Banking Act*

(*Gesetz über das Kreditwesen*)

Revised read-only version
Unofficial text

July 2009

* Translated by the Deutsche Bundesbank. This translation is not official; the only authentic text is the German one as published in the Federal Law Gazette (*Bundesgesetzblatt*).

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(*Gesetz über das Kreditwesen*)

Revised read-only version

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In the wording of the announcement of 9 September 1998 (Federal Law Gazette I, page 2776)

- as last amended by Article 2 of the Act of 25 June 2009 (Act to Implement the Prudential Supervisory Provisions of the Payment Services Directive (*Gesetz zur Umsetzung der aufsichtsrechtlichen Vorschriften der Zahlungsdiensterichtlinie*), also known as the Payment Services Implementation Act (*Zahlungsdiensteumsetzungsgesetz*)), Federal Law Gazette I, page 1522.

Table of contents

PART I

GENERAL PROVISIONS 8

DIVISION 1 CREDIT INSTITUTIONS, FINANCIAL SERVICES INSTITUTIONS, FINANCIAL HOLDING COMPANIES, MIXED FINANCIAL HOLDING COMPANIES, FINANCIAL CONGLOMERATES, MIXED-ACTIVITY HOLDING COMPANIES AND FINANCIAL ENTERPRISES 8

SECTION 1 DEFINITION OF TERMS 8

SECTION 1A TRADING BOOK AND BANKING BOOK 19

SECTION 2 EXCEPTIONS 22

SECTION 2A EXCEPTIONS FOR INSTITUTIONS BELONGING TO A GROUP 28

SECTION 2B LEGAL FORM 30

SECTION 2C HOLDERS OF MAJOR PARTICIPATING INTERESTS 30

SECTION 2D MANAGEMENT BODIES OF FINANCIAL HOLDING COMPANIES AND MIXED FINANCIAL HOLDING COMPANIES 34

SECTION 3 PROHIBITED BUSINESS 34

SECTION 4 BAFIN'S DECISION 35

DIVISION 2 FEDERAL FINANCIAL SUPERVISORY AUTHORITY (BAFIN) 36

SECTION 5 (REPEALED) 36

SECTION 6 FUNCTIONS 36

SECTION 6A SPECIAL FUNCTIONS 36

SECTION 7 COOPERATION WITH THE DEUTSCHE BUNDESBANK 37

SECTION 8 COOPERATION WITH OTHER AUTHORITIES 38

SECTION 8A SPECIAL TASKS RELATING TO SUPERVISION ON A CONSOLIDATED BASIS 41

SECTION 8B COOPERATION IN THE SUPERVISION OF FINANCIAL CONGLOMERATES 42

SECTION 8C DELEGATION OF RESPONSIBILITY FOR THE SUPERVISION OF GROUPS OF INSTITUTIONS, FINANCIAL HOLDING GROUPS AND INSTITUTIONS BELONGING TO A GROUP 43

SECTION 8D RESPONSIBILITY FOR SUPPLEMENTARY SUPERVISION AT CONGLOMERATE LEVEL 44

SECTION 9 CONFIDENTIALITY REQUIREMENT 45

PART II

PROVISIONS FOR INSTITUTIONS, GROUPS OF INSTITUTIONS, FINANCIAL HOLDING GROUPS, FINANCIAL CONGLOMERATES, MIXED FINANCIAL HOLDING COMPANIES AND MIXED-ACTIVITY HOLDING COMPANIES 47

DIVISION 1 OWN FUNDS AND LIQUIDITY 47

SECTION 10 OWN FUNDS REQUIREMENTS FOR INSTITUTIONS, GROUPS OF INSTITUTIONS AND FINANCIAL HOLDING GROUPS 47

SECTION 10A DETERMINING THE OWN FUNDS ADEQUACY OF GROUPS OF INSTITUTIONS AND FINANCIAL HOLDING GROUPS 62
SECTION 10B ADEQUACY OF OWN FUNDS OF FINANCIAL CONGLOMERATES 67
SECTION 10C ZERO WEIGHTING OF INTRA-GROUP EXPOSURES 71
SECTION 11 LIQUIDITY 73
SECTION 12 LIMITATION OF QUALIFYING PARTICIPATING INTERESTS, AND SHAREHOLDING RESTRICTIONS FOR E-MONEY INSTITUTIONS 73
SECTION 12A ESTABLISHMENT OF CORPORATE RELATIONSHIPS 74
DIVISION 2 LENDING BUSINESS 75
SECTION 13 LARGE EXPOSURES OF NON-TRADING BOOK INSTITUTIONS 75
SECTION 13A LARGE EXPOSURES OF TRADING BOOK INSTITUTIONS 76
SECTION 13B LARGE EXPOSURES OF GROUPS OF INSTITUTIONS AND FINANCIAL HOLDING GROUPS 78
SECTION 13C INTRA-GROUP TRANSACTIONS WITH MIXED-ACTIVITY HOLDING COMPANIES 78
SECTION 13D RISK CONCENTRATIONS AND INTRA-GROUP TRANSACTIONS OF FINANCIAL CONGLOMERATES 79
SECTION 14 LOANS OF 1.5 MILLION EURO OR MORE 81
SECTION 15 LOANS TO GOVERNING AND RELATED BODIES 82
SECTION 16 (REPEALED) 84
SECTION 17 LIABILITY 84
SECTION 18 BORROWER DOCUMENTATION 85
SECTION 19 DEFINITION OF "EXPOSURE" AND "LOAN" IN SECTIONS 13 TO 13B AND 14, AND OF "BORROWER" 85
SECTION 20 EXCEPTIONS TO THE OBLIGATIONS PURSUANT TO SECTIONS 13 TO 13B AND 14 ... 88
SECTION 20A COVERED BONDS 92
SECTION 20B RECOGNITION OF CREDIT PROTECTION INSTRUMENTS AS EXEMPTING EXPOSURES FROM REPORTING AND WEIGHTING REQUIREMENTS 95
SECTION 20C EXEMPTION FROM THE OBLIGATIONS PURSUANT TO SECTION 13 (3), SECTION 13A (3) TO (5) AND SECTION 13B (1) 95
SECTION 21 DEFINITION OF "EXPOSURE" AND "LOAN" IN SECTIONS 15 TO 18 96
SECTION 22 AUTHORITY TO ISSUE STATUTORY ORDERS ON EXPOSURES AND LOANS 98
DIVISION 2A REFINANCING REGISTER 99
SECTION 22A REGISTER-KEEPING ENTERPRISE 99
SECTION 22B KEEPING A REFINANCING REGISTER FOR THIRD PARTIES 100
SECTION 22C REFINANCING INTERMEDIARIES 100
SECTION 22D REFINANCING REGISTERS 101
SECTION 22E APPOINTMENT OF AN ADMINISTRATOR 102
SECTION 22F ADMINISTRATOR'S RELATIONSHIP WITH BAFIN 102
SECTION 22G ADMINISTRATOR'S TASKS 102

SECTION 22H ADMINISTRATOR'S RELATIONSHIP WITH THE REGISTER-KEEPING ENTERPRISE AND THE REFINANCING ENTERPRISE 103
SECTION 22I ADMINISTRATOR'S REMUNERATION 103
SECTION 22J EFFECTS OF ENTRY IN THE REFINANCING REGISTER 103
SECTION 22K CESSATION AND TRANSFER OF REGISTER-KEEPING ACTIVITIES 104
SECTION 22L APPOINTMENT OF A CREDITORS' TRUSTEE UPON THE INITIATION OF INSOLVENCY PROCEEDINGS 105
SECTION 22M ANNOUNCEMENT OF THE APPOINTMENT OF A CREDITORS' TRUSTEE 105
SECTION 22N LEGAL POSITION OF THE CREDITORS' TRUSTEE 106
SECTION 22O APPOINTMENT OF A CREDITORS' TRUSTEE IN THE EVENT OF IMMINENT INSOLVENCY 106
DIVISION 3 CUSTOMERS' RIGHTS 107
SECTION 22P REDEEMABILITY OF ELECTRONIC MONEY 107
DIVISION 4 ADVERTISING, AND INSTITUTIONS' DUTIES OF INFORMATION 107
SECTION 23 ADVERTISING 107
SECTION 23A GUARANTEE SCHEME 108
DIVISION 5 SPECIAL DUTIES OF INSTITUTIONS, THEIR SENIOR MANAGERS, FINANCIAL HOLDING COMPANIES AND MIXED-ACTIVITY HOLDING COMPANIES 109
SECTION 24 REPORTS 109
SECTION 24A ESTABLISHMENT OF A BRANCH AND PROVISION OF CROSS-BORDER SERVICES IN OTHER EEA STATES 112
SECTION 24B PARTICIPATION IN PAYMENT AND SECURITIES TRANSFER AND SETTLEMENT SYSTEMS AS WELL AS INTEROPERABLE SYSTEMS 114
SECTION 24C AUTOMATED ACCESS TO ACCOUNT DETAILS 114
SECTION 25 MONTHLY RETURNS AND ADDITIONAL INFORMATION 116
SECTION 25A PARTICULAR GOVERNANCE DUTIES OF INSTITUTIONS 117
DIVISION 5A PREVENTION OF MONEY LAUNDERING, TERRORIST FINANCING AND FRAUDULENT ACTIVITIES TO THE DETRIMENT OF INSTITUTIONS 119
SECTION 25B FULFILMENT OF PARTICULAR ORGANISATIONAL DUTIES IN CONNECTION WITH CASHLESS PAYMENTS 119
SECTION 25C INTERNAL SAFEGUARDS 119
SECTION 25D SIMPLIFIED DUE DILIGENCE 120
SECTION 25E SIMPLIFIED IDENTIFICATION PROCEDURE 121
SECTION 25F ENHANCED DUE DILIGENCE 122
SECTION 25G GROUP-WIDE COMPLIANCE WITH DUE DILIGENCE STANDARDS 123
SECTION 25H PROHIBITED BUSINESS 123
DIVISION 5B SUBMISSION OF ACCOUNTING DOCUMENTS 123
SECTION 26 SUBMISSION OF ANNUAL ACCOUNTS, MANAGEMENT REPORT AND AUDIT REPORTS 123

DIVISION 5C DISCLOSURE 124

SECTION 26A DISCLOSURE BY INSTITUTIONS 124

DIVISION 6 AUDITS AND THE APPOINTMENT OF AUDITORS 125

SECTION 27 (REPEALED) 125

SECTION 28 APPOINTMENT OF THE AUDITOR IN SPECIAL CASES 125

SECTION 29 SPECIAL DUTIES OF THE AUDITOR 126

SECTION 30 DETERMINATION OF AUDIT CONTENTS 127

DIVISION 7 EXEMPTIONS 128

SECTION 31 128

PART III

PROVISIONS CONCERNING THE SUPERVISION OF INSTITUTIONS 131

DIVISION 1 APPROVAL FOR BUSINESS OPERATIONS 131

SECTION 32 AUTHORISATION 131

SECTION 33 REFUSAL OF AUTHORISATION 132

SECTION 33A DEFERRAL OR RESTRICTION OF AUTHORISATION IN THE CASE OF ENTERPRISES DOMICILED OUTSIDE THE EUROPEAN COMMUNITIES 135

SECTION 33B CONSULTATION OF THE COMPETENT AGENCIES OF ANOTHER EEA STATE 135

SECTION 34 REPRESENTATION AND CONTINUATION OF BUSINESS IN THE EVENT OF DEATH 135

SECTION 35 EXPIRY AND REVOCATION OF AUTHORISATION 136

SECTION 36 REMOVAL OF SENIOR MANAGERS, TRANSFER OF POWERS OF THE GOVERNING BODIES TO SPECIAL REPRESENTATIVES 137

SECTION 37 INTERVENTION AGAINST UNLAWFUL BUSINESS 137

SECTION 38 CONSEQUENCES OF THE REVOCATION AND EXPIRY OF AUTHORISATION; MEASURES IN THE EVENT OF LIQUIDATION 138

DIVISION 2 PROTECTED TERMS 138

SECTION 39 THE TERMS “BANK” AND “BANKER” 138

SECTION 40 THE TERM “SAVINGS BANK” 139

SECTION 41 EXCEPTIONS 139

SECTION 42 BAFIN’S DECISION 139

SECTION 43 REGISTRATION PROVISIONS 139

DIVISION 3 INFORMATION AND INSPECTIONS 140

SECTION 44 INFORMATION FROM AND INSPECTIONS OF INSTITUTIONS, ANCILLARY SERVICE PROVIDERS, FINANCIAL HOLDING COMPANIES AND ENTERPRISES INCLUDED IN SUPERVISION ON A CONSOLIDATED BASIS 140

SECTION 44A CROSS-BORDER INFORMATION AND INSPECTIONS 142

SECTION 44B INFORMATION FROM AND INSPECTIONS OF THE HOLDERS OF MAJOR PARTICIPATING INTERESTS 142
SECTION 44C PROSECUTION OF UNAUTHORISED BANKING BUSINESS AND FINANCIAL SERVICES 143
DIVISION 4 MEASURES IN SPECIAL CASES 144
SECTION 45 MEASURES IN THE CASE OF INADEQUATE OWN FUNDS OR INADEQUATE LIQUIDITY 144
SECTION 45A MEASURES VIS-À-VIS FINANCIAL HOLDING COMPANIES AND MIXED FINANCIAL HOLDING COMPANIES 145
SECTION 45B MEASURES IN THE CASE OF ORGANISATIONAL DEFICIENCIES 146
SECTION 46 MEASURES IN THE CASE OF DANGER 147
SECTION 46A MEASURES IN THE EVENT OF IMMINENT INSOLVENCY, APPOINTMENT OF PERSONS WITH POWERS OF REPRESENTATION 148
SECTION 46B INSOLVENCY PETITION 149
SECTION 46C CALCULATION OF PRESCRIBED PERIODS 150
SECTION 46D NOTIFICATION OF THE OTHER EEA STATES WITH REGARD TO REORGANISATION MEASURES 150
SECTION 46E INSOLVENCY PROCEEDINGS IN EEA STATES 151
SECTION 46F NOTIFICATION OF CREDITORS IN INSOLVENCY PROCEEDINGS 152
SECTION 47 MORATORIUM, SUSPENSION OF BANKING AND STOCK EXCHANGE BUSINESS 153
SECTION 48 RESUMPTION OF BANKING AND STOCK EXCHANGE BUSINESS 153
DIVISION 5 ENFORCEABILITY, SANCTIONS, COSTS AND CHARGES 154
SECTION 49 IMMEDIATE ENFORCEABILITY 154
SECTION 50 (REPEALED) 154
SECTION 51 COSTS AND CHARGES 154
PART IV
SPECIAL PROVISIONS APPLYING TO FINANCIAL CONGLOMERATES 156
SECTION 51A DETERMINATION OF THE EXISTENCE OF A FINANCIAL CONGLOMERATE; THRESHOLDS 156
SECTION 51B CLASSIFICATION AS A FINANCIAL CONGLOMERATE 157
SECTION 51C EXEMPTIONS 158
PART V
SPECIAL PROVISIONS 159
SECTION 52 SPECIAL SUPERVISION 159
SECTION 53 BRANCHES OF ENTERPRISES DOMICILED OUTSIDE GERMANY 159
SECTION 53A REPRESENTATIVE OFFICES OF INSTITUTIONS DOMICILED OUTSIDE GERMANY 160
SECTION 53B ENTERPRISES DOMICILED IN ANOTHER EEA STATE 161
SECTION 53C ENTERPRISES DOMICILED IN A NON-EEA STATE 163
SECTION 53D PARENT ENTERPRISES DOMICILED IN A NON-EEA STATE 164

SECTION 53E COOPERATION WITH THE COMMISSION OF THE EUROPEAN COMMUNITIES.....164

PART VI

PROVISIONS ON PENALTIES AND FINES.....166

SECTION 54 PROHIBITED BUSINESS, OPERATING WITHOUT AUTHORISATION 166

SECTION 55 VIOLATION OF THE DUTY TO REPORT INSOLVENCY OR OVERINDEBTEDNESS.....166

SECTION 55A UNAUTHORISED USE OF DATA ON LOANS OF 1.5 MILLION EURO OR MORE 166

SECTION 55B UNAUTHORISED PUBLIC DISCLOSURE OF DATA ON LOANS OF 1.5 MILLION EURO OR MORE 166

SECTION 56 PROVISIONS ON ADMINISTRATIVE FINES 167

SECTIONS 57 AND 58 (REPEALED) 169

SECTION 59 ADMINISTRATIVE FINES IMPOSED ON ENTERPRISES.....170

SECTION 60 COMPETENT ADMINISTRATIVE AUTHORITY 170

SECTION 60A NOTIFICATIONS IN CRIMINAL CASES 170

PART VII

TRANSITIONAL AND FINAL PROVISIONS.....171

SECTION 61 AUTHORISATION FOR EXISTING CREDIT INSTITUTIONS 171

SECTION 62 TRANSITIONAL PROVISIONS.....171

SECTION 63 (REPEAL OF AND AMENDMENTS TO LEGAL PROVISIONS) 171

SECTION 63A SPECIAL PROVISIONS RELATING TO THE TERRITORY SPECIFIED IN ARTICLE 3 OF THE UNIFICATION TREATY (*EINIGUNGSVERTRAG*).....171

SECTION 64 SUCCESSOR ENTERPRISES TO DEUTSCHE BUNDESPOST 172

SECTION 64A (REPEALED).....172

SECTION 64B CAPITAL OF EXISTING CREDIT INSTITUTIONS 172

SECTION 64C (REPEALED).....172

SECTION 64D TRANSITIONAL ARRANGEMENT FOR LARGE EXPOSURES 172

SECTION 64E TRANSITIONAL PROVISIONS FOR THE SIXTH ACT AMENDING THE BANKING ACT ..173

SECTION 64F TRANSITIONAL PROVISIONS FOR THE FOURTH FINANCIAL MARKET PROMOTION ACT174

SECTION 64G TRANSITIONAL PROVISIONS REGARDING THE ACT IMPLEMENTING THE FINANCIAL CONGLOMERATES DIRECTIVE 174

SECTION 64H TRANSITIONAL PROVISIONS REGARDING THE ACT IMPLEMENTING THE RECAST BANKING DIRECTIVE AND THE RECAST CAPITAL ADEQUACY DIRECTIVE.....176

SECTION 64I TRANSITIONAL PROVISIONS REGARDING THE ACT IMPLEMENTING THE MARKETS IN FINANCIAL INSTRUMENTS DIRECTIVE 177

SECTION 64J TRANSITIONAL PROVISIONS REGARDING THE ANNUAL TAX ACT 2009.....178

SECTION 64K TRANSITIONAL PROVISION REGARDING THE ACT IMPLEMENTING THE ACQUISITION DIRECTIVE 179

SECTION 64L TRANSITIONAL PROVISION REGARDING AUTHORISATION TO PROVIDE ASSET MANAGEMENT SERVICES 179
SECTION 65 ENTRY INTO FORCE 179

Part I
General provisions

Division 1 CREDIT INSTITUTIONS, FINANCIAL SERVICES INSTITUTIONS, FINANCIAL HOLDING COMPANIES, MIXED FINANCIAL HOLDING COMPANIES, FINANCIAL CONGLOMERATES, MIXED-ACTIVITY HOLDING COMPANIES AND FINANCIAL ENTERPRISES

Section 1 Definition of terms

(1) [1]Credit institutions are enterprises which conduct banking business commercially or on a scale which requires a commercially organised business undertaking. [2]Banking business comprises

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

1a the business specified in section 1 (1) sentence 2 of the Pfandbrief Act (*Pfandbriefgesetz*) (Pfandbrief business),

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

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

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

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

6 (Repealed)

7 the incurrence of the obligation to repurchase previously sold claims in respect of loans prior to their maturity,

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

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

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

11 the issuance and administration of electronic money (e-money business),

12 acting in the capacity of a central counterparty within the meaning of subsection (31).

(1a) [1]Financial services institutions are enterprises which provide financial services to others commercially or on a scale which requires a commercially organised business undertaking, and which are not credit institutions. [2]Financial services comprise

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

1a providing customers or their representatives with personal recommendations relating to transactions in certain financial instruments insofar as the recommendation is based on an evaluation of the investor's personal circumstances or is presented as being suitable for the investor and is not provided exclusively via information distribution channels or for the general public (investment advice),

1b operating a multilateral system, which brings together a large number of persons' interests in the purchase and sale of financial instruments within the system according to set rules in a way that leads to a purchase agreement for these financial instruments (operation of a multilateral trading system),

1c the placing of financial instruments without a firm underwriting commitment (placement business),

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

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

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

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

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

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

8 the issuance or administration of credit cards and travellers' cheques (credit card business) unless the card issuer also provides the service underlying the payment transaction,

9 the ongoing purchase of receivables on the basis of standard agreements, with or without recourse (factoring),

10 the conclusion of finance lease agreements in the capacity of the lessor and the management of asset-leasing vehicles within the meaning of section 2 (6) sentence 1 number 17 (finance leasing),

11 the purchase and sale of financial instruments for a community of investors, who are natural persons, with discretionary leeway regarding the choice of financial instruments, insofar as this is a core element of the product offered and serves the purpose of ensuring that these investors have a share in the performance of the financial instruments acquired (asset management).

[3]The purchase or sale of financial instruments on an own-account basis which does not constitute a service for others within the meaning of sentence 2 number 4 is also deemed to be a financial service (proprietary business).

(1b) Institutions within the meaning of this Act are credit institutions and financial services institutions.

(2) [1]Senior managers within the meaning of this Act are those natural persons who are appointed according to law, articles of association, articles of incorporation or a partnership agreement to manage the business of and represent an institution organised in the form of a legal person or a commercial partnership. [2]In exceptional cases, the Federal Financial Supervisory Authority (*Bundesanstalt für Finanzdienstleistungsaufsicht*, hereinafter referred to as BaFin) may also revocably designate as senior manager another person entrusted with the management of an institution's business and empowered to represent it if that person is trustworthy and has the necessary professional qualifications; section 33 (2) applies. [3]If the institution is operated by a sole proprietor, a person whom the proprietor has entrusted with the management of the institution's business and empowered to represent it may be revocably designated as senior manager in exceptional cases under the conditions set out in sentence 2. [4]If a person is designated as senior manager at the institution’s request, the designation shall be revoked at the request of the institution or the senior manager.

(3) [1]Financial enterprises are enterprises which are not institutions, German asset management companies or investment stock corporations, and whose principal activities involve

1 acquiring and holding participating interests,

2 acquiring monetary claims against payment,

3 being an asset-leasing vehicle within the meaning of section 2 (6) sentence 1 number 17,

4 (Repealed)

5 trading in financial instruments on an own-account basis,

6 advising others on investing in financial instruments,

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

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

[2]The Federal Ministry of Finance (*Bundesministerium der Finanzen*), after consulting the Deutsche Bundesbank, can, by way of a statutory order (*Rechtsverordnung*), designate as financial enterprises other enterprises which principally engage in an activity which is added to the list in Annex I to Directive 2006/48/EC of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions (OJ EU L 177/1) (Banking Directive).

(3a) [1]Financial holding companies are financial enterprises which are not mixed financial holding companies and whose subsidiaries are exclusively or mainly institutions or financial enterprises, at least one of which is a deposit-taking credit institution, an e-money institution or a securities trading firm. [2]Mixed financial holding companies are parent undertakings

which are not regulated financial conglomerate enterprises and which form a financial conglomerate together with their subsidiaries – at least one of which is a regulated financial conglomerate enterprise domiciled in Germany or another EEA state – and other enterprises. [3]Regulated financial conglomerate enterprises are deposit-taking credit institutions, e-money institutions, securities trading firms or primary insurance companies within the meaning of section 104k number 2 letter (a) of the Insurance Supervision Act (*Versicherungsaufsichtsgesetz*) as well as German asset management companies or other asset management companies within the meaning of Article 2 (5) and Article 30 of Directive 2002/87/EC which form part of a conglomerate.

(3b) [1]Mixed-activity holding companies are enterprises which are not financial holding companies, mixed financial holding companies or institutions and whose subsidiaries include at least one deposit-taking credit institution, e-money institution or securities trading firm.[2] A mixed-activity group consists of a mixed-activity holding company and its subsidiaries.

(3c) Ancillary service providers are enterprises which are neither institutions nor financial enterprises and whose principal activity comprises managing property, operating computer centres or performing similar activities which are ancillary activities relative to the principal activity of one or more institutions.

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

(3e) Stock exchanges or futures exchanges within the meaning of this Act are stock markets or futures markets which are regulated and supervised by competent public agencies, are held regularly and are accessible to the general public either directly or indirectly, including

1. their operators if the said operators' principal activity involves the operation of stock markets or futures markets, and
2. their systems for safeguarding the settlement of the trades in these markets (clearing houses) that are regulated and supervised by competent public agencies.

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

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

(5a) [1]The European Economic Area (EEA) within the meaning of this Act comprises the member states of the European Union as well as the other signatories to the Agreement on the European Economic Area. [2]Non-EEA states within the meaning of this Act are all other states.

(5b) (Repealed)

(6) Parent enterprises are enterprises which are deemed to be parent enterprises within the meaning of section 290 of the German Commercial Code (*Handelsgesetzbuch*) or which can exercise a controlling influence irrespective of their legal form and domicile.

(7) [1]Subsidiaries are enterprises which are deemed to be subsidiaries within the meaning of section 290 of the Commercial Code or in which a controlling influence can be exercised irrespective of their legal form and domicile. [2]Affiliated enterprises are enterprises which have a common parent enterprise.

(7a) Parent institutions in a member state are institutions domiciled in an EEA state to which an institution within the meaning of section 10a (1) sentence 2 or (4) is subordinated and which themselves are not subordinated to either an institution or a financial holding company domiciled in the same EEA state.

(7b) Parent financial holding companies in a member state are financial holding companies which themselves are not subsidiaries of either an institution or a financial holding company domiciled in the same EEA state.

(7c) EU parent institutions are parent institutions in a member state which themselves are not subordinated to either an institution or a financial holding company domiciled in an EEA state within the meaning of section 10a (1) sentence 2 or (4).

(7d) EU parent financial holding companies are parent financial holding companies in a member state which themselves are not subsidiaries of either an institution or a financial holding company domiciled in an EEA state.

(8) Control shall exist if an enterprise is deemed to be a parent enterprise in relation to another enterprise, or if a similar relationship exists between a natural or a legal person and an enterprise.

(9) [1]A major participating interest shall exist if at least 10 per cent of the capital of, or the voting rights in, a third-party enterprise is held directly or indirectly through one or more subsidiaries or a similar relationship or through collaboration with other persons or enterprises, in the holder's own interests or in the interests of a third party, or if a significant influence can be exercised on the management of another enterprise. [2]For calculating the share of the voting rights, section 21 (1) in conjunction with a statutory order pursuant to subsection (3), section 22 (1) to (3a) in conjunction with a statutory order pursuant to subsection (5) and section 23 of the Securities Trading Act (*Wertpapierhandelsgesetz*) as well as section 32 (2) and (3) in conjunction with a statutory order pursuant to subsection (5)

number 1 of the Investment Act (*Investmentgesetz*) shall apply *mutatis mutandis*. [3]This shall not include the voting rights or capital shares which institutions hold in connection with underwriting business pursuant to subsection (1) sentence 2 number 10, provided that these rights are not exercised or used in any other way to interfere with the issuer's management and they are sold within one year of being acquired. [4]Participating interests which are held indirectly are to be attributed in full to the persons and enterprises holding the indirect participating interests.

(10) A close link shall exist if an institution and another natural person or another enterprise are linked

1 through the direct or indirect holding by one or more subsidiaries or trustees of at least 20 per cent of the capital or the voting rights, or

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

(11) [1]Financial instruments within the meaning of subsections (1) to (3) and (17) as well as within the meaning of section 2 (1) and (6), notwithstanding section 1a (3), are securities, money market instruments, foreign exchange or units of account and derivatives. [2]Securities – even if they are not evidenced by certificates – are all types of transferable securities, with the exception of payment instruments, which by their nature are tradable in the capital markets, in particular:

1 shares and other stakes in German or foreign legal persons, commercial partnerships and any other enterprises if these stakes are comparable to shares, as well as certificates representing shares;

2 debt instruments, in particular, participation certificates, bearer bonds, order bonds and certificates representing these debt instruments;

3 any other securities which provide a right to purchase or sell securities in accordance with numbers 1 and 2 or lead to a cash payment that is determined in connection with securities, with currencies, interest rates or other income streams, or with commodities, indices or benchmarks;

4 units in collective investment schemes issued by a German asset management company or a foreign asset management company.

[3]Money market instruments are all types of receivables that are not covered by sentence 1 and which are normally traded on the money market, with the exception of payment instruments. [4]Derivatives are

1 futures or options contracts in the form of a purchase, exchange or similar transaction, which are to be settled with a time lag and whose value is derived directly or indirectly from the price or measure of an underlying (forward transactions) in relation to the following underlyings:

(a) securities or money market instruments,

(b) foreign exchange or units of account,

(c) interest rates or other income streams,

(d) indices of the underlyings for letters (a), (b) or (c), other financial indices or financial benchmarks, or

(e) derivatives;

2 forward transactions in relation to commodities, freight rates, emission allowances, climatic or other physical variables, inflation rates or other macroeconomic variables or any other assets, indices or measures as underlyings if they

(a) must either be settled by means of cash settlement or give a contracting party the right to demand cash settlement without this right arising as a result of default or another termination event,

(b) are conducted on an organised market or in a multilateral trading system, or

(c) have the characteristics of other derivative financial instruments and are not for commercial purposes pursuant to Article 38 (1) of Commission Regulation (EC) No 1287/2006 of 10 August 2006 implementing Directive 2004/39/EC of the European Parliament and of the Council as regards record-keeping obligations for investment firms, transaction reporting, market transparency, admission of financial instruments to trading, and defined terms for the purposes of that Directive (OJ EU L 241/1), and the conditions under Article 38 (4) of this Regulation are not met,

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

3 financial contracts for differences;

4 futures or options contracts in the form of a purchase, exchange or similar transaction, which are to be settled with a time lag and serve to transfer credit risk (credit derivatives);

5 forward transactions in relation to the underlyings listed in Article 39 of Commission Regulation (EC) No 1287/2006 if they meet the conditions laid down in number 2.

(12) (Repealed)

(13) [1]Risk models within the meaning of this Act are time-related stochastic representations of changes in market rates, prices, values or interest rates and their effects on the market value of individual financial instruments or groups of financial instruments (value-at-risk measures) based on the sensitivity of these financial instruments or groups of financial instruments to changes in their relevant risk-determining factors. [2]They comprise mathematical-statistical structures and distributions that are used for determining risk-capturing ratios, notably the extent of and correspondence between fluctuations in rates, prices and interest rates (volatility and correlation) as well as the sensitivity of financial instruments and groups of financial instruments, which are determined by means of appropriate computer-assisted procedures, notably time series analyses.

(14) Electronic money consists of units of value in the form of a claim on the issuing agency which are

1 stored on electronic data media,

2 issued against receipt of a sum of money, and

3 are accepted by third parties as a means of payment without being legal tender.

(15) [1]A qualifying participating interest within the meaning of this Act shall exist if a person or an enterprise holds at least 10 per cent of the capital of, or voting rights in, another enterprise directly or indirectly through one or more subsidiaries or a similar relationship, or can exercise a significant influence on the management of the other enterprise; subsection (9) sentences 2 and 3 shall apply *mutatis mutandis*. [2]Capital shares which are not intended to serve the holder's own business operations by establishing permanent links shall not be included in the computation of the level of the participating interest.

(16) [1]A system within the meaning of section 24b is a written arrangement pursuant to Article 2 letter (a) of Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems (OJ EC L 166/45), including the arrangement between a participant and an indirectly participating credit institution which has been reported to the Commission of the European Communities by the Deutsche Bundesbank or the competent authority of either another member state or a contracting state of the EEA. [2]The systems of non-EEA states are equivalent to the systems mentioned in sentence 1 provided that they essentially fulfil the requirements set out in Article 2 letter (a) of Directive 98/26/EC.

(17) [1]Financial collateral arrangements within the meaning of this Act are cash balances, monetary amounts, securities, money market instruments and any other loans against borrowers' notes, including any rights or claims in connection therewith, which are provided as collateral under security interest, transfer or title transfer structures on the basis of an agreement between a collateral taker and a collateral provider belonging to one of the categories listed in Article 1 (2) letters (a) to (e) of Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements (OJ EC L 168/43). [2]If a collateral provider is a person or corporate entity mentioned in Article 1 (2) letter (e) of Directive 2002/47/EC, then a financial collateral arrangement is deemed to exist only if the collateral serves as backing for liabilities arising from contracts or from the brokerage of contracts concerning

(a) the purchase and sale of financial instruments,

(b) repurchase transactions, lending transactions and comparable transactions relating to financial instruments, or

(c) loans to finance the purchase of financial instruments.

[3]If a collateral provider is a person or corporate entity mentioned in Article 1 (2) letter (e) of Directive 2002/47/EC, then the collateral provider's own capital shares or capital shares in affiliated enterprises within the meaning of section 290 (2) of the Commercial Code are not

financial collateral arrangements; the point in time at which the collateral is provided is decisive. [4]Collateral providers from non-EEA states are equivalent to the collateral providers mentioned in sentence 1 provided that they essentially correspond to the authorities, financial institutions and entities listed in Article 1 (2) letters (a) to (e) of Directive 2002/47/EC.

(18) Sectoral legislation within the meaning of this Act is the legislation of the European Communities in the area of financial supervision, in particular Directives 73/239/EEC, 85/611/EEC, 98/78/EC, 2004/39/EC, 2006/48/EC and 2006/49/EC as well as Annex V Part A of Directive 2002/83/EC, the national legislation based thereon, in particular this Act, the Insurance Supervision Act, the Securities Trading Act, the Investment Act, the Pfandbrief Act, the Act on Building and Loan Associations (*Gesetz über Bausparkassen*) and the Money Laundering Act (*Geldwäschegesetz*) including the statutory orders enacted in connection therewith as well as any other laws, regulations and administrative provisions enacted in the area of financial supervision.

(19) Financial sector within the meaning of this Act consists of the following sectors:

1 the banking and investment services sector: covers credit institutions within the meaning of subsection (1), financial services institutions within the meaning of subsection (1a), German asset management companies within the meaning of section 2 (6) of the Investment Act, investment stock corporations within the meaning of section 2 (5) of the Investment Act, financial enterprises within the meaning of subsection (3), ancillary service providers within the meaning of subsection (3c) and corresponding enterprises domiciled outside Germany; for the purposes of sections 51a und 51c, German asset management companies and investment stock corporations are not deemed to belong to this sector;

2 the insurance sector: covers primary insurance companies within the meaning of section 104k number 2 letter (a) of the Insurance Supervision Act, reinsurance companies within the meaning of section 104a (2) number 3 of the Insurance Supervision Act, insurance holding companies within the meaning of section 104a (2) number 4 of the Insurance Supervision Act and corresponding enterprises domiciled outside Germany;

3 a further sector consisting of mixed financial holding companies.

(20) [1]A financial conglomerate within the meaning of this Act, subject to section 51a (2) to (6), is a group of enterprises

1 which consists either of a parent enterprise, its subsidiaries and enterprises in which the parent enterprise or a subsidiary holds a participating interest, or of enterprises which are consolidated into a horizontal group;

2 which is headed by a regulated financial conglomerate enterprise which is the parent enterprise of a financial sector enterprise, is an enterprise which holds a participating interest in a financial sector enterprise or is an enterprise which is consolidated with another banking and investment services sector or insurance sector enterprise into a

horizontal group; if the group is not headed by a regulated financial conglomerate enterprise but has at least one of these enterprises as a subsidiary, then the group shall be deemed to be a financial conglomerate if it is predominantly active in the financial sector;

3 which includes at least one insurance sector enterprise as well as at least one enterprise from the banking and investment services sector, and

4 which has significant consolidated or aggregated activities within both the insurance sector and the banking and investment services sector, and/or whose enterprises have significant consolidated or aggregated activities within both the insurance sector and the banking and investment services sector.

[2]A subgroup of a group within the meaning of sentence 1 number 1 shall also be deemed to be a financial conglomerate provided that this subgroup itself fulfils the conditions laid down in sentence 1 numbers 1 to 4.

(21) A horizontal group within the meaning of this Act is a group in which an enterprise is linked to one or more other enterprises in such a way that

1 they are jointly under single management owing to a provision in their articles of association, articles of incorporation or a contract, or

2 their management or supervisory bodies, for the most part, are made up of the same persons, who remain in office during the financial year and up to the end of the period laid down in section 290 (1) of the Commercial Code, when they must or ought to prepare consolidated financial statements.

(22) Intra-group transactions in a financial conglomerate within the meaning of this Act are transactions in which regulated financial conglomerate enterprises, to fulfil an obligation, directly or indirectly draw on the support of other enterprises within the same financial conglomerate or on that of natural or legal persons which are closely linked to the group enterprises, whereby it is immaterial whether this occurs on a contractual or non-contractual or on a gratuitous or non-gratuitous basis.

(23) Risk concentrations within the meaning of this Act are all exposures of the enterprises within a financial conglomerate that are subject to default risk and are large enough to jeopardise the solvency or the general financial position of the regulated financial conglomerate enterprises, whereby the risk of default is based on, or can be based on, counterparty risk, credit risk, investment risk, insurance risk, market risk, any other type of risk, a combination of the above risks or an interplay between these types of risk.

(24) Refinancing enterprises are enterprises which, for self-refinancing or transferee refinancing purposes, sell assets or claims thereto from their business operations to special purpose vehicles, refinancing intermediaries, a credit institution domiciled in an EEA state or one of the entities mentioned in section 2 (1) number 1 or 3a; if economic risks are also passed on without being accompanied by a devolution of title, this does not have any detrimental effect.

(25) Refinancing intermediaries are credit institutions which purchase assets or claims thereto from a refinancing enterprise's business operations from refinancing enterprises or other refinancing intermediaries in order to sell them to special purpose vehicles or refinancing intermediaries; if economic risks are also passed on without being accompanied by a devolution of title, this does not have any detrimental effect.

(26) Special purpose vehicles are enterprises whose essential purpose is to raise funds or gain other pecuniary advantages by issuing financial instruments or in some other way in order to purchase assets or claims thereto from a refinancing enterprise's business operations from refinancing enterprises or refinancing intermediaries; if economic risks are also taken over without being accompanied by a devolution of title, this does not have any detrimental effect.

(27) Multilateral development banks within the meaning of this Act are:

1 the International Bank for Reconstruction and Development,

2 the International Finance Corporation,

3 the Multilateral Investment Guarantee Agency,

4 the Inter-American Development Bank,

5 the African Development Bank,

6 the Asian Development Bank,

7 the Caribbean Development Bank,

8 the Nordic Investment Bank,

9 the Council of Europe Development Bank,

10 the European Bank for Reconstruction and Development,

11 the European Investment Bank,

12 the European Investment Fund,

13 the Inter-American Investment Corporation,

14 the Black Sea Trade and Development Bank,

15 the Central American Bank for Economic Integration,

16 the Islamic Development Bank, and

17 the International Finance Facility for Immunisation.

(28) International organisations within the meaning of this Act are:

1 the European Community,

2 the International Monetary Fund, and

3 the Bank for International Settlements.

(29) [1]Recognised securities trading firms from non-EEA states within the meaning of this Act are securities trading firms that are authorised to operate in a non-EEA state and are subject to a prudential supervisory regime which is equivalent to the prudential supervisory regime for trading book institutions pursuant to the provisions of this Act. [2]Sentence 1 does not apply to investment advisers and brokers who, in providing financial services, are not authorised to obtain ownership or possession of funds or securities of customers and who do not trade in financial instruments for their own account.

(30) [1]Public-sector entities within the meaning of this Act are non-commercial administrative bodies which are responsible solely to central or regional governments or local authorities and perform the tasks of central or regional governments or local authorities. [2]Public-sector entities also include legally independent development institutions operating non-competitively within the jurisdictional reach of this Act which are also supported by a domestic central or regional government or local authority and for whose payment obligations at least one domestic central or regional government or local authority has assumed liability.

(31) A central counterparty is an enterprise which legally interposes itself between the buyer and the seller for contracts of sale traded within one or more financial markets in order to serve as a contracting party for each of them, and whose claims arising from counterparty risk vis-à-vis all participants in its systems are adequately collateralised on an intraday basis.

Section 1a Trading book and banking book

(1) [1]For the purposes of determining trading book risk positions and calculating the relevant capital charges, the following positions shall be deemed to be part of an institution's trading book within the meaning of this Act:

1 financial instruments within the meaning of subsection (3) and commodities which the institution holds as proprietary positions with a view to reselling them in the short term or which are acquired by the institution with the intention of profiting for its own account in the short term from existing or expected differences between buying and selling prices or fluctuations in market rates, prices, values or interest rates (trading intent),

2 financial instruments within the meaning of subsection (3) as well as commodities for hedging market risk in the trading book and any refinancing operations in connection therewith,

3 repurchase and lending transactions relating to trading book positions as well as transactions which are comparable to repurchase and lending transactions relating to trading book positions,

4 name-to-follow transactions, and

5 receivables in the form of fees, commissions, interest, dividends and margin payments that are directly linked to the trading book positions.

[2]Financial instruments and commodities that are deemed to be part of the trading book pursuant to sentence 1 number 1 or sentence 1 number 2 may not be subject to any restrictive provisions with regard to their tradability or must themselves be hedgeable.

(2) The banking book comprises all of an institution's transactions that are not deemed to be part of the trading book.

(3) Financial instruments within the meaning of this Act, subject to section 1 (11), are all contracts which create a financial asset for one of the parties involved and a financial liability or a capital? instrument for the other.

(4) [1]Positions are to be assigned to the trading book according to internally defined, verifiable criteria of which BaFin and the Deutsche Bundesbank must be informed; any changes to these criteria must be reported to BaFin and the Deutsche Bundesbank promptly, stating the reasons therefor. [2]The institutions must regularly monitor, as well as fully and comprehensibly document, compliance with these criteria in their records. [3]Trading book positions must be reclassified as banking book positions and banking book positions must be reclassified as trading book positions if the requirements for deeming the relevant positions to be part of the trading book or the banking book are no longer applicable. [4]Otherwise, trading book positions may be reclassified as banking book positions and banking book positions may be reclassified as trading book positions only if there is a compelling reason for doing so. [5]The reclassification of positions must be fully documented, as well as comprehensibly and adequately substantiated, in the institution's records.

(5) [1]The institutions must have clearly defined policies and procedures for the operation and management of their trading book that also expressly outline the institutions' assessment of the tradability and hedgeability of the various kinds of trading book positions which they hold. [2]In particular, the institutions must set up and permanently maintain suitable control mechanisms by means of which they can reliably identify actual and legal restrictions on the tradability and hedgeability of their trading book positions and can adequately assess how reliable the valuation of their trading book positions is.

(6) [1]In the case of trading book positions held with trading intent, this trading intent must be evidenced on the basis of a trading strategy approved by senior management as well as clearly defined guidelines on both the active management of the positions and the monitoring of the institution's trading book positions against the institution's trading strategy. [2]The structure and documentation of the trading strategy as well as an institution's own guidelines on the management and monitoring of the trading book positions against the trading strategy must comply with the requirements laid down in Annex VII, Part A of Directive 2006/49/EC of the European Parliament and of the Council of 14 June 2006 on the capital adequacy of investment firms and credit institutions (OJ EU L 177/201) (Capital Adequacy Directive). [3]The trading strategy may thereby be a part of the strategies required in section 25a (1) sentence 3 number 1.

(7) [1]Internal hedges are transactions which serve to hedge, materially or completely, one or more banking book positions. [2]They may be deemed to be part of the trading book only if

they are conducted at market conditions and are used consistently to hedge the institution's banking book positions and if the institution includes them in the management and monitoring of its trading book positions in the same way as comparable trading book positions which are not internal hedges. [3]Subsections (4), (5) and (8) shall apply *mutatis mutandis*. [4]Moreover, for such hedges to be deemed part of the trading book, they must be effected and permanently monitored through specially created internal control mechanisms in accordance with the provisions on conducting such hedges approved by the institution's senior management. [5]The inclusion of internal hedges in the trading book must be comprehensibly documented in the institution's records. [6]The assignment of internal hedges to the trading book shall be without prejudice to the assignment of the banking book positions secured by these hedges to the banking book as well as to the capital requirements applicable to these banking book positions as a result. [7]By contrast, subject to the conditions and in the manner laid down by the statutory order pursuant to section 10 (1) sentence 9, an institution can recognise a credit derivative, which it has acquired from a third party and uses to hedge a banking book position, when determining the capital requirements in relation to this banking book position even if this credit derivative is deemed to be part of the trading book. [8]In doing so, however, the institution may recognise this credit derivative only to the extent that it books this credit derivative to the banking book through an internal hedge.

(8) [1]Institutions must value trading book positions at market prices obtained from independent sources on a daily basis. [2]Where such direct marking to market is not possible, the institution may estimate the market value of the trading book positions using valuation models based on reference prices observed in the market. [3]Institutions must set up and permanently maintain suitable systems and control mechanisms for valuing trading book positions. [4]These systems and control mechanisms must have written guidelines and procedures for the trading book position valuation process and must ensure that trading book positions are valued prudently and reliably. [5]When valuing their trading book positions, institutions must, in particular, take due account of the risk that, in the event that these trading book positions are sold or hedged at short notice, the value received will be lower than their most recently observed market price or estimated value.

(9) [1]The Federal Ministry of Finance shall be authorised to issue by way of a statutory order, in consultation with the Deutsche Bundesbank, more detailed provisions on the composition, operation and management of institutions' trading book as well as on the application of provisions regarding the trading book in groups of institutions and financial holding groups within the meaning of section 10a (1) to (5), in particular in respect of

1 the assignment of further tradable positions to the trading book,

2 the exclusion of positions from assignment to the trading book,

3 the distinction between trading book institutions and non-trading book institutions,

4 the requirements for the trading book and the positions included therein,

5 the management of trading book positions and the risks inherent in the trading book, and

6 the valuation of trading book positions and the requirements for the internal systems and control mechanisms which must be in place for this purpose.

[2]The Federal Ministry of Finance may delegate this authority to BaFin by way of a statutory order, subject to the proviso that the statutory order is issued in agreement with the Deutsche Bundesbank. [3]The central associations of the institutions shall be consulted before the statutory order is issued.

Section 2 Exceptions

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

1 the Deutsche Bundesbank;

2 the KfW banking group (*Kreditanstalt für Wiederaufbau*);

3 the statutory social security funds and the Federal Employment Agency (*Bundesagentur für Arbeit*);

3a the public debt administration of the Federal Government, of one of its special funds, of a regional government or of another EEA state and EEA central bank, provided that it does not accept funds from others as deposits or other repayable funds from the public or conduct lending business;

3b German asset management companies, even if they undertake the management and safekeeping of units in collective investment schemes for others pursuant to section 7 (2) number 4 of the Investment Act, and investment stock corporations;

4 private and public insurance companies;

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

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

6a enterprises recognised under the Act to Promote Venture Capital Investment (*Gesetz zur Förderung von Wagniskapitalbeteiligungen*) as venture capital companies;

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

8 enterprises which, without being involved in cross-border activities, conduct banking business solely in the form of principal broking services on domestic stock exchanges or in domestic multilateral trading systems within the meaning of section 1 (1a) sentence 2 number 1c on or in which derivatives are traded (derivatives markets) for other members of these markets or trading systems, provided that clearing members of these markets or trading systems are liable for the fulfilment of the contracts which the aforementioned enterprises conclude on the said markets or in the said trading systems;

9 enterprises which engage in principal broking services only in relation to derivatives within the meaning of section 1 (11) sentence 4 numbers 2 and 5, provided that

(a) they are not part of a corporate group whose principal activity comprises providing financial services within the meaning of section 1 (1a) sentence 2 numbers 1 to 4 or conducting banking business within the meaning of section 1 (1) sentence 2 numbers 1, 2, 8 or 11,

(b) the principal broking services, financial services within the meaning of section 1 (1a) sentence 2 numbers 1 to 4 in relation to derivatives within the meaning of section 1 (11) sentence 4 numbers 2 and 5 and proprietary business in financial instruments at a group level are of secondary significance to the principal activity, and

(c) the principal broking services are provided only for principal activity customers in objective connection with principal activity operations.

(2) Section 14, sections 22a to 22o and any arrangements made by virtue of section 47 (1) number 2 and section 48 shall apply to the KfW banking group; section 14 shall apply to the statutory social security funds, the Federal Employment Agency, insurance companies and risk capital investment companies.

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

(4) [1]In individual cases, BaFin can decide that sections 2c, 10 to 18, 24, 24a, 25, 25a, 26 to 38, 45, 46 to 46c and 51 (1) of this Act shall not apply as a whole to an institution if the enterprise does not require supervision in this respect given the nature of the business which it conducts. [2]A decision of this kind shall be published in the electronic Federal Gazette.

(5) [1]In individual cases, BaFin, in consultation with the Deutsche Bundesbank, can decide that sections 2c, 10 to 18, 24, 32 to 38, 45 and 46a to 46c of this Act shall not apply as a whole to an enterprise which conducts only e-money business if the enterprise does not require supervision in this respect given the nature or the volume of the business which it conducts. [2]A decision of this kind shall be published in the electronic Federal Gazette. [3]The Federal Ministry of Finance may, by way of a statutory order to be issued in consultation with the Deutsche Bundesbank, issue more detailed provisions on the exemption pursuant to sentence 1. [4]The Federal Ministry of Finance may delegate this authority to BaFin by way of a statutory order, subject to the proviso that the statutory order is issued in agreement with the Deutsche Bundesbank.

(6) [1]The following are not deemed to be financial services institutions:

1 the Deutsche Bundesbank;

2 the KfW banking group;

3 the public debt administration of the Federal Government, of one of its special funds, of a regional government or of another EEA state and EEA central bank;

4 private and public insurance companies;

5 enterprises which provide financial services within the meaning of section 1 (1a) sentence 2 solely within a corporate group;

5a German asset management companies, even if they provide individual asset management services pursuant to section 7 (2) number 1, investment advice pursuant to section 7 (2) number 3 or other services and ancillary services pursuant to section 7 (2) number 7 of the Investment Act, and investment stock corporations;

5b foreign asset management companies, insofar as they issue units in foreign collective investment schemes within the meaning of section 2 (9) of the Investment Act;

6 enterprises whose financial service for others solely comprises the administration of a system of employee participations in themselves or their affiliated enterprises;

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

8 enterprises which provide financial services for others that solely comprise investment advice, investment broking and contract broking between customers and

(a) domestic institutions,

(b) institutions or financial enterprises domiciled in another EEA state which fulfil the conditions of section 53b (1) sentence 1 or (7),

(c) enterprises that are treated as enterprises domiciled in the EEA or granted exemption from the provisions by way of a statutory order pursuant to section 53c, or

(d) German asset management companies, investment stock corporations and foreign asset management companies

insofar as these financial services are confined to units in collective investment schemes which are issued by a German asset management company or investment stock corporation within the meaning of sections 96 to 111a of the Investment Act or to units in foreign collective investment schemes which may be sold publicly pursuant to the Investment Act, and the enterprises are not authorised to obtain ownership or possession of funds or shares of customers in providing such financial services, unless the enterprise applies for and is granted appropriate authorisation pursuant to section 32 (1); units in common funds with additional risks (hedge funds) pursuant to section 112 of the Investment Act shall not be deemed to be units in collective investment schemes within the meaning of this provision;

9 enterprises which, without being involved in cross-border activities, conduct proprietary business on derivatives markets within the meaning of subsection (1) number 8 and trade on spot markets only for the purpose of hedging these positions, which engage in proprietary trading or contract broking only for other members of

these derivatives markets or which determine prices for other members of these derivatives markets through proprietary trading as a market maker within the meaning of section 23 (4) of the Securities Trading Act, provided that clearing members of these markets or trading systems are liable for the fulfilment of the contracts which the aforementioned enterprises conclude;

10 members of independent professions who provide financial services within the meaning of section 1 (1a) sentence 2 numbers 1 to 4 only occasionally within their client relationships as self-employed professionals and who belong to a professional chamber having the legal form of a public-law corporation whose professional rules do not exclude the provision of financial services;

11 enterprises which conduct proprietary business in financial instruments or provide financial services within the meaning of section 1 (1a) sentence 2 numbers 1 to 4 only in relation to derivatives within the meaning of section 1 (11) sentence 4 numbers 2 and 5, provided that

(a) they are not part of a corporate group whose principal activity comprises providing financial services within the meaning of section 1 (1a) sentence 2 numbers 1 to 4 or conducting banking business within the meaning of section 1 (1) sentence 2 numbers 1, 2, 8 or 11,

(b) the provision of financial services is of secondary significance to the principal activity at a group level, and

(c) the financial services relating to derivatives within the meaning of section 1 (11) sentence 4 numbers 2 and 5 are provided only for principal activity customers in objective connection with principal activity operations;

12 enterprises whose sole financial service within the meaning of section 1 (1a) sentence 2 is dealing in foreign notes and coins, unless their principal activity is foreign currency dealing;

13 enterprises whose principal activity involves conducting proprietary business and proprietary trading in commodities or derivatives within the meaning of section 1 (11) sentence 4 number 2 relating to commodities, provided that these enterprises do not belong to a corporate group whose principal activity comprises providing financial services within the meaning of section 1 (1a) sentence 2 numbers 1 to 4 or conducting banking business pursuant to section 1 (1) sentence 2 numbers 1, 2, 8 or 11;

14 enterprises whose sole financial service comprises conducting proprietary business or proprietary trading, unless they

(a) continuously offer to buy or sell financial instruments at prices which they themselves have determined on an organised market or in a multilateral trading system, or

(b) undertake trading, often for their own account, in an organised and systematic manner outside an organised market or a multilateral trading system by providing

a system accessible to third parties in order to transact business with these third parties;

15 enterprises whose sole financial service within the meaning of section 1 (1a) sentence 2 comprises providing investment advice as part of another occupational activity and which are not remunerated separately for providing this investment advice;

16 operators of organised markets which, apart from operating a multilateral trading system, do not provide any other financial services within the meaning of section 1 (1a) sentence 2;

17 enterprises whose sole financial service within the meaning of section 1 (1a) sentence 2 comprises carrying out finance leasing activities, if they act only as an asset-leasing vehicle for a single leased asset, do not make their own business policy decisions and are managed by an institution domiciled in an EEA state which is authorised to conduct finance leasing operations under the laws of the home state;

18 enterprises whose only financial service comprises carrying out asset management activities and whose parent enterprise is the KfW banking group or an institution within the meaning of sentence 2. An institution within the meaning of sentence 1 is a financial services institution which has authorisation to engage in asset management activities, or a deposit-taking credit institution or securities trading firm domiciled in another EEA state within the meaning of section 53b (1) sentence 1 which, in its home state, is authorised to conduct business comparable with that described in section 1 (1a) sentence 2 number 11, or an institution domiciled in a non-EEA state which, pursuant to subsection (4), is exempt from the authorisation requirement pursuant to section 32 with regard to the business specified in section 1 (1a) sentence 2 number 11.

[2]The provisions of this Act shall apply to entities and enterprises within the meaning of sentence 1 numbers 3 and 4 insofar as they provide financial services which are not part of their characteristic business.

(7) [1]The provisions of section 2b (2), sections 10, 11 to 18 and 24 (1) number 9, sections 24a and 33 (1) sentence 1 number 1, section 35 (2) number 5 and sections 45 and 46a to 46c shall not apply to financial services institutions which provide no financial services within the meaning of section 1 (1a) sentence 2 apart from credit card business, non-EEA deposit broking, money transmission services and foreign currency dealing. [2]The provisions of section 2b (2), sections 10, 11 to 13d, sections 15 to 18 and 24 (1) numbers 6, 9, 11 and 13, sections 25 and 33 (1) sentence 1 number 1, section 35 (2) number 5 and sections 45 and 46a to 46c shall not apply to enterprises which solely provide financial services pursuant to section 1 (1a) sentence 2 number 9 or 10. [3]BaFin can, in individual cases, exempt a financial services institution whose sole financial service within the meaning of section 1 (1a) sentence 2 comprises credit card business or money transmission services from the provisions of this Act as long as the manner of performing the business conducted does not require supervision.

(8) The provisions of section 2b (2), sections 10, 11 and 12 (1), sections 13, 13a, 14 to 18 and 35 (2) number 5 and section 45 shall not apply to investment advisers, investment brokers, contract brokers, operators of multilateral trading systems and enterprises engaging in placement business who, in providing financial services, are not authorised to obtain ownership or possession of funds or securities of customers and who do not trade in financial instruments for their own account, or to enterprises which are to be classified as institutions by virtue of subsection (1) number 8 or subsection (6) number 9 owing to the counter-exception for performing cross-border transactions.

(8a) Subject to section 64h (7), the requirements of section 10 shall not apply to institutions whose principal activity solely comprises conducting banking business or providing financial services in connection with derivatives pursuant to section 1 (11) sentence 4 numbers 2, 3 and 5.

(9) (Repealed)

(10) [1]An enterprise which does not conduct any banking business within the meaning of section 1 (1) sentence 2 and provides financial services that only comprise investment broking or contract broking, placement business or investment advice solely for the account and under the liability of a deposit-taking credit institution or securities trading firm domiciled in Germany or operating in Germany in accordance with section 53b (1) sentence 1 or (7) (tied agent) shall not be deemed to be a financial services institution, but rather a financial enterprise if this is reported to BaFin by the deposit-taking credit institution or securities trading firm as the liable enterprise. [2]The activities of the tied agent shall be attributed to the liable enterprise. [3]If there is any change in the circumstances reported by the liable enterprise, the new circumstances shall be reported to BaFin promptly. [4]More detailed provisions on the contents of the reports pursuant to sentences 1 and 3 as well as the accompanying documentation and evidence can be issued by means of a statutory order pursuant to section 24 (4). [5]BaFin shall forward the reports pursuant to sentences 1 and 3 to the Deutsche Bundesbank. [6]BaFin shall keep a public register of the tied agents reported to it pursuant to this subsection on its website; the names of the liable enterprise and the tied agents as well as the date on which the activity pursuant to sentence 1 starts and ends shall be entered in this register. [7]More detailed provisions on the prerequisites for entry in the register, the contents and the keeping of the register can be issued by means of a statutory order pursuant to section 24 (4), in particular the liable enterprise can be granted write access for the register page to be set up for this enterprise as well as given responsibility for ensuring the accuracy of and updating this page. [8]BaFin can prohibit a liable enterprise, which has not duly selected or monitored its tied agents or has breached the duties entrusted to it in connection with the keeping of the register, from integrating tied agents within the meaning of sentences 1 and 2 into the enterprise.

(11) [1]An institution shall not be required to apply the provisions of this Act concerning the trading book if

1 the share of the institution's trading book activities does not normally exceed 5 per cent of its total on- and off-balance-sheet business,

2 its total individual trading book positions do not normally exceed the equivalent of 15 million euro, and

3 the share of its trading book activities never exceeds 6 per cent of its total on- and off-balance-sheet business and its total trading book positions never exceed the equivalent of 20 million euro.

[2]For the purpose of determining the share of the trading book activities, derivatives shall be valued according to the nominal value or the market price of their underlying instruments, and the other financial instruments at their principal value or market price; long positions and short positions shall be summed regardless of their signs. [3]More detailed provisions shall be laid down by way of a statutory order pursuant to section 22. [4]The institution shall notify BaFin and the Deutsche Bundesbank promptly if it makes use of the option pursuant to sentence 1, if it has exceeded one of the limits laid down in sentence 1 number 3 or if it applies the provisions concerning the trading book even though the conditions specified in sentence 1 exist.

(12) [1]The requirements of sections 25a and 33 (1) numbers 1 to 4 as well as the notification requirements pursuant to section 2c (1) and (4) as well as section 24 (1) numbers 1, 2 and 11 and subsection (1a) number 2 shall apply *mutatis mutandis* to operators of organised markets domiciled outside Germany whose sole financial service comprises operating a multilateral trading system in Germany. [2]The requirements mentioned in sentence 1 shall also apply *mutatis mutandis* to entities responsible for a domestic stock exchange whose sole financial service, apart from over-the-counter trade, comprises operating a multilateral trading system in Germany. [3]It shall be assumed that the senior managers of a domestic stock exchange and persons who actually manage the business of a foreign organised market fulfil the requirements pursuant to section 33 (1) numbers 2 and 4. [4]BaFin's powers pursuant to sections 2c and 25a (1) sentence 7 as well as sections 44 to 48 shall apply *mutatis mutandis*. [5]BaFin can prohibit the persons mentioned in sentence 1 from operating a multilateral trading system in the cases described in section 35 (2) numbers 4, 5 and 6 as well as if they do not fulfil the requirements pursuant to section 33 (1) sentence 1 numbers 1 to 4. [6]The persons mentioned in sentence 1 shall notify BaFin promptly of the commencement of operations.

Section 2a Exceptions for institutions belonging to a group

(1) An institution domiciled in Germany, which is a subordinated enterprise of a group of institutions pursuant to section 10a (1) or (2), need not apply the provisions of sections 10, 13 and 13a as well as 25a (1) sentence 3 number 1 on the establishment of an internal control procedure if

1 the superordinated institution holds more than 50 per cent of the voting rights attaching to shares in the capital of the subordinated institution or has the right to

appoint and/or remove a majority of the members of the subordinated institution's management body,

2 the prudential management of the subordinated institution by the superordinated institution fulfils BaFin's requirements,

3 the superordinated institution's processes for identifying, assessing, managing as well as monitoring and reporting risks cover the subordinated institution,

4 there is no current or foreseen material practical or legal impediment to the prompt transfer of own funds or repayment of liabilities by the superordinated institution, and

5 the superordinated institution, with BaFin's consent, has declared with binding force that it guarantees the current and future commitments entered into by the subordinated institution, or if the risks incurred by the subordinated institution are of secondary significance.

(2) [1]The institution shall notify BaFin and the Deutsche Bundesbank promptly that and to what extent it will make use of the exception set out in subsection (1). [2]The institution shall furnish BaFin and the Deutsche Bundesbank with suitable documentation to prove the existence of the conditions specified in subsection (1).

(3) [1]The institution shall examine on an *ad hoc* basis whether the conditions specified in subsection (1) still exist and shall document the outcome in writing. [2]This documentation shall be presented to BaFin and the Deutsche Bundesbank upon request.

(4) [1]If the existence of the conditions specified in subsection (1) is not proven, BaFin can ask the institution or the superordinated enterprise to present the required evidence or to take measures that are suitable and necessary to eliminate the prevailing deficiencies; BaFin may set an appropriate deadline for compliance. [2]If evidence is not presented or is not presented within the prescribed period, or if the deficiencies are not remedied or are not remedied within the prescribed period, BaFin can order that the institution shall again apply the provisions of sections 10, 13 and 13a as well as 25a (1) sentence 3 number 1 on the establishment of an internal control system.

(5) Subsections (1) to (4) shall apply *mutatis mutandis* to institutions domiciled in Germany which are subordinated enterprises of a financial holding group pursuant to section 10a (3) if the financial holding company is likewise domiciled in Germany.

(6) [1]A superordinated enterprise within the meaning of section 10a (1) to (3) domiciled in Germany need not apply the provisions of sections 10, 13 and 13a as well as 25a (1) sentence 3 number 1 on the establishment of an internal control procedure if

1 there is no current or foreseen material practical or legal impediment to the prompt transfer of own funds or repayment of liabilities to the superordinated institution, and

2 the superordinated enterprise is included in the processes for identifying, assessing, managing as well as monitoring and reporting risks used for supervision on a consolidated basis.

[2]Subsections (2) to (4) shall apply *mutatis mutandis*. [3]If a superordinated enterprise makes use of the exception pursuant to sentence 1, BaFin shall inform the competent authorities of the other EEA states accordingly.

Section 2b Legal form

(1) Credit institutions which require authorisation pursuant to section 32 (1) may not be operated in the legal form of a sole proprietorship.

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

Section 2c Holders of major participating interests

(1) [1]Anyone who intends to purchase a major participating interest in an institution, either alone or through collaboration with other persons or enterprises (prospective purchaser), shall report this intention in writing to BaFin and the Deutsche Bundesbank promptly pursuant to sentence 2. [2]In this report, the prospective purchaser shall give the key facts and documentation, which are to be specified in more detail by way of a statutory order pursuant to section 24 (4), germane to the amount of the participating interest and to the establishment of the significant influence, as well as to the assessment of his/her trustworthiness and examination of the further grounds for prohibition pursuant to subsection (1b) sentence 1, and name the individuals or enterprises from whom or which he/she intends to acquire the corresponding capital shares. [3]The statutory order may provide that, in particular also in case-by-case decisions or as a general rule, the prospective purchaser shall present the documentation specified in section 32 (1) sentence 2 number 6 letters (d) and (e). [4]If the prospective purchaser is a legal person or a commercial partnership, the report shall contain the key facts germane to assessing the trustworthiness of its legal representatives or representatives pursuant to the articles of association or articles of incorporation, or of its general partners. [5]The holder of a major participating interest shall promptly report every newly appointed legal representative or representative pursuant to the articles of association or articles of incorporation, or new general partner to BaFin and the Deutsche Bundesbank in writing, together with the key facts germane to assessing his/her trustworthiness. [6]The holder of a major participating interest shall, moreover, promptly notify BaFin and the Deutsche Bundesbank in writing if he/she intends, either alone or through collaboration with other persons or enterprises, to increase the amount of the major participating interest in such a way that the thresholds of 20 per cent, 30 per cent or 50 per cent of the voting rights or capital are reached or exceeded, or that the institution comes under his/her control. [7]BaFin shall provide the party required to submit the report with written

confirmation of receipt of a complete report pursuant to sentence 1 or sentence 6 promptly, but at the latest within two working days of receipt thereof.

(1a) [1]BaFin shall assess the report pursuant to subsection (1) within 60 working days of the date on its letter confirming receipt of a complete report (assessment period). [2]In the confirmation provided pursuant to subsection (1) sentence 7, BaFin shall inform the party required to submit the report of the date on which the assessment period will end. [3]BaFin can make a written request for further information which it requires to complete the assessment no later than the 50th working day of the assessment period. [4]The request shall be made in writing, specifying the additional information required. [5]BaFin shall provide the party required to submit the report with written confirmation of receipt of this additional information promptly, at the latest however within two working days of receipt thereof. [6]The assessment period shall be suspended from the time when the request for further information is made until BaFin receives this information. [7]In the event of a suspension pursuant to sentence 6, the assessment period shall last no more than 80 working days. [8]BaFin can ask for additional data or clarifications regarding this information; this shall not lead to a further suspension of the assessment period. [9]Notwithstanding sentence 7, the assessment period can be extended to no more than 90 working days in the event of a suspension if the party required to submit the report

1 is resident or supervised in a non-EEA state, or

2 is a natural person or enterprise not subject to supervision pursuant to Council Directive 85/611/EEC of 20 December 1985 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS), Council Directive 92/49/EEC of 18 June 1992 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance, Directive 2002/83/EC of the European Parliament and of the Council of 5 November 2002 concerning life assurance, Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments, Directive 2005/68/EC of the European Parliament and of the Council of 16 November 2005 on reinsurance, or the Banking Directive.

(1b) [1]BaFin can prohibit the intended purchase of or increase in the major participating interest within the assessment period if facts are known which warrant the assumption that

1 the party required to submit the report or, if it is a legal person, a legal representative or representative pursuant to the articles of association or articles of incorporation, or, if it is a commercial partnership, a partner, is not trustworthy or for any other reason does not satisfy the requirements to be set in the interests of the sound and prudent management of the institution; in case of doubt, this shall also apply if facts are known which warrant the assumption that the funds raised in order to purchase the major participating interest have been acquired by an action which objectively constitutes a criminal offence;

2 the institution will not be or remain in a position to meet the supervisory requirements, in particular those pursuant to the Banking Directive, Directive 2000/46/EC of the

European Parliament and of the Council of 18 September 2000 on the taking up, pursuit of and prudential supervision of the business of electronic money institutions, Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate and Directive 2006/49/EC of the European Parliament and of the Council of 14 June 2006 on the capital adequacy of investment firms and credit institutions, or the institution, through purchasing or increasing the major participating interest, would be integrated into a corporate network with the holder of the major participating interest which, owing to the structure of cross-shareholdings or because of inadequate economic transparency, would hamper the effective supervision of the institution or the effective exchange of information between the competent agencies or the allocation of responsibilities between the said agencies;

3 the purchase of or increase in the major participating interest would make the institution a subsidiary of an institution domiciled in a non-EEA state that is not effectively supervised in the state where it is domiciled or has its head office or whose competent supervisory body is not prepared to cooperate satisfactorily with BaFin;

4 the future senior manager is not trustworthy or does not have the necessary professional qualifications;

5 the intended purchase of or increase in the participating interest is being used or has been used for money laundering or terrorist financing within the meaning of Article 1 of Directive 2005/60/EC, these criminal offences have been attempted, or the purchase of or increase in the participating interest could aggravate the risk of such occurring, or

6 the party required to submit the report does not have the requisite financial soundness; this is especially the case if, owing to its capital adequacy or asset situation, the party required to submit the report is unable to fulfil the special requirements laid down by law with regard to an institution's own funds and liquidity.

[2]BaFin can also prohibit the purchase of or increase in the participating interest if the data pursuant to subsection (1) sentence 2 or sentence 6 or the additional information required pursuant to subsection (1a) sentence 3 are incomplete or incorrect or do not meet the requirements laid down in the statutory order pursuant to section 24 (4). [3]BaFin may neither impose preconditions on the size of the participating interest to be purchased or the intended increase in the participating interest nor be guided by the economic needs of the market in its assessment. [4]If, after completing its assessment, BaFin decides to prohibit the purchase of or increase in the participating interest, it shall inform the party required to submit the report of its decision in writing within two working days and in observance of the assessment period, stating the reasons therefor. [5]Any comments and reservations on the part of the agencies competent for the party required to submit the report shall be cited in the decision; prohibition is permissible only for the reasons given in sentences 1 and 2. [6]If the purchase of or increase in the participating interest is not prohibited in writing within the assessment period, then the purchase or increase may be executed; this is without prejudice to BaFin's

rights pursuant to subsection (2). [7]BaFin can set a deadline after the expiry of which the party required to submit the report shall notify it whether or not the intended purchase of or increase in the participating interest has been executed. [8]After the expiry of this deadline, the party required to submit the report shall submit the report to BaFin promptly.

(2) [1]BaFin may prohibit the holder of a major participating interest as well as the enterprises that it controls from exercising the voting rights and order that the capital shares may be used only with BaFin's consent if

1 the prerequisites for a prohibition order pursuant to subsection (1b) sentence 1 or sentence 2 exist,

2 the holder of the major participating interest has not fulfilled its duty pursuant to subsection (1) to give BaFin and the Deutsche Bundesbank prior notification of its intention and has not made such notification subsequently by a deadline set by BaFin, or

3 the participating interest has been purchased or increased contrary to an enforceable prohibition pursuant to subsection (1b) sentence 1 or sentence 2.

[2]In the event of a prohibition pursuant to sentence 1, the court having jurisdiction at the institution's domicile – at the request of BaFin, the institution or a holder of a participating interest in the institution – shall appoint a trustee to whom it shall transfer the exercise of voting rights. [3]In exercising the voting rights, the trustee shall take due account of the interests of a sound and prudent management of the institution. [4]Over and above the measures pursuant to sentence 1, BaFin may commission the trustee to sell the capital shares insofar as they establish a major participating interest if the holder of the major participating interest does not provide BaFin with proof of a trustworthy buyer by an appropriate deadline set by BaFin; the holders of the capital shares shall cooperate in the sale to the extent necessary. [5]If the prerequisites specified in sentence 1 no longer exist, BaFin shall apply for the appointment of the trustee to be revoked. [6]The trustee shall be entitled to the reimbursement of reasonable expenses and remuneration for his/her activities. [7]The court shall determine such expenses and remuneration at the trustee's request; an appeal on a point of law against the fixing of remuneration by the court shall not be permissible. [8]The institution and the relevant holder of the major participating interest shall be jointly and severally liable for the costs arising from the appointment of the trustee, the expenses that he/she is to be granted and his/her remuneration. [9]BaFin shall advance such expenses and remuneration.

(3) [1]Anyone who intends to relinquish a major participating interest in an institution or to reduce the amount of his/her major participating interest below the thresholds of 20 per cent, 30 per cent or 50 per cent of the voting rights or the capital, or to change the participating interest in such a way that the institution is no longer a controlled enterprise, shall report this promptly in writing to BaFin and the Deutsche Bundesbank. [2]The intended residual level of the participating interest shall be indicated in the report. [3]BaFin can set a deadline after the expiry of which the person or commercial partnership who has submitted the report pursuant to sentence 1 shall provide notification of whether or not the intended reduction or change in

the participating interest has been executed. [4]After the expiry of this deadline, the person or commercial partnership who has submitted the report pursuant to sentence 1 shall submit the notification to BaFin promptly.

(4) [1]BaFin shall temporarily prohibit or limit the purchase of a direct or indirect participating interest in an institution, through which the institution would become a subsidiary of an enterprise domiciled in a non-EEA state, if a decision to this effect has been taken by the European Commission pursuant to Article 151 (2) of the Banking Directive or Article 15 (3) sentence 2 of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments (OJ EU L 145/1, 2005 OJ EU L 45/18 (Markets in Financial Instruments Directive)). [2]The temporary prohibition or limitation may not last for more than three months from the date of the decision. [3]If the Council of the European Union decides to prolong the period pursuant to sentence 2, BaFin shall take due account of this prolongation and prolong the temporary prohibition or limitation accordingly.

Section 2d Management bodies of financial holding companies and mixed financial holding companies

(1) Any persons who actually manage the business of a financial holding company or a mixed financial holding company shall be trustworthy and have the professional qualifications necessary to manage the company.

(2) In the case of financial holding companies and mixed financial holding companies which have been classified as the superordinated enterprise pursuant to section 10a (3) sentence 6 or sentence 7 or section 10b (3) sentence 8, BaFin can demand that the persons within the meaning of subsection (1) are dismissed and prohibit them from carrying out their activities if

1. they do not fulfil the conditions of subsection (1), or
2. they have intentionally or recklessly contravened the provisions of this Act, the regulations issued to implement this Act or orders issued by BaFin, and if they persist in such behaviour despite having been duly cautioned by BaFin.

Section 3 Prohibited business

The following activities are prohibited:

1. the conduct of deposit business if the majority of the depositors are persons employed by the enterprise (company savings banks), unless other banking business is conducted which exceeds the scale of such deposit business;
2. the acceptance of monetary amounts if the majority of the financiers have a legal right to the granting of loans or the procurement of items on credit out of these monetary amounts (special-purpose savings enterprises); this shall not apply to building and loan associations (*Bausparkassen*);

3 the conduct of lending business or deposit business if, by agreement or in line with standard business practice, it is not permissible or extremely difficult to withdraw the amount of the loan or the deposits in cash.

Section 4 BaFin's decision

[1]In cases of doubt, BaFin shall decide whether an enterprise is subject to the provisions of this Act. [2]Its decisions shall be binding upon the administrative authorities.

Division 2 FEDERAL FINANCIAL SUPERVISORY AUTHORITY (BAFIN)

Section 5 (Repealed)

Section 6 Functions

(1) BaFin shall exercise supervision over institutions pursuant to the provisions of this Act.

(2) BaFin shall counteract undesirable developments in the banking and financial services sector which may endanger the safety of the assets entrusted to institutions, impair the proper conduct of banking business or provision of financial services or lead to serious disadvantages for the economy as a whole.

(3) [1]BaFin may, as part of its statutory mandate, issue orders to institutions and their senior managers that are appropriate and necessary to stop or prevent violations of regulatory provisions or to prevent or overcome undesirable developments at an institution which could endanger the safety of the assets entrusted to the institution or impair the proper conduct of its banking business or provision of financial services. [2]The power to issue orders pursuant to sentence 1 shall also apply vis-à-vis financial holding companies or mixed financial holding companies as well as vis-à-vis the persons who actually manage the business of these companies.

(4) (Repealed)

Section 6a Special functions

(1) If there are grounds for inferring that the deposits accepted by an institution, any other assets entrusted to an institution or a financial transaction serve or – if a financial transaction were to be executed – would serve the purpose of financing a terrorist organisation pursuant to section 129a also in conjunction with section 129b of the German Criminal Code (*Strafgesetzbuch*), then BaFin may

1. issue instructions to the management of the institution;
2. prohibit an institution from allowing funds to be withdrawn or transferred from an account or safe custody account held with it;
3. prohibit an institution from executing any other financial transactions.

(2) Such grounds within the meaning of subsection (1) are, as a rule, particularly deemed to exist if the holder of an account or a safe custody account, any party authorised to draw on the said accounts, or a customer of the institution is a natural or legal person or a group of persons without legal personality whose name is included on the applicable list of the European Council approved in connection with combating terrorism as part of the Council Common Position 2001/931/CFSC of 27 December 2001 on the application of specific measures to combat terrorism (OJ EC L 344/93).

(3) BaFin can release assets subject to an order issued pursuant to subsection (1) in individual cases at the request of the natural or legal person or group of persons without legal personality concerned if these assets cover the minimum subsistence outlays of the person or his/her family or are required for pension payments, maintenance payments or similar purposes.

(4) An order issued pursuant to subsection (1) shall be rescinded as soon and insofar as the reason for issuing it no longer exists.

(5) The institution or any other aggrieved party can raise an objection to an order issued pursuant to subsection (1).

(6) This is without prejudice to the possibility of imposing restrictions on capital transfers and payment transactions pursuant to section 2 (2) in conjunction with section 7 (1) of the Foreign Trade and Payments Act (*Aussenwirtschaftsgesetz*).

Section 7 Cooperation with the Deutsche Bundesbank

(1) [1]BaFin and the Deutsche Bundesbank shall cooperate as stipulated in this Act. [2]Notwithstanding further legal provisions, such cooperation shall encompass the ongoing monitoring of institutions by the Deutsche Bundesbank. [3]Ongoing monitoring shall specifically include evaluating the documentation submitted by institutions, audit reports pursuant to section 26 and annual financial statements as well as performing and evaluating audits of banking operations with a view to assessing institutions' capital adequacy and risk management procedures, as well as appraising audit findings. [4]As a rule, the Deutsche Bundesbank's ongoing monitoring activities shall be performed by its Regional Offices (*Hauptverwaltungen*).

(2) [1]In this context, the Deutsche Bundesbank shall observe the guidelines issued by BaFin. [2]BaFin's guidelines on ongoing supervision shall be issued in agreement with the Deutsche Bundesbank. [3]If agreement cannot be reached within an appropriate period, the Federal Ministry of Finance shall issue such guidelines in consultation with the Deutsche Bundesbank. [4]BaFin shall be responsible for any supervisory action taken against institutions, especially general dispositions and administrative acts, including audit orders pursuant to section 44 (1) sentence 2 and section 44b (2) sentence 1. [5]As a rule, BaFin shall base its supervisory action on the Deutsche Bundesbank's audit findings and appraisals.

(3) [1]BaFin and the Deutsche Bundesbank shall exchange any observations and findings which are necessary for the performance of their functions. [2]In this respect, the Deutsche Bundesbank shall also provide BaFin with the data that it obtains by virtue of collecting statistics pursuant to section 18 of the Bundesbank Act (*Gesetz über die Deutsche Bundesbank*). [3]It shall consult BaFin prior to ordering such collection of statistics; section 18 sentence 5 of the Bundesbank Act shall apply *mutatis mutandis*.

(4) [1]The cooperation pursuant to subsection (1) and the information pursuant to subsection (3) include the transmission of personal data which are needed by the recipient for the

performance of its functions. [2]In order to perform their functions under this Act, BaFin and the Deutsche Bundesbank may access the data stored in each other's databases by means of an automated procedure. [3]Every tenth time that BaFin retrieves personal data from the Deutsche Bundesbank's database, the Deutsche Bundesbank shall log the time, the details which enable the retrieved data sets to be ascertained as well as the identity of the retriever. [4]The log data may be used solely for the purpose of monitoring compliance with data protection rules, for data backups or for ensuring the proper functioning of the data processing system. [5]They must be deleted at the end of the calendar year following that in which the data are logged, unless they are needed for an ongoing control procedure. [6]Sentences 3 to 5 shall apply *mutatis mutandis* to data retrievals by the Deutsche Bundesbank from BaFin's database. [7]This is without prejudice to the provisions of the Federal Data Protection Act (*Bundesdatenschutzgesetz*).

(5) [1]BaFin and the Deutsche Bundesbank can set up joint data files. [2]Each party may alter, block or delete only the data which it itself has entered and is deemed to be the competent authority within the meaning of the Federal Data Protection Act with regard only to the data which it itself has entered. [3]If either party has grounds to suspect that the data entered by the other party are incorrect, it shall notify the other party thereof promptly. [4]The other party shall promptly check the accuracy of the data and, if necessary, promptly correct, block or delete the data. [5]When a joint data file is set up, it shall be determined which party shall take the technical and organisational measures pursuant to section 9 of the Federal Data Protection Act. [6]The party designated pursuant to sentence 5 shall ensure that employees are granted access to personal data only to the extent necessary for performing their functions. [7]Retrievals of personal data by the party which did not enter the data shall be logged in accordance with subsection (4) sentences 3 to 5.

Section 8 Cooperation with other authorities

(1) (Repealed)

(2) If criminal proceedings for tax offences are initiated against proprietors or senior managers of institutions as well as against holders of major participating interests in institutions or their legal representatives or representatives pursuant to the articles of association or articles of incorporation or general partners or against persons who actually manage the business of a financial holding company or a mixed financial holding company, or if such proceedings are not initiated owing to voluntary disclosure pursuant to section 371 of the Fiscal Code (*Abgabenordnung*), then section 30 of the Fiscal Code shall not preclude notifying BaFin of the proceedings and the underlying facts; the same shall apply if the proceedings are directed at persons who committed the offence whilst they were an employee of an institution or of a holder of a major participating interest in an institution.

(3) [1]BaFin and the Deutsche Bundesbank – insofar as it takes action under this Act – shall work together with the competent EEA authorities in the supervision of institutions which conduct banking business or provide financial services in another EEA state as well as in the supervision of groups of institutions or financial holding groups within the meaning of section

10a (1) to (5). [2]For the assessment pursuant to section 2c (1a) and (1b), BaFin shall work together with the competent EEA authorities if the party required to submit the report is

1. a deposit-taking credit institution, an e-money institution or a securities trading firm, a primary insurance company, a reinsurance company or a management company within the meaning of Article 1a number 2 of Council Directive 85/611/EEC (UCITS management company) which is authorised to operate in a member state or sector other than the one in which a major participating interest is to be purchased;
2. a parent enterprise of a deposit-taking credit institution, an e-money institution or a securities trading firm, a primary insurance company, a reinsurance company or a UCITS management company which is authorised to operate in a member state or sector other than the one in which a major participating interest is to be purchased, or
3. a natural or legal person who controls a deposit-taking credit institution, an e-money institution or a securities trading firm, a primary insurance company, a reinsurance company or a UCITS management company which is authorised to operate in a member state or sector other than the one in which a major participating interest is to be purchased.

[3]Subject to section 4b (1) in conjunction with section 15 (1) of the Federal Data Protection Act, they shall exchange with them all relevant and essential information required for the performance of supervision. [4]Essential information can be passed on even without an appropriate request from the competent authority. [5]All information which may affect the assessment of an institution's financial situation in the EEA state in question shall be deemed to be essential information in this respect. [6]This includes, in particular:

1. identification of the group structure, including of all major institutions in the group, as well as of the competent authorities of the institutions in the group,
2. procedures for the collection of information from the institutions in a group, and the verification of that information,
3. adverse developments in institutions or in other entities of a group which could seriously affect the institutions, and
4. major sanctions or exceptional supervisory measures which BaFin has taken pursuant to this Act or the statutory orders issued with regard to this Act's enforcement.

[7]BaFin shall provide the competent authority in the host state with all the information necessary for assessing the trustworthiness and the professional qualifications of the persons mentioned in section 1 (2) sentence 1 as well as for assessing the trustworthiness of the holders of a major participating interest in enterprises of the same group domiciled in Germany which is required for granting authorisation to and the ongoing supervision of an enterprise within the meaning of section 33b sentence 1 that intends to conduct banking business in accordance with section 1 (1) sentence 2 numbers 1, 2, 4 and 10 or provide financial services in accordance with section 1 (1a) sentence 2 numbers 1 to 4 in the host state.

(3a) [1]The competent authority within the meaning of subsection (3) sentence 1 can ask for BaFin's cooperation in a monitoring operation or an examination or inquiry. [2]In the case of requests within the meaning of sentence 1, BaFin – for the purposes of monitoring compliance with this Act and the relevant provisions of these states – shall make use of all the powers vested in it according to law, insofar as this is appropriate and necessary to fulfil the requests. [3]BaFin can refuse to perform an examination, provide information or allow employees of these foreign authorities to participate in such examinations if

1 the sovereignty, security or public order of the Federal Republic of Germany could thereby be undermined, or

2 judicial proceedings have already been instituted or an unappealable decision has already been rendered with regard to the persons in question on the basis of the same matters.

[4]In the event that BaFin does not fulfil a pertinent request or if it avails itself of its right pursuant to sentence 1, it shall inform the authority making the request of this promptly, explaining the reasons therefor; in the case of a refusal pursuant to sentence 3 number 2, it shall provide precise information about the judicial proceedings or unappealable decision.

(4) [1]In cases where BaFin is responsible for the supervision of EU parent institutions or institutions which are controlled by an EU parent financial holding company, it shall, upon request, provide all relevant information to the competent authorities of the other EEA states which are responsible for the supervision of subsidiaries of these institutions. [2]All information which may materially influence the assessment of the financial soundness of an institution in another EEA state shall be deemed to be relevant information in this respect. [3]The extent of the duty to provide information shall depend, in particular, on the subsidiary's importance within the financial system of the state concerned.

(5) Information from the competent authorities of another state may be used only for the following purposes:

1 to verify an institution's approval for business operations,

2 to monitor the institutions' activities on a stand-alone or consolidated basis,

3 for orders issued by BaFin as well as BaFin's prosecution and punishment of breaches of administrative regulations,

4 in the context of administrative proceedings regarding legal remedies against a decision by BaFin, or

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

(6) [1]Before a decision is rendered on the following matters, BaFin shall regularly consult the competent EEA authorities if the decision is of importance for their supervisory tasks:

1 changes in the shareholder, organisational or management structure of institutions in a group which require BaFin's approval or authorisation,

2 major sanctions or exceptional supervisory measures. In these cases, at least the competent authority responsible for supervision on a consolidated basis shall always be consulted, unless this supervision falls within BaFin's area of responsibility.

[2]In the event of imminent risk, BaFin may waive prior consultation of the competent authorities. [3]The same shall apply if prior consultation could compromise the effectiveness of the measure; in these cases, BaFin shall promptly inform the competent authorities after it has ordered or implemented the measure.

(7) [1]If BaFin is responsible for the supervision of a group of institutions or a financial holding group on a consolidated basis and an emergency situation arises within the group which potentially jeopardises the stability of the financial system in any EEA state in which one of the enterprises belonging to the group is domiciled, then BaFin shall promptly inform the Federal Ministry of Finance and the Deutsche Bundesbank. [2]This is without prejudice to section 9.

(8) BaFin shall notify the competent authorities of the host state of any measures which it will take to end an institution's infringements of the host state's legal provisions of which BaFin has been informed by the competent authorities of the host state.

(9) [1]If BaFin has sufficient evidence to indicate an infringement of the provisions of this Act or the corresponding provisions of the EEA states, it shall inform the authority responsible for cooperation in the supervision of institutions within whose jurisdiction the improper action has occurred. [2]If BaFin receives corresponding notification from the competent authorities of other states, it shall inform these authorities of the outcome of any inquiries which it institutes in this regard.

Section 8a Special tasks relating to supervision on a consolidated basis

(1) If BaFin is responsible for the consolidated supervision of a group of institutions or a financial holding group within the meaning of section 10a (1) to (5) headed by an EU parent institution or an EU parent financial holding company, it shall be responsible not only for the tasks ensuing from this Act, but also for carrying out the following tasks:

1 coordination of the gathering and dissemination of relevant and essential information pursuant to section 8 (3) as part of ongoing supervision as well as in emergency situations, and

2 planning and coordination of supervisory activities as part of ongoing supervision as well as in emergency situations. BaFin and the Deutsche Bundesbank – insofar as it takes action under this Act – shall hereby work together with the competent authorities of the other EEA states insofar as this is necessary. This shall particularly be the case for the ongoing monitoring of institutions' risk management frameworks as well as for cross-border examinations.

(2) [1]BaFin and the competent EEA authorities can lay down detailed provisions for the supervision of groups of institutions or financial holding groups within the meaning of section 10a (1) to (5) in cooperation agreements. [2]These arrangements may entrust additional tasks to the competent authority responsible for supervision on a consolidated basis and specify procedures for the decision-making process and for cooperation with other competent authorities.

Section 8b Cooperation in the supervision of financial conglomerates

(1) [1]BaFin and the Deutsche Bundesbank – insofar as it takes action under this Act – shall work together with the competent authorities of the other EEA states in determining the existence of and supervising financial conglomerates pursuant to Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate and amending Council Directives 73/239/EEC, 79/267/EEC, 92/49/EEC, 92/96/EEC, 93/6/EEC and 93/22/EEC, and Directives 98/78/EC and 2000/12/EC of the European Parliament and of the Council (OJ EU 2003 L 35/1); section 8 (5) shall apply *mutatis mutandis*. [2]Where a deposit-taking credit institution, an e-money institution, a securities trading firm or a German asset management company belongs to a cross-border corporate group which could be a financial conglomerate but has not yet been classified as such pursuant to Directive 2002/87/EC, BaFin shall inform the competent authorities of the other EEA states concerned accordingly.

(2) [1]BaFin together with the competent authorities of the other EEA states concerned shall designate pursuant to Article 10 of Directive 2002/87/EC a single coordinator responsible for the supplementary supervision of the financial conglomerate pursuant to this Act. [2]If BaFin is the coordinator, it shall be responsible for the following tasks, in particular, pursuant to Article 11 of Directive 2002/87/EC:

1. coordination of the gathering and dissemination of relevant and essential information as part of ongoing supervision as well as in emergency situations;
2. supervisory overview and assessment of the financial situation of a financial conglomerate;
3. assessment of compliance with the provisions on capital adequacy as well as on risk concentration and intra-group transactions pursuant to Articles 6 to 8 of Directive 2002/87/EC;
4. assessment of the financial conglomerate's structure, organisation and internal control system pursuant to Article 9 of Directive 2002/87/EC;
5. planning and coordination of supervisory activities as part of ongoing supervision as well as in emergency situations in cooperation with the competent authorities of the other EEA states concerned, and
6. any other tasks, measures and decisions assigned to BaFin by Directive 2002/87/EC or deriving from its application.

[3]As the coordinator, BaFin shall

1 inform the competent authorities of the other EEA states concerned that notification has been provided of the finding that a group of enterprises is a financial conglomerate pursuant to section 51b (1);

2 consult the competent authorities of the other EEA states concerned prior to

(a) decisions pursuant to section 10b (3) sentence 8, also in conjunction with section 13d (1), and section 53d;

(b) exemptions pursuant to section 31 (5) sentence 3; in urgent cases, BaFin can waive prior consultation;

(c) measures pursuant to section 10b (5), section 13d (4) sentence 5, section 45 (3) and section 45a (1) sentence 2 if these are of importance for the authorities' supervisory activities; in urgent cases or in the event of imminent risk, BaFin may waive prior consultation of the competent authorities. It shall promptly inform the competent authorities of the EEA states concerned thereof;

3 present the competent authorities of the other EEA states concerned with proposals for decisions on

(a) disregarding conglomerate enterprises when calculating thresholds pursuant to section 51a (4);

(b) revoking the finding that a group of enterprises is a financial conglomerate and that an enterprise is a superordinated financial conglomerate enterprise pursuant to section 51b (3);

(c) exemptions pursuant to section 51c number 2.

(3) [1]In the cases specified in section 8d (2), section 10b (4), section 51a (4) and (6) sentence 4, section 51b (3) and section 51c, BaFin shall render a decision in agreement with the competent authorities of the other EEA states concerned. [2]Only relevant competent authorities shall be deemed to be competent authorities within the meaning of sentence 1 as well as subsection (2) sentence 3 number 2 letters (a) and (b) and number 3. [3]Relevant competent authorities shall mean the coordinator pursuant to subsection (2) sentence 1 and the other authorities defined as relevant competent authorities in Article 2 number 17 of Directive 2002/87/EC or identified as such in the procedure described therein.

(4) BaFin shall lay down detailed provisions on cooperation in the supervision of financial conglomerates in cooperation agreements concluded with the competent authorities of the other EEA states concerned.

Section 8c Delegation of responsibility for the supervision of groups of institutions, financial holding groups and institutions belonging to a group

(1) [1]BaFin may waive supervision of a group of institutions or a financial holding group within the meaning of section 10a (1) to (5) and revocably delegate responsibility for supervision on

a consolidated basis to another competent authority within the EEA if supervision by BaFin would be inappropriate in view of the institutions concerned and the importance of their business activities in the other state, and if

1 in the case of groups of institutions, the group's superordinated enterprise is a subsidiary of a deposit-taking credit institution or a securities trading firm domiciled in the other EEA state and is included in supervision on a consolidated basis in accordance with the Banking Directive in that other state, or

2 in the case of financial holding groups, these groups are supervised on a consolidated basis in accordance with the Banking Directive by the competent authorities of the other EEA state.

[2]In these cases, BaFin shall revocably exempt the superordinated enterprise from the provisions of this Act relating to supervision on a consolidated basis. [3]The superordinated enterprise shall be consulted before exemption and delegation of responsibility to another authority. [4]The Commission of the European Communities shall be notified of the existence and contents of any such agreements.

(2) [1]If BaFin assumes responsibility for supervision on a consolidated basis of a group of institutions or a financial holding group by virtue of an agreement with a competent authority within the EEA, it can designate a group institution domiciled in Germany as the superordinated enterprise. [2]Section 10a shall apply *mutatis mutandis*.

(3) [1]BaFin can revocably delegate responsibility for the supervision of an institution which it is responsible for authorising to another competent authority within the EEA if the institution is a subsidiary of an institution which this competent authority is responsible for authorising and supervising pursuant to the Banking Directive. [2]This institution shall be consulted before delegation of responsibility to another authority. [3]The Commission of the European Communities shall be informed of the existence and contents of any such agreements.

Section 8d Responsibility for supplementary supervision at conglomerate level

(1) BaFin may waive supervision of a financial conglomerate and revocably exempt the superordinated financial conglomerate enterprise from the provisions of this Act relating to supervision at conglomerate level if

1 the financial conglomerate is subordinated to another financial conglomerate, whose superordinated financial conglomerate enterprise is domiciled in another EEA state and is included in supplementary supervision at conglomerate level there pursuant to Directive 2002/87/EC, or

2 this is appropriate, taking into account the financial conglomerate's structure and the relative importance of its activities in different EEA states; the superordinated financial conglomerate enterprise shall be given the opportunity to comment.

(2) [1]Over and above the cases specified in section 1 (20) and section 10b (3) sentences 6 to 8 or (4), BaFin can designate a cross-sector corporate group as a financial conglomerate and

an institution as a superordinated financial conglomerate enterprise pursuant to Article 2 number 14 as well as Articles 3 and 5 of Directive 2002/87/EC. [2]The provisions of this Act relating to the supplementary supervision of financial conglomerates shall apply *mutatis mutandis* in this case.

Section 9 Confidentiality requirement

(1) [1]Persons employed by BaFin and persons commissioned under section 4 (3) of the Act Concerning the Federal Financial Supervisory Authority (*Gesetz über die Bundesanstalt für Finanzdienstleistungsaufsicht*), supervisors appointed under section 46 (1) sentence 2 number 4, the liquidators appointed under section 37 sentence 2 and section 38 (2) sentences 2 and 4 and persons employed by the Deutsche Bundesbank, insofar as they are acting to implement this Act, may not disclose or use without authorisation facts which have come to their notice in the course of their activities and which should be kept secret in the interests of the institution or a third party (especially business and trade secrets), not even after they have left such employment or their activities have ended. [2]This is without prejudice to the provisions of the Federal Data Protection Act which must be complied with by the institutions and enterprises under supervision. [3]This shall also apply to other persons who, by way of official reporting, obtain knowledge of the facts referred to in sentence 1. [4]In particular, it shall not be deemed to be such disclosure or use without authorisation within the meaning of sentence 1 if facts are passed on to

1 criminal prosecution authorities or courts having jurisdiction in criminal cases or administrative fine cases,

2 authorities which are entrusted by law or public mandate with the supervision of institutions, asset management companies, financial enterprises, insurance companies, financial markets or payment systems or operations, and to persons commissioned by such authorities,

3 authorities dealing with an institution's liquidation or insolvency proceedings over its assets,

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

5 a deposit guarantee scheme or an investor compensation scheme,

6 stock exchanges or futures exchanges,

7 central banks, or

8 providers of systems pursuant to section 1 (16),

insofar as these authorities require the information for the performance of their functions. [5]The confidentiality requirement specified in sentence 1 shall apply *mutatis mutandis* to persons employed by these authorities. [6]If the authority is located in another state, the facts may be passed on only if that authority and the persons commissioned by it are subject to a confidentiality requirement corresponding to that specified in sentence 1. [7]The foreign authority is to be informed that it may use information solely for the purpose for which it has

been passed on to it. [8]Information from another state may be passed on only with the express permission of the competent authorities providing this information and only for such purposes as have been agreed by these authorities.

(2) [1]Sections 93, 97 and 105 (1), section 111 (5) in conjunction with section 105 (1), and section 116 (1) of the Fiscal Code shall not apply to the persons specified in subsection (1) insofar as they are acting to implement this Act. [2]This shall not apply if the fiscal authorities require the information for instituting tax offence proceedings and the associated tax assessment proceedings in the prosecution of which there is a pressing public interest, or if the person required to provide information or the persons acting on his/her behalf have intentionally supplied incorrect information. [3]Sentence 2 shall not apply if the facts involved were communicated to the persons specified in subsection (1) sentence 1 or 3 by the competent supervisory authority of another state or by persons commissioned by that authority.

Part II

Provisions for institutions, groups of institutions, financial holding groups, financial conglomerates, mixed financial holding companies and mixed-activity holding companies

Division 1 OWN FUNDS AND LIQUIDITY

Section 10 Own funds requirements for institutions, groups of institutions and financial holding groups

(1) [1]In order to meet their obligations to their creditors, and in particular to safeguard the assets entrusted to them, institutions as well as groups of institutions and financial holding groups pursuant to section 10a (1) to (5) must have adequate own funds. [2]To assess the adequacy of their own funds, institutions as well as groups of institutions and financial holding groups within the meaning of section 10a (1) to (5) may, subject to BaFin's prior approval, use internal risk measurement procedures, in particular internal rating systems for estimating risk parameters relating to counterparty credit risk, internal market risk models and internal estimation procedures for determining operational risk. [3]Institutions may collect and use personal data on their customers, on persons with whom they conduct contractual negotiations on transactions that give rise to counterparty credit risk and on persons responsible for the performance of a counterparty credit risk, provided that these data are

1 verifiably material to determining and recognising counterparty credit risks using a scientifically recognised mathematical-statistical method, and

2 necessary for the setting up and operation, including the development and improvement, of internal rating systems for estimating risk parameters relating to the institution's counterparty credit risk

and do not pertain to information about nationality or data pursuant to section 3 (9) of the Federal Data Protection Act. [4]Business and trade secrets shall be deemed to be equivalent to personal data. [5]Notwithstanding sentence 3 number 1, institutions may, for the purpose of developing and improving rating systems, also collect and use data that may be material to determining and recognising counterparty credit risk based on plausible economic rationale. [6]In particular, data that belong to the following categories or have been be obtained from data in the following categories may be material to determining and recognising counterparty credit risk:

1 income, financial and employment circumstances as well as other economic circumstances, in particular type, scope and profitability of the business activity of the person concerned,

2 the past payment behaviour and contract fulfilment of the person concerned,

3 enforceable claims and judicial enforcement proceedings and measures against the person concerned,

4 insolvency proceedings relating to the assets of the person concerned where these have been opened or an application has been made to open such proceedings.

[7]These data may be collected from

1 the person concerned,

2 institutions that belong to the same group of institutions,

3 external credit assessment institutions (ECAIs) and credit information agencies, and

4 publicly accessible sources.

[8]Institutions may transmit personal data collected pursuant to sentence 3 to other institutions within the same group and, in a pseudo-anonymised form, also to service providers tasked with the setting up and operation, including the development and improvement, of rating systems, provided that this is necessary for the setting up and operation, including the development and improvement, of internal rating systems for estimating risk parameters relating to counterparty credit risk. [9]The Federal Ministry of Finance shall be authorised to issue by way of a statutory order, in consultation with the Deutsche Bundesbank, more detailed provisions on determining the own funds adequacy (solvency) of institutions as well as groups of institutions and financial holding groups, in particular concerning

1 the determination of the transactions that are subject to capital charges for counterparty credit risk, including equity and dilution risk, as well as market risk (in particular foreign currency risk, commodities risk and position risk in the trading book) and their risk parameters;

2 the subject and procedures relating to determining capital requirements for operational risk;

3 the methods for calculating capital requirements and the requisite technical principles;

4 details concerning the collection and use of personal data for determining and recognising counterparty credit risk; the statutory order shall include deadlines for deleting or anonymising the data;

5 the approval criteria for using internal risk measurement procedures, in particular internal rating systems for estimating risk parameters relating to counterparty credit risk, internal market risk models as well as internal estimation procedures for determining operational risk, the approval procedure and the execution of examinations pursuant to section 44 (1) sentence 2 concerning the approval of internal risk measurement procedures;

6 the substance, type, scope and form of the information required to demonstrate adequate own funds pursuant to subsection (1e) and the data storage media, transmission channels and data formats permissible for data transmission;

7 institutions' obligation to disclose information used as the basis for demonstrating adequate own funds pursuant to section 26a (1) and (2), including the subject of the disclosure requirement and the medium and frequency of disclosure;

8 the calculation methods used to determine the positions pursuant to subsection (2b) sentence 1 number 9 and subsection (6a), and

9 the requirements that an external credit assessment institution has to fulfil for its ratings to be recognised for risk weighting purposes and the requirements in terms of the rating.

[10]The Federal Ministry of Finance may delegate this authority to BaFin by way of a statutory order, subject to the proviso that the statutory order is issued in agreement with the Deutsche Bundesbank. [11]The central associations of the institutions shall be consulted before the statutory order is issued.

(1a) [1]When institutions belonging to a cross-border group of institutions or a financial holding group subject to consolidated supervision by BaFin in accordance with section 10a (1) to (5) intend for the first time to use an internal risk measurement procedure to calculate their own funds requirements for counterparty credit risk or operational risk or an internal market risk model on a consolidated basis pursuant to subsection (1) sentence 2, the superordinated enterprise shall submit the application for approval to BaFin. [2]A cross-border group of institutions or financial holding group within the meaning of this provision shall be deemed to exist if the enterprises belonging to the group are domiciled in at least two different EEA countries. [3]After receiving the complete application, BaFin shall promptly forward it to the competent EEA authorities responsible for supervising the enterprises covered by the application in accordance with the Banking Directive. [4]The competent authorities shall, within six months of receipt of the complete application by BaFin, take a joint decision on the application. [5]If a joint decision is not reached within this time, BaFin shall decide on its own. [6]As soon as a decision pursuant to sentence 4 or 5 has been reached, BaFin shall inform the group's superordinated enterprise of its substance in writing, giving the principal reasons and referring to the legal foundations on which the decision was based. [7]Where a decision is taken pursuant to sentence 5, BaFin shall additionally inform the other competent authorities involved; in this case, any reservations expressed by these agencies shall also be referred to when giving the principal reasons. [8]BaFin will issue the notice of approval to use the internal risk measurement procedure on a consolidated and a stand-alone basis if it is responsible for supervising the enterprises covered by the application on a stand-alone basis. [9]Sentence 8 shall apply *mutatis mutandis* to notices of approval to institutions that belong to a cross-border group within the meaning of sentence 2 but are subject to supervision by BaFin only on a stand-alone basis.

(1b) When assessing the adequacy of the own funds, BaFin may, in particular cases,

(a) stipulate own funds requirements exceeding the solvency principles for institutions which, by virtue of their asset or business profile, have a risk structure which compares unfavourably with that of most other institutions engaged in similar business, in line with the institution's extraordinary risk structure (extraordinary circumstances), and

(b) permit, upon application from the institution, a different method of calculating the own funds requirements in order to avoid risks being reflected inappropriately in

particular cases. Such permission must be compatible with the framework laid down by European Community legislation as stipulated in subsection (1).

(1c) (Repealed)

(1d) [1]The calculation of the adequacy of the own funds in accordance with the statutory order pursuant to subsection (1) sentence 9 shall be based on modified available capital. [2]To determine the modified available capital, the amounts required to back positions with liable capital pursuant to the provisions of this Act and the positions pursuant to subsection (6a) shall be deducted from liable capital pursuant to subsection (2) sentence 2, and the eligible part of the position in subsection (2b) sentence 1 number 9 shall be added to it. [3]When calculating liable capital pursuant to subsection (2) sentence 2 for the purposes of sections 12, 13, 13a and 15, the positions of subsection (6a) and the eligible part of the position in subsection (2b) sentence 1 number 9 shall be disregarded. [4]The same applies to the amounts required to back positions with liable capital pursuant to the provisions of this Act.

(1e) [1]Institutions and the superordinated enterprises of a group of institutions or a financial holding group pursuant to section 10a (1) to (3) shall submit the information necessary for monitoring capital adequacy to BaFin and the Deutsche Bundesbank once a quarter. [2]The statutory order pursuant to subsection (1) sentence 9 number 6 may prescribe a longer reporting period in particular cases.

(2) [1]The own funds consist of liable capital and tier 3 capital. [2]The liable capital is the sum of tier 1 capital pursuant to subsection (2a) sentence 1, less the deductible positions pursuant to subsection (2a) sentence 2 numbers 1 to 5, and tier 2 capital pursuant to subsection (2b) sentence 1 numbers 1 to 8, less the positions of subsection (6) sentence 1. [3]For the purpose of calculating the liable capital, tier 2 capital pursuant to sentence 2 may only be included up to the level of the tier 1 capital pursuant to sentence 2. [4]Moreover, the amount of tier 2 capital included in the calculation consisting of longer-term subordinated liabilities and the add-on for the extended liability of members of cooperatives may not exceed 50 per cent of the tier 1 capital. [5]Own funds made available by third parties may be included only if they have actually been transferred to the institution. [6]The acquisition of own funds of the institution by a third party acting for the institution's account, by a subsidiary of the institution or by a third party acting for the account of the institution's subsidiary shall be deemed, for the purpose of inclusion, to be equivalent to an acquisition by the institution, unless the institution can prove that the own funds were actually transferred to it. [7]Such acquisition shall be equivalent to collateral pledged as security.

(2a) [1]Tier 1 capital consists of the following after deducting the positions listed in sentence 2:

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

2 in the case of public limited companies, limited partnership companies and private limited companies: the paid-up capital, less shares entitling the holder to preferential

payment of dividends (preferential shares), and the reserves; in the case of limited partnership companies, also capital contributions of the general partners not paid into the capital, less withdrawals by the general partners and loans granted to them;

3 in the case of registered cooperative societies: the amounts paid up on members' shares and the reserves; amounts paid up on the shares of members who are retiring at the end of the financial year and their rights to the disbursement of a share in the cooperative society's revenue reserves, as shown separately in the balance sheet by registered cooperative societies pursuant to section 73 (3) of the Cooperative Societies Act (*Genossenschaftsgesetz*), shall be deducted;

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

5 in the case of public credit institutions that do not come under the provisions of number 4: the paid-up endowment capital and the reserves;

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

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

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

9 the net profit for the financial year, insofar as its appropriation to the capital, to the reserves, or to the amounts paid up on members' shares has been agreed.

[2]The deductible positions pursuant to sentence 1 are

1 the net loss for the financial year,

2 the intangible assets,

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

4 loans to limited partners, to shareholders in a private or public limited company or in a limited partnership company, or to shareholders in a public institution who own more than 25 per cent of the capital (nominal capital, total amount of capital shares) of the institution, or who hold more than 25 per cent of the voting rights, if they have not been granted on market terms or if they are not adequately secured in line with banking practice,

5 loans to silent partners within the meaning of subsection (4) whose contribution to the capital amounts to more than 25 per cent of the tier 1 capital, excluding the capital contributions of silent partners, if they have not been granted on market terms or if they are not adequately secured in line with banking practice,

6 at least half of the respective amounts of the positions pursuant to subsection (6) sentence 1, subsection (6a) and of the amounts to be backed by liable capital pursuant to section 12 (1) sentence 4, section 13, section 13a and section 15, and

7 the negative tier 2 capital balance that results if the sum of the at most half of the respective amounts of the positions pursuant to subsection (6) sentence 1 and subsection (6a) and of the positions to be backed by liable capital pursuant to section 12 (1) sentence 4, section 13, section 13a and section 15 exceeds the eligible tier 2 capital pursuant to subsection (2) sentence 3.

[3]Section 16 (2) to (4) of the Companies Act (*Aktiengesetz*) shall apply *mutatis mutandis* to the calculation of the percentages pursuant to sentence 2 numbers 4 and 5.

(2b) [1]Tier 2 capital consists of the following after deducting the adjustment items pursuant to subsection (3b):

1 non-committed contingency reserves pursuant to section 340f of the Commercial Code,

2 preferential shares,

3 reserves pursuant to section 6b of the Income Tax Act (*Einkommensteuergesetz*) up to the amount of 45 per cent, insofar as these reserves were formed by the transfer of the profits from the sale of land, land rights and buildings,

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

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

6 the unrealised reserves shown in the notes to the last set of approved annual accounts pursuant to subsections (4a) and (4b) in the case of land, land rights and buildings up to the amount of 45 per cent of the difference between the book value and the mortgage lending value,

7 the unrealised reserves shown in the notes to the last set of approved annual accounts pursuant to subsections (4a) and (4c) in the case of banking book positions up to the amount of 45 per cent of the difference between the book value, including contingency reserves, and

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

(b) the value, to be ascertained pursuant to section 11 (2) sentences 2 to 5 of the Valuation Act (*Bewertungsgesetz*), of unlisted securities evidencing shares in incorporated enterprises belonging to the networks of credit cooperatives or savings banks with a balance sheet total of at least 10 million euro, or

(c) the published repurchase price of units in a common fund within the meaning of the Investment Act or of units in a collective investment scheme launched by an asset management company domiciled in another EEA state in accordance with the provisions of the UCITS Directive,

8 in the case of registered cooperative societies, the capital add-on which takes into account the members' extended liability, to be set by way of a statutory order by the Federal Ministry of Finance after having consulted the Deutsche Bundesbank; the Federal Ministry of Finance may delegate this authority by way of a statutory order to BaFin,

9 the recognisable value adjustment excess that arises at an institution (IRBA institution) which may, when determining whether its own funds are adequate pursuant to subsection (1), recognise credit risk exposures according to the Internal Ratings-based Approach (IRBA) from calculating the difference between the value adjustments and provisions created for all IRBA exposures in the exposure classes Central governments, Institutions, Corporates and Retail claims and the expected loss amounts for these IRBA exposures; the value adjustment excess shall be recognised up to 0.6 per cent of the sum of the risk-weighted IRBA exposure amounts for all IRBA exposures that are not IRBA securitisation positions with a risk weight of 1,250 per cent.

[2]The deductible positions also include the at most half of the respective amounts of the positions pursuant to subsection (6) sentence 1, subsection (6a) and of the amounts to be backed by liable capital pursuant to section 12 (1) sentence 4, section 13, section 13a and section 15.

(2c) [1]Tier 3 capital consists of the following:

1 the proportional profit that would arise from the notional closing of all trading book positions, less all foreseeable charges and dividends and less the likely loss that would ensue from banking book business in the event of the enterprise's liquidation, unless this is already included in the adjustment items pursuant to subsection (3b) (net profit),

2 short-term subordinated liabilities within the meaning of subsection (7), and

3 positions that may not be recognised as tier 2 capital owing solely to capping pursuant to subsection (2) sentences 3 and 4.

[2]The aforementioned positions may be recognised as tier 3 capital (eligible tier 3 capital) only up to an amount which, together with that part of the tier 2 capital pursuant to subsection (2b) which is not needed to back counterparty credit risk and operational risk under the provisions of this Act (free tier 2 capital), does not exceed 250 per cent of the tier 1 capital pursuant to subsection (2a) not needed to back counterparty credit risk and operational risk under the provisions of this Act (free tier 1 capital). [3]For securities trading firms, the limit stipulated in sentence 2 shall be 200 per cent of the free tier 1 capital, unless the illiquid assets within the meaning of sentence 4, where these have not been deducted from the liable capital pursuant to subsection (6) sentence 1 number 1, and the losses of its subsidiaries are deducted from the tier 3 capital. [4]Illiquid assets are

1 tangible assets,

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

3 loans and non-marketable debt securities with a remaining maturity of more than 90 days, and

4 physical stocks, unless they have to be backed by own funds in accordance with the statutory order pursuant to subsection (1) sentence 9.

[5]Margin payments on forward or futures transactions concluded on a stock exchange or financial futures exchange shall not be deemed to be illiquid assets.

(2d) [1]When calculating the adequacy of the own funds in accordance with the statutory order pursuant to subsection (1) sentence 9, institutions shall calculate their tier 3 capital pursuant to subsection (2c), in the case of trading book institutions less the large exposure excess amounts from borrower-related trading book and overall business positions pursuant to section 13a (4) and (5) where these excess amounts are backed by tier 3 capital (available tier 3 capital). [2]Available tier 3 capital may be used only to back the capital charges for market risk.

(2e) (Repealed)

(3) [1]Where an institution draws up interim accounts, these shall be audited by an external auditor; in these cases, the interim accounts shall be deemed comparable to the annual accounts for the purposes of this provision, with interim profits assignable to tier 1 capital insofar as they are not earmarked for anticipated dividends or tax payments. [2]Losses arising from interim accounts shall be deducted from tier 1 capital. [3]The institution shall submit the interim accounts to both BaFin and the Deutsche Bundesbank promptly. [4]The external auditor shall submit a certificate on the audit of the interim accounts to BaFin and the Deutsche Bundesbank promptly after completion of the audit. [5]A truncated set of annual accounts covering a period of less than twelve months drawn up in the wake of a merger shall not constitute a set of interim accounts within the meaning of this subsection.

(3a) [1]Reserves within the meaning of subsection (2a) sentence 1 shall comprise only the amounts designated as such in the balance sheet in the last approved annual accounts for the end of a financial year, with the exception of liability-side items that will not be liable to tax until after they have been released. [2]Amounts designated as reserves that have been formed from income which will not become liable to tax until after a future event occurs may only be recognised up to 45 per cent. [3]Reserves which are formed as a result of premium income obtained through a share issue or through some other inflow of external funds may be included from the time of their inflow. [4]Where an institution is the originator of a securitisation transaction, net gains arising from the capitalisation of future income from the securitised assets and providing credit enhancement to positions in the securitisation shall not be deemed to constitute reserves within the meaning of subsection (2a) sentence 1.

(3b) [1]BaFin may impose an adjustment item on the liable capital. [2]If the adjustment item is imposed so as to take account of capital changes which have not yet affected the balance sheet, the adjustment shall become null and void with the next approved annual accounts drawn up for the end of a financial year. [3]At the institution's request, BaFin shall rescind its adjustment insofar as the reasons for its imposition no longer apply.

(4) [1]Capital contributions of silent partners shall be recognised towards tier 1 capital if

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

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

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

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

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

6 the institution, when establishing the silent partnership, referred explicitly and in writing to the legal consequences specified in sentences 2 and 3.

[2]Subsequently, participation in any loss cannot be changed to the detriment of the institution, the subordination of claims cannot be limited, and neither the period to maturity nor the period of notice can be shortened. [3]Any early repayment shall be returned to the institution, notwithstanding any arrangements to the contrary, unless the capital has been replaced by the payment of other liable capital of at least equivalent value or BaFin has consented to the early repayment. [4]Sections 723 to 725, 727 and 728 of the German Civil Code (*Bürgerliches Gesetzbuch*) shall not apply if the company's purpose is to supply liable capital.

(4a) [1]Unrealised reserves may be recognised as liable capital only if the tier 1 capital pursuant to subsection (2a) sentence 1, after taking account of the deductible positions pursuant to subsection (2a) sentence 2 numbers 1 to 5, is at least 4.4 per cent of 12.5 times the total capital charge for credit risk; the unrealised reserves may be recognised as liable capital only up to 1.4 per cent of this amount. [2]For the purpose of these calculations, trading book positions may be treated as banking book positions. [3]Unrealised reserves may be recognised only if all assets pursuant to subsection (2b) sentence 1 number 6 or 7 are included in the calculation of the difference. [4]The calculation of the unrealised reserves shall be disclosed to BaFin and the Deutsche Bundesbank at the former's request, indicating the relevant valuations.

(4b) [1]Section 16 (1) and (2) of the Pfandbrief Act shall apply *mutatis mutandis* to the calculation of the mortgage lending value of land, land rights and buildings. [2]These values shall be determined by means of expert valuations at least every three years. [3]The institution shall appoint a committee of experts consisting of at least three members to calculate the mortgage lending value. [4]Section 77 (2) and (3) of the Investment Act shall apply *mutatis mutandis*. [5]If the mortgage lending value is lower than the book value, this negative difference shall be deducted from the unrealised reserves.

(4c) [1]The market value of securities listed in subsection (2b) sentence 1 number 7 (a) shall be determined by the market price on the reporting date. [2]If no market price is available on a

reporting date, the last market price ascertained before the reporting date shall apply. [3]If securities are treated in accordance with the principles for fixed assets, the difference between the applicable market value and the higher book value shall be deducted from the unrealised reserves. [4]The procedure described in sentences 1 to 3 shall be used *mutatis mutandis* to determine the value of securities listed in subsection (2b) sentence 1 number 7 (b) pursuant to section 11 (2) of the Valuation Act, and to determine the repurchase price of units in a common fund.

(5) [1]Capital paid up against the granting of participation rights (liabilities represented by participation rights) shall be recognised towards tier 2 capital only if

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

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

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

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

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

6 the institution, when concluding the agreement, referred explicitly and in writing to the legal consequences specified in sentences 3 and 4.

[2]The institution may reserve the right to terminate the liability without notice in the event that a change in taxation gives rise to additional payments to the party acquiring the participation rights. [3]Subsequently, participation in any loss cannot be changed to the detriment of the institution, the subordination of claims cannot be limited, and neither the period to maturity nor the period of notice can be shortened. [4]Except in the cases described in sentence 6, any early repurchase of the claim or other repayment shall be returned to the institution, notwithstanding any arrangements to the contrary, unless the capital has been replaced by the payment of other liable capital of at least equivalent value or BaFin has consented to the early repayment; the institution may reserve such a right contractually. [5]If securities are issued in respect of the participation rights, the legal consequences specified in sentences 3 and 4 shall be specified only in the subscription and issuance terms. [6]An institution may purchase its own participation rights evidenced by securities up to 3 per cent of the total nominal amount of an issue for market-smoothing purposes or if it is thereby carrying out instructions to buy on a commission basis. [7]BaFin and the Deutsche Bundesbank shall be notified promptly of an institution's intention to make use of the market-smoothing option pursuant to sentence 6.

(5a) [1]Capital which has been paid up by virtue of the incurrence of subordinated liabilities shall be recognised as liable capital in the form of longer-term subordinated liabilities if

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

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

3 the repayment claim cannot be offset against claims of the institution and the terms of the contract do not stipulate the provision of collateral for the liabilities by the institution or third parties.

[2]If the claim to repayment falls due or, under the terms of the agreement, can fall due within less than two years, only two-fifths of the liabilities shall be recognised as liable capital. [3]The institution may reserve the right to terminate the liability without notice in the event that a change in taxation gives rise to additional payments to the party acquiring the subordinated claims. [4]Subsequently, the subordination of claims cannot be limited, and neither the period to maturity nor the period of notice can be shortened. [5]Except in the cases described in sentence 6, any early repurchase of the claim or other repayment shall be returned to the institution, notwithstanding any arrangements to the contrary, unless the capital has been replaced by the payment of other liable capital of at least equivalent value or BaFin has consented to the early repayment; the institution may reserve such a right contractually. [6]An institution may purchase its own subordinated liabilities evidenced by securities up to 3 per cent of the total nominal amount of an issue for market-smoothing purposes or if it is thereby carrying out instructions to buy on a commission basis. [7]BaFin and the Deutsche Bundesbank shall be notified promptly of an institution's intention to make use of the market-smoothing option pursuant to sentence 6. [8]The institution, when concluding the agreement, shall refer explicitly and in writing to the legal consequences specified in sentences 4 and 5; if securities are issued in respect of the subordinated liabilities, the aforementioned legal consequences shall be specified only in the subscription and issuance terms. [9]Section 309 number 3 of the Civil Code concerning the ban on netting shall not apply to claims arising from the institution's subordinated liabilities. [10]No designation may be used for subordinated liabilities, or for advertising for subordinated liabilities, which contains the word "saving" (*Spar*), or which is otherwise liable to deceive as to the subordinated status in the event of the opening of insolvency proceedings or liquidation; this shall not apply, however, insofar as a credit institution uses its firm-name as protected under section 40. [11]Notwithstanding sentence 1 number 3, an institution may provide subordinated collateral for subordinated liabilities incurred by a subsidiary of the institution set up exclusively for the purpose of raising capital.

(6) [1]Half of the following shall, in each case, be deducted from tier 1 and tier 2 capital:

1 direct participating interests in institutions and financial enterprises amounting to more than 10 per cent of these enterprises' capital;

2 claims arising from subordinated liabilities within the meaning of subsection (5a) and claims arising from participation rights in institutions and financial enterprises in which the institution directly holds a capital share of more than 10 per cent;

3 capital contributions of silent partners in institutions and financial enterprises in which the institution directly holds a capital share of more than 10 per cent;

4 the total amount of the following positions insofar as it exceeds 10 per cent of the institution's liable capital before deducting the amounts pursuant to numbers 1 to 3, 5 and 6 and pursuant to this number:

(a) direct participating interests in institutions and financial enterprises amounting to not more than 10 per cent of these enterprises' capital;

(b) claims arising from subordinated liabilities within the meaning of subsection (5a) and claims arising from participation rights in institutions and financial enterprises in which the institution has no direct participating interest or in which such participating interest amounts to not more than 10 per cent of these enterprises' capital;

(c) capital contributions of silent partners in institutions and financial enterprises in which the institution has no direct participating interest or in which such participating interest amounts to not more than 10 per cent of these enterprises' capital;

5 participating interests within the meaning of section 271 (1) sentence 1 of the Commercial Code or a direct or indirect participating interest of at least 20 per cent of the capital or of the voting rights in primary insurance companies, reinsurance companies and insurance holding companies, and

6 claims arising from participation rights within the meaning of section 53c (3) sentence 1 number 3a in conjunction with subsection (3a) of the Insurance Supervision Act and claims arising from subordinated liabilities within the meaning of section 53c (3) sentence 1 number 3b in conjunction with section (3b) of the Insurance Supervision Act on primary insurance companies, reinsurance companies and insurance holding companies in which the institution holds a participating interest within the meaning of number 5.

[2]At the institution’s request, BaFin may allow exemptions in terms of the deductible positions pursuant to sentence 1 numbers 1 to 6 if the institution holds shares in another institution, financial enterprise, primary insurance company or reinsurance company or in an insurance holding company temporarily for the purposes of financially assisting the enterprise in question with a view to reorganising or saving it. [3]Shares in another institution, financial enterprise, primary insurance company or reinsurance company or in an insurance holding company that an institution holds only temporarily to trade for its own account, on a continuous basis, on the financial markets using its own capital by buying and selling these shares at the prices it sets shall not be deducted from tier 1 and tier 2 capital, provided that the institution has reported this activity to BaFin and the Deutsche Bundesbank and has in place appropriate systems and controls for trading with these shares. [4]Positions pursuant to

sentence 1 numbers 1 to 4 which an institution or its superordinated enterprise mandatorily or voluntarily includes in the consolidation pursuant to sections 10a, 13b (3) sentence 1 and section 12 (2) sentences 1 and 2 need not be deducted from the institution's liable capital. [5]Where an institution belongs to a cross-sector corporate group that is not a financial conglomerate, it does not need to deduct positions pursuant to sentence 1 numbers 5 and 6 from its liable capital if this corporate group, subject to BaFin's approval, additionally conducts a capital adequacy calculation using one of the methods described in more detail in the statutory order pursuant to section 10b (1) sentence 2 and the institution and the enterprises in question are included in this calculation as subordinated enterprises or the superordinated enterprise in accordance with the criteria pursuant to section 10b (3) sentences 5 to 8 or (4); calculation method 1 may only be applied if and to the extent that the scope and level of the integrated management and the internal controls are appropriate in terms of the enterprises included in the consolidated group. [6]The option pursuant to sentence 5 shall be applied for by the enterprise which is the group's superordinated enterprise in accordance with the criteria pursuant to section 10b (3) sentences 6 to 8 or (4); the chosen calculation method shall be applied on a consistent and permanent basis. [7]An institution that belongs to a financial conglomerate need not deduct the positions pursuant to sentence 1 numbers 1 to 6 from its liable capital if it itself and the enterprises concerned are included in the calculation of this financial conglomerate’s own funds at conglomerate level pursuant to section 10b.

(6a) When determining the modified available capital within the meaning of subsection (1d) sentence 2, half of the following shall, in each case, be deducted from tier 1 and tier 2 capital:

1 value adjustment shortfalls which arise at an IRBA institution when calculating the difference between the sum of the expected loss amounts for all IRBA exposures in the exposure classes Central governments, Institutions, Corporates and Retail claims and the value adjustments and provisions created for these IRBA exposures;

2 expected loss amounts for IRBA equity exposures subject to the PD/LGD approach and IRBA equity exposures valued at the simple IRBA risk weight for equity exposures;

3 securitisation positions which are assigned a risk weight of 1,250 per cent in application of the statutory order pursuant to subsection (1) sentence 9 and which are not included in the institution's calculation of the risk-weighted exposure amounts for securitisations, and

4 the amount of the transferred value plus any replacement costs in the case of free deliveries made in the context of trading book securities transactions where performance has not been effectively executed five business days after it becomes due; free deliveries arising from system-wide failures of a clearing and settlement system may, subject to BaFin's approval, be disregarded until the system's functionality has been restored.

(7) [1]Capital which has been paid up by virtue of incurring subordinated liabilities shall be recognised as tier 3 capital in the form of short-term subordinated liabilities if

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

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

3 it is expressly stipulated that the repayment claim cannot be offset against the institution's claims and the terms of the contract expressly stipulate that no collateral for the liabilities is provided by the institution or third parties, and

4 the terms of the contract expressly stipulate that

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

(b) any early repayments of principal or payments of interest made by the institution shall be returned to it, notwithstanding any arrangements to the contrary.

[2]Subsequently, the subordination of claims cannot be limited, and neither the period to maturity nor the period of notice can be shortened. [3]Except in the cases described in sentence 5, any early repurchase of the claim or other repayment shall be returned to the institution, notwithstanding any arrangements to the contrary, unless the capital has been replaced by the payment of other own funds of at least equivalent value or BaFin has consented to the early repayment; the institution may reserve such a right contractually. [4]The institution, when concluding the agreement, shall refer explicitly and in writing to the legal consequences specified in sentences 2 and 3; if securities are issued in respect of the subordinated liabilities, the aforementioned legal consequences shall be specified only in the subscription and issuance terms. [5]An institution may purchase its own subordinated liabilities evidenced by securities up to 3 per cent of the total nominal amount of an issue for market-smoothing purposes or if it is thereby carrying out instructions to buy on a commission basis. [6]BaFin and the Deutsche Bundesbank shall be notified promptly of an institution's intention to make use of the market-smoothing option pursuant to sentence 5. [7]An institution shall notify BaFin and the Deutsche Bundesbank promptly if its own funds fall below 120 per cent of the total adequate own funds pursuant to subsection (1) sentence 1 on account of repayments of principal or payments of interest in respect of the short-term subordinated liabilities. [8]Notwithstanding sentence 1 number 3, an institution may provide subordinated collateral for subordinated liabilities incurred by a subsidiary of the institution set up exclusively for the purpose of raising capital.

(8) [1]An institution shall promptly report to BaFin and the Deutsche Bundesbank any loan which is to be deducted pursuant to subsection (2a) sentence 2 numbers 4 and 5 in accordance with sentence 2. [2]It shall specify the collateral provided and the terms of the loan. [3]Such loans which it has reported pursuant to sentence 1 shall be promptly reported to BaFin and the Deutsche Bundesbank once again if the collateral provided or the terms of the

loan are contractually altered, together with the corresponding alterations. [4]BaFin may require institutions to submit to itself and the Deutsche Bundesbank every five years a summary report of the loans to be reported pursuant to sentence 1.

(9) [1]Portfolio managers not authorised to obtain the ownership or possession of money or securities of customers when providing financial services and which do not trade in financial instruments for their own account shall demonstrate that they have own funds amounting to at least 25 per cent of their costs shown in the profit and loss account in the last set of annual accounts under general administrative expenses, depreciation and value adjustments of tangible and intangible assets. [2]If a set of annual accounts has not yet been drawn up for the first full financial year, the corresponding estimates for these items contained in the business plan for the current year shall be indicated. [3]BaFin may raise the requirements pursuant to sentences 1 and 2 if this appears appropriate in view of an expansion of the institution's business activity. [4]Upon application by the institution, BaFin may reduce the costs for the current year used as the basis for calculating the ratio pursuant to sentences 1 and 2 if it deems this appropriate because of a verifiably significant reduction in the institution's business activity in the current year compared with the preceding year. [5]Portfolio managers not authorised to obtain the ownership or possession of money or securities of customers when providing financial services and which do not trade in financial instruments for their own account shall submit to BaFin and the Deutsche Bundesbank the details and evidence necessary to verify the ratio and compliance with the requirements pursuant to sentences 1 and 3. [6]The Federal Ministry of Finance shall be authorised to issue by way of a statutory order in consultation with the Deutsche Bundesbank more detailed provisions concerning the substance, type, scope, timing and form of the information as well as the permissible data storage media, transmission channels and data formats. [7]The Federal Ministry of Finance may delegate this authority by way of a statutory order to BaFin, provided that BaFin's statutory orders are issued in agreement with the Deutsche Bundesbank.

(10) [1]Subject to further-reaching requirements, the own funds of an e-money institution shall amount to at least 2 per cent of

1 the current amount, or

2 the average amount over the past six months

of its liabilities arising from electronic money that has not yet been drawn down. [2]The applicable amount shall be the higher of the two. [3]If an e-money institution has been operating for a period of less than six months since the day it commenced business, its own funds shall amount to at least 2 per cent of

1 the current amount, or

2 the six-month target amount

of its liabilities arising from electronic money that has not yet been drawn down; sentence 2 shall apply *mutatis mutandis*. [4]The six-month target amount for liabilities shall be stated in the institution's business plan, which, if necessary, shall be amended in accordance with BaFin's requirements. [5]Subsection (9) sentences 5 to 7 shall apply *mutatis mutandis*.

(11) [1]Upon request, BaFin may allow an institution pursuant to section 1 (7a) and (7c) to include the corresponding positions of subsidiaries when determining the adequacy of its own funds on a stand-alone basis if

1 the subsidiary is covered by the institution's risk evaluation, measurement and control procedures,

2 the institution holds more than 50 per cent of the voting rights attaching to shares in the capital of the subsidiary or has the right to appoint or remove a majority of the members of the subsidiary's management body,

3 the subsidiary's material exposures or liabilities are to the institution, and

4 there is no current or foreseen material practical or legal impediment to the prompt transfer of own funds or repayment of the subsidiary's liabilities by the institution at any time.

[2]In its application, the institution shall demonstrate fully to BaFin the circumstances and arrangements, including legal agreements, necessary for satisfying the condition pursuant to sentence 1 number 4. [3]BaFin shall inform the competent EEA authorities on a regular basis and not less than once a year of approvals granted pursuant to sentence 1 as well as of the circumstances and arrangements pursuant to sentence 1 number 4. [4]If the subsidiary is domiciled in a non-EEA state, BaFin shall inform the competent authority in the non-EEA state concerned accordingly.

Section 10a Determining the own funds adequacy of groups of institutions and financial holding groups

(1) [1]A group of institutions within the meaning of this Act shall comprise an institution within the meaning of section 1 (7a) or (7c) domiciled in Germany (superordinated enterprise) and its subordinated enterprises (group enterprises). [2]Subordinated enterprises within the meaning of this provision are the subsidiaries of an institution which themselves are institutions, German asset management companies, financial enterprises or ancillary service providers. [3]If, in the case of cross-shareholdings, no institution within the group fulfils the conditions of section 1 (7a) or (7c), BaFin shall determine which is to be deemed the group's superordinated enterprise. [4]A group of institutions shall be deemed not to exist if solely ancillary service providers are subordinated to an institution.

(2) [1]A group of institutions within the meaning of this Act shall also be deemed to exist if an institution forms a horizontal corporate group with other enterprises in the banking and investment services sector or the investment sector. [2]In such a group of institutions, the deposit-taking credit institution, e-money institution or securities trading firm belonging to the group and domiciled in Germany with the highest balance sheet total shall be deemed to be the superordinated enterprise; where the balance sheet totals are equal, BaFin shall determine which is to be deemed the superordinated enterprise.

(3) [1]A financial holding group within the meaning of this Act shall be deemed to exist if enterprises within the meaning of subsection (1) sentence 2 are subordinated to a financial

holding company within the meaning of section 1 (7b) or (7d) domiciled in Germany; of these subordinated enterprises, at least one deposit-taking credit institution, e-money institution or securities trading firm domiciled in Germany must be subordinated to the financial holding company as a subsidiary. [2]Sentence 1 shall not apply to financial holding companies within the meaning of section 1 (7b) which are themselves subordinated as a subsidiary to a deposit-taking credit institution, an e-money institution or a securities trading firm domiciled in another EEA state. [3]If the financial holding company within the meaning of section 1 (7b) or (7d) is domiciled in another EEA state, a financial holding group shall be deemed to exist if

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

2 the deposit-taking credit institution, e-money institution or securities trading firm domiciled in Germany has a larger balance sheet total than any other deposit-taking credit institution, e-money institution or securities trading firm domiciled in another EEA state that is subordinated as a subsidiary to the financial holding company; where the balance sheet totals are equal, the earlier date on which approval to operate was granted shall be decisive.

[4]In the case of a financial holding group, the deposit-taking credit institution, e-money institution or securities trading firm belonging to the group and domiciled in Germany which itself is not subordinated to any other group institution domiciled in Germany shall be deemed to be the superordinated enterprise. [5]If several deposit-taking credit institutions, e-money institutions or securities trading firms domiciled in Germany or – in the case of cross-shareholdings – no institution domiciled in Germany fulfils these conditions, the deposit-taking credit institution or e-money institution with the largest balance sheet total shall normally be deemed to be the superordinated enterprise; upon request or where the balance sheet totals are equal, BaFin shall determine which deposit-taking credit institution, e-money institution or securities trading firm domiciled in Germany is deemed to be the superordinated enterprise. [6]Notwithstanding sentences 4 und 5, BaFin, at the request of a financial holding company that is domiciled in Germany and after consulting the regulated enterprise which pursuant to sentences 4 und 5 is deemed to be the superordinated enterprise or would be designated such by BaFin, may rule that the financial holding company is deemed to be the superordinated enterprise if it has demonstrated that it has the requisite structure and organisation for ensuring compliance with the group-related obligations. [7]Notwithstanding sentence 6, BaFin, after consulting the regulated enterprise which pursuant to sentences 4 and 5 is deemed to be the superordinated enterprise or would be designated such by BaFin, may also designate a financial holding company that is domiciled in Germany as the superordinated enterprise without having been requested to do so where this is necessary for prudential reasons, especially reasons pertaining to the organisation and structure of the financial holding group. [8]The financial holding company that is designated pursuant to sentence 6 or sentence 7 shall fulfil all the group-related obligations of a superordinated enterprise. [9]If the conditions for such designation pursuant to sentence 6 or sentence 7 no

longer exist, especially if the financial holding company transfers its domicile to another state or is no longer in a position to ensure compliance with the group-related obligations, BaFin, after consulting the financial holding company, shall rescind its designation; section 35 (3) shall apply *mutatis mutandis*. [10]BaFin shall grant a financial holding company that is designated as the superordinated enterprise pursuant to sentence 6 or sentence 7 and its governing bodies all the authorisations vis-à-vis itself to which an institution as a superordinated enterprise and its governing bodies are entitled.

(4) [1]Institutions, German asset management companies, financial enterprises or ancillary service providers domiciled in or outside Germany shall also be deemed to be subordinated enterprises if a group enterprise directly or indirectly holds at least 20 per cent of their capital shares, manages the institutions, German asset management companies or enterprises together with other enterprises and has liability for the obligations of these institutions, German asset management companies or enterprises limited to the amount of its capital shares (qualified minority participation). [2]Capital shares which are held directly or indirectly and capital shares which are held by a third party for the account of a group enterprise shall be aggregated. [3]Capital shares which are held indirectly shall not be included if they are brokered by an enterprise which is not a subsidiary of the superordinated institution or of the financial holding company. [4]This shall apply *mutatis mutandis* to capital shares which are held indirectly that are brokered by more than one enterprise. [5]Capital shares shall be deemed to be equivalent to voting rights. [6]Section 16 (2) and (3) of the Companies Act shall apply *mutatis mutandis*.

(5) Enterprises that, pursuant to section 10 (6) sentence 4, are voluntarily included in the consolidation pursuant to this provision as well as pursuant to section 13b (3) sentence 1 and section 12 (2) sentences 1 and 2 shall also be deemed to be subordinated enterprises.

(6) [1]The question of whether or not group enterprises in the aggregate have adequate own funds shall be determined by consolidating their own funds, including the shares held by other shareholders, and the relevant risk exposures under the statutory order pursuant to section 10 (1) sentence 9; in the case of group enterprises, own funds shall be deemed to comprise the components recognised under section 10. [2]For the purposes of consolidation, the superordinated enterprise shall aggregate its relevant positions with those of the other group enterprises. [3]The following shall be deducted from the own funds to be consolidated pursuant to sentence 2:

1 the book values relating to the group enterprises as shown by the superordinated enterprise and the other enterprises belonging to the group of institutions or the financial holding group, namely the book values of the

(a) capital shares,

(b) capital contributions of silent partners pursuant to section 10 (4) sentence 1,

(c) participation rights pursuant to section 10 (5) sentence 1,

(d) longer-term subordinated liabilities pursuant to section 10 (5a) sentence 1, and

(e) short-term subordinated liabilities pursuant to section 10 (7) sentence 1, as well as

2 the unrealised reserves pursuant to section 10 (2b) sentence 1 numbers 6 and 7 included by the superordinated enterprise or another enterprise belonging to the group of institutions or the financial holding group insofar as they relate to group enterprises.

[4]Capital shares, subject to the provision for the capitalised aggregation difference pursuant to sentences 9 and 10, and the capital contributions of silent partners shall be deducted from the tier 1 capital. [5]Longer-term subordinated liabilities shall be deducted from the tier 2 capital components pursuant to section 10 (2b) sentence 3. [6]Liabilities represented by participation rights and the unrealised reserves shall be deducted from total tier 2 capital, in each case before the capping specified in section 10 (2b) sentences 2 and 3. [7]Short-term subordinated liabilities shall be deducted from the tier 3 capital pursuant to section 10 (2c) sentence 1 before the capping specified in section 10 (2c) sentences 2 and 4. [8]In the case of participating interests brokered by enterprises not belonging to the group, such book values and unrealised reserves shall be deducted in proportion to the arithmetical share of the capital. [9]If the book value of a participating interest is greater than that part of the capital and reserves of the subordinated enterprise to be consolidated pursuant to sentence 2, the superordinated enterprise shall deduct the difference in equal parts from the tier 1 capital and tier 2 capital of the group of institutions or the financial holding group. [10]The capitalised aggregation difference may thereby be treated as a participating interest in an enterprise outside the group, with an amount that decreases by at least one-tenth each year. [11]The counterparty credit risk exposures resulting from the legal relationships between group enterprises shall be disregarded. [12]The market risk exposures of different group enterprises shall not be netted with one another unless the enterprises are included in the superordinated enterprise's central risk management system, the own funds are appropriately distributed across the group of institutions or the financial holding group and, in the case of subordinated enterprises domiciled in non-EEA states, it is guaranteed that the local laws, regulations and administrative provisions do not impede the free transfer of capital to other group enterprises.

(7) [1]If the superordinated enterprise of a group of institutions is obliged to prepare group accounts pursuant to the provisions of the Commercial Code or if, pursuant to Article 4 of Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards (OJ EC L 243/1), as amended, or in accordance with section 315a (2) of the Commercial Code, it is obliged to apply the international accounting standards adopted pursuant to Articles 3 and 6 of the aforementioned Regulation when preparing the group accounts, it shall base the determination of the consolidated own funds and the consolidated risk exposures in accordance with the statutory order pursuant to section 10 (1) sentence 9 on the group accounts no later than five years after this obligation has come into being; own funds shall be deemed to comprise the components corresponding to the components recognised under section 10. [2]This is without prejudice to section 64h (3) and (4). [3]If the superordinated enterprise of a group of institutions applies the aforementioned international accounting

standards in accordance with section 315a (3) of the Commercial Code, sentences 1 and 2 shall apply *mutatis mutandis*; the coming into being of the obligation shall be replaced by the first-time application of the international accounting standards. [4]Subject to sentence 6, subsection (6) shall not apply to the cases in sentences 1 to 3. [5]The own funds and other relevant risk exposures of the enterprises included in the group accounts which are not group enterprises within the meaning of this provision shall be excluded. [6]The own funds and other relevant risk exposures of enterprises not included in the group accounts which are group enterprises within the meaning of this provision shall be included, whereby the procedure pursuant to subsection (6) may be applied. [7]Sentences 1 to 6 shall apply *mutatis mutandis* to the superordinated enterprise of a financial holding group if the financial holding company is obliged under the aforementioned provisions to prepare group accounts or prepares group accounts according to the aforementioned international accounting standards pursuant to section 315a (3) of the Commercial Code.

(8) [1]A group of institutions or a financial holding group that, pursuant to subsection (7), must base the calculation of the consolidated own funds and the consolidated risk exposures on the group accounts may, subject to BaFin's permission, use the procedure pursuant to subsection (6) for this purpose if the use of the group accounts is unsuitable in a particular case. [2]In this case, the superordinated enterprise of the group of institutions or the financial holding group shall apply the procedure pursuant to subsection (6) for at least three consecutive years.

(9) [1]The Federal Ministry of Finance shall be authorised to issue by way of a statutory order in consultation with the Deutsche Bundesbank more detailed provisions on determining the adequacy of the own funds of groups of institutions and financial holding groups, in particular with regard to

1. the use of data from the group accounts in determining the consolidated adequacy of the own funds when using the procedure pursuant to subsection (7),
2. the treatment of participating interests valued using the equity method when using the procedure pursuant to subsection (7).

[2]The Federal Ministry of Finance may delegate this authority to BaFin by way of a statutory order, subject to the proviso that the statutory order is issued in agreement with the Deutsche Bundesbank. [3]The central associations of the institutions shall be consulted before the statutory order is issued.

(10) [1]If a group of institutions or a financial holding group determines the adequacy of its own funds in accordance with subsection (7) and if the superordinated enterprise of a group of institutions or a financial holding group prepares interim accounts, these shall be examined by the external auditor. [2]The interim accounts pursuant to sentence 1, for the purposes of this provision, shall be deemed to be comparable with the group accounts, whereby the profits shown in the interim accounts shall be assigned to the tier 1 capital, provided that they are not earmarked for anticipated dividends or tax payments. [3]Losses arising from interim accounts shall be deducted from the tier 1 capital. [4]The superordinated enterprise shall

submit the interim accounts to both BaFin and the Deutsche Bundesbank promptly. [5]The external auditor shall submit a certificate on the audit of the interim accounts to BaFin and the Deutsche Bundesbank promptly after completion of the audit.

(11) [1]In the case of subordinated enterprises which are not subsidiaries, the superordinated enterprise shall consolidate its own funds and the relevant risk exposures under the statutory order pursuant to section 10 (1) sentence 9 with the own funds and the relevant risk exposures of the subordinated enterprises, in each case in proportion to its share of the capital in the subordinated enterprise. [2]Subsections (6) and (7) shall also apply, in each case also in conjunction with the statutory order pursuant to subsection (9).

(12) [1]The superordinated enterprise is responsible for ensuring that the group of institutions or the financial holding group has adequate own funds. [2]However, in fulfilling its obligations pursuant to sentence 1, it may exert influence on the group enterprises only insofar as this does not conflict with applicable company law.

(13) [1]The group enterprises shall set up a proper organisational structure and appropriate internal control mechanisms in order to ensure that the data required for consolidation pursuant to subsections (6), (7) and (11) are duly processed and forwarded. [2]They are obliged to transmit the data needed for consolidation to the superordinated enterprise. [3]If a superordinated enterprise is unable to obtain the requisite data for individual group enterprises, the book values mentioned in subsection (6) sentence 3 relating to the group enterprise shall be deducted from the own funds of the superordinated enterprise.

(14) [1]Subsections (6) to (13) of this provision as well as section 10 shall apply to an institution domiciled in Germany to which at least one institution, asset management company within the meaning of Article 2 (5) of Directive 2002/87/EC or financial enterprise domiciled in a non-EEA state is subordinated, irrespective of whether or not it is itself a subordinated enterprise of a group of institutions or a financial holding group pursuant to subsections (1) to (5). [2]If the financial holding company at the head of a financial holding group has at least one institution, asset management company within the meaning of Article 2 (5) of Directive 2002/87/EC or financial enterprise domiciled in a non-EEA state as a subsidiary, sentence 1 shall apply subject to the proviso that the superordinated enterprise of the financial holding group is obliged to carry out the additional consolidation.

Section 10b Adequacy of own funds of financial conglomerates

(1) [1]A financial conglomerate must have adequate own funds in the aggregate. [2]The Federal Ministry of Finance shall be authorised to issue in consultation with the Deutsche Bundesbank more detailed provisions by way of a statutory order that does not require the consent of the upper house of parliament (Bundesrat) on determining the adequate own funds required for carrying out Article 6 and Annex I of Directive 2002/87/EC, in particular concerning

1 the permissible composition of own funds,

2 the extent and form of the supplementary capital adequacy requirements calculation as well as other technical principles,

3 the following permissible calculation methods for the supplementary capital adequacy requirements:

(a) method 1: Accounting consolidation method;

(b) method 2: Deduction and aggregation method;

(c) method 3: Book value/Requirement deduction method, or

(d) combination of methods 1 to 3,

4 risk models,

5 calculation intervals.

[3]The Federal Ministry of Finance may by way of a statutory order delegate this authority to BaFin, provided that the statutory order is issued in agreement with the Deutsche Bundesbank. [4]The central associations of the institutions and the Insurance Advisory Council pursuant to section 92 of the Insurance Supervision Act shall be consulted prior to issuing the statutory order.

(2) [1]BaFin shall review the adequacy of the own funds of financial conglomerates. [2]The superordinated financial conglomerate enterprise within the meaning of subsection (3) sentences 6 to 8 or subsection (4) shall submit to BaFin and the Deutsche Bundesbank the information necessary to review the adequacy of the own funds at the conglomerate level in accordance with subsection (1), unless a superordinated financial conglomerate enterprise within the meaning of section 104a (3) sentences 6 to 8 or (4) of the Insurance Supervision Act is required to submit a report pursuant to section 104q (2) of the Insurance Supervision Act. [3]More detailed provisions on the type, scope, timing and form of the information as well as the permissible data storage media and transmission channels shall be specified in the statutory order pursuant to subsection (1) sentence 2.

(3) [1]The superordinated financial conglomerate enterprise domiciled in Germany and the financial conglomerate enterprises subordinated to it shall be included in the calculation of own funds at the conglomerate level pursuant to subsection (1). [2]For the enterprises to be included in the calculation of own funds at conglomerate level, the own funds are deemed to comprise components that are recognised as such pursuant to the provisions of this Act and of the Insurance Supervision Act. [3]BaFin shall determine which of the calculation methods described in more detail in the statutory order pursuant to subsection (1) sentence 2 the financial conglomerate is to use to calculate the own funds at conglomerate level; the superordinated financial conglomerate enterprise shall be consulted beforehand. [4]If a financial conglomerate is headed by a mixed financial holding company and its regulated financial conglomerate enterprises are not all domiciled in Germany, any of the calculation methods described in more detail in the statutory order pursuant to subsection (1) sentence 2 may be applied; the superordinated financial conglomerate enterprise shall notify BaFin and the Bundesbank promptly of which calculation method it has chosen. [5]Subordinated financial conglomerate enterprises within the meaning of this Act are the mixed financial holding

companies, credit institutions, financial services institutions, German asset management companies, financial enterprises, ancillary service providers, primary insurance companies, reinsurance companies and insurance holding companies belonging to the conglomerate that are not a superordinated financial conglomerate enterprise. [6]The superordinated financial conglomerate enterprise within the meaning of this Act is the regulated financial conglomerate enterprise in the banking and investment services sector which

1 heads a financial conglomerate, unless a primary insurance company domiciled in Germany also heads the financial conglomerate and the insurance sector is more strongly represented than the banking and investment services sector;

2 is a subsidiary of a mixed financial holding company domiciled in Germany, unless

(a) a primary insurance company domiciled in Germany is the subsidiary of the same mixed financial holding company and the insurance sector is more strongly represented than the banking and investment services sector;

(b) a regulated financial conglomerate enterprise in the banking and investment services sector in the same group domiciled in another EEA country, which is the subsidiary of a mixed financial holding company in its country of domicile, has a higher balance sheet total than the deposit-taking credit institution, e-money institution or securities trading firm domiciled in Germany;

(c) a primary insurance company in the same group domiciled in another EEA country is the subsidiary of a mixed financial holding company in its country of domicile and the insurance sector is more strongly represented than the banking and investment services sector;

if two or more regulated financial conglomerate enterprises in the banking and investment services industry that are domiciled in Germany meet these conditions, the institution with the highest balance sheet total shall be deemed to be the superordinated financial conglomerate enterprise;

3 is a subsidiary of a mixed financial holding company domiciled in another EEA country which is not the parent company of a regulated financial conglomerate enterprise domiciled in its country of domicile, if

(a) the banking and investment services sector is more strongly represented than the insurance industry, and

(b) the regulated financial conglomerate enterprise in the banking and investment services sector that is domiciled in Germany has the highest balance sheet total.

[7]Subject to sentence 6 numbers 2 and 3, a regulated financial conglomerate enterprise in the banking and investment services sector domiciled in Germany shall be deemed to be the superordinated financial conglomerate enterprise if the banking and investment services sector is more strongly represented than the insurance sector and this institution domiciled in Germany has the highest balance sheet total. [8]Notwithstanding sentence 6 numbers 1 to 3 and sentence 7, BaFin can designate a different regulated financial conglomerate enterprise or a mixed financial holding company as the superordinated financial conglomerate

enterprise after taking into account the financial conglomerate's structure and after consulting the regulated financial conglomerate enterprise that would be designated as the superordinated financial conglomerate enterprise pursuant to sentences 6 and 7; the enterprise that is to be designated shall likewise be consulted beforehand. [9]The financial sector which accounts for the highest average share pursuant to section 51a (3) shall be deemed to be more strongly represented within the meaning of this subsection.

(4) Where participating interests in one or more regulated financial conglomerate enterprises or capital ties to such enterprises exist or where a controlling influence can be exercised over such enterprises without this constituting a case pursuant to subsection (3) sentences 6 to 8, BaFin can wholly or partially apply the provisions of this Act concerning supplementary supervision at the conglomerate level to these enterprises *mutatis mutandis* and designate one of these companies as the superordinated financial conglomerate enterprise, if

1 at least one of these enterprises operates in the banking and investment services sector and at least one in the insurance industry, and

2 the consolidated or aggregated activities and/or the consolidated and aggregated activities of these enterprises within both the banking and investment services sector and the insurance sector are significant within the meaning of section 51a (3).

(5) [1]BaFin can impose an adjustment item on the financial conglomerate's own funds, if

1 without prejudice to the requirements pursuant to subsection (1) sentence 1 in conjunction with the statutory order pursuant to subsection (1) sentence 2 or pursuant to section 13d or section 25a (1a) being met, the solvency of the financial conglomerate is jeopardised;

2 significant intra-group transactions within the financial conglomerate or significant risk concentrations at conglomerate level jeopardise the financial conglomerate's financial position

[2]At the request of the superordinated financial conglomerate enterprise, BaFin shall rescind the adjustment item insofar as the reasons for its imposition no longer apply. [3]BaFin may undertake such imposition specified in sentence 1 only after the financial conglomerate has failed to remedy the deficiency within a period to be set by BaFin.

(6) [1]The superordinated financial conglomerate enterprise is responsible for ensuring that the financial conglomerate has adequate own funds. [2]To fulfil its obligations pursuant to sentence 1, it may, however, exercise an influence over enterprises to be included in the calculation of own funds at conglomerate level pursuant to subsection (3) sentence 1 only insofar as this does not contravene general company law.

(7) [1]The enterprises to be included in the calculation of own funds at the conglomerate level pursuant to subsection (3) sentence 1 shall set up a proper organisation and appropriate internal control mechanisms to ensure that the data required for the supplementary supervision of a financial conglomerate are duly processed and passed on. [2]They are obliged to pass on the data required for the supplementary supervision to the reporting enterprise

pursuant to subsection (2). [3]If the reporting enterprise pursuant to subsection (2) cannot procure the requisite information for individual subordinated financial conglomerate enterprises, the book values attributable to the subordinated financial conglomerate enterprise in accordance with the statutory order pursuant to subsection (1) sentence 2 shall be deducted from the own funds of the superordinated financial conglomerate enterprise.

(8) Subsections (1), (6) to (7) shall not apply to a financial conglomerate which itself is subordinated to a financial conglomerate to which subsections (1), (6) and (7) apply.

Section 10c Zero weighting of intra-group exposures

(1) [1]A CRSA risk weight of 0 per cent may be applied to a credit risk standardised approach exposure (CRSA exposure) of an institution which is an enterprise belonging to a group of institutions pursuant to section 10a (1) or (2) or a financial holding group pursuant to section 10a (3) which is not assigned to the own funds of the obligor of the CRSA exposure, provided that the following conditions are met:

1. the obligor of the CRSA position is the superordinated enterprise of the group of institutions or financial holding group, a subordinated enterprise in the same group of institutions or financial holding group or the financial holding company at the head of the financial holding group,
2. both the institution and the obligor are included in the full consolidation,
3. the institution and the obligor of the CRSA exposure are domiciled in Germany,
4. the obligor of the CRSA exposure is subject to the same procedures to identify, assess, control, monitor and communicate risks as the institution, and
5. there is no current or foreseen material practical or legal impediment to the prompt transfer of own funds or repayment of liabilities from the obligor of the CRSA exposure to the institution.

[2]The institution shall provide adequate documentation showing that the requirements are met. [3]The statutory order pursuant to section 10 (1) sentence 9 shall lay down more detailed provisions on determining the CRSA exposure.

(2) [1]A CRSA risk weight of 0 per cent may be applied to a CRSA exposure to an enterprise that is a member of the same institutional protection scheme as the institution as long as it is not assigned to the own funds of the obligor of the CRSA exposure, provided that the following conditions are met:

1. the obligor of the CRSA exposure is an institution, a financial holding company, a financial enterprise or an ancillary services provider and is either subject to supervision pursuant to this Act or BaFin has auditing rights and regulatory powers over it,
2. the institution and the obligor of the CRSA exposure are domiciled in Germany,

3 there is no current or foreseen material practical or legal impediment to the prompt transfer of own funds or repayment of liabilities from the obligor of the CRSA exposure to the institution,

4 the institution and the obligor of the CRSA exposure have entered into a contractual or statutory liability arrangement which protects them and in particular ensures their liquidity and solvency to avoid bankruptcy in case it becomes necessary,

5 the liability arrangements ensure that the institutional protection scheme will be able to grant support necessary under its commitment from funds readily available to it,

6 the institutional protection scheme disposes of suitable and uniformly stipulated systems for the monitoring and classification of risk which gives a complete overview of the risk situations of all the individual members and the institutional protection scheme as a whole, with corresponding possibilities to take influence; those systems shall suitably monitor defaulted exposures,

7 the institutional protection scheme conducts its own risk review which is communicated to the individual members,

8 the institutional protection scheme publishes at least once a year either a consolidated report comprising a balance sheet, a profit-and-loss account, a situation report and a risk report concerning the institutional protection scheme as a whole or a report comprising an aggregated balance sheet, an aggregated profit-and-loss account, a situation report and a risk report concerning the institutional protection scheme as a whole,

9 the members of the institutional protection scheme are obliged to give advance notice of at least 24 months if they wish to end the arrangements,

10 the multiple use of elements eligible for the calculation of own funds (‘multiple gearing’) as well as any inappropriate creation of own funds between the members of the institutional protection scheme shall be eliminated,

11 the institutional protection scheme shall be based on a broad membership of institutions of a predominantly homogeneous business profile, and

12 the adequacy of the systems pursuant to number 6 is approved and monitored at regular intervals by BaFin.

[2]The institution shall provide adequate documentation showing that the requirements have been met. [3]The statutory order pursuant to section 10 (1) sentence 9 shall lay down more detailed provisions on determining the CRSA exposure.

(3) An IRBA institution may permanently exclude counterparty credit risk exposures which would, as CRSA exposures, meet the criteria stipulated in

1 subsection (1) sentence 1 number 1, or

2 subsection (2) sentence 1 numbers 1 to 12

from application of the IRBA and treat them as CRSA exposures.

Section 11 Liquidity

(1) [1]Institutions must invest their funds in such a way as to ensure that adequate liquidity for payment purposes is guaranteed at all times. [2]The Federal Ministry of Finance shall be authorised to lay down by way of a statutory order, in consultation with the Deutsche Bundesbank, more detailed adequate liquidity requirements, in particular in respect of

1 the methods for assessing adequate liquidity and the requisite technical principles,

2 the transactions to be recognised as payment instruments and payment obligations, including their assessment bases, as well as

3 the institutions' duty to provide BaFin and the Deutsche Bundesbank with the information required to demonstrate adequate liquidity, including provisions on the substance, type, scope and form of the information, on the frequency of provision and on the permissible data storage media, transmission channels and data formats.

[3]The statutory order shall tie in with the definition of savings deposits in section 21 (4) of the Regulation on the Accounting of Credit Institutions and Financial Services Institutions (*Kreditinstituts-Rechnungslegungsverordnung*). [4]The Federal Ministry of Finance may delegate this authority to BaFin by way of a statutory order, subject to the proviso that the statutory order is issued in agreement with the Deutsche Bundesbank. [5]The central associations representing the institutions shall be consulted before the statutory order is issued.

(2) Section 10 (1b) relating to the determination of extraordinary circumstances shall apply *mutatis mutandis*.

(3) (Repealed)

Section 12 Limitation of qualifying participating interests, and shareholding restrictions for e-money institutions

(1) [1]A deposit-taking credit institution may not hold a qualifying participating interest in an enterprise which is neither an institution, a German asset management company, a financial enterprise, a primary insurance company or a reinsurance company nor an ancillary service provider if the participating interest in the nominal capital, in terms of amount, exceeds 15 per cent of the deposit-taking credit institution's liable capital. [2]A deposit-taking credit institution may not hold qualifying participating interests in enterprises within the meaning of sentence 1 if the sum of the participating interests in the nominal capital, in terms of amount, exceeds 60 per cent of the deposit-taking credit institution's liable capital. [3]The deposit-taking credit institution may exceed the limits laid down in sentence 1 or 2 with BaFin's permission. [4]BaFin may give permission only if the deposit-taking credit institution backs that part of the participating interests that exceeds the limit – and, if both limits are exceeded, the larger amount – with liable capital.

(2) [1]The superordinated enterprise of a group within the meaning of section 10a (1) to (3) which includes at least one deposit-taking credit institution shall ensure that the group does not hold qualifying participating interests in an enterprise within the meaning of subsection (1) sentence 1 if the participating interests in the nominal capital, in terms of amount, exceed 15 per cent of the group's liable capital. [2]Moreover, it shall ensure that the group does not in total hold qualifying participating interests in enterprises within the meaning of subsection (1) sentence 1 if the sum of the participating interests in the nominal capital, in terms of amount, exceeds 60 per cent of the group's liable capital. [3]Subject to BaFin's permission, the superordinated enterprise may allow the group to exceed the limits laid down in sentence 1 or 2. [4]BaFin may give permission only if the institution backs that part of the participating interests that exceeds the limit – and, if both limits are exceeded, the larger amount – with the group's liable capital. [5]Sentences 1 to 4 shall apply *mutatis mutandis* to institutions within the meaning of section 10a (14).

(3) An e-money institution may not hold a participating interest in another enterprise unless that enterprise fulfils operational or other functions in connection with the electronic money issued or passed on by the institution concerned.

Section 12a Establishment of corporate relationships

(1) [1]An institution or a financial holding company, when purchasing a participating interest in an enterprise domiciled outside Germany or when establishing a corporate relationship with such an enterprise by virtue of which the enterprise becomes a subordinated enterprise within the meaning of section 10a (1) to (5) or section 13b (2), shall ensure that it or, in the case of a financial holding company, the superordinated enterprise responsible for consolidation receives the data required to fulfil the relevant duties pursuant to sections 10a, 13b and 25 (2). [2]Sentence 1 shall not apply to the data required to fulfil the duties pursuant to sections 10a and 13b if due account is taken of the risk arising from the establishment of the participating interest or the corporate relationship by the deduction of the book values to be effected pursuant to section 10a (13) sentence 3 in a manner comparable to the consolidation pursuant to section 10a (6) or (7) and section 13b (3), and if it is rendered possible for BaFin to monitor compliance with this condition. [3]The institution or financial holding company shall promptly notify BaFin and the Deutsche Bundesbank of the establishment, modification or discontinuation of a participating interest or corporate relationship mentioned in sentence 1.

(2) [1]BaFin may prohibit the continuation of the participating interest or corporate relationship if the superordinated enterprise or the institution within the meaning of section 10a (14) does not receive the data required to fulfil the duties pursuant to sections 10a, 13b or 25 (2). [2]The exception pursuant to subsection (1) sentence 2 shall apply *mutatis mutandis* to the power of prohibition pursuant to sentence 1.

(3) Subsections (1) and (2) sentence 1 shall apply *mutatis mutandis* to a mixed financial holding company and a regulated superordinated financial conglomerate enterprise in the

banking and investment services sector with regard to the duties pursuant to sections 10b and 13d.

Division 2 LENDING BUSINESS

Section 13 Large exposures of non-trading book institutions

(1) [1]An institution which is exempt from the provisions concerning the trading book pursuant to section 2 (11) (non-trading book institution) shall promptly notify the Deutsche Bundesbank if its total exposure to a single borrower is equal to or exceeds 10 per cent of its liable capital (large exposure). [2]The statutory order pursuant to section 22 may provide for regular summary reports rather than immediate notification as laid down in sentence 1. [3]The Deutsche Bundesbank shall forward the reports to BaFin along with its comments; BaFin may waive the forwarding of certain reports.

(2) A non-trading book institution organised in the form of a legal person or a commercial partnership may – without prejudice to the validity of the legal transactions – incur a large exposure only by virtue of a unanimous decision by all its senior managers. [2]The decision is to be taken before the exposure is incurred. [3]If this is not possible in individual cases owing to the urgency of the transaction, then the decision shall be taken promptly thereafter. [4]The decision shall be placed on record. [5]If a large exposure has been incurred without a prior unanimous decision by all the senior managers and if a decision is not taken retrospectively within one month of the exposure having been incurred, the non-trading book institution shall promptly notify BaFin and the Deutsche Bundesbank of this fact. [6]If an exposure which has already been incurred becomes a large exposure owing to a reduction in the liable capital, the non-trading book institution may maintain this exposure – without prejudice to the validity of the legal transaction – only by virtue of a unanimous decision by all its senior managers to be taken promptly thereafter. [7]The decision shall be placed on record. [8]If a decision is not taken retrospectively within one month starting from the date on which the exposure became a large exposure, the non-trading book institution shall promptly notify BaFin and the Deutsche Bundesbank of this fact.

(3) [1]Without prejudice to the validity of the legal transactions, a non-trading book institution may not, without BaFin's permission, incur an exposure to a single borrower which in total exceeds 25 per cent of the non-trading book institution's liable capital (individual large exposure limit). [2]Regardless of whether BaFin gives permission, the non-trading book institution shall promptly notify BaFin and the Deutsche Bundesbank if the individual large exposure limit is exceeded and shall back the amount by which the large exposure exceeds the individual large exposure limit with liable capital. [3]Exposure to an affiliated enterprise that neither belongs to a group within the meaning of section 13b (2) nor is consolidated into a group by the competent agencies of another EEA state pursuant to Council Directive 92/121/EEC of 21 December 1992 on the monitoring and control of large exposures of credit institutions (OJ EC 1993 L 29/1) (Large Exposures Directive) may not, without BaFin's permission, exceed 20 per cent of the non-trading book institution's liable capital. [4]Sentence 2 shall apply *mutatis mutandis*. [5]The non-trading book institution shall ensure that the sum of

its large exposures does not, without BaFin's permission, exceed 800 per cent of its liable capital (aggregate large exposure limit). [6]Regardless of whether BaFin gives permission, the non-trading book institution shall promptly notify BaFin and the Deutsche Bundesbank if the aggregate large exposure limit is exceeded and shall back the amount by which the sum of its large exposures exceeds the aggregate large exposure limit with liable capital. [7]A non-trading book institution which exceeds both the individual large exposure limit with respect to one or more borrowers and the aggregate large exposure limit shall back only the greater excess amount with liable capital. [8]BaFin may give permission pursuant to sentences 1, 3 and 5 at its own diligent discretion. [9]BaFin can, in exceptional circumstances, temporarily exempt a non-trading book institution from the requirement to back the excessive amount with liable capital pursuant to sentence 2, also in conjunction with sentence 4, if a limit was exceeded as a result of an amalgamation of borrowers or similar events and this could not have been foreseen by the non-trading book institution.

(4) Subsections (1) and (2) shall also apply to general credit line commitments subject to the proviso that the reports pursuant to subsection (1) are to be filed on dates specified by way of a statutory order pursuant to section 24 (4) sentence 1.

Section 13a Large exposures of trading book institutions

(1) [1]An institution which is not exempt from the provisions concerning the trading book pursuant to section 2 (11) (trading book institution) shall promptly report large exposures to the Deutsche Bundesbank pursuant to sentence 3. [2]Section 13 (1) sentence 3 shall apply *mutatis mutandis*. [3]A trading book institution incurs a large exposure in overall business if its total exposure to a single borrower (borrower-related overall exposure) is equal to or exceeds 10 per cent of the institution's own funds; a trading book institution incurs a large exposure on the banking book if its total exposure to a single borrower excluding the borrower-related total trading book exposure (borrower-related total banking book exposure) is equal to or exceeds 10 per cent of the institution's liable capital. [4]The borrower-related total trading book exposure is the sum of its exposures to a single borrower that are assigned to the trading book.

(2) Section 13 (2) concerning decisions on large exposures of non-trading book institutions shall apply *mutatis mutandis* to trading book institutions.

(3) [1]Without prejudice to the validity of the legal transactions, a trading book institution shall ensure that the borrower-related total banking book exposure does not, without BaFin's permission, exceed 25 per cent of its liable capital (individual large exposure limit on the banking book). [2]Regardless of whether BaFin gives permission, the trading book institution shall promptly notify BaFin and the Deutsche Bundesbank if the individual large exposure limit on the banking book is exceeded and shall back the excess amount with liable capital. [3]The borrower-related total banking book exposure to an affiliated enterprise within the meaning of section 13 (3) sentence 3 may not, without BaFin's permission, exceed 20 per cent of the trading book institution's liable capital. [4]Sentence 2 shall apply *mutatis mutandis*. [5]The trading book institution shall ensure that the sum of its large exposures on the banking

book does not, without BaFin's permission, exceed 800 per cent of its liable capital (aggregate large exposure limit on the banking book). [6]Regardless of whether BaFin gives permission, the trading book institution shall promptly notify BaFin and the Deutsche Bundesbank if the aggregate large exposure limit on the banking book is exceeded and shall back the excess amount with liable capital. [7]Section 13 (3) sentence 7 shall apply *mutatis mutandis*. [8]BaFin may give permission pursuant to sentences 1, 3 and 5 at its own diligent discretion. [9]Section 13 (3) sentence 9 shall apply *mutatis mutandis*.

(4) [1]The trading book institution shall ensure that the borrower-related overall exposure does not, without BaFin's permission, exceed 25 per cent of its own funds (individual large exposure limit in overall business). [2]Regardless of whether BaFin gives permission, the trading book institution shall notify BaFin and the Deutsche Bundesbank if the individual large exposure limit in overall business is exceeded and shall back the excess amount with own funds pursuant to the statutory order under section 22 sentence 1. [3]The borrower-related overall exposure to an affiliated enterprise within the meaning of section 13 (3) sentence 3 may not exceed 20 per cent of the trading book institution's own funds. [4]Sentence 2 shall apply *mutatis mutandis*. [5]The trading book institution shall ensure that the sum of its large exposures in overall business does not, without BaFin's permission, exceed 800 per cent of its own funds (aggregate large exposure limit in overall business). [6]Regardless of whether BaFin gives permission, the trading book institution shall notify BaFin and the Deutsche Bundesbank if the aggregate large exposure limit in overall business is exceeded and shall back the excess amount with own funds pursuant to the statutory order under section 22 sentence 1. [7]Section 13 (3) sentence 7 shall apply *mutatis mutandis*. [8]BaFin may give permission pursuant to sentences 1, 3 and 5 at its own diligent discretion; permission pursuant to sentence 1 or 3 shall be deemed not to have been given if the borrower-related total banking book exposure exceeds the relevant limit pursuant to subsection (3) sentence 1 or 3.

(5) [1]Even if BaFin gives permission, if the limit pursuant to subsection (4) sentence 1 or 3 is exceeded, a trading book institution's borrower-related total trading book exposure may not exceed 500 per cent of the trading book institution's own funds that are not needed to back risks on the banking book. [2]The trading book institution shall promptly notify BaFin and the Deutsche Bundesbank if this limit is exceeded and shall back the excess amount with own funds pursuant to the statutory order under section 22 sentence 1. [3]The sum of its borrower-related overall exposures which exceed the limit pursuant to subsection (4) sentence 1 or 3 for more than ten days, after deduction of the amounts that do not exceed these limits (aggregate excess exposure), may not exceed 600 per cent of the trading book institution's own funds that are not needed to back risks on the banking book. [4]The trading book institution shall promptly notify BaFin and the Deutsche Bundesbank if this limit is exceeded and shall back the excess amount with own funds pursuant to the statutory order under section 22 sentence 1.

(6) Subsections (1) and (2) shall also apply to general credit line commitments subject to the proviso that the reports pursuant to subsection (1) are to be filed on dates specified by way of a statutory order pursuant to section 24 (4) sentence 1.

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

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

(2) Section 10a (1) to (5) and (14) shall apply *mutatis mutandis* to the definition of a group of institutions or a financial holding group within the meaning of this provision.

(3) [1]The question of whether or not enterprises belonging to a group of institutions or a financial holding group have in the aggregate incurred a large exposure and are complying with the limits pursuant to sections 13 and 13a shall be determined by consolidating their own funds, including the shares held by other shareholders, and their exposures to a single borrower if the borrower-related overall exposure of one of the enterprises belonging to the group is equal to or exceeds 5 per cent of its liable capital. [2]Section 10a (6) sentences 2 to 11 and (7) to (11) shall apply *mutatis mutandis*.

(4) [1]The superordinated enterprise shall fulfil the notification requirements pursuant to subsection (1) in conjunction with sections 13 and 13a. [2]It is responsible for ensuring that the enterprises belonging to the group comply in the aggregate with the limits pursuant to sections 13 and 13a. [3]However, to fulfil its obligations pursuant to sentence 2, it may exert influence on the group enterprises only insofar as this does not conflict with general company law.

(5) Section 10a (13) and (14) shall apply *mutatis mutandis*.

Section 13c Intra-group transactions with mixed-activity holding companies

(1) [1]A deposit-taking credit institution, an e-money institution or a securities trading firm which is a subsidiary of a mixed-activity holding company shall notify BaFin and the Deutsche Bundesbank of any significant intra-group transactions with mixed-activity holding companies or other subsidiaries of such mixed-activity holding companies. [2]The Federal Ministry of Finance shall be authorised, by way of a statutory order – not requiring the consent of the Bundesrat – to be issued in consultation with the Deutsche Bundesbank, to specify in more detail:

1. the types of transactions to be reported and the thresholds to identify which intra-group transactions are to be deemed significant transactions;
2. the limits for intra-group transactions and any restrictions with regard to the types of intra-group transactions;
3. the type, scope, timing and form of the information as well as the permissible data storage media and transmission channels.

[3]The Federal Ministry of Finance may delegate this authority to BaFin by way of a statutory order provided that the statutory order is to be issued in agreement with the Deutsche

Bundesbank. [4]The central associations representing the institutions shall be consulted before the statutory order is issued.

(2) The deposit-taking credit institution, e-money institution or securities trading firm within the meaning of subsection (1) sentence 1 may – without prejudice to the validity of the legal transactions – conduct significant intra-group transactions with mixed-activity holding companies or other subsidiaries of such mixed-activity holding companies only by virtue of a unanimous decision by all its senior managers; section 13 (2) sentences 2 to 5 shall apply *mutatis mutandis*.

(3) [1]Without prejudice to the validity of the legal transactions, the deposit-taking credit institution, e-money institution or securities trading firm within the meaning of subsection (1) sentence 1 may not, without BaFin‘s permission, conduct any significant intra-group transactions with mixed-activity holding companies or other subsidiaries of such mixed-activity holding companies which exceed the limits laid down in the statutory order pursuant to subsection (1) sentence 2 or violate the restrictions regarding the types of significant intra-group transactions laid down in the statutory order. [2]BaFin may give permission pursuant to sentence 1 at its own discretion. [3]Regardless of whether BaFin gives permission, the institution shall notify BaFin and the Deutsche Bundesbank promptly if the limits are exceeded or if the restrictions with regard to the types of intra-group transactions are violated. [4]BaFin can

1 require the deposit-taking credit institution, e-money institution or securities trading firm within the meaning of subsection (1) sentence 1 to back the excess amount with own funds if the limits set in the statutory order pursuant to subsection (1) sentence 2 are exceeded;

2 use appropriate and necessary measures to stop or prevent violations of the restrictions regarding the types of intra-group transactions laid down in the statutory order pursuant to subsection (1) sentence 2.

(4) [1]In order to identify, quantify, monitor and manage significant intra-group transactions within a mixed-activity group, the deposit-taking credit institutions, e-money institutions or securities trading firms belonging to a group must have an appropriate risk management structure and appropriate internal control mechanisms, including a proper reporting system and proper accounting procedures; this is without prejudice to sections 13 and 13b. [2]Section 10a (12) and (13) sentences 1 and 2 as well as section 25a (1) sentence 2 shall apply *mutatis mutandis*.

Section 13d Risk concentrations and intra-group transactions of financial conglomerates

(1) The superordinated financial conglomerate enterprise within the meaning of section 10b (3) sentences 6 to 8 or (4) shall notify BaFin and the Deutsche Bundesbank of any significant risk concentrations at conglomerate level and significant intra-group transactions within the financial conglomerate unless a superordinated financial conglomerate enterprise is required

to submit a report pursuant to section 104q (3) sentences 6 to 8 or (4) of the Insurance Supervision Act.

(2) [1]The Federal Ministry of Finance shall be authorised to issue by way of a statutory order that does not require the consent of the Bundesrat, in consultation with the Deutsche Bundesbank, more detailed provisions on risk concentrations and intra-group transactions to implement Articles 7 and 8 and Annex II of Directive 2002/87/EC, in particular concerning

1 the types of risk concentrations and intra-group transactions to be reported as well as the thresholds to identify whether risk concentrations and intra-group transactions are to be deemed significant;

2 limits for significant risk concentrations and significant intra-group transactions as well as any restrictions with regard to the types of intra-group transactions;

3 the type, scope, timing and form of the information as well as the permissible data storage media and transmission channels.

[2]The Federal Ministry of Finance may delegate this authority to BaFin by way of a statutory order provided that the statutory order is to be issued in agreement with the Deutsche Bundesbank. [3]The central associations representing the institutions and the Insurance Advisory Council pursuant to section 92 of the Insurance Supervision Act shall be consulted before the statutory order is issued.

(3) [1]A regulated financial conglomerate enterprise in the banking and investment services sector may – without prejudice to the validity of the legal transactions – conduct significant intra-group transactions only by virtue of a unanimous decision by all the senior managers of this institution. [2]Section 13 (2) sentences 2 to 5 shall apply *mutatis mutandis*.

(4) [1]Without prejudice to the validity of the legal transactions, the superordinated financial conglomerate enterprise shall be responsible for ensuring that any significant risk concentrations at conglomerate level or significant intra-group transactions within the financial conglomerate do not, without BaFin‘s permission, exceed the limits laid down in the statutory order pursuant to subsection (2) or violate the restrictions regarding the types of intra-group transactions laid down in the statutory order. [2]However, to fulfil its obligations pursuant to sentence 1, it may exert influence on the conglomerate enterprises only insofar as this does not conflict with general company law; section 10b (7) and (8) shall apply *mutatis mutandis*. [3]BaFin may give permission pursuant to sentence 1 at its own discretion. [4]Regardless of whether BaFin gives permission, the enterprise required to submit reports pursuant to subsection (1) shall notify BaFin and the Deutsche Bundesbank promptly if the limits are exceeded or if the restrictions with regard to the types of intra-group transactions are violated. [5]BaFin can

1 require the financial conglomerate to back the excess amount with own funds if the limits set in the statutory order pursuant to subsection (2) sentence 1 are exceeded;

2 use appropriate and necessary measures to stop or prevent violations of the restrictions regarding the types of intra-group transactions laid down in the statutory order pursuant to subsection (2) sentence 1.

Section 14 Loans of 1.5 million euro or more

(1) [1]A credit institution, a financial services institution within the meaning of section 1 (1a) sentence 2 number 4, 9 or 10, a financial enterprise within the meaning of section 1 (3) sentence 1 number 2 and the enterprises and agencies specified in section 2 (2) (enterprises participating in the reporting procedure for loans of 1.5 million euro or more) shall report to the Deutsche Bundesbank's Central Credit Register (*Evidenzzentrale*) on a quarterly basis those borrowers whose credit volume pursuant to section 19 (1) (indebtedness) amounts to 1,500,000 euro or more (loans of 1.5 million euro or more); the contents of the reports and the reporting deadlines shall be laid down in the statutory order pursuant to section 22. [2]Sentence 1 shall apply *mutatis mutandis* to superordinated enterprises within the meaning of section 13b (2), which shall also report the borrowers of the enterprises belonging to the group within the meaning of section 13b (2). [3]This shall not apply if these enterprises are themselves required to submit reports pursuant to sentence 1 or if they are exempted or released from the reporting requirement pursuant to section 2 (4), (5), (7) or (8) or if the book value of the participating interest in the enterprises belonging to the group is deducted from the superordinated enterprise's own funds pursuant to section 10a (13) sentence 3. [4]Those enterprises belonging to the group which themselves are not required to submit reports pursuant to sentence 1 shall transmit the requisite data to the superordinated enterprise. [5]BaFin can, upon request, exempt credit institutions which solely conduct banking business pursuant to section 1 (1) sentence 2 number 12 with financial sector enterprises from the obligation pursuant to sentence 1. [6]Sentence 1 shall apply to syndicated loans of 1.5 million euro or more even if the individual enterprise's share does not amount to 1.5 million euro. [7]Section 13 (1) sentence 3 shall apply *mutatis mutandis*.

(2) [1]If it is found that several enterprises have granted a particular borrower loans of 1.5 million euro or more, the Deutsche Bundesbank shall notify the enterprises submitting reports. [2]This notification shall include information about the borrower's aggregate indebtedness and the aggregate indebtedness of the single borrower unit (group of connected clients) to which the borrower belongs, about the number of enterprises involved as well as information about the forecast probability of default within the meaning of the statutory order pursuant to section 10 (1) sentence 9 in respect of this borrower if an enterprise has itself reported information about such a probability of default. [3]The notification shall be structured according to the statutory order pursuant to section 22. [4]The Deutsche Bundesbank shall, upon request, inform an enterprise required to submit reports of the level of indebtedness of a borrower or prospective borrower or, if the borrower or prospective borrower is part of a single borrower unit, of the level of indebtedness of the single borrower unit. [5]In the case of a prospective borrower, the enterprise shall, upon request, inform the Deutsche Bundesbank of the amount of the intended loan and prove that the prospective borrower has consented to the disclosure of this information. [6]The enterprises participating in the reporting procedure for loans of 1.5 million euro or more and the Deutsche Bundesbank

may also transmit the report pursuant to subsection (1), the notification pursuant to sentence 1 and the information pursuant to sentence 4 via electronic data transfer. [7]The details of the procedure shall be laid down in the statutory order pursuant to section 22. [8]The Deutsche Bundesbank may transmit personal data relating to several borrowers to the enterprise required to submit reports insofar as this is essential for the purpose of assigning the report pursuant to subsection (1) to a particular borrower. [9]Such data may not contain any information about the borrowers' financial situation. [10]Persons employed by an enterprise required to submit reports may neither disclose to third parties any information imparted to the enterprise pursuant to this subsection nor exploit such information. [11]For the purpose of monitoring compliance with data protection rules on the part of the responsible parties, the Deutsche Bundesbank shall log during each data transfer the time, the data transmitted and the parties involved. [12]The log data may not be used for any other purposes. [13]The log data must be kept for at least 18 months and deleted after 24 months at the latest.

(3) [1]If several debtors are deemed to be a single borrower pursuant to section 19 (2), the indebtedness and information about the forecast probabilities of default of the individual debtors shall also be indicated in the reports pursuant to subsection (1). [2]The indebtedness of individual debtors and the information about their forecast probabilities of default shall be imparted only to those enterprises which themselves, or whose subordinated enterprises within the meaning of subsection (1) sentences 3 and 4, have incurred an exposure to these debtors or have reported information about the forecast probabilities of default of these debtors.

(4) The Deutsche Bundesbank may, in agreement with BaFin and pursuant to section 4b of the Federal Data Protection Act, make borrower data which it has stored in its database available to central credit registers in other countries, including for transmission to creditors resident in those countries.

Section 15 Loans to governing and related bodies

(1) [1]Loans to

1 senior managers of the institution,

2 partners of the institution who are not senior managers if the institution is organised in the form of a commercial partnership or private limited company, and to general partners of an institution who are not senior managers if the institution is organised in the form of a limited partnership company,

3 members of a governing body of the institution appointed to monitor the management of the institution if the monitoring powers of the body are laid down by law (supervisory body),

4 holders of a general commercial power of attorney (*Prokuristen*) and authorised officers of the institution empowered to represent it in all aspects of its business,

5 spouses, civil partners and minors of the persons specified in numbers 1 to 4,

6 silent partners of the institution,

7 enterprises organised in the form of a legal person or commercial partnership if a senior manager, a holder of a general commercial power of attorney or an authorised officer of the institution empowered to represent it in all aspects of its business is a legal representative or a member of the supervisory body of the legal person or a partner in the commercial partnership,

8 enterprises organised in the form of a legal person or commercial partnership if a legal representative of the legal person, a partner in the commercial partnership, a holder of a general commercial power of attorney or an authorised officer of this enterprise empowered to represent it in all aspects of its business is a member of the supervisory body of the institution,

9 enterprises in which the institution or a senior manager holds a participating interest of more than 10 per cent of the enterprise's capital or in which the institution or a senior manager is a general partner,

10 enterprises which hold a participating interest in the institution of more than 10 per cent of the institution's capital,

11 enterprises organised in the form of a legal person or commercial partnership if a legal representative of the legal person or a partner in the commercial partnership holds a participating interest in the institution of more than 10 per cent of its capital, and

12 general partners, senior managers, members of the executive board or supervisory body, holders of a general commercial power of attorney and authorised officers empowered to represent all aspects of business of an enterprise controlled by or controlling the institution, as well as their spouses, civil partners and minors,

(loans to governing and related bodies) may be granted only by virtue of a unanimous decision by all of the institution's senior managers and – other than as part of staff programmes – only on market terms and only with the explicit approval of the supervisory body or, in the case of number 12, of the supervisory body of the enterprise controlling the institution; the above provisions pertaining to commercial partnerships shall apply *mutatis mutandis* to other partnerships. [2]A unanimous decision by all senior managers and the explicit approval of the supervisory body may be waived if, pursuant to section 10c (1), a CRSA risk weight of 0 per cent can be applied to a loan to an enterprise pursuant to sentence 1 numbers 9 and 10. [3]A participating interest within the meaning of sentence 1 numbers 9 to 11 shall be deemed to be any ownership of stocks or shares in the enterprise if these amount to at least a quarter of the capital (nominal capital, sum total of the capital shares) irrespective of the duration of ownership. [4]The authorisation of withdrawals over and above the remuneration due to a senior manager or a member of the supervisory body and, in particular, the authorisation of withdrawals of advances on such remuneration, shall be deemed to be equivalent to the granting of a loan. [5]Loans to governing and related bodies which are not granted on market terms shall be backed with liable capital if so ordered by BaFin.

(2) [1]In individual cases, BaFin can impose limits for the granting of loans to governing and related bodies; it shall also have the right to do so after such a loan has been granted. [2]Loans to governing and related bodies which exceed the limits imposed by BaFin shall be reduced to the stipulated limits upon a further order issued by BaFin; in the meantime, they shall be backed with liable capital.

(3) Subsection (1) shall not apply to

1 loans to holders of a general commercial power of attorney or authorised officers of an institution empowered to represent it in all aspects of its business as well as to their spouses, civil partners and minors if the loan does not exceed the amount of one annual salary of the holder of a general commercial power of attorney or of the authorised officer of the institution empowered to represent it in all aspects of its business,

2 loans to persons or enterprises specified in subsection (1) sentence 1 numbers 6 to 11 if the loan amounts to less than 1 per cent of the institution's liable capital or less than 50,000 euro, and

3 loans which are increased by no more than 10 per cent of the amount approved pursuant to subsection (1) sentence 1.

(4) [1]The decision by the senior managers and the decision on approval shall be taken before the loan is granted. [2]The decisions must include provisions on the interest payable on, and the repayment of, the loan. [3]They shall be placed on record. [4]If the granting of a loan pursuant to subsection (1) sentence 1 numbers 6 to 11 is urgent, it shall be deemed to be sufficient if all the senior managers and the supervisory body promptly approve the granting of the loan retrospectively. [5]If the decision by the senior managers has not been taken retrospectively within two months or the decision by the supervisory body has not been taken retrospectively within four months of the date on which the loan was granted, the institution shall promptly notify BaFin of this fact. [6]The decision by the senior managers and the decision on the approval of loans to the persons specified in subsection (1) sentence 1 numbers 1 to 5 and 12 can be taken in advance – but no more than one year in advance – for certain lending business and types of lending business.

(5) If a loan is granted to a person specified in subsection (1) sentence 1 numbers 1 to 5 and 12 contrary to subsection (1) or (4), it shall be repaid immediately, irrespective of any arrangements to the contrary, unless all of the senior managers and the supervisory body promptly approve the granting of the loan retrospectively.

Section 16 (Repealed)

Section 17 Liability

(1) If a loan is granted contrary to the provisions of section 15, the senior managers who thereby breach their duties and the members of the supervisory body who breach their duties by not intervening to prevent an intended loan from being granted despite being aware

thereof shall be jointly and severally liable to the institution for any ensuing damages; the onus shall be on the senior managers and members of the supervisory body to prove that they did not act culpably.

(2) [1]The institution's claim for damages can also be asserted by its creditors insofar as they cannot obtain satisfaction from the institution. [2]The liability for damages vis-à-vis the creditors shall not be terminated by a waiver or composition on the part of the institution nor, in the case of institutions organised in the form of a legal person, by the fact that the loan was granted by virtue of a decision by the institution's highest governing body (shareholders' meeting, general meeting, partners' meeting).

(3) Claims pursuant to subsection (1) shall become statute-barred after five years.

Section 18 Borrower documentation

[1]A credit institution may grant a loan amounting in the aggregate to more than 750,000 euro or more than 10 per cent of the institution's liable capital only if it requires the borrower to disclose his/her financial situation, in particular by submitting his/her annual accounts. [2]The credit institution can waive this requirement if, in the light of the collateral provided or of the jointly obligated parties, there is evidently no reason to require such disclosure. [3]The credit institution can waive the requirement of ongoing disclosure if

1. the loan is secured by mortgages on residential property that is used by the borrower himself/herself,
2. the loan does not exceed four-fifths of the mortgage lending value of the mortgaged property within the meaning of section 16 (1) and (2) of the Pfandbrief Act, and
3. the borrower regularly effects the interest payments and principal repayments owed by him/her.

[4]Disclosure is not required in the case of loans to a foreign public sector agency within the meaning of section 20 (2) number 1 letters (a) to (c).

Section 19 Definition of "exposure" and "loan" in sections 13 to 13b and 14, and of "borrower"

(1) [1]Exposures and loans within the meaning of sections 13 to 13b and 14 are asset items, derivatives (with the exception of short positions in call options) as well as the guarantees assumed in respect thereof, and other off-balance-sheet items. [2]Asset items within the meaning of sentence 1 are:

1. balances with central banks and post office giro institutions,
2. debt instruments issued by public bodies and bills of exchange eligible for refinancing with central banks,
3. cash items in the process of collection for which corresponding payment has already been advanced,

4 exposures to credit institutions and customers (including the trade exposures of credit institutions engaging in commodities trading),

5 debt securities and other fixed-interest securities insofar as they do not evidence any rights covered by the derivatives specified in sentence 1,

6 shares and other variable-yield securities insofar as they do not evidence any rights covered by the derivatives specified in sentence 1,

7 participating interests,

8 capital shares in affiliated enterprises,

9 assets in respect of which the lessor has concluded lease agreements, regardless of how they are shown on the balance sheet, and

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

[3]The following are deemed to be other off-balance-sheet items within the meaning of sentence 1:

1 bills of exchange in circulation drawn by the credit institution, discounted and credited to borrowers,

2 endorsement liabilities arising from rediscounted bills,

3 sureties and guarantees in respect of asset items,

4 warranties and indemnities and other sureties and guarantees besides those specified in number 3, insofar as they do not refer to the derivatives specified in sentence 1,

5 the issuing and confirmation of documentary credits,

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

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

8 asset items deducted from the transferor’s portfolio which he/she has transferred to a third party subject to an agreement that he/she shall repurchase them upon request,

9 sales of asset items with recourse, in respect of which the credit risk remains with the selling institution,

10 asset items purchased under outright forward purchase agreements,

11 forward forward deposits placed,

12 purchase and refinancing commitments,

13 undrawn credit commitments,

14 credit derivatives, and

15 off-balance-sheet items insofar as they are subject to a counterparty risk and are not covered by numbers 1 to 14.

(1a) [1]Derivatives within the meaning of this provision, notwithstanding section 1 (11) sentence 4, are futures or options contracts in the form of a purchase, exchange or similar transaction relating to an underlying, whose value is determined by the underlying and whose value can change in future owing to a deferred settlement date on the part of at least one contracting party, including financial contracts for differences. [2]The underlying within the meaning of sentence 1 can also be a derivative.

(2) [1]A borrower within the meaning of sections 10 and 13 to 18 is deemed to be two or more natural or legal persons or commercial partnerships which constitute a single risk because one of them can, directly or indirectly, exercise a controlling influence over the other or others, or which, in the absence of such a relationship of control, are to be regarded as constituting a single risk because they are so interconnected that, if one of these borrowers were to experience financial problems, the others would be likely to encounter payment difficulties, too. [2]This is especially the case for

1 all enterprises belonging to the same group or connected by agreements which provide that one enterprise is obliged to transfer its entire profit to another enterprise, as well as majority-owned enterprises and the enterprises or persons with a majority interest in them, with the exception of

   (a) the Federal Government, a special fund of the Federal Government, a state government, a local government or a local government association,

   (b) the European Communities,

   (c) foreign central governments,

   (d) regional governments and local authorities in other EEA states for which a zero risk weight has been announced pursuant to Article 44 of the Banking Directive,

2 commercial partnerships or incorporated enterprises and each general partner, as well as other partnerships and each partner, and

3 persons and enterprises for whose account a loan is taken out and the parties that take out this loan in their own name.

[3]When applying sections 13 and 13a, sentence 1 shall not apply to exposures within a group pursuant to section 13b (2) to enterprises which are included in the consolidation pursuant to section 13b (3). [4]Sentence 3 shall apply *mutatis mutandis* to exposures to parent enterprises domiciled in another EEA state, as well as to those enterprises' other subsidiaries, provided that the institution, its parent enterprise and their other subsidiaries are included in the monitoring of large exposures on a consolidated basis in accordance with the Banking Directive by the competent agencies of the other state.

(3) [1]In the case of loans from public promotional funds which the promotional institutions of the Federal Government and of state governments pass through to ultimate borrowers on the basis of independent loan agreements – if necessary via further pass-through institutions – via principal banks on predefined terms (principal bank principle), with regard to sections 13 to 13b, for the institutions concerned, the individual ultimate borrowers shall be deemed to be

the borrowers of the interbank loan granted by the institutions if the credit claims are assigned to the institutions as collateral. [2]This shall apply *mutatis mutandis* to interest-subsidised loans granted by the promotional institutions using their own or public funds in accordance with the principal bank principle (own resources programmes), as well as to loans granted using non-public funds which a credit institution passes through to ultimate borrowers – if necessary via further pass-through institutions – via principal banks in accordance with statutory requirements.

(4) When applying sections 13 to 13b, in the case of loans which central credit institutions pass through to ultimate borrowers via their affiliated regional cooperative institutions or central giro institutions or via registered cooperative societies or savings banks affiliated thereto, the individual ultimate borrowers shall be deemed to be the borrowers with regard to the central credit institution if the credit claims are assigned to the central credit institution as collateral.

(5) In the case of purchased monetary claims, the seller of the claims shall be deemed to be the borrower within the meaning of sections 13 to 18 if he/she is responsible for the satisfaction of the transferred claim or is obliged to repurchase it at the purchaser's request; otherwise, the claim debtor shall be deemed to be the borrower.

(6) (Repealed)

Section 20 Exceptions to the obligations pursuant to sections 13 to 13b and 14

(1) The following are not deemed to be exposures within the meaning of sections 13 to 13b:

1 exposures arising from foreign exchange transactions which are incurred in the ordinary course of settlement during the two business days following advance payment, although this is subject to other provisions laid down in the statutory order pursuant to section 22 for borrower-related free_delivery risk exposures in connection with a trading book institution's total trading book exposure,

2 exposures arising from transactions for the purchase or sale of securities which are incurred in the ordinary course of settlement during the five business days following advance payment or delivery, although this is subject to other provisions laid down in the statutory order pursuant to section 22 for borrower-related free delivery risk exposures in connection with a trading book institution's total trading book exposure,

3 asset items which are deducted from the liable capital pursuant to section 10 (2a) sentence 2 numbers 4 and 5, section 10 (6) sentence 1 numbers 1 to 3, 5 and 6, section 10a (13) sentence 3 or section 13b (5), and

4 exposures written off.

(2) [1]The following shall be disregarded in the reports pursuant to section 13 (1), section 13a (1) and section 13b (1):

1 exposures to

(a) central governments or central banks outside Germany, the Federal Government, the Deutsche Bundesbank or a legally dependent special fund of the Federal Government if they would be assigned a credit risk standardised approach risk weight (CRSA risk weight) of 0 per cent without collateral,

(b) multilateral development banks or international organisations if they would be assigned a CRSA risk weight of 0 per cent without collateral,

(c) regional governments or local authorities outside Germany, a state government, a local government, a local government association, a legally dependent special fund of a state government, a local government or a local government association or public-sector entities if they would be assigned a CRSA risk weight of 0 per cent without collateral, as well as

(d) other borrowers insofar as the exposures – subject to the provisions in section 20b – are explicitly guaranteed by one of the entities specified in letters (a) to (c) and if exposures to this entity would be assigned a CRSA risk weight of 0 per cent without collateral,

2 exposures insofar as they – subject to the provisions in section 20b – are collateralised by

(a) debt securities issued by one of the entities specified in number 1 if uncollateralised exposures to the issuer would be assigned a CRSA risk weight of 0 per cent,

(b) cash on deposit with the lending institution or a third party institution which is the parent undertaking or a subsidiary of the lending institution, or cash assimilated instruments which the institution receives under the issue of a credit linked note, or

(c) certificates of deposit or similar paper issued by the lending institution or a third party institution which is the parent undertaking or a subsidiary of the lending institution that are lodged with such an institution, and

3 repurchase or lending transactions which relate to securities or commodities and are part of the borrower-related total trading book exposure, insofar as they are secured by financial instruments pursuant to section 1a (3) or commodities which are assignable to the trading book pursuant to section 1a (1), albeit subject to the provisions in section 20b.

[2]The reporting requirement shall not apply if an exposure would no longer reach the defined large exposure threshold pursuant to section 13 (1) sentence 1, also in conjunction with section 13b (1), after deduction of the amounts that are to be disregarded pursuant to sentence 1. [3]Sentences 1 and 2 shall not apply if BaFin has, upon request, revocably permitted an institution to recognise the protective effects of financial collateral arrangements in calculating exposure amounts pursuant to sections 13 to 13b. [4]More detailed provisions on determining the CRSA risk weight can be laid down in the statutory order pursuant to section 10 (1) sentence 9.

(3) [1]Exposures within the meaning of subsection (2) shall be disregarded when calculating whether the limits have been reached pursuant to section 13 (3) and section 13a (3) to (5), also in conjunction with section 13b (1). [2]The following shall likewise be disregarded:

1 exposures to a central government or central bank which are not covered by subsection (2) sentence 1 number 1 letter (a) provided that the exposures are denominated in the currency of the debtor or issuer concerned and are financed in that currency,

2 exposures with a residual maturity of up to 1 year to

(a) credit institutions domiciled in Germany,

(b) securities trading firms domiciled in Germany, with the exception of investment advisers and investment brokers who, in providing financial services, are not authorised to obtain ownership or possession of funds or securities of customers and who do not trade in financial instruments for their own account,

(c) deposit-taking credit institutions, e-money institutions or securities trading firms, with the exception of investment advisers and investment brokers who, in providing financial services, are not authorised to obtain ownership or possession of funds or securities of customers and who do not trade in financial instruments for their own account, domiciled in another EEA state,

(d) deposit-taking credit institutions or e-money institutions domiciled in a non-EEA state which are authorised to operate in that non-EEA state and are subject to a prudential supervisory regime which is materially equivalent to that provided for by this Act,

(e) recognised securities trading firms from non-EEA states within the meaning of section 1 (29),

(f) central counterparties within the meaning of section 1 (31), or

(g) stock exchanges or futures exchanges within the meaning of section 1 (3e) provided that the exposures are not counted towards own funds; the claims of registered cooperative societies on their regional institutions, of savings banks on their central giro institutions as well as of regional cooperative institutions and central giro institutions on their central credit institutions which serve the purpose of liquidity pooling within the network may have a longer period to maturity,

3 covered bonds pursuant to section 20a and claims pursuant to section 4 (3) of the Pfandbrief Act,

4 exposures with a residual maturity of up to 1 year for which

(a) a credit institution domiciled in Germany,

(b) a securities trading firm domiciled in Germany, with the exception of investment advisers and investment brokers who, in providing financial services, are not

authorised to obtain ownership or possession of funds or securities of customers and who do not trade in financial instruments for their own account,

(c) a deposit-taking credit institution, an e-money institution or a securities trading firm, with the exception of investment advisers and investment brokers who, in providing financial services, are not authorised to obtain ownership or possession of funds or securities of customers and who do not trade in financial instruments for their own account, domiciled in another EEA state,

(d) a deposit-taking credit institution or an e-money institution domiciled in a non-EEA state which is authorised to operate in that non-EEA state and is subject to a prudential supervisory regime which is materially equivalent to that provided for by this Act,

(e) a recognised securities trading firm from a non-EEA state within the meaning of section 1 (29),

(f) a central counterparty within the meaning of section 1 (31), or

(g) a stock exchange or futures exchange within the meaning of section 1 (3e) – subject to the provisions in section 20b – is liable as a principal, and

5 positions which are deducted from liable capital pursuant to section 10 (6a) number 4.

[3]Legally independent promotional institutions of the Federal Government and of state governments within the meaning of section 5 (1) number 2 of the Corporation Tax Act (*Körperschaftsteuergesetz*) can, notwithstanding sentence 2 number 2, apply a weighting of 20 per cent to exposures to other credit institutions domiciled in Germany regardless of their maturity when calculating whether the limits for large exposures have been reached pursuant to section 13 (3) and section 13a (3) to (5) if the exposures are not counted towards own funds. [4]The promotional institution must notify BaFin and the Deutsche Bundesbank if it makes use of this weighting method and shall carry on applying this method for a period of at least five years from the date on which BaFin receives such notification.

(4) Exposures pursuant to subsections (2) and (3) sentence 2 shall be disregarded when calculating the utilisation of the aggregate large exposure limit pursuant to section 13 (3) sentence 5 and section 13a (3) sentence and of the aggregate large exposure limit in overall business pursuant to section 13a (4) sentence 5, when calculating the borrower-related total trading book exposure pursuant to section 13a (5) sentence 1 and when calculating the aggregate excess exposure pursuant to section 13a (5) sentence 3.

(5) Section 13 (2) and (4) as well as section 13a (2) and (6) regarding decisions on large exposures shall not apply to exposures pursuant to subsections (2) and (3) sentence 2.

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

1 exposures pursuant to subsection (1) numbers 1, 2 and 4,

2 exposures to

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

(b) the European Communities,

(c) the European Investment Bank,

(d) borrowers for whose liabilities the Federal Government is liable as a principal by law,

3 credit commitments,

4 capital shares in other enterprises regardless of how they are shown on the balance sheet and asset items which are deducted from liable capital pursuant to section 10a (13) sentence 3,

5 securities in the trading portfolio, and

6 drawings against credited amounts under the direct debit procedure which are marked “Subject to receipt” (“*Eingang vorbehalten*”).

Section 20a Covered bonds

(1) [1]Covered bonds are

1 Pfandbriefe within the meaning of section 1 (3) of the Pfandbrief Act,

2 bonds pursuant to Article 22 (4) of the UCITS Directive which were issued before 31 December 2007, or

3 bonds pursuant to Article 22 (4) of the UCITS Directive which are collateralised exclusively by the following assets:

(a) exposures to or explicitly guaranteed by

(aa) the central government or central bank of an EEA state, or

(bb) the central government or central bank of a non-EEA state, a multilateral development bank or an international organisation with a CRSA risk weight of 0 per cent,

(b) exposures to or explicitly guaranteed by

(aa) a regional government, local authority or public-sector entity of an EEA state,

(bb) a regional government or local authority of a non-EEA state with the same CRSA risk weight as the central government to whose jurisdiction the debtor belongs and which has a CRSA risk weight of 0 per cent, or

(cc) a regional government, local authority or public-sector entity of a non-EEA state with the same CRSA risk weight as institutions and which have a CRSA risk weight of 20 per cent,

(c) exposures to or explicitly guaranteed by

(aa) the central government, the central bank, a public-sector entity, a regional government or a local authority of a non-EEA state, or

(bb) a multilateral development bank or an international organisation

if, in the aggregate, they do not exceed 20 per cent of the total nominal value of the outstanding covered bonds of the issuing credit institution and the debtor or protection provider has been assigned a minimum of credit quality step 2,

(d) exposures to

(aa) a credit institution domiciled in Germany,

(bb) a securities trading firm domiciled in Germany, with the exception of investment advisers and investment brokers who, in providing financial services, are not authorised to obtain ownership or possession of funds or securities of customers and who do not trade in financial instruments for their own account,

(cc) a deposit-taking credit institution, an e-money institution or a securities trading firm, with the exception of investment advisers and investment brokers who, in providing financial services, are not authorised to obtain ownership or possession of funds or securities of customers and who do not trade in financial instruments for their own account, domiciled in another EEA state,

(dd) a deposit-taking credit institution or an e-money institution domiciled in a non-EEA state which is authorised to operate in that non-EEA state and is subject to a prudential supervisory regime which is materially equivalent to that provided for by this Act,

(ee) a recognised securities trading firm from a non-EEA state within the meaning of section 1 (29),

(ff) a central counterparty within the meaning of section 1 (31), or

(gg) a stock exchange or futures exchange within the meaning of section 1 (3e),

with a CRSA risk weight of 20 per cent, subject to the provisions in subsection (2),

(e) exposures secured by mortgages on residential real estate, provided that the mortgage amount plus any prior or equal-ranking liens does not exceed 80 per cent of the value of the encumbered residential property,

(f) exposures secured by mortgages on commercial real estate, provided that the mortgage amount plus any prior or equal-ranking liens does not exceed 60 per cent of the value of the encumbered commercial property, and

(g) exposures secured by registered ship mortgages, provided that the mortgage amount plus any prior or equal-ranking liens does not exceed 60 per cent of the value of the encumbered ship.

[2]More detailed provisions on determining the CRSA risk weight, on the CRSA exposures and exposure classes as well as on the credit quality steps can be laid down in the statutory order pursuant to section 10 (1) sentence 9.

(2) [1]Cover assets for a covered bond pursuant to subsection (1) sentence 1 number 3 letter (d) may not exceed 15 per cent of the total nominal value of all the covered bonds issued by this credit institution. [2]When calculating the 15 per cent limit, exposures incurred by the transmission and management of debtors' payments or revenues from the liquidation of exposures secured by real estate to the holders of covered bonds shall be disregarded. [3]In the case of exposures with a residual maturity of up to 100 days, the debtor's CRSA risk weight may not be greater than 50 per cent.

(3) [1]If cover assets for a covered bond are exposures secured by real estate mortgages or ship mortgages pursuant to subsection (1) sentence 1 number 3 letters (e) to (g), the issuer of the covered bond must fulfil the requirements set out in subsections (4) to (8). [2]The provisions for mortgages on commercial real estate shall apply *mutatis mutandis* to ship mortgages.

(4) [1]The real estate mortgage lien must be legally enforceable; this shall be documented. [2]The institution must be able to realise the value of the real estate mortgage within a reasonable period of time upon the occurrence of the secured event.

(5) [1]For a property to be recognised as a cover asset, it shall be valued by an independent valuer; the property may be valued at most at its market value pursuant to section 16 (2) sentence 4 of the Pfandbrief Act. [2]Where an EEA state has laid down stringent criteria for the assessment of the mortgage lending value in statutory or regulatory provisions, the institution may choose to have the property valued not at its market value but instead at its mortgage lending value pursuant to section 16 (2) sentences 1 to 3 of the Pfandbrief Act. [3]The value of the property shall be documented in a transparent and clear manner.

(6) [1]The value of the encumbered property shall be monitored at regular intervals. [2]These intervals may not be greater than a year for commercial real estate and three years for residential real estate. [3]More frequent monitoring shall be carried out if the market for the encumbered property is subject to significant fluctuations in value. [4]Institutions may use statistical methods to identify those properties that require revaluation and to monitor the value of the encumbered property. [5]Where a property is valued at its mortgage lending value, sentences 1 to 4 shall apply to the valuation bases. [6]The valuation of the encumbered property shall be reviewed by an independent valuer as soon as the institution has information indicating that the value of the encumbered property may have materially declined relative to the general market value of comparable properties. [7]In the case of exposures secured by real estate mortgages where the assessment base for the exposure and the value of the encumbered property exceeds the lower of 3 million euro or 5 per cent of the institution's liable capital pursuant to section 10 (2) sentence 2, the valuation of the encumbered property shall be reviewed by an independent valuer at least every three years. [8]Section 16 (1) of the Pfandbrief Act shall apply *mutatis mutandis*. [9]If the review of the

encumbered property's value reveals that a write-down is necessary, then the value shall be reduced accordingly; when determining the value of the real estate mortgage, any prior encumbrances shall be deducted.

(7) An institution must have written instructions on lending against real estate mortgages, in particular regarding the types of residential real estate and commercial real estate for which mortgages are accepted as collateral.

(8) An institution must have taken steps to ensure that the property serving as collateral is adequately insured against loss or damage.

Section 20b Recognition of credit protection instruments as exempting exposures from reporting and weighting requirements

The following credit protection instruments shall be recognised as exempting exposures from reporting and weighting requirements if they fulfil the more detailed provisions on credit risk mitigation laid down in the statutory order pursuant to section 22:

1. explicit guarantees pursuant to section 20 (2) sentence 1 number 1 letter (d) or liability as a principal pursuant to section 20 (3) sentence 2 number 4,
2. debt securities pursuant to section 20 (2) sentence 1 number 2 letter (a),
3. cash on deposit or cash assimilated instruments pursuant to section 20 (2) sentence 1 number 2 letter (b),
4. certificates of deposit or similar paper pursuant to section 20 (2) sentence 1 number 2 letter (c),
5. financial instruments or commodities pursuant to section 20 (2) sentence 1 number 3, and
6. cover assets pursuant to section 20a (1) sentence 1 number 3.

Section 20c Exemption from the obligations pursuant to section 13 (3), section 13a (3) to (5) and section 13b (1)

(1) BaFin can, upon request, revocably permit a securities trading firm domiciled in Germany, with the exception of investment advisers and investment brokers who, in providing financial services, are not authorised to obtain ownership or possession of funds or securities of customers and who do not trade in financial instruments for their own account, to allow

1. exposures to exceed the large exposure limits pursuant to section 13 (3) and section 13a (3) to (5), also in conjunction with section 13b (1), without BaFin's permission if the exposures are incurred exclusively
   (a) by financial instruments within the meaning of subsection (2) number 1 in relation to the underlyings specified in section 1 (11) sentence 4 numbers 2 and 5, for

which a credit equivalent amount is to be calculated pursuant to the provisions laid down in the statutory order pursuant to section 22, or

(b) on the basis of contracts concerning the delivery of goods or the transfer of issuing rights, and

2 the amount by which an exposure within the meaning of number 1 exceeds a large exposure limit pursuant to section 13 (3) and section 13a (3) to (5), also in conjunction with section 13b (1), does not have to be backed with liable capital or with own funds.

(2) The request pursuant to subsection (1) can be granted only if the institution

1 conducts banking business and provides financial services in connection with derivatives pursuant to section 1 (11) sentence 4 numbers 2, 3 and 5,

2 does not conduct the banking business and provide the financial services pursuant to number 1 for or on behalf of retail customers,

3 has a documented strategy for managing – in particular, for controlling and limiting – concentration risk and has reported this to BaFin and the Deutsche Bundesbank, and

4 puts in place arrangements which

(a) ensure the ongoing monitoring of the borrowers' credit quality commensurate with the concentration risk, and

(b) allow a prompt response to a deterioration in the borrowers' credit quality.

(3) A securities trading firm within the meaning of subsection (1) shall notify BaFin and the Deutsche Bundesbank promptly if

1 an exposure within the meaning of subsection (1) exceeds the concentration limits which the institution has set internally in its strategy pursuant to subsection (2) number 3; the report shall specify the amount by which the limit has been exceeded, the borrower's name and information about the underlying business, or

2 material changes are made to the strategy pursuant to subsection (2) number 3 .

(4) [1]A securities trading firm within the meaning of subsection (1) shall, by the 15th day of each new quarter, notify BaFin and the Deutsche Bundesbank of the previous quarter's large exposures which are covered by the exemption pursuant to subsection (1) and exceed the limits pursuant to section 13 (3) and section 13a (3) to (5), also in conjunction with section 13b (1). [2]The report shall specify the amounts by which the limits have been exceeded, the borrowers' names and information about the performance of the exposures.

Section 21 Definition of "exposure" and "loan" in sections 15 to 18

(1) [1]Exposures and loans within the meaning of sections 15 to 18 are:

1 money loans of all types, monetary claims acquired against payment, acceptance credits and exposures arising from registered bonds, with the exception of registered Pfandbriefe and municipal bonds;

2 the discounting of bills of exchange and cheques;

3 monetary claims arising from a credit institution's other commercial transactions, with the exception of exposures arising from the commodities trading of credit cooperatives, provided that these are not deferred beyond the period usual in commercial practice;

4 an institution’s sureties, guarantees and other warranties as well as an institution’s liability arising from the provision of collateral for third-party liabilities;

5 the obligation to assume responsibility for the settlement of monetary claims transferred against payment or to reacquire them at the purchaser's request;

6 an institution’s ownership of stocks or shares in another enterprise amounting to at least a quarter of that enterprise's capital (nominal capital, sum total of the capital shares) irrespective of the duration of ownership;

7 assets in respect of which an institution has concluded lease agreements as the lessor, less any items created on account of the settlement or sale of claims arising from these lease agreements; such items may be deducted up to the book value of the respective leased asset.

[2]Any collateral held in the institution’s favour as well as balances maintained with the institution by the borrower shall be disregarded.

(2) The following are not deemed to be exposures and loans within the meaning of sections 15 to 18:

1 exposures to the Federal Government, a legally dependent special fund of the Federal Government or of a state government, a state government, a local government or a local government association;

2 unsecured exposures to other institutions arising from balances maintained with those institutions and serving the sole purpose of financial investment, which mature within no more than three months; the exposures of registered cooperative societies to their regional institutions, of savings banks to their central giro institutions as well as of regional cooperative institutions and central giro institutions to their central credit institutions may mature later;

3 bills of exchange purchased from other institutions which an institution has accepted, endorsed or issued as promissory notes, and which have a maturity of no more than three months and are normally traded in the money market;

4 exposures written off.

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

1 loans insofar as they satisfy the requirements of sections 14 and 16 (1) and (2) of the Pfandbrief Act (mortgages);

2 loans with periods to maturity of no more than 15 years secured by ship mortgages insofar as they satisfy the requirements of section 22 (1), (2) sentence 1 and (5)

sentence 3, section 23 (1) and (4) as well as section 24 (2) in conjunction with (3) of the Pfandbrief Act;

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

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

(4) The following are not deemed to be exposures and loans within the meaning of section 18:

1 loans based on the acquisition against payment of a claim arising from non-banking commercial transactions if

(a) claims arising from non-banking commercial transactions on the relevant debtor are acquired on an ongoing basis,

(b) the seller of the claim is not responsible for the settlement of the claim, and

(c) the claim falls due within three months of the date on which it was purchased;

2 loans within the meaning of section 20 (2) sentence 1 number 2 letter (b) or (c).

Section 22 Authority to issue statutory orders on exposures and loans

[1]The Federal Ministry of Finance shall be authorised to issue by way of a statutory order, in consultation with the Deutsche Bundesbank, more detailed provisions for large exposures and loans of 1.5 million euro or more regarding the determination of the credit weightings and the borrowers, credit risk mitigation, the distinction between trading book institutions and non-trading book institutions, organisational duties and measures, decision-making requirements and the backing of breaches of large exposure limits, the total trading book exposure of a trading book institution and the valuation of trading book positions, the notification requirements in the procedure for loans of 1.5 million euro or more, and the reporting of large exposures and loans of 1.5 million euro or more incurred or granted by the institutions, in particular with respect to

1 calculating the exposure or loan amounts,

2 calculating the credit equivalent amounts of derivatives as well as of repurchase and lending transactions and of other transactions comparable thereto as well as calculating the warranties assumed for these transactions,

3 divergent provisions on sections 20 to 20b as well as more detailed provisions for institutions stipulating that they may, upon request, be permitted to recognise the protective effects of financial collateral arrangements when calculating the exposure or loan amounts pursuant to sections 13 to 13b if they conduct periodic stress tests and have developed strategies for managing concentration risk,

4 assigning exposures or loans to borrowers,

5 counting exposures and loans towards the large exposure limits and within the framework of reports on loans of 1.5 million euro or more,

6 recognising, including and calculating credit protection instruments (credit risk mitigation provisions),

7 the notification requirements vis-à-vis a collateral provider in the case of concentration risk,

8 the decision-making requirements in connection with large exposures,

9 the type, scope, timing and form of the information as well as the permissible data storage media, transmission channels and data formats for the large exposure reports pursuant to sections 13 to 13b, and the reporting requirements under these provisions, which can be supplemented with the obligation to submit summary reports insofar as this is necessary to enable BaFin to perform its functions, especially to obtain standardised documentation for assessing the positions opened by the institutions,

10 calculating the total trading book exposure,

11 divergent provisions on section 20 concerning borrower-related free delivery risk,

12 backing the excess amount pursuant to section 13a (4) sentences 2, 4 and 6 as well as subsection (5) sentences 2 and 4,

13 the contents of the reports, reporting deadlines and observation period pursuant to section 14 (1) sentence 1,

14 additional data to be provided in the notification pursuant to section 14 (2) sentence 1 insofar as this is necessary owing to information which the Deutsche Bundesbank has received from central credit registers in other countries,

15 details concerning the data to be provided in the notification pursuant to section 14 (2) sentence 2, in particular the prerequisites for and the contents of the information feedback on the forecast probabilities of default, as well as the structure of the notification pursuant to section 14 (2) sentence 3,

16 details concerning the electronic data transfer process pursuant to section 14 (2) sentence 6.

[2]The Federal Ministry of Finance may delegate this authority to BaFin by way of a statutory order, subject to the proviso that the statutory order is issued in agreement with the Deutsche Bundesbank. [3]The central associations of the institutions shall be consulted before the statutory order is issued.

Division 2a REFINANCING REGISTER

Section 22a Register-keeping enterprise

(1) [1]If the refinancing enterprise is a credit institution or one of the entities mentioned in section 2 (1) numbers 1 to 3a and if a special purpose vehicle, a refinancing intermediary, a

credit institution domiciled in an EEA state or one of the entities mentioned in section 2 (1) number 1 or 3a has a claim to the transfer of an exposure of the refinancing enterprise or a lien held by the refinancing enterprise by way of collateral, these assets may be entered in a refinancing register kept by the refinancing enterprise; this shall apply *mutatis mutandis* to registered liens on aircraft and ship mortgages. [2]Each refinancing transaction is to be entered in a separate section.

(2) [1]This division shall not create an obligation on the part of the refinancing enterprise or the refinancing intermediary to keep a refinancing register. [2]The keeping of a register may be terminated or transferred only under the conditions set out in section 22k.

(3) Register-keeping shall not be outsourced.

(4) Subsections (1) to (3) shall apply *mutatis mutandis* to refinancing intermediaries which are a credit institution or one of the entities mentioned in section 2 (1) numbers 1 to 3a.

Section 22b Keeping a refinancing register for third parties

(1) [1]If the refinancing enterprise is neither a credit institution nor one of the entities mentioned in section 2 (1) numbers 1 to 3a, the refinancing enterprise's assets mentioned in section 22a (1) sentence 1, to which a special purpose vehicle, a refinancing intermediary or a credit institution domiciled in an EEA state has a transfer claim, may be entered in a refinancing register kept by a credit institution or the KfW banking group. [2]If the refinancing register also contains assets which the register-keeping enterprise or another enterprise is obliged to transfer, then each obligor of transfer is to be entered in a separate section within the same refinancing register and each refinancing transaction is to be entered in a subsection of this section.

(2) [1]If the refinancing enterprise is a credit institution for which the keeping of its own refinancing register constitutes an undue burden in terms of the nature and scope of its business operations, BaFin shall, at the refinancing enterprise's request, give permission for the refinancing register to be kept by another credit institution. [2]BaFin's permission shall be deemed to have been given if it is not denied within one month of the request having been submitted.

(3) Entries made for other credit institutions without BaFin's permission pursuant to subsection (2) shall be invalid.

(4) Section 22a (2) and (3), also in conjunction with (4), shall apply *mutatis mutandis*.

Section 22c Refinancing intermediaries

Sections 22d to 22o shall apply *mutatis mutandis* to refinancing registers which are kept by a refinancing intermediary pursuant to section 22a (4) or for a refinancing intermediary pursuant to section 22b (4).

Section 22d Refinancing registers

(1) [1]A refinancing register may be kept in electronic form provided that it is ensured that adequate arrangements have been put in place to prevent a loss of data. [2]The Federal Ministry of Finance must, by way of a statutory order not requiring the consent of the Bundesrat, lay down details regarding the form which a refinancing register should take as well as the way in which entries are to be made. [3]The Federal Ministry of Finance may delegate this authority to BaFin by way of a statutory order.

(2) [1]The register-keeping enterprise shall record the following in the refinancing register:

1 the exposures or collateral to which the special purpose vehicles, refinancing intermediaries, credit institutions domiciled in an EEA state or entities mentioned in section 2 (1) number 1 or 3a entered in the register as the parties entitled to transfer (transferees) have a transfer claim,

2 the transferee,

3 the date and time of the entry,

4 if an asset is held by way of collateral, the legal reason therefor, the scope and ranking of the collateral as well as the date on which the contract containing the legal reason for the collateralisation was concluded.

[2]With regard to numbers 1 and 4, the entries shall be deemed to be adequate if third parties, in particular, the administrator (*Verwalter*), the creditors' trustee (*Sachwalter*), BaFin or an insolvency administrator, are able to clearly define and identify the information concerned. [3]If the transferee is a Pfandbrief bank, then it as well as the cover pool monitor appointed pursuant to section 7 (1) of the Pfandbrief Act shall be informed of the entry.

(3) If data required pursuant to subsection (2) are lacking or if entries are incorrect or do not allow the details to be clearly defined and identified, the assets concerned shall be deemed not to have been entered properly.

(4) [1]Exposures can also be entered in the register and assigned to the transferee after registration if assignment has been excluded through a verbal or implied agreement with the debtor. [2]This is without prejudice to section 354a of the Commercial Code as well as any statutory restraints on disposition.

(5) [1]Entries can be deleted only with the consent of the transferee and, if the transferee is a Pfandbrief bank, the consent of the Pfandbrief bank's cover pool monitor, whereby the date and time of deletion must be recorded. [2]Incorrect entries can be deleted with the administrator's consent, however; subsection (2) sentence 3 shall apply *mutatis mutandis*. [3]The correction, the date and time of said correction, and the administrator's consent are to be entered in the refinancing register. [4]Re-registration without deletion of the previous entry shall not produce any legal effects.

Section 22e Appointment of an administrator

(1) [1]Every register-keeping enterprise must appoint a natural person as an administrator of the refinancing register (administrator). [2]The tenure of office shall expire upon cessation of the register or when a different person is appointed as the creditors' trustee of the refinancing register pursuant to section 22l (4) sentence 1.

(2) [1]The administrator shall be appointed by BaFin based on a proposal from the register-keeping enterprise. [2]BaFin shall appoint the nominated person as the administrator if he/she appears to have the required independence, trustworthiness and expertise. [3]In making its decision, BaFin shall take due account of the interests of the transferee entered or to be entered in the refinancing register.

(3) [1]BaFin can dismiss the administrator at any time if it is suspected that he/she is not properly fulfilling his/her tasks. [2]Subsection (2) sentence 3 shall apply *mutatis mutandis*. [3]If the administrator has an employment or client relationship with a party involved in a specific refinancing transaction, his/her office shall be suspended for the term of this refinancing transaction.

(4) [1]A deputy administrator shall be appointed at the register-keeping enterprise's request. [2]A request is permissible at any time. [3]Subsections (2) and (3) shall apply *mutatis mutandis* to the appointment and dismissal of a deputy administrator. [4]If the administrator isdismissed pursuant to subsection (3) sentence 1, if his/her office is suspended or if he/she is prevented from performing his/her tasks, the deputy administrator shall take his/her place.

(5) [1]If an administrator is not on hand for a considerable period of time, if he/she is prevented from performing his/her tasks or if his/her office is suspended without a deputy administrator taking his/her place, BaFin shall appoint a suitable administrator without consulting the register-keeping enterprise. [2]Subsection (2) sentence 3 shall apply *mutatis mutandis*. [3]The register-keeping enterprise shall inform BaFin promptly if any of the circumstances listed in sentence 1 arises.

Section 22f Administrator's relationship with BaFin

(1) The administrator shall provide BaFin with information about any findings and observations made in performing his/her tasks and shall also notify BaFin on his/her own initiative if circumstances exist which suggest that the register is not being kept properly.

(2) The administrator is not bound by BaFin's instructions.

Section 22g Administrator's tasks

(1) [1]The administrator shall ensure that the refinancing register is kept properly. [2]However, his/her tasks shall not include checking whether the registered assets are the refinancing enterprise's assets or registrable assets pursuant to section 22d (2).

(2) [1]The administrator of the refinancing register shall ensure, in particular, that

1 the refinancing register contains the information required pursuant to section 22d (2),

2 the dates and times given in the refinancing register are correct, and

3 the entries are not altered subsequently.

[2]In all other respects, the administrator of the refinancing register shall not be obliged to verify the factual accurancy of the refinancing register's contents.

(3) The administrator may make use of other persons and entities in performing his/her tasks.

Section 22h Administrator's relationship with the register-keeping enterprise and the refinancing enterprise

(1) [1]The administrator shall be authorised to inspect the register-keeping enterprise's books and papers at any time unless these are in no way connected with the keeping of the refinancing register. [2]In the cases specified in section 22b, the administrator shall also have the same powers vis-à-vis the refinancing enterprise.

(2) [1]The administrator shall be obliged to maintain confidentiality with regard to any facts of which he/she obtains knowledge when inspecting the books and papers of the register-keeping enterprise or, if different, of the refinancing enterprise. [2]He/she may provide BaFin with information or notify BaFin only about facts connected with the monitoring of the refinancing register.

(3) Disputes between the administrator and the register-keeping enterprise or, if different, the refinancing enterprise shall be settled by BaFin.

Section 22i Administrator's remuneration

(1) [1]The administrator shall receive appropriate remuneration and reimbursement of his/her expenses from BaFin. [2]The amounts paid shall be refunded separately to BaFin by the register-keeping enterprise and, at BaFin's request, shall be provided in advance.

(2) BaFin can instruct a register-keeping enterprise to pay an amount laid down by BaFin directly to the administrator of a refinancing register on BaFin's behalf if there is no reason to suspect that this may affect the administrator's independence.

(3) [1]Other than in the case specified in subsection (2), the register-keeping enterprise, the refinancing enterprise for which the register is kept and the transferees shall not make payments to the administrator of the refinancing register. [2]If the administrator has nevertheless received such payments, he/she shall be dismissed by BaFin.

Section 22j Effects of entry in the refinancing register

(1) [1]A refinancing enterprise's assets which have been properly entered in a refinancing register can, in the event of the refinancing enterprise's insolvency, be separated from the insolvent's estate by the transferee pursuant to section 47 of the German Insolvency Code (*Insolvenzordnung*). [2]The same shall apply to assets which supersede the assets properly entered in a refinancing register. [3]A transferee can raise an objection to orders or injunctions issued as part of judicial enforcement or execution of attachment by way of litigation pursuant to section 771 of the Code of Civil Procedure (*Zivilprozessordnung*).

(2) [1]Entry in the refinancing register shall not limit the objections and pleas of third parties with regard to registered exposures and rights. [2]If the assets entered in the refinancing register are separated from the insolvent's estate or are transferred to the transferee or to a third party by the transferee, all objections and pleas can be raised in the same way as in the event of assignment. [3]Section 1156 sentence 1 of the German Civil Code shall not apply. [4]If assets entered in the refinancing register serve as collateral for other assets, the collateral provider can raise all objections and pleas laid down in the contract containing the legal reason for the collateralisation vis-à-vis the transferee. [5]Section 1157 sentence 2 of the German Civil Code shall not apply. [6]This is without prejudice to section 22d (4) in conjunction with section 22j (1) sentences 1 and 2, however.

(3) [1]The refinancing enterprise cannot offset any counterclaims against the transferee's claims for the transfer of assets properly entered in a refinancing register and cannot assert any rights of retention. [2]This is without prejudice to any rights of avoidance on the part of the transferee's creditors pursuant to the Creditors' Avoidance of Transfers Act (*Anfechtungsgesetz*) and sections 129 to 147 of the Insolvency Code.

Section 22k Cessation and transfer of register-keeping activities

(1) [1]If all of the transferees entered in a refinancing register as well as their creditors consent thereto, the keeping of the refinancing register can cease one month after BaFin has been notified thereof. [2]If all of the transferees entered in a refinancing register as well as their creditors consent thereto, the keeping of the register can be transferred, under BaFin's supervision, to a suitable credit institution provided that the registered assets are those of the credit institution taking over the register-keeping activities or the conditions set out in section 22b regarding the keeping of a refinancing register for third parties have been fulfilled.

(2) [1]The keeping of the register shall furthermore cease if BaFin deems the register-keeping enterprise to be unsuitable for this activity. [2]In this case, the keeping of the register shall be transferred, under BaFin's supervision, to a credit institution which BaFin deems to be suitable for this activity. [3]The provisions of section 22b regarding the keeping of a refinancing register for third parties shall apply *mutatis mutandis*.

(3) Subsection (2) shall not apply if insolvency proceedings are initiated over the assets of an enterprise which keeps a refinancing register not only for third parties.

Section 22l Appointment of a creditors' trustee upon the initiation of insolvency proceedings

(1) [1]If insolvency proceedings are initiated over the assets of an enterprise which keeps a refinancing register not only for third parties, the insolvency court, at BaFin's request, shall appoint one or two natural persons proposed by BaFin as the creditors' trustee(s) of the refinancing register (the creditors' trustee(s)). [2]The court can deviate from BaFin's proposal if this appears necessary to ensure proper cooperation between the insolvency administrator and the creditors' trustee(s). [3]The creditors' trustee shall receive a certificate of appointment, which he/she must return to the insolvency court at the end of his/her tenure.

(2) [1]BaFin shall submit a request pursuant to subsection (1) sentence 1 if, after consulting the transferees, this appears necessary for the proper management of the assets entered in the refinancing register. [2]BaFin shall nominate the administrator of the refinancing register as the creditors' trustee of the refinancing register or, if the administrator is not available or permanently prevented from performing his/her tasks, his/her deputy or another suitable natural person. [3]The creditors' trustee of the refinancing register shall be dismissed at BaFin's request if there is a good reason for doing so.

(3) [1]If it appears necessary to appoint a second creditors' trustee of the refinancing register to ensure the proper management of the assets entered in the refinancing register, BaFin, after consulting the transferees, can submit a further request pursuant to subsection (1) sentence 1. [2]If BaFin submits such a request, it shall nominate the deputy administrator of the refinancing register or, if there is no deputy, another suitable natural person.

(4) [1]If a person other than the administrator is appointed as the creditors' trustee, then the administrator's tenure shall end. [2]The creditors' trustee of the refinancing register shall take up this office. [3]Sentences 1 and 2 shall apply *mutatis mutandis* to the deputy administrator.

Section 22m Announcement of the appointment of a creditors' trustee

(1) [1]The insolvency court shall publicly announce and inform the relevant court of registration about the appointment or dismissal of a creditors' trustee promptly. [2]The appointment or dismissal of a creditors' trustee shall be entered officially in the commercial register (*Handelsregister*) following announcement. [3]These entries shall not be publicly announced. [4]The provisions of section 15 of the Commercial Code shall not apply.

(2) [1]If rights on the part of the register-keeping enterprise which are already entered in the land register (*Grundbuch*) are entered in the refinancing register, then the appointment of a creditors' trustee shall be entered in the land register at the request of either the insolvency court or the creditors' trustee if the type of rights concerned and circumstances suggest that the transferees' interests could be at risk without such registration. [2]Sentence 1 shall apply *mutatis mutandis* to rights on the part of the register-keeping enterprise which are entered in the shipping register (*Schiffsregister*), the shipbuilding register (*Schiffsbauregister*) or the register of liens on aircraft (*Register für Pfandrechte an Luftfahrzeugen*).

Section 22n Legal position of the creditors' trustee

(1) [1]The creditors' trustee shall be subject to supervision by the insolvency court. [2]The insolvency court can, in particular, ask the creditors' trustee for specific information or a report on the situation and the management at any time. [3]In addition, it shall be incumbent upon the creditors' trustee to perform the duties of an administrator. [4]The creditors' trustee and the insolvency administrator shall provide one another with all information which may be of significance for the insolvency proceedings over the assets of the register-keeping enterprise and for managing the assets entered in the refinancing register.

(2) [1]If the register-keeping enterprise was authorised to manage and dispose of the assets entered in the refinancing register, this right shall pass to the creditors' trustee. [2]In consultation with the insolvency administrator, the creditors' trustee shall use all of the register-keeping enterprise's facilities that are required to manage the registered assets.

(3) [1]If the register-keeping enterprise has disposed of an asset entered in the refinancing register after the creditors' trustee has been appointed, this disposal shall be invalid. [2]This is without prejudice to the provisions of sections 892 and 893 of the German Civil Code, sections 16 and 17 of the Act Governing Rights in Registered Ships and Ships Under Construction (*Gesetz über Rechte an eingetragenen Schiffen und Schiffsbauwerken*) and sections 16 and 17 of the Act Governing Rights in Aircraft (*Gesetz über Rechte an Luftfahrzeugen*). [3]If the register-keeping enterprise has disposed of an asset on the day on which the creditors' trustee of the refinancing register was appointed, it shall be assumed that the disposal occurred after the appointment.

(4) [1]In performing his/her management functions, the creditors' trustee of the refinancing register shall exercise the diligence of a prudent and conscientious creditors' trustee. [2]If the creditors' trustee of the refinancing register breaches his/her duties, the transferees and the register-keeping enterprise can demand compensation for damages resulting therefrom. [3]This shall not apply if the creditors' trustee of the refinancing register is not responsible for the breach of duty.

(5) [1]The creditors' trustee of the refinancing register shall receive appropriate remuneration and reimbursement of his/her expenses from BaFin. [2]The amounts paid shall be refunded separately to BaFin by the transferees on a *pro rata* basis depending on the number of assets registered on their behalf and, at BaFin's request, shall be provided in advance. [3]If the refinancing register is kept for third parties, these parties as well as the transferees, as joint and several debtors, shall be obliged to make refunds and provide advance payments. [4]Section 22i (2) and (3) sentence 1 shall apply *mutatis mutandis*. [5]Section 22i (3) sentence 2 shall apply *mutatis mutandis* subject to the proviso that BaFin is to file an application for dismissal with the insolvency court.

Section 22o Appointment of a creditors' trustee in the event of imminent insolvency

(1) [1]Under the conditions set out in section 46a, at BaFin's request, the court with jurisdiction at the register-keeping enterprise's domicile shall appoint one or two persons as the

creditors' trustee(s). [2]BaFin shall submit a request pursuant to sentence 1 if, after consulting the transferees, this appears necessary for the proper management of the assets entered in the refinancing register. [3]In the event of imminent risk, this consultation shall be waived. [4]In this case, the transferees shall be consulted promptly thereafter.

(2) [1]The provisions of sections 22l to 22n shall apply *mutatis mutandis* to the appointment and dismissal as well as to the legal position of a creditors' trustee appointed under these circumstances subject to the proviso that the court with jurisdiction at the register-keeping enterprise's domicile takes the place of the insolvency court. [2]A good reason within the meaning of section 22l (2) sentence 3 shall be deemed to exist, in particular, if the conditions set out in section 46a are no longer applicable. [3]In this case, BaFin shall appoint an administrator from among the creditors' trustees.

(3) [1]If insolvency proceedings are initiated over the assets of a register-keeping enterprise after a creditors' trustee has been appointed pursuant to subsections (1) and (2) then, for the period following the initiation of insolvency proceedings, the creditors' trustee shall be regarded as having been appointed by the insolvency court upon the initiation of insolvency proceedings. [2]The insolvency court shall take the place of the court with jurisdiction at the register-keeping enterprise's domicile. [3]The court with jurisdiction at the register-keeping enterprise's domicile must hand over to the insolvency court all documentation in connection with the appointment and supervision of the creditors' trustee of the refinancing register.

Division 3 CUSTOMERS' RIGHTS

Section 22p Redeemability of electronic money

(1) Holders of electronic money, for the duration of its validity, may demand that the issuer redeem it at par value in banknotes and coins or in the form of a credit transfer to an account, without the issuer being permitted to charge any costs other than those absolutely necessary to perform the transaction.

(2) The redemption conditions must be explicitly stated in the contract between the issuer and the holder.

(3) [1]The contract may stipulate a minimum redemption amount. [2]This amount may not be more than 10 euro.

Division 4 ADVERTISING, AND INSTITUTIONS' DUTIES OF INFORMATION

Section 23 Advertising

(1) In order to counteract undesirable developments in advertising by institutions, BaFin may prohibit certain types of advertising.

(2) Before general measures are introduced pursuant to subsection (1), the central associations of the institutions and the consumer protection associations shall be consulted.

Section 23a Guarantee scheme

(1) [1]An institution which conducts banking business within the meaning of section 1 (1) sentence 2 numbers 1, 4 or 10, or provides financial services within the meaning of section 1 (1a) sentence 2 numbers 1 to 4 shall inform customers who are not institutions in its price list of its membership of a scheme to safeguard the claims of depositors and investors (guarantee scheme). [2]In addition, prior to commencing a business relationship, the institution shall inform customers who are not institutions about the guarantee provisions, including the scope and amount of the guarantee, in writing in an easily comprehensible form. [3]If deposits and other repayable funds are not guaranteed, the institution shall draw attention to this fact in its general terms and conditions, in its price list and in a prominent position in the contract documents prior to commencing abusiness relationship, unless the repayable funds are securitised by Pfandbriefe, municipal bonds or other debt securities which fulfil the conditions of Article 22 (4) sentences 1 and 2 of the UCITS Directive. [4]The information in the contract documents pursuant to sentence 3 shall not include any other declarations, and must be signed separately by the customer. [5]Furthermore, upon request, information must be available on the terms and conditions of the guarantee scheme, including the requisite formalities for asserting compensation claims.

(2) If an institution ceases to be a member of a guarantee scheme, it shall promptly inform its customers who are not institutions, BaFin and the Deutsche Bundesbank of this fact in writing.

Division 5 SPECIAL DUTIES OF INSTITUTIONS, THEIR SENIOR MANAGERS, FINANCIAL HOLDING COMPANIES AND MIXED-ACTIVITY HOLDING COMPANIES

Section 24 Reports

(1) An institution shall promptly report to BaFin and the Deutsche Bundesbank

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

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

3 changes in the legal form, unless authorisation is already required under section 32 (1), and changes in the firm name;

4 a loss amounting to 25 per cent of the liable capital;

5 the relocation of the office or domicile;

6 the establishment, relocation and closure of a branch in a non-EEA state and the commencement and termination of the provision of cross-border services without establishing a branch;

7 the discontinuation of business operations;

8 the intention of its governing bodies appointed according to law and its articles of association to bring about a decision on the institution’s liquidation;

9 a fall in the initial capital below the minimum requirements defined in section 33 (1) sentence 1 number 1, and the discontinuation of appropriate insurance cover pursuant to section 33 (1) sentences 2 and 3;

10 the acquisition or disposal of a major participating interest in its own institution, the reaching, exceeding or falling below the thresholds for participating interests of 20 per cent, 30 per cent and 50 per cent of the voting rights or capital, and the fact that the institution becomes or ceases to be the subsidiary of another enterprise, as soon as the forthcoming change in these participatory relationships comes to the institution's attention;

11 each case in which the counterparty to a securities repurchase agreement, reverse repo, or a lending transaction in securities or commodities did not discharge his/her settlement obligations;

12 the emergence of, change in or termination of a close link with another natural person or another enterprise;

13 the emergence of, change in the level or termination of a qualifying participating interest in other enterprises;

14 the finding that when determining the effects of a sudden and unexpected change in interest rates as stipulated by BaFin pursuant to section 25a (1) sentence 7, the institution's present value declines by more than 20 per cent of own funds pursuant to section 10 (2);

15 the appointment of a member of the supervisory body, stating the facts which are germane to assessing his/her trustworthiness and professional expertise;

16 a change in the ratio of balance sheet capital to the sum of total assets and off-balance-sheet liabilities and the replacement cost for claims arising from off-balance-sheet transactions (modified balance sheet capital ratio) of at least 5 per cent based on a monthly return pursuant to section 25 (1) sentence 1 or the monthly balance sheet statistics pursuant to section 25 (1) sentence 3, in each case at the end of a quarter, in relation to the institution's approved annual accounts; where the institution prepares its accounts according to international accounting standards or is required to prepare interim accounts under the German Securities Trading Act, a corresponding change in the modified balance sheet capital ratio must also be reported based on the interim accounts in relation to the approved annual accounts according to international accounting standards.

(1a) An institution shall report to BaFin and the Deutsche Bundesbank annually

1 its close links with other natural persons or enterprises,

2 its qualifying participating interests in other enterprises,

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

4 the number of its domestic branches, and

5 the modified balance sheet capital ratio based on the approved annual accounts.

(2) An institution intending to merge with another institution shall promptly report this to BaFin and the Deutsche Bundesbank.

(3) [1]A senior manager of an institution and the persons who actually manage the business of a financial holding company or a mixed financial holding company shall promptly report to BaFin and the Deutsche Bundesbank

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

2 the acquisition and disposal of a direct participating interest in an enterprise, as well as any changes in the amount of such a participating interest.

[2]A direct participating interest within the meaning of sentence 1 number 2 shall be deemed to be the holding of at least 25 per cent of the enterprise's capital.

(3a) [1]A financial holding company shall promptly report to BaFin and the Deutsche Bundesbank

1 the intention to appoint a person who is actually to manage the business of the financial holding company, stating the facts which are germane to assessing his/her trustworthiness and professional qualifications, as well as the realisation of such an intention;

2 the retirement of any person who has actually managed the business of the financial holding company;

3 changes to the structure of the financial holding group which mean that the group will, in future, be active across sectors;

4 the appointment of a member of the supervisory body, stating the facts which are germane to assessing his/her trustworthiness and professional expertise.

[2]A financial holding company shall submit to BaFin and the Deutsche Bundesbank annually a summary report of those institutions, German asset management companies, financial enterprises, ancillary service providers and payment institutions within the meaning of the Payment Services Oversight Act (*Zahlungsdiensteaufsichtsgesetz*) that are subordinated enterprises within the meaning of section 10a (3) to (5). [3]BaFin shall transmit a list of these to the competent authorities of the other EEA states and to the Commission of the European Communities. [4]The establishment, modification or discontinuation of such participating interests or corporate relationships shall be promptly reported to BaFin and the Deutsche Bundesbank. [5]Sentence 1 numbers 1 and 2 shall apply *mutatis mutandis* to a mixed financial holding company in respect of the persons who actually manage the business of this company; sentences 2 and 4 shall apply *mutatis mutandis* to conglomerate enterprises.

(3b) BaFin and the Deutsche Bundesbank may impose additional notification and reporting requirements on institutions or certain types or categories of institutions, in particular in order to obtain more in-depth insights into developments in the institutions' financial situation where this is necessary to fulfil the tasks of BaFin and the Deutsche Bundesbank.

(4) [1]The Federal Ministry of Finance, acting in consultation with the Deutsche Bundesbank, may issue by way of a statutory order more detailed provisions on the nature, scope, timing and form of the reports and on the submission of the documentation provided for in this Act, as well as on the permissible data carriers, transmission channels and data formats, and may supplement the existing reporting requirements by the obligation to submit summary reports and summary lists, insofar as this is necessary for the performance of BaFin's tasks and especially to enable it to obtain consistent records for assessing the banking business conducted and financial services provided by institutions. [2]It may delegate this authority by way of a statutory order to BaFin, provided that statutory orders of BaFin are issued in agreement with the Deutsche Bundesbank. [3]The central associations of the institutions shall be consulted before the statutory order is issued.

Section 24a Establishment of a branch and provision of cross-border services in other EEA states

(1) [1]A deposit-taking credit institution, an e-money institution and a securities trading firm shall promptly report the intention to establish a branch in another EEA state to BaFin and the Deutsche Bundesbank pursuant to sentence 2. [2]The report shall contain the following particulars:

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

2 a business plan indicating the nature of the planned business and the organisational structure of the branch and any intention to use tied agents,

3 the address from which the institution's records can be requested in the host member state and to which documents can be delivered, and

4 the names of the managers of the branch.

(2) [1]If there is no reason to doubt the suitability of the institution's organisational structure and financial standing, BaFin forwards the particulars pursuant to subsection (1) sentence 2 to the competent authorities of the host state within two months of receiving the complete documentation and informs the reporting institution of this. [2]BaFin also informs the competent authorities of the host state about the amount of own funds and the adequacy of own funds and, if applicable, about the deposit guarantee scheme or investor compensation scheme to which the institution belongs or about its comparable protection arrangements within the meaning of section 23a (1) sentence 1. [3]If BaFin does not forward the particulars pursuant to subsection (1) sentence 2 to the competent authorities of the host state, it notifies the institution of its reasons for not doing so within two months of receiving all the particulars pursuant to subsection (1) sentence 2. [4]After the report has been forwarded to the competent authorities of the host state, the institution may take up activities in the other state after receiving a corresponding notification from these authorities or after the expiry of a two-month period at the latest.

(3) [1]Subsection (1) sentence 1 shall apply *mutatis mutandis* to the intention to conduct banking business, to provide financial services within the meaning of section 1 (1a) sentence 2 numbers 1, 1a, 1c, 2 to 4, 9 and 10 or sentence 3 or to engage in activities pursuant to section 1 (3) sentence 1 numbers 2 to 8 or to provide credit reports or offer to rent out safe deposit boxes, or, in the case of deposit-taking credit institutions or e-money institutions, to provide payment services within the meaning of the Payment Services Oversight Act in another EEA state by way of cross-border services. [2]The report shall specify the state in which the cross-border service is to be provided and shall contain a business plan specifying the intended activities and whether tied agents are to be used in this state. [3]If there is no reason to doubt the suitability of the institution's organisational structure and financial standing, BaFin notifies the competent authorities of the host state within one month of receiving the report. [4]The institution must wait until the competent authorities of the host state have been notified within this period before it takes up activities in the other state.

[5]Otherwise, BaFin promptly informs the institution of its non-notification and its reasons for such non-notification.

(3a) [1]If the operator of a multilateral trading system intends to grant trading participants in other states direct access to its trading system, it shall notify BaFin if this is the first time a trading participant in the country in question has been granted access. [2]BaFin notifies the competent authorities in the host state of such intention within one month of receiving the report. [3]Upon request, the operator shall provide BaFin with the names of the trading participants from this state which have been granted access. [4]At the request of the competent authorities in the host state, BaFin discloses this information within a reasonable period.

(3b) [1]If a financial services institution within the meaning of section 1 (1a) sentence 2 numbers 1 to 4 intends to use tied agents for an activity within the meaning of subsection (3), BaFin, at the request of the competent authorities in the host state, informs them, within a reasonable period of time, of the name or names of the tied agents which the institution in this state intends to use. [2]Sentence 1 shall apply *mutatis mutandis* to the request of a host state that it be advised of the names of the members of or participants in a domestically domiciled multilateral trading system which intends to provide such systems in this host state.

(4) [1]If changes occur in the circumstances reported pursuant to subsection (1) sentence 2 or subsection (3) sentence 2, the institution shall notify BaFin, the Deutsche Bundesbank and the competent authorities of the host state of these changes in writing at least one month before the changes become effective. [2]The notification requirement pursuant to sentence 1 shall apply *mutatis mutandis* to an institution which has established its branch in another EEA state prior to the date on which it comes under the obligation to submit a report pursuant to subsection (1). [3]An institution which has established a branch pursuant to subsection (1) shall report any changes in the circumstances regarding the deposit guarantee scheme or investor compensation scheme or the comparable protection arrangements within the meaning of section 23a (1) sentence 1 to BaFin, the Deutsche Bundesbank and the competent authorities of the host state at least one month before the changes become effective. [4]BaFin informs the competent authorities of the host state of the changes pursuant to sentence 3.

(5) The Federal Ministry of Finance is authorised, by way of a statutory order, to lay down whether subsections (1), (2) and (4) shall apply *mutatis mutandis* to the use of a tied agent that is domiciled or habitually resident in another EEA state and that subsections (2) and (4) shall apply *mutatis mutandis* to the establishment of a branch in a non-EEA state, insofar as this is necessary in the context of the right of establishment under agreements of the European Communities with non-EEA states.

(6) (Repealed)

Section 24b Participation in payment and securities transfer and settlement systems as well as interoperable systems

[1]An institution shall promptly report the intention to operate a system pursuant to section 1 (16) to BaFin and the Deutsche Bundesbank and shall name the participants. [2]This also applies to any subsequent change in the group of participants and to agreements on the operation of interoperable systems. [3]The Deutsche Bundesbank notifies the Commission of the European Communities of the systems reported to it after having satisfied itself of the appropriateness of the rules governing the system. [4]In the case of an agreement on the operation of interoperable systems, the Deutsche Bundesbank verifies whether the rules of the systems involved concerning the timing of submission and the irrevocability of orders are compatible.

(2) The institution shall provide information on the systems within the meaning of subsection (1) in which it is involved and on the basic rules governing their mode of operation to all parties which can demonstrate that they have a legitimate interest in the matter.

(3) [1]An institution that operates a system pursuant to section 1 (16) shall grant deposit-taking credit institutions or securities trading firms domiciled in another EEA state equal access to the system according to the same transparent and objective criteria as apply to domestic participants in this system. [2]This is without prejudice to the institution's right to deny access for justified commercial reasons.

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

(5) Subsections (1) to (4) shall apply *mutatis mutandis* to system operators which are not an institution.

Section 24c Automated access to account details

(1) [1]Credit institutions shall maintain a data file in which they must promptly store the following data:

1 the number of any account which is subject to the obligation to verify proof of identity within the meaning of section 154 (2) sentence 1 of the Fiscal Code or of a safe custody account, as well as the dates on which the account was opened and closed,

2 the name – and for natural persons the date of birth – of the holder and of any party authorised to draw on the account, as well as – in the cases specified in section 3 (1) number 3 of the Money Laundering Act – the name and, if available, the address of any other economic beneficiary within the meaning of section 1 (6) of the Money Laundering Act.

[2]A new data record shall be created promptly for each change in the data entered pursuant to sentence 1. [3]The data shall be deleted three years after the account or safe custody account has been closed. [4]In the case of sentence 2, the previous data record shall be deleted three years after the new data record has been created. [5]The credit institution shall ensure that BaFin has automated access at all times to the data entered in the data file pursuant to sentence 1 by means of a procedure of BaFin's choice. [6]The institution shall ensure by means of technical and organisational measures that it cannot monitor such data retrievals.

(2) BaFin may access individual data entered in the data file pursuant to subsection (1) sentence 1 insofar as this is necessary to enable it to perform its prudential functions under this Act or the Money Laundering Act, in particular with respect to unauthorised banking business and financial services or the misuse of the institutions by means of money laundering or fraudulent activities to the detriment of the institutions, and if there is particular urgency in individual cases.

(3) [1]Upon request, BaFin provides information entered in the data file pursuant to subsection (1) sentence 1 to

1 the supervisory authorities pursuant to section 9 (1) sentence 4 number 2 insofar as this is necessary to enable them to perform their prudential functions under the conditions set out in subsection (2),

2 the authorities or courts responsible for providing international judicial assistance in criminal cases, and otherwise for the prosecution and punishment of criminal offences, insofar as this is necessary to enable them to perform their statutory functions,

3 the national authority responsible for imposing restrictions on capital transfers and payment transactions pursuant to the Foreign Trade and Payments Act insofar as this is necessary to enable it to perform its functions ensuing from the Foreign Trade and Payments Act or from legal instruments of the European Communities in connection with restrictions on economic and financial relations.

[2]BaFin shall access the data stored in the data files by means of an automated procedure and transmit them to the agency making the request. [3]BaFin verifies the permissibility of such transmission only if it has particular grounds for doing so. [4]Responsibility for the permissibility of the transmission shall lie with the agency making the request. [5]BaFin may, pursuant to section 4b of the Federal Data Protection Act, provide foreign agencies with information from the data file pursuant to subsection (1) sentence 1 for the purposes described in sentence 1. [6]Section 9 (1) sentences 5 and 6 and subsection (2) shall apply *mutatis mutandis*. [7]This is without prejudice to the provisions on international judicial assistance in criminal cases.

(4) [1]For the purpose of monitoring compliance with data protection rules on the part of the competent agency, BaFin logs the time of each data retrieval, the data used during the retrieval, the data retrieved, the name of the retriever, the reference number and, if the data are retrieved at the request of another agency, the name of that agency and its reference

number. [2]The log data may not be used for any other purposes. [3]The log data shall be kept for at least 18 months and deleted after two years at the latest.

(5) [1]The credit institution shall, at its own expense, put in place all the procedures necessary for the automated data access within its area of responsibility. [2]These include, in each case in accordance with the relevant BaFin provisions, the procurement of the equipment necessary to ensure confidentiality and protection against unauthorised access, the installation of a suitable telecommunications link and participation in the closed user system, as well as the ongoing provision of these facilities.

(6) [1]The credit institution and BaFin shall put in place state-of-the-art measures to safeguard data protection and data security, which in particular shall guarantee the confidentiality and integrity of the retrieved and transmitted data. [2]The state of the art shall be defined by BaFin in consultation with the Federal Office for Information Security (*Bundesamt für Sicherheit in der Informationstechnik*) by a procedure of BaFin's choice.

(7) [1]The Federal Ministry of Finance may, by way of a statutory order, permit exemptions from the obligation to transmit data by means of an automated procedure. [2]It may delegate this authority to BaFin by way of a statutory order.

(8) Insofar as the Deutsche Bundesbank and the Federal Republic of Germany – Finance Agency *(Bundesrepublik Deutschland – Finanzagentur GmbH)* maintain accounts and safe custody accounts for third parties, they shall be deemed to be credit institutions within the meaning of subsections (1), (5) and (6).

Section 25 Monthly returns and additional information

(1) [1]Institutions shall submit a monthly return to the Deutsche Bundesbank promptly after the end of each month. [2]The Deutsche Bundesbank shall forward these returns to BaFin along with its comments; BaFin may waive the forwarding of certain returns. [3]If monthly balance sheet statistics are collected by the Deutsche Bundesbank pursuant to section 18 of the Bundesbank Act or Article 5 of the Protocol on the Statute of the European System of Central Banks and of the European Central Bank, the returns to be submitted for that purpose shall also be deemed to be monthly returns pursuant to sentence 1.

(2) [1]Superordinated enterprises within the meaning of section 13b (2) shall also submit a consolidated monthly return to the Deutsche Bundesbank promptly after the end of each month. [2]Subsection (1) sentence 2 and section 10a (6), (7) and (11) on the consolidation methodology, section 10a (13) on the duty to provide information, and section 10a (14) on the subconsolidation of subsidiaries in non-EEA states shall apply *mutatis mutandis*.

(3) [1]The Federal Ministry of Finance may, in consultation with the Deutsche Bundesbank, issue by way of a statutory order more detailed provisions on the type and scope of the monthly returns as well as on the permissible data storage media, transmission channels and data formats, insofar as monthly balance sheet statistics are not collected pursuant to section 18 of the Bundesbank Act, in particular to gain an insight into developments in institutions'

assets and liabilities position and profitability, and on additional information, insofar as this is necessary to enable BaFin to perform its functions. [2]The information may also relate to subordinated enterprises within the meaning of section 13b (2), to subsidiaries domiciled in or outside Germany which are not included in supervision on a consolidated basis and to mixed-activity holding companies with subordinated institutions; the mixed-activity holding companies shall transmit the requisite data to the institutions. [3]The Federal Ministry of Finance may delegate the authority to issue a statutory order to BaFin by way of a statutory order, subject to the proviso that the statutory order is issued in agreement with the Deutsche Bundesbank.

Section 25a Particular governance duties of institutions

(1) [1]An institution must have in place a proper business organisation which ensures compliance with the legal provisions to be observed by the institution as well as fulfilment of business necessities. [2]The persons specified in section 1 (2) sentence 1 are responsible for the institution's proper business organisation. [3]A proper business organisation encompasses, in particular, appropriate and effective risk management, which

1 based on methodologies for gauging and safeguarding resilience, includes the definition of strategies as well as the establishment of internal control mechanisms with an internal control system and an internal auditing function, whereby the internal control system comprises, in particular,

   (a) structural and operational arrangements with a clear definition of the areas of responsibility, and

   (b) processes for identifying, assessing, managing as well as monitoring and reporting risks in accordance with the criteria laid down in Annex V of the Banking Directive;

2 requires the institution to have suitable staffing levels and technical and organisational resources, and

3 includes the definition of an adequate contingency plan, especially for IT systems.

[4]The risk management structure shall depend on the type, scope, complexity and risk content of the business operations performed. [5]The institution shall regularly review its appropriateness and effectiveness. [6]In addition, a proper business organisation encompasses

1 appropriate arrangements by means of which the institution's financial situation can be gauged with sufficient accuracy at all times;

2 complete documentation of business operations which permits full tracking and monitoring by BaFin for its area of responsibility; requisite records must be retained for at least five years; this is without prejudice to section 257 (4) of the Commercial Code, section 257 (3) and (5) of the Commercial Code shall apply *mutatis mutandis*.

[7]BaFin can lay down provisions on the modelling of a sudden and unexpected change in the interest rate and on the methodology for computing the impact on the present value of the interest rate risk in the banking book. [8]In individual cases, BaFin may issue orders to an institution that are appropriate and necessary for putting into place arrangements within the meaning of sentences 3, 6 and 7.

(1a) [1]Subsection (1) shall apply *mutatis mutandis* to groups of institutions, financial holding groups, institutions within the meaning of section 10a (14) and financial conglomerates subject to the proviso that the persons specified in section 1 (2) sentence 1 or section 2d (1) of the superordinated enterprise or the superordinated financial conglomerate enterprise are responsible for the proper business organisation of the group of institutions, the financial holding group or the financial conglomerate. [2]Section 10a (12) as well as (13) sentences 1 and 2 shall apply *mutatis mutandis* to groups of institutions and financial holding groups; section 10b (6) as well as (7) sentences 1 and 2 shall apply *mutatis mutandis* to financial conglomerates.

(2) [1]An institution must, depending on the type, scope, complexity and risk content of outsourcing to another enterprise activities and processes that are material to conducting banking business or providing financial services or any of an institution's other typical services, make appropriate arrangements in order to avoid incurring excessive additional risks. [2]The outsourcing must impair neither the proper conduct of such business and services nor the business organisation within the meaning of subsection (1). [3]In particular, the institution must ensure ongoing appropriate and effective risk management that includes the outsourced activities and processes. [4]The outsourcing must not lead to a delegation of responsibility on the part of the persons specified in section 1 (2) sentence 1 to the external service provider. [5]In the event of outsourcing, the institution shall remain responsible for ensuring compliance with the legal provisions to be observed by the institution. [6]The outsourcing must not prevent BaFin from performing its tasks; its right to request information, right to audit and ability to monitor must be ensured by means of suitable arrangements with regard to the outsourced activities and processes, including in the event of outsourcing to an enterprise domiciled in another EEA state or in a non-EEA state. [7]This shall apply *mutatis mutandis* to the performance of the tasks of the institution's auditors. [8]Outsourcing requires a written agreement which lays down the institution's rights to ensure compliance with the aforementioned conditions, including the right to give instructions and the right to give notice, as well as the corresponding duties on the part of the external service provider.

(3) [1]If BaFin's right to audit and ability to monitor are impaired in respect of outsourcing pursuant to subsection (2), BaFin can, in individual cases, issue orders that are appropriate and necessary for eliminating this impairment. [2]This is without prejudice to BaFin's powers pursuant to subsection (1) sentence 8.

(4) [1]If a deposit-taking credit institution or a securities trading firm avails itself of a tied agent within the meaning of section 2 (10) sentence 1, it must ensure that he/she is trustworthy and has the necessary professional qualifications, fulfils the statutory requirements when providing financial services, informs customers about his/her status pursuant to section 2

(10) sentences 1 and 2 prior to commencing business relationships and notifies customers about the termination of this status promptly. [2]The deposit-taking credit institution or securities trading firm must keep the necessary evidence of the fulfilment of its duties pursuant to sentence 1 for at least five years after the termination of the tied agent's status. [3]More detailed provisions on the evidence required can be issued by way of a statutory order pursuant to section 24 (4).

Division 5a PREVENTION OF MONEY LAUNDERING, TERRORIST FINANCING AND FRAUDULENT ACTIVITIES TO THE DETRIMENT OF INSTITUTIONS

Section 25b Fulfilment of particular organisational duties in connection with cashless payments

BaFin shall monitor the fulfilment of the duties contained in Regulation (EC) No 1781/2006 of the European Parliament and of the Council of 15 November 2006 on information on the payer accompanying transfers of funds (OJ EU L 345/1) incumbent upon the credit institutions and financial services institutions which provide money transmission services pursuant to section 1 (1a) sentence 2 number 6.

Section 25c Internal safeguards

(1) Notwithstanding the duties cited in section 25a (1) of this Act and section 9 (1) and (2) of the Money Laundering Act, institutions as well as financial holding companies and mixed financial holding companies which are deemed to be superordinated enterprises pursuant to section 10a (3) sentence 6 or sentence 7 or section 10b (3) sentence 8 must – as part of their proper business organisation and appropriate risk management to prevent fraudulent activities to their detriment – create and update internal policies and adequate business and customer-related safeguards, and conduct checks.

(2) [1]Credit institutions must operate and update appropriate IT systems which enable them to identify business relationships and individual transactions in payment operations that appear dubious or unusual in the light of knowledge of money laundering methods, terrorist financing and fraudulent activities to the detriment of institutions available publicly or within the credit institution. [2]Where such circumstances are identified, they must be investigated in the context of the current business relationship and individual transactions in order to be able to monitor and assess the risk involved in the relevant business relationships and transactions and, if necessary, examine whether there are grounds for suspicion. [3]The credit institutions may collect, process and use personal data insofar as this is necessary to fulfil this duty. [4]BaFin can lay down criteria which, if they are met, allow credit institutions to waive the use of systems pursuant to sentence 1.

Section 25d Simplified due diligence

(1) [1]Where the conditions specified in section 25f of this Act and section 6 of the Money Laundering Act do not exist, a low risk of money laundering or terrorist financing shall be deemed to exist at institutions, over and above section 5 of the Money Laundering Act, in the following cases:

1 in the issuance or administration of electronic money within the meaning of section 1 (14), insofar as it is guaranteed that

(a) in the case of a non-rechargeable data storage medium, the stored amount does not come to more than 150 euro, or

(b) in the case of a rechargeable data storage medium, the total amount issued or administered in a calendar year does not come to more than 2,500 euro, unless the holder within the meaning of section 22p (1) redeems an amount of 1,000 euro or more in the same calendar year;

2 subject to sentence 2, upon the conclusion of

(a) a government-subsidised funded pension agreement,

(b) an agreement on the investment of capital formation benefits, insofar as the agreement fulfils the conditions for a government subsidy,

(c) a loan agreement, finance lease agreement or an instalment credit transaction with a consumer (sections 491, 500 and 501 of the German Civil Code),

(d) a credit agreement as part of a government promotion programme that is processed via a Federal Government or state government promotional bank and whose loan principal must be used for a specific purpose,

(e) a credit agreement for sales financing,

(f) any other credit agreement in which the credit account is used solely to process the loan and the loan is repaid from an account held by the borrower with a credit institution within the meaning of section 1 (1) with the exception of the enterprises specified in section 2 (1) numbers 3 to 8, with a credit institution in another member state of the European Union or with a branch in Germany of a credit institution domiciled outside Germany,

(g) a savings agreement, and

(h) a lease agreement;

3 subject to sentence 2, in any other cases insofar as the following conditions are met:

(a) the agreement is in writing,

(b) the transactions in question are settled via an account held by the customer with a credit institution within the meaning of section 1 (1) with the exception of the enterprises specified in section 2 (1) numbers 3 to 8, with a credit institution in another member state of the European Union or with a branch in Germany of a

credit institution domiciled outside Germany or via a credit institution domiciled in a non-EEA state to which requirements equivalent to those in Directive 2005/60/EC apply,

(c) the product or the related transaction is not anonymous and enables section 3 (2) sentence 1 number 3 of the Money Laundering Act to be applied in good time, and

(d) the payments under the agreement or the related transaction cannot be made in favour of a third party except in the event of death or impairment, if a certain age limit is exceeded or in comparable cases;

4 subject to sentence 2, in the case of products or related transactions allowing investment in financial assets or claims, such as insurance or any other contingent claims, if over and above the conditions specified in number 3

(a) the payments under the product or the transaction can be made only in the long term,

(b) the product or the transaction cannot be used as collateral, and

(c) it is not possible to make premature payments and apply buyback clauses during the term of the agreement and the agreement cannot be terminated prematurely.

[2]However, a low risk shall be deemed to exist in the cases specified in sentence 1 numbers 2 to 4 only if the following thresholds are not exceeded:

1 for agreements within the meaning of sentence 1 number 2 letters (a), (b), (d) and (f) or for agreements within the meaning of sentence 1 numbers 3 and 4, payments totalling 15,000 euro,

2 for agreements within the meaning of sentence 1 number 2 letters (c), (e) and (h) or for any other agreements involving the financing of assets or their use and in which ownership of the asset is not transferred to the contracting party or the user until the agreement is completed, payments totalling 15,000 euro per calendar year,

3 for savings agreements within the meaning of sentence 1 number 2 letter (g), 1,000 euro per calendar year in the case of periodic payments or 2,500 euro for a one-off payment.

(2) Subsection (1) shall not apply if an institution has information with regard to a specific transaction or business relationship which indicates that the risk of money laundering or terrorist financing is not low.

Section 25e Simplified identification procedure

[1]Notwithstanding section 4 (1) of the Money Laundering Act, verification of the identity of the contracting party and the economic beneficiary can also be completed promptly after an account or a safe custody account has been opened. [2]In this case, it must be ensured that no funds can be withdrawn from the account or safe custody account before the verification of identity has been completed.

Section 25f Enhanced due diligence

(1) [1]Over and above section 6 of the Money Laundering Act, institutions must comply with enhanced due diligence standards commensurate with a higher risk also in the settlement of payment transactions as part of business relationships with correspondent institutions domiciled in a non-EEA state. [2]Insofar as these business relationships do not concern the settlement of payment transactions, this is without prejudice to section 5 (2) number 1 of the Money Laundering Act. [3]Section 3 (4) sentence 2 of the Money Laundering Act shall apply *mutatis mutandis*.

(2) In the cases cited in subsection (1), institutions shall

1 obtain sufficient publicly available information about the correspondent institution and its business and management structure in order to be able to understand fully, both before and during such a business relationship, the nature of the business operations conducted by the correspondent institution and assess its reputation and controls for combating money laundering and terrorist financing as well as the quality of its supervision,

2 lay down and document the respective responsibilities of both institutions with regard to compliance with the due diligence standards before establishing such a business relationship,

3 ensure that, before such a business relationship is established by an agent acting on the obligated party's behalf, he/she obtains the approval of his/her immediate superior or the next highest management level,

4 take measures to ensure that the correspondent institution does not establish or maintain a business relationship with a credit institution of which it is known that its accounts are used by a shell bank within the meaning of Article 3 (10) of Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing (OJ EU L 309/15) as last amended by Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 (OJ EU L 319/1), and

5 take measures to ensure that the correspondent institution does not permit transactions via pass-through accounts.

(3) Notwithstanding section 3 (2) sentence 1 number 2 of the Money Laundering Act, the due diligence pursuant to section 3 (1) numbers 1 and 3 of the Money Laundering Act shall apply to obligated parties pursuant to section 2 (1) numbers 1 and 2 of the Money Laundering Act when accepting cash irrespective of any thresholds specified in the Money Laundering Act or in this Act, insofar as a customer's order in the context of money transmission services within the meaning of section 1 (1a) sentence 2 number 6 or foreign currency dealing within the meaning of section 1 (1a) sentence 2 number 7 is not settled via a customer account opened with the obligated party and the transaction with regard to foreign currency dealing involves a value of 2,500 euro or more.

Section 25g Group-wide compliance with due diligence standards

(1) [1]The institutions and enterprises specified in section 25c (1), as superordinated enterprises, shall develop group-wide internal safeguards pursuant to section 9 of the Money Laundering Act and section 25c (1) of this Act and must ensure compliance with the due diligence standards pursuant to sections 3, 5 and 6 of the Money Laundering Act and sections 25d and 25f of this Act as well as the record-keeping obligation pursuant to section 8 of the Money Laundering Act with regard to their subordinated enterprises and branches. [2]The senior managers within the meaning of section 1 (2) sentence 1 shall be responsible for the proper fulfilment of the duties pursuant to sentence 1. [3]Insofar as the measures to be taken pursuant to sentence 1 as part of establishing or conducting business relationships or transactions are *de jure* not permissible under local law or *de facto* not possible in a non-EEA state in which the enterprise is domiciled, the superordinated enterprise or the parent enterprise shall ensure that a subordinated enterprise or branch does not establish or maintain any business relationships or conduct any transactions in this non-EEA state. [4]If a business relationship already exists, the superordinated enterprise or the parent enterprise shall ensure that the subordinated enterprise or branch ends this relationship by termination of contract or in some other way regardless of any other statutory or contractual provisions. [5]If stricter obligations apply in the foreign state in which a subordinated enterprise or branch is domiciled, these stricter obligations must be fulfilled there.

(2) [1]Financial holding companies or mixed financial holding companies which are deemed to be superordinated enterprises pursuant to section 10a (3) sentence 6 or sentence 7 or section 10b (3) sentence 8 are obligated parties within the meaning of section 2 (1) number 1 of the Money Laundering Act. [2]In this respect, they shall also be subject to supervision by BaFin pursuant to section 16 (1) in conjunction with subsection (2) number 2 of the Money Laundering Act.

Section 25h Prohibited business

The following activities are prohibited:

1. the establishment or maintenance of a correspondent banking relationship or any other business relationship with a shell bank within the meaning of Article 3 (10) of Directive 2005/60/EC, and
2. the setting-up and maintenance of accounts in the name of the institution or for third-party institutions which customers can operate independently to conduct their own transactions; this is without prejudice to section 154 (1) of the Fiscal Code.

Division 5b SUBMISSION OF ACCOUNTING DOCUMENTS

Section 26 Submission of annual accounts, management report and audit reports

(1) [1]Institutions shall draw up their annual accounts for the previous financial year in the first three months of the current financial year, and submit their annual accounts as drawn up,

and subsequently also as approved, and their management report to BaFin and the Deutsche Bundesbank promptly pursuant to sentence 2. [2]The annual accounts must bear an audit certificate or a note accounting for the withholding of such a certificate. [3]The auditor shall submit his/her report on the audit of the annual accounts (audit report) to BaFin and the Deutsche Bundesbank promptly after completing the audit. [4]In the case of credit institutions which belong to a credit cooperative audit association or are audited by the auditing agency of a savings bank and giro association, the auditor shall submit the audit report only if requested to do so by BaFin.

(2) If an additional audit has been carried out in connection with a guarantee scheme, the auditor or audit association shall submit the report on this audit to BaFin and the Deutsche Bundesbank promptly.

(3) [1]An institution which draws up group accounts or a group management report shall submit these documents to BaFin and the Deutsche Bundesbank promptly. [2]The superordinated enterprise of a financial holding group within the meaning of section 10a (3) or of a financial conglomerate shall submit group accounts or a group management report promptly if the financial holding company at the head of the group or the mixed financial holding company at the head of the financial conglomerate draws up group accounts or a group management report. [3]The group auditor shall submit the audit reports concerning the group accounts and group management reports specified in sentences 1 and 2 to BaFin and the Deutsche Bundesbank promptly upon completing the audit. [4]In the case of credit institutions which belong to a credit cooperative audit association or are audited by the auditing agency of a savings bank and giro association, the auditor shall submit the audit report only if requested to do so by BaFin.

(4) The provisions of subsection (3) shall apply *mutatis mutandis* to single-entity annual accounts pursuant to section 325 (2a) of the German Commercial Code.

Division 5c DISCLOSURE

Section 26a Disclosure by institutions

(1) [1]An institution must publish, at regular intervals, qualitative and quantitative information on its capital, risks incurred and risk management procedures, including the internal models used pursuant to section 10 (1) sentence 2, credit risk mitigation techniques and securitisation transactions, and have formal procedures and rules in place for fulfilling these disclosure requirements. [2]The rules must also provide for a regular review of the adequacy and appropriateness of the institution's disclosure practices. [3]More detailed requirements regarding the content of the information to be disclosed and the procedures and rules for fulfilling the disclosure requirement may be laid down in the statutory order pursuant to section 10 (1) sentence 9 number 7.

(2) [1]A disclosure requirement does not exist in respect of information which is immaterial, protected by law or confidential. [2]In particular, information is regarded as being

1 material if its omission or misstatement could change or influence the assessment or decision of a user relying on that information when taking economic decisions;

2 protected by law if its public announcement would weaken the institution's competitive position;

3 confidential if it was made available on a contractual basis or results from a business relationship.

[3]In such cases the institution shall explain the reason for not disclosing such information and publish more general data with regard to the information pursuant to sentence 2 numbers 2 and 3, unless such data are also to be regarded as protected by law or confidential under the criteria pursuant to sentence 2 numbers 2 and 3.

(3) If an institution does not fulfil its disclosure requirements in cases other than those specified in subsection (2), or does not fulfil with them correctly, in full or in time, BaFin can, in individual cases, issue orders that are appropriate and necessary in order to have the information duly disclosed.

(4) [1]Subsections (1) to (3) shall apply *mutatis mutandis* to groups of institutions and financial holding groups pursuant to section 10a (1) to (5) subject to the proviso that the persons specified in section 1 (2) sentence 1 of the superordinated enterprise are responsible for proper disclosure by the group of institutions or the financial holding group. [2]Section 10a (12) and (13) sentences 1 and 2 shall apply *mutatis mutandis*. [3]In the cases pursuant to sentence 1, the disclosure of information pursuant to subsections (1) to (3) shall not apply to the single-entity institution.

Division 6 AUDITS AND THE APPOINTMENT OF AUDITORS

Section 27 (Repealed)

Section 28 Appointment of the auditor in special cases

(1) [1]Institutions shall notify BaFin and the Deutsche Bundesbank of the auditor they have appointed promptly after making the appointment. [2]Within one month of receiving such notification, BaFin may request the appointment of a different auditor if this appears necessary to achieve the object of the audit. [3]If an institution has appointed as auditor an auditing firm which was the institution's auditor in one of the institution's two preceding financial years, BaFin can demand a change of the responsible auditor if the preceding audit including the audit report did not achieve the object of the audit; section 319a (1) sentence 5 of the German Commercial Code shall apply *mutatis mutandis*. [4]Objections to and appeals against measures pursuant to sentence 2 or sentence 3 have no postponing effect.

(2) [1]The court of registration having jurisdiction at the institution's domicile shall appoint an auditor at BaFin's request if

1 the notification pursuant to subsection (1) sentence 1 is not effected promptly after the end of the financial year;

2 the institution does not comply promptly with the request to appoint a different auditor pursuant to subsection (1) sentence 2;

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

[2]The appointment by the court shall be final. [3]Section 318 (5) of the German Commercial Code shall apply *mutatis mutandis*. [4]At BaFin's request, the court of registration of may terminate the appointment of an auditor appointed pursuant to sentence 1.

(3) Subsections (1) and (2) shall not apply to credit institutions which are members of a credit cooperative audit association or are audited by an auditing agency of a savings bank or giro association.

Section 29 Special duties of the auditor

(1) [1]When auditing the annual accounts or interim accounts, the auditor shall also examine the institution's financial situation. [2]When auditing the annual accounts, he/she must ascertain in particular whether the institution has complied with the reporting requirements pursuant to sections 10, 10b, 11, 12a, 13 to 13d and 14 (1), pursuant to sections 15, 24 and 24a, in each case also in conjunction with a statutory order pursuant to section 24 (4) sentence 1, pursuant to section 24a also in conjunction with a statutory order pursuant to section 24a (5), and also whether the institution has satisfied the requirements pursuant to section 1a (4) to (8), in each case also in conjunction with a statutory order pursuant to section 1a (9), pursuant to sections 10 to 10b, 11, 12, 13 to 13d, 18, 25a (1) sentence 3 and sentence 6 number 1, section 1a and 2 and section 26a, as well as pursuant to sections 13 to 13c and 14 (1), in each case also in conjunction with a statutory order pursuant to section 22. [3]If an institution makes use of the exception pursuant to section 2a, the auditor shall examine whether the conditions specified therein have been met. [4]If BaFin has, pursuant to section 30, issued provisions vis-à-vis the institution regarding the contents of the audit, the auditor shall take these provisions into consideration. [5]If unrealised reserves are included in the institution's liable capital, the auditor, when auditing the annual accounts, shall also examine whether section 10 (4a) to (4c) was complied with when determining those reserves. [6]The findings shall be included in the audit report.

(2) [1]The auditor shall likewise examine whether the institution has fulfilled its obligations pursuant to sections 24c and 25c to 25h, the Money Laundering Act and Regulation (EC) No 1781/2006. [2]In the case of institutions which conduct safe custody business, he/she shall audit that business specifically unless it is to be audited pursuant to section 36 (1) sentence 2 of the Securities Trading Act; this audit shall also cover compliance with section 128 of the Companies Act regarding disclosure requirements and section 135 of the Companies Act regarding the exercising of voting rights. [3]The auditor shall report separately on the audits

pursuant to sentences 1 and 2, respectively; section 26 (1) sentence 3 shall apply *mutatis mutandis*.

(3) [1]The auditor shall notify BaFin and the Deutsche Bundesbank promptly if, in the course of the audit, he/she becomes aware of facts which might warrant the qualification or withholding of the audit certificate, jeopardise the institution's existence or materially impair its development, which constitute a major infringement of the provisions relating to the institution's approval criteria or the pursuit of business under this Act, or which indicate that the senior managers have seriously infringed the law, the articles of association, the articles of incorporation or the partnership agreement. [2]At the request of BaFin or the Deutsche Bundesbank, the auditor shall explain the audit report to them, and inform them of any other facts which have come to his/her attention in the course of the audit which suggest that the institution's business is not being conducted properly. [3]The notification, explanation and disclosure requirements pursuant to sentences 1 and 2 shall also apply in relation to an enterprise which is closely linked to the institution if the auditor becomes aware of the relevant facts while auditing the institution. [4]The auditor shall not be liable for the accuracy of facts which he/she reports in good faith pursuant to this subsection.

(4) [1]The Federal Ministry of Finance shall be authorised, in agreement with the Federal Ministry of Justice (*Bundesministerium der Justiz*) and after consulting the Deutsche Bundesbank, to issue by way of a statutory order more detailed provisions concerning

1 the object of the audit pursuant to subsections (1) and (2),

2 the time at which it is to be carried out, and

3 the contents of the audit reports

insofar as this is necessary for the performance of BaFin's functions, and especially in order to enable it to identify irregularities which may jeopardise the safety of the assets entrusted to the institution or which may impair the proper conduct of banking business or provision of financial services, and to obtain consistent records for assessing the business conducted by institutions. [2]The statutory order may provide that the requirements set forth in subsections (1) to (3) are to be fulfilled also when auditing the group accounts of a group of institutions or a financial holding group or of a financial conglomerate; more detailed requirements on the object of the audit, the time at which it is to be carried out and the contents of the audit reports can be issued in accordance with sentence 1. [3]The Federal Ministry of Finance may delegate this authority to BaFin by way of a statutory order.

Section 30 Determination of audit contents

[1]Notwithstanding the special duties of the auditor pursuant to section 29, BaFin can also issue requirements vis-à-vis the institution regarding the contents of the audit, which the auditor must take into consideration when auditing the annual accounts. [2]In particular, BaFin can determine focal points of the audits.

Division 7 EXEMPTIONS

Section 31 ....

(1) [1]The Federal Ministry of Finance, after consulting the Deutsche Bundesbank, can by way of a statutory order

1 exempt all institutions, or certain types or categories of institutions, from the duty to report specific exposures and facts pursuant to section 10 (8) sentence 3, section 13 (1), section 13a (1), section 14 (1) and section 24 (1) numbers 1 to 4 and 6 and (1a), exempt certain types or categories of institutions from the duty to submit monthly returns pursuant to section 25, or from the obligation pursuant to section 26 (1) sentence 2 to elucidate the annual accounts in notes thereon, and the senior managers of an institution from the duty to report participating interests pursuant to section 24 (3) number 2, if these particulars are immaterial for supervisory purposes;

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

[2]The Federal Ministry of Finance may delegate this authority to BaFin by way of a statutory order subject to the proviso that the statutory order is issued in agreement with the Deutsche Bundesbank.

(2) [1]BaFin may exempt individual institutions from requirements pursuant to section 13 (1) and (2), section 13a (1) and (2), section 15 (1) sentence 1 numbers 6 to 11 and (2), section 24 (1) numbers 1 to 4, sections 25, 26 and 29 (2) sentence 2 as well as from the requirement pursuant to section 15 (1) sentence 1 to grant loans only on market terms if this appears appropriate for special reasons, in particular due to the nature or scale of the business conducted. [2]Exemption can be granted at the institution's request or *ex officio*.

(3) [1]A superordinated enterprise within the meaning of section 10a (1) to (3) and section 13b (2) need not include individual subordinated enterprises within the meaning of section 10a (1) to (5) and section 13b (2) in the consolidation pursuant to section 10a (6) to (12), section 12a (1) sentence 1, section 13b (3) and (4) and section 25 (2) if and as long as the total assets of the individual subordinated enterprise are less than the lower of the following amounts.

1 10 million euro, or

2 1 per cent of the total assets of the superordinated enterprise of a group of institutions or of the financial holding company holding the participating interest.

[2]The superordinated enterprise shall promptly notify BaFin and the Deutsche Bundesbank of its intention to avail itself of the possibility pursuant to sentence 1 in respect of an enterprise and inform them once a year in a summary report which enterprises it has excluded pursuant to sentence 1 from inclusion in the consolidation pursuant to section 10a (6) to (12), section 12a (1) sentence 1, section 13b (3) and (4) and section 25 (2). [3]BaFin can order that individual or several subordinated enterprises excluded from the consolidation pursuant to

sentence 1 be re-incorporated in the consolidation if these enterprises as a whole are not insignificant for supervision on a consolidated basis. [4]In cases other than those specified in sentence 1, BaFin can, upon request, exempt individual superordinated enterprises within the meaning of section 10a (1) to (3) and section 13b (2) from obligations pursuant to section 10a (6) to (12), section 12a (1) sentence 1, section 13b (3) and (4) and section 25 (2) in respect of individual subordinated enterprises within the meaning of section 10a (1) to (5) and section 13b (2) if the inclusion of the enterprises in supervision on a consolidated basis is not significant or of minor significance. [5]Exemption is likewise permissible at the superordinated institution's request or *ex officio* for individual enterprises belonging to a group if, in BaFin's opinion, their inclusion in supervision on a consolidated basis would be inappropriate or misleading. [6]Sentences 1 to 5 shall apply *mutatis mutandis* to institutions which, pursuant to section 10a (14), are obligated to determine their consolidated own funds.

(4) [1]BaFin can exempt individual groups of institutions and financial holding groups from the requirement set forth in section 10 (1) sentence 1 to determine the adequacy of their own funds on a consolidated basis under the following conditions.

1 The group does not own any deposit-taking credit institutions, e-money institutions or institutions which engage in underwriting business or trade in financial instruments for their own account.

2 Each group institution which is domiciled within the EEA determines its own funds within the meaning of section 10 (2), less all the contingent liabilities that it has assumed on behalf of group enterprises.

3 Each group institution which is domiciled within the EEA fulfils the requirement set forth in section 10 (1) sentence 1 on a single-entity basis.

4 The positions pursuant to section 10 (2a) sentence 1 numbers 1 to 10 and (2b) sentence 1 numbers 1 to 8 of a financial holding company which is a group enterprise must be at least equivalent to the sum-total of the positions listed in section 10a (6) sentence 3 number 1 and the contingent liabilities that it has assumed on behalf of group enterprises.

5 Each financial holding company which heads a financial holding group must have capital which is at least equivalent to the sum-total of the positions listed in section 10a (6) sentence 3 number 1 and the contingent liabilities that it has assumed on behalf of group enterprises.

6 Each group institution which is domiciled within the EEA must have systems in place with which to monitor and manage the source of own funds and the other sources of funding of all group institutions.

7 The superordinated enterprise of the group informs BaFin and the Deutsche Bundesbank about all risks which might impair the financial situation of the group of institutions or the financial holding group.

[2]Notwithstanding sentence 1 numbers 4 and 5, BaFin can also grant exemption pursuant to sentence 1 if the financial holding company which is the parent enterprise of a financial

services institution of this group has capital which is equivalent to the sum-total of the requirements of section 10 (1) sentence 1 on a single-entity basis for the financial services institutions which are subordinated to the financial holding company and the contingent liabilities assumed on behalf of group enterprises; notional own funds requirements shall be calculated for securities trading firms from non-EEA countries. [3]Institutions which belong to a group of institutions or a financial holding group that is exempt pursuant to sentence 1 must deduct the positions in group enterprises which are listed in section 10 (6) sentence 1, and which are allocated to these group enterprises' tier 1 capital, from the tier 1 capital when calculating the ratios pursuant to section 10 (2) sentences 6 and 7 and determining free tier 1 capital pursuant to section 10 (2c); illiquid assets pursuant to section 10 (2c) sentence 4 and the losses of their subsidiaries shall be deducted from the own funds.

(5) [1]BaFin can exempt individual superordinated financial conglomerate enterprises within the meaning of section 10b (3) sentences 6 to 8 or (4) from obligations pursuant to section 10b with regard to individual subordinated financial conglomerate enterprises within the meaning of section 10b (3) sentence 5 if and as long as the inclusion of these enterprises is insignificant for supervision at conglomerate level and BaFin is enabled to monitor compliance with these conditions. [2]BaFin shall refrain from granting exemption pursuant to sentence 1 if several subordinated financial conglomerate enterprises fulfil the conditions for exemption, but these enterprises as a whole are not of secondary significance for supervision at conglomerate level. [3]Exemption is likewise permissible for individual subordinated financial conglomerate enterprises within the meaning of section 10b (3) sentence 5 if, in BaFin's opinion, their inclusion in supervision at conglomerate level would be inappropriate or misleading. [4]Exemptions pursuant to sentences 1 or 3 can be granted at the request of the superordinated financial conglomerate enterprise or *ex officio*.

(6) BaFin can temporarily suspend the requirements pursuant to section 18a (1) and (2) in times when market liquidity is generally tense.

Part III
Provisions concerning the supervision of institutions

Division 1 APPROVAL FOR BUSINESS OPERATIONS

Section 32 Authorisation

(1) [1]Anyone wishing to conduct banking business or to provide financial services in Germany commercially or on a scale which requires a commercially organised business undertaking needs written authorisation from BaFin; section 37 (4) of the Act on Administrative Procedures (*Verwaltungsverfahrensgesetz*) shall apply. [2]The application for authorisation must contain the following particulars:

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

2 the names of the senior managers;

3 the data required to assess the trustworthiness of the applicants and of the persons specified in section 1 (2) sentence 1;

4 the data required to assess the professional qualifications for managing the institution needed by the proprietors and the persons specified in section 1 (2) sentence 1;

5 a viable business plan showing the nature of the planned business, the organisational structure and the planned internal control mechanisms of the institution;

6 if major participating interests are held in the institution:

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

(b) the amount of these participating interests,

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

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

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

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

[3]The reports and documentation to be submitted pursuant to sentence 2 shall be specified in more detail by way of a statutory order pursuant to section 24 (4). [4]The requirements under sentence 2 number 6 letters (d) and (e) shall not apply to financial services institutions.

(2) BaFin may grant authorisation subject to conditions which must be consistent with the objective pursued by this Act. [2]It may limit the authorisation to specific types of banking business or financial services.

(3) Before granting authorisation, BaFin shall consult the guarantee scheme appropriate for the institution.

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

(4) BaFin shall publicise the granting of authorisation in the electronic Federal Gazette.

(5) [1]BaFin shall keep a register of institutions on its website in which it shall enter all the domestic institutions which have been granted authorisation pursuant to subsection (1), also in conjunction with section 53 (1) and (2), along with the date on which authorisation was granted, the scope of the authorisation and, if applicable, the date of the authorisation's expiry or revocation. [2]The Federal Ministry of Finance may, by way of a statutory order not requiring the consent of the Bundesrat, issue more detailed provisions on the contents of the register and the institutions' duties to cooperate with regard to the keeping of the register.

Section 33 Refusal of authorisation

(1) [1]Authorisation shall be refused if

1 the resources needed for business operations, in particular sufficient initial capital within the meaning of section 10 (2a) sentence 1 numbers 1 to 6, are not available in Germany; the initial capital which must be available is as follows:

(a) in the case of investment advisers, investment brokers, contract brokers, asset managers and portfolio managers, operators of multilateral trading systems or enterprises engaging in placement business who, in providing financial services, are not authorised to obtain ownership or possession of funds or securities of customers and who do not trade in financial instruments for their own account: an amount equivalent to at least 50,000 euro,

(b) in the case of other financial services institutions which do not trade in financial instruments for their own account: an amount equivalent to at least 125,000 euro,

(c) in the case of financial services institutions which trade in financial instruments for their own account as well as in the case of securities trading banks: an amount equivalent to at least 730,000 euro,

(d) in the case of deposit-taking credit institutions and central counterparties within the meaning of section 1 (31): an amount equivalent to at least 5 million euro,

(e) in the case of institutions which solely conduct e-money business: an amount equivalent to at least 1 million euro, and

(f) in the case of investment advisers, investment brokers and contract brokers who, in providing financial services, are not authorised to obtain ownership or possession of funds or securities of customers and who do not trade in financial instruments for their own account, the amount of 25,000 euro if they are also entered in a register as an insurance intermediary pursuant to Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation (OJ EU L 9/3) and fulfil the requirements of Article 4 (3) of Directive 2002/92/EC, and

(g) in the case of enterprises which conduct proprietary business also on foreign derivatives markets and on spot markets only for the purpose of hedging these positions, which engage in principal broking services or investment broking only for other members of these markets or which determine prices for other members of these markets through proprietary trading as a market maker within the meaning of section 23 (4) of the Securities Trading Act, the amount of 25,000 euro if clearing members of these markets or trading systems are liable for the fulfilment of the contracts which the aforementioned enterprises conclude on the said markets or in the said trading systems;

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

3 facts are known which warrant the assumption that the holder of a major participating interest or, if this is a legal person, a legal representative or representative pursuant to the articles of association or articles of incorporation or, in the case of a commercial partnership, a partner is not trustworthy or, for other reasons, fails to satisfy the requirements to be set in the interests of the sound and prudent management of the institution;

4 facts are known which reveal that the proprietor or one of the persons specified in section 1 (2) sentence 1 does not have the professional qualifications required to manage the institution and if no other person has been designated as senior manager pursuant to section 1 (2) sentence 2 or 3;

4a the institution, after having been granted authorisation, becomes a subsidiary of a financial holding company within the meaning of section 1 (3a) sentence 1 or of a mixed financial holding company within the meaning of section 1 (3a) sentence 2 and facts are known which warrant the assumption that a person within the meaning of section 2d is not trustworthy or does not have the professional qualifications required to manage the business of the financial holding company or of the mixed financial holding company;

5 a credit institution or a financial services institution which, in providing financial services, is authorised to obtain ownership or possession of funds or securities of customers or which, in accordance with an attestation from BaFin pursuant to section 4 (1) number 2 of the Act Governing the Certification of Old-Age Pension Contracts (*Gesetz über die Zertifizierung von Altersvorsorgeverträgen*), is authorised to offer

old-age pension contracts, does not have at least two senior managers who work for the institution not merely in an honorary capacity;

6 the institution has its head office outside Germany;

7 the institution is not prepared or in a position to put in place the organisational arrangements necessary for the proper conduct of the business for which it is seeking authorisation;

8 the applicant is a subsidiary of a foreign credit institution and the foreign supervisory authority responsible for overseeing this credit institution has not given permission for the establishment of the subsidiary.

[2]An investment adviser, investment broker or a contract broker who, in providing financial services, is not authorised to obtain ownership or possession of funds or securities of customers and who does not trade in financial instruments for his/her own account shall not be refused authorisation pursuant to sentence 1 letter (a) if, instead of the initial capital, he/she can demonstrate that, for the protection of customers, he/she has taken out appropriate insurance with an indemnity of at least 1,000,000 euro for each insured loss and at least 1,500,000 euro for all insured losses in an insurance year. [3]Sentence 2 shall apply *mutatis mutandis* to investment advisers and investment brokers who are also entered in a register as insurance intermediaries pursuant to Directive 2002/92/EC and fulfil the requirements of Article 4 (3) of Directive 2002/92/EC subject to the proviso that an indemnity of at least 500,000 euro for each insured loss and at least 750,000 euro for all insured losses in an insurance year is envisaged.

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

(3) [1]BaFin may refuse authorisation if facts are known which warrant the assumption that effective supervision of the institution will be impaired. [2]This is especially the case if

1 the institution is integrated in a corporate network with other individuals or enterprises or is closely linked to such a network which, owing to the structure of cross-shareholdings or because of inadequate economic transparency, hampers the effective supervision of the institution;

2 effective supervision of the institution is impaired by the statutory or regulatory provisions of a non-EEA state applicable to such individuals or enterprises;

3 the institution is a subsidiary of an institution domiciled in a non-EEA state that is not effectively supervised in the state where it is domiciled or has its head office or whose competent supervisory agency is not willing to cooperate satisfactorily with BaFin;

[3]BaFin may also refuse to grant authorisation if, contrary to section 32 (1) sentence 2, the application contains insufficient data or documentation.

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

(5) BaFin must inform the applicant whether authorisation will be granted or refused within six months of the applicant having submitted the complete documentation required for an application for authorisation pursuant to section 32 (1) sentence 2.

Section 33a Deferral or restriction of authorisation in the case of enterprises domiciled outside the European Communities

[1]BaFin shall defer the decision on an application for authorisation submitted by enterprises domiciled outside the European Communities or by subsidiaries of such enterprises, or shall restrict the authorisation, if a decision to this effect has been taken by the Commission or the Council of the European Communities pursuant to Article 151 of the Banking Directive. [2]The period of deferral or restriction may not last for more than three months from the date of the decision. [3]Sentences 1 and 2 shall also apply to applications for authorisation submitted after the date of the decision. [4]If the Council of the European Communities decides to prolong the period pursuant to sentence 2, BaFin shall take due account of this prolongation and prolong the deferral or restriction accordingly.

Section 33b Consultation of the competent agencies of another EEA state

[1]If authorisation is to be granted to conduct banking business pursuant to section 1 (1) sentence 2 number 1, 2, 4, 10 or 11 or to provide financial services pursuant to section 1 (1a) sentence 2 numbers 1 to 4 to an enterprise which

1. is a subsidiary or an affiliate of a deposit-taking credit institution, an e-money institution, a securities trading firm or a primary insurance company and whose parent enterprise is authorised to operate in another EEA state, or
2. is controlled by the same natural persons or enterprises which control a deposit-taking credit institution, an e-money institution, a securities trading firm or a primary insurance company domiciled in another EEA state,

BaFin shall consult the competent agencies in the home state before granting authorisation. [2]The consultation shall include, in particular, the information required to assess the trustworthiness and professional qualifications of the persons specified in section 1 (2) sentence 1 as well as to assess the trustworthiness of the holders of a major participating interest in enterprises of the same group domiciled in the EEA state in question.

Section 34 Representation and continuation of business in the event of death

(1) Section 45 of the Industrial Code (*Gewerbeordnung*) shall not apply to institutions.

(2) [1]In the event of the death of the holder of authorisation, an institution's business may be continued on behalf of the heirs by two representatives without authorisation for a period of up to one year. [2]The representatives shall be designated promptly following the death of the holder of authorisation; they shall be deemed to be senior managers. [3]If a representative is not trustworthy or does not have the necessary professional qualifications, BaFin can prohibit the continuation of business. [4]BaFin can prolong the period pursuant to sentence 1 if there are special reasons for doing so. [5]One representative shall suffice in the case of financial services institutions which, in providing financial services, are not authorised to obtain ownership or possession of funds or securities of customers.

Section 35 Expiry and revocation of authorisation

(1) [1]Authorisation shall expire if it is not used within one year from the date on which it is granted. [2]Authorisation shall likewise expire if the institution has been excluded from the compensation scheme pursuant to section 11 of the Deposit Guarantee and Investor Compensation Act.

(2) BaFin may revoke authorisation pursuant to the provisions of the Act on Administrative Procedures, and also if

1 the business operations to which the authorisation relates have not been conducted for more than six months;

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

3 it becomes aware of facts which would warrant refusal of authorisation pursuant to section 33 (1) sentence 1 numbers 1 to 8 or (3) numbers 1 to 3;

4 insolvency proceedings have been initiated over an institution or there is any other danger to the discharge of an institution's obligations to its creditors, in particular to the safety of the assets entrusted to it, and the danger cannot be averted by taking other measures under this Act; the safety of the assets entrusted to the institution is jeopardised, *inter alia*, by

(a) a loss amounting to half of its liable capital calculated pursuant to section 10, or

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

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

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

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

(4) If an institution's authorisation to conduct banking business or provide financial services is revoked, BaFin shall inform the competent agencies of the other EEA states in which the institution has established branches or has been providing cross-border services.

Section 36 Removal of senior managers, transfer of powers of the governing bodies to special representatives

(1) [1]In the cases specified in section 35 (2) numbers 3, 4, and 6, BaFin, instead of revoking authorisation, may demand that the senior managers responsible are removed and may also prohibit these senior managers from carrying out their activities at institutions organised in the form of a legal person. [2]For the purposes of sentence 1, section 35 (2) number 4 shall apply subject to the proviso that, when calculating the amount of the loss, accounting conveniences used to reduce or avoid a balance sheet loss are disregarded.

(1a) [1]Under the conditions set out in subsection (1), BaFin may also transfer, in full or in part, powers incumbent upon the institution's governing bodies to a special representative who is deemed competent to exercise these powers; the powers of a cover pool administrator pursuant to sections 32 to 35 of the Pfandbrief Act may also be transferred to the special representative. [2]The costs incurred through the appointment of the special representative, including the remuneration which he/she is to be paid, shall be borne by the institution. [3]The amount of this remuneration shall be determined by BaFin. [4]If the institution is temporarily unable to pay the remuneration, BaFin may make advance payments to the special representative. [5]If the special representative acts without remuneration, he/she shall be liable only for wilful intent and gross negligence. [6]In the case of negligent conduct, the special representative's liability for damages shall be limited to 1 million euro for an activity at an institution. [7]If this institution is a public limited company whose shares are admitted to trading on the regulated market, liability for damages within the meaning of sentence 6 shall be limited to 4 million euro. [8]The limitations pursuant to sentences 6 and 7 shall also apply where the powers of more than one governing body have been transferred to the special representative or the special representative has committed more than one act giving rise to liability for damages.

(2) BaFin may also demand the removal of a senior manager and prohibit that senior manager from carrying out his/her activities at institutions organised in the form of a legal person if he/she has intentionally or recklessly contravened the provisions of this Act, the Act on Building and Loan Associations, the Safe Custody Act (*Depotgesetz*), the Money Laundering Act, the Investment Act, the Pfandbrief Act or the Securities Trading Act, the regulations issued to implement these Acts or orders issued by BaFin, and if he/she persists in such behaviour despite having been duly warned by BaFin.

Section 37 Intervention against unlawful business

(1) [1]If banking business is carried out or financial services are provided without the authorisation required pursuant to section 32 or if business prohibited under section 3 is conducted, BaFin can order the enterprise and the members of its governing bodies to cease

business operations immediately and to settle this business promptly. [2]It may issue instructions for the settlement of the business and appoint a suitable person as the liquidator. [3]It may publicise its measures pursuant to sentences 1 and 2. [4]BaFin's powers pursuant to sentences 1 to 3 shall also apply vis-à-vis the enterprise involved in the initiation, conclusion or settlement of such business.

(2) The liquidator shall be authorised to file a petition for the initiation of insolvency proceedings over the enterprise's assets.

Section 38 Consequences of the revocation and expiry of authorisation; measures in the event of liquidation

(1) [1]If BaFin revokes authorisation or if authorisation expires, in the case of legal persons and commercial partnerships it may decide that the institution is to be liquidated. [2]BaFin's decision shall have the effect of a dissolution order. [3]The court of registration shall be informed of the decision and shall enter it accordingly in the commercial register or register of cooperative societies (*Genossenschaftsregister*).

(2) [1]BaFin may issue general instructions with regard to the liquidation of an institution. [2]The court shall appoint liquidators at BaFin's request if the persons otherwise appointed to liquidate the institution offer no guarantee of proper liquidation. [3]If responsibility therefor does not lie with the court, BaFin shall appoint the liquidator.

(3) [1]BaFin shall publicise the revocation or expiry of authorisation in the electronic Federal Gazette. [2]It shall inform the competent agencies of the other EEA states in which the institution has established branches or has been providing cross-border services.

(4) Subsections (1) and (2) shall not apply to legal persons governed by public law.

Division 2 PROTECTED TERMS

Section 39 The terms "bank" and "banker"

(1) The terms "bank" ("Bank") or "banker" ("Bankier") or a term in which the words "bank" or "banker" appear, unless otherwise stipulated by law, may be used in the corporate name, as an addendum to the corporate name, to describe the business purpose or for advertising purposes only by

1. credit institutions with authorisation pursuant to section 32 or branches of enterprises pursuant to section 53b (1) sentences 1 and 2 or (7);
2. other enterprises which, upon this Act coming into force, were legitimately using such a term pursuant to previous provisions.

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

(3) When granting authorisation, BaFin may decide that the terms specified in subsection (1) may not be used if, according to generally accepted standards, the nature or volume of the business conducted by the credit institution does not warrant the use of such a term.

Section 40 The term “savings bank”

(1) The term “savings bank” (“Sparkasse”) or a term in which the words “savings bank” appear may be used in the corporate name, as an addendum to the corporate name, to describe the business purpose or for advertising purposes only by

1 public savings banks with authorisation pursuant to section 32;

2 other enterprises which, upon this Act coming into force, were legitimately using such a term pursuant to previous provisions;

3 enterprises which are newly established by restructuring the enterprises specified in number 2 as long as they, by virtue of their articles of association or articles of incorporation, exhibit specific features (in particular, tasks geared towards public welfare and a restriction of their principal business operations to the economic area in which the enterprise is domiciled) to the same extent as before restructuring.

(2) Credit institutions within the meaning of section 1 of the Act on Building and Loan Associations may use the term “building and loan association” (“Bausparkasse”); registered cooperative societies which belong to an audit association may use the term “savings and loans bank” (“Spar- und Darlehenskasse”).

Section 41 Exceptions

[1]Sections 39 and 40 shall not apply to enterprises that use the words “bank”, “banker” or “savings bank” in a context which precludes the impression that they conduct banking business. [2]Credit institutions domiciled outside Germany may use the terms specified in section 39 (2) and section 40 in their corporate name, as an addendum to their corporate name, to describe their business purpose or for advertising purposes for their operations in Germany if they are entitled to use these terms in their country of domicile and append an addendum to the term referring to their country of domicile.

Section 42 BaFin’s decision

[1]In cases of doubt, BaFin shall decide whether an enterprise is authorised to use the terms specified in sections 39 and 40. [2]It shall inform the court of registration of its decisions.

Section 43 Registration provisions

(1) If authorisation is required to conduct banking business or provide financial services pursuant to section 32, entries in public registers may be made only if the court of registration has been furnished with evidence of such authorisation.

(2) [1]If an enterprise uses a corporate name or an addendum to a corporate name which it is impermissible to use pursuant to sections 39 to 41, the court of registration shall compel the enterprise to refrain from using the corporate name or addendum to the corporate name by imposing an administrative fine; section 392 of the Act on the Procedure in Cases Involving Family Law and on Matters of Non-Contentious Jurisdiction (*Gesetz über das Verfahren in Familiensachen und in den Angelegenheiten der freiwilligen Gerichtsbarkeit*) shall apply *mutatis mutandis*. [2]This is without prejudice to section 395 of the Act on the Procedure in Cases Involving Family Law and on Matters of Non-Contentious Jurisdiction.

(3) BaFin shall be entitled to file petitions in proceedings before the court of registration regarding the entry or amendment of the legal relationships or corporate name of credit institutions or enterprises using terms that are impermissible pursuant to sections 39 to 41, and may also seek the legal remedies permissible under the Act on the Procedure in Cases Involving Family Law and on Matters of Non-Contentious Jurisdiction.

Division 3 INFORMATION AND INSPECTIONS

Section 44 Information from and inspections of institutions, ancillary service providers, financial holding companies and enterprises included in supervision on a consolidated basis

(1) [1]An institution or a superordinated enterprise, the members of its governing bodies and its employees shall, upon request, provide information about all business activities and submit documentation to BaFin, the persons and entities which BaFin uses in performing its functions and the Deutsche Bundesbank. [2]BaFin may perform inspections at the institutions and superordinated enterprises, with or without a special reason, and may entrust the Deutsche Bundesbank with the task of carrying out such inspections; this shall include enterprises to which an institution or superordinated enterprise has outsourced material areas within the meaning of section 25a (2) (external service provider). [3]BaFin's staff, the staff of the Deutsche Bundesbank as well as any other persons whom BaFin uses to perform the inspections may enter and inspect the business premises of the institution, the external service provider and the superordinated enterprise for this purpose during ordinary office and business hours. [4]The parties affected shall acquiesce to the measures taken under sentences 2 and 3.

(2) [1]A subordinated enterprise within the meaning of section 10a (1) to (5), a financial holding company at the head of a financial holding group within the meaning of section 10a (3) and a member of a governing body of such an enterprise shall, upon request, provide information and submit documentation to BaFin, the persons and entities which BaFin uses in performing its functions and the Deutsche Bundesbank in order to enable them to verify the accuracy of the information or data supplied and which are required for supervision on a consolidated basis or which are to be supplied in connection with a statutory order pursuant to section 25 (3) sentence 1. [2]BaFin may perform inspections at the enterprises specified in sentence 1, with or without a special reason, and may entrust the Deutsche Bundesbank with the task of carrying out such inspections; subsection (1) sentence 2 clause 2 shall apply *mutatis*

mutandis. [3]BaFin's staff, the staff of the Deutsche Bundesbank as well as any other persons whom BaFin uses to perform the inspections may enter and inspect the enterprises' business premises for this purpose during ordinary office and business hours. [4]The parties affected shall acquiesce to the measures taken under sentences 2 and 3. [5]Sentences 1 to 4 shall apply *mutatis mutandis* to a subsidiary not included in the consolidation and to a mixed-activity holding company and its subsidiaries.

(2a) [1]If, in the supervision of a group of institutions or a financial holding group, BaFin requires information which has already been submitted to another competent authority, it shall initially address its request for information to that competent authority. [2]When supervising institutions which are subordinated to an EU parent institution pursuant to section 10a (1) sentence 2, (4) or (5), BaFin shall routinely address its initial requests for information on the implementation of the approaches and measures under the Banking Directive to the authority responsible for consolidated supervision.

(3) [1]Enterprises domiciled outside Germany which are included in the consolidation shall, upon request, allow BaFin to carry out the inspections permitted under this Act, in particular verification of the accuracy of the data supplied for the consolidation pursuant to section 10a (6) to (11), section 13b (3) and section 25 (2) and (3), insofar as this is both necessary to enable BaFin to perform its functions and permissible under the laws of the other state. [2]This shall also apply to subsidiaries domiciled outside Germany which are not included in the consolidation.

(3a) [1]Subsection (2) sentences 1 to 4 and sentence 5 first alternative shall apply *mutatis mutandis* to subordinated financial conglomerate enterprises within the meaning of section 10b (3) sentence 5 and mixed financial holding companies as well as to the members of the governing bodies of such enterprises. [2]Subsection (3) shall apply *mutatis mutandis* to subordinated financial conglomerate enterprises within the meaning of section 10b (3) sentence 5 domiciled outside Germany.

(4) [1]BaFin can send representatives to shareholders' meetings, general meetings or partners' meetings, as well as to meetings of the supervisory bodies of institutions organised in the form of a legal person. [2]They may address these meetings. [3]The parties affected shall acquiesce to the measures taken under sentences 1 and 2.

(5) [1]Institutions organised in the form of a legal person shall, at BaFin's request, call the meetings specified in subsection (4) sentence 1, call meetings of the supervisory bodies and announce subjects on which decisions are to be taken. [2]BaFin can send representatives to a meeting called pursuant to sentence 1. [3]They may address the meeting. [4]The parties affected shall acquiesce to the measures taken under sentences 2 and 3. [5]This is without prejudice to subsection (4).

(6) A person obliged to furnish information may refuse to do so in respect of any questions, the answering of which would place him/her or one of his/her relatives as designated in section 383 (1) numbers 1 to 3 of the Code of Civil Procedure at risk of criminal prosecution

or proceedings under the Act on Breaches of Administrative Regulations (*Gesetz über Ordnungswidrigkeiten*).

Section 44a Cross-border information and inspections

(1) [1]Legislation that hinders the transmission of data shall not apply to the transmission of data between an institution, a German asset management company, a financial enterprise, a financial holding company, a mixed financial holding company, an ancillary service provider or an enterprise not included in the consolidation or in supplementary supervision at conglomerate level and an enterprise domiciled outside Germany which directly or indirectly holds at least 20 per cent of the capital shares or voting rights in the enterprise, is a parent enterprise or can exercise a controlling influence, or between a mixed-activity holding company and its subsidiaries domiciled outside Germany, if such transmission of data is necessary to comply with the prudential provisions according to the Banking Directive or Directive 2002/87/EC for the enterprise domiciled outside Germany. [2]BaFin can prohibit an institution from transmitting data to a non-EEA state.

(2) [1]At the request of an authority responsible for the supervision of an enterprise domiciled in another EEA state, BaFin shall verify the accuracy of the data transmitted by an enterprise within the meaning of subsection (1) sentence 1 for that supervisory authority according to the Banking Directive or Directive 2002/87/EC, or shall permit the authority making the request, an external auditor or an expert to verifysuch data; BaFin may, at its own diligent discretion, adopt the same procedure vis-à-vis supervisory authorities in non-EEA states provided that reciprocity is assured. [2]Section 5 (2) of the Act on Administrative Procedures regarding the limits to administrative assistance shall apply *mutatis mutandis*. [3]The enterprises within the meaning of subsection (1) sentence 1 shall acquiesce to the verification.

(3) [1]BaFin can request from deposit-taking credit institutions, e-money institutions, securities trading firms, German asset management companies, financial holding companies or mixed financial holding companies domiciled in another EEA state that it be given information that facilitates the supervision of institutions which are subsidiaries of these enterprises and which are not included in supervision on a consolidated basis by the competent authorities of the other state for reasons corresponding to those specified in section 31 (3) sentence 1 or 4. [2]Sentence 1 shall apply *mutatis mutandis* where subordinated financial conglomerate enterprises are not included in supplementary supervision at conglomerate level by the competent authority of another EEA state acting as the coordinator for reasons corresponding to those specified in section 31 (5) sentence 1 or 3.

Section 44b Information from and inspections of the holders of major participating interests

(1) [1]The obligations vis-à-vis BaFin and the Deutsche Bundesbank to provide information and submit documentation pursuant to section 44 (1) sentence 1 shall also apply to

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

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

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

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

[2]At BaFin's request, the party obliged to present documentation shall, at its own expense, arrange for the documentation to be submitted pursuant to section 2c (1) sentence 2 to be examined by an external auditor determined by BaFin.

(2) [1]BaFin and the Deutsche Bundesbank may take measures pursuant to section 44 (1) sentences 2 and 3 in respect of the persons and enterprises specified in subsection (1) if there is evidence of grounds for a prohibition pursuant to section 2c (1b) sentence 1 numbers 1 to 6. [2]The parties affected shall acquiesce to these measures.

(3) A person obliged to furnish information pursuant to subsections (1) or (2) may refuse to do so in respect of any questions, the answering of which would place him/her or one of his/her relatives as designated in section 383 (1) numbers 1 to 3 of the Code of Civil Procedure at risk of criminal prosecution or proceedings under the Act on Breaches of Administrative Regulations.

Section 44c Prosecution of unauthorised banking business and financial services

(1) [1]An enterprise about which facts are known which warrant the assumption that it conducts banking business or provides financial services without the authorisation required under this Act or that it conducts business prohibited under section 3, a member of its governing bodies, an employee of this enterprise as well as other enterprises which are or were involved in performing such business shall, upon request, provide information about all of the enterprise's business activities and submit documentation to BaFin and the Deutsche Bundesbank. [2]A member of a governing body and an employee shall, upon request, provide information even after they have left the governing body or the enterprise.

(2) [1]BaFin can carry out inspections on the premises of the enterprise as well as on the premises of the persons and enterprises obliged to provide information and submit documentation pursuant to subsection (1) sentence 1 insofar as this is necessary to determine the nature or volume of the business or activities, and it may entrust the Deutsche Bundesbank with the task of carrying out such inspections. [2]To this end, BaFin's staff and the staff of the Deutsche Bundesbank may enter and inspect these premises during ordinary office and business hours. [3]In order to prevent imminent risks to public order and safety, they shall be authorised to enter and inspect these premises also outside ordinary office and

business hours, and may enter and inspect premises which also serve as living accommodation; the basic right enshrined in Article 13 of the Basic Law (*Grundgesetz*) shall be limited in this respect.

(3) [1]BaFin's staff and the staff of the Deutsche Bundesbank may search these premises of the enterprise as well as those of the persons and enterprises obliged to provide information and submit documentation pursuant to subsection (1) sentence 1. [2]The basic right enshrined in Article 13 of the Basic Law shall be limited in this respect. [3]Searches of business premises shall require a judicial order except in the event of imminent danger. [4]Searches of premises which serve as living accommodation shall require a judicial order. [5]The court responsible shall be the local court (*Amtsgericht*) in whose area of jurisdiction the premises are located. [6]An appeal may be lodged against the judicial decision; sections 306 to 310 and 311a of the Code of Criminal Procedure (*Strafprozessordnung*) shall apply *mutatis mutandis*. [7]A written record shall be made of the search. [8]It must specify which official agency was responsible for carrying out the search, the reason, time and place of the search and its outcome and, if no judicial order was issued, the facts substantiating the presumption of imminent danger.

(4) BaFin's staff and the staff of the Deutsche Bundesbank may seize items which could be of importance as evidence in their investigations.

(5) [1]The parties affected shall acquiesce to measures taken pursuant to subsection (2), subsection (3) sentence 1 and subsection (4). [2]Section 44 (6) shall apply.

(6) [1]The rights of BaFin and the Deutsche Bundesbank as well as the duties to cooperate and acquiesce incumbent upon the parties affected shall also apply to the enterprises and persons about which facts are known which warrant the assumption that they are involved in the initiation, conclusion or settlement of unauthorised banking business or financial services. [2]If the competent authority of another state makes an appropriate request to BaFin, the aforementioned rights and duties shall also apply in respect of the enterprises and persons about which facts are known which warrant the assumption that the enterprises or persons are involved in the initiation, conclusion or settlement of banking business or financial services which are being conducted or provided in the other state contrary to a prohibition in effect in that state.

Division 4 MEASURES IN SPECIAL CASES

Section 45 Measures in the case of inadequate own funds or inadequate liquidity

(1) If an institution's own funds do not meet the requirements laid down in section 10 (1) or if the investment of its funds does not meet the requirements laid down in section 11 (1), BaFin can

1 prohibit or limit both withdrawals by the proprietors or partners and the distribution of profits,

2 prohibit or limit lending within the meaning of section 19 (1), and

3 order the institution to take measures to reduce risks insofar as they arise from certain types of activities and products or through the use of certain systems.

(2) [1]Subsection (1) numbers 1 and 3 shall apply *mutatis mutandis* to superordinated enterprises within the meaning of section 10a (1) to (5) as well as to institutions within the meaning of section 10a (14) if the consolidated own funds of the enterprises belonging to the group do not meet the requirements laid down in section 10 (1). [2]In these cases, BaFin can also lower the large exposure limits pursuant to section 13 (3) sentence 5, section 13a (3) sentence 3 and section 13a (4) sentence 5 applicable to the group of institutions or the financial holding group pursuant to section 13b.

(3) If a financial conglomerate's own funds do not meet the requirements laid down in section 10b (1), BaFin can

1 take measures pursuant to subsection (1) vis-à-vis a superordinated financial conglomerate enterprise operating in the banking and investment services sector within the meaning of section 10b (3) sentences 6 to 8 or section 10b (4);

2 take necessary and suitable measures vis-à-vis a mixed financial holding company; it can, in particular, prohibit or limit both withdrawals by the proprietor or partner and the distribution of profits.

(4) [1]BaFin may issue the orders specified in subsections (1) to (3) only if the institution or the mixed financial holding company has failed to remedy the deficiency within a period set by BaFin. [2]Decisions on the distribution of profits shall be void insofar as they contradict an order issued pursuant to subsections (1) to (3).

Section 45a Measures vis-à-vis financial holding companies and mixed financial holding companies

(1) [1]BaFin can prohibit a financial holding company at the head of a financial holding group within the meaning of section 10a (3) sentence 1 or 2 or section 13b (2) from exercising its voting rights in the superordinated enterprise and the other subordinated enterprises if

1 the financial holding company fails to transmit to the superordinated enterprise the data pursuant to section 10a (13) sentence 2 or section 13b (5) in conjunction with section 10a (13) sentence 2 required for consolidation pursuant to section 10a or section 13b, unless the supervisory consolidation requirements can be satisfied in some other way;

2 facts are known which reveal that a person who actually manages the business of the financial holding company is not trustworthy or does not have the professional qualifications required to manage the business.

[2]Sentence 1 shall apply *mutatis mutandis* to a mixed financial holding company which fails to transmit to the enterprise required to submit reports pursuant to section 10b (2) and section 13d (1) the data pursuant to section 10b (7) sentence 2, also in conjunction with section 13d (4) sentence 2, required for supervision at conglomerate level pursuant to section 10b or

section 13d, or if facts are known which reveal that a person who actually manages the business of the mixed financial holding company is not trustworthy or does not have the professional qualifications required to manage the business.

(1a) In the cases cited in subsection (1) sentence 1 number 2 or subsection (1) sentence 2 second alternative, BaFin can also order the superordinated enterprise of a financial holding group or the superordinated financial conglomerate enterprise not to comply with the instructions of the financial holding company or of the mixed financial holding company if the possibilities under company law for removing the persons who actually manage the business of the financial holding company or of the mixed financial holding company cannot be used or if such can be used but have been without success.

(2) [1]In the case of a prohibition pursuant to subsection (1), at BaFin's request, the court with jurisdiction at the domicile of the superordinated enterprise pursuant to section 10a (1) to (5) or of the superordinated financial conglomerate enterprise pursuant to section 10b (3) sentences 6 to 8 or section 10b (4) shall appoint a trustee to whom it shall transfer the exercise of voting rights. [2]In exercising the voting rights, the trustee must take due account of the interests of a sound management of the enterprises concerned, in conformity with banking supervisory requirements. [3]BaFin may request the appointment of a different trustee for good cause. [4]If the prerequisites specified in subsection (1) no longer exist, BaFin shall apply for the appointment of the trustee to be revoked. [5]The trustee shall be entitled to the reimbursement of reasonable expenses and remuneration for his/her activities. [6]The court shall determine such expenses and remuneration at the trustee's request; an appeal on a point of law against the fixing of remuneration by the court shall not be permissible. [7]The Federal Government shall advance such expenses and remuneration; the financial holding company or the mixed financial holding company and the enterprises concerned shall be jointly and severally liable to the Federal Government in respect of its outlays.

(3) [1]As long as the prohibition order pursuant to subsection (1) is enforceable, the enterprises concerned shall not be deemed to be subordinated enterprises of the financial holding company within the meaning of sections 10a and 13b. [2]Sentence 1 shall apply *mutatis mutandis* to the subordinated enterprises of a mixed financial holding company within the meaning of section 10b (2) sentence 5.

Section 45b Measures in the case of organisational deficiencies

(1) If an institution does not have a proper business organisation within the meaning of section 25a (1) and if the institution has failed to remedy the deficiencies on the basis of an order issued pursuant to section 25a (1) sentence 8 within an appropriate period set by BaFin, BaFin can order, in particular, that the institution

1 must hold additional own funds in excess of the capital base required pursuant to section 10 (1) and the statutory order pursuant to section 10 (1) sentence 9,

2 must take measures to reduce risks insofar as they arise from certain types of activities and products or through the use of certain systems,

3 may establish further branches only with BaFin's approval, and

4 may not engage in certain types of business, in particular the acceptance of deposits, funds or securities of customers and lending pursuant to section 19 (1), or may engage in such business only to a limited extent.

(2) Subsection (1) shall apply *mutatis mutandis* to the relevant superordinated enterprise within the meaning of section 10a (1) to (5) as well as to an institution within the meaning of section 10a (14) if a group of institutions or a financial holding group does not have a proper business organisation in contradiction of section 25a (1) and (1a); subsection (1) number 4 shall apply *mutatis mutandis* provided that, instead of prohibiting or limiting lending, BaFin can lower the large exposure limits pursuant to section 13 (3) sentence 5, section 13a (3) sentence 4 and section 13a (4) sentence 5 applicable to the group of institutions or financial holding group pursuant to section 13b.

(3) In individual cases, BaFin can also give the orders specified in subsections (1) and (2) before the issue of an order pursuant to section 25a (1) sentence 8 or can combine them with such an order if this is called for by the risk situation at the institution, group of institutions or financial holding group so as to avert a real danger to proper business management.

Section 46 Measures in the case of danger

(1) [1]If there is any danger to the discharge of an institution's obligations to its creditors, especially to the safety of the assets entrusted to it, or if there are grounds for suspecting that effective supervision of the institution is not possible (section 33 (3) numbers 1 to 3), BaFin may take temporary measures to avert this danger. [2]In particular, it can

1 issue instructions on the institution's management,

2 forbid the acceptance of deposits, funds or securities of customers and lending (section 19 (1)),

3 prohibit proprietors and senior managers from carrying out their activities, or limit the performance of these activities, and

4 appoint supervisors.

[3]Decisions on the distribution of profits shall be void insofar as they contradict an order issued pursuant to sentences 1 and 2. [4]In the case of institutions operating in a legal form other than that of a sole proprietorship, senior managers who have been prohibited from carrying out their activities shall be debarred from managing and representing the institution for the duration of the prohibition. [5]The general provisions shall apply to any claims arising from the employment contract or from other terms governing the activities of the senior manager. [6]Any rights enabling a senior manager to participate as a partner or in other ways in decisions on management measures at the institution may not be exercised for the duration of the prohibition.

(2) [1]If senior managers have been prohibited from carrying out their activities pursuant to subsection (1) sentence 2 number 3, the court having jurisdiction at the institution's domicile, at BaFin's request, shall appoint the necessary persons with powers of management and representation if, owing to the prohibition, the institution no longer has the requisite number of persons authorised to manage and represent it. [2]Section 46a (2) sentences 2 and 3, section 46a (3) sentence 1 and section 46a (4) to (7) shall apply *mutatis mutandis*.

Section 46a Measures in the event of imminent insolvency, appointment of persons with powers of representation

(1) [1]If the conditions specified in section 46 (1) sentence 1 exist, in order to avert insolvency proceedings, BaFin can temporarily

1 impose a ban on sales and payments by the institution,

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

3 prohibit the acceptance of payments not intended for the discharge of debt vis-à-vis the institution, unless the competent deposit guarantee scheme or investor compensation scheme warrants that the obligees will be satisfied in full.

[2]The deposit guarantee scheme or investor compensation scheme can make its commitment subject to the condition that incoming payments not intended for the discharge of debt vis-à-vis the institution are held and managed – for the benefit of the scheme – separately from the institution's assets in existence at the time when the ban on sales and payments pursuant to sentence 1 number 1 was imposed. [3]After the imposition of a ban on sales and payments pursuant to sentence 1 number 1, the institution may settle any business in progress when the ban was imposed and enter into new business insofar as this is necessary for settlement purposes if and insofar as the competent deposit guarantee scheme or investor compensation scheme makes available the funds required to conduct this business or undertakes to reimburse the institution for all and any diminution in its assets resulting from this business as a whole if this is necessary to satisfy all of the creditors in full. [4]Moreover, BaFin can allow exceptions to the ban on sales and payments pursuant to sentence 1 number 1 if this is necessary for the administration of the institution. [5]Compulsory enforcements, attachments and temporary injunctions against the institution's assets shall not be permissible for the duration of measures pursuant to sentence 1. [6]The provisions of the Insolvency Code relating to the protection of payment and securities delivery and settlement systems as well as of central banks' collateral security and of financial collateral arrangements shall apply *mutatis mutandis*.

(2) [1]If measures pursuant to subsection (1) sentence 1 have been ordered for institutions operating in a legal form other than that of a sole proprietorship and if senior managers have been prohibited from carrying out their activities, then the court having jurisdiction at the institution's domicile, at BaFin's request, shall appoint the necessary persons with powers of management and representation if, owing to the prohibition, the institution no longer has the requisite number of persons authorised to manage and represent it. [2]In the case of institutions entered in a public register, the appointment or removal by the court of persons

with powers of representation, the scope of their powers of representation as well as the termination of their tenure of office shall be recorded officially. [3]While the conditions specified in sentence 1 exist, any persons or bodies entitled under other legislation to appoint persons with powers of management and representation may not exercise this right.

(3) [1]The scope of the powers of representation of the person whom the court has appointed shall be determined by the scope of the powers of representation of the senior manager to whose position he/she has been appointed. [2]His/her powers of management – unless extended by the institution's competent governing bodies – shall be limited to the implementation of the measures necessary to avert insolvency proceedings and protect the creditors.

(4) [1]The person with powers of management and representation whom the court has appointed shall be entitled to the reimbursement of reasonable out-of-pocket expenses and remuneration for his/her activities. [2]The court having jurisdiction at the institution's domicile shall determine such expenses and remuneration at the request of the person with powers of management and representation whom the court has appointed. [3]An appeal on a point of law shall not be permissible. [4]The final and absolute decision shall result in compulsory enforcement pursuant to the Code of Civil Procedure.

(5) For the duration of measures ordered pursuant to subsection (1) sentence 1, a person with powers of management and representation whom the court has appointed may be removed only by the court at the request of BaFin or the institution's governing body responsible for the debarment of partners from the management and representation of the institution or for the removal of persons with powers of management and representation, and only for good cause.

(6) [1]The tenure of office of a person with powers of management and representation whom the court has appointed shall end at all events when the measures pursuant to subsection (1) sentence 1 and the order prohibiting the senior manager – to whose position the person has been appointed – from carrying out his/her activities are rescinded. [2]If only the measures pursuant to subsection (1) sentence 1 are rescinded, the tenure of office of a person with powers of management and representation whom the court has appointed shall end as soon as the persons or bodies entitled under other legislation to appoint a person with powers of management and representation have done so and this person, if necessary, has been granted authorisation pursuant to section 32.

(7) Subsections (2) to (6) shall not apply to legal persons governed by public law.

Section 46b Insolvency petition

(1) [1]If an institution or a financial holding company which is deemed to be a superordinated enterprise pursuant to section 10a (3) sentence 6 or sentence 7 becomes insolvent or overindebted, the senior managers, the proprietor in the case of an institution operating in the form of a sole proprietorship and the persons who actually manage the business of the financial holding company shall report this fact to BaFin promptly, enclosing informative

documentation; the aforementioned persons must also provide such notification along with the corresponding documentation if the institution or the financial holding company which is deemed to be a superordinated enterprise pursuant to section 10a (3) sentence 6 or sentence 7 is not expected to be in a position to fulfil its existing payment obligations when they fall due (imminent insolvency). [2]Insofar as these persons are required under other legislation to file a petition for the initiation of insolvency proceedings in the event of insolvency or overindebtedness, the notification requirement pursuant to sentence 1 shall replace the requirement to file such a petition. [3]Insolvency proceedings over the assets of an institution or a financial holding company which is deemed to be a superordinated enterprise pursuant to section 10a (3) sentence 6 or sentence 7 shall be initiated in the event of insolvency, overindebtedness or, under the conditions set out in sentence 5, also in the event of imminent insolvency. [4]The petition for the initiation of insolvency proceedings over the assets of an institution or a financial holding company which is deemed to be a superordinated enterprise pursuant to section 10a (3) sentence 6 or sentence 7 may be filed only by BaFin. [5]In the event of imminent insolvency, however, BaFin may file a petition for insolvency only with the permission of the institution or the financial holding company which is deemed to be a superordinated enterprise pursuant to section 10a (3) sentence 6 or sentence 7, and only if measures pursuant to sections 46 and 46a do not hold out the promise of success. [6]The insolvency court must consult BaFin before appointing an insolvency administrator. [7]The court order to initiate insolvency proceedings shall be specially delivered to BaFin.

(2) [1]If insolvency proceedings are initiated against an institution which is a participant in a system within the meaning of section 24b (1), BaFin shall promptly notify the agencies whose names have been communicated by the other EEA states to the Commission of the European Communities. [2]Sentence 1 shall apply *mutatis mutandis* to system operators within the meaning of section 24b (5).

Section 46c Calculation of prescribed periods

The periods to be calculated pursuant to sections 88 and 130 to 136 of the Insolvency Code from the date on which the petition for the initiation of insolvency proceedings is filed shall be calculated from the date on which a measure pursuant to section 46a (1) is ordered.

Section 46d Notification of the other EEA states with regard to reorganisation measures

(1) [1]BaFin shall notify the competent authorities in the other EEA states before it orders reorganisation measures, in particular measures pursuant to section 46 or section 46a (1) sentence 1 numbers 1 to 3, to be carried out at a deposit-taking credit institution or an e-money institution. [2]If this is not possible, the competent authorities shall be informed immediately after such measures have been ordered. [3]The same shall apply insofar as measures pursuant to section 46 or section 46a (1) are taken against a branch of an enterprise within the meaning of section 53 domiciled in a non-EEA state. [4]In this case, BaFin shall inform the competent authorities in the other EEA states in which the enterprise

has established further branches. [5]This is without prejudice to the provisions under section 8 (3) to (7).

(2) [1]Reorganisation measures which prejudice the rights of third parties in a host state and against which legal remedies may be sought must be announced promptly without an accompanying statement of reasons in the Official Journal of the European Union and in at least two national newspapers of the host states in the official language or languages of the relevant EEA states. [2]This announcement must stipulate which agency or authority has received the statement of reasons, the subject matter of and legal basis for the decision, the time limits for legal remedies including deadlines, BaFin's address as the authority which would decide if an objection were filed and the address of the competent administrative court. [3]Such announcement is not a prerequisite for validity.

(3) [1]Reorganisation measures within the meaning of subsections (1) and (2) are measures pursuant to section 46 or section 46a (1) as well as section 6 (3) by means of which the financial situation of a deposit-taking credit institution or an e-money institution is to be reinforced or restored and which could prejudice the existing rights of third parties in a host EEA state, including measures which allow a suspension of payments or which serve to bolster the reorganisation measures ordered by supervisory authorities in the EEA. [2]Reorganisation measures are to be designated as such. [3]With due regard for the reorganisation measures, sections 336, 337, 338, 340 and 351 (2) of the Insolvency Code shall apply *mutatis mutandis* to contracts on the use or purchase of an immovable object, to employment contracts and employment relationships, to set-offs, to repurchase transactions within the meaning of section 340b of the Commercial Code, to debt rescheduling contracts and netting agreements as well as to the rights in rem of third parties unless otherwise stipulated in this Act.

(4) [1]Subsections (1) and (2) shall not apply if and insofar as only the rights of persons involved in the internal corporate structure as well as those of senior managers and shareholders of a deposit-taking credit institution or an e-money institution may be prejudiced in one of these capacities. [2]Notification and announcement pursuant to subsections (1) and (2) are not necessary in the case of deposit-taking credit institutions or e-money institutions which are not involved in cross-border activities.

(5) [1]BaFin shall support reorganisation measures ordered by the authorities of the home state to be carried out at a deposit-taking credit institution or an e-money institution domiciled in another EEA state. [2]If it considers it necessary to carry out reorganisation measures at a deposit-taking credit institution or an e-money institution domiciled in another EEA state, it shall inform the competent authorities of this state accordingly.

Section 46e Insolvency proceedings in EEA states

(1) [1]The relevant authorities or courts of the home state shall be solely responsible for initiating insolvency proceedings over the assets of a deposit-taking credit institution or an e-money institution within the EEA. [2]If another EEA state is the home state of a deposit-taking

credit institution or an e-money institution and insolvency proceedings are initiated there over the assets of this institution, then these proceedings shall be recognised irrespective of the provisions under section 343 (1) of the Insolvency Code.

(2) Secondary insolvency proceedings pursuant to section 356 of the Insolvency Code and any other territorial insolvency proceedings pursuant to section 354 of the Insolvency Code are not permissible with regard to deposit-taking credit institutions or e-money institutions which are domiciled in another EEA state.

(3) [1]The office of the insolvency court shall immediately forward the court order to initiate proceedings to BaFin, which in turn shall promptly inform the competent authorities in the other host EEA states that proceedings have been initiated. [2]Without prejudice to the announcement laid down in section 30 of the Insolvency Code, the insolvency court must publish extracts from the court order to initiate proceedings in the Official Journal of the European Union and in at least two national newspapers of the host states in which the credit institution concerned has a branch or provides services. [3]This publication is to be preceded by the form pursuant to section 46f (1) of this Act.

(4) [1]BaFin can request information about the status of the insolvency proceedings from the insolvency court and the insolvency administrator at any time. [2]It is obliged, upon the request of the competent authorities in other EEA states, to inform the said authorities about the status of the insolvency proceedings.

(5) [1]If BaFin files a petition for the initiation of insolvency proceedings over the assets of a branch of an enterprise domiciled in a non-EEA state, it shall promptly notify the competent authorities in the EEA states in which the enterprise has a further branch or provides services. [2]The notification given must also include information about the contents and legal validity of the authorisation pursuant to section 32. [3]The persons and agencies involved shall endeavour to take a concerted approach.

Section 46f Notification of creditors in insolvency proceedings

(1) [1]On issuing the court order to initiate insolvency proceedings, the office of the insolvency court shall send the creditors a form bearing the heading “Invitation to lodge a claim and submit observations relating to a claim. Time limits to be observed!” in all of the official languages of the EEA. [2]The form shall be published in the Federal Gazette by the Federal Ministry of Justice and shall contain the following information in particular.

1. The time limits which are to be observed and the penalties for breaching these time limits.
2. The body or authority empowered to accept the lodgement of claims or observations relating to claims.
3. Other measures which have been laid down.

4 How important it is for creditors whose claims are preferential or secured in rem to lodge these claims and the extent to which they must do so.

(2) [1]Creditors whose place of habitual abode, residence or domicile is in another EEA state can lodge their claims in the official language or one of the official languages of that state. [2]The lodgement of claims must bear the heading “Lodgement of claim and submission of observations relating to claims” in German, ie “Anmeldung und Erläuterung einer Forderung”. [3]Upon request, the creditor must provide a translation of the lodgement of claim and submission of observations relating to claims, which is to be certified by a person authorised to do so in the state relevant to sentence 1.

(3) The insolvency administrator must regularly inform the creditors about developments in the insolvency proceedings in an appropriate form.

Section 47 Moratorium, suspension of banking and stock exchange business

(1) If there is reason to fear that credit institutions may encounter financial difficulties which are likely to pose grave dangers to the economy as a whole, and particularly to the proper functioning of the general payment system, the Federal Government may by way of a statutory order

1 grant a credit institution an extension of time to discharge its obligations and order that compulsory enforcements, attachments and temporary injunctions against the credit institution as well as the initiation of insolvency proceedings over the credit institution’s assets are not permissible for the duration of the extension;

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

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

(2) Before taking measures pursuant to subsection (1), the Federal Government shall consult the Deutsche Bundesbank.

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

Section 48 Resumption of banking and stock exchange business

(1) [1]The Federal Government, after consulting the Deutsche Bundesbank, may issue by way of a statutory order provisions on the resumption of payments, credit transfers and stock exchange business for the period following a temporary closure of credit institutions and stock exchanges pursuant to section 47 (1) numbers 2 and 3. [2]In particular, it may stipulate

that the withdrawal of credit balances is subject to temporary restrictions. [3]Such restrictions may not be imposed in respect of monetary amounts accepted after a temporary closure of credit institutions.

(2) The statutory orders issued pursuant to subsection (1) and section 47 (1) shall become inoperative three months after the date of their promulgation if they have not already been rescinded.

Division 5 ENFORCEABILITY, SANCTIONS, COSTS AND CHARGES

Section 49 Immediate Enforceability

Objections to and appeals against measures taken by BaFin on the basis of section 2c (1b) sentences 1 and 2, (2) sentence 1 and (4), section 6a, section 10b (5), section 12a (2), section 13 (3), section 13a (3) to (5), in each case also in conjunction with section 13b (4) sentence 2, of section 13c (3) sentence 4, section 13d (4) sentence 5, section 28 (1), section 35 (2) numbers 2 to 6, sections 36, 37, and 44 (1), also in conjunction with section 44b (2) and (3a) sentence 1, of section 44a (2) sentence 1, sections 44c, 45 (1), 45a (1) and section 45b (1), sections 46 and 46a (1) and section 46b have no postponing effect.

Section 50 (Repealed)

Section 51 Costs and charges

(1) [1]Institutions shall refund to the Federal Government 90 per cent of the costs incurred by BaFin that are not covered by charges or separate refunds pursuant to subsection (3). [2]The costs shall be apportioned among the individual institutions according to the scale of their business and collected by BaFin as provided in the Administration Enforcement Act (*Verwaltungsvollstreckungsgesetz*). [3]From the period from 12 March 1999 to 30 December 2000, the provisions contained in the Regulation on the allocation of costs incurred by the Federal Banking Supervisory Office for the banking and financial services sector (*Umlage-Verordnung Kredit- und Finanzdienstleistungswesen*) of 8 March 1999 (Federal Law Gazette I, page 314) in the wording of 12 March 1999 shall apply with the force of law. [4]For the period from 31 December 2000 to 31 December 2001, the provisions contained in the Regulation on the allocation of costs incurred by the Federal Banking Supervisory Office for the banking and financial services sector as amended on 31 December 2000 shall apply with the force of law. [5]For the period from 1 January 2002 to 30 April 2002, the provisions contained in the Regulation on the allocation of costs incurred by the Federal Banking Supervisory Office for the banking and financial services sector as amended on 1 January 2002 shall apply with the force of law. [6]The costs shall include refundable amounts that could not be collected and shortfalls from the previous year's cost apportionment for which costs are to be refunded; refunds or shortfalls on which no final and absolute or incontestable ruling has yet been made shall be excepted from this provision. [7]The details concerning the apportionment of costs, especially regarding the apportionment key and date, the minimum assessment, the apportionment procedure including an appropriate estimation method, the payment deadlines

and the amount of late payment penalties, and concerning the collection shall be determined by the Federal Ministry of Finance by way of a statutory order; such statutory order may also contain provisions governing the provisional setting of the apportionment amount. [8]The Federal Ministry of Finance may transfer such authority to BaFin by way of a statutory order.

(2) [1]For decisions pursuant to section 2 (4) or (5), section 10 (3b) sentence 1, section 31 (2), sections 32 and 34 (2) and sections 35 to 37, BaFin may levy charges of between 250 euro and 50,000 euro. [2]The sum charged should depend in each case on the amount of work required for the decision and the scale of business of the enterprise concerned.

(3) [1]The costs incurred by the Federal Government as a result of appointing a liquidator pursuant to section 37 sentence 2 and section 38 (2) sentences 2 and 4, a supervisor pursuant to section 46 (1) sentence 2, as a result of an announcement pursuant to section 32 (4), section 37 sentence 3 or section 38 (3) or of an audit carried out pursuant to section 44 (1) or (2), section 44b sentence 2 or section 44c (2) shall be refunded separately by the enterprise concerned, and at the request of BaFin they shall be paid in advance. [2]The costs incurred by the Federal Government as a result of checks pursuant to section 44 (3) of the accuracy of the data transmitted for the aggregation pursuant to section 10a (6) and (7), section 13b (3) and section 25 (2) shall be refunded separately by the superordinated institution required to effect the aggregation, and at the request of BaFin they shall be paid in advance.

(4) [1]For the period from 12 March 1999 to 30 April 2002, subsection (1) sentences 3 to 5 in the wording of the Act amending the Insurance Supervision Act (*Versicherungsaufsichtsgesetz*) and of other acts of 15 December 2004 (Federal Law Gazette I, page 3416) shall apply to costs incurred by BaFin. [2]Moreover, for the period prior to 30 April 2002, subsections (1) to (3) in the wording valid prior to 30 April 2002 shall apply to costs incurred by BaFin.

Part IV
Special provisions applying to financial conglomerates

Section 51a Determination of the existence of a financial conglomerate; thresholds

(1) BaFin shall determine whether groups of enterprises which are active in various sectors are to be classified as financial conglomerates.

(2) A group shall be deemed within the meaning of section 1 (20) sentence 1 number 2 clause 2 to be predominantly active in the financial sector if the ratio of the balance sheet total of the group enterprises active in the financial sector to the balance sheet total of the group exceeds 40 per cent.

(3) The consolidated or aggregated activities and/or the consolidated or aggregated activities of the enterprises active in the insurance sector and the banking and investment services sector are significant within the meaning of section 1 (20) sentence 1 number 4 if

1 (a) the ratio of the balance sheet total of the enterprises active in the insurance sector to the balance sheet total of all group enterprises active in both financial sectors and the ratio of the solvency requirements of the enterprises active in the insurance sector to the aggregate solvency requirements of all group enterprises active in both financial sectors exceeds 10 per cent on average, and

(b) the ratio of the balance sheet total of the enterprises active in the banking and investment services sector to the balance sheet total of all group enterprises active in both financial sectors and the ratio of the solvency requirements of the enterprises active in the banking and investment services sector to the aggregate solvency requirements of all group enterprises active in both financial sectors exceed 10 per cent on average, or

2 the balance sheet total of the enterprises active in the insurance sector and that of the enterprises active in the banking and investment services sector exceeds 6 billion euro in each case.

(4) [1]When carrying out the calculations pursuant to subsections (2) and (3), BaFin may in individual cases disregard individual conglomerate enterprises if and as long as

1 the enterprise is domiciled in a non-EEA state in which there are impediments to the transmission of the information required for the calculations,

2 subject to sentence 2, inclusion of the enterprise is immaterial for supervision at conglomerate level, or

3 the enterprise's inclusion in supplementary supervision at conglomerate level would be inappropriate or misleading.

[2]Where several enterprises belonging to the conglomerate satisfy the conditions in the cases described in sentence 1 number 2 but, taken together, they are not immaterial for the

supplementary supervision of the group, BaFin shall include these enterprises in the calculations pursuant to subsections (2) and (3).

(5) If, within a group of enterprises which according to section 1 (20) as well as to subsections (2) and (3) is classified as a financial conglomerate and is already subject to supplementary supervision within the meaning of this Act, the ratios pursuant to subsections (2) and (3) number 1 fall or the amount pursuant to subsection (3) number 2 falls below the thresholds laid down there during a financial year, the group shall continue to be deemed a financial conglomerate if, in the three subsequent financial years,

1 in cases described in subsection (2) a threshold of 35 per cent;

2 in cases described in subsection (3) number 1 a threshold of 8 per cent;

3 in cases described in subsection (3) number 2 a threshold of 5 billion euro is exceeded.

(6) [1]The aggregated balance sheet totals of the group enterprises which are calculated on the basis of their annual accounts shall be assumed to be the balance sheet total within the meaning of subsections (2) and (3). [2]Enterprises in which a participating interest is held shall be included according to the share of their balance sheet totals that is equivalent to the aggregated proportional share held by the group. [3]If a set of consolidated accounts is available, this shall be used as the basis instead of the aggregated balance sheet totals of the single-entity accounts of the individual enterprises. [4]Notwithstanding sentences 1 and 2, BaFin may, in individual cases, permit the income structure or off-balance-sheet business to be used for calculating the thresholds instead of or in addition to the balance sheet total. [5]The solvency requirements to be taken into account when making the calculations shall be determined in accordance with sections 10 and 10a of this Act and sections 53c and 104g of the Insurance Supervision Act; where an enterprise domiciled in another EEA state or in a non-EEA state is to be included in the calculation and is not already included in the calculation pursuant to section 10a of this Act or section 104g of the Insurance Supervision Act, the solvency requirement provisions of the respective country of domicile shall apply.

Section 51b Classification as a financial conglomerate

(1) [1]BaFin shall be responsible for classifying a group of enterprises operating in different sectors as a financial conglomerate. [2]It shall inform the parent enterprise at the head of the group that the group has been classified as a financial conglomerate and of the appointment of the superordinated financial conglomerate enterprise; where the group is not headed by a parent enterprise, BaFin shall inform the regulated financial conglomerate enterprise active in the banking and investment services sector with the highest balance sheet total, unless a primary insurance company belonging to the conglomerate with a higher balance sheet total is to be notified pursuant to section 104o (1) sentence 2 of the Insurance Supervision Act (*Versicherungsaufsichtsgesetz*)t.

(2) BaFin shall revoke the classification of a group of enterprises as a financial conglomerate and the appointment of the superordinated financial conglomerate enterprise if the conditions

pursuant to section 1 (20) are no longer fulfilled, in particular if within the group the relevant ratios pursuant to subsection 51a (2) and (3) number 1 or the amount pursuant to section 51a (3) number 2 fall

1 below a threshold of 35 per cent in the case described in section 51a (2);

2 below a threshold of 8 per cent in the case described in section 51a (3) number 1;

3 below a threshold of 5 billion euro in the case described in section 51a (3) number 2. Subsection (1) sentence 2 shall apply *mutatis mutandis*.

(3) Subject to the provisions of subsection (2), in the cases described in section 51a (5) BaFin may revoke the classification as a financial conglomerate and the appointment of the superordinated financial conglomerate enterprise for the applicable period of three years; subsection (1) sentence 2 shall apply *mutatis mutandis*.

Section 51c Exemptions

BaFin may revocably waive the classification of a group of enterprises as a financial conglomerate or exempt the superordinated financial conglomerate enterprise from all or some of its duties pursuant to sections 13d and 25a (1a) if

1 in the case described in section 51a (3) number 2 the group does not reach the threshold laid down in section 51a (3) number 1 and supplementary supervision at conglomerate level is unnecessary, inappropriate or misleading; this may be assumed in particular if

(a) the relative size of the smallest financial sector represented, measured in terms either of the average ratio pursuant to section 51a (3) No. 1 or of the balance sheet total or of the solvability requirements of this financial sector, does not exceed 5 per cent, or

(b) the market share, measured in terms of the balance sheet total in the banking and investment services sector and in terms of the gross premiums in the insurance sector, does not exceed 5 per cent in any state that is a contracting party to the Agreement on the European Economic Area;

2 the exceeding of the thresholds laid down in section 51a (2) and (3) which led to the classification of a group of enterprises as a financial conglomerate is due solely to a substantial change in the structure of the group; such exemption shall not exceed a period of three years, beginning with the next financial year.

Part V
Special provisions

Section 52 Special supervision

Insofar as institutions are subject to any other government supervision, this shall remain in effect alongside supervision by BaFin.

Section 53 Branches of enterprises domiciled outside Germany

(1) [1]If an enterprise domiciled outside Germany maintains a branch in Germany which conducts banking business or provides financial services, that branch shall be deemed to be a credit institution or a financial services institution. [2]If the enterprise maintains several branches in Germany, they shall be deemed to be one institution.

(2) This Act shall apply to the institutions specified in subsection (1) subject to the following provisos.

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

2 The institution is obliged to keep separate books and render separate accounts to BaFin and the Deutsche Bundesbank in respect of the business it conducts and the assets of the enterprise used in its business. To this extent, the provisions of the Commercial Code on trading books shall apply *mutatis mutandis*. On the liabilities side of the annual statement of assets and liabilities, the amount of working capital placed at the institution’s disposal by the enterprise and the amount of operating surplus retained by the institution to bolster its own funds shall be shown separately. The amount by which the liability items exceed the asset items or by which the asset items exceed the liability items shall be shown separately and in a single sum at the end of the statement of assets and liabilities.

3 The statement of assets and liabilities to be drawn up for the end of each financial year pursuant to number 2, together with a statement of income and expenses and notes thereon, shall be deemed to constitute the annual accounts (section 26). Section 340k of the Commercial Code shall apply *mutatis mutandis* to the auditing of the annual accounts subject to the proviso that the auditor is chosen and appointed by the senior managers. The annual accounts of the enterprise for the same financial year shall be submitted along with the annual accounts of the institution.

4 The sum total of the amounts shown in the monthly return pursuant to section 25 as working capital placed at the institution’s disposal by the enterprise and operating surplus retained by the institution to bolster its own funds, less the amount of a credit balance on inter-branch settlement account, if any, shall be deemed to constitute the institution's own funds. In addition, capital paid up against the granting of participation rights or on account of the incurrence of longer-term subordinated liabilities or short-term subordinated liabilities, and net profit (section 10 (2c) sentence 1 number 1) shall be counted as part of the institution's liable capital or tier 3 capital if the conditions stipulated in section 10 (5), (5a) or (7) relate in each case to the entire enterprise; section 10 (1), (2) sentences 3 and 4, (2c) sentences 2 to 5, (3b), (6), (6a) and (9) shall apply *mutatis mutandis* subject to the proviso that the own funds pursuant to sentence 1 are deemed to be tier 1 capital.

5 Authorisation may also be refused if reciprocity on the basis of international agreements is not assured. Authorisation shall be revoked if and insofar as the enterprise's authorisation to conduct banking business or provide financial services has been revoked by the authority responsible for supervising the enterprise outside Germany.

6 For the purposes of section 36 (1), the institution shall be deemed to be a legal person.

7 The institution shall promptly notify BaFin and the Deutsche Bundesbank of the establishment of new branches and the closure of branches in Germany.

(2a) For the provisions of this Act relating to an institution which is a subsidiary of an enterprise domiciled outside Germany, the branch shall be deemed to be a wholly owned subsidiary of the institution's central office domiciled outside Germany.

(3) For litigation relating to the business undertakings of a branch within the meaning of subsection (1), the place of jurisdiction of the affiliate, pursuant to section 21 of the Code of Civil Procedure, may not be contractually excluded.

(4) Subsections (2) to (3) shall not apply if they conflict with international agreements which have been approved by the legislative bodies in the form of a Federal law.

(5) [1]If a decision has been taken to close a branch, this shall be filed for registration in the Commercial Register of the court relevant for the branch and all legal actions shall bear the note "in liquidation". [2]The authorisation granted shall be returned to BaFin.

(6) [1]The closure of the branch, which must likewise be entered in the Commercial Register, may be carried out only with BaFin's consent. [2]As a rule, such consent shall be refused if it has not been proven that all of the branch’s business has been settled.

Section 53a Representative offices of institutions domiciled outside Germany

[1]An institution domiciled outside Germany may establish or operate a representative office in Germany if it is authorised to conduct banking business or provide financial services in its

home state and if it has its head office there. [2]The institution shall promptly notify BaFin and the Deutsche Bundesbank of its intention to establish a representative office, as well as the realisation of that intention. [3]BaFin shall provide the institution with confirmation of the receipt of such notification. [4]The representative office, including its senior managers, may not commence operations until the institution has received confirmation from BaFin. [5]The institution shall promptly notify BaFin and the Deutsche Bundesbank of the relocation or closure of the representative office.

Section 53b Enterprises domiciled in another EEA state

(1) [1]A deposit-taking credit institution or a securities trading firm domiciled in another EEA state may conduct banking business or provide financial services in Germany, either through a branch or by providing cross-border services, without authorisation from BaFin if the enterprise has been granted approval by the competent authorities of the home state, the business it conducts is covered by the approval granted and the enterprise is supervised by the competent authorities in accordance with the directives issued by the European Communities. [2]Sentence 1 shall apply *mutatis mutandis* to e-money institutions. [3]Section 53 shall not apply in this case. [4]This is without prejudice to section 14 of the Industrial Code.

(2) [1]BaFin shall notify an enterprise within the meaning of subsection (1) sentences 1 and 2 intending to establish a branch in Germany – within two months of receiving the documentation relating to the intended establishment of the branch transmitted by the competent authorities of the home state – of the reports to BaFin and the Deutsche Bundesbank prescribed for its operations and shall specify the terms applicable pursuant to subsection (3) sentence 1 to the performance of the branch's planned operations on grounds of public interest. 2After receipt of the notification from BaFin, but no later than after the end of the period specified in sentence 1, the branch can be established and commence operations. 3If an enterprise within the meaning of subsection (1) sentence 1 intends to use tied agents, BaFin can ask the competent authorities of the home state for their names.

[4]BaFin may post corresponding information on its website.

(2a) BaFin shall notify an enterprise within the meaning of subsection (1) sentences 1 and 2 intending to engage in operations in Germany by providing cross-border services – within two months of receiving the documentation relating to the intended commencement of the cross-border services transmitted by the competent authorities of the home state – of the terms applicable pursuant to subsection (3) sentence 3 to the performance of the planned operations on grounds of public interest.

(3) [1]The following provisions shall apply *mutatis mutandis* to branches within the meaning of subsection (1) sentences 1 and 2 subject to the proviso that one or more branches of the same enterprise are deemed to be one credit institution, an e-money institution or a financial services institution:

1 sections 3 and 6 (2),

1a section 10 (1) sentences 3 to 8,

2 section 11, in the case of a deposit-taking credit institution,

3 sections 14, 22 and 23,

4 section 23a, in the case of a deposit-taking credit institution or a financial services institution,

5 section 24 (1) numbers 5 and 7,

6 sections 24b, 24c, 25 and 25a (1) sentence 6 number 2,

7 section 25c (2), insofar as the internal organisation requirements for combating money laundering and the financing of terrorism are concerned,

8 sections 25d to 25f, 25h, 37, 39 to 42, 43 (2) and (3), 44 (1) and (6), 44a (1) and (2) as well as 44c and 46 to 49, and

9 section 17 of the Act concerning the Federal Financial Supervisory Authority.

[2]BaFin and the Deutsche Bundesbank shall be notified in writing of any changes in the business plan, especially in the type of business planned and the organisational structure of the branch, the address and the senior managers, as well as in the deposit insurance scheme to which the institution belongs in its home country, no later than one month before such changes enter into force. [3]Section 3, section 23a (in the case of a deposit-taking institution or a financial services institution), sections 37, 44 (1) and sections 44c and 49 as well as section 17 of the Act concerning the Federal Financial Supervisory Authority shall apply *mutatis mutandis* to operations constituting cross-border services pursuant to subsection (1) sentences 1 and 2. [4]Section 23a shall not apply to operators of multilateral trading systems who provide access to such systems in Germany by way of cross-border services.

(4) [1]If BaFin ascertains that an enterprise within the meaning of subsection (1) sentences 1 and 2 is not fulfilling its obligations pursuant to subsection (3) and, in particular, that its liquidity is inadequate, it shall request the enterprise to rectify the shortcoming within a specified period. [2]If the enterprise fails to comply with this request, BaFin shall notify the competent authorities of the home state. [3]If the home state fails to take any measures or if its measures prove to be insufficient, BaFin, after having informed the competent authorities of the home state, may take the necessary measures; if necessary, BaFin may prohibit the enterprise from conducting new business in Germany.

(5) [1]In urgent cases, BaFin may take the necessary measures before initiating the procedure envisaged in subsection (4). [2]It shall promptly notify the Commission of the European Communities and the competent authorities of the home state thereof. [3]BaFin shall modify or set aside the measures if the Commission, after consulting the competent authorities of the home state and BaFin, so decides.

(6) The competent authorities of the home state, after having first notified BaFin, may verify the information needed for the prudential supervision of the branch at the branch concerned, either themselves or through their representative agents.

(7) [1]An enterprise domiciled in another EEA state which conducts banking business within the meaning of section 1 (1) sentence 2 numbers 1 to 3, 5 and 7 to 9, provides financial services within the meaning of section 1 (1a) sentence 2 numbers 7, 9 and 10 or operates as a financial enterprise within the meaning of section 1 (3) may conduct these operations, notwithstanding section 32, without authorisation from BaFin through a branch or by providing cross-border services in Germany if

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

2 its articles of association or articles of incorporation permit such operations,

3 the parent enterprise(s) is (are) authorised to operate as a deposit-taking credit institution in the state in which the enterprise is domiciled,

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

5 the parent enterprise(s) hold(s) at least 90 per cent of the voting rights in the subsidiary,

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

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

[2]Sentence 1 shall apply *mutatis mutandis* to subsidiaries of enterprises specified in sentence 1 which meet the aforementioned conditions. [3]Subsections (2) to (6) shall apply *mutatis mutandis*.

Section 53c Enterprises domiciled in a non-EEA state

The Federal Ministry of Finance shall be authorised, by way of a statutory order,

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

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

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

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

(c) the competent authorities of the country of domicile are willing to cooperate satisfactorily with BaFin and if this is guaranteed by means of an international agreement.

Section 53d Parent enterprises domiciled in a non-EEA state

(1) If deposit-taking credit institutions, e-money institutions or securities trading firms domiciled in Germany, which are subsidiaries of either an institution or a financial holding company domiciled in a non-EEA state, are not subject to a level of supervision in that non-EEA state which is equivalent to the provisions of this Act relating to supervision on a consolidated basis, BaFin can define the group of enterprises as a group of institutions or a financial holding group and an institution as a superordinated enterprise; the provisions of this Act relating to supervision on a consolidated basis shall apply *mutatis mutandis* in this case.

(2) Subsection (1) shall apply *mutatis mutandis* to regulated financial conglomerate enterprises in the banking and investment services sector domiciled in Germany, which are subsidiaries of either a regulated financial conglomerate enterprise or a mixed financial holding company domiciled in a non-EEA state and are not subject to a level of supervision in that non-EEA state which is equivalent to the provisions of this Act relating to the supervision of financial conglomerates.

(3) [1]Notwithstanding subsections (1) and (2), BaFin, in individual cases, can duly ensure adequate supervision on a consolidated basis or at conglomerate level in other ways. [2]In particular, it can demand that

1 in the cases cited in subsection (1), a financial holding company domiciled in Germany or in another EEA state be established, to which the provisions of this Act relating to supervision on a consolidated basis shall apply *mutatis mutandis*;

2 in the cases cited in subsection (2), a mixed financial holding company domiciled in Germany or in another EEA state be established, to which the provisions of this Act relating to supplementary supervision at conglomerate level shall apply *mutatis mutandis*.

Section 53e Cooperation with the Commission of the European Communities

(1) [1]BaFin shall report to the Commission of the European Communities

1 the granting of authorisation to a deposit-taking credit institution or an e-money institution;

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

3 (Repealed)

4 the number and nature of the cases in which the establishment of a branch in another EEA state has foundered because BaFin has failed to forward the information specified in section 24a (1) sentence 2 to the competent authorities of the host state;

5 the number and nature of the cases in which measures have been taken pursuant to section 53b (4) sentence 3 and (5) sentence 1;

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

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

The reports pursuant to sentence 1 number 7 shall be submitted only at the Commission's request.

(2) [1]BaFin shall report to the Commission of the European Communities

1 the notification of the classification of a group of enterprises as a financial conglomerate pursuant to section 51b (1);

2 the principles which BaFin applies, in agreement with the other competent EEA authorities, regarding the monitoring of intra-group transactions and risk concentrations;

3 the approach chosen in cases described in section 53d (3).

(3) [1]BaFin shall consult the Commission of the European Communities beforehand

1 in cases described in section 53d (1) if it would be responsible for consolidated supervision according to the Banking Directive. BaFin will take account of the guidance given by the European Banking Committee in accordance with Article 143 (2) of the Banking Directive;

2 in cases described in section 53d (2) if it would act as the coordinator in accordance with Directive 2002/87/EC. BaFin will take account of the guidance given by the Financial Conglomerates Committee in accordance with Article 21 (5) of Directive 2002/87/EC.

Part VI
Provisions on penalties and fines

Section 54 Prohibited business, operating without authorisation

(1) Anyone who

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

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

shall be punished by a term of imprisonment of up to three years or by a fine.

(2) If the violator acts with negligence, the punishment shall be imprisonment of up to one year or a fine.

Section 55 Violation of the duty to report insolvency or overindebtedness

(1) Anyone who fails to give notice or does not do so correctly, in full or in time contrary to section 46b (1) sentence 1, also in conjunction with section 53b (3) sentence 1, shall be punished by a term of imprisonment of up to three years or by a fine.

(2) If the violator acts with negligence, the punishment shall be imprisonment of up to one year or a fine.

Section 55a Unauthorised use of data on loans of 1.5 million euro or more

(1) Anyone who uses data contrary to section 14 (2) sentence 10 shall be punished by a term of imprisonment of up to two years or by a fine.

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

Section 55b Unauthorised public disclosure of data on loans of 1.5 million euro or more

(1) Anyone who publicly discloses data contrary to section 14 (2) sentence 10 shall be punished by a term of imprisonment of up to one year or by a fine.

(2) If the violator acts for monetary consideration or with the intention of enriching himself or a third party or in order to damage a third party, the punishment shall be a term of imprisonment of up to two years or a fine.

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

Section 56 Provisions on administrative fines

(1) An administrative offence shall be deemed to have been committed by anyone who contravenes an enforceable order pursuant to section 36 (1) or (2) sentence 1.

(2) An administrative offence shall be deemed to have been committed by anyone who intentionally or recklessly

1 fails to give notice or does not do so correctly, in full or in time contrary to section 2c (1) sentence 1, 5 or 6, in each case also in conjunction with a statutory order pursuant to section 24 (4) sentence 1,

2 contravenes a statutory order pursuant to section 2c (1) sentence 3 insofar as, for a specified offence, it refers to this provision on administrative fines,

3 contravenes an enforceable prohibition or order pursuant to

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

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

4 fails to give notice or does not do so correctly, in full or in time contrary to section 2c (3) sentence 1 or 4, section 10 (8) sentence 1 or 3, section 12a (1) sentence 3, section 13 (1) sentence 1, also in conjunction with subsection (4), (2) sentence 5 or 8, in each case also in conjunction with section 13a (2), section 13 (3) sentence 2 or 6, section 13a (1) sentence 1, also in conjunction with subsection (6), (3) sentence 2 or 6, section 14 (1) sentence 1 in conjunction with a statutory order pursuant to section 22 sentence 1 number 13, section 14 (1) sentence 2, in each case also in conjunction with section 53b (3) sentence 1, section 15 (4) sentence 5, section 24 (1) numbers 4 to 10, 12 or 13, number 5 or 7, in each case also in conjunction with section 53b (3) sentence 1, section 24 (1a), section 24 (3) sentence 1 or (3a) sentence 1 number 1 or 2 or sentence 2, in each case also in conjunction with sentence 5, section 24 (3a) sentence 1 number 3, section 24a (1) sentence 1, also in conjunction with subsection (3) sentence 1, or (4) sentence 1, also in conjunction with sentence 2, in each case also in conjunction with a statutory order pursuant to section 24a (5), section 28 (1) sentence 1 or section 53a sentence 2 or 5, in each case also in conjunction with a statutory order pursuant to section 24 (4) sentence 1,

5 fails to submit a set of interim accounts, an interim audit report, a monthly return, a set of annual accounts, a management report, an audit report, a set of group accounts or a group management report, or does not do so correctly, in full or in time contrary to section 10 (3) sentence 5 or 6, section 10a (10) sentence 5 or 6, section 25 (1) sentence 1 or (2) sentence 1, in each case in conjunction with a statutory order pursuant to subsection (3) sentence 1, in each case also in conjunction with section 53b (3) sentence 1, or contrary to section 26 (1) sentence 1, 3 or 4 or subsection (3),

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

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

8 commences activities contrary to section 53a sentence 4.

(3) An administrative offence shall be deemed to have been committed by anyone who intentionally or recklessly

1 contravenes an enforceable order pursuant to section 6a (1),

1a fails to submit a report or does not do so correctly, in full or in time contrary to section 10 (5) sentence 7 or (5a) sentence 7, in each case in conjunction with a statutory order pursuant to section 24 (4) sentence 1,

2 holds a qualified participating interest contrary to section 12 (1) sentence 1 or 2,

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

4 incurs an exposure contrary to section 18 sentence 1,

4a makes payments contrary to section 22i (3) sentence 1, also in conjunction with section 22n (5) sentence 4,

5 contravenes an enforceable order pursuant to section 23 (1), also in conjunction with section 53b (3) sentence 1, section 25a (1) sentence 8 or (3) sentence 1, section 26a (3), section 45 (1) or (3) or section 45a (1) sentence 1,

6. fails to provide information or does not do so correctly, in full, in the prescribed manner or in time contrary to section 23a (1) sentence 3, also in conjunction with section 53b (3),

7 fails to notify a customer, BaFin or the Deutsche Bundesbank or does not do so correctly, in full, in the prescribed manner or in time contrary to section 23a (2), also in conjunction with section 53b (3),

7a fails to maintain a data file or does not do so correctly or in full contrary to section 24c (1) sentence 1,

7b does not ensure that BaFin has automated access to the data at all times contrary to section 24c (1) sentence 5,

7c establishes or maintains a correspondent banking relationship or any other business relationship with a shell bank contrary to section 25h number 1,

7d sets up or maintains an account contrary to section 25h number 2,

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

9 fails to provide information or does not do so correctly, in full or in time, or fails to submit documentation or does not do so correctly, in full or in time contrary to section 44 (1) sentence 1, also in conjunction with section 44b (1) or section 53b (3) sentence 1, section 44 (2) sentence 1 or section 44c (1), also in conjunction with section 53b (3) sentence 1,

10 does not acquiesce to a measure contrary to section 44 (1) sentence 4, also in conjunction with section 44b (2) or section 53b (3), (2) sentence 4, (4) sentence 3, (5) sentence 4 or section 44c (5) sentence 1, also in conjunction with section 53b (3),

11 fails to take a specified measure or does not do so in time contrary to section 44 (5) sentence 1,

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

13 contravenes a statutory order pursuant to section 47 (1) number 2 or 3 or section 48 (1) sentence 1 insofar as, for a specified offence, it refers to this provision on administrative fines.

(4) An administrative offence shall be deemed to have been committed by any person who infringes Regulation (EC) No 1781/2006 of the European Parliament and of the Council of 15 November 2006 on information on the payer accompanying transfers of funds (OJ EU L 345/1) if he/she, when transferring funds, intentionally or recklessly

1 fails to ensure that complete information on the payer is transmitted contrary to Article 5 (1),

2 fails to verify some of the information on the payer or does not do so in time contrary to Article 5 (2), also in conjunction with (4),

3 fails to transmit the information on the payer or does not do so correctly or in full contrary to Article 7 (1),

4 fails to have effective procedures in place to detect whether the specified information on the payer is missing contrary to Article 8 sentence 2,

5 fails to reject the transfer or does not do so in time or fails to ask for complete information on the payer or does not do so in time contrary to Article 9 (1) sentence 1,

6 fails to keep records of any information received on the payer for at least five years contrary to Article 11 or Article 13 (5), or

7 fails to ensure that all information received on the payer that accompanies a transfer of funds is kept with the transfer contrary to Article 12.

(5) A breach of administrative regulations may be punished by means of an administrative fine of up to €500,000 in the cases described in subsection (1), subsection (2) number 3 letter (a), numbers 6 and 7 as well as subsection (3) number 12, an administrative fine of up to €150,000 in the cases described in subsection (2) numbers 1, 2 and 3 letter (b) as well as subsection (3) numbers 4 to 10, and by means of an administrative fine of up to €50,000 in all of the other cases described.

Sections 57 and 58 (Repealed)

Section 59 Administrative fines imposed on enterprises

Section 30 of the Act on Breaches of Administrative Regulations shall also apply to enterprises within the meaning of section 53b (1) sentence 1 and (7) sentence 1 operating through a branch or by providing cross-border services in Germany.

Section 60 Competent administrative authority

The administrative authority within the meaning of section 36 (1) number of he Act on Breaches of Administrative Regulations is BaFin.

Section 60a Notifications in criminal cases

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

1 the indictment or the petition in lieu of an indictment;

2 the application for the issue of a fixed penalty order, and

3 the decision concluding the proceedings together with the grounds for the decision;

if an appeal has been lodged against the decision, the decision shall be transmitted together with a reference to the appeal that has been lodged. [2]In proceedings concerning criminal acts committed through recklessness, the information to be transmitted under numbers 1 and 2 shall be transmitted only if the transmitting agency believes that decisions or other measures need to be taken by BaFin promptly.

(1a) In criminal proceedings which concern criminal acts pursuant to section 54, the criminal prosecution authority shall inform BaFin as soon as preliminary investigations are initiated.

(2) [1]If, in criminal proceedings, facts become otherwise known which point to irregularities in an institution's business operations, and if the transmitting agency believes that these need to be made known to BaFin so that it can take measures pursuant to this Act, the court, the criminal prosecution authority or the penal enforcement authority shall likewise transmit these facts, unless it is clear to the transmitting agency that protecting the interests of the party concerned should take precedence. [2]Due consideration should thereby be given to how well substantiated the findings to be transmitted are.

(3) [1]Upon request, BaFin shall be granted access to the files unless it is clear to the party granting access to the files that protecting the interests of the party concerned should take precedence. [2]Subsection (2) sentence 2 shall apply *mutatis mutandis*.

Part VII
Transitional and final provisions

Section 61 Authorisation for existing credit institutions

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

Section 62 Transitional provisions

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

(2) Functions and powers assigned under Federal legislation to the banking supervisory authority shall devolve upon BaFin.

(3) This is without prejudice to the responsibilities of the German regional governments (*Länder*) for recognition as a relocated financial institution pursuant to the Thirty-fifth Regulation Implementing the Conversion Act (*Fünfunddreissigste Durchführungsverordnung zum Umstellungsgesetz*), for confirmation of the conversion account and the old bank account, and for functions and powers under the Securities Validation Acts (*Wertpapierbereinigungsgesetze*) and the Act on the Validation of German External Bonds (*Bereinigungsgesetz für deutsche Auslandsbonds*).

Section 63 (Repeal of and amendments to legal provisions)

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

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

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

(3) (Repealed)

Section 64 Successor enterprises to Deutsche Bundespost

(1) [1]From 1 January 1995 the authorisation pursuant to section 32 shall be deemed to have been granted to POSTBANK, a successor enterprise to Deutsche Bundespost. [2]For the purpose of consolidation pursuant to section 19 (2) sentence 1, capital shares which are held in the successor enterprises to Deutsche Bundespost by the Bundesanstalt für Post und Telekommunikation Deutsche Bundespost shall be disregarded until 31 December 2002.**Section 64a (Repealed)**

Section 64b Capital of existing credit institutions

(1) [1]Deposit-taking credit institutions which are authorised pursuant to section 32 on 1 January 1993, may have at their disposal an initial capital, notwithstanding section 33 (1) sentence 1 number 1 letter (d), which is lower than the equivalent of 5 million euro. [2]In this case the initial capital may not fall below the level available on 31 December 1990. [3]In the case of deposit-taking credit institutions authorised after 31 December 1990, the initial capital may not fall below the level available at the time authorisation was granted.

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

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

(4) [1]In the case of a merger between two or more credit institutions which have taken advantage of the preferential treatment specified in subsection (1), the initial capital of the credit institution resulting from the merger may be below the equivalent of 5 million euro, subject to BaFin's approval, if there is no danger that the credit institution might fail to meet its obligations to its creditors. [2]However, in this case the initial capital of the merged credit institution must at least equal the total initial capital of the merging credit institutions available at the time of the merger.

(5) [1]BaFin may grant the credit institution a grace period within which it must comply with the capital requirements specified in subsection (1) sentence 2 or 3 or subsection (4) sentence 2, or discontinue its activities. [2]If a credit institution lastingly fails to meet these capital requirements, section 35 (2) number 3 on the revocation of the authorisation shall apply *mutatis mutandis*.

Section 64c (Repealed)

Section 64d Transitional arrangement for large exposures

[1]Until 31 December 1998 the reporting threshold for large exposures as specified in section 13 (1) sentence 1 and for the large exposure limit in overall business as specified in section

13a (1) sentence 3 shall be 15 per cent instead of 10 per cent, and the individual large exposure limit as specified in section 13 (3) sentence 1 or 3, the individual large exposure limit on the banking book as specified in section 13a (3) sentence 1 or 3 and the individual large exposure limit in overall business as specified in section 13a (4) sentence 1 or 3 and 4 shall be 40 per cent instead of 25 per cent or 30 per cent instead of 20 per cent, respectively. [2]The exposures shall be reduced to the individual large exposure limits specified in section 13 (3) sentence 1 or 3 and section 13a (4) sentence 1 or 3 by 31 December 2001. [3]Sentence 2 shall not apply to exposures which were incurred before 1 January 1996 and which do not fall due until after 31 December 2001by virtue of the contractual conditions. [4]In the case of institutions whose liable capital did not exceed 7 million euro on 5 February 1993, the periods specified in sentences 1 and 2 shall be extended by five years in each case; sentence 3 shall apply *mutatis mutandis*. [5]Sentence 4 shall not apply if such an institution was or will be merged with another institution after 5 February 1993 and if the liable capital of the merged credit institutions exceeds 7 million euro.

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

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

(2) [1]Financial services institutions and securities trading banks which were legitimately operating on 1 January 1998 without authorisation from BaFin shall report their activities which require authorisation under this Act and their intention to continue such activities to BaFin and the Deutsche Bundesbank by 1 April 1998. [2]If the report has been submitted by this date, authorisation pursuant to section 32 shall be deemed to have been granted for the scope of activities specified. [3]BaFin shall confirm the specified activities which require authorisation under this Act within three months of receipt of the report. [4]Within three months of receipt of BaFin's confirmation the institution shall submit a supplementary report to BaFin and the Deutsche Bundesbank which satisfies the material requirements under section 32. [5]If the supplementary report is not submitted in time, BaFin may revoke the authorisation granted pursuant to sentence 2; this is without prejudice to section 35.

(3) [1]Section 35 (2) number 3 in conjunction with section 33 (1) sentence 1 number 1 letters (a) to (c) and section 24 (1) number 9 on the initial capital shall apply only as from 1 January 2003 to institutions for which authorisation is deemed to have been granted pursuant to subsection (2). [2]As long as the initial capital of the institutions described in sentence 1 is smaller than the amount required under section 33 (1) sentence 1 number 1, it may not fall below the average level over the preceding six months; the average level shall be calculated every six months and reported to BaFin. [3]If the average level pursuant to sentence 2 is undershot, BaFin may revoke the authorisation. [4]Section 10 (1) to (8) and sections 10a, 11 and 13 to 13b shall apply to institutions described in sentence 1 only as from 1 January 1999, unless they establish a branch or provide cross-border services in other EEA states pursuant to section 24a. [5]Securities trading firms for which authorisation is deemed to have

been granted pursuant to subsection (2) and which do not apply section 10 (1) to (8) and sections 10a, 11 and 13 to 13b shall inform their customers that they may not establish a branch or provide cross-border services in other EEA states pursuant to section 24a. [6]Institutions for which authorisation is deemed to have been granted pursuant to subsection (2) shall notify BaFin and the Deutsche Bundesbank as to whether they apply section 10 (1) to (8) and sections 10a, 11 and 13 to 13b.

(4) (Repealed)

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

Section 64f Transitional provisions for the Fourth Financial Market Promotion Act

(1) For a credit institution which on 1 July 2002 is authorised to conduct business as a deposit-taking credit institution, authorisation to conduct credit card business shall be deemed to have been granted as of this date.

(2) [1]Financial services institutions and securities trading banks which were legitimately operating on 1 July 2002 without authorisation from BaFin pursuant to section 1 (1a) sentence 2 number 8 shall report their activities which require authorisation under this Act and their intention to continue such activities to BaFin and the Deutsche Bundesbank by 1 November 2002. [2]Section 64e (2) sentences 2 to 5 shall apply *mutatis mutandis*.

(3) to (6) (Repealed)

Section 64g Transitional provisions regarding the Act Implementing the Financial Conglomerates Directive

(1) Until such time as the statutory order pursuant to section 13d (2) has been issued

1 all significant risk concentrations that accrue during a calendar year shall be reported to BaFin and the Deutsche Bundesbank before January 16 of the following year. A risk concentration is significant if the counterparty risk, credit risk or investment risk exposure, to be determined pursuant to sections 13 to 13b, 19 and 20 of this Act, in each case in conjunction with the statutory order pursuant to section 22 of this Act, and section 54 of the Insurance Supervision Act, to a counterparty to be determined pursuant to section 19 (2) of this Act on its own or in total equals or exceeds 10 per cent of the capital requirement at conglomerate level;

2 the superordinated financial conglomerate enterprise pursuant to section 10b (3) sentences 6 to 8 or (4) shall promptly report to BaFin and the Deutsche Bundesbank risk concentrations resulting from insurance risks and identified as being significant on the basis of the internal risk management system which ensue from major risks and cumulative risks and risks that take a long time to develop and the causal chain of

which is uncertain. To the extent that such risks also have a direct impact on individual counterparties specified under number 1, this shall be included in the report, broken down by individual counterparty. The insurance risk comprises the potential claim, which shall be determined on the basis of the contractual indemnity and taking account of reinsurance, past damages and mathematical models;

3 the superordinated financial conglomerate enterprise pursuant to section 10b (3) sentences 6 to 8 or (4) shall promptly notify BaFin and the Deutsche Bundesbank of any risks that ensue from a combination of and interactions between the individual types of risk;

4 all significant intra-group transactions carried out within a financial conglomerate during a calendar year shall be reported to BaFin and the Deutsche Bundesbank before January 16 of the following year. Intra-group transactions notably include

(a) loans,

(b) sureties, guarantees and other off-balance-sheet transactions,

(c) transactions relating to own funds components within the meaning of sections 10 and 10a of this Act and sections 53c and 104g of the Insurance Supervision Act,

(d) investments,

(e) reinsurance transactions;

(f) cost-sharing agreements.

An intra-group transaction is significant if the individual transaction equals or exceeds 5 per cent of the capital requirement at conglomerate level. If one or more conglomerate enterprises conduct several transactions with another conglomerate enterprise during any given financial year, these must be aggregated for each counterparty, even if the individual transaction does not equal 5% of the capital requirement at conglomerate level.

(2) Until such time as the statutory order pursuant to section 13c (1) sentence 2 has been issued, subsection (1) number 4 shall apply *mutatis mutandis* to intra-group transactions with mixed-activity holding companies.

(3) Until such time as the statutory order pursuant to section 24 (4) has been supplemented,

1 in connection with reports pursuant to section 24 (3a) sentence 1 number 1,

(a) the declarations prescribed by section 8 sentence 2 number 2 of the Reports Regulation (*Anzeigenverordnung*) of 29 December 1997 (Federal Law Gazette I, page 3372) as last amended by Article 8 of the Act of 15 August 2003 (Federal Law Gazette I, page 1657) shall be submitted for the purpose of assessing the trustworthiness of persons who are actually to manage the business of a financial holding company or a mixed financial holding company;

(b) the documentation specified in section 8 sentence 2 number 1 of the Reports Regulation of 29 December 1997 (Federal Law Gazette I, page 3372) as last

amended by Article 8 of the Act of 15 August 2003 (Federal Law Gazette I, page 1657) shall be appended for the purpose of assessing the professional qualifications of persons who are actually to manage the business of a financial holding company or a mixed financial holding company;

2 section 27 of the Reports Regulation of 29 December 1997 (Federal Law Gazette I, page 3372) as last amended by Article 8 of the Act of 15 August 2003 (Federal Law Gazette I, page 1657) shall apply *mutatis mutandis* to reports concerning a mixed financial holding company pursuant to section 12a (1) sentence 3 and section 24 (3a) sentence 5.

(4) [1]The determination and classification of a cross-sector corporate group as a financial conglomerate pursuant to sections 51a to 51c in conjunction with section 1 (20) shall be undertaken for the first time on the basis of the annual accounts for the financial year ending in 2003; BaFin shall take due account of any material changes during the financial year 2004. [2]The provisions of section 10b on the capital required at conglomerate level shall be applied for the first time on the basis of the accounting records for the financial year starting on 1 January 2005 or the financial year ending during 2005. [3]Reports pursuant to subsection (1) numbers 1 and 4 shall be submitted for the first time as of 16 January 2006.

Section 64h Transitional provisions regarding the Act Implementing the recast Banking Directive and the recast Capital Adequacy Directive

(1) Exposures incurred before 1.January 2007 which, when applying section 10 (1a) sentence 1 in the wording valid as of 31 December 2006, carry a counterparty-related risk weight of zero may continue to attract a zero weighting up to the end of the loan maturity.

(2) [1]Institutions which, pursuant to the transitional provisions in the statutory order pursuant to section 10 (1) sentence 9, apply instead of the CRSA the requirements of Principle I of the Principles Concerning the Own Funds and Liquidity of Credit Institutions (*Grundsätze über die Eigenmittel und die Liquidität der Kreditinstitute*) in the wording of the announcement of 29 October 1997 (Federal Law Gazette, page 13 555), as last amended pursuant to the announcement of 20 July 2000 Federal Law Gazette, page 17 077) for their CRSA positions until 1 January 2008, may apply until 31 December 2007, consistently for all exposures, sections 13 to 13b, 14, 19, 20, 22 and 64f (3) and (4) in the wording valid until 31 December 2006 and the Regulation governing large exposures and loans of 1.5 million euro or more (*Grosskredit- und Millionenkreditverordnung*) in the wording valid until 31 December 2006. [2]Institutions which apply sentence 1 shall promptly report this fact to BaFin and the Deutsche Bundesbank.

(3) [1]If at the time of the changeover in the method of determining the consolidated own funds requirement from the procedure pursuant to section 10a (6) to the procedure pursuant to section 10a (7) for participating interests acquired up to this time there is a capitalised aggregation difference within the meaning of section 10a (6) sentence 9, a deduction process initiated pursuant to section 10a (6) sentence 10 may be continued subject to the proviso that up to 31 December 2015 goodwill replaces the capitalised aggregation

difference and the difference is deducted solely from tier 1 capital. [2]The capitalised aggregation difference may continue to be deducted pursuant to section 10a (6) sentence 10 in the case of participating interests acquired up to 31 December 2006.

(4) [1]If a superordinated institution of a group of institutions within the meaning of section 10a (1) or (2) is obliged by the provisions of the Commercial Code to draw up consolidated accounts, it may, notwithstanding the provision of section 10a (7), apply the procedure pursuant to section 10a (6) when determining the own funds adequacy of the group of institutions until 31 December 2015. [2]Sentence 1 shall apply *mutatis mutandis* if the superordinated enterprise, pursuant to Article 4 of Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards (OJ EC L 243/1) in the currently valid wording or pursuant to section 315a (2) of the Commercial Code, is obliged when drawing up the consolidated accounts to apply the international accounting standards adopted pursuant to Articles 3 and 6 of the aforementioned Regulation or applies these pursuant to section 315a (3) of the Commercial Code. [3]Sentences 1 and 2 shall apply *mutatis mutandis* to the superordinated enterprise of a financial holding group within the meaning of section 10a (3) if the financial holding company is obliged by the provisions of the Commercial Code to draw up consolidated accounts, pursuant to Article 4 of Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards (OJ EC L 243/1) in the currently valid wording or pursuant to section 315a (2) of the Commercial Code is obliged when drawing up the consolidated accounts to apply the international accounting standards adopted pursuant to Articles 3 and 6 of the aforementioned Regulation or applies these pursuant to section 315a (3) of the Commercial Code. [4]If a superordinated enterprise applies the procedure pursuant to section 10a (7) before 31 December 2015, it shall carry on applying this procedure.

(5) Institutions may use personal data which they have collected before 1 January 2007 in accordance with section 10 (1).

(6) Section 20c shall apply no later than until 31 December 2010.

(7) Section 2 (8a) shall apply no later than until 31 December 2010.

Section 64i Transitional provisions regarding the Act Implementing the Markets in Financial Instruments Directive

(1) [1]In the case of an enterprise which was authorised to conduct one or more kinds of banking business or financial services within the meaning of section 1 (1a) sentence 2 numbers 1 to 4 on 1 November 2007, authorisation to provide investment advice shall be deemed to have been granted as of that date. [2]In the case of a financial services institution which is not covered by sentence 1, authorisation to provide investment advice shall be deemed to have been granted provisionally as of that date until BaFin renders a decision if the institution submitted a complete application for authorisation by 31 January 2008

pursuant to section 32 (1) sentences 1 and 2, also in conjunction with a statutory order pursuant to section 24 (4).

(2) In the case of an enterprise which was authorised to conduct one or more kinds of banking business or financial services within the meaning of section 1 (1a) sentence 2 numbers 1 to 4 on 1 November 2007 and has hitherto traded in financial instruments for its own account, authorisation to conduct proprietary business shall be deemed to have been granted as of that date.

(3) Subsection (1) sentence 2 shall apply *mutatis mutandis* to an enterprise which became a financial services institution or a securities trading bank on 1 November 2007 by virtue of the expansion of the definition of financial instruments in section 1 (11).

(4) [1]In the case of an enterprise which was authorised to engage in investment broking on 1 November 2007, authorisation to operate a multilateral trading system shall be deemed to have been granted as of that date if the institution submitted a complete application for authorisation by 31 January 2008 pursuant to section 32 (1) sentences 1 and 2, also in conjunction with a statutory order pursuant to section 24 (4), and BaFin did not raise an objection thereto within three months of receiving the complete application for authorisation. [2]BaFin may raise an objection if, in the case of an orderly application for authorisation pursuant to section 32, it would have the right to refuse to grant authorisation pursuant to section 33.

(5) In the case of an enterprise which was authorised to engage in contract broking on 1 November 2007, subsection (1) sentence 2 shall apply *mutatis mutandis* to authorisation to engage in placement business.

Section 64j Transitional provisions regarding the Annual Tax Act 2009

(1) [1]In the case of an enterprise which was authorised to conduct one or more kinds of banking business within the meaning of section 1 (1) or financial services within the meaning of section 1 (1a) sentence 2 numbers 1 to 4 on 25 December 2008, authorisation to engage in factoring and finance leasing shall be deemed to have been granted as of that date.

(2) [1]For financial services institutions that do not come under subsection (1), authorisation to engage in factoring and finance leasing shall be deemed to have been granted as of December 25 if they report their engagement in these activities by 31 January 2009. [2]For enterprises within the meaning of sentence 1 which at the time this Act enters into force do not exceed at least two of the three size criteria stipulated in section 267 (1) of the Commercial Code, a longer period applies until 31 December 2009. [3]The report must contain the information pursuant to section 32 (1) sentence 2 numbers 2 and 6 letters (a) and (b), the annual accounts for the past financial year or – if the latter were not yet to be drawn up pursuant to the periods specified therefor – for the preceding financial year or – if no annual accounts were yet to be drawn up – the opening balance sheet and a quarterly profit and loss account as well as a current excerpt from the commercial register and the trade registration pursuant to section 14 (1) sentence 1 of the Industrial Code.

Section 64k Transitional provision regarding the Act Implementing the Acquisition Directive

The provisions of this Act in the wording valid up to 17 March 2009 shall apply to procedures pursuant to section 2c under which a report has been submitted by 17 March 2009.

Section 64l Transitional provision regarding authorisation to provide asset management services

[1]For an institution which is authorised to provide principal broking services, proprietary trading services or financial portfolio management services on 25 March 2009, authorisation to provide asset management services shall be deemed to have been granted as of that date. [2]Authorisation to provide asset management services is not required for products for which a sales prospectus was published by 24 September 2008.

Section 65 Entry into force