

German Securities Prospectus Act

Requirement for issuers to publish an "Annual Document"

Frankfurt
August 22, 2006

Any issuer of equity or debt securities¹ that are admitted to trading on the official or regulated market of a German exchange (or an organized market of another member state of the European Economic Area ("EEA")) and whose home member state is Germany (as discussed in further detail below) is required to file with the German Financial Supervisory Authority (*Bundesanstalt für Finanzdienstleistungsaufsicht*, "BaFin") and publish at least annually a document that contains or refers to certain information that such issuer has made publicly available during the preceding 12 months (the "Annual Document").² This obligation is set forth in Section 10 of the German Securities Prospectus Act (*Wertpapierprospektgesetz*, "WpPG") in connection with Article 27 of the Commission Regulation (EC) No 809/2004 implementing the Securities Prospectus Directive. On June 28, 2006, the BaFin published – in the form of Q&As – interpretive guidance on the rules governing the Annual Document.³

First-time Application and Scope of the New Disclosure Requirement

The BaFin indicated that it expects compliance with the new disclosure requirement after expiration of the first full fiscal year starting after July 1, 2005.⁴ However, in practice, many German issuers already comply with the new disclosure requirement and published Annual Documents for fiscal years ending after July 1, 2005.

Issuers that have more than one home member state within the meaning of Article 2 (1) lit. m) of the Securities Prospectus Directive are required to file with the competent authorities and publish in each home member state an Annual Document.⁵

¹ Except for, among other things, debt securities with a minimum denomination of EUR 50,000 per security.

² Section 10 WpPG is based on Article 10 of the Securities Prospectus Directive (2003/71/EC). Similar obligations apply in other EEA member states that have implemented the Securities Prospectus Directive.

³ The complete Q&A-document, which reflects the BaFin's administrative practice on the issues addressed, can be found on the BaFin website under the link: http://www.bafin.de/faq/faq_10wppg_en.htm.

⁴ In case the fiscal year of an issuer corresponds to the calendar year, the first Annual Document would have to be made available in 2007, following the publication of the financial statements for fiscal year 2006. A violation of the requirement to issue an Annual Document timely and in the manner described in Section 10 WpPG can trigger a monetary fine of up to EUR 50,000.

⁵ An issuer has more than one EEA home member state if it has elected different

Issuers that are in the process of delisting their securities in their EEA home member state(s) are not required to file and publish an Annual Document if the delisting has become effective by the time when the Annual Document would have to be filed and published.⁶

Content of the Annual Document

The Annual Document is a compilation of certain information that the issuer was obligated to publish or make available to the public in the preceding 12 months in accordance with German or foreign law.⁷ The BaFin interprets this period to mean the preceding fiscal year of the issuer. Accordingly, only information that was published during the preceding fiscal year needs to be included or referred to in the Annual Document, whereas information that relates to the preceding fiscal year, but is published only thereafter, *e.g.*, ad-hoc notices regarding the financial results of the preceding fiscal year or the annual financial statements for the preceding fiscal year, need not be included. However, issuers are free to include such information in the Annual Document.

The Annual Document may either spell out the relevant information (long-form) or refer to it by stating where such information can be obtained (short-form). So far, the Annual Documents of most German issuers contain only references to the relevant information (which is also permissible in form of hyperlinks). In addition, if information contained, or referred to, in the Annual Document is outdated, the Annual Document has to include a special note to such effect.⁸

With respect to issuers of non-equity securities (*e.g.*, bonds), the BaFin noted that for the time being certain recurring information provided to investors (*e.g.*, information regarding changes of interest rates in the case of floating rate notes) is not required to be included or referred to in the Annual Document.⁹ This interpretation is meant to address an issue raised by frequent issuers that have numerous listed non-equity securities outstanding and, thus, have numerous recurring notification obligations *vis-à-vis* investors. This may change, once the

EEA home member states with respect to different issuances of securities within the EEA. For the determination of Germany as home member state, please see on page 4.

⁶ For instance, delisting of shares from the official market at the Frankfurt Stock Exchange (“FSE”) usually becomes effective 3 months after publication of the delisting decision by the listing department of the FSE.

⁷ The obligation relates primarily to notices regarding insider information (ad-hoc notices), directors’ dealings and share ownership, as well as notices regarding important corporate measures and other events affecting the issuer or its securities. For details regarding the content of the Annual Document, please see the form of an Annual Document attached hereto in English and German as Appendices 1 and 2.

⁸ There is no requirement to update any outdated information included or referred to in the Annual Document.

⁹ The following issuer information with respect to non-equity securities is required to be included in the Annual Document: (i) exercise of termination rights, (ii) convocation of meetings of bond holders, (iii) changes in the constituent documents of the issuer that would affect the rights of the bondholders, (iv) annual - consolidated and stand alone - financial statements and related management reports, (v) other changes of rights arising from the securities, and (vi) any new issuances of bonds and guarantees issued in relation thereto and, in case of convertible or exchangeable bonds, any changes of rights attached to the underlying shares.

electronic company register will be introduced in Germany and issuers will be able to include information in the Annual Document by reference to entries in such register.¹⁰

With respect to information that has been published in compliance with similar rules under foreign law applicable to the issuer, such information has to be included or referred to in the Annual Document only if the relevant securities are admitted to trading on an organized market in at least one EEA member state. If that is the case, information required to be published due to another listing in a non-EEA state must be published as part of the Annual Document. By contrast, information published in respect of securities that are admitted to trading only in non-EEA states is not required to be included in the Annual Document.

The Annual Document does not have to include information required to be published pursuant to the WpPG, *i.e.*, securities prospectuses, prospectus supplements or notices according to Section 14 WpPG.

Timing and Manner of Filing and Making Available the Annual Document

The Annual Document has to be filed with the BaFin (in long or short-form, in whichever form it has been prepared) and has to be made available to the public at the latest 20 “working days”¹¹ after the issuer has disclosed its annual financial statements in Germany.¹² The BaFin requires that the Annual Document as such be issued in German (*e.g.*, the introductory and closing paragraphs as well as the headings for the relevant categories of information or the cross-references, as the case may be), while the information included or incorporated by reference therein need not be translated if such information was originally provided in another language (*e.g.*, documents provided to the SEC).

The issuer may choose one of the following methods to make the Annual Document available to the public: (i) publication in one or more daily newspapers of broad dissemination in Germany, (ii) providing a printed copy free of charge through the German paying agent or certain other agents, (iii) publication on the website of the issuer or certain other websites, or (iv) publication on the website of the organized market on which the issuer’s securities are admitted to trading in Germany.

For issuers that choose to provide the information in the form of references (short-form), such as hyperlinks, the BaFin offers the following practical tips:

- Reference can be made to information on the issuer’s website or to websites or other sources of third parties (*e.g.*, information distribution services or websites of newspapers). In each case, the reference should be specific and direct the

¹⁰ The new German law introducing, among other things, an electronic company register is expected to enter into effect on January 1, 2007.

¹¹ “Working days” means Mondays to Fridays except all public holidays in Hesse, North Rhine-Westphalia (the two German states where the BaFin has its seat) and at the place where the issuer has its registered office.

¹² The issuer has “disclosed” its annual financial statements once they have been filed with the issuer’s paying agent in Germany pursuant to Section 65 German Exchange Admission Regulation (*Börsenzulassungsverordnung*, “BörsZulV”), or published on the issuer’s website, whichever occurs earlier.

user as closely as possible to the relevant information (in case of a reference to print media, the reference should provide the name of the print media, date of its publication and, if possible, the page where the information can be found). By contrast, general references, *e.g.*, to all information contained on a certain website or published by the issuer in a newspaper are not permitted;

- To avoid possible dead-links, it is advisable that the Annual Document provides the path where the document can be found (*e.g.*, [www.issuerxyz.de/investor - relations/ad-hoc_notices](http://www.issuerxyz.de/investor-relations/ad-hoc_notices));
- Hyperlinks used in the Annual Document should remain valid throughout the entire period for which the Annual Document must be made available on the issuer's website;
- Issuers should offer to provide, free of charge, hard copies of all information referred to in the Annual Document that cannot be retrieved on the issuer's website due to incorrect references or hyperlinks.

Filing of the Annual Document with the BaFin can be made by mailing a printout of the issuer's webpage containing the Annual Document (as it appears on the website), indicating the name of the issuer to the following address: Bundesanstalt für Finanzdienstleistungsaufsicht, Referat WA 22, Lurgiallee 2, 60439 Frankfurt am Main or, alternatively, Graurheindorfer Straße 108, 53117 Bonn. For the filing, the BaFin charges an administrative fee of EUR 100.

The Annual Document has to remain available on the issuer's website until it is replaced by a more recent Annual Document, covering the issuer's most recent fiscal year for which annual financial statements have been published.

Determination of Home Member State

Only issuers whose home member state is Germany are obligated to publish an Annual Document. Germany is the home member state for

1. German issuers with respect to all issues of securities (except for debt securities with a minimum denomination of EUR 1,000 per security ("high-denomination debt securities"), as well as certain exchangeable bonds and similar securities that grant option or exchange rights ("exchangeable securities"), provided that such securities have not or not only been offered to the public or listed in Germany, but at least also in one other EEA member state, and the issuer has elected such other EEA member state as home member state)
2. Non-German issuers with respect to all issues of high-denomination debt securities and exchangeable securities, provided that such securities have been offered to the public or listed in Germany (alone or in addition to other jurisdictions), and the issuer has elected Germany as home member state
3. Non-EEA issuers with respect to all issues of securities that do not fall under 2. above, provided that one of the following requirements is met: (i) The issuer's securities were admitted to trading on an organized market within the EEA prior to

July 1, 2005 and the issuer has validly elected Germany as its home member state *vis-à-vis* the BaFin prior to December 31, 2005, (ii) Germany was the first EEA member state, where the issuer offered securities to the public or applied for an admission to trading on an organized market between January 1, 2004 and June 30, 2005, or (iii) with respect to securities issued after June 30, 2005, if the issuer (offeror or entity filing the listing application) has elected Germany as its home member state *vis-à-vis* the BaFin, and Germany is the first EEA member state, where the issuer has made a public offer of securities or applied for an admission to trading.

For instance, Germany is the home member state for all non-EEA issuers whose shares were admitted to trading on the official market of at least one German stock exchange prior to January 1, 2004, and who elected Germany as their home member state between July 1, 2005 and December 31, 2005.

In case that Germany cannot clearly be determined as a non-EEA issuer's home member state, because, among other things, the issuer has not issued any securities in Germany between January 1, 2004 and June 30, 2005 or has not made a valid election between July 1, 2005 and December 31, 2005, such issuer should not file an Annual Document with the BaFin or take any other action that could be viewed as election of Germany as home member state without consulting counsel.

* * *

If you have any questions regarding this memorandum, please contact Christof von Dryander (cvondryander@cgsh.com), Gabriele Apfelbacher (gapfelbacher@cgsh.com) or Udo Müller (umueller@cgsh.com) in our Frankfurt office.

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Appendix 1

Form of an Annual Document

[English Courtesy Translation]

Annual Document of [Company] pursuant to Section 10 (1) WpPG

This document lists all information of [Company] published or made available to the public within fiscal year [2006] pursuant to applicable regulations covered by Section 10 (1) of the WpPG.

[Note: The relevant information should be listed under the following headings with title, date of publication or, if the information is available elsewhere, *e.g.*, on the Issuer's website, include a hyperlink to the relevant information or state where the relevant information can be obtained, as applicable.]

Ad hoc Notices

[information pursuant Section 15 German Securities Trading Act (*Wertpapierhandelsgesetz*, "WpHG"), Section 10 (1) no. 1 WpPG]

Directors' Dealings

[information pursuant to Section 15a WpHG, 10 (1) no. 1 WpPG]

Notices of Changes Regarding the Ownership of Voting Rights of the [Company's] Shares

[information pursuant to Section 25 or 26 WpHG, 10 (1) no. 1 WpPG]

Notices of Stockholders' Meetings

[information pursuant to Section 39 (1) no. 3 and (2) German Exchange Act (*Börsengesetz*, "BörsG") in connection with Chapter 2 BörsZulV, Section 10 (1) no. 2 WpPG]

Interim Reports

[information pursuant to Section 39 (1) no. 3 and (2) BörsG in connection with Chapter 2 BörsZulV, Section 10 (1) no. 2 WpPG]

Notices of Dividend Payments

[information pursuant to Section 39 (1) no. 3 and (2) BörsG in connection with Chapter 2 BörsZulV, Section 10 (1) no. 2 WpPG]

Notices of the Issuance of New Shares

[information pursuant to Section 39 (1) no. 3 and (2) BörsG in connection with Chapter 2 BörsZulV, Section 10 (1) no. 2 WpPG]

Annual Financial Statements and Management Report

[information pursuant to Section 39 (1) no. 3 and (2) BörsG in connection with Chapter 2 BörsZulV, Section 10 (1) no. 2 WpPG]

Further Notices

[This heading covers, in case applicable, notices regarding, among others, the exercise of exchange, conversion or subscription rights, or, in case of bonds of the Issuer listed on an organized market in Germany, any notices to the bondholders or notices with respect to the exercise of bondholders rights (except as described under First-time Application and Scope of the New Disclosure Requirement and footnote 9), or any other changes of rights connected with the listed Securities.]

[information pursuant to Section 39 (1) no. 3 and (2) BörsG in connection with Chapter 2 BörsZulV, Section 10 (1) no. 2 WpPG]

Notices under Foreign Law

[In addition to notices mentioned above, the Issuer is required to include in the Annual Document any notices similar to the ones mentioned above published or made available due to requirements of foreign law, *e.g.*, similar notice requirements under regulations of U.S. stock exchanges, other foreign exchanges, U.S. or other foreign securities laws and regulations applicable to the Issuer.]

[information pursuant to Section 10 (1) no. 4 WpPG]

Note:

Information [*contained*] / [*referred to*] in this Annual Document could be outdated.

[*Date/Place of Publication*]

Form of an Annual Document

Jährliches Dokument der [Corporation] gemäß § 10 Abs. 1 WpPG

Nachfolgend sind die von der [Corporation] auf Grund der in § 10 Abs. 1 WpPG genannten Vorschriften im Geschäftsjahr [2006] veröffentlichten bzw. dem Publikum zur Verfügung gestellten Informationen aufgeführt.

Ad hoc Mitteilungen

[•]

Directors' Dealings

[•]

Veränderungen des Stimmrechtsanteils

[•]

Einberufung der Hauptversammlung

[•]

Zwischenbericht

[•]

Dividendenbekanntmachung

[•]

Mitteilung über die Ausgabe neuer Aktien

[•]

Jahresabschluss und Lagebericht

[•]

Weitere Informationen

[•]

Mitteilungen aufgrund ausländischer Vorschriften

[•]

Hinweis:

Informationen, [die in diesem jährlichen Dokument enthalten sind] [auf die in diesem jährlichen Dokument verwiesen wird], können inzwischen veraltet sein.

[Place], [Date of Publication]

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