

BAWe

Bundes-
aufsichtsamt
für den
Wertpapier-
handel

Annual Report 1996

Abridged English Version

ANNUAL REPORT 1996

Preliminary Remarks

The second year of operation of the Frankfurt-based German Federal Securities Supervisory Office (Bundesaufsichtsamt für den Wertpapierhandel, hereinafter BAWe) was determined by the implementation of the rules of the German Securities Trading Act (Wertpapierhandelsgesetz, hereinafter WpHG). Nearly all provisions of the Act go back to EC directives in which minimum standards are set. These standards comprise investor protection, market integrity and market transparency. Besides, there was a need to centralise international cooperation and to ensure the exchange of also confidential information. These objectives were explicitly incorporated in the WpHG.

Investor Protection – Rules of Conduct

Enhanced investor protection is particularly achieved by the rules of conduct which credit institutions must comply with in rendering investment services. They are in particular required to provide investors with all information necessary for making an informed investment decision. In addition, investment services firms must maintain an internal organisational structure capable of minimising conflicts of interest with their customers.

For monitoring the provision of investment services, the BAWe is entitled to carry out verifications with investment services firms and to call on information and the presentation of documents. It is also verified whether the obligation to

report to the BAWe all transactions in securities traded on the exchanges has been complied with. For this purpose, the BAWe commissions external auditors who audit the institutions' investment services business once a year. For a number of audits the auditors were accompanied by employees of the BAWe. In 1996, 3,554 credit institutions were subject to examination. The BAWe had 355 audit reports submitted by the auditors for evaluation purposes; out of these 16 came from branches of credit institutions from other European member states.

Evaluation of the first audit reports filed with the BAWe showed that the rules of conduct as laid down in the WpHG needed to be more concrete in order to achieve uniform interpretation of the legal requirements and thus ensure comparability of the audit reports. In 1996, main emphasis was laid on drafting the BAWe guideline on the rules of conduct which was published on 3 June 1997. The guideline will help to facilitate the practical application of these rules.

Compliance with the rules of conduct is also monitored by evaluation of customer complaints. During the period under review, the BAWe received 138 customer complaints referring to a total of 163 subject matters, as compared to only 67 complaints in 1995.

Investor Protection – Deposit of Prospectuses

Relevant for investor protection is the now centralised deposit of prospectuses with the BAWe for securities which are publicly offered but not listed on a stock exchange. Previously, these prospectuses were

kept in decentralised deposits with the individual stock exchanges. Now it is possible to check timely compliance of the issuers with the obligation to publish a prospectus. The BAWe has published an announcement on the Securities Sales Prospectus Act on 15 April 1996 in order to provide issuers of securities with more information about the scope of application, procedure and interpretation of individual provisions.

In 1996, a total of 417 complete prospectuses, 159 incomplete prospectuses and 882 supplements thereto were deposited with the BAWe. They encompassed a total of 5,133 issues subject to the prospectus publication requirements.

Public offerings of issuers and non-regulated firms on the so-called „grey capital market“ caused particular problems. These enterprises are at present not subject to any specific governmental monitoring. Here, the provisions laid down in the Securities Sales Prospectus Act very often were not complied with, though sometimes probably merely out of ignorance. With regard to these enterprises the BAWe aimed at achieving compliance with the

regulations laid down in the Securities Sales Prospectus Act, if necessary also by instituting monetary fine proceedings. Cases in which reasonable grounds for suspicion of fraud had arisen were handed over by the BAWe to the competent prosecuting authorities.

Market Integrity – Prohibition of Insider Trading

As far as market integrity is concerned, the prohibition of insider trading is a central issue of the WpHG. The investigation of possible insider cases, the collection and evaluation of the reports on all transactions in securities and derivatives and the monitoring of compliance with the reporting obligations are all part of supervising the insider trading prohibition.

In 1996, the BAWe passed on 17 insider cases to the competent public prosecutor's offices. Apart from cases where knowledge of internal corporate information was abused these also included cases where brokers, traders or portfolio managers made use of their knowledge of market relevant insider facts or made front-running deals. In these

cases the BAWe continued the investigations instigated by the market supervision units of the stock exchanges. In 1996, the public prosecutor's offices discontinued three proceedings; four cases were concluded by final convictions. In one case a prison sentence was imposed which was suspended in connection with the obligation to pay a considerable amount to a non-profit making organisation. In the other cases heavy fines were imposed fixed in relation to the amount gained from the respective insider transactions and the personal income of those being convicted.

On 1 January 1996, a comprehensive reporting system for all securities transactions was set up which enhances market surveillance and the combating of insider trading. On the first trading day already 230,000 reports were received. In total, about 80 million reports were transmitted to the BAWe for all trading days in 1996. This corresponds to an average of almost 310,000 reports per trading day. The most active day in this respect was the 18th of November 1996, the first trading day of the Telekom share when 651,000 reports were received.

Insider Investigations of the BAWe

	Number of Investigations		Investigations concluded in the Period under Review			Open Investigations at the End of the Period under Review
	Newly Taken up in the Period under Review	Open at the Start of the Period under Review	Total	Result of the Investigations		
				Discontinued	Passed on to a Public Prosecutor's Office	
1995	24	0	23	16	7	1
1996	59	1	44	27	17	16

Market Transparency – Ad hoc Disclosure

Exchange-listed companies are required to publish immediately any price-sensitive corporate information not publicly known. For the period under review domestic issuers filed 1,024 ad hoc announcements with the BAWe. An ad hoc matter must first be reported to the management of the exchanges in question and the BAWe and then be published by means of an electronic information service or a journal for statutory stock exchange announcements. German securities markets have become far more transparent due to improved information policies of the issuers.

In 1995, publications had to be made exclusively in the German language. It was therefore difficult for foreign issuers to fulfill the obligation to immediately publish price-sensitive information. In its announcement of 29 January 1996 the BAWe therefore generally admitted publications in the English language by foreign issuers.

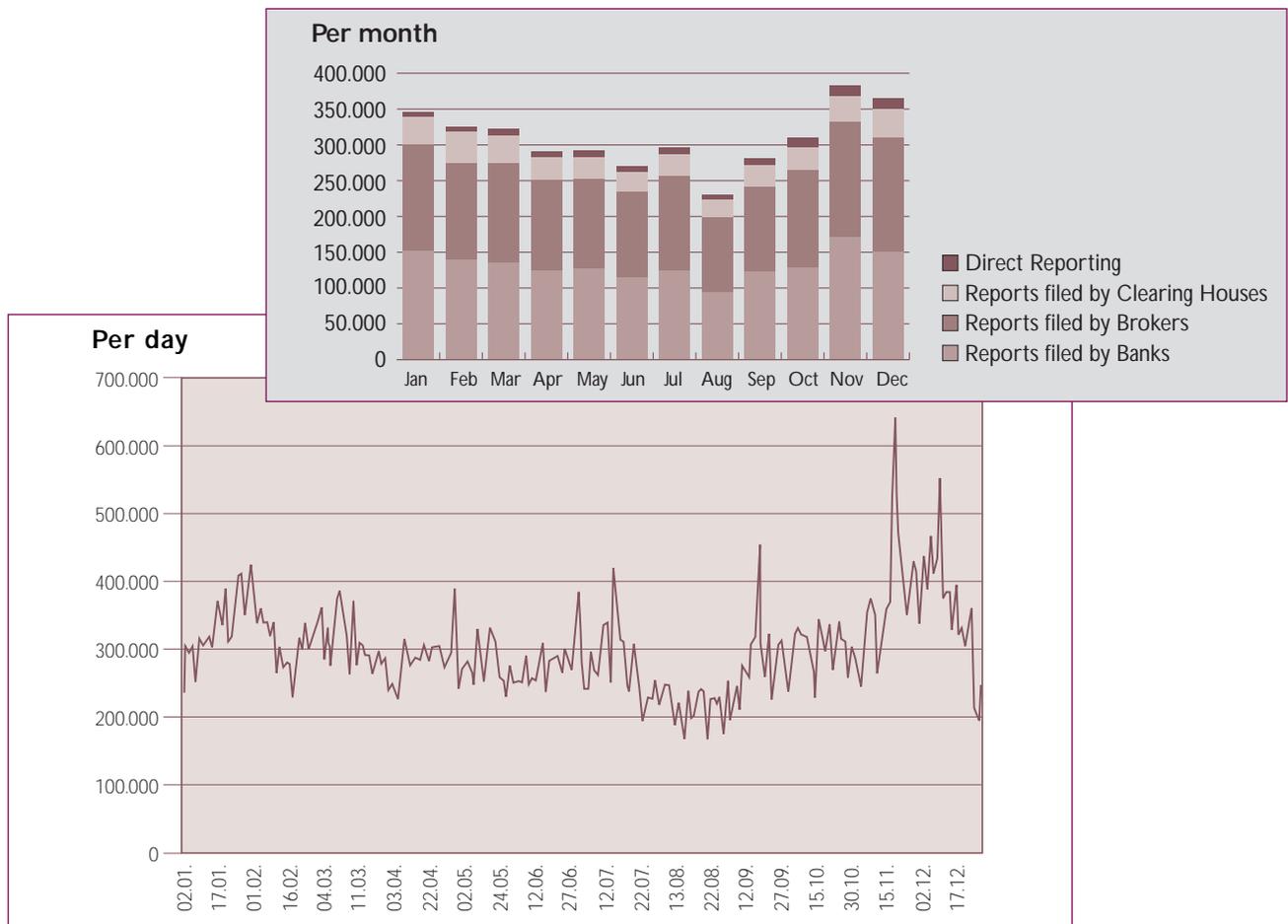
Market Transparency – Disclosure of Major Shareholdings

The requirement to disclose major shareholdings in officially quoted companies equally has improved market transparency and forms the basis for obtaining reliable data on the composition of shareholders and

control structures of these companies. The notification and disclosure requirements relate to voting rights and not to shareholdings in companies domiciled in the Federal Republic of Germany whose shares are admitted to official trading on an exchange in a country of the European Union or the European Economic Area. 437 domestic and 206 foreign stock corporations were officially listed on 31 December 1996.

In 1996, the BAWe received 178 initial reports and 512 notifications relating to changes in holdings of voting rights. In 1995, there had been 1,084 initial reports and 194 notifications relating to changes in holdings of voting rights. Based on

Volume of Transaction Reports



Number of Ad hoc Reports

	Total	Registered Office of the Issuer		Ways of Transmission	
		Germany	Abroad	Electronic media	Journal for statutory stock exchange announcements
1995	1.001 *)	991	10*)	not available	not available
1996	1.058	1.024	34	1.020	38

*) revised figure

these reports, the BAWe published a report entitled „Major holdings of voting rights in officially listed companies as per 30 September 1996“. The BAWe intends to make this information accessible to the public also in future. For this purpose the use of new media, particularly of the Internet, is under consideration so as to be able to provide information on the holdings of voting rights as up-to-date as possible.

Cooperation in Germany

With the Second Financial Market Promotion Act of 1994 a three-tier supervisory system has been introduced for the German securities markets. While the BAWe monitors trading on and off the exchanges in accordance with the regulations laid down in the WpHG, the authorities of the German federal states (Länder) and the market supervision units of the exchanges supervise the activities, including the trading rules, of the stock exchanges under the German Exchange Act (Börsengesetz).

During the period under review cooperation between the BAWe, the supervisory authorities of the Länder and the market supervision units has been intensified. These authorities have direct access to the data relating to stock exchange trading. If

they come across clues for a violation of the prohibition of insider dealing, the competent stock exchange supervisory authorities of the respective Länder report the findings of their investigations to the BAWe. If it is the BAWe who is first to investigate a case of suspected insider dealing at the stock exchange, it can in urgent cases request the market supervision units to make on-the-spot investigations.

International Cooperation

The WpHG vests the BAWe with the sole powers for cooperation with the competent authorities responsible for supervising exchanges and securities trading in other countries. As all national supervisory systems are confronted with the task of supervising international securities markets and market participants, international cooperation becomes increasingly important. The BAWe may communicate facts to such foreign authorities which they require for the supervision of stock exchanges or other securities markets and credit institutions, financial institutions or insurance undertakings as well as or for administrative or court proceedings connected with such supervision. In 1996, the BAWe made use of its powers in several insider investigations by addressing a total of 41 enquiries to

foreign authorities. In return, the BAWe could provide assistance to foreign supervisory authorities in six cases.

The European Investment Services Directive adopted in May 1993 provides for the right of establishment and the freedom to provide services for investment services firms domiciled in EU countries. Investment services firms whose countries of origin have implemented the directive are authorised to operate in Germany under the so-called European passport since 1 January 1996. During the period under review 695 European investment services firms gave notice to that effect to the BAWe. 690 of these firms notified the BAWe of their intention to provide cross-border investment services. Five enterprises set up branches in Germany. The notices were given by six European countries though the majority of them came from Great Britain.

Apart from cooperation within Europe, which for the most part is regulated by EU directives, cooperation with supervisory authorities of countries outside the European Union must essentially be undertaken on a bilateral basis. In this respect it depends on each country in how far its national legislation permits the cross-border exchange of information.

On 29 February 1996, the BAWe exchanged letters with the U.S. Commodities Futures Trading Commission (CFTC) on the mutual exchange of information, in particular with respect to insider investigations. At the same time, Deutsche Terminbörse (DTB), the German Options and Futures Exchange, received a „no-action letter“ from the CFTC. Thus, the DTB became the first foreign exchange to be au-

active role in all work undertaken by IOSCO and represents German interests in its committees. Besides, cooperation with other supervisors, such as the banking and insurance supervisory authorities, was intensified. In January 1996, the Joint Forum on Financial Conglomerates, composed of IOSCO, the Basle Committee and the International Association of Insurance Supervisors (IAIS), took up its work.

Perspectives

When starting operations in 1995 the BAWe as well as the market participants faced new challenges. The experience gained during the first two years of operation has shown the positive effects of the new regulatory system. The tasks of the BAWe will be increasing over the next few years. With the full implementation of the European Investment Services Directive, the BAWe will be given a range of new functions. As the definition of what constitutes an investment services firm will be broadened and include investment brokers and portfolio managers, the responsibilities of the BAWe will be extended to the so-called „grey capital market“.

In parallel with the work underway on the implementation of the European Investment Services Directive, the Third Financial Promotion Act is being prepared in order to adapt the legal framework to the changing financial markets. One of the objectives of the Third Financial Market Promotion Act is to improve the legal framework through deregulation and modernisation, in particular for the German risk capital market, and thus to promote the capitalisation of young, innovative and fast-growing companies.

Country	Notification of Cross-border Services Rendered	Notification of Branches Set up
Denmark	5	–
France	1	–
Great Britain	618	2
Ireland	33	2
The Netherlands	20	1
Sweden	13	–

thorised by a U.S. supervisory authority to set up terminals in the United States.

On 10 September 1996, the BAWe and the French Commission des Opérations de Bourse (COB) signed a Memorandum of Understanding on the exchange of information in Paris. The standardisation of requests for information and clear laying down of information channels will help both supervisory authorities with the exercise of their functions as established by law. The BAWe presently prepares the conclusion of further Memoranda of Understanding with foreign supervisory authorities.

The BAWe represents Germany within IOSCO, the International Organization of Securities Commissions. As a full member the BAWe plays an

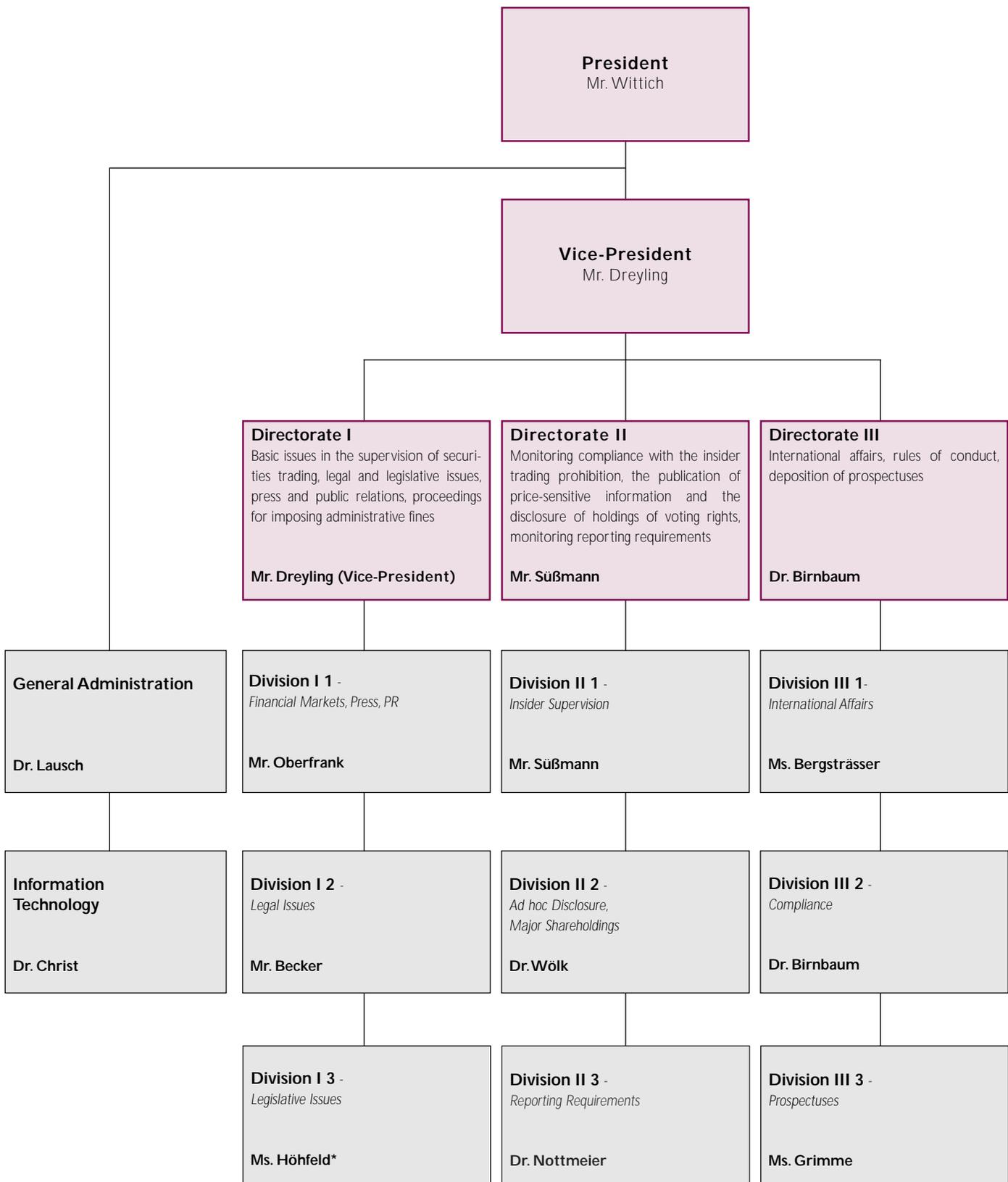
BAWe Internals

Towards the end of 1996 the BAWe had 93 members of staff. The cost incurred by the BAWe amounted to about DM 14.9 million in 1996, of which about DM 6.4 million were incurred by staff expenditure.

Approximately DM 3.5 million were spent on material expenditure and investments, and about DM 5.0 million were spent on information technology.

According to section 11 of the WpHG, 90 per cent of the costs of the BAWe must be reimbursed by the investment services firms subject to supervision – i.e. credit institutions, official exchange brokers and unofficial brokers – and by the issuers.

Organisational Structure



*) on leave

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