

Auditing Association of German Banks

Articles

October 9, 2013

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October 9, 2013

I. AUDITING ASSOCIATION NAME, REGISTERED OFFICE AND FISCAL YEAR

§ 1 Name and Legal Form

The Association shall operate under the name "*Prüfungsverband deutscher Banken e.V.*" (*Prüfungsverband*) [Auditing Association of German Banks (Auditing Association)].

§ 2 Registered Office and Fiscal Year

- (1) The registered office of the Auditing Association shall be in Cologne.
- (2) The fiscal year shall be the calendar year.

II. CORPORATE PURPOSE AND DUTIES OF THE AUDITING ASSOCIATION

§ 3 Corporate Purpose

- (1) ⁽¹⁾ The corporate purpose of the Auditing Association shall be protecting the interests of all its members (member banks), in particular with regard to banks participating in the Deposit Protection Fund (*Einlagensicherungsfonds*) within the Association of German Banks (*Bundesverband deutscher Banken e. V.*). ⁽²⁾ Within the scope of this specific purpose, the Auditing Association shall operate as an auditing institution and in other respects in the interests of deposit protection. ⁽³⁾ The Auditing Association may effect all transactions, provide services and adopt measures necessary or expedient for achieving this purpose.
- (2) The Auditing Association may acquire a participating interest in other enterprises in order to fulfil its tasks.
- (3) ⁽¹⁾ The Auditing Association may combine its audit activities with the provision of advice to member banks and to enterprises which have applied for membership. ⁽²⁾ It may submit proposals to any member bank or to any enterprise which has applied for membership regarding the choice of auditor of the annual financial statements.
- (4) The Auditing Association shall be entitled to disclose the names of its member banks and changes to the membership.

- (5) The Auditing Association shall not aim to operate as a commercial undertaking; it shall not be geared to making a profit but shall only seek to cover its costs.

§ 4 Duties and Powers

- (1) ⁽¹⁾ Within the scope of the corporate purpose set forth in § 3 paragraph (1), the Auditing Association shall have the following duties and powers:

1. The Auditing Association shall conduct deposit protection audits at its member banks and audits at enterprises which have applied for membership.
2. The Auditing Association may also audit persons or enterprises who or which intend to acquire or have already acquired a qualified participating interest as defined in § 1 paragraph 9 German Banking Act (*Kreditwesengesetz (KWG)*) in a member bank or in an enterprise which has applied for membership (audits within the context of owner control procedure) or who or which, where a qualified participating interest has already been acquired, fulfil the conditions specified in the following § 6 paragraph 1 no. 3 or no. 4.
3. The Auditing Association shall additionally check whether the prerequisites specified under the By-laws (*Statut*) of the Deposit Protection Fund for participation in the Deposit Protection Fund are met and whether the obligations resulting from the By-laws are fulfilled.
4. The Auditing Association may take any measures in the interests of the Deposit Protection Fund and permissible under the By-laws thereof.
5. The Auditing Association shall have the power to impose conditions on member banks subject to the prerequisites specified under § 11.
6. The Auditing Association shall, in addition, rate member banks and also in certain circumstances their group enterprises on behalf of the Deposit Protection Fund (§§ 17 and 18 German Companies Act (*Aktiengesetz (AktG)*)).
7. The Auditing Association may in justified cases also outwith deposit protection audits request from member banks all information, documents and evidence pursuant to § 5 paragraph 1 sentence 2, provided these are necessary for assessing the current situation and the future development of a member bank or all member banks.

8. The Auditing Association shall be entitled to inform the Association of German Banks of the volume of protected deposits as well as the level of, and any change in, the protection ceiling of a member bank; in addition, the Auditing Association shall be entitled and obligated to inform the Association of German Banks of anything that affects the obligations of a member bank resulting from the By-laws.

(2) The Auditing Association may also perform audits pursuant to sentence 1 no. 1 and no. 2 above at enterprises which are or intend to become affiliated enterprises as defined in § 15 German Companies Act (AktG) or § 271 paragraph 2 German Commercial Code (*Handelsgesetzbuch (HGB)*) in relation to a member bank, an enterprise that has applied for membership or the holder of a qualified participating interest.

(2) Subsequent to withdrawal of a member bank from the Auditing Association, the powers provided for under the terms of these Articles shall continue to be vested in the Auditing Association in respect of the former member bank as long as liabilities of the bank which has withdrawn are secured under the By-laws (so-called extended liability phase) and if the Association of German Banks has delegated to the Auditing Association performance of the tasks of an auditing institution for the duration of the extended liability phase and has communicated this in writing to the former member bank.

(3) (1) No obligation shall exist on the part of the Auditing Association to perform the tasks referred to in paragraph 1 above; it may limit its activity to certain areas. (2) The Auditing Association shall be authorised to delegate tasks within its area of responsibility to other persons or enterprises. (3) In the event of any such delegation of tasks to third parties, the Auditing Association shall ensure the careful and proper selection and supervision of the authorised third parties and their commitment to maintaining confidentiality pursuant to § 24 paragraph 1 sentence 2.

(4) Member banks, enterprises which have applied for membership and banks or other enterprises which have withdrawn from the Auditing Association shall have no claim against the Auditing Association to the performance or non-performance of tasks referred to in paragraphs 1 to 3 above or to compensation for expenditure or loss due to performance or non-performance of the said tasks.

§ 5 Deposit Protection Audits

- (1) ⁽¹⁾ The Auditing Association shall be empowered to audit member banks at any time; audits shall take place as a general rule at member banks' premises. ⁽²⁾ It may request member banks and their bodies to give it access to all documents, to provide information and to submit required evidence.
- (2) ⁽¹⁾ The Auditing Association shall be entitled and obligated to inform the Board of Directors of the Association of German Banks, the Association of German Banks' Deposit Protection Committee and the Member of the Association of German Banks' Management Board responsible for the Deposit Protection Fund if an audit of a member bank or of persons or enterprises referred to in § 4 paragraph 1 sentence 1 no. 2 and sentence 2 has led to findings which make it apparent that the member bank's deposits may possibly be endangered. ⁽²⁾ The Auditing Association shall be entitled, unless it is in any event obligated to do so under applicable supervisory regulations, to bring its audit reports and audit results to the attention of the auditor of the annual financial statements of the member bank concerned and of the responsible supervisory authorities. ⁽³⁾ In addition, the Auditing Association shall be entitled to communicate and explain to the competent supervisory body of the member bank audit results or other significant facts that may materially impair the further development of the member bank.
- (3) ⁽¹⁾ If foreign banks or enterprises operate branches as defined in § 53 and § 53b German Banking Act (KWG) in Germany and if these are members of the Auditing Association, the Auditing Association rights referred to in paragraphs 1 and 2 above shall also extend to the head office of the member bank and other branches abroad if this is deemed necessary for reliable assessment of the circumstances prevailing at the branch as defined in § 53 and § 53b German Banking Act (KWG). ⁽²⁾ In relation to the competent supervisory authorities and the head office annual financial statements auditor, the Auditing Association's right to provide information regarding audit results pursuant to paragraph 2 above shall apply accordingly.
- (4) ⁽¹⁾ Guidelines shall be issued by the Advisory Board on details of auditing activity (§ 21 paragraph 1 sentence 1 no. 3 b)) [Audit Guidelines]. ⁽²⁾ The Audit Guidelines shall contain provisions regarding
1. the purpose, types, scope, performance, duration, frequency and cost of audits,
 2. audit reports and

3. responsibility for decisions regarding performance of audits.

§ 6 Audits in the context of Owner Control Procedures

(1) ⁽¹⁾ If

1. a qualified participating interest as defined in § 1 paragraph 9 German Banking Act (KWG) in a member bank or in an enterprise which has applied for membership is acquired or held or
2. acquisition of any such qualified participating interest in a member bank is definitely intended or
3. an existing participating interest is increased in such a way that the thresholds of 20%, 30% or 50% of the voting rights or capital are reached or exceeded or
4. the Auditing Association becomes aware of any other facts or circumstances that are grounds for questioning the findings hitherto with regard to the requirements to be met under sentence 2,

Auditing Association audits may also extend, in order to achieve the purpose set out in sentence 2 below, to those persons and enterprises referred to in § 4 paragraph 1 sentence 1 no. 2 and sentence 2. ⁽²⁾ These audits shall serve to ascertain that no facts exist which justify the assumption that the holder of a qualified participating interest (§ 1 paragraph 9 German Banking Act (KWG)) in a member bank or an enterprise which has applied for membership or any legal representative or personally liable partner of such a holder of a qualified participating interest is not or is no longer trustworthy or for any other reasons does not satisfy or no longer satisfies the requirements to be met in the interests of a sound and prudent management of the member bank or the enterprise which has applied for membership.

- (2) In cases covered by paragraph 1, the Auditing Association may require a member bank, an enterprise which has applied for membership and the bodies of the latter to enable performance of on-site audits at the premises of persons or enterprises referred to in § 4 paragraph 1 sentence 1 no. 2 and sentence 2, provision of all documents, disclosure of information and submission of the required evidence unless the member bank or enterprise which has applied for membership or the

holder of the participating interest is in a position to prove that there are mandatory statutory provisions precluding this.

- (3) § 5 paragraphs 2 and 3 shall apply accordingly.

§ 7 Rating Procedure

- (1) The Auditing Association shall be entitled, if it engages third parties for performance of rating, to provide the latter upon request with audit reports and audit results as well as any other data and information required for rating.
- (2) ⁽¹⁾ The rating result shall be communicated only to the management of the member bank concerned and the Member of the Association of German Banks' Management Board responsible for the Deposit Protection Fund, as well as the competent compensation scheme. ⁽²⁾ The Auditing Association shall be entitled to communicate the rating result also to the competent supervisory authorities and the supervisory body of the bank concerned.

III. MEMBERSHIP

§ 8 Obtaining Membership: Admission Procedure

- (1) ⁽¹⁾ The prerequisites for obtaining membership of the Auditing Association shall be that the company concerned is a member of the Association of German Banks, participates in the Deposit Protection Fund and possesses the necessary licence to conduct banking business from the competent supervisory authorities. ⁽²⁾ Admission shall in principle be made dependent on performance of an audit. ⁽³⁾ If a qualified participating interest as defined in § 1 paragraph 9 German Banking Act (KWG) is held or has been acquired in an enterprise which has applied for membership, admission shall in principle also be made dependent on an audit of the persons and enterprises referred to in § 4 paragraph 1 sentence 1 no. 2 and sentence 2 in order to achieve the purpose set out in § 6 paragraph 1 sentence 2.
- (2) ⁽¹⁾ Admission of a member bank shall be decided by the Advisory Board (§ 21 paragraph 1 sentence 1 no. 3 c)). ⁽²⁾ The Advisory Board's decision regarding admission shall be communicated as provided for in § 25 paragraph 1 to the enterprise which has applied for membership. ⁽³⁾ The enterprise which has applied for admission may appeal to the Members Meeting against refusal of an application

for admission by the Advisory Board within one month from receipt of the Advisory Board's decision to refuse such application.

- (3) § 24 paragraph 3 sentence 1 shall not apply in the case of paragraph 1 and paragraph 2.
- (4) Membership of the Auditing Association shall commence as soon as the enterprise which has applied for membership receives notification from the Executive Board regarding the Advisory Board decision as provided for in § 25 paragraph 1.

§ 9 Rights of Member Banks

- (1) Member banks shall be entitled to the rights and powers of an association member arising from these Articles and non-negotiable statutory regulations.
- (2) Member banks shall in particular be entitled to participate in the Members Meeting (§ 18) and to exercise their voting right (§ 19 paragraph 1), to request that an extraordinary Members Meeting be convened as provided for in § 17 paragraph 1 sentence 3 and to propose motions for the agenda as provided for in § 17 paragraph 2 sentence 3.

§ 10 Obligations of Member Banks

- (1) ⁽¹⁾Every member bank shall undertake
 - 1. to accept deposit protection audits by the Auditing Association or third parties appointed by the Association and to support the Auditing Association in its auditing activity,
 - 2. to immediately provide the Auditing Association with any documents and evidence it requests in complete and correct form,
 - 3. to immediately disclose to the Auditing Association completely and truthfully any information it requests,
 - 4. to cooperate in all audits to the degree necessary to ensure clarification of the facts,

5. if a qualified participating interest as defined in § 1 paragraph 9 German Banking Act (KWG) in a member bank is acquired, acquisition of any such participating interest is definitely intended, the participating interest reaches or exceeds any of the thresholds referred to in § 6 paragraph 1 sentence 1 no. 3 or an owner control procedure pursuant to § 6 paragraph 1 sentence 1 no. 4 is initiated, to enable the Auditing Association, in order to achieve the purpose set out in § 6 paragraph 1 sentence 2, to perform audits of those persons or enterprises referred to in § 4 paragraph 1 sentence 1 no. 2 and sentence 2 (including on-site audits at the premises of such persons or enterprises) and to make available all documents, provide information and submit the required evidence unless the member bank or the holder of the participating interest is in a position to prove that there are mandatory statutory provisions precluding this,
6. to immediately make available to the Auditing Association at the latter's request the documents and information necessary for rating pursuant to § 4 paragraph 1 sentence 1 no. 6,
7. to inform the Auditing Association of its intention to substantially change its business model or any other material circumstances if such change may lead to a general increase in protected customer deposits or to a significant increase in the member bank's risk exposure,
8. to immediately comply with the conditions imposed on the basis of § 11, to immediately confirm in writing compliance with these pursuant to § 11 paragraph 5 sentence 1 and to make available the information, documents and evidence necessary for monitoring compliance with such conditions that are requested by the Auditing Association,
9. to pay the fees and contributions levied under § 15 when due and
10. to comply with the provisions contained in these Articles, the other rules and regulations decided by the competent Auditing Association bodies applying in general to all member banks and the additional resolutions of the Auditing Association bodies.

(2) In particular, every member bank shall immediately provide to the Auditing Association upon request all notifications, reports, business plans, and balance sheets which must be submitted to the competent supervisory authorities.

- (2) Member banks shall, when requested by the Auditing Association, authorise the competent supervisory authorities and their annual financial statements auditor to provide information to the Auditing Association both verbally and in writing in accordance with the two attached model declarations; the corresponding declarations must be available to the Auditing Association no later than one month after they have been requested by it in writing.
- (3) ⁽¹⁾ If foreign banks or enterprises operate branches as defined in § 53 and § 53b German Banking Act (KWG) in Germany and if these are members of the Auditing Association, the member banks' obligations referred to in paragraphs 1 and 2 above shall also extend to the head office of the member bank and other branches abroad if this proves necessary for reliable assessment of the circumstances of the member bank. ⁽²⁾ In relation to the respective supervisory authorities and the head office annual financial statements auditor, the authorisation to provide information and the periods referred to in paragraph 2, as well as the Auditing Association's right to communicate audit results, shall apply accordingly. ⁽³⁾ The authorisation to provide information pursuant to paragraph 2 above shall likewise be issued on the basis of the attached model declarations, but with the appropriate additions and in the form required by the respective supervisory authority and the auditor of the annual financial statements as addressees of such authorisation.
- (4) ⁽¹⁾ A member bank shall not be entitled to advertise its membership. ⁽²⁾ It shall also not be entitled to disclose in the course of business the result of any rating pursuant to § 4 paragraph 1 sentence 1 no. 6 or to make mention thereof in advertising material; disclosure of the rating result to the competent compensation scheme in accordance with the German Deposit Guarantee and Investor Compensation Act (*Einlagensicherungs- und Anlegerentschädigungsgesetz (EAEG)*) shall be exempt therefrom.

§ 11 Conditions

- (1) ¹⁾The Auditing Association may impose conditions on a member bank
1. if an objection is made
 - a) by the competent supervisory authority or public audit firm or
 - b) by the Auditing Association within the scope of an audit or as the result of an admission audit conducted on application for membership

which relates to the German Banking Act (KWG), other statutory provisions, legal ordinances, orders, administrative regulations, supervisory practice of the competent supervisory authorities or the principles of internal operation or

2. if “an increased latent risk” pursuant to sentence 2 is detected by the Auditing Association or
3. if the said conditions are apt to avert any misuse or any otherwise imminent threat of recourse to the Deposit Protection Fund.

⁽²⁾ An increased latent risk which may have a seriously detrimental effect on the present or future financial position, net asset position and/or earnings position of a bank and which leads to a “tying up” of equity and/or hidden reserves is in particular deemed to exist

1. if in the course of an audit an asset or debit item cannot be conclusively assessed (e.g. due to the absence of any proof of the value of the asset item or an inability to assess the value of a security) or
2. if – set against the financial circumstances of the bank or the borrower – lending on an unsecured basis appears too high.

(2) ⁽¹⁾ In addition, the Auditing Association may impose conditions designed to ensure compliance with the main circumstances and business-policy aims stated on submission of the application for admission and which formed the basis for admission of the member bank. ⁽²⁾ If the institution wishes to make a substantial change in this regard, an assessment must first be made by the Auditing Association.

(3) The Auditing Association may also impose conditions if a member bank intends to make a substantial change to its business model or any other change pursuant to § 10 paragraph 1 sentence 1 no. 7 and the condition is designed to prevent any increase in the existing risk exposure of the member bank until completion of an assessment of the intended change.

(4) If a qualified participating interest (§ 1 paragraph 9 German Banking Act (KWG)) in a member bank is acquired or a procedure pursuant to § 6 paragraph 1 sentence 1 no. 2 to no. 4 is initiated before an owner control procedure pursuant to § 4

paragraph 1 sentence 1 no. 2, § 6 and § 10 paragraph 1 sentence 1 no. 5 has been completed, the Auditing Association may impose one or more conditions on the basis of paragraph 1 sentence 1 no. 3 above which are apt to maintain the existing risk situation until completion of the owner control procedure.

- (5) ⁽¹⁾ At the request of the Auditing Association, the member bank shall confirm in writing to the Auditing Association that the conditions are complied with. ⁽²⁾ The Auditing Association may satisfy itself of compliance with the conditions within the scope of audits. ⁽³⁾ If the Auditing Association has ascertained, following an examination of the circumstances, that the prerequisites for imposition of a condition no longer apply, it shall cancel the condition and inform the member bank thereof in writing.
- (6) ⁽¹⁾ A member bank shall be entitled to have any conditions which the Auditing Association has imposed on it through the Executive Board verified by the Advisory Board. ⁽²⁾ Any such recourse to the Advisory Board pursuant to § 25 paragraph 2 shall have no suspensive effect and shall not release the member bank from its obligations arising from the conditions (including the obligation under paragraph 5 sentences 1 and 2 above – subject to a different Advisory Board decision – to recognise compliance with conditions as binding and to have compliance with these verified by the Auditing Association). ⁽³⁾ In this event, the Advisory Board shall be provided with all documents and information which formed the basis for imposition of the condition; § 24 paragraph 3 sentence 1 shall not apply in this respect.

§ 12 Termination of Membership

- (1) Membership shall end upon withdrawal (paragraph 2), loss of a licence to conduct banking business (paragraph 3) or exclusion (paragraph 4).
- (2) ⁽¹⁾ Withdrawal may only be declared in writing in compliance with § 25 paragraph 2. ⁽²⁾ Withdrawal shall take effect following expiry of a period of one month from receipt of notice of withdrawal by the Auditing Association.
- (3) If the licence to conduct banking business required by a member bank is withdrawn by the competent supervisory authorities or returned by the member bank, the membership of the member bank concerned in the Auditing Association shall end without any exclusion procedure with effect from the time the licence is effectively withdrawn or returned.

- (4) (1) A member bank may be excluded from the Auditing Association
1. if its membership of the Association of German Banks or participation in the Deposit Protection Fund terminates,
 2. if it has committed not only a non-material breach of significant obligations vis-à-vis the Auditing Association or
 3. if it has otherwise committed a material and sustained breach of any provision contained in these Articles, of the Audit Guidelines or of any decision of a competent Auditing Association body.
- (2) As a general rule, a material breach of significant obligations vis-à-vis the Auditing Association shall be deemed to exist if the member bank
1. fails to agree to audits required by the Auditing Association or fails to support the Auditing Association in the performance of its auditing duties,
 2. falls into arrears with the legally binding delivery of the declarations specified in § 10 paragraph 2 and paragraph 3,
 3. falls into arrears with the submission of documents and/or evidence required by the Auditing Association,
 4. falls into arrears with the provision of information required by the Auditing Association,
 5. submits incomplete or incorrect documents to the Auditing Association,
 6. provides incomplete or incorrect information to the Auditing Association,
 7. fails in any other manner to cooperate in providing clarification of facts to the extent required in the course of an audit,
 8. fails to immediately provide to the Auditing Association on request supporting documents or information necessary for rating pursuant to § 4 paragraph 1 sentence 1 no. 6 or

9. fails to immediately comply with any condition imposed by the Auditing Association under § 11 or fails to immediately confirm compliance with such condition in writing.

⁽³⁾ Exclusion on the basis of sentence 1 no. 2 and no. 3 above shall not take place if the member bank can demonstrate to the Auditing Association that it was not responsible for the occurrence of the circumstance concerned or if the breach of obligations is non-material.

§ 13 Exclusion Procedure

- (1) ⁽¹⁾ The Executive Board shall caution the member bank regarding its intention to initiate an exclusion procedure by giving it appropriate notice and indicating the grounds for exclusion pursuant to § 25 paragraph 1. ⁽²⁾ The member bank shall be given the opportunity to submit a written response regarding the underlying facts of the situation. ⁽³⁾ The Executive Board may allow the member bank a reasonable period of time to submit this response in order to give the Advisory Board sufficient time to prepare its decision. ⁽⁴⁾ Any response by the member bank received after expiry of this period shall only be considered if the member bank can demonstrate to the Executive Board that it was not to blame for failing to respond in time.
- (2) ⁽¹⁾ The Advisory Board shall reach its exclusion decision pursuant to § 12 paragraph 4 at its own discretion, taking into consideration the legitimate concerns of the bank concerned. ⁽²⁾ § 24 paragraph 3 sentence 1 shall not apply in this respect.
- (3) ⁽¹⁾ Notification regarding the Advisory Board's exclusion decision shall be served on the member bank concerned along with a copy of an extract from the record in which the exclusion decision is documented, as specified in § 25 paragraph 1. ⁽²⁾ The Advisory Board's exclusion decision shall take effect following expiry of a period of one month from its receipt by the member bank concerned.
- (4) ⁽¹⁾ The member bank may request a review of the exclusion decision by the Members Meeting by lodging an appeal; § 24 paragraph 3 sentence 1 shall not apply in this respect. ⁽²⁾ The appeal must be received in writing prior to expiry of the one-month period referred to in paragraph 3 sentence 2 above, as specified in § 25 paragraph 2. ⁽³⁾ Lodging the appeal shall have suspensive effect. ⁽⁴⁾ Notification of the Members Meeting's appeal decision shall be served on the member bank concerned along with a copy of an extract from the record in which the appeal decision is documented, as specified in § 25 paragraph (1). ⁽⁵⁾ The Members

Meeting's appeal decision shall take effect as of the date of receipt by the member bank concerned.

§ 14 Rights and Obligations of Former Member Banks

- (1) A former member bank shall have no claim to the assets of the Auditing Association, to parts of those assets or to compensation.
- (2) A former member bank's obligation to pay the contribution for the current fiscal year shall extend only to the period up to effective termination of its Auditing Association membership.

§ 15 Contributions and Fees

- (1) ⁽¹⁾ Member banks shall pay an annual contribution. ⁽²⁾ Its size shall be set at a percentage rate, applicable to all member banks, of the "Liabilities to customers" item on the balance sheet of its last audited annual financial statement prepared prior to the 30th of June of each respective year. ⁽³⁾ In calculating contributions, liabilities to foreign affiliates of the member bank as defined in § 15 German Companies Act (AktG) and § 271 paragraph 2 German Commercial Code (HGB) which conduct banking business pursuant to § 1 paragraph 1 sentence 2 no. 2 German Banking Act (KWG), liabilities arising from securities repurchase agreements or repo transactions, including redelivery commitments arising from securities lending transactions, shall not be taken into account. ⁽⁴⁾ A minimum contribution may be levied.
- (2) ⁽¹⁾ In the case of member banks which only or also conduct mortgage bond business, liabilities secured by issuing registered or public mortgage bonds shall not be taken into account. ⁽²⁾ In special cases, the Advisory Board may set a different basis for calculation.
- (3) Annual contributions shall be due following expiry of a period of one month from receipt of a written request for payment.
- (4) Irrespective of a contribution set in accordance with paragraph 1 sentence 4, the contribution shall not apply if the Deposit Protection Fund assumes the Auditing Association's costs.

- (5) For services under the provisions contained in Section II. (§§ 3 to 7) – including those on the basis of or in connection with audits within the scope of § 4 paragraph 2 – and expenses in connection with obtaining membership pursuant to § 8, fees may be calculated on the basis of an Advisory Board decision.

IV. AUDITING ASSOCIATION BODIES

§ 16 Bodies

The Auditing Association bodies shall be

1. The Members Meeting (*Mitgliederversammlung*)
2. The Advisory Board (*Beirat*) and
3. The Executive Board (*Vorstand*)

A. THE MEMBERS MEETING

§ 17 Conduct of Members Meetings

- (1) ⁽¹⁾ The Ordinary Members Meeting shall be convened at least once a year. ⁽²⁾ If there is good reason to do so, an Extraordinary Members Meeting shall be convened. ⁽³⁾ An Extraordinary Members Meeting must also be convened if at least one-tenth of Auditing Association member banks request this in writing, indicating the reasons for and the purpose of the assembly.
- (2) ⁽¹⁾ Ordinary and Extraordinary Members Meetings shall be convened by the Executive Board in writing, subject to a period of notice of at least fourteen days, and accompanied by the published agenda. ⁽²⁾ Following an Advisory Board resolution, the manner and form in which assemblies are convened may be waived. ⁽³⁾ If motioned by at least ten member banks, the agenda shall be supplemented if the motion indicating the desired addition is received by the Executive Board no later than one week before the Members Meeting and explained in detail.
- (3) The Members Meeting shall be conducted by the Advisory Board Chairman.
- (4) Minutes shall be kept of the Members Meetings, which shall be signed by the Chairman of the Advisory Board and the Chairman or a spokesman of the Executive Board.

§ 18 Duties of the Members Meeting

- (1) The Members Meeting shall be responsible for all Auditing Association matters unless they have been delegated by law or under these Articles to other bodies.
- (2) The duties of the Members Meeting shall include in particular:
 1. electing the Advisory Board members pursuant to the provisions of § 20 paragraph 1 and paragraph 2,
 2. appointing the auditor of the annual financial statements,
 3. setting membership contributions subject to the provision contained in § 21 paragraph 1 sentence 1 no. 3 f),
 4. passing resolutions on amendment of the Articles,
 5. passing resolutions relating to legal remedy by way of an appeal against an Advisory Board resolution on refusal of an admission application or exclusion of a member bank from the Auditing Association,
 6. accepting the annual financial statements approved by the Advisory Board and the Notes thereto,
 7. passing resolutions regarding the discharge of the Advisory Board and the Executive Board and
 8. passing the resolution on dissolution of the Association and liquidation of its assets.

§ 19 Voting Rights, Quorum and Majorities

- (1)
 - (1) Every member bank shall have at least one vote at the Members Meeting.
 - (2) For every full fifty euros of the last annual contribution fixed pursuant to § 15 paragraph 1 or paragraph 2 it shall receive an additional vote provided the annual contribution has been paid. (3) Newly admitted members within the current year shall receive, by way of derogation from sentence 2, an additional vote for every full fifty euros of the advance payment of the annual contribution set for them, provided the advance payment has been made.

- (2) ⁽¹⁾ The Members Meeting shall constitute a quorum if at least half of all votes are represented. ⁽²⁾ If this number is not reached at a Members Meeting, a Members Meeting convened as soon as possible afterwards with the same agenda shall constitute a quorum irrespective of the number of votes represented.
- (3) ⁽¹⁾ Resolutions regarding amendments to the Articles and dissolution of the Association shall require a four-fifths majority and other resolutions a two-thirds majority of the votes cast. ⁽²⁾ Resolutions in respect of § 18 paragraph 2 no. 4, no. 5 and no. 8 shall not come about if a majority of the votes cast by any of these three groups of banks
1. major banks
 2. regional banks, foreign banks and other institutions or
 3. private bankers
- are against.
- (4) Regarding membership of the three groups of banks referred to in paragraph 3 above and § 20 paragraph 1, the following shall apply:
1. Big banks shall be credit institutions which are classified as such in the *Deutsche Bundesbank's* banking statistics.
 2. Regional banks shall be credit institutions which – whilst not belonging to the group of big banks – are operated in the legal form of a private limited company (*Gesellschaft mit beschränkter Haftung*), public limited company (*Aktiengesellschaft*) or limited company with one or more general partners (*Kommanditgesellschaft auf Aktien*), provided nothing to the contrary results from no. 3 below.
 3. Private bankers shall be credit institutions operated in the legal form of a general partnership (*offene Handelsgesellschaft*) or limited partnership (*Kommanditgesellschaft*); limited companies with one or more general partners shall be deemed to be private bankers if
 - a) the personally liable partners are natural persons,
 - b) the shares of the company are not traded on a stock market and

- c) transfer of shares is subject to the approval of the personally liable partners.

4. Foreign banks shall be deemed to be

- a) branches in Germany (§ 53 and § 53b German Banking Act (KWG)) of private banks domiciled abroad and
- b) private banks incorporated under German law whose capital is majority-held by one or more foreign shareholders and which are classified by the Association of German Banks as members of the "Foreign Banks" group.

- (5) ⁽¹⁾ Member banks shall be represented at the Members Meeting by an active owner or a manager; they may have themselves represented by another member bank by submitting a written power of attorney. ⁽²⁾ Sub-powers of attorney shall be permissible. ⁽³⁾ By agreement with the Chairman of the Advisory Board, other authorised signatories of a member bank shall be entitled to represent the member bank.

B. THE ADVISORY BOARD

§ 20 Composition and Election of the Advisory Board

- (1) ⁽¹⁾ The Advisory Board shall comprise
- 1. one representative from each of the big banks
 - 2. three representatives of the regional banks, the foreign banks and the other institutions and
 - 3. three representatives of the private bankers.
- ⁽²⁾ Advisory Board members must be active owners or managers of member banks at the time they are elected.
- (2) ⁽¹⁾ The Advisory Board shall be elected by the Members Assembly for a period of three years; the Advisory Board members shall remain in office until the constitutive meeting of a newly elected Advisory Board. ⁽²⁾ The term of office of the Advisory Board members shall, in addition, end upon termination of their active service as owners or managers of a member bank or upon termination of membership of the member bank of which they are the owner or manager. ⁽³⁾ If an Advisory Board member resigns prior to expiry of his term of office, an additional election shall take

place for the remaining term of office of the other Advisory Board members. It shall be held by the Advisory Board, taking into account the provisions pursuant to paragraph 1.

(3) The Advisory Board shall elect from its midst its Chairman and his deputy.

§ 21 Duties of the Advisory Board

(1) ⁽¹⁾ The duties of the Advisory Board shall be as follows:

1. It shall appoint, and may also dismiss, the members of the Executive Board.
2. It shall approve the annual financial statements.
3. It shall pass resolutions on
 - a) the internal rules of procedure for the Executive Board,
 - b) the Audit Guidelines pursuant to § 5 paragraph 4,
 - c) the applications for admission pursuant to § 8 paragraph 2
 - d) a member bank's appeal against a condition imposed by the Executive Board pursuant to § 11 paragraph 6 sentence 1,
 - e) the exclusion of a member bank pursuant to § 13 paragraph 2,
 - f) the fixing of contributions in the cases reserved for the Advisory Board pursuant to § 15 paragraph 2 sentence 2,
 - g) the establishment of committees and the delegation of tasks to individual committee members in accordance with paragraph 2 below,
 - h) the fixing of fees pursuant to § 15 paragraph 5,
 - i) the acquisition by the Auditing Association of a participating interest in an enterprise pursuant to § 3 paragraph 2 and
 - j) all other decisions assigned to it under these Articles.

⁽²⁾ The Advisory Board may issue internal rules of procedure for itself.

(2) ⁽¹⁾ The Advisory Board may appoint from its midst one or more committees and delegate specific tasks to such committees. ⁽²⁾ The Advisory Board may also authorise one or more Advisory Board members to perform certain tasks on its behalf.

§ 22 Voting Rights, Quorum and Majorities

- (1) ⁽¹⁾ The Advisory Board shall be convened by its Chairman. ⁽²⁾ It must be convened if so requested by all representatives of one group of banks.
- (2) Each Advisory Board member shall have one vote.
- (3) ⁽¹⁾ The Advisory Board shall be deemed to constitute a quorum if at least two-thirds of its members are present or cast their vote in writing or by telephone. ⁽²⁾ If members of the Advisory Board are prevented from attending, they can authorise another Advisory Board member in writing to exercise their voting right. ⁽³⁾ In these cases, the member who is prevented from attending shall be considered to be present. ⁽⁴⁾ Resolutions may be passed on the basis of written or telephone voting if the Chairman of the Advisory Board orders such a procedure for special reasons and provided no Advisory Board member objects thereto.
- (4) ⁽¹⁾ Advisory Board resolutions shall require – subject to the provision contained in sentence 2 below – a two-thirds majority of the votes cast. ⁽²⁾ Resolutions pursuant to § 21 paragraph 1 sentence 1 no. 3 c) and e), on the basis of which a decision is made concerning an admission application or the exclusion of a member bank, shall require a four-fifths majority of the votes of all Advisory Board members, whereby in determining whether this qualified majority is met those Advisory Board members not present or not represented shall also be taken into account.
- (5) Minutes shall be kept of Advisory Board meetings, including its resolutions, which the Chairman of the Advisory Board and the Chairman or a spokesman of the Executive Board shall sign.

C. THE EXECUTIVE BOARD

§ 23 Composition and Duties of the Executive Board

- (1) ⁽¹⁾ The Executive Board shall consist of one or more Board members, who shall be auditors. ⁽²⁾ If only one member of the Executive Board is appointed, he shall represent the Association alone. ⁽³⁾ If several members of the Executive Board are appointed, the Association shall be represented by two members of the Board. ⁽⁴⁾ The Advisory Board may stipulate that individual members of the Executive Board have individual power of representation in general or for particular legal transactions. ⁽⁵⁾ If several members of the Executive Board are appointed, the

Advisory Board may nominate one member as Chairman or several members as spokesmen with equal status.

- (2) (1) The Executive Board shall conduct the day-to-day business of the Auditing Association in accordance with a set of internal rules of procedure adopted by the Advisory Board. (2) It shall prepare the annual financial statements and the Notes thereto and submit these to the Members Meeting following approval by the Advisory Board. (3) The annual financial statements must bear an audit certificate from the auditor of the annual financial statements appointed by the Members Meeting.
- (3) (1) The Executive Board shall be released from the ban on self-contracting (§ 181 German Civil Code [*Bürgerliches Gesetzbuch (BGB)*]) in respect of all legal transactions in connection with affiliated enterprises. (2) This shall apply also to the appointment of a member of the Executive Board as manager of one or more of the said enterprises. (3) The member of the Executive Board shall, in the event of self-contracting (§ 181 German Civil Code (BGB)), only act with the approval of the Advisory Board; this approval may also be granted by the Chairman of the Advisory Board.

V. FINAL PROVISIONS

§ 24 Secrecy and Duty of Confidentiality; Notification of the Advisory Board

- (1) (1) All Auditing Association member banks and members of Auditing Association bodies shall undertake to treat everything they learn in that capacity regarding the activity and results of the work of the Auditing Association, in particular regarding the circumstances of members and their customers and regarding the circumstances of companies and persons in the context of owner control or admission procedures, in the strictest confidence and not to disclose or use the said information without authorisation, even following termination of their membership of the Auditing Association or its bodies. (2) This obligation shall also be imposed upon employees and other persons and enterprises engaged by the Auditing Association.
- (2) (1) Paragraph 1 above shall not apply to communications made by Auditing Association bodies at their own professional discretion to the competent supervisory authorities, the competent compensation scheme, the auditor of the annual financial statements of the member bank concerned, the Association of German Banks or the supervisory body of a member bank in connection with the tasks of the Auditing

Association pursuant to the provisions of these Articles. ⁽²⁾ Paragraph 1 above shall also not apply to notification of rating results for member banks or to communication of analyses and information in aggregated form on all member banks or certain groups of banks (excluding the possibility to draw conclusions about individual member banks or their customers) to the Association of German Banks and the competent compensation scheme.

- (3) ⁽¹⁾ The Advisory Board and the Members Meeting shall not be notified of rating results and the results of audits at individual banks. ⁽²⁾ Sentence 1 shall not apply to the forwarding of documents and information
1. to the Advisory Board in the case of admission audits (§ 8 paragraph 1 sentence 2), verification of conditions following an appeal by the member bank concerned (§ 11 paragraph 6) and in the event of exclusion procedures (§ 13 paragraph 2) and
 2. to the Members Meeting for preparation of decisions regarding the appeal by a member bank against refusal of an admission application (§ 8 paragraph 2 sentence 3) or against the exclusion of a member bank from the Auditing Association by the Advisory Board (§ 13 paragraph 4).

§ 25 Notifications and Service of Process

- (1) ⁽¹⁾ All Advisory Board or Members Meeting resolutions which must be served under the provisions of these Articles on a member bank or an enterprise which has applied for membership shall be communicated to the member bank or enterprise which has applied for membership by the Executive Board in writing by registered letter (with advice of delivery to the addressee in person) or by other means appropriate to ensure proof of receipt. ⁽²⁾ The same shall apply to the imposition of conditions pursuant to § 11 and the threat of initiation of an exclusion procedure pursuant to § 13 paragraph 1 sentence 1 by the Executive Board.
- (2) ⁽¹⁾ All declarations made by a member bank, the subject of which is termination of its membership must – irrespective of the Auditing Association body which is internally responsible in this regard – be made to the Executive Board in writing by registered letter (with advice of delivery to the addressee in person) or by any other means appropriate to ensure proof of receipt. ⁽²⁾ The same shall apply in the cases in which these Articles provide for internal legal remedy, by way of an appeal to the Advisory Board, against the imposition of conditions by the Executive Board or for

internal legal remedy, by way of an appeal to the Members Meeting, against Advisory Board decisions regarding the refusal of an admission application or against exclusion of a member bank from the Auditing Association.

2 Annexes

D E C L A R A T I O N

pursuant to § 10 paragraph 2 of the Articles
of the Auditing Association of German Banks

To the auditor of the annual financial statements appointed by us in accordance with
§ 340k, in conjunction with § 318, of the German Commercial Code (*Handelsgesetzbuch*
(HGB))

Re.: Auditing Association of German Banks (Auditing Association)

Supplementary to the audit assignment issued to you, we hereby declare the following:

1. We hereby release you from the requirement of confidentiality vis-à-vis the Auditing Association.
2. We hereby authorise you to provide on request to the Auditing Association information and documents based on the findings of your audit. You are also authorised to send directly to the Auditing Association the audit report with all annexes upon completion. In addition, we hereby instruct you to inform the Auditing Association in advance during auditing of any actual audit findings which may, according to reasonable commercial judgement, jeopardise deposits. We also hereby instruct you to inform the Auditing Association where necessary of any delay in completing the annual financial statements promptly and to state the reasons for such delay.

This declaration shall be irrevocable for the duration of our membership of the Auditing Association and – as long as customer deposits held with us are protected under the By-laws of the Deposit Protection Fund within the Association of German Banks – additionally for the duration of the mandate given to the Auditing Association by the Association of German Banks pursuant to § 4 paragraph 2 of the Articles of the Auditing Association and shall cover all audit assignments pursuant to § 340k of the German Commercial Code (HGB) issued during this period.

.....
(Place, date)

.....
(Legally binding signature of bank)

D E C L A R A T I O N

pursuant to § 10 paragraph 2 of the Articles
of the Auditing Association of German Banks

We hereby authorise

.....
(Name of competent supervisory authority)

to provide information to the Auditing Association of German Banks (Auditing Association) on request and also to inform it, even where not specifically requested, of anything which might be of interest to it with respect to its functions.

This declaration shall be irrevocable for the duration of our membership of the Auditing Association and – as long as customer deposits held with us are protected under the By-laws of the Deposit Protection Fund within the Association of German Banks – additionally for the duration of the mandate given to the Auditing Association by the Association of German Banks pursuant to § 4 paragraph 2 of the Articles of the Auditing Association.

.....
(Place, date)

.....
(Legally binding signature of bank)