

*Translation of the Austrian Stock Exchange Act 1989, as amended:*

**Federal Law of the 8th of November 1989**  
**regarding Stock Exchanges and General Commodity Exchanges**  
**and an amendment of the Stock Exchange Official Brokers**  
**Act 1949 and the Stock Exchange Amendment 1903**  
**(Stock Exchange Act 1989 = Börsegesetz 1989-BörseG)**  
**as promulgated in Federal Law Gazette (hereinafter FLG) No. 1989/555**  
**and as amended in the version of FLG No. 1993/529, FLG No. 1996/753, FLG I No. 1998/11,**  
**126 and 127, FLG I No. 1999/123 and 187, FLG I No. 2001/2 and FLG I No. 2001/42, FLG I**  
**No. 97/2001, FLG I No. 33 and 123/2003, FLG I No. 70/2004, FLG I No. 127/2004, FLG I**  
**No. 37/2005, FLG I No. 78/2005, FLG I No. 124/2005, FLG I No. 48/2006, FLG I No. 75/2006,**  
**FLG I No. 104/2006, FLG I No. 141/2006, FLG I No. 19/2007, FLG I No. 60/2007, FLG I**  
**No. 107/2007, FLG I No. 2/2008, FLG I No. 136/2008, FLG I No. 22/2009, FLG I No. 37/2010 and**  
**FLG I No. 58/2010**

**and taking into account the provisions of Article 104**  
**of the Banking Act 1993 (FLG 1993/532)**

*(Note: Abbreviations and references to legislation used in this text are listed at the end.)*

**The National Assembly has adopted:**

**Section I**

**Provisions for both Stock Exchanges and**  
**General Commodity Exchanges**

**Definition of Terms**

**Article 1**

(1) Securities exchanges are domestic markets on which financial instruments pursuant to Art. 1 fig. 6 Securities Supervision Act 2007 – 2007, Federal Law Gazette I No. 60/2007 are traded. Legal tender, coins, and precious metals may also be traded on a securities exchange as well as ancillary transactions related to such trades.

(2) Regulated market: Regulated market means a multilateral system operated and/or managed by a market operator in Austria or in a member state, which brings together or facilitates the matching of multiple third-party buy and sell interests in financial instruments within the system in accordance with non-discretionary rules in such a way that results in a contract in those financial instruments admitted to trading under the rules and systems of the market. A regulated market must have an operating license and function regularly in accordance with the rules of the home member state that correspond to the provisions of Title III of Directive 2004/39/EEC.

(3) A market operator is anyone who manages and/or operates a regulated market. The market operator may be the regulated market itself.

(4) General commodity exchanges are exchanges on which those commodities are traded that are eligible for trading on an exchange and have not been explicitly assigned to trading on a regulated market or to an exchange for agricultural products as well as on which all ancillary transactions related to commodities trading are conducted.

(5) Unless otherwise specified in this Federal Act, the definitions of the Banking Act and of the Securities Supervision Act 2007 shall apply.

## **The Issuance of Licenses**

### **Article 2**

(1) A legal entity that manages and/or operates a regulated market or anyone who operates any other securities exchange or general commodities exchange shall be deemed an exchange operating company. The exchange operating company shall guarantee that the regulated markets it manages and operates and any other securities exchanges or general commodities exchanges it operates comply with the requirements of this Federal Act at all times. If an exchange operating company under this Federal Act is an enterprise charged with the fulfillment of sovereign functions, it shall carry out the tasks assigned to it bearing in mind the objectives of maintaining a functioning securities industry for the benefit of the national economy and of safeguarding the interests of investors.

(2) The management and operation of a regulated market or of any other securities exchange shall require a license from the Financial Market Authority (FMA); the operation of a general commodities exchange shall require a license issued by the Ministry of Economics and Labor.

(2a) An exchange operating company authorized to manage and operate a regulated market has the right to operate a multilateral trading system (MTF) with the approval of the FMA without requiring a separate license pursuant to Article 3 Securities Supervision Act 2007. A license shall be granted if compliance with Articles 67 and 68 Securities Supervision Act 2007 is given. When an exchange operating company operates an MTF, the organizational requirements pursuant to Articles 16 to 35 Securities Supervision Act 2007 shall be deemed as met if the exchange operating company meets the requirements of Article 9. No separate proof of qualification to manage/operate an MTF shall be required if the management of an MTF is conducted by a managing body that meets the requirements stated in Art. 3 par. 1.

(3) The license shall be void unless issued in writing; certain conditions and obligations may be attached to the license.

(4) The applicant shall attach the following information and documents to the application for a license:

1. registered office and legal form;
2. the statutes;
3. a business plan setting forth the organizational structure and internal controlling procedures of the enterprise; furthermore, the business plan must contain a budget accounting plan for the first three business years;
4. a description of the available trading and settlement systems
5. the amount of unrestricted and unencumbered start-up capital freely available in Austria to the managing directors;
6. the identity and the size of the shares held by shareholders with a qualified interest in the firm, as well as information on the group's structure if such shareholders form part of

- a group company;
7. the names of the managing directors to be appointed and their qualification with regard to the operation of the company.

### **Article 3**

(1) The license shall be granted provided:

1. the company is to be operated under the legal form of a stock corporation under Austrian law;
2. the planned business of the company is not expected to pose a threat to maintaining a properly functioning securities industry for the benefit of the national economy or in terms of safeguarding the vital interests of the investing public; this shall apply, in particular, with regard to its impact on the liquidity of markets.
3. the persons holding a qualified interest in the company fulfill the profile required in terms of a sound and prudent management of the company;
4. the supervisory authorities are not impeded in the proper execution of their duty of supervision by the fact that the company has close links to other natural or legal persons;
5. the supervisory authorities are not impeded in the proper execution of their duty of supervision by the legal and administrative regulations of a third country applicable to a natural or legal person standing in a close relationship with the company, or by difficulties that might arise in the course of enforcing such regulations;
6. the initial capital amounts to at least EUR 5 million and is at the unencumbered and unlimited disposal of the managing directors in the member states, and the company's material and staff basis safeguards the best possible management and administration of the exchange.
7. no reason for exclusion within the meaning of Article 13 paragraph 1 to 3, 5 and 6 Business Code 1994, FLG No. 194/1994, as amended, applies to any of the managing directors and no bankruptcy proceedings have been instituted on the assets of any of the managing directors or any legal entity that is not a natural person and over whose business said managing directors have or have had a substantial influence unless a reorganization plan was ordered and fulfilled; this shall also apply to similar cases having occurred abroad.
8. no investigation procedures are being conducted against any of the managing directors on grounds of a offense committed intentionally, which is punishable by imprisonment of a term of more than one year, until the final decision terminating the criminal proceedings is reached;
9. the managing directors have the required professional background to qualify for the position and the personal qualifications and experience required to run the company. The professional qualification of managing directors includes adequate theoretical and practical knowledge in areas relating to the operation of an exchange as well as management experience; the expert qualification for the management of an exchange operating company shall be assumed to be given if the persons are proven to have at least three years of managing experience at a company of comparable size and type of business or if the managers proposed are proven to already manage an authorized regulated market in the meaning of Directive 2004/39/EEC;
10. no reasons for exclusion from the position as a managing director of an exchange operating company within the meaning of fig. 7, 8, 9 or 14 exist with regard to any of the managing directors who is a citizen of any country other than Austria, in the country of which he or she is a citizen; this must be confirmed by the exchange supervisory authority of the respective director's home country; however, if such a confirmation

cannot be obtained, the respective managing director shall furnish the required evidence, certify the absence of the named reasons for exclusion and file a declaration as to whether the named reasons for exclusion exist;

11. at least one of the managing directors has the center of his/her vital interests in Austria;
12. at least one of the managing directors has an active command of the German language;
13. the company has at least two managing directors and the company by-laws stipulate that it shall not be permitted to confer the power of sole representation, full power of attorney (as defined by Article 48 Austrian Commercial Code) or sole commercial power of attorney for the entire scope of business exclusively to any one of the managing directors;
14. neither one of the managing directors engages in a principal employment in a field other than securities business;
15. the registered office and the main administration are in Austria;
16. the available trading and settlement systems comply with up-to-date industry standards for exchange trading.

(2) An exchange operating company shall only be registered in the Commercial Register if the required legal certificates have been submitted in the original or as certified duplicates (counterparts). The competent court shall forward decisions regarding the registration in the Commercial Register to the supervisory authorities and to Oesterreichische Nationalbank.

### **Withdrawal of Licenses**

#### **Article 4**

(1) The Austrian Financial Market Authority FMA, and in the case of general commodity exchanges, the Federal Ministry of Economics and Labor have the right to withdraw the license if the exchange operations to which it refers

1. have not started within one year of the granting of the license, or
2. have not been conducted for more than six months.

(2) The Austrian Financial Market Authority (FMA), or, in the case of general commodity exchanges, the Federal Ministry of Economics and Labor, shall withdraw the license if

1. it was granted on the basis of incorrect information or deceptive acts or otherwise surreptitiously obtained,
2. the company fails to fulfill its obligations toward its creditors,
3. the requirements for the granting of the license pursuant to Article 3 paragraph 1 cease to be fulfilled after the license has been granted, or
4. the company continually fails to fulfill its duties relating to the management and the administration of an exchange adequately and in accordance with the regulations.

(3) A notification of withdrawal of a license shall be equivalent to a dissolution order applicable to undertakings unless the field of activity of management and administration of an exchange is deleted from the company by-laws, and its business is changed in line with this order (Article 47 paragraph 1) within a period of three months after the notification has become final. The Austrian Financial Market Authority (FMA), or, in the case of a general commodity exchange, the Federal Ministry of Economics and Labor, shall forward a duplicate of this notification to the Commercial Court of registration; the withdrawal of the license shall be registered in the Commercial Register.

(4) Upon request of the State Attorney to which the Federal Ministry of Finance, or, in the case of a general commodity exchange, the Federal Ministry of Economics and Labor, shall take recourse,

the court shall appoint liquidators, if the persons otherwise charged with the liquidation cannot guarantee proper liquidation. If the Federal Ministry of Finance, or, in the case of a general commodity exchange, the Federal Ministry of Economics and Labor, is of the opinion that the persons charged with the task fail to safeguard proper liquidation, it shall request the appointment of appropriate liquidators through the State Attorney at the court having original jurisdiction in commercial matters in the area in which the respective exchange operating company has its registered office; the court shall take the decisions in proceedings except in the cases of disputes.

## **Expiration of Licenses**

### **Article 5**

(1) The license shall expire:

1. upon expiration of the time period for which it was granted;
2. if conditions arise giving ground for dissolution (Article 2 paragraph 3);
3. if it is handed back by the licensee;
4. upon completion of the liquidation of the exchange operating company;
5. with the institution of bankruptcy proceedings on the assets of the exchange operating company;
6. at the time the European Company (SE) is entered into the register of the new country of domicile.

(2) The expiration of the license shall be established by decree of the Austrian Financial Market Authority (FMA), or, in the case of general commodity exchanges, by decree of the Federal Ministry of Economics and Labor. Article 4 paragraph 3 and 4 shall apply.

(3) The handing back of a license (Article 1 paragraph 3) shall only be permissible in writing and only if the management and administration of the exchange has previously been taken over by another exchange operating company.

## **Shareholdings**

### **Article 6**

(1) Any person intending to hold, either directly or indirectly, a qualified interest in an exchange operating company, shall notify the Austrian Financial Market Authority (FMA), or, in the case of general commodity exchanges, the Federal Ministry of Economics and Labor in advance of this intention in writing stating the amount of the stake. This shall not apply in cases in which the qualified interest will be held through an exchange operating company subject to the obligation to obtain a license pursuant to Article 7 paragraph 1 fig. 2.

(2) Any person intending to increase a qualified interest in an exchange operating company to an extent so as to reach or exceed the limits of 20 percent, 33 percent or 50 percent of the voting rights or the capital of the company, or to the extent that the exchange operating company becomes the respective person's subsidiary, shall give prior written notification of this intention to the Austrian Financial Market Authority (FMA), or, in the case of general commodity exchanges, to the Federal Ministry of Economics and Labor.

(3) The Austrian Financial Market Authority (FMA), or, in the case of general commodity exchanges, the Federal Ministry of Economics and Labor shall prohibit the intended acquisition of shares if the conditions listed in Article 3 paragraph 1 fig. 3 through 5 are not met within a period of three months following the notification pursuant to paragraph 1 or 2. If the acquisition of shares is to

be permitted, the Austrian Financial Market Authority (FMA), and, in the case of general commodity exchanges, the Federal Ministry of Economics and Labor, may prescribe a deadline for the realization of the intentions named in paragraph 1 and 2.

(4) The duty of notification pursuant to paragraph 1 and 2 shall apply equally to an intended divestiture of a qualified interest and to cases in which the shares held in an exchange operating company fall below the limits stated in paragraph 2 for shareholdings.

(5) Exchange operating companies shall immediately notify the Austrian Financial Market Authority (FMA), or, in the case of general commodity exchanges, the Federal Ministry of Economics and Labor in writing of any acquisition or divestiture of shares, of any stakes held that reach, exceed or fall below the shareholding limits within the meaning of paragraph 1, 2 and 4 as soon as they gain knowledge of such fact. Moreover, exchange operating companies shall at least once annually inform the Austrian Financial Market Authority (FMA), or, in the case of general commodity exchanges, the Federal Ministry of Economics and Labor in writing of the names and addresses of shareholders that hold a qualified interest in the company as well as of the size of the stakes held, this refers in particular, to information obtained at annual shareholders' meetings or information obtained pursuant to Articles 91 through 94. Pursuant to this paragraph, the exchange operating companies are under the obligation to publish the information required to be notified to the FMA, and in the case of general commodities exchanges, to the Federal Minister of Economy and Labor, in a medium that is available to the general public.

(6) In the event that the influence exerted by the holder of a qualified interest is not in agreement with the requirements of a sound and prudent conduct of an exchange operating company, the Austrian Financial Market Authority (FMA), or, in the case of general commodity exchanges, the Federal Ministry of Economics and Labor, shall take the measures required to ward off this danger or to end the situation. Such measures are, in particular,

1. measures within the meaning of Article 45 paragraph 3 or
2. to apply for a court order to suspend the voting rights of the shares held by the respective shareholders with the court having original jurisdiction in commercial matters in the area in which the respective exchange operating company has its registered office,
  - a) for as long as the danger continues to exist, the court determining when such danger has ceased to exist, or
  - b) until these shares are acquired by third parties if not prohibited pursuant to paragraph 3;the court shall take the decisions in proceedings except in cases of disputes.

(7) The Austrian Financial Market Authority (FMA), or, in the case of general commodity exchanges, the Federal Ministry of Economics and Labor, shall take adequate measures against the persons named in paragraph 1 and 2 if they fail to comply with their duty of prior notification, or acquire an interest in defiance of the prohibition pursuant to paragraph 3 or without an authorization pursuant to Article 7 paragraph 1. The voting rights of the shares held by the respective shareholders shall remain suspended until

1. the Austrian Financial Market Authority (FMA), or, in the case of a general commodity exchange, the Federal Ministry of Economics and Labor, determines that the acquisition of the shares would not have been prohibited pursuant to paragraph 3 or
2. the Austrian Financial Market Authority (FMA), or, in the case of a general commodity exchange, the Federal Ministry of Economics and Labor, determines that the reason for the prohibition has ceased to exist.

(8) If a court decrees the suspension of the voting rights pursuant to paragraph 6, the court shall concurrently appoint a fiduciary who complies with the requirements of Article 3 paragraph 1 fig. 3 and shall confer to the fiduciary the right to exercise the voting rights. If paragraph 7 is applicable, the Austrian Financial Market Authority (FMA), or, in the case of a general commodity exchange, the Federal Ministry of Economics and Labor, shall, upon receipt of the notification regarding the suspension of the voting rights, immediately apply for the appointment of a fiduciary at the competent court pursuant to paragraph 6. The fiduciary shall be entitled to reimbursement of expenses incurred and to remuneration for his/her work, the amount of which shall be determined by the court. The exchange operating company and the respective shareholders and other shareholders shall be jointly and severally liable for such expenses. The obligors shall have the right of recourse against decisions determining the amount of remuneration and reimbursed expenses due to the fiduciary. No further legal action shall be permitted against judgments by the court of recourse.

(9) Paragraph 1 to 4 and paragraph 5 first sentence shall not apply where the procedures within the meaning of paragraph 1 and 2 pursuant to Article 7 paragraph 1 are subject to authorization.

## **Authorizations**

### **Article 7**

(1) A separate authorization by the Austrian Financial Market Authority (FMA), or, in the case of general commodity exchanges, the Federal Ministry of Economics and Labor, is required

1. for mergers of exchange operating companies;
2. if the stakes held reach, surpass or fall below 10 percent (qualified interest), 20 percent, 33 percent and 50 percent of the voting rights or the capital of an exchange operating company; if another exchange operating company directly or indirectly holds, acquires or divests these voting rights or capital;
3. for the establishment of branch operations in a third country.

(2) Articles 2 to 4 shall apply mutatis mutandis to the granting of authorizations pursuant to paragraph 1.

(3) Authorizations pursuant to paragraph 1 fig. 1 may only be registered in the Commercial Register if the required legal certificates have been submitted in the original or as certified duplicates (copy). The competent court shall also forward decisions regarding such registrations in the Commercial Register to the Austrian Financial Market Authority (FMA), or, in the case of general commodity exchanges, to the Federal Ministry of Economics and Labor.

## **Notifications**

### **Article 7a**

(1) The exchange operating companies are under the obligation to immediately notify the FMA in writing, and in the case of general commodities exchanges, the Federal Minister of Economics and Labor, of any changes regarding the person of the managing director as well as any other change that is of material significance for the license granted pursuant to Art. 3.

(2) A market operator that operates an MTF shall notify the FMA in which other member states it intends to make an MTF available. The FMA shall send this information within one month to the member state in which the market operator intends to make an MTF available. Furthermore, upon

the request of the competent authority, the FMA shall inform the competent authority in the host member state of the MTF of the names of the members or participants of the MTF operating in that member state within an appropriate period of time.

## **Presentation of Financial Statements**

### **Article 8**

(1) The certified financial statements, the report of the management board, group financial accounts and report of the management board for the group as well as any and all audit reports regarding the financial statements, the report of the management board, group financial accounts and report of the management board for the group shall be submitted by the exchange operating company to the Austrian Financial Market Authority (FMA); in the case of general commodity exchanges, to the Federal Ministry of Economics and Labor, at the latest six months after the respective business year has ended.

(2) The auditor shall examine the financial statements of the exchange operating company, its cash balance and bookkeeping and shall examine the functional capacity of the computer system as to whether its technical installations are suitable for ensuring adequate surveillance within the meaning of Article 25 paragraph 2 and in particular for allowing the required investigations pursuant to Article 25 paragraph 2. The results of this examination shall be included in the auditor's written report.

(3) The examination by the auditor shall also include a consideration regarding the compliance with stipulations of this federal law and the result of the examination shall be included in the audit report.

(4) Exchange operating companies shall be subject to the provisions valid for large stock corporations pursuant to Article 221 Commercial Code.<sup>1</sup>

## **Organizational Requirements on the Management and Operation of a Regulated Market**

### **Article 9**

The exchange operating company shall

1. take measures to clearly recognize and regulate any adverse effects of conflicts of interest between the exchange operating company, its owners and the smooth functioning of a regulated market on the operation of the regulated market or its participants, in particular, if such conflicts of interest could hinder the fulfillment of the tasks assigned to the exchange operating company under this Federal Act;
2. take appropriate precautions and install systems to identify all major operational risks and take effective measures to limit these risks;
3. take precautions for the sound management of the technical workflows of the system, including effective emergency measures in the event of a system failure;
4. take effective precautions to facilitate the smooth and timely conclusion of transactions executed within its systems;
5. define measures that make it possible to check compliance with the admission requirements pursuant to Articles 66, 66a and 68 for the financial instruments it has admitted to trading.

---

<sup>1</sup> (Translator's note: The Austrian HGB is now Unternehmensgesetzbuch, UBG, = Companies Act)

## **Articles 10 to 12 repealed**

### **General Terms and Conditions of Business**

#### **Article 13**

(1) The exchange operating company shall draw up General Terms and Conditions of Business, which must be authorized by the Austrian Financial Market Authority (FMA), or, in the case of general commodity exchanges, by the Federal Ministry of Economics and Labor; the same shall apply to any amendments thereto.

(2) The General Terms and Conditions of Business shall include

1. regulations regarding exchange membership,
2. regulations regarding trading hours;
3. regulations regarding the location of the exchange,
4. the trading rules pursuant to Article 26,
5. the trading practices for the commodity exchange,
6. the official Bulletin of the exchange, in which all important facts regarding exchange trading shall be published.

(3) To become a member of the stock exchange, a company must first be admitted by the exchange operating company. Membership may not be restricted to companies with their registered office in Austria. The exchange operating company must define rules based on clear, non-discriminatory, and objective criteria for admission to the exchange. The exchange operating company also decides on the expulsion of members.

(4) The exchange operating company may in individual cases define the starting and closing hours for exchange trading differently from those of the General Terms and Conditions of Business, or hold or cancel trading sessions if required by important circumstances in the interest of the public, or in order to guarantee proper trading on the exchange, or to protect persons interested in proper trading on the exchange, or if due to other important circumstances proper trading cannot be guaranteed.

(5) Trading hours and the location of the exchange for trading in foreign exchange may be fixed only after prior consultation with Oesterreichische Nationalbank.

(6) The exchange operating company shall issue a Schedule of Fees for the items listed below taking into account the general principles of sound business and bearing the interest in maintaining a functioning exchange for the benefit of the national economy in mind. The fees may be charged for

1. membership;
2. admission of dealers and other persons eligible to admission as dealer;
3. the use of the exchange's infrastructure, especially the trading and settlement systems;
4. for the admission to listing of negotiable instruments to trading on the exchange, and for the duration of the listing of negotiable instruments in accordance with Article 81, and
5. the use of other services provided by the exchange

The Schedule of Fees and its amendments shall form part of the General Terms and Conditions of Business; the fees shall be enforced by ordinary legal procedures. The Schedule of Fees and its amendments shall not require an authorization pursuant to paragraph 1.

## **Membership in the Exchange**

### **Article 14**

(1) Membership in the exchange may be granted if:

1. No facts are known that might indicate that the applicant is not as reliable as is required to be able to take part in trading on the exchange,
2. the applicant is not restricted in its capacity to do business, in particular due to insolvency or because it has been put under receivership,
3. the applicant or one of its officers has not been convicted by law for an offense pursuant to Article 13 Business Code and as long as the sentence has not been abrogated, or it is not subject to restricted divulgence from the penal record,
4. the applicant or one of its officers has not been punished finally and conclusively pursuant to Articles 48, 48b and 48c, unless the violation of Article 48 has been insignificant or the sentence has become extinct in the criminal record, or
5. if no facts are known that would be detrimental to the reputation of the domestic market or hinder the maintenance of orderly and fair trading.

(2) Membership to the exchange is obtained by entering into an agreement with the exchange operating company. If the applicant fulfills the legal conditions, the exchange operating company shall be under the obligation to enter the contract except in the case of applicants that are applying for membership according to the requirements of Art. 15 paragraph 1 fig. 4.

(3) In the case of applicants for membership having their registered office in a EEA member state or in a third country, membership to the respective domestic exchange shall suffice as a proof that the conditions listed in paragraph 1 are met, if the fulfillment of such or comparable conditions is a compulsory prerequisite for exchange membership at the home country exchange. Admission as a member to the exchange shall not be possible if the applicant has been convicted by final judgement in his/her home country unless the sentence has already been abrogated and is subject to restricted divulgence from the penal record and the offense on which the sentence was passed is considered equivalent to the facts of a case under the provisions listed in paragraph 1 fig. 3 and 4.

(4) The exchange operating company shall be authorized to gather and evaluate data within the meaning of the Federal Data Protection Act.

(5) The exchange operating company shall maintain a list of trading members, and of settlement and clearing members on the regulated markets it operates on a medium accessible by the general public; this list shall be updated regularly.

### **Article 15**

(1) Membership in a securities exchange entitles a member to take part in trading on one or more regulated markets and MTFs operated by the exchange operating company, and in trading in foreign means of payment, coins and precious metals as well as to participate in settlement and clearing. Membership in a securities exchange is open to:

1. Credit institutions pursuant to Art. 1 par. 1 Banking Act, Federal Law Gazette No. 532/1993 licensed to carry on any of the businesses specified in Art. 1 par. 1 fig. 7 Banking Act;
2. Credit institutions, investment firms from member states and local firms from member states
  - a) licensed in their home member state to provide services according to Section A fig.1 to 3 of the Annex to the Council Directive 2004/39/EEC or pursuant to

- Art. 3 fig. 1 lit. p of Directive 2006/49/EEC and the license comprises the freedom to provide services or freedom of movement,
- b) that comply with the capital requirements according to the Council Directive 2006/49/EEC and – unless the respective company is a local firm – are subject to the supervision by the competent authorities of the home member state with respect to these regulations, and
  - c) for whom the notification by the competent authority of the home member state according to Article 9 par.2 or 6 Banking Act has been made; in the case of local firms, a confirmation of the competent authority of the home member state or any other evidence which certifies compliance with the provisions pursuant to Article 6 of Council Directive 2006/49/EEC shall be considered sufficient;
3. recognized investment firms in third countries pursuant to Article 2 fig. 31 lit. b Banking Act;
  4. companies with their registered office in a third country (Art. 2 fig. 8 Banking Act) that are licensed to carry out at least one of the businesses pursuant to Art. 1 par. 1 fig. 7 lit. b to f Banking Act;
  5. recognized clearing agents pursuant to Art. 2 fig. 33 Banking Act with their registered office or admission in an EEA member state if they take part only in the clearing and settlement of trades;
  6. companies that are licensed to trade for their own account or on behalf of third parties in derivative contracts pursuant to Art. 1 fig. 6 lit. e to g and j Securities Supervision Act 2007, even if their license is not based on the Banking Act.

(2) A license restricted to the foreign exchange and the foreign currency business shall only authorize the company to participate in trading in foreign tender.

(3) Membership to a securities exchange shall only be granted if the applicant's technical facilities for participating in the trading and settlement system ensure that it will not hinder undisturbed trading and/or settlement on the respective market. Upon admission, a member shall immediately

1. join an existing trading and an existing settlement system or a suitable settlement and clearing system pursuant to Art. 15a and deposit the respective collateral;
2. nominate at least one dealer who will participate in the trading on the floor or who has, at the respective member's premises, access to the automated trading system;

(4) Recognized investment firms and other firms with their registered office in a third country may retain their membership to a securities exchange only as long as the following is in place: on the derivatives market, at least one authorized clearing participant (Art. 2 fig. 48 Banking Act) and on the cash market, at least one authorized credit institution that has its registered office and license in an EEA member state and is a member of the domestic securities exchange concludes deals on their behalf and guarantees vis-à-vis the exchange operating company the fulfillment of exchange transactions carried out by the recognized investment firm or the company that is a member of the domestic exchange.

(5) The exchange operating company may enter into cooperation agreements with other operators of recognized exchanges pursuant to Art. 2 fig. 32 Banking Act. Recognized exchanges with their registered office in a third country shall meet the requirements for regulated markets in such case. Cooperation agreements may regulate the following

1. Members of an exchange or a regulated market may become members of a host exchange or a host market granting them the same status as they enjoy at their home exchange or home market, which means that they may become members of the

- domestic securities exchange to a comparable degree starting on the effective date agreed in the cooperation contract under the same conditions agreed in said contract;
2. if the agreement relates to the cash market regarding fig. 1, an authorized credit institution with its registered office and license in an EEA member state shall guarantee to the exchange operating company the fulfillment of transactions concluded on a domestic exchange by all or individual exchange members or market members;
  3. if the agreement relates to the derivatives market regarding fig 1, an authorized clearing participant with its registered office and license in an EEA member state may enter into the obligation to fulfill all transactions executed on a domestic exchange on behalf of all or individual exchange members or market members;

The requirement stated in fig. 2 and 3 may be waived or lowered if the clearing and settlement of exchange transactions is guaranteed by other means. Furthermore, a contract may be concluded stating that the technical and legal terms of the cooperation exchange must be comparable to the standards of the exchange operating company, which may apply as supplemental membership requirements on the domestic exchange in addition to regulations of the home exchange or home market.

(6) The exchange operating company and the recognized clearing agent may agree under a cooperation agreement that the clearing agent may take part in the settlement of exchange transactions concluded on the securities exchange by becoming a member of the settlement and clearing system. The clearing agent, as a member of the settlement and clearing system, shall be entitled to enter into the exchange transactions concluded by its members through the exchange, and to settle and clear these.

(7) The exchange operating company shall define in its General Terms and Conditions of Business (Art. 13) the obligations of the members of the securities exchange under the rules and procedures for the clearing and settlement of transactions concluded on this market. The exchange operating company shall offer membership in the clearing and settlement system under equal conditions to all members and may not make any differentiation by place of the registered office of member.

(8) If an exchange operating company intends to make available in another member state a system for the remote access of members to one of its regulated markets, then the exchange operating company shall notify the FMA of this intention. The FMA shall forward this information within one month to the competent authority of the member state in which the exchange operating company intends to make such operating system available. Upon request of the competent authority of the host member state, the FMA must inform this authority within a reasonable period of time of the names of the members of the regulated market concerned. The exchange operating company shall immediately make available to the FMA upon its request an updated list of members.

(9) If the operator of a regulated market with its registered office in another member state intends to make available a system in the meaning of par. 8 within the country, the FMA may request the competent authority of the home member state to send the names of the members of the concerned regulated market.

#### **Article 15a**

(1) The exchange operating company shall grant all members the right to choose a settlement and clearing system through which transactions in financial instruments concluded on one of the regulated markets operated by the concerned exchange operating company can be settled and cleared provided that

1. there are connections and agreements between the selected settlement system and every other system or any other facility as required for the efficient and economic settlement of the concerned transactions, and
2. the technical requirements for the settlement of transactions concluded on the regulated market via a settlement system other than the one selected by the regulated market enable the smooth and orderly functioning of the financial markets.

(2) Par. 1 does not affect the right of the operator of a central counterparty, clearing or securities settlement system to refuse to provide the requested services for well-founded reasons.

#### **Article 16**

Exchange members that conclude transactions on a regulated market are not under the obligation to comply by Articles 36 to 57 Securities Supervision Act 2007; this shall not apply if the exchange members execute orders on behalf of customers on a regulated market.

#### **Article 17**

(1) Membership to a commodity exchange is restricted to:

1. Persons that are professionally engaged in the production, sale or processing of goods that are admitted to and tradable on the exchange,
2. persons who use goods admitted to and tradable on the exchange in their enterprise, or
3. persons that are engaged in auxiliary business dealings connected to the goods admitted to and tradable on an exchange.

(2) Upon being accepted, Members of the Commodity Exchange must either appoint themselves, a member of the management or an employee of the company, as dealer to the exchange.

#### **Article 18**

It is the duty of the Members of an exchange to:

1. comply with the trading rules of the exchange in doing business, to act with the conscientiousness of a proper businessperson and to avoid any activities that might be damaging to the reputation of the exchange;
2. pay all prescribed stock exchange fees and any other dues in a timely manner;
3. always have at least one dealer (Article 20) delegated to the exchange;
4. maintain the prescribed collateral at the stipulated minimum amount as specified under the trading and clearing system;
5. as Member of a stock exchange, to take the measures within its enterprise as stated in Article 82 paragraph 5 fig. 1 to 3 for the prevention of insider dealings.

#### **Article 19**

(1) Members shall be expelled in the following cases:

1. If the prerequisites for the admission were not given at the time of admission or if these cease to apply later on;
2. if they fail to fulfill their duties.

(2) The exchange operating company shall have the right to suspend membership for the period of time required to determine whether or not grounds for expulsion of the member under investigation are given. The expulsion of a member is done by means of a declaration of expulsion issued by the exchange operating company. Action on the grounds of interference with possession or a motion for an injunction pursuant to the Rules of Execution (see footnotes) based on measures taken by the exchange operating company in connection with the expulsion from membership shall not be

permissible. The same shall apply with regard to orders issued by the exchange operating company pursuant to paragraph 3 and 4.

(3) If the grounds for expulsion pursuant to paragraph 1 fig. 2 are only temporary and can be rectified, and the Member is not grossly at fault, instead of being expelled, the Member may be suspended for the duration of time these grounds are given.

(4) Should a Member of a stock exchange no longer fulfill the requirements stated in Article 15 paragraph 3 regarding its technical installations, then given the prerequisites under paragraph 3, the Member shall be banned from stock exchange trading within the trading system for the duration of the disruption. The right to trade on the stock exchange trading floor as well as all other rights of Members shall not be affected by this order. However, should the requirements pursuant to Article 15 paragraph 3 not be fulfilled within a period of grace as set by the exchange operating company, then measures pursuant to paragraph 1 shall be taken.

## **Dealers**

### **Article 20**

(1) Dealers are those physical persons that are authorized to place orders and to conclude dealings in the name of Members on the exchange or within the trading system and have been admitted as dealers to the exchange by the exchange operating company. The right to trade on the exchange shall be obtained by entering into an agreement with the exchange operating company. If the applicant fulfills the legal conditions, the exchange operating company shall be under obligation to contract.

(2) Admission as dealer to the exchange is only granted if:

1. the person is a Member of the exchange and a physical person,
2. the person either belongs to the management of one of the Members, or
3. the person is employed by the management of one of the Members.

(3) The admission as dealer to the exchange may only be granted to persons named in paragraph 2 if none of the grounds for expulsion named in Article 14 applies to them. The admission as dealer to the exchange shall only be granted to persons stated in paragraph 2 fig. 1 and 3 if these persons have the experience and qualifications to participate in stock exchange trading without causing disruptions in trading.

(4) Dealers are obliged to comply with the provisions of Article 18 fig. 1 when trading on the exchange.

(5) The provisions of Article 19 paras. 1 to 3 regarding the grounds for expulsion and suspension also apply to dealers.

## **Other Persons Admitted to the Floor**

### **Article 21**

Other persons who are interested in attending the trading sessions may be admitted to the exchange as long as they do not interfere in the order of the exchange. Such persons, however, are not authorized to conclude deals on the exchange.

## **Realization of Security and Collateral**

### **Article 22**

The collateral deposited within the trading and settlement system shall be realized by the settlement agency established for this purpose, in accordance with the principles of realization of commercial executors. In cases of bankruptcy, this authority is obliged to give information if requested to do so by a trustee in bankruptcy (Article 120 paragraph 4, Bankruptcy Act - Imperial FLG 337/1914).

### **Article 23 repealed**

### **Article 24 repealed**

## **Surveillance of Trading**

### **Article 25**

(1) The exchange operating company shall supervise trading on the exchange and shall take the decisions during trading sessions as may become necessary according to the trading rules and shall also ensure that these trading rules are complied with.

(2) The surveillance of trading shall be carried out by means of an adequate technical surveillance system that guarantees the systematic and complete gathering and evaluation of data related to trading on the stock exchange and facilitates any necessary investigations.

(3) If there is reason to suspect that insider dealings or violations of any other provisions have been committed that fall under the competence of the Austrian Financial Market Authority (FMA), the exchange operating company shall immediately inform the Austrian Financial Market Authority (FMA).

(4) If the automated surveillance system pursuant to paragraph 2 does not suffice for the adequate surveillance of trading activities and settlement, then the FMA shall order, pursuant to Article 45 paragraph 2, that the system be improved under penalty of a fine within an adequate period of time so that it meets the requirements specified in paragraph 2; the Law on Administrative Enforcement (FLG 53/1991) is applicable.

(5) If the exchange operating company suspects or has a well-founded reason to believe, pursuant to Art. 41 par. 1 fig. 1, 2 or 4 Banking Act, it shall immediately notify the competent authority (Financial Intelligence Unit (Art. 4 par. 2 Act on the Federal Investigation Bureau FLG I No. 22/2002)) and discontinue any further settlement of the transaction until the facts of the case have been clarified, unless the delay of the transaction threatens to complicate or prevent the investigation of the facts of the case. This shall also apply if there are well-founded grounds to suspect that the contracting party participates objectively in transactions pursuant to Art. 41 par. 1 fig. 1, 2 or 4 Banking Act. The exchange operating company shall have the right to demand that the competent authority decide as to whether there are any objections against the immediate settlement of a transaction; if the competent authority fails to issue a statement on the case by the end of the next banking day, the transaction may be settled without delay.

(6) The exchange operating company shall immediately provide all information to the competent body (par. 5) upon request irrespective of a notification pursuant to par. 5 in any manner said body may deem necessary for the prevention or the prosecution of money laundering or terrorism

financing.

(7) The competent authority, (Financial Intelligence Unit (Art. 4 par. 2 Act on the Federal Investigation Bureau FLG I No. 22/2002)) shall have the power to order the discontinuation or postponement of any transaction in progress or planned, which has come under the suspicion or for which there are well-founded reasons to believe it serves the purpose of money laundering or terrorism financing. The competent authority (par. 5) shall have the power to order the discontinuation or postponement of any transaction in progress or planned, which has come under the well-founded suspicion of serving the purpose of money laundering. The competent authority shall without unnecessary delay notify the contracting party and the Public Prosecutor of the order. The notice given to the contracting party shall contain reference to the respective party's or any other involved person's right to lodge a complaint with the Autonomous Administrative Tribunal (see footnotes) on grounds of infringement of rights; in this context, the competent authority shall also make reference to the provisions of Article 67c General Law on Administrative Procedure regarding such complaints. The competent authority shall lift the injunction as soon as the grounds on which it had been issued have ceased to exist or the Public Prosecutor issues a declaration stating that the conditions for the confiscation pursuant to Articles 109 fig. 2 and 115 par. 1 fig. 3 Code of Criminal Procedure are not given. The injunction shall also become ineffective,

1. if six months have passed since its issue;
2. as soon as the court has passed a final decision on the order for confiscation pursuant to Articles 109 fig. 2 and 115 par. 1 fig. 3 Code of Criminal Procedure.

(8) The stock exchange operating company shall keep secret from its contracting parties and third persons all actions and proceedings which serve the performance of paragraph 5 to 7. However, as soon as an injunction pursuant to paragraph 7 has been issued, it shall have the right to refer the contracting party to the competent authority (paragraph 5); with the consent of the competent authority it shall also have the right to inform the contracting party directly of the injunction issued.

(9) Data which have been collected pursuant paragraph 5 and 6, shall become null and void if used to the disadvantage of the defendant or third parties involved in proceedings instituted exclusively on grounds as stated in Articles 33 through 41 and 49 through 52 of the Fiscal Penalties Act. If the competent authority (paragraph 5) on the basis of the data established pursuant to paragraph 5 and 6 arrives at the conclusion that there is a suspicion merely of an infringement of Articles 33 through 41 and 49 through 52 of the Fiscal Penalties Act, it shall abstain from notification pursuant to Article 78 Code of Criminal Procedure as well as from notification of the fiscal authorities for criminal offenses.

(10) Claims for damages shall not be permitted that are based on the circumstance that the exchange operating company or a person in its employment delayed or failed to effect a transaction based on a negligent lack of knowledge that the suspicion of money laundering or the financing of terrorism was incorrect.

(11) To carry out the tasks pursuant to these provisions, the competent body (Financial Intelligence Unit (Art. 4 par. 2 Act on the Federal Investigation Bureau FLG I No. 22/2002)) shall have the right, irrespective of par. 6, to investigate and process any data required from natural persons and legal entities as well as from any other organizations that are legal entities in their own right. Furthermore, the competent body shall have the right to use person-related data of customers that it has gathered in the execution of federal or provincial laws and to exchange information with other states that are responsible for combatting money laundering and terrorism financing.

### **Article 25a**

(1) The Austrian Financial Market Authority (FMA) shall have the right to make use of the trading surveillance system pursuant to Article 25 paragraph 2 when conducting investigations for which it is responsible by virtue of this federal law and pursuant to the Securities Supervision Act or to order the exchange operating company to carry out such investigations.

(2) The exchange operating company shall provide the FMA with statistical data, in particular with turnover figures and prices of instruments traded on regulated markets. The FMA shall be empowered to determine by decree the classification and the type of transmission to be used or to dispense by decree with such transmission if the information necessary for the fulfillment of their duties can also be obtained by means of another appropriate information system; in this case, the exchange operating company shall, however, be also obliged to promptly answer any inquiries the FMA may request about stock exchange trading.

(3) The exchange operating company shall, notwithstanding paragraph 2, be obliged to give the FMA<sup>2</sup> any relevant information it might request in the course of its supervisory duty and to assist the FMA in conducting investigations. If there is reason to suspect that any provisions have been infringed upon that are within the competence of either the exchange operating company, in particular infringements of the trading rules, or of the FMA, then these bodies shall cooperate and provide each other with the necessary information. The FMA shall, however, be empowered to order the exchange operating company to discontinue the investigations or any other measures if these are likely to impede or prevent the investigation of the facts of a matter pursuant to Article 48a of this federal law, or to impede or prevent the investigation of any infringements pursuant to Article 2 fig. 4 Securities Supervision Act (SSA).

### **Article 25b**

(1) The exchange operating company shall suspend trading in a financial instrument that no longer meets the rules of the regulated market irrespective of Art. 91 par. 3 fig. 9 Securities Supervision Act if such measure does not stand in opposition to investor interests or the objective of having a properly functioning market.

(2) Should the exchange operating company suspend trading in a financial instrument, it must publish this decision in a medium that is accessible to the general public and inform the FMA of the suspension of trading; the exchange operating company shall send all relevant information in this context to the FMA. Additionally, the exchange operating company may inform the operators of other regulated markets directly of the suspension of trading in the concerned financial instrument. The FMA shall inform the competent authorities of other member states of the suspension of trading.

(3) The FMA shall request the suspension of trading in a financial instrument on one or on several regulated markets unless the exchange operating company has taken action on its own pursuant to par.1 if this action is necessary to safeguard the interests of a properly functioning market and is not contrary to the interests of investors; the FMA shall immediately publish its decision and inform the competent bodies of the other member states of such action.

(4) Should the FMA receive information from the competent body of another member state that may result in the suspension of trading in a financial instrument on the Official Market, on the Second

---

<sup>2</sup> Austrian Financial Market Authority (Finanzmarktaufsicht, FMA)

Regulated Market or another domestic regulated market or the suspension from trading on a multilateral trading system operated by the exchange operating company, then the FMA shall inform the exchange operating company immediately of this circumstance within the scope of its competence. The exchange operating company shall subsequently proceed pursuant to par. 1 and inform the FMA of any suspension of trading in the concerned financial instrument.

## **Trading Rules**

### **Article 26**

(1) Trading on the exchange shall take place in accordance with the rules of fairness and with the principle of equal treatment of all market participants. Above all, no simulated transactions or transactions for the purpose of damaging third parties may be concluded. The exchange operating company shall issue regulations necessary for the protection of investors and for the maintenance of the good reputation of exchanges in Austria that provide for the equal treatment of the market participants. These regulations shall comply with the provision of Article 82 paras. 5 for stock exchanges.

(2) The exchange operating company shall issue rules and regulations of trading based on the common usages for the instruments traded on the exchange so as to fulfill the requirements of promptness and effective trading. The rules and regulations of trading shall also state the procedure in case a transaction is not fulfilled or a Member of the exchange goes bankrupt. In these cases it may be decreed that any realization only be carried out on the exchange by Official Brokers or Non-official Brokers. If trading in foreign means of payment is involved, then the Oesterreichische Nationalbank shall be heard beforehand.

(3) The exchange operating company shall issue rules for the settlement of exchange transactions in the form of the General Terms and Conditions of Business (Article 13) to ensure promptness and fulfillment, taking into account international developments, and shall also set up a clearing and settlement agency for this purpose; in the case of general commodity exchanges, it shall not be obligatory to set up a clearing and settlement agency. The exchange operating company, however, is free to contract legal entities under private law to set up a settlement and clearing agency if these can guarantee the proper settlement of exchange transactions. If settlement agencies are charged with the clearing of exchange trading, they shall have the right to carry out exchange transactions in options and financial futures contracts for their own account and to fulfill obligations arising therefrom including the delivery and receipt of securities; the provisions of the Banking Act shall not apply to such settlement agencies, however, these settlement agencies may not carry on banking operations nor participate in stock exchange transactions. This shall apply analogously, if the clearing agencies are charged with said services for trading on an MTF operated by the exchange operating company, and also if it sets up its own settlement agency and acts as a settlement agency in its own right. The settlement agencies shall provide all and any information pertaining to the settlement and fulfillment of stock exchange transactions to the supervisory authorities, the exchange operating company and the Stock Exchange Commissioner that might be needed by these bodies to fulfill their duties.

## **Exchange Transactions**

### **Article 27**

(1) Dealings concluded on the floor of the exchange during trading hours in those negotiable instruments whose trading is permitted on the exchange concerned are considered exchange transactions.

(2) If there is an automated trading system on an exchange, then all dealings are considered exchange transactions that are concluded in those negotiable instruments that are included in the automated trading system.

(3) Exchange transactions are transactions for delivery at a fixed time; any claims for their effective fulfillment must be presented within one week after the due date at a court of arbitration.

(4) Disputes arising from exchange transactions shall be arbitrated by the Court of Arbitration of the exchange.

(5) Collateral deposited within the context of exchange transactions shall be realized in accordance with the provisions of commercial executors even if the pledgee is not a businessperson.

### **Objection of Gambling and Wager**

#### **Article 28**

(1) In decisions concerning legal disputes arising from exchange transactions, the objection shall be inadmissible that margin trading judged to be gambling or wager be named as the grounds for a claim.

(2) If options and financial futures contracts are being traded on recognized exchanges, in Austria or outside the country, and prices published for these, the objection of gambling and wager in legal disputes arising from these transactions shall not be admissible, irrespective of who presents the claim.

### **Commodity Exchange**

#### **Trading on the Exchange**

#### **Article 29**

(1) Trading on the commodity exchange shall be carried out by the Official Brokers (*Sensale*), directly by exchange traders or by an automated trading system.

(2) Whenever Official Brokers act as intermediaries the provisions in Articles 60 to 63 apply *mutatis mutandis* with the exception of the order books.

(3) On the general commodity exchanges, there shall be only one official trading market.

#### **Article 30 repealed**

### **Price Determination**

#### **Article 31**

(1) The exchange operating company, under the supervision of the Exchange Commissioner, shall determine the prices of the negotiable instruments to be traded on the commodity exchange on a daily basis after the closure of the trading session. These shall be based on transactions concluded by the intermediaries during the trading session as well as on information the intermediaries gain knowledge of in the course of exercising their function and from persons of confidence the exchange operating company may have appointed from among the dealers to the exchange with

their approval.

(2) The exchange operating company is responsible for the immediate publication of the prices determined pursuant to paragraph 1.

### **The Official Brokers (Sensale)**

#### **Article 32**

(1) The Official Brokers (Sensale) of the exchange are the officially appointed self-employed intermediaries of an exchange in accordance with Articles 33 and 34.

(2) The FMA shall appoint an adequate number of Official Brokers if the conclusion of dealings is not carried out exclusively by means of an automated trading system.

(3) The appointment shall require the approval of the state governor. The appointment shall be preceded by the public announcement of the position of Official Broker to be published in the Official Gazette of the "Wiener Zeitung" and in the organ of the exchange.

(4) The appointment of the Official Broker may be granted in general for all types of intermediary dealings pursuant to Article 35 paragraph 1 or only for certain types of dealings.

(5) The FMA shall issue the Official Broker an appointment decree which names the exchange to which he/she is appointed and the scope of his/her appointment.

(6) The appointment of an Official Broker shall be published in the Official Gazette of the "Wiener Zeitung" and in the organ of the exchange operating company (Article 13 paragraph 5), and the competent Chamber of Commerce and Industries for that exchange's location shall be informed.

#### **Article 33**

(1) In order to become an Official Broker a person must:

1. be at least 24 years of age,
2. have full legal capacity,
3. have successfully passed the Official Broker Examination, and
  - a) if appointed as Official Broker for the securities exchange, have at least three years experience in the field as Official Broker's assistant or as an employee of a Non-official Broker, or
  - b) if appointed as Official Exchange Broker for the commodity exchange, have at least five years qualified experience in one of the relevant industries or be authorized to serve as a court-certified expert for such industry.

(2) The following persons are excluded from being appointed:

1. persons convicted of criminal offenses in accordance with Article 13 Business Code for as long as the conviction has not been abrogated nor subjected to restricted divulgence from the penal record;
2. if they are excluded from holding public office on the grounds of legal federal provisions;
3. if they have been dismissed from public office by disciplinary action;
4. if insolvency proceedings have been initiated against their assets, for the duration of these proceedings, or if insolvency proceedings have not been opened due to lack of assets to cover the costs as well as in the case of insolvency established by court ruling;

5. persons that have been convicted finally and conclusively for an infraction of administrative law pursuant to Article 48, and as long as the sentence has not become extinct in the criminal record.

#### **Article 34**

(1) The Official Broker Examination shall be held by a commission consisting of the Securities Exchange Commissioner as Chairman, two to four experts for the securities industry from among the staff of the exchange operating company appointed by the FMA with its approval and one representative of the FMA charged with this task; the Commission for the examination of a commodity exchange Official Broker shall consist in contrast of the Commodity Exchange Commissioner as Chairman, an employee of the exchange operating company appointed for this task by the FMA and a further expert for commodities industry appointed by the FMA with his/her approval.

(2) Subject of the examination shall be the candidate's knowledge of the legal provisions pertaining to the transaction activities of the Official Brokers

(3) The commission shall decide immediately after the examination if the candidate has passed or not. The commission may also qualify a passing grade as "excellent" or "good".

(4) The result of the Official Broker Examination shall be documented by a signed examination certificate signed by the Exchange Commissioner.

#### **Article 35**

(1) Official Brokers have the right to mediate contracts for negotiable instruments as well as for the admissible auxiliary transactions concluded on the exchange. Exchange Brokers for the Commodity Exchange are additionally authorized to act as official experts as usual for the industry. It is not permitted to mediate deals during stock exchange trading hours in securities that are not quoted on the Official List of the Official Market of the exchange.

(2) Official Brokers are permitted to exercise their office off the floor of the exchange within the city limits where it is located. In this case the provisions in Articles 60 to 63 shall apply *mutatis mutandis* with the exception of the provisions concerning the order books. In the case of transactions that cannot be fulfilled immediately the Official Broker shall remit the contract note to the parties for them to sign and shall then immediately send the signed contract note to each party with each others signatures. In the case of anonymous transactions (Article 63), however, the Official Broker shall keep the signed contract notes and shall only give the contract note of each party to remain anonymous, signed by him/herself, to the parties.

(3) Official Brokers have the right to hold public auctions of negotiable instruments that are part of their intermediary activities if the head of the provincial government grants them the permit to do so. The head of the provincial government shall grant this permit if demand for such auctions at the location of the exchange exists.

#### **Article 36**

(1) It is the duty of the Official Brokers to carry out the transactions entrusted to them with the proper care of registered commercial businesspersons. They shall avoid any activities that might help deteriorate the trust in their impartiality or in the credibility of the prices they determine or of the certificates they issue.

(2) Official Brokers are prohibited in particular from doing the following:

1. concluding the usual transactions in negotiable instruments or in contracts carried out in exchange trading for their own account for which they act as intermediaries for, be it on or off the exchange floor, directly or indirectly; nor may they act as agents for transactions concluded;
2. guaranteeing or pledging themselves to the fulfillment of transactions they conclude or of taking responsibility in any other way;
3. carrying on any independent business activities, being active in another business enterprise or being a member of the management or of the supervisory board of a stock corporation, cooperative association or savings bank insofar as this status might prejudice their impartiality or the credibility of the prices they determine or of the certificates they issue;
4. joining together with other Official Brokers or commercial brokers in order to mediate transactions together or a part of these together; if the party ordering agrees to it, the joint intermediation of individual dealings is permitted;
5. accepting orders placed with them by mail, by telephone, or by any other means of telecommunication unless they personally know the party placing the order or they have confirmed their identity;
6. accepting orders if they know or should know that the ordering party is unable to pay or fulfill commitments.
7. accepting orders if they have reason to suspect that a deal is fictitious or a deal is being made with the sole purpose of damaging a third party;
8. suggesting or determining prices that are not based on Articles 31 paragraph 1, second sentence or Article 59 paragraph 1, second sentence.

(3) The transactions concluded by the Official Brokers shall be valid even if they commit a breach of duty as stated in paragraph 2 fig. 1, 2, 4 and 7.

(4) Official Brokers are bound to secrecy regarding orders, negotiations and conclusion of deals.

(5) Official Brokers shall perform their function in person and are not permitted to use the help of an assistant to conclude transactions nor to fulfill their duty of determining the prices. However, they may employ assistants to take orders to mediate transactions.

(6) Insofar as the Official Brokers pursuant to paragraph 5 employ one or more assistants they are obliged to take measures pursuant to Article 82 paragraph 5 for the prevention of insider dealings.

### **Article 37**

(1) The Official Brokers are required to be present on the exchange during the whole of the trading session or to make provisions for them to be represented by other Official Brokers; the Exchange Commissioner and the exchange operating company shall be notified in writing of who will act as representative.

(2) The FMA may per decree ordain the Official Brokers to be present at times differing from those stated in paragraph 1 if there is an automated trading system on the exchange and in spite of the differing trading hours the proper functioning of trading on the exchange at any given time remains guaranteed.

### **Article 38**

(1) Insofar as it is required by the types of transactions carried out by the Official Brokers, the

exchange operating company may rule that the Official Brokers of an exchange (of a department of the exchange) deposit a security. When determining the amount of security to be deposited the probability of damage occurring as well as the probable amount of such damage shall be taken into consideration and when determining the type of security, the efficient realization and appropriateness shall be taken into consideration.

(2) The exchange operating company's right to demand that Official Brokers deposit a collateral for the participation in a clearing procedure remains valid.

### **Article 39**

(1) The Official Broker is entitled to a brokerage (broker's fee) for transactions concluded.

(2) The amount of the brokerage shall be determined by the head of the provincial government taking the interests in maintaining a functioning market for trading on an exchange for the benefit of the national economy into consideration and in accordance with the type of negotiable instruments and volumes traded as well as keeping an adequate income for the Official Brokers in mind. Before determining the brokerage, the Exchange Commissioner, the exchange operating company and the interests group representing the Official Brokers, if one exists, shall be heard.

(3) The brokerage is due as soon as the transaction has been concluded and the Official Broker has delivered the contract note. If the transaction was conditional, then the brokerage shall be due when the transaction becomes unconditional.

(4) The Official Broker is also entitled to brokerage if the mediation of the transaction has progressed far enough for him/her to notify both parties and the transaction is then concluded by the parties immediately on the same day.

(5) In the event the transaction is not concluded or it becomes an unconditional one, then the Official Broker is not entitled to charge brokerage for his/her mediation.

(6) The brokerage is paid half by each party if they have not agreed to anything else.

(7) The exchange operating company may rule that in the case of securities and contracts that are included in the corresponding settlement system, the settlement and collection of the brokerage fees be carried out by a settlement agency.

### **Article 40**

(1) Entrusting the Official Broker with the mediation of transactions does not give him/her proxy rights to receive payments or any other services stipulated in the contract.

(2) The Official Broker does, however, have the right, without being bestowed with special proxy rights, to receive payment for negotiable instruments for which he/she acts as intermediary if these negotiable instruments are handed over by him/her.

### **Article 41**

The Official Broker shall keep samples labeled correspondingly of each of the goods sold after sampling for which he/she acted as intermediary, unless the parties release him/her from this duty or if common local practice with regard to the type of goods releases him/her from doing so, until the goods are accepted without objections as to their condition or until the transaction is concluded in any other way.

#### **Article 42**

The activities of the Official Broker shall be supervised by the exchange operating company that, in particular, shall have the right to look into all the books of the Official Broker for this purpose.

#### **Article 43**

(1) The Official Brokers shall be appointed for an unlimited period of time. The FMA upon request of the exchange operating company shall remove the Official Broker from office if:

1. he/she has reached the age of 65 at the end of that year;
2. he/she voluntarily steps down from office;
3. if he/she is sentenced by law for a criminal offense according to Article 13 of the Business Code;
4. if bankruptcy proceedings have been initiated on his/her assets or if such bankruptcy proceedings have not been opened due to lack of assets to cover the costs;
5. if he/she is restricted in his/her capacity to do business for any other reason than mentioned in figure 4;
6. if he/she was prevented from exercising his/her office for longer than one year.

(2) The voluntary resignation from office pursuant to paragraph 1 fig.2 will only take effect if presented to the exchange operating company in writing under observance of a three months' period of notice giving notice at the end of the following month.

(3) The FMA may prolong the duration of the tenure of office of an Official Broker when he/she reaches the age limit if he/she requests an extension by five years in each case if this becomes necessary due to a reduced number of transactions and lack of qualified applicants for the position.

(4) Before an Official Broker is removed from office the interest group representatives of the Official Brokers, if such an association exists on the exchange concerned, shall be heard.

#### **Article 44**

(1) If an Official Broker commits a breach of duty pursuant to Article 36 paras. 2 and 4 to 6, he/she violates administrative law and may be fined up to EUR 10,000 and the ASA upon request of the exchange operating company may suspend him/her from office for a period of up to one year or remove him/her from office altogether depending on the type of offense and its severity for which he/she has been sentenced by law.

(2) The FMA has the right to temporarily suspend an Official Broker from office if:

1. criminal proceedings have been initiated against an Official Broker in accordance with paragraph 1 or if he or she is being prosecuted in criminal proceedings (Art. 48 par. 1 fig. 1 and 2 Code of Criminal Procedure) and the character and severity of the allegations are capable of damaging the trustworthiness of the Official Broker or pose a danger for persons who make use of the Broker's services;
2. in the event and for the length of time the Official Broker fails to maintain the security deposited (Article 38) at the prescribed amount and in the prescribed composition even after being requested to do so by the exchange operating company;
3. if, and for the length of time the assets of the Official Broker are under reorganization proceedings;
4. if the Official Broker's pecuniary circumstances are in disorder, something which may be assumed especially if an order of distraint has been issued against him/her due to financial obligations or if a court ordered seizure against him/her has been unsuccessful.

(3) The right of the interest group representatives to be heard pursuant to Article 43 paragraph 4 also applies to resolutions on the temporary banning of Official Brokers from office in accordance with paragraph 1 and on the suspension from office in accordance with paragraph 2 in which case the hearing may also be held at a later date.

(4) The Public Prosecutor shall inform the FMA of any investigation procedures against an Official Broker and of the termination of such procedures or the withdrawal of the prosecution (Art. 194 and 208 par. 4 Code of Criminal Procedure); the court of law shall inform the FMA of the end of the criminal prosecution and the outcome of the criminal proceedings.

(5) The appellate instance for decisions pursuant to paragraph 1 and 2 and to Article 43 paragraph 1 and 3. shall be the Autonomous Administrative Tribunal (see footnotes).

### **Surveillance of the Exchange**

#### **Article 45**

(1) Stock exchanges are under the supervision of Austrian Financial Market Authority (FMA). The Austrian Financial Market Authority (FMA) shall supervise the organization of the exchange and the decisions made by the bodies of the exchange operating company as to their compliance with law, in particular through the Exchange Commissioner appointed pursuant to Article 46. The FMA shall supervise the proper conduct of stock exchange trading. The general commodity exchanges are under the supervision of the Federal Ministry of Economics and Labor.

(2) The supervisory authorities shall supervise compliance with the provisions of this federal law and with the other legal regulations regarding exchanges. They shall always uphold the interests in functioning stock exchanges for the benefit of the national economy as well as safeguard investors' interests. If a body of the exchange operating company commits a violation of the provisions of this federal law, or of any decrees or notices issued by virtue of this federal law, then the competent supervisory authorities shall, notwithstanding the necessary measures to be taken by the exchange operating company in the case of imminent danger pursuant to paragraph 3, order the exchange operating company under penalty of fine to reinstate the proper state of affairs within a period of time reasonable under the circumstances of the case.

(3) In the event of imminent danger or if an order pursuant to paragraph 2 has not been fulfilled on time, the supervisory authorities may take the following measures in the course of fulfilling their duty of surveillance and in order to avert abuses:

1. in the case of default of the exchange operating company, they may make the necessary decisions and take the necessary action in accordance with this federal law for the duration of the state of danger and default,
2. they may remove the managing directors and other officers of the exchange operating company from office if these persistently fail to fulfill their duties, and the interests in maintaining well-functioning exchanges for the benefit of the national economy can only be guaranteed by their removal from office. In this case the management of the exchange may temporarily be transferred to professionally qualified supervisory personnel,
3. temporarily or permanently close exchanges, if other supervisory measures do not suffice to prevent serious damages to the national economy.

(4) The managing directors and other officers and employees of the exchange operating company,

the clearing and settlement agencies, the Official Brokers and the Non-official Brokers are obliged to give the competent supervising authorities under paragraph 1, and the Exchange Commissioners appointed pursuant to Article 46 any relevant information they might request in the course of their supervisory duty, and to allow them to look into their books, written documents and data carriers. If stock exchange trading or its settlement is carried out with computer support or through a fully automated trading system, then the possibility to look into the books, written documents and data carriers at any time shall be granted to the supervisory authorities and the Stock Exchange Commissioners (deputies). The provisions of this paragraph shall also apply if these books are recorded or kept by a third party.

(5) A certified public accountant may also be ordered to carry out an inspection pursuant to paragraph 4, and may access the premises of the exchange operating company, of the intermediary and of the settlement agency prior to presenting the inspection order.

(6) The costs incurred by the Austrian Financial Market Authority (FMA) arising out of measures pursuant to paragraphs 3 and 5 shall be reimbursed by the corresponding exchange operating company. The costs for surveillance and investigations caused by individual Members, issuers, Official Brokers or settlement agencies shall be reimbursed by these to the exchange operating company.

(7) For the execution of an official writ by virtue of this federal law, within the enforcement jurisdiction of the Austrian Financial Market Authority (FMA) as stated in Article 5 paragraph 3 of the Law on Administrative Procedure (VVG) 1991, the amount of ATS 10,000 prescribed shall be replaced by EUR 30,000.

## **Commissioners of the Exchange**

### **Article 46**

(1) The Federal Ministry of Finance shall appoint an Exchange Commissioner for every securities exchange and the Federal Ministry of Economics and Labor shall appoint an Exchange Commissioner for the Commodity Exchange as well as the necessary number of deputies for each exchange. The Exchange Commissioner and his/her deputies must be actively employed according to private law or under public law by a territorial body or exercise the profession of lawyer or public accountant. In their function as Exchange Commissioner they are subject to orders by the competent supervisory body. The competent Federal Ministers have the right to dismiss Exchange Commissioners and their Deputies at any time.

(2) The Stock Exchange Commissioners and their deputies shall be invited by the exchange operating company with due previous notice to all general meetings, all supervisory board meetings, all decision-making meetings of committees of the supervisory board as well as to meetings of the management the subject of which is the admission of new members, the suspension of membership or expulsion of members, the admission or withdrawal of admission to listing of negotiable instruments to the different types of trading. They have the right to speak at any time if they request. All minutes of the meetings of the bodies of the exchange operating company to which they are invited shall be sent to them without delay. The Stock Exchange Commissioners and their deputies have the right to visit trading sessions at any time they wish.

(3) The Exchange Commissioners shall immediately raise objections against all resolutions and decisions of the bodies of the exchange operating company that they consider contrary to federal laws, decrees or rulings of the competent supervisory authority. The Exchange Commissioner shall

state in his/her objection which regulations the resolution violates in his/her opinion. The objection shall postpone the date as of which the resolution shall take effect until the supervising authorities reach a decision on the matter. The body concerned may demand that a decision be reached by the competent Federal Ministry within one week after the objection was raised. If the objection is confirmed, then the implementation of the resolution is unlawful; the objection is repealed if the competent supervisory body does not reach a decision on its legal effect within one week after receiving the application of the exchange operating company.

(4) The resolutions and decisions of the bodies of the exchange operating company that are reached outside of meetings shall be reported to the Exchange Commissioners and deputies immediately. In this case the Exchange Commissioner may raise objections only within two exchange days after learning of this resolution or decision.

(5) The Exchange Commissioners and their deputies shall inform the competent supervisory body without delay of any facts they gain knowledge of that require action in accordance with Article 45 by the supervising authority.

(6) The Exchange Commissioners and their deputies shall receive remuneration (payment for office) from the competent Federal Ministry commensurate with the work connected to the surveillance and the expenses involved. The competent Federal Ministry shall prescribe a lump sum to be paid by the exchange operating company on a yearly basis for the work connected to the surveillance of the exchange commensurate with the expenses incurred by the surveillance work.

### **Protection of Designations**

#### **Article 47**

(1) The word "exchange" or a similar word combination in connection with negotiable instruments in accordance with Article 1 of this federal law may not be used in public in such a way so as to give the false impression that an exchange is meant in the meaning of this federal law.

(2) The name "Official Broker" may only be used by persons that are appointed as such in accordance with the provisions of this federal law.

### **International Cooperation**

#### **Article 47a**

(1) The Federal Ministry of Finance or the Austrian Financial Market Authority (FMA) shall be permitted to disclose official information to foreign supervisory authorities if:

1. the public order or other vital interests of the Republic of Austria or banking secrecy rules (Article 23 Banking Act<sup>3</sup>) are not violated,
2. it is guaranteed that the country requesting information would fulfill a similar request by Austrian authorities and
3. a request for information of the same kind by the Federal Ministry of Finance or Austrian Financial Market Authority (FMA) would comply with the aims of this federal law.

(2) The Federal Ministry of Finance and the Austrian Financial Market Authority (FMA) may at any time gather information from foreign authorities that is in the interest of maintaining properly

---

<sup>3</sup> Cf. now: Art. 38 Banking Act (BWG) 1993 (in accordance with Art. 105 paragraph 2 BWG, FLG 532/1993)

functioning exchanges for the benefit of the national economy, or of safeguarding the interests of investors or is necessary in the line of its duty as supervisory authority.

(3) The provisions of paragraphs 1 and 2 are applicable insofar as nothing to the contrary has been accorded in international agreements. The provisions of this federal law on cooperation within the European Economic Area EEA (Article 75a) shall not be affected.

## **Penal Provisions**

### **Article 48**

#### (1) Anyone

1. who, without a license pursuant to Article 2, holds meetings, sets up or operates a fully automated or computer assisted trading system at which stock exchange trading in negotiable instruments takes place pursuant to Article 1, (bucket shops); or
2. who commits a breach against an obligation pursuant to Art. 48d par. 1 through 6, 9 or 10, first sentence, or pursuant to Art. 48f or against an obligation pursuant to a decree issued by the FMA based on Art. 48d par. 11 or Art. 48f par. 10, or who employs a defendant in violation of an employment ban on said person pursuant to Art. 48q par. 3,
3. who concludes transactions in negotiable instruments on the exchange that are not admitted to trading on the exchange or have been suspended from trading,
4. who participates or holds exchange trading sessions against the orders of the exchange operating company or of the supervisory authorities regarding the cancellation of trading sessions or the closure of exchanges,
5. who does not, or not in a timely manner, fulfill notification obligations or disclosure requirements in accordance with Articles 91 through 94, or the notification requirement pursuant to Article 6 or the presentation requirement pursuant to Article 8,
6. who is an issuer and does not, or not in a timely manner, fulfill disclosure, transmission or notification requirements pursuant to Articles 75a and 82 through 89 or breaches its obligations pursuant to Article 82 par. 5,
7. who as Member of the exchange commits breaches of duty pursuant to Article 18 fig. 1 to 3,
- 7a. who as Member of the exchange commits breaches of duty pursuant to Article 18 fig. 5,
8. who as Member of an exchange trades negotiable instruments through the exchange that are not admitted to trading on the respective exchange,

shall be deemed to have committed a violation of administrative law and with respect to Figure 1 may be fined up to EUR 50,000 and with respect to Figures 2 through 8 the fine may be up to EUR 30,000 insofar as the act does not constitute an offense that would otherwise be in the jurisdiction of the courts of criminal law.

#### (2) Anyone

1. who disrupts fair and proper trading procedures and the peace and order on an exchange by improper behavior,
2. who participates in bucket-shop exchanges pursuant to paragraph 1 fig. 1 and publicly disseminates the deals or the prices concluded on it; or
3. repealed
4. who as a dealer commits breaches of duty pursuant to Articles 18 fig. 1 and 20 paragraph 4,

**Austrian Stock Exchange Act 1989**

(Federal Law Gazette No. 1989/555 as amended FLG I No. 58/2010)

5. who as a dealer to the exchange trades negotiable instruments through the exchange that are not admitted to trading on the respective exchange,
6. who acts contrary to the provisions of Article 47 and misuses the words "exchange" or "Sensal" (Official Broker)

commits a violation of administrative law and shall be fined up to EUR 10,000, insofar as the act does not constitute an offense that would otherwise be the jurisdiction of the courts of criminal law.

(3) The attempt is punishable by law.

(3a) The installation of systems that make possible to participate in trading on a regulated market or in a multilateral trading system of a member state from within the country, shall not be subject to par. 1 fig. 1. Participation in such a regulated market or such a multilateral trading system from within the country shall not be subject to par. 2 fig. 2.

(3b) The installation of a system that enable the participation in trading in a market with its registered office in a third country as well as participation in trading from within the country shall not be governed by paragraph 1 fig. 1 and par. 2 fig. 2 if it meets the following conditions:

1. The legal entity responsible for trading has its registered office in accordance with its bylaws in a country that is represented on the Basle Committee for Banking Supervision;
2. The exchange concerned has been issued a license to operate a recognized exchange in the country of its registered office pursuant to Art. 2 fig. 32 Austrian Banking Act;
3. The authority responsible for supervising this market in the country of its registered office declares that the supervision of orderly trading also covers activities within the country and that it collaborates with the FMA pursuant to Articles 98 to 101 Securities Supervision Act 2007 with respect to this surveillance.

(4) Administrative files pursuant to paras. 1, 2 and 5 as well as pursuant to Art. 44 par. 1 are imposed by the FMA. The Administrative Offences Act shall apply. With respect to paras. 1 and 2, and Art. 44 par. 1, the exchange operating company is under the obligation to disclose to the FMA fully and immediately, all material facts it gains knowledge without being requested to do so.

(5) Any person responsible for an exchange operating company (Art. 9 Administrative Offences Act) shall be deemed to have committed a breach of administrative law and shall be fined up to EUR 30,000 if such person

1. fails to meet his or her obligation pursuant to Art. 25b paras.1 and 2 to suspend trading in a financial instrument;
2. fails to meet his or her disclosure obligations pursuant to Art. 65 paras. 2 and 3;
3. fails to meet his or her obligation to withdraw the admission to trading of a financial instrument pursuant to Art. 66 par. 8;
4. fails to meet his or her obligation with respect to the initiation of proceedings under Art. 64 par. 5 pursuant to Art. 66 par. 10 or fails to meet his or her notification obligation pursuant to Art. 15 par. 8;
5. fails to meet a disclosure obligation imposed on him or her pursuant to Art. 14 par. 5.

(6) Any person responsible (Art. 9 Administrative Offences Act) for an exchange operating company who violates the obligations of Art. 25 paras. 5 to 8 – also if only by negligence – shall be deemed to have committed an administrative offence, insofar as the act is not a criminal act that falls into the sphere of competence of the courts, and shall be sanctioned by the FMA by a prison sentence of up to six weeks or a fine of up to EUR 75,000.

## **Market Abuse**

### **Article 48a**

(1) For the purposes of Articles 48a through 48r, the following definitions shall apply:

1. *Inside information* is any information of a precise nature, which has not been made public and relates directly or indirectly to one or more issuers of financial instruments or to one or more financial instruments, and its disclosure could have a significant effect on the price of said financial instruments or their derivatives, because said information would serve an informed investor as a basis on which to reach investment decisions.
  - a) Information is deemed to be precise if it contains a number of already given facts and events or such facts and events of which it may be assumed to a sufficient degree of probability that these will occur in the future, and are moreover precise to a degree that would allow conclusions to be drawn regarding the possible effects of said facts and events on the prices of financial instruments and their derivatives.
  - b) In the case of commodity derivatives, inside information is information of a precise nature that has not been disclosed to the general public and relates directly or indirectly to one or more such derivatives, and of which market participants in markets where such derivatives are traded would expect to receive such information in line with accepted market practices in the respective markets. The information referred to relates directly or indirectly to such derivative or several derivatives and is regularly made available to market participants in such markets or said information must be disclosed under legal and administrative rules, trading rules, contracts or is accepted market practice in the markets on which such commodity derivatives are traded or on the respective underlying commodity exchanges. As regards commodity derivatives that are not financial instruments pursuant to the Securities Supervision Act 2007, the competence that would otherwise fall in the jurisdiction of the FMA shall belong to the scope of responsibility of the Federal Ministry for Economic Affairs and Labor, excepting Articles 48i through 48p, which are not to be applied.
  - c) With respect to persons who are charged with the execution of orders in the relevant financial instruments, inside information shall also include information according to lit. a or b that has been received from a customer and refers to the pending orders of said customer.
2. *Market manipulation* shall be understood to be
  - a) Transactions or buy/sell orders
    - aa) which send or are likely to send false or misleading signals regarding the supply of, demand for or the price of financial instruments, or
    - ab) influence or have the capacity to influence the price of one or several financial instruments placed by one person or several persons acting in collaboration in the intent to drive up prices to an abnormal or artificial level,

unless said person who entered into the transaction or has placed such an order has legitimate reasons for this action and the transactions or orders are conform to accepted market practices in the regulated market concerned.

When assessing transactions or buy/sell orders pursuant to lit. a with respect to market manipulation, the following circumstances – which of themselves would not necessarily be viewed as market manipulation – are to be taken into consideration irrespective of the cases deemed to be market manipulation pursuant to par. 2:

- The extent to which the orders placed or executed account for a

- significant share of the daily trading volume in the financial instrument concerned on the respective regulated market, in particular, when such activities lead to substantial changes in the price of said financial instrument;
- The extent to which the orders placed or executed by persons holding significant buy or sell positions in a financial instrument or a derivative instrument result in a substantial change to the price of such financial instrument respectively its derivative or to the price of an underlying asset admitted to trading on a regulated market;
  - Whether or not the trades executed lead to a change in the identity of the commercial owner of a financial instrument admitted to trading on a regulated market.
  - The extent to which the orders or trades executed contain reversals in positions within a short period of time and constitute a substantial portion of the daily trading volume of the trades in the financial instruments concerned on the respective regulated market and a connection can be established with substantial changes to the price of a financial instrument admitted to trading on a regulated market;
  - The extent to which the orders or trades executed within a short period of time of the exchange trading day are concentrated and lead to a change in prices that are subsequently reversed again;
  - The extent to which the orders placed change the best bid and ask market prices for a financial instrument admitted to trading on a regulated market or generally alter the situation on the orderbook available to market participants and can be cancelled before actual execution;
  - The extent to which orders are placed or trades are executed at precisely or approximately a certain point in time when the reference prices, the settlement prices or valuations are calculated and this results in changes to prices that refer to precisely said prices and valuations.
- b) Trades, buy and sell orders are placed under false pretences or by any other deceitful actions. When assessing trades or buy/sell orders pursuant to lit. b with respect to market manipulation the following circumstances – which as such are not necessarily to be viewed as market manipulation – are to be taken into consideration irrespective of the cases deemed market manipulation pursuant to par. 2:
- Whether or not certain persons have placed orders or have executed trades in advance or after disseminating false or misleading information themselves or has been done by persons with whom they have close relationships;
  - Whether or not orders have been placed or executed by persons before or after these persons or other persons with whom they have a close relationship have prepared or passed on analyses or investment recommendations that were incorrect or distorted or obviously influenced by the material interests of these persons.
- c) The dissemination of information via the media including the Internet or through other channels that send or could send false or misleading signals with respect to the financial instruments, among other things, by disseminating rumors and false or misleading news if the person who disseminated this information knew or should have known that the information was false or misleading. Media staff that disseminates such information in the line of duty shall be judged by the standards

applicable to their profession irrespective of Art. 48q par. 1 and 2 unless these persons gain an advantage or a pecuniary benefit directly or indirectly from the dissemination of the respective information.

3. *Financial instruments* include
  - a) Securities in the meaning of Art. 1 fig. 4 Securities Supervision Act 2007,
  - b) Shares in organisms for collective investment,
  - c) Money market instruments
  - d) Financial futures contracts (futures) including equivalent instruments settled in cash,
  - e) Forward rate agreements,
  - f) Interest and foreign exchange swaps and swaps on shares or stock indices (equity swaps),
  - g) Call and put options on all instruments listed under lit. a through f including equivalent instruments settled in cash; these include in particular foreign exchange and interest rate options,
  - h) Commodity derivatives,
  - i) All other instruments admitted to trading on a regulated market in a member state or for which an application for admission to trading on such a market has been submitted.
4. Accepted market practices are practices that one may reasonably expect to find on one or more financial markets and are recognized by the FMA by way of a decree pursuant to par. 3.
5. A *person* may be a natural person or a legal entity.
6. *Competent authority* is the competent body appointed by the member state pursuant to Article 11 of Directive 2003/6/EC.
7. A *person discharging managerial responsibilities at an issuer* may be
  - a) a person belonging to an administrative, management or supervisory body of the issuer, or
  - b) a person who even though in a managing position does not belong to any of the bodies listed under lit. a but nonetheless has regular access to inside information with a direct or indirect relationship to the issuer and is authorized to reach business decisions on behalf of the listed company regarding future developments and business prospects.
8. A *person having a close relationship with a person discharging managerial responsibilities at an issuer of financial instruments* may be
  - a) the spouse of a person who has such management responsibilities or any other life partner who enjoys equivalent rights to spouses under national law,
  - b) a dependent child under national law of a person discharging managerial responsibilities,
  - c) any other family member of the person discharging managerial responsibilities who has lived in the same household for at least one year before the trade in question was executed,
  - d) a legal entity, an institution acting as fiduciary or a sole proprietorship company managed by a person pursuant to fig. 8 of lit. a through c who directly or indirectly is controlled by such a person, or has been established for the benefit of such a person or whose business interests are the same as those of such a person.
9. "*Persons who professionally arrange transactions in financial instruments*" are primarily investment firms and credit institutions.
10. An *investment firm* is a legal entity in the meaning of Article 4 par. 1 fig. 1 of Directive 2004/39/EEC.

11. A *credit institution* is an undertaking in the meaning of Article 4 fig. 1 of Directive 2006/48/EEC.

(1a) For the purposes of Articles 48a to 48c and 48q, the term *regulated market* shall also include multilateral trading systems.

(2) Market manipulation pursuant to par. 1 fig. 2 shall mean:

1. Conduct by a person, or persons acting in collaboration, to secure a dominant position over the supply of or demand for a financial instrument which has the effect of fixing, directly or indirectly, buy or sell prices or creating other unfair trading conditions;
2. The buying or selling of financial instruments at the close of the market with the effect of misleading investors acting on the basis of closing prices;
3. Taking advantage of occasional or regular access to the traditional or electronic media by voicing an opinion about a financial instrument (or indirectly about its issuer) while having previously taken positions on that financial instrument and profiting subsequently from the impact of the opinions voiced on the price of that instrument, without having simultaneously disclosed that conflict of interest to the public in a proper and effective way.

(3) The FMA can define whether accepted market practice is given pursuant to par. 1 fig. 5 by issuing a decree.

1. It shall take into special account the following aspects irrespective of its collaboration with other authorities:
  - a) How transparent the market practice is for the market,
  - b) if the operation of market forces and the free play of supply and demand are guaranteed, giving special attention to the analysis of market practice concerned on the most important market parameters such as prevailing market conditions prior to the introduction of the market practice concerned, the weighted average price on a trading day and the daily closing price,
  - c) the extent to which the market practice concerned has an effect on the market quality and efficiency,
  - d) the extent to which the respective market practice takes the trading mechanism of the market concerned into account and permits market participants to respond adequately and in a timely manner to the new market situation created by the market practice,
  - e) which risk the market practice concerned creates for the market integrity of other, directly or indirectly linked, regulated and unregulated markets for this financial instrument within the Community,
  - f) the results arrived at by the competent authorities or other authorities named in Article 12 par. 1 of Directive 2003/6/EC during their investigations of the market practice concerned especially whether they determined an infringement of market abuse regulations or of the applicable codes of conduct on the respective market or other directly or indirectly linked markets within the Community,
  - g) the structural features of the market concerned, e.g. whether it is a regulated market or not, which financial instruments are traded and which market participants are represented and which share in trading is accounted for by private investors. Market practices especially new or emerging market practices may not be defined as unacceptable on the grounds that they were not explicitly designated as accepted market practice previously.  
The FMA shall review accepted market practices regularly as to their continued

acceptance and shall take into account major changes to the trading environment of the market concerned such as changed trading rules or the infrastructure of the market.

2. Before issuing a decree pursuant to this paragraph and irrespective of Art. 48q par. 2 the FMA shall consult the exchange operating company and interest group representatives of issuers, financial service providers and consumers as well as any other market operators. Within the scope of these consultation proceedings, the FMA shall also consult the competent authorities of other member states in particular if there are comparable markets (similar structures, trading volumes, transactions). Before changing or repealing such a decree, the same consultation proceedings shall be carried out.
3. The decree shall adequately describe the market practice and shall list the factors that were taken into consideration when deliberating the decision on the acceptance of the market practice concerned, in particular if the acceptance of the one and the same market practice was assessed differently in the different markets.
4. The decree shall also be sent to the European Securities Committee at the time it is promulgated.

### **Abuse of Inside Information**

#### **Article 48b**

(1) Any person taking advantage of inside information with the intention to gain a pecuniary benefit for himself or herself or a third party by

1. buying or selling the financial instruments concerned or offering to buy or to sell these to a third party, or recommending such action,
2. of making this information accessible to a third party without having been ordered to do so,

shall be punished by law to a prison sentence of up to three years and if the benefit gained exceeds EUR 50,000, by a prison sentence of six months to five years.

(2) A person not being an insider who takes advantage as described in par. 1 of inside information he or she is informed of or learns of in any other manner with the intention to gain a pecuniary benefit for himself or herself or a third party shall be punished by law to a prison sentence of not more than one year or to a fine of not more than 360 times the daily fine rate as set by the court, but if the pecuniary benefit gained exceeds EUR 50,000 the punishment shall be a prison sentence up to three years.

(3) Any other person – regardless of whether insider or not – who uses such information in the manner described in par. 1 in the knowledge of or in gross negligent ignorance of the fact that the information is inside information, but without the intention to attain a pecuniary gain for himself or herself or for a third party shall be punishable by a court of law to a prison sentence of up to six months or of not more than 360 times the daily fine rate as set by the court.

(4) An insider is any person who has access to inside information as a member of an administrative, management or supervisory body of an issuer or otherwise due to his or her profession, employment, duties or share in the capital of an issuer. Any person having obtained inside information through criminal acts shall also be deemed an insider. In the case of a legal entity, those natural persons shall be considered insiders who were involved in the decision to carry out a transaction for the account of the legal entity.

## **Market Manipulation**

### **Article 48c**

Any person engaged in market manipulation or that commits a violation of the Official Decree issued by the FMA pursuant to Art. 48d par. 12 - unless the act is a criminal offence punishable under the jurisdiction of the courts - shall be deemed to commit an infraction of administrative law and shall be punishable by the FMA by a fine of up to EUR 75,000. The Administrative Offences Act shall apply. Any attempt is also punishable by law. Any pecuniary benefit gained from such acts shall be declared void by FMA.

### **Article 48d**

(1) Issuers of financial instruments having inside information relating directly to them shall make such information immediately available to the public. The issuer shall disseminate the occurrence of a series of circumstances or events – irrespective of whether or not formally ascertained – immediately. Any major changes with respect to inside information, which has already been disclosed, shall be disseminated immediately after any such change takes place. The announcement shall be disseminated through the same channels as the original information. The dissemination of inside information to the public shall be executed at the same time for all categories of investors in the member states in which the issuers have submitted for their financial instruments an application for admission to trading on a regulated market or for which such an admission application has already been granted. Issuers shall make any inside information, which they are under the obligation to disseminate, available to the public on their website for an adequate period of time.

(2) An issuer may postpone the release of inside information pursuant to par. 1 first sentence, if the release could be potentially damaging to said issuer's legitimate interests unless the suppression of such inside information would be misleading for the public and the issuer would not be in a position to guarantee the confidentiality of the information.

1. Legitimate interests are:
  - a) Ongoing negotiations or any circumstances in connection with such negotiations, if the outcome or normal course of the negotiations could be hindered by the release of such information. In particular, if the financial survival of the issuer is directly at high risk – even if the issuer is not yet subject to valid insolvency provisions – the release of such information can be postponed for a limited time should the release seriously threaten existing and potential shareholders' interests by preventing the conclusion of the specific negotiations that could serve to secure the long-term financial recovery of the issuer;
  - b) A decision by one of the executive bodies of an issuer or in the case of a contract already executed, when such a decision requires the approval of another body of the issuer and the structure of an issuer separates these bodies and the release is made before obtaining the required approval and is disseminated together with a statement to the effect that such approval is still pending, making a release in this form a potential threat to a correct assessment by the public.
2. The issuers are under the obligation to control access to such information in order to guarantee the confidentiality of the inside information. They shall
  - a) take effective measures to prevent that persons other than those who need to access the inside information to carry out their job within the organization of the issuing institution gain access to such information;
  - b) take the required measures to guarantee that every person who has access to such

information acknowledges the legal obligations resulting from such knowledge and is made aware of the sanctions in the event of abuse of inside information or the improper dissemination of such information;

- c) shall take the required measures to permit the immediate release of the information in the event that the issuer is not in a position to guarantee the confidentiality of the relevant inside information irrespective of par. 3 second sentence.

The issuer shall inform the FMA immediately of any decision to postpone the dissemination of inside information.

(3) The issuer or any person acting on the issuer's behalf or for the account of the issuer who passes on inside information within the course of normal work tasks or when exercising their profession or performing their duties towards third parties shall announce this information to the public in full and with respect to all facts, specifically, at the same time the information is being passed on intentionally, and shall do so without delay in the event of the non-intentional passing on of information. This obligation shall not apply if the person to whom the information is being passed on is under the obligation to maintain secrecy regardless of whether this obligation results from legal or administrative provisions, by-laws or a contract. The issuer or any person acting on behalf of said issuer or for the issuer's account shall keep a record of the persons who work for them under work contracts or any other agreement and regularly have access to inside information or have access on an ad hoc basis. The issuer or any person acting on behalf of said issuer or for the issuer's account shall regularly update such records and transmit the records to the FMA upon request. The list of insiders must be archived after being completed or, if applicable, after their last update for at least five years. The persons under the obligation to keep records of insiders shall ensure that those persons who have access to inside information sign a written acknowledgement and declaration to observe the obligations arising from the applicable legal and administrative provisions, and must furthermore state their awareness of the sanctions that would apply in the event of abuse of inside information or the improper dissemination of such information.

1. The record of insiders shall contain the following data:
  - a) The personal data of all persons who have access to inside information,
  - b) The reason for recording such persons in the record,
  - c) The date of creation and updates of the record of insiders.
2. The insider records must be immediately updated in the event that
  - a) the reason for the entry of a person already on the record changes,
  - b) new persons must be added to the records,
  - c) the persons in the records no longer have access to inside information; in this case, it shall be recorded as of when this applies.

(4) Persons who have a management position with an issuer of financial instruments with its registered office in the country and, if applicable, persons who have close relationships with issuers shall report to the FMA all trades concluded for their own account in trading in equities and equity-like securities admitted to the regulated markets of the issuer or any related trades in derivatives or associated companies (Art. 228 par. 3 Commercial Code). The aforementioned persons shall be under the obligation to immediately disclose such information. A registered office pursuant to this Article shall be viewed as equivalent when an issuer having its registered office outside the EEA is obligated to submit in Austria a document pursuant to Art. 10 of Directive 2003/71/EC once a year. The disclosures pursuant to this provision may also be carried out by the FMA with their approval.

1. The report must contain the following:
  - a) Name of person responsible at an issuer of financial instruments for management tasks, or the name of a person who has a close relationship to such a person,
  - b) Reason for the reporting obligation,

- c) Name of respective issuer,
  - d) Description of the financial instrument,
  - e) Type of trade (e.g. sell or buy),
  - f) Closing date and place of execution of trade,
  - g) Price and volume of trade.
2. The report to the FMA must be made within five workdays as of the day the trade was executed, but may be prolonged until the total volume of the trade executed in accordance with this paragraph reaches the amount of EUR 5,000. Should this amount not yet be reached by the end of the calendar year, the report may be omitted. When determining the total amount of trades executed, such trades in accordance with this paragraph placed by persons named in the first sentence having management duties and by all persons having a close relationship to them shall be added.

(5) Persons who prepare analyses of financial instruments or of issuers of financial instruments or other such information destined to be disclosed through information dissemination channels or who prepare or pass on such information to the public including recommendations and suggestions for investment strategies shall ensure that the information is presented properly with respect to the facts so as to reveal any interests or conflicts of interest in connection with the financial instruments to which the information relates.

(6) The exchange operating company shall take structural measures to prevent and reveal market manipulation practices.

(7) The FMA can take any measures required to assure compliance with paragraphs 1 through 5, and ensure that the public is properly informed.

(8) Public authorities who disseminate statistics that could have a significant influence on financial markets shall do so in an appropriate and transparent manner.

(9) Persons who are professionally engaged in trading in financial instruments shall immediately inform the FMA of any well-founded suspicions they may have based on information and facts they have gained knowledge of indicating that a transaction could be an inside deal or constitute market manipulation. The persons named above shall decide on a case-by-case basis whether there are well-founded suspicions of insider dealings or market manipulation pursuant to Art. 48a in the case of a specific trade. This reporting obligation shall apply irrespective of Art. 48e par. 5 to the named persons having their registered office or branch office in Austria. As may be the case, the FMA shall immediately report any suspicious trades to the competent authorities of the regulated markets concerned. The persons subject to reporting obligations shall send the following information to the FMA:

1. Description of the trades including the type of order (e.g. limit order, market order or other execution attributes) and type of trading (e.g. block trade),
2. Grounds for the suspected market abuse,
3. Information for identifying persons who have executed trades as well as any other persons involved in such trades,
4. Function of the persons subject to reporting obligations (e.g. in own name or for the account of a third party),
5. Any other information that could be of relevance for the evaluation of suspicious trades.

Should the information not be available at the time the report is made, then at the least the reasons must be stated that have led the person filing the report to suspect insider dealings or market manipulation in the case of the trades in question. Any other information must be sent to the FMA

as soon as it is available. The reports can be submitted by regular mail or electronically, by fax or by telephone; in the case of reports by telephone a written confirmation must be submitted afterwards upon request of the FMA.

(10) Persons who file reports with the FMA pursuant to par. 9, shall be prohibited from informing other persons, in particular, not the person on whose behalf a trade has been executed or persons having close relationships to said person of the report filed. There is no right to compensation for damages should a report not be filed if a person has acted in good faith. Negligence shall not be deemed to detract from acting good faith. The FMA shall not be permitted to inform anybody else of the name of the person who reported the trade, in particular, not the persons on whose order the trades have been executed if this would or could be potentially damaging to the person filing the report. A report filed with the FMA pursuant to par. 9 shall not be deemed a violation of any contractual disclosure restrictions or restrictions imposed by legal or administrative provisions and shall release the person who has filed the report from any liability for damages if said person has acted in good faith. Negligence shall not be deemed to detract from acting good faith.

(11) FMA has been empowered to define the form, content and type of transmission of the reports/announcement/information/disclosures pursuant to par. 1 through 5 and 9; the legitimate interests of issuers and investors and the international standards of developed markets are to be taken into account when reaching such definitions. With respect to the type of transmission, in the interest of the rapid dissemination of information and in line with the respective state-of-the-art technology, the FMA may prescribe certain means of communication.

(12) The FMA shall have the right – as a measure to prevent any substantial disadvantages to the financial market – to issue a Decree in which it specifies financial instruments that shall not be permitted to be the object of short-selling for a period of three months defined in the Decree or to impose certain restrictions on short-selling in said financial instruments. Such restrictions include the reporting of every short sale by the seller, even if the conditions of par. 9 are not given, the obligation to disclose the positions entered into and the requirement that the seller must furnish evidence that it holds a certain percentage of the instruments to be sold. A short sale shall be deemed the equivalent of entering into derivative positions that match sell positions in the underlying financial instruments. The FMA shall define the type and duration of the restriction in the Decree for each financial instrument. If the risk to the financial market continues after the end of the period of three months, the FMA has the right, with the consent of the Federal Ministry of Finance, to prolong the measures stated in this paragraph for up to another six months.

#### **Article 48e**

(1) Articles 48a to 48d shall not apply to transactions relating to monetary policy, exchange rate or public debt management policy by a member state, by a province (Länder), by the European System of Central Banks, by a national central bank or by any other officially designated body, or by any person acting on their behalf.

(2) Articles 48a to 48d shall apply to any financial instrument admitted to trading on a regulated market in at least one member state, or for which an application for admission to trading on such a market has been submitted, irrespective of whether or not the transaction itself actually takes place on that market.

(3) Article 48b shall also apply to any financial instrument not admitted to trading on a regulated market in a member state, but whose value depends on a financial instrument in the meaning of par. 2.

(4) Article 48d paragraphs 1 through 3 shall not apply to issuers who have not applied for admission of their financial instruments to trading on a regulated market in a member state or have not been granted such admission.

- (5) The prohibitions and requirements provided for in Articles 48a to 48d shall apply to actions
1. carried out in Austria or abroad concerning financial instruments that are admitted to trading on a regulated market situated or operating in Austria or for which an application for admission to trading on such a market has been made;
  2. carried out in Austria concerning financial instruments that are admitted to trading on a regulated market in a member state or for which an application for admission to trading on such market has been made.

(5a) Articles 48b and Art. 48c shall apply to acts done in Austria that relate to financial instruments admitted to trading on a market in a third country that is regulated and supervised by a body recognized by a government and which is operated regularly and accessible by the public directly or indirectly or for which the relevant application for admission to trading to such a market has been submitted. However, the obligations pursuant to Art. 48d and Art. 48f shall not apply in connection with such financial instruments.

(6) Articles 48b and 48c shall not apply to trading in own shares (purchase and sale) within the scope of 'buy-back' programs or price stabilization measures for a financial instrument provided such transactions are carried out in accordance with Commission Regulation (EC) No. 2273/2003 of 22 December 2003.

#### **Article 48 f**

(1) For the purposes of this provision, the following definitions shall apply:

1. An *investment firm* shall be any person in the meaning of Art. 4 par. 1 fig. 1 of Directive 2004/39/EEC.
2. A *credit institution* shall mean any legal entity in the meaning of Art. 4 fig. 1 Directive 2006/48/EEC;
3. *Recommendation* shall mean an analysis or other explicit or implicit information, intended for information dissemination channels or for the public, recommending or suggesting an investment strategy regarding one or more financial instruments or issuers of financial instruments, including a current or future assessment of the value or price of such instruments;
4. *Analysis or other information recommending or suggesting an investment strategy* shall mean
  - a) Information prepared by an independent analyst, by a securities firm, by a credit institution, by any other person whose main activity consists in producing recommendations or by a natural person who works at one of the institutions mentioned before under a contract of employment or otherwise, which relates directly or indirectly to a certain investment recommendation for a financial instrument or an issuer of financial instruments,
  - b) Information prepared by persons other than those listed in lit. a, which recommends directly a certain investment decision for a financial instrument;
5. *Relevant person* shall mean any natural or legal person who produces or passes on recommendations in the course of his or her profession or in the course of his or her business activities;
6. *Issuer* shall mean the issuer of a financial instrument to which the recommendation

directly or indirectly relates;

7. *Information dissemination channel* shall mean a channel through which information is actually made available to the public or is likely to be made available; *information probably disclosed to the public* shall mean information, which is available to a large number of persons;
8. *Appropriate regulation* shall mean any regulation – including self-regulation – adopted by the member states pursuant to Directive 2003/6/EC.

(2) Anyone who issues a recommendation shall

1. Clearly and unambiguously specify the identity of the person who issued the recommendation, especially the name and professional title of the person who prepared the recommendation and the name of the legal entity who is responsible for the preparation of the recommendation;
2. Specify the identity of the competent authority if the relevant entity is a securities firm or a credit institution;
3. Refer to the standards and rules mentioned if the relevant person is neither a securities firm nor a credit institution, but the self-regulatory standards or professional and ethical rules apply to the said person;
4. Specify in the case of non-written recommendations where the information pursuant to fig. 1 through 3 is to be found, with this information having to be directly and easily available to the public, e.g., at the Internet address of the relevant entity;

Fig. 1 through 3 shall not apply to media employees who are subject to an equivalent appropriate regulation – including any equivalent appropriate self-regulation – in the respective member states, provided that the regulations mentioned have a similar effect as those mentioned in this paragraph.

(3) A recommendation shall ensure that

1. A clear differentiation is made between facts and interpretations, assessments, statements and other types of non-pertinent information;
2. All sources are reliable and if there are doubts concerning the reliability of the source, this is clearly indicated;
3. All forecasts, predictions and price targets are clearly identified as such and a reference is made to the underlying fundamental assumptions used for their calculation or use;
4. In the case of a recommendation in non-written form, the circumstances mentioned in fig. 1 through 3 are to be indicated in a way that is clearly and easily recognized by the addressee of the recommendation.

The relevant persons shall have to substantiate the reasonableness of any recommendation upon request by the FMA. This paragraph shall not apply to media staff that is subject to an equivalent appropriate regulation – including equivalent appropriate self-regulation – in the respective member states, if the regulation mentioned has a similar effect as the regulation mentioned in this paragraph.

(4) If the relevant person is an independent analyst, a securities firm, a credit institution, an affiliated legal entity or other relevant person whose main activity consists in producing recommendations, or a natural person working at one of the institutions mentioned under a contract of employment or otherwise, said person shall also ensure that the recommendation contains:

1. A reference to all significant sources, including the relevant issuers, as well as whether the recommendation was disclosed to the issuer in question and changed after its disclosure before being passed on;
2. A summary that adequately explains the basis for the valuation and all methods for assessing a financial instrument or the issuer of a financial instrument or for defining a

- price target for a financial instrument;
3. An adequate explanation of the significance of the recommendation (e.g. “Buy”, “Sell” or “Hold”), which may include the timeframe of the investment to which the recommendation refers, and includes an appropriate warning of the potential risks, including a sensitivity analysis of the underlying assumptions;
  4. A reference, if applicable, to the planned frequency of updating of the recommendation and to the potential changes to the previously announced target;
  5. The time at which the recommendation was published for the first time specified clearly and unambiguously as well as the respective date and time of the named prices of financial instruments;
  6. A clear and unambiguous reference to the time of the previous recommendation, if the recommendation is different from the recommendation that was prepared in the twelve months immediately before its publication for the same financial instrument or the same issuer.

If compliance with the provisions listed in fig. 1 through 3 results in the regulated information being disproportionately long in comparison to the length of the issued recommendation, it is sufficient to make a clear and unambiguous reference in the recommendation to the place where the regulated information is directly and easily available to the public, e.g., a direct Internet link to the information mentioned at the address of the relevant person, provided that the method or valuation basis used was not changed. The same shall apply to non-written recommendations.

(5) The relevant persons shall have to disclose all relationships and circumstances in the recommendation which are expected to impair the objective nature of the recommendation, especially if relevant persons have a non-negligible financial interest in one or more financial instruments, which are the object of the recommendation, or there is a major conflict of interest in connection with an issuer to whom the recommendation refers. If the relevant person is a legal entity, this shall also apply to all legal entities and natural persons working for the named legal entity under a contract of employment or otherwise that are involved in preparing the recommendation. If the relevant person is a legal entity, the information to be disclosed pursuant to this paragraph shall include:

1. All interests or conflicts of interest of the relevant persons or their affiliated companies which are accessible or which are expected to be accessible to the persons involved in producing the recommendation;
2. All interests or conflicts of interest of the relevant person or affiliated legal entities, which persons who were not involved in producing the recommendation, but had access to or could have had access to the recommendation before it was passed on to the clients and to the public.

If compliance with the provisions listed in this paragraph results in the required disclosures being disproportionately long in comparison to the length of the issued recommendation, it is sufficient for the recommendation to make a clear and unambiguous reference to the place where these disclosures are directly and easily available to the public, e.g., a direct Internet link to the disclosure at the respective address of the relevant person. The same shall apply to non-written recommendations. This paragraph shall not apply to media staff that is subject to an equivalent appropriate regulation – including equivalent appropriate self-regulation – in the respective member states, if the regulation mentioned has a similar effect as the regulation mentioned in this paragraph.

(6) If the recommendation is prepared by an independent analyst, a securities firm, a credit institution, an affiliated legal entity or another relevant person whose main activity consists in producing recommendations, the named persons shall have to ensure – in addition to the

obligations stated in paragraph 5 – that the following information regarding interests and conflicts of interest is disclosed clearly and unambiguously in the recommendation:

1. Significant holdings, which exist between the relevant person or an affiliated legal entity and the issuer. These significant holdings shall include as a minimum:
  - a) Cases in which a share of more than 5% of the entire issued share capital of the issuer is held by the relevant person or an affiliated legal entity, or
  - b) If a share of more than 5% of the entire issued share capital of the relevant person or an affiliated legal entity is held by the issuer;
2. Other significant financial interests of the relevant person or affiliated legal entity with respect to the issuer;
3. If applicable, an opinion as to whether the relevant person or an affiliated legal entity is a market maker or a liquidity provider in the financial instruments of the issuer;
4. If applicable, a statement as to whether the relevant person or an affiliated legal entity played a major role or was one of the co-leaders in the public offering of financial instruments of the issuer in the past twelve months;
5. If applicable, a statement on whether the relevant person or an affiliated legal entity has entered into any other agreement with the issuer regarding investment banking services, provided this does not result in the disclosure of confidential business information and the agreement was in force for the past twelve months or compensation was paid under said agreement during the same period;
6. If applicable, a statement as to whether the relevant person or an affiliated legal entity reached an agreement with the issuer on the production of investment recommendations.

Actual organizational and administrative agreements within the securities firm or the credit institution shall generally be disclosed in the recommendation in order to prevent or avoid conflicts of interest in connection with the recommendations, including information barriers. The provisions pursuant to paragraph 5 second sentence for the natural persons and legal entities working for a securities firm or a credit institution within the framework of a contract of employment or otherwise include the disclosure of whether the remuneration of these persons depends on investment banking transactions of the securities firm or the credit institution or affiliated legal entities. If the natural persons receive or purchase the shares in the issuing company before the public offering, the purchase price and the date of purchase shall be disclosed in the recommendation. Securities firms and credit institutions shall have to disclose the percentage of recommendations issued giving “Buy”, “Hold”, “Sell” or similar calls on a quarterly basis as well as the percentage of issuers that correspond to the categories mentioned for which the securities firm or the credit institution has provided major investment banking services in the past twelve months. If compliance with the provisions listed in this paragraph results in the required disclosures being disproportionately long in comparison to the length of the recommendation issued, it shall be sufficient to make a clear and unambiguous reference in the recommendation to the place where these disclosures are directly and easily available to the public, e.g., a direct Internet link to the disclosure at the respective address of the securities firm or the credit institution. The same shall apply to non-written recommendations.

(7) If the recommendation prepared by a third party is passed on by a relevant person in charge, the relevant person shall have to specify his or her identity clearly and unambiguously in the recommendation.

(8) If a recommendation prepared by a third party is contained in information intended for the public and is passed on with major changes, the person releasing the recommendation shall ensure that this information contains a clear notice indicating the details of the changes. Should the significant

change to a recommendation consist in a contrary recommendation (e.g. Buy is changed to Hold or Sell or vice versa), paragraphs 2 through 5 shall also apply accordingly to the person passing on the recommendation. Furthermore, the relevant legal entities that pass on a recommendation with significant changes themselves or via a natural person, shall define formal written guidelines enabling the recipients of the significantly changed recommendation to refer to the place where they can access the identity of the producer of the recommendation, the recommendation itself and the disclosure of interests or conflicts of interest of the producer, provided that this information is publicly available. Sentences 1 and 2 shall not apply to press reports on recommendations prepared by third parties, if these recommendations do not contain significant changes. When passing on a summary of a recommendation prepared by a third party, the relevant persons who pass on the summary shall ensure that the summary containing a reference to the source text as well as to the place where the disclosures connected with the source document are directly and easily accessible to the public, is clear and not misleading, provided that this information is made available to the public.

(9) In the event that the relevant person who passes on the recommendations prepared by third parties is a securities firm, a credit institution or a natural person in their employ under a contract of employment or otherwise, the following shall apply:

1. The name of the authority responsible for the securities firm or the credit institution shall be specified clearly and unambiguously.
2. If the person who prepared the recommendation has not already passed on this recommendation through an information dissemination channel, the provisions contained in paragraph 6, which are intended for the persons producing recommendations, shall also apply to the persons passing on the recommendation.
3. If the securities firm or the credit institution makes a significant change to the recommendation, the persons producing the recommendation shall comply with the provisions mentioned pursuant to paragraphs 2 through 6.

(10) The FMA is authorized to define the form and content of the information pursuant to this provision by issuing a decree; it shall take the legitimate interests of issuers and investors and the international standards of developed capital markets into account when drafting such definitions.

### **Special Provisions for Criminal Proceedings Relating to the Abuse of Inside Information**

#### **Article 48g**

(1) Unless other proceedings are stipulated in the following, the provisions of the Code of Criminal Procedure 1975, FLG No. 631 shall apply to criminal proceedings relating to the abuse of inside information.

(2) The special provisions for criminal proceedings relating to the abuse of inside information shall also apply to proceedings relating to an offence, which simultaneously constitutes an abuse of inside information and another type of offence punishable by a court of law.

#### **Article 48 h**

The principal trial due to the abuse of inside information fall within the competence of the Vienna Regional Criminal Court (*Landesgericht Wien*). In the case of Article 48b par. 1, second case, the principal trial and the judgment fall are the competence of the Vienna Regional Criminal Court with a panel consisting of two professional judges and two lay judges.

**Article 48i**

(1) In the case of suspected abuse of inside information, the Public Prosecutor shall charge the FMA with the investigation within the scope of the FMA's authority pursuant to Art. 48q; in such case, the FMA will take action within the scope of criminal justice (Art. 10 par. 1 fig. 6 Federal Constitutional Act).

(2) However, on the instructions of the Public Prosecutor, the Police Criminal Investigation Department shall intervene if it seems appropriate for the investigations to be conducted, especially as regards type and scope. This shall apply especially to securing of evidence, confiscations, arrests and searches. The same shall apply if the FMA is not able to take action in time or if the matter to be investigated possibly also concerns another offence under criminal law.

(3) The FMA shall report to the Public Prosecutor in Vienna in writing or via computer-aided data processing as soon as it gains knowledge of any suspected abuse of information by a certain person. The FMA shall conduct immediate investigations to determine the facts of the case and conduct a probe of the suspected crime if it has been charged with this task by the Public Prosecutor irrespective of the exercise of its powers pursuant to Art. 48q.

(4) The FMA shall report to the Public Prosecutor without delay of the progress and the results of any investigations it conducts. If the Police Criminal Investigation Department has been charged with investigations, the FMA shall be given an opportunity to take part in the investigations. However, if imminent danger calls for immediate action by the authorities, the FMA shall be informed without unnecessary delay of the investigations of the Police Criminal Investigation Department, and shall be given an opportunity to study the results of such investigations.

(5) Moreover, the procedure followed in the official actions of the FMA shall be subject to the provisions governing criminal proceedings in the case of administrative offences unless otherwise defined in the Code of Criminal Procedure.

**Article 48j** Repealed.

**Article 48k**

(1) The FMA shall have the position of a private party in any investigation procedures in which it has not been charged with investigation tasks, as well as in any principal proceedings or appeal proceedings conducted with respect to abuse of inside information.

(2) In addition to having the rights of injured parties, rights of private parties to proceedings, and the rights of private parties continuing a lawsuit after the Public Prosecutor has withdrawn its action (*Subsidiarankläger*), the FMA shall have the following rights:

1. The FMA has the right to lodge appeals against court rulings to the same extent as the Public Prosecutor and demand the re-opening of criminal proceedings,
2. The FMA's plea of nullity shall not require the signature of a counsel for the defense,
3. It shall be informed of any hearings to decide on the need to keep the accused person in prison (Articles 175 and 176, Code of Criminal Procedure) and of any oral hearings in appeal proceedings,
4. FMA representatives have the right to make statements at the hearings to decide on the need to keep the accused in prison, at oral hearings in appeal proceedings, and to file applications.
5. Its right to inspect the files of the proceedings shall not be limited or suspended (Art. 68 Code of Criminal Procedure)

(3) The presumption of withdrawal of a complaint (Art. 72 par. 2 and 3, Code of Criminal Procedure) shall not apply to the FMA as prosecutor.

#### **Article 48l**

The FMA shall generally be served court notices and other documents it is required to be informed of under this federal act without requiring proof of delivery. The summons to the principal trial, court rulings and other documents against which the FMA shall have the right of legal recourse or the right of appeal shall require proof of delivery (Articles 13 to 20 of the Act on the Serving of Official Notices) or shall be served by tealeaf transmission or within the scope of electronic legal transactions (Art. 89a Court Organization Act).

#### **Article 48m**

Should the Public Prosecutor's Office discontinue investigation proceedings of suspected abuse of inside information or should it withdraw from the prosecution of such a crime, then the Public Prosecutor's Office shall immediately inform the FMA of the reasons for this decision (Articles 194 and 208 par. 4 Code of Criminal Procedure); furthermore, the court must inform the FMA of the termination of the criminal proceedings.

#### **Article 48n**

The Public Prosecutor's Office and the court shall give the FMA an opportunity to make a statement before issuing a notice according to Articles 200 par. 4, 201 par. 4 or 203 par. 3 Code of Civil Procedure. If the Public Prosecutor has withdrawn from the prosecution of the abuse of inside information and the discontinued the investigation procedures, the FMA shall have the right to request the continuation of the investigation procedures pursuant to Art. 195 Code of Criminal Procedure).

#### **Article 48o**

Every criminal proceeding instituted and every written accusation for abuse of inside information shall also be served to the FMA; the Public Prosecutor shall serve the court a copy of the petition for criminal proceedings and of the written accusation for the FMA.

#### **Article 48p**

(1) The costs of the criminal proceedings shall include expenses incurred by the FMA as a private party to proceedings or as a private party of continuing a lawsuit after the Public Prosecutor has withdrawn its action (*Subsidiarankläger*); these costs shall not be included in the lump sum costs.

(2) The costs incurred by the FMA in the course of duty of criminal justice shall be taken account in the provisions on the lump sum cost contribution unless these are to be reimbursed separately according to Article 381 par. 1 fig. 3, 4 or 5 Code of Civil Procedure.

(3) FMA shall be reimbursed for cash expenses and costs that would be due to the Federal Financial Agency pursuant to Art. 5 of the Act on the Federal Financial Agency, State Law Gazette. No. 172/1945.

### **Supervisory Powers of the FMA**

#### **Article 48q**

(1) Regardless of the jurisdiction of the courts and prosecuting authorities, it shall be the responsibility of the FMA to supervise compliance with Articles 48a through 48f. For this purpose, it

shall have the following powers:

1. It shall have the right to inspect all types of documents and receive copies,
2. It shall have the right to request information from any person, including persons Involved in the passing on of orders or in the execution of the respective sequence of actions, as well as from their clients, and, if necessary, to issue a summons to such a person for an interrogation,
3. It shall have the right to conduct investigations on site,
4. It shall have the right to inspect the results of a request for information on telecommunication data and the surveillance data on telecommunication already included in the court files (Articles 134 fig 5 and 145 Code of Criminal Procedure) and to receive copies thereof (Art. 140 par. 3 Code of Criminal Procedure).

(2) The FMA shall set up an office at its premises for conducting consultations with market participants regarding any changes that may be made to national law.

(3) The FMA has the right to order the exchange operating company to suspend trading in a financial instrument concerned in connection with the fight against market manipulation and insider dealings. In the case of proceedings according to Art. 48c, the FMA may issue a ban for the duration of the proceedings on any accused person to stop them from exercising their profession if such accused person is a strong suspect, and his or her profession is related to the criminal offence subject of the proceedings, and, there is a risk that the accused person could repeat the crime.

(4) The FMA has the right to take official action on the grounds of violations of Articles 48a through 48f, to give information in accordance with fig. 1 through 3 or to disclose such violations to the public.

1. In the event of any official action in the course of current criminal proceedings, the FMA shall refrain from naming the parties involved unless these are already known to the public, or the FMA must correct false information published in the media or there is a risk of imminent danger.
2. In the event of sanctions, the FMA may respond to inquiries or disclose the names of persons or companies against whom sanctions have been imposed, or the names of the companies for whom persons are responsible against whom sanctions have been imposed as well as the sanctions imposed. Sanctions in the meaning of these provisions shall be understood to be all legal acts of the FMA taken after proceedings have been finalized by issuing a ruling.
3. The FMA shall refrain from giving such information on legal acts or from making a related disclosure in the following cases
  - a) If the response to an inquiry or the disclosure would put the stability of financial markets at a considerable risk, or
  - b) If the response to an inquiry or the disclosure would lead to excessive damage to one of the persons affected by the information released or disclosure, or
  - c) If the information given would stop, hamper, delay or endanger proceedings or measures that would benefit the general good.

(5) Valid provisions of other federal acts regarding the obligation to maintain professional secrecy shall not be affected by the provisions of this federal act.

#### **Article 48r**

(1) The FMA shall collaborate with the competent authorities of the other member states, if this is required for the competent authorities to perform their duties pursuant to Directives 2003/6/EC,

2003/124/EC, 2003/125/EC and 2004/72/EC, and pursuant to Regulation (EC) No. 2273/2003 or Articles 48a through 48q. The FMA shall grant the other member states official assistance and has the right to take recourse to official assistance itself. The FMA and the competent authorities of the other member states shall exchange information and shall collaborate in conducting investigations.

(2) The FMA shall transmit to the competent authorities of the other member states on their request any other information immediately that is necessary for the purpose stated in par. 1. If necessary, the FMA to whom such a request is addressed shall take the required measures to obtain the information requested. If the FMA is not capable of immediately supplying the information requested, it shall inform the requesting authorities of the reasons. Information received in the same manner upon request by the FMA from the competent authorities of other member states shall be treated as an official secret. The FMA may refuse to send the requested information,

1. If sending such information would impinge on sovereignty, security or public order,
2. If proceedings are already pending at an Austrian court of law due to the same act and against the same person, or
3. If a final judgment has been handed down against the persons named for the same offence by an Austrian court of law.

In this case, the FMA shall inform the competent authority making the request of this fact and send information that is as precise as possible relating to the concerned proceedings or final judgment.

The FMA shall have the right to gather information from the competent authorities of the other member states for the performance of its duties pursuant to par. 1. The FMA may, if its request for information has not been answered within a reasonable period or has been denied, report this fact to the European Securities Committee. Irrespective of its duties within the scope of criminal proceedings, the FMA shall use the information received pursuant to par. 1 exclusively for the performance of its duties under this federal law or in connection with administrative or court proceedings in the exercise of its duties. However, if a competent authority who has sent information grants its consent, the FMA may use it for other purposes or send it to the competent authorities of other member states if this is permitted under national law especially according to Articles 1, 6 and 12f Data Protection Act 2000.

(3) If the FMA is convinced that violations against Directive 2003/6/EC are being committed or have been committed on the sovereign territory of another member state, or that financial instruments traded on a regulated market in another member state are affected by any actions it may take then it shall inform the competent authority of another member state of this in as concrete terms as possible. Should the FMA in turn receive a notification of this kind, then it shall take the measures required. The FMA shall inform the competent authority sending the notification of the results and inform as far as possible it of any important interim results. The powers of the competent authority from which the information comes shall not be affected by this paragraph. The local competent authorities pursuant to Art. 10 of Directive 2003/6/EC shall consult each other on the subsequent measures planned.

(4) The FMA may request the competent authority of another member state to conduct investigations on its territory. Likewise, the FMA must comply with such a request from the competent authorities of other member states. Furthermore, the FMA may request the competent authorities of other member states to permit its staff to accompany their staff when conducting the investigation. Likewise, the FMA must comply with such a request from the competent authorities of other member states. The investigations shall be fully under the control of the member state on whose sovereign territory they are conducted. The FMA may refuse to comply with a request for an investigation pursuant to this paragraph or may grant a request of the competent authority of another member state pursuant to this paragraph to permit its own staff to be accompanied by the

staff of the other competent authority, if such investigations would impair the sovereignty, the security or the public order or if due to the same offence and against the same person proceedings are pending before an Austrian court of law or if a final judgment has been handed down by an Austrian court against the person concerned for the same offence. In this case, the FMA shall inform the competent authority making the request of this fact and shall send information that is as precise as possible relating to the concerned proceedings or final judgment. Irrespective of Art. 226 of the Agreement, the FMA may report to the European Securities Committee should its request for the initiation of investigations or request for permission to allow its staff to accompany the staff of the competent authority of the other member states not be answered within a reasonable period or be denied.

#### **Article 48s**

All credit institutions<sup>4</sup> in the meaning of the Banking Act (KWG)<sup>5</sup>, insurance companies in the meaning of the Insurance Surveillance Act, FLG. No. 569/1978, and pensions plans in the meaning of the Pension Plans Act, FLG. No. 281/1990, in their valid versions, shall take measures to prevent insider dealings according to Article 82 paragraph 5 fig. 1 to 3.

### **Fines**

#### **Article 48t**

(1) The FMA shall prescribe the following fines for the Members of the stock exchange as follows:

1. 1 percent of the amount that falls short of the collateral to be deposited pursuant to Article 18 fig. 4 as required by the clearing and settlement system, per day, a minimum, however, of EUR 70;
2. 0.3 percent of the price of those securities not delivered on time to the settlement system in violation of the rules for the settlement of stock exchange deals (Article 26 paragraph 3), per day, a minimum, however, of EUR 250; as of the sixth day of non-delivery this percentage rate shall increase to 0.6 percent per day.

(2) The exchange operating company shall be obliged to inform the FMA fully and immediately of any facts it has gained knowledge of pursuant to paragraph 1 without being requested to do so.

(3) The fines prescribed pursuant to paragraph 1 shall be given to the Republic of Austria.

### **Special Provisions for the Vienna Stock Exchange**

#### **Article 49**

(1) The Vienna Stock Exchange is a stock exchange and at the same time a general commodity exchange.

(2) The license to operate and manage the Vienna Stock Exchange pursuant to Article 2 shall be issued by the Austrian Financial Market Authority (FMA) in agreement with the Federal Ministry of Economics and Labor.

---

<sup>4</sup> now: credit institutions (in accordance with Art. 104 Banking Act 1993, FLG 532/1993)

<sup>5</sup> now: Banking Act (BWG) 1993 (in accordance with Art. 105 paragraph 2 BWG, FLG 532/1993)

(3) The Austrian Financial Market Authority (FMA) in agreement with the Federal Ministry of Economics and Labor shall be responsible for notices, measures and authorizations pursuant to Articles 6 and 7 regarding the exchange operating company's tasks of managing and operating the exchange.

## **Articles 50 to 54 repealed**

### **Surveillance**

#### **Article 55**

The surveillance of those affairs of the Vienna Stock Exchange that do not pertain materially to stock or commodity trading shall be the competence of the Austrian Financial Market Authority (FMA) in agreement with the Federal Ministry of Economics and Labor.

## **Special Provisions for the Stock Exchange**

### **Trading Procedure**

#### **Article 56**

(1) The exchange operating company shall decide on the type of trading system to be used on the exchange bearing in mind the interests of the economy in maintaining a functioning stock exchange, and taking the protection of investor rights, the efficiency, the type of instruments traded and the volumes traded into account when making this decision. Keeping the above-mentioned requirements in mind the following types of trading are permissible: trading through intermediaries, through an automated trading system, through open-outcry and by the stating of fixed buy and sell prices by Members of the Stock Exchange (market maker). It is also permissible to combine several of these types of trading on one stock exchange.

(2) If trading is done in part or in whole with the help of intermediaries, then the only intermediaries that may be appointed for trading on the Official Market shall be the Official Brokers (Sensale), and on the Second Regulated Market the Non-official Brokers (Freie Makler).

(3) The allotment of the negotiable instruments to the individual Official Brokers shall be done by the exchange operating company with their agreement, and may be revoked at any time after hearing the representatives of the interest group of the Official Brokers if there is such a representative on the exchange concerned.

(4) The allotment of the negotiable instruments to the individual Non-official Brokers shall be done by the exchange operating company with their agreement, and may be revoked at any time after hearing the representatives of the interest group of the Non-official Brokers if there is such a representative on the exchange concerned

### **Non-official Brokers (Freie Makler)**

#### **Article 57**

(1) The exchange operating company shall appoint Non-official Brokers from among its Members if this is required by the type of the trading procedure specified in Article 56 paragraph 1. These shall act as intermediaries in dealings for those negotiable instruments that have been assigned to them pursuant to Article 56 paragraph 4.

(2) The Non-official brokers admitted by the exchange operating company pursuant to par. 1 must be authorized to conduct banking activities pursuant to Art. 1 par. 1 fig. 7 Banking Act with other credit institutions licensed to perform the activities referred to in Art. 2 fig. 23 Banking Act or with investment firms pursuant to Art. 4 par. 1 fig 1 of Directive 2004/39/EEC. They shall not be authorized to engage in the banking business beyond this scope.

## **Trading Systems**

### **Article 58**

(1) The exchange operating company may decide to install automated trading systems that, however, are restricted to use by Members of the exchange, and insofar as the system foresees the cooperation of an Official Broker, only for the use of the Official Brokers appointed by the exchange. The Members of the exchange and the Official Brokers shall take care that only dealers and Official Brokers have access to this trading system.

(2) The exchange operating company may decide that exchange members may only place orders with the intermediaries using such trading systems. Trading between the exchange members on the floor of the exchange is also permissible without the use of trading systems irrespective of such a provision.

## **Price Determination**

### **Article 59**

(1) Prices for negotiable instruments officially listed on the stock exchange shall be determined at least once every stock exchange trading day. If trading takes place through intermediaries, then the trades concluded by the Official Brokers during stock exchange trading hours are the basis for price determination.

The General Terms and Conditions of Business shall state if price determination shall be made by the

1. exchange operating company or,
2. by the Official Brokers posting the prices themselves; the display on a computer screen within a computer assisted trading and information system is considered as such.

(2) If a stock exchange has an automated trading system, then all official prices shall be those prices that are determined within this system. If trading takes place on a stock exchange through open-outcry trading or through market makers, then the official prices are those determined during trading hours.

(3) In the case of paragraph 1 fig. 2 all stock exchange dealers entitled to participate in stock exchange trading have the right to raise objections as to the correctness of the prices posted within the period of time fixed in the General Terms and Conditions of Business. Such objections made by a stock exchange dealers shall be decided upon immediately by the exchange operating company on the basis of the orders.

(4) The exchange operating company has the obligation to ensure that the prices are published. In the case of negotiable instruments traded in consecutive trading only the opening and closing prices as well as the highest and lowest prices shall be published. In the case of trading in foreign means of payment it suffices to publish an official rate of exchange on every exchange trading day. If price determination is carried out through an automated trading system (paragraph 2), then an automated information system shall be established.

(5) Price determination and publication of stock exchange prices for negotiable instruments traded on the Second Regulated Market shall be carried out as stated in the preceding paragraphs, and in the case of trading through intermediaries, the trades concluded by Non-official Brokers shall determine the prices.

### **Order Books and Diaries**

#### **Article 60**

(1) All intermediaries (Official Brokers and the Non-official Brokers acting as intermediaries for those negotiable instruments traded on the Second Regulated Market) shall keep order books in which they shall register all orders they receive in chronologically; this also applies to the cancellation of orders.

(2) The intermediaries shall record the transactions they conclude on a daily basis in their order books and shall take note of:

1. names of the contracting parties;
2. description of the object of the contract;
3. price;
4. conditions of the transaction; and if goods are being sold, in particular the quantity and type;
5. location and time of delivery;
6. settlement type;
7. time of the conclusion of the contract;
8. if the transaction was concluded on the exchange or off the exchange;
9. if given, the cancellation of the contract before being fulfilled.

(3) If the order books are kept with the support of computers, then the printouts shall either be collected and bound together by month and their correctness confirmed by signature by the intermediary, or stored on data carriers and handed over to the exchange operating company on every exchange trading day together with a signed confirmation of the integrity of the data.

(4) If the books are kept by hand, then the book shall be bound and the pages numbered chronologically and stapled together in a special way so as to protect pages from being exchanged or removed. The intermediary shall sign the records daily.

(5) The books shall be written in German. Furthermore, all regulations applicable to the keeping of books for registered merchants shall also apply mutatis mutandis to the bookkeeping.

(6) The books shall be retained for seven years after the last entry has been made by the exchange operating company and shall then be destroyed in the presence of a commission. The books of the intermediaries that resign from office shall also be kept.

(7) The intermediaries are obliged to give the parties certified excerpts from the diary upon request of the parties against payment of the costs, containing everything concerning the transaction concluded by the party (paragraph 2); the other party's name may be omitted in the case of anonymous transactions (Article 63).

## **Inspection of the Intermediaries' Books**

### **Article 61**

(1) The Exchange Commissioner, his/her representative and the exchange operating company have the right to look into the order books and diaries of the intermediaries at any time.

(2) The parties have the right to look into the sections of the books concerning them. The inspection of the books may only be carried out in such a way so as permit the party only to gain knowledge of the transactions concerning him or her; in the case of anonymous deals (Article 63) the name of the other party may be covered.

(3) Third parties may only inspect the books if officially authorized to do so or if the parties concerned permit the inspection or give them an excerpt.

(4) In the course of a legal dispute the court may order the diary to be presented even if the party does not request this, however, the book may only be made available at the public trial in such a manner that conceals the entries not concerning the dispute.

## **Contract Note**

### **Article 62**

(1) The intermediaries shall deliver a contract note to each party without delay after a transaction has been concluded that contains the objects of the contracts as listed in Article 60 paragraph 2; in the case of anonymous transactions (Article 63) the names of the parties shall not be required.

(2) The contract note shall be signed by the intermediary and shall contain the number under which the transaction is recorded in the diary; the signature of the intermediary may be omitted if the contract note is produced by computer; the number of the order as recorded in the diary may also be omitted if it is guaranteed that the transaction can be retrieved at any given time by other means.

(3) In the case of transactions on the exchange, the exchange operating company shall determine the form in which the intermediary shall write the contract note, when and how it is to be delivered taking the given technical equipment of the exchange into consideration.

(4) If a party refuses to accept or sign a contract note, the Official Broker shall inform the other party of this without delay.

(5) The validity of a transaction mediated by an Official Broker does not depend on the entry of the deal in the Official Broker's diary or on the delivery of the contract note.

## **Anonymous Transactions**

### **Article 63**

(1) It is the Official Broker's duty not to name the other party if both partners are Members of the exchange and the settlement of accounts takes place under a clearing system with collateral deposits to guarantee the fulfillment of transactions.

(2) The Official Broker has the right not to name the other party to the contract insofar as he/she may expect to receive adequate collateral or a full guarantee. If the Official Broker has not received

adequate collateral, then he/she is liable towards that party with which he/she has concluded the transaction for the damage that results therefrom, the Official Broker being at fault for concluding a transaction with a person that is not in the position to give a full guarantee.

### **Procedures for the Admission to Listing on the Official Market**

#### **Article 64**

(1) The exchange operating company decides on applications for the admission to listing of securities and of issuing programs that include the issuance of non-dividend paying securities on the Official Market.

(2) An appeal may be lodged with an Appellate Committee established by the Austrian Financial Market Authority (FMA) in objection to

1. the denial of admission to listing;
2. the revocation of admission to listing (paragraph 5).

The appeal shall only have a suspending effect if the protection of investors or the guaranteed fulfillment of stock exchange transactions is not endangered. The Appellate Committee shall be made up of a chairperson with legal knowledge, a member who is a practicing judge and one further member. The members of the Appellate Committee shall be appointed by the Austrian Financial Market Authority (FMA) for a period of five years; the appointment of the judge shall require the approval of the Federal Ministry of Justice. A substitute shall be appointed for each member in the same manner. If a member is constantly prevented from exercising his/her duty or if he/she commits a flagrant breach of duty, then he/she shall be removed from office and a new member shall be appointed in his/her stead for the remaining period of office.

(3) The decisions of the Appellate Committee are not subject to changes or annulments by administrative proceedings. It is permissible to lodge an appeal with the Administrative Court. An appeal may also be lodged by the Austrian Financial Market Authority (FMA) on the grounds of unlawfulness.

(4) Admission shall not be granted if the requirements pursuant to Articles 66a, 70 to 73 and Article 82 paragraph 5 are not fulfilled; irrespective of this, the admission may also be denied if, due to the economic and legal status of the issuer, the admission would be detrimental to the interests of potential investors.

(5) The admission shall be repealed if any of the admission requirements pursuant to paragraph 4 is no longer given at a later time, if it was obtained by giving incorrect information or by means of deceitful behavior or by any other surreptitious method, or if the issuer does not fulfill its duties as stipulated in Articles 81 to 87 and 91 to 94. If the protection of investors is not prejudiced the issuer may, in the event that the admission requirements were no longer fulfilled at a later time, or in the case of breach of duty by the issuer, be requested to reinstate the former legal status, an appropriate extension of the period of time being granted; the admission shall be repealed if, after the extension of the period of time expires, the request has not been complied with.

(6) Conditions may be placed on the admission if this is required to protect the interests of potential investors; in this case, the applicant shall be granted the opportunity to make a statement before the decision is reached on the admission.

#### **Article 64a**

The members and substitutes of the Appellate Committee pursuant to Article 64 paragraph 2 shall

be reimbursed travel expenses according to the Schedule of Travel Expenses of federal employees. Furthermore, they shall receive a corresponding remuneration for the work and time spent for these activities in the amount as determined for judges by the Austrian Financial Market Authority (FMA) in agreement with the Federal Ministry of Justice and for the other members as determined by the Austrian Financial Market Authority (FMA). Every stock exchange shall be prescribed an annual flat fee by the Federal Ministry of Finance to be paid to them, the amount of which shall be proportionally adequate to the above-mentioned remuneration and reimbursements.

### **Disclosure of Pre-trading and Post-trading Information**

#### **Article 65**

(1) Irrespective of paras. 2 and 3, the exchange operating company shall have the right to disseminate prices, quotes and trading volumes determined on the securities exchange for financial instruments pursuant to Art. 1 fig. 6 Securities Supervision Act 2007 immediately via an information system with nationwide reach in real time if this is in the interest of investors and reasonable considering the type of exchange trading.

(2) The exchange operating company shall, for the stocks admitted to trading on a regulated market and traded through its trading system, publish the current bid and ask quotes and their respective trading volumes pursuant to Articles 17, 29, 30 and 32 of Regulation (EEC) No. 1287/2006 subject to reasonable commercial terms, continuously during regular business hours.

(3) The exchange operating company shall publish the prices, volumes and times of the trades in the stocks admitted to trading as far as possible in real time pursuant to Articles 27, 29, 30 and 32 of Regulation (EEC) No. 1287/2006 subject to reasonable commercial terms.

(4) The exchange operating company shall, irrespective of Art. 15, grant companies, which must disclose information pursuant to Art. 65 or Art. 69 Securities Supervision Act 2007 within the scope of pre-trading and post-trading transparency, access to the systems in a non-discriminatory manner subject to reasonable commercial terms that the exchange operating company uses for disclosures pursuant to paras. 2 and 3.

(5) The exchange operating company has the right with the approval of the FMA to disclose with a time lag and take the necessary measures in this respect, any individual pieces of post-trading information on the trades concluded pursuant to par. 3, which have a large volume in comparison to the usual scope of trading for the stock or stock category concerned. The approval shall be granted if the criteria of Art. 28 of Regulation (EEC) No. 1287/2006 are met and the proposed measures permit one to expect a delayed disclosure in line with these criteria. The exchange operating company shall clearly point out the measures taken to the market participants and the investing public. An approval in individual cases shall not be necessary if the FMA has issued a decree in accordance with Art. 28 of Regulation (EEC) No. 1287/2006. Such decree shall also regulate the relevant measures that need to be taken.

(6) The FMA is under the obligation pursuant to Art. 17 to 20 of Regulation (EEC) No. 1287/2006 to issue a decree regarding the exceptions from the disclosure obligation pursuant to par. 2, especially with regard to trades, which have a large volume in comparison to the usual scope of trading for the stock or stock category concerned; when issuing the decree, the FMA shall bear in mind the interest of the national economy in a functioning securities industry.

## **General Admission Requirements on the Regulated Market**

### **Article 66**

(1) Trading in financial instruments on a regulated market shall require the admission to listing by the exchange operating company. The admission to listing shall be granted if the financial instruments can be traded in a fair, orderly and efficient manner and – in the case of transferable securities – are freely tradable. If an application is submitted for admission to the Official Market or to the Second Regulated Market, the requirements pursuant to Article 66a and Article 68 must also be met.

(2) When assessing whether transferable securities can be traded fairly, properly and efficiently pursuant to Article 1 fig. 4 Securities Supervision Act 2007 or investment fund shares pursuant to Article 2 fig. 35 lit. a and b Banking Act, the exchange operating company shall take into account Art. 35 par. 4 and 6 or Art. 36 par. 1, 3 and 4 of Regulation (EEC) No. 1287/2006.

(3) A transferable security shall be deemed transferable if the requirements pursuant to Art. 35 paras. 1 to 3 or par. 5 of Regulation (EEC) No. 1287/2006 are met.

(4) When admitting derivatives to trading pursuant to Article 1 fig. 6 lit. d to j Securities Supervision Act 2007, Art. 37 of Regulation (EEC) No. 1287/2006 shall apply.

(5) Transferable securities may also be admitted to trading on a regulated market by the exchange operating company without the consent of the issuer if these securities have already been admitted to one of the following regulated markets:

1. on a domestic securities exchange;
2. to a regulated market in another member state, or
3. to a recognized securities exchange in a third country if the requirements for admission to listing of securities are comparable to those of Directive 2004/39/EEC and the legal provisions in the third country regarding the preparation of a listing prospectus for a public offering of securities or for the admission to trading are comparable to those of Directive 2003/71/EEC.

The exchange operating company shall inform the respective issuer and the FMA of the admission to trading of transferable securities and shall announce the admission on its website.

(6) In the case of par. 5, the issuer shall not be under the obligation to send the information that must be published under this Federal Act to the exchange operating company that has admitted the transferable securities to trading without its consent.

(7) Irrespective of Article 73, the exchange operating company shall install permanent effective organizational procedures to check if an issuer of transferable securities that have been admitted to trading on a regulated market that it operates complies with the disclosure requirements of this Federal Act. The exchange operating company shall take measures to facilitate access for its members to such information disclosed.

(8) The exchange operating company shall rescind the admission to trading of a financial instrument irrespective of Art. 91 par. 3 fig. 10 Securities Supervision Act 2007, if the requirements pursuant to paras. 1 to 4 are no longer met. Article 64, par. 5 shall apply to rescissions of admission to trading under the condition that in those cases in which financial instruments other than those admitted to official trading are concerned, instead of the admission requirements of Article 66a, the requirements of Article 68 shall apply. If the admission to trading is rescinded, the exchange

operating company shall disclose its decision in a medium accessible to the public and notify the FMA of the rescission of the admission; the exchange operating company shall send all relevant information on the case to the FMA. The FMA shall inform the competent authorities of other member states of the rescission of admission to trading. Additionally, the exchange operating company may inform the operators of other regulated markets directly of the rescission of admission to trading in the concerned financial instrument.

(9) If the FMA gains knowledge of reasons that would justify the rescission of admission of a financial instrument to the Official market, the Second Regulated Market or to another domestic regulated market, then it shall inform the exchange operating company of this and charge it with the task of examining the reasons given for the rescission and to immediately disclose this decision on its website. Should the exchange operating company arrive at the conclusion in the course of this examination that there is a reason for rescission, par. 8 shall apply.

(10) Should the FMA receive information from the competent authority of another member state that could result in the rescission of admission to trading of a financial instrument on a domestic regulated market, then the FMA shall immediately inform the exchange operating company of this fact. The exchange operating company shall inform the FMA of any proceedings it initiates pursuant to Article 64 par. 5.

### **Requirements for the Admission to Listing on the Official Market**

#### **Article 66a**

(1) The requirements for the admission to listing of securities and issuing programs to the Official Market are:

1. The establishment and the bylaws or articles of association of the issuer must comply with the law of the country in which the issuer has its registered office.
2. The total nominal value of the securities for which admission to listing is being requested shall be at least EUR 2.9 million and for other securities, at least EUR 725,000. In the case of securities that are not denominated in a monetary amount, the issuer shall confirm that the probable price will be at least EUR 725,000; the total number of share certificates of such securities must be at least 20,000. In the case of non-voting preferred shares issued by Austrian stock corporations whose ordinary shares are not admitted to listing on the Official Market, the nominal value of the preferred shares must be one million euro.
3. In the case of an initial admission to listing of shares, the stock corporation must have existed for at least three years and the financial statements for the three full financial years preceding the application must have been published in accordance with applicable law; if the stock corporation is a universal successor of another company and there is accounting continuity, then the period of existence of this other company shall be credited to the period of existence of three years. An exception to the requirement of three years' of existence may be granted if the admission to listing is in the interest of the issuer and of the public, and the applicant makes available to the public documents that contain information equivalent to that of the financial statements of the past three years with respect to being able to assess the economic and legal situation of the issuer. However, the stock corporation must have published the financial statements for one full financial year.
4. The issuer must have complied with the provisions of the federal acts and laws of the provincial governments applicable to the issuance of the securities as well as with the decrees and official notices based on such legislation; this shall apply to the foreign

legislation of the country in which the securities have been issued mutatis mutandis. If the securities need to be registered in a public register, this registration must have been completed.

5. The denomination of the securities, especially the smallest denominations and the number of securities issued in this denomination, must meet the needs of exchange trading and the investing public.
6. The application for admission to listing must refer to all shares already issued of the same category or to all securities of the same issue; however, shares that cannot be traded for a certain period of time due to applicable legislation may be exempt from the admission, if such exemption would not entail disadvantages for the bearers of the admitted shares and this exemption is pointed out in the listing prospectus of the official notice promulgating the admission to listing.
7. The securities must have the appropriate free float among the public or if this free float is to be achieved through the initial listing, the adequate number of securities must be made available for exchange trading. In the case of shares, the adequate free float shall be assumed if at least a nominal value of EUR 725,000 are owned by the public, and in the case of no-par-value shares, a number of at least 10,000 shares are owned by the public or have been offered to the public for purchase.
8. In the case of securities that grant holders the right to convert or subscribe to other securities and the minimum denomination is less than EUR 50,000, the securities to which the right of conversion or subscription refers must be admitted to listing on the exchange by the latest at the same time; this requirements may be waived if the issuer furnishes proof that the bearers of the securities that grant them the right to conversion or subscription with a minimum denomination of less than EUR 50,000 have all the information at their disposal that they need to reach an informed judgment of the value of the securities to which the right of conversion or subscription refers; this shall be assumed, above all, if the securities to which the right to conversion or subscription refers are officially listed on an internationally recognized securities exchange and the prospectus for the admission to listing of the securities with conversion or subscription rights meets the requirements of Art. 7 Capital Market Act.

(2) In the case of admission to listing of shares that have already been admitted to official listing on one or several other foreign exchanges and for which a sufficient free float is given outside the country, the requirement of par. 1 fig. 7 shall not apply.

(3) In the case of enlargement of the admission to listing to other securities of the same category, the requirements of par. 1 fig. 2 and 7 shall not apply.

(4) For the admission of debt securities that are issued continuously without any restriction to a subscription period or a certain maximum amount, the restriction pursuant to par. 1 fig. 2 shall not apply.

(5) Debt securities of an international organization that is an entity under public law must be tradable without any restrictions in order to be admitted to listing on the Official Market and the application for admission to listing must refer to all debt securities of an issue. Debt securities issued by the federal government, the provinces and the member states of the EEA shall be admitted to official listing on all securities exchanges.

(6) Certificates that represent shares may be admitted to listing if

1. the issuer of the shares represented meets the requirements pursuant to par. 1 fig. 1

- to 3,
2. the certificates meet the requirements pursuant to par. 1 fig. 4 to 8, and
  3. the issuer of the certificates guarantees the fulfillment of its obligations vis-à-vis the bearers of the certificates.

(7) Non-dividend bearing securities issued within the scope of an issuing program admitted to listing on the Official Market within 12 months as of the publication of the prospectus shall not require a separate admission procedure. Official listing shall be granted if the conditions of par. 1 fig. 2 and 4 through 8 are met, and after the applicant has handed over the terms of issue to the exchange operating company.

#### **Article 67**

(1) The exchange operating company may admit tradable instruments such as issuing programs under which non-dividend paying securities are issued on the Second Regulated Market.

(2) The admission to listing on the Second Regulated Market shall be denied if the requirements pursuant to Articles 68, 70 to 73 and Article 82 paragraph 5 are not fulfilled or the admission would be against the interests of maintaining a functioning stock market for the benefit of the national economy, or against the special interests of potential investors. It may also be denied if the securities are not available in a sufficient number and distribution to expect regular exchange trading.

(3) Repealed.

(4) Conditions may be placed on the admission if this is required to protect the interests of potential investors; in this case, the applicant shall be granted the opportunity to make a statement before a decision is reached on the admission.

(5) The Appellate Committee pursuant to Article 64 paragraph 2 shall have jurisdiction for appeals against the denial or repeal of admission to listing on the Second Regulated Market.

### **Conditions for the Admission to Listing on the Second Regulated Market**

#### **Article 68**

(1) The conditions for the admission of securities to listing on the Second Regulated Market are:

1. The establishment of the issuer's company and the articles of association or the partnership agreement of the issuer must comply with the laws of the country in which the issuer has its registered office.
2. The securities to be listed must have at least a total nominal value of EUR 725,000. In the case of admission of no-par value securities, the issuer shall certify that the market value is expected to be at least EUR 362,500; the total number of such securities must be at least 10,000.
3. A stock corporation whose shares are being admitted for the first time must have existed for a period of at least one year and have published financial statements in accordance with applicable regulations for the complete financial year preceding the application; if the stock corporation is the universal successor to another and the accounting is continuous, then the period of existence of this other company shall be taken into the one-year time period.
4. Listed companies must comply with applicable federal and provincial securities law and decrees and official notices issued under such law; this shall also apply mutatis

mutandis to the foreign laws of the state in which the securities have been issued. If it is mandatory that the issuance of the securities be registered in a public register, this rule must be complied with.

5. Shares and other equity securities shall have adequate amount of free float. If this is to be achieved by the introduction to the exchange, the necessary amount for trading on the exchange shall be provided. In the case of shares an adequate distribution is reached if at least EUR 181,250 nominal share capital, in the case of no-par shares at least 2,500 are in the possession of the public or are offered to the public for sale.
6. The denominations of the share and other equity securities shall meet trading requirements.
7. The application for admission shall be made for all shares already issued of the same kind or for all securities of the same offering; however, shares may be excluded from admission that may not be traded for a certain period of time for legal reasons if this exception does not prejudice the bearers of the shares to be admitted and the prospectus or the decree announcing the admission mentions this exception.
8. In the case of securities that give the bearer conversion rights or subscription rights to other securities and whose minimum denomination is less than EUR 50,000 those underlying securities shall be admitted at the latest simultaneously with these to the exchange; exceptions may be made to this requirement if the issuer furnishes proof that the owners of the securities with conversion rights or subscription rights have all the information at their disposal that is necessary in order to make a judgment on the value of the underlying securities; this is to be assumed especially if the underlying securities are officially listed on a recognized exchange pursuant to Art. 2 fig. 32 Banking Act and the prospectus for the admission of securities with conversion or subscription rights contains the necessary information in accordance with Article 74.

(2) Certificates that represent securities may be admitted if:

1. the issuer of the securities represented fulfill the requirements in accordance with paragraph 1 fig. 1 to 3,
2. the certificates fulfill the requirements in accordance with paragraph 1 fig. 4 to 9 and
3. the issuer of the certificates guarantees the fulfillment of its obligations towards the bearers of these certificates.

(3) The rules of exception in Article 66a paras. 2 to 4 apply mutatis mutandis.

(4) Non-dividend securities issued within the scope of an issuing program admitted to listing on the Second Regulated Market within 12 months of the publication of the prospectus shall not require a separate admission procedure. Listing on the Second Regulated Market shall be effected if the conditions of Article 68 par. 1 fig. 2 and 4 through 9 are met and after the applicant submitted the terms of issue to the exchange operating company.

## **The Print of Securities**

### **Article 70**

(1) In the event that individual documents are to be printed, the documents shall be counterfeit-proof and facilitate the simple and rapid settlement of securities transactions. The FMA is responsible for issuing decrees regulating the print of security certificates based on an expertise drawn up by the exchange operating company taking technological progress into account and shall also examine the printed securities as to their compliance with the minimum requirements stipulated in the printing guidelines. The application of additional security characteristics shall

always be permissible.

(2) If the securities of foreign issuers do not fulfill the directives stated in paragraph 1, then the issuer shall certify that the securities fulfill the requirements of the admission authorities in the country of its registered office. The admission shall be granted in this case under the conditions that:

1. the public is informed that the print does not meet Austrian standards;
2. the deviation from Austrian standards does not endanger investors' interests worthy of protection and
3. the country of the registered office of the issuer is prepared to admit Austrian securities under the same conditions.

## **Foreign Issuers**

### **Article 71**

Shares of a company with its registered office in a third country that are not listed on an exchange in the company's home country nor in the country where they are mainly being traded, shall only be admitted if the company can give a plausible explanation confirming that it is not for reasons of investor protection that its shares have remained unlisted in these countries.

## **The Application for Admission to Listing**

### **Article 72**

(1) Applications for admission to listing of a security or of an issuing program on the Official Market and on the Second Regulated Market are to be made in writing to the exchange operating company by the issuer and must be signed by an exchange member if the issuer is not a Member of the exchange concerned.

(2) The application shall contain the name and registered office of the applicant, the type and denomination of the securities as well as the total amount of the issue to be admitted by stating the nominal value or in the case of no-par value securities, the expected market value and the number of securities. In the case of an application for admission to listing of an issuing program, the total amount of the maximum issuing volume stated in the prospectus shall refer to all potential non-dividend paying securities. Should more than 12 months pass since the publication of the prospectus or the issuing of non-dividend paying securities exceed the total amount of the program applied for, a new application must be submitted. Furthermore, the application shall specify any other exchanges to which an application for admission to listing has been made at the same time or within the past 30 days, or will be made in the near future.

(3) The application shall be accompanied by the following documents:

1. An excerpt from the commercial register in which the issuer is registered that is not older than four weeks;
2. a valid copy of the articles of association or partnership agreement of the issuer;
3. any official authorization certificates if such are required for the establishment of the issuer's company, the pursuit of its business activities or the issue of securities;
4. proof of any other legal requirements for the issue of securities;
5. any proof of registration of the issue in a register if this is required for the issue to be legal;
6. a) if shares are to be admitted for the first time to listing on the Official Market, the annual audited accounts with the statement of the auditor and the financial reports

- for the past three complete business years; if a company has not existed in this legal form during the preceding three complete business years, then proof shall be given that it is the universal successor to another and that the accounting is continuous, in particular the transformation reports and audits shall be presented;
- b) in all other cases the annual audited accounts with the statement of the auditor and the annual report for the last complete business year.
7. the prospectus approved pursuant to Article 74 or otherwise a prospectus approved pursuant to Directive 2003/71/EC including a confirmation by the FMA of having received the notification pursuant to Article 8b Austrian Capital Market Act, each in two counterparts;
  8. in the case that security certificates are to be printed, two sample prints of the security certificates of each of the denominations of the securities for which admission is applied for;
  9. in the event that the securities or certificates seeking admission are to be secured by a global certificate, a declaration of the issuer stating at which central depository for securities or similar depository the global certificate shall be in the custody of.

(4) The exchange operating company must reach a decision on applications pursuant to paragraph 1 within 10 weeks after submission. During this period, however, the time consumed in gathering information from the issuer pursuant to Article 73 paragraph 1, or due to publishing this information pursuant to Article 73 paragraph 2, or consumed by the procedure pursuant to Article 75 a, or is necessary to remedy irregularities of form pursuant to Article 13 paragraph 3 General Law on Administrative Procedure (AVG) 1991 shall not be included.

### **Obligation of the Issuer to Provide Information**

#### **Article 73**

(1) The issuer filing the application has the obligation to give the exchange operating company any information that might be necessary to determine if the conditions for the admission to trading on the exchange are given.

(2) In the case of applications for admission to listing on the Official Market or on the Second Regulated Market, the exchange operating company may require the issuer to make the information public pursuant to paragraph 1 within an adequate period of time. If the issuer does not comply with this order and this violates investor protection, then no further admissions shall be granted.

### **Prospectus for the Admission to Listing on the Exchange**

#### **Article 74**

Irrespective of Article 8b Austrian Capital Market Act, the listing prospectus must be prepared pursuant to Articles 2 ff Austrian Capital Market Act and approved by the FMA pursuant to Article 8a Austrian Capital Market Act.

### **Exemptions from the Obligation to Publish a Prospectus Provided for by Law**

#### **Article 75**

(1) A prospectus in accordance with Article 74 is not required if the application for admission to listing is made for:

1. Shares that account for less than 10% of the number of shares of the same category

- over a period of 12 months and which have already been admitted to listing on the same regulated market;
2. Shares issued in exchange for shares of the same category already listed on the same market, as long as this share issue is not related to any capital increase by the issuer;
  3. Securities offered within the scope of a takeover as an offer to exchange shares, as long as a document has been published containing information that is deemed by the FMA to be equivalent to the information contained in a prospectus;
  4. Securities offered or allotted within the scope of a merger as an offer to exchange shares, or which are planned to be allotted, as long as a document has been published containing information that is deemed by the FMA to be equivalent to the information contained in a prospectus;
  5. Shares offered or allotted to existing shareholders free of charge, or which is planned for the future, as well as dividends in the form of shares of the same category as the shares on which such dividends are paid out, as long as these are shares of the same category as the shares already admitted to trading on the same regulated market and on the condition that a document has been published containing information on the number and type of shares and explaining the reasons and details of the offer;
  6. Securities offered or allotted to current or former managing directors or employees by their employers or by an associated company or that planned for the future on the condition that the securities are of the same category as the securities already admitted to trading on the same regulated market, and a document has been published that contains information on the number and type of securities and the reasons and details of the offer;
  7. Shares issued within the scope of a conversion or exchange for other securities or as a consequence of the exercise of rights attached to other securities, as long as the shares belong to the same category as the shares already admitted to trading on the same regulated market;
  8. Securities already admitted to trading on another regulated market under the following conditions:
    - a) These securities or the securities of the same category have been admitted to trading for a period longer than 18 months on another regulated market;
    - b) For securities admitted for the first time to trading on a regulated market after this Federal Act has taken effect, the admission to trading on the other regulated market must have taken place at the same time as the approval of the prospectus made available to the public pursuant to the provisions of Art. 14 of Directive 2001/34/EC;
    - c) With the exception of the cases governed by lit. b: for securities admitted to exchange listing for the first time after 30 June 1983, prospectuses were approved in accordance with the rules of Directive 80/390/EEA or Directive 2001/34/EC;
    - d) The ongoing obligations regarding trading on the other regulated market have been complied with;
    - e) The person applying for the admission of a security to trading on a regulated market under this exemption rule has prepared a summary documentation published in a language recognized by the competent authority of the member state in which the regulated market is located for which admission to listing is being applied for;
    - f) The summary report pursuant to lit. e has been published for the public in the member state pursuant to Article 10 par. 3 Austrian Capital Market Act in which the regulated market is located for which the admission to trading has been applied for;
    - g) The content of the summary report complies with Article 7 par. 2 Austrian Capital

Market Act. Furthermore, the document must indicate where the most recent prospectus and financial information is available that must be disclosed by the issuer according to the disclosure rules that it is subject to.

(2) The obligation to publish a prospectus pursuant to Article 74 shall not apply in the case listed in Article 3 par. 1 fig. 1, 1a, 1b, 2 and 3 Austrian Capital Market Act.

(3) The FMA has the right to define a minimum content for the documents pursuant to par. 1 fig. 3 to 6 and 8 by issuing a decree. This type of publication is subject to Article 10 Austrian Capital Market Act.

## **Cooperation within the European Economic Area**

### **Article 75a**

(1) Issuers whose securities are admitted to trading on a regulated market must publish at least once a year a document that contains all information or makes a reference to such information it has published or made available to the public in the preceding twelve months in one or more member states or third countries within the scope of its obligations under Community law and the individual provisions of each country regarding the supervision of securities, securities issuers and securities markets. The issuers must at least make a reference to the information required according to the Company Law Directives, Directive 2003/71/EC and 2004/109/EC, and Regulation (EC) No. 1606/2002 of the European Parliament and of the Council of 19 July 2002 regarding the application of international accounting standards.

(2) The document – if Austria is the country of origin – must be deposited with the FMA or with an organization charged by the FMA for an adequate fee after the publication of the annual financial statements. Should the document make any reference to information, it must also indicate where such information is available. The FMA has the right to issue a decree regarding fees for the depositing of the documents. These fees shall not exceed the average costs incurred by such an official act and considering overhead costs.

(3) The obligations mentioned in par. 1 shall not apply to issuers of non-dividend paying securities with a minimum denomination of EUR 50,000.

## **List of Regulated Markets**

### **Article 76**

(1) The FMA shall keep a list of domestic regulated markets pursuant to Art. 47 of Directive 2004/39/EEC. Regulated markets in Austria in the meaning of this Federal Act are the Official Market and the Second Regulated Market.

(2) The FMA shall send this list to the European Commission and to the other member states.

**Articles 77 to 80 repealed.**

## **Fees**

### **Article 81**

(1) The issuer shall pay the exchange operating company an admission fee and a fee for the duration of the exchange listing of transferable securities. These fees shall be fixed in a Schedule

of Fees to be agreed by the exchange operating company with the consent of the FMA (Art. 13 par. 6), bearing in mind general business principles and the interests of the national economy in exchange trading. The Schedule of Fees and amendments to it shall constitute General Terms and Conditions of Business; any claims to fees shall be done through regular legal action; the exchange operating company may make the admission to listing contingent on proof of payment of the fees. The Schedule of Fees shall not require approval pursuant to Art. 13 par. 1.

(2) Repealed.

(3) In the case of foreign issues and of bonds not offered for subscription in Austria, the estimated circulation in Austria shall be used as a basis for calculations.

(4) In the case of no-par value shares, the fee shall be determined on the basis of the selling price or expected market value.

(5) repealed

(6) No admission fees shall be charged for securities issued by the federal government.

#### **Article 81a**

(1) For the purposes of Articles 81a through 94, the following definitions shall apply:

1. "Securities" are transferable securities in the meaning of Article 4 par. 1 no. 18 of Directive 2004/39/EEC with the exception of money market instruments in the meaning of Art. 4 par. 1 no. 19 of that Directive having a maturity shorter than twelve months.
2. "Debt securities" are debt securities or other transferable, securitized receivables with the exception of securities equivalent to shares or which upon conversion or exercise of the rights attached to them entitle the holder to acquire shares or securities equivalent to shares.
3. "Shares/stocks" are shares and certificates that represent shares if these also carry exercisable voting rights.
4. "Issuer" shall be understood to mean a legal entity whose securities have been admitted to trading on a regulated market, and in the case of certificates that represent securities, the issuer of the securities represented shall be deemed to be the issuer.
5. "Shareholder" shall be any person under private or public law that holds, indirectly or directly:
  - a) Shares of the issuer in its own name and for its own account,
  - b) Shares of the issuer in its own name, but on behalf of another natural person or legal entity,
  - c) Certificates with the holder of the certificate being considered the shareholder of the underlying shares represented by the certificate,
6. "Controlled company" shall be any company,
  - a) over which one person has the majority of voting rights, or
  - b) in which one person has the right to appoint or dismiss the majority of the members of the management or supervisory bodies and at the same time is a shareholder or partner of the company concerned; the rights of the owner with respect to agreement, appointment and dismissal shall also comprise the rights of any other company controlled by the shareholder and the rights of those persons who act in their own name but on behalf of the shareholder or of any other company controlled by the shareholder, or

- c) in which one person is a shareholder or a partner, and under an agreement with the other shareholders or partners of the concerned company, holds the majority of voting rights of the shareholders or partners, or
  - d) in which or over which one person may exercise a controlling interest or control or, in fact, does so.
7. “Home member state”
- a) In the case of an issuer of debt securities with a denomination lower than EUR 1,000 or of an issuer of shares,
    - aa) for issuers with their registered office in the Community, the member state in which it has its registered office,
    - bb) for issuers with their registered office in a third country, the member state in which the competent authority is seated with which the annual information must be deposited pursuant to Art. 10 of Directive 2003/71/EEC;

The definition “home member state” shall apply to debt securities that are denominated in a currency other than the euro if the value of the denomination on the issuing day corresponds to less than EUR 1,000 as long as it is not anywhere near EUR 1,000;
  - b) for any issuer of the member state not covered by lit. a, the member state which the issuer has selected from its state of registered office and the member states that have admitted its securities to trading on a regulated market within their sovereign territory. An issuer shall not be permitted to select more than one member state as home member state. The selection shall be valid for at least three years unless the securities of the issuer are no longer admitted to trading on any regulated market in the European Union.
8. The “host member state” shall be a member state in which the securities have been admitted to trading on a regulated market as long as it is not the home member state.
9. “Regulated information” shall include all information that must be disclosed by an issuer or any other person who has applied for the admission to trading of securities of the issuer on a regulated market without the consent of the issuer pursuant to Article 82 par. 8 as well as the information of the home member state selected pursuant to fig. 7 lit. b.
10. “Electronic aids” shall be understood to mean electronic devices for the processing (including digital compression), storing and transmission of data via cable, radio, optical technologies or other electro-magnetic processes.
11. “Management company” shall be a company in the meaning of Article 1a no. 2 of Directive RL 85/611/EEC.
12. “Market maker” shall be a person who is willing to engage in trading on a permanent basis in financial markets for its own account by buying and selling financial instruments with its own capital at prices it determines.
13. A “credit institution” shall be a company in the meaning of Article 1 fig. 1 of Directive 2006/48/EEC.
14. A “member state” shall be any state that belongs to the European Economic Area.
15. A “person” may be a natural person or a legal entity.

(2) In accordance with the comitology provisions of the European Commission pursuant to Article 27 par. 2 of Directive 2004/109/EEC, the FMA shall define by promulgating a decree

- 1. the procedures to be followed by an issuer for the selection of the home member state for the purposes of par. 1 fig 7 ;

2. the adjustment of the three-year period in conjunction with the issuer's business activity to any new provisions under Community legislation regarding the admission to trading on a regulated market, if this is appropriate for the selection of the home member state set out in par. 1 fig 7 lit. b;
3. the drafting of an indicative list for the purpose stated in par. 1 fig.10 of the aids, which are not to be viewed as electronic aids but meet the objectives of Annex V of Directive 98/34/EEC.

(3) The disclosure and reporting requirements pursuant to Articles 82 to 94 shall apply to issuers for whom Austria is the host member state and to shareholders of such issuers pursuant to Article 91 and equivalent persons pursuant to Article 92, but only to the extent it does not exceed the requirements of Directive 2004/109/EEC.

(4) Only Articles 91 to 94 of the disclosure and reporting obligations pursuant to Articles 82 to 94 shall apply to shares issued by organisms for collective investment of a type other than the closed type pursuant to Directive 85/611/EEC (UCITs) as well as to shares acquired or sold within the framework of such organisms.

(5) Securities issued by federal bodies or regional authorities that have been admitted to trading on a regulated market shall be exempt from the application of Article 84 par. 2 to 4 and Art. 93 par. 6.

### **General Obligations of the Issuers**

#### **Article 82**

(1) Every issuer has the obligation to apply, within one year after the issue, for admission to trading on the exchange if he/she issues securities of the same type as are already being quoted on the Official Market or on the Second Regulated Market. In the case of shares that at the time of issue were not freely negotiable in accordance with Article 66 paragraph 3, this period of one year shall begin as soon as they become freely negotiable.

(2) The Austrian Financial Market Authority (FMA) has the right to extend the obligation of the issuer pursuant to paragraph 1 by decree to other securities if this is in the interests of investor protection or in the general public interest in a functioning exchange for the benefit of the national economy. The time limit to be set in the decree for the inclusion of the newly issued security in exchange trading may also be shorter than one year.

(3) Every issuer shall maintain for the term of the listing of the securities it has issued on a regulated market a depositary and paying agent with a credit institution at the venue of the exchange and shall inform the exchange operating company of any change immediately. For securities that are securitized in global certificates, it shall suffice to maintain a depositary and paying agent with a credit institution in a member state of the EEA

(4) An issuer shall disclose its annual financial statements by the latest four months after the close of the financial year and shall ensure that it is available to the public for at least five years. The annual financial statements shall comprise

1. the audited financial statements;
2. the report of the management board;
3. explanations in which the legal representatives of the issuer confirm the following stating their name and function
  - a) that to the best of their knowledge, the annual financial statements drafted in line

with the applicable accounting standards present a fair and true view of the assets, earnings and financial position of the issuer or the entirety of the companies included in the consolidation;

- b) that the report of the management board presents the development of business, the earnings and the situation of the companies included in the scope of consolidation in such a manner so as to present a fair and true view of the assets, earnings and financial position of the issuer and also describes the major risks and uncertainties to which the companies are exposed.

If the issuer is under the obligation to prepare consolidated financial statements, then audited annual financial statements shall comprise the consolidated financial statements and the annual financial statements of the issuer as the parent company. The auditor's opinion shall be disclosed in full together with the annual financial statements.

(5) In order to prevent insider dealings every issuer shall

1. inform its employees and other persons working for it that they are prohibited to abuse inside information (Article 48a),
2. issue internal directives for the communication of information within the company and shall monitor compliance,
3. take organizational measures suitable for preventing the abuse of inside information or its disclosure to third parties.

(6) In accordance with the comitology rules defined by the European Commission pursuant to Art. 27 par. 2 of Directive 2004/109/EEC, the FMA shall issue a decree by which the technical requirements for annual financial statements pursuant to par. 4 including the auditor's opinion must remain available to the public. Furthermore, it shall be empowered to define by decree the basic principles according to which information is to be communicated in the company pursuant to par. 5 fig. 2 and for organizational measures pursuant to fig. 3. Taking into consideration the Part II of the Securities Supervision Act 2007, these principles shall serve to counteract the occurrence of situations pursuant to Article 48b and to render such situations traceable.

(7) Any issuer whose securities have been admitted to the Official or Second Regulated Markets shall, prior to publication, communicate the facts to be published according to Art. 48d to the FMA and to the exchange operating company. The FMA shall have the right to determine by decree the type of transmission to be used and to prescribe the use of specific means of communication in order to ensure efficient transmission using state-of-the-art technology.

(8) Disclosure pursuant to par. 4, Art. 48d, Art. 75a par. 1, Art. 87 par. 1 and 6 as well as Art. 93 par. 1 to 6 and the notification pursuant to Art. 81a fig. 7 lit. b of the home member state selected shall be done via an electronic data dissemination system that has a reach at least within the European Community. Which information dissemination systems meet this requirement shall be defined by decree issued by the FMA.

(9) An issuer of shares and certificates shall be obliged to disclose to the public a report on any stock options granted pursuant to Art. 95 paragraph 6, Art. 98 par. 3, Art. 153 par. 4, Art. 159 par. 2 fig. 3 and par. 3 and Art. 171 par. 1 last sentence of the Stock Corporation Act within the time periods prescribed therein in pursuant to paragraph 8. The issuer shall also be obliged to immediately disclose the resolution of the General Meeting according to Art. 65 par. 1 figures 4, 6 and 8 Stock Corporation Act as well as the duration of any stock buyback programmes directly before carrying out such stock buyback program; the same shall apply mutatis mutandis to the sale of own stocks with the exception of sales pursuant to Art. 65 par. 1 fig. 7 Stock Corporation Act; in

such cases the transactions in which own shares were sold on and off exchanges shall be disclosed. Disclosure obligations with respect to stock options granted, buyback programs and the selling of own shares shall also apply to issuers that are not subject to the Stock Corporation Act but for which Austria is the home country pursuant to Art. 81a par. 1 fig. 7. The Austrian Financial Market Authority (FMA) in agreement with the Federal Ministry of Justice shall be empowered to define the content and form of the announcement stipulated in this paragraph; this shall be done taking the legitimate interests of the issuer and of investors into consideration as well as the international standards of developed capital markets. The regulations pertaining to announcements regarding the transactions conducted, in particular, when fixing the frequency and the time limits for the announcements, and the impact of such transactions on trading in the concerned shares and certificates shall also be taken into account.

(10) If facts must be disclosed pursuant to Art 82 par. 9, this disclosure shall replace the one required under Art. 65 par. 1a second sentence, Art. 95 par. 6, Art. 98 par. 3, Art. 153 par. 4, Art. 159 par. 2 fig. 3, Art. 159 par. 3, Art. 171 par. 1 last sentence Stock Corporation Act.

(11) All issuers of securities with voting rights domiciled in another member country of the EEA, shall, report to the FMA, the exchange operating company and the Takeover Commission which member country of the EEA is to be responsible for the supervision of the public offerings (Art. 27c par. 1 fig.3 Takeover Act) if the first-time admission of the securities to trading is being done simultaneously in Austria as well as in another EEA country that is not the domicile of the issuer. This report shall be disclosed by publication in the Official Gazette, Wiener Zeitung.

## **Obligations of Issuers of Shares**

### **Article 83**

(1) An issuer of shares must treat all shareholders that are in the same situation equally.

(2) The issuer shall ensure that all facilities and information that the shareholders need to exercise their rights are available in the home member state and the integrity of the data is guaranteed. Shareholders have the right to appoint an authorized representative to exercise their rights if the laws of the home member state of the issuer are complied with. In particular, the issuer must

1. inform on the place, time and agenda of the general meetings as well as on the total number of shares and voting rights, and the rights of shareholders regarding participation in the general meetings;
2. send to every person who has the right to take part and vote at a general meeting, together with the individual notification of the general meeting, if such notification is sent, or upon request after the date has been fixed, a power of attorney form either in paper form or if applicable by electronic means;
3. name a credit or a financial institution as authorized body through which the shareholders can exercise their financial rights;
4. announce the allotment and payout of dividends and the issue of new shares as well as of changes to the bylaws and rights relating to the allotment, subscription, withdrawal or exchange of shares.

The FMA shall define by decree in accordance with the comitology rules laid down by the European Commission pursuant to Art. 27 par. 2 of Directive 2004/109/EEC through which types of credit or financial institutions shareholders can exercise their financial rights mentioned in fig. 3.

(3) For the purpose of sending information to shareholders, issuers may use electronic aids if the corresponding decision has been taken by a general meeting and the following conditions are met:

1. The use of the electronic aids does not depend in any way on the seat or place of residence of the shareholder or the persons pursuant to Article 92.
2. Precautions shall be for the identification of persons in order to ensure that the shareholders or the persons exercising the voting rights or who have the right to instruct the exercise of voting rights, are actually informed.
3. Shareholders or persons pursuant to Art. 92 fig.1 to 5 who may acquire, sell or exercise voting rights shall be requested in writing to consent to the use of electronic aids for transmitting information; their consent shall be deemed given if they do not raise objections within an appropriate period. They may request at any time at a later point to have the information sent to them again in written form.
4. Any division of the costs relating to the transmission of such information by electronic means shall be defined by the issuer in accordance with the principle of equal treatment pursuant to par. 1.

(4) The withdrawal of shares from the Second Regulated Market shall be notified to the exchange operating company at least one month in advance and must be published at the same time. This period may be shortened by the exchange operating company upon request if there are well-founded reasons.

(5) The obligations of the issuers of shares pursuant to par. 1 to 3 also apply to issuers of participation certificates pursuant to Article 23 par. 4 Banking Act and Article 73c par. 1 Insurance Supervision Act as well as to issuers of securities granting holders profit sharing rights pursuant to Article 174 Stock Corporation Act.

### **Obligations of Issuers of Debt Securities**

#### **Article 84**

(1) An issuer of debt securities must treat all bearers of equivalent debt securities equally as regards all rights related to these debt securities.

(2) The issuer shall ensure that all facilities and information that the bearers of debt securities need to exercise their rights are publicly available in the home member state and the integrity of the data is guaranteed. Bearers of debt securities have the right to appoint an authorized representative to exercise their rights if the laws of the home member state of the issuer are complied with. In particular, the issuer must

1. inform of the place, time and agenda of the creditor meeting of debt securities holders and of the payment of interest, the exercise of conversion rights, exchange, subscription or annulment and repayment as well as the right to participation of these bearers of debt securities;
2. send to every person who has the right to take part in the creditor meeting of debt security holders, together with the individual notification of the meeting, if such notification is sent, or upon request after the date has been fixed, a power of attorney form either in paper form or if applicable by electronic means;
3. name a credit or a financial institution as authorized body through which the holders of debt securities can exercise their financial rights;

The FMA shall define by decree in accordance with the comitology rules laid down by the European Commission pursuant to Art. 27 par. 2 of Directive 2004/109/EEC through which types of credit or financial institutions debt security holders can exercise their financial rights mentioned in fig. 3.

(3) If only holders of debt securities with a minimum denomination of EUR 50,000 or — in the case of debt securities denominated in currencies other than euro — with a minimum denomination that corresponds to EUR 50,000 on the date of issue, are invited to a creditor meeting, the issuer may select as venue of the meeting any member state as long as it has all of the facilities and information needed for the holders of the debt securities to exercise their rights.

(4) For the purpose of sending information to debt securities holders, issuers may use electronic aids if the corresponding decision has been taken by a creditor meeting and the following conditions are met:

1. The use of the electronic aids does not depend in any way on the seat or place of residence of the debt security holder or an authorized representative pursuant to Article 92.
2. Precautions for the identification of persons are taken in order to ensure that the holders of debt securities have actually been informed.
3. The holders of debt securities are requested in writing to give their consent to use the electronic aids for the transmission of information; their consent shall be deemed given if they do not raise objections within an appropriate period. They may request at any time at a later point to have the information sent to them again in written form.
4. Any division of the costs relating to the transmission of such information by electronic means shall be defined by the issuer in accordance with the principle of equal treatment pursuant to par. 1.

(5) The withdrawal of debt securities from the Second Regulated Market shall be notified to the exchange operating company at least one month in advance and must be published at the same time. This period may be shortened by the exchange operating company upon request if there are well-founded reasons. This period of notice shall not apply if an application for admission to official listing has been submitted before the end of the period.

### **Language and Third Country Rules**

#### **Article 85**

(1) If the securities have been admitted to trading only on a regulated market in Austria as home member state, then the prescribed information must be published in German.

(2) If the securities have been admitted to listing on a regulated market in Austria as home member state as well as on a regulated market in one or several host member states, then the regulated information shall be published in

1. in German and
2. depending on the choice of the issuer either in a language accepted by the competent body in the concerned host member state or in a language that is commonly used in international financial circles.

(3) If the securities are admitted to trading on a regulated market in one or several host member states but not in the home member state, then the regulated information shall be published at the choice of the issuer in a language accepted by the competent body of the concerned host member state or in a language commonly used in international financial circles.

(4) If the securities are admitted to trading without the consent of the issuer on a regulated market, then the obligations pursuant to par. 1 to 3 shall not apply to the issuer but to the person who has applied for admission without the consent of the issuer.

(5) Shareholders and persons in the meaning of Articles 91, 91a and 92 shall be permitted to inform issuers of regulated information only in a language commonly used in international financial circles.

(6) In deviation from par. 1 to 4, the regulated information shall be notified at the choice of the issuer or of the person who has applied for admission without the consent of the issuer either in the language accepted by the competent bodies of the home member state and the host member state or in a language commonly used in international financial circles if securities with a minimum denomination of EUR 50,000 or — in the case of a debt securities denominated in a currency other than the euro — with a minimum denomination that corresponds to EUR 50,000 on the date of issue have been admitted to trading on a regulated market in one or more member states.

(7) If the registered office of the issuer is in a third country, the FMA as competent body of the home member country shall have the right to make an exception from the requirements of Articles 82 to 84, 87 and 93 if the law of the concerned third country imposes equivalent requirements or if the issuer meets the requirements of the law of the third country that the FMA views as equivalent. The information required to be presented by the law of the third country shall be deposited pursuant to Article 86 and published in accordance with Articles 85 and 86. In deviation from this provision, issuers with their registered office in a third country may be exempt from the preparation of annual financial statements and interim reports pursuant to Articles 84 and 87 prior to the financial year that starts on or after 1 January 2007 on the condition that the issuers prepare their financial statements pursuant to IFRS as stipulated in Regulation 1606/2002/EEC.

(8) The FMA shall ensure that the information published in a third country that could be of relevance for the public in the Community must additionally be published pursuant to Articles 85 and 86. This shall also apply if the information concerned is not regulated information pursuant to Article 81a par. 1 fig. 9.

(9) Companies with their registered office in a third country that would need an admission pursuant to Art. 5 par. 1 of Directive 85/611/EEC or an admission with respect to the management of portfolios pursuant to Section A No. 4 of Annex I of Directive 2004/39/EEC, if they have their seat or – in the case of investment firms – their principal management within the Community shall also be exempt pursuant to Art. 92a par. 2 and 3 from adding their investments to the investments of their parent company on the condition that they meet equivalent conditions as regards their independence as management firms or investment firms.

(10) In accordance with the comitology provisions of the European Commission pursuant to Article 27 par. 2 of Directive 2004/109/EEC, the FMA shall define by promulgating a decree

1. Procedures to determine and guarantee the equivalence of the regulated information including the financial statements with the information required according to the legislative and administrative provisions of a third country;
2. Determine that a third country in which the issuer has its registered office can guarantee the equivalence of the regulated information based on its legislative and administrative provisions or practice, which are based on the international standards defined by international organizations;
3. Permit the concerned issuer from a third country whose accounting standards are not equivalent to continue using such accounting standards for an appropriate period of transition;
4. Determine which type of information is of significance for the public within the Community that is disclosed in a third country pursuant to par. 8;

5. Determine that a third country guarantees the equivalence of the requirements as regards independence pursuant to Directive 2004/109/EEC and the relevant implementing measures under the third country's legal and administrative provisions.

### **Storage Systems and Competence of Bodies**

#### **Article 86**

(1) Should an issuer or a person who has applied for admission to trading of securities on a regulated market without the consent of the issuer, disclose regulated information, then such issuer or person shall simultaneously disclose such information to the exchange operating company and the FMA as well as the OeKB for the purpose of depositing such information for inspection. The FMA shall have the right to disclose this information on its website. The obligations mentioned above shall only apply with respect to issuers for which Austria is home member state and vis-à-vis the exchange operating company only if the securities of the issuer have been admitted to a regulated market operated by the exchange operating company. If the issuer intends to change its bylaws or articles of association, the issuer must send a draft of the changes to the exchange operating company on whose regulated market the securities have been admitted to trading and to the FMA if Austria is the issuer's home member state. This communication must be done immediately but at the latest by the date the general meeting or creditor meeting is convened at which a resolution on the draft for the amendment is to be taken or the meeting informed thereof.

(2) The FMA shall issue a decree to define the procedures in accordance with the comitology rules of the European Commission pursuant to Art. 27 par. 2 of Directive 2004/109/EEC that must be followed by issuers, shareholders or holders of other financial instruments or by persons for the sending of information pursuant to par. 1 to the exchange operating company and the FMA in the meaning of Article 92

1. to enable the storage by electronic means;
2. to enable the coordination of the depositing of the annual financial statements in the meaning of Article 82 par. 4 with the depositing of the annual information in the meaning of Art. 10 of Directive 2003/71/EEC.

(3) An issuer or a person who has applied for admission to trading on a regulated market without the consent of the issuer shall disclose the regulated information in such a manner that permits the non-discriminatory fast access to the information and makes it available on the official system in the meaning of par. 4. The issuer or the person who has applied for admission to trading on a regulated market without the issuer's consent shall not be permitted to collect fees from investors for accessing the information. The issuer must use media for which it may be reasonably assumed that the information will in fact be disseminated to the public throughout the entire Community. Should securities be admitted to trading on a regulated market only in Austria as host member state but not in the home member state, the FMA shall ensure the disclosure of the regulated information pursuant to the requirements of this paragraph.

(4) The OeKB shall act as officially appointed system for the central storage of the regulated information. It shall comply with minimum quality standards as regards data security and shall secure the origin of the information, record the time and enable easy access for end users and harmonize its procedures with the depositing procedures pursuant to par. 1. It shall be entitled to collect an appropriate remuneration for its activities.

(5) The FMA shall ensure the uniform application of paras. 3 and 4 in accordance with the comitology rules of the European Commission pursuant to Art. 27 par. 2 of Directive 2004/109/EEC

by issuing a decree, taking into account the technological developments on financial markets and developments in the information and communications technologies. In particular, it shall define:

1. Minimum standards for the dissemination of the regulated information pursuant to par. 3;
2. Minimum standards for the central storage system pursuant to par. 4.

It may also compile a list of the media, which shall regularly update and make this information available to the public.

(6) The FMA shall have the authority within the scope of Articles 82 to 94 to

1. to demand the presentation of the information and documents from auditors, issuers, shareholders and holders of other financial instruments or persons in the meaning of Articles 91a and 92, and of persons who exercise control over these or who are controlled by these;
2. to demand of issuers to disclose information pursuant to fig. 1 by the means and within the periods that it deems necessary. It may disclose such information of its own after hearing the issuers, if the issuer or the persons that control the issuer or are controlled by the issuer fail to comply by this request;
3. to demand if necessary the transmission of further information and documents by the managing directors of the issuer or the holders of shares and other financial instruments or by persons in the meaning of Articles 91a and 92 that are under the obligation pursuant to Articles 82 to 94;
4. to suspend trading in securities for at the most ten consecutive days or demand suspension from the relevant regulated market if it has well-founded reasons to assume that the provisions of Articles 82 to 94 have not been complied with by the issuer;
5. to prohibit trading on a regulated market if it determines that a breach of Articles 82 to 94 has been committed or there are justified reasons for assuming that such breach has been committed;
6. to supervise the timely disclosure of information by the issuer in order to ensure in this manner that the public in all member states in which the securities are traded actually have equal access, or otherwise, take appropriate measures;
7. to disclose the fact that an issuer or a holder of shares or other financial instruments or a person in the meaning of Articles 91a and 92 have failed to comply with their obligations if such disclosure does not pose a serious threat to the stability of the financial markets or cause any excessively large damage to the party concerned;
8. to investigate on site, compliance with Articles 82 to 84 and examine the implementation.

(7) If information on facts or resolutions in connection with the request for information of the competent authority pursuant to par. 6 fig. 1 are forwarded by the auditors to the competent authorities, this shall not constitute a breach of any contractually agreed or legal provisions restricting the passing on of information, and the auditors shall not be liable in any manner whatsoever for such action.

(8) The FMA shall collaborate with the competent bodies of other member states if this is required for the fulfillment of its tasks pursuant to Articles 82 to 94. The FMA shall provide official assistance to the competent bodies of other member states. The bond to official secrecy shall not contradict the exchange of confidential information between the competent authorities. The information exchanged in this manner shall be subject to the confidentiality rules that apply to persons who work or have worked at the competent bodies that have received such information.

(9) Should the FMA as competent body of the host member state reach the conclusion that an issuer or holder of shares or other financial instruments or a person in the meaning of Article 92 have committed irregularities or have breached their obligations, it shall inform the competent authority of the home member state of this finding. Should an issuer or a holder of securities continue to breach the relevant legal provisions despite the measures taken by the competent authority of the home member state — or because such measures prove to be ineffective — then the FMA shall take any required measures to protect investors' interests after informing the competent authority of the home member state, bearing Article 81a par. 3 in mind. The FMA shall inform the European Commission of such measures as soon as possible.

## **Interim Reports**

### **Article 87**

(1) Issuers of shares or debt securities shall prepare half-year reports for the first six months of the financial year, immediately, but at the latest two months after the close of the reporting period and shall ensure that this report is available to the public for at least five years. The half-year financial statements shall include:

1. Abbreviated financial statements;
2. A half-year report of the management board;
3. Declarations in which the legal representatives of the issuers, stating their names and positions confirm
  - a) that the abbreviated financial statements prepared in accordance with applicable accounting standards to the best of their knowledge present a fair and true view of the assets, earnings and financial position of the issuer or of the entirety of the companies included in the scope of consolidation;
  - b) that the half-year report of the management board presents a fair and true view of the assets, earnings and financial position of the issuer with respect to the information required under par. 2.

(2) If the issuer is not under the obligation to prepare consolidated financial statements, the abbreviated financial statements shall contain at least an abbreviated balance sheet, an abbreviated profit/loss account and explanatory notes to the financial statements. When preparing the abbreviated balance sheet and the abbreviated profit/loss account, the issuer shall apply the same reporting and valuation principles as for the preparation of the annual financial statements. If the issuer is under the obligation to prepare consolidated financial statements, then the abbreviated financial statements shall be prepared in accordance with IFRS pursuant to Regulation 1606/2002/EEC applicable to interim reports.

(3) If the half-year report has been audited, the full text of the auditor's opinion must be included. The same applies to a review report by an auditor. If the half-year financial statements have not been audited fully nor subjected to a review by an auditor, the issuer must state this fact in its report. The liability of an auditor who conducts an audit review shall be subject to the provisions of Articles 275 par. 2 Austrian Companies Act, 62a Banking Act and 82 par. 8 Insurance Supervision Act.

(4) The half-year management report must discuss as a minimum any major events in the first six months of the financial year and their effects on the abbreviated financial statements; furthermore, it shall describe the principal risks and uncertainties for the remaining six months of the financial year.

In the case of issuers of shares, the half-year management report shall also describe major transactions by persons or companies closely related to the issuer.

1. Transactions with companies and persons affiliated to the issuer completed in the first six months of the current financial year and have had a material influence on the financial situation or earnings of the company during this period;
2. Any changes in the transactions with affiliated companies and persons that were presented in the last annual financial statements and could have had a material influence on the financial situation or earnings of the company in the first six months of the current financial year.

If an issuer of shares is not under the obligation to prepare consolidated financial statements, the issuer shall at least disclose transactions with affiliated companies and persons to which a reference is made in Article 43 par. 1 no. 7 letter b of Directive 78/660/EEA.

(5) In accordance with the comitology rules defined by the European Commission pursuant to Art. 27 par. 2 of Directive 2004/109/EEC, the FMA shall define through the issuance of decrees

1. under which technical requirements a half-year report including a confirmation of the audit review by an auditor must be remain available to the public;
2. the precise nature of the audit review by an auditor;
3. which information must be contained as a minimum in the abbreviated balance sheet, abbreviated profit/loss account and explanatory notes to the financial statements if these have not been prepared in accordance with IFRS pursuant to Regulation 1606/2002/EEC.

(6) In the event that an issuer of shares does not prepare quarterly reports in accordance with IFRS pursuant to Regulation 1606/2002/EG, the issuer shall publish interim reports of the management board on the first and the third quarter of the financial year immediately but at the latest six weeks after the close of the reporting period. The interim report shall in any case contain:

1. an explanation of the major events and transactions that took place during the period under review and their effects on the financial situation of the issuer and any companies it controls; in particular, the order situation, development of costs and prices, number of employees and investments are to be discussed in detail if they are of material importance for the company;
2. a general description of the financial situation and earnings of the issuer and of the companies it controls during the concerned period of time as well as the outlook of the company for the current financial year.

### **Content of the Report in Special Cases**

#### **Article 88**

(1) If the figures reported pursuant to Article 87 and the decree issued by the FMA pursuant to Article 87 par. 5 with respect to the activities of the issuer do not reflect the actual situation and are not suited for assessing the business activities and earnings of the company, then the interim report must be supplemented by the corresponding data.

*J.* (2) Credit institutions shall state the points listed in the Annex to Article 88 instead of the information specified in Article 87. The figures shall be calculated based on the latest monthly return and quarterly report in accordance with Article 74 Banking Act; if a quarterly report or a monthly return is due at the same time, then these shall serve as a basis for the interim report.

(3) Insurance companies shall state the premium income from contributions in each insurance class as well as the volume of their life insurance contracts instead of sales and operating results, and in the explanations they shall also report on the level of damages, costs and earnings from investments as components of their results.

## **Article 89 Repealed.**

### **Exemptions from Reporting Obligations**

#### **Article 90**

(1) Articles 82 par. 4 and 87 shall not apply to the following issuers:

1. central states, regional authorities, international bodies under public law to which at least one member state belongs, the ECB and the national central banks of member states irrespective of whether they issue shares or other securities and
2. issuers of debt securities admitted to trading only on a regulated market with a minimum denomination of EUR 50,000 or — in the case of debt securities denominated in a currency other than euro — with a minimum denomination whose value on the first day of listing equalled at least EUR 50,000.

(2) Article 87 par. 1 shall not apply to credit institutions whose shares have not been admitted to trading on a regulated market and who have issued debt securities in a continuous or repeated manner on the condition that the total nominal value of the debt securities issued does not exceed EUR 100mn and no prospectus pursuant to Directive 2003/71/EEC has been published.

(3) Article 87 par. 1 shall not apply to issuers who already existed on 31 December 2003 and have issued only debt securities on regulated markets that are irrevocably guaranteed by the home member state of one of its regional authorities.

### **Changes to Major Holdings**

#### **Article 91**

(1) If persons, directly or indirectly acquire or sell the shares of an issuer whose shares are admitted to trading on a regulated market, they shall be under the obligation to immediately, but at the latest two trading days later, inform the FMA, the exchange operating company and the issuer of the share of voting rights held after the completion of the acquisition or sale, if, as a consequence, their proportion of voting rights reaches, exceeds or falls below 5 percent, 10 percent, 15 percent, 20 percent, 25 percent, 30 percent, 35 percent, 40 percent, 45 percent, 50 percent, 75 percent and 90 percent. This shall also apply to the thresholds stated by such issuer in its by-laws pursuant to Article 27 paragraph 1 fig. 1 Takeover Act, Federal Law Gazette I No. 127/1998. The obligations stated above shall apply only with respect to issuers for which Austria is the home member state and vis-à-vis the exchange operating company only if the securities of the issuer have been admitted to listing on a regulated market of the exchange operating company. The period of two trading days runs as of the day following the day on which the person

1. gains knowledge of the acquisition or sale or of the possibility of exercising voting rights or on which such person should have gained knowledge under the circumstances, irrespective of the day on which the acquisition, the sale or the possibility of exercising voting rights takes effect, or
2. has been informed of the event pursuant to par. 1a.

(1a) The percentage of voting rights pursuant to par. 1 shall be calculated based on the total

number of shares with voting rights, even if the exercise of such voting rights has been suspended. This percentage shall furthermore also be stated with respect to all shares with voting rights of the same category. The obligation to report pursuant to par. 1 shall be given for persons even if their share of voting rights reaches, surpassed or falls below one of the threshold mentioned in par. 1 due to events that change the distribution of voting rights based on information published pursuant to Article 93 par. 1. Should the issuer have its registered office in a third country, then a report shall be made in the case of comparable events.

(2) Par. 1 shall not apply to shares that have been acquired solely for the purpose of settling and clearing trades within the usually short clearing cycle nor to custodians who hold shares only in safe custody on the condition that the custodian has the right to exercise voting rights for these shares only on instructions given in writing or via electronic means. Par. 1 shall not apply to the acquisition or sale of major shareholdings by a market maker trading in this function, if the threshold of 5 percent or more has been exceeded or the transaction falls below such threshold on the condition that

1. the market maker has been admitted to trading in its home member state pursuant to Directive 2004/39/EEC;
2. the market maker does not intervene in the management of the concerned issuer and does not exercise any influence over said issuer to buy the concerned shares or to support the share price.

(2a) Voting rights that a credit institution or an investment firm may exercise within the scope of the conduct of the business of securities dealing (Art. 1 par. 2 fig. 7 Banking Act), shall not be counted for the intents of this Article on the condition that

1. The share in voting rights held due to securities trading is not higher than 5 percent, and
2. the credit institution or the investment firm ensures that the voting rights of shares that could be exercised within the scope of securities trading are not exercised or used otherwise to intervene in the management of the issuer.

(3) If the acquiring or selling party belongs to a group which must draw up consolidated financial statements, then the notification of the company in accordance with paragraph 1 shall be made either by the party acquiring or selling, by its parent company, or by a further higher ranking company of the group.

(4) The acquisition of a share in a company pursuant to paragraph 1 shall be equivalent to the first listing of the stocks of a company on the Official Market or on the Second Regulated Market of an Austrian stock exchange.

## **Derivative Instruments**

### **Article 91a**

The reporting obligation pursuant to Article 91 shall also apply to persons who directly or indirectly hold financial instruments that grant the holders within the scope of a formal agreement the right to acquire the shares of an issuer with attached voting rights that have already been issued.

## **Determination of the Proportions of Voting Rights**

### **Article 92**

The reporting obligation pursuant to Article 91 par. 1 and 1a shall also apply to persons who are authorized to exercise voting rights in one of more of the following cases:

1. Voting rights under shares held by third parties with whom this person has reached an agreement that imposed the obligation on both parties to pursue a common policy with respect to the management of the concerned listed company by exercising the voting rights in mutual consent;
2. Voting rights from shares that this person has assigned to a third party as collateral if the voting rights can be exercised without requiring any explicit instructions by the transferee or if the person can influence the exercise of the voting rights by the transferee;
3. Voting rights from shares under which this person enjoys *usus fructus* rights if the voting rights can be exercised without requiring any explicit instructions by the transferee or if the person can influence the exercise of the voting rights by the transferee;
4. Voting rights from shares that belong to a company or may be considered as belonging according to fig. Z 1 to 3 over which this person holds a controlling interest, directly or indirectly (Art. 22 par. 2 and 3 Takeover Act);
5. Voting rights that this person may exercise without being the owner;
6. Voting rights that this person in the function of a party having the power of attorney may exercise at his or her own discretion, if no special instructions have been given by the shareholders;
7. Voting rights that are deemed to belong to the person pursuant to Article 23 par. 1 or 2 Takeover Act.

## **Rules of Procedure**

### **Article 92a**

(1) The notification pursuant to Articles 91 and 92 must contain the following information:

1. the number of voting rights after the acquisition or sale;
2. if applicable, the chain of controlled companies over which the voting rights can actually be exercised;
3. the date as of which the threshold was reached or exceeded;
4. the name of the shareholder, even if the shareholder is not authorized to exercise voting rights under the conditions of Article 92 and of the person authorized to exercise voting rights in the name of said shareholder.

(2) The parent company of a management company shall not be obligated to aggregate the holdings pursuant to Articles 91 and 92 with the holdings managed by the management company in accordance with Directive 85/611/EEA, if the management company exercises its voting rights independently of the parent company. However, Articles 91 and 92 shall apply if the parent company or another company controlled by the parent company holds shares in the investment managed by the concerned management company and the management company cannot exercise these voting rights relating to these investments at its own discretion, but only on direct or indirect instructions issued by its parent company or another company controlled by the parent company.

(3) The parent company of an authorized investment firm pursuant to Directive 2004/39/EEC shall not be obligated to aggregate its holdings pursuant to Article 91 and 92 with the holdings managed

by the concerned investment firm on a client-by-client basis in the meaning of Art. 4 par 1 no. 9 Directive 2004/39/EEC provided that

1. the investment firm has been authorized to provide portfolio management services pursuant to Annex I Section A no. 4 of Directive 2004/39/EEC;
2. it may exercise the voting rights attached to the concerned shares only if given written instructions or instructed via electronic means or takes precautions to ensure that the individual portfolio management is conducted independently of other services and under conditions equivalent to those defined in Directive 85/611/EEA;
3. the investment firm exercises the voting rights independently of the parent company.

However, Articles 91 and 92 shall apply if the parent company or another company controlled by the parent company holds shares in the investment managed by the concerned management company and the management company cannot exercise these voting rights relating to these investments at its own discretion, but only on the direct or indirect instructions issued by its parent company or another company controlled by the parent company.

(4) Articles 91 and 92 fig. 3 shall not apply to shares available or made available to the members of the European System of Central Bank (ESCB) in the exercise of its duties as monetary authority; these shall include shares that members of the ESCB deposit as collateral or within the scope of securities repurchase agreements or a similar agreement in exchange for liquidity for monetary policy purposes or made available within a transfer of payments system. For the exemption to apply, the transactions mentioned must be short-term transactions and the voting rights attached to such shares are not be exercised.

### **Additional Information**

#### **Article 93**

(1) For the purposes of calculating the thresholds pursuant to Article 91, the issuer shall disclose the total number of voting rights and the capital at the end of every calendar month on which an increase or reduction of voting rights or capital has occurred.

(2) As soon as the issuer receives the notification pursuant to Article 92a par. 1, but at the latest two trading day after receipt, the issuer must disclose all of the information contained in the notification.

(3) Should an issuer of shares acquire or sell own shares itself or through a person acting in its own name but for the account of the issuer, then the issuer shall disclose the percentage of own shares immediately, but at the latest two trading days after the acquisition or sale, if these shares reach, exceed or fall below the threshold of 5 percent or 10 percent of voting rights. The percentage shall be calculated based on the total number of shares with attached voting rights.

(4) An issuer of shares shall immediately disclose any change to the rights attached to the different categories of shares including any rights attached to derivative instruments issued by the issuer itself or which grant access to the shares of the concerned issuer.

(5) An issuer of securities other than shares shall immediately disclose any change to the rights of the holders of such securities not being shares, including any changes to the features or terms of such securities that could affect the concerned rights indirectly, especially based on changes to the bond terms or interest rates.

(6) An issuer shall immediately disclose new bond issues and any related guarantees or collateral. Irrespective of Directive 2003/6/EEC, this Article shall not apply to international organizations under public law to which at least one member state belongs.

#### **Article 94**

In accordance with the comitology rules defined by the European Commission pursuant to Art. 27 par. 2 of Directive 2004/109/EEC, the FMA shall issue decrees that

1. specify the events stated in Art. 91 par. 1a, if applicable, in an exhaustive list;
2. regulate the maximum period of the short settlement cycle and define adequate and reasonable control mechanisms for the exemptions pursuant to Article 91 par. 2 and 2a;
3. define the types of financial instruments and their aggregation, the type of formal agreement, the content of the notifications and the standard form to be used throughout the Community for this purpose, the notification period and the addressees of the notification pursuant to Art. 91a;
4. create a standard form to be used throughout the Community for communicating the information pursuant to Art. 92a par. 1 to the issuers or for the depositing of information pursuant to Art. 86;
5. create a calendar of the "trading days" for all member states;
6. define in which cases the shareholder or the person in the meaning of Art. 92 or both must make the required notification to the issuer;
7. specify under which circumstances the shareholder or person in the meaning of Art. 92 should have gained knowledge of the acquisition or sale;
8. define under which circumstances the independence of a management company from its parent company and of an investment firm from its parent company shall be deemed to exist in order to be able to claim the exemption under Art. 92a par. 2 and 3;
9. standardize the implementing measures regarding the acquisition of own shares pursuant to Article 93 par. 3.

### **Derivatives Contracts**

#### **Article 95**

(1) If an exchange member submits an application for admission to listing for derivatives contracts pursuant to Art. 1 fig. 6 lit. d to j Securities Supervision Act, then Art. 72 shall apply accordingly.

(2) In decisions concerning applications for admission to trading on the exchange Article 64 shall apply *mutatis mutandis*.

(3) The provisions of Articles 59 and 10 Capital Market Act shall apply to announcements of new listings on the exchange, price determination and publication of prices.

### **Transitional and Final Provisions**

#### **Article 96**

(1) After this Federal Act takes effect, the following transitional provisions shall apply:

1. Membership status valid at the time of the dissolution of the Council of the Vienna Stock Exchange of exchange members and dealers shall be replaced by the agreement with the exchange operating company that manages and runs the stock exchange pursuant to Article 14 paragraph 2 and Article 20 par 1.
2. The valid admission of negotiable instruments to listing in a certain type of trading at

the time of the dissolution of the Council of the Vienna Stock Exchange shall be replaced by the admission granted by the exchange operating company that manages and runs the stock exchange. The same shall apply to individual acts in this context of the Council of the Vienna Stock Exchange in its function as public authority.

3. (To Article 13 paragraph 2) Exchange operating companies that have been granted a license to operate an exchange before 1 January 2002 shall include provisions in their general terms and conditions of business regarding which currency units will be used in the transition phase after the Third Stage of economic and monetary union takes effect for quoting the prices of negotiable instruments, for the clearing and settlement of transactions and for all other exchange operations; the exchange operating company is hereby empowered to define the euro as currency in the relevant provisions
4. The valid decrees issued by the Council of the Vienna Stock Exchange at the time of its dissolution shall continue to be valid as part of the General Terms and Conditions of Business until the exchange operating company that manages and runs the stock exchange issued other General Terms and Conditions of Business.
5. (To Articles 32 to 44) The provisions in Articles 32 to 44 regarding Official Brokers (Sensale) appointed to an Austrian stock exchange or general commodity exchange shall replace the provisions stated in the federal law on Official Brokers on Stock Exchanges, FLG 3/1949.
6. A valid appointment as Official Broker at the time of the dissolution of the Council of the Vienna Stock Exchange shall be replaced by the appointment by the Austrian Financial Market Authority (FMA) pursuant to Article 32 paragraph 2.
7. (To Articles 49 and 50) The Exchange Commissioner appointed to the Vienna Stock Exchange at the time this act comes into force shall be an Exchange Commissioner pursuant to Article 46. The deputies of the Exchange Commissioner appointed to the Vienna Stock Exchange are deputies pursuant to Article 46. The Exchange Councillors elected or appointed to the Vienna Stock Exchange on November 30, 1989 shall remain in office until the end of their period of tenure (December 31, 1990). The President and the Vice-Presidents shall remain office until the reelections take place that are to be held at the latest by February 28, 1991.
- 7a. (To Article 57) Non-official brokers who have been admitted by the exchange operating company at the time when Article 57 in its amended version of the federal law, FLG 753/1996 (Securities Supervision Act) came into effect, shall be entitled until December 31, 1997 to carry out their business as defined in Article 57 paragraph 2 in its unamended version of the federal law, FLG 529/1993 (Stock Exchange Act Amendment 1993), even if they do not hold a license to carry out the banking business pursuant to Article 4 Banking Act 1993.
8. (To Article 65) The obligation for Members of the exchange to report off-floor turnovers shall take effect on June 30, 1990.
9. (To Articles 66, 68 and 74 to 80) The provisions in Articles 66, 68 and 74 to 80 on the admission of securities to the Official Market and to the Second Regulated Market including the provisions on the admission prospectus shall take effect on July 1, 1990.
10. (To Articles 87 to 90) The Articles 87 to 90 shall come into effect on January 1, 1991.
11. a) The provisions in Articles 91 to 93 shall come into effect on January 1, 1992. Article 91 paragraph 1 in the version of federal law FLG 529/1993 shall take effect October 1, 1993. Natural and legal persons that have a proportion of voting rights of more than 10 percent in a stock corporation pursuant to Article 91 paragraph 1 shall inform these companies at the latest at their first general meeting to take place after March 31, 1992 and simultaneously the Executive Committee of the

- proportion of voting rights held. The stock corporations shall inform the public in accordance with Article 91 within one month after the general meeting is held of the proportions of voting rights held in the company.
- b) Natural and legal persons that hold 5 percent to 10 percent or 90 percent or more of voting rights in stock corporations in the meaning of Article 91 paragraph 1 shall at the latest at the first general meeting of this company to take place after October 1, 1993 inform the company and simultaneously the Executive Committee of the proportion of voting rights they hold. The stock corporations shall inform the public in accordance with Article 91 within one month after the general meeting is held of the proportions of voting rights held in the company.
- c) In the case of companies that have their registered office in Austria, the shares of which have been traded since 1 January 1998 on the Second Regulated Market of the exchange, shareholders shall inform the FMA by March 31 1998, the exchange operating company and the company itself of the percentage of the voting rights held if these reach or exceed the percentages defined in Article 91 paragraph 1. Articles 91 paras 2 through 94 shall apply mutatis mutandis.
12. (To Article 82 paras. 5 and 6 in the version of the federal law FLG 529/1993) Regarding the stipulated penalty contract drawn up by the Council of the Vienna Stock Exchange based on Article 82 paragraph 5 in the version of the federal law FLG 555/1989 the following applies: each party to the contract has as of October 1 1993, the right to cancel the contract by a written statement to the Council of the Vienna Stock Exchange. Regarding any stipulated penalties already due at the time of the cancellation (time of receipt of the statement by the Council of the Vienna Stock Exchange) the provisions of Article 82 paragraph 5 in the version of federal law FLG 555/1989 shall apply.
13. (To Article 26 paragraph 3 in the version of federal law FLG 529/1993) At the time this federal law FLG 529/1993 comes into effect, the charters granted to existing clearing agencies pursuant to Article 4 Banking Act 1979 for the practice of banking operations shall become invalid; however, any transactions of clearing agencies carried out after this time within the scope of their duties pursuant to Article 26 paragraph 3 that were commissioned by the Council of the Vienna Stock Exchange in accordance with the above mentioned provisions are considered dealer transactions in the meaning of Article 23 paragraph 1 Capital Transactions Tax Law, German Reich Law Gazette I, S. 1058 in its valid version.
14. The decrees issued by the Federal Ministry of Finance valid at the time Federal Law Gazette I No. 97/2001 takes effect, for which the Austrian Financial Market Authority (FMA) shall be competent issuing body according to this Federal Act, shall continue to be valid as decrees issued by the FMA. The authorizations under the Stock Exchange Act valid at the time Federal Law Gazette I No. 97/2001 takes effect shall not be affected by the new assignment of competencies under this Federal Act.
15. (To Article 87 par. 2)  
Issuers that meet the conditions of Art. 906 par. 12 sentence 1 and 2 Austrian Companies Act, shall be exempt from the obligation pursuant to Art. 87 par. 2 to present abbreviated financial statements in accordance with IFRS under the provisions of Regulation 1606/2002/EEC for the financial year that starts on or after 1 January 2006.
16. (To Articles 91, 91a and 92)  
Irrespective of Art. 91 par. 1 3<sup>rd</sup> sentence, a shareholder shall inform an issuer pursuant to Articles 91, 91a and 92 by the latest two months after 20<sup>th</sup> April 2007 which voting rights or share in the capital he or she holds in the company of the issuer

at that time unless the shareholder has already sent a notification with equivalent information before this time to the issuer. Irrespective of Art. 93 par. 2, the issuer shall in turn disclose the information received within the scope of such notifications by the latest three months after 20<sup>th</sup> April 2007.

17. (To Article 82 par. 4)  
An issuer with its registered office in a third country shall be exempt from the disclosure of annual financial statements and report of the management board pursuant to Art. 82 par. 4 with respect to such debt securities that were already admitted to trading on a regulated market of the European Union prior to 1 January 2005. The exemption shall only apply provided that
- a) the competent authority of the home member state confirms that the financial statements prepared by the issuer in such third country in fact give a fair and true view of the assets, earnings and financial position of the issuer;
  - b) The third country in which the issuer has its registered office does not prescribe by law the application of the IFRS under the provisions of Regulation 1606/2002/EEC, and
  - c) the Commission has not passed a resolution pursuant to Art. 23 par. 4 fig. ii) of Directive 2004/109/EEC whether the IFRS under Regulation 1606/2002/EEC are equivalent to
    - aa) the accounting standards defined by the provisions of the laws and administration of the third country in which the issuer has its registered office, or
    - bb) the accounting standards of a third country which the issuer has opted to comply with.
18. (To Article 82 par. 4 and Art. 87)  
Art. 82 par. 4 and Art. 87 as amended by Federal Law Gazette I No. 10/2007 shall apply for the first time to annual financial statements and interim reports prepared for a period that ends at the earliest on 30 July. For all preceding periods, Articles 82 ff Stock Exchange Act, as amended by Federal Law Gazette. I No. 141/2006 shall continue to apply for annual financial statements and interim reports.
19. (To Art. 2 as amended by Federal Law Gazette I No. 60/2007)  
A license for the management and operation of a securities exchange issued before the date Federal Act FLG. I No. 60/2007 takes effect shall continue to be effective after said law enters into force as a license to operate regulated markets. The markets, Official Market and Second Regulated Market, operated at the time Federal Act FLG I No. 60/2007 entered into force shall be deemed regulated markets in the meaning of Article 1 par. 2. The Unregulated Third Market pursuant to Art. 69 as amended by Federal Act FLG I No. 19/2007 shall be deemed a multilateral trading system after the entry into force of Federal Act FLG I No. 60/2007; a permit from the FMA pursuant to Art. 2 par. 2a shall not be required.
20. (To Art. 15 as amended by Federal Act FLG I No. 60/2007)  
Any membership effective at the time Federal Act FLG. I No. 60/2007 enters into force shall continue to authorize the members to take part in trading in the regulated markets and multilateral trading facilities operated by the exchange operating company.
21. (To the repeal of Art. 69)  
Financial instruments that were admitted to trading on the Unregulated Third Market until the time of entry into force of Federal Act FLG. I No. 60/2007 pursuant to Art. 69 as amended by Federal Act FLG. I No. 19/2007 shall be permitted to trade also after the entry into force of Federal Act FLG. I No. 60/2007 in a multilateral trading system

operated by the exchange operating company as a continuation of said Unregulated Third Market without requiring a new admission to trading by the exchange operating company. The exchange operating company shall define in its General Terms and Conditions of Business that the legal status of the issuers of such financial instruments is to remain unaffected and shall correspond to the provisions of Article 69 paras. 1, 2, 4, 5 and 7 as amended by Federal Act FLG I No. 19/2007.

### **Procedural Provisions**

#### **Article 96a**

(1) In matters related to securities exchanges the Federal Ministry of Finance shall be the objectively competent higher authority of the FMA, in matters related to the general commodity exchange, it shall be the Federal Ministry for Economic Affairs.

(2) The exchange operating company shall apply the General Rules of Administrative Procedure for all procedural matters relating to the exercise of its function as official authority.

(3) In the case of administrative offences pursuant to Articles 48 and 48c, the statute of limitation shall be 18 months instead of the six months pursuant to Art. 31 par. 2 Administrative Offenses Act.

#### **Article 97**

As this Federal Act comes into force, the following laws shall be repealed:

1. The Law on the Organization of Exchanges (Stock Exchange Law), Imperial Law Gazette. 67/1875 in the version of the FLG 658/1921, 361/1926, 160/1948;
2. The Statutes of the Vienna Stock and Commodity Exchange, Part I, Rules and Regulations, Official Gazette of the Council of the Vienna Stock Exchange No. 550/1984 in the version of No. 139/1986, irrespective of Article 98 paragraph 1 fig. 1.
3. The supreme resolution of September 24, 1860 shall become null and void as of January 1, 1994.

#### **Article 98**

(1) The following decrees of the Council of the Vienna Stock Exchange are considered federal laws:

1. The Statutes of the Vienna Stock and Commodity Exchange, Part I, Official Gazette of the Council of the Vienna Stock and Commodity Exchange No. 550/1984 in the version of No. 134/1986 regarding the Articles 13 to 15, 17, 23 to 26, 32, 33, 35, 45 paragraph 3 first sentence, 76 and 78;
2. The Directives for the Admission of Securities to trading and to listing on the Official Market of the Vienna Stock Exchange, Official Gazette of the Council of the Vienna Stock Exchange and Commodity Exchange No. 597/1987 in the version of No. 899/1988;
3. The Directives for the quotation of securities to the Second Regulated Market of the Vienna Stock Exchange, Official Gazette of the Council of the Vienna Stock and Commodity Exchange No. 110/1986 in the version of No. 949/1987;
4. The Regulations for Price Determination and Publication of Negotiable Instruments admitted to the Official Market and to the Second Regulated Market of the Vienna Stock Exchange (Regulation on Prices, Stock Exchange), Official Gazette of the Council of the Vienna Stock and Commodity Exchange No. 604/1980 in the version of No. 550/1984;

5. The Directives on the good delivery of shares and participation certificates from capital increases, of the Vienna Stock Exchange, Official Gazette of the Council of the Vienna Stock and Commodity Exchange No. 948/1987;
6. The Directives on the good delivery of shares from capital increases after the conversion of reserves into share capital, of the Vienna Stock Exchange, Official Gazette of the Council of the Vienna Stock and Commodity Exchange No. 841/1986.

(2) The federal laws pursuant to paragraph 1 shall be repealed as of June 30, 1990.

### **Articles 99 to 100 repealed**

#### **Article 101**

The following Ministries are charged with the execution of:

1. Articles 13 paragraph 2, Articles 27, 28, 48b: the Federal Ministry of Justice;
2. Articles 29 to 31 and Art. 48a par. 1 fig. 1 lit. b: the Federal Ministry of Economics and Labor;
3. Articles 60 paragraph 5, Article 63 paragraph 2 second sentence and Article 64a: the Federal Ministry of Finance in agreement with the Federal Ministry of Justice;
4. the remaining provision of this federal law: the corresponding Federal Ministry having jurisdiction pursuant to Article 45 paragraph 1., irrespective of Article 51.

#### **Article 101a**

(1) Insofar as this federal law refers to other federal laws, these laws shall be applicable as amended, unless otherwise specified.

(2) Any reference made in this Federal Act to Directive 2004/39/EEC shall refer, unless otherwise stated, to Directive 2004/39/EEC of the European Parliament and the Council on Markets in Financial Instruments, to the amendment to Council Directive 85/611/EEA and 93/6/EEA and Directive 2000/12/EEC of the European Parliament and the Council and to the repeal of Council Directive 93/22/EEA (Official Journal of EU No. L 145 of 30 Apr. 2004, p. 1) as amended by Directive 2006/31/EEC of the European Parliament and the Council amending Directive 2004/39/EEC on markets in Financial Instruments with respect to certain periods (Official Journal of EU No. L 114 of 27 Apr. 2006, p. 60).

#### **Article 101b**

(1) Until the notice granting the license to an exchange operating company to manage and run Wiener Börse becomes legally effective, the Council of the Vienna Stock Exchange and its bodies shall perform their duties as set out in the legislation of the Stock Exchange Act 1989 as amended by FLG No. 753/1996. The date as of which the notice granting this license shall be published by the Federal Ministry of Finance in the Official Gazette of the Republic, Wiener Zeitung".

(2) Without prejudice to Sect. XIII ff Introductory Law to the Code of Civil Procedure, and in those cases where reference is made to the "Statutes" of an exchange, these shall be replaced by the "General Terms and Conditions of Business" of the respective exchange operating company.

#### **Article 101c**

The exchange operating company shall issue an official notice, against which no appeal with a court of law shall be permitted, ordering the switch of securities from the Official Market (Second Regulated Market) on a securities exchange, on which certain securities may not (no longer) be traded according to the exchange operating company's bylaws, to the Official Market (Second

Regulated Market) of another domestic securities exchange on which trading may continue according to the bylaws of the exchange operating company that manages and operates the other securities exchange. The official notice on the switch in listing shall not trigger any obligation on the issuer to publish a prospectus or any other disclosure obligations.

### **Article 101d Repealed**

#### **Article 101e**

In the case of applications for admission to listing pursuant to Article 72, which have been submitted before 10 August 2005 to the exchange operating company and approved before 10 November 2005, in deviation of Article 2 Austrian Capital Market Act it shall suffice to publish a prospectus pursuant to the provisions of the Stock Exchange Act as amended by FLG I No. 127/2004. The competent authority, the procedure and the decision on the scrutiny of the prospectus (Art. 77, as amended, Federal Act FLG. No. 11/1989) shall be governed exclusively by the laws valid at the time the application was submitted. Article 8b par. 3 Austrian Capital Market Act shall not apply to prospectuses prepared under such circumstances.

### **Equal Treatment of Gender in Language**

#### **Article 101f**

Any references in this federal act that refer to persons only in the masculine form shall also refer equally to men and women. When applying to certain persons, the applicable gender-specific form is to be used.

### **Entry into Force**

#### **Article 102**

(1) This federal law shall enter into force on December 1, 1989.

(2) Articles 3 paragraph 3, 8 paragraph 1, 10 paragraph 2 fig. 4 and 5, 12 paragraph 2, 14 fig. 4, 15 paragraph 4, 18 fig. 5, 19 fig. 4, 20 paras. 3 to 5, 25 paras. 2 to 4, 26 paragraph 3, 33 paragraph 2 fig. 5, 36 paragraph 6, 44 paragraph 1, 45 paras. 2 to 4 and paras. 6 and 7, 46 paragraph 2, 47a, 48, 48a, 48b, 49 paragraph 3, 53 paragraph 1, 56 paragraph 1, 59, 60 paragraph 3, 62 paragraph 2, 63 paragraph 1, 64 paras. 2, 4 and 5, 64a, 66 paragraph 1 fig. 3, 67 paras. 2 and 5, 69, 72 paragraph 4, 73 paragraph 2, 74 paragraph 2 fig. 1 and 2 and paras. 3 and 4, 80 paragraph 1, 81 paragraph 6, 82 paras. 5 and 6, 87 paras. 1 and 9, 91 paragraph 1, 95 par 3, 96 fig. 11 to 13, 101 fig. 1 and 3 as well as schedule E chapter 5 fig. 1 lit. a and annex I and J in the version of federal law FLG 529/1993 shall enter into force on October 1, 1993.

(3) repealed

(4) repealed

(5) Articles 16, 48c, 65, 66 paragraph 5, 75 paragraph 1 fig. 1, 79 paragraph 5 and 84 paragraph 7 in the version of federal law FLG 529/1993 shall enter into force on January 1, 1994.

(6) Article 75a shall enter into force when the EEA<sup>6</sup> agreement takes effect.

---

<sup>6</sup> The EEA Agreement entered into force on January 1, 1994 (FLG 909/1993; cf. also figure 56 of the Official Decree FLG 917/1993).

(7) Decrees on the provisions stated in paragraphs 2 to 6 in the version of federal law FLG 529/1993 may be issued before these provisions take effect after this federal law has been promulgated. Such decrees shall enter into force at the same time as the provisions are enacted on which these are based. The appointment of Members of the Council of the Vienna Stock Exchange pursuant to Article 3 paragraph 2 in the version of federal law FLG 529/1993 may take place after this federal law FLG 529/1993 has been promulgated and before it comes into effect. The Members of the Council of the Vienna Stock Exchange appointed in this manner shall take office at the first General Assembly to take place after October 1, 1993.

(8) Article 3 paragraph 5 fig. 3, Article 5 paragraph 2a and 3, Article 6 paragraph 2 fig. 1 and paragraph 3, Article 7 paragraph 1, Article 9 paragraph 3, the deletion of Article 10 paragraph 2 fig. 5, Article 12 paragraph 2, Article 14 fig. 4, Article 15, the deletion of Article 16, Article 18 fig. 4, Article 22, Article 48 paragraph 3a, Article 57, the deletion of Article 64 paragraph 2 fig. 3, Article 88 paragraph 2, Article 96 fig. 7a, Article 101a and the annex to Article 88 paragraph 2 in their amended versions of the federal law FLG 753/1996 shall enter into force on January 1, 1997.

(9) Articles 25 and 25a, Article 45 paragraph 1 and 4, Article 48 paragraph 1 fig. 2 and 5 to 7a and paragraph 4 and 5, Article 65, Article 82 paragraph 5a to 8, the deletion of Article 83 paragraph 4 fig. 3, Article 83 paragraph 5, the deletion of Article 84 paragraph 4, Article 91 paragraph 1 and Article 93 paragraph 2 in their amended versions of the federal law FLG 753/1996 shall enter into force on January 1, 1998.

(10) The titles of Articles 2, 13, 49, 65 and 96a as well as those of Articles 2, 3, 4, 5, 6, 7, 8, 13, 14, 15 paragraph 1, 15 paragraph 3, 15 paras 4 through 6, 19 paragraph 2 and 4, 20 paragraph 1, 20 paragraph 4, 25 paragraph 1 and 3 and 5 through 10, 25a par 1 through 3, 26 paragraph 1 through 3, 31 par 1 and 2, 32 paragraph 2, 3, 5 and 6, 33 paragraph 1 fig. 4, 34 paragraph 1, 37 paragraph 1 and 2, 38 paragraph 1 and 2, 39 paragraph 2, 39 paragraph 6 and 7, 42, 43 paragraph 1 through 4, 44 paragraph 1 through 5, 45, paragraph 1 through 6, 46 paragraph 2 through 4, 46 paragraph 6, 48 paragraph 1 and 2 fig. 5, 48 paragraph 4, 48c par 1 through 3, 49, 56 paragraph 1, 56 paragraph 3 and 4, 57 paragraph 1 and 2, 58, 59 paragraph 1, 3 and 4, 60 paragraph 3 and 6, 61 paragraph 1, 62 paragraph 3, 64 par 1, 65 paragraph 1 through 6, 67 paragraph 1, 69 par 1 through 4, 70 paragraph 1, 71, 72 par 1 and 4, 73 paragraph 1 and 2, 74 paragraph 3, 75a paragraph 1 through 3 and paragraph 5 through 7, 76 paragraph 1 through 3, 77 paragraph 1 and 2, 79 paragraph 2, 4 and 5, 81 paragraph 1 and 5, 82 paragraph 3 and 7, 83 par 2, 3 and 5, 84 paragraph 5 and 6, 85 paragraph 1, 3 and 4, 86 paragraph 1 through 3, 87 paragraph 1, 3, 6 and 8, 89, 90 paragraph 1, 91 paragraph 1 and 4, 95 paragraph 3, 96 fig 1, 2, 4 and 6, 96 fig. 11 letter c, 96a, 101b and Annexes A through J and the deletion of Articles 9 through 12, 24, 30, 45 paragraph 7 last sentence, 48 paragraph 2 fig. 3, 48 par 5, 50 through 54, 99, 100 and 102 paras. 3 and 4 shall enter into force on January 1, 1998, as promulgated by Federal Law FLG I No. 11/1998.

(11) Article 96 fig. 3 as amended by FLG I. No 126/1998 will enter into force on 1 January 1999.

(12) Articles 14 paragraph 1, 2 ; Art. 15 paragraph 1, 4 and 5; Art. 74 paragraph 1; Art. 75 paragraph 4; Art. 75a paragraph 2 and 5; Art. 85 paragraph 4 and 101c as amended by FLG I No. 123/1999 shall enter into force on 1 July 1999.

(13) Article 48 paragraph 3b as amended by FLG I No. 2/2001 shall take effect on 1 January 2001.

(14) Article 48 paragraph 1 fig. 8 and 9, Article 48 paragraph 2 fig. 5, Article 48c paragraph 1 fig. 1 and 2 and Article 69 as amended by FLG I No. 2/2001 shall take effect on 1 July 2001."

(15) Article 3 paragraph 1 fig. 6, Article 23, Article 44 paragraph 1, Article 45 paragraph 7, Article 48 paragraph 1 last part of sentence regarding change in currency and paragraph 2 last part of sentence regarding change in currency, Article 65 paragraph 6, Article 66 paragraph 1 fig. 2 and 8, Article 68 paragraph 1 fig. 2 and 5, Article 81 paragraph 7 as amended by FLG I No. 2/2001 shall take effect on 1 January 2002."

(16) Art. 48 par. 1 fig. 6a, Art. 82 par. 9 and 10 and Art. 91a as amended by FLG I No. 42/2001 shall take effect as of 1 May 2001.

(17) Art. 2 par. 2, Art. 4, Art. 5 par. 2, Art. 6, Art. 7 par. 1 und 3, Art. 8 par. 1, Art. 13 par. 1, Art. 25, Art. 25a, Art. 32, Art. 34, Art. 37, Art. 43, Art. 44, Art. 45, Art. 46 par. 1, 3 und 5, Art. 47a, Art. 48 par. 3b und 4, Art. 48c, Art. 49, Art. 55, Art. 64 par. 3, Art. 64a, Art. 65, Art. 70, Art. 81 par. 1, Art. 82, Art. 83 par. 5, Art. 87, Art. 91 par. 1, Art. 91a, Art. 93 par. 2, Art. 96 fig 6, Art. 96 fig 14, Art. 96a and the repeal of Art. 81 par. 5 as amended by Federal Act FLG I No. 97/2001 shall take effect on 1 April 2002.

(18) Art. 15 par. 2 as amended by FLG I No. 123/2003 shall take effect as of 1 January 2004.

(19) Art. 46 par. 1 as amended by FLG I No. 70/2004 shall take effect as of 1 August 2004.

(20) Art. 26 par. 1, Art. 48 par. 1 fig 2 and Articles 48a to 48t, Art. 64 par. 1, Art. 66 par. 1 and 7, Art.67 par. 1, Art.68 par. 4, the heading before Art. 69, Art. 69 par. 1, Art. 72 par. 1 and 2, Art. 75a par. 2 and 5, Art. 82 par. 7 and 8, Art. 96a par. 3, Art. 101 fig. 1 and 2 and Art. 101e as amended by federal act FLG. I No. 127/2004 shall enter into force on 1 January 2005. Art. 82 par. 6 and Art. 91a shall expire as of the end of 31 December 2004.

(21) Art. 29 par. 1, Art. 33 par. 1, Art. 35 par. 1, Art. 43 par. 3, Art. 48 par. 1 fig. 6, Art. 64 par. 1, Art. 66 par. 7, Art. 67 par. 1, Art. 68 par. 1 fig. 5 and 7, Art. 68 par. 4, Art. 69 par. 1, Art. 72 par. 2 and 3 fig. 7, Art. 74, Art. 75 par. 1 to 3, Art. 75a, Art. 82 par. 8, Art. 83 par. 5, Art. 87 par. 1 and Art. 101e, as amended by Federal Law FLG. I No. 78/2005 shall enter into force on 10 August 2005. Art. 75 par. 4 and 5, Articles 76 to 80 and Schedules A through J shall become ineffective as of the end of the day on 9 August 2005.

(22) Art. 18 fig. 1, Art. 22 first sentence, Art. 27 par. 5 and Art. 36 par. 1 shall take effect on 1 January 2007.

(23) Art. 82 par. 11 shall take effect as of 20 May 2006.

(24) Art. 15 par. 1 fig. 2, Art. 15 par. 5 and Art. 57 par. 2 as amended by Federal Act FLG. I No. 141/2006 shall take effect as of 1 January 2007.

(25) Art. 1 including heading, Art. 2 par. 1, 2 and 2a, Art.3 par. 1 fig. 9, Art.4 par. 1, Art.6 par. 5, Art.7a including heading, Art.9 including heading, Art.13 par. 3, Art.14 par. 5, Art.15, Art.15a, Art.16, Art.25a par. 1, Art.25b, Art.29 par. 3, Art.48 par. 3a, par. 3b, par. 4 and 5, Art.48a par. 1 fig. 3 and 11 and par. 1a, Art.48f par. 1 fig. 1, Art.57 par. 2, Art.64 par. 4, Art.65, 66 and 66a including heading, Art.68 par. 1 fig. 9 and par. 3, Art.76 including heading, Art.82 par. 1 and 6, Art.101a,

**Austrian Stock Exchange Act 1989**

(Federal Law Gazette No. 1989/555 as amended FLG I No. 58/2010)

Art.101c as amended by Federal Act FLG I No. 60/2007 shall enter into force as of 1 November 2007.

(26) Art.23 including heading, Art.48a par. 1 fig. 4, Art.67 par. 3, Art.68 par. 1 fig. 6, Art.69 including heading, Art.81 par. 7, Art.81a par. 1 fig. 3 and Art.101d shall be repealed as of the end of the day on 31 October 2007.

(27) Art. 3, Art. 25 par. 5 through 7 and par. 9, Art. 44 par. 2 fig. 1 and par. 4, Art. 48h, Art. 48i, Art. 48k, Art. 48m, Art. 48n, Art. 48p, Art. 48q and Art. 87 par. 4 as amended by Federal Law Gazette, FLG I No. 107/2007 shall enter into force as of 15 December 2007. Article 48j shall be repealed as of the end of the day of 14 December 2007.

(28) Art. 14 par. 1 fig. 4, Art. 15 par. 1 fig. 6, Art. 26 par. 3, Art. 48a par. 1 fig. 1 lit. b last sentence, Art. 81a par. 1 fig. 3, Art. 82 par. 9, Art. 91 par. 1, the heading to Art. 95 and Art. 95 par. 1 in the version of Federal Act FLG. I No. 22/2009 shall take effect as of 1 April 2009

(29) Art. 25 par. 5, 6, 7, 10 and 11 and Art. 48 par. 6 as amended by Federal Act FLG I No. 37/2010 shall take effect as of 1 July 2010.

(30) Art. 3 par. 1 fig. 7, Art. 33 par. 2 fig. 4, Art. 43 par. 1 fig. 4 and Art. 44 par. 2 fig. 3, as amended by the Federal Act FLG I No. 58/2010 shall take effect as of 1 August 2010.

## **Section II**

The Federal Law on the Official Brokers of the Exchange, FLG 3/1949 shall be amended as follows:

1. Article 1 shall read:

### **“Article 1**

(1) Official Brokers in the meaning of this federal law are those appointed in accordance with Articles 15 to 18 for an agricultural exchange, these being officially appointed commercial brokers.

(2) Official Brokers shall act as intermediaries for principals for purchases and sales in cereals and milling products, furthermore for auxiliary transactions in contracts in trading in these goods as well as for insurance, carriage, forwarding and lending transactions.”

2. Article 30 shall read:

### **“Article 30**

The Federal Ministry of Agriculture and Forest Affairs are charged with the execution of this federal law in agreement with the Federal Ministry of Justice.”

## **Section III**

The Amendment to the Exchange Act, Imperial LG No. 10/1903 shall be modified as follows:

1. Articles 23 and 24 shall be repealed.
2. Article 26 shall read:

### **“Article 26**

The Federal Ministry for Agriculture and Forest Affairs and the Federal Ministry of Justice are charged with the execution of this Act.”

## **Section IV**

This Federal Act shall come into force on December 1, 1989.

**Waldheim**  
**Vranitzky**

**Annex to Article 88 par. 2 Stock Exchange Act**  
**Layout for the Interim Reports of Credit Institutions**

Assets

1. Cash and balances with central banks and giro banks
2. Debt securities issued by public bodies and bills of exchange admitted for refinancing with central banks
3. Loans and advances to banks
4. Loans and advances to customers
5. Debt securities and other fixed income securities
6. Shares and other variable income securities
7. Investments
8. Investments in affiliated companies
9. Other assets

Total assets

Liabilities

1. Amounts owed to banks
2. Amounts owed to customers
  - a) Savings deposits
  - b) Other payables
3. Securitized payables
4. Provisions
5. Fund for general banking risks
6. Subordinate liabilities
7. Supplementary capital
8. Subscribed capital
9. Reserves
10. Liability reserve
11. Other liabilities

Total liabilities and shareholders' equity

Off balance sheet items

1. Contingent liabilities including:
  - a) Acceptance bills and commitments arising from the endorsement of bills of exchange passed on
  - b) Liabilities from sureties and guarantees
2. Credit risks

Profit and loss account

1. Interest and similar income
2. Interest and similar expenses

I. Net interest earnings

3. Income on shares, other equity rights and variable-income securities
4. Income on investments and shares in affiliated companies

**Austrian Stock Exchange Act 1989**

(Federal Law Gazette No. 1989/555 as amended FLG I No. 58/2010)

5. Income from commissions
6. Income on financial transactions
7. Other operating revenues

II. Operating income

8. Personnel expenses
9. Other administrative expenditure (operating expenses)
10. Value adjustments for capital goods
11. Other operating expenses

III. Operating expenses

IV. Operating result

***This English translation of the authentic German text serves merely information purposes.  
In the event of a dispute, the German text shall prevail.***

Act on Salaried Workers	Angestelltengesetz, AnG:
Act on Tendering Procedures	Ausschreibungsgesetz
Administrative Offenses Act	Verwaltungsstrafgesetz, VStG
Austrian schillings	ATS
Austrian Securities Authority	Bundes-Wertpapieraufsicht BWA ,
Banking Act	Bankwesengesetz, BWG
Banking Act 1979 (replaced by the Banking Act 1993, BWG=Bankwesengesetz)	Kreditwesengesetz, KWG
Bankruptcy Act	Konkursordnung, KO
Business Code	Gewerbeordnung, GewO
Capital Market Act	Kapitalmarktgesetz, KMG
Capital Transactions Tax Law	Kapitalverkehrssteuergesetz
CCP - Code of Civil Procedure	Zivilprozeßordnung, ZPO
Code of Criminal Procedure	Strafprozeßordnung, StPO
Commercial Code	Handelsgesetzbuch, HGB
Consumer Protection Act	Konsumentenschutzgesetz:
Data Protection Act	Datenschutzgesetz:
Federal Legal Gazette	Bundesgesetzblatt, FLG
Fiscal Penalties Act	Finanzstrafgesetz, FinStrG
Gazette of the German Reich	deutsches Reichsgesetzblatt, dRGBI.
General Law on Administrative Procedure	Allgemeines Verwaltungsverfahrensgesetz, AVG
ILCCP - Introductory Law to the CCP	Einführungsgesetz zur Zivilprozeßordnung, EGZPO
Imperial Gazette (of the Austro-Hungarian Empire)	Reichsgesetzblatt, RGBI
Insurance Policy Act	Versicherungsvertragsgesetz, VersVG
Insurance Supervision Act	Versicherungsaufsichtsgesetz, VAG
Investment Fund Act	Investmentfondsgesetz, InvFG
Law Enforcement Bodies Act	Sicherheitspolizeigesetz, SPO
Law on Administrative Enforcement	Verwaltungsvollstreckungsgesetz, VVG
Oesterreichische Nationalbank	Oesterreichische Nationalbank (=Austrian central bank, name used in English)
Wiener Börse	Wiener Börse (=Vienna stock exchange, name used in English)
Council of the Vienna Stock Exchange	Wiener Börsekammer (until 2 April 1998)
Pension Plans Act	Pensionskassengesetz, PKG
Securities Supervision Act	Wertpapieraufsichtsgesetz, WAG
Stock Corporation Act	Aktiengesetz, AktG
Sicherheitspolizeigesetz	Security Police Act
Gerichtsorganisationsgesetz GOG	Court Organization Act
Unternehmenshandbuch	Austrian Companies Act