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INSIGHT
CORPORATE GOVERNANCE GERMANY

Essential: Information, Analysis and Opinion for Investment Professionals, Advisers and Academics

Lufthansa buys into Fraport

Deutsche Lufthansa has taken advantage of the sale of the government's stake to acquire an around 4.95 % share of airport operator Fraport. The airline wants to beef up its holding to 5 % within a few weeks. Additionally, Lufthansa is claiming a seat on the Fraport Supervisory Board. That would enable it through the oversight body to exercise influence on strategy and on investments in Fraport's core business. A representative on the Supervisory Board should also enhance planning security on the cost side. As regards potential conflicts of interest arising from the dual role as customer and co-owner of Fraport, the airline points out that it has no intention of pushing through special conditions for itself. The Federal Republic of Germany has sold its remaining shares (18.2 % of the share capital) in airport operator Fraport for over 660 million Euros, through direct placing with institutional investors plus an exchangeable bond. The biggest shareholders, after the Federal Government's withdrawal, are the State of Hesse (31.8 %) and the City of Frankfurt (20.3 %). Neither are making use of their preemptive right to Fraport shares at the moment. The City of Frankfurt continues, however, to be interested in raising its share to 25.1 %, so as to reach a blocking minority. By a consortial agreement, these two shareholders are to keep 50 % plus one share until mid 2011.

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BUHLMANN'S CORNER

Germany after the elections: the new old Germany

Conflicts in co-determination or codetermination in conflict – there's one of the major problems on the new Federal Government's table. Is it defensible for a squad of employees to be able to keep Herr Schrempp in office as DaimlerChrysler CEO beyond his time, just because the capital side doesn't react? Recall the crack at the 2004 AGM about the "Dual Monarchy of Kopper and Klemm", i.e. the Supervisory Board chair and the head of the Works Council – which by definition represents the interests of the German workers only. Is a VW workforce – but actually, once again, only the part working in Germany – entitled to keep Porsche strategist and family manager Piëch as President (i.e. chair of the SUPERVISORY Board), even if he is at the same time the dominant shareholder in their new major shareholder? Which in turn, let us not forget, is not just a competitor on the market, but also even today already the biggest – and uncoincidentally expanding still further – dealer in their group's products?

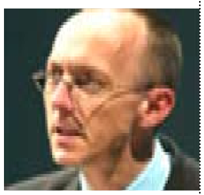
Clearly such conflicts of interest look worse than Germany Inc as such. And clearly something's got to change here. And again, management expert Fredmund Malik (St.Gallen) is clearly right, when he takes Piëch under his wing by saying "Ownership creates obligations more than anything else". But that does not mean that Corporate Governance rules should stop when it comes to Porsche descendants: ownership entitles only to a quota, not to putting the burden on others. And the conflict of interest should be brought out transparently, and what's more, as soon as it's recognized as a potential danger, not just once it breaks out.

While Kirk Kerkorian at GM is "pushing" on to the Supervisory Board because he can now call 10 % of the shares, by and large, his own, Porsche in the New Germany is demanding "as an ultimatum" three seats on the VW Supervisory Board, which thanks to co-determination is only half available to capital. Are they maybe hoping to use this access to the holy of holies to conclude one or more (public – and perhaps a few secret?) cooperation agreements? Who is to judge that? One non-German plaintiff in a technically interesting legal action against VW has been trying for four years through German lawyers to show his locus standi – unsuccessfully, though admittedly in Wolfsburg, VW's company town.

IF what Porsche boss Pischetsrieder is said to have said – "Porsche's entry will help VW to save … cost advantages of billions" – is true, THEN the Delphi receiver ought immediately to buy up GM shares and watch his worries evaporate – or else the conflict of interest perceived everywhere but in Wolfsburg is real. Who is going to tell us, and when, how VW came to accumulate too many of its own shares, and what Brazilian decision-making assistance then brought about their resale at the right time, in VW's interest? How fortunate that the mighty, double-banked German Supervisory Board exists! Co-determination may be able to take half of it, but not its power, were all to attend its sittings. How fortunate that it does audits, and can even pay for a J.P. Morgan expert report – or perhaps more accurately, get it paid for.

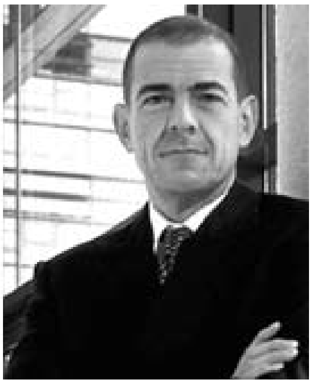
Surely there must be some mechanism that makes it possible to find out whether the head supervisor (who stands out in the media as the only one to have a "contract till 2007" for the role) is now playing off the two VW bosses Bernhard and Pischetsrieder against each other – or simply creating a vacuum in which both Salzburg (VW dealers the Porsche Family) and Wiedeking (now only Porsche CEO, but soon, with his ultimatum, VW supervisor) can flourish. Where are we going to get the purgative to clean out the Corporate Governance system?

Take a look at Fresenius. There corporate governance was turned on its head so that everything could stay the same – just like Tomasi di Lampedusa's Sicily in "The Leopard". Until the investors managed to force a Corporate-Governance Audit Committee out of the major shareholder. So that the Board members – in any case entitled – could then (but why only then?) look a bit closer and then – here's where it gets exciting! – report. At VW it will scarcely be possible to define how Porsche can cover the whole range of production, and Salzburg the sales ...
The Fresenius Medical Care model is clever, and tempting; all the parties keep face (after all, they're doing something ...), each has an addressee to delegate responsibility to, and the details are left as an exercise for the historian – since at present any matters of substance are liable to remain secret. Corporate governance filed away – or filed-down corporate governance? Yet it could all be so simple: there's the AGM, and everybody comes along and speaks and acts – that's what can crack (even) the VW Act.



Hans-Martin Buhlmann is the founder of VIP Vereinigung Institutionelle Privatanleger e.V. (www.vip-cg.com), a proxy voting agency.

Infineon in the sights of the financial authorities



The financial authorities are, according to reports in the "Süddeutsche Zeitung," investigating irregularities surrounding the March 2000 IPO of chip manufacturer Infineon. Executives are alleged to have secured more shares, through trustees, than had been reserved internally for management. The financial authorities are said to be examining whether there were infringements of tax regulations. Last December the head offices of Infineon and its major shareholder Siemens were already searched in this connection. Both firms confirm the investigations. Their object is said to be Infineon's so-called Friends & Family Programme. According to the newspaper's information, former Infineon CEO **Ulrich Schumacher** had secured access to further shares through trustees. Among these was allegedly Infineon executive Peter Bauer. Infineon stated that Bauer had at Schumacher's request bought shares in his own quota on a fiduciary basis. This is said to have been approved by then Supervisory Board head Volker Jung. Schumacher's lawyer stated there were no investigations against Schumacher personally in the tax case. Schumacher said, "The company and the Supervisory Board had an interest in having the board subscribe as many shares as possible, so as to promote the board's commitment to the company."

The prosecutors' investigations in the Infineon corruption case have been extended to Schumacher. The ex Infineon CEO has according to news magazine "Focus" been accused of accepting benefits in the purchase of private sports cars. Swiss sports marketing entrepreneur Ralf-Udo Schneider is alleged to have bought vintage and other desirable cars on commission from Schumacher and passed them on to him below cost. This is alleged to have been in thanks for Schumacher's helpfulness as group boss in giving out Infineon orders. Schumacher rejects the accusations. In July it became known that executives at the chip manufacturer were said to have accepted large amounts from Schneider for giving sponsoring orders from the group. Infineon executive Andreas von Zitzewitz thereupon resigned.

Corporate Governance - VW a test case

The dual role of **Ferdinand F. Piëch** as Supervisory Board chair of automobile group VW and major shareholder in sports-car manufacturer Porsche has sparked off debate about the importance of conflicts of interest on supervisory boards. Manuel R. Theisen, Economics Professor at Munich University and a lawyer, calls it "the crassest case of conflict of interest we've ever seen at this level". Theodor Baums, Professor at the Institute for Banking Law at the Johann Wolfgang Goethe University and head of the former Government Commission on Corporate Governance, regards Piëch's dual role as not unproblematic. According to the Corporate Governance Code, a supervisor must resign if simultaneously a member of an institutional body of a major competitor. However, opinions differ as to how much constitutes important, or major. Some put it at an overlap of 25 % of turnover, others at a mere 10 %. In the light of the VW case, clarification of the point about conflict of interests in the Corporate Governance Code is being called for. Discussion of this is, however, in the view of such observers as Marcus Lutter, Professor at the Centre for European Economic Law at the University of Bonn, unlikely before spring next year.

YOUR FEEDBACK

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Deutsche Börse AG gets a new exchange segment ...

The Frankfurt stock exchange has set up a segment with lower reporting obligations than its Prime and General Standards, to be called Entry Standard. The prospectus can be replaced by a statement drawn up by a bank, if the placement of the shares is directed at fewer than 100 so-called qualified investors. This eliminates the legal liability for prospectus statements, important for investor protection. The firms need not publish bilingual ad-hoc notices or quarterly reports, but only half-yearly reports. News relevant to the quotation must be published forthwith on the company Web site. The annual accounts must be tested, but auditing can be in accordance with the German commercial code (HGB). A bank that is a so-called Listing Partner of the company it is bringing to the exchange must ensure compliance with the disclosure rules.

... and soon a hard core of shareholders

The new Supervisory Board chair of the Frankfurt Stock Exchange, Kurt Viermetz, is according to an “FT Germany” report considering creating a hard core of shareholders. In France, the prevalent practice to ward off takeovers is to form a group of permanent, reliable core shareholders. According to indications from Viermetz, over 90 % of the shares in Deutsche Börse are held abroad. Among the biggest shareholders are TCI (nearly 8 %), Atticus Capital (5 %), and Capital Group, FMR and Fidelity International at nearly 5 % each.

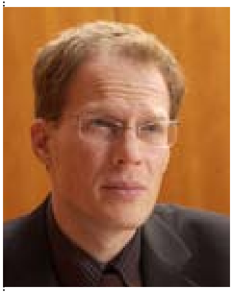
Corruption case at BMW widens

The corruption case about a former sales manager at car group BMW has broadened. According to the Munich public prosecutors, the suspected BMW ex-manager has again been arrested. He allegedly additionally received a total of 450,000 dollars from two supplier firms, for which he gave the firms preference when giving out orders and supplied them with insider information. The BMW employee is also suspected of taking a further 100,000-dollar bribe from a supplier firm in Saxony. The BMW ex-manager has made a partial confession. Three other people have been arrested in the same connection. According to the prosecutors, they include employees of BMW suppliers (Grammer and Dräxlmaier).

OPINION

Little chance of pre-clearing with the enforcement agencies

By the end of October the German Audit Office (DPR) will have been at work for four months. It has opened its first proceedings to check the accounting of firms with equity or loan-capital securities accepted for trading on a German exchange. The companies concerned were in part chosen randomly; in part, however, the checks are based on grounds for suspecting wrong balance-sheet reporting. The German Financial Supervisory Authority (BaFin), to which the cases would be passed in the event of refusal to cooperate, is said to have none before it yet. That would seem to mean all firms concerned are cooperating with the DPR.



Dr. Henning Hönsch, Corporate Governance Chief at Pricewaterhouse-Coopers AG auditing company

Publicly effective finding of fault is threatened not just in cases where the balance-sheet rules were deliberately misapplied. Even if the accounting objected to had been carefully considered, the DPR can find objective fault. Publication of fault will then as a rule damage the image of the firm concerned. To avoid that, companies might like in future to clear up complex balance-sheet questions before a finding and publication of the relevant accounts, with the DPR or even straight away with BaFin. The model here might be the USA. There, companies can go to the Office of the Chief Accountant of US stock-exchange regulator SEC for a so-called "pre-clearing".

However, in Germany the Accounting Oversight Act does not grant firms an entitlement to pre-clearing of accounting questions with either the DPR or BaFin. This need not, of course, stop firms from at least informally, possibly together with the auditor, seeking to clear them up beforehand. Both the companies and the DPR or BaFin would have to act fast, though. Investors expect company figures to be published as near the time as possible, at latest by expiry of the legal time-limit for publishing accounts. Within the time available, agreement to the accounting assessment at European level on the principles laid down by the Committee of European Securities Regulators (CESR) in Standard No. 2, as well as with the agency responsible for international accounting (especially the IASB), might also be necessary. Yet a look at the current staffing of the relevant offices makes any attempt at rapid pre-clearing seem to have small chance of success.

Shareholders sue FMC over change of corporate form

Shareholders in Fresenius Medical Care (FMC) have filed a civil suit against the dialysis company. They are challenging the resolutions of the extraordinary general meeting to change the group's legal form from a joint-stock company (Aktiengesellschaft) to a partnership limited by shares (KGaA) and convert the preference shares to ordinary shares. FMC points out that over 90 % of the ordinary shares represented at the EGM and almost 85 % of the preference capital agreed to the measures.

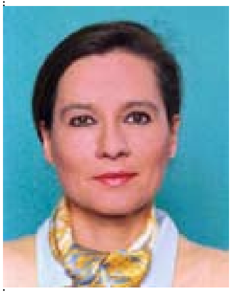
Federal judges have doubts about Mannesmann acquittals

On 21 December the Federal Court of Justice will announce the verdict in the Mannesmann appeal. At the end of the second oral hearings (20 and 21 October) on last July's judgments at the Mannesmann trial, the federal judges displayed doubt as to the soundness of the acquittals. The President of the Third Criminal Division, Klaus Tolksdorf, had raised the question whether the bonuses to Mannesmann executives were not truly "presents". The Supervisory Board of the Mannesmann Group had in connection with the takeover of Mannesmann by the UK's Vodafone approved around 60 million Euros in special payments to managers in the Mannesmann Group. The Düsseldorf Regional Court had acquitted the six accused, including Deutsche Bank CEO Josef Ackermann, former IG-Metall president Klaus Zwickel, the last Mannesmann CEO Klaus Esser and Supervisory Board chair Joachim Funk, on the charge of breach of trust. The Düsseldorf court had justified the acquittal on grounds of "unavoidable error" as to the prohibited nature of the act.

OPINION

Acting in Concert - guidance sought

The WpÜG (Securities Purchase and Takeovers Act) requires a shareholder acquiring 30 % of the voting rights in a listed company to issue a takeover offer to all outside shareholders. Voting rights of third parties are counted towards that figure inter alia where that shareholder has, apart from individual cases, co-ordinated its conduct vis-à-vis the target company with other shareholders, i.e. in the event of so-called Acting in Concert (§ 30(2) WpÜG). The WpÜG does not, however, specify the elements of what constitutes "acting in concert".



Dr. Susanne Rückert is a lawyer, with Haarmann Hemmelrath, Rechtsanwälte Wirtschaftsprüfer Steuerberater

Acting in Concert requires, first, deliberate collaboration with the object of co-ordinated and continuing exercise of membership rights in continual and persistent form. The Munich Regional Appeal Court has already affirmed this in the case of a one-off agreement among shareholders about Supervisory Board elections, because of the persistence of the mode of action, insofar as a common business strategy is present. The Federal Financial Supervisory Authority BaFin had announced it wished to be guided by this decision.

On 19 October this year BaFin announced it was stopping investigations in the Deutsche Börse v. TCI case, since Acting in Concert could not be established with adequate certainty. The funds around TCI, which together hold a share of over 30 % of the voting rights in Deutsche Börse AG, could not be shown to have prevented the planned takeover of the London Stock Exchange LSE and forced the resignation of CEO Werner G. Seifert by coordinated action. Had the charge been confirmed the funds involved could have been forced to make a takeover bid and been fined. Additionally, their voting rights would have been suspended.

The Federal Finance Ministry is now – probably partly in response to the Deutsche Börse v. TCI case – considering giving BaFin farther-reaching powers (especially extended investigative powers). Consideration might also, however, be given to closer definition of Acting in Concert, to avoid future uncertainties in practice. For instance, by listing cases where in its view Acting in Concert is basically not present, BaFin could at least give a negative definition of Acting in Concert for practical purposes. In the case of ad-hoc disclosure law and insider law, BaFin has published issuer guidelines for practical utilization.

Doughty Hanson expects DAX takeover

British investment company Doughty Hanson is expecting a takeover of a DAX30 group by major private equity funds sooner or later. "The mega-funds might try it if the existing investment pressure continues to grow," opines its Germany boss Claus Felder. In Europe, he says, some funds have accumulated 4 or 5 billion Euros in equity capital and have therefore got too big for the middle-market segment. However, Felder is not looking for hostile takeovers, as the German business culture tends more to require understandings.

For Carlyle, Germany is the most exciting M&A country in Europe

David Rubenstein, co-founder and Managing Director of private equity firm Carlyle, sees Germany as currently the most exciting place for buyouts (takeovers) in Europe. In Germany there are in his view many companies that could be improved. Says Rubenstein: "Germany can profit more from private equity than any other country on the continent, if not in the whole world." Carlyle is concentrating its investment policy particularly on large German companies. Negotiating with small and medium-sized businesses is 'like waiting for Godot'. Promises to sell, for instance, are often not kept, thinks Rubenstein. It is, moreover, hard to buy listed companies, because a private equity firm has to persuade the board not to engage in an auction with other bidders.

DSW calls for increased external liability for company institutions ...

The private investors' association DSW (German Association for the Protection of Security Holders) is calling on the new German government to tighten up the liability of Management and Supervisory Board members to shareholders (so-called external liability). The draft Capital Market Information Liability Act (KapInHaG) ought to be reconsidered. The liability for infringement regarding "ad hoc disclosure" is seen as inadequate in the present form. Managers should be liable to indemnify shareholders where they had deliberately or grossly negligently misinformed them, as provided in the KapInHaG. The need to prove a causal connection between investment decision and misinformation ought finally to be dropped. Liability should be triggered in all cases of oral statements by the Management or Supervisory Board, "where these are aimed at a broad range of people and are likely to affect the quotation". The amount of liability should in the DSW's view be unlimited – even in cases of negligence.

The Justice Ministry has not yet decided whether to put the KapInHaG on its agenda again.

... and greater transparency in capital-market transactions

The DSW suggests publishing short sales or securities loans undertaken in anonymous and aggregated form once daily - as customary in the US or UK. It is further calling for the introduction of additional reporting thresholds for securities transactions. On reaching limits of 1, 3, 5, 7 and 10 %, purchasers should already notify the transaction to the company concerned and financial regulator BaFin. Currently, investors have a reporting obligation if they own more than 5, 10, 25, 50 and 75 % of the shares in a company.
Additionally, the private-investor representatives want to lower the threshold of 30 % in the Takeovers Act to 25 %. On reaching the 30 % threshold, those aiming at takeovers must make an obligatory offer to the remaining shareholders. In the light of attendances at AGMs, the 30 % threshold is unrealistic, says the DSW.

Platform for shareholders

In November a shareholder forum is to be set up on the Web site of the Federal Gazette. The forum will enable shareholders to contact other shareholders or shareholder associations. The legislature wishes to make it easier for shareholders to find fellow fighters for shareholders' rights to exercise the vote and to reach statutorily prescribed quorums. Submission of contributions (requests and announcements) is subject to payment of a fee. Participants must register and give an e-mail address. A fee-based push service (information on, say, new contributions) is being set up. The company concerned can respond to pieces by linking to their position on their own Web site.
The Act on Corporate Integrity and Modernization of the Right of Avoidance (UMAG) in force since1 November set the quorum for entitlement of a minority to sue at 100,000 Euros nominal or 1 % of the registered capital.

➔ **Shareholder forum:**
www.ebundesanzeiger.de

DGB: New rules for Supervisory Boards

The German Federation of Labour (DGB) has changed the contribution rates for Supervisory Board members' payments to the trade unions' Hans Böckler Foundation. From 1 January 2006, employee representatives on a Supervisory Board must transfer 10 % to the Foundation on every retainer of up to 3,500 Euros per year, and can keep 90 %. On what they earn as Supervisory Board member above 3,500 Euros per year, they must pay 90 %. The threshold figures for Supervisory Board chairs and deputy chairs are raised to 7,000 and 5,250 Euros; on higher amounts they must transfer 90 % to the Foundation. The DGB has thereby abolished the capping of Supervisory Board earnings. On the rules currently in force, employee representatives on the Supervisory Board must hand over all of their remuneration over 32,500 Euros to the Foundation. Below the threshold they can retain a maximum of 4,600 Euros. The unions justify the measure by their members' higher tax consultancy expenses.

Federal Court of Justice strengthens shareholder rights

BGH in Karlsruhe

A joint-stock company need not inform its shareholders in writing of the exclusion of shareholder rights and the reasons for it before carrying out a capital increase with authorized capital, the **Federal Court of Justice** (BGH) has ruled. On the so-called authorized capital the board receives capital-increase discretion by AGM resolution. However, shareholders could still have the board's actions reviewed retrospectively in a declaratory action, the BGH found. A declaratory judgment can be the basis for later claims for damages, and justify AGM refusal of discharge to the board.

Search for proportionality in hedge-fund regulation

National financial-market regulators want closer oversight over hedge funds worldwide. First, IOSCO (the International Organization of Securities Commissions) wants a study done on hedge funds and their role in the international financial system. **Jochen Sanio**, President of the German Financial Supervisory Authority (BaFin), warned of the risks to the financial system from these funds: "Hedge funds present a great danger for the stability of the world financial system." Together the biggest participants on financial markets, they must be controlled. Hedge funds, he said, are a "black hole" as regards oversight and investor protection. The European Central Bank (ECB) likewise favours tighter controls. A first step should be to support efforts in the credit economy to introduce voluntary self-restraint, for more transparency in the sector. The banks are supporting the authority's efforts. The President of the National Association of German Banks (BdB), Klaus-Peter Müller, supports moderate regulation of hedge funds. However, regulation would be meaningful only on a world-wide basis, including offshore centres. Any attempt at a continental or national solution would be doomed to failure.

The German Association for Alternative Investments (BAI) accuses Sanio of not backing up his warnings with professional expertise. The statements would, they said, make investors uncertain and harm Germany as a location. According to BAI, the sector is already suffering from too-high requirements on market participants.

CDU/CSU wants to strengthen the investment market

The CDU/CSU, which makes up the new federal government along with the SPD, wants especially to strengthen the market for venture capital. According to CDU small-business expert Roland Pofalla's plans, the Private-Equity Companies Act (UBGG) is to be reformed for the purpose. The Act was passed in 1987, to open up new sources of finance for small and medium-sized businesses. On Pofalla's view, the Act has to be opened up to foreign legal forms.

The ZEW (Centrum for European Economic Research) advocates, in an SPD-commissioned expert report on "Private Equity on an international comparison," the extension of the UBGG into a Private Equity Act. The restrictive requirements on investment instruments, investment limits on holdings and minority participations should in the ZEW's view be lowered.

➔ **Study: www.zew.de/PE**

In & Out in October

Changes on Management and Supervisory Boards in DAX30, MDAX and TEC30 companies

On the Supervisory Board of pharma group **Bayer**, since 1 October Dr. Thomas Fischer has been representing the employee side, replacing **Wolfgang Schenk**.

Manfred Wennemer

Manfred Wennemer's contract as CEO of car supply firm **Continental** has been extended by five years until 2010. On 30 September **Gerhard Lerch**, CEO of ContiTech AG, was appointed to the Continental management board. He will be responsible for the ContiTech Division there. Dr. Ulrich Weiss, since 1990 on the Conti Supervisory Board, resigned as from the end of September for age reasons. Christian Streiff is to be appointed as his successor; Streiff was till May 2005 Chief Operating Officer of Saint-Gobain and member of various Supervisory Boards.

At **Deutsche Börse AG**, **Reto Francioni** took over as CEO on 1 November. Francioni had since 2002 been Administrative Board Chair of the Swiss stock exchange SWX. As expected, Richard Berliand (JP Morgan Securities), Craig Heimark (Hawthorne Group), Herrmann-Josef Lamberti (Deutsche Bank) and Dr. Erhard Schipporeit (E.ON) were appointed to the Supervisory Board. Leaving it are Dr. Rolf-E. Breuer, Mehmet Dalman, Dr. Stefan Jentzsch and Hessel Lindenbergh.

Dr. Frank Rottmann

Dr. Anton Mindl has since 1 October been a director of **Elmos Semiconductor**; in the course of the coming year he is to take over as CEO from Dr. Klaus G. Weyer. Mindl came in October this year from SiemensVD, where he had since 2003 been CEO. To replace Dr. Wolfgang Heinke, who left the Supervisory Board of the supplier of high-performance ASICs (Application Specific Integrated Circuits) on 12 October, **Dr. Peter Thoma** has been moved up; Thoma was until 1 October responsible on the management board for Development & Distribution. The new Development & Distribution manager is **Dr. Frank Rottmann**; he has worked at Elmos Semiconductor for over 13 years in various positions.

Lothar Reiff

The management board of clothing manufacturer **Hugo Boss** will be reduced from five to four members as from 1 November. **Lothar Reiff**, responsible for the Creation and Licences sector, has resigned with effect from 31 October. The Creation sector is being eliminated, and the Licences division taken over by executive André Maeder, also responsible for the Hugo brand. Responsibility for the Boss segment is in the hands of CEO Dr. Bruno Sälzer, and for Logistics and Production in those of Werner Lackas. Jörg-Viggo Müller, in charge of the Finance, Personnel, Administration and IT areas, is leaving the board on 31 March 2006. His successor is to be **Joachim Reinhardt**, currently Finance Manager with the Gillette Group.

Albrecht Schmidt

Albrecht Schmidt resigned from the chair of the **HVB** Supervisory Board on 26 October. His successor, following completion of the Bank's takeover by Unicredit that Schmidt had criticized, is to be the latter's boss Alessandro Profumo.

Dr. Jens Baganz (State Secretary in the Ministry for Economy, Small Business and Energy of the State of North-Rhine-Westphalia), **Dr. Martin Viessmann** (Managing Partner of the Viessmann Group) and **Andreas Wittmann** (employee representative) have since 9 September been Supervisory Board members of **IKB** Deutsche Industriebank. Leaving the Supervisory Board are Dr. Jürgen Heraeus, Dr. Norbert Walter-Borjans and employee representative Roswitha Loeffler.

Wilhelm Simson

At pharma group Merck, former **E.ON**-Co CEO **Wilhelm Simson** is to become Supervisory Board chair as from 1 January 2006; Simson has since April 2004 been a member of Merck's Supervisory Board, and since July 2004 a member of the partners' board of E. Merck OHG, which brings together the business interests of the Merck Family and, with a 73 % holding, is a full partner of Merck KGaG. Current Supervisory Board chair Peter Zühlsdorff will after January be an ordinary member of it.

With effect from 24 September, **Axel Knoblauch** (according to the company's indications an independent commercial agent) has been appointed Supervisory Board member at financial services provider **MLP**. Dr. Felix Blomberg left the Supervisory Board on 11 August. Blomberg became an MLP divisional manager at the end of June.

Jürgen M. Geißinger

Because of the new ownership structure at **MTU Aero Engines Holding** after its IPO, Oliver Haarmann of Kohlberg Kravis Roberts & Co. left the Supervisory Board on 1 October. INA-Holding Schaeffler KG CEO **Jürgen M. Geißinger** has since 4 October been on the Supervisory Board of the engine module and component as well as aero engine manufacturer.

Alfred Pfaff has been appointed to the management board of **Software AG** with effect from 27 October. He is in charge of business in the regions Central Europe and Asia. Pfaff came to the software company on 1 January 2005 as general manager of SAG Systemhaus GmbH. Before his move to Software AG, as executive manager of IBM Deutschland GmbH he was responsible for Communications, Media and Utility Industries distribution for Germany, Austria and Switzerland. Pfaff's appointment is to a management post vacant since May this year. Then manager Andreas Zeitler had decided to leave the firm for new career possibilities outside it, it was said.

Rainer Schamoni

Deputy CEO of **Techem**, **Rainer Schamoni**, is not extending his contract expiring on 30 September 2006, "for personal reasons"; he has already left the firm. With effect from 1 October this year two new board members were appointed from inside the housing and real-estate industry service provider: **Hans-Lothar Schäfer** (Technology and Production sector) and **Bernd Sülberg** (Distribution Germany). Techem is thereby separating the Distribution and Production sectors.

Considerable potential for improvement in Supervisory Board practice

German Supervisory Boards tend in the main to be too past-oriented, too passive and too inward-directed in their working. Those are the weaknesses in oversight practice by Supervisory Boards in German firms, according to a study by Martin K. Welge, Professor in the Chair of Business Management at the University of Dortmund. The findings reached and the lines of argument of those surveyed were highly sobering. The level of experience, or the world-views, of Supervisory Board members pointed to in part considerable potential for improvement in supervisory practice.

According to the survey, Supervisory Board members are not always involved in future-oriented decisions, but mostly only see the results. Welge: “They only ask about what there was. They don’t ask about what is afoot in the company, or what’s being planned.” Retrospective monitoring of results and following up strategic development are both rated as very important. By contrast, comprehensive strategic oversight is at the tail end of the priority list of those surveyed, and is rated nearly insignificant. Only a bare 7 % of Supervisory Board members surveyed define the firm’s strategic objectives along with the management board, a quarter discuss and adopt the goals defined by it, and a good 53 % of supervisors content themselves with “taking note.”

Value-oriented indicators like value added by subunits, cash flow and business value play only a subordinate part in assessing company strategy. By contrast, traditional accounting indicators like annual surplus continue to dominate. External information sources like reports from industry associations or analysts, or competitors’ business reports, are barely used.

The instrument of withholding consent is according to the survey findings too rarely used by Supervisory Boards. 28 % of those surveyed stated a refusal of consent had never yet occurred.

Welge did 46 interviews with Supervisory Board members in Germany for his study “Company oversight by Supervisory Boards – a contribution to the Corporate Governance debate in Germany”. Among these, eleven DAX30 Supervisory Board chairs (including Rolf-E. Breuer from the Deutsche Bank and Ulrich Hartmann of E.ON) were willing to give personal interviews.

→ **Study: mail to m.welge@wiso.uni-dortmund.de**

NEWSLETTER

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Too high costs to move to IFRS?

Since this year, use of the international financial reporting standard IFRS has been compulsory for all capital-market-oriented companies in Germany too. **Karlheinz Küting** notes some disenchantment in assessing the benefits of the international accounting rules as regards the hoped-for fair and reliable accounting brought by a system of "glass pockets", with no balance-sheet policy and no hidden reserves. The Professor at the University of the Saarland and Director of the Institute for Auditing in Saarbrücken is asking, after comparing the two accounting worlds, whether the shift to IFRS may mean not just a high but maybe even too high a price. Early recognition of crises, he thinks, is difficult or indeed impossible even using IFRS. Managements could – largely unrecognizably for balance-sheet addressees – use the subjective elements of rendering accounts to mask crisis situations in balance sheets and exert influence over the disclosure of earnings. The keyword in IFRS accounting, Fair Value, was not fulfilling the hopes placed in it. The great majority of all asset and debit items had no reliable fair value that could be determined on an active market. Küting: "Fair-Value assessment is instead opening up room for a gigantic balance-sheet policy such as hardly existed in this form in any accounting system to date."

➔ **Article: www.faz.net**

Groups are often giving away money

Boards of German groups are mostly failing to enhance the value of peripheral sectors of their group before selling them, to reach a higher price for them. This is the finding of a study by the Ruhr University, Bochum. Its Faculty of Finance and Credit studied 33 group buyouts with a transaction volume of more than 100 million Euros in the years 1999 - 2003. Intensive interviews were carried out with 57 people involved in the transactions. Only one eighth of the sales were made on the basis of Pre-Sale Due Diligence. The questions to the fore when hiving off a division are instead legal ones and organizing the build-up and procedures. The sales negotiations were often like "flying blind", because mostly no fixed lower limit for the division's value had been set beforehand. In many cases, moreover, firms fixed on a buyer at too early a stage of the bidding process, thus throwing away the chance of a higher price.

➔ **Study:**
www.ruhr-uni-bochum.de/fin-kred

Buying & Selling in October

Changes in holdings in DAX30, MDAX and TEC30

Hochtief (ISIN DE0006070006): Investment company Custodia Holding has increased its holding in construction group Hochtief from 5.2 to 10.6 %. In September Custodia crossed the 5% notification limit. The investment firm is controlled as part of billionaire August von Finck's holdings.

Hypo Real Estate Holding (ISIN DE0008027707): The American firm Brandes Investment Partners lowered its voting participation in Hypo Real Estate Holding from 9.1 to 3.8 % at the end of September. Large blocks of shares are also held by Capital Group (5.2 % declared by Capital in August) and Barclays PLC (5.3 %, declared in July). By the end of August, the UK's Egerton Capital had lowered its share to a bare 5 %.

HVB (ISIN DE0008022005): Over 80 % of HVB shareholders had accepted the takeover bid by major Italian bank UniCredit by the time-limit for doing so. UniCredit is according to its statements not planning to squeeze out HVB shareholders.

IWKA (ISIN DE0006204407): US investor Guy Wyser-Pratte raised his share in machine and plant builder IWKA from around 6.5 to more than 7 % in October. On 4 October Hermes Focus Asset Management stated that its share had fallen slightly from 5.0 to 4.98 %, and FMR declared a share of 5.6 %. Other large blocks of around 5 % are still held by K Capital Partners, LBBW, Schroders and Capital Group.

KarstadtQuelle (ISIN DE0006275001): Madeleine Schickedanz, main shareholder in KarstadtQuelle, raised her share in the commercial group's registered capital in early October by a further 411,000 units, for 4.5 million Euros. Ms Schickedanz now holds 57 % of the shares.

Merck (ISIN DE0006599905): Major British bank Barclays owns over 5.6 % of the voting rights in pharma group Merck. Up to 10 % of the shares have according to Merck's indications been held since late 2004 by the American FMR Corporation.

Pfleiderer (ISIN DE0006764749): Fidelity Management & Research Company has reduced its participation in Pfleiderer (systems supplier for engineered wood, surfacings, rail sleeper technology) from 5.5 to 4.7 %. Altogether, Fidelity now holds less than 15 % of the Pfleiderer shares. In early September, Pfleiderer Unternehmensverwaltung GmbH & Co. KG had sold 200,000 shares, thus reducing its share slightly to 12.7 %. Other shareholders are, on the firm's indications, Henderson Global Investors and Capital Group, each with holdings of just below 5 %.

Rhön-Klinikum (ISIN DE0007042301): Insurance group Allianz has, after the conversion of preference to ordinary shares, sold a voting share of 6.2 % in the hospital operator. Rhön-Klinikum's major shareholder Eugen Münch has stated he does not wish to sell his holding. The Münch Family holds about 16 % of the shares.

SGL Carbon (ISIN DE0007235301): Jana Partners, New York, reduced its voting share in SGL Carbon (manufacturer of carbon, graphite and composites products) in September from 5.3 to 4.9 %. Further shareholders are Eureka Fund Limited with 6.8%, K Capital Partners with 5.2 %, Cominvest with a good 4.9 % and BT Pension Scheme Limited with 5.1 %.

VW (ISIN DE0007664005): Two US investment companies, Brandes Investment Partners and Capital Group, have reduced their holdings in car manufacturer VW. Brandes lowered its share on 30 September from 10.7 to 8.6 %, as did Capital Group on 4 October, from 5.1 to 3.5 %.

Source: Compulsory notifications under the Securities Act and AfU indications (published annual and quarterly reports of the capital investment companies)

Capital measures in October

adidas-Salomon (ISIN DE0005003404): The sports-goods manufacturer is shifting its credit. Adidas-Salomon has signed a revolving credit line of up to 2 billion Euros. The new transaction increases the revolving credit facility of up to 800 million Euros set up in February 2005. The new facility has a period of 5 years and contains two one-year extension options, which can be exercised at the end of the first and second years.

DaimlerChrysler (ISIN DE0007100000): The automobile group has negotiated a loan of over one billion Euros. The Eurobond has a period of 5 years (10 November 2010), a coupon of 3.625 % and an issue and redemption price of 99.955 %, putting it 57 basis points above mid swaps. DaimlerChrysler has also negotiated, at par, a dollar loan with flexible interest (Floating Rate Notes) for a volume of 750 million dollars. It becomes due on 31 October 2008, and the coupon is 53 basis points above the three-month Libor.

Fresenius (ISIN DE0005785638): Pharma company Fresenius is issuing 4.7 million new ordinary and 4.7 million new preference shares from the authorized capital. Old shareholders are offered a 9:2 subscription right. The subscription prices will be at least 86 Euros per ordinary and 93 Euros per preference share; they will be notified on 15 November. The term of subscription will be from 17 to 30 November; rights trading will be from 17 to 28 November. The capital increase is likely to bring Fresenius proceeds of around 840 million Euros (gross), which is according to Fresenius to be used to take over the Helios clinics.

Jenoptik (ISIN DE0006229107): The State of Thuringia wants to sell its 14.8 % block of shares in the laser technology firm by 2007 at latest. Large holdings are those of Gabriele Wahl-Munterer (5.8 %), OppenheimerFunds (4.4 %), Franklin Templeton (4.6 %) and Meag (6.7 %).

K+S (ISIN DE0007162000): The supplier of potassium and magnesium chemicals for agricultural and industrial use wants to buy back 1.25 million shares, some 3 % of the share capital, by the end of the year. The AGM has authorized the board to buy back by 31 October 2006 a maximum of 4.25 million shares, or 10 % of the capital.

MTU Aero Engines Holding (ISIN DE000A0D9PT0): The engine manufacturer made an extraordinary redemption of 30 million Euros of its high-interest bond in October. In September it had already repaid 80 million Euros of the bonds, which yield 8.25 %. MTU Aero had floated a 275 million Euro loan in March 2004.

INSIGHT Shareholder ID: DAX 30

Companies	Own Shares	Ma-nage-ment	Notifiable Shareholders*	Share	reporting capital investment company **	change from previous month in percentage points	biggest reporting capital investment company **	
Adidas-Salomon	None	5.00			23.71	0.18	DWS	1.83
Allianz	0.10	None	Münchener Rück	4.90	18.55	-0.09	Activest	2.06
			Deutsche Bank	2.50				
Altana	3.64	None	Susanne Klatten	50.10	14.37	-0.08	Fidelity Investments Luxembourg	2.01
BASF	0.15	None	Allianz	2.70	21.77	-0.04	Deka Investment	1.94
Bayer	None	None	Capital Group	5.04	20.93	-0.13	DWS	2.09
			Allianz	4.76				
HVB	0.40	None	UniCredito	80.99	10.42	0.10	American Funds	2.18
BMW	1.10	None	Familie Quandt	46.60	12.30	0.02	DIT	1.40
			Allianz	1.90				
			Widely dispersed	98.90				
Commerzbank	1.33	None	Assicurazioni Generali	9.10	16.57	0.06	MEAG	4.29
			Münchener Rück	4.99				
			Banca Intesa	1.90				
			Mediobanca	0.60				
			BSCH	0.60				
Continental	None	None	AXA	10.05	25.64	-0.20	Harbor Fund	2.56
			Barclays PLC	5.49				
			The Capital Group	5.14				
DaimlerChrysler	0.02	None	Kuwait	7.20	12.53	-0.16	Deka Investment	1.12
			Deutsche Bank	6.90				
			Emirat Dubai	2.20				
Deutsche Bank	4.86	None			17.18	-0.22	Deka Investment	1.67
Deutsche Börse	1.07	None	TCI Fund Management	7.89	24.26	0.02	Fidelity USA	2.20
			Atticus Capital	5.01				
			Capital Group	4.91				
			FMR	4.84				
			Fidelity International	4.75				
Deutsche Lufthansa	None	None	Genujo	8.60	24.50	-0.11	DWS	4.81
Deutsche Post	None	None	KfW	44.70	11.69	-0.17	DWS	2.59

INSIGHT Shareholder ID: DAX 30

Companies	Own Shares	Ma-nage-ment	Notifiable Shareholders*	Share	reporting capital investment company **	change from previous month in percentage points	biggest reporting capital investment company **	
Deutsche Telekom	0.06	None	KfW	22.10	13.65	0.00	DWS	1.10
			Bundesanstalt für Post und Telekom	15.44				
E.ON	4.81	None	Freistaat Bayern	4.86	19.85	-0.11	Deka Investment	1.05
			Allianz	3.60				
Fresenius Med. Care	None	None	Fresenius	50.76	13.39	-0.03	Jupiter (GB)	1.17
Henkel	4.20	None	Familie Henkel	51.48	12.28	-0.09	Deka Investment	1.21
			Jahr Vermögens-verwaltung	6.11				
			Familie Schwarzkopf	3.89				
Infineon	None	None	Siemens	18.23	12.29	-0.36	Deka Investment	0.86
			Capital Group	6.99				
Linde	None	None	Allianz	12.30	19.66	-0.09	Artisan	2.24
			Deutsche Bank	10.00				
			Commerzbank	10.00				
MAN	None	None	AXA	10.09	26.96	-1.08	DWS	5.84
			Deutsche Bank	4.99				
			Allianz	0.82				
Metro	None	None	Otto Beisheim Vermögensverwaltung und Fam. Schmidt-Ruthenbeck	36.58	11.49	-0.03	Deka Investment	0.81
			Franz Haniel & Cie GmbH	19.00				
Münchener Rück	0.46	None	HVB Group	9.97	16.75	0.00	Deka Investment	1.44
			Allianz	9.40				
RWE	None	None	Cities and local authorities	22.00	14.81	-0.42	DIT	1.24
			RW Energie-Beteili-gungsgesellschaft mbH	10.94				
			Münchener Rück	4.90				
			Allianz	4.33				
			Staff	2.00				
			E.ON	1.90				
			AXA	0.29				

INSIGHT Shareholder ID: DAX 30

Companies	Own Shares	Ma-nage-ment	Notifiable Shareholders*	Share	reporting capital investment company **	change from previous month in percentage points	biggest reporting capital investment company **	
SAP	2.07	None	Hasso Plattner GmbH & Co. Beteiligungs-KG	9.90	11.37	-0.01	Union Privatfonds	0.82
			Dietmar Hopp und Dietmar Hopp Stiftung	8.90				
			Klaus Tschira Stiftung	5.10				
			Dr. h.c. Tschira Beteiligung	5.00				
			Hasso Plattner För-derstiftung gemein-nützige GmbH	1.70				
			Golfplatz St. Leon-Rot GmbH & Co. Beteiligungs-KG	1.50				
			Dr. Klaus Tschira	0.20				
Schering	2.10	None	Allianz	12.50	14.75	0.13	Union Privatfonds	1.16
			Brandes	5.00				
Siemens	None	0.11	Siemens-Vermögens-verwaltung GmbH	6.10	17.71	-0.01	Deka Investment	1.57
ThyssenKrupp	2.98	None	Alfried Krupp von Bohlen und Halbach -Stiftung	20.00	12.34	-0.02	Deka Investment	1.41
TUI	None	None	Riu Family	5.10	17.77	-0.17	Deka Investment	1.69
			CAM	5.00				
			The Capital Group	4.92				
			Deutsche Bank	4.82				
			Grupo de Empresas	2.40				
			Morgan Stanley & Co.	0.23				
VW	12.97	None	Porsche	18.53	7.93	0.23	Deka Investment	1.38
			State of Niedersachsen	18.20				
			Porsche	10.26				
			Brandes	8.58				
			Capital Group	3.50				

* Notifiable shareholders plus those indicated by the company.
** Source: AfU Investor Research GmbH (n.paulsen@afu.de)
The AfU company information agency lists over 18,000 funds and investment companies making disclosures.
The position shown is taken from recently published annual and quarterly reports.

INSIGHT Shareholder ID: Jenoptik

Notifiable Shareholders

OppenheimerFunds, Inc., Colorado	2279117	4.38 %
Gabriele Wahl-Multerer	3033620	5.83 %
State of Thuringia	7701128	14.80 %
Total	**13013865**	**25.01 %**

free float

Investment companies(KAGs) making disclosures	9.032.465	17.36 %

including the following TOP 10 KAGs

MEAG	3.484.940	6.74 %
Franklin Templeton Lux	2.419.700	4.65 %
Franklin Templeton USA	484.372	0.93 %
DFA Investment (USA)	315.096	0.61 %
Indexchange	298.867	0.57 %
Universal-Inv.	211.150	0.41 %
COMINVEST (Lux)	189.028	0.36 %
DIT	145.900	0.28 %
SüdKA	129.000	0.25 %
3 Banken-Generali	125.300	0.24 %
Total	**7.803.353**	**15.04 %**

➔ **For further information please send an e-mail to: n.paulsen@afu.de**

BUSINESS DIARY

November/early December

→ AGM dates: www.vip-cg.com

DAX 30

Allianz (ISIN DE0008404005)
11.11. First three quarters' results, Phone conferences

Bayer (ISIN DE0005752000)
09.11. Third quarter results, Press conference,
Phone conference for investors

Deutsche Börse (ISIN DE0005810055)
07.11. Third quarter results
08.11. Analyst conference

Deutsche Lufthansa (ISIN DE0008232125)
10.11. Provisional first three quarters' results,
Analyst conference, Balance-sheet press conference

Deutsche Post (ISIN DE0005552004)
10.11. First three quarters' results,
Phone conference for analysts

Deutsche Telekom (ISIN DE0005557508)
10.11. Third quarter results, Phone conference

E.ON (ISIN DE0007614406)
10.11. First three quarters' results

Infineon (ISIN DE0006231004)
18.11. Fourth quarter results, Balance-sheet press conference,
Analyst phone conference

Linde (ISIN DE0006483001)
07.11. First three quarters' results

Munich Re (ISIN DE0008430026)
07.11. First three quarters' results

RWE (ISIN DE0007037129)
16.11. First three quarters' results, Analyst phone conference

Siemens (ISIN DE0007236101)
10.11. Provisional annual accounts, Business press conference,
11.11. Analyst conference

ThyssenKrupp (ISIN DE0007500001)
01.12. Balance-sheet press conference, Analyst conference,
Roadshow

TUI (ISIN DE000TUAG000)
10.11. First three quarters' results

MDAX

Aareal Bank (ISIN DE0005408116)
11.11. Third quarter results

AMB Generali Holding (ISIN DE0008400029)
10.11. First three quarters' results

AWD (ISIN DE0005085906)
15.11. First three quarters' results, Phone conference

Beiersdorf (ISIN DE0005200000)
10.11. First three quarters' results, Analyst conference

Bilfinger Berger (ISIN DE0005909006)
14.11. First three quarters' results

Celesio (ISIN DE0005858005)
14.11. First three quarters' results

Degussa (ISIN DE0005421903)
08.11. First three quarters' results, Phone conference

Deutsche Euroshop (ISIN DE0007480204)
10.11. First three quarters' results

Deutsche Postbank (ISIN DE0008001009)
09.11. First three quarters' results,
Phone conference for analysts

Fielmann (ISIN DE0005772206)
24.11. Third quarter results

Fraport (ISIN DE0005773303)
09.11. Provisional third quarter results

GEA Group (ISIN DE0006602006)
09.11. First three quarters' results

Hanover Re (ISIN DE0008402215)
10.11. Third quarter results

HeidelbergCement (ISIN DE0006047004)
08.11. First three quarters' results

Heidelberger Druckmaschinen (ISIN DE0007314007)
08.11. First six months' business figures

Hochtief (ISIN DE0006070006)
17.11. First three quarters' results,
Phone conference for investors and analysts

Hypo Real Estate Holding (ISIN DE0008027707)
10.11. Third quarter results

IKB (ISIN DE0008063306)
11.11. First six months' business figures, Phone conference

BÖRSENKALENDER

November/Anfang Dezember

→ **AGM dates: www.vip-cg.com**

>> MDAX

IVG (ISIN DE0006205701)
15.11. First three quarters' results, Analyst conference, Press conference

IWKA (ISIN DE0006204407)
08.11. First three quarters' results

K+S (ISIN DE0007162000)
14.11. First three quarters' results, Analyst conference

Leoni (ISIN DE0005408884)
03.11. First three quarters' results

Medion (ISIN DE0006605009)
10.11. Third quarter results

MLP (ISIN DE0006569908)
23.11. Third quarter results

MPC Münchmeyer Petersen (ISIN DE0005187603)
09.11. First three quarters' results
10.11. Roadshow

MTU Aero Engines Holding (ISIN DE000A0D9PT0)
08.11. Third quarter results, Phone conference

Pfleiderer (ISIN DE0006764749)
08.11. First three quarters' results

Premiere (ISIN DE000PREM111)
08.11. Third quarter results

PROSIEBENSAT.1 MEDIA (ISIN DE0007771172)
10.11. Third quarter results

Rheinmetall (ISIN DE0007030009)
14.11. Third quarter results

Rhön-Klinikum (ISIN DE0007042301)
10.11. DVFA analysts' conference

Salzgitter (ISIN DE0006202005)
14.11. First three quarters' results

SGL Carbon (ISIN DE0007235301)
09.11. First three quarters' results, Phone conference, Analyst conference

Stada (ISIN DE0007251803)
10.11. Third quarter results

TECDAX30

Bechtle (ISIN DE0005158703)
11.11. Third quarter results

Drägerwerk (ISIN DE0005550636)
10.11. Third quarter results, Phone conference

Epcos (ISIN DE0005128003)
17.11. Fourth quarter results, Phone conference

Evotec (ISIN DE0005664809)
09.11. Third quarter results

Freenet.de (ISIN DE0005792006)
08.11. Third quarter results

Funkwerk (ISIN DE0005753149)
10.11. Third quarter results

Jenoptik (ISIN DE0006229107)
14.11. Provisional third quarter results

Mobilcom (ISIN DE0006622400)
08.11. Third quarter results

Pfeiffer Vakuum (ISIN DE0006916604)
08.11. First three quarters' results, Phone conference

QSC (ISIN DE0005137004)
29.11. Third quarter results

Singulus Technologies (ISIN DE0007238909)
07.11. Third quarter results

Solarworld (ISIN DE0005108401)
14.11. Third quarter results

T-Online International (ISIN DE0005557706)
09.11. First three quarters' results

United Internet (ISIN DE0005089031)
09.11. First three quarters' results

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