The FMA is an independent, autonomous and integrated supervisory authority for the Austrian financial market, established as an institution under public law. It is responsible for supervising credit institutions, payment institutions, insurance undertakings, Pensionskassen (pension companies), corporate provision funds, investment funds, licensed investment service providers, credit rating agencies and stock exchanges, as well as for prospectus supervision. The FMA is also responsible for monitoring trading in listed securities to ensure that this is carried out properly and for monitoring issuers’ compliance with information and organisation obligations. Further tasks include combating the unauthorised provision of financial services and taking preventive action against money laundering and terrorist financing.

The FMA is an integral part of the European System of Financial Supervisors (ESFS) and represents Austria in the relevant European institutions, closely cooperating with the network of supervisors and actively contributing to its work.

The aims of the FMA are:

- to contribute towards the stability of Austria as a financial market;
- to reinforce confidence in the ability of the Austrian financial market to function;
- to protect in accordance with provisions of law investors, creditors and consumers; and
- to put forth preventive efforts with respect to compliance with supervisory standards while consistently punishing any violations of these standards.

In order to achieve these aims:

- the FMA monitors and takes any measures necessary to ensure compliance with provisions of law;
- the FMA defines minimum standards and publishes regulations putting legal provisions into concrete terms;
- in dialogue with market participants the FMA works out proposals for ensuring that the Austrian financial market permanently adheres to high standards;
- the FMA represents Austria’s interests in the EU and other international bodies and supports cooperation with other supervisory authorities;
- the FMA utilises and further develops modern analysis systems;
- the FMA places great emphasis on employing highly qualified and motivated staff as well as deploying the most modern technology; and
- its staff works as a team towards solving problems in a holistic manner so as to accomplish its integrated supervisory tasks efficiently and effectively.

We as staff members of the FMA identify with these aims and base our actions on the values of independence and objectivity. We fulfil our commission with confidence and in the knowledge of the significance of our efforts for the Austrian financial market.
2012 was a special year for the Financial Market Authority (FMA), marking the tenth anniversary of the creation of the autonomous supervisory body from a merger between the banking and insurance supervision units based at the Federal Ministry of Finance and the Austrian Securities Authority. Thus at the beginning of April 2012 the FMA was able to look back on the successes of its first ten years and celebrate this important milestone.

Yet occasions such as these also provide an opportunity to carry out a review. The fact is that the concept of an integrated supervisory authority has more than proved its worth and, indeed, has emerged as the optimal organisational form as the different financial sectors have grown increasingly interrelated. Particularly with regard to the identification of systemic risks in the different areas of the financial market, this broader approach to supervision has been and continues to be very useful.

The FMA has established itself over the years as a strong and assertive supervisory body, making a crucial contribution to the stability of Austria’s financial sector. This is not least thanks to you, the FMA’s employees. You have consistently shown commitment and dedication to your work, thereby guaranteeing Austria’s position as a transparent, secure and stable base for economic and financial activity.

Even if the basic route to be followed is already marked out, the work of the FMA is nevertheless set to change significantly over the coming years. Firstly, supervision has assumed a much stronger international dimension since the financial crisis and, secondly, the decisions made at European level to set up a banking union and the Single Supervisory Mechanism are momentous decisions for the future.

The new system is likely to come into effect in March 2014, under which the European Central Bank will take over direct supervision of eurozone banks classed as significant and/or of those Member States that have committed to close cooperation. The national supervisory authorities will support the European Central Bank with this task.

Establishing a Single Supervisory Mechanism (SSM) will present everyone involved with major challenges over the next few years. First of all, there needs to be a smooth transfer of supervisory powers to the European Central Bank and, additionally, redundancies will need to be avoided in the interests of cost efficiency. The Single Resolution Mechanism (SRM) – the second pillar of the banking union – should make it possible for ailing banks to be wound up without resorting to taxpayers’ money. However, in order to ensure that these problems do not even arise in the first place, a comprehensive expansion of the preventive supervisory tools is planned, use of which will require a reorientation of supervision and also change the enforcement activity of the FMA.

Two plans for regulation that have already been subject to long negotiations and are, in my view, essential for financial market stability have unfortunately been delayed somewhat at European level during the past year. This relates to the CRR/CRD IV package, consisting of one directive and one regulation, intended to implement the global rules comprising Basel III at European level and to improve the quantity and above all quality of credit institutions’ capital base, as well as to Solvency II, which sets out similar provisions for insurance undertakings.

In contrast, in Austria, the difficult debate about setting up a monitoring unit for ensuring that companies active in the capital market comply with the relevant accounting standards was successfully brought to a conclusion with the adoption of the Rechnungslegungskontrollgesetz (RL-KG; Accounting Control Act). This Act creates a two-stage system, with the Austrian Review Panel for Financial Reporting, organised in the form of an association, being responsible for the first stage, and the second stage being performed by the FMA. The aim is to make further improvements to the quality of the financial statements of companies active
in the capital market and, as a result, to boost the confidence of capital market participants in the integrity of the market.

Dear colleagues, thanks to your valuable contribution we have achieved a great deal over the past year and have also recorded key successes in overcoming the financial crisis.

Nevertheless, in 2013, the challenges facing the financial and capital market will certainly not be any easier. For me, one thing is clear. Only by working together – harnessing your skills and specialist knowledge – can we master the challenges that lie ahead. On that note, I look forward to us continuing our excellent working relationship and would like to thank you once again for your efficient, professional and motivated approach to your work at the FMA.

MARIA FEKTER
As has been confirmed by the experience of the FMA ever since it was set up more than ten years ago, the goalposts of financial markets supervision are always shifting. The pace at which new developments hit the financial markets means that the supervisory authority faces new challenges all the time, whilst the economic and regulatory environment changes so rapidly that the supervisory model is permanently being adjusted.

When the FMA took up its role in 2002, issues such as shadow banking, high frequency trading and exchange traded funds (ETFs), to name but a few, did not even figure on the agenda. At that time, Europe was working on its Financial Services Action Plan, a series of Directives that aimed to harmonise the legal foundation of what was already a European financial market without borders. Today – a whole decade and a financial crisis later – with its internal market for financial services serving some 510 million consumers and encompassing more than 6,000 banks, the European Economic Area is in the process of acquiring a central European banking supervisor, with cross-border supervision in general being stepped up on a huge scale.

The Austrian Financial Market Authority (FMA) has always been able to keep with the pace of these developments. And we are very proud of this achievement. The mere fact that the FMA’s remit has been continually expanded since it was first created, to include a growing set of new and additional tasks, is proof that we have always successfully maintained our focus on these changing objectives. To name just a few examples, these new activities have included supervision of corporate provision funds and of financial conglomerates, prospectus and compliance supervision, combating unauthorised business and preventing money laundering and the financing of terrorism. Recently, the policymakers also entrusted us with the challenging role of operating as an enforcement office for accounting standards – a type of accounting police for companies listed on the regulated market of Wiener Börse.

Our ability to face these new challenges for the good of Austria’s financial market and in the interests of its stability, drawing on our efficiency and effectiveness, is down to our excellent staff. It is our employees who keep pace with the dynamic development of the markets. It is our employees who ensure their knowledge is always as up to date as it could possibly be. And it is our employees who maintain a good working relationship with the entities being supervised.

Today, three out of every four FMA employees have a university qualification (mainly in law, economic sciences, mathematics or statistics). One in four of our staff also has an additional qualification, having completed a postgraduate course of study or passed professional examinations in law or auditing. The basic training provided by the FMA has grown into the Academy of Supervision which is run jointly by the FMA and OeNB. The “WU Executive Academy” based at Vienna University of Economics and Business (WU) is a vocational, specifically tailored two-year university course in financial market supervision. The first group of students received their final diplomas in 2012, with the fourth year-group beginning the course in 2013. Successful supervision relies on us recruiting the right candidates and on us providing excellent training and continuing professional development for our employees. It is therefore very important to us that we take this opportunity to thank the FMA’s employees and express our gratitude to them. Without their expertise and their tireless commitment, the FMA would not be where it is today. Thank you.

Of course our thanks also go to our partners in the supervisory system, namely the Federal Ministry of Finance, which develops the basic legal parameters in the legislation, and Oesterreichische Nationalbank, which is fully focused on supervision at a macro level and the stability of the financial market, but which also supports us with both off and on-site analysis in the field of banking supervision. It is only when all of the cogs in the supervisory wheel engage in perfect
harmony that the FMA as the micro-supervisor, focusing on individual institutions, can fully comply with its legal remit.

At the same time, however, not least due to the lessons learnt from the global financial crisis and its long-lasting fallout, cross-border cooperation is also becoming an ever more important element of supervision, particularly within the European Economic Area (EEA). In this regard the four new supervisory institutions in Europe – the European Systemic Risk Board (ESRB), the European Banking Authority (EBA), the European Insurance and Occupational Pensions Authority (EIOPA) and the European Securities and Markets Authority (ESMA) – have proved their worth during difficult times. For its part, the FMA has always played an active role in the decision-making bodies of these institutions and has generated vital impetus for further European integration. This forward-looking approach is now also being driven forward consistently by the central supervisory authority for banking groups with systemic importance in Europe based at the European Central Bank (ECB).

The FMA will devote all of its efforts to the development of this new European Single Supervisory Mechanism (SSM) and, in this way, ensure that cooperation between central supervisory functions and decentralised functions runs just as smoothly as supervision at Austrian level, with the same standards that Austrian providers have justifiably come to expect. And we will do everything within our power to ensure that this new European supervisory structure also guarantees a level playing field for all – providers and consumers alike – in the EEA.

Huge challenges lie ahead of us over the coming months. However, by working together with our first-rate employees and our partners on whom we can rely throughout Austria and Europe, we firmly believe that we will meet them with success.

HELMUT ETTL

KLASUS KUMPFMÜLLER
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FINANCIAL MARKETS

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DEVELOPMENTS ON THE FINANCIAL MARKETS

THE ECONOMIC ENVIRONMENT

Despite a mood of considerable, primarily political, uncertainty in the industrialised nations (intensification of the euro crisis, budget crisis in the USA) and a weaker economic performance from the group of developing countries and emerging markets compared with the previous year, global economic growth only dipped slightly in 2012. According to the International Monetary Fund, the price-adjusted figure for global economic growth in 2012 was 3.2%. The equivalent figure in 2011 was 3.9%. The slight weakening in global demand is also reflected in a lower level of growth in world trade, the volume of which was still expanding by 5.9% back in 2011. In contrast, the volume of world trade grew by a mere 2.8% in 2012 (see Chart 1).

Once again in 2012 it was the emerging markets and developing countries that proved to be the main engines of growth. Their economies grew by 5.1% in total (2011: +6.3%), although growth in the Central and Eastern Europe (CEE) region, which forms part of the group of emerging markets and developing countries, only increased by 1.8% compared with the previous year (2011: +5.3%). By way of comparison, the developing countries in Asia recorded average real growth of 6.6% (2011: +8.0%) during the year under review. The developing nations in the Middle East & North Africa (MENA)1 were the only group in this category to record a positive figure, at 5.2% (2011: +3.5%).

Within the group of industrialised nations, the biggest increases were recorded by Australia (+3.3%; 2011: +2.1%), Norway (+3.1%; 2011: +1.5%) and Israel (+2.9%; 2011: +4.6%). With a rise of 2.1%, there was an improvement in real gross domestic product (GDP) in the USA in 2012 (2011: +1.8%). Meanwhile, in Japan, a negative figure of 0.6% in 2011 was followed by a positive figure of 2.0% in 2012.

The negative development in the CEE countries, an important region for Austria, also impacted on the performance of the Austrian economy. According to provisional figures from Eurostat, Austria’s real economic output rose by 0.8%. This was considerably down on 2011 (+2.7%) but still higher than the EU average.

---

1 MENA encompasses Algeria, Bahrain, Egypt, Iran, Iraq, Israel, Jordan, Kuwait, Lebanon, Libya, Morocco, Oman, Palestinian Autonomous Areas, Qatar, Saudi Arabia, Syria, Tunisia, United Arab Emirates and Yemen.
<table>
<thead>
<tr>
<th>THE ECONOMIC ENVIRONMENT IN AUSTRIA</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
<th>2011</th>
<th>2012 (prel.)</th>
</tr>
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<tbody>
<tr>
<td><strong>SUPPLY AND DEMAND (real change in %)</strong></td>
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<tr>
<td>Gross domestic product</td>
<td>1.4</td>
<td>-3.8</td>
<td>2.1</td>
<td>2.7</td>
<td>0.7</td>
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<tr>
<td>Consumption</td>
<td>1.6</td>
<td>0.9</td>
<td>1.3</td>
<td>0.5</td>
<td>0.3</td>
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<td>Private consumption</td>
<td>0.7</td>
<td>1.1</td>
<td>1.7</td>
<td>0.7</td>
<td>0.4</td>
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<td>Public consumption</td>
<td>4.1</td>
<td>0.6</td>
<td>0.2</td>
<td>0.1</td>
<td>-0.2</td>
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<td>Gross investment</td>
<td>-1.8</td>
<td>-11.2</td>
<td>3.8</td>
<td>9.6</td>
<td>-0.7</td>
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<td>Gross fixed capital formation</td>
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<td>-7.8</td>
<td>0.8</td>
<td>7.3</td>
<td>1.2</td>
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<td>Exports</td>
<td>1.4</td>
<td>-15.6</td>
<td>8.7</td>
<td>7.2</td>
<td>2.0</td>
</tr>
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<td>Imports</td>
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<td>-13.3</td>
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<td>7.2</td>
<td>0.8</td>
</tr>
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<td><strong>LABOUR MARKET</strong></td>
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<td>Dependently employed (changes in %)</td>
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<td>-1.5</td>
<td>0.6</td>
<td>1.8</td>
<td>1.3</td>
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<td>Unemployment rate (in %)</td>
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<td></td>
<td></td>
<td></td>
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<tr>
<td>Registered</td>
<td>5.9</td>
<td>7.2</td>
<td>6.9</td>
<td>6.7</td>
<td>7.0</td>
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<td>Harmonised</td>
<td>3.8</td>
<td>4.8</td>
<td>4.4</td>
<td>4.2</td>
<td>4.3</td>
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<td><strong>PRICES AND INCOME (changes in %)</strong></td>
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</tr>
<tr>
<td>GDP deflator</td>
<td>1.8</td>
<td>1.4</td>
<td>1.8</td>
<td>2.1</td>
<td>2.0</td>
</tr>
<tr>
<td>Consumer price index (HICP)</td>
<td>3.2</td>
<td>0.4</td>
<td>1.7</td>
<td>3.6</td>
<td>2.6</td>
</tr>
<tr>
<td>Unit labour cost (overall economy)</td>
<td>4.2</td>
<td>4.5</td>
<td>-0.1</td>
<td>1.2</td>
<td>3.6</td>
</tr>
<tr>
<td>Real disposable income</td>
<td>0.7</td>
<td>0.2</td>
<td>-0.7</td>
<td>-0.8</td>
<td>0.7</td>
</tr>
<tr>
<td>Savings ratio of households</td>
<td>11.5</td>
<td>11.2</td>
<td>9.1</td>
<td>7.4</td>
<td>7.9</td>
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<tr>
<td><strong>INSOLVENCIES (changes in %)</strong></td>
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<tr>
<td>Corporate insolvencies</td>
<td>0.3</td>
<td>9.3</td>
<td>-7.6</td>
<td>-8.0</td>
<td>2.9</td>
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<tr>
<td>Private bankruptcies</td>
<td>15.3</td>
<td>6.2</td>
<td>0.2</td>
<td>6.3</td>
<td>-0.8</td>
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<tr>
<td><strong>GENERAL GOVERNMENT FINANCES (as % of GDP)</strong></td>
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</tr>
<tr>
<td>Public revenue (incl. property income)</td>
<td>48.3</td>
<td>48.5</td>
<td>48.1</td>
<td>48.0</td>
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</tr>
<tr>
<td>Public spending (incl. property expenses)</td>
<td>49.3</td>
<td>52.6</td>
<td>52.6</td>
<td>50.5</td>
<td>...</td>
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<tr>
<td>Public balance (Maastricht definition)</td>
<td>-0.9</td>
<td>-4.1</td>
<td>-4.5</td>
<td>-2.5</td>
<td>-3.1</td>
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<tr>
<td>Government debt (Maastricht definition)</td>
<td>63.8</td>
<td>69.2</td>
<td>72.0</td>
<td>72.4</td>
<td>74.5</td>
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<tr>
<td><strong>BALANCE OF PAYMENTS (as % of GDP)</strong></td>
<td></td>
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<td></td>
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</tr>
<tr>
<td>Trade balance (imports/exports of goods)</td>
<td>-0.7</td>
<td>-1.4</td>
<td>-1.5</td>
<td>-2.9</td>
<td>...</td>
</tr>
<tr>
<td>Current account balance</td>
<td>4.0</td>
<td>4.8</td>
<td>2.7</td>
<td>3.5</td>
<td>1.1</td>
</tr>
<tr>
<td><strong>INTEREST AND CREDIT</strong></td>
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<td></td>
</tr>
<tr>
<td>Domestic credit to non-banks (changes in %)</td>
<td>7.3</td>
<td>-1.2</td>
<td>3.2</td>
<td>2.7</td>
<td>0.0</td>
</tr>
<tr>
<td>Credit to non-financial enterprises</td>
<td>9.5</td>
<td>-2.5</td>
<td>2.4</td>
<td>2.7</td>
<td>0.8</td>
</tr>
<tr>
<td>Credit to households</td>
<td>5.5</td>
<td>-0.1</td>
<td>5.9</td>
<td>2.6</td>
<td>0.7</td>
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<tr>
<td>Three-month interbank rate (EURIBOR, average)</td>
<td>4.6</td>
<td>1.2</td>
<td>0.8</td>
<td>1.4</td>
<td>0.6</td>
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<tr>
<td>10-year reference government bond (average)</td>
<td>4.3</td>
<td>3.9</td>
<td>3.2</td>
<td>3.3</td>
<td>2.3</td>
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<tr>
<td><strong>EXCHANGE RATES</strong></td>
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<tr>
<td>Nominal effective exchange rate (period average)</td>
<td>116.8</td>
<td>119.7</td>
<td>111.4</td>
<td>112.1</td>
<td>107.1</td>
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<tr>
<td>Real effective exchange rate (period average)</td>
<td>105.9</td>
<td>106.8</td>
<td>98.1</td>
<td>97.6</td>
<td>92.9</td>
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**Table 2: ECONOMIC FIGURES INTERNATIONAL 2008-2012**
(Source: OECD, Eurostat, European Commission, ECB, OeNB, Austrian Institute of Economic Research, Kreditschutzverband von 1870)

<table>
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<tr>
<th>THE INTERNATIONAL ECONOMIC ENVIRONMENT</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
<th>2011</th>
<th>2012 (prel.)</th>
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<tr>
<td><strong>EU-27</strong></td>
<td></td>
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<tr>
<td>Real GDP growth (in %)</td>
<td>0.3</td>
<td>-4.3</td>
<td>2.1</td>
<td>1.5</td>
<td>-0.3</td>
</tr>
<tr>
<td>Consumer prices (changes in %)</td>
<td>3.7</td>
<td>1.0</td>
<td>2.1</td>
<td>3.1</td>
<td>2.6</td>
</tr>
<tr>
<td>Budget deficit (as % of GDP)</td>
<td>-2.4</td>
<td>-6.9</td>
<td>-6.5</td>
<td>-4.4</td>
<td>-3.8</td>
</tr>
<tr>
<td>Debt position (as % of GDP)</td>
<td>62.2</td>
<td>74.6</td>
<td>80.0</td>
<td>82.5</td>
<td>87.2</td>
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<tr>
<td>Current account balance (as % of GDP)</td>
<td>-0.4</td>
<td>-0.9</td>
<td>-0.1</td>
<td>-0.1</td>
<td>0.7</td>
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<tr>
<td><strong>USA</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Real GDP growth (in %)</td>
<td>-0.3</td>
<td>-3.1</td>
<td>2.4</td>
<td>1.8</td>
<td>2.2</td>
</tr>
<tr>
<td>Consumer prices (changes in %)</td>
<td>3.8</td>
<td>-0.4</td>
<td>1.6</td>
<td>3.2</td>
<td>2.1</td>
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<tr>
<td>Budget deficit (as % of GDP)</td>
<td>-6.4</td>
<td>-11.6</td>
<td>-10.6</td>
<td>-10.0</td>
<td>-8.5</td>
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<tr>
<td>Debt position (as % of GDP)</td>
<td>71.4</td>
<td>85.0</td>
<td>94.2</td>
<td>97.6</td>
<td>109.8</td>
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<td>Current account balance (as % of GDP)</td>
<td>-5.0</td>
<td>-4.8</td>
<td>-3.6</td>
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<td>-3.3</td>
</tr>
<tr>
<td>3-year interest rates (average)</td>
<td>2.9</td>
<td>0.7</td>
<td>0.3</td>
<td>0.3</td>
<td>0.4</td>
</tr>
<tr>
<td>10-year interest rates (average)</td>
<td>3.6</td>
<td>3.2</td>
<td>3.2</td>
<td>2.8</td>
<td>1.8</td>
</tr>
<tr>
<td>EUR/USD (average)</td>
<td>1.47</td>
<td>1.39</td>
<td>1.33</td>
<td>1.39</td>
<td>1.29</td>
</tr>
<tr>
<td><strong>JAPAN</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Real GDP growth (in %)</td>
<td>-1.0</td>
<td>-5.5</td>
<td>4.7</td>
<td>-0.6</td>
<td>1.9</td>
</tr>
<tr>
<td>Consumer prices (changes in %)</td>
<td>1.4</td>
<td>-1.4</td>
<td>-0.7</td>
<td>-0.3</td>
<td>-0.2</td>
</tr>
<tr>
<td>Budget deficit (as % of GDP)</td>
<td>-2.2</td>
<td>-8.7</td>
<td>-6.8</td>
<td>-7.2</td>
<td>-9.1</td>
</tr>
<tr>
<td>Debt position (as % of GDP)</td>
<td>174.1</td>
<td>194.1</td>
<td>200.0</td>
<td>211.7</td>
<td>214.3</td>
</tr>
<tr>
<td>Current account balance (as % of GDP)</td>
<td>4.9</td>
<td>3.3</td>
<td>2.9</td>
<td>3.7</td>
<td>2.0</td>
</tr>
<tr>
<td>3-year interest rates (average)</td>
<td>0.9</td>
<td>0.5</td>
<td>0.2</td>
<td>0.2</td>
<td>0.2</td>
</tr>
<tr>
<td>10-year interest rates (average)</td>
<td>1.5</td>
<td>1.3</td>
<td>1.2</td>
<td>1.1</td>
<td>0.8</td>
</tr>
<tr>
<td>EUR/JPY (average)</td>
<td>152.3</td>
<td>130.3</td>
<td>116.4</td>
<td>111.0</td>
<td>102.6</td>
</tr>
<tr>
<td><strong>SWITZERLAND</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Real GDP growth (in %)</td>
<td>2.2</td>
<td>-1.9</td>
<td>3.0</td>
<td>1.9</td>
<td>1.0</td>
</tr>
<tr>
<td>Consumer prices (changes in %)</td>
<td>2.3</td>
<td>-0.7</td>
<td>0.6</td>
<td>0.1</td>
<td>-0.7</td>
</tr>
<tr>
<td>Budget deficit (as % of GDP)</td>
<td>2.3</td>
<td>1.0</td>
<td>0.6</td>
<td>0.8</td>
<td>0.7</td>
</tr>
<tr>
<td>Debt position (as % of GDP)</td>
<td>43.6</td>
<td>42.5</td>
<td>41.7</td>
<td>41.0</td>
<td>39.5</td>
</tr>
<tr>
<td>Current account balance (as % of GDP)</td>
<td>8.8</td>
<td>2.5</td>
<td>11.4</td>
<td>15.1</td>
<td>11.5</td>
</tr>
<tr>
<td>3-year interest rates (average)</td>
<td>2.6</td>
<td>0.4</td>
<td>0.2</td>
<td>0.1</td>
<td>0.1</td>
</tr>
<tr>
<td>10-year interest rates (average)</td>
<td>2.8</td>
<td>2.1</td>
<td>1.6</td>
<td>1.4</td>
<td>0.6</td>
</tr>
<tr>
<td>EUR/CHF (average)</td>
<td>1.59</td>
<td>1.51</td>
<td>1.38</td>
<td>1.23</td>
<td>1.21</td>
</tr>
</tbody>
</table>
International Financial Markets

Developments on the international financial markets were once again dominated by events in the eurozone during 2012. Whilst the uncertainty on the financial markets increased during the first half of the year, not least due to growing doubts about the long-term future of the eurozone itself, the situation gradually began to ease towards the end of July after the President of the European Central Bank (ECB), Mario Draghi, publicly announced that he would do “whatever it takes” [within the mandate of the ECB] to preserve the euro.

On 6 September 2012, the ECB Council backed up Mr Draghi’s remarks, adopting its not entirely uncontroversial Outright Monetary Transactions (OMTs) programme. Under the terms of this programme, the ECB may, subject to certain conditions being fulfilled, buy up unlimited quantities of government bonds issued by euro countries on the secondary market.

(-0.3%; 2011: +1.5%) and above the average figure for the eurozone (-0.4%; 2011: +1.4%, see Chart 2 on page 12).

On the consumption side of real GDP growth in Austria, the following breakdown emerged for 2012. Household consumption grew by 0.4% (2011: +0.7%), with public consumption down by 0.2% (2011: +0.1%). Gross investment, which rose the most strongly in 2011 with an increase of 9.6%, fell by 0.7% during the reporting year. Following the deep recession during the 2009 crisis, exports grew again for the third year in a row in 2011 (2012: +2.0%, 2011: +7.3%, 2010: +8.7%).

After a rapid increase during the previous year (+3.6%), Austria’s harmonised consumer price index rose by 2.6% during 2012. Exactly the same figure was recorded for 2012 for the European Union (EU) as a whole (2011: +3.1%). In the USA, the harmonised consumer price index rose by 2.1% in 2012, compared with a figure of +3.2% in 2011 [see Chart 3].

In 2012 the topic of inflation caused by imports of raw materials rather than domestic factors was back on the agenda again. The commodity price index published by the Hamburg Institute of International Economics (HWWI), which measures the changes in the prices contained in the industrialised nations’ commodity import account and 80% of which comprises energy commodities, fell slightly on a dollar basis on average over 2012 (-2.8%). Given the euro’s relative weakness against the US dollar over the year, the HWWI commodity price index calculated on a euro basis did however rise by 5.3% in 2012.

The price of a barrel (159 litres) of Brent crude oil has risen without significant interruption from its lowest price of USD 34.00 in December 2008 during the depths of the crisis to USD 110.12 by the end of 2012 (2011 year-end: USD 106.71, see Chart 4).
As shown in Chart 5, the resulting boost to investor confidence in the long-term future of the eurozone sparked a turnaround in the major international share indices. This was not restricted to the eurozone. Japan’s leading index, the Nikkei 225, had put on 19.09 percentage points by the year-end, following a low point in mid-July, ending the year up 22.91%. Germany’s leading index, the DAX 30, performed even better, ending 2012 up 30.90% on the previous year. The Austrian share index ATX recorded a year-on-year increase of 26.94%, with the S&P 500 index in the USA up by 12.28%, and the FTSE 100 in the UK rising by 96%. The eurozone’s blue chip EURO STOXX 50 ended 2012 up 16.00% after recording a fall of 17.05% in the previous year.

The uncertainty among participants in the financial markets in relation to future price fluctuations is demonstrated by the volatilities priced in to the options that are being traded (see Chart 6). Here too, at least as far as the EURO STOXX 50 is concerned, the situation resembles that of share indices. The volatility indices for the S&P 500 and the EURO STOXX 50 reached their highest point by the middle/end of May, before levelling off during the middle of the year. Whilst the EURO STOXX 50 then fell continuously from the middle of 2012 onwards, the S&P tended to be more erratic. In terms of the year-on-year comparison, the implicit volatility of the S&P 500 fell by 4.53 percentage points, with the EURO STOXX 50 down by 9.70 percentage points.

Chart 7 compares the change in the EURO STOXX bank and insurance indices and the development of the index for other financial service providers with the average performance on the market as a whole. Here again, the familiar 2012 picture can be clearly seen. As the euro crisis intensified over the first half of 2012, all of the EURO STOXX indices experienced significant losses. The falls in European stocks as confidence levels waned were not restricted to specific sectors, although it was the banking sector that had to withstand the biggest losses, falling by 21.2% between the beginning of the year and its lowest point, recorded in late May.

All indices experienced a turnaround in the middle of the year, and all of them ended the year at a higher level than at the 2011 year-end. The biggest gains
# Table 3a: Financial Market Figures 2008–2012
(Source: OeNB, OeKB, Wiener Börse AG)

<table>
<thead>
<tr>
<th>Banking Sector</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
<th>2011</th>
<th>2012 (prel.)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Regulatory capital</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Core capital (in € billions)</td>
<td>66.9</td>
<td>72.1</td>
<td>73.3</td>
<td>72.9</td>
<td>76.3</td>
</tr>
<tr>
<td>Tier 2 capital (in € billions)</td>
<td>24.9</td>
<td>25.9</td>
<td>24.7</td>
<td>23.1</td>
<td>21.5</td>
</tr>
<tr>
<td>Equity ratio (as % of assessment base)</td>
<td>17.2</td>
<td>18.7</td>
<td>18.7</td>
<td>18.5</td>
<td>20.3</td>
</tr>
</tbody>
</table>

| Asset composition and quality |         |         |         |         |              |
| Total assets (in € billions) | 1,069.1 | 1,029.0 | 978.6   | 1,014.3 | 982.1        |
| Sectoral distribution of assets (as % of total) |         |         |         |         |              |
| Domestic banks | 27.8    | 27.1    | 24.6    | 25.2    | 23.5         |
| Foreign banks | 16.9    | 15.9    | 14.0    | 14.0    | 13.7         |
| Non-bank financial intermediaries | 3.3    | 3.4    | 3.3    | 3.0     | 3.0          |
| Non-financial enterprises | 17.4    | 17.8    | 19.2    | 18.9    | 19.9         |
| Households | 15.8    | 16.6    | 18.5    | 18.2    | 19.1         |
| Private non-profit organisations | 0.4    | 0.4    | 0.4    | 0.4     | 0.4          |
| Government | 3.3    | 3.6    | 3.9    | 4.1     | 4.2          |
| Foreign non-banks | 15.2    | 15.3    | 16.0    | 16.2    | 16.2         |
| Deposits (excluding interbank) to loans (in %) | 75.6    | 78.1    | 77.0    | 78.1    | 80.3         |
| Share of foreign currency loans granted to households (in %) | 31.1    | 29.5    | 30.1    | 28.3    | 23.9         |

| Sectoral distribution of liabilities |         |         |         |         |              |
| Domestic interbank liabilities | 23.1    | 20.7    | 18.2    | 19.0    | 17.8         |
| Foreign interbank liabilities | 9.6     | 9.2     | 8.9     | 8.9     | 8.2          |
| Deposits domestic non-banks | 25.8    | 27.1    | 28.8    | 28.6    | 30.2         |
| Deposits foreign non-banks | 4.9     | 4.9     | 5.2     | 5.8     | 5.9          |
| Own domestic issues | 14.8    | 15.7    | 16.2    | 15.1    | 14.5         |

| Earnings and profitability (in %) |         |         |         |         |              |
| ROA | 0.18    | 0.00    | 0.41    | 0.12    | 0.3         |
| ROE | 2.82    | 0.06    | 5.74    | 1.64    | 4.2         |
| Operating expenses to operating income | 55.6    | 62.1    | 58.6    | 60.9    | 63.8         |
| Personnel expenses to non-interest expenses | 50.6    | 51.4    | 50.2    | 51.2    | 51.2         |
| Balance from allocations to/release of value adjustments for credit risks (in € billions) | 4.2     | 4.4     | 2.8     | 2.4     | 1.5          |

| Sectoral distribution of income (as % of total) |         |         |         |         |              |
| Net interest income | 40.1    | 49.1    | 46.3    | 50.0    | 46.1         |
| Income from securities and investments | 35.0    | 18.6    | 20.4    | 19.0    | 19.2         |
| Balance of business on commission basis | 20.5    | 20.2    | 20.0    | 19.9    | 20.1         |
| Balance of financial business | -3.9    | 2.7     | 3.4     | 1.7     | 3.3          |

| Liquidity (in %) |         |         |         |         |              |
| Cover ratio of liquid resources of the first degree | 665.4   | 680.9   | 830.8   | 920.5   | 2368.8       |
| Cover ratio of liquid resources of the second degree | 209.2   | 236.2   | 226.9   | 218.2   | 223.0         |
### Table 3a: Financial Market Figures 2008–2012

(Source: OeNB, OeKB, Wiener Börse AG)

<table>
<thead>
<tr>
<th><strong>Austria’s Financial Market</strong></th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
<th>2011</th>
<th>2012 [prel.]</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Insurance Sector</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Earned premiums (in € millions)</td>
<td>18,059</td>
<td>18,057</td>
<td>18,797</td>
<td>19,019</td>
<td></td>
</tr>
<tr>
<td>Life assurance (increase in %)</td>
<td>2.2</td>
<td>0.5</td>
<td>1.1</td>
<td>-7.3</td>
<td></td>
</tr>
<tr>
<td>Non-life/accident insurance (increase in %)</td>
<td>0.4</td>
<td>-1.0</td>
<td>5.2</td>
<td>7.2</td>
<td></td>
</tr>
<tr>
<td>Health insurance (increase in %)</td>
<td>3.5</td>
<td>3.7</td>
<td>2.8</td>
<td>3.6</td>
<td></td>
</tr>
<tr>
<td>Technical account balance (in € millions)</td>
<td>-119</td>
<td>132</td>
<td>380</td>
<td>295</td>
<td></td>
</tr>
<tr>
<td>Financial result (in € millions)</td>
<td>2,319</td>
<td>2,730</td>
<td>3,204</td>
<td>2,964</td>
<td></td>
</tr>
<tr>
<td>Result from ordinary activities (in € millions)</td>
<td>411</td>
<td>744</td>
<td>1,100</td>
<td>1,162</td>
<td></td>
</tr>
<tr>
<td>Combined ratio (non-life/accident insurance, in %)</td>
<td>96.5</td>
<td>100.6</td>
<td>92.8</td>
<td>91.9</td>
<td></td>
</tr>
<tr>
<td><strong>Pensionskassen</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Assets managed (in € millions, year-end)</td>
<td>11,714</td>
<td>13,342</td>
<td>14,912</td>
<td>14,764</td>
<td>16,278</td>
</tr>
<tr>
<td>Performance (in %)</td>
<td>-12.9</td>
<td>9.0</td>
<td>6.5</td>
<td>-3.0</td>
<td>8.4</td>
</tr>
<tr>
<td>Beneficiaries (entitled) (in 1,000s, year-end)</td>
<td>457</td>
<td>680</td>
<td>696</td>
<td>721</td>
<td>744</td>
</tr>
<tr>
<td>Beneficiaries (recipients) (in 1,000s, year-end)</td>
<td>58</td>
<td>62</td>
<td>66</td>
<td>71</td>
<td>76</td>
</tr>
<tr>
<td><strong>Corporate Provision Funds</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Assets managed (in € millions)</td>
<td>2,138</td>
<td>2,830</td>
<td>3,573</td>
<td>4,284</td>
<td>5,275</td>
</tr>
<tr>
<td>Performance (in %)</td>
<td>-2.0</td>
<td>3.7</td>
<td>2.6</td>
<td>0.2</td>
<td>4.3</td>
</tr>
<tr>
<td><strong>Investment Funds</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Assets managed (in € millions, year-end)</td>
<td>126,037</td>
<td>136,660</td>
<td>145,176</td>
<td>134,590</td>
<td>144,411</td>
</tr>
<tr>
<td>Net inflow of funds (in € millions)</td>
<td>-15,289</td>
<td>-41</td>
<td>2,034</td>
<td>-4,695</td>
<td>-391</td>
</tr>
<tr>
<td>Number of domestic investment funds (year-end)</td>
<td>2,364</td>
<td>2,238</td>
<td>2,158</td>
<td>2,232</td>
<td>2,230</td>
</tr>
<tr>
<td><strong>Capital Market</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>ATX at year-end</td>
<td>1,751</td>
<td>2,496</td>
<td>2,904</td>
<td>1,892</td>
<td>2,401</td>
</tr>
<tr>
<td>ATX performance (in %)</td>
<td>-61.2</td>
<td>42.5</td>
<td>16.4</td>
<td>-34.9</td>
<td>26.9</td>
</tr>
<tr>
<td>Market capitalisation (in € millions, year-end)</td>
<td>52,118</td>
<td>76,951</td>
<td>91,038</td>
<td>63,679</td>
<td>78,124</td>
</tr>
<tr>
<td>Market capitalisation/GDP (in %)</td>
<td>18.5</td>
<td>28.0</td>
<td>31.8</td>
<td>21.1</td>
<td>25.2</td>
</tr>
<tr>
<td>Sales in share segment (in € millions, double counting)</td>
<td>142,938</td>
<td>72,594</td>
<td>73,530</td>
<td>60,154</td>
<td>36,089</td>
</tr>
<tr>
<td>Number of issuers (share segment, year-end)</td>
<td>96</td>
<td>94</td>
<td>86</td>
<td>81</td>
<td>79</td>
</tr>
<tr>
<td>Secondary market returns (in %, year-end)</td>
<td>3.38</td>
<td>3.15</td>
<td>2.56</td>
<td>2.15</td>
<td>0.97</td>
</tr>
<tr>
<td>Spreads of ten-year govt bonds compared w. German Bunds (in basis points)</td>
<td>73</td>
<td>29</td>
<td>49</td>
<td>111</td>
<td>43</td>
</tr>
<tr>
<td>CDS spreads (5 years, in basis points)</td>
<td>133</td>
<td>81</td>
<td>100</td>
<td>184</td>
<td>45</td>
</tr>
<tr>
<td>Sales in bond segment (in € millions)</td>
<td>1,614</td>
<td>1,947</td>
<td>2,140</td>
<td>1,309</td>
<td>238</td>
</tr>
</tbody>
</table>
Financial Market Crisis

were posted by the insurance sector (+37.3%), followed by other financial service providers (+19.5%) and banks (+14.4%).

As expected, the negative performance of the eurozone led to higher demand for government bonds, which are viewed as relatively safe. Except in the case of Austrian government bonds, the extent of this increase in demand was not, however, on a par with the previous year. As of the middle of the year the upwards trend eased off slightly again. Chart 8 shows the change in price for ten-year reference bonds from selected countries, including traditional safe havens such as Germany, Switzerland and the USA.

During 2012 Austrian government bonds were a particularly popular choice with investors. Prices rose by 12.5% over the year (2011: +4.4%). Government bonds issued by the Federal Republic of Germany, the price of which had risen by up to 6.6% during the first six months of the year, ended the trading year up 5.7% (2011: +11.2%). The prices of US, Japanese and Swiss bonds also performed positively, up by 2.9%, 2.8% and 2.6% respectively.

As in the previous year, the problems in the eurozone were only reflected on the currency markets to a limited extent. Whilst the euro did fall in value against all of the currencies listed in Chart 9 during the first half of the year, these losses were not as marked as they might have been given the considerable uncertainty surrounding the future of the European currency. At its lowest point of the year, the euro had shed 7.0% against pound sterling, compared with a 5.8% fall against the US dollar and a 5.3% drop against the Japanese yen. Following the Swiss National Bank’s introduction in September 2011 of a minimum price target for the euro/Swiss franc rate of 1.20, there was barely any fluctuation in the exchange rate between the two currencies, which deviated by no more than 1.5% from the target during 2012.

Compared with the previous year, the euro put on 13.2% against the yen and increased in value by 2.4% against the US dollar. The euro fell in value against sterling, down by 2.3% on a year-on-year basis. Above all, the euro’s strong performance against the yen during the second half of the year can be largely attributed to the relaxed monetary policy and resulting increase in the supply of yen currency.

Summing up 2012, what happened is that extreme uncertainty and concerns about a partial collapse of the eurozone intensified, particularly during the first six months of the year. To date, however, these fears have proved to be unfounded. Yet it would be premature to imagine that the European triangle of crises (sovereign debt, banking and structural crises) has been overcome.

Examples of this include, not least, the high and increasing levels of government debt of some of the states in the eurozone over the past year (see also Chart 11 on page 22), the ongoing negotiations on rescue pack-
ages for Cyprus and possibly also Spain, and the re-
newed failure by France to meet its deficit target.
Moreover, the political debate on how the EU should
look in the future has intensified to such an extent in
2012 that the risk category “political risk” has grown
considerably more significant on the financial market.
It is not just with regard to the specific design of a
common banking supervisor within the eurozone that
there has been and remains a lack of political unity.
Rather, this lack of agreement also extends to the in-
tensity of future cooperation between the Member
States on future (economic) policy. Whilst some states,
such as the United Kingdom, tend to be sceptical
towards any expansion of the “political union” and
regard the deepening and widening of the single
market as the priority, other Member States consider
closer political integration to be the engine of Euro-
pean economic growth and a means of overcoming
the crisis.

The fact that the political risk created by ongoing de-
bate can indeed manifest itself in the form of tangible
financial phenomena was very clear during the first
half of 2012. The increasing uncertainty surrounding
the future of the European currency – and the risk of
one or more peripheral countries, and primarily
Greece, being forced to leave the euro – resulted in
capital being taken out of the peripheral states and
moved to countries with a more stable reputation,
both inside and outside the EU, on an unprecedented
scale during the first two quarters of 2012. This
called the very future of Europe’s single financial
market into question. The increasing fragmentation of
the financial markets within Europe saw the financial
market crisis enter a fifth phase in Europe in 2012.

HISTORY OF THE CRISIS

In general, the financial market crisis can be divided
into five phases:

1. Crisis caused by subprime exposure, affecting US
mortgage providers and investors in securitisation
products.

2. Banking and financial market crisis caused by
rising loan defaults and falling real estate prices;
as these new factors are priced in, and as a result
of efforts to reduce risk and of an increased re-
quirement for liquidity, the prices of shares and
corporate bonds fall.

3. Real economic crisis: stifled demand, which is
tackled through fiscal policy and economic stimu-
lus programmes, significant rise in public borrow-
ing.

4. Crisis of states: sprawling budget deficits in the
midst of a recession jeopardise long-term ability to
finance government debt.

5. Fragmentation of financial markets within Europe:
The lack of convincing solutions to the European
triangle of crises (sovereign debt, banking and
structural crises) is adding to the uncertainty sur-
rounding the long-term future of the eurozone in its
current form and is causing nervous investors to shift
significant amounts of capital out of the peripheral
countries into states regarded as being more sta-
ble, both within and outside the EU.

The subprime crisis, emanating from the USA, was the
result of exceptionally low interest rates in the wake
of a very expansionist monetary policy on the part of
the US Federal Reserve. A further key factor was the
belief that real estate prices would continue to rise
forever.

This combination of factors allowed unsupervised
mortgage brokers to arrange loans for customers with
a poor credit rating. Tempting offers such as lower in-
terest rates or no interest at all during the early years
(“teaser rates”) of these mortgages, which were
generally flexible-rate products, were used to ensure
a keen level of demand. A further factor was the pros-
pect of problem-free redemption, where necessary
through the sale of the property serving as collateral
at a price that was generally expected to rise in the
future and to be higher than when the mortgage was
provided. The high loan-to-value ratios and the ease
with which borrowers could end their agreements also
helped to inflate the bubble. At the same time, a
steady decrease in the quality of loan documentation

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1 See for example the speech given by the British Prime Minister, David
Cameron, on 23 January 2013: http://www.number10.gov.uk/news/
eu-speech-at-bloomberg/

2 See for example José Barroso’s State of the Union Address 2012:
archives/2012/09/20120912_1_en.htm

3 See for example IMF Global Financial Stability Report, October 2012:
http://www.imf.org/external/Pubs/FT/GFSR/2012/02/pdf/c1.pdf
was observed. For example, borrowers’ stated asset and income levels were verified only superficially. A major factor in the growth of the mortgage loan market, and with hindsight in the obvious breakdown in quality assurance on loans, was the “originate and distribute” strategy, according to which loans only remained on the books of the originating bank for a short period before very quickly being passed on to the capital market in securitised form. The securitisation of the loans also meant that regulatory loopholes were deliberately exploited to ensure that less capital backing was required for the same level of exposure to credit risk. From the state’s point of view, the promotion of home ownership also helped to distort the market.

However, the long-term trend of rising property prices in the US came to an end in 2006 and 2007, with the counter-trend hitting those regions the hardest where prices once had risen the most strongly. The nationwide S&P/Case-Shiller index, which reflects house price changes in 20 American metropolitan regions, fell by 32.6% between the third quarter of 2006 and the second quarter of 2009. Over the following one-and-a-half years, during which time the market was twice propped up by tax relief measures, a minimal rise was observed overall. However, there was no recovery on the scale witnessed in some cases on the financial markets (see Chart 10).

Even before real estate prices had peaked in many major towns and cities, the rise in interest rates was forcing a rapid increase in households’ financial commitments. Interest rates started to rise in summer 2004 but it took until the teaser rates began to expire in 2006 for the full impact to be felt. Combined with a traditionally low savings ratio, mortgage default rates rose significantly among borrowers with low credit ratings.

Ailing loans and a rising number of defaults represent a problem for US mortgage banks mainly because the real estate serving as collateral can no longer be realised at the prices on which the original loan calculation was based. However, it is not just in direct lending business that write-downs are being required to take account of claims that cannot be recovered. The trend of securitising credit risks and thus selling structured loan pools to other, primarily European, banks or other investors inevitably means that the problem has spread beyond the US mortgage banks into other financial sectors. When assessing the underlying risks and the design of the products, investors obviously relied too heavily on the assessments of credit rating agencies, which, themselves, had insufficient data to model the risks of such products, particularly with regard to historical performance.

The rising default rates caused the prices of structured loan products such as asset backed securities (ABS) and collateralised debt obligations (CDOs) to collapse. The reason for this could also be traced back to the fact that trading in these products had practically ground to a halt. With extremely low liquidity available, sales could only be made with very large discounts. Given the need for write-downs in order to report these assets at their market values in balance sheets, credit institutions faced an increasingly tough profit situation, particularly those institutions that held ABS and CDOs based on US mortgage risks.

As early as 2007 some banks, in Germany and the UK for example, were already finding their existence under threat from the financial crisis. In the late summer of 2008, the crisis took on a new dimension that put the entire financial system at risk. The collapse of US investment bank Lehman Brothers and the problems experienced around the same time with the two US mortgage lenders Fannie Mae and Freddie Mac, the American International Group insurance corporation and the investment bank Merrill Lynch marked the
Austrian financial market worst point in the crisis to date. However, alongside these very visible institutions whose problems were all too evident to the public at large, many smaller US banks also found themselves experiencing difficulties. Between 2007 and the end of 2012, 477 institutions closed in total.

From 2008 onwards all of the world’s industrialised nations began to react with counter-measures. These included economic rescue packages and emergency measures to stabilise the banking sector, generally in the form of injections of equity capital or the provision of guarantees. These expansive fiscal policy measures at a time when tax revenues were falling resulted in massive increases in public borrowing.

Chart 12 shows the risk premiums payable by eurozone countries and those paid by selected European companies in the financial sector: these premiums have been increasing synchronously, particularly from the middle of 2011. As the positive correlation between the CDS spreads of European governments and those of banks clearly indicates, the European banking sector has also not remained immune to the negative effects of the sovereign debt crisis from 2011 onwards.

While the public purse was still able to support the foundering banks during the second phase of the crisis, these governments, as ‘payers of last resort’, are themselves now highly indebted in some cases and their resources are naturally no longer available. This placed greater pressure on the European banking sector, particularly in the peripheral countries. States’ high levels of borrowing had a negative impact on their credit ratings and thus pushed down the value of the government bonds held by the banks. Because government bonds are widely held investments in the European banking sector, including for regulatory reasons, this in turn had an impact on banks’ credit standing. This then raised the likelihood of governments having to step in with new aid, reducing the credit rating of the states concerned.

In a bid to tackle this negative spiral, European policymakers agreed to set up the European Financial Stability Facility (EFSF) for a limited period, before proceeding to create a permanent structure in the form of the European Stability Mechanism (ESM). This provides support to those states that find themselves

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**Chart 11:** GOVERNMENT DEBT OF SELECTED STATES IN RELATION TO GDP, 2010–2012 (Source: OeNB, February 2012)

**Chart 12:** INDEX OF CDS SPREADS FROM THE EUROZONE AND DENMARK, SWEDEN, THE UK, NORWAY [SOVX Western Europe]; INDEX OF CDS SPREADS OF SELECTED EUROPEAN COMPANIES IN THE FINANCIAL SECTOR [ITraxx Europe Financials] (Source: Bloomberg)

**Chart 13:** YIELDS ON 10-YEAR GOVERNMENT BONDS OF SELECTED EUROZONE COUNTRIES (Source: Datastream)
experiencing payment difficulties, thereby helping to avert any further systemic crisis. On 27 September 2012, the Luxembourg-based ESM finally entered into force, with €500 billion of aid at its disposal. In addition, the ECB, through its Long Term Refinancing Operations (LTROs), provided the European banking system with credit for the unusually long term of three years at the end of 2011/beginning of 2012. During the two auctions for unlimited funds, European banks availed themselves of more than a trillion euros in total. In order to stop the prices of ailing states’ government bonds plunging any further, the ECB, through its Securities Markets Programme (SMP) has bought up government bonds on the secondary market with an outstanding value as at 8 February 2013 of approximately €205 billion.

Neither the extraordinary measures adopted by the ECB nor the implementation of the ESM was initially enough to allay investors’ fears that the eurozone was about to start falling apart. Investors withdrew their capital from the peripheral states, and from Greece in particular, moving their money into countries inside and outside the EU that they believed to be a safer choice. The further rise in the interest rate differential within the eurozone triggered by this capital flight caused the European financial market to grow ever more fragmented. Thus the financial crisis entered a crucial phase.

Chart 13 shows how the yields on 10-year Greek government bonds began to soar again after some of the country’s debts were written off in February 2012. Any renewed rise in the yields on Greek government bonds on the scale observed prior to the debt relief measures would have further compromised Greece’s ability to sustain its debts and severely hampered the country’s reform efforts due to prohibitive debt servicing costs. The potential departure of Greece from the eurozone would have further intensified the pressure on other peripheral states and thus also led to higher interest rates. As shown in Chart 13, the situation only eased in response to the reassurance given by ECB President Mario Draghi, referred to above, and the launch of the ECB’s Outright Monetary Transactions programme in the middle of the year.

**AUSTRIAN FINANCIAL MARKET**

After a very difficult year in 2011, there was a clear improvement in the situation on the Wiener Börse equity market in 2012. The ATX ended the year at 2,401 points. This corresponds to a year-on-year increase of 26.94% and is around 42% above the low point recorded during the crisis in March 2009. However, things are still a very long way indeed from the all-time high of 5,000 points recorded in 2007. Based on the improved refinancing conditions, two banking stocks ranked among the top three performers of 2012. Erste Group Bank AG rose by 76.85%, with Raiffeisen Bank International AG up by 56.77%. With an increase of 64.90%, RHI AG was the second-best performer in 2012. Meanwhile, the biggest price falls were recorded by Telekom Austria AG (-37.88%), Verbund AG (-9.50%) and Strabag SE (-7.64%). The market capitalisation of Wiener Börse follows the trend set by share prices. The equimarkat.at segment reported capitalisation of €78.12 billion at the end of 2012, some 22.68% up on the 2011 year-end. In contrast, transaction levels were down by 40.00% on a year-on-year basis. Using the standard double counting method, the total amount traded was...
€ 36.09 billion – significantly lower, even, than 2007 when a figure of € 188.0 billion was achieved. There were further new listings in 2012, namely NanoRepro AG and Sintal Agriculture Public Limited GDRs. There were, however, also ten delistings over the course of 2012.⁶

These related to the following companies: TeleTrader Software AG; KTM AG; S & T System Integration & Technology Distribution AG; Barracuda Networks AG; Life Settlement Holding AG; GS Serie A; Private Equity Performance Beteiligungs AG; SNUKO Public Limited Company; Mobius EcoCapital plc; Tangibal Group Public Limited Company and Windworks Engineering Inc.
The outbreak of the financial and economic crisis in 2008 dramatically demonstrated just how rapidly the cumulative risks associated with foreign currency (FX) loans can have a major impact. Furthermore, these risks are faced by the banks and by the borrowers who take out such loans.

To take the example of the Swiss franc – during the period from the beginning of 2008 until 6 September 2011, when the Swiss National Bank (SNB) announced that it would do everything possible for the time being to ensure that the value of the franc did not fall below € 1.20, the Swiss currency had already increased in value by 37.5%. As at 5 September 2011 it had actually appreciated by 48.9% (see Chart 15). The collapse of US investment bank Lehman Brothers in September 2008 sparked a massive loss of confidence on the interbank market, such that Austrian credit institutions faced huge difficulties in securing foreign currency refinancing. Ultimately, it took large-scale intervention by the central banks to remedy this problem.

Moreover, the volume of outstanding foreign currency loans in Austria has reached a level that has been classed as a potential systemic risk by such international financial institutions as the International Monetary Fund (IMF), the World Bank and the European Bank for Reconstruction and Development (EBRD), as well as by the credit rating agencies (see Chart 16).

This shows how justified the warnings issued by the Financial Market Authority (FMA), Oesterreichische Nationalbank (OeNB) and the IMF were, with all three institutions having warned of the risks posed by FX loans since the outset.

Foreign currency lending to households began to boom in Austria in the middle of the 1990s. From a nominal volume of € 1.2 billion back in 1996, the volume of FX lending to private borrowers had increased ten-fold to € 12.6 billion by 2000. The volume of outstanding FX loans to households had subsequently tripled by 2010, peaking at € 38.7 billion. After 2005, almost one third of all loans issued to

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**Chart 15: Relevant Changes in Exchange Rates (Year-End) and Exchange Rate Index (Volume-Weighted) 2007–2012**

- **Exchange Rate Index (left scale, Q1 08 = 1)**
- **EUR/JPY (right scale)**
- **EUR/USD (left scale)**
- **EUR/CHF (left scale)**

<table>
<thead>
<tr>
<th>Quarter</th>
<th>Index Value</th>
</tr>
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<tr>
<td>Q1 07</td>
<td>100</td>
</tr>
<tr>
<td>Q4 07</td>
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</tr>
<tr>
<td>Q1 08</td>
<td>140</td>
</tr>
<tr>
<td>Q4 08</td>
<td>160</td>
</tr>
<tr>
<td>Q1 09</td>
<td>180</td>
</tr>
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<td>Q4 09</td>
<td>200</td>
</tr>
<tr>
<td>Q1 10</td>
<td>220</td>
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<td>Q4 10</td>
<td>240</td>
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<td>Q1 11</td>
<td>260</td>
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<td>Q4 11</td>
<td>280</td>
</tr>
<tr>
<td>Q1 12</td>
<td>300</td>
</tr>
<tr>
<td>Q4 12</td>
<td>320</td>
</tr>
</tbody>
</table>

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The turbulence on the stock markets and capital markets, affecting equities, bonds and also derivatives, meant that many of the capital market-based investment products taken out to pay off bullet loans (70% of all FX loans to private borrowers are bullet loans with repayment vehicles) did not perform anything like as well as expected and could therefore not be used to pay off the full loan amount at the end of the loan term. It also became clear during the crisis that contractual arrangements on risk limitation (conversion to euros, liquidity premiums, obligation to make additional payments) were difficult to enforce and often did significant damage to banks’ reputations in the process.
households were in foreign currencies (see Chart 17). Typically, foreign currency loans are taken out by borrowers looking to build or purchase a home. The loan will have a term of at least 20 years, will be secured by a mortgage, and will generally (in about 80% of cases) take the form of a bullet loan. This means that it is only interest that is paid during the term of the loan, with the principal being repaid in one single payment at the end of the loan term. Generally, the borrower saves using a repayment vehicle throughout the loan term. In most cases this takes the form of a capital market-based investment product such as a unit-linked or index-linked life assurance policy, investment fund or securities-based savings plan. Whether the repayment vehicle will be sufficient to repay the loan depends on whether the vehicle generates the expected level of return. Any shortfall has to be made up by the borrower.

This type of product comprising an FX bullet loan with repayment vehicle was developed by loan brokers, investment advisers and multi-level sales organisations, and subsequently fiercely promoted as it was particularly lucrative. As well as the commission for arranging the loan, there was also the even more attractive commission for arranging and selling the repayment vehicle. These commissions are generally between 80% and 170% of the annual premium paid for capital market-based investment products such as index-linked or unit-linked life assurance or securities-based savings plans over a twenty-year term. In terms of the providers, the product is entirely risk-free for the broker, since the credit default risk is borne by the bank, and the risk that the repayment vehicle contract might not be fulfilled in full is borne by the respective insurance undertaking or securities provider. For consumers meanwhile, the contractual partner after taking out the policy was not the financial adviser but the bank and the provider of the repayment vehicle. Correspondingly, the FX bullet loan with repayment vehicle became a key engine of growth in the financial adviser sector.

Between 1995 and 2005 the interest rate advantage of FX loans in Swiss francs was between 1 and 2.5 percentage points, and as much as 2.5 to 4.5 percentage points in the case of Japanese yen. At the

1 It should, however, be noted that this jump in the figures from 2003 to 2004 (+ € 9.6 billion) is partly due to a change in the data bases. Since 2004, FX loans to the borrower categories of “liberal professions” and “self-employed persons” were included in the households category.
same time, the yields on capital market-based investment products during the boom years before the crisis were disproportionately high in light of what was practically an explosion in prices on the stock markets and on the share, bond, derivative and real estate markets. The exchange rates of the two currencies that dominated FX loans, the Swiss franc and the yen, were indeed volatile during this period but remaining within a stable range. These developments and the euphoria created by the prolonged upturn distorted many people’s view of the risks associated with exchange rates, repayment vehicles and interest rates. Nevertheless, the FMA began introducing the first measures to counter the risks arising in conjunction with foreign currency financing from an early stage. Back in October 2003, the FMA introduced its first Minimum Standards for Granting and Managing Foreign Currency Loans (FMA-FX-MS) and its Minimum Standards for Granting and Managing Loans with Repayment Vehicles (FMA-TT-MS). Both sets of standards addressed banks’ internal risk management processes for coping with FX loans. They obliged banks to monitor risk on an ongoing basis, with regard to the foreign currency position, the repayment vehicle and the collateral. They also formalised the requirement for regular reporting on these issues to the executive board and supervisory board.

Subsequently, the FMA, together with the OeNB and the Austrian Federal Economic Chamber (WKO), also addressed consumers with a joint information campaign (press meetings and info folder), in order to raise awareness of the particular risks emanating from foreign currency loans. The information folder on the risks of foreign currency loans, distributed through banks and financial advisers, proved to be very popular. Several hundred thousand copies of this folder, which is updated regularly, have now been distributed to interested consumers.

Following the outbreak of the global financial and economic crisis, the FMA massively stepped up its efforts to limit the risk arising from FX loans. In fact, with effect from 10 October 2008 it imposed a de facto ban on the issuing of new FX loans to private borrowers, responding to the huge loss of confidence on the interbank market following the collapse of US investment bank Lehman Brothers and to the liquidity risk that was then affecting banks’ foreign currency positions. The extension and review of the FMA Minimum Standards on foreign currency loans and loans with repayment vehicles in March 2012 made it very clear that this type of credit was “generally unsuitable” as a standard home finance product for consumers. The granting of new loans to private borrowers was restricted to borrowers with income or assets in the foreign currency concerned and to high net worth individuals. And it was not just the granting of bullet loans with repayment vehicles to private borrowers in foreign currency that was limited, but also euro-denominated loans. Additionally, the obligations in terms of monitoring, providing information and advising were tightened up for those loans already in place. An agreement between the supervisors and the banks obliged the latter to do everything that could reasonably be expected of them to reduce the volume of outstanding foreign currency loans over the long term. In particular, the banks are now required to inform consumers about any change in the risk situation, to encourage customers to attend reviews and receive advice, and to offer tailored strategies to limit risk including attractive offers for switching to a euro-denominated finance product.

The measures introduced by the FMA are having the desired effect. At the end of December 2012, the outstanding volume of FX loans held by private domestic households was €31.7 billion, a nominal decrease of around €7 billion compared with the peak of 2010. However, because the Swiss franc has appreciated by 25.7% since the ban was placed on new FX loans in October 2008, this equates to an adjusted reduction since the third quarter of 2008 of €15.4 billion or 32.7% (see Chart 18 on page 32). Consequently, foreign currency loans, as a proportion of all loans extended to households, accounted for 24%, compared with 31.6% at their peak in 2006, and fell below a quarter for the first time in ten years. Further evidence that the supervisory measures are working can be found by analysing the development in residual maturities of FX loans to private borrowers (see Chart 19 on page 32). At the end of the third quarter of 2008, loans with a residual term of more than 20 years accounted for 30.2%, their highest level. This percentage has fallen continuously since
RISKS ASSOCIATED WITH FOREIGN CURRENCY LOANS

Foreign currency (FX) loans are associated with additional risks and often cumulative risks compared with lending in the legal tender of the state in which the borrower is resident. These not only affect the borrower but also impact on the credit institution concerned, and can therefore pose a threat to financial market stability.

RISKS FOR BORROWERS

For their part, borrowers face an exchange rate and interest rate risk when taking out an FX loan. Additionally, if the loan takes the form a bullet loan with repayment vehicle, there is also a level of risk associated with the repayment vehicle. Share price, exchange rate and interest rate risks all come into play. In the case of a bullet loan, only the interest is paid during the loan term. The amount borrowed is not repaid until the end of the loan term, when it is all repaid at once. For this purpose, the borrower will generally invest in parallel in a capital market-based investment product. This is the repayment vehicle (usually a unit-linked or index-linked life assurance policy, investment fund or securities-based savings plan), the proceeds from which are then used to repay the loan amount.

EXCHANGE RATE RISK

Whilst the only exchange rate relevant in the case of a bullet loan is the rate at the end of the loan term (maturity risk), any fall in value of the home currency in the case of amortising loans will immediately push up the monthly repayments, affecting the capital redemption and finance costs to the same extent. For example: A borrower who borrowed €100,000 in the form of a bullet loan in Swiss francs at the beginning of 2008 will have owed €137,100 by the end of 2012 as a result of the appreciation in the Swiss currency since the loan was taken out, and that is without taking into account any interest.

INTEREST RATE RISK

The interest rate risk is significant in relation to variable-interest FX loans. Although a lower foreign rate of interest compared with the domestic rate can motivate borrowers to take out an FX loan, there is often the risk with variable-interest products, particularly in the case of long loan terms, that this relative advantage will be eroded or even reversed over the term of the product.

REPAYMENT VEHICLE RISK

Designing an FX loan as a bullet loan with a repayment vehicle means speculating that the investment product used to save during the loan term will generate a markedly higher return than the amount of interest charged on the loan. If this is the case, the loan will (at least) in part pay for itself. The higher the assumed average return made on the repayment vehicle, the lower the amount that needs to be saved every month in order to be able to pay off the loan at the end of the loan term. If, however, the level of return on which the calculation is based is not actually achieved, it will not be possible to pay off the full amount of the loan.

In order to be able to calculate a correspondingly high return, capital market-based investment products are generally used as the repayment vehicles, including unit-linked or index-linked life assurance policies, securities-based savings plans or investment funds. The higher the promised or calculated return, however, the higher the risk that the target return might not be achieved. And this could have serious consequences.

To take just one example: In order to have available funds of €100,000 to pay off a 20-year loan at the end of the loan term, and assuming a 7% return on the repayment vehicle, €197 would have to be saved on a monthly basis. However, if the repayment vehicle were only to generate a return of 5%, the total amount saved would only be €79,956. This amounts to a
shortfall of €20,044; and if the return fell to 3%, the shortfall would be as much as €35,600.

In order to be able to speculate on a correspondingly high return on the repayment vehicle, borrowers will generally invest in capital market-based products. However, these too are subject to high levels of share price, exchange rate and interest rate risk. Moreover, the maturity risk must also be taken into account. The loan must be repaid on a certain date. If the financial and capital markets are subject to turbulent developments in the immediate run-up to maturity, this will generally result in capital market-based investment products experiencing sharp falls in value.

Finally, it should also be noted that there can also be correlations between different types of risk (e.g. in the case of exchange rate and interest rate risk). This means that risks can have a cumulative impact.

**RISKS FOR CREDIT INSTITUTIONS**

The additional risks that are assumed by borrowers in relation to FX loans also impact on banks’ indirect credit risk as it is more likely that borrowers will default on their loan payments. Alongside the basic risk of the borrower defaulting (direct credit risk), exchange rate risks and interest rate risks (market risk) should also be incorporated into the credit institution’s risk calculation. The strongly non-linear correlation between market and credit risk (in accordance with the principle of prudence assuming an entirely positive correlation) must be appropriately incorporated into the quantification methods used.

**CONCENTRATION RISK**

If the impact of a particular risk has serious negative repercussions for a credit institution due to that institution’s portfolio not being sufficiently diversified, reference is made to concentration risk. This can apply in the case of FX loans as a result of market developments that are detrimental to the FX portfolio, due to insufficient proceeds being realised from selling off collateral upon loan defaults or idiosyncratic refinancing shocks.

**LIQUIDITY RISK AND FOLLOW-UP FINANCING RISK**

In contrast to one-off idiosyncratic refinancing risks, structural refinancing risks in FX business – in other words the risk of a bank’s financial stability being significantly impeded due to a long-term shortage of deposits in a foreign currency making refinancing in that currency more expensive – are classed under the general term of liquidity risk. If foreign currency refinancing becomes prohibitively expensive, however, not as a result of a credit institution’s credit rating but, rather, as a consequence of a crisis on the financial markets, reference is generally made to follow-up financing risk, as a special type of liquidity risk.

**EXCHANGE RATE RISK, SOLVENCY RISK AND REPUTATION RISK**

Credit institutions are adversely affected by exchange rate risk if loans issued in foreign currency are not offset by balance sheet items or derivatives, resulting in liabilities-side gaps in the institution’s FX holdings. Additionally, high losses in FX lending also present the risk that credit institutions will not be able to comply with minimum equity requirements (solvency risk). High risk positions in relation to FX loans or drastic measures in relation to borrowers to limit the bank’s risk (such as compulsory conversion, liquidity premiums, obligations to make additional payments or realisation of collateral) can harm a credit institution’s reputation over the medium term (reputation risk).

**SYSTEMIC RISK FOR FINANCIAL MARKET STABILITY**

If there is a strong regional concentration of financial institutions holding a high proportion of foreign currency, the possibility of a destabilising effect on local banking stability cannot be excluded. Should several of the risks outlined above impact on credit institutions simultaneously, it is to be feared that what started as a local foreign currency problem could spread further with, for example, banking groups with cross-border activities finding themselves in a precarious financial position as a result. This type of destabilisation at local level could then result in a domino effect, jeopardising the stability of the national financial market and even that of the European Union’s financial market.

Furthermore, the attractiveness of FX loans resulting from their interest benefits, particularly in conjunction with home loans, can trigger an excessive level of
A high portfolio volume and the possibility of issuing new FX loans can, ultimately, also considerably limit the effectiveness of monetary measures and thus hamper the banking industry’s ability to adjust to changes in the real economic environment. Financial market stability is also jeopardised, for example, in cases in which monetary policy measures to avert crises cease to be effective. If there is a high level of FX loans compared with the volume of lending in the domestic currency, monetary policy tightening will sometimes only have a weak impact as borrowers with FX loans will not be affected by falling disposable incomes caused by domestic key interest rate hikes.

credit growth and thus contribute to the creation of price bubbles. By pushing up real estate prices, these bubbles then raise the value of potential mortgage collateral, which in turn can push up demand for credit. If the collateral provided to banks turns out to be insufficient due to a sudden turnaround in prices on the real estate sector combined with negative exchange rate developments, the banking industry will face high losses. If credit institutions are also excessively reliant on the international financial markets for refinancing purposes during a crisis and foreign currency liquidity dries up, this can have a negative impact on the stability of the financial market at national or even EU level.
then (up to Q3 2012), sinking to 9.3%. Over the same period, the proportion of residual terms in the 15 to 20-year band has increased by 9.1 percentage points, from 22.0% to 31.1%. The proportion of other even lower residual terms is also continuously rising. This means that the natural migration of the outstanding volume towards shorter residual terms is barely being offset by new lending or any extensions of existing FX loans, as is also reflected in the long-term process of cutting back issued loans.

However, foreign currency loans to private borrowers still account for almost 70% of the total outstanding volume of FX loans in Austria (just under €50 billion at the 2012 year-end). Just under 20% relates to companies, with the remaining share of just over 10% being distributed among the sectors of government (federal, provincial and local level) and non-bank financial intermediaries (see Chart 20). Companies in particular have distanced themselves in droves from foreign currency credit, after still accounting for as much as 36% of the total volume in 2004.

If the two most important sectors in foreign currency finance (households and companies) are compared, significant differences emerge:

- If FX loans are considered as a proportion of the total credit volume in the respective sector, the figure for households at the end of 2012 was 24% compared with a mere 7% in the case of companies (see Chart 21 on page 35).

- In terms of the loan currency, there are again significant differences between the two borrower categories. Whilst more than 90% of these loans to households are denominated in Swiss francs and the remainder exclusively in Japanese yen, loans in Swiss francs account for only 70% of corporate loans, with around 10% in yen and the remaining 20% in other currencies (see Chart 22 on page 35).

- The difference between private and corporate borrowers is the most marked in the repayment profile, however. Whilst, for households, just over 70% of the loans were bullet loans with repayment vehicles, not quite 10% were bullet loans without a repayment vehicle and only 20% constituted amortising loans (with regular interest payments and ongoing redemption payments), not even 20% of the loans extended to corporate borrowers were
Austrian banks in CESEE and adherence to the Guiding Principles is monitored on an ongoing basis by the OeNB through its six-monthly survey. The survey for the first half of 2012 revealed that the supervisory strategy to limit risk was beginning to work. Whilst the total amount of loans issued by Austrian subsidiaries in CESEE rose by 4% to €184.8 billion during the period from the end of 2011 until the middle of 2012, the total figure for FX lending included in this figure grew only slightly, up by 1.5% to €85.6 billion. The smaller increase in FX receivables resulted in a slight fall in the overall proportion of FX lending, to a current level of 46.3%. It should, however, be noted in this regard that the acquisition of a Polish credit institution by a major Austrian bank is included in these figures for the first time. Otherwise, the FX lending volume would actually have dropped by 2.9% in all of the three main currencies (EUR, CHF and USD). Thus the Guiding Principles are having the desired effect in relation to business strategy.

Given, however, that the proportion of FX loans still remains very high, further measures to limit the risk are being discussed, such as the introduction of a (low) ceiling for the loan-to-value ratio and/or loan-to-income ratio. This is one way in which to improve the quality of the collateral provided to secure the loans. The possibility of extending the Guiding Principles is also being considered, by limiting lending in euros (or in US dollars in the CIS) to private borrowers and small and medium-sized enterprises if these borrowers lack any income or assets (hedge) in the foreign currency. This should be dependent on the degree to which the local refinancing markets are developed.

At European level too, the issue of the risk associated with FX lending is now also being intensively debated. The European Systemic Risk Board (ESRB), for example, adopted recommendations in September 2011 to tackle the cross-border contagion effects in the European Union resulting from FX lending. One of the aims of these recommendations is to prevent the
measures introduced in the respective Member States from being circumvented through the issuing of FX loans via subsidiary banks or direct cross-border loans (principle of reciprocity). On this basis, national supervisory authorities in the country in which the banking group is based are required to adjust their measures for dealing with risks from FX lending in such a way that they are at least equivalent to the corresponding legal situation in the respective host Member States. As an alternative to adjusting the national legal framework to that of the host Member State, domestic credit institutions may also be obliged, when issuing FX loans to borrowers resident in another Member State, to adhere to the measures governing such forms of lending in the country concerned.

In conclusion, it should also be mentioned that the European Banking Authority (EBA) is currently working on guidelines for ensuring adequate provision is made for risk when granting FX loans. These EBA guidelines are to be incorporated into the Supervisory Review and Evaluation Process (SREP) in the context of Basel III.

These measures at European level strengthen cross-border cooperation among the national supervisory authorities for the limitation of risks arising from FX loans.
bullet loans with a repayment vehicle, just over 30% were bullet loans without a repayment vehicle and almost 50% were standard amortising loans (see Chart 23).

Whilst foreign currency financing and the structure of such loans makes economic sense for companies operating in an export-oriented industry, comparing the figures for households shows, in contrast, that the boom in FX loans to private borrowers was clearly much more speculative in character. In particular, the figures show that households seriously underestimated the associated economic risks, or did not have a sufficient understanding of these.

The FMA is taking consistent action to limit the risks resulting from FX loans. One particular focus will be the expansion of international cooperation – above all with the FMA’s sister authorities – to limit risks arising in conjunction with foreign exchange loans in the CESEE region (see special section “Foreign currency lending by Austria’s major banks in Central, Eastern and South-Eastern Europe” on page 33).

Additionally, with effect from 2 January 2013, the FMA has once again revised and extended its Minimum Standards governing foreign currency loans. In particular, the recommendations of the European Systemic Risk Board on this type of loan (ESRB Recommendations on Foreign Currency Lending) have been incorporated into the revised version. These Recommendations are aimed at all EU Member States and their supervisory authorities and have a corresponding weighting in international cooperation. The principle of reciprocity already described in the special section “Risks associated with foreign currency loans” on page 29 has been enshrined in the conditions for example, whilst the obligations to provide borrowers with information have been extended, and a new section has been added on the pricing of risk premiums and on internal capital allocation. Additionally, credit institutions will now be required to prepare written redemption concepts for bullet loans with a term of more than 5 years.

The aim of all of these measures introduced
by the Austrian supervisor is to make a long-term contribution to reducing the risks associated with FX loans, in the interests of both consumers and banks, and in the interests of a stable financial market in Austria.
The International Association of Insurance Supervisors (IAIS), which was founded in 1994, now has more than 200 members. The Austrian supervisory authority was among the founding members. The FMA is represented in the body by the Director of the Insurance and Pension Companies Supervision Department, Peter Braumüller, who is the Chair of the IAIS’s Executive Committee (ExCo). The ExCo reappointed Peter Braumüller for another term as Chair in 2012. The IAIS focused efforts in 2012 more strongly on external requirements relating to financial market stability and on strategic areas with promise for the future. The new orientation and priorities of the IAIS can be specifically seen in the organisation’s five strategic areas: standard setting, standard implementation, financial stability, external interactions, and effectiveness and efficiency. The ExCo established a group to prepare plans for a global capital standard for the insurance industry. The ComFrame project, aimed at a Common Framework for the Supervision of Internationally Active Insurance Groups, is planned to be completed by 2018. For the purpose of carrying out an impact study for ComFrame, the ExCo established a Field Testing Task Force and approved the mandate for the FTTF.

The Technical Committee concluded an intensive three-year process back in 2011, devoted to the reworking of the Insurance Core Principles (ICPs). These are globally applicable principles for insurance supervision, which also reflect the recommendations of the Financial Stability Board (FSB). In the area of recovery and resolution, consideration was given to making the necessary adaptations to the ICPs in order to implement the FSB’s Key Attributes.

As of December 2012, 33 IAIS members, among them the FMA, had successfully completed the accession process for the IAIS Multilateral Memorandum of Understanding (IAIS MMoU), designed to promote the exchange of information and cooperation among IAIS members.

In light of the G20 recommendations, the Financial Stability Committee (FSC) is working intensively on a methodology applicable to insurance undertakings to be used for identifying global systemically important financial institutions (G-SIFIs), on macro-prudential supervisory tools and measures in relation to G-SIFIs, and on general issues relating to financial market stability. Both the IAIS General Meeting and the 2012 Annual Conference were held in Washington DC. The main areas covered by the discussions were ComFrame, macro-prudential monitoring, consumer protection, financial stability, systemic risk and access to insurance products.

Further information on the IAIS is available on the association’s website at www.iaisweb.org.

The International Organisation of Pension Supervisors (IOPS) is the international umbrella organisation for supervisors of private and occupational pension institutions. Examples of such institutions include pension funds and Pensionskassen (pension companies). The organisation, which was set up in 2004, now comprises more than 70 members and observers from some 60 countries with highly diverse pension and supervision systems. The FMA is a founding member of the organisation.

At the IOPS General Meeting in Santiago de Chile in October 2012, three papers in the IOPS Working Papers Series were issued. One of the papers was on the structures of pension supervisory authorities and their approaches to supervision, another report concerned the supervision of pension intermediaries and
a further document addressed default investment funds. Other topics included the projects Good Practices for Internal Governance of Pension Supervisory Authorities, Costs and Fee, and Stress Tests for Pension Funds, which were launched in 2012 and will be continued in 2013.

Following the Annual General Meeting in Santiago, the IOPS in cooperation with the Organisation for Economic Co-operation and Development (OECD) staged a global forum entitled Making Funded Pensions Work, which was focused on pension funds in the Latin American market as well as, in general, on ways of making pension arrangements more common.

Further information on the IOPS is available on the organisation’s website at www.iopsweb.org.

INTERNATIONAL ORGANIZATION OF SECURITIES COMMISSIONS (IOSCO)

The International Organization of Securities Commissions (IOSCO) has 126 member organisations including the FMA. As securities markets became ever more global, the significance of the IOSCO continues to grow. The topics dealt with in 2011 are relevant to the crisis and thus highly significant. Among the topics on which work was focused were derivatives, securitisation and market infrastructure. The FMA plays an active role in the European Regional Committee (ERC).

From the FMA’s perspective, the IOSCO Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information (IOSCO MMoU) is one of the most important items of IOSCO’s work programme. The document regulates the worldwide exchange of information on matters involving securities. At the end of 2011, 80 supervisory authorities had signed the MMoU. A further 34 regulators that had not fulfilled all of the requirements were listed in Annex B. A list of members that have yet to submit an application will be published from 2013 onwards.

The Investor Alerts portal on the IOSCO website makes an important contribution to investor protection, publishing warnings about companies that are not authorised to provide investment services. These warnings are sent by the national supervisory authorities to the IOSCO. The FMA actively contributes to this platform.

The IOSCO will continue to deal intensively with the subject of market stability in 2013. With this in mind, the Standing Committee on Risk and Research has been set up. The International Monetary Fund (IMF) also has observer status in this body.

Further information on the IOSCO is available at www.iosco.org.

EUROPEAN COOPERATION

The European System of Financial Supervision (ESFS) consists of three components (see figure 1 on page 40): macro-prudential supervision through the European Systemic Risk Board (ESRB); micro-prudential supervision through the European Supervisory Authorities (ESAs); the national supervisory authorities, which will continue to be responsible for the ongoing supervision of individual institutions/groups of institutions.

The ESRB, an independent body, is based at the European Central Bank (ECB) in Frankfurt. Its role lies in assessing and monitoring systemic risks in the financial system in order to strengthen the financial markets’ ability to withstand shocks. The ESRB provides the Council of the European Union with regular assessments of the current situation. As and when required, it also provides warnings or recommendations to the EU as a whole or to one or more Member States, one or more ESAs, or one or more national supervisory authorities.

Micro-prudential supervision at European level is the role of:

- the European Banking Authority (EBA) in London;
- the European Insurance and Occupational Pensions Authority (EIOPA) in Frankfurt;
- the European Securities and Markets Authority (ESMA) in Paris.

A Joint Committee coordinates the joint efforts of the ESAs and handles issues that affect more than one sector, specifically in the four sub-committees that cover the areas of financial conglomerates, money laundering, micro-prudential analyses of cross-sectoral
International cooperation

Developments and also consumer protection and financial innovation. This system means that the interaction between micro-prudential and macro-prudential supervision has been institutionalised.

In terms of their organisational structure, the three ESAs are all the same. The Board of Supervisors (BoS) is the decision-making body, on which the FMA is represented as a voting member. With regard to the EBA, the OeNB is also represented as a non-voting member. The BoS sets the guidelines for the authority’s work, draws up its work programme and makes the regulatory decisions. A full-time chair, elected by the BoS, heads the BoS and also represents the ESA externally. This function is currently exercised by Andrea Enria (EBA), Gabriel Bernardino (EIOPA) and Steven Maijoor (ESMA).

The BoS elects a Management Board, composed of the Chairperson and six further voting members of the Board of Supervisors. Meanwhile, an Executive Director is responsible for the administrative management of the authority, preparing the work of the Management Board. The current Executive Directors are Adam Farkas (EBA), Carlos Montalvo (EIOPA) and Verena Ross (ESMA). A Board of Appeal has been set up for each authority to handle objections against ESA decisions. Stakeholder Groups have also been created to facilitate the process of consulting stakeholder representatives.

The ESAs are authorities with legal personality and both administrative and financial autonomy. They are accountable to the European Parliament and the Council. The ESAs are financed by obligatory contributions from the national supervisory authorities (60%) and from the EU budget (40%). They have been entrusted with the following responsibilities and powers in particular:

- preparing technical regulatory and implementation standards;
- issuing guidelines and recommendations;
- verifying and enforcing supervisory convergence;
- consumer protection.

In this way, they have a key role to play in the creation of a level playing field on the European financial markets.

For the purposes of securing financial stability, half-yearly financial stability reports are prepared by the ESAs and the Joint Committee for the attention of the Financial Stability Table (FST) of the EU’s Economic and Financial Committee. Following establishment of the ESAs in 2011, work on their internal processes was completed in 2012. The sector-specific and cross-sectoral bodies required by law (e.g. Mediation Panel, Board of Appeal) were additionally instated.

European Banking Authority (EBA)

The focus of the work programme in 2012 was also on financial stability. In addition to implementing the recapitalisation recommendation, the specific items included the semi-annual micro-prudential reports on the risks and vulnerabilities in the banking sector which the EBA prepares for the ESRB and the European
Parliament, the ongoing monitoring of refinancing and liquidity conditions for European banks, and the risk dashboard which the EBA submits on a quarterly basis to the Board of Supervisors and the individual parties responsible for the European Financial Stability Facility (EFSF).

In regard to regulatory activities, the focus continued to be on the preliminary work for a regulatory package aimed at implementing the Capital Requirements Directive IV (CRD IV), which will transpose the terms of Basel III into European law.

Public consultation has so far taken place on five draft regulatory technical standards. The standards concern various aspects relating to capital requirements and credit risk assessment. The items addressed also include drafts of four implementing standards in the areas of large exposures, reporting of capital requirements, and liquidity and leverage ratio.

The draft technical standards have not yet been completed, pending finalisation of the CRD IV package. Meanwhile, in September 2012 an initial draft of the regulatory technical standards based on the European Market Infrastructure Regulation (EMIR) was sent to the European Commission for their adoption. The draft standard specifies the capital requirements for central counterparties (CCPs).

Six guidelines were adopted in 2012, the specific subjects of which included the management of operational risk and market risk, remuneration policies and corporate governance. The EBA also submitted an opinion on shadow banking to the European Commission in July. At the Commission’s request, a report was published in October dealing with issues relating to risk weights for retail SME lending as proposed in CRD IV. The EBA submitted further opinions to the European Commission and the European Parliament in November, addressing recent changes to the draft text of the CRD IV regulatory framework.

As the body responsible for monitoring convergence in supervisory practices, the EBA took a more active role in ensuring coherent functioning of the supervisory colleges.

Further information is available at www.eba.europa.eu.

The focus of ESMA’s efforts in 2012 was in particular on preparing technical standards and guidelines as well as on exercising direct supervisory powers. FMA Executive Director Kurt Pribil was re-elected to the ESMA Board of Supervisors in the year under review. Gabriele Zgubic of the Chamber of Labour continues to serve as a member of the Securities and Markets Stakeholder Group.

The European Commission published in June the technical standards on the Short Selling Regulation, which had been prepared by ESMA. Among the items specified in the standards are the conditions for applying the Regulation. The specific points described and set forth include procedures for disclosing net positions in shares, the format for reporting net short positions to ESMA, and the data used for determining the principal trading venue of shares. Since the Short Selling Regulation entered into force on 1 November 2012, ESMA has been publishing links to the websites of the national supervisory authorities indicating all net short positions that have been reported to ESMA.

In the wake of the financial crisis, the institutions in Europe were called on to ensure enhanced security and transparency in Europe’s derivative markets. Nine technical standards applying to EMIR were published in December 2012. Among the items included in the standards are capital requirements for CCPs, information required to be reported to and published by trade repositories, and a settlement requirement. ESMA is responsible for supervising the trade repositories, as well as for managing entries and deletions. This means that the authority will exercise additional direct supervisory powers in 2013. While supervising the trade repositories represents a new challenge for ESMA, the first on-site inspections of credit rating agencies (CRAs) have already taken place. A report of the outcome of inspections at Fitch Ratings, Moody's Investors Services and Standard & Poor's Rating Services can be viewed on the ESMA website.

In addition to supervision of CRAs, ESMA’s work programme included completion of five MoUs, the assessment of the equivalence of third countries, the prepa-
ration of technical standards, delegated acts, guidelines and recommendations, as well as additional registrations.

ESMA can issue guidelines and recommendations in the interests of ensuring coherent, efficient and effective supervisory practices as well as uniform application of Community law. Within two months of issue, the competent authority is required to report implementation of the guideline or recommendation to ESMA. Any authority not intending to implement such a rule is required to state the reasons. Compliance Tables have been published on the ESMA website www.esma.europa.eu for all guidelines and regulations.

EUROPEAN INSURANCE AND OCCUPATIONAL PENSIONS AUTHORITY (EIOPA)

The FMA very actively participates in the bodies of EIOPA. The FMA is also represented in the Management Board of EIOPA by the Director of the FMA’s Insurance and Pension Companies Department, Peter Braumüller, who is one of six elected members of that body. In light of its responsibility for both insurance and Pensionskassen, EIOPA has two Stakeholder Groups. Austria is represented on the Occupational Pensions Stakeholder Group by Otto Farny from the Chamber of Labour and by Fritz Janda from the Association of Austrian Pension Funds.

Solvency II, the new supervisory regime for insurance undertakings, was one of the main focuses of EIOPA’s work, even though the entry into force of the framework directive, published back in 2009, has been postponed until 1 January 2014. While EIOPA continued work on drafting the necessary regulatory technical and implementing standards and on guidelines and recommendations, other work included technical specifications for an impact study of long-term guarantee products. These deliverables are a prerequisite for the policy decision. For the interim until a further policy decision is taken, an examination is currently taking place, based on an opinion submitted by EIOPA, as to which elements of the overall Solvency II package can already be applied in 2013 on the basis of the existing legal foundation.

EIOPA is dedicated to improving the efficiency and functioning of the supervisory colleges responsible for insurance groups active on a cross-border basis. The Action Plan for Colleges 2012 has introduced additional improvements over the previous year in this regard. EIOPA is monitoring compliance with the plan, among other ways by having EIOPA experts participate in college meetings, and annual reports on these efforts will ensue.

Early in the year, EIOPA provided advice to the European Commission on the revision of the Directive on the activities and supervision of institutions for occupational retirement provision (IORP Directive). In order to assess in quantitative terms the impact of this advice, EIOPA carried out a specific impact study together with the national supervisory authorities concerned. Taking into account EIOPA’s advice of February 2012, addressing a wealth of questions raised by the Commission in this regard, as well as the results of the completed impact study, the Commission plans to present an amendment of the IORP Directive in the coming months.

The intense efforts in the area of financial stability (i.e. an analysis of financial markets and of sectoral and cross-sectoral risks) have been supplemented by a periodic risk dashboard.

Worth mentioning in the area of consumer protection are the first EIOPA guidelines, dedicated to complaints-handling by insurance undertakings. These are to be applied by the FMA on the basis of the “comply or explain” mechanism. The national supervisory authorities are required to report to EIOPA as to whether they comply or intend to comply with the guidelines. The FMA submitted a positive compliance report to EIOPA by the stipulated deadline. In addition, several publications relevant for consumers were made available (examples include an overview of consumer trends and an analysis of the consumer protection powers of national supervisory authorities) and the second EIOPA Consumer Strategy Days were held.

Further information is available at https://eiopa.europa.eu.
Based on the relevant provisions of the supervisory laws, the FMA may enter into bilateral cooperation agreements (Memoranda of Understanding or MoUs) with foreign supervisory authorities. These make practical supervisory activities in cross-border cases simpler and swifter. They also serve as a confidence-building measure, towards non-EEA Member States in particular, and as an instrument in the FMA’s efforts to continually strengthen operative cooperation with its sister authorities, mainly those situated in Central, Eastern and South-Eastern European countries. The main function of the MoUs is to define in practical terms the responsibilities and obligations in relation to cross-border cooperation with the other supervisory authority in question. In 2012, an MoU was signed with Switzerland for the banking sector (see Table 4).

**MULTILATERAL MEMORANDA OF UNDERSTANDING CONCLUDED**

Similar to bilateral MoUs, Multilateral Memoranda of Understanding (MMoU) are also concluded. They serve the interests of international cooperation on supervision. Of particular importance are those MMoUs that place the exchange of relevant information on a multilaterally agreed basis, thus helping to harmonise and simplify the exchange of information between the participating authorities (see Table 5 on page 44).

**OTHER BILATERAL AND MULTILATERAL CONTACTS**

The FMA consistently strives to nurture and further expand on dialogue with other supervisory authorities, particularly those in Central, Eastern and South-Eastern Europe. As a sign of the good relations in the region, for the first time since joining the Group of Banking Supervisors from Central and Eastern Europe (BSCEE) in 2008, the FMA was elected by the member organisations to chair the Group in 2012.

This office was exercised by Michael Hysek, who heads the FMA’s Banking Supervision Department. In this capacity, the FMA hosted the 25th BSCEE Annual Conference in Vienna from 23 to 26 April 2012, attended by more than 30 representatives of the member authorities. Together with prominent guests from Austria and abroad, including the Basel Committee on Banking Supervision (BCBS), the EBA, the Autorité de Contrôle Prudentiel (AMF) of France, the Oesterreichische Nationalbank (OeNB), the Institute for Advanced Studies (IHS) and the finance industry, intensive discussions were held on upcoming implementation of Basel III and concerning cross-border supervisory cooperation.

The counterpart to the BSCEE, the Central Eastern and South-Eastern European Insurance Supervision Initiative (CESEE ISI), which the FMA had a role in initiating in 2011, held its third conference in Ljubljana in May, while the FMA hosted the fourth such event in Vienna in December. CESEE ISI is an informally structured forum for the purpose of exchanging expertise.
Among insurance supervisors in Central, Eastern and South-Eastern Europe.

At the traditional four-country meeting involving high-level representatives from the supervisory authorities in Germany, Liechtenstein, Switzerland and Austria, held in November 2012 in Vaduz, discussion focused on increased cooperation among the four authorities.

<table>
<thead>
<tr>
<th>Organisation</th>
<th>Topic</th>
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<th>Insurance</th>
<th>Pensionskassen</th>
<th>Securities</th>
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<td></td>
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<td>IAIS</td>
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<td></td>
<td></td>
<td></td>
<td>2010</td>
</tr>
<tr>
<td>All financial sector supervisory authorities, ECB, finance ministers</td>
<td>Cooperation both in times of crisis and in normal periods, as well as crisis management for coordinating efforts in cross-border crises</td>
<td></td>
<td></td>
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<td>ECB</td>
<td>Payment systems</td>
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<td></td>
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FINANCIAL MARKETS

TOPIC IN DETAIL

INTERNATIONAL COOPERATION

LEGAL DEVELOPMENTS

OPERATIONAL SUPERVISION

LEGAL AND ENFORCEMENT AFFAIRS

INTERNAL MATTERS

ANNEX
The following important legislative changes were introduced in the FMA’s area of enforcement in 2012:

**CHANGES TO EXISTING LAWS**

**BankwesengeSetz (BWG; Banking Act), Federal Law Gazette I No. 20/2012**

This amendment introduced the concept of the “group of affiliated credit institutions” (Kreditinstitute-Verband). The underlying Article 30a BWG stipulates that credit institutions may form a group of affiliated credit institutions together with a central organisation subject to FMA approval. Upon establishment of their group, the affiliated credit institutions are granted exemption from the regulatory provisions governing banking supervision. The relevant obligations must be fulfilled by the group. Article 30a BWG entered into force on 28 March 2012.

1. **StabilitätsgeSetz 2012 (StABG; First Stability Act), Federal Law Gazette I No. 22/2012**

The Bausparkassengesetz (BspG; Building Society Act) and the Pensionskassengesetz (PKG; Pensionskassen Act) were amended with this Federal Act. With regard to the BspG, the business objectives of building societies were extended, while the amendment to the PKG provides for the possibility of a flat advance tax payment (25% income tax) for (future) pensioners subject to certain requirements being met.

2. **StabilitätsgeSetz 2012 (StABG; Second Stability Act), Federal Law Gazette I No. 35/2012**

According to the second StabG 2012, the fines specified in the supervisory laws to be enforced by the FMA have been doubled across the board. Furthermore, the corporate governance rules are expanded in the Aktiengesetz (AktG; Stock Corporation Act) and the Unternehmensgesetzbuch (UGB; Corporate Code).

**Pensionskassengesetz (PKG; Pensionskassen Act), Versicherungsaufsichtsgesetz (VAG; Insurance Supervision Act) and others, Federal Law Gazette I No. 54/2012**

This amendment in the PKG strengthens the rights of beneficiaries with regard to opting for differing investment strategies, introduces new rights with regard to obtaining information and improves existing rights in this regard. The changes to the VAG will make it easier to switch between the pension company system and the occupational pension group insurance scheme.

**KapitalmarktgeSetz (KMG; Capital Market Act), BörsegeSetz (Börseg; Stock Exchange Act) and others, Federal Law Gazette I No. 83/2012**

The amendment to the KMG serves to implement changes in the Prospectus Directive (2010/73/EU). The obligatory summary of the prospectus must now contain all key information in a concise form. With regard to the requirement to disclose investments in listed companies, the amendment to the BörseG effects changes which are intended to prevent its circumvention using instruments that are not covered by the law, i.e. a “creeping takeover”. The amendment also serves to implement the Short Selling Regulation (236/2012/EU), giving the FMA, as the competent national authority, all necessary competencies to enforce it. Amendments to the Immobilien-Investmentfondsgesetz (ImmoInvFG; Real Estate Investment Fund Act) and the 2011 Investmentfondsgesetz (InvFG; Investment Fund Act) make it possible to change the custodian bank more quickly in the event of a crisis.

**Zentrale Gegenpartei-VollzugsgeSetz (ZGVG; Central Counterparties Implementation Act), Federal Law Gazette I No. 97/2012**

Regulation (EU) No 648/2012 on OTC derivatives in essence provides for uniform rules in the European Union regarding the introduction of a general clearing obligation for those OTC derivative contracts con-
sidered suitable for clearing by a central counterparty (CCP). Through the accompanying act, the FMA, as the competent authority, is mandated to carry out all tasks related to the admission and supervision of CCPs established in Austria.

**BÖRSEG, BWG and others, Federal Law Gazette I No. 119/2012**

Regulation (EU) No 1031/2010 is intended to guarantee fully harmonised access to the auctioning of greenhouse gas emission allowances within the EU and to stipulate rules to combat market abuse. The announced federal act adds those provisions that are necessary to transpose the Regulation into Austrian law so that it can be enforced. The FMA is named as the competent authority for specific supervision tasks laid down in the Regulation.

**FMA REGULATIONS**

**2007 EMITTENTEN-COMPLIANCE-VERORDNUNG (ECV; COMPLIANCE DECREE FOR ISSUERS), Federal Law Gazette II No. 30/2012**

The amendment expands the scope of ECV 2007 to include confidential price-sensitive information which, while not yet meeting all criteria for inside information, could develop into inside information due to its nature.

**5. LIQUIDITÄTSVERORDNUNG (LIQUIV; FIFTH LIQUIDITY REGULATION), Federal Law Gazette II No. 32/2012**

Against the background of the ECB Decision of 8 December 2011, the fifth LiquiV laid down that the minimum rate for liquid resources of the first degree, which the FMA may change, is lowered from 2.5% to 1.0%.

**GROSSEKREDBETEIDENZAUSTAUSCHVERORDNUNG (GKE-AUSTAUSCHV; REGULATION ON THE INTERNATIONAL EXCHANGE OF DATA FROM THE MAJOR LOANS REGISTER), Federal Law Gazette II No. 42/2012**

The Czech national bank (Česká národní banka) was added to the list of banks in Article 1 para. 1 GKE-AustauschV with this amendment.


The Republic of Ghana, the Republic of Indonesia, the Islamic Republic of Pakistan, the United Republic of Tanzania and the Kingdom of Thailand were included in the list of high-risk countries in the GTV with the amendment detailed in Federal Law Gazette II No. 101/2012. This was done in consideration of the Public Statement of the Financial Action Task Force on Money Laundering (FATF) of 16 February 2012. The Republic of Ecuador, the Republic of Yemen, the Socialist Republic of Vietnam and the Federal Republic of Somalia were included in the list of high-risk countries in the GTV with the amendment detailed in Federal Law Gazette II No. 299/2012. This was done in consideration of the FATF Public Statement of 22 June 2012. Since the Republic of Ghana is no longer listed in the FATF Public Statement of 19 October 2012 due to progress made, Ghana was deleted from the list of high-risk countries in the GTV with the amendment detailed in Federal Law Gazette II No. 517/2012.

**2. LEERVERKAUFVERBOTSVERORDNUNG (LEV; SECOND REGULATION PROHIBITING SHORT SELLING), Federal Law Gazette II No. 167/2012**

For the last time and for the period up to and including 31 October 2012, the Regulation extended the prohibition on short selling in the cash market outside market-maker activities of shares and securities representing shares in Erste Group Bank AG, Raiffeisen Bank International AG, UNIQA Versicherungen AG and VIENNA INSURANCE GROUP AG Wiener Versicherung Gruppe. Europe-wide rules apply from 1 November 2012 in respect of short selling (Regulation (EU) No 236/2012).

**FMA-GEBÜHRENVERORDNUNG (FMA-GBEV; FMA FEE REGULATION), Federal Law Gazette II No. 211/2012**

The amendment introduced new fees for approvals pursuant to the BWG. Moreover, fees pertaining to prospectus approvals were also adjusted.
LEGAL DEVELOPMENTS

MEDEWESENSAMMELNOVELLE (COLLECTIVE AMENDMENT ON REPORTING), Federal Law Gazette II No. 218/2012; GROSSKREDITALTVERORDNUNG (GKM-V; REGULATION ON MAJOR LOAN REPORTING), Federal Law Gazette II No. 272/2012

The amendment implemented the introduction of the group of affiliated credit institutions, effected by Federal Law Gazette I No. 20/2012, also in the area of reporting pertaining to banking supervision.

KAPITALANLAGEVERORDNUNG (KAVO; REGULATION ON INVESTMENTS), Federal Law Gazette II No. 273/2012

The amendment adjusted the KAVO with regard to the creditworthiness of assets, index-linked life assurance, securities lending and repurchase agreements, as well as loans.

MINDESTINHALTS-, VERÖFFENTLICHUNGS- UND SPRACHENVERORDNUNG (MVSV; MINIMUM CONTENT, PUBLISHING AND LANGUAGE REGULATION), Federal Law Gazette II No. 282/2012

The amendment adjusted the MVSV in line with the amendment to the KMG transposing the Prospectus Directive (Federal Law Gazette I No. 83/2012) into Austrian law.

HÖCHSTZINSSATZVERORDNUNG (MAXIMUM INTEREST RATE REGULATION), Federal Law Gazette II No. 354/2012

In response to the trend of falling capital market interest rates, the maximum interest rate used in calculating the technical provisions in life assurance was lowered from 2% to 1.75%.

2012 QUARTAISMELDEVERORDNUNG (QMV; REGULATION ON QUARTERLY FINANCIAL STATEMENTS), Federal Law Gazette II No. 383/2012

An adjustment of the FMA Regulation on the Layout of Quarterly Financial Statements owing to the amendment detailed in Federal Law Gazette I No. 54/2012 revising the PKG.

FMA-INCOMING-PLATTFORMVERORDNUNG (FMA-IPV; FMA REGULATION ON THE INCOMING PLATFORM), Federal Law Gazette II No. 384/2012

The amendment allows the use of the Incoming Platform for the supervision of Pensionskassen and the supervision of investment firms and investment service providers.

2012 FORMBLATT- UND JAHRESMELDEVERORDNUNG (FBjMV; REGULATION ON FORMS AND ANNUAL REPORTS), Federal Law Gazette II No. 385/2012

The forms were changed inasmuch as they now provide more transparency for the beneficiaries. The innovations apply, among other things, to the calculation of assets and aim to provide a more realistic view of the asset and risk situation of an investment and risk sharing group (substance over form).

INFORMATIONSPFLICHTENVERORDNUNG PENSKASSEN (INFOV-PK; INFORMATION REQUIREMENTS REGULATION FOR PENSIONSKASSEN), Federal Law Gazette II No. 424/2012

The amendment of the PKG, VAG and BPG by Federal Law Gazette I No. 52/2012 legally introduced, among other things, the so-called life-cycle model. Pensionskassen are legally obliged to provide information, upon request, about certain circumstances prior to a changeover to a collective pension group insurance scheme. The FMA InfoV-PK regulates the exact form that this information must take.

VERMÖGENS-, ERFOLGS- UND RISIKOAUSWEISVERORDNUNG (VERA-V; REGULATION ON ASSET, INCOME AND RISK STATEMENTS), Federal Law Gazette II No. 425/2012

With regard to the risks arising from remuneration policy and practices, aggregated data on remuneration in credit institutions and groups of credit institutions must now also be collected, as laid down in annexes to VERA-V.

VERORDNUNG ÜBER DIE ZUSÄTZLICHE ZUWEISUNG ZUR SCHWANKUNGSRÜCKSTELLUNG (ZZV; REGULATION ON THE ADDITIONAL ALLOCATION TO THE VOLATILITY RESERVE), Federal Law Gazette II No. 453/2012

Federal Law Gazette I No. 54/2012 imposed on the FMA, through the PKG, the obligation to set by means of a regulation framework conditions for an additional allocation to the volatility reserve by the management board of the Pensionskasse for the group of
persons affected, as well as criteria for the extent of the allocation. The FMA fulfilled this obligation by publishing said regulation.

2012 RECHNUNGSPARAMETERVERORDNUNG (RPV; REGULATION ON CALCULATION PARAMETERS), Federal Law Gazette II No. 454/2012
The regulation sets the maximum percentage for the assumed interest rate at 3% (security-oriented IRG: 1.75%) and for the technical surplus at 5% (security-oriented IRG: 2.75%) for new pension company contracts to be concluded and for new beneficiaries (entitled) who join existing pension company contracts.

HINTERLEGUNGS Gebühren-Verordnung (DEPOSITING FEE REGULATION), Federal Law Gazette II No. 518/2012
The amendment adjusts, among other things, the fee for depositing the final conditions of a base prospectus, as well as the final issue price and volume at the FMA in line with the average costs accruing for the FMA.
the following legislation of relevance to the areas of responsibility of the Financial Market Authority (FMA) was adopted at European level in 2012:

REGULATIONS AND DIRECTIVES

REGULATION ON SHORT SELLING AND CERTAIN ASPECTS OF CREDIT DEFAULT SWAPS – Regulation (EU) No 236/2012
This Regulation is intended to harmonise the rules for short selling and certain aspects of credit default swaps in order to enable coordinated measures at the European level, to enhance transparency and to lower risks. In this context, the national and European supervisory authorities are, among other things, equipped with the relevant powers. Entry into force: 24 March 2012.

REGULATION ON OTC DERIVATIVES, CENTRAL COUNTERPARTIES AND TRADE REPOSITORIES – Regulation (EU) No 648/2012
The aim of this Regulation is to make over-the-counter derivatives more secure and to create greater transparency in the market. Information on OTC derivative contracts is to be reported to trade repositories and made accessible to the supervisory authorities. Market participants are to receive more information. Standardised OTC derivative contracts should as a general rule be cleared through central counterparties (CCPs), in a bid to reduce counterparty credit risk. Entry into force: 16 August 2012.

To ensure that Member States are not excessively burdened by the legal obligations arising from Directive 2009/138/EC (Solvency II) and subsequently as a consequence of the Omnibus II Directive, which introduces the new supervisory architecture and is currently still being negotiated, it was necessary to postpone the date for transposing Directive 2009/138/EC into national law. This was achieved by postponing the transposition dates in Directive 2009/138/EC from originally 31 October 2012 and 1 November 2012 to 30 June 2013 and 1 April 2014 respectively. Entry into force: 15 September 2012.

COMMISSION DELEGATED REGULATIONS AND IMPLEMENTING REGULATIONS

The following three delegated regulations and one implementing regulation were issued in relation to Regulation (EU) No 236/2012 (short selling):

COMMISSION DELEGATED REGULATION SUPPLEMENTING REGULATION (EU) No 236/2012 with regard to definitions, the calculation of net short positions, covered sovereign credit default swaps, notification thresholds, liquidity thresholds for suspending restrictions, significant falls in the value of financial instruments and adverse events – Commission Delegated Regulation (EU) No 918/2012
This Regulation further specifies definitions used in Regulation (EU) 236/2012 (e.g. ownership, short sale, holding) and methods of calculating positions given in Regulation (EU) 236/2012 (e.g. method of calculation of net short positions, etc.) as well as notification thresholds. Entry into force: 12 October 2012.

COMMISSION DELEGATED REGULATION SUPPLEMENTING REGULATION (EU) No 236/2012 with regard to regulatory technical standards for the method of calculation of the fall in value for liquid shares and other financial instruments – Commission Delegated Regulation (EU) No 919/2012
This Regulation specifies the method of calculation of the 10% fall in value for liquid shares traded on a trading venue as set out in Article 23(5) of Regulation (EU) No 236/2012. The Regulation also specifies the method of calculation of the fall in value for certain financial instruments (illiquid shares, exchange-traded funds, money market instruments and derivatives whose sole underlying is a financial instrument traded on a trading venue). Entry into force: 10 October 2012.

**Commission Delegated Regulation**

with regard to net short positions, the details of the information to be provided to the European Securities and Markets Authority in relation to net short positions and the method for calculating turnover to determine exempted shares – Commission Delegated Regulation (EU) No 826/2012

This Regulation lays down regulatory technical standards, e.g. for:

- the details of the information on net short positions to be provided to the competent authorities and disclosed to the public by a natural or legal person pursuant to Article 9(5) of Regulation (EU) No 236/2012;
- the details of the information to be provided to the European Securities and Markets Authority (ESMA) by the competent authority pursuant to Article 11(3) of Regulation (EU) No 236/2012;
- the method for calculation of turnover to determine the principal venue for the trading of a share pursuant to Article 16(3) of Regulation (EU) No 236/2012.

Entry into force: 19 September 2012.

The following three implementing regulations were issued in relation to Regulation (EU) No 648/2012 (known as “EMIR” – European Market Infrastructure Regulation):

**Commission Implementing Regulation**

laying down implementing technical standards with regard to the means for public disclosure of net position in shares, the format of the information to be provided to the European Securities and Markets Authority in relation to net short positions, the types of agreements, arrangements and measures to adequately ensure that shares or sovereign debt instruments are available for settlement and the dates and period for the determination of the principal venue for a share – Commission Implementing Regulation (EU) No 827/2012

This Regulation lays down implementing technical standards, e.g. for:

- the means by which information on net short positions may be disclosed to the public by natural or legal persons as well as the format of information to be provided to the ESMA by competent authorities;
- the types of agreements, arrangements and measures that adequately ensure that the shares are available for settlement and the types of agreements or arrangements that adequately ensure that the sovereign debt is available for settlement;
- the date and period for principal trading venue calculations, notification to ESMA and the effectiveness of the relevant list.

Entry into force: 10 January 2012.

**Commission Implementing Regulation**

laying down implementing technical standards with regard to the format and frequency of trade reports to trade repositories according to Regulation (EU) No 648/2012 – Commission Implementing Regulation (EU) No 1247/2012

This Regulation in essence contains in its annex the format of the required derivative contract reports. Entry into force: 10 January 2012.

**Commission Implementing Regulation**

laying down implementing technical standards with regard to the format of applications for registration of trade repositories according to Regulation (EU) No 648/2012 – Commission Implementing Regulation (EU) No 1248/2012

This Regulation in essence contains in its annex the format for the application for registration of a trade repository to be submitted to ESMA. Entry into force: 10 January 2012.

**Commission Implementing Regulation**

laying down implementing technical standards with regard to the format of the records to be maintained by central counterparties according to Regulation (EU) No 648/2012 – Commission Implementing Regulation (EU) No 1249/2012
This Regulation in essence contains in its annex the format of the records and information to be maintained by CCPs. Entry into force: 10 January 2012.

The following four delegated regulations were issued in relation to Regulation (EU) No 1060/2009 (credit rating agencies):

**COMMISSION DELEGATED REGULATION**

supplementing Regulation (EC) No 1060/2009 with regard to regulatory technical standards on the content and format of ratings data periodic reporting to be submitted to the European Securities and Markets Authority by credit rating agencies – Commission Delegated Regulation (EU) No 446/2012

This Regulation sets out the content and format of ratings data periodic reporting to be requested from credit rating agencies for the purpose of ongoing supervision by ESMA. Entry into force: 10 January 2012.

**COMMISSION DELEGATED REGULATION**


This Regulation lays down the rules to be used in the assessment of compliance of credit rating methodologies with the requirements set out in Article 8(3) of Regulation (EC) No 1060/2009. Entry into force: 19 June 2012.

**COMMISSION DELEGATED REGULATION**

supplementing Regulation (EC) No 1060/2009 with regard to regulatory technical standards for the presentation of the information that credit rating agencies shall make available in a central repository established by the European Securities and Markets Authority – Commission Delegated Regulation (EU) No 448/2012

This Regulation specifies the rules for the presentation of the information, including structure, format, method and period of reporting, that credit rating agencies are required to make available in a central repository. Entry into force: 19 June 2012.

**COMMISSION DELEGATED REGULATION**


This Regulation extends the transitional period for recognising the Generally Accepted Accounting Principles (GAAP) of China, Canada, South Korea and India, equivalence of which should have expired on 1 January 2012, to 31 December 2014. This should provide legal certainty to issuers from these third countries listed in the Union and avoid the risk that they might have to reconcile their financial statements with the International Financial Reporting Standards (IFRS). Entry into force: 16 April 2012; retroactive effect: 1 January 2012.

**COMMISSION DELEGATED REGULATION**

amending Regulation (EC) No 809/2004 as regards the format and the content of the prospectus, the base prospectus, the summary and the final terms and as regards the disclosure requirements – Commission Delegated Regulation (EU) No 486/2012

This Regulation stipulates extensive amendments as regards the base prospectus and information to be included in the base prospectus. Entry into force: 1 June 2012.
IN TERNATIONAL LEGISLATION

COMMISSION DELEGATED REGULATION
amending Regulation (EC) No 809/2004 as regards information on the consent to use the prospectus, information on underlying indexes and the requirement for a report prepared by independent accountants or auditors – Commission Delegated Regulation (EU) No 862/2012
This Regulation specifies, among other things, the consent to use prospectuses in retail cascades as well as the information on indexes as underlyings. Entry into force: 23 September 2012.

The following Commission Delegated Regulation was issued in relation to Commission Regulation (EC) No 1569/2007 (establishing a mechanism for the determination of equivalence of accounting standards applied by third country issuers of securities):

COMMISSION DELEGATED REGULATION

EUROPEAN LEGISLATIVE PROJECTS

The following legislative projects of relevance to the FMA’s activities were tackled at European level in 2012 but have not yet been concluded or published:

AMENDMENT OF DIRECTIVE 94/19/EC ON DEPOSIT-GUARANTEE SCHEMES – Commission proposal COM (2010) 369
This proposal aims to extend the protection given to customers in the event of a credit institution becoming insolvent by maintaining a Europe-wide level of cover of € 100,000 (since Directive 2009/14/EC), quicker payment (within seven days), less bureaucracy and better information about the deposit-guarantee system.

AMENDMENT OF DIRECTIVE 97/9/EC ON INVESTOR-COMPENSATION SCHEMES – Commission proposal COM (2010) 371
The aim of this proposal is to bring the scope of investor compensation into line with the Markets in Financial Instruments Directive (MiFID) and, additionally, to increase the covered amount to € 50,000. Claims in the event of market abuse are excluded.

The draft Directive is designed to regulate the powers of the European Insurance and Occupational Pensions Authority (EIOPA) and the European Securities and Markets Authority (ESMA), and to amend both the Solvency II Directive (Directive 2009/138/EC) and the Prospectus Directive (Directive 2003/71/EC). The plan is to extend the areas already referred to in the Omnibus Directive (Directive 2010/78/EU) with regard to which the Commission can introduce technical standards and regulations in the form of delegated acts or implementing measures. Transitional periods are stipulated that allow application of the capital requirements set out in the Solvency II Directive to be suspended for a period of up to 10 years at most.

SOLVENCY II LEVEL 2 IMPLEMENTING MEASURES – Commission consultations
The European Commission carried out a public consultation process with regard to the enactment of implementing measures for the Solvency II Directive (Directive 2009/138/EC) between 24 November 2010 and 26 January 2011. The implementing measures proposed relate primarily to technical regulations (such as the risk margin, minimal capital requirement, Pillar II dampener, etc.) but also concern supervisory reporting and publication issues, in order to specify the aims of the Solvency II Directive (Directive 2009/138/EC).
EIOPA issued its last advice on the implementing measures back in 2011. The Commission is waiting for political agreement to be reached on its proposed Omnibus II Directive (particularly transitional periods) before presenting an implementing regulation.


The Commission’s proposal replaces the previous directives on capital (Capital Requirements Directive (CRD) 2006/48/EC and Capital Adequacy Directive (CAD) 2006/49/EC) with

- a directive on the authorisation of credit institutions and the supervision of credit institutions and investment firms, and
- a regulation on prudential requirements for credit institutions and investment firms (capital, liquidity, counterparty credit risk, introduction of a borrowing ratio).

The overriding objective is to make the EU’s banking sector more robust while at the same time ensuring that the banks can continue to finance industry and growth. Ultimately, the aim is to reduce the significance of external ratings for credit institutions as far as possible.


The proposal for the Directive provides for EU-wide minimum requirements for criminal sanctions applicable to insider dealing and market manipulation. Besides the definition of insider dealing and market manipulation, criminal sanctions are also set out for inciting and aiding market abuse. In this context, criminal and non-criminal liability also covers legal persons.

The proposal for the Regulation is intended to revise the Market Abuse Directive (Directive 2003/6/EC) by expanding the scope of the definition of market manipulation to include financial instruments on new trading platforms and OTC markets, and to improve government authorities’ ability to carry out investigations and to impose sanctions. The proposal also sets out higher fines and an obligation on the part of the Member States to introduce criminal penalties for wilful breaches of the statutory provisions.

**REGULATION ON MARKETS IN FINANCIAL INSTRUMENTS – MiFIR proposal of the Commission COM (2011) 652, AND DIRECTIVE ON MARKETS IN FINANCIAL INSTRUMENTS – MiFID proposal of the Commission COM (2011) 656**

These Commission proposals are designed to replace the Markets in Financial Instruments Directive (MiFID) including its implementing acts. The key goals are as follows:

- to improve transparency and monitoring of regulated markets, including derivative markets, as well as to curb excessive price volatility on the commodity markets;
- to extend the definition of instruments admitted to trading;
- to define an “organised trading facility” (OTF) and automated “crossing systems”;
- to extend the definition of “automated trading” to include “high frequency trading”;
- to introduce a small and medium enterprises market (SME market);
- to extend transaction reporting (to include, for example, instruments traded via a multi-trading facility [MTF]);
- supervisory authorities should be given the power to ban, in consultation with ESMA, certain products, services or practices that pose a risk to investor protection, financial stability or the proper functioning of markets.


This proposal aims to improve the provisions laid down in the Transparency Directive (Directive 2004/109/EC). The amendments include: establish-
DIRECTIVE ESTABLISHING A FRAMEWORK FOR THE RECOVERY AND RESOLUTION OF CREDIT INSTITUTIONS AND INVESTMENT FIRMS – Commission proposal COM (2012) 280
To manage bank failures in an orderly way and to avoid contagion to other institutions, particularly to address banking crises pre-emptively and to safeguard financial stability, the range of powers available to the relevant authorities should consist of three elements:
- preparatory steps and plans to minimise the risks of potential problems (preparation and prevention);
- in the event of incipient problems, powers to arrest a bank’s deteriorating situation at an early stage so as to avoid insolvency (early intervention); and
- if insolvency of an institution presents a concern as regards the general public interest, a clear means to reorganise or wind down the bank in an orderly fashion while preserving its critical functions and limiting to the maximum extent any exposure of taxpayers to losses in insolvency (resolution).

REGULATION ON IMPROVING SECURITIES SETTLEMENT IN THE EUROPEAN UNION AND ON CENTRAL SECURITIES DEPOSITORIES (CSDS) – Commission proposal COM (2012) 73
The proposal introduces an obligation to represent all transferable securities in book entry form and to record these in CSDs before trading them on regulated venues. Furthermore, it harmonises settlement periods and settlement discipline regimes across the EU, and introduces a common set of rules inspired by international standards addressing the risks of the CSDs’ operations and services. As all CSDs will be subject to identical substantive rules across the EU, they will benefit from uniform requirements for licensing and an EU-wide passport, which will help remove the existing barriers of access.

DIRECTIVE AMENDING DIRECTIVE 2009/65/EC ON THE COORDINATION OF LAWS, REGULATIONS AND ADMINISTRATIVE PROVISIONS RELATING TO UNDERTAKINGS FOR COLLECTIVE INVESTMENT IN TRANSFERABLE SECURITIES (UCITS) AND DIRECTIVE 2011/61/EU ON ALTERNATIVE INVESTMENT FUNDS MANAGERS IN RESPECT OF THE EXCESSIVE RELIANCE ON CREDIT RATINGS – Commission proposal COM (2011) 746
This proposal aims to revise the provisions of Directives 2009/65/EC and 2011/61/EC as regards the risk management process:
- The management or investment company or alternative investment funds managers (AIFMs) should in future be required not to solely or mechanically rely on external credit ratings for assessing the creditworthiness of the UCITS or AIF assets. External credit ratings may be used as one factor among others in this process but shall not prevail.
- Moreover, amendments to the existing empowerment of the Commission to adopt delegated acts with a view to specifying the relevant provisions of the mentioned Directives are proposed.

DIRECTIVE AMENDING DIRECTIVE 2009/65/EC ON THE COORDINATION OF LAWS, REGULATIONS AND ADMINISTRATIVE PROVISIONS RELATING TO UNDERTAKINGS FOR COLLECTIVE INVESTMENT IN TRANSFERABLE SECURITIES (UCITS) AS REGARDS DEPOSITORY FUNCTIONS, REMUNERATION POLICIES AND SANCTIONS – Commission proposal COM (2012) 350
The following five issues are dealt with in the revision of the UCITS Directive: eligibility and obligations of a depositary of financial instruments, criteria for delegating custody, liability for the loss of financial instruments held in custody, remunerations of UCITS managers and sanctions for breaches of the UCITS rules.

REGULATION ON KEY INFORMATION DOCUMENTS FOR INVESTMENT PRODUCTS (PRIIPS REGULATION) – Commission proposal COM (2012) 352
This proposal is about improving transparency in the investment market for retail investors, particularly in the case of investment products such as investment funds, retail structured products (packaged retail investment products – PRIPs) and certain types of insurance contracts used for investment purposes. European retail investors should always receive short, comparable and standardised disclosures in the form
of a Europe-wide and uniform key information document (KID), whatever the investment product they are considering. The proposal in essence contains provisions on content and preparation of the KID, as well as the obligation to provide such.

**DIRECTIVE ON INSURANCE MEDIATION (IMD2) – Commission proposal COM (2012) 360**

This proposal aims to amend Directive 2009/92/EU (Insurance Mediation Directive – IMD1) in order to ensure a level playing field between all participants involved in the selling of insurance products and to strengthen policyholder protection. The IMD2 project should achieve the following improvements: to expand the scope of application of IMD1 to all distribution channels (e.g. direct writers, car rentals, etc.); to identify, manage and mitigate conflicts of interest; to raise the level of harmonisation of administrative sanctions and measures for breach of key provisions of the current Directive; to enhance the suitability and objectiveness of advice; to ensure sellers’ professional qualifications match the complexity of products sold; to simplify and approximate the procedure for cross-border entry to insurance markets across the EU.


The two proposals for regulations, which were still being negotiated at a political level at the end of 2012, should specify the new competencies for the planned banking union. In essence, in the field of banking supervision comprehensive supervisory and sanctioning powers are to be conferred by the national authorities on the European Central Bank (ECB). With establishment of the banking union, a uniform but decentralised supervisory regime is to be set up between the ECB and Member States with oversight of all credit institutions (CI) in the eurozone and of credit institutions from those Member States that will participate in the Single Supervisory Mechanism (SSM). Supervision of CI with total assets of more than € 30 billion should henceforth (from 1 January 2014) be carried out at the level of the EU while all other CI should continue to be supervised by the Member States themselves. Details of this supervisory regime are still the subject of political debate. The European Banking Authority (EBA) will continue to exist under the new supervisory regime and continue to carry out its tasks within the scope of European legislation (e.g. technical standards), the development of guidelines and recommendations, and have special law-making powers, within the scope of proceedings of the European Supervisory Authorities (ESAs) in the case of breaches of law, emergency situations and disagreements.


The general objectives of the proposal are:
- to diminish the impact of “cliff” effects on financial institutions and markets by reducing reliance on external ratings;
- to mitigate the risks of contagion effects linked to sovereign ratings changes;
- to improve credit rating market conditions, since there is limited choice and competition in the credit rating market, with a view to improving the quality of ratings;
- to ensure a right of redress for investors, since there is insufficient protection for users of ratings who have suffered losses due to a credit rating issued in violation of the relevant regulation;
- to improve the quality of ratings by reinforcing the independence of credit rating agencies (CRAs) and promoting sound credit rating processes and methodologies;
- to reduce overreliance by financial institutions on external ratings by reducing the importance of external ratings in financial services legislation;
- to disclose details regarding the underlying asset pools of structured finance products to help investors to make their own credit risk assessment, rather than leaving them to rely solely on external ratings.
The business volume of Austrian credit institutions totalled €964 billion by the end of 2012 and had thus decreased by 2.9% compared with the previous year. Growth rates were seen specifically for the building societies (+9.7%), the savings banks (+2.5%) and the joint stock banks (+0.4%). The largest decrease by far was recorded for industrial credit cooperatives (–18.1%). In terms of business volume, rural credit cooperatives were able to maintain their market lead and accounted for a market share of 30.8%. Joint stock banks at 26.8% and savings banks at 17.9%, in contrast, succeeded in expanding their year-on-year market shares. The market shares resulting when branches from EEA countries in Austria (Article 9 BWG) and corporate provision funds are included are shown for the purposes of comparison in Chart 24.

Claims on non-banks, in spite of a slight decrease of 0.8%, continued to account for the largest share on the asset side of the Austrian banking sector in 2012, at 45.5%. Thus, the share of the balances attributed to claims on non-banks could be increased by 0.9 percentage points over 2011. Liabilities to non-banks increased both in terms of volume (+1.1%) and of share (+1.4 percentage points), accounting at 35.7% for the largest share on the liability side. At 26.6%, claims on credit institutions accounted for the second-largest share on the asset side of the balance sheet, while at 26.2% liabilities to credit institutions represented the comparable share on the liability side. These figures represent a decrease of 11.2% both in the case of claims and liabilities.

**Earnings**

A non-consolidated operating result of €6.8 billion is expected for Austrian banks as at the end of 2012. This represents a more than 11% decrease compared with the previous year. The reason for this development is a decrease in operating income (–2.3%), augmented by an increase in operating expenses (+3.5%). The positive trend in net interest income during the past few years was reversed in 2012. Declining by 8.4%, the figure dropped to the level last seen in 2009. At 46.5%, net interest income continues to account for a significant share of operating income (see Chart 27 on page 60).

Whereas the Austrian credit institutions finished the 2011 financial year at a relatively positive level with net income of €0.8 billion, the figures for 2012 would suggest that a considerable increase can be expected. Although the final figures are not yet available, the credit institutions are forecasting net income of approximately €3.2 billion for the 2012 financial year, which would represent a positive result comparable to 2010.  

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1 The following data is based on that provided as part of credit institutions’ financial statements for 2008 to 2011 and their quarterly reporting on asset, income and risk statements (on a non-consolidated basis) as at the reporting date of 31 December 2012. In order to guarantee comparability of the values from the audited financial statements with those from the asset, income and risk statements, branches from countries of the European Economic Area (EEA countries) in Austria (Article 9 BWG), credit guarantee banks and corporate provision funds are not considered.
### Table 6: MARKET DEVELOPMENT OF THE AUSTRIAN BANKING SECTOR 2008–2012

(Source: OeNB; 2008–2011 financial statement figures; 2012 asset, income and risk statements)

<table>
<thead>
<tr>
<th></th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
<th>2011</th>
<th>2012 (prov.)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>TOTAL ASSETS IN TERMS OF SECTORS (non-consolidated, in € millions)</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total assets non-consolidated [sum total]¹</td>
<td>1,047,107</td>
<td>1,005,171</td>
<td>954,437</td>
<td>992,536</td>
<td>963,985</td>
</tr>
<tr>
<td>Joint stock banks</td>
<td>308,200</td>
<td>286,251</td>
<td>244,732</td>
<td>257,415</td>
<td>258,458</td>
</tr>
<tr>
<td>Savings banks</td>
<td>177,156</td>
<td>168,529</td>
<td>162,292</td>
<td>167,818</td>
<td>172,094</td>
</tr>
<tr>
<td>Mortgage banks</td>
<td>95,908</td>
<td>93,486</td>
<td>91,959</td>
<td>88,646</td>
<td>85,033</td>
</tr>
<tr>
<td>Rural credit cooperatives</td>
<td>264,826</td>
<td>275,842</td>
<td>281,015</td>
<td>309,043</td>
<td>296,766</td>
</tr>
<tr>
<td>Industrial credit cooperatives</td>
<td>79,115</td>
<td>76,578</td>
<td>71,825</td>
<td>70,791</td>
<td>57,971</td>
</tr>
<tr>
<td>Building societies</td>
<td>20,142</td>
<td>20,883</td>
<td>21,466</td>
<td>21,935</td>
<td>24,054</td>
</tr>
<tr>
<td>Special-purpose banks²</td>
<td>101,759</td>
<td>83,602</td>
<td>81,148</td>
<td>76,887</td>
<td>69,608</td>
</tr>
<tr>
<td><strong>DEVELOPMENT OF ASSETS AND LIABILITIES (non-consolidated, in € millions)</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total assets non-consolidated [sum total]¹</td>
<td>1,047,107</td>
<td>1,005,171</td>
<td>954,437</td>
<td>992,536</td>
<td>963,985</td>
</tr>
<tr>
<td>Claims on credit institutions</td>
<td>351,462</td>
<td>326,393</td>
<td>274,170</td>
<td>288,876</td>
<td>256,408</td>
</tr>
<tr>
<td>Claims on non-banks</td>
<td>430,455</td>
<td>417,184</td>
<td>427,822</td>
<td>442,267</td>
<td>438,938</td>
</tr>
<tr>
<td>Debt securities and other fixed-income securities</td>
<td>101,050</td>
<td>103,831</td>
<td>97,450</td>
<td>93,471</td>
<td>77,578</td>
</tr>
<tr>
<td>Shares and other variable-yield securities</td>
<td>17,984</td>
<td>17,450</td>
<td>16,367</td>
<td>14,396</td>
<td>12,283</td>
</tr>
<tr>
<td>Other asset items</td>
<td>146,155</td>
<td>140,314</td>
<td>138,628</td>
<td>153,526</td>
<td>178,780</td>
</tr>
<tr>
<td>Liabilities to credit institutions</td>
<td>347,559</td>
<td>304,742</td>
<td>262,778</td>
<td>284,436</td>
<td>252,509</td>
</tr>
<tr>
<td>Liabilities to non-banks</td>
<td>320,789</td>
<td>322,351</td>
<td>325,295</td>
<td>340,307</td>
<td>344,136</td>
</tr>
<tr>
<td>Securitised liabilities</td>
<td>237,434</td>
<td>237,427</td>
<td>227,980</td>
<td>223,882</td>
<td>205,342</td>
</tr>
<tr>
<td>Other liability items</td>
<td>141,325</td>
<td>140,651</td>
<td>138,384</td>
<td>143,910</td>
<td>161,998</td>
</tr>
<tr>
<td><strong>NET INCOME IN TERMS OF SECTORS (consolidated, in € millions)</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total assets non-consolidated [sum total]¹</td>
<td>-213</td>
<td>-455</td>
<td>3,326</td>
<td>849</td>
<td>3,110</td>
</tr>
<tr>
<td>Joint stock banks</td>
<td>-866</td>
<td>425</td>
<td>438</td>
<td>-189</td>
<td>385</td>
</tr>
<tr>
<td>Savings banks</td>
<td>292</td>
<td>757</td>
<td>1,326</td>
<td>396</td>
<td>947</td>
</tr>
<tr>
<td>Mortgage banks</td>
<td>-839</td>
<td>-1,606</td>
<td>-445</td>
<td>-133</td>
<td>120</td>
</tr>
<tr>
<td>Rural credit cooperatives</td>
<td>1,179</td>
<td>1,131</td>
<td>1,531</td>
<td>2,509</td>
<td>1,620</td>
</tr>
<tr>
<td>Industrial credit cooperatives</td>
<td>186</td>
<td>-1,222</td>
<td>76</td>
<td>-1,394</td>
<td>-84</td>
</tr>
<tr>
<td>Building societies</td>
<td>-169</td>
<td>75</td>
<td>78</td>
<td>71</td>
<td>88</td>
</tr>
<tr>
<td>Special-purpose banks²</td>
<td>4</td>
<td>-15</td>
<td>322</td>
<td>-412</td>
<td>36</td>
</tr>
<tr>
<td><strong>EARNINGS (non-consolidated), in € millions</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Net interest income</td>
<td>8,161</td>
<td>8,697</td>
<td>8,971</td>
<td>9,489</td>
<td>8,689</td>
</tr>
<tr>
<td>Operating income</td>
<td>20,120</td>
<td>17,654</td>
<td>18,837</td>
<td>19,110</td>
<td>18,679</td>
</tr>
<tr>
<td>Operating expenses</td>
<td>11,084</td>
<td>10,922</td>
<td>11,192</td>
<td>11,499</td>
<td>11,899</td>
</tr>
<tr>
<td>Operating result</td>
<td>9,036</td>
<td>6,732</td>
<td>7,645</td>
<td>7,611</td>
<td>6,780</td>
</tr>
<tr>
<td>Cost-income ratio (in %)</td>
<td>55.09</td>
<td>61.86</td>
<td>59.41</td>
<td>60.17</td>
<td>63.70</td>
</tr>
<tr>
<td><strong>EXPOSURE TO CESEE (end of period in € millions)</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total assets of CESEE subsidiary banks</td>
<td>267,484</td>
<td>254,356</td>
<td>263,810</td>
<td>270,045</td>
<td>280,735</td>
</tr>
<tr>
<td>NMS-2004⁴</td>
<td>131,809</td>
<td>126,916</td>
<td>130,530</td>
<td>126,737</td>
<td>136,631</td>
</tr>
<tr>
<td>NMS-2007⁵</td>
<td>40,679</td>
<td>40,488</td>
<td>41,275</td>
<td>42,309</td>
<td>40,886</td>
</tr>
<tr>
<td>SEE⁶</td>
<td>46,745</td>
<td>48,676</td>
<td>49,122</td>
<td>51,489</td>
<td>50,976</td>
</tr>
<tr>
<td>CIS⁷</td>
<td>48,251</td>
<td>38,285</td>
<td>42,883</td>
<td>49,510</td>
<td>52,242</td>
</tr>
</tbody>
</table>

¹ Branches from EEA countries in Austria (Article 9 BWG); credit guarantee banks and corporate provision funds not included.
² Credit guarantee banks as specified in Article 5 no. 3 KStG not included.
³ The joint venture (not fully consolidated) of Bank Austria in Turkey not included; most recent data as of 30 June 2011 (editorial deadline).
⁴ NMS-2004: Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia, Slovenia.
⁵ NMS-2007: Bulgaria, Romania.
⁶ SEE: Albania, Bosnia and Herzegovina, Croatia, Kosovo, Macedonia, Montenegro, Serbia, Turkey.
⁷ CIS: Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Republic of Moldova, Russia, Tajikistan, Turkmenistan, Ukraine, Uzbekistan.
With the exception of the industrial credit cooperatives, the individual sectoral results are all positive. Despite only little net income compared with 2011, rural credit cooperatives at €1.6 billion continue to account for the largest share among sectors. Both joint stock banks and savings banks succeeded in achieving considerably higher earnings than in the previous year. The industrial credit cooperatives were the only sector to post a net loss for the year, which at €0.84 billion was still significantly smaller than that seen in 2011.

With regard to the provisions for risk (value adjustments), credit institutions are expecting a clear decrease in such provisions, falling to €2.5 billion in 2012. This figure had amounted to just under €7 billion in 2011.

MARKET PRESENCE OF AUSTRIA’S MAJOR BANKS IN CENTRAL, EASTERN AND SOUTH-EASTERN EUROPE

At the end of the fourth quarter of 2012, the 68 fully consolidated subsidiary banks in Central, Eastern and South-Eastern Europe (CESEE) reported aggregate total assets of €280.7 billion. Almost half of this figure (48.7%) was accounted for by the Member States that acceded to the EU in 2004 (NMS-2004), followed by the countries in the Commonwealth of Independent States (CIS) at 18.6%, the South-Eastern European countries (SEE) at 18.2% and the Member States that acceded to the EU in 2007 (NMS-2007) at 14.6%.

After increases in the previous two years, the Austrian banking industry continued to grow in 2012, by 4% in total.

The return on assets of Austrian subsidiary banks in CESEE came to 0.8% in 2012 (2011: 0.7%), and the return on equity rose to 6.4% (after 3.6% in 2011). The cost-income ratio increased to 50.5% (2011: 50.1%).

LEGAL BASIS

The pivotal federal statute of Austrian banking law is
the Bankwesengesetz (BGW; Banking Act). The supervision of credit institutions is regulated by Article 69 et seq. of this Act. It includes a provision requiring the FMA, notwithstanding the duties assigned to it in other federal acts, to monitor domestic credit institutions, credit institutions conducting business in Austria by way of the freedom of establishment or the freedom to provide services, and representative offices of foreign credit institutions, in order to ensure compliance with the provisions of the BGW and other catalogued federal statutes.

The most important other federal acts, compliance with which the FMA is required to verify in the banking sector, are the Sparkassengesetz (SpG; Savings Banks Act), the Bausparkassengesetz (BSpG; Building Society Act), the Hypothekenbankgesetz (HypBG; Mortgage Banks Act), the Investmentfondsgesetz (InvFG; Investment Fund Act), the Finanzkonglomeratgesetz (FKG; Financial Conglomerates Act), the Zahlungsdienstege- setz (ZaDiG; Payment Services Act) and the E-Geldgesetz (E-GeldG; Electronic Money Act). In its supervisory activities, the FMA must act in consideration of the national economic interest in a functioning banking sector and the stability of the financial market. Further important legal bases for the FMA's activities are numerous regulations enacted on the basis of the BGW and other laws, in addition to directly applicable legal acts of the EU, as well as guidelines and recommendations issued by the European Banking Authority (EBA). The EBA issued these specific sets of EBA guidelines in 2012: Guidelines on AMA (Advanced Measurement Approach) – Extensions and Changes; Guidelines on the Incremental Default and Migration Risk Charge (IRC); Guidelines on Stressed Value-At-Risk (Stressed VaR); Guidelines on the Data Collection Exercise Regarding High Earners; Guidelines on the Remuneration Benchmarking Exercise; and Guidelines on the assessment of the suitability of members of the management body and key function holders.

Amendments to the BGW

Three amendments to the BGW were adopted in 2012. Among these, the legal basis for establishing a group of affiliated credit institutions (Kreditinstitute-Verbund), specified in Article 30a BGW (Federal Law Gazette I No. 20/2012), is particularly significant. Through Article 30a BGW, Article 3 of Directive 2006/48/EC was transposed into national law, so that the model of the group of affiliated credit institutions, which has proven itself in Europe for organisational and supervisory purposes, can now be applied in Austria as well. According to this model, a central body assumes responsibility for the main control functions within the group, while the members of the group remain legally independent. Making joint use of the organisational infrastructure, the group members can nonetheless achieve significant synergy effects in business. Compliance with and monitoring of the relevant supervisory provisions takes place at the consolidated level (explanations on the government bill in annex 1648 to the shorthand verbatim records of the National Council, 24th legislative period, page 2).

The amendment issued in Federal Law Gazette I No. 35/2012 stipulated a two-fold increase of the previous maximum administrative penalties, a measure intended to improve compliance with supervisory regulations. The penalties were thus adjusted to a level commensurate with that in other countries (explanations on the government bill in annex 1685 to the shorthand verbatim records of the National Council, 24th legislative period, page 41).

Federal Law Gazette I No. 119/2012 introduced to Austrian legislation measures to support implementation of Regulation (EU) No 1031/2010 concerning the auctioning of greenhouse gas emission allowances. It was stipulated that credit institutions are only allowed to auction emission allowances when approved to do so by the FMA.

Official Tasks

Supervised Companies

As at 31 December 2012, there were 808 credit institutions in Austria, including those 29 branches of credit institutions operating in Austria pursuant to Article 9 BGW under the European Union’s freedom of establishment. To be categorised as a “credit institution” within the meaning of the BGW, an establishment must hold a licence to carry out at least one banking transaction pursuant to Article 1 para. 1 BGW. The total number
Anks operational supervision of credit institutions fell, down by 16 compared with 2011, marking the continuation of a trend in evidence for years now. Further consolidation affected particularly the decentralised sectors (rural credit cooperatives, savings banks, industrial credit cooperatives), with a drop in the number of credit institutions from 648 to 636 (see table 7).

Payment institutions
The Zahlungsdienstegesetz (ZaDiG; Payment Services Act) introduced the payment institution as a company form in Austria with effect from 1 November 2009. Payment institutions are legal entities that are entitled to commercially provide payment services. Examples of such services include credit transfers and the issuing of payment instruments. Four payment service providers were licensed in Austria as at 31 December 2012. In addition, there were four branches of payment institutions active in Austria under the EU’s freedom of establishment.

Licensing processes
Pursuant to Article 4 para. 1 BWG and Article 5 para. 1 ZaDiG, a licence is required from the FMA in order to carry out the banking transactions or payment services listed in Article 1 para. 1 BWG or Article 1 para. 2 ZaDiG. The first step in the licensing process is for the FMA to verify that the application is complete, specifically whether all details required by the BWG or ZaDiG have been provided and all documents submitted. If these requirements have been met, the actual investigation process is instigated. Firstly, the planned activity is compared with the type of licence applied for as based on the specific licensing provisions. This is done in order to exclude any “shell licences” (i.e. where a credit institution outsources its banking activities and therefore exists only as an “empty shell”) and any possible exceeding of the scope of the licence. Furthermore, the corporate structure, the articles of association, the suitability of the owners and managers – based on a “fit and proper” test – as well as the structure of the credit institution, the business plan and the risk management system are all reviewed.

The hearing process is conducted in parallel to the investigation process. This involves giving the Federal Ministry of Finance (BMF), the Oesterreichische Nationalbank (OeNB) and the deposit guarantee institutions the opportunity to give their opinion. In a final step, the documentary evidence presented is considered in full and a decision made on whether to grant

<table>
<thead>
<tr>
<th>Table 7: Number of Credit Institutions 2004–2012</th>
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<tbody>
<tr>
<td>Credit institutions</td>
</tr>
<tr>
<td>Joint stock and special-purpose banks</td>
</tr>
<tr>
<td>Savings banks</td>
</tr>
<tr>
<td>Rural credit cooperatives</td>
</tr>
<tr>
<td>Industrial credit cooperatives</td>
</tr>
<tr>
<td>Mortgage banks</td>
</tr>
<tr>
<td>Building societies</td>
</tr>
<tr>
<td>Investment fund management companies</td>
</tr>
<tr>
<td>Corporate provision funds</td>
</tr>
<tr>
<td>Exchange offices/remittance services</td>
</tr>
<tr>
<td>EU branches</td>
</tr>
<tr>
<td>Total</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Table 8: Number of Payment Institutions 2009–2012</th>
</tr>
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<tbody>
<tr>
<td></td>
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<tr>
<td>Licensed payment institutions</td>
</tr>
<tr>
<td>Licensing processes pending as at 31 December</td>
</tr>
<tr>
<td>Passive notifications</td>
</tr>
</tbody>
</table>
a licence, possibly subject to requirements and conditions. The decision is delivered to the applicant in the form of an administrative decision, informing the party that the licence has been granted or refused. Two new licences pursuant to the BWG and one new licence pursuant to the ZaDiG were granted in 2012 (see Table 9). There was a decrease in the number of approved licence extensions, down from 10 in 2011 to three in 2012. One application for a licence was refused during the reporting period. A total of five licences were declared expired or revoked.

Credit institutions and qualified financial institutions that are licensed in another Member State of the EEA do not require a licence from the FMA. These institutions may, on the basis of the fundamental freedoms applicable in the EEA, also offer their services in Austria. This may be done either under the freedom of establishment by setting up a branch or under the freedom to provide services through direct cross-border operations. A prerequisite is notification, i.e. that the competent home country supervisory authority informs the FMA that the institution concerned is in possession of a licence and details the banking transactions covered by that licence. At the same time, that authority confirms that the institution for which notification is provided is subject to supervision by the relevant home supervisor.

In the period under review, 25 credit institutions and 34 payment institutions from other Member States provided notification of their being active in Austria ("passive notification", see Tables 8 and 10). At the same time, 21 Austrian credit institutions provided notification via the FMA to the supervisory authorities in other Member States of their plans to avail themselves of the freedom of establishment or the freedom to provide services ("active notification"). These figures include new notifications and changes to existing notifications during the period under review. As at 31 December 2012, five licence extension processes pursuant to the BWG as well as one licensing process pursuant to the ZaDiG were pending.

**Sources of Information for Supervision**

**Credit institutions and payment institutions: reporting, notification and information obligations**

Banking supervision in Austria is based on several interdependent control bodies at different levels: the managing directors, the internal audit unit and the supervisory board of a credit institution (internal control) are assigned to act as the first control body. Auditors and bank auditors act as the second control body (external control). State supervision, conducted by state commissioners, FMA and OeNB, follows immediately after these lower levels.

An important source of information arises from the extensive reporting, notification and information obligations with which credit institutions are required to
Anks operationaL supeRvisaL comply by law. Article 74 BWG and Article 20 ZaDiG set out central reporting requirements, according to which credit institutions and payment institutions are obliged to provide the supervisory authority with economic key figures at periodic intervals. Annual asset, income and risk statements (VERA) contain the figures required by the supervisory authority to assess the institutions’ economic situation and their adherence to risk-specific due diligence obligations. The proof of compliance document (ONA), which is submitted monthly, provides insight into whether the credit institutions are complying with the essential standards of the BWG, particularly with regard to capital requirements and limits on large-scale investments. Further reporting obligations apply to foreign currency and liquidity risks, the positions of the trading book and the credit institutions’ master data. In accordance with an FMA regulation, the credit institutions are required to report this information to the OeNB, which then analyses it and makes it available to the FMA.

Notification obligations, set out in particular in Articles 20 and 73 BWG, relate mainly to two different categories of facts:

- planned or initiated acts such as e.g. a change of managing director or chairperson of the supervisory board; or
- facts that reveal a direct risk such as e.g. the occurrence of insolvency or over-indebtedness.

By way of example, the FMA received 166 notifications of a change in director and 24 of a change in the chairperson of the supervisory board during the year under review (see Table 11). In each of these cases the FMA is required to verify whether the individual holding the new position is personally and professionally qualified for the office. In contrast, no credit institution submitted notification of a risk affecting the ability to fulfil obligations or of the occurrence of insolvency or over-indebtedness in 2012.

In addition to the reports and notifications received from the credit institutions, the FMA also actively approaches the supervised banks. Pursuant to Article 70 para. 1 no. 1 BWG and Article 63 para. 2 no. 2 ZaDiG, the FMA may request information at any time from the supervised credit institutions and payment institutions and inspect their business documents. This enables the authorities to acquire additional information or to check the accuracy of reported data. There were 402 instances of information being obtained or of documentation being inspected in the year under review. This number of cases includes requests for statements concerning the issue of foreign currency loans, which is a special focus of supervisory efforts. Furthermore, the FMA may obtain information not only from the credit institutions themselves but also from bank auditors and auditing associations, from protection schemes as well as from government commissioners. The FMA issued 29 such requests for information in 2012.

Table 11: SOURCES OF INFORMATION 2008–2012

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<tr>
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</tr>
</thead>
<tbody>
<tr>
<td>Notification of changes in the persons appointed as directors pursuant to Article 73 para. 1 no. 3 BWG</td>
<td>85</td>
<td>140</td>
<td>219</td>
<td>149</td>
<td>166</td>
</tr>
<tr>
<td>Notification of the election of a new chairperson of the supervisory board pursuant to Article 28a para. 4 BWG</td>
<td>32</td>
<td>31</td>
<td>52</td>
<td>34</td>
<td>24</td>
</tr>
<tr>
<td>Notification by the director of danger for creditors, possible insolvency or over-indebtedness pursuant to Article 73 para. 1 no. 3 or 6 BWG or Article 11 para. 1 nos. 5 or 6 ZaDiG</td>
<td>2</td>
<td>2</td>
<td>1</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Information obtained from or inspection at credit institution pursuant to Article 70 para. 1 no. 1 BWG</td>
<td>179</td>
<td>307</td>
<td>382</td>
<td>384</td>
<td>402</td>
</tr>
<tr>
<td>Information obtained from bank auditor, protection scheme and government commissioner pursuant to Article 70 para. 1 no. 2 BWG</td>
<td>Not surveyed</td>
<td>5</td>
<td>30</td>
<td>13</td>
<td>29</td>
</tr>
<tr>
<td>Notifications of facts required to be reported by bank auditors pursuant to Article 63 para. 3 BWG</td>
<td>55</td>
<td>36</td>
<td>31</td>
<td>42</td>
<td>39</td>
</tr>
<tr>
<td>Bank auditor meetings/early recognition meetings</td>
<td>38</td>
<td>40</td>
<td>47</td>
<td>52</td>
<td>43</td>
</tr>
<tr>
<td>Management talks</td>
<td>60</td>
<td>78</td>
<td>73</td>
<td>63</td>
<td>61</td>
</tr>
</tbody>
</table>

The requirement to provide notification of a change in the chairperson of the supervisory board applies only to institutions having total assets exceeding 750 million at the time when the chairperson is elected.
The Basel Committee on Banking Supervision (BCBS) was set up in 1974 by the central banks and bank supervisors of the G10 states in order to create an international standard for appropriate minimum levels of capital for banks. Its main role is to help introduce high and uniform standards in banking supervision by means of guidelines and recommendations.

**From Basel I to Basel III**

The Basel Capital Accord was drawn up in 1988 and, although not legally binding, became a recognised standard in the 1990s, referred to as “Basel I”. By the end of the 1990s, however, Basel I had begun to face criticism due to its failure to take account of the dynamic development in methods to reduce risks and because it had not broken the general concept of risk down in sufficient detail. Consequently, negotiations on a completely new version of the rules began in 1999. This new version, known as “Basel II” entered into force in 2007. In order to ensure that the capital requirements adequately reflected risk, the newly revised minimum capital requirements formed part of a three-pillar model encompassing a supervisory review process and also extended transparency and disclosure obligations. Basel II had barely been implemented when the global financial crisis revealed weaknesses inherent in its rules and sparked off a new reform project. The package of reforms designed to avoid such types of crisis in the future and to strengthen the banking sector’s resistance to crisis, which was adopted by the Basel Committee in December 2010, became known as “Basel III”. As part of this process, a global regulatory framework for more resilient banks and banking systems was established. For the purposes of implementing Basel III in the European Economic Area (EEA), the European Commission submitted two legislative proposals on 20 June 2011, the Capital Requirements Directive (CRD IV) and the related Capital Requirements Regulation (CRR). The aim of these documents is to merge the current Directives (2006/48/EC – CRD, 2006/49/EC – CAD) and, at the same time, to implement the new content.

- The main aims of CRD IV relate to the second-pillar requirements under the Basel II concept and, in particular, rules on authorisation, exercising the freedom of establishment and the freedom to provide services, corporate governance and also supervision by and disclosure obligations of the supervisory authorities.
- The CRR is directly applicable without the need for it to be transposed into national law. It is based on achieving the maximum level of harmonisation and covers the requirements included under the Basel II model of the first and third pillars. These include, for example, provisions on own funds requirements, counterparty credit risks, liquidity standards, leverage ratio and disclosures.

**Own Funds**

Redefining the concept of capital was also at the heart of Austria’s efforts in 2012 to ensure that the Basel III framework was fleshed out in a risk-oriented manner. What the policymakers in Basel and Brussels are aiming to achieve is an increase in the loss-absorbing capacity of the eligible own funds held by credit institutions and groups of credit institutions, thereby making banks and banking systems more resilient. The idea is to simplify the capital base while reinforcing it by introducing additional eligibility criteria.

From now on, regulatory capital will only be broken down into two categories, namely Tier 1 and Tier 2. Tier 1 capital can then be broken down into Common Equity Tier 1 (CET1) and Additional Tier 1 (AT1). Both Tier 1 categories represent going-concern capital with loss-absorbing capacity. Tier 2 capital is gone-concern capital. For all of the categories there is a single set of qualitative criteria stipulated in the CRR that
instruments are required to meet in full before inclusion in the relevant category. Deductions from capital have also been harmonised at a European level, and far-reaching disclosure requirements must be complied with.

From an Austrian perspective, it was the design of the requirements relating to CET1, the highest ranking category of capital, that was of particular interest. Within the strict Basel III rules, institutions outside the capital market in particular need to retain access to flexible instruments for remunerating investors, as was previously possible via the issuing of participation capital or preference shares. Another important aspect was ensuring that the CRR took sufficient account of the specific features of institutions in the legal form of a cooperative or a Vereinsbankkasse (savings bank operated by a non-profit association) or Gemeindebankkasse (savings bank operated by a municipality). As far as institutions in the decentralised sectors are concerned, the rules in the CRR on exemption, subject to approval, from deducting holdings in the central institution are crucial. Here the CRR maintains, albeit on the basis of amended conditions, the principle of sector consolidation, which is currently common practice. A further key topic for Austria is the inclusion in capital of minority interests in fully consolidated subsidiaries of a bank, where the case was made for far-reaching recognition.

LIQUIDITY

Prior to Basel III, regulation efforts were focused on own funds. However, during the global financial crisis, it became clear that even institutions with a good capital base found themselves in difficulties. The risk of a systemic liquidity crisis had been underestimated. As a result, the focus now also lies on preventing future liquidity shocks, particularly through the early detection of potential liquidity bottlenecks. Alongside qualitative aspects of liquidity risk management, the aim is also for quantitative liquidity indicators to be introduced. The Liquidity Coverage Ratio (LCR) and the Net Stable Funding Ratio (NSFR) should have been enshrined in the CRR, with binding effect, as of 2013. Initially at least they will however only be used in a reporting context. The current plan is for the LCR to be integrated into the first pillar with effect from 2015 (in stages through until 2019), with the NSFR being integrated from 2018 onwards, following an appropriate data collection and calibration phase in each case. The collated data will be made available to the European Banking Authority (EBA), the European Central Bank (ECB) and the responsible consolidating supervisory authority in each case.

PARALLEL EBA ACTIVITIES

In parallel to the activities at EU level in Brussels, the FMA has also been involved within the EBA in the design of technical regulation and implementing standards that flesh out the detail of the principles enshrined in the CRR. Technical standards have been prepared in relation to capital, liquidity and reporting in particular and will also be announced in the Official Journal of the European Union following the publication of the CRR and CRD IV.

TIMETABLE AND NATIONAL IMPLEMENTATION

In November 2011 the heads of state and of government of the G20 states, convening in Cannes, called on the individual countries to begin by meeting their obligation to implement Basel II in full and consistently by the end of 2011. Implementation of Basel III was scheduled to commence in early 2013 and should have been concluded by 1 January 2019. Due to the many points requiring clarification, the original timetable was postponed. By the end of 2012 the European Commission, Council and Parliament had yet to agree on the texts of CRD IV and CRR. A final vote in the Parliament is still scheduled for the first half of 2013, with entry into force planned for 1 January 2014. The USA had also failed to implement Basel III by 1 January 2013.
BANK AUDITORS AND STATE COMMISSIONERS

The financial statements of each credit institution and payment institution as well as the consolidated financial statements of each group of credit institutions pursuant to Article 59 para. 1 BWG, including the accounting and the management report as well as the consolidated report, where applicable, must be examined by the bank or statutory auditors to verify their compliance with the law. Among the auditors’ responsibilities is to verify the substantive correctness of the measurement, including compliance with the regulatory provisions of the BWG (or the ZaDiG) as well as the allocation of items in the trading book. The result of this audit is to be included in an annex to the audit report. This annex must be submitted to the management and the supervisory body under company law, together with the audit report on the financial statements. If, as part of their activities, auditors identify particularly significant facts, the FMA must be immediately notified of them. A total of 39 such notifications were made to the FMA in the period under review.

The FMA maintains close and regular contact with all the bank auditors of Austrian credit institutions. This applies in particular to the meetings with the auditing associations of the decentralised sectors that are held at regular intervals. The FMA holds such meetings, referred to as early recognition meetings, with representatives of the protection schemes of each of the sectors. Over the course of 2012, 43 bank auditor and early recognition meetings were held in total.

State commissioners must be appointed for all credit institutions with total assets of € 1 billion upwards. These officials are entitled to attend all AGMs or general meetings, supervisory board meetings and all meetings of supervisory board committees with decision-making powers. If they become aware of facts in these meetings that indicate a threat to the credit institution, they must inform the FMA accordingly without delay. State commissioners are obliged to raise objections against resolutions of the above-mentioned bodies that they consider to violate banking supervision requirements. They are also required to report to the FMA on their activities.

INCOMING PLATFORM

The introduction of the Incoming Platform has greatly improved the flow of information between credit institutions and payment institutions, bank auditors and state commissioners on the one hand and the FMA on the other. The Platform is an online portal supporting centralised submission of materials to the supervisory authority, i.e. to the FMA and the OeNB. It entails in particular the notifications specified in Articles 20 et seq. and Article 73 BWG. Electronic submission is also possible in the case of annual financial statements and audit reports.

MANAGEMENT TALKS

Another important source of information is the regular, structured talks held on certain issues with the management of credit institutions. Such management talks, representing an important facet of routine analysis, take place at regular intervals with the major banks. The main purpose of the meetings is to maintain contact with the management of credit institutions and to examine in greater detail their risk assessment and strategy. Depending on the issue focused on, a distinction is made in this context between management talks, risk talks and CESEE talks. A total of 61 management talks were held in 2012.

ON-SITE INSPECTIONS

On-site inspections on the credit institutions’ premises are a significant source of information for the supervisory authority. These are either carried out routinely or in response to a particular occurrence. Since 2008, the OeNB has been principally responsible for conducting the on-site inspections in the area of banking supervision, in which case the OeNB acts on the basis of a formal audit engagement issued by the

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Table 12: AUDIT ENGAGEMENTS 2008–2012

<table>
<thead>
<tr>
<th>Year</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
<th>2011</th>
<th>2012</th>
</tr>
</thead>
<tbody>
<tr>
<td>Audit engagements issued to the OeNB pursuant to Article 70 para. 1 no. 3 BWG</td>
<td>39</td>
<td>49</td>
<td>39</td>
<td>43</td>
<td>47</td>
</tr>
</tbody>
</table>

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3 The amendment published in Federal Law Gazette I No. 145/2011 transferred inspection powers in cases of suspected money laundering to the FMA with legal effect as of 1 January 2012.
To this end the FMA and the OeNB jointly stipulate each year an audit plan for the following year (Article 70 para. 1b BWG). On-site inspections form an important basis of the analytical work carried out by the OeNB. A total of 47 audit engagements pursuant to Article 70 para. 1 no. 3 BWG or Article 63 para. 1 no. 4 ZaDiG were issued to the OeNB in 2012 (see Table 12). The 2012 audit plan focused on the topics of counterparty credit risk and liquidity risk. In view of the significance of the CESEE region for Austrian credit institutions, on-site inspections of credit institutions in that region are being conducted with greater frequency within the framework of consolidated supervision. Such inspections are held with the consent of the competent supervisory authority in the particular case.

Additionally, an expert opinion to be prepared by the OeNB as part of the model approval process regularly requires additional on-site presence of the OeNB.

SUPERVISORY PROCEDURES

GENERAL AND OFFICIAL MEASURES PURSUANT TO ARTICLE 70 BWG AND ARTICLE 64 ZADiG

In accordance with its statutory mandate, the FMA is charged with monitoring the credit institutions’ compliance with statutory provisions pertaining to banking, with ascertaining facts in cases involving the endangering of creditors’ interests and with introducing appropriate remedial measures. The pivotal statutory provisions in this regard are Article 70 BWG and Article 64 ZaDiG, which provide the FMA with the means of implementing these objectives. Based on the above-mentioned rights of the FMA to procure information, Article 70 BWG and Article 64 ZaDiG also equip the authority with rights to intervene and impose sanctions.

If there is a risk of a credit institution or payment institution being unable to fulfil its obligations to its creditors and customers, the FMA may take appropriate measures. In particular, it may prohibit the distribution of capital or profit, appoint a government commissioner, dismiss the managers or prohibit the continuation of business operations. In no instance in 2012 did the FMA have to order measures as specified in Article 70 para. 2 BWG. For one credit institution, however, a government commissioner was appointed in late 2011, and the official continued to exercise her function in 2012.

One particularly relevant official power in practice is that specified in Article 70 para. 4 BWG. In cases where a licensing requirement is no longer met or where a credit institution is violating provisions of the BWG or another special law [e.g. SpG, E-GeldG or the Pfandbriefgesetz (PfundbriefG; Mortgage Bond Act)], the FMA may introduce the following measures: firstly, the FMA is required to request the credit institution to restore compliance with the statutory provisions or be subject to a coercive penalty. Should the institution fail to comply with this request, the FMA is required to prohibit, in full or in part, the managers from managing the business, unless this would be an inappropriate measure given the type and severity of the violation and it is expected that renewed imposition of the first measure will result in compliance with the statutory provisions. In such a case, the FMA is required to impose the threatened coercive penalty and to re-issue the request under threat of a more severe penalty. If these measures are not sufficient to guarantee the ability of the credit institution to function, the institution’s licence is to be revoked as a last resort. On eight occasions during the period under review the FMA ordered credit institutions, under threat of a coercive penalty, to establish compliance with statutory provisions within an appropriate period of time. One licence was revoked.

Para. 4a of Article 70 BWG makes provision for a special power. If in the case of a credit institution, group of affiliated credit institutions or group of credit institutions the commercial and operational risks are inadequately limited, and if these risks are not expected to be limited in the short term, the FMA must, irrespective of any other measures, impose a minimum capital requirement that is higher than the normal minimum capital requirement (referred to as a “capital add-on”).

A further general supervisory measure designed to enforce compliance with the statutory provisions is found in Article 97 BWG. Pursuant to this provision, the FMA is required to charge interest in the event of breaches of the law involving failure to comply with thresholds, either by exceeding or falling below them [e.g. limits on large exposures, minimum capital
An additional requirement). The intention in charging these additional costs is to encourage the credit institutions to comply with the regulatory provisions as well as to compensate for any competitive advantages that might arise through infringements of the law. Interest was charged in 24 instances in 2012 and thus in eight fewer cases than in 2011 (see Table 13).

In addition to the measures described above, the BWG also defines other powers for the FMA in order to guarantee compliance with statutory provisions. In particular, the FMA’s rights to prohibit and to approve are designed to exclude the possibility of the law being breached before such a situation occurs. This especially applies to licensing, the provisions regarding shareholder structure and the approval of internal models.

Table 13: OFFICIAL MEASURES PURSUANT TO ARTICLES 70 AND 97 BWG 2008–2012

<table>
<thead>
<tr>
<th>Measure Description</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
<th>2011</th>
<th>2012</th>
</tr>
</thead>
<tbody>
<tr>
<td>Measures against danger to creditors pursuant to Article 70 para. 2 BWG</td>
<td>0</td>
<td>3</td>
<td>0</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Measures to establish compliance with the statutory provisions pursuant to Article 70 para. 4 nos. 1 to 3 BWG</td>
<td>2</td>
<td>27</td>
<td>3</td>
<td>5</td>
<td>9</td>
</tr>
<tr>
<td>Charging of interest pursuant to Article 97 BWG</td>
<td>46</td>
<td>51</td>
<td>37</td>
<td>32</td>
<td>24</td>
</tr>
</tbody>
</table>

Table 14: NOTIFICATIONS AND APPROVALS PURSUANT TO ARTICLE 20 ET SEQ. BWG AND ARTICLE 11 ZaDiG 2008–2012

<table>
<thead>
<tr>
<th>Notification</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
<th>2011</th>
<th>2012</th>
</tr>
</thead>
<tbody>
<tr>
<td>Measures pursuant to Article 20 para. 1 BWG</td>
<td>26</td>
<td>31</td>
<td>16</td>
<td>20</td>
<td>14</td>
</tr>
<tr>
<td>Procedure completed with end of approval period</td>
<td>25</td>
<td>24</td>
<td>13</td>
<td>4</td>
<td>12</td>
</tr>
<tr>
<td>(exkl. 1 current procedure from 2011)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Procedure completed with prohibition of the participation pursuant to Article 20a para. 2 BWG</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Procedure completed through withdrawal of the notification pursuant to Article 20a para. 2 BWG</td>
<td>0</td>
<td>2</td>
<td>0</td>
<td>15</td>
<td>1</td>
</tr>
<tr>
<td>Rejection of notification of qualifying participations pursuant to Article 20 para. 1 BWG</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Current procedures pursuant to Article 20 para. 1 BWG</td>
<td>0</td>
<td>5</td>
<td>3</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Approval of mergers pursuant to Article 21 para. 1 no. 1 BWG</td>
<td>8</td>
<td>9</td>
<td>11</td>
<td>10</td>
<td>13</td>
</tr>
<tr>
<td>Approval of demergers pursuant to Article 21 para. 1 no. 6 BWG</td>
<td>5</td>
<td>3</td>
<td>2</td>
<td>2</td>
<td>4</td>
</tr>
</tbody>
</table>

NOTIFICATIONS AND APPROVALS PURSUANT TO ZA DiG

<table>
<thead>
<tr>
<th>Notification</th>
<th>2011</th>
<th>2012</th>
</tr>
</thead>
<tbody>
<tr>
<td>Measures pursuant to Article 11 para. 2 ZaDiG</td>
<td>3</td>
<td>4</td>
</tr>
<tr>
<td>Procedure completed with end of the assessment period or non-prohibiting administrative decision during approval period pursuant to Article 11 para. 2 ZaDiG</td>
<td>0</td>
<td>2</td>
</tr>
<tr>
<td>Procedure completed with prohibition of the participation pursuant to Article 11 para. 2 ZaDiG</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Procedure completed through withdrawal of the notification pursuant to Article 11 para. 2 ZaDiG</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Rejection of notification of qualifying participations pursuant to Article 11 para. 2 ZaDiG</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Current procedures pursuant to Article 11 para. 2 ZaDiG</td>
<td>2</td>
<td>1</td>
</tr>
</tbody>
</table>

* The ZaDiG entered into force in November 2010.
must, within 60 working days of notification, prohibit the intended acquisition if the new owners do not meet the requirements set in the interests of the sound and prudent management of the credit institution (Article 20 para. 2 in conjunction with Article 20b BWG). In 2012, a total of 18 notifications of planned acquisition of participation in an Austrian credit institution or payment institution were submitted to the FMA (see Table 14). Of these, 14 resulted in the acquisition of participation not being prohibited. One notification of a planned participation was rejected. Two notifications were withdrawn. One case was still pending as at the reporting date of 31 December 2012.

The FMA also approved 13 mergers of credit institutions and four demergers during the reporting period.

MODEL APPROVALS
Since implementation of the Basel II Directives on 1 January 2007, credit institutions and groups of credit institutions with head offices in Austria have been permitted, with the approval of the FMA, to apply internal ratings-based models (IRB) for calculating their regulatory capital requirements in the area of credit risk. From the beginning of 2008 onwards, credit institutions have been able to apply their own assessments of the loss rate in the case of default as well as of the conversion factors in the area of IRB, and to apply the advanced measurement approach (AMA) for operational risk. If an application for approval of a model only relates to the Austrian market, the process is very straightforward. Once the application has been received by the FMA, it is checked to ensure that it meets the formal requirements and to verify that all of the necessary documentation has been submitted. The next stage involves the OeNB, which is commissioned to issue an expert opinion. On the basis of the review of all documents and the OeNB opinion, the model is then either approved or rejected. Over the course of 2012, nine models relating solely to the Austrian market were approved in total.

The official process is far more comprehensive and complex in the case of cross-border approval for a model. If a superordinate EEA parent credit institution applies to have a risk model approved for itself and its subsidiary banks, the approval must be issued jointly by all of the supervisory authorities affected. The supervisory authority responsible for the parent credit institution (home supervisor) has a central role to play in this process. In addition to its activity as a home supervisor, the FMA is also involved in other cross-border processes in the capacity of host supervisor. During 2011, the FMA in its capacity as home supervisor was able to bring eight cross-border approval processes to a successful conclusion.

### Table 15: MODEL APPROVALS 2008–2012

<table>
<thead>
<tr>
<th>CREDIT RISK</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
<th>2011</th>
<th>2012</th>
</tr>
</thead>
<tbody>
<tr>
<td>Approval for the internal ratings-based approach pursuant to Article 21a para. 1 BWG</td>
<td>14</td>
<td>12</td>
<td>12</td>
<td>10</td>
<td>11</td>
</tr>
<tr>
<td>Approval for the internal ratings-based approach with own estimate of loss given default and conversion factors pursuant to Article 21a para. 1 in conjunction with Article 22b para. 8 BWG</td>
<td>0</td>
<td>1</td>
<td>1</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Provisional or final approval to use the IRB approach pursuant to Article 21a para. 1 in conjunction with Article 103e no. 2 BWG</td>
<td>3</td>
<td>13</td>
<td>0</td>
<td>21</td>
<td>0</td>
</tr>
<tr>
<td>Approval of use of own volatility estimates (comprehensive method) pursuant to Article 21c para. 1 BWG</td>
<td>2</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Approval for internal models for calculating the exposure value for transactions as specified in Article 21f para. 1 nos. 1 to 5 BWG pursuant to Article 21f para. 3 BWG</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>MARKET RISK</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
<th>2011</th>
<th>2012</th>
</tr>
</thead>
<tbody>
<tr>
<td>Approval for internal market risk models pursuant to Article 21e para. 1 BWG</td>
<td>1</td>
<td>0</td>
<td>2</td>
<td>1</td>
<td>6</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>OPERATIONAL RISK</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
<th>2011</th>
<th>2012</th>
</tr>
</thead>
<tbody>
<tr>
<td>Approval for the advanced measurement approach for operational risk pursuant to Article 21d para. 1 BWG</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>7</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>OF THESE</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
<th>2011</th>
<th>2012</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cross-border processes pursuant to Article 21g para. 1 BWG</td>
<td>2</td>
<td>3</td>
<td>7</td>
<td>11</td>
<td>8</td>
</tr>
</tbody>
</table>
CONSOLIDATING SUPERVISION

COLLEGES AS AN INSTRUMENT OF CONSOLIDATED SUPERVISION

Alongside its collaboration in international organisations, the FMA also focuses on maintaining bilateral and multilateral relations with other supervisory authorities. A key area for the bilateral and multilateral contacts with sister supervisory authorities is in monitoring the activities of Austrian credit institutions in the Central, Eastern and South-Eastern European (CESEE) region.

Supervisory colleges are a key instrument for realising consolidated supervision of cross-border credit institutions. Not only do the colleges entail Basel II Pillar 1 procedures, e.g. reaching joint decisions in model approval cases; in addition, they are a venue for dealing with issues arising during continued supervision, particularly the overall risk situation and risk management of a group of credit institutions as defined under Pillar 2 of Basel II (Supervisory Review and Evaluation Process, SREP).

Specifically, the issues raised during continued supervision are discussed and then brought together in an overall view, with the members of the college annually reaching a joint decision on the capital requirements for the group of credit institutions, based on a joint risk assessment (joint risk assessment and decision process, JRAD). Based on this decision, the members of the college annually stipulate a joint action plan, defining the further procedures of the supervisory authorities in the case of the particular banking group.

In view of the special significance of the CESEE region for Austrian credit institutions, and as a means of promptly assessing the economic situation of a group of credit institutions at the consolidated level, on-site inspections of credit institutions are being conducted with greater frequency in that region within the frame-work of consolidated supervision.

In order to optimise cooperation within the supervisory colleges, the FMA concludes cooperation agreements (referred to as “Article 131 agreements”) with other European supervisory authorities. These agreements define the rules and procedures for each supervisory college, as well as the flow of information between the authorities. As of the end of 2012, the FMA had established a total of four “fully fledged” supervisory colleges for banking groups operating on a cross-border basis that have at least two significant subsidiary institutions or branch offices in other EEA Member States; each of the colleges is required to hold an annual college meeting. Another ten “non-fully fledged” supervisory colleges, having a more flexible structure, existed as of the end of 2012.

Supervisory colleges have gained in significance, particularly as a result of the entry into force, on 31 December 2010, of Article 77c BWG, which defines the cross-border decision-making procedure. Consequently, the authorities participating in the supervisory colleges now also discuss possible additional capital requirements and coordinate joint actions in crisis situations.

Within the scope of this coordinating role, the FMA in its capacity of home supervisor held a total of nine college meetings devoted to cross-border groups of credit institutions in 2012. Representatives of the competent EEA and third-country authorities as well as EBA staff members also participated in the college meetings.

CESEE MANAGEMENT TALKS

Austrian credit institutions are prominent in Central and Eastern Europe, and thus great significance is associated with this region for the business development of Austria’s major credit institutions. Correspondingly, priority is given to discussing the risk situation in the

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Table 16: SUPERVISORY COLLEGES 2008–2012

<table>
<thead>
<tr>
<th>Colleges established as specified in Article 131 CRD (FMA as home supervisor)</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
<th>2011</th>
<th>2012</th>
</tr>
</thead>
<tbody>
<tr>
<td>0*</td>
<td>4*</td>
<td>4*</td>
<td>4</td>
<td>14</td>
<td></td>
</tr>
<tr>
<td>College meetings held</td>
<td>4*</td>
<td>6*</td>
<td>7*</td>
<td>7</td>
<td>9</td>
</tr>
</tbody>
</table>

* The requirement to hold supervisory colleges (Article 77b BWG) entered into force on 31 December 2010.
context of management talks involving the major banking groups with a strong CESSEE commitment. The purpose of the talks is to develop a clear view of the structure and business activities of CESSEE subsidiaries as well as of the risks to which they are exposed. Detailed information is also provided by the banks concerning their strategy for Eastern Europe, the group risk management system and the development of their most significant subsidiaries abroad.

SUSTAINABILITY PACKAGE
The FMA and the OeNB presented a set of measures in November 2011 to enhance the sustainability of the business models applied by Austrian banking groups operating in CESSEE. The objectives of the sustainability package include: reinforcing the capacity of large internationally active banks to bear risk, avoiding in future excessive and non-sustainable credit growth rates (resulting in boom-bust cycles), and proactive preparation for potential crisis situations. These objectives are to be met by means of the following three sets of measures:

- **Greater capitalisation**
  The provisions of Basel III pertaining to Common Equity Tier 1 capital (CET1) will apply without any transitional period, already from 2013 onwards, to the banks falling under the regulations, while an additional CET1 capital buffer of up to three percentage points is planned for 2016 and beyond.

- **Stable refinancing of subsidiary banks**
  The local deposit base and local issuing activity, as well as refinancing through supranational institutions (EBRD, EIB) are to be bolstered. A more balanced net credit growth rate relative to the stable refinancing forms at the local level are to be achieved. For this purpose, what is referred to as the Loan-to-Local Stable Funding Ratio (LLFSR) was defined at 110% as an indicator for existing business and net new transactions.

- **Submission of restructuring and winding down plans**
  The banking groups were requested to submit restructuring and winding down plans by the end of 2012. Such plans are to blueprint the steps to be taken towards restructuring in the event of adverse market conditions, as well as the steps for winding down the business while causing a minimum amount of financial market instability. The major banks presented to the supervisory authorities the required living wills and resolution schemes at the end of 2012. Among the items identified in this documentation are the system-relevant functions of the banking groups. The plans will be evaluated by the supervisory authorities and further developed by the institutions in 2013.
In the wake of the 2008 financial crisis, one of the issues being focused on by the banking supervisors has been banks’ remuneration and bonus systems. Whilst the payment of very high bonuses in some isolated cases should not be viewed as the main trigger for the international financial crisis, there is no doubt that they did at least make it easier for the crisis to happen. Remuneration systems often created the wrong types of incentive; high bonuses and rewards were paid for the attainment of short-term targets with less value being placed on the long-term nature of the performance in question. What became clear during the crisis was that some institutions were paying out excessively high amounts despite the fact that the performance of the individuals being rewarded was at least questionable in some cases and/or the financial situation of the bank itself was very critical. To address these failings, the European Banking Directive was amended in 2010. The revised version was then transposed into Austrian law the same year, which meant that the provisions of the Bankwesen-gesetz (BWG; Banking Act) relating to remuneration could enter into force on 1 January 2011.

**KEY PROVISIONS**

The aim of the remuneration provisions of the BWG (Article 39b including Annex, and Article 39c) is to ensure that the bonuses and rewards paid by banks are in line with the respective institution’s financial situation. Employees should be motivated to perform well over the long term. Thus the payment of variable remuneration is based on two different conditions. Firstly, the employee must have performed well over a long period of time and, secondly, the amount being paid must be commensurate with the institution’s financial position at the time. These conditions are fleshed out in the remuneration principles in Article 39 of the BWG:

- The employee’s performance, the performance of the employee’s department and the performance of the institution as a whole should be taken into account when awarding a bonus. Account should also be taken of the risks assumed (ex ante risk adjustment, for example with discounts applied to bonus pools for high-risk transactions).
- The fixed and variable components of remuneration must be appropriately balanced. There must not be a situation in which employees are reliant on bonuses due to these being excessively high compared with basic salary levels.
- “Golden parachute” arrangements are prohibited in that payments made when employees’ contracts are terminated prematurely may never reward lack of success.
- Implicit ex post risk adjustment: In the case of institutions whose shares or equivalent interests are traded on a stock market, at least 50% of the variable remuneration paid to employees must comprise such instruments. The shares acquired in this way are then subject to a holding period. This means that the employee can only sell them after a period of a few years has elapsed, with the result that the reward received ultimately depends in part on how the bank performs in future.
- Explicit ex post risk adjustment: The principle of deferred bonuses also has a similar effect. At least 40% of the variable remuneration, and up to as much as 60% in the case of high amounts, must not be paid out immediately but is paid in instalments over a five-year period. If it becomes clear during these five years that the performance being rewarded was not sustained or if there is a marked deterioration in the credit institution’s situation, the outstanding instalments will no longer be paid out.

**PROPORTIONALITY**

Not all of the remuneration principles are to be applied to all employees and all bonuses due. The principle of proportionality must apply, based on the com-
plexity of the institution, the employee’s function and the amount of variable remuneration. Put simply, the remuneration principles barely apply to typical employees working in small non-complex institutions with relatively low bonuses and rewards. In terms of directors and senior management in major banks, the remuneration principles must be applied in full.

NEW FMA REMUNERATION CIRCULAR in 2012

Alongside ongoing analysis and assessment of the theory behind the remuneration systems in place in credit institutions, the first review of practical implementation was carried out in 2012. The remuneration figures for 26 randomly selected banks/banking groups were investigated, leading to the conclusion that, basically, the new provisions were being implemented across the board. However, the FMA did discover that the individual provisions were being fundamentally misinterpreted in some cases. The principle of proportionality in particular has been causing problems for credit institutions, which have struggled to accurately assess their own complexity and to identify in full all risk-relevant employees.

In order to make it easier for the banking industry to apply these principles coherently and in accordance with the statutory provisions, the FMA revised its Circular on remuneration and republished it in December 2012. The following areas were the subject of particular clarification:

- **Variable remuneration**: Remuneration, the amount of which is based on an employee’s personal performance and/or the performance of the company as a whole.

- **Principle of proportionality**: Credit institutions with total assets of more than one billion euros or whose securities are traded on a regulated market are classed as “complex” institutions, and must apply the remuneration principles in relation to payment in the form of shares or deferred bonus payments. In 2012, this definition applied to 91 of the 808 credit institutions.

- **Holding period**: Where payment is made in the form of shares, the employees must hold the shares for a minimum period of three years before being allowed to sell them.

- **Restriction of bonuses in the event of a poor financial situation**: The relevant benchmark is the current capital base in relation to the minimum equity required by law.

The updated Remuneration Circular can be downloaded in German from the FMA website.

REPORTING

In 2012, the foundation was laid for the more comprehensive and efficient monitoring of compliance with the rules on remuneration. Pursuant to the revised version of a reporting regulation (Vermögens-, Erfolgs- und Risikoausweis-Verordnung – VERA-V; Regulation on Asset, Income and Risk Statements), credit institutions must, with effect from 2013, report on an annual basis the aggregated remuneration data for the previous year. The data collated will include, in particular, the total fixed remuneration paid, the total variable remuneration paid and the total of all deferred payments, broken down by risk buyer in each case (e.g. senior management and other employees), and also broken down by business division. This will enable the supervisory authorities to evaluate and review credit institutions’ remuneration payments on an automated basis.

OUTLOOK

The required supervisory framework will be in place as of 2013 to ensure that the remuneration rules are enforced. This has already proven its worth with regard to other areas of supervision. IT-based, standardised surveys and evaluations are carried out on a large scale through the reporting system. These are then supplemented with regular detailed reviews in the form of analysis by the FMA of an institution’s theoretical remuneration policy or on-site inspections carried out by the Oesterreichische Nationalbank (OeNB). In this way, the full and consistent implementation of the remuneration rules is guaranteed in Austria.

1 FMA Circular on Articles 39 para. 2, 39b and 39c BWG – Principles of remuneration policy and practices (December 2012)
2 It should be noted in this regard that the vast majority of credit institutions in Austria form part of the decentralised sectors which means that, due to their small size, organisational structure and limited business model, they are not required to apply the remuneration principles relating to deferred bonuses and payment in the form of shares.
Market Development

The weakening of the Austrian economy, with real growth in gross domestic product (GDP) having dropped by more than half from 2% in 2010 and 2011 to 0.8% in 2012, has not yet impacted on the corporate provision funds system.

By the reporting date of 31 December 2012 the number of membership contracts, measured on the basis of employer account numbers, had increased by 7.70% from 926,341 to 997,691 (see Chart 28). Provision for employees grew by 5.47% (from 484,556 to 511,054 contracts) while provision for the self-employed rose by 10.15% (from 441,785 to 486,637 contracts). It should be kept in mind, however, that several employer account numbers may be assigned to one and the same employer.

During 2012, corporate provision funds received current contributions totalling €1.04 billion, of which €945.17 million was contributed to provision for employees and €97.73 million to self-employed provision. By comparison, the figures for 2011 totalled €944.40 million (provision for employees: €848.90 million, for the self-employed €95.54 million). Summed up, the increase amounted to 10.43%, comprising 11.34% for employees and 2.29% for the self-employed.

The assets managed in 2012 by the ten corporate provision funds rose from €4.29 billion to €5.27 billion, i.e. by €987.5 million or 23.03% (see Chart 29).

Since the system’s introduction on 1 January 2004, a total of €1.14 billion had been paid out to 1,550,392 beneficiaries (entitled) by 31 December 2012. During this period, 55,412 beneficiaries (entitled) transferred a total of €45.65 million in pension expectancies to another corporate provision fund, while 409 individuals transferred a total of €1.17 million to a Pensionskasse or supplementary pension insurance scheme. In 2012, the majority of the severance pay expectancies were paid out in the
form of a capital sum (see Chart 30 on page 75 and Market Development Table 17).

For cost reasons, corporate provision funds made use of the services of third parties in the 2012 financial year; these were paid on the basis of corresponding contracts.

The Betriebliche Mitarbeiter- und Selbständigenversorgungsgesetz (BMSGV; Company Employee and Self-Employment Provisions Act) obliges corporate provision funds in Article 24 para. 1 to guarantee accrued severance pay funds, as well as any transferred existing severance pay expectancies and any severance pay expectancies transferred from another corporate provision fund. This guarantee is referred to as the capital guarantee. Pursuant to Article 24 para. 2 BMSGV, corporate provision funds may extend an interest guarantee over and above this minimum. Until the end of 2005, such an interest guarantee was offered by ÖVK Vorsorgekasse AG; since 2010, it has been offered by fair-finance Vorsorgekasse AG.

The legally required capital guarantee leads corporate provision funds to invest highly conservatively: mostly in bonds, either directly or indirectly through investment funds (see Chart 31). Most corporate provision funds consider sustainability criteria when making their investment decisions. Often an investment advisory committee is also involved in the investment process.

Following an investment result that was only just positive at +0.2% in 2011, the corporate provision funds recorded a performance of 4.28% in 2012 (2009: +3.65%; 2010: +2.58%).

**Legal Basis**

The activities of corporate provision funds are regulated by the BMSGV. Since the BMSGV defines the acceptance and investment of severance payment contributions additionally as banking transactions pursuant to Article 1 para. 1 no. 21 of the Bankwesengesetz (BWG; Banking Act) that require a licence, the BWG must also be applied to corporate provision funds unless they are explicitly exempted.

**Official Tasks**

**Supervised Companies / Licensing**

As at 31 December 2012, ten corporate provision funds held licences. Each of these ten funds currently manages a single collective investment undertaking. Once a licence is granted, corporate provision funds are subject to continued supervision by the FMA. The authority is responsible for supervisory procedures and for notifications and reports in accordance with the BWG. It is thus responsible for conducting a “fit and proper” test to examine the suitability of the management, and must approve the original investment conditions as well as any changes to them. Compliance with the capital requirements set out in Article 20 BMSGV and with the investment provisions of Article 30 BMSGV are further areas monitored by the FMA. In addition, the appointment or any change of custodian bank also requires the FMA’s approval.

In 2012, the investment conditions of five corporate provision funds were approved.

**Continued Supervision**

**Reporting and Information Sources**

To ensure that the FMA can fulfil its tasks, corporate provision funds are subject to extensive reporting obligations. Pursuant to the Betriebliche Vorsorgekassen-Quartalsausweisverordnung (BVQA-V; FMA Regulation on the Quarterly Financial Statements for Corporate Provision Funds), corporate provision funds must submit reports on their quarterly financial statements to the OeNB within four weeks of the end of every quarter. The BVQA report contains details on own
funds and a statement of net assets for the collective investment undertaking. In addition, corporate provision funds must submit the audited financial statements, the annex to the audit report, as well as the audited report on activities of the collective investment undertaking and the audit report on the report on activities. The state commissioners appointed for the corporate provision funds are required to provide regular reports, which are then systematically evaluated. Corporate provision funds are subject to the reporting obligations as specified in the BWG.

DISCLOSURE OBLIGATIONS
Beneficiaries (entitled) of corporate provision funds are to be informed every year of the severance pay expectancy acquired as of the last balance sheet date, the contributions made by the employer during that financial year, the cash and administrative expenses charged to them, the investment income allocated to them and the acquired severance pay expectancy in total. This information is provided in the form of an account statement. The FMA has published Minimum Standards covering how this account information is to be presented. The reports on activities of the collective investment undertakings are sent on request to employers who pay contributions and to the works councils responsible.

INSPECTIONS AND EXAMINATIONS ON SITE
The FMA is entitled to carry out a number of supervisory measures, including the right to inspect provision funds and to demand information from them, or to prohibit or intervene in activities, as well as being entitled to make use of the instruments of on-site inspections and examinations.
In 2012, one on-site inspection was carried out at one corporate provision fund.

MANAGEMENT TALKS
The FMA regularly invites representatives of corporate provision funds to management talks. At these management talks the management reports on such aspects as performance and results during the past year, investment activities, changes in the organisation,
deviations from the business plan and any current concerns.
In 2012, management talks were held with nine corporate provision funds.

**OPERATIONAL SUPERVISION**

**SUPERVISORY PROCEDURES**

No supervisory procedures pursuant to Article 70 para. 4 BWG were introduced in 2012 to restore compliance with statutory provisions in response to a violation of provisions of the BMSVG. One application for lifting a dedication pursuant to Article 31 para. 1 no. 3a lit c BMSVG was rejected as the special circumstances required by law did not apply.
MARKET DEVELOPMENT

ASSETS MANAGED

As at 31 December 2012, about €16.3 billion was being managed within the Austrian pension company market. This figure represents an increase of about 10.3% over the previous year. The change in assets managed can be attributed for the most part to contributions, pension benefits, inflows of funds from first-time pension company contracts and to the investment result.

The three largest providers, namely VBV Pensionskasse AG, Valida Pension AG and APK Pensionskasse AG, combine to account for a 71.3% share of the market, measured in terms of amount of assets managed. This share has remained practically unchanged for the past five years. Measured within the market overall, single-employer Pensionskassen (pension companies) account for around 14.6% of the assets under management. This share has decreased by about 7.5% during the past five years, a development to be attributed to the transfer of investment and risk sharing groups (IRGs) to multi-employer Pensionskassen.

The occupational group insurance schemes offered by insurance undertakings are a form of company old-age provision that is very similar in structure to the Pensionskassen. The assets managed in this sector increased by 10.5% over the previous year to €536.6 million. By way of comparison, this equates to about three per cent of all assets managed by Pensionskassen. Thus, the sum of the assets managed within these two types of company old-age pension provision roughly equalled 5.6% of the Austrian gross domestic product at the end of 2012.

NUMBER OF BENEFICIARIES IN THE PENSION COMPANY SYSTEM

There were about 820,000 beneficiaries at the end of 2012, representing a year-on-year increase of about 3.6%, 9.3% of whom are already collecting pension benefits. The vast majority of the beneficiaries are still in the savings period for a pension benefit. However, the number of beneficiaries (recipients) is rising strongly in absolute terms (see Chart 32). During the past five years, the number of beneficiaries has risen steadily. In 2012, of all dependently employed persons in Austria, 22.9% or around one in four held an entitlement to a pension from a Pensionskasse.

NUMBER OF PENSIONSKASSEN AND INVESTMENT AND RISK SHARING GROUPS

The number of Pensionskassen has decreased over the last five years from 19 to 17 companies. This is to be attributed to single-employer Pensionskassen discontinuing activities, with their investment and risk sharing groups (IRGs) being transferred to existing multi-employer Pensionskassen.

The number of investment and risk sharing groups has increased from 135 to 140 since 2008. This is a
result of the rising number of beneficiaries in the pension company system as well as the application of life-cycle models, which in each case require more than one investment and risk sharing group.

**INVESTMENT PERFORMANCE**

The Oesterreichische Kontrollbank AG (OeKB) is mandated by the Pensionskassen to calculate their investment performance figures each quarter on the basis of the investment data that they provide. However, it should be noted that other factors apart from actual performance also play a major role in determining the monthly pension benefit. Such factors include the technical account balance, the amount of the volatility reserve and any deficits arising from changes in mortality charts.

All Pensionkassen taken together achieved an average investment result of 8.4% in 2012. The results for the individual investment and risk sharing groups range from +2.6% to +15.7%.

The average performance recorded by the Pensionskassen has amounted to 3.8% per year for the past three years, 1.2% over the past five years and 3.9% for the last ten years. Investment performance over the past five years has generally been very volatile: the worst performance was seen in 2008 at –12.93% and the best in 2009 at +9.04%.

**LEGAL BASIS**

The Pensionskassengesetz (PKG; Pensionskassen Act) of 1990 serves as the legal basis for the pension company sector. Article 2 para. 4 of the Finanzmarktaufsichtsbehördengesetz (FMABG; Financial Market Authority Act) assigns the FMA responsibility for the
official tasks and the powers which have been defined by the provisions of the PKG¹ and the Betriebspensionsgesetz (BPG; Company Pension Act). Article 33 para. 2 PKG requires that the FMA monitor compliance with the provisions of that federal act. In this context, it must take both the national economic interest in a functioning pension company system and the interests of the beneficiaries into account. The main powers of the FMA are laid down in Article 33 para. 3 PKG.

AMENDMENTS TO THE LEGAL BASIS

2012 AMENDMENT TO THE PKG, THE VAG AND THE BPG
A fundamental amendment to the PKG, the Versicherungsaufsichtsgesetz (VAG; Insurance Supervision Act) and the BPG was published in June 2012 and entered into force on 1 January 2013. A detailed description of these amendments can be found under the special topic of “2012 PKG amendment – Fundamental reform of the occupational pension system in Austria” on page 83.

AMENDMENT TO THE FBJMV
Article 30 para. 4 PKG authorises the Financial Market Authority (FMA) to issue regulations defining the layout of forms. The Formblatt- und Jahresmeldeverordnung (FBJMV; Regulation on Forms and Annual Reports) was comprehensively amended in 2012. The forms used up to now have been modified in order to ensure enhanced transparency for beneficiaries. The financial market crisis has revealed that it is impossible to develop a realistic view of an investment and risk sharing group’s asset and risk situation without considering the actual risk inherent in investments. Achieving “substance over form” is the main aim of the amendment. Instead of according to their legal structure, assets are required to be calculated in terms of their economic impact (exposure statement). In order to make this information suitably intelligible for the intended recipients, additional minimum content is specified to be included in the annex (Form C). In addition, the electronic reports provided up to now will be harmonised with the details of the reports on activities. This will result in enhanced efficiency and should avoid any additional expenses. The information required for supervisory purposes that is not shown in the balance sheet or the income statement will be separately collected by the FMA via electronic means.

AMENDMENT OF THE EU FRAMEWORK DIRECTIVE

As part of activities aimed at revising the EU Framework Directive on the activities and supervision of institutions for occupational retirement provision (IORP Directive), the technical details for a Quantitative Impact Study (QIS) were designed by the European Insurance and Occupational Pensions Authority (EIOPA) in 2012. The settings included in the study were tested during the period of 16 October to 17 December 2012. EIOPA is currently assessing the results so as to allow them to be included in preparing the draft Directive, scheduled for 2013. Austrian Pensionskassen did not participate in this first QIS.

The FMA has planned a separate impact study for Austria. A preparatory meeting involving pension company representatives took place in December 2012. The study is scheduled to take place in Q1 2013 and will apply a simpler method (compared with the Europe-wide study conducted by EIOPA).

OFFICIAL TASKS

SUPERVISED COMPANIES

Among Pensionskassen, two different types of pension company need to be distinguished: single-employer and multi-employer Pensionskassen.

SINGLE-EMPLOYER PENSIONSKASSEN
These are entitled to operate the pension company business for the beneficiaries of only one employer or company group. Single-employer Pensionskassen were primarily founded as subsidiaries of international groups. Employees can thus be offered benefits from their “own” Pensionskasse while at the same time the parent companies can exert a stronger influence on

¹ The PKG specifies in Article 33 para. 1 that Pensionskassen are subject to the FMA’s supervision.
the type of and conditions for investment. In the financial year 2012, the following companies held a licence for the provision of single-employer pension company services:

- Bundespensionskasse AG
- EVN Pensionskasse AG
- Generali Pensionskasse AG
- IBM Pensionskasse AG
- Infineon Technologies Austria Pensionskasse AG
- Porsche Pensionskasse AG
- Shell Austria Pensionskasse AG
- Sozialversicherungspensionskasse AG
- Wirtschaftskammern Pensionskasse AG

MULTI-EMPLOYER PENSIONSKASSEN

These can operate the pension company business for the beneficiaries of more than one employer. In the financial year 2012, the following companies held a licence for the provision of multi-employer pension company services:

- Allianz Pensionskasse AG
- APK Pensionskasse AG
- BAV Pensionskasse AG
- Bonus Pensionskasse AG
- Siemens Pensionskasse AG
- Valida Pension AG
- VBV Pensionskasse AG
- Victoria-Volksbanken Pensionskasse AG

LICENSENG

Companies with head offices situated in Austria that hold the appropriate licence granted by the FMA are entitled to operate the pension company business in this country. The licence will have to be granted if the prerequisites stipulated in the PKG are fulfilled. These are specifically: sufficient capital, submission of an approvable business plan which includes suitable actuarial bases, as well as proper qualifications of the management board members and the shareholders. In order to be eligible for a licence, the company must also have the legal form of a joint stock company (Aktiengesellschaft).

In 2012, no applications for the granting of a licence were filed.

CONTINUED SUPERVISION

Among the most important tasks making up the FMA’s mandate are the ongoing analysis of the development of the pension company market and of individual Pensionskassen and IRGs, the verification of compliance with the provisions stipulated in the PKG, i.e. concerning investment limits, coverage of the technical provisions and an adequate level of own funds as prescribed, as well as the verification of compliance with the Risikomanagementverordnung Pensionskassen (RiMAV-PK; Risk Management Regulation for Pensionskassen).

SOURCES OF INFORMATION

Several standardised sources of information, published periodically, are available to Pension Companies Supervision, these are:

- the quarterly report on investment data;
- performance figures (reported quarterly);
- reports by the state commissioners on the meetings of the pension company bodies (provided quarterly);
- audit reports and reports on activities of the Pensionskassen and IRGs;
- risk management manuals;
- the set of investment policy principles for each IRG.

Apart from the information that originates from these standardised reporting sources, Pension Companies Supervision may also, pursuant to Article 33 para. 3 no. 1 PKG, demand information on all business matters from the Pensionskassen and inspect all of their books, documents and data media. In addition, Pensionskassen are subject to the notification obligations as stipulated under Article 36 PKG.

ON-SITE INSPECTIONS

In 2012, on-site inspections were performed at six Pensionskassen. The focus of inspections carried out by actuarial supervision included payment of lump-sum settlements, management of volatility reserves and the technical account balances. The focus of inspections in the area of financial supervision was on compliance with the RiMAV-PK, which entails the minimum standards for the risk management process and
The amendment to the *Pensionskassengesetz* (PKG; *Pensionskassen* Act) was published in Federal Law Gazette I No. 54/2012 in June 2012. This included related amendments to the *Versicherungsaufsichtsgesetz* (VAG; Insurance Supervision Act) and to the *Betriebspensionsgesetz* (BPG; Company Pension Act). The changes, which enter into force as of 1 January 2013, result in a major reform of the occupational pension system in Austria.

**Change Options** (*Article 12* paras. 6 and 7 PKG)

Sub-investment groups (sub-IGs) with varying investment strategies can now be established in as many as three investment and risk sharing groups (IRGs). Up until the beginning of retirement, beneficiaries (entitled) can choose an alternative investment strategy by changing to another sub-IG. The option of changing to another IRG also exists. However, the individual option to change groups, which is a newly specified provision of the PKG, is limited to three times. The change can also be stipulated in general employment agreements, with the individual beneficiary (entitled) choosing not to change. Beneficiaries (recipients), i.e. natural persons already receiving benefits from a *Pensionskasse* on the basis of a pension company contract, are not entitled to change groups.

**Security-Oriented IRG** (*Article 12a* PKG)

The introduction of a security-oriented IRG is one of the main features of the amendment to the PKG. With such an IRG, the *Pensionskasse* guarantees that for the duration of receiving pension benefits the amount of these benefits will not fall below the level paid out on entering retirement. While the possibility of future changes to the pension exists, the guarantee rules out any drop below the initial pension amount. The guaranteed amount is required to be increased every five years. This security-oriented IRG is a type of IRG in which no commitments are managed that entail either a minimum yield guarantee or an unlimited obligation for the employer to make additional contributions. The maximum assumed interest rate is set at 1.75%. Another aspect of such an IRG is that mortality charts are used which take increased life expectancy especially into account. When changing to a security-oriented IRG, the ratio of premium reserve to volatility reserve must be adjusted to the existing ratio. It is possible to change to a security-oriented IRG after one’s 55th birthday and until the beginning of retirement. Changing back to the previous IRG before entering retirement is also possible.

A *Pensionskasse* not intending to establish a security-oriented IRG is required to conclude a cooperative agreement with a multi-employer *Pensionskasse*. It may be stipulated in the shop agreement or in the collective agreement on the establishment of a single-employer *Pensionskasse* that neither a security-oriented IRG will be established nor a cooperative agreement with a multi-employer *Pensionskasse* concluded. The *Pensionskasse* must hold own funds amounting to 3% of the appropriate premium reserve to cover the commitments managed in the security-oriented IRG. The portfolio management costs charged to beneficiaries (recipients) in a security-oriented IRG are limited to 0.55% of the average assets.

**Openness of the System** (*Article 16* para. 4 PKG)

Contributions made to the *Pensionsinstitut Linz*, to retirement provision institutions for chartered public accountants and lawyers, and to the pharmacists’ salary fund can also be transferred to a *Pensionskasse*. The employee must be a beneficiary (either entitled or recipient) on the date of transfer.

**Refund of Portfolio Management Costs** (*Article 16a* para. 4b PKG)

A special option for the refund of portfolio management costs has been introduced for beneficiaries (recipients) having commitments not entailing a minimum yield guarantee or an unlimited obligation of the
employer to make additional contributions. If the investment income of the IRG is less than the portfolio management costs, the Pensionskasse is still reimbursed with the total portfolio management costs as stipulated by contract, yet half of these costs are refunded directly to the beneficiaries (recipients) affected, as an annual pension paid out the following year. This ensures a stronger effect than simply reducing the portfolio management costs could achieve. The Pensionskasse can, however, request repayment of that portion of the portfolio management costs within the following ten years if the investment income of the IRG allows it.

CANCELLATION OF THE PENSION COMPANY CONTRACT (Article 17 para. 1 PKG)
In addition to beneficiaries (recipients), beneficiaries (entitled) with non-contributory expectancies may now also remain with the “old” Pensionskasse.

INFORMATION CONCERNING COSTS AND PERFORMANCE (Article 19 para. 5a PKG)
The Pensionskasse is obliged to provide beneficiaries on request with the proportion of total costs and a representative comparison of performance for the last three years at most.

INFORMATION CONCERNING THE BUSINESS PLAN (Article 19 para. 5c PKG)
The Pensionskasse is required to make available to an employee interest group that is eligible to enter into collective agreements, at their request, those parts of the business plan that are relevant to benefits and that are necessary for verifying the details pursuant to Article 19 para. 5c PKG in an individual case and at the request of a beneficiary.

INFORMATION REQUIREMENTS (Article 19b PKG)
The amendment to the PKG provides beneficiaries with a number of change options, which entail extensive information requirements for the Pensionskasse. Specifically, prior to any decision regarding a change (to a sub-IG or security-oriented IRG), the Pensionskasse is obliged to provide a beneficiary or an insured person at their request with certain details, including the vested amount, the relevant parameters of the current IRG, sub-IG or security-oriented IRG to which the beneficiary (entitled) is assigned, the relevant parameters of the IRG to which the individual wishes to change, the expected amount of the guaranteed initial pension (security-oriented IRG), as well as the investment strategy, and the opportunities and risks entailed in achieving yields (security-oriented IRG). The FMA is responsible for determining by regulation the content and the structure of the information, as well as details concerning the calculations. Similar provisions applying to occupational group insurance have been added to the VAG.

CALCULATION PARAMETERS (Article 20 para. 2a PKG)
The scope of the Rechnungsparameterverordnung (RPV; Regulation on Calculation Parameters) needs to be expanded to include the additional new beneficiaries (entitled). The FMA has defined a maximum assumed interest rate and technical surplus for the security-oriented IRG. The FMA is responsible for verifying the adequacy of the interest rates at least every three years.

DEPUTY ACTUARY (Article 20a para. 1 PKG)
A deputy actuary must be appointed for multi-employer Pensionskassen.

VOLATILITY RESERVE (Article 24 para. 2 PKG)
The options for managing the volatility reserve (i.e. individually or jointly) have been expanded to allow practically every combination. Previously there had been special groups for employers. Now, volatility reserve groups can be formed for sub-IGs, probability tables, assumed interest rate and technical surplus.

ADDITIONAL ALLOCATION TO THE VOLATILITY RESERVE (Article 24a para. 3 PKG)
For any additional allocation to the volatility reserve, the FMA is responsible for determining by regulation the framework conditions for the group of persons affected as well as criteria for the extent of the allocation. Consideration is to be given in such cases to adjusting recipients’ pensions as uniformly as possible as well as to the situation in the capital market.

RISK MANAGEMENT (Article 25 para. 9 PKG)
The Pensionskasse is required to establish a risk
management system for the purpose of recording, evaluating, controlling and monitoring the risks arising from the investment.

LIMITATIONS OF THE INVESTMENT CONDITIONS
(Article 25 para. 10 PKG)
For the investment of the assets allocated to an IRG, the FMA may, in individual cases, determine by administrative decision certain upper limits as well as detailed conditions for the acquisition of investments.

WAIVER OF VOLATILITY RESERVE
(Article 49 para. 2 no. 4 PKG)
Beneficiaries (recipients) having a commitment where the employer has no unlimited obligation to make an additional contribution and the volatility reserve is managed individually may declare by 31 October 2014 that no allocation to or release of the volatility reserve is to take place if the current monthly pension at the time of the waiver declaration is lower than the first monthly pension.

AMENDMENTS TO THE BPG

VARIABLE CONTRIBUTIONS (Article 3 para. 1 no. 2 BPG)
As an alternative to the previous “fixed” contribution amounts, variable contributions may also be stipulated on condition that the minimum amount is 2%. Variable contributions are paid based on a figure calculated for the company.

VESTING PERIOD (Article 5 para. 1 BPG)
The vesting period has been reduced from five to three years.

CHANGE TO OCCUPATIONAL GROUP INSURANCE DURING CONTINUED EMPLOYMENT RELATIONSHIP (Article 5a BPG)
From age 55 upwards, a beneficiary (entitled) may change to an occupational group insurance scheme on condition that this is stipulated in general employment agreements. One such change is permissible, and the change is irrevocable once benefits become due. Similar terms apply where an employee in a continued employment relationship changes to a Pensionskasse (Article 6e BPG).
for the structure of risk management at Pensionskas-sen.

**MANAGEMENT TALKS**

In addition to the six on-site inspections, the FMA held 15 management talks during the year under review. In these talks, the FMA discusses current economic and supervisory topics as well as current issues with the management board members. A main subject of the talks is the result of the analysis of the financial statements of Pensionskassen and any consequent issues. (see Table 19).

### APPROVAL OF BUSINESS PLANS

Pursuant to Article 20 PKG, the Pensionskasse must draw up a business plan which contains all details and actuarial bases required for the operation of the pension company business. The business plan, as well as any amendment to the business plan, require the FMA’s approval, which may also stipulate relevant conditions and time limits. The application for approval must include a report of the auditing actuary, who must audit the business plan as well as any amendment to it.

In 2012, the year under review, 33 business plans were submitted for approval (see Table 20).

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| Table 19: ON-SITE ACTIVITIES 2008–2012 (Source: FMA) |
|----------------------|------------------|------------------|------------------|------------------|------------------|
|                      | 2008 | 2009 | 2010 | 2011 | 2012 |
| **ON-SITE INSPECTIONS** |      |      |      |      |      |
| Acc. to inspection plan | 2    | 4    | 3    | 3    | 6    |
| Non-scheduled          | 1    | 0    | 1    | 0    | 0    |
| **BRIEF INSPECTIONS**  |      |      |      |      |      |
| Acc. to inspection plan | 0    | 0    | 0    | 0    | 0    |
| **MANAGEMENT TALKS**   |      |      |      |      |      |
| Acc. to inspection plan | 7    | 25   | 21   | 17   | 15   |
| **COMPANY VISITS**     |      |      |      |      |      |
| Acc. to inspection plan | 11   | 0    | 0    | 0    | 0    |
| Non-scheduled          | 2    | 0    | 0    | 0    | 0    |

| Table 20: APPROVAL OF BUSINESS PLANS 2008–2012 (Source: FMA) |
|----------------------|------------------|------------------|------------------|------------------|
|                      | 2008 | 2009 | 2010 | 2011 | 2012 |
| Approvals            | 27   | 19   | 16   | 16   | 33   |
MARKET DEVELOPMENT

Following the slight decrease in premiums recorded overall during 2011, the figures fell by around twice as much in 2012, dropping by 1.2%. The decrease in premiums is attributable to continuing falls in life assurance, above all in the case of single-premium policies as well as regular premiums and in the case of unit-linked products. Meanwhile, health and non-life/accident insurance continue to record increases.

INSURANCE DENSITY AND INSURANCE PENETRATION

The state of development of a country’s insurance industry can be evaluated statistically in terms of insurance density and insurance penetration. Insurance density specifically refers to the ratio of premium revenues to total population. In the area of life assurance, insurance density dropped by 7.4% compared with 2011 to a level of €762, whereas for the non-life sector the figure increased by 2.2% to €1,174. These results put Austria in a mid-table position compared with the rest of Europe. In 2011, premium revenues per person within the EU averaged €1,072 for life assurance and €744 for non-life, of which €190 related to health insurance. Insurance penetration is defined as the ratio of premiums to gross domestic product. In Austria, insurance penetration in 2012 fell compared with the previous year, from 5.8% to 5.4%. In terms of the European average, there was a fall from 8.2% in 2010 to 7.6% in 2011.¹

BUSINESS DEVELOPMENT

PREMIUMS WRITTEN

The volume of premiums written (direct gross amount) fell by 1.2% compared with 2011 (2010: –0.7%) and totalled €16.34 billion in 2012.

With regard to the life assurance balance sheet group, premiums decreased from €6.9 billion in 2011 to €6.4 billion in the year under review. The proportion of premiums from unit-linked and index-linked life assurance continues to decline and was at 28.7% by the end of 2012. Claims payments fell compared with the previous year, from €6.6 billion to €6.3 billion.

The balance sheet group of non-life and accident insurance showed an increase over the previous year, with premiums written rising by 2.7% to a total of €8.2 billion. Claims payments rose in this regard to €5.0 billion, an increase of 4.8%.

With premiums written totalling €1.8 billion in 2012, the health insurance balance sheet group achieved an increase of 3.4% over the previous year. Premiums have continuously increased in the long term. Totaling €1.1 billion, payments for claims fell slightly.

TECHNICAL ACCOUNT BALANCE, FINANCIAL RESULT, RESULT FROM ORDINARY ACTIVITIES

The technical account balance totalled €455 million in 2012 (2011: €295 million). Mainly responsible for this balance was the somewhat lower level of business as well as a higher financial result, subsequently transferred to the technical account balance (the life assurance and health insurance balance sheet groups were transferred). As a result of a fall in expenditures for investments and interest, the financial result grew by 14.4% in 2012, from €3.0 billion to €3.4 billion. Overall, the result from ordinary activities was €1.4 billion, marking a 20.69% improvement on the previous year (2011: €1.16 billion).

ASSET STRUCTURE

As at the end of December 2012, assets totalled €82.2 billion (excluding deposits retained, invest-

¹ Source: CEA Statistics No. 46, European Insurance in Figures, January 2013; figures for 2012 were not yet available at the time of this report being prepared.
Table 21a: MARKET DEVELOPMENT OF AUSTRIAN INSURANCE UNDERTAKINGS 2008–2012
(Source: FMA, Statistics Austria, CEA, www.economic-growth.eu)

<table>
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<tr>
<th></th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
<th>2011</th>
<th>2012</th>
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<tr>
<td><strong>PREMIUMS WRITTEN IN AUSTRIA (direct gross amount, in € millions)</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>Life assurance</td>
<td>7,258</td>
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<td>7,438</td>
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<td>Unit-linked life assurance</td>
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<td>1,895</td>
<td>1,766</td>
<td>1,537</td>
</tr>
<tr>
<td>Index-linked life assurance</td>
<td>1,010</td>
<td>996</td>
<td>965</td>
<td>489</td>
<td>309</td>
</tr>
<tr>
<td>Health insurance</td>
<td>1,535</td>
<td>1,591</td>
<td>1,895</td>
<td>1,766</td>
<td>1,537</td>
</tr>
<tr>
<td>Non-life and accident insurance</td>
<td>7,330</td>
<td>7,440</td>
<td>7,576</td>
<td>7,940</td>
<td>8,152</td>
</tr>
<tr>
<td>Total premiums written in Austria</td>
<td>16,123</td>
<td>16,349</td>
<td>16,652</td>
<td>16,536</td>
<td>16,340</td>
</tr>
<tr>
<td><strong>PAYMENTS FOR CLAIMS (in € millions)</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Life assurance</td>
<td>5,448</td>
<td>5,777</td>
<td>5,819</td>
<td>6,624</td>
<td>6,328</td>
</tr>
<tr>
<td>Health insurance</td>
<td>1,079</td>
<td>1,087</td>
<td>1,115</td>
<td>1,134</td>
<td>1,129</td>
</tr>
<tr>
<td>Non-life and accident insurance</td>
<td>4,633</td>
<td>4,954</td>
<td>4,939</td>
<td>4,749</td>
<td>4,775</td>
</tr>
<tr>
<td><strong>PREMIUMS WRITTEN ABROAD (groups, in € millions)</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Western Europe</td>
<td>1,610</td>
<td>1,521</td>
<td>1,793</td>
<td>1,834</td>
<td>1,660</td>
</tr>
<tr>
<td>CESEE EEA</td>
<td>5,201</td>
<td>5,346</td>
<td>5,347</td>
<td>5,857</td>
<td>6,845</td>
</tr>
<tr>
<td>CESEE NON-EAA</td>
<td>489</td>
<td>509</td>
<td>1,052</td>
<td>753</td>
<td>941</td>
</tr>
<tr>
<td>Total premiums written abroad</td>
<td>7,300</td>
<td>7,376</td>
<td>8,192</td>
<td>8,444</td>
<td>9,446</td>
</tr>
<tr>
<td>Percentage foreign countries [groups]</td>
<td>35.47</td>
<td>36.01</td>
<td>43.62</td>
<td>44.05</td>
<td>...</td>
</tr>
<tr>
<td><strong>PREMIUM DEVELOPMENT SERVICES AND BRANCHES (in € millions)</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Services</td>
<td>327</td>
<td>572</td>
<td>517</td>
<td>...</td>
<td>...</td>
</tr>
<tr>
<td>Branches</td>
<td>308</td>
<td>302</td>
<td>325</td>
<td>...</td>
<td>...</td>
</tr>
<tr>
<td>Total premiums services and branches</td>
<td>635</td>
<td>874</td>
<td>842</td>
<td>...</td>
<td>...</td>
</tr>
<tr>
<td>Technical account balance (in € millions)</td>
<td>-111</td>
<td>132</td>
<td>378</td>
<td>295</td>
<td>455</td>
</tr>
<tr>
<td>Financial result (in € millions)</td>
<td>2,370</td>
<td>2,730</td>
<td>3,203</td>
<td>2,964</td>
<td>3,391</td>
</tr>
<tr>
<td>Result from ordinary activities (in € millions)</td>
<td>419</td>
<td>744</td>
<td>1,101</td>
<td>1,162</td>
<td>1,395</td>
</tr>
<tr>
<td><strong>INSURANCE DENSITY (in €)</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Life assurance</td>
<td>871</td>
<td>875</td>
<td>885</td>
<td>823</td>
<td>762</td>
</tr>
<tr>
<td>Non-life insurance</td>
<td>1,063</td>
<td>1,080</td>
<td>1,097</td>
<td>1,149</td>
<td>1,174</td>
</tr>
<tr>
<td>Total</td>
<td>1,934</td>
<td>1,955</td>
<td>1,982</td>
<td>1,972</td>
<td>1,936</td>
</tr>
<tr>
<td>Insurance penetration (in %)</td>
<td>5.70</td>
<td>5.96</td>
<td>5.91</td>
<td>5.78</td>
<td>5.43</td>
</tr>
</tbody>
</table>

Operations in relation to unit-linked and index-linked life assurance, investments relating to state-sponsored retirement provision, and pro rata interest), which corresponds to a rise of 1.1% compared with the previous year.

Deckungsstock\(^1\) and covering assets account for by far the largest share of investments. They are used to cover technical provisions and thereby secure the obligations of the insurance undertaking towards the insured party. At the 2012-year end, including unit-linked and index-linked life assurance and state-sponsored retirement provision plans, they totalled €89.9 billion, which represents an increase of 4.3% compared with the previous year. The biggest share, of €36.6 billion, relates to debt securities. This marks a slight decrease compared with 2011. At 40.3%, the

\(^1\) Translator’s note: The Deckungsstock is a fund which is administered separately from the other assets of the insurance undertakings. It is exempt from creditors’ attachment and designed to satisfy the claims of the policyholders in the event of an insolvency of the insurance undertaking.
percentage of government bonds in the debt securities segment remains high. The core share ratio (listed shares, share-based investment funds, equity risk in mixed funds), which had been falling since 2006, grew slightly again during the reporting year, ending 2012 at 4.0%. The extended share ratio (listed shares, unlisted shares, share-based investment funds, equity risk in mixed funds, structured debt securities without capital guarantee, structured loans without capital guarantee) increased slightly from 15.5% in 2011 to 15.7% in 2012.

LIFE ASSURANCE

The sum of all assets secured as special funds in the life assurance sector (excluding unit-linked and index-linked life assurance) amounted to €49.0 billion as at the end of 2012, which is slightly down on the previous year (€49.01 billion). Accounting for 57.2%, debt securities made up more than half of the investments in life assurance Deckungsstock. The percentage of government bonds in this category has remained relatively stable at 22.4%. Over the same period the share ratio rose slightly from 4.0% to 4.1%. The extended share ratio decreased from 7.3% at the 2011 year-end to 7.2% by the end of 2012 and has thus continued to fall.

LEGAL BASIS

The main basis for supervision of insurance undertakings is provided by the Versicherungsaufsichtsgesetz (VAG; Insurance Supervision Act) as well as associated regulations. On the basis of this legislation, the Financial Market Authority (FMA) monitors all business operations within the insurance sector as well as the net assets, financial position and results of opera-
Authority. The number of insurance companies has therefore fallen by 19 since 2000.

**Joint stock companies and large mutual associations**

Excluding small mutual associations, there were 48 domestic insurance undertakings operating in Austria in 2012 in total. Six of these were mutual associations, with 42 joint stock companies. The classes of insurance in which these joint stock companies and large mutual associations operate are detailed in Table 23.

Austria is traditionally dominated by composite insurers. This refers to insurance undertakings that operate in more than just one balance sheet group (i.e. life assurance, health insurance, non-life and accident insurance). The regulation on the separation of insurance classes, which became effective in Austria with the signing of the EEA treaty on 2 May 1992, does not apply to numerous Austrian insurance undertakings. This is because they were already operating as composite insurers before the Treaty was signed and are thus permitted to continue their operations without limitation.

**Small mutuals**

As at the end of December 2012 the FMA was supervising a total of 53 small mutual associations, of which around two thirds operate in the form of fire insurers, with the remaining third involved in animal insurance. In addition, there is a reinsurance association for small mutuals (see Table 24).

**EEA and third-country insurers**

Since the beginning of July 1994, the country of origin principle has applied to the Europe-wide licensing of insurance undertakings within the European internal insurance market (which entails all EEA countries). Consequently, Austrian policyholders and

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**Operational Supervision**

<table>
<thead>
<tr>
<th>Table 22: Legal Forms of Domestic Insurance Undertakings 2008–2012</th>
<th>(Source: FMA)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Companies</td>
<td>2008</td>
</tr>
<tr>
<td>Mutual associations</td>
<td>6</td>
</tr>
<tr>
<td>Small mutual associations</td>
<td>56</td>
</tr>
<tr>
<td>Joint stock companies</td>
<td>44</td>
</tr>
<tr>
<td>Total</td>
<td>106</td>
</tr>
<tr>
<td>Mutual associations dealing in asset management / private foundations</td>
<td>6</td>
</tr>
</tbody>
</table>

**Table 23: Business Areas of Insurance Undertakings 2008–2012**

| (Excluding small mutuals; source: FMA) |
|---|---|---|---|---|---|
| Business Areas | 2008 | 2009 | 2010 | 2011 | 2012 |
| Reinsurance only | 3 | 3 | 3 | 3 | 3 |
| Life assurance | 31 | 31 | 31 | 31 | 30 |
| Health insurance | 9 | 10 | 10 | 10 | 8 |
| Non-life and accident insurance | 43 | 42 | 42 | 42 | 41 |

**Table 24: Small Mutual Associations by Field of Activity 2008–2012**

| (Source: FMA) |
|---|---|---|---|---|---|
| Mutual Associations | 2008 | 2009 | 2010 | 2011 | 2012 |
| Fire insurance associations | 37 | 37 | 35 | 35 | 35 |
| Animal insurance associations | 18 | 18 | 18 | 17 | 17 |
| Death benefits funds | 0 | 0 | 0 | 0 | 0 |
| Reinsurers for small mutuals | 1 | 1 | 1 | 1 | 1 |
| Total number of mutuals | 56 | 56 | 54 | 53 | 53 |
policyholders from other EEA countries may also take out insurance with insurance undertakings that have their registered office in another EEA Member State, rather than being restricted to insurance undertakings based in their own country. The European internal insurance market allows insurance undertakings that have their registered office in another EEA Member State as well as a valid licence there to operate through a branch and/or under the freedom to provide services without acquiring a new licence from the competent foreign supervisory authority (host authority; single licence principle). In order to take up insurance activities in another EEA country, the insurance undertaking is required to register with the authority of the country of origin and to submit certain documents. The home country authority is the authority in the country where the insurance undertaking has its registered offices.

It is the home country authority and not the foreign supervisory authority of the country where the insurance undertaking operates that is principally responsible for supervision.

As at the end of December 2012, 28 insurance undertakings from within the EEA were operating in Austria through a branch. An additional 897 companies were registered to provide services here. This is 19 more than in 2011 (see Table 25).

Since 2010 only one foreign insurance undertaking from a third country (outside the EEA) has remained licensed in Austria, namely Helvetia Versicherungen AG from Switzerland.

CONTINUED SUPERVISION

ANALYSES

Once every three months, the FMA carries out an analysis of the net assets, financial position and the results of operations of the supervised insurance undertakings. The data required for the analysis is reported by the companies electronically. Based on these routine analyses, the FMA has published a report on the performance of the Austrian insurance sector once every quarter since 2010. The reports can be viewed on the FMA website: http://www.fma.gv.at/en/statistics-reporting/statistics-companies/insurance-undertakings.html

Table 25: EEA INSURERS IN AUSTRIA 2008–2012 (Source: FMA)

<table>
<thead>
<tr>
<th>REGISTERED EEA INSURERS</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
<th>2011</th>
<th>2012</th>
</tr>
</thead>
<tbody>
<tr>
<td>Operating through branches</td>
<td>25</td>
<td>23</td>
<td>27</td>
<td>26</td>
<td>28</td>
</tr>
<tr>
<td>Providing services directly</td>
<td>761</td>
<td>804</td>
<td>845</td>
<td>878</td>
<td>897</td>
</tr>
</tbody>
</table>

Pursuant to Article 100 para. 1 VAG, the FMA is entitled to make use of its right to information at any time. Information on solvency status during the course of the year and the monthly development of hidden reserves may be requested from insurance undertakings so that any potential threats to capital requirements can be recognised at the earliest possible time. Additionally, a cash flow forecast for a five-year period helps to reveal whether sufficient liquidity is available to fulfil the obligations arising from insurance contracts. It can also be recognised whether companies will be able to hold conservatively valued securities until redemption or be forced to realise losses through the premature sale of the securities.

The data, which is reported as part of standard procedures, together with the FMA’s analyses based on this data also serve as a basis for deciding whether to take any additional supervisory measures:

- **Article 104a, para. 2a VAG:*** If, due to a deterioration in the financial situation of an insurance undertaking, the supervisory authority has legitimate reason to assume that a sufficient solvency margin is no longer likely to be guaranteed in the long term, the authority may call on the undertaking to submit a reorganisation plan setting out the planned development for the next three financial years.

- **Article 104a para. 1 VAG:*** The FMA will call on the supervised insurance undertakings to submit a solvency plan if the solvency margin is judged insufficient or if the FMA has legitimate reason to assume that an insurance undertaking will no longer have own funds in the amount required in the foreseeable future.

- **Article 104a para. 2 VAG:*** If the own funds of an insurance undertaking are not in line with the scope of the guarantee fund, the FMA will require
a financing plan which must be approved by the FMA.
In order to better estimate future risk potential, the FMA additionally performs regular stress tests. These are conducted twice a year in the life assurance sector and once a year in the classes of non-life/accident insurance and health insurance.

OFFICIAL PROCESSES, DISCLOSURES, LICENSING, ON-SITE ACTIVITIES

Pursuant to Article 116 para. 1 VAG, the FMA periodically publishes information on legal requirements relevant to the insurance industry and on activities involving individual insurance undertakings. The latter include information regarding licences granted, transformations of companies, liquidations, the establishment of branch offices and the commencement of the provision of services by EEA-based companies. Since 2001 such disclosures have been available to view on the FMA website: http://www.fma.gv.at/en/companies/insurance-undertakings/disclosures-concerning-insurance-undertakings.html

Both undertakings with their head office in Austria and foreign insurers with their head office situated outside the EEA (third-country insurers) require a licence from the FMA in order to conduct contractual insurance business in Austria. Licences granted to domestic insurance undertakings are valid for the entire EEA (single licence principle), while a licence granted to a third-country insurer is only valid for Austria.

An undertaking applying for a licence must fulfil a number of conditions before being granted a licence by the FMA. Examples of the requirements include the establishment of a company in the legal form of a joint stock company or a mutual association, and funding it with the required level of own funds. The members of the management board must be personally and professionally qualified for their functions, and shareholders must also meet certain requirements. A business plan must be presented providing precise information on the field and scope of activities, as well as the nature of the planned business activities. A separate licence to operate is granted for each individual insurance class.

The FMA processed a total of five licensing applications in 2012. One application was for an additional insurance class and four related to licence withdrawals. The FMA was also involved in one case of a portfolio being transferred and in four merger cases, linked to the licence withdrawals. Overall, there were 16 cases of articles of association being amended during the year under review. In 2012, 91 cases were processed in connection with the provision of services and two in connection with establishing branches. The figures relating to outsourcing pursuant to Article 17a VAG and the appointment of trustees can be found in Table 26.

In compliance with the legal requirements set forth in Article 18 para. 2 of the VAG, 136 business plans disclosing the premiums for life assurance and health insurance were submitted to the FMA last year (see Table 27).

With regard to on-site activities, a distinction is made between the different types according to the degree of intensity. The following terminology is applied in insurance supervision:

- **On-site inspections**: an inspection as specified in Article 101 of the VAG or Article 33 of the Pensionskassengesetz (PKG; Pensionskassen Act). Such inspections adhere to a predefined inspection plan. Inspections may also be carried out on an ad hoc basis if necessary.
- **Brief inspections**: on-site activity focused on a specific item of inspection or investigation, usually lasting between one and five days.
- **Management talks**: meetings with senior representatives of an insurance undertaking concerning topics specifically related to the undertaking.
- **Company visits**: on-site presence for the purpose of discussing current information.

As in the previous years, the availability of personnel resources for carrying out on-site activities was markedly affected by preparations for Solvency II and the preliminary implementation tasks. This fact was taken into account in scheduling.

During 2012 on-site inspections were held with regard to such subject areas as risk management of investments, auditing and internal control system, formation of an appropriate level of provisions for outstanding insurance claims, risk-bearing capacity, actuarial bases, preventing and tackling money laundering and terrorist financing, analysis of profits and

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costs – cost allocation, minimum standards for information requirements in life assurance, profit participation, conclusion of contracts and portfolio management.

In addition to on-site inspections, several brief inspections were held at insurance undertakings in 2012. As in the previous year, one of the focuses was the current status of the risk management process among insurance undertakings. The suitability of risk management for Solvency II is also being evaluated.

In addition, company visits and management talks also touched on annual reports for 2011, current developments in 2012 and company strategies, as well as other company-specific topics (see Table 28).

An inspection database has been established to store information on the current situation of insurance undertakings and to enable developments to be traced at a later stage.

**Activities Abroad in Connection with Insurance Groups**

Alongside supervision of insurance undertakings at the level of the individual companies involved, the additional supervision of insurance groups represents an important aspect of supervisory activity. This additional supervision comprises the monitoring of sufficient solvency at the group level, as well as changes in levels of foreign business in relation to the associated risk exposure.

Austrian insurance groups operate outside Austria in 26 different countries through participations. Of the 107 foreign holdings of Austrian insurance groups in 2012 (2011: 114 foreign holdings), 95 (2011: 99) are located in Central, Eastern and South-Eastern Europe (CESEE). As was also the case in the two previous years, the Austrian insurance industry’s foreign investments developed dynamically during 2012.

Austrian insurance groups were able to write premiums of €9.45 billion (2011: €8.44 billion) abroad during 2012, of which €7.76 billion (2011: €6.61 billion) related to CESEE states. This meant that 82% (2011: 78%) of premium written abroad by Austrian insurance groups were written through holdings in CESEE. From the perspective of Austrian insurance groups, the Czech Republic, Poland and the Slovak Republic are vitally important markets, accounting for more than two thirds of the total CESEE premiums generated.

The share of premiums from abroad relative to the total premium volume of Austrian insurance groups has increased constantly since 2006. While this figure was still just 32.31% back in 2006, the equivalent figure at the 2011 year-end was 44%.

Table 26 (on page 94) shows which insurance groups are active in which countries.

<table>
<thead>
<tr>
<th>Insurance Groups</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
<th>2011</th>
<th>2012</th>
</tr>
</thead>
<tbody>
<tr>
<td>Wiener Versicherung Gruppe (VIG)</td>
<td>3</td>
<td>3</td>
<td>3</td>
<td>3</td>
<td>5</td>
</tr>
<tr>
<td>UNIQA Versicherungen AG (UniqA Group)</td>
<td>3</td>
<td>0</td>
<td>2</td>
<td>2</td>
<td>5</td>
</tr>
<tr>
<td>Amendment to articles of association (insurers and small mutuals)</td>
<td>17</td>
<td>17</td>
<td>31</td>
<td>8</td>
<td>19</td>
</tr>
<tr>
<td>Trustee appointments</td>
<td>18</td>
<td>25</td>
<td>24</td>
<td>11</td>
<td>24</td>
</tr>
<tr>
<td>Branches</td>
<td>1</td>
<td>0</td>
<td>4</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>Services</td>
<td>87</td>
<td>76</td>
<td>68</td>
<td>55</td>
<td>91</td>
</tr>
</tbody>
</table>

Table 27: BUSINESS PLANS / ACTUARIAL BASES 2008–2012 (Source: FMA)

<table>
<thead>
<tr>
<th>2008</th>
<th>2009</th>
<th>2010</th>
<th>2011</th>
<th>2012</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of annually submitted premiums</td>
<td>114</td>
<td>116</td>
<td>134</td>
<td>156</td>
</tr>
</tbody>
</table>

Table 28: ON-SITE PRESENCE 2008–2012 (Source: FMA)

<table>
<thead>
<tr>
<th>2008</th>
<th>2009</th>
<th>2010</th>
<th>2011</th>
<th>2012</th>
</tr>
</thead>
<tbody>
<tr>
<td>Inspections</td>
<td>17</td>
<td>41</td>
<td>31</td>
<td>14</td>
</tr>
<tr>
<td>Brief inspections</td>
<td>9</td>
<td>3</td>
<td>6</td>
<td>7</td>
</tr>
<tr>
<td>Management talks</td>
<td>32</td>
<td>33</td>
<td>55</td>
<td>19</td>
</tr>
</tbody>
</table>
foreign insurance undertakings
provision of services and freedom of establishment in the EEA

The volume of premiums written by EEA insurance undertakings that are active in Austria on the basis of the freedom of establishment was €374 million in 2011 (2010: €325 million). EEA insurance undertakings that are active in Austria on the basis of the freedom to provide services took in a premium volume of €544 million in 2011 (2010: €517 million).
Third-country insurers in Austria
The premium revenues of the only non-EEA insurance undertaking licensed to operate in Austria are insignificant. As in previous years, the premium volume was exclusively accounted for by non-life and accident insurance.
Looking back, the first quarter of the year was dominated by the positive effects of the three-year money market tender provided in 2011 by the European Central Bank (ECB). In total more than €1,000 billion has been pumped into the banking system. This not only helped to ease the European debt crisis on a temporary basis. It also led to a significant fall in the bond yields of the ailing eurozone states. Waning levels of risk aversion caused liquidity on the equity markets to rise sharply.

The equity indices recorded their best start to the year ever in 2012. After a turbulent second quarter, dominated by the fallout from the euro crisis, the markets stabilised again towards the middle of the year. The announcement by ECB President Mario Draghi that he would do “whatever it takes” to preserve the euro resulted in a clear easing in the debt crisis. The yield markups for Spain and Italy fell strongly on the bond markets. Meanwhile, the euro was able to recover. The equity markets have been tending upwards again since then.

The total fund assets managed by the 24 Austrian investment fund management companies (excluding fund assets managed by real estate investment fund management companies) rose from €134.59 billion as at the 2011 year-end to €144.41 billion as at 31 December 2012. This equates to an increase of €9.82 billion or 7.30%. By way of comparison, the total fund assets as at 31 December 2008 were €126.04 billion (see Chart 33), while still totalling €163.75 billion at the end of 2007.

Net outflows of funds in 2012 totalled €390.65 million, with the largest volume being taken out in January and May. The highest inflows of funds were recorded in July and August. Net outflows of funds were recorded for most investment categories: during the year under review in the investment categories of short-term money market funds (−€51.40 million), money market funds (−€190.44 million), mixed funds (−€427.20 million), hedge funds of funds (−€316.40 million), and alternative funds (−€140.80 million).
InVestMent funDs

(−€161.47 million), alternative funds (−€217.82 million) and the new fund category introduced in August 2012 of funds that are compliant with directives with a considerable derivative strategy (−€750,000). Mixed funds were the most strongly affected. In contrast, the investment categories of bond and share-based funds recorded net inflows of €158.55 million and €499.87 million respectively (see Chart 34).

The dominant position of bond and mixed funds is reflected in the breakdown of the overall fund volume figures. As at 31 December 2012, these two categories accounted for a total of €115.95 billion (€60.74 billion and €55.21 billion respectively) or 80.3% of the total volume (42.1% and 38.2% respectively). At the 2012 year-end there were fewer fund assets invested in the asset classes of short-term money market funds (€4.53 million), money market funds (€445.77 million), short-term bond funds (€7.94 billion), share-based investment funds (€18.81 billion), hedge funds of funds (€602 million), alternative funds (€656.20 million) and funds that are compliant with directives with a considerable derivative strategy (€12.24 million; see Chart 35).

When viewed by target group, 46.9% of investors held retail funds, 44.0% special funds and 9.1% large-scale investment funds as at 31 December 2012 (see Chart 36).

R E A L E S T A T E F U N D S

Over recent years the Austrian real estate market has not developed evenly. Whilst the cumulative increase in real estate prices in Austria excluding Vienna recorded since 2000 did not exceed the rise in consumer prices until early 2012, real estate prices in Vienna have been following their own path separate from developments in the rest of Austria since 2005. Between just the first quarter of 2009 and the third quarter of 2012 the increase recorded for Vienna was in excess of 40%. This rapid price increase might be maintained over the coming years, with interest rates remaining low and the general levels of market uncertainty. However, there will be a risk of falling prices over the longer term if interest rates start to rise again, particularly after further price increases over the next few years.

![Chart 35: Net Assets by Fund Category (as at 31 Dec. 2012)](image1)

![Chart 36: Net Assets by Target Group (as at 31 Dec. 2012)](image2)

![Chart 37: Fund Assets of Real Estate Funds 2008–2012 (in € millions)](image3)
Despite the excessive development in prices seen in Vienna in particular of late, the rise in property prices in Austria remains moderate by international standards. Real estate loans have certainly grown more strongly than other forms of lending to households over recent years. However, the price increase in evidence in Vienna in particular since the beginning of the crisis has not resulted in a disproportionately large expansion in lending.

As at the reporting date of 31 December 2012, the five real estate investment management companies were managing a total fund volume of €3.41 billion, which equates to an increase of 17.4% in the assets under management. As at 31 December 2011, the fund volume was €2.90 billion. The fund assets being managed by real estate funds have risen over the past five years, with the total amount practically doubling since 2008 (see Chart 37 on page 97).

**Legal Basis**

The entry into force of the new 2011 Investmentfondsgesetz (InvFG 2011; Investment Fund Act) and related FMA regulations laid a new foundation for Austrian investment fund law. In particular, detailed rules governing investment fund management companies were standardised in terms of the organisational requirements (such as risk management, internal audit or handling conflicts of interest), and the options for the cross-border management and marketing of investment funds were extended.

Under the new legal provision, the management of investment funds in Austria also requires a licence as a credit institution pursuant to Article 1 para. 1 no. 13 of the Bankwesengesetz (BWG; Banking Act). Alongside the provisions of InvFG 2011, this therefore means that the BWG is also directly applicable to investment fund management companies in some aspects. Pursuant to Article 5 para. 2 nos. 3 and 4 InvFG 2011, this licence may be extended to the provision of certain financial services transactions, such as the provision of investment advice in relation to financial instruments (Article 3 para. 2 no. 1 WAG 2007) and (individual) portfolio management on an individual customer basis (Article 3 para. 2 no. 2 WAG 2007). As of the end of 2012, ten Austrian investment fund management companies had availed themselves of this opportunity to extend their licences. Real estate investment fund management companies that hold a banking licence in accordance with Article 1 para. 1 no. 13a BWG are subject in the first instance to the provisions of the Immobilien-Investmentfonds-


gesetz (ImmobilienFonds-Real Estate Investment Fund Act) including the provisions of the BWG.
The FMA is also responsible for enforcing the Immobilienfonds-Prospektinhalt-Verordnung (Regulation on the Contents of Prospectuses of Real Estate Funds) and the regulations specifying implementation of the ImmobilienFonds-Prospektinhalt-Verordnung concerning the risk disclaimer (Risikohinweisverordnung; Risk Disclaimer Regulation), as well as the regulation specifying the categories of counterparties in transactions involving OTC derivatives of real estate funds (Immobilienfonds-OTC-Derivate-Gegenpartei-Verordnung; Real Estate Funds and OTC Derivative Counterparty Regulation).

OFFICIAL TASKS

SUPERVISED COMPANIES / LICENSING

As at the year-end, 24 investment fund management companies held the corresponding licence from the FMA. No new licences were granted in 2012. In total, 2,230 funds (2011: 2,232) of domestic investment fund management companies were licensed for public sale in Austria, alongside 5,663 funds of foreign companies (2011: 5,591). The figures for domestic and foreign funds over the past five years are shown in Table 30.

Five real estate investment fund management companies were licensed in Austria as at 31 December 2012. Each of these companies manages a retail fund. One company also manages a second retail fund, and another company also manages a special real estate fund. One special real estate fund was merged into the now single remaining special real estate fund in mid-2012. No new licences were granted for real estate investment fund management companies in 2012.

FREEDOM TO PROVIDE SERVICES AND FREEDOM OF ESTABLISHMENT

Investment fund management companies based in the European Economic Area (EEA) are authorised to provide anywhere in the EEA those services that they are licensed to provide in their home country pursuant to the Fourth Directive relating to undertakings for collective investment in transferable securities (UCITS IV) by establishing branches or under the freedom to provide services.

As at the end of 2012, a total of 12 Austrian companies were taking advantage of this option, operating under the freedom to provide services in the Czech Republic, France, Germany, Hungary, Italy, Luxembourg, Malta, Poland, Slovakia, Slovenia, Spain, Sweden and the UK. Conversely, some 50 companies (2011: 46) from Belgium, Denmark, France, Germany, Liechtenstein, Luxembourg, Norway, Spain, Sweden and the UK were represented in Austria under the freedom to provide services in 2012. One investment fund management company from France and one from Luxembourg are currently doing business in Austria based on the freedom of establishment (2011: 2). Of the 50 companies operating in Austria under the freedom to provide services, two German and two French companies also hold a management company passport (MCP). Since the implementation of UCITS IV, the MCP has enabled management companies from other Member States to manage UCITS approved in Austria and sell units of these funds, without being subject to any additional internal restrictions. Currently, no Austrian investment fund management company has applied for an MCP.

SUPERVISORY PROCEDURES

At 6,148, the number of official measures (amendments to fund regulations in particular) increased in 2012 (2011: 4,314 measures). As in the previous year, this decline can be attributed to the fact that, in view of the implementation of the UCITS IV regime within Austria, the fund industry’s focus continued to lie on making administrative adjustments. A particular focus in supervisory activities was the adaptation of fund regulations pursuant to the InvFG 2011. For the first time, two purely domestic master-feeder structures were approved in Austria.

Compliance with the warnings in the simplified and complete prospectuses and in advertising materials was reviewed using spot checks. This is particularly important with regard to providing transparent, comprehensive information and consequently for protecting the interests of investors. Changes to the fund regulations were approved for two real estate investment fund management companies.
CONTINUED SUPERVISION

REPORTING AND INFORMATION SOURCES
Pursuant to the provisions of the 4. Derivate-Risikoberechnungs- und Meldeverordnung (4th Regulation on Risk Calculation and Reporting of Derivative Instruments), investment fund management companies are responsible for providing to the FMA in a standardised format certain details on the derivatives belonging to the fund assets. In addition, the investment fund management companies must comply with the notification and reporting obligations as specified in the BWG. The appointed state commissioners are also required to provide regular reports, which are evaluated on a systematic basis.

DISCLOSURE OBLIGATIONS
The disclosure obligations applicable to investment fund management companies are defined in the InvFG 2011. They are consequently required to publish the half-yearly report and the audited report on activities for each investment fund in addition to the financial statements of the company itself. The obligations also encompass the requirement that the company itself or its custodian bank, if one has been appointed, must publish the issue and repurchase price of units on every occasion on which units are issued or repurchased. This must happen at least twice every month. Every investment fund management company is additionally required to publish a prospectus in Austria, one working day prior to offering an investment fund, as well as any major changes to prospectuses.

When the new InvFG 2011 entered into force, the simplified prospectus was replaced by the Key Investor Information Document (KIID), with a one-year transitional period until 30 June 2012. The KIID represents pre-contractual information for the investor. It must be fair and clear, it must not mislead, and it must be consistent with the content of the prospectus. The central components of the KIID must always be kept completely up to date. The KIID contributes to improved investor protection and transparency in financial markets. As a result of EU-wide harmonisation of the content and format of the KIID, the investor is better able to compare different investment funds, including on an international basis.

The following aspects are covered by the content of the KIID, which usually comprises two pages:
- Objectives and investment policy
- Risk and reward profile
- Charges
- Past performance
- Practical information

The disclosure obligations applying to real estate investment fund management companies are set forth in the ImmolnVFG. They are consequently required to publish the half-yearly report and the audited report on activities for each real estate investment fund in addition to the financial statements of the real estate investment fund management company itself. Whenever units are issued or repurchased, but at least twice monthly, the custodian bank is obliged to publish the issue and repurchase prices. Every real estate investment fund management company is additionally required to publish a simplified prospectus and a complete prospectus in Austria, one working day prior to offering a real estate investment fund, as well as any major changes to prospectuses.

ON-SITE INSPECTIONS
The revision of the BWG through Federal Law Gazette I No. 72/2010 of 18 August 2010 in relation to responsibility for implementing on-site inspections means that, since 1 January 2011, it has been the FMA carrying out on-site inspections at investment fund management companies, real estate investment fund management companies and corporate provision funds. In 2012, six such inspections were carried out at investment fund management companies, one at a real estate investment fund company and one at a corporate provision fund.

MANAGEMENT TALKS
Detailed management talks were held with 30 supervised companies in 2012 (2011: 21).

INTERNATIONAL COOPERATION
At an international level, the FMA was again represented in the investment fund sector in 2012 on the Investment Management Standing Committee (IMSC) of the European Securities and Markets Authority
This Committee deals with rules and interpretation issues for both harmonised and non-harmonised investment funds. With regard to the harmonised UCITS sector, the main task of the Committee is to prepare advice for the European Commission (referred to as binding technical standards or BTS), as well as guidelines and recommendations regarding UCITS. A permanent operational working group, in which the FMA also participates, has been established within the IMSC. Amongst other things, the operational working group is involved in the operational and practical implementation of the UCITS IV Directive. The objective is to achieve harmonised supervisory standards across the individual Member States and to lay the technical foundations for the IMSC.

One of the IMSC’s main tasks lay in developing guidelines for exchange traded funds (ETFs) and structured UCITS. These guidelines were published on 18 December 2012. They include detailed rules on handling secondary market investors, transparency provisions, requirements for securities lending and repos, and strict technical framework conditions for financial indices.

Another key issue tackled by the IMSC has been the Alternative Investment Fund Managers Directive (AIFM Directive). The main focus was the development of detailed remuneration guidelines and cooperation agreements between the European and international regulators. These Memoranda of Understanding (MoU) are a prerequisite if AIFM-related services are to be offered by third countries within the European Union. ESMA already succeeded in negotiating MoU with Switzerland and Brazil during 2012. Work to flesh out the definition of AIF and AIFM (Guidelines on key concepts of the AIFMD, Regulatory technical standards on types of AIFMs) formed an important part of European efforts to harmonise supervision in 2012. These guidelines and RTS are to be finalised in 2013.

Alongside its work on the IMSC, the FMA was also involved internationally in the preparation of the new UCITS V Directive on custodian banks, remuneration and sanctions, and the two new EU Regulations relating to the AIFM Directive, namely the European Social Entrepreneurship Funds Regulation and the European Venture Capital Funds Regulation.
or the first time since the financial crisis, the market for investment firms and investment service providers licensed in accordance with the 2007 Wertpapieraufsichtsgesetz (WAG 2007; Securities Supervision Act) recovered slightly last year. Despite continued scepticism among broad swathes of investors, there were increases in the volume of assets under management compared with the financial sector as a whole.

The trend towards restructuring and realignment of business activities continued during the 2012 financial year. The number of undertakings licensed pursuant to WAG 2007 fell on a similar scale to previous years. In contrast, the trend towards the creation of new Austrian branches of EEA investment firms located outside Austria, already in evidence in the previous year, picked up considerably, to the extent that almost one third of all such branches were set up in 2012. These now account for 11% of all of the investment firms and investment service providers based in Austria.

In terms of the commercial orientation of investment firms and investment service providers, there was a slight shift in the activity of licensed undertakings in 2012 towards types of business that do not require a licence. For the first time since 2008, companies operating exclusively in the investment services sector now only account for around one third of the licensed investment firms and investment service providers. On average less than two thirds of the sales generated by these companies result from business that requires a licence.

Compared with 2011, there was barely any change in the total number of customers being served by investment firms and investment service providers in the area of investment services. The total figure for 2012 was 461,723, which represents a 0.5% increase on 2011. The volume of clients’ assets being managed by investment firms and investment service providers developed much more positively. Assets under management by investment firms in the portfolio management segment, totalling €32.86 billion, were up 24% on the previous period. With regard to the receipt and transmission of clients’ orders, the total volume recorded, at €18.35 billion, was almost 2.5 times as high as in 2011.

There has been a very sharp fall in the number of people working for investment firms and investment service providers, down from almost 4,000 employees in 2007 to barely 1,000 now. This marks a fall of 75% compared with the situation at the start of the financial crisis. The entry into force of the new rules creating the position of “securities broker” has had a major impact on the number of independent brokers operating under the liability umbrella of licensed companies. The securities broker takes the place of the financial services assistant, previously a free profession [see special topic “From financial services assistant to securities broker” on page 107]. Whilst the number of tied agents working exclusively for a licensed investment firm and requiring registration as commercial investment advisers increased considerably and rose by more than 28% in 2012, the number of financial services assistants (without a special certificate of qualification) working for investment firms and investment service providers decreased by almost 62%. In just the first year of the new rules governing the profession, this figure is already clearly down on the more strictly regulated positions. Detailed figures in this regard can be found in Table 31, “Key figures for Austrian investment firms” under the heading “Staff”.

The fact that, out of a total of 3,666 agents operating under the liability umbrella of licensed investment firms and investment service providers, now only 36% lack a special certificate of qualification shows the extent to which the market has been cleaned up in a segment that was previously frequently criticised for being “unregulated and unsupervised”. In terms of the

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<th>2008</th>
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<td>All companies</td>
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<td>169</td>
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<td>Multilateral trading system</td>
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<td>Cooperation with financial services assistants/securities brokers</td>
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<td>127</td>
<td>118</td>
<td>105</td>
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<td>Joint stock company (AG)</td>
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<td>23</td>
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<td>18</td>
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<td>Limited liability company (GmbH)</td>
<td>162</td>
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<td>121</td>
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<td>Partnerships</td>
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<td>Sale proprietorships</td>
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<td>46</td>
<td>42</td>
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<td>32</td>
<td>27</td>
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<td>Companies with branches in EEA</td>
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<td>12</td>
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<td>9</td>
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<td>Multi-level marketing companies</td>
<td>9</td>
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<td>9</td>
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<tr>
<td><strong>STAFF</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Number of employees</td>
<td>2,028</td>
<td>1,524</td>
<td>1,366</td>
<td>1,283</td>
<td>992</td>
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<tr>
<td>Number of tied agents</td>
<td>2,363</td>
<td>2,418</td>
<td>2,038</td>
<td>1,263</td>
<td>1,620</td>
</tr>
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<td>Number of financial services assistants</td>
<td>6,449</td>
<td>5,035</td>
<td>4,313</td>
<td>3,426</td>
<td>1,316</td>
</tr>
<tr>
<td>Number of securities brokers</td>
<td>–</td>
<td>–</td>
<td>–</td>
<td>–</td>
<td>730</td>
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<td><strong>BUSINESS ACTIVITY</strong></td>
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<tr>
<td>Provision of investment advice</td>
<td>153</td>
<td>132</td>
<td>115</td>
<td>112</td>
<td>99</td>
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<tr>
<td>Provision of portfolio management</td>
<td>58</td>
<td>51</td>
<td>47</td>
<td>48</td>
<td>42</td>
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<tr>
<td>Receipt and transmission of orders</td>
<td>166</td>
<td>133</td>
<td>123</td>
<td>111</td>
<td>106</td>
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<tr>
<td>Advisory of investment funds</td>
<td>31</td>
<td>29</td>
<td>31</td>
<td>27</td>
<td>23</td>
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<tr>
<td>External management of investment funds</td>
<td>34</td>
<td>33</td>
<td>32</td>
<td>32</td>
<td>29</td>
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<tr>
<td>Appointment of tied agents</td>
<td>31</td>
<td>32</td>
<td>30</td>
<td>28</td>
<td>27</td>
</tr>
<tr>
<td>Cooperation with financial services assistants</td>
<td>89</td>
<td>73</td>
<td>63</td>
<td>54</td>
<td>48</td>
</tr>
<tr>
<td>Sale of own products</td>
<td>48</td>
<td>46</td>
<td>58</td>
<td>62</td>
<td>59</td>
</tr>
<tr>
<td>Services to key account customers</td>
<td>46</td>
<td>48</td>
<td>50</td>
<td>49</td>
<td>43</td>
</tr>
<tr>
<td><strong>SHARE OF INVESTMENT SERVICES IN TOTAL BUSINESS</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Up to 50%</td>
<td>78</td>
<td>64</td>
<td>66</td>
<td>54</td>
<td>61</td>
</tr>
<tr>
<td>Up to 75%</td>
<td>30</td>
<td>24</td>
<td>23</td>
<td>21</td>
<td>18</td>
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<tr>
<td>Up to 99%</td>
<td>65</td>
<td>49</td>
<td>32</td>
<td>37</td>
<td>31</td>
</tr>
<tr>
<td>100%</td>
<td>84</td>
<td>74</td>
<td>72</td>
<td>63</td>
<td>57</td>
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<tr>
<td><strong>INVESTMENT SERVICE CUSTOMERS</strong></td>
<td></td>
<td></td>
<td></td>
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</tr>
<tr>
<td>Number of investment service customers</td>
<td>556,334</td>
<td>459,887</td>
<td>515,546</td>
<td>459,376</td>
<td>461,723</td>
</tr>
<tr>
<td>Number of customers per company – up to 100 customers</td>
<td>127</td>
<td>107</td>
<td>100</td>
<td>91</td>
<td>98</td>
</tr>
<tr>
<td>Up to 1,000 customers</td>
<td>97</td>
<td>79</td>
<td>71</td>
<td>66</td>
<td>53</td>
</tr>
<tr>
<td>Up to 10,000 customers</td>
<td>26</td>
<td>19</td>
<td>15</td>
<td>12</td>
<td>10</td>
</tr>
<tr>
<td>Up to 100,000 customers</td>
<td>6</td>
<td>5</td>
<td>5</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>More than 100,000 customers</td>
<td>1</td>
<td>1</td>
<td>2</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>Brokered customer assets (in € millions)</td>
<td>28,621</td>
<td>22,109</td>
<td>21,616</td>
<td>5,293</td>
<td>18,348</td>
</tr>
<tr>
<td>Managed customer assets (in € millions)</td>
<td>29,697</td>
<td>28,827</td>
<td>37,300</td>
<td>26,483</td>
<td>32,862</td>
</tr>
</tbody>
</table>
figures, this means that, out of the 12,500 “freelancers” registered with the FMA prior to the entry into force of WAG 2007, only 10.5% remained at the end of 2012. The number of people working in regulated professions (investment advisers and securities brokers), totalling 2,350 in 2012, was almost 15% up on 2007’s figures.

Looking to the future and the European rules on managers of alternative investment funds that are due to be transposed into national law in 2013, further structural changes among those offering investment services are to be expected, as these managers of AIFs who need to be licensed by the FMA are likely to also be allowed to offer certain investment services subject to special authorisation.

LEGAL BASIS

LICENCE PURSUANT TO THE WAG 2007

Pursuant to Article 3 para. 2 of the WAG 2007, the following investment services may not be provided commercially without a licence:

- investment advice relating to financial instruments;
- portfolio management by managing portfolios for individual customers who authorise a certain degree of management discretion, provided that the customer portfolio contains one or several financial instruments;
- receipt and transmission of orders, provided that such activity involves one or several financial instruments;
- operation of a multilateral trading facility.

According to Article 1 no. 6 WAG 2007, transferable securities, money market instruments, units in investment funds, in real estate funds or in similar institutions, derivative contracts (particularly options, futures, forwards, swaps) relating to securities, currencies, interest rates, interest income or financial indices, derivative contracts relating to goods, derivatives designed to transfer credit risk, financial margin trading and derivative contracts relating to climate variables, freight rates, emission allowances, inflation rates and official economic statistics are deemed financial instruments.

With regard to investment services and the financial instruments related to these services, the WAG 2007 stipulates two kinds of licences, each with a separate scope of authorisation, for the commercial provision of investment services: the licence for the investment firm as specified in Article 3 of the WAG 2007, and the licence for the investment service provider as specified in Article 4 of the WAG 2007.

The authorisation of an investment firm to provide one or more investment services can be without limitation, thus including all financial instruments stipulated in Article 1 no. 6 WAG 2007, and can be extended to the entire EEA through the issue of a “European Passport”. Unlike investment firms, investment service providers are subject to various limitations relating to the provision of investment services and are only allowed to operate in Austria. Pursuant to Article 4 para. 2 WAG 2007, various relaxed licensing requirements apply to investment service providers. For instance, the appointment of a single managing director, who may also have another full-time occupation outside the banking, insurance or pension company sector, is sufficient. Also permitted are a free choice in the legal form of the company (in addition to corporations, partnerships and sole proprietorships may also offer investment services that require a licence), substitution of the capital requirements with a professional liability insurance policy and relaxations concerning accounting and auditing.

EEA NOTIFICATIONS

The European Markets in Financial Instruments Directive (MiFID; Directive 2004/39/EC) provides the basis on which investment firms from the EEA may operate throughout the entire EEA both through branches and under the freedom to provide services. To make use of this freedom, investment firms, having been awarded the corresponding licence, must undergo a notification process with the respective home supervisory authority. Having this “European Passport” means that investment firms are entitled, pursuant to MiFID, to provide any investment services that they are licensed to provide in their home Member State also in those Member States that are included in the notification process, without the need for any further licensing proceedings.
OFFICIAL TASKS

SUPERVISED COMPANIES

As at the reporting date of 31 December 2012, 167 companies were in possession of a valid licence from the FMA entitling them to provide investment services pursuant to WAG 2007. Of this total, 88 held a licence as an investment firm pursuant to Article 3 WAG 2007 and 79 companies a licence as an investment service provider pursuant to Article 4 WAG 2007. In comparison, there were 175 licensed companies in 2011, comprising 92 investment firms and 83 investment service providers. The comparison with the previous year’s data shows a fall of eight licences pursuant to WAG 2007. This means that the fall in licensed undertakings was less than 5% in 2012, compared with around 9% in 2011 (see Chart 38). Fourteen licences expired in total in 2012, eight relating to investment firms and six to investment service providers. This compares with the expiry of 21 investment firm and investment service provider licences in total in 2011. With a further six licences being given up by the holders during the reporting year, the number of licences that came to an end changed only slightly compared with the previous year.

All of these 167 companies with a valid licence were entitled to provide investment advice relating to financial instruments, with 54 investment firms entitled to manage client portfolios. In all, 161 investment firms and investment service providers were entitled to receive and transmit orders, provided that such activity involved one or several financial instruments. As at the end of the reporting year, 54 Austrian investment firms held a European Passport for the provision of investment services in the EEA. Of these, seven undertakings maintained a total of 13 branches in the EEA, which was unchanged compared with the previous year. In terms of the geographical distribution of the licensed investment firms and investment service providers within Austria, a total of 98 undertakings or 58.7% of all licensed undertakings had their registered office in Vienna as at the reporting date of 31 December 2012. Within the other federal provinces, 14 companies were located in Upper Austria, followed by Salzburg with 13 licensed companies (see Chart 39).

NEW LICENCE GRANTED TO INVESTMENT FIRMS AND INVESTMENT SERVICE PROVIDERS

During the year under review, five new licence applications were submitted to the FMA, three fewer than in 2011. Chart 40 (on page 106) shows that this is the lowest number of new applications compared with earlier years.

Five applications for a licence were withdrawn during the year under review, and one application was rejected. This compares with three withdrawn applications and one rejection in 2011. Five new licences were granted in the year under review, one of which did not become legally effective until 2013. This
meant that the number of licences awarded was the same as in 2011. No licences were issued to sole proprietorships or partnerships during 2012. Thus, the trend towards corporations, as also seen in previous years, continued, with this form of company now accounting for more than 80% of all of the firms licensed pursuant to WAG 2007.

Using the FMA website at www.fma.gv.at investors and interested members of the public can use the corporate database at any time to check whether a provider holds a valid FMA licence. The information available online also includes the scope of the respective investment firms’ and investment service providers’ licences and contact addresses for the licensed undertakings.

Agents of Investment Firms and Investment Service Providers

Investment firms and investment service providers are allowed to use vicarious agents for the provision of investment services. These agents may, without themselves holding a licence pursuant to WAG 2007, perform investment services on behalf and for the account of the licensed firm. There are two legal forms for these agents, the tied agent and the securities broker, with the latter replacing the function of financial services assistant.

Tied Agents

Tied agents may be natural or legal persons. They are bound by the principle of exclusivity, which means that a tied agent may only work for one single investment firm, credit institution, insurance undertaking or branch of an investment firm or credit institution. He may be appointed for the purposes of promoting the services of the investment firm, soliciting business or receiving orders from clients and transmitting them, and for providing investment advice with regard to financial instruments and services offered by the legal entity.

An investment firm that appoints a tied agent is liable pursuant to Article 1313a of the Allgemeines Bürgerliches Gesetzbuch (ABGB; General Civil Code) for each and every act or failure to act of the agent, provided the agent is acting in the name of the legal entity. Therefore, the investment firm is obliged to monitor the agent’s activities accordingly. If the tied agent resides in Austria, he must hold a trade licence for the commercial provision of investment advice pursuant to Article 136a of the Gewerbeordnung (GewO; Trade Act) and he must be entered in the public register kept by the FMA. As at the reporting date of 31 December 2012, 27 Austrian investment firms were using 1,620 tied agents for the provision of investment services. This represents a rise of 28.3% compared with 31 December 2011, when only 1,263 tied agents were registered with the FMA.

Securities Brokers

Unlike the remit of tied agents, the scope of activities to be performed by a securities broker is limited. Only a natural person may serve as a securities broker. The securities broker may only operate on the domestic market and requires a trade licence pursuant to Article 136a or 136b GewO. The profession of securities broker is a registered trade, which means that a certificate of qualification is required to obtain the authorisation to exercise the profession. Unlike the activity of tied agents, that of the securities broker is limited to investment advice and the acceptance and transmission of orders in relation to financial instruments pursuant to Article 1 no. 6 lit. a and c WAG 2007. This relates to transferable securities and investment fund units. The broker may act on behalf and for the account of a maximum of three investment firms/investment service providers, but not for credit institutions or insurance undertakings.
Through Federal Law Gazette I No. 2007/60 of 1 September 2012, the profession of financial services assistant was replaced with the position of securities broker. The aim of the amended legislation was to completely overhaul the rules governing professions in investment advisory. The profession of financial services assistant was abolished, and statutory provisions were put in place governing the new, regulated profession of securities broker. These new rules on securities brokers are intended to improve the standard of advice and, in particular, the specialist knowledge of those working for investment firms or investment service providers. This in turn should guarantee improved quality in this area.

IMPROVED TRAINING AND CAREER DEVELOPMENT

This quality will be assured by the requirement that any individual wishing to work as a securities broker must provide a certificate of qualification. Securities brokers are also legally obliged to attend regular training. Continuing professional development totalling 40 hours must be completed within three years of securities brokers being entered in the trade register.

On the basis of the amendment announced back on 16 November 2011, the FMA has been involved in designing the content of the training measures together with the responsible association of the Austrian Federal Economic Chamber (WKO).

The FMA also provided comprehensive information about all of the changes relating to the exercising of the profession of securities broker prior to the new statutory provisions entering into force, in an effort to ensure a smooth transition from financial services assistant to securities broker in line with the planned schedule.

The changes to the law also required a redesign of the FMA register. The registration processes needed to be reorganised in conjunction with the registration of securities brokers and/or the process of removing entries for financial services assistants pursuant to the old rules and changing them to entries for securities brokers under the new rules.

Against the background of the transitional rules imposed by the policymakers under Article 108 para. 11 WAG 2007, the coordination of these registration processes was key to those previously working as financial services assistants:

“[…] Anyone who exercised the activity on a valid basis prior to 31 August 2012 pursuant to Article 2 para. 1 no. 15 as amended by Federal Gazette I no. 60/2007 for at least one year may continue to exercise such activity on the basis of the previous legal situation for up to two years following the entry into force of this Federal Act.”

STREAMLINED TRANSITION

In order to be able to take advantage of the transitional rules, a financial services assistant must have exercised the activity for at least one year during the reference period from 1 November 2007 to 31 August 2012 and thus also have been registered in the FMA register as a financial services assistant. Simply having a valid trade licence was not enough. The individual must actually have worked as a financial services assistant.

Those financial services assistants that had not met the applicable conditions were required, with effect from 1 September 2012, to hold a trade licence authorising them to work either as a securities broker pursuant to Article 136b of the 1994 Gewerbeordnung (GewO; Trade Act) or as a commercial investment adviser pursuant to Article 136a GewO in order to carry on working. Legal entities could no longer register as new financial services assistants after 31 August 2012.

Provided that the prerequisites were met in full, financial services assistants were able to take advantage of the transitional rules. However, they are only per-
mitted to continue to work as financial services assistants up until 31 August 2014 at the latest, by which time they must have acquired authorisation to work as a securities broker or commercial investment adviser. As soon as financial services assistants meet the statutory requirements and are authorised to work as commercial investment advisers or securities brokers, they must be registered in the FMA register as securities brokers and may no longer operate in the capacity of financial services assistants.

The policymakers’ express aim in implementing the transitional rules was to enable financial services assistants to continue to operate without interruption until the expiry of the transitional period, in other words up until 31 August 2014. During this period, they were to have the opportunity to fulfil the prerequisites set out in trade law. In particular, the transitional rules aimed to avoid any form of hardship for those financial services assistants who need further training before being able to meet the strict conditions of the regulated profession of securities broker.

In light of this transitional period, the FMA was primarily focused on ensuring that individuals were not able to work on the basis of both legal situations at the same time, i.e. as both a financial services assistant and a securities broker. The main reason for this was the key differences in the rules relating to securities brokers compared with those governing financial services assistants. In order to avoid a situation in which one individual is registered as both a financial services assistant and a securities broker, the FMA designed the registration processes in such a way that all of the legal entities are duly informed by the FMA of the changed registration whenever an individual who has previously been registered as a financial services assistant is registered under the new legal system as a securities broker. Credit institutions and insurance undertakings are required to terminate their contractual relationship with the financial services assistant within a period of two weeks and to deactivate the position of financial services assistant in the FMA’s public register, as securities brokers may only work for investment firms and investment service providers. The other legal entities that make use of the same person as a financial services assistant are also informed by the FMA of the change in registration and are required to re-register the person concerned as a securities broker within two weeks, thereby ensuring that there are no instances of both legal systems being used at the same time by one person.

The aim behind keeping this period for changing registration from financial services assistant to securities broker so short is, firstly, to ensure that the FMA’s register entries are as up to date as possible and, secondly, to avoid as far as possible the type of legal uncertainty that would certainly arise were one and the same person to be registered as both a financial services assistant and a securities broker.
Securities brokers provide their services for investment firms and investment service providers in the capacity of vicarious agents, and their actions are attributed to the respective legal entity. This is why the investment firm or investment service provider is liable for the vicarious agent pursuant to Article 1313a ABGB regardless of whether the securities broker discloses the respective principal or not. The provisions of Article 136d GewO on the joint and several responsibility of all investment firms and investment service providers that have registered the same securities broker in the FMA register apply accordingly. This joint and several solidarity applies if the securities broker has not clearly disclosed the identity of the principal under the terms of the contract. Like tied agents, securities brokers must also be entered in the public register kept by the FMA. Appointing securities brokers for the provision of investment services presupposes that this has been approved in the administrative decision granting the licence to the investment firm or the investment service provider. As at 31 December 2012, 98 Austrian investment firms and investment service providers were entitled to operate by appointing securities brokers. Of these, only 48 actually exercised the right granted to them. This represents a reduction compared with the previous year, as 105 investment firms and investment service providers were still entitled to use financial services assistants for the provision of investment services in 2011. Overall, 54 of these actually made use of the right to do so. As at 31 December 2012, 730 persons acting as securities brokers for investment firms or investment service providers had been registered with the FMA. Also taking into account the total of 1,316 individuals who were still registered as financial services assistants on the basis of the statutory transitional rules on the reporting date, there were 2,046 people working in the capacity of vicarious agents pursuant to Article 2 para. 1 no. 15 WAG 2007 for licensed investment firms and investment service providers. By way of comparison, at the 2011 year-end 3,426 persons were still registered as financial services assistants for investment firms or investment service providers. This represents a year-on-year decrease of 40%.

Up-to-date information on the tied agents, securities brokers and financial services assistants registered with the FMA, can be found on the FMA website at www.fma.gv.at. This gives investors a means of checking whether or not a particular individual is actually registered with the FMA as a tied agent, securities broker or financial services assistant of an investment firm or an investment service provider and is entitled to provide investment services.

The FMA supervises all licensed investment firms and investment service providers in terms of their compliance with the obligations standardised in the WAG 2007. These obligations include, in particular, adherence to the extensive organisational requirements of the WAG 2007, such as for example the obligation to establish an independent compliance function, a risk management function and an internal audit function, as well as observance of recording duties. A central aspect is the supervision of compliance with the statutory codes of conduct based on classification of the respective investment firm’s or investment service provider’s clients as retail clients, professional clients or eligible counterparties. Further obligations of the WAG 2007 covered by securities supervision include the licensing requirements, adherence to the scope of the licence granted, the notification and reporting obligations and the duties of presentation, as well as the provisions on accounting and the annual audit.

Once a year, investment firms and investment service providers must appoint a statutory auditor to prepare an audit report pursuant to Articles 73 and 74 WAG 2007. This report serves to document verification of compliance with the statutory provisions and must be submitted to the FMA no later than six months after the audited company’s financial year-end, which in the case of most investment firms and investment service providers means by 30 June of the following year.

Pursuant to Article 15 of the FMA-Kostenverordnung (FMA-KVO; FMA Cost Regulation), investment firms and investment service providers also have to report the sales revenues from their investment services business to the FMA by no later than 30 June. The prepa-
ration, verification and analysis of the financial statements, audit reports and reporting data provide decisive indicators with regard to implementation of and compliance with statutory standards governing the provision of investment services by investment firms and investment service providers; they also provide a starting point for supervisory measures.

A further important supervision tool is the electronic analysis questionnaire for investment firms and investment service providers, which can be completed online on the FMA website. The questionnaire consists of six modules and contains 68 questions. These are grouped into the following topics: general company information, employees, corporate organisation, insurance cover/investments, business activities and customer structure. The evaluation of the analysis questionnaires gives the FMA valuable insights into the activity of the supervised companies as well as of the capital market as a whole, and also provides every evaluated company with information and tips that can be used to review and optimise existing internal processes.

**EEA INVESTMENT FIRMS**

In 2012 there were 2,282 investment firms with their head offices situated in an EEA state other than Austria that were authorised to provide investment services in Austria under the freedom to provide services. Such authorisation is provided in the form of the European Passport. It may, however, also apply if there is a branch in Austria with regard to which the responsible sister authority abroad has provided sufficient notification to Austria. As at the end of 2012, 22 branches of EEA investment firms were operating in Austria on the basis of an appropriate notification process. Compared with the 2,096 firms that had provided notification of their operations in Austria in the previous year, the number of EEA investment firms entitled to provide investment services in Austria therefore increased by 8.7%. The number of branches of EEA investment firms rose from 16 to 21 in 2012, a 31.3% increase. During the reporting year, 1,747 firms or around 76.7% of the firms that had provided notification of their operations in Austria came from the UK. This was followed by Germany with 139 notified companies, Cyprus with 79, and both Ireland and the Netherlands with 47.

**ON-SITE INSPECTIONS AND MANAGEMENT TALKS**

During the 2012 financial year, on-site inspections were carried out with regard to 36 investment firms and investment service providers, seven of which were conducted in response to current issues. By way of comparison, 38 inspections were carried out in 2011, nine of which tackled a current issue. Within the scope of an on-site inspection, the FMA is entitled to request information from the companies and their bodies concerning any business matter, examine all books, documents and data media of the companies, and obtain audit reports and information from the statutory auditors. Basically, on-site inspections focus on verifying compliance with the provisions of the entire WAG 2007, particularly compliance with organisational obligations and the rules of conduct, as well as controlling compliance with the scope of the licence and any stipulations or limitations prescribed by administrative decision.

A total of 135 talks were held with the management of investment firms and investment service providers during the year under review, providing an opportunity for a direct and efficient exchange of information and also enabling any unresolved issues to be clarified. Another purpose of the talks is found within the context of official processes as a means of observing the obligation to hear the parties involved, as well as within the framework of “fit and proper” tests of candidates for the management of supervised companies.
MARKET DEVELOPMENT

In the basis of the 2011 financial statements, there are currently 51 financial conglomerates in the European Union (EU) that are subject to additional supervision pursuant to the Financial Conglomerates Directive 2002/87/EC. Compared with 2009, this represents a decrease by one group. A further 15 financial conglomerates are exempt from additional supervision by the respective national supervisory authority given their low level of cross-sectoral activities. No financial conglomerates have been identified in the Baltic states, Cyprus, Greece, Hungary, Luxembourg, Malta, Poland, Romania, Slovakia or Spain.

In the European Economic Area (EEA), which encompasses Iceland, Liechtenstein and Norway in addition to the EU Member States, the number of financial conglomerates is 57. Six further financial conglomerates based outside the EEA are also active in the EEA. Of these, two are domiciled in Switzerland, three in the US and one in Australia. Thus, in the EEA a total of 78 financial groups active on a cross-sectoral basis exist that have business activities of significant magnitude in two financial sectors (banking and insurance).

Three groups (one each in Ireland, Poland and Spain) dissolved their cross-sectoral ties in 2011, while two groups (one each in Belgium and England) were newly established.

The developments seen during the period of 2005-2011 indicate that groups with cross-sectoral activities are continuing to pursue their business models. Yet the previous tendency towards capital links has been replaced by a trend towards minority interests and cooperation. The number of financial groups subject to additional supervision subsequently decreased by 15, from 66 to 51. During the same period, the number of groups holding a significant cross-sectoral share of business rose by 10, from five to 15.

In Austria the following groups are subject to additional supervision pursuant to the Finanzkonglomerategesetz (FKG; Financial Conglomerates Act):
- Bausparkasse Wüstenrot AG and Wüstenrot Versicherung AG;
- Grazer Wechselseitige Versicherung AG with the Hypo-Bank Burgenland AG banking group (whose member companies include Hypo-Bank Burgenland AG, Sopron Bank Burgenland Rt., Capital Bank – GRAWE Gruppe AG, Brüll Kallmus Bank AG); and
- Raiffeisenzentralbank Österreich AG and its major holdings in UNIQA Versicherungen AG.

Austria had five financial conglomerates at the outset of 2006. One group has since divested their interest in an insurance undertaking. Another group was no longer subject to financial conglomerate supervision as a result of altering the legal status of their business units.

Owing to the current low interest rates, insurance undertakings in Germany are displaying an increasing tendency to provide financing to consumers and businesses. One example is the 4.6% of investments that German insurance undertakings have lent as mortgages. Another 0.8% of investments were in business loans. In this way, Germany’s insurance undertakings are making increasing inroads into the core business of credit institutions. Yet, a prerequisite for insurance companies to follow this trend is to have appropriate risk management systems in place. There is currently no indication of a similar trend in Austria. On the contrary, Austrian insurance undertakings’ investments in mortgage loans dropped in the period from late 2010 to 30 September 2012 from 1% to 0.4% of invested assets. This is roughly equal to a €160 million decrease.

A decrease was also seen in the percentage of loans granted, from 5% to 4%. This is equal to a total decrease of €200 million. The volume of funds invested by insurance companies increased during the same period from €97 billion to €102 billion, i.e. by €5 billion.

1 Source: Financial Stability Review 2012, Deutsche Bundesbank
Operational Supervision

Chart 41: Changes in Average Solvency Ratio Among Austrian Financial Conglomerates 2006-2012 (unweighted, in %)

We can thus assume that Austrian insurance undertakings continue to look to the investment strategy followed up to now for the required capital income, and that they are not making inroads into the core business of credit institutions. In spite of this observation, insurance undertakings and credit institutions are increasingly opting for cooperation models and for providing equity and liquidity support. This trend entails potential risk elements that, while not subject to additional supervision as specified in the FKG, the FMA is nonetheless more frequently including in analysis. Currently, five to seven company groups in Austria can be classified as what is referred to as “large complex groups” (LCGs) active in both the insurance and the credit institution sector. This does not include the company groups already subject to additional supervision pursuant to the FKG. Based on the solvency data for the supervised companies belonging to these groups, no threat to financial market stability or risk of cross-sectoral contagion can currently be identified.

Own Funds

Austrian financial conglomerates display a stable, high level of own funds. The average solvency ratio rose slightly in 2012 to reach 172% (2011: 161%; see Chart 41). One of the main reasons for this attractive capital situation enjoyed by Austrian financial conglomerates can be found in their ownership structure. This enables them to retain profits, which thus remain available to the group as eligible own funds.

Legal Basis

In conjunction with the Omnibus Directive (Directive 2010/78/EU), there were also amendments to the Financial Conglomerates Directive (Directive 2002/87/EC), which has been transposed into Austrian law through the FKG. Apart from the Conglomerates Directive (originally Financial Conglomerates Directive 1 or FiCoD 1), the Banking Directive (Directive 2006/48/EC) and the Solvency II Directive (Directive 2009/138/EC) were also adapted. Groups must now provide a comparative overview of the differences between their legal and organisational structures.

Together with the rule on developing a living will in order to facilitate any winding-up of the group in question, these points are key in guaranteeing sufficient transparency from a supervisory perspective. As a result of further amendments to the Financial Conglomerates Directive as set forth in Directive 2011/89/EU, appropriate and regular stress tests are required to be carried out on financial conglomerates. These will be carried out in close cooperation with the European Systemic Risk Board (ESRB) and the Joint Committee of the European Supervisory Authorities (ESAs).

The FKG has been amended on the basis of these European provisions. Among other aspects, the living will requirement at group level has been incorporated into Article 11 para. 2, according to which, as of 31 December 2011, measures are to be taken in order for contributions to be made to appropriate restructuring and winding-up procedures and plans, if necessary, and for such procedures and plans to be developed. These measures must be regularly reviewed and adapted. The relevant provisions for the banking sector are planned to be introduced in the course of 2013. The FMA has the goal of coherently implementing, at the level of financial conglomerates as well, the specifications applicable to the sector.

International Cooperation and Outlook

In the context of the European supervisory architec-
ture, the Sub-Committee on Financial Conglomerates (JCFC) is one of four sub-committees of the Joint Committee serving the three supervisory authorities, namely the European Banking Authority (eba), the European Insurance and Occupational Pensions Authority (EIOPA) and the European Securities and Markets Authority (ESMA).

In April 2011, the European Commission asked the JCFC for technical support in view of a further revision of the Financial Conglomerates Directive. The reason for the revision is the goal of uniform implementation and interpretation by the Member States as well as the altered legal conditions resulting from amendments to sectoral directives. Some of the main topics evaluated in this context are incorporating further key companies into the scope of additional supervision, internal governance requirements, and also sanctions and empowerment.

Following consultation with the financial industry, the findings were made available to the Commission in October 2012. These encompass eight major recommendations as described in the following. Specifically, it is proposed that the definition of “financial sector” be expanded to include special purpose entities (SPEs) and special purpose vehicles (SPVs) as well as insurance ancillary services. These types of companies are defined in the relevant specific sectoral legislation, namely in the Capital Requirements Regulation (CRR) and in the Solvency II Directive (2009/138/EC). Pension companies and funds are also recommended for inclusion in the definition. The IORP Directive (Directive of the European Parliament and of the Council on the activities and supervision of institutions for occupational retirement provision, 2003/41/EC) is currently under review, however. Mixed financial holding companies should also be included among the addressees of additional supervision, in order to provide supervisors with a legal hold on the organisational unit that actually dominates the financial conglomerate’s hierarchy. The topics addressed by the recommendations in this regard include: the entity ultimately responsible towards supervisory authorities, the contact for supervision, potential sanctions against holding companies, and developing and implementing binding technical standards (BTS). The Commission has acknowledged the recommendations.

The proposals are expected to be implemented through an amendment to the Financial Conglomerates Directive, which will be published in 2014 at the earliest due to the great number of Directives and specifications for the financial industry that are to be implemented and are already planned.

In 2012 as well, the Joint Committee prepared draft regulatory technical standards (RTS) for calculating capital requirements at the level of financial conglomerates. The Joint Committee currently plans to prepare three sets of standards dealing with the topics of risk-based assessment of financial conglomerates, supervisory convergence for groups active on a cross-border basis, and supervision of mixed financial holding companies subject to additional supervision.

**Official Tasks**

The supervisory activities of the FMA continued to be concentrated on the quality deficiencies that were identified during analyses, some on the basis of the quarterly reports submitted pursuant to the Finanzkonglomeratsquartalsberichts-Verordnung (FK-QUAB-V; FMA Financial Conglomerates Quarterly Reporting Regulation). The focus of supervision in the coming year will be on the existence of winding-down plans for the entire group, on risk management quality and on stress tests for whole conglomerates.
**LEGAL BASIS**

In the context of its compliance supervision duties, the FMA monitors adherence to the compliance-related provisions of the *Börsegesetz* (BörseG; Stock Exchange Act) and the *Emittenten-Compliance-Verordnung* (ECV; Compliance Decree for Issuers), as well as to the compliance-related provisions and rules of conduct set out in the 2007 *Wertpapieraufsichtsgesetz* (WAG 2007; Securities Supervision Act) and in the 2011 *Investmentfondsgesetz* (InvFG 2011; Investment Fund Act). Credit institutions, investment fund management companies, issuers, insurance undertakings and *Pensionskassen* (pension companies) are specifically subject to compliance supervision.

**CREDIT INSTITUTIONS**

In order to prevent insider dealings, all credit institutions as defined in the *Bankwesengesetz* (BWG; Banking Act) are required to implement and adhere to the compliance measures specified in the BörseG and in the WAG 2007. This applies in particular to credit institutions that, as part of their licence, are also authorised to provide investment services, i.e. investment advice, portfolio management to individual customers, and acceptance and submission of securities orders.

**INVESTMENT FUND MANAGEMENT COMPANIES**

The InvFG 2011 contains comprehensive regulations for investment fund management companies with regard to rules of conduct and compliance. In the interests of harmonising market standards and of ensuring consistent interpretation in practice by compliance supervision, these regulations have been modelled on the provisions of the WAG 2007. Additionally, investment fund management companies acting as credit institutions pursuant to the BWG are also subject to the compliance rules set out in the BörseG (Article 48s in conjunction with Article 82 para. 5 BörseG). Where investment fund management companies also hold an additional licence to provide the investment services of investment advice and portfolio management on an individual customer basis (Article 5 para. 2 nos. 3 and 4 in conjunction with Article 6 para. 2 no. 12 InvFG 2011), certain provisions of the WAG 2007 also apply to these activities.

**ISSUERS**

In the case of issuers, the FMA monitors compliance with the provisions relating to the record of insiders pursuant to Article 48d para. 3 BörseG and adherence to the compliance-related provisions set out in Article 82 para. 5 nos. 1 to 3 BörseG in conjunction with the terms of the ECV 2007.

**INSURANCE UNDERTAKINGS AND PENSIONSKASSEN**

Insurance undertakings and *Pensionskassen* are also required to adhere to the compliance measures specified in the BörseG. Where insurance undertakings place units in investment funds as specified in Article 3 para. 3 of the *Versicherungsaufsichtsgesetz* (VAG; Insurance Supervision Act), they are additionally subject to certain provisions of the WAG 2007 governing such activities.

**OFFICIAL TASKS**

**SUPERVISED COMPANIES**

As at the reporting date of 31 December 2012, the following entities were subject to compliance supervision by the FMA (comparable figures for 2011 given in brackets):

- 809 credit institutions licensed in Austria (824), including:
  - 42 special-purpose credit institutions (43) and
  - 29 investment fund management companies (24);
- 48 insurance undertakings domiciled and licensed in Austria (52);
- 17 Austrian *Pensionskassen*, including nine single-
employer and eight multi-employer (17);
- 157 issuers (158), including 97 subject to the provisions of ECV 2007.

CONTINUED SUPERVISION

As a part of continued compliance supervision, the FMA monitors the legal entities concerned to ensure that they fulfil the organisational prerequisites necessary for a functioning compliance system. The FMA is authorised, at any time, to examine and obtain copies of books, documents and data media of companies, to request information from companies and their bodies, as well as existing records of telephone calls and data transmissions. The FMA is also entitled to summon and question persons and to have on-site inspections performed by its own auditors, or by statutory auditors or other experts.

SUPERVISORY MEASURES

On-site inspections are a particular means of reviewing compliance with statutory provisions in a targeted way. As part of these comprehensive supervisory measures, the FMA reviews, during on-site visits, the extent to which the compliance mechanisms in place meet the statutory requirements. Compliance with the rules of conduct specified in the WAG 2007 and the InvFG 2011 may also be reviewed.

Additional supervisory measures include company visits and management talks. These activities have the purpose of ensuring ongoing contact with supervised companies and consequently of raising compliance standards within the market. Specific issues are to be discussed with the companies as the problems arise. Targeted use is also made of management talks as a follow-up measure. Recommendations are drawn up on the basis of the findings resulting from the FMA’s supervisory measures, implementation of which is subsequently verified through follow-up measures. In the event that a supervisory measure gives rise to suspicion of a violation of statutory provisions, a procedure to demand compliance with statutory provisions can be initiated. If administrative penal proceedings are conducted, a fine may be imposed or an admonition issued.

Within the context of compliance supervision, supervisory measures take place both on a scheduled basis and as cases arise. Such measures can have the purpose of reviewing the complete range of supervisory issues relating to compliance supervision or may be limited to very specific topics or cases subject to supervision.

A total of 61 supervisory measures were conducted in 2012. These included eleven instances of on-site measures, 32 sets of management talks and 18 company visits (see Table 33).

OTHER SUPERVISORY ACTIVITIES

In addition to the supervisory measures described above, “fit and proper” tests are used to review the suitability of managers of investment fund management companies that hold an additional licence to provide investment advice and portfolio management on an individual customer basis.

“Internet surf days” take place as a means of identifying whether the information and marketing communications provided to customers in the context of investment services meet legal requirements. Special attention is paid to verifying that such information is appropriate, fair and clear, and does not include any misleading items.

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1 Source: Wiener Börse.
2 Issuers whose shares or securities equivalent to shares are admitted to trading on a regulated market in Austria are governed by the terms of the ECV 2007.
In addition, the annex to the audit report pursuant to Article 63 paras. 5 and 7 BWG, which is prepared by the auditors, is analysed and evaluated. Specifically, compliance with the terms of Article 48f BörseG relating to the required content of financial analyses is reviewed.

**DEVELOPMENT OF SUPERVISION**

To help ensure legal security as well as to inform those concerned of legal developments, the FMA prepares and publishes circulars on a regular basis. An FMA circular on the compliance rules imposed by the BörseG and the ECV 2007 was published in 2012. The circular is aimed at entities that issue shares or equivalent securities. The purpose of the circular is to specify the compliance rules contained in the BörseG and the ECV 2007, and to promote investor confidence in properly functioning securities markets.

**INTERNATIONAL COOPERATION**

At the international level, with regard to compliance supervision the FMA represents Austrian interests as member of the European Securities and Markets Authority (ESMA). Through its involvement in ESMA expert groups, the FMA participates in activities that include preparing guidelines and recommendations on rules of conduct and compliance. One of the aims in this regard is to ensure that the provisions of the Markets in Financial Instruments Directive (MiFID) concerning compliance are interpreted uniformly throughout all EU Member States.

Two sets of guidelines were published in 2012 as a result of these efforts: the Guidelines on certain aspects of the MiFID compliance function requirements, which entered into force on 28 January 2013, and the Guidelines on certain aspects of the MiFID suitability requirements, which entered into force on 21 December 2012. The FMA has pledged to comply with these guidelines and has consequently included them as part of the foundation of the FMA’s supervisory activities as of the date of entry into force.

A draft of the Guidelines on remuneration policies and practices (MiFID) is currently in the consultation stage. These guidelines are expected to be published in 2013.
The FMA’s supervisory competence for the stock exchange is based on a large number of regulations contained in the Börsegesetz (BörseG; Stock Exchange Act), which in turn are derived from provisions found in various EU directives. Article 45 of the BörseG plays a key role in this regard. The provision authorises the FMA to take measures affecting the exchange operating company and serves as a general guideline, specifying the conditions for exercising other powers as an authority.

During the period under review, the only exchange operating company established in Austria was Wiener Börse. For more than ten years it has been run by Wiener Börse AG, a joint stock company. While Wiener Börse is run by a private legal entity, its acts independently to some extent in executing official functions, such as in the admission of financial instruments to trading. It may thus be viewed as an “enterprise charged with the fulfillment of sovereign functions” (i.e. a “beliehenes Unternehmen” as defined in BörseG). Wiener Börse AG is part of the CEE Stock Exchange Group, which is owned by Austrian credit institutions and issuers. Other exchange operating companies belonging to the group include the stock exchanges in Budapest, Ljubljana and Prague. The general economic conditions during the period under review had varying impact on the stock exchanges belonging to the group.

In the energy sector, Wiener Börse AG maintained cooperative partnerships in 2012 with Energy Exchange Austria Abwicklungsstelle für Energieprodukte AG and the Central European Gas Hub AG, for the purpose of commodity trading in electricity and natural gas products. Wiener Börse AG has commissioned Central Counterparty Austria GmbH, which is a joint subsidiary of Wiener Börse and Österreichische Kontrollbank AG, as the clearing agency for securities trading.

One of the FMA’s main tasks in legal supervision in the past year continued to be the approval, by administrative decision, of any change to the General Terms and Conditions of Business of Wiener Börse AG pursuant to Article 13 BörseG. Examples of such changes include conditions relating to technical equipment and conditions altered as part of introducing a new trading system for natural gas.

**DEVELOPMENTS IN EU LAW**

The ESMA’s guidelines on systems and controls in an automated trading environment for trading platforms, investment firms and competent authorities entered into force during the second quarter of 2012. The guidelines were expressly recognised by the majority of supervisory authorities in Europe, including the FMA, as interpretations of existing provisions in EU Directives (in Austrian legislation, for example as implemented in the 2007 Wertpapieraufsichtsgesetz – WAG 2007; Securities Supervision Act – and in the BörseG). The guidelines have thus become a basis for supervisory activities.

The aim of the guidelines is to enhance the stability of the technical systems used in the context of securities trading. An example of the more specific aspects regulated are the measures set forth to prevent market abuse in connection with high frequency trading. Yet, more detailed rules governing the area of “trading algorithms” can be expected only when two additional pieces of legislation enter into force, the Markets in Financial Instruments Directive II (MiFID II) and the Regulation on markets in financial instruments and amending Regulation [EMIR] on OTC derivatives, central counterparties and trade repositories (Markets in Financial Instruments Regulation – MiFIR).
MARKET DEVELOPMENT

In 2012, a year marked by sharp fluctuations on the stock exchanges, two contrary tendencies were seen in the Austrian capital market: while share prices at Wiener Börse showed strong recovery as the year progressed, trading volumes dropped considerably.

Examples include the stock heavyweights Erste Group Bank AG (+76.85%) and Raiffeisen Bank International AG (+56.77%), which showed the best performance in the banking sector. Major increases in the industrial sector were seen especially for RHI AG at +64.9%, followed by Andritz AG at +51.45% and Amag Austria Metall AG at +47.05%. There was a correspondingly strong increase in Wiener Börse’s market capitalisation within the prime market, from €58.69 billion to €72.99 billion.

The annual trading volume fell drastically, in contrast, from €59.42 billion to €35.73 billion (–39.86%). The annual trading volume by share in the prime market segment of the equity market at Wiener Börse also declined, specifically by 29.83%, from €4.1 billion to €2.87 billion. The average volume traded daily at Wiener Börse decreased, in fact, from €239.59 million to €144.66 million (–39.61%). The maximum volume traded on one day also dropped considerably, from €1.22 billion to €0.62 billion (–49.01%).

With an increase of 26.94%, the exchange’s blue-chip index Austrian Traded Index (ATX) showed exceptional performance in 2012, not only when compared with the previous year but also with other international indices. In 2011, the ATX had plummeted by 34.87%. In a comparison of European exchanges, the German DAX had even risen by 29.05% by the end of the year, to reach the highest level since 2008. The EuroStoxx 50 also showed positive performance at 13.78%. London, Europe’s largest financial centre, recorded moderate growth of 5.84%. Growth was also seen among share indices outside Europe. While the Dow Jones Industrial Average rose by 7.25%, the New York Stock Exchange Index climbed even more, by 12.92%. At a global level, the Morgan Stanley Capital International (MSCI) World index rose by 13.18% and MSCI Financials by even 25.63%. Japan’s NIKKEI index also rose in value, by 25.18%.

A positive economic trend was seen throughout Europe particularly in the second half of 2012, despite Spain’s announcement at that time that the country would also have to accept assistance from the euro rescue umbrella (ESM). The main reason for this positive economic trend was the pledge made repeatedly to the financial market by European Central Bank President Mario Draghi that the ECB would do everything necessary to support the euro. The risk premiums applicable to Spanish and Italian bonds immediately dropped to a healthier level. Investments in sectors such as financial securities, which had previously been less attractive, increased from that point on.

On the other hand, the ECB’s bond-buying programme, which since May 2010 has come to include a total volume of €211.5 billion, was debated even within the ECB. In the meantime, the euro lost one per cent of its value compared with the US dollar. Share prices at European exchanges also fell.

LEGAL BASIS

The FMA’s remit with regard to supervising the stock exchange and securities trading includes monitoring compliance with the terms of the Börsengesetz (BörseG; Stock Exchange Act) and the 2007 Wertpapieraufsichtsgesetz (WAG 2007; Securities Supervision Act). The FMA’s overriding objective in this regard, as specified by legislation, is to ensure that the trading in listed securities is carried out in an orderly and fair manner.

The FMA also supervises exchanges at an international level.

The core responsibilities in supervising the stock exchange and securities trading include:
Table 34: SUPERVISED MARKETS, ISSUERS AND SECURITIES 2008–2012 (Source: Wiener Börse AG)

<table>
<thead>
<tr>
<th>NUMBER OF ISSUERS</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
<th>2011</th>
<th>2012</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>OFFICIAL MARKET AND SEMI-OFFICIAL MARKET</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Foreign shares</td>
<td>8</td>
<td>8</td>
<td>7</td>
<td>6</td>
<td>6</td>
</tr>
<tr>
<td>Domestic shares</td>
<td>85</td>
<td>83</td>
<td>72</td>
<td>70</td>
<td>67</td>
</tr>
<tr>
<td>Profitsharing certificates</td>
<td>4</td>
<td>3</td>
<td>3</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Warrants</td>
<td>3</td>
<td>3</td>
<td>3</td>
<td>3</td>
<td>3</td>
</tr>
<tr>
<td>Participation certificates</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>Bonds</td>
<td>97</td>
<td>94</td>
<td>94</td>
<td>91</td>
<td>97</td>
</tr>
<tr>
<td>Certificates</td>
<td>16</td>
<td>16</td>
<td>14</td>
<td>12</td>
<td>12</td>
</tr>
<tr>
<td>Exchange traded funds</td>
<td>4</td>
<td>4</td>
<td>4</td>
<td>4</td>
<td>3</td>
</tr>
<tr>
<td>Total issuers</td>
<td>185</td>
<td>184</td>
<td>166</td>
<td>158</td>
<td>157</td>
</tr>
<tr>
<td><strong>THIRD MARKET</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Foreign shares</td>
<td>9</td>
<td>10</td>
<td>14</td>
<td>11</td>
<td>9</td>
</tr>
<tr>
<td>Domestic shares</td>
<td>16</td>
<td>14</td>
<td>17</td>
<td>18</td>
<td>17</td>
</tr>
<tr>
<td>Profitsharing certificates</td>
<td>8</td>
<td>7</td>
<td>4</td>
<td>4</td>
<td>3</td>
</tr>
<tr>
<td>Warrants</td>
<td>3</td>
<td>4</td>
<td>5</td>
<td>4</td>
<td>2</td>
</tr>
<tr>
<td>Participation certificates</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Bonds</td>
<td>191</td>
<td>184</td>
<td>180</td>
<td>172</td>
<td>182</td>
</tr>
<tr>
<td>Certificates</td>
<td>11</td>
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<td>14</td>
<td>12</td>
<td>11</td>
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<tr>
<td>Exchange traded funds</td>
<td>45</td>
<td>48</td>
<td>17</td>
<td>0</td>
<td>1</td>
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<tr>
<td>Total issuers</td>
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<td>272</td>
<td>239</td>
<td>210</td>
<td>216</td>
</tr>
<tr>
<td><strong>NUMBER OF LISTED SECURITIES</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>OFFICIAL MARKET AND SEMI-OFFICIAL MARKET</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Foreign shares</td>
<td>8</td>
<td>8</td>
<td>7</td>
<td>6</td>
<td>6</td>
</tr>
<tr>
<td>Domestic shares</td>
<td>92</td>
<td>89</td>
<td>78</td>
<td>76</td>
<td>73</td>
</tr>
<tr>
<td>Profitsharing certificates</td>
<td>8</td>
<td>7</td>
<td>6</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>Warrants</td>
<td>1,704</td>
<td>1,341</td>
<td>2,268</td>
<td>2,268</td>
<td>1,857</td>
</tr>
<tr>
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<td>2</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>Bonds</td>
<td>2,460</td>
<td>2,658</td>
<td>2,748</td>
<td>2,802</td>
<td>2,808</td>
</tr>
<tr>
<td>Certificates</td>
<td>1,739</td>
<td>2,178</td>
<td>3,609</td>
<td>3,389</td>
<td>3,336</td>
</tr>
<tr>
<td>Exchange traded funds</td>
<td>22</td>
<td>22</td>
<td>22</td>
<td>22</td>
<td>21</td>
</tr>
<tr>
<td>Total issuers</td>
<td>6,035</td>
<td>6,305</td>
<td>8,740</td>
<td>8,585</td>
<td>8,105</td>
</tr>
<tr>
<td><strong>THIRD MARKET</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Foreign shares</td>
<td>9</td>
<td>10</td>
<td>14</td>
<td>11</td>
<td>9</td>
</tr>
<tr>
<td>Domestic shares</td>
<td>16</td>
<td>14</td>
<td>17</td>
<td>18</td>
<td>18</td>
</tr>
<tr>
<td>Profitsharing certificates</td>
<td>8</td>
<td>7</td>
<td>4</td>
<td>4</td>
<td>3</td>
</tr>
<tr>
<td>Warrants</td>
<td>46</td>
<td>20</td>
<td>14</td>
<td>7</td>
<td>4</td>
</tr>
<tr>
<td>Participation certificates</td>
<td>11</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Bonds</td>
<td>1,075</td>
<td>980</td>
<td>909</td>
<td>836</td>
<td>818</td>
</tr>
<tr>
<td>Certificates</td>
<td>35</td>
<td>35</td>
<td>50</td>
<td>108</td>
<td>82</td>
</tr>
<tr>
<td>Exchange traded funds</td>
<td>196</td>
<td>237</td>
<td>34</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Total issuers</td>
<td>1,386</td>
<td>1,304</td>
<td>1,043</td>
<td>985</td>
<td>936</td>
</tr>
<tr>
<td><strong>TRADE STATISTICS OF EQUITY MARKET AT SEGMENT</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Capitalisation of domestic shares as at last trading day (in € billions)</td>
<td>52.1</td>
<td>77</td>
<td>91</td>
<td>63.7</td>
<td>78.1</td>
</tr>
<tr>
<td>Annual sales on equity market at (in € billions)</td>
<td>142.9</td>
<td>72.6</td>
<td>73.5</td>
<td>60.2</td>
<td>36.1</td>
</tr>
<tr>
<td>Daily average sales (in € millions)</td>
<td>571.8</td>
<td>292.7</td>
<td>295.3</td>
<td>242.6</td>
<td>146.1</td>
</tr>
<tr>
<td>ATX at year-end</td>
<td>1,750.83</td>
<td>2,495.56</td>
<td>2,904.47</td>
<td>1,891.68</td>
<td>2,401.21</td>
</tr>
<tr>
<td>ATX performance (in %)</td>
<td>−61.20</td>
<td>42.54</td>
<td>16.39</td>
<td>−34.87</td>
<td>26.94</td>
</tr>
</tbody>
</table>
Exposing the misuse of inside information and, in accordance with statutory responsibilities, introducing measures to prosecute these offences. Insider dealing is a criminal offence which must be prosecuted by the public prosecutor's office and dealt with by the ordinary courts. The FMA is responsible for monitoring trading to ensure that it is orderly; if there are reasonable grounds to suspect a violation of the prohibition of insider dealing, the FMA must report the case to the public prosecutor's office. That office will then usually commission the FMA to carry out further investigations.

Exposing market manipulation and the violation of trading rules of Wiener Börse and prosecuting these offences.

Monitoring compliance with statutory disclosure, reporting and information obligations and prosecuting any violations within the framework of administrative penal proceedings.

To fulfil these core responsibilities, the FMA has a number of supervisory powers. It has far-reaching authority to obtain information, for instance by examining documents of all kinds and by requesting information from individuals involved in cases. During investigations, individuals can be summoned and questioned. On-site inspections are also provided for by law.

OFFICIAL TASKS

SUPERVISED COMPANIES

ISSUERS
As at 31 December 2012, a total of 8,105 securities from 157 issuers were listed on the official and semi-official market of Wiener Börse. An additional 936 securities from a total of 216 issuers were listed on the third market, which has been operated as a multilateral trading facility (MTF) since 2007. The number of issuers on the semi-official market thus hardly changed from the previous year, while it slightly increased on the third market. The number of listed securities fell during the period under review.

INSTITUTIONS SUBJECT TO REPORTING OBLIGATIONS
Pursuant to Article 64 of the WAG 2007, companies that conclude transactions in listed financial instruments (including Austrian credit institutions and Austrian branches of foreign credit institutions) are required to report each transaction to the FMA.

In 2012, 774 companies were subject to this reporting obligation.

OTHER STOCK EXCHANGE MEMBERS
Stock exchange members not subject to reporting obligations are also supervised by the FMA. Since the implementation of the Markets in Financial Instruments Directive (MiFID) in 2007, market participants that are based within the European Union have been required to report the securities transactions carried out at Wiener Börse to the authority of their home country, which forwards the reported data to the FMA.

TRANSACTION REPORTING

Apart from taking care of ongoing supervisory activities, special attention was given in 2012 to ensuring that reporting deadlines were met. In addition, plans were drawn up for integrating the reports on derivative transactions with the FMA's analysis tool, MADE. In the area of stock exchange and securities trading, the FMA is a member of the ESMA Transaction Reporting Systems Joint Sub Group. The main activities included revising MiFID in the context of the Markets in Financial Instruments Regulation (MiFIR). Among the topics discussed at European level were: transaction reporting, data quality within the international Transaction Reporting Exchange Mechanism (TREM) as well as related data consistency tests, and compatibility with future reporting in accordance with the European Market Infrastructure Regulation (EMIR).

In 2012, 10,734,114 securities transaction reports were submitted to the FMA by the institutions subject to reporting obligations pursuant to Article 64 WAG 2007. Of this number, 3,657,985 were forwarded to the relevant competent authority within the European Union. In addition, in its role as competent authority, the FMA received 18,473,351 transaction reports from other European supervisory authorities. This meant that, overall, the FMA received 29,207,465 transaction reports in total, which represents a slight decrease (–0.97%) compared with the previous year (29,492,322 reports; see Chart 42).
The FMA is responsible for ensuring orderly and fair trading in listed securities, with specific obligations to expose any misuse of inside information (Article 48b BörseG), any market manipulation (Article 48c BörseG) and any violations of the trading rules of Wiener Börse (Article 18 para. 1 BörseG in conjunction with Article 48 para. 1 no. 7 BörseG).

Every irregularity in trading that becomes known to the FMA through its own monitoring of the market or as a result of third-party observations is first subjected to a routine analysis. This is done to check whether there are plausible grounds for the irregularity. If that is not the case, the case undergoes comprehensive analysis in the course of a preliminary investigation. The investigative measures to be taken are selected depending on the type of irregularity identified. Specifically, trading days before and after the suspicious transaction may be examined, the trading activities of specific market participants or traders investigated, the investment activities of a client evaluated on the basis of previously reported transactions and recurrent trading patterns identified. More in-depth information such as professional securities analyses are included in the detailed analysis of the order and/or transaction data. The preliminary investigation is exclusively limited to information and data that are internally available to the FMA. This ensures that the case is dealt with efficiently and as soon as possible after the fact.

If the preliminary investigation substantiates the suspicion that the investigated irregularity may have been caused by a violation of a legal provision subject to supervision by the FMA, a formal investigation will be initiated. In this case the FMA subsequently makes use of all its rights to demand information and conduct inspections pursuant to the WAG 2007 and the BörseG, examining various documents, conducting on-site inspections and summoning the individuals involved for questioning.

As part of market supervision, the FMA conducted a total of 1,209 routine analyses during the period under review. A preliminary investigation was initiated in 61 cases, which was scaled up to a formal investigation in 23 instances. A total of 25 investigations were completed in the past year, including 9 investigations involving misuse of inside information and 16 investigations of market manipulation or violation of the trading rules. Thus, the number of initiated investigations increased over the previous year, from 18 to 23. The number of requests for official assistance, which were addressed to a large variety of authorities in other countries, also increased during the year of this report. This number rose from 13 to 21 over the previous year. There were 24 enquiries from foreign authorities, which represents a substantial decrease from the 52 enquiries in the previous year. Most of these enquiries again came from the FMA’s sister authority in Germany, the Federal Financial Supervisory Authority (BaFin).

As part of its investigative activities, the FMA again conducted several special audits on different subject areas in 2012. The aim of such focus campaigns is to investigate and cover relevant issues in their entirety. Special audits do not arise from specific irregularities that come to light in ongoing market observation but from insights gained during such observation or from information or reports provided by third parties. In such cases, selected market areas are examined, securities trading in certain sectors investigated or the trading behaviour of a market participant analysed over an extended period of time.

MISUSE OF INSIDE INFORMATION

The law defines inside information as a specific piece
Table 35: MARKET SUPERVISION 2008–2012

<table>
<thead>
<tr>
<th>ROUTINE ANALYSES</th>
<th>INVESTIGATIONS INTO MISUSE OF INSIDE INFORMATION, MARKET MANIPULATION AND VIOLATION OF TRADING RULES</th>
<th>RESEARCH REPORTS</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Warnings computed</td>
<td>Preliminary investigations initiated</td>
</tr>
<tr>
<td>2008</td>
<td>2,715</td>
<td>37</td>
</tr>
<tr>
<td>2009</td>
<td>1,256</td>
<td>43</td>
</tr>
<tr>
<td>2010</td>
<td>1,496</td>
<td>31</td>
</tr>
<tr>
<td>2011</td>
<td>1,436</td>
<td>52</td>
</tr>
<tr>
<td>2012</td>
<td>1,209</td>
<td>61</td>
</tr>
</tbody>
</table>

Table 36: OFFICIAL ASSISTANCE MARKET SUPERVISION 2008–2012

<table>
<thead>
<tr>
<th>Enquiries addressed to foreign supervisory authorities</th>
<th>Enquiries received from foreign supervisory authorities</th>
</tr>
</thead>
<tbody>
<tr>
<td>BaFin</td>
<td>FSA</td>
</tr>
<tr>
<td>2008</td>
<td>4</td>
</tr>
<tr>
<td>2009</td>
<td>5</td>
</tr>
<tr>
<td>2010</td>
<td>4</td>
</tr>
<tr>
<td>2011</td>
<td>2</td>
</tr>
<tr>
<td>2012</td>
<td>7</td>
</tr>
</tbody>
</table>

of non-publicly disclosed information that relates directly to one or more issuers or one or more financial instruments. It must furthermore be capable of having a significant influence on the price of a security were it to be published. The information must additionally be in a form that an informed investor could use as the basis of their investment decision. As specified in Article 48b BörseG, Austrian law prohibits the misuse of inside information.

Anyone taking advantage of inside information to secure a pecuniary benefit, either by transactions in securities or by disclosing the information to third parties, commits an act constituting misuse of inside information. A pecuniary benefit in this case refers not just to achieving a profit but also to avoiding a loss. Misuse of inside information is punishable by imprisonment for up to five years or by a fine.

In 2012, a total of nine investigations were initiated, and an equal number were closed. In one case, the FMA submitted a report pursuant to Article 48i para. 3 BörseG to the public prosecutor’s office in Vienna concerning the suspected misuse of inside information.

MARKET MANIPULATION

Austrian law defines market manipulation as transactions or orders to trade that give, or are likely to give, false or misleading signals as to the supply of, demand for or price of financial instruments, or influence the price of one or several financial instruments in such a way that an abnormal or artificial price level is reached.

Media dissemination of information, rumours or news which send or may send false or misleading signals about a financial instrument is also defined as market manipulation pursuant to Article 48a para. 2 BörseG. Cases where transactions or orders to trade are completed or commissioned under false pretences or any other form of deception may also indicate market manipulation.

Market manipulation is a criminal offence under administrative law, for which the FMA may impose a fine of up to €150,000.

In the year under review, 14 investigations of suspected market manipulation were initiated and 16 were completed. Corresponding administrative penal proceedings were initiated in six cases.

INTERNATIONAL TASKS

In the ESMA Post-Trading Standing Committee, of which the FMA is a member, efforts in 2012 focused mainly on the technical standards (TS) for implementing in greater detail the general specifications set forth in EMIR. The main items of the Regulation include
In the wake of the global financial crisis one of the issues that has figured strongly on the European political agenda has been the short selling of securities, triggering intense political debate on if and why short selling is actually needed. Proponents of the technique claim that short selling increases liquidity on the markets, thereby reducing the price spreads between buying and selling. They believe that short selling helps to prevent, or at least alleviate, abnormal price jumps, known as bubbles. In contrast, opponents of short selling argue that it lacks transparency. It is almost impossible for supervisory authorities to intervene in the market at an early stage. This makes it more likely that short selling will jeopardise market stability and integrity. It is claimed that short selling, particularly during times of crisis, can aggravate the downward spiral in the price of shares. The main argument put forward was without doubt the threat posed by uncovered short selling, and the fear of a domino effect. If one financial institution becomes insolvent, this could lead others to follow suit, generating a global financial crisis and, ultimately, a global economic crisis.

Rules take account of pros and cons

Neither the arguments put forward by proponents of short selling nor the case made by its opponents can simply be dismissed. For its part, the European Commission, with considerable assistance from the European Securities and Markets Authority (ESMA) and the national supervisory bodies, has succeeded in achieving a compromise, which takes account of both sides’ arguments. The result was the entry into force on 1 November 2012 of Regulation (EU) No 236/2012 on short selling and certain aspects of credit default swaps. The key points of this Regulation are as follows:

- A general ban on the uncovered short selling of shares with a main trade channel in Europe and on uncovered short selling of European sovereign debt.
- A ban on the acquisition for speculative purposes of credit default swaps (CDS) relating to European sovereign debt.
- A requirement to notify the respective national regulator of significant net short positions, as soon as a certain threshold is exceeded.
- The introduction of emergency scenarios in which the national supervisory authorities or ESMA can adopt measures on a centralised basis. One key aspect, however, is that any such measure must be approved at European level before entering into force.

The ban on uncovered short positions takes account of the main argument put forward by opponents of short selling (domino effect) without, however, obstructing the general possibility of entering into covered short selling transactions. This enables the European economy to benefit from the positive effects of short selling during economically stable periods. The reporting obligation introduced in the Regulation now enables the supervisory authorities to react to any potential negative developments at an early stage. A further key advantage now is that, for the first time, Europe has reliable and uniform statistics on short selling. Consequently, in future, the arguments of both supporters and opponents of short selling can be backed up or countered, as appropriate, on the basis of the available figures.

Measures agreed at European level

The option of introducing emergency measures provides the national supervisory authorities and ESMA with a tool that can also be used to ban covered short selling during times of crisis. The fact that such measures have to be agreed at European level before entering into force means that a uniform and harmonised package of measures will apply in Europe. This
During the first two months since the reporting obligation entered into force, 58 reports have been submitted to the FMA in total, four of which were, however, cancelled due to them having been made erroneously. As at 31 December 2012, seven reports were published on the FMA website.

**Emergency Measures**

The emergency measures listed in the Regulation were put to the test twice immediately after the legislation entered into force. Both Greece and Spain made use of this option, ordering stricter restrictions on short selling. In each case the procedure set out in the Regulation was followed, according to which ESMA is first contacted by the national supervisor with a request for emergency measures to be adopted. ESMA must assess the application and may, where necessary, request that additional data and information be provided. Subsequently, ESMA will inform all of the other national authorities about the plan to introduce an emergency measure. A telephone conference will then be held, involving all of the European supervisors, to vote on the application. Given that it is an emergency measure being debated, this process must take place relatively quickly. The good organisational structure of ESMA and the flexible approach of the national supervisors mean that this type of process can be completed in less than 48 hours.

In 2013, ESMA will carry out a review of the measures imposed by the Short Selling Regulation with the involvement of the national supervisory authorities. Where necessary, minor adjustments to the European Commission’s Regulation will be recommended.
compulsory clearing for certain classes of OTC derivatives (to be defined by ESMA), regulations for central counterparties (CCPs), regulations to ensure the interoperability among CCPs, compulsory reporting of all derivatives to a trade repository, and the planned trade repositories.

EMIR formally entered into force on 16 August 2012 as Regulation (EU) No 648/2012 on OTC derivatives, central counterparties and trade repositories. The main items of the Regulation become applicable, however, only after the TS are adopted and published by the European Commission. The standards were adopted and issued by the Commission on 19 December 2012. The TS are immediately applicable 20 days after publication, which will be the case in the first quarter of 2013. The clearing obligation is expected to apply for the first time in Q1 2014, and required reporting of derivatives to trade repositories will begin between 1 July 2013 and 1 July 2015 at the earliest.

Contents of the technical standards:

- **OTC derivatives:** Regulatory technical standards (RTS) specify in detail the EMIR provisions relating to indirect clearing arrangements, the clearing obligation, the public register, access to a trading venue, non-financial counterparties and risk mitigation techniques.

- **CCPs:** RTS specify the requirements for central counterparties. Implementing technical standards (ITS) define the format of the records to be maintained by CCPs.

- **Trade repositories:** RTS specify in detail provisions relating to data to be reported to trade repositories, registration as a trade repository, the data to be published, comparing data among trade repositories, and access to data. ITS define the format and frequency of trade reports to trade repositories, and the format of applications for registration of trade repositories.

Pursuant to Article 2 para. 1 of the Zentrale Gegenparteien-Vollzugsge setz (ZGVG; Central Counterparties Implementation Act), the FMA is the competent authority responsible for the tasks arising from EMIR and is required to monitor compliance with the requirements set forth in the Regulation.

**SUPERVISION OF ISSUERS**

Pursuant to the BörseG, issuers of financial instruments are required to meet a large number of obligations. The requirements are intended to ensure that important information is made available to participants in the capital market in a timely manner and with as little delay as possible; such information concerns the companies whose securities they hold or are interested in purchasing. Data in particular should be made publicly accessible that is of major importance for any change in value of the particular investment, whether it be of a short or long-term nature. A common feature of such transparency requirements is that they apply only to issuers whose financial instruments are admitted for trading in an organised market. Examples of such include the official market and the semi-official market of Wiener Börse. Moreover, shareholders are also subject to certain requirements pursuant to the BörseG. Verifying and monitoring compliance with the reporting obligations relating to directors’ dealings and to trading by individuals closely associated with them is another area of responsibility within the scope of issuer supervision.

The legal basis for transparency obligations is found in EU Directives, the most important of which in this regard are the Transparency Directive (2007/14/EC) and Directive 2003/6/EC on insider dealing and market manipulation. The most significant national legislation in this area is the BörseG and the Veröffentlichungs- und Meldeverordnung (VMV; FMA Disclosure and Reporting Regulation).

The Austrian Financial Market Authority’s competence for monitoring compliance with transparency obligations, as specified in legislation governing securities exchanges, principally depends on whether Austria is the issuer’s home Member State as defined in Article 81a para. 1 no. 7 BörseG. As at 31 December 2012, a total of 157 issuers, accounting for a total of 8,105 securities listed on the official and semi-official market of Wiener Börse, were subject to these obligations (Source: Wiener Börse).

**AD HOC REPORTING REQUIREMENT**

The ad hoc disclosure obligation is mainly intended as a preventive measure to combat the misuse of inside
The aim in creating transparency is to ensure that market participants have fair access to information relevant to securities prices. An ad hoc disclosure is required in cases where inside information exists. The related events must already have occurred or can reasonably be expected to occur. The information also has to be capable of having a significant influence on the stock exchange or market price of the financial instruments. The capability of significantly influencing the price is a sufficient condition. Consequently, it is not necessary for the price to actually have been affected through disclosure of the information.

Publicising inside information quickly and without delay makes such information common knowledge that is generally available to the public, in this way preventing anyone from illegally taking advantage of it by carrying out transactions involving listed financial instruments. In general, whether ad hoc disclosure is required depends largely on the circumstances in the specific case.

Under certain circumstances, the issuer can delay disclosure of inside information for as long as might be required to protect their legitimate interests. The public must not be misled, however, and it must be ensured that the information is kept confidential.

In the event that details of the circumstances on which the inside information is based are spread as rumours or that some or all of the information enters the public domain, any part or all of the details of the yet undisclosed inside information must be published immediately to the extent necessary to avoid any misleading of the public; this applies regardless of whether the rumour was spread or the knowledge became public as a result of any breach in confidentiality within the issuer’s domain of control.

The FMA investigates cases where an issuer is suspected of not publicising inside information subject to ad hoc disclosure requirements or of publicising such information either with delay, incorrectly or incompletely, or where it is suspected that information has been disseminated through the media or by other means. Examples where this rule is applied include cases in which false or misleading signals related to financial instruments are given, rumours or false or misleading information is disseminated, or where the individual disseminating such information was aware or at least should have been aware that the information was false or misleading.

Issuers notified the FMA of postponing disclosure of inside information in nine cases in 2012. The FMA did not identify grounds for releasing issuers from ad hoc disclosure requirements especially in the context of multi-level decision processes as well as in mergers and acquisitions (see Table 37).

### Table 37: AD-HOC REPORTS BY CASE 2011–2012 (Source: FMA)

<table>
<thead>
<tr>
<th>REPORTS</th>
<th>2011</th>
<th>2012</th>
</tr>
</thead>
<tbody>
<tr>
<td>Share buyback/resale</td>
<td>29</td>
<td>18</td>
</tr>
<tr>
<td>Information pursuant to Art. 93 para. 1 BörseG</td>
<td>11</td>
<td>0</td>
</tr>
<tr>
<td>Peculiarities/other items of ongoing business operations</td>
<td>71</td>
<td>110</td>
</tr>
<tr>
<td>Participations (acquisition, sale), partnerships</td>
<td>49</td>
<td>29</td>
</tr>
<tr>
<td>Financial reports/business figures</td>
<td>214</td>
<td>197</td>
</tr>
<tr>
<td>Large-scale order</td>
<td>10</td>
<td>5</td>
</tr>
<tr>
<td>Capital measures</td>
<td>68</td>
<td>28</td>
</tr>
<tr>
<td>Staff details</td>
<td>38</td>
<td>45</td>
</tr>
<tr>
<td>Forecasts, profit warning</td>
<td>8</td>
<td>1</td>
</tr>
<tr>
<td>Restructuring, reorganisation, insolvency</td>
<td>11</td>
<td>7</td>
</tr>
<tr>
<td>Strategic corporate decisions, investments</td>
<td>22</td>
<td>10</td>
</tr>
<tr>
<td>Management board meetings, resolutions</td>
<td>8</td>
<td>0</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>539</td>
<td>450</td>
</tr>
</tbody>
</table>

**Regular Disclosure**

*(Interim and Annual Reporting)*

Financial reporting is the main reporting system used by listed companies for reporting to the entire financial community. The system, which includes annual, semi-annual and quarterly financial reports as well as interim reports, is the most important source of information for the capital market. Financial reporting provides the basis for analyses and ratings. It is used for example by investors to make investment decisions. Investors have to be able to rely on timely, correct financial reporting. For this reason, financial reports are among the items referred to as regulated information. Such reports must consequently be made available in their entirety to the public. The ad hoc disclosure requirement applies independently of the regular disclosure obligation. Ad hoc disclosure may be required, for example, when the results differ considerably from the previous year’s figures or in the case of a break with previous business developments. The ad
hoc disclosure requirement may also become applicable if a turnaround is achieved after a period of loss lasting several quarters, if there is a sharp drop in revenue following a growth phase, or when the results differ considerably from market expectations.

**REQUIREMENT TO REPORT MAJOR HOLDINGS**

The main aim of the disclosure requirement is to ensure transparency in cases where investors progressively acquire major holdings as part of a takeover bid. A lack of transparency in a case involving the progressive acquisition, through financial instruments, of major holdings in listed companies additionally affects the takeover offer made in the end. By putting the candidate under time pressure and forcing them to act, the acquiring party can minimise their risks and thus save money. The other shareholders with interest in the takeover candidate are at a disadvantage. Their investments are subject to additional risk. Transparency rules for the progressive acquisition of holdings, such that apply and are enforced regardless of the manner of acquisition, are intended to protect the reputation of the capital market.

For this reason Austrian legislators have extended the reporting requirements specified in the BörseG to include financial instruments, previously exempted from such obligations, which had been suited to covertly building up holdings. Current legislation covers only derivative instruments entitling holders to acquire shares in companies. Austria has included cash-settled derivatives among those subject to reporting obligations. The amendment enters into force as of 1 January 2013. Another new provision as of 1 January 2013 stipulates a general requirement to total the voting rights held through various financial instruments, which means, for instance, that voting rights based on derivative financial instruments must be added to those arising from physically held instruments. The current reporting thresholds are 5%, 10%, 15%, 20%, 25%, 30%, 35%, 40%, 45%, 50%, 75% and 90%. The lowest reporting threshold will be set at 4% as of 1 January 2013. The penalties applicable in the event of non-compliance with the disclosure requirement for major holdings also increase as of 1 January 2013, from €30,000 to €150,000.

Issuers are also subject to reporting requirements when holdings are acquired. As soon as the issuer receives notification from the shareholder, the issuer must disclose all of the information contained in the notification within two trading days. Disclosure is also required in cases where the percentage of voting rights changes as a result of shares being diluted, in other words, when the shareholder is not actively involved; examples include a capital increase or capital reduction.

**REQUIREMENT TO REPORT DIRECTORS’ DEALINGS**

This disclosure requirement applies to certain transactions by management staff, i.e. individuals who have management responsibilities with an Austrian-based issuer of financial instruments. Individuals closely associated with management staff also fall under this requirement. If such individuals conduct on their own account transactions in shares or securities equivalent to shares that were issued by the firm with which they have management responsibilities, such transactions

<table>
<thead>
<tr>
<th>Year</th>
<th>Ad hoc reports received</th>
<th>Annual and quarterly reports received</th>
<th>Directors’ dealings</th>
<th>Reports of voting rights received</th>
<th>Investigations initiated</th>
<th>Investigations forwarded for internal legal processing</th>
<th>Investigations dropped/completed</th>
</tr>
</thead>
<tbody>
<tr>
<td>2008</td>
<td>555</td>
<td>401</td>
<td>1005</td>
<td>177</td>
<td>28</td>
<td>6</td>
<td>14</td>
</tr>
<tr>
<td>2009</td>
<td>635</td>
<td>568</td>
<td>436</td>
<td>139</td>
<td>33</td>
<td>20</td>
<td>24</td>
</tr>
<tr>
<td>2010</td>
<td>569</td>
<td>345</td>
<td>442</td>
<td>124</td>
<td>45</td>
<td>29</td>
<td>26</td>
</tr>
<tr>
<td>2011</td>
<td>539</td>
<td>558</td>
<td>516</td>
<td>107</td>
<td>30</td>
<td>17</td>
<td>43</td>
</tr>
<tr>
<td>2012</td>
<td>459</td>
<td>511</td>
<td>287</td>
<td>118</td>
<td>41</td>
<td>27</td>
<td>40</td>
</tr>
</tbody>
</table>
must be reported to the FMA and publicly disclosed immediately. This requirement also applies to individuals who have regular access to inside information and are authorised to take business decisions affecting the future development of the issuing firm. Transactions involving amounts below the petty amount of €5,000 are not subject to the reporting requirement. The amount is based on the total of all transactions concluded in one year. Purchases and sales are to be added in determining this amount, both in the case of managers and of individuals closely associated with them. Notification must be made within five working days of completing the transaction. The data are published on the FMA website.
Ensuring effective control of accounting standards now ranks as a key quality criterion in a developed capital market. Failure to implement such processes will not only result in failure to abide by international standards but will also put the domestic capital market at a disadvantage compared with international competition.

With this in mind, Austria’s National Council adopted the Rechnungslegungskontrollgesetz (RL-KG; Accounting Control Act) on 5 December 2012 in order to transpose EU rules on the implementation of enforcement proceedings for accounting standards into Austrian law. The aim of the RL-KG is to ensure that the financial information presented by undertakings that are active on the Austrian capital market is reliable, accurate and internationally comparable. It therefore introduces a process for reviewing financial reporting, primarily of companies that are active on the capital market. This should help to prevent any errors during the preparation of company’s financial statements and reports. In the event that inaccurate disclosures are nevertheless included, these should be revealed and the capital market duly informed.

By setting up a review procedure for the accounting of companies that are active on the capital market pursuant to RL-KG, Austria is also complying with the corresponding obligation under European law as defined in the Transparency Directive (2004/109/EC) and with the terms of Regulation (EC) No 1606/2002 (application of international accounting standards). Pursuant to these EU laws, such companies are for example obliged to apply the International Financial Reporting Standards (IFRS) when preparing their consolidated financial statements.

**Cooperation between Review Panel and FMA**

The RL-KG basically assigns the FMA the role of review panel for financial reporting. This means that it must review annual financial statements and consolidated financial statements, as well as other prescribed disclosures by companies active on the capital market, to ensure that they have been prepared in accordance with the legal requirements, are accurate and comply with the accounting standards. Additionally, the FMA must report to the responsible public prosecutor’s office any circumstances that lead it to suspect that a criminal act has been committed in relation to accounting. This should, however, only happen if the company itself does not carry out the necessary correction of its mistakes or if the circumstances are such that serious damage for investors is feared. Similarly, if the FMA becomes aware of circumstances that appear to indicate a breach of professional duty by the auditor, it must report the case to the Austrian Chamber of Chartered Public Accountants. Circumstances that lead to the conclusion that stock market rules have been breached must be officially handled by the FMA in its capacity as the supervisory authority responsible for the stock market.

For the purposes of performing reviews, a private-law review panel may also be set up, but must be recognised by the Federal Ministry of Finance. Such a panel may then carry out appropriate reviews of companies’ financial statements or reports. However, cooperation with this panel on the part of a company being reviewed takes place on a voluntary basis. If a company refuses to let such a review panel access its premises, does not allow it to inspect its files or otherwise impedes its investigations, the review panel must inform the FMA accordingly. In such cases, the FMA can then review the company itself or order a review.

If the company being reviewed cooperates with the review panel, the process of checking the financial statements or company reports is carried out by the review panel. As soon as the review findings are available, these must be submitted to the FMA and the company concerned. If inaccuracies are detected during the review of the company’s financial statements and
reports, the company will be given the opportunity to state whether it agrees with the review panel’s findings. If it does agree, the FMA may order publication of the correction. If, however, the company is not in agreement with the review panel’s findings, the FMA must also take the necessary action. If the review carried out by the FMA reveals that the accounts prepared by the reviewed company do indeed contain errors, the FMA will oblige the company by means of an administrative decision issued in the public interest to publish details of the errors found, provided that such publication is not contrary to the company’s justified interests.

IMPLEMENTATION PLAN

The enforcement proceedings for accounting standards are to be applied for the first time with effect from 1 July 2013 in relation to financial statements for the 2013 financial year, by which time the institutional and organisational requirements are to be created, the corresponding testing processes and procedures developed, and the technical and organisational processes for determining and publishing errors established. Furthermore, the FMA is responsible for creating and expanding the basis for international cooperation with its sister authorities and with the European Securities and Markets Authority (ESMA). Whilst the introduction of the enforcement proceedings will create costs for industry, as the companies on the capital market will have to bear most of the monitoring costs, the benefits far outweigh any financial burden. The implementation of the enforcement proceedings meets the needs of listed companies and international investors for the utmost security in relation to the reliability of published company data. The reliable monitoring of harmonised compliance with accounting standards on an EU-wide basis will improve the accessibility and integrity of the domestic financial marketplace for international investors and their long-term commitment to Austrian securities. By setting up a credible and independent enforcement unit, there is no longer any concern that Austrian companies listed on a different regulated market in the European Union might be subject to a stricter review by the authorities responsible for that market.
PROSPECTUS SUPERVISION

LEGAL BASIS

Since the European Prospectus Directive (Directive 2003/71/EC) was transposed into Austrian law, the FMA has been mandated as the competent authority for supervision of capital market prospectuses. The legal basis for publicly offering securities and investments is found in the Kapitalmarktgesetz (KMG; Capital Market Act) and in Regulation (EC) No 809/2004 (the legal basis for the preparation of securities prospectuses). In cases where the prospectus also includes securities for admission to the stock exchange, the Börsegesetz (BörseG; Stock Exchange Act) additionally applies.

In its function as the competent authority, the FMA is responsible for the following main tasks:
- Auditing and approval of prospectuses and supplements when securities are offered to the public (securities prospectuses) or admitted to trading on a regulated market. The standard applied in this case by the FMA in auditing prospectuses includes, in accordance with Article 8a para. 1 KMG, completeness, coherence and comprehensibility.
- Conducting investigations of any alleged infringements of the KMG or of any provisions of the BörseG which apply to prospectuses.
- Cooperation with other European supervisory authorities, which includes notifications, official assistance and exchange of information, as well as further development of the legal framework at the European level as part of expert groups of the European Securities and Markets Authority (ESMA).
- Tasks related to organisation, coordination and information, such as publishing lists of eligible prospectus auditors, of approved securities prospectuses and of incoming notifications on the FMA website.

In addition to the FMA, in Austria Oesterreichische Kontrollbank (OeKB) is also responsible for certain tasks defined in the laws applying to prospectuses. The OeKB acts as a reporting office as specified in the KMG. The prospectuses that have been approved by the FMA are required to be filed with the OeKB and kept on file for at least 15 years. The legal framework in Austria also provides Wiener Börse AG, alongside the OeKB, with individual powers related to the auditing of prospectuses.

APPROVAL PROCEDURES

A prospectus is required to be issued whenever securities or investments are publicly offered and when securities are admitted to trading on a regulated market of the stock exchange. The prospectus must include all details which are required to characterise the issuer and the publicly offered securities or investments, or the securities admitted to trading on the regulated market. The purpose is to allow investors to make a sound judgement on the issuer’s, and any guarantor’s, assets and liabilities, financial situation, profits and losses, and future prospects, as well as on any rights associated with these securities or investments.

The prospectus is not permitted to be published prior to approval by the FMA. On approval, however, the prospectus must be published at the earliest possible date, but no later than one banking day before the public offering commences or one banking day before the particular security is admitted to trading.

Any supplement to a previously approved securities prospectus must be published and filed according to the same procedure as for the prospectus. A supplement is required to be issued for any important new fact or material error or inaccuracy with respect to the information contained in the prospectus that could affect the valuation of the securities or investments and that occurs or is identified between approval of the prospectus and final closure of the public offering or, if occurring later, admission to trading on a regulated market. The issuer has a legal claim to approval.
where a prospectus submitted for approval fully meets all requirements.
Unlike the procedures for approving securities prospectuses, which are harmonised by EU law, prospectuses for the public offering of investments are subject to national law in the particular case. The notification process within the framework of the European Passport is therefore not applicable to such prospectuses. The examination of the investment prospectus with regard to correctness and completeness must be performed by a prospectus auditor as specified in Article 8 KMG. The FMA is required to publish a list of eligible prospectus auditors on its website.

AUDITING STANDARD APPLIED BY THE FMA IN APPROVAL PROCEDURES

In accordance with the legal basis stipulated in the KMG, the FMA audits securities prospectuses according to the standards of completeness, coherence and comprehensibility. The auditing standards expressly preclude any evaluation of the contents. The particular issuer is liable for the correctness of the information contained in the prospectus.

COMPLETENESS

Within the approval procedures, completeness is verified on the basis of the minimum requirements as contained in the relevant schedule under European law. The schedules have been set forth in standardised form in Regulation (EC) No 809/2004. These include a broad range of compulsory information that applies to various different securities and issuer categories.

COHERENCE

Key to verifying coherence is to ensure that the information contained in the prospectus does not include any contradictory statements. Any specific items that are inconsistent will require closer examination and possibly adaptation by the provider or issuer.

COMPREHENSIBILITY

When verifying comprehensibility, the average informed investor is to be used as the benchmark. The prospectus must convey the information in such a way that the details are easy to analyse and follow. While technical terms may be used, such language should not predominate in the prospectus. An explanation of any such terms should be included in the prospectus.

OFFICIAL TASKS

Chart 43 displays the trends in prospectus approval procedures, approved supplements and procedures discontinued during 2008 to 2012. The clear increase in the number of such procedures from 2009 onwards is mainly due to the expiry on 1 January 2009 of the exemption provision according to which debt securities were allowed to be offered without a prospectus until 31 December 2008. This provision included Austrian housing bonds. Such bonds provided for a conversion right into shares or securities equivalent to shares (participation capital) in order to fall under the tax concessions of the Bundesgesetz über steuerliche Sondermaßnahmen zur Förderung des Wohnbaus (StWbFG; Federal Act on Fiscal Special Measures to Promote Housing). As dividend-bearing securities within the meaning of Article 1 para. 1 no. 4a KMG, such bonds have been subject to the obligation to publish a prospectus since 1 January 2009. This change led to a 138% increase in the number of prospectus approvals in 2009. The number of prospectus approvals remained at this relatively high level until 2011. There was a decrease in the number of prospectus approvals to 76 in 2012, accounted for almost entirely by the reduced number of approvals in the housing bond sector.

The number of approved supplements rose from 65 in 2011 to 80 in 2012. This fact reflects the situation in the capital markets, which continues to be unstable, as well as the changes introduced when the amendment to the KMG entered into force on 1 July 2012.

EEA NOTIFICATIONS

The objective of the Prospectus Directive was to create a European Passport for securities prospectuses. Accordingly, once a prospectus or a compulsory supplement is approved in one EEA Member State, for the duration of its validity it may be used for a public offering or admission to trading on a regulated market in any other EEA Member State as well. In order to
use a prospectus or a supplement in another EEA Member State, the competent authority in the respective host country must first be notified. It should also be noted that the prospectus must be drawn up in an admissible prospectus language. In Austria, prospectuses must be drawn up in German or English. It may be necessary to translate a summary into the particular language of the EEA Member State.

From Chart 44 it can be seen that the number of prospectuses from Austria notified in other EEA Member States decreased between 2008 and 2012. Specifically, 26 prospectuses were submitted to other authorities in 2012, representing a 10% drop compared with the previous year. The number of notifications for supplements as defined in Article 6 KMG was practically the same in 2012 as in the previous year. The majority of outgoing notifications was made to Germany. Prospectuses or supplements were also submitted to various countries in Eastern Europe.

The number of prospectuses notified in Austria by other EEA Member States rose by 11% during the period from 2008 to 2012, reaching a level of 383 in 2012. There was no change compared with the previous year. There was a decrease in notified supplements, from 2,482 in 2011 to 2,250 in 2012, which represents a 9.3% decline. The majority of incoming notifications to the FMA was submitted by the competent authority in Luxembourg as well as by the German authority.

**INTERNATIONAL COOPERATION**

The Corporate Finance Standing Committee is a body established with the European Securities and Markets Authority (ESMA). The FMA is a member of this committee, which also covers regulatory responsibilities entailed in the Prospectus Directive.

The focus of activities in 2012 was implementation of the changes set forth in Directive 2010/73/EU of the European Parliament and of the Council of 24 November 2010 amending the Prospectus Directive. In the wake of these activities, two regulations delegated by the European Commission, amending Regulation (EC) No 809/2004, were adopted. This legislation introduced provisions aimed at improving investor protection, at reducing the bureaucracy burden on companies wishing to procure capital through EU securities markets, and at enhancing the efficiency of prospectus regulation. Commission Delegated Regulation (EU) No 486/2012 contains important new rules specifying the format and content of the prospectus summary, a new set of rules applying to the base prospectus regime, as well as the proportionate disclosure regime for rights issues by small and medium-sized enterprises (SMEs) and the proportionate requirements for credit institutions issuing securities referred to in Article 1(2)(j) of Directive 2003/71/EC. Commission Delegated Regulation (EU) No 862/2012 additionally specifies rules concerning consent to the use of prospectuses in retail cascades, information on underlying indexes and the requirements for a report on profit forecasts or estimates that is prepared by independent accountants or auditors.
INVESTIGATION OF BREACHES OF THE RULES ON PROSPECTUSES AND ADVERTISING

The FMA is additionally responsible for monitoring the Austrian financial market in order to identify any breach of statutory provisions that may occur in connection with issuing and advertising securities and investments. Investigations were conducted in 29 such cases in 2012.
The FMA is responsible for areas including the supervision of credit institutions, insurance undertakings, Pensionskassen (pension companies), staff provision funds, investment funds, investment service providers, listed companies as well as stock exchanges. One of the goals defined for the FMA in this regard is to contribute towards ensuring the stability of the Austrian financial market. Yet, every now and then providers emerge on the market who avoid continued supervision and who provide services requiring a licence but are not authorised to do so. Providing services that require a licence without the necessary authorisation is referred to as unauthorised business.

**Financial Crime**

As well as identifying cases where business operations are being carried out without authorisation, during its investigations the FMA also frequently encounters cases involving genuine financial crime. As described below, such crimes can be committed in a great variety of ways, demonstrating that there is no limit to the criminal imagination of those perpetrating such crimes.

**Advance Fee Scams**

In this form of fraud, victims are promised absurdly high returns (up to 100% or even higher) and in this way motivated to make an advance payment to the providers. The first contact is frequently through a mass e-mail in which the sender claims to have knowledge of accounts held by former rulers or large corporations in developing countries and to require the recipient’s help in transferring the six-figure sums abroad. The promised commissions tempt the victims into making upfront payments, allegedly to cover fees, bribes and similar expenses. The victims then wait in vain for the promised consideration.

**Boiler Rooms**

Boiler rooms are call centres from which sellers attempt to persuade customers to enter into dubious investment transactions over the telephone. The sellers apply a great deal of psychological pressure in an attempt to coerce customers into buying shares in certain companies. After the funds are transferred, customers are often issued counterfeit receipts and account statements, or they are left with worthless shares of stock. Once no more money can be expected from the customers, the providers break off all contact and can no longer be reached.

**Phishing**

In this case, criminals attempt to spy on access details to online bank accounts (i.e. user data such as passwords, PIN and TAN codes) by means of phishing e-mails or Trojans. The spied out accounts are then debited and the funds transferred outside the country.

**Legal Basis**

The 2005 Finanzmarktaufsichtsänderungsgesetz (FMAÄG 2005; Financial Market Authority Modification Act; Federal Law Gazette I No. 48/2006) added Articles 22b to 22e to the Finanzmarktaufsichtsbehördengesetz (FMABG; Financial Market Authority Act) under the heading of “Unauthorised business”. These provisions entered into force on 31 March 2006 and have since been amended several times. Pursuant to Articles 22b to 22e FMABG, the FMA can take action founded on the suspicion of an administrative offence pursuant to the relevant supervisory laws: Article 98 para. 1 of the Bankwesengesetz (BWG, Banking Act), Article 66 para. 1 of the Zahlungsdienstegesetz (ZaDiG; Payment Services Act), Article 94 para. 1 of the 2007 Wertpapieraufsichtsgesetz (WAG 2007; Securities Supervision Act), Article 48 para. 1 no. 1 of the Börsegesetz (BörseG; Stock Exchange Act), Article 47 of the Pensionskassengesetz (PKG; Pensionskassen Act), and Article 110 of the Versicherungsaufsichtsgesetz (VAG; Insurance Supervision Act).

Article 22b FMABG stipulates the specific powers held
by the FMA in relation to conducting investigations as a means of prosecuting the violations referred to above. Under these powers, the FMA is entitled to obtain information from persons and other entities with legal personality, and to process the required data. This right also encompasses the FMA’s power to carry out on-site examinations, e.g. on the business premises of the suspected party and also on the business premises of a third party, of documents and electronic data media. On the basis of the provisions contained in the relevant laws, in particular Article 4 para. 7 BWG and Article 92 para. 11 WAG 2007, the FMA may inform the public by means of an announcement that a person is not authorised to carry out certain transactions that require a licence. In addition to these provisions on publication, Article 22c FMAbg also authorises the FMA – taking into account above all the stability of the financial markets and the interests of those concerned – to publish details of any penal decisions and administrative decisions prohibiting the business, and to disclose the details of these.

One of the FMA’s key tools and one which is effective in combating unauthorised business is stipulated in Article 22d FMAbg. As soon as an administrative offence is suspected pursuant to the relevant supervisory laws, the FMA must, irrespective of the initiation of criminal proceedings, instruct the company suspected of engaging in unauthorised business to remedy the situation such that the statutory provisions are met; such instruction is issued in the form of a procedural order. Should the party concerned fail to meet this requirement by the stipulated deadline, it is the responsibility of the FMA to issue an administrative decision ordering the necessary measures to establish legal compliance. Such measures can go as far as closing down business operations. The issuing of a decision in this regard regularly involves the threat of a coercive penalty up to the amount of €30,000.

In addition to the powers stipulated in the FMAbg with regard to investigation, publication and prohibition, in its efforts to combat unauthorised business the FMA also regularly conducts administrative penal proceedings in the event of infringements pursuant to Article 98 para. 1 BWG, Article 66 para. 1 ZaDiG, Article 94 para. 1 WAG 2007, Article 48 para. 1 no. 1 BörseG, Article 47 PKG and Article 110 VAG.

**OFFICIAL TASKS**

**INVESTIGATIONS**

The suspicion of unauthorised business is founded on information, enquiries or complaints from market participants, on information acquired by the FMA as part of its continued supervision of licensed companies or through active observation of the market, or on notification by other authorities.

The FMA begins its investigations by carrying out research with the help of the internet, company register, trade register and register of residents, as well as internal databases and enquiry tools. Subsequently, individuals may be called upon to submit a written statement or summoned to appear for questioning.

In 2012, the FMA initiated 265 investigations in total, 320 of which could be completed. Brief inspections and full on-site inspections were also carried out in 19 cases entailing suspicion of unauthorised business operations.

**PROCEDURES TO PROHIBIT BUSINESS OPERATIONS**

If, based on the results of investigations, the existence of a case of unauthorised business operations is identified, the FMA introduces a procedure pursuant to Article 22d FMAbg to prohibit business operations, which first of all involves issuing a procedural order calling upon the suspected party to remedy the situation such that it complies with the statutory provisions.

In a total of 52 cases in 2012, a procedural order pursuant to Article 22d FMAbg, calling upon the party to remedy the situation such that it complies with the statutory provisions, was issued. In two cases an administrative decision prohibiting business operations, simultaneously threatening a coercive penalty, had to be issued due to non-compliance with the procedural order.

**PUBLICATIONS**

The provisions in the BWG, ZaDiG and VAG (Article 4 para. 7 BWG, Article 64 para. 9 ZaDiG, Article 92 para. 11 WAG 2007 and Article 4 para. 11 VAG) enable the FMA to inform the public, by making an announcement on the internet, through publication in the
official gazette “Amtsblatt zur Wiener Zeitung” or in any newspaper with nationwide circulation, that a person is not authorised to carry out particular transactions that require a licence.

In total, 38 such announcements were made in 2012. Experience has shown that this is a very efficient way of tackling unauthorised business conducted via the internet, as dubious providers can be countered with publicity.

ADM INISTRATIVE PENAL PROCEEDINGS

A key pillar in the fight against unauthorised business is also the rapid implementation of administrative penal proceedings based on the provisions in the relevant supervisory laws. Penalties of up to € 100,000 threaten in such a case. Administrative penal proceedings were initiated in 29 new cases in 2012. A total of 23 penal decisions, 17 penal orders and 17 admonition orders were issued. Six penal decisions were not contested and thus became final, whilst appeals were lodged against 17 of them.

ENFORCEMENT

In accordance with Article 22 para. 1 FMAGB, the FMA is responsible for enforcing its own administrative decisions. An exception to this are administrative penal decisions. In order to enforce the latter, and coercive penalties in particular, an application is made with the relevant court to initiate enforcement proceedings. The penal decisions are then enforced by the district administration authority responsible.

REPORTED OFFENCES AND REPORTS forwarded TO THE ADMINISTRATIVE AUTHORITIES

If an authority or public office becomes aware of a suspected criminal act that does not fall within its statutory remit, that authority or office is obliged under Article 78 para. 1 of the Strafprozessordnung (StPO; Code of Criminal Procedure) to report the case in question to the criminal investigation department or public prosecutor’s office. In addition to reporting the offence in question, the FMA may also forward the relevant details of the case to the responsible telecommunication authorities; this is specifically done in cases involving cold calling (marketing calls without the participant’s prior permission) or the sending of unsolicited electronic messages, including text messages.

In 2012, the FMA submitted a total of 60 statements of the facts to the public prosecutor or police authorities and made 40 reports to the administrative authorities.

INTERNATIONAL COOPERATION

Since many companies that engage in unauthorised business offer their services on a cross-border basis, cooperation at an international level with sister authorities is of vital importance. Consequently, a study visit to the FMA took place, in which four employees of the German Federal Financial Supervisory Authority (BaFin) participated.

<table>
<thead>
<tr>
<th>ACTIVITIES</th>
<th>2009</th>
<th>2010</th>
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<td>Concluded investigations</td>
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<td>Reported offences</td>
<td>28</td>
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</table>
Money Laundering and Terrorist Financing

**Operational Supervision**

**Legal Basis**

The FMA supervises compliance with the due diligence and disclosure obligations aimed at combating money laundering and terrorist financing. As a means of doing this, on-site measures can be carried out and related supervisory procedures and administrative penal proceedings conducted. Legislative authorities have vested the FMA with certain powers in this area, including responsibility for legal interpretation.

The Financial Action Task Force (FATF), an independent inter-governmental body that develops and promotes standards to protect the global financial system against money laundering, terrorist financing and financing for the purpose of proliferating weapons of mass destruction, has developed a series of Recommendations. A comprehensive package of measures was agreed in 2010 in order to implement these FATF Recommendations. These also stipulated an extended role and greater powers for the FMA in the fight against money laundering and terrorist financing. On 29 December 2011, the power to carry out on-site inspections at credit institutions, with a view to preventing money laundering and terrorist financing, was officially assigned to the FMA. While previously existing for insurance and securities supervision, the FMA’s powers to conduct on-site inspections for combating money laundering and terrorist financing were extended by the new provision to include credit institutions as well. Thus, in an area of supervision that requires a high level of specialisation, the FMA has been granted comprehensive and sole responsibility for conducting on-site inspections. In the fight against money laundering and terrorist financing, synergies are to be expected that should result in improved supervision activities at credit institutions and enhance the effectiveness of such efforts. Transferring responsibility for on-site inspections to the FMA is also in keeping with a specific FATF Recommendation, namely that powers in this area should be concentrated with one authority.

**Official Tasks**

**On-Site Inspections and Company Visits**

For the purpose of preventing money laundering and terrorist financing, 37 on-site measures were carried out in total during 2012. On-site inspections of credit institutions were conducted for the first time in this area by the FMA. A total of 17 on-site inspections were carried out by the FMA within the framework of combating money laundering and terrorist financing during the year under review. In detail, six on-site inspections were conducted at credit institutions, two at insurance undertakings and nine at investment firms. Additionally, in relation to preventing money laundering and terrorist financing, the FMA carried out a total of 20 company visits at credit institutions during the year under review.

**Supervisory Procedures**

During 2012, there were 123 cases in total of supervisory procedures being initiated to prevent money laundering and terrorist financing. The procedures included 72 investigations, 17 procedural orders requesting compliance with statutory provisions to be restored, and 34 cases of administrative penal proceedings. In total, 14 penal decisions, six admonitions and eight admonition orders were issued due to infringements against anti-money laundering and terrorist financing provisions as set out in Articles 40 et seq. of the Bankwesengesetz (BWG; Banking Act). In a further 18 cases, the FMA filed a suspicious transaction report with the Financial Intelligence Unit.

**Circulars and Regulations**

By issuing the Geldwäscherei-und Terrorismusfinanzierungsrisko-Verordnung (GTV; Regulation on Money Laundering and Terrorist Financing Risk), the FMA has
made use of its corresponding authority pursuant to Article 40b para. 1 BWG and Article 98d para. 1 of the Versicherungsaufsichtsgesetz (VAG; Insurance Supervision Act) to define further cases associated with an increased risk of money laundering or terrorist financing. An increased risk of money laundering or terrorist financing as defined in the GTV is deemed to exist where the customer, the customer’s authorised representative, a person with whom the customer maintains an important business relationship, the trustor or the beneficial owner has their place of residence or place of incorporation in one of the high-risk countries listed in the Regulation or where the transaction is processed through an account held at a credit institution in one of the listed countries. The Regulation, which entered into force on 31 December 2011, was last amended on 28 December 2012.

On 24 April 2012, the FMA published a Circular on the Anti-Money Laundering Officer (AML Officer), which explains and details the responsibilities and powers vested in the AML Officer, the compatibility with other functions, and the outsourcing of the AML Officer’s responsibilities.

INTERNATIONAL COOPERATION

The FMA is a member of the Austrian delegation to the FATF and a member of the Anti-Money Laundering Subcommittee (AMLC), a working group of the Joint Committee of the three European financial market supervisory authorities (EBA, EIOPA, ESMA). The FMA also has representatives in these expert bodies: the EU Committee for the Prevention of Money Laundering and Terrorist Financing (CPMLTF) and the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL).

FATF

In February 2012, the FATF adopted the new “International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation – the FATF Recommendations”. The main features of the standards include an emphasis on the risk-based approach as well as the requirement for countries to understand, identify and assess the money laundering and terrorist financing risks. A direct consequence of the new Recommendations was the need to revise the methodology used in country assessments, in preparation for the 4th round of mutual evaluations beginning in autumn 2013. The focus of these evaluations will be on effectiveness assessment. Consequently, alongside adapting the methodology applied in technical implementation, a methodology to be used in effectiveness assessment has also been developed. The methodology is aligned with a hierarchy of outcomes, structured according to three levels, with the high-level objective of protecting financial systems and the broader economy from the threats of money laundering and the financing of terrorism and proliferation. This should strengthen financial sector integrity and contribute to safety and security, among other things. The new assessment methodology is to be adopted at the plenary session in February 2013.

EUROPEAN COOPERATION

At the European level, the Committee for the Prevention of Money Laundering and Terrorist Financing (CPMLTF), headed by the European Commission, deals with current developments. In-depth discussions were held on the Commission’s report on implementation of the Third Money Laundering Directive (2005/60/EC), as stipulated in Article 42 of the Directive. There was also a discussion of the impact of the new FATF Recommendations in view of the imminent revision of the Third Money Laundering Directive. Publication of the Commission’s draft proposal for the Fourth Money Laundering Directive was postponed until the first quarter of 2013. Through Austria’s membership in MONEYVAL, an FMA staff member represented the authority in a country evaluation by participating as a financial assessor in the evaluation team.

As a working group of the Joint Committee of the three European supervisory authorities (EBA, EIOPA, ESMA), the AMLC pays special attention to comparative implementation of individual aspects of the Third Money Laundering Directive as well as to related

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concerns. The AMLC prepared a report on the application of anti-money laundering and counter-terrorist financing obligations as practised by e-money issuers, agents and distributors.\(^2\)

ith regard to the enforcement of supervisory laws, the FMA has administrative penal jurisdiction in the first instance and is therefore authorised to conduct administrative penal proceedings should provisions of the supervisory laws be breached.

As at the beginning of 2012, 160 proceedings were pending. A further 498 administrative penal proceedings were initiated and 531 cases were concluded during the year under review with the issuing of an administrative decision. Of all the administrative penal proceedings concluded in 2012, 163 resulted in penal decisions, 212 in penal orders and 156 in admonitions. In all, 99 cases were dropped, and in 125 cases no administrative penal proceedings were initiated. As at the end of the year, 150 proceedings were still pending.

In the case of a penal decision, an administrative decision imposing a fine is issued following investigation procedures. A penal order can be issued without any additional investigation procedures if the evidence for the offence is sufficiently unequivocal. In this case the fine may not exceed €365 per violation, but fines incurred for several breaches may be imposed on a cumulative basis. If negligence is minimal and the consequences of the infringement are insignificant, the FMA may also refrain from imposing a penalty and admonish the accused while indicating the illegality of his behaviour.

In 2012 the FMA imposed 375 fines totalling €1,301,750, of which €1,202,050 related to penal decisions and €99,700 to penal orders. The average fine in 2012 for penal decisions was therefore €7,375, with penal orders averaging €470. The average amount of the penal orders is above the maximum amount applicable to an individual case since penal orders imposed for several breaches are applied on a cumulative basis. The overall average was €3,471, and the highest fine imposed was €100,000. Some of the laws included in the FMA’s supervisory remit also cover criminal offences. If the FMA has reason-
able grounds to suspect that such a law has been breached, it must submit a report to the public prosecutor’s office. The ordinary courts of law are then responsible for imposing any sanctions. Such offences include, for example, insider dealing as prohibited by the Börsengesetz (BörseG; Stock Exchange Act) and the public offering of investments without submitting a prospectus as required by the Kapitalmarktgesetz (KMG; Capital Market Act). Additionally, as part of its supervisory activity, the FMA is confronted time and time again with circumstances that lead it to suspect that a statutory provision that is not covered by its supervisory remit has been breached. Here too, the FMA is legally bound to report such circumstances to the relevant responsible authority. The most frequent circumstances in this regard are suspected breach of trust and/or fraud, as well as prohibited pyramid schemes pursuant to the Strafgesetzbuch (StGB; Criminal Code) and the falsification of accounts.

In 2012 the FMA forwarded 88 such reports to the public prosecutor’s office, two of which related to suspected insider dealing as defined in the BörseG. Some 85% of the circumstances reported related to suspected breaches of provisions contained in the StGB.

**Penal decisions according to area of the law concerned**

**Money laundering provisions**

During the year under review the FMA issued 13 penal decisions against the parties responsible at credit institutions due to failure to comply with money laundering rules. The breaches related to the following circumstances in particular. In one case, despite money laundering being suspected, the entity concerned did not refrain from processing further transactions until the matter had been resolved. In a further case, the suspicious transaction report was not sent immediately to the Financial Intelligence Unit as required by law. Dubious business relationships were not sufficiently monitored in another case. One penal decision was also issued against a customer for failing to disclose a trusteeship. Of the 59 penal decisions1 issued in response to violations of the WAG 2007, 40 concerned credit institutions and 19 other investment service providers. The penal decisions affecting credit institutions related in particular to breaches of organisational requirements (essentially lack of control of staff transactions), as well as to violations of codes of conduct and advertising rules. In the case of investment firms and investment service providers, the decisions were issued in response to breaches of organisational rules and codes of conduct in particular. There was one case of a penal decision being issued due to non-compliance with minimum capital requirements.

**Börsengesetz (BörseG; Stock Exchange Act)**

Of the 35 penal decisions1 relating to breaches of the BörseG, five concerned market manipulation. One was issued in response to cross trading, originating in defective programming and a failure to monitor the automated trading system over a period of several days, while four related to market manipulation through sending misleading signals or information-based market manipulation. A further penal decision was issued in response to a violation of directors’ dealings requirements. There were nine cases of penal decisions being issued due to failure to submit an ad hoc report for timely publication of inside information. Ten penal decisions related to infringements of the trading rules of the Wiener Börse. Four penal decisions targeted issuers that had failed to comply with the rules on compliance. Other penal decisions addressed in particular the failure to comply with requirements governing regular disclosure and the notification of participations.

**Investmentfondsgesetz (InvFG; Investment Fund Act) and Immobilien-Investmentfondsgesetz (ImmoinvFG; Real Estate Investment Fund Act)**

Of the 8 penal decisions1 issued in response to breaches of the InvFG and ImmoinvFG, three related to the omission of any reference to published prospectuses in marketing documents. A further three were issued due to the audited report on activities, including audit report, not being submitted on time to the FMA. One decision was issued due to advertising material that highlighted the benefits of a financial instrument without fairly and clearly setting out the associated risks.

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1 Some of the penal decisions relate to breaches of various different material laws.
A further penal decision was issued due to a breach of the provisions protecting designations as contained in the old version of the InvFG, with a further such decision based on the 2011 version of InvFG.

KAPITALMARKTGESETZ
(KMG; CAPITAL MARKET ACT)

In 2012 there were 10 penal decisions issued in response to breaches of the terms of the KMG. These concerned the following cases, among others. Six related to failure to notify the reporting office at the Oesterreichische Kontrollbank (OeKB) of the details of a securities issue, to allow inclusion in the new-issue calendar. There was one case of securities being publicly offered even though the terms of the prospectus did not comply with legal requirements. In three cases, the prospectuses could not be accessed via the relevant websites without registering first.

PENSIONSKASSENGESETZ
(PKG; PENSIONSKASSEN ACT)

Breaches of the investment conditions pursuant to the PKG resulted in a penal decision in five cases.

ZAHLUNGSDIENSTEGESETZ
(ZADIG; PAYMENT SERVICES ACT)

The issue involved in one penal decision was the delayed value date of a payment transaction.

BREACH OF NOTIFICATION OBLIGATIONS

Pursuant to the Bankwesengesetz (BWG; Banking Act), the Versicherungsaufsichtsgesetz (VAG; Insurance Supervision Act) and the
2007 Wertpapieraufsichtsgesetz (WAG 2007; Securities Supervision Act), credit institutions, insurance undertakings, investment firms and investment service providers are obliged to immediately notify the FMA of certain facts relevant to supervision. These facts include amendments to articles of association, changes concerning the directors, violations of regulatory provisions, establishment/transfer of the head office and similar occurrences. Four penal decisions were issued due to related offences in this regard. The FMA is increasingly making use of admonitions under the shortened procedure in response to such breaches of notification obligations in particular.

SELECTED PROCEEDINGS BEFORE THE UNABHÄNGIGER VERWALTUNGSSENAT (UVS; INDEPENDENT ADMINISTRATIVE TRIBUNAL)

Based on a judgement of the European Court of Justice (ECJ) of 28 June 2012, it is the view of the UVS that information about an interim step in a process implemented over an extended period can also represent inside information. Specifically, one case related to a decision taken by a management board to launch a merger project in relation to the issuer. The UVS was of the opinion that the secrecy and notification obligations set out in the law on takeovers took precedence over the general disclosure requirements under capital market law, particularly ad hoc disclosure, in the form of a lex specialis. It was therefore the UVS’s view that, during the period of validity of the secrecy obligations under takeover law, the general disclosure requirements imposed by capital market law pursuant to Article 48d BörseG were suspended. The FMA lodged an official appeal with the Verwaltungsgerichtshof (VwGH; Administrative Court) against this ruling.

The UVS judged that the offence of omitting to report an issue for inclusion in the new-issue calendar ended when the issue offer came to an end, as it did not make sense for the report to be made subsequently. The UVS confirmed the FMA’s legal opinion that market manipulation represented an offence of failing to obey the statutory provisions but that could nevertheless be committed as a result of negligence in the case of cross trades. Specifically, there was a case of negligence in relation to a control system for trading computers that was not sufficiently effective to avoid cross trades.

The UVS confirmed the FMA’s view with regard to the occurrence of market manipulation through cross trades by a credit institution. It could not be proved to the UVS that a well-functioning control system was in place for the purposes of reliably ensuring that the statutory provisions would be complied with (to prevent market manipulation on the stock exchange).

The UVS agreed with the FMA’s legal opinion that breaches of the obligation to provide monthly reporting on large exposures constituted a long-term offence and that only the submission of a correction report brought the punishable offence to an end.

One case that arose during 2012 involved a bank at which trading was carried out via the assistant trader account of an individual who no longer worked there. There were also inconsistencies in relation to the logging on and off of traders and assistant traders. The UVS felt that this action was in breach of the trading conditions of Wiener Börse AG and also of the obligation to exercise due and reasonable care.

It is also the view of the UVS that the designations “Veranlagungsgemeinschaft KG” and “Investment Trust KG” breach the provisions protecting designations and are therefore prohibited for non-licensed companies.

The UVS imposed penalties on those responsible for a Pensionskasse due to infringement of the investment limits pursuant to Article 25 PKG in relation to various investment and risk sharing groups on several reporting dates.

In a further case the UVS judged that a PowerPoint presentation did not fulfil the requirements of a written compliance activity report. Available in written form, the brief presentation formulated in the form of bullet points also required verbal explanation. The UVS argued that the PowerPoint presentation contained headings, key words and definitions, as is typical of the PowerPoint format, but was in no way designed to enable the reader to gain a comprehensive view of the compliance function simply from reading through the presentation.
As part of an investigation the FMA called on a company to submit documentation and provide information due to the suspicion that it was conducting deposit-taking business without being authorised to do so. Failure to comply with these requests by the deadline resulted in the threatened coercive penalty being imposed. The company lodged appeals against both of these decisions with the Verfassungsgerichtshof (VfGH; Constitutional Court), considering that the rights of it and its customers to data protection had been violated and believing that it was being compelled to self-incriminate, contrary to the permitted practices. The Constitutional Court declined to handle the two appeals, forwarding them instead to the Administrative Court.

The Constitutional Court declined to handle an appeal requesting the removal of an announcement pursuant to Article 92 para. 11 WAG 2007 (warning regarding unauthorised business) from the FMA’s website and passed the case to the Administrative Court. The appeal submitted by the company concerned to the Data Protection Commission in parallel to these proceedings was also rejected as unfounded.

An FMA decision categorising a group as a financial conglomerate was revoked by the Administrative Court on the grounds of illegality. It was the Court’s view that the own shares held by a company in the group and the related voting rights were not to be included in the calculation of the proportion of voting rights held in companies in a different industry.

According to a decision of the Constitutional Court, the provisions of the FMA-Kostenverordnung (FMA-KVO; FMA Cost Regulation) are based on express rights to issue regulations. The provisions in the Regulation, according to which those liable to pay must independently provide their data and are solely responsible for this and for stipulating a deadline for any corrections, are not inappropriate or objectionable.
The executive bodies of the FMA comprise the Executive Board and the Supervisory Board. The Executive Board is responsible for managing the entire operation as well as the FMA’s business transactions in accordance with the law and the Rules of Procedure. The Supervisory Board is responsible for monitoring the management and business operations of the FMA.

**EXECUTIVE BOARD**

In accordance with the Finanzmarktaufsichtsbehör-dengesetz (FMABG; Financial Market Authority Act), the Executive Board consists of two members with equal rights, one of whom is nominated by the Federal Minister of Finance and the other by the Oester-reichische Nationalbank (OeNB). Both are to be appointed by the Federal President upon the proposal of the Federal Government for a five-year term of office, and may be reappointed for a second term. During the year under review, Helmut Ettl and Kurt Pribil made up the Executive Board of the FMA.

**SUPERVISORY BOARD**

The Supervisory Board of the FMA is composed of eight members. Of these, the Federal Minister of Finance (BMF) as well as the Oesterreichische Nationalbank (OeNB) appoint three members each, who are eligible to vote, while the Austrian Federal Economic Chamber (WKO) nominates two co-opted members without voting rights to represent the supervised institutions. The latter members have clearly delineated rights to obtain information. The ordinary members of the Supervisory Board are to be appointed by the BMF, whilst the members nominated by the WKO are co-opted by the Supervisory Board itself.

Pursuant to Article 10 para. 2 FMABG, the following measures require the approval of the Supervisory Board:

- the financial plan to be drawn up by the Executive Board including the investment and staff plan;
- investments, to the extent that they are not authorised in the investment plan, and the taking out of loans that exceed € 75,000 each;
- the acquisition, disposal and encumbrance of real estate;
- the financial statements to be drawn up by the Executive Board;
- the Rules of Procedure pursuant to Article 6 para. 2 and changes thereto;
- the Compliance Code pursuant to Article 6 para. 4 and changes thereto;
- the appointment of employees of the FMA to leading functions directly subordinate to the Executive Board (second management level) as well as their dismissal and termination of employment;
- the annual report to be drawn up pursuant to Article 16 para. 3;
- the conclusion of collective agreements and works agreements.

Figure 2: SUPERVISORY BOARD OF THE FMA

<table>
<thead>
<tr>
<th>Appointed by the BMF</th>
<th>Appointed by the OeNB</th>
<th>Appointed by the WKO</th>
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<tr>
<td>Alfred Lejsek</td>
<td>Ewald Nowotny</td>
<td>(until 20 Sept. 2012)</td>
</tr>
<tr>
<td>(Chair)</td>
<td>(Deputy Chair)</td>
<td>Herbert Pichler</td>
</tr>
<tr>
<td>Michael Hällerer</td>
<td>Friedrich Karrer</td>
<td>Walter Knirsch</td>
</tr>
<tr>
<td>Gerhard Zotter</td>
<td>Andreas Ittner</td>
<td></td>
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<tr>
<td>(from 7 Sept. 2012)</td>
<td></td>
<td></td>
</tr>
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<td>Gerhard Baumgartner</td>
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<td></td>
</tr>
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</table>
In accordance with Article 9 para. 1 FMABG, the Supervisory Board is obliged to hold meetings at least once every calendar quarter. In the year under review, the Supervisory Board convened on 9 March, 23 May, 7 September and 9 November. At its meeting on 23 May 2012, the Supervisory Board unani-
he Supervisory Board had approved a staffing target of 326.85 full-time equivalents (FTEs) for 2011 and 2012. The actual number of staff employed by the FMA as at 31 December 2012 was 313.975 FTEs, which corresponds to 340 employees (excluding those on leave). The planned distribution of staff among the individual departments compared with the actual figures is shown in Table 42.

The staff turnover rate in 2012 was 9.43%, not counting those employees whose fixed-term contracts expired during the year, i.e. almost unchanged compared with the previous year. To stabilise the turnover rate, divisions with a high turnover were subjected to an analysis at an early stage, allowing countermeasures to be defined and implemented.

The number of civil servants assigned to duty at the FMA by the Federal Ministry of Finance dropped from 21.10 to 20.00 FTEs, meaning they accounted for 6.37% of all staff. The number of contractual employees stayed the same (6.50 FTEs); their share in the total staff thus fell slightly to 2.07%.

The average age of FMA employees increased from 37 to 38 years. The share of part-time employees was 18.53% in 2012, for the greater part due to parents taking part-time leave. Women accounted for 52.65% of the total staff, a proportion that remained largely unchanged compared with the previous year. The share of university graduates remained consistently high, at 72.35%. The number of employees with additional qualifications such as a second course of study, a postgraduate qualification, or professional qualifications in law or tax accountancy stabilised at a high level of 26.47%. Including those 24 employees who graduated from the university programme in Financial Market Supervision in 2012, the value increases to 33.53%.

The range of training and career development options offered by the FMA is essentially based on five pillars:

- the university programme in Financial Market Supervision offered in conjunction with the OeNB (the first group of students started in 2010);
- the executive development programme (implemented in 2011);
- the FMA Academy (since 2005);
- international seminars organised by the European Supervisory Authorities (ESAs); and
- third-party seminars offered individually.

### Executive Development Programme

Career development for executives is given high priority at the FMA. In addition to the one-off seminars offered by the FMA Academy, the executive development programme “Leadership Basic and Advanced” was established in 2011 and consists of the following four modules: “My role as leader”, “Leading employees/experts”, “Leading teams” and “Leading divisions”. This programme covers all current challenges faced...
The University Programme in Financial Market Supervision, developed jointly with the WU Executive Academy of the Vienna University of Economics and Business (WU), has since 2010 been a central component of the system of basic and advanced training offered by the Financial Market Authority (FMA) and the Oesterreichische Nationalbank (OeNB). The university programme provides participants with relevant basic knowledge derived from scientific research while covering, with a view to practical application, the most recent developments in the financial markets. The first participants successfully completed the course of studies in autumn 2012 and received their diplomas, certifying them as “Academic Financial Market Supervisors”.

**Major Subjects and Procedure**

In the programme, an interdisciplinary approach is taken in providing students with comprehensive basic knowledge of all areas related to supervision. The focus in terms of subject matter is on the fundamentals of financial market supervision from the areas of supervisory law and financial and business economics, as well as on risk management and controlling. Various courses imparting social and language skills supplement the specialised studies. Through involving lecturers both from within the institutions organising the programme and from external organisations, it is furthermore ensured that theoretical as well as practical aspects of supervision are covered. In addition to attending courses and passing three block exams, participants are also required to complete a work placement and submit a final paper. The course of studies in the university programme entails a total of 60 ECTS credits, with one ECTS credit equalling 25 to 30 hours of work.

The courses offered as part of the university programme fall into one of these general fields:

- Supervisory law and financial transactions
  - Introduction to financial market supervision
  - Fundamentals of the Authority
  - Introduction to supervisory law
  - Supervisory reporting and analysis tools
  - Money laundering
  - Introduction to credit business
  - Introduction to insurance business
  - Introduction to securities transactions

- Financial economics and accounting
  - Fundamentals of statistics
  - Fundamentals of financial mathematics
  - Fundamentals of economics
  - Fundamentals of accounting
  - Financial accounting (valuation according to UGB, BWG and IFRS)
  - Minimum capital requirement and capital adequacy in the banking sector
  - Introduction to holding companies

- Risk management and controlling
  - Credit risk assessment and controlling
  - Market risk assessment and controlling
  - Compulsory elective modules
    - Banking: ICAAP (overall bank risk management)
    - Insurance: Solvency II
    - Securities: stock exchange trading and IPOs

- Communication and social skills
  - Financial English
  - Effective communication I
  - Effective communication II

The work placement and the final paper can be selected from among these subjects: supervisory law and financial transactions, financial economics and accounting, or risk management and controlling.

The university programme entails a total of 49 days of seminars structured according to 21 modules. Students are assessed on the basis of three written block exams. The exams cover all of the subject matter taken in the courses. Including the work placement and the final paper, the study programme can usually be completed after four semesters.
**Completion of the University Programme**

For successful completion of the programme, the conditions listed below must be met:

- Attendance of courses/modules
- Passing grade on all three block exams
- Successful participation in the courses on communication and social skills
- Successful completion of the work placement
- Passing grade on the final paper

On successful completion of the programme, the WU Executive Academy issues an academically recognised diploma. Each graduate of the university programme is awarded the title of “Academic Financial Market Supervisor”.

**Review**

Six classes have begun with the university programme since it was launched in 2010. A total of more than 120 individual courses have been held and nine block exams have taken place. In 2012, 27 students from the FMA successfully completed the programme. The topics of the final papers submitted by the graduates are made public within the FMA and the OeNB, with the aim of giving a larger number of staff of both institutions the opportunity to profit from the knowledge acquired by the graduates.

**Graduation Ceremony**

At a ceremony on 21 November 2012, the first 55 (27 from the FMA, 28 from the OeNB) graduates were conferred the title of “Academic Financial Market Supervisor”. The WU Executive Academy awarded the diplomas during a ceremony, which took place at Palais Liechtenstein in Vienna.

**Outlook**

Until January 2013, the University Programme in Financial Market Supervision was run with the assistance of KPMG and the Academy of Chartered Public Accountants. From March 2013, the university programme will be offered exclusively in cooperation with the WU Executive Academy. The curriculum will also undergo further changes, supplemented, for example, by modules covering the new supervisory regimes for banks (Basel III) and insurance undertakings (Solvency II).

Further developing the curriculum in cooperation with the WU Executive Academy has also paved the way for recognition of the programme towards postgraduate studies at the WU. From autumn 2013, the University Programme in Financial Market Supervision will be recognised as a specialisation within the curriculum of the Professional MBA programme offered by the WU Executive Academy. On condition of meeting the admission requirements, selected graduates of the university programme from the FMA will in future have the option of entering the Professional MBA programme and graduating with an MBA after two additional semesters of coursework. In this way, a further goal in the area of postgraduate professional advancement has been achieved.
by today’s managers of people. In the meantime, a
large proportion of FMA executive staff has now
participated in the development programme and com-
pleted the relevant modules.
Since successful completion of the executive develop-
ment programme is a prerequisite for reappointment
as an executive under the FMA salary scale (appoint-
ment period of five years), the programme will be
offered again in 2013. This should allow those execu-
tives who are newly appointed or who have only taken
part in some of the modules to complete the whole
programme.

FMA ACADEMY

The range of training offered by the FMA Academy
consists both of basic seminars to help integrate new
employees, and courses in social and methodological
skills, language and specialist training. The FMA
Academy has thus developed into a platform for inte-
grated knowledge management at the FMA. The semi-
nars offered in the education catalogue are chosen
every year together with the departments. Since 2009
the seminars offered at the FMA Academy have been
closely integrated into the FMA salary scale, which
defines a specific range of training measures for each
target group. In 2012, the FMA Academy organised
a total of 87 seminars in which 886 individuals par-
ticipated.

INTERNATIONAL SEMINARS

A large number of employees took advantage of the
possibility of attending specific seminars within the
scope of the European system of financial supervision
once again in 2012. FMA employees participated in
nearly 100 international training seminars, thus ensur-
ning that they were familiar with the very latest interna-
tional developments.

INTERNATIONAL COOPERATION

Cooperation with sister authorities in Europe was ex-
plored further and in greater detail in 2012. As part
of so-called brief study visits, two employees from the
Securities Supervision and one employee from the In-
surance Supervision Department gathered invaluable
experience at the Financial Services Authority (FSA)
in London. One employee from the Integrated Super-
vision Department worked for the European Banking
Authority (EBA) in London, another with the FMA’s
German sister authority, the Federal Financial Super-
visory Authority (BaFin), in Frankfurt am Main. Another
employee from the Insurance Supervision Department
spent time at the European Insurance and Occupation-
al Pensions Authority (EIOPA) in Frankfurt. An FMA
employee from the Investment Firms Division spent
four months in Washington, where she exchanged ex-
periences with her counterparts at the Securities and
Exchange Commission (SEC), and one colleague from
Banking Supervision was seconded to the Central
Bank of Russia (CBR) in Moscow.
In turn, employees from other authorities were naturally
also involved in study visits to the FMA. Four col-
leagues from BaFin gathered experience in dealing
with unauthorised business in the Integrated Super-
vision Department, and one colleague from the Luxem-
bourg authority, Commission de Surveillance du Secteur
Financier (CSSF), was seconded to the Human Re-
sources, Finance and Controlling Division.
FINANCING

The financing of the FMA consists of three components:
- the federal contribution;
- the share of entities liable to pay costs, as well as income from fees; and
- other revenues.

Article 19 para. 4 of the Finanzmarktaufsichtsbehördengesetz (FMABG; Financial Market Authority Act) stipulates the federal contribution as a fixed sum of €3.5 million for each financial year of the FMA. Article 19 FMABG lays down in addition that the FMA's costs (personnel, material expenses, write-downs and other expenses) are to be apportioned to the four accounting groups – banks, insurance, securities and Pensionskassen – according to the share incurred in each case.

The supervisory costs must be apportioned on a direct basis as far as possible. Consequently, direct costs are allocated directly to the accounting group. Costs that cannot be directly allocated are to be apportioned based on a ratio which represents the share of the relevant accounting group in the direct costs.

The income (e.g. federal contribution, fees, other revenues) is deducted from the costs of the accounting groups, yielding the share of costs to be paid by the supervised entities.

TIME AND PERFORMANCE TRACKING

The FMA's tried and tested time and performance administration system (ZLES) allows staff costs to be allocated to the legally defined accounting groups on the basis of the share of the costs incurred. For this purpose, every employee’s individual working time is recorded electronically by the minute. Each employee is then required to assign the recorded actual working times to the accounting groups by activity on the basis of a product list of pre-defined activities.

The FMA’s controlling division generates quarterly analyses for various levels of the organisation, which are used as an instrument for management and controlling. The relevant analysis reports are used by the management to verify and confirm that the activities have been assigned to the correct accounting group.

NOTICES OF PAYMENT DUE

Article 19 FMABG stipulates the form in which the supervised companies are required to reimburse the FMA for its costs. The specific conditions for the reimbursement of costs and for making advance payments, including deadlines for the notices of payments due and payment periods, are stipulated in the FMA-Kostenverordnung (FMA-KVO; FMA Cost Regulation).

The FMA's financial statements along with the statement of costs form the basis for determining these costs. The individual amount to be paid is calculated on the basis of the data reported by the supervised companies directly or by Wiener Börse. The number of entities liable to pay costs amounted to approximately 2,000 in 2012 (2011: 2,100).

In December 2012, the FMA posted the administrative decisions (Bescheide) on the payment notices for the actual costs incurred by the FMA in the 2011 financial year, as well as the administrative decisions on the advance payments for the 2013 financial year.

The costs in the 2011 financial statements of the FMA less the 2011 advance payments result in additional payments of approximately €11.1 million to be paid by the entities liable to pay costs to cover the actual costs in 2011.

FINANCIAL STATEMENTS

Pursuant to Article 18 FMABG the FMA is required to draw up financial statements for the previous financial year in the form of an annual balance sheet and an income statement including notes, as stipulated in
Chapter III of the *Unternehmensgesetzbuch* (UGB; Corporate Code). According to the relevant statutory provisions, this must be completed within five months of the end of the financial year, i.e. by 31 May. This means that the Executive Board of the FMA must submit the financial statements including statement of costs, after auditing and confirmation by a public auditor or a certified auditing firm, to the Supervisory Board of the FMA by no later than this deadline. The Supervisory Board, in turn, must approve the financial statements including the statement of costs in good time so that the FMA Executive Board is able, within six months of the previous financial year-end, to submit the financial statements including statement of costs to the Federal Minister of Finance and to publish the statements on the FMA website (pursuant to Article 18 para. 6 FMAbg) and by means of an announcement in the “Wiener Zeitung” newspaper.

As auditor for the FMA, IB Interbilanz Hübner Wirtschaftsprüfung GmbH carried out the statutory audit of the annual financial statements and statement of costs for 2011. The auditor issued an unqualified opinion and confirmed the FMA’s compliance with the statutory provisions upon completion of the audit of the 2011 financial statements including the statement of costs and management report.

At its meeting on 23 May 2012, the Supervisory Board approved the 2012 financial statements, thereby also discharging the Executive Board of the FMA for the 2011 financial year.

The financial statements were subsequently sent to the Federal Minister of Finance and the Court of Audit and were simultaneously published in the “Wiener Zeitung” and on the FMA website by the required deadline.

**FINANCIAL PLANNING**

The financial plan of the FMA, which must also include an investment and staff plan, must be submitted to the Supervisory Board by 31 October of each year for the following financial year. The Supervisory Board must then approve the financial plan by no later than 15 December. Alongside statutory requirements, the financial planning is based on the FMA’s medium and long-term goals, which are drawn up together with the executive staff during an annual strategy meeting.

Personnel planning is carried out on this basis as well as based on the results of a resources analysis. After personnel expenses, other operating expenses account for the second-largest cost block. This budget item also includes third-party supervisory services provided by the OeNB:

- In the area of banking supervision, up to € 8 million have been earmarked for the purpose of reimbursing the OeNB for the expense of on-site inspections and the analysis of individual banks.
- In the area of insurance supervision, € 0.5 million have been set aside for reimbursing the OeNB for services rendered within the scope of implementing the new supervisory processes under Solvency II.

Other expenses include write-downs and allocations to the reserve established in accordance with Article 20 FMAbg.

The cost of materials and depreciation will be allocated to the accounting groups directly or by way of an allocation scheme. Costs that cannot be directly allocated are to be apportioned to the accounting groups on the basis of ratios which result from directly allocable costs and costs that are to a large extent directly allocable.

The federal contribution of € 3.5 million and other income (including financial income and income from fees) are subtracted from the costs, yielding the share contributed by entities liable to pay costs.

The 2012 financial plan also includes a liquidity calculation, which provides a transparent breakdown of income and expense flows that serves to ensure the FMA’s liquidity.

The 2013 financial plan was discussed in detail at the Supervisory Board meeting on 9 November 2012. In the end, the Supervisory Board approved an increase of 19 full-time equivalents (FTEs) to the planned staffing level, from 326.85 to 345.85 FTEs by 30 June 2014, specifically a planned staffing level of 335 FTEs by 31 December 2013 and a planned staffing level of 345.85 FTEs by 30 June 2014.

In accordance with Article 17 FMAbg, quarterly reports must be submitted to the Supervisory Board covering compliance with the financial plan, including the investment and staff plan, as part of reporting on financial planning.
According to the Finanzmarktaufsichtsbehörden-Gesetz (FMABG; Financial Market Authority Act), the FMA’s Executive Board has to submit the 2012 financial statements including the statement of costs to the Supervisory Board for approval within five months of the previous financial year-end.

Since preparation of the 2012 Annual Report takes place prior to approval of the 2012 financial statements, it is not possible to publish the audited financial statements. The balance sheet and income statement figures included in Tables 43 and 44 are therefore provisional and may still change.

When examining the preliminary financial statements for 2012, the following items should be considered:

- The share contributed by entities liable to pay costs, which results from the balance of expenses and income, increased year-on-year by approximately €2.6 million to about €40.7 million. This increase in costs (about 7%) to be borne by the entities liable to pay costs was mainly due to a rise in personnel expenses and other operating expenses, which were only offset in part by a higher amount of other income.

- Other operating income rose from 2011 to 2012 by approximately €0.5 million to about €3.6 million, due in particular to higher fee income for investment funds and approvals.

- The rise of about €2.2 million in personnel expenses to €28.8 million was due to the higher number of staff on the one hand, and to salary adjust-
ments owing to an increase in collective agreement salary levels and salary progression on the other.

- Other operating expenses rose by some 5% compared with the previous year, from about €17 million to about €17.9 million. Increases in expenses are to be attributed mainly to the third-party supervisory services provided by the Oesterreichische Nationalbank (OeNB) for insurance supervision, to other third-party supervisory and inspection services, and to membership fees.

- The allocation of approximately €319,000 pursuant to Article 20 FMABG meant that the limit set for this item of 5% of total costs for the previous year was utilised to the full extent.

After auditing and on approval by the Supervisory Board, the 2012 financial statements will be published on the FMA’s website. The audited 2011 financial statements can be found in the Annex to this Annual Report.

Table 43: PRELIMINARY BALANCE SHEET 2012

<table>
<thead>
<tr>
<th>A. Reserve pursuant to Article 20 FMABG</th>
<th>2,239,666.52</th>
<th>1,920</th>
</tr>
</thead>
<tbody>
<tr>
<td>B. Provisions</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1. Provisions for severance pay</td>
<td>1,027,437.86</td>
<td>883</td>
</tr>
<tr>
<td>2. Other provisions</td>
<td>5,891,936.08</td>
<td>5,253</td>
</tr>
<tr>
<td></td>
<td>6,919,373.94</td>
<td>6,137</td>
</tr>
<tr>
<td>C. Liabilities</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1. Advance payments received pursuant to Article 19 FMABG</td>
<td>32,367,854.37</td>
<td>27,088</td>
</tr>
<tr>
<td>2. Trade payables</td>
<td>18,068,589.75</td>
<td>13,065</td>
</tr>
<tr>
<td>3. Other liabilities</td>
<td></td>
<td></td>
</tr>
<tr>
<td>a) Taxes</td>
<td>470,277.97</td>
<td>444</td>
</tr>
<tr>
<td>b) Social security and similar obligations</td>
<td>483,531.11</td>
<td>459</td>
</tr>
<tr>
<td>c) Actual cost accounting for previous years</td>
<td>990,487.18</td>
<td>1,212</td>
</tr>
<tr>
<td>d) Other</td>
<td>1,425,240.53</td>
<td>1,148</td>
</tr>
<tr>
<td></td>
<td>3,369,536.79</td>
<td>3,263</td>
</tr>
<tr>
<td></td>
<td>53,805,980.91</td>
<td>43,416</td>
</tr>
<tr>
<td>D. Deferred Income</td>
<td>743,160.00</td>
<td>575</td>
</tr>
<tr>
<td></td>
<td>63,708,181.37</td>
<td>52,049</td>
</tr>
</tbody>
</table>
Table 44: PRELIMINARY INCOME STATEMENT FOR THE FINANCIAL YEAR 2012

PRELIMINARY INCOME STATEMENT FOR THE FINANCIAL YEAR FROM 1 JAN. TO 31 DEC. 2012 (preliminary result, amounts in €)

<table>
<thead>
<tr>
<th>Description</th>
<th>Previous year in € thousands</th>
<th>2012 in € thousands</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Federal Government contribution pursuant to Article 19 FMABG</td>
<td>3,500</td>
<td>3,500</td>
</tr>
<tr>
<td>2. Other operating income</td>
<td></td>
<td></td>
</tr>
<tr>
<td>a) Income from and write-ups of fixed assets except for long-term financial assets</td>
<td>1,830.00</td>
<td>12</td>
</tr>
<tr>
<td>b) Income from the release of provisions</td>
<td>215,673.16</td>
<td>274</td>
</tr>
<tr>
<td>c) Other</td>
<td>3,395,655.23</td>
<td>2,825</td>
</tr>
<tr>
<td></td>
<td>3,613,158.39</td>
<td>3,111</td>
</tr>
<tr>
<td>3. Personnel expenses</td>
<td></td>
<td></td>
</tr>
<tr>
<td>a) Salaries</td>
<td>–22,852,404.39</td>
<td>–21,227</td>
</tr>
<tr>
<td>b) Expenses for severance pay and contributions to corporate staff provision funds</td>
<td>–430,669.59</td>
<td>–344</td>
</tr>
<tr>
<td>c) Expenses for old-age pensions</td>
<td>–759,163.14</td>
<td>–684</td>
</tr>
<tr>
<td>d) Cost of statutory social security, payroll-related taxes and mandatory contributions</td>
<td>–4,513,235.02</td>
<td>–4,151</td>
</tr>
<tr>
<td>e) Other social costs</td>
<td>–288,457.57</td>
<td>–267</td>
</tr>
<tr>
<td></td>
<td>–28,843,929.71</td>
<td>–26,673</td>
</tr>
<tr>
<td>4. Amortisation and write-downs of intangible fixed assets, depreciation and write-downs of tangible fixed assets</td>
<td>–916,494.41</td>
<td>–858</td>
</tr>
<tr>
<td>5. Other operating expenses</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other</td>
<td>–17,858,190.70</td>
<td>–16,998</td>
</tr>
<tr>
<td>6. Subtotal of items 1 to 5</td>
<td>–40,505,456.43</td>
<td>–37,918</td>
</tr>
<tr>
<td>7. Other interest</td>
<td>87,907.91</td>
<td>53</td>
</tr>
<tr>
<td>8. Interest</td>
<td>0.00</td>
<td>–4</td>
</tr>
<tr>
<td>9. Subtotal of items 7 to 10</td>
<td>87,907.91</td>
<td>49</td>
</tr>
<tr>
<td>10. Appropriation to reserve pursuant to Article 20 FMABG</td>
<td>–319,360.73</td>
<td>–260</td>
</tr>
<tr>
<td>11. Share of entities liable to pay costs</td>
<td>40,736,909.25</td>
<td>38,129</td>
</tr>
<tr>
<td>12. NET RESULT</td>
<td>0.00</td>
<td>0</td>
</tr>
</tbody>
</table>

Table 45: PRELIMINARY STATEMENT OF CHANGES IN FIXED ASSETS 2012

STATEMENT OF CHANGES IN FIXED ASSETS PURSUANT TO ARTICLE 226 PARA. 1 UGB (preliminary fixed assets, amounts in €)

<table>
<thead>
<tr>
<th>Description</th>
<th>As at 1 Jan. 2012</th>
<th>Additions</th>
<th>Cost</th>
<th>Disposals</th>
<th>As at 31 Dec. 2012</th>
</tr>
</thead>
<tbody>
<tr>
<td>I. Intangible fixed assets</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Industrial property rights and similar rights as well as related licences</td>
<td>2,034,489.40</td>
<td>410,905.98</td>
<td>69,999.60</td>
<td>2,375,395.78</td>
<td></td>
</tr>
<tr>
<td>II. Tangible fixed assets</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1. Buildings on third-party land</td>
<td>601,061.79</td>
<td>387,070.96</td>
<td>692.31</td>
<td>987,440.44</td>
<td></td>
</tr>
<tr>
<td>2. Other equipment, operating and office equipment</td>
<td>3,272,968.39</td>
<td>727,589.49</td>
<td>189,870.11</td>
<td>3,810,687.77</td>
<td></td>
</tr>
<tr>
<td>3. Low-value assets</td>
<td>3,874,030.18</td>
<td>1,174,002.39</td>
<td>249,904.36</td>
<td>4,798,128.21</td>
<td></td>
</tr>
<tr>
<td></td>
<td>5,908,519.58</td>
<td>1,584,908.37</td>
<td>319,903.96</td>
<td>7,173,523.99</td>
<td></td>
</tr>
</tbody>
</table>

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TARGET AND PROJECT CONTROLLING

One focus of the work programme in the second half of the year is always on reviewing and expanding the FMA’s strategic goals. To this end, the relevance and achievement of the current goals are analysed by executive managers in strategy workshops, and new challenges posed by a changing supervisory environment are defined. All FMA managers then sit down together in a strategy meeting to agree on the medium and long-term strategic direction of the FMA, as well as on the goals for the following financial year. These corporate goals are then broken down into objectives for the individual departments and divisions, and achievement of the objectives is evaluated based on half-yearly target/actual analyses. Objectives that are not reached are disclosed and analysed, and adequate remedial measures are introduced.

In addition to its target controlling, the FMA also has project controlling procedures in place. A “project”, according to the FMA’s standard, is defined as a set of new and complex tasks, to be carried out within a certain timeframe and committing appropriate resources. Such tasks are subject to specific approval, organisation and information requirements, in particular a quarterly status report on content, goals, timing and resources. The FMA’s Executive Board must be regularly updated on the progress and completion of these projects.

---

### STATEMENT OF CHANGES IN FIXED ASSETS PURSUANT TO ARTICLE 226 P. ARA.

**Preliminary fixed assets, amounts in €**

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>i. intangible fixed assets</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>industrial property rights and similar rights</td>
<td>2,034,489.40</td>
<td>410,905.98</td>
<td>69,999.60</td>
</tr>
<tr>
<td>ii. tangible fixed assets</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1. buildings on third-party land</td>
<td>601,061.79</td>
<td>387,070.96</td>
<td>692.31</td>
</tr>
<tr>
<td>2. other equipment, operating and office equipment</td>
<td>3,272,968.39</td>
<td>727,589.49</td>
<td>189,870.11</td>
</tr>
<tr>
<td>3. low-value assets</td>
<td>59,341.94</td>
<td>59,341.94</td>
<td></td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>3,874,030.18</strong></td>
<td><strong>1,174,002.39</strong></td>
<td><strong>249,904.36</strong></td>
</tr>
<tr>
<td><strong>5,908,519.58</strong></td>
<td><strong>1,584,908.37</strong></td>
<td><strong>319,903.96</strong></td>
<td></td>
</tr>
</tbody>
</table>
BUSINESS CONTINUITY MANAGEMENT

As more and more of the FMA’s business processes and activities are digitised, the FMA is increasingly dependent on secure IT infrastructure that functions reliably. At the FMA, very high priority is placed on information security, which characteristically entails the objectives of confidentiality, integrity and availability of information and systems. In service failure and crisis situations, the availability of IT systems is a necessary yet not sufficient condition for being able to continue business processes. In a holistic view of the core processes and support processes that are critical to the organisation, it will be necessary to avoid any discontinuity in business processes, to limit the impact of any loss of staff or technical resources, to take acts of God into account in risk analysis and to ensure that business processes can be continued very soon following any interruption. For this reason, the Business Continuity Management (BCM) project was launched in November 2011 with these objectives:

- Initiation and maintenance of BCM at the FMA
- Fulfilment of the preconditions at the structural level by establishing an emergency management organisation with the task of emergency prevention and control
- Performance of a Business Impact Analysis to identify time-critical business processes and availability requirements relating to important resources
- Planning and implementation of emergency prevention measures for critical business processes that are appropriate to the risk and economically justifiable
- Definition of detailed instructions for action and of checklists to be used in dealing with specific emergency scenarios listed in the emergency manual
- Establishment of an emergency and crisis management committee having the powers required to respond quickly to any emergency or crisis
- Involvement of all staff members through sensitisation measures and training

The implementation and maintenance of the BCM plans at the FMA are based on the emergency management process defined in Standard 100-4 of the German Federal Office for Information Security (BSI). The planning and implementation stages of the project are thus based on a tried and tested model of procedure and, with a period of two years scheduled for completion, require only few resources.

During the year under review, the main work packages were successfully completed, specifically: Guidelines for Emergency Management, the Business Impact Analysis (BIA) and the Emergency Prevention Plan. During the implementation stage until project completion in October 2013, the most important emergency prevention measures will be put in place or initiated within the medium term. Other activities include the definition of the structure and procedure organisation for emergency management, the establishment of a crisis management system and a summary of measures in the emergency manual.

QUARTERLY REPORTING BY PENSIONSKASSEN

The 2012 Quartalsmeldeverordnung (QMV 2012; Regulation on Quarterly Financial Statements) specified a new format for reports submitted by Pensionskassen. The entire reporting logic was integrated in the Incoming Platform in the course of introducing XML as the new report format. The XML file contains the asset statement as specified in the Annex to QMV 2012 along with the detailed data list serving as the basis for calculating the items in the statement.

In addition to reporting data, a submission as specified in Article 36 para. 2 of the Pensionskassengesetz (PKG; Pensionskassen Act) must be created in the Incoming Platform and linked to the data report. In the event of any infringement of the investment provisions specified in Articles 25 and/or 25a PKG as of the due date, the system requires the corresponding documents describing the circumstances to be included.
he FMA set itself three communications targets during the reporting year. Firstly, it aimed to convey the FMA’s motto of “competence – control – consistency” by highlighting the expertise of its employees, the developments made in off-site and on-site analysis, and the consistent use of sanctions in response to violations. Secondly, the FMA wanted to demonstrate its role as a driving force in European and international cooperation efforts. And thirdly, it wished to position the FMA’s activities as it strives to draw the correct conclusions from the financial crisis, doing so consistently, efficiently and effectively.

**MEDIA RELATIONS**

Given that the FMA, in its capacity as an authority that is self-financed by the supervised entities, has an obligation to be frugal, it has no financial resources at its disposal for use in advertising, information or PR campaigns. The most important form of communication is therefore classic media work. The FMA has set itself the objective, within the scope of its statutory framework and whilst maintaining its legal obligations for official secrecy, of always pursuing a communications policy that is as open as possible in order to reinforce confidence in the Austrian financial marketplace. To this end, whilst implementing this communications strategy, the FMA utilises traditional PR tools such as press releases, press conferences, background discussions, presentations and the availability of Executive Directors for individual interviews by selected media.

The FMA published a total of 41 press releases during the reporting year (2011: 34). These were sent out via the Austria Press Agency (APA) and the FMA’s own media distribution list, to which any journalist can sign up via the FMA website. They are also promptly published on the FMA website. The FMA also published 38 official announcements in the official gazette “Amtsblatt zur Wiener Zeitung” (2011: 51). These usually took the form of investor warnings, informing investors that a named provider was not authorised to offer particular financial services that require a licence in Austria. This information was also made available on the FMA website at the same time. The FMA also uses its website to publish investor warnings issued by sister supervisory organisations. Over the years an easily accessible and very comprehensive database of dubious providers of financial services has been built up in this way.

The broadest media coverage was achieved by the press meetings with the FMA Executive Directors, which were held on 10 occasions in 2012 (2011: 10):

- 24 January 2012, Press meeting at the Economic Writers’ Club: “Supervision strategy of the FMA for CESEE” and “Penalty statistics”
- 2 February 2012, Press meeting held by the Banking and Insurance section of the Tyrol Economic Chamber: “Foreign currency loans”
- 9 May 2012, Presentation of the new FMA publication series and the first volume “Solvency II”

**Chart 48: Press Releases 2008–2012**
30 August 2012, Press breakfast at the European Forum Alpbach: “European banking union”

11 September 2012, Press meeting with the Austrian Association of Financial Planners covering Packaged Retail Investment Products (PRIPs), the Key Investor Information Document (KIID) and the new securities broker

13 September 2012, Press meeting with Gabriel Bernardino, Chair of the European Insurance and Occupational Pensions Authority (EIOPA) during the FMA Supervision Conference: “The new European insurance supervision authority EIOPA”


13 November 2012, Press breakfast: “Unlawful conduct of business”

10 December 2012, Press meeting: “Financial market crisis – Consequences of supervision” and “Strengthening international cooperation”

All of these events met with a high level of interest from journalists, who reported on them widely.

EVENTS

Both the FMA Executive Directors and staff members regularly participated in discussions or appeared as speakers at many events again in 2012 in order to communicate the Authority’s duties and goals, as well as technical and specific issues, to selected target groups. At the same time, the FMA itself organised various events on specific topics:

The Banking Supervision Department hosted the 25th BSCEE Annual Conference (Group of Banking Supervisors from Central and Eastern Europe), which was staged from 23 to 26 April 2012 in Vienna.

The Securities Supervision Department, meanwhile, staged the annual “WPDLU Forum” (investment service provider forum) in May 2012.

To mark the FMA’s tenth anniversary, the FMA Executive Board organised a celebratory event on 13 September 2012. Among the 300 or so guests were National Council President Barbara Prammer and the Chair of the FMA’s Supervisory Board Alfred Lejsek, both of whom said a few words and looked back over the past ten years. The keynote speech was given by the former head of the Swiss financial market authority, Daniel Zuberbühler, and was entitled “Reform of financial market regulation: What have we achieved and what remains to be done?”

The FMA’s annual Supervision Conference was held on 14 September 2012 in Vienna’s Reed Exhibitions Congress Center. The general theme of “Changes in regulation: from quantitative to qualitative supervision – experience and challenges” generated a high level of interest and the event attracted more than 800 visitors.

The fourth conference of the Central, Eastern and South-Eastern European Insurance Supervision Initiative (CESEE ISI) was staged by the Insurance Supervision Department in Vienna in December 2012.

PUBLICATIONS

The FMA Annual Report 2011 was submitted to the Supervisory Board by the statutory deadline, after which it was approved by that Board and then submitted to the Finance Committee of the National Council. The Executive Directors of the FMA presented the major key figures at the annual balance sheet press conference.

The Annual Report 2011 was only printed in German. The electronic version is available in German and English, and can be accessed from the FMA website. Both language versions of the report are also available on CD-ROM.

A new series of publications was launched during the reporting year, the FMA publication series. The first volume, the Solvency II Manual, was presented during 2012 and aims to provide an introduction to the
Under the general theme of “Changes in regulation: from quantitative to qualitative supervision – experience and challenges”, the FMA held its third Supervision Conference on 13 September 2012. As in previous years, the event was a complete success. More than 800 managers from supervised companies, as well as representatives from academia, politics and interest groups, attended the conference. The aim of the FMA Supervision Conference is to encourage the market participants and stakeholders to engage in open dialogue on current issues and developments on the financial markets and on regulation and supervision. In line with the FMA’s integrated approach to supervision, the overall theme is discussed from the different perspectives of the sectors concerned and the various market participant groups, and with both a national and international focus.

Representing the Federal Chancellor, the State Secretary at the Federal Ministry of Finance, Andreas Schieder, gave the opening address, stressing in particular the close correlation between a country’s financial market stability and economic prosperity. Risks for the financial sector were, he explained, also risks for the state as a whole and for the economy. Mr Schieder said he firmly believed that the common European supervisory structure of the future would create greater stability and clearer controls on the markets, highlighting three key decisions made in 2012 to illustrate his argument: the decision of the European Central Bank (ECB) to play a more active role on the markets, the common commitment to the European Stability Mechanism (ESM) and the moves towards a European banking union, with the ECB strongly involved.

FMA Executive Director Helmut Ettl welcomed the participants and spoke about the ideas and principles behind a uniform system of European banking supervision. He stressed that this was a process that “we as the Austrian financial market supervisory authority welcome unequivocally, not least in light of the experiences of the past few years.” He added, however, that the process would involve shifting powers within a system that would be supervising some 6,000 European banks with assets of in excess of €33,000 billion. With this in mind the FMA Executive Director called for a clear, detailed, realistic and feasible introduction plan, comprising several stages and with a clear allocation of responsibilities between the central European authority and the national supervisors.

The keynote speech at the conference was given by the Chairman of the European Insurance and Occupational Pensions Authority (EIOPA), Gabriel Bernardino, who tackled the subject “Redefining regulation – from quantitative to qualitative supervision”. In his speech, Mr Bernardino defended the often highly complex nature and increasing complexity of official regulations by referring his audience to the reality of the markets, with financial products that are also growing ever more complex. It was, he said, up to the financial industry to offer simpler products. Less complex products would also mean less complex regulations. He stressed, however, that the banks and insurance undertakings must in any event keep pace with the dynamic developments on the markets. “There is still much to be done in this regard,” the EIOPA Chairman concluded.

In the ensuing panel discussion Herbert Stepic (CEO of Raiffeisen Bank International AG), Peter Hagen (CEO of VIENNA INSURANCE GROUP Wiener Versicherung Gruppe), Julie Galbo (Deputy Director General of the Danish financial supervisory authority Finanstilsynet and FMA Executive Director Kurt Pribil debated these issues with Gabriel Bernardino. During this discussion Kurt Pribil confirmed that the role of the supervisory authority had changed, with the result that implementation of risk management now needed to be monitored much more intensively and that this risk management also had to be turned into everyday reality. This applied to all of the players on the banking, capital, insurance and securities market.
In his capacity as the spokesman for a major insurance group with a strong market position in the emerging markets in Central, Eastern and South-Eastern Europe, Peter Hagen stressed the need for competent and consistent supervision. He explained that the transition from quantitative to qualitative supervision meant significant advantages provided that qualitative supervision was not associated with an even higher quantity.

During the conference’s second keynote speech, Adam Farkas, Executive Director of the European Banking Authority (EBA) addressed the question “How much market can the financial sector bear?” In this speech Farkas highlighted the major contradictions that arise when answering this question given that the global financial crisis has not yet been overcome. On the one hand, the crisis was a dramatic demonstration of the need to limit market freedom, whilst, on the other hand, recovery on the ailing markets was dependent on these markets being given as much freedom as possible. Farkas went on to explain that, within this area of tension, one aspect had to be made clear: “We must at least clearly define the aims! Since the longer we go on hesitating about regulations, the more we will again become the victims of the markets and of the financial institutions.” In the ensuing panel discussion Ewald Nowotny, Governor of Oesterreichische Nationalbank (OeNB); Stephan Koren, CEO of Volksbanken AG; State Secretary Andreas Schieder and FMA Executive Director Helmut Ettl discussed these issues with Adam Farkas. OeNB Governor Ewald Nowotny stressed that deregulation in the run-up to the financial crisis had gone too far, and had at least made it easier for such a crisis to occur even if had not actually been the main trigger. Given the growing complexity of the financial markets, this, he said, had been the wrong response. However, tackling increasing complexity with even more complex regulation was also not logical and actually even counterproductive. “In some cases,” Nowotny continued, “it’s better to answer complex questions with simple responses. Instead of always coming up with sophisticated and detailed regulations, which in any case only encourage people to look for loopholes and ways round them, it would be more efficient and effective to implement clear and simple bans!” State Secretary Schieder then qualified these comments: “Simply banning everything to be on the safe side cannot be the right answer either.” Having insurance cover against poor harvests could, he explained, be used to hedge a real economic transaction, but on another occasion could represent nothing more than a form of senseless speculation. And, in turn, speculation could be used to hedge a real economic transaction. “So what we need in these cases are sophisticated responses,” explained Schieder.

In the afternoon the general theme of the conference was considered in more detail in industry-specific workshops. In the workshop led by FMA Director Gerald Resch, Felix Flinterman (Head of the Credit Rating Agencies Unit, ESMA), Peter Mooslechner (Director of the Economic Analysis and Research Department, OeNB), Torsten Hinrichs (Managing Director of Standard & Poor’s) and Markus Krall (CEO, European Rating Agency Projektgesellschaft) debated the issue “The role of ratings in supervision and in the market”. The workshop devoted to insurance supervision tackled the theme “Solvency II: a corporate management tool”. This session was led by FMA Director Peter Braumüller, who was joined in the discussions by Manfred Rapf (Member of the Board, Sparkassen Versicherung AG VIG), Thomas Smrekar (Partner, KPMG), Stephan Kalb (Senior Director, Fitch Ratings) and Dietmar Pfeifer (Professor, Oldenburg University). The banking supervision workshop dealt with the topic “On the brink of Basel III – current tasks for implementation within supervision and the banking industry”. With Dagmar Urbanek (Deputy Head of Division at FMA) leading the workshop, Alfred Lejsek (Head of the Financial Markets Directorate, BMF), Willibald Cernko (CEO of Unicredit Bank Austria), Franz Rudorfer (Managing Director of Bank and Insurance Division, Austrian Federal Economic Chamber) and Franz Hahn (research staff member, Austrian Institute of Economic Research) all joined in the discussions.

The various talks ended with a presentation by Didier Davydoff, Director of the European Savings Institute. In his speech, entitled “European financial market regulation on the finishing straight”, Davydoff covered a range of key initiatives designed to realign supervision and regulation in the European Economic Area.
In his concluding remarks at the close of the FMA’s third Supervision Conference, Executive Director Kurt Pribil summed up the findings of the day’s in-depth and comprehensive discussions with three key messages:

- We are relatively quickly going to have a strong and centralised supervisory body for the banks of the eurozone, located at the ECB.
- The new supervisory and capital regimes for banks and insurance undertakings, namely Basel III and Solvency II, must be implemented quickly and in an undiluted form.
- Anyone who has learnt the lessons of the crisis should always be aware that the answer to increasing complexity cannot be even more complexity. On the contrary, it is often better to provide a clear and simple response that cannot be misunderstood.

Full documentation from the FMA’s third Supervision Conference can be found in the conference proceedings “Changes in regulation: from quantitative to qualitative supervision – experience and challenges”, German copies of which can be requested directly from the FMA. The fourth Supervision Conference is to be held on 17 September 2013 and is entitled “The complexity of financial markets – New approaches in supervision”. The venue will once again be the Reed Exhibitions Congress Center in Vienna.
complexities of the new supervisory regime in the insurance sector and to give readers a good overview of almost all aspects.

**WEBSITE**

The FMA is constantly striving to meet usability requirements. With this in mind, its website was given a soft relaunch during the year under review. The changes made were prompted by feedback from users and also incorporated the latest trends from research into usability. This resulted in the search function being improved and some modifications being made to navigation. The site editors were given the opportunity to take part in a workshop dedicated to writing for the web. They then began work on optimising the website content in order to make the website more user-friendly. In terms of the content management system itself, an updated version was installed to guarantee that the system is up to date and to avoid the possibility of any security flaws.
The enquiries and complaints received covered a wide range of issues:

- With regard to banking supervision, the issues included in particular foreign currency loans and the related repayment vehicles, fees for transfers and the time taken for transfers according to the Zahlungsdienstegesetz (ZaDiG; Payment Services Act), issues related to the fight against money laundering and the related obligations in relation to identification and proof of identity, and also the modalities of deposit-guarantee schemes.

- With regard to insurance supervision, the main issues were insurance companies paying out only partial benefits or none at all, doubts as to the accuracy of calculations, termination of the contract, and exemption from or discounts on premiums.

- With regard to securities supervision, the main issues were failure to observe rules of conduct, lack of proper advice, failure to protect investors’ interests, and investment of funds at an inappropriate level of risk.

- There was a sharp increase in the number of enquiries and complaints on unauthorised business operations, particularly cases of illegal cold calling, i.e. cases of unsolicited phone calls, fax messages or e-mails offering financial products.

One new issue that arose during the reporting year related to financing in the form of public participation models, particularly with regard to projects for the production of alternative and renewable forms of energy. Numerous enquiries and complaints were received in this regard. The FMA was primarily faced with two legal questions. Firstly, there was the question of whether a banking transaction was involved that required a licence pursuant to the Bankwesengesetz (BWG; Banking Act). Secondly, the issue of whether the project constituted a public offer as defined by the Kapitalmarktgesetz (KMG; Capital Market Act) needed to be clarified. This would in some cases create the obligation to issue a prospectus.
in accordance with the KMG. The FMA also published comprehensive information for consumers on this subject on its website.
### List of Abbreviations

<table>
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<tr>
<th>Abbreviation</th>
<th>Description</th>
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<tbody>
<tr>
<td>ABGB</td>
<td>Allgemeines Bürgerliches Gesetzbuch (General Civil Code)</td>
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<tr>
<td>ABS</td>
<td>Asset Backed Securities</td>
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<tr>
<td>AHG</td>
<td>Amtshaftungs gesetz (Public Liability Act)</td>
</tr>
<tr>
<td>AIFM</td>
<td>Alternative Investment Fund Providers</td>
</tr>
<tr>
<td>AKG</td>
<td>Aktiengesetz (Stock Corporation Act)</td>
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<tr>
<td>AMA</td>
<td>Advanced Measurement Approach</td>
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<td>AMF</td>
<td>Autorité de Contrôle Prudentiel</td>
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<td>AMLC</td>
<td>Anti-Money Laundering Sub-Committee</td>
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<tr>
<td>ASA</td>
<td>Austrian Securities Authority</td>
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<tr>
<td>ATX</td>
<td>Austrian Traded Index</td>
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<tr>
<td>AVG</td>
<td>Allgemeines Verwaltungsverfahrensgesetz (Code of Administrative Procedure)</td>
</tr>
<tr>
<td>BaFin</td>
<td>Bundesanstalt für Finanzdienstleistungsaufsicht (Germany’s Federal Financial Supervisory Authority)</td>
</tr>
<tr>
<td>BAO</td>
<td>Bundesabgabenordnung (Federal Tax Code)</td>
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<tr>
<td>BCM</td>
<td>Business Continuity Management</td>
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<tr>
<td>BE</td>
<td>Best Estimate</td>
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<tr>
<td>BMF</td>
<td>Bundesministerium für Finanzen (Federal Ministry of Finance)</td>
</tr>
<tr>
<td>BMSVG</td>
<td>Betriebliches Mitarbeiter- und Selbstständigenvorsorgegesetz (Company Employee and Self-Employment Provisions Act) (after amendment)</td>
</tr>
<tr>
<td>BoS</td>
<td>Board of Supervisors</td>
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<tr>
<td>BörseG</td>
<td>Börsengesetz (Stock Exchange Act)</td>
</tr>
<tr>
<td>BPG</td>
<td>Betriebspensionsgesetz (Company Pension Act)</td>
</tr>
<tr>
<td>BSCEE</td>
<td>Group of Banking Supervisors from Central and Eastern Europe</td>
</tr>
<tr>
<td>BSpG</td>
<td>Bausparkassengesetz (Building Society Act)</td>
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<tr>
<td>BTS</td>
<td>Binding Technical Standards</td>
</tr>
<tr>
<td>BVQA V</td>
<td>Betriebliche Vorsorgekassen Quartalsausweis-Verordnung (Regulation on the Quarterly Financial Statements for Corporate Provision Funds)</td>
</tr>
<tr>
<td>BWG</td>
<td>Bankwesengesetz (Banking Act)</td>
</tr>
<tr>
<td>CAD</td>
<td>Capital Adequacy Directive</td>
</tr>
<tr>
<td>CCP</td>
<td>Central Counterparty</td>
</tr>
<tr>
<td>CESEE – ISI</td>
<td>Eastern and South-Eastern European Insurance Supervision Initiative</td>
</tr>
<tr>
<td>CDO</td>
<td>Collateralised debt obligations</td>
</tr>
<tr>
<td>CDS</td>
<td>Credit Default Swaps</td>
</tr>
<tr>
<td>CEA</td>
<td>Comité Européen des Assurances; European insurance and reinsurance federation</td>
</tr>
<tr>
<td>CEE</td>
<td>Central and Eastern Europe</td>
</tr>
<tr>
<td>CEIOPS</td>
<td>Committee of European Insurance and Occupational Pensions Supervisors</td>
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<tr>
<td>CESEE</td>
<td>Central, Eastern and South-Eastern Europe</td>
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<tr>
<td>CERS</td>
<td>Committee of European Securities Regulators</td>
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<tr>
<td>CHF</td>
<td>Swiss franc</td>
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<tr>
<td>CIS</td>
<td>Commonwealth of Independent States</td>
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<tr>
<td>Com Frame</td>
<td>Supervision of Internationally Active Insurance Groups</td>
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<tr>
<td>CPMLTF</td>
<td>Committee on the Prevention of Money Laundering and Terrorist Financing</td>
</tr>
<tr>
<td>CRA</td>
<td>Credit Rating Agencies</td>
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<tr>
<td>CRD</td>
<td>Capital Requirements Directive</td>
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<tr>
<td>CRR</td>
<td>Capital Requirements Regulation</td>
</tr>
<tr>
<td>CSSF</td>
<td>Commission de Surveillance du Secteur Financier</td>
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<tr>
<td>DAX</td>
<td>German share index</td>
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<tr>
<td>EBA</td>
<td>European Banking Authority</td>
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<tr>
<td>EBRD</td>
<td>European Bank for Reconstruction and Development</td>
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<tr>
<td>Abbreviation</td>
<td>Full Form</td>
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<tr>
<td>EC</td>
<td>European Commission</td>
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<tr>
<td>ECB</td>
<td>European Central Bank</td>
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<td>ECTS</td>
<td>European Credit Transfer and Accumulation System</td>
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<tr>
<td>ECY</td>
<td>Emittenten-Compliance-Verordnung (Compliance Decree for Issuers)</td>
</tr>
<tr>
<td>EEA</td>
<td>European Economic Area</td>
</tr>
<tr>
<td>EFSF</td>
<td>European Financial Stability Facility</td>
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<tr>
<td>E-GeldG</td>
<td>E-Geldgesetz (Act on Electronic Money)</td>
</tr>
<tr>
<td>EIOPA</td>
<td>European Insurance and Occupational Pensions Authority</td>
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<tr>
<td>ELAK</td>
<td>Electronic File</td>
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<td>EMIR</td>
<td>European Market Infrastructure Regulation</td>
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<td>EP</td>
<td>European Parliament</td>
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<tr>
<td>ERC</td>
<td>European Regional Committee</td>
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<tr>
<td>ESA</td>
<td>European Supervisory Authority</td>
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<td>ESFS</td>
<td>European System of Financial Supervisors</td>
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<td>ESMA</td>
<td>European Securities and Markets Authority</td>
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<td>ESRB</td>
<td>European Systemic Risk Board</td>
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<tr>
<td>EStG</td>
<td>Einkommensteuergesetz (Income Tax Law)</td>
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<tr>
<td>ETF</td>
<td>Exchange Traded Fund</td>
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<td>EU</td>
<td>European Union</td>
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<td>EUR</td>
<td>Euro</td>
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<tr>
<td>EURIBEX</td>
<td>European Exchange</td>
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<tr>
<td>EuroStoxx 50</td>
<td>Euro Interbank Offered Rate; three-month interbank rate</td>
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<tr>
<td>EV/EBITDA</td>
<td>Enterprise Value/Earnings before Interest, Taxes Depreciation and Amortization</td>
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<tr>
<td>ExCo</td>
<td>Executive Committee</td>
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<tr>
<td>FAQ</td>
<td>Frequently Asked Questions</td>
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<td>FATF</td>
<td>Financial Action Task Force on Money Laundering</td>
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<tr>
<td>FB/WMV</td>
<td>Formblatt- und Jahresmeldeverordnung (Regulation on Forms and Annual Reports)</td>
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<td>FK-QUAB-V</td>
<td>Finanzkonglomeratsquartalsberichts-Verordnung (Financial Conglomerates Quarterly Reporting Regulation)</td>
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<td>FKG</td>
<td>Finanzkonglomerategesetz (Financial Conglomerates Act)</td>
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<td>FMA</td>
<td>Financial Market Authority</td>
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<td>FMABG</td>
<td>Finanzmarktaufsichtsbehörden-gegesetz (Financial Market Authority Act)</td>
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<td>FMA-FX-MS</td>
<td>Mindeststandards für die Vergabe und Gestionierung von Fremdwährungskrediten (Managing Foreign Currency Loans)</td>
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<td>FMA Kostenverordnung (FMA Cost Regulation)</td>
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<td>FMA-TT-MS</td>
<td>Mindeststandards für die Vergabe und Gestionierung von Krediten mit Tilgungsträgern (Managing Loans with Repayment Vehicles)</td>
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<td>FSA</td>
<td>Financial Services Authority (UK)</td>
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<td>FSB</td>
<td>Financial Stability Board</td>
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<td>FSC</td>
<td>Financial Stability Committee</td>
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<td>Financial Stability Table</td>
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<td>FTE</td>
<td>Full-Time Equivalents</td>
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<td>FTSE 100</td>
<td>Financial Times Stock Exchange Index (UK)</td>
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<td>FTTF</td>
<td>Field Testing Task Force</td>
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<td>FX</td>
<td>Foreign Currency</td>
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<td>G-20</td>
<td>Group of Twenty; group of the 20 most important industrialised and emerging nations</td>
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<tr>
<td>G-SIFs</td>
<td>Global Systemically Important Financial Institutions</td>
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<td>GBP</td>
<td>Pound sterling</td>
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<tr>
<td>GDP</td>
<td>Gross Domestic Product</td>
</tr>
<tr>
<td>GewO</td>
<td>Gewerbeordnung (Trade Act)</td>
</tr>
<tr>
<td>GIIPS</td>
<td>Greece, Ireland, Italy, Portugal, Spain</td>
</tr>
<tr>
<td>GKM-V</td>
<td>Großkreditmeldungs-Verordnung (FMA Regulation on a Major Loan Reporting)</td>
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<tr>
<td>GSVG</td>
<td>Gewerbliches Sozialversicherungsgesetz (Commercial Social Insurance Act)</td>
</tr>
<tr>
<td>GTV</td>
<td>Geldwäsche- und Terrorismusfinanzierungsrisiko-Verordnung (Regulation on Money Laundering and Terrorist Financing Risk)</td>
</tr>
<tr>
<td>HICP</td>
<td>Harmonized Index of Consumer Prices</td>
</tr>
<tr>
<td>HTM</td>
<td>Held to maturity</td>
</tr>
<tr>
<td>HWWI</td>
<td>Hamburger Institut für Weltwirtschaft (Hamburg Institute of International Economics)</td>
</tr>
<tr>
<td>HypBG</td>
<td>Hypothekenbankgesetz (Mortgage Banks Act)</td>
</tr>
</tbody>
</table>
IAIS  International Association of Insurance Supervisors
ICP  Insurance Core Principles
IFRS  International Financial Reporting Standards
IHS  Institut für Höhere Studien (Institute for Advanced Studies)
IMD  Insurance Mediation Directive
IMEG  CESR Expert Group on Investment Management
IMF  International Monetary Fund
ImmInvFG  Immobilien-Investmentfondsgesetz (Real Estate Investment Fund Act)
IMSC  Investment Management Standing Committee
InvFG  Investmentfondsgesetz (Investment Fund Act)
IOPS  International Organisation of Pension Supervisors
IORP II  Institutions for Occupational Retirement Provision II
IOSCO  International Organization of Securities Commissions
IRB  Internal Ratings Based Approach (formula to calculate capital requirements for credit institutions – Basel II)
IRG  Investment and risk sharing groups
JCFC  Joint Committee on Financial Conglomerates
JPY  Japanese yen
KII(D)  Key Investor Information (Document)
KMG  Kapitalmarktgesetz (Capital Market Act)
KSG  Körperschaftsteuergesetz (Law on Corporation Tax)
KVO  Kostenverordnung (Cost Regulation)
LCG  Large Complex Groups
LCR  Liquidity coverage ratio
LTR  Long Term Refinancing Operations
MAD  Market Abuse Directive
MSCI  Morgan Stanley Capital International
MiFID  Markets in Financial Instruments Directive
MiFIR  Markets in Financial Instruments Regulation
MMoU  Multilateral Memorandum of Understanding
MoU  Memorandum of Understanding
MTF  Multilateral Trading Facility
NMS  New member states (of the EU)
NBG  Nationalbankgesetz (National Bank Act)
OECD  Organisation for Economic Co-operation and Development
OeKB  Oesterreichische Kontrollbank AG
OeNB  Oesterreichische Nationalbank (Austrian Federal Bank)
OMT  Outright Monetary Transaction
ONA  Ordnungsnormenausweis (Proof of compliance document)
OTC  Over-the-counter
OTF  Organised trading facility
PKG  Pensionskassengesetz (Pensionskasse Act)
PRIIPS  Packaged Retail Investment Products
QIS  Quantitative Impact Study (quantitative impact study of Basel II on the capital requirements for banks)
QMv  Quantifizierungsverordnung (Regulation on Quarterly Financial Statement)
RIMAV-PK  Risikomanagement-Verordnung Pensionskassen (Risk Management Regulation for Pensionskassen – pension companies)
RLKG  Rechnungslegungs-Kontrahogesetz (Accounting Control Act)
ROA  Return on assets
ROE  Return on equity
RTS  Regulatory Technical Standards
S&P  Standard & Poor’s (Rating Agency)
SCR  Solvency Capital Requirement
<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Full Form</th>
</tr>
</thead>
<tbody>
<tr>
<td>SEE</td>
<td>South Eastern Europe</td>
</tr>
<tr>
<td>SIFi</td>
<td>Systemically Important Financial Institutions</td>
</tr>
<tr>
<td>SME</td>
<td>Small and medium-sized enterprise</td>
</tr>
<tr>
<td>SMI</td>
<td>Swiss Market Index</td>
</tr>
<tr>
<td>SMP</td>
<td>Securities Markets Programme</td>
</tr>
<tr>
<td>SMSC</td>
<td>Secondary Markets Standing Committee</td>
</tr>
<tr>
<td>SNB</td>
<td>Swiss National Bank</td>
</tr>
<tr>
<td>SolvaV</td>
<td>Solvabilitätsverordnung (FMA Solvency Regulation)</td>
</tr>
<tr>
<td>SPC</td>
<td>Secondary Data Center</td>
</tr>
<tr>
<td>SPG</td>
<td>Sparkassengesetz (Savings Banks Act)</td>
</tr>
<tr>
<td>SPV</td>
<td>Special Purpose Vehicle</td>
</tr>
<tr>
<td>SREP</td>
<td>Supervisory Review and Evaluation Process</td>
</tr>
<tr>
<td>SSM</td>
<td>Single Supervisory Mechanism</td>
</tr>
<tr>
<td>SfGB</td>
<td>Strafgesetzbuch (Penal Code)</td>
</tr>
<tr>
<td>SfPO</td>
<td>Strafprozessordnung (Code of Criminal Procedure)</td>
</tr>
<tr>
<td>SfWbFG</td>
<td>Bundesgesetz über steuerliche Sondermaßnahmen zur Förderung des Wohnbaus (Federal Act on fiscal special measures to promote housing)</td>
</tr>
<tr>
<td>TP</td>
<td>Technical provisions</td>
</tr>
<tr>
<td>TRS JSG</td>
<td>Transaction Reporting System Joint Subgroup</td>
</tr>
<tr>
<td>TREM</td>
<td>Transaction Reporting Exchange Mechanism</td>
</tr>
<tr>
<td>UCITS</td>
<td>Undertakings for Collective Investments in Transferable Securities</td>
</tr>
<tr>
<td>UGB</td>
<td>Unternehmensgesetzbuch (Corporate Code)</td>
</tr>
<tr>
<td>UHV</td>
<td>Übermittlungs- und Hinterlegungsverordnung (FMA Transmission and Storage Regulation)</td>
</tr>
<tr>
<td>UK</td>
<td>United Kingdom</td>
</tr>
<tr>
<td>USA</td>
<td>United States of America</td>
</tr>
<tr>
<td>USD</td>
<td>US dollar</td>
</tr>
<tr>
<td>UVS</td>
<td>Unabhängiger Verwaltungssenat (Independent Administrative Tribunal)</td>
</tr>
<tr>
<td>VAG</td>
<td>Versicherungsaufsichtsgesetz (Insurance Supervision Act)</td>
</tr>
<tr>
<td>VaR</td>
<td>Value at risk</td>
</tr>
<tr>
<td>VERA</td>
<td>Vermögens-, Erfolgs- und Risikoausweis (Annual asset, trading and risk statements)</td>
</tr>
<tr>
<td>VGH</td>
<td>Verfassungsgerichtshof (Constitutional Court)</td>
</tr>
<tr>
<td>VKRG</td>
<td>Verbraucherkrankengesetz (Consumer Credit Act)</td>
</tr>
<tr>
<td>VwGH</td>
<td>Verwaltungsgerichtshof (Administrative Court)</td>
</tr>
<tr>
<td>WAG 2007</td>
<td>Wertpapieraufsichtsgesetz 2007 (Securities Supervision Act)</td>
</tr>
<tr>
<td>WIFO</td>
<td>Wirtschaftsforschungsinstitut (Austrian Institute of Economic Research)</td>
</tr>
<tr>
<td>WKO</td>
<td>Austrian Federal Economic Chamber</td>
</tr>
<tr>
<td>XML</td>
<td>Extensible Markup Language (data exchange format for internet communication)</td>
</tr>
<tr>
<td>ZaDiG</td>
<td>Zahlungsdienstegesetz (Payment Services Act)</td>
</tr>
<tr>
<td>ZGVG</td>
<td>Zentrales Gegenparteien-Vollzugsgesetz (Central Counterparties Implementation Act)</td>
</tr>
<tr>
<td>ZIES</td>
<td>Integrated time and performance administration system</td>
</tr>
</tbody>
</table>
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2011 FINANCIAL STATEMENTS

AUDITOR’S REPORT

We have audited the attached financial statements including the accounting of the Financial Market Authority, 1090 Vienna, Otto-Wagner-Platz 5 for the financial year from 1 January 2011 to 31 December 2011. These financial statements include the balance sheet as at 31 December 2011, the income statement for the financial year ending 31 December 2011, as well as the notes. The statement of costs pursuant to Article 19 FMABG was part of our audit.

Legal representatives’ responsibility for
the financial statements and for the accounting
The FMA’s legal representatives are responsible for the accounting and for the preparation of financial statements which present a picture that is as true and fair as possible with respect to net assets, financial position and the results of operations of the FMA in accordance with Austrian company law. This responsibility includes the design, implementation and maintenance of an internal control system, to the extent that this is important for the preparation of the financial statements and the presentation of as true and fair a picture as possible of the authority’s net assets, financial position and the results of operations, so that these financial statements are free from material misrepresentations, whether due to intentional or unintentional mistakes; it also includes the selection and application of suitable accounting and valuation

Table 46: 2011 BALANCE SHEET

BALANCE SHEET AS AT 31 DECEMBER 2011 (amounts in €)

<table>
<thead>
<tr>
<th>ASSETS</th>
<th>Previous year in € thousands</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>A. Fixed Assets</td>
<td></td>
</tr>
<tr>
<td>I. Intangible fixed assets</td>
<td></td>
</tr>
<tr>
<td>Industrial property and similar rights</td>
<td></td>
</tr>
<tr>
<td>licences in such rights</td>
<td>218,493.34</td>
</tr>
<tr>
<td>II. Tangible fixed assets</td>
<td></td>
</tr>
<tr>
<td>1. Buildings on third-party land</td>
<td>462,057.75</td>
</tr>
<tr>
<td>2. Other equipment, operating and</td>
<td></td>
</tr>
<tr>
<td>office equipment</td>
<td>1,198,245.98</td>
</tr>
<tr>
<td>1,660,303.73</td>
<td>1,330</td>
</tr>
<tr>
<td>1,878,797.07</td>
<td>1,651</td>
</tr>
<tr>
<td>B. Current assets</td>
<td></td>
</tr>
<tr>
<td>I. Services not yet invoiced to entities</td>
<td></td>
</tr>
<tr>
<td>liable to pay costs</td>
<td>38,129,432.78</td>
</tr>
<tr>
<td>II. Receivables and other assets</td>
<td></td>
</tr>
<tr>
<td>1. Trade receivables</td>
<td>3,011,224.75</td>
</tr>
<tr>
<td>2. Other receivables and assets</td>
<td>942,232.39</td>
</tr>
<tr>
<td>3,953,457.14</td>
<td>2,200</td>
</tr>
<tr>
<td>III. Cash at bank and in hand</td>
<td></td>
</tr>
<tr>
<td>49,307,393.42</td>
<td>37,584</td>
</tr>
<tr>
<td>7,224,503.50</td>
<td>4,218</td>
</tr>
<tr>
<td>52,048,848.45</td>
<td>40,395</td>
</tr>
<tr>
<td>C. Prepaid expenses</td>
<td>862,657.96</td>
</tr>
</tbody>
</table>

ANNEX
methods, as well as making estimates that appear appropriate under the existing circumstances.

**Auditor’s responsibility and description of type and scope of the statutory audit**

It is our responsibility to issue an audit opinion on these financial statements based on our audit. We have carried out our audit with due regard for the legal provisions valid in Austria and the principles of proper auditing. These principles require us to comply with the rules of professional conduct and to plan and perform the audit in a way to issue a sufficiently confident opinion as to whether the financial statements are free from material misrepresentations.

An audit involves performing procedures to obtain audit evidence about the amounts and other information in the financial statements. The procedures selected depend on the auditor’s judgement, including the assessment of the risks of material misrepresentations in the financial statements, whether due to intentional or unintentional mistakes. In making those risk assessments, the auditor considers the internal control system relevant to the FMA’s preparation of the financial statements and the presentation of as true and fair a picture as possible of the authority’s net assets, financial position and the results of operations in order to determine audit procedures that are appropriate under the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the authority’s internal control procedures. The audit also includes the assessment of the appropriateness of the accounting and valuation methods used and the essential estimates made by the legal representatives, as well as an evaluation of the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

**Audit opinion**

Our audit did not lead to any objections. Based on the findings of the audit, we believe that the financial state-

---

### EQUITY AND LIABILITIES

**Previous year in € thousands**

<table>
<thead>
<tr>
<th>Section</th>
<th>Current Year</th>
<th>Previous Year</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>A. Reserve pursuant to Article 20 FMABG</strong></td>
<td>1,920,305.79</td>
<td>1,660</td>
</tr>
<tr>
<td><strong>B. Provisions</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1. Provisions for severance pay</td>
<td>883,497.09</td>
<td>800</td>
</tr>
<tr>
<td>2. Other provisions</td>
<td>5,253,339.27</td>
<td>4,436</td>
</tr>
<tr>
<td><strong>C. Liabilities</strong></td>
<td>6,136,836.36</td>
<td>5,235</td>
</tr>
<tr>
<td>1. Advance payments received pursuant to Article 19 FMABG</td>
<td>27,088,192.36</td>
<td>21,061</td>
</tr>
<tr>
<td>2. Trade payables</td>
<td>13,065,052.35</td>
<td>9,609</td>
</tr>
<tr>
<td>3. Other liabilities</td>
<td></td>
<td></td>
</tr>
<tr>
<td>a) Taxes</td>
<td>443,975.93</td>
<td>408</td>
</tr>
<tr>
<td>b) Social security and similar obligations</td>
<td>459,131.50</td>
<td>402</td>
</tr>
<tr>
<td>c) Actual cost accounting for previous years</td>
<td>1,211,801.50</td>
<td>697</td>
</tr>
<tr>
<td>d) Other</td>
<td>1,148,072.66</td>
<td>734</td>
</tr>
<tr>
<td><strong>Total Liabilities</strong></td>
<td>3,262,981.59</td>
<td>32,912</td>
</tr>
<tr>
<td>D. Deferred income</td>
<td>575,480.00</td>
<td>588</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>52,048,848.45</td>
<td>40,395</td>
</tr>
</tbody>
</table>
ments comply with the legal provisions and present a picture of the company that is as true and fair as possible with respect to net assets and the financial position of the Financial Market Authority as at 31 December 2011 as well as the results of operations of the Financial Market Authority for the financial year from 1 January 2011 to 31 December 2011 in accordance with the generally accepted Austrian accounting principles. The statement of costs pursuant to Article 19 FMABG complies with the statutory provisions.

Comments on the management report
Legal provisions require us to perform audit procedures to determine whether the management report is consistent with the financial statements and whether the other information made in the management report does not give a false impression of the situation of the Financial Market Authority. The auditor’s report also has to contain a statement as to whether the management report is consistent with the financial statements.

In our opinion, the management report is consistent with the financial statements.

Vienna, 11 April 2012

IB INTERBILANZ HÜBNER
WIRTSCHAFTSPRÜFUNG GMBH

ANDREAS RÖTHLIN
Auditor

MICHAEL SZÜCS
Auditor

Publication or dissemination of the financial statements with our auditor’s report is only permitted in the version we have audited. This auditor’s report refers exclusively to the complete German version of the financial statements including the management report. With regard to other versions, the provisions contained in Article 281 para. 2 UGB are to be observed.
A. General Information

1. The FINANCIAL MARKET AUTHORITY (FMA) is an institution under public law and was established by the Finanzmarktaufsichtsbehörden- setz (FMABG; Financial Market Authority Act) (Federal Law Gazette 97/2001) on 22 October 2001. The official competence of the FMA commenced on 1 April 2002. The FMA is in charge of banking supervision, insurance supervision, securities supervision and pension companies supervision. As at 31 March 2002, the Austrian Securities Authority (ASA) was incorporated into the FMA by way of universal legal succession pursuant to Article 1 of the Wertpapieraufsichtsgesetz (WAG; Securities Supervision Act).

2. The financial statements were prepared in conformity with the generally accepted accounting principles and the general principle of presenting a picture that is as true and fair as possible with respect to net assets, financial position and the results of operations. In accordance with Article 18 FMABG, the provisions of the Unternehmensgesetzbuch (UGB; Corporate Code) were applied correspondingly to the present financial statements.

3. The accounting policies applied to the individual items of the financial statements were based on the general provisions of Articles 193 to 211 UGB, taking the special provisions for large corporations into account.

4. The financial statements were prepared in accordance with the going concern principle.

B. Information on the Balance Sheet Including the Description of the Accounting Policies

1. Fixed assets
   The changes in fixed assets and the breakdown of the annual depreciation according to individual items can be seen in Annex III/page 11 (changes in fixed assets).
1.1. Tangible fixed assets
Depreciation is calculated on a straight-line basis.
The useful life of the individual asset groups is as follows:
1. Industrial property and similar rights and licences in such rights: 3 years
2. Buildings on third-party land: 8 to 20 years
3. Other equipment, operating and office equipment: 3 to 10 years
There was no need for depreciation pursuant to Article 204 para. 2 UGB as there was no impairment loss.
The low-value assets pursuant to Article 13 of the Einkommensteuergesetz (ESTG, Income Tax Law) with individual acquisition values of below €400.00 each were reported as disposals in their year of acquisition.

2. Services not yet invoiced to entities liable to pay costs
This item comprises the expenses to be borne by the entities liable to pay costs pursuant to Article 19 FMABG in the amount of €38,129,432.78 (previous year: €31,165k). The statement of costs is prepared according to the procedures stipulated under Article 19 FMABG. In this connection, the FMA has set up four accounting groups to which the cost shares are apportioned as follows:

<table>
<thead>
<tr>
<th></th>
<th>2011 (€)</th>
<th>2010 (in € thousands)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Banking supervision costs</td>
<td>19,807,887.91</td>
<td>13,503</td>
</tr>
<tr>
<td>2. Insurance supervision costs</td>
<td>7,695,322.23</td>
<td>7,318</td>
</tr>
<tr>
<td>3. Securities supervision costs</td>
<td>9,534,032.35</td>
<td>9,460</td>
</tr>
<tr>
<td>4. Pension companies supervision costs</td>
<td>1,092,190.29</td>
<td>884</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>38,129,432.78</strong></td>
<td><strong>31,165</strong></td>
</tr>
</tbody>
</table>

The costs are apportioned to the individual entities liable to pay costs, and the advance payments made by the entities liable to pay costs in the 2011 financial year are offset based on the reference data, listed in the relevant supervisory laws and reported to the FMA, which is only available after the financial statements have been prepared.

3. Trade receivables
The receivables are carried at nominal values and show a residual maturity of less than a year. Individual valuation allowances were recognised for identifiable risks in the measurement of receivables.

Receivables of €3,114,927.61 (previous year: €1,736k) are still carried from the actual cost accounting of previous years. Itemised valuation allowances of €103,702.86 (previous year: €124k) were recognised for receivables from actual cost accounting.

4. Other receivables
Other receivables include mostly receivables from orders imposing fees, administrative penalties, penalty interest, trustee fees, interest pursuant to the betriebliches Mitarbeiter- und selbstständigenvorsorgegesetz (BMSVG; Company Employee and Self-Employment Provisions Act), as well as reimbursed salary cost and transitory items concerning the Electronic File (ELAK). The itemised valuation allowance amounts to €2,340.00 (previous year: €2k).

5. Prepaid expenses
The item prepaid expenses comprises in particular insurance expenses, royalties and maintenance fees, membership fees, as well as subscriptions.

6. Reserve pursuant to Article 20 FMABG
Article 20 FMABG specifies the option of establishing a reserve in the amount of 1% of the FMA’s total costs based on the latest adopted financial statements as at 31 December 2010 (1% of the total costs of the FMA in 2010 in the amount of €38,406,115.80 is €384,061.16).
The maximum amount of the reserve may not, however, exceed the amount of 5% of the FMA’s total costs based on the latest adopted financial statements as at 31 December 2010 (5% of the total costs of the FMA in 2010 in the amount of €38,406,115.80 is €1,920,305.79).
As at 31 December 2010, the total in the reserve was €1,660,349.85. Following allocation of €259,955.94 (the maximum amount possible), the reserve pursuant to Article 20 FMABG totalled the maximum amount of €1,920,305.79 as at 31 December 2011.

Provisions are established taking the prudent person rule pursuant to Article 211 para. 1 UGB into account.

7.1 Provisions for severance pay

<table>
<thead>
<tr>
<th></th>
<th>2011 (€)</th>
<th>2010 (in € thousands)</th>
</tr>
</thead>
<tbody>
<tr>
<td>As at 1 January 2011</td>
<td>799,698.26</td>
<td>714</td>
</tr>
<tr>
<td>Use</td>
<td>6,853.75</td>
<td>8</td>
</tr>
<tr>
<td>Appropriation</td>
<td>90,652.58</td>
<td>94</td>
</tr>
<tr>
<td><strong>As at 31 December 2011</strong></td>
<td><strong>883,497.09</strong></td>
<td><strong>800</strong></td>
</tr>
</tbody>
</table>

The provisions for severance pay were calculated in accordance with financial principles. The basis for the computation was an interest rate of 3.5% and a retirement age of 65 for men and 60 for women.

7.2 Other provisions
Other provisions were determined by exercising sound business judgement in accordance with the prudent person rule pursuant to Article 211 para. 1 UGB and include all risks recognisable at the balance sheet date and all liabilities of the past financial year not yet fixed in terms of their amount.
As at 1 Jan. 2011  Use  Release  Appropriation  As at 31 Dec. 2011

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
<th>Amount</th>
<th>Amount</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Anniversary bonuses</td>
<td>220,160.00</td>
<td>21,327.87</td>
<td>0.00</td>
<td>18,928.87</td>
</tr>
<tr>
<td>Provision for premiums</td>
<td>1,233,533.77</td>
<td>1,233,533.77</td>
<td>0.00</td>
<td>1,283,130.08</td>
</tr>
<tr>
<td>Unused holiday entitlement</td>
<td>1,818,036.35</td>
<td>0.00</td>
<td>0.00</td>
<td>247,449.69</td>
</tr>
<tr>
<td>Overtime to be paid</td>
<td>27,524.05</td>
<td>20,544.36</td>
<td>0.00</td>
<td>29,172.92</td>
</tr>
<tr>
<td>Additional hours</td>
<td>146,790.76</td>
<td>0.00</td>
<td>0.00</td>
<td>17,196.77</td>
</tr>
<tr>
<td>Other provisions</td>
<td>818,335.71</td>
<td>329,788.50</td>
<td>103,237.67</td>
<td>144,428.06</td>
</tr>
<tr>
<td>2009 prov. actual costs Bank. Superv.</td>
<td>171,176.27</td>
<td>0.00</td>
<td>0.00</td>
<td>144,428.06</td>
</tr>
<tr>
<td>2010 prov. actual costs Bank. Superv.</td>
<td>0.00</td>
<td>0.00</td>
<td>0.00</td>
<td>0.00</td>
</tr>
<tr>
<td></td>
<td>4,435,556.91</td>
<td>1,605,194.50</td>
<td>274,413.94</td>
<td>2,697,390.80</td>
</tr>
</tbody>
</table>

The provision for anniversary bonuses was computed in accordance with financial principles. The computation was based on an interest rate of 3.5%, a retirement age of 65 for men and 60 for women, and a rate of non-wage labour costs of 4.5% for contractual employees.

The other provisions comprise the following items:

- Payments of arrears of salary, labour court proceedings: 722,000.00
- Reimbursement to the OeNB for analysis of market risk models under Solvency II: 250,000.00
- Operating expenses: 111,598.21
- Consulting costs and external services: 64,619.02
- Expenses FMA Annual Report: 53,456.68
- Objections to payment notices: 43,200.00
- Exemption levy for non-employment of disabled persons: 41,080.00
- Miscellaneous: 27,515.04
- Electricity, gas: 20,000.00
- Usage fees, licences: 8,925.00

Total: 1,342,393.95

2009 provision for actual costs of Banking Supervision:

The provision established pursuant to Article 69a BWG in one financial year must be released in the following financial statements of the FMA, i.e. the provision established in the 2010 financial statements for the actual costs incurred in 2009 was released in the 2011 financial statements of the FMA; by way of derogation to Article 19 para. 4 FMABG, the resulting income is only to be deducted from the costs of accounting group 1.

2010 provision for actual costs of Banking Supervision:

Pursuant to Article 69a BWG the difference between the calculated cost shares and the minimum amounts to be paid by the credit institutions (€ 1,000 per credit institution) for 2010 is to be allocated to a provision in 2011.

8. Liabilities

The liabilities are computed with the amount repayable taking the prudent person rule into account. All liabilities have a residual maturity of up to one year.

8.1 Advance payments received pursuant to Article 19 FMABG

For the 2011 financial year, the entities liable to pay costs had to make advance payments in the amount of €27,012,613.00 (previous year: €20,995k) as prescribed by administrative decision. Of the prescribed advance payments, €180,639.14 (previous year: €93k) had not been paid by the balance sheet date. Itemised valuation allowances of €1,278.75 (previous year: €6k) were recognised for the amounts not yet paid.

The 2011 advance payments are compared with the cost share to be borne by the entities liable to pay costs within the scope of preparing the statement of costs. The resulting balance is either charged or repaid to the entities liable to pay costs.

As at 31 December 2011, €254,939.75 (previous year: €154k) had already been paid in advance for the 2012 financial year.

8.2 Trade payables

With the reform of financial market supervision in Austria having taken effect on 1 January 2008, a clear demarcation was drawn between the FMA and the Oesterreichische Nationalbank (OeNB) in the area of banking supervision, with the FMA remaining the sole authority and with responsibility for inspection and analysis (including reporting and approval of models) being concentrated at the OeNB. In this context, the FMA must reimburse OeNB for the direct costs of on-site inspections and the analysis of individual banks (Article 19 para. 5a FMABG). The amounts reimbursed are to be calculated on the basis of the direct costs of banking supervision notified for the respective preceding financial year pursuant to Article 79 para. 4b BWG. Amendments to the Nationalbankgesetz (NGB; Nationalbank Act) and to the FMABG, which entered into force on 1 August 2011 (Federal Law Gazette I No. 50 /2011), specified the maximum amount at €8 million (previously €4 million), retroactively effective for 2011 as well. The reimbursement is to be effected no later than by the end of March of the following financial year.

The liabilities owed to the OeNB have increased to a total of €12 million, of which the €4 million for 2010 are to be reimbursed by 31 March 2012 and the €8 million for 2011 by 31 March 2013.
The fee for the audit of the 2011 financial statements and share of costs, agreed with the auditing firm IB Interbilanz Hübner Wirtschaftsprüfung GmbH upon commissioning the audit, is included in the 2011 incoming invoices still expected; it amounts to €33,600.00 (previous year: €34k).

8.3 Other liabilities
A liability of €1,211,801.50 (previous year: €697k) is still carried from the actual cost of previous years.

9. Contingent liabilities
As at 31 December 2011, there were no contingent liabilities or guarantees.

10. The liabilities from the use of tangible fixed assets not shown in the balance sheet amount to approximately €3,023,600.00 (previous year: €2,834k) for the following year and a total of approximately €15,011,700.00 (previous year: €13,837k) for the following five years

C. INFORMATION ON THE INCOME STATEMENT

1. Income from federal grant
Pursuant to Article 19 para. 4 FMABG, the Federal Government paid a total of €3,500,000.00 (previous year: €3,500k) in advance for the 2011 financial year, which was used to cover part of the costs incurred during the 2011 financial year.

2. Share of entities liable to pay costs
Please refer to Point B. 2. “Services not yet invoiced to entities liable to pay costs” in the Notes.

3. Personnel expenses
In the income statement, Item 3b shows “Contributions to corporate staff provision funds” in the amount of €242,009.09 (previous year: €220k). The remaining amount of €101,725.51 (previous year: €94k) is attributed to “Expenses for severance pay”.

D. OTHER INFORMATION

1. The average number of staff pursuant to Article 239 UGB is as follows:

<table>
<thead>
<tr>
<th></th>
<th>2011</th>
<th>2010</th>
</tr>
</thead>
<tbody>
<tr>
<td>Civil servants</td>
<td>22</td>
<td>23</td>
</tr>
<tr>
<td>Employees (incl. contractual employees)</td>
<td>314</td>
<td>298</td>
</tr>
<tr>
<td>Staff total</td>
<td>336</td>
<td>321</td>
</tr>
</tbody>
</table>

2. Management of the FMA pursuant to Article 6 FMABG
Mr Kurt Pribil and Mr Helmut Ettl were appointed to serve as members of the FMA’s Executive Board for the 2011 financial year.
Mr Kurt Pribil was reappointed by the Federal President on 29 September 2009 to serve as member of the FMA’s Executive Board from 22 October 2009 to 21 October 2014.
Mr Helmut Ettl was appointed by the Federal President on 14 February 2008 to serve as member of the FMA’s Executive Board from 14 February 2008 to 13 February 2013.

With regard to Article 241 para. 4 UGB, the details pursuant to Article 239 para. 1 nos. 3 and 4 UGB are not disclosed.

3. Members of the Supervisory Board pursuant to Article 8 FMABG
The remuneration budgeted for the members of the Supervisory Board for the 2011 financial year amounted to €15,300.00 (previous year: €15k).
Members of the Supervisory Board reappointed by the Federal Ministry of Finance as at 1 September 2011:
- Alfred LEJEK (Chairperson), Federal Ministry of Finance
- Ewald NOWOTNY (Vice-Chairperson), Governor of the Oesterreichische Nationalbank

STATEMENT OF CHANGES IN FIXED ASSETS (ARTICLE 226 PARA. 1 UGB) [amounts in €]

<table>
<thead>
<tr>
<th></th>
<th>As at 1 Jan. 2011</th>
<th>Additions</th>
<th>Cost</th>
<th>Disposals</th>
<th>As at 31 Dec. 2011</th>
</tr>
</thead>
<tbody>
<tr>
<td>I. Intangible fixed assets</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Licences</td>
<td>1,932,523.40</td>
<td>120,293.27</td>
<td>18,327.27</td>
<td>2,034,489.40</td>
<td></td>
</tr>
<tr>
<td>II. Tangible fixed assets</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1. Buildings on third-party land</td>
<td>561,930.55</td>
<td>39,131.24</td>
<td></td>
<td>601,061.79</td>
<td></td>
</tr>
<tr>
<td>2. Other equipment, operating and office equipment</td>
<td>2,536,384.03</td>
<td>841,222.81</td>
<td>104,638.45</td>
<td>3,272,968.39</td>
<td></td>
</tr>
<tr>
<td>3. Low-value assets</td>
<td>85,830.31</td>
<td>85,830.31</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>3,098,314.58</td>
<td>966,184.36</td>
<td>190,468.76</td>
<td>3,874,030.18</td>
<td></td>
</tr>
<tr>
<td>4. Buildings and office equipment</td>
<td>5,030,837.98</td>
<td>1,086,477.63</td>
<td>208,796.03</td>
<td>5,908,519.58</td>
<td></td>
</tr>
</tbody>
</table>

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MANAGEMENT REPORT

A. REPORT ON THE BUSINESS DEVELOPMENTS AND ECONOMIC SITUATION

1. Business developments

2011 financial year

Changes in expenses and income in 2011:
The share contributed by entities liable to pay costs increased over the previous year by some €7 million to about €38.1 million. This is specifically due to increases in personnel expenses (approximately €1.9 million) and in other operating expenses (approximately €4.6 million). The reduction of approximately €0.6 million in other operating income compared with 2010 was mainly attributable to falling income from the disposal of assets, the writing back of reserves and reimbursed salary costs.
The year-on-year rise of €1.9 million in personnel expenses to about €26.7 million was due to the higher number of staff, up by an average of 14 full-time equivalents (FTEs), and to the annual salary progressions and the adjustment of salary levels for inflation.
Other operating expenses rose by €4.6 million compared with 2010, primarily due to the increase made during the course of the year to the maximum cost refunds payable to the OeNB for on-site inspections and analyses of individual banks pursuant to Articles 18 and 19 of the Finanzmarktaufsichtsbehörengesetz (FMABG; Financial Market Authority Act). The maximum amounts were raised from €4 million to €8 million. Additional reasons included adjustments made for inflation, higher staff numbers and increases in the membership fees due to the European Supervisory Authorities.

An allocation of €0.26 million was made to the reserve pursuant to Article 20 FMABG. This means that the upper limit of 5% of total costs based on the 2010 annual financial statements was reached.

Appointments
Mr. Markus Öhlinger was appointed Head of Division IV/4 – Combat against Unauthorised Business for a period of five years (initially with a one-year contract) with effect from 1 January 2011.
Mr. Christoph Kodada was appointed Head of Division IV/5 – Prevention of Money Laundering and Terrorism Financing for a period of five years with effect from 1 January 2011.

Table 48: 2011 STATEMENT OF CHANGES IN FIXED ASSETS
Ms Magdalena Orter was appointed interim Head of Division III/3 – Rules of Conduct and Compliance for the duration of Ms Muther-Pradler’s leave with effect from 1 February 2011.

Ms Daniela Gorfer was appointed interim Head of Division III/3 – Rules of Conduct and Compliance for the duration of Ms Muther-Pradler’s leave with effect from 20 July 2011.

Mr Christoph Kapfer was appointed Head of Division IV/2 – International Affairs and European Integration for a period of five years (initially with a one-year contract) with effect from 19 September 2011.

Mr Gerhard Maienhofer was appointed interim Head of Division III/3 – Rules of Conduct and Compliance for the duration of Ms Muther-Pradler’s leave with effect from 20 December 2011.

Appointment extensions

Mr Johann Palkovitsch was reappointed Head of Division I/4 – Supervision of Decentralised Credit Institutions for a period of five years with effect from 1 January 2011.

Mr Peter Braumüller was reappointed Director of Department II Insurance and Pension Companies Supervision for a period of five years with effect from 1 April 2012.

Mr Erich Schaffer was reappointed Director of Department III Securities Supervision for a period of five years with effect from 1 April 2012.

Mr Gerald Resch will be reappointed Director of Department IV Integrated Supervision for a period of five years with effect from 1 August 2012.

2. Audit report on branches

The FMA is an independent, autonomous and integrated supervisory authority for the Austrian financial market, established as an institution under public law. It is responsible for supervising credit institutions, payment institutions, insurance undertakings, Pensionskassen (pension companies), corporate provision funds, investment funds, licensed investment service providers, rating agencies and stock exchanges, as well as for prospectus supervision. The FMA is also responsible for monitoring trading in listed securities to ensure that it is carried out properly and for monitoring issuers’ compliance with information and organisation obligations. Further tasks include combating the unauthorised provision of financial services and taking preventive action against money laundering and terrorist financing.

The FMA is an integral part of the European System of Financial Supervisors (ESFS) and represents Austria in the relevant European institutions, closely cooperating with the network of supervisors and actively contributing to its work.

The FMA has its head office in Vienna (9th district of Vienna) and has no branches.

Financial and non-financial performance indicators

Liquidity development in 2011

Liquidity at the start of 2011 totalled approximately €4.2 million. Due to income of some €33.3 million, expenses of about €39.8 million and the payments pursuant to Article 19 para. 5 FMABG (additional payments by the entities liable to pay costs of approximately €9.5 million), year-end liquidity as at 31 December 2012 amounted to about €7.2 million.

As a consequence of increased payments from entities liable to pay costs, income in 2011 rose by some €5.5 million year-on-year to about €33.3 million.

Expenses rose year-on-year by some €1.9 million in 2011 to around €39.8 million.

– The €1.7 million increase over 2010 in personnel expenses was due to the rise in the average number of staff, up by about 14 FTEs, as well as to the annual salary progressions and the adjustment of salary levels for inflation.

– The increase in material expenses over the previous year could, at roughly €0.4 million or 3%, be limited more or less to the level of price increases.

– Investments were approximately €0.2 million lower than in the previous year, after the authority’s relocation in 2010 had resulted in higher investments for improvements to leased buildings.

The calculation pursuant to Article 19 para. 5 FMABG mainly comprises the calculation of actual costs for 2009 (approximately €0.9 million) and for 2010 (approximately €8.6 million).

As at the end of 2011, year-end liquidity amounted to around €7.2 million.

Details of 2011 cash flow statement pursuant to expert report KFS BW2:

<table>
<thead>
<tr>
<th></th>
<th>2011 (in € thousands)</th>
<th>2010 (in € thousands)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Net cash flow from ordinary activities</td>
<td>4,081</td>
<td>1,218</td>
</tr>
<tr>
<td>Net cash flow from investing activities</td>
<td>−1,075</td>
<td>−642</td>
</tr>
<tr>
<td>Net change in cash and cash equivalents</td>
<td>3,006</td>
<td>576</td>
</tr>
<tr>
<td>Cash and cash equivalents at beginning of period</td>
<td>4,215</td>
<td>3,639</td>
</tr>
<tr>
<td>Cash and cash equivalents at end of period</td>
<td>7,223</td>
<td>4,215</td>
</tr>
</tbody>
</table>

Rounding differences are not taken into account.

The difference in amounts between cash and cash equivalents at the end of the period and the balance sheet item results from the fact that petty cash was not taken into account.

Deposits made to petty cash (€1,553.76 in 2011 and roughly €2,800 in 2010) were entered as expenses on the dates of deposit.
Non-financial performance indicators

Staff

Staff turnover
The staff turnover rate was 10.86% in 2011 (after 5.67% in 2010). However, after allowing for the fixed-term contracts that expired during 2011, the turnover rate for 2011 is 9.24%. Furthermore, FMA employees who moved to work for sister authorities abroad have also been included in the turnover calculation and, after adjusting for these, the turnover rate falls to 7.94%. The rise in the staff turnover rate is to be attributed to two factors: the high degree of mobility among FMA staff, and the great demand for highly qualified financial market experts.

Training and career development
As a specialist organisation, the FMA places particular emphasis on the CPD of its workforce, which rests on five pillars:
- the University Programme in Financial Market Supervision offered in conjunction with the OeNB;
- the newly introduced Management Curriculum;
- the FMA Academy;
- international seminars organised by the European Supervisory Authorities (ESAs);
- third-party seminars, funded by departmental budgets and offered on an individual basis.

The joint Academy of Supervision by the FMA and OeNB opened its doors in April 2010 with its first Financial Market Supervisor course. Certification of the University Programme in Financial Market Supervision, conducted in cooperation with the Executive Academy of the Vienna University of Economics and Business (WU), followed in autumn 2011. A total of 50 participants in each course (25 employees each from the FMA and the OeNB) will complete a challenging programme of standardised training, in two classes held simultaneously with professional activities, on 49 seminar days within an 18-month period.

The course of studies in the university programme entails a total of 60 ECTS credits (European Credit Transfer and Accumulation System; 1 ECTS credit equals 25 to 30 hours of work). The curriculum, structured in modules, encompasses courses, each entailing a final exam lasting several hours, as well as a work placement and a final paper. Students successfully completing the programme graduate with the title of “Academic Financial Market Supervisor”. The next goal in the area of postgraduate professional advancement has already been set: the development of an MBA programme with the University Programme in Financial Market Supervision as a recognised specialisation.

Recruitment process
At the outset of the FMA recruitment process is a requirements profile, prepared in joint consultation between the respective division and Human Resources. Vacant positions are then usually advertised on the FMA’s website as well as on a leading job website and, in specific cases, in daily newspapers. Short-listed candidates undergo a three-tier selection process. A first round of interviews takes place with the management of the division concerned. After the field of candidates is further narrowed down, a second interview is held with the responsible Director and Head of Division, as well as one representative from Human Resources. The third and final interview takes place with the Executive Directors. When recruiting staff members with a number of years of specialised professional experience (specialists), the third interview is staged as a hearing preceded by a potential assessment.

Recruiting fairs, some of which provide an opportunity to interview pre-selected candidates, have proved a highly effective method for recruiting and personnel marketing among university graduates, so that participation in additional events of this kind is planned for 2012. The FMA will also take part in more events aimed especially at the target group of high potential graduates. The main focus of the FMA’s recruiting efforts will, however, be on professionals, i.e. individuals having at least five to ten years of specialised professional experience.

Health and safety
Widespread activities continue to be offered in the area of health and safety. Occupational physicians and safety experts are available to the staff on site, during the periods required by law and specifically during consultation hours. Other offerings in the way of preventive health care are also available: extensive health checks, immunisation programmes, subsidised exercise courses and a fitness room.

Events of particular importance after the balance sheet date

Quarterly report pursuant to Article 6 para. 5 FMABG for Q4 2011
The FMA’s quarterly report, pursuant to Article 6 para. 5 FMABG, for the fourth quarter of 2011 concerning its ongoing activities and the liquidity report, which describes the FMA’s income and expenses as well as the asset additions for 2011, was presented to the Supervisory Board of the FMA at its meeting of 9 March 2012. The Supervisory Board was also provided with an outlook of the 2011 financial statement figures.

Annual report pursuant to Article 16 para. 3 FMABG
The FMA’s 2011 Annual Report must be submitted to the Supervisory Board for approval, pursuant to Article 16 para. 3 FMABG. After approval by the Supervisory Board, the Annual Report is submitted to the Finance Committee of the National Council and the Federal Minister of Finance.
B. REPORT ON THE EXPECTED DEVELOPMENT AND RISKS OF THE COMPANY

1. Expected development of the company

Outlook for 2012
An important component of financial planning are the FMA’s goals for 2012 as well as intensive planning discussions with the FMA’s Executive Board and management. Based on these activities, a financial plan including an investment and staff plan were prepared and submitted to the Supervisory Board pursuant to Article 17 FMABG on 31 October 2011. The financial plan was approved at the Supervisory Board meeting on 18 November 2011.
- The 2012 financial plan does not provide for hiring any new staff members, and the planned staffing level for 2012 consequently remains unchanged at 326.85 employees (FTEs).
- Due to an amendment of the FMABG, expenses are planned at €8 million in 2012 for the purpose of reimbursing to the OeNB the costs of on-site inspections and the analysis of individual banks as specified in Article 19 FMABG (€4 million was planned for this purpose in the 2011 financial plan).
- Plans for putting a secondary data centre into service are included in the 2012 financial plan.
- Funds have been budgeted to cover the expense of remodelling the meeting and seminar facilities in the basement of the FMA building in 2012.
The focus of efforts in 2012 will be to further develop the Academy of Supervision, which was established jointly with the OeNB in 2010, expanding the certified University Programme in Financial Market Supervision to become an individually tailored MBA programme.

Business Continuity Management project
The project Business Continuity Management (BCM) in the FMA, which has been going on since November 2011, is dedicated to the goal of enhancing organisational stability and of ensuring that the FMA is adequately prepared to meet emergency situations with the potential of threatening the authority’s existence. This requires, firstly, the implementation of precautionary measures to safeguard against related risks and, secondly, the preparation of suitable mechanisms and plans in order to be able to act even in emergencies and critical situations and to contain any potential damage. The implementation and maintenance of the BCM plans at the FMA are based on the emergency management process defined in the recognised Standard 100-4 (2008) of the German Federal Office for Information Security (BSI). Project planning is roughly structured according to two phases: the concept phase and the implementation phase. With planned completion of the project in October 2013, the post project phase will begin, involving continuous improvement of BCM in ongoing operations.

2. Material risks and uncertainties

Liability for the FMA’s activities (Article 3 FMABG as amended by Federal Law Gazette I no. 136/2008)
The Federal Government shall be liable pursuant to the provisions of the Amtshaftungsgesetz (AHG; Public Liability Act), Federal Law Gazette No. 20/1949, for damage caused by the FMA’s bodies and employees in the enforcement of the federal acts specified under Article 2. Damage as defined in the present provision is such that was directly caused to the legal entities subject to supervision pursuant to this federal act. The FMA as well as its employees and bodies shall not be liable towards the injured party (Article 3 para 1 FMABG). If the Federal Government made good the damage to the injured party pursuant to para. 1, it shall be entitled to demand reimbursement from the FMA’s bodies or employees according to the provisions of the AHG (Article 3 para. 3 FMABG). The law does not, however, provide the Federal Government with a right of recourse against the FMA (B1F annex to the shorthand verbatim records of the National Council, 22nd legislative period).

Staff
Any personnel risks at the FMA have been mitigated as far as possible through specific measures, including a system of deputies, clear documentation and management of limited contracts. Scenarios entailing the inability to replace staff due to demographic change continue to pose only little risk as well. Only a small number of staff are expected to retire in the coming years, and the average age of employees remained constant in 2011 at a relatively low level of 37.
The turnover rate was moderate in 2011, and vacant positions are filled quickly with qualified candidates. When hiring new staff, it was more frequently possible to recruit experts having several years of specialised professional experience. Any possible losses among key employees can be made up for quickly since every division has a deputy for the Head of Division. Furthermore, many divisions are structured to include teams, with the team leaders able to compensate for management staff losses. The prevalence of team structures became further entrenched as at 1 March 2012, with the introduction of this structure in Insurance and Pension Companies Supervision. In the event of any indications of an increase in turnover rate, the FMA performs evaluations and takes steps for timely response.
In 2011 as well, periods of leave, such as due to illness or excused absence, did not present the organisation as a whole with any appreciable challenges. The corresponding levels at the FMA continue to be clearly below the national average.
C. REPORT ON RESEARCH AND DEVELOPMENT

Unlike other organisations such as manufacturing companies, due to its position as a supervisory authority the FMA does not publish a report on research and development.

Vienna, 11 April 2012

KURT Pribil
signed in person

HELMUT Ettl
signed in person