

BAWe

Bundes-
aufsichtsamt
für den
Wertpapier-
handel

BAWe
Annual Report 2000

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Bundesaufsichtsamt für den Wertpapierhandel

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In the year 2000, the activities of the Bundesaufsichtsamt für den Wertpapierhandel (BAWe) were strongly influenced by turbulence in the stock markets.

One central issue dealt with in the first part of the year was the lack of transparency of the allotment procedures used in numerous initial public offerings. This was also an issue of criticism among retail investors. Furthermore, at the start of last year many online banks did not manage to be constantly available to their customers due to capacity bottlenecks resulting from growing customer business and an increase in the number of IPOs. We expect the Principles for the Allotment of Share Issues to Private Investors, set up by the Expert Exchange Commission in co-operation with the BAWe, to contribute to higher transparency for the allotment of oversubscribed issues. In the meantime, the online banks have significantly improved their availability by increasing their workforce and expanding technical capacities.

The pronounced decrease in share prices and revisions of earnings forecasts by companies listed in the Neuer Markt resulted in a growing number of insider investigations in the second part of the year. Furthermore, the BAWe placed a special focus on compliance with the duty to immediately publish price relevant company information.

The European regulators from EU member states as well as Norway and Iceland which are comprised in FESCO, have increased their efforts to promote a common European financial services market by harmonising regulatory standards and prac-

tices. Within the scope of the EU action plan for a modernisation of European legislation, FESCO presented recommendations concerning homogeneous standards for investor protection, action against market abuse, the regulation of alternative transaction systems, and the introduction of a European passport for issuers. The plans to increase the flexibility of legislation within Europe (Lamfalussy report), which were passed in March at the EU summit in Stockholm, can be expected to improve the role played by the securities regulators in shaping European legislation.

The planned merger of the Banking, Insurance, and Securities Supervisory Offices in Germany into a "Federal agency for the supervision of financial services" will result in a major reform of the German supervisory system. This will take into account the trend towards a consolidation of markets and institutions across sectors resulting in higher efficiency and synergies. The BAWe welcomes the fact that Frankfurt will remain one of the agency's two locations that serves the interests of supervision close to the market.

Georg Wittich
President
Bundesaufsichtsamt
für den Wertpapierhandel

INVESTOR PROTECTION – RULES OF CONDUCT

The BAWe's regulatory activities in the turbulent year of 2000 were determined by current issues and developments. During the first six months of the year, the BAWe was concerned with the allotment of share issues to private investors. Another new challenge came from developments witnessed in the areas of day trading and alternative trading systems (ATS). The guiding principles for personal transactions of employees and the guideline on the details specifying the rules of conduct were amended.

Set up for the purpose of ensuring fair treatment of investors, the rules of conduct for investment services companies stipulated in the Securities Trading Act (Wertpapierhandelsgesetz; short: WpHG) are a major prerequisite for investor protection. In order to be able to make their own investment decisions, investors should receive comprehensive information about the major features of an investment and the risks and costs involved. Besides being required to provide an appropriate degree of information, investment services enterprises must comply with comprehensive organisational duties, including the obligation to implement measures to avoid conflicts of interest, and to provide professional services to meet customers' requirements.

When applying the rules of conduct, an investment services enterprise must take account of the customer's professional experience. In the year under review, the European secur-

ities regulators comprised in the Forum of European Securities Commissions (FESCO) passed criteria enabling a securities firm to draw a distinction between professional and non-professional investors, taking into account their different protection requirements. The content of information provided to the customer and the extent thereof must be in line with his or her knowledge about the type of intended transaction. The harmonisation within Europe of these criteria was intended to facilitate the provision of investment services across borders.

Allotment of Share Issues

In the first half of 2000, the allotment procedures used by credit institutions for oversubscribed IPOs were an important issue. Growing dissatisfaction among investors about the allotment procedures resulted in an increasing number of complaints. An analysis of the allotment behaviour of investment services enterprises revealed that many investors were not adequately informed about the procedures employed. This lack of transparency was also a target of severe public criticism.

In a reaction to this the Exchange Expert Committee (Börsensachverständigenkommission: BSK) at the Federal Ministry of Finance and the BAWe set up principles geared to improve the transparency of IPOs. The Principles for the Allotment of Share Issues to Private Investors (www.bawe.de at "Laws and Regulations/Other Publications") came into force on 01 July 2000, following comprehensive discussions with issuers, underwriters, and investor protectors. The Principles contain recommendations of conduct for

issuers and investment services firms, aiming to create transparency for investors in particular in the case of oversubscribed issues, without restricting the issuers' liberty to determine at their own discretion the group of investors with which the issue shall be placed. The Principles clearly state that there is no legal right to allotment.

The issuer and the syndicate members may thus freely decide which procedure to use, be it by drawing lots, allotment according to order size, allotment by means of a spe-

the allotment of share issues. The BAWe shall place a particular focus in its annual examinations on verifying the firms' observance of the Principles. Furthermore, the BAWe established by means of a survey, the extent to which underwriting firms meet their obligations. The questionnaires were sent out mainly to those investment services enterprises which acted as syndicate leaders or were members of the consortium in an IPO carried out in the second half of 2000. The results of the survey were available in May 2001 and were passed on to the

The BAWe was especially interested in the activities of day trading centres. These firms require a license from the BAKred and if they engage in investment brokerage, are subject to supervision by the BAWe. Various day trading centres act exclusively for account and on behalf of other investment firms which provide the means for the customer to place orders electronically. Some direct banks and online brokers offer their customers direct access to day trading, i.e. the customers do not need to use a day trading centre.

Article 12 of BSK's Principles (Excerpt)

The allotment to private investors in the case of an oversubscribed issue shall correspond to one of the procedures set out below or a combination thereof. As there is no legal right to allotment, consortium members may freely decide which procedure they make use of, unless otherwise provided in the syndicate agreement or by the lead manager or the issuer.

Subsequent to a price determination procedure such as the bookbuilding procedure, one of the allotment procedures set forth below or a combination thereof, as the case may be, shall be taken into account: drawing lots, allotment according to order size, allotment by means of a specific quote, allotment after the point in time of receipt of the purchase offer, selection according to other objective criteria.

cific quote, or according to other pertinent criteria. Private investors shall upon request be notified of the type of allotment procedure used and the details thereof. Employees of investment services firms must not be given preference to retail investors. The Principles may always be adjusted to practical experience made in the future.

The BAWe monitors the investment firms' compliance with the Principles. The BAWe is convinced that the Principles provide an appropriate specification of the rules of conduct set up in the WpHG with respect to

Exchange Expert Committee. Compliance of the Principles through the issuers is monitored by the Admission Boards of the German exchanges.

Day Trading

Day trading is a type of securities trading where positions are opened and closed within the same day. Day traders attempt to use changes in prices in order to achieve a profit. Day trading providers, e.g. operators of day trading centres, furnish the necessary technical trading facilities such as trading in real-time or electronic order routing.

In view of the high risks involved in day trading and the danger of inexperienced investors being induced by misleading advertisements to engage in day trading transactions, the BAWe is planning to lay down rules of conduct for the day trading business of investment firms. In August 2000, the BAWe published a draft Guideline Relating to the Day Trading Business of Investment Services Enterprises and presented it to the relevant industry and consumer associations for written and oral consultation. In addition, interested investors were able to review the draft guideline on BAWe's homepage and to submit their comments via e-mail.

Day Trading

is a type of securities trading where securities or derivatives are bought and sold within the same day. The customers are provided with real-time prices and an electronic order routing system. This enables them to place orders electronically themselves. The orders are submitted without delay for execution to the stock exchange.

Alternative Trading Systems

The growing number of alternative trading systems have led to important changes in the financial markets. Though not classified as exchanges, alternative trading systems (ATS) are organised electronic systems which bring together buying and selling interests in securities, money market instruments or derivatives in exchange trading, according to homogeneous rules and with the aim of concluding a contract. ATS operators are supervised as investment services enterprises because they provide either investment or transaction brokerage, or own-account transactions on behalf of third parties.

Compliance of investment services enterprises operating ATS with the rules of conduct and organisational duties set out in the WpHG, shall be examined by the BAWe during the annual audits of the companies concerned. Moreover, the BAWe has prepared a questionnaire the results of which will provide an overview of the functioning and respective standard of existing systems. Given the fact that alternative trading systems are increasingly used for cross-border securities transactions, proposals for a homogeneous regulation of such systems are discussed also at a European level. In September 2000, FESCO presented a comprehensive report on the use of and the risks involved in alternative trading systems and suggested solutions for the regulation of such systems (www.europefesco.org at "Recent publications"). The next step will be to develop additional regulatory standards ensuring market integrity of alternative trading systems and the implementation thereof at a national level.

Rules of Conduct for Staff Transactions

On 15 July 2000, the BAKred and the BAWe publicised joint standards for the rules of conduct for employees of credit institutions and financial services institutions with regard to personal transactions of employees (guiding principles for personal transactions of employees). These have replaced the provisions governing the rules of conduct for members of staff released by the BAKred in December 1993, prior to the effective date of the WpHG. The amended guiding principles take account of recent developments impacting on the issues of investor and institutional protection. In addition, the scope of application of the provisions was extended to include financial services institutions which had only recently been subjected to supervision. Responsibility for taking internal provisions on personal transactions of employees has been shifted to the companies.

The rules take account of the interests of customer protection as well as the protection of institutions. Employees who do not have regular access to price-sensitive information are only upon the employer's request required to furnish information

Employees with Special Functions

Employees who in fulfilling their professional activities receive regular information that would be likely to have a significant effect on the market conditions for securities trading and trading in derivatives, bear a particular responsibility and must therefore comply with additional, special duties.

about their own transactions and on transactions carried out on behalf of others. Particular duties such as the ongoing disclosure of securities transactions and compliance with certain holding periods and trading prohibitions may be imposed only upon those members of staff who acquire regular knowledge of compliance relevant information. The guiding principles for personal transactions of employees contain minimum standards which give the enterprises sufficient scope for individual action and decisions.

The BAWe checks compliance with the guiding principles for personal transactions of employees during the annual examination pursuant to Section 36 WpHG. In 2001, the audit results should provide the BAWe and the BAKred with an overview of the state of implementation of the new guiding principles among companies.

Guidelines Governing the Rules of Conduct and Compliance

On 15 July 2000, the BAWe released a revised guideline on the rules of conduct relating to the commission business, proprietary trading on behalf of a third party, and agency business of investment services institutions (guideline on the rules of conduct). Thus, the scope of application of the guideline, which was originally released in 1997, was extended to comprise financial services institutions. The latter have been subject to supervision by the BAWe since 1998.

Moreover, the guideline was adjusted to recent developments. For instance, if an agency service is shared by several intermediaries, the customer

Investment Services Enterprises

- ◆ Credit institutions
- ◆ Financial services institutions
- ◆ Branches of a company domiciled abroad which provide investment services alone or in connection with non-core investment services on a commercial basis or to an extent that requires their provision on a commercial basis.

must be informed about any subordinate agency agreements with one or several third parties. This is intended to provide sufficient transparency of the fees and commissions involved. The obligation to disclose kick back agreements now includes monetary payments and soft commissions such as research results which the investment services enterprise receives and which are related to customer transactions. The enterprise is permitted to furnish such information in a general manner and must explain the details of existing agreements only upon request. Also to be disclosed are selling commissions and fees charged for keeping securities on behalf of a customer which are paid back under a commission contract. The duty to disclose such information should make the investment firm's own interests in co-operating with a financial intermediary more transparent.

In accordance with the guidelines on the rules of conduct, information must be requested from and provided to a customer only once, even if an investment service is rendered and shared by several investment services enterprises. A firm ranking second in line may take it for granted that previously involved enterprises

have complied with their legal obligation to question and inform the customer. Therefore, it only needs to point out the additional risks involved in its particular area of activity. The list of investments whose features and risks must be explained to the customer has been extended. Investment services enterprises are now required to inform customers about the risks of structured products such as reverse convertibles. The information requirements can be extended even further if several types of investment forms are combined.

In November 1999, the BAWe issued new guidelines on the details concerning the organisational duties of investment services enterprises, whose scope of application now comprises financial services institutions (compliance guideline). Smaller companies, which includes many financial services enterprises, are required to comply only with minimum requirements (basic compliance). But even these companies must be organised in a way that enables them to provide their investment services with the requisite degree of care, expertise and conscientiousness in the interest of their customers. The particular duties to be complied with have to be determined with a view to the respective company's size, business activity, and structure. The guidelines themselves set important minimum standards which leave sufficient leeway for the investment services enterprises to implement a compliance organisation enabling them to conduct business properly and to avoid conflicts of interest. Given the fact that smaller companies do not regularly have compliance relevant facts such as inside information, it is not normally necessary for them

to implement particular measures such as watch lists, restricted lists, or Chinese walls. They are not required to establish a compliance office. Instead, compliance with organisational duties may be monitored by a suitable member of staff or by management itself. Enterprises operated as sole proprietorships may find it useful to source certain areas out to a third party in order to fulfil the legal requirements.

Supervision of Investment Services Enterprises

The BAWe monitors compliance with the rules of conduct and reporting requirements by credit institutions and financial services providers furnishing investment services. Investment services are rendered in connection with transactions in shares, bonds, warrants, investment certificates, and futures and options, whereas stakeholdings, fund-linked life or pension insurance, or commodities are not included in the definition even if the latter are traded on a stock exchange. The same applies to spot trading on the energy exchanges of Leipzig and Frankfurt, established in mid-2000. However, due to the particular risks involved in futures trading the BAWe monitors compliance with the rules of conduct when commodity futures transactions are effected. This includes futures transactions carried out on the energy and commodities futures exchanges.

Compliance of each reporting party with the rules of conduct and reporting requirements is verified once every year by a suitable auditor. The BAWe may determine the contents of the examination and set particular points of emphasis, which enables it to exert influence on the

contents of an examination and to identify the weak points in a company. Furthermore, the BAWe may at all times require the provision of information and documents and conduct inspections itself without any particular reason. An auditor establishing serious violations against the reporting requirements or the rules of conduct is obliged to notify the BAWe without delay. In the year under review, the BAWe participated in 81 examinations of credit institutions and financial services institutions.

The BAWe's Investment Services Examination Ordinance of January 1999 sets binding minimum standards for the annual examination of credit institutions and financial services firms. Auditors' reports must have certain minimum contents. In addition, the auditors are required to fill in a questionnaire that summarises the examination results. This is to ensure that reports are prepared in accordance with homogeneous

Non-core Investment Services

- ◆ Safekeeping and management of securities on behalf of third parties, provided the German Safe Custody Act (Depotgesetz) is not applicable;
- ◆ Granting of credits or loans to others for the purpose of carrying out investment services by the enterprise that grants or has granted the credit or loan;
- ◆ Giving of advice with respect to investments in securities, money-market instruments or derivatives;
- ◆ Foreign exchange transactions or forward exchange transactions that are related to investment services.

Investment Services

- ◆ Financial commission business: the purchase and sale of securities, money-market instruments or derivatives in one's own name or for the account of a third party;
- ◆ Own-account trading: the purchase and sale of securities, money-market instruments or derivatives by way of own trading on behalf of a third party;
- ◆ Contract brokerage: the purchase and sale of securities, money-market instruments or derivatives in the name and for the account of a third party;
- ◆ Investment brokerage: the arrangement of or information on transactions on the purchase and sale of securities, money-market instruments or derivatives;
- ◆ Underwriting business: the underwriting of securities, money-market instruments or derivatives or the granting of similar guarantees;
- ◆ Portfolio management: the management of individual assets invested in securities, money-market instruments or derivatives on behalf of third parties with scope for decision.

standards, permitting a quick and efficient evaluation of the contents by the BAWe.

Examination of Credit Institutions

In the year under review the BAWe examined 416 private-sector credit institutions and foreign banks, as well as 2,366 savings banks and co-operative banks. Private sector banks and foreign banks are usually examined by an auditor, while savings banks and co-operative banks have their investment services business examined by auditors from the Savings Bank Association or from the unions of co-operative banks respectively. Unlike the years before, the BAWe did not determine any general areas of emphasis for the examinations. In individual cases, however, it did set a particular focus, for instance on the availability of online banks or the allotment of shares in an IPO.

Providing the BAWe with a comprehensive overview of the short-

comings, the questionnaires prepared in accordance with the Investment Services Examination Ordinance made it much easier to analyse the audit reports. A major part of the shortcomings concerned compliance with the duty to provide adequate documentation and the guiding principles for personal transactions of employees, as well as the information requested from customers and the provision of appropriate information to each type of investor. Some credit institutions failed to request the mandatory information from new customers who wished to subscribe to a new issue, and did not provide appropriate information about the new investment. Further findings concerned infringements with the obligation to pass on customer orders without delay. Some employees of banks had difficulties in providing professional information about innovative products. Quite often it was not possible to verify during an examination whether the necessary information had been requested from and provided to the customers. With respect to the

rules of conduct concerning personal transactions of employees the BAWe stated violations against the prohibitions on day trading and multiple subscription. Further shortcomings in compliance with the organisational duties concerned in particular the availability of online banks and in smaller-scale credit institutions, the position of a compliance officer.

The examinations revealed that many credit institutions had obviously reacted to previous complaints by the BAWe and adjusted their systems to the requirements of the WpHG.

Examination of Financial Services Institutions

At the end of 2000, the BAWe monitored 1,045 financial services institutions. In addition, the BAWe was notified of 1,889 enterprises acting as agents exclusively for account and on behalf of other investment services enterprises. Although these companies are not classified as investment services enterprises their activities are considered to be part of the respective investment services enterprises on whose behalf they act. Therefore, they are directly subject to supervision by the BAWe. In light of the legal requirements combined with the obligation to obtain a license, many companies which provide agency services prefer to act primarily on account of another, licensed investment services enterprise, or to provide services which do not require a license, such as furnishing investment advice. The BAWe did not determine a general area of emphasis for the examinations, but in some cases it set individual aspects of interest. In seven cases the examinations were carried out by

Financial Services Institutions

Enterprises which provide financial services and which are not credit institutions. The list of financial services which constitute an investment service but cannot be classified as banking business include

- ◆ Investment brokerage
- ◆ Contract brokerage
- ◆ Portfolio management and
- ◆ Own-account trading on behalf of others.

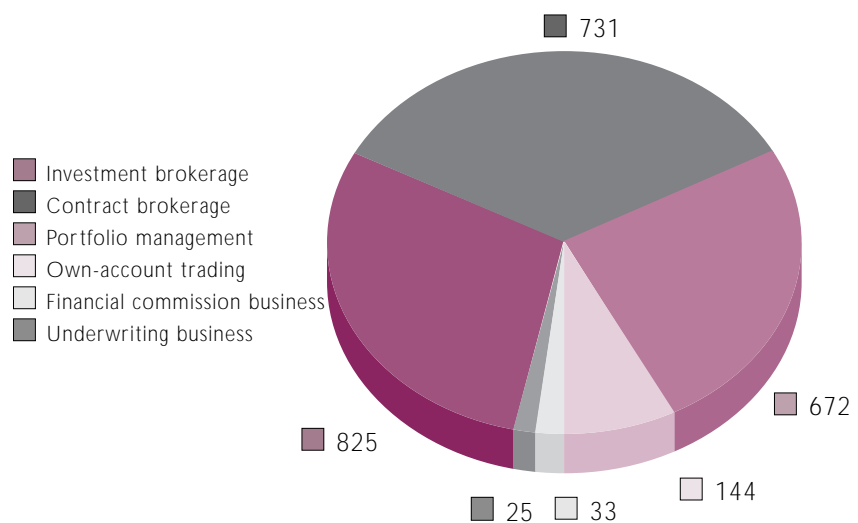
the BAWe itself because the financial services institutions involved had failed to appoint an auditor.

Many financial services institutions have remedied previously-stated shortcomings and are increasingly adjusting their organisational structures to their respective duties and obligations. An analysis of the audit reports revealed deficiencies in the proper provision of information, in particular with respect to information about the costs and fees involved in a transaction and about kick back agreements with other companies. A large number of financial services enterprises had failed to implement suitable measures to ensure the regular and orderly execution of

investment services. Further shortcomings were identified in respect of the record-taking requirements, especially the duty to keep a record of the customer's order and the corresponding instructions. Quite often no record was kept of the account manager's name and the time of the received order, as well as the execution thereof.

In particularly severe cases of sustained violations against the rules of conduct the BAWe gave the enterprises concerned an official order to embark on or to suspend particular courses of action. If it was not possible to remedy a deficiency or if an order was not complied with, the BAWe notified the Federal Banking

Financial Services Institutions including Securities Trading Banks: a Breakdown by Types of Business (As at 09 February 2001, including multiple indications)



Supervisory Office (Bundesaufsichtsamt für das Kreditwesen; short: BAKred) of the case. In eight cases the BAWe carried out exceptional audits. The fact that the number of exceptional audits was lower than in the previous year is mainly attributable to the decrease in the number of financial services enterprises supervised by the BAWe. Several audits were carried out due to indications of violations against the prohibition of cold calling or due to suspected churning. During an exceptional examination of a securities trading bank the BAWe found out that a manager of the bank had transferred to his personal securities account part of the shares maintained in a collective securities account on behalf of customers, and had used these shares as collateral for a loan. The case was passed on to the public prosecutor's office, which initiated investigations into the matter.

In autumn 2000 the BAWe, together with the auditors' association (Institut der Wirtschaftsprüfer; IdW), invited auditors of financial services enterprises for an exchange of experience. Discussions concerned in particular issues relating to the

interpretation of the WpHG and the Investment Services Examination Ordinance, especially the specific characteristics of the various financial services enterprises and of the sector, which must be taken account of by the auditor. The group of participants was mainly comprised of auditors who carried out an examination pursuant to Section 36 WpHG for the first time. In four workshops, each lasting for a whole day, cases of daily practice were presented to the participants and discussed under regulatory points of view. Due to a strong demand of close co-operation between the regulator and the auditors, the BAWe is planning to carry out further workshops in the future.

Investor Complaints

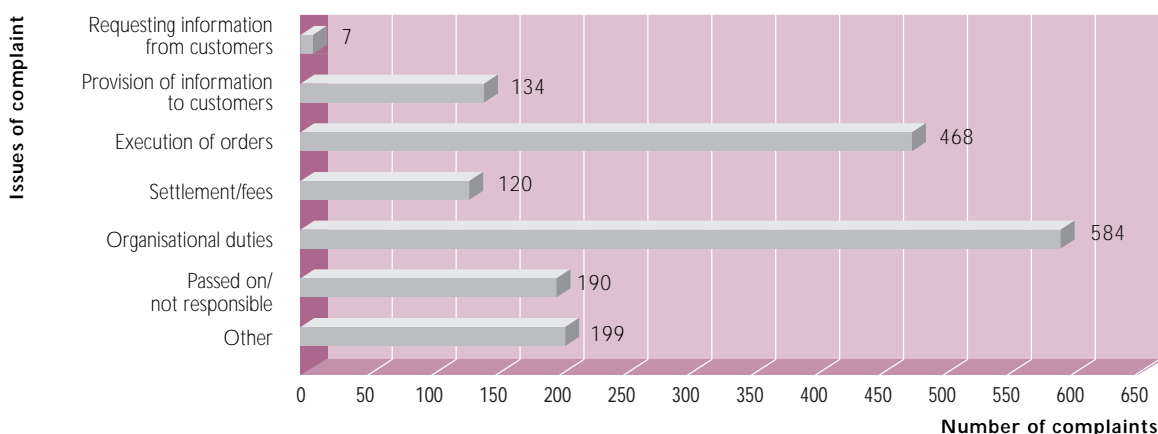
In the year under review the BAWe received 1,702 complaints from customers of credit institutions and financial services providers. This is a pronounced increase from the previous year (1999: 578). Investor complaints enable the BAWe to detect violations against the rules of conduct and weak points in a company's organisational structure. However, due to the fact that the

BAWe acts exclusively in the interest of the public it is not entitled to assist a claimant in a civil suit for damages.

During the first part of the year a particularly high amount of complaints concerned the inadequate availability of online banks. Therefore, the BAWe checked the extent to which they were able to meet the growing demand for securities, especially initial public offerings. A consultative meeting with representatives from direct banks was held in March, in the course of which the firms were reminded of their obligation to maintain and use effectively the resources and procedures required for the proper conduct of the investment services they offer. The BAWe placed a particular focus on these issues and during the examinations, informed itself about the state of implementation of the respective measures. A follow-up meeting in October revealed that the online banks had improved their availability by expanding capacities.

During the first half of the year a considerable number of investor complaints concerned the allotment

Complaints about Credit and Financial Services Institutions (2000; total: 1,702)



procedures used for initial public offerings. In particular, investors found they were not informed of the procedures employed in the event of oversubscription. Furthermore, they were often not aware that they have no legal claim to allotment. Many investors complained that subscription fees had been charged by credit institutions without the allocation of shares.

Similar to the year before, the majority of complaints about financial services institutions concerned the failure to provide adequate information about costs and fees. In addition, investors were annoyed about inadequately executed orders, which were often attributable to deficiencies in the organisational measures taken by the institutions regarding their technical equipment and workforce. A large number of complaints centred on unsolicited telephone calls namely cold calling. In 1999 the BAWe, considering this type of advertising to be an irregularity within the meaning of the WpHG, issued a general order prohibiting cold calling. This resulted in a decrease in the number of complaints.

Administrative Fines

Under the WpHG only certain infringements of the rules of conduct can be punished by an administrative fine. In the year under review the BAWe initiated seventeen proceedings to impose administrative fines against investment services enterprises who had violated the reporting requirements. The majority of these proceedings were triggered off by findings stated in the audit report. Two proceedings were punished by fines ranging between DM 4,000 and DM 10,000.

In three cases the original suspicions were invalidated, while another four proceedings were suspended. By the end of the year, eight cases were still being investigated.

Seven proceedings were initiated because the institutions had either failed to or were late in appointing an auditor. The total number of cases under investigation, including those originating from the preceding year, amounted to 36. Twelve institutions were charged with fines between DM 500 to DM 7,500. 17 cases were suspended because contrary to initial statements, the investment services enterprises involved had not provided investment services that were subject to supervision by the BAWe.

With the help of customer complaints and due to findings stated in the audit reports the BAWe established several violations against the general order prohibiting cold calling. In this context, three administrative proceedings were pending at the end of the year.

Outlook

The BAWe is planning to set up guidelines governing the provision of asset management services. The issue was discussed in two meetings with portfolio managers and representatives of the associations concerned. Of particular interest to the parties involved were the specific reporting and information requirements for asset managers, including information on commissions charged for keeping securities on behalf of a customer, kick back agreements, the risks involved in an investment, and the asset situation. In addition, the customer must be notified if losses have been incurred. In view of the

planned harmonisation of the rules of conduct within Europe the issue is also dealt with by FESCO, whose statements are supposed to be taken into account in the planned directive.

A growing number of investment services enterprises are sourcing out major areas of their investment services business to third parties. Specifically this concerns areas such as securities settlements and controlling functions. Thus, it has become necessary to formulate specific rules and requirements for the proper outsourcing of business activities. According to the WpHG and the Banking Act (Gesetz über das Kreditwesen; KWG), individual areas may be sourced out only if this does neither adversely affect the proper conduct of such services, nor the fulfilment of the duties incumbent upon the company, nor the respective audit rights and control powers of the regulators. The BAWe is planning to explain the prerequisites for outsourcing activities in accordance with Section 33 para. 2 WpHG in a circular that supplements a circular released by the BAKred on issues concerning the outsourcing of major activities within the meaning of Section 25 a WpHG.

INVESTOR PROTECTION - PROSPECTUSES

The duty incumbent upon an issuer of securities to prepare and publish a prospectus represents an important aspect in investor protection. This duty must be observed by all issuers of securities which are publicly offered in Germany for the first time. The prospectus must be deposited with the BAWe unless the issuer has applied for admission to exchange trading (official trading or regulated market). This duty concerns only the offering of securities, i.e. shares, bonds, or warrants, whereas the public offering of other participations in an enterprise such as stakes in a public limited company or in a company constituted under civil law, does not require the publication of a prospectus. Offers to acquire shares free of charge are not subject to the publication requirements either. Quite often young companies, aiming to make themselves known to a wider circle of investors, offer their shares free of charge via the Internet. However, an offer is deemed to be free of charge only when no secondary costs such as fees for Internet services of the company are incurred.

The BAWe examines a prospectus, prior to its publication, with a view to its completeness. However, it does not check the issuer's creditworthiness or the seriousness of the offer. The content requirements are set out in the Prospectus Ordinance. A prospectus must include a description of the securities, as well as of the issuer's activities and his assets, financial and earnings situation. As a rule, a prospectus contains the

latest disclosed annual financial statements including the audit certificate and offers comprehensive information to interested investors. However, this does not relieve investors from their duty to assess whether a company's business concept is likely to attain its success or not. Furthermore, investors should consider the prospects of selling the shares at a later point in time as some securities cannot even be traded outside an exchange. The statement frequently made in a prospectus that the company is planning to bring the shares to the market is usually only a non-binding declaration of intent.

As far as issuers of securities are concerned, the procedure is as follows: The BAWe confirms receipt of the prospectus and examines it within a period of ten days. The prospectus is deemed approved if these ten days have elapsed without complaints on the part of the BAWe. Usually publication of the prospectus is explicitly permitted before the above period is over. If a prospectus is not complete it is not allowed to be published. The BAWe may prohibit the public offering of securities if no prospectus has been published. Violations against the publication requirements are detected by means of research conducted on the Internet, others are pointed out to the BAWe by investors or the police. The BAWe has the right to require information from the issuer in order to investigate violations against the publication requirements.

The issuer must publish in a supra-regional official stock exchange gazette either the complete prospectus or an indication as to the agents from whom a free copy of the prospectus may be obtained.

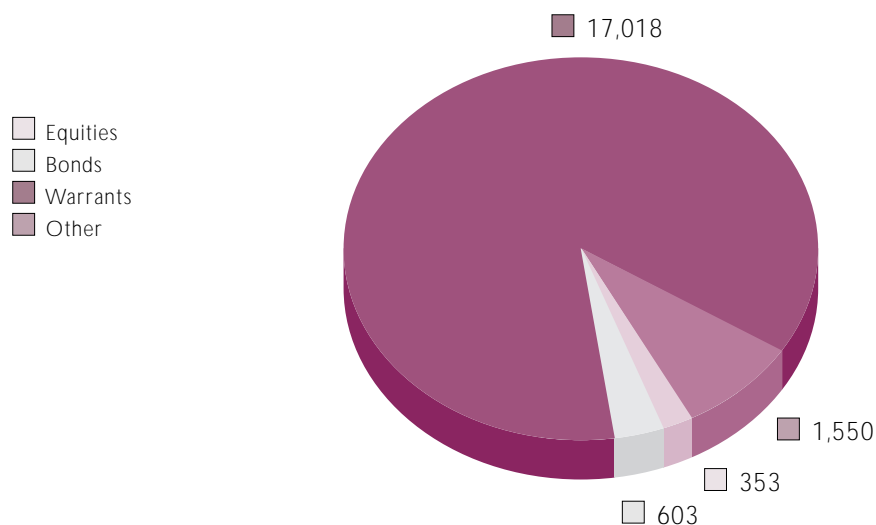
This is the normal procedure. Only when the prospectus has been published is the issuer permitted to offer the securities to the public. A full working day must elapse between the publication of the prospectus and the date of the public offer. For example, if the prospectus is published on a Monday the securities must not be offered before the next Wednesday. The BAWe charges a fee of not more than DM 400 for each prospectus. Under the amended announcement of the BAWe relating to the Prospectus Act and the Prospectus Ordinance of September 1999, offerors may obtain comprehensive information even before a prospectus has been deposited with the BAWe.

Deposit of Prospectuses

The number of initial public offerings increased considerably in 2000. Prospectuses for 19,566 newly issued securities were deposited with the BAWe (1999: 7,358), of which 17,018 related to warrants, 353 to shares, and 603 to bonds. The sharp increase in the number of newly issued bonds and warrants is striking. This was attributable to higher volatility of the securities markets, which provides a favourable environment for issuing warrants, and a growing interest among German retail investors in equities and innovative financial products. A survey conducted by the BAWe about the distribution of IPOs among the various industries revealed that besides the Internet and software sectors, also venture capital stocks accounted for a large number of issuances.

Publication of a prospectus was prohibited in 89 cases because the

Prospectuses Deposited with the BAWe (2000; total: 19,524)



issuers had failed to furnish some of the legally prescribed information. In particular, a fair amount of prospectuses (approx. 5%) did not contain original signatures. Twelve enterprises were prohibited from submitting a public offer of securities due to failure to publish a prospectus at all.

Securities Offers on the Internet

The announcement of the BAWe relating to the Prospectus Act and the Prospectus Ordinance deals also with issues relating to the public offering of securities on the Internet and specifies when an offer is deemed to be made in Germany.

A prospectus is required if the offer is addressed to investors in Germany, irrespective of the country in which the server is located. Notably, an offer appears to be addressed to investors in Germany in particular if it is made in the German language or if a German contact person is named. Investors in Germany may be excluded from the offer by means

of a disclaimer as well as other appropriate arrangements.

It is sometimes difficult to say whether a person actually offers securities or if they merely provide information about it. Someone who claims to offer only information can nonetheless be an offeror of securities if there exists an agreement in connection with the offer or if payments are made, i.e. if the person participates in the results of a successful offer. The distinction has to be made in view of the offeror's respective intentions. If, for instance, the websites of the information provider on the one hand and the offeror of securities on the other are very similar in terms of structure and content, this indicates that the information provider actually intends to offer securities. It is not possible to draw a clear line merely on the basis of abstract criteria. Instead, it must be determined in each individual case whether a firm offers information or securities.

Publishing a prospectus exclusively on the Internet is not permitted.

Even if securities are offered via the Internet, the prospectus or an indication as to the agent from whom the prospectus can be obtained must be published in a supra-regional official stock exchange gazette. Of course, the prospectus may additionally be made accessible on the Internet, which grants investors easy access to the information contained therein.

In May 2001, the BAWe compiled a list of the prospectuses deposited with it, which will soon be made available on the Internet. This will enable investors to inform themselves about issuers, offerors, or securities identification codes (WKN), and to establish when a prospectus has been deposited and published or when the offer will be made.

Cross-Border Securities Offers

In the year under review the BAWe received 22 prospectuses which had previously been admitted by other European regulators. If the certificate of admission makes it clear that the prospectus complies with the content requirements set out in the European prospectus directive, the BAWe monitors only the publication procedure but does not check the prospectus for completeness. In spite of the simplified procedure, however, the actual implementation of the principle of mutual recognition of prospectuses within the EU is still dissatisfactory. In the light of this, FESCO is making attempts at introducing homogeneous criteria for the mutual recognition of cross-border securities offers by means of the so-called European Passport for issuers.

If an issuer is domiciled abroad, the BAWe usually permits publication of

the prospectus in the English language. In 2000, 65 prospectuses were published in English.

A prospectus must be prepared also if shares are offered to German investors in connection with a takeover bid. If the target company is German the prospectus must be prepared in the German language. Given the fact that such offers are likely to have a considerable effect on the securities of the target company, in particular on prices and liquidity, German investors are considered to have higher information requirements under such circumstances. If, however, the target company is domiciled abroad the BAWe usually permits publication of the prospectus in English.

Administrative Fines

The BAWe investigated 129 cases of supposed failure or delay in publishing a prospectus and of violations against enforceable orders of the BAWe. In 24 cases the parties concerned were charged with fines ranging between DM 1,000 and DM 20,000. Another 42 proceedings were suspended, partly because suspicion was invalid. By the end of 2000, 62 cases were still pending. A growing number of fines were imposed on firms who offered securities on the Internet without having published a prospectus. One particular case concerned an offer submitted by a foreign enterprise in the German-speaking area.

MARKET INTEGRITY – PROHIBITION OF INSIDER TRADING

The BAWe monitors, for the purpose of counteracting prohibited insider dealing, all transactions in insider securities carried out on and off the exchanges. All securities which are admitted to trading on a stock exchange in Germany or in another contracting state to the Agreement on the European Economic Area are subject to ongoing supervision. In Germany, this includes securities which are admitted to trading in the third market segment (Freiverkehr). For this purpose, the BAWe has been vested with various rights to request information and carry out investigations.

Persons having knowledge of inside information are prohibited from taking advantage of this knowledge for the purpose of dealing in insider securities either on or off the exchange. Inside information is defined as information which has not been made public and which relates to one or more issuers of insider securities, or to insider securities, and which, if it were made public, would be likely to have a significant effect on the price of the insider security. Buying or selling securities upon knowledge of inside information is prohibited to both primary and secondary insiders. While a primary insider (Section 13 para. 1 WpHG) acquires knowledge of inside information by virtue of his profession, employment or duties, the way in which a secondary insider acquires inside knowledge is of no import-

ance. The secondary insider is not subject to the legal prohibition to pass on inside information and to make recommendations, but he may, upon passing on such information or making a recommendation, be liable to punishment as an aider or abettor.

Insider investigations are based on the results of a systematic analysis of the data reported to the BAWe. If a preliminary investigation by our market analysts confirms a suspicion, the BAWe requests the issuer and other parties involved to provide information relating to both the subject matter and the persons having knowledge of the inside information. The information received is compared with the data on insider transactions reported by credit institutions for the period in question. If in the course of investigations the BAWe establishes facts indicating a violation against the insider dealing provision, then it will report the case to the competent public prosecutor's office. Any violations against the prohibition to deal in, pass on, or to recommend insider securities, are punishable with imprisonment of up to five years or a fine.

Market Analysis

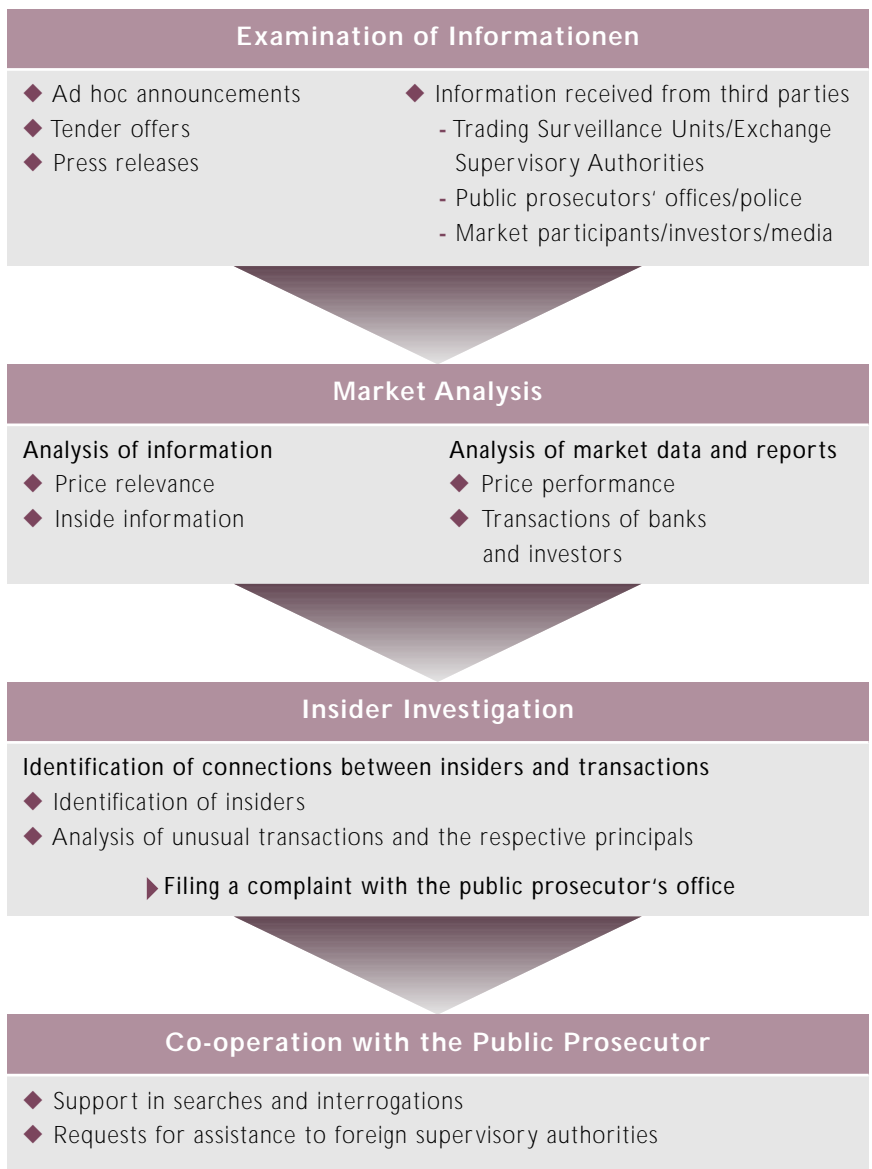
Before an insider investigation is initiated the BAWe analyses the trading environment in order to identify from the mass of financial and company information and trading charts those facts which indicate a breach of insider trading prohibition. Such analyses are based in particular upon new information about companies and on irregularities in the general trading pattern. In the year under review, further sources of information included

some 250 hints from the Trading Surveillance Units at the stock exchanges, and from market participants and investors. Analyses may also be triggered off by hints and requests for information from the media and by daily reports on economic issues. 51 analyses led to a formal insider investigation in the course of which pertinent information was requested from issuers and credit institutions and subsequently analysed.

Given the large amount of reported transaction data, efficient supervision requires the use of an electronic system. Developed in-house, Securities Watch Application (SWAP) automatically identifies deviations from usual trading patterns by means of statistical procedures. The system takes account of the peculiarities of the respective security or derivative and permits a comparison with the trading patterns of other securities or derivatives. Unusual trading be-

haviour can thus be identified and the resultant investigations may be carried out by the BAWe's analysts even without considering the respective ad hoc announcements. However, the majority of analyses concerns unusual trading patterns prior to the publication of an ad hoc announcement. Therefore, all ad hoc announcements are filed in an electronic data base and checked for irregularities.

Insider Supervision at the BAWe



If sufficient indications are found in the automatic procedure the BAWe will conduct intensive analyses, based on the transaction data reported in accordance with Section 9 WpHG. To start with, the BAWe determines a period to be investigated, which is usually related to the type of inside information. The likelihood of inside information impacting on the price of the securities must be seen against the general market background, taking into account all relevant factors which have an impact on the price formation process. Apart from those circumstances which are specific to the company, this includes economic developments as well as particular features of the sector, and the expectations of the market. Therefore, it is not possible to determine a certain percentage as an indicator of significant price relevance. It is not even necessary for the price to actually move since the information must only be likely to lead to a change. A price movement that takes place after the information has been made public may be an indication of the price relevance of such information. On the other hand, it is quite possible, for instance, that the publication of inside information does not lead to a change in the price at all because the effect is offset or over-compensated by other factors.

Experience shows that certain ad hoc announcements, for instance announcements concerning tender offers or insolvency proceedings, are most likely to have an effect on the price. The same applies to the decision of a company to buy back its own shares. Things are more complicated when it comes to assessing corporate figures, where it is necessary to take into account market expectations on the one hand and a peer group comparison on the other.

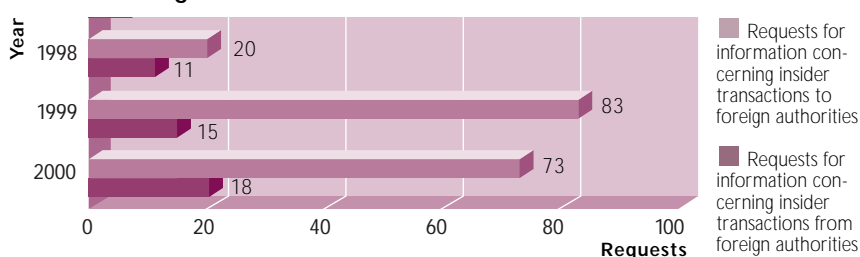
In the year under review the majority of analyses concerned Neuer Markt stocks, which was due to the large amount of ad hoc announcements and changes in earnings forecasts published in this market segment, and the resultant sharp declines in prices.

Insider Investigations

In 2000 the BAWe investigated 51 new cases of suspected infringements of the insider provisions. Added to this came 45 proceedings pending from the past. The large increase by 40% in the number of new investigations is mainly attributable to the fact that a growing proportion of transactions in Neuer Markt stocks were examined (19 cases). In 24 cases the suspicions proved to be unfounded. 22 cases were reported to the competent public prosecutors' offices. 50 investigations were still pending at the end of the year.

When insider investigations are carried out across borders the BAWe may upon request from foreign regulators require market participants to furnish information about securities transactions and the identity of the principal. The

Requests for Information Concerning Insider Transactions from and to Foreign Authorities



information received may be passed on to the requesting authority. In turn, the BAWe is also permitted to request foreign regulators to provide assistance in its own investigations. In the year under review, the BAWe made use of this right to exchange information in 73 cases, asking foreign regulators for assistance in connection with investigations into insider offences. 18 requests for assistance were submitted by foreign supervisors. Of these, 13 were related to unusual price increases in the run-up to the ad hoc announcement of takeover bids.

One case resulted in the final conviction of the accused on grounds of a violation against the insider trading prohibition. This was the first time a German court opened main proceedings in an insider case. Furthermore, two orders imposing punishment were issued which however, were still subject to appeal by the end of the year. Four proceedings were suspended by the public prosecutors in accordance with Section 153a of the Code of Criminal Procedure (StPO), against payment of a fine. Three cases were suspended pursuant to Section 153 due to insignificance. The year 2000 witnessed for the first time ever an issuance of judicial warrants of arrest in connection with investigations carried out by the public prosecutors. Of the five warrants that were actually issued, three were

suspended from execution against a security of up to DM 2 million.

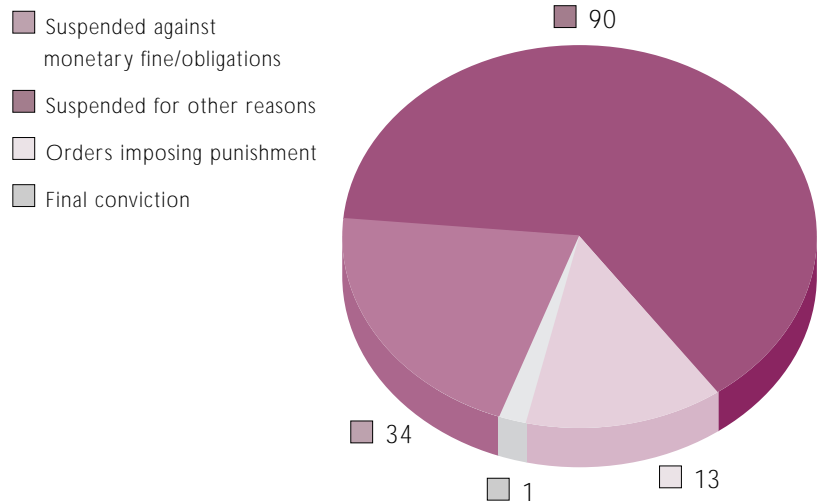
Outlined below are some of the cases concerned:

- ◆ On 26.08.1998, Moeller Holding GmbH & Co. KG submitted a tender offer to the shareholders of Felten & Guillaume Energie-technik AG (F&G) to buy all shares of the company at a price of DM 300 per share. The price of F&G shares was then DM 275. A few days before the offer was made the share price began to rise amid increasing trading volumes. The takeover plans and the details of the offer were inside information and were likely to have a considerable effect on the price. Owning 25% of the company, Gas-, Elektrizitäts- und Wasserwerke Köln AG (GEW) was a major shareholder of F&G. In his capacity as a member of the supervisory board of GEW, the then mayor of Cologne acquired knowledge of the takeover bid and the details thereof before the information was made public. On 05.08., 07.08. and 18.08.1998, he invested an aggregate amount of DM 75,000 to purchase via two credit institutions 300 F&G shares at prices between DM 245 and DM 254. By accepting the tender offer the accused realised a profit of DM 15,180. The BAWe reported the

case to the public prosecutor's office of Cologne. The local court of Cologne subsequently opened the trial for the first time ever on grounds of an insider offence. The accused was sentenced with a fine of DM 37,500. This sentence is not subject to appeal. Furthermore, on 25.08.1998, on the day before the ad hoc announcement was published, a former member of the board of Kölner Verkehrsbetriebe AG purchased 70 F&G shares. He realised a profit of DM 1,750 by accepting the tender offer. The accused admitted having received a hint from the board of managers of GEW. With the consent of the court, the public prosecutor's office of Cologne refrained from filing an official complaint (Section 153a StPO) for the time being, and suspended the proceedings against payment of a fine of DM 20,000.

- ◆ In June 1997 a German bank in Frankfurt am Main was requested by a British bank to sell registered shares of Aachener und Münchener Beteiligungs-AG (AMB) on behalf of a customer. The transaction volume would amount to 2-5% of the shares issued. Upon the customer's wish, neither AMB nor its major shareholders were to be informed in advance. The plan to sell this amount of shares was considered inside information within the meaning of Section 13 para.1 WpHG. The employee of the bank responsible for the transaction informed her immediate superior, which she was authorised to do. Her superior, in turn, informed AMB and a member of the bank's board of managers about the forthcoming place-

Notifications from Public Prosecutors' Offices Relating to Insider Proceedings that Have been Concluded in 1995 - 2000



ment. The latter, who was responsible for another area of activity of the bank, passed on the information to its customer AMB even before a buyer of the share package was found. While the passing on of information to the board of managers was still considered authorised behaviour, neither the employee's superior nor the member of the board were permitted to subsequently inform AMB. The information was not required by the recipient and was not submitted as part of the usual business activities. With the consent of court, the public prosecutor's office of Frankfurt am Main refrained for the time being from filing a public complaint and suspended the cases against payment of a fine of DM 35,000 (member of the board) and DM 18,000 (superior of the employee) respectively.

- ◆ On 01.10.1998, INFO AG published in an ad hoc announcement its decision to co-operate closely with SYSTEMATICS group, due to the acquisition of the

stakes in Systematics Business Systems GmbH by INFO AG and the simultaneous participation of the former in the share capital of the latter. According to the announcement, Systematics Business Systems GmbH was to be managed as an independent subsidiary of INFO AG. The takeover of Systematics Business Systems GmbH by INFO AG was an insider fact. A lawyer involved in the takeover negotiations invested some DM 25,000 to purchase 1,020 shares ahead of the ad hoc announcement. Having been requested by the BAWe to comment on the matter, the lawyer, who was a primary insider, sold all shares at a profit of DM 27,400. During the course of further investigations by the BAWe the lawyer eventually reported himself to the public prosecutor's office of Hamburg. The public prosecutor refrained from filing a public complaint (Section 153 a StPO) and suspended the case against payment of DM 24,700, which had been suggested by the lawyer's de-

fending counsel. The accused was thus able to retain a profit of DM 2,700.

Reporting Requirements for Transactions in Securities and Derivatives

Information on transactions in securities carried out on or off an exchange is virtually indispensable for an insider investigation. The legal reporting requirements pursuant to Section 9 WpHG concern all transactions in securities or derivatives which are admitted to trading on an organised market in a member state of the European Union or in another of the contracting states to the Agreement on the European Economic Area or are traded on the third market segment (Freiverkehr) of a German stock exchange. This applies to credit institutions, financial services institutions authorised to trade for their own account, subsidiaries within the meaning of

Section 53 para. 1 KWG, and companies admitted to trading on a German stock exchange.

Reporting volumes increased considerably in 2000. Having received 318 million reports in 1999, in 2000 the BAWe recorded a total of 525 reports - a 65% increase from the previous year's level. In the year under review, an average two million reports per day reached the BAWe, compared with some 1.2 million in 1999. The highest trading volume was recorded on 17 April 2000 when 4.3 million reports were submitted to the BAWe, even though there was no particular reason for such unusual trading activity.

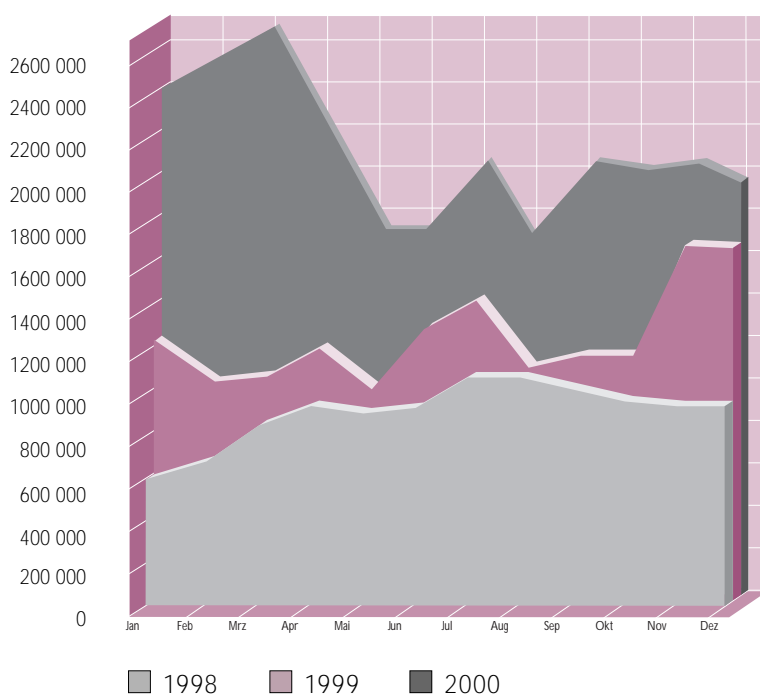
There have probably been several reasons behind the pronounced increase in the reporting volume in 2000. A major reason besides the expansion of exchange trading hours and the increase in the number of admitted companies is the higher

volatility of the securities markets. Furthermore, more private investors have started to invest in shares, often for private pension purposes. Of the 5,491 parties required to report, 4,999 came from Germany (1999: 3,402) and 492 from abroad (1999: 320). The reporting requirements incumbent upon foreign issuers, especially enterprises from the UK, Switzerland, the USA, and France, were mainly attributable to their membership in XETRA or Eurex. Like in the year before, the percentage of the reporting parties domiciled in Germany was 91.04 %.

There are still substantial differences in the quality of the data reported to the BAWe. Some institutions have largely automated their reporting procedure, and the faults contained in the reports are usually due to system errors. From the point of view of the reporting party it may be only a minor mistake to report to the BAWe that all securities transactions of a particular day were effected at a randomly chosen time of 7.00 p.m., but for the regulator that conducts an insider investigation the exact trading time is of utmost importance. If in the course of a day an insider fact occurs, the investigations become extremely difficult if the trading times reported to the BAWe are incorrect. Therefore, in such cases, the reporting institution is obliged to correct the false report.

Many reporting parties have linked their reporting programmes with other EDP programmes, for instance programmes generating settlement notes or customer account settlements. Changes made to these programmes often affected the reports on securities transactions submitted to the BAWe. Correct reports were suddenly missing or contained all

Monthly Average of Daily Reporting Volumes 1998 - 2000



kinds of different mistakes. One institution which had made amendments to a programme suddenly failed to report XETRA transactions effected after 6.00 p.m., whereas the reports on all XETRA transactions carried out before 6.00 p.m. and all other securities transactions were perfectly correct.

In the year under review the BAWe in co-operation with Deutsche Börse AG carried out several training courses for the reporting parties in order to assist them in establishing reporting facilities. The participants were informed about the legal foundation and the practical implementation of the reporting requirements. These courses were very successful.

Trading participants subject to the Ordinance on the Reporting Requirements Relating to Trades in Securities and Derivatives (WpHMV) do not need to report transactions carried out in an organised market of another European state if similar reporting requirements exist in the other state. With "newex" (New Europe Exchange), which took up operations in Vienna in autumn 2000, the reporting requirements are now as follows: Transactions carried out in the Official Market and the Semi-Official Market of the Austrian stock exchange which must be reported to the Austrian Securities Authority (ASA) are exempt from German reporting requirements. However, the BAWe must be notified of any transactions effected off the exchange.

Administrative Fines

In the year under review, one infringement against the reporting requirements in connection with an insider investigation was prosecuted

and punished by a fine. For the BAWe to be able to conduct insider investigations, requests for information submitted under Section 16 para. 4 WpHG must be complied with by the reporting parties during the prescribed period. One company was late in sending its replies of two requests of information submitted to it in connection with an insider investigation. In addition, the replies were incomplete. The company was punished by an administrative fine of DM 20,000.

The BAWe instituted twelve new proceedings based on infringements of the reporting requirements pursuant to Section 9 WpHG, adding the total number of pending cases up to 18. Five cases were concluded in the year under review and fines were imposed ranging between DM 15,000 and DM 75,000. The majority of the parties involved had displayed organisational shortcomings related to the technical aspects of data processing. Therefore, in order to avoid such violations against pertinent provisions, enterprises subject to the reporting requirements should contact the BAWe to find a solution for any problems they have. Nine proceedings were suspended due to insignificance or because suspicion was invalid.

Recommendations from Journalists - Scalping

Recommendations from journalists may have a significant impact on the price of securities. The trading of securities upon knowledge of the forthcoming release of a recommendation is an insider offence (scalping).

In a decision of 09 November 1999, the regional court of Frankfurt

confirmed the view that scalping is prosecutable and seen as an insider offence. However, the court refused to have a trial for other reasons because it would have been impossible to furnish conclusive evidence - that when buying securities, the accused had already taken the decision to recommend them in his TV show "3sat-Börse", which was broadcast two days later.

The BAWe thus welcomes the fact that the media are making efforts to find their own solutions for self regulation. In May 2000, the regulatory body of the German print media, the German Press Council, extended its press code to include rules of conduct for journalists relating to inside and other information which is likely to have an effect on securities prices. Furthermore, several publishing houses are making attempts at introducing internal rules of conduct. A well-functioning mechanism of self regulation will most probably be particularly effective in counteracting undesirable behaviour in this area.

Co-operation

Co-operation with the police and judicial authorities was intensified further. The BAWe assisted the public prosecutors by acting as an expert witness in nine preliminary investigations. In another six cases, employees of the BAWe took part in questionings of defendants and witnesses by the public prosecutor and/or the police.

The fifth forum on insider law and ad hoc disclosure took place on 14 March 2000. Jointly hosted by the BAWe and Deutsches Aktieninstitut and supported by the regional Bundesbank branch of Hesse, the event

was attended by some 100 public prosecutors, lawyers, police officers, members of exchange supervision and Trading Surveillance Units at the exchanges. Representatives of listed companies delivered speeches about "The WpHG: 1995 - 2000". Also in the year under review, a meeting was held with representatives of the State and Federal Offices of Criminal Investigation.

Price Manipulation

When investigating supposed insider transactions, the BAWe repeatedly found indications of price manipulation, especially on the Internet, including the dissemination of wrong information, false letters to shareholders and press reports, as well as recommendations of valueless shares in specialised Internet publications. Since the BAWe is not authorised so far to investigate and prosecute price manipulation (Section 88 Exchange Act) itself, facts indicating market manipulation are submitted to the exchange supervisory authorities of the Federal States or reported to the public prosecutors. In the year under review, 20 cases were handled accordingly. Indications of price manipulation are often directly correlated with possible violations against the rules of conduct and the provisions on ad hoc disclosure. In some cases, which were still pending at the end of 2000, issuers were suspected of having disseminated false ad hoc announcements in order to push the price of their own shares or to support them in a weak market. Primary insiders from the companies concerned supposedly benefited from the resultant high prices and sold their own shares before the public was informed about the company's

actual economic situation. The lack of supervision of price manipulation by a central regulator makes it rather difficult to combat such offences. This is particularly true for activities on the Internet, clarification of which often requires co-operation with foreign regulators. The BAWe welcomes the fact that the prosecution of price manipulation is intended to be made as one of its responsibilities within the scope of the Fourth Financial Markets Promotion Act.

MARKET TRANSPARENCY

AD HOC DISCLOSURE

Transparency is fundamental for the fairness and efficiency of capital markets. The obligation of issuers to disclose price relevant information without delay (ad hoc disclosure) provides all market participants with equal access to information which they may need for their investment decisions. The increasing use of electronic media, notably the Internet, enables even retail investors to acquire pertinent information without any particular delay. In addition, ad hoc disclosure helps to prevent violations against the insider trading prohibition. As long as it has not been published, any piece of price relevant information is considered to be inside information. Therefore, the immediate disclosure of such facts limits the time available for insiders to misuse their knowledge to the detriment of others.

Prerequisites for Ad hoc Announcements

The duty to immediately disclose price relevant information concerns issuers of securities admitted to official trading or to the regulated market of a German stock exchange (Section 15 WpHG) in case any new information which comes within their sphere of activity and which is not

Disclosure without Delay

Information that is likely to impact on the price of a security must be disclosed without – culpable – delay, irrespective of whether the exchanges are open for trading or not.

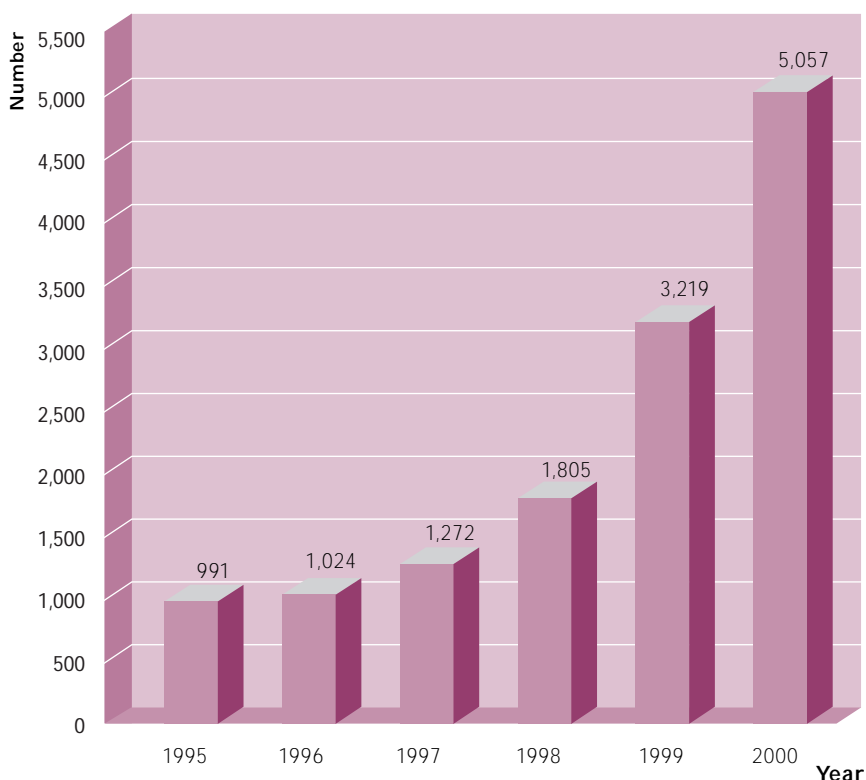
publicly known is likely to exert influence on the assets and financial position or the general trading position of the issuer. Such information must further be likely because of the above effects to have a considerable impact on the price of the securities. In the case of listed bonds it must be able to impair the issuer's ability to meet his liabilities.

Price relevant facts must be disclosed without delay. However, there is time for the issuer to verify whether the information is important enough to be likely to have a considerable effect on the price of the listed securities, but this must not result in a culpable delay in publicising the information. The duty to disclose such information without delay is not confined to normal trading hours and must be observed even when the exchanges are closed for trading. A major part of trading takes place off the floor, for instance in telephone trading, and outside the usual trading hours. Therefore, if a fact occurs after the market closes publicising facts on the next day, prior to the start of trading, would be too late. Similarly, any new information that occurs during exchange trading must be disclosed immediately while the exchanges are still open. Possible means of disclosure include dissemination by means of an electronic information system or publication in a supra-regional official stock exchange gazette. Furthermore, the BAWe and the stock exchanges should be informed about this in advance.

Number and Contents of Ad hoc Announcements

The BAWe received 5,693 ad hoc announcements in 2000, 5,057 of which were submitted by domestic

Number of Ad hoc Announcements from Domestic Issuers 1995 - 2000



issuers (1999: 3,219). The pronounced increase in the number of ad hoc announcements is attributable to the higher number of listed companies on the one hand and the growing propensity among many issuers to publish information on the other. The duty to disclose price relevant information applies to companies whose shares are admitted to official trading or to the regulated market, as well as to issuers of shares traded on the Neuer Markt. The latter published nearly three times as many ad hoc announcements as other listed companies.

The majority of ad hoc announcements concerned strategic decisions of issuers, i.e. structural changes, the acquisition or divestiture of stakes and mergers. As in the year before, many announcements provided information pertaining to financial statements or interim results. This

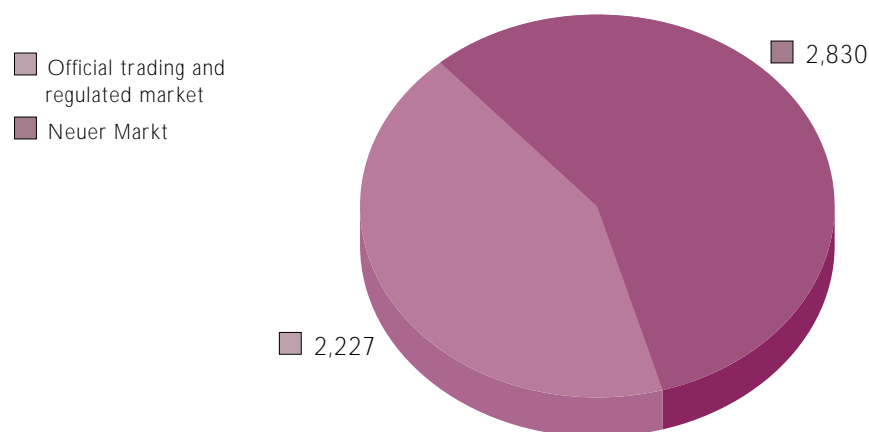
included deviations from profit or sales figures in the annual and semi-annual financial statements and in other interim reports, especially quarterly reports. The announcements specifically stated deviations from the figures achieved during the relevant comparable period.

The BAWe may on application by the issuer temporarily exempt the issuer from the publication requirement if publication of the information is likely to damage the interests of the issuer (Sec. 15 para. 1 sentence 2 WpHG). It has to be considered in each individual case whether the issuer's interest in the confidential treatment of information must be rated higher than the interests of the market. In the year under review, the BAWe received two applications for exemption from the publication requirement. One application was accepted, the other one was rejected. The temporary exemption was granted on the grounds of the issuer's attempts at restructuring the company.

Administrative Fines

30 cases were dealt with in the year under review. The BAWe imposed six administrative fines of DM 10,000 - DM 200,000 due to the failure to publish price-relevant information or because the information was delivered late. 13 cases were suspended, for instance because suspicion was invalid. 11 cases were still pending at the end of the year.

Number of Ad hoc Announcements from Domestic Issuers by Type of Notification 2000 (total: 5,057)



One particular case was brought to trial because the enterprise concerned did not accept the administrative fine imposed by the BAWe. The court confirmed the BAWe's view that the ad hoc announcement had deliberately been delayed and fixed a six-digit administrative fine. The company involved had purchased another enterprise and not published the requisite ad hoc announcement until ten days later.

Misuse of Ad hoc Announcements

Not every announcement published in the year under review concerned price relevant information occurred with the company. Numerous announcements did not meet the requirements pursuant to Section 15 WpHG. Some issuers, notably

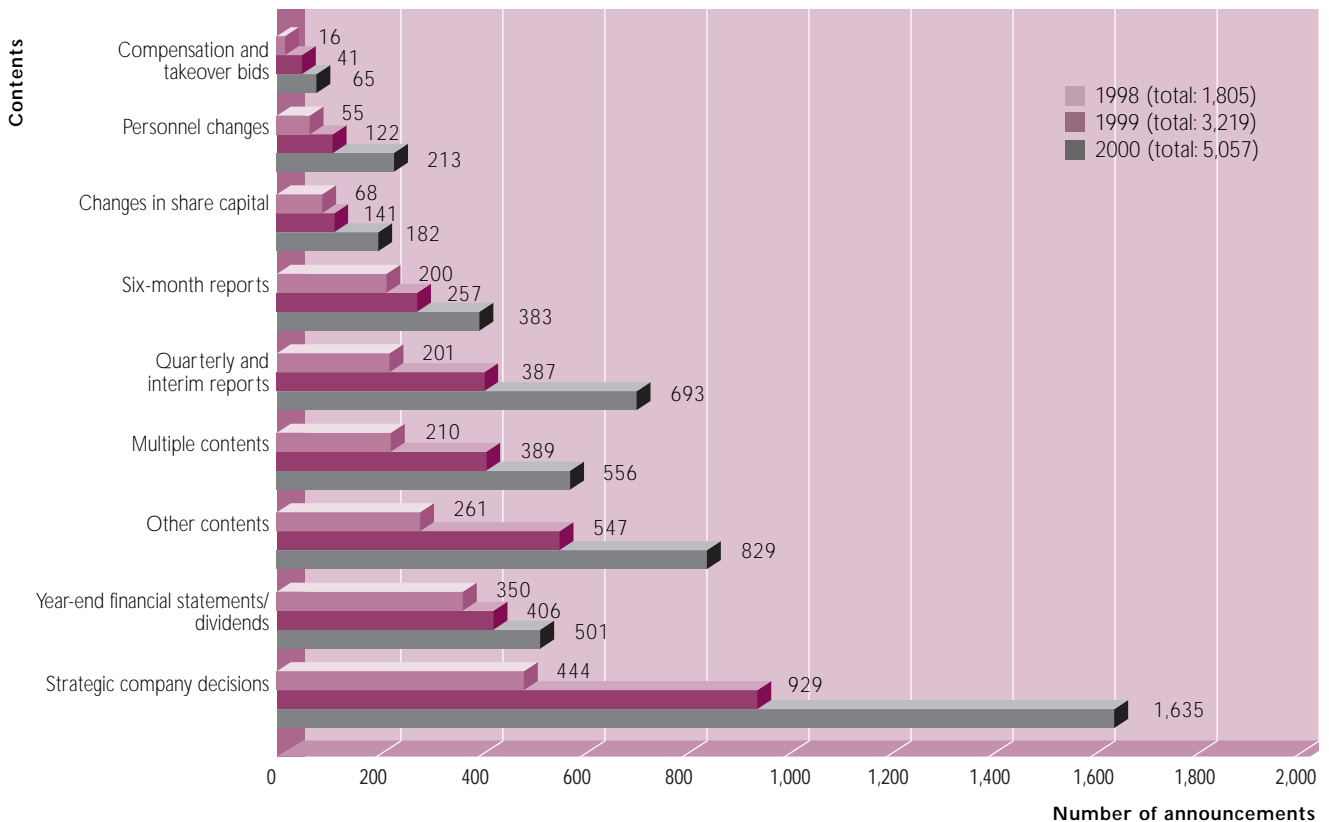
Neuer Markt companies, used the instrument of ad hoc disclosure mainly for public relations or advertising purposes. This is an undesirable development within the meaning of Section 4 para. 1 sentence 2 WpHG and makes it difficult for market participants to identify and make use of information which is really important.

In a reaction to the above, in March 2000 the BAWe sent a letter to all issuers requesting them to restrict the contents of ad hoc announcements to the contents required by the legislator. The letter is available on the BAWe's homepage (www.bawe.de at "Laws & Regulations/ Letters"). The description of price-relevant information should not take more than 20 typed lines. It is not appropriate to quote statements of board members or other persons in

order to repeat a fact that has been mentioned in the first part of the announcement. The same applies to the repetition of previously published information and to non-existent "facts". Furthermore, ad hoc announcements are not a suitable means of reacting to attacks from competitors, and must not include a description of the corporate profile or any full-length interim reports or annual financial statements. The latter may of course contain information that is subject to the disclosure requirements. In that case the company shall publish only the fact concerned and not the complete report, which may well extend over several pages.

In the second part of the year the number of completely or partly unnecessary ad hoc announcements declined. There were fewer an-

Contents of Ad hoc Announcements Published by Domestic Issuers in 1998 - 2000



nouncements containing several pages of quarterly or six-month reports from which the decisive information had to be distilled. Overall, the issuers reduced the size of their ad hoc announcements, but the situation was still far from satisfactory. In spite of the danger of losing credibility, numerous listed companies could not be moved by appeals such as the BAWe's letter of March 2000 to improve their information policy. Therefore, the BAWe suggested to make it clear within the scope of the Fourth Financial Market Promotion Act that ad hoc announcements must not contain advertising statements and must be clear and consistent. According to the BAWe, violations against these rules should be punishable by a fine.

Some issuers were suspected of making false statements about price-sensitive information. If, for instance, an issuer claims to have received a large order – a fact that must be disclosed immediately – while the actual size of the order is much lower, the BAWe may punish such misrepresentation by a fine of up to DM 3 million. Given the fact that often public prosecutors investigate such cases - suspecting them to be accompanied by a criminal offence such as price manipulation (Section 88 Exchange Act), the BAWe passes its findings on to the respective offices. The competent courts will then also decide about the breach of the disclosure requirements.

Other Issues

Again, the annual forum on ad hoc disclosure met with considerable interest. It is jointly hosted by Deutsche Börse AG, Deutsche Gesellschaft für Ad hoc-Publizität mbH (DGAP) and the BAWe. The following issues were dealt with: "The quality of ad hoc announcements is crucial for transparency", "Requirements to ad hoc disclosure in Germany and in the UK from the points of view of the regulator and the issuer", and "Extension of trading hours and its effects on disclosure".

XiQu AG and Hugin IR Services Deutschland GmbH joined the DGAP in providing technical ad hoc services to issuers in autumn 2000

and in spring 2001 respectively. The three providers submit ad hoc announcements to the BAWe and the exchanges concerned before the information is published, pass them on for publication to an electronic system for the dissemination of information, and furnish the BAWe and the exchanges with proof of the successful publication. Furthermore, they offer a separate channel for publicising important company information that is not subject to the publication requirements. This, too, is helpful in counteracting any misuse of ad hoc disclosure.

Online Access to Ad hoc Announcements

Current ad hoc announcements are available at:	
Internet:	www.bawe.de/links.htm#a1 www.dgap.de www.vwd.de/news/adhoc/main.html www.xiqu.de www.huginonline.de
Fax polling:	Computel (0190-576647)
Video text:	n-tv (page 460), ARD/ZDF (page 718)

MARKET TRANSPARENCY

HOLDINGS OF VOTING RIGHTS

The disclosure of changes in the holdings of voting rights of companies listed in the official market helps to improve stock market transparency. Investors making an investment decision should take account of information they receive about the shareholder structures of domestic companies.

Holders of voting rights are required to inform the BAWe and the respective listed company without delay if their shareholdings reach, exceed or drop below certain thresholds (5, 10, 25, 50, or 75 per cent). The listed company must make the information known to the public and send the BAWe proof of the publication. Holders of foreign listed enterprises whose shares are traded on a German stock exchange are not subject to the notification requirements. However, the companies themselves must disclose any information they receive on changes in the holdings of voting rights.

Notifications and Disclosure

At the end of 2000, 651 domestic and foreign companies were admitted to official trading in Germany. The BAWe received 656 reports (1999: 1,059) about changes in the holdings of voting rights. A large part of these notifications did not fulfil the legal requirements. Quite often the reports did not contain information relating to the relevant

threshold and the day on which the shareholdings had reached, exceeded or dropped below the threshold. Several issuers did not observe the obligation to count voting rights additionally (Section 22 WpHG).

Some shareholders notify the companies concerned of changes in their holdings of voting rights even though no threshold has been reached, and the information is subsequently published by the companies. The BAWe welcomes such voluntary notifications and announcements as an important contribution to more transparency in the capital market.

The BAWe may upon application by an investment services provider exempt it from the reporting requirements. The same applies to companies wishing to exploit the difference between the purchase and selling prices, provided less than 10% of the voting rights of the listed company are concerned. Such trading portfolios are not counted towards the total number of voting rights. In 2000, the BAWe accepted 74 applications for exemption (1999: 121).

Administrative Fines

233 proceedings were pending in the year under review. The BAWe imposed 36 administrative fines the amounts of which ranged between DM 2,500 and DM 17,500. Eleven fines were imposed on listed companies that had failed to publicise a change in their shareholder structure in time. Two fines were attributable to the delayed submission of a proof of publication, whereas the remaining 23 fines concerned shareholders who were late in announcing changes in their holdings of voting rights. Another 100 pro-

ceedings were suspended for various reasons, for instance because suspicion was invalid. The BAWe realised that some investment firms providing underwriting services did not inform issuers about the reporting and publication requirements even though this was expected by the latter. Quite a few delayed reports might have come in time had the institutions involved informed the issuers about the reporting requirements when the shares were initially admitted to official trading.

Data Base of Voting Rights

In August 1997, the BAWe established a data base containing major holdings of voting rights in officially traded companies. The data base is available on the BAWe's home page (www.bawe.de at "Data bases"). Several search options enable investors to retrieve current information about holdings of voting rights. The data are updated on the 1st and 15th day of each month based on the proofs of publication submitted to the BAWe. In 2001, the data base in its current form will be extended. It will be optimised in terms of user friendliness, and cross shareholdings and historical data will be made visible.

In August 2000, the board members of Deutsche Börse AG decided to weigh index components according to the issuers' respective free float, starting from June 2002. Holdings of 5 per cent or more will be considered major shareholdings. Against this backdrop, the BAWe's data base of voting rights is likely to meet with additional interest.

Outlook

Both the planned law governing company takeovers and the Fourth Financial Markets Promotion Act will contribute to improving transparency even further. The BAWe supports the fact that the present scope of application of the provisions governing the disclosure of major holdings of voting rights is intended to be extended to companies listed in the Neuer Markt. The revised provisions should include shareholdings in Neuer Markt companies which are also admitted to the Regulated Market. Furthermore, the BAWe would welcome the introduction of a legal requirement for primary insiders of listed companies, i.e. members of the boards, to disclose their transactions in securities. This would increase transparency in the capital market.

Once the Fourth Financial Markets Promotion Act has come into force, reporting parties shall be given the opportunity to submit their reports electronically by means of an Internet-based form. It will then be possible to submit the data either by mail or through the Internet, by means of an electronic code. Irrespective of the way of transmission, the data will be placed on the BAWe's website as soon as it has been checked for completeness and correctness. This procedure is intended to facilitate the submission of reports while at the same time provide market investors with information about changes in shareholder structures without any major delay.

CO-OPERATION IN GERMANY

Securities Council

The securities council (Wertpapier-rat) convened for its annual meeting in November 2000. Besides representatives of the 16 Federal States, the meeting was also attended by representatives of the Federal Ministries of Finance, Justice, Economics and Technology, and of the Deutsche Bundesbank as well as the Federal Banking Supervisory Office (BAKred). The securities council advises the BAWe in fundamental issues concerning its regulatory activities. In its meeting the council dealt with the growing number of those ad hoc announcements which did not comply with the legal requirements or whose contents were false. Further issues of discussion concerned developments in insider investigations and the measures taken by online banks to improve transparency and the allocation procedures in IPOs. Last but not least the securities council discussed a draft guideline on day trading and amendments to existing guidelines, for instance the Guideline on the Rules of Conduct. Also on the agenda was the current stage of the planned takeover legislation and of the Fourth Financial Markets Promotion Act in the Federal Ministry of Finance (BMF). The BAWe informed the participants about recent developments at an international level, in particular with respect to IOSCO and FESCO.

Forum for Financial Market Supervision

On 03 November 2000, the BAKred, the Federal Insurance Supervisory

Office (Bundesaufsichtsamt für das Versicherungswesen: BAV), and the BAWe signed an agreement on future co-operation. In a new forum for financial market supervision, the presidents of the Supervisory Offices and Bundesbank's director for financial market supervision discuss issues of cross-sector interest. The meetings are further attended by the responsible state secretary of the BMF. In light of the growing importance of bancassurance concepts and the trend towards large groups of financial services providers, co-operation between the various regulators and Deutsche Bundesbank is becoming increasingly important.

The forum shall provide a basis for the regular exchange of information about major observations and experience in securities supervision. The forum's first meeting was hosted by the BAKred in Bonn and took place on 19 December 2000. The participants discussed the issues of stakeholder control within the meaning of the KWG and the Law on the Supervision of Insurance Undertakings (VAG), corporate governance, as well as the future method of certification of individual pension insurance schemes that will receive special tax treatment.

Federal Banking Supervisory Office

The BAWe co-operates closely with the BAKred, in particular in supervising firms that provide securities services. Under the functional approach, the BAKred is responsible for the admission and solvency control of companies, which includes verifying the reliability and professional qualification of managers and

the ongoing supervision of the institutions' economic situation. The BAWe, in turn, is responsible for the supervision of customer transactions in securities and derivatives. Specifically, it monitors compliance of the firms with the rules of conduct and the organisational duties which are designed to ensure the proper execution of transactions in the customers' interests.

An intensive exchange of information and data between the two authorities helps to exploit synergies in supervision. Beyond this, various working groups hold regular meetings to discuss questions of interpretation and definition. Among the issues dealt with in the year 2000 ranked the supervision of bound agents and participants in energy spot trading, as well as the distinction between portfolio management and discretionary commission business.

As far as the regulatory activities of both authorities are concerned, they co-operate closely in terms of elaborating and announcing joint ordinances, guidelines, announcements and notices. In July 2000, the BAKred and the BAWe published their joint announcement concerning personal transactions of employees of credit institutions and financial services institutions (guiding principles for personal transactions of employees)

Working Committee of the Federal States on Securities and Exchange-related Issues

Co-operation between the exchange supervisory authorities of the Federal States has been given an institutional framework in the Working Committee of the Federal States on Securities and Exchange-related Issues (Länderarbeitskreis Börsenwesen). In view of the close correlation between exchange and securities supervision the meetings are regularly attended by a representative of the BAWe. The fact that the BAWe is responsible for international co-operation in exchange matters makes it particularly important to share information. The issues of common interest dealt with by the working committee during three meetings in March, June and November 2000 concerned questions of market supervision, market manipulation and possible provisions on price stabilisation in Germany. Further areas of discussion included the legal framework for the erection of trading screens of foreign exchanges and the performance of the energy exchanges.

Exchange Expert Commission

The president of the BAWe is regularly invited to attend the meetings of the Exchange Expert Commission (Börsensachverständigenkommission: BSK). In light of the low acceptance of the takeover code, in February 1999 the BSK prepared a paper suggesting the creation of legal provisions governing corporate takeovers. In June 2000, the Federal Ministry of Finance presented a consultation paper on corporate takeovers, which was replaced in March 2001 by a draft law on corporate takeovers and the purchase of securities.

Another key issue was the allocation of securities in an IPO, which was frequently criticised as lacking in transparency. During the first half of 2000 many IPOs, notably in the Neuer Markt, were oversubscribed. On 01 July 2000, the BSK published its "Principles for the Allotment of Share Issues to Private Investors", which aim at ensuring a suitable degree of transparency on the allocation of shares to investors, especially when an IPO is oversubscribed.

INTERNATIONAL CO-OPERATION

The BAWe is responsible for co-operation with regulators of foreign exchanges and securities markets. Given the fact that there is a growing trend towards globalisation of securities trading as well as among market participants, while the states' individual regulatory systems are still restricted by national borders, international co-operation between regulators is becoming increasingly important for the functioning of effective capital market supervision. In the year under review, the BAWe made further efforts to place the exchange of information with foreign regulators on a sound basis. Much importance was attached to co-operation in international forums and the development of common regulatory standards.

Co-operation within Europe

EU Action Plan

In May 1999 the European Commission presented an action plan to the Council of Economic and Finance Ministers (ECOFIN) whose purpose it is to establish a common European market for financial services. The action plan requires that European rules and regulations must be updated. In March 2000, the European heads of state and government agreed at the European summit of Lisbon to fully implement the action plan for financial services by 2005 at the latest. In November 2000, the European Commission presented its Third Progress Report on the action plan which contained the following list of priorities:

- updating the Stock Exchange Admission and the Prospectus Directives,
- implementing an announcement for a new EU accounting strategy,
- updating the Investment Services Directive and harmonising the rules of conduct,
- a directive on market abuse,
- a directive of the European Commission on electronic commerce in the financial services sector,
- implementing a Securities Committee.

The Group of Wise Men – Lamfalussy Report

In July 2000, a committee of wise men chaired by Baron Alexandre Lamfalussy was mandated by the Council of Economic and Finance Ministers (ECOFIN) to examine the legal framework for the European securities markets. In particular, the mandate included the task to review the process of law-making in the European Union. The committee tried to find ways to adjust European legislation quickly and flexibly to the developments in the securities markets. Finally, suggestions were to be made on how to remove obstacles in an integrated European financial market, in order to achieve greater convergence of regulatory practices in light of current market developments.

In November 2000, the committee of wise men presented an interim report, and a final report on the regulation of European securities markets was presented on 15 February 2001. The latter describes the advantages of an integrated European financial market and outlines the developments on the European financial markets, as well as the main problems of the existing legislative procedure in Europe. The wise men

demand a four-level approach to implementing a more flexible and more efficient system of law-making. At the first level, the EU would agree on framework legislation passed in a directive or regulation. At the second level, a newly created Securities Committee would reach agreement on the technicalities of the new legislation. Consisting of representatives of the Member States and headed by the EU Commission, the Securities Committee would receive support and advice from a group of representatives of EU regulators, comparable to what is known from FESCO. At the third level, enhanced co-operation among the regulators and the development of common regulatory standards is intended to ensure the implementation of European legislation across the Member States. The fourth level involves stricter control of the timely implementation of European legislation at a national level.

The four-level approach of decision-making proposed in the Lamfalussy report was passed by the heads of state and government at their summit in Stockholm in March 2001.

Planned European Directives

A directive on electronic commerce was passed in May 2000. In accordance with the freedom to provide services and the freedom of establishment, such services may be offered throughout the EU provided they comply with the legal requirements of the providers' respective home countries. The directive is applicable especially to online services. It contains provisions relating to the place of establishment of service providers, transparency requirements, advertising, direct marketing, the conclusion of contracts in electronic business, liability

of intermediaries, the dealing of disputes, and the role of national authorities. The directive shall be implemented at Member State level within 18 months.

The directive governing the distance marketing of financial services is likewise intended to ensure the protection of investors. The directive concerns financial services agreements which are concluded exclusively through remote means of communication. Though originally scheduled for release in the year 2000, the directive has not yet been passed.

European Passport

European investment firms wishing to provide services across borders may take advantage of the European Passport. Investment firms domiciled in a Member State of the EU or the EEA which are licensed in their home state are permitted to offer their services or establish a branch in another Member State without requiring a separate admission from the host state. Under a European Passport such companies need to be supervised only in their home country. An exception is made only with respect to the rules of conduct governing the firms' relationship towards their customers. Compliance

with these rules is verified in the host state. It would be desirable to transfer the responsibility for monitoring compliance with the rules of conduct to the home states as well, but this would require an appropriate degree of harmonisation of these rules to benefit investors.

At the end of the year under review, 1,297 investment firms provided business in Germany under the European Passport. They came from 13 European countries, with nearly two thirds being from the UK. 351 German investment firms made use of the European Passport to provide services in the EEA.

FESCO

The Forum of European Securities Commissions (FESCO) was founded in December 1997 by 17 securities regulators of the European Union with Norway and Iceland as member states of the agreement on the EEA. The president of the BAWE was re-elected FESCO chairman in 2000. The 17 members, the BAKred, Banca d'Italia, and the Belgian pension fund have signed a multilateral Memorandum of Understanding (MoU) for the purpose of facilitating the exchange of information between members and improving transparency, investor protection

European Passport

Investment services enterprises are entitled to receive the European Passport for taking up business in another Member State of the European Union (EU) or the European Economic Area (EEA) due to an admission from their home countries. The European Passport permits them to establish branches in other Member States of the EU or the EEA and to offer their services in these countries without having to undergo a separate application procedure in the host country. As a rule, the companies are supervised by their respective home countries. An exception is made only for the rules of conduct, compliance with which is monitored by the host state.

FESCO

The Forum of European Securities Commissions was founded on 08 December 1997 by 17 European securities supervisory authorities. The organisation's task is to improve investor protection and increase the transparency and integrity of the markets. The members exchange information and experience, develop common regulatory standards in experts groups, and assist each other in monitoring the markets.

and the integrity of the European securities markets respectively. All FESCO standards, consultative papers and press releases are made available to the public on FESCO's homepage (www.eurofefesco.org).

Under the EU action plan, FESCO elaborates proposals and recommendations for new legislative measures of the EU for the securities sector, thereby making sure that the practical experience gained by the regulators is taken account of in the planned legislation. Besides preparing a definition for "professional investors" and a paper on the regulation of alternative trading systems, FESCO made suggestions for regulating market abuse at a European level and for a European Passport for issuers.

FESCO's chairman participates in the meetings of the "Financial Services Policy Group" and of the "Round Table of Regulators". Furthermore, FESCO has been granted observer status with the five forum groups of the European Commission responsible for the implementation of the action plan, and with the forum of High Level

Securities Supervisors (HLSS). Here, FESCO contributes to improving market transparency and the fair treatment of investors.

Experts Groups

Standards for Investor Protection

The experts group "Standards for Investor Protection" deals with the harmonisation of the rules of conduct for investment services firms. In March 2000, the group presented a definition of "professional investors" which include, according to the definition, all licensed and regulated investment services enterprises. Moreover, investors fulfilling certain requirements to the size of their portfolios, professional experience etc., may in accordance with a special procedure be categorised as professional investors. The different categories of investors shall take account of the different protection requirements of the various groups of investors when it comes to applying the rules of conduct. This should prevent over-burdensome regulation. In addition, harmonisation within Europe will facilitate the cross-border provision of investment services.

Market Abuse

This experts group deals with market abuse. So far, the rules on market abuse implemented by the various member states are far from homogenous. In September 2000, the group presented its first proposal for a European regime against all kinds of market abuse, including insider dealing and market manipulation such as the dissemination of false or misleading information. Of these, so far only insider dealing has been regulated at a European level. The group further suggested the creation of a European network of

securities regulators which shall interpret and prosecute individual instances of market abuse in a co-ordinated fashion. In a second step, the group is elaborating standards for measures to prevent market abuse.

Primary Market Practices

This experts group has prepared standards for price stabilisation and the allotment of shares. With regard to stabilisation, the group has adopted the principle of a "safe harbour" from Anglo-Saxon law, according to which actions of market participants are not to be deemed price manipulation if the respective rules on stabilisation have been observed. This more or less supplements the work done by the experts group "Market Abuse". Furthermore, the group suggested rules rendering the allotment of newly issued securities more transparent for investors. The draft was opened to consultation in autumn 2000.

Alternative Trading Systems (ATS)

In September 2000, this group presented a comprehensive report on the various trading platforms which exist beside securities exchanges. The report analyses the benefits and risks of alternative trading systems and makes suggestions as to the regulation of such systems. FESCO submitted it to the European Commission as a contribu-

Alternative Trading Systems

Though not classified as exchanges, alternative trading systems (ATS) operate electronic systems which bring together buying and selling interests according to rules set up by the system operator. Trading results in an irrevocable contract.

tion for a Green Paper on the amendment of the European Investment Services Directive. In a next step, the experts group will elaborate concrete standards for the regulation of ATS which are intended to be applied by the FESCO member states until the ISD has been amended.

European Public Offers

In May 2000, the experts group presented its consultative paper "A 'European Passport' for Issuers" on the mutual recognition of securities offers. Under the FESCO proposal, the prospectus would be divided into a Registration Document containing information about the issuer, and a Securities Note that contains information about the securities offered or admitted to exchange trading. The dissemination of such documents would be permitted also through the Internet or other electronic communication facilities. It is the aim of the paper to facilitate the mutual recognition of prospectuses throughout Europe and to grant investors easier access to relevant information contained in a prospectus. Issuers will benefit from a reduction in the time and costs involved in preparing the prospectus. The paper was open to consultation at a European level for a period of three months. The final paper, which takes account of the results of the consultation procedure, was published on 17 January 2001. The European Passport for issuers may now become reality, based on the standards created by FESCO. In scope of the action plan, the European Union is going to revise existing legislation, in particular the Admission Directive and the Listing Particulars Directive, with a view to removing obstacles to the procurement of capital across Europe.

International Accounting Standards (IAS)

A recently established experts group on accounting issues is examining ways for FESCO to contribute to the implementation of IAS in Europe and the ongoing supervision thereof. It is planned to set up working groups that comment on and deal with proposals presented by the International Accounting Standards Committee (IASC) and the European Commission, as well as the homogeneous implementation of IAS throughout Europe. The European Commission has stressed the importance of the role played by the securities regulators in this process, in particular in the ongoing supervision of the proper and homogeneous use of the International Accounting Standards.

FESCOPOL

FESCOPOL, a group of top representatives of national regulators, was set up in order to implement the multilateral Memorandum of Understanding (MoU). Besides discussing issues concerning the regulator's daily work, FESCOPOL makes continuous efforts to improve the exchange of information under the MoU. FESCOPOL enables FESCO members to react in a co-ordinated fashion if international matters require co-operation at more than a bilateral level. Particularly helpful has been the regular exchange of experience and knowledge about regulators of third countries refusing to furnish information.

Outlook

In 2001, FESCO will deal with the supervision of clearing and settlement organisations, the publication of ad hoc announcements, and the harmonisation of reporting, as the legal framework surrounding these

areas differs strongly from one major financial market in Europe to another. From a German point of view in particular, harmonisation of these areas is of major importance in view of increasing co-operation between exchanges.

Co-operation in IOSCO

Much of the global co-operation between securities regulators takes place through the International Organization of Securities Commissions (IOSCO). The BAWe is a member of IOSCO's Executive Committee, i.e. the central organisation, and of the Technical Committee where the regulators of the 15 most important capital markets co-operate to develop global regulatory standards. Furthermore, the BAWe is represented in each of the five working groups of the Technical Committee and participates in the drawing up of IOSCO's reports and resolutions.

In its report "Objectives and Principles of Securities Regulation" released in 1998, IOSCO set up principles for an effective functioning system of securities supervision. The stage of implementation of the principles is examined by means of a questionnaire sent out to the various member states. The replies received from the members are currently being analysed, with a particular focus lying on the question whether the level of implementation stated by the respective member state is correct. The related tasks are carried out in co-operation with international financial organisations, notably the World Bank and the International Monetary Fund, as well as the regional development banks.

IOSCO's 25th Annual Conference took place in Sydney, Australia, in

May 2000. The main purpose of the conferences lies in presenting and where applicable, passing proposals and recommendations for international standards. IOSCO's reports and resolutions are available on its homepage (www.iosco.org). The issues dealt with on the conference concerned areas of current interest to the securities markets, such as the facilitation of public offerings across borders, the opportunities and dangers of the Internet, the regulation of the New Economy, and the transformation of exchanges into exchange-listed and profit-seeking enterprises.

IOSCO

The International Organization of Securities Commissions was founded in 1983, developing out of a pan-American organisation. Today it comprises 165 members from over 90 countries. The organisation is first of all a forum for exchanging experience. It takes efforts to develop globally accepted standards in major areas in order to guarantee the functioning and safety of the international financial system. A major objective of IOSCO is to improve co-operation between the supervisory authorities and to provide mutual assistance in the prosecution of breaches of law.

At its annual conference, IOSCO passed a bulletin on investor protection and set up a working group in which Germany is represented. The working group will draw up an overview of the existing national rules and usage concerning the allotment of shares, and possibilities for existing shareholders and the management to sell their shares. This is

intended to make the current regulatory practice of the various member states more transparent.

"Demutualisation" is the heading of an analysis conducted by IOSCO's Technical Committee into the regulatory issues resulting from the transformation of exchanges into listed profit-seeking enterprises. Of particular interest is the question to what extent the functioning of a demutualised exchange depends on certain corporate structures on the one hand, and on the different ways of dealing with conflicts of interest in carrying out supervisory functions on the other. The Technical Committee has presented a Discussion Paper on the issue that is subject to consultation by all interested parties.

IAS Standards

IOSCO passed a resolution at its Annual Conference in Sydney, recommending all member states to permit foreign issuers to prepare their balance sheets according to International Accounting Standards (IAS). IOSCO's recommendations refer to the IASC 2000 Standards developed by the International Accounting Standards Committee (IASC). Furthermore, the recommendation comprises an interpretation of IAS details elaborated by the IASC.

After several years of preparation, in 1995 IOSCO and the IASC agreed that the IASC would set up core standards for the preparation of annual accounts. IOSCO would then check the suitability of these IAS for cross-border offerings of shares. After the IASC presented its standards in 1999, IOSCO has now concluded its thorough analysis of IAS by passing in Sydney the above-described recommendation.

By signing this agreement, all IOSCO members have declared their willingness to accept (group) financial statements prepared by a foreign enterprise in accordance with the IASC 2000 standards. The recommendation was also approved by the SEC of the USA. Implementation of the resolution at member state level would take a substantial burden off issuers throughout the world. While in Germany annual accounts prepared according to IAS are already accepted, other member states, including the US, have yet to implement IOSCO's recommendation into national law. Therefore, IOSCO will verify at the end of 2001 to what extent member states acknowledge financial statements of foreign issuers that have been set up in accordance with the IASC standards. Even today, though, IOSCO's resolution has practically made IAS the global standard, and the IASC has become the organisation determining future international accounting issues.

IOSCO's work in the area of accounting forms part of a project intended to make the procurement of capital on international financial markets more (cost) efficient, which in turn would facilitate the cross-border offering of securities and listings abroad. One major step was the harmonisation of the national provisions on prospectuses submitted by foreign issuers. In 1998, IOSCO developed International Disclosure Standards (IDS). These set up maximum content requirements to prospectuses which are not to be exceeded by the national provisions. An investigation conducted into the matter in the year under review revealed that most member states of the Technical Committee have implemented the IDS.

Internet Task Force, Surf Day

By passing in 1998 its report "Securities Activities on the Internet", IOSCO was the first international organisation to elaborate guidelines for the regulation of Internet activities. The Technical Committee set up a task force chaired by the president of the BAWe that dealt with regulatory issues concerning new developments in Internet usage. New technologies such as WAP make it possible to place orders via a mobile phone or the Internet and provide another boost to the global trend towards effecting securities transactions online. In addition, a growing number of issuers commission virtual underwriters with the initial public placement of their shares.

The Internet Task Force wants to support the implementation of high, homogeneous regulatory standards and to promote close international co-operation between regulators. In the year under review, its areas of discussion included online banking/brokerage, system capacities, day trading, Internet communication, and hyperlinks. A follow-up report is scheduled for release in the first half of 2001. The basic idea behind all regulatory recommendations consists in protecting the interests of investors and markets when securities are traded on the Internet.

In March 2000, IOSCO organised an Internet Surf Day involving securities regulators from 20 states, including the BAWe. More than 220 employees of 21 regulators searched the Internet for indications of prohibited actions, insider dealing, or market manipulation. Throughout the world and across various time zones, the participants checked more than 10,000 websites. Approximately 1,000 of these sites contained indi-

cations of legal offences which were investigated further by the authorities concerned. Some 400 cases involved cross-border activities. The BAWe's 14 employees who took part in the Surf Day visited and checked more than 600 websites and found offers of supposedly high-yielding investments which did not include the required information about risks. Some providers of investment services did not have a license. The contents of about 80 sites were subsequently subject to further investigations by the BAWe.

Joint Forum, Financial Stability Forum

The supervision of international financial conglomerates is an object of close co-operation between IOSCO, the Basle Committee on Banking Supervision, and the International Association of Insurance Supervisors (IAIS) in the Joint Forum. Financial conglomerates are active in more than one area of the financial market, i.e. securities, banking and insurance. Conglomerates present particular challenges to efficient supervision, both at a national and international level. The Joint Forum has been dedicated to improving the supervision of financial conglomerates ever since 1996, and has since presented numerous reports. Its mandate was updated in December 1999. The regulatory principles developed by IOSCO, IAS and BIS for their respective sectors are compared for the purpose of developing joint principles.

Another working group compares the various states' national corporate governance standards and accounting rules, specifically the regulatory use of internal and external examination of a company's finances. Furthermore, the Forum

analyses the importance and purpose of capital adequacy requirements in the various sectors in order to elaborate general principles and to close loopholes for cross-sector arbitrage deals.

IOSCO takes part in the Financial Stability Forum, which was founded in 1999 for the purpose of ensuring the stability of the financial system by improving the exchange of information and co-operation between regulators.

Bilateral Co-operation

Memoranda of Understanding

The exchange of information about regulatory issues forms an integral part of co-operation between securities regulators across borders. However, confidential information should be exchanged only if this is provided for by the national laws of the countries involved, and if the information is treated confidentially. While EU Directives ensure that these prerequisites are fulfilled in

Memoranda of Understanding

Memoranda of Understanding are bilateral letters of intent concerning the exchange of confidential information between supervisory authorities, which provide the basis for cross-border co-operation. The supervisory authorities undertake to provide assistance in the case of requests relating to investigations into insider cases, market manipulation or other offences, within the scope of their respective national laws. The information received may be used only for the purpose specified in each individual case, and confidentiality must be guaranteed.

the EU member states, the situation in other countries has to be examined on a case-by-case basis.

Memoranda of Understanding (MoU), i.e. written agreements between regulators, provide a useful tool for exchanging information across borders. MoUs are bilateral letters of intent on the exchange of confidential information between supervisory authorities, signed to facilitate co-operation by means of international assistance. Many requests for information are related to investigations into insider dealing, market manipulation, or breaches of national regulatory legislation. The information provided by the requested authority may be used only for the purpose previously specified.

Once the terms of assistance are fixed, standardised requests for information facilitate co-operation across borders. Another objective pursued by the BAWe when it signs Memoranda of Understanding consists in enabling German investment firms and exchanges to access foreign markets.

In May 2000, the BAWe signed agreements on the exchange of information with the regulators of Singapore and Turkey respectively. Outside the European Economic Area, agreements have been signed so far with the supervisory authorities of Argentina, Australia, Brazil, China, the Czech Republic, Hong Kong, Hungary, Poland, Taiwan, and with the SEC and CFTC of the USA. In March 2001, the BAWe signed an MoU with the securities regulator of Russia. Under the terms of this agreement, the BAWe will assist Russia in establishing a supervisory system.

Practical Co-operation

Within the scope of the merger between Deutsche Börse AG and the London Stock Exchange into iX, which eventually failed, several meetings were held at working group level between the BAWe, the Financial Services Authority (FSA) of the UK, and the Exchange Supervisory Authority of the federal state of Hesse. The working groups were commissioned to work out regulatory solutions for the merger of exchanges and to determine procedures for effective co-operation between the supervisory authorities involved.

In the year under review, about 40 delegations from abroad, mainly from Eastern European or Asian states, visited the BAWe to obtain information about the German supervisory system. The BAWe placed a particular focus on providing advice to countries whose financial markets are still being developed. In the summer of 2000, the president of the BAWe was appointed member of the "International Advisory Board", an international group of advisors to the Korean financial market regulatory board. This was set up in order to elaborate a concept for an efficient capital market in Korea.

BAWe - INTERNAL AFFAIRS

Personnel, Organisation

In 2000, total headcount at the BAWe amounted to 138, comprising 94 civil servants, 35 white collar workers, two blue collar workers, and seven apprentices. Female employees and disabled persons accounted for 35.88 per cent and 4.58 per cent respectively. Not including apprentices and persons on leave or delegated to other authorities, the BAWe's staff was comprised of 49 employees of the higher services, 50 employees of the higher intermediate services, and 32 employees of the intermediate and lower services.

The year under review saw the introduction of flexible working hours at the BAWe as at 01 March 2000. The terms and conditions were approved by the local employee council.

The BAWe enabled apprentices to qualify as specialists in office communication, and numerous law students and trainees from Germany and abroad were offered the opportunity to get to know the tasks and activities of the BAWe. Furthermore, several staff members of foreign securities regulators, notably from central and eastern Europe as well as from China, completed several weeks of practical training with the BAWe.

The employees of the BAWe took part in job-related training programmes held by the Federal Academy for Public Administration (Bundesakademie für öffentliche

Verwaltung), the Federal Academy for Finances (Bundesfinanzakademie), the Federal Office of Languages (Bundessprachenamt), and various private-sector providers.

In-house training was held in areas such as information technology, securities business, as well as English language classes. Some employees visited foreign securities regulators in order to become acquainted with their work. Seven persons successfully qualified as exchange traders.

An analysis of the BAWe's organisational structure resulted in organisational changes; for example, two previously separate divisions were amalgamated in order to make more efficient use of the existing workforce.

Monitoring of Personal Transactions of Employees

A designated person monitors the personal securities transactions of employees of the BAWe as set forth in Section 16 a WpHG. Under an office instruction to the employees of the BAWe, persons who in carrying out their official duties possess inside information in accordance with the regulations are obliged to immediately notify the person commissioned by the BAWe in writing of any transactions in insider securities which they have concluded for their own account or for the account or on behalf of a third party. The duty to disclose transactions in insider securities extends to securities accounts and the turnover in such accounts, as well as to the powers of attorney and other authorities to operate an account which they have been granted. Regular spot checks are made of the securities transactions of employees

who are not subject to the above provisions.

Employees of the BAWe are required to treat inside information confidentially and to report it to the person commissioned by the BAWe without delay, in order to have such information recorded in a watch list that is updated on an ongoing basis. Restricted lists are another means of monitoring the personal transactions of employees. Violations against the duty to provide information and submit documents and to immediately notify the BAWe of transactions in insider securities are subject to disciplinary penalties and governed by labour law.

The person commissioned by the BAWe to monitor personal transactions of employees checks transactions carried out by the employees against inside information available to the BAWe, in order to establish whether members of the BAWe's staff are involved in prohibited insider dealing. Should this be the case, the responsible division carries out further insider investigations. None of the examinations conducted in the year under review resulted in further investigations.

Budget

BAWe expenditures in the year 2000 amounted to DM 18.07 million. Of this figure, DM 10.33 million was accounted for by personnel costs and DM 7.74 million by material costs and investments, the latter including an amount of DM 3.77 million that was spent on information technology.

An amount of DM 2.67 million was retrieved through fees charged for the deposit of prospectuses. 90% of

the remaining costs were allocated as follows: 68% were reimbursed by credit institutions, four per cent were charged upon exchange brokers and other companies admitted to exchange trading, and nine per cent were allocated to issuers and financial services enterprises respectively. Ten per cent of the costs are borne by the Federation.

Credit institutions, exchange brokers, and other companies admitted to exchange trading, are required to reimburse the costs of the BAWe in proportion to the transactions reported to the BAWe under Section 9 para. 1 WpHG. The respective amount to be reimbursed is determined with a view to the result from ordinary business activities or the gross proceeds from investment services or own-account transactions. The costs allocated to issuers are determined in proportion to the stock exchange turnover of their securities admitted to exchange trading or traded on the third market segment (Freiverkehr).

Information Technology

The pronounced increase in the number of reported securities transactions to an average two million reports per trading day called for an extension of the BAWe's IT infrastructure. The hard- and software solutions employed by the BAWe are specifically tailored to the requirements of securities supervision.

SWAP I and II (Securities Watch Applications) provide efficient tools for detecting irregular behaviour in the market and cases of insider dealing. By means of statistical processes and data mining methods, the systems analyse the reports submit-

ted to the BAWe and generate indicators displaying irregularities in the trading patterns of individual securities. Furthermore, the system assists BAWe analysts in evaluating the potential influence of ad hoc announcements on share prices and in identifying trading activities suggesting that the trader must have had knowledge of inside information. The data and experience gained through the evaluation provide a basis for further development of the systems.

The key data of all securities are accessible via Internet from all work stations of the BAWe. Furthermore, the employees have access to information systems, real time prices, research reports, and corporate and financial market news.

Public Relations

The focus of interest of the media lay on initial public offerings and the allotment of shares to retail investors. Specifically, it was transparency of the allotment procedures which attracted the interest of the public. As a result of retail investors' growing demand for securities, some online banks did not manage to be permanently available to customers, especially during the highly attractive IPOs in the spring of 2000. The steps taken by the BAWe to deal with these issues met with extensive media coverage.

Also dealt with by the media was the misuse of ad hoc announcements, notably any misuse for advertising purposes and the disclosure of false facts. Many inquiries from the press concerned the surveillance of Internet activities for the purpose of detecting and preventing price manipulation and insider trading.

During pending merger negotiations between Deutsche Börse AG and the London Stock Exchange, the BAWe co-ordinated its public relations activities with those of the FSA and the Exchange Supervisory Authority of the State of Hesse. In this context, the three authorities published a joint statement concerning the regulatory aspects of the planned merger.

The BAWe's annual report for the year 1999 was presented during a press conference in June. In September 2000, the BAWe took part for the second time in a three-day International Investor's Fair in Düsseldorf. Besides leading discussions with interested investors and experts, members of the BAWe talked to large groups of auditors about issues of investor protection. Retail investors in particular were strongly interested in current regulatory issues.

Also in September, the BAWe revised its Internet home page. In its new layout, the site contains comprehensive tips for investors. Furthermore, besides offering a user-friendly database on reported holdings of voting rights in officially listed companies, the BAWe will soon enable interested parties to access a database containing the prospectuses deposited with the BAWe.

For the first time, the BAWe placed a draft guideline on day trading on its Internet home page in order to give investors and other interested parties the opportunity to comment on the contents. In close co-operation with FESCO, the BAWe informed the public about press releases on FESCO proposals.

A SUMMARY OF SECURITIES SUPERVISION IN 2000

24 Februar 2000

The BAWe reminds online banks and discount brokers of their organisational duties in terms of availability to customers.

28 - 29 February 2000

FESCO defines criteria for "professional investors" in Amsterdam.

14 March 2000

Fifth forum on insider law and ad hoc disclosure held by the BAWe and Deutsches Aktieninstitut e.V. for judges, public prosecutors and criminal police officers.

15 - 18 March 2000

25th international conference of representatives of the futures exchanges, market participants and supervisory authorities in Boca Raton, USA.

22 March 2000

The BAWe sends a letter to the boards of management of listed enterprises with respect to the contents of ad hoc announcements.

28 March 2000

Joined by another 20 supervisory authorities from 18 states, the BAWe takes part in the Internet Surf Day.

3 April 2000

Constituent meeting in Frankfurt of FESCOPOL, a permanent forum for the practical aspects of co-operation.

4 - 5 May 2000

FESCO suggests European Passport for issuers.

13 - 19 May 2000

Annual Conference of IOSCO in Sydney. IOSCO passes a resolution on "IASC 2000 Standards".

16 May 2000

Agreement on the exchange of information between the BAWe and SERMAYE PIYASASI KURULU, the securities supervisory authority of Turkey.

17 May 2000

Agreement on the exchange of information between the BAWe and the MONETARY AUTHORITY of SINGAPORE.

14 June 2000

Annual press conference of the BAWe and presentation of the Annual Report 1999.

15 July 2000

Joint announcement of the BAWe and the BAKred on the amendment of the "standards for the rules of conduct for employees of credit institutions and financial services institutions concerning personal transactions of employees" (guiding principles for personal transactions of employees).

15 July 2000

Publication of the new " guideline on the details concerning Sections 31 and 32 of the WpHG relating to the commission business, proprietary trading on behalf of a third party, and agency business of investment services institutions".

21 August 2000

Joint statement of the BAWe, the Hessisches Ministeriums für Wirtschaft, Verkehr und Landesentwicklung, and the Financial Services Authority of the UK on regulatory issues in connection with the planned merger of Deutsche Börse AG and the London Stock Exchange.

7 – 10 September 2000

21st conference of Futures & Options Markets Regulators in Bürgenstock, Switzerland.

14 September 2000

FESCO agree on a common approach to market abuse, the allotment procedure in an initial public offering, and the supervision of alternative trading systems (ATS) in Paris. FESCO submits proposals for a draft directive to the EU Commission.

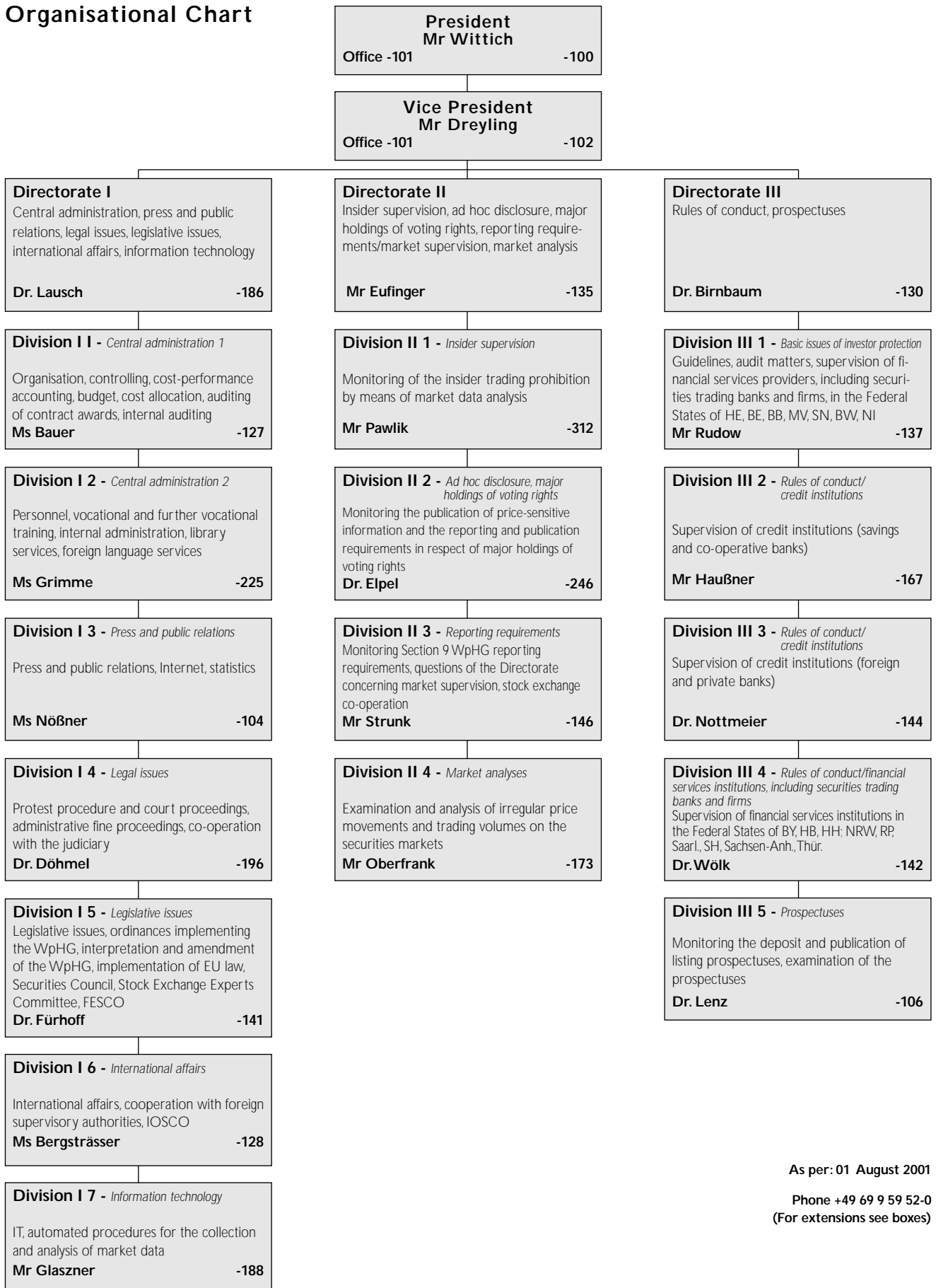
3 November 2000

Foundation of the Forum for Financial Market Supervision by the BAWe, BAKred, BAV and Deutsche Bundesbank in Frankfurt am Main.

7 November 2000

Sixth meeting of the Securities Council with the BAWe.

Organisational Chart



As per: 01 August 2001

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(For extensions see boxes)

STATISTICAL APPENDIX

Number of Insider Investigations

	New investigations	Investigation results in the period under review		Pending investigations at the end of the period under review
		Suspended	Passed on to the public prosecutors' offices	
1995	24	16	7	1
1996	59	27	17	16
1997	55	40	22	9
1998	58	21	16	30
1999	39	27	13	45*)
2000	51	24	22	50
Total 1995 – 2000	286	155	97	151

*) figure corrected

Notifications from the Public Prosecutors' Offices Relating to Suspension of Insider Proceedings

	Total	Suspended proceedings		Court decisions		
			Of which: suspension against payment of a fine	Final order imposing punishment	Final convictions	Final acquittals
1995	4	2	0	2	0	0
1996	7	3	1	4	0	0
1997	18	15	6	3	0	0
1998	25	21	13	4	0	0
1999	46	46	10	0	0	0
2000	38	37	4	0	1	0
Total 1995 – 2000	138	124	34	13	1	0

Source: investigating public prosecutors' offices

Number of Ad hoc Announcements

	Total	Issuer's domicile		Means of publication	
		Germany	Abroad	Electronic media	Official stock exchange gazette
1995	1,001	991	10	n.a.	n.a.
1996	1,058	1,024	34	1,020	38
1997	1,279	1,272	7	1,229	50
1998	1,856	1,805	51	1,798	58
1999	3,417	3,219	198	3,358	59
2000	5,693	5,057	636	5,651	42
H1 2000	2,872	2,572	300	2,854	18
H2 2000	2,821	2,485	336	2,797	24
Q1 2000	1,448	1,287	161	1,442	6
Q2 2000	1,424	1,285	139	1,412	12
Q3 2000	1,411	1,251	160	1,403	8
Q4 2000	1,410	1,234	176	1,394	16
January	319	285	34	319	0
February	520	461	59	517	3
March	609	541	68	606	3
April	407	376	31	405	2
Mai	633	562	71	630	3
June	384	347	37	377	7
July	426	382	44	422	4
August	636	564	72	634	2
September	349	305	44	347	2
October	403	357	46	396	7
November	643	563	80	639	4
December	364	314	50	359	5

Proceedings to Impose Administrative Fines

Subject matter	Year	Number of proceedings		Proceedings concluded finally in the period under review				Pending proceedings at the end of the period under review
		Pending proceedings at the start of the period under review	New proceedings in the period under review	Total	Concluded through			
					Fines	Suspension	Transferral to public prosecutor's office or other authorities	
Reporting requirements pursuant to Section 9	1995	0	0	0	0	0	0	0
	1996	0	0	0	0	0	0	0
	1997	0	13	6	1	5	0	7
	1998	7	12	5	2	3	0	14
	1999	14	8	16	0	16	0	6
	2000	6	12	15	6	9	0	3
Ad hoc announcements	1995	0	11	2	0	2	0	9
	1996	9	16	7	0	7	0	18
	1997	18	9	3	1	1	1	24
	1998	24	13	6	0	5	1	31
	1999	31	4	13	2	11	0	22
	2000	22	8	19	6	13	0	11
Holdings of voting rights	1995	0	74	16	0	16	0	58
	1996	58	179	88	15	73	0	149
	1997	149	61	152	17	135	0	58
	1998	58	29	61	12	49	0	26
	1999	26	132	71	16	55	0	87
	2000	87	146	136	36	100	0	97
Prospectuses	1995	0	20	10	0	9	1	10
	1996	10	46	26	0	24	2	30
	1997	30	74	30	7	23	0	74
	1998	74	43	65	7	58	0	52
	1999	52	74	56	15	41	0	70
	2000	70	59	67	24	42	1	62
Other	1995	0	0	0	0	0	0	0
	1996	0	0	0	0	0	0	0
	1997	0	0	0	0	0	0	0
	1998	0	4	2	0	2	0	2
	1999	2	40	9	0	9	0	33
	2000	33	27	34	9	25	0	26
Total	1995	0	105	28	0	27	1	77
	1996	77	241	121	15	104	2	197
	1997	197	157	191	26	164	1	163
	1998	163	101	139	21	117	1	125
	1999	125	258	165	33	132	0	218
	2000	218	252	271	81	189	1	199

P u b l i s h e r ' s I m p r i n t

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