

# ZENTRALER KREDITAUSSCHUSS

MITGLIEDER: BUNDESVERBAND DER DEUTSCHEN VOLKSBANKEN UND RAIFFEISENBANKEN E.V. BERLIN · BUNDESVERBAND DEUTSCHER BANKEN E.V. BERLIN  
BUNDESVERBAND ÖFFENTLICHER BANKEN DEUTSCHLANDS E.V. BERLIN · DEUTSCHER SPARKASSEN- UND GIROVERBAND E.V. BERLIN-BONN  
VERBAND DEUTSCHER HYPOTHEKENBANKEN E.V. BERLIN

**Comments**  
**of the Zentraler Kreditausschuss (ZKA)<sup>1</sup>**  
**on**  
**Working Document ESC/17/2005 –rev2**  
**on organisational requirements**  
**and identification, management and disclosure of conflicts of interest**  
  
**“Investment research”**

15 September 2005

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<sup>1</sup> The ZKA is the joint committee operated by the central associations of the German banking industry. These associations are the Bundesverband der Deutschen Volksbanken und Raiffeisenbanken (BVR), for the cooperative banks, the Bundesverband deutscher Banken (BdB), for the private commercial banks, the Bundesverband Öffentlicher Banken Deutschlands (VÖB), for the public-sector banks, the Deutscher Sparkassen- und Giroverband (DSGV), for the savings banks financial group, and the Verband deutscher Pfandbriefbanken (vdp), for the Pfandbrief banks. Collectively, they represent more than 2,300 banks.

## I. General remarks

As a follow-up to its comments of 13 July 2005, the Zentraler Kreditausschuss (ZKA) is pleased to take the opportunity to outline its position on the rules on investment research.

## II. Specific remarks

### 1. Article 2, No. 7

It should be made clear that only financial or investment advisers and similar persons are to be covered.

The definition of “*associate*” is much too broad and too vague, particularly item (c), reading “*a company or trust in which the person owns an interest, directly or indirectly*”. As a result, it remains completely unclear which requirements apply in regard to the nature and the size of the interests owned by analysts for such companies or trusts to be included in the scope of the measures that are to be put in place by the investment firm. Item (c) should therefore be deleted.

### 2. Article 24

Article 24 (b) (i) calls for “*additional measures*” to prevent analysts, their associates and other employees of the investment firm from trading in a personal capacity or on behalf of the firm in financial instruments with knowledge of the timing or content of specific investment research. Against this background, Article 24 (b) (ii) – “*in circumstances not covered by paragraph i*” – can be taken to mean that measures to prevent trading in financial instruments to which investment research relates are also to be put in place for cases in which analysts and their associates have no knowledge of the timing or content of the investment research. This would be neither practicable nor appropriate. Instead, it can only be a question of preventing any front-running by analysts with knowledge of investment research, unless trading is already prohibited by item (i). This should be made clear.

The inclusion of associates in Article 24 (b) (i)-(iii) is neither practicable nor appropriate. Because they have no legal relationship with associates, it is not possible for investment firms to take additional measures directly in regard to associates. Associates can only be prevented indirectly from obtaining knowledge of the timing or content of specific investment research, e.g. via a confidentiality requirement for analysts. There can be no objection to associates trading in financial instruments without knowledge of related investment research. The same goes for trading after dissemination of the investment research. The inclusion of associates in Article 24 (b) (i)-(iii) should therefore be dropped.