

# **WpHG Administrative Fine Guidelines II**

Guidelines on the Imposition of Administrative Fines  
for Offences relating to the German Securities Trading  
Act (*Wertpapierhandelsgesetz – WpHG*)

German Federal Financial Supervisory Authority  
(*Bundesanstalt für Finanzdienstleistungsaufsicht – BaFin*)  
Securities Supervision/Asset Management  
Division for Administrative Offence Proceedings

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# Introduction

With the following Administrative Fine Guidelines from the Securities Supervision Directorate, BaFin, in exercise of its discretion in the area, lays out how it imposes administrative fines following the amendments to the German Act Implementing the Transparency Directive Amending Directive (*Gesetz zur Umsetzung der Transparenzrichtlinie-Änderungsrichtlinie – TRL-ÄndRL-UmsG*)<sup>1</sup> as well as after the entry into force of Regulation (EU) No 596/2014 (Market Abuse Regulation – MAR) and of the First Financial Markets Amendment Act (*Erstes Finanzmarktnovellierungsgesetz*) (1<sup>st</sup> FiMaNoG)<sup>2</sup>. The WpHG Administrative Fine Guidelines II supplement the previous WpHG Administrative Fine Guidelines (version dated November 2013) and are valid for offences to which the TRL-ÄndRL-UmsG, the Market Abuse Regulation or the 1<sup>st</sup> FiMaNoG are applicable.

In accordance with section 40 of the WpHG, BaFin is responsible for pursuing and punishing offences relating to the WpHG. Its task is to identify offences against the law and to punish the administrative offences committed. In the process, it ensures that the imposed administrative fine constitutes a sanction which is appropriate, effective and proportionate for the individual case and which has the necessary deterrent effect on the persons committing the breaches (parties concerned) and on third parties.

The WpHG Administrative Fine Guidelines II are divided into a part which provides general information and a part which provides more specific information. The general part describes the scope of the guidelines and elucidates the principles which apply to the assessment of administrative fines against the backdrop of alternative upper limits of administrative fines (*Bußgeldrahmen*) (fixed, turnover-based, gain-based). As a result of modifications to the statutory requirements, when imposing an administrative fine BaFin will first of all identify the upper limit which is pertinent in the individual case before then undertaking an assessment of the specific administrative fine on the basis of a three-step process. In the more specific part, there are detailed explanations on calculation of the base amounts for the offences against capital market law covered by the guidelines.

While nominal values are shown in the area of application of the fixed maximum fine amounts, in the case of turnover- and gain-based maximum fine amounts the base

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<sup>1</sup> German Federal Law Gazette (*Bundesgesetzblatt – BGBl.*) I 2015, 2029.

<sup>2</sup> BGBl. I 2016, 1514.

amounts are influenced by the value judgements contained within the nominal amounts – in particular in the case of especially serious offences.

**Examples in the area of application of turnover-based maximum fine amounts for a company with a market capitalisation of more than EUR 20 billion**





	<b>Provision of financial reports</b>	<b>Ad hoc publication</b>
<b>Relevant turnover (example)</b>	<b>EUR 50 billion</b>	<b>EUR 50 billion</b>
<b>Maximum fine amount</b>	 <b>EUR 2.5 billion</b> (5% of relevant turnover)	 <b>EUR 1 billion</b> (2% of relevant turnover)
<b>Base amount in the case of an exceptionally severe offence</b>	 <b>EUR 2 billion</b>	 <b>EUR 800 million</b>

Figure 1

By contrast, in the case of less serious offences the base amount for turnover- and gain-based maximum fine amounts may differ significantly from this benchmark.

# **WpHG Administrative Fine Guidelines II**

## **Generalities**



# Generalities

## A. Basic principles

### I. Concept and purpose of the WpHG Administrative Fine

#### Guidelines II

The WpHG Administrative Fine Guidelines II are based on BaFin's prosecutorial discretion (cf. section 47 (1) sentence 1 of the German Act on Breaches of Administrative Regulations (*Ordnungswidrigkeitengesetz* – OWiG) as well as section 39 (4), (4a) and (6) of the WpHG). They represent assessment guidelines for administrative fines. They provide additional details on the provisions of section 17 of the OWiG, which governs the assessment of administrative fines and which grants BaFin wide-ranging discretion, and take into account the assessment criteria developed for criminal law.

The purpose of the WpHG Administrative Fine Guidelines II is to define the amount of the administrative fines to be imposed for certain administrative offences relating to the WpHG under the statutory system of administrative fines (*Bußgeldrahmen*). They include not only those circumstances which typically occur when offences are committed (normal cases) but also exceptional situations characterised by a significantly increased degree of wrongdoing and which justify a special deterrent. The WpHG Administrative Fine Guidelines II present the general method for calculating administrative fines; however, the unique circumstances of a particular case may justify a departure from this method or from the base amounts set.

The WpHG Administrative Fine Guidelines II support the principle of equal treatment, which administrative bodies are obliged to comply with. They ensure that materially identical administrative offences are treated in a similar manner, while retaining the focus on the assessment of the specific circumstances of the offence and the offender. Finally, the WpHG Administrative Fine Guidelines II promote the transparency of BaFin's decisions on administrative fines for the parties concerned and for the public.

### II. Scope of the WpHG Administrative Fine Guidelines II

The WpHG Administrative Fine Guidelines II apply to the imposition of fines in accordance with section 39 (4), (4a) and (6) of the WpHG on natural persons and on legal persons in cases in which a responsible person in a managerial position has breached the duties under the WpHG that are sanctioned by administrative fines (assessment of

administrative fines on entities in accordance with section 30 of the OWiG). The determinations of the WpHG Administrative Fine Guidelines II for legal persons apply to associations of persons *mutatis mutandis*.

The WpHG Administrative Fine Guidelines II apply to breaches of the following provisions:

- Article 17(1) subparagraph 1 and subparagraph 2 sentence 1 of the MAR
- Section 21 (1) sentence 1 of the WpHG
- Section 25 (1) sentence 1 of the WpHG
- Section 25a (1) sentence 1 of the WpHG
- Section 26 (1) sentence 1 of the WpHG
- Section 26a (1) sentence 1 of the WpHG
- Section 37v (1) of the WpHG
- Section 37w (1) of the WpHG

The WpHG Administrative Fine Guidelines II are applied both in joint proceedings and in stand-alone proceedings (cf. section 30 (4) of the OWiG).

## **B. Stage 1 – Determining the applicable upper limit of administrative fines**

The provisions of section 39 (4) and section 39 (4a) of the WpHG now provide for two alternative maximum fine amounts for natural persons and three alternative maximum fine amounts for legal persons. According to these provisions, administrative fines can be imposed on the basis of a fixed maximum fine amount or a turnover- or gain-based maximum fine amount. The highest of the two or, as the case may be, three amounts will be applied in each case.

Only fixed maximum fine amounts are provided for in the scope of section 39 (6) of the WpHG. These apply equally to offences committed by natural persons and by legal persons.

### **I. Scope of section 39 (4) of the WpHG**

Within the scope of section 39 (4) of the WpHG, the WpHG Administrative Fine Guidelines II apply to breaches of the following duties:

- Duty to submit voting rights notifications under section 21 (1) sentence 1, section 25 (1) sentence 1 and section 25a (1) sentence 1 of the WpHG
- Publication obligations under section 26 (1) sentence 1 and section 26a (1) sentence 1 of the WpHG
- Provision of a financial report under section 37v (1) sentence 1 and section 37w (1) sentence 1 of the WpHG
- Publication of an announcement on the availability of the financial report under section 37v (1) sentence 2 and section 37w (1) sentence 2 of the WpHG

#### **1. Legal persons**

With regard to legal persons, section 39 (4) of the WpHG provides for the following three alternative maximum fine amounts, of which the highest one in each case shall be considered the applicable upper limit of administrative fines.

- EUR 10 million,
- 5 percent of the total turnover generated by the legal person or association of persons in the financial year prior to the decision of the competent authority or
- twice the economic advantage gained from committing the offence.



## **2. Natural persons**

With regard to natural persons, section 39 (4) of the WpHG provides for the following two alternative maximum fine amounts, of which the highest one in each case shall be considered the applicable upper limit of administrative fines:

- EUR 2 million or
- twice the economic advantage gained from committing the offence.

## **II. Scope of section 39 (4a) of the WpHG**

Within the scope of section 39 (4a) of the WpHG, the WpHG Administrative Fine Guidelines II apply to breaches of the duty to publish inside information under Article 17 (1) subparagraph 1 and subparagraph 2 sentence 1 of the MAR.

### **1. Legal persons**

With regard to legal persons, in cases of breaches of the duty to publish ad hoc notices, section 39 (4a) of the WpHG provides for the following three alternative maximum fine amounts, of which the highest one in each case shall be considered the applicable upper limit of administrative fines:

- EUR 2.5 million,
- 2 percent of the total turnover generated by the legal person or association of persons in the financial year prior to the decision of the competent authority or
- three times the economic advantage gained from committing the offence.

### **2. Natural persons**

With regard to natural persons, section 39a (4a) of the WpHG provides for the following two alternative maximum fine amounts, of which the higher of the two in each case shall be considered the applicable upper limit of administrative fines:

- EUR 1 million or
- three times the economic advantage gained from committing the offence.

### **III. Scope of section 39 (6) of the WpHG**

Within the scope of section 39 (6) of the WpHG, the WpHG Administrative Fine Guidelines II apply to breaches of the following duties:

- Notification of BaFin regarding the publication of an announcement under section 37v (1) sentence 3 and section 37w (1) sentence 3 of the WpHG
- Transmission of an announcement to the company register under section 37v (1) sentence 3 and section 37w (1) sentence 3 of the WpHG
- Transmission of a financial report to the company register under section 37v (1) sentence 4 and section 37w (1) sentence 4 of the WpHG

With regard to natural and legal persons, section 39 (6) of the WpHG provides for administrative fines with an upper limit for fixed maximum fine amounts of five hundred thousand euros. These apply equally to offences committed by natural persons and by legal persons.

## **C. Stage 2 – Assessment of administrative fines pursuant to section 17 of the OWiG**

After determining the upper limit of administrative fines applicable in the individual case, at stage two an assessment of the specific administrative fine is undertaken. Based on the statutory maximum fine amount set out in section 39 (4), (4a) or (6) of the WpHG, each administrative fine has to be assessed in accordance with the provisions of section 17 of the OWiG.

BaFin will assess each administrative fine using a three-step process based on the specific circumstances of the case: in the first step, the base amount is calculated using assessment criteria that are relevant to the offence (I.); in the second step, the base amount is adjusted to reflect the specific guilt of the party concerned using additional assessment criteria relevant to the offence and in particular to the offender (II.); and in the third step, the financial circumstances of the party concerned are considered (III.). When BaFin imposes the fine, it also reserves the right to skim off the economic benefit that the party concerned obtained as a result of the offence (cf. section 17 (4) of the OWiG).

The base amount must reflect the significance of the punishable administrative offence within the system of administrative fines applicable in each case (cf. section 17 (3) sentence 1 of the OWiG). In particular, the adjustment of the base amount (increase or decrease) reflects the charge faced by the offender (cf. section 17 (3) sentence 1 of the OWiG). BaFin also takes the offender's financial capacity into account, which may lead to an adjustment of the administrative fine (cf. section 17 (3) sentence 2 of the OWiG).

### **I. Step 1 – Calculation of the base amount**

The base amount places a value on the severity of the offence within the system of administrative fines applicable in each case. The latter shall not be measured in terms of those cases that occur especially often in practice, but in terms of those cases that are conceivable.

### **II. Step 2 – Adjustment of the base amount**

In the second step for assessing administrative fines, the mitigating and aggravating circumstances relating to the party concerned must be weighed up; in particular, these include offender-related criteria. Examples are the behaviour of the party concerned before the offence and after it during BaFin's investigations. This has an aggravating or

mitigating effect on the sanction (the amount of the administrative fine). Assessment criteria that have already been taken into account in calculating the base amount cannot be considered again when adjusting it.

If there are any mitigating and/or aggravating circumstances, the sanction may be less or more than the calculated base amount. This step finally establishes the amount of the fine to be imposed (subject to an assessment of the offender's financial capacity). The following non-exhaustive list of assessment criteria is particularly relevant in this context: additional adjustment criteria may need to be used in individual cases.

## **1. Mitigating adjustment criteria**

### **a. Negligent (or reckless) behaviour**

The party concerned behaves in a manner that is (only) negligent or reckless. However, this mitigation option only applies to those administrative fines for which the provision contained within section 17 (2) of the OWiG does not apply under section 39 (6a) of the WpHG. Section 17 (2) of the OWiG provides for at most one-half of the threatened maximum fine amount being imposed in each case for non-intentional violations. For offences which fall into this category, the provisions of the relevant EU legislative acts stipulate that the system of administrative fines contained therein must apply in the absence of a legal provision for an across-the-board lowering of the maximum fine amount in the event of negligent behaviour. However, the provisions of European Union law, such as point (b) of Article 31(1) of the MAR, make it clear that the degree of responsibility of the party concerned can be relevant when making assessments in relation to administrative fines.

### **b. Confession**

The party concerned confesses that the *actus reus* and *mens rea* (the objective and subjective elements of the offence) have been committed. The quality of the confession must be taken into account. A voluntary self-incrimination by the party concerned is treated as a confession. A voluntary self-incrimination exists if BaFin would not have become aware of the offence without the cooperation of the party concerned. The party concerned contacted BaFin and informed BaFin of their failure to comply with the law.

### **c. Cooperation with BaFin's investigations**

This is defined as statements relating to the facts of the offence other than a confession. The statements must be relevant to the allegation. The party concerned assists in explaining and reconstructing the course of events.

#### **d. Promise/measures taken to improve**

Promises to improve are defined as statements made by the party concerned to the effect that it has taken precautions to prevent further offences in future. Such statements must be credible. Furthermore, specific measures taken to improve must be taken into account. These measures must be presented in detail and be substantiated. Proof of them must also be provided to BaFin.

#### **e. Long proceedings**

With respect to the duration of the proceedings, two components must be taken into account:

- the period of time between the end of the offence and the issue of the administrative order imposing the fine and
- the duration of the official proceedings from the time when the authority becomes aware of the offence until the administrative order imposing the fine is issued.

The delays must not have been caused by the party concerned or be the result of the complexity of the proceedings.

## **2. Aggravating adjustment criteria**

### **a. Repeat offence**

An offence has been committed again although a factually and temporally related offence against the legal provisions governing the capital markets was previously punished by a final and binding order imposing an administrative fine, or by a final and binding court decision. Under certain circumstances, an administrative order imposing a fine issued after the offence was committed may also be considered as a reason to increase the administrative fine to be imposed if the party concerned was aware at a minimum that the investigative proceedings had commenced when it committed the second offence.

Provisions are considered to be materially related where it emerges that the party concerned is disregarding the mandatory requirements and prohibitions that apply to a

particular area. For example, this includes all the provisions of the WpHG. A temporal relationship is deemed to exist when the fine was imposed within the previous five years. The date on which the punishment of the first offence became effective marks the start of the period.

#### **b. Special deterrence**

The administrative fine must be increased, among other cases, if the party concerned, out of disrespect for the law, expresses its intent to continue to disregard the legal system in future (increased intransigence) and rejects its duty to observe capital market norms in future. The party concerned takes the view that it does not need to comply with the law. Given the offence and the personality of the party concerned, the assumption can be made that a lower administrative fine will not sufficiently deter such person. Remaining silent at a hearing or disputing the allegations shall not be considered intransigence.

### **III Step 3 – Consideration of financial capacity**

In the last step, the amount of the administrative fine may be adjusted based on the financial capacity of the party concerned (which may be estimated where appropriate). Under certain circumstances, permission may be granted for the administrative fine imposed to be paid in specified instalments or to be deferred until a later date (section 18 of the OWiG).

# WpHG Administrative Fine Guidelines II

## Specifics



## **B. Specifics**

### **A. Principles for calculating the base amount for fixed maximum fine amounts**

The base amounts for fixed maximum fine amounts for legal and natural persons are set out below. Natural persons may be affected as the direct addressees for obligations such as those relating to voting rights. In addition, this category includes persons whose function may lead to an administrative fine that is to the legal person's disadvantage. An example here are members of a company's governing bodies who are authorised representatives in accordance with section 30 (1) no. 1 of the OWiG and – independently of their formal legal position – persons acting on behalf of the management in accordance with section 30 (1) no. 5 of the OWiG. For example, this could be the compliance officer or a person in the operation or enterprise who is responsible for internal accounting or auditing.

While in the scope of section 39 (4) and (4a) of the WpHG separate base amounts are shown for offences committed by natural and legal persons, the base amounts in the scope of section 39 (6) of the WpHG apply equally to offences committed by both categories of persons.

The base amount is calculated based on a combination of the assessment criteria relevant to the offence – the "size of the issuer" (1) and the "severity of the circumstances of the offence" (2). On the one hand, these criteria take into account the issuer's significance for the capital markets (its market position); on the other hand, the specific circumstances of the punishable administrative offence are also taken into account.

#### **I. Categorisation of the issuer**

Issuers are grouped into six defined size categories that correspond to their market position. The key defining criterion in this context is in particular the issuer's market capitalisation at the time the offence was committed, although exceptions and deviations from this principle are permitted.

<b>Categorisation of the issuer on the basis of market capitalisation</b>
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<b>Issuer group</b>	<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>	<b>E</b>	<b>F</b>
<b>Market capitalisation in EUR</b>	Over 20 billion	Over 4 billion to 20 billion	Over 500 million to 4 billion	Over 100 million to 500 million	Over 10 million to 100 million	Up to 10 million

Figure 2

## **II. Categorisation of the circumstances of the offence**

The severity of the violation is also assessed in line with the specific circumstances of the individual offence. To this end, the circumstances of the offence are classified as "exceptionally severe", "very severe", "severe", "moderate", or "mild". Examples of regular, typically occurring circumstances of the punishable administrative offence are given below. They include in particular the type of breach involved, its effect on the capital markets and its duration. In most cases, multiple circumstances exist which are then weighted and assessed together in the process of weighing up and arriving at an overall evaluation of the administrative offence.

The base amounts apply to a single offence in each case.

## B. Base amounts for fixed maximum fine amounts

### I. Ad hoc publication

#### *Nominal base amounts for legal persons*

<b>Duty to publish inside information under Article 17(1) subparagraph 1 and subparagraph 2 sentence 1 of the MAR</b> Administrative fines of up to EUR 2,500,000 (section 39 (4a) sentence 2 no. 2 and section 39 (3d) no. 6 and no. 7 of the WpHG)							
Amounts are in EUR		Issuer group					
		A	B	C	D	E	F
Circumstances of the offence	Exceptionally severe	2,000,000	1,750,000	1,500,000	1,250,000	1,000,000	750,000
	Very severe	1,750,000	1,500,000	1,250,000	1,000,000	750,000	500,000
	Severe	1,500,000	1,250,000	1,000,000	625,000	425,000	350,000
	Moderate	1,000,000	875,000	625,000	425,000	300,000	250,000
	Mild	625,000	500,000	375,000	225,000	150,000	125,000

Figure 3

#### *Nominal base amounts for natural persons*

<b>Duty to publish inside information under Article 17(1) subparagraph 1 and subparagraph 2 sentence 1 of the MAR</b> Administrative fines of up to EUR 1,000,000 (section 39 (4a) sentence 1 and section 39 (3d) no. 6 and no. 7 of the WpHG)							
Amounts are in EUR		Issuer group					
		A	B	C	D	E	F
Circumstances of the offence	Exceptionally severe	800,000	700,000	600,000	500,000	400,000	300,000
	Very severe	700,000	600,000	500,000	400,000	300,000	200,000
	Severe	600,000	500,000	400,000	250,000	170,000	140,000
	Moderate	400,000	350,000	250,000	170,000	120,000	100,000
	Mild	250,000	200,000	150,000	90,000	60,000	50,000

Figure 4

Under section 39 (6a) of the WpHG, section 17 (2) of the OWiG is not to be applied to offences against Article 17 (1) subparagraph 1 and subparagraph 2 sentence 1 of the MAR.

**Specific circumstances of the offence**

- Length of the delay
- Extent of the errors in the inside information to be published ad hoc
- Extent of the incompleteness of the inside information to be published ad hoc
- Effect on the capital markets/impact of the breach on the capital markets (e.g. stock exchange turnover, free float, actual share price)
- Subject of the ad hoc announcement (e.g. change in personnel, key earnings figures, insolvency)
- Need for administrative coercion

## II. Voting rights notifications

### *Nominal base amounts for legal persons*

<b>Duty to submit voting rights notifications under section 21 (1) sentence 1, section 25 (1) sentence 1 and section 25a (1) sentence 1 of the WpHG</b>							
Administrative fines of up to EUR 10,000,000 (section 39 (4) sentence 2 no. 1 and section 39 (2) no. 2 (f) and (g) of the WpHG)							
Amounts are in EUR		Issuer group					
		A	B	C	D	E	F
Circumstances of the offence	Exceptionally severe	6,000,000	5,000,000	4,000,000	3,500,000	3,000,000	2,000,000
	Very severe	5,000,000	4,000,000	3,500,000	3,000,000	2,500,000	1,500,000
	Severe	4,000,000	2,000,000	1,200,000	600,000	400,000	300,000
	Moderate	2,800,000	1,400,000	800,000	400,000	300,000	200,000
	Mild	1,400,000	700,000	400,000	300,000	200,000	100,000

Figure 5

### *Nominal base amounts for natural persons*

<b>Duty to submit voting rights notifications under section 21 (1) sentence 1, section 25 (1) sentence 1 and section 25a (1) sentence 1 of the WpHG</b>							
Administrative fines of up to EUR 2,000,000 (section 39 (4) sentence 1 and section 39 (2) no. 2 (f) and (g) of the WpHG)							
Amounts are in EUR		Issuer group					
		A	B	C	D	E	F
Circumstances of the offence	Exceptionally severe	1,200,000	1,000,000	800,000	700,000	600,000	400,000
	Very severe	1,000,000	800,000	700,000	600,000	500,000	300,000
	Severe	800,000	400,000	240,000	120,000	80,000	60,000
	Moderate	560,000	280,000	160,000	80,000	60,000	40,000
	Mild	280,000	140,000	80,000	60,000	40,000	20,000

Figure 6

The size of the base amounts takes into account the fact that generally two administrative fines are levied jointly – one due to the breach of the duty to notify the issuer and one due to the breach of the duty to notify BaFin (section 20 of the OWiG).

Under section 39 (6a) of the WpHG, section 17 (2) of the OWiG is not to be applied to offences against section 21 (1) sentence 1, section 25 (1) sentence 1 and section 25a (1) sentence 1 of the WpHG.

Specific circumstances of the offence

- Length of the delay
- Extent of the errors in the notification to be corrected and effect of the error on the information content of the voting rights notification (including errors relating to the date on which the threshold was crossed, erroneous information on the name of the party subject to the notification requirement and on the percentage of voting rights held)
- Extent of the change in the percentage of voting rights held (including if a major shareholder sells its entire equity interest, the increase in the percentage of voting rights held, the number of voting rights thresholds affected, relevance for the German Securities Acquisition and Takeover Act (*Wertpapiererwerbs- und Übernahmegesetz – WpÜG*))
- Event causing the threshold to be crossed (including as a consequence of a capitalisation measure)
- Issues relevant to the group as a whole
- Effect of the breach on the capital markets (including free float, major shareholder)
- Need for administrative coercion

### III. Voting rights publications

#### *Nominal base amounts for legal persons*

<b>Publication requirement under section 26 (1) sentence 1 of the WpHG</b> Administrative fines of up to EUR 10,000,000 (section 39 (4) sentence 2 no. 1 and section 39 (2) no. 5 (c) of the WpHG)							
<b>Amounts are in EUR</b>		<b>Issuer group</b>					
		<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>	<b>E</b>	<b>F</b>
<b>Circumstances of the offence</b>	Exceptionally severe	8,000,000	7,000,000	6,000,000	5,000,000	4,000,000	3,000,000
	Very severe	7,000,000	6,000,000	5,000,000	4,000,000	3,000,000	2,000,000
	Severe	4,500,000	2,500,000	2,000,000	1,500,000	900,000	600,000
	Moderate	3,000,000	1,600,000	1,400,000	1,000,000	600,000	400,000
	Mild	1,500,000	800,000	700,000	500,000	300,000	200,000

Figure 7

#### *Nominal base amounts for natural persons*

<b>Publication requirement under section 26 (1) sentence 1 of the WpHG</b> Administrative fines of up to EUR 2,000,000 (section 39 (4) sentence 1 and section 39 (2) no. 5 (c) of the WpHG)							
<b>Amounts are in EUR</b>		<b>Issuer group</b>					
		<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>	<b>E</b>	<b>F</b>
<b>Circumstances of the offence</b>	Exceptionally severe	1,600,000	1,400,000	1,200,000	1,000,000	800,000	600,000
	Very severe	1,400,000	1,200,000	1,000,000	800,000	600,000	400,000
	Severe	900,000	500,000	400,000	300,000	180,000	120,000
	Moderate	600,000	320,000	280,000	200,000	120,000	80,000
	Mild	300,000	160,000	140,000	100,000	60,000	40,000

Figure 8

Under section 39 (6a) of the WpHG, where an offence against section 26 (1) sentence 1 of the WpHG has been committed recklessly, the provision contained in section 17 (2) of the OWiG is to be applied. Accordingly, the amounts shown in the above table are to be halved.

## Specific circumstances of the offence

- Length of the delay
- Extent of the errors in the notification to be corrected and effect of the error on the information content of the voting rights notification (including errors relating to the date on which the threshold was crossed, erroneous information on the name of the party subject to the notification requirement or the issuer and on the percentage of voting rights held)
- Extent of the change in the voting rights held in the voting rights notification to be published
- Number of voting rights thresholds affected (including if a major shareholder sells its entire equity interest, increase in the percentage of voting rights held)
- Effect of the breach on the capital markets
- Need for administrative coercion

## IV. Publication of the total number of voting rights

### *Nominal base amounts for legal persons*

<b>Publication requirement under section 26 (1) sentence 1 of the WpHG</b> Administrative fines of up to EUR 10,000,000 (section 39 (4) sentence 2 no. 1 and section 39 (2) no. 5 (c) of the WpHG)							
<b>Amounts are in EUR</b>		<b>Issuer group</b>					
		<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>	<b>E</b>	<b>F</b>
<b>Circumstances of the offence</b>	Exceptionally severe	8,000,000	7,000,000	6,000,000	5,000,000	4,000,000	3,000,000
	Very severe	7,000,000	6,000,000	5,000,000	4,000,000	3,000,000	2,000,000
	Severe	4,500,000	2,500,000	2,000,000	1,500,000	900,000	600,000
	Moderate	3,000,000	1,600,000	1,400,000	1,000,000	600,000	400,000
	Mild	1,500,000	800,000	700,000	500,000	300,000	200,000

Figure 9

### *Nominal base amounts for natural persons*

<b>Publication requirement under section 26 (1) sentence 1 of the WpHG</b> Administrative fines of up to EUR 2,000,000 (section 39 (4) sentence 1 and section 39 (2) no. 5 (c) of the WpHG)							
<b>Amounts are in EUR</b>		<b>Issuer group</b>					
		<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>	<b>E</b>	<b>F</b>
<b>Circumstances of the offence</b>	Exceptionally severe	1,600,000	1,400,000	1,200,000	1,000,000	800,000	600,000
	Very severe	1,400,000	1,200,000	1,000,000	800,000	600,000	400,000
	Severe	900,000	500,000	400,000	300,000	180,000	120,000
	Moderate	600,000	320,000	280,000	200,000	120,000	80,000
	Mild	300,000	160,000	140,000	100,000	60,000	40,000

Figure 10

Under section 39 (6a) of the WpHG, where an offence against section 26a (1) sentence 1 of the WpHG has been committed recklessly, the provision contained in section 17 (2) of the OWiG is to be applied. Accordingly, the amounts shown in the above table are to be halved.



### **Specific circumstances of the offence**

- Length of the delay
- Extent of the errors in the notification to be corrected and the effect of the error on the statutory information required (including on the total number of voting rights, on the date of effectiveness and on the issuer)
- Publication of incorrect supplemental information
- Effect of the breach on the capital markets
- Need for administrative coercion

## V. Financial reporting requirements

### 1. Provision of financial reports

#### *Nominal base amounts for legal persons*

<b>Provision of a financial report under section 37v (1) sentence 1 and section 37w (1) sentence 1 of the WpHG</b> Administrative fines of up to EUR 10,000,000 (section 39 (4) sentence 2 no. 1 and section 39 (3) no. 12 of the WpHG)							
<b>Amounts are in EUR</b>		<b>Issuer group</b>					
		<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>	<b>E</b>	<b>F</b>
<b>Circumstances of the offence</b>	Exceptionally severe	8,000,000	7,000,000	6,000,000	5,000,000	4,000,000	3,000,000
	Very severe	7,000,000	6,000,000	5,000,000	4,000,000	3,000,000	2,000,000
	Severe	5,000,000	2,500,000	2,000,000	1,500,000	1,200,000	900,000
	Moderate	3,500,000	2,000,000	1,500,000	1,200,000	900,000	600,000
	Mild	2,000,000	1,500,000	1,000,000	900,000	600,000	300,000

Figure 11

#### *Nominal base amounts for natural persons*

<b>Provision of a financial report under section 37v (1) sentence 1 and section 37w (1) sentence 1 of the WpHG</b> Administrative fines of up to EUR 2,000,000 (section 39 (4) sentence 1 and section 39 (3) no. 12 of the WpHG)							
<b>Amounts are in EUR</b>		<b>Issuer group</b>					
		<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>	<b>E</b>	<b>F</b>
<b>Circumstances of the offence</b>	Exceptionally severe	1,600,000	1,400,000	1,200,000	1,000,000	800,000	600,000
	Very severe	1,400,000	1,200,000	1,000,000	800,000	600,000	400,000
	Severe	1,000,000	500,000	400,000	300,000	240,000	180,000
	Moderate	700,000	400,000	300,000	240,000	180,000	120,000
	Mild	400,000	300,000	200,000	180,000	120,000	60,000

Figure 12

Under section 39 (6a) of the WpHG, where offences against section 37v (1) sentence 1 and section 37w (1) sentence 1 of the WpHG have been committed, section 17 (2) of the OWiG is not to be applied.

**Specific circumstances of the offence**

- Length of the delay
- Effect of the breach on the capital markets (including failure to provide financial reports in times of crisis, withholding of critical data, free float, connection with any threat of default or insolvency)
- Need for administrative coercion

## 2. Publication of announcements

### *Nominal base amounts for legal persons*

<b>Publication of an announcement on the availability of the financial report under section 37v (1) sentence 2 and section 37w (1) sentence 2 of the WpHG</b> Administrative fines of up to EUR 10,000,000 (section 39 (4) sentence 2 no. 1 and section 39 (2) no. 5 (g) and (h) of the WpHG)							
<b>Amounts are in EUR</b>		<b>Issuer group</b>					
		<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>	<b>E</b>	<b>F</b>
<b>Circumstances of the offence</b>	Exceptionally severe	8,000,000	7,000,000	6,000,000	5,000,000	4,000,000	3,000,000
	Very severe	7,000,000	6,000,000	5,000,000	4,000,000	3,000,000	2,000,000
	Severe	2,500,000	1,200,000	1,000,000	800,000	600,000	400,000
	Moderate	2,000,000	1,000,000	800,000	600,000	400,000	200,000
	Mild	1,500,000	700,000	600,000	400,000	200,000	100,000

Figure 13

### *Nominal base amounts for natural persons*

<b>Publication of an announcement on the availability of the financial report under section 37v (1) sentence 2 and section 37w (1) sentence 2 of the WpHG</b> Administrative fines of up to EUR 2,000,000 (section 39 (4) sentence 1 and section 39 (2) no. 5 (g) and (h) of the WpHG)							
<b>Amounts are in EUR</b>		<b>Issuer group</b>					
		<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>	<b>E</b>	<b>F</b>
<b>Circumstances of the offence</b>	Exceptionally severe	1,600,000	1,400,000	1,200,000	1,000,000	800,000	600,000
	Very severe	1,400,000	1,200,000	1,000,000	800,000	600,000	400,000
	Severe	500,000	240,000	200,000	160,000	120,000	80,000
	Moderate	400,000	200,000	160,000	120,000	80,000	40,000
	Mild	300,000	140,000	120,000	80,000	40,000	20,000

Figure 14

Under section 39 (6a) of the WpHG, where offences against section 37v (1) sentence 2 and section 37w (1) sentence 2 of the WpHG have been committed, section 17 (2) of the OWiG is not to be applied.

### 3. Notifying BaFin of the publication of announcements

#### *Nominal base amounts for natural and legal persons*

<b>Notification of BaFin regarding the publication of an announcement under section 37v (1) sentence 3 and section 37w (1) sentence 3 of the WpHG</b> Administrative fines of up to EUR 200,000 (section 39 (6) and section 39 (2) no. 2 (n) and (o) of the WpHG)							
<b>Amounts are in EUR</b>		<b>Issuer group</b>					
		<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>	<b>E</b>	<b>F</b>
<b>Circumstances of the offence</b>	Exceptionally severe	160,000	140,000	120,000	100,000	80,000	60,000
	Very severe	140,000	120,000	100,000	80,000	60,000	40,000
	Severe	75,000	40,000	30,000	25,000	20,000	15,000
	Moderate	60,000	30,000	25,000	20,000	15,000	10,000
	Mild	40,000	20,000	20,000	15,000	10,000	5,000

Figure 15

Where an offence against section 37v (1) sentence 3 and section 37w (1) sentence 3 of the WpHG has been committed recklessly, section 17 (2) of the OWiG is to be applied. Accordingly, the amounts shown in the above table are to be halved.

#### 4. Transmission of the announcements to the companies register

##### *Nominal base amounts for natural and legal persons*

<b>Transmission of an announcement to the companies register                      under section 37v (1) sentence 3 and section 37w (1) sentence 3 of the WpHG</b> Administrative fines of up to EUR 500,000 (section 39 (6) and section 39 (2) no. 11 (a) of the WpHG)							
Amounts are in EUR		Issuer group					
		A	B	C	D	E	F
Circumstances of the offence	Exceptionally severe	400,000	350,000	300,000	250,000	200,000	150,000
	Very severe	350,000	300,000	250,000	200,000	150,000	100,000
	Severe	210,000	100,000	85,000	70,000	50,000	40,000
	Moderate	170,000	85,000	70,000	55,000	40,000	30,000
	Mild	120,000	60,000	50,000	40,000	30,000	20,000

Figure 16

Where an offence against section 37v (1) sentence 3 and section 37w (1) sentence 3 of the WpHG has been committed recklessly, section 17 (2) of the OWiG is to be applied. Accordingly, the amounts shown in the above table are to be halved.

## 5. Transmission of financial reports to the companies register

### *Nominal base amounts for natural and legal persons*

<b>Transmission of a financial report to the companies register under section 37v (1) sentence 4 and section 37w (1) sentence 4 of the WpHG</b> Administrative fines of up to EUR 500,000 (section 39 (6) and section 39 (2) no. 24 of the WpHG)							
<b>Amounts are in EUR</b>		<b>Issuer group</b>					
		<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>	<b>E</b>	<b>F</b>
<b>Circumstances of the offence</b>	Exceptionally severe	400,000	350,000	300,000	250,000	200,000	150,000
	Very severe	350,000	300,000	250,000	200,000	150,000	100,000
	Severe	250,000	130,000	100,000	75,000	55,000	45,000
	Moderate	200,000	100,000	80,000	60,000	45,000	35,000
	Mild	140,000	70,000	60,000	45,000	35,000	25,000

Figure 17

Where an offence against section 37v (1) sentence 3 and section 37w (1) sentence 3 of the WpHG has been committed recklessly, section 17 (2) of the OWiG is to be applied. Accordingly, the amounts shown in the above table are to be halved.