

## CBF: Reporting of Transactions to the Federal Financial Supervisory Authority (BaFin)

Within the framework of implementing of the **statutory ban on uncovered short selling** under Section 30h of the German Securities Trading Act (WpHG), the Federal Financial Supervisory Authority (BaFin) has notified Clearstream Banking<sup>1</sup> in writing, with reference to the ongoing monitoring of the ban on uncovered short selling by BaFin under Section 4 Paragraph 1 and Paragraph 2 WpHG, that in BaFin's legal opinion, a delay in delivery occurring within the context of security orders may be grounds for suspicion of uncovered short selling under Section 30h WpHG. In particular, for security delivery orders which have still not been delivered **10 days after the agreed delivery date (Intended Settlement Day)**, there is a requirement to report this as suspicious activity, in accordance with Section 10 Paragraph 1 WpHG.

For this reason, BaFin expects CBF to report these types of security transactions in securities named in Section 30h Paragraph 1 WpHG as suspicious, with immediate effect. CBF has agreed to collate a weekly report for BaFin, based upon the report template of the public authorities, and it will report all instances of suspicion for all of the securities named in Section 30h Paragraph 1 WpHG that are approved for trading on the regulated market at a domestic stock exchange. The regulations of Section 30h Paragraph 1 Sentence 3 and Paragraph 2 WpHG cannot be taken into consideration in the creation of the reports.

CBF will dispatch these reports to BaFin effective

**immediately.**

### Background

With the *Gesetz zur Vorbeugung gegen missbräuchliche Wertpapier- und Derivategeschäfte (Law for the Prevention of Improper Securities and Derivatives Transactions)* of 21 July 2010, a ban on uncovered short selling of certain securities was introduced through Section 30h WpHG. With the same law, Section 10 WpHG was expanded to the extent that banks, inter alia, must report suspected cases of possible violations of Section 30h WpHG to BaFin. BaFin notified CBF in correspondence dated 15 December 2010, with reference to the ongoing monitoring of CBF by BaFin under Section 4 Paragraph 1 and Paragraph 2 WpHG, concerning its legal opinion **whereby security transactions that have not yet been settled on the "Intended Settlement Day" +10 (ISD +10) shall be considered as suspicious.**

The ban on uncovered short selling under Section 30h WpHG and the obligation to submit reports of suspicious cases covers transactions in shares and debt securities that are approved for trading on the regulated market at a domestic stock exchange. In the case of debt securities the ban only covers those items that are issued by central governments, regional governments and local authorities of European Union Member States whose legal currency is the euro.

By reason of the statutory regulation in Section 10 Paragraph 1 Sentence 2 WpHG, CBF is subject to a statutory obligation of confidentiality, and for this reason it will provide no information concerning the reports. The type of information that will be communicated to BaFin comes from the forms published by BaFin for reports of suspicious activities under Section 10 WpHG.

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<sup>1</sup> Clearstream Banking refers in this announcement to Clearstream Banking AG, Frankfurt am Main (CBF). CBF is a company of the Deutsche Börse Group.

## Further information

For further information, please contact your Relationship Officer or Customer Service.

	<b>Customer Service Domestic</b>
<b>E-mail:</b>	csdomestic@clearstream.com
<b>Telephone:</b>	+49-(0) 69-2 11-1 11 77
<b>Fax:</b>	+49-(0) 69-2 11-61 11 77