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**Act on the Drawing up, Approval and Publication of the Prospectus to be  
Published when Securities are Offered to the Public or Admitted to Trading on  
an Organised Market  
(Securities Prospectus Act)  
(Wertpapierprospektgesetz - WpPG)**

Complete edition valid between 02 July 2016 and 30 September 2021

**Act on the Drawing up, Approval and Publication of the Prospectus to be  
Published when Securities are Offered to the Public or Admitted to Trading on  
an Organised Market**

Last amended by Article 16 (7) of the Act of 30 June 2016 **I 1514**

This Act implements Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC (OJ EU No. L 345, p. 64).

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**Part 1**  
**Scope of application and definitions**

**Section 1**  
**Scope of application**

(1) This Act shall be applied to the drawing up, approval and publication of prospectuses for securities to be offered to the public or to be admitted to trading on an organised market.

(2) This Act shall not apply to:

1. units or shares in open-ended investment funds within the meaning of section 1 (4) of the Investment Code (*Kapitalanlagegesetzbuch – KAGB*);
2. non-equity securities issued by an EEA signatory state or by one of such state's regional or local authorities, by public international bodies of which one or more EEA signatory states are members, by the European Central Bank or by the central banks of the members of the European Economic Area;
3. securities unconditionally and irrevocably guaranteed by an EEA signatory state or by one of an EEA signatory state's regional or local authorities;
4. securities issued by CRR credit institutions or issuers whose shares have already been admitted to trading on an organised market; this only applies where the sale price for all securities offered in the EEA is less than 5 million euros, which limit shall be calculated over a period of 12 months;
5. non-equity securities issued in a continuous or repeated manner by CRR credit institutions where the sale price for all securities offered in the EEA is less than 75 million euros, which limit shall be calculated over a period of 12 months, provided that these securities
  - a) are not subordinated, convertible or exchangeable; or
  - b) do not give a right to subscribe to or acquire other types of securities and that they are not linked to a derivative instrument.

(3) Notwithstanding subsection (2) nos. 2 to 5, issuers, offerors or applicants for admission shall be entitled to draw up a prospectus in accordance with this Act when securities are offered to the public or admitted to trading on an organised market.

## **Section 2**

### **Definitions**

Within the meaning of this Act

1. "securities" means transferable securities which can be traded on a market, in particular
  - a) shares and other securities equivalent to shares or units in limited companies (*Kapitalgesellschaften*) or other legal entities, and certificates representing shares;
  - b) debt securities, in particular bonds and certificates representing securities other than those mentioned in a);
  - c) any other securities giving the right to acquire or sell such securities or to receive a cash amount determined by reference to transferable securities, currencies, interest rates or payments, commodities or other indices or measures;

with the exception of money market instruments having a maturity of less than 12 months;

2. "equity securities" means shares and other transferable securities equivalent to shares in companies, as well as any other type of transferable securities giving the right to acquire any of the aforementioned securities as a consequence of their being converted or the rights conferred by them being exercised, provided that securities of the latter type are issued by the issuer of the underlying shares or by an entity belonging to the group of the said issuer;
3. "non-equity securities" means all securities that are not equity securities;
4. "offer of securities to the public" means a communication to the public in any form and by any means, presenting sufficient information on the terms of the offer and the securities to be offered, so as to enable an investor to decide to purchase or subscribe to these securities; this shall also be applicable to the placing of securities through institutions as defined in section 1 (1b) of the Banking Act (*Kreditwesengesetz*) or enterprises operating under section 53 (1) sentence 1 or section 53b (1) sentence 1 or subsection (7) of the Banking Act, with communications relating to the trading of securities on an organised market or on the regulated unofficial market (*Freiverkehr*) not constituting a public offer;
5. "offering programme" means a plan which would permit the issuance of non-equity securities having a similar type or class or warrants in any form in a continuous or repeated manner during a specified issuing period;
6. "qualified investors" means
  - a) clients and enterprises which, unless they are categorised as a retail client, are professional clients or eligible counterparties within the meaning of section 31a subsection (2) or (4) of the Securities Trading Act (*Wertpapierhandelsgesetz*), or which are categorised as such upon request pursuant to section 31a (5) sentence 1 or subsection (7) of the Securities Trading Act or which continue to be treated as professional clients pursuant to section 31a (6) sentence 5 of the Securities Trading Act;
  - b) natural or legal persons which are regarded as professional clients under the provisions adopted in other EEA signatory states, which implement the requirements of Annex II part I nos. 1 to 4 of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC (Official Journal L 145 of 30 April 2004, p.1), as amended, and which have not applied for treatment as non-professional clients;
  - c) natural or legal persons which upon request are treated as professional clients under the provisions adopted in other EEA signatory states, which implement the requirements of Annex II of Directive 2004/39/EC;
  - d) natural or legal persons which are recognised as eligible counterparties under the provisions adopted in other EEA signatory states, which implement Article 24 of Directive 2004/39/EC and which have not applied for treatment as non-professional clients; and
  - e) natural or legal persons who continue to be treated as professional clients by investment services enterprises in accordance with provisions adopted in other member states of the EEA to implement Article 71(6) of Directive 2004/39/EC and were treated as such before the Directive came into force;
7. (repealed)

8. "CRR credit institutions" means institutions as defined in section 1 (3d) sentence 1 of the Banking Act;
9. "issuer" means a person or company which issues or proposes to issue securities;
10. "offeror" means a person or company which offers securities to the public;
11. "applicant for admission" means the persons which apply for admission to trading on an organised market;
12. "continuous or repeated issue of securities" means the continuous issue or at least two issues of securities of a similar type or class over a period of 12 months;
13. "home state" means
  - a) for all issuers of securities not mentioned in b), the EEA signatory state where the issuer has its registered office;
  - b) for any issues of non-equity securities whose denomination per unit amounts to at least 1,000 euros, and for any issues of non-equity securities giving the right to acquire any transferable securities or to receive a cash amount, as a consequence of their being converted or the rights conferred by them being exercised, provided that the issuer of the non-equity securities is not the issuer of the underlying securities or an entity belonging to the group of this issuer, the EEA signatory state where the issuer has its registered office, or where the securities were or are to be admitted to trading on an organised market, or where the securities are offered to the public, at the choice of the issuer, the offeror or the applicant for admission, as the case may be; this shall also be applicable to non-equity securities in a currency other than euro if the value of such minimum denomination is nearly equivalent to 1,000 euros;
  - c) for all issuers of securities domiciled in a third country, which are not mentioned in b), the EEA signatory state where the securities are intended to be offered to the public for the first time, or where the first application for admission to trading on an organised market is made, at the choice of the issuer, the offeror or the applicant for admission, as the case may be, subject to a subsequent election by such issuers domiciled in a third country if the home state was not determined in accordance with their choice or if the securities are no longer admitted to trading on an organised market in the home state but are instead admitted to trading on an organised market in another EEA signatory state;
14. "host state" means the state where an offer to the public is made or admission to trading is sought, when different from the home state;
15. "EEA signatory state" means the member states of the European Union and the other signatories to the Agreement on the European Economic Area;
16. "organised market" means a multilateral system operated or managed in Germany, another member state of the European Union or another signatory to the Agreement on the European Economic Area, authorised, regulated and supervised by public bodies, which, in the system and in accordance with pre-determined 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 for the acquisition of these financial instruments;

17. "Supervisory Authority" means the Federal Financial Supervisory Authority (*Bundesanstalt für Finanzdienstleistungsaufsicht*);

18. "key information" means essential and appropriately structured information which is to be provided to the investor with a view to enabling them to understand the nature and the risks of the issuer, guarantor and securities that are being offered to them or admitted to trading on an organised market and, without prejudice to section 5 (2b) no. 2, to decide which offers of securities to consider further.

### **Section 3**

#### **Obligation to publish a prospectus and exemptions with respect to the type of offer**

(1) Unless subsections (2) and (3) or section 4 (1) stipulate otherwise, the offeror may only offer securities to the public in Germany after having published a prospectus for such securities first.

(2) The obligation to publish a prospectus shall not apply to an offer of securities

1. addressed solely to qualified investors;
2. addressed to fewer than 150 non-qualified investors per EEA signatory state;
3. addressed to investors who may acquire securities for a total consideration of at least 100,000 euros per investor, for each separate offer;
4. whose denomination per unit amounts to at least 100,000 euros; or
5. if the sale price for all securities offered in the EEA is less than 100,000 euros, which limit shall be calculated over a period of 12 months.

Any subsequent resale of securities which were previously the subject of one or more of the types of offer mentioned in sentence 1 shall be regarded as a separate offer.

(3) The obligation to publish a prospectus shall not apply to a later offer or a later final placement of securities through institutions as defined in section 1 (1b) of the Banking Act (*Kreditwesengesetz*) or enterprises operating under section 53 (1) sentence 1 or section 53b (1) sentence 1 or subsection (7) of the Banking Act as long as a valid prospectus is available in accordance with section 9 for the securities and the issuer or the persons who assumed liability for the prospectus consent to its use in writing.

(4) In relation to securities intended to be admitted to trading on an organised market in Germany, the applicant for admission shall publish a prospectus unless section 4 (2) stipulates otherwise.

### **Section 4**

#### **Exemptions from the obligation to publish a prospectus with respect to certain securities**

(1) The obligation to publish a prospectus shall not apply to offers of securities to the public of the following types of securities:

1. shares issued in substitution for shares of the same class already issued if the issuing of such new shares does not involve any increase in the issued capital;
2. securities offered in connection with a takeover by means of an exchange offer, provided that a document is available containing information equivalent to that of the prospectus;

3. securities offered, allotted or to be allotted in connection with a merger or division, provided that a document is available containing information equivalent to that of the prospectus;
4. dividends paid out to shareholders in the form of shares of the same class as the shares in respect of which such dividends are paid, provided that a document is made available containing information on the number and nature of the shares and the reasons for and details of the offer;
5. securities offered to existing or former members of executive bodies or employees by their employer or by an affiliated undertaking within the meaning of section 15 of the Stock Corporation Act (*Aktiengesetz*) as the issuer, provided that a document is made available containing information on the number and nature of the securities and the reasons for and details of the offer, and
  - a) the issuer has its registered office or head office in a member state of the EEA,
  - b) securities of the issuer are already admitted to trading on an organised market or
  - c) securities of the issuer are already admitted to trading in a third country, the European Commission has issued a decision on equivalence for that market and there is sufficient information, including the above-mentioned document, available in a language commonly used in the international financial world.

(2) The obligation to publish a prospectus shall not apply to the admission to trading on an organised market of the following types of securities:

1. shares representing, over a period of 12 months, less than 10 percent of the number of shares of the same class already admitted to trading on the same organised market;
2. shares issued in substitution for shares of the same class already admitted to trading on the same organised market if the issuing of such new shares does not involve any increase in the issued capital;
3. securities offered in connection with a takeover by means of an exchange offer, provided that a document is available containing information equivalent to that of the prospectus;
4. securities offered, allotted or to be allotted in connection with a merger or division, provided that a document is available containing information equivalent to that of the prospectus;
5. shares offered, allotted or to be allotted to holders of shares of the same class admitted to trading on the same organised market following a capital increase from reserves, and dividends paid out in the form of shares of the same class as the shares in respect of which such dividends are paid, provided that a document is made available containing information on the number and nature of the shares and the reasons for and details of the offer;
6. securities offered, allotted or to be allotted to existing or former members of executive bodies or employees by their employer or an affiliated undertaking within the meaning of section 15 of the Stock Corporation Act, provided that the said securities are of the same class as the securities already admitted to trading on the same organised market and that a document is made available containing information on the number and nature of the securities and the reasons for and details of the offer;
7. shares issued after exercise of conversion or subscription rights conferred by other securities, provided that said shares are of the same class as the shares already admitted to trading on the same organised market;

8. securities already admitted to trading on another organised market, on the following conditions:
- a) that the securities, or securities of the same class, have been admitted to trading on that other organised market for more than 18 months;
  - b) that a prospectus was approved for the securities, provided that they were first listed after 30 June 1983 and up to and including 31 December 2003, in accordance with the provisions of the Stock Exchange Act (*Börsengesetz*) or the provisions of other EEA signatory states, issued under Council Directive 80/390/EEC of 17 March 1980 coordinating the requirements for the drawing up, scrutiny and distribution of the listing particulars to be published for the admission of securities to official stock exchange listing (OJ L 100, p. 1) as amended or under Directive 2001/34/EC of the European Parliament and of the Council of 28 May 2001 on the admission of securities to official stock exchange listing and on information to be published on those securities (OJ L 184, p. 1) as amended; if the securities were admitted to trading on an organised market for the first time after 31 December 2003, the admission to trading on that other organised market must have been accompanied by the approval of a prospectus which was published in accordance with section 14 (2);
  - c) that the issuer of the securities has complied with the provisions issued under the European Community directives with regard to the admission to trading on that other organised market and the associated information requirements;
  - d) that the applicant for admission draws up a summary document in the German language;
  - e) that the summary document mentioned in d) is published in accordance with the provisions of section 14; and
  - f) that the contents of the summary document shall comply with the key information described in section 5 (2a). Furthermore, the document shall state where the most recent prospectus can be obtained and where the financial information published by the issuer pursuant to its ongoing disclosure obligations is available.

(3) In agreement with the Federal Ministry of Justice and Consumer Protection, the Federal Ministry of Finance may, by means of a Regulation not requiring the consent of the *Bundesrat*, set forth which provisions the information provided in the documents referred to in subsection (1) nos. 2 and 3, and subsection (2) nos. 3 and 4 must meet in order to be equivalent within the meaning of subsection (1) no. 2 or 3 or within the meaning of subsection (2) no. 3 or 4. This may also be achieved by designating provisions of German law or the law of another EEA signatory state whose application ensures equivalence. The Federal Ministry of Finance may, by means of a Regulation, delegate this authority to the Federal Financial Supervisory Authority.

## **Part 2**

### **Drawing up of the prospectus**

#### **Section 5**

##### **Prospectus**

(1) Without prejudice to section 8 (2), the prospectus must contain, in an easily analysable and comprehensible form, all information in respect of the issuer and the securities offered to the public or admitted to trading on an organised market which is necessary to enable the public to make an informed assessment of the assets and liabilities, financial position, profit and losses, and prospects of the issuer and of any



guarantor, as well as of the rights attaching to such securities. In particular, the prospectus must contain information on the issuer and the securities to be offered to the public or to be admitted to trading on an organised market. The prospectus must be drawn up in a manner which is easy to understand and analyse.

(2) Subject to sentence 5, the prospectus must include a summary which shall encompass the key information described in section 2a and the warnings pursuant to section 2b. The summary shall be written in the language of the original prospectus. The format and content of the summary, in conjunction with the other information included in the prospectus, must be appropriate to aid investors when considering whether to invest in the corresponding securities. The summary shall be drawn up in a common format prescribed by Commission Delegated Regulation (EU) No 486/2012 of 30 March 2012 amending Regulation (EC) No 809/2004 as regards the format and the content of the prospectus, the base prospectus, the summary and the final terms and as regards the disclosure requirements (OJ L 150 of 9 June 2012, p. 1). Where the prospectus relates to the admission on an organised market of non-equity securities having a denomination of at least 100,000 euros, there shall be no requirement to provide a summary.

(2a) The required key information shall include, in a brief manner and in non-technical language, as well as taking into account the relevant offer and securities:

1. a short description of the essential characteristics of and risks associated with the issuer and any guarantor, including the assets, liabilities and financial position of the issuer and any guarantor;
2. a short description of the risks associated with and the essential characteristics of the investment in the relevant security, including any rights attaching to the securities;
3. general terms of the offer, including estimated expenses charged to the investor by the issuer or offeror;
4. details on the admission to trading and
5. reasons for the offer and use of proceeds.

(2b) The required warnings include indications that

1. the summary should be read as an introduction to the prospectus;
2. any decision to invest in the securities should be based on consideration of the prospectus as a whole by the investor;
3. where a claim relating to the information contained in a prospectus is brought before a court, the plaintiff investor might, under the national legislation of the EEA signatory states, have to bear the costs of translating the prospectus before the legal proceedings are initiated; and
4. civil liability attaches to those persons who are responsible for the drawing up of the summary, including any translations thereof, or for its issuing, but only if the summary is misleading, inaccurate or inconsistent when read together with the other parts of the prospectus, or if the summary, when read together with the other parts of the prospectus, fails to provide all of the required key information.

(3) The prospectus must bear the date on which it was drawn up and must be signed by the offeror. If the prospectus is to be used for the admission of securities to trading on an organised market, the prospectus must be signed by the applicant for admission.

(4) The persons or entities responsible for the contents of the prospectus must be clearly identified in the prospectus by their names and functions or, in the case of legal entities or companies, their company names and registered offices; the prospectus must also

contain declarations by these persons or entities that, to the best of their knowledge, the information contained in the prospectus is accurate and does not contain any material omissions. In the case set out in subsection (3) sentence 2, the credit institution, financial services institution or the enterprise operating under section 53 (1) sentence 1 or section 53b (1) sentence 1 of the Banking Act (*Kreditwesengesetz*) with which the issuer is applying for the admission to trading of the securities shall also always assume responsibility, and the prospectus must contain a declaration by the institution or enterprise in accordance with sentence 1.

## **Section 6**

### **Base prospectus**

(1) For the following types of securities, the offeror or applicant for admission may draw up a base prospectus which must contain all information required under sections 5 and 7 concerning the issuer and the securities to be offered to the public or to be admitted to trading on an organised market, but need not contain the final terms of the offer:

1. non-equity securities and warrants in any form, issued under an offering programme;
2. non-equity securities issued in a continuous or repeated manner by CRR credit institutions,
  - a) where the securities are covered by assets entered in a cover register (*Deckungsregister*) which provide sufficient coverage for the liability deriving from the securities concerned until their maturity date; and
  - b) where, in the event of the insolvency of the CRR credit institution, the assets within the meaning of a) are intended, as a priority, to repay the capital and interest falling due, without prejudice to the provisions adopted on the basis of Directive 2001/24/EC of the European Parliament and of the Council of 4 April 2001 on the reorganisation and winding up of credit institutions (OJ L 125, p.15).

(2) The information given in the base prospectus shall be supplemented, if necessary, in accordance with section 16 with updated information on the issuer and on the securities to be offered to the public or to be admitted to trading on an organised market.

(3) Where the final terms of the offer are neither included in the base prospectus, nor in a supplement drawn up pursuant to section 16, they shall be published and filed with the Supervisory Authority by the offeror or applicant for admission without undue delay upon the making of a public offer and, where possible, before the beginning of the public offer or admission to trading. Section 8 (1) sentences 1 and 2 shall apply *mutatis mutandis*. The final terms shall only be filed electronically via the Supervisory Authority's reporting and publishing system and shall not require any signature. The Supervisory Authority shall communicate the final terms of the offer to the competent authority of the host state or states and to the European Securities and Markets Authority.

## **Section 7**

### **Minimum information**

The minimum information to be included in a prospectus is governed by Commission Regulation (EC) No 809/2004 of 29 April 2004 implementing Directive 2003/71/EC of the European Parliament and of the Council as regards information contained in prospectuses as well as the format, incorporation by reference and publication of such prospectuses and dissemination of advertisements (OJ EU L 149, p. 1, L 215, p.3) as amended.

## **Section 8**

### **Omission of information**

(1) Where the issue price of the securities (offer price) and the total number of securities offered to the public (offer volume) cannot be included in the prospectus, the prospectus shall specify the criteria or conditions in accordance with which the above elements shall be determined. By way of derogation from the above, the prospectus may specify a maximum offer price. Where the prospectus does not contain the criteria or conditions required in accordance with sentence 1 or sentence 2, the purchaser has the right to revoke the declaration of intent with regard to the conclusion of the agreement within two working days (including Saturdays) of the filing of the final offer price and the offer volume. No grounds must be stated for the revocation, which must be made in text form to the person specified in the prospectus as the recipient of any revocations; the timely dispatch of the revocation is sufficient to comply with the specified deadline. Section 357a of the Civil Code (*Bürgerliches Gesetzbuch*) shall apply *mutatis mutandis* to the legal consequences of the revocation. The offeror or applicant for admission must publish the final offer price and the offer volume without undue delay following their determination in a manner permissible in accordance with section 14 (2). In the event that the offer is not a public offer, the final offer price and the offer volume must be published one working day (including Saturday) before the securities are introduced to trading at the latest. If the offer relates to non-equity securities but is not a public offer, the information specified in sentence 6 may be published at a later date if the non-equity securities are to be issued over a longer period of time and at changing prices. Furthermore, the final offer price and the offer volume must always be filed with the Supervisory Authority on the day of publication. In the cases specified in sentence 3, the prospectus must contain a clearly highlighted instruction on the right of revocation.

(2) The Supervisory Authority may authorise the omission from the prospectus of certain information provided for in this Act or Regulation (EC) No 809/2004 if

1. the distribution of such information would be contrary to the public interest;
2. the distribution of such information would be seriously detrimental to the issuer, provided that not publishing such information would not mislead the public with regard to facts and circumstances essential for an informed assessment of the issuer, offeror, guarantor and the securities to which the prospectus relates; or
3. such information is of minor importance only for the specific offer or admission to trading on an organised market and is not likely to influence the assessment of the financial position and prospects of the issuer, offeror or guarantor.

(3) Without prejudice to the adequate information of the public, where, exceptionally, certain information required under Regulation (EC) No 809/2004 to be included in a prospectus is inappropriate to the issuer's sphere of activity or the legal form of the issuer or to the securities to which the prospectus relates, the prospectus shall contain information equivalent to the required information.

(4) Where an EEA signatory state guarantees a security, the prospectus shall not have to include information on that guarantor.

## **Section 9**

### **Validity of a prospectus, base prospectus and registration document**

(1) A prospectus shall be valid for 12 months after its approval for offers to the public or admissions to trading on an organised market, provided that it is completed by the supplements required pursuant to section 16.

(2) In the case of an offering programme, the base prospectus shall be valid for a period of 12 months following its approval.

(3) In the case of non-equity securities within the meaning of section 6 (1) no. 2, the prospectus shall be valid until no more of the securities concerned are issued in a continuous or repeated manner.

(4) A registration document, as referred to in section 12 (1) sentences 2 and 3, previously filed and approved, shall be valid for a period of 12 months following its approval. A registration document, updated in accordance with section 12 (3) or section 16, accompanied by the securities note and the summary, shall be considered to constitute a valid prospectus.

(5) (repealed)

## **Section 10 (repealed)**

## **Section 11 Incorporation by reference**

(1) The prospectus may contain information incorporated by reference to one or more documents that have been previously or simultaneously published or made available to the public,

1. that have been approved by the Supervisory Authority or filed with it in accordance with this Act; or
2. whose publication has been communicated to the Supervisory Authority pursuant to section 2b (1), section 15 (1) or (2), section 26 (2), sections 26a, 29a (2), section 30e (1), section 30f (2) of the Securities Trading Act (*Wertpapierhandelsgesetz*), in each case also in conjunction with the Securities Trading Reporting and Insider List Regulation (*Wertpapierhandelsanzeige- und Insiderverzeichnisverordnung*); or
3. whose availability to the public has been communicated to the Supervisory Authority pursuant to section 37v (1), section 37w (1), section 37x (2), section 37y or section 37z of the Securities Trading Act, in each case also in conjunction with the Securities Trading Reporting and Insider List Regulation.

The prospectus may contain information incorporated by reference to one or more previously or simultaneously published documents that have been approved by the competent authority or filed with it in accordance with the provisions issued in other EEA signatory states to implement Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC (OJ L 345 of 31 December 2003, p.64), as amended, or to implement 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 of 31 December 2004, p.38), as amended. Such information shall be the most up-to-date information available to the issuer. The summary shall not incorporate information by reference.

(2) When information is incorporated by reference, the prospectus must contain a list indicating the locations of such references in the prospectus, the information to which the references relate and where the information incorporated by reference is published.

## **Section 12**

### **Prospectus consisting of one or more separate documents**

(1) The prospectus can be drawn up as a single document or separate documents. A prospectus composed of separate documents shall divide the required information into a registration document, a securities note and a summary. The registration document must contain the information relating to the issuer. The securities note must contain the information concerning the securities to be offered to the public or to be admitted to trading on an organised market. Section 5 (2) to (2b) shall apply to the summary.

(2) An issuer which already has a registration document approved by the Supervisory Authority shall be required to draw up the securities note and the summary when securities are offered to the public or admitted to trading on an organised market.

(3) In the case set out in subsection (2), the securities note must provide the information that would normally be provided in the registration document, where there has been a material change or recent development which could affect the public's assessment since the latest updated registration document was approved. Sentence 1 shall not apply if the registration document has already been updated pursuant to section 16 due to those new circumstances. The securities note and the summary shall be subject to a separate approval by the Supervisory Authority.

(4) Where an issuer has only filed a registration document without approval, the entire documentation shall be subject to approval by the Supervisory Authority.

## **Part 3**

### **Approval and publication of the prospectus**

## **Section 13**

### **Approval of the prospectus**

(1) No prospectus shall be published until it has been approved. The Supervisory Authority shall make a decision on the approval of the prospectus after checking it for completeness, including consistency and comprehensibility of the information given.

(2) The Supervisory Authority shall notify the offeror or applicant for admission of its decision within ten working days (including Saturdays) of receipt of the prospectus and, in the case of approval, simultaneously notify the European Securities and Markets Authority and provide it with a copy of the prospectus at the same time. This time limit shall be 20 working days (including Saturdays) if the public offer involves securities issued by an issuer which does not have any securities admitted to trading on an organised market in an EEA signatory state or which has not previously offered securities to the public.

(3) If the Supervisory Authority has reason to believe that the prospectus is incomplete or that supplementary information is needed, the time limits referred to in subsection (2) shall apply only from the date on which this information is received. The Supervisory Authority should inform the offeror or applicant for admission of the need for supplementary information within ten working days (including Saturdays) of receipt of the prospectus.

(4) The Supervisory Authority shall make available the approved prospectuses on its website for a period of twelve months.

(5) The prospectus to be approved, including the translation of the summary, shall be submitted to the Supervisory Authority both in paper form and in electronic form via its reporting and publishing system or on a data carrier.

## **Section 14**

### **Filing and publication of the prospectus**

(1) Once approved, the offeror or applicant for admission must file the prospectus with the Supervisory Authority and publish it without undue delay, at the latest one working day (including Saturdays) before the beginning of the public offer, in accordance with subsection (2). If the securities are introduced to trading on an organised market without a public offer, sentence 1 shall apply *mutatis mutandis*, subject to the proviso that the date of the introduction of the securities to trading, instead of the date at which the public offer commences, shall be relevant for the determination of the publication deadlines. If subscription rights are traded on an organised market prior to the introduction of the securities to trading, the prospectus must be published at least one working day (including Saturdays) before trading in the subscription rights commences. In the case of an initial public offer of a class of shares for which the issuer has not been granted admission to trading on an organised market yet, the period of time between the publication of the prospectus in accordance with sentence 1 and the conclusion of the offer must amount to at least six working days (including Saturdays).

(2) The prospectus shall be published

1. by insertion in one or more business or daily newspapers having general circulation in the EEA signatory states in which the offer to the public is made or the admission to trading is sought;
2. in a printed form to be made available free of charge to the public
  - a) at the competent offices of the organised market on which the securities are to be admitted to trading;
  - b) at the issuer;
  - c) at those institutions as defined in section 1 (1b) of the Banking Act (*Kreditwesengesetz*) or enterprises operating under section 53 (1) sentence 1 or section 53b (1) sentence 1 of the Banking Act which place or sell the securities; or
  - d) at the paying agents;
3. on the website of
  - a) the issuer;
  - b) those institutions as defined in section 1 (1b) of the Banking Act or enterprises operating under section 53 (1) sentence 1 or section 53b (1) sentence 1 of the Banking Act which place or sell the securities; or
  - c) the paying agents; or
4. on the website of the organised market where the admission to trading is sought.

If the prospectus is published pursuant to nos. 1 or 2, it shall also be published pursuant to no. 3. The prospectus must be available pursuant to nos. 2, 3 and 4 at least until the final closing of the offer to the public or, if this occurs at a later date, the time when trading on an organised market begins.

(3) The offeror or applicant for admission shall inform the Supervisory Authority as to the date and place of the publication of the prospectus without undue delay and in writing.

(4) Where the prospectus comprises several separate documents or incorporates information by reference, the documents and information making up the prospectus may be published separately using one of the methods specified in subsection (2). Each document shall indicate where the other constituent documents of the full prospectus may be obtained.

(5) Where the prospectus is published on the Internet, a paper copy must nevertheless be delivered to the investor, upon his request and free of charge, by the offeror, the applicant for admission or from the institutions as defined in section 1 (1b) of the Banking Act or the enterprises operating under section 53 (1) sentence 1 or section 53b (1) sentence 1 of the Banking Act placing or selling the securities.

(6) The filed prospectus shall be retained by the Supervisory Authority for a period of ten years. This period shall begin at the end of the calendar year in which the prospectus was filed.

## **Section 15 Advertisements**

(1) Any type of advertisements relating either to an offer to the public of securities or to an admission to trading on an organised market shall comply with subsections (2) to (5). Subsections (2) to (4) shall apply only to cases where the public offer of securities or admission of securities to trading on an organised market is subject to the obligation to draw up a prospectus.

(2) Advertisements shall state that a prospectus has been or will be published and indicate where investors are or will be able to obtain it.

(3) Advertisements shall be clearly recognisable as such. The information contained in an advertisement shall not be inaccurate or misleading. This information shall also be consistent with the information contained in the prospectus or required to be in the prospectus, if the prospectus is published afterwards.

(4) All information disclosed concerning the offer to the public or the admission to trading on an organised market, even if not for advertising purposes, shall be consistent with that contained in the prospectus.

(5) When no prospectus is required in accordance with this Act, the offeror shall disclose material information on the issuer or on itself addressed to qualified investors or special categories of investors, including information disclosed in the context of events relating to offers of securities, to all qualified investors or special categories of investors to whom the offer is exclusively addressed. Where a prospectus is required to be published, such information shall be included in the prospectus or in a supplement to the prospectus pursuant to section 16 (1).

(6) If the Supervisory Authority has reason to believe that the provisions of subsections (2) to (5) have been contravened, it may order that the advertisements be suspended for a maximum of ten consecutive days in each case. The Supervisory Authority may prohibit advertisements containing information that is likely to be misleading as to the scope of the checks pursuant to section 13 or section 16. The central associations of the economic sectors concerned and the leading consumer protection associations shall be consulted before general measures pursuant to sentence 2 are taken.

## **Section 16**

### **Supplements to the prospectus, investor's right of revocation**

(1) Every significant new factor or material mistake relating to the information included in the prospectus which is capable of affecting the assessment of the securities and which arises or is noted after the time the prospectus is approved and before the final closing of the offer to the public or, if this occurs at a later date, the time when the securities are introduced to trading on an organised market, shall be mentioned in a supplement to the prospectus. The issuer, offeror or applicant for admission must file the supplement with the Supervisory Authority. The supplement shall be approved in accordance with section 13 within a maximum of seven working days (including Saturdays) of its receipt by the Supervisory Authority. Section 13 (2) sentence 1 second half-sentence applies *mutatis mutandis*. Once approved, the offeror or applicant for admission shall publish the supplement without undue delay and in the same manner as the original prospectus in accordance with section 14.

(2) The summary, and any translations thereof, shall be supplemented to take into account the new information included in the supplement.

(3) Where the supplement relates to a prospectus drawn up for securities offered to the public, investors who have already submitted a declaration of intent with regard to the purchase of or subscription for the securities before the supplement is published shall have the right, exercisable within two working days (including Saturdays) after the publication of the supplement, to revoke their declarations of intent provided that the new factor or mistake referred to in subsection (1) arose before the final closing of the offer to the public and the delivery of the securities. The revocation period may be extended by the issuer, offeror or applicant for admission. The supplement must contain a clearly highlighted instruction on the right of revocation in accordance with sentence 1; the revocation period must be stated. Section 8 (1) sentences 4 and 5 shall apply *mutatis mutandis*, subject to the proviso that the designated recipient of any revocations is the person named in the supplement, in place of the person named in the prospectus.

## **Part 4**

### **Cross-border offers and admission to trading**

## **Section 17**

### **Cross-border scope of approvals of prospectuses**

(1) Without prejudice to section 9, where an offer to the public or admission to trading on an organised market is also, or exclusively, provided for in one or more other EEA signatory states, the prospectus approved by the Supervisory Authority and any supplements thereto shall be valid for the public offer or the admission to trading in any number of host states without the need for an additional approval process, provided that the European Securities and Markets Authority and the competent authority of each host state are notified in accordance with section 18.

(2) If significant new factors or material mistakes as referred to in section 16 come to light after the approval of the prospectus, the Supervisory Authority shall require that the offeror or applicant for admission submit a supplement to the prospectus for approval and that they publish it. If the Supervisory Authority has reason to believe that a supplement pursuant to section 16 should be published, it may communicate the relevant information to the competent authority in the home state in accordance with section 28.

(3) A prospectus approved by the competent authority in another EEA signatory state, including any supplements thereto, shall be valid for a public offer or admission to trading in the Federal Republic of Germany without the need for an additional approval process, provided that the Supervisory Authority is notified in accordance with the



provisions of the home state corresponding to section 18 and that the language of the prospectus meets the requirements of section 19 (4) and (5).

## **Section 18**

### **Certificate of approval**

(1) The Supervisory Authority shall, at the request of the offeror or the applicant for admission and within three working days (including Saturdays), provide the competent authorities of the host state and simultaneously the European Securities and Markets Authority with a certificate of approval attesting that the prospectus has been drawn up in accordance with this Act and with a copy of the said prospectus. If the request is made at the same time as the prospectus is filed for approval, the period in accordance with sentence 1 shall be one working day (including Saturdays) following approval of the prospectus. The offeror or applicant for admission must attach the translations of the summary, in accordance with the requirements for the use of languages that apply to the prospectus in the host state, to the application. The offeror or applicant for admission shall also be notified of the certificate of approval at the same time as the competent authorities of the host states.

(2) Subsection (1) shall apply *mutatis mutandis* to approved prospectus supplements.

(3) In the event that permission is granted pursuant to section 8 (2) or (3), the provisions on which such permission is based must be stated in the certificate and grounds must be given to justify their application.

(4) If the Supervisory Authority in its capacity as the competent authority of the host state receives certificates of approval of prospectuses and prospectus supplements pursuant to the relevant provisions of a home state pursuant to subsection 1 sentence 1, the Supervisory Authority shall publish on its website a list of the communicated certificates, including, if applicable, a hyperlink to the prospectuses and prospectus supplements on the website of the competent authority of the home state, on the website of the issuer or on the website of the organised market. The Supervisory Authority shall keep the list up-to-date and ensure that each item is available for a period of at least twelve months.

## **Part 5**

### **Use of languages and issuers domiciled in third countries**

## **Section 19**

### **Use of languages**

(1) Where an offer to the public is made or admission to trading on an organised market is sought only in Germany and not in any other EEA signatory state(s) for securities from an issuer whose home state is the Federal Republic of Germany, the prospectus shall be drawn up in German. The Supervisory Authority may also permit the use of a language customary in the sphere of international finance, provided that the prospectus contains a translation of the summary into German and can be deemed to provide sufficient information to the public in each case, taking into account the type of securities in question.

(2) Where an offer to the public is made or admission to trading on an organised market is sought not in Germany but in another or several other EEA signatory state(s) for securities from an issuer whose home state is the Federal Republic of Germany, the offeror or applicant for admission may draw up the prospectus, at its choice, in a language accepted by the competent authorities in the host state or states, or in a language customary in the sphere of international finance. In the cases set out in sentence 1, the prospectus must also be drawn up in a language recognised by the

Supervisory Authority or in a language customary in the sphere of international finance if such a language has not already been selected in accordance with sentence 1.

(3) Where an offer to the public is made or admission to trading on an organised market is sought in Germany for securities from an issuer whose home state is the Federal Republic of Germany, and where an offer to the public is also made in another or several other EEA signatory state(s) for such securities or admission to trading is also sought in such state(s), the prospectus shall be drawn up in German or in a language customary in the sphere of international finance. If the prospectus is not drawn up in German, it must also contain a German translation of the summary.

(4) Where an offer to the public is made or admission to trading on an organised market is sought in Germany for securities from an issuer whose home state is not the Federal Republic of Germany, the prospectus can be drawn up in a language accepted by the Supervisory Authority or in a language customary in the sphere of international finance. If the prospectus is not drawn up in German, it must also contain a German translation of the summary.

(5) Where admission to trading on an organised market of non-equity securities whose denomination per unit amounts at least to 100,000 euros is sought in one or more EEA signatory state(s), the prospectus may be drawn up either in a language accepted by the Supervisory Authority and the competent authorities of the host state or states, or in a language customary in the sphere of international finance.

## **Section 20**

### **Issuers from third countries**

(1) The Supervisory Authority may approve a prospectus drawn up by an issuer in accordance with the legislation that applies to the latter in a non-EEA state for a public offer or for admission to trading on an organised market provided that

1. the prospectus has been drawn up in accordance with international standards set by international securities commission organisations, including the disclosure standards set forth by the International Organisation of Securities Commissions (IOSCO); and
2. the information requirements, including information of a financial nature, are equivalent to the requirements under this Act.

(2) Sections 17, 18 and 19 shall apply *mutatis mutandis*.

(3) In agreement with the Federal Ministry of Justice and Consumer Protection, the Federal Ministry of Finance may, by means of a Regulation not requiring the consent of the *Bundesrat*, set forth the conditions under which information requirements are deemed to be equivalent within the meaning of subsection (1) no. 2. This can also be done by specifying provisions whose application ensures equivalence. The Federal Ministry of Finance may, by means of a Regulation, delegate this authority to the Federal Financial Supervisory Authority.

## **Part 6**

### **Liability attaching to the prospectus**

#### **Section 21**

##### **Liability for an incorrect listing prospectus**

(1) Purchasers of securities admitted to trading on a stock exchange on the basis of a prospectus containing incorrect or incomplete information which is material to the assessment of such securities have a claim against

1. the persons who assumed liability for the prospectus and
2. the persons who initiated the issue of the prospectus

on a joint and several basis, for redemption of the securities against reimbursement of both the purchase price, to the extent that said price does not exceed the initial issue price of the securities, and the costs customarily involved in the purchase of securities, provided that the purchase transaction was concluded after the publication of the prospectus and within six months after the securities being introduced to trading. If an issue price has not been determined, the first exchange price determined or established after the securities have been introduced to trading shall be deemed the issue price, or, in the event that the price is determined or established on several domestic exchanges at the same time, the highest first exchange price. Sentences 1 and 2 shall apply *mutatis mutandis* to the purchase of securities of the same issuer that do not differ from the securities specified in sentence 1 in terms of their features or in any other way.

(2) If the purchaser is no longer the holder of the securities, they may claim payment of the difference between the purchase price, to the extent that said price does not exceed the initial issue price, and the selling price of the securities and payment of the costs customarily involved in the purchase and sale of securities. Subsection (1) sentences 2 and 3 shall apply.

(3) If the securities of an issuer domiciled outside Germany are also admitted to trading on a stock exchange outside Germany, a claim pursuant to subsections (1) or (2) shall only exist if the securities were acquired pursuant to a transaction executed in Germany or a securities service rendered either partially or fully in Germany.

(4) A written disclosure statement, the publication of which releases the issuer from the publication of a prospectus, shall be deemed equal to a prospectus.

## **Section 22**

### **Liability for other incorrect prospectuses**

If a prospectus issued pursuant to section 3 (1) sentence 1, which does not act as a basis for admission of securities to trading on a stock exchange in Germany, contains incorrect or incomplete information which is material to the assessment of such securities, section 21 shall apply *mutatis mutandis*, subject to the proviso that

1. in applying section 21 (1) sentence 1 for the calculation of the period of six months, the date of the first public offer in Germany shall be controlling instead of the date of the introduction of the securities to trading and
2. section 21 (3) shall apply to those issuers domiciled outside Germany whose securities are also offered to the public outside Germany.

## **Section 23**

### **Exclusion of liability**

(1) Any person who can prove that they were not aware of the incorrectness or incompleteness of the information in the prospectus and that this lack of awareness was not due to gross negligence shall not be liable pursuant to sections 21 and 22.

(2) Claims under sections 21 and 22 do not exist if

1. the securities were not acquired on the basis of the prospectus;
2. the facts about which the prospectus contains incorrect or incomplete information did not contribute to a reduction in the exchange price of the securities;
3. the purchaser of the securities was aware of the incorrectness or incompleteness of the information in the prospectus at the time of the purchase;
4. prior to the execution of the purchase transaction, a clear correction of the incorrect or incomplete information was published in Germany in the annual financial statements or the interim report of the issuer, in a publication pursuant to Article 17 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 and 2004/72/EC (OJ L 173 of 12 June 2014, p.1) as amended or in a comparable announcement; or
5. the claims are based solely on the information contained in the summary or a translation, unless the summary is misleading, inaccurate or inconsistent when read together with the other parts of the prospectus, or if the summary does not provide, when read together with the other parts of the prospectus, all of the key information required pursuant to section 5 (2) sentence 1 in conjunction with (2a).

## **Section 24**

### **Liability for failure to publish a prospectus**

(1) If a prospectus has not been published in contravention of section 3 (1) sentence 1, purchasers of the securities have a claim against the issuer and offeror on a joint and several basis for redemption of the securities against reimbursement of the purchase price, to the extent that said price does not exceed the initial purchase price, and the costs customarily involved in the purchase of securities, provided that the purchase transaction was concluded prior to the publication of a prospectus and within six months after the initial public offer in Germany. Sentence 1 shall apply *mutatis mutandis* to the purchase of securities of the same issuer that do not differ from the securities specified in sentence 1 in terms of their features or in any other way.

(2) If the purchaser is no longer the holder of the securities, they may claim payment of the difference between the purchase price and the selling price of the securities and payment of the costs customarily involved in the purchase and sale of securities. Subsection (1) sentence 1 shall apply *mutatis mutandis*.

(3) If the securities of an issuer domiciled outside Germany are also offered to the public outside Germany, a claim pursuant to subsections (1) or (2) shall only exist if the securities were acquired pursuant to a transaction executed in Germany or a securities service rendered either partially or fully in Germany.

(4) Claims under subsections (1) to (3) do not exist if the purchaser was aware of the obligation to publish a prospectus at the time of purchase.

## **Section 25**

### **Invalid limitation of liability; other claims**

- (1) An agreement by which a claim pursuant to sections (21), (23) or (24) is limited or excluded in advance is invalid.
- (2) Further claims which may be asserted pursuant to civil law provisions on the basis of a contract or of prohibited acts shall remain unaffected.

## **Part 7**

### **Competent authority and procedure**

## **Section 26**

### **Powers of the Supervisory Authority**

- (1) If a prospectus is submitted to the Supervisory Authority for approval, the latter may require the offeror or applicant for admission to include in the prospectus supplementary information if deemed necessary for the protection of the interests of the public.
- (2) The Supervisory Authority may require the issuer, offeror or applicant for admission to provide information and documents and submit copies, insofar as this is required in order to monitor compliance with the provisions of this Act. The power specified in sentence 1 also applies vis-à-vis
1. companies affiliated with the issuer, offeror or applicant for admission;
  2. parties in relation to which there is evidence to suggest that they are offerors within the meaning of this Act.

In the case of sentence 2 no. 2, the Supervisory Authority may only request the provision of information and documents and the submission of copies insofar as this is necessary to assess whether or not the party in question is deemed to be an offeror within the meaning of this Act.

(2a) If an issuer, offeror or applicant for admission fails to act on an immediately enforceable demand under section 2 within a reasonable time without justification or fails to do so within a reasonable time despite a repeated request or acts on such demand only partially, the Supervisory Authority may publish this state of affairs in an announcement on its website if there is evidence indicating that no prospectus has been published in contravention of section 3 of this Act or a prospectus has been published in contravention of section 13, or if the prospectus or the registration document is no longer valid pursuant to section 9 of this Act. The request for information and documentation under subsection (2) shall refer to the power described in sentence 1. The announcement may contain only such personal details that enable the identification of the offeror or issuer. In the case of non-final measures, the following note is to be included: "This measure is not yet final". If an appeal has been lodged against the measure, the status and result of the appeal procedure are to be published, too. The announcement shall be deleted after a period of five years at the latest.

(2b) The Supervisory Authority shall refrain from publishing an announcement pursuant to subsection (2a) if the announcement would pose a significant threat to the financial markets of the Federal Republic of Germany or one or more EEA signatory states. The Supervisory Authority may also refrain from publishing an announcement if it has the potential to adversely affect the conduct of criminal or disciplinary investigations, or investigations into administrative offences.

(3) The Supervisory Authority may require auditors and members of the supervisory and executive bodies of the issuer, offeror or applicant for admission, as well as institutions as defined in section 1 (1b) of the Banking Act (*Kreditwesengesetz*) commissioned to carry out the offer to the public or seek admission to trading, or enterprises operating under section 53 (1) sentence 1 or section 53b (1) sentence 1 of the Banking Act, to provide information and documents and submit copies, insofar as this is required in order to monitor compliance with the provisions of this Act.

(4) The Supervisory Authority shall prohibit a public offer if, contrary to section 3, no prospectus has been published, if, contrary to section 13, a prospectus is published, if the prospectus or the registration document is no longer valid pursuant to section 9, if the approval of the prospectus is not evidenced by a certificate pursuant to section 18 (1) or if the prospectus does not comply with the requirements for the use of languages set out in section 19. If the Supervisory Authority has reason to believe that one or more of the provisions set forth in sentence 1 have been contravened, it may order the suspension of a public offer for a maximum of ten days. The period of time specified in sentence 2 shall begin upon announcement of the decision.

(5) The Supervisory Authority may submit data, including personal data, to the stock exchange management or the admissions office if there is reason to suspect that the provisions of this Act have been contravened and the data is required in order to perform the duties which lie within the remit of the stock exchange management or the admissions office.

(6) Persons obliged to furnish information may refuse to do so in respect of any questions, the answers to which would place themselves or one of their relatives as designated in section 383 (1) nos. 1 to 3 of the Code of Civil Procedure (*Zivilprozessordnung*) at risk of criminal prosecution or proceedings under the Act on Breaches of Administrative Regulations (*Gesetz über Ordnungswidrigkeiten*). Such persons shall be informed of their right to refuse to furnish information.

(7) The Supervisory Authority may only use personal data for the purposes of fulfilling its supervisory functions and for the purpose of cooperation in accordance with section 28.

(8) If the Supervisory Authority is made aware of circumstances on the basis of which reasonable grounds exist to suspect a material mistake or significant omission in respect of the contents of a prospectus that is to be used as the basis for admission to trading of securities on an organised market, which could result in the deception of the public, it may exert the powers defined in subsection (2). In the cases set out in sentence 1, the Supervisory Authority may request that the offeror suspend the public offer until the matter is resolved. If the prospectus is, indeed, found to contain a mistake or omission in respect of its contents, the Supervisory Authority may revoke its approval and prohibit the public offer. The Supervisory Authority may submit data obtained in accordance with sentence 1 and decisions in accordance with sentences 2 and 3 to the stock exchange management, as well as to German or foreign admissions offices, insofar as the latter require this information in order to perform their duties.

## **Section 27**

### **Obligation of confidentiality**

(1) Persons employed with the Supervisory Authority and persons commissioned in accordance with section 4 (3) of the Act Establishing the Federal Financial Supervisory Authority (*Finanzdienstleistungsaufsichtsgesetz*) may not, without authorisation, disclose or utilise facts which 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 have ceased employment or their activities have ended. The same shall apply with

respect to other persons who may obtain knowledge of the information referred to in sentence 1 through official reporting. Disclosure or utilisation shall specifically not be deemed made without authorisation as defined in sentence 1 of this subsection, if facts are communicated to

1. public prosecutors' offices or courts having jurisdiction in criminal cases and administrative offence cases; or
2. bodies, and persons commissioned by such bodies, entrusted by law or by order of the 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, investment companies, financial enterprises or insurance undertakings;
3. 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 these bodies require the information for the performance of their functions. The obligation of confidentiality as specified in sentence 1 shall apply *mutatis mutandis* to persons employed by the bodies mentioned in sentence 3 nos. 1 and 2 and to persons commissioned by such bodies. If a body mentioned in sentence 3 no. 1 or 2 is located in another country, the facts may be communicated only if the persons employed by that body and the persons commissioned by that body are subject to an obligation of confidentiality equivalent to that specified in sentence 1.

(2) The provisions of sections 93, 97 and 105 (1), 111 (5) in conjunction with section 105 (1) and section 116 (1) of the Fiscal Code (*Abgabenordnung*) shall only apply to the persons referred to in subsection (1) sentence 1 or 2 to the extent that the tax authorities require the information obtained for a proceeding arising from a criminal tax offence and a tax proceeding related thereto. The provisions listed in sentence 1 shall not apply to the extent that facts

1. that have been communicated to the persons specified in subsection (1) sentence 1 or 2 by a body of another state within the meaning of subsection (1) sentence 3 no. 2 or by persons commissioned by such body; or
2. of which persons employed by the Supervisory Authority obtain knowledge by cooperating in the supervision of institutions directly supervised by the European Central Bank, in particular in joint supervisory teams within the meaning of Article 2(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, p.1) and that are considered classified under the rules of the European Central Bank.

are concerned.

## **Section 28 Cooperation with the competent authorities in other EEA signatory states**

(1) The Supervisory Authority is responsible for cooperation with the competent authorities in the European Union and other EEA signatory states responsible for the supervision of public offers or the admission of securities to trading on an organised market. Within the framework of its cooperation, for purposes of monitoring compliance with the provisions of this Act and equivalent provisions of the countries specified in sentence 1, the Supervisory Authority may make use of all powers available to it by law,

to the extent this is suitable and necessary to honour the requests of the authorities specified in sentence 1.

(2) Upon request by the competent authorities specified in subsection (1) sentence 1, the Supervisory Authority may conduct investigations and communicate information, to the extent that this is necessary for the supervision of organised markets or issuers, offerors or applicants for admission, or their auditors or executive and supervisory bodies, in accordance with the provisions of this Act and corresponding regulations of the countries specified in subsection (1) or administrative or judicial proceedings related thereto. When communicating information, the Supervisory Authority is obliged to instruct the recipient that, without prejudice to his prosecutorial obligations, the communicated information, including personal data, is to be used only to fulfil supervisory duties in accordance with sentence 1 and in the context of administrative and judicial proceedings related thereto.

(3) The Supervisory Authority may refuse an investigation or the communication of information if

1. this might adversely affect the sovereignty, security or public order of the Federal Republic of Germany;
2. judicial proceedings have already been initiated in respect of the same facts against the persons concerned or if a final judgement has been passed; or
3. the investigation or communication of information is not permitted under German law.

(4) The Supervisory Authority may request the competent authorities specified in subsection (1) sentence 1 to conduct investigations and communicate information necessary to perform its functions in accordance with the provisions of this Act, in particular where there are several competent authorities for an issuer in the home state or if trading in certain securities traded in several EEA signatory states is to be suspended or prohibited. Without prejudice to its obligations in prosecutorial matters concerned with contraventions of the provisions of this Act, the Supervisory Authority may disclose or utilise the information received from an authority of another EEA signatory state only for the purpose of performing its supervisory functions in accordance with subsection (2) sentence 1 and in the context of administrative or judicial proceedings related thereto. Any other use of the information is only permitted with the consent of the authority communicating the information. The Supervisory Authority may request the assistance of the European Securities and Markets Authority 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, p. 84) where a request pursuant to sentence 1 has been rejected or has not been acted upon within a reasonable time.

(5) The above shall be without prejudice to the provisions contained in the Securities Trading Act (*Wertpapierhandelsgesetz*) with regard to cooperation with the competent authorities in other countries or the provisions on international assistance in criminal matters.

## **Section 28a**

### **Cooperation with the European Securities and Markets Authority**

Upon request, the Supervisory Authority shall provide the European Securities and Markets Authority without delay with all the information necessary to carry out its duties in accordance with Article 35 of Regulation (EU) No 1095/2010.



## **Section 29**

### **Precautionary measures**

(1) If the issuer, an institution as defined in section 1 (1b) of the Banking Act (*Kreditwesengesetz*) commissioned to place the public offer, or an enterprise commissioned to place the public offer operating under section 53 (1) sentence 1, section 53b (1) or (7) of the Banking Act contravenes section 3 (1) or (4), sections 7, 9, 14 to 16, 18 or 19, or post-admission obligations, the Supervisory Authority shall communicate this information to the competent authority of the home state and the European Securities and Markets Authority. Section 28 (3) to (5) applies *mutatis mutandis*.

(2) If, despite the measures taken by the competent authority of the home state or because such measures are inadequate, the issuer, an institution as defined in section 1 (1b) of the Banking Act commissioned to place the public offer, or an enterprise commissioned to place the public offer operating under section 53 (1) sentence 1, section 53b (1) sentence 1 of the Banking Act contravenes the relevant legal or administrative provisions, the Supervisory Authority may, after informing the competent authority of the home state and the European Securities and Markets Authority, take all appropriate measures in order to protect the public. The European Commission and the European Securities and Markets Authority shall be informed of such measures at the earliest opportunity.

## **Section 30**

### **Publication of measures**

The Supervisory Authority may publish incontestable measures that it has adopted due to contraventions of prohibitions or requirements of this Act on its website, provided that this is necessary to resolve or avoid irregularities, unless such publication would seriously jeopardise the financial markets or would disproportionate damage the parties involved.

## **Section 31**

### **Immediate enforcement**

The following shall have no suspensive effect:

1. objections and actions to annul measures pursuant to section 15 (6) and section 26; and
2. objections and actions to annul the threat or determination of coercive measures.

## **Part 8**

### **Other provisions**

## **Section 32**

### **Information obligation of investment services enterprises**

Subject to written consent of the client in question, investment services enterprises within the meaning of section 2 (4) of the Securities Trading Act (*Wertpapierhandelsgesetz*) shall, upon request and without delay, inform issuers or offerors of their categorisation of that client pursuant to section 31a of the Securities Trading Act.

### **Section 33**

#### **Fees and expenses**

(1) The Supervisory Authority may charge fees and expenses for individually attributable official acts in accordance with this Act, the legal provisions based on this Act, and legislation of the European Union.

(2) The Federal Ministry of Finance is authorised, by means of a Regulation not requiring the consent of the *Bundesrat*, to define the official acts subject to charges and the charge amounts expressed as fixed rates or fee ranges. The fixed rates and fee ranges shall be determined in such a way that there is an appropriate relationship between the amount of administrative effort and the relevance, the economic value or other benefits of the individually attributable official act. The Federal Ministry of Finance may, by means of a Regulation, delegate this authority to the Federal Financial Supervisory Authority.

### **Section 34**

#### **Obligation to appoint**

If the Supervisory Authority is the competent authority for an issuer domiciled outside Germany pursuant to section 2 no. 13 (b) or (c), the issuer shall appoint an agent in Germany. Section 15 sentences 2 and 3 of the Administrative Procedure Act (*Verwaltungsverfahrensgesetz*) shall apply *mutatis mutandis*.

### **Section 35**

#### **Provisions on administrative fines**

- (1) An administrative offence is committed by any person who wilfully or negligently
1. in contravention of section 3 (1), offers securities;
  2. in contravention of section 8 (1) sentence 6 or 7, fails to publish the offer price or offer volume, or does so incorrectly, not in the prescribed form or not within the prescribed period;
  3. in contravention of section 8 (1) sentence 9, fails to file the offer price or offer volume, or fails to do so within the prescribed period;
  4. (repealed)
  5. in contravention of section 13 (1) sentence 1, publishes a prospectus;
  6. in contravention of section 14 (1) sentence 1, also in conjunction with sentence 2, fails to publish a prospectus, or does so incorrectly, incompletely, not in the prescribed form or not within the prescribed period;
  7. in contravention of section 14 (3), fails to make a notification, or makes such notification incorrectly, incompletely, not in the prescribed form or not within the prescribed period;
  - 7a. in contravention of section 14 (4) sentence 2 fails to provide information, or provides such information incorrectly, incompletely, or not within the prescribed period;
  8. in contravention of section 14 (5), fails to provide a paper copy of the prospectus;  
or
  9. in contravention of section 16 (1) sentence 5, fails to publish a supplement, or makes such publication incorrectly, incompletely, not in the prescribed form or not within the prescribed period.

(2) An administrative offence is committed by any person who wilfully or negligently fails to comply with an enforceable order pursuant to

1. section 15 (6) sentence 1 or 2, or section 26 (2) sentence 1; or
2. section 26 (4) sentence 1 or 2.

(3) The administrative offence is punishable by a fine not exceeding five hundred thousand euros in the cases referred to in subsection (1) no. 1 and 5 and subsection (2) no. 2, by a fine not exceeding one hundred thousand euros in the cases referred to in subsection (1) no. 6, and by a fine not exceeding fifty thousand euros in all other cases.

(4) The administrative authority within the meaning of section 36 (1) no. 1 of the Act on Breaches of Administrative Regulations (*Gesetz über Ordnungswidrigkeiten*) is the Federal Financial Supervisory Authority.

### **Section 36**

#### **Transitional provisions**

(1) Issuers from third countries whose securities have already been admitted to trading on an organised market may choose the Supervisory Authority as their competent authority within the meaning of section 2 no. 13 (c), and shall notify the Supervisory Authority of this by 31 December 2005. The Federal Republic of Germany is the home state of issuers from third countries who offered securities to the public in Germany or submitted an application for admission to trading on an organised market in Germany prior to the entry into force of this Act, provided this is

- a) the initial public offer of securities in an EEA signatory state after 31 December 2003; or
- b) the initial application for admission of securities to trading on an organised market in the European Economic Area after 31 December 2003.

(1a) Section 9 (2) of this Act shall continue to apply in the version applicable until 10 July 2015 to public offers whose final terms were filed with the Supervisory Authority by that date. If final terms of securities are filed with the Supervisory Authority within a period of three months starting on 10 July 2015 which refer to base prospectuses that were approved before 10 July 2015, these securities may continue to be offered to the public on the basis of this base prospectus for a period of six months after the filing of the final terms, provided that section 9 (2) does not provide for a longer validity.

(2) Securities which were offered to the public prior to 1 July 2012 on the basis of a base prospectus approved by the Supervisory Authority before that date and of the final terms filed with the Supervisory Authority in accordance with section 9 (5) of the version applicable until 30 June 2012, may continue to be offered to the public until 31 December 2013 inclusive.

(3) The annual document pursuant to section 10 of this Act in the version applicable until 30 June 2012 shall be drawn up for the last time in relation to the period encompassed by the annual financial statements to be published before 1 July 2012, shall be made available to the public and filed with the Supervisory Authority.

### **Section 37**

#### **Transitional provisions on repealing the Prospectus Act** **(*Verkaufsprospektgesetz*)**

The Prospectus Act and sections 44 to 47 of the Stock Exchange Act (*Börsengesetz*) shall continue to apply in their respective versions applicable until 31 May 2012 to claims for incorrect prospectuses which are not the basis for the admission of securities to trading on a German stock exchange and which had been published in Germany prior to 1 June 2012. If prospectuses were not published, in contravention of section 3 (1) sentence 1, the Prospectus Act shall continue to apply in its version applicable until 31 May 2012 to claims resulting thereof that emerged by the end of 31 May 2012.