

**German Securities Trading Act
(Wertpapierhandelsgesetz)**

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Part 1 Scope, definitions

Section 1 Scope

(1) This Act contains requirements relating to

1. the provision of investment services and ancillary investment services,
2. the provision of data reporting services and the organisation of data reporting services providers,
3. abusive conduct in on-exchange and OTC trading in financial instruments,
4. the marketing, distribution and sale of financial instruments and structured deposits,
5. the manufacturing of financial instruments for distribution,
6. the monitoring of company financial statements and publication of financial reports subject to the requirements of this Act,
7. changes in proportions of voting rights held by shareholders in listed companies and
8. the responsibilities and powers of the Federal Financial Supervisory Authority (BaFin) and the imposition of penalties in the event of violations of
 - a) the requirements of this Act,
 - b) Regulation (EC) No. 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies (OJ L 302 of 17 November 2009, page 1; L 350 of 29 December 2009, page 59; L 145 of 31 May 2011, page 57; L 267 of 6 September 2014, page 30), as most recently amended by Directive 2014/51/EU (OJ L 153 of 22 May 2014, page 1; L 108 of 28 April 2015, page 8,) as amended,
 - c) Regulation (EU) No. 236/2012 of the European Parliament and of the Council of 14 March 2012 on short selling and certain aspects of credit default swaps (OJ L 86 of 24 March 2012, page 1), as most recently amended by Regulation (EU) No. 909/2014 (OJ L 257 of 28 August 2014, page 1), as amended,
 - d) Regulation (EU) No. 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (OJ L 201 of 27 July 2012, page 1; L 321 of 30 November 2013, page 6), as most recently amended by Regulation (EU) 2015/2365 (OJ L 337 of 23 December 2015, page 1), as amended,
 - e) Regulation (EU) No. 596/2014 of the European Parliament and of the Council of 16 April 2014 on

market abuse (Market Abuse Regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC (OJ L 173 of 12 June 2014, page 1, L 287 of 21 October 2016, page 320; L 306 of 15 November 2016, page 43; L 348 of 21 December 2016, page 83), as most recently amended by Regulation (EU) 2016/1033 (OJ L 175 of 30 June 2016, page 1) as amended,

- f) Regulation (EU) No. 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No. 648/2012 (OJ L 173 of 12 June 2014, page 84; L 6 of 10 January 2015, page 6; L 270 of 15 October 2015, page 4), as amended,
- g) Regulation (EU) No. 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No. 236/2012 (OJ L 257 of 28 August 2014, page 1; L 349 of 21 December 2016, page 5), as most recently amended by Regulation (EU) 2016/1033 (OJ L 175 of 30 June 2016, page 1), as amended,
- h) Regulation (EU) No. 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs) (OJ L 352 of 9 December 2014, page 1; L 358 of 13 December 2014, page 50), as amended,
- i) Regulation (EU) 2015/2365 of the European Parliament and of the Council of 25 November 2015 on transparency of securities financing transactions and of reuse and amending Regulation (EU) No. 648/2012 (OJ L 337 of 23 December 2015, page 1), as amended,
- j) Regulation (EU) 2016/1011 of the European Parliament and of the Council of 8 June 2016 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds and amending Directives 2008/48/EC and 2014/17/EU and Regulation (EU) No. 596/2014 (OJ L 171 of 29 June 2016, page 1), as amended.

(2) ¹Unless otherwise specified, the requirements of Part 11 and sections 54 to 57 also apply to acts and omissions performed outside Germany, to the extent that they relate to

- 1. an issuer whose registered office is in Germany,
- 2. financial instruments traded on a German organised market, a German multilateral trading facility or a German organised trading facility, or
- 3. investment services or ancillary investment services offered in Germany.

²Sections 54 to 57 also apply to commodity derivatives traded outside a trading venue outside Germany that are economically equivalent to commodity derivatives that are traded on trading venues in Germany.

(3) ¹Units in and shares of open-ended investment funds within the meaning of section 1 (4) of the Investment Code (*Kapitalanlagegesetzbuch*) are to be disregarded when applying the requirements of Parts 6, 7 and 16.

²This only applies to Part 6 unless these relate to special AIFs within the meaning of section 1 (6) of the Investment Code.

Section 2 Definitions

(1) Securities within the meaning of this Act, whether or not represented by a certificate, mean all categories of transferable securities with the exception of instruments of payment that are by their nature negotiable on the financial markets, in particular

- 1. shares,
- 2. other investments equivalent to shares in German or foreign legal persons, partnerships and other entities, as well as depositary receipts in respect of shares,
- 3. debt securities,
 - a) in particular profit participation certificates, bearer bonds and order bonds as well as depositary receipts

in respect of debt securities;

- b) any other securities giving the right to acquire or sell securities specified in numbers 1 and 2 or giving rise to a cash settlement determined by reference to securities, currencies, interest rates or other yields, commodities, indices or measures; more detailed requirements are contained in Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive (OJ L 87 of 31 March 2017, page 1), as amended.

(2) Money market instruments within the meaning of this Act mean instruments that are commonly traded on the money market, in particular treasury bills, certificates of deposit, commercial papers and other similar instruments, provided that, in accordance with Article 11 of Delegated Regulation (EU) 2017/565,

- 1. they have a value that be determined at any time,
 - 2. they are not derivatives;
 - 3. they have a maturity at issuance of 397 days or less,
- unless they are instruments of payment.

(3) Derivatives within the meaning of this Act are

- 1. firm contracts or option contracts in the form of purchases or swaps or in other forms that are to be settled at a future date and whose values are derived directly or indirectly from the price or dimension of an underlying instrument (forward transactions) relating to the following underlying instruments:
 - a) securities or money market instruments,
 - b) foreign exchange, to the extent that the transaction does not meet the conditions set out in Article 10 of Delegated Regulation (EU) 2017/565, or units of account,
 - c) interest rates or other yields,
 - d) indices of the underlying instruments specified in a), b), c) or f), other financial indices or financial measures,
 - e) derivatives or
 - f) allowances, emission reduction units and certified emission reductions within the meaning of section 3 numbers 3, 6 and 16 of the Greenhouse Gas Emissions Trading Act (*Treibhausgas-Emissionshandelsgesetz*), to the extent that they may be held in the EU emissions trading registry (emission allowances);
- 2. forward transactions relating to commodities, freight rates, climatic or other physical variables, inflation rates or other economic variables or other assets, indices or measures as underlying instruments, provided that they
 - a) are cash-settled or grant the party to a contract the right to demand cash settlement without this right being contingent on default or another termination event;
 - b) are entered into on an organised market or a multilateral or organised trading liability and are not wholesale energy products within the meaning of subsection 20 that are traded on an organised trading facility and must be physically settled, or
 - c) that have characteristics of other derivative contracts within the meaning of Article 7 of Delegated Regulation (EU) 2017/565 and are not for commercial purposes,and are not spot contracts within the meaning of Article 7 of Delegated Regulation (EU) 2017/565;
- 3. financial contracts for differences;
- 4. firm contracts or option contracts in the form of purchases or swaps or in other forms that are to be settled at a future date and are used to transfer credit risk (credit derivatives);
- 5. forward transactions relating to the underlying instruments referred to in Article 8 of Delegated Regulation (EU) 2017/565 if they satisfy the conditions of number 2.

(2a) (Repealed)

(4) Financial instruments within the meaning of this Act mean

1. securities as defined in subsection (1),
2. units in investment funds as defined in section 1 (1) of the Investment Code (*Kapitalanlagegesetzbuch*),
3. money market instruments as defined in subsection (2),
4. derivative transactions as defined in subsection (3),
5. emission allowances,
6. rights to subscribe for securities and
7. investment products within the meaning of section 1 (2) of the Capital Investment Act (*Vermögensanlagegesetz*), with the exception of shares of a cooperative within the meaning of section 1 of the Cooperatives Act (*Genossenschaftsgesetz*) and registered bonds with an agreed fixed maturity and an agreed fixed positive interest rate that cannot be modified, for which the capital invested is repaid in full at the full principal amount at the maturity date without crediting any interest, and that are issued by a CRR credit institution within the meaning of section 1 (3d) sentence 1 of the Banking Act (*Kreditwesengesetz*) that has been authorised under section 32 (1) of the Banking Act, unless the capital invested in the bonds is not repaid until all non-subordinated creditors have been satisfied in the event that insolvency proceedings are opened relating to the assets of the institution or in the event of the liquidation of the institution.

(5) Commodities within the meaning of this Act mean economic goods of a fungible nature that are capable of being delivered; they include metals, ores and alloys, agricultural products and energy, such as electricity.

(6) A spot commodity contract within the meaning of this Act means a contract within the meaning of Article 3(1) number 15 of Regulation (EU) No. 596/2014.

(7) A benchmark within the meaning of this Act means any rate, index or figure within the meaning of Article 3(1) number 29 of Regulation (EU) No. 596/2014.

(8) ¹Investment services within the meaning of this Act mean

1. buying or selling financial instruments in the undertaking's own name for account of third parties (principal broking services),
2. the
 - a) continuous offer to buy and sell financial instruments on the financial markets on own account against the undertaking's proprietary capital at prices defined by the undertaking (market making),
 - b) trading on own account on an organised, frequent systematic and substantial basis outside an organised market or a multilateral or organised trading facility, if client orders are executed outside a regulated market or a multilateral or organised trading facility without operating a multilateral system (systematic internaliser),
 - c) buying or selling of financial instruments for own account as a service for third parties (proprietary trading) or
 - d) buying or selling of financial instruments for own account as a direct or indirect participant in a German organised market or a multilateral or organised trading facility by means of a high-frequency algorithmic trading technique within the meaning of subsection (44), including without the provision of a service for third parties (high-frequency trading),
3. buying or selling financial instruments in the name of a third party for the account of third parties (contract broking),
4. brokering transactions related to buying and selling financial instruments (investment broking),
5. underwriting financial instruments at the undertaking's own risk for placement in the market or assuming equivalent guarantees (underwriting business),
6. placing financial instruments without a firm commitment basis (placement business),

7. managing one or more portfolios of assets invested in financial instruments for third parties on a discretionary basis (portfolio management),
8. operating a multilateral system which, in the system and in accordance with non-discretionary provisions, brings together multiple third-party buying and selling interests in financial instruments in a way that results in a contract to buy these financial instruments (operating a multilateral trading facility),
9. operating a multilateral facility that is not an organised market or an multilateral trading facility and in which multiple third-party buying and selling interests in bonds, structured finance products, emission allowances or derivatives are able to interact in the system in a way that results in a contract to buy these financial instruments (operating an organised trading facility),
10. providing personal recommendations within the meaning of Article 9 of Delegated Regulation (EU) 2017/565 relating to transactions in certain financial instruments to clients or their representatives insofar as the recommendation is based on a consideration of the investor's personal circumstances or is presented as being suitable for the investor and is not provided exclusively through distribution channels or for the general public (investment advice).

²Principal broking services, proprietary trading and contract broking include the conclusion of agreements to sell financial instruments issued by an investment services enterprise or a credit institution at the moment of their issuance. ³The issue of whether there is frequent systematic trading is measured by the number of over-the-counter (OTC) trades in a financial instrument carried out by the investment services enterprise on own account when executing client orders. ⁴The issue of whether trading is on a substantial basis is measured either by the size of the OTC trading carried out by the investment services enterprise in relation to the total trading of the investment services enterprise in a specific financial instrument or by the size of the OTC trading carried out by the investment services enterprise in relation to the total trading in the European Union in a specific financial instrument; more detailed requirements are contained in Articles 12 to 17 of Delegated Regulation (EU) 2017/565. ⁵The definition of a systematic internaliser applies only where the pre-set limit for frequent and systematic basis and for a substantial basis are both crossed, or whether an investment services enterprise chooses to opt-in under the systematic internaliser regime and has applied to BaFin for authorisation to act as a systematic internaliser. ⁶Buying or selling financial instruments for own account that is not a service for third parties within the meaning of sentence 1 no. 2 is also considered to be an investment service (proprietary business). ⁷Investment management that requires authorisation under section 1 (1a) sentence 2 no. 11 of the Banking Act is considered to be equivalent to portfolio management in respect of sections 22, 63 to 83 and 85 to 92 of this Act and to Articles 20 and 1 of Commission Regulation (EC) No. 2017/565.

(9) Ancillary investment services within the meaning of this Act mean

1. safekeeping and administration of financial instruments for the account of third parties, including custodianship and related services such as cash or collateral management, and excluding providing and maintaining securities accounts at the top tier level (central maintenance service) under Section A number 2 of the Annex to Regulation (EU) No. 909/2014 (safe custody business),
2. granting credits or loans to others to allow them to carry out investment services, where the enterprise granting the credit or loan is involved in these transactions,
3. advice to undertakings on capital structure and industrial strategy, and advice and services offerings relating to mergers and acquisitions,
4. foreign exchange transactions that are connected to investment services,
5. producing or distributing recommendations or suggestions for investment strategies within the meaning of Article 3(1) number 34 of Regulation (EU) No. 596/2014 (investment strategy recommendation) or investment recommendations within the meaning of Article 3(1) number 35 of Regulation (EU) No. 596/2014 (investment recommendation),
6. services related to underwriting business,
7. services related to an underlying instrument within the meaning of subsection (2) no. 2 or no. 5 and that are connected to investment services or ancillary investment services.

(10) Investment services enterprises within the meaning of this Act mean credit institutions, financial services institutions and undertakings operating under section 53 (1) sentence 1 of the Banking Act that provide investment services alone or in connection with ancillary investment services on a commercial basis or on a scale that requires commercially organised business operations.

(11) An organised market within the meaning of this Act means a multilateral system operated or managed in Germany, another Member State of the European Union or another signatory state to the Agreement on the European Economic Area that is authorised, regulated and supervised by public authorities and that, in the system and in accordance with non-discretionary provisions, brings together or facilitates the bringing together of multiple third-party buying and selling interests in financial instruments admitted to trading on such a system in a way that results in a contract to buy or sell these financial instruments.

(12) A third country within the meaning of this Act means a country that is neither a Member State of the European Union (Member State) nor a signatory state to the Agreement on the European Economic Area.

(13) Issuers whose home country is the Federal Republic of Germany mean

1. issuers of debt securities the denomination per unit of which is less than EUR 1,000 or the equivalent amount in another currency at the date of issue, or of shares,
 - a) whose registered office is in Germany and whose securities are admitted to trading on an organised market in Germany or in another Member State of the European Union or another signatory state to the Agreement on the European Economic Area, or
 - b) whose registered office is in a third country and whose securities are admitted to trading on an organised market in Germany, and that have opted for the Federal Republic of Germany as their home country under section 4 (1),
2. issuers that have issued financial instruments other than those specified in number 1 and
 - a) whose registered office is in Germany and whose financial instruments are admitted to trading on an organised market in Germany or in other Member States of the European Union or in other signatory states to the Agreement on the European Economic Area, or
 - b) whose registered office is not in Germany and whose financial instruments are admitted to trading on an organised market in Germanyand that have opted for the Federal Republic of Germany as their home country under section 4 (2),
3. issuers that can opt for the Federal Republic of Germany as their home country under number 1 (b) or number 2 and whose financial instruments are admitted to trading on an organised market in Germany, provided they have not effectively opted for a home country under section 4 in conjunction with section 5 or under corresponding requirements of other Member States of the European Union or other signatory states to the Agreement on the European Economic Area.

(14) Domestic issuers mean

1. issuers whose home country is the Federal Republic of Germany, with the exception of issuers whose securities are not admitted to trading in Germany but only in another Member State of the European Union or another signatory state to the Agreement on the European Economic Area, to the extent that they are subject in that state to the disclosure and notification requirements under Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC (OJ EU no. L 390 page 38), and
2. issuers whose home country is not the Federal Republic of Germany but another Member State of the European Union or another signatory state to the Agreement on the European Economic Area and whose securities are only admitted to trading on an organised market in Germany.

(15) MTF issuers within the meaning of this Act are issuers of financial instruments

1. whose registered office is in Germany and that have requested or approved admission of their financial instruments to trading on a multilateral trading facility in Germany or in another Member State of the European Union (Member State) or another signatory state to the Agreement on the European Economic Area, provided that these financial instruments are only traded on multilateral trading facilities, with the exception of issuers whose financial instruments are not admitted to trading in Germany, but only in another Member State or another signatory state to the Agreement on the European Economic Area, if they are subject in that other country to the requirements of Article 21 of Directive 2004/109/EC, or
2. whose registered office is not in Germany and that have requested or approved admission of their financial instruments to trading on a multilateral trading facility in Germany, provided that these financial instruments

are only traded on multilateral trading facilities in Germany.

(16) OTF issuers within the meaning of this Act are issuers of financial instruments

1. whose registered office is in Germany and that have requested or approved admission of their financial instruments to trading on an organised trading facility in Germany or in another Member State or another signatory state to the Agreement on the European Economic Area, provided that these financial instruments are only traded on organised trading facilities, with the exception of issuers whose financial instruments are not admitted to trading in Germany, but only in another Member State or another signatory state to the Agreement on the European Economic Area, to the extent that they are subject in that country to the requirements of Article 21 of Directive 2004/109/EC, or
2. whose registered office is not in Germany and that have only requested or approved admission of their financial instruments to trading on an organised trading facility in Germany.

(17) A home Member State within the meaning of this Act means

1. in the case of an investment services enterprise,
 - a) if it is a natural person, the Member State in which the head office of the investment services enterprise is situated;
 - b) if it is a legal person, the Member State in which its registered office is situated;
 - c) if it is a legal person for which no registered office is designated under the national law applicable to the investment services enterprise, the Member State in which its head office is situated;
2. in the case of an organised market, the Member State in which it is registered or authorised or, if no registered office is designated for it under the law of that Member State, the Member State in which its head office is situated;
3. in the case of data reporting services provider,
 - a) if it is a natural person, the Member State in which the head office of the investment services enterprise is situated;
 - b) if it is a legal person, the Member State in which the registered office of the data reporting services provider is situated;
 - c) if it is a legal person for which no registered office is designated under the national law applicable to the data reporting services provider, the Member State in which its head office is situated.

(18) A host Member State within the meaning of this Act means

1. in the case of an investment services enterprise, the Member State in which it has a branch or provides investment services under the freedom to provide cross-border services;
2. in the case of an organised market, the Member State in which it provides appropriate arrangements so as to facilitate access to trading on its system by market participants established in that same Member State.

(19) ¹A structured deposit means a deposit within the meaning of section 2 (3) sentences 1 and 2 of the Deposit Guarantee Act (*Einlagensicherungsgesetz*) that is fully repayable at maturity on terms under which interest or a premium will be paid or is at risk according to a formula that depends on particular on

1. an index or a combination of indices,
2. a financial instrument or combination of financial instruments,
3. a commodity or combination of commodities or other physical or non-physical non-fungible assets, or
4. a foreign exchange rate or combination of foreign exchange rates.

²Variable rate deposits whose return is directly linked to an interest rate index, in particular Euribor or Libor, are not structured deposits.

(20) A wholesale energy product within the meaning of this Act means a wholesale energy product within the meaning of Article 2 number 4 of Regulation (EU) No. 1227/2011 of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency (OJ L 326 of 8 December

2011, page 1) and Articles 5 and 6 of Delegated Regulation (EU) 2017/565.

(21) A multilateral system within the meaning of this Act means any system or facility in which multiple third-party buying and selling trading interests in financial instruments are able to interact in the system.

(22) A trading venue within the meaning of this Act means an organised market, a multilateral trading facility or an organised trading facility.

(23) ¹A liquid market within the meaning of this Act means a market for a financial instrument or a class of financial instruments,

1. where there are ready and willing buyers and sellers on a continuous basis,
2. assessed in accordance with the following criteria, taking into consideration the specific market structures of the particular financial instrument or of the particular class of financial instruments:
 - a) the average frequency and size of transactions over a range of market conditions, having regard to the nature and life cycle of products within the class of financial instrument;
 - b) the number and type of market participants, including the ratio of market participants to traded financial instruments in a particular financial instrument;
 - c) the average size of spreads, where available.

²More detailed requirements are contained in Articles 1 to 4 of Commission Delegated Regulation (EU) 2017/567 of 18 May 2016 supplementing Regulation (EU) No. 600/2014 of the European Parliament and of the Council with regard to definitions, transparency, portfolio compression and supervisory measures on product intervention and positions (OJ L 87 of 31 March 3 2017, page 90), as amended.

(24) ¹A branch within the meaning of this Act means a place of business

1. other than the head office,
2. which is part of an investment services enterprise, which has no legal personality and
3. which provides investment services and may also perform ancillary investment services for which the investment services enterprise has been authorised.

²All the places of business set up in the same Member State by an investment services enterprise whose head office is in another Member State will be regarded as a single branch.

(25) Unless Parts 6 and 16 contain specific requirements, a parent undertaking within the meaning of this Act means a parent undertaking within the meaning of Article 2(9) and Article 22 of Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29 June 2013, page 19).

(26) Unless Parts 6 and 16 contain specific requirements, a subsidiary within the meaning of this Act means a subsidiary undertaking within the meaning of Article 2(10) and Article 22 of Directive 2013/34/EU, including any subsidiary of a subsidiary of an ultimate parent undertaking.

(27) A group within the meaning of this Act means a group as defined in Article 2(11) of Directive 2013/34/EU.

(28) A close link within the meaning of this Act means a situation in which two or more natural or legal persons are linked by:

1. participation in the form of ownership, direct or by way of control, of 20 per cent or more of the voting rights or shares of an undertaking;
2. control in the form of a relationship between a parent undertaking and a subsidiary in all the cases referred to in Article 22(1) and (2) of Directive 2013/34/EU, or a similar relationship between any natural or legal person and an undertaking; any subsidiary of a subsidiary is also considered to be a subsidiary of the parent undertaking that is at the head of those undertakings;
3. a permanent link of both or all of persons to the same third person by a control relationship.

(29) matched principal trading within the meaning of this Act means a transaction where

1. the facilitator interposes itself between the buyer and the seller in such a way that it is never exposed to market risk throughout the execution of the transaction,
2. with buy and sell transactions executed simultaneously, and
3. where the transaction is concluded at prices where the facilitator makes no profit or loss, other than a previously disclosed commission, fee or charge.

(30) ¹Direct electronic access within the meaning of this Act means an arrangement where a member of or participant on or client of a trading venue permits a person to use its trading code so the person can electronically transmit orders relating to a financial instrument directly to the trading venue, other than the cases specified in Article 20 of Delegated Regulation (EU) 2017/565. ²Direct electronic access also includes arrangements which involve the use by a person of the infrastructure of or any connecting system provided by the member or participant or client to transmit the orders (direct market access) and arrangements where such an infrastructure is not used by a person (sponsored access).

(31) Depositary receipts within the meaning of this Act mean securities that are negotiable on the capital market and that represent ownership of the securities of an issuer whose registered office is outside Germany while being able to be admitted to trading on an organised market and traded independently of the securities of an issuer whose registered office is outside Germany.

(32) An exchange-traded fund within the meaning of this fund means an investment fund within the meaning of the Investment Code of which at least one unit or share class is traded throughout the day on at least one trading venue and with at least one market maker which takes action to ensure that the price of its units or shares on the trading venue does not vary significantly from its net asset value and, where applicable, from its indicative net asset value.

(33) A certificate within the meaning of this Act means a security that is negotiable on the capital market and that in case of a repayment of investment by the issuer is ranked above shares but below unsecured bond instruments and other similar instruments;

(34) A structured finance product within the meaning of this Act means a security created to securitise and transfer credit risk associated with a selected pool of financial assets and that entitles the security holder to receive regular payments that depend on the cash flow from the underlying assets.

(35) Derivatives within the meaning of this Act mean derivative transactions within the meaning of subsection (3) and securities within the meaning of subsection (1) number 3 b).

(36) Commodity derivatives within the meaning of this Act mean financial instruments as defined in Article 2(1) number 30 of Regulation (EU) No. 600/2014.

(37) An approved publication arrangement within the meaning of this Act means an undertaking that publishes trade reports within the meaning of Articles 20 and 21 of Regulation (EU) No. 600/2014 on behalf of investment services enterprises.

(38) A consolidated tape provider within the meaning of this Act means an undertaking authorised to provide the service of collecting trade reports for financial instruments listed in Articles 6, 7, 10, 12 and 13, 20 and 21 of Regulation (EU) No. 600/2014 from regulated markets, multilateral and organised trading facilities and approved publication arrangements, and consolidating them into a continuous electronic live data stream providing price and volume data for each individual financial instrument.

(39) An approved reporting mechanism within the meaning of this Act means a undertaking authorised to provide the service of reporting details of transactions to competent authorities or to the European Securities and Markets Authority on behalf of investment services enterprises.

(40) A data reporting services provider within the meaning of this Act means

1. an approved publication arrangement,
2. a consolidated tape provider or
3. an approved reporting mechanism.

(41) A third-country undertaking within the meaning of this Act means an undertaking that would be an investment services enterprise if its registered office was in the European Economic Area.

(42) Sovereign issuers within the meaning of this Act mean any of the following that issue debt instruments:

1. the European Union,
2. a Member State, including a government department, an agency or a special purpose vehicle of the Member State;
3. in the case of a federal Member State, a member of the federation.
4. a special purpose vehicle for several Member States,
5. an international financial institution established by several Member States which has the purpose of mobilising funding and providing financial assistance to the benefit of its members, to the extent they are experiencing or threatened by severe financing problems,
6. the European Investment Bank.

(43) ¹A durable medium means any instrument that

1. enables a client to store information addressed personally to that client in a way accessible for future reference and for a period of time adequate for the purposes of the information, and
2. allows the unchanged reproduction of the information stored.

²More detailed requirements are contained in Article 3 of Delegated Regulation (EU) 2017/565.

(44) A high frequency algorithmic trading technique within the meaning of this Act means algorithmic trading within the meaning of section 80 (2) sentence 1 characterised by

1. infrastructure intended to minimise network and other types of latencies, including at least one of the following facilities for algorithmic order entry: co-location, proximity hosting or high-speed direct electronic access,
2. system capability to initiate, generate, route or executed an order without human intervention within the meaning of Article 18 of Delegated Regulation (EU) 2017/565 and
3. a high message intra-day rate within the meaning of Article 19 of Delegated Regulation (EU) 2017/565 that constitutes orders, quotes or cancellations.

(45) A central counterparty within the meaning of this Act means an undertaking within the meaning of Article 2 number 1 of Commission Regulation (EC) No. 648/2012, as amended.

(46) ¹Small and medium-sized enterprises within the meaning of this Act mean companies that had an average market capitalisation of less than EUR 200 million on the basis of end-year quotes for the previous three calendar years. ²More detailed requirements are contained in Articles 77 to 79 of Delegated Regulation (EU) 2017/565.

(47) Sovereign debt within the meaning of this Act means a debt instrument issued by a sovereign issuer.

(48) A PRIIP within the meaning of this Act means a product defined in Article 4 number 1 of Regulation (EU) No. 1286/2014.

(49) A PRIIP within the meaning of this Act means a product defined in Article 4 number 3 of Regulation (EU) No. 1286/2014.

Section 3 Exemptions; power to issue statutory orders

(1) ¹The following are not considered to be investment services enterprises:

1. undertakings that provide investment services within the meaning of section 2 (1) sentence 1 solely for their parent undertaking or their subsidiaries or sister companies within the meaning of Article 4 (1) numbers 15 and 16 of Regulation (EU) No. 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No. 648/2012 (OJ L 176 of 27 June 2013, page 1) and of section 1 (7) of the Banking Act,
2. undertakings whose investment services provided for third parties consist only of the administration of an employee investment scheme in their own undertaking or in affiliated undertakings;
3. enterprises that provide investment services solely in line with both number 1 and number 2,
4. insurance undertakings under private or public law that carry out the activities specified in Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ L 335 of 17 December 2009, page 1; L 219 of 25 July 2014, page 66; L 108 of 28 April 2015, page 8), as most recently amended by Directive 2014/51/EU (OJ L 153 of 22 May 2014, page 1; L 108 of 28 April 2015, page 8),
5. the public debt management of the Federal Government or one of its funds, of a Federal State, of another Member State of the European Union or another signatory state to the Agreement on the European Economic Area, the Deutsche Bundesbank and other members of the European System of Central Banks or the central banks of the other signatory states, and international financial institutions established by two or more Member States to mobilise funding and provide financial assistance to the benefit of those states if Member States are experiencing or threatened by severe financing problems,
6. members of independent professions who only occasionally provide investment services within the meaning of Article 4 of Delegated Regulation (EU) 2017/565 as self-employed persons on behalf of clients, and who are members of a professional organisation in the form of a corporate body under public law whose professional rules and regulations do not prohibit the provision of investment services,
7. undertakings that provide investment services to third parties that consist solely of investment advice and investment broking between clients and
 - a) institutions within the meaning of the Banking Act,
 - b) institutions or financial undertakings whose registered office is in another state of the European Economic Area and that fulfil the requirements specified in section 53b (1) sentence 1 or subsection (7) of the Banking Act;
 - c) undertakings that are considered to be equivalent or are exempted on the basis of a statutory order under section 53c of the Banking Act,
 - d) asset management companies, externally managed investment companies, EU management companies or non-German AIF management companies, or
 - e) providers or issuers of investment products within the meaning of section 1 (2) of the Capital Investment Act (*Vermögensanlagengesetz*),

to the extent that these investment services are limited to units or shares of German investment funds that are issued by an asset management company that is authorised under section 7 or section 97 (1) of the Investment Act (*Investmentgesetz*) in the version in force until 21 July 2013 and that continues to be in force for the period set out in section 345 (2) sentence 1, subsection (3) sentence 2, in conjunction with subsection (2) sentence 1, of subsection (4) sentence 1 of the Investment Code, or that is authorised under sections 20, 21 or sections 20, 22 of the Investment Code, or that are issued by an EU management company that is authorised under Article 6 of Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (OJ L 302 of 17 November 2009, page 32, L 269 of 13 November 2010, page 27), as amended most recently by Directive 2014/91/EU (OJ L 257 of 28 August 2014, page 186), or under Article 6 of Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No. 1060/2009 and (EU) No. 1095/2010 (OJ L 174 of 1 July 2011, page 1, L 115 of 27 April 2012, page 35), as amended most recently by Directive 2014/65/EU (OJ L 173 of 12 June 2014, page 349, L 74 of 18 March 2015, page 38), or to units or shares of EU investment funds or non-German AIFs that are permitted to be distributed under the Investment Code, with the exception of AIFs that are permitted to be distributed under section 330a of the Investment Code, or are limited to investment products within the meaning of section 1 (2) of the Capital Investment Act that are being offered to the public for the first time and to the extent that

- the undertakings are not authorised to obtain ownership or possession of money or shares from clients in the course of providing these investment services, unless the undertaking has requested and received a corresponding authorisation under section 32 (1) of the Banking Act; units or shares in hedge funds with the meaning of section 283 of the Investment Code are not considered to be units in investment funds within the meaning of this provision,
8. undertakings that deal on own account or are market makers in commodity derivatives, emission allowances or derivatives on emission allowances or exclusively provide investment services within the meaning of section 2 (8) numbers 1 and 3 to 10 to the customers and suppliers of their main business, provided that
 - a) for each of these cases individually and on an aggregate basis this is an ancillary activity when considered on a group basis within the meaning of Commission Delegated Regulation (EU) 2017/592 of 1 December 2016 supplementing Directive 2014/ 65 65/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the criteria to establish when an activity is considered to be ancillary to the main business (OJ L 87 of 31 March 2017, page 492), as amended,
 - b) the main activity of the undertaking is not the provision of investment services within the meaning of section 2 (8) sentence 1 numbers 1, 2 b) to d), numbers 3 to 10 or sentence 2, or acting as market maker in relation to commodities, or the provision of banking business within the meaning of section 1 (1) sentence 2 of the Banking Act,
 - c) the undertaking does not apply a high-frequency algorithmic trading technique, and
 - d) the undertaking has notified BaFin under section 2 (1) sentences 3 and 4 or subsection (6) sentences 3 and 4 of the Banking Act that it makes use of the exemption under this number,
 9. undertakings that provide investment services exclusively in commodity derivatives, emission allowances or derivatives on emission allowances for the sole purpose of hedging the commercial risks of their clients, where those clients
 - a) are exclusively local electricity undertakings as defined in Article 2(1) of Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC (OJ L 211 of 14 August 2009, page 55) or natural gas undertakings under Article 2 number 1 of Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC (OJ L 211 of 14 August 2009, page 94),
 - b) jointly hold 100 per cent of the capital or of the voting rights of those undertakings, exercise joint control and
 - c) are exempt under number 8 if they carry out those investment services themselves,
 10. undertakings that provide investment services exclusively in emission allowances or derivatives on emission allowances for the sole purpose of hedging the commercial risks of their clients, where those clients
 - a) are exclusively operators as defined in section 3 number 2 of the Greenhouse Gas Emissions Trading Act (*Treibhausgas-Emissionshandelsgesetz*),
 - b) jointly hold 100 per cent of the capital or of the voting rights of those undertakings, exercise joint control and
 - c) are exempt under number 8 if they carry out those investment services themselves,
 11. undertakings that solely deal on own account in financial instruments other than commodity derivatives, emission allowances or derivatives on emission allowances, that do not provide any other investment services, including any other investment activities, in financial instruments other than commodity derivatives, emission allowances or derivatives on emission allowances, unless
 - a) those undertakings are market makers,
 - b) the undertakings are either members of or participants in an organised market or multilateral trading facility or have direct electronic access to a trading venue, with the exception of non-financial entities that conduct transactions on a trading venue that are deemed to be objectively measurable as reducing risks directly relating to the commercial activity or treasury financing activity,

- d) the undertakings apply a high-frequency algorithmic trading technique, or
- d) the undertakings deal on own account when executing client orders,
- 12. undertakings that, in the course of providing another professional activity, provide investment services consisting solely of investment advice that is not specifically remunerated,
- 13. stock exchange operators or operators of organised markets that do not provide any other investment services within the meaning of section 2 (8) sentence 1 beside the operation of a multilateral or organised trading facility.
- 14. undertakings that provide placement business solely for providers or issuers of investment products within the meaning of section 1 (2) of the Capital Investment Act,
- 15. operators within the meaning of section 3 number 4 of the Greenhouse Gas Emissions Trading Act if, when trading emission allowances, they
 - a) deal solely on own account,
 - b) do not offer any investment broking or contract broking,
 - c) do not apply a high-frequency algorithmic trading technique and
 - d) do not provide any other investment services,
- 16. transmission system operators as defined in Article 2 number 4 of Directive 2009/72/EC or Article 2 number 4 of Directive 2009/73/EG, when carrying out their tasks under those Directives, under Regulation (EC) No. 714/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the network for cross-border exchanges in electricity and repealing Regulation (EC) No. 1228/2003 (EG) (OJ L 211 of 14 August 2009, page 15), as most recently amended by Regulation (EU) No. 543/2013 (OJ L 163 of 15 June 2013, page 1), under Regulation (EC) No. 715/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the natural gas transmission networks and repealing Regulation (EC) No. 1775/2005 (OJ L 211 of 14 August 2009, page 36; L 229 of 1 September 2009, page 29; L 309 of 24 November 2009, page 87), as most recently amended by Decision (EU) 2015/715 (OJ L 114 of 5 May 2015, page 9), and under network codes or guidelines adopted under those Regulations, any persons acting as service providers on their behalf to carry out the tasks of a transmission system operator under those legislative acts and other network codes or guidelines adopted under those Regulations, as well as any operator or administrator of an energy balancing mechanism, pipeline network or system to keep in balance the supplies and uses of energy when carrying out such tasks, to the extent that they provide the investment service relating to commodity derivatives and provided they do not operate either a secondary market or a platform for secondary trading in financial transmission rights,
- 17. central securities depositories as defined in Article 2(1) number 1 of Regulation (EU) No. 909/2014, where they provide the services specified in Sections A and B of the Annex to that Regulation and
- 18. asset management companies, EU management companies and externally managed investment companies, where they only provide collective investment management services or, in addition to collective investment management services, solely the services and ancillary services specified in section 20 (2) and 3 of the Investment Code.

²Undertakings that satisfy the conditions set out in sentence 1 numbers 8 to 10 must inform BaFin of this annually.

(2) ¹An undertaking that is a tied agent within the meaning of section 2 (10) sentence 1 of the Banking Act and provides only contract broking, investment broking, placing financial instruments without a firm commitment basis or investment advice as investment services, is not considered to be an investment services enterprise. ²Its business activities are attributed to the institution or undertaking for the account and under the liability of which it provides its services.

(3) ¹Sections 77, 78 and 80 (2) and (3) apply, with the necessary modifications, to undertakings that are members of or participants in organised markets or multilateral trading facilities and that make use of the exemption under subsection (1) numbers 4, 8 or 15. ²Sections 22, 63 to 83 and 85 to 92 apply, with the necessary modifications, to undertakings that make use of an exemption under subsection (1) numbers 9 or 10.

(4) ¹The Federal Ministry of Finance can, by way of a statutory order, adopt more detailed requirements

governing the timing, content and format of the notification to be submitted under subsection (1) sentence 2 as well as the maintenance of a public register of the notifying undertakings. ²The Federal Ministry of Finance may delegate this authority to BaFin by way of a statutory order.

Section 4 Choice of home country; power to issue statutory orders

(1) An issuer within the meaning of section 2 (13) number 1 b) can opt for the Federal Republic of Germany as its home country if

1. it has not already opted for another country as its home country or
2. it previously opted for another country as its home country but has no longer had its securities admitted to trading on any organised market in that country.

The election applies until

1. the issuer's securities are no longer admitted to trading on an organised market in Germany, but instead are admitted to trading on an organised market in another Member State of the European Union or signatory state to the Agreement on the European Economic Area and the issuer opts for a new home country, or
2. the issuer's securities are no longer admitted to trading on an organised market in a Member State of the European Union or in another signatory state to the Agreement on the European Economic Area.

(2) An issuer within the meaning of section 2 (13) number 2 can opt for the Federal Republic of Germany as its home country if

1. it did not opt for another country as its home country in the past three years or
2. it previously opted for another country as its home country but has no longer had its financial instruments admitted to trading on any organised market in that country.

The election applies until

1. the issuer issues securities within the meaning of section 2 (13) number 1 that are admitted to trading on an organised market in a Member State of the European Union or in another signatory state to the Agreement on the European Economic Area,
2. the issuer's financial instruments are no longer admitted to trading on an organised market in a Member State of the European Union or in another signatory state to the Agreement on the European Economic Area or
3. the issuer opts for a new home country under sentence 3.

An issuer within the meaning of section 2 (13) number 2 that has opted for the Federal Republic of Germany as its home country can opt for a new home country if

1. the issuer's financial instruments are no longer admitted to trading on an organised market in Germany, but instead are admitted to trading on an organised market in another Member State of the European Union or signatory state to the Agreement on the European Economic Area, or
2. the issuer's financial instruments are admitted to trading on an organised market in another Member State of the European Union or in another signatory state to the Agreement on the European Economic Area and at least three years have elapsed since the election of the Federal Republic of Germany as the home country.

(3) The election of a home country becomes effective when it is published under section 5.

(4) The Federal Ministry of Finance can, by way of a statutory order not requiring the consent of the Bundesrat, adopt more detailed requirements governing the choice of home country.

Section 5 Disclosure of the home country; power to issue statutory orders

(1) ¹An issuer whose home country within the meaning of section 2 (11) number 1 a) is the Federal Republic of Germany, or who has opted for the Federal Republic of Germany as its home country under section 4 (1) or (2), must disclose this fact without undue delay. ²In respect of the information that the Federal Republic of Germany is its home country,

1. it must also provide that information to the Company Register under section 8b of the German Commercial Code (*Handelsgesetzbuch*) for storage and
2. notify it to the following authorities without undue delay:
 - a) the Federal Financial Supervisory Authority (BaFin),
 - b) if its registered office is in another Member State of the European Union or another signatory state to the Agreement on the European Economic Area, also to the competent authority in that country within the meaning of Article 24 Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC (OJ EU no. L 390 of 31 December 2004, page 38), as amended by Directive 2001/50/EU (OJ L 294 of 6 November 2013, p. 13), and
 - c) if its financial instruments are admitted to trading on an organised market in another Member State of the European Union or in another signatory state to the Agreement on the European Economic Area, also to the competent authority in that country within the meaning of Article 24 of Directive 2004/109/EC.

(2) The Federal Ministry of Finance can, by way of a statutory order not requiring the consent of the Bundesrat, adopt more detailed requirements governing the choice of home country.

Part 2 Federal Financial Supervisory Authority (BaFin)

Section 6 BaFin's functions and general powers

(1) ¹BaFin supervises the requirements of this Act. ²Under the terms of the functions assigned to it, BaFin counteracts undesirable developments that could impair the orderly conduct of trading in financial instruments or the provision of investment services, ancillary investment services or data reporting services, or that could result in serious disadvantages for the financial market. ³It can issue orders that are appropriate and necessary for eliminating or preventing such undesirable developments.

(2) ¹As part of its assigned responsibilities, BaFin monitors compliance with the prohibitions and requirements of this Act, the statutory orders adopted on the basis of this Act, the European legislative acts specified in section 1 (1) number 8, including the Commission delegated and implementing acts adopted on the basis of those legislative acts. ²It can issue orders that are appropriate and necessary for ensuring their implementation. ³In particular, it can publish warnings on its website where this is necessary for it to perform its functions under this Act. ⁴It can temporarily prohibit trading in individual or multiple financial instruments or order the suspension of trading in individual or multiple financial instruments on markets on which financial instruments are traded to the extent necessary for enforcing the prohibitions and requirements of this Act, Regulation (EU) No. 596/2014 or Regulation (EU) No. 600/2014, or for eliminating or preventing undesirable developments as set out in subsection (1); for this purpose, it can also issue orders to a legal entity under public law or a stock exchange. ⁵It can suspend the marketing or sale of financial instruments or structured deposits where the investment services enterprise has not developed or applied an effective product approval process under section 80 (9) or otherwise failed to comply with section 80 (1) sentence 2 number 2 or section

80 (9) to (11).

(3) ¹To monitor whether requirements or prohibitions of this Act or Regulation (EU) No. 596/2014, Regulation (EU) No. 600/2014, Regulation (EU) No. 1286/2014, Regulation (EU) 2015/2365, Regulation (EU) 2016/1011 are being complied with, or to verify whether the requirements for a measure under section 15 or under Article 42 of Regulation (EU) No. 600/2014 are met, BaFin may require any person to provide information, submit documents or other data, provide copies, and summon and question persons. ²It can require the following information in particular:

1. changes in the portfolio of financial instruments,
2. the identities of other persons, especially the principal and the persons acquiring rights or incurring liabilities from transactions,
3. the size and purpose of a position or exposure entered into via a commodity derivative,
4. any assets or liabilities in the underlying market.

³Statutory rights to provide or refuse to provide information as well as statutory obligations of confidentiality remain unaffected. ⁴With regard to the requirements and prohibitions of Regulation (EU) 2016/1011, sentences 1 and 3 relating to the provision of information, summoning and questioning apply only to persons who are involved in providing a benchmark within the meaning of Regulation (EU) 2016/1011.

(4) ¹BaFin can require investment services enterprises that engage in algorithmic trading within the meaning of section 80 (2) sentence 1 in particular at any time to provide information about their algorithmic trading and the systems used for this trading, to the extent that this is necessary due to indications relating to monitoring compliance with any prohibitions or requirements of this Act. ²BaFin can require in particular a description of the algorithmic trading strategies, details of the trading parameters or limits to which the system is subject, the key procedures in place to assess the risks and ensure compliance with the requirements of section 80, and details of the testing of its systems.

(5) ¹Without prejudice to section 3 (5), (11) and (12) and section 15 (7) of the Stock Exchange Act (*Börsengesetz*), BaFin is the competent authority within the meaning of Article 22 of Regulation (EU) No. 596/2014 and as defined in Article 2(1) number 18 of Regulation (EU) No. 600/2014. ²BaFin is the competent authority for the purposes of the third subparagraph of Article 25(4) of Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directives 2002/92/EC and 2011/61/EU (OJ L 173 of 12 June 2014, page 349; L 74 of 18 March 2015, page 38; L 188 of 13 July 2016, page 28; L 273 of 8 October 2016, page 35; L 64 of 10 October 2017, page 116), as most recently amended by Directive (EU) 2016/1034 (OJ L 175 of 30 June 2016, page 8), as amended.

(6) ¹In the event of an infringement of

1. requirements of Part 3 of this Act and statutory orders adopted to implement these requirements,
2. requirements of Regulation (EU) No. 596/2014, in particular of its Article 4, 14 and 21, as well as the Commission delegated and implementing acts adopted on the basis of those Articles,
3. requirements of Part 11 of this Act and statutory orders adopted to implement these requirements,
4. requirements of Regulation (EU) No. 600/2014, in particular the articles in Titles II to VI and the Commission delegated and implementing acts adopted on the basis of those articles,
5. Articles 4 and 15 or Regulation (EU) 2015/2365 and the Commission delegated and implementing acts adopted on the basis of Article 4,
6. requirements of Regulation (EU) 2016/1011 and the Commission delegated and implementing acts adopted on the basis of that Regulation, or
7. any order issued by BaFin that refers to a requirement specified in numbers 1 to 6,

BaFin can require the cessation of the acts or conduct underlying the infringement for a period of up to two years in order to prevent further infringements. ²In the event of infringements of the requirements specified in sentence 1 numbers 3 and 4, and of orders issued by BaFin that refer to those requirements, BaFin can require the acts or conduct underlying the infringement to cease permanently and their recurrence to be prevented.

(7) BaFin can prevent a natural person who is responsible for an infringement of Articles 14, 15, 16(1) and (2),

Article 17(1), (2), (4), (5) and (8), Article 18(1) to (6), Article 19(1) to (3), (5) to (7) and (11), and Article 20(1) of Regulation (EU) No. 596/2014 or of an order issued by BaFin that refers to those requirements, for a period of up to two years, to conduct transactions for own account in the financial instruments and products designated in Article 2(1) of Regulation (EU) No. 596/2014.

(8) ¹BaFin can impose a prohibition on the exercise of professional activity for a period of up to two years on a person who works at an undertaking supervised by BaFin if that person has intentionally infringed one of the requirements set out in subsection (6) sentence 1 numbers 1 to 4 and 6 or of an order issued by BaFin that refers to those requirements and continues this behaviour despite being cautioned by BaFin. ²In the case of an infringement of one of the requirements set out in subsection (6) sentence 1 number 5 or of an order issued by BaFin that refers to those requirements, BaFin can ban a person from exercising management functions for a period of up to two years if that person has intentionally infringed the requirement and continues this behaviour despite being cautioned by BaFin.

(9) ¹In the event of an infringement of one of the requirements specified in subsection (6) sentence 1 numbers 1 to 5 or of an enforceable order issued by BaFin that refers to those requirements, BaFin can publish on its website a warning that names the natural or legal person or association of persons that infringed the requirement or order, as well as the nature of the infringement. ²Section 125 (3) and (5) applies, with the necessary modifications.

(10) BaFin can prohibit an investment services enterprise that has infringed one of the requirements specified in subsection (6) sentence 1 numbers 3 and 4 or an enforceable order issued by BaFin that refers to those requirements from participating in trading on a trading venue for a period of up to three months.

(11) ¹BaFin's staff and the persons authorised by BaFin must be permitted to enter the property and business premises of persons required to provide information under subsection (3) during normal business hours, insofar as this is necessary for the performance of their functions. ²Outside of normal business hours, or if the business premises are located in residential property, entry without permission is permitted and must be tolerated only to the extent that this is necessary to prevent imminent danger to public safety and order and there are indications that the person required to provide information has infringed a prohibition or requirement of this Act. ³The basic right enshrined in Article 13 of the Basic Law (*Grundgesetz*) is restricted in this respect.

(12) ¹BaFin's staff may search business and residential premises to the extent necessary to investigate infringements of Articles 14 and 15 of Regulation (EU) No. 596/2014. ²The basic right enshrined in Article 13 of the Basic Law (*Grundgesetz*) is restricted in this respect. ³In the course of the search, BaFin's staff may seize items that could be of importance as evidence in their investigations. ⁴If the items are held by a person, and if they are not surrendered voluntarily, BaFin's staff can seize the items. ⁵Searches and seizures must be ordered by a judge except in the event of imminent danger. ⁶The Local Court in Frankfurt am Main is the competent court. ⁷The judicial order may be appealed. Sections 306 to 310 and 311a of the Code of Criminal Procedure (*Strafprozessordnung*) apply, with the necessary modifications. ⁸Section 98 (2) of the Code of Criminal Procedure applies, with the necessary modifications, in the case of seizures without a court order. ⁹The competent court for subsequently obtaining the court decision is the Local Court in Frankfurt am Main. ¹⁰A written record must be made of the search. ¹¹It must specify the responsible department, the reason, the time and place of the search, and its outcome. ¹²Sentences 1 to 11 apply, with the necessary modifications, to the premises of legal persons to the extent necessary to investigate infringements of Regulation (EU) 2016/1011.

(13) ¹BaFin can apply for the seizure of assets to the extent necessary for enforcing prohibitions and requirements contained in subsection (6) section 1 numbers 3, 4 and 6, and in Regulation (EU) No. 596/2014. ²Measures under sentence 1 must be ordered by the judge. ³The Local Court in Frankfurt am Main is the competent court. ⁴The judicial order can be appealed; sections 306 to 310 and 311a of the Code of Criminal Procedure apply, with the necessary modifications.

(14) BaFin may make publications or notifications in accordance with the requirements of this Act or under Regulation (EU) No. 596/2014 at the expense of the entity subject to the publication or notification requirement if that entity fails to comply with the requirement or complies with it incorrectly, incompletely or not in the prescribed form.

(15) ¹A person obliged to provide information may refuse to do so if answering any questions would place that person or one of that person's relatives designated in section 383 (1) numbers 1 to 3 of the Code of Civil Procedure at risk of criminal prosecution or proceedings under the Act on Breaches of Administrative Regulations (*Gesetz über Ordnungswidrigkeiten*). ²Persons obliged to provide information or statements must be informed of the right to refuse to do so and must be instructed that, under the Act, they are at all times free,

including prior to questioning, to consult with a defence counsel of their choosing.

(16) BaFin may only store, edit and use the personal data submitted to it for the purposes of fulfilling its supervisory functions and for international cooperation purposes as allowed by section 18.

(17) BaFin may allow auditors or experts to carry out investigations or verifications to perform its functions.

Section 7 Release of communications data

(1) ¹BaFin can require a telecommunications operator to release existing data traffic records within the meaning of section 96 (1) of the Telecommunications Act (*Telekommunikationsgesetz*) in its possession where certain facts establish a suspicion that a party has infringed Articles 14 or 15 of Regulation (EU) No. 596/2014 or one of the requirements specified in section 6 (6) sentence 1 numbers 3 and 4, to the extent this is necessary to investigate the matter. ²Section 100a (3) and section 100b (1) to (4) sentence 1 of the Code of Criminal Procedure apply, with the necessary modifications, provided that BaFin is entitled to make an application. ³The privacy of correspondence, posts and telecommunications under Article 10 of the Basic Law is restricted in this respect.

(2) ¹BaFin can require investment services enterprises, data reporting services, credit institutions as defined in Article 4(1) number 1 of Regulation (EU) No. 575/2013, supervised entities as defined in Article 3(1) number 17 of Regulation (EU) 2016/1011 and financial institutions as defined in Article 4(1) number 26 of Regulation (EU) No. 575/2013 to release existing

1. recordings of telephone conversations,
2. electronic communications or
3. other data traffic records within the meaning of section 96 (1) of the Telecommunication Act,

that are held by those undertakings, to the extent that this is necessary due to indications relating to monitoring compliance with any prohibition under Articles 14 and 15 of Regulation (EU) No. 596/2014 or one of the requirements specified in section 6 (6) sentence 1 numbers 3 and 4 or any prohibition or requirement under Regulation (EU) 2016/1011. ²The privacy of correspondence, posts and telecommunications under Article 10 of the Basic Law is restricted in this respect.

Section 8 Provision and release of market-related data; power to issue statutory orders

(1) ¹BaFin can require stock exchanges and operators of markets on which financial instruments are traded in particular to provide the data that BaFin needs to perform its functions under section 54, under Article 4 of Regulation (EU) No. 596/2014, under Article 27 of Regulation (EU) No. 600/2014 and under the delegated and implementing acts adopted on the basis of Article 57 of Regulation 2014/65/EU, in a standardised electronic format. ²In particular on the basis of reports that it receives under Article 4 of Regulation (EU) No. 596/2014, BaFin can publish information on its website about issuers that have applied for or received approval for their financial instruments to be traded on a trading venue or admitted to trading, and the financial instruments this relates to.

(2) ¹BaFin can require market participants who trade on spot markets as defined in section 3 (1) number 16 of Regulation (EU) No. 596/2014 in particular to provide information and reports on commodity derivatives trades, to the extent that this is necessary due to indications relating to monitoring compliance with a prohibition under Articles 14 and 15 of Regulation (EU) No. 596/2014 with regard to commodity derivatives. ²Subject to the conditions set out in sentence 1, BaFin must also be granted access to dealers' trading systems. ³BaFin can require the information under sentence 1 to be provided in a standardised format. ⁴Section 6 (15) applies, with the necessary modifications.

Section 9 Reducing and restricting positions or exposures

(1) BaFin can require any party to reduce the size of positions or exposures in financial instruments to the extent that this is required for enforcing the prohibitions and requirements of the provisions set out in section 6 (6) sentence 1 numbers 3 and 4.

(2) BaFin can restrict the ability of any party to enter into a position in commodity derivatives to the extent that this is necessary for enforcing the prohibitions and requirements of the provisions set out in section 6 (6) sentence 1 numbers 3 and 4.

Section 10 Special powers under Regulation (EU) No. 1286/2014 and Regulation (EU) 2016/1011

(1) ¹BaFin must monitor supervision of compliance with the prohibitions and requirements of Regulation (EU) No. 1286/2014 and the Commission delegated and implementing acts adopted on the basis of that Regulation. ²BaFin can issue orders to an investment services enterprise that provides advice about a PRIIP, sells a PRIIP or is a manufacturer of PRIIPs, that are appropriate and necessary for enforcing the prohibitions and requirements referred to in sentence 1. ³In particular, it can

1. temporarily or permanently prohibit the marketing, distribution or sale of the PRIIP in the event of an infringement of Article 5(1), Articles 6, 7 and 8(1) to (3), Articles 9, 10(1), Article 13(1), (3) and (4) or Articles 14 or 19 of Regulation (EU) No. 1286/2014,
2. prohibit the provision of a key information document that does not satisfy the requirements of Articles 6 to 8 or 10 of Regulation (EU) No. 1286/2014,
3. require the PRIIP manufacturer to publish a new version of the key information document where the published version does not satisfy the requirements of Articles 6 to 8 or 10 of Regulation (EU) No. 1286/2014, and
4. in the event of an infringement of one of the requirements specified in number 1, publish on its website a warning naming the responsible investment services enterprise and the nature of the infringement; section 114 (3) and 5 applies, with the necessary modifications.

⁴BaFin has the powers specified in sentence 2 subject to section 34d (8) number 5, section 34e (2) and section 34g (1) sentence 2 number 5 of the Industrial Code (*Gewerbeordnung*), in each case in conjunction with a statutory order adopted on this basis, section 5 (6a) of the Investment Code, section 308a of the Insurance Supervision Act (*Versicherungsaufsichtsgesetz*) and section 47 of the Banking Act, including in respect of other persons or associations of persons that provide advice about a PRIIP, sell a PRIIP or are a PRIIP manufacturer.

(2) ¹With the exception of insurance undertakings that are supervised at Federal State level, BaFin is the competent authority within the meaning of Article 40(1) of Regulation (EU) 2016/1011. ²It must monitor compliance with the prohibitions and requirements of Regulation (EU) 2016/1011 and the Commission delegated and implementing acts adopted on the basis of that Regulation, and can issue orders that are appropriate and necessary for ensuring their implementation. ³In particular, it can

1. take measures to ensure the public is correctly informed about the provision of a benchmark and require corrections,
2. require contributors who are active on spot markets and contribute data to produce a commodity benchmark to provide information and report transactions, to the extent that this is necessary to monitor compliance with the requirements and prohibitions of Regulation (EU) 2016/1011 with regard to those commodity benchmarks; section 8 (1) sentences 2 and 3 and subsection (2) apply, with the necessary modifications,
3. in the event of an infringement of Articles 4 to 16, 21, 23 to 29 and 34 of Regulation (EU) 2016/1011 or of an enforceable order issued by BaFin in conjunction with an investigation of compliance with obligations under this Regulation in accordance with numbers 1 or 2, section 6 (3) sentence 4, subsection (6) sentence 1, subsections (8), (11) to (13), section 7 (2),

- a) require a supervised entity as defined in Article 3 (1) number 17 of that Regulation to permanently cease the acts or conduct underlying the infringement,
- b) publish a warning under section 6 (9) with regard to a supervised entity as defined in Article 3(1) number 17 of that Regulation naming the natural or legal person or association of persons that is responsible for the infringement,
- c) withdraw or suspend the authorisation or registration of an administrator,
- d) ban a person from exercising management functions in an administrator or supervised contributor for a period of up to two years if that person intentionally or through gross negligence caused the infringement and continues this behaviour despite being cautioned by BaFin.

Section 11 Reporting facts giving rise to criminal offences

¹BaFin must report facts giving rise to suspicion of a criminal offence under section 119 to the competent public prosecutor's office without undue delay. ²It can communicate to the public prosecutor's office the personal data of any persons suspected of the offence or persons who may be witnesses, to the extent that this is necessary for criminal prosecution. ³The public prosecutor's office decides on the necessary investigative measures to be pursued, especially with regard to searches, under the Code of Criminal Procedure. ⁴This does not affect the powers of BaFin under section 6 (2) to (13) and sections 7 to 9 and 10 (2), to the extent that this is necessary for implementing administrative measures or fulfilling requests by foreign agencies in accordance with section 18 (2), (4) sentence 1 or (10), and to the extent that this does not endanger the purpose of investigations by law enforcement agencies or the courts responsible for criminal cases.

Section 12 Addressees of a measure in response to a potential infringement of Article 14 or 15 of Regulation (EU) No. 596/2014

Addressees of measures under section 6 (2) to (13) and sections 7 to 9 that are taken by BaFin in response to a possible infringement of a prohibition under Article 14 or 15 of Regulation (EU) No 596/2014 are prohibited from informing persons other than state agencies and such persons who, by virtue of their profession, are subject to a statutory obligation of confidentiality, of these measures or of any investigations initiated against them.

Section 13 Immediate enforcement

Objections and appeals against measures under section 6 (1) to (14) and sections 7 to 10 do not have any suspensory effect.

Section 14 Powers to safeguard the financial system

(1) ¹BaFin can, in consultation with the Deutsche Bundesbank, issue orders that are appropriate and necessary for eliminating or preventing undesirable developments that may be detrimental to the stability of

financial markets or undermine confidence in the proper functioning of the financial markets. ²In particular, BaFin may temporarily

1. suspend trading in individual or multiple financial instruments, in particular a ban on buying rights attached to currency derivatives within the meaning of section 2 (2) number 1 b), d) or e) where the value of the derivatives is derived directly or indirectly from the exchange rate of the euro, to the extent that it is expected that the market value of such rights will decrease when the euro exchange rate appreciates, and if buying such rights is not used to hedge existing or expected own currency risks; such a ban may also extend to legal obligations to enter into such transactions,
2. order the suspension of trading in individual or multiple financial instruments on markets on which financial instruments are traded, or
3. order markets on which financial instruments are traded, with the exception of stock exchanges as defined in section 2 of the Stock Exchange Act, to close or remain closed, or order systematic internalisers stop operating.

³BaFin can also issue orders under sentence 2 numbers 1 and 2 to a legal entity under public law or a stock exchange.

(2) ¹BaFin can order that persons who enter into transactions in financial instruments must publish their positions in such financial instruments and at the same time notify them to BaFin. ²BaFin can publish notifications under sentence 1 on its website.

(3) Section 6 (3), (11), (14) and (16) applies, with the necessary modifications.

(4) ¹Measures under subsections (1) to (3) are limited to a maximum of twelve months. ²This period may be extended by up to a further twelve months. ³In this case, the Federal Ministry of Finance will submit a report to the Bundestag within one month of the beginning of the extension. ⁴Objections and appeals against measures under subsections (1) to (3) do not have any suspensory effect.

Section 15 Product intervention

(1) ¹With the exception of the conditions under Article 42(3) and (4) of Regulation (EU) No. 600/2014, BaFin has the powers under Article 42 of Regulation (EU) No. 600/2014 under the conditions specified in that Article, with the necessary modifications, for investment products as defined in section 1 (2) of the Capital Investment Act. ²BaFin can take measures under sentence 1 and Article 42 of Regulation (EU) No. 600/2014 in respect of any party, to the extent that the Regulation is not directly applicable.

(2) Objections and appeals against measures under sentence 1 and Article 42 of Regulation (EU) No. 600/2014 do not have any suspensory effect.

Section 16 Securities Council

(1) ¹A Securities Council is established at BaFin. ²It comprises representatives of the Federal States. ³Membership is not held in a personal capacity. ⁴Each Federal State appoints one representative. ⁵Representatives of the Federal Ministries of Finance, of Justice and Consumer Protection, and for Economic Affairs and Energy, as well as of the Deutsche Bundesbank, are entitled to attend the meetings of the Securities Council. ⁶The Securities Council can consult experts, particularly from the stock exchanges, market participants, business and academics. ⁷The Securities Council draws up rules of procedure.

(2) ¹The Securities Council assists with supervision. ²It advises BaFin, in particular

1. on issuing statutory orders and establishing policies for BaFin's supervisory activity,

2. concerning the impact of supervisory issues on stock exchange and market structures and on competition in trading in financial instruments,
3. on the division of responsibilities between BaFin and the exchange supervisory offices as well as on issues of cooperation.

³The Securities Council can submit proposals to BaFin concerning the general development of supervisory practice. ⁴BaFin reports to the Securities Council at least once per year about its supervisory activities, the development of supervisory practice and international cooperation.

(3) ¹The Securities Council is convened at least once each year by BaFin's President. ²It is also convened at the request of one-third of its members. ³Any member is entitled to put forward proposals for deliberation.

Section 17 Cooperation with other authorities in Germany

(1) ¹The stock exchange supervisory authorities act on behalf of BaFin in implementing urgent measures as part of monitoring compliance with the prohibition of insider dealing under Article 14 of Regulation (EU) No. 596/2014 and the prohibition of market manipulation under Article 15 of Regulation (EU) No 596/2014 on the stock exchanges that they supervise. ²The further details are governed by an administrative agreement between the Federal Government and the Federal States that supervise stock exchanges.

(2) BaFin, the Deutsche Bundesbank in the context of its activities in accordance with the Banking Act, the Federal Cartel Office, the exchange supervisory offices, the trading surveillance units, the competent authorities for implementing Regulation (EU) No. 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No. 922/72, (EEC) No. 234/79, (EC) No. 1037/2001 and (EC) No. 1234/2007 (OJ L 347, 20 December 2013, page 671; L 189 of 27 June 2014, page 261; L 130 of 19 May 2016, page 18; L 34 of 9 February 2017, page 41), as most recently amended by Delegated Regulation (EU) 2016/1226 (OJ L 202 of 28 July 2016, page 5), the Federal Network Agency and the state cartel authorities in the context of their activities in accordance with the Energy Industry Act (*Energiewirtschaftsgesetz*), and the agencies responsible for supervising insurance intermediaries and the undertakings defined in section 3 (1) number 7 must exchange any observations and findings, including personal data, that are necessary for the performance of their functions.

(3) BaFin must cooperate with the exchange supervisory offices, the trading surveillance units and the competent authorities under section 19 (1) of the Greenhouse Gas Emissions Trading Act (*Treibhausgas-Emissionshandelsgesetz*) to ensure that they can acquire a consolidated overview of emission allowances markets.

(4) ¹For the performance of its functions, BaFin may, in an automated procedure, retrieve data stored at the Deutsche Bundesbank under sections 2 (10), 2c, 24 (1) numbers 1, 2, 5, 7 and 10 and subsection (3), section 25b (1) to (3), section 32 (1) sentences 1 and 2 numbers 2, 6 a) and b) of the Banking Act. ²For the purpose of monitoring data protection compliance, the Deutsche Bundesbank must log the time, the details enabling the retrieved data sets to be identified, and the person responsible for the retrieval. ³The recorded data may only be used for the purpose of data protection compliance, for data backups, or for ensuring the proper functioning of the data processing system. ⁴The records must be deleted at the end of the calendar year following the year in which they were stored.

(4) (Repealed)

Section 18 Cooperation with competent authorities outside Germany; power to issue statutory orders

(1) ¹BaFin is required to cooperate with the competent authorities in the European Union that are responsible for the supervision of conduct of business and organisational obligations applicable to undertakings that provide investment services, of financial instruments and of markets on which financial instruments or commodities are traded in other Member States of the European Union and the other signatory states to the Agreement on the European Economic Area. ²In the context of its cooperation for the purposes of supervising compliance with the prohibitions and requirements of this Act and of Regulation (EU) No. 600/2014, and of the prohibitions and requirements of the countries referred to in sentence 1 that correspond to those of this Act, the Stock Exchange Act or the specified regulations, BaFin can make use of all powers conferred upon it by this Act and Regulation (EU) No. 600/2014 to the extent that this is appropriate and necessary in order to comply with the requests of the authorities specified in sentence 1. ³It can only order the prohibition or suspension of

trading under section 6 (2) sentence 4 on a market in Germany in response to a request by the authorities specified in sentence 1 if this does not seriously jeopardise investors' interests or orderly trading on the market concerned. ⁴This does not affect the requirements of the Stock Exchange Act relating to cooperation between the trading surveillance units and similar bodies or the management of exchanges in other countries.

(2) ¹Upon request by the competent authorities specified in subsection (1) sentence 1, BaFin conducts investigations in accordance with the implementing regulation adopted on the basis of Article 80(4) and Article 81(4) of Directive 2014/65/EU and provides all information without undue delay, to the extent that this is necessary for the supervision of organised markets or other markets for financial instruments, credit institutions, financial services institutions, asset management companies, externally managed investment companies, EU management companies, non-German AIF management companies, financial undertakings, insurance undertakings or related administrative or judicial proceedings. ²When providing information, BaFin must instruct the recipient that, without prejudice to the obligations to which it is subject in judicial proceedings, the information provided, including personal data, may only be used for the exercise of supervisory functions under sentence 1 and in the context of related administrative and judicial proceedings.

(3) BaFin is required to establish proportionate arrangements for effective cooperation, in particular with those Member States where the operations of a trading venue in Germany are of substantial importance for the functioning of the financial markets and the protection of investors under Article 90 of Delegated Regulation (EC) 2017/565, or whose trading venues are of substantial importance in Germany.

(4) ¹BaFin may, upon request, permit staff of competent authorities of other countries to participate in investigations conducted by BaFin. ²The competent authorities within the meaning of subsection (1) sentence 1 or their representatives may, after notifying BaFin, examine directly at a branch within the meaning of section 53b (1) sentence 1 of the Banking Act the information required for monitoring whether that branch complies with the reporting requirements under Article 26 of Regulation (EU) No 600/2014, the conduct of business, organisational and transparency obligations specified in sections 63 to 83 or equivalent foreign requirements. ³Staff of the European Securities and Markets Authority can participate in investigations under sentence 1.

(5) BaFin can cooperate with the authorities specified in subsection (1) sentence 1 with regard to facilitating the recovery of fines.

(6) ¹BaFin can refuse to conduct an investigation, provide information or permit the participation of staff of foreign competent authorities within the meaning of subsection (1) sentence 1 if judicial proceedings have already been instituted or final judgment has already been delivered with regard to the persons in question in respect of the same actions. ²If BaFin does not comply with a request or exercises its right under sentence 1, it must notify its decision without undue delay to the requesting authority and the European Securities and Markets Authority, including the reasons, and must provide them with precise information about the judicial proceedings or final judgment.

(7) ¹On the basis of Article 80(4) and Article 81(4) of Directive 2014/65/(EU), BaFin must request the competent authorities named in subsection (1) to conduct investigations and provide information that is appropriate and necessary to perform its functions in accordance with the provisions of this Act. ²It can request the competent authorities to permit BaFin's staff to participate in the investigations. ³With the consent of the competent authorities, BaFin can conduct investigations outside Germany and engage auditors or experts to do this; if BaFin investigates branches of a domestic investment services enterprise in a host Member State, it is sufficient to notify the competent authority outside Germany in advance. ⁴If BaFin issues orders to undertakings whose registered office is outside Germany and are members of organised markets in Germany, it must inform the competent authorities that supervise those undertakings. ⁵Without prejudice to the obligations to which it is subject in criminal matters relating to a suspected criminal offence under the criminal provisions of this Act, BaFin may only use information notified by an authority of another country for the purpose of performing its supervisory functions in accordance with subsection (2) sentence 1 and for related administrative and judicial proceedings. ⁶In due consideration of the intended purpose of the authority providing the information, BaFin can notify this information to the authorities specified in section 17 (2) if this is necessary for the performance of their functions. ⁷Any other use of the information is only permitted with the consent of the authority providing that information. ⁸With the exception of information related to insider trading and market manipulation, such consent may be waived in exceptional and justified cases if the authority providing the information is informed about this without undue delay, giving the reasons. ⁹If a request by BaFin under sentences 1 to 3 is not complied within a reasonable time or if it is rejected without good reasons, BaFin can ask the European Securities and Markets Authority for help in accordance with Article 19 of Regulation (EU) No. 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No. 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331 of 15 December 2010, page 84).

(8) ¹If BaFin has good reasons to suspect the infringement of prohibitions or requirements of this Act or equivalent provisions of another country specified in subsection (1) sentence 1, it must notify the European Securities and Markets Authority and the competent authorities of the country under subsection (1) sentence 1 on whose territory the unlawful act is being or was performed or on whose territory the financial instruments concerned are traded on an organised market, or which is responsible for prosecuting the infringement under European Union law. ²If the measures subsequently taken by the competent authorities outside Germany are inadequate or if the infringement of the provisions of this Act or the equivalent provisions of the other country continues, after notifying the competent authorities BaFin must take all steps necessary to protect investors and notify the European Commission and the European Securities and Markets Authority of this. ³If BaFin receives a corresponding notification from competent authorities of other countries, it informs those authorities and the European Securities and Markets Authority of the outcome of any investigations it has initiated in this respect. ⁴BaFin must also notify

1. the competent authorities under sentence 1 and the European Securities and Markets Authority about orders to suspend, prohibit or cease trading under section 6 (2) sentence 4 of this Act and section 3 (5) sentence 3 number 1 and section 25 (1) of the Stock Exchange Act,
2. the competent authorities under sentence 1 within one month of receipt of a notification under section 19 (10) of the Stock Exchange Act of the intention of the management of a stock exchange to grant trading participants from the countries concerned direct access to their trading system,
3. the competent authorities under sentence 1 and the European Securities and Markets Authority about orders under section 9 (1) to reduce the size of positions or exposures, and
4. the competent authorities under sentence 1 and the European Securities and Markets Authority about orders under section 9 (2) to impose limits on positions in commodity derivatives.

⁵The notification under sentence 4 numbers 3 and 4 must be made at least 24 hours before the order is announced; if this is not possible in exceptional circumstances, the notification must be made no later than the announcement. ⁶The notification under sentence 4 numbers 3 and 4 comprises information about requests for information and documents in accordance with section 6 (3) sentence 2 number 1, including their grounds and addressees, and about the scope of orders under section 9 (2), including the group of their addressees, the financial instruments concerned, position limits and exceptions granted under section 56 (3). ⁷When an action specified in sentence 4 numbers 3 and 4 relates to wholesale energy products, BaFin must also notify the Agency for the Cooperation of Energy Regulators established under Regulation (EC) No. 713/2009.

(9) This is without prejudice to the provisions on international judicial assistance in criminal cases.

(10) ¹BaFin may cooperate with the competent authorities of countries other than those specified in subsection (1) in accordance with subsections (1) to (9) and conclude agreements providing for information sharing. ²Subsection (7) sentences 5 and 6 applies on condition that information provided by these authorities may only be used for the purpose intended by the authority providing the information and may only be communicated to the Deutsche Bundesbank or the Federal Cartel Office with the express consent of the authority providing the information, to the extent that this is necessary for the performance of their functions. ³Subsection (7) sentence 8 does not apply. ⁴Section 4b of the Federal Data Protection Act (*Bundesdatenschutzgesetz*) applies to the communication of personal data. ⁵BaFin must notify the European Securities and Markets Authority about the conclusion of agreements under sentence 1.

(11) In the context of its cooperation for the purposes of supervising compliance with the prohibitions and requirements under Regulation (EU) No 596/2014 as well as the prohibitions and requirements of the equivalent foreign provisions of other signatory states to the Agreement on the European Economic Area or of third countries, BaFin can make use of all powers conferred upon it under this Act in order to comply with the relevant requests of competent authorities in the countries concerned.

(12) ¹The Federal Ministry of Finance may, by way of a statutory order not requiring the consent of the Bundesrat, adopt more detailed requirements for the purposes stated in subsections (2), (3) and (7) relating to the provision of information to foreign authorities, the conduct of investigations at the request of foreign authorities as well as requests by BaFin to foreign authorities. ²The Federal Ministry of Finance may delegate this authority to the Federal Financial Supervisory Authority by way of a statutory order.

Section 19 Cooperation with the European Securities and Markets Authority

(1) BaFin must provide the European Securities and Markets Authority without delay with all information

necessary to carry out its duties, in accordance with Articles 35 and 36 of Regulation (EU) No. 1095/2010.

(2) BaFin must provide annually aggregated information regarding all administrative penalties and measures in connection with supervision imposed under Parts 9 and 11 to the European Securities and Markets Authority.

(3) BaFin must notify the European Securities and Markets Authority of every expiry of authorisation under section 4 (4) of the Stock Exchange Act and any withdrawal of authorisation under section 4 (5) of the Stock Exchange Act or under the provisions of the acts on administrative procedures of the Federal States.

Section 20 Cooperation with the European Commission in the context of the Energy Industry Act

BaFin must provide to the European Commission on request information about transactions in financial instruments, including personal data, that was notified to BaFin under Article 26 of Regulation (EU) No. 600/2014 in cases where the European Commission could also require the provision of that information directly from the undertakings subject to the notification requirement under section 5a (1) of the Energy Industry Act and the European Commission needs this information to perform its functions as described in greater detail in the Energy Industry Act.

Section 21 Obligation of confidentiality

(1) ¹Persons employed by BaFin and authorised persons in accordance with section 4 (3) of the Act Establishing the Federal Financial Supervisory Authority (*Finanzdienstleistungsaufsichtsgesetz*) may not without authorisation disclose or utilise facts that have come to their knowledge in the course of their activities, the secrecy of which is in the interests of an entity subject to this Act or a third party, especially business and trade secrets as well as personal data, even if the above persons are no longer employed or their activities have ended. ²This also applies to other persons who, by way of official reporting, obtain knowledge of the facts referred to in sentence 1. ³Unauthorised disclosure or use within the meaning of sentence 1 does not apply in particular if facts are provided to

1. law enforcement agencies or courts with jurisdiction in criminal cases and administrative offence cases,
2. authorities and persons authorised by such authorities entrusted by law or by order of public authorities with the supervision of stock exchanges or other markets on which financial instruments are traded, of trading in financial instruments or currencies, of credit institutions, financial services institutions, asset management companies, externally managed investment companies, EU management companies or non-German AIF management companies, financial undertakings, insurance undertakings, insurance intermediaries, undertakings defined in section 3 (1) number 7 or employees within the meaning of section 87 (1) to (5),
3. central banks in their capacity as monetary authorities and other public authorities responsible for overseeing payment systems,
4. authorities involved in the liquidation or the insolvency proceedings over the assets of an investment services enterprise, an organised market or the operator of an organised market,
5. the European Central Bank, the European System of Central Banks, the European Securities and Markets Authority, the European Insurance and Occupational Pensions Authority, the European Banking Authority, the Joint Committee of the European Supervisory Authorities, the European Systemic Risk Board or the European Commission,

provided that these authorities need the information for the purpose of performing their functions. ⁴The obligation of confidentiality as specified in sentence 1 applies, with the necessary modifications, to persons employed and persons authorised by the authorities specified in sentence 3 numbers 1 to 4. ⁵If an authority specified in sentence 3 numbers 1 to 4 is located in another country, the facts may only be provided if that authority and the persons authorised by it are subject to a confidentiality requirement equivalent to that specified in sentence 1.

(2) ¹Sections 93, 97 and 105 (1), section 111 (5) in conjunction with section 105 (1) and section 116 (1) of the Fiscal Code only apply to the persons specified in subsection (1) sentences 1 and 2 to extent that the tax authorities need the information for instituting tax offence proceedings and the associated taxation procedure.

²However, the provisions of sentence 1 are not applicable if they relate to facts

1. that were notified to the persons specified in subsection (1) sentence 1 or sentence 2 by an authority of another country within the meaning of subsection (1) sentence 3 number 2 or by persons authorised by that authority, or
2. that become known to persons employed by BaFin because they are involved in supervising institutions that are directly supervised by the European Central Bank, in particular in joint supervisory teams under Article 2 number 6 of Regulation (EU) No. 468/2014 of the European Central Bank of 16 April 2014 establishing the framework for cooperation within the Single Supervisory Mechanism between the European Central Bank and national competent authorities and with national designated authorities (SSM Framework Regulation) (ECB/2014/17) (OJ L 141 of 14 May 2014, page 1), and that are confidential under the rules of the European Central Bank.

(3) ¹The Federal Ministry of Finance may, by way of a statutory order not requiring the consent of the Bundesrat, adopt more detailed requirements governing the content, nature, scope and format of the notifications to be provided under subsection (1) sentences 1 and (2) and the permitted data media and transmission channels, and on the format, content, scope and presentation of the publication under subsection (1) sentence 2. ²The Federal Ministry of Finance may delegate this authority to BaFin by way of a statutory order.

Section 22 Reporting requirements

(1) ¹BaFin is the competent authority within the meaning of Articles 26 and 27 of Regulation (EU) No. 600/2014. ²This also applies in particular to the notification of reference data to be provided by trading venues under Article 27(1) of Regulation (EU) No. 600/2014. ³It is responsible for providing reports under Article 26(1) of Regulation (EU) No. 600/2014 to the competent authority of another Member State of the European Union or of another signatory state to the Agreement on the European Economic Area, if the most relevant market in terms of liquidity for the reported financial instrument within the meaning of Article 26(1) Regulation (EU) No. 600/2014 is situated in that country.

(2) ¹A trading venue in Germany that provides reports under Article 26(1) of Regulation (EU) No. 600/2014 on behalf of an investment services enterprise must have security mechanisms in place that guarantee the security and authentication of the means of transfer of information and that prevent data corruption, unauthorised access and the information becoming known, thus maintaining the confidentiality of the data at all times. ²The trading venue must maintain adequate resources and have back-up facilities in place in order to offer and maintain its related services at all times.

(3) ¹The obligation under Article 26(1) to (3) and (6) and (7) of Regulation (EU) No. 600/2014 in conjunction with Commission Delegated Regulation (EU) 2017/590 of 28 July 2016 supplementing Regulation (EU) No. 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the reporting of transactions to competent authorities (OJ L 87 of 31 March 2017, page 449), as amended, applies, with the necessary modifications, to central counterparties in Germany as defined in section 1 (31) of the Banking Act in respect of information they have because of the transactions they have entered into. ²This information comprises details to be reported in accordance with Annex I Table 2 Fields 1 to 4, 6, 7, 16, 28 to 31, 33 to 36 and 38 to 56 of Commission Delegated Regulation (EU) 2017/590. ³The other fields must be populated in such a way that they comply with the technical validation rules defined by the European Securities and Markets Authority.

Section 23 Reporting suspicious transactions

(1) ¹Investment services enterprises, other credit institutions, asset management companies and operators of OTC markets on which financial instruments are traded, must notify BaFin without undue delay of any facts giving rise to suspicion that a transaction in financial instruments for which BaFin is the competent authority within the meaning of Article 2(1)(j) of Regulation (EU) No. 236/2012 infringes Articles 12, 13 or 14 of Regulation (EU) No. 236/2012. ²They are prohibited from informing persons other than public authorities and such persons who, by virtue of their profession, are subject to a statutory obligation of confidentiality, about the report or any investigation initiated in response to it.

(2) ¹The information contained in the report under subsection (1) may only be used by BaFin for the performance of its functions. ²BaFin may not make the identity of any person making a report under subsection (1) available to anyone other than public authorities. ³This does not affect BaFin's right under section 123.

(3) Anyone making a report under subsection (1) may not be held liable because of the report, unless the report is intentionally or negligently untrue.

(4) ¹The Federal Ministry of Finance may, by way of a statutory order not requiring the consent of the Bundesrat, adopt more detailed requirements governing

1. the format and content of a report under subsection (1) and
2. the method of making a report under Article 16(1) and (2) of Regulation (EU) No. 596/2014.

²The Federal Ministry of Finance may delegate this authority to BaFin by way of a statutory order.

Section 24 Duty of the insolvency administrator

(1) If insolvency proceedings are initiated over the assets of anyone obliged to perform an action under this Act, the insolvency administrator must support the debtor in fulfilling its duties under this Act, in particular by providing the necessary funds from the assets involved in the insolvency proceedings.

(2) If a provisional insolvency administrator is appointed prior to the opening of insolvency proceedings, that provisional insolvency administrator must support the debtor in fulfilling its duties, in particular by consenting to the funds being used by the obliged party or, if a general restraint on disposition has been imposed upon the obliged party, by providing the funds from the assets under its management.

Part 3 Monitoring market abuse

Section 25 Application of Regulation (EU) No. 596/2014 to commodities and foreign currencies

Article 15 in conjunction with Article 12(1) to (4) of Regulation (EU) No. 596/2014 applies, with the necessary modifications, to

1. commodities as defined in section 2 (5) and
2. foreign currencies within the meaning of section 51 of the Stock Exchange Act

that are traded on a German stock exchange or on an equivalent market in another Member State of the European Union or in another signatory state to the Agreement on the European Economic Area.

Section 26 Provision of inside information and own account transactions; power to issue statutory orders

(1) A domestic issuer, an MTF issuer or an OTF issuer that is required by Article 17(1), (7) or (8) of Regulation (EU) No. 596/2014 to make public inside information must provide it prior to publication to BaFin and the management of the trading venues on which its financial instruments have been admitted to trading or are included in trading and, without undue delay after its publication, to the Company Register within the meaning of section 8b of the Commercial Code for storage.

(2) A domestic issuer, an MTF issuer or an OTF issuer that is required by Article 19(3) of Regulation (EU) No. 596/2014 to make public information about managers' transactions for own account must provide that information, but not before its publication, to the Company Register within the meaning of section 8b of the Commercial Code for storage and to notify BaFin of the publication.

(3) ¹If the issuer infringes the requirements under subsection (1) or under Article 17(1), (7) or (8) of Regulation (EU) No. 596/2014, it is only liable to compensate any third party for losses incurred subject to the conditions set out in sections 97 and 98. ²This does not affect claims for compensation based on other legal grounds.

(4) ¹The Federal Ministry of Finance may, by way of a statutory order not requiring the consent of the Bundesrat, adopt more detailed requirements governing

1. the minimum content, nature, language, scope and format of the notification under subsection (1) or (2),
2. the minimum content, nature, language, scope and format of the publication under Article 17(1), (2) and (6) to (9) of Regulation (EU) No. 596/2014,
3. the conditions an issuer or emission allowance market participant must meet under the first subparagraph of Article 17(4) of Regulation (EU) No. 596/2014 in order to delay disclosure to the public of inside information,
4. the method of providing, and the minimum content of, a notification under the sentence 1 of the third subparagraph of Article 17(4) and sentence 1 of the first subparagraph of paragraph (6) of Regulation (EU) No. 596/2014,
5. the method of providing an insider list under Article 18(1)(c) of Regulation (EU) No. 596/2014,
6. the method of providing, and the language, of a report under Article 19(1) of Regulation (EU) No. 596/2014, and
7. the content, nature, scope and format of an additional publication of information under Article 19(3) of Regulation (EU) No. 596/2014 by BaFin under the third subparagraph of Article 19 (3) of Regulation (EU) No. 596/2014.

²The Federal Ministry of Finance may delegate this authority to BaFin by way of a statutory order.

Section 27 Record-keeping obligations

¹Before executing orders relating to financial instruments within the meaning of the first subparagraph of Article 2(1) of Regulation (EU) No. 596/2014 or behaviour or transactions within the meaning of sentence 1 of the second subparagraph of Article 2(1) of Regulation (EU) No. 596/2014, investment services enterprises as well as undertakings whose registered office is in Germany that are admitted to trading on a German stock exchange are required to establish and record, in the case of natural persons the name, date of birth and address, and in the case of companies the name and address of the principals and the persons or companies acquiring rights or incurring liabilities from the transactions. ²The information recorded under subsection (1) must be kept for a period of at least six years. ³Section 257 (3) and (5) of the Commercial Code applies, with the necessary modifications, to the retention of the records.

Section 28 Monitoring transactions of persons employed by BaFin

(1) BaFin must have adequate internal control mechanisms in place that are capable of preventing any infringement of the prohibitions under Article 14 of Regulation (EU) No. 596/2014 by persons employed by BaFin.

(2) The supervisor or the person authorised by the supervisor can require BaFin employees to provide information and submit documents relating to transactions in financial instruments within the meaning of the first subparagraph of Article 2(1) of Regulation (EU) No. 596/2014 or behaviour or transactions within the meaning of sentence 1 of the second subparagraph of Article 2(1) of Regulation (EU) No. 596/2014 that they have concluded for own account or for the account of or on behalf of a third party. ²Section 6 (15) applies. ³Employees who possess or may possess inside information in carrying out their official duties are obliged to notify, without undue delay, the supervisor or the person authorised by the supervisor in writing of any transactions in financial instruments within the meaning of the first subparagraph of Article 2(1) of Regulation (EU) No. 596/2014 or behaviour or transactions within the meaning of sentence 1 of the second subparagraph of Article 2(1) of Regulation (EU) No. 596/2014 that they have concluded for own account or for the account of or on behalf of a third party. ⁴The supervisor or the person authorised by the supervisor designates the employees referred to in sentence 3.

Part 4 Rating agencies

Section 29 Competence within the meaning of Regulation (EC) No. 1060/2009

(1) BaFin is the competent authority within the meaning of Article 22 of Regulation (EC) No. 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies (OJ L 302 of 17 November 2009, page 1), as most recently amended by Regulation (EU) No. 462/2013 (OJ L 146 of 31 May 2013, page 1), as amended,

(2) Under this Act, BaFin is the sectoral competent authority within the meaning of Article 25a of Regulation (EC) No. 1060/2009, as amended, for investment services enterprises to the extent that they use ratings when providing investment services or ancillary investment services.

(3) Unless stipulated otherwise in Regulation (EU) No. 1060/2009, as amended, or the legislative acts adopted on the basis of that Regulation, sections 2, 3, 6 to 13, 17 (2), section 18 (with the exception of subsection 7 sentences 5 to 8), section 21 (with the exception of subsection (1) sentences 3 to 5) apply, with the necessary modifications, to the exercise of supervision under subsections 1, 2 and 5.

(4) Objections and appeals against measures of BaFin under subsections (2), (1) and (2), including on the basis of or in conjunction with Regulation (EC) No. 1060/2009, as amended, or the legislative acts adopted on the basis of that Regulation, do not have any suspensory effect.

(5) ¹Applicants for admission within the meaning of section 2 number 11 and providers within the meaning of section 2 number 10 of the Securities Prospectus Act (*Wertpapierprospektgesetz*) who submit an application for approval of a prospectus within the meaning of the Securities Prospectus Act for a public offering or for admission to trading of structured financial instruments within the meaning of Article 8b or Article 8c of Regulation (EC) No. 1060/2009, as amended, or an issuance within the meaning of Article 8d of Regulation (EC) No. 1060/2009, as amended, to BaFin and are themselves the issuer of those structured financial instruments or that issuance, must add to the application to BaFin for approval a statement that they meet the obligations under Articles 8b, 8c or 8d of Regulation (EC) No. 1060/2009 that apply to them. ²The effectiveness of the application for approval is not affected by the due submission of this statement.

Part 5 OTC derivatives and trade repositories

Section 30 Monitoring OTC derivatives clearing and supervision of trade repositories

(1) ¹Without prejudice to section 6 of the Banking Act, BaFin is responsible under this Act for compliance with the requirements of Articles 4, 5 and 7 to 13 of Regulation (EU) No. 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (OJ L 201 of 27 July 2012, page 1), unless otherwise stipulated in section 3 (5) or section 5 (6) of the Stock Exchange Act. ²BaFin is the competent authority within the meaning of Article 62(4), Article 63(3) to (7), Article 68(3) and Article 74(1) to (3) of Regulation (EU) No. 648/2012. ³Unless otherwise provided for in Regulation (EC) No. 648/2012, the requirements of Part 1 and Part 2 of this Act apply, with the necessary modifications, with the exception of sections 22 and 23.

(2) If it provides or extends a guarantee as defined in Articles 1 and 2(1) of Commission Delegated Regulation (EU) No. 285/2014 of 13 February 2014 supplementing Regulation (EU) No. 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on direct, substantial and foreseeable effect of contracts within the Union and to prevent the evasion of rules and obligations (OJ L 85 of 21 March 2014, page 1), as amended, a domestic financial counterparty as defined in Article 2 number 8 of Regulation (EU) No. 648/2012 is required to ensure by means of suitable measures, in particular contractual arrangements and controls, that third country participating in guaranteed OTC derivative contracts do not infringe the provisions of Regulation (EU) No. 648/2012 applicable to those guaranteed OTC derivative contracts.

(3) Domestic clearing members as defined in Article 2 number 14 of Regulation (EU) No. 648/2012 and trading venues within the meaning of Article 2 number 4 of Regulation (EU) No. 648/2012 may only use clearing services of a central counterparty that is established in a third country within the meaning of Article 25(1) of Regulation (EU) No. 648/2012 if it has been recognised by the European Securities and Markets Authority.

(4) BaFin exercises the powers conferred on it by subsection (1) in conjunction with Regulation (EC) No. 648/2012 where this is necessary to perform its functions and monitor compliance with the obligations defined in Regulation (EC) No. 648/2012.

(5) ¹To the extent that BaFin, as the competent authority, takes action under subsection (1) or exercises powers under subsection (4), the documents to be submitted in German must also be prepared and submitted in English if required by BaFin. ²BaFin can permit the documents to be prepared and submitted solely in English.

(6) ¹BaFin can require undertakings to provide information, submit documents and provide copies where this is necessary for monitoring compliance with the requirements of subsection (1). ²Statutory rights to provide or refuse to provide information as well as statutory obligations of confidentiality remain unaffected.

(7) Objections and appeals against measures taken by BaFin under subsections (4) and (6), including in conjunction with Regulation (EU) No. 648/2012, do not have any suspensory effect.

Section 31 Notification obligations of non-financial counterparties

(1) Any notification to BaFin under Article 10(1)(a) of Regulation (EU) No. 648/2012 must be made in written form.

(2) If a non-financial counterparty as defined in Article 2(9) of Regulation (EU) No. 648/2012 becomes subject to the clearing obligation because the conditions set out in Article 10(1)(b) of Regulation (EU) No. 648/2012 are met, it must notify BaFin of this in writing without undue delay.

(3) An attestation report issued by a German public auditor (*Wirtschaftsprüfer*), a German sworn auditor (*vereidigter Buchprüfer*) or a German public auditing firm (*Wirtschaftsprüfungsgesellschaft*) or sworn auditing firm (*Buchprüfungsgesellschaft*) is considered to be evidence within the meaning of Article 10(2) of Regulation (EU) No. 648/2012.

Section 32 Audit of compliance with certain obligations under Regulation (EU) No. 648/2012 and Regulation (EU) No. 600/2014

(1) ¹Corporations that are neither small corporations as defined in section 267 (1) of the Commercial Code nor financial counterparties as defined in Article 2 number 8 of Regulation (EU) No. 648/2012 and that, in the preceding financial year, either

1. entered into OTC derivative contracts as defined in Article 2 number 7 of Regulation (EU) No. 648/2012 with an aggregate notional amount of more than EUR 100 million, or
2. entered into more than 100 OTC derivative contracts as defined in Article 2 number 7 of Regulation (EU) No 648/2012

must appoint a suitable auditor within nine months after the end of the financial year to verify and certify that they have appropriate systems for ensuring compliance with the requirements of Article 4(1), (2) and the second subparagraph of paragraph (3), Article 9(1) to (3), Article 10(1) to (3) and Article 11(1), (2) and (3) sentence 2 and (5) to the first subparagraph of paragraph (11) Regulation (EU) No. 648/2012, under Article 28(1) to (3) of Regulation (EU) No. 600/2014 and under section 31 (1) and (2) of this Act. ²Transactions that, as intragroup transactions, are covered by the exemption in Article 4(2) of Regulation (EU) No. 648/2012 or are exempted from the requirements of Article 11(3) der Regulation (EU) No. 648/2012, are not included when calculating the threshold under sentence 1 numbers 1 and 2. ³The obligations under sentence 1 do not apply to undertakings that are subject to the audit requirements under section 35 of the Insurance Supervision Act or the audit requirements under section 29 of the Banking Act.

(2) ¹Suitable auditors within the meaning of subsection (1) sentence 1 are German public auditors, German sworn auditors, German public auditing firms or sworn auditing firms that have sufficient knowledge of the subject of the audit. ²The corporation must appoint the auditor no later than 15 months after the beginning of the financial year to which the audit relates.

(3) ¹The auditor must sign the attestation report and submit it to the legal representatives and the supervisory board of the corporation, if any, within nine months of the end of the financial year to which the audit relates. ²Management must be given an opportunity to comment before the attestation report is forwarded to the supervisory board. ³The auditor must report in writing on the findings of the audit in the attestation report. ⁴If the auditor becomes aware of significant infringements of the requirements of subsection (1), the auditor must notify BaFin without delay. ⁵Section 323 of the Commercial Code applies, with the necessary modifications.

(4) ¹If the auditor's attestation report identifies deficiencies, the corporation must provide the attestation report to BaFin without delay. ²If the auditor finds that the management failed to make a corresponding notification to BaFin in a year prior to the audit period, the auditor must notify BaFin of this without delay. ³BaFin must notify the Chamber of German Public Auditors (*Wirtschaftsprüferkammer*) of any facts indicating that the auditor has infringed professional duties. ⁴Section 110 (1) sentence 2 applies, with the necessary modifications.

(5) ¹The obligations under subsection (1) in conjunction with subsections (2) to (4) also apply to general (commercial) partnerships and limited partnerships within the meaning of section 264a (1) of the Commercial Code. ²Section 264a (2) of the Commercial Code applies, with the necessary modifications.

(6) ¹In consultation with the Federal Ministry of Justice and Consumer Protection, the Federal Ministry of Finance may, by way of a statutory order not requiring the consent of the Bundesrat, adopt more detailed requirements governing the nature, scope and timing of the audit under subsection (1) and the nature and scope of attestation reports under subsection (3), to the extent that this is necessary for the performance of BaFin's functions, and in particular to ensure compliance with the duties and requirements specified in subsection (1) sentence 1 and to obtain uniform documents. ²In consultation with the Federal Ministry of Justice and Consumer Protection, the Federal Ministry of Finance may, by way of a statutory order, delegate this authority to BaFin.

Section 6 Notification, publication and submission of changes in the proportion of voting rights to the Company Register

Section 33 Notification requirements applicable to the party subject to the notification requirement; power to issue statutory orders

(1) ¹Any party (the party subject to the notification requirement) whose shareholding in an issuer whose home country is the Federal Republic of Germany reaches, exceeds or falls below 3 per cent, 5 per cent, 10 per cent, 15 per cent, 20 per cent, 25 per cent, 30 per cent, 50 per cent or 75 per cent of the voting rights attaching to shares belonging to that party by purchase, sale or other means must notify this to the issuer and simultaneously to BaFin without undue delay, and at the latest within four trading days, in compliance with section 34 (1) and (2). ²In the case of depositary receipts in respect of shares, the notification requirement applies only to the holder of the certificates. ³The notification period under sentence 1 begins when the party subject to the notification requirement learns or, in consideration of the circumstances, must have learned, that its percentage of voting rights has reached, exceeded or fallen below the specified thresholds. ⁴With regard to the beginning of the period, there is an irrefutable presumption that the party subject to the notification requirement learns of this no later than two trading days after reaching, exceeding or falling below the specified thresholds. ⁵By way of derogation from sentence 3, if a threshold is triggered as a result of events that change the total number voting rights, the period begins as soon as the party subject to the notification requirement has knowledge that the threshold has been triggered, but at the latest when the issuer publishes the disclosure in accordance with section 41 (1).

(2) ¹Any party that is entitled to 3 per cent or more of the voting rights in an issuer whose home country is the Federal Republic of Germany at the time the shares are admitted to trading on an organised market for the first time is required to make a notification to that issuer and BaFin under subsection (1) sentence 1. ²Subsection (1) sentence 2 applies, with the necessary modifications.

(3) The term "belong" within the meaning of this Part already means the existence of an unconditional claim for transfer of shares without delay or a corresponding obligation.

(4) Domestic issuers and issuers whose home country is the Federal Republic of Germany within the meaning of this Part are only those issuers whose shares are admitted to trading on an organised market.

(5) ¹The Federal Ministry of Finance may, by way of a statutory order not requiring the consent of the Bundesrat, adopt more detailed requirements governing the content, nature, language, scope and format of the notification under subsection (1) sentence 1 and subsection (2). ²The Federal Ministry of Finance may delegate this authority to BaFin by way of a statutory order, to the extent that the nature and format of the notification under subsection (1) or subsection (2) are affected, in particular the use of an electronic procedure.

Section 34 Attribution of voting rights

(1) ¹For the purpose of the notification requirements under section 33 (1) and (2), the following voting rights attaching to shares of an issuer whose home country is the Federal Republic of Germany are equivalent to the voting rights of the party subject to the notification requirement:

1. voting rights of a subsidiary of the party subject to the notification requirement,
2. that belong to a third party and are held by it for the account of the party subject to the notification requirement,
3. that the party subject to the notification requirement assigns as collateral to a third party, unless that third party is authorised to exercise the voting rights attaching to the shares and declares its intention to do so independently of the instructions of the party subject to the notification requirement,
4. in respect of which a life interest has been granted to the party subject to the notification requirement,
5. that the party subject to the notification requirement can acquire through a declaration of intent,
6. voting rights that have been entrusted to the party subject to the notification requirement or which it may exercise as a proxyholder, provided that it can exercise the voting rights attaching to the shares at its own discretion in the absence of specific instructions from the shareholder,
7. if the party subject to the notification requirement can exercise voting rights attaching to shares under an agreement that provides for the temporary transfer of the voting rights without the related shares for a consideration.
8. that are lodged as collateral with the party subject to the reporting requirement, provided that it holds the voting rights and declares its intention of exercising them.

²For the purpose of attribution under sentence 1 numbers 2 to 8, subsidiaries of the party subject to the notification requirement are deemed to be equivalent to the party subject to the notification requirement. ³Any voting rights of the subsidiary are attributed in full to the party subject to the notification requirement.

(2) ¹Any voting rights attaching to shares of an issuer whose home country is the Federal Republic of Germany that belong to a third party are also attributed in full to the party subject to the notification requirement if the party subject to the notification requirement or its subsidiary has, on the basis of an agreement or otherwise, adopted a common policy with the third party towards that issuer; agreements in individual cases are excluded.

²Acting in concert requires the party subject to the notification requirement or its subsidiary and the third party to reach an understanding on the exercise of voting rights or otherwise collaborate with the aim of bringing about a lasting and material change in the issuer's business strategy. ³Subsection (1) applies, with the necessary modifications, to the calculation of the proportion of voting rights held by the third party.

(3) ¹If, in the case of subsection (1) sentence 1 number 6, a proxy is only granted for the exercise of the voting rights at one general meeting, the notification requirement under section 33 (1) and (2) in conjunction with subsection (1) sentence 1 number 6 is also deemed to be met if the notification is not made until the proxy is granted. ²The notification must include information about the date of the general meeting and the amount of the proportion of voting rights that will be attributed to the proxyholder once the proxy or exercise discretion has expired.

Section 35 Subsidiary status; power to issue statutory orders

(1) Subject to subsections (2) to (4), subsidiaries within the meaning of this Part mean undertakings

1. that are classified as subsidiaries as defined in section 290 of the Commercial Code or
 2. over which significant influence can be exercised,
- regardless of their legal form or registered office.

(2) An investment services enterprise is not considered to be a subsidiary within the meaning of this Part with regard to the investments it manages as part of an investment service under section 2 (3) sentence 1 number 7, if

1. the investment services enterprise exercises the voting rights attaching to the relevant shares

- independently of the parent undertaking,
2. the investment services enterprise
 - a) may only exercise the voting rights on the basis of instructions given in writing or by electronic means, or
 - b) if it ensures by putting into place appropriate mechanisms that portfolio management services are conducted independently of any other services and under conditions equivalent to those provided for under Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (OJ EU No. L 302 of 17 November 2009, p. 32), as amended,
 3. the parent undertaking informs BaFin of the name of the investment services enterprise and of the competent authority responsible for its supervision, or the lack of such an authority, and
 4. the parent undertaking declares to BaFin that the conditions under number 1 are met.

(3) Asset management companies within the meaning of section 17 (1) of the Investment Code and EU management companies within the meaning of section 1(17) of the Investment Code are not considered to be subsidiaries within the meaning of this Part with regard to the investments belonging to the investment funds they manage if

1. the management company exercises the voting rights attaching to the relevant shares independently of the parent undertaking,
2. the management company manages the investments within the meaning of sections 33 and 34 belonging to the investment fund in accordance with Directive 2009/65/EC,
3. the parent undertaking informs BaFin of the name of the management company and of the competent authority responsible for its supervision, or the lack of such an authority, and
4. the parent undertaking declares to BaFin that the conditions under number 1 are met.

(4) An undertaking whose registered office is in a third country and that would require authorisation for financial portfolio management under section 32 (1) sentence 1 in conjunction with section 1 (1a) sentence 2 number 3 of the Banking Act or permission under section 20 or section 113 of the Investment Code if its registered office or head office was in Germany is not considered to be a subsidiary within the meaning of this Part if

1. the undertaking complies with requirements concerning its independence that are equivalent to the requirements under subsection (2) or subsection (3), including in conjunction with a statutory order under subsection (6),
2. the parent undertaking informs BaFin of the name of that undertaking and of the competent authority responsible for its supervision, or the lack of such an authority, and
3. the parent undertaking declares to BaFin that the conditions under number 1 are met.

(5) However, by way of derogation from subsections (2) to (4), investment services enterprises and management companies are considered to be subsidiaries within the meaning of this Part if

1. the parent undertaking or another subsidiary of the parent company itself holds shares of the investment managed by the undertaking and
2. the undertaking has no discretion to exercise the voting rights attaching to those investments and may only exercise the voting rights under direct or indirect instructions from the parent undertaking or another subsidiary of the parent undertaking.

(6) The Federal Ministry of Finance is authorised, by way of a statutory order not requiring the consent of the Bundesrat, to adopt more detailed requirements relating to the circumstances under which the subsidiary is considered to be independent from the parent undertaking in the cases set out in subsections (2) to (5).

Section 36 Non-consideration of voting rights

- (1) Voting rights attaching to shares in an issuer whose home country is the Federal Republic of Germany are

not considered when calculating the proportion of voting rights if their holder

1. is a credit institution or an investment services enterprise whose registered office is situated in a Member State of the European Union or in another signatory state to the Agreement on the European Economic Area,
2. holds the shares in question in its trading book and this proportion does not exceed 5 per cent of the voting rights, and
3. ensures that the voting rights attaching to such shares are not exercised or otherwise used to exert influence over the management of the issuer.

(2) Voting rights attaching to shares acquired for stabilisation purposes under Regulation (EC) No. 2273/2003 are not considered when calculating the proportion of voting rights if the holder of the shares ensures that the voting rights attaching to the shares in question are not exercised or otherwise used to exert influence over the management of the issuer.

(3) Voting rights attached to shares in an issuer whose home country is the Federal Republic of Germany remain unconsidered when calculating the percentage of voting rights if

1. the shares concerned are held for a maximum period of three trading days for the sole purpose of clearing and settlement, even if the shares are also traded outside an organised market, or
2. a custodian can only exercise the voting rights attaching to the shares held in custody under instructions given in writing or by electronic means.

(4) ¹Voting rights attaching to shares provided to or by the members of the European System of Central Banks in carrying out their functions as monetary authorities are not considered when calculating the proportion of voting rights in an issuer whose home country is the Federal Republic of Germany if the transactions last for a short period and provided that the voting rights attaching to such shares are not exercised. ²Sentence 1 applies in particular to voting rights attaching to shares that are transferred as collateral from or to a member within the meaning of sentence 1, and to voting rights attaching to shares provided to or by a member under a pledge or repurchase or similar agreement for liquidity granted for monetary policy purposes or within a payment system.

(5) ¹For the notification threshold thresholds of 3 per cent and 5 per cent, the voting rights attaching to shares of an issuer whose home country is the Federal Republic of Germany are not considered if they are bought or sold by a person that holds itself out on a market on a continuous basis as being willing to buy or sell, by way of proprietary trading, financial instruments at prices defined by it, if

1. this person acts in its capacity as a market maker,
2. it is authorised under Directive 2004/39/EC,
3. it does not intervene in the management of the issuer and does not exert any influence on the issuer to buy the shares in question or to support the share price, and
4. it informs BaFin without undue delay and within no later than four trading days that it acts as market maker in the shares in question; section 33 (1) sentences 3 and 4 applies, with the necessary modifications, to the beginning of the notification period.

²The person may already submit the notification at the time when it intends to commence market making activities in the shares concerned.

(6) Voting rights attaching to shares that, under subsections (1) to (5) are not considered when calculating the percentage of voting rights, may not be exercised, with the exception of subsection (3) number 2.

(7) The Federal Ministry of Finance may, by way of a statutory order not requiring the consent of the Bundesrat,

1. determine a lower maximum period for holding shares under subsection (3) number 1,
2. adopt more detailed requirements concerning the non-consideration of voting rights of a market maker under subsection (5), and
3. adopt more detailed requirements concerning the electronic means by which instructions may be given under subsection (3) number 2.

(8) The calculation of voting rights that are not considered under subsections (1) and (5) is governed by the regulatory technical standards referred to in Article 9(6b) and Article 13(4) of Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC (OJ L 390, 31 December 2004, page 38).

Section 37 Notification by parent undertakings; power to issue statutory orders

(1) A party subject to the notification requirements is exempted from the notification requirements under section 33 (1) and (2), section 38 (1) and section 39 (1) if the notification is made by its parent company or, if the parent company is itself a subsidiary, by its own parent company.

(2) The Federal Ministry of Finance may, by way of a statutory order not requiring the consent of the Bundesrat, adopt more detailed requirements governing the content, nature, language, scope and format of the notification under subsection (1).

Section 38 Notification requirements relating to holdings of instruments; power to issue statutory orders

(1) ¹The notification requirement under section 33 (1) and (2) applies, with the necessary modifications, when the thresholds specified in section 33 (1) sentence 1, with the exception of the 3 per cent threshold, are reached, exceeded or fallen below, to direct or indirect holders of instruments that

1. the give the holder either
 - a) an unconditional right at maturity to buy issued shares with voting rights attached of an issuer whose home country is the Federal Republic of Germany, or
 - b) the discretion as to the holder's right to buy the sharesor
2. that are referenced to shares referred to in number 1 and with economic effect similar to that of the financial instruments referred to in number 1, whether or not they confer a right to a physical settlement.

²Sections 36 and 37 apply, with the necessary modifications.

(2) Instruments within the meaning of subsection (1) are in particular:

1. transferable securities
2. options,
3. futures,
4. swaps,
5. forward rate agreements and
6. contracts for difference.

(3) ¹The number of voting rights relevant for the notification requirement under subsection (1) is calculated on the basis of the full notional amount of shares underlying the instrument. ²By way of derogation from sentence 1, if the instrument only provides for cash settlement, the number of voting rights is calculated on a delta-adjusted basis by multiplying the notional amount of underlying shares by the delta of the instrument. ³Details of the calculation are governed by the regulatory technical standards referred to in Article 13(1a) of Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC (OJ L 390, 31 December 2004, page 38). ⁴Instruments referenced to a basket of shares or an index are also calculated in accordance with the regulatory technical standards referred to in sentence 2.

(4) ¹If different instruments specified in subsection (1) are referenced to shares of the same issuer, the voting

rights attaching to those shares must be aggregated. ²Long positions may not be netted with short positions.

(5) ¹The Federal Ministry of Finance may, by way of a statutory order not requiring the consent of the Bundesrat, adopt more detailed requirements governing the content, nature, language, scope and format of the notification under subsection (1). ²The Federal Ministry of Finance may delegate this authority to BaFin by way of a statutory order, to the extent that the nature and format of the notification under subsection (1) are affected, in particular use of an electronic procedure.

Section 39 Notification requirements applicable to aggregation; power to issue statutory orders

(1) The notification requirement under section 33 (1) and (2) applies, with the necessary modifications, to holders of voting rights within the meaning of section 33 and instruments within the meaning of section 38 if the total number of voting rights in the same issuer under section 33 (1) sentence 1 or (2) and section 38 (1) sentence 1 reaches, exceeds or falls below the thresholds referred to in section 33 (1) sentence 1, with the exception of the 3 per cent threshold.

(2) ¹The Federal Ministry of Finance may, by way of a statutory order not requiring the consent of the Bundesrat, adopt more detailed requirements governing the content, nature, language, scope and format of the notification under subsection (1). ²The Federal Ministry of Finance may delegate this authority to BaFin by way of a statutory order, to the extent that the nature and format of the notification under subsection (1) are affected, in particular use of an electronic procedure.

Section 40 Publication obligations of the issuer and communication to the Company Register

(1) ¹A domestic issuer must publish information under section 33 (1) sentence 1, subsection (2) and section 38 (1) sentence 1 as well as section 39 (1) sentence 1, or under equivalent provisions of other Member States of the European Union or other signatory states to the Agreement on the European Economic Area without undue delay, but no later than three trading days following receipt of the notification; it must also communicate the information to the Company Register within the meaning of section 8b of the Commercial Code without undue delay, but not before its publication, for storage. ²If a domestic issuer reaches, exceeds or falls below the thresholds of 5 per cent or 10 per cent through acquiring or disposing of its own shares or otherwise, either by the issuer itself, through a subsidiary or through a person acting in its own name but for the account of the issuer, sentence 1 applies, with the necessary modifications, provided that, by way of derogation from sentence 1, a statement is published whose content is governed by section 33 (1) sentence 1, including in conjunction with a statutory order under section 33 (5), and that the publication is made no later than four trading days after reaching, exceeding or falling below the specified thresholds; if the Federal Republic of Germany is the home country of the issuer, the 3 per cent threshold also applies.

(2) The domestic issuer must inform BaFin of the publication at the same time as the publication under subsection (1) sentences 1 and 2.

(3) The Federal Ministry of Finance may, by way of a statutory order not requiring the consent of the Bundesrat, adopt more detailed requirements governing

1. the content, nature, language, scope and format, as well as the electronic processing of the information of the publication under subsection (1) sentence 1, including personal data contained in it, and
2. the content, nature, language, scope and format, as well as the electronic processing of the information of the notification under subsection (2), including personal data contained in it.

Section 41 Publication of the total number of voting rights and communication to the Company Register

(1) ¹If there is an increase or decrease in the voting rights in a domestic issuer, that issuer is required to publish the total number of voting rights and the effective date of the increase or decrease in the manner provided for in section 40 (1) sentence 1, including in conjunction with a statutory order under subsection (3) number 1, without delay, but no later than within two trading days. ²At the same time, it must inform BaFin of the publication in accordance with 40 (2), including in conjunction with a statutory order under subsection (3) number 2. ³It must also communicate that information without undue delay, but not before its publication, to the

Company Register within the meaning of section 8b of the Commercial Code for storage.

(2) ¹By way of derogation from subsection (1) sentence 1, when new shares are issued the total number of new shares is only required to be published in conjunction with a publication that would in any case be required under subsection (1), but no later than the end of the calendar month in which the voting rights increased or decreased. ²There is no requirement to publish the effective date of the increase or decrease.

Section 42 Proof notified holdings

Any party who has made a notification under section 33 (1) or (2), section 38 (1) or section 39 (1) must prove the existence of the notified holding if required to do so by BaFin or an issuer whose home country is the Federal Republic of Germany.

Section 43 Notification requirements applicable to owners of qualifying holdings

(1) ¹Any party subject to the notification requirement within the meaning of sections 33 and 34 whose shareholding reaches or exceeds the threshold of 10 per cent, or a higher threshold, of voting rights attaching to shares must, within 20 trading days after reaching or exceeding these thresholds, inform an issuer whose home country is the Federal Republic of Germany of the goals pursued by purchasing the voting rights and the source of the funds used to purchase the voting rights. ²Any change to the goals within the meaning of sentence 1 must be notified within 20 trading days. ³In respect of the goals pursued by purchasing the voting rights, the party subject to the notification requirement must disclose whether

1. the investment serves to implement strategic objectives or to generate trading profits,
2. it plans to acquire further voting rights within the next twelve months by means of a purchase or by other means,
3. it intends to exert influence on the appointment or removal of members of the issuer's administrative, managing and supervisory bodies, and
4. it intends to achieve a material change in the company's capital structure, in particular as regards the ratio between equity and debt and the dividend policy.

⁴With regard to the source of the funds used, the party subject to the notification requirement must disclose whether the funds raised by the party subject to the notification requirement to finance the purchase of the voting rights are equity or debt. ⁵No notification requirement under sentence 1 applies if the threshold was reached or exceeded as a result of an offer within the meaning of section 2 (1) of the Securities Acquisition and Takeover Act (*Wertpapiererwerbs- und Übernahmegesetz*). ⁶In addition, no notification requirement applies to asset management companies as well as foreign management companies and investment companies within the meaning of Directive 2009/65/EC that are subject to a prohibition corresponding to Article 56(1) sentence 1 of Directive 2009/65/EC, to the extent that an investment limit of 10 per cent or less has been stipulated; there is also no notification requirement in the event of a permitted exemption if investment limits are exceeded under Article 57(1) sentence 1 and (2) of Directive 2009/65/EC.

(2) An issuer is required to publish the information received or the fact that the notification requirement under subsection (1) has not been fulfilled in accordance with section 40 (1) sentence 1 in conjunction with the statutory order under section 40 (3) number 1; it must also communicate that information without undue delay, but not before its publication, to the Company Register within the meaning of section 8b of the Commercial Code for storage.

(3) ¹The articles of association of an issuer whose registered office is in Germany may stipulate that subsection (1) does not apply. ²Additionally, subsection (1) does not apply to issuers whose registered office is outside Germany and whose articles of association or other provisions stipulate non-application.

(4) The Federal Ministry of Finance may, by way of a statutory order not requiring the consent of the Bundesrat, adopt more detailed requirements governing the content, nature, language, scope and format of the notification under subsection (1).

Section 44 Loss of rights

(1) ¹Rights attaching to shares held by a party subject to the notification requirement or attributed to it under section 34 are ineffective during the period for which the notification requirements under section 33 (1) or (2) have not been met. ²This does not apply to claims under section 58 (4) and section 271 of the Stock Corporation Act (*Aktiengesetz*) if the failure to make the notification was not intentional and this was subsequently remedied. ³If this relates to the proportion of voting rights, the period under sentence 1 is extended by six months if the notification requirements were infringed intentionally or because of gross negligence. ⁴Sentence 3 does not apply if the difference in the amount of voting rights indicated in the previously submitted incorrect notification is less than 10 per cent of the actual proportion of voting rights, and there has been no failure to make a notification that the holding reached, exceeded or fell below any of the thresholds specified in section 33.

(2) If the party subject to the reporting requirement does not fulfil its notification requirements under section 38 (1) or section 39 (1), subsection (1) must be applied to shares of the same issuer that belong to the party subject to the reporting requirement.

Section 45 BaFin guidelines

¹BaFin can prepare guidelines that it uses to judge in standard cases whether or not the conditions are met for an event subject to notification requirements or whether the conditions for exemption from the notification requirements under section 33 (1) are met. ²The guidelines must be published in the Federal Gazette (*Bundesanzeiger*).

Section 46 Exemptions; power to issue statutory orders

(1) ¹BaFin can exempt domestic issuers whose registered office is in a third country from the obligations under section 40 (1) and section 41 if those issuers are subject to equivalent requirements of a third country or if they committed to complying with such requirements. ²BaFin must notify the European Securities and Markets Authority about the exemption. ³Sentence 1 does not apply to obligations of that issuer under section 40 (1) and section 41 resulting from notifications under section 39.

(2) ¹Issuers who have been exempted by BaFin under subsection (1) must publish in the manner specified in section 40 (1) sentence 1, including in conjunction with a statutory order under subsection (3), information about circumstances that correspond to those set out in section 33 (1) sentence 1 and (2), section 38 (1) sentence 1, section 40 (1) sentences 1 and 2 as well as section 41, and that must be made available to the public under the equivalent requirements of a third country, and simultaneously notify BaFin. ²The information must also be communicated to the Company Register within the meaning of section 8b of the Commercial Code without undue delay, but not before its publication, for storage.

(3) The Federal Ministry of Finance may, by way of a statutory order not requiring the consent of the Bundesrat, adopt more detailed requirements governing the equivalence of third country requirements and the exemption of issuers under subsection (1).

Section 47 Trading days

(1) For the purpose of calculating the time limits for notifications and publications under this Part, trading days mean all calendar days except Saturdays, Sundays or public holidays that are legally recognised in at least one Federal State.

(2) BaFin makes available a calendar of trading days on its website.

Part 7 Information necessary for exercising rights attaching to securities

Section 48 Issuers' obligations to holders of securities

(1) Issuers whose home country is the Federal Republic of Germany must ensure that

1. all holders of the securities admitted to trading are treated equally under equal circumstances;
2. all the facilities and information necessary to enable holders of securities admitted to trading to exercise their rights are publicly available in Germany;
3. the integrity of data on holders of securities admitted to trading is protected from access by unauthorised persons;
4. for the entire period during which securities are admitted to trading, at least one financial institution must be designated as paying agent in Germany through which all necessary measures in respect of securities can be implemented, and implemented free of charge where the securities are submitted to this agent;
5. in the case of shares admitted to trading, a form for granting a proxy for the general meeting is made available in writing to each person entitled to vote, together with the notice convening the general meeting or, upon request, after the general meeting has been announced;
6. in the case of debt securities admitted to trading within the meaning of section 2 (1) number 3, with the exception of securities that also fall within the scope of section 2 (1) number 2 or that establish at least a contingent right to acquire securities under section 2 (1) numbers 1 or 2, a form granting a proxy for a general meeting of debt securities holders is made available in text form and in good time to each person entitled to vote, together with the notice convening the meeting or, upon request, after the meeting has been announced.

(2) ¹An issuer of debt securities admitted to trading within the meaning of subsection (1) number 6 whose home country is the Federal Republic of Germany can hold the general meeting of debt securities holders in any Member State of the European Union or another signatory state to the Agreement on the European Economic Area. ²A condition for this is that all the facilities and information necessary to exercise rights are available to the debt securities holders in that country, and that only holders of the following debt securities are invited to the meeting:

1. debt securities with a minimum denomination per unit of EUR 100,000 or the equivalent value in another currency on the date of issue, or
2. outstanding debt securities with a minimum denomination per unit of EUR 50,000 or the equivalent value in another currency at the date of issue, if the debt instruments were already admitted to trading on an organised market in Germany or in another Member State of the European Union or another signatory state to the Agreement on the European Economic Area prior to 31 December 2010.

(3) For the purpose of the requirements under subsection (1) numbers 1 to 5 as well as section 49 (3) number 1, the holders of depositary receipts are considered to be equivalent to the holders of the represented shares.

Section 49 Publication of notifications and electronic communication of information

(1) ¹An issuer of shares admitted to trading whose home country is the Federal Republic of Germany must publish in the Federal Gazette

1. the notice convening the general meeting, including the agenda, the total number of shares and voting rights at the time the meeting was convened, as well as the shareholders' rights in respect of attendance at the general meeting, and
2. notices about the distribution and payment of dividends, announcements about the issuance of new shares and any arrangements for or exercise of conversion, pre-emptive, retirement and subscription rights, as well as resolutions on these rights

without undue delay. ²If a corresponding publication in the Federal Gazette is also required under other provisions, a single publication is sufficient.

(2) ¹An issuer of debt securities within the meaning of section 48 (1) number 6 whose home country is the Federal Republic of Germany must publish in the Federal Gazette

1. the place, time and agenda of the meeting of debt securities holders as well as notices about the right of those securities holders to attend the meeting, and
2. notices about exercising any conversion, subscription and cancellation rights, as well as the interest payments, repayments, drawings and units that have been cancelled or drawn but have not yet been

redeemed

without undue delay. ²Subsection (1) sentence 2 applies, with the necessary modifications.

(3) ¹Without prejudice to the publication requirements under subsections (1) and (2), issuers whose home country is the Federal Republic of Germany can communicate information to the holders of securities admitted to trading electronically if the resulting costs are not imposed on the securities holders in contravention of the principle of equal treatment laid down in section 48 (1) no. 1, and if

1. in the case of shares admitted to trading
 - a) the general meeting has voted to approve it,
 - b) the choice of electronic communication medium does not depend upon the location of the registered office or residence of the shareholders or the persons to whom voting rights are attributed in the cases referred to in section 34,
 - c) mechanisms have been put into place for securely identifying and addressing the shareholders or persons who exercise the voting rights or who are entitled to issue instructions on the exercise of voting rights, and
 - d) the shareholders, or in the cases of section 34 (1) sentence 1 numbers 1, 3, 4 and subsection (2), the persons entitled to exercise the voting rights, have given their explicit consent to electronic communication or have not objected to a request for consent in text form within an appropriate period of time and have not revoked that consent at a later point in time, which is thus deemed to have been given,
2. in the case of debt securities admitted to trading within the meaning of section 48 (1) number 6
 - a) a meeting of debt securities holders has voted to approve it,
 - b) the choice of electronic communication medium does not depend upon the location of the registered office or residence of the debt securities holders or their proxies,
 - c) mechanisms have been put into place for securely identifying and addressing the debt securities holders,
 - d) the debt securities holders have given their explicit consent to electronic communication or have not objected to a request for consent in text form within an appropriate period of time and have not revoked that consent at a later point in time, which is thus deemed to have been given.

²If electronic communication is not possible under these conditions, the information will be communicated in writing regardless of any provisions to the contrary in the articles of association.

Section 50 Publication of additional information and transmission to the Company Register; power to issue statutory orders

(1) ¹A domestic issuer must publish

1. any change in the rights attaching to the securities admitted to trading and
 - a) in the case of shares admitted to trading, rights attaching to derivative securities issued by the issuer itself, provided that they grant conversion or acquisition rights in respect of the issuer's shares admitted to trading,
 - b) in the case of securities other than shares, any changes in the terms of these securities, in particular changes in the interest rates or the conditions associated with them, provided that the rights attaching to such securities are indirectly affected by this, and
2. information that it publishes in a third country and that may be of importance to the public in the European Union and the European Economic Area,

without undue delay, and simultaneously inform BaFin of this publication. ²In addition, it must communicate that information without undue delay, but not before its publication, to the Company Register within the meaning of section 8b of the Commercial Code for storage.

(2) The Federal Ministry of Finance may, by way of a statutory order not requiring the consent of the Bundesrat, adopt more detailed requirements governing the content, nature, language, scope and format of the publication under subsection (1) sentence 1.

Section 51 Exemption

(1) ¹BaFin can exempt domestic issuers whose registered office is in a third country from the obligations under sections 48, 49 and 50 (1) sentence 1 numbers 1 and 2 if those issuers are subject to equivalent requirements of a third country or if they have committed to complying with those rules. ²BaFin must notify the European Securities and Markets Authority about the exemption.

(2) In accordance with section 50 (1) in conjunction with a statutory order under section 50 (2), issuers exempted by BaFin under subsection (1) must publish information on circumstances within the meaning of section 50 (1) sentence 1 numbers 1 and 2 that must be made available to the public under the equivalent requirements of a third country, and simultaneously inform BaFin of this publication; in addition, they must communicate that information without undue delay, but not before its publication, to the Company Register within the meaning of section 8b of the Commercial Code for storage.

(3) The Federal Ministry of Finance may, by way of a statutory order not requiring the consent of the Bundesrat, adopt more detailed requirements governing the equivalence of third country requirements and the exemption of issuers under subsection (1).

Section 52 Exclusion of appeal

Any appeal against a resolution of the general meeting may not be based on an infringement of the requirements of this Part.

Part 8 Short selling and derivative transactions

Section 53 Monitoring short selling; power to issue statutory orders

(1) ¹BaFin is the competent authority for the purposes of Regulation (EU) No. 236/2012. ²This does not affect section 15 (5a) of the Stock Exchange Act. ³Unless otherwise provided for in Regulation (EU) No. 236/2012, the requirements of Part 1 and Part 2 of this Act apply, with the necessary modifications, with the exception of section 18 (7) sentences 5 to 8, section 21 (1) sentence 3 and sections 22.

(2) ¹BaFin exercises the powers conferred on it by subsection (1) sentence 1 in conjunction with Regulation (EC) No. 236/2012 where this is necessary to perform its functions and monitor compliance with the obligations defined in Regulation (EC) No. 236/2012. ²For the purposes of Article 9(4) sentence 2 of Regulation (EU) No. 236/2012, BaFin supervises the corresponding Federal Gazette website.

(3) Objections and appeals against measures taken by BaFin under subsection (2), including in conjunction with Regulation (EU) No. 236/2012, do not have any suspensory effect.

(4) The Federal Ministry of Finance may, by way of a statutory order not requiring the consent of the Bundesrat, adopt more detailed requirements governing

1. the nature, scope and format of notifications and publications of net short positions under Articles 5 to 8 of Regulation (EU) No. 236/2012,
2. supervision of the Federal Gazette website for the purposes of Article 9(4) sentence 2 of Regulation (EU) No. 236/2012 and
3. the nature, scope and format of notifications under Article 17(5), (6) and (8) to (10) of Regulation (EU) No. 236/2012.

The Federal Ministry of Finance may delegate the authority under sentence 1 to BaFin by way of a statutory order not requiring the consent of the Bundesrat.

Part 9 Position limits and position management controls in commodity derivatives and reporting

Section 54 Position limits and position management controls

(1) Subject to section 55, BaFin specifies a quantitative threshold for the maximum size of a position in each commodity derivative traded on a trading venue in Germany that any person can hold (position limit).

(2) The position limit must be set in order to

1. prevent market abuse within the meaning of Article 1 of Regulation (EU) No. 596/2014,
2. support orderly price formation and settlement conditions.

In particular, the position limit supports price formation and settlement conditions within the meaning of sentence 1 number 2 if it

1. prevents market distorting positions and
2. ensures convergence between the price of a derivative in the delivery month and spot prices for the underlying commodity, without prejudice to price formation on the market for the underlying commodity.

(3) ¹In exceptional cases, BaFin can impose position limits that are more restrictive than those calculated under subsections (1) and (2) if this is objectively justified and proportionate taking into account the liquidity of the specific derivative and the orderly functioning of the market in question. ²Position limits imposed under sentence 1 must be published on BaFin's website and are limited to a period not exceeding six months from the date of publication. ³If the grounds for the restriction under sentence 1 continue to be applicable after the end of that period, the restriction can be renewed for further periods not exceeding six months at a time. ⁴Subsection (4) applies, with the necessary modifications.

(4) ¹BaFin must communicate the position limit it intends to set to the European Securities and Markets Authority before setting a position limit under subsection (1). ²If, within two months following receipt of the notification under sentence 1, the European Securities and Markets Authority requires the position limit to be modified and BaFin does not comply with this requirement, it must inform the European Securities and Markets Authority of its decision, including the reasons, and publish a notice on its website explaining the reasons for its decision. ³BaFin must communicate the details of the position limit it has set to the European Securities and Markets Authority.

(5) ¹If there is any significant change in the deliverable supply or open interest in a derivative or any other significant change on the market, BaFin must reset the position limits in accordance with subsections (1) to (4). ²Operators of trading venues must inform BaFin of significant changes on their trading venue as specified in sentence 1.

(6) ¹An operator of a multilateral or organised trading facility on which commodity derivatives are traded must establish procedures to monitor compliance with the position limits set in accordance with subsections (1) to (5) and section 55 (position management controls). ²These must be transparent and non-discriminatory, specify how they apply and take account of the nature and composition of market participants and of the use they make of the contracts submitted to trading. ³In the context of controls under sentences 1 and 2, an operator of a trading venue must ensure in particular that it has the power to

1. monitor the open interest positions of persons,
2. access information, including all relevant documentation, from persons about the size and purpose of a position or exposure they have entered into, information about beneficial or underlying owners, any concert arrangements, and any related assets or liabilities in the underlying market,
3. require a person to terminate or reduce a position, on a temporary or permanent basis, and to unilaterally take appropriate action to ensure the termination or reduction if the person does not comply, and
4. require a person to provide liquidity back into the market at an agreed price and volume on a temporary

basis with the express intent of mitigating the effects of a large or dominant position.

⁴The operator must inform BaFin of the details of the position management controls under sentences 1 to 3.

⁵BaFin must communicate this information to the European Securities and Markets Authority.

Section 55 Position limits for derivatives traded throughout Europe

(1) ¹If the same commodity derivative is also traded in significant volumes in another Member State or another signatory state to the Agreement on the European Economic Area, BaFin only sets a position limit under section 54 (1) if it is the central competent authority for that derivative. ²BaFin is the central competent authority for a derivative if the largest volume of trading in that derivative takes place on a trading venue in Germany.

³Further details of when a commodity derivative is considered to be the same within the meaning of sentence 1 and how volumes within the meaning of sentences 1 and 2 are calculated are contained in Article 5 of Commission Delegated Regulation (EU) 2017/591 of 1 December 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the application of position limits to commodity derivatives (OJ L 87 of 31 March 2017, page 479), as amended.

(2) ¹If BaFin is the central competent authority for the relevant derivative in the case of subsection (1) sentence 1, it must also notify an intended position limit for that derivative to the competent authorities of the other trading venues on which significant volumes of that derivative are traded before setting the position limit. ²If one of those competent authorities requires the position limit to be modified within two months following receipt of the notification under sentence 1, and it BaFin does not comply with this requirement, it must inform the European Securities and Markets Authority of its decision, including the reasons.

(3) ¹If BaFin is not the central competent authority for the relevant derivative in the case of subsection (1) sentence 1, the position limit set for this derivative by the central competent authority also applies in Germany. ²In this case, BaFin must notify the central competent authority for this derivative within two months of receipt of the notification that the authority intends setting a position limit if it agrees with the intended position limit. ³If the central competent authority does not comply with a requirement by BaFin to modify the position limit, BaFin must inform the European Securities and Markets Authority of its requirement, including the reasons.

Section 56 Application of position limits

(1) ¹In applying the position limits set under sections 54 and 55, all positions are taken into account that are held by a natural or legal person or an association of persons either individually or in the aggregate at group level. ²More detailed requirements on calculating positions are contained in Articles 3, 4 and 9 to 20 of Delegated Regulation (EU) 2017/591.

(2) ¹The position limits set under sections 54 and 55 also apply to OTC contracts that are economically equivalent to commodity derivatives within the meaning of subsection (1). ²More detailed requirements relating to economic equivalence are contained in Article 6 of Delegated Regulation (EU) 2017/591.

(3) ¹The position limits set under sections 54 and 55 do not apply to positions for which BaFin or the competent authority of another Member State has established on application that they are held by a non-financial entity and that they are objectively measurable in reducing risks directly related to commercial activity. ²More detailed requirements relating to positions qualifying as reducing risks and the method under sentence 1 are contained in Articles 7 and 8 of Delegated Regulation (EU) 2017/591.

Section 57 Position reporting; power to issue statutory orders

(1) ¹Members and participants of trading venues must report the details of their own positions in commodity derivatives that are traded on that venue to the relevant operator of the trading venue on a daily basis, as well as the positions of their clients and the clients of those clients until the end client is reached. ²Clients and their own clients, until the end client is reached, must provide the trading venue participants required to make the report with the information necessary for the report.

(2) ¹An operator of a trading venue on which commodity derivatives, emission allowances or derivatives thereof are traded must make a weekly report to BaFin and the European Securities and Markets Authority of the

aggregate positions in the various commodity derivatives or emission allowances or derivatives thereof traded on the trading venue that are held in these financial instruments by the categories of persons under sentence 4. ²The report must contain:

1. the number of long or short positions, broken down by the categories specified in sentences 4 and 5,
2. any related changes since the previous report,
3. the percentage of total open interest represented by each category and
4. the number of position holders in each category.

³For the disclosures under sentence 2, positions identified as positions that in an objectively measurable way reduce risks directly to commercial activity, and other positions, must be shown separately. ⁴For the purposes of sentence 1, the operator of the trading venue must classify persons holding positions according to the nature of their main business, taking account of any applicable authority, in one of the following categories:

1. investment services enterprises and credit institutions,
2. investment funds as defined in section 1 (1) of the Investment Code,
3. other financial institutions, including insurance undertakings or reinsurance undertakings as defined in Directive 2009/138/EC, and institutions for occupational retirement provision as defined in Directive 2003/41/EC,
4. other commercial undertakings.

⁵In the case of an emission allowance or derivative thereof, a further category for operators with compliance obligations under Directive 2003/87/EG for emission allowances or derivatives thereof must be defined in addition to the requirements of sentence 4. ⁶The obligation under sentence 1 applies only to commodity derivatives, emission allowances and derivatives thereof for which the minimum thresholds defined in Article 83 of Delegated Regulation (EU) 2017/565 are exceeded.

(3) Operators of a trading venue on which commodity derivatives, emission allowances or derivatives thereof are traded must also provide BaFin with a complete breakdown of the positions held by all members of or participants on that trading venue, and their clients, in commodity derivatives, emission allowances and derivatives thereof.

(4) ¹Investment services enterprises trading in commodity derivatives or emission allowances or derivatives thereof outside a trading venue must provide the competent authority named in sentence 2 on at least a daily basis with a complete breakdown of their positions taken in commodity derivatives or emission allowances or derivatives thereof traded on a trading venue and economically equivalent OTC contracts, as well as of those of their clients and the clients of those clients until the end client is reached, in accordance with Article 26 of Regulation (EU) No. 600/2014 or Article 8 of Regulation (EU) No. 1227/2011. ²The breakdown under sentence 1 must be provided

1. to BaFin in the case of commodity derivatives, emission allowances or derivatives thereof that are only traded in significant volumes on trading venues in Germany,
2. in the case of commodity derivatives, emission allowances or derivatives thereof that are only fully or partly traded in significant volumes on a trading venue in another Member State or another signatory state to the Agreement on the European Economic Area, to the competent authority of the relevant trading venues, and
3. in the case of commodity derivatives, emission allowances or derivatives thereof that are traded in significant volumes on trading venues in more than one Member State or signatory state to the Agreement on the European Economic Area, to the relevant central competent authority within the meaning of section 55.

³Clients and their own clients, until the end client is reached, must provide the investment services enterprises required to provide the breakdown with the information necessary for the breakdown.

(5) In critical market situations, BaFin can require the information under subsections (1), 3 and (4) to be provided on multiple occasions within the same day.

(6) ¹The Federal Ministry of Finance may, by way of a statutory order not requiring the consent of the Bundesrat,

1. adopt more detailed requirements governing the content, nature, scope, format and frequency of the information to be provided under subsections (1) and (3) to (5) and about the permitted data media and transmission channels, and
2. stipulate that, in the cases specified in subsections (1), (3) and (4), in addition to the information required there, additional information must be provided if this is necessary because of the specific features of the financial instrument that is the subject of the report, or the specific conditions prevailing on the trading venue on which the transaction was executed, to enable BaFin to monitor the position limits under section 54.

²The Federal Ministry of Finance may delegate this authority to BaFin by way of a statutory order.

Part 10 Organisational requirements for data reporting services providers

Section 58 Organisational requirements for approved publication arrangements

(1) ¹An approved publication arrangement must have adequate policies and arrangements in place to make public the following information about transactions in financial instruments as close to real time as possible, on a reasonable commercial basis:

1. the identifier of the financial instrument;
2. the price at which the transaction was concluded;
3. the volume of the transaction;
4. the time of the transaction;
5. the time the transaction was reported;
6. the price notation of the transaction;
7. the code for the trading venue the transaction was executed on, or where the transaction was executed via a systematic internaliser the code "SI" or otherwise the code "OTC";
8. if applicable, an indicator that the transaction was subject to specific conditions.

²The information under sentence 1 must be made available free of charge no later than 15 minutes after it has been published.

(2) ¹An approved publication arrangement must disseminate information efficiently and consistently in a way that ensures fast access to the information on a non-discriminatory basis. ²The information must be published in a format that facilitates the consolidation of the information with similar data from other sources.

(3) ¹The approved publication arrangement must maintain administrative arrangements designed to prevent conflicts of interest with its clients. ²In particular, if it is also a stock exchange operator or an investment services enterprise, it must treat all information collected in a non-discriminatory fashion and must operate and maintain appropriate arrangements to separate these different business functions.

(4) ¹An approved publication arrangement must establish mechanisms that ensure the security of the means of transfer of information, minimise the risk of unauthorised data manipulation and unauthorised access, and prevent information from becoming known before publication. ²It must have adequate resources and back-up facilities in order to offer and maintain its services at all times.

(5) An approved publication arrangement must have mechanisms in place that can effectively check the information to be published for completeness, identify omissions and obvious errors, and request retransmission of any such erroneous reports.

(6) An approved publication arrangement must have a whistleblower system in place in application of section 25a (1) sentence 6 number 3 of the Banking Act, with the necessary modifications.

(7) More detailed information about the organisational requirements set out in subsections (1) to (6) is contained in Commission Delegated Regulation (EU) 2017/571 of 2 June 2016 supplementing Directive

2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards on the authorisation, organisational requirements and the publication of transactions for data reporting services providers (OJ L 87 of 31 March 3 2017, page 126), as amended.

Section 59 Organisational requirements for consolidated tape providers

(1) ¹A consolidated tape provider must ensure that the data provided is consolidated from all trading venues and approved publication arrangements. ²It must have adequate policies and arrangements in place to collect at least the following information about transactions in financial instruments, to consolidate it into a continuous electronic data stream and make it available to the public as close to real time as possible, on a reasonable commercial basis:

1. the identifier of the financial instrument;
2. the price at which the transaction was concluded;
3. the volume of the transaction;
4. the time of the transaction;
5. the time the transaction was reported;
6. the price notation of the transaction;
7. the code for the trading venue the transaction was executed on, or where the transaction was executed via a systematic internaliser the code "SI" or otherwise the code "OTC";
8. where applicable, an indicator that a computer algorithm within the investment services enterprise firm was responsible for the investment decision and the execution of the transaction;
9. if applicable, an indicator that the transaction was subject to specific conditions;
10. if the obligation to make public the information referred to in Article 3(1) of Regulation (EU) No. 600/2014 was waived in accordance with point (a) or (b) of Article 4(1) of Regulation (EU) No. 600/2014, a flag to indicate which waiver the transaction was subject to.

³The information under sentence 2 must be made available free of charge no later than 15 minutes after it has been published.

(2) ¹A consolidated tape provider must disseminate information under subsection (1) efficiently and consistently in a way that ensures fast access to the information on a non-discriminatory basis. ²The information must be published in a format that is easily accessible and utilisable for market participants.

(3) ¹A consolidated tape provider must maintain administrative arrangements designed to prevent conflicts of interest with its clients. ²In particular, if it is also a stock exchange operator or an approved publication arrangement, it must treat all information collected in a non-discriminatory fashion and must operate and maintain appropriate arrangements to separate these different business functions.

(4) ¹A consolidated tape provider must establish mechanisms that ensure the security of the means of transfer of information, minimise the risk of unauthorised data manipulation and unauthorised access. ²It must have adequate resources and back-up facilities in order to offer and maintain its services at all times.

(5) A consolidated tape provider must have a whistleblower system in place in application of section 25a (1) sentence 6 number 3 of the Banking Act, with the necessary modifications.

(6) More detailed information relating to the organisational requirements in subsections (1) to (5) is contained in Delegated Regulation (EU) 2017/571.

Section 60 Organisational requirements for approved reporting mechanisms

1. An approved reporting mechanism must have adequate policies and arrangements in place to report the information required under Article 26 of Regulation (EU) No. 600/2014 for the investment services enterprise subject to the reporting requirement as quickly as possible, and no later than the close of the working day

following the day upon which the transaction in the financial instrument took place. ²More detailed requirements about reporting this information are governed by Article 26 of Regulation (EU) No. 600/2014.

(2) ¹The approved reporting mechanism must maintain effective administrative arrangements designed to prevent conflicts of interest with its clients. ²In particular, if it is also a stock exchange operator or an approved publication arrangement, it must treat all information collected in a non-discriminatory fashion and must operate and maintain appropriate arrangements to separate the different business functions.

(3) ¹An approved reporting mechanism must establish effective mechanisms that ensure the security of the means of transfer of information in order to minimise the risk of unauthorised data manipulation and unauthorised access, and prevent information from becoming known before publication. ²It must have adequate resources and back-up facilities in order to offer and maintain its services at all times.

(4) An approved reporting mechanism must have systems in place that can

1. check transaction reports for completeness, identify omissions and errors caused by the investment services enterprise, and where this happens, to communicate details of the error or omission to the investment services enterprise and request retransmission, and
2. detect errors or omissions caused by the approved reporting mechanism itself and enable it to correct and transmit to BaFin correct and complete transaction reports.

(5) An approved reporting mechanism must have a whistleblower system in place in application of section 25a (1) sentence 6 number 3 of the Banking Act, with the necessary modifications.

(6) More detailed information relating to the organisational requirements in subsections (1) to (5) are contained in Delegated Regulation (EU) 2017/571.

Section 61 Monitoring organisational requirements

¹BaFin can also make inspections without any particular reason in order to monitor compliance by data reporting services providers with the requirements set out in this Part. ²Section 88 (3) applies, with the necessary modifications. ³Section 88 (2) applies to the scope of the inspections, with the necessary modifications. ⁴Objections and appeals against measures under sentence 1 do not have any suspensory effect.

Section 62 Review of organisational requirements; power to issue statutory orders

(1) ¹Without prejudice to section 61, compliance with the obligations under this Part and the obligations arising under Delegated Regulation (EU) 2017/565, Delegated Regulation (EU) 2017/571 and under the delegated regulation adopted in accordance with Article 61(5) of Directive 2014/65/EU, as amended, must be reviewed by a suitable auditor on at least an annual basis. ²Section 89 (1) sentences 4 and 6, subsection (2) sentences 1 and 2, subsections (3) and (4) apply, with the necessary modifications.

(2) ¹The Federal Ministry of Finance may, by way of a statutory order not requiring the consent of the Bundesrat, adopt more detailed requirements governing the nature, scope and timing of the review under subsection (1) and the content of the review reports. ²The Federal Ministry of Finance may delegate this authority to BaFin by way of a statutory order.

Part 11 Conduct of business obligations, organisational requirements, transparency requirements

Section 63 General rules of conduct; power to issue statutory orders

(1) An investment services enterprises is required to provide investment services and ancillary investment services honestly, fairly and professionally in accordance with the best interests of its clients.

(2) ¹Where organisational arrangements under section 80 (1) sentence 2 number 2 are not sufficient to ensure,

with reasonable confidence, that risks of damage to client interests will be prevented, an investment services enterprise must clearly disclose to the client the general nature and sources of conflicts of interest and the steps taken to mitigate those risks before undertaking business on the client's behalf. ²The disclosure referred to in sentence 1 must

1. be made in a durable medium and
2. include sufficient detail, taking into account the classification of the client within the meaning of section 67, to enable that client to take an informed decision with respect to the investment service or ancillary investment service in the context of which the conflict of interest arises.

(3) ¹An investment services enterprise must ensure that it does not remunerate or assess the performance of its staff in a way that conflicts with its duty to act in the best interest of its clients. ²In particular, it may not make any arrangement by way of remuneration, sales targets or otherwise that could provide an incentive to its staff to recommend a particular financial instrument to a retail client when the investment services enterprise could offer a different financial instrument which would better meet that retail client's needs.

(4) ¹An investment services enterprise that manufactures financial instruments for sale to clients must ensure that those financial instruments are designed to

1. meet the needs of an identified target market within the meaning of section 80 (9) and
2. the strategy for distribution of the financial instruments is compatible with the identified target market.

²The investment services enterprise must take reasonable steps to ensure that the financial instrument is distributed to the identified target market.

(5) ¹An investment services enterprise must understand the financial instruments it offers or recommends. ²It must assess the compatibility of the financial instruments with the needs of the clients to whom it provides investment services, also taking account of the identified target market as referred to section 80 (9), and ensure that financial instruments are offered or recommended only when this is in the interest of the client.

(6) ¹All information, including marketing communications, addressed by investment services enterprises to their clients must be fair, clear and not misleading. ²Marketing communications must be clearly identifiable as such. ³This is without prejudice to section 302 of the Investment Code and section 15 of the Securities Prospectus Act.

(7) ¹Investment services enterprises must provide clients with appropriate information in an comprehensible form and in good time about the investment services enterprise and its services, the financial instruments and proposed investment strategies, execution venues and all costs and related charges that are reasonable necessary for those clients to understand the nature and risks of the types of financial instruments or investment services that are being offered or demanded, and to take investment decisions on this basis. ²This information may be provided in a standardised format. ³The information under sentence 1 must contain the following disclosures:

1. with regard to the types of financial instruments and the proposed investment strategy, taking account of the target market within the meaning of subsections (3) or (4):
 - a) appropriate guidance on investments in those types of financial instruments or in respect of particular investment strategies,
 - b) appropriate warnings on the risks associated with this type of financial instruments or the particular investment strategies and
 - c) whether the type of financial instrument is intended for retail or professional clients;
2. with regard to all costs and charges:
 - a) information on costs and charges relating to both investment services and ancillary investment services, including the cost of advice, where relevant,
 - b) the cost of the financial instruments recommended or marketed to the client and
 - c) how the client may pay for it, also encompassing any third-party payments.

⁴Information about costs and charges, including costs and charges in connection with the investment service

and the financial instrument, that are not caused by the occurrence of underlying market risk, must be aggregated by the investment services enterprise to allow the client to understand the overall cost as well as the cumulative effect of the costs on the return of the investment. ⁵The investment services enterprise must provide an itemised breakdown if so requested by the client. ⁶Such information must be provided to the client on a regular basis under the conditions set out in Article 50(9) of Delegated Regulation (EU) 2017/565, and at least annually, during the life of the investment. ⁷This does not affect sections 293 to 297 and 303 to 307 of the Investment Code. ⁸In the case of certified retirement provision and basic pension contracts within the meaning of the Act Governing the Certification of Contracts for Private Old-Age Provision (*Altersvorsorgeverträge-Zertifizierungsgesetz*), the information requirement under this subsection is satisfied if the individual product information sheet under section 7 of the Act Governing the Certification of Contracts for Private Old-Age Provision is provided. ⁹The client must be provided with the information about costs and fees required by this subsection on request. ¹⁰The client's attention must be drawn to this right when the client is provided with the individual product information sheet under section 7 of the Act Governing the Certification of Contracts for Private Old-Age Provision. ¹¹If the client is provided with a standardised information sheet under section 64 (2) sentence 3, the information with regard to all costs and charges under sentences 4 and 5 must be provided automatically to the client using a formalised breakdown of costs.

(8) Subsections (6) and (7) do not apply to investment services that are offered as part of a financial product that is already subject to other provisions of European Community law relating to credit institutions and consumer credits.

(9) ¹If an investment services enterprise offers investment services together with other services or products as part of a package or in such a way that the provision of the investment services, the other services or the transactions in the other products is a condition for performing the other components or concluding the other agreements, it must inform the client whether it is possible to buy the different components separately and must provide separate evidence to the client of the costs and charges of each component. ²Where the risks resulting from such a package or agreement are likely to be different from the risks associated with the components taken separately, the investment services enterprise must provide retail clients with an adequate description of the different components and the way in which their interaction modifies the risks.

(10) ¹Before providing investment services other than investment advice or portfolio management, an investment services enterprise must obtain information from the clients regarding their knowledge and experience in respect of transactions in specific types of financial instruments or investment services, where this information is necessary for assessing whether the financial instruments or investment services are appropriate for the clients. ²Where the client order relates to bundles of services or products within the meaning of subsection (9), the investment services enterprise must assess whether the overall bundled package is appropriate for the client. ³If an investment services enterprise considers, on the basis of the information received under sentence 1, that the financial instrument or investment service desired by the client is not appropriate for the client, it must inform the client about this. ⁴If the investment services enterprise does not obtain the required information, it must inform the client that an appropriateness assessment within the meaning of sentence 1 is not possible. ⁵Further details regarding appropriateness and the obligations in connection with the appropriateness assessment are governed by Articles 55 and 56 of Delegated Regulation (EU) 2017/565. ⁶The information under sentences 3 and 4 can be provided in a standardised format.

(11) The obligations under subsection (10) do not apply where

1. the investment services enterprise, at the initiative of the client, provides principal broking services, proprietary trading, contract broking or investment broking relating to
 - a) shares admitted to trading on an organised market or on an equivalent third-country market or on a multilateral trading facility, excluding shares in an alternative investment fund as defined in section 1 (3) of the Investment Code and shares that embed a derivative,
 - b) bonds and other forms of securitised debt admitted to trading on an organised market or on an equivalent third country market or on a multilateral trading facility, excluding those that embed a derivative or incorporate a structure that makes it difficult for the client to understand the risk involved,
 - c) money market instruments, excluding those that embed a derivative or incorporate a structure that makes it difficult for the client to understand the risk involved,
 - d) shares or units in UCITS as defined in section 1 (2) of the Investment Code, excluding the structured UCITS referred to in the second subparagraph of Article 36(1) of Regulation (EU) No. 583/2010,
 - e) structured deposits, excluding those that incorporate a structure that makes it difficult for the client to

understand the risk of return or the cost of exiting the product before term, or

- f) other non-complex financial instruments for the purpose of this subsection that meet the criteria referred to in Article 57 of Delegated Regulation (EU) 2017/565,
2. the investment services enterprise does not provide this investment service together with the granting of loans as an ancillary investment service as defined in section 2 (7) number 2, except if it consists of utilising a credit limit of an existing loan, or an existing loan that was granted in such a way that the lender grants the borrower in a contractual relationship relating to a current account the right to overdraw its account by a certain amount (overdraft facility), or that the lender, under the terms of a current account contract, tolerates the borrower overdrawing the account, although no overdraft facility has been granted, and charges a contractually agreed fee for this, and
3. the investment services enterprise expressly informs the client that an appropriateness assessment within the meaning of subsection (10) will be performed, and this information can be provided in a standardised format.

(12) ¹Investment services enterprises must provide their clients with adequate reports on the investment services provided in a durable medium; in particular, after a transaction has been executed, they must inform the client where they executed the order. ²The obligation under sentence 1 includes periodic reports to clients described in greater detail in Articles 59 to 63 of Delegated Regulation (EU) 2017/565, which must take into account the type and complexity of the financial instruments involved and the nature of the investment services provided, as well as, where applicable, information about the costs incurred. ³In the case of certified retirement provision and basic pension contracts within the meaning of the Act Governing the Certification of Contracts for Private Old-Age Provision the information requirement sentence 1 is satisfied if the annual information requirement under section 7a of the Act Governing the Certification of Contracts for Private Old-Age Provision is met. ⁴The client must be provided with the information about costs and fees required by this subsection on request. ⁵The client's attention must be drawn to this right when the client is provided with the annual information under section 7a of the Act Governing the Certification of Contracts for Private Old-Age Provision.

(13) More detailed requirements are contained in Articles 1 to 3, 6, 7, 10 and 12 of Delegated Regulation (EU) 2017/565, in particular on

1. the obligation under subsection (1) arising from Articles 58, 64, 65 and 67 to 69,
2. the nature, scope and format of the disclosure under subsection (2) arising from Articles 34 and 41 to 43,
3. the remuneration or assessment under subsection (3) arising from Article 27,
4. the conditions under which information within the meaning of subsection (6) sentence 1 is considered to be fair, clear and not misleading, arising from Articles 36 and 44,
5. the nature, content, presentation and timing of the information for clients required under subsection (7) arising from Articles 38, 39, 41, 45 to 53, 61 and 65,
6. the nature, scope and criteria of the information to be obtained from clients under subsection (10) arising from Articles 54 to 56,
7. the nature, content and timing of the reporting obligations under subsection (12) arising from Articles 59 to 63.

(14) ¹In consultation with the Federal Ministry of Justice and Consumer Protection, the Federal Ministry of Finance may, by way of a statutory order not requiring the consent of the Bundesrat, adopt more detailed requirements governing the content and structure of the formalised breakdown of costs under subsection (7) sentence 11. ²The Federal Ministry of Finance may delegate this authority to BaFin by way of a statutory order.

Section 64 Special rules of conduct applicable to the provision of investment advice and portfolio management; power to issue statutory orders

(1) ¹If an investment services enterprise provides investment advice, in addition to the information required by section 63 (7), it must inform clients in good time and in a comprehensible form before it provides investment advice about

1. whether or not the advice is provided on an independent basis (independent fee-based investment advice);

2. whether the advice is based on a broad or on a more restricted analysis of different types of financial instruments and, in particular, whether the range is limited to financial instruments provided or issued by providers or issuers with close links with the investment services enterprise or with which there are any other legal or economic relationships that are so close as to pose a risk of impairing the independent basis of the investment advice provided, and
3. whether the investment services enterprise will provide the client with a periodic assessment of the suitability of the recommended financial instruments.

²Section 63 (7) sentence 2 and, if the conditions set out there are met, the exemption under section 63 (8) apply, with the necessary modifications.

(2) ¹If it provides investment advice, an investment services enterprise must provide a retail client with the following information in good time before carrying out a transaction in financial instruments for which no key information document has to be prepared under Regulation (EU) No. 1286/2014:

1. for each financial instrument to which a buy recommendation refers, a brief and easily understandable information sheet,
2. in the cases set out in sentence 3, an information sheet referred to in number 1 or, optionally, a standardised information sheet, or
3. in the cases set out in sentence 4, a document referred to there instead of the information sheet referred to in number 1.

²The information provided in the information sheets under sentence 1 must not be false or misleading and must match the information given in the prospectus. ³A standardised information sheet can be used for shares that are traded on an organised market when the investment advice is provided, instead of the information sheet under sentence 1 number 1. ⁴The information sheet is replaced,

1. in the case of units or shares in UCITS or retail AIFs, by the key investor information documents under sections 164 and 166 of the Investment Code,
2. in the case of units or shares in closed-ended retail AIFs, by the key investor information documents under sections 268 and 270 of the Investment Code,
3. in the case of units or shares in special AIFs, by the key investor information documents under section 166 or section 270 of the Investment Code, provided that the AIF management company has prepared such documents under section 307 (5) of the Investment Code,
4. in the case of EU AIFs and non-German AIFs, by the key investor information documents under section 318 (5) of the Investment Code,
5. in the case of EU UCITS, by the key investor information documents that have been published in German in accordance with section 298 (1) sentence 2 of the Investment Code,
6. in the case of German investment funds within the meaning of the Investment Act in the version in force until 21 July 2013 and that may continue to be distributed for the period stipulated in section 345 (6) sentence 1 of the Investment Code, by the key investor information documents that have been prepared under section 42 (2) of the Investment Act in the version in force until 21 July 2013,
6. in the case of German investment funds within the meaning of the Investment Act in the version in force until 21 July 2013 and that may continue to be distributed for the period stipulated in section 345 (6) sentence 2 of the Investment Code, by the key investor information documents that have been prepared under section 137 (2) of the Investment Act in the version in force until 21 July 2013,
8. in the case of investment products as defined in section 1 (2) of the Capital Investment Act, by the capital investment information sheet under section 13 of the Capital Investment Act, to the extent that the provider of the investment products is required to prepare such a capital investment information sheet,
9. in the case of certified retirement provision and basic pension contracts within the meaning of the Act Governing the Certification of Contracts for Private Old-Age Provision, by the individual product information sheet under section 7 (1) of the Act Governing the Certification of Contracts for Private Old-Age Provision and additionally, by the key investor information documents under numbers 1, 3 or 4, to the extent that units in the collective investment undertakings referred to in numbers 1, 3 or 4 are concerned, and
10. in the case of securities as defined in section 2 number 1 of the Securities Prospectus Act, the securities

information sheet under section 3a of the Securities Prospectus Act, to the extent that the provider of the securities is obliged to prepare such a securities information sheet.

(3) ¹The investment services enterprise must obtain from the client all information

1. regarding the client's knowledge and experience relevant to certain types of financial instruments or investment services,
2. regarding the client's financial situation, including the client's ability to bear losses, and
3. regarding the client's investment objectives, including the client's risk tolerance,

necessary to enable the investment services enterprise to recommend to the client a financial instrument or an investment service that is suitable for the client and, in particular, is in accordance with the client's risk tolerance and ability to bear losses. ²An investment services enterprise may only recommend financial instruments and investment services to its clients or carry out transactions in the course of portfolio management that are appropriate for the client on the basis of the information obtained. ³Further details regarding suitability and the obligations in connection with the suitability assessment are governed by Articles 54 and 55 of Delegated Regulation (EU) 2017/565. ⁴Where an investment services enterprise provides investment advice recommending a package of services or products bundled within the meaning of section 63 (9), sentence 2 applies to the overall bundled package.

(4) ¹An investment services enterprise that provides investment advice must provide the retail client with a statement on suitability (suitability statement) in a durable medium before the transaction is made. ²The suitability statement must specify the advice given and explain how that advice meets the preferences, objective and other characteristics of the client. ³More detailed requirements are contained in Article 54(12) of Delegated Regulation (EU) 2017/565. ⁴Where the agreement to buy or sell a financial instrument is concluded using a means of distance communication that prevents the prior delivery of the suitability statement, the investment services enterprise may provide the written suitability statement immediately after the client is bound by any agreement if the client has consented to receiving the suitability statement without undue delay after the conclusion of the transaction and the investment services enterprise has given the client the option of delaying the transaction in order to receive the statement on suitability in advance.

(5) ¹An investment services enterprise that provides independent fee-based investment advice

1. must, when providing the advice, consider a sufficient range of financial instruments available on the market that
 - a) are sufficiently diverse with regard to their type and issuer or provider and
 - b) are not limited to financial instruments issued or provided by the investment services enterprise itself or by entities with close links with the investment services enterprise or with which there are any other legal or economic relationships that are so close as to pose a risk of impairing the independent basis of the investment advice provided;
2. may only be remunerated by the client for the independent fee-based investment advice provided.

²Under sentence 1 number 2, the investment services enterprise may not accept any non-monetary inducements paid or provided in connection with the fee-based investment advice by any third party who is not the client in relation to that service or a person acting on behalf of the client. ³Monetary inducements may only be accepted if the recommended financial instrument or a comparable suitable financial instrument cannot be obtained without payment of an inducement. ⁴In this case the monetary inducements must be disbursed to the client in full as quickly as reasonably possible after their receipt. ⁵This does not affect provisions governing the payment of taxes and levies. ⁶The investment services enterprise must inform clients about monetary inducements it has disbursed. ⁷The general requirements relating to investment advice apply in other respects.

(6) ¹In the case of recommended transactions in financial instruments resulting from fee-based investment advice and whose provider or issuer is the investment services enterprise itself or to whose providers or issuers it has close links or with which there are any other economic relationships, the investment services enterprise must inform clients in good time and in a comprehensible form about

1. the fact that it is itself the provider or issuer of the financial instruments,
2. the existence of close links or other economic relationships with the provider or issuer, and
3. the fact that the investment services enterprise has an interest in making a profit or that the interest of an

issuer or provider with which it has links or economic relationships has an interest in the transaction.

²An investment services enterprise may not execute a transaction resulting from its fee-based investment advice as a transaction with the client at a fixed or determinable price for its own account (fixed price transaction). ³This restriction does not apply to fixed price transactions in financial instruments that are provided or issued by the investment services enterprise itself.

(7) ¹When providing portfolio management, an investment services enterprise that provides portfolio management may not accept and retain any inducements paid by any third party or by persons acting on behalf of a third party. ²By way of derogation from sentence 1, non-monetary inducements may only be accepted if they are minor non-monetary inducements

1. that are capable of enhancing the quality of the investment service or ancillary investment service provided to the client and
2. are of a scale, for which factor the total amount of the inducements paid by an individual entity or an individual group of entities must be taken into account, and nature that are reasonable and proportionate such that they cannot be judged to impair compliance with the investment services enterprise's duty to act in the best interest of its clients,

provided that these inducements are clearly disclosed to the client before the relevant investment service or ancillary investment service is provided to the clients. ³This disclosure can take the form of a generic description. ⁴Monetary inducements received in connection with portfolio management must be disbursed to the client in full as quickly as reasonably possible after their receipt. ⁵This does not affect provisions governing the payment of taxes and levies. ⁶The investment services enterprise must inform clients about monetary inducements it has disbursed.

(8) If an investment services enterprise provides portfolio management or if it has informed the client under subsection (1) sentence 1 number 3 that it periodically assesses the suitability of the recommended financial instruments, the periodic reports to retail clients under section 63 (12) must in particular contain a statement of how the investment meets the client's preferences, investment objectives and the other characteristics of the client.

(9) More detailed requirements are contained in Articles 1, 3, 5 and 8 of Delegated Regulation (EU) 2017/565, in particular on

1. the nature, content, presentation and timing of the information for clients required under subsections (1) and (5), including in conjunction with section 63 (7), arising from Articles 52 and 53,
2. suitability under subsection (3), the applicable obligations in connection with the assessment of suitability, and the nature, scope and criteria of the information to be obtained from the client under subsection (3) arising from Articles 54 and 55,
3. the statement under subsection (4) arising from Article 54(12),
4. investment advice under subsection (5) arising from Article 53,
5. the nature, content and timing of the reporting obligations under subsection (8), including in conjunction with section 63 (12), arising from Articles 60 and 62.

(10) ¹The Federal Ministry of Finance may, by way of a statutory order not requiring the consent of the Bundesrat, adopt more detailed requirements

1. in consultation with the Federal Ministry of Justice and Consumer Protection governing the content and structure of information sheets within the meaning of subsection (2) sentence 1 and the method of providing them, as well as the content and structure of the standardised information sheets within the meaning of subsection 2 (3), and the method of providing them,
2. governing the nature, content design and timing of, and the data medium for, information for clients required under subsection (6),
3. the criteria for assessing when there are minor non-monetary inducements within the meaning of subsection (7).

²The Federal Ministry of Finance may delegate this authority to BaFin by way of a statutory order.

Section 65 Self-declaration for brokering the conclusion of a contract relating to an investment product within the meaning of section 2a of the Capital Investment Act

(1) ¹Before brokering the conclusion of a contract relating to an investment product within the meaning of section 2a of the Capital Investment Act, an investment services enterprise must obtain from the client a self-declaration about the client's assets or income to the extent necessary to verify whether the total amount of investment products of the same issuer that are acquired by the client does not exceed the following amounts:

1. EUR 10,000, in cases where, according to the investor's self-declaration, the investor has investable assets in the form of bank balances and financial instruments of at least EUR 100,000, or
2. twice the amount of the investor's average monthly net income, but no more than EUR 10,000.

²Sentence 1 does not apply if the total amount of investment products of the same issuer that are acquired by a client who is not a corporation does not exceed EUR 1,000. ³An investment services enterprise may only broker the conclusion of a contract relating to an investment product within the meaning of section 2a of the Capital Investment Act if it has verified that the total amount of investment products of the same issuer that are acquired by a client who is not a corporation does not exceed EUR 1,000 or the amounts specified in sentence 1 numbers 1 and 2.

(2) If the information referred to in subsection (1) is based on information provided by the client, the investment services enterprise is not responsible for the inaccuracy or incompleteness of the client's information unless it is aware of the inaccuracy or incompleteness of the information provided by the client or is unaware of it as a result of gross negligence.

Section 65a Self-declaration for brokering the conclusion of a contract relating to securities within the meaning of section 3c of the Securities Prospectus Act

(1) ¹Before brokering the conclusion of a contract relating to securities within the meaning of section 3c of the Securities Prospectus Act, an investment services enterprise must obtain from the non-qualified investor a self-declaration about the investor's assets or income to the extent necessary to verify whether the total amount of investment products of the same issuer that are acquired by the non-qualified investor does not exceed the following amounts:

1. EUR 10,000, in cases where, according to the investor's self-declaration, the relevant non-qualified investor has investable assets in the form of bank balances and financial instruments of at least EUR 100,000, or
2. twice the amount of the relevant non-investor's average monthly net income, but no more than EUR 10,000.

²Sentence 1 does not apply if the total amount of securities that are acquired by a non-qualified investor who is not a corporation does not exceed EUR 1,000. ³An investment services enterprise may only broker the conclusion of a contract relating to securities within the meaning of section 3c of the Securities Prospectus Act if it has verified that the total amount of securities that are acquired by a non-qualified investor does not exceed EUR 1,000 or the amounts specified in sentence 1.

(2) If the information mentioned in subsection (1) is based on information provided by the non-qualified investor, the investment services enterprise is not responsible for the inaccuracy or incompleteness of that information unless it is aware of the inaccuracy or incompleteness of the information provided by the non-qualified investor or is unaware of it as a result of gross negligence.

Section 66 Exemptions for agreements on consumer loans for immovable property

Section 63 (10) and (12) and section 64 (3), (4) and (8) do not apply to agreements on consumer loans for immovable property that are linked to a condition precedent that the consumer is provided with an investment service relating to covered bonds that have been issued to secure the financing of and having identical terms as the agreement on the consumer loan for immovable property so that the loan can be payable, refinanced or redeemed.

Section 67 Clients; power to issue statutory orders

(1) Clients within the meaning of this Act are any natural or legal persons for whom investment services enterprises provide or arrange investment services or ancillary investment services.

(2) ¹Professional clients within the meaning of this Act are clients who possess the experience, knowledge and expertise to make their own investment decisions and properly assess the risks that they incur. ²Professional clients within the meaning of sentence 1 are

1. undertakings that as

- a) investment services enterprises,
- b) other authorised or supervised financial institutions,
- c) insurance undertakings,
- d) collective investment undertakings and their management companies,
- e) pension funds and their management companies,
- f) exchange traders and commodity derivatives dealers,
- g) other institutional investors whose main business is not covered by (a) to (g),

are required to be authorised or regulated in Germany or another country to operate in the financial markets;

2. entities that are not required to be authorised or regulated within the meaning of number 1 that exceed at least two of the following three criteria:

- a) total assets of EUR 20,000,000,
- b) revenue of EUR 40,000,000,
- c) own funds of EUR 2,000,000;

3. national and regional governments as well as public bodies that manage public debt;

4. central banks, international and supranational institutions such as the World Bank, the International Monetary Fund, the European Central Bank, the European Investment Bank and other similar international organisations;

5. other institutional investors that are not required to be authorised or regulated within the meaning of number 1 and whose main activity is to invest in financial instruments, and entities dedicated to the securitisation of assets and other financing transactions.

³They are considered to be professional clients with respect to all financial instruments, investment services and ancillary investment services.

(3) Retail clients within the meaning of this Act are clients who are not professional clients.

(4) ¹Eligible counterparties mean undertakings within the meaning of subsection (2) sentence 2 number 1 a) to e) as well as entities under subsection (2) numbers 3 and 4. ²The following are deemed equivalent to eligible counterparties:

1. undertakings within the meaning of subsection (2) number 2 whose registered office is in Germany or another country,
2. undertakings whose registered office is in another Member State of the European Union or in another signatory state to the Agreement on the European Economic Area and that are considered to be eligible counterparties under the law of their home country within the meaning of Article 30(3) sentence 1 of Directive 2014/65/EU,

if they have agreed to be treated as eligible counterparties for all transactions or for individual transactions.

(5) ¹A professional client may agree with the investment services enterprise to be categorised as retail client.

²The agreement on the change in categorisation must be concluded in writing. ³Where the change is not intended to apply to all investment services, ancillary investment services and financial instruments, this must be expressly stipulated. ⁴At the beginning of any business relationship, an investment services enterprise must

inform professional clients within the meaning of subsection (2) sentence 2 number 2 and of subsection (6) that they are categorised as professional clients and that this categorisation can be changed in accordance with sentence 1. ⁵Where an investment services enterprise has categorised clients prior to 1 November 2007 on the basis of an assessment procedure that focuses on the clients' expertise, experience and knowledge in accordance with subsection (2) sentence 1, this categorisation remains valid after 1 November 2007. ⁶These clients must be informed about the conditions for categorisation under subsections (2) and (5), and about the possibility to change this categorisation under subsection (5) sentence 4.

(6) ¹A retail client may be categorised as a professional client on request or if this categorisation is determined by the investment services enterprise. ²Prior to changing the categorisation, the investment services enterprise must assess whether the client possesses the experience, knowledge and expertise to make investment decisions generally or in respect of a specific type of transaction, and if the client is capable of properly assessing the risks that they incur. ³A change in categorisation can only be considered if the retail client satisfies, as a minimum, two of the following three criteria:

1. the client has carried out transactions, in significant size, on the market on which the financial instruments are traded for which the client is intended to be categorised as professional client, at an average frequency of ten per quarter over the previous year;
2. the client's cash deposits and financial instruments exceed EUR 500,000;
3. the client has worked in the capital market for at least one year in a professional position that requires knowledge of the transactions, investment services and ancillary investment services envisaged.

⁴The investment services enterprise must inform the retail client in writing that, owing to the change in categorisation, the provisions of this Act relating to protection for retail clients no longer apply. ⁵Clients must confirm in writing that they have been informed of this fact. ⁶Where a professional client within the meaning of sentence 1 or subsection (2) sentence 2 number 2 does not keep the investment services enterprise informed about any change that may affect the client's categorisation as a professional client, any miscategorisation made on this basis does not constitute a breach of duty on the part of the investment services enterprise.

(7) The Federal Ministry of Finance may, by way of a statutory order not requiring the consent of the Bundesrat, adopt more detailed requirements concerning the provisions on categorisation under subsection (2) number 2, and the criteria, procedure and organisational arrangements for changing or maintaining a classification under subsections (5) and (6). ²The Federal Ministry of Finance may delegate this authority to BaFin by way of a statutory order.

Section 68 Transactions executed with eligible counterparties; power to issue statutory orders

(1) ¹Investment services enterprises that provide principal broking services, investment broking, contract broking and proprietary trading as well as ancillary services directly related to those services to eligible counterparties are not subject to the provisions set out in section 63 (1), (3) to (7), (9), (10), section 64 (3), (5) and (7), section 69 (1), sections 70, 82, 83 (2) and section 87 (1) and (2). ²Sentence 1 does not apply if the eligible counterparty has agreed with the investment services enterprise to be treated as a professional or retail client in respect of all transactions or individual transactions. ³In their relationship with eligible counterparties, investment services enterprises must communicate in a way which is fair, clear and not misleading, taking into account the nature of the eligible counterparty and of its business.

(2) More detailed requirements relating to subsection (1), in particular the form and content of an agreement under subsection (1) sentence 2 and the manner in which consent is given under section 67 (4) sentence 2 are contained in Article 71 of Delegated Regulation (EU) 2017/565.

Section 69 Client order handling; power to issue statutory orders

(1) An investment services enterprise must take all reasonable steps to

1. execute, or transmit to third parties, client orders promptly and fairly relative to other client orders and the trading interests of the investment services enterprise, and
2. execute comparable client orders in chronological order of reception or transmit such orders to third parties for the purpose of execution.

(2) ¹In the case of a client limit order in respect of shares admitted to trading on an organised market or traded on a trading venue that are not be immediately executed under prevailing market conditions, the investment services enterprise must, unless the client instructs otherwise, make public that client limit order immediately in a manner that is easily accessible to other market participants. ²The obligation under sentence 1 is considered to be met if the orders are or have been transmitted to a trading venue that complies with the requirements of Article 70(1) of Delegated Regulation (EU) 2017/565. ³BaFin may waive the obligation under sentence 1 in respect of orders that are significantly larger in scale compared with normal market size.

(3) More detailed requirements relating to the obligations under subsections (1) and (2) are contained in Articles 67 to 70 of Delegated Regulation (EU) 2017/565.

(4) ¹The Federal Ministry of Finance may, by way of a statutory order not requiring the consent of the Bundesrat, adopt more detailed requirements relating to the conditions under which BaFin may waive the obligation under subsection (2) sentence 1 in accordance with subsection (2) sentence 3. ²The Federal Ministry of Finance may delegate this authority to BaFin by way of a statutory order.

Section 70 Inducements and fees; power to issue statutory orders

(1) ¹An investment services enterprise may not, in relation to the provision of an investment services or ancillary investment services, accept any inducements from third parties or provide any inducements to third parties that are not clients of this service or do not act on behalf of the client, unless

1. the inducement is designed to enhance the quality of the service to the client and does not impair the proper provision of the service in the best interest of the client within the meaning of section 63 (1), and
2. the existence, nature and amount of the inducement or, where the amount cannot be ascertained, the method of calculating that amount, is clearly disclosed to the client in a manner that is comprehensive, accurate and understandable, prior to the provision of the investment service or ancillary investment service.

²Investment services enterprises must hold evidence that all inducements paid or received by them are designed to enhance the quality of the relevant service to the client. ³If an investment firm was unable to ascertain the amount of the inducement and has instead disclosed how it is calculated, it must inform the client subsequently about the exact amount of the inducement it has received or paid. ⁴As long as ongoing inducements are received by the investment firm in relation to the investment services provided to the relevant clients, the investment firm must inform its clients on an individual basis about the actual amount of inducements received or paid.

(2) ¹Inducements within the meaning of this provision are commissions, fees or other cash payments as well as any non-cash benefits. ²The provision of search to the investment services enterprise by third parties does not constitute an inducement if it is consideration for

1. a direct payment by the investment services enterprise out of its own resources or
2. payments from a separate research payment account controlled by the investment services enterprise, if
 - a) this account is funded by a specific research charge to the client,
 - b) the investment services enterprise has set and periodically assesses a research budget as part of establishing a research payment account,
 - c) the investment services enterprise is held responsible for the research payment account, and
 - d) the investment services enterprise periodically assesses the research based on robust quality criteria and its ability to contribute to better investment decisions.

³Where an investment services enterprise has established a research payment account, it must inform the client in question about the budgeted amount for research and the estimated research charges, as well as annual information on the total costs that each client has incurred for third-party research before it provides an investment service to that client. ⁴For the assessment under sentence 2 number 2 d), investment services enterprises must prepare a written policy for all necessary elements and provide it to their clients.

(3) Where an investment services enterprise operates a payment research account, it is required, on request by the client or by BaFin, to provide a summary containing the following information:

1. the provides paid from a research payment account within the meaning of subsection (2) sentence 2

- number 2,
2. the total amount the research providers were paid over a defined period,
 3. the inducements and services received by the investment services enterprise, and
 4. a comparison of the total amount paid from the research payment account with the research budget set by the investment services enterprise for that period,

noting any rebate or carry-over if residual funds remain in the account.

(4) ¹The disclosure under subsection (1) sentence 1 number 2 and sentence 4 can take the form of a generic description in the case of minor non-monetary inducements. ²The amount of other non-monetary inducements received or paid by the investment services enterprise in connection with the investment service or ancillary investment service provided to a client must be disclosed and made public separately. ³More detailed information about the requirements under this subsection and under subsection (1) sentence 1 number 2 and sentences 3 and 4 is contained in Article 50 der Delegated Regulation (EU) 2017/565; investment services enterprises are also required to take account of the requirements of section 63 (7) sentence 3 number 2.

(5) Where an investment services enterprise is required to disburse to the client inducements received in connection with the provision of investment services or ancillary investment services, it must inform the client about the related procedure.

(6) ¹For each investment service that executes client orders, an investment services enterprise must identify separate charges that only reflect the cost of executing the transaction. ²The provision of any other inducement or service by the same investment services enterprise to another investment services enterprise whose registered office is in the European Union must be subject to a separately identifiable charge. ³The provision of any other inducement or service under sentence 2 and the charges for them may not be influenced or conditioned by levels of payment for investment services that execute client orders.

(7) Fees or charges that by themselves enable or are necessary for the provision of investment services and whose nature means they are unlikely to jeopardise compliance with the obligations under section 63 (1), exempted from the prohibition set out in subsection (1).

(8) More detailed requirements relating to the acceptance of inducements under subsection (1) are contained in Article 40 of Delegated Regulation 2017/565.

(9) ¹The Federal Ministry of Finance may, by way of a statutory order not requiring the consent of the Bundesrat, adopt more detailed requirements governing

1. the criteria for the nature and determination of an improvement in quality within the meaning of subsection (1) sentence 1 number 1,
2. the nature and content of the disclosure under subsection (1) sentence 2,
3. the nature, content and methodology for charging a research charge and the determination, administration and use of the research budget under subsection (2) sentence 2 number 2 a) and b),
4. the nature, content and mechanism relating to the administration and use of the research payment account operated by the investment services enterprise under subsection (2) number 2,
5. the nature and content of the written principles under subsection (2) sentence 4.

²The Federal Ministry of Finance may delegate this authority to BaFin by way of a statutory order.

Section 71 Provision of investment services and ancillary investment services through the medium of another investment services enterprise

Where an investment services enterprise receives an instruction through another investment services enterprise to provide investment services or ancillary investment services on behalf of a client, the enterprise receiving the instruction is responsible for performing the investment service or ancillary investment service in compliance with the provisions of this Part, subject to the following conditions:

1. the investment services enterprise receiving the instruction is not responsible for verifying the completeness and accuracy of the client information and instructions transmitted by the other investment

services enterprise,

2. the investment services enterprise receiving the instruction must be able to rely on recommendations in respect of the investment service or ancillary investment service provided by the other investment services enterprise to clients being in compliance with the legal requirements.

Section 72 Operation of a multilateral trading facility or an organised trading facility

(1) ¹The operator of a multilateral or organised trading facility is required to

1. establish non-discriminatory rules governing access to the multilateral or organised trading facility that do not allow for any discretion on the part of the operator;
2. define rules for including financial instruments in trading, for the orderly conduct of trading and price determination, for the use of reference prices and the settlement of executed transactions in conformity with the contract;
3. have in place appropriate mechanisms for monitoring compliance with the rules under number 2 and Regulation EU No. 596/2014;
4. publish all information necessary for and relevant to the use of the multilateral trading facility, taking into account the type of users and the types of financial instruments traded;
5. charge separate fees for the excessive usage of the multilateral or organised trading facility, in particular due to a disproportionately high number of order entries, modifications and cancellations; the level of these fees must be measured in such a way that they effectively counteract excessive usage and the associated adverse effects on systemic stability or market integrity;
6. put into place appropriate arrangements to safeguard orderly price determination even in the event of considerable price fluctuations; appropriate arrangements include in particular short-term changes in the market model, temporary circuit breakers to reduce volatility interruptions, taking into consideration the static or dynamic price ranges and limiting systems of the trading participants tasked with price determination, although the operator must be able to cancel, modify or correct any transaction in exceptional cases; the parameters for such volatility interruptions must take account of the liquidity of the individual categories and subcategories of the financial instruments concerned, the type of market model and the type of users, and must allow significant disruptions of orderly trading to be prevented; the operator must inform BaFin about these parameters;
7. ensure an appropriate ratio between order entries, modifications and cancellations and orders actually executed (order-to-trade ratio) in order to avoid risks to orderly trading on multilateral or organised trading facilities; the order-to-trade ratio is determined for each individual financial instrument by reference to the numerical volume of orders and executed transactions within one day; an order-to-trade ratio is appropriate in particular if it is economically reasonable on the basis of the liquidity of the financial instrument in question, the specific market situation or the function of the trading participant;
8. determine an appropriate minimum tick size for traded shares, depositary receipts, exchange-traded funds, certificates and other comparable financial instruments, as well as all other financial instruments covered by the Commission delegated regulation adopted on the basis of Article 49(4) of Directive 2014/65/EU, in order to mitigate negative effects on market integrity and liquidity; particular attention must be paid in particular to ensure that the minimum tick size does not adversely affect the price discovery mechanism and the objective of an appropriate order-to-trade ratio; information about the individual requirements for determining the minimum tick size is contained in Commission Delegated Regulation (EU) 2017/588 of 14 July 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards on the tick size regime for shares, depositary receipts and exchange-traded funds (OJ L 87 of 31 March 2017, page 411), as amended;
9. appropriate risk controls and thresholds for trading using direct electronic access, and in particular set rules for
 - a) distinguishing orders issued using direct electronic access, and
 - b) facilities for stopping trading or terminating direct electronic access at any time if the owner of the direct electronic access infringes applicable legal provisions;
10. determine rules for distinguishing any orders generated by algorithmic trading within the meaning of

section 80 (2) sentence 1 by the trading participants and for the disclosure of the trading algorithms used for this purpose and of the persons who initiated these orders;

11. ensure reliable administration of the technical operations of the trading facility, in particular
 - a) establish effective contingency arrangements in the event of a system failure or of disruptions of its trading systems in order to ensure continuity of business operations,
 - b) ensure that the trading systems are resilient and have sufficient capacity to deal with peak order and message volumes, and
 - c) ensure that the systems are able to safeguard orderly trading even under conditions of extreme market stress, and are fully tested to ensure that these conditions are met;
12. have arrangements to identify clearly and manage potential adverse consequences for the operation of the multilateral or organised trading facility and its owners or operators on the one hand, and the sound functioning of the multilateral or organised trading facility on the other, for its operation or for its trading participants;
13. ensure that multilateral or organised trading facilities have at least three active members or users who each have the opportunity to interact with all the other members and users in respect to price formation.

²Section 5c (4a), sections 22a, 26c and 26d of the Stock Exchange Act apply, with the necessary modifications.

(2) ¹Fee structures, including execution fees, ancillary fees and any rebates must be transparent and non-discriminatory. ²Fees may not create incentives to place, modify or cancel orders or to execute transactions in a way that contributes to disorderly trading conditions or market abuse. ³In particular, rebates may only be granted with respect to individual shares or baskets of shares in exchange for assuming market making obligations.

(3) ¹An operator of a multilateral or organised trading facility must provide BaFin with a detailed description of the functioning of the trading facility. ²This description must also list any links of the trading facility to exchange exchanges, other multilateral or organised trading facilities or systematic internalisers, whose owners or operators are owned by the operator of the trading facility, as well as a list of members, participants and users of the trading facility. ³BaFin must make this information available to the European Securities and Markets Authority on request. ⁴It must inform the European Securities and Markets Authority about all authorisations to operate a multilateral or organised trading facility.

(4) Issuers whose financial instruments have been admitted to trading on a multilateral trading facility without their consent are not subject to any obligation to disclose information relating to those financial instruments with regard to that multilateral or organised trading facility.

(5) The operator of a multilateral or organised trading facility can require an issuer to provide reference data relating to its financial instruments where this is necessary to fulfil the requirements of Article 4 of Regulation (EU) No. 596/2014.

(6) ¹The operator of a multilateral or organised trading facility must inform BaFin about any serious infringements of the trading rules, disruptions to market integrity and indications of an infringement of the requirements of Regulation (EU) No. 596/2014 without undue delay provide comprehensive support to BaFin in the course of its investigations. ²BaFin must provide the information under sentence 1 to the European Securities and Markets Authority and the competent authorities in the other Member States and the signatory states to the Agreement on the European Economic Area. ³If there are indications of infringements of the requirements of Regulation (EU) No. 596/2014, BaFin will only provide the information once it is convinced that an infringement has occurred.

(7) In addition, the operator of a multilateral or organised trading facility is required to inform BaFin without undue delay if there is a significant fall within the meaning of Article 23 of Regulation (EU) No. 236/2012 in the value of a financial instrument traded on its trading facility.

(8) ¹The operator of a multilateral or organised trading facility is required to inform BaFin without undue delay about the receipt of any applications for access under Articles 7 and 8 of Regulation (EU) No. 648/2012. ²BaFin may,

1. subject to the conditions set out in Article 7(4) of Regulation (EU) No. 648/2012, refuse access to a central

- counterparty for the operator of a multilateral or organised trading facility within the meaning of that Regulation, and
2. subject to the conditions set out in Article 8(4) of Regulation (EU) No. 648/2012, grant access to a central counterparty for the operator of a multilateral or organised trading facility within the meaning of that Regulation.

Section 73 Suspension and removal of financial instruments from trading

(1) ¹The operator of a multilateral or organised trading facility can suspend trading in a financial instrument or remove that instrument from trading if this appears to be necessary to safeguard orderly trading or protect the public, in particular if

1. the financial instrument no longer complies with the rules of the trading facility,
2. there is a suspicion of market abuse within the meaning of Article 1 of Regulation (EU) No. 596/2014 or the non-disclosure of inside information infringing Article 17 of Regulation (EU) No. 596/2014 in respect of the financial instrument, or
3. a takeover bid was published in respect of the issuer of the financial instrument.

²In the case of a measure under sentence 1, the operator must also suspend trading in derivatives that relate or are referenced to that financial instrument or remove those financial instruments from trading where necessary to support the objectives of the measures under sentence 1. ³An operator does not take a measure under sentence 1 or sentence 2 if it could cause significant damage to the investors' interests or the orderly functioning of the market. ⁴The operator must make public its decisions under sentences 1 and 2 and communicate them to BaFin without undue delay.

(2) ¹Where a financial instrument that is subject to one of measures under subsection (1) sentence 1 or sentence 2 in the cases governed by subsection (1) sentence 1 number 2 or number 3, or a derivative that relates to or is referenced to that financial instrument, is also traded on another multilateral organised trading facility in Germany or by a systematic internaliser, BaFin must also order measures under subsection (1) sentence 1 or sentence 2. ²Subsection (1) sentence 3 applies, with the necessary modifications.

(3) ¹BaFin must make public measures under subsections (1) and (2) without undue delay and communicate them to the European Securities and Markets Authority and the competent authorities of the other Member States of the European Union and the signatory states to the Agreement on the European Economic Area. ²If BaFin in turn receives such a notification from a competent authority in another Member State of the European Union or a signatory state to the Agreement on the European Economic Area, it must notify this to the management of the stock exchanges on which the financial instruments in question are traded, and to the relevant exchange supervisory office. ³BaFin must order the operators of multilateral and organised trading facilities in Germany and systematic internalisers that trade the financial instruments in question to also take the measures under subsection (1) sentence 1 or sentence 2. ⁴Subsection (1) sentence 3 applies, with the necessary modifications. ⁵BaFin must inform the European Securities and Markets Authority and the competent authorities of the other Member States of the European Union and the signatory states to the Agreement on the European Economic Area about measures that it has ordered under sentence 3, including an explanation if its decision was not to suspend or remove from trading. ⁶Sentences 1 and 5 apply, with the necessary modifications, when suspension from trading is lifted.

Section 74 Specific requirements for multilateral trading facilities

(1) As a minimum, the rules for access to a multilateral trading facility must correspond to the requirements under section 19 (2) and (4) sentences 1 and 2 of the Stock Exchange Act.

(2) The rules for trading and price determination may not grant the operator of a multilateral trading facility any discretion; price discovery in the multilateral trading facility must correspond to the requirements of section 24 (2) of the Stock Exchange Act.

(3) The operator of a multilateral trading facility must also have arrangements

1. to adequately manage the risks to which it is exposed, and in particular to identify all significant risks to

- operation of the trading facility and to effectively mitigate those risks, and
2. to facilitate the efficient and timely finalisation of the transactions executed under its systems.
- (4) The operator of a multilateral trading facility must have available on an ongoing basis sufficient financial resources to ensure the orderly functioning of the facility, having regard to the nature and extent of the transactions concluded on the trading system and the range and degree of the risks to which it is exposed.
- (5) The operator of a multilateral trading facility is not allowed to execute client orders against proprietary capital or to engage in matched principal trading as defined in section 2 (29).

Section 75 Specific requirements for organised trading facilities

- (1) The operator of an organised trading facility must establish arrangements preventing the execution of client orders in an organised trading facility against the proprietary capital of the operator or a member of the same group.
- (2) ¹The operator of an organised trading facility may engage in matched principal trading as defined in section 2(29) for bonds, structured finance products, emission allowances and certain derivatives only where the client has consented to the process. ²It may not use matched principal trading to execute client orders in derivatives subject to the clearing obligation under Article 4 of Regulation (EU) No. 648/2012.
- (3) An operator of an organised trading facility may engage in dealing on own account, other than matched principal trading as defined in section 2(29), only with regard to sovereign debt instruments for which there is not a liquid market.
- (4) ¹An organised trading system may not be operated within the same legal entity as a systematic internaliser. ²An organised trading facility may not connect with a systematic internaliser or another organised trading facility in a way that enables orders in the organised trading facility to interact with orders or quotes in the systematic internaliser or the organised multilateral facility.
- (5) ¹The operator of an organised trading facility may engage another investment services enterprise to engage in market making independently from the operator of the organised trading facility. ²Market making is only carried out independently if there are no close links between the investment services enterprise and the operator of the organised trading facility.
- (6) ¹The operator of the organised trading facility must exercise discretion in respect of the decision to execute an order on an organised trading facility if it decides
1. to place or retract an order, or
 2. not to match a specific client order with other orders available in the systems at a given time.
- ²In the case of sentence 1 number 2, the operator may decide not to match an order if this is in compliance with specific instructions by the client and with the best execution obligation for client orders within the meaning of section 82. ³For a system that crosses client orders, the operator can decide if, when and how much of two or more orders it matches within the system. ⁴In accordance with subsections (1), (2), (4) and (5) and without prejudice to subsection (3), with regard to a system that arranges transactions in non-equities, the operator may facilitate negotiation between clients so as to bring together two or more potentially compatible trading interests in a transaction. ⁵This obligation is without prejudice to Articles 72 and 82 of this Act.
- (7) ¹BaFin may require the operator of the organised trading facility at any time, and in particular in the case of an application to operate the organised trading facility, to provide a detailed explanation why the organised trading facility does not correspond to and cannot be operated as a regulated market, a multilateral trading facility or a systematic internaliser. ²The explanation must contain a detailed description as to how discretion will be exercised, in particular when an order to the organised trading facility may be retracted and when and how two or more client orders will be matched within the organised trading facility. ³In addition, the operator of an organised trading facility must provide BaFin with information explaining its use of matched principal trading.
- (8) BaFin must monitor the engagement of the operator of the organised trading facility in matched principal trading to ensure that it continues to fall within the definition of such trading and that its engagement in

matched principal trading does not give rise to conflicts of interest between the operator and its clients.

(9) Section 63 (1), (3) to (7) and (9), section 64 (1) and sections (69), (70) and (82) apply, with the necessary modifications, to transactions concluded on an organised trading facility.

Section 76 SME growth markets; power to issue statutory orders

(1) ¹The operator of a multilateral trading facility can apply to BaFin to register it as a growth market for small and medium-sized enterprises (SME growth market), provided the following requirements are met:

1. at least 50 per cent of the issuers whose financial instruments are admitted to trading on the multilateral trading facility are small and medium-sized enterprises;
2. the operator has set appropriate criteria for admission to trading of financial instruments on the market;
3. the operator makes admission to trading of financial instruments on the market conditional upon the publication of sufficient information at the time of admission to enable the public to make an accurate assessment about the issuer and the financial instruments; this information must either be an admission document or a prospectus if the requirements laid down in Directive 2003/71/EC are applicable in respect of a public offer being made in conjunction with the initial admission to trading of the financial instrument on the multilateral trading facility;
4. the operator ensures appropriate periodic financial reporting on the market by the issuer whose financial instruments are admitted to trading on the multilateral trading facility, in particular by means of audited annual reports;
5. issuers as defined in Article 3(1) number 21 of Regulation (EU) No. 596/2014, persons discharging managerial responsibilities as defined in Article 3(1) number (25) of Regulation (EU) No. 596/2014 and persons closely associated with them as defined in Article 3(1) number 26 of Regulation (EU) No. 596/2014 comply with the relevant requirements applicable to them under Regulation (EU) No. 596/2014;
6. the operator records information published by an issuer on the basis of a legal obligation and makes it public, and
7. the operator establishes effective systems and controls aiming to prevent and detect market abuse on that market as required under the Regulation (EU) No. 596/2014.

²The above criteria do not prevent the operator from imposing additional requirements.

(2) ¹BaFin may deregister an SME growth market if its operator applies for its deregistration or the requirements for registration under subsection (1) no longer apply. ²BaFin notifies the European Securities and Markets Authority without undue delay about the registration or deregistration of an SME growth market.

(3) ¹Where a financial instrument is admitted to trading on one SME growth market, it can only be traded on another SME growth market if the issuer of the financial instrument has been informed and has not objected. ²In such a case however, the issuer is not subject to any obligation relating to corporate governance or initial, ongoing or ad hoc disclosure with regard to the latter SME growth market.

(4) The Federal Ministry of Finance may, by way of a statutory order not requiring the consent of the Bundesrat, adopt more detailed requirements governing

1. the nature of the criteria under subsection (1) number 2,
2. the nature, scope and form of the information to be published at the time of admission under subsection (1) number 3, and
3. the nature, scope and form of the reports under subsection (1) no. 4.

The Federal Ministry of Finance may, by means of a Regulation, delegate this authority to the Supervisory Authority.

Section 77 Direct electronic access

- (1) An investment services enterprise that provides direct electronic access to a trading venue must
1. assess and periodically review the suitability of clients using the service before granting them access,
 2. ensure that there is a binding written agreement between the investment services enterprise and the client regarding the rights and obligations arising from the provision of the service, and that the responsibility of the investment services enterprise under this Act cannot be transferred to the client,
 3. set appropriate trading and credit thresholds from trading by those clients,
 4. monitor trading by the clients in order to
 - a) ensure that the clients do not exceed the thresholds set under number 3,
 - b) ensure that trading complies with the requirements of Regulation (EU) No. 596/2014, this Act and the rules of the trading venue,
 - c) identify disorderly market conditions or conduct that may involve market abuse, which must be reported to the competent authority, and
 - d) ensure that trading does not create any risks to the investment services enterprise itself.

(2) ¹An investment services enterprise that provides direct electronic access to a trading venue must notify BaFin and the competent authorities of the trading venue at which it provides direct electronic access accordingly. ²BaFin may require the investment services enterprise to provide, on a regular basis or at any time, a description of the systems and controls referred to in subsection (1) and evidence that they have been applied. ³On the request of a competent authority of a trading venue at which an investment services enterprise offers direct electronic access, BaFin must communicate this information to that authority without undue delay.

(3) The investment services enterprise must arrange for records to be kept for a minimum of five years in relation to the matters referred to in this section and must ensure that those records are sufficient to BaFin to monitor compliance with the requirements of this Act.

Section 78 Acting as a general clearing member

¹An investment services enterprise that acts as a general clearing member for other persons must have in place effective systems and controls to ensure that the clearing services are only provided to persons who are suitable and meet clear criteria that have been defined in advance by the investment services enterprise. ²It must impose appropriate requirements on those persons to reduce risks to the investment services enterprise and to the market. ³There must be a written agreement between the investment services enterprise and the relevant person regarding the rights and obligations arising from the provision of that service.

Section 79 Notification requirement of systematic internalisers

¹Investment services enterprises that act as systematic internalisers must notify this to BaFin without undue delay. ²BaFin must communicate this information to the European Securities and Markets Authority.

Section 80 Organisational requirements; power to issue statutory orders

(1) ¹Investment services enterprises must comply with the organisational requirements under section 25a (1) and section 25e of the Banking Act. ²In addition, they must

1. take appropriate steps to ensure continuity and regularity in the performance of investment and ancillary services;
2. maintain permanent and effective arrangements for taking appropriate steps to identify and to prevent or manage conflicts of interest between itself, including its managers, employees and tied agents, or any persons and undertakings directly or indirectly linked to them by control within the meaning of Article 4(1) number 37 of Regulation (EU) No. 575/2013 and its clients, or between one client and another, that arise in the course of providing investment services or ancillary investment services or a combination of those

services; this also includes conflicts of interest that are caused by the receipt of inducements from third parties or by the investment services enterprise's own remuneration structure or other incentive structures;

3. as part of the arrangements under number 2 and in such a way as to not adversely affect the interests of their clients, design, implement and monitor those policies or objectives (sales targets) that directly or indirectly concern the revenue, the volume of or the profit from the transactions recommended as part of their investment advice;
4. have sound security mechanisms in place designed to guarantee the security and authentication of the means of transfer of information, minimise the risk of data corruption and unauthorised access and to prevent data corruption, unauthorised access and the information becoming known, thus maintaining the confidentiality of the data at all times.

³More detailed requirements relating to the organisation of investment services enterprises are contained in Articles 21 to 26 of Delegated Regulation (EU) 2017/565.

(2) ¹An investment services enterprise must additionally comply with the provisions of this subsection if it engages in trading in such a way that a computer algorithm automatically determines individual order parameters, but is not any system that is used only for the purpose of routing orders to one or more trading venues, for the processing of orders involving no determination of order parameters, or for the confirmation of orders or the post-trade processing of executed transactions (algorithmic trading). ²Order parameters within the meaning of sentence 1 mean in particular decisions on whether to initiate the order, the timing, price or quantity of the order, or how to manage the order after its submission, with limited or no human intervention.

³An investment services enterprise that engages in algorithmic trading must have in place effective systems and risk controls to ensure that

1. its trading systems are resilient, have sufficient capacity and are subject to appropriate trading thresholds and limits;
2. the routing of orders that contain errors or the functioning of the system in such a way that could create or contribute to a disorderly market are prevented;
3. its trading systems cannot be used for any purpose that infringes European and national provisions against market abuse or the rules of the trading venue to which it is connected.

⁴An investment services enterprise that conducts algorithmic trading must also have in place effective business continuity arrangements to deal with unforeseen failures of its trading systems and must ensure that its systems are fully tested and properly monitored. ⁵The investment services enterprise must notify BaFin and the competent authorities of the trading venue of which it is a member or a participant that it conducts algorithmic trading.

(3) ¹An investment services enterprise that conducts algorithmic trading within the meaning of Article 18 of Delegated Regulation (EU) 2017/565 must keep adequate records on the matters referred to in subsection (2) for a minimum of five years. ²If the investment services enterprise engages in a high frequency algorithmic trading technique, these records must in particular be time sequenced and include all orders it has placed, including cancellations of orders, executed orders and quotations on trading venues. ³These records must be made available to BaFin on request.

(4) If an investment services enterprise engages in algorithmic trading within the meaning of subsection (2) to pursue a market making strategy, taking into account the liquidity, scale and nature of the specific market and the characteristics of the instrument traded, it must

1. carry out this market making continuously during a specified proportion of the trading venue's trading hours, except under exceptional circumstances, with the result of providing liquidity on a regular and predictable basis to the trading venue,
2. enter into a binding written agreement with the trading venue that must as a minimum specify the obligations under number 1, to the extent that it is not subject to the requirements of section 26c of the Stock Exchange Act, and
3. have in place effective systems and controls to ensure that it fulfils these obligations at all times.

(5) An investment services enterprise that engages in algorithmic trading is considered to be pursuing a market making strategy within the meaning of subsection (4) when, as a member of or participant on one or more trading venues, its strategy, when dealing on own account, involves posting firm, simultaneous two-way quotes of comparable size and at competitive prices relating to one or more financial instruments on a single trading

venue or across different trading venues.

(6) ¹An investment services enterprise must comply with the requirements of section 25b of the Banking Act when it outsources activities, processes and financial services. ²The outsourcing arrangement may not alter the legal relationship of the enterprise with its clients and its obligations towards its clients defined in this Part. ³The outsourcing may not alter the conditions under which the investment services enterprise has been granted authorisation under section 32 of the Banking Act. ⁴More detailed requirements on the requirements relating to outsourcing are contained in Articles 30 to 32 of Delegated Regulation (EU) 2017/565.

(7) ¹An investment services enterprise may only provide investment advice in the form of independent fee-based investment advice if it only provides independent fee-based investment advice or if its independent fee-based investment advice is separate from its other investment advice in terms of organisation, function and personnel. ²Investment services enterprises must design sales targets within the meaning of subsection (1) number 3 for independent fee-based investment advice in such a way that no conflicts of interest with client interests can arise under any circumstances. ³An investment services enterprise that provides independent fee-based investment advice must disclose on its website whether the independent fee-based investment advice is offered at its head office and the branches in Germany at which it is offered.

(8) An investment services enterprise that provides portfolio management or independent fee-based investment advice must adopt appropriate policies to ensure that any monetary inducements received by any third party or a person acting on behalf of a third party in relation to portfolio management or independent fee-based investment advice is allocated and transferred to each individual client.

(9) ¹An investment services enterprise that manufactures financial instruments for sale must maintain, operate and review a process for the approval of each financial instrument and significant adaptations of existing financial instruments before the financial instrument is marketed or distributed to clients (product approval process). ²The process must ensure that an identified target market of end clients within the relevant category of clients is defined for each financial instrument. ³All relevant risks to the target market must be assessed. ⁴The process must also ensure that the intended distribution strategy is consistent with the identified target market under sentence 2.

(10) ¹An investment services enterprise must review the financial instruments it offers or markets on a regular basis, taking into account any event that could materially affect the potential risk to the identified target market. ²As a minimum, investment services enterprises must assess whether the financial instrument remains consistent with the identified target market under subsection (9) sentence 2 and whether the intended distribution strategy remains appropriate.

(11) ¹An investment services enterprise that manufactures financial instrument must make available to any distributor all necessary and appropriate information on the financial instrument and the product approval process under subsection (9) sentence 1, including the identified target market under subsection (9) sentence 2. ²Where an investment services enterprise distributes or recommends financial instruments that it does not manufacture, it must have in place adequate arrangements to obtain the information referred to in sentence 1 from the investment services enterprise that manufactures the financial instrument or from the issuer and to understand the characteristics and target market of the financial instrument.

(12) ¹An investment services enterprise that intends to offer or recommend financial instruments and distributes financial instruments manufactured by another investment services enterprise must have in place appropriate processes and take steps to ensure compliance with the requirements under this Act. ²This also includes requirements that apply to the publication, to the assessment of suitability and appropriateness, to incentives and to the proper management of conflicts of interest. ³The investment services enterprise must take particular care if it intends to offer or recommend a new financial product as a distributor, or if there is a change in the services it intends to offer or recommend as a distributor.

(13) ¹The investment services enterprise must periodically review its product approval arrangements to ensure that they are resilient and appropriate and to take appropriate steps to implement any necessary changes. ²It must ensure that its compliance function established under Article 22(2) of Delegated Regulation (EU) 2017/565 monitors the development and regular review of the product approval arrangements and identifies at an early stage any risks that requirements for the product monitoring process will not be fulfilled.

(14) ¹The Federal Ministry of Finance can, by way of a statutory order not requiring the consent of the Bundesrat, adopt more detailed requirements relating to the application of Delegated Regulation (EU) 2017/565 and to the transposition of Commission Delegated Directive (EU) 2017/593 of 7 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to

safeguarding of financial instruments and funds belonging to clients, product governance obligations and the rules applicable to the provision or reception of fees, commissions or any monetary or non-monetary benefits (OJ L 87 of 31 March 2017, page 500), as amended, and the organisational requirements under subsection (1) sentence 2 and subsection (7) the requirements for the product approval process and product distribution under subsection (9) and the review process under subsection (10), as well as the information to be provided under subsection (11) and related obligations of investment services enterprises. ²The Federal Ministry of Finance may delegate this authority to BaFin by way of a statutory order.

Section 81 Managers

(1) ¹In the context of their obligations under section 25c (3) of the Banking Act, the managers of an investment services enterprise must discharge their duties in such a way as to safeguard the integrity of the market and promote the interests of the clients. ²In particular, the managers must define, implement and oversee the following:

1. taking into account the nature, scale and complexity of the business of the investment services enterprise and all the requirements the investment services enterprise has to comply with,
 - a) the organisation for the provision of investment services ancillary investment services, including the resources necessary for this, and organisational arrangements, and
 - b) whether the personnel have the necessary skills, knowledge and expertise,
2. the business policy with regard to
 - a) the investment services and ancillary investment ancillary services offered or provided and
 - b) the products offered or provided,that must be consistent with the risk tolerance of the investment services enterprise and any characteristics and needs of its clients, including carrying out appropriate stress testing where appropriate, and
3. the remuneration policy for persons who are involved in the provision of investment services or ancillary investment services to clients and that must be aimed at encouraging
 - a) responsible business conduct,
 - b) fair treatment of clients and
 - c) avoiding conflicts of interest in the relationships with clients.

(2) ¹The managers of an investment services enterprise must periodically monitor and assess the following:

1. the adequacy and the implementation of the investment services enterprise's strategic objectives in the provision of investment services and ancillary investment services,
2. the effectiveness of the investment services enterprise's governance arrangements and
3. the adequacy of the business strategy relating to the provision of investment services and ancillary investment services to the clients.

²If there are any deficiencies, the managers must take the necessary steps to address the deficiencies without undue delay.

(3) The investment services enterprise must ensure that the managers have adequate access to information and documents that are needed for oversight and monitoring.

(4) ¹The managers must effectively monitor the product approval process. ²They must ensure that the compliance reports to the managers systematically include information about the financial instruments manufactured and recommended by the investment services enterprise, in particular about the distribution strategy. ³The compliance reports must be made available to BaFin on request.

(5) ¹The investment services enterprise must appoint an officer with responsibility for ensuring that the investment services enterprise complies with its obligations regarding the safeguarding of client financial instruments and funds. ²The officer can carry out additional duties in addition to the above.

Section 82 Best execution of client orders

(1) ¹An investment services enterprise that executes client orders for the purchase or sale of financial instruments within the meaning of section 2 (8) sentence 1 numbers 1 to 3 must

1. take all reasonable steps, in particular by defining an order execution policy and reviewing it periodically, in particular taking into account the information published under subsections (9) to (12) and section 26e of the Stock Exchange Act, in order to obtain the best possible result for its clients, and
2. ensure that each individual client order is executed in accordance with this execution policy.

²(2) The investment services enterprise must, when establishing its execution policy, take into account all relevant criteria for obtaining the best possible result, in particular the prices of the financial instruments, the costs related to the execution of the order, the speed, likelihood of the execution and settlement of the order as well as the size and nature of the order, and weight the criteria taking into consideration the characteristics of the client, the client order, the financial instrument and the execution venue.

(3) ¹Where an investment services enterprise executes orders on behalf of retail clients, its execution policy must contain arrangements allowing for the best possible results to be determined in terms of the total consideration. ²The total consideration represents the price of the financial instrument and all costs related to execution. ³Where the execution policy allows for more than one competing venue to execute an order for a financial instrument, the costs also include the investment services enterprise's own commissions and fees charged to the client for an investment service. ⁴The costs to be reflected when calculating the total consideration include the fees and charges of the execution venue on which the transaction is executed, costs of clearing and settlement and all other fees paid to third parties involved in the execution of the order.

(4) Where an investment services enterprise executes an order following specific instructions from the client, the obligation to obtain the best possible result is deemed to be fulfilled in accordance with the scope of the order.

(5) ¹The execution policy must include

1. in respect of each category of financial instruments, information on the different execution venues and the factors affecting the choice of execution venue,
2. at least those execution venues that enable the investment services enterprise to obtain, on a consistent basis, the best possible result for the execution of client orders.

²Where the execution policy within the meaning of subsection (1) number 1 also allows order execution outside trading venues as defined in section 2 subsection (22), the investment services enterprise must inform its clients about that possibility and must obtain their prior express consent, in general or in respect of individual transactions, before proceeding to execute their orders at those execution venues.

(6) ¹The investment services enterprise must

1. inform its clients of its execution policy prior to the provision of investment services for the first time and obtain the consent of its clients to that policy, and
2. inform its clients without undue delay of any material changes to the reasonable steps under subsection (1) number 1.

²The information on the execution policy must explain clearly, in sufficient detail and in a way that can be easily understood by clients how the investment services enterprise executes client orders.

(7) The investment services enterprise must be able to demonstrate to its clients, at their request, that it has executed their orders in accordance with its execution policy.

(8) An investment services enterprise may not receive any remuneration, discount or non-monetary inducement either for executing client orders on a particular trading venue or for routing client orders to a particular trading or execution venue that would infringe the requirements under section 63 (1) to (7) and (9), section 64 (1) and (5), sections 70, 80 (1) sentence 2 number 2, subsections (9) to (11) or subsections (1) to (4).

(9) The investment services enterprise must summarise and make public the top five execution venues in terms of trading volumes for all executed client orders for each class of financial instruments at least once a year and information on the quality of execution obtained in accordance with the requirements of Commission Delegated Regulation (EU) 2017/576 of 8 June 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the annual publication by investment firms of information on the identity of execution venues and on the quality of execution (OJ L 87 of 31 March 2017, page 166), as amended.

(10) Subject to section 26e of the Stock Exchange Act, trading venues and systematic internalisers must make public without charge information relating to the quality of execution of transactions on at least an annual basis for each financial instrument subject to the trading volume under Article 23 or Article 28 of Regulation (EU) No. 600/2014.

(11) Subject to section 26e of the Stock Exchange Act, trading venues must make public without charge information relating to the quality of execution of transactions on at least an annual basis for each financial instrument that is not covered by subsection (10).

(12) ¹The publications under subsections (10) and (11) must contain details about price, costs associated with order execution, speed and likelihood of execution and settlement of orders for individual financial instruments. ²More detailed requirements are contained in Commission Delegated Regulation (EU) 2017/575 of 8 June 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards concerning the data to be published by execution venues on the quality of execution of transactions (OJ L 87 of 31 March 3 2017, page 152), as amended.

(13) More detailed requirements are contained in Delegated Regulation (EU) 2017/565, in particular with regard to

1. establishing the execution policy under subsections (1) to (5) arising from Article 64,
2. reviewing the steps under subsection (1) arising from Article 66,
3. the nature, scope and data medium for the information on the execution policy under subsection (6) arising from Article 66, and
4. the obligations of investment services enterprises that route orders of their clients to third parties for execution or provide portfolio management services without executing the orders or making the decisions themselves to act in the best interest of their clients, arising from Article 65.

Section 83 Record-keeping and retention obligations

(1) Without prejudice to the record-keeping obligations under Articles 74 and 75 of Delegated Regulation (EC) No. 2017/565, investment services enterprises must keep records of the investment services and ancillary investment services provided by them as well as records of the transactions undertaken by them, to enable BaFin to monitor compliance with the obligations set out in this Part, Regulation (EU) No. 600/2014 and Regulation (EU) No. 596/2014.

(2) ¹Investment services enterprises must keep records of agreements with clients that stipulate the rights and obligations of the parties, as well as the other terms on which the investment services enterprise will provide investment and ancillary services to the client. ²The rights and obligations stipulated or agreed upon in other documents or legal texts may be incorporated into the basic agreement by reference. ³More detailed requirements relating to the record-keeping obligation under sentence 1 are contained in Article 58 of Delegated Regulation (EU) 2017/565.

(2a) (Repealed)

(2b) (Repealed)

(3) ¹In the case of transactions concluded when dealing on own account and the provision of services relating to the reception, transmission and execution of client orders, the investment services enterprise must record the content of telephone conversations and electronic communications in order to preserve evidence. ²The recording must contain in particular those parts of telephone conversions and electronic communications in which the risks, earnings opportunities or design of financial instruments or investment services are discussed. ³The investment services enterprise is permitted to collect, process and use personal data for this purpose.

⁴This also applies if the telephone conversations or electronic communications that do not result in the conclusion of such a transaction or the provision of such a service.

(4) ¹The investment services enterprise must take all reasonable steps to record relevant telephone conversations and electronic communications made with, sent from or received by devices provided by the investment services enterprise to its employees or contractors, or whose use by employees or contractors has been accepted or permitted by the investment services enterprise. ²Telephone conversations and electronic communications that must be recorded under subsection (3) sentence 1 may only be made on privately owned devices or private electronic communications of employees if the investment services enterprise can record them with the consent of the employee or copy them to its own data storage device after the end of the conversation.

(5) ¹The investment services enterprise must notify new and existing clients and its own employees and contractors in advance about the recording of telephone conversations under subsection (3) sentence 1. ²If an investment services enterprise has not informed its clients in advance about the recording of telephone conversions or electronic communications or if the client has objected to the recording, the investment services enterprise may not provide any telephone investment services or investment services conducted by means of electronic communications if these relate to the reception, transmission and execution of client orders. ³More detailed requirements are contained in Article 76 of Delegated Regulation (EU) 2017/565.

(6) ¹If the client places an order with the investment services enterprise in the course of a face-to-face conversation, the investment services enterprise must document the placing of the order on a durable medium. ²Written minutes or notes about the content of the face-to-face conversation may be prepared for this purpose. ³If the client places its order by other means, such communications must be made in a durable medium. ⁴More detailed requirements are contained in Article 76(9) of Delegated Regulation (EU) 2017/565.

(7) The client can request the investment services enterprise at any time until the deletion or destruction under subsection (8) to provide to the client the records under subsection (3) sentence 1 and the documentation under subsection (6) sentence 1.

(8) ¹The records under subsections (3) and (6) must be kept for a period of five years to the extent they are necessary for the purposes designated in those subsections. ²They must be deleted or destroyed after the end of the period stipulated in sentence 1. ³Their deletion or destruction must be documented. ⁴Where BaFin becomes aware before the end of the period stipulated in sentence 1 of circumstances that require the records to be kept beyond the maximum period stipulated in sentence 1, in particular to preserve evidence, BaFin can prolong the maximum period for keeping the records stipulated in sentence 1 by up to two years.

(9) ¹The records kept under subsections (3) and (6) must be protected from subsequent manipulation and unauthorised use and may not be used for other purposes, in particular not for surveillance of employees by the investment services enterprise. ²They may only be analysed under certain conditions, in particular to fulfil a client order, to meet a requirement by BaFin or another supervisory authority or law enforcement agency, and only by one or more employees to be nominated specially by the investment services enterprise.

(10) ¹The Federal Ministry of Finance may, by way of a statutory order not requiring the consent of the Bundesrat, adopt more detailed requirements relating to the record-keeping obligations and the suitability of the media to be used under subsections (1) to (7). ²The Federal Ministry of Finance may delegate this authority to BaFin by way of a statutory order.

(11) BaFin must publish on its website a list of the minimum records that investment services enterprises are required to keep under this Act in conjunction with a statutory order under subsection (11).

(12) Subsection (2) does not apply to agreements on consumer loans for immovable property under section 491 (3) of the German Civil Code (*Bürgerliches Gesetzbuch*) that are linked to a condition precedent that the consumer is provided with an investment service relating to covered bonds that have been issued to secure the financing of and having identical terms as the agreement on the consumer loan for immovable property so that the loan can be payable, refinanced or redeemed.

Section 84 Safeguarding of assets and financial collateral; power to issue statutory orders

(1) An investment services enterprise that is not authorised to conduct deposit business under section 1 (1) sentence 2 number 1 of the Banking Act and that holds funds belonging to clients must make adequate

arrangements to safeguard the rights of the clients and to ensure that the client's funds are not used for its own account or for account of any other person without the client's express consent.

(2) ¹An investment services enterprise that is not authorised to conduct deposit business within the meaning of section 1 (1) sentence 2 number 1 of the Banking Act must, without undue delay, safeguard client funds received in connection with an investment service or ancillary investment service separately from the funds of the investment services enterprise and from other client funds by depositing the funds in a trustee account with credit institutions, undertakings within the meaning of section 53b (1) sentence 1 of the Banking Act or equivalent institutions whose registered office is in a third country and that are authorised to conduct deposit business, a central bank or a qualifying money market fund until the funds are used for their intended purpose. ²A client may, by way of individual contractual arrangement, issue any other instruction in respect of the safeguarding of client funds if the client has been informed of the safeguarding purpose of the segregation of client funds. ³The investment services enterprise must obtain the client's prior consent to deposit the client funds with a qualifying money market fund. ⁴The client's consent is only effective if the investment services enterprise informed the client in advance before obtaining the client's consent that the funds deposited for safekeeping with the qualifying money market fund will not be held in compliance with the protective standards of this Act and not in compliance with the German Regulation Specifying Rules of Conduct and Organisational Requirements for Investment Services Enterprises (*Verordnung zur Konkretisierung der Verhaltensregeln und Organisationsanforderungen für Wertpapierdienstleistungsunternehmen*). ⁵The investment services enterprise must disclose to the institution holding the funds that the funds are being deposited in trust. ⁶It must inform the client without undue delay with which institution and in which account the client funds have been deposited and whether or not the institution holding the client money is a member of a scheme designed to protect the claims of depositors and investors, as well as the extent to which the client funds are protected by that scheme.

(3) ¹If the client funds are held at a credit institution, an equivalent institution whose registered office is in a third country or a money market fund that belongs to the same group as the investment services enterprise, the funds deposited with that undertaking or a community of such undertakings may not exceed 20 per cent of all client funds of the investment services enterprise. ²BaFin can allow the investment services enterprise to exceed the limit under sentence 1 on application if it demonstrates that the requirement under sentence 1 is disproportionate in light of the nature, scale and complexity of its activities, in light of the level of protection offered by the custodians under sentence 1 and in light of the small balance of client funds held by the investment services enterprise. ³The investment services enterprise must review the assessment conducted under sentence 2 and must communicate its initial assessment and the revised assessments to BaFin on an annual basis for review.

(4) ¹An investment services enterprise that holds financial instruments belonging to clients must make adequate arrangements so as to safeguard the ownership rights of clients in those financial instruments. ²This applies in particular in the event of the investment services enterprise's insolvency. ³The investment services enterprise must make adequate arrangements to ensure that the financial instruments of a client are not used for its own account or for the account of any other persons without the client's express consent.

(5) ¹An investment services enterprise that is not authorised to conduct deposit business within the meaning of section 1 (1) sentence 2 no. 5 of the Banking Act must, without undue delay, pass on for safe custody securities that they accept in connection with an investment service or ancillary investment service to a credit institution authorised to conduct safe custody business in Germany or to an institution whose registered office is outside Germany and that is authorised to conduct safe custody business and at which the client is granted a legal status equivalent to that under the Safe Custody Act. ²Subsection (2) sentence 6 applies, with the necessary modifications.

(6) ¹The investment services enterprise may only use a client's financial instruments for its own account or the account of any other person under narrowly defined conditions in order to prevent the unauthorised use of the client's financial instruments for its own account or the account of any other person. ²The client must have given prior express consent to the conditions and this consent must be clearly documented by the client's signature or equivalent written affirmation. ³Where financial instruments are held in an omnibus account maintained by a third party, their use under sentence 1 requires the prior consent of all other clients of the omnibus account or systems and controls that ensure that only financial instruments for which consent has been given under sentence 2 are used. ⁴In the cases governed by sentence 3, the investment services enterprise must keep records relating to clients on whose instructions the financial instruments are used, as well as the number of financial instruments used belonging to each client who has given consent, so as to enable the clear and correct allocation of any loss incurred in using the financial instrument.

(7) An investment services enterprise is not permitted to conclude title transfer collateral arrangements with retail clients for the purpose of securing or covering obligations of clients, including those that do not yet exist,

with the meaning of Article 2(1)(b) of Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements (OJ L 168 of 27 June 2002, page 43), as most recently amended by Directive 2014/59/EU (OJ L 173 of 12 June 2014, page 190), as amended.

(8) ¹Where title transfer collateral arrangements are permitted, the investment services enterprise must consider and document the appropriateness of the use of a financial instrument as financial collateral in the context of the client's contractual relationship with the investment services enterprise and the client's assets. ²Professional clients and eligible counterparties must be informed about the risks and the consequences of any title transfer collateral arrangement.

(9) ¹In the context of securities lending transactions with third parties in respect of financial instruments of clients, an investment services enterprise must adopt appropriate arrangements to ensure that the borrower of client financial instruments provides appropriate collateral. ²The investment services enterprise must put into place appropriate arrangements to ensure and continuously monitor the appropriateness of the collateral provided and to maintain the balance between the value of the collateral and the value of the client's financial instrument.

(10) ¹The Federal Ministry of Finance may, by way of a statutory order not requiring the consent of the Bundesrat, adopt more detailed requirements relating to the extent of the obligations under subsections (1) to (9) and on the requirements applicable to qualifying money market funds within the meaning of subsection (2) in order to safeguard client funds or securities entrusted to an investment services enterprise. ²The Federal Ministry of Finance may delegate this authority to BaFin by way of a statutory order.

Section 85 Investment strategy recommendations and investment regulations; power to issue statutory orders

(1) ¹Undertakings that produce or disseminate investment strategy recommendations as defined in Article 3(1) number 34 of Regulation (EU) No. 596/2014 or investment recommendations as defined in Article 3(1) number 35 of Regulation (EU) No. 596/2014 must be organised in such a way that conflicts of interest within the meaning of Article 20(1) of Regulation (EU) No. 596/2014 are kept to a minimum. ²In particular, they must have adequate control mechanisms capable of countering any infringement of the obligations under Article 20(1) of Regulation (EU) No. 596/2014.

(2) BaFin's powers under section 88 apply, with the necessary modifications, in respect of compliance with the obligations set out in subsection (1) and the obligations arising from Article 20 (1) of Regulation (EU) No. 596/2014 in conjunction with a delegated act adopted on the basis of Article 20(3) of Regulation (EU) No. 596/2014.

(3) ¹The Federal Ministry of Finance may, by way of a statutory order not requiring the consent of the Bundesrat, adopt more detailed requirements relating to the appropriate organisation under subsection (1) sentence 1. ²The Federal Ministry of Finance may delegate this authority to BaFin by way of a statutory order.

Section 86 Notification requirement

(1) ¹Persons other than investment services enterprises, asset management companies, EU management companies or investment companies who are responsible, as part of their business activities or through the exercise of a profession, for producing or disseminating investment strategy recommendations as defined in Article 3(1) number 34 of Regulation (EU) No. 596/2014 or investment recommendations as defined in Article 3(1) number 35 of Regulation (EU) No. 596/2014 must notify this to BaFin before producing or disseminating the recommendations. ²The notification must contain the following information:

1. in the case of a natural person, their name, place and date of birth, residential and business address, and telephone and electronic contact information,
2. in the case of a legal person or an association of persons, the registered name, name or designation, legal form, register number, if any, address of the registered or head office, names of the members of the representative body or the legal representatives, and telephone and electronic contact information; if a member of the representative body or the legal representatives is a legal person, their registered name, name or designation, legal form, register number, if any, and address of the registered or head office must also be disclosed.

³The information under sentence 2 must be substantiated. ⁴If the person required to make the notification

intends to disseminate recommendations, the notification must also contain a detailed description of the intended dissemination channels. ⁵The person required to make the notification must also disclose the extent to which it is aware of facts that could cause conflicts of interest at affiliated undertakings. ⁶Changes in the notified data and matters and the discontinuation of the activities referred to in sentence 1 must be notified to BaFin within four weeks.

(2) BaFin must publish on its website the name, registered name or designation of the persons and associations of persons properly notified under subsection (1) sentence 2 number 2, as well as the place and country of the residential and business address or of the registered or head office.

Section 87 Use of employees in the provision of investment advice, as sales supervisors, in portfolio management or as compliance officers; power to issue statutory orders

(1) ¹An investment services enterprise may entrust an employee with the provision of investment advice only if that employee has the degree of expertise and reliability required for the activity. ²The investment services enterprise must notify

1. the employee and,
2. where the investment services enterprise has sales supervisors within the meaning of subsection (4), the sales supervisor directly responsible for that employee on the basis of the investment services enterprise's organisational structure

to BaFin before that employee starts the activity referred to in sentence 1. ³If there is any change in the circumstances notified by the investment services enterprise under sentence 2, the new circumstances must be notified to BaFin without undue delay. ⁴In addition, if one or more complaints within the meaning of Article 26 of Delegated Regulation (EU) 2017/565 are made by retail clients about the investment services enterprise,

1. each complaint,
2. the name of the employee on the basis of whose activity the complaint being made, and
3. where the investment services enterprise has several establishments, branches or other organisational units, the establishment, branch or organisational unit to which the employee is assigned or for which the employee predominantly or usually performs the activity to be notified under sentence 1

must be notified to BaFin.

(2) An investment services enterprise may only entrust an employee to provide information to clients about financial instruments, structured deposits, investment services or ancillary investment services (sales force staff) if that employee has the degree of expertise and reliability required for the activity.

(3) An investment services enterprise may only entrust an employee with portfolio management if that employee has the degree of expertise and reliability required for the activity.

(4) ¹An investment services enterprise may only entrust an employee with designing, implementing or monitoring sales targets within the meaning of section 80 (1) sentence 2 number 3 (sales supervisor) if that employee has the degree of expertise and reliability required for the activity. ²The investment services enterprise must notify the employee to BaFin before that employee starts the activity referred to in sentence 1. ³If there is any change in the circumstances notified by the investment services enterprise under sentence 2, the new circumstances must be notified to BaFin without undue delay.

(5) ¹An investment services enterprise may only entrust an employee with responsibility for the compliance function within the meaning of Article 22(2) of Delegated Regulation (EU) 2017/565 and for reports to management under Article 25(2) of Delegated Regulation (EU) 2017/565 (compliance officer) if that employee has degree of expertise and reliability required for the activity. ²The investment services enterprise must notify the employee to BaFin before that employee starts the activity referred to in sentence 1. ³If there is any change in the circumstances notified by the investment services enterprise under sentence 2, the new circumstances must be notified to BaFin without undue delay.

(6) ¹If there is evidence indicating that an employee

1. does not satisfy or no longer satisfies the requirements under subsection (1) sentence 1, subsection (2)

- sentence 1, in each case in conjunction with section 96, or subsection (5) sentence 1, BaFin may, without prejudice to its powers set under section 4, prohibit the investment services enterprise from entrusting that employee with the notified activity for as long as the employee not satisfy the statutory requirements, or
2. has infringed provisions of this Part that are to be complied with when performing the employee's activity, BaFin may, without prejudice to its powers under section 6,
 - a) caution the investment services enterprise and the employee; or
 - b) prohibit the investment services enterprise for a period of up to two years from entrusting the employee with the notified activity.

²BaFin may publish on its website orders within the meaning of sentence 1 that have become unappealable, unless this publication is likely to damage the legitimate interests of the undertaking. ³The public announcement under sentence 2 must be made without specifying the name of the employee concerned.

⁴Objections and appeals against measures under sentence 1 do not have any suspensory effect.

(7) BaFin must maintain an internal database of the employees to be notified under subsections (1), (4) and (5), the complaints made about them under subsection (1) and the orders relating to their activity under subsection (6).

(8) Subsections (1) to (7) do not apply to employees of an investment services enterprise who work solely in a branch within the meaning of section 24a of the Banking Act or in several such branches.

(9) ¹The Federal Ministry of Finance may, by way of a statutory order not requiring the consent of the Bundesrat, adopt more detailed requirements relating to

1. the content, nature, language, scope and form of the notifications under subsections (1), (4) or (5),
2. the expertise and reliability under subsection (1) sentence 1, subsections (2), (3), (4) sentence 1, in each case in conjunction with section 96, and subsection (5) sentence 1, and
3. the content of the database under subsection (7) and the storage period for the entries,

including the relevant procedures. ²The statutory order under sentence 1 can stipulate in particular that the relevant investment services enterprise will be granted write access to the database entries that are to be created for the enterprise under subsection (7) and that it will be given the responsibility for these entries being correct and up to date. ³The Federal Ministry of Finance may delegate the authority to BaFin by way of a statutory order not requiring the consent of the Bundesrat.

(10) Subsections (1) to (3) do not apply to agreements on consumer loans for immovable property that are linked to a condition precedent that the consumer is provided with an investment service relating to covered bonds that have been issued to secure the financing of and having identical terms as the agreement on the consumer loan for immovable property so that the loan can be payable, refinanced or redeemed.

Section 88 Monitoring compliance with reporting requirements and rules of conduct

(1) To monitor compliance with

1. the reporting requirements under Article 26 of Regulation (EU) No. 600/2014, including in conjunction with the regulatory technical standards adopted on the basis of that Article,
2. the requirement to report positions under section 57 (1) to (4),
3. the notification requirements under section 23,
4. the obligations governed by this Part, including in conjunction with regulatory technical standards adopted on the basis of Article 17(7), Article 27(10) and Article 32(2) of Directive 2014/65/EU, and
5. the obligations arising from
 - a) Articles 4, 16 and 20 of Regulation (EU) No. 596/2014, including in conjunction with regulatory technical standards adopted on the basis of those Articles,
 - b) Articles 3 to 15, 17, 18, 20 to 23, 25, 27 and 31 of Regulation (EU) No. 600/2014, including in conjunction with regulatory technical standards adopted on the basis of those Articles,

- c) Delegated Regulation (EU) 2017/565,
- d) Delegated Regulation (EU) 2017/567,
- e) section 29 (2) in conjunction with the first subparagraph of Article 4(1) and Article 5a(1) of Regulation (EU) No. 1060/2009,

in each case as amended, BaFin may audit the investment services enterprises, their affiliated enterprises, branches within the meaning of section 53b of the Banking Act, enterprises with which they have or had an outsourcing arrangement within the meaning of section 25a (2) of the Banking Act, and other third persons and enterprises engaged to perform tasks, without any particular reason.

(2) In order to monitor compliance with the obligations set out in this part, BaFin may also require enterprises whose registered office is in a third country and that provide investment services to clients who are ordinarily resident or have their management in Germany to provide information and submit documents, except where the investment service and any related ancillary investment services are provided exclusively in a third country.

(3) Objections and appeals against measures under subsections (1) and (2) do not have any suspensory effect.

(4) ¹BaFin can issue guidelines under which it can assess, in accordance with Directive 2014/65/EU and Delegated Directive (EU) 2017/593, in standard cases whether the requirements of this Part have been met. ²The Deutsche Bundesbank and the central associations of the economic sectors concerned must be consulted before the guidelines are issued. ³The guidelines must be published in the Federal Gazette.

Section 89 Audit of reporting requirements and rules of conduct; power to issue statutory orders

(1) ¹With prejudice to section 88, a suitable auditor must, on at least an annual basis, examine whether the following requirements are being complied with:

1. the reporting requirements under Article 26 of Regulation (EU) No. 600/2014, including in conjunction with the regulatory technical standards adopted on the basis of that Article,
2. the requirement to report positions under section 57 (1) to (4),
3. the notification requirements under section 23,
4. the obligations governed by this Part, including in conjunction with regulatory technical standards adopted on the basis of Article 17(7), Article 27(10) and Article 32(2) of Directive 2014/65/EU, and
5. the obligations arising from
 - a) Articles 4, 16 and 20 of Regulation (EU) No. 596/2014, including in conjunction with regulatory technical standards adopted on the basis of those Articles,
 - b) Articles 3 to 15, 17, 18, 20 to 23, 25, 27 and 31 of Regulation (EU) No. 600/2014, including in conjunction with regulatory technical standards adopted on the basis of those Articles,
 - c) Delegated Regulation (EU) 2017/565,
 - d) Delegated Regulation (EU) 2017/567,
 - e) section 29 (2) in conjunction with the first subparagraph of Article 4(1) and Article 5a(1) of Regulation (EU) No. 1060/2009,

as amended. ²In the case of credit institutions that are engaged in safe custody business within the meaning of section 1 (1) sentence 2 number 5 of the Banking Act and financial services institutions that provide limited custody business within the meaning of section 1 (1a) sentence 2 number 12 of the Banking Act, the auditor must also examine this business particularly carefully; this examination must also cover compliance with section 128 of the Stock Corporation Act regarding notification requirements and with section 135 of the Stock Corporation Act on the exercise of voting rights. ³BaFin may, on application, fully or partly waive the requirement for an annual audit, with the exception of the examination with respect to compliance with the requirements set out in section 84, including in conjunction with a statutory order under section 84 (5), if it considers this to be appropriate for specific reasons, in particular due to the nature and scale of the business conducted. ⁴The investment services enterprise must appoint the auditor no later than the end of the financial

year to which the audit relates. ⁵In the case of credit institutions that are members of a cooperative audit association (*genossenschaftlicher Prüfungsverband*) or that are audited by the auditing body of a savings bank association (*Sparkassen- und Giroverband*), the audit must be carried out by the competent auditing association or auditing body, to the extent that this is provided for by Federal State law in the latter case. ⁶Suitable auditors are also German public auditors, German sworn auditors or German public auditing firms or sworn auditing firms that have sufficient knowledge of the subject of the audit.

(2) ¹Where audits under subsection (1) sentence 5 are carried out by cooperative auditing associations or auditing bodies of a savings bank association, the auditor or the audit association or auditing body is required to prepare a report on the audit under subsection (1) and to submit it on request by BaFin or the Deutsche Bundesbank to BaFin and the Deutsche Bundesbank. ²The material results of the audit must be summarised in a questionnaire and attached to the audit report. ³The questionnaire must also be submitted to BaFin and the responsible Regional Office of the Deutsche Bundesbank if no audit report under sentence 1 has been requested. ⁴The auditor must submit the questionnaire without undue delay after the audit has been completed.

(3) ¹Before issuing the audit engagement, the investment services enterprise must notify the auditor to BaFin. ²BaFin can require the appointment of a different auditor within a month after receiving the notification if this is deemed necessary to achieve the purpose of the audit; objections and appeals against this decision do not have any suspensory effect. ³Sentences 1 and 2 do not apply to credit institutions that are members of a cooperative auditing association or are audited by an auditing body of a savings bank association.

(4) ¹BaFin can notify the investment services enterprise of requirements regarding the content of the examination that the auditor must take into consideration. ²In particular, BaFin can determine areas of emphasis of the audits. ³The auditor must inform BaFin without undue delay of any serious infringements of the obligations whose compliance must be examined under subsection (1) sentence 1. ⁴BaFin may participate in the audits. ⁵To this end, BaFin must be notified about the start of the audit in good time.

(5) ¹BaFin may, without any particular reason, replace the auditor and conduct the audit under subsection (1) itself or through persons engaged by it. ²The investment services enterprise must be informed of this in good time.

(6) ¹The Federal Ministry of Finance can, by way of a statutory order not requiring the consent of the Bundesrat, adopt more detailed requirements relating to the structure, content and method of submitting the audit reports under subsection (2) as well as more detailed requirements relating to the nature, scope and timing of the audit under subsections (1) and (2), where this is necessary for BaFin to perform its functions, and in particular to counteract undesirable developments in trading in financial instruments, to ensure compliance with the obligations underlying the audit under subsection 1 sentence 1 and to obtain consistent records for this purpose. ²The Federal Ministry of Finance may delegate this authority to BaFin by way of a statutory order.

Section 90 Undertakings, organised markets and multilateral trading facilities whose registered office is situated in another Member State of the European Union or another signatory state to the Agreement on the European Economic Area

(1) ¹The rights and obligations governed in this Part and in Articles 14 to 26 of Regulation (EU) No. 600/2014 must be applied, with the exception of section 63 (2), sections 72 to 78, 80 (1) to (6) and (9) to (13), sections 81, 84 to section 87 (1) sentences 2 to 4 and subsections (3) to (8), with the necessary modifications, to branches and tied agents whose registered office or ordinary residence is in Germany within the meaning of section 53b of the Banking Act to provide investment services. ²An undertaking whose registered office is in another Member State of the European Union or another signatory state to the Agreement on the European Economic Area that provides investment services alone or together with ancillary investment services and that intends to establish a branch within the meaning of section 53b of the Banking Act in Germany, must be informed by BaFin within the period specified in section 53b (2) sentence 1 of the Banking Act about the reporting requirements under section 22 and about the rights and obligations applicable to branches under sentence 1.

(2) ¹BaFin can require branches to change the arrangements established to meet the obligations applicable to them, where the changes are necessary and proportionate to enable BaFin to verify compliance with the obligations. ²If BaFin ascertains that an undertaking does not comply with the obligations applicable to its branch under subsection (1) sentence 1, it will require the undertaking to comply with its obligations within a

period of time to be specified by BaFin. ³If the undertaking does not comply with the request, BaFin must take all appropriate measures to ensure compliance with the obligations and inform the competent authorities of the home Member State of the nature of the measures taken. ⁴If the undertaking fails to remedy the deficiency, BaFin may, after informing the competent authority of the home Member State, take all measures to prevent or penalise further infringements. ⁵Where necessary, BaFin may prevent the undertaking concerned from initiating any further transactions in Germany. ⁶BaFin must inform the European Commission and the European Securities and Markets Authority without undue delay of the measures taken under sentences 4 and 5.

(3) ¹If BaFin finds that an undertaking within the meaning of subsection (1) sentence 2 that has established a branch in Germany infringes requirements of this Act other than those stipulated in subsection (1) sentence 1 or equivalent foreign requirements, it must inform the competent authority of the home Member State in accordance with section 18 (8) sentence 1. ²If the measures subsequently taken by the competent authority of the home Member State are inadequate or if the undertaking continues to infringe other provisions of this part for other reasons, thus endangering the interests of investors or the orderly functioning of the market, BaFin must, after informing the competent authority of the home Member State, take all the measures needed in order to protect investors and the orderly functioning of the markets. ³Subsection (2) sentences 4 to 6 apply, with the necessary modifications.

(4) Subsection (3) applies, with the necessary modifications, to any undertaking whose registered office is in another Member State of the European Union or in another signatory state to the Agreement on the European Economic Area and that provides cross-border investment services or ancillary investment services to clients whose ordinary residence or place of management is in Germany, if that undertaking infringes requirements of this Part or equivalent foreign provisions.

(5) Subsection (3) applies, with the necessary modifications, to operators of organised markets and multilateral trading facilities provided that, with respect to measures taken by BaFin in respect of those operators, the requirements of this Part, the Stock Exchange Act or equivalent foreign provisions must have been infringed and that measures under subsection (3) sentence 2 may include in particular prohibiting the operator of the organised market or multilateral trading facility from making its facility available to members in Germany.

(6) BaFin must inform the undertakings or markets concerned of the measures taken under subsections (2) to (5), giving the grounds for them.

(7) In the cases governed by subsection (2) number 2, subsection (3) number 1 and subsection (5), BaFin may request the European Securities and Markets Authority for assistance under Article 19 of Regulation (EU) No. 1095/2010.

Section 91 Undertakings whose registered office is in a third country

¹Subject to the requirements of Title VIII of Regulation (EU) No. 600/2014, BaFin may determine in individual cases that section 63 (2), sections 72 to 78, 80 (1) to (6) and (9) to (13), die sections 81, 84 to 87 (1) sentences 2 to 4 and subsections (3) to (8) of this Act are not applicable to an undertaking whose registered office is in a third country and that intends provide investment services in Germany under the freedom to provide cross-border services on a commercial basis or on a scale that requires commercially organised business operations, provided that the undertaking does not need to be supervised additionally by BaFin in respect of the investment services it provides in Germany because it is supervised by the competent authority in its home country. ²This exemption may be subject to conditions, in particular that the undertaking enables monitoring and examination of compliance with the requirements that are equivalent to sections 6 to 15, 88 and 89.

Section 92 Advertising by investment services enterprises

(1) ¹In order to counter irregularities in advertising for investment services and ancillary investment services, BaFin may prohibit investment services enterprises from using certain types of advertising. ²There is an irregularity in particular if the investment services enterprise

1. does not or does not adequately draw attention to the risks associated with the investment service it provides,

2. advertises the security of the investment although there is no assurance that the principal will be repaid or repaid in full,
3. the advertising features information about costs and income as well as dependence on the behaviour of third parties that misleadingly gives the impression of a particularly low-cost offering,
4. the advertising features misleading information about BaFin's powers under this Act or the powers of the competent authorities in other Member States of the European Economic Area or third countries.

(2) Before general measures under subsection (1) are taken, the central associations of the economic sectors concerned and of consumer advocacy groups must be heard.

Section 93 Register of independent fee-based investment advisers; power to issue statutory orders

(1) BaFin must maintain on its website a public register of independent fee-based investment advisers containing all investment services enterprises wishing to provide independent investment advice.

(2) ¹BaFin must record an investment services enterprise in the register of independent fee-based investment advisers on application if it

1. holds an authorisation under section 32 of the Banking Act or is the branch of an undertaking under section 53b (1) sentences 1 and 2 or (7) of the Banking Act,
2. is authorised to provide investment advice as defined in section 2 (8) sentence 1 number 10 and
3. demonstrates to BaFin by means of an attestation report by a suitable auditor that it is able to meet the requirements stipulated in section 80 (7).

²In the case of credit institutions that are members of a cooperative audit association or that are audited by the auditing body of a savings bank association, the audit under subsection (2) number 3 must be carried out by the competent auditing association or auditing body, to the extent that this is provided for by Federal State law in the latter case. ³Suitable auditors are also German public auditors, German sworn auditors or German public auditing firms or sworn auditing firms that have sufficient knowledge of the subject of the audit.

(3) BaFin is required to delete the entry in the register of independent fee-based investment advisers if

1. the investment services enterprise notifies BaFin that it wishes to waive entry in the register or
2. the entire authorisation of an investment services enterprise under section 32 of the Banking Act or the authorisation to provide investment advice expires or is revoked.

(4) An investment services enterprise that no longer wishes to provide independent fee-based investment advice must notify this to BaFin.

(5) The Federal Ministry of Finance may, by way of a statutory order not requiring the consent of the Bundesrat, adopt more detailed requirements

1. on the content of the register of independent fee-based investment advisers,
2. on the duties of cooperation of the institutions in maintaining the register of independent fee-based investment advisers and
3. on the evidence to be provided subsection (2) sentence 1 number 3.

(6) The Federal Ministry of Finance may delegate this authority to BaFin by way of a statutory order.

Section 94 Terms used in the provision of independent fee-based investment advice

(1) Unless otherwise provided for by law, only investment services enterprises that are recorded in the register of independent fee-based investment advisers under section 93 may use the terms "independent fee-based investment adviser" or "independent fee-based investment advice", or variations in the spelling of those terms, or another term that contains those words, in their registered name, as a supplement to their registered name, to describe their business purpose or for advertising purposes.

(2) ¹Subsection 1 does not apply to undertakings that use the terms referred to there in a context that rules out the impression that they provide investment services. ²Investment services enterprises whose registered office is outside Germany may use the terms specified in subsection (1) in their registered name, as a supplement to their registered name, to describe their business purpose or for advertising purposes for their operations in Germany if they are entitled to use these terms in their home country and supplement the term with a reference to their home country.

(3) ¹In cases of doubt, BaFin decides whether an investment services enterprise is authorised to use the terms specified in subsections (1). ²It must inform the registration court of its decisions.

(4) The requirement set out in section 43 of the Banking Act applies, with the necessary modifications, except that the entry in the register of independent fee-based investment advisers under section 93 replaces the authorisation under section 32 of the Banking Act.

Section 95 Exemptions

¹Section 63 (1) and (3) to (7) and (9), section 56 (1) as well as sections 69, 70 and 82 do not apply to transactions concluded on organised markets or in a multilateral trading facility between investment services enterprises or between such investment services enterprises and other members of or participants in those markets or facilities. ²However, if a transaction within the meaning of sentence 1 is concluded to execute a client order, the investment services enterprises must comply with the obligations to the client set out in sections 63 (1) and (3) to (7) and (9), section 56 (1) as well as sections 69, 70 and 82.

Section 96 Structured deposits

Sections 63 and 64, with the exception of section 64 (2), section 67 (4), sections 68 to 71, 80 (1) sentence 2 numbers 2 and 3 and subsections (7) to (13), section 81 (1) to 4, section 83 (1) and (2), section 87 (1) sentence 1, (2), (3), (4) sentence 1 and subsection (6) must be applied to investment services enterprises and credit institutions, with the necessary modifications, if they sell or provide advice about structured deposits.

Part 12 Liability for incorrect or omitted capital market information

Section 97 Liability for damages due to failure to publish inside information without undue delay

(1) If an issuer whose financial instruments have been admitted to trading on a trading venue in Germany or who has applied for the financial instruments to be admitted to trading on a regulated market or multilateral trading facility in Germany fails to publish, without undue delay, inside information that directly relates to that issuer in accordance with Article 17 of Regulation (EU) No. 596/2014, that issuer is liable to compensate a third party for losses arising from the failure to publish if that third party

1. bought the financial instruments after the failure to publish and still owns the financial instruments when the inside information becomes known, or
2. bought the financial instruments before the event triggering the inside information and sells them after failure to publish that information.

(2) Issuers who can prove that the failure to publish was not deliberate or an act of gross negligence are not liable for damages under subsection (1).

(3) Claims for damages under subsection (1) cannot be asserted if, in the case of subsection (1) number 1, the third party knew the inside information at the time of purchase or, in the case of subsection (1) number 2, at the time of sale.

(4) This is without prejudice to further contractual claims or claims for intentional tort that may be asserted under the provisions of civil law.

(5) Any agreement that reduces or waives in advance claims by an issuer against members of its board of management due to claims asserted against the issuer under subsection (1) is invalid.

Section 98 Liability for damages due to publication of untrue inside information

(1) If an issuer whose financial instruments have been admitted to trading on a trading venue in Germany or who has applied for the financial instruments to be admitted to trading on a regulated market or multilateral trading facility in Germany publishes untrue inside information that directly relates to that issuer in a disclosure under Article 17 of Regulation (EU) No. 596/2014, that issuer is liable to compensate a third party for losses arising from the fact that the third party relied on the accuracy of the inside information, if that third party

1. bought the financial instruments after publication and still owns the financial instruments when it becomes known that the information was inaccurate or
2. bought the financial instruments before publication and sells them before it becomes known that the information was inaccurate.

(2) Issuers who can prove that they were not aware of the inaccuracy of the inside information and that the lack of awareness does not constitute an act of gross negligence are not liable for damages under subsection (1).

(3) Claims under subsection (1) cannot be asserted if, in the case of subsection (1) number 1, the third party knew that the inside information was inaccurate at the time of purchase or, in the case of subsection (1) number 2, at the time of sale.

(4) This is without prejudice to further contractual claims or claims for intentional tort that may be asserted under the provisions of civil law.

(5) Any agreement that reduces or waives in advance claims by an issuer against members of its board of management due to claims asserted against the issuer under subsection (1) is invalid.

Part 13 Financial derivatives transactions

Section 99 Exclusion of the objection under section 762 of the Civil Code

¹Objections under section 762 of the Civil Code may not be made against claims arising from financial derivatives transactions involving at least one party that is an undertaking that enters into financial derivatives transactions on a commercial basis or on a scale that requires commercially organised business operations or that buys, sells or brokers financial derivatives transactions. ²Financial derivatives transactions within the meaning of sentence 1 and sections 100 and 101 mean derivatives within the meaning of section 2 (3) and warrants.

Section 100 Prohibited financial derivatives transactions

(1) Without prejudice to BaFin's powers under section 15, the Federal Ministry of Finance may, by way of a statutory order, prohibit or restrict financial derivatives transactions where this is necessary for investor protection.

(2) ¹A financial derivatives transaction that infringes a statutory order under subsection (1) (prohibited financial derivatives transaction) is void. ²Sentence 1 applies, with the necessary modifications, to

1. the provision of margin for prohibited financial derivatives transactions,
2. an agreement by means of which one party incurs a liability towards the other party for the purpose of

- meeting a liability under a prohibited financial derivatives transaction, in particular for an acknowledgement of debt,
3. the placing and acceptance of orders for the purpose of concluding prohibited financial derivatives transactions and
 4. associations established for the purpose of concluding prohibited financial derivatives transactions.

Part 14 Arbitration agreements

Section 101 Arbitration agreements

Arbitration agreements on future legal disputes relating to investment services, ancillary investment services or financial derivatives transactions are binding only if both parties to the agreement are merchants within the meaning of the Commercial Code or legal persons under public law.

Part 15 Markets in financial instruments whose registered office is outside the European Union

Section 102 Authorisation; power to issue statutory orders

(1) ¹Subject to the requirements of Title VIII of Regulation (EU) No. 600/2014 and decisions of the European Commission under the third subparagraph of Article 25(4) of Directive 2014/65/EU and the first subparagraph of Article 28(4) of Regulation (EU) No. 600/2014, markets in financial instruments whose registered office is outside the European Union and that are not organised markets or multilateral trading facilities within the meaning of this Act, or their operators, require written authorisation from BaFin if they grant trading participants whose registered office is in Germany direct market access by means of an electronic trading system. ²The application for authorisation must contain:

1. the name and address of the management of the market or its operator,
2. information required in order to assess the reliability of the management,
3. a business plan showing the type of planned market access for the trading participants, the organisational structure and the internal control mechanisms of the market,
4. the name and address of an authorised agent for service in Germany,
5. information about the authorities responsible for supervising the market and its trading participants in the home country and their powers of supervision and intervention,
6. information on the type of financial instruments that are to be traded by the trading participants by means of direct market access, and
7. the name and address of trading participants whose registered office is in Germany that are to be granted direct market access.

³The Federal Ministry of Finance will, by way of a statutory order not requiring the consent of the Bundesrat, determine the further details of the information required and the documents to be submitted under sentence 2.

⁴The Federal Ministry of Finance may delegate this authority to the Federal Financial Supervisory Authority by way of a statutory order.

(2) ¹BaFin can grant authorisation subject to conditions that must be consistent with the intended purpose of this Act. ²Prior to granting authorisation, BaFin must give the stock exchange supervisory authorities of the Federal States an opportunity to comment on the application within a period of four weeks.

(3) BaFin is required to announce the authorisation in the Federal Gazette.

(4) (Repealed)

Section 103 Denial of authorisation

Authorisation must be denied if

1. there is evidence indicating that the management is not reliable,
2. direct market access is to be granted to trading participants whose registered office is in Germany and that fail to meet the requirements of section 19 (2) of the Stock Exchange Act,
3. the home country fails to meet standards of market supervision or investor protection equivalent to those under German law, or
4. information sharing with the authorities responsible for supervising the market in the home country is not guaranteed.

Section 104 Revocation of authorisation

(1) BaFin can revoke authorisation other than under the provisions of the Administrative Procedure Act (*Verwaltungsverfahrensgesetz*) if

1. it learns of facts that would warrant denial of authorisation under section 103 or
2. the market or its operator has persistently infringed provisions of this Act or the regulations or orders adopted to implement this Act,

(2) BaFin must announce the revocation of authorisation in the Federal Gazette.

Section 105 Prohibition

BaFin can prohibit trading participants whose registered office is in Germany and that offer investment services in Germany from executing client orders by means of an electronic trading system of a foreign market if those markets or their operators grant trading participants whose registered office is in Germany direct market access by means of that electronic trading system without authorisation.

Part 16 Monitoring of company financial statements, publication of financial reports

Subpart 1 Monitoring of company financial statements

Section 106 Examination of company financial statements and financial reports

Under the requirements of this Part, subject to section 342b (2) sentence 3 numbers 1 and 3 of the Commercial Code, BaFin is responsible for examining whether the following financial statements and reports, in each case including the underlying accounting system, of undertakings that are issuers and whose home country is the Federal Republic of Germany, comply with the statutory requirements, including German proper accounting principles or other accounting standards permitted by law:

1. adopted annual financial statements and the related management reports or approved consolidated financial statements and related group management reports,
2. published condensed financial statements and related interim management reports, and
3. published reports or consolidated reports on payments.

Section 107 Ordering of an examination of the accounting and BaFin's powers of investigation

(1) ¹BaFin must order an examination of the accounting if there is specific evidence of an infringement of accounting requirements; no order is issued if it is evidently not in the public interest to clarify the matter. ²BaFin can also order an examination of the accounting without any particular reason (sampling examination). ³The scope of each individual examination is defined in the examination order. ⁴Only the most recent adopted annual financial statements and the related management report or the most recent approved consolidated financial statements and the related group management report, the most recent published condensed financial statements and the related interim management report, and the most recent published report on payments or consolidated report on payments, will be examined; without prejudice to the above, in the case of section 108 (1) sentence 2 BaFin can examine the financial statements that were examined by the financial reporting enforcement panel within the meaning of section 342b (1) of the Commercial Code (enforcement panel). ⁵If BaFin orders an examination of the accounting after receiving a report from the enforcement panel under section 108 (1) sentence 2 number 1, it can publish its order and the grounds under section 108 (1) sentence 2 number 1 in the Federal Gazette. ⁶Sentence 2 does not apply to the examination of the condensed financial statements and the related interim management report as well as the report on payments and the consolidated report on payments. ⁷The examination can be continued if the securities are no longer admitted to trading on the organised market, in particular if the subject of an examination is an error and there is a public interest in making that error public.

(2) ¹Financial statements and reports for the financial year preceding the financial year to which subsection (1) sentence 4 first half-sentence refers can also be the subject of the examination under subsection (1). ²No sampling examination can be made in these cases.

(3) ¹The annual financial statements and the related management report will not be examined by BaFin if an action to declare the financial statements void within the meaning of section 256 (7) of the Stock Corporation Act is pending. ²Nor will an examination be performed if a special auditor has been appointed under section 142 (1) or (2) or section 258 (1) of the Stock Corporation Act, provided that the subject of the special audit, the audit report or a court decision concerning the conclusive findings of the special auditors are sufficient under section 260 of the Stock Corporation Act.

(4) In conducting the examination, BaFin may make use of the enforcement panel as well as other entities or persons.

(5) ¹The undertaking within the meaning of section 106, the members of its governing bodies, its employees and its auditors are required to provide information and submit documentation on request to BaFin and persons assisting BaFin to perform its functions, to the extent required for the examination; the auditors' obligation to provide information is restricted to facts of which they became aware in the course of the audit. ²Sentence 1 also applies to subsidiaries to be included in the consolidated financial statements in accordance with the Commercial Code. ³Section 6 (15) applies, with the necessary modifications, to the right to refuse to provide information and the obligation to inform affected persons of their rights.

(6) ¹Persons obliged to provide information and submit documentation under subsection (5) are required to grant BaFin's staff and persons authorised by it access to their property and business premises during normal business hours, to the extent that this is necessary for the performance of their functions. ²Section 6 (11) sentence 2 applies, with the necessary modifications. ³The inviolability of the home (Article 13 of the Basic Law) is restricted in this respect.

Section 108 BaFin's powers if an enforcement panel has been recognised

(1) ¹If an enforcement panel has been recognised under section 342b (1) of the Commercial Code, sampling examinations will only be carried out at the request of the enforcement panel. ²In other respects, BaFin may only exercise the powers as defined in section 107 if

1. it is informed by the enforcement panel that an undertaking refuses to cooperate in an examination or does not agree with the results of the examination, or
2. there are substantial doubts about the accuracy of the results of enforcement panel's examination or about the proper conduct of the examination by the enforcement panel.

³At BaFin's request, the enforcement panel must explain the results and the conduct of the examination and submit an examination report. ⁴Without prejudice to sentence 2, BaFin may take over the examination at any time if it is also conducting or has conducted an examination under section 44 (1) sentence 2 of the Banking Act, section 14 sentence 2 of the Investment Code or section 306 (1) number 1 of the Insurance Supervision

Act, and the examinations relate to the same subject.

(2) BaFin can require the enforcement panel to initiate an examination subject to the conditions set out in section 107 (1) sentence 1.

(3) BaFin must inform the enforcement panel of notifications under section 142 (7), section 256 (7) sentence 2 and section 261a of the Stock Corporation Act if the enforcement panel intends to or has initiated an examination of an undertaking affected by a notification.

Section 109 Results of the examination by BaFin or the enforcement panel

(1) If the examination by BaFin establishes that the accounting contains errors, BaFin must identify the error.

(2) ¹The Supervisory Authority must order the undertaking to make public the error identified by BaFin or the enforcement panel in consultation with the undertaking, together with significant parts of the reasons for identifying the error. ²The Supervisory Authority will waive the order under sentence 1 if there is no public interest in publication. ³Upon request by the undertaking, BaFin may waive the order under sentence 1 if its publication is could potentially harm the legitimate interests of the undertaking. ⁴The publication must be made without undue delay in the Federal Gazette as well as in either a national newspaper for statutory stock exchange announcements, or by means of an electronic information system that is widely used by credit institutions, undertakings operating under section 53 (1) sentence 1 of the Banking Act, other undertakings whose registered office is in Germany that are admitted to trading on a German stock exchange and insurance undertakings.

(3) BaFin must inform the undertaking if its examination results in no objections.

Section 110 Notifications to other authorities

(1) ¹BaFin must notify facts giving rise to suspicion of a criminal offence in relation to the undertaking's accounting to the competent law enforcement agency. ²It may communicate to these authorities the personal data of persons who are the subject of the suspicion or who may be witnesses.

(2) ¹BaFin must notify the Auditor Oversight Commission (*Abschlussprüferaufsichtsstelle*) at the Federal Office of Economics and Export Control (*Bundesamt für Wirtschaft und Ausfuhrkontrolle*) of any facts indicating that the auditor has infringed professional obligation. ²BaFin must notify the responsible exchange supervisory office of any facts indicating that the undertaking has infringed requirements of stock exchange law. ³Subsection (1) sentence 2 applies, with the necessary modifications.

Section 111 International cooperation

(1) ¹BaFin is responsible for cooperating with foreign authorities charged with investigating possible infringements of accounting requirements by undertakings whose securities are admitted to trading on an organised market. ²To perform this function, it can communicate information to these authorities in accordance with section 18 (2) sentences 1 and 2, including in conjunction with subsection (10). ³Section 107 (5) and (6) applies, with the necessary modifications, provided that the powers governed there extend to all undertakings covered by the cooperation referred to in sentence 1, as well as all undertakings included in the consolidated financial statements of such an undertaking.

(2) ¹BaFin can cooperate with the competent authorities of other Member States of the European Union or signatory states to the Agreement on the European Economic Area in order to ensure the consistent cross-border implementation of international accounting standards. ²To this end, it may provide these authorities with transcripts of decisions that it or the enforcement panel have made in individual cases. ³The transcripts of the decisions may only be made available in anonymised form.

(3) BaFin cooperates with international authorities under subsections (1) and (2) in consultation with the enforcement panel.

Section 112 Objection proceedings

(1) ¹Before a complaint is filed, the legality and appropriateness of orders issued by BaFin under the provisions of this Part must be reviewed in objection proceedings. ²Such a review is not required if the decision on redress or the decision on the objection contains a complaint for the first time. ³Sections 68 to 73 and 80 (1) of the Rules of the Administrative Courts (*Verwaltungsgerichtsordnung*) apply, with the necessary modifications, to the objection proceedings unless otherwise provided for in this Part.

(2) Objections against measures taken by BaFin under section 107 (1) sentences 1, 3 and 6 as well as subsections (5) and (6), section 108 (1) sentences 3 and 4 and subsection (2), and section 109 (1) and (2) sentence 1 do not have any suspensory effect.

Section 113 Complaints

(1) ¹Complaints may be filed against orders issued by BaFin under this Part. ²Complaints do not have any suspensory effect.

(2) Sections 43 and 48 (2) to (4), section 50 (3) to (5) and sections 51 to 58 of the Securities Acquisition and Takeover Act apply, with the necessary modifications.

Subpart 2 Publication and provision of financial reports to the Company Register

Section 114 Annual financial report; power to issue statutory orders

(1) ¹An undertaking that issues securities as a domestic issuer is required to prepare an annual financial report as at the end of each financial year and make it available to the public no later than four months after the end of each financial year, unless the undertaking is required to disclose the accounting documents specified in subsection (2) under the provisions of commercial law. ²Before the date when the accounting documents specified in subsection (2) are made publicly available for the first time, and no later than four months after the end of each financial year, any undertaking that issues securities as a domestic issuer must publish an announcement about the date from which and the website where the accounting documents specified in subsection (2) will be made publicly available, in addition to their availability in the Company Register. ³The undertaking must notify BaFin of the announcement at the same time as its publication and provide it without undue delay, but not before its publication, to the Company Register within the meaning of section 8b of the Commercial Code for storage. ⁴In addition, the undertaking must provide without undue delay the accounting documents specified in subsection (2) to the Company Register for storage, but not before the publication of the announcement under sentence 2, unless their provision is governed by section 8b (2) number 4 in conjunction with subsection (3) sentence 1 number 1 of the Commercial Code.

(2) As a minimum, the annual financial report must contain

1. the annual financial statements, which
 - a) in the case of an undertaking whose registered office is in a Member State of the European Union or a signatory state to the Agreement on the European Economic Area, were prepared and audited in accordance with the national law of the home country of the undertaking, or
 - b) in the case of an undertaking whose registered office is in a third country, were prepared and audited in accordance with the requirements of the Commercial Code and issued with an audit report or a non-affirmative audit report,
2. the management report, which
 - a) in the case of an undertaking whose registered office is in a Member State of the European Union or a signatory state to the Agreement on the European Economic Area, was prepared and audited in accordance with the national law of the home country of the undertaking, or
 - b) in the case of an undertaking whose registered office is in a third country, was prepared and audited in accordance with the requirements of the Commercial Code,
3. a responsibility statement under section 264 (2) sentence 3, section 289 (1) sentence 5 of the Commercial

Code, and

4. a certificate of registration for the auditor issued by the Chamber of German Public Auditors under section 134 (2a) of the Act Regulating the Profession of *Wirtschaftsprüfer* (*Wirtschaftsprüferordnung*) or a certification of exemption from the obligation to register issued by the Chamber of German Public Auditors under section 134 (4) sentence 8 of the Act Regulating the Profession of *Wirtschaftsprüfer*.

(3) In consultation with the Federal Ministry of Justice, the Federal Ministry of Finance may, by way of a statutory order not requiring the consent of the Bundesrat, adopt more detailed provisions concerning

1. the minimum content, nature, language, scope and form of the publication under subsection (1) sentence 2,
2. the minimum content, nature, language, scope and form of the notification under subsection (1) sentence 3,
3. the language in which the information under subsection (2) is to be prepared, as well as the period for which this information must be made publicly accessible in the Company Register, and the date on which this information is to be deleted.

Section 115 Half-yearly financial report; power to issue statutory orders

(1) ¹An undertaking that, as a domestic issuer, issues shares or debt securities within the meaning of section 2 (1), is required to prepare a half-yearly financial report for the first six months of each financial year and make that report available to the public without undue delay, but no later than two months after the end of the relevant reporting period, unless the securities admitted to trading are debt securities that fall within the scope of section 2 (1) number 2, or that grant at least a contingent right to acquire securities under section 2 (1) numbers 1 or 2. ²In addition, no later than three months after the end of the reporting period and before the date on which the half-yearly financial report is made publicly available for the first time, the undertaking must publish an announcement about the date from which and the website where the report will be made publicly available, in addition to its availability in the Company Register. ³The undertaking must notify BaFin of the announcement at the same time as its publication and provide it without undue delay, but not before its publication, to the Company Register within the meaning of section 8b of the Commercial Code for storage. ⁴In addition, the undertaking must provide the half-yearly financial report to the Company Register for storage without undue delay, but not before the publication of the announcement under sentence 2.

(2) As a minimum, the half-yearly financial report must contain

1. condensed financial statements,
2. an interim management report and
3. a responsibility statement under section 264 (2) sentence 3, section 289 (1) sentence 5 of the Commercial Code.

(3) ¹As a minimum, the condensed financial statements must contain a condensed balance sheet, a condensed income statement and notes. ²The condensed financial statements must be prepared using the same accounting policies applied to the annual financial statements. ³Where, in the case of publication, the annual financial statements are replaced by separate financial statements within the meaning of section 325 (2a) of the Commercial Code, the condensed financial statements must be prepared in accordance with the international accounting standards and requirements specified in section 315e (1) of the Commercial Code.

(4) ¹As a minimum, the interim management report must disclose the key events that have occurred in the issuer's undertaking during the reporting period and their impact on the condensed financial statements, as well as a description of the material opportunities and risks for the six months of the financial year following the reporting period. ²In addition, in the case of an undertaking that issues shares as a domestic issuer, the interim management report must disclose material transactions with related parties; alternatively, these disclosures may be made in the notes to the half-yearly financial statements.

(5) ¹The condensed financial statements and the interim management report may be reviewed by an auditor. ²The provisions governing the appointment of the auditor apply, with the necessary modifications, to the review by the auditor. The review must be planned in such a way as to preclude, if professional diligence is exercised, that the condensed financial statements and the interim management report do not comply, in all in material

respects, with the applicable accounting principles. ⁴The auditor must summarise the findings of the review in a review report on the half-yearly financial report, which must be published together with the half-yearly financial report. ⁵If the condensed financial statements and the interim management report have been audited in accordance with section 317 of the Commercial Code, the auditors' report or the non-affirmative auditors' report must be reproduced in full and published together with the half-yearly financial report. ⁶If the condensed financial statements and half-yearly financial report have not been reviewed by auditors or audited in accordance with section 317 of the Commercial Code, this fact must be disclosed in the half-yearly financial report. ⁷Sections 320 and 323 of the Commercial Code apply, with the necessary modifications.

(6) ¹In consultation with the Federal Ministry of Justice, the Federal Ministry of Finance may, by way of a statutory order not requiring the consent of the Bundesrat, adopt more detailed requirements governing

1. the content and the review of the half-yearly financial report,
2. the minimum content, nature, language, scope and form of the publication under subsection (1) sentence 2,
3. the minimum content, nature, language, scope and form of the notification under subsection (1) sentence 3, and
4. the language in which the half-yearly financial report is to be prepared, as well as the period for which the half-yearly financial report must be made publicly accessible in the Company Register, and the date on which it is to be deleted.

²(7) If an undertaking prepares and publishes additional intraperiod financial information that complies with the requirements of subsection (2) numbers 1 and 2 and subsections (3) and (4), subsection (5) applies, with the necessary modifications, to the audit or review of that financial information.

Section 116 Report on payments; power to issue statutory orders

(1) ¹An undertaking that issues securities as a domestic issuer is required to prepare a report on payments or consolidated report on payments in application of sections 341r to 341v of the Commercial Code, with the necessary modifications, and to make it publicly available no later than six months after the end of the reporting period if

1. the undertaking or one of its subsidiaries within the meaning of section 341r number 1 of the Commercial Code is active in the extractive industry or in the logging of primary forests within the meaning of section 341r number 2 of the Commercial Code, and
2. section 341q of the Commercial Code does not apply to that undertaking.

²In the case of an undertaking within the meaning of sentence 1 whose registered office is in another Member State of the European Union or in another signatory state to the Agreement on the European Economic Area, the provisions of national law enacted by its home state to transpose Chapter 10 of Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182 of 29 June 2013, page 19) apply in the place of sections 341s to 341v of the Commercial Code.

(2) ¹In addition, no later than six months after the end of the reporting period and before the date on which the report on payments or consolidated report on payments is made publicly available for the first time, any undertaking within the meaning of subsection (1) sentence 1 number 1 must publish an announcement about the date from which and the website where the report on payments or consolidated report on payments will be made publicly available, in addition to its availability in the Company Register. ²The undertaking must notify BaFin of the announcement at the same time as its publication and provide it without undue delay, but not before its publication, to the Company Register within the meaning of section 8b of the Commercial Code for storage. ³In addition, any undertaking within the meaning of sentence 1 must provide without undue delay the report on payments or consolidated report on payments to the Company Register for storage, but not before the publication of the announcement under sentence 2, unless its provision is governed by section 8b (2) number 4 in conjunction with subsection (3) sentence 1 number 1 of the Commercial Code.

(3) ¹BaFin can request an undertaking to state whether it is active in the extractive industry or in the logging of primary forests within the meaning of section 341r of the Commercial Code, and may set an appropriate deadline. ²The reasons for the request must be given. ³If the undertaking does not issue a statement within this

period, there is a presumption that it falls within the scope of subsection (1) sentence 1 number 1. ⁴Sentences 1 and 2 apply, with the necessary modifications, if BaFin has reason to presume that a subsidiary of the undertaking is active in the extractive industry or in the logging of primary forests.

(4) In consultation with the Federal Ministry of Justice, the Federal Ministry of Finance may, by way of a statutory order not requiring the consent of the Bundesrat, adopt more detailed provisions concerning

1. the minimum content, nature, language, scope and form of the publication under subsection (2) sentence 1,
2. the minimum content, nature, language, scope and form of the announcement under subsection (2) sentence 2,
3. the language in which the report on payments or consolidated report on payments is to be prepared, as well as the period for which the report on payments or consolidated report on payments must be made publicly accessible in the Company Register, and the date on which it is to be deleted.

Section 117 Consolidated financial statements

If a parent undertaking is required to prepare consolidated financial statements and a group management report, sections 114 and 115 apply, subject to the following conditions:

1. The annual financial report must also contain the audited consolidated financial statements prepared in accordance with Regulation (EC) No. 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards (OJ EC No. L 243, page 1), the group management report, a responsibility statement under section 297 (2) sentence 4, section 315 (1) sentence 5 of the Commercial Code and a certificate of registration for the auditor issued by the Chamber of German Public Auditors under section 134 (2a) of the Act Regulating the Profession of *Wirtschaftsprüfer* or a certification of exemption from the obligation to register issued by the Chamber of German Public Auditors under section 134 (4) sentence 8 of the Act Regulating the Profession of *Wirtschaftsprüfer*.
2. The legal representatives of the parent undertaking must prepare and publish the half-yearly financial report for the parent undertaking and all of the subsidiaries to be included. ²Section 115 (3) applies, with the necessary modifications, if the parent undertaking is required to prepare the consolidated financial statements in accordance with the international accounting standards and requirements specified in section 315a (1) of the Commercial Code.
3. (Repealed)

Section 118 Exemptions; power to issue statutory orders

(1) ¹Sections 114, 115 and 117 do not apply to undertakings that exclusively

1. issue debt securities admitted to trading on an organised market with a minimum denomination per unit of EUR 100,000 or the equivalent value in another currency on the date of issue, or
2. have issued outstanding debt securities with a minimum denomination per unit of EUR 50,000 or the equivalent value in another currency on the date of issue that were already admitted to trading on an organised market in Germany or in another Member State of the European Union or another signatory state to the Agreement on the European Economic Area prior to 31 December 2010.

²The exemptions under sentence 1 are not applicable to issuers of securities within the meaning of section 2 (1) number 2.

(2) Section 115 does not apply to credit institutions that issue securities as domestic issuers if their shares are not admitted to trading on an organised market and if they have, either continuously or repeatedly, only issued debt securities with a total principal amount of less than EUR 100 million, and for which no prospectus under the Securities Prospectus Act has been published.

(3) Section 115 also does not apply to undertakings that issue securities as domestic issuers if they already existed as at 31 December 2003 and exclusively issue debt securities admitted to trading on an organised market that are unconditionally and irrevocably guaranteed by the Federal Government, one of the Federal States, or one of the regional or local authorities.

(4) ¹BaFin may exempt an undertaking whose registered office is in a third country and that issues securities as a domestic issuer from the requirements of sections 114, 115 and 117, including in conjunction with a statutory order under section 114 (3) or section 115 (6), if those issuers are subject to equivalent requirements of a third country or if they have committed to complying with such requirements. ²BaFin must notify the European Securities and Markets Authority about the exemption. ³However, the information to be prepared under the provisions of a third country must be made available to the public, published and simultaneously notified to BaFin in the manner specified in section 114 (1) sentences 1 and 2 and section 115 (1) sentences 1 and 2, in each case in conjunction with a statutory order under section 114 (3) or section 115 (6). ⁴The information must also be communicated to the Company Register within the meaning of section 8b of the Commercial Code without undue delay, but not before its publication, for storage. ⁵The Federal Ministry of Finance may, by way of a statutory order not requiring the consent of the Bundesrat, adopt more detailed requirements governing the equivalence of third country requirements and the exemption of undertakings under subsection (1).

(5) (Repealed)

Part 17 Provisions relating to criminal penalties and administrative fines

Section 119 Provisions relating to criminal penalties

(1) Any persons who commit an intentional act designated in section 120 (2) number 3 or subsection (15) number 2 and thereby influence any of the following will be liable to imprisonment for a term not exceeding five years or a fine:

1. the German stock exchange or market price of a financial instrument, a related commodity spot contract, a commodity as defined in section 2 (5) or a foreign currency within the meaning of section 51 of the Stock Exchange Act,
2. the price of a financial instrument or a related commodity spot contract on an organised market, a multilateral or organised trading facility in another Member State of the European Union or another signatory state to the Agreement on the European Economic Area,
3. the price of a commodity as defined in section 2 (5) or a foreign currency within the meaning of section 51 of the Stock Exchange Act on a market equivalent to a German stock exchange in another Member State of the European Union or in another signatory state to the Agreement on the European Economic Area, or
4. the calculation of a benchmark in Germany or in another Member State of the European Union or another signatory state to the Agreement on the European Economic Area.

(2) Persons will also be punished if they infringe the requirements of Commission Regulation (EU) No. 1031/2010 of 12 November 2010 on the timing, administration and other aspects of auctioning of greenhouse gas emission allowances under Directive 2003/87/EC of the European Parliament and of the Council establishing a scheme for greenhouse gas emission allowances trading within the Community (OJ L 56 of 18 November 2010, page 11), as most recently amended by Regulation (EU) No. 176/2014 (OJ L 56 of 26 February 2014, page 11), by

1. submitting, modifying or withdrawing a bid in contravention of the first subparagraph of Article 38(1), including in conjunction with subsection (2) or Article 40, or
2. as a person under the second subparagraph of Article 38(1), including in conjunction with subsection (2),
 - a) disclosing inside information in contravention of Article 39(a) or
 - b) recommending or inducing another person to submit, modify or withdraw a bid in contravention of Article 39(b).

(3) Persons will also be punished if they infringe the requirements of Regulation (EU) No. 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (Market Abuse Regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC (OJ L 173 of 12 June 2014, page 1, L 287 of 21 October 2016, page 320; L 306 of 15 November 2016, page 43; L 348 of 21 December 2016, page 83), as most recently amended by Regulation (EU) 2016/1033 (OJ L 175 of 30 June 2016, page 1), by

1. engaging in insider dealing in contravention of Article 14(a),
 2. recommending that another person engage in insider dealing or inducing another person to engage in insider dealing, in contravention of Article 14(b), or
 3. disclosing inside information in contravention of Article 14(c).
- (4) Any attempt is punishable.
- (5) Persons will be liable to imprisonment for a term of between one year and a maximum of ten years if, in the cases governed by subsection (1),
1. they act professionally or as a member of a gang formed for the continuous commission of such crimes, or
 2. they act in the course of performing their function for a financial supervisory authority in Germany, an investment services enterprise, a stock exchange or an operator of a trading venue.
- (6) The punishment is a term imprisonment of between six months and five years in less serious cases governed by subsection (5) number 2.
- (7) If the perpetrator acts negligently in the cases governed by subsection (2) number 1, the punishment is a term of imprisonment of up to one year or a fine.

Section 120 Provisions relating to administrative fines; power to issue statutory orders

- (1) Any persons commit an administrative offence if they
1. contravene an enforceable order under section 8 (2) sentence 1 or sentence 2,
 2. do not provide information or do not provide it promptly in contravention of section 26 (1) or (2),
 3. do not make a notification, do not make it correctly, do not make it completely or do not make it promptly in contravention of section 26 (1),
 4. do not make a notification or do not make it promptly in contravention of section 26 (2), or
 5. use clearing services in contravention of section 30 (3).
- (2) Any persons commit an administrative offence if they wilfully or negligently
1. do not provide information or do not provide it promptly in contravention of section 5 (1) sentence 2,
 2. in contravention of
 - a) section 5 (1) sentence 2,
 - b) section 22 (3),
 - c) section 23 (1) sentence 1, including in conjunction with a statutory order under subsection (4) sentence 1,
 - d) sections 33 (1) sentence 1 or 2 or subsection (2), in each case including in conjunction with a statutory order under section 33 (5),
 - e) section 38 (1) sentence 1, including in conjunction with a statutory order under section 38 (5), or section 39 (1), including in conjunction with a statutory order under section (39) (2),
 - f) section 40 (2), including in conjunction with a statutory order under section 40 (3) number 2,
 - g) section 41 (1) sentence 2, including in conjunction with section 41 (2),
 - h) section 46 (2) sentence 1,
 - i) section 50 (1) sentence 1, including in conjunction with a statutory order under section 50 (2),
 - j) section 51 (2),
 - k) section 114 (1) sentence 3, including in conjunction with section 117, in each case including in

- conjunction with a statutory order under section 114 (3) number 2,
- l) section 115 (1) sentence 3, including in conjunction with section 117, in each case including in conjunction with a statutory order under section 115 (6) number 3,
 - m) section 116 (2) sentence 2, including in conjunction with a statutory order under section 116 (4) number 2, or
 - n) section 118 (4) sentence 3,
- do not make a notification, do not make it correctly, or completely, or in the prescribed manner or promptly,
- 2a. inform a person about a notification, an investigation that has been initiated or a measure in contravention of section 12 or section 23 (1) sentence 2,
 - 2b. contravene an enforceable order under section 15 (1),
 - 3. engage in market manipulation in contravention of section 25 in conjunction with Article 15 of Regulation (EU) No. 596/2014,
 - 4. in contravention of
 - a) section 40 (1) sentence 1, including in conjunction with a statutory order under section 40 (3) number 1, or in contravention of section 41 (1) sentence 1, including in conjunction with section 41 (2) or section 46 (2) sentence 1,
 - b) section 40 (1) sentence 2, in conjunction with section 40 (1) sentence 1, including in conjunction with a statutory order under section 40 (3),
 - a) section 49 (1) or (2),
 - i) section 50 (1) sentence 1 in conjunction with a statutory order under section 50 (2) or in contravention of section 51 (2),
 - a) section 114 (1) sentence 2 in conjunction with a statutory order under section 114 (3) number 1, in each case including in conjunction with section 117 or in contravention of section 118 (4) sentence 3,
 - f) section 115 (1) sentence 2 in conjunction with a statutory order under section 115 (6) number 2, in each case in conjunction with section 117, or
 - g) section 116 (2) sentence 1 in conjunction with a statutory order under section 116 (4) number 1,
- do not provide a publication, or do not provide it correctly, or completely, or in the prescribed manner or promptly, or do not provide it subsequently within the stipulated period,
- 5. do not prepare a record, or do not prepare it correctly, or completely or promptly in contravention of section 27 (1),
 - 6. do not include the statement referred to in section 29 (5) sentence 1 with the application for admission in contravention of section 29 (5) sentence 1,
 - 7. do not make a notification or do not make it promptly in contravention of section 31 (2),
 - 8. do not have the facts referred to in section 32 (1) sentence 1 verified and certified within the stipulated period in contravention of section 32 (1) sentence 1,
 - 9. do not provide an attestation report or do not provide it promptly in contravention of section 32 (4) sentence 1,
 - 10. do not provide information or an announcement or do not do so within the required period in contravention of section 40 (1) sentence 1, section 41 (1) sentence 3, section 46 (2) sentence 2, section 50 (1) sentence 2, section 51 (2), section 114 (1) sentence 3, section 115 (1) sentence 3, section 116 (2) sentence 2 or section 118 (4) sentence 3,
 - 11. do not ensure that facilities and information are publicly available in Germany in contravention of section 48 (1) number 2, including in conjunction with section 48 (3),
 - 12. do not ensure that the integrity of data is protected from access by unauthorised persons in contravention of section 48 (1) number 3, including in conjunction with section 48 (3),

13. do not ensure that a paying agent is designated in contravention of section 48 (1) number 4, including in conjunction with section 48 (3),
14. do not make a notification, do not make it correctly, or completely or promptly in contravention of section 86 sentences 1, 2 or 4,
15. do not provide or provide within the stipulated period an annual financial report including the responsibility statement in accordance with section 114 (2) number 3 and the certificate of registration or the certification under section 114 (2) number 4, or a half-yearly financial report including the responsibility statement in accordance with section 115 (2) number 3 in contravention of section 114 (1) sentence 4, section 115 (1) sentence 4, in each case including in conjunction with section 117, or a report on payments or consolidated report on payments in contravention of section 116 (2) sentence 3, or
16. contravene a directly applicable provision in delegated acts of the European Union supplementing Regulation (EC) No. 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies (OJ L 302 of 17 November 2009, page 1; L 350 of 29 December 2009, page 59; L 145 of 31 May 2011, page 57; L 267 of 6 September 2014, page 30), as most recently amended by Directive 2014/51/EU (OJ L 153 of 22 May 2014, page 1), within the scope of this Act, where a statutory order under section 28 refers to this provision on administrative fines for a specified offence.

(3) Any persons commit an administrative offence if they wilfully or negligently do not prepare a record, do not prepare it correctly, do not prepare it completely or do not prepare it promptly in contravention of Article 74 or Article 75 of Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive (OJ L 87 of 31 March 2017, page 1).

(4) Any persons acting on behalf of an investment services enterprise commit an administrative offence if they contravene the requirements of Regulation (EC) No. 1060/2009 if they wilfully or negligently

1. use a rating in contravention of the first subparagraph of Article 4(1),
2. do not ensure that the investment services enterprise makes its own credit risk assessments in contravention of Article 5a(1),
3. do not place an order correctly in contravention of Article 8c(1),
4. do not ensure that the contracted rating agencies meet the criteria set out in Article 8c(2) in contravention of Article 8c(2), or
5. do not provide documentation specified in section 8d(1) sentence 2 correctly in contravention of section 8d(1) sentence 2.

(5) Any persons commit an administrative offence if they contravene the requirements of Regulation (EU) No. 1031/2010 if they wilfully or negligently

1. as a person under Article 40
 - a) disclose inside information in contravention of Article 39(a) or
 - b) recommend or induce another person to submit, modify or withdraw a bid in contravention of Article 39(b).
2. do not provide the list, or do not provide it correctly, or completely or promptly in contravention of Article 42(1) sentences 2 or 3,
3. do not make a notification, do not make it correctly or do not make it within five working days in contravention of Article 42(2),
4. do not inform the authority, or do not inform it correctly, or completely or promptly in contravention of Article 42(5).

(6) Any persons commit an administrative offence if they contravene the requirements of Regulation (EU) No. 236/2012 of the European Parliament and of the Council of 14 March 2012 on short selling and certain aspects of credit default swaps (OJ L 86 of 24 March 2012, page 1), as amended by Regulation (EU) No. 909/2014 (OJ L 257 of 28 August 2014, page 1), as amended, if they wilfully or negligently

1. do not make a notification, or do not make it correctly, or completely or promptly in contravention of Article 5(1), Article 7(1) or Article 8(1), in each case in conjunction with the first subparagraph of Article 9(1) or Article 10,
2. do not disclose details, or do not disclose them correctly, or completely or promptly in contravention of Article 6(1), including in conjunction with the first subparagraph of Article 9(1) or Article 10,
3. enter into a short sale of a share or sovereign debt in contravention of Article 12(1) or Article 13(1),
4. enter into a transaction in contravention of Article 14(1), or
5. do not ensure that they have a procedure in place referred to in Article 15(1) in contravention of Article 15(1).

(7) Any persons commit an administrative offence if they contravene the requirements of Regulation (EU) No. 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (OJ L 201 of 27 July 2012, page 1; L 321 of 30 November 2013, page 6), as most recently amended by Regulation (EU) 2015/2365 (OJ L 337 of 23 December 2015, page 1), if they wilfully or negligently

1. do not clear an OTC derivative contract or do not do so in the specified manner in contravention of Article 4(1) and (3),
2. as an operator of a multilateral trading facility within the meaning of section 72 (1) do not provide trade feeds, or do not provide them correctly, or completely, or in the specified manner or promptly in contravention of Article 8(1) in conjunction with the first subparagraph of paragraph (4),
3. do not make a report, or do not make it correctly, or completely or promptly in contravention of Article 9(1) sentence 2,
4. do not keep a record or do not keep it for at least five years in contravention of Article 9(2),
5. do not make a notification or do not make it promptly in contravention of Article 10(1)(a),
6. do not ensure that a procedure or arrangement referred to in Article 11(1) is in place in contravention of Article 11(1),
7. do not calculate the value of outstanding contracts, do not calculate it correctly or do not calculate it promptly in contravention of Article 11(2) sentence 2,
8. do not have risk management procedures in contravention of Article 11(3),
9. do not ensure that an appropriate and proportionate amount of capital is held to manage the risk not covered by appropriate exchange of collateral in contravention of Article 11(4), or
10. do not publicly disclose information on exemption from the requirements of Article 11(3) or do not disclose it correctly in contravention of Article 11(11) sentence 1.

(8) Any persons commit an administrative offence if they wilfully or negligently

1. contravene an enforceable order by BaFin under sections 6 to 9 in connection with an investigation relating to compliance with the obligations under Parts 9 to 11,
2. contravene an enforceable order by BaFin under section 9 (2), including if the position is entered into outside Germany,
3. as the operator of a trading venue in Germany who makes reports on behalf of an investment services enterprise under Article 26(1) of Regulation 2014/600/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) 648/2012 (OJ L 173 of 12 June 2014, page 349; L 6 of 10 January 2015, page 6; L 270 of 15 October 2015, page 4), as most recently amended by Directive (EU) 2016/1033 (OJ L 175 of 30 June 2016, page 1),
 - a) do not have the security mechanisms in place referred to in section 22 (2) sentence 1 in contravention of section 22 (2) sentence 1 or
 - b) do not maintain the resources or do not have the back-up facilities in place referred to in section 22 (2) sentence 2 in contravention of section 22 (2) sentence 2 ,
4. exceed a position limit specified by BaFin for a commodity derivative under section 54 (1), (3), (5),

5. exceed a position limit specified by a foreign competent authority of a Member State for a commodity derivative,
6. do not have appropriate procedures to monitor compliance with position management controls in contravention of section 54 (6) sentence 1,
7. do not provide the information, or do not provide it correctly or completely in contravention of section 54 (6) sentence 4,
8. do not provide the information, or do not provide it correctly or completely in contravention of section 57 (2), (3) and (4),
9. do not provide a report, or do not provide it correctly or completely or promptly in contravention of section 57 (1),
10. do not have the policies and arrangements referred to in section 58 (1) sentence 1 in contravention of section 58 (1) sentence 1,
11. do not make available the information, or do not make it available correctly, or completely, or in the prescribed manner or promptly in contravention of section 58 (2) sentence 1,
12. are not able to disseminate information in the prescribed manner in contravention of section 58 (2) sentence 2,
13. do not maintain the administrative arrangements referred to in section 58 (3) sentence 1 in contravention of section 58 (3) sentence 1,
14. treat information in a discriminatory fashion or do not maintain appropriate arrangements to separate different business functions in contravention of section 58 (3) sentence 2, section 59 (3) sentence 2 or section 60 (2) sentence 2,
15. do not have the mechanisms referred to in section 58 (4) sentence 1 or section 60 (3) sentence 1 in contravention of section 58 (4) sentence 1 or section 60 (3) sentence 1,
16. do not have the resources and back-up facilities referred to in section 58 (4) sentence 2 or section 60 (3) sentence 2 in contravention of section 58 (4) sentence 2 or section 60 (3) sentence 2.
17. do not have the systems referred to in section 58 (5) in contravention of section 58 (5),
18. do not have the policies and arrangements in place referred to in section 59 (1) sentence 2 in contravention of section 59 (1) sentence 2,
19. do not have the policies and arrangements referred to in place in contravention of section 59 (1) sentence 2,
20. are not able to make the information available in the prescribed manner in contravention of section 59 (1) sentence 3,
21. do not disseminate information in the stipulated matter in contravention of section 59 (2),
22. do not maintain the arrangements referred to in section 59 (3) sentence 1 in contravention of section 59 (3) sentence 1,
23. do not establish mechanisms referred to in section 59 (4) sentence 1 in contravention of section 59 (4) sentence 1,
24. do not establish resources and back-up facilities referred to in section 59 (4) sentence 2 in contravention of section 59 (4) sentence 2,
25. do not have the policies and arrangements referred to in section 60 (1) sentence 1 in contravention of section 60 (1) sentence 1,
26. do not have arrangements in place in contravention of section 60 (1) sentence 1 or subsection (4),
27. do not make a disclosure, or do not make it correctly, or completely, or in the prescribed manner or promptly in contravention of section 63 (2) sentence 1 in conjunction with sentence 2, including in conjunction with the Commission delegated act enacted on the basis of Article 23(4) of Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directives 2002/92/EC and 2011/61/EU (OJ L 173 of 12 June 2014, page 349; L 74 of 18 March 2015, page 38; L 188 of 13 July 2016, page 28; L 273 of 8 October 2016, page

35; L 64 of 10 October 2017, page 116), as most recently amended by Directive (EU) 2016/1034 (OJ L 175 of 30 June 2016, page 8),

28. as an investment services enterprise do not ensure that they do not do so in contravention of section 63 (3) sentence 1, including in conjunction with the Commission delegated act enacted on the basis of Article 24 (13) in conjunction with Article 89 of Directive 2014/65/EU,
29. as an investment services enterprise do not provide an incentive in contravention of section 63 (3) sentence 2, including in conjunction with the Commission delegated act enacted on the basis of Article 24 (13) in conjunction with Article 89 of Directive 2014/65/EU,
30. as an investment services enterprise distribute a financial instrument that was not manufactured in accordance with the requirements of section 63 (4), including in conjunction with a statutory order under section 80 (14) and the Commission delegated act enacted on the basis of Article 24(13) in conjunction with Article 89 der Directive 2014/65/EU,
31. as an investment services enterprise make available information that is not fair, not clear or misleading in contravention of section 63 (6) sentence 1, including in conjunction with the Commission delegated act enacted on the basis of Article 24(13) in conjunction with Article 89 of Directive 2014/65/EU,
32. as an investment services enterprise make a marketing communication accessible to another person that is not clearly identifiable as such in contravention of section 63 (6) sentence 2,
33. do not provide information, or do not provide it correctly, or completely, or in the prescribed manner or promptly in contravention of section 63 (7) sentence 1 in conjunction with sentences 3 and 4, including in conjunction with sentence 11, including in conjunction with a statutory order under section (14) and including in conjunction with the Commission delegated act enacted on the basis of Article 24(13) in conjunction with Article 89 of Directive 2014/65/EU,
34. do not provide a breakdown, or do not provide it correctly or completely in contravention of section 63 (7) sentence 5, including in conjunction with the Commission delegated act enacted on the basis of Article 24(13) in conjunction with Article 89 of Directive 2014/65/EU,
35. do not inform a client, or do not inform a client correctly, or completely, or in the prescribed manner or promptly in contravention of section 64 (1), including in conjunction with the Commission delegated act enacted on the basis of Article 24(3) in conjunction with Article 89 of Directive 2014/65/EU,
36. do not inform a client or do not inform a client correctly or do not provide separate evidence to the client of the costs and charges for each component, in contravention of section 63 (9) sentence 1, including in conjunction with the Commission delegated act enacted on the basis of Article 24(3) in conjunction with Article 89 of Directive 2014/65/EU,
37. do not provide an adequate description to a retail client or do not provide it correctly in contravention of section 63 (9) sentence 2, including in conjunction with the Commission delegated act enacted on the basis of Article 24(3) in conjunction with Article 89 of Directive 2014/65/EU,
38. do not make available a document referred to in section 64 (2) sentence 1, do not make it available correctly, or completely or promptly in contravention of section 64 (2) sentence 1 in conjunction with a statutory order under section 64 (10) sentence 1 number 1,
39. do not obtain the information referred to in section 64 (3) sentence 1 or do not obtain it completely in contravention of section 64 (3) sentence 1, including in conjunction with the Commission delegated act enacted on the basis of Article 25(8) in conjunction with Article 89 of Directive 2014/65/EU,
40. recommend a financial instrument or an investment service or carry out a transaction in contravention of section 64 (3) sentences 2 to 4,
41. do not provide a suitability statement, or do not provide it correctly, or completely, or in the prescribed manner or promptly in contravention of section 64 (4) sentence 1 in conjunction with sentence 2, including in conjunction with the Commission delegated act enacted on the basis of Article 25(8) in conjunction with Article 89 of Directive 2014/65/EU,
42. as an investment services enterprise that informed a client when providing investment advice that independent fee-based investment advice is being provided, recommend a financial instrument to a client that is not based on a sufficient range of financial instruments within the meaning of section 64 (5) number 1, including in conjunction with the Commission delegated act enacted on the basis of Article 24(3) in conjunction with Article 89 of Directive 2014/65/EU,

43. do not provide information, or do not provide it correctly, or completely or promptly in contravention of section 64 (6) sentence 1, including in conjunction with a statutory order under section 64 (10) number 2,
44. execute a fixed price transaction in contravention of section 64 (6) sentence 2,
45. accept or retain an inducement in contravention of section 64 (7), including in conjunction with a statutory order under section 64 (10) number 3,
- 45a. broker a contract in contravention of section 65 (1) sentence 3 or section 65a (1) sentence 3,
46. do not obtain the information referred to in section 63 (10) sentence 1, including in conjunction with sentence 2, or do not obtain it completely in contravention of section 64 (10) sentence 1, including in conjunction with sentence 2, in each case including in conjunction with the Commission delegated act enacted on the basis of Article 25(8) in conjunction with Article 89 of Directive 2014/65/EU,
47. do not provide information or do not provide it promptly in contravention of section 63 (10) sentences 3 or 4, including in conjunction with the Commission delegated act enacted on the basis of Article 25(8) in conjunction with Article 89 of Directive 2014/65/EU,
48. do not provide period reports to a client or do not notify the execution venue of an order in contravention of section 63 (12) sentence 1 in conjunction with sentence 2, including in conjunction with section 64 (8), in each case including in conjunction with the Commission delegated act enacted on the basis of Article 25(8) in conjunction with Article 89 of Directive 2014/65/EU,
49. do not communicate with an eligible counterparty in the manner stipulated in section 68 (1) sentence 2, in contravention of section 68 (1) sentence 2,
50. do not take all reasonable steps in relation to the execution and transmission of client orders in contravention of section 69 (1) number 1 or number 2, including in conjunction with the Commission delegated act enacted on the basis of Article 28(3) in conjunction with Article 89 of Directive 2014/65/EU,
51. do not make public a client order, do not do so in the prescribed manner or promptly in contravention of section 69 (2) sentence 1, including in conjunction with the Commission delegated act enacted on the basis of Article 28(3) in conjunction with Article 89 of Directive 2014/65/EU,
52. accept or retain an inducement in contravention of section 70 (1) sentence 1, including in conjunction with a statutory order under section 70 (9) number 1,
53. do not inform a client about procedures related to the disbursement of inducements in contravention of section 70 (5), including in conjunction with the Commission delegated act enacted on the basis of Article 24(13) in conjunction with Article 89 of Directive 2014/65/EU,
54. do not establish the rules referred to in section 72 (1) number 1 or do not establish them in the stipulated scope in contravention of section 72 (1) number 1,
55. do not define the rules referred to in section 72 (1) number 2 or do not define them in the stipulated scope in contravention of section 72 (1) number 2,
56. do not have appropriate mechanisms in place in contravention of section 72 (1) number 3,
57. do not provide the information, or do not provide it correctly or completely in contravention of section 72 (1) sentence 4,
58. do not charge fees or do not charge fees in the stipulated scale in contravention of section 72 (1) number 5,
59. do not put in place the arrangements referred to in section 72 (1) number 6 or not in the stipulated scope in contravention of section 72 (1) number 6,
60. do not ensure an appropriate order-to-trade ratio in contravention of section 72 (1) number 7,
61. do not determine an appropriate minimum tick size in contravention of section 72 (1) number 8,
62. do not define the risk controls, thresholds and rules referred to in section 72 (1) number 9, in contravention of section 72 (1) number 9,
63. do not define the rules referred to in section 72 (1) number 10, in contravention of section 72 (1) number 10,

64. do not ensure reliable administration of the technical operations of the trading facility in contravention of section 72 (1) number 11,
65. do not have the arrangements referred to in section 72 (1) number 12 in contravention of section 58 (3) number 11,
66. do not operate a multilateral or an organised trading facility without having at least three members who can interact with all the other users in respect to price formation in contravention of section 72 (1) number 13,
67. operate a multilateral or organised trading facility without having the systems within the meaning of section 5 (4a) of the Stock Exchange Act in conjunction with section 72 (1),
68. as an operator of a multilateral or an organised trading facility do not have an adequate number of users in contravention of section 26c (2) sentence 1 of the Stock Exchange Act in conjunction with section 72 (1),
69. as an operator of a multilateral or an organised trading facility do not enter into an agreement within the meaning of section 26c (1) of the Stock Exchange Act in conjunction with section 72 (1) that contains all of the elements set out in section 26c (3) of the Stock Exchange Act,
70. do have fee structures that comply with the requirements of section 72 (2), in contravention of section 72 (2),
71. do not provide a description, or do not provide it correctly or completely in contravention of section 72 (3),
72. do not notify BaFin about serious infringements of the trading rules, disruptions to market integrity and indications of an infringement of the requirements of Regulation (EU) No. 596/2014, or do not do so promptly in contravention of section 72 (6) sentence 1,
73. do not suspend a financial instrument or remove it from trading in contravention of section 73 (1) sentence 2,
74. do not make public a decision or do not make it public correctly, or do not communicate a publication to BaFin or do not do so promptly, in contravention of section 73 (1) sentence 4,
- 74a. contravene an enforceable order under section 73 (2) sentence 1 or subsection (3) sentence 3,
75. as the operator of a multilateral trading facility do not have in place the rules referred to in section 74 (1) and (2) in contravention of section 74 (1) and (2),
76. do not put in place the arrangements referred to in section 74 (3) or not in the stipulated scope in contravention of section 74 (3),
77. execute a client order against proprietary capital in contravention of section 74 (5),
78. do not establish the arrangements referred to in section 75 (1) in contravention of section 75 (1),
79. engage in matched principal trading without the client's consent in contravention of section 75 (2) sentence 1,
80. match client orders in contravention of section 75 (2) sentence 2,
81. do not ensure when executing a transaction, in contravention of section 75 (2) sentence 3, that
 - a) it is never exposed to market risk throughout the execution of the transaction,
 - b) both transactions are executed simultaneously or
 - c) the transaction is concluded at a price where they make no profit or loss, other than a previously disclosed commission, fee or charge,
82. as the operator of an organised trading facility, engage in dealing for own account, other than matched principal trading, with regard to a financial instrument that is not a sovereign debt instrument for which there is not a liquid market in contravention of section 75 (3),
83. operate an organised trading facility in the same legal entity as a systematic internaliser in contravention of section 75 (4) sentence 1,

84. operate an organised trading facility that is connected to a systematic internaliser in a way that enables orders in the organised trading facility and orders or quotes in the systematic internaliser to interact in contravention of section 75 (4) sentence 2,
85. as the operator of an organised trading facility exercise discretion in handling orders in cases other than those specified in section 75 (6) sentence 2,
86. contravene a requirement to provide an explanation under section 75 (7) sentence 1,
87. do not provide the information referred to in section 75 (7) sentence 3, or do not provide it correctly or completely in contravention of section 75 (7) sentence 3,
88. offer electronic access to a trading venue without having the systems and controls referred to in section 77 (1) in contravention of section 77 (1),
89. do not ensure that their clients comply with the requirements of section 77 (1) or observe the provisions referred to there,
90. do not monitor trading in order to identify infringements of the rules of the trading venue, disorderly trading conditions or conduct that may involve market abuse in contravention of section 77 (1) number 4 c),
91. as an investment services enterprise, offers a client direct electronic access to a trading venue must without having entered into a written agreement with the client that corresponds to requirements of section 77 (1) number 2 with regard to its content,
92. do not make a notification or do not make it correctly in contravention of section 77 (2) sentence 1,
93. contravene an enforceable order under section 77 (2) sentence 2,
94. do not arrange for records to be kept or do not ensure that the records are sufficient in contravention of section 77 (3),
95. as an investment services enterprise act as a general clearing member for other persons without having in place the effective systems and controls referred to in section 78 sentence 1,
96. as an investment services enterprise act as a general clearing member for other persons without a written agreement required under section 78 sentence 3 regarding the material rights and obligations,
97. do not take appropriate steps in contravention of section 80 (1) sentence 2 number 1, including in conjunction with the Commission delegated act enacted on the basis of Article 23(4) in conjunction with Article 89 of Directive 2014/65/EU,
98. as an investment services enterprise engage in algorithmic trading without having in place the systems and risk controls referred to in section 80 (2) sentence 3,
99. as an investment services enterprise engage in algorithmic trading without having in place the business continuity arrangements referred to in section 80 (2) sentence 4,
100. do not make a notification in contravention of section 80 (2) sentence 5,
101. contravene an enforceable order under section 80 (3) sentence 3,
102. do not keep a record, or do not keep it correctly or completely, or do not keep it in the prescribed manner or do not keep for a period of five years in contravention of section 80 (3) sentence 1 in conjunction with sentence 2,
103. do not conduct market making on the scale referred to in section 80 (4) number 1 in contravention of section 80 (4) number 1,
104. as an investment services enterprise engage in algorithmic trading when pursuing a market making strategy within the meaning of section 80 (5) without having entered into a written agreement with the trading venue client that, as a minimum, contains the obligations under section 80 (4) number 1,
105. as an investment services enterprise engage in algorithmic trading when pursuing a market making strategy within the meaning of section 80 (5) without having in place the systems and risk controls referred to in section 80 (4) sentence 3,
106. do not maintain or operate a product approval process or do not review it periodically in contravention of section 80 (9) sentence 1, including in conjunction with a statutory order under section 80 (14)

- number 1,
107. do not periodically review an identified target market in contravention of section 80 (10) sentence 1, including in conjunction with a statutory order under section 80 (14) number 1,
 108. do not make available the information referred to in section 80 (11) sentence 1, or do not make it available correctly, or completely or in the prescribed manner in contravention of section 80 (11) sentence 1, including in conjunction with a statutory order under section 80 (14) sentence 1,
 109. do not have adequate arrangements in place to obtain the information referred to in section 80 (11) sentence 1 from the investment services enterprise that manufactures the financial instrument or from the issuer and to understand the characteristics and target market of the financial instrument in contravention of section 80 (11) sentence 2, including in conjunction with a statutory order under section 80 (14) number 1,
 110. do not define, implement and oversee the organisation, the adequacy of the personnel, the resources and arrangements for providing investment services ancillary investment services, the business policy and the remuneration policy in contravention of section 81 (1),
 111. do not monitor and assess the adequacy and implementation of the investment services enterprise's strategic objectives, the effectiveness of the governance arrangements and the adequacy of the business strategy in contravention of section 81 (2) or do not take the necessary steps to address any deficiencies without undue delay,
 112. do not ensure appropriate access in contravention of section 81 (3),
 113. do not ensure that a client order is executed in accordance with section 82 (1) in contravention of section 82 (1), including in conjunction with the Commission delegated act enacted on the basis of Article 27(9) in conjunction with Article 89 of Directive 2014/65/EU,
 114. do not make a periodic review in contravention of section 82 (1) number 1, including in conjunction with the Commission delegated act enacted on the basis of Article 27(9) in conjunction with Article 89 of Directive 2014/65/EU,
 115. do not provide the information or do not obtain the consent referred to in section 82 (5) sentence 2 or do not provide the information or obtain the consent promptly in contravention of section 82 (5) sentence 2, including in conjunction with the Commission delegated act enacted on the basis of Article 27(9) in conjunction with Article 89 of Directive 2014/65/EU ,
 116. do not inform a client, or do not inform a client correctly, or completely, or in the prescribed manner or promptly in contravention of section 82 (1), including in conjunction with the Commission delegated act enacted on the basis of Article 27(9) in conjunction with Article 89 of Directive 2014/65/EU,
 117. do not obtain the consent referred to in section 82 (6) number 1 or do not obtain it promptly in contravention of section 82 (6) sentence 1,
 118. do not inform a client, or do not inform a client correctly, or completely, or in the prescribed manner or promptly in contravention of section 82 (2), including in conjunction with the Commission delegated act enacted on the basis of Article 27(9) in conjunction with Article 89 of Directive 2014/65/EU,
 119. receive remuneration, a discount or a non-monetary inducement in contravention of section 82 (8),
 120. do not make at least on an annual basis the publication referred to in section 82 (9) in contravention of section 82 (9), including in conjunction with a regulatory technical standard under Article 27(10)(b) of Directive 2014/65/EU,
 121. as the operator of a trading venue or as a systematic internaliser, subject to the requirements of section 26e of the Stock Exchange Act, do not make public on at least an annual basis the information referred to in section 82 (10) in contravention of section 82 (10), including in conjunction with a delegated regulation under Article 27(9) and a regulatory technical standard under Article 27(10)(a) of Directive 2014/65/EU,
 122. as the operator of an execution venue, subject to the requirements of section 26e of the Stock Exchange Act, do not make public on at least an annual basis the information referred to in section 82 (11) in contravention of section 82 (11), including in conjunction with a delegated regulation under Article 27(9) and a regulatory technical standard under Article 27(10)(a) of Directive 2014/65/EU,
 123. do not keep a record referred to in section 83 (1) or (2) sentence 1, or do not keep it correctly or completely in contravention of section 83 (1) or (2) sentence 1, including in conjunction with a statutory

order under section 83 (10) sentence 1 and Articles 58 and 72 to 74 of Delegated Regulation (EU) 2017/565,

124. do not record a telephone conversation or electronic communication, or do not record it correctly, or completely or in the prescribed manner in contravention of section 83 (3) sentence 1, including in conjunction with a statutory order under section 83 (10) sentence 1 and Article 76 of Delegated Regulation (EU) 2017/565,
125. do not take all reasonable steps to record relevant telephone conversions and electronic communications in contravention of section 83 (4) sentence 1, including in conjunction with a statutory order under section 83 (10) sentence 1,
126. do not inform a client or do not inform a client in good time in advance about the recording of telephone conversations under section 83 (3) sentence 1 in contravention of section 83 (5), including in conjunction with a statutory order under section 83 (10) sentence 1 and Articles 76(8) of Delegated Regulation (EU) 2017/565,
127. do not make adequate arrangements to safeguard the rights of the clients and financial instrument or funds belonging to them and to prevent their for own account without express consent in contravention of section 84 (1) sentence 1 or subsection (4) sentence 1.
128. do not obtain the client's consent to depositing the client's assets with a qualifying money market fund or do not obtain it in good time in contravention of section 84 (2) sentence 3,
129. do not disclose a deposit in trust in contravention of section 84 (2) sentence 5,
130. do not inform the client, or do not inform the client correctly or in good time with which institution and in which account the client's funds have been deposited for safekeeping in contravention of section 84 (2) sentence 6,
131. do not pass on a security or do not pass it on promptly for safe custody in contravention of section 84 (5) sentence 1,
132. conclude a title transfer collateral arrangement within the meaning of Article 2(1)(b) of Directive 2002/47/EG with a client in contravention of section 84 (7),
133. use a security for own account or for account of another client in contravention of section 84 (6) sentence 1, including in conjunction with section 84 (6) sentence 2,
134. entrust an employee with an activity referred to in section 87 (1) sentence 1, subsections (2), (3), (4) sentence 1, or subsection (5) sentence 1, in each case including in conjunction with a statutory order under section 87 (9) sentence 1 number 2, in contravention of section 87 (1) sentence 1, subsections (2), (3), (4) sentence 1, or subsection (5) sentence 1,
135. in contravention of
 - a) section 87 (1) sentence 2 or sentence 3, subsection (4) sentence 2 or sentence 3, subsection (5) sentence 2 or sentence 3, in each case including in conjunction with a statutory order under section 87 (9) sentence 1 number 1, or
 - b) section 87 (1) sentence 4 in conjunction with a statutory order under section 87 (9) sentence 1 number 1do not make a notification, or do not make it correctly, or completely or promptly,
136. contravene an enforceable order under section 87 (6) sentence 1 number 1 or number 2 b) or
137. use a term in contravention of section 94 (1).

(9) Any persons commit an administrative offence if they contravene the requirements of Regulation (EU) No. 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No. 648/2012 (OJ L 173, 12.6.2014, p. 84) if they wilfully or negligently

1. as an investment services enterprise as defined in this Act, in contravention of
 - a) Article 3(1),
 - b) Article 6(1),

- c) Article 8(1) sentence 2,
 - d) Article 8(4) sentence 2,
 - e) Article 10(1),
 - f) the third subparagraph of Article 11(3) in conjunction with Article 10(1),
 - g) Article 31(2)
- do not make a publication, or do not make it correctly, or completely or in the prescribed manner or promptly,
- 2. as an investment services enterprise within the meaning of this Act, in contravention of
 - a) Article 3(3),
 - b) Article 6(2),do not provide access to the systems concerned in the manner stipulated in those Articles,
 - 3. as an investment services enterprise within the meaning of this Act, in contravention of
 - a) Article 8(3),
 - b) Article 10(2),do not provide access to the facilities concerned in the manner stipulated in those Articles,
 - 4. as an investment services enterprise as defined in this Act, in contravention of
 - a) sentence 1 of the third subparagraph of Article 7(1) do not obtain approval in good time or do not disclose proposed arrangements for publication, or do not disclose them correctly, or completely, or in the prescribed manner or promptly,
 - b) sentence 1 of the third subparagraph of Article 11(1) do not disclose proposed arrangements for publication, or do not disclose them correctly, or completely, or in the prescribed manner or promptly,
 - c) Article 12(1) do not make information available to the public, or do not make it available correctly, or completely, or in the prescribed manner or promptly,
 - d) Article 13(1) sentence 1 in conjunction with sentence 2 do not make information available to the public, or do not make it available correctly, or completely, or in the prescribed manner or promptly, or do not ensure non-discriminatory access to the information,
 - e) the first subparagraph of Article 14(1) in conjunction with Article 14(3), (4) and (5) and the first subparagraph of Article 15(1) do not make public a quote, do not make it public correctly, or completely, or in the prescribed scale,
 - f) Article 25 (2) sentence 1 do not record the relevant data of an order, or do not record it correctly, or completely or in the prescribed manner, or do not keep the recorded data at the disposal of the competent authority for at least five years,
 - g) Article 26(5) do not make a report, or do not make it correctly, or completely, or in the prescribed manner or promptly,
 - h) Article 31(3) sentence 1 do not keep a record, or do not make keep it correctly, or completely, or in the prescribed manner,
 - i) Article 31(3) sentence 2 do not make available a record available to the European Securities and Markets Authority, or do not make it available correctly, or completely or promptly,
 - j) sentence 1 of the first subparagraph of Article 35 (1) do not clear or do not clear on a non-discriminatory and transparent basis,
 - k) Article 35(2) sentence 1 do not make a request in the prescribed form,
 - l) Article 35(3) sentence 1 do not respond to the trading venue, or do not respond correctly, or in the prescribed manner or promptly,
 - m) Article 35(3) sentence 2 deny a request,

- n) Article 35(3) sentence 3, including in conjunction with sentence 4, do not provide full reasons for a denial or do not provide information or a notification or do not provide it in the prescribed manner,
 - o) Article 35(3) sentence 5 do not make access possible or do not do so promptly,
 - p) sentence 1 of the first subparagraph of Article 36(1) do not provide trade feeds on a non-discriminatory and transparent basis,
 - q) Article 36(3) sentence 1 do not respond to a central counterparty, or do not respond correctly, or in the prescribed manner or promptly,
 - r) Article 36(3) sentence 2 deny access to a trading venue without the conditions for denying access referred to in Article 36(3) sentence 2 being met,
 - s) Article 36(3) sentence 5 do not make access possible or do not do so promptly.
5. as an investment services enterprise as defined in this Act in the course of operating a multilateral trading facility or an organised trading facility, operate a system that formalises negotiated transactions that does not comply with or does not fully comply with the requirements described in the first subparagraph of Article 4(3),
 6. do not make public a quote, or do not make it public correctly, or completely, or in the prescribed manner or in the prescribed scale in contravention of the second subparagraph of Article 14(1) in conjunction with Article 14(3), (4) and (5),
 7. do not execute an order in the prescribed manner contravention of Article 15(4) sentence 2,
 8. as a systematic internaliser do not have clear standards for governing access to quotes in contravention of Article 17(1) sentence 2 in conjunction with Article 17(1) sentence 1,
 9. do not make public a quote referred to in section 18(1) in contravention of section 18(1) in conjunction with section 18(9),
 10. do not disclose a quote in contravention of section 18(1) sentence 1 in conjunction with section 18(9),
 11. do not publish a quote in contravention of Article 18(5) sentence 1,
 12. do not undertake to enter into a transaction with another client in contravention of the first subparagraph of Article 18(6),
 13. as a systematic internaliser do not make public the information required in or make it public in the manner prescribed by Article 18(8) in contravention of Article 18(8),
 14. in contravention of
 - a) Article 20(1) sentence 1 in conjunction with Article 20(1) sentence 2 and paragraph (2),
 - b) Article 21(1) sentence 1 in conjunction with Article 21(1) sentence 2, paragraphs (2) and (3) and Article 10,do not make public the required information, or do not make it public correctly, or completely, or promptly, or in the prescribed manner,
 15. as an investment services enterprise, an approved publication arrangement or as a consolidated tape provider do not store the necessary data for a sufficient period of time in contravention of Article 22(2),
 16. undertake a trade outside the trading facilities referred to in Article 23(1) in contravention of Article 23(1),
 17. do not record the relevant data relating to an order or transaction, or do not record it correctly, or completely or in the prescribed manner, or do not keep the relevant data at the disposal of the competent authority for at least five years in contravention of Article 25(1) sentence 1,
 18. do not make a report, or do not make it correctly, or completely, or in the prescribed manner or promptly in contravention of the first subparagraph of Article 26(1), including in conjunction with Article 26(4) sentence 2,
 19. do not include all the details with a transmitted order in contravention of Article 26(4) sentence 1,
 20. as an approved reporting mechanism or an operator of a trading venue, do not transmit a report, or do not transmit it correctly or completely in contravention of the first subparagraph of Article 26(7),

21. as an operator of a trading venue within the meaning of Article 4(1) number 24 do not make a report, or do not make it correctly, or completely, or in the prescribed manner or promptly in contravention of Article 26(5),
22. as an investment services enterprise, systematic internaliser or operator of a trading venue do not provide or maintain identifying reference data relating to a financial instrument, or do not provide it correctly, or completely, or in the prescribed manner or promptly in contravention of subparagraph 1, 2 or 3 sentence 2 of Article 27(1),
23. conclude a transaction at a venue other than those referred to in Article 28 (1), in contravention of Article 28 (1), including in conjunction with the first subparagraph of Article 28(2),
24. as a central counterparty as defined in Article 2(1) of Regulation (EU) No. 648/2012 or as an investment services enterprise within the meaning of this Act do not have the systems, procedures and arrangements referred to in the first subparagraph of Article 29(2), in contravention of the first subparagraph of Article 29(2),
25. do not submit a request or do not submit it in the prescribed manner in contravention of Article 36 (2),
26. do not grant access, or do not grant it the prescribed manner or promptly in contravention of Article 37 (1),
27. as a central counterparty as defined in Article 2(1) of Regulation (EU) No. 648/2012 or as an investment services enterprise within the meaning of this Act or as an affiliated undertaking of the first two undertakings do not enter into an agreement referred to in Article 37(3), in contravention of Article 37(3),
28. contravene an enforceable decision by the European Securities and Markets Authority under Article 40(1),
29. contravene an enforceable decision by the European Banking Authority under Article 41(1) or
30. contravene an enforceable decision by BaFin under Article 42(1).

(10) Any persons commit an administrative offence if they contravene the requirements of Regulation (EU) 2015/2365 of the European Parliament and of the Council of 25 November 2015 on transparency of securities financing transactions and of reuse and amending Regulation (EU) No. 648/2012 (OJ L 337 of 23 December 2015, page 1), if they wilfully or negligently

1. do not make a report, or do not make it correctly, or completely, or in the prescribed manner or promptly in contravention of Article 4(1),
2. do not keep records, or do not keep them correctly, or at least for the required period in contravention of Article 4(4),
3. reuse financial instruments although the conditions referred to in Article 15(1) have not been met, in contravention of Article 15(1), or
4. exercise the right of reuse although the conditions referred to in Article 15(2) have not been met, in contravention of Article 15(2).

(11) Any persons commit an administrative offence if they contravene the requirements of Regulation (EU) 2016/1011 of the European Parliament and of the Council of 8 June 2016 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds and amending Directives 2008/48/EC and 2014/17/EU and Regulation (EU) No. 596/2014 (OJ L 171 of 29 June 2016, page 1), if they wilfully or negligently

1. as an administrator do not have in place any governance arrangements or only have in place arrangements that do not meet the requirements referred to in the first subparagraph of Article 4(1), in contravention of the first subparagraph of Article 4(1),
2. as an administrator do not take adequate steps to identify, prevent or manage conflicts of interest in contravention of the second subparagraph of Article 4(1),
3. as an administrator do not take ensure that any judgement or discretion is independently and honestly exercised in contravention of the second subparagraph of Article 4(1),
4. as an administrator do not provide a benchmark that is operationally separated from the other parts of the business in contravention of Article 4(2),

5. as an administrator contravene an enforceable decision by BaFin under Article 4(3) or (4),
6. as an administrator do not publish or disclose conflicts of interest of which they become aware, or do not do so correctly, or completely, or without due delay in contravention of Article 4(5),
7. as an administrator do not establish, operate, regularly review or update the measures referred to in Article 4(6) in contravention of in Article 4(6),
8. as an administrator do not ensure that employees and the other natural persons referred to in Article 4(7) meet the requirements referred to in Article 4(7)(a) to (e) in contravention of Article 4(7),
9. as an administrator do not establish specific internal control procedures to ensure the integrity and reliability of the employees or persons determining the benchmark or ensuring that management signs off on the benchmark before its dissemination in contravention of Article 4(8),
10. as an administrator do not establish and maintain a permanent and effective oversight function in contravention of Article 5(1),
11. as an administrator do not develop and maintain robust procedures regarding the oversight function in contravention of Article 5(2) and do not make it available to BaFin, or do not do so correctly, or completely, or promptly after development has been completed,
12. as an administrator do not equip the oversight functions with the responsibilities referred to in Article 5(3) or do not adjust them based on the complexity, use and vulnerability of the benchmark, in contravention of Article 5(3),
13. as an administrator do not transfer the oversight function to a separate committee in contravention of Article 5(4) or ensure the integrity of the function by other appropriate governance arrangements and prevent conflicts of interest,
14. as an administrator do not have a control framework or a control framework that meets the requirements of Article 6(1), (2) or (3), in contravention of Article 6(1), (2) or (3),
15. as an administrator do not establish the measures referred to in Article 6(4), or do not establish them completely or effectively, in contravention of Article 6(4),
16. as an administrator do not document, review or maintain the control framework, or do not do so completely, or make it available to BaFin or its users, or do make it available correctly, or completely, or promptly in contravention of Article 6(5),
17. as an administrator do not have in place an accountability framework that meets the requirements of Article 7(1), in contravention of Article 7(1),
18. as an administrator do not designate an internal function with the necessary capability to review and report on the administrator's compliance with the benchmark methodology and this Regulation, in contravention of Article 7(2),
19. as an administrator do not appoint an independent external auditor in contravention of Article 7(3),
20. as an administrator do not provide or publish the information referred to in Article 7(4), or do not do so correctly, or completely or promptly in contravention of Article 7(4),
21. as an administrator do not keep a record referred to in Article 8(1), or do not keep a record completely, in contravention of Article 8(1),
22. as an administrator do not keep a record referred to in Article 8(2) sentence 1, or do not do so completely, or do not keep it for at least five years, in contravention of Article 8(2) sentence 1,
23. as an administrator do not provide a record referred to in Article 8(2) sentence 2, or do not provide it correctly, or completely or promptly or do not keep it for a period of at least three years, in contravention of Article 8(2) sentence 2,
24. as an administrator do not have in place appropriate complaints procedures and do not publish them after their preparation in contravention of Article 9(1),
25. as an administrator do not outsource functions in the provision of a benchmark in such a way as to impair materially the administrator's control over the provision of the benchmark or the ability of the relevant competent authority to supervise the benchmark, in contravention of Article 10(1),
26. as an administrator outsource functions without ensuring that the conditions set out in Article 10(3)(a) to

- (h) are met, in contravention of Article 10(3),
27. as an administrator provide a benchmark without ensuring that the conditions set out in contravention of Article 11(1)(a) to (c) and (e) are met, in contravention of Article 11(1),
 28. as an administrator provide a benchmark without ensuring that the conditions set out in contravention of Article 11(1)(d) are met, in contravention of Article 11(1),
 29. as an administrator do not ensure controls to the extent referred to in Article 11(2), in contravention of Article 11(2),
 30. as an administrator do not obtain data from other sources or do not ensure that contributors have in place adequate oversight and verification procedures, in contravention of Article 11(3),
 31. as an administrator do not make the changes it believes are necessary to the input data or to the methodology for representing the market or economic reality or cease to provide the benchmark, in contravention of Article 11(4),
 32. as an administrator do not use a methodology for determining a benchmark that meets the requirements set out in Article 12(1), in contravention of Article 12(1),
 33. as an administrator when development a benchmark methodology do not meet the requirements set out in Article 12(2), in contravention of Article 12(2),
 34. as an administrator do not have in place clear published arrangements that identify the circumstances in which the quantity or quality of input data falls below the standards necessary for the methodology to determine the benchmark accurately and reliably, in contravention of Article 12(3),
 35. as an administrator do not publish or make available the information for developing, operating, administering and changing the benchmark and the benchmark methodology referred to in Article 13(1) sentence 2 or paragraph (2), or do not do so correctly, or completely, or promptly, in contravention of Article 13(1) sentence 2 or paragraph (2),
 36. as an administrator do not establish adequate systems and effective controls to ensure the integrity of input data in contravention of Article 14(1),
 37. as an administrator do not or do not effectively monitor input data and contributors in order to be able to notify the competent authority and provide all relevant information in contravention of the first subparagraph of Article 14(2),
 38. as an administrator do not provide to BaFin all the information referred to in the first subparagraph of Article 14(2), or do not provide it correctly, or completely or promptly after the suspicion of manipulation has arisen, in contravention of the first subparagraph of Article 14(2),
 39. as an administrator do not have procedures in place for their managers, employees and any other natural persons whose services are placed at their disposal to report internally infringements of Regulation (EU) 2016/1011, in contravention of Article 14(3),
 40. as an administrator do not develop a code of conduct for benchmarks based on input data from contributors or do not do so in compliance with the requirements set out in Article 15(1) sentence 1 in conjunction with paragraph (2), in contravention of Article 15 (1) sentence 1 in conjunction with paragraph (2),
 41. as an administrator do not or do not adequately review compliance with code of conduct in contravention of Article 15(1) sentence 2,
 42. as an administrator do not adjust the code of conduct within the required period in contravention of Article 15(4) sentence 2 or paragraph (5) sentence 3 in conjunction with paragraph (4),
 43. as an administrator do not notify BaFin of the code of conduct, or do not do so correctly, or completely, or within the required period in contravention of Article 15(5) sentence 1,
 44. as a supervised contributor do not meet the governance and control requirements set out in Article 16(1), in contravention of Article 16(1),
 45. as a supervised contributor do not have effective systems, controls and strategies to ensure the integrity and reliability of all contributions of input data or expert judgement under paragraph (3) to the administrator in contravention of Article 16(2) or paragraph (3),

46. as a supervised contributor do not retain records, or do not retain them correctly, or completely, or for the required period in contravention of section 16(3) sentence 1,
47. as a supervised contributor do not fully cooperate with the administrator and BaFin in the auditing and supervision of the provision of a benchmark and make available the information and records, or do not do so correctly, or completely, or do not cooperate fully, in contravention of Article 16(4),
48. as an administrator do not notify BaFin, or do not notify BaFin promptly, of the intention to cease providing a critical benchmark, or do not submit an assessment referred to in point (b), or do not do so within the required period, in contravention of point (a) of the first subparagraph of Article 21(1),
49. as an administrator do not cease provision of the benchmark during the period referred to in point (b) in contravention of the second subparagraph of Article 21(1),
50. as an administrator contravene an enforceable order of BaFin under Article 21(3),
51. as an administrator do not submit to BaFin an assessment, or do not submit it correctly, or completely, or in the prescribed manner or promptly in contravention of Article 23(2),
52. as a supervised contributor do not notify the administrator, or do not do so correctly, or in the prescribed manner or promptly in contravention of Article 23(3) sentence 1,
53. as an administrator do not notify BaFin or do not do so promptly in contravention of Article 23(3) sentence 1,
54. as an administrator do not submit an assessment referred to in Article 23(3) sentence 3 or do not do so within the required period, in contravention of Article 23(3) sentence 3,
55. as a contributor contravene an enforceable order by BaFin under Article 23(5), as a supervised entity under Article 23(6) or as a supervised contributor under Article 23(10),
56. as a contributor do not make a notification, or do not make it promptly, in contravention of Article 23(11),
57. as an administrator do not make a notification, or do not make it promptly, in contravention of Article 24(3),
58. as an administrator do not provide to BaFin a decision or the information, or do not provide it correctly, or completely or promptly in contravention of Article 25(2),
59. as an administrator contravene an enforceable order of BaFin under Article 25(3) sentence 1,
60. as an administrator do not publish and maintain a compliance statement, or do not do so correctly, or completely, or in the prescribed manner, or promptly in contravention of Article 25(7),
61. as an administrator do not notify to BaFin when the benchmark exceeds the threshold mentioned in point (a) of Article 24(1), or do not notify it correctly, or completely, or promptly, or do not comply with the deadline mentioned in sentence 2, in contravention of Article 8(2) sentence 1,
62. as an administrator,
 - a) following the decision not to apply one or more of the provisions set out in Article 26(1) do not publish a compliance statement, or do not publish it correctly, or completely or without undue delay, or
 - b) following the decision not to apply one or more of the provisions set out in Article 26(1) do not provide the compliance statement to BaFin, or do not provide it completely or without undue delay, or do not maintain it, in contravention of Article 26(3),
63. as an administrator contravene an enforceable order of BaFin under Article 26(4),
64. as an administrator do not publish a benchmark statement, or do not do so correctly, or completely, or in the prescribed manner, or promptly in contravention of Article 27(1),
65. as an administrator do not review and update a benchmark statement, or do not do so promptly, in contravention of the third subparagraph of Article 27(1),
66. as an administrator do not publish the measures referred to in Article 28(1), or do not do so correctly, or completely, or in the prescribed manner, or promptly, or do not update them promptly, in contravention of Article 28(1),
67. as a supervised entity do not produce a plan meeting the requirements set out in Article 28(2), or do not

- produce a plan correctly, or completely or in the prescribed manner, do not update it, do not provide it to BaFin, or do not provide it completely or promptly, or do not reference it, in contravention of Article 28(2),
68. as a supervised entity use a benchmark that does not meet the requirements set out in Article 29(1), in contravention of Article 29(1),
 69. as an issuer, offeror or person asking for admission to trade on a regulated market, do not ensure that a prospectus contains information stating whether the benchmark is provided by an administrator included in the register referred to in Article 36, in contravention of Article 29(2),
 70. act as an administrator act without previously receiving authorisation or registration under subsection (6) in contravention of Article 34(1),
 71. continue to act as an administrator although the authorisation requirements under Regulation (EU) 2016/1011 are no longer met, in contravention of Article 34(2),
 72. as an administrator do not notify BaFin of material changes, or do not notify BaFin correctly, or completely or promptly after the changes have arisen, in contravention of Article 34(2),
 73. do not make an application or do not make it within the required period in contravention of Article 34(3),
 74. make inaccurate statements relating to the information necessary to demonstrate compliance with the requirements of Regulation (EU) 2016/1011, in contravention of Article 34(4), or
 75. contravenes an enforceable order by BaFin under sections 6 to 10 in connection with an investigation relating to compliance with the obligations under Regulation (EU) 2016/1011.

(12) Any persons commit an administrative offence if they wilfully or negligently

1. do not comply with an enforceable order under
 - a) section 6 (3) sentence 1,
 - b) section 87 (6) sentence 1 number 1 or number 2 b),
 - c) section 92 (1),
 - d) section 107 (5) sentence 1 or section 109 (2) sentence 1,
2. do not permit or tolerate access in contravention of section 6 (11) sentences 1 or 2 or section 107 (6) sentence 1,
3. do not appoint an auditor or do not appoint an auditor promptly in contravention of section 89 (1) sentence 4,
4. do not make a notification, or do not make it incorrectly, or completely, or promptly in contravention of section 89 (3) sentence 1, or
5. in contravention of section 114 (1) sentence 1, section 115 (1) sentence 1, in each case including in conjunction with section 117, do not make available or do not make available within the required period an annual financial report, a half-yearly financial report or, in contravention of section 116 (1) in conjunction with section 341w of the Commercial Code, a report on payments or a consolidated report on payments.

(13) Any persons commit an administrative offence if they infringe the requirements of Regulation (EU) No. 236/2012 of the European Parliament and of the Council of 14 March 2012 on short selling and certain aspects of credit default swaps (OJ L 86 of 24 March 2012, page 1), as most recently amended by Regulation (EU) No. 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No. 236/2012 (OJ L 257 of 28 August 2014, page 1), if they wilfully or negligently contravene an enforceable order under Article 18(2) sentence 2 or sentence 3, Article 19(2), Article 20(2), Article 21(1) or Article 23(1).

(14) Any persons commit an administrative offence if they negligently commit one of the acts referred to in section 119 (3) numbers 1 to 3.

(15) Any persons commit an administrative offence if they contravene the requirements of Regulation (EU) No. 596/2014 if they wilfully or negligently

1. as an operator of a trading venue do not provide or maintain identifying reference data relating to a financial instrument, or do not provide it correctly, or completely, or in the prescribed manner or promptly in contravention of Article 4,
2. engage in market manipulation in contravention of Article 15,
3. do not establish and maintain effective arrangements, systems and procedures in contravention of the first subparagraph of Article 16(1) or paragraph (2) sentence 1,
4. do not make a report, or do not make it correctly, or completely, or in the prescribed manner or promptly in contravention of the second subparagraph of Article 16(1),
5. do not make a notification, or do not make it correctly, or completely, or in the prescribed manner or promptly in contravention of Article 16(2) sentence 2,
6. do not inform the public about inside information, or do not do so correctly, or completely, or in the prescribed manner or promptly in contravention of the first subparagraph of Article 17(1) or sentence 1 of the first subparagraph of Article 17(2),
7. do not ensure publication in contravention of sentence 1 of subparagraph 2 of section 17(1),
8. combine the publication of inside information with the marketing of its activities in contravention of sentence 2 of the second subparagraph of Article 17(1),
9. do not post inside information on the relevant website, or do not post it correctly, or completely, or in the prescribed manner or for a period of at least five years, in contravention sentence 3 of the second subparagraph of Article 17(1),
10. do not inform the competent authority, or do not do so correctly, or completely, or not in the prescribed manner or not promptly about the delay of a disclosure, or do not explain the delay of the disclosure, or do not do so correctly, or completely, or not in the prescribed manner or not promptly, in contravention of sentence 1 of the third subparagraph of Article 17(4),
11. do not disclose inside information, or do not disclose it correctly, or completely, or in the prescribed manner or promptly in contravention of Article 17(8) sentence 1,
12. do not draw up a list, or do not do so correctly, or completely, or in the prescribed manner or promptly in contravention of Article 18(1)(a),
13. do not update an insider list, or do not update it correctly, or completely, or in the prescribed manner or promptly in contravention of Article 18(1)(b) including in conjunction with Article 18(4),
14. do not provide the insider list, or do not do so correctly, or completely, or in the prescribed manner or promptly in contravention of section 18(1)(c),
15. do not take the steps referred to in the first subparagraph of Article 18(2) in contravention of the first subparagraph of Article 18(2),
16. do not keep an insider list after its preparation or updating or do not keep it for at least five years in contravention of Article 18(5),
17. do not make a notification, or do not make it correctly, or completely, or in the prescribed manner or promptly in contravention of the first subparagraph of Article 19(1), including in conjunction with the first subparagraph of Article 19(7), in each case including in conjunction with an implementing technical standard under Article 19(15),
18. do not make public the information, or do not do so correctly, or completely, or in the prescribed manner or promptly in contravention of the first subparagraph of Article 19(3) including in conjunction with Article 19(4), in each case including in conjunction with an implementing technical standard under Article 19(15),
19. do not notify a person referred to in sentence 1 of the first subparagraph or the second subparagraph of Article 19(5), or do not do so correctly, or completely, or in the prescribed manner, in contravention of sentence 1 of the first subparagraph or the second subparagraph of Article 19(5),
20. do not draw up a list or do not draw it up completely in contravention of sentence 2 of the first subparagraph of Article 19(5),
21. do not keep a copy or do not keep it for at least five years in contravention of the second subparagraph of

Article 19(5),

22. conduct a transaction for own account or for the account of a third party in contravention of Article 19(11), or
23. do not ensure or do not ensure in the prescribed manner that information is objectively presented or that interests or conflicts of interest are disclosed in contravention of Article 20(1), including in conjunction with a regulatory technical standard under Article 20(3).

(15a) Any persons commit an administrative offence if they do not complete a suspicious transaction report correctly in contravention of Articles 5(5) of Commission Delegated Regulation (EU) 2016/957 of 9 March 2016 supplementing Regulation (EU) No. 596/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the appropriate arrangements, systems and procedures as well as notification templates to be used for preventing, detecting and reporting abusive practices or suspicious orders or transactions (OJ L 160 of 17 June 2016, page 1).

(16) Any persons commit an administrative offence if they contravene Regulation (EU) No. 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs) (OJ L 352 of 9 December 2014, page 1; L 358 of 13 December 2014, page 50), if they wilfully or negligently,

1. in contravention of
 - a) Article 5(1),
 - b) Article 5(1) in conjunction with Article 6,
 - c) Article 5(1) in conjunction with Article 7(2),
 - d) Article 5(1) in conjunction with Article 8(1) to (3),do not draw up or publish a key information document, do not do so correctly, or completely, or promptly, or in the prescribed form,
2. do not write or translate a key information document in the prescribed manner in contravention of Article 5(1) in conjunction with Article 7(1),
3. do not review a key information document or do not review it promptly in contravention of section 10(1) sentence 1,
4. do not revise a key information document or do not revise it promptly in contravention of section 10(1) sentence 1,
5. do not make available a key information document or do not make it available promptly in contravention of section 10(1) sentence 2,
6. make statements in marketing communications that contradict the information in the key information document or diminish its significance in contravention of Article 9 sentence 1,
7. do not include the necessary indications in marketing communications, or do not do so correctly or completely, in contravention of Article 9(2),
8. in contravention of
 - a) Article 13(1), (3) and (4), or
 - b) Article 14do not provide a key information document, or do not provide it promptly or in the prescribed manner,
9. do not establish appropriate procedures and arrangements for submitting and replying to complaints or do not do so in the prescribed manner in contravention of Article 19(a) and (b), or
10. do not establish appropriate procedures and arrangements that ensure that effective redress procedures are available to retail investors in the event of cross-border disputes in contravention of Article 19(c).

(17) ¹The administrative offence is punishable by a fine not exceeding EUR two million in the cases referred to in subsection (2) number 2 letters d) and e), number 4 letters a), b) and e) to g), and subsection (12) number 5. ²A higher fine than stipulated in sentence 1 can be imposed on a legal person or an association of persons; the

fine may not exceed the higher of the following amounts:

1. EUR ten million or
2. 5 per cent of the total revenue generated by the legal person or association of persons in the financial year preceding the administrative decision.

³Over and above the amounts referred to in sentences 1 and 2, the administrative offence is punishable by a fine of up to twice the economic benefit derived from the infringement. ⁴The economic benefit comprises profits gained and losses avoided and can be estimated.

(18) ¹The administrative offence is punishable by a fine not exceeding EUR five million in the cases referred to in subsections (14) and (15) number 2, by a fine not exceeding EUR one million in the cases referred to in subsection (2) number 3, subsection (15) numbers 3 to 11 and subsection (15a), and by a fine not exceeding five hundred thousand in the cases referred to in subsection (15) numbers 1 and 12 to 24. ²A higher fine than stipulated in sentence 1 can be imposed on a legal person or an association of persons;

1. in the cases referred to in subsections (14) and (15) number 2, this fine may not exceed the higher of EUR fifteen million and 15 per cent of the total revenue generated by the legal person or association of persons in the financial year preceding the administrative decision,
2. in the cases referred to in subsection (15) numbers 3 to 11 and subsection (15a), this fine may not exceed the higher of EUR two and a half million and 2 per cent of the total revenue generated by the legal person or association of persons in the financial year preceding the administrative decision, and
3. in the cases referred to in subsection (15) number 1 and numbers 12 to 23, this fine may not exceed EUR one million.

³Over and above the amounts referred to in sentences 1 and 2, the administrative offence is punishable by a fine of up to three times the economic benefit derived from the infringement. ⁴The economic benefit comprises profits gained and losses avoided and can be estimated.

(19) ¹The administrative offence is punishable by a fine not exceeding EUR seven hundred thousand in the cases referred to in subsection (16). ²A higher fine than stipulated in sentence 1 can be imposed on a legal person or an association of persons; this fine may not exceed the higher of EUR five million and 3 per cent of the total revenue generated by the legal person or association of persons in the financial year preceding the administrative decision. ³Over and above the amounts referred to in sentences 1 and 2, the administrative offence is punishable by a fine of up to twice the economic benefit derived from the infringement. ⁴The economic benefit comprises profits gained and losses avoided and can be estimated.

(20) ¹The administrative offence is punishable by a fine not exceeding EUR five million in the cases referred to in subsection (8) and (9). ²A higher fine than stipulated in sentence 1 not exceeding the 10 per cent of the total revenue generated by a legal person or an association of persons in the financial year preceding the administrative decision can be imposed on the legal person or association of persons. ³Over and above the amounts referred to in sentences 1 and 2, the administrative offence is punishable by a fine of up to twice the economic benefit derived from the infringement. ⁴The economic benefit comprises profits gained and losses avoided and can be estimated.

(21) ¹The administrative offence is punishable by a fine not exceeding EUR five million in the cases referred to in subsection (10). ²A higher fine than stipulated in sentence 1 can be imposed on a legal person or an association of persons;

1. in the cases referred to in subsection (10) numbers 1 and 2, this fine may not exceed the higher of EUR five million and 10 per cent of the total revenue generated by the legal person or association of persons in the financial year preceding the administrative decision,
1. in the cases referred to in subsection (10) sentence 1 numbers 3 and 4, this fine may not exceed the higher of EUR fifteen million and 10 per cent of the total revenue generated by the legal person or association of persons in the financial year preceding the administrative decision.

³Over and above the amounts referred to in sentences 1 and 2, the administrative offence is punishable by a fine of up to three times the economic benefit derived from the infringement. ⁴The economic benefit comprises profits gained and losses avoided and can be estimated.

(22) ¹In the cases referred to in subsection (11) sentence 1 numbers 1 to 27, 29, 30 and 32 to 74, the

administrative offence is punishable by a fine not exceeding EUR five hundred thousand, and in the cases referred to in section (11) sentence 1 numbers 28, 31 and 75, by a fine not exceeding EUR one hundred thousand. ²A higher fine than stipulated in sentence 1 can be imposed on a legal person or an association of persons;

1. in the cases referred to in subsection (11) sentence 1 numbers 27, 29, 30 and 32 to 74, this fine may not exceed the higher of EUR one million and 10 per cent of the total revenue generated by the legal person or association of persons in the financial year preceding the administrative decision,
2. in the cases referred to in subsection (11) sentence 1 numbers 28, 31 and 75, this fine may not exceed the higher of EUR two hundred and fifty thousand and 2 per cent of the total revenue generated by the legal person or association of persons in the financial year preceding the administrative decision.

³Over and above the amounts referred to in sentences 1 and 2, the administrative offence is punishable by a fine of up to three times the economic benefit derived from the infringement. ⁴The economic benefit comprises profits gained and losses avoided and can be estimated. ⁵Sentences 1 to 4 apply to other associations, with the necessary modifications, except that the applicable total revenue amounts to 10 per cent of the aggregate revenue of the shareholders if the other association is a parent undertaking or a subsidiary.

(23) ¹Total revenue within the meaning of subsection (17) sentence 2 number 2, subsection (18) sentence 2 numbers 1 and 2, subsection (19) sentence 2, subsection (20) sentence 2, subsection (21) sentences 2 and subsection (22) sentence 2 means

1. in the case of credit institutions, payment institutions and financial services institutions within the meaning of section 340 of the Commercial Code, the total amount resulting from the national law applicable to the institution in accordance with Article 27 numbers 1, 3, 4, 6 and 7 or Article 28 numbers B1, B2, B3, B4 and B7 of Council Directive 86/635/EEC of 8 December 1986 on the annual accounts and consolidated accounts of banks and other financial institutions (OJ L 372 of 31 December 1986, page 1), less value added tax and other taxes levied directly on that revenue,
2. in the case of insurance undertakings, the total amount resulting from the national law applicable to the insurance undertaking in accordance with Article 63 of Council Directive 91/674/EEC of 19 December 1991 on the annual accounts and consolidated accounts of insurance undertakings (OJ L 374 of 31 December 1991, page 7), less value added tax and other taxes levied directly on that revenue,
3. in other cases, the amount of net sales revenue calculated under the national law applicable to the undertaking in accordance with Article 2 number 5 of Directive 2013/34/EU.

²If the legal person or association of persons is a parent undertaking or a subsidiary, the total revenue of the legal person or association of persons is replaced by the relevant total amount reported in the consolidated financial statements of the parent undertaking that is prepared for the largest number of undertakings. ³If the consolidated financial statements for the largest number of undertakings is not prepared in accordance with the provisions referred to in sentence 1, total revenue is calculated on the basis of the items of the consolidated financial statements that are equivalent to the items referred to in sentence 1 numbers 1 to 3. ⁴If annual financial statements or consolidated financial statements are not available for the relevant financial year, the annual or consolidated financial statements for the immediately preceding financial year must be used; if these are also not available, total revenue can be estimated.

(24) The administrative offence is punishable by a fine not exceeding EUR five hundred thousand in the cases referred to in subsection (2) number 2 f) to h), numbers 2b and 4 c), numbers 10 and 15 as well as subsection (6) numbers 3 to 5 and subsection (7) numbers 5, 8 and 9, by a fine not exceeding EUR two hundred thousand in the cases referred to in subsection (1) numbers 2 and 3, subsection (2) numbers 1 and 2 a), b) and k) to n), numbers 2a and 16, subsection (4) number 5, subsection (6) numbers 1 and 2, subsection (7) numbers 1, 3 and 4, and subsection (12) number 1 b), by a fine not exceeding EUR one hundred thousand in the cases referred to in subsection (1) number 4, subsection (2) numbers 6 to 8, 11 to 13, subsection (7) numbers 2, 6 and 7, and subsection (12) number 1 c), and by a fine not exceeding EUR fifty thousand in all other cases.

(25) ¹Section 17 (2) of the Act on Breaches of Administrative Regulations is not applicable to infringements of requirements and prohibitions referred to in subsections (17) to (22). ²This does not apply to administrative offences under subsection (2) number 4 a), subsection 8 numbers 43 and 44, 134 to 137 and subsection (15) number 1. ³Section 30 of the Act on Breaches of Administrative Regulations also applies to legal persons and associations of persons that operate through a branch or by providing cross-border services in Germany.

(26) Administrative offences under subsections (17) to (22) become statute-barred after three years.

(27) ¹Subsection (2) numbers 5 and 14, subsection (3) and subsection (12) number 1 c), numbers 3 and 4, in each case in conjunction with subsection (24), also apply to investment management that requires authorisation within the meaning of section 2 (13) sentence 3. Subsection (8) numbers 27 to 37, 39 to 53, 97 to 100, 103 to 112 and 123, in each case in conjunction with subsection (20), also applies to investment services enterprises and credit institutions if they sell or provide advice about structured deposits within the meaning of section 96. ²Subsection (8) numbers 88 to 96 and 98 to 102, in each case in conjunction with subsection (20), also applies to undertakings within the meaning of section 3 sentence 1. ³Subsection (8) numbers 2, 27 to 126 and 134 to 136, in each case in conjunction with subsection (20), also applies to undertakings within the meaning of section 3 (3) sentences 1 and 2.

(28) The Federal Ministry of Finance is authorised, to the extent necessary to enforce legislative acts adopted by the European Union, to designate the offences that can be punished as an administrative under subsection (2) number 16 by way of a statutory order not requiring the consent of the Bundesrat.

Section 121 Competent administrative authority

BaFin is the administrative authority within the meaning of section 36 (1) number 1 of the Act on Breaches of Administrative Regulations (*Gesetz über Ordnungswidrigkeiten*).

Section 122 Involvement of BaFin and information in criminal cases

(1) ¹The public prosecutor's office must inform BaFin of the initiation of preliminary proceedings relating to criminal offences under section 119. ²If experts are required for these preliminary proceedings, knowledgeable staff members of BaFin may be used. ³BaFin must be informed of the indictment and the application for a penalty order, as well as the abatement of the proceedings. ⁴If the public prosecutor's office intends to discontinue prosecution, it is required to hear BaFin.

(2) In proceedings relating to criminal offences in accordance with section 119, the court must inform BaFin of the date of the main hearing and the decision ending the proceedings.

(3) BaFin must be granted access to the files on request unless this is contrary to the legitimate interests of the party concerned or would endanger the success of the investigations.

(4) ¹If public action is brought in criminal proceedings against the owners or managers of investment services enterprises or their legal representatives or personally liable partners because of criminal offences to the disadvantage of clients in respect of or in connection with operating the investment services enterprise, as well as in criminal proceedings relating to criminal offences under section 119, BaFin must be provided with

1. the indictment or the application in lieu of an indictment,
2. the application to issue a penalty order and
3. the decision ending the proceedings together with the grounds for the decision;

if an appeal has been lodged against the decision, the decision must be communicated together with a reference to the appeal that has been lodged. ²In proceedings concerning criminal acts committed through recklessness, the information to be communicated under numbers 1 and 2 must be communicated only if the authority making the communication believes that decisions or other measures must be taken by BaFin without undue delay.

(5) ¹If other facts indicating irregularities in the business operations of an investment services enterprise become known in criminal proceedings and if, in the view of the authority making the communication, knowledge about them is necessary for measures to be taken by BaFin under this Act, the court or the prosecuting or enforcement authority must also communicate those facts, unless it is evident to the authority making the communication that warranted interests of the persons concerned take precedence. ²Due consideration must be given to the extent to which the findings to be communicated are substantiated.

Section 123 Publication of measures

(1) ¹BaFin may publish unappealable measures that it has adopted due to infringements of prohibitions or requirements of this Act on its website, provided that this is appropriate and necessary to eliminate or prevent irregularities in accordance with section 6 (1) sentence 2, unless publication would seriously jeopardise the financial markets or would cause disproportionate damage to the parties involved. ²BaFin must publish any orders issued under section 6 (2) sentence 4 on its website without undue delay.

(2) BaFin must inform the European Securities and Markets Authority about the publication under subsection (1) sentence 1 or sentence 2 at the same time as it is published.

(3) BaFin must publish unappealable measures that it has taken due to infringements of Article 4(1) of Regulation (EC) No. 1060/2009 on its website without undue delay, unless publication would seriously jeopardise the financial markets or would cause disproportionate damage to the parties involved.

(4) ¹BaFin must publish any unappealable administrative order imposing a fine under section 120 (7) on its website without undue delay, unless publication would seriously jeopardise the financial markets or would cause disproportionate damage to the parties involved. ²The publication may not contain any personal data.

(5) ¹Any publication under subsections (1), (3) and (4) must be deleted five years after being published. ²By way of derogation from sentence 1, personal data must be deleted as soon as its publication is no longer necessary.

Section 124 Publication of measures and penalties due to infringements of transparency requirements

(1) BaFin must publish decisions on measures and penalties imposed due to infringements of prohibitions or requirements under Parts 6, 7 and 16 subpart 2 of this Act or notified to BaFin under 335 (1d) of the Commercial Code on its website without undue delay.

(2) ¹In the publication, BaFin must state the provision that was infringed and the natural or legal person or association of persons that is responsible for the infringement. ²In the case of decisions that are not definitive under administrative law or unappealable, BaFin must add a note that the decision is not yet definitive under administrative law or unappealable. ³BaFin must supplement the publication without undue delay with a note about an appeal lodged against the measure or penalty and about the outcome of the appeal.

(3) BaFin must publish the decision without giving any personal data or must defer publication of the decision if

1. publication of the personal data would be disproportionate,
2. the publication would seriously jeopardise the stability of the financial system,
3. the publication would seriously jeopardise an ongoing investigation or
4. publication would cause disproportionate damage to the parties involved.

(4) ¹Any publication under subsection (1) must be deleted five years after being published. ²By way of derogation from sentence 1, personal data must be deleted as soon as its publication is no longer necessary.

Section 125 Publication of measures and penalties due to infringements of Regulation (EU) No. 596/2014, Regulation (EU) 2015/2365 and Regulation (EU) 2016/1011

(1) ¹BaFin must publish decisions on measures and penalties imposed due to infringements of Articles 14, 15, 16(1) and (2), Article 17(1), 2, 4, 5 and 8, Article 18(1) to (6), Article 19(1), (2), (3), (5), (6), (7) and 11 and Article 20(1) of Regulation (EU) No. 596/2014, as well as Articles 4 and 15 of Regulation (EU) 2015/2365 on its website without undue delay after notifying the natural or legal person on whom the measure or penalty was imposed. ²This does not apply to decisions about investigative measures.

(2) In the publication, BaFin must state the provision that was infringed and the natural or legal person or association of persons that is responsible for the infringement.

(3) ¹Where the publication of the identity of the legal person affected by the decision or the personal data of a natural person is disproportionate, or if publication would jeopardise an ongoing investigation or the stability of

the financial markets,

1. BaFin must defer publication of the decision until the reasons for deferral cease to exist,
2. BaFin must publish the decision without stating the identity or personal data if this ensures effective protection of the identity or the relevant personal data, or
3. BaFin does not publish the decision if publication under numbers 1 and 2 would not be sufficient to ensure that
 - a) the stability of financial markets would not be put in jeopardy or
 - b) the proportionality of the publication is ensured.

²In the case of sentence 1 number 2, BaFin can reverse the decision not to publish the identity or the personal data if the reasons for anonymous publication cease to exist.

(4) ¹In the case of decisions that are not definitive under administrative law or unappealable, BaFin must add a corresponding note. ²If an appeal is lodged against a decision to be published, BaFin must supplement the publication without undue delay with a reference to the appeal and any subsequent information about the outcome of the appeal.

(5) ¹Any publication under subsection (1) must be deleted five years after being published. ²By way of derogation from sentence 1, personal data must be deleted as soon as its publication is no longer necessary.

(6) In the case of decisions on measures and penalties imposed due to an infringement of Articles 4 to 16, 21, 23 to 29 and 34 of Regulation (EU) 2016/1011 or due to an infringement of an enforceable order issued by BaFin in connection with an investigation relating to the obligations under that order in accordance with section 6 (3) sentence 4 and subsections (6), (8), (11) to (13), section 7 (2), section 10 (2) sentence 2 numbers 1 or 2, subsections (1) to (5) apply, with the necessary modifications, provided that the withdrawal of a decision is also published if it was withdrawn because of an appeal.

Section 126 Publication of measures and penalties due to infringements of provisions of Parts 9 to 11 and Regulation (EU) No. 600/2014

(1) ¹BaFin must publish decisions on measures and penalties that were imposed due to infringements of

1. the prohibitions or requirements of Parts 9 to 11 of this Act,
2. the statutory orders issued to enforce those provisions or
3. the prohibitions or requirements of the Articles of Regulation (EU) No. 600/2014 contained in Titles II to VI on its website without undue delay after notifying the natural or legal person on whom the measure or penalty was imposed. ²This does not apply to

1. decisions on measures and penalties that were imposed due to infringements of section 64 (6), sections 86, 87, 89 or 94,
2. decisions imposing measures that are of an investigatory and
3. decisions that are required to be notified by the exchange supervisory offices under section 50a of the Stock Exchange Act.

(2) In the publication, BaFin must state the provision that was infringed and the natural or legal person or association of persons that is responsible for the infringement.

(3) ¹If the publication of the identity of the legal person or the personal data of the natural person is disproportionate, or if publication would jeopardise the stability of the financial markets or ongoing investigations, BaFin can

1. defer the publication of the decision to impose the measure or penalty until the moment where the reasons for non-publication cease to exist, or
2. publish the decision to impose the penalty or measure without giving personal data, if anonymous

- publication ensures effective protection of the personal data concerned, or
3. not publish the decision to impose the penalty or measure at all if the options set out in numbers 1 and 2 are considered to be insufficient to ensure that
 - a) the stability of financial markets would not be put in jeopardy,
 - b) the publication of decisions on measures or penalties that are deemed to be of a minor nature is proportionate.

²If the conditions under which publication would only be possible on anonymous basis are satisfied, BaFin can postpone the publication of the relevant data for a reasonable period of time if it is envisaged that the reasons for anonymous publication will cease to exist within that period.

(4) ¹If an appeal is lodged against a decision to impose a penalty or measure, BaFin must also publish that fact and any subsequent information about the outcome of the appeal without undue delay on its website. ²In addition, any decision annulling a previous decision to impose a penalty or a measure must also be published.

(5) ¹Any publication under subsection (1) must be deleted five years after being published. ²By way of derogation from sentence 1, personal data must be deleted as soon as its publication is no longer necessary.

(6) ¹BaFin must notify the European Securities and Markets Authority about any measures and penalties that were not published in accordance with subsection (3) sentence 1 number 3 as well as all appeals relating to these measures and penalties and the outcome of those appeals. ²If BaFin has published a measure or penalty, it must inform the European Securities and Markets Authority about it at the same time.

Part 18 Transitional provisions

Section 127 Notification and publication requirements applying for the first time

(1) Any undertaking within the meaning of section 9 (1) sentence 1 in the version of this Act of 26 July 1994 (Federal Law Gazette I page 1749) that exists on 1 August 1997 and prior to this date was not already subject to the reporting requirement under section 9 (1) in the version of this Act of 26 July 1994 (Federal Law Gazette I page 1749) is required to make notifications under section 9 (1) in the version of this Act of 22 October 1997 (Federal Law Gazette I page 2518) for the first time on 1 February 1998.

(2) ¹Any persons who, taking account of section 22 (1) and (2) in the version of this Act of 20 December 2001 (Federal Law Gazette I page 3822), hold 5 per cent or more of the voting rights of a listed undertaking on 1 April 2002 must, without undue delay, and within seven calendar days at the latest, notify the undertaking and BaFin in writing, giving their address, of the proportion of the voting rights they hold; the voting rights to be attributed must be disclosed separately in the notification for each attribution criterion. ²No obligation under sentence 1 exists if a notification under section 21 (1) or (1a) in the version of this Act of 24 March 1998 (Federal Law Gazette I page 529) was made after 1 January 2002 and prior to 1 April 2002.

(3) The undertaking must publish notifications under subsection (2) within one month of receipt in accordance with section 25 (1) sentence 1 in the version of this Act of 24 March 1998 (Federal Law Gazette I page 529) and sentence 2 in the version of this Act of 22 October 1997 (Federal Law Gazette I page 2518), as well as subsection (2) in der version of this Act of 20 December 2001 (Federal Law Gazette I page 3822) and send BaFin documentary evidence of the publication without undue delay.

(4) Sections 23 and 24 in the version of this Act of 24 March 1998 (Federal Law Gazette I page 529), section 25 (3) sentence 2 and subsection (4) in the version of this Act of 26 July 1994 (Federal Law Gazette I page 1749), section 27 in the version of this Act of 24 March 1998 (Federal Law Gazette I page 529) and section 28 in the version of this Act of 20 December 2001 (Federal Law Gazette I page 3822), as well as sections 29 and 30 in the version of this Act of 26 July 1994 (Federal Law Gazette I page 1749) apply to the obligations under subsections (2) and (3), with the necessary modifications.

(5) ¹Any persons who on 20 January 2007 hold a proportion of voting rights attaching to shares that reaches, exceeds or falls below the thresholds of 15, 20 or 30 per cent, also taking into account section 22 in the version of this Act of 5 January 2007 (Federal Law Gazette I page 10), must notify an issuer whose home country is the Federal Republic of Germany of their proportion of the voting rights by no later than 20 March 2007. ²This

does not apply if those persons submitted a notification containing equivalent information to the issuer prior to 20 January 2007; the content of the notification is governed by section 21 (1) in the version of this Act of 5 January 2007 (Federal Law Gazette I page 10), including in conjunction with a statutory order under section 21 (2). ³Any persons who on 20 January 2007 are attributed a proportion of the voting rights of 5 per cent or more in an issuer whose home country is the Federal Republic of Germany on the basis of attribution under section 22 (1) sentence 1 number 6 in the version of this Act of 5 January 2007 (Federal Law Gazette I page 10) must notify the issuer of this by no later than 20 March 2007. ⁴This does not apply if those persons submitted a notification containing equivalent information to the issuer prior to 20 January 2007 and if they could not already be attributed the voting rights under section 22 (1) sentence 1 number 6 in the version of this Act of 20 December 2001 (Federal Law Gazette I page 3822); the content of the notification is governed by section 21 (1) in the version of this Act of 5 January 2007 (Federal Law Gazette I page 10), including in conjunction with a statutory order under section 21 (2). Any persons who on 20 January 2007 hold financial instruments within the meaning of section 25 in the version of this Act of 5 January 2007 (Federal Law Gazette I page 10) must notify an issuer whose home country is the Federal Republic of Germany by no later than 20 March 2007 what their proportion of voting rights would be if they held, instead of financial instruments, shares that may be acquired under the legally binding agreement, unless their proportion of voting rights would be below 5 per cent. ⁵This does not apply if those persons submitted a notification containing equivalent information to the issuer prior to 20 January 2007; the content of the notification is governed by section 25 (1) in the version of this Act of 5 January 2007 (Federal Law Gazette I page 10), including in conjunction with sections 17 and 18 of the Securities Trading Reporting and Insider List Regulation (*Wertpapierhandelsanzeige- und Insiderverzeichnisverordnung*) in the version of 5 January 2007 (Federal Law Gazette I page 10). ⁶If a domestic issuer receives a notification under sentences 1, 3 or 5, that issuer must publish it by no later than 20 April 2007 under section 26 (1) sentence 1 in the version of this Act of 5 January 2007 (Federal Law Gazette I page 10), including in conjunction with a statutory order under section 26 (3). ⁷In addition, it must communicate that information without undue delay, but not before its publication, to the Company Register within the meaning of section 8b of the Commercial Code for storage. ⁸At the same time as the publication under sentence 7, it must notify BaFin under section 26 (2) in the version of this Act of 5 January 2007 (Federal Law Gazette I page 10), including in conjunction with statutory order under section 26 (3) number 2. ⁹Section 23 in the version of this Act of 5 January 2007 (Federal Law Gazette I page 10), section 24 in the version of this Act of 24 March 1998 (Federal Law Gazette I page 529), section 27 in the version of this Act of 5 January 2007 (Federal Law Gazette I page 10), section 28 in the version of this Act of 20 December 2001 (Federal Law Gazette I page 3822), section 29 in the version of this Act of 28 October 2004 (Federal Law Gazette I page 2630) and section 29a (3) in the version of this Act of 5 January 2007 (Federal Law Gazette I page 10) apply to the obligations under sentences 1 to 9, with the necessary modifications. ¹⁰Section 29a (1) and (2) in the version of this Act of 5 January 2007 (Federal Law Gazette I page 10) apply, with the necessary modifications, to the obligations under sentence 4.

(6) ¹Any persons who, also taking into account section 22 in the version of this Act of 12 August 2008 (Federal Law Gazette I page 1666), hold a proportion of voting rights attaching to shares as well as financial instruments within the meaning of section 25 in the version of this Act of 12 August 2008 (Federal Law Gazette I page 1666), are not required make a notification when they reach or exceed the thresholds applicable to section 25 in the version of this Act of 12 August 2008 (Federal Law Gazette I page 1666) that they reach or exceed on 1 March 2009 solely because of the amendment of section 25 in the version of this Act of 12 August 2008 (Federal Law Gazette I page 1666) effective 1 March 2009 through aggregation under section 25 (1) sentence 3 in the version of this Act of 12 August 2008 (Federal Law Gazette I page 1666). ²This notification must only be made after again reaching, exceeding or falling below one of the thresholds under section 25 in the version of this Act of 12 August 2008 (Federal Law Gazette I page 1666). ³Notification requirements under section 25 in the version of this Act of 5 January 2007 (Federal Law Gazette I page 10) that are not met, or not met correctly, or completely or in the prescribed manner, must be met taking into account section 25 (1) sentence 3 in the version of this Act of 12 August 2008 (Federal Law Gazette I page 1666).

(7) ¹Any persons who, also taking into account section 22 in the version of this Act of 12 August 2008 (Federal Law Gazette I page 1666), hold a proportion of voting rights attaching to shares, are not required to make a notification when they reach or exceed the thresholds applicable to section 21 in the version of this Act of 21 December 2007 (Federal Law Gazette I page 3089) that they reach or exceed on 19 August 2008 solely because of the attribution of voting rights due to the revision of section 22 (2) in the version of this Act of 12 August 2008 (Federal Law Gazette I page 1666) effective 19 August 2008. ²This notification must only be made after again reaching, exceeding or falling below one of the thresholds under section 21 in the version of this Act of 21 December 2007 (Federal Law Gazette I page 3089). ³Sentences 1 and 2 apply to the notification requirement under section 25 in the version of this Act of 12 August 2008 (Federal Law Gazette I page 1666), with the necessary modifications, provided that the thresholds applicable to section 25 in the version of this Act of 12 August 2008 (Federal Law Gazette I page 1666) apply.

(8) ¹Any persons who, on 1 February 2012, hold financial instruments or other instruments within the meaning of section 25a (1) in the version of this Act of 5 April 2011 (Federal Law Gazette I page 538) that give their holder, based on their terms, the right to acquire 5 per cent of more of the issued shares with voting rights attached of an issuer whose home country is the Federal Republic of Germany, are required to notify the issuer and, at the same time, BaFin without undue delay, but no later than within 30 trading days, the proportion of voting rights they hold in accordance with section 25a (2), corresponding to section 25a (1), including in conjunction with a statutory order under section 25a (4), in each case in the version of this Act of 5 April 2011 (Federal Law Gazette I page 538). ²Section 24 in the version of this Act of 24 March 1998 (Federal Law Gazette I page 529) applies, with the necessary modifications. ³Aggregation with the investments under section 21 in the version of this Act of 21 December 2007 (Federal Law Gazette I page 3089), section 22 in the version of this Act of 12 August 2008 (Federal Law Gazette I page 1666) and section 25 in the version of this Act of 5 April 2011 (Federal Law Gazette I page 538) applies.

(9) ¹The domestic issuer must publish the information under subsection (8) without undue delay, but at the latest three trading days after its receipt in accordance with section 26 (1) sentence 1 1st half-sentence in the version of this Act of 5 April 2011 (Federal Law Gazette I page 538) and communicated to the Company Register within the meaning of section 8b of the Commercial Code without undue delay, but not before its publication, for storage. ²The domestic issuer must notify BaFin of the publication at the same time it is published.

(10) ¹Any persons who, also taking into account section 22 in the version of this Act of 20 November 2015 (Federal Law Gazette I page 2029), hold voting rights within the meaning section 21 in the version of this Act of 20 November 2015 (Federal Law Gazette I page 2029) in an issuer whose home country is the Federal Republic of Germany on 26 November 2015 and reach, exceed or fall below one of the thresholds applicable to section 21 in the version of this Act of 20 November 2015 (Federal Law Gazette I page 2029) solely because of the amendment of section 21 effective 26 November 2015, are required to notify this by 15 January 2016 in accordance with section 21 in the version of this Act of 20 November 2015 (Federal Law Gazette I page 2029). ²Any persons who hold instruments within the meaning of section 25 in the version of this Act of 20 November 2015 (Federal Law Gazette I page 2029) on 26 November 2015 that reference at least 5 per cent of the voting rights in an issuer whose home country is the Federal Republic of Germany in accordance with section 25 (3) and (4) in the version of this Act of 20 November 2015 (Federal Law Gazette I page 2029) are required to notify this by 15 January 2016 in accordance with section 25 in the version of this Act of 20 November 2015 (Federal Law Gazette I page 2029). ³Any persons who reach, exceed or fall below one of the thresholds applicable to section 25a in the version of this Act of 20 November 2015 (Federal Law Gazette I page 2029) solely because of the amendment of section 25a effective 26 November 2015, are required to notify this by 15 January 2016 in accordance with section 25a in the version of this Act of 20 November 2015 (Federal Law Gazette I page 2029). ⁴Subsection (9) applies, with the necessary modifications.

(11) ¹Any persons who reach, exceed or fall below one of the thresholds applicable to sections 21, 25 or 25a, in each case in the version of this Act of 20 November 2015 (Federal Law Gazette I page 2029) relating to an issuer whose home country is the Federal Republic of Germany solely because of the amendment of section 1 (3) effective 2 July 2016, are required to notify this by 23 July 2016 in accordance with sections 21, 25 and 25a, in each case in the version of this Act of 20 November 2015 (Federal Law Gazette I page 2029). ²Subsection (10) applies, with the necessary modifications.

(12) Any persons commit an administrative offence if they wilfully or negligently

1. do not make a publication, or do not make it correctly, or completely, or not in the prescribed manner or promptly in contravention of subsection (5) sentence 7,
2. do not notify the information or do not notify it promptly in contravention of section 5 (8),
3. do not make a notification, or do not make it correctly, or completely, or in the prescribed manner or promptly in contravention of subsection (5) sentences 1, 3, 5 or 9, subsection (8) sentence 1 or subsection (10) sentences 1, 2 or 3,
4. do not make a publication, or do not make it correctly, or completely, or not in the prescribed manner or promptly in contravention of subsection (9) sentence 1.

(13) The administrative offence is punishable by a fine not exceeding EUR two hundred thousand in the cases referred to in subsection (12).

Section 128 Transitional provision governing notification and publication requirements relating to the

choice of home country

Section 5 does not apply to an issuer as defined in section 2 (11) sentence 1 number 1 b) or number 2 whose home country is the Federal Republic of Germany on 27 November 2015 and who has notified BaFin of its choice.

Section 129 Transitional provision governing the obligation to reimburse costs under section 11 of the version of this Act in force until 2 January 2018

(1) The parties obliged to reimburse costs to BaFin under section 11 (1) sentence 1 in the version of this Act of 26 July 1994 (Federal Law Gazette I page 1749) can also provide evidence of the volume of transactions in securities and derivatives for the period until the end of 1996 and for 1997 on the basis of the number of transactions reported under section 9 in 1996 and 1997, respectively.

(2) Section 11 in the version in force for the period until 30 April 2002 prior to the entry into force of the Act Establishing the Federal Financial Supervisory Authority (*Gesetz über die integrierte Finanzdienstleistungsaufsicht*) of 22 April 2002 (Federal Law Gazette I page 1310) applies to the costs incurred by the Federal Securities Supervisory Office.

Section 130 Transitional provision governing the notification and publication requirements for holders of net short positions under section 30i in the version of this Act of 6 December 2011 (Federal Law Gazette I page 2841)

(1) ¹Any persons who, on 26 March 2012, hold net short positions as defined in section 30i (1) sentence 1 in the version of this Act of 6 December 2011 (Federal Law Gazette I page 2481) of 0.2 per cent or more are required to notify BaFin about this by the close of the next trading day in accordance with section 30i (3) of the above-mentioned version of this Act, including in conjunction with a statutory order under section 30i (5) of the above-mentioned version of this Act. ²The holder of a net short position as defined in section 30i (1) sentence 2 of the above-mentioned version of this Act of 0.5 per cent or more must, in addition to the notification under sentence 1, publish the position in the Federal Gazette, including in conjunction with a statutory order under section 30i (5) of the above-mentioned version of this Act, within the period specified in sentence 1 under section 30i (3) of the above-mentioned version of this Act; no such obligation exists if a comparable notification was already made prior to 26 March 2012.

(2) Any persons commit an administrative offence if they wilfully or negligently

1. do not make a notification, or do not make it correctly, or completely, or not in the prescribed manner or promptly in contravention of subsection (1) sentence 1, or
2. do not make a publication, or do not make it correctly, or completely, or not in the prescribed manner or promptly in contravention of subsection (1) sentence 2 first half-sentence.

(3) The administrative offence is punishable by a fine not exceeding EUR two hundred thousand in the cases referred to in subsection (2).

Section 131 Transitional provision governing the limitation of claims for damages under section 37a in the version of this Act in force until 4 August 2009

Section 37a in the version in force up to 4 August 2009 applies to claims that arose in the period from 1 April 1998 up to and including 4 August 2009.

Section 132 Application of the Transparency Directive Implementation Act (*Transparenzrichtlinie-Umsetzungsgesetz*)

(1) Sections 37n and 37o (1) sentence 4 as well as the provisions under Part 11 subpart 2 in the version of the law of 5 January 2007 (Federal Law Gazette I page 10) apply for the first time to financial reports for financial years beginning after 31 December 2006.

(2) Section 37w (3) sentence 2 and section 37y number 2, in the version of the Act of 5 January 2007 (Federal Law Gazette I page 10), apply to issuers for which only debt securities are admitted to trading on an organised market as defined in Article 4(1) No. 14 of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments (OJ EU No. L 145 page 1) in a Member State of the European Union or another signatory state to the Agreement on the European Economic Area, and to issuers whose securities are admitted to trading in a third country and that have been applying internationally accepted accounting standards for this purpose since the financial year that began before 11 September 2002, subject to the condition that the issuer can apply the accounting policies of the prior-year financial statements to financial years beginning before 31 December 2007.

(3) Section 30b (3) number 1 a) in the version of the Act of 5 January 2007 (Federal Law Gazette I page 10) applies for the first time to information that is communicated after 31 December 2007.

(4) (Repealed)

Section 133 Application of section 34 of the version of this Act in force until 2 January 2018

Section 34 (2b) of the version of this Act in force until 2 January 2018 continues to apply to claims for release of a copy of the record under section 34 (2a) of the version of this Act in force until 2 January 2018 that arose until the end of 2 January 2018.

Section 134 Application of the Act Implementing the Directive Amending the Transparency Directive (*Transparenzrichtlinie-Änderungsrichtlinie*)

(1) Sections 37n, 37o and 37p in the version of the Act of 20 November 2015 (Federal Law Gazette I page 2029) are applicable effective 1 January 2016.

(2) Section 37x in the version of the Act of 20 November 2015 (Federal Law Gazette I page 2029) is effective for the first time to reports on payments and consolidated reports on payments for financial years beginning after 26 November 2015.

Section 135 Transitional provisions relating to Regulation (EU) No. 596/2014

¹Section 39 (3d) number 1 in the version of this Act of 30 June 2016 (Federal Law Gazette I page 1514) does not apply until the date from which Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173 of 12 June 2014, page 349, L 74 of 18 March 2015, page 38), which was amended by Regulation (EU) No. 909/2014 (OJ L 257 of 28 August 2014, page 1) will be applied under its Article 93. ²Regulation (EU) No. 596/2014 applies to the provisions of this Act until the end of 2 January 2018, subject to the following conditions:

1. a trading venue as defined in Article 3(1) number 10 of that Regulation means a regulated market as defined in Article 4(1) number 14 of Directive 2004/39/EC as well as a multilateral trading facility as defined in Article 4(1) number 15 of Directive 2004/39/EC;
2. algorithmic trading as defined in Article 3(1) number 18 of that Regulation means trading in financial instruments where a computer algorithm automatically determines individual parameters, but not a system that is only used to route orders to one or more trading venues or for confirming orders;
3. high-frequency trading as defined in Article 3(1) number 33 of that Regulation means a high-frequency algorithmic trading technique characterised by infrastructure intended to minimise latencies, system-determination of order initiation, generation, routing or execution without human intervention for individual trades or orders, and high message intraday rates that constitute orders, quotes or cancellations.

Section 136 Transitional provision relating to the Act Implementing the CSR Directive (*CSR-Richtlinie-Umsetzungsgesetz*)

¹Sections 37w and 37y in the version of the Act Implementing the CSR Directive of 11 April 2017 (Federal Law

Gazette I page 802) are applicable for the first time to management reports and group management report relating to financial years beginning after 31 December 2016. ²Sections 37w and 37y in the version in force until 18 April 2017 continue to apply to management reports and group management reports relating to financial years beginning before 1 January 2017.

Section 137 Transitional provision governing infringements of sections 38 and 39 in the version of this Act in force until the end of 1 July 2016

(1) By way of derogation from section 2 (3) of the Criminal Code (*Strafgesetzbuch*), criminal offences under section 38 in the version in force until the end of 1 July 2016 are punishable on the basis of the provisions in force at the time of the offence.

(2) By way of derogation from section 4 (3) of the Act on Breaches of Administrative Regulations (*Gesetz über Ordnungswidrigkeiten*), administrative offences under section 39 in the version in force until the end of 1 July 2016 are punishable on the basis of the provisions in force at the time of the offence.

Section 138 Transitional provision relating to Directive 2014/65/EU on markets in financial instruments

(1) C6 energy derivative contracts entered into by non-financial counterparties that meet the conditions in Article 10(1) of Regulation (EU) No. 648/2012 or by non-financial counterparties that are authorised for the first time as investment services enterprises as from 3 January 2018 are not subject to either the clearing obligation under Article 4 of Regulation (EU) No. 648/2012 or the risk mitigation techniques under Article 11(3) of that Regulation until 3 January 2021.

(2) C6 energy derivative contracts are not considered to be OTC derivative contracts for the purposes of the clearing threshold set out in Article 10(1) of Regulation (EU) No. 648/2012 until 3 January 2021.

(3) C6 energy derivative contracts are subject to all the other requirements of Regulation (EU) No. 648/2012.

(4) A C6 energy derivative contract within the meaning of this provision means an option, a future, a swap or any other derivative contract mentioned in Section C.6 of Annex I of Directive 2014/65/EU, as amended, relating to coal or oil that is traded on an organised trading facility and must be physically settled.

(5) ¹Application must be made to BaFin to apply the exemptions under subsections (1) and (2). ²BaFin must notify the European Securities and Markets Authority of the C6 energy derivative contracts for which exemptions under subsections (1) and (2) have been granted.