

Entrepreneurial and Financial Studies

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**Insider Ownership,
Shareholder Structures and
Corporate Governance**

Verlag Wissenschaft & Praxis



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Preface

The question whether a relationship between insider ownership — i.e. direct shareholdings of managers in their firms — and corporate performance exists increasingly attracts attention in academia as well as in investment practice. The introduction of the German Entrepreneurial Index (GEX) through Germany's leading stock exchange operator Deutsche Börse AG along with its remarkable performance may have contributed to this development as well. The concept of this new stock index is based on both theoretical and empirical research. Departing from the owner-management conflict, which has already been extensively discussed in literature, the quintessence of these works is that management's incentives can be considerably improved, if managers also benefit from the success of their firms through direct shareholdings.

The work on hand is an important contribution to this research strand especially as most of the relevant empirical studies refer to Anglo-Saxon capital markets. This fact may not be neglected in the comparison of corresponding empirical studies as insider ownership in these countries is mainly driven by share-based compensation schemes. Furthermore, these countries do not have a notable tradition of midsize family owned companies, as they are common in Germany and other Continental European countries. Therefore, this study investigates the relationship between insider ownership and corporate performance on the basis of a new and unique data set. From a methodical point of view, this data set has the advantage that econometrical biases may be less severe than in comparable Anglo-Saxon studies as the determinants of insider ownership are rather exogenous for the case of Germany. The results of this study are very interesting from both an academic and practical perspective. They provide evidence that the development of investment strategies should not disregard companies' ownership structures. Finally, this work constitutes the first comprehensive overview on the development of shareholder structures of German listed stock corporations.

München, 21 January 2007

Prof. Dr. Christoph Kaserer

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I owe a special debt to several colleagues and friends which supported me over the last three years. Firstly, Martin Brixner was my CEFS colleague from the first hour and made the experience of building up and working at the Center an exciting and enjoyable effort. His helpfulness remains unmatched and without his enduring support this thesis would never have been finished on LaTeX as it is. Special thanks for their probing questions and tedious reviewing are to Markus Ampenberger, Benedikt Kormaier, Felix Moldenhauer, Oliver Klöckner, Peter Heister, Christopher Angelo and Bes Achi. I have also benefited from the discussions with and experience of all my colleagues at the CEFS which are not limited to Dr. Christian Diller, Dr. Christian Fingerle, Annabel Geidner, Dr. Thorsten Groth, Kay Müller, Dr. Eva Nathusius, PD Dr. Niklas Wagner and Dr. Simon Wahl.

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I must acknowledge explicitly the Deutsche Börse AG for the co-operation in the German Entrepreneurial Index (GEX) project which initially triggered my interest to examine insider ownership on the German capital market. Insights from this practical project contributed to this academic work. Furthermore, the help in providing stock exchange data was of enormous help.

Without the emotional support of family and friends this project would never have been finished. When I acknowledge that Karin supported me in all thinkable aspects throughout the times of writing this thesis I can only hint at her contribution. I also want to thank my brothers, family and friends for moral support in completing the dissertation. Finally, I would like to thank my parents very much who supported me throughout my education in a unique and outstanding manner. This work is dedicated to them.

Even with all this help and support I am certain that flaws remain. They are the author's responsibility alone.

Frankfurt-on-Main, 29 January, 2007

Dr. Benjamin Moldenhauer

Table of Contents

Table of Contents	IX
List of Figures	XV
List of Tables	XVII
List of Abbreviations	XXI
1 Corporate Governance and the Role of Insider Ownership	1
1.1 Why Do Corporate Governance and Insider Ownership Matter? .	1
1.2 Aims of the Study	6
1.3 Structure of the Analysis	8
2 Fundamentals of Corporate Governance	11
2.1 Definition and Understanding of Corporate Governance	11
2.2 Corporate Governance Mechanisms	14
2.2.1 Business Objective and Shareholder Value	14
2.2.2 Conflicts between Shareholders and Management	16
2.2.3 Mechanisms to Control Management	17
2.3 Basic Types of Corporate Governance Systems	22
2.3.1 The Capital Market Oriented System	23
2.3.2 The Corporate Law Oriented System	25
2.3.3 Which Corporate Governance System is Best?	26
2.4 The German System of Corporate Governance	28
2.4.1 Historical Development	28
2.4.2 Status Quo	33
2.4.3 Characteristics and Idiosyncrasies	36
2.4.4 Trends and Outlook	38

3	Causes and Consequences of Shareholder Structures in Theory and Practice of Corporate Governance	43
3.1	The Separation of Ownership and Control	43
3.2	Constitution of the German Stock Corporation	47
3.2.1	Management Board	48
3.2.2	Supervisory Board	49
3.2.3	Shareholders' Meeting	51
3.3	Shareholders' Objectives and Control Incentives	53
3.3.1	Systematization of Shareholders' Interests	53
3.3.2	Shareholder Identity as Differentiating Factor	55
3.3.2.1	Insider Individuals	56
3.3.2.1.1	Members of the Management Board	56
3.3.2.1.2	Members of the Supervisory Board	58
3.3.2.1.3	Former Members of the Boards	60
3.3.2.2	Non-financial Companies	61
3.3.2.2.1	Business Group	61
3.3.2.2.2	Corporations	62
3.3.2.3	Financial Institutions	63
3.3.2.3.1	Banks	63
3.3.2.3.2	Insurance Companies	65
3.3.2.3.3	Investment Companies	66
3.3.2.3.4	Domestic Institutional Investors	66
3.3.2.3.5	Foreign Institutional Investors	69
3.3.2.4	Federal, State and Municipal Government	70
3.3.2.5	Miscellaneous	70
3.3.2.5.1	Outsider Individuals	70
3.3.2.5.2	Employees	71
3.3.2.5.3	Others and Treasury Shares	72
3.3.3	Shareholder Concentration as Differentiating Factor	73
3.3.3.1	Minority Shareholders	74
3.3.3.1.1	Smallholders	74
3.3.3.1.2	Simple Blockholders	76
3.3.3.1.3	Dominating Blockholders	78
3.3.3.2	Majority Shareholders	79

3.3.3.2.1	Simple Majority Blockholders	79
3.3.3.2.2	Super Majority Blockholders	80
3.4	Shareholders, Management and Conflicts of Interest	81
3.4.1	Introductory Remarks	81
3.4.2	Systematical Analysis of Potential Conflicts of Interest	82
3.4.2.1	Between Shareholders and Management	82
3.4.2.2	Among Shareholders	86
3.4.3	Ways and Means for Overcoming Conflicts of Interest	87
4	Insider Ownership and its Effects on Corporate Performance	91
4.1	Insider Ownership According to Different Theoretical Views	91
4.1.1	The Neoclassical View	91
4.1.2	The Institutional View	93
4.1.2.1	Introductory Remarks	93
4.1.2.2	Transaction Cost Theory	95
4.1.2.3	Property Rights Theory	96
4.1.2.4	Principal Agent Theory	98
4.2	Empirical Evidence on Insider Ownership and Performance	102
4.2.1	Determinants and Effects of Insider Ownership	102
4.2.2	Overview of Empirical Studies on Insider Ownership	104
4.2.2.1	Descriptive Studies on the German Market	106
4.2.2.2	Studies on Insider Ownership and Performance	110
4.2.3	Selected Studies on Insider Ownership and Performance	120
4.2.3.1	Results from Capital Market Oriented Systems	120
4.2.3.2	Results from Corporate Law Oriented Systems	123
4.2.3.2.1	Germany	123
4.2.3.2.2	Other Nations	125
4.2.4	Shortcomings of German Research	127
5	Hypotheses on Causes and Effects of Insider Ownership	129
5.1	Determinants of Insider Ownership	129
5.2	Insider Ownership and Corporate Control	131
5.3	Insider Ownership and Corporate Performance	137

6	Empirical Analysis of Insider Ownership in German Public Stock Corporations	143
6.1	Study Design	143
6.2	Sample and Data	146
6.2.1	Sample Selection	146
6.2.2	Data and Sources	150
6.3	Definition of Variables	156
6.3.1	Shareholder Structure Variables	156
6.3.1.1	Introductory Remarks	156
6.3.1.2	Shareholder Identity	157
6.3.1.3	Shareholder Concentration	161
6.3.2	Performance Variables	162
6.3.3	Control and Other Variables	166
6.4	Descriptive Results	170
6.4.1	Shareholder Structure Variables	170
6.4.1.1	Shareholder Identity	170
6.4.1.1.1	Control Rights	170
6.4.1.1.2	Cash Flow Rights	181
6.4.1.1.3	Control and Cash Flow Rights	182
6.4.1.1.4	Ultimate and Direct Ownership	185
6.4.1.2	Shareholder Concentration	187
6.4.1.2.1	Largest Shareholder	188
6.4.1.2.2	Blockholders	191
6.4.1.2.3	Number of Blockholders	195
6.4.2	Performance Variables	198
6.4.3	Control and other Variables	200
6.5	Overview of Hypotheses	204
6.6	Methodology	206
6.7	Results I: Determinants of Insider Ownership	208
6.7.1	Simple Regression Analysis	208
6.7.2	Difference in Means	209
6.7.3	Multiple Regression Analysis	212
6.7.4	Discussion of Results	213
6.8	Results II: Insider Ownership and Corporate Control	215

6.8.1	Simple Regression Analysis	215
6.8.2	Correlation Analysis	217
6.8.3	Difference in Means	219
6.8.4	Discussion of Results	222
6.9	Results III: Insider Ownership and Corporate Performance . . .	224
6.9.1	Correlation Analysis	224
6.9.2	Difference in Means	227
6.9.3	Multiple Regression Analysis	229
6.9.3.1	Base Case (Cross Section 2003)	229
6.9.3.2	Base Case Extended (Cross Section 2003) . . .	234
6.9.3.3	Base Case (Cross Section 1998)	238
6.9.3.4	Base Case (Cross Section 1993)	240
6.9.3.5	Base Case (Pooled Sample)	242
6.9.3.6	Models of Dynamic Ownership	244
6.9.4	Robustness Tests	246
6.9.4.1	Alternative Performance Measures	246
6.9.4.2	Endogeneity	251
6.9.4.3	Multi-Collinearity	255
6.9.5	Discussion of Results	256
6.10	Limitations of the Empirical Study	261
7	Conclusion and Implications	265
7.1	Conclusion	265
7.2	Implications	266
7.2.1	For Research and Theory	266
7.2.2	For Practice	270
 Appendices		
A	Exemplary Shareholder Structure Classification	277
B	Results I: Determinants of Insider Ownership	279
C	Results II: Insider Ownership and Corporate Control	283
D	Results III: Insider Ownership and Corporate Performance	289

E Results III: Insider Ownership and Corporate Performance - Robustness	309
F Exemplary Ownership Filings in the U.S. and Germany	315
References	317

List of Figures

Figure 1-1: Chart of the German Entrepreneurial Index (GEX)	7
Figure 1-2: Structure of the Analysis	9
Figure 2-1: Overview of Control Mechanisms	18
Figure 3-1: Shareholders' Set of Objectives	54
Figure 3-2: Shareholders' Concentration Scheme	74
Figure 6-1: Sample Composition 1993-2003	150
Figure 6-2: Control Rights 1993-2003	172
Figure 6-3: Control Rights 1993-2003 (MGMT)	174
Figure 6-4: Control Rights in Industries 2003 (MGMT)	175
Figure 6-5: Control Rights 1993-2003 (CORP)	176
Figure 6-6: Control Rights 1993-2003 (FINC)	177
Figure 6-7: Control Rights 1993-2003 (MISC)	179
Figure 6-8: Control Rights Weighted by Market Value 1993-2003	180
Figure 6-9: Control Rights in Size Groups 1993-2003 (MGMT)	181
Figure 6-10: Cash Flow Rights 1993-2003	182
Figure 6-11: Excess Control Rights 1993-2003	183
Figure 6-12: Excess Control Rights 1993-2003 (MGMT)	184
Figure 6-13: Direct Ownership Stakes 1993-2003	186
Figure 6-14: Ultimate and Direct Control Rights 1993-2003	187
Figure 6-15: Largest Shareholder's Identity 1993-2003	189
Figure 6-16: Overview of Methodology	207
Figure 6-17: Changes of Insider Ownership 1993-2003	252
Figure F-1: SEC Filing of Beneficial Ownership (U.S.)	315
Figure F-2: BaFin Database of Directors' Dealings (Germany)	316

List of Tables

Table 2-1: Corporate Governance Initiatives 1998-2002	32
Table 2-2: Corporate Governance Initiatives 2003-2006	34
Table 3-1: Determinants of Control Incentives	57
Table 3-2: Systematization of Equity Agency Conflicts	83
Table 4-1: Empirical Studies on German Shareholder Structures . .	106
Table 4-2: Empirical Studies on Insider Ownership and Performance	110
Table 6-1: Listings at the Frankfurt Stock Exchange 2005	147
Table 6-2: Sample Selection 1993-2003	148
Table 6-3: Hoppenstedt Shareholder Structure Data 1993-2003 . . .	154
Table 6-4: Board Characteristics 1993-2003	155
Table 6-5: Shareholder Identity Classification Scheme	159
Table 6-6: Shareholder Concentration Classification Scheme	162
Table 6-7: Overview of Control and Other Variables	168
Table 6-8: Industry Classification Scheme	169
Table 6-9: Incidences of Control Enhancing Devices 1993-2003 . . .	185
Table 6-10: Overview of Largest Shareholder Identity 1993-2003 . . .	190
Table 6-11: Overview of Blockholder Identity 1993-2003	192
Table 6-12: Blockholder Identity and Types 1993	194
Table 6-13: Blockholder Identity and Types 1998	196
Table 6-14: Blockholder Identity and Types 2003	197
Table 6-15: Descriptive Statistics of Performance Variables	200
Table 6-16: Descriptive Statistics of Control Variables I	202
Table 6-17: Descriptive Statistics of Control Variables II	203
Table 6-18: Descriptive Statistics of Industry Split	204
Table 6-19: Overview of Hypotheses	205
Table 6-20: Results I: Simple Regression	209

Table 6-21: Results I: Difference in Means I	210
Table 6-22: Results I: Difference in Means II	211
Table 6-23: Results I: Multiple Regression	212
Table 6-24: Results I: Review of Hypotheses	214
Table 6-25: Results II: Simple Regression	216
Table 6-26: Results II: Correlation Analysis	218
Table 6-27: Results II: Difference in Means	220
Table 6-28: Results II: Review of Hypotheses	222
Table 6-29: Results III: Correlation Analysis I	225
Table 6-30: Results III: Correlation Analysis II	226
Table 6-31: Results III: Difference in Means	228
Table 6-32: Results III: Multiple Regression - Base Case (2003) . . .	232
Table 6-33: Results III: Multiple Regression - Base Case Extended . .	236
Table 6-34: Results III: Multiple Regression - Base Case (1998) . . .	239
Table 6-35: Results III: Multiple Regression - Base Case (1993) . . .	241
Table 6-36: Results III: Multiple Regression - Base Case (Pooled) . .	243
Table 6-37: Results III: Multiple Regression - Dynamic Ownership . .	245
Table 6-38: Results III: Descriptive Statistics of APM	249
Table 6-39: Results III: Multiple Regression - APM	250
Table 6-40: Results III: Multiple Regression - Endogeneity	253
Table 6-41: Results III: Multiple Regression - Multi-Collinearity . . .	257
Table 6-42: Results III: Review of Hypotheses	259
Table B-1: R I: Simple Regression	279
Table B-2: R I: Difference in Means I	280
Table B-3: R I: Difference in Means II	280
Table B-4: R I: Multiple Regression	281
Table C-1: R II: Simple Regression I	283
Table C-2: R II: Simple Regression II	284
Table C-3: R II: Simple Regression III	285
Table C-4: R II: Correlation Analysis	286
Table C-5: R II: Difference in Means (T-Test)	287
Table C-6: R II: Difference in Means (U-Test)	288
Table D-1: R III: Correlation Analysis I	290

Table D-2: R III: Correlation Analysis II	291
Table D-3: R III: Difference in Means (T-Test)	292
Table D-4: R III: Difference in Means (U-Test)	293
Table D-5: R III: Multiple Regression - Base Case (2003) I	294
Table D-6: R III: Multiple Regression - Base Case (2003) II	295
Table D-7: R III: Multiple Regression - Base Case Extended (2003) I	296
Table D-8: R III: Multiple Regression - Base Case Extended (2003) II	297
Table D-9: R III: Multiple Regression - Base Case (1998) I	298
Table D-10: R III: Multiple Regression - Base Case (1998) II	299
Table D-11: R III: Multiple Regression - Base Case (1993) I	300
Table D-12: R III: Multiple Regression - Base Case (1993) II	301
Table D-13: R III: Multiple Regression - Base Case (Pooled) I	302
Table D-14: R III: Multiple Regression - Base Case (Pooled) II	303
Table D-15: R III: Multiple Regression - Base Case (Beta) I	304
Table D-16: R III: Multiple Regression - Base Case (Beta) II	305
Table D-17: R III: Multiple Regression - Dynamic Ownership (2003) .	306
Table D-18: R III: Multiple Regression - Dynamic Ownership (1998) .	307
Table D-19: R III: Multiple Regression - Dynamic Ownership (Pooled)	308
Table E-1: R III: Multiple Regression - APM (2003)	310
Table E-2: R III: Multiple Regression - APM (1998)	311
Table E-3: R III: Multiple Regression - APM (1993)	312
Table E-4: R III: Multiple Regression - APM (Pooled)	313
Table E-5: R III: Multiple Regression - Endogeneity (Pooled)	314

List of Abbreviations

2SLS	Two-Stage Least Square
3SLS	Three-Stage Least Square
AG	Aktiengesellschaft (“Limited Liability Stock Corporation”)
AktG	Aktiengesetz (“Stock Corporation Act”)
AMEX	American Stock Exchange
ANOVA	Analysis of Variance
AnSVG	Anlegerschutzverbesserungsgesetz (“Investor Protection Improvement Act”)
APM	Alternative Performance Measures
BaFin	Bundesamt für Finanzdienstleistungsaufsicht (formerly: BaWe) (“Federal Financial Supervisory Authority”)
BaWe	Bundesaufsichtsamt für den Wertpapierhandel (now: BaFin) (“Federal Financial Supervisory Authority”)
BetrVG	Betriebsverfassungsgesetz (“Works Constitution Act”)
BilKoG	Bilanzkontrollgesetz (“Balance Sheet Auditing Law”)
BilReG	Bilanzrechtsreformgesetz (“Accounting Law Reform”)
bn	billion
CAR	Cumulative Abnormal Return
CEO	Chief Executive Officer
cf.	confer
CG	Corporate Governance
DCGK	Deutscher Corporate Governance Kodex (“German Corporate Governance Code”)
e.g.	exempli gratia (“for example”)
ECGN	European Corporate Governance Network
EDGAR	Electronic Data Gathering, Analysis, and Retrieval System
et al.	et alii (“and the following”)

EU	European Union
EUR	Euro
excl.	excluding
FCF	Free Cash Flow
FMFG	Finanzmarktförderungsgesetz (“Financial Market Promotion Law”)
GDP	Gross Domestic Product
GEX	German Entrepreneurial Index
GmbH	Gesellschaft mit beschränkter Haftung (“Limited Liability Company”)
HGB	Handelsgesetzbuch (“Commercial Code”)
i.e.	id est (“that is”)
IFRS	International Financial Reporting Standards
inc.	incorporated
incl.	including
InsO	Insolvenzordnung (“Insolvency Statute”)
InvG	Investmentgesetz (“Investment Act”)
IPO	Initial Public Offering
IV	Instrumental Variable
KAGG	Gesetz über Kapitalanlagegesellschaften (“Investment Companies Act”)
KapAEG	Kapitalaufnahmeerleichterungsgesetz (“Law to Ease Capital Procurement”)
KapInHaG	Kapitalmarktinformationshaftungsgesetz (“Law Governing Liability for Capital Market Information”)
KapMuG	Kapitalanleger-Musterverfahrensgesetz (“Capital Markets Model Case Act”)
KonTraG	Gesetz zur Kontrolle und Transparenz im Unternehmensbereich (“Law on Control and Transparency in the Corporate Sector”)

KStG	.....	Körperschaftsteuergesetz (“Corporation Tax Law”)
KuMaKV	...	Verordnung zur Konkretisierung des Verbotes der Kurs- und Marktpreismanipulation (“Regulation for the Concretion of the Prohibition of Stock Price and Market Price Manipulation”)
LBO	.....	Leveraged Buy-Out
LSX	.....	London Stock Exchange
m	.....	million
M&A	.....	Mergers & Acquisitions
MaKonV	....	Marktmanipulations-Konkretisierungsverordnung (“Regulations for the Concretion of the Prohibition of Market Manipulation”)
N.N.	.....	nomen nescio (“name unknown”)
Nasdaq	.....	National Association of Securities Dealers Automated Quotation System
NPV	.....	Net Present Value
NYSE	.....	New York Stock Exchange
OLS	.....	Ordinary Least Square
OSE	.....	Oslo Stock Exchange
p./ pp.	.....	page/ pages
p.a.	.....	per annum (“yearly”)
R&D	.....	Research and Development
S.p.A.	.....	Società per azioni
S&P 500	....	Standard & Poor’s 500 Stock Index
SEC	.....	Security Exchange Commission
SOX	.....	Sarbanes-Oxley Act
SSRN	.....	Social Sciences Research Network
StückAG	....	Stückaktiengesetz (“Law on Admission of Nonpar Shares”)
TransPuG	...	Transparenz- und Publizitätsgesetz (“Transparency and Disclosure Law”)

TUG	.....	Transparenzrichtlinie-Umsetzungsgesetz (“Transparency Directive Ratification Act”)
U.K.	.....	United Kingdom
U.S.	.....	United States of America
UBGG	.....	Gesetz über Unternehmensbeteiligungsgesellschaften (“Law on Private Equity Companies”)
UMAG	.....	Gesetz zur Unternehmensintegrität und Modernisierung des Anfechtungsrechts (“Act on Corporate Integrity and Modernization of Rescission Law”)
UmwG	.....	Umwandlungsgesetz (“Restructuring Act”)
USD	.....	United States Dollar
VAG	.....	Versicherungsaufsichtsgesetz (“German Insurance Supervision Act”)
VIF	.....	Variance Inflation Factor
VorstOG	....	Vorstandsvergütungs-Offenlegungsgesetz (“Management Compensation Disclosure Act”)
vs.	.....	versus
WpÜG	.....	Wertpapiererwerbs- und Übernahmegesetz (“Acquisition and Takeover Act”)
WpHG	.....	Wertpapierhandelsgesetz (“Securities Trading Act”)

1 Corporate Governance and the Role of Insider Ownership

1.1 Why Do Corporate Governance and Insider Ownership Matter?

In the aftermath of large corporate scandals as Enron, Inc. (U.S.), MCI Worldcom, Inc. (U.S.), Parmalat S.p.A. (Italy) and Bankgesellschaft Berlin AG (Germany), public discussion about *corporate governance* has increased dramatically. The consequences of individual managers' criminal and selfish behavior in such cases are dire and diverse: The wealth of shareholders and creditors of the affected companies was diminished, investors' trust in corporate managers has been ruined on a much broader scale and policy makers reacted by initiating and passing numerous regulations. For example, the introduction of the Sarbanes-Oxley Act (SOX) in the U.S. in 2002 aimed at preventing the recurrence of such cases but also imposes significant administrative costs.¹ Often, the occurrence of such scandals is reasoned by a *failure* of corporate governance. Though the diversity of definitions of corporate governance will be dealt with later on in section 2.1, it should be noted that corporate governance is commonly referred to in at least three different contexts: First, as already mentioned, in public discussion, the criminal and deceptive activities of corporate managers and the resulting corporate scandals are often attributed to a lack of adequate corporate governance. Second, in academic discussion, corporate governance primarily deals with the question of how to prevent corporate managers from misusing corporate resources and how to ensure that managers act in the best interest of those who provide funds, i.e. the shareholders. The second meaning, even though similar at the first glance, must be clearly differentiated from illegal practices and corporate scandals²: It usually assumes that managers act in accordance with law but managers are also seen as individuals which pursue their own — and not necessarily shareholders' — interests. Third, from an economics and law perspective, corporate governance often refers to the whole system of corporate governance, i.e. the institutional characteristics and regulations, which may vary significantly across countries. The study at hand³ will (almost) exclusively focus on the second aspect, i.e. the question of

¹ Cf. Ziener, Riecke, Hussla and Fockenbrock (2006), p. 2.

² See Helmig (2002), p. 2.

³ The terms *this study* or *this analysis* will always refer to the works at hand in the following if not stated otherwise.

how conflicts of interest between managers and shareholder can be prevented or resolved. Thereby, the role of ownership structures — and especially insider ownership — will be at the very focus. To begin with, the importance of corporate governance and ownership structures in general and for the German capital market will be highlighted.

Besides public discussion, also academic research extensively deals with corporate governance. A search at the Social Sciences Research Network (SSRN)⁴ for scientific papers submitted between August 2, 2005 and August 2, 2006 containing “Corporate Governance” in the title yields a total of 227 hits.⁵ Thereby, also the question of how corporate governance affects corporate performance has attracted broad attention: For example, GOMPERS, ISHII AND METRICK (2003) report that a trading strategy according to which firms with bad corporate governance, i.e. low shareholder rights (“dictatorship firms”), are sold and those with good corporate governance, i.e. strong shareholder rights (“democracy firms”), are bought yields abnormal annual returns of 8.5%.⁶ Similarly, in a recent survey among German listed companies 62.2% state that high standards in corporate governance have a “high” or “very high” importance for their stock market performance.⁷ But what constitutes good corporate governance or how can it be measured? The number of possible approaches is large: Some studies examine the compliance with (newly introduced) corporate governance codes while others analyze the effectiveness of single corporate governance mechanisms, e.g. supervisory board composition, compensation or control through the takeover market.⁸ A less obvious aspect refers to the ownership structures of public stock corporations, which have far-reaching implications for potential corporate governance issues.

A prominent, current example illustrating the importance of ownership structures in the case of public German stock corporations is the case of Deutsche Börse AG. In 2005, foreign institutional investors opposed the plans of the Chief Executive Officer (CEO) to acquire the London Stock Exchange (LSE). The

⁴ For more information refer to the website <http://papers.ssrn.com>.

⁵ Good surveys of corporate governance and overviews of the fast growing theoretical and empirical literature are provided amongst others by Shleifer and Vishny (1997); Farinha (2003); Gillan (2006).

⁶ See Gompers, Ishii and Metrick (2003), p. 144. Cf. Daouk, Lee and Ng (2006).

⁷ See ergo Kommunikation (2005), p. 51.

⁸ See section 2.2.

CEO initially dismissed institutional investors concerns, last but not least because of their historical comparatively minor weight. However, the institutional investors revolted effectively and finally achieved the denial of the takeover attempt as well as the resignation of the CEO and the supervisory board chairman.⁹ Besides outside blockholders, as in the case of Deutsche Börse AG, also the shareholdings of insiders, i.e. the members of the management and supervisory boards, might play an important role. In the case of significant insider ownership¹⁰ levels, corporate managers also become shareholders themselves and the typical conflicts of interest between both groups may be alleviated or the interests might even become aligned. Similar arguments also can be applied to the advantages of family firms, where management and ownership usually are still (partially) united in the hands of the (founding) family. Therefore, the discussion about family firms should be seen closely related to the discussion about the effects of insider ownership. For example, family firms are often perceived to be less short-term oriented and more focused on value than on mere growth.¹¹ Nevertheless, family firms sometimes are also characterized by a bad reputation as outside (minority) shareholder are supposed to become expropriated by potent family shareholders.¹² As empirical research about the relationship between ownership — and especially insider ownership — and performance is rare and ambiguous for the case of Germany, these arguments should be regarded as speculations in the first place.

The question of how insider dominated firms perform on the stock market becomes even more important if one argues that the ambiguity regarding their performance might play a role in the underdevelopment of the German capital market. This underdevelopment is a topic which has attracted widespread discussion in the past.¹³ Even though the importance of the German capital market has clearly increased in the last decade, a closer look at the actual figures still reveals a significant backlog demand in capital market development.

⁹ See Kamp and Krieger (2005), pp. 54-56.

¹⁰ *Insider ownership* refers to the absolute level of shareholdings by corporate insiders as members of the management and supervisory boards. It has to be differentiated from *insider trading* which refers to the fact that corporate managers buy or sell shares in their own company. The latter is problematic (and illegal) if the managers act on information which is not available to other (outsider) market participants.

¹¹ See footnote 880; Weishaupt (2005).

¹² Cf. Hajek (2004), pp. 114-117; Göcmen and Meyer (2004), p. 25; N.N. (2004), p. 35; Dostert (2004), p. 21; Gröneweg (2004), p. 22.

¹³ See Monopolkommission (1998), pp. 18-63.