X-pand into the Future

e u r e x *circular 091/03*

Date: Frankfurt, August 21, 2003
Recipients: All Eurex members and vendors
Authorized by: Peter Reitz

Reporting Requirements pursuant to Section 9 of the Securities Trading Act (WpHG)

Contact: Eurex Customer Support, Tel. +49-69-211-1 17 00, Fax +49-69-211-1 17 01
Michael Kollak, BaFin, e-mail: Michael.Kollak@bafin.de, Fax +49-228-41 08-52 50

Content may be most important for:

- Front Office / Trading
- Middle + Backoffice
- Auditing / Security Coordination

Attachments:

1. Excerpt from the Securities Trading Act (WpHG)
2. Reporting solutions offered on the basis of Deutsche Börse AG's TRICE service
3. Fax/E-Mail Reply Form

Summary:

With this Circular we would like to inform you about the following:

1. New Ordinance pursuant to section 9 of the German Securities Trading Act and its impact on Frankfurt Stock Exchange ((FWB) Xetra/Floor) and Eurex participants
2. Deutsche Börse AG's solutions for current and potential TRICE customers corresponding to the new rules.

On July 1, 2003, a new Ordinance on the Reporting Requirements Relating to Trades in Securities and Derivatives (WpHMV) came into effect in Germany. Its purpose is to make a more effective prosecution of insider trading possible, and it applies to all participants of German securities and derivatives markets, including all FWB (Xetra/Floor) and Eurex members. All exchange members have to fulfil the new reporting requirements for their transactions performed by mentioning the initiator of the order.

The new Ordinance is based on the Fourth Financial Market Promotion Act. Among other things, this Act contains an amendment to section 9 of the Securities Trading Act (WpHG), where reporting requirements for transactions in securities and derivatives are laid down (Attachment 1). The implementation measures are spelled out in the above-mentioned Ordinance, and are enforced by the German Federal Supervisory Authority (BaFin). The new requirements apply **to agent account business only**.

BaFin is aware that market participants will need several months to implement the changes involved. Therefore, in its circular from July 16, 2003, BaFin has officially announced that fulfilling the new reporting requirements will not be obligatory before October 1, 2003. However, after this date, BaFin may consider sanctions in case of non-compliance, as stipulated by section 39 para. 2 in connection with para. 4 WpHG.

Enclosed please find a fax reply form which we kindly ask you to fill in and send back, if possible no later than August 29, 2003. Thank you very much in advance for your assistance.

Reporting Requirements pursuant to Section 9 of the Securities Trading Act (WpHG)

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1. New Ordinance pursuant to section 9 of the German Securities Trading Act and its impact on Frankfurt Stock Exchange ((FWB) Xetra/Floor) and Eurex participants
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The new Ordinance is based on the Fourth Financial Market Promotion Act. Among other things, this act contains an amendment to section 9 of the Securities Trading Act (WpHG), where reporting requirements for transactions in securities and derivatives are laid down (Attachment 1). The implementation measures are spelled out in the above-mentioned Ordinance, and are enforced by the German Federal Supervisory Authority (BaFin). BaFin is currently preparing an English translation of the Ordinance on the Reporting Requirements Relating to Trades in Securities and Derivatives.

The new requirements apply **to agent account business only**. There are two scenarios depending on the type of order initiator:

1. If the order initiator himself is not subject to German reporting requirements, trading participants are obliged to provide an unambiguous reference to the individual or legal person or to the securities account number involved. If the order initiator is from outside Germany, BaFin accepts reporting of the general term "U/AUSLAND" (=abroad);
2. If the order initiator is himself subject to German reporting requirements, as is the case with all Xetra and Eurex participants, then he has to be reported by his official identification (member ID, bank identification or clearing number). For example: Xetra members who execute an order on Xetra that has been initiated by another Xetra member from Germany or abroad must report the initiator. The same applies to Eurex members for initiators who are themselves Eurex members.

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Members may choose the way they will perform their reporting in order to comply with the new requirements according to section 9 WpHG. At present, members may report via:

1. Deutsche Börse TRICE data stream transfer service
   Clients who use this service can enter the order initiator identification from their backoffice systems into the existing data stream transferred to Deutsche Börse (Attachment 2, section 3).
2. Deutsche Börse TRICE automatic transaction report generation service
   Until now, the order initiator information has not been included in the Xetra/Eurex trade data from which Deutsche Börse generates the transaction reports. Therefore clients will be able to enter this information in the Xetra and Eurex front ends. An internet application for adding or correcting that data will be made available by October 2003. We are also considering offering a file service to feed the order initiator information (Attachment 2). Current clients of the automatic transaction report generation service will receive a revised version of the TRICE contract which reflects the new legal requirements.

Eurex Deutschland
D-60485 Frankfurt am Main
www.eurexchange.com

Eurex Customer Support
Tel. +49-69-211-1 17 00
Fax +49-69-211-1 17 01

Geschäftsführung:
Rudolf Ferscha (CEO), Jürg Spillmann,
Daniel Gisler, Thomas Lenz,
Peter Reitz, Michael Widmer

3. File transfer directly to BaFin
   For more information please contact BaFin directly via e-mail at the following address:
   Michael.Kollak@bafin.de.

4. A third party (a General Clearer for example)
   For more information please contact your clearing institution.

In order to best fulfil your needs please let us know which of the above options or which other option you plan to use. Enclosed please find a fax reply form which we kindly ask you to fill in and send back, if possible no later than August 29, 2003. Thank you very much in advance for your assistance.

If you have questions regarding the above solutions or any other questions, please contact Mr. Axel Birk, Customer Support, at +49-69-211-1 17 00.

If you have questions especially regarding the new requirements pursuant to section 9 of the German Securities Trading Act, please contact BaFin directly either via e-mail to Michael.Kollak@bafin.de or by fax at +49-228-41 08-52 50.

Frankfurt, August 21, 2003

Securities Trading Act (WpHG)

(Excerpt; amendments relevant in our context are bold and underlined)

– BaFin Translation – This translation is furnished for information purposes only and is not binding -

as announced on September 9,1998 (Federal Law Gazette I p. 2708)

- as last amended by Article 2 of the Law of June 21, 2002 (Federal Law Gazette I p. 2010) –
- section 9 (2) sentence 2, numbers 7 and 8 shall become effective on 1 April 2003

Section 9
Reporting requirements

(1) Credit institutions, financial services institutions authorised to conduct trading for own account, enterprises domiciled in a state which is neither a Member State of the European Union nor a Contracting State to the Agreement on the European Economic Area operating under section 53 (1) sentence 1 of the German Banking Act, and enterprises domiciled in Germany and admitted to trading on a German stock exchange shall be required to report to the Supervisory Authority not later than the next working day (other than a Saturday) after the conclusion of the transaction, in accordance with subsection (2), any transaction in securities or derivatives which are admitted to trading on an organised market in a Member State of the European Union or in another of the Contracting States to the Agreement on the European Economic Area or are traded on the non-official regulated market (Geregelter Markt) or the free market (Freiverkehr) of a German stock exchange, if the transaction is concluded in connection with a securities service or for own account. The requirement pursuant to sentence 1 shall also apply to the purchase or sale of rights to subscribe securities, insofar as these securities are to be traded on an organised market, and to transactions in shares and warrants in respect of which an application for admission to trading on an organised market or for admission to trading on the non-official regulated market (Geregelter Markt) or the free market (Freiverkehr) has been made or publicly announced. The requirement pursuant to sentences 1 and 2 shall also apply to domestic entities which operate a system ensuring the settlement of transactions effected on an organised market, in respect of the transactions concluded by them. The requirements pursuant to sentences 1 and 2 shall also apply to undertakings domiciled abroad and authorised to trade on a German stock exchange, in respect of transactions concluded by them on a German stock exchange or on the free market (Freiverkehr) in connection with a securities service or for own account.

(…)

(2) The report must be made on data media or by means of remote electronic data transmission. It must include the following information on each transaction:

1. description of the security or derivative and securities identification number (WKN);
2. date and time of the transaction or the relevant price determination;
3. price, number and face value of the securities or derivatives;
4. the institutions and enterprises within the meaning of subsection (1) which were involved in the transaction;

5. the stock exchange or the stock exchange's electronic trading system, if the transaction is concluded on a stock exchange;
6. a marker to identify the transaction;
7. **a marker to identify the securities account holder or the securities account, unless the securities account holder himself is obliged to submit a report in accordance with subsection (1);**
8. **a marker to identify the principal, unless he is identical with the securities account holder.**

Solutions offered with DBAG TRICE service

1. Introduction

The changes embodied in the Fourth Financial Market Promotion Act require that foreign Eurex and Xetra participants who use the TRICE system to automatically generate reporting records must be able to add a client or securities account ID to identify the order initiator to individual records when placing or post-processing an order. The solution offered by Deutsche Börse AG is described in section 2 below.

Alternatively clients can generate the report file themselves and use the file transfer solution described in section 3 below.

There is no exact procedure defined yet for the treatment of collection orders. This issue has been discussed with BaFin and the Association of German Banks (BdB). BaFin still needs to decide about the exact mode of reporting this particular case of orders.

2. Automatic generation of reporting records

Market participants will be able to enter a client/securities account ID in the existing text fields using a prefix (<e) as soon as they place an order in the Eurex and Xetra trading systems (only necessary for client business = AGENT).Based on this information TRICE generates the transaction reports.

If no client/securities account ID has been entered in the Xetra/Eurex front ends, then the term “U/AUSLAND” will be generated automatically. In addition it will be possible to use an Internet tool or a file service to provide the order initiator information.

a) **Internet-Tool:** By October 2003 Deutsche Börse will provide a web front end to customers of the TRICE automatic generation service at no additional charge. This web front end will allow the correction of the order initiator information in the pre-generated reporting records on the next trading day. Furthermore it supports cancel and entry of complete reporting records.

b) **File service**; For customers with large numbers of transactions where the order initiator needs to be reported Deutsche Börse is in discussions about offering a simple file feed service for changing the pre-generated order initiator information.

2.1 Timing

During trading hours

During trading hours, market participants will have the option of entering a client ID in the trading systems when placing an order.

After close of trading

After close of trading, the reporting data will be transmitted to TRICE. TRICE will then generate the relevant reporting records for all TRICE participants, making the following distinctions:

a) if, during the order placement process, a client ID has already been entered and validated as part of the plausibility check, the relevant reporting record will be entered in the TRICE databases ready for transfer to BaFin the following day.

b) if, during the order placement process, a client ID has already been entered and identified as incomplete by the plausibility check, the relevant reporting record will be entered in the TRICE error database. This record will not be transferred to BaFin the following day.

c) if, during the order placement process, no client ID is entered, the TRICE system will generate the default value "U/AUSLAND" and the records will be entered in the TRICE databases ready for transfer to BaFin the following day.

Following day

On the following day, TRICE participants may change, correct or re-enter reporting records via File-Transfer or via Internet-Tool:

a) reporting records already containing a correct client ID may, if necessary, be changed before being transferred to BaFin.

b) erroneous reporting records containing an incomplete client ID, for example, may be called up using a separate function code before being corrected and then also transferred to BaFin. If the records are not corrected, they are retained in the system for 90 days before being irrevocably deleted.

c) reporting records tagged "U/AUSLAND" due to a lack of client ID may, if necessary, be amended before being transferred to BaFin.

2.2 General guidelines

Changes or corrections may only be carried out until 10pm (CET/CEST) on the following day as, according to prevailing EU law, data must be transferred to BaFin at the latest the next bank working day after the trade date (T+1 regulation).

Data records identified by the TRICE system as incorrect will only be transferred if they have been corrected. If such records are not corrected on time, the reporting deadline will have been exceeded.

3. Self generation of reporting records (Deutsche Börse's Existing file feed solution)

If market participants select the file transfer procedure, Deutsche Börse AG will no longer automatically generate reporting records. The file transfer procedure is based on the selection of all reporting-related data from the customer's back-office and its transfer to Deutsche Börse for plausibility checking, data enrichment, conversion into BaFin format and transmission to BaFin. This solution can also be used by remote members who will need to generate the trade report information (including the end customer id) in their back office systems and send it via file feed. The solution includes a 3270 front end which enables the customer to update / cancel any trade report records sent and to manually enter new ones. The new web front end mentioned in 2 can also be used instead. Technical options to transfer the file to Deutsche Börse are a leased line or a transfer over the Internet using a card reader on the customer end for security. The format of the file to be sent to Deutsche Börse is similar to SWIFT formats.

3.1 Procedural description

Deutsche Börse will acknowledge receipt of the transferred data immediately. The aim of the check carried out prior to the acknowledgement of receipt is solely to confirm that the records are properly formatted; the contents check is carried out during batch processing.

Batch processing will be carried out several times during trading hours and will be based on correct field contents as well as the logical dependencies of the field contents.

In principle, the first step is used to check that the technical field contents are valid and in line with the processing conventions. An example of this is the check whether the file awaiting processing has already been sent at an earlier date. If this is the case, the entire file will be rejected to avoid the generation of two identical sets of reports.

Data records that successfully pass the plausibility check are entered into the TRICE databases ready for transfer to BaFin. These may either be displayed in the dialogue procedure (online tool) and/or if they have not yet been transferred to BaFin either changed or deleted. As part of batch processing, the data records will be furnished with the additional data required for BaFin, which are saved in the securities master data base. If individual data records are identified as incorrect, they will be rejected. All successfully processed data will be transferred to BaFin in line with the applicable EU directives during an evening batch processing session.

If you have any questions, please either call or contact us via e-mail at the following addresses: andreas.koehler@deutsche-boerse.com or ralf.oster@deutsche-boerse.com.

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Fax or E-Mail Reply

Please return before August 29th, 2003

Deutsche Börse AG
Customer Support

Telefax: +49-69-211-61 96 15
E-Mail: Axel.Birk@deutsche-boerse.com

Filed by:

Institution _____

Name _____

Function _____

Phone _____

Eurex ID ☐☐☐☐☐

Transaction reporting according to §9 of the German Securities Trading Act

Please mark those reporting channels you would like to utilize to comply with the new reporting requirements in future.

Deutsche Börse "TRICE" automatic transaction report generation service used in combination with:
☐ the internet-tool or ☐ file service (potentially in 2004)

☐ Self-generation of reporting records with transfer via Deutsche Börse's "TRICE" existing file feed solution

☐ Self-generation of reporting records with transfer directly to BaFin

☐ reporting via a third party

_____ _____
(date) signature

Many thanks for your assistance!