

CODE OF PROCEDURES OF THE ENFORCEMENT PANEL

- as resolved by the Enforcement Panel on August 16, 2005, approved by the Federal Ministry of Justice (*Bundesministerium der Justiz*) in agreement with the Federal Ministry of Finance (*Bundesministerium der Finanzen*) on August 24, 2005 -

- unofficial text -

Insofar as this code of procedures uses the masculine form, it is assumed that this refers to both genders on equal terms.

Part A: Organisation of the Enforcement Panel**§ 1 Presidential Board of the Enforcement Panel**

- (1) The Enforcement Panel's president (President) shall assume the leadership function of the Enforcement Panel and shall represent the Enforcement Panel externally. The President shall be represented by the vice president of the Enforcement Panel (Vice President) or, if the latter is prevented from doing so, by the longest serving member of the panel; should two persons have served for the same length of time, then the older of the two members of the panel shall represent the President.
- (2) The Vice President shall support the President in the performance of his duties.

§ 2 Plenum of the Enforcement Panel

- (1) The Enforcement Panel's plenum shall comprise the members of the Enforcement Panel. It shall be convened by the President as required, but at least once each year.
- (2) The plenum shall be responsible for approving and amending the code of procedures of the Enforcement Panel. The plenum shall also serve to inform members of the Enforcement Panel's work and of current or particularly complicated examinations; it shall also serve as a forum for discussing fundamental issues relating to the performance and execution of examinations.
- (3) The President shall convene the plenum without delay if a request for such, along with the subject for discussion, has been submitted by the Vice President, a committee, or at least three members of the Enforcement Panel.
- (4) There shall be a gap of at least three days between the date on which the invitation is issued and the date on which the meeting is held.
- (5) There shall be a quorum for meetings of the plenum if at least two thirds of the members of the Enforcement Panel are present.
- (6) The invitation shall include an agenda and, if necessary, any documents necessary for discussion.
- (7) The President shall include on the agenda all topics for discussion which have been submitted by members of the Enforcement Panel at least one day before the meeting. Provided there are no objections, the plenum may also add further topics for discussion to the agenda. A topic which has been introduced by the President, the Vice President, a committee, or at least three members of the Enforcement Panel may not be removed from the agenda. The plenum shall decide on the agenda at the beginning of each meeting.
- (8) Meetings shall be chaired by the President. Minutes of meetings shall be taken and issued to each member of the Enforcement Panel without delay.
- (9) The Enforcement Panel's plenum shall take decisions based on the majority of the votes of the members present.

§ 3 Enforcement Panel Committees

- (1) The following permanent committees shall be established out of members of the Enforcement Panel.
 1. a committee for the Enforcement Panel's code of procedures,
 2. a committee for safeguarding integrity requirements (the "Compliance Committee"),
 3. a committee to assess whether to commence "examinations with cause" (the "Pre-Review Committee") which shall act on input from the Media Analysis Committee or from other quarters.
 4. a committee to deal with all issues relating to examinations based on random sampling (the "Sampling Committee"), which shall determine the principles for sample testing pursuant to § 342b (2) sentence 5 HGB and which shall design a specific plan for sample testing,
 5. a committee to analyse reports appearing in the business press and other media (the "Media Analysis Committee"),
 6. a committee for international cooperation,
 7. a complaints committee.
- (2) Further committees may be established as necessary.
- (3) Each committee shall comprise three members, one at least of whom shall be the President or the Vice President. Deputising members shall be nominated for both the Pre-Review Committee and the Complaints Committee. They shall stand in for committee members who, as a result of the involvement of a particular entity, do not fulfil the impartiality requirements contained in § 13 et seq.
- (4) The Presidential Board shall select the members of the committees and their deputies for a period of two financial years.
- (5) The President shall chair the committees of which he is a member. The same shall apply to the Vice President if the President is not represented on the committee.
- (6) Any committee member may call for a meeting to be convened, stating the subject to be discussed. The chairperson shall convene the relevant committee meeting without delay.
- (7) A committee shall have a quorum if at least two members are present. The votes of at least two members shall be required for a committee to take a decision. If a deadlock situation means that a decision cannot be taken, the topic shall be put onto the agenda of the next meeting.
- (8) In individual cases, the plenum may, with the agreement of the Presidential Board, assume the responsibility of taking a decision for a committee. By the same token, a committee may transfer responsibility for a decision to the plenum. In such cases, the committee shall be bound by the decision taken by the plenum.
- (9) The chairpersons shall report at least once each year to the plenum on the work carried out by the committees.

§ 4 Enforcement Panel chambers

- (1) The Enforcement Panel's chambers are responsible for determining the ultimate findings.

- (2) The same number of chambers shall be established as there are members of the Enforcement Panel, excluding the President and Vice President. The chambers shall be numbered consecutively, starting with number one.
- (3) Each chamber shall comprise the President, the Vice President and one other member of the Enforcement Panel.
- (4) The President shall chair the odd-numbered chambers and the Vice President shall chair the even-numbered chambers.
- (5) In the event that an ordinary chamber member is not able to attend, in particular for one of the exclusion reasons contained in § 14, the member of the chamber concerned shall be deputised by the most recently designated member of the chamber with the next highest number; for these purposes, the chamber with the highest number is followed by the first chamber. If the chairperson of the chamber is not able to attend, the chair shall be taken by the other member of the Enforcement Panel's Presidential Board.
- (6) Each chamber shall take decisions on the basis of the majority of the votes of its members.
- (7) The Examiner-in-Charge (§ 6), other members of the Enforcement Panel and persons acting in an advisory capacity (§ 7) may also be invited to attend chamber meetings.

§ 5 Scheduled allocation of duties

- (1) Enforcement examinations shall be allocated to the chambers according to the following principles:
 1. Enforcement examinations pursuant to § 342b (2) sentence 3 no. 1 HGB (examinations with cause) according to the date of the Pre-Review Committee's decision to initiate examination proceedings; if dates coincide, alphabetically according to the name of the entity,
 2. Enforcement examinations pursuant to § 342b (2) sentence 3 no. 2 HGB (examinations requested by the Federal Financial Supervisory Authority - (*Bundesanstalt für Finanzdienstleistungsaufsicht* or *BaFin*) on a rolling basis according to the date of validity of BaFin's request to the Enforcement Panel; if dates coincide, alphabetically according to the name of the entity,
 3. Enforcement examinations pursuant to § 342b (2) sentence 3 no. 3 HGB (random sample examinations) on a rolling basis alphabetically according to the name of the entity.
- (2) During the period that an enforcement examination is still pending, any new examination relating to the same entity shall be allocated to the chamber which is already dealing with the enforcement examination at that entity.
- (3) In particularly complex cases which require specialist knowledge, or which would result in an excessive workload being placed on an Examiner-in-Charge (§6), the Presidential Board may, in the interests of the proper conduct of the enforcement examination, deviate from paragraph 1 and allocate the case to another chamber with the relevant specialist knowledge or to the next chamber according to the scheduled allocation of duties.

§ 6 Responsible Panel Member for a Particular Case (Examiner-in-Charge)

- (1) For each enforcement examination, a member of the Enforcement Panel shall be selected, in agreement with the other members of the chamber (fellow members), to be the responsible member for a particular case (Examiner-in-Charge). The Examiner-in-Charge may not be a member of the chamber in question. The selection of the Examiner-in-Charge shall take into consideration in particular the relevant specialist technical and sector knowledge and capacity utilisation of the members of the Enforcement Panel.
- (2) The Examiner-in-Charge shall be responsible for performing all enforcement examination activities in order to enable the members of the relevant chamber to reach an informed decision.
- (3) The Examiner-in-Charge shall carry out his enforcement examination activities in close cooperation with the chamber. The Examiner-in-Charge shall be bound by the instructions issued by the chamber.
- (4) The Examiner-in-Charge shall report to the chairman of the chamber without delay at any time on request; in the event that special circumstances arise, the Examiner-in-Charge shall report to the chairman of the chamber without delay, irrespective of whether a request has been made.

§ 7 Use of specialist examiners

- (1) If, prior to commencing enforcement examination activities or during the course of those activities, an Examiner-in-Charge determines that he will not be able to carry out those activities alone, either because specialist knowledge is required or because of the time involved, he shall inform the chairperson of the chamber without delay and, at the same time, submit a plan showing the additional personnel capacities required, both in terms of relevant skills and time-scale.
- (2) In agreement with the Examiner-in-Charge, the chairperson of the chamber shall determine which other members of the Enforcement Panel (who may not be members of the chamber involved or Report Evaluators) and which external specialists should be called in.
- (3) The President shall decide whether the designated members of the Enforcement Panel shall be used in each relevant case.
- (4) In accordance with § 9 (3) sentence 3 of the Association's statutes, the engagement of external specialists is solely incumbent on the members of the Enforcement Panel; they shall be engaged jointly by the President and the Vice President. The fee volume budgeted in the relevant financial budget for external specialists shall be taken into account.

§ 8 Quality Control Panel Member

- (1) The chairperson of the relevant chamber shall, with the agreement with the fellow chamber members, designate a member of the Enforcement Panel to be the Quality Control Panel Member. The Quality Control Panel Member shall not be a member of the relevant chamber. The selection of the Quality Control Panel Member shall take into consideration in particular the relevant specialist technical and sector knowledge and capacity utilisation of the members of the Enforcement Panel.
- (2) The task of a Quality Control Panel Member shall be to critically review the enforcement examination documentation prepared by the Examiner-in-Charge. At the request of the Quality Control Panel Member, the Examiner-in-Charge shall provide additional information about the examination. After concluding the review work, the Quality Control Panel Member shall, without delay, forward his written conclusion to the chairman of the relevant chamber.

PART B: INTEGRITY REQUIREMENTS**SECTION 1: GENERAL RULES****§ 9 Persons covered**

- (1) The requirement of persons employed by the Enforcement Panel to comply with the relevant integrity requirements arises from statutory regulations and the relevant rules contained in contracts of employment.
- (2) The requirement of third parties engaged by the Enforcement Panel to comply with the relevant integrity requirements arises from statutory regulations and the relevant provisions contained in contractual agreements.

SECTION 2: DUTY OF CONFIDENTIALITY AND PROHIBITION TO USE COMPANY AND BUSINESS SECRETS**§ 10 Scope**

The rules contained in this section apply to all employees of the Enforcement Panel and to third parties involved in examination proceedings.

§ 11 Requirement of Confidentiality

Except where there is a statutory duty to report, all company and business secrets of the entity being examined and any information about that entity which has become known during enforcement examination activities shall be subject to the duty of confidentiality. This duty of confidentiality shall also apply in particular to the Federal Ministry of Justice, Federal Ministry of Finance and the members of the Association's Executive Board.

§ 12 Prohibition to use company and business secrets

It shall not be permitted to make unauthorised use of company and business secrets which have become known during enforcement examination activities.

SECTION 3: INDEPENDENCE REQUIREMENTS

§ 13 Area of application

- (1) The rules contained in this section apply to all persons involved in the technical aspects of an examination.
- (2) The exclusion reasons contained in § 14 shall also be deemed to be fulfilled if they apply to a spouse or common law spouse.
- (3) An entity to be examined shall include
 1. the entity itself,
 2. all affiliated entities of that entity and
 3. all entities that, either by way of transformation or acquisition, have become an entity belonging to one of the two above-named categories during the last three years.

§ 14 Reasons for exclusion

- (1) A person shall not become involved in an examination if reasons (in particular relationships of a business, financial or personnel nature) exist which give rise to concern of impartiality.
- (2) A person shall not become involved in an examination in particular if the person - in relation to the entity to be examined -
 1. holds shares or has other significant financial interests in that entity,
 2. was a legal representative, member of the supervisory board or employee of the entity during the last three years,
 3. has, within the last three years,
 - a) been involved in the maintenance of accounting records or in the preparation of the financial statements subject to examination,
 - b) participated in internal audit activities,

- c) rendered management or financial services to the entity,
- d) rendered independent actuarial or valuation services which have more than an insignificant impact on the financial statements to be examined,
- e) rendered legal or tax advisory services which go beyond identifying tax planning alternatives and which have a direct and more than an insignificant impact on the presentation of the net assets, financial and earnings position of the entity involved,
- f) been involved in the development, installation and introduction of financial reporting information systems,

where any of these activities are not of immaterial importance,

- 4. agreed the temporary suspension of a contract of employment.
- 5. has received benefit entitlements from the entity involved.

(3) A person shall not become involved in an examination in particular if the person - in relation to the external auditors of the entity to be examined -

- 1. holds shares or has other significant financial interests in that entity,
- 2. was, or has, within the last three years,
 - a) the external auditor himself,
 - b) exercised his profession jointly with the external auditor,
 - c) been involved in a responsible position in the external audit of the annual financial statements,
 - d) the legal representative or member of the supervisory board,
- 3. agreed the temporary suspension of a contract of employment
- 4. has received benefit entitlements from the entity involved.

§ 15 Independence declaration

- (1) Each person who is to be included in an examination shall, before commencing activities, submit a declaration that, to the best of their knowledge, there are no events or circumstances which could constitute a reason for exclusion (independence declaration). When events or circumstances occur subsequently which could constitute a reason for exclusion, the person involved shall notify this to the Compliance Committee. If the Compliance Committee becomes aware of events or circumstances which could constitute a reason for exclusion, the person involved shall, on request of the Compliance Committee, submit a statement on the matter.
- (2) The independence declaration shall be documented in writing and signed by the person to be included in an examination. The declaration shall be added to the documentation of the relevant examination.

§ 16 Consequences of the independence declaration

- (1) A person, who has not submitted an independence declaration prior to commencing his activities, shall not be included in an examination. If events or circumstances become known retrospectively, which could constitute a reason for exclusion, the activity shall be suspended until the Compliance Committee has determined that there is no reason for exclusion.
- (2) If the Compliance Committee determines that there is a reason for exclusion, the person involved shall no longer be included in the examination. In this case, the Compliance Committee shall also determine whether and, if so, which parts of the examination in which the person was involved, shall be repeated.

PART C: EXAMINATION PROCEDURES**§ 17 Order of events of examination procedures**

- (1) In the case of examinations with cause, the Pre-Review Committee shall decide whether the criteria for the initiation of an examination are met. In the case of examinations based on random sampling, the selection of the financial statements to be examined shall be made by the Sampling Committee on the basis of the principles set out in § 342b (2) sentence 5 German Commercial Code (HGB).
- (2) The President shall report to the BaFin of the intention of initiating an examination unless the BaFin has already requested the examination in accordance with § 342 b (2) sentence 3 no. 2 HGB. If the BaFin does not give notification of a background reason pursuant to § 342 b (3) HGB, the President shall, taking account of § 342 b (4) HGB, give the entity to be examined the opportunity to cooperate in the examination to be performed by the Enforcement Panel. In the event that the entity does not agree to cooperate, the President shall inform the BaFin; an examination pursuant to § 342 b (2) HGB is not carried out.
- (3) If the entity states its willingness to cooperate, the President shall call up the relevant chamber pursuant to § 5 which shall then designate the Examiner-in-Charge pursuant to § 6 and the Quality Control Panel Member pursuant to § 8.
- (4) The Examiner-in-Charge shall perform the necessary examination procedures. Examination documentation shall be subject to review by the Quality Control Panel Member.
- (5) The Examiner-in-Charge shall report to the relevant chamber on significant interim and concluding findings, explaining the audit procedures performed. The chamber decides independently whether the financial reporting is erroneous.
- (6) The chamber shall notify the entity of the results of the examination. In the event that an aspect of the entity's financial report is found to be erroneous, the reason for the results

of the examination shall be given; at the same time, the entity shall be requested, within a reasonable period of time, to state whether it agrees with the results of the examination.

- (7) The President shall inform the BaFin of the results of the examination and, where appropriate, whether the entity has confirmed that it agrees with the results of the examination. At that stage, the examination procedure comes to an end for the Enforcement Panel.

§ 18 Right of BaFin* to take over an examination

As soon as the BaFin has taken over an examination in accordance with § 37p (1) sentence 4 WpHG, the Enforcement Panel shall break off its own examination. At the BaFin's request, the Enforcement Panel shall provide a description of the examination procedures carried at so far and submit a report thereon.

§ 19 Statutory duty to notify prosecuting authorities and the Chamber of Public Accountants (*Wirtschaftsprüferkammer*)

- (1) If the examination procedure gives rise to the suspicion of a criminal activity relating to an entity's financial reporting, the President shall notify the facts to the relevant prosecuting authority (§ 342b (8) sentence 1 HGB).
- (2) If there is an indication of a violation of professional obligations by the external auditors of the entity, the President shall notify the facts to the Chamber of Public Accountants (*Wirtschaftsprüferkammer*) (§ 342b (8) sentence 2 HGB).

§ 20 Reporting on the activities of the Enforcement Panel

The President shall once each year – regardless of the annual report of the Executive Board pursuant to § 7 (4) of the statutes of the association (DPR e.V). – prepare a report on activities, containing, in particular, statistical information and, without naming the entities involved, summarising significant findings which came to light in the course of the

Enforcement Panel's examinations. The activity report shall be made available on the Internet ("www.frep.info").

* Federal Financial Supervisory Authority (*Bundesanstalt für Finanzdienstleistungsaufsicht*)

§ 21 Complaints procedure

- (1) Complaints from entities or third parties, of which the Enforcement Panel becomes aware, and which are directed against the Enforcement Panel's employees or external specialists used by the Enforcement Panel shall be taken up by the Complaints Committee.
- (2) If the complaints prove to be justified, the Complaints Committee shall determine how the matter shall be remedied.
- (3) Justified complaints and the manner in which they are dealt shall be documented.