation.pdf</p>	<p>7</p>
<p>Mistrade Rules</p>	<p>This Implementation Regulation specifies the details of the cancellation of transactions on the Spot Markets and the Derivatives Markets of EEX.</p>	<p>2014-05-13 v.0010a</p>	<p> Mistrade Rules for § 10 Trading Conditio</p>	<p>8</p>
<p>Technical Implementation Regulation</p>	<p>Technical Implementation Regulations pertaining to § 19 of the Exchange Rules of EEX.</p>	<p>2014-02-24 v.006b</p>	<p> Implementation Regulation for § 19 I</p>	<p>9</p>



EEX Exchange Rules

The English version is for informal use only. Only the German version is legally binding.

Date **04.07.2016**

Place **Leipzig**

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2. Organisation and Exchange Bodies

§ 1 Line of Business

- (1) These Exchange Rules govern the organisation of the Spot and Commodity Derivatives Exchange, the European Energy Exchange (EEX) with the following lines of business:
 - (a) Sub-market of EEX Power Derivatives Market for derivatives trading in Power and Guarantees of Origin,
 - (b) Sub-market of EEX Emission Market for spot and derivatives trading in emission rights,
 - (c) Sub-market of EEX Coal Market for derivatives trading in Coal,
 - (d) Sub-market EEX Oil Market for derivatives trading in Crude Oil and Refined Products,
 - (e) Sub-market EEX Freight Market for derivatives trading in Freight,
 - (f) Sub-market Metal Market for derivatives trading in Iron Ore,
 - (g) Sub-market Agricultural Market for derivatives trading in agricultural products.
- (2) EEX has different electronic trading systems. The conclusion of trades and, in particular, of standardised contracts, such as Spot Market contracts, futures and options (Products) is ensured using the respective trading systems according to the conditions for trading on EEX (Trading Conditions) and the rules for the registration of trades (Trade Registration Rules).
- (3) The Management Board of EEX can permit the use of exchange facilities for lines of business other than those stipulated in paragraph 1, as far as this is not prohibited by the rules of law. Where such use is permitted, the Exchange participants are to be informed by suitable means.

§ 2 Operating Companies

- (1) European Energy Exchange AG (EEX AG) is operating the exchange.
- (2) EEX AG as operating company is obligated to, at the request of the Management Board of the Exchange, make available necessary staff, financial resources, facilities and premises for the adequate operation of EEX and further development of the exchange.

§ 3 Exchange Supervisory Authority

The supreme state authority of the Free State of Saxony is responsible for the supervision of the operations of EEX and of the bodies of the exchange. The Saxon State Ministry for Economic Affairs, Labour and Traffic (Sächsisches Staatsministerium für Wirtschaft, Arbeit und Verkehr), Wilhelm-Buck-Straße 2 in 01097 Dresden is the Exchange Supervisory Authority.

§ 4 Exchange Bodies

- (1) The following are the exchange bodies:
 - (a) the Exchange Council,
 - (b) the Management Board of the Exchange,
 - (c) the Market Surveillance Department, and
 - (d) the Sanctions Committee.
- (2) With exception of the Management Board of the Exchange and the Head of Market Surveillance, the members of the Exchange Bodies exercise their occupation on an honorary basis.

§ 5 Rules and Regulations of the Exchange

- (1) The Exchange Council establishes the rules and regulations for the exchange. The rules and regulations are binding for the bodies of the exchange and for the companies and traders licensed to trade on the exchange as well as other persons who are permitted to use the exchange's facilities. The rules and regulations of EEX consist in particular of the following parts:
 - (a) the Exchange Rules,
 - (b) Trading Conditions with the Contract Specifications,
 - (c) the Trade Registration Rules,
 - (d) the Code of Conduct, and
 - (e) the Admission Rules.
- (2) Provided this is laid down in the rules and regulations of the exchange, the Management Board of the Exchange can adopt implementation rules. The implementation rules are binding for the companies and traders admitted to trading on the exchange and for other persons who are permitted to use the exchange's facilities.
- (3) Exchange participants and other persons who are permitted to use the exchange's facilities are obliged to use the facilities of EEX in accordance with the provisions under exchange law and the further national and European rules, in order to ensure the proper execution of trading and of the settlement of exchange transactions. The provisions under exchange law comprise the Exchange Act¹ (BörsG) as amended from time to time and the statutory instruments and decrees rendered on the basis of the Exchange Act, as well as the rules and regulations of EEX and the orders passed on the basis of these.

§ 6 Duties and Powers of the Exchange Council

- (1) The Exchange Council has the duties and powers assigned to it by the Exchange Act. It shall be responsible in particular for:

¹ Exchange Act of 16th July 2007 (Federal Law Gazette, vol. I, p. 1330)

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- (a) the issuance of the Exchange Rules, the Trading Conditions, and the Admission Rules,
 - (b) the appointment, re-appointment and dismissal of the Managing Directors of the Exchange in consultation with the Exchange Supervisory Authority,
 - (c) the supervision of the Management Board of the Exchange,
 - (d) the issuance of the rules of internal procedures for the Exchange Council and the Management Board of the Exchange,
 - (e) the appointment, reappointment and dismissal of the head of Market Surveillance upon the nomination of the Management Board of the Exchange in consultation with the Exchange Supervisory Authority,
 - (f) the appointment, reappointment and dismissal of the appointment of the members of the Sanctions Committee in agreement with the Exchange Supervisory Council.
- (2) The Management Board of the Exchange must obtain the prior consent of the Exchange Council regarding other matters of fundamental importance.

§ 7 Election of the Exchange Council

The composition, the election and the term of office of the Exchange Council is regulated by the Saxon Exchange Act Execution Ordinance² (SächsBörsDVO) as amended from time to time.

§ 8 Chairperson of the Exchange Council; Deputy Chairperson

- (1) In its first meeting following an election, the Exchange Council shall elect, by means of a secret ballot, a Chairperson and up to three deputies from among its members.
- (2) The Chairperson or if he is unable to do so, one of the deputies shall preside over the meetings of the Exchange Council (Chairperson of the Meeting). In case the Chairperson and all the deputies are prevented from attending a meeting, the member of the Exchange Council eldest in age shall serve as Chairperson of the Meeting.

§ 9 Quorum and Resolutions of the Exchange Council

- (1) The Exchange Council shall have a quorum when more than one half of its members take part either in person, by way of written vote, or represented by another member as the result of the properly issued invitation to the meeting. The invitation to the meeting is considered to have been properly issued if there is a period of, at least, 10 Exchange Days between posting the invitation and the documents for the meeting and the day of the meeting. The invitation and the documents for the meeting may be sent to the members of the Exchange Council via e-mail.

² Ordinance by the Saxon State Ministry of Economic Affairs, Labour and Transport regarding the Execution of Exchange Law of 9th February 2012.

- (2) Resolutions shall be passed by a simple majority of the votes cast. In the case of a tie vote, the Chairperson of the Meeting shall cast the deciding vote. If the Chairperson of the meeting abstains from voting, the motion shall be deemed rejected.
- (3) If unable to attend, a member of the Exchange Council may take part in voting by submitting a written vote.
- (4) Resolutions can also be passed in writing, by telex, by telephone, or by fax. A motion shall be deemed to have been passed if more than one half of the members of the Exchange Council have responded within a stipulated period and if the majority of the Exchange Council has agreed to the motion. Each member of the Exchange Council shall be able to demand that the decision be taken by vote after oral debate. The chairperson shall comply with such a request, for which a detailed reason must be given, by calling a meeting without undue delay.
- (5) Votes shall be taken by secret ballot at the request of one quarter of the members.
- (6) The content and outcome of the meetings and of the decision making process shall be recorded in writing and signed by the chairperson of the meeting. With regard to votes cast in writing, by telex, by fax, or by telephone as stipulated in paragraph 4, the minutes and the outcome of the decision making process can also be signed by a managing director of the Exchange. The Regulations of the Exchange Council shall specify details with respect to the preparation of minutes and the adoption of resolutions.

§ 10 Exchange Council Committees

The Exchange Council is allowed to establish committees in order to prepare its resolutions.

§ 11 Management Board of the Exchange; Representation

- (1) The Management Board of the Exchange is responsible for all duties that are not allocated to other governing bodies of the Exchange.
- (2) In the case of more than one managing director being appointed, the EEX shall be represented in and out of court by one managing director. The Management Board of the Exchange may also name other persons as representatives.
- (3) The Management Board of the Exchange and the representatives authorized by it may take all necessary actions for the proper implementation of trading on the EEX and the settlement of the Exchange transactions.
- (4) Companies and persons who contravene existing rules, or do not observe instructions within the meaning of paragraph 3, can be temporarily suspended from access to the exchange entirely or in part, if and for as long as, the orderly trading procedure is disturbed by the company or person, respectively. The same applies accordingly to persons who are not permitted to participate in trading.

§ 12 Market Surveillance Department

- (1) Subject to directives issued by the Exchange Supervisory Authority, the EEX shall establish and operate a Market Surveillance Department as a governing Exchange Body.
- (2) The Head of the Market Surveillance Department shall be appointed and dismissed by the Exchange Council upon the nomination of the Management Board of the Exchange and in agreement with the Supervisory Authority. The re-appointment is permissible.
- (3) The Market Surveillance Department monitors trading and the orderly execution of trading and settlement of transactions on EEX in accordance with Art. 7 BörsG as well as the applicable national and European provisions. In particular, the Market Surveillance Department assumes the tasks according to Art. 16 Market Abuse Regulation³.
- (4) In accordance with Art. 7 BörsG, the Market Surveillance Department can forward data regarding the conclusion of trades to the management board and the market surveillance department of another exchange or to an office in charge of monitoring trading on another organised foreign market or of another corresponding market registered outside the European Union or a contracting state of the Agreement on the European Economic Area in as far as such data is required for fulfilling the tasks of these offices. The Market Surveillance Department can also receive data from these offices provided such is required for the proper execution of trading and the settlement of exchange transactions on EEX.
- (5) If the Market Surveillance Department identifies facts justifying the assumption that provisions or orders under exchange law are violated or that there are other grievances which might impair the proper execution of trading on EEX or the settlement of exchange transactions, it shall inform the exchange supervisory authority or the Management Board of the Exchange thereof. Sentence 1 shall apply accordingly with regard to information on Exchange participants and traders which is relevant for the assessments in the framework of the admission procedure. If the Market Surveillance Department has the justified suspicion that an order or transaction including any cancellation or modification thereof violates the provisions of Articles 3 or 5 REMIT⁴ or of Articles 14 or 15 Market Abuse Regulation (ban on engaging in or attempting to engage in insider dealing or market manipulation), it shall inform the Market Surveillance Department or the German Federal Financial Supervisory Authority thereof.

§ 13 Sanctions Committee

- (1) At the EEX, a Sanctions Committee may be established by statutory decree as organ of the exchange. The Sanctions Committee's duties comprise the tasks defined by Sect. 22 Exchange Act.
- (2) The details about the establishment, composition, procedure and the costs as well as the involvement of the Exchange Supervisory Authority are defined by Sect. 22 Exchange Act

³ Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC

⁴ Regulation (EU) No. 1227/2011 of the European Parliament and of the Council of 25th October 2011 on wholesale energy market integrity and transparency (Official gazette L 326 of 8th December 2011, p.1)



and the rules regarding the Sanctions Committee in the Saxon Exchange Act Execution Ordinance.

3. Admission

3.1. Admission of Exchange Participants and Exchange Traders

§ 14 Exchange Trading

Exchange trading comprises the conclusion of Spot and Derivatives Market transactions (exchange transactions) in the EEX trading systems either through order book trading or the registration of trades. Trading on the EEX shall only be carried out or brokered by an approved Exchange participant.

§ 15 Application for Admission

(1) Application for admission may be filed

- (a) for spot trading only,
- (b) for derivatives trading only,
- (c) for one or more products as well as
- (d) for spot and derivatives trading altogether.

The application for admission to exchange trading can be restricted to the use of the Trade Registration Functionality of the EEX trading systems.

(2) An application for admission as an Exchange participant can also be filed for one branch office or several branch offices of one company.

(3) Even if they are not Exchange participants on EEX, companies can be recognised as Trading Agent for trading on the Spot Market by the Management Board of the Exchange upon a written application by the company concerned. Approved Trading Agents are entitled to effect the conclusion of transactions on EEX on behalf and for the account of other Exchange participants licensed on EEX through the Exchange traders admitted to EEX for them. Trading Agents are acting with its own user identification. Every entry by the Exchange traders of the Trading Agent into the system has to be made individually allocable. The Management Board issues the admission as Trading Agents in writing; it can refuse or revoke said admission at any time in writing if there are relevant reasons for such a refusal or such a revocation. Details with regard to this shall be specified by the Management Board of the Exchange. The provisions contained in the rules and regulations of the exchange in connection with the participation in trading, including the rules regarding the technical facilities shall apply accordingly to the Trading Agents - even if the Trading Agents is not mentioned specifically.

(4) In accordance with Sect. 31 of these rules, companies, which have been admitted, can file an application for the admission as a Market Maker.

(5) Each application for admission has to be directed to EEX, using the required form.

§ 16 Admission Procedure

- (1) Decisions regarding the admission
 - (a) of companies to participate in Exchange trading (Exchange participant) and
 - (b) of persons who shall be entitled to trade on the EEX Spot and/or Derivatives Market (Exchange trader)

are made by the Management Board of the Exchange upon written application pursuant to Sect. 19 Exchange Act (Börsengesetz, BörsG). The decision is made by the Management Board of the Exchange in written form. It is permitted to refuse an incomplete application. The existing Exchange participants may be informed of the admission of a new Exchange participant conveniently.
- (2) Evidence of fulfilment of the conditions for admission of Exchange participants and traders must be furnished by the respective participant. The applicant must obtain all state approvals, permissions, licenses and admissions or similar agreements that are required for trading on the EEX and the analogous handling of the concluded business. The Management Board may request from the applicant additional documents or information at any time and within a certain time limit. In this respect it may, after a due assessment of the circumstances, either itself or through an agent, conduct an examination of the applicant at the applicant's expense and require the applicant to submit such statements and documents as it may deem appropriate. In addition, it may request information from third parties- the applicant must be given prior notice of such request.
- (3) Before its admission as an Exchange participant on the sub-markets of the EEX, a foreign company shall appoint an authorized agent with a registered office within the Federal Republic of Germany. An effective revocation of such authorization can only be undertaken if – at the same time – another authorized agent with registered offices in the Federal Republic of Germany is appointed.
- (4) Foreign participants can only be admitted to trade at EEX if the Exchange is permitted to admit these companies based on the law of the respective country. Applications for the admission of foreign companies are suspended as long as no evidence of the lawfulness of the admission and the trading participation, in accordance with the law of the respective country, is furnished by the applicant or should EEX gain knowledge by other means to the effect that the admission of the foreign Exchange participant and its trade participation is permissible.
- (5) After the granting of admission to trading, the Exchange participant shall still be required to notify the Management Board without delay of any changes of a factual or legal nature which could lead to the conditions for admission no longer being met; in particular, the admitted participant shall be required to inform the Management Board without delay if it becomes aware that criminal proceedings are being launched against it on suspicion of property or tax violations. Moreover, it shall be obliged to inform the Management Board if it becomes aware that such proceedings have been instituted – or are pending – against a person either acting on its behalf who, according to statute, the Articles of Association or a Shareholders' Agreement is entrusted with the management of the business of the Exchange participant or admitted as an exchange trader for it. In order to ensure this, the

Management Board of the Exchange may demand additional information and documents under analogous application of paragraph 2 sentences 3 and 4.

§ 17 General Admission Requirements for Exchange participants

- (1) Entitled to file an application for admission to participate in Spot and Derivatives trading (Exchange trading) are only those companies that are, with respect to the products that may be traded, commercially engaged in the business of
 - (a) purchasing and selling for their own account (own transactions),
 - (b) purchasing and selling in their own name for the account of a third party (customer transactions), or
 - (c) acting as intermediaries for contracts to buy and sell (brokerage operations).
- (2) Companies which have their registered office within or outside the Federal Republic of Germany are entitled to apply for admission, provided that the superior Exchange Supervisory Authorities in Germany and abroad are able to exchange information in order to supervise the Exchange participants.
- (3) According to the requirements stipulated in Sect. 19 paragraph 4 Exchange Act, Exchange participants shall meet the general admission requirements:
 - (a) Companies that are organized in the legal form of a sole proprietorship, the proprietor, or in the case of other Exchange participants, the individuals who are by law, articles of association or shareholders' agreement entrusted with the management and the representation of the applicant's business (managing directors) are reliable and if at least one of such persons has the necessary professional qualification for engaging in Exchange transactions. These representatives shall be appointed by the applicant in the application for admission.
 - (b) The orderly settlement of such transactions must be assured.
 - (c) The Exchange participant provides evidence of liable equity amounting to at least € 50,000 unless it is
 - a financial institution,
 - a financial services institution or
 - an Exchange participant within the meaning of Sect. 53 paragraph 1, sentence 1 or Sect. 53 b paragraph 1, sentence 1 of the KWG⁵

and is authorized to engage in financial commission business within the meaning of Sect. 1 paragraph 1, sentence 2 no. 4, or to provide a financial service within the meaning of Sect. 1 paragraph 1a, sentence 2 nos. 1 – 4 of the Banking Act; the paid-in capital and reserves after deduction of any withdrawals by the proprietor or the personally liable shareholder and any loans extended to such persons and of

⁵ German Law on Banking (German Banking Act) of 9th September 1998 (German Federal Gazette I p. 2776)

any excess of indebtedness with respect to the free assets of the proprietor shall be considered as liable equity.

- (d) With respect to applicants that are obliged to provide evidence of liable equity according to a), there shall be no facts justifying the assumption that the applicant, taking into account the liable equity capital, does not have the necessary economic capacity to participate in Exchange trading in an orderly manner.
 - (e) In case a proof for the liable equity cannot be rendered, the proof can be substituted by means of a bank guarantee or by a deposit in monetary form. The bank guarantee has to be declared by a domestic credit institute according to Sect. 1 paragraph 1 of the KWG or a comparable foreign institute in favour of the EEX. The guarantee has to contain the unconditional and irrevocable obligation to transfer the guaranteed amount to an EEX bank account upon first request of EEX. The content, form and type of the bank guarantee shall be determined by the EEX.
 - (f) The evidence of liable equity is not necessary if the Exchange participant only applies for participation in primary auctions of emission rights and the performance of its liabilities arising out of its trading activities is guaranteed by a Clearing Member of the European Commodity Clearing AG (ECC AG).
- (4) The admission of an Exchange participant shall authorize the Exchange participant to participate in Exchange trading, if the Exchange participant is equipped with the necessary technical connection and if any other requirements for the connection to the respective trading systems of EEX are fulfilled.
- (5) In the case of companies that only want to be admitted for using the Trade Registration Functionality of the EEX trading systems, the preconditions contained in paragraph 3 lit. (a) – (d) as well as paragraph 4 must be fulfilled. In this case, participation in order book trading is excluded.

§ 18 Requirements for the Settlement of Exchange Transactions

- (1) The orderly settlement of Exchange transactions as stipulated in Sect. 19 paragraph 4 no. 2 of the Exchange Act is deemed to be secured when the following requirements are fulfilled:
- (a) The Exchange participant has to take part in clearing on ECC AG in accordance with the respectively valid Clearing Conditions of ECC AG.
 - (b) A participant must have sufficient technical facilities at its disposal which guarantee correct trading and settlement via the EEX trading systems or via phone. When using an EDP system, it must be ensured that these technical facilities do not impair the Exchange Trading and settlement of transactions. The Management Board can recommend hardware and software, which meet the criteria of 1 and 2. When using other hardware and software, the applicant is obliged to furnish evidence that the requirements of 1 and 2 are met. Details are regulated by the regulations pertaining to technical facilities.

- (c) The technical facilities shall be kept in good condition by the Exchange participant and the Exchange participant is to ensure that their continuous readiness for operation is guaranteed.
 - (d) The participant shall provide the personnel who are required for trading and settlement, and take satisfactory organizational precautions.
- (2) The participation in the Clearing of the ECC AG pursuant to paragraph 1, lit. a is deemed to be secured when the ECC AG confirms to the EEX in a binding form that the Exchange participant:
- (a) has concluded a Clearing Agreement with the ECC AG for the market applied for, or provided that the Exchange participant intends to become a Non-Clearing Member for transactions for the respective market in terms of the Clearing Conditions of ECC AG (Non-Clearing Member), the participant has concluded a respective agreement with a Clearing Member and the ECC AG (NCM Agreement) and
 - (b) is recognised by the ECC AG as a trading participant for each product to be traded. The admission as a trading participant requires, in particular, the necessary declarations and/or verifications for the completion of trades in a product.

§ 19 Requirements of Technical Facilities

- (1) The technical requirements of the connection to the EEX trading systems are met if the Exchange participant is equipped with EDP facilities, which comply with the requirements in accordance with the Implementation Regulations of EEX concerning technical equipment. The Management Board of the Exchange is authorised to check on the compliance with these regulations on-site.
- (2) Upon application of an Exchange participant or by an applicant for Exchange admission, the Management Board of the Exchange may permit the installation of front-end systems in the offices of the Exchange participant outside the country in which the Exchange participant for admission to trade has its registered office, provided that the application of and compliance with the Exchange rules of the EEX and any supplemental provisions thereto are also ensured in the country in which the additional offices is situated.
- (3) If the Management Board of the Exchange permits an Exchange participant to use order routing systems, in accordance with the Implementation Regulations of the EEX concerning Technical Equipment, such Exchange participant shall be responsible for ensuring that the order routing facility is used properly, for the designated purpose, and in accordance with the legal provisions applicable on exchanges. This also applies to any orders, which are entered into the EEX trading systems via order routing by third parties who are not admitted to the Exchange. Should the Exchange participant fail to comply with these requirements, the Management Board of the Exchange will restrict or revoke the permission to use an order routing system.
- (4) The use of systems for trading, in which a computer algorithm determines single order parameters automatically (algorithmic trading), has to be notified to the Management Board of the Exchange prior to their launch. The Management Board of the Exchange may permanently or temporarily, completely or partially forbid using a system as described in

phrase 1, if a disturbance of the proper exchange trading or the proper execution of exchange trades is impending. Further details are stipulated in the Technical Implementation Regulations of EEX.

§ 20 Admission of Exchange Traders

Persons entitled to trade on the EEX Spot and/or Derivatives Market (Exchange trader) shall be admitted by EEX if they are reliable and have the necessary professional qualifications in accordance with the provisions in the Rules for Admission. They can only be admitted for one Exchange participant at any given time.

§ 21 Admission of Trader Assistant

- (1) Persons who shall be entitled to trade on the EEX Spot and/or Derivatives Market on behalf of an admitted exchange participant without having proofed the personal qualification (Trader Assistant) can be admitted by EEX one time for the maximum duration of 6 month as trader assistant, if they are reliable, participate in trading at the EEX markets only under control and instruction of one specific exchange trader (Responsible Exchange Trader), and only insofar as the admission of the Responsible Exchange Trader extends to.
- (2) Trader Assistants can on be assigned to one specific Responsible Exchange Trader. A maximum of three Trader Assistants can be assigned to each responsible Exchange Trader. The Responsible Exchange Trader is responsible for all submissions into the systems of his admitted Trader Assistance; towards the exchange all such submissions into the systems are deemed to be entered in the name of the Exchange Trader.
- (3) The rules regarding the termination and suspension in Section 3.2 apply mutatis mutandis with respect to Trader Assistants. Furthermore, an admission as Trader Assistant expires if the admission of his Responsible Exchange Trader ceases to exist or if the period mentioned in subsection 1 expires.

3.2. Termination and Suspension of Exchange Admission

§ 22 Resignation from Exchange Admission, Withdrawal and Revocation of Exchange Admission

- (1) An Exchange participant or Exchange trader can resign from admission upon written notice to EEX. The resignation can be limited to individual products.
- (2) The Management Board of the Exchange is entitled to withdraw the admission of an Exchange participant or Exchange trader in full, or partially should one of the admission requirements not exist upon the granting of the admission.
- (3) The Management Board of the Exchange is entitled to revoke the admission of an Exchange participant in full or partially if one of these requirements ceases to be satisfied at a later date, or if the Exchange participant fails to lodge the securities determined for such Exchange participation or fails to make the daily clearing payments or other deliveries or payments and settle other charges in good times as stipulated in the Conditions for Trading on EEX (Trading Conditions) or the respective Clearing Conditions within the pre-

scribed period. The same applies for serious repeated breaches of the Rules and Regulations of EEX. The Management Board of the Exchange may also revoke the admission if the Exchange participant does not comply with the Order-Transaction-Ratio according to Sect. 26a of the German Exchange Act in conjunction with Sect. 39.

- (4) ECC AG or a Clearing Member of ECC AG may also submit an application for an instruction for the revocation of admission.
- (5) The deletion of the admission of an Exchange participant to EEX results in the deletion of the admission of the Exchange trader who is acting on behalf of this Exchange participant.

§ 23 Consequences of Resignation, Withdrawal and Revocation

If an Exchange participant resigns its admission to trading in full or partially or such admission is withdrawn or revoked by the Management Board of the Exchange in full or partially, the Exchange participant shall be obliged to close or transfer the positions affected by this measure to other Exchange participants within a period prescribed by the Management Board of the Exchange; furthermore, the Exchange participant must cancel all orders and quotes in the trading system concerned and may not open any new positions. The Exchange participant shall ensure that its customers can transfer their positions to another Exchange participant. If the Exchange participant fails to meet these requirements within the prescribed period, the Management Board of the Exchange has the right to cancel the orders and quotes and to close the positions. The admission to trade shall terminate only after the fulfilment of the requirements provided for in this paragraph and of all obligations owed to ECC AG and/or the relevant Clearing Member.

§ 24 Suspension of Exchange Admission

- (1) On the strong suspicion that one of the conditions for admission has not been fulfilled, or has subsequently ceased to be fulfilled, the Management Board of the Exchange may order the suspension of the Exchange participant or Exchange trader partially or in full for a maximum period of six months. The suspension of the admission of an Exchange participant may also be ordered so long as the Exchange participant is in default with the payment of due fees.
- (2) The Management Board of the Exchange may also suspend the admission of an Exchange Participant or of an exchange trader operating for it in case of non-payments for the time being in default, in all other cases for a maximum period of six months, should the Exchange Participant or an exchange trader operating for it contravene provisions of the German Exchange Act or the EEX Rules or fail to lodge the margins or make the daily clearing payments or effect other deliveries or payments and settle other charges in good time as stipulated according to the Trading Conditions or the current Clearing Conditions. The same applies if the Exchange participant does not comply with the Order Transaction Ratio according to Sect. 26a of the German Exchange Act in conjunction with Sect. 39.
- (3) ECC AG or a Clearing Member of ECC AG can also submit an application regarding the order for a suspension of admission.

- (4) During the period of the suspension of the admission of an Exchange participant, the right to take part in trading on the EEX shall also be suspended for its Exchange traders admitted to trading under § 20. The Exchange trader concerned must cancel all orders and quotes and is not permitted to open any new positions and, under the supervision of the EEX, shall close or transfer all of his/her existing positions.
- (5) Upon application of the Exchange participant the Management Board of the Exchange may order the suspension of the exchange admission at its own discretion. The duration of the suspension shall not exceed a period of 1 year. During the suspension period no annual fees will be charged; technical fees only, if relevant connections are maintained. Sect. 24 paragraph 4 applies accordingly. The Management Board of the Exchange will revoke the suspension upon request of the Exchange participant before expiry of the period ordered pursuant to sentence 1 if the Exchange participant continues to comply with the admission requirements.

§ 25 Emergency Member Stop

- (1) A Clearing Member of ECC AG can file an application for the temporary exclusion (generally only for a period of five days) from trading on all Sub-markets of EEX of an Exchange participant for which it provides services by means of a corresponding entry into the trading system of EEX (Emergency Member Stop), provided such Clearing Member has made an agreement regarding the permissibility and toleration of this measure with this Exchange participant. At the same time, the Clearing Member states that it is not prepared to clear further transactions by this Exchange participant on the Sub-markets of EEX.
- (2) The Clearing Member which has used the function of the Emergency Member Stop is obliged to make all the required declarations to permit trading of the Exchange participant concerned on the Sub-markets of EEX, by means of an immediate corresponding entry into the trading system of EEX (deactivation of the Emergency Member Stop) once the preconditions for the use of the Emergency Member Stop have ceased to exist.
- (3) In each individual case, the Clearing Member which has activated the Emergency Member Stop is obliged to immediately communicate a written explanation for the activation of the Emergency Member Stop to the Management Board of the Exchange on the same exchange trading day. This documentation should contain information regarding the facts of the matter, the reasons and the probable time of the deactivation of the Emergency Member Stop.
- (4) Upon the activation of the Emergency Member Stop, the Management Board of the Exchange will order the suspension of the admission of the respective Exchange participant to trade on the exchange for the period of time until the Clearing Member communicates to the Management Board of the Exchange that it is ready to re-commence clearing of transactions of the Exchange participant concerned by deactivating the Emergency Member Stop.
- (5) For the duration of the suspension of the admission to trade on the exchange according to paragraph 1 the trading system T7 prevents further orders by the Exchange participant concerned from being entered into the trading system. Moreover, orders which have already been entered into the system are deleted. Other trading systems do not have this

functionality. Regardless of this, the Exchange participant concerned is no longer entitled to enter orders or conclude transactions on EEX or to make entries for the purpose of position administration according to Sect. 35 of the Trading Conditions as of the order regarding the suspension of the admission to trade on the exchange.

§ 26 Exclusion from Trading

- (1) If an Exchange participant admitted to trading on the EEX as a Clearing Member of ECC AG fails to provide the margin or daily settlement amount required or fails to make any other payment or delivery when due, on request of ECC AG the Exchange participant, as well as all affiliated Non-Clearing Members, may be excluded from trading on the EEX for the duration of such failure by decision of the Management Board of the Exchange.
- (2) If an Exchange participant admitted to trading on the EEX as a Non-Clearing Member of the ECC AG fails to provide the margin or daily settlement amount required or fails to make any other payment or delivery when due, paragraph 1 shall apply accordingly. If such a Non-Clearing Member fails to make any deliveries or payments or fails to pay any premiums or fees to its Clearing Member when due as set out in the Trading Conditions of EEX or in the Clearing Conditions of ECC AG, the Management Board of the Exchange may, at the request of ECC AG or its Clearing Member, exclude such a Non-Clearing Member from trading on EEX for the duration of such failure.
- (3) If the other requirements for the admission as an Exchange participant are no longer fulfilled, the Management Board of the Exchange can exclude the Exchange participants from trading in full or partially for individual products or markets

§ 27 Consequences of Exclusion from Trading

- (1) If a Non-Clearing Member is excluded from trading, the Clearing Member which provides services for such Non-Clearing Member, or ECC AG may request the Management Board of the Exchange to close the positions of that Non-Clearing Member. If a Clearing Member that is Exchange participant at the same time, is excluded from trading, ECC AG may request the Management Board of the Exchange to close the positions of that Non-Clearing Member. If a Clearing Member of ECC is excluded from trading under the provisions of this paragraph, Non-Clearing Members affiliated with it may only be excluded from trading until they are able to engage in trading on EEX through another Clearing Member. The right to revoke their admission remains unaffected.
- (2) If an Exchange participant is excluded from trading in single or all products, the Exchange participant must cancel all its bids, orders and quotes within the respective products and must not enter new bids, orders or quotes within the trading systems of EEX.

3.3. Liquidity Provision by Market Makers and Liquidity Providers

§ 28 Prerequisites and Definitions

- (1) The Management Board of the Exchange may determine for single products or sub-markets that and in what manner liquidity shall be provided for trading in the respective product(s) by Market Makers or Liquidity Providers.

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- (2) The provision of liquidity for EEX by Market Making means the holding out of an Exchange participant on EEX on a continuous basis as being willing to deal on own account by buying and selling of products against that Exchange participant's proprietary capital at quotations defined by that Exchange participant (Market Maker). Market-Makers will be admitted or committed as Market Makers, respectively, by the management board of the exchange by means of administrative act.
 - (3) The provision of liquidity which is not conducted within the framework of an admission or commitment as Market Maker, respectively, is the willingness of an undertaking on EEX on a continuous basis to deal on own account by buying and/or selling of products against that undertaking's proprietary capital at prices defined by that undertaking (Liquidity Provider). Liquidity Provider will be appointed by means of private-law agreements.

§ 29 Obligations of Market Makers and Liquidity Providers

- (1) A Market Maker is obligated to simultaneously enter limited bid and ask orders (quotes) into the EEX trading system to the extent determined by the Management Board of the Exchange and to conclude trades on the basis of such quotes. The Market Maker must be contactable at all times during trading times.
- (2) In the interest of ensuing orderly trading conditions, the Management Board of the Exchange may impose additional duties on Market Makers. In particular, the Management Board of the Exchange may establish a maximum or minimum spread between the bid and the ask prices, minimum contract sizes for both the bid and the ask side, a minimum holding period for quotes, and a minimum period for maintaining quotes in the EEX trading system.
- (3) Type and scope of the obligations of Liquidity Providers will be determined by the exchange operator by means of general terms and conditions,

§ 30 Commitment as Market Maker or Liquidity Provider by EEX

- (1) The Management Board of the Exchange may commit suitable Trading participants to provide EEX continuously and foreseeable with liquidity in single products or sub-markets as Market Maker or Liquidity Provider. Without limitation, a Exchange participant may be considered as being suitable if it possesses the necessary organizational and financial means to comply with its obligations as Market Maker or Liquidity Provider and it has an appropriate number of Exchange traders as well as the necessary technical requirements at its disposal. Further, it may be assumed due to the previous trading behavior or other comparable criteria, that it entertains a substantial interest to further the development of the liquidity in the products or sub-markets of EEX concerned, respectively.
- (2) The commitment as Market Maker or Liquidity Provider, respectively, has to be subject to appropriate commercial conditions. The commitment as Market Maker is furthermore dependent on the admission as an Exchange participant.
- (3) The Management Board of the Exchange revokes the commitment as Market Maker or Liquidity Provider, respectively, if Market Making or Liquidity Provision is sufficiently conducted by other Exchange participants according to the following provisions.

§ 31 Admission as Market Maker

- (1) Notwithstanding Sect. 30, an Exchange participant may also apply for admission as a Market Maker for one or several products if the Management Board of the Exchange has decided to conduct market making with respect to the trading of such product or products. Each product, to which an applicant seeks admission as a Market Maker, must be specified in the application.
- (2) The Management Board of the Exchange will grant a Market Maker admission provided the Exchange traders named in the application for such type of trading have the requisite trading knowledge to act as Market Makers. The applicant must furnish evidence of the requisite professional knowledge.
- (3) The admission as Market Maker is dependent on the admission as an Exchange participant.
- (4) A Market Maker admitted in accordance with paragraphs (1) through (3) may at any time resign from its Market Maker Admission upon written notice to EEX for all or for individual products. From the fifth trading day after receipt of the notice on, the Market Maker is neither authorized nor obliged to enter quotes for the products concerned.
- (5) In the case of a reapplication for admission as a Market Maker concerning products where the admission has been resigned from before, EEX may prescribe a waiting period of at least 10 trading days.
- (6) The Management Board of the Exchange may revoke the admission of a Market Maker if the Market Maker does not fulfil its obligations specified in Sect. 29 upon prior notice.

3.4. Admission of Institutions with public mandate

§ 32 Admission as Auctioneer

- (1) Legal bodies organized under private law or legal bodies organized under public law may be admitted as an auctioneer by the exchange without being admitted as an Exchange participant.
- (2) Auctioneer in the meaning of this clause is a private law or public law institution mandated by one or several EU member states or by the European Commission with the primary auction of greenhouse gas emission allowances (Emission Rights) in the sense of Directive 2003/87/EG and any following acts (public mandate) and who acts only as seller of Emission Rights using an auction (single sided auction). Under the admission as auctioneer any other participation of the auctioneer in trading at EEX is prohibited.
- (3) An auctioneer may be admitted upon request as auctioneer if:
 - (a) the auctioneer is entitled by public mandate in the sense of subsection 2 to sell Emission Rights,
 - (b) the orderly settlement of the auctions is secured and
 - (c) the orderly settlement of transactions is secured; Sect. 18 applies mutatis mutandis.

The prerequisites under lit. a–c shall be considered as fulfilled for auctioneers that request to be admitted to auctions within the meaning of Art. 26 (2) of Commission Regulation (EC) No 1031/2010 („Transitional Common Auction Platform“ or „TCAP“) if the prerequisites for admission stipulated in the “Arrangements on primary auctions of emission allowances on the spot market of the European Energy Exchange (EEX) under Commission Regulation (EU) No 1031/2010 and clearing and settlement of such transactions through European Commodity Clearing AG (ECC)” (“Arrangements”) are accepted and fulfilled.

- (4) An auctioneer is only entitled to act as a seller within an auction. Auctioneers that have been admitted in accordance with Art. 22 of Regulation (EC) No. 1031/2010, shall not be entitled to enter sell orders into the trading system, the respective sell order is the Auction calendar in its respective valid version.
- (5) Regarding resignation, withdrawal, revocation and suspension of an acceptance as auctioneer the rules in Section 3.2 apply mutatis mutandis.

3.5. Recognition of Non-Trading Brokers and Third-Party Trading Venues

§ 33 Recognition as a Non-Trading Broker

- (1) Undertakings may also be recognised by the Management Board of the Exchange exclusively for using the Trade Registration Functionality by entering trades on behalf and in the name (authorised declaring agent or declaring intermediary) of Exchange participants in accordance with the Trade Registration Rules (Non-Trading Broker). Non-Trading Brokers are not Exchange participants within the meaning of Sect. 16 paragraph 1 and they do not take the place of the clients upon the registration of the trades at EEX and they cannot open any own positions.
- (2) Recognition as Non-Trading Broker within the meaning of this provision shall only be possible for those undertakings:
 - (a) which are
 - a credit institution,
 - a financial services institution, or
 - an undertaking operating within the meaning of Sect. 53 paragraph 1 sentence 1 or Sect. 53b paragraph 1 sentence 1 KWG

that are authorised to conduct principle broking business within the meaning of Sect. 1 paragraph 1 sentence 2 no. 4 KWG or to provide a financial service within the meaning of Section 1 paragraph 1a sentence 2 no. 1 to 4 KWG. If according to the law of the country of origin of the undertaking that conducts the principle broking business or provides financial services, respectively, an authorization to do so is not necessary, the undertaking has to prove an equity base that is at least comparable to that of the undertakings mentioned in sentence 1. EEX may at any time demand proof of a higher equity base or the posting of collateral if it is deemed necessary by EEX after having conducted a proper risk analysis;

- (b) in as far as they are organised in the legal form of a sole proprietorship, whose proprietors are personally reliable and professionally qualified for this position and in the case of other companies, in which the managing directors are personally reliable and professionally qualified for this position; those persons holding power of representation shall be specified by the applicant in the application for recognition;
 - (c) which have successfully completed a KYC process at EEX;
 - (d) which have the required technical access to the EEX Trade Registration Functionality;
 - (e) which must have appointed persons who are to be entitled to use the Trade Registration functionality with these persons having to be personally reliable and professionally qualified;
 - (f) which guarantee
 - (i) that through their internal organisation they ensure that transactions are only registered in the name of such Exchange participants with whom they have concluded a respective agreement
 - (ii) that by this agreement the liability risk for erroneous registrations caused by the Non Trading Broker is allotted thoroughly to the Non Trading Broker as well as
 - (iii) that they provide EEX with a list amended from time to time and in a format determined by EEX containing EEX Exchange participants with whom the Non Trading Broker has concluded a respective agreement; and
 - (iv) that the process for matching of orders within their internal trading system cannot be manipulated;
- (3) Non-Trading Brokers, who are not also admitted as Exchange participants on EEX at the same time are only authorised to enter trades; however, they are not authorised to confirm such. Any participation in exchange trading and holding of own positions via the Trade Registration functionality are excluded.
- (4) The Management Board of the Exchange can restrict the recognition of Non-Trading Brokers to certain market segments and products.
- (5) The Management Board of the Exchange can revoke the recognition as a Non-Trading Broker at any time and with immediate effect in the event that individual preconditions for recognition as a Non-Trading Broker cease to apply or in the event that the Management Board of the Exchange learns of facts which indicate unreliability on the part of the Non-Trading Broker. Such facts include, in particular, entering of transaction which the Non-Trading Broker was not entitled to conclude. The revocation of a company's recognition as a Non-Trading Broker has to be communicated to the Exchange participants of EEX.

§ 34 Recognition as a Third Party Trading Venue

- (1) Enterprises that operate and/or manage the business of a regulated market may be recognised by the Management Board of the Exchange exclusively for using the Trade Reg-

istration Functionality by entering trades on behalf and in the name (authorised declaring agent or declaring intermediary) of Exchange participants or Trade Registration Participants in accordance with the Trade Registration Rules (Third Party Trading Venue). A regulated market according to sentence 1 is a multilateral system operated and/or managed by a market operator, which brings together or facilitates the bringing together of multiple third-party buying and selling interests in commodities or future or forward transactions in commodities, freight rates, emission allowances, climatic or other physical variables – in the system and in accordance with its non-discretionary rules – in a way that results in a contract, in respect of the commodities, freight rates, emission allowances, climatic or other physical variables admitted to trading under its rules.

- (2) Recognition as Third Party Trading Venue within the meaning of this provision shall only be possible for those undertakings:
 - (a) which have obtained a permission by the respective competent national supervisory authority to operate a regulated market and which are supervised in doing so by that authority;
 - (b) which have concluded a cooperation agreement regarding the registration of trades with EEX AG or a group company of EEX Group.
 - (c) which have the required technical access to the EEX Trade Registration Functionality;
 - (d) which guarantee
 - (i) that through their internal organisation they ensure that transactions are only registered in the name of such Exchange participants with whom they have concluded a respective agreement
 - (ii) that they provide EEX with a list amended from time to time containing their trading participants for whom the Trade Registration Functionality will be used; as well as
 - (iii) that they are thoroughly liable risk for erroneous registrations caused by the them.
- (3) There shall be no right to be recognized as Third Party Trading Venue, particularly, such right shall not be the consequence of the recognition of another enterprise.
- (4) The Management Board of the Exchange can revoke the recognition as a Third Trading Party Venue at any time and with immediate effect in the event that individual preconditions for recognition as a Third Trading Party Venue cease to apply or in the event that the Management Board of the Exchange learns of facts which indicate unreliability on the part of the Third Trading Party Venue. Such facts include, in particular, entering of transaction which the Third Trading Party Venue was not entitled to conclude. The revocation of a company's recognition as a Third Trading Party Venue has to be communicated to the Exchange participants of EEX.

3.6. Admission, Withdrawal and Suspension of Products

§ 35 Admission of Products

- (1) The Management Board of the Exchange shall decide which product shall be admitted to Spot and Derivatives Trading on the EEX and determines – subject where necessary to the required approval of the Exchange Supervisory Authority – on which trading system a product will be launched. Condition for the admission of a product is that the maintenance of orderly Spot and Derivatives trading can be expected. Details are regulated in the EEX Conditions for Trading.
- (2) Products are, in each case, Spot Market trades, and Options or Derivatives contracts on a specific underlying instrument that are authorized to trading on the Exchange. The underlying instrument is the reference object of the product.
- (3) A decision of the Management Board of the Exchange concerning the admission of products for trading on the EEX must be made public.
- (4) The Management Board of the Exchange shall decide on the admission of products for use of the Trade Registration Functionality. In the case of products which are exclusively launched for the registration of trades, it shall determine the contract specifications. More detailed provisions regarding this are made in the Trade Registration Rules.

§ 36 Withdrawal and Suspension of a Product Admission

- (1) If orderly Exchange trading or the orderly settlement of Exchange transactions is at risk or protection of the public requires such actions, the Management Board of the Exchange may withdraw the admission of products for Spot Market or Derivatives trading in these products on the EEX, or it may suspend trading on the Spot or Derivatives Markets of the EEX altogether. This holds in particular for trading on the Derivatives Market of the EEX if the quotation of an underlying is suspended or if for other reasons, the EEX is not authorized to reference this underlying anymore.
- (2) Furthermore, the Management Board of the Exchange may interrupt the entire Exchange trading or trading in individual products if technical reasons or the prevention of threats to the functionality of Exchange trading require such an action.
- (3) In case the orderly trading or settlement of a contract is not secured, the Management Board of the Exchange may determine cash settlement instead of physical fulfillment for contracts which have to be fulfilled physically.
- (4) The Exchange participants need to be immediately informed about withdrawals of the admission of products or the suspension of trading on the Spot or Derivatives Markets of the EEX and the determination of a cash settlement for physical products.

When trading on the Spot or Derivatives Markets of the EEX is entirely or partly suspended for certain products, it is not possible to enter orders or quotes for the concerned products and for the duration of the suspension. Neither is it possible to close open positions resulting from derivatives trading for the concerned products and for the duration of the suspension. All the existing orders and quotes will be deleted. Reopening of trading in the suspended products begins – if applicable - with a pre trading period or an opening phase. In the case of a suspension that constitutes a particular situation, the Management Board of the Exchange may give instructions that deviate from the rules specified above.

4. Exchange Trading

4.1. General Terms for Exchange Trading

§ 37 Electronic Exchange

- (1) The EEX is a fully electronic exchange. It has electronic trading platforms for the conclusion of Spot transactions and for the conclusion of Derivatives transactions.
- (2) Orders are purchase or sale orders made by Exchange participants on the Spot Market of the EEX in the trading type of Continuous Trading with auction trading as well as on the Derivatives Market. In auctions orders can also be referred to as bids. Quotes are limited purchase and sale orders entered simultaneously which are valid for only one day. Further details are stipulated in the EEX Conditions for Trading.
- (3) Exchange participants transfer orders and quotes from their respective workstations to the EEX trading systems by means of electronic transmission. The Management Board is entitled to permit the usage of other methods of transfer; it will inform the Exchange participants of this method by the most suitable means.
- (4) The Management Board is entitled to temporarily interrupt the access to the EEX trading systems for single or all products for one or all of the Exchange participants should this be necessary for technical reasons. The Management Board makes the decision as to the revocation of the interruption. The Exchange participants concerned must be informed of the interruption of the access to the EEX trading systems and the revocation of the same by suitable means.

§ 38 Exchange Price and Price Determination

- (1) Exchange prices are determined by execution of orders at the exchange. Exchange prices are determined transparently and non-discriminatorily by the trading systems of EEX according to the more detailed provisions of the following paragraphs.
- (2) Exchange prices must be determined properly and correspond with the actual market situation of the exchange trading. The exchange has to make appropriate arrangements to secure the proper determination of the exchange prices in the event of extensive price fluctuations. Appropriate arrangements are in particular short-term changes in the market model, like the discontinuation of continuous trading with a subsequent restart by an opening auction or through the short-term interception of the volatility considering static or dynamic price corridors. Details may be stipulated in the Trading Conditions. The Management Board of the Exchange may rapidly determine further appropriate measures, if there is a risk that the exchange prices are not determined properly or do not correspond with the actual market situation.
- (3) In primary auctions of emission allowances at the spot market in accordance with Regulation (EU) No. 1031/2010 as well as at the derivatives market pricing is carried out as uniform pricing in the auction by means that all successful bidders will pay the same auction clearing price after the end of the call phase.

The limit price of the order at which the sum of the volumes bid matches or exceeds the volume of allowances auctioned shall be the auction clearing price: The orders are sorted according to the height of the price limit and the quantities specified are added up. Where the price limit of several orders is the same, these orders will be sorted through a random selection according to an algorithm determined by EEX before the auction.

If the amount of bidding orders does not meet the offer of EU emission allowances a price determination does not take place during the respective auction. The same applies if the estimated auction price does not reflect the orderly market value (reference price procedure as per Art. 7 (6) of Regulation (EU) No. 1031/2010) and the other cases as foreseen in Art. 9 of Regulation (EU) No. 1031/2010. Further details are stipulated in Sect. 33 of the Trading Conditions of EEX.

- (4) Within the trading system T7 the opening price is determined during the opening auction, as of a time to be determined by the Management Board of EEX, on the basis of both limited orders and market orders contained in the trading system and shall be the price at which the largest possible number of contracts of such orders and quotes may be executed (Principle of Maximizing Executions – Meistausführungsprinzip).

During continuous trading the exchange price is determined on the basis of the respective highest sell limit or lowest buy limit in the same order book or another order book (synthetic path) at which the orders are executed automatically by the trading system (price-time priority). Further details are stipulated in Sect. 25 of the Trading Conditions of EEX.

- (5) The exchange prices and the volume and time at which the trades were closed out shall be published within the respective trading system or by means of electronic media, respectively, immediately in real time and not later than three minutes after occurrence, unless a delayed publication seems necessary in order to avoid an inadequate disadvantage of the parties of the transaction. Type and extent of the publication shall be determined by the Management Board of the Exchange in accordance with the requirements provided by law. The Management Board shall accordingly be authorized to publication serving the purpose of an adequate notification of the public of the market development.

§ 39 Order-Transaction-Ratio

- (1) The Exchange Participants shall be obliged to safeguard an adequate ratio between their entries of orders, changes and cancellations thereof and the actually executed transactions (Order-Transaction-Ratio), to avoid any risk for proper exchange trading. Thereby, the Order-Transaction-Ratio is to be determined for each financial instrument by means of the numerical volume of the respective orders and trades within one calendar month. An adequate Order-Transaction-Ratio is particularly existent, if it is economically comprehensible due to liquidity of the product concerned, the actual market situation or the function of the acting exchange participant.
- (2) The Management Board of the Exchange shall be entitled to define criteria to determine the adequate Order-Transaction-Ratio for the respective financial instrument or certain classes of financial instruments, whereat the Management Board of the Exchange considers the liquidity and volatility within the respective market including specific order book situations, the way entries to the order book are made (manually or electronically). Enter-

prises, whose entries to the order book serve to fulfill their quotation obligation, may be exempted from the obligation stipulated in paragraph 1.

§ 40 Minimum Price Change

- (1) The minimum price change for each product is stipulated in the Contract Specifications.
- (2) The Management Board of the Exchange may temporarily determine the minimum price change exceeding the provisions in the Contract Specifications, if this determination is appropriate to reduce negative impacts to the market integrity and liquidity.

§ 41 Technical Malfunctions

- (1) Malfunctions which occur on the technical equipment that is required for participation in trading have to be reported to EEX without delay during the business hours by the affected Exchange participants.
- (2) In the case of technical malfunctions, EEX shall be authorized to take any suitable and appropriate measures which are required to safeguard or resume proper trading or the proper settlement of exchange trades. For example, EEX can exclude individual Exchange participants or all Exchange participants from trading temporarily; they can suspend trading or delete orders by individual or all Exchange participants. The measures taken by EEX shall be binding for all Exchange participants. Further rules are contained in the Technical Implementing Regulations of EEX.
- (3) EEX provides unrestricted technical support only during business hours. Outside business hours the support only comprises measures for remedying technical malfunctions and for damage control. These measures concern in particular remedying of a technical malfunction, the deletion of orders by individual or all Exchange participants, the cancellation of transactions, or the complete or partial suspension of trading.
- (4) EEX shall be authorized to commission third parties not belonging to the EEX group to support the Exchange participants outside the business hours or for measures according to paragraph 2. However, the third parties commissioned to that end shall not be granted access to the trading data of the Exchange participants or a right of inspection of such.
- (5) EEX, its operating company and companies of the EEX group assume no liability for damage resulting from a disruption of the operation as a result of force majeure, rebellion, acts of war, natural phenomena, or other events for which it is not responsible (e.g. strikes, lock-outs).
- (6) EEX, its operating company and companies of the EEX group only accept liability for damages resulting from the use of the EEX trading systems if and in as far as this results from gross negligence or actions of intent committed by its organs or vicarious agent. Over and above this, the EEX shall only be liable for the careful selection of the EDP systems used for trading.

§ 42 Central Counterparty

- (1) To safeguard the proper execution of trades concluded or registered at EEX, the clearing of these trades is carried out through European Commodity Clearing AG as central coun-

terparty (ECC or clearing house). The collateralization, financial and physical settlement of all trades concluded or registered at EEX (Clearing), will be carried out exclusively according to the ECC Clearing Conditions in their respective valid version and the conditions they refer to.

- (2) The Management Board of the Exchange may admit ECC AG to trading on EEX as an exchange participant in connection with its activity as a central counterparty. ECC AG is limited to trading on its own behalf or on behalf of the Clearing Members and Non-Clearing Members connected to it in the framework of the default management process of ECC AG. Proof of the authorisation required to this end constitutes the precondition for trading on behalf of the Clearing Members or Non-Clearing Members. Admission has to be applied for in writing.
- (3) The Management Board of the Exchange may regardless of the provision of Sect. 27 enter orders either for own behalf and own account of ECC or on behalf of and on account of the clearing members or non-clearing members of ECC or register trades to safeguard the proper execution of exchange trades.

4.2. Exchange Trading on the Spot Markets of EEX

§ 43 Exchange Hours and Trading Periods

- (1) The Exchange hours for the commencement and the end of the individual phases for all products shall be determined by the Management Board of the Exchange. The Management Board of the Exchange may extend or reduce the Exchange hours as well as the commencement of any of the individual phases on any given Exchange day to the extent necessary to maintain orderly trading conditions or for reasons relating to the trading systems of the EEX.
- (2) The Exchange hours for Spot transactions, which can be concluded in the trading type of closed or open auctions, comprises the following consecutive phases:
 - (a) Call Phase and
 - (b) Execution Phase

The trading period for Spot transactions in the trading type of continuous trading comprises only the Execution Phase.

- (3) Orders can be entered, changed or deleted from the EEX trading systems during the Call-Phase; the Order Book remains closed.
- (4) The Call-Phase is followed by the Execution Phase during which transactions in the individual products can be concluded in a closed or open auction in accordance with the Trading Conditions. The execution of the auctions for individual products, shall be determined by the Management Board of the Exchange unless more detailed provisions regarding this are established in the Exchange Rules or the Trading Conditions.

§ 44 Trading types

- (1) Products of the EEX Spot Markets will be traded in continuous trading or in auctions.

- (2) Unless deviating provisions are made in an individual case, the price at which the highest order volume can be executed with the minimum surplus is determined from the limited and unlimited orders which are received in the EEX system until a certain time in the Open or Closed Auction; in as far as unlimited orders are permissible, these shall be given priority. An Open Auction is generally divided into the call phase and the price determination. During the call phase, Exchange participants may enter, change or delete orders. If there are orders that could be executed against one another, in auctions with a closed Order Book, a potential execution price is displayed during the Call phase. If this is not the case, the best buy and/or sell limit is displayed. In auctions with an open Order Book, the cumulated order volumes of each of the buy and/or sell limits are also displayed. Neither a potential execution price nor order volumes are displayed in a closed auction.
- (3) Continuous Trading commences without an opening auction, closing auction, or intraday auctions. Prices are determined by matching orders at the best possible bid and ask limits indicated in the Order Book; in the event that prices are identical, orders and quotes are matched in the order in which they were entered into the EEX system (price-time priority); unlimited orders are executed first. All available orders shall be displayed cumulatively at the respective limits (Open Order book).
- (3) Details are stipulated in the Trading Conditions.

4.3. Exchange Trading on the Derivatives Markets of EEX

§ 45 Exchange Hours and Trading Periods

- (1) The Exchange hours for derivatives transactions on the Derivatives Markets of EEX consist in accordance with the more detailed provisions in the Trading Conditions of at least the:
 - (a) Trading Period;Furthermore, it can establish the following phases:
 - (a) Pre-Trading Period and
 - (b) Post-Trading Period.
- (2) The Exchange hours for the commencement and end of the individual periods for each approved product for the Derivatives market shall be determined by the Management Board of the Exchange. The Management Board of the Exchange may extend or reduce the Exchange hours, as well as the commencement of any of the individual periods on any given Exchange day to the extent necessary to maintain orderly trading conditions, or for reasons relating to the EEX trading systems.
- (3) In accordance with the Trading Conditions and the Trade Registration Rules, the execution of trades on the Exchange is only possible during the Trading Period.

§ 46 Type of Trading

Products of EEX will be traded on the Derivatives Markets in continuous trading with or without open auctions. In accordance with the Trading Conditions the products may also be traded in closed or open auctions.

4.4. Special Provisions for the Primary Auction of Emission Rights

§ 47 Primary Auction - Auctioneer

- (1) Primary auction of emission rights is effected as an element of exchange trading on the spot and/or derivatives market of EEX.
- (2) The primary auction of emission allowances comprises both EU emission allowances (EUA) and EU aviation allowances (EUAA) according to Commission Regulation (EU) No 1031/2010 (Auctioning Regulation).
- (3) In addition to the rules and regulations of EEX, the respectively valid statutory bases are applicable to the respective auctions. For TCAP-Auctions within the meaning of Art. 26 (2) of the Auctioning Regulation the provisions of the Arrangements as defined in Art. 31 (3) shall apply additionally for the respective contracting parties. In case of a conflict between the Arrangements including the provisions the Arrangements refer to and the Exchange rules, the provisions of the Arrangement precede in the relation between the auctioneers and EEX.
- (4) EEX is the exchange carrying out the primary auction of emission allowances.
- (5) Contracting entity of EEX is the national or European institution, EEX has concluded an agreement about the execution of auctions with. The respectively competent national or European institution or a third party commissioned by it (auctioneer) shall provide the emission allowances to be auctioned off. Trading participants other than the auctioneer are not entitled to conclude sales transactions in the framework of the primary auction.

§ 48 Execution of the Primary Auction

- (1) Exchange, trading for the primary auction of emission allowances is effected by means of a closed auction on the EEX Spot and Derivatives Market.
- (2) The exchange publishes an auction calendar which specifies inter alia the dates for the auction (day and time) as well as the respective quantity of emission allowances to be auctioned off during a given auction date
- (3) More detailed provisions regarding the execution of the auctions are established in the Trading Conditions.

§ 49 Cooperation with Supervisory Authorities, Forwarding of Information

- (1) EEX is entitled and obliged to exchange information with the respective contracting entity, the authorities in charge of monitoring of the auctions in accordance with the more de-

tailed provisions of the provisions which are applicable to the respective primary auction and with the implementing rules and agreements which are based on these, to the extent that the knowledge of such information is necessary for these bodies to fulfil their tasks.

- (2) Further, EEX is in accordance with the provisions of Commission Regulation (EU) No 1031/2010 in its respectively valid version, entitled and obliged to forward data and information to third parties that are commissioned to execute the auction as the successors of EEX, that apply for such succession or that, as authorities, collect data and information in order to forward such to the persons specified in the framework of the valid provisions. Details are laid down, in particular, in Art. 35 paragraph 3 lit h of the Commission Regulation (EU) 1031/2010 and the specific rules governing the use of such data and information which are based on these.
- (3) EEX is entitled to take measures to ensure proper pricing in the primary auction which is also in line with the market with regard to secondary trading in accordance with the more detailed statutory provisions which are valid for the respective primary auction and the more detailed specifications which are based on these.

5. Margin Requirements; Position Limits

§ 50 Margin Requirements

- (1) Each Exchange participants shall deposit the required margin as well as the daily settlement payments on the Derivatives Markets at any given time. The method for the calculation of the margin established by ECC AG and the Clearing Members shall be disclosed to the Non-Clearing Members on request.
- (2) Exchange participants that are also Clearing Members at ECC AG shall immediately inform the managing board of the exchange if one of its Non-Clearing Members does not provide the margins which have been established.
- (3) The adherence to provision regarding margin requirements (i.e. the respective valid clearing conditions) and making of arrangements of suitable measures to ensure that the obligations of Exchange transactions are met shall be monitored in compliance with Sect. 20 of the Exchange Act.

§ 51 Determination of the Position Limits for Derivatives Trading

- (1) The Management Board of the Exchange may set position limits for Derivatives trading in order to ensure that Derivatives Trading proceeds in an orderly fashion. A position limit is a maximum number of Derivatives contracts that may be held by one Exchange participant or one customer for its own account.
- (2) Positions held in arrangements with third parties for a common purpose shall also be included in such position limits.
- (3) In Derivatives trading, the position limits for each product shall be defined as the maximum total number of contracts purchased and sold.
- (4) An Exchange participant may not, for its own account or for the account of any customer, engage in any transactions on the EEX if there are any indications that the Exchange participant or customer, as a consequence of such transaction, whether alone or jointly with others, would hold or control a total position in excess of the position limits set by the Management Board of the Exchange.

§ 52 Modifications of Position Limits

The Management Board of the Exchange may modify position limits in order to maintain orderly trading. Changes to position limits shall become effective no earlier than on the sixth exchange day following the date of their announcement to the Exchange participants.

§ 53 Monitoring of Compliance with Position Limits

The Market Surveillance Department monitors all positions of an Exchange participant, including customer positions, to verify compliance with position limits.

§ 54 Reporting Obligation

In the case that trading commences prior to the point of time at which the margin requirements or the daily settlement payment are to be provided, an Exchange participant must not start trading if the fulfilment of the margin requirements or daily settlement payments applying for this Exchange participant within the agreed time limit is at risk. The Management Board of the Exchange shall be notified by the Exchange participant hereof without delay.

6. Final Provisions

§ 55 Usage of Data

- (1) Data and information received from the EEX trading system shall only be used by Exchange participants for their own purposes with respect to trading and settlement. Transmitting such data to third parties or processing the data received, including all types of commercial uses of these data shall, to the extent not required for EEX trading or for clearing purposes, not be permitted without the prior consent of the Management Board of the Exchange.
- (2) Without prejudice to legal and regulatory obligations, the Management Board of the Exchange and the Operating Company are entitled to share information and data related to the exchange membership within EEX group, the scope of cooperations, outsourcings and the assignment of external service providers. A transfer of information and data outside of EEX group may only take place if this is necessary for the fulfilment of the tasks performed by the third party and if the third party has committed itself to strict confidentiality. The disclosure of personal data is only permitted in the framework of the respectively valid statutory provisions.

§ 56 Recording of Telephone Calls

- (1) In order to safeguard the correctness of exchange trading and of the settlement of exchange trades, telephone calls with the EEX Market Supervision may be recorded and saved electronically by EEX. An indication of the right to refuse the recording will be provided to the caller before the recording. Without prejudice to already granted approvals, the caller may refuse the recording of his call. In this case, the call is terminated by EEX Market Supervision, so that trading on behalf is not possible.
- (2) These recordings are regularly deleted upon the end of a period of one year after the month during which the recording was made provided knowledge of the data recorded is no longer necessary for EEX to be able to fulfil its tasks.
- (3) Data recorded in accordance with section 1 shall exclusively be used for the purpose specified in section 1 and it shall only be used if the matters concerned cannot be clarified or reasonably clarified with the help of other evidence and proof.

§ 57 Publication of Prices and Transaction Volumes

The Management Board of the Exchange shall publish Exchange prices, daily settlement prices, final settlement prices and underlying transaction volumes in the electronic media. The manner and scope of the publication of prices shall be determined by the Management Board of the Exchange. The Management Board of the Exchange is also authorized to publish information serving to adequately inform the public of matters related to market activities.

§ 58 Announcements

Unless provided otherwise, announcements by any of the Exchange bodies of EEX shall appear in the electronic media. The Management Board of the Exchange shall determine the electronic medium.

§ 59 Date of Effectiveness

The Exchange Rules as well as any amendments hereto shall take effect on the day after their publication.

§ 60 Changes of Rules and Regulations

The Management Board of the Exchange is authorized, upon approval by the chairman of the Exchange Council or his deputy, to bring about changes to the Rules and Regulations which do not alter the content.



The English version is for informal use only. The German version is legally binding.



EEX-Admission Rules

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2. General Rules

§ 1 Scope

- (1) The following Admission Rules govern the prerequisites for the admission as an exchange trader, the procedure and the prerequisites for admission to and the content of the traders' examination furnishing proof of professional qualification according to Sect. 19 paragraph 6 BörsG¹ (Traders Examination). The proof of professional qualification constitutes the precondition for admission to the European Energy Exchange (EEX) as an exchange trader.

¹ Exchange Act of 16th July 2007 (Federal Law Gazette, vol. I, p. 1330)

3. Admission

§ 2 Admission of Exchange traders

- (1) Persons entitled to trade on the EEX Spot and/or Derivatives Market (Exchange trader) shall be admitted by EEX if they are reliable and have the necessary professional qualifications in accordance with the detailed provision in the rules for admission.
- (2) The admission entitles the Exchange trader to trade only the products or group of products he is admitted to and only on the trading platform for which such Exchange trader has the required technical knowledge.

§ 3 Proof of Reliability

The applicant proves his personal reliability through the sending of the duly completed and signed document „Declaration of personal reliability“. The Board of Management may request from the applicant additional documents or information.

§ 4 Proof of professional qualification

- (1) Professional qualification shall be assumed if the required practical experience and specialised knowledge necessary for trading on the EEX are satisfactorily shown.
- (2) Practical experience is considered proven if the applicant
 - (a) has successfully taken part in a systems training course according to Sect. 11 or
 - (b) can furnish proof of existing experience regarding the trading systems of EEX over a period of at least six months over the past two years before the application is submitted.
- (3) Evidence of the required specialised knowledge is particularly supplied by passing an examination leading to the qualification of an Exchange trader on the EEX. Details of the examination procedure are stipulated in Subsections 4 and 5.
- (4) The management of the exchange may in its own discretion refrain from the proof of passing the exams mentioned in sections 4 and 5 and may generally accept specific trainings and exams of other exchanges and institutions (foreign certificates) as a proof of professional qualification, this acceptance of foreign certificates has to be published.

§ 5 Admission procedure

- (1) Decisions regarding the admission of persons as Exchange traders are made by the Board of Management of EEX upon written application pursuant to Sect. 19 BörsG. The decision is made by the Board of Management of the Exchange in written form. It is permitted to refuse an incomplete application. The existing Exchange participants may be informed of the admission of a new Exchange participant conveniently.
- (2) Evidence of fulfilment of the conditions for admission of Exchange traders must be furnished by the respective participant. The Board of Management may request from the applicant additional documents or information at any time and within a certain time limit.

4. Board of Examiners

§ 6 Appointment

- (1) The Board of Management appoints a Board of Examiners to administer the examination for the purpose of evidencing the professional qualifications of exchange traders. This Board of Examiners consists of three members; such members elect a chairperson and a deputy chairperson. The Board of Examiners shall determine, by a majority of the votes cast, the results of such examination. Should the vote end in a tie, the respective chairperson shall have the casting vote.
- (2) The composition of the Board of Examiners is published on the website of EEX.
- (3) The Board of Management may appoint one or several deputy members for the Board of Examiners.
- (4) The Board of Management shall appoint and dismiss the members of the Board of Examiners and, where required, the deputies. The appointment may be limited in time. A re-appointment is permissible.

§ 7 Confidentiality

- (1) The members of the Board of Examiners shall keep confidential from third parties all examination proceedings, including the documents transmitted by participants in the examination.
- (2) Members of the Board of Management and the Exchange Council are not considered as third parties in terms of the above mentioned paragraph.

§ 8 Partiality

- (1) Members of the Board of Examiners who are or were related by blood or marriage to an examination candidate, or who are very close to such candidate in another way, should not be involved neither in the examination process nor in the admission to an examination.
- (2) If any concerns regarding partiality of a member of the Board of Examiners are raised by an examination candidate, the remaining members of the Board of Examiners shall determine whether or not to exclude the member concerned from administration of the examination.
- (3) If an examination candidate is concerned that a member of the Board of Examiners is partial, this shall be raised vis-à-vis the Board of Examiners in writing no later than two weeks after the application for the examination and the announcement of the members of the Board of Examiners.

5. Examination Process

§ 9 Application

- (1) The application for admission to the examination as exchange trader on EEX shall be filed in text form.
- (2) The application may be filed by enterprises which intend to participate in EEX as exchange participants or by the individuals to be examined.

§ 10 Admission to Examination

- (1) Individuals shall be admitted to the traders examination who
 - have filed an application for participation in the traders' examination,
 - attend a suitable preparation course (EEX Systems Training) which is recognised by the Board of Management for such purposes or who can demonstrate by any other means in writing that they have acquired the necessary knowledge imparted in the EEX Systems Training within the scope of another vocational training course or by admission to another exchange, and
 - have paid the fees charged to their account.
- (2) The Board of Examiners shall determine admission to the examination on the basis of the certificates provided.
- (3) If the number of applicants admitted for the examination exceeds the number of available places on a particular examination date, the receipt of the applications shall decide on the order of the applicants to be admitted to the examination date in question.

§ 11 EEX Systems Training Course

- (1) Evidence of the required practical experience of the applicant is furnished through the successful participation in an EEX Systems Training course.
- (2) The EEX Systems Training course shall take sufficient account of the actual trading process of the EEX systems. The type, content, process and duration of the systems training course shall be specified by the Board of Management.

§ 12 Examination Date, Place of Examination

- (1) The traders' exam shall be held sufficiently frequently, however, at least, once a quarter.
- (2) The Board of Management of the exchange shall decide on the examination dates and the respective place of examination in accordance with the Board of Examiners and announce these on the EEX website.

§ 13 Objective of the Examination

- (1) Objective of the examination shall be the determination of the specialised knowledge of the candidate for participation in the EEX exchange trading.
- (2) Evidence within the meaning of subparagraph (1) shall be furnished by the passing of the respective traders' examination according to these Exchange Rules.
- (3) Passing the traders examination does not - as a rule - constitute proof of specialised knowledge if the examination was taken more than three years prior to the first admittance as an exchange trader on EEX or the trader has not been active as a trader on EEX or a comparable market during the last three years.

§ 14 Examination Topics

- (1) The traders examination comprises the following examination topics:
 - Examination topic 1:
General legal foundations of exchange and electricity trading; legal foundations of exchange and electricity trading on EEX, organizational structure of EEX
 - Examination topic 2:
Practice of general trading, EEX products, trading procedure as well as collateral and settlement (clearing) of transactions concluded on EEX,
- (2) Generally, the examination candidate's knowledge in all concerning examination topics can be tested.

§ 15 Examination Tasks

The scope of the examination in terms of Sect. 13 in combination with Sect. 14 shall be the basis for the preparation of the examination tasks.

§ 16 Examination Requirements Committee

The Board of Examiners may form a committee which shall determine the content of the exchange traders' examinations (Examination Requirements Committee). The decision shall be based on the examination requirements pursuant to Sect. 13 in combination with Sect. 14.

§ 17 Conducting the Traders' Examination

- (1) The traders' examination shall be conducted electronically or in writing and in German or another language.
- (2) The examination time shall be determined by the Board of Examiners and the examination candidates shall be informed of the examination time in advance.
- (3) The traders' examinations are not of a public nature. Members or representatives of the Board of Management of EEX are permitted to be present at the examination.

- (4) The Board of Management regulates the monitoring of the traders examination, in agreement with the Board of Examiners, which shall guarantee that the candidates work independently and only with permitted aids.
- (5) Candidates for examination shall bring a valid identification card or passport and provide it at request of the examination supervisor.
- (6) Candidates for examination shall be instructed by the examination supervisor prior to the commencement of the traders examination regarding the examination procedure, the time available and of tools and examination aids which may be used as well as of the consequences of deception.

§ 18 Deception and Breach of Rules

- (1) Participants engaging in deceptive practices, such as the use of working aids which are not permitted, the impermissible aid of third parties or other deceptive practices, maybe permitted from further participation in the traders' examination under reservation of exclusion by the examination supervisor. The same applies to disruptions of the examination procedure.
- (2) The Board of Examiners shall determine the final exclusion and consequences after having afforded the examination candidate an opportunity to be heard. In serious cases, particularly in the case of premeditated deception, the traders' examination may be declared to have been failed. The same shall apply to deceptions subsequently discovered within one year.

§ 19 Withdrawal

- (1) The examination candidate may withdraw by written declaration prior to the commencement of the traders' examination. In such case, the traders' examination shall be considered not to have been taken.
- (2) If the examination candidate withdraws after the commencement of the traders' examination without cause, he/she shall be considered to have failed the examination. The same shall apply if the candidate does not appear for the examination despite of his/her admission.
- (3) Upon good cause for the withdrawal, the traders' examination shall be considered not to have been taken. The Board of Examiners shall determine the existence of such cause.

§ 20 Passing of the Traders Examination, Announcement of Results

- (1) Only the members of the Board of Examiners shall take part in the discussion of the examination results. The Board of Examiners determines, by a majority of the votes cast, the results of the respective traders' examination.
- (2) The traders' examination shall be deemed to have been passed if a percentage of the points to be attained in the individual examination topics determined by the Board of Management for the examination in question was attained. The percentage to be determined shall not fall below 50 of 100. No special grading is granted for performance between the required percentage for the passing of the examination and 100 % of the attainable points.

-
- (3) The Board of Examiners/Board of Management shall promptly distribute a certificate reflecting satisfactory completion of the examination after evaluation of the results of the traders' examination.

§ 21 Failing and Retaking the Traders Examination

- (1) After the evaluation of the examination results, the Board of Examiners shall promptly inform the examination candidate of the decision regarding the failure to pass a traders' examination in a notification.
- (2) Traders' examinations can be re-taken.

§ 22 Legal Remedy

An appeal against a decision based on these Examination Rules may be submitted to the Board of Management of EEX within one month after the announcement. Opposition proceedings shall be carried out according to the Administrative Court Rules.

§ 23 Costs

Fees may be charged to the examination candidate's account for participating in traders' exams and EEX systems training courses as well as repeat examinations.

6. Final Provisions

§ 24 Date of Effectiveness

The Examination Rules as well as changes to the Examination Rules shall take effect on the day after their publication or -if it is decreed- at a later date.



Trading Conditions

*The English version is for informal use only.
The German version is legally binding.*

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2 General Provisions

§ 1 Scope of Application; Types of Trades

- (1) The following trading conditions shall govern all Spot and Derivatives transactions, which are concluded on the European Energy Exchange (EEX).
- (2) The products of EEX are traded in the closed auction, in the open auction or in continuous trading with and without open auctions.

§ 2 Exchange Days, Trading Hours, Business Hours and Settlement Days

- (1) Trading on EEX shall generally take place from Monday to Friday.
- (2) Trading hours are those times during which the products can be traded on the EEX. Trading is also permitted on days which are not exchange trading days provided this was announced by the Management Board of the Exchange in due time. The Management Board of the Exchange can specify with regard to individual products that these are not tradeable on all exchange trading days.
- (3) Exchange trading days may be ascertained differently according to product. The Management Board of the Exchange publishes for all products the list of holidays, respectively, which are not exchange trading days, in the annex to the Contract Specifications. Furthermore, it announces the trading times for the single products which can be traded on EEX.
- (4) The business hours are from 7:30 am until 06:00 pm on every Exchange Day of EEX.
- (5) Settlement Days are the days on which financial and/or physical settlement of the transaction on EEX is effected by European Commodity Clearing AG (ECC AG) (ECC business days). ECC AG publishes a list of days from Monday to Friday which are not ECC business days.

§ 3 Products

- (1) Products are contracts which have been admitted to spot or derivatives trading on EEX by the Management Board of the Exchange.
- (2) The contracts, which are admitted to spot or derivatives trading on EEX, are stipulated in the contract specifications attached to these trading conditions.
- (3) The latest version of the contract specifications appended to these trading conditions is an integral part of these and, hence, forms the basis for all business carried out on EEX.

§ 4 Binding Nature of Transactions

With regard to an exchange participant all those transactions shall be binding which are brought about by means of his input devices or by means of his allotted technical access (Member ID) and accordingly on his behalf and on his account.

§ 5 Delivery and Acceptance Periods

The delivery and acceptance periods resulting from transactions concluded on the EEX are fixed periods within the meaning of Art. 376 HGB [German Commercial Code], in particular, with the result that a right to resign from the transaction and to demand compensation on grounds of non-performance in the event of culpable non-compliance with the deadline arises from a non-compliance with said deadline.

§ 6 Settlement and Fulfilment of Transactions

The trades concluded by the EEX exchange participants are fulfilled financially or physically in accordance with the respective provisions in the contract specifications. Fulfilment, settlement and securitisation of the transactions concluded on EEX (clearing) are provided by ECC AG in its capacity as the clearing house of EEX. Clearing of all transactions concluded on EEX shall exclusively be effected according to the Clearing Conditions of ECC AG in the version effective at the time of the provision of the service in accordance with the more detailed provisions in § 7.

§ 7 Contractual Relationships

- (1) The transactions on the Spot Market of EEX shall only be concluded between the ECC AG and an exchange participant. The integration of the clearing members of ECC AG into the settlement of the trades concluded shall depend on the provisions of the current version of the Clearing Conditions of the ECC AG.
- (2) The transactions on the Derivatives Markets of EEX shall only be concluded between ECC AG and an institution which holds a clearing license (general clearing member or direct clearing member). In case an exchange participant is not authorized to carry out clearing itself (non-clearing member) transactions shall only be concluded by means of the clearing member, via whom the participant settles his transactions on EEX. If an order entered into a trading system of EEX is matched with another order, a transaction is concluded between the non-clearing member and the clearing member and, at the same time, a corresponding transaction is concluded between the clearing member and ECC AG. If, in accordance with the trading conditions, performance by delivery is necessary, from the time a contract has to be delivered only the exchange participant is obliged to take or make delivery pursuant to section 3.3.5 of the Clearing Conditions.
- (3) The provisions of this article concerning exchange participants shall apply accordingly to enterprises or institutions that have been admitted as auctioneers.

§ 8 Pre-arranged Trades and Cross Trades

- (1) Subject to § 1 of the Trade Registration Rules, it is not permitted to enter consecutive orders in continuous trading which could be executed against each other to conclude a transactions according to a prior arrangement between two exchange participants (Pre-arranged trades) unless the requirements of Paragraph (4) are fulfilled.

- (2) Entering of opposite orders by a single exchange participant with respect to the same product which could be matched with each other in the trading system for continuous trading so that a transaction is effected (cross trades), is not permitted in case the exchange participant knowingly acts for its own account or for the account of a customer on both the bid and ask side unless the requirements of Paragraph (4) are fulfilled. This does not apply to the submission of orders as part of a quote.
- (3) An Exchange Participant may submit a written description of his internal and external links to the IT system of the Exchange to the Market Surveillance of EEX on the basis of which it will decide whether the Exchange Participant acted knowingly within the meaning of Paragraph 2.
- (4) A cross trade or a pre-arranged trade is admissible to be entered into the trading system T7 if the purchaser, prior to entering his order or quote, enters a cross request into the trading system. The purchaser and the seller must enter the cross trade or pre-arranged trade at the earliest after five seconds and at the latest after 65 seconds after having entered the cross request into the trading system. The order or quote must comply with the announced number of contracts.
- (5) Paragraphs (1) and (2) shall apply accordingly to other kinds of conduct which constitute a circumvention of the regulation. Such other kinds of conduct within the meaning of this paragraph shall include, in particular, the misuse of quotes.

§ 9 Cancellation of Trades and Orders

The Management Board of the Exchange shall be entitled to cancel trades or orders ex officio provided this is required in order to ensure proper trading on the exchange or in order to safeguard the correctness of the settlement of exchange transactions.

§ 10 Objections against Transactions

- (1) Objections against a transaction which has been concluded in the order book can only be asserted with reference to errors in the corresponding trading system of EEX or to bad mistakes which can be recognised objectively during entering of volumes or prices. The detailed provisions shall be specified by the Management Board of the Exchange. Moreover, the Management Board of the Exchange can specify that objections are excluded with regard to certain products or determine other rights, such as i.e. withdrawal rights.
- (2) Objections may be raised additionally against transactions that are based on entries which have not been conducted by the exchange participant itself with the reason that the entries have not been conducted or transmitted according to his allowance or without his mandate. Further provisions are stipulated within the Trade Registration Rules.
- (3) Objections shall be raised towards the Management Board of the Exchange in writing or in text form forthwith. By means of raising said objection the cancellation of the trade by the Management Board of the Exchange shall be requested. The Management Board of the Exchange shall decide on requests regarding the cancellation of a trade immediately and at the latest within 24 hours. The expenses incurred by EEX on account of the cancellation and reversed transaction shall be refunded by the exchange participant requesting the can-

cellation, unless such cancellation is entirely based on an error within the trading system. Claims to damages on the part of EEX AG or of the clearing institutions included towards the exchange participant upon whose request the transaction was cancelled shall not be affected by this.

§ 11 Provisions regarding Access

- (1) Every exchange participant shall be responsible for controlling access to his input devices and other EDP devices which are connected to the trading systems of EEX.
- (2) The exchange participants are obliged to take effective precautions against any improper use of their entire EDP which is connected to EEX and to monitor access to the corresponding devices continuously.
- (3) Every exchange trader receives individual access authorisations to the trading systems. He is not permitted to forward these individual access authorisations to any other person and he is obliged to take effective precautions against any improper use of his individual access authorizations.

§ 12 Transmission of Orders

- (1) Exchange participants shall transfer entries for order book trading (entering, modifications and deletion of orders) to then respective trading systems of EEX from their input units by means of electronic data transmission. The use of the Trade registration Functionality of the trading systems of EEX shall be carried out according to the provisions stipulated within the Trade Registration Rules.
- (2) Only admitted exchange traders are permitted to submit entries to the trading systems.
- (3) The Management Board of the Exchange may permit other ways of transmitting the entry, modification and deletion of orders into the systems of EEX. In this case, it shall inform the exchange participants in due manner.

§ 13 Trading on Behalf of the Exchange Participants (Trading on Behalf)

- (1) In particular in the event of technical malfunctions or other obstacles to access to the trading systems on the part of a trading participant, the Management Board of the Exchange can make entries in the trading systems on his behalf and in accordance with specific instructions and for said party (trading on behalf). Trading-on-behalf orders may only be issued by a licensed exchange trader of the trading participant concerned. For participation in primary auctions of emission rights the Management Board of the Exchange may permit other registered persons to submit orders. EEX checks the legitimation for submitting orders by the active user login. Orders can be issued via phone, in text form (fax, e-mail) or in writing.
- (2) EEX shall only be liable for cases of damage which a trading participant sustains in the context of trading on behalf, in particular, on account of incorrect entries in as far as premeditation or gross negligence on the part of its bodies or vicarious bodies can be proven.

In this case, however, the liability of EEX shall be limited to the amount of the damage typical of the contract which was foreseeable upon the conclusion of the contract. EEX is entitled to refuse orders for trading on behalf without having to give reasons.

§ 14 Technical Problems within the Trading Systems of EEX

- (1) Upon the occurrence of technical problems or if it is evident for further technical development, the Management Board of the Exchange may temporarily interrupt access to the trading systems of EEX or trading on EEX for individual or all exchange participants in part or entirely. As far as the Management Board of the Exchange deems necessary, it can take suitable measures in order to ensure that trading is possible. The measures taken by the Management Board of the Exchange in accordance with sentences 1 and 2 are binding for all exchange participants.
- (2) Exchange participants affected by technical problems of the EEX trading system shall be notified of such measures to the extent possible pursuant to paragraph (1) through the system or, in the event of a system failure, per fax or in another suitable manner.
- (3) Should individual exchange participants not be able to participate in trading on EEX because of technical disruptions, the corresponding trading system of EEX shall remain available to the other exchange participants, unless the Management Board of the Exchange of the exchange decides that measures in terms of paragraph (1) sentence 2 are necessary to ensure that trading is possible.

§ 15 Technical Disruptions concerning a Trading Participant

- (1) Each exchange participant must be reachable at any time during the business hours.
- (2) During the business hours the exchange participant shall promptly notify the Management Board of the Exchange if the entry or the receipt of data is totally or partly impossible as a result of disruptions of its operations or governmental action. Upon request, the Management Board of the Exchange may cancel orders entered by such exchange participants; otherwise, section 14 paragraph 3 shall apply accordingly.
- (3) The exchange participant must immediately notify the Management Board of the Exchange of any failure of his telephone system or of any other problem which makes communication by telephone impossible.

3 General Provisions for Trading on the Spot and Derivatives Markets of EEX

§ 16 Scope of Application

The rules below shall apply to all transactions which are concluded on the EEX Spot and Derivatives Markets.

§ 17 Products, Forms of Trading and Trading Systems

- (1) On the EEX Spot and Derivatives Markets products can be traded in closed or open auctions and in continuous trading.
- (2) Primary auctions of emission rights (EU emission allowances and EU Aviation Allowances) are carried out on the ComXerv Auction System; continuous trading in all other products is effected in the T7 trading system.

§ 18 Types of Orders

- (1) Orders are buy and/or sell orders of exchange participants on the EEX Spot and Derivatives Markets.
- (2) In auction trading, orders can also be referred to as bids.
- (3) Depending on the form of trading, orders can be entered into the respective trading system in the form of:
 - Unlimited orders (Market Orders)
 - Limited orders (Limit Orders).

Market Orders are buy or sell orders which are entered without specifying a price limit and which are to be executed at the next price established by the EEX trading system. Limit Orders are buy or sell orders which are entered with a price limit and are to be executed at this price or at a better price.

- (4) Orders are only valid for the trading system into which they are entered. Transmission into another trading system or the order book of another trading system is not effected.
- (5) In as far as orders cannot be executed or deleted immediately after they are entered into the trading systems in accordance with their execution conditions, they are saved in electronic order books.
- (6) Executable orders in the order book are carried out through order execution in accordance with the rules valid for the respective trading phase.
- (7) Orders in the order book can be modified or deleted at any time. All orders of one trading participant in the order book can be deleted by EEX at the trading participant's request. Modifications of an order which concern the price or increase in the number of contracts are considered a new order and, as a result, they are given a new position in the chronological order in the order book.

3.1 Special Provisions for Continuous Trading within the T7 Trading System

§ 26 Trading time and trading phases

- (1) The trading time for Spot and Derivatives Transactions comprises three consecutive phases:
 - “Pre-trading period”,
 - “Trading period” and
 - “Post-trading period”.
- (2) During the Pre-trading period, orders and quotes can be entered into the trading systems.
- (3) Upon the beginning of the trading phase, an opening auction is carried out and, afterwards, the contracts will be traded continuously. The trading phase ends upon expiry. It can be interrupted for the execution of auctions in accordance with the exchange rules and instructions.
- (3) After the end of the trading phase, the trading systems are still available for the trading participants for entering and retrieving data (post-trading phase).

§ 20 Order types

- (1) The following orders can be entered into the trading system by the trading participants:
 - market orders
 - limit orders
 - stop orders
 - limit orders with a stop limit (OCO orders).

Stop orders are bid or ask orders, of a certain number of contracts, which have a certain trigger price and upon reaching of which the stop orders are executed like other incoming market orders.

OCO (Once-Cancels-Other) orders combine the characteristics of limit orders and stop orders within a single order. If they are executable on the basis of the execution limit, an order is executed in its entirety or in part like a limit order. Any residual volume which might still remain is still subject to the execution rules of the OCO order. If the order is executable on the basis of the price which triggers the stop, the OCO order which is in the order book until the stop is triggered, is converted into a market order in its entirety and included in continuous trading as such.

- (2) An order shall comprise, at least, the information as to whether it is a buy or a sell order, the product (Spot contract, futures or options) to which they refer, the maturity and the number of contracts. In the case of options, the option type (call or put) and the exercise price have to be specified, in addition.
- (3) Upon entry the orders must be marked as own orders or customer orders and as opening or closing-out transactions for the purpose of recording unless they are to be traded within a position account kept in net terms.

(4) Orders can have the following conditions regarding their validity:

- only valid on that day (good for day),
- valid until withdrawn (good till cancelled) or
- valid until expiry (good till date).

Orders which are entered without a validity condition are only valid until the end of the trading phase on that trading day. Unless they have been executed until that time, they are automatically deleted from the exchange's systems.

(5) Furthermore, orders can carry the following execution conditions upon entry:

- One cancels the other or
- Immediate-or-cancel.

In the case of immediate-or-cancel orders, the order is carried out immediately and in as far as possible; unexecuted parts are deleted.

§ 21 Quotes

- (1) A quote is the technical possibility to generate a limited buy and a limited sell order regarding one contract in the system at the same time with one entry. Quotes are also possible with combined instruments.
- (2) Orders, generated through quotes, reach execution according to the terms of their execution, independently of other, simultaneously generated orders.
- (3) Quotes are shown separately in the system and in the order book. Should they fail to be executed in their entirety or in part, the current holding can be individually changed for single orders or collectively changed for a Product, or cancelled, as well as entirely taken out of trading by the exchange participant for a period of time. All of the exchange participant's quotes can be deleted from the order book by EEX upon the exchange participant's request.
- (4) Any amendment of quotes which changes the price or increases the number of contracts constitutes a new entry of all individual orders contained.
- (5) Quotes are only valid for the day on which they are entered; any re-activation constitutes a new entry.

§ 22 Combined instruments

- (1) A combined instrument is a combination of various contracts ("leg instruments") whose execution is interdependent. A combined instrument can comprise individual leg instruments several times. The IT system of EEX supports the following combination types:
 - A Time Spread is a combined instrument consisting of two contracts of the same futures product which only differ with regard to their maturity with one contract being bought and the other contract being sold.
 - An Inter-Product Spread is a combined instrument consisting of, at least, two different contracts with, at least, one contract being bought and one contract being sold.

The Management Board of the Exchange determines the possible combined instruments and announces these.

- (2) Only Limit Orders can be entered into the system of the Eurex exchanges for combined instruments.
- (3) Orders regarding combined instruments are saved in a specific order book; they can be carried out against corresponding executable orders in the order book of the combined instrument or against orders in the respective leg instruments.

§ 23 Pre-Trade Limits

- (1) A pre-trade limit is the possibility of limiting orders which can be entered into the trading systems by an exchange participant and which is provided technologically within the trading system. Provided a corresponding agreement has been concluded by the clearing member with its non-clearing member, the clearing member of ECC, which provides settlement for said trading participant, is entitled to enter pre-trade limits.
- (2) Pre-trade limits can contain the individual restrictions specified herein below or a combination of these:
 - Maximum number of contracts with reference to a product per contract. With regard to this, the following limit is taken into account in accordance with the respective type of order:
 - Maximum number of contracts per order (“Maximum Order Quantity“), in as far as such do not refer to combined orders or
 - Maximum number of contracts per combined order (“Order Maximum Calendar Spread Quantity“) with reference to certain products.
 - Maximum amount of available total margins or special margins specified in more detail for further trading activities.
- (3) If one of the limits described in paragraph (2) is reached, the system can take measures to stop the forwarding of orders by the exchange participant concerned into the trading systems and, hence, discontinue the matching of such with other orders. Orders which have already been entered into the order books are deleted.
- (4) If certain limits are exceeded, the details shall be determined in an agreement between the Exchange participant and his Clearing Member, further entering or execution of orders can be limited for the duration of the exceedance and existing orders can be deleted.

§ 24 Execution and Management of Orders

- (1) All orders entered receive a time stamp and an identification number. Orders which do not fulfil the prescribed minimum requirements are rejected. The Exchange participants are informed of recording of the orders by the trading system.
- (2) For every tradable product an order book is kept in which all orders are sorted and managed according to price and time of receipt. Amendments of an order result in a new chronological order if they concern the price or other contents of the order, especially, through an increase

in quantity which might have a detrimental effect on the executability of other orders. Combined instruments are kept in separate order books and are executed with the orders in the order books of the respective products or with matching opposite combined orders.

- (3) Orders in the order book can be amended or deleted at any time. All orders of one Exchange participant can be deleted by the Management Board of the Exchange upon a request to this end by the Exchange participant.
- (4) Existing orders are deleted as soon as the validity condition is reached; however, at the latest, if a contract (delivery day or delivery period) is no longer tradable.

§ 25 Order Execution

- (1) During the opening auction of the trading phase, trades are concluded according to the principle of the most executable volume as follows:

During the balancing process, the biggest possible number of executable orders available within the system is matched at the opening price for every option series and every contract. If there are no executable matching orders during the opening auction of a contract, the opening auction ends without the determination of an opening price.

- (2) During continuous trading in the trading phase transactions are concluded as follows:

An order is checked for executability with the orders in the order book in line with its validity specification. If an order entered cannot be executed right away, it is entered in the order book in accordance with its price and time priority unless this is precluded by an order restriction.

If the order entered can be executed with matching orders in the order book, these are allocated to each other and matched automatically. In this process, an incoming sell order is matched with the order on the buy side of the order book with the respective highest ask price (best price on the ask side), while an incoming buy order is matched with the respective order on the sell side with the respective lowest bid price (best price of the bid side). If there are several orders with the same best price in the order book which are opposite orders to the incoming and executable order, an allocation procedure as per Paragraph 3 shall be decisive for their sequence in execution.

If, after matching with all best-price orders in the order book which are opposite orders to the side of the incoming order, the order entered is still executable as against the respective next best order book price, matching is continued until the order entered is no longer executable.

An order which after matching at the respective best order book price still has a residual volume which cannot be executed any further is entered into the order book in accordance with its price-time priority provided this is not precluded by an order restriction. Further details regarding matching for certain order types are specified in the rules in section 4.2.

- (3) Best-price orders saved in different order books can be combined so that they correspond to the side opposite the order ("synthetic path"). If the price formed from such a combination of order book sides ("synthetic path") is identical with the best price on the side of the order book which is opposite the incoming order or improves this price, the synthetic path upon the execution against the incoming order can be taken into account. In the event of an improve-

ment in price, the synthetic path is the best available price and the synthetic path is executed against the incoming order.

Synthetic paths are formed from, at maximum, combinations of three different order book sides. In the event of two different best-price synthetic paths whose number of combined order book sides is identical, the synthetic path whose combination of order book sides contains the instrument with the nearest expiry date has a higher priority.

If a synthetic path is executed with a certain quantity as against an incoming order ("allocated path quantity"), this synthetic path is divided into the order book sides generating it and the allocated path quantity is executed against the best-price order contained in the generating order book sides. In the event of several orders contained in one generating order book side, an allocation procedure as per Paragraph 4 shall be decisive for their sequence during execution.

- (4) If there are several orders with the same price on one side in the order book, an allocation procedure shall be decisive for the consideration and allocation of the volume of these orders. The volume to be distributed to the orders with the same price ("volume to be allocated") is specified through an incoming order in continuous trading or through allocated path quantities or through a balancing process in an auction.

In determining the volume allocated to the respective order, the orders contained in the order book are processed at the same price in the chronological sequence of receipt with the order entered first being assigned the highest priority.

- (5) Market orders are always executed before limit orders. If there are several market orders in the order book, the time of the entry of such shall be decisive for consideration and the allocation of the volume of the market orders.
- (6) EEX shall forthwith inform the exchange participants of the execution of their orders in the trading system. This information shall contain all the essential details of the transaction.
- (7) In the case of trades regarding futures or options, the trading system updates the exchange participants' position accounts after matching.

§ 26 Execution of Market Orders

- (1) Market orders for Spot or Futures contracts that are entered during continuous trading of the Trading Period will only be executed with Limit orders, the prices of which are within a certain range, as determined by the Management Board of the Exchange either above or below the last price at which the last contract was concluded. If incoming Market orders cannot be executed in full, or at all, they will be transferred into the order book. New incoming Limit orders will be executed with any remaining Market orders if their prices are within the range either above or below the last contract price. If, although the prices of incoming Limit orders are not within such range, they could nevertheless be executed with other Limit orders or quotes contained in the order book, the price at which such Limit orders or quotes could be executed with each other will then be the new last effected Derivatives contract price within the meaning of sentence 2 of this paragraph. Such Limit orders or quotes will be executed with other Market or Limit orders in accordance with the general priority rules set forth in § 25. If no last

contract price within the meaning of sentence 2 of this paragraph can be determined on a given trading day, Market orders will not be executed on that day. If a new contract is introduced, Market Orders shall only be executed after two Limit Orders have determined the contract price.

- (2) Market Orders for Options contracts that are entered during continuous trading of the Trading Period can be executed with Quotes and orders contained in the order book, which are not more unfavourable than the most unfavourable Quote of an Options series. The Market Orders entered are executed along with existing Market Orders and Limit Orders in the order book in the order of best price. Market Orders which are not, or not fully, executed are thereafter transferred to the order book. Newly entered orders are used for execution with the remaining Market Orders or as a price reference for the execution of the Market Orders with other orders in the order book. Each Market Order is exercised before a Limit Order. In deviation to clause (1), as long as no quotes are entered, Market Orders can be executed with other Markets Orders or Limit Orders if an entered Limit order can be executed with a Limit Order already entered in the order book. The price, at which the Limit Orders are jointly executed, serves as the execution price for the existing Market Orders. These are executed, along with other Market Orders and Limit Orders in accordance with the general priority rules.
- (3) If a Market Order is still in the Order Book on the following trading day, it will be processed as a Market Order during the Opening Auction of such a trading day.
- (4) Market Orders entered during the Pre-Trading Period or the Post-Trading will be processed during the next opening auction.

§ 27 Execution of Limit Orders

- (1) Unrestricted Limit Orders may be entered during the Pre-trading period, the Opening period, the Trading period or the Post-trading full period. Unrestricted Limit Orders that are not executed immediately are entered in the Order Book. If there already is an unrestricted Limit Order in the order book and if an executable Limit Order which can be executed with it is received, a transaction shall be effected at the price of the order contained in the Order Book.
- (2) Restricted Limit Orders may only be subject to the limitation on execution "immediate or cancel". Restricted Limit Orders may only be entered during the Trading Period. They are not entered in the Order Book.
- (3) Limit orders entered without a validity specification or limitations on their execution shall be valid only until the end of a given trading day. To the extent that they have not been executed, Limit Orders shall be deleted from the trading systems after the trading day.

§ 28 Execution of Stop Orders

- (1) Stop Orders are only possible for Spot and Futures contracts. If the price specified for the Stop Order is reached or exceeded is reached during trading or in determining the opening price in the respective contract, or the price of the contract falls below the specified price or exceeds it, as the case may be, the Stop Orders will, pursuant to an automatic selection process in the chronological order of their entry, be converted into Market orders. These orders

will then be executed along with any other incoming Market orders in the order of the times of their conversion into Market orders, in accordance with the general principles for the matching of Market orders for Futures contracts.

- (2) Stop Orders will be entered into a separate Order Book.

3.2 Special Provisions for Primary Auctions of Emission Rights in Accordance with the Provisions of the Commission Regulation (EU) No. 1031/2010*

* Articles referred to below in this section without further reference are articles of the Commission Regulation (EU) No. 1031/2010 (Auction Regulation).

§ 29 General Regulations

- (1) Primary auction of emission rights is effected as an element of exchange trading of EEX.
- (2) In addition to the rules and regulations of EEX, the respectively valid national or European statutory bases are applicable to the respective auctions.
- (3) EEX is the exchange carrying out the primary auction of emission allowances.
- (4) The respectively competent national or European institution or a third party commissioned by it (auctioneer) shall provide the emission rights to be auctioned off. Trading participants other than the auctioneer are not entitled to conclude sales transactions in the framework of the primary auction.

§ 30 Execution of Auctions

- (1) Exchange trading for the primary auction of emission rights takes place by means of single-round, closed and uniform price auctions.
- (2) The auction will follow the format required in the EU Auctioning Regulation and comply with the respective contracts between EEX and those institutions which appointed or selected EEX as the respective auction platform. An auctioneer's participation in a primary auction shall be excluded unless the emission rights to be auctioned have been submitted to the corresponding auction delivery account of ECC Lux at the Union registry by, at the latest, 10:00 CET two days before the auction in accordance with the valid auction table.
- (3) The call phase (bidding window) and the pricing phase are the trading phases for the auction.
- (4) EEX will obtain and take the utmost account of the Commission's opinion with regard to auctions according to Art. 26 and of the opinion of the competent national authority of the respective Member State with regard to auctions according to Art. 30.

§ 31 Auction Calendar

- (1) EEX determines and publishes the auction calendars for auctions as per Art. 26 and for auctions as per Art. 30 in compliance with Art. 8 and per product to be auctioned (EUA and EU-

AA) in accordance with the more detailed provisions of Art. 11 and 13 on the basis of the annual auction volumes.

- (2) The timing and frequency of auctions are determined in accordance with the more detailed provisions in Art. 8.
- (3) EEX shall adjust the respective auction calendar in the cases as per Art. 14 (1).
- (4) Provided the Emission Allowances have been transferred to the respective ECC Lux Auction Delivery Account in accordance with Art. 46, the Auction Calendar in its respectively valid version shall determine the volume which will be auctioned off at the next auction.
- (5) The Auction Calendar shall comprise, at least, the following information:
 - a. auction dates and times, including the duration of the call phase (bidding window)
 - b. volumes to be auctioned (including disclosure of the amounts per auctioneer) and
 - c. the auctioned product.

§ 32 Bidders and Order Types

- (1) Buy orders can only be entered by Exchange Participants who are admitted and entitled to bid in a primary auction in accordance with Chapter IV of the Auction Regulation (Eligibility).
- (2) Entering, deletion or modification of orders is only admissible during the call phase.
- (3) Orders have to be entered into the trading system or by using trading on behalf, § 13 applies mutatis mutandis. To ensure proper handling of orders submitted through trading on behalf, these orders may only be submitted up until 10 minutes before the end of the call phase.
- (4) Bidding Orders can only be entered into the trading system as limit orders. Limit orders are buy orders with a price limit which can only be carried out at this price or at a better price. Upon entering into the trading system the limited buy orders have to comprise the following information:
 - Buy (bid),
 - Price limit specified to two decimal points,
 - Product and
 - Number of contracts (at a minimum lot size of 500 or a multiple thereof).

Upon entering into the system orders have to be marked as own orders or customer orders. In case the trading participant enters a customer order, the identity of the customer has to be named in the customer field provided by the trading system or on the written order. It is the sole responsibility of the trading participant to ensure the eligibility of the customer in accordance with the Auction Regulation (Chapter 4).

- (5) All orders which are still valid at the end of the call phase are binding. The Management Board of the Exchange may withdraw that order after the end of the bidding window but before the auction clearing price has been determined - upon request of the trading participant - in case a genuine mistake has been made in the submission of the order.

§ 33 Pricing and Execution of Orders, Cancellation

- (1) A potential execution price is not displayed during the call phase (“black box auction”).
- (2) After the end of the call phase pricing is carried out as uniform pricing in the auction by means that all successful bidders will pay the same auction clearing price.
- (3) The limit price of the order at which the sum of the volumes bid matches or exceeds the volume of allowances auctioned shall be the auction clearing price: The orders are sorted according to the height of the price limit and the quantities specified are added up. Where the price limit of several orders is the same, these orders will be sorted through a random selection according to an algorithm determined by EEX before the auction. The price which is identical with the price limit of the orders at which the added-up buy orders reach or exceed the quantities offered on the sell side.
- (4) Orders not carried out are deleted after the auction.
- (5) The trading participants are informed of the prices established in the auctions as well as of the execution of their orders by the trading system. Said information contains all essential trading and transaction data.
- (6) Not later than 15 minutes after the end of the call phase, EEX will publish the following information about the auction on its website
 - a. the volume of the allowances auctioned;
 - b. the auction clearing price in euros;
 - c. the total value of the auction and
the distribution of the revenues between the Member States, in the case of auctions of EEX pursuant to Article 26(1) or (2).
- (7) If the amount of bidding orders does not meet the offer of EU emission allowances a price determination does not take place and the respective auction will be cancelled. The same applies if the estimated auction price does not reflect the orderly market value (reference price procedure as per Art. 7 (6))) and the other cases as foreseen in Art. 9.

§ 34 Measures by the Management Board of the Exchange

- (1) In order to maintain an orderly situation on the market, especially in case of incorrect entries or other events affecting proper pricing the Management Board of the Exchange can take adequate measures in accordance with the Auctioning Regulation for a proper price calculation or cancel an auction.
- (2) In case an auction is not held on an auction date due to technical reasons or an insufficient bidding volume or in case an auction carried out is cancelled by the Management Board of the Exchange, the volumes to be auctioned will be allocated to the following auctions in accordance with Art 7 (8), 9 or 14.
- (3) Trading participants interfering with the proper course of the auction can be excluded from participation therein.

3.3 Position Account-Keeping for the Exchange Participants

§ 35 Position Administration

- (1) Transactions concluded on the Derivatives Markets of EEX by trading participants shall be recorded as positions in internal Principal, Agent and Market Maker Position accounts by ECC AG as the CCP according to the ECC clearing conditions.
- (2) Two Principal Position Accounts, one Agent Position Account and two Market Maker Position Accounts shall be maintained for each exchange participant. Additionally, for options an internal premium account shall be maintained for each position account of each exchange participant. The premium from all exchange traded Options trades shall be booked to the respective Premium account.
- (3) Entries made by the exchange participants in the trading systems of the exchange which occur while entering the order are binding for the exchange participant towards EEX as well as towards the clearing houses included and their clearing members. These include information about the position account and the information whether it concerns an opening or closing trade.
- (4) Entries made by the exchange participants, which occur in connection with the position administration, are only allowed pursuant to the regulations in the respectively applicable clearing conditions and are binding for the exchange participant towards EEX as well as towards the clearing houses included and their clearing members. These include, in particular, opening or closing trade adjustments, closing position adjustments, trade adjustments, entries, which can change the classification of a trade or a position from Agent to Principal or from Principal to Agent position accounts (Trade or Position Transfers including Give up Trades) as well as the separation of trades into various position accounts (Trade Separation).

4 Final Provisions

§ 36 Place of Performance

Leipzig shall be the place of performance for all transactions on EEX governed by these provisions.

§ 37 Effective Date

These Trading Conditions as well as any amendments thereto shall become effective on the day after their publication, unless a later effective date has been specified by the Exchange Council.

Appendix: Contract specifications



Contract Specifications

The English version is for informal use only.
The German version is legally binding.

Datum / Date

02.09.2016

Ort / Place

Leipzig

Dokumentversion / Document Release

0050a

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F. *Trading Calendar*48

A. Subject of the Contract and Underlying Commodity

1. Energy and Energy Related Products

Financial and physical futures on the following energy and energy related products can be traded on EEX:

1.1. Power (financial and physical)

1.1.1. Underlying

1.1.1.1. Power Futures

Delivery or acceptance of delivery of electricity with a constant output of 1 MW into the maximum-voltage level of the respective market area during the delivery time on every delivery day during the delivery period.

1.1.1.2. Cap Futures

The average difference of a reference price calculated for the respective market area for particular power spot market contracts within a specific delivery period for a particular market area and a price threshold (Cap) determined by the Management Board of the Exchange of EEX. For hours for which the difference is negative, a zero will be counted for the determination of the average.

1.1.1.3. Wind Power Futures

The average load factor of the installed wind power plants calculated for the respective market area in percent (%). The load factor will be determined for each month as the unweighted average value of the quotients of the produced amount of wind power (in MWh) and the installed production capacity for wind power (in MW) for each hour. For futures having a shorter maturity than a month those shorter periods of time will be the basis for the determination.

1.1.2. Market Areas/Reference Contract

1.1.2.1. Power Futures with Physical Fulfilment

Power Futures with physical fulfilment within the respective control area can be traded for the following market areas:

- Belgium (Belgian Power Baseload Futures) and
- The Netherlands (Dutch Power Baseload and Peakload Futures).

1.1.2.2. Power Futures with Financial Fulfilment

Power Futures with financial fulfilment can be traded for the following market areas:

- Belgium (Belgian Base Futures),
- Germany/Austria (Phelix Base, Peak and Off-Peak Futures),
- France (French Base and Peak Futures),

- Italy (Italian Base and Peak Futures),
- The Netherlands (Dutch Base and Peak Futures)
- Nordic (Nordic Base Futures),
- Spain (Spanish Base Futures),
- Switzerland (Swiss Base Futures), and
- United Kingdom (UK Base and Peak Futures)

1.1.2.3. *Cap Futures*

The following financially settled Cap Futures can be traded:

- German Market area, Base load, Intraday Market Hourly Product (German Base Intraday Hourly Cap Future)

1.1.2.4. *Wind Power Futures*

The following financially settled Wind Power Futures can be traded:

- Germany/Austria, Base load (German Austrian Wind Power Future)

1.1.3. **Delivery Time**

Delivery time is the days and their hours that are comprised by the respective delivery period according to the contract concerned:

1.1.3.1. *Base*

00:00 until 24:00 for all days of the week (Base)

1.1.3.2. *Peak*

08:00 until 20:00 for all days Monday through Friday (Peak) and 08:00 until 20:00 for the days Saturday and Sunday (Peak Weekend) respectively

1.1.3.3. *Off-Peak*

00:00 until 08:00 and 20:00 until 24:00 Uhr for all days Monday through Friday as well as the hours between 00:00 and 24:00 at weekends (Off-Peak)

1.1.4. **Delivery Period/Time Period**

The Delivery periods for the respective market area may be: Day, Weekend, Week, Month, Quarter, Season*, and Year.

* A Season comprises either October through March (Winter Season) or the respective months April through September (Summer Season).

1.1.5. **Tradable Delivery Periods**

1.1.5.1. *Physical Power Futures*

- Belgian Power Baseload Month/Quarter/Year Futures
- Dutch Power Baseload Month/Quarter/Year Futures
- Dutch Power Peakload Month/Quarter/Year Futures

1.1.5.2. *Financial Power Futures*

- Belgian Base Month/Quarter/Year Futures
- Dutch Power Base Week/Month/Quarter/Year Futures
- Dutch Power Peak Month/Quarter/Year Futures
- French Base Day/Weekend/Week/Month/Quarter/Year Futures
- French Peak Day/Weekend/Week/Month/Quarter/Year Futures
- Italian Base Day/Weekend/Week/Month/Quarter/Year Futures
- Italian Peak Day/Weekend/Week/Month/Quarter/Year Futures
- Nordic Base Week/Month/Quarter/Year Futures
- Phelix Base Day/Weekend/Week/Month/Quarter/Year Futures
- Phelix Peak Day/Weekend/Week/Month/Quarter/Year Futures
- Phelix Off-Peak Month/Quarter/Year Futures
- Spanish Base Day/Weekend/Week/Month/Quarter/Year Futures
- Swiss Base Week/Month/Quarter/Year Futures
- UK Base Day/Weekend/Week/Month/Quarter/Season/Year Futures
- UK Peak Week/Month/Quarter/Season/Year Futures

1.1.6. **Tradable Settlement Periods**

1.1.6.1. *Cap Futures*

- German Base Intraday Hourly Cap Week Future

1.1.6.2. *Wind Power Futures*

- German Austrian Wind Power Week/Month/Quarter/Year Future*

* Introduction to trading expected as of October 2016.

1.1.7. **Contract Volume and Minimum Lot Size**

- Contract Volume of Power and Cap Futures:
The contract volume is calculated by multiplying the number of delivery hours (h) during the delivery period with the constant output (MW) specified in the respective reference contract (see above 1.1.5.). The maximum amount of power per day is usually 24 MWh, on the day of the switch from winter time to summer time it amounts to 23 MWh, whereas on the day of the switch from summer time to winter time it amounts to 25 MWh.

The contract volume of physically fulfilled Futures:

As of the second exchange day before the beginning of the delivery period the contract volume is reduced at the end of trading by the quantity of electricity which is to be delivered.

The quantity to be delivered is the quantity for the delivery day which follows the next exchange day (t+2) in each case. In case this delivery day is not an exchange day, the quantities for all delivery days following that delivery day up until and including the next exchange day are to be delivered additionally.

- **Contract Volume of Wind Power Futures:**
The contract volume is calculated by the number of single hours (h) during the settlement period. The maximum number of hours per day is usually 24, on the day of the switch from or to summer time it amounts to 25 or 23, respectively.
- **Minimum lot size:** 1 contract or a multiple thereof

1.1.8. Tradable Maturities

At maximum the following maturities can be traded at EEX:

1.1.8.1. Power Futures

- **Day Futures:**
 - The respective next 34 days (Day Future),
- **Weekend Futures**
 - The respective next 5 weekends (Weekend Future),
- **Week Futures**
 - The current and the next 4 weeks (Week Future),
- **Month Futures**
 - The current and the next 9 months (Phelix/French Month Future),
 - The current and the next 6 months (remaining Month Future),
- **Quarter Futures**
 - The respective next 11 full quarters (Phelix/French Quarter Future),
 - The respective next 7 full quarters (remaining Quarter Future)
- **Season-Futures**
 - The respective next 6 full seasons (Season Future),
- **Year Futures**
 - The respective next 6 full years (Year Future).

1.1.8.2. Cap Futures

- **German Base Intraday Hourly Cap Future**
 - The current and the next 4 weeks (Week Future),

1.1.8.3. Wind Power Futures

- **Week Futures:**
 - The current and the next 4 weeks (Week Future),
- **Month Futures:**
 - The current and the next 3 months (Month Future),

- Quarter Futures
 - The respective next 4 full quarters (Quarter Future),
- Year Futures
 - The respective next 2 full years (Year-Future)

The exact number of tradable maturities is determined by the Management Board of the Exchange and announced before implementation.

1.2. Coal (financial)

1.2.1. Underlying

Delivery or acceptance of delivery of steam coal having a calorific value of 6000 kcal/kg net as received (NAR) and 1% Sulphur at maximum within 90 days at the delivery point:

- cif Amsterdam–Rotterdam–Antwerp (API 2* CIF ARA (Argus-IHS McCloskey) Coal Futures)
- fob Richards Bay, South Africa (API 4* FOB Richards Bay (Argus-IHS McCloskey) Coal Futures).

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1.2.2. Contract Volume and Minimum Lot Size

- Contract volume: 1,000 metric tons;
- Minimum Lot Size: 1 contract or a multiple thereof

1.2.3. Tradable Maturities

At maximum the following maturities can be traded at EEX:

1.2.3.1. Month Futures

- The current and the next 83 months

The exact number of the tradable maturities is determined by the Management Board of the Exchange and announced before implementation.

2. Environmental Products

2.1. Emission Allowances

2.1.1. Underlying

Delivery or acceptance of delivery of EU Emission Allowances, EU Aviation Allowances, and Green Certified Emission Reductions, respectively.

2.1.2. EU Emission Allowance and EU Aviation Allowance

EU Emission Allowance (EUA) and EU Aviation Allowance (EUAA), respectively, permit to emit one ton of carbon dioxide or one ton of a carbon dioxide equivalent within the meaning of the directive 2003/87/EC of 13 Oct. 2003 in its respective valid version, which are kept by a register within the meaning of this directive and which can be transferred at the respective delivery day within the scope of said directive or any respective succeeding rule (Spot market Primary auction and secondary trading: EU Allowances, EU Aviation Allowances; Derivatives market secondary trading: European Carbon Future, EU Aviation Allowances Future).

2.1.3. Green Certified Emission Reductions

Green Certified Emission Reductions (CER)* are certified emission reductions from Bilateral Projects** according to article 12 of the Kyoto Protocol and the Kyoto Protocol decisions of the United Nations Framework Convention on Climate Change (UNFCCC) in their respective valid version at the time of delivery, corresponding to one tonne of carbon dioxide or equivalent which can be used at the respective delivery day for means of compliance according to the valid rules EU ETS and which are freely transferred, including all projects except those involving the destruction of trifluoromethane (HFC-23) and nitrous oxide (N₂O) from adipic acid production as well as large hydro projects exceeding 20MW (Spot market: CER; Derivatives market: CER Dec Future).

* CERs generated from projects in countries listed by OFAC (www.treasury.gov), are excluded.

** Bilateral Projects: Projects which hold a letter of approval (LoA) from the project host country as well as a LoA from a designated national authority (DNA) of a contractual state according to Annex I of the Kyoto Protocol as part of the project documentation submitted and published by the UN.

2.1.4. Contract Volume and Minimum Lot Size

2.1.4.1. Spot Market

- EU Allowances / EU Aviation Allowances – Primary Auction
 - Contract volume: 1 EUA and EUAA, respectively,
 - Minimum lot size: 500 contracts or a multiple thereof
- EU Allowances / EU Aviation Allowances / CER Contracts – Secondary Trading:
 - Contract volume: 1,000 EUA, EUAA, and CER, respectively,
 - Minimum lot size: 1 contract or a multiple thereof

2.1.4.2. Derivatives Market

- European Carbon Futures/EU Aviation Allowances Future/CER Futures
 - Contract volume: 1,000 EUA, EUAA, and CER, respectively,
 - Minimum lot size: 1 contract or a multiple thereof

2.1.5. Time of Fulfilment and Delivery Day

The time of fulfilment and the delivery day, respectively, is for spot market contracts on the first ECC Business Day after the conclusion of the contract and for derivatives contracts on the second ECC Business Day after the last trading day.

2.1.6. Maturities of Derivatives Contracts

Maturities can be: Month, Quarter, December

2.1.7. Tradable Maturities for Derivatives Contracts

At maximum the following maturities can be traded at EEX:

2.1.7.1. Month Futures

- The current and the next 2 months, if no EUA Dec Future or EUA Quarter Future expires at the respective maturity date (EUA Month Future).

2.1.7.2. Quarter Futures

- The current and the next 11 quarters, if no EUA DEC Future expires at the respective maturity date (EUA Quarter Future)

2.1.7.3. December Futures

- all December maturities up to and including December 2020* (EU Aviation Allowance Future, CER Future, EUA Dec Future)
- the current and the next 8 Decembers** (EUA Dec Future)

* For EUA Dec Future: until and including September 23rd, 2016.

** As of September 26th, 2016.

The exact number of the tradable maturities is determined by the Management Board of the Exchange and announced before implementation.

2.2. Guarantees of Origin

2.2.1. Underlying

Delivery or acceptance of delivery of Guarantees of Origin (GO).

Valid Guarantee of Origin in the meaning of Article 2 (j) of Directive 2009/28/EC of electricity produced from renewable energy sources in accordance with Article 15 of Directive 2009/28/EC issued by the competent member state or designated competent body and certifying 1 MWh production of a Hydro-electric head installation located

- in Denmark, Finland, Norway, or Sweden (GO Nordic Hydro Power Future)
- in Germany, Austria or Switzerland (GO Alpine Hydro Power Future)

that has not benefited from a national support scheme, thus being consistent with Code 0 of EECS Rules Fact Sheet 3 - TYPES OF PUBLIC SUPPORT;

- Belgium, Denmark, Germany or the Netherlands (GO Northern Continental Europe Wind Power Future)

that might have benefited from a national support scheme, thus being consistent with Code 0, 1, 2, 3 or 4 of EECS Rules Fact Sheet 3 - TYPES OF PUBLIC SUPPORT.

The production of electricity certified by the GO must have occurred in the months preceding the maturity of the futures contract according to the following scheme:

Maturity	Valid period of certified production
March	April – December of the previous calendar year
December	January – December of the on-going calendar year

2.2.2. Contract Volume and Minimum Lot Size

- Contract Volume: 1,000 GO
- Minimum lot size: 1 contract or a multiple thereof

2.2.3. Maturities

Maturities are: March and December

2.2.4. Tradable Maturities

At maximum the following maturities can be traded at EEX:

- Maturities in December and March are tradable within the three years before maturity at the exchange

The exact number of the tradable maturities is determined by the Management Board of the Exchange and announced before implementation.

3. Agricultural Products

Financial futures on the following agricultural products can be traded on EEX:

3.1. Potatoes

3.1.1. Underlying

Delivery or acceptance of delivery of processing potatoes used for the production of French fries from specific cultivation areas in Germany, the Netherlands, Belgium, and France. Settlement is carried out financially against the European Processing Potato Index in its respective valid version/composition for each date of delivery (European Processing Potato Future).

3.1.2. Contract Volume and Minimum Lot Size

- Contract Volume: 25 metric tons
- Minimum Lot Size:
 - 1 Contract or a multiple thereof (Order book trading)
 - minimum 10 Contracts (Trade Registration)

3.1.3. Tradable Maturities

At maximum the following maturities can be traded at EEX:

- The next three expiry months from the cycle April, June and November as well as the following expiry month April.

The exact number of the tradable maturities is determined by the Management Board of the Exchange and announced before implementation.

3.2. Livestock and Meat

3.2.1. Underlying

Delivery or acceptance of delivery of:

- One piglet in the four most important piglet trading zones in Germany (Schwäbisch Gmünd, Bavaria, North-Rhine Westphalia, Lower Saxony). Settlement is carried out financially against the Piglet Index in its respective valid version/composition for each date of delivery (Piglet Future)
- Hogs for slaughter in Central Europe (Germany, the Netherlands, Belgium, and Austria). Settlement is carried out financially against the Hog Index in its respective valid version/composition for each date of delivery (Hog Future).

3.2.2. Contract Volume and Minimum Lot Size

- Contract Volume:
 - 100 piglets (Piglet Future)
 - 8,000 kg slaughter-weight (Hog Future)
- Minimum Lot Size:
 - 1 Contract or a multiple thereof (Order book trading)
 - minimum 10 Contracts (Trade Registration)

3.2.3. Tradable Maturities

At maximum the following maturities can be traded at EEX:

- The maturities of the current and the next twelve consecutive calendar months as well as the following two quarter months from the cycle March, June, September and December.

The exact number of the tradable maturities is determined by the Management Board of the Exchange and announced before implementation.

3.3. Dairy Products

3.3.1. Underlying

Delivery or acceptance of delivery of:

- Skimmed milk powder for comestible use in the European Economic Area (Quotations in Germany, France and the Netherlands). Settlement is carried out financially against the Skimmed Milk Powder Index in its respective valid version/composition for each date of delivery (Skimmed Milk Powder Future)

- Whey powder in the European Economic Area (Quotations in Germany, France and the Netherlands). Settlement is carried out financially against the European Whey Powder Index in its respective valid version/composition for each date of delivery as it is calculated and published by AMI Agrarmarkt Informations-Gesellschaft mbH (European Whey Powder Future)
- Block butter for comestible production in Germany, France and the Netherlands. Settlement is carried out financially against the Butter Index in its respective valid version/composition for each date of delivery (Butter Future).

3.3.2. Contract Volume and Minimum Lot Size

- Contract Volume: 5 metric tons
- Minimum Lot Size: 1 Contract or a multiple thereof

3.3.3. Tradable Maturities

At maximum the following maturities can be traded at EEX:

- The maturities of the current and the next eighteen consecutive calendar months.

The exact number of the tradable maturities is determined by the Management Board of the Exchange and announced before implementation.

4. Options

4.1. Underlying

The buyer of a call option (call) is entitled to receive a long position in the corresponding future at the exercise price of the option on the last trading day.

The seller of the call option (call) receives a short position in the corresponding future after the call option is exercised and assigned at the exercise price on the last trading day.

The buyer of a put option (put) is entitled to receive a short position in the corresponding future at the exercise price of the option on the last trading day.

The seller of the put option (put) receives a long position in the corresponding future at the exercise price after the put option is exercised and assigned on the last trading day.

4.1.1. Underlying of Options on Power Futures

The respective delivery period of the Base Month, Base Quarter or Base Year Future, that is named in the respective Option as underlying.

Options on Power Futures are offered for the following market areas:

- Germany/Austria (Phelix Base Option),
- France (French Base Option),
- Italy (Italian Base Option),
- Nordic (Nordic Base Option)* and
- Spain (Spanish Base Option).

* Currently not available for trading.

4.1.2. Underlying of Options on EUA Dec Futures*

The respective maturity of the EUA Dec Future, that is named in the Option as underlying.

* Introduction to trading expected as of the middle of October 2016.

4.2. Option Premium

The buyer of an option contract is obliged to pay the price for the purchase of the right of option (option premium) on the ECC Business Day after the purchase. The premium is credited to the seller of the option on the same day.

4.3. Type of Option

European type, i.e. the option can only be exercised on the last trading day.

4.4. Maturities

4.4.1. Options on Power Futures

Maturities can be: Month, Quarter, Year

4.4.2. Options on EUA Dec Futures

Maturities can be: Year (December)

4.5. Tradable Option Series

An option series is the total number of call and put options (call and put) with the same Underlying, the same exercise price and the same maturity which can be traded in the system.

At least three series with different exercise prices can be traded for each maturity; in this context one exercise price is in the money, one exercise price is at the money and one exercise price is out of the money upon their introduction into trading.

The management board of the exchange is entitled to change the number of tradable option series at any given time.

4.6. Tradable Maturities

4.6.1. Options on Power Futures

At maximum the following maturities can be traded at EEX:

- The respective next 5 delivery months (Month Option),
- The respective next 6 delivery quarters (Quarter Option),
- The respective next 4 delivery years* of the underlying (Year Option)

* For each delivery year of the underlying up to 4 contracts with different expiry dates at the end of each quarter of the preceding year can be available. Underlyings are available:

Expiry end of March:	Base Year Apr Option (Phelix Options only)
Expiry end of June:	Base Year Jul Option (Phelix Options only)
Expiry end of September:	Base Year Oct Option (Phelix Options only)
Expiry end of December	Base Year Jan Option (for all Options)

New maturities will be introduced for trading to such an extent that always 16 maturities with 4 maturities per year (Phelix Options) and 4 maturities (for all other Options) referring to the next 4 delivery years of the underlying are tradable.

4.6.2. Options on EUA Dec Futures

At maximum the following maturities can be traded at EEX:

- the current and the next 8 December expiries

(EUA Dec Option).

The exact number of the tradable maturities of the respective options is determined by the Management Board of the Exchange and announced before implementation.

4.7. Exercise

The option can only be exercised on the last trading day. Said exercise is carried out by means of an entry into the EEX system between 08:00 a.m. and 03:00 p.m. (Exercise Period) on the last trading day.

On the last trading day starting at 2 p.m. the exchange determines the intraday market value of the underlying (Intraday Fixing Price) and publishes it in due time before the end of the Exercise Period.

In deviation to sentence 1, options which are in the money in relation to the Intraday Fixing Price are exercised automatically at the end of the exercise period unless the trading participant has made a deviating entry into the system by that time.

Exercises only become effective at 03:00 p.m., until that time they can be changed or deleted at any time.

B. Pricing and Minimum Price Fluctuation

1. Euro Denominated Products

Pricing in EUR per

- EUA, EUAA, CER, and MWh (Power Futures except UK Power Futures) to the second decimal place
- MWh (Cap Futures) to the third decimal place
- h (Wind Power Futures) to the second decimal place
- GO to the third decimal place
- 100 kg to the first decimal place (European Processing Potato Future)
- Piglet to the first decimal place (Piglet Future)
- kg to the third decimal place (Hog Future)
- Tonne (Skimmed Milk Powder, European Whey Powder, Butter Future) no decimal places

Minimum price fluctuation:

- EUR 0.01 per EUA, EUAA, CER, and MWh (Power Futures except UK Power Futures)
- EUR 0.001 per MWh (Cap Futures)
- 0.01 EUR per h (Wind Power Futures)
- EUR 1.00 per GO
- EUR 0.1 per 100 kg (European Processing Potato Future)
- EUR 0.1 per piglet (Piglet Future)
- EUR 0.001 per kg (Hog Future)
- EUR 1 per Tonne (Skimmed Milk Powder, European Whey Powder, Butter Futures)

Minimum price fluctuation per contract is determined by multiplying the minimal price fluctuation per unit with the contract volume and the amount of delivery hours, respectively.

2. GBP Denominated Products

Pricing in GBP per

- MWh (UK Power Future) to the second decimal place

Minimum price fluctuation:

- GBP 0.01 per MWh (UK-Power-Future)

Minimum price fluctuation per contract is determined by multiplying the minimal price fluctuation per unit with the contract volume and the amount of delivery hours, respectively.

3. USD Denominated Products

Pricing in USD per

- Tonne (coal) to the second decimal place

Minimum price fluctuation:

- USD 0.01 per Tonne

Minimum price fluctuation per contract is determined by multiplying the minimal price fluctuation per unit with the contract volume and the amount of delivery hours, respectively.

4. Pricing for the Option Premium

Pricing in EUR per

- MWh (Power Options) and EUA (EUA Dec Option) to the third decimal place

Minimum price fluctuation:

- EUR 0.001 per MWh or EUA, respectively.

C. Last Trading Day for Derivatives Market Contracts

1. Energy and Energy Related Products

1.1. Power

1.1.1. Physically Settled Power Futures

The Last Trading Day:

- of the Month Future
is two exchange trading days before the last delivery day of the delivery month
- of the Quarter/Year Future
is the third exchange trading day before the beginning of the delivery period.

1.1.2. Financially Settled Power Futures

The Last Trading Day:

- of the Day Future
is the day at which the hourly auction for the respective delivery day on the EPEX SPOT Market is conducted
- of the Weekend Future
is the Friday before the beginning of the delivery period,
- of the Base Week Future
is the Friday of the current delivery period,
- of the Peak Week Future
is the Thursday of the current delivery week,
- of the Month Future
is the day the hourly auction for the last delivery day of the delivery month on the EPEX Spot Spot Market is conducted. Trading ends at the time of the end of the submission of bids for the hourly auction on the EPEX Spot Spot Market (usually at 12:00) on that day.
- Of the Quarter/Season/Year Future
is the third exchange trading day before the beginning of the delivery period.

1.1.3. Cap-Futures

The Last Trading Day:

- of the German Base Intraday Hourly Cap Week Future
is the Friday of the current settlement period.

1.1.4. Wind Power Futures

The Last Trading Day:

- of the Week/Month Future
is the last exchange trading day before the end of the respective settlement period,
- of the Quarter/Year Future
is the third exchange trading day before the beginning of the settlement period.

If one of the before mentioned Last Trading days is not an exchange trading day, the Last Trading Day is the previous exchange trading day.

1.2. Coal

The Last Trading Day:

- of the Month Future
is the last Friday of the delivery month

If this day is not an exchange trading day or if it is a public holiday in Great Britain, the Last Trading Day is the previous exchange trading day. If – according to the preceding provision – the Last Trading Day of a December contract would fall on a day prior to December 24th, the Last Trading Day in this case shall be the first exchange trading day following December 24th.

2. Environmental Products

2.1. Emission Allowances

The Last Trading Day:

- is the last Monday of the maturity month. If this day is not an exchange trading day or if it is a public holiday in Great Britain or if one of the 4 days following the last Monday is not an exchange trading day, the Last Trading Day is the penultimate Monday of the maturity month.

The last trading day for each contract will be published by the Management Board of the Exchange prior to introduction of a maturity to trading at the latest.

2.2. Guarantees of Origin

The Last Trading Day is an exchange trading day within the calendar month of the respective maturity of the contract. It will be determined by the Management Board of the Exchange prior to the introduction of a maturity to trading at the latest. The Last Trading Day will normally be at least two weeks before the last calendar day of that specific month.

3. Agricultural Products

3.1. Potatoes

The Last Trading Day:

- is the exchange trading day before the last Friday of the month for the expiry months April and November.
- is the exchange trading day before the first Friday of the month for the expiry month June.

3.2. Livestock and Meat

The Last Trading Day:

- is the exchange trading day before the Thursday that follows the third Friday of the respective expiry month. For the expiry month December the Last Trading Day is the exchange trading day before the Thursday that follows the second Friday of the month.

3.3. Dairy Products

The Last Trading Day:

- is the last Wednesday of the respective expiry month. If this day is not an exchange trading day, the Last Trading Day is the previous exchange trading day.
- is the expiry month December the Last Trading Day is the third Wednesday of the month. If this day is not an exchange trading day, the Last Trading Day is the following exchange trading day.

4. Options

4.1. Last Trading Day

4.1.1. Options on Power Futures

The Last Trading Day:

- Month Option
 - Delivery month of January: the third Thursday of the preceding December
 - All other delivery months*: four exchange trading days prior to the beginning of the delivery month
- Quarter Option
 - First quarter of a given year: the third Thursday of the preceding December
 - All other quarters: four exchange trading days prior the beginning of the delivery quarter
- Year Option
 - Phelix Base Year Jan Option: The second Thursday in December
 - All other maturities: four exchange days before the end of the quarter

On the Last Trading Day of a maturity all options of the same maturity type (Month, Quarter or Year) are only tradable until 3 p.m. irrespective of whether they expire that same day as well.

4.1.2. Options on EUA Dec Futures

The Last Trading Day:

- The third exchange trading day prior to the last Monday of the expiry month. If this Monday is not an exchange trading day, a public holiday in Great Britain or if one of the four days following that last Monday is not an exchange trading day, then the Last Trading Day is the penultimate Monday of the expiry month.

The last trading day for each option contract will be published by the Management Board of the Exchange prior to introduction of a maturity to trading at the latest.

4.2. Expiry Day

Options which have not been exercised expire at 03:00 p.m. on the Last Trading Day.

D. Fulfilment

1. Energy and Energy Related Products

1.1. Cascading

For the following Future contracts longer maturities cascade into corresponding shorter maturities:

- Power Futures
- Wind Power Futures

On the third ECC Business Day before the beginning of the delivery period, each open position in a Year Future is replaced by equivalent positions in the three Month Futures for the delivery months from January through to March and the three Quarter Futures for the second through to the fourth delivery quarter whose delivery periods together correspond to the delivery year.

On the third ECC Business Day before the beginning of the delivery period, each open position in a Season Future is replaced by equivalent positions in the three Month Futures for the delivery months from October through to December (Winter-Season) or the three Month Futures for the delivery months from April through to Juni (Summer-Season) and the respective following Quarter Future.

On the third ECC Business Day before the beginning of the delivery period, each open position in a Quarter Future is replaced by equivalent positions in the three Month Futures whose delivery months together correspond to the delivery quarter.

1.2. Power

1.2.1. Final Settlement Price

1.2.1.1. *Physical Power Futures*

The respective final settlement price is determined two exchange trading days prior to the beginning of the delivery period (Month Futures). Thus, this is the settlement price that the entire contract volume of the respective contract is last traded for.

1.2.1.2. *Financial Power Futures*

The determination of the respective final settlement price is based on an Index which is the mean value of all auction prices of the hourly contracts traded for the respective market area and delivery period (Base/Peak/Off-Peak) for all days of the respective delivery period.

EEX determines the Index on each exchange trading day by using the most valuable sources for the respective market area. As a rule the auction prices of the hourly contracts traded at the most liquid power spot exchange are used.

Currently, the reference price for the market area:

- Belgium: is based on the „Belix Base“ as determined by auf dem von Belpex NV;
- Germany/Austria: is based on the hourly prices determined at the spot market of EPEX SPOT for this market area;

- France: is based on the hourly prices determined at the spot market of EPEX SPOT for this market area;
- Italy: is based on the “PUN Index GME” as determined by Gestore dei Mercati Energetici S.p.A. (GME);
- The Netherlands: is based on the „APX NL Base“ or the „APX NL Peak“, respectively, as determined by APX Power BV
- Nordic: is based on the Nordic Elspot System Price as determined by Nord Pool Spot;
- Switzerland: is based on the hourly prices determined at the spot market of EPEX SPOT for this market area;
- Spanien: is based on the “SPEL Base” Index as determined by OMIP.
- United Kingdom is based on the „APX Power UK Auction Base“ and the „APX Power UK Auction Peak“ Index as determined by APX Commodities Ltd.

The Management Board of the Exchange may use indexes of information service providers or any other appropriate sources in case exchange data are not available for EEX. EEX will publish in those cases the source that is used for calculation of the index.

1.2.1.3. Cap-Futures

The final settlement price per MWh is the average of the differences of the respective price index for all reference contracts within the respective delivery period and the Cap, whereas negative differences will be counted as zero for the determination of the average:

- German Base Intraday Hourly Cap Future: Average of the differences of the Intraday Price Indices (ID₃-Price) determined for the Intraday hourly contracts by EPEX SPOT and the Cap that has been stipulated by the Management Board of the Exchange prior to the introduction of the respective Future.

1.2.1.4. Wind Power Futures Germany/Austria

The Final Settlement Price is the respective Wind Power Index for the relevant period of time as the unweighted average of the load factors for all hours of the contract. The Wind Power Index will be determined by an established information or data service provider that is specialized for the processing and calculation of weather data, on a model-basis for the respective market area and will be based on actual wind data for each week or month, respectively. Due to technical reasons, the Wind Power Index for Month Futures will be calculated by using wind forecasts for the eight (8) last hours of the settlement period.

Currently, the Wind Power Index for the market area:

- Germany/Austria is calculated by the EuroWind GmbH, Cologne.

The Management Board of the Exchange may in a particular instance or permanently employ other information or data service providers or any other appropriate sources to determine the respective Wind Power Index, particularly if the named information or data service providers are not able in a particular instance to determine the respective Wind Power Index or if the Management Board of the Exchange considers that the calculations of other information or data service providers better reflect the underlying of the contract. EEX will publish in those cases the source that is used for calculation of the index.

1.2.2. Fulfilment of Physical Power Futures

The buyer is obliged to purchase the quantity of electricity agreed on every delivery day of the delivery period and to pay the purchase price plus the taxes payable on said amount.

The seller is obliged to deliver the quantity of electricity agreed on with constant power and duration on every delivery day.

1.2.2.1. Delivery and Acceptance of Delivery

Delivery and acceptance of delivery of power is effected, subject to the provisions specified in the Clearing Conditions, by submitting a nomination or schedule in accordance with the requirements of the respective Balancing Agreement, which comprises the underlying delivery transaction as well as the binding confirmation of the nomination or schedule by the respective transmission system operator.

On every delivery day only that the part of the contract shall be delivered which has been defined for delivery according to the respective contract specifications for delivery on every day of the delivery period.

1.2.2.2. Purchase Price

The purchase price for all delivery days in the entire delivery period is the final settlement price.

1.2.3. Fulfilment of Financial Power Futures, Cap Futures and Wind Power Futures

The seller (buyer) is obliged to settle the difference between the price agreed on and the higher (lower) final settlement price in cash on the day of execution. The final settlement price may be negative.

Fulfilment is carried out between the clearing members and ECC AG. Cash settlement between non-clearing members and their own clients is the task of the clearing member in charge; the cash settlement between non-clearing members and their clients is the task of the non-clearing members concerned.

1.2.3.1. Month Futures

Fulfilment by means of cash settlement based on the final settlement price on the ECC Business Day following the Last Trading Day. If the final settlement price is determined on a Saturday Sunday or a public holiday following a Sunday, the cash settlement takes place on the second ECC Business Day after the Last Trading Day.

1.2.3.2. Week Futures

Fulfilment by means of cash settlement based on the final settlement price on the ECC Business Day following the day of determination of the final settlement price (as a rule Tuesdays).

1.2.3.3. Weekend Futures

Fulfilment by means of cash settlement on the second ECC Business Day following the Last Trading Day.

1.2.3.4. Day Futures

Fulfilment by means of cash settlement based on the final settlement price determined on the ECC business day following the day the settlement price is determined. If the final settlement price is determined on a Saturday, Sunday or a public holiday, the cash settlement takes place on the second next ECC Business Day after the Last Trading Day.

1.3. Coal

1.3.1. Final Settlement Price

The determination of the respective final settlement price is based on a monthly index for coal (Index) which is the mean value of all weekly indices of the respective delivery point published in the relevant month in Argus/McCloskey's Coal Price Index Report on the last Friday of each month.

The Index for the delivery point

- cif Amsterdam Rotterdam Antwerp (cif ARA) is the API 2* Month Index
- fob Richards Bay, South Africa is the API 4* Month Index

* API 2 and API 4 are trade marks and are used under licence from Argus Media Limited and IHS Global Limited. All copyrights and database rights in the API 2 and API 4 index belong exclusively to Argus Media Limited and IHS Global Limited and are used herein under licence. EEX is solely responsible for the operation of markets in API-2-CIF-ARA-(Argus-IHS McCloskey)-Coal- and API-4-FOB-Richards-Bay-(Argus-IHS McCloskey)-Coal-Futures. Argus and IHS take no position on the purchase or sale of such Products and exclude all liability in relation thereto.

1.3.2. Fulfilment

Fulfilment by means of cash settlement on the ECC Business Day following the Last Trading Day based on the difference between the settlement price of the exchange day before the Last Trading Day and the final settlement price.

The seller (buyer) is obliged to settle the difference between the settlement price of the previous ECC Business Day and the higher (lower) final settlement price in cash.

Fulfilment is carried out between the clearing members and ECC AG. Cash settlement with non-clearing members and their own clients is the responsibility of the clearing member in charge; the cash settlement between non-clearing members and their clients is the responsibility of the non-clearing members concerned.

2. Environmental Products

2.1. Emission Allowances

2.1.1. Primary Auctions

2.1.1.1. Escrow Accounts

EU Allowances and EU Aviation Allowances, respectively, are held in escrow by ECC Lux in accounts as collateral security within the meaning of Article 2(m) of the Settlement Finality Directive as implemented in section 166 (3) 1 of the German Insolvency Statute.

2.1.1.2. Fulfilment

Fulfilment is carried out by delivering the purchased EU Emission Allowances or the purchased EU Aviation Allowances after payment: upon receipt of the payment by the auctioneer(s), ECC Lux transfers the purchased EU Emission Allowances and the purchased EU Aviation Allowances, respectively, into the internal account of the successful bidders in the ECC internal account system and subsequently makes the corresponding changes in the ECC Lux escrow accounts held at the registry.

2.1.1.3. Transfer of Allowances

Following fulfilment of the contract, successful bidders are entitled to demand the transfer of EU Allowances and EU Aviation Allowances, respectively, held in escrow for them, in the ECC Lux escrow accounts at the registry, to a registry account specified by them. The demand is executed at the latest on the first ECC Business Day after it is made.

2.1.2. Secondary Trading

2.1.2.1. Escrow Accounts

Emission Allowances (EUA, EUAA, or CER) are held in escrow by ECC Lux in accounts as collateral security within the meaning of Article 2(m) of the Settlement Finality Directive as implemented in section 166 (3) 1 of the German Insolvency Statute.

2.1.2.2. Fulfilment

After payment of the purchase price, ECC Lux transfers the purchased Emission Allowances into the internal account of the purchaser in the ECC internal account system and subsequently makes the corresponding changes in the ECC Lux escrow accounts held at the registry.

2.1.2.3. Transfer of Allowances

Each exchange Participant is entitled to demand the transfer of EUAs, held in escrow for them, in the ECC Lux escrow accounts at the registry, to a registry account specified by them. The demand is executed at the latest on the first ECC Business Day after it is made.

2.2. Guarantees of Origin

2.2.1. Escrow Accounts

Guarantees of Origin are held in escrow by ECC Lux in accounts as collateral security within the meaning of Article 2(m) of the Settlement Finality Directive as implemented in section 166 (3) 1 of the German Insolvency Statute.

2.2.2. Fulfilment

ECC Lux transfers the purchased Guarantees of Origin into the internal account of the purchaser in the ECC internal account system and subsequently makes the corresponding changes in the ECC Lux escrow accounts held at the registry.

2.2.3. Transfer of Guarantees of Origin

Each exchange participant is entitled to demand the transfer of Guarantees of Origin, held in escrow for them, in the ECC Lux escrow accounts at the registry, to a registry account specified by them. The demand is executed at the latest on the first ECC Business Day after it is made.

3. Agricultural Products

3.1. Potatoes

3.1.1. Final Settlement Price

The determination of the final settlement price is based on the

- European Processing Potato Index

at 9.30 CET of the exchange trading day after the Last Trading Day. EEX determines the final settlement price.

3.1.2. Fulfilment

Fulfilment by means of cash settlement on the second ECC Business Day following the Last Trading Day based on the difference between the settlement price of the Last Trading Day and the final settlement price.

The seller (buyer) is obliged to settle the difference between the settlement price of the previous ECC Business Day and the higher (lower) final settlement price in cash.

Fulfilment is carried out between the clearing members and ECC AG. Cash settlement with non-clearing members and their own clients is the responsibility of the clearing member in charge; the cash settlement between non-clearing members and their clients is the responsibility of the non-clearing members concerned.

3.2. Livestock and Meat

3.2.1. Final Settlement Price

The determination of the final settlement price is based on the

- Piglet Index for Piglet Futures
- Hog Index for Hog Futures

at 9.30 CET of the exchange trading day after the Last Trading Day. EEX determines the Final Settlement Price.

3.2.2. Fulfilment

Fulfilment by means of cash settlement on the second ECC Business Day following the Last Trading Day based on the difference between the settlement price of the Last Trading Day and the final settlement price.

The seller (buyer) is obliged to settle the difference between the settlement price of the previous ECC Business Day and the higher (lower) final settlement price in cash.

Fulfilment is carried out between the clearing members and ECC AG. Cash settlement with non-clearing members and their own clients is the responsibility of the clearing member in charge; the cash settlement between non-clearing members and their clients is the responsibility of the non-clearing members concerned.

3.3. Dairy Products

3.3.1. Final Settlement Price

The determination of the final settlement price is based on the

- Skimmed Milk Powder Index for Skimmed Milk Powder Futures
- European Whey Powder Index, as it is calculated and published by AMI Agrarmarkt Informations-Gesellschaft mbH for European Whey Powder Futures
- Butter Index for Butter Futures

at 19.00 CET of the Last Trading Day, respectively. EEX determines the Final Settlement Price.

3.3.2. Fulfilment

Fulfilment by means of cash settlement on the ECC Business Day following the Last Trading Day based on the difference between the settlement price of Exchange Day before the Last Trading Day and the final settlement price.

The seller (buyer) is obliged to settle the difference between the settlement price of the previous ECC Business Day and the higher (lower) final settlement price in cash.

Fulfilment is carried out between the clearing members and ECC AG. Cash settlement with non-clearing members and their own clients is the responsibility of the clearing member in charge; the cash settlement between non-clearing members and their clients is the responsibility of the non-clearing members concerned.

4. Options

4.1. Fulfilment

Options are fulfilled by booking in of the corresponding futures position at the respective exercise price after the option is exercised.

4.2. Assignment

If a buyer exercises his right of option, ECC AG assigns a seller of the same option series and of the same type of option (call or put) to the buyer with the help of a procedure maintaining the neutrality of the assignment process at the end of the post-trading phase on the exercise day. Partial assignments are permissible.

All assignments which have been executed for the agent position account of a trading participant have to be assigned by said trading participant for the positions of his customers; this has to be done with the help of a procedure which ensures the neutrality of the assignment process.

ECC AG informs all the parties involved as well as the clearing members supporting the parties involved about the assignment on the exercise day.

E.ISIN Codes, WKN, and Exchange Code

1. Power (Physical Fulfilment)

Name	ISIN Code	WKN	Exchange Code
Belgian Power Base Load Month Future	DE000A1XQRD2	A1XQRD	QBBM
Belgian Power Base Load Quarter Future	DE000A1XQRE0	A1XQRE	QBBQ
Belgian Power Base Load Year Future	DE000A1XQRF7	A1XQRF	QBBY
Dutch Power Base Load Month Future	DE000A1XQRG5	A1XQRG	QDBM
Dutch Power Base Load Quarter Future	DE000A1XQRH3	A1XQRH	QDBQ
Dutch Power Base Load Year Future	DE000A1XQRJ9	A1XQRJ	QDBY
Dutch Power Peak Load Month Future	DE000A1XQRK7	A1XQRK	QDPM
Dutch Power Peak Load Quarter Future	DE000A1XQRL5	A1XQRL	QDPQ
Dutch Power Peak Load Year Future	DE000A1XQRM3	A1XQRM	QDPY

2. Power (Financial Fulfilment)

Name	ISIN Code	WKN	Exchange Code
Belgian Power Base Month Future	DE000A160XW8	A160XW	Q1BM
Belgian Power Base Quarter Future	DE000A160XX6	A160XX	Q1BQ
Belgian Power Base Year Future	DE000A160XY4	A160XY	Q1BY
Dutch Power Base Week Future	DE000A18T9K8	A18T9K	Q0B1
	DE000A18T9L6	A18T9L	Q0B2
	DE000A18T9M4	A18T9M	Q0B3
	DE000A18T9N2	A18T9N	Q0B4
	DE000A18T9P7	A18T9P	Q0B5
Dutch Power Base Month Future	DE000A160XQ0	A160XQ	Q0BM
Dutch Power Base Quarter Future	DE000A160XR8	A160XR	Q0BQ
Dutch Power Base Year Future	DE000A160XS6	A160XS	Q0BY
Dutch Power Peak Month Future	DE000A160XT4	A160XT	Q0PM
Dutch Power Peak Quarter Future	DE000A160XU2	A160XU	Q0PQ
Dutch Power Peak Year Future	DE000A160XV0	A160XV	Q0PY

Name	ISIN Code	WKN	Exchange Code
French Base Day Future	DE000A13RR96	A13RR9	F701
	DE000A13RSA4	A13RSA	F702
	DE000A13RSB2	A13RSB	F703
	DE000A13RSC0	A13RSC	F704
	DE000A13RSD8	A13RSD	F705
	DE000A13RSE6	A13RSE	F706
	DE000A13RSF3	A13RSF	F707
	DE000A13RSG1	A13RSG	F708
	DE000A13RSH9	A13RSH	F709
	DE000A13RSJ5	A13RSJ	F710
	DE000A13RSK3	A13RSK	F711
	DE000A13RSL1	A13RSL	F712
	DE000A13RSM9	A13RSM	F713
	DE000A13RSN7	A13RSN	F714
	DE000A13RSP2	A13RSP	F715
	DE000A13RSQ0	A13RSQ	F716
	DE000A13RSR8	A13RSR	F717
	DE000A13RSS6	A13RSS	F718
	DE000A13RST4	A13RST	F719
	DE000A13RSU2	A13RSU	F720
	DE000A13RSV0	A13RSV	F721
	DE000A13RSW8	A13RSW	F722
	DE000A13RSX6	A13RSX	F723
	DE000A13RSY4	A13RSY	F724
	DE000A13RSZ1	A13RSZ	F725
	DE000A13RS04	A13RS0	F726
	DE000A13RS12	A13RS1	F727
	DE000A13RS20	A13RS2	F728
	DE000A13RS38	A13RS3	F729
	DE000A13RS46	A13RS4	F730
	DE000A13RS53	A13RS5	F731
	DE000A13RS61	A13RS6	F732
	DE000A13RS79	A13RS7	F733
	DE000A13RS87	A13RS8	F734
French Base Weekend Future	DE000A13RS95	A13RS9	F7W1
	DE000A13RTA2	A13RTA	F7W2
	DE000A13RTB0	A13RTB	F7W3
	DE000A13RTC8	A13RTC	F7W4
	DE000A13RTD6	A13RTD	F7W5

Name	ISIN Code	WKN	Exchange Code
French Base Week Future	DE000A1EZKJ5	A1EZKJ	F7B1
	DE000A1EZKK3	A1EZKK	F7B2
	DE000A1EZKL1	A1EZKL	F7B3
	DE000A1EZKM9	A1EZKM	F7B4
	DE000A1EZKN7	A1EZKN	F7B5
French Base Month Future	DE000A1L19A5	A1L19A	F7BM
French Base Quarter Future	DE000A1L19B3	A1L19B	F7BQ
French Base Year Future	DE000A1L19C1	A1L19C	F7BY
French Peak Day Future	DE000A18T6Z2	A18T6Z	P701
	DE000A18T603	A18T60	P702
	DE000A18T611	A18T61	P703
	DE000A18T629	A18T62	P704
	DE000A18T637	A18T63	P705
	DE000A18T645	A18T64	P706
	DE000A18T652	A18T65	P707
	DE000A18T660	A18T66	P708
	DE000A18T678	A18T67	P709
	DE000A18T686	A18T68	P710
	DE000A18T694	A18T69	P711
	DE000A18T7A3	A18T7A	P712
	DE000A18T7B1	A18T7B	P713
	DE000A18T7C9	A18T7C	P714
	DE000A18T7D7	A18T7D	P715
	DE000A18T7E5	A18T7E	P716
	DE000A18T7F2	A18T7F	P717
	DE000A18T7G0	A18T7G	P718
	DE000A18T7H8	A18T7H	P719
	DE000A18T7J4	A18T7J	P720
	DE000A18T7K2	A18T7K	P721
	DE000A18T7L0	A18T7L	P722
	DE000A18T7M8	A18T7M	P723
	DE000A18T7N6	A18T7N	P724
	DE000A18T7P1	A18T7P	P725
	DE000A18T7Q9	A18T7Q	P726
	DE000A18T7R7	A18T7R	P727
	DE000A18T7S5	A18T7S	P728
	DE000A18T7T3	A18T7T	P729
	DE000A18T7U1	A18T7U	P730
	DE000A18T7V9	A18T7V	P731
	DE000A18T7W7	A18T7W	P732
	DE000A18T7X5	A18T7X	P733
	DE000A18T7Y3	A18T7Y	P734

Name	ISIN Code	WKN	Exchange Code
French Peak Weekend Future	DE000A18T7Z0	A18T7Z	P7W1
	DE000A18T702	A18T70	P7W2
	DE000A18T710	A18T71	P7W3
	DE000A18T728	A18T72	P7W4
	DE000A18T736	A18T73	P7W5
French Peak Week Future	DE000A1EZKP2	A1EZKP	F7P1
	DE000A1EZKQ0	A1EZKQ	F7P2
	DE000A1EZKR8	A1EZKR	F7P3
	DE000A1EZKS6	A1EZKS	F7P4
	DE000A1EZKT4	A1EZKT	F7P5
French Peak Month Future	DE000A1L19D9	A1L19D	F7PM
French Peak Quarter Future	DE000A1L19E7	A1L19E	F7PQ
French Peak Year Future	DE000A1L19F4	A1L19F	F7PY

Name	ISIN Code	WKN	Exchange Code
Italian Base Day Future	DE000A13RPZ7	A13RPZ	FD01
	DE000A13RP07	A13RP0	FD02
	DE000A13RP15	A13RP1	FD03
	DE000A13RP23	A13RP2	FD04
	DE000A13RP31	A13RP3	FD05
	DE000A13RP49	A13RP4	FD06
	DE000A13RP56	A13RP5	FD07
	DE000A13RP64	A13RP6	FD08
	DE000A13RP72	A13RP7	FD09
	DE000A13RP80	A13RP8	FD10
	DE000A13RP98	A13RP9	FD11
	DE000A13RQA8	A13RQA	FD12
	DE000A13RQB6	A13RQB	FD13
	DE000A13RQC4	A13RQC	FD14
	DE000A13RQD2	A13RQD	FD15
	DE000A13RQE0	A13RQE	FD16
	DE000A13RQF7	A13RQF	FD17
	DE000A13RQG5	A13RQG	FD18
	DE000A13RQH3	A13RQH	FD19
	DE000A13RQJ9	A13RQJ	FD20
	DE000A13RQK7	A13RQK	FD21
	DE000A13RQL5	A13RQL	FD22
	DE000A13RQM3	A13RQM	FD23
	DE000A13RQN1	A13RQN	FD24
	DE000A13RQP6	A13RQP	FD25
	DE000A13RQQ4	A13RQQ	FD26
	DE000A13RQR2	A13RQR	FD27
	DE000A13RQS0	A13RQS	FD28
	DE000A13RQT8	A13RQT	FD29
	DE000A13RQU6	A13RQU	FD30
	DE000A13RQV4	A13RQV	FD31
	DE000A13RQW2	A13RQW	FD32
	DE000A13RQX0	A13RQX	FD33
	DE000A13RQY8	A13RQY	FD34
Italian Base Weekend Future	DE000A13RQZ5	A13RQZ	FDW1
	DE000A13RQ06	A13RQ0	FDW2
	DE000A13RQ14	A13RQ1	FDW3
	DE000A13RQ22	A13RQ2	FDW4
	DE000A13RQ30	A13RQ3	FDW5

Name	ISIN Code	WKN	Exchange Code
Italian Base Week Future	DE000A1YD5W4	A1YD5W	FDB1
	DE000A1YD5X2	A1YD5X	FDB2
	DE000A1YD5Y0	A1YD5Y	FDB3
	DE000A1YD5Z7	A1YD5Z	FDB4
	DE000A1YD507	A1YD50	FDB5
Italian Base Month Future	DE000A1RREN9	A1RREN	FDBM
Italian Base Quarter Future	DE000A1RREP4	A1RREP	FDBQ
Italian Base Year Future	DE000A1RREQ2	A1RREQ	FDBY
Italian Peak Day Future	DE000A18T744	A18T74	PD01
	DE000A18T751	A18T75	PD02
	DE000A18T769	A18T76	PD03
	DE000A18T777	A18T77	PD04
	DE000A18T785	A18T78	PD05
	DE000A18T793	A18T79	PD06
	DE000A18T8A1	A18T8A	PD07
	DE000A18T8B9	A18T8B	PD08
	DE000A18T8C7	A18T8C	PD09
	DE000A18T8D5	A18T8D	PD10
	DE000A18T8E3	A18T8E	PD11
	DE000A18T8F0	A18T8F	PD12
	DE000A18T8G8	A18T8G	PD13
	DE000A18T8H6	A18T8H	PD14
	DE000A18T8J2	A18T8J	PD15
	DE000A18T8K0	A18T8K	PD16
	DE000A18T8L8	A18T8L	PD17
	DE000A18T8M6	A18T8M	PD18
	DE000A18T8N4	A18T8N	PD19
	DE000A18T8P9	A18T8P	PD20
	DE000A18T8Q7	A18T8Q	PD21
	DE000A18T8R5	A18T8R	PD22
	DE000A18T8S3	A18T8S	PD23
	DE000A18T8T1	A18T8T	PD24
	DE000A18T8U9	A18T8U	PD25
	DE000A18T8V7	A18T8V	PD26
	DE000A18T8W5	A18T8W	PD27
	DE000A18T8X3	A18T8X	PD28
	DE000A18T8Y1	A18T8Y	PD29
	DE000A18T8Z8	A18T8Z	PD30
	DE000A18T801	A18T80	PD31
	DE000A18T819	A18T81	PD32
	DE000A18T827	A18T82	PD33
	DE000A18T835	A18T83	PD34

Name	ISIN Code	WKN	Exchange Code
Italian Peak Weekend Future	DE000A18T843	A18T84	PDW1
	DE000A18T850	A18T85	PDW2
	DE000A18T868	A18T86	PDW3
	DE000A18T876	A18T87	PDW4
	DE000A18T884	A18T88	PDW5
Italian Peak Week Future	DE000A1YD515	A1YD51	FDP1
	DE000A1YD523	A1YD52	FDP2
	DE000A1YD531	A1YD53	FDP3
	DE000A1YD549	A1YD54	FDP4
	DE000A1YD556	A1YD55	FDP5
Italian Peak Month Future	DE000A1YD5T0	A1YD5T	FDPM
Italian Peak Quarter Future	DE000A1YD5U8	A1YD5U	FDPQ
Italian Peak Year Future	DE000A1YD5V6	A1YD5V	FDPY
Nordic Base Week Future	DE000A18T9E1	A18T9E	FBB1
	DE000A18T9F8	A18T9F	FBB2
	DE000A18T9G6	A18T9G	FBB3
	DE000A18T9H4	A18T9H	FBB4
	DE000A18T9J0	A18T9J	FBB5
Nordic Base Month Future	DE000A1RREG3	A1RREG	FBBM
Nordic Base Quarter Future	DE000A1RREH1	A1RREH	FBBQ
Nordic Base Year Future	DE000A1RREJ7	A1RREJ	FBBY

Name	ISIN Code	WKN	Exchange Code
Phelix Base Day Future	DE000A1PH1G3	A1PH1G	FB01
	DE000A1PH1H1	A1PH1H	FB02
	DE000A1PH1J7	A1PH1J	FB03
	DE000A1PH1K5	A1PH1K	FB04
	DE000A1PH1L3	A1PH1L	FB05
	DE000A1PH1M1	A1PH1M	FB06
	DE000A1PH1N9	A1PH1N	FB07
	DE000A1PH1P4	A1PH1P	FB08
	DE000A1PH1Q2	A1PH1Q	FB09
	DE000A1PH1R0	A1PH1R	FB10
	DE000A1PH1S8	A1PH1S	FB11
	DE000A1PH1T6	A1PH1T	FB12
	DE000A1PH1U4	A1PH1U	FB13
	DE000A1PH1V2	A1PH1V	FB14
	DE000A1PH1W0	A1PH1W	FB15
	DE000A1PH1X8	A1PH1X	FB16
	DE000A1PH1Y6	A1PH1Y	FB17
	DE000A1PH1Z3	A1PH1Z	FB18
	DE000A1PH100	A1PH10	FB19
	DE000A1PH118	A1PH11	FB20
	DE000A1PH126	A1PH12	FB21
	DE000A1PH134	A1PH13	FB22
	DE000A1PH142	A1PH14	FB23
	DE000A1PH159	A1PH15	FB24
	DE000A1PH167	A1PH16	FB25
	DE000A1PH175	A1PH17	FB26
	DE000A1PH183	A1PH18	FB27
	DE000A1PH191	A1PH19	FB28
	DE000A1PH2A4	A1PH2A	FB29
	DE000A1PH2B2	A1PH2B	FB30
	DE000A1PH2C0	A1PH2C	FB31
	DE000A1PH2D8	A1PH2D	FB32
	DE000A1PH2E6	A1PH2E	FB33
	DE000A1PH2F3	A1PH2F	FB34
Phelix Base Weekend Future	DE000A1PH3G9	A1PH3G	FWB1
	DE000A1PH3H7	A1PH3H	FWB2
	DE000A1PH3J3	A1PH3J	FWB3
	DE000A1PH3K1	A1PH3K	FWB4
	DE000A1PH3L9	A1PH3L	FWB5

Name	ISIN Code	WKN	Exchange Code
Phelix Base Week Future	DE000A1A41M7	A1A41M	F1B1
	DE000A1A41N5	A1A41N	F1B2
	DE000A1A41P0	A1A41P	F1B3
	DE000A1A41Q8	A1A41Q	F1B4
	DE000A1A41R6	A1A41R	F1B5
Phelix Base Month Future	DE0006606023	660602	F1BM
Phelix Base Quarter Future	DE0006606049	660604	F1BQ
Phelix Base Year Future	DE0006606064	660606	F1BY
Phelix Peak Day Future	DE000A1PH2G1	A1PH2G	FP01
	DE000A1PH2H9	A1PH2H	FP02
	DE000A1PH2J5	A1PH2J	FP03
	DE000A1PH2K3	A1PH2K	FP04
	DE000A1PH2L1	A1PH2L	FP05
	DE000A1PH2M9	A1PH2M	FP06
	DE000A1PH2N7	A1PH2N	FP07
	DE000A1PH2P2	A1PH2P	FP08
	DE000A1PH2Q0	A1PH2Q	FP09
	DE000A1PH2R8	A1PH2R	FP10
	DE000A1PH2S6	A1PH2S	FP11
	DE000A1PH2T4	A1PH2T	FP12
	DE000A1PH2U2	A1PH2U	FP13
	DE000A1PH2V0	A1PH2V	FP14
	DE000A1PH2W8	A1PH2W	FP15
	DE000A1PH2X6	A1PH2X	FP16
	DE000A1PH2Y4	A1PH2Y	FP17
	DE000A1PH2Z1	A1PH2Z	FP18
	DE000A1PH209	A1PH20	FP19
	DE000A1PH217	A1PH21	FP20
	DE000A1PH225	A1PH22	FP21
	DE000A1PH233	A1PH23	FP22
	DE000A1PH241	A1PH24	FP23
	DE000A1PH258	A1PH25	FP24
	DE000A1PH266	A1PH26	FP25
	DE000A1PH274	A1PH27	FP26
	DE000A1PH282	A1PH28	FP27
	DE000A1PH290	A1PH29	FP28
	DE000A1PH3A2	A1PH3A	FP29
	DE000A1PH3B0	A1PH3B	FP30
	DE000A1PH3C8	A1PH3C	FP31
	DE000A1PH3D6	A1PH3D	FP32
	DE000A1PH3E4	A1PH3E	FP33
	DE000A1PH3F1	A1PH3F	FP34

Name	ISIN Code	WKN	Exchange Code
Phelix Peak Weekend Future	DE000A1PH3M7	A1PH3M	FWP1
	DE000A1PH3N5	A1PH3N	FWP2
	DE000A1PH3P0	A1PH3P	FWP3
	DE000A1PH3Q8	A1PH3Q	FWP4
	DE000A1PH3R6	A1PH3R	FWP5
Phelix Peak Week Future	DE000A1A41S4	A1A41S	F1P1
	DE000A1A41T2	A1A41T	F1P2
	DE000A1A41U0	A1A41U	F1P3
	DE000A1A41V8	A1A41V	F1P4
	DE000A1A41W6	A1A41W	F1P5
Phelix Peak Month Future	DE0006606031	660603	F1PM
Phelix Peak Quarter Future	DE0006606056	660605	F1PQ
Phelix Peak Year Future	DE0006606072	660607	F1PY
Phelix Off-Peak Month Future	DE000A1A41G9	A1A41G	F1OM
Phelix Off-Peak Quarter Future	DE000A1A41H7	A1A41H	F1OQ
Phelix Off-Peak Year Future	DE000A1A41J3	A1A41J	F1OY

Name	ISIN Code	WKN	Exchange Code
Spanish Base Day Future	DE000A13RQ48	A13RQ4	FE01
	DE000A13RQ55	A13RQ5	FE02
	DE000A13RQ63	A13RQ6	FE03
	DE000A13RQ71	A13RQ7	FE04
	DE000A13RQ89	A13RQ8	FE05
	DE000A13RQ97	A13RQ9	FE06
	DE000A13RRA6	A13RRA	FE07
	DE000A13RRB4	A13RRB	FE08
	DE000A13RRC2	A13RRC	FE09
	DE000A13RRD0	A13RRD	FE10
	DE000A13RRE8	A13RRE	FE11
	DE000A13RRF5	A13RRF	FE12
	DE000A13RRG3	A13RRG	FE13
	DE000A13RRH1	A13RRH	FE14
	DE000A13RRJ7	A13RRJ	FE15
	DE000A13RRK5	A13RRK	FE16
	DE000A13RRL3	A13RRL	FE17
	DE000A13RRM1	A13RRM	FE18
	DE000A13RRN9	A13RRN	FE19
	DE000A13RRP4	A13RRP	FE20
	DE000A13RRQ2	A13RRQ	FE21
	DE000A13RRR0	A13RRR	FE22
	DE000A13RRS8	A13RRS	FE23
	DE000A13RRT6	A13RRT	FE24
	DE000A13RRU4	A13RRU	FE25
	DE000A13RRV2	A13RRV	FE26
	DE000A13RRW0	A13RRW	FE27
	DE000A13RRX8	A13RRX	FE28
	DE000A13RRY6	A13RRY	FE29
	DE000A13RRZ3	A13RRZ	FE30
	DE000A13RR05	A13RR0	FE31
	DE000A13RR13	A13RR1	FE32
	DE000A13RR21	A13RR2	FE33
	DE000A13RR39	A13RR3	FE34
Spanish Base Weekend Future	DE000A13RR47	A13RR4	FEW1
	DE000A13RR54	A13RR5	FEW2
	DE000A13RR62	A13RR6	FEW3
	DE000A13RR70	A13RR7	FEW4
	DE000A13RR88	A13RR8	FEW5

Name	ISIN Code	WKN	Exchange Code
Spanish Base Week Future	DE000A1YD564	A1YD56	FEB1
	DE000A1YD572	A1YD57	FEB2
	DE000A1YD580	A1YD58	FEB3
	DE000A1YD598	A1YD59	FEB4
	DE000A1YD6A8	A1YD6A	FEB5
Spanish Base Month Future	DE000A1RRER0	A1RRER	FEBM
Spanish Base Quarter Future	DE000A1RRES8	A1RRES	FEBQ
Spanish Base Year Future	DE000A1RRET6	A1RRET	FEBY
Swiss Base Week Future	DE000A18T892	A18T89	FCB1
	DE000A18T9A9	A18T9A	FCB2
	DE000A18T9B7	A18T9B	FCB3
	DE000A18T9C5	A18T9C	FCB4
	DE000A18T9D3	A18T9D	FCB5
Swiss Base Month Future	DE000A1RREK5	A1RREK	FCBM
Swiss Base Quarter Future	DE000A1RREL3	A1RREL	FCBQ
Swiss Base Year Future	DE000A1RREM1	A1RREM	FCBY

Name	ISIN Code	WKN	Exchange Code
UK Base Day Future	DE000A163U47	A163U4	FU01
	DE000A163U54	A163U5	FU02
	DE000A163U62	A163U6	FU03
	DE000A163U70	A163U7	FU04
	DE000A163U88	A163U8	FU05
	DE000A163U96	A163U9	FU06
	DE000A163VA2	A163VA	FU07
	DE000A163VB0	A163VB	FU08
	DE000A163VC8	A163VC	FU09
	DE000A163VD6	A163VD	FU10
	DE000A163VE4	A163VE	FU11
	DE000A163VF1	A163VF	FU12
	DE000A163VG9	A163VG	FU13
	DE000A163VH7	A163VH	FU14
	DE000A163VJ3	A163VJ	FU15
	DE000A163VK1	A163VK	FU16
	DE000A163VL9	A163VL	FU17
	DE000A163VM7	A163VM	FU18
	DE000A163VN5	A163VN	FU19
	DE000A163VP0	A163VP	FU20
	DE000A163VQ8	A163VQ	FU21
	DE000A163VR6	A163VR	FU22
	DE000A163VS4	A163VS	FU23
	DE000A163VT2	A163VT	FU24
	DE000A163VU0	A163VU	FU25
	DE000A163VV8	A163VV	FU26
	DE000A163VW6	A163VW	FU27
	DE000A163VX4	A163VX	FU28
	DE000A163VY2	A163VY	FU29
	DE000A163VZ9	A163VZ	FU30
	DE000A163V04	A163V0	FU31
	DE000A163V12	A163V1	FU32
	DE000A163V20	A163V2	FU33
	DE000A163V38	A163V3	FU34
UK Base Weekend Future	DE000A163V46	A163V4	FUW1
	DE000A163V53	A163V5	FUW2
	DE000A163V61	A163V6	FUW3
	DE000A163V79	A163V7	FUW4
	DE000A163V87	A163V8	FUW5

Name	ISIN Code	WKN	Exchange Code
UK Base Week Future	DE000A163V95	A163V9	FUB1
	DE000A163WA0	A163WA	FUB2
	DE000A163WB8	A163WB	FUB3
	DE000A163WC6	A163WC	FUB4
	DE000A163WD4	A163WD	FUB5
UK Base Month Future	DE000A163WE2	A163WE	FUBM
UK Base Quarter Future	DE000A163WF9	A163WF	FUBQ
UK Base Season Future	DE000A163WH5	A163WH	FUBS
UK Base Year Future	DE000A163WG7	A163WG	FUBY
UK Peak Week Future	DE000A163WJ1	A163WJ	FUP1
	DE000A163WK9	A163WK	FUP2
	DE000A163WL7	A163WL	FUP3
	DE000A163WM5	A163WM	FUP4
	DE000A163WN3	A163WN	FUP5
UK Peak Month Future	DE000A163WP8	A163WP	FUPM
UK Peak Quarter Future	DE000A163WQ6	A163WQ	FUPQ
UK Peak Season Future	DE000A163WS2	A163WS	FUPS
UK Peak Year Future	DE000A163WR4	A163WR	FUPY

3. Cap Futures (Financial Fulfilment)

German Base Intraday Hourly Cap Week Future	DE000A160PX2	A160PX	C1B1
	DE000A160PY0	A160PY	C1B2
	DE000A160PZ7	A160PZ	C1B3
	DE000A160P05	A160P0	C1B4
	DE000A160P13	A160P1	C1B5

4. Wind Power Futures (Financial Fulfilment)

German-Austrian-Wind-Power-Week-Future	DE000A163693	A16369	W1B1
	DE000A1637A5	A1637A	W1B2
	DE000A1637B3	A1637B	W1B3
	DE000A1637C1	A1637C	W1B4
	DE000A1637D9	A1637D	W1B5
German-Austrian-Wind-Power-Month-Future	DE000A1637E7	A1637E	W1BM
German-Austrian-Wind-Power-Quarter-Future	DE000A1637F4	A1637F	W1BQ
German-Austrian-Wind-Power-Year-Future	DE000A1637G2	A1637G	W1BY

5. Coal

Name	ISIN Code	WKN	Exchange Code
API 2 CIF ARA (Argus IHS McCloskey) Coal Month Future	DE000A0G87V0	A0G87V	FT2M
API 4 FOB Richard Bay (Argus IHS McCloskey) Coal Month Future	DE000A0G87Y4	A0G87Y	FT4M

6. Emission Allowances

Name	ISIN Code	WKN	Exchange Code
EU Allowances – Primary Auction (3 rd Trading Period)	DE000A1N5HU0	A1N5HU	T3PA
EU Allowances – Secondary Trading	DE000A1DKQ99	A1DKQ9	SEME
EU Aviation Allowances – Primary Auction (3 rd Trading Period)	DE000A1N5HT2	A1N5HT	EAA3
EU Aviation Allowances – Secondary Trading	DE000A1MLGA5	A1MLGA	SEMA
Green Certified Emission Reductions (CER)	DE000A1RRG98	A1RRG9	SEMC
European Carbon Future – Secondary Trading	DE000A0SYVA6	A0SYVA	FEUA
EU Aviation Allowances Future – Secondary Trading	DE000A1MLFJ8	A1MLFJ	FEAA
Certified Emission Reductions (CER) Futures	DE000A1A41L9	A1A41L	F2CR

7. Guarantees of Origin

Name	ISIN Code	WKN	Exchange Code
GO on Nordic Hydro Power Future	DE000A1RRV24	A1RRV2	FECN
GO on Alpine Hydro Power Future	DE000A1RRV32	A1RRV3	FECA
GO on Northern Continental Europe Wind Power Future	DE000A1RRV40	A1RRV4	FECW

8. Potatoes

Name	ISIN Code	WKN	Exchange Code
European Processing Potato Future	DE000A13RUL7	A13RUL	FAPP

9. Livestock and Meat

Name	ISIN Code	WKN	Exchange Code
Piglet Future	DE000A13RUQ6	A13RUQ	FAPG
Hog Future	DE000A13RUR4	A13RUR	FAHG

10. Dairy Products

Name	ISIN Code	WKN	Exchange Code
Skimmed Milk Powder Future	DE000A13RUM5	A13RUM	FASM
European Whey Powder Future	DE000A13RUN3	A13RUN	FAWH
Butter Future	DE000A13RUP8	A13RUP	FABT

11. Options

11.1. Options on Power Futures

Name	ISIN Code	WKN	Exchange Code
French Base Month Option	DE000A160XZ1	A160XZ	O7BM
French Base Quarter Option	DE000A160X05	A160X0	O7BQ
French Base Year Option	DE000A160X13	A160X1	O7BY
Italian Base Month Option	DE000A160X21	A160X2	ODBM
Italian Base Quarter Option	DE000A160X39	A160X3	ODBQ
Italian Base Year Option	DE000A160X47	A160X4	ODBY
Nordic Base Month Option	DE000A160X88	A160X8	OBBM
Nordic Base Quarter Option	DE000A160X96	A160X9	OBBQ
Nordic Base Year Option	DE000A160YA2	A160YA	OBBY
Phelix Base Month Option	DE000A0AEQQ2	A0AEQQ	O1BM
Phelix Base Quarter Option	DE000A0AEQP4	A0AEQP	O1BQ
Phelix Base Year Option	DE000A0AEQN9	A0AEQN	O1BY
Spanish Base Month Option	DE000A160X54	A160X5	OEBM
Spanish Base Quarter Option	DE000A160X62	A160X6	OEBQ
Spanish Base Year Option	DE000A160X70	A160X7	OEBY

11.2. Options on EUA Dec Futures

Name	ISIN-Code	WKN	Börsenkürzel
EUA-DEC-Option	DE000A0SYVB4	A0SYVB	OEUA

F.Trading Calendar

General Trading Calendar	ECC Business Days*
Exchange Days and ECC Business Days, respectively, are all days Monday to Friday which are not one of the below-mentioned holidays ¹	
New Year's Day, January 1 st	New Year's Day, January 1 st
Good Friday	Good Friday
Easter Monday	Easter Monday
May Day, May 1 st	May Day, May 1 st
Christmas Eve, December 24 th	
Christmas Day, December 25 th	Christmas Day, December 25 th
Boxing Day, December 26 th	Boxing Day, December 26 th
New Year's Eve, December 31 st	

* For information purposes only. Applicable is the publication on the website of ECC AG (www.ecc.de) only.

¹ Changes to the trading calendar are made by decision of the Management Board of the Exchange.



Contract Specifications Trade Registration

The English version is for informal use only.
The German version is legally binding.

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2 Contract Specifications EEX Derivatives Markets

2.1 Financial Futures on Power

2.1.1 Greek Power Base Futures with Different Delivery Periods

ISIN Code/ WKN/ Exchange Code/ Name	DE000A1RREU4	A1RREU	FFBM	Greek-Base-Month-Future
	DE000A1RREV2	A1RREV	FFBQ	Greek-Base-Quarter-Future
	DE000A1RREW0	A1RREW	FFBY	Greek-Base-Year-Future
Underlying	<p>Index based on the mean value of all auction prices of the hourly contracts for the market area Greece calculated for the hours between 00:00 and 24:00 for all days of the respective delivery period (final settlement price). EEX determines on each exchange trading day the Index by using the most valuable sources* for the respective market area. As a rule the auction prices of the hourly contracts traded at the most liquid power spot exchange are used. Indexes of information service providers or any other appropriate sources may be used in case exchange data are not available for EEX. EEX will publish in those cases the source that is used for calculation of the index.</p> <p>* Currently the System Marginal Price (SMP) is used.</p>			
Contracts eligible for Trade Registration	<p>At maximum the following delivery periods can be registered:</p> <ul style="list-style-type: none"> ▪ the current and the next 6 months (Greek Power Base Month Future), ▪ the respective next 7 full quarters (Greek Power Base Quarter Future), ▪ the respective next 6 full years (Greek Power Base Year Future). 			
Contract Volume	<p>The contract volume is calculated on the basis of the factors of the number of delivery days in the delivery period and the quantity of electricity to be delivered daily. This quantity usually amounts to 24 MWh, on the day of the switch from winter time to summer time it amounts to 23 MWh, whereas on the day of the switch from summer time to winter time it amounts to 25 MWh.</p> <p>For example, the contract volume for a month future with 30 delivery days amounts to 720 MWh, for a quarter future with 91 delivery days it amounts to 2,184 MWh and for a year future with 365 delivery days it amounts to 8,760 MWh.</p>			
Pricing	In EUR / MWh with two decimal places after the point			

Minimum Price Fluctuation	<p>€ 0.01 per MWh; multiplied by the contract volume in each case, e.g. for a month future with 30 delivery days this corresponds to an amount of € 7.20, for a quarter future with 91 delivery days this corresponds to a value of € 21.84 and for a year future with 365 delivery days this corresponds to a value of € 87.60.</p>
Cascading	<p>Each open position in a Greek Power Base Year Future is replaced with equal positions of the three Greek Power Base Month Futures for the delivery months January until March and three Greek Power Base Quarter Futures for the second until the fourth delivery quarter whose delivery periods taken together correspond to the delivery year on the third ECC business day before the beginning of the delivery period (last day of trade registration of the year future).</p> <p>Each open position of a Greek Power Base Quarter Futures is replaced with equal positions in the three Greek Power Base Month Futures whose delivery periods taken together correspond to the delivery quarter on the third ECC business day before the beginning of the delivery period (last day of trade registration of the quarter future).</p>
Last Registration Day of Month Futures	<p>The last day of trade registration is equivalent to the last trading day of Phelix Base Futures.</p>
Fulfilment during the delivery month	<p>Fulfilment by means of cash settlement based on the final settlement price on the ECC business day following the last day of trade registration. If the final settlement price will be determined on a Saturday Sunday or a public holiday following a Sunday, the cash settlement takes place on the second ECC business day after the last day of trade registration.</p> <p>The seller (buyer) is obliged to settle in cash the difference between the price agreed on and the higher (lower) final settlement price on the day of execution.</p> <p>Fulfilment is carried out between the clearing members and ECC AG. Cash settlement between non-clearing members and their own clients is the task of the clearing member in charge; the cash settlement between non-clearing members and their clients is the task of the non-clearing members concerned.</p>

2.1.2 Romanian Power Base Futures with Different Delivery Periods

ISIN Code/ WKN/ Exchange Code/ Name	DE000A1RREX8	A1RREX	FHBM	Romanian Power Base Month Future
	DE000A1RREY6	A1RREY	FHBQ	Romanian Power Base Quarter Future
	DE000A1RREZ3	A1RREZ	FHBY	Romanian Power Base Year Future
Underlying	<p>Index based on the mean value of all auction prices of the hourly contracts for the market area Romania calculated for the hours between 00:00 and 24:00 for all days of the respective delivery period (final settlement price). EEX determines on each exchange trading day the Index by using the most valuable sources* for the respective market area. As a rule the auction prices of the hourly contracts traded at the most liquid power spot exchange are used. Indexes of information service providers or any other appropriate sources may be used in case exchange data are not available for EEX. EEX will publish in those cases the source that is used for calculation of the index.</p> <p>* Currently the ROPEX_DAM_Base index is used as determined by Opcom.</p>			
Contracts eligible for Trade Registration	<p>At maximum the following delivery periods can be registered:</p> <ul style="list-style-type: none"> ▪ the current and the next 6 months (Romanian Power Base Month Future), ▪ the respective next 7 full quarters (Romanian Power Base Quarter Future), ▪ the respective next 6 full years (Romanian Power Base Year Future). 			
Contract Volume	<p>The contract volume is calculated on the basis of the factors of the number of delivery days in the delivery period and the quantity of electricity to be delivered daily. This quantity usually amounts to 24 MWh, on the day of the switch from winter time to summer time it amounts to 23 MWh, whereas on the day of the switch from summer time to winter time it amounts to 25 MWh.</p> <p>For example, the contract volume for a month future with 30 delivery days amounts to 720 MWh, for a quarter future with 91 delivery days it amounts to 2,184 MWh and for a year future with 365 delivery days it amounts to 8,760 MWh.</p>			
Pricing	In EUR / MWh with two decimal places after the point			

Minimum Price Fluctuation	<p>€ 0.01 per MWh; multiplied by the contract volume in each case, e.g. for a month future with 30 delivery days this corresponds to an amount of € 7.20, for a quarter future with 91 delivery days this corresponds to a value of € 21.84 and for a year future with 365 delivery days this corresponds to a value of € 87.60.</p>
Cascading	<p>Each open position in a Romanian Power Base Year Future is replaced with equal positions of the three Romanian Power Base Month Futures for the delivery months January until March and three Romanian Power Base Quarter Futures for the second until the fourth delivery quarter whose delivery periods taken together correspond to the delivery year on the third ECC business day before the beginning of the delivery period (last day of trade registration of the year future).</p> <p>Each open position of a Romanian Power Base Quarter Futures is replaced with equal positions in the three Romanian Power Base Month Futures whose delivery periods taken together correspond to the delivery quarter on the third ECC business day before the beginning of the delivery period (last day of trade registration of the quarter future).</p>
Last Registration Day of Month Futures	<p>The last day of trade registration is equivalent to the last trading day of Phelix Base Futures.</p>
Fulfilment during the delivery month	<p>Fulfilment by means of cash settlement based on the final settlement price on the ECC business day following the last day of trade registration. If the final settlement price will be determined on a Saturday Sunday or a public holiday following a Sunday, the cash settlement takes place on the second ECC business day after the last day of trade registration.</p> <p>The seller (buyer) is obliged to settle in cash the difference between the price agreed on and the higher (lower) final settlement price on the day of execution.</p> <p>Fulfilment is carried out between the clearing members and ECC AG. Cash settlement between non-clearing members and their own clients is the task of the clearing member in charge; the cash settlement between non-clearing members and their clients is the task of the non-clearing members concerned.</p>

2.2 Financial Futures on Coal

2.2.1 API 5 FOB Newcastle (Argus-IHS McCloskey) Coal Futures**

ISIN Code/ WKN/ Exchange Code/ Name	DE000A11RMD5	A11RMD	FT5M	API 5 FOB Newcastle (Argus-IHS McCloskey) Coal Future
Underlying	<p>The monthly API 5* price index for fob Newcastle, Australia thermal coal delivered within 90 days for a net as received (NAR) calorific value of 5,500 kcal/kg and 1% Sulphur at maximum (Index).</p> <p>The Index is the arithmetic average of all weekly price assessments for API 5* FOB Newcastle Coal of the respective month as published in the “Argus/McCloskey’s Coal Price Index Report” on the last Friday of each month.</p>			
Contract Series	Up to 36 consecutive months			
Contract Volume	1,000 metric tonnes (t)			
Pricing	In USD per t to the second decimal place after the point.			
Minimum Price Fluctuation	0.01 USD per t			
Last Registration Day	<p>The Last Registration Day is the last Friday of the respective delivery month.</p> <p>If this is not an exchange trading day or a public holiday in Great Britain, the Last Registration Day is the preceding exchange trading day. If the Last Registration Day of a December contract would – according to the preceding provision – fall on an exchange trading day prior to December 24th, the Last Registration Day for this December contract shall be the exchange trading day following December 24th.</p>			

<p>Fulfilment</p>	<p>Fulfilment takes place by cash settlement on the ECC business day following the Last Registration Day based on the difference between the settlement price of the exchange day before the last trading day and the Index. If this day is not a USD settlement day at Clearstream Banking SA, cash settlement takes place on the following ECC business day which is also a USD settlement day at Clearstream Banking SA.</p> <p>The seller (buyer) is obliged to settle in cash the difference between the settlement price of the previous ECC business day and the higher (lower) Index.</p> <p>Fulfilment is carried out between the clearing members and ECC AG. Cash settlement with non-clearing members and their own clients is the responsibility of the clearing member in charge; the cash settlement between non-clearing members and their clients is the responsibility of the non-clearing members concerned.</p>
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** Expected as of the end of the second quarter of 2016.

2.2.2 API 8 CFR South China (Argus-IHS McCloskey) Coal Month Futures**

ISIN Code/ WKN/ Exchange Code/ Name	DE000A11RME3	A11RME	FT8M	API 8 CFR South China (Argus-IHS McCloskey) Coal Future
Underlying	<p>The monthly API 8* price index for cfr South China thermal coal delivered within 90 days for a net as received (NAR) calorific value of 5,500 kcal/kg and 1% Sulphur at maximum (Index).</p> <p>The Index is the arithmetic average of all weekly price assessments for API 8* CFR South China Coal of the respective month as published in the “Argus/McCloskey’s Coal Price Index Report” on the last Friday of each month.</p>			
Contract Series	Up to 36 consecutive months			
Contract Volume	1,000 metric tonnes (t)			
Pricing	In USD per t to the second decimal place after the point.			
Minimum Price Fluctuation	0.01 USD per t			
Last Registration Day	<p>The Last Registration Day is the last Friday of the respective delivery month.</p> <p>If this is not an exchange trading day or a public holiday in Great Britain, the Last Registration Day is the preceding exchange trading day. If the Last Registration Day of a December contract would – according to the preceding provision – fall on an exchange trading day prior to December 24th, the Last Registration Day for this December contract shall be the exchange trading day following December 24th.</p>			

<p>Fulfilment</p>	<p>Fulfilment takes place by cash settlement on the ECC business day following the Last Registration Day based on the difference between the settlement price of the exchange day before the last trading day and the Index. If this day is not a USD settlement day at Clearstream Banking SA, cash settlement takes place on the following ECC business day which is also a USD settlement day at Clearstream Banking SA.</p> <p>The seller (buyer) is obliged to settle in cash the difference between the settlement price of the previous ECC business day and the higher (lower) Index.</p> <p>Fulfilment is carried out between the clearing members and ECC AG. Cash settlement with non-clearing members and their own clients is the responsibility of the clearing member in charge; the cash settlement between non-clearing members and their clients is the responsibility of the non-clearing members concerned.</p>
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** Expected as of the end of the second quarter of 2016

2.2.3 Indonesian Sub-bit. (IHS McCloskey) Coal Futures**

ISIN Code/ WKN/ Exchange Code/ Name	DE000A11RMF0	A11RMF	FTIM	Indonesian Sub-bit. (IHS McCloskey) Coal Future
Underlying	<p>The monthly IHS McCloskey price index for Indonesian Sub-Bituminous Coal fob for 4,900 kcal/kg NAR (net as received) thermal coal shipped from East and South Kalimantan ports of Indonesia.</p> <p>The monthly IHS McCloskey price index for Indonesian Sub-Bituminous Coal is the arithmetic average of all weekly price assessments for the IHS McCloskey Indonesian Sub-Bituminous Coal FOB Marker* of the respective month as published by IHS McCloskey in the “IHS McCloskey Coal Report” in general on the last Friday of each month.</p>			
Contract Series	Up to 36 consecutive months			
Contract Volume	1,000 metric tonnes (MT)			
Pricing	In USD per MT to the second decimal place after the point.			
Minimum Price Fluctuation	0.01 USD per MT			
Last Registration Day	<p>The Last Registration Day is the last Friday of the respective delivery month.</p> <p>If this day is not an exchange trading day or a public holiday in Great Britain, the Last Registration Day is the preceding exchange trading day. If the Last Registration Day of a December contract would – according to the preceding provision – fall on an exchange trading day prior to December 24th, the Last Registration Day for this December contract shall be the exchange trading day following December 24th.</p>			

<p>Fulfilment</p>	<p>Fulfilment takes place by cash settlement on the ECC business day following the Last Registration Day based on the difference between the settlement price of the exchange day before the last trading day and the underlying index. If this day is not a USD settlement day at Clearstream Banking SA, cash settlement takes place on the following ECC business day which is also a USD settlement day at Clearstream Banking SA.</p> <p>The seller (buyer) is obliged to settle in cash the difference between the settlement price of the previous ECC business day and the higher (lower) underlying index.</p> <p>Fulfilment is carried out between the clearing members and ECC AG. Cash settlement with non-clearing members and their own clients is the responsibility of the clearing member in charge; the cash settlement between non-clearing members and their clients is the responsibility of the non-clearing members concerned.</p>
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The Products are not in any way sponsored, endorsed, sold or promoted by IHS and IHS has no obligation or liability in connection with the administration, marketing or trading of the Products. IHS makes no warranties or representations, whether express or implied, including as to the results to be obtained from the use of the Index and excludes all liability relating to use of the Index to the fullest extent permitted at law.

** Expected as of the end of the second quarter of 2016.

2.3 Options on Coal Futures

2.3.1 Options on API 2 CIF ARA (Argus-IHS McCloskey) Coal Futures**

ISIN-Code/ WKN/ Exchange Code/ Name	DE000A1634D6	A1634D	OT2M	API 2 Month Option
	DE000A1634E4	A1634E	OT2Q	API 2 Quarter Option
	DE000A1634F1	A1634F	OT2Y	API 2 Year Option
Underlying	<p>API 2* Coal Option contract is an option on a single month or strips of consecutive single months of the API 2* CIF ARA (Argus-IHS McCloskey) Coal Future:</p> <p>The underlying of an API 2* Month Option is the API 2* CIF ARA (Argus-IHS McCloskey) Coal Future with same maturity.</p> <p>The underlying of an API 2* Quarter Option are the three API 2* CIF ARA (Argus-IHS McCloskey) Coal Futures which make up the respective quarter.</p> <p>The underlying of an API 2* Year Option are the twelve API 2* CIF ARA (Argus-IHS McCloskey) Coal Futures which make up the respective calendar year.</p>			
Option Right	<p>The buyer of a call option is entitled to receive respective long positions of the underlying future(s) at the exercise price of the option on the Last Registration Day.</p> <p>The seller of the call option receives respective short positions of the underlying future(s) after the call option is exercised and assigned at the exercise price on the Last Registration Day.</p> <p>The buyer of a put option is entitled to receive respective short positions of the underlying future(s) at the exercise price of the option on the Last Registration Day.</p> <p>The seller of the put option receives respective long positions of the underlying future(s) at the exercise price after the put option is exercised and assigned on the Last Registration Day.</p>			
Option Premium	<p>The buyer of an option contract is obliged to pay the price for the purchase of the right of option (option premium) on the ECC business day following the purchase of the option. If this day is not a USD settlement day at Clearstream Banking SA, the payment takes place on the following ECC business day which is also a USD settlement day at Clearstream Banking SA. The option premium is credited to the seller of the option on the same day.</p>			
Option Style	<p>European style, i.e. the option can only be exercised on the last trading day.</p>			

Tradable Option Series	<p>An option series is the total number of call and put options with the same Underlying, the same exercise price and the same maturity which can be traded in the system.</p> <p>At least three series with different exercise prices can be traded for each maturity; in this context one exercise price is in the money, one exercise price is at the money and one exercise price is out of the money upon their introduction into trading.</p> <p>The management board of the exchange is entitled to change the number of tradable option series at any given time.</p>
Maturities	<p>Maturities can be month, quarter, year</p>
Tradable Maturities	<p>At maximum the following maturities can be registered at EEX:</p> <ul style="list-style-type: none"> ▪ The current and next 3 delivery months (Month Option), ▪ The respective next 6 delivery quarters (Quarter Option), ▪ The respective next 3 delivery years of the underlying (Year Option)
Exercise/Automatic Exercise	<p>The option can only be exercised on the Last Registration Day. Said exercise is carried out by means of an entry into the EEX system between 08:00 a.m. and 06:45 p.m. (Exercise Period) on the Last Registration Day.</p> <p>Options which are in the money in relation to the Final Settlement Price are exercised automatically at the end of the Exercise Period if the trading participant has maintained in the system the desired in the money minimum amount and if the trading participant has not made a deviating entry into the system by that time.</p> <p>Exercises only become effective at 06:45 p.m., until that time they can be changed or deleted at any time.</p>
Strike Price Increments	<p>USD 0.50</p>
Pricing for Option Premium	<p>In USD per future to the second decimal place.</p>
Minimum Price Fluctuation	<p>USD 0.01 per future</p>

Last Registration Day	<p>The Last Registration Day is the thirtieth day prior to the beginning of the expiration period. If this day is not an exchange trading day or if it is a public holiday in Great Britain, the Last Registration Day is the preceding exchange trading day.</p> <p>If the Last Trading Day would – according to the preceding provision – fall on a day of the month before the month prior to the expiration period, the first exchange trading day of the month prior to the expiration period shall be the Last Trading Day.</p> <p>The respective Last Registration Day for each maturity is stipulated in the contract detail file.</p>
Expiry Day	<p>Options which have not been exercised expire at 06:45 p.m. CET on the Last Registration Day.</p>
Fulfilment	<p>Options are fulfilled by booking in of the corresponding futures position at the respective exercise price after the option is exercised.</p>
Assignment	<p>If a buyer exercises his right of option, ECC AG assigns a seller of the same option series and of the same type of option (call or put option) to the buyer with the help of a procedure maintaining the neutrality of the assignment process at the end of the post-trading phase on the exercise day. Partial assignments are permissible.</p> <p>All assignments which have been executed for the agent position account of a trading participant have to be assigned by said trading participant for the positions of his customers; this has to be done with the help of a procedure which ensures the neutrality of the assignment process.</p> <p>ECC AG informs all the parties involved as well as the clearing members supporting the parties involved about the assignment on the exercise day.</p>

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** Expected as of the end of the second quarter of 2016.

2.3.2 Options on API 4 FOB Richards Bay (Argus-IHS McCloskey) Coal Futures**

ISIN-Code/ WKN/ Exchange Code/ Name	DE000A1634G9	A1634G	OT4M	API 4 Month Option
	DE000A1634H7	A1634H	OT4Q	API 4 Quarter Option
	DE000A1634J3	A1634J	OT4Y	API 4 Year Option
Underlying	<p>API 4* Coal Option contract is an option on a single month or strips of consecutive single months of the API 4* FOB Richards Bay (Argus-IHS McCloskey) Coal Future:</p> <p>The underlying of an API 4* Month Option is the API 4* FOB Richards Bay (Argus-IHS McCloskey) Coal Future with same maturity.</p> <p>The underlying of an API 4* Quarter Option are the three API 4* FOB Richards Bay (Argus-IHS McCloskey) Coal Futures which make up the respective quarter.</p> <p>The underlying of an API 4* Year Option are the twelve API 4* FOB Richards Bay (Argus-IHS McCloskey) Coal Futures which make up the respective calendar year.</p>			
Option Right	<p>The buyer of a call option is entitled to receive respective long positions of the underlying future(s) at the exercise price of the option on the Last Registration Day.</p> <p>The seller of the call option receives respective short positions of the underlying future(s) after the call option is exercised and assigned at the exercise price on the Last Registration Day.</p> <p>The buyer of a put option is entitled to receive respective short positions of the underlying future(s) at the exercise price of the option on the Last Registration Day.</p> <p>The seller of the put option receives respective long positions of the underlying future(s) at the exercise price after the put option is exercised and assigned on the Last Registration Day.</p>			
Option Premium	<p>The buyer of an option contract is obliged to pay the price for the purchase of the right of option (option premium) on the ECC business day following the purchase of the option. If this day is not a USD settlement day at Clearstream Banking SA, the payment takes place on the following ECC business day which is also a USD settlement day at Clearstream Banking SA. The option premium is credited to the seller of the option on the same day.</p>			
Option Style	<p>European style, i.e. the option can only be exercised on the last trading day.</p>			

Tradable Option Series	<p>An option series is the total number of call and put options with the same Underlying, the same exercise price and the same maturity which can be traded in the system.</p> <p>At least three series with different exercise prices can be traded for each maturity; in this context one exercise price is in the money, one exercise price is at the money and one exercise price is out of the money upon their introduction into trading.</p> <p>The management board of the exchange is entitled to change the number of tradable option series at any given time.</p>
Maturities	<p>Maturities can be month, quarter, year</p>
Tradable Maturities	<p>At maximum the following maturities can be registered at EEX:</p> <ul style="list-style-type: none"> ▪ The current and next 3 delivery months (Month Option), ▪ The respective next 6 delivery quarters (Quarter Option), ▪ The respective next 3 delivery years of the underlying (Year Option)
Exercise/Automatic Exercise	<p>The option can only be exercised on the Last Registration Day. Said exercise is carried out by means of an entry into the EEX system between 08:00 a.m. and 06:45 p.m. (Exercise Period) on the Last Registration Day.</p> <p>Options which are in the money in relation to the Final Settlement Price are exercised automatically at the end of the Exercise Period if the trading participant has maintained in the system the desired in the money minimum amount and if the trading participant has not made a deviating entry into the system by that time.</p> <p>Exercises only become effective at 06:45 p.m., until that time they can be changed or deleted at any time.</p>
Strike Price Increments	<p>USD 0.50</p>
Pricing for Option Premium	<p>In USD per future to the second decimal place.</p>
Minimum Price Fluctuation	<p>USD 0.01 per future</p>

Last Registration Day	<p>The Last Registration Day is the thirtieth day prior to the beginning of the expiration period. If this day is not an exchange trading day or if it is a public holiday in Great Britain, the Last Registration Day is the preceding exchange trading day.</p> <p>If the Last Trading Day would – according to the preceding provision – fall on a day of the month before the month prior to the expiration period, the first exchange trading day of the month prior to the expiration period shall be the Last Trading Day.</p> <p>The respective Last Registration Day for each maturity is stipulated in the contract detail file.</p>
Expiry Day	<p>Options which have not been exercised expire at 06:45 p.m. CET on the Last Registration Day.</p>
Fulfilment	<p>Options are fulfilled by booking in of the corresponding futures position at the respective exercise price after the option is exercised.</p>
Assignment	<p>If a buyer exercises his right of option, ECC AG assigns a seller of the same option series and of the same type of option (call or put option) to the buyer with the help of a procedure maintaining the neutrality of the assignment process at the end of the post-trading phase on the exercise day. Partial assignments are permissible.</p> <p>All assignments which have been executed for the agent position account of a trading participant have to be assigned by said trading participant for the positions of his customers; this has to be done with the help of a procedure which ensures the neutrality of the assignment process.</p> <p>ECC AG informs all the parties involved as well as the clearing members supporting the parties involved about the assignment on the exercise day.</p>

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** Expected as of the end of the second quarter of 2016

2.3.3 Options on API 5 FOB Newcastle (Argus-IHS McCloskey) Coal Futures**

ISIN-Code/ WKN/ Exchange Code/ Name	DE000A1634K1	A1634K	OT5M	API 5 Month Option
	DE000A1634L9	A1634L	OT5Q	API 5 Quarter Option
	DE000A1634M7	A1634M	OT5Y	API 5 Year Option
Underlying	<p>API 5* Coal Option contract is an option on a single month or strips of consecutive single months of the API 5* FOB Newcastle (Argus-IHS McCloskey) Coal Future:</p> <p>The underlying of an API 5* Month Option is the API 5* FOB Newcastle (Argus-IHS McCloskey) Coal Future with same maturity.</p> <p>The underlying of an API 5* Quarter Option are the three API 5* FOB Newcastle (Argus-IHS McCloskey) Coal Future which make up the respective quarter.</p> <p>The underlying of an API 5* Year Option are the twelve API 5* FOB Newcastle (Argus-IHS McCloskey) Coal Future which make up the respective calendar year.</p>			
Option Right	<p>The buyer of a call option is entitled to receive respective long positions of the underlying future(s) at the exercise price of the option on the Last Registration Day.</p> <p>The seller of the call option receives respective short positions of the underlying future(s) after the call option is exercised and assigned at the exercise price on the Last Registration Day.</p> <p>The buyer of a put option is entitled to receive respective short positions of the underlying future(s) at the exercise price of the option on the Last Registration Day.</p> <p>The seller of the put option receives respective long positions of the underlying future(s) at the exercise price after the put option is exercised and assigned on the Last Registration Day.</p>			
Option Premium	<p>The buyer of an option contract is obliged to pay the price for the purchase of the right of option (option premium) on the ECC business day following the purchase of the option. If this day is not a USD settlement day at Clearstream Banking SA, the payment takes place on the following ECC business day which is also a USD settlement day at Clearstream Banking SA. The option premium is credited to the seller of the option on the same day.</p>			
Option Style	<p>European style, i.e. the option can only be exercised on the last trading day.</p>			

Tradable Option Series	<p>An option series is the total number of call and put options with the same Underlying, the same exercise price and the same maturity which can be traded in the system.</p> <p>At least three series with different exercise prices can be traded for each maturity; in this context one exercise price is in the money, one exercise price is at the money and one exercise price is out of the money upon their introduction into trading.</p> <p>The management board of the exchange is entitled to change the number of tradable option series at any given time.</p>
Maturities	<p>Maturities can be month, quarter, year</p>
Tradable Maturities	<p>At maximum the following maturities can be registered at EEX:</p> <ul style="list-style-type: none"> ▪ The current and next 3 delivery months (Month Option), ▪ The respective next 6 delivery quarters (Quarter Option), ▪ The respective next 3 delivery years of the underlying (Year Option)
Exercise/Automatic Exercise	<p>The option can only be exercised on the Last Registration Day. Said exercise is carried out by means of an entry into the EEX system between 08:00 a.m. and 06:45 p.m. (Exercise Period) on the Last Registration Day.</p> <p>Options which are in the money in relation to the Final Settlement Price are exercised automatically at the end of the Exercise Period if the trading participant has maintained in the system the desired in the money minimum amount and if the trading participant has not made a deviating entry into the system by that time.</p> <p>Exercises only become effective at 06:45 p.m., until that time they can be changed or deleted at any time.</p>
Strike Price Increments	<p>USD 0.50</p>
Pricing for Option Premium	<p>In USD per future to the second decimal place.</p>
Minimum Price Fluctuation	<p>USD 0.01 per future</p>

Last Registration Day	<p>The Last Registration Day is the thirtieth day prior to the beginning of the expiration period. If this day is not an exchange trading day or if it is a public holiday in Great Britain, the Last Registration Day is the preceding exchange trading day.</p> <p>If the Last Trading Day would – according to the preceding provision – fall on a day of the month before the month prior to the expiration period, the first exchange trading day of the month prior to the expiration period shall be the Last Trading Day.</p> <p>The respective Last Registration Day for each maturity is stipulated in the contract detail file.</p>
Expiry Day	<p>Options which have not been exercised expire at 06:45 p.m. CET on the Last Registration Day.</p>
Fulfilment	<p>Options are fulfilled by booking in of the corresponding futures position at the respective exercise price after the option is exercised.</p>
Assignment	<p>If a buyer exercises his right of option, ECC AG assigns a seller of the same option series and of the same type of option (call or put option) to the buyer with the help of a procedure maintaining the neutrality of the assignment process at the end of the post-trading phase on the exercise day. Partial assignments are permissible.</p> <p>All assignments which have been executed for the agent position account of a trading participant have to be assigned by said trading participant for the positions of his customers; this has to be done with the help of a procedure which ensures the neutrality of the assignment process.</p> <p>ECC AG informs all the parties involved as well as the clearing members supporting the parties involved about the assignment on the exercise day.</p>

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** Expected as of the end of the second quarter of 2016

2.4 Financial Futures on Dry Bulk Time Charter Freight

2.4.1 Capesize Time Charter Freight Futures (TC4)

ISIN Code/ WKN/ Exchange Code/ Name	DE000A11RCE4	A11RCE	CTCM	Capesize TC4 Freight Fu- ture
Underlying	<p>The monthly price index for Capesize Dry Bulk Time Charter Freight (Index).</p> <p>The Index is the arithmetic average of all daily spot price assessments for “Capesize Dry Bulk Time Charter Freight Basket Routes (Avg. 4 routes)” of the respective month as published by Baltic Exchange.</p>			
Contract Series	Up to 84 consecutive months			
Contract Volume	1 day			
Pricing	In USD per day			
Minimum Price Fluctuation	1.00 USD per day			
Last Registration Day	<p>Last Registration Day is the last exchange trading day of the respective expiry month except for December contracts.</p> <p>The Last Registration Day for December contracts is the exchange trading day, following 24th December.</p>			
Fulfilment	<p>Fulfilment takes place by cash settlement on the ECC business day following the Last Registration Day based on the difference between the settlement price of the exchange day before the last trading day and the Index. If this day is not a USD settlement day at Clearstream Banking SA, cash settlement takes place on the following ECC business day which is also a USD settlement day at Clearstream Banking SA.</p> <p>The seller (buyer) is obliged to settle in cash the difference between the settlement price of the previous ECC business day and the higher (lower) Index.</p> <p>Fulfilment is carried out between the clearing members and ECC AG. Cash settlement with non-clearing members and their own clients is the responsibility of the clearing member in charge; the cash settlement between non-clearing members and their clients is the responsibility of the non-clearing members concerned.</p>			

2.4.2 Capesize Time Charter Freight Futures (TC5)

ISIN Code/ WKN/ Exchange Code/ Name	DE000A1634C8	A1634C	CPTM	Capesize TC5 Freight Future
Underlying	<p>The monthly price index for Capesize Dry Bulk Time Charter Freight (Index).</p> <p>The Index is the arithmetic average of all daily spot price assessments for “Capesize Dry Bulk Time Charter Freight Basket Routes (Avg. 5 routes)” of the respective month as published by Baltic Exchange.</p>			
Contract Series	Up to 84 consecutive months			
Contract Volume	1 day			
Pricing	In USD per day			
Minimum Price Fluctuation	1.00 USD per day			
Last Registration Day	<p>Last Registration Day is the last exchange trading day of the respective expiry month except for December contracts.</p> <p>The Last Registration Day for December contracts is the exchange trading day, following 24th December.</p>			
Fulfilment	<p>Fulfilment takes place by cash settlement on the ECC business day following the Last Registration Day based on the difference between the settlement price of the exchange day before the Last Registration Day and the Index. If this day is not a USD settlement day at Clearstream Banking SA, cash settlement takes place on the following ECC business day which is also a USD settlement day at Clearstream Banking SA.</p> <p>The seller (buyer) is obliged to settle in cash the difference between the settlement price of the previous ECC business day and the higher (lower) Index.</p> <p>Fulfilment is carried out between the clearing members and ECC AG. Cash settlement with non-clearing members and their own clients is the responsibility of the clearing member in charge; the cash settlement between non-clearing members and their clients is the responsibility of the non-clearing members concerned.</p>			

2.4.3 Panamax Time Charter Freight Futures

ISIN Code/ WKN/ Exchange Code/ Name	DE000A11RCF1	A11RCF	PTCM	Panamax TC Freight Future
Underlying	<p>The monthly price index for Panamax Dry Bulk Time Charter Freight (Index).</p> <p>The Index is the arithmetic average of all daily spot price assessments for “Panamax Dry Bulk Time Charter Freight Basket Routes (Avg. 4 routes)” of the respective month as published by Baltic Exchange.</p>			
Contract Series	Up to 84 consecutive months			
Contract Volume	1 day			
Pricing	In USD per day			
Minimum Price Fluctuation	1.00 USD per day			
Last Registration Day	<p>Last Registration Day is the last exchange trading day of the respective expiry month except for December contracts.</p> <p>The Last Registration Day for December contracts is the exchange trading day, following 24th December.</p>			
Fulfilment	<p>Fulfilment takes place by cash settlement on the ECC business day following the Last Registration Day based on the difference between the settlement price of the exchange day before the last trading day and the Index. If this day is not a USD settlement day at Clearstream Banking SA, cash settlement takes place on the following ECC business day which is also a USD settlement day at Clearstream Banking SA.</p> <p>The seller (buyer) is obliged to settle in cash the difference between the settlement price of the previous ECC business day and the higher (lower) Index.</p> <p>Fulfilment is carried out between the clearing members and ECC AG. Cash settlement with non-clearing members and their own clients is the responsibility of the clearing member in charge; the cash settlement between non-clearing members and their clients is the responsibility of the non-clearing members concerned.</p>			

2.4.4 Supramax Time Charter Freight Futures

ISIN Code/ WKN/ Exchange Code/ Name	DE000A11RCG9	A11RCG	STCM	Supramax TC Freight Future
Underlying	<p>The monthly price index for Supramax Dry Bulk Time Charter Freight (Index).</p> <p>The Index is the arithmetic average of all daily spot price assessments for “Supramax Dry Bulk Time Charter Freight Basket Routes (Avg. 6 routes)” of the respective month as published by Baltic Exchange.</p>			
Contract Series	Up to 84 consecutive months			
Contract Volume	1 day			
Pricing	In USD per day			
Minimum Price Fluctuation	1.00 USD per day			
Last Registration Day	<p>Last Registration Day is the last exchange trading day of the respective expiry month except for December contracts.</p> <p>The Last Registration Day for December contracts is the 24th December. The Last Registration Day for December contracts is the exchange trading day, following 24th December.</p>			
Fulfilment	<p>Fulfilment takes place by cash settlement on the ECC business day following the Last Registration Day based on the difference between the settlement price of the exchange day before the last trading day and the Index. If this day is not a USD settlement day at Clearstream Banking SA, cash settlement takes place on the following ECC business day which is also a USD settlement day at Clearstream Banking SA.</p> <p>The seller (buyer) is obliged to settle in cash the difference between the settlement price of the previous ECC business day and the higher (lower) Index.</p> <p>Fulfilment is carried out between the clearing members and ECC AG. Cash settlement with non-clearing members and their own clients is the responsibility of the clearing member in charge; the cash settlement between non-clearing members and their clients is the responsibility of the non-clearing members concerned.</p>			

2.4.5 Handysize Time Charter Freight Futures

ISIN Code/ WKN/ Exchange Code/ Name	DE000A11RCH7	A11RCH	HTCM	Handysize TC Freight Future
Underlying	<p>The monthly price index for Handysize Dry Bulk Time Charter Freight (Index).</p> <p>The Index is the arithmetic average of all daily spot price assessments for “Handysize Dry Bulk Time Charter Freight Basket Routes (Avg. 6 routes)” of the respective month as published by Baltic Exchange.</p>			
Contract Series	Up to 84 consecutive months			
Contract Volume	1 day			
Pricing	In USD per day			
Minimum Price Fluctuation	1.00 USD per day			
Last Registration Day	<p>Last Registration Day is the last exchange trading day of the respective expiry month except for December contracts.</p> <p>The Last Registration Day for December contracts is the exchange trading day, following 24th December.</p>			
Fulfilment	<p>Fulfilment takes place by cash settlement on the ECC business day following the Last Registration Day based on the difference between the settlement price of the exchange day before the last trading day and the Index. If this day is not a USD settlement day at Clearstream Banking SA, cash settlement takes place on the following ECC business day which is also a USD settlement day at Clearstream Banking SA.</p> <p>The seller (buyer) is obliged to settle in cash the difference between the settlement price of the previous ECC business day and the higher (lower) Index.</p> <p>Fulfilment is carried out between the clearing members and ECC AG. Cash settlement with non-clearing members and their own clients is the responsibility of the clearing member in charge; the cash settlement between non-clearing members and their clients is the responsibility of the non-clearing members concerned.</p>			

2.5 Financial Futures on Dry Bulk Trip Time Charter Freight

2.5.1 P1A Panamax Transatlantic Freight Future

ISIN Code/ WKN/ Exchange Code/ Name	DE000A11RCN5	A11RCN	P1AM	P1A Panamax Transatlantic Freight Future
Underlying	<p>The monthly price index for P1A Panamax Transatlantic Freight (Index).</p> <p>The Index is the arithmetic average of the last 7 daily spot price assessments for “P1A Panamax Dry Bulk Trip Time Charter Freight (Transatlantic Round Voyage)” of the respective month as published by Baltic Exchange except for December contracts where the last 7 daily spot prices including those for the Last Registration Day are decisive for the Index calculation.</p>			
Contract Series	Up to 36 consecutive months			
Contract Volume	1 day			
Pricing	In USD per day			
Minimum Price Fluctuation	1.00 USD per day			
Last Registration Day	<p>Last Registration Day is the last exchange trading day of the respective expiry month except for December contracts.</p> <p>The Last Registration Day for December contracts is the exchange trading day, following 24th December.</p>			
Fulfilment	<p>Fulfilment takes place by cash settlement on the ECC business day following the Last Registration Day based on the difference between the settlement price of the exchange day before the last trading day and the Index. If this day is not a USD settlement day at Clearstream Banking SA, cash settlement takes place on the following ECC business day which is also a USD settlement day at Clearstream Banking SA.</p> <p>The seller (buyer) is obliged to settle in cash the difference between the settlement price of the previous ECC business day and the higher (lower) Index.</p> <p>Fulfilment is carried out between the clearing members and ECC AG. Cash settlement with non-clearing members and their own clients is the responsibility of the clearing member in charge; the cash settlement between non-clearing members and their clients is the responsibility of the non-clearing members concerned.</p>			

2.5.2 P2A Panamax Far East Freight Future

ISIN Code/ WKN/ Exchange Code/ Name	DE000A11RCP0	A11RCP	P2AM	P2A Panamax Far East Freight Future
Underlying	<p>The monthly price index for P2A Panamax Far East Freight (Index). The Index is the arithmetic average of the last 7 daily spot price assessments for “P2A Panamax Dry Bulk Trip Time Charter Freight (Skaw – Gibraltar / Cont Trip Far East)” of the respective month as published by Baltic Exchange except for December contracts where the last 7 daily spot prices including those for the Last Registration Day are decisive for the Index calculation.</p>			
Contract Series	Up to 36 consecutive months			
Contract Volume	1 day			
Pricing	In USD per day			
Minimum Price Fluctuation	1.00 USD per day			
Last Registration Day	<p>Last Registration Day is the last exchange trading day of the respective expiry month except for December contracts. The Last Registration Day for December contracts is the exchange trading day, following 24th December.</p>			
Fulfilment	<p>Fulfilment takes place by cash settlement on the ECC business day following the Last Registration Day based on the difference between the settlement price of the exchange day before the last trading day and the Index. If this day is not a USD settlement day at Clearstream Banking SA, cash settlement takes place on the following ECC business day which is also a USD settlement day at Clearstream Banking SA.</p> <p>The seller (buyer) is obliged to settle in cash the difference between the settlement price of the previous ECC business day and the higher (lower) Index.</p> <p>Fulfilment is carried out between the clearing members and ECC AG. Cash settlement with non-clearing members and their own clients is the responsibility of the clearing member in charge; the cash settlement between non-clearing members and their clients is the responsibility of the non-clearing members concerned.</p>			

2.5.3 P3A Panamax Pacific Freight Future

ISIN Code/ WKN/ Exchange Code/ Name	DE000A11RCQ8	A11RCQ	P3AM	P3A Panamax Pacific Freight Future
Underlying	<p>The monthly price index for P3A Panamax Pacific Freight (Index).</p> <p>The Index is the arithmetic average of the last 7 daily spot price assessments for “P3A Panamax Dry Bulk Trip Time Charter Freight (Japan – South Korea / Pacific Round Voyage)” of the respective month as published by Baltic Exchange, except for December contracts where the last 7 daily spot prices including those for the Last Registration Day are decisive for the Index calculation.</p>			
Contract Series	Up to 36 consecutive months			
Contract Volume	1 day			
Pricing	In USD per day			
Minimum Price Fluctuation	1.00 USD per day			
Last Registration Day	<p>Last Registration Day is the last exchange trading day of the respective expiry month except for December contracts.</p> <p>The Last Registration Day for December contracts is the exchange trading day, following 24th December.</p>			
Fulfilment	<p>Fulfilment takes place by cash settlement on the ECC business day following the Last Registration Day based on the difference between the settlement price of the exchange day before the last trading day and the Index. If this day is not a USD settlement day at Clearstream Banking SA, cash settlement takes place on the following ECC business day which is also a USD settlement day at Clearstream Banking SA.</p> <p>The seller (buyer) is obliged to settle in cash the difference between the settlement price of the previous ECC business day and the higher (lower) Index.</p> <p>Fulfilment is carried out between the clearing members and ECC AG. Cash settlement with non-clearing members and their own clients is the responsibility of the clearing member in charge; the cash settlement between non-clearing members and their clients is the responsibility of the non-clearing members concerned.</p>			

2.6 Financial Futures on Dry Bulk Voyage Routes Freight

2.6.1 C3 Capesize Freight Future (Tubarao – Qingdao)

ISIN Code/ WKN/ Exchange Code/ Name	DE000A11RCL9	A11RCL	C3EM	C3 Capesize Freight Future
Underlying	<p>The monthly price index for C3 Capesize Freight, voyage route Tubarao – Qingdao (Index).</p> <p>The Index is the arithmetic average of all daily spot price assessments for “C3 Capesize Dry Bulk Voyage Route Freight (Tubarao – Qingdao)” of the respective month as published by Baltic Exchange.</p>			
Contract Series	Up to 36 consecutive months			
Contract Volume	1,000 metric tonnes (t)			
Pricing	In USD per t to the second decimal place after the point			
Minimum Price Fluctuation	0.01 USD per t			
Last Registration Day	<p>Last Registration Day is the last exchange trading day of the respective expiry month except for December contracts.</p> <p>The Last Registration Day for December contracts is the exchange trading day, following 24th December.</p>			
Fulfilment	<p>Fulfilment takes place by cash settlement on the ECC business day following the Last Registration Day based on the difference between the settlement price of the exchange day before the last trading day and the Index. If this day is not a USD settlement day at Clearstream Banking SA, cash settlement takes place on the following ECC business day which is also a USD settlement day at Clearstream Banking SA.</p> <p>The seller (buyer) is obliged to settle in cash the difference between the settlement price of the previous ECC business day and the higher (lower) Index.</p> <p>Fulfilment is carried out between the clearing members and ECC AG. Cash settlement with non-clearing members and their own clients is the responsibility of the clearing member in charge; the cash settlement between non-clearing members and their clients is the responsibility of the non-clearing members concerned.</p>			

2.6.2 C4 Capesize Freight Future (Richards Bay – Rotterdam)

ISIN Code/ WKN/ Exchange Code/ Name	DE000A11RCJ3	A11RCJ	C4EM	C4 Capesize Freight Future
Underlying	<p>The monthly price index for C4 Capesize Freight, voyage route Richards Bay – Rotterdam (Index).</p> <p>The Index is the arithmetic average of all daily spot price assessments for “C4 Capesize Dry Bulk Voyage Route Freight (Richards Bay – Rotterdam)” of the respective month as published by Baltic Exchange.</p>			
Contract Series	Up to 36 consecutive months			
Contract Volume	1,000 metric tonnes (t)			
Pricing	In USD per t to the second decimal place after the point			
Minimum Price Fluctuation	0.01 USD per t			
Last Registration Day	<p>Last Registration Day is the last exchange trading day of the respective expiry month except for December contracts.</p> <p>The Last Registration Day for December contracts is the exchange trading day, following 24th December.</p>			
Fulfilment	<p>Fulfilment takes place by cash settlement on the ECC business day following the Last Registration Day based on the difference between the settlement price of the exchange day before the last trading day and the Index. If this day is not a USD settlement day at Clearstream Banking SA, cash settlement takes place on the following ECC business day which is also a USD settlement day at Clearstream Banking SA.</p> <p>The seller (buyer) is obliged to settle in cash the difference between the settlement price of the previous ECC business day and the higher (lower) Index.</p> <p>Fulfilment is carried out between the clearing members and ECC AG. Cash settlement with non-clearing members and their own clients is the responsibility of the clearing member in charge; the cash settlement between non-clearing members and their clients is the responsibility of the non-clearing members concerned.</p>			

2.6.3 C5 Capesize Freight Future (Western Australia – Qingdao)

ISIN Code/ WKN/ Exchange Code/ Name	DE000A11RCM7	A11RCM	C5EM	C5 Capesize Freight Future
Underlying	<p>The monthly price index for C5 Capesize Freight, voyage route Western Australia – Qingdao (Index).</p> <p>The Index is the arithmetic average of all daily spot price assessments for “C5 Capesize Dry Bulk Voyage Route Freight (Western Australia – Qingdao)” of the respective month as published by Baltic Exchange.</p>			
Contract Series	Up to 36 consecutive months			
Contract Volume	1,000 metric tonnes (t)			
Pricing	In USD per t to the second decimal place after the point			
Minimum Price Fluctuation	0.01 USD per t			
Last Registration Day	<p>Last Registration Day is the last exchange trading day of the respective expiry month except for December contracts.</p> <p>The Last Registration Day for December contracts is the exchange trading day, following 24th December.</p>			
Fulfilment	<p>Fulfilment takes place by cash settlement on the ECC business day following the Last Registration Day based on the difference between the settlement price of the exchange day before the last trading day and the Index. If this day is not a USD settlement day at Clearstream Banking SA, cash settlement takes place on the following ECC business day which is also a USD settlement day at Clearstream Banking SA.</p> <p>The seller (buyer) is obliged to settle in cash the difference between the settlement price of the previous ECC business day and the higher (lower) Index.</p> <p>Fulfilment is carried out between the clearing members and ECC AG. Cash settlement with non-clearing members and their own clients is the responsibility of the clearing member in charge; the cash settlement between non-clearing members and their clients is the responsibility of the non-clearing members concerned.</p>			

2.6.4 C7 Capesize Freight Future (Bolivar – Rotterdam)

ISIN Code/ WKN/ Exchange Code/ Name	DE000A11RCK1	A11RCK	C7EM	C7 Capesize Freight Future
Underlying	<p>The monthly price index for C7 Capesize Freight, voyage route Bolivar - Rotterdam (Index).</p> <p>The Index is the arithmetic average of all daily spot price assessments for “C7 Capesize Dry Bulk Voyage Route Freight (Bolivar - Rotterdam)” of the respective month as published by Baltic Exchange.</p>			
Contract Series	Up to 36 consecutive months			
Contract Volume	1,000 metric tonnes (t)			
Pricing	In USD per t to the second decimal place after the point			
Minimum Price Fluctuation	0.01 USD per t			
Last Registration Day	<p>Last Registration Day is the last exchange trading day of the respective expiry month except for December contracts.</p> <p>The Last Registration Day for December contracts is the exchange trading day, following 24th December.</p>			
Fulfilment	<p>Fulfilment takes place by cash settlement on the ECC business day following the Last Registration Day based on the difference between the settlement price of the exchange day before the last trading day and the Index. If this day is not a USD settlement day at Clearstream Banking SA, cash settlement takes place on the following ECC business day which is also a USD settlement day at Clearstream Banking SA.</p> <p>The seller (buyer) is obliged to settle in cash the difference between the settlement price of the previous ECC business day and the higher (lower) Index.</p> <p>Fulfilment is carried out between the clearing members and ECC AG. Cash settlement with non-clearing members and their own clients is the responsibility of the clearing member in charge; the cash settlement between non-clearing members and their clients is the responsibility of the non-clearing members concerned.</p>			

2.7 Options on Freight Futures

2.7.1 Options on Capesize TC4 Freight Futures

ISIN-Code/ WKN/ Exchange Code/ Name	DE000A1634N5	A1634N	OCTM	Capesize TC4 Freight Option
Underlying	Capesize TC4 Freight Future with the same maturity, at which the delivery period corresponds to the maturity.			
Option Right	<p>The buyer of a call option is entitled to receive respective long positions of the underlying future(s) at the exercise price of the option on the Last Registration Day.</p> <p>The seller of the call option receives respective short positions of the underlying future(s) after the call option is exercised and assigned at the exercise price on the Last Registration Day.</p> <p>The buyer of a put option is entitled to receive respective short positions of the underlying future(s) at the exercise price of the option on the Last Registration Day.</p> <p>The seller of the put option receives respective long positions of the underlying future(s) at the exercise price after the put option is exercised and assigned on the Last Registration Day.</p>			
Option Premium	The buyer of an option contract is obliged to pay the price for the purchase of the right of option (option premium) on the ECC business day following the purchase of the option. If this day is not a USD settlement day at Clearstream Banking SA, the payment takes place on the following ECC business day which is also a USD settlement day at Clearstream Banking SA. The option premium is credited to the seller of the option on the same day.			
Option Style	European style, i.e. the option can only be exercised on the last trading day.			
Tradable Option Series	<p>An option series is the total number of call and put options with the same Underlying, the same exercise price and the same maturity which can be traded in the system.</p> <p>At least three series with different exercise prices can be traded for each maturity; in this context one exercise price is in the money, one exercise price is at the money and one exercise price is out of the money upon their introduction into trading.</p> <p>The management board of the exchange is entitled to change the number of tradable option series at any given time.</p>			

Tradable Maturities	Up to 36 consecutive months
Exercise/Automatic Exercise	<p>The option can only be exercised on the Last Registration Day. Said exercise is carried out by means of an entry into the EEX system between 08:00 a.m. and 06:45 p.m. (Exercise Period) on the Last Registration Day.</p> <p>Options which are in the money in relation to the Final Settlement Price are exercised automatically at the end of the Exercise Period if the trading participant has maintained in the system the desired in the money minimum amount and if the trading participant has not made a deviating entry into the system by that time.</p> <p>Exercises only become effective at 06:45 p.m., until that time they can be changed or deleted at any time.</p>
Strike Price Increments	USD 1
Pricing for Option Premium	In USD per future to the second decimal place.
Minimum Price Fluctuation	USD 0.01 per future
Last Registration Day	<p>Last Registration Day is the last exchange trading of the respective expiration month except for December contracts.</p> <p>The Last Registration Day for December contracts is the exchange trading day, following 24th December.</p>
Expiry Day	Options which have not been exercised expire at 06:45 p.m. CET on the Last Registration Day.
Fulfilment	Options are fulfilled by booking in of the corresponding futures position at the respective exercise price after the option is exercised.
Assignment	<p>If a buyer exercises his right of option, ECC AG assigns a seller of the same option series and of the same type of option (call or put option) to the buyer with the help of a procedure maintaining the neutrality of the assignment process at the end of the post-trading phase on the exercise day. Partial assignments are permissible.</p> <p>All assignments which have been executed for the agent position account of a trading participant have to be assigned by said trading participant for the positions of his customers; this has to be done with the help of a procedure which ensures the neutrality of the assignment process.</p> <p>ECC AG informs all the parties involved as well as the clearing members supporting the parties involved about the assignment on the exercise day.</p>

2.7.2 Options on Capesize TC5 Freight Futures

ISIN-Code/ WKN/ Exchange Code/ Name	DE000A1634P0	A1634P	OCPM	Capesize TC5 Freight Option
Underlying	Capesize TC5 Freight Future with the same maturity, at which the delivery period corresponds to the maturity.			
Option Right	<p>The buyer of a call option is entitled to receive respective long positions of the underlying future(s) at the exercise price of the option on the Last Registration Day.</p> <p>The seller of the call option receives respective short positions of the underlying future(s) after the call option is exercised and assigned at the exercise price on the Last Registration Day.</p> <p>The buyer of a put option is entitled to receive respective short positions of the underlying future(s) at the exercise price of the option on the Last Registration Day.</p> <p>The seller of the put option receives respective long positions of the underlying future(s) at the exercise price after the put option is exercised and assigned on the Last Registration Day.</p>			
Option Premium	The buyer of an option contract is obliged to pay the price for the purchase of the right of option (option premium) on the ECC business day following the purchase of the option. If this day is not a USD settlement day at Clearstream Banking SA, the payment takes place on the following ECC business day which is also a USD settlement day at Clearstream Banking SA. The option premium is credited to the seller of the option on the same day.			
Option Style	European style, i.e. the option can only be exercised on the last trading day.			
Tradable Option Series	<p>An option series is the total number of call and put options with the same Underlying, the same exercise price and the same maturity which can be traded in the system.</p> <p>At least three series with different exercise prices can be traded for each maturity; in this context one exercise price is in the money, one exercise price is at the money and one exercise price is out of the money upon their introduction into trading.</p> <p>The management board of the exchange is entitled to change the number of tradable option series at any given time.</p>			

Tradable Maturities	Up to 36 consecutive months
Exercise/Automatic Exercise	<p>The option can only be exercised on the Last Registration Day. Said exercise is carried out by means of an entry into the EEX system between 08:00 a.m. and 06:45 p.m. (Exercise Period) on the Last Registration Day.</p> <p>Options which are in the money in relation to the Final Settlement Price are exercised automatically at the end of the Exercise Period if the trading participant has maintained in the system the desired in the money minimum amount and if the trading participant has not made a deviating entry into the system by that time.</p> <p>Exercises only become effective at 06:45 p.m., until that time they can be changed or deleted at any time.</p>
Strike Price Increments	USD 1
Pricing for Option Premium	In USD per future to the second decimal place.
Minimum Price Fluctuation	USD 0.01 per future
Last Registration Day	<p>Last Registration Day is the last exchange trading of the respective expiration month except for December contracts.</p> <p>The Last Registration Day for December contracts is the exchange trading day, following 24th December.</p>
Expiry Day	Options which have not been exercised expire at 06:45 p.m. CET on the Last Registration Day.
Fulfilment	Options are fulfilled by booking in of the corresponding futures position at the respective exercise price after the option is exercised.
Assignment	<p>If a buyer exercises his right of option, ECC AG assigns a seller of the same option series and of the same type of option (call or put option) to the buyer with the help of a procedure maintaining the neutrality of the assignment process at the end of the post-trading phase on the exercise day. Partial assignments are permissible.</p> <p>All assignments which have been executed for the agent position account of a trading participant have to be assigned by said trading participant for the positions of his customers; this has to be done with the help of a procedure which ensures the neutrality of the assignment process.</p> <p>ECC AG informs all the parties involved as well as the clearing members supporting the parties involved about the assignment on the exercise day.</p>

2.7.3 Options on Panamax TC Freight Futures

ISIN-Code/ WKN/ Exchange Code/ Name	DE000A1634Q8	A1634Q	OPTM	Panamax TC Freight Option
Underlying	Panamax TC Freight Future with the same maturity, at which the delivery period corresponds to the maturity.			
Option Right	<p>The buyer of a call option is entitled to receive respective long positions of the underlying future(s) at the exercise price of the option on the Last Registration Day.</p> <p>The seller of the call option receives respective short positions of the underlying future(s) after the call option is exercised and assigned at the exercise price on the Last Registration Day.</p> <p>The buyer of a put option is entitled to receive respective short positions of the underlying future(s) at the exercise price of the option on the Last Registration Day.</p> <p>The seller of the put option receives respective long positions of the underlying future(s) at the exercise price after the put option is exercised and assigned on the Last Registration Day.</p>			
Option Premium	The buyer of an option contract is obliged to pay the price for the purchase of the right of option (option premium) on the ECC business day following the purchase of the option. If this day is not a USD settlement day at Clearstream Banking SA, the payment takes place on the following ECC business day which is also a USD settlement day at Clearstream Banking SA. The option premium is credited to the seller of the option on the same day.			
Option Style	European style, i.e. the option can only be exercised on the last trading day.			
Tradable Option Series	<p>An option series is the total number of call and put options with the same Underlying, the same exercise price and the same maturity which can be traded in the system.</p> <p>At least three series with different exercise prices can be traded for each maturity; in this context one exercise price is in the money, one exercise price is at the money and one exercise price is out of the money upon their introduction into trading.</p> <p>The management board of the exchange is entitled to change the number of tradable option series at any given time.</p>			

Tradable Maturities	Up to 36 consecutive months
Exercise/Automatic Exercise	<p>The option can only be exercised on the Last Registration Day. Said exercise is carried out by means of an entry into the EEX system between 08:00 a.m. and 06:45 p.m. (Exercise Period) on the Last Registration Day.</p> <p>Options which are in the money in relation to the Final Settlement Price are exercised automatically at the end of the Exercise Period if the trading participant has maintained in the system the desired in the money minimum amount and if the trading participant has not made a deviating entry into the system by that time.</p> <p>Exercises only become effective at 06:45 p.m., until that time they can be changed or deleted at any time.</p>
Strike Price Increments	USD 1
Pricing for Option Premium	In USD per future to the second decimal place.
Minimum Price Fluctuation	USD 0.01 per future
Last Registration Day	<p>Last Registration Day is the last exchange trading of the respective expiration month except for December contracts.</p> <p>The Last Registration Day for December contracts is the exchange trading day, following 24th December.</p>
Expiry Day	Options which have not been exercised expire at 06:45 p.m. CET on the Last Registration Day.
Fulfilment	Options are fulfilled by booking in of the corresponding Futures position at the respective exercise price after the option is exercised.
Assignment	<p>If a buyer exercises his right of option, ECC AG assigns a seller of the same option series and of the same type of option (call or put option) to the buyer with the help of a procedure maintaining the neutrality of the assignment process at the end of the post-trading phase on the exercise day. Partial assignments are permissible.</p> <p>All assignments which have been executed for the agent position account of a trading participant have to be assigned by said trading participant for the positions of his customers; this has to be done with the help of a procedure which ensures the neutrality of the assignment process.</p> <p>ECC AG informs all the parties involved as well as the clearing members supporting the parties involved about the assignment on the exercise day.</p>

2.7.4 Options on Supramax TC Freight Futures

ISIN-Code/ WKN/ Exchange Code/ Name	DE000A1634R6	A1634R	OTSM	Supramax TC Freight Option
Underlying	Supramax TC Freight Future with the same maturity, at which the delivery period corresponds to the maturity.			
Option Right	<p>The buyer of a call option is entitled to receive respective long positions of the underlying future(s) at the exercise price of the option on the Last Registration Day.</p> <p>The seller of the call option receives respective short positions of the underlying future(s) after the call option is exercised and assigned at the exercise price on the Last Registration Day.</p> <p>The buyer of a put option is entitled to receive respective short positions of the underlying future(s) at the exercise price of the option on the Last Registration Day.</p> <p>The seller of the put option receives respective long positions of the underlying future(s) at the exercise price after the put option is exercised and assigned on the Last Registration Day.</p>			
Option Premium	The buyer of an option contract is obliged to pay the price for the purchase of the right of option (option premium) on the ECC business day following the purchase of the option. If this day is not a USD settlement day at Clearstream Banking SA, the payment takes place on the following ECC business day which is also a USD settlement day at Clearstream Banking SA. The option premium is credited to the seller of the option on the same day.			
Option Style	European style, i.e. the option can only be exercised on the last trading day.			
Tradable Option Series	<p>An option series is the total number of call and put options with the same Underlying, the same exercise price and the same maturity which can be traded in the system.</p> <p>At least three series with different exercise prices can be traded for each maturity; in this context one exercise price is in the money, one exercise price is at the money and one exercise price is out of the money upon their introduction into trading.</p> <p>The management board of the exchange is entitled to change the number of tradable option series at any given time.</p>			

Tradable Maturities	Up to 36 consecutive months
Exercise/Automatic Exercise	<p>The option can only be exercised on the Last Registration Day. Said exercise is carried out by means of an entry into the EEX system between 08:00 a.m. and 06:45 p.m. (Exercise Period) on the Last Registration Day.</p> <p>Options which are in the money in relation to the Final Settlement Price are exercised automatically at the end of the Exercise Period if the trading participant has maintained in the system the desired in the money minimum amount and if the trading participant has not made a deviating entry into the system by that time.</p> <p>Exercises only become effective at 06:45 p.m., until that time they can be changed or deleted at any time.</p>
Strike Price Increments	USD 1
Pricing for Option Premium	In USD per future to the second decimal place.
Minimum Price Fluctuation	USD 0.01 per future
Last Registration Day	<p>Last Registration Day is the last exchange trading of the respective expiration month except for December contracts.</p> <p>The Last Registration Day for December contracts is the exchange trading day, following 24th December.</p>
Expiry Day	Options which have not been exercised expire at 06:45 p.m. CET on the Last Registration Day.
Fulfilment	Options are fulfilled by booking in of the corresponding futures position at the respective exercise price after the option is exercised.
Assignment	<p>If a buyer exercises his right of option, ECC AG assigns a seller of the same option series and of the same type of option (call or put option) to the buyer with the help of a procedure maintaining the neutrality of the assignment process at the end of the post-trading phase on the exercise day. Partial assignments are permissible.</p> <p>All assignments which have been executed for the agent position account of a trading participant have to be assigned by said trading participant for the positions of his customers; this has to be done with the help of a procedure which ensures the neutrality of the assignment process.</p> <p>ECC AG informs all the parties involved as well as the clearing members supporting the parties involved about the assignment on the exercise day.</p>

2.7.5 Options on Handysize TC Freight Futures

ISIN-Code/ WKN/ Exchange Code/ Name	DE000A1634S4	A1634S	OHTM	Handysize TC Freight Option
Underlying	Handysize TC Freight Future with the same maturity, at which the delivery period corresponds to the maturity.			
Option Right	<p>The buyer of a call option is entitled to receive respective long positions of the underlying future(s) at the exercise price of the option on the Last Registration Day.</p> <p>The seller of the call option receives respective short positions of the underlying future(s) after the call option is exercised and assigned at the exercise price on the Last Registration Day.</p> <p>The buyer of a put option is entitled to receive respective short positions of the underlying future(s) at the exercise price of the option on the Last Registration Day.</p> <p>The seller of the put option receives respective long positions of the underlying future(s) at the exercise price after the put option is exercised and assigned on the Last Registration Day.</p>			
Option Premium	The buyer of an option contract is obliged to pay the price for the purchase of the right of option (option premium) on the ECC business day following the purchase of the option. If this day is not a USD settlement day at Clearstream Banking SA, the payment takes place on the following ECC business day which is also a USD settlement day at Clearstream Banking SA. The option premium is credited to the seller of the option on the same day.			
Option Style	European style, i.e. the option can only be exercised on the last trading day.			
Tradable Option Series	<p>An option series is the total number of call and put options with the same Underlying, the same exercise price and the same maturity which can be traded in the system.</p> <p>At least three series with different exercise prices can be traded for each maturity; in this context one exercise price is in the money, one exercise price is at the money and one exercise price is out of the money upon their introduction into trading.</p> <p>The management board of the exchange is entitled to change the number of tradable option series at any given time.</p>			

Tradable Maturities	Up to 36 consecutive months
Exercise/Automatic Exercise	<p>The option can only be exercised on the Last Registration Day. Said exercise is carried out by means of an entry into the EEX system between 08:00 a.m. and 06:45 p.m. (Exercise Period) on the Last Registration Day.</p> <p>Options which are in the money in relation to the Final Settlement Price are exercised automatically at the end of the Exercise Period if the trading participant has maintained in the system the desired in the money minimum amount and if the trading participant has not made a deviating entry into the system by that time.</p> <p>Exercises only become effective at 06:45 p.m., until that time they can be changed or deleted at any time.</p>
Strike Price Increments	USD 1
Pricing for Option Premium	In USD per future to the second decimal place.
Minimum Price Fluctuation	USD 0.01 per future
Last Registration Day	<p>Last Registration Day is the last exchange trading of the respective expiration month except for December contracts.</p> <p>The Last Registration Day for December contracts is the exchange trading day, following 24th December.</p>
Expiry Day	Options which have not been exercised expire at 06:45 p.m. CET on the Last Registration Day.
Fulfilment	Options are fulfilled by booking in of the corresponding futures position at the respective exercise price after the option is exercised.
Assignment	<p>If a buyer exercises his right of option, ECC AG assigns a seller of the same option series and of the same type of option (call or put option) to the buyer with the help of a procedure maintaining the neutrality of the assignment process at the end of the post-trading phase on the exercise day. Partial assignments are permissible.</p> <p>All assignments which have been executed for the agent position account of a trading participant have to be assigned by said trading participant for the positions of his customers; this has to be done with the help of a procedure which ensures the neutrality of the assignment process.</p> <p>ECC AG informs all the parties involved as well as the clearing members supporting the parties involved about the assignment on the exercise day.</p>

2.8 Financial Futures on Fertilisers

2.8.1 Urea (Granular) fob NOLA Future (The Fertilizer Index)

ISIN Code/ WKN/ Exchange Code/ Name	DE000A11RCW6	A11RCW	URNM	Urea (Granular) fob NOLA Future (The Fertilizer Index)
Underlying	<p>The monthly price index for granular urea fob New Orleans, Louisiana (Index).</p> <p>The Index is the arithmetic average of all weekly values of the price index "Urea (gran) fob barge NOLA" of the respective month as published in the Fertilizer Index* report by Argus, CRU and Fertecon each Friday**.</p> <p>** The last Friday in December will be excluded as there is no publication of an index in the week prior to New Year.</p>			
Contract Series	Up to 20 consecutive months			
Contract Volume	25 short tons (st)			
Pricing	In USD per st to the second decimal place after the point			
Minimum Price Fluctuation	0.01 USD per st			
Last Registration Day	<p>The Last Registration Day is the last Friday of the respective delivery month except for December contracts.</p> <p>The Last Registration Day for December contracts is the penultimate Friday of December. If this is not an exchange trading day, the Last Registration Day is the preceding exchange trading day.</p>			
Fulfilment	<p>Fulfilment takes place by cash settlement on the ECC business day following the Last Registration Day based on the difference between the settlement price of the exchange day before the last trading day and the Index. If this day is not a USD settlement day at Clearstream Banking SA, cash settlement takes place on the following ECC business day.</p> <p>The seller (buyer) is obliged to settle in cash the difference between the settlement price of the previous ECC business day and the higher (lower) Index.</p> <p>Fulfilment is carried out between the clearing members and ECC AG. Cash settlement with non-clearing members and their own clients is the responsibility of the clearing member in charge; the cash settlement between non-clearing members and their clients is the responsibility of the non-clearing members concerned.</p>			

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2.8.2 Urea (Granular) fob Egypt Future (The Fertilizer Index)

ISIN Code/ WKN/ Exchange Code/ Name	DE000A11RC04	A11RC0	UREM	Urea (Granular) fob Egypt Future (The Fertilizer Index)
Underlying	<p>The monthly price index for granular urea fob Egypt (Index). The Index is the arithmetic average of all weekly values of the price index “Urea (gran) fob bulk Egypt” of the respective month as published in the Fertilizer Index* report by Argus, CRU and Fertecon each Friday**.</p> <p>** The last Friday in December will be excluded as there is no publication of an index in the week prior to New Year.</p>			
Contract Series	Up to 20 consecutive months			
Contract Volume	25 metric tonnes (t)			
Pricing	In USD per t to the second decimal place after the point			
Minimum Price Fluctuation	0.01 USD per t			
Last Registration Day	<p>The Last Registration Day is the last Friday of the respective delivery month except for December contracts.</p> <p>The Last Registration Day for December contracts is the penultimate Friday of December. If this is not an exchange trading day, the Last Registration Day is the preceding exchange trading day.</p>			
Fulfilment	<p>Fulfilment takes place by cash settlement on the ECC business day following the Last Registration Day based on the difference between the settlement price of the exchange day before the last trading day and the Index. If this day is not a USD settlement day at Clearstream Banking SA, cash settlement takes place on the following ECC business day.</p> <p>The seller (buyer) is obliged to settle in cash the difference between the settlement price of the previous ECC business day and the higher (lower) Index.</p> <p>Fulfilment is carried out between the clearing members and ECC AG. Cash settlement with non-clearing members and their own clients is the responsibility of the clearing member in charge; the cash settlement between non-clearing members and their clients is the responsibility of the non-clearing members concerned.</p>			

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2.8.3 Urea (Prilled) fob Yuzhnyy Future (The Fertilizer Index)

ISIN Code/ WKN/ Exchange Code/ Name	DE000A11RCZ9	A11RCZ	URYM	Urea (Prilled) fob Yuzhnyy Future (The Fertilizer Index)
Underlying	<p>The monthly price index for prilled urea fob Yuzhnyy (Index). The Index is the arithmetic average of all weekly values of the price index “Urea (prill) fob bulk Yuzhnyy” of the respective month as published in the Fertilizer Index* report by Argus, CRU and Fertecon each Friday**.</p> <p>** The last Friday in December will be excluded as there is no publication of an index in the week prior to New Year.</p>			
Contract Series	Up to 20 consecutive months			
Contract Volume	25 metric tonnes (t)			
Pricing	In USD per t to the second decimal place after the point			
Minimum Price Fluctuation	0.01 USD per t			
Last Registration Day	<p>The Last Registration Day is the last Friday of the respective delivery month except for December contracts.</p> <p>The Last Registration Day for December contracts is the penultimate Friday of December. If this is not an exchange trading day, the Last Registration Day is the preceding exchange trading day.</p>			
Fulfilment	<p>Fulfilment takes place by cash settlement on the ECC business day following the Last Registration Day based on the difference between the settlement price of the exchange day before the last trading day and the Index. If this day is not a USD settlement day at Clearstream Banking SA, cash settlement takes place on the following ECC business day.</p> <p>The seller (buyer) is obliged to settle in cash the difference between the settlement price of the previous ECC business day and the higher (lower) Index.</p> <p>Fulfilment is carried out between the clearing members and ECC AG. Cash settlement with non-clearing members and their own clients is the responsibility of the clearing member in charge; the cash settlement between non-clearing members and their clients is the responsibility of the non-clearing members concerned.</p>			

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2.8.4 DAP fob NOLA Future (The Fertilizer Index)

ISIN Code/ WKN/ Exchange Code/ Name	DE000A11RCX4	A11RCX	DANM	DAP fob NOLA Future (The Fertilizer Index)
Underlying	<p>The monthly price index for Di-Ammonium Phosphate (DAP) fob New Orleans, Louisiana (Index).</p> <p>The Index is the arithmetic average of all weekly values of the price index “DAP fob barge NOLA” of the respective month as published in the Fertilizer Index* report by Argus, CRU and Fertecon each Friday**.</p> <p>** The last Friday in December will be excluded as there is no publication of an index in the week prior to New Year.</p>			
Contract Series	Up to 20 consecutive months			
Contract Volume	25 short tons (st)			
Pricing	In USD per st to the second decimal place after the point			
Minimum Price Fluctuation	0.01 USD per st			
Last Registration Day	<p>The Last Registration Day is the last Friday of the respective delivery month except for December contracts.</p> <p>The Last Registration Day for December contracts is the penultimate Friday of December. If this is not an exchange trading day, the Last Registration Day is the preceding exchange trading day.</p>			
Fulfilment	<p>Fulfilment takes place by cash settlement on the ECC business day following the Last Registration Day based on the difference between the settlement price of the exchange day before the last trading day and the Index. If this day is not a USD settlement day at Clearstream Banking SA, cash settlement takes place on the following ECC business day.</p> <p>The seller (buyer) is obliged to settle in cash the difference between the settlement price of the previous ECC business day and the higher (lower) Index.</p> <p>Fulfilment is carried out between the clearing members and ECC AG. Cash settlement with non-clearing members and their own clients is the responsibility of the clearing member in charge; the cash settlement between non-clearing members and their clients is the responsibility of the non-clearing members concerned.</p>			

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2.8.5 DAP fob Tampa Future (The Fertilizer Index)

ISIN Code/ WKN/ Exchange Code/ Name	DE000A11RC12	A11RC1	DATM	DAP fob Tampa Future (The Fertilizer Index)
Underlying	<p>The monthly price index for Di-Ammonium Phosphate (DAP) fob Tampa, Florida (Index).</p> <p>The Index is the arithmetic average of all weekly values of the price index "DAP fob bulk Tampa" of the respective month as published in the Fertilizer Index* report by Argus, CRU and Fertecon each Friday**.</p> <p>** The last Friday in December will be excluded as there is no publication of an index in the week prior to New Year.</p>			
Contract Series	Up to 20 consecutive months			
Contract Volume	25 metric tonnes (t)			
Pricing	In USD per t to the second decimal place after the point			
Minimum Price Fluctuation	0.01 USD per t			
Last Registration Day	<p>The Last Registration Day is the last Friday of the respective delivery month except for December contracts.</p> <p>The Last Registration Day for December contracts is the penultimate Friday of December. If this is not an exchange trading day, the Last Registration Day is the preceding exchange trading day.</p>			
Fulfilment	<p>Fulfilment takes place by cash settlement on the ECC business day following the Last Registration Day based on the difference between the settlement price of the exchange day before the last trading day and the Index. If this day is not a USD settlement day at Clearstream Banking SA, cash settlement takes place on the following ECC business day.</p> <p>The seller (buyer) is obliged to settle in cash the difference between the settlement price of the previous ECC business day and the higher (lower) Index.</p> <p>Fulfilment is carried out between the clearing members and ECC AG. Cash settlement with non-clearing members and their own clients is the responsibility of the clearing member in charge; the cash settlement between non-clearing members and their clients is the responsibility of the non-clearing members concerned.</p>			

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2.8.6 UAN fob NOLA Future (The Fertilizer Index)

ISIN Code/ WKN/ Exchange Code/ Name	DE000A11RCY2	A11RCY	UANM	UAN fob NOLA Future (The Fertilizer Index)
Underlying	<p>The monthly price index for Urea Ammonium Nitrate (32%N) fob New Orleans, Louisiana (Index).</p> <p>The Index is the arithmetic average of all weekly values of the price index "UAN (32% N) fob barge NOLA" of the respective month as published in the Fertilizer Index* report by Argus, CRU and Fertecon each Friday**.</p> <p>** The last Friday in December will be excluded as there is no publication of an index in the week prior to New Year.</p>			
Contract Series	Up to 20 consecutive months			
Contract Volume	25 short tons (st)			
Pricing	In USD per st to the second decimal place after the point			
Minimum Price Fluctuation	0.01 USD per st			
Last Registration Day	<p>The Last Registration Day is the last Friday of the respective delivery month except for December contracts.</p> <p>The Last Registration Day for December contracts is the penultimate Friday of December. If this is not an exchange trading day, the Last Registration Day is the preceding exchange trading day.</p>			
Fulfilment	<p>Fulfilment takes place by cash settlement on the ECC business day following the Last Registration Day based on the difference between the settlement price of the exchange day before the last trading day and the Index. If this day is not a USD settlement day at Clearstream Banking SA, cash settlement takes place on the following ECC business day.</p> <p>The seller (buyer) is obliged to settle in cash the difference between the settlement price of the previous ECC business day and the higher (lower) Index.</p> <p>Fulfilment is carried out between the clearing members and ECC AG. Cash settlement with non-clearing members and their own clients is the responsibility of the clearing member in charge; the cash settlement between non-clearing members and their clients is the responsibility of the non-clearing members concerned.</p>			

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2.9 Financial Futures on Iron Ore

2.9.1 Iron Ore 62% Fe Tianjin Futures

ISIN Code/ WKN/ Exchange Code/ Name	DE000A11RCV8	A11RCV	IOTM	Iron Ore 62% Fe Tianjin Future
Underlying	<p>The monthly price index for Iron Ore 62% Fe CFR Tianjin (Index). The Index is the arithmetic average of all daily price assessments for “TSI Iron Ore Fines 62% Fe, CFR Tianjin Port”* of the respective month as published by TSI - The Steel Index - in the “Iron Ore Daily Edition” in Section “TSI Benchmark Iron Ore Prices”.</p>			
Contract Series	Up to 36 consecutive months			
Contract Volume	100 metric tonnes (t)			
Min Block Size	5 lots (equals 500 t) or a multiple thereof			
Pricing	In USD per t to the second decimal place after the point			
Minimum Price Fluctuation	0.01 USD per t			
Last Registration Day	Last Registration Day is the last exchange trading day of the respective delivery month.			
Fulfilment	<p>Fulfilment takes place by cash settlement on the ECC business day following the Last Registration Day based on the difference between the settlement price of the exchange day before the last trading day and the Index. If this day is not a USD settlement day at Clearstream Banking SA, cash settlement takes place on the following ECC business day which is also a USD settlement day at Clearstream Banking SA.</p> <p>The seller (buyer) is obliged to settle in cash the difference between the settlement price of the previous ECC business day and the higher (lower) Index.</p> <p>Fulfilment is carried out between the clearing members and ECC AG. Cash settlement with non-clearing members and their own clients is the responsibility of the clearing member in charge; the cash settlement between non-clearing members and their clients is the responsibility of the non-clearing members concerned.</p>			

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EEX Code of Conduct

The English version is for informal use only. The German version is legally binding.

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1. Preamble

- (1) In the framework of its right to self-management EEX sets the following rules of conduct for itself through the exchange council in addition to the existing provisions.
- (2) This EEX Code of Conduct is based on the fundamental principle of the need for the joint responsibility of EEX and its trading participants for a fair and transparent trading at the markets of EEX.
- (3) These rules make an active contribution to the requirements of the further developing internationalisation of commodities trading and aim at complying with the market's need for a uniform and internationally harmonised control system.
- (4) These rules are intended to strengthen the confidence which the market and the public have in the markets of EEX, its pricing mechanisms and the reference character of the exchange prices.

2. Scope of Application

§ 1 Scope of Application

- (1) The EEX Code of Conduct is applicable to the market places and EEX itself, all trading participants and exchange traders admitted to trading on the markets of EEX as well as all other persons who are allowed to use the exchange and its facilities. This EEX Code of Conduct therefore applies particularly to Non-Trading Brokers and the persons entitled to use the Trade Registration functionality. Any obligations that is determined to apply to trading participants or exchange traders in the following, shall apply as well to Non-Trading Brokers and the persons entitled to use the Trade Registration functionality.
- (2) Furthermore, § 8 para 2 shall be binding for those persons and companies involved in the determination of the settlement price.
- (3) The scope of this EEX Code of Conduct comprises all acts and conduct, including such acts and conducts that are carried out outside of the markets of EEX that could compromise the integrity of EEX, trading at EEX, and the market prices of EEX.

§ 2 Legal Classification

- (1) The EEX Code of Conduct is part of the rules and regulations of EEX.
- (2) The EEX Code of Conduct does not release the trading participants from the obligation to comply with statutory rules and further specific provisions applicable on exchanges, such as the exchange rules and the trading conditions of EEX.

3. Rules of Conduct for Exchange Trading

3.1. Principle

§ 3 Integrity of the Markets of EEX

- (1) In order to safeguard the integrity of the markets of EEX, particularly to ensure a free, transparent and fair trading on the markets of EEX and notwithstanding the corresponding provisions of REMIT¹ und MAR², any form of manipulation of exchange trading at EEX and the exchange prices and the involvement in insider dealings as well as the use of the exchange and its facilities to commit other economic crimes or tax offences are banned.
- (2) The ban according to paragraph 1 and the following provisions also comprise the respective attempt to engage in the banned conduct.
- (3) The trading participants and exchange traders commit to fairness towards the EEX and the other trading participants. They shall only conclude transactions on EEX in compliance with the customary trade practices and the principles of professional exchange traders.

3.2. Ban of Market Manipulation

§ 4 Definition

- (1) The term “market manipulation” comprises without limitation particularly the following acts and conducts:
 - entering of orders without trading interests (fictitious orders),
 - the conclusion of transactions suitable for a manipulation of the exchange prices (misleading trading transactions),
 - collusions or the collusive co-operation of trading participants or exchange traders among each other or with third parties,
 - influencing of settlement prices so that these do not reflect the fair market value.
 - publishing or disseminating news via the facilities of EEX or outside EEX of which the trading participants or the persons acting on behalf of them know or should have known that they are false or misleading and which are likely to give, false or misleading signals as to the supply of, demand for or the price of the products traded at the markets of EEX Group.

¹ Regulation (EU) No. 1227/2011 of the European Parliament and of the Council of 25th October 2011 on wholesale energy market integrity and transparency in its respective valid version.

² Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC in its respective valid version.

§ 5 Ban on Fictitious Orders

It is forbidden to enter orders into the trading systems of EEX which are not intended to lead to the conclusion of a transaction (fictitious orders).

§ 6 Ban on Misleading Transactions

The conscious conclusion of transactions which are suitable for setting incorrect or misleading signals regarding the supply or the demand for the products traded on EEX or establishing an artificial price level shall be banned.

§ 7 Collusions and Collusive Behaviour

- (1) Any collusive co-operation of trading participants or exchange traders among each other or with third parties which is suitable for influencing trading on EEX shall be banned.
- (2) The conclusion of collusive transactions and internal transactions concluded by trading participants shall not be permitted unless these are expressly permissible as an exception according to the more detailed provisions of the Rules and Regulations of EEX. Sentence 1 shall be applied accordingly with regard to other behaviour which constitutes a circumvention of this provision.

§ 8 Establishment of Settlement Prices

- (1) Any influencing of the settlement price and, in particular, any attempts at achieving a deviation of the settlement price from the fair market value (fair values) by means of the conclusion of transactions or by entering orders shall be banned.
- (2) All participants in the chief trader procedure in which the fair market value (fair values) is established by means of a survey by EEX shall convey their assessment free from any self-interest and to the best of their knowledge and belief.

3.3. Requirement for Transparency and Ban of Insider Dealings

§ 9 Requirement of Transparency

The trading participants support EEX in ensuring and further developing the transparency of the exchange and the information of the public beyond the pure exchange trading.

§ 10 Definition of Inside Information

“Inside information” is any information of a precise nature, which has not been made public, relating, directly or indirectly to a product traded on the markets of EEX Group or that concerns a trading participant in relation to such a product and which, if it were made public, would be likely to have a significant effect on the prices of that product or associated products or products referring thereto. This comprises also the respective information about announced but not yet executed buy or sell orders of clients.

§ 11 Ban of Insider Trading

Trading participants and exchange traders are prohibited to directly or indirectly buy or sell a product traded at EEX for own account or the account of a third party, by using insider information. This includes cancellations or modifications of an order, if the order has been placed before the inside information has been acquired. This also includes the transmission, modification or withdrawal of a bid with regards to primary auctions of emission allowances or any products referring thereto.

§ 12 Ban of Dissemination and Recommendation

- (1) Trading participants or their exchange traders are forbidden to disseminate inside information to third parties if they are not authorized by law to do so.
- (2) Similarly, a trading participant or its exchange traders are forbidden to recommend other persons or to incite other persons based on inside information to buy or sell products the information relates to or to cancel or modify orders that have already been placed.

§ 13 Exemptions

The bans according to Articles 11 and 12 do not apply as far as one of the exemptions of Article 3 paragraphs 3 or 4 REMIT apply to the concrete act.

3.4. Further Economic Crimes and Tax Offences

§ 14 Ban of Use of Facilities of EEX

Without prejudice to the criminal-law and tax-law provisions, trading participants and exchange traders are forbidden to use the facilities of EEX or the markets of EEX Group for the purpose of committing other economic crimes or tax offences.

4. Conduct Towards the Public

§ 15 Principle

- (1) In as far as a trading participant makes statements regarding its participation in the exchange towards the public, said participant shall be obliged to make such statements truthfully.
- (2) Moreover, trading participants shall be obliged to refrain from bringing EEX and the companies operating the exchange as well as the other markets of EEX Group into disrepute by consciously false statements.

5. Internal Regulation and Organisation

§ 16 Principle

The trading participant shall be obliged to establish internal regulations for itself in accordance with its personal circumstances and the extent of its business activities and to provide an organisational structure ensuring a proper participation in exchange trading and the settlement of exchange transactions.

§ 17 Organisation

- (1) The trading participant shall be obliged to organise its business operations in such a way that it fulfils all the legal and regulatory requirements for energy trading.
- (2) The adequate organisation of the trading participant shall comprise, in particular, the following – under consideration of the personal circumstances and the extent of the business activities of the trading participant:
 - that the trading participant has an internally established organisational structure,
 - that the scope of duties of the employees is clearly defined,
 - that the trading activities are monitored effectively internally and
 - that effective risk management with regulations and control mechanisms for the basic risks from participation in trading on the markets of EEX is available.

§ 18 Qualification of the Traders

The trading participants shall ensure that their traders are sufficiently qualified and enjoined to comply with the rules of the exchange, including this EEX Code of Conduct.

6. The Trading Participant's Conduct towards its Clients

§ 19 Principle and Scope of Application

- (1) The provisions of this section apply to the trading participants and exchange traders who carry out their clients' orders directly or indirectly on EEX.
- (2) The trading participants are obliged to treat their clients with the required professionalism and fairness and to resolve conflicts with client's interests adequately.

§ 20 General Rules of Conduct

- (1) Trading participants shall, in particular, be obliged
 - to provide their services in connection with trading on EEX with the required expert knowledge, care and conscientiousness in the interest of their clients at all times,
 - to endeavour to avoid conflicts of interests and to clearly explain the general type and origin of conflicts of interest to the clients prior to the execution of transactions for clients.
- (2) All the information which trading participants make accessible to their clients has to be honest, unmistakable and such information must not be misleading.

§ 21 Processing of Orders

Upon the execution of client orders a trading participant shall take precautions safeguarding that

- client orders are executed forthwith, in particular, independently from other client orders and own interests of the trading participants or forwarded to third parties,
- comparable client orders are executed or forwarded in accordance with the sequence in which they were received,
- the interests of all the clients involved are preserved in combining client orders,
- any misuse of information in connection with client orders which have not yet been carried out is prevented.

7. Instructions, Information and Penalties

§ 22 Instructions

The trading participants and exchange traders licensed to trade on the exchange are obliged to comply with the instructions and rules by the exchange supervisory authority, the management board of the exchange and the market surveillance department.

§ 23 Information Rights

- (1) The exchange supervisory authority and the market surveillance department are entitled to request information and the submission of documents from any trading participant and to carry out inspections in as far as this is required for the performance of their tasks.
- (2) The exchange supervisory authority and the market surveillance department can request information from everyone, they can also request the submission of documents and the surrender of copies, summon and interview persons in case there are indications substantiating the assumption that provisions or instructions under exchange law are violated or that there are other grievances which might affect the proper execution of trading on the exchange or the settlement of exchange transactions.
- (3) In addition to this, the statutory provisions and further specific provisions applicable on exchanges shall apply.

§ 24 Sanctions

- (1) In case trading participants and exchange traders licensed to trade on the exchange violate existing rules, fail to comply with instructions by the management board of the exchange or the request for information by the market surveillance department or the exchange supervisory authority, they can be excluded from trading on the exchange in its entirety or for certain partial markets or products by the management board of the exchange either temporarily or permanently in accordance with the more detailed provisions in the exchange rules. The same applies in the event, that supervisory or criminal prosecution authorities detect and inflict a penalty for a trading participant's or exchange trader's infringement of exchange law or capital markets law provisions.
- (2) Further, cases that fall within the scope of paragraph 1 may be filed with the Sanctions Committee. The Sanctions Committee has the competences to impose the trading participants and exchange traders with sanctions as stipulated in Section 22 of the German Exchange Act (*Börsengesetz*) and the Saxon Exchange Act Execution Ordinance³ (*SächsBörsDVO*) in their respective valid version.
- (3) This provision does not exclude sanctions on account of other provisions and/or by other authorities.

³ Ordinance by the Saxon State Ministry of Economic Affairs, Labour and Transport regarding the Execution of Exchange Law of 9 February 2012.

8. Final Provisions

§ 25 Entry into Force

The EEX Code of Conduct as well as any amendments thereto shall enter into force on the day after its publication unless a different time is provided for.



Implementation Regulation for the Order Transaction Ratio

The English version is for informal use only. The
German version is legally binding

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2. Preliminary note

According to Sect. 26a which has been inserted into the Exchange Act by the High Frequency Trading Act, Trading participants are obliged to maintain an adequate ratio between their order entries, order changes, and order deletions and their actually executed transactions (Order Transaction Ratio). EEX has to enact more detailed provisions regarding an adequate Order Transaction Ratio.

Section 39 of the Exchange Rules empowers the Management Board of EEX to stipulate an adequate Order Transaction Ratio considering the liquidity and volatility of the respective market including special situations of the order book and the means of order entry (manually or electronically).

Without prejudice to Sect. 39 of the Exchange Rules the Management Board of the Exchange hereby exercises this right by enacting this Implementation Regulation concretizing the adequate Order Transaction Ratio to be maintained by the Trading participants of EEX for financial instruments tradable at the respective derivatives markets of EEX and certain classes of these financial instruments, respectively.

3. Scope of Application

The Implementation Regulation shall apply to all Trading participants of EEX according to the following provisions and for all products tradable at the derivatives markets of EEX.

The provisions of Sect. 4 of this Implementation Regulation (Order Transaction Ratio) do not apply to entries made within the scope of auctions and for undertakings whose order entries serve as fulfillment of quoting obligations. Entries conducted and trades concluded via the Trade Registration Functionality of EEX are not considered.

4. Order Transaction Ratio

4.1. Determination of the Order Transaction Ratio

The Order Transaction Ratio (OTR) will be determined for each Trading participant on a monthly basis separately for each instrument tradable at EEX (product). The OTR of a Trading participant is adequate, if it does not exceed the allowed quantity of ordered contracts in a product (order times quantity) according to Sect. 4.2 for each executed transaction in a product within one month, whereas the OTR is also valid if no transaction in the respective product has been executed at all. The number of ordered contracts per product and month is calculated according to the following rules:

- Entry and Deletion of an order, respectively:
 - in each case the number of contracts ordered in the respective product
- Change of an order:
 - the number of contracts ordered in the respective product times two
- Entry of combined orders:
 - the number of contracts ordered in the respective product times two or times the number of orders, respectively, if all legs of the combined order relate to the same commodity or
 - the number of ordered contracts in the respective product per leg per commodity
- Quotes: two entries
- Measures conducted by the trading systems, e.g. deletion of orders, are not taken into consideration.

4.2. Parameters of the Order Transaction Ratio

Market segments	Products	OTR (Ratio of the quantity of ordered contracts to executed contracts)
Derivatives market	Power	20,000
	Emission Rights	10,000
	Coal	5,000
	Guarantees of Origin	5,000
	Other Products	5,000

4.3. Order Transaction Ratio due to short-term risks for proper exchange trading

Without prejudice to provisions 4.1 and 4.2 the Management Board of the Exchange reserves the right to adjust the instrument groups and the respective parameters of the OTR accordingly to mitigate any short-term risks for the orderly exchange trading that might occur.

These changes become effective immediately after a corresponding customer information has been sent out.

5. Final provisions

5.1. Changes to this Implementation Regulation

Without prejudice to provision 4.3 of this Implementation Regulation, changes to this Implementation Regulation become effective as of the beginning of the first calendar day of the calendar month following the date the amended version of this Implementation Regulation has been released on the EEX website and a corresponding Customer Information has been sent.

5.2. Entry into Force

This Implementation Regulation comes into force at the beginning of the first calendar day of the calendar month following the date this Implementation Regulation has been released and a corresponding Customer Information has been sent.



Mistrade Regeln
(Durchführungsbestimmung zu § 10
der Bedingungen für den Handel)



*Mistrade Rules
(Implementation Regulation for § 10
of the Trading Conditions)*

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2. Allgemeine Bestimmungen / General Provisions

2.1. Geltungsbereich / Scope of Application

Die vorliegende Durchführungsbestimmung regelt – unbeschadet der Regelung in § 9 der Handelsbedingungen – die Einzelheiten der Aufhebung von Geschäften und Aufträgen an den Spotmärkten der European Energy Exchange (EEX) sowie an den Terminmärkten der EEX durch die Geschäftsführung nach Maßgabe des § 10 der Bedingungen für den Handel an der EEX.

This implementation regulation specifies irrespective of the validity of § 9 of the Trading Conditions the details of the cancellation of transactions on the Spot Markets and the Derivatives Markets of the European Energy Exchange (EEX) by the Board of Management pursuant to § 10 of the Trading Conditions for the European Energy Exchange.

2.2. Aufhebung eines Auftrags von Amts wegen / Cancellation of Orders ex officio

Die Geschäftsführung kann einen Auftrag von Amts wegen insbesondere dann aufheben, wenn sie Kenntnis von einem Auftrag erlangt, welcher im Fall seiner Ausführung die Voraussetzungen eines Mistrades nach Abschnitt 3.1 erfüllen würde oder technisch bedingt ist, und der Handelsteilnehmer, der den Auftrag in das System der EEX eingegeben hat, nicht erreichbar ist oder keinen Zugang zu den technischen Systemen hat.

The Board of Management may cancel a transaction ex officio in particular if it obtains knowledge of an order that in case of its execution would meet the requirements for a mistrade according to 3.1 or it is caused by technical problems and the Trading Participant which has entered the order into the EEX system is not available or has no access to the systems.

2.3. Aufhebung eines Geschäftes von Amts wegen / Cancellation of Transactions ex officio

Die Geschäftsführung kann ein Geschäft von Amts wegen insbesondere dann aufheben, wenn eine Einwendung nicht geltend gemacht wurde und die Voraussetzungen eines Mistrades nach Abschnitt 3.1 vorliegen oder technisch bedingt ist und der Handelsteilnehmer keinen Zugang zu den technischen Systemen hat..

The Board of Management may cancel a transaction ex officio in particular if a request to cancel is not submitted and the requirements of a mistrade according to 3.1 are met or it is caused by technical problems and the Trading Participant has no access to the systems..

2.4. Bestätigung, Veröffentlichung von Preisberichtigungen / Confirmation, Publication of Price Adjustments

Die Geschäftsführung übersendet den Parteien des aufgehobenen Geschäfts eine Bestätigung, dass das betreffende Geschäft nach § 9 bzw. § 10 der Bedingungen für den Handel an der EEX in Verbindung mit dieser Durchführungsbestimmung von der Geschäftsführung aufgehoben wurde.

Die Geschäftsführung veröffentlicht erforderliche Preisberichtigungen mittels elektronischer Medien. Art und Umfang der Veröffentlichung bestimmen die Geschäftsführung.

The parties to the cancelled transaction will receive a confirmation transmitted by the Board of Management on the cancellation of the respective transaction executed by the Board of Management pursuant to Sections 9 and 10 of the Trading Conditions, respectively, in conjunction with this Implementation Regulation.

The Board of Management publishes the necessary price adjustments via electronic media. The Board of Management determines the extent and manner of such publications.

2.5. **Weitergehende Rechte / Further Rights**

Die Geltendmachung weitergehender Rechte zwischen den Parteien des Geschäfts bleibt unberührt.

The assertion of further rights between the parties of the transactions shall remain unaffected.

2.6. **Vertretung der Geschäftsführung / Representation of the Board of Management**

Die Geschäftsführung wird im Rahmen dieser Durchführungsbestimmung durch die Marktsteuerung der EEX vertreten.

Within the scope of this Implementation Regulation the Board of Management is represented by the EEX Market Supervision.

3. Besondere Bestimmungen für Mistrades / *Regulations for Mistrades*

3.1. Anwendungsbereich der Mistrade Regeln / *Scope of application of mistrade rules*

Die Vorschriften dieses 3. Abschnittes finden nur auf Geschäfte und Aufträge Anwendung, für die Mistraderegelungen gelten.

The rules of chapter 3 shall only apply to transactions and orders for which the mistrade function is available..

3.2. Voraussetzungen für die Aufhebung eines Geschäfts / *Prerequisites for the Cancellation of a Transaction*

(1) Die Geschäftsführung wird ein Geschäft zur Gewährleistung geordneter und fairer Marktverhältnisse aufheben, wenn

- ein Fehler im technischen System der EEX vorliegt oder
- ein objektiv erkennbarer, grober Irrtum eines Handelsteilnehmers bei der Eingabe eines Auftrags oder eines Quotes in das System der EEX (Fehleingabe) vorliegt und die Einwendung form- und fristgemäß geltend gemacht wird. Betrifft die Fehleingabe den Preis (Mistrade), muss der Preis des Geschäfts erheblich vom Referenzpreis bzw. von den fairen Marktverhältnissen abweichen.

(1) The Board of Management shall cancel and remove transactions from the electronic trading system in order to ensure orderly and fair market conditions, if

- *A technical fault occurs in the EEX system, or*
- *due to an elementary and objective observable mistake of an Trading Participant when entering the price of an order or quote into the EEX system (erroneous entry) and if the price of the transaction significantly differs from the reference price respective the fair market conditions and the objection is asserted in time and in proper form.*

(2) Ein Antrag auf Aufhebung von Geschäften, die in einer Auktion an den Spotmärkten der EEX geschlossen wurden, wegen einer Fehleingabe ist ausgeschlossen.

(2) A request for cancellation of transactions, which were executed in an auction at the Spot Markets of the EEX, because of an incorrect input is impossible.

3.3. Ermittlung des Referenzpreises / *Determination of the Reference Price*

Der Referenzpreis bestimmt sich nach den folgenden Regelungen:

- Der Referenzpreis entspricht grundsätzlich dem Preis des letzten unmittelbar vor der Fehleingabe zustande gekommenen Geschäftes.
- Ist ein Referenzpreis nach der vorstehenden Regelung nicht zu ermitteln oder entspricht der ermittelte Referenzpreis nicht den fairen Marktverhältnissen, bestimmt die

Geschäftsführung den Referenzpreis. Hierzu kann die Geschäftsführung aus dem Kreis der Handelsteilnehmer, die nicht an dem Geschäft beteiligt sind, drei fachkundige Personen, insbesondere Chefhändler, auswählen. Diese haben jeweils einen Marktpreis für das betreffende Geschäft zu ermitteln, wobei der Durchschnitt dieser Preise dann den Referenzpreis bildet.

The reference price shall be determined in accordance with the following provisions:

- *The reference price shall generally equal the price of the last transaction concluded directly before the erroneous entry.*
- *If a reference price cannot be determined according to the foregoing provision, or if any doubt exists as to whether the reference price determined is not in line with fair market conditions, the Board of Management shall determine a reference price. For this, the Board of Management shall select three competent persons (in particular chief traders) from among traders who are not involved in the transaction, each of whom shall indicate a market price for the transaction in question; the average of these three prices shall serve as the reference price.*

3.4. Verfahren zur Feststellung des Mistrades / Procedure of Determination of Mistrade

Die Börsengeschäftsführung entscheidet, ob ein Mistrade vorliegt. Ein Mistrade ist insbesondere gegeben, wenn der Preis des Geschäftes erheblich vom Referenzpreis bzw. den fairen Marktverhältnissen abweicht. Sie verneint die erhebliche Abweichung in der Regel, wenn der Preis des Geschäftes innerhalb einer Spanne liegt, die der für diesen Kontrakt festgelegten Mistrade-Spanne um den Referenzpreis entspricht. Die jeweils anzuwendende Mistrade-Spanne ist abhängig von der aktuellen Marktsituation. So ist für die Marktsituationen normal, fast und extended-fast je eine Mistrade-Spanne definiert. Die Mistrade-Spannen für den jeweiligen Kontrakt werden auf der EEX-Website, die aktuelle Marktsituation wird im Handelssystem und auf der EEX-Website veröffentlicht. Weiterhin kann die Börsengeschäftsführung in ihre Entscheidung auch die Einschätzung des Marktes einfließen lassen und kann dann einen Mistrade bejahen, wenn mindestens drei von maximal fünf befragten Händlern, die nicht an diesem Geschäft beteiligt sind, die Abweichung des Ausführungspreises vom Referenzpreis bzw. von dem von ihnen jeweils genannten Marktpreis als erheblich ansehen.

The Board of Management decides about a Mistrade. A Mistrade is inter alia if the price of the transaction in question deviates from the reference price respectively of the fair market conditions. As a rule it rejects the significant deviation if the price of the transaction is set in within a range, which corresponds to the Mistrade Range set around the reference price. The respectively applicable Mistrade Range depends on the current market situation. Thus, three Mistrade Ranges are defined, one for each market situation (normal, fast and extended fast market). The Mistrade Range for the particular contract as well as the market situation will be published on the EEX website.

The Board of Management might consider the evaluation of the market into its decision and approve the Mistrade, if a minimum of 3 and a maximum of 5 questioned traders, not involved in the transaction, accept the deviation of the trade price with regards to the Reference Price respectively their agreed market price if it is considered to be accepted by them.

3.5. **Form und Frist der Geltendmachung / Form and Time Limit of Assertion**

- (1) Die Einwendung kann nur von der Partei des beanstandeten Geschäfts geltend gemacht werden, die die Fehleingabe verursacht hat. Die Einwendung ist unverzüglich gegenüber der Geschäftsführung, vertreten durch die Marktsteuerung der EEX, per Telefon (+49 (0) 341-2156-222) zu erheben.
- (2) Die Einwendung gilt als unverzüglich erhoben, wenn sie binnen 5 Minuten, bei Agrarprodukten binnen 30 Minuten nach Geschäftsabschluss erfolgt.

(1) The assertion of a Mistrade may only be made by the party involved in the relevant transaction who entered the mistrade. An assertion shall be made without delay after execution by contacting the Board of Management, represented by EEX Market Supervision (Tel.: +49 (0) 341 – 2156 – 222) by telephone.

(2) The assertion is made without delay, if it is disclosed within 5 minutes or in case of agriculture derivatives transactions within 30 minutes after execution of the transaction.

3.6. **Aufhebung / Cancellation**

- (1) Die Aufhebung eines Auftrags erfolgt durch die Herausnahme des Auftrags aus dem System der EEX.
- (2) Die Aufhebung eines Geschäftes erfolgt durch die Löschung des Geschäftes oder die Eingabe eines Gegengeschäftes zu dem Fehleingabepreis in das System der EEX.
- (3) Ein Geschäft, das aufgrund einer durch ein aufgehobenes Geschäft ausgelösten Stop-Order zustande gekommen ist, kann von der Geschäftsführung durch die Eingabe eines Gegengeschäftes zu dem Preis des ursprünglichen Geschäftes aufgehoben werden. Bei kombinierten Aufträgen (insbesondere Spread Aufträge) kann auch das mit dem aufgehobenen Geschäft in der Ausführung verbundene Geschäft aufgehoben werden.

(1) The order which has to be cancelled shall be taken out of the EEX system by the Board of Management.

(2) The cancellation of the transaction occurs by cancellation of the transaction or the entry of a countertrade according to the Mistrade price into the system of the EEX.

(3) A transaction which results from a through a cancelled transaction triggered stop order, might be notified by the Board of Management by an entry of a countertrade according to the price of the original transaction. With combined transactions (i.e. spread orders) can also the transaction linked with the cancelled transaction be cancelled.

4. Kosten / Costs

Dem Handelsteilnehmer, der eine Fehleingabe getätigt hat, wird ein Bearbeitungsentgelt nach näherer Bestimmung des Preisverzeichnisses in Rechnung gestellt. Die für das aufgehobene Geschäft entstandenen Entgelte werden storniert.

The Trading Participant that has made the erroneous entry will be charged with a handling fee according to the Price Lists of the EEX Groups. The fees arising from the cancelled transaction are reversed.



Technical Implementation Regulations (Implementation Regulation pertaining to § 19 of the Exchange Rules of European Energy Exchange)

The English version is for informal use only.
The German version is legally binding.

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2. Definition

2.1. Network in the Electronic Trading System

The Network of the electronic trading systems used by the European Energy Exchange (“EEX”) - EUREX T7, ComXerv of Deutsche Börse AG (DBAG) and the Trayport® Exchange Trading SystemSM (ETS) provided by Powermext (PXW) via the PEGAS cooperation - includes the entirety of all hardware elements gathered from each Network node as well as all necessary components for the connection of the Network nodes (leased lines for telecommunications, etc.) which form the technical basis for the implementation of trading on EEX.

If the trading participants select an alternative connection for their access to a system (cf. subsection 2.3), which is solely based on the internet or a combination of leased line and internet, the EEX Network shall not include the internet connections.

2.2. EDP system

In addition to the network of the respective trading system, the EEX EDP system also comprises the operation-ready installed application of the exchange or corresponding components in the participant’s trading systems.

2.3. Access alternatives

Access alternatives are options for the technical connections between the EEX network and the member front-end systems of the trading participants. The access alternatives outlined in this section can also be ordered and operated by the customer in combination with each other.

2.3.1. Network access

Trading participants can choose between the following alternatives for connection to the EEX trading systems:

Depending on the respective system, EEX provides several network access types which can be used in combination with the corresponding connection options in order to ensure access to the exchange systems.

Access types:

- Leased lines: Connections are provided with service-oriented bandwidths on physical lines.
- iAccess (VPN): A point-to-point connection is established via the public internet with an IP-Sec encoded tunnel between the participant’s network and an access point of the exchange (virtual private network - VPN).
- Native Internet: The connection is established via an internet connection which is not encoded specifically and can be used in combination with services which use their own, self-contained encryption mechanism for the data transfer (e.g.: Eurex Trader GUI, Common Report Engine)

Access options:

- Standard connection (2 leased lines): This access option will reasonably be switched with separate routes or, alternatively, it is leased from two different providers.
- Combined: In the case of the “combined” option, the trading participant’s access is established via a leased line and an internet back-up connection whose technical design corresponds to an internet connection with iAccess. In the event of a failure of the leased line, the internet is available as an alternative for the connection to the EEX system. Failover is effected automatically.
- iAccess: In the case of iAccess, the trading participant’s access is exclusively effected via the internet. The selection of the provider and the implementation of the connection lie within the responsibility of the trading participant. Availability and performance are determined and ensured by the internet provider selected by the trading participant. EEX will technically reduce the data throughput which is theoretically possible via the internet to the bandwidth of the other access alternatives in order to ensure comparable access times to the EEX system for all access alternatives.

A Member Front-End System has to be installed at the trading participant. EEX, in turn, ensures the internet accessibility of the exchange with a sufficient availability and corresponding security, authentication of the trading participants and a firewall infrastructure.

Trading participants with the clearing status of Direct Clearing Members (DCM) and General Clearing Members (GCM) are exclusively connected to the systems of EEX via the Standard or Combined options.

2.3.2. Service-oriented channels on leased lines/VPN connections

Depending on the trading system used, certain services are available with a specific bandwidth on leased lines and/or VPN connections with the help of separate, service-oriented channels.

2.3.3. Access version for customers

- EUREX T7: The trading participant’s access to a graphical user interface (Eurex T7 Trader GUI, Eurex WebTrading Service) is established via the internet or the service-oriented channel on a leased line/VPN connection. At the trading participant, one work station is required for each workplace. This work station is connected to a multi-member front-end system operated by EEX via the internet. A firewall concept and a personal secure ID token, which has to be used at the trading participant and is provided to the trading participant by EEX for every trader, and the use of certificates protect the EEX trading system against unauthorised third-party access. If several users are connected to the trading system, one token per user is required for simultaneous access. This token is not specific to the work station.
- WebAccess to ComXerv: The trading participant is usually connected to the ComXerv front-end (Comtrader) via the internet. On the part of the trading participant, one work station is required for each workplace. This work station is connected to a multi-member front-end system operated by EEX via the internet. A firewall concept and a personal access code (RACF-ID with password), which EEX provides to the trading participant for every trader, protect the EEX trading system against unauthorised third-party access.
- EEX TT Screen with access to the DBAG trading systems: EEX can provide trading participants wishing to trade via EEX TT Screen with a simple access version. The EEX TT Screen is provided as SAAS solution in cooperation with Trading Technologies Incorporated, a world leading enterprise in the field of high performance trading platforms. The EEX

TT Screen is connected via an internet connection which the customer itself has to provide with the data processing centre of Trading Technologies which is directly connected with the trading systems of DBAG.

- EEX GlobalVision PortalSM with access to the DBAG trading systems: Customers operating their own Trayport[®] Trading GatewaySM can use the market integration into their Trayport[®] Trading GatewaySM via the direct connection to the GlobalVision PortalSM provided centrally by Trayport[®]. Responsibility for the establishment, installation and configuration (e.g. product mapping) of the technical infrastructure consisting of the Trayport[®] Trading GatewaySM, the Trayport[®] Frontend, the Trayport[®] GlobalVision PortalSM Translator and the technical network connection rests exclusively with the trading participant. The EEX GlobalVision PortalSM is always cleared by Trayport[®] for defined versions of the Trayport[®] Trading GatewaySM Server and the Trayport[®] GlobalVision PortalSM Translator, separate clearance by EEX is not required.
- PEGAS Direct Screen and customer-operated (own) Trayport[®] Trading GatewaySM with access to the Trayport[®] Exchange Trading SystemSM (ETS): The corresponding rules and regulations of PWX apply with regard to the connection to the Trayport[®] Exchange Trading SystemSM (ETS) via the PEGAS Direct Screen. The connection is established directly with Powernext (system provider).
- Pegas OTC Registration: Powernext offers the Pegas customers a solution for the registration of transactions; the corresponding rules and regulations of PWX apply.

2.3.4. Trayport[®] Trading GatewaySM

Trayport[®] Trading GatewaySM is an application by Trayport Ltd. which permits trading via brokers or market platforms including the EEX Spot and Derivatives Market via a member front-end. In this context, the different markets can be integrated / aggregated within one screen for the trader. As an interface between the Trayport[®] Trading GatewaySM and the EEX trading systems (EUREX T7/ComXerv), the Software Trayport[®] GlobalVision PortalSM Translator software, which was developed by Trayport[®], is required for connection to the GlobalVision PortalSM provided by EEX.

2.3.5. Trayport[®] GlobalVision PortalSM

Trayport[®] GlobalVision PortalSM is a Trayport Ltd. application operated by EEX which enables trading participants using the Trayport[®] Trading GatewaySM application to access the EEX trading systems (EUREX T7 / ComXerv). In this process, the connection to the EEX GlobalVision PortalSM is entirely created via Trayport[®] software products, product mapping for which is exclusively carried out in the Trayport[®] software products.

2.4. Member Front-End Installation

A member front-end system consists of one or several computers (several workstations) facilitating trading and clearing on EEX and input devices and network components via which integration into the EEX network is effected. Furthermore, the member front-end installation comprises all the components required in order to maintain the member's internal network connections (e.g. gateways, routers, etc.) in as far as such do not lie in a network area reserved for EEX ("logical network"). Further hardware elements are not part of the member front-end installation but can be connected to it in as far as these fulfil the interface requirements established by EEX and are registered at EEX in as far as required.

Several trading participants can trade on EEX by means of a common Member Front-End System (Multi Member Front-End System). In such cases, EEX increases its requirements for availability. A Multi Member Front-End System must be installed as a 2-LAN configuration. The connection of workstations to a Multi Member Front-End System lies within the sole responsibility of the trading participant. EEX does not assume any responsibility for the availability and performance of the Multi Member Front-End System.

2.5. Logical network

In addition to the EEX Network, the Logical Network of EEX includes all components at the exchange participant's site which are connected to the Network for technical reasons provided they are located in a Network area reserved for EEX.

2.6. Data transmission equipment

Telecommunication within the EEX Network is effected by means of data transmission equipment consisting of access points, routers and leased lines. The connection of a Member Front-End System or a Multi Member Front-End System shall always be made via an access point.

2.7. Quote machines

Quote machines are automatic quotation systems for futures. On the basis of pricing information and additional parameters determined by the trading participant, quotes are automatically generated and channelled into the EDP system of EEX.

2.8. Electronic Eyes

Electronic Eyes are computer programs which continuously receive market prices of products traded on the exchange from the EEX system and evaluate such market prices. As soon as the price of an order which is received by the Electronic Eye lies within the range previously set by the trading participant, the Electronic Eye automatically generates an order which is then channelled into the trading system of EEX through the programmable interfaces of EEX to facilitate its execution.

2.9. Order Routing Systems

Order Routing Systems are electronic order forwarding systems which are used by trading participants to transmit exchange orders, i.e. exclusively for the entry, modification and deletion of exchange orders. Order Routing Systems may be connected to the Member Front-End System via a defined interface so that the orders transmitted via this system can be directly channelled into the EEX trading system.

2.10. Systems for Algorithmic Trading

Systems for algorithmic trading are computer algorithms that determine single order parameters automatically without being Quote Machines, Electronic Eyes or Order Routing Systems. Order parameters within the meaning of clause 1 are particularly decisions about whether the order is to be

initiated, the point in time, the price or the quantity of the order or how the order is adapted with limited or no involvement of humans at all, after its submission.

2.11. Third-Party Software (“Third-Party-Software”)

Third-Party Software is software which is not provided by EEX and connected by a trading participant to the programmable interface of the Member Front-End System of EEX.

2.12. Location

Location within the meaning of this provision means the entirety of all business premises occupied by a trading participant within a building in which Member Front-End Installations have been installed for the purpose of active trading on the EEX markets. Business premises in which Member Front-End Installations are only employed in emergencies or for the purpose of engaging in technical simulated tests are not deemed to constitute a location within the meaning of this provision.

3. Access to the EEX-System

3.1. Requirements

Upon granting of admission to participation in energy trading, the trading participant is connected to the trading system in the case of the line-bound connection alternatives.

If the trading participant chooses a web-based access version, such trading participant, after having been granted admission to participate in the electronic trading system, may only be connected to the system of EEX after they have realised the connection via internet by means of an internet provider.

All connection alternatives to the trading system require compliance with the Exchange Rules and Regulations of EEX and with the technical standards of these Implementation regulations with respect to hardware, software, the Network and the configuration thereof and that by the establishment of such connection, the system of EEX – in particular trading and clearing - shall not be compromised, be it on the basis of location or any other technical grounds.

EEX can measure the load generated by the individual Member Front-End Installations on the EDP system of EEX and, if applicable, limit these with the help of technical measures if this is required for reasons of system security or other serious reasons. Each trading participant undertakes to ensure that its institution is entitled to connect a Member Front-End Installation at its location to the EEX system and to execute trading and clearing on EEX according to the national laws and regulations effective in the country of its location.

3.2. Access to Member Front-End Installations

All Member Front-End Installations if not employed in emergencies or for the purpose of participating in technical simulations must, in principle, be installed at the locations of the trading participant and should be configured redundantly in order to increase failure safety.

Upon receipt of a written application from a trading participant or from an applicant for exchange admission, the EEX Management Board may permit the installation and operation of a Member Front-End Installation at the business premises of a third party engaged by the trading participant or applicant for exchange admission to operate such Member Front-End installation if the application of and compliance with the provisions of the Exchange Rules and Regulations of EEX and supplemental conditions thereto are ensured, in particular, in respect of such third party. By means of appropriate agreements concluded with the third party, the trading participant or applicant for exchange admission shall ensure that the third party grants EEX the right to inspect the business premises of such third party at all times for the purpose of determining compliance with the requirements for the installation and operation of a Member Front-End Installation.

3.3. Access of several Member Front-End Systems

A trading participant may apply for the connection of several Member Front-End Installations. EEX may limit the number of Member Front-End Installations applied for by a trading participant to the extent that such action is necessary for reasons relating to system performance or for other serious reasons.

3.4. Access to Quote Machines / Electronic Eyes

Upon special application by a trading participant, the EEX Management Board may permit the connection of quote machines or Electronic Eyes to the EEX system through the programmable interfaces made available via the Member Front-End Installation provided that the trading participant continuously ensures that the quote machines and/or Electronic Eyes

- are installed at the locations of the trading participant admitted to derivatives trading and
- are given parameters which correspond to, at least, one person admitted to EEX for the trading participant (exchange trader) and
- are checked by at least one such person during the course of the trading day.

3.5. Connection of Systems for Algorithmic Trading

- (1) Before connecting systems for algorithmic trading to the systems of EEX through the programmable interfaces made available via the Member Front-End Installation, the Management Board of the Exchange has to be notified by the respective exchange participant. The notification has to include a detailed and comprehensible description of functionalities used and the trading strategies pursued by the system for algorithmic trading. The notification has to state the names and the respective contact details of the exchange traders that will be responsible for the respective system for algorithmic trading. With the notification, the exchange participants have to confirm,
 - that the respective system for algorithmic trading
 - is sufficiently resilient, come with sufficient capacity and are subject to adequate trading thresholds and upper trading limits;
 - avoid the submission of erroneous orders or a functionality of the system that causes dysfunctions of exchange trading or could contribute thereto;
 - cannot be used for a purpose that violates European or national laws against market abuse or the rules of the exchanges it is connected to;
 - is continuously parameterized by an exchange trader admitted for the exchange participant at the exchange and controlled by an exchange trader admitted for the exchange participant at the exchange,
 - that the exchange participant
 - has efficient emergency arrangements at its disposal, to deal with unforeseen disruptions in its systems and safeguard,
 - has completely inspected and monitored its systems properly.
 - has safeguarded, that records about each change in the computer algorithm are kept.
- (2) The Management Board of the Exchange will permanently or temporarily, completely or partially prohibit the use a system as described in Sect. 2.10, if one of the prerequisites mentioned in paragraph 1 did not exist or ceased to exist afterwards, the exchange participant did not comply with the requirements according to paragraph 1 or the duty of disclo-

sure according to Sect. 3 paragraph 4 sentence 4 Nr. 5 of the German Exchange Act, or a disturbance of the proper exchange trading or the proper execution of exchange trades impends for other reasons. The partial prohibition of the usage may be effected telephonically. The exchange participant has to turn-off immediately the system for algorithmic trading concerned if its use is prohibited permanently or temporarily, completely or partially.

3.6. Connection of Order Routing Systems

After making written application and receiving approval thereof from the Management Board of EEX, a trading participant is entitled to connect an Order Routing System via a defined interface if:

- before being channelled into the trading system, the transmitted orders pass an electronic filter which is installed in the Member Front-End Installation, which checks and releases orders for further transmission according to parameters defined by the trading participant;
- the filter has been allocated an approved exchange trader who is responsible for the definition of parameters, the control and monitoring of the filter, and who can prevent the forwarding of orders at any time;
- the trading participant has informed the Management Board of EEX of the personal user ID of the allocated exchange trader in writing;
- the Order Routing System is used exclusively for the transmission of client orders,
- in those cases in which third parties not admitted to the exchange are able to enter orders using the Order Routing System, the number, operating location and the identity of the user of the input devices connected to the Order Routing System must have been communicated to the Market Surveillance of EEX. This also applies to changes with respect to such input devices. The trading participant must oblige the user to comply with the Exchange Rules and Regulations. Should the user fail to do so, the trading participant shall immediately prevent it from continuing to use the Order Routing System.

4. Technical Requirements

The technical requirements presented in the context of these Implementation Regulations are binding on all trading participants; divergence from such regulations shall require the written consent of EEX. EEX may at any time examine the configurations and Network parameters of the trading participants and require the correction of divergent values. In the event that changes become necessary, the trading participant is required to institute such technical modifications to its Member Front-End Installation that may be laid down by EEX and to effect such changes within any timeframe that may be imposed by EEX.

Upon request from EEX, the trading participant is obligated to grant EEX access to the technical infrastructure employed by it for establishing a connection with the EDP system of EEX to facilitate the execution of technical inspections by EEX. Such access and/or any right of inspection shall not extend to customer related data.

5. Hardware

5.1. Requirements

EDP equipment which ensures the orderly execution of trading and clearing via the respective system has to be available for the trading participant.

5.2. Admissible hardware platforms

EEX shall specify permitted hardware platforms for equipping the member front-end installation connected to the trading and/or clearing system.

5.3. Approval of hardware configurations

All hardware configurations planned by a trading participant must be approved by EEX – after submission of the configurations questionnaire provided by EEX and to be filled out by the trading participant – prior to their installation; the same shall also apply with regard to modifications.

5.4. Responsibility for operation

The operation of the member front-end installation and, if applicable, the Trayport Global Vision Gateway and the Trayport® GlobalVision PortalSM Translator lie within the sphere of responsibility of the trading participant. By means of the orderly operation of its member front-end or its Trayport® GlobalVisionSM installation, the trading participant shall guarantee that trading and clearing on EEX shall not be compromised either in its process or in its functionality on account of such operation.

The accesses to and the tools for the Pegas market are operated by Powernext, which also holds responsibility for these. The respective conditions of Powernext apply.

6. Software

6.1. EEX software

EEX grants the trading participant a revocable, non exclusive right to use the application software. This right to use can be substantiated by further agreements between EEX and the trading participant, if applicable. A trading participant, or any third party contracted by the trading participant, must not modify the version of the application software as it is made available by EEX and must not alter or copy such software without the prior consent of EEX. The foregoing shall not apply to the production of copies of the application software if such copies are produced solely for data storage purposes. The trading participant must not delete or alter any proprietary notices (including but not limited to copyright and trademark notices). Every trading participant is responsible for the installation of the application software on the components of its Member Front-end Installation.

6.2. Member Operating System Software

EEX shall specify each version of the operating system software valid at the time, including all necessary components used for operating the current version of the EEX software on the Member Front-End Installation.

6.3. Registration of Third-Party Software

If trading participants intend to connect Third-Party Software to the programmable interface of the EEX system, these trading participants are required by EEX to assign an electronic identifier to this Third-Party Software before connecting it to the programmable interface, observing the instructions of EEX as to the systematic compositions of such identifier and to have the Third-Party Software as well as the EEX Universal Communicator registered at EEX.

The trading participants shall ensure that the identifier assigned to the Third-Party Software will be sent to the EEX system together with each transmission when the registered Third-Party Software communicates with the EEX system via the programmable interface. In case the EEX system is impaired by the Third-Party Software connected to the programmable interface, EEX may prohibit the connection of such software with immediate effect.

6.4. Responsibility for using Third-Party Software

In as far as the application software made available by EEX shall include interfaces for front and back office systems, the trading participant itself is responsible for the programs which use these interfaces and shall ensure functioning of the software in line with the rules and regulations of EEX.

6.1. EEX TT Screen

The access to the EEX TT Screen is provided by EEX. The terms of use stated in the End User Licence Agreement (EULA) agreed by the trading participant before installation of EEX TT Screen shall apply.

7. Authorisation Level of Data Transmission Equipment

A trading participant may not use the data transmission equipment which serves the purpose of trading and clearing on EEX for any other purposes without the prior written approval of EEX. However, EEX reserves the right to also use its data transmission equipment for trading and clearing on other institutions.

8. Transmission Alternatives for Telecommunications

8.1. Leased Lines

8.1.1. Responsibility for the leased lines

EEX shall control the leased lines for the entire physical Network of EEX. Installation and operation of the leased lines for telecommunications which are necessary for the connection between the Member Front-End Installation and EEX shall be carried out by EEX or may be contracted out by EEX.

8.1.2. Range of leased lines

EEX shall make available a connection to the trading participant's location. The precondition for this is that the transmission paths and types of connection supported by EEX are available for a trading participant, and can be established and operated at normal conditions and adequate expense while ensuring that the security and quality standards set forth by EEX are attained.

8.1.3. Access to the EEX Network

In the case of Premium Access, Member Front-End Installations must be connected to the EEX network by means of at least two leased lines, while, in the case of Combined Access, they must be connected by means of one leased line. EEX decides to which access point a Member Front-end Installation shall be connected.

8.1.4. System reliability

In order to increase failure safety trading participants can combine several connection alternatives for connection to the EEX Network. In the case of Premium Access, Member Front-End Installations can be connected to the EEX Network by means of more than two dedicated lines with the object to improve failure safety.

8.1.5. Number of leased lines

In deviation from the above regulations, the EEX Management Board can set a minimum and maximum number in respect of the leased lines which a trading participant has applied for to have its Member Front-End Installation connected to the EEX system to the extent that such action is necessary for reasons relating to system performance or for other reasons.

8.2. Member Access via the Internet

8.2.1. Responsibility of the trading participants

If a member accesses the system via the internet, the trading participant itself is responsible for the selection of the internet provider as well as for the implementation of the connection to the EEX Network. EEX does not assume any responsibility for the availability and performance of the aforementioned connection alternatives.

This applies accordingly in case of the use of the EEX TT Screen.

8.2.2. Internet provider

Trading participants are obliged to choose an internet provider which provides, on the part of the participant, a suitable connection to the EEX Network via the internet.

8.2.3. Connection to the EEX Network

If the connection to the EEX Network is made via the internet, EEX will decide to which access point such connection shall be made.

9. Network Parameters for the Connection Alternatives

9.1. Realisation of trading participation

The software for the Member Front-End Installation made available or supplied by EEX and properly installed by the trading participant contains all necessary connections to effect exchange participation.

9.2. Determination of network parameters for leased lines or the internet

EEX specifies Network parameters to ensure the security of the Network and to protect the Member Front-End Installation. In particular, EEX ensures that

- a trading participant's computers which are not components of the Member Front-End Installation may only access the trading system of that particular trading participant and do not reach other computers within the Network of EEX,
- unauthorised access by a Member Front-End Installation to the computers of EEX is not possible,
- communication between various trading participants by means of the Network of EEX is not possible.

9.3. Compliance with the network parameters

Upon installation of the Member Front-End systems and Network components, the trading participant shall set the network parameters specified by EEX for the respective connection alternative.

9.4. Reservation of network areas

EEX reserves network areas for its Logical Network. The network areas selected by EEX must be used for participation in EEX. Within its own Network, each trading participant may use any network areas that are not reserved for EEX.

9.5. Node numbers/Node names

EEX shall assign node numbers and node names for the entire Logical Network. Within the Network of EEX, only the nodes authorised by EEX by assignment of node numbers may communicate with the EEX trading system of EEX.

Consequently, no computer that has not received a corresponding node number from EEX may be connected by the trading participants in the Network areas reserved by EEX. The transfer of the assigned node number and the related node name to a computer with a function other than that as applied for is not permitted.

10. Emergency Plans

10.1. Responsibility

Each trading participant is responsible for taking appropriate measures for emergency planning and management.

10.2. Emergency computer centre

The establishment of an inactive emergency computer centre (computer back-up centre) and, if necessary, its connection to an access point via a leased line are optional for the trading participants. In such case, the costs incurred by EEX shall be charged to the trading participant.

10.3. Connection of two locations

If a trading participant has two or more locations, it may equip any two locations with a connection in order to ensure breakdown protection in the event of a disruption of the connection between one location and an access point.

11. Staff

Each trading participant is obligated to maintain a sufficient number of qualified personnel at all times during the exchange trading and clearing hours and to guarantee the availability by telephone in order to ensure the orderly operation of the components of the EDP system of EEX which are in the control of the exchange participant, particularly, in order to be able to take the necessary measures at the instruction of EEX in the event of a technical disruption. In addition, EEX must be provided with the name of a person to be contacted in the event of a technical disruption or with proof of a service agreement with a third party.

12. Costs

12.1. Hard- and software

The costs for the purchase, installation and maintenance of all hardware and software used by it shall be borne by the trading participant. The application software referred to in sec. 5 para. 1 shall be made available by EEX at no additional cost.

12.2. Internet

The internet is not a component of the Network of the electronic trading system. The trading participant itself is responsible for the selection of the internet provider as well as for the implementation of the connection. Correspondingly, the trading participant's costs arising for the internet shall be borne by the trading participant.

12.3. Costs of EEX

In accordance with the price list of EEX in its respectively valid version, EEX AG shall charge fees for the one-off and running costs for the establishment and operation of the telecommunications network of EEX, in particular, the expenses for the provision of the connection alternative selected by the respective trading participant concerned as per subsection 2.3.

13. Technical Problems

13.1. Measures

In the case of technical problems, the EEX Management Board may suspend or restrict access to the EDP system for one, several or all trading participants regardless of whether such problems appear at EEX or at one, several or all trading participants. The EEX Management Board may resume or re-commence trading after an interruption even if one or several trading participants still do not have access to the EEX system if, in the opinion of the Board of Management of EEX, an orderly market continues to exist or is possible again.

13.2. Information for the trading participants/Obligation of the trading participants to co-operate

Trading participants are obligated to inform themselves of technical requirements and changes by means of the media made available by EEX. EEX shall, to the extent possible, inform the trading participants of any technical problems without undue delay. In case of technical problems of the EEX system, trading participants are obligated to grant access to their locations in which Member Front-End Systems are installed to EEX or third parties commissioned by EEX for problem resolution.

13.3. Suspension of derivatives trading

In the event of the suspension of trading on the basis of technical problems, EEX shall place the exchange system on “halt” status so that no more inputs can be effected by the trading participants in the system.

The resumption of trading after a trading suspension pursuant to the foregoing regulation shall begin with a new Pre-trading period. Subsequently, trading will proceed in line with the general provisions of the Trading Conditions.

EEX shall inform the trading participants of the further schedule for the trading period without delay.

13.4. Alternative trading and clearing forms

In the event that the EEX system is non-functional for a longer period of time, the EEX Management Board shall declare a technical emergency and shall, if necessary, determine alternative trading and clearing methods. Only in case of intentional misconduct or gross negligence shall EEX be liable for damage caused to a trading participant upon using alternative trading methods, particularly, for cases of damage due to an erroneous entry and/or processing of data effected by EEX or European Commodity Clearing AG (ECC) on behalf of trading participants when using alternative trading methods provided the damage results from a culpable infringement by EEX or ECC of fundamental duties incumbent on them/it when applying alternative trading and clearing methods. In such case, the liability of EEX or ECC in cases of ordinary negligence shall be limited to the amount of damage typical of such contract with regard to the provision of alternative forms of trading and clearing.

13.5. “Trading on Behalf”

In the event of the default of the participant trading system or of other EDP systems of the trading participants, EEX can effect entering of data into the electronic trading system for such trading participant on its behalf. In this case, EEX will check the legitimation for entering data with the help of the active user code communicated to it. Section 14 shall apply accordingly with regard to the liability of EEX.

13.6. Information rights

EEX may require the exchange participants to provide information and submit documents if such measure is necessary in order to prevent or solve technical problems.

14. Liability

14.1. Force majeure

EEX is not liable for cases of damage caused by a disruption in its services as a result of any force majeure, riot, and events resulting from war or natural disasters, or resulting from other circumstances beyond the control of EEX (e.g. strikes, lock-outs, interruption of transport or orders of domestic or foreign governments).

14.2. General liability

With regard to cases of damage suffered by a trading participant in connection with its use of trading systems of EEX or the use of the connecting software or interfaces of EEX to its trading systems or the use of EDP devices of EEX (e.g. tokens), EEX shall only be liable to the extent that intentional misconduct or gross negligence of its bodies or third parties assisting in its performance can be proven unless such damage resulted from a culpable breach of its principal duties by EEX. In such case, the liability of EEX for cases of ordinary liability shall be limited to the amount of damage typically foreseeable upon the conclusion of the contract.

Apart from this, EEX shall not be liable for the completeness, availability and recentness of data which are transmitted to the trading participants on the basis of the chosen connection alternative via internet.

Beyond its scope of responsibility there is no liability of EEX on principle. EEX shall only be liable for cases of damage arising from an event originating from the sphere (hardware or third-party software) of a trading participant in as far as evidence of a culpable violation of essential obligations towards the respective trading participant on the part of its bodies or vicarious agents can be furnished.

14.3. Liability in connection with the Trayport[®] Trading GatewaySM and the Trayport[®] GlobalVision PortalSM Translator

EEX shall not be liable for Trayport[®] technical facilities and systems (hard- and software) which lie outside the logical network of EEX unless the trading participant is connected by means of the installation of the EEX GlobalVisionSM screen. In these cases, liability shall be based on sub-section 14.2.

EEX does not accept any liability for cases of damage which a trading participant sustains as a result of technical problems or of a partial or full non-usability of the Trayport[®] Trading GatewaySM and Trayport[®] GlobalVision PortalSM Translator or of the EDP devices used by it or in the event of disruptions of the data transfer.

The installation, set-up and configuration (such as e.g. product mapping) of the Trayport[®] Trading GatewaySM and Trayport[®] GlobalVision PortalSM Translator are carried out by each trading participant itself and at its own risk and under its own responsibility.

If an employee of EEX implements configuration settings on the participant's front-end or on components connected with it at the express wish of the trading participants concerned, any liability on the part of EEX shall be excluded. The trading participant shall, in particular, test the

configuration settings sufficiently before commissioning. In the event of physical injury, this shall only apply in as far as evidence of intent or gross negligence of its bodies or vicarious agents can be furnished unless the damage results from a culpable breach of principal duties by EEX.

14.4. Liability in connection with EEX TT Screen

EEX is not responsible for technical systems (hard- and software) of Trading Technologies with the exception of the EEX TT Screen. The liability in relation to EEX TT screen is ruled by the EULA, which is agreed between the trading participant or the respective user, respectively, and EEX.

14.5. Commissioning of third parties

EEX may in full or in part delegate the performance of the obligations assigned to it to third parties when it deems such delegation justified taking into account the purposes of these Implementation Regulations. Should EEX so delegate its duties, its liability shall be limited to the careful selection and instruction of the third parties retained by it. EEX, however, shall at the request of the trading participant, transfer to such trading participant any existing claims against third parties retained by EEX.

14.6. Third-party data and information

EEX shall not be liable for the accuracy, completeness, availability and up-to-date nature of the prices of underlying and other data it obtains from third parties.

Exhibit A-6: current rules, regulations, guidelines and bylaws of EEX

Attached please find the following documents –

1. **Exchange Rules**
2. **Admission Rules**
3. **Trading Conditions**
4. **Contract Specifications**
5. **Contract Specifications for Trade Registration**
6. **Code of Conduct**
7. **Implementation Regulation for the Order Transaction Ratio**
8. **Mistrade Rules (Implementation Regulation for § 10 of Trading Conditions)**
9. **Technical Implementation Regulation (Implementation Regulation pertaining to § 19 of the Exchange Rules)**

Attachments










Key Words	Subject matter	Date	Document	Attachment
Exchange Rules	The Exchange Rules govern the organization of the Spot and Derivatives Exchange	2016-07-04 v.0037a	 Exchange Rules.pdf	1
Admission Rules	The Admission Rules govern the prerequisites for the admission as an exchange trader	2015-02-24 v.006a	 Admission Rules.pdf	2
Trading Conditions	The Trading Conditions govern all Spot and Derivatives transactions, which are concluded on the EEX.	2016-07-04 v.0042a	 Trading Conditions.pdf	3
Contract Specifications	The Contract Specifications contain a legally binding description of the terms and conditions of all futures and option contracts tradable at EEX.	2016-09-02 v.0050a	 Contract Specs.pdf	4

EXHIBIT A GENERAL INFORMATION AND DOCUMENTATION



<p>Contract Specifications for Trade Registration</p>	<p>The Contract Specifications for Trad Registration contain a legally binding description of the terms and conditions of all futures and option available for Trade Registration.</p>	<p>2016-09-05 v.0018b</p>	<p> Contract Specs for Trade Registration.p</p>	<p>5</p>
<p>Code of Conduct</p>	<p>Rules of the EEX itself to make an active contribution to the requirements of the further developing internationalization of commodities trading and to strengthen the confidence which the market and the public have in the markets of EEX.</p>	<p>2016-07-04 v.002a</p>	<p> Code of Conduct.pdf</p>	<p>6</p>
<p>Implementation Regulation for the Order Transaction Ratio</p>	<p>Due to the implementation of the High Frequency Trading into the Exchange Act EEX has to enact more detailed provisions regarding an adequate Order Transaction Ratio.</p>	<p>2016-07-02 v.001b</p>	<p> OTR Implementation.pdf</p>	<p>7</p>
<p>Mistrade Rules</p>	<p>This Implementation Regulation specifies the details of the cancellation of transactions on the Spot Markets and the Derivatives Markets of EEX.</p>	<p>2014-05-13 v.0010a</p>	<p> Mistrade Rules for § 10 Trading Conditio</p>	<p>8</p>
<p>Technical Implementation Regulation</p>	<p>Technical Implementation Regulations pertaining to § 19 of the Exchange Rules of EEX.</p>	<p>2014-02-24 v.006b</p>	<p> Implementation Regulation for § 19 </p>	<p>9</p>



EEX Exchange Rules

The English version is for informal use only. Only the German version is legally binding.

Date	04.07.2016
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2. Organisation and Exchange Bodies

§ 1 Line of Business

- (1) These Exchange Rules govern the organisation of the Spot and Commodity Derivatives Exchange, the European Energy Exchange (EEX) with the following lines of business:
 - (a) Sub-market of EEX Power Derivatives Market for derivatives trading in Power and Guarantees of Origin,
 - (b) Sub-market of EEX Emission Market for spot and derivatives trading in emission rights,
 - (c) Sub-market of EEX Coal Market for derivatives trading in Coal,
 - (d) Sub-market EEX Oil Market for derivatives trading in Crude Oil and Refined Products,
 - (e) Sub-market EEX Freight Market for derivatives trading in Freight,
 - (f) Sub-market Metal Market for derivatives trading in Iron Ore,
 - (g) Sub-market Agricultural Market for derivatives trading in agricultural products.
- (2) EEX has different electronic trading systems. The conclusion of trades and, in particular, of standardised contracts, such as Spot Market contracts, futures and options (Products) is ensured using the respective trading systems according to the conditions for trading on EEX (Trading Conditions) and the rules for the registration of trades (Trade Registration Rules).
- (3) The Management Board of EEX can permit the use of exchange facilities for lines of business other than those stipulated in paragraph 1, as far as this is not prohibited by the rules of law. Where such use is permitted, the Exchange participants are to be informed by suitable means.

§ 2 Operating Companies

- (1) European Energy Exchange AG (EEX AG) is operating the exchange.
- (2) EEX AG as operating company is obligated to, at the request of the Management Board of the Exchange, make available necessary staff, financial resources, facilities and premises for the adequate operation of EEX and further development of the exchange.

§ 3 Exchange Supervisory Authority

The supreme state authority of the Free State of Saxony is responsible for the supervision of the operations of EEX and of the bodies of the exchange. The Saxon State Ministry for Economic Affairs, Labour and Traffic (Sächsisches Staatsministerium für Wirtschaft, Arbeit und Verkehr), Wilhelm-Buck-Straße 2 in 01097 Dresden is the Exchange Supervisory Authority.

§ 4 Exchange Bodies

- (1) The following are the exchange bodies:
 - (a) the Exchange Council,
 - (b) the Management Board of the Exchange,
 - (c) the Market Surveillance Department, and
 - (d) the Sanctions Committee.
- (2) With exception of the Management Board of the Exchange and the Head of Market Surveillance, the members of the Exchange Bodies exercise their occupation on an honorary basis.

§ 5 Rules and Regulations of the Exchange

- (1) The Exchange Council establishes the rules and regulations for the exchange. The rules and regulations are binding for the bodies of the exchange and for the companies and traders licensed to trade on the exchange as well as other persons who are permitted to use the exchange's facilities. The rules and regulations of EEX consist in particular of the following parts:
 - (a) the Exchange Rules,
 - (b) Trading Conditions with the Contract Specifications,
 - (c) the Trade Registration Rules,
 - (d) the Code of Conduct, and
 - (e) the Admission Rules.
- (2) Provided this is laid down in the rules and regulations of the exchange, the Management Board of the Exchange can adopt implementation rules. The implementation rules are binding for the companies and traders admitted to trading on the exchange and for other persons who are permitted to use the exchange's facilities.
- (3) Exchange participants and other persons who are permitted to use the exchange's facilities are obliged to use the facilities of EEX in accordance with the provisions under exchange law and the further national and European rules, in order to ensure the proper execution of trading and of the settlement of exchange transactions. The provisions under exchange law comprise the Exchange Act¹ (BörsG) as amended from time to time and the statutory instruments and decrees rendered on the basis of the Exchange Act, as well as the rules and regulations of EEX and the orders passed on the basis of these.

§ 6 Duties and Powers of the Exchange Council

- (1) The Exchange Council has the duties and powers assigned to it by the Exchange Act. It shall be responsible in particular for:

¹ Exchange Act of 16th July 2007 (Federal Law Gazette, vol. I, p. 1330)

-
- (a) the issuance of the Exchange Rules, the Trading Conditions, and the Admission Rules,
 - (b) the appointment, re-appointment and dismissal of the Managing Directors of the Exchange in consultation with the Exchange Supervisory Authority,
 - (c) the supervision of the Management Board of the Exchange,
 - (d) the issuance of the rules of internal procedures for the Exchange Council and the Management Board of the Exchange,
 - (e) the appointment, reappointment and dismissal of the head of Market Surveillance upon the nomination of the Management Board of the Exchange in consultation with the Exchange Supervisory Authority,
 - (f) the appointment, reappointment and dismissal of the appointment of the members of the Sanctions Committee in agreement with the Exchange Supervisory Council.
- (2) The Management Board of the Exchange must obtain the prior consent of the Exchange Council regarding other matters of fundamental importance.

§ 7 Election of the Exchange Council

The composition, the election and the term of office of the Exchange Council is regulated by the Saxon Exchange Act Execution Ordinance² (SächsBörsDVO) as amended from time to time.

§ 8 Chairperson of the Exchange Council; Deputy Chairperson

- (1) In its first meeting following an election, the Exchange Council shall elect, by means of a secret ballot, a Chairperson and up to three deputies from among its members.
- (2) The Chairperson or if he is unable to do so, one of the deputies shall preside over the meetings of the Exchange Council (Chairperson of the Meeting). In case the Chairperson and all the deputies are prevented from attending a meeting, the member of the Exchange Council eldest in age shall serve as Chairperson of the Meeting.

§ 9 Quorum and Resolutions of the Exchange Council

- (1) The Exchange Council shall have a quorum when more than one half of its members take part either in person, by way of written vote, or represented by another member as the result of the properly issued invitation to the meeting. The invitation to the meeting is considered to have been properly issued if there is a period of, at least, 10 Exchange Days between posting the invitation and the documents for the meeting and the day of the meeting. The invitation and the documents for the meeting may be sent to the members of the Exchange Council via e-mail.

² Ordinance by the Saxon State Ministry of Economic Affairs, Labour and Transport regarding the Execution of Exchange Law of 9th February 2012.

- (2) Resolutions shall be passed by a simple majority of the votes cast. In the case of a tie vote, the Chairperson of the Meeting shall cast the deciding vote. If the Chairperson of the meeting abstains from voting, the motion shall be deemed rejected.
- (3) If unable to attend, a member of the Exchange Council may take part in voting by submitting a written vote.
- (4) Resolutions can also be passed in writing, by telex, by telephone, or by fax. A motion shall be deemed to have been passed if more than one half of the members of the Exchange Council have responded within a stipulated period and if the majority of the Exchange Council has agreed to the motion. Each member of the Exchange Council shall be able to demand that the decision be taken by vote after oral debate. The chairperson shall comply with such a request, for which a detailed reason must be given, by calling a meeting without undue delay.
- (5) Votes shall be taken by secret ballot at the request of one quarter of the members.
- (6) The content and outcome of the meetings and of the decision making process shall be recorded in writing and signed by the chairperson of the meeting. With regard to votes cast in writing, by telex, by fax, or by telephone as stipulated in paragraph 4, the minutes and the outcome of the decision making process can also be signed by a managing director of the Exchange. The Regulations of the Exchange Council shall specify details with respect to the preparation of minutes and the adoption of resolutions.

§ 10 Exchange Council Committees

The Exchange Council is allowed to establish committees in order to prepare its resolutions.

§ 11 Management Board of the Exchange; Representation

- (1) The Management Board of the Exchange is responsible for all duties that are not allocated to other governing bodies of the Exchange.
- (2) In the case of more than one managing director being appointed, the EEX shall be represented in and out of court by one managing director. The Management Board of the Exchange may also name other persons as representatives.
- (3) The Management Board of the Exchange and the representatives authorized by it may take all necessary actions for the proper implementation of trading on the EEX and the settlement of the Exchange transactions.
- (4) Companies and persons who contravene existing rules, or do not observe instructions within the meaning of paragraph 3, can be temporarily suspended from access to the exchange entirely or in part, if and for as long as, the orderly trading procedure is disturbed by the company or person, respectively. The same applies accordingly to persons who are not permitted to participate in trading.

§ 12 Market Surveillance Department

- (1) Subject to directives issued by the Exchange Supervisory Authority, the EEX shall establish and operate a Market Surveillance Department as a governing Exchange Body.
- (2) The Head of the Market Surveillance Department shall be appointed and dismissed by the Exchange Council upon the nomination of the Management Board of the Exchange and in agreement with the Supervisory Authority. The re-appointment is permissible.
- (3) The Market Surveillance Department monitors trading and the orderly execution of trading and settlement of transactions on EEX in accordance with Art. 7 BörsG as well as the applicable national and European provisions. In particular, the Market Surveillance Department assumes the tasks according to Art. 16 Market Abuse Regulation³.
- (4) In accordance with Art. 7 BörsG, the Market Surveillance Department can forward data regarding the conclusion of trades to the management board and the market surveillance department of another exchange or to an office in charge of monitoring trading on another organised foreign market or of another corresponding market registered outside the European Union or a contracting state of the Agreement on the European Economic Area in as far as such data is required for fulfilling the tasks of these offices. The Market Surveillance Department can also receive data from these offices provided such is required for the proper execution of trading and the settlement of exchange transactions on EEX.
- (5) If the Market Surveillance Department identifies facts justifying the assumption that provisions or orders under exchange law are violated or that there are other grievances which might impair the proper execution of trading on EEX or the settlement of exchange transactions, it shall inform the exchange supervisory authority or the Management Board of the Exchange thereof. Sentence 1 shall apply accordingly with regard to information on Exchange participants and traders which is relevant for the assessments in the framework of the admission procedure. If the Market Surveillance Department has the justified suspicion that an order or transaction including any cancellation or modification thereof violates the provisions of Articles 3 or 5 REMIT⁴ or of Articles 14 or 15 Market Abuse Regulation (ban on engaging in or attempting to engage in insider dealing or market manipulation), it shall inform the Market Surveillance Department or the German Federal Financial Supervisory Authority thereof.

§ 13 Sanctions Committee

- (1) At the EEX, a Sanctions Committee may be established by statutory decree as organ of the exchange. The Sanctions Committee's duties comprise the tasks defined by Sect. 22 Exchange Act.
- (2) The details about the establishment, composition, procedure and the costs as well as the involvement of the Exchange Supervisory Authority are defined by Sect. 22 Exchange Act

³ Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC

⁴ Regulation (EU) No. 1227/2011 of the European Parliament and of the Council of 25th October 2011 on wholesale energy market integrity and transparency (Official gazette L 326 of 8th December 2011, p.1)



and the rules regarding the Sanctions Committee in the Saxon Exchange Act Execution Ordinance.

3. Admission

3.1. Admission of Exchange Participants and Exchange Traders

§ 14 Exchange Trading

Exchange trading comprises the conclusion of Spot and Derivatives Market transactions (exchange transactions) in the EEX trading systems either through order book trading or the registration of trades. Trading on the EEX shall only be carried out or brokered by an approved Exchange participant.

§ 15 Application for Admission

(1) Application for admission may be filed

- (a) for spot trading only,
- (b) for derivatives trading only,
- (c) for one or more products as well as
- (d) for spot and derivatives trading altogether.

The application for admission to exchange trading can be restricted to the use of the Trade Registration Functionality of the EEX trading systems.

(2) An application for admission as an Exchange participant can also be filed for one branch office or several branch offices of one company.

(3) Even if they are not Exchange participants on EEX, companies can be recognised as Trading Agent for trading on the Spot Market by the Management Board of the Exchange upon a written application by the company concerned. Approved Trading Agents are entitled to effect the conclusion of transactions on EEX on behalf and for the account of other Exchange participants licensed on EEX through the Exchange traders admitted to EEX for them. Trading Agents are acting with its own user identification. Every entry by the Exchange traders of the Trading Agent into the system has to be made individually allocable. The Management Board issues the admission as Trading Agents in writing; it can refuse or revoke said admission at any time in writing if there are relevant reasons for such a refusal or such a revocation. Details with regard to this shall be specified by the Management Board of the Exchange. The provisions contained in the rules and regulations of the exchange in connection with the participation in trading, including the rules regarding the technical facilities shall apply accordingly to the Trading Agents - even if the Trading Agents is not mentioned specifically.

(4) In accordance with Sect. 31 of these rules, companies, which have been admitted, can file an application for the admission as a Market Maker.

(5) Each application for admission has to be directed to EEX, using the required form.

§ 16 Admission Procedure

- (1) Decisions regarding the admission
 - (a) of companies to participate in Exchange trading (Exchange participant) and
 - (b) of persons who shall be entitled to trade on the EEX Spot and/or Derivatives Market (Exchange trader)

are made by the Management Board of the Exchange upon written application pursuant to Sect. 19 Exchange Act (Börsengesetz, BörsG). The decision is made by the Management Board of the Exchange in written form. It is permitted to refuse an incomplete application. The existing Exchange participants may be informed of the admission of a new Exchange participant conveniently.
- (2) Evidence of fulfilment of the conditions for admission of Exchange participants and traders must be furnished by the respective participant. The applicant must obtain all state approvals, permissions, licenses and admissions or similar agreements that are required for trading on the EEX and the analogous handling of the concluded business. The Management Board may request from the applicant additional documents or information at any time and within a certain time limit. In this respect it may, after a due assessment of the circumstances, either itself or through an agent, conduct an examination of the applicant at the applicant's expense and require the applicant to submit such statements and documents as it may deem appropriate. In addition, it may request information from third parties- the applicant must be given prior notice of such request.
- (3) Before its admission as an Exchange participant on the sub-markets of the EEX, a foreign company shall appoint an authorized agent with a registered office within the Federal Republic of Germany. An effective revocation of such authorization can only be undertaken if – at the same time – another authorized agent with registered offices in the Federal Republic of Germany is appointed.
- (4) Foreign participants can only be admitted to trade at EEX if the Exchange is permitted to admit these companies based on the law of the respective country. Applications for the admission of foreign companies are suspended as long as no evidence of the lawfulness of the admission and the trading participation, in accordance with the law of the respective country, is furnished by the applicant or should EEX gain knowledge by other means to the effect that the admission of the foreign Exchange participant and its trade participation is permissible.
- (5) After the granting of admission to trading, the Exchange participant shall still be required to notify the Management Board without delay of any changes of a factual or legal nature which could lead to the conditions for admission no longer being met; in particular, the admitted participant shall be required to inform the Management Board without delay if it becomes aware that criminal proceedings are being launched against it on suspicion of property or tax violations. Moreover, it shall be obliged to inform the Management Board if it becomes aware that such proceedings have been instituted – or are pending – against a person either acting on its behalf who, according to statute, the Articles of Association or a Shareholders' Agreement is entrusted with the management of the business of the Exchange participant or admitted as an exchange trader for it. In order to ensure this, the

Management Board of the Exchange may demand additional information and documents under analogous application of paragraph 2 sentences 3 and 4.

§ 17 General Admission Requirements for Exchange participants

- (1) Entitled to file an application for admission to participate in Spot and Derivatives trading (Exchange trading) are only those companies that are, with respect to the products that may be traded, commercially engaged in the business of
 - (a) purchasing and selling for their own account (own transactions),
 - (b) purchasing and selling in their own name for the account of a third party (customer transactions), or
 - (c) acting as intermediaries for contracts to buy and sell (brokerage operations).
- (2) Companies which have their registered office within or outside the Federal Republic of Germany are entitled to apply for admission, provided that the superior Exchange Supervisory Authorities in Germany and abroad are able to exchange information in order to supervise the Exchange participants.
- (3) According to the requirements stipulated in Sect. 19 paragraph 4 Exchange Act, Exchange participants shall meet the general admission requirements:
 - (a) Companies that are organized in the legal form of a sole proprietorship, the proprietor, or in the case of other Exchange participants, the individuals who are by law, articles of association or shareholders' agreement entrusted with the management and the representation of the applicant's business (managing directors) are reliable and if at least one of such persons has the necessary professional qualification for engaging in Exchange transactions. These representatives shall be appointed by the applicant in the application for admission.
 - (b) The orderly settlement of such transactions must be assured.
 - (c) The Exchange participant provides evidence of liable equity amounting to at least € 50,000 unless it is
 - a financial institution,
 - a financial services institution or
 - an Exchange participant within the meaning of Sect. 53 paragraph 1, sentence 1 or Sect. 53 b paragraph 1, sentence 1 of the KWG⁵

and is authorized to engage in financial commission business within the meaning of Sect. 1 paragraph 1, sentence 2 no. 4, or to provide a financial service within the meaning of Sect. 1 paragraph 1a, sentence 2 nos. 1 – 4 of the Banking Act; the paid-in capital and reserves after deduction of any withdrawals by the proprietor or the personally liable shareholder and any loans extended to such persons and of

⁵ German Law on Banking (German Banking Act) of 9th September 1998 (German Federal Gazette I p. 2776)

any excess of indebtedness with respect to the free assets of the proprietor shall be considered as liable equity.

- (d) With respect to applicants that are obliged to provide evidence of liable equity according to a), there shall be no facts justifying the assumption that the applicant, taking into account the liable equity capital, does not have the necessary economic capacity to participate in Exchange trading in an orderly manner.
 - (e) In case a proof for the liable equity cannot be rendered, the proof can be substituted by means of a bank guarantee or by a deposit in monetary form. The bank guarantee has to be declared by a domestic credit institute according to Sect. 1 paragraph 1 of the KWG or a comparable foreign institute in favour of the EEX. The guarantee has to contain the unconditional and irrevocable obligation to transfer the guaranteed amount to an EEX bank account upon first request of EEX. The content, form and type of the bank guarantee shall be determined by the EEX.
 - (f) The evidence of liable equity is not necessary if the Exchange participant only applies for participation in primary auctions of emission rights and the performance of its liabilities arising out of its trading activities is guaranteed by a Clearing Member of the European Commodity Clearing AG (ECC AG).
- (4) The admission of an Exchange participant shall authorize the Exchange participant to participate in Exchange trading, if the Exchange participant is equipped with the necessary technical connection and if any other requirements for the connection to the respective trading systems of EEX are fulfilled.
- (5) In the case of companies that only want to be admitted for using the Trade Registration Functionality of the EEX trading systems, the preconditions contained in paragraph 3 lit. (a) – (d) as well as paragraph 4 must be fulfilled. In this case, participation in order book trading is excluded.

§ 18 Requirements for the Settlement of Exchange Transactions

- (1) The orderly settlement of Exchange transactions as stipulated in Sect. 19 paragraph 4 no. 2 of the Exchange Act is deemed to be secured when the following requirements are fulfilled:
- (a) The Exchange participant has to take part in clearing on ECC AG in accordance with the respectively valid Clearing Conditions of ECC AG.
 - (b) A participant must have sufficient technical facilities at its disposal which guarantee correct trading and settlement via the EEX trading systems or via phone. When using an EDP system, it must be ensured that these technical facilities do not impair the Exchange Trading and settlement of transactions. The Management Board can recommend hardware and software, which meet the criteria of 1 and 2. When using other hardware and software, the applicant is obliged to furnish evidence that the requirements of 1 and 2 are met. Details are regulated by the regulations pertaining to technical facilities.

- (c) The technical facilities shall be kept in good condition by the Exchange participant and the Exchange participant is to ensure that their continuous readiness for operation is guaranteed.
 - (d) The participant shall provide the personnel who are required for trading and settlement, and take satisfactory organizational precautions.
- (2) The participation in the Clearing of the ECC AG pursuant to paragraph 1, lit. a is deemed to be secured when the ECC AG confirms to the EEX in a binding form that the Exchange participant:
 - (a) has concluded a Clearing Agreement with the ECC AG for the market applied for, or provided that the Exchange participant intends to become a Non-Clearing Member for transactions for the respective market in terms of the Clearing Conditions of ECC AG (Non-Clearing Member), the participant has concluded a respective agreement with a Clearing Member and the ECC AG (NCM Agreement) and
 - (b) is recognised by the ECC AG as a trading participant for each product to be traded. The admission as a trading participant requires, in particular, the necessary declarations and/or verifications for the completion of trades in a product.

§ 19 Requirements of Technical Facilities

- (1) The technical requirements of the connection to the EEX trading systems are met if the Exchange participant is equipped with EDP facilities, which comply with the requirements in accordance with the Implementation Regulations of EEX concerning technical equipment. The Management Board of the Exchange is authorised to check on the compliance with these regulations on-site.
- (2) Upon application of an Exchange participant or by an applicant for Exchange admission, the Management Board of the Exchange may permit the installation of front-end systems in the offices of the Exchange participant outside the country in which the Exchange participant for admission to trade has its registered office, provided that the application of and compliance with the Exchange rules of the EEX and any supplemental provisions thereto are also ensured in the country in which the additional offices is situated.
- (3) If the Management Board of the Exchange permits an Exchange participant to use order routing systems, in accordance with the Implementation Regulations of the EEX concerning Technical Equipment, such Exchange participant shall be responsible for ensuring that the order routing facility is used properly, for the designated purpose, and in accordance with the legal provisions applicable on exchanges. This also applies to any orders, which are entered into the EEX trading systems via order routing by third parties who are not admitted to the Exchange. Should the Exchange participant fail to comply with these requirements, the Management Board of the Exchange will restrict or revoke the permission to use an order routing system.
- (4) The use of systems for trading, in which a computer algorithm determines single order parameters automatically (algorithmic trading), has to be notified to the Management Board of the Exchange prior to their launch. The Management Board of the Exchange may permanently or temporarily, completely or partially forbid using a system as described in

phrase 1, if a disturbance of the proper exchange trading or the proper execution of exchange trades is impending. Further details are stipulated in the Technical Implementation Regulations of EEX.

§ 20 Admission of Exchange Traders

Persons entitled to trade on the EEX Spot and/or Derivatives Market (Exchange trader) shall be admitted by EEX if they are reliable and have the necessary professional qualifications in accordance with the provisions in the Rules for Admission. They can only be admitted for one Exchange participant at any given time.

§ 21 Admission of Trader Assistant

- (1) Persons who shall be entitled to trade on the EEX Spot and/or Derivatives Market on behalf of an admitted exchange participant without having proofed the personal qualification (Trader Assistant) can be admitted by EEX one time for the maximum duration of 6 month as trader assistant, if they are reliable, participate in trading at the EEX markets only under control and instruction of one specific exchange trader (Responsible Exchange Trader), and only insofar as the admission of the Responsible Exchange Trader extends to.
- (2) Trader Assistants can on be assigned to one specific Responsible Exchange Trader. A maximum of three Trader Assistants can be assigned to each responsible Exchange Trader. The Responsible Exchange Trader is responsible for all submissions into the systems of his admitted Trader Assistance; towards the exchange all such submissions into the systems are deemed to be entered in the name of the Exchange Trader.
- (3) The rules regarding the termination and suspension in Section 3.2 apply mutatis mutandis with respect to Trader Assistants. Furthermore, an admission as Trader Assistant expires if the admission of his Responsible Exchange Trader ceases to exist or if the period mentioned in subsection 1 expires.

3.2. Termination and Suspension of Exchange Admission

§ 22 Resignation from Exchange Admission, Withdrawal and Revocation of Exchange Admission

- (1) An Exchange participant or Exchange trader can resign from admission upon written notice to EEX. The resignation can be limited to individual products.
- (2) The Management Board of the Exchange is entitled to withdraw the admission of an Exchange participant or Exchange trader in full, or partially should one of the admission requirements not exist upon the granting of the admission.
- (3) The Management Board of the Exchange is entitled to revoke the admission of an Exchange participant in full or partially if one of these requirements ceases to be satisfied at a later date, or if the Exchange participant fails to lodge the securities determined for such Exchange participation or fails to make the daily clearing payments or other deliveries or payments and settle other charges in good times as stipulated in the Conditions for Trading on EEX (Trading Conditions) or the respective Clearing Conditions within the pre-

scribed period. The same applies for serious repeated breaches of the Rules and Regulations of EEX. The Management Board of the Exchange may also revoke the admission if the Exchange participant does not comply with the Order-Transaction-Ratio according to Sect. 26a of the German Exchange Act in conjunction with Sect. 39.

- (4) ECC AG or a Clearing Member of ECC AG may also submit an application for an instruction for the revocation of admission.
- (5) The deletion of the admission of an Exchange participant to EEX results in the deletion of the admission of the Exchange trader who is acting on behalf of this Exchange participant.

§ 23 Consequences of Resignation, Withdrawal and Revocation

If an Exchange participant resigns its admission to trading in full or partially or such admission is withdrawn or revoked by the Management Board of the Exchange in full or partially, the Exchange participant shall be obliged to close or transfer the positions affected by this measure to other Exchange participants within a period prescribed by the Management Board of the Exchange; furthermore, the Exchange participant must cancel all orders and quotes in the trading system concerned and may not open any new positions. The Exchange participant shall ensure that its customers can transfer their positions to another Exchange participant. If the Exchange participant fails to meet these requirements within the prescribed period, the Management Board of the Exchange has the right to cancel the orders and quotes and to close the positions. The admission to trade shall terminate only after the fulfilment of the requirements provided for in this paragraph and of all obligations owed to ECC AG and/or the relevant Clearing Member.

§ 24 Suspension of Exchange Admission

- (1) On the strong suspicion that one of the conditions for admission has not been fulfilled, or has subsequently ceased to be fulfilled, the Management Board of the Exchange may order the suspension of the Exchange participant or Exchange trader partially or in full for a maximum period of six months. The suspension of the admission of an Exchange participant may also be ordered so long as the Exchange participant is in default with the payment of due fees.
- (2) The Management Board of the Exchange may also suspend the admission of an Exchange Participant or of an exchange trader operating for it in case of non-payments for the time being in default, in all other cases for a maximum period of six months, should the Exchange Participant or an exchange trader operating for it contravene provisions of the German Exchange Act or the EEX Rules or fail to lodge the margins or make the daily clearing payments or effect other deliveries or payments and settle other charges in good time as stipulated according to the Trading Conditions or the current Clearing Conditions. The same applies if the Exchange participant does not comply with the Order Transaction Ratio according to Sect. 26a of the German Exchange Act in conjunction with Sect. 39.
- (3) ECC AG or a Clearing Member of ECC AG can also submit an application regarding the order for a suspension of admission.

- (4) During the period of the suspension of the admission of an Exchange participant, the right to take part in trading on the EEX shall also be suspended for its Exchange traders admitted to trading under § 20. The Exchange trader concerned must cancel all orders and quotes and is not permitted to open any new positions and, under the supervision of the EEX, shall close or transfer all of his/her existing positions.
- (5) Upon application of the Exchange participant the Management Board of the Exchange may order the suspension of the exchange admission at its own discretion. The duration of the suspension shall not exceed a period of 1 year. During the suspension period no annual fees will be charged; technical fees only, if relevant connections are maintained. Sect. 24 paragraph 4 applies accordingly. The Management Board of the Exchange will revoke the suspension upon request of the Exchange participant before expiry of the period ordered pursuant to sentence 1 if the Exchange participant continues to comply with the admission requirements.

§ 25 Emergency Member Stop

- (1) A Clearing Member of ECC AG can file an application for the temporary exclusion (generally only for a period of five days) from trading on all Sub-markets of EEX of an Exchange participant for which it provides services by means of a corresponding entry into the trading system of EEX (Emergency Member Stop), provided such Clearing Member has made an agreement regarding the permissibility and toleration of this measure with this Exchange participant. At the same time, the Clearing Member states that it is not prepared to clear further transactions by this Exchange participant on the Sub-markets of EEX.
- (2) The Clearing Member which has used the function of the Emergency Member Stop is obliged to make all the required declarations to permit trading of the Exchange participant concerned on the Sub-markets of EEX, by means of an immediate corresponding entry into the trading system of EEX (deactivation of the Emergency Member Stop) once the preconditions for the use of the Emergency Member Stop have ceased to exist.
- (3) In each individual case, the Clearing Member which has activated the Emergency Member Stop is obliged to immediately communicate a written explanation for the activation of the Emergency Member Stop to the Management Board of the Exchange on the same exchange trading day. This documentation should contain information regarding the facts of the matter, the reasons and the probable time of the deactivation of the Emergency Member Stop.
- (4) Upon the activation of the Emergency Member Stop, the Management Board of the Exchange will order the suspension of the admission of the respective Exchange participant to trade on the exchange for the period of time until the Clearing Member communicates to the Management Board of the Exchange that it is ready to re-commence clearing of transactions of the Exchange participant concerned by deactivating the Emergency Member Stop.
- (5) For the duration of the suspension of the admission to trade on the exchange according to paragraph 1 the trading system T7 prevents further orders by the Exchange participant concerned from being entered into the trading system. Moreover, orders which have already been entered into the system are deleted. Other trading systems do not have this

functionality. Regardless of this, the Exchange participant concerned is no longer entitled to enter orders or conclude transactions on EEX or to make entries for the purpose of position administration according to Sect. 35 of the Trading Conditions as of the order regarding the suspension of the admission to trade on the exchange.

§ 26 Exclusion from Trading

- (1) If an Exchange participant admitted to trading on the EEX as a Clearing Member of ECC AG fails to provide the margin or daily settlement amount required or fails to make any other payment or delivery when due, on request of ECC AG the Exchange participant, as well as all affiliated Non-Clearing Members, may be excluded from trading on the EEX for the duration of such failure by decision of the Management Board of the Exchange.
- (2) If an Exchange participant admitted to trading on the EEX as a Non-Clearing Member of the ECC AG fails to provide the margin or daily settlement amount required or fails to make any other payment or delivery when due, paragraph 1 shall apply accordingly. If such a Non-Clearing Member fails to make any deliveries or payments or fails to pay any premiums or fees to its Clearing Member when due as set out in the Trading Conditions of EEX or in the Clearing Conditions of ECC AG, the Management Board of the Exchange may, at the request of ECC AG or its Clearing Member, exclude such a Non-Clearing Member from trading on EEX for the duration of such failure.
- (3) If the other requirements for the admission as an Exchange participant are no longer fulfilled, the Management Board of the Exchange can exclude the Exchange participants from trading in full or partially for individual products or markets

§ 27 Consequences of Exclusion from Trading

- (1) If a Non-Clearing Member is excluded from trading, the Clearing Member which provides services for such Non-Clearing Member, or ECC AG may request the Management Board of the Exchange to close the positions of that Non-Clearing Member. If a Clearing Member that is Exchange participant at the same time, is excluded from trading, ECC AG may request the Management Board of the Exchange to close the positions of that Non-Clearing Member. If a Clearing Member of ECC is excluded from trading under the provisions of this paragraph, Non-Clearing Members affiliated with it may only be excluded from trading until they are able to engage in trading on EEX through another Clearing Member. The right to revoke their admission remains unaffected.
- (2) If an Exchange participant is excluded from trading in single or all products, the Exchange participant must cancel all its bids, orders and quotes within the respective products and must not enter new bids, orders or quotes within the trading systems of EEX.

3.3. Liquidity Provision by Market Makers and Liquidity Providers

§ 28 Prerequisites and Definitions

- (1) The Management Board of the Exchange may determine for single products or sub-markets that and in what manner liquidity shall be provided for trading in the respective product(s) by Market Makers or Liquidity Providers.

- (2) The provision of liquidity for EEX by Market Making means the holding out of an Exchange participant on EEX on a continuous basis as being willing to deal on own account by buying and selling of products against that Exchange participant's proprietary capital at quotations defined by that Exchange participant (Market Maker). Market-Makers will be admitted or committed as Market Makers, respectively, by the management board of the exchange by means of administrative act.
- (3) The provision of liquidity which is not conducted within the framework of an admission or commitment as Market Maker, respectively, is the willingness of an undertaking on EEX on a continuous basis to deal on own account by buying and/or selling of products against that undertaking's proprietary capital at prices defined by that undertaking (Liquidity Provider). Liquidity Provider will be appointed by means of private-law agreements.

§ 29 Obligations of Market Makers and Liquidity Providers

- (1) A Market Maker is obligated to simultaneously enter limited bid and ask orders (quotes) into the EEX trading system to the extent determined by the Management Board of the Exchange and to conclude trades on the basis of such quotes. The Market Maker must be contactable at all times during trading times.
- (2) In the interest of ensuing orderly trading conditions, the Management Board of the Exchange may impose additional duties on Market Makers. In particular, the Management Board of the Exchange may establish a maximum or minimum spread between the bid and the ask prices, minimum contract sizes for both the bid and the ask side, a minimum holding period for quotes, and a minimum period for maintaining quotes in the EEX trading system.
- (3) Type and scope of the obligations of Liquidity Providers will be determined by the exchange operator by means of general terms and conditions,

§ 30 Commitment as Market Maker or Liquidity Provider by EEX

- (1) The Management Board of the Exchange may commit suitable Trading participants to provide EEX continuously and foreseeable with liquidity in single products or sub-markets as Market Maker or Liquidity Provider. Without limitation, a Exchange participant may be considered as being suitable if it possesses the necessary organizational and financial means to comply with its obligations as Market Maker or Liquidity Provider and it has an appropriate number of Exchange traders as well as the necessary technical requirements at its disposal. Further, it may be assumed due to the previous trading behavior or other comparable criteria, that it entertains a substantial interest to further the development of the liquidity in the products or sub-markets of EEX concerned, respectively.
- (2) The commitment as Market Maker or Liquidity Provider, respectively, has to be subject to appropriate commercial conditions. The commitment as Market Maker is furthermore dependent on the admission as an Exchange participant.
- (3) The Management Board of the Exchange revokes the commitment as Market Maker or Liquidity Provider, respectively, if Market Making or Liquidity Provision is sufficiently conducted by other Exchange participants according to the following provisions.

§ 31 Admission as Market Maker

- (1) Notwithstanding Sect. 30, an Exchange participant may also apply for admission as a Market Maker for one or several products if the Management Board of the Exchange has decided to conduct market making with respect to the trading of such product or products. Each product, to which an applicant seeks admission as a Market Maker, must be specified in the application.
- (2) The Management Board of the Exchange will grant a Market Maker admission provided the Exchange traders named in the application for such type of trading have the requisite trading knowledge to act as Market Makers. The applicant must furnish evidence of the requisite professional knowledge.
- (3) The admission as Market Maker is dependent on the admission as an Exchange participant.
- (4) A Market Maker admitted in accordance with paragraphs (1) through (3) may at any time resign from its Market Maker Admission upon written notice to EEX for all or for individual products. From the fifth trading day after receipt of the notice on, the Market Maker is neither authorized nor obliged to enter quotes for the products concerned.
- (5) In the case of a reapplication for admission as a Market Maker concerning products where the admission has been resigned from before, EEX may prescribe a waiting period of at least 10 trading days.
- (6) The Management Board of the Exchange may revoke the admission of a Market Maker if the Market Maker does not fulfil its obligations specified in Sect. 29 upon prior notice.

3.4. Admission of Institutions with public mandate

§ 32 Admission as Auctioneer

- (1) Legal bodies organized under private law or legal bodies organized under public law may be admitted as an auctioneer by the exchange without being admitted as an Exchange participant.
- (2) Auctioneer in the meaning of this clause is a private law or public law institution mandated by one or several EU member states or by the European Commission with the primary auction of greenhouse gas emission allowances (Emission Rights) in the sense of Directive 2003/87/EG and any following acts (public mandate) and who acts only as seller of Emission Rights using an auction (single sided auction). Under the admission as auctioneer any other participation of the auctioneer in trading at EEX is prohibited.
- (3) An auctioneer may be admitted upon request as auctioneer if:
 - (a) the auctioneer is entitled by public mandate in the sense of subsection 2 to sell Emission Rights,
 - (b) the orderly settlement of the auctions is secured and
 - (c) the orderly settlement of transactions is secured; Sect. 18 applies mutatis mutandis.

The prerequisites under lit. a–c shall be considered as fulfilled for auctioneers that request to be admitted to auctions within the meaning of Art. 26 (2) of Commission Regulation (EC) No 1031/2010 („Transitional Common Auction Platform“ or „TCAP“) if the prerequisites for admission stipulated in the “Arrangements on primary auctions of emission allowances on the spot market of the European Energy Exchange (EEX) under Commission Regulation (EU) No 1031/2010 and clearing and settlement of such transactions through European Commodity Clearing AG (ECC)” (“Arrangements”) are accepted and fulfilled.

- (4) An auctioneer is only entitled to act as a seller within an auction. Auctioneers that have been admitted in accordance with Art. 22 of Regulation (EC) No. 1031/2010, shall not be entitled to enter sell orders into the trading system, the respective sell order is the Auction calendar in its respective valid version.
- (5) Regarding resignation, withdrawal, revocation and suspension of an acceptance as auctioneer the rules in Section 3.2 apply mutatis mutandis.

3.5. Recognition of Non-Trading Brokers and Third-Party Trading Venues

§ 33 Recognition as a Non-Trading Broker

- (1) Undertakings may also be recognised by the Management Board of the Exchange exclusively for using the Trade Registration Functionality by entering trades on behalf and in the name (authorised declaring agent or declaring intermediary) of Exchange participants in accordance with the Trade Registration Rules (Non-Trading Broker). Non-Trading Brokers are not Exchange participants within the meaning of Sect. 16 paragraph 1 and they do not take the place of the clients upon the registration of the trades at EEX and they cannot open any own positions.
- (2) Recognition as Non-Trading Broker within the meaning of this provision shall only be possible for those undertakings:
 - (a) which are
 - a credit institution,
 - a financial services institution, or
 - an undertaking operating within the meaning of Sect. 53 paragraph 1 sentence 1 or Sect. 53b paragraph 1 sentence 1 KWG

that are authorised to conduct principle broking business within the meaning of Sect. 1 paragraph 1 sentence 2 no. 4 KWG or to provide a financial service within the meaning of Section 1 paragraph 1a sentence 2 no. 1 to 4 KWG. If according to the law of the country of origin of the undertaking that conducts the principle broking business or provides financial services, respectively, an authorization to do so is not necessary, the undertaking has to prove an equity base that is at least comparable to that of the undertakings mentioned in sentence 1. EEX may at any time demand proof of a higher equity base or the posting of collateral if it is deemed necessary by EEX after having conducted a proper risk analysis;

- (b) in as far as they are organised in the legal form of a sole proprietorship, whose proprietors are personally reliable and professionally qualified for this position and in the case of other companies, in which the managing directors are personally reliable and professionally qualified for this position; those persons holding power of representation shall be specified by the applicant in the application for recognition;
 - (c) which have successfully completed a KYC process at EEX;
 - (d) which have the required technical access to the EEX Trade Registration Functionality;
 - (e) which must have appointed persons who are to be entitled to use the Trade Registration functionality with these persons having to be personally reliable and professionally qualified;
 - (f) which guarantee
 - (i) that through their internal organisation they ensure that transactions are only registered in the name of such Exchange participants with whom they have concluded a respective agreement
 - (ii) that by this agreement the liability risk for erroneous registrations caused by the Non Trading Broker is allotted thoroughly to the Non Trading Broker as well as
 - (iii) that they provide EEX with a list amended from time to time and in a format determined by EEX containing EEX Exchange participants with whom the Non Trading Broker has concluded a respective agreement; and
 - (iv) that the process for matching of orders within their internal trading system cannot be manipulated;
- (3) Non-Trading Brokers, who are not also admitted as Exchange participants on EEX at the same time are only authorised to enter trades; however, they are not authorised to confirm such. Any participation in exchange trading and holding of own positions via the Trade Registration functionality are excluded.
- (4) The Management Board of the Exchange can restrict the recognition of Non-Trading Brokers to certain market segments and products.
- (5) The Management Board of the Exchange can revoke the recognition as a Non-Trading Broker at any time and with immediate effect in the event that individual preconditions for recognition as a Non-Trading Broker cease to apply or in the event that the Management Board of the Exchange learns of facts which indicate unreliability on the part of the Non-Trading Broker. Such facts include, in particular, entering of transaction which the Non-Trading Broker was not entitled to conclude. The revocation of a company's recognition as a Non-Trading Broker has to be communicated to the Exchange participants of EEX.

§ 34 Recognition as a Third Party Trading Venue

- (1) Enterprises that operate and/or manage the business of a regulated market may be recognised by the Management Board of the Exchange exclusively for using the Trade Reg-

istration Functionality by entering trades on behalf and in the name (authorised declaring agent or declaring intermediary) of Exchange participants or Trade Registration Participants in accordance with the Trade Registration Rules (Third Party Trading Venue). A regulated market according to sentence 1 is a multilateral system operated and/or managed by a market operator, which brings together or facilitates the bringing together of multiple third-party buying and selling interests in commodities or future or forward transactions in commodities, freight rates, emission allowances, climatic or other physical variables – in the system and in accordance with its non-discretionary rules – in a way that results in a contract, in respect of the commodities, freight rates, emission allowances, climatic or other physical variables admitted to trading under its rules.

- (2) Recognition as Third Party Trading Venue within the meaning of this provision shall only be possible for those undertakings:
 - (a) which have obtained a permission by the respective competent national supervisory authority to operate a regulated market and which are supervised in doing so by that authority;
 - (b) which have concluded a cooperation agreement regarding the registration of trades with EEX AG or a group company of EEX Group.
 - (c) which have the required technical access to the EEX Trade Registration Functionality;
 - (d) which guarantee
 - (i) that through their internal organisation they ensure that transactions are only registered in the name of such Exchange participants with whom they have concluded a respective agreement
 - (ii) that they provide EEX with a list amended from time to time containing their trading participants for whom the Trade Registration Functionality will be used; as well as
 - (iii) that they are thoroughly liable risk for erroneous registrations caused by the them.
- (3) There shall be no right to be recognized as Third Party Trading Venue, particularly, such right shall not be the consequence of the recognition of another enterprise.
- (4) The Management Board of the Exchange can revoke the recognition as a Third Trading Party Venue at any time and with immediate effect in the event that individual preconditions for recognition as a Third Trading Party Venue cease to apply or in the event that the Management Board of the Exchange learns of facts which indicate unreliability on the part of the Third Trading Party Venue. Such facts include, in particular, entering of transaction which the Third Trading Party Venue was not entitled to conclude. The revocation of a company's recognition as a Third Trading Party Venue has to be communicated to the Exchange participants of EEX.

3.6. Admission, Withdrawal and Suspension of Products

§ 35 Admission of Products

- (1) The Management Board of the Exchange shall decide which product shall be admitted to Spot and Derivatives Trading on the EEX and determines – subject where necessary to the required approval of the Exchange Supervisory Authority – on which trading system a product will be launched. Condition for the admission of a product is that the maintenance of orderly Spot and Derivatives trading can be expected. Details are regulated in the EEX Conditions for Trading.
- (2) Products are, in each case, Spot Market trades, and Options or Derivatives contracts on a specific underlying instrument that are authorized to trading on the Exchange. The underlying instrument is the reference object of the product.
- (3) A decision of the Management Board of the Exchange concerning the admission of products for trading on the EEX must be made public.
- (4) The Management Board of the Exchange shall decide on the admission of products for use of the Trade Registration Functionality. In the case of products which are exclusively launched for the registration of trades, it shall determine the contract specifications. More detailed provisions regarding this are made in the Trade Registration Rules.

§ 36 Withdrawal and Suspension of a Product Admission

- (1) If orderly Exchange trading or the orderly settlement of Exchange transactions is at risk or protection of the public requires such actions, the Management Board of the Exchange may withdraw the admission of products for Spot Market or Derivatives trading in these products on the EEX, or it may suspend trading on the Spot or Derivatives Markets of the EEX altogether. This holds in particular for trading on the Derivatives Market of the EEX if the quotation of an underlying is suspended or if for other reasons, the EEX is not authorized to reference this underlying anymore.
- (2) Furthermore, the Management Board of the Exchange may interrupt the entire Exchange trading or trading in individual products if technical reasons or the prevention of threats to the functionality of Exchange trading require such an action.
- (3) In case the orderly trading or settlement of a contract is not secured, the Management Board of the Exchange may determine cash settlement instead of physical fulfillment for contracts which have to be fulfilled physically.
- (4) The Exchange participants need to be immediately informed about withdrawals of the admission of products or the suspension of trading on the Spot or Derivatives Markets of the EEX and the determination of a cash settlement for physical products.

When trading on the Spot or Derivatives Markets of the EEX is entirely or partly suspended for certain products, it is not possible to enter orders or quotes for the concerned products and for the duration of the suspension. Neither is it possible to close open positions resulting from derivatives trading for the concerned products and for the duration of the suspension. All the existing orders and quotes will be deleted. Reopening of trading in the suspended products begins – if applicable - with a pre trading period or an opening phase. In the case of a suspension that constitutes a particular situation, the Management Board of the Exchange may give instructions that deviate from the rules specified above.

4. Exchange Trading

4.1. General Terms for Exchange Trading

§ 37 Electronic Exchange

- (1) The EEX is a fully electronic exchange. It has electronic trading platforms for the conclusion of Spot transactions and for the conclusion of Derivatives transactions.
- (2) Orders are purchase or sale orders made by Exchange participants on the Spot Market of the EEX in the trading type of Continuous Trading with auction trading as well as on the Derivatives Market. In auctions orders can also be referred to as bids. Quotes are limited purchase and sale orders entered simultaneously which are valid for only one day. Further details are stipulated in the EEX Conditions for Trading.
- (3) Exchange participants transfer orders and quotes from their respective workstations to the EEX trading systems by means of electronic transmission. The Management Board is entitled to permit the usage of other methods of transfer; it will inform the Exchange participants of this method by the most suitable means.
- (4) The Management Board is entitled to temporarily interrupt the access to the EEX trading systems for single or all products for one or all of the Exchange participants should this be necessary for technical reasons. The Management Board makes the decision as to the revocation of the interruption. The Exchange participants concerned must be informed of the interruption of the access to the EEX trading systems and the revocation of the same by suitable means.

§ 38 Exchange Price and Price Determination

- (1) Exchange prices are determined by execution of orders at the exchange. Exchange prices are determined transparently and non-discriminatorily by the trading systems of EEX according to the more detailed provisions of the following paragraphs.
- (2) Exchange prices must be determined properly and correspond with the actual market situation of the exchange trading. The exchange has to make appropriate arrangements to secure the proper determination of the exchange prices in the event of extensive price fluctuations. Appropriate arrangements are in particular short-term changes in the market model, like the discontinuation of continuous trading with a subsequent restart by an opening auction or through the short-term interception of the volatility considering static or dynamic price corridors. Details may be stipulated in the Trading Conditions. The Management Board of the Exchange may rapidly determine further appropriate measures, if there is a risk that the exchange prices are not determined properly or do not correspond with the actual market situation.
- (3) In primary auctions of emission allowances at the spot market in accordance with Regulation (EU) No. 1031/2010 as well as at the derivatives market pricing is carried out as uniform pricing in the auction by means that all successful bidders will pay the same auction clearing price after the end of the call phase.

The limit price of the order at which the sum of the volumes bid matches or exceeds the volume of allowances auctioned shall be the auction clearing price: The orders are sorted according to the height of the price limit and the quantities specified are added up. Where the price limit of several orders is the same, these orders will be sorted through a random selection according to an algorithm determined by EEX before the auction.

If the amount of bidding orders does not meet the offer of EU emission allowances a price determination does not take place during the respective auction. The same applies if the estimated auction price does not reflect the orderly market value (reference price procedure as per Art. 7 (6) of Regulation (EU) No. 1031/2010) and the other cases as foreseen in Art. 9 of Regulation (EU) No. 1031/2010. Further details are stipulated in Sect. 33 of the Trading Conditions of EEX.

- (4) Within the trading system T7 the opening price is determined during the opening auction, as of a time to be determined by the Management Board of EEX, on the basis of both limited orders and market orders contained in the trading system and shall be the price at which the largest possible number of contracts of such orders and quotes may be executed (Principle of Maximizing Executions – Meistausführungsprinzip).

During continuous trading the exchange price is determined on the basis of the respective highest sell limit or lowest buy limit in the same order book or another order book (synthetic path) at which the orders are executed automatically by the trading system (price-time priority). Further details are stipulated in Sect. 25 of the Trading Conditions of EEX.

- (5) The exchange prices and the volume and time at which the trades were closed out shall be published within the respective trading system or by means of electronic media, respectively, immediately in real time and not later than three minutes after occurrence, unless a delayed publication seems necessary in order to avoid an inadequate disadvantage of the parties of the transaction. Type and extent of the publication shall be determined by the Management Board of the Exchange in accordance with the requirements provided by law. The Management Board shall accordingly be authorized to publication serving the purpose of an adequate notification of the public of the market development.

§ 39 Order-Transaction-Ratio

- (1) The Exchange Participants shall be obliged to safeguard an adequate ratio between their entries of orders, changes and cancellations thereof and the actually executed transactions (Order-Transaction-Ratio), to avoid any risk for proper exchange trading. Thereby, the Order-Transaction-Ratio is to be determined for each financial instrument by means of the numerical volume of the respective orders and trades within one calendar month. An adequate Order-Transaction-Ratio is particularly existent, if it is economically comprehensible due to liquidity of the product concerned, the actual market situation or the function of the acting exchange participant.
- (2) The Management Board of the Exchange shall be entitled to define criteria to determine the adequate Order-Transaction-Ratio for the respective financial instrument or certain classes of financial instruments, whereat the Management Board of the Exchange considers the liquidity and volatility within the respective market including specific order book situations, the way entries to the order book are made (manually or electronically). Enter-

prises, whose entries to the order book serve to fulfill their quotation obligation, may be exempted from the obligation stipulated in paragraph 1.

§ 40 Minimum Price Change

- (1) The minimum price change for each product is stipulated in the Contract Specifications.
- (2) The Management Board of the Exchange may temporarily determine the minimum price change exceeding the provisions in the Contract Specifications, if this determination is appropriate to reduce negative impacts to the market integrity and liquidity.

§ 41 Technical Malfunctions

- (1) Malfunctions which occur on the technical equipment that is required for participation in trading have to be reported to EEX without delay during the business hours by the affected Exchange participants.
- (2) In the case of technical malfunctions, EEX shall be authorized to take any suitable and appropriate measures which are required to safeguard or resume proper trading or the proper settlement of exchange trades. For example, EEX can exclude individual Exchange participants or all Exchange participants from trading temporarily; they can suspend trading or delete orders by individual or all Exchange participants. The measures taken by EEX shall be binding for all Exchange participants. Further rules are contained in the Technical Implementing Regulations of EEX.
- (3) EEX provides unrestricted technical support only during business hours. Outside business hours the support only comprises measures for remedying technical malfunctions and for damage control. These measures concern in particular remedying of a technical malfunction, the deletion of orders by individual or all Exchange participants, the cancellation of transactions, or the complete or partial suspension of trading.
- (4) EEX shall be authorized to commission third parties not belonging to the EEX group to support the Exchange participants outside the business hours or for measures according to paragraph 2. However, the third parties commissioned to that end shall not be granted access to the trading data of the Exchange participants or a right of inspection of such.
- (5) EEX, its operating company and companies of the EEX group assume no liability for damage resulting from a disruption of the operation as a result of force majeure, rebellion, acts of war, natural phenomena, or other events for which it is not responsible (e.g. strikes, lock-outs).
- (6) EEX, its operating company and companies of the EEX group only accept liability for damages resulting from the use of the EEX trading systems if and in as far as this results from gross negligence or actions of intent committed by its organs or vicarious agent. Over and above this, the EEX shall only be liable for the careful selection of the EDP systems used for trading.

§ 42 Central Counterparty

- (1) To safeguard the proper execution of trades concluded or registered at EEX, the clearing of these trades is carried out through European Commodity Clearing AG as central coun-

terparty (ECC or clearing house). The collateralization, financial and physical settlement of all trades concluded or registered at EEX (Clearing), will be carried out exclusively according to the ECC Clearing Conditions in their respective valid version and the conditions they refer to.

- (2) The Management Board of the Exchange may admit ECC AG to trading on EEX as an exchange participant in connection with its activity as a central counterparty. ECC AG is limited to trading on its own behalf or on behalf of the Clearing Members and Non-Clearing Members connected to it in the framework of the default management process of ECC AG. Proof of the authorisation required to this end constitutes the precondition for trading on behalf of the Clearing Members or Non-Clearing Members. Admission has to be applied for in writing.
- (3) The Management Board of the Exchange may regardless of the provision of Sect. 27 enter orders either for own behalf and own account of ECC or on behalf of and on account of the clearing members or non-clearing members of ECC or register trades to safeguard the proper execution of exchange trades.

4.2. Exchange Trading on the Spot Markets of EEX

§ 43 Exchange Hours and Trading Periods

- (1) The Exchange hours for the commencement and the end of the individual phases for all products shall be determined by the Management Board of the Exchange. The Management Board of the Exchange may extend or reduce the Exchange hours as well as the commencement of any of the individual phases on any given Exchange day to the extent necessary to maintain orderly trading conditions or for reasons relating to the trading systems of the EEX.
- (2) The Exchange hours for Spot transactions, which can be concluded in the trading type of closed or open auctions, comprises the following consecutive phases:
 - (a) Call Phase and
 - (b) Execution Phase

The trading period for Spot transactions in the trading type of continuous trading comprises only the Execution Phase.

- (3) Orders can be entered, changed or deleted from the EEX trading systems during the Call-Phase; the Order Book remains closed.
- (4) The Call-Phase is followed by the Execution Phase during which transactions in the individual products can be concluded in a closed or open auction in accordance with the Trading Conditions. The execution of the auctions for individual products, shall be determined by the Management Board of the Exchange unless more detailed provisions regarding this are established in the Exchange Rules or the Trading Conditions.

§ 44 Trading types

- (1) Products of the EEX Spot Markets will be traded in continuous trading or in auctions.

- (2) Unless deviating provisions are made in an individual case, the price at which the highest order volume can be executed with the minimum surplus is determined from the limited and unlimited orders which are received in the EEX system until a certain time in the Open or Closed Auction; in as far as unlimited orders are permissible, these shall be given priority. An Open Auction is generally divided into the call phase and the price determination. During the call phase, Exchange participants may enter, change or delete orders. If there are orders that could be executed against one another, in auctions with a closed Order Book, a potential execution price is displayed during the Call phase. If this is not the case, the best buy and/or sell limit is displayed. In auctions with an open Order Book, the cumulated order volumes of each of the buy and/or sell limits are also displayed. Neither a potential execution price nor order volumes are displayed in a closed auction.
- (3) Continuous Trading commences without an opening auction, closing auction, or intraday auctions. Prices are determined by matching orders at the best possible bid and ask limits indicated in the Order Book; in the event that prices are identical, orders and quotes are matched in the order in which they were entered into the EEX system (price-time priority); unlimited orders are executed first. All available orders shall be displayed cumulatively at the respective limits (Open Order book).
- (3) Details are stipulated in the Trading Conditions.

4.3. Exchange Trading on the Derivatives Markets of EEX

§ 45 Exchange Hours and Trading Periods

- (1) The Exchange hours for derivatives transactions on the Derivatives Markets of EEX consist in accordance with the more detailed provisions in the Trading Conditions of at least the:
 - (a) Trading Period;Furthermore, it can establish the following phases:
 - (a) Pre-Trading Period and
 - (b) Post-Trading Period.
- (2) The Exchange hours for the commencement and end of the individual periods for each approved product for the Derivatives market shall be determined by the Management Board of the Exchange. The Management Board of the Exchange may extend or reduce the Exchange hours, as well as the commencement of any of the individual periods on any given Exchange day to the extent necessary to maintain orderly trading conditions, or for reasons relating to the EEX trading systems.
- (3) In accordance with the Trading Conditions and the Trade Registration Rules, the execution of trades on the Exchange is only possible during the Trading Period.

§ 46 Type of Trading

Products of EEX will be traded on the Derivatives Markets in continuous trading with or without open auctions. In accordance with the Trading Conditions the products may also be traded in closed or open auctions.

4.4. Special Provisions for the Primary Auction of Emission Rights

§ 47 Primary Auction - Auctioneer

- (1) Primary auction of emission rights is effected as an element of exchange trading on the spot and/or derivatives market of EEX.
- (2) The primary auction of emission allowances comprises both EU emission allowances (EUA) and EU aviation allowances (EUAA) according to Commission Regulation (EU) No 1031/2010 (Auctioning Regulation).
- (3) In addition to the rules and regulations of EEX, the respectively valid statutory bases are applicable to the respective auctions. For TCAP-Auctions within the meaning of Art. 26 (2) of the Auctioning Regulation the provisions of the Arrangements as defined in Art. 31 (3) shall apply additionally for the respective contracting parties. In case of a conflict between the Arrangements including the provisions the Arrangements refer to and the Exchange rules, the provisions of the Arrangement precede in the relation between the auctioneers and EEX.
- (4) EEX is the exchange carrying out the primary auction of emission allowances.
- (5) Contracting entity of EEX is the national or European institution, EEX has concluded an agreement about the execution of auctions with. The respectively competent national or European institution or a third party commissioned by it (auctioneer) shall provide the emission allowances to be auctioned off. Trading participants other than the auctioneer are not entitled to conclude sales transactions in the framework of the primary auction.

§ 48 Execution of the Primary Auction

- (1) Exchange, trading for the primary auction of emission allowances is effected by means of a closed auction on the EEX Spot and Derivatives Market.
- (2) The exchange publishes an auction calendar which specifies inter alia the dates for the auction (day and time) as well as the respective quantity of emission allowances to be auctioned off during a given auction date
- (3) More detailed provisions regarding the execution of the auctions are established in the Trading Conditions.

§ 49 Cooperation with Supervisory Authorities, Forwarding of Information

- (1) EEX is entitled and obliged to exchange information with the respective contracting entity, the authorities in charge of monitoring of the auctions in accordance with the more de-

tailed provisions of the provisions which are applicable to the respective primary auction and with the implementing rules and agreements which are based on these, to the extent that the knowledge of such information is necessary for these bodies to fulfil their tasks.

- (2) Further, EEX is in accordance with the provisions of Commission Regulation (EU) No 1031/2010 in its respectively valid version, entitled and obliged to forward data and information to third parties that are commissioned to execute the auction as the successors of EEX, that apply for such succession or that, as authorities, collect data and information in order to forward such to the persons specified in the framework of the valid provisions. Details are laid down, in particular, in Art. 35 paragraph 3 lit h of the Commission Regulation (EU) 1031/2010 and the specific rules governing the use of such data and information which are based on these.
- (3) EEX is entitled to take measures to ensure proper pricing in the primary auction which is also in line with the market with regard to secondary trading in accordance with the more detailed statutory provisions which are valid for the respective primary auction and the more detailed specifications which are based on these.

5. Margin Requirements; Position Limits

§ 50 Margin Requirements

- (1) Each Exchange participants shall deposit the required margin as well as the daily settlement payments on the Derivatives Markets at any given time. The method for the calculation of the margin established by ECC AG and the Clearing Members shall be disclosed to the Non-Clearing Members on request.
- (2) Exchange participants that are also Clearing Members at ECC AG shall immediately inform the managing board of the exchange if one of its Non-Clearing Members does not provide the margins which have been established.
- (3) The adherence to provision regarding margin requirements (i.e. the respective valid clearing conditions) and making of arrangements of suitable measures to ensure that the obligations of Exchange transactions are met shall be monitored in compliance with Sect. 20 of the Exchange Act.

§ 51 Determination of the Position Limits for Derivatives Trading

- (1) The Management Board of the Exchange may set position limits for Derivatives trading in order to ensure that Derivatives Trading proceeds in an orderly fashion. A position limit is a maximum number of Derivatives contracts that may be held by one Exchange participant or one customer for its own account.
- (2) Positions held in arrangements with third parties for a common purpose shall also be included in such position limits.
- (3) In Derivatives trading, the position limits for each product shall be defined as the maximum total number of contracts purchased and sold.
- (4) An Exchange participant may not, for its own account or for the account of any customer, engage in any transactions on the EEX if there are any indications that the Exchange participant or customer, as a consequence of such transaction, whether alone or jointly with others, would hold or control a total position in excess of the position limits set by the Management Board of the Exchange.

§ 52 Modifications of Position Limits

The Management Board of the Exchange may modify position limits in order to maintain orderly trading. Changes to position limits shall become effective no earlier than on the sixth exchange day following the date of their announcement to the Exchange participants.

§ 53 Monitoring of Compliance with Position Limits

The Market Surveillance Department monitors all positions of an Exchange participant, including customer positions, to verify compliance with position limits.

§ 54 Reporting Obligation

In the case that trading commences prior to the point of time at which the margin requirements or the daily settlement payment are to be provided, an Exchange participant must not start trading if the fulfilment of the margin requirements or daily settlement payments applying for this Exchange participant within the agreed time limit is at risk. The Management Board of the Exchange shall be notified by the Exchange participant hereof without delay.

6. Final Provisions

§ 55 Usage of Data

- (1) Data and information received from the EEX trading system shall only be used by Exchange participants for their own purposes with respect to trading and settlement. Transmitting such data to third parties or processing the data received, including all types of commercial uses of these data shall, to the extent not required for EEX trading or for clearing purposes, not be permitted without the prior consent of the Management Board of the Exchange.
- (2) Without prejudice to legal and regulatory obligations, the Management Board of the Exchange and the Operating Company are entitled to share information and data related to the exchange membership within EEX group, the scope of cooperations, outsourcings and the assignment of external service providers. A transfer of information and data outside of EEX group may only take place if this is necessary for the fulfilment of the tasks performed by the third party and if the third party has committed itself to strict confidentiality. The disclosure of personal data is only permitted in the framework of the respectively valid statutory provisions.

§ 56 Recording of Telephone Calls

- (1) In order to safeguard the correctness of exchange trading and of the settlement of exchange trades, telephone calls with the EEX Market Supervision may be recorded and saved electronically by EEX. An indication of the right to refuse the recording will be provided to the caller before the recording. Without prejudice to already granted approvals, the caller may refuse the recording of his call. In this case, the call is terminated by EEX Market Supervision, so that trading on behalf is not possible.
- (2) These recordings are regularly deleted upon the end of a period of one year after the month during which the recording was made provided knowledge of the data recorded is no longer necessary for EEX to be able to fulfil its tasks.
- (3) Data recorded in accordance with section 1 shall exclusively be used for the purpose specified in section 1 and it shall only be used if the matters concerned cannot be clarified or reasonably clarified with the help of other evidence and proof.

§ 57 Publication of Prices and Transaction Volumes

The Management Board of the Exchange shall publish Exchange prices, daily settlement prices, final settlement prices and underlying transaction volumes in the electronic media. The manner and scope of the publication of prices shall be determined by the Management Board of the Exchange. The Management Board of the Exchange is also authorized to publish information serving to adequately inform the public of matters related to market activities.

§ 58 Announcements

Unless provided otherwise, announcements by any of the Exchange bodies of EEX shall appear in the electronic media. The Management Board of the Exchange shall determine the electronic medium.

§ 59 Date of Effectiveness

The Exchange Rules as well as any amendments hereto shall take effect on the day after their publication.

§ 60 Changes of Rules and Regulations

The Management Board of the Exchange is authorized, upon approval by the chairman of the Exchange Council or his deputy, to bring about changes to the Rules and Regulations which do not alter the content.



The English version is for informal use only. The German version is legally binding.



EEX-Admission Rules

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2. General Rules

§ 1 Scope

- (1) The following Admission Rules govern the prerequisites for the admission as an exchange trader, the procedure and the prerequisites for admission to and the content of the traders' examination furnishing proof of professional qualification according to Sect. 19 paragraph 6 BörsG¹ (Traders Examination). The proof of professional qualification constitutes the precondition for admission to the European Energy Exchange (EEX) as an exchange trader.

¹ Exchange Act of 16th July 2007 (Federal Law Gazette, vol. I, p. 1330)

3. Admission

§ 2 Admission of Exchange traders

- (1) Persons entitled to trade on the EEX Spot and/or Derivatives Market (Exchange trader) shall be admitted by EEX if they are reliable and have the necessary professional qualifications in accordance with the detailed provision in the rules for admission.
- (2) The admission entitles the Exchange trader to trade only the products or group of products he is admitted to and only on the trading platform for which such Exchange trader has the required technical knowledge.

§ 3 Proof of Reliability

The applicant proves his personal reliability through the sending of the duly completed and signed document „Declaration of personal reliability“. The Board of Management may request from the applicant additional documents or information.

§ 4 Proof of professional qualification

- (1) Professional qualification shall be assumed if the required practical experience and specialised knowledge necessary for trading on the EEX are satisfactorily shown.
- (2) Practical experience is considered proven if the applicant
 - (a) has successfully taken part in a systems training course according to Sect. 11 or
 - (b) can furnish proof of existing experience regarding the trading systems of EEX over a period of at least six months over the past two years before the application is submitted.
- (3) Evidence of the required specialised knowledge is particularly supplied by passing an examination leading to the qualification of an Exchange trader on the EEX. Details of the examination procedure are stipulated in Subsections 4 and 5.
- (4) The management of the exchange may in its own discretion refrain from the proof of passing the exams mentioned in sections 4 and 5 and may generally accept specific trainings and exams of other exchanges and institutions (foreign certificates) as a proof of professional qualification, this acceptance of foreign certificates has to be published.

§ 5 Admission procedure

- (1) Decisions regarding the admission of persons as Exchange traders are made by the Board of Management of EEX upon written application pursuant to Sect. 19 BörsG. The decision is made by the Board of Management of the Exchange in written form. It is permitted to refuse an incomplete application. The existing Exchange participants may be informed of the admission of a new Exchange participant conveniently.
- (2) Evidence of fulfilment of the conditions for admission of Exchange traders must be furnished by the respective participant. The Board of Management may request from the applicant additional documents or information at any time and within a certain time limit.

4. Board of Examiners

§ 6 Appointment

- (1) The Board of Management appoints a Board of Examiners to administer the examination for the purpose of evidencing the professional qualifications of exchange traders. This Board of Examiners consists of three members; such members elect a chairperson and a deputy chairperson. The Board of Examiners shall determine, by a majority of the votes cast, the results of such examination. Should the vote end in a tie, the respective chairperson shall have the casting vote.
- (2) The composition of the Board of Examiners is published on the website of EEX.
- (3) The Board of Management may appoint one or several deputy members for the Board of Examiners.
- (4) The Board of Management shall appoint and dismiss the members of the Board of Examiners and, where required, the deputies. The appointment may be limited in time. A re-appointment is permissible.

§ 7 Confidentiality

- (1) The members of the Board of Examiners shall keep confidential from third parties all examination proceedings, including the documents transmitted by participants in the examination.
- (2) Members of the Board of Management and the Exchange Council are not considered as third parties in terms of the above mentioned paragraph.

§ 8 Partiality

- (1) Members of the Board of Examiners who are or were related by blood or marriage to an examination candidate, or who are very close to such candidate in another way, should not be involved neither in the examination process nor in the admission to an examination.
- (2) If any concerns regarding partiality of a member of the Board of Examiners are raised by an examination candidate, the remaining members of the Board of Examiners shall determine whether or not to exclude the member concerned from administration of the examination.
- (3) If an examination candidate is concerned that a member of the Board of Examiners is partial, this shall be raised vis-à-vis the Board of Examiners in writing no later than two weeks after the application for the examination and the announcement of the members of the Board of Examiners.

5. Examination Process

§ 9 Application

- (1) The application for admission to the examination as exchange trader on EEX shall be filed in text form.
- (2) The application may be filed by enterprises which intend to participate in EEX as exchange participants or by the individuals to be examined.

§ 10 Admission to Examination

- (1) Individuals shall be admitted to the traders examination who
 - have filed an application for participation in the traders' examination,
 - attend a suitable preparation course (EEX Systems Training) which is recognised by the Board of Management for such purposes or who can demonstrate by any other means in writing that they have acquired the necessary knowledge imparted in the EEX Systems Training within the scope of another vocational training course or by admission to another exchange, and
 - have paid the fees charged to their account.
- (2) The Board of Examiners shall determine admission to the examination on the basis of the certificates provided.
- (3) If the number of applicants admitted for the examination exceeds the number of available places on a particular examination date, the receipt of the applications shall decide on the order of the applicants to be admitted to the examination date in question.

§ 11 EEX Systems Training Course

- (1) Evidence of the required practical experience of the applicant is furnished through the successful participation in an EEX Systems Training course.
- (2) The EEX Systems Training course shall take sufficient account of the actual trading process of the EEX systems. The type, content, process and duration of the systems training course shall be specified by the Board of Management.

§ 12 Examination Date, Place of Examination

- (1) The traders' exam shall be held sufficiently frequently, however, at least, once a quarter.
- (2) The Board of Management of the exchange shall decide on the examination dates and the respective place of examination in accordance with the Board of Examiners and announce these on the EEX website.

§ 13 Objective of the Examination

- (1) Objective of the examination shall be the determination of the specialised knowledge of the candidate for participation in the EEX exchange trading.
- (2) Evidence within the meaning of subparagraph (1) shall be furnished by the passing of the respective traders' examination according to these Exchange Rules.
- (3) Passing the traders examination does not - as a rule - constitute proof of specialised knowledge if the examination was taken more than three years prior to the first admittance as an exchange trader on EEX or the trader has not been active as a trader on EEX or a comparable market during the last three years.

§ 14 Examination Topics

- (1) The traders examination comprises the following examination topics:
 - Examination topic 1:
General legal foundations of exchange and electricity trading; legal foundations of exchange and electricity trading on EEX, organizational structure of EEX
 - Examination topic 2:
Practice of general trading, EEX products, trading procedure as well as collateral and settlement (clearing) of transactions concluded on EEX,
- (2) Generally, the examination candidate's knowledge in all concerning examination topics can be tested.

§ 15 Examination Tasks

The scope of the examination in terms of Sect. 13 in combination with Sect. 14 shall be the basis for the preparation of the examination tasks.

§ 16 Examination Requirements Committee

The Board of Examiners may form a committee which shall determine the content of the exchange traders' examinations (Examination Requirements Committee). The decision shall be based on the examination requirements pursuant to Sect. 13 in combination with Sect. 14.

§ 17 Conducting the Traders' Examination

- (1) The traders' examination shall be conducted electronically or in writing and in German or another language.
- (2) The examination time shall be determined by the Board of Examiners and the examination candidates shall be informed of the examination time in advance.
- (3) The traders' examinations are not of a public nature. Members or representatives of the Board of Management of EEX are permitted to be present at the examination.

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- (4) The Board of Management regulates the monitoring of the traders examination, in agreement with the Board of Examiners, which shall guarantee that the candidates work independently and only with permitted aids.
 - (5) Candidates for examination shall bring a valid identification card or passport and provide it at request of the examination supervisor.
 - (6) Candidates for examination shall be instructed by the examination supervisor prior to the commencement of the traders examination regarding the examination procedure, the time available and of tools and examination aids which may be used as well as of the consequences of deception.

§ 18 Deception and Breach of Rules

- (1) Participants engaging in deceptive practices, such as the use of working aids which are not permitted, the impermissible aid of third parties or other deceptive practices, maybe permitted from further participation in the traders' examination under reservation of exclusion by the examination supervisor. The same applies to disruptions of the examination procedure.
- (2) The Board of Examiners shall determine the final exclusion and consequences after having afforded the examination candidate an opportunity to be heard. In serious cases, particularly in the case of premeditated deception, the traders' examination may be declared to have been failed. The same shall apply to deceptions subsequently discovered within one year.

§ 19 Withdrawal

- (1) The examination candidate may withdraw by written declaration prior to the commencement of the traders' examination. In such case, the traders' examination shall be considered not to have been taken.
- (2) If the examination candidate withdraws after the commencement of the traders' examination without cause, he/she shall be considered to have failed the examination. The same shall apply if the candidate does not appear for the examination despite of his/her admission.
- (3) Upon good cause for the withdrawal, the traders' examination shall be considered not to have been taken. The Board of Examiners shall determine the existence of such cause.

§ 20 Passing of the Traders Examination, Announcement of Results

- (1) Only the members of the Board of Examiners shall take part in the discussion of the examination results. The Board of Examiners determines, by a majority of the votes cast, the results of the respective traders' examination.
- (2) The traders' examination shall be deemed to have been passed if a percentage of the points to be attained in the individual examination topics determined by the Board of Management for the examination in question was attained. The percentage to be determined shall not fall below 50 of 100. No special grading is granted for performance between the required percentage for the passing of the examination and 100 % of the attainable points.

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- (3) The Board of Examiners/Board of Management shall promptly distribute a certificate reflecting satisfactory completion of the examination after evaluation of the results of the traders' examination.

§ 21 Failing and Retaking the Traders Examination

- (1) After the evaluation of the examination results, the Board of Examiners shall promptly inform the examination candidate of the decision regarding the failure to pass a traders' examination in a notification.
- (2) Traders' examinations can be re-taken.

§ 22 Legal Remedy

An appeal against a decision based on these Examination Rules may be submitted to the Board of Management of EEX within one month after the announcement. Opposition proceedings shall be carried out according to the Administrative Court Rules.

§ 23 Costs

Fees may be charged to the examination candidate's account for participating in traders' exams and EEX systems training courses as well as repeat examinations.

6. Final Provisions

§ 24 Date of Effectiveness

The Examination Rules as well as changes to the Examination Rules shall take effect on the day after their publication or -if it is decreed- at a later date.



Trading Conditions

*The English version is for informal use only.
The German version is legally binding.*

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2 General Provisions

§ 1 Scope of Application; Types of Trades

- (1) The following trading conditions shall govern all Spot and Derivatives transactions, which are concluded on the European Energy Exchange (EEX).
- (2) The products of EEX are traded in the closed auction, in the open auction or in continuous trading with and without open auctions.

§ 2 Exchange Days, Trading Hours, Business Hours and Settlement Days

- (1) Trading on EEX shall generally take place from Monday to Friday.
- (2) Trading hours are those times during which the products can be traded on the EEX. Trading is also permitted on days which are not exchange trading days provided this was announced by the Management Board of the Exchange in due time. The Management Board of the Exchange can specify with regard to individual products that these are not tradeable on all exchange trading days.
- (3) Exchange trading days may be ascertained differently according to product. The Management Board of the Exchange publishes for all products the list of holidays, respectively, which are not exchange trading days, in the annex to the Contract Specifications. Furthermore, it announces the trading times for the single products which can be traded on EEX.
- (4) The business hours are from 7:30 am until 06:00 pm on every Exchange Day of EEX.
- (5) Settlement Days are the days on which financial and/or physical settlement of the transaction on EEX is effected by European Commodity Clearing AG (ECC AG) (ECC business days). ECC AG publishes a list of days from Monday to Friday which are not ECC business days.

§ 3 Products

- (1) Products are contracts which have been admitted to spot or derivatives trading on EEX by the Management Board of the Exchange.
- (2) The contracts, which are admitted to spot or derivatives trading on EEX, are stipulated in the contract specifications attached to these trading conditions.
- (3) The latest version of the contract specifications appended to these trading conditions is an integral part of these and, hence, forms the basis for all business carried out on EEX.

§ 4 Binding Nature of Transactions

With regard to an exchange participant all those transactions shall be binding which are brought about by means of his input devices or by means of his allotted technical access (Member ID) and accordingly on his behalf and on his account.

§ 5 Delivery and Acceptance Periods

The delivery and acceptance periods resulting from transactions concluded on the EEX are fixed periods within the meaning of Art. 376 HGB [German Commercial Code], in particular, with the result that a right to resign from the transaction and to demand compensation on grounds of non-performance in the event of culpable non-compliance with the deadline arises from a non-compliance with said deadline.

§ 6 Settlement and Fulfilment of Transactions

The trades concluded by the EEX exchange participants are fulfilled financially or physically in accordance with the respective provisions in the contract specifications. Fulfilment, settlement and securitisation of the transactions concluded on EEX (clearing) are provided by ECC AG in its capacity as the clearing house of EEX. Clearing of all transactions concluded on EEX shall exclusively be effected according to the Clearing Conditions of ECC AG in the version effective at the time of the provision of the service in accordance with the more detailed provisions in § 7.

§ 7 Contractual Relationships

- (1) The transactions on the Spot Market of EEX shall only be concluded between the ECC AG and an exchange participant. The integration of the clearing members of ECC AG into the settlement of the trades concluded shall depend on the provisions of the current version of the Clearing Conditions of the ECC AG.
- (2) The transactions on the Derivatives Markets of EEX shall only be concluded between ECC AG and an institution which holds a clearing license (general clearing member or direct clearing member). In case an exchange participant is not authorized to carry out clearing itself (non-clearing member) transactions shall only be concluded by means of the clearing member, via whom the participant settles his transactions on EEX. If an order entered into a trading system of EEX is matched with another order, a transaction is concluded between the non-clearing member and the clearing member and, at the same time, a corresponding transaction is concluded between the clearing member and ECC AG. If, in accordance with the trading conditions, performance by delivery is necessary, from the time a contract has to be delivered only the exchange participant is obliged to take or make delivery pursuant to section 3.3.5 of the Clearing Conditions.
- (3) The provisions of this article concerning exchange participants shall apply accordingly to enterprises or institutions that have been admitted as auctioneers.

§ 8 Pre-arranged Trades and Cross Trades

- (1) Subject to § 1 of the Trade Registration Rules, it is not permitted to enter consecutive orders in continuous trading which could be executed against each other to conclude a transactions according to a prior arrangement between two exchange participants (Pre-arranged trades) unless the requirements of Paragraph (4) are fulfilled.

- (2) Entering of opposite orders by a single exchange participant with respect to the same product which could be matched with each other in the trading system for continuous trading so that a transaction is effected (cross trades), is not permitted in case the exchange participant knowingly acts for its own account or for the account of a customer on both the bid and ask side unless the requirements of Paragraph (4) are fulfilled. This does not apply to the submission of orders as part of a quote.
- (3) An Exchange Participant may submit a written description of his internal and external links to the IT system of the Exchange to the Market Surveillance of EEX on the basis of which it will decide whether the Exchange Participant acted knowingly within the meaning of Paragraph 2.
- (4) A cross trade or a pre-arranged trade is admissible to be entered into the trading system T7 if the purchaser, prior to entering his order or quote, enters a cross request into the trading system. The purchaser and the seller must enter the cross trade or pre-arranged trade at the earliest after five seconds and at the latest after 65 seconds after having entered the cross request into the trading system. The order or quote must comply with the announced number of contracts.
- (5) Paragraphs (1) and (2) shall apply accordingly to other kinds of conduct which constitute a circumvention of the regulation. Such other kinds of conduct within the meaning of this paragraph shall include, in particular, the misuse of quotes.

§ 9 Cancellation of Trades and Orders

The Management Board of the Exchange shall be entitled to cancel trades or orders ex officio provided this is required in order to ensure proper trading on the exchange or in order to safeguard the correctness of the settlement of exchange transactions.

§ 10 Objections against Transactions

- (1) Objections against a transaction which has been concluded in the order book can only be asserted with reference to errors in the corresponding trading system of EEX or to bad mistakes which can be recognised objectively during entering of volumes or prices. The detailed provisions shall be specified by the Management Board of the Exchange. Moreover, the Management Board of the Exchange can specify that objections are excluded with regard to certain products or determine other rights, such as i.e. withdrawal rights.
- (2) Objections may be raised additionally against transactions that are based on entries which have not been conducted by the exchange participant itself with the reason that the entries have not been conducted or transmitted according to his allowance or without his mandate. Further provisions are stipulated within the Trade Registration Rules.
- (3) Objections shall be raised towards the Management Board of the Exchange in writing or in text form forthwith. By means of raising said objection the cancellation of the trade by the Management Board of the Exchange shall be requested. The Management Board of the Exchange shall decide on requests regarding the cancellation of a trade immediately and at the latest within 24 hours. The expenses incurred by EEX on account of the cancellation and reversed transaction shall be refunded by the exchange participant requesting the can-

cellation, unless such cancellation is entirely based on an error within the trading system. Claims to damages on the part of EEX AG or of the clearing institutions included towards the exchange participant upon whose request the transaction was cancelled shall not be affected by this.

§ 11 Provisions regarding Access

- (1) Every exchange participant shall be responsible for controlling access to his input devices and other EDP devices which are connected to the trading systems of EEX.
- (2) The exchange participants are obliged to take effective precautions against any improper use of their entire EDP which is connected to EEX and to monitor access to the corresponding devices continuously.
- (3) Every exchange trader receives individual access authorisations to the trading systems. He is not permitted to forward these individual access authorisations to any other person and he is obliged to take effective precautions against any improper use of his individual access authorizations.

§ 12 Transmission of Orders

- (1) Exchange participants shall transfer entries for order book trading (entering, modifications and deletion of orders) to then respective trading systems of EEX from their input units by means of electronic data transmission. The use of the Trade registration Functionality of the trading systems of EEX shall be carried out according to the provisions stipulated within the Trade Registration Rules.
- (2) Only admitted exchange traders are permitted to submit entries to the trading systems.
- (3) The Management Board of the Exchange may permit other ways of transmitting the entry, modification and deletion of orders into the systems of EEX. In this case, it shall inform the exchange participants in due manner.

§ 13 Trading on Behalf of the Exchange Participants (Trading on Behalf)

- (1) In particular in the event of technical malfunctions or other obstacles to access to the trading systems on the part of a trading participant, the Management Board of the Exchange can make entries in the trading systems on his behalf and in accordance with specific instructions and for said party (trading on behalf). Trading-on-behalf orders may only be issued by a licensed exchange trader of the trading participant concerned. For participation in primary auctions of emission rights the Management Board of the Exchange may permit other registered persons to submit orders. EEX checks the legitimation for submitting orders by the active user login. Orders can be issued via phone, in text form (fax, e-mail) or in writing.
- (2) EEX shall only be liable for cases of damage which a trading participant sustains in the context of trading on behalf, in particular, on account of incorrect entries in as far as premeditation or gross negligence on the part of its bodies or vicarious bodies can be proven.

In this case, however, the liability of EEX shall be limited to the amount of the damage typical of the contract which was foreseeable upon the conclusion of the contract. EEX is entitled to refuse orders for trading on behalf without having to give reasons.

§ 14 Technical Problems within the Trading Systems of EEX

- (1) Upon the occurrence of technical problems or if it is evident for further technical development, the Management Board of the Exchange may temporarily interrupt access to the trading systems of EEX or trading on EEX for individual or all exchange participants in part or entirely. As far as the Management Board of the Exchange deems necessary, it can take suitable measures in order to ensure that trading is possible. The measures taken by the Management Board of the Exchange in accordance with sentences 1 and 2 are binding for all exchange participants.
- (2) Exchange participants affected by technical problems of the EEX trading system shall be notified of such measures to the extent possible pursuant to paragraph (1) through the system or, in the event of a system failure, per fax or in another suitable manner.
- (3) Should individual exchange participants not be able to participate in trading on EEX because of technical disruptions, the corresponding trading system of EEX shall remain available to the other exchange participants, unless the Management Board of the Exchange of the exchange decides that measures in terms of paragraph (1) sentence 2 are necessary to ensure that trading is possible.

§ 15 Technical Disruptions concerning a Trading Participant

- (1) Each exchange participant must be reachable at any time during the business hours.
- (2) During the business hours the exchange participant shall promptly notify the Management Board of the Exchange if the entry or the receipt of data is totally or partly impossible as a result of disruptions of its operations or governmental action. Upon request, the Management Board of the Exchange may cancel orders entered by such exchange participants; otherwise, section 14 paragraph 3 shall apply accordingly.
- (3) The exchange participant must immediately notify the Management Board of the Exchange of any failure of his telephone system or of any other problem which makes communication by telephone impossible.

3 General Provisions for Trading on the Spot and Derivatives Markets of EEX

§ 16 Scope of Application

The rules below shall apply to all transactions which are concluded on the EEX Spot and Derivatives Markets.

§ 17 Products, Forms of Trading and Trading Systems

- (1) On the EEX Spot and Derivatives Markets products can be traded in closed or open auctions and in continuous trading.
- (2) Primary auctions of emission rights (EU emission allowances and EU Aviation Allowances) are carried out on the ComXerv Auction System; continuous trading in all other products is effected in the T7 trading system.

§ 18 Types of Orders

- (1) Orders are buy and/or sell orders of exchange participants on the EEX Spot and Derivatives Markets.
- (2) In auction trading, orders can also be referred to as bids.
- (3) Depending on the form of trading, orders can be entered into the respective trading system in the form of:
 - Unlimited orders (Market Orders)
 - Limited orders (Limit Orders).

Market Orders are buy or sell orders which are entered without specifying a price limit and which are to be executed at the next price established by the EEX trading system. Limit Orders are buy or sell orders which are entered with a price limit and are to be executed at this price or at a better price.

- (4) Orders are only valid for the trading system into which they are entered. Transmission into another trading system or the order book of another trading system is not effected.
- (5) In as far as orders cannot be executed or deleted immediately after they are entered into the trading systems in accordance with their execution conditions, they are saved in electronic order books.
- (6) Executable orders in the order book are carried out through order execution in accordance with the rules valid for the respective trading phase.
- (7) Orders in the order book can be modified or deleted at any time. All orders of one trading participant in the order book can be deleted by EEX at the trading participant's request. Modifications of an order which concern the price or increase in the number of contracts are considered a new order and, as a result, they are given a new position in the chronological order in the order book.

3.1 Special Provisions for Continuous Trading within the T7 Trading System

§ 26 Trading time and trading phases

- (1) The trading time for Spot and Derivatives Transactions comprises three consecutive phases:
 - “Pre-trading period”,
 - “Trading period” and
 - “Post-trading period”.
- (2) During the Pre-trading period, orders and quotes can be entered into the trading systems.
- (3) Upon the beginning of the trading phase, an opening auction is carried out and, afterwards, the contracts will be traded continuously. The trading phase ends upon expiry. It can be interrupted for the execution of auctions in accordance with the exchange rules and instructions.
- (3) After the end of the trading phase, the trading systems are still available for the trading participants for entering and retrieving data (post-trading phase).

§ 20 Order types

- (1) The following orders can be entered into the trading system by the trading participants:
 - market orders
 - limit orders
 - stop orders
 - limit orders with a stop limit (OCO orders).

Stop orders are bid or ask orders, of a certain number of contracts, which have a certain trigger price and upon reaching of which the stop orders are executed like other incoming market orders.

OCO (Once-Cancels-Other) orders combine the characteristics of limit orders and stop orders within a single order. If they are executable on the basis of the execution limit, an order is executed in its entirety or in part like a limit order. Any residual volume which might still remain is still subject to the execution rules of the OCO order. If the order is executable on the basis of the price which triggers the stop, the OCO order which is in the order book until the stop is triggered, is converted into a market order in its entirety and included in continuous trading as such.

- (2) An order shall comprise, at least, the information as to whether it is a buy or a sell order, the product (Spot contract, futures or options) to which they refer, the maturity and the number of contracts. In the case of options, the option type (call or put) and the exercise price have to be specified, in addition.
- (3) Upon entry the orders must be marked as own orders or customer orders and as opening or closing-out transactions for the purpose of recording unless they are to be traded within a position account kept in net terms.

(4) Orders can have the following conditions regarding their validity:

- only valid on that day (good for day),
- valid until withdrawn (good till cancelled) or
- valid until expiry (good till date).

Orders which are entered without a validity condition are only valid until the end of the trading phase on that trading day. Unless they have been executed until that time, they are automatically deleted from the exchange's systems.

(5) Furthermore, orders can carry the following execution conditions upon entry:

- One cancels the other or
- Immediate-or-cancel.

In the case of immediate-or-cancel orders, the order is carried out immediately and in as far as possible; unexecuted parts are deleted.

§ 21 Quotes

- (1) A quote is the technical possibility to generate a limited buy and a limited sell order regarding one contract in the system at the same time with one entry. Quotes are also possible with combined instruments.
- (2) Orders, generated through quotes, reach execution according to the terms of their execution, independently of other, simultaneously generated orders.
- (3) Quotes are shown separately in the system and in the order book. Should they fail to be executed in their entirety or in part, the current holding can be individually changed for single orders or collectively changed for a Product, or cancelled, as well as entirely taken out of trading by the exchange participant for a period of time. All of the exchange participant's quotes can be deleted from the order book by EEX upon the exchange participant's request.
- (4) Any amendment of quotes which changes the price or increases the number of contracts constitutes a new entry of all individual orders contained.
- (5) Quotes are only valid for the day on which they are entered; any re-activation constitutes a new entry.

§ 22 Combined instruments

- (1) A combined instrument is a combination of various contracts ("leg instruments") whose execution is interdependent. A combined instrument can comprise individual leg instruments several times. The IT system of EEX supports the following combination types:
 - A Time Spread is a combined instrument consisting of two contracts of the same futures product which only differ with regard to their maturity with one contract being bought and the other contract being sold.
 - An Inter-Product Spread is a combined instrument consisting of, at least, two different contracts with, at least, one contract being bought and one contract being sold.

The Management Board of the Exchange determines the possible combined instruments and announces these.

- (2) Only Limit Orders can be entered into the system of the Eurex exchanges for combined instruments.
- (3) Orders regarding combined instruments are saved in a specific order book; they can be carried out against corresponding executable orders in the order book of the combined instrument or against orders in the respective leg instruments.

§ 23 Pre-Trade Limits

- (1) A pre-trade limit is the possibility of limiting orders which can be entered into the trading systems by an exchange participant and which is provided technologically within the trading system. Provided a corresponding agreement has been concluded by the clearing member with its non-clearing member, the clearing member of ECC, which provides settlement for said trading participant, is entitled to enter pre-trade limits.
- (2) Pre-trade limits can contain the individual restrictions specified herein below or a combination of these:
 - Maximum number of contracts with reference to a product per contract. With regard to this, the following limit is taken into account in accordance with the respective type of order:
 - Maximum number of contracts per order (“Maximum Order Quantity“), in as far as such do not refer to combined orders or
 - Maximum number of contracts per combined order (“Order Maximum Calendar Spread Quantity“) with reference to certain products.
 - Maximum amount of available total margins or special margins specified in more detail for further trading activities.
- (3) If one of the limits described in paragraph (2) is reached, the system can take measures to stop the forwarding of orders by the exchange participant concerned into the trading systems and, hence, discontinue the matching of such with other orders. Orders which have already been entered into the order books are deleted.
- (4) If certain limits are exceeded, the details shall be determined in an agreement between the Exchange participant and his Clearing Member, further entering or execution of orders can be limited for the duration of the exceedance and existing orders can be deleted.

§ 24 Execution and Management of Orders

- (1) All orders entered receive a time stamp and an identification number. Orders which do not fulfil the prescribed minimum requirements are rejected. The Exchange participants are informed of recording of the orders by the trading system.
- (2) For every tradable product an order book is kept in which all orders are sorted and managed according to price and time of receipt. Amendments of an order result in a new chronological order if they concern the price or other contents of the order, especially, through an increase

in quantity which might have a detrimental effect on the executability of other orders. Combined instruments are kept in separate order books and are executed with the orders in the order books of the respective products or with matching opposite combined orders.

- (3) Orders in the order book can be amended or deleted at any time. All orders of one Exchange participant can be deleted by the Management Board of the Exchange upon a request to this end by the Exchange participant.
- (4) Existing orders are deleted as soon as the validity condition is reached; however, at the latest, if a contract (delivery day or delivery period) is no longer tradable.

§ 25 Order Execution

- (1) During the opening auction of the trading phase, trades are concluded according to the principle of the most executable volume as follows:

During the balancing process, the biggest possible number of executable orders available within the system is matched at the opening price for every option series and every contract. If there are no executable matching orders during the opening auction of a contract, the opening auction ends without the determination of an opening price.

- (2) During continuous trading in the trading phase transactions are concluded as follows:

An order is checked for executability with the orders in the order book in line with its validity specification. If an order entered cannot be executed right away, it is entered in the order book in accordance with its price and time priority unless this is precluded by an order restriction.

If the order entered can be executed with matching orders in the order book, these are allocated to each other and matched automatically. In this process, an incoming sell order is matched with the order on the buy side of the order book with the respective highest ask price (best price on the ask side), while an incoming buy order is matched with the respective order on the sell side with the respective lowest bid price (best price of the bid side). If there are several orders with the same best price in the order book which are opposite orders to the incoming and executable order, an allocation procedure as per Paragraph 3 shall be decisive for their sequence in execution.

If, after matching with all best-price orders in the order book which are opposite orders to the side of the incoming order, the order entered is still executable as against the respective next best order book price, matching is continued until the order entered is no longer executable.

An order which after matching at the respective best order book price still has a residual volume which cannot be executed any further is entered into the order book in accordance with its price-time priority provided this is not precluded by an order restriction. Further details regarding matching for certain order types are specified in the rules in section 4.2.

- (3) Best-price orders saved in different order books can be combined so that they correspond to the side opposite the order ("synthetic path"). If the price formed from such a combination of order book sides ("synthetic path") is identical with the best price on the side of the order book which is opposite the incoming order or improves this price, the synthetic path upon the execution against the incoming order can be taken into account. In the event of an improve-

ment in price, the synthetic path is the best available price and the synthetic path is executed against the incoming order.

Synthetic paths are formed from, at maximum, combinations of three different order book sides. In the event of two different best-price synthetic paths whose number of combined order book sides is identical, the synthetic path whose combination of order book sides contains the instrument with the nearest expiry date has a higher priority.

If a synthetic path is executed with a certain quantity as against an incoming order (“allocated path quantity”), this synthetic path is divided into the order book sides generating it and the allocated path quantity is executed against the best-price order contained in the generating order book sides. In the event of several orders contained in one generating order book side, an allocation procedure as per Paragraph 4 shall be decisive for their sequence during execution.

- (4) If there are several orders with the same price on one side in the order book, an allocation procedure shall be decisive for the consideration and allocation of the volume of these orders. The volume to be distributed to the orders with the same price (“volume to be allocated”) is specified through an incoming order in continuous trading or through allocated path quantities or through a balancing process in an auction.

In determining the volume allocated to the respective order, the orders contained in the order book are processed at the same price in the chronological sequence of receipt with the order entered first being assigned the highest priority.

- (5) Market orders are always executed before limit orders. If there are several market orders in the order book, the time of the entry of such shall be decisive for consideration and the allocation of the volume of the market orders.
- (6) EEX shall forthwith inform the exchange participants of the execution of their orders in the trading system. This information shall contain all the essential details of the transaction.
- (7) In the case of trades regarding futures or options, the trading system updates the exchange participants’ position accounts after matching.

§ 26 Execution of Market Orders

- (1) Market orders for Spot or Futures contracts that are entered during continuous trading of the Trading Period will only be executed with Limit orders, the prices of which are within a certain range, as determined by the Management Board of the Exchange either above or below the last price at which the last contract was concluded. If incoming Market orders cannot be executed in full, or at all, they will be transferred into the order book. New incoming Limit orders will be executed with any remaining Market orders if their prices are within the range either above or below the last contract price. If, although the prices of incoming Limit orders are not within such range, they could nevertheless be executed with other Limit orders or quotes contained in the order book, the price at which such Limit orders or quotes could be executed with each other will then be the new last effected Derivatives contract price within the meaning of sentence 2 of this paragraph. Such Limit orders or quotes will be executed with other Market or Limit orders in accordance with the general priority rules set forth in § 25. If no last

contract price within the meaning of sentence 2 of this paragraph can be determined on a given trading day, Market orders will not be executed on that day. If a new contract is introduced, Market Orders shall only be executed after two Limit Orders have determined the contract price.

- (2) Market Orders for Options contracts that are entered during continuous trading of the Trading Period can be executed with Quotes and orders contained in the order book, which are not more unfavourable than the most unfavourable Quote of an Options series. The Market Orders entered are executed along with existing Market Orders and Limit Orders in the order book in the order of best price. Market Orders which are not, or not fully, executed are thereafter transferred to the order book. Newly entered orders are used for execution with the remaining Market Orders or as a price reference for the execution of the Market Orders with other orders in the order book. Each Market Order is exercised before a Limit Order. In deviation to clause (1), as long as no quotes are entered, Market Orders can be executed with other Markets Orders or Limit Orders if an entered Limit order can be executed with a Limit Order already entered in the order book. The price, at which the Limit Orders are jointly executed, serves as the execution price for the existing Market Orders. These are executed, along with other Market Orders and Limit Orders in accordance with the general priority rules.
- (3) If a Market Order is still in the Order Book on the following trading day, it will be processed as a Market Order during the Opening Auction of such a trading day.
- (4) Market Orders entered during the Pre-Trading Period or the Post-Trading will be processed during the next opening auction.

§ 27 Execution of Limit Orders

- (1) Unrestricted Limit Orders may be entered during the Pre-trading period, the Opening period, the Trading period or the Post-trading full period. Unrestricted Limit Orders that are not executed immediately are entered in the Order Book. If there already is an unrestricted Limit Order in the order book and if an executable Limit Order which can be executed with it is received, a transaction shall be effected at the price of the order contained in the Order Book.
- (2) Restricted Limit Orders may only be subject to the limitation on execution "immediate or cancel". Restricted Limit Orders may only be entered during the Trading Period. They are not entered in the Order Book.
- (3) Limit orders entered without a validity specification or limitations on their execution shall be valid only until the end of a given trading day. To the extent that they have not been executed, Limit Orders shall be deleted from the trading systems after the trading day.

§ 28 Execution of Stop Orders

- (1) Stop Orders are only possible for Spot and Futures contracts. If the price specified for the Stop Order is reached or exceeded is reached during trading or in determining the opening price in the respective contract, or the price of the contract falls below the specified price or exceeds it, as the case may be, the Stop Orders will, pursuant to an automatic selection process in the chronological order of their entry, be converted into Market orders. These orders

will then be executed along with any other incoming Market orders in the order of the times of their conversion into Market orders, in accordance with the general principles for the matching of Market orders for Futures contracts.

- (2) Stop Orders will be entered into a separate Order Book.

3.2 Special Provisions for Primary Auctions of Emission Rights in Accordance with the Provisions of the Commission Regulation (EU) No. 1031/2010*

* Articles referred to below in this section without further reference are articles of the Commission Regulation (EU) No. 1031/2010 (Auction Regulation).

§ 29 General Regulations

- (1) Primary auction of emission rights is effected as an element of exchange trading of EEX.
- (2) In addition to the rules and regulations of EEX, the respectively valid national or European statutory bases are applicable to the respective auctions.
- (3) EEX is the exchange carrying out the primary auction of emission allowances.
- (4) The respectively competent national or European institution or a third party commissioned by it (auctioneer) shall provide the emission rights to be auctioned off. Trading participants other than the auctioneer are not entitled to conclude sales transactions in the framework of the primary auction.

§ 30 Execution of Auctions

- (1) Exchange trading for the primary auction of emission rights takes place by means of single-round, closed and uniform price auctions.
- (2) The auction will follow the format required in the EU Auctioning Regulation and comply with the respective contracts between EEX and those institutions which appointed or selected EEX as the respective auction platform. An auctioneer's participation in a primary auction shall be excluded unless the emission rights to be auctioned have been submitted to the corresponding auction delivery account of ECC Lux at the Union registry by, at the latest, 10:00 CET two days before the auction in accordance with the valid auction table.
- (3) The call phase (bidding window) and the pricing phase are the trading phases for the auction.
- (4) EEX will obtain and take the utmost account of the Commission's opinion with regard to auctions according to Art. 26 and of the opinion of the competent national authority of the respective Member State with regard to auctions according to Art. 30.

§ 31 Auction Calendar

- (1) EEX determines and publishes the auction calendars for auctions as per Art. 26 and for auctions as per Art. 30 in compliance with Art. 8 and per product to be auctioned (EUA and EU-

AA) in accordance with the more detailed provisions of Art. 11 and 13 on the basis of the annual auction volumes.

- (2) The timing and frequency of auctions are determined in accordance with the more detailed provisions in Art. 8.
- (3) EEX shall adjust the respective auction calendar in the cases as per Art. 14 (1).
- (4) Provided the Emission Allowances have been transferred to the respective ECC Lux Auction Delivery Account in accordance with Art. 46, the Auction Calendar in its respectively valid version shall determine the volume which will be auctioned off at the next auction.
- (5) The Auction Calendar shall comprise, at least, the following information:
 - a. auction dates and times, including the duration of the call phase (bidding window)
 - b. volumes to be auctioned (including disclosure of the amounts per auctioneer) and
 - c. the auctioned product.

§ 32 Bidders and Order Types

- (1) Buy orders can only be entered by Exchange Participants who are admitted and entitled to bid in a primary auction in accordance with Chapter IV of the Auction Regulation (Eligibility).
- (2) Entering, deletion or modification of orders is only admissible during the call phase.
- (3) Orders have to be entered into the trading system or by using trading on behalf, § 13 applies mutatis mutandis. To ensure proper handling of orders submitted through trading on behalf, these orders may only be submitted up until 10 minutes before the end of the call phase.
- (4) Bidding Orders can only be entered into the trading system as limit orders. Limit orders are buy orders with a price limit which can only be carried out at this price or at a better price. Upon entering into the trading system the limited buy orders have to comprise the following information:
 - Buy (bid),
 - Price limit specified to two decimal points,
 - Product and
 - Number of contracts (at a minimum lot size of 500 or a multiple thereof).

Upon entering into the system orders have to be marked as own orders or customer orders. In case the trading participant enters a customer order, the identity of the customer has to be named in the customer field provided by the trading system or on the written order. It is the sole responsibility of the trading participant to ensure the eligibility of the customer in accordance with the Auction Regulation (Chapter 4).

- (5) All orders which are still valid at the end of the call phase are binding. The Management Board of the Exchange may withdraw that order after the end of the bidding window but before the auction clearing price has been determined - upon request of the trading participant - in case a genuine mistake has been made in the submission of the order.

§ 33 Pricing and Execution of Orders, Cancellation

- (1) A potential execution price is not displayed during the call phase (“black box auction”).
- (2) After the end of the call phase pricing is carried out as uniform pricing in the auction by means that all successful bidders will pay the same auction clearing price.
- (3) The limit price of the order at which the sum of the volumes bid matches or exceeds the volume of allowances auctioned shall be the auction clearing price: The orders are sorted according to the height of the price limit and the quantities specified are added up. Where the price limit of several orders is the same, these orders will be sorted through a random selection according to an algorithm determined by EEX before the auction. The price which is identical with the price limit of the orders at which the added-up buy orders reach or exceed the quantities offered on the sell side.
- (4) Orders not carried out are deleted after the auction.
- (5) The trading participants are informed of the prices established in the auctions as well as of the execution of their orders by the trading system. Said information contains all essential trading and transaction data.
- (6) Not later than 15 minutes after the end of the call phase, EEX will publish the following information about the auction on its website
 - a. the volume of the allowances auctioned;
 - b. the auction clearing price in euros;
 - c. the total value of the auction and
the distribution of the revenues between the Member States, in the case of auctions of EEX pursuant to Article 26(1) or (2).
- (7) If the amount of bidding orders does not meet the offer of EU emission allowances a price determination does not take place and the respective auction will be cancelled. The same applies if the estimated auction price does not reflect the orderly market value (reference price procedure as per Art. 7 (6))) and the other cases as foreseen in Art. 9.

§ 34 Measures by the Management Board of the Exchange

- (1) In order to maintain an orderly situation on the market, especially in case of incorrect entries or other events affecting proper pricing the Management Board of the Exchange can take adequate measures in accordance with the Auctioning Regulation for a proper price calculation or cancel an auction.
- (2) In case an auction is not held on an auction date due to technical reasons or an insufficient bidding volume or in case an auction carried out is cancelled by the Management Board of the Exchange, the volumes to be auctioned will be allocated to the following auctions in accordance with Art 7 (8), 9 or 14.
- (3) Trading participants interfering with the proper course of the auction can be excluded from participation therein.

3.3 Position Account-Keeping for the Exchange Participants

§ 35 Position Administration

- (1) Transactions concluded on the Derivatives Markets of EEX by trading participants shall be recorded as positions in internal Principal, Agent and Market Maker Position accounts by ECC AG as the CCP according to the ECC clearing conditions.
- (2) Two Principal Position Accounts, one Agent Position Account and two Market Maker Position Accounts shall be maintained for each exchange participant. Additionally, for options an internal premium account shall be maintained for each position account of each exchange participant. The premium from all exchange traded Options trades shall be booked to the respective Premium account.
- (3) Entries made by the exchange participants in the trading systems of the exchange which occur while entering the order are binding for the exchange participant towards EEX as well as towards the clearing houses included and their clearing members. These include information about the position account and the information whether it concerns an opening or closing trade.
- (4) Entries made by the exchange participants, which occur in connection with the position administration, are only allowed pursuant to the regulations in the respectively applicable clearing conditions and are binding for the exchange participant towards EEX as well as towards the clearing houses included and their clearing members. These include, in particular, opening or closing trade adjustments, closing position adjustments, trade adjustments, entries, which can change the classification of a trade or a position from Agent to Principal or from Principal to Agent position accounts (Trade or Position Transfers including Give up Trades) as well as the separation of trades into various position accounts (Trade Separation).

4 Final Provisions

§ 36 Place of Performance

Leipzig shall be the place of performance for all transactions on EEX governed by these provisions.

§ 37 Effective Date

These Trading Conditions as well as any amendments thereto shall become effective on the day after their publication, unless a later effective date has been specified by the Exchange Council.

Appendix: Contract specifications



Contract Specifications

The English version is for informal use only.
The German version is legally binding.

Datum / Date

02.09.2016

Ort / Place

Leipzig

Dokumentversion / Document Release

0050a

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F. *Trading Calendar*48

A. Subject of the Contract and Underlying Commodity

1. Energy and Energy Related Products

Financial and physical futures on the following energy and energy related products can be traded on EEX:

1.1. Power (financial and physical)

1.1.1. Underlying

1.1.1.1. Power Futures

Delivery or acceptance of delivery of electricity with a constant output of 1 MW into the maximum-voltage level of the respective market area during the delivery time on every delivery day during the delivery period.

1.1.1.2. Cap Futures

The average difference of a reference price calculated for the respective market area for particular power spot market contracts within a specific delivery period for a particular market area and a price threshold (Cap) determined by the Management Board of the Exchange of EEX. For hours for which the difference is negative, a zero will be counted for the determination of the average.

1.1.1.3. Wind Power Futures

The average load factor of the installed wind power plants calculated for the respective market area in percent (%). The load factor will be determined for each month as the unweighted average value of the quotients of the produced amount of wind power (in MWh) and the installed production capacity for wind power (in MW) for each hour. For futures having a shorter maturity than a month those shorter periods of time will be the basis for the determination.

1.1.2. Market Areas/Reference Contract

1.1.2.1. Power Futures with Physical Fulfilment

Power Futures with physical fulfilment within the respective control area can be traded for the following market areas:

- Belgium (Belgian Power Baseload Futures) and
- The Netherlands (Dutch Power Baseload and Peakload Futures).

1.1.2.2. Power Futures with Financial Fulfilment

Power Futures with financial fulfilment can be traded for the following market areas:

- Belgium (Belgian Base Futures),
- Germany/Austria (Phelix Base, Peak and Off-Peak Futures),
- France (French Base and Peak Futures),

- Italy (Italian Base and Peak Futures),
- The Netherlands (Dutch Base and Peak Futures)
- Nordic (Nordic Base Futures),
- Spain (Spanish Base Futures),
- Switzerland (Swiss Base Futures), and
- United Kingdom (UK Base and Peak Futures)

1.1.2.3. *Cap Futures*

The following financially settled Cap Futures can be traded:

- German Market area, Base load, Intraday Market Hourly Product (German Base Intraday Hourly Cap Future)

1.1.2.4. *Wind Power Futures*

The following financially settled Wind Power Futures can be traded:

- Germany/Austria, Base load (German Austrian Wind Power Future)

1.1.3. **Delivery Time**

Delivery time is the days and their hours that are comprised by the respective delivery period according to the contract concerned:

1.1.3.1. *Base*

00:00 until 24:00 for all days of the week (Base)

1.1.3.2. *Peak*

08:00 until 20:00 for all days Monday through Friday (Peak) and 08:00 until 20:00 for the days Saturday and Sunday (Peak Weekend) respectively

1.1.3.3. *Off-Peak*

00:00 until 08:00 and 20:00 until 24:00 Uhr for all days Monday through Friday as well as the hours between 00:00 and 24:00 at weekends (Off-Peak)

1.1.4. **Delivery Period/Time Period**

The Delivery periods for the respective market area may be: Day, Weekend, Week, Month, Quarter, Season*, and Year.

* A Season comprises either October through March (Winter Season) or the respective months April through September (Summer Season).

1.1.5. **Tradable Delivery Periods**

1.1.5.1. *Physical Power Futures*

- Belgian Power Baseload Month/Quarter/Year Futures
- Dutch Power Baseload Month/Quarter/Year Futures
- Dutch Power Peakload Month/Quarter/Year Futures

1.1.5.2. *Financial Power Futures*

- Belgian Base Month/Quarter/Year Futures
- Dutch Power Base Week/Month/Quarter/Year Futures
- Dutch Power Peak Month/Quarter/Year Futures
- French Base Day/Weekend/Week/Month/Quarter/Year Futures
- French Peak Day/Weekend/Week/Month/Quarter/Year Futures
- Italian Base Day/Weekend/Week/Month/Quarter/Year Futures
- Italian Peak Day/Weekend/Week/Month/Quarter/Year Futures
- Nordic Base Week/Month/Quarter/Year Futures
- Phelix Base Day/Weekend/Week/Month/Quarter/Year Futures
- Phelix Peak Day/Weekend/Week/Month/Quarter/Year Futures
- Phelix Off-Peak Month/Quarter/Year Futures
- Spanish Base Day/Weekend/Week/Month/Quarter/Year Futures
- Swiss Base Week/Month/Quarter/Year Futures
- UK Base Day/Weekend/Week/Month/Quarter/Season/Year Futures
- UK Peak Week/Month/Quarter/Season/Year Futures

1.1.6. **Tradable Settlement Periods**

1.1.6.1. *Cap Futures*

- German Base Intraday Hourly Cap Week Future

1.1.6.2. *Wind Power Futures*

- German Austrian Wind Power Week/Month/Quarter/Year Future*

* Introduction to trading expected as of October 2016.

1.1.7. **Contract Volume and Minimum Lot Size**

- Contract Volume of Power and Cap Futures:
The contract volume is calculated by multiplying the number of delivery hours (h) during the delivery period with the constant output (MW) specified in the respective reference contract (see above 1.1.5.). The maximum amount of power per day is usually 24 MWh, on the day of the switch from winter time to summer time it amounts to 23 MWh, whereas on the day of the switch from summer time to winter time it amounts to 25 MWh.

The contract volume of physically fulfilled Futures:

As of the second exchange day before the beginning of the delivery period the contract volume is reduced at the end of trading by the quantity of electricity which is to be delivered.

The quantity to be delivered is the quantity for the delivery day which follows the next exchange day (t+2) in each case. In case this delivery day is not an exchange day, the quantities for all delivery days following that delivery day up until and including the next exchange day are to be delivered additionally.

- Contract Volume of Wind Power Futures:
The contract volume is calculated by the number of single hours (h) during the settlement period. The maximum number of hours per day is usually 24, on the day of the switch from or to summer time it amounts to 25 or 23, respectively.
- Minimum lot size: 1 contract or a multiple thereof

1.1.8. Tradable Maturities

At maximum the following maturities can be traded at EEX:

1.1.8.1. Power Futures

- Day Futures:
 - The respective next 34 days (Day Future),
- Weekend Futures
 - The respective next 5 weekends (Weekend Future),
- Week Futures
 - The current and the next 4 weeks (Week Future),
- Month Futures
 - The current and the next 9 months (Phelix/French Month Future),
 - The current and the next 6 months (remaining Month Future),
- Quarter Futures
 - The respective next 11 full quarters (Phelix/French Quarter Future),
 - The respective next 7 full quarters (remaining Quarter Future)
- Season-Futures
 - The respective next 6 full seasons (Season Future),
- Year Futures
 - The respective next 6 full years (Year Future).

1.1.8.2. Cap Futures

- German Base Intraday Hourly Cap Future
 - The current and the next 4 weeks (Week Future),

1.1.8.3. Wind Power Futures

- Week Futures:
 - The current and the next 4 weeks (Week Future),
- Month Futures:
 - The current and the next 3 months (Month Future),

- Quarter Futures
 - The respective next 4 full quarters (Quarter Future),
- Year Futures
 - The respective next 2 full years (Year-Future)

The exact number of tradable maturities is determined by the Management Board of the Exchange and announced before implementation.

1.2. Coal (financial)

1.2.1. Underlying

Delivery or acceptance of delivery of steam coal having a calorific value of 6000 kcal/kg net as received (NAR) and 1% Sulphur at maximum within 90 days at the delivery point:

- cif Amsterdam–Rotterdam–Antwerp (API 2* CIF ARA (Argus-IHS McCloskey) Coal Futures)
- fob Richards Bay, South Africa (API 4* FOB Richards Bay (Argus-IHS McCloskey) Coal Futures).

* API 2 and API 4 are trade marks and are used under licence from Argus Media Limited and IHS Global Limited. All copyrights and database rights in the API 2 and API 4 index belong exclusively to Argus Media Limited and IHS Global Limited and are used herein under licence. EEX is solely responsible for the operation of markets in API-2-CIF-ARA-(Argus-IHS McCloskey)-Coal- and API-4-FOB-Richards-Bay-(Argus-IHS McCloskey)-Coal-Futures. Argus and IHS take no position on the purchase or sale of such Products and exclude all liability in relation thereto.

1.2.2. Contract Volume and Minimum Lot Size

- Contract volume: 1,000 metric tons;
- Minimum Lot Size: 1 contract or a multiple thereof

1.2.3. Tradable Maturities

At maximum the following maturities can be traded at EEX:

1.2.3.1. Month Futures

- The current and the next 83 months

The exact number of the tradable maturities is determined by the Management Board of the Exchange and announced before implementation.

2. Environmental Products

2.1. Emission Allowances

2.1.1. Underlying

Delivery or acceptance of delivery of EU Emission Allowances, EU Aviation Allowances, and Green Certified Emission Reductions, respectively.

2.1.2. EU Emission Allowance and EU Aviation Allowance

EU Emission Allowance (EUA) and EU Aviation Allowance (EUAA), respectively, permit to emit one ton of carbon dioxide or one ton of a carbon dioxide equivalent within the meaning of the directive 2003/87/EC of 13 Oct. 2003 in its respective valid version, which are kept by a register within the meaning of this directive and which can be transferred at the respective delivery day within the scope of said directive or any respective succeeding rule (Spot market Primary auction and secondary trading: EU Allowances, EU Aviation Allowances; Derivatives market secondary trading: European Carbon Future, EU Aviation Allowances Future).

2.1.3. Green Certified Emission Reductions

Green Certified Emission Reductions (CER)* are certified emission reductions from Bilateral Projects** according to article 12 of the Kyoto Protocol and the Kyoto Protocol decisions of the United Nations Framework Convention on Climate Change (UNFCCC) in their respective valid version at the time of delivery, corresponding to one tonne of carbon dioxide or equivalent which can be used at the respective delivery day for means of compliance according to the valid rules EU ETS and which are freely transferred, including all projects except those involving the destruction of trifluoromethane (HFC-23) and nitrous oxide (N₂O) from adipic acid production as well as large hydro projects exceeding 20MW (Spot market: CER; Derivatives market: CER Dec Future).

* CERs generated from projects in countries listed by OFAC (www.treasury.gov), are excluded.

** Bilateral Projects: Projects which hold a letter of approval (LoA) from the project host country as well as a LoA from a designated national authority (DNA) of a contractual state according to Annex I of the Kyoto Protocol as part of the project documentation submitted and published by the UN.

2.1.4. Contract Volume and Minimum Lot Size

2.1.4.1. Spot Market

- EU Allowances / EU Aviation Allowances – Primary Auction
 - Contract volume: 1 EUA and EUAA, respectively,
 - Minimum lot size: 500 contracts or a multiple thereof
- EU Allowances / EU Aviation Allowances / CER Contracts – Secondary Trading:
 - Contract volume: 1,000 EUA, EUAA, and CER, respectively,
 - Minimum lot size: 1 contract or a multiple thereof

2.1.4.2. Derivatives Market

- European Carbon Futures/EU Aviation Allowances Future/CER Futures
 - Contract volume: 1,000 EUA, EUAA, and CER, respectively,
 - Minimum lot size: 1 contract or a multiple thereof

2.1.5. Time of Fulfilment and Delivery Day

The time of fulfilment and the delivery day, respectively, is for spot market contracts on the first ECC Business Day after the conclusion of the contract and for derivatives contracts on the second ECC Business Day after the last trading day.

2.1.6. Maturities of Derivatives Contracts

Maturities can be: Month, Quarter, December

2.1.7. Tradable Maturities for Derivatives Contracts

At maximum the following maturities can be traded at EEX:

2.1.7.1. Month Futures

- The current and the next 2 months, if no EUA Dec Future or EUA Quarter Future expires at the respective maturity date (EUA Month Future).

2.1.7.2. Quarter Futures

- The current and the next 11 quarters, if no EUA DEC Future expires at the respective maturity date (EUA Quarter Future)

2.1.7.3. December Futures

- all December maturities up to and including December 2020* (EU Aviation Allowance Future, CER Future, EUA Dec Future)
- the current and the next 8 Decembers** (EUA Dec Future)

* For EUA Dec Future: until and including September 23rd, 2016.

** As of September 26th, 2016.

The exact number of the tradable maturities is determined by the Management Board of the Exchange and announced before implementation.

2.2. Guarantees of Origin

2.2.1. Underlying

Delivery or acceptance of delivery of Guarantees of Origin (GO).

Valid Guarantee of Origin in the meaning of Article 2 (j) of Directive 2009/28/EC of electricity produced from renewable energy sources in accordance with Article 15 of Directive 2009/28/EC issued by the competent member state or designated competent body and certifying 1 MWh production of a Hydro-electric head installation located

- in Denmark, Finland, Norway, or Sweden (GO Nordic Hydro Power Future)
- in Germany, Austria or Switzerland (GO Alpine Hydro Power Future)

that has not benefited from a national support scheme, thus being consistent with Code 0 of EECS Rules Fact Sheet 3 - TYPES OF PUBLIC SUPPORT;

- Belgium, Denmark, Germany or the Netherlands (GO Northern Continental Europe Wind Power Future)

that might have benefited from a national support scheme, thus being consistent with Code 0, 1, 2, 3 or 4 of EECS Rules Fact Sheet 3 - TYPES OF PUBLIC SUPPORT.

The production of electricity certified by the GO must have occurred in the months preceding the maturity of the futures contract according to the following scheme:

Maturity	Valid period of certified production
March	April – December of the previous calendar year
December	January – December of the on-going calendar year

2.2.2. Contract Volume and Minimum Lot Size

- Contract Volume: 1,000 GO
- Minimum lot size: 1 contract or a multiple thereof

2.2.3. Maturities

Maturities are: March and December

2.2.4. Tradable Maturities

At maximum the following maturities can be traded at EEX:

- Maturities in December and March are tradable within the three years before maturity at the exchange

The exact number of the tradable maturities is determined by the Management Board of the Exchange and announced before implementation.

3. Agricultural Products

Financial futures on the following agricultural products can be traded on EEX:

3.1. Potatoes

3.1.1. Underlying

Delivery or acceptance of delivery of processing potatoes used for the production of French fries from specific cultivation areas in Germany, the Netherlands, Belgium, and France. Settlement is carried out financially against the European Processing Potato Index in its respective valid version/composition for each date of delivery (European Processing Potato Future).

3.1.2. Contract Volume and Minimum Lot Size

- Contract Volume: 25 metric tons
- Minimum Lot Size:
 - 1 Contract or a multiple thereof (Order book trading)
 - minimum 10 Contracts (Trade Registration)

3.1.3. Tradable Maturities

At maximum the following maturities can be traded at EEX:

- The next three expiry months from the cycle April, June and November as well as the following expiry month April.

The exact number of the tradable maturities is determined by the Management Board of the Exchange and announced before implementation.

3.2. Livestock and Meat

3.2.1. Underlying

Delivery or acceptance of delivery of:

- One piglet in the four most important piglet trading zones in Germany (Schwäbisch Gmünd, Bavaria, North-Rhine Westphalia, Lower Saxony). Settlement is carried out financially against the Piglet Index in its respective valid version/composition for each date of delivery (Piglet Future)
- Hogs for slaughter in Central Europe (Germany, the Netherlands, Belgium, and Austria). Settlement is carried out financially against the Hog Index in its respective valid version/composition for each date of delivery (Hog Future).

3.2.2. Contract Volume and Minimum Lot Size

- Contract Volume:
 - 100 piglets (Piglet Future)
 - 8,000 kg slaughter-weight (Hog Future)
- Minimum Lot Size:
 - 1 Contract or a multiple thereof (Order book trading)
 - minimum 10 Contracts (Trade Registration)

3.2.3. Tradable Maturities

At maximum the following maturities can be traded at EEX:

- The maturities of the current and the next twelve consecutive calendar months as well as the following two quarter months from the cycle March, June, September and December.

The exact number of the tradable maturities is determined by the Management Board of the Exchange and announced before implementation.

3.3. Dairy Products

3.3.1. Underlying

Delivery or acceptance of delivery of:

- Skimmed milk powder for comestible use in the European Economic Area (Quotations in Germany, France and the Netherlands). Settlement is carried out financially against the Skimmed Milk Powder Index in its respective valid version/composition for each date of delivery (Skimmed Milk Powder Future)

- Whey powder in the European Economic Area (Quotations in Germany, France and the Netherlands). Settlement is carried out financially against the European Whey Powder Index in its respective valid version/composition for each date of delivery as it is calculated and published by AMI Agrarmarkt Informations-Gesellschaft mbH (European Whey Powder Future)
- Block butter for comestible production in Germany, France and the Netherlands. Settlement is carried out financially against the Butter Index in its respective valid version/composition for each date of delivery (Butter Future).

3.3.2. Contract Volume and Minimum Lot Size

- Contract Volume: 5 metric tons
- Minimum Lot Size: 1 Contract or a multiple thereof

3.3.3. Tradable Maturities

At maximum the following maturities can be traded at EEX:

- The maturities of the current and the next eighteen consecutive calendar months.

The exact number of the tradable maturities is determined by the Management Board of the Exchange and announced before implementation.

4. Options

4.1. Underlying

The buyer of a call option (call) is entitled to receive a long position in the corresponding future at the exercise price of the option on the last trading day.

The seller of the call option (call) receives a short position in the corresponding future after the call option is exercised and assigned at the exercise price on the last trading day.

The buyer of a put option (put) is entitled to receive a short position in the corresponding future at the exercise price of the option on the last trading day.

The seller of the put option (put) receives a long position in the corresponding future at the exercise price after the put option is exercised and assigned on the last trading day.

4.1.1. Underlying of Options on Power Futures

The respective delivery period of the Base Month, Base Quarter or Base Year Future, that is named in the respective Option as underlying.

Options on Power Futures are offered for the following market areas:

- Germany/Austria (Phelix Base Option),
- France (French Base Option),
- Italy (Italian Base Option),
- Nordic (Nordic Base Option)* and
- Spain (Spanish Base Option).

* Currently not available for trading.

4.1.2. Underlying of Options on EUA Dec Futures*

The respective maturity of the EUA Dec Future, that is named in the Option as underlying.

* Introduction to trading expected as of the middle of October 2016.

4.2. Option Premium

The buyer of an option contract is obliged to pay the price for the purchase of the right of option (option premium) on the ECC Business Day after the purchase. The premium is credited to the seller of the option on the same day.

4.3. Type of Option

European type, i.e. the option can only be exercised on the last trading day.

4.4. Maturities

4.4.1. Options on Power Futures

Maturities can be: Month, Quarter, Year

4.4.2. Options on EUA Dec Futures

Maturities can be: Year (December)

4.5. Tradable Option Series

An option series is the total number of call and put options (call and put) with the same Underlying, the same exercise price and the same maturity which can be traded in the system.

At least three series with different exercise prices can be traded for each maturity; in this context one exercise price is in the money, one exercise price is at the money and one exercise price is out of the money upon their introduction into trading.

The management board of the exchange is entitled to change the number of tradable option series at any given time.

4.6. Tradable Maturities

4.6.1. Options on Power Futures

At maximum the following maturities can be traded at EEX:

- The respective next 5 delivery months (Month Option),
- The respective next 6 delivery quarters (Quarter Option),
- The respective next 4 delivery years* of the underlying (Year Option)

* For each delivery year of the underlying up to 4 contracts with different expiry dates at the end of each quarter of the preceding year can be available. Underlyings are available:

Expiry end of March:	Base Year Apr Option (Phelix Options only)
Expiry end of June:	Base Year Jul Option (Phelix Options only)
Expiry end of September:	Base Year Oct Option (Phelix Options only)
Expiry end of December	Base Year Jan Option (for all Options)

New maturities will be introduced for trading to such an extent that always 16 maturities with 4 maturities per year (Phelix Options) and 4 maturities (for all other Options) referring to the next 4 delivery years of the underlying are tradable.

4.6.2. Options on EUA Dec Futures

At maximum the following maturities can be traded at EEX:

- the current and the next 8 December expiries

(EUA Dec Option).

The exact number of the tradable maturities of the respective options is determined by the Management Board of the Exchange and announced before implementation.

4.7. Exercise

The option can only be exercised on the last trading day. Said exercise is carried out by means of an entry into the EEX system between 08:00 a.m. and 03:00 p.m. (Exercise Period) on the last trading day.

On the last trading day starting at 2 p.m. the exchange determines the intraday market value of the underlying (Intraday Fixing Price) and publishes it in due time before the end of the Exercise Period.

In deviation to sentence 1, options which are in the money in relation to the Intraday Fixing Price are exercised automatically at the end of the exercise period unless the trading participant has made a deviating entry into the system by that time.

Exercises only become effective at 03:00 p.m., until that time they can be changed or deleted at any time.

B. Pricing and Minimum Price Fluctuation

1. Euro Denominated Products

Pricing in EUR per

- EUA, EUAA, CER, and MWh (Power Futures except UK Power Futures) to the second decimal place
- MWh (Cap Futures) to the third decimal place
- h (Wind Power Futures) to the second decimal place
- GO to the third decimal place
- 100 kg to the first decimal place (European Processing Potato Future)
- Piglet to the first decimal place (Piglet Future)
- kg to the third decimal place (Hog Future)
- Tonne (Skimmed Milk Powder, European Whey Powder, Butter Future) no decimal places

Minimum price fluctuation:

- EUR 0.01 per EUA, EUAA, CER, and MWh (Power Futures except UK Power Futures)
- EUR 0.001 per MWh (Cap Futures)
- 0.01 EUR per h (Wind Power Futures)
- EUR 1.00 per GO
- EUR 0.1 per 100 kg (European Processing Potato Future)
- EUR 0.1 per piglet (Piglet Future)
- EUR 0.001 per kg (Hog Future)
- EUR 1 per Tonne (Skimmed Milk Powder, European Whey Powder, Butter Futures)

Minimum price fluctuation per contract is determined by multiplying the minimal price fluctuation per unit with the contract volume and the amount of delivery hours, respectively.

2. GBP Denominated Products

Pricing in GBP per

- MWh (UK Power Future) to the second decimal place

Minimum price fluctuation:

- GBP 0.01 per MWh (UK-Power-Future)

Minimum price fluctuation per contract is determined by multiplying the minimal price fluctuation per unit with the contract volume and the amount of delivery hours, respectively.

3. USD Denominated Products

Pricing in USD per

- Tonne (coal) to the second decimal place

Minimum price fluctuation:

- USD 0.01 per Tonne

Minimum price fluctuation per contract is determined by multiplying the minimal price fluctuation per unit with the contract volume and the amount of delivery hours, respectively.

4. Pricing for the Option Premium

Pricing in EUR per

- MWh (Power Options) and EUA (EUA Dec Option) to the third decimal place

Minimum price fluctuation:

- EUR 0.001 per MWh or EUA, respectively.

C. Last Trading Day for Derivatives Market Contracts

1. Energy and Energy Related Products

1.1. Power

1.1.1. Physically Settled Power Futures

The Last Trading Day:

- of the Month Future
is two exchange trading days before the last delivery day of the delivery month
- of the Quarter/Year Future
is the third exchange trading day before the beginning of the delivery period.

1.1.2. Financially Settled Power Futures

The Last Trading Day:

- of the Day Future
is the day at which the hourly auction for the respective delivery day on the EPEX SPOT Market is conducted
- of the Weekend Future
is the Friday before the beginning of the delivery period,
- of the Base Week Future
is the Friday of the current delivery period,
- of the Peak Week Future
is the Thursday of the current delivery week,
- of the Month Future
is the day the hourly auction for the last delivery day of the delivery month on the EPEX Spot Spot Market is conducted. Trading ends at the time of the end of the submission of bids for the hourly auction on the EPEX Spot Spot Market (usually at 12:00) on that day.
- Of the Quarter/Season/Year Future
is the third exchange trading day before the beginning of the delivery period.

1.1.3. Cap-Futures

The Last Trading Day:

- of the German Base Intraday Hourly Cap Week Future
is the Friday of the current settlement period.

1.1.4. Wind Power Futures

The Last Trading Day:

- of the Week/Month Future
is the last exchange trading day before the end of the respective settlement period,
- of the Quarter/Year Future
is the third exchange trading day before the beginning of the settlement period.

If one of the before mentioned Last Trading days is not an exchange trading day, the Last Trading Day is the previous exchange trading day.

1.2. Coal

The Last Trading Day:

- of the Month Future
is the last Friday of the delivery month

If this day is not an exchange trading day or if it is a public holiday in Great Britain, the Last Trading Day is the previous exchange trading day. If – according to the preceding provision – the Last Trading Day of a December contract would fall on a day prior to December 24th, the Last Trading Day in this case shall be the first exchange trading day following December 24th.

2. Environmental Products

2.1. Emission Allowances

The Last Trading Day:

- is the last Monday of the maturity month. If this day is not an exchange trading day or if it is a public holiday in Great Britain or if one of the 4 days following the last Monday is not an exchange trading day, the Last Trading Day is the penultimate Monday of the maturity month.

The last trading day for each contract will be published by the Management Board of the Exchange prior to introduction of a maturity to trading at the latest.

2.2. Guarantees of Origin

The Last Trading Day is an exchange trading day within the calendar month of the respective maturity of the contract. It will be determined by the Management Board of the Exchange prior to the introduction of a maturity to trading at the latest. The Last Trading Day will normally be at least two weeks before the last calendar day of that specific month.

3. Agricultural Products

3.1. Potatoes

The Last Trading Day:

- is the exchange trading day before the last Friday of the month for the expiry months April and November.
- is the exchange trading day before the first Friday of the month for the expiry month June.

3.2. Livestock and Meat

The Last Trading Day:

- is the exchange trading day before the Thursday that follows the third Friday of the respective expiry month. For the expiry month December the Last Trading Day is the exchange trading day before the Thursday that follows the second Friday of the month.

3.3. Dairy Products

The Last Trading Day:

- is the last Wednesday of the respective expiry month. If this day is not an exchange trading day, the Last Trading Day is the previous exchange trading day.
- is the expiry month December the Last Trading Day is the third Wednesday of the month. If this day is not an exchange trading day, the Last Trading Day is the following exchange trading day.

4. Options

4.1. Last Trading Day

4.1.1. Options on Power Futures

The Last Trading Day:

- Month Option
 - Delivery month of January: the third Thursday of the preceding December
 - All other delivery months*: four exchange trading days prior to the beginning of the delivery month
- Quarter Option
 - First quarter of a given year: the third Thursday of the preceding December
 - All other quarters: four exchange trading days prior the beginning of the delivery quarter
- Year Option
 - Phelix Base Year Jan Option: The second Thursday in December
 - All other maturities: four exchange days before the end of the quarter

On the Last Trading Day of a maturity all options of the same maturity type (Month, Quarter or Year) are only tradable until 3 p.m. irrespective of whether they expire that same day as well.

4.1.2. Options on EUA Dec Futures

The Last Trading Day:

- The third exchange trading day prior to the last Monday of the expiry month. If this Monday is not an exchange trading day, a public holiday in Great Britain or if one of the four days following that last Monday is not an exchange trading day, then the Last Trading Day is the penultimate Monday of the expiry month.

The last trading day for each option contract will be published by the Management Board of the Exchange prior to introduction of a maturity to trading at the latest.

4.2. Expiry Day

Options which have not been exercised expire at 03:00 p.m. on the Last Trading Day.

D. Fulfilment

1. Energy and Energy Related Products

1.1. Cascading

For the following Future contracts longer maturities cascade into corresponding shorter maturities:

- Power Futures
- Wind Power Futures

On the third ECC Business Day before the beginning of the delivery period, each open position in a Year Future is replaced by equivalent positions in the three Month Futures for the delivery months from January through to March and the three Quarter Futures for the second through to the fourth delivery quarter whose delivery periods together correspond to the delivery year.

On the third ECC Business Day before the beginning of the delivery period, each open position in a Season Future is replaced by equivalent positions in the three Month Futures for the delivery months from October through to December (Winter-Season) or the three Month Futures for the delivery months from April through to Juni (Summer-Season) and the respective following Quarter Future.

On the third ECC Business Day before the beginning of the delivery period, each open position in a Quarter Future is replaced by equivalent positions in the three Month Futures whose delivery months together correspond to the delivery quarter.

1.2. Power

1.2.1. Final Settlement Price

1.2.1.1. Physical Power Futures

The respective final settlement price is determined two exchange trading days prior to the beginning of the delivery period (Month Futures). Thus, this is the settlement price that the entire contract volume of the respective contract is last traded for.

1.2.1.2. Financial Power Futures

The determination of the respective final settlement price is based on an Index which is the mean value of all auction prices of the hourly contracts traded for the respective market area and delivery period (Base/Peak/Off-Peak) for all days of the respective delivery period.

EEX determines the Index on each exchange trading day by using the most valuable sources for the respective market area. As a rule the auction prices of the hourly contracts traded at the most liquid power spot exchange are used.

Currently, the reference price for the market area:

- Belgium: is based on the „Belix Base“ as determined by auf dem von Belpex NV;
- Germany/Austria: is based on the hourly prices determined at the spot market of EPEX SPOT for this market area;

- France: is based on the hourly prices determined at the spot market of EPEX SPOT for this market area;
- Italy: is based on the “PUN Index GME” as determined by Gestore dei Mercati Energetici S.p.A. (GME);
- The Netherlands: is based on the „APX NL Base“ or the „APX NL Peak“, respectively, as determined by APX Power BV
- Nordic: is based on the Nordic Elspot System Price as determined by Nord Pool Spot;
- Switzerland: is based on the hourly prices determined at the spot market of EPEX SPOT for this market area;
- Spanien: is based on the “SPEL Base” Index as determined by OMIP.
- United Kingdom is based on the „APX Power UK Auction Base“ and the „APX Power UK Auction Peak“ Index as determined by APX Commodities Ltd.

The Management Board of the Exchange may use indexes of information service providers or any other appropriate sources in case exchange data are not available for EEX. EEX will publish in those cases the source that is used for calculation of the index.

1.2.1.3. Cap-Futures

The final settlement price per MWh is the average of the differences of the respective price index for all reference contracts within the respective delivery period and the Cap, whereas negative differences will be counted as zero for the determination of the average:

- German Base Intraday Hourly Cap Future: Average of the differences of the Intraday Price Indices (ID₃-Price) determined for the Intraday hourly contracts by EPEX SPOT and the Cap that has been stipulated by the Management Board of the Exchange prior to the introduction of the respective Future.

1.2.1.4. Wind Power Futures Germany/Austria

The Final Settlement Price is the respective Wind Power Index for the relevant period of time as the unweighted average of the load factors for all hours of the contract. The Wind Power Index will be determined by an established information or data service provider that is specialized for the processing and calculation of weather data, on a model-basis for the respective market area and will be based on actual wind data for each week or month, respectively. Due to technical reasons, the Wind Power Index for Month Futures will be calculated by using wind forecasts for the eight (8) last hours of the settlement period.

Currently, the Wind Power Index for the market area:

- Germany/Austria is calculated by the EuroWind GmbH, Cologne.

The Management Board of the Exchange may in a particular instance or permanently employ other information or data service providers or any other appropriate sources to determine the respective Wind Power Index, particularly if the named information or data service providers are not able in a particular instance to determine the respective Wind Power Index or if the Management Board of the Exchange considers that the calculations of other information or data service providers better reflect the underlying of the contract. EEX will publish in those cases the source that is used for calculation of the index.

1.2.2. Fulfilment of Physical Power Futures

The buyer is obliged to purchase the quantity of electricity agreed on every delivery day of the delivery period and to pay the purchase price plus the taxes payable on said amount.

The seller is obliged to deliver the quantity of electricity agreed on with constant power and duration on every delivery day.

1.2.2.1. Delivery and Acceptance of Delivery

Delivery and acceptance of delivery of power is effected, subject to the provisions specified in the Clearing Conditions, by submitting a nomination or schedule in accordance with the requirements of the respective Balancing Agreement, which comprises the underlying delivery transaction as well as the binding confirmation of the nomination or schedule by the respective transmission system operator.

On every delivery day only that the part of the contract shall be delivered which has been defined for delivery according to the respective contract specifications for delivery on every day of the delivery period.

1.2.2.2. Purchase Price

The purchase price for all delivery days in the entire delivery period is the final settlement price.

1.2.3. Fulfilment of Financial Power Futures, Cap Futures and Wind Power Futures

The seller (buyer) is obliged to settle the difference between the price agreed on and the higher (lower) final settlement price in cash on the day of execution. The final settlement price may be negative.

Fulfilment is carried out between the clearing members and ECC AG. Cash settlement between non-clearing members and their own clients is the task of the clearing member in charge; the cash settlement between non-clearing members and their clients is the task of the non-clearing members concerned.

1.2.3.1. Month Futures

Fulfilment by means of cash settlement based on the final settlement price on the ECC Business Day following the Last Trading Day. If the final settlement price is determined on a Saturday Sunday or a public holiday following a Sunday, the cash settlement takes place on the second ECC Business Day after the Last Trading Day.

1.2.3.2. Week Futures

Fulfilment by means of cash settlement based on the final settlement price on the ECC Business Day following the day of determination of the final settlement price (as a rule Tuesdays).

1.2.3.3. Weekend Futures

Fulfilment by means of cash settlement on the second ECC Business Day following the Last Trading Day.

1.2.3.4. Day Futures

Fulfilment by means of cash settlement based on the final settlement price determined on the ECC business day following the day the settlement price is determined. If the final settlement price is determined on a Saturday, Sunday or a public holiday, the cash settlement takes place on the second next ECC Business Day after the Last Trading Day.

1.3. Coal

1.3.1. Final Settlement Price

The determination of the respective final settlement price is based on a monthly index for coal (Index) which is the mean value of all weekly indices of the respective delivery point published in the relevant month in Argus/McCloskey's Coal Price Index Report on the last Friday of each month.

The Index for the delivery point

- cif Amsterdam Rotterdam Antwerp (cif ARA) is the API 2* Month Index
- fob Richards Bay, South Africa is the API 4* Month Index

* API 2 and API 4 are trade marks and are used under licence from Argus Media Limited and IHS Global Limited. All copyrights and database rights in the API 2 and API 4 index belong exclusively to Argus Media Limited and IHS Global Limited and are used herein under licence. EEX is solely responsible for the operation of markets in API-2-CIF-ARA-(Argus-IHS McCloskey)-Coal- and API-4-FOB-Richards-Bay-(Argus-IHS McCloskey)-Coal-Futures. Argus and IHS take no position on the purchase or sale of such Products and exclude all liability in relation thereto.

1.3.2. Fulfilment

Fulfilment by means of cash settlement on the ECC Business Day following the Last Trading Day based on the difference between the settlement price of the exchange day before the Last Trading Day and the final settlement price.

The seller (buyer) is obliged to settle the difference between the settlement price of the previous ECC Business Day and the higher (lower) final settlement price in cash.

Fulfilment is carried out between the clearing members and ECC AG. Cash settlement with non-clearing members and their own clients is the responsibility of the clearing member in charge; the cash settlement between non-clearing members and their clients is the responsibility of the non-clearing members concerned.

2. Environmental Products

2.1. Emission Allowances

2.1.1. Primary Auctions

2.1.1.1. Escrow Accounts

EU Allowances and EU Aviation Allowances, respectively, are held in escrow by ECC Lux in accounts as collateral security within the meaning of Article 2(m) of the Settlement Finality Directive as implemented in section 166 (3) 1 of the German Insolvency Statute.

2.1.1.2. Fulfilment

Fulfilment is carried out by delivering the purchased EU Emission Allowances or the purchased EU Aviation Allowances after payment: upon receipt of the payment by the auctioneer(s), ECC Lux transfers the purchased EU Emission Allowances and the purchased EU Aviation Allowances, respectively, into the internal account of the successful bidders in the ECC internal account system and subsequently makes the corresponding changes in the ECC Lux escrow accounts held at the registry.

2.1.1.3. Transfer of Allowances

Following fulfilment of the contract, successful bidders are entitled to demand the transfer of EU Allowances and EU Aviation Allowances, respectively, held in escrow for them, in the ECC Lux escrow accounts at the registry, to a registry account specified by them. The demand is executed at the latest on the first ECC Business Day after it is made.

2.1.2. Secondary Trading

2.1.2.1. Escrow Accounts

Emission Allowances (EUA, EUAA, or CER) are held in escrow by ECC Lux in accounts as collateral security within the meaning of Article 2(m) of the Settlement Finality Directive as implemented in section 166 (3) 1 of the German Insolvency Statute.

2.1.2.2. Fulfilment

After payment of the purchase price, ECC Lux transfers the purchased Emission Allowances into the internal account of the purchaser in the ECC internal account system and subsequently makes the corresponding changes in the ECC Lux escrow accounts held at the registry.

2.1.2.3. Transfer of Allowances

Each exchange Participant is entitled to demand the transfer of EUAs, held in escrow for them, in the ECC Lux escrow accounts at the registry, to a registry account specified by them. The demand is executed at the latest on the first ECC Business Day after it is made.

2.2. Guarantees of Origin

2.2.1. Escrow Accounts

Guarantees of Origin are held in escrow by ECC Lux in accounts as collateral security within the meaning of Article 2(m) of the Settlement Finality Directive as implemented in section 166 (3) 1 of the German Insolvency Statute.

2.2.2. Fulfilment

ECC Lux transfers the purchased Guarantees of Origin into the internal account of the purchaser in the ECC internal account system and subsequently makes the corresponding changes in the ECC Lux escrow accounts held at the registry.

2.2.3. Transfer of Guarantees of Origin

Each exchange participant is entitled to demand the transfer of Guarantees of Origin, held in escrow for them, in the ECC Lux escrow accounts at the registry, to a registry account specified by them. The demand is executed at the latest on the first ECC Business Day after it is made.

3. Agricultural Products

3.1. Potatoes

3.1.1. Final Settlement Price

The determination of the final settlement price is based on the

- European Processing Potato Index

at 9.30 CET of the exchange trading day after the Last Trading Day. EEX determines the final settlement price.

3.1.2. Fulfilment

Fulfilment by means of cash settlement on the second ECC Business Day following the Last Trading Day based on the difference between the settlement price of the Last Trading Day and the final settlement price.

The seller (buyer) is obliged to settle the difference between the settlement price of the previous ECC Business Day and the higher (lower) final settlement price in cash.

Fulfilment is carried out between the clearing members and ECC AG. Cash settlement with non-clearing members and their own clients is the responsibility of the clearing member in charge; the cash settlement between non-clearing members and their clients is the responsibility of the non-clearing members concerned.

3.2. Livestock and Meat

3.2.1. Final Settlement Price

The determination of the final settlement price is based on the

- Piglet Index for Piglet Futures
- Hog Index for Hog Futures

at 9.30 CET of the exchange trading day after the Last Trading Day. EEX determines the Final Settlement Price.

3.2.2. Fulfilment

Fulfilment by means of cash settlement on the second ECC Business Day following the Last Trading Day based on the difference between the settlement price of the Last Trading Day and the final settlement price.

The seller (buyer) is obliged to settle the difference between the settlement price of the previous ECC Business Day and the higher (lower) final settlement price in cash.

Fulfilment is carried out between the clearing members and ECC AG. Cash settlement with non-clearing members and their own clients is the responsibility of the clearing member in charge; the cash settlement between non-clearing members and their clients is the responsibility of the non-clearing members concerned.

3.3. Dairy Products

3.3.1. Final Settlement Price

The determination of the final settlement price is based on the

- Skimmed Milk Powder Index for Skimmed Milk Powder Futures
- European Whey Powder Index, as it is calculated and published by AMI Agrarmarkt Informations-Gesellschaft mbH for European Whey Powder Futures
- Butter Index for Butter Futures

at 19.00 CET of the Last Trading Day, respectively. EEX determines the Final Settlement Price.

3.3.2. Fulfilment

Fulfilment by means of cash settlement on the ECC Business Day following the Last Trading Day based on the difference between the settlement price of Exchange Day before the Last Trading Day and the final settlement price.

The seller (buyer) is obliged to settle the difference between the settlement price of the previous ECC Business Day and the higher (lower) final settlement price in cash.

Fulfilment is carried out between the clearing members and ECC AG. Cash settlement with non-clearing members and their own clients is the responsibility of the clearing member in charge; the cash settlement between non-clearing members and their clients is the responsibility of the non-clearing members concerned.

4. Options

4.1. Fulfilment

Options are fulfilled by booking in of the corresponding futures position at the respective exercise price after the option is exercised.

4.2. Assignment

If a buyer exercises his right of option, ECC AG assigns a seller of the same option series and of the same type of option (call or put) to the buyer with the help of a procedure maintaining the neutrality of the assignment process at the end of the post-trading phase on the exercise day. Partial assignments are permissible.

All assignments which have been executed for the agent position account of a trading participant have to be assigned by said trading participant for the positions of his customers; this has to be done with the help of a procedure which ensures the neutrality of the assignment process.

ECC AG informs all the parties involved as well as the clearing members supporting the parties involved about the assignment on the exercise day.

E.ISIN Codes, WKN, and Exchange Code

1. Power (Physical Fulfilment)

Name	ISIN Code	WKN	Exchange Code
Belgian Power Base Load Month Future	DE000A1XQRD2	A1XQRD	QBBM
Belgian Power Base Load Quarter Future	DE000A1XQRE0	A1XQRE	QBBQ
Belgian Power Base Load Year Future	DE000A1XQRF7	A1XQRF	QBBY
Dutch Power Base Load Month Future	DE000A1XQRG5	A1XQRG	QDBM
Dutch Power Base Load Quarter Future	DE000A1XQRH3	A1XQRH	QDBQ
Dutch Power Base Load Year Future	DE000A1XQRJ9	A1XQRJ	QDBY
Dutch Power Peak Load Month Future	DE000A1XQRK7	A1XQRK	QDPM
Dutch Power Peak Load Quarter Future	DE000A1XQRL5	A1XQRL	QDPQ
Dutch Power Peak Load Year Future	DE000A1XQRM3	A1XQRM	QDPY

2. Power (Financial Fulfilment)

Name	ISIN Code	WKN	Exchange Code
Belgian Power Base Month Future	DE000A160XW8	A160XW	Q1BM
Belgian Power Base Quarter Future	DE000A160XX6	A160XX	Q1BQ
Belgian Power Base Year Future	DE000A160XY4	A160XY	Q1BY
Dutch Power Base Week Future	DE000A18T9K8	A18T9K	Q0B1
	DE000A18T9L6	A18T9L	Q0B2
	DE000A18T9M4	A18T9M	Q0B3
	DE000A18T9N2	A18T9N	Q0B4
	DE000A18T9P7	A18T9P	Q0B5
Dutch Power Base Month Future	DE000A160XQ0	A160XQ	Q0BM
Dutch Power Base Quarter Future	DE000A160XR8	A160XR	Q0BQ
Dutch Power Base Year Future	DE000A160XS6	A160XS	Q0BY
Dutch Power Peak Month Future	DE000A160XT4	A160XT	Q0PM
Dutch Power Peak Quarter Future	DE000A160XU2	A160XU	Q0PQ
Dutch Power Peak Year Future	DE000A160XV0	A160XV	Q0PY

Name	ISIN Code	WKN	Exchange Code
French Base Day Future	DE000A13RR96	A13RR9	F701
	DE000A13RSA4	A13RSA	F702
	DE000A13RSB2	A13RSB	F703
	DE000A13RSC0	A13RSC	F704
	DE000A13RSD8	A13RSD	F705
	DE000A13RSE6	A13RSE	F706
	DE000A13RSF3	A13RSF	F707
	DE000A13RSG1	A13RSG	F708
	DE000A13RSH9	A13RSH	F709
	DE000A13RSJ5	A13RSJ	F710
	DE000A13RSK3	A13RSK	F711
	DE000A13RSL1	A13RSL	F712
	DE000A13RSM9	A13RSM	F713
	DE000A13RSN7	A13RSN	F714
	DE000A13RSP2	A13RSP	F715
	DE000A13RSQ0	A13RSQ	F716
	DE000A13RSR8	A13RSR	F717
	DE000A13RSS6	A13RSS	F718
	DE000A13RST4	A13RST	F719
	DE000A13RSU2	A13RSU	F720
	DE000A13RSV0	A13RSV	F721
	DE000A13RSW8	A13RSW	F722
	DE000A13RSX6	A13RSX	F723
	DE000A13RSY4	A13RSY	F724
	DE000A13RSZ1	A13RSZ	F725
	DE000A13RS04	A13RS0	F726
	DE000A13RS12	A13RS1	F727
	DE000A13RS20	A13RS2	F728
	DE000A13RS38	A13RS3	F729
	DE000A13RS46	A13RS4	F730
	DE000A13RS53	A13RS5	F731
	DE000A13RS61	A13RS6	F732
	DE000A13RS79	A13RS7	F733
	DE000A13RS87	A13RS8	F734
French Base Weekend Future	DE000A13RS95	A13RS9	F7W1
	DE000A13RTA2	A13RTA	F7W2
	DE000A13RTB0	A13RTB	F7W3
	DE000A13RTC8	A13RTC	F7W4
	DE000A13RTD6	A13RTD	F7W5

Name	ISIN Code	WKN	Exchange Code
French Base Week Future	DE000A1EZKJ5	A1EZKJ	F7B1
	DE000A1EZKK3	A1EZKK	F7B2
	DE000A1EZKL1	A1EZKL	F7B3
	DE000A1EZKM9	A1EZKM	F7B4
	DE000A1EZKN7	A1EZKN	F7B5
French Base Month Future	DE000A1L19A5	A1L19A	F7BM
French Base Quarter Future	DE000A1L19B3	A1L19B	F7BQ
French Base Year Future	DE000A1L19C1	A1L19C	F7BY
French Peak Day Future	DE000A18T6Z2	A18T6Z	P701
	DE000A18T603	A18T60	P702
	DE000A18T611	A18T61	P703
	DE000A18T629	A18T62	P704
	DE000A18T637	A18T63	P705
	DE000A18T645	A18T64	P706
	DE000A18T652	A18T65	P707
	DE000A18T660	A18T66	P708
	DE000A18T678	A18T67	P709
	DE000A18T686	A18T68	P710
	DE000A18T694	A18T69	P711
	DE000A18T7A3	A18T7A	P712
	DE000A18T7B1	A18T7B	P713
	DE000A18T7C9	A18T7C	P714
	DE000A18T7D7	A18T7D	P715
	DE000A18T7E5	A18T7E	P716
	DE000A18T7F2	A18T7F	P717
	DE000A18T7G0	A18T7G	P718
	DE000A18T7H8	A18T7H	P719
	DE000A18T7J4	A18T7J	P720
	DE000A18T7K2	A18T7K	P721
	DE000A18T7L0	A18T7L	P722
	DE000A18T7M8	A18T7M	P723
	DE000A18T7N6	A18T7N	P724
	DE000A18T7P1	A18T7P	P725
	DE000A18T7Q9	A18T7Q	P726
	DE000A18T7R7	A18T7R	P727
	DE000A18T7S5	A18T7S	P728
	DE000A18T7T3	A18T7T	P729
	DE000A18T7U1	A18T7U	P730
	DE000A18T7V9	A18T7V	P731
	DE000A18T7W7	A18T7W	P732
	DE000A18T7X5	A18T7X	P733
	DE000A18T7Y3	A18T7Y	P734

Name	ISIN Code	WKN	Exchange Code
French Peak Weekend Future	DE000A18T7Z0	A18T7Z	P7W1
	DE000A18T702	A18T70	P7W2
	DE000A18T710	A18T71	P7W3
	DE000A18T728	A18T72	P7W4
	DE000A18T736	A18T73	P7W5
French Peak Week Future	DE000A1EZKP2	A1EZKP	F7P1
	DE000A1EZKQ0	A1EZKQ	F7P2
	DE000A1EZKR8	A1EZKR	F7P3
	DE000A1EZKS6	A1EZKS	F7P4
	DE000A1EZKT4	A1EZKT	F7P5
French Peak Month Future	DE000A1L19D9	A1L19D	F7PM
French Peak Quarter Future	DE000A1L19E7	A1L19E	F7PQ
French Peak Year Future	DE000A1L19F4	A1L19F	F7PY

Name	ISIN Code	WKN	Exchange Code
Italian Base Day Future	DE000A13RPZ7	A13RPZ	FD01
	DE000A13RP07	A13RP0	FD02
	DE000A13RP15	A13RP1	FD03
	DE000A13RP23	A13RP2	FD04
	DE000A13RP31	A13RP3	FD05
	DE000A13RP49	A13RP4	FD06
	DE000A13RP56	A13RP5	FD07
	DE000A13RP64	A13RP6	FD08
	DE000A13RP72	A13RP7	FD09
	DE000A13RP80	A13RP8	FD10
	DE000A13RP98	A13RP9	FD11
	DE000A13RQA8	A13RQA	FD12
	DE000A13RQB6	A13RQB	FD13
	DE000A13RQC4	A13RQC	FD14
	DE000A13RQD2	A13RQD	FD15
	DE000A13RQE0	A13RQE	FD16
	DE000A13RQF7	A13RQF	FD17
	DE000A13RQG5	A13RQG	FD18
	DE000A13RQH3	A13RQH	FD19
	DE000A13RQJ9	A13RQJ	FD20
	DE000A13RQK7	A13RQK	FD21
	DE000A13RQL5	A13RQL	FD22
	DE000A13RQM3	A13RQM	FD23
	DE000A13RQN1	A13RQN	FD24
	DE000A13RQP6	A13RQP	FD25
	DE000A13RQQ4	A13RQQ	FD26
	DE000A13RQR2	A13RQR	FD27
	DE000A13RQS0	A13RQS	FD28
	DE000A13RQT8	A13RQT	FD29
	DE000A13RQU6	A13RQU	FD30
	DE000A13RQV4	A13RQV	FD31
	DE000A13RQW2	A13RQW	FD32
	DE000A13RQX0	A13RQX	FD33
	DE000A13RQY8	A13RQY	FD34
Italian Base Weekend Future	DE000A13RQZ5	A13RQZ	FDW1
	DE000A13RQ06	A13RQ0	FDW2
	DE000A13RQ14	A13RQ1	FDW3
	DE000A13RQ22	A13RQ2	FDW4
	DE000A13RQ30	A13RQ3	FDW5

Name	ISIN Code	WKN	Exchange Code
Italian Base Week Future	DE000A1YD5W4	A1YD5W	FDB1
	DE000A1YD5X2	A1YD5X	FDB2
	DE000A1YD5Y0	A1YD5Y	FDB3
	DE000A1YD5Z7	A1YD5Z	FDB4
	DE000A1YD507	A1YD50	FDB5
Italian Base Month Future	DE000A1RREN9	A1RREN	FDBM
Italian Base Quarter Future	DE000A1RREP4	A1RREP	FDBQ
Italian Base Year Future	DE000A1RREQ2	A1RREQ	FDBY
Italian Peak Day Future	DE000A18T744	A18T74	PD01
	DE000A18T751	A18T75	PD02
	DE000A18T769	A18T76	PD03
	DE000A18T777	A18T77	PD04
	DE000A18T785	A18T78	PD05
	DE000A18T793	A18T79	PD06
	DE000A18T8A1	A18T8A	PD07
	DE000A18T8B9	A18T8B	PD08
	DE000A18T8C7	A18T8C	PD09
	DE000A18T8D5	A18T8D	PD10
	DE000A18T8E3	A18T8E	PD11
	DE000A18T8F0	A18T8F	PD12
	DE000A18T8G8	A18T8G	PD13
	DE000A18T8H6	A18T8H	PD14
	DE000A18T8J2	A18T8J	PD15
	DE000A18T8K0	A18T8K	PD16
	DE000A18T8L8	A18T8L	PD17
	DE000A18T8M6	A18T8M	PD18
	DE000A18T8N4	A18T8N	PD19
	DE000A18T8P9	A18T8P	PD20
	DE000A18T8Q7	A18T8Q	PD21
	DE000A18T8R5	A18T8R	PD22
	DE000A18T8S3	A18T8S	PD23
	DE000A18T8T1	A18T8T	PD24
	DE000A18T8U9	A18T8U	PD25
	DE000A18T8V7	A18T8V	PD26
	DE000A18T8W5	A18T8W	PD27
	DE000A18T8X3	A18T8X	PD28
	DE000A18T8Y1	A18T8Y	PD29
	DE000A18T8Z8	A18T8Z	PD30
	DE000A18T801	A18T80	PD31
	DE000A18T819	A18T81	PD32
	DE000A18T827	A18T82	PD33
	DE000A18T835	A18T83	PD34

Name	ISIN Code	WKN	Exchange Code
Italian Peak Weekend Future	DE000A18T843	A18T84	PDW1
	DE000A18T850	A18T85	PDW2
	DE000A18T868	A18T86	PDW3
	DE000A18T876	A18T87	PDW4
	DE000A18T884	A18T88	PDW5
Italian Peak Week Future	DE000A1YD515	A1YD51	FDP1
	DE000A1YD523	A1YD52	FDP2
	DE000A1YD531	A1YD53	FDP3
	DE000A1YD549	A1YD54	FDP4
	DE000A1YD556	A1YD55	FDP5
Italian Peak Month Future	DE000A1YD5T0	A1YD5T	FDPM
Italian Peak Quarter Future	DE000A1YD5U8	A1YD5U	FDPQ
Italian Peak Year Future	DE000A1YD5V6	A1YD5V	FDPY
Nordic Base Week Future	DE000A18T9E1	A18T9E	FBB1
	DE000A18T9F8	A18T9F	FBB2
	DE000A18T9G6	A18T9G	FBB3
	DE000A18T9H4	A18T9H	FBB4
	DE000A18T9J0	A18T9J	FBB5
Nordic Base Month Future	DE000A1RREG3	A1RREG	FBBM
Nordic Base Quarter Future	DE000A1RREH1	A1RREH	FBBQ
Nordic Base Year Future	DE000A1RREJ7	A1RREJ	FBBY

Name	ISIN Code	WKN	Exchange Code
Phelix Base Day Future	DE000A1PH1G3	A1PH1G	FB01
	DE000A1PH1H1	A1PH1H	FB02
	DE000A1PH1J7	A1PH1J	FB03
	DE000A1PH1K5	A1PH1K	FB04
	DE000A1PH1L3	A1PH1L	FB05
	DE000A1PH1M1	A1PH1M	FB06
	DE000A1PH1N9	A1PH1N	FB07
	DE000A1PH1P4	A1PH1P	FB08
	DE000A1PH1Q2	A1PH1Q	FB09
	DE000A1PH1R0	A1PH1R	FB10
	DE000A1PH1S8	A1PH1S	FB11
	DE000A1PH1T6	A1PH1T	FB12
	DE000A1PH1U4	A1PH1U	FB13
	DE000A1PH1V2	A1PH1V	FB14
	DE000A1PH1W0	A1PH1W	FB15
	DE000A1PH1X8	A1PH1X	FB16
	DE000A1PH1Y6	A1PH1Y	FB17
	DE000A1PH1Z3	A1PH1Z	FB18
	DE000A1PH100	A1PH10	FB19
	DE000A1PH118	A1PH11	FB20
	DE000A1PH126	A1PH12	FB21
	DE000A1PH134	A1PH13	FB22
	DE000A1PH142	A1PH14	FB23
	DE000A1PH159	A1PH15	FB24
	DE000A1PH167	A1PH16	FB25
	DE000A1PH175	A1PH17	FB26
	DE000A1PH183	A1PH18	FB27
	DE000A1PH191	A1PH19	FB28
	DE000A1PH2A4	A1PH2A	FB29
	DE000A1PH2B2	A1PH2B	FB30
	DE000A1PH2C0	A1PH2C	FB31
	DE000A1PH2D8	A1PH2D	FB32
	DE000A1PH2E6	A1PH2E	FB33
	DE000A1PH2F3	A1PH2F	FB34
Phelix Base Weekend Future	DE000A1PH3G9	A1PH3G	FWB1
	DE000A1PH3H7	A1PH3H	FWB2
	DE000A1PH3J3	A1PH3J	FWB3
	DE000A1PH3K1	A1PH3K	FWB4
	DE000A1PH3L9	A1PH3L	FWB5

Name	ISIN Code	WKN	Exchange Code
Phelix Base Week Future	DE000A1A41M7	A1A41M	F1B1
	DE000A1A41N5	A1A41N	F1B2
	DE000A1A41P0	A1A41P	F1B3
	DE000A1A41Q8	A1A41Q	F1B4
	DE000A1A41R6	A1A41R	F1B5
Phelix Base Month Future	DE0006606023	660602	F1BM
Phelix Base Quarter Future	DE0006606049	660604	F1BQ
Phelix Base Year Future	DE0006606064	660606	F1BY
Phelix Peak Day Future	DE000A1PH2G1	A1PH2G	FP01
	DE000A1PH2H9	A1PH2H	FP02
	DE000A1PH2J5	A1PH2J	FP03
	DE000A1PH2K3	A1PH2K	FP04
	DE000A1PH2L1	A1PH2L	FP05
	DE000A1PH2M9	A1PH2M	FP06
	DE000A1PH2N7	A1PH2N	FP07
	DE000A1PH2P2	A1PH2P	FP08
	DE000A1PH2Q0	A1PH2Q	FP09
	DE000A1PH2R8	A1PH2R	FP10
	DE000A1PH2S6	A1PH2S	FP11
	DE000A1PH2T4	A1PH2T	FP12
	DE000A1PH2U2	A1PH2U	FP13
	DE000A1PH2V0	A1PH2V	FP14
	DE000A1PH2W8	A1PH2W	FP15
	DE000A1PH2X6	A1PH2X	FP16
	DE000A1PH2Y4	A1PH2Y	FP17
	DE000A1PH2Z1	A1PH2Z	FP18
	DE000A1PH209	A1PH20	FP19
	DE000A1PH217	A1PH21	FP20
	DE000A1PH225	A1PH22	FP21
	DE000A1PH233	A1PH23	FP22
	DE000A1PH241	A1PH24	FP23
	DE000A1PH258	A1PH25	FP24
	DE000A1PH266	A1PH26	FP25
	DE000A1PH274	A1PH27	FP26
	DE000A1PH282	A1PH28	FP27
	DE000A1PH290	A1PH29	FP28
	DE000A1PH3A2	A1PH3A	FP29
	DE000A1PH3B0	A1PH3B	FP30
	DE000A1PH3C8	A1PH3C	FP31
	DE000A1PH3D6	A1PH3D	FP32
	DE000A1PH3E4	A1PH3E	FP33
	DE000A1PH3F1	A1PH3F	FP34

Name	ISIN Code	WKN	Exchange Code
Phelix Peak Weekend Future	DE000A1PH3M7	A1PH3M	FWP1
	DE000A1PH3N5	A1PH3N	FWP2
	DE000A1PH3P0	A1PH3P	FWP3
	DE000A1PH3Q8	A1PH3Q	FWP4
	DE000A1PH3R6	A1PH3R	FWP5
Phelix Peak Week Future	DE000A1A41S4	A1A41S	F1P1
	DE000A1A41T2	A1A41T	F1P2
	DE000A1A41U0	A1A41U	F1P3
	DE000A1A41V8	A1A41V	F1P4
	DE000A1A41W6	A1A41W	F1P5
Phelix Peak Month Future	DE0006606031	660603	F1PM
Phelix Peak Quarter Future	DE0006606056	660605	F1PQ
Phelix Peak Year Future	DE0006606072	660607	F1PY
Phelix Off-Peak Month Future	DE000A1A41G9	A1A41G	F1OM
Phelix Off-Peak Quarter Future	DE000A1A41H7	A1A41H	F1OQ
Phelix Off-Peak Year Future	DE000A1A41J3	A1A41J	F1OY

Name	ISIN Code	WKN	Exchange Code
Spanish Base Day Future	DE000A13RQ48	A13RQ4	FE01
	DE000A13RQ55	A13RQ5	FE02
	DE000A13RQ63	A13RQ6	FE03
	DE000A13RQ71	A13RQ7	FE04
	DE000A13RQ89	A13RQ8	FE05
	DE000A13RQ97	A13RQ9	FE06
	DE000A13RRA6	A13RRA	FE07
	DE000A13RRB4	A13RRB	FE08
	DE000A13RRC2	A13RRC	FE09
	DE000A13RRD0	A13RRD	FE10
	DE000A13RRE8	A13RRE	FE11
	DE000A13RRF5	A13RRF	FE12
	DE000A13RRG3	A13RRG	FE13
	DE000A13RRH1	A13RRH	FE14
	DE000A13RRJ7	A13RRJ	FE15
	DE000A13RRK5	A13RRK	FE16
	DE000A13RRL3	A13RRL	FE17
	DE000A13RRM1	A13RRM	FE18
	DE000A13RRN9	A13RRN	FE19
	DE000A13RRP4	A13RRP	FE20
	DE000A13RRQ2	A13RRQ	FE21
	DE000A13RRR0	A13RRR	FE22
	DE000A13RRS8	A13RRS	FE23
	DE000A13RRT6	A13RRT	FE24
	DE000A13RRU4	A13RRU	FE25
	DE000A13RRV2	A13RRV	FE26
	DE000A13RRW0	A13RRW	FE27
	DE000A13RRX8	A13RRX	FE28
	DE000A13RRY6	A13RRY	FE29
	DE000A13RRZ3	A13RRZ	FE30
	DE000A13RR05	A13RR0	FE31
	DE000A13RR13	A13RR1	FE32
	DE000A13RR21	A13RR2	FE33
	DE000A13RR39	A13RR3	FE34
Spanish Base Weekend Future	DE000A13RR47	A13RR4	FEW1
	DE000A13RR54	A13RR5	FEW2
	DE000A13RR62	A13RR6	FEW3
	DE000A13RR70	A13RR7	FEW4
	DE000A13RR88	A13RR8	FEW5

Name	ISIN Code	WKN	Exchange Code
Spanish Base Week Future	DE000A1YD564	A1YD56	FEB1
	DE000A1YD572	A1YD57	FEB2
	DE000A1YD580	A1YD58	FEB3
	DE000A1YD598	A1YD59	FEB4
	DE000A1YD6A8	A1YD6A	FEB5
Spanish Base Month Future	DE000A1RRER0	A1RRER	FEBM
Spanish Base Quarter Future	DE000A1RRES8	A1RRES	FEBQ
Spanish Base Year Future	DE000A1RRET6	A1RRET	FEBY
Swiss Base Week Future	DE000A18T892	A18T89	FCB1
	DE000A18T9A9	A18T9A	FCB2
	DE000A18T9B7	A18T9B	FCB3
	DE000A18T9C5	A18T9C	FCB4
	DE000A18T9D3	A18T9D	FCB5
Swiss Base Month Future	DE000A1RREK5	A1RREK	FCBM
Swiss Base Quarter Future	DE000A1RREL3	A1RREL	FCBQ
Swiss Base Year Future	DE000A1RREM1	A1RREM	FCBY

Name	ISIN Code	WKN	Exchange Code
UK Base Day Future	DE000A163U47	A163U4	FU01
	DE000A163U54	A163U5	FU02
	DE000A163U62	A163U6	FU03
	DE000A163U70	A163U7	FU04
	DE000A163U88	A163U8	FU05
	DE000A163U96	A163U9	FU06
	DE000A163VA2	A163VA	FU07
	DE000A163VB0	A163VB	FU08
	DE000A163VC8	A163VC	FU09
	DE000A163VD6	A163VD	FU10
	DE000A163VE4	A163VE	FU11
	DE000A163VF1	A163VF	FU12
	DE000A163VG9	A163VG	FU13
	DE000A163VH7	A163VH	FU14
	DE000A163VJ3	A163VJ	FU15
	DE000A163VK1	A163VK	FU16
	DE000A163VL9	A163VL	FU17
	DE000A163VM7	A163VM	FU18
	DE000A163VN5	A163VN	FU19
	DE000A163VP0	A163VP	FU20
	DE000A163VQ8	A163VQ	FU21
	DE000A163VR6	A163VR	FU22
	DE000A163VS4	A163VS	FU23
	DE000A163VT2	A163VT	FU24
	DE000A163VU0	A163VU	FU25
	DE000A163VV8	A163VV	FU26
	DE000A163VW6	A163VW	FU27
	DE000A163VX4	A163VX	FU28
	DE000A163VY2	A163VY	FU29
	DE000A163VZ9	A163VZ	FU30
	DE000A163V04	A163V0	FU31
	DE000A163V12	A163V1	FU32
	DE000A163V20	A163V2	FU33
	DE000A163V38	A163V3	FU34
UK Base Weekend Future	DE000A163V46	A163V4	FUW1
	DE000A163V53	A163V5	FUW2
	DE000A163V61	A163V6	FUW3
	DE000A163V79	A163V7	FUW4
	DE000A163V87	A163V8	FUW5

Name	ISIN Code	WKN	Exchange Code
UK Base Week Future	DE000A163V95	A163V9	FUB1
	DE000A163WA0	A163WA	FUB2
	DE000A163WB8	A163WB	FUB3
	DE000A163WC6	A163WC	FUB4
	DE000A163WD4	A163WD	FUB5
UK Base Month Future	DE000A163WE2	A163WE	FUBM
UK Base Quarter Future	DE000A163WF9	A163WF	FUBQ
UK Base Season Future	DE000A163WH5	A163WH	FUBS
UK Base Year Future	DE000A163WG7	A163WG	FUBY
UK Peak Week Future	DE000A163WJ1	A163WJ	FUP1
	DE000A163WK9	A163WK	FUP2
	DE000A163WL7	A163WL	FUP3
	DE000A163WM5	A163WM	FUP4
	DE000A163WN3	A163WN	FUP5
UK Peak Month Future	DE000A163WP8	A163WP	FUPM
UK Peak Quarter Future	DE000A163WQ6	A163WQ	FUPQ
UK Peak Season Future	DE000A163WS2	A163WS	FUPS
UK Peak Year Future	DE000A163WR4	A163WR	FUPY

3. Cap Futures (Financial Fulfilment)

German Base Intraday Hourly Cap Week Future	DE000A160PX2	A160PX	C1B1
	DE000A160PY0	A160PY	C1B2
	DE000A160PZ7	A160PZ	C1B3
	DE000A160P05	A160P0	C1B4
	DE000A160P13	A160P1	C1B5

4. Wind Power Futures (Financial Fulfilment)

German-Austrian-Wind-Power-Week-Future	DE000A163693	A16369	W1B1
	DE000A1637A5	A1637A	W1B2
	DE000A1637B3	A1637B	W1B3
	DE000A1637C1	A1637C	W1B4
	DE000A1637D9	A1637D	W1B5
German-Austrian-Wind-Power-Month-Future	DE000A1637E7	A1637E	W1BM
German-Austrian-Wind-Power-Quarter-Future	DE000A1637F4	A1637F	W1BQ
German-Austrian-Wind-Power-Year-Future	DE000A1637G2	A1637G	W1BY

5. Coal

Name	ISIN Code	WKN	Exchange Code
API 2 CIF ARA (Argus IHS McCloskey) Coal Month Future	DE000A0G87V0	A0G87V	FT2M
API 4 FOB Richard Bay (Argus IHS McCloskey) Coal Month Future	DE000A0G87Y4	A0G87Y	FT4M

6. Emission Allowances

Name	ISIN Code	WKN	Exchange Code
EU Allowances – Primary Auction (3 rd Trading Period)	DE000A1N5HU0	A1N5HU	T3PA
EU Allowances – Secondary Trading	DE000A1DKQ99	A1DKQ9	SEME
EU Aviation Allowances – Primary Auction (3 rd Trading Period)	DE000A1N5HT2	A1N5HT	EAA3
EU Aviation Allowances – Secondary Trading	DE000A1MLGA5	A1MLGA	SEMA
Green Certified Emission Reductions (CER)	DE000A1RRG98	A1RRG9	SEMC
European Carbon Future – Secondary Trading	DE000A0SYVA6	A0SYVA	FEUA
EU Aviation Allowances Future – Secondary Trading	DE000A1MLFJ8	A1MLFJ	FEAA
Certified Emission Reductions (CER) Futures	DE000A1A41L9	A1A41L	F2CR

7. Guarantees of Origin

Name	ISIN Code	WKN	Exchange Code
GO on Nordic Hydro Power Future	DE000A1RRV24	A1RRV2	FECN
GO on Alpine Hydro Power Future	DE000A1RRV32	A1RRV3	FECA
GO on Northern Continental Europe Wind Power Future	DE000A1RRV40	A1RRV4	FECW

8. Potatoes

Name	ISIN Code	WKN	Exchange Code
European Processing Potato Future	DE000A13RUL7	A13RUL	FAPP

9. Livestock and Meat

Name	ISIN Code	WKN	Exchange Code
Piglet Future	DE000A13RUQ6	A13RUQ	FAPG
Hog Future	DE000A13RUR4	A13RUR	FAHG

10. Dairy Products

Name	ISIN Code	WKN	Exchange Code
Skimmed Milk Powder Future	DE000A13RUM5	A13RUM	FASM
European Whey Powder Future	DE000A13RUN3	A13RUN	FAWH
Butter Future	DE000A13RUP8	A13RUP	FABT

11. Options

11.1. Options on Power Futures

Name	ISIN Code	WKN	Exchange Code
French Base Month Option	DE000A160XZ1	A160XZ	O7BM
French Base Quarter Option	DE000A160X05	A160X0	O7BQ
French Base Year Option	DE000A160X13	A160X1	O7BY
Italian Base Month Option	DE000A160X21	A160X2	ODBM
Italian Base Quarter Option	DE000A160X39	A160X3	ODBQ
Italian Base Year Option	DE000A160X47	A160X4	ODBY
Nordic Base Month Option	DE000A160X88	A160X8	OBBM
Nordic Base Quarter Option	DE000A160X96	A160X9	OBBQ
Nordic Base Year Option	DE000A160YA2	A160YA	OBBY
Phelix Base Month Option	DE000A0AEQQ2	A0AEQQ	O1BM
Phelix Base Quarter Option	DE000A0AEQP4	A0AEQP	O1BQ
Phelix Base Year Option	DE000A0AEQN9	A0AEQN	O1BY
Spanish Base Month Option	DE000A160X54	A160X5	OEBM
Spanish Base Quarter Option	DE000A160X62	A160X6	OEBQ
Spanish Base Year Option	DE000A160X70	A160X7	OEBY

11.2. Options on EUA Dec Futures

Name	ISIN-Code	WKN	Börsenkürzel
EUA-DEC-Option	DE000A0SYVB4	A0SYVB	OEUA

F. Trading Calendar

General Trading Calendar	ECC Business Days*
Exchange Days and ECC Business Days, respectively, are all days Monday to Friday which are not one of the below-mentioned holidays ¹	
New Year's Day, January 1 st	New Year's Day, January 1 st
Good Friday	Good Friday
Easter Monday	Easter Monday
May Day, May 1 st	May Day, May 1 st
Christmas Eve, December 24 th	
Christmas Day, December 25 th	Christmas Day, December 25 th
Boxing Day, December 26 th	Boxing Day, December 26 th
New Year's Eve, December 31 st	

* For information purposes only. Applicable is the publication on the website of ECC AG (www.ecc.de) only.

¹ Changes to the trading calendar are made by decision of the Management Board of the Exchange.



Contract Specifications Trade Registration

The English version is for informal use only.
The German version is legally binding.

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2 Contract Specifications EEX Derivatives Markets

2.1 Financial Futures on Power

2.1.1 Greek Power Base Futures with Different Delivery Periods

ISIN Code/ WKN/ Exchange Code/ Name	DE000A1RREU4	A1RREU	FFBM	Greek-Base-Month-Future
	DE000A1RREV2	A1RREV	FFBQ	Greek-Base-Quarter-Future
	DE000A1RREW0	A1RREW	FFBY	Greek-Base-Year-Future
Underlying	<p>Index based on the mean value of all auction prices of the hourly contracts for the market area Greece calculated for the hours between 00:00 and 24:00 for all days of the respective delivery period (final settlement price). EEX determines on each exchange trading day the Index by using the most valuable sources* for the respective market area. As a rule the auction prices of the hourly contracts traded at the most liquid power spot exchange are used. Indexes of information service providers or any other appropriate sources may be used in case exchange data are not available for EEX. EEX will publish in those cases the source that is used for calculation of the index.</p> <p>* Currently the System Marginal Price (SMP) is used.</p>			
Contracts eligible for Trade Registration	<p>At maximum the following delivery periods can be registered:</p> <ul style="list-style-type: none"> ▪ the current and the next 6 months (Greek Power Base Month Future), ▪ the respective next 7 full quarters (Greek Power Base Quarter Future), ▪ the respective next 6 full years (Greek Power Base Year Future). 			
Contract Volume	<p>The contract volume is calculated on the basis of the factors of the number of delivery days in the delivery period and the quantity of electricity to be delivered daily. This quantity usually amounts to 24 MWh, on the day of the switch from winter time to summer time it amounts to 23 MWh, whereas on the day of the switch from summer time to winter time it amounts to 25 MWh.</p> <p>For example, the contract volume for a month future with 30 delivery days amounts to 720 MWh, for a quarter future with 91 delivery days it amounts to 2,184 MWh and for a year future with 365 delivery days it amounts to 8,760 MWh.</p>			
Pricing	In EUR / MWh with two decimal places after the point			

Minimum Price Fluctuation	<p>€ 0.01 per MWh; multiplied by the contract volume in each case, e.g. for a month future with 30 delivery days this corresponds to an amount of € 7.20, for a quarter future with 91 delivery days this corresponds to a value of € 21.84 and for a year future with 365 delivery days this corresponds to a value of € 87.60.</p>
Cascading	<p>Each open position in a Greek Power Base Year Future is replaced with equal positions of the three Greek Power Base Month Futures for the delivery months January until March and three Greek Power Base Quarter Futures for the second until the fourth delivery quarter whose delivery periods taken together correspond to the delivery year on the third ECC business day before the beginning of the delivery period (last day of trade registration of the year future).</p> <p>Each open position of a Greek Power Base Quarter Futures is replaced with equal positions in the three Greek Power Base Month Futures whose delivery periods taken together correspond to the delivery quarter on the third ECC business day before the beginning of the delivery period (last day of trade registration of the quarter future).</p>
Last Registration Day of Month Futures	<p>The last day of trade registration is equivalent to the last trading day of Phelix Base Futures.</p>
Fulfilment during the delivery month	<p>Fulfilment by means of cash settlement based on the final settlement price on the ECC business day following the last day of trade registration. If the final settlement price will be determined on a Saturday Sunday or a public holiday following a Sunday, the cash settlement takes place on the second ECC business day after the last day of trade registration.</p> <p>The seller (buyer) is obliged to settle in cash the difference between the price agreed on and the higher (lower) final settlement price on the day of execution.</p> <p>Fulfilment is carried out between the clearing members and ECC AG. Cash settlement between non-clearing members and their own clients is the task of the clearing member in charge; the cash settlement between non-clearing members and their clients is the task of the non-clearing members concerned.</p>

2.1.2 Romanian Power Base Futures with Different Delivery Periods

ISIN Code/ WKN/ Exchange Code/ Name	DE000A1RREX8	A1RREX	FHBM	Romanian Power Base Month Future
	DE000A1RREY6	A1RREY	FHBQ	Romanian Power Base Quarter Future
	DE000A1RREZ3	A1RREZ	FHBY	Romanian Power Base Year Future
Underlying	<p>Index based on the mean value of all auction prices of the hourly contracts for the market area Romania calculated for the hours between 00:00 and 24:00 for all days of the respective delivery period (final settlement price). EEX determines on each exchange trading day the Index by using the most valuable sources* for the respective market area. As a rule the auction prices of the hourly contracts traded at the most liquid power spot exchange are used. Indexes of information service providers or any other appropriate sources may be used in case exchange data are not available for EEX. EEX will publish in those cases the source that is used for calculation of the index.</p> <p>* Currently the ROPEX_DAM_Base index is used as determined by Opcom.</p>			
Contracts eligible for Trade Registration	<p>At maximum the following delivery periods can be registered:</p> <ul style="list-style-type: none"> ▪ the current and the next 6 months (Romanian Power Base Month Future), ▪ the respective next 7 full quarters (Romanian Power Base Quarter Future), ▪ the respective next 6 full years (Romanian Power Base Year Future). 			
Contract Volume	<p>The contract volume is calculated on the basis of the factors of the number of delivery days in the delivery period and the quantity of electricity to be delivered daily. This quantity usually amounts to 24 MWh, on the day of the switch from winter time to summer time it amounts to 23 MWh, whereas on the day of the switch from summer time to winter time it amounts to 25 MWh.</p> <p>For example, the contract volume for a month future with 30 delivery days amounts to 720 MWh, for a quarter future with 91 delivery days it amounts to 2,184 MWh and for a year future with 365 delivery days it amounts to 8,760 MWh.</p>			
Pricing	In EUR / MWh with two decimal places after the point			

Minimum Price Fluctuation	<p>€ 0.01 per MWh; multiplied by the contract volume in each case, e.g. for a month future with 30 delivery days this corresponds to an amount of € 7.20, for a quarter future with 91 delivery days this corresponds to a value of € 21.84 and for a year future with 365 delivery days this corresponds to a value of € 87.60.</p>
Cascading	<p>Each open position in a Romanian Power Base Year Future is replaced with equal positions of the three Romanian Power Base Month Futures for the delivery months January until March and three Romanian Power Base Quarter Futures for the second until the fourth delivery quarter whose delivery periods taken together correspond to the delivery year on the third ECC business day before the beginning of the delivery period (last day of trade registration of the year future).</p> <p>Each open position of a Romanian Power Base Quarter Futures is replaced with equal positions in the three Romanian Power Base Month Futures whose delivery periods taken together correspond to the delivery quarter on the third ECC business day before the beginning of the delivery period (last day of trade registration of the quarter future).</p>
Last Registration Day of Month Futures	<p>The last day of trade registration is equivalent to the last trading day of Phelix Base Futures.</p>
Fulfilment during the delivery month	<p>Fulfilment by means of cash settlement based on the final settlement price on the ECC business day following the last day of trade registration. If the final settlement price will be determined on a Saturday Sunday or a public holiday following a Sunday, the cash settlement takes place on the second ECC business day after the last day of trade registration.</p> <p>The seller (buyer) is obliged to settle in cash the difference between the price agreed on and the higher (lower) final settlement price on the day of execution.</p> <p>Fulfilment is carried out between the clearing members and ECC AG. Cash settlement between non-clearing members and their own clients is the task of the clearing member in charge; the cash settlement between non-clearing members and their clients is the task of the non-clearing members concerned.</p>

2.2 Financial Futures on Coal

2.2.1 API 5 FOB Newcastle (Argus-IHS McCloskey) Coal Futures**

ISIN Code/ WKN/ Exchange Code/ Name	DE000A11RMD5	A11RMD	FT5M	API 5 FOB Newcastle (Argus-IHS McCloskey) Coal Future
Underlying	<p>The monthly API 5* price index for fob Newcastle, Australia thermal coal delivered within 90 days for a net as received (NAR) calorific value of 5,500 kcal/kg and 1% Sulphur at maximum (Index).</p> <p>The Index is the arithmetic average of all weekly price assessments for API 5* FOB Newcastle Coal of the respective month as published in the “Argus/McCloskey’s Coal Price Index Report” on the last Friday of each month.</p>			
Contract Series	Up to 36 consecutive months			
Contract Volume	1,000 metric tonnes (t)			
Pricing	In USD per t to the second decimal place after the point.			
Minimum Price Fluctuation	0.01 USD per t			
Last Registration Day	<p>The Last Registration Day is the last Friday of the respective delivery month.</p> <p>If this is not an exchange trading day or a public holiday in Great Britain, the Last Registration Day is the preceding exchange trading day. If the Last Registration Day of a December contract would – according to the preceding provision – fall on an exchange trading day prior to December 24th, the Last Registration Day for this December contract shall be the exchange trading day following December 24th.</p>			

<p>Fulfilment</p>	<p>Fulfilment takes place by cash settlement on the ECC business day following the Last Registration Day based on the difference between the settlement price of the exchange day before the last trading day and the Index. If this day is not a USD settlement day at Clearstream Banking SA, cash settlement takes place on the following ECC business day which is also a USD settlement day at Clearstream Banking SA.</p> <p>The seller (buyer) is obliged to settle in cash the difference between the settlement price of the previous ECC business day and the higher (lower) Index.</p> <p>Fulfilment is carried out between the clearing members and ECC AG. Cash settlement with non-clearing members and their own clients is the responsibility of the clearing member in charge; the cash settlement between non-clearing members and their clients is the responsibility of the non-clearing members concerned.</p>
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** Expected as of the end of the second quarter of 2016.

2.2.2 API 8 CFR South China (Argus-IHS McCloskey) Coal Month Futures**

ISIN Code/ WKN/ Exchange Code/ Name	DE000A11RME3	A11RME	FT8M	API 8 CFR South China (Argus-IHS McCloskey) Coal Future
Underlying	<p>The monthly API 8* price index for cfr South China thermal coal delivered within 90 days for a net as received (NAR) calorific value of 5,500 kcal/kg and 1% Sulphur at maximum (Index).</p> <p>The Index is the arithmetic average of all weekly price assessments for API 8* CFR South China Coal of the respective month as published in the “Argus/McCloskey’s Coal Price Index Report” on the last Friday of each month.</p>			
Contract Series	Up to 36 consecutive months			
Contract Volume	1,000 metric tonnes (t)			
Pricing	In USD per t to the second decimal place after the point.			
Minimum Price Fluctuation	0.01 USD per t			
Last Registration Day	<p>The Last Registration Day is the last Friday of the respective delivery month.</p> <p>If this is not an exchange trading day or a public holiday in Great Britain, the Last Registration Day is the preceding exchange trading day. If the Last Registration Day of a December contract would – according to the preceding provision – fall on an exchange trading day prior to December 24th, the Last Registration Day for this December contract shall be the exchange trading day following December 24th.</p>			

<p>Fulfilment</p>	<p>Fulfilment takes place by cash settlement on the ECC business day following the Last Registration Day based on the difference between the settlement price of the exchange day before the last trading day and the Index. If this day is not a USD settlement day at Clearstream Banking SA, cash settlement takes place on the following ECC business day which is also a USD settlement day at Clearstream Banking SA.</p> <p>The seller (buyer) is obliged to settle in cash the difference between the settlement price of the previous ECC business day and the higher (lower) Index.</p> <p>Fulfilment is carried out between the clearing members and ECC AG. Cash settlement with non-clearing members and their own clients is the responsibility of the clearing member in charge; the cash settlement between non-clearing members and their clients is the responsibility of the non-clearing members concerned.</p>
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** Expected as of the end of the second quarter of 2016

2.2.3 Indonesian Sub-bit. (IHS McCloskey) Coal Futures**

ISIN Code/ WKN/ Exchange Code/ Name	DE000A11RMF0	A11RMF	FTIM	Indonesian Sub-bit. (IHS McCloskey) Coal Future
Underlying	<p>The monthly IHS McCloskey price index for Indonesian Sub-Bituminous Coal fob for 4,900 kcal/kg NAR (net as received) thermal coal shipped from East and South Kalimantan ports of Indonesia.</p> <p>The monthly IHS McCloskey price index for Indonesian Sub-Bituminous Coal is the arithmetic average of all weekly price assessments for the IHS McCloskey Indonesian Sub-Bituminous Coal FOB Marker* of the respective month as published by IHS McCloskey in the “IHS McCloskey Coal Report” in general on the last Friday of each month.</p>			
Contract Series	Up to 36 consecutive months			
Contract Volume	1,000 metric tonnes (MT)			
Pricing	In USD per MT to the second decimal place after the point.			
Minimum Price Fluctuation	0.01 USD per MT			
Last Registration Day	<p>The Last Registration Day is the last Friday of the respective delivery month.</p> <p>If this day is not an exchange trading day or a public holiday in Great Britain, the Last Registration Day is the preceding exchange trading day. If the Last Registration Day of a December contract would – according to the preceding provision – fall on an exchange trading day prior to December 24th, the Last Registration Day for this December contract shall be the exchange trading day following December 24th.</p>			

<p>Fulfilment</p>	<p>Fulfilment takes place by cash settlement on the ECC business day following the Last Registration Day based on the difference between the settlement price of the exchange day before the last trading day and the underlying index. If this day is not a USD settlement day at Clearstream Banking SA, cash settlement takes place on the following ECC business day which is also a USD settlement day at Clearstream Banking SA.</p> <p>The seller (buyer) is obliged to settle in cash the difference between the settlement price of the previous ECC business day and the higher (lower) underlying index.</p> <p>Fulfilment is carried out between the clearing members and ECC AG. Cash settlement with non-clearing members and their own clients is the responsibility of the clearing member in charge; the cash settlement between non-clearing members and their clients is the responsibility of the non-clearing members concerned.</p>
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** Expected as of the end of the second quarter of 2016.

2.3 Options on Coal Futures

2.3.1 Options on API 2 CIF ARA (Argus-IHS McCloskey) Coal Futures**

ISIN-Code/ WKN/ Exchange Code/ Name	DE000A1634D6	A1634D	OT2M	API 2 Month Option
	DE000A1634E4	A1634E	OT2Q	API 2 Quarter Option
	DE000A1634F1	A1634F	OT2Y	API 2 Year Option
Underlying	<p>API 2* Coal Option contract is an option on a single month or strips of consecutive single months of the API 2* CIF ARA (Argus-IHS McCloskey) Coal Future:</p> <p>The underlying of an API 2* Month Option is the API 2* CIF ARA (Argus-IHS McCloskey) Coal Future with same maturity.</p> <p>The underlying of an API 2* Quarter Option are the three API 2* CIF ARA (Argus-IHS McCloskey) Coal Futures which make up the respective quarter.</p> <p>The underlying of an API 2* Year Option are the twelve API 2* CIF ARA (Argus-IHS McCloskey) Coal Futures which make up the respective calendar year.</p>			
Option Right	<p>The buyer of a call option is entitled to receive respective long positions of the underlying future(s) at the exercise price of the option on the Last Registration Day.</p> <p>The seller of the call option receives respective short positions of the underlying future(s) after the call option is exercised and assigned at the exercise price on the Last Registration Day.</p> <p>The buyer of a put option is entitled to receive respective short positions of the underlying future(s) at the exercise price of the option on the Last Registration Day.</p> <p>The seller of the put option receives respective long positions of the underlying future(s) at the exercise price after the put option is exercised and assigned on the Last Registration Day.</p>			
Option Premium	<p>The buyer of an option contract is obliged to pay the price for the purchase of the right of option (option premium) on the ECC business day following the purchase of the option. If this day is not a USD settlement day at Clearstream Banking SA, the payment takes place on the following ECC business day which is also a USD settlement day at Clearstream Banking SA. The option premium is credited to the seller of the option on the same day.</p>			
Option Style	<p>European style, i.e. the option can only be exercised on the last trading day.</p>			

Tradable Option Series	<p>An option series is the total number of call and put options with the same Underlying, the same exercise price and the same maturity which can be traded in the system.</p> <p>At least three series with different exercise prices can be traded for each maturity; in this context one exercise price is in the money, one exercise price is at the money and one exercise price is out of the money upon their introduction into trading.</p> <p>The management board of the exchange is entitled to change the number of tradable option series at any given time.</p>
Maturities	<p>Maturities can be month, quarter, year</p>
Tradable Maturities	<p>At maximum the following maturities can be registered at EEX:</p> <ul style="list-style-type: none"> ▪ The current and next 3 delivery months (Month Option), ▪ The respective next 6 delivery quarters (Quarter Option), ▪ The respective next 3 delivery years of the underlying (Year Option)
Exercise/Automatic Exercise	<p>The option can only be exercised on the Last Registration Day. Said exercise is carried out by means of an entry into the EEX system between 08:00 a.m. and 06:45 p.m. (Exercise Period) on the Last Registration Day.</p> <p>Options which are in the money in relation to the Final Settlement Price are exercised automatically at the end of the Exercise Period if the trading participant has maintained in the system the desired in the money minimum amount and if the trading participant has not made a deviating entry into the system by that time.</p> <p>Exercises only become effective at 06:45 p.m., until that time they can be changed or deleted at any time.</p>
Strike Price Increments	<p>USD 0.50</p>
Pricing for Option Premium	<p>In USD per future to the second decimal place.</p>
Minimum Price Fluctuation	<p>USD 0.01 per future</p>

Last Registration Day	<p>The Last Registration Day is the thirtieth day prior to the beginning of the expiration period. If this day is not an exchange trading day or if it is a public holiday in Great Britain, the Last Registration Day is the preceding exchange trading day.</p> <p>If the Last Trading Day would – according to the preceding provision – fall on a day of the month before the month prior to the expiration period, the first exchange trading day of the month prior to the expiration period shall be the Last Trading Day.</p> <p>The respective Last Registration Day for each maturity is stipulated in the contract detail file.</p>
Expiry Day	<p>Options which have not been exercised expire at 06:45 p.m. CET on the Last Registration Day.</p>
Fulfilment	<p>Options are fulfilled by booking in of the corresponding futures position at the respective exercise price after the option is exercised.</p>
Assignment	<p>If a buyer exercises his right of option, ECC AG assigns a seller of the same option series and of the same type of option (call or put option) to the buyer with the help of a procedure maintaining the neutrality of the assignment process at the end of the post-trading phase on the exercise day. Partial assignments are permissible.</p> <p>All assignments which have been executed for the agent position account of a trading participant have to be assigned by said trading participant for the positions of his customers; this has to be done with the help of a procedure which ensures the neutrality of the assignment process.</p> <p>ECC AG informs all the parties involved as well as the clearing members supporting the parties involved about the assignment on the exercise day.</p>

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** Expected as of the end of the second quarter of 2016.

2.3.2 Options on API 4 FOB Richards Bay (Argus-IHS McCloskey) Coal Futures**

ISIN-Code/ WKN/ Exchange Code/ Name	DE000A1634G9	A1634G	OT4M	API 4 Month Option
	DE000A1634H7	A1634H	OT4Q	API 4 Quarter Option
	DE000A1634J3	A1634J	OT4Y	API 4 Year Option
Underlying	<p>API 4* Coal Option contract is an option on a single month or strips of consecutive single months of the API 4* FOB Richards Bay (Argus-IHS McCloskey) Coal Future:</p> <p>The underlying of an API 4* Month Option is the API 4* FOB Richards Bay (Argus-IHS McCloskey) Coal Future with same maturity.</p> <p>The underlying of an API 4* Quarter Option are the three API 4* FOB Richards Bay (Argus-IHS McCloskey) Coal Futures which make up the respective quarter.</p> <p>The underlying of an API 4* Year Option are the twelve API 4* FOB Richards Bay (Argus-IHS McCloskey) Coal Futures which make up the respective calendar year.</p>			
Option Right	<p>The buyer of a call option is entitled to receive respective long positions of the underlying future(s) at the exercise price of the option on the Last Registration Day.</p> <p>The seller of the call option receives respective short positions of the underlying future(s) after the call option is exercised and assigned at the exercise price on the Last Registration Day.</p> <p>The buyer of a put option is entitled to receive respective short positions of the underlying future(s) at the exercise price of the option on the Last Registration Day.</p> <p>The seller of the put option receives respective long positions of the underlying future(s) at the exercise price after the put option is exercised and assigned on the Last Registration Day.</p>			
Option Premium	<p>The buyer of an option contract is obliged to pay the price for the purchase of the right of option (option premium) on the ECC business day following the purchase of the option. If this day is not a USD settlement day at Clearstream Banking SA, the payment takes place on the following ECC business day which is also a USD settlement day at Clearstream Banking SA. The option premium is credited to the seller of the option on the same day.</p>			
Option Style	<p>European style, i.e. the option can only be exercised on the last trading day.</p>			

Tradable Option Series	<p>An option series is the total number of call and put options with the same Underlying, the same exercise price and the same maturity which can be traded in the system.</p> <p>At least three series with different exercise prices can be traded for each maturity; in this context one exercise price is in the money, one exercise price is at the money and one exercise price is out of the money upon their introduction into trading.</p> <p>The management board of the exchange is entitled to change the number of tradable option series at any given time.</p>
Maturities	<p>Maturities can be month, quarter, year</p>
Tradable Maturities	<p>At maximum the following maturities can be registered at EEX:</p> <ul style="list-style-type: none"> ▪ The current and next 3 delivery months (Month Option), ▪ The respective next 6 delivery quarters (Quarter Option), ▪ The respective next 3 delivery years of the underlying (Year Option)
Exercise/Automatic Exercise	<p>The option can only be exercised on the Last Registration Day. Said exercise is carried out by means of an entry into the EEX system between 08:00 a.m. and 06:45 p.m. (Exercise Period) on the Last Registration Day.</p> <p>Options which are in the money in relation to the Final Settlement Price are exercised automatically at the end of the Exercise Period if the trading participant has maintained in the system the desired in the money minimum amount and if the trading participant has not made a deviating entry into the system by that time.</p> <p>Exercises only become effective at 06:45 p.m., until that time they can be changed or deleted at any time.</p>
Strike Price Increments	<p>USD 0.50</p>
Pricing for Option Premium	<p>In USD per future to the second decimal place.</p>
Minimum Price Fluctuation	<p>USD 0.01 per future</p>

Last Registration Day	<p>The Last Registration Day is the thirtieth day prior to the beginning of the expiration period. If this day is not an exchange trading day or if it is a public holiday in Great Britain, the Last Registration Day is the preceding exchange trading day.</p> <p>If the Last Trading Day would – according to the preceding provision – fall on a day of the month before the month prior to the expiration period, the first exchange trading day of the month prior to the expiration period shall be the Last Trading Day.</p> <p>The respective Last Registration Day for each maturity is stipulated in the contract detail file.</p>
Expiry Day	<p>Options which have not been exercised expire at 06:45 p.m. CET on the Last Registration Day.</p>
Fulfilment	<p>Options are fulfilled by booking in of the corresponding futures position at the respective exercise price after the option is exercised.</p>
Assignment	<p>If a buyer exercises his right of option, ECC AG assigns a seller of the same option series and of the same type of option (call or put option) to the buyer with the help of a procedure maintaining the neutrality of the assignment process at the end of the post-trading phase on the exercise day. Partial assignments are permissible.</p> <p>All assignments which have been executed for the agent position account of a trading participant have to be assigned by said trading participant for the positions of his customers; this has to be done with the help of a procedure which ensures the neutrality of the assignment process.</p> <p>ECC AG informs all the parties involved as well as the clearing members supporting the parties involved about the assignment on the exercise day.</p>

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** Expected as of the end of the second quarter of 2016

2.3.3 Options on API 5 FOB Newcastle (Argus-IHS McCloskey) Coal Futures**

ISIN-Code/ WKN/ Exchange Code/ Name	DE000A1634K1	A1634K	OT5M	API 5 Month Option
	DE000A1634L9	A1634L	OT5Q	API 5 Quarter Option
	DE000A1634M7	A1634M	OT5Y	API 5 Year Option
Underlying	<p>API 5* Coal Option contract is an option on a single month or strips of consecutive single months of the API 5* FOB Newcastle (Argus-IHS McCloskey) Coal Future:</p> <p>The underlying of an API 5* Month Option is the API 5* FOB Newcastle (Argus-IHS McCloskey) Coal Future with same maturity.</p> <p>The underlying of an API 5* Quarter Option are the three API 5* FOB Newcastle (Argus-IHS McCloskey) Coal Future which make up the respective quarter.</p> <p>The underlying of an API 5* Year Option are the twelve API 5* FOB Newcastle (Argus-IHS McCloskey) Coal Future which make up the respective calendar year.</p>			
Option Right	<p>The buyer of a call option is entitled to receive respective long positions of the underlying future(s) at the exercise price of the option on the Last Registration Day.</p> <p>The seller of the call option receives respective short positions of the underlying future(s) after the call option is exercised and assigned at the exercise price on the Last Registration Day.</p> <p>The buyer of a put option is entitled to receive respective short positions of the underlying future(s) at the exercise price of the option on the Last Registration Day.</p> <p>The seller of the put option receives respective long positions of the underlying future(s) at the exercise price after the put option is exercised and assigned on the Last Registration Day.</p>			
Option Premium	<p>The buyer of an option contract is obliged to pay the price for the purchase of the right of option (option premium) on the ECC business day following the purchase of the option. If this day is not a USD settlement day at Clearstream Banking SA, the payment takes place on the following ECC business day which is also a USD settlement day at Clearstream Banking SA. The option premium is credited to the seller of the option on the same day.</p>			
Option Style	<p>European style, i.e. the option can only be exercised on the last trading day.</p>			

Tradable Option Series	<p>An option series is the total number of call and put options with the same Underlying, the same exercise price and the same maturity which can be traded in the system.</p> <p>At least three series with different exercise prices can be traded for each maturity; in this context one exercise price is in the money, one exercise price is at the money and one exercise price is out of the money upon their introduction into trading.</p> <p>The management board of the exchange is entitled to change the number of tradable option series at any given time.</p>
Maturities	<p>Maturities can be month, quarter, year</p>
Tradable Maturities	<p>At maximum the following maturities can be registered at EEX:</p> <ul style="list-style-type: none"> ▪ The current and next 3 delivery months (Month Option), ▪ The respective next 6 delivery quarters (Quarter Option), ▪ The respective next 3 delivery years of the underlying (Year Option)
Exercise/Automatic Exercise	<p>The option can only be exercised on the Last Registration Day. Said exercise is carried out by means of an entry into the EEX system between 08:00 a.m. and 06:45 p.m. (Exercise Period) on the Last Registration Day.</p> <p>Options which are in the money in relation to the Final Settlement Price are exercised automatically at the end of the Exercise Period if the trading participant has maintained in the system the desired in the money minimum amount and if the trading participant has not made a deviating entry into the system by that time.</p> <p>Exercises only become effective at 06:45 p.m., until that time they can be changed or deleted at any time.</p>
Strike Price Increments	<p>USD 0.50</p>
Pricing for Option Premium	<p>In USD per future to the second decimal place.</p>
Minimum Price Fluctuation	<p>USD 0.01 per future</p>

Last Registration Day	<p>The Last Registration Day is the thirtieth day prior to the beginning of the expiration period. If this day is not an exchange trading day or if it is a public holiday in Great Britain, the Last Registration Day is the preceding exchange trading day.</p> <p>If the Last Trading Day would – according to the preceding provision – fall on a day of the month before the month prior to the expiration period, the first exchange trading day of the month prior to the expiration period shall be the Last Trading Day.</p> <p>The respective Last Registration Day for each maturity is stipulated in the contract detail file.</p>
Expiry Day	<p>Options which have not been exercised expire at 06:45 p.m. CET on the Last Registration Day.</p>
Fulfilment	<p>Options are fulfilled by booking in of the corresponding futures position at the respective exercise price after the option is exercised.</p>
Assignment	<p>If a buyer exercises his right of option, ECC AG assigns a seller of the same option series and of the same type of option (call or put option) to the buyer with the help of a procedure maintaining the neutrality of the assignment process at the end of the post-trading phase on the exercise day. Partial assignments are permissible.</p> <p>All assignments which have been executed for the agent position account of a trading participant have to be assigned by said trading participant for the positions of his customers; this has to be done with the help of a procedure which ensures the neutrality of the assignment process.</p> <p>ECC AG informs all the parties involved as well as the clearing members supporting the parties involved about the assignment on the exercise day.</p>

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** Expected as of the end of the second quarter of 2016

2.4 Financial Futures on Dry Bulk Time Charter Freight

2.4.1 Capesize Time Charter Freight Futures (TC4)

ISIN Code/ WKN/ Exchange Code/ Name	DE000A11RCE4	A11RCE	CTCM	Capesize TC4 Freight Fu- ture
Underlying	<p>The monthly price index for Capesize Dry Bulk Time Charter Freight (Index).</p> <p>The Index is the arithmetic average of all daily spot price assessments for “Capesize Dry Bulk Time Charter Freight Basket Routes (Avg. 4 routes)” of the respective month as published by Baltic Exchange.</p>			
Contract Series	Up to 84 consecutive months			
Contract Volume	1 day			
Pricing	In USD per day			
Minimum Price Fluctuation	1.00 USD per day			
Last Registration Day	<p>Last Registration Day is the last exchange trading day of the respective expiry month except for December contracts.</p> <p>The Last Registration Day for December contracts is the exchange trading day, following 24th December.</p>			
Fulfilment	<p>Fulfilment takes place by cash settlement on the ECC business day following the Last Registration Day based on the difference between the settlement price of the exchange day before the last trading day and the Index. If this day is not a USD settlement day at Clearstream Banking SA, cash settlement takes place on the following ECC business day which is also a USD settlement day at Clearstream Banking SA.</p> <p>The seller (buyer) is obliged to settle in cash the difference between the settlement price of the previous ECC business day and the higher (lower) Index.</p> <p>Fulfilment is carried out between the clearing members and ECC AG. Cash settlement with non-clearing members and their own clients is the responsibility of the clearing member in charge; the cash settlement between non-clearing members and their clients is the responsibility of the non-clearing members concerned.</p>			

2.4.2 Capesize Time Charter Freight Futures (TC5)

ISIN Code/ WKN/ Exchange Code/ Name	DE000A1634C8	A1634C	CPTM	Capesize TC5 Freight Future
Underlying	<p>The monthly price index for Capesize Dry Bulk Time Charter Freight (Index).</p> <p>The Index is the arithmetic average of all daily spot price assessments for “Capesize Dry Bulk Time Charter Freight Basket Routes (Avg. 5 routes)” of the respective month as published by Baltic Exchange.</p>			
Contract Series	Up to 84 consecutive months			
Contract Volume	1 day			
Pricing	In USD per day			
Minimum Price Fluctuation	1.00 USD per day			
Last Registration Day	<p>Last Registration Day is the last exchange trading day of the respective expiry month except for December contracts.</p> <p>The Last Registration Day for December contracts is the exchange trading day, following 24th December.</p>			
Fulfilment	<p>Fulfilment takes place by cash settlement on the ECC business day following the Last Registration Day based on the difference between the settlement price of the exchange day before the Last Registration Day and the Index. If this day is not a USD settlement day at Clearstream Banking SA, cash settlement takes place on the following ECC business day which is also a USD settlement day at Clearstream Banking SA.</p> <p>The seller (buyer) is obliged to settle in cash the difference between the settlement price of the previous ECC business day and the higher (lower) Index.</p> <p>Fulfilment is carried out between the clearing members and ECC AG. Cash settlement with non-clearing members and their own clients is the responsibility of the clearing member in charge; the cash settlement between non-clearing members and their clients is the responsibility of the non-clearing members concerned.</p>			

2.4.3 Panamax Time Charter Freight Futures

ISIN Code/ WKN/ Exchange Code/ Name	DE000A11RCF1	A11RCF	PTCM	Panamax TC Freight Future
Underlying	<p>The monthly price index for Panamax Dry Bulk Time Charter Freight (Index).</p> <p>The Index is the arithmetic average of all daily spot price assessments for “Panamax Dry Bulk Time Charter Freight Basket Routes (Avg. 4 routes)” of the respective month as published by Baltic Exchange.</p>			
Contract Series	Up to 84 consecutive months			
Contract Volume	1 day			
Pricing	In USD per day			
Minimum Price Fluctuation	1.00 USD per day			
Last Registration Day	<p>Last Registration Day is the last exchange trading day of the respective expiry month except for December contracts.</p> <p>The Last Registration Day for December contracts is the exchange trading day, following 24th December.</p>			
Fulfilment	<p>Fulfilment takes place by cash settlement on the ECC business day following the Last Registration Day based on the difference between the settlement price of the exchange day before the last trading day and the Index. If this day is not a USD settlement day at Clearstream Banking SA, cash settlement takes place on the following ECC business day which is also a USD settlement day at Clearstream Banking SA.</p> <p>The seller (buyer) is obliged to settle in cash the difference between the settlement price of the previous ECC business day and the higher (lower) Index.</p> <p>Fulfilment is carried out between the clearing members and ECC AG. Cash settlement with non-clearing members and their own clients is the responsibility of the clearing member in charge; the cash settlement between non-clearing members and their clients is the responsibility of the non-clearing members concerned.</p>			

2.4.4 Supramax Time Charter Freight Futures

ISIN Code/ WKN/ Exchange Code/ Name	DE000A11RCG9	A11RCG	STCM	Supramax TC Freight Future
Underlying	<p>The monthly price index for Supramax Dry Bulk Time Charter Freight (Index).</p> <p>The Index is the arithmetic average of all daily spot price assessments for “Supramax Dry Bulk Time Charter Freight Basket Routes (Avg. 6 routes)” of the respective month as published by Baltic Exchange.</p>			
Contract Series	Up to 84 consecutive months			
Contract Volume	1 day			
Pricing	In USD per day			
Minimum Price Fluctuation	1.00 USD per day			
Last Registration Day	<p>Last Registration Day is the last exchange trading day of the respective expiry month except for December contracts.</p> <p>The Last Registration Day for December contracts is the 24th December. The Last Registration Day for December contracts is the exchange trading day, following 24th December.</p>			
Fulfilment	<p>Fulfilment takes place by cash settlement on the ECC business day following the Last Registration Day based on the difference between the settlement price of the exchange day before the last trading day and the Index. If this day is not a USD settlement day at Clearstream Banking SA, cash settlement takes place on the following ECC business day which is also a USD settlement day at Clearstream Banking SA.</p> <p>The seller (buyer) is obliged to settle in cash the difference between the settlement price of the previous ECC business day and the higher (lower) Index.</p> <p>Fulfilment is carried out between the clearing members and ECC AG. Cash settlement with non-clearing members and their own clients is the responsibility of the clearing member in charge; the cash settlement between non-clearing members and their clients is the responsibility of the non-clearing members concerned.</p>			

2.4.5 Handysize Time Charter Freight Futures

ISIN Code/ WKN/ Exchange Code/ Name	DE000A11RCH7	A11RCH	HTCM	Handysize TC Freight Future
Underlying	<p>The monthly price index for Handysize Dry Bulk Time Charter Freight (Index).</p> <p>The Index is the arithmetic average of all daily spot price assessments for “Handysize Dry Bulk Time Charter Freight Basket Routes (Avg. 6 routes)” of the respective month as published by Baltic Exchange.</p>			
Contract Series	Up to 84 consecutive months			
Contract Volume	1 day			
Pricing	In USD per day			
Minimum Price Fluctuation	1.00 USD per day			
Last Registration Day	<p>Last Registration Day is the last exchange trading day of the respective expiry month except for December contracts.</p> <p>The Last Registration Day for December contracts is the exchange trading day, following 24th December.</p>			
Fulfilment	<p>Fulfilment takes place by cash settlement on the ECC business day following the Last Registration Day based on the difference between the settlement price of the exchange day before the last trading day and the Index. If this day is not a USD settlement day at Clearstream Banking SA, cash settlement takes place on the following ECC business day which is also a USD settlement day at Clearstream Banking SA.</p> <p>The seller (buyer) is obliged to settle in cash the difference between the settlement price of the previous ECC business day and the higher (lower) Index.</p> <p>Fulfilment is carried out between the clearing members and ECC AG. Cash settlement with non-clearing members and their own clients is the responsibility of the clearing member in charge; the cash settlement between non-clearing members and their clients is the responsibility of the non-clearing members concerned.</p>			

2.5 Financial Futures on Dry Bulk Trip Time Charter Freight

2.5.1 P1A Panamax Transatlantic Freight Future

ISIN Code/ WKN/ Exchange Code/ Name	DE000A11RCN5	A11RCN	P1AM	P1A Panamax Transatlantic Freight Future
Underlying	<p>The monthly price index for P1A Panamax Transatlantic Freight (Index).</p> <p>The Index is the arithmetic average of the last 7 daily spot price assessments for “P1A Panamax Dry Bulk Trip Time Charter Freight (Transatlantic Round Voyage)” of the respective month as published by Baltic Exchange except for December contracts where the last 7 daily spot prices including those for the Last Registration Day are decisive for the Index calculation.</p>			
Contract Series	Up to 36 consecutive months			
Contract Volume	1 day			
Pricing	In USD per day			
Minimum Price Fluctuation	1.00 USD per day			
Last Registration Day	<p>Last Registration Day is the last exchange trading day of the respective expiry month except for December contracts.</p> <p>The Last Registration Day for December contracts is the exchange trading day, following 24th December.</p>			
Fulfilment	<p>Fulfilment takes place by cash settlement on the ECC business day following the Last Registration Day based on the difference between the settlement price of the exchange day before the last trading day and the Index. If this day is not a USD settlement day at Clearstream Banking SA, cash settlement takes place on the following ECC business day which is also a USD settlement day at Clearstream Banking SA.</p> <p>The seller (buyer) is obliged to settle in cash the difference between the settlement price of the previous ECC business day and the higher (lower) Index.</p> <p>Fulfilment is carried out between the clearing members and ECC AG. Cash settlement with non-clearing members and their own clients is the responsibility of the clearing member in charge; the cash settlement between non-clearing members and their clients is the responsibility of the non-clearing members concerned.</p>			

2.5.2 P2A Panamax Far East Freight Future

ISIN Code/ WKN/ Exchange Code/ Name	DE000A11RCP0	A11RCP	P2AM	P2A Panamax Far East Freight Future
Underlying	<p>The monthly price index for P2A Panamax Far East Freight (Index). The Index is the arithmetic average of the last 7 daily spot price assessments for “P2A Panamax Dry Bulk Trip Time Charter Freight (Skaw – Gibraltar / Cont Trip Far East)” of the respective month as published by Baltic Exchange except for December contracts where the last 7 daily spot prices including those for the Last Registration Day are decisive for the Index calculation.</p>			
Contract Series	Up to 36 consecutive months			
Contract Volume	1 day			
Pricing	In USD per day			
Minimum Price Fluctuation	1.00 USD per day			
Last Registration Day	<p>Last Registration Day is the last exchange trading day of the respective expiry month except for December contracts. The Last Registration Day for December contracts is the exchange trading day, following 24th December.</p>			
Fulfilment	<p>Fulfilment takes place by cash settlement on the ECC business day following the Last Registration Day based on the difference between the settlement price of the exchange day before the last trading day and the Index. If this day is not a USD settlement day at Clearstream Banking SA, cash settlement takes place on the following ECC business day which is also a USD settlement day at Clearstream Banking SA.</p> <p>The seller (buyer) is obliged to settle in cash the difference between the settlement price of the previous ECC business day and the higher (lower) Index.</p> <p>Fulfilment is carried out between the clearing members and ECC AG. Cash settlement with non-clearing members and their own clients is the responsibility of the clearing member in charge; the cash settlement between non-clearing members and their clients is the responsibility of the non-clearing members concerned.</p>			

2.5.3 P3A Panamax Pacific Freight Future

ISIN Code/ WKN/ Exchange Code/ Name	DE000A11RCQ8	A11RCQ	P3AM	P3A Panamax Pacific Freight Future
Underlying	<p>The monthly price index for P3A Panamax Pacific Freight (Index).</p> <p>The Index is the arithmetic average of the last 7 daily spot price assessments for “P3A Panamax Dry Bulk Trip Time Charter Freight (Japan – South Korea / Pacific Round Voyage)” of the respective month as published by Baltic Exchange, except for December contracts where the last 7 daily spot prices including those for the Last Registration Day are decisive for the Index calculation.</p>			
Contract Series	Up to 36 consecutive months			
Contract Volume	1 day			
Pricing	In USD per day			
Minimum Price Fluctuation	1.00 USD per day			
Last Registration Day	<p>Last Registration Day is the last exchange trading day of the respective expiry month except for December contracts.</p> <p>The Last Registration Day for December contracts is the exchange trading day, following 24th December.</p>			
Fulfilment	<p>Fulfilment takes place by cash settlement on the ECC business day following the Last Registration Day based on the difference between the settlement price of the exchange day before the last trading day and the Index. If this day is not a USD settlement day at Clearstream Banking SA, cash settlement takes place on the following ECC business day which is also a USD settlement day at Clearstream Banking SA.</p> <p>The seller (buyer) is obliged to settle in cash the difference between the settlement price of the previous ECC business day and the higher (lower) Index.</p> <p>Fulfilment is carried out between the clearing members and ECC AG. Cash settlement with non-clearing members and their own clients is the responsibility of the clearing member in charge; the cash settlement between non-clearing members and their clients is the responsibility of the non-clearing members concerned.</p>			

2.6 Financial Futures on Dry Bulk Voyage Routes Freight

2.6.1 C3 Capesize Freight Future (Tubarao – Qingdao)

ISIN Code/ WKN/ Exchange Code/ Name	DE000A11RCL9	A11RCL	C3EM	C3 Capesize Freight Future
Underlying	<p>The monthly price index for C3 Capesize Freight, voyage route Tubarao – Qingdao (Index).</p> <p>The Index is the arithmetic average of all daily spot price assessments for “C3 Capesize Dry Bulk Voyage Route Freight (Tubarao – Qingdao)” of the respective month as published by Baltic Exchange.</p>			
Contract Series	Up to 36 consecutive months			
Contract Volume	1,000 metric tonnes (t)			
Pricing	In USD per t to the second decimal place after the point			
Minimum Price Fluctuation	0.01 USD per t			
Last Registration Day	<p>Last Registration Day is the last exchange trading day of the respective expiry month except for December contracts.</p> <p>The Last Registration Day for December contracts is the exchange trading day, following 24th December.</p>			
Fulfilment	<p>Fulfilment takes place by cash settlement on the ECC business day following the Last Registration Day based on the difference between the settlement price of the exchange day before the last trading day and the Index. If this day is not a USD settlement day at Clearstream Banking SA, cash settlement takes place on the following ECC business day which is also a USD settlement day at Clearstream Banking SA.</p> <p>The seller (buyer) is obliged to settle in cash the difference between the settlement price of the previous ECC business day and the higher (lower) Index.</p> <p>Fulfilment is carried out between the clearing members and ECC AG. Cash settlement with non-clearing members and their own clients is the responsibility of the clearing member in charge; the cash settlement between non-clearing members and their clients is the responsibility of the non-clearing members concerned.</p>			

2.6.2 C4 Capesize Freight Future (Richards Bay – Rotterdam)

ISIN Code/ WKN/ Exchange Code/ Name	DE000A11RCJ3	A11RCJ	C4EM	C4 Capesize Freight Future
Underlying	<p>The monthly price index for C4 Capesize Freight, voyage route Richards Bay – Rotterdam (Index).</p> <p>The Index is the arithmetic average of all daily spot price assessments for “C4 Capesize Dry Bulk Voyage Route Freight (Richards Bay – Rotterdam)” of the respective month as published by Baltic Exchange.</p>			
Contract Series	Up to 36 consecutive months			
Contract Volume	1,000 metric tonnes (t)			
Pricing	In USD per t to the second decimal place after the point			
Minimum Price Fluctuation	0.01 USD per t			
Last Registration Day	<p>Last Registration Day is the last exchange trading day of the respective expiry month except for December contracts.</p> <p>The Last Registration Day for December contracts is the exchange trading day, following 24th December.</p>			
Fulfilment	<p>Fulfilment takes place by cash settlement on the ECC business day following the Last Registration Day based on the difference between the settlement price of the exchange day before the last trading day and the Index. If this day is not a USD settlement day at Clearstream Banking SA, cash settlement takes place on the following ECC business day which is also a USD settlement day at Clearstream Banking SA.</p> <p>The seller (buyer) is obliged to settle in cash the difference between the settlement price of the previous ECC business day and the higher (lower) Index.</p> <p>Fulfilment is carried out between the clearing members and ECC AG. Cash settlement with non-clearing members and their own clients is the responsibility of the clearing member in charge; the cash settlement between non-clearing members and their clients is the responsibility of the non-clearing members concerned.</p>			

2.6.3 C5 Capesize Freight Future (Western Australia – Qingdao)

ISIN Code/ WKN/ Exchange Code/ Name	DE000A11RCM7	A11RCM	C5EM	C5 Capesize Freight Future
Underlying	<p>The monthly price index for C5 Capesize Freight, voyage route Western Australia – Qingdao (Index).</p> <p>The Index is the arithmetic average of all daily spot price assessments for “C5 Capesize Dry Bulk Voyage Route Freight (Western Australia – Qingdao)” of the respective month as published by Baltic Exchange.</p>			
Contract Series	Up to 36 consecutive months			
Contract Volume	1,000 metric tonnes (t)			
Pricing	In USD per t to the second decimal place after the point			
Minimum Price Fluctuation	0.01 USD per t			
Last Registration Day	<p>Last Registration Day is the last exchange trading day of the respective expiry month except for December contracts.</p> <p>The Last Registration Day for December contracts is the exchange trading day, following 24th December.</p>			
Fulfilment	<p>Fulfilment takes place by cash settlement on the ECC business day following the Last Registration Day based on the difference between the settlement price of the exchange day before the last trading day and the Index. If this day is not a USD settlement day at Clearstream Banking SA, cash settlement takes place on the following ECC business day which is also a USD settlement day at Clearstream Banking SA.</p> <p>The seller (buyer) is obliged to settle in cash the difference between the settlement price of the previous ECC business day and the higher (lower) Index.</p> <p>Fulfilment is carried out between the clearing members and ECC AG. Cash settlement with non-clearing members and their own clients is the responsibility of the clearing member in charge; the cash settlement between non-clearing members and their clients is the responsibility of the non-clearing members concerned.</p>			

2.6.4 C7 Capesize Freight Future (Bolivar – Rotterdam)

ISIN Code/ WKN/ Exchange Code/ Name	DE000A11RCK1	A11RCK	C7EM	C7 Capesize Freight Future
Underlying	<p>The monthly price index for C7 Capesize Freight, voyage route Bolivar - Rotterdam (Index).</p> <p>The Index is the arithmetic average of all daily spot price assessments for “C7 Capesize Dry Bulk Voyage Route Freight (Bolivar - Rotterdam)” of the respective month as published by Baltic Exchange.</p>			
Contract Series	Up to 36 consecutive months			
Contract Volume	1,000 metric tonnes (t)			
Pricing	In USD per t to the second decimal place after the point			
Minimum Price Fluctuation	0.01 USD per t			
Last Registration Day	<p>Last Registration Day is the last exchange trading day of the respective expiry month except for December contracts.</p> <p>The Last Registration Day for December contracts is the exchange trading day, following 24th December.</p>			
Fulfilment	<p>Fulfilment takes place by cash settlement on the ECC business day following the Last Registration Day based on the difference between the settlement price of the exchange day before the last trading day and the Index. If this day is not a USD settlement day at Clearstream Banking SA, cash settlement takes place on the following ECC business day which is also a USD settlement day at Clearstream Banking SA.</p> <p>The seller (buyer) is obliged to settle in cash the difference between the settlement price of the previous ECC business day and the higher (lower) Index.</p> <p>Fulfilment is carried out between the clearing members and ECC AG. Cash settlement with non-clearing members and their own clients is the responsibility of the clearing member in charge; the cash settlement between non-clearing members and their clients is the responsibility of the non-clearing members concerned.</p>			

2.7 Options on Freight Futures

2.7.1 Options on Capesize TC4 Freight Futures

ISIN-Code/ WKN/ Exchange Code/ Name	DE000A1634N5	A1634N	OCTM	Capesize TC4 Freight Option
Underlying	Capesize TC4 Freight Future with the same maturity, at which the delivery period corresponds to the maturity.			
Option Right	<p>The buyer of a call option is entitled to receive respective long positions of the underlying future(s) at the exercise price of the option on the Last Registration Day.</p> <p>The seller of the call option receives respective short positions of the underlying future(s) after the call option is exercised and assigned at the exercise price on the Last Registration Day.</p> <p>The buyer of a put option is entitled to receive respective short positions of the underlying future(s) at the exercise price of the option on the Last Registration Day.</p> <p>The seller of the put option receives respective long positions of the underlying future(s) at the exercise price after the put option is exercised and assigned on the Last Registration Day.</p>			
Option Premium	The buyer of an option contract is obliged to pay the price for the purchase of the right of option (option premium) on the ECC business day following the purchase of the option. If this day is not a USD settlement day at Clearstream Banking SA, the payment takes place on the following ECC business day which is also a USD settlement day at Clearstream Banking SA. The option premium is credited to the seller of the option on the same day.			
Option Style	European style, i.e. the option can only be exercised on the last trading day.			
Tradable Option Series	<p>An option series is the total number of call and put options with the same Underlying, the same exercise price and the same maturity which can be traded in the system.</p> <p>At least three series with different exercise prices can be traded for each maturity; in this context one exercise price is in the money, one exercise price is at the money and one exercise price is out of the money upon their introduction into trading.</p> <p>The management board of the exchange is entitled to change the number of tradable option series at any given time.</p>			

Tradable Maturities	Up to 36 consecutive months
Exercise/Automatic Exercise	<p>The option can only be exercised on the Last Registration Day. Said exercise is carried out by means of an entry into the EEX system between 08:00 a.m. and 06:45 p.m. (Exercise Period) on the Last Registration Day.</p> <p>Options which are in the money in relation to the Final Settlement Price are exercised automatically at the end of the Exercise Period if the trading participant has maintained in the system the desired in the money minimum amount and if the trading participant has not made a deviating entry into the system by that time.</p> <p>Exercises only become effective at 06:45 p.m., until that time they can be changed or deleted at any time.</p>
Strike Price Increments	USD 1
Pricing for Option Premium	In USD per future to the second decimal place.
Minimum Price Fluctuation	USD 0.01 per future
Last Registration Day	<p>Last Registration Day is the last exchange trading of the respective expiration month except for December contracts.</p> <p>The Last Registration Day for December contracts is the exchange trading day, following 24th December.</p>
Expiry Day	Options which have not been exercised expire at 06:45 p.m. CET on the Last Registration Day.
Fulfilment	Options are fulfilled by booking in of the corresponding futures position at the respective exercise price after the option is exercised.
Assignment	<p>If a buyer exercises his right of option, ECC AG assigns a seller of the same option series and of the same type of option (call or put option) to the buyer with the help of a procedure maintaining the neutrality of the assignment process at the end of the post-trading phase on the exercise day. Partial assignments are permissible.</p> <p>All assignments which have been executed for the agent position account of a trading participant have to be assigned by said trading participant for the positions of his customers; this has to be done with the help of a procedure which ensures the neutrality of the assignment process.</p> <p>ECC AG informs all the parties involved as well as the clearing members supporting the parties involved about the assignment on the exercise day.</p>

2.7.2 Options on Capesize TC5 Freight Futures

ISIN-Code/ WKN/ Exchange Code/ Name	DE000A1634P0	A1634P	OCPM	Capesize TC5 Freight Option
Underlying	Capesize TC5 Freight Future with the same maturity, at which the delivery period corresponds to the maturity.			
Option Right	<p>The buyer of a call option is entitled to receive respective long positions of the underlying future(s) at the exercise price of the option on the Last Registration Day.</p> <p>The seller of the call option receives respective short positions of the underlying future(s) after the call option is exercised and assigned at the exercise price on the Last Registration Day.</p> <p>The buyer of a put option is entitled to receive respective short positions of the underlying future(s) at the exercise price of the option on the Last Registration Day.</p> <p>The seller of the put option receives respective long positions of the underlying future(s) at the exercise price after the put option is exercised and assigned on the Last Registration Day.</p>			
Option Premium	The buyer of an option contract is obliged to pay the price for the purchase of the right of option (option premium) on the ECC business day following the purchase of the option. If this day is not a USD settlement day at Clearstream Banking SA, the payment takes place on the following ECC business day which is also a USD settlement day at Clearstream Banking SA. The option premium is credited to the seller of the option on the same day.			
Option Style	European style, i.e. the option can only be exercised on the last trading day.			
Tradable Option Series	<p>An option series is the total number of call and put options with the same Underlying, the same exercise price and the same maturity which can be traded in the system.</p> <p>At least three series with different exercise prices can be traded for each maturity; in this context one exercise price is in the money, one exercise price is at the money and one exercise price is out of the money upon their introduction into trading.</p> <p>The management board of the exchange is entitled to change the number of tradable option series at any given time.</p>			

Tradable Maturities	Up to 36 consecutive months
Exercise/Automatic Exercise	<p>The option can only be exercised on the Last Registration Day. Said exercise is carried out by means of an entry into the EEX system between 08:00 a.m. and 06:45 p.m. (Exercise Period) on the Last Registration Day.</p> <p>Options which are in the money in relation to the Final Settlement Price are exercised automatically at the end of the Exercise Period if the trading participant has maintained in the system the desired in the money minimum amount and if the trading participant has not made a deviating entry into the system by that time.</p> <p>Exercises only become effective at 06:45 p.m., until that time they can be changed or deleted at any time.</p>
Strike Price Increments	USD 1
Pricing for Option Premium	In USD per future to the second decimal place.
Minimum Price Fluctuation	USD 0.01 per future
Last Registration Day	<p>Last Registration Day is the last exchange trading of the respective expiration month except for December contracts.</p> <p>The Last Registration Day for December contracts is the exchange trading day, following 24th December.</p>
Expiry Day	Options which have not been exercised expire at 06:45 p.m. CET on the Last Registration Day.
Fulfilment	Options are fulfilled by booking in of the corresponding futures position at the respective exercise price after the option is exercised.
Assignment	<p>If a buyer exercises his right of option, ECC AG assigns a seller of the same option series and of the same type of option (call or put option) to the buyer with the help of a procedure maintaining the neutrality of the assignment process at the end of the post-trading phase on the exercise day. Partial assignments are permissible.</p> <p>All assignments which have been executed for the agent position account of a trading participant have to be assigned by said trading participant for the positions of his customers; this has to be done with the help of a procedure which ensures the neutrality of the assignment process.</p> <p>ECC AG informs all the parties involved as well as the clearing members supporting the parties involved about the assignment on the exercise day.</p>

2.7.3 Options on Panamax TC Freight Futures

ISIN-Code/ WKN/ Exchange Code/ Name	DE000A1634Q8	A1634Q	OPTM	Panamax TC Freight Option
Underlying	Panamax TC Freight Future with the same maturity, at which the delivery period corresponds to the maturity.			
Option Right	<p>The buyer of a call option is entitled to receive respective long positions of the underlying future(s) at the exercise price of the option on the Last Registration Day.</p> <p>The seller of the call option receives respective short positions of the underlying future(s) after the call option is exercised and assigned at the exercise price on the Last Registration Day.</p> <p>The buyer of a put option is entitled to receive respective short positions of the underlying future(s) at the exercise price of the option on the Last Registration Day.</p> <p>The seller of the put option receives respective long positions of the underlying future(s) at the exercise price after the put option is exercised and assigned on the Last Registration Day.</p>			
Option Premium	The buyer of an option contract is obliged to pay the price for the purchase of the right of option (option premium) on the ECC business day following the purchase of the option. If this day is not a USD settlement day at Clearstream Banking SA, the payment takes place on the following ECC business day which is also a USD settlement day at Clearstream Banking SA. The option premium is credited to the seller of the option on the same day.			
Option Style	European style, i.e. the option can only be exercised on the last trading day.			
Tradable Option Series	<p>An option series is the total number of call and put options with the same Underlying, the same exercise price and the same maturity which can be traded in the system.</p> <p>At least three series with different exercise prices can be traded for each maturity; in this context one exercise price is in the money, one exercise price is at the money and one exercise price is out of the money upon their introduction into trading.</p> <p>The management board of the exchange is entitled to change the number of tradable option series at any given time.</p>			

Tradable Maturities	Up to 36 consecutive months
Exercise/Automatic Exercise	<p>The option can only be exercised on the Last Registration Day. Said exercise is carried out by means of an entry into the EEX system between 08:00 a.m. and 06:45 p.m. (Exercise Period) on the Last Registration Day.</p> <p>Options which are in the money in relation to the Final Settlement Price are exercised automatically at the end of the Exercise Period if the trading participant has maintained in the system the desired in the money minimum amount and if the trading participant has not made a deviating entry into the system by that time.</p> <p>Exercises only become effective at 06:45 p.m., until that time they can be changed or deleted at any time.</p>
Strike Price Increments	USD 1
Pricing for Option Premium	In USD per future to the second decimal place.
Minimum Price Fluctuation	USD 0.01 per future
Last Registration Day	<p>Last Registration Day is the last exchange trading of the respective expiration month except for December contracts.</p> <p>The Last Registration Day for December contracts is the exchange trading day, following 24th December.</p>
Expiry Day	Options which have not been exercised expire at 06:45 p.m. CET on the Last Registration Day.
Fulfilment	Options are fulfilled by booking in of the corresponding Futures position at the respective exercise price after the option is exercised.
Assignment	<p>If a buyer exercises his right of option, ECC AG assigns a seller of the same option series and of the same type of option (call or put option) to the buyer with the help of a procedure maintaining the neutrality of the assignment process at the end of the post-trading phase on the exercise day. Partial assignments are permissible.</p> <p>All assignments which have been executed for the agent position account of a trading participant have to be assigned by said trading participant for the positions of his customers; this has to be done with the help of a procedure which ensures the neutrality of the assignment process.</p> <p>ECC AG informs all the parties involved as well as the clearing members supporting the parties involved about the assignment on the exercise day.</p>

2.7.4 Options on Supramax TC Freight Futures

ISIN-Code/ WKN/ Exchange Code/ Name	DE000A1634R6	A1634R	OTSM	Supramax TC Freight Option
Underlying	Supramax TC Freight Future with the same maturity, at which the delivery period corresponds to the maturity.			
Option Right	<p>The buyer of a call option is entitled to receive respective long positions of the underlying future(s) at the exercise price of the option on the Last Registration Day.</p> <p>The seller of the call option receives respective short positions of the underlying future(s) after the call option is exercised and assigned at the exercise price on the Last Registration Day.</p> <p>The buyer of a put option is entitled to receive respective short positions of the underlying future(s) at the exercise price of the option on the Last Registration Day.</p> <p>The seller of the put option receives respective long positions of the underlying future(s) at the exercise price after the put option is exercised and assigned on the Last Registration Day.</p>			
Option Premium	The buyer of an option contract is obliged to pay the price for the purchase of the right of option (option premium) on the ECC business day following the purchase of the option. If this day is not a USD settlement day at Clearstream Banking SA, the payment takes place on the following ECC business day which is also a USD settlement day at Clearstream Banking SA. The option premium is credited to the seller of the option on the same day.			
Option Style	European style, i.e. the option can only be exercised on the last trading day.			
Tradable Option Series	<p>An option series is the total number of call and put options with the same Underlying, the same exercise price and the same maturity which can be traded in the system.</p> <p>At least three series with different exercise prices can be traded for each maturity; in this context one exercise price is in the money, one exercise price is at the money and one exercise price is out of the money upon their introduction into trading.</p> <p>The management board of the exchange is entitled to change the number of tradable option series at any given time.</p>			

Tradable Maturities	Up to 36 consecutive months
Exercise/Automatic Exercise	<p>The option can only be exercised on the Last Registration Day. Said exercise is carried out by means of an entry into the EEX system between 08:00 a.m. and 06:45 p.m. (Exercise Period) on the Last Registration Day.</p> <p>Options which are in the money in relation to the Final Settlement Price are exercised automatically at the end of the Exercise Period if the trading participant has maintained in the system the desired in the money minimum amount and if the trading participant has not made a deviating entry into the system by that time.</p> <p>Exercises only become effective at 06:45 p.m., until that time they can be changed or deleted at any time.</p>
Strike Price Increments	USD 1
Pricing for Option Premium	In USD per future to the second decimal place.
Minimum Price Fluctuation	USD 0.01 per future
Last Registration Day	<p>Last Registration Day is the last exchange trading of the respective expiration month except for December contracts.</p> <p>The Last Registration Day for December contracts is the exchange trading day, following 24th December.</p>
Expiry Day	Options which have not been exercised expire at 06:45 p.m. CET on the Last Registration Day.
Fulfilment	Options are fulfilled by booking in of the corresponding futures position at the respective exercise price after the option is exercised.
Assignment	<p>If a buyer exercises his right of option, ECC AG assigns a seller of the same option series and of the same type of option (call or put option) to the buyer with the help of a procedure maintaining the neutrality of the assignment process at the end of the post-trading phase on the exercise day. Partial assignments are permissible.</p> <p>All assignments which have been executed for the agent position account of a trading participant have to be assigned by said trading participant for the positions of his customers; this has to be done with the help of a procedure which ensures the neutrality of the assignment process.</p> <p>ECC AG informs all the parties involved as well as the clearing members supporting the parties involved about the assignment on the exercise day.</p>

2.7.5 Options on Handysize TC Freight Futures

ISIN-Code/ WKN/ Exchange Code/ Name	DE000A1634S4	A1634S	OHTM	Handysize TC Freight Option
Underlying	Handysize TC Freight Future with the same maturity, at which the delivery period corresponds to the maturity.			
Option Right	<p>The buyer of a call option is entitled to receive respective long positions of the underlying future(s) at the exercise price of the option on the Last Registration Day.</p> <p>The seller of the call option receives respective short positions of the underlying future(s) after the call option is exercised and assigned at the exercise price on the Last Registration Day.</p> <p>The buyer of a put option is entitled to receive respective short positions of the underlying future(s) at the exercise price of the option on the Last Registration Day.</p> <p>The seller of the put option receives respective long positions of the underlying future(s) at the exercise price after the put option is exercised and assigned on the Last Registration Day.</p>			
Option Premium	The buyer of an option contract is obliged to pay the price for the purchase of the right of option (option premium) on the ECC business day following the purchase of the option. If this day is not a USD settlement day at Clearstream Banking SA, the payment takes place on the following ECC business day which is also a USD settlement day at Clearstream Banking SA. The option premium is credited to the seller of the option on the same day.			
Option Style	European style, i.e. the option can only be exercised on the last trading day.			
Tradable Option Series	<p>An option series is the total number of call and put options with the same Underlying, the same exercise price and the same maturity which can be traded in the system.</p> <p>At least three series with different exercise prices can be traded for each maturity; in this context one exercise price is in the money, one exercise price is at the money and one exercise price is out of the money upon their introduction into trading.</p> <p>The management board of the exchange is entitled to change the number of tradable option series at any given time.</p>			

Tradable Maturities	Up to 36 consecutive months
Exercise/Automatic Exercise	<p>The option can only be exercised on the Last Registration Day. Said exercise is carried out by means of an entry into the EEX system between 08:00 a.m. and 06:45 p.m. (Exercise Period) on the Last Registration Day.</p> <p>Options which are in the money in relation to the Final Settlement Price are exercised automatically at the end of the Exercise Period if the trading participant has maintained in the system the desired in the money minimum amount and if the trading participant has not made a deviating entry into the system by that time.</p> <p>Exercises only become effective at 06:45 p.m., until that time they can be changed or deleted at any time.</p>
Strike Price Increments	USD 1
Pricing for Option Premium	In USD per future to the second decimal place.
Minimum Price Fluctuation	USD 0.01 per future
Last Registration Day	<p>Last Registration Day is the last exchange trading of the respective expiration month except for December contracts.</p> <p>The Last Registration Day for December contracts is the exchange trading day, following 24th December.</p>
Expiry Day	Options which have not been exercised expire at 06:45 p.m. CET on the Last Registration Day.
Fulfilment	Options are fulfilled by booking in of the corresponding futures position at the respective exercise price after the option is exercised.
Assignment	<p>If a buyer exercises his right of option, ECC AG assigns a seller of the same option series and of the same type of option (call or put option) to the buyer with the help of a procedure maintaining the neutrality of the assignment process at the end of the post-trading phase on the exercise day. Partial assignments are permissible.</p> <p>All assignments which have been executed for the agent position account of a trading participant have to be assigned by said trading participant for the positions of his customers; this has to be done with the help of a procedure which ensures the neutrality of the assignment process.</p> <p>ECC AG informs all the parties involved as well as the clearing members supporting the parties involved about the assignment on the exercise day.</p>

2.8 Financial Futures on Fertilisers

2.8.1 Urea (Granular) fob NOLA Future (The Fertilizer Index)

ISIN Code/ WKN/ Exchange Code/ Name	DE000A11RCW6	A11RCW	URNM	Urea (Granular) fob NOLA Future (The Fertilizer Index)
Underlying	<p>The monthly price index for granular urea fob New Orleans, Louisiana (Index).</p> <p>The Index is the arithmetic average of all weekly values of the price index "Urea (gran) fob barge NOLA" of the respective month as published in the Fertilizer Index* report by Argus, CRU and Fertecon each Friday**.</p> <p>** The last Friday in December will be excluded as there is no publication of an index in the week prior to New Year.</p>			
Contract Series	Up to 20 consecutive months			
Contract Volume	25 short tons (st)			
Pricing	In USD per st to the second decimal place after the point			
Minimum Price Fluctuation	0.01 USD per st			
Last Registration Day	<p>The Last Registration Day is the last Friday of the respective delivery month except for December contracts.</p> <p>The Last Registration Day for December contracts is the penultimate Friday of December. If this is not an exchange trading day, the Last Registration Day is the preceding exchange trading day.</p>			
Fulfilment	<p>Fulfilment takes place by cash settlement on the ECC business day following the Last Registration Day based on the difference between the settlement price of the exchange day before the last trading day and the Index. If this day is not a USD settlement day at Clearstream Banking SA, cash settlement takes place on the following ECC business day.</p> <p>The seller (buyer) is obliged to settle in cash the difference between the settlement price of the previous ECC business day and the higher (lower) Index.</p> <p>Fulfilment is carried out between the clearing members and ECC AG. Cash settlement with non-clearing members and their own clients is the responsibility of the clearing member in charge; the cash settlement between non-clearing members and their clients is the responsibility of the non-clearing members concerned.</p>			

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2.8.2 Urea (Granular) fob Egypt Future (The Fertilizer Index)

ISIN Code/ WKN/ Exchange Code/ Name	DE000A11RC04	A11RC0	UREM	Urea (Granular) fob Egypt Future (The Fertilizer Index)
Underlying	<p>The monthly price index for granular urea fob Egypt (Index). The Index is the arithmetic average of all weekly values of the price index “Urea (gran) fob bulk Egypt” of the respective month as published in the Fertilizer Index* report by Argus, CRU and Fertecon each Friday**.</p> <p>** The last Friday in December will be excluded as there is no publication of an index in the week prior to New Year.</p>			
Contract Series	Up to 20 consecutive months			
Contract Volume	25 metric tonnes (t)			
Pricing	In USD per t to the second decimal place after the point			
Minimum Price Fluctuation	0.01 USD per t			
Last Registration Day	<p>The Last Registration Day is the last Friday of the respective delivery month except for December contracts.</p> <p>The Last Registration Day for December contracts is the penultimate Friday of December. If this is not an exchange trading day, the Last Registration Day is the preceding exchange trading day.</p>			
Fulfilment	<p>Fulfilment takes place by cash settlement on the ECC business day following the Last Registration Day based on the difference between the settlement price of the exchange day before the last trading day and the Index. If this day is not a USD settlement day at Clearstream Banking SA, cash settlement takes place on the following ECC business day.</p> <p>The seller (buyer) is obliged to settle in cash the difference between the settlement price of the previous ECC business day and the higher (lower) Index.</p> <p>Fulfilment is carried out between the clearing members and ECC AG. Cash settlement with non-clearing members and their own clients is the responsibility of the clearing member in charge; the cash settlement between non-clearing members and their clients is the responsibility of the non-clearing members concerned.</p>			

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2.8.3 Urea (Prilled) fob Yuzhnyy Future (The Fertilizer Index)

ISIN Code/ WKN/ Exchange Code/ Name	DE000A11RCZ9	A11RCZ	URYM	Urea (Prilled) fob Yuzhnyy Future (The Fertilizer Index)
Underlying	<p>The monthly price index for prilled urea fob Yuzhnyy (Index). The Index is the arithmetic average of all weekly values of the price index “Urea (prill) fob bulk Yuzhnyy” of the respective month as published in the Fertilizer Index* report by Argus, CRU and Fertecon each Friday**.</p> <p>** The last Friday in December will be excluded as there is no publication of an index in the week prior to New Year.</p>			
Contract Series	Up to 20 consecutive months			
Contract Volume	25 metric tonnes (t)			
Pricing	In USD per t to the second decimal place after the point			
Minimum Price Fluctuation	0.01 USD per t			
Last Registration Day	<p>The Last Registration Day is the last Friday of the respective delivery month except for December contracts.</p> <p>The Last Registration Day for December contracts is the penultimate Friday of December. If this is not an exchange trading day, the Last Registration Day is the preceding exchange trading day.</p>			
Fulfilment	<p>Fulfilment takes place by cash settlement on the ECC business day following the Last Registration Day based on the difference between the settlement price of the exchange day before the last trading day and the Index. If this day is not a USD settlement day at Clearstream Banking SA, cash settlement takes place on the following ECC business day.</p> <p>The seller (buyer) is obliged to settle in cash the difference between the settlement price of the previous ECC business day and the higher (lower) Index.</p> <p>Fulfilment is carried out between the clearing members and ECC AG. Cash settlement with non-clearing members and their own clients is the responsibility of the clearing member in charge; the cash settlement between non-clearing members and their clients is the responsibility of the non-clearing members concerned.</p>			

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2.8.4 DAP fob NOLA Future (The Fertilizer Index)

ISIN Code/ WKN/ Exchange Code/ Name	DE000A11RCX4	A11RCX	DANM	DAP fob NOLA Future (The Fertilizer Index)
Underlying	<p>The monthly price index for Di-Ammonium Phosphate (DAP) fob New Orleans, Louisiana (Index).</p> <p>The Index is the arithmetic average of all weekly values of the price index “DAP fob barge NOLA” of the respective month as published in the Fertilizer Index* report by Argus, CRU and Fertecon each Friday**.</p> <p>** The last Friday in December will be excluded as there is no publication of an index in the week prior to New Year.</p>			
Contract Series	Up to 20 consecutive months			
Contract Volume	25 short tons (st)			
Pricing	In USD per st to the second decimal place after the point			
Minimum Price Fluctuation	0.01 USD per st			
Last Registration Day	<p>The Last Registration Day is the last Friday of the respective delivery month except for December contracts.</p> <p>The Last Registration Day for December contracts is the penultimate Friday of December. If this is not an exchange trading day, the Last Registration Day is the preceding exchange trading day.</p>			
Fulfilment	<p>Fulfilment takes place by cash settlement on the ECC business day following the Last Registration Day based on the difference between the settlement price of the exchange day before the last trading day and the Index. If this day is not a USD settlement day at Clearstream Banking SA, cash settlement takes place on the following ECC business day.</p> <p>The seller (buyer) is obliged to settle in cash the difference between the settlement price of the previous ECC business day and the higher (lower) Index.</p> <p>Fulfilment is carried out between the clearing members and ECC AG. Cash settlement with non-clearing members and their own clients is the responsibility of the clearing member in charge; the cash settlement between non-clearing members and their clients is the responsibility of the non-clearing members concerned.</p>			

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2.8.5 DAP fob Tampa Future (The Fertilizer Index)

ISIN Code/ WKN/ Exchange Code/ Name	DE000A11RC12	A11RC1	DATM	DAP fob Tampa Future (The Fertilizer Index)
Underlying	<p>The monthly price index for Di-Ammonium Phosphate (DAP) fob Tampa, Florida (Index).</p> <p>The Index is the arithmetic average of all weekly values of the price index "DAP fob bulk Tampa" of the respective month as published in the Fertilizer Index* report by Argus, CRU and Fertecon each Friday**.</p> <p>** The last Friday in December will be excluded as there is no publication of an index in the week prior to New Year.</p>			
Contract Series	Up to 20 consecutive months			
Contract Volume	25 metric tonnes (t)			
Pricing	In USD per t to the second decimal place after the point			
Minimum Price Fluctuation	0.01 USD per t			
Last Registration Day	<p>The Last Registration Day is the last Friday of the respective delivery month except for December contracts.</p> <p>The Last Registration Day for December contracts is the penultimate Friday of December. If this is not an exchange trading day, the Last Registration Day is the preceding exchange trading day.</p>			
Fulfilment	<p>Fulfilment takes place by cash settlement on the ECC business day following the Last Registration Day based on the difference between the settlement price of the exchange day before the last trading day and the Index. If this day is not a USD settlement day at Clearstream Banking SA, cash settlement takes place on the following ECC business day.</p> <p>The seller (buyer) is obliged to settle in cash the difference between the settlement price of the previous ECC business day and the higher (lower) Index.</p> <p>Fulfilment is carried out between the clearing members and ECC AG. Cash settlement with non-clearing members and their own clients is the responsibility of the clearing member in charge; the cash settlement between non-clearing members and their clients is the responsibility of the non-clearing members concerned.</p>			

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2.8.6 UAN fob NOLA Future (The Fertilizer Index)

ISIN Code/ WKN/ Exchange Code/ Name	DE000A11RCY2	A11RCY	UANM	UAN fob NOLA Future (The Fertilizer Index)
Underlying	<p>The monthly price index for Urea Ammonium Nitrate (32%N) fob New Orleans, Louisiana (Index).</p> <p>The Index is the arithmetic average of all weekly values of the price index “UAN (32% N) fob barge NOLA” of the respective month as published in the Fertilizer Index* report by Argus, CRU and Fertecon each Friday**.</p> <p>** The last Friday in December will be excluded as there is no publication of an index in the week prior to New Year.</p>			
Contract Series	Up to 20 consecutive months			
Contract Volume	25 short tons (st)			
Pricing	In USD per st to the second decimal place after the point			
Minimum Price Fluctuation	0.01 USD per st			
Last Registration Day	<p>The Last Registration Day is the last Friday of the respective delivery month except for December contracts.</p> <p>The Last Registration Day for December contracts is the penultimate Friday of December. If this is not an exchange trading day, the Last Registration Day is the preceding exchange trading day.</p>			
Fulfilment	<p>Fulfilment takes place by cash settlement on the ECC business day following the Last Registration Day based on the difference between the settlement price of the exchange day before the last trading day and the Index. If this day is not a USD settlement day at Clearstream Banking SA, cash settlement takes place on the following ECC business day.</p> <p>The seller (buyer) is obliged to settle in cash the difference between the settlement price of the previous ECC business day and the higher (lower) Index.</p> <p>Fulfilment is carried out between the clearing members and ECC AG. Cash settlement with non-clearing members and their own clients is the responsibility of the clearing member in charge; the cash settlement between non-clearing members and their clients is the responsibility of the non-clearing members concerned.</p>			

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2.9 Financial Futures on Iron Ore

2.9.1 Iron Ore 62% Fe Tianjin Futures

ISIN Code/ WKN/ Exchange Code/ Name	DE000A11RCV8	A11RCV	IOTM	Iron Ore 62% Fe Tianjin Future
Underlying	<p>The monthly price index for Iron Ore 62% Fe CFR Tianjin (Index). The Index is the arithmetic average of all daily price assessments for “TSI Iron Ore Fines 62% Fe, CFR Tianjin Port”* of the respective month as published by TSI - The Steel Index - in the “Iron Ore Daily Edition” in Section “TSI Benchmark Iron Ore Prices”.</p>			
Contract Series	Up to 36 consecutive months			
Contract Volume	100 metric tonnes (t)			
Min Block Size	5 lots (equals 500 t) or a multiple thereof			
Pricing	In USD per t to the second decimal place after the point			
Minimum Price Fluctuation	0.01 USD per t			
Last Registration Day	Last Registration Day is the last exchange trading day of the respective delivery month.			
Fulfilment	<p>Fulfilment takes place by cash settlement on the ECC business day following the Last Registration Day based on the difference between the settlement price of the exchange day before the last trading day and the Index. If this day is not a USD settlement day at Clearstream Banking SA, cash settlement takes place on the following ECC business day which is also a USD settlement day at Clearstream Banking SA.</p> <p>The seller (buyer) is obliged to settle in cash the difference between the settlement price of the previous ECC business day and the higher (lower) Index.</p> <p>Fulfilment is carried out between the clearing members and ECC AG. Cash settlement with non-clearing members and their own clients is the responsibility of the clearing member in charge; the cash settlement between non-clearing members and their clients is the responsibility of the non-clearing members concerned.</p>			

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EEX Code of Conduct

The English version is for informal use only. The German version is legally binding.

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1. Preamble

- (1) In the framework of its right to self-management EEX sets the following rules of conduct for itself through the exchange council in addition to the existing provisions.
- (2) This EEX Code of Conduct is based on the fundamental principle of the need for the joint responsibility of EEX and its trading participants for a fair and transparent trading at the markets of EEX.
- (3) These rules make an active contribution to the requirements of the further developing internationalisation of commodities trading and aim at complying with the market's need for a uniform and internationally harmonised control system.
- (4) These rules are intended to strengthen the confidence which the market and the public have in the markets of EEX, its pricing mechanisms and the reference character of the exchange prices.

2. Scope of Application

§ 1 Scope of Application

- (1) The EEX Code of Conduct is applicable to the market places and EEX itself, all trading participants and exchange traders admitted to trading on the markets of EEX as well as all other persons who are allowed to use the exchange and its facilities. This EEX Code of Conduct therefore applies particularly to Non-Trading Brokers and the persons entitled to use the Trade Registration functionality. Any obligations that is determined to apply to trading participants or exchange traders in the following, shall apply as well to Non-Trading Brokers and the persons entitled to use the Trade Registration functionality.
- (2) Furthermore, § 8 para 2 shall be binding for those persons and companies involved in the determination of the settlement price.
- (3) The scope of this EEX Code of Conduct comprises all acts and conduct, including such acts and conducts that are carried out outside of the markets of EEX that could compromise the integrity of EEX, trading at EEX, and the market prices of EEX.

§ 2 Legal Classification

- (1) The EEX Code of Conduct is part of the rules and regulations of EEX.
- (2) The EEX Code of Conduct does not release the trading participants from the obligation to comply with statutory rules and further specific provisions applicable on exchanges, such as the exchange rules and the trading conditions of EEX.

3. Rules of Conduct for Exchange Trading

3.1. Principle

§ 3 Integrity of the Markets of EEX

- (1) In order to safeguard the integrity of the markets of EEX, particularly to ensure a free, transparent and fair trading on the markets of EEX and notwithstanding the corresponding provisions of REMIT¹ und MAR², any form of manipulation of exchange trading at EEX and the exchange prices and the involvement in insider dealings as well as the use of the exchange and its facilities to commit other economic crimes or tax offences are banned.
- (2) The ban according to paragraph 1 and the following provisions also comprise the respective attempt to engage in the banned conduct.
- (3) The trading participants and exchange traders commit to fairness towards the EEX and the other trading participants. They shall only conclude transactions on EEX in compliance with the customary trade practices and the principles of professional exchange traders.

3.2. Ban of Market Manipulation

§ 4 Definition

- (1) The term “market manipulation” comprises without limitation particularly the following acts and conducts:
 - entering of orders without trading interests (fictitious orders),
 - the conclusion of transactions suitable for a manipulation of the exchange prices (misleading trading transactions),
 - collusions or the collusive co-operation of trading participants or exchange traders among each other or with third parties,
 - influencing of settlement prices so that these do not reflect the fair market value.
 - publishing or disseminating news via the facilities of EEX or outside EEX of which the trading participants or the persons acting on behalf of them know or should have known that they are false or misleading and which are likely to give, false or misleading signals as to the supply of, demand for or the price of the products traded at the markets of EEX Group.

¹ Regulation (EU) No. 1227/2011 of the European Parliament and of the Council of 25th October 2011 on wholesale energy market integrity and transparency in its respective valid version.

² Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC in its respective valid version.

§ 5 Ban on Fictitious Orders

It is forbidden to enter orders into the trading systems of EEX which are not intended to lead to the conclusion of a transaction (fictitious orders).

§ 6 Ban on Misleading Transactions

The conscious conclusion of transactions which are suitable for setting incorrect or misleading signals regarding the supply or the demand for the products traded on EEX or establishing an artificial price level shall be banned.

§ 7 Collusions and Collusive Behaviour

- (1) Any collusive co-operation of trading participants or exchange traders among each other or with third parties which is suitable for influencing trading on EEX shall be banned.
- (2) The conclusion of collusive transactions and internal transactions concluded by trading participants shall not be permitted unless these are expressly permissible as an exception according to the more detailed provisions of the Rules and Regulations of EEX. Sentence 1 shall be applied accordingly with regard to other behaviour which constitutes a circumvention of this provision.

§ 8 Establishment of Settlement Prices

- (1) Any influencing of the settlement price and, in particular, any attempts at achieving a deviation of the settlement price from the fair market value (fair values) by means of the conclusion of transactions or by entering orders shall be banned.
- (2) All participants in the chief trader procedure in which the fair market value (fair values) is established by means of a survey by EEX shall convey their assessment free from any self-interest and to the best of their knowledge and belief.

3.3. Requirement for Transparency and Ban of Insider Dealings

§ 9 Requirement of Transparency

The trading participants support EEX in ensuring and further developing the transparency of the exchange and the information of the public beyond the pure exchange trading.

§ 10 Definition of Inside Information

“Inside information” is any information of a precise nature, which has not been made public, relating, directly or indirectly to a product traded on the markets of EEX Group or that concerns a trading participant in relation to such a product and which, if it were made public, would be likely to have a significant effect on the prices of that product or associated products or products referring thereto. This comprises also the respective information about announced but not yet executed buy or sell orders of clients.

§ 11 Ban of Insider Trading

Trading participants and exchange traders are prohibited to directly or indirectly buy or sell a product traded at EEX for own account or the account of a third party, by using insider information. This includes cancellations or modifications of an order, if the order has been placed before the inside information has been acquired. This also includes the transmission, modification or withdrawal of a bid with regards to primary auctions of emission allowances or any products referring thereto.

§ 12 Ban of Dissemination and Recommendation

- (1) Trading participants or their exchange traders are forbidden to disseminate inside information to third parties if they are not authorized by law to do so.
- (2) Similarly, a trading participant or its exchange traders are forbidden to recommend other persons or to incite other persons based on inside information to buy or sell products the information relates to or to cancel or modify orders that have already been placed.

§ 13 Exemptions

The bans according to Articles 11 and 12 do not apply as far as one of the exemptions of Article 3 paragraphs 3 or 4 REMIT apply to the concrete act.

3.4. Further Economic Crimes and Tax Offences

§ 14 Ban of Use of Facilities of EEX

Without prejudice to the criminal-law and tax-law provisions, trading participants and exchange traders are forbidden to use the facilities of EEX or the markets of EEX Group for the purpose of committing other economic crimes or tax offences.

4. Conduct Towards the Public

§ 15 Principle

- (1) In as far as a trading participant makes statements regarding its participation in the exchange towards the public, said participant shall be obliged to make such statements truthfully.
- (2) Moreover, trading participants shall be obliged to refrain from bringing EEX and the companies operating the exchange as well as the other markets of EEX Group into disrepute by consciously false statements.

5. Internal Regulation and Organisation

§ 16 Principle

The trading participant shall be obliged to establish internal regulations for itself in accordance with its personal circumstances and the extent of its business activities and to provide an organisational structure ensuring a proper participation in exchange trading and the settlement of exchange transactions.

§ 17 Organisation

- (1) The trading participant shall be obliged to organise its business operations in such a way that it fulfils all the legal and regulatory requirements for energy trading.
- (2) The adequate organisation of the trading participant shall comprise, in particular, the following – under consideration of the personal circumstances and the extent of the business activities of the trading participant:
 - that the trading participant has an internally established organisational structure,
 - that the scope of duties of the employees is clearly defined,
 - that the trading activities are monitored effectively internally and
 - that effective risk management with regulations and control mechanisms for the basic risks from participation in trading on the markets of EEX is available.

§ 18 Qualification of the Traders

The trading participants shall ensure that their traders are sufficiently qualified and enjoined to comply with the rules of the exchange, including this EEX Code of Conduct.

6. The Trading Participant's Conduct towards its Clients

§ 19 Principle and Scope of Application

- (1) The provisions of this section apply to the trading participants and exchange traders who carry out their clients' orders directly or indirectly on EEX.
- (2) The trading participants are obliged to treat their clients with the required professionalism and fairness and to resolve conflicts with client's interests adequately.

§ 20 General Rules of Conduct

- (1) Trading participants shall, in particular, be obliged
 - to provide their services in connection with trading on EEX with the required expert knowledge, care and conscientiousness in the interest of their clients at all times,
 - to endeavour to avoid conflicts of interests and to clearly explain the general type and origin of conflicts of interest to the clients prior to the execution of transactions for clients.
- (2) All the information which trading participants make accessible to their clients has to be honest, unmistakable and such information must not be misleading.

§ 21 Processing of Orders

Upon the execution of client orders a trading participant shall take precautions safeguarding that

- client orders are executed forthwith, in particular, independently from other client orders and own interests of the trading participants or forwarded to third parties,
- comparable client orders are executed or forwarded in accordance with the sequence in which they were received,
- the interests of all the clients involved are preserved in combining client orders,
- any misuse of information in connection with client orders which have not yet been carried out is prevented.

7. Instructions, Information and Penalties

§ 22 Instructions

The trading participants and exchange traders licensed to trade on the exchange are obliged to comply with the instructions and rules by the exchange supervisory authority, the management board of the exchange and the market surveillance department.

§ 23 Information Rights

- (1) The exchange supervisory authority and the market surveillance department are entitled to request information and the submission of documents from any trading participant and to carry out inspections in as far as this is required for the performance of their tasks.
- (2) The exchange supervisory authority and the market surveillance department can request information from everyone, they can also request the submission of documents and the surrender of copies, summon and interview persons in case there are indications substantiating the assumption that provisions or instructions under exchange law are violated or that there are other grievances which might affect the proper execution of trading on the exchange or the settlement of exchange transactions.
- (3) In addition to this, the statutory provisions and further specific provisions applicable on exchanges shall apply.

§ 24 Sanctions

- (1) In case trading participants and exchange traders licensed to trade on the exchange violate existing rules, fail to comply with instructions by the management board of the exchange or the request for information by the market surveillance department or the exchange supervisory authority, they can be excluded from trading on the exchange in its entirety or for certain partial markets or products by the management board of the exchange either temporarily or permanently in accordance with the more detailed provisions in the exchange rules. The same applies in the event, that supervisory or criminal prosecution authorities detect and inflict a penalty for a trading participant's or exchange trader's infringement of exchange law or capital markets law provisions.
- (2) Further, cases that fall within the scope of paragraph 1 may be filed with the Sanctions Committee. The Sanctions Committee has the competences to impose the trading participants and exchange traders with sanctions as stipulated in Section 22 of the German Exchange Act (*Börsengesetz*) and the Saxon Exchange Act Execution Ordinance³ (*SächsBörsDVO*) in their respective valid version.
- (3) This provision does not exclude sanctions on account of other provisions and/or by other authorities.

³ Ordinance by the Saxon State Ministry of Economic Affairs, Labour and Transport regarding the Execution of Exchange Law of 9 February 2012.

8. Final Provisions

§ 25 Entry into Force

The EEX Code of Conduct as well as any amendments thereto shall enter into force on the day after its publication unless a different time is provided for.



Implementation Regulation for the Order Transaction Ratio

The English version is for informal use only. The
German version is legally binding

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2. Preliminary note

According to Sect. 26a which has been inserted into the Exchange Act by the High Frequency Trading Act, Trading participants are obliged to maintain an adequate ratio between their order entries, order changes, and order deletions and their actually executed transactions (Order Transaction Ratio). EEX has to enact more detailed provisions regarding an adequate Order Transaction Ratio.

Section 39 of the Exchange Rules empowers the Management Board of EEX to stipulate an adequate Order Transaction Ratio considering the liquidity and volatility of the respective market including special situations of the order book and the means of order entry (manually or electronically).

Without prejudice to Sect. 39 of the Exchange Rules the Management Board of the Exchange hereby exercises this right by enacting this Implementation Regulation concretizing the adequate Order Transaction Ratio to be maintained by the Trading participants of EEX for financial instruments tradable at the respective derivatives markets of EEX and certain classes of these financial instruments, respectively.

3. Scope of Application

The Implementation Regulation shall apply to all Trading participants of EEX according to the following provisions and for all products tradable at the derivatives markets of EEX.

The provisions of Sect. 4 of this Implementation Regulation (Order Transaction Ratio) do not apply to entries made within the scope of auctions and for undertakings whose order entries serve as fulfillment of quoting obligations. Entries conducted and trades concluded via the Trade Registration Functionality of EEX are not considered.

4. Order Transaction Ratio

4.1. Determination of the Order Transaction Ratio

The Order Transaction Ratio (OTR) will be determined for each Trading participant on a monthly basis separately for each instrument tradable at EEX (product). The OTR of a Trading participant is adequate, if it does not exceed the allowed quantity of ordered contracts in a product (order times quantity) according to Sect. 4.2 for each executed transaction in a product within one month, whereas the OTR is also valid if no transaction in the respective product has been executed at all. The number of ordered contracts per product and month is calculated according to the following rules:

- Entry and Deletion of an order, respectively:
 - in each case the number of contracts ordered in the respective product
- Change of an order:
 - the number of contracts ordered in the respective product times two
- Entry of combined orders:
 - the number of contracts ordered in the respective product times two or times the number of orders, respectively, if all legs of the combined order relate to the same commodity or
 - the number of ordered contracts in the respective product per leg per commodity
- Quotes: two entries
- Measures conducted by the trading systems, e.g. deletion of orders, are not taken into consideration.

4.2. Parameters of the Order Transaction Ratio

Market segments	Products	OTR (Ratio of the quantity of ordered contracts to executed contracts)
Derivatives market	Power	20,000
	Emission Rights	10,000
	Coal	5,000
	Guarantees of Origin	5,000
	Other Products	5,000

4.3. Order Transaction Ratio due to short-term risks for proper exchange trading

Without prejudice to provisions 4.1 and 4.2 the Management Board of the Exchange reserves the right to adjust the instrument groups and the respective parameters of the OTR accordingly to mitigate any short-term risks for the orderly exchange trading that might occur.

These changes become effective immediately after a corresponding customer information has been sent out.

5. Final provisions

5.1. Changes to this Implementation Regulation

Without prejudice to provision 4.3 of this Implementation Regulation, changes to this Implementation Regulation become effective as of the beginning of the first calendar day of the calendar month following the date the amended version of this Implementation Regulation has been released on the EEX website and a corresponding Customer Information has been sent.

5.2. Entry into Force

This Implementation Regulation comes into force at the beginning of the first calendar day of the calendar month following the date this Implementation Regulation has been released and a corresponding Customer Information has been sent.



Mistrade Regeln
(Durchführungsbestimmung zu § 10
der Bedingungen für den Handel)



Mistrade Rules
(Implementation Regulation for § 10
of the Trading Conditions)

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2. Allgemeine Bestimmungen / General Provisions

2.1. Geltungsbereich / Scope of Application

Die vorliegende Durchführungsbestimmung regelt – unbeschadet der Regelung in § 9 der Handelsbedingungen – die Einzelheiten der Aufhebung von Geschäften und Aufträgen an den Spotmärkten der European Energy Exchange (EEX) sowie an den Terminmärkten der EEX durch die Geschäftsführung nach Maßgabe des § 10 der Bedingungen für den Handel an der EEX.

This implementation regulation specifies irrespective of the validity of § 9 of the Trading Conditions the details of the cancellation of transactions on the Spot Markets and the Derivatives Markets of the European Energy Exchange (EEX) by the Board of Management pursuant to § 10 of the Trading Conditions for the European Energy Exchange.

2.2. Aufhebung eines Auftrags von Amts wegen / Cancellation of Orders ex officio

Die Geschäftsführung kann einen Auftrag von Amts wegen insbesondere dann aufheben, wenn sie Kenntnis von einem Auftrag erlangt, welcher im Fall seiner Ausführung die Voraussetzungen eines Mistrades nach Abschnitt 3.1 erfüllen würde oder technisch bedingt ist, und der Handelsteilnehmer, der den Auftrag in das System der EEX eingegeben hat, nicht erreichbar ist oder keinen Zugang zu den technischen Systemen hat.

The Board of Management may cancel a transaction ex officio in particular if it obtains knowledge of an order that in case of its execution would meet the requirements for a mistrade according to 3.1 or it is caused by technical problems and the Trading Participant which has entered the order into the EEX system is not available or has no access to the systems.

2.3. Aufhebung eines Geschäftes von Amts wegen / Cancellation of Transactions ex officio

Die Geschäftsführung kann ein Geschäft von Amts wegen insbesondere dann aufheben, wenn eine Einwendung nicht geltend gemacht wurde und die Voraussetzungen eines Mistrades nach Abschnitt 3.1 vorliegen oder technisch bedingt ist und der Handelsteilnehmer keinen Zugang zu den technischen Systemen hat..

The Board of Management may cancel a transaction ex officio in particular if a request to cancel is not submitted and the requirements of a mistrade according to 3.1 are met or it is caused by technical problems and the Trading Participant has no access to the systems..

2.4. Bestätigung, Veröffentlichung von Preisberichtigungen / Confirmation, Publication of Price Adjustments

Die Geschäftsführung übersendet den Parteien des aufgehobenen Geschäfts eine Bestätigung, dass das betreffende Geschäft nach § 9 bzw. § 10 der Bedingungen für den Handel an der EEX in Verbindung mit dieser Durchführungsbestimmung von der Geschäftsführung aufgehoben wurde.

Die Geschäftsführung veröffentlicht erforderliche Preisberichtigungen mittels elektronischer Medien. Art und Umfang der Veröffentlichung bestimmen die Geschäftsführung.

The parties to the cancelled transaction will receive a confirmation transmitted by the Board of Management on the cancellation of the respective transaction executed by the Board of Management pursuant to Sections 9 and 10 of the Trading Conditions, respectively, in conjunction with this Implementation Regulation.

The Board of Management publishes the necessary price adjustments via electronic media. The Board of Management determines the extent and manner of such publications.

2.5. **Weitergehende Rechte / Further Rights**

Die Geltendmachung weitergehender Rechte zwischen den Parteien des Geschäfts bleibt unberührt.

The assertion of further rights between the parties of the transactions shall remain unaffected.

2.6. **Vertretung der Geschäftsführung / Representation of the Board of Management**

Die Geschäftsführung wird im Rahmen dieser Durchführungsbestimmung durch die Marktsteuerung der EEX vertreten.

Within the scope of this Implementation Regulation the Board of Management is represented by the EEX Market Supervision.

3. Besondere Bestimmungen für Mistrades / *Regulations for Mistrades*

3.1. Anwendungsbereich der Mistrade Regeln / *Scope of application of mistrade rules*

Die Vorschriften dieses 3. Abschnittes finden nur auf Geschäfte und Aufträge Anwendung, für die Mistraderegelungen gelten.

The rules of chapter 3 shall only apply to transactions and orders for which the mistrade function is available..

3.2. Voraussetzungen für die Aufhebung eines Geschäfts / *Prerequisites for the Cancellation of a Transaction*

(1) Die Geschäftsführung wird ein Geschäft zur Gewährleistung geordneter und fairer Marktverhältnisse aufheben, wenn

- ein Fehler im technischen System der EEX vorliegt oder
- ein objektiv erkennbarer, grober Irrtum eines Handelsteilnehmers bei der Eingabe eines Auftrags oder eines Quotes in das System der EEX (Fehleingabe) vorliegt und die Einwendung form- und fristgemäß geltend gemacht wird. Betrifft die Fehleingabe den Preis (Mistrade), muss der Preis des Geschäfts erheblich vom Referenzpreis bzw. von den fairen Marktverhältnissen abweichen.

(1) The Board of Management shall cancel and remove transactions from the electronic trading system in order to ensure orderly and fair market conditions, if

- *A technical fault occurs in the EEX system, or*
- *due to an elementary and objective observable mistake of an Trading Participant when entering the price of an order or quote into the EEX system (erroneous entry) and if the price of the transaction significantly differs from the reference price respective the fair market conditions and the objection is asserted in time and in proper form.*

(2) Ein Antrag auf Aufhebung von Geschäften, die in einer Auktion an den Spotmärkten der EEX geschlossen wurden, wegen einer Fehleingabe ist ausgeschlossen.

(2) A request for cancellation of transactions, which were executed in an auction at the Spot Markets of the EEX, because of an incorrect input is impossible.

3.3. Ermittlung des Referenzpreises / *Determination of the Reference Price*

Der Referenzpreis bestimmt sich nach den folgenden Regelungen:

- Der Referenzpreis entspricht grundsätzlich dem Preis des letzten unmittelbar vor der Fehleingabe zustande gekommenen Geschäftes.
- Ist ein Referenzpreis nach der vorstehenden Regelung nicht zu ermitteln oder entspricht der ermittelte Referenzpreis nicht den fairen Marktverhältnissen, bestimmt die

Geschäftsführung den Referenzpreis. Hierzu kann die Geschäftsführung aus dem Kreis der Handelsteilnehmer, die nicht an dem Geschäft beteiligt sind, drei fachkundige Personen, insbesondere Chefhändler, auswählen. Diese haben jeweils einen Marktpreis für das betreffende Geschäft zu ermitteln, wobei der Durchschnitt dieser Preise dann den Referenzpreis bildet.

The reference price shall be determined in accordance with the following provisions:

- *The reference price shall generally equal the price of the last transaction concluded directly before the erroneous entry.*
- *If a reference price cannot be determined according to the foregoing provision, or if any doubt exists as to whether the reference price determined is not in line with fair market conditions, the Board of Management shall determine a reference price. For this, the Board of Management shall select three competent persons (in particular chief traders) from among traders who are not involved in the transaction, each of whom shall indicate a market price for the transaction in question; the average of these three prices shall serve as the reference price.*

3.4. Verfahren zur Feststellung des Mistrades / Procedure of Determination of Mistrade

Die Börsengeschäftsführung entscheidet, ob ein Mistrade vorliegt. Ein Mistrade ist insbesondere gegeben, wenn der Preis des Geschäftes erheblich vom Referenzpreis bzw. den fairen Marktverhältnissen abweicht. Sie verneint die erhebliche Abweichung in der Regel, wenn der Preis des Geschäftes innerhalb einer Spanne liegt, die der für diesen Kontrakt festgelegten Mistrade-Spanne um den Referenzpreis entspricht. Die jeweils anzuwendende Mistrade-Spanne ist abhängig von der aktuellen Marktsituation. So ist für die Marktsituationen normal, fast und extended-fast je eine Mistrade-Spanne definiert. Die Mistrade-Spannen für den jeweiligen Kontrakt werden auf der EEX-Website, die aktuelle Marktsituation wird im Handelssystem und auf der EEX-Website veröffentlicht. Weiterhin kann die Börsengeschäftsführung in ihre Entscheidung auch die Einschätzung des Marktes einfließen lassen und kann dann einen Mistrade bejahen, wenn mindestens drei von maximal fünf befragten Händlern, die nicht an diesem Geschäft beteiligt sind, die Abweichung des Ausführungspreises vom Referenzpreis bzw. von dem von ihnen jeweils genannten Marktpreis als erheblich ansehen.

The Board of Management decides about a Mistrade. A Mistrade is inter alia if the price of the transaction in question deviates from the reference price respectively of the fair market conditions. As a rule it rejects the significant deviation if the price of the transaction is set in within a range, which corresponds to the Mistrade Range set around the reference price. The respectively applicable Mistrade Range depends on the current market situation. Thus, three Mistrade Ranges are defined, one for each market situation (normal, fast and extended fast market). The Mistrade Range for the particular contract as well as the market situation will be published on the EEX website.

The Board of Management might consider the evaluation of the market into its decision and approve the Mistrade, if a minimum of 3 and a maximum of 5 questioned traders, not involved in the transaction, accept the deviation of the trade price with regards to the Reference Price respectively their agreed market price if it is considered to be accepted by them.

3.5. **Form und Frist der Geltendmachung / Form and Time Limit of Assertion**

- (1) Die Einwendung kann nur von der Partei des beanstandeten Geschäfts geltend gemacht werden, die die Fehleingabe verursacht hat. Die Einwendung ist unverzüglich gegenüber der Geschäftsführung, vertreten durch die Marktsteuerung der EEX, per Telefon (+49 (0) 341-2156-222) zu erheben.
- (2) Die Einwendung gilt als unverzüglich erhoben, wenn sie binnen 5 Minuten, bei Agrarprodukten binnen 30 Minuten nach Geschäftsabschluss erfolgt.

(1) The assertion of a Mistrade may only be made by the party involved in the relevant transaction who entered the mistrade. An assertion shall be made without delay after execution by contacting the Board of Management, represented by EEX Market Supervision (Tel.: +49 (0) 341 – 2156 – 222) by telephone.

(2) The assertion is made without delay, if it is disclosed within 5 minutes or in case of agriculture derivatives transactions within 30 minutes after execution of the transaction.

3.6. **Aufhebung / Cancellation**

- (1) Die Aufhebung eines Auftrags erfolgt durch die Herausnahme des Auftrags aus dem System der EEX.
- (2) Die Aufhebung eines Geschäftes erfolgt durch die Löschung des Geschäftes oder die Eingabe eines Gegengeschäftes zu dem Fehleingabepreis in das System der EEX.
- (3) Ein Geschäft, das aufgrund einer durch ein aufgehobenes Geschäft ausgelösten Stop-Order zustande gekommen ist, kann von der Geschäftsführung durch die Eingabe eines Gegengeschäftes zu dem Preis des ursprünglichen Geschäftes aufgehoben werden. Bei kombinierten Aufträgen (insbesondere Spread Aufträge) kann auch das mit dem aufgehobenen Geschäft in der Ausführung verbundene Geschäft aufgehoben werden.

(1) The order which has to be cancelled shall be taken out of the EEX system by the Board of Management.

(2) The cancellation of the transaction occurs by cancellation of the transaction or the entry of a countertrade according to the Mistrade price into the system of the EEX.

(3) A transaction which results from a through a cancelled transaction triggered stop order, might be notified by the Board of Management by an entry of a countertrade according to the price of the original transaction. With combined transactions (i.e. spread orders) can also the transaction linked with the cancelled transaction be cancelled.

4. Kosten / Costs

Dem Handelsteilnehmer, der eine Fehleingabe getätigt hat, wird ein Bearbeitungsentgelt nach näherer Bestimmung des Preisverzeichnisses in Rechnung gestellt. Die für das aufgehobene Geschäft entstandenen Entgelte werden storniert.

The Trading Participant that has made the erroneous entry will be charged with a handling fee according to the Price Lists of the EEX Groups. The fees arising from the cancelled transaction are reversed.



Technical Implementation Regulations (Implementation Regulation pertaining to § 19 of the Exchange Rules of European Energy Exchange)

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2. Definition

2.1. Network in the Electronic Trading System

The Network of the electronic trading systems used by the European Energy Exchange (“EEX”) - EUREX T7, ComXerv of Deutsche Börse AG (DBAG) and the Trayport® Exchange Trading SystemSM (ETS) provided by Powermext (PXW) via the PEGAS cooperation - includes the entirety of all hardware elements gathered from each Network node as well as all necessary components for the connection of the Network nodes (leased lines for telecommunications, etc.) which form the technical basis for the implementation of trading on EEX.

If the trading participants select an alternative connection for their access to a system (cf. subsection 2.3), which is solely based on the internet or a combination of leased line and internet, the EEX Network shall not include the internet connections.

2.2. EDP system

In addition to the network of the respective trading system, the EEX EDP system also comprises the operation-ready installed application of the exchange or corresponding components in the participant’s trading systems.

2.3. Access alternatives

Access alternatives are options for the technical connections between the EEX network and the member front-end systems of the trading participants. The access alternatives outlined in this section can also be ordered and operated by the customer in combination with each other.

2.3.1. Network access

Trading participants can choose between the following alternatives for connection to the EEX trading systems:

Depending on the respective system, EEX provides several network access types which can be used in combination with the corresponding connection options in order to ensure access to the exchange systems.

Access types:

- Leased lines: Connections are provided with service-oriented bandwidths on physical lines.
- iAccess (VPN): A point-to-point connection is established via the public internet with an IP-Sec encoded tunnel between the participant’s network and an access point of the exchange (virtual private network - VPN).
- Native Internet: The connection is established via an internet connection which is not encoded specifically and can be used in combination with services which use their own, self-contained encryption mechanism for the data transfer (e.g.: Eurex Trader GUI, Common Report Engine)

Access options:

- **Standard connection (2 leased lines):** This access option will reasonably be switched with separate routes or, alternatively, it is leased from two different providers.
- **Combined:** In the case of the “combined” option, the trading participant’s access is established via a leased line and an internet back-up connection whose technical design corresponds to an internet connection with iAccess. In the event of a failure of the leased line, the internet is available as an alternative for the connection to the EEX system. Failover is effected automatically.
- **iAccess:** In the case of iAccess, the trading participant’s access is exclusively effected via the internet. The selection of the provider and the implementation of the connection lie within the responsibility of the trading participant. Availability and performance are determined and ensured by the internet provider selected by the trading participant. EEX will technically reduce the data throughput which is theoretically possible via the internet to the bandwidth of the other access alternatives in order to ensure comparable access times to the EEX system for all access alternatives.

A Member Front-End System has to be installed at the trading participant. EEX, in turn, ensures the internet accessibility of the exchange with a sufficient availability and corresponding security, authentication of the trading participants and a firewall infrastructure.

Trading participants with the clearing status of Direct Clearing Members (DCM) and General Clearing Members (GCM) are exclusively connected to the systems of EEX via the Standard or Combined options.

2.3.2. Service-oriented channels on leased lines/VPN connections

Depending on the trading system used, certain services are available with a specific bandwidth on leased lines and/or VPN connections with the help of separate, service-oriented channels.

2.3.3. Access version for customers

- **EUREX T7:** The trading participant’s access to a graphical user interface (Eurex T7 Trader GUI, Eurex WebTrading Service) is established via the internet or the service-oriented channel on a leased line/VPN connection. At the trading participant, one work station is required for each workplace. This work station is connected to a multi-member front-end system operated by EEX via the internet. A firewall concept and a personal secure ID token, which has to be used at the trading participant and is provided to the trading participant by EEX for every trader, and the use of certificates protect the EEX trading system against unauthorised third-party access. If several users are connected to the trading system, one token per user is required for simultaneous access. This token is not specific to the work station.
- **WebAccess to ComXerv:** The trading participant is usually connected to the ComXerv front-end (Comtrader) via the internet. On the part of the trading participant, one work station is required for each workplace. This work station is connected to a multi-member front-end system operated by EEX via the internet. A firewall concept and a personal access code (RACF-ID with password), which EEX provides to the trading participant for every trader, protect the EEX trading system against unauthorised third-party access.
- **EEX TT Screen with access to the DBAG trading systems:** EEX can provide trading participants wishing to trade via EEX TT Screen with a simple access version. The EEX TT Screen is provided as SAAS solution in cooperation with Trading Technologies Incorporated, a world leading enterprise in the field of high performance trading platforms. The EEX

TT Screen is connected via an internet connection which the customer itself has to provide with the data processing centre of Trading Technologies which is directly connected with the trading systems of DBAG.

- EEX GlobalVision PortalSM with access to the DBAG trading systems: Customers operating their own Trayport[®] Trading GatewaySM can use the market integration into their Trayport[®] Trading GatewaySM via the direct connection to the GlobalVision PortalSM provided centrally by Trayport[®]. Responsibility for the establishment, installation and configuration (e.g. product mapping) of the technical infrastructure consisting of the Trayport[®] Trading GatewaySM, the Trayport[®] Frontend, the Trayport[®] GlobalVision PortalSM Translator and the technical network connection rests exclusively with the trading participant. The EEX GlobalVision PortalSM is always cleared by Trayport[®] for defined versions of the Trayport[®] Trading GatewaySM Server and the Trayport[®] GlobalVision PortalSM Translator, separate clearance by EEX is not required.
- PEGAS Direct Screen and customer-operated (own) Trayport[®] Trading GatewaySM with access to the Trayport[®] Exchange Trading SystemSM (ETS): The corresponding rules and regulations of PWX apply with regard to the connection to the Trayport[®] Exchange Trading SystemSM (ETS) via the PEGAS Direct Screen. The connection is established directly with Powernext (system provider).
- Pegas OTC Registration: Powernext offers the Pegas customers a solution for the registration of transactions; the corresponding rules and regulations of PWX apply.

2.3.4. Trayport[®] Trading GatewaySM

Trayport[®] Trading GatewaySM is an application by Trayport Ltd. which permits trading via brokers or market platforms including the EEX Spot and Derivatives Market via a member front-end. In this context, the different markets can be integrated / aggregated within one screen for the trader. As an interface between the Trayport[®] Trading GatewaySM and the EEX trading systems (EUREX T7/ComXerv), the Software Trayport[®] GlobalVision PortalSM Translator software, which was developed by Trayport[®], is required for connection to the GlobalVision PortalSM provided by EEX.

2.3.5. Trayport[®] GlobalVision PortalSM

Trayport[®] GlobalVision PortalSM is a Trayport Ltd. application operated by EEX which enables trading participants using the Trayport[®] Trading GatewaySM application to access the EEX trading systems (EUREX T7 / ComXerv). In this process, the connection to the EEX GlobalVision PortalSM is entirely created via Trayport[®] software products, product mapping for which is exclusively carried out in the Trayport[®] software products.

2.4. Member Front-End Installation

A member front-end system consists of one or several computers (several workstations) facilitating trading and clearing on EEX and input devices and network components via which integration into the EEX network is effected. Furthermore, the member front-end installation comprises all the components required in order to maintain the member's internal network connections (e.g. gateways, routers, etc.) in as far as such do not lie in a network area reserved for EEX ("logical network"). Further hardware elements are not part of the member front-end installation but can be connected to it in as far as these fulfil the interface requirements established by EEX and are registered at EEX in as far as required.

Several trading participants can trade on EEX by means of a common Member Front-End System (Multi Member Front-End System). In such cases, EEX increases its requirements for availability. A Multi Member Front-End System must be installed as a 2-LAN configuration. The connection of workstations to a Multi Member Front-End System lies within the sole responsibility of the trading participant. EEX does not assume any responsibility for the availability and performance of the Multi Member Front-End System.

2.5. Logical network

In addition to the EEX Network, the Logical Network of EEX includes all components at the exchange participant's site which are connected to the Network for technical reasons provided they are located in a Network area reserved for EEX.

2.6. Data transmission equipment

Telecommunication within the EEX Network is effected by means of data transmission equipment consisting of access points, routers and leased lines. The connection of a Member Front-End System or a Multi Member Front-End System shall always be made via an access point.

2.7. Quote machines

Quote machines are automatic quotation systems for futures. On the basis of pricing information and additional parameters determined by the trading participant, quotes are automatically generated and channelled into the EDP system of EEX.

2.8. Electronic Eyes

Electronic Eyes are computer programs which continuously receive market prices of products traded on the exchange from the EEX system and evaluate such market prices. As soon as the price of an order which is received by the Electronic Eye lies within the range previously set by the trading participant, the Electronic Eye automatically generates an order which is then channelled into the trading system of EEX through the programmable interfaces of EEX to facilitate its execution.

2.9. Order Routing Systems

Order Routing Systems are electronic order forwarding systems which are used by trading participants to transmit exchange orders, i.e. exclusively for the entry, modification and deletion of exchange orders. Order Routing Systems may be connected to the Member Front-End System via a defined interface so that the orders transmitted via this system can be directly channelled into the EEX trading system.

2.10. Systems for Algorithmic Trading

Systems for algorithmic trading are computer algorithms that determine single order parameters automatically without being Quote Machines, Electronic Eyes or Order Routing Systems. Order parameters within the meaning of clause 1 are particularly decisions about whether the order is to be

initiated, the point in time, the price or the quantity of the order or how the order is adapted with limited or no involvement of humans at all, after its submission.

2.11. Third-Party Software (“Third-Party-Software”)

Third-Party Software is software which is not provided by EEX and connected by a trading participant to the programmable interface of the Member Front-End System of EEX.

2.12. Location

Location within the meaning of this provision means the entirety of all business premises occupied by a trading participant within a building in which Member Front-End Installations have been installed for the purpose of active trading on the EEX markets. Business premises in which Member Front-End Installations are only employed in emergencies or for the purpose of engaging in technical simulated tests are not deemed to constitute a location within the meaning of this provision.

3. Access to the EEX-System

3.1. Requirements

Upon granting of admission to participation in energy trading, the trading participant is connected to the trading system in the case of the line-bound connection alternatives.

If the trading participant chooses a web-based access version, such trading participant, after having been granted admission to participate in the electronic trading system, may only be connected to the system of EEX after they have realised the connection via internet by means of an internet provider.

All connection alternatives to the trading system require compliance with the Exchange Rules and Regulations of EEX and with the technical standards of these Implementation regulations with respect to hardware, software, the Network and the configuration thereof and that by the establishment of such connection, the system of EEX – in particular trading and clearing - shall not be compromised, be it on the basis of location or any other technical grounds.

EEX can measure the load generated by the individual Member Front-End Installations on the EDP system of EEX and, if applicable, limit these with the help of technical measures if this is required for reasons of system security or other serious reasons. Each trading participant undertakes to ensure that its institution is entitled to connect a Member Front-End Installation at its location to the EEX system and to execute trading and clearing on EEX according to the national laws and regulations effective in the country of its location.

3.2. Access to Member Front-End Installations

All Member Front-End Installations if not employed in emergencies or for the purpose of participating in technical simulations must, in principle, be installed at the locations of the trading participant and should be configured redundantly in order to increase failure safety.

Upon receipt of a written application from a trading participant or from an applicant for exchange admission, the EEX Management Board may permit the installation and operation of a Member Front-End Installation at the business premises of a third party engaged by the trading participant or applicant for exchange admission to operate such Member Front-End installation if the application of and compliance with the provisions of the Exchange Rules and Regulations of EEX and supplemental conditions thereto are ensured, in particular, in respect of such third party. By means of appropriate agreements concluded with the third party, the trading participant or applicant for exchange admission shall ensure that the third party grants EEX the right to inspect the business premises of such third party at all times for the purpose of determining compliance with the requirements for the installation and operation of a Member Front-End Installation.

3.3. Access of several Member Front-End Systems

A trading participant may apply for the connection of several Member Front-End Installations. EEX may limit the number of Member Front-End Installations applied for by a trading participant to the extent that such action is necessary for reasons relating to system performance or for other serious reasons.

3.4. Access to Quote Machines / Electronic Eyes

Upon special application by a trading participant, the EEX Management Board may permit the connection of quote machines or Electronic Eyes to the EEX system through the programmable interfaces made available via the Member Front-End Installation provided that the trading participant continuously ensures that the quote machines and/or Electronic Eyes

- are installed at the locations of the trading participant admitted to derivatives trading and
- are given parameters which correspond to, at least, one person admitted to EEX for the trading participant (exchange trader) and
- are checked by at least one such person during the course of the trading day.

3.5. Connection of Systems for Algorithmic Trading

(1) Before connecting systems for algorithmic trading to the systems of EEX through the programmable interfaces made available via the Member Front-End Installation, the Management Board of the Exchange has to be notified by the respective exchange participant. The notification has to include a detailed and comprehensible description of functionalities used and the trading strategies pursued by the system for algorithmic trading. The notification has to state the names and the respective contact details of the exchange traders that will be responsible for the respective system for algorithmic trading. With the notification, the exchange participants have to confirm,

- that the respective system for algorithmic trading
 - is sufficiently resilient, come with sufficient capacity and are subject to adequate trading thresholds and upper trading limits;
 - avoid the submission of erroneous orders or a functionality of the system that causes dysfunctions of exchange trading or could contribute thereto;
 - cannot be used for a purpose that violates European or national laws against market abuse or the rules of the exchanges it is connected to;
 - is continuously parameterized by an exchange trader admitted for the exchange participant at the exchange and controlled by an exchange trader admitted for the exchange participant at the exchange,
- that the exchange participant
 - has efficient emergency arrangements at its disposal, to deal with unforeseen disruptions in its systems and safeguard,
 - has completely inspected and monitored its systems properly.
 - has safeguarded, that records about each change in the computer algorithm are kept.

(2) The Management Board of the Exchange will permanently or temporarily, completely or partially prohibit the use a system as described in Sect. 2.10, if one of the prerequisites mentioned in paragraph 1 did not exist or ceased to exist afterwards, the exchange participant did not comply with the requirements according to paragraph 1 or the duty of disclo-

sure according to Sect. 3 paragraph 4 sentence 4 Nr. 5 of the German Exchange Act, or a disturbance of the proper exchange trading or the proper execution of exchange trades impends for other reasons. The partial prohibition of the usage may be effected telephonically. The exchange participant has to turn-off immediately the system for algorithmic trading concerned if its use is prohibited permanently or temporarily, completely or partially.

3.6. Connection of Order Routing Systems

After making written application and receiving approval thereof from the Management Board of EEX, a trading participant is entitled to connect an Order Routing System via a defined interface if:

- before being channelled into the trading system, the transmitted orders pass an electronic filter which is installed in the Member Front-End Installation, which checks and releases orders for further transmission according to parameters defined by the trading participant;
- the filter has been allocated an approved exchange trader who is responsible for the definition of parameters, the control and monitoring of the filter, and who can prevent the forwarding of orders at any time;
- the trading participant has informed the Management Board of EEX of the personal user ID of the allocated exchange trader in writing;
- the Order Routing System is used exclusively for the transmission of client orders,
- in those cases in which third parties not admitted to the exchange are able to enter orders using the Order Routing System, the number, operating location and the identity of the user of the input devices connected to the Order Routing System must have been communicated to the Market Surveillance of EEX. This also applies to changes with respect to such input devices. The trading participant must oblige the user to comply with the Exchange Rules and Regulations. Should the user fail to do so, the trading participant shall immediately prevent it from continuing to use the Order Routing System.

4. Technical Requirements

The technical requirements presented in the context of these Implementation Regulations are binding on all trading participants; divergence from such regulations shall require the written consent of EEX. EEX may at any time examine the configurations and Network parameters of the trading participants and require the correction of divergent values. In the event that changes become necessary, the trading participant is required to institute such technical modifications to its Member Front-End Installation that may be laid down by EEX and to effect such changes within any timeframe that may be imposed by EEX.

Upon request from EEX, the trading participant is obligated to grant EEX access to the technical infrastructure employed by it for establishing a connection with the EDP system of EEX to facilitate the execution of technical inspections by EEX. Such access and/or any right of inspection shall not extend to customer related data.

5. Hardware

5.1. Requirements

EDP equipment which ensures the orderly execution of trading and clearing via the respective system has to be available for the trading participant.

5.2. Admissible hardware platforms

EEX shall specify permitted hardware platforms for equipping the member front-end installation connected to the trading and/or clearing system.

5.3. Approval of hardware configurations

All hardware configurations planned by a trading participant must be approved by EEX – after submission of the configurations questionnaire provided by EEX and to be filled out by the trading participant – prior to their installation; the same shall also apply with regard to modifications.

5.4. Responsibility for operation

The operation of the member front-end installation and, if applicable, the Trayport Global Vision Gateway and the Trayport[®] GlobalVision PortalSM Translator lie within the sphere of responsibility of the trading participant. By means of the orderly operation of its member front-end or its Trayport[®] GlobalVisionSM installation, the trading participant shall guarantee that trading and clearing on EEX shall not be compromised either in its process or in its functionality on account of such operation.

The accesses to and the tools for the Pegas market are operated by Powernext, which also holds responsibility for these. The respective conditions of Powernext apply.

6. Software

6.1. EEX software

EEX grants the trading participant a revocable, non exclusive right to use the application software. This right to use can be substantiated by further agreements between EEX and the trading participant, if applicable. A trading participant, or any third party contracted by the trading participant, must not modify the version of the application software as it is made available by EEX and must not alter or copy such software without the prior consent of EEX. The foregoing shall not apply to the production of copies of the application software if such copies are produced solely for data storage purposes. The trading participant must not delete or alter any proprietary notices (including but not limited to copyright and trademark notices). Every trading participant is responsible for the installation of the application software on the components of its Member Front-end Installation.

6.2. Member Operating System Software

EEX shall specify each version of the operating system software valid at the time, including all necessary components used for operating the current version of the EEX software on the Member Front-End Installation.

6.3. Registration of Third-Party Software

If trading participants intend to connect Third-Party Software to the programmable interface of the EEX system, these trading participants are required by EEX to assign an electronic identifier to this Third-Party Software before connecting it to the programmable interface, observing the instructions of EEX as to the systematic compositions of such identifier and to have the Third-Party Software as well as the EEX Universal Communicator registered at EEX.

The trading participants shall ensure that the identifier assigned to the Third-Party Software will be sent to the EEX system together with each transmission when the registered Third-Party Software communicates with the EEX system via the programmable interface. In case the EEX system is impaired by the Third-Party Software connected to the programmable interface, EEX may prohibit the connection of such software with immediate effect.

6.4. Responsibility for using Third-Party Software

In as far as the application software made available by EEX shall include interfaces for front and back office systems, the trading participant itself is responsible for the programs which use these interfaces and shall ensure functioning of the software in line with the rules and regulations of EEX.

6.1. EEX TT Screen

The access to the EEX TT Screen is provided by EEX. The terms of use stated in the End User Licence Agreement (EULA) agreed by the trading participant before installation of EEX TT Screen shall apply.

7. Authorisation Level of Data Transmission Equipment

A trading participant may not use the data transmission equipment which serves the purpose of trading and clearing on EEX for any other purposes without the prior written approval of EEX. However, EEX reserves the right to also use its data transmission equipment for trading and clearing on other institutions.

8. Transmission Alternatives for Telecommunications

8.1. Leased Lines

8.1.1. Responsibility for the leased lines

EEX shall control the leased lines for the entire physical Network of EEX. Installation and operation of the leased lines for telecommunications which are necessary for the connection between the Member Front-End Installation and EEX shall be carried out by EEX or may be contracted out by EEX.

8.1.2. Range of leased lines

EEX shall make available a connection to the trading participant's location. The precondition for this is that the transmission paths and types of connection supported by EEX are available for a trading participant, and can be established and operated at normal conditions and adequate expense while ensuring that the security and quality standards set forth by EEX are attained.

8.1.3. Access to the EEX Network

In the case of Premium Access, Member Front-End Installations must be connected to the EEX network by means of at least two leased lines, while, in the case of Combined Access, they must be connected by means of one leased line. EEX decides to which access point a Member Front-end Installation shall be connected.

8.1.4. System reliability

In order to increase failure safety trading participants can combine several connection alternatives for connection to the EEX Network. In the case of Premium Access, Member Front-End Installations can be connected to the EEX Network by means of more than two dedicated lines with the object to improve failure safety.

8.1.5. Number of leased lines

In deviation from the above regulations, the EEX Management Board can set a minimum and maximum number in respect of the leased lines which a trading participant has applied for to have its Member Front-End Installation connected to the EEX system to the extent that such action is necessary for reasons relating to system performance or for other reasons.

8.2. Member Access via the Internet

8.2.1. Responsibility of the trading participants

If a member accesses the system via the internet, the trading participant itself is responsible for the selection of the internet provider as well as for the implementation of the connection to the EEX Network. EEX does not assume any responsibility for the availability and performance of the aforementioned connection alternatives.

This applies accordingly in case of the use of the EEX TT Screen.

8.2.2. Internet provider

Trading participants are obliged to choose an internet provider which provides, on the part of the participant, a suitable connection to the EEX Network via the internet.

8.2.3. Connection to the EEX Network

If the connection to the EEX Network is made via the internet, EEX will decide to which access point such connection shall be made.

9. Network Parameters for the Connection Alternatives

9.1. Realisation of trading participation

The software for the Member Front-End Installation made available or supplied by EEX and properly installed by the trading participant contains all necessary connections to effect exchange participation.

9.2. Determination of network parameters for leased lines or the internet

EEX specifies Network parameters to ensure the security of the Network and to protect the Member Front-End Installation. In particular, EEX ensures that

- a trading participant's computers which are not components of the Member Front-End Installation may only access the trading system of that particular trading participant and do not reach other computers within the Network of EEX,
- unauthorised access by a Member Front-End Installation to the computers of EEX is not possible,
- communication between various trading participants by means of the Network of EEX is not possible.

9.3. Compliance with the network parameters

Upon installation of the Member Front-End systems and Network components, the trading participant shall set the network parameters specified by EEX for the respective connection alternative.

9.4. Reservation of network areas

EEX reserves network areas for its Logical Network. The network areas selected by EEX must be used for participation in EEX. Within its own Network, each trading participant may use any network areas that are not reserved for EEX.

9.5. Node numbers/Node names

EEX shall assign node numbers and node names for the entire Logical Network. Within the Network of EEX, only the nodes authorised by EEX by assignment of node numbers may communicate with the EEX trading system of EEX.

Consequently, no computer that has not received a corresponding node number from EEX may be connected by the trading participants in the Network areas reserved by EEX. The transfer of the assigned node number and the related node name to a computer with a function other than that as applied for is not permitted.

10. Emergency Plans

10.1. Responsibility

Each trading participant is responsible for taking appropriate measures for emergency planning and management.

10.2. Emergency computer centre

The establishment of an inactive emergency computer centre (computer back-up centre) and, if necessary, its connection to an access point via a leased line are optional for the trading participants. In such case, the costs incurred by EEX shall be charged to the trading participant.

10.3. Connection of two locations

If a trading participant has two or more locations, it may equip any two locations with a connection in order to ensure breakdown protection in the event of a disruption of the connection between one location and an access point.

11. Staff

Each trading participant is obligated to maintain a sufficient number of qualified personnel at all times during the exchange trading and clearing hours and to guarantee the availability by telephone in order to ensure the orderly operation of the components of the EDP system of EEX which are in the control of the exchange participant, particularly, in order to be able to take the necessary measures at the instruction of EEX in the event of a technical disruption. In addition, EEX must be provided with the name of a person to be contacted in the event of a technical disruption or with proof of a service agreement with a third party.

12. Costs

12.1. Hard- and software

The costs for the purchase, installation and maintenance of all hardware and software used by it shall be borne by the trading participant. The application software referred to in sec. 5 para. 1 shall be made available by EEX at no additional cost.

12.2. Internet

The internet is not a component of the Network of the electronic trading system. The trading participant itself is responsible for the selection of the internet provider as well as for the implementation of the connection. Correspondingly, the trading participant's costs arising for the internet shall be borne by the trading participant.

12.3. Costs of EEX

In accordance with the price list of EEX in its respectively valid version, EEX AG shall charge fees for the one-off and running costs for the establishment and operation of the telecommunications network of EEX, in particular, the expenses for the provision of the connection alternative selected by the respective trading participant concerned as per subsection 2.3.

13. Technical Problems

13.1. Measures

In the case of technical problems, the EEX Management Board may suspend or restrict access to the EDP system for one, several or all trading participants regardless of whether such problems appear at EEX or at one, several or all trading participants. The EEX Management Board may resume or re-commence trading after an interruption even if one or several trading participants still do not have access to the EEX system if, in the opinion of the Board of Management of EEX, an orderly market continues to exist or is possible again.

13.2. Information for the trading participants/Obligation of the trading participants to co-operate

Trading participants are obligated to inform themselves of technical requirements and changes by means of the media made available by EEX. EEX shall, to the extent possible, inform the trading participants of any technical problems without undue delay. In case of technical problems of the EEX system, trading participants are obligated to grant access to their locations in which Member Front-End Systems are installed to EEX or third parties commissioned by EEX for problem resolution.

13.3. Suspension of derivatives trading

In the event of the suspension of trading on the basis of technical problems, EEX shall place the exchange system on “halt” status so that no more inputs can be effected by the trading participants in the system.

The resumption of trading after a trading suspension pursuant to the foregoing regulation shall begin with a new Pre-trading period. Subsequently, trading will proceed in line with the general provisions of the Trading Conditions.

EEX shall inform the trading participants of the further schedule for the trading period without delay.

13.4. Alternative trading and clearing forms

In the event that the EEX system is non-functional for a longer period of time, the EEX Management Board shall declare a technical emergency and shall, if necessary, determine alternative trading and clearing methods. Only in case of intentional misconduct or gross negligence shall EEX be liable for damage caused to a trading participant upon using alternative trading methods, particularly, for cases of damage due to an erroneous entry and/or processing of data effected by EEX or European Commodity Clearing AG (ECC) on behalf of trading participants when using alternative trading methods provided the damage results from a culpable infringement by EEX or ECC of fundamental duties incumbent on them/it when applying alternative trading and clearing methods. In such case, the liability of EEX or ECC in cases of ordinary negligence shall be limited to the amount of damage typical of such contract with regard to the provision of alternative forms of trading and clearing.

13.5. “Trading on Behalf”

In the event of the default of the participant trading system or of other EDP systems of the trading participants, EEX can effect entering of data into the electronic trading system for such trading participant on its behalf. In this case, EEX will check the legitimation for entering data with the help of the active user code communicated to it. Section 14 shall apply accordingly with regard to the liability of EEX.

13.6. Information rights

EEX may require the exchange participants to provide information and submit documents if such measure is necessary in order to prevent or solve technical problems.

14. Liability

14.1. Force majeure

EEX is not liable for cases of damage caused by a disruption in its services as a result of any force majeure, riot, and events resulting from war or natural disasters, or resulting from other circumstances beyond the control of EEX (e.g. strikes, lock-outs, interruption of transport or orders of domestic or foreign governments).

14.2. General liability

With regard to cases of damage suffered by a trading participant in connection with its use of trading systems of EEX or the use of the connecting software or interfaces of EEX to its trading systems or the use of EDP devices of EEX (e.g. tokens), EEX shall only be liable to the extent that intentional misconduct or gross negligence of its bodies or third parties assisting in its performance can be proven unless such damage resulted from a culpable breach of its principal duties by EEX. In such case, the liability of EEX for cases of ordinary liability shall be limited to the amount of damage typically foreseeable upon the conclusion of the contract.

Apart from this, EEX shall not be liable for the completeness, availability and recentness of data which are transmitted to the trading participants on the basis of the chosen connection alternative via internet.

Beyond its scope of responsibility there is no liability of EEX on principle. EEX shall only be liable for cases of damage arising from an event originating from the sphere (hardware or third-party software) of a trading participant in as far as evidence of a culpable violation of essential obligations towards the respective trading participant on the part of its bodies or vicarious agents can be furnished.

14.3. Liability in connection with the Trayport[®] Trading GatewaySM and the Trayport[®] GlobalVision PortalSM Translator

EEX shall not be liable for Trayport[®] technical facilities and systems (hard- and software) which lie outside the logical network of EEX unless the trading participant is connected by means of the installation of the EEX GlobalVisionSM screen. In these cases, liability shall be based on sub-section 14.2.

EEX does not accept any liability for cases of damage which a trading participant sustains as a result of technical problems or of a partial or full non-usability of the Trayport[®] Trading GatewaySM and Trayport[®] GlobalVision PortalSM Translator or of the EDP devices used by it or in the event of disruptions of the data transfer.

The installation, set-up and configuration (such as e.g. product mapping) of the Trayport[®] Trading GatewaySM and Trayport[®] GlobalVision PortalSM Translator are carried out by each trading participant itself and at its own risk and under its own responsibility.

If an employee of EEX implements configuration settings on the participant's front-end or on components connected with it at the express wish of the trading participants concerned, any liability on the part of EEX shall be excluded. The trading participant shall, in particular, test the

configuration settings sufficiently before commissioning. In the event of physical injury, this shall only apply in as far as evidence of intent or gross negligence of its bodies or vicarious agents can be furnished unless the damage results from a culpable breach of principal duties by EEX.

14.4. Liability in connection with EEX TT Screen

EEX is not responsible for technical systems (hard- and software) of Trading Technologies with the exception of the EEX TT Screen. The liability in relation to EEX TT screen is ruled by the EULA, which is agreed between the trading participant or the respective user, respectively, and EEX.

14.5. Commissioning of third parties

EEX may in full or in part delegate the performance of the obligations assigned to it to third parties when it deems such delegation justified taking into account the purposes of these Implementation Regulations. Should EEX so delegate its duties, its liability shall be limited to the careful selection and instruction of the third parties retained by it. EEX, however, shall at the request of the trading participant, transfer to such trading participant any existing claims against third parties retained by EEX.

14.6. Third-party data and information

EEX shall not be liable for the accuracy, completeness, availability and up-to-date nature of the prices of underlying and other data it obtains from third parties.

Sächsisches Staatsministerium für Wirtschaft, Arbeit und Verkehr
Postfach 10 03 29 | 01073 Dresden

Commodity Futures Trading Commission
Division of Market Oversight
Three Lafayette Centre
1155 21st Street, NW
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Ihr/e Ansprechpartner/-in:
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Ihr Zeichen

Update European Energy Exchange application for Foreign Board of Trade (FBOT) status

Ihre Nachricht vom

Exhibit A-8

Aktenzeichen
(bitte bei Antwort angeben)
44-4151/6/3

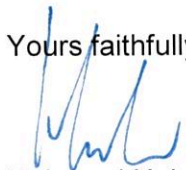
Dresden,
03. Juli 2016

Dear Sir or Madam,

The Saxon State Ministry for Economic Affairs, Labour and Transport as Exchange Supervisory Authority, with registered offices at Wilhelm-Buck-Straße 2, 01097 Dresden, Germany, hereby confirms that there have been no disciplinary or enforcement actions or proceedings brought against the European Energy Exchange - located at Augustusplatz 9, 04109 Leipzig, Germany - or any of its senior officers in the past five years. To the best of our knowledge, there have been no such proceedings brought against the European Energy Exchange ever since establishment.

Should you have any questions or concerns, please do not hesitate to contact us.

Yours faithfully,



Raimund Huber

Head of Division
Exchange Supervisory Authority

Hausanschrift:
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www.smwa.sachsen.de

Verkehrsbindung:
Zu erreichen mit den Straßenbahnlinien
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Haltestelle Carolaplatz

Kein Zugang für elektronisch signierte
sowie für verschlüsselte elektronische
Dokumente.



European Energy Exchange AG
Augustusplatz 9 | 04109 Leipzig | Germany

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September, 6th 2016

To whom it may concern

I, Reitz, Peter, acting Chief Executive Officer of the European Energy Exchange AG and I, von Rintelen, Wolfgang, acting Director of Legal & Compliance of the European Energy Exchange AG, hereby certify that I will notify the staff of the Commodity Futures Trading Commission (CFTC) in a timely manner should any of the representations made in connection with or related to the European Energy Exchange's application for registration as a Foreign Board of Trade (FBOT) cease to be true or correct, or become incomplete or misleading.

Yours faithfully,

Peter Reitz
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