Regulation concerning the Establishment, Composition and Proceedings of the Disciplinary Committees of the Stock Exchanges

(Disciplinary Committee Regulation)

of December 18, 1996 *(GVBl. Part I 1997, p. 19)* most recently amended on March 17, 1999 *(GVBl. Part I, p. 292)*

Based on § 9 paragraph (1) sentence (1) of the German Stock Exchange Act (the "Exchange Act", *Börsengesetz*) in its version of September 9, 1998 (*BGBl. Part I, p. 2683*) in conjunction with § 2 no. 2 of the Regulation concerning Competencies pursuant to the Exchange Act of January 4, 1995 (*GVBl. Part I, p. 8*), the following regulation is adopted:

§ 1 Establishment

(1) For the stock exchanges a Disciplinary Committee shall be established.

§ 2 Composition of the Disciplinary Committee

(1) The Disciplinary Committee consists of the presiding member and two associated members. The members of the Disciplinary Committee shall carry out their activities on an unremunerated, honorary basis. For necessary expenses and any loss of earnings, they shall be entitled to a lump sum for each proceeding of up to 500 Euro, as fixed by the administrating and operating institution of the Exchange.

(2) The presiding member and the member appointed as his deputy must have the qualification for holding judicial office or higher administrative office in the civil service within the meaning of § 110 of the German Law on the Judiciary (*Richtergesetz*). They may not be Trading Participants pursuant to § 1a paragraph (1) sentence (1) of the Exchange Act or members of the bodies of the Exchange or employees of the administrating and operating institution of the Exchange or officials of the Exchange Supervisory Authority. They should have experience in business matters.

(3) The presiding member and his deputy shall be appointed by the Exchange Council, in agreement with the Exchange Supervisory Authority, for a period of three years upon proposal of the Exchange Management. The Exchange Council can, in agreement with the Exchange Supervisory Authority, withdraw or revoke the appointment for important cause. If an appointed person leaves office prematurely, a successor member shall be appointed for the remainder of the term of the departing member.

(4) As associated members, twelve persons shall be elected by the Exchange Council for a term of three years from among the Trading Participants pursuant to § 7 of the Exchange Act. The Exchange Council divides the Trading Particpants in consideration of different activities and interests into groups and chooses from these groups the associated members. Persons receiving a simple majority of the votes cast are elected. Ties shall be decided by lot.

(5) The Exchange Council can prematurely dismiss associated members for important cause. If an associated member leaves office prematurely, the Exchange Council shall elect a successor member for the remainder of the term of the departing member.

§ 3 Organization of the Disciplinary Committee

(1) The presiding member shall determine, in consideration of the groups within the meaning of § 2 paragraph (4) sentence (2) and the alphabetical order of the names of the associated members, the order in which the associated members shall be assigned to the meetings. The Disciplinary Committee shall act in this composition until the conclusion of the proceedings.

(2) The Disciplinary Committee shall only be qualified to reach a decision if the group to which the concerned person belongs is represented by at least one member.

(3) The presiding member shall, in case of his being prevented from carrying out his duties, be represented by the member appointed as his deputy. If an associated member is prevented from carrying out his duties, then the next consecutive associated member in the alphabetical order of names within the concerned person's group shall take his place.

(4) The Disciplinary Committee shall reach a decision with a majority of votes. In the case of a tie, the vote of the presiding member shall be decisive.

§ 4 Initiation of Disciplinary Proceedings

(1) The Disciplinary Committee shall act

1. at the request of the Exchange Supervisory Authority,
2. at the request of the Exchange Management,
3. at the request of an enterprise admitted to trading on the Exchange, or
4. at the request of a Trading Participant, in which the participant asserts that his right to commercial trust or his honor has been injured by the concerned person.

(2) The Disciplinary Committee shall decide on the initiation of the proceedings, if there is sufficient evidence of a violation pursuant to § 9 paragraph (2) of the Exchange Act. The decision to initiate proceedings is not subject to appeal. Should the Disciplinary Committee decide against an initiation of proceedings, such decision must be substantiated in writing, accompanied by instructions about available legal remedies, and delivered to the person or authority at whose request the Disciplinary Committee has acted. The Exchange Supervisory Authority and the Exchange Management shall be notified of the decision.

§ 5 Interested Parties

(1) Interested parties are

1. the concerned person,
2. the Exchange Supervisory Authority,
3. the Exchange Management, and
4. persons included in the proceedings by the Disciplinary Committee pursuant to paragraph (2).

(2) The Disciplinary Committee can, *ex officio* or upon request, include persons whose legal interests might be affected by the results of the proceedings as interested parties.

(3) Persons or authorities heard in the proceedings who do not meet the requirements of paragraph (1) shall not be considered to be interested parties.

(4) The interested parties can, at their own expense, be represented by an authorized person.

§ 6 Excluded Persons

(1) The following persons may not participate in the decisions of the Disciplinary Committee:

1. interested parties pursuant to § 5,

2. persons who, through their activity or as a result of the decision, may acquire a direct advantage or disadvantage. This shall not apply if the advantage or disadvantage solely results from the fact that a person belongs to a professional group or segment of the population whose common interests are affected by the matter,

3. persons who are or were married to a person named in nos. 1 or 2 or are directly related to such person or related by marriage or connected through adoption as a child, or collaterally related up to the third degree or related through marriage up to the second degree, even if the marriage through which the relationship was established no longer exists,

4. persons who represent a person named in nos. 1 or 2 in general or in these administrative proceedings by way of law or power of attorney,

5. persons who are employed by or who are members of a body of a person named in nos. 1 or 2, and

6. persons who, outside of their official capacity, have submitted an expert opinion or have otherwise acted in this matter.

(2) If a member of the Disciplinary Committee finds that he should be excluded from a proceeding, or if doubts exist as to whether the requirements of paragraph (1) are fulfilled, the Disciplinary Committee shall be notified of such fact. The Committee shall decide on the exclusion. The affected member may not participate in this decision.

§ 7 Challenged Persons

The interested parties can challenge a member of the Disciplinary Committee who may not participate in this sanctions proceeding (§ 6) or for whom concerns exist with respect to a lack of impartiality, because of the existence of suitable grounds which justify a lack of confidence in the neutrality of the member. Any such challenge prior to the oral hearing shall be declared in writing. The declaration shall not be permissible if the interested person or authority has known the reasons for the challenge and has participated in the oral hearing without raising such reasons. For the decision regarding the challenge, § 6 paragraph (2) sentences (2) and (3) shall apply.

§ 8 Summons to the Meeting of the Disciplinary Committee

(1) The presiding member shall determine the date and time of Disciplinary Committee meetings and shall summon the interested parties. The summons shall include the time and place of the meeting, the composition of the Disciplinary Committee as well as copies of the documents requesting the proceedings. It should include the names of any witnesses summoned and experts ordered as well as the date for any on-site inspection. The interested parties shall be informed that the oral hearing may take place and a decision may be rendered even if an interested person or authority is absent.

(2) A period of at least two weeks shall pass between the time of delivery of the summons and the hearing. This period my be shortened in agreement with the interested parties.

(3) The presiding member can order the physical presence of the concerned person.

§ 9 Principle of Official Investigation

The Disciplinary Committee shall ascertain the facts of the case *ex officio*. It shall determine the nature and scope of the investigation; it is not limited to the evidence presented by the interested parties.

§ 10 Evidence and Hearing of the Interested Parties

(1) The Disciplinary Committee shall avail itself of the means of evidence that it believes to be necessary in order to ascertain the facts. In particular, it can

1. request information of any kind,
2. hear interested parties, question witnesses and experts without their being under oath or obtain written statements from such persons,
3. request documents and files and
4. conduct on-site inspections.

(2) The interested parties should assist in ascertaining the facts. They should, in particular, disclose any facts or evidence known to them.

(3) The interested parties can make written statements on the matter before the hearing. The interested parties shall be notified of the appointment of experts and the taking of written statements from witnesses. The Disciplinary Committee shall grant the interested parties access to the files relating to the proceedings to the extent that their knowledge is required for the assertion or defense of their legal interests.

(4) The Exchange Supervisory Authority, the Exchange Management and the concerned person shall be given the opportunity to be present at the questioning of witnesses and experts. They may pose questions. Written expert opinions shall be made available to the interested parties before the hearing.

(5) If the Disciplinary Committee has used witnesses and experts, they shall be compensated in accordance with the Law regarding the Compensation of Witnesses and Experts in the version of October 1, 1969 (*BGBl. Part I, p. 1757*), last amended by statute of December 17, 1997 (*BGBl. Part I, p. 3108*), which shall apply *mutatis mutandis*.

§ 11 Participation of Witnesses and Experts

(1) The Disciplinary Committee may hear or request the submission of an expert opinion from witnesses or experts, who voluntarily appear before it. The provisions of the Code of Civil Procedure with respect to the rejection of experts and testimony by members of the civil service as witnesses or experts shall apply *mutatis mutandis*.

(2) If witnesses or experts refuse to testify or prepare an expert opinion in the absence of any of the reasons set out in §§ 376, 383 to 385 and 408 of the Code of Civil Procedure, the Disciplinary Committee can request the Municipal Court that is competent at the place of the permanent or habitual residence of the witnesses or experts to conduct the questioning. In its request, the Disciplinary Committee must describe the subject of the questioning and indicate the names and addresses of the interested parties. The court shall notify the Disciplinary Committee and the interested parties accordingly.

(3) If the Disciplinary Committee believes that an oath is necessary in light of the significance of a witness's statement or of an expert opinion, or to bring about a truthful statement, then it can request the court which is competent pursuant to paragraph (2) that the questioning be conducted under oath.

§ 12 Meeting of the Disciplinary Committee

(1) The Disciplinary Committee shall make a decision following oral proceedings. The meeting of the Disciplinary Committee shall not be open to the public. Upon request, a person or authority not involved in the proceedings can be admitted, provided that no interested person or authority objects.

(2) The Disciplinary Committee can make a decision without the oral proceedings if

1. the matter presents no particular difficulties of a factual or legal nature and the facts have been ascertained or
2. an immediate decision is necessary due to an eminent danger.

Should the Disciplinary Committee intend to make a decision in the case of sentence (1) no. 1 without oral proceedings, it shall inform the interested parties that objections can be raised within a period of two weeks.

(3) The presiding member shall open, lead and close the oral proceedings. After calling the case, the presiding member shall present the material content of the files. The presiding member shall discuss the legal and factual aspects of case with the interested parties. Members of the Disciplinary Committee and interested parties must be permitted, upon request, to ask questions. If a question is objected to, the Disciplinary Committee shall decide.

(4) The presiding member is responsible to keep order and can have persons who do not follow instructions necessary for the maintenance of order removed. The proceedings can be continued without these persons.

§ 13 Decision

(1) The Disciplinary Committee shall make a decision based on the assessment of the collective results of the proceedings. With the consent of the Exchange Supervisory Authority, it may dismiss the proceedings in the case of minor violations. Every decision resulting in the conclusion of the proceedings before the Disciplinary Committee must state who shall bear the costs of the proceedings. The costs consist of the fees and expenses.

(2) The decisionmaking process and voting is confidential. Only committee members who have participated in the oral proceedings may be present.

(3) The decisions made to conclude the sanctions proceedings must be put in writing, be substantiated, include instructions as to available legal remedies and be served on the interested parties.

(4) The fee for the proceedings amounts to at least 250 Euro and at most 5,000 Euro. The fee shall be set by the presiding member. The amount of the fee shall be based on the costs and the significance of the proceedings.

(5) The expenses shall consist of

1. the compensation payable pursuant to § 2 paragraph (1) sentence 3 and § 11 paragraph (5),

2. postal charges for deliveries and summonses and for the request of official copies and transcribed copies as well as telex and telephone charges.

(6) The concerned person must bear the costs to the extent that they have been incurred in the course of the proceedings because of an action which has caused a sanction to be ordered. The fees and expenses levied accrue to the administrating and operating institution of the Exchange. The same shall apply to fines levied pursuant to § 9 paragraph (2) of the Exchange Act. Insofar as no sanction is imposed, the proceedings are dismissed or the initiation of sanctions proceedings is rejected, no fee will be levied. Expenses incurred are to be borne by the administrating and operating institution of the Exchange. In other respects, each interested person or authority shall bear its own costs.

§ 14 Minutes

Minutes of the meeting shall be taken. The minutes must contain details regarding

1. the location and date of the meeting,

2. the names of the members of the Disciplinary Committee, the interested parties, witnesses and experts who appeared,

3. the subject of the proceedings,

4. the material content of the statements made by witnesses and experts,

5. the results of any on-site inspection,

6. the decision of the Disciplinary Committee.

The minutes shall be signed by the presiding member and also, to the extent he or she was involved in the preparation, by the secretary as well. The minutes shall be delivered to the concerned person, the Exchange Supervisory Authority and the Exchange Management.

§ 15 Repeal of the Honor Committee Regulation

The regulation concerning the establishment , composition and proceedings of the Honor Committee of the Frankfurt Stock Exchange of November 22, 1982 (*GVBl I p. 280*) is hereby repealed.

§ 16 Effective Date

This regulation shall become effective on the day following its announcement.

Wiesbaden, March 17, 1999

The Hessian Minister of Economy, Transportation and State Development

Klemm