

Federal Financial Supervisory Authority

(BaFin)

Effective Enforcement in Insider Trading and Market Manipulation

Istanbul, February 2006

BaFin

Creation of **BaFin** on 1 May 2002 (Act establishing the Federal Financial Supervisory Authority - FinDAG)

Merger of the Federal supervisory offices for

- banking (**BAKred**)
 - set up in 1934 as a banking supervisory body with an observer function
 - creation of BAKred on 1 January 1962
- for insurance (**BAV**)
 - created on 1 January 1902 under the name of Kaiserliches Aufsichtsamt für Privatversicherungen
- for securities trading (**BAWe**)
 - Created on 1 January 1995

Entities involved in integrated financial supervision



BaFin and the institutions included in integrated financial supervision

- Around 1,500 staff
- Supervision of around
 - 2,400 credit institutions
 - 750 financial services institutions
 - 640 insurance undertakings
 - 25 pension funds
 - 7,000 funds
 - 85 investment companies



Bonn

Frankfurt



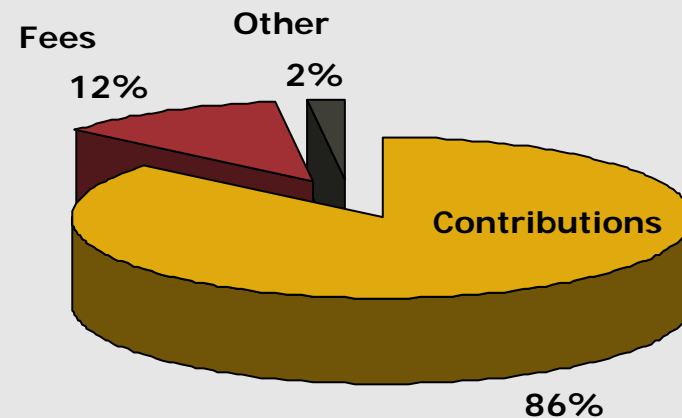
BaFin's remit

BaFin's aim is to ensure the efficiency, stability and integrity of the German financial system.

- Safeguarding solvency at banks, financial services institutions and insurance undertakings (**SOLVENCY SUPERVISION**)
- Protecting clients and investors (**MARKET SUPERVISION**) by ensuring fair and transparent markets
- Taking legal action against those conducting unauthorised banking, insurance or financial services business; combatting money laundering and terrorist financing; certifying pension schemes; handling consumer complaints

Financing

BaFin is financed exclusively out of fees and contributions payable by the institutions and undertakings being supervised. BaFin is thus independent of the Federal budget.



Supervision by BaFin: market supervision

- **Market integrity**
- **Market transparency**
- **Investor protection**
- **Further information:** www.bafin.de

Market monitoring

Supervision under the Securities Trading Act (WpHG) by BaFin



- ◆ Ad-hoc publicity
- ◆ Directors' dealings
- ◆ Significant voting shares
- ◆ Combatting insider dealing and market manipulation
- ◆ Rules of conduct for investment service providers
- ◆ International cooperation

European context

- European Market Abuse Directive (2003/6/EC)
- Framework Directive: Details/implementing measures in Commission Directive/Commission Regulation
- Directive covers Insider Dealing and Market Manipulation = Market Abuse
- harmonisation of the rules for market abuse throughout Europe
- commitment to transparency and equal treatment of market participants

Sections 12 ff. WpHG Monitoring insider dealing

- Criminal offence according to Section 38
Imprisonment of up to five years for insider trading and market manipulation
- Fine of up to € 1 m for misdemeanors
- Section 12: Insider Securities
- Section 13: Insider Information
- Section 14: Prohibition of Insider Dealing
- Section 4: Regular monitoring

Insider Information

Any information which

- relates to one or more issuers or
- relates to one or more securities,
- is **non-public** and
- could materially influence the price of the security if it became publicly known.

(Section 13)

Insider

Any person who

- by virtue of his or her **membership** of the management or supervisory body of the issuer,
- by virtue of his or her participation in the capital of the issuer (**shareholders**),
- by virtue of the **designated purpose** of his or her profession, employment or duties
- by virtue of criminal activities

has knowledge of insider information.

(Section 38)

Prohibition of Insider Dealing

Insiders and **third parties** („secondary insiders“) who know of insider information may not

- take advantage of such knowledge to sell or buy insider securities.
- make available insider information
- recommend a third party to sell or buy insider securities.

(Section 14)

Price- and Marketmanipulation Sec. 20 a

It is prohibited to make **incorrect statements** about facts which are germane to the valuation of an asset if such information would be likely to have an effect on the stock exchange or market price of an asset. Silence is treated in the same way if there is a legal obligation for disclosure.

Prohibited is it as well to carry out other actions **aimed** at the deception for the purpose of exerting influence on the price.

Safe Harbor:

BaFin will issue a **List** of these actions and omissions which on no account violate the prohibition.

Sanction: If action actually **affects the price** arrest up to 5 years or fine (criminal act), in case there is no influence measurable fine up to € 1 mio. (administrative offence).

Sources of Information

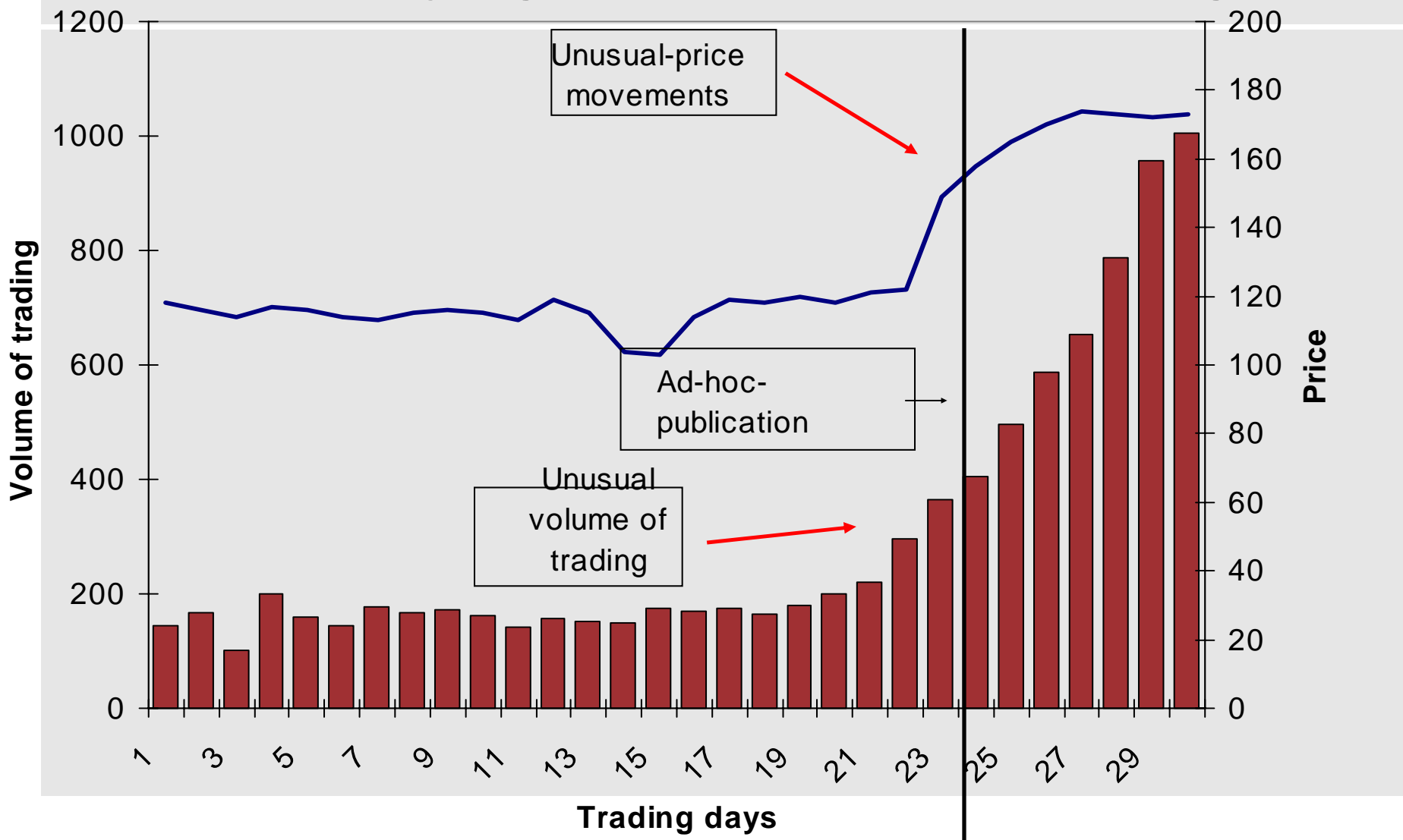
Screening media news **for insider information**

Receiving information from other authorities

Continuously monitoring the information published as ad hoc announcements

Automatic analysis through SWAP (Securities Watch Applications)

Identifying cases of insider trading



Ad hoc Disclosure Sec. 15

**An issuer of securities
admitted to trading on a German stock exchange
must immediately publish**

any new information, which

- 1. has occurred in the sphere of activity of the issuer**
- 2. is not publicly known**
- 3. is likely to have a significant influence on the exchange price**

Director's Dealings Sec. 15 a

- Members of the management or supervisory bodies of an issuer which securities are listed on the exchange,
- shall immediately notify the issuer and the BaFin of the acquisition or disposal of the shares of the issuer.
- Not applicable, if the acquisition is made on the basis of an employment contract or the aggregated value of the total number of transactions within 1 year does not exceed
€ 5.000,-.
- The notification has to be published on the issuer's website for a period not shorter than one month.

Holdings of Voting Rights Sec. 21, 25

Any person whose shareholding in a listed company reaches, exceeds or falls below of 5, 10, 25, 50 or 75 per cent shall immediately notify the company and the BaFin

The listed company must publish this notification immediately in at least one supra-national official stock exchange gazette.

Federal Financial Supervisory Authority

(BaFin)

Effective Enforcement in Insider Trading and Market Manipulation

Istanbul, February 2006