

DEUTSCHE BUNDESBANK

Notice on the granting of authorisation to provide financial services pursuant to section 32 (1) of the German Banking Act

(18 November 2016)

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1 Financial services requiring authorisation

Anyone wishing to provide financial services in Germany (within the jurisdictional reach of the German Banking Act (*Kreditwesengesetz*, KWG)) commercially or on a scale that requires a commercially organised business undertaking generally needs **written authorisation** from the Federal Financial Supervisory Authority (*Bundesanstalt für Finanzdienstleistungsaufsicht*, BaFin) (section 32 (1) of the Banking Act). Exceptions apply to undertakings domiciled in another country of the European Economic Area (EEA) (section 53b of the Banking Act). Authorisation must be obtained before commencing business operations; entries in public registers (e.g. the Commercial Register (*Handelsregister*)) may be made only if the court of registration has been provided with proof of such authorisation (section 43 (1) of the Banking Act). The Federal Financial Supervisory Authority (hereinafter referred to as BaFin) may grant authorisation subject to conditions; moreover, it may limit the authorisation to specific types of financial services (section 32 (2) of the Banking Act). If financial services are provided without the necessary authorisation, BaFin may, pursuant to section 37 of the Banking Act, order the undertaking and the members of its governing bodies to cease business operations immediately and to settle this business immediately. Compulsory measures may also be imposed on undertakings and members of their governing bodies involved in the initiation, conclusion or settlement of the unauthorised business operations. It is a punishable offence to provide financial services without authorisation (section 54 of the Banking Act).

1.1 Pursuant to section 1 (1a) sentence 1 of the Banking Act, **financial services institutions** are undertakings that provide financial services to others **commercially** or on a scale that requires a **commercially organised business undertaking**.

Business operations are considered to be performed commercially if the operation is intended to continue for a **certain length of time** and is conducted with the **intention of making a profit**. Alternatively, the criterion of the requirement for a commercially organised business undertaking applies. What is crucial for fulfilment of this criterion is not whether a commercially organised business undertaking exists, but solely whether the scale of the business **objectively requires a commercially organised business undertaking**.

1.2 The definition of what are to be deemed as **financial services** is laid down in section 1 (1a) sentence 2 numbers 1 to 12, sentences 3 and 4 of the Banking Act. Accordingly, financial services comprise:

1. the brokering of business involving the purchase and sale of financial instruments (**investment broking**),
 - 1a. providing customers or their representatives with personal recommendations in respect of transactions relating to certain financial instruments where the recommendation is based on an evaluation of the investor's personal circumstances or is presented as being suitable for the investor and is not provided exclusively via information distribution channels or for the general public (**investment advice**),
 - 1b. operating a multilateral facility, which brings together the interests of a large number of persons in the purchase and sale of financial instruments within the facility according to set rules in a way that results in a purchase agreement for these financial instruments (**operation of a multilateral trading facility**),
 - 1c. the placing of financial instruments without a firm commitment basis (**placement business**),
2. the purchase and sale of financial instruments on behalf of and for the account of others (**contract broking**),
3. the management of individual portfolios of financial instruments for others on a discretionary basis (**portfolio management**),
4.
 - a) continuously offering to purchase or sell financial instruments at self-determined prices in an organised market or a multilateral trading facility,
 - b) frequent organised and systematic conduct of trading for own account outside an organised market or a multilateral trading facility, by providing a system accessible to third parties in order to conduct business transactions with them,
 - c) the purchase or sale of financial instruments for own account as a service for others, or
 - d) the purchase or sale of financial instruments for own account as a direct or indirect participant in a domestic organised market or multilateral trading facility by means of a high-frequency algorithmic trading strategy that is characterised by the use of infrastructures designed to minimise latency periods through the system decision on the initiation, generation, routing or execution of an order without human intervention for individual transactions or orders and by a large volume of intraday reports in the

form of orders, quotes or cancellations, including where no service for others is rendered (**proprietary trading**),

5. the brokering of deposit business with undertakings domiciled outside the European Economic Area (non-EEA country) (**non-EEA deposit broking**),
7. dealing in foreign notes and coins (**foreign currency dealing**),
9. the ongoing purchase of receivables on the basis of standard agreements, with or without recourse (**factoring**),
10. the conclusion of financial lease agreements in the capacity of the lessor and the management of asset-leasing vehicles within the meaning of section 2 (6) sentence 1 number 17 separately from the management of a collective investment scheme within the meaning of section 1 (1) of the Capital Investment Code (*Kapitalanlagegesetzbuch*) (**financial leasing**),
11. the purchase and sale of financial instruments separately from the management of a collective investment scheme within the meaning of section 1 (1) of the Capital Investment Code for a community of investors, who are natural persons, on a discretionary basis with regard to the choice of financial instruments, insofar as this is a core element of the product offered and serves the purpose of ensuring that these investors have a share in the performance of the financial instruments acquired (**asset management**),
12. the safe custody and administration of securities solely for alternative investment funds (AIF) within the meaning of section 1 (3) of the Capital Investment Code (**limited custody business**).

Anyone wishing not only to conduct banking business or to provide financial services within the meaning of section 1 (1a) sentence 2 numbers 1 to 5 and 11 of the Banking Act but also to engage in the purchase or sale of financial instruments for own account, but not fulfilling the requirements for proprietary trading (proprietary business), also requires written authorisation from BaFin to undertake this activity (section 32 (1a) of the Banking Act).

The financial services set out above are described in more detail below. Further information may be found in the guidance notices on the regulated activities, which can be downloaded from www.bafin.de.

Investment broking (number 1)

The activities of an investment broker consist in receiving and transmitting investors' orders insofar as they relate to financial instruments pursuant to section 1 (11) of the Banking Act¹. Anyone who deliberately and definitively influences an investor so that the investor concludes a transaction for the purchase and sale of financial instruments is also undertaking investment broking.

Investment advice (number 1a)

Investment advice constitutes recommending to an investor that a particular action is in his/her interests. Merely providing a customer with information does not constitute investment advice. The recommendation should involve advice tailored to the customer with regard to a specific financial instrument or the advice must at least give the impression of taking the customer's personal circumstances into account. A mere recommendation to a non-individually determinable group of persons, such as in a newspaper or similar, is not sufficient.

Operation of a multilateral trading facility (number 1b)

A multilateral trading facility exists where the interests of individual persons in the purchase or sale of financial instruments pursuant to section 1 (11) of the Banking Act are brought together without any discretionary scope with respect to the final conclusion of a transaction with a particular contracting party. This requires a firm set of rules; a platform in the technical sense is not necessary. Bilateral facilities in which the counterparty to a purchase or sale is always one and the same bidder are not deemed to be multilateral trading facilities. The same is true of advertising systems that function like electronic noticeboards on which interested parties can post their trading requests.

Placement business (number 1c)

Placement business is a special kind of contract broking in which the institution acts on a disclosed agency basis for the customer vis-à-vis investors in the placement of financial instruments.

Contract broking (number 2)

The purchase and sale of financial instruments is undertaken on a disclosed agency basis, i.e. in the name and for the account of the customer.

¹ See section 1.3.

Portfolio management (number 3)

A key criterion for classification as a portfolio manager is that he/she has discretionary leeway regarding the investment decisions to be made. Discretionary leeway exists if specific investment decisions are made at the manager's discretion.

The portfolio manager must have securities placed in a safe custody account of the customer at a credit institution; otherwise, he/she would require an authorisation to conduct safe custody business and would thus him/herself be a credit institution.

Proprietary trading (number 4)

When trading as a proprietary trader on behalf of a third party, the institution acts as a purchaser and seller rather than as a commission agent vis-à-vis its customer. Even if the trade is a contract of sale under civil law, it is classified as a service within the meaning of the Markets in Financial Instruments Directive (Directive 2004/39/EC — MiFID).

Trading in financial instruments must always be assigned to one of the following five categories:

- Trading on behalf of and for the account of others (disclosed agency) is a financial service within the meaning of section 1 (1a) sentence 2 number 2 of the Banking Act (contract broking).
- Trading on behalf of and for the account of others (disclosed agency) within the scope of placement business is a financial service within the meaning of section 1 (1a) sentence 2 number 1c of the Banking Act (placement business).
- Trading in the credit institution's own name for the account of others (undisclosed agency) is banking business within the meaning of section 1 (1) sentence 2 number 4 of the Banking Act (principal broking services).²
- Trading in the credit institution's own name for its own account, if this constitutes a service for others, is a financial service within the meaning of section 1 (1a) sentence 2 number 4a to c of the Banking Act (proprietary trading).

² See section 1.4

- Trading in the credit institution's own name for its own account, even if it does not constitute a service for others, in the case of high-frequency trading, is a financial service within the meaning of section 1 (1a) sentence 2 number 4d of the Banking Act (proprietary trading).

This fifth category occupies a special position. A regulatory gap is closed by extending the definition of proprietary trading to include high-frequency trading. This includes trading participants who use algorithmic trading programs in electronic trading, who generate buy and sell signals at very short intervals of sometimes only fractions of a second and who intend to hold financial instruments for only very time spans.

Non-EEA deposit broking (number 5)

This provision covers the brokering of the conclusion of deposit contracts for counterparties in non-EEA countries as well as receiving deposits in Germany and forwarding them immediately to the aforementioned counterparties. A "trustee" who officially collects funds at the instruction of a foreign enterprise is deemed to be a branch of that foreign enterprise requiring authorisation pursuant to section 53 of the Banking Act.

Foreign currency dealing (number 7)

Foreign currency dealing comprises the exchange of banknotes and coins that constitute legal tender as well as the purchase and sale of travellers' cheques. Foreign exchange bureaux are therefore classified as financial services institutions.

Factoring (number 9)

Given the financing function of factoring, it is conclusively deemed to be a financial service irrespective of whether the *del credere* agency is also assumed ("true factoring") or not ("quasi-factoring"). This classification is not affected by the civil law classification of quasi-factoring as a loan within the meaning of section 488 of the German Civil Code (*Bürgerliches Gesetzbuch*). Purchases of receivables through special purpose vehicles in the context of revolving ABS transactions are not subject to the provisions of section 1 (1a) sentence 2 number 9 of the Banking Act. Maturity factoring involving the complete absence of the financing function is likewise not classified as a financial service.

Financial leasing (number 10)

Financial leasing requiring authorisation comprises the conclusion of financial lease

agreements in the capacity of the lessor and the management of asset-leasing vehicles within the meaning of section 2 (6) sentence 1 number 17 of the Banking Act, separately from the management of a collective investment scheme within the meaning of section 1 (1) of the Capital Investment Code. A distinction should be made between financial leasing and activities not requiring authorisation characterised chiefly, but not exclusively, by the paid temporary loaning-out of an object (operating leasing/atypical leasing agreements). The authorisation requirement applies only to agreements under which the financing function is predominant.

Asset management (number 11)³

The investment manager's activity consists in the purchase and sale of financial instruments for a community of investors, who are natural persons, on a discretionary basis with regard to the choice of financial instruments, where this is a core element of the product offered and serves the purpose of ensuring that these investors have a share in the performance of the financial instruments acquired.

Limited custody business (number 12)

The Banking Act classifies the safe custody and administration of securities for the account of others (safe custody business) as banking business (section 1 (1) sentence 2 number 5 of the Banking Act) and it may therefore be conducted solely by credit institutions. The Alternative Investment Fund Managers Directive (AIFMD) provides that not only credit institutions but also investment firms authorised under the MiFID may be appointed as depositary for an alternative investment fund (AIF). A sub-category for safe custody business has therefore now been created in the Banking Act, namely the safe custody and administration of securities solely for AIFs (limited custody business).

The regulation does not include the special assets themselves, but rather the legal entities who are involved in the management, administration and distribution of AIFs. This includes, for example, hedge funds, private equity funds, commodity funds, infrastructure funds and other types of institutional funds that are not already regulated.

Authorisation to engage in limited custody business within the meaning of section 1 (1a) sentence 2 number 12 of the Banking Act may be granted only if authorisation to provide at least one financial service within the meaning of section 1 (1) sentence 2 numbers 1 to 4 of

³ See BaFin Circular 7/2009 (WA)

the Banking Act or to conduct banking business within the meaning of section 1 (1) sentence 2 of the Banking Act has already been granted or is being granted at the same time. The authorisation to engage in limited custody business will expire upon the expiry or withdrawal of the aforementioned authorisation (section 32 (1b) of the Banking Act).

1.3 **Financial instruments** within the meaning of section 1 (1) to (3) and (17) of the Banking Act as well as within the meaning of section 2 (1) and (6) of the Banking Act are pursuant to section 1 (11) sentence 1 of the Banking Act⁴:

1. shares and other stakes in German or foreign legal persons, commercial partnerships and any other undertakings if these stakes are comparable to shares, as well as certificates representing shares or stakes comparable to shares,
2. investment products within the meaning of section 1 (2) of the Investment Products Act (*Vermögensanlagengesetz*) with the exception of stakes in a cooperative society within the meaning of section 1 of the Cooperative Societies Act (*Genossenschaftsgesetz*),
3. debt instruments, in particular, participation certificates, bearer bonds, order bonds and rights that are both comparable to these debt instruments and, by their nature, tradable in the capital markets, with the exception of payment instruments, as well as certificates representing these debt instruments,
4. any other rights authorising the purchase or sale of rights in accordance with numbers 1 and 3 or leading to a cash payment that is determined in connection with such rights, with currencies, interest rates or other income streams, or with commodities, indices or metrics,
5. units in collective investment schemes within the meaning of section 1 (1) of the Capital Investment Code,
6. money market instruments,
7. foreign exchange or units of account, and
8. derivatives.

⁴ Details may be found in the BaFin guidance notices “Hinweise zu Finanzinstrumenten nach § 1 Absatz 11 Satz 1 Nummern 1 bis 7 KWG (Aktien, Vermögensanlagen, Schuldtitel, sonstige Rechte, Anteile an Investmentvermögen, Geldmarktinstrumente, Devisen und Rechnungseinheiten)” [Guidance Notice on Financial Instruments pursuant to section 1 (11) sentence 1 nos. 1 to 7 of the Banking Act (shares, investment products, debt instruments, other rights, units in collective investment schemes, money market instruments, foreign exchange and units of account)] and “Hinweise zu Finanzinstrumenten nach § 1 Absatz 11 Satz 3 KWG (Derivate)” [Guidance Notice on Financial Instruments pursuant to section 1 (11) sentence 3 of the Banking Act (Derivatives)] (in German only).

A collective investment scheme is any undertaking for collective investment that raises capital from a number of investors for the purpose of investing it in accordance with a defined investment policy for the benefit of those investors and that is not a commercial company operating outside the financial sector. A “number of investors” exists if the investment conditions, the articles of association or the instrument of incorporation of the collective investment undertaking do not limit the number of possible investors to a single investor. Under this definition, “collective investment scheme” is the generic term for all funds irrespective of their legal form and irrespective of whether they are open-ended or closed-ended funds. Collective investment schemes are thus both undertakings for collective investment in transferable securities (UCITS) and AIFs.

1.4 Financial services institutions can also be the **securities trading firms** defined in section 1 (3d) sentence 4 of the Banking Act (synonym for the term “investment firm” in MiFID) which, under certain conditions, using what is known as the “European passport”, are able to establish branches in other countries of the EEA or provide cross-border financial services in such countries by means of a simplified procedure and under the supervision of their home country authorities.

Securities trading firms are institutions that are not Capital Requirements Regulation credit institutions within the meaning of Regulation (EU) No 575/2013 (hereinafter “CRR”) and that conduct principal broking services or underwriting business (“banking business” within the meaning of section 1 (1) sentence 2 number 4 or 10 of the Banking Act) or provide financial services within the meaning of section 1 (1a) sentence 2 numbers 1 to 4 of the Banking Act, i.e. that operate for others as an investment advisor, investment broker, contract broker, operator of a multilateral trading facility, in the placement business, as a portfolio manager or as a proprietary trader. **This does not apply** if the aforementioned business operations are confined to foreign exchange or units of account.

Furthermore, financial services institutions can also be classified as CRR investment firms under section 1 (3d) sentence 2 of the Banking Act. This term covers those financial services institutions to which the CRR is directly applicable. Much stricter supervisory requirements apply to these institutions than to the other financial services institutions under the Banking Act⁵. CRR investment firms are institutions that undertake principal broking services or underwriting business (“banking business” within the meaning of section 1 (1) sentence 2 number 4 or 10 of the Banking Act) or institutions which provide financial services within the

⁵ Section 2 (7) ff. of the Banking Act sets out the exceptions to the application of the CRR for those financial services institutions that are not to be classified as CRR investment firms.

meaning of section 1 (1a) sentence 2 numbers 1b, 1c or 4 of the Banking Act, i.e. which work as the operator of a multilateral trading facility, in placement business or as a proprietary trader for others (with the exception of high-frequency trading pursuant to section 1 (1a) sentence 2 number 4(d) of the Banking Act; case-by-case assessment here if necessary). Furthermore, financial services institutions that provide financial services pursuant to section 1 (1a) sentence 2 numbers 1, 1a, 2 or 3 of the Banking Act (investment advice, investment broking, contract broking and portfolio management) are also to be classified as CRR investment firms if they are authorised to obtain ownership or possession of funds or shares of customers in the course of providing such financial services and/or trade in financial instruments for their own account without this fulfilling the conditions of proprietary trading under section 1 (1a) sentence 2 number 4 of the Banking Act.

Principal broking services pursuant to section 1 (1) sentence 2 number 4 of the Banking Act are defined as the purchase and sale of financial instruments in the credit institution's own name for the account of others.

Underwriting business pursuant to section 1 (1) sentence 2 number 10 of the Banking Act is defined as the purchase of financial instruments at the credit institution's own risk for placing in the market ("underwriting syndicate") or the assumption of equivalent guarantees.

Therefore, securities trading firms may be both financial services institutions and credit institutions depending on the scope of the authorisation granted. Securities trading firms must comply not only with the Banking Act but also with the Securities Trading Act (*Gesetz über den Wertpapierhandel*). The prerequisites and formalities for the granting of authorisation to credit institutions are available separately on request.

2 Exceptions

Section 2 (6) sentence 1 numbers 1 to 20 and section 2 (10) of the Banking Act stipulate which undertakings are not deemed to be financial services institutions and thus **do not require authorisation** from BaFin⁶.

Pursuant to section 2 (6) sentence 1 of the Banking Act, these include in particular:

⁶ These exceptions do not affect sections 34f and 34h of the Industrial Code (*Gewerbeordnung*).

- Undertakings which provide financial services solely within a corporate group (**number 5**);
- Undertakings whose financial service comprises solely the administration of an employee participation scheme in their own or affiliated undertakings (**number 6**);
- Undertakings which provide financial services for others that solely comprise investment advice and investment broking between customers and
 - a credit institution or financial services institution,
 - an undertaking operating in accordance with section 53b (1) sentence 1 or section 53b (7) of the Banking Act,
 - undertakings that are treated as undertakings domiciled in the EEA or granted exemption by way of statutory order pursuant to section 53c of the Banking Act,
 - investment management companies, externally managed investment companies, EU management companies or foreign AIF management companies,
 - providers or issuers of investment products within the meaning of section 1 (2) of the Investment Products Act

where these financial services are confined either to units or shares in German collective investment schemes which are issued by an investment management company that has been granted authorisation pursuant to section 7 or section 97 (1) of the Investment Act (*Investmentgesetz*) in the version in force up to 21 July 2013 which is still valid for the period stipulated in section 345 (2) sentence 1, subsection (3) sentence 2, in conjunction with subsection (2) sentence 1, or subsection (4) sentence 1 of the Capital Investment Code or authorisation pursuant to sections 20 and 21 or sections 20 and 22 of the Capital Investment Code, or to units or shares in EU collective investment schemes or foreign AIFs which may be marketed under the Capital Investment Code, or to investment products within the meaning of section 1 (2) of the Investment Products Act, and the undertakings are **not authorised** to obtain ownership or possession of funds or shares of customers in providing such financial services (**number 8**). This exception does not apply to units or shares in hedge funds within the meaning of section 283 of the Capital Investment Code.

This exception also applies to brokering for more than one of the above-mentioned providers.

- Undertakings which, without being involved in cross-border activities, conduct proprietary business in derivatives markets and trade on spot markets only for the purpose of hedging these positions, which engage in proprietary trading within the meaning of section 1 (1a) sentence 2 number 4 letters (a) to (c) of the Banking Act or contract broking only for other members of these derivatives markets or which determine prices for other members of these derivatives markets through proprietary trading within the meaning of section 1 (1a) sentence 2 number 4 letter (a) of the Banking Act as a market maker within the meaning of the Securities Trading Act, provided that clearing members of these markets or trading facilities are liable for the fulfilment of the contracts which the aforementioned undertakings conclude (**number 9**);
- Members of independent professions who provide financial services only occasionally within their client relationships as self-employed professionals and who belong to a professional chamber having the form of a public-law entity whose professional rules do not exclude the provision of financial services (**number 10**);
- Undertakings which conduct proprietary business in financial instruments or provide financial services within the meaning of 1 (1a) sentence 2 numbers 1 to 4 letters (a) to (c) of the Banking Act only in relation to derivatives within the meaning of 1 (11) sentence 4 numbers 2 and 5 of the Banking Act, insofar as
 - a) they are not part of a corporate group whose principal activity comprises providing financial services within the meaning of section 1 (1a) sentence 2 numbers 1 to 4 of the Banking Act or conducting banking business within the meaning of section 1 (1) sentence 2 numbers 1, 2 or 8 of the Banking Act,
 - b) the provision of financial services at a group level is of secondary significance to the principal activity, and
 - c) the financial services in relation to derivatives within the meaning of section 1 (11) sentence 4 numbers 2 and 5 of the Banking Act are provided only for principal activity customers in objective connection with principal activity operations (**number 11**);

- Undertakings whose sole financial service is dealing in foreign notes and coins, insofar as foreign currency dealing is not their principal activity (**number 12**);

This includes hotels, travel agencies, department stores and other undertakings for which dealing in foreign notes and coins is only a secondary activity.

- Undertakings whose principal activity involves conducting proprietary business and proprietary trading within the meaning of section 1 (1a) sentence 2 number 4 (a) to (c) of the Banking Act in commodities or derivatives relating to commodities, provided that these undertakings do not belong to a corporate group whose principal activity consists in investment advice, investment broking and contract broking, portfolio management, operation of a multilateral trading facility, placement business, proprietary trading, or in deposit business, lending business or guarantee business (**number 13**);
- Undertakings whose sole financial service comprises providing investment advice as part of another occupational activity and which are not remunerated separately for providing this investment advice (**number 15**);
- Operators of organised markets which, apart from operating a multilateral trading facility, do not provide any other financial services (**number 16**);

This includes, stock exchanges, for example, which do not provide any other financial services.

- Undertakings whose sole financial service comprises carrying out financial leasing activities, if they act only as an asset-leasing vehicle for a single leased asset, do not make their own business policy decisions and are managed by an institution domiciled in an EEA country which is authorised to conduct financial leasing operations under the laws of the home member state (**number 17**);
- Undertakings whose only financial service comprises carrying out asset management activities and whose parent undertaking is the KfW banking group or an institution within the meaning of sentence 2. An institution within the meaning of sentence 1 is a financial services institution which has authorisation to engage in asset management activities, or a CRR institution (section 1 (3d) sentence 3 of the Banking Act) domiciled in another EEA country within the meaning of section 53b (1) sentence 1 of the Banking Act which, in its

home member state, is authorised to conduct business comparable to that described in section 1 (1a) sentence 2 number 11 of the Banking Act, or an institution domiciled in a non-EEA country which, pursuant to subsection (4), is exempt from the authorisation requirement pursuant to section 32 with regard to the business specified in section 1 (1a) sentence 2 number 11 of the Banking Act (**number 18**);

- Undertakings which engage in placement business solely for providers or issuers of investment products within the meaning of section 1 (2) of the Investment Products Act or of closed-ended AIFs within the meaning of section 1 (5) of the Capital Investment Code (**number 19**); and
- Undertakings which do not provide any financial services other than portfolio management and asset management services, provided that the portfolio management and asset management activities are confined solely to investment products within the meaning of section 1 (2) of the Investment Products Act or closed-ended AIFs within the meaning of section 1 (5) of the Capital Investment Code (**number 20**).

Section 2 (10) sentence 1 of the Banking Act provides for another **exception** from the authorisation requirement for tied agents:

- Undertakings are also deemed **not** to be financial services institutions if
 - they engage in investment broking, placement business or investment advice activities solely for the account and under the liability of a CRR credit institution (pursuant to section 1 (3d) sentence 1 of the Banking Act) or a securities trading firm (pursuant to section 1 (3d) sentence 4 of the Banking Act) which is domiciled in Germany, or operating in Germany pursuant to section 53b (1) sentence 1 or section 53b (7) of the Banking Act, without providing any other financial services or conducting banking business, and
 - this is reported to BaFin by the liable institution or undertaking exclusively by means of the electronic reporting procedure.

3 Conditions for the granting of authorisation

Pursuant to section 33 (1) sentence 1 of the Banking Act, which lays down the criteria for refusing authorisation, BaFin may grant authorisation only if the following mandatory **conditions** are met:

- The **resources needed** for business operations, in particular sufficient **initial capital**, must be available in Germany (section 33 (1) sentence 1 number 1) of the Banking Act).
- For undertakings which intend to engage in investment advice, investment broking, contract broking, portfolio management, operation of a multilateral trading facility, placement business or investment management and which, in providing financial services, are **not authorised to obtain ownership or possession** of funds or securities of customers and which do **not** trade in financial instruments **for their own account**, this is an amount equivalent to at least **€50,000**.
- For undertakings which engage in investment advice and investment broking and which, in providing financial services, are not authorised to obtain ownership or possession of funds or securities of customers and which do not trade in financial instruments for their own account, the amount of **€25,000** is required if they are also entered in a register as an insurance intermediary pursuant to Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation and fulfil the requirements of Article 4 (3) of Directive 2002/92/EC.

Pursuant to section 33 (1) sentence 2 of the Banking Act, investment advisers and investment brokers who, in providing financial services, are not authorised to obtain ownership or possession of funds or securities of customers and who do not trade in financial instruments for their own account may demonstrate, instead of sufficient initial capital, that they have taken out appropriate insurance for the protection of customers. This insurance should provide an indemnity of €1,000,000 for each insured loss and at least €1,500,000 for all insured losses in an insurance year.

The amounts are lower for investment advisers and investment brokers who are also entered in a register as insurance intermediaries pursuant to Directive 2002/92/EC and fulfil the requirements of Article 4 (3) of that Directive, namely the sums of €500,000 for each insured loss and of at least €750,000 for all insured losses in an insurance year.

Appropriate insurance must cover, in particular, losses arising from incorrect advice. In

principle, in each individual case, it should be examined whether the insurance contract submitted by an investment adviser or investment broker meets the requirements of section 33 (1) sentences 2 and 3 of the Banking Act⁷.

- For undertakings which also conduct proprietary business on foreign derivatives markets and on spot markets only for the purpose of hedging these positions, which engage in principal broking services, investment broking only for other members of these markets or which determine prices for other members of these markets through proprietary trading as defined in section 1 (1a) sentence 2 number 4(a) of the Banking Act as a market maker within the meaning of the Securities Trading Act, an amount of **€25,000** is required if clearing members of these markets or trading facilities are liable for the fulfilment of the contracts which the aforementioned undertakings conclude on such markets or in such trading facilities.
- Financial services institutions which do not trade in financial instruments for their own account but do not fall into the aforementioned categories must provide proof of an amount equivalent to at least **€125,000**.
- In the case of financial services institutions which trade in financial instruments for their own account, financial services institutions which provide a limited custody business within the meaning of section 1 (1a) sentence 1 number 12 of the Banking Act, as well as securities trading banks, an amount equivalent to at least €730,000 is stipulated.

The initial capital is calculated in accordance with Article 4 (1) number 51 of the CRR (mainly paid-up capital, reserves as well as retained earnings) less any withdrawals and partners' loans or less the total nominal amount of the shares that are entitled to cumulative preferential profit distributions.

The capital must be freely available and may not be derived from borrowing. However, BaFin reserves the right to decide on a case-by-case basis whether the initial capital in the amounts specified above is, in fact, sufficient and meets the actual requirements of the new institution. This may apply in particular if and where the institution reports an assumption of liability to BaFin pursuant to section 2 (10) of the Banking Act.

⁷ See also BaFin Circular 2/2008 (WA) of 25 January 2008 — "Anforderungen an die eigenkapitalersetzende Versicherung nach § 33 Abs. 1 Satz 2 und 3 KWG" [Requirements for insurance instead of initial capital under section 33 (1) sentences 2 and 3 of the Banking Act]

Exception:

The provisions concerning initial capital are not applicable to financial services institutions which do not provide any financial services other than non-EEA deposit broking, foreign currency dealing, factoring and financial leasing (section 2 (7) and section 2 (7a) of the Banking Act).

The following should also be noted:

Portfolio managers and contract brokers⁸ are to comply at all times with capital ratios pursuant to Article 92 (1) of the CRR, as well as the requirements for initial capital (section 33 (1) sentence 1 number 1a of the Banking Act). To that end, eligible equity capital within the meaning of Articles 92, 95 (2) and 97 of the CRR must be held at a sufficient level (at least one quarter of the fixed overheads incurred in the preceding year) pursuant to section 23 of the Solvency Regulation (Solvabilitätsverordnung). If the business activity has been conducted for less than one year, eligible equity capital equivalent to at least one quarter of the fixed overhead costs projected in the business plan should be held (Article 97 (3) of the CRR). Article 97 (2) of the CRR grants BaFin the opportunity to adjust the equity requirement if there is a change in the business activity of the institution which BaFin considers to be material.

Whether securities trading firms have to carry out a calculation of the capital ratios in Article 92 (1) of the CRR—taking account, where applicable, of the provisions of Articles 95 (2) and 97 of the CRR—can be ascertained from the document “Übersicht über die wichtigsten Anzeige- und Meldevorschriften für Finanzdienstleistungsinstitute und Wertpapierhandelsbanken” [Overview of the most important notification and reporting regulations for financial services institutions and securities trading banks], which may be found on the Bundesbank’s website.

*In the case of **securities trading firms** in the legal form of a sole proprietorship or partnership, the risk assets of the proprietor or general partners are to be included in the assessment of the institution's solvency; however, the personal assets of the proprietor or partners are excluded when calculating the institution's own funds (section 2b (2) sentence 1 of the Banking Act).*

⁸ Portfolio managers who do not trade in financial instruments for their own account and are not authorised to obtain ownership or possession of funds or securities of customers.

- The institution must have trustworthy **senior managers** who have the necessary professional qualifications and work for it not merely in an honorary capacity (section 33 (1) sentence 1 numbers 2, 4, 4a and 5 of the Banking Act).

A financial services institution which, in providing financial services, is **authorised to obtain ownership or possession** of funds or securities of customers must have at least **two** senior managers (section 33 (1) sentence 1 number 5 of the Banking Act). In all other cases, **one** senior manager is sufficient.

There must not be any facts known which cast doubt on the personal **trustworthiness** of the senior managers (section 33 (1) sentence 1 number 2 of the Banking Act). A person deemed not to be trustworthy is, for example, someone who has committed offences against property, violated statutory regulations concerning the running of an undertaking or demonstrated through his/her private or business conduct that sound management cannot be expected of him/her.

Pursuant to section 25c (1) sentence 2 of the Banking Act, "**professional qualifications**" requires that the senior managers have adequate theoretical and practical knowledge of the business concerned, managerial experience and sufficient time to perform their functions. A person is normally assumed to have the professional qualifications needed to manage a financial services institution if he/she can demonstrate three years' managerial experience at an institution of comparable size and type of business (section 25c (1) sentence 3 of the Banking Act). A person with managerial experience is someone who has held a position in the senior management of an institution or immediately below the senior management level. The existence of professional qualifications is evaluated on a case-by-case basis, taking account of all the circumstances and the particular features of the respective institution.

- The proprietors or legal representatives or general partners of an undertaking that has a **significant holding** in a financial services institution (section 1 (9) of the Banking Act) must satisfy the requirements to be set in the interests of ensuring the sound and prudent management of the institution. This requires, in particular, that they are trustworthy (section 33 (1) sentence 1 number 3 of the Banking Act).
- The financial services institution's **head office** must be domiciled **in Germany** (section 33 (1) sentence 1 number 6 of the Banking Act).

- The institution must be prepared and/or in a position to make the **organisational arrangements** necessary for the proper operation of the business for which it is seeking authorisation (section 33 (1) sentence 1 number 7 of the Banking Act, see also section 25a of the Banking Act).

4 Refusal of authorisation

Pursuant to section 33 (2) of the Banking Act (among other provisions), BaFin may **refuse** to grant authorisation if

- the financial services institution is associated with the holder of a **significant holding** and this corporate connection or the structure of the corporate connection of the holder of the significant holding with other undertakings impairs the effective supervision of the institution (section 33 (2) sentence 2 number 1 of the Banking Act),
- the institution is a subsidiary of another undertaking **domiciled in a non-EEA country** that is not effectively supervised in the country in which it has its domicile or head office or whose competent supervisory agency is not willing to cooperate satisfactorily with BaFin (section 33 (2) sentence 2 number 3 of the Banking Act), and
- the application for authorisation contains insufficient data **or documentation** (section 33 (2) sentence 3 of the Banking Act).

5 Contents of the application for authorisation

The application for authorisation⁹ is to be made in a letter in writing. In the case of corporations, this is done by the executive board or senior management on behalf of the company; in the case of partnerships, by each general partner; and in the case of institutions in the legal form of a sole proprietorship, by the proprietor. The application and all the necessary documentation should be submitted to BaFin in triplicate.

⁹ For information on the reports and documentation to be submitted with the application, see in particular section 14 of the Regulation Concerning Reports and the Submission of Documentation under the Banking Act (Reports Regulation) (*Anzeigeverordnung*) of 19 December 2006 last amended on 20 March 2009

The application should state the name of the firm, its legal form, registered office, business purpose, governing bodies and their composition, as well as the date on which business operations are expected to commence. In addition, it should indicate the financial services specified in section 1 (1a) sentence 2 of the Banking Act for which authorisation is being sought. Furthermore, it should be explicitly stated whether the institution is to be authorised to obtain ownership or possession of funds or securities of customers, whether it is to be trading in financial instruments for its own account and whether such transactions are to be conducted in the banking book.

The application should be accompanied by certified copies of the formation documents, the partnership agreement or the articles of association, as well as the rules of procedure envisaged for the senior management.

The following information and documentation should also be included with the application:

- Suitable evidence of having the **resources needed** for business operations (section 32 (1) sentence 2 number 1 of the Banking Act in conjunction with section 14 (3) of the Reports Regulation).

In the case of the formation of an undertaking, evidence consists of confirmation from a CRR credit institution within the meaning of section 1 (3d) sentence 1 of the Banking Act domiciled in an EEA country stating that the initial capital has been paid up, is unencumbered by third-party rights and is freely available to the senior managers. In the case of existing undertakings wishing to commence business operations requiring authorisation, up-to-date confirmation from an external auditor or a certified public accountant regarding the existence of the required initial capital is to be presented instead.

- The names of the **senior managers** (section 32 (1) sentence 2 number 2 of the Banking Act in conjunction with section 14 (2) of the Reports Regulation).
- The information required to assess the **trustworthiness** of the applicants and of the senior managers (section 1 (2) sentence 1 of the Banking Act, section 32 (1) sentence 2 number 3 of the Banking Act).

For this purpose, the following are required from each applicant or senior manager:

- The form “Disclosures relating to the reliability of designated managers”,
- An excerpt from the Federal Business Record Register (*Gewerbezentralregister*) if they were or are self-employed or if, in the course of their professional activities, they were or are the authorised representative of a businessperson or charged with managing a business or the manager of any other commercial enterprise,
- “Criminal record check for submission to an authority” or “European criminal record check for submission to an authority” or equivalent documents from another country.

The form and a check list for documents to be submitted are attached to the “Guidance Notice for assessing the Professional Qualifications and Reliability of Managers in accordance with the Insurance Supervision Act, the Banking Act, the Payment Services Supervision Act and the Investment Act”, which can be downloaded from BaFin’s website (<http://www.bafin.de>).

- The information required to assess the **professional qualifications** of the proprietors and the senior managers (section 32 (1) sentence 2 number 4 of the Banking Act).

Each proprietor and senior manager should submit (along with at least the references from any employment relationship that has ended within the last three years) a complete, signed *curriculum vitae* containing all given names, name at birth, date and place of birth, home address and nationality, as well as a detailed description of relevant education and training, the names of all undertakings for which the manager/proprietor has worked and details of the nature and duration (in months and years) of the functions performed there, particularly with relevance to the business for which authorisation is being sought, including any secondary activities except for those performed in an honorary capacity. When describing the nature of the functions performed, in particular, the powers of representation, internal decision-making authority and the divisions within the undertaking overseen by the manager/proprietor must be specified.

- A viable **business plan** (section 32 (1) sentence 2 number 5 of the Banking Act), which should contain the following information:

- The nature of the planned business with a substantiated indication of its future development; for this purpose, projected balance sheets and projected profit and loss accounts for the first three full financial years after the commencement of business operations should be submitted;
 - A detailed description of the intended business operations;
 - Drafts of planned customer contracts, contracts for management services, powers of attorney to operate an account/safe custody account and general terms and conditions — if such documents have already been drawn up;
 - A description of the organisational structure of the institution, accompanied by an organisation chart indicating, in particular, the responsibilities of the senior managers; it should be indicated whether branches are to be established, and if so, where, and whether the intention is to provide financial services in another EEA country by way of cross-border services; in addition, it should be stated whether operational units are intended to be outsourced to another undertaking;
 - A description of the planned internal monitoring procedures detailing, in particular, how compliance with the obligations pursuant to the Banking Act and the Securities Trading Act is to be safeguarded.
- If **significant holdings** are held in the institution (section 32 (1) sentence 2 number 6 of the Banking Act), the application for authorisation should also include the following:
- The names of the holders of the significant holdings;
 - The amount of such holdings;
 - The information required to assess the trustworthiness of these holders or of the legal representatives or of the general partners.
- If an applicant or a holder of a significant holding belongs to a group, the structure of the group should be described, accompanied by consolidated group accounts.
- Where no significant holdings are held in the institution, the names of the biggest shareholders should be given, up to a maximum of 20.

- Any facts indicating a **close link** (Article 4 (1) number 38 of the CRR) between the financial services institution and other natural persons or undertakings should be stated (section 32 (1) sentence 2 number 7 of the Banking Act).
- The information and documentation under section 2c of the Banking Act in conjunction with the Ownership Control Regulation (*Inhaberkontrollverordnung, InhKontrollV*).
- In the case of **securities trading firms** in the legal form of a sole proprietorship, the proprietor should demonstrate the extent to which he/she has taken appropriate measures to protect customers for the event that the institution discontinues its business operations owing to the proprietor's death or legal incapacity or for other reasons (section 2b (2) sentence 2 of the Banking Act). Any evidence of the measures taken should contain, in particular, the consent of the representative named therein; if he/she is a natural person, a statement by the representative should be appended for the purpose of assessing his/her trustworthiness.

6 Approval of undertakings domiciled outside Germany

6.1 The authorisation requirement and the aforementioned prerequisites and formalities for the granting of authorisation apply as appropriate to undertakings domiciled in a **non-EEA country** which intend to provide financial services via a branch to be established in Germany; for this purpose, this branch is deemed to be a financial services institution (section 53 (1) of the Banking Act).

In addition to the prerequisites and formalities for the granting of authorisation specified in section 3 of this Notice, the following provisions should be **noted**:

- In order to commence business operations, the branch needs sufficient **initial capital**. This working capital must be made freely available to the branch by the undertaking that maintains this branch.

The provisions concerning initial capital do not apply to institutions engaged solely in non-EEA deposit broking, foreign currency dealing, factoring or financial leasing (section 2 (7) and section 2 (7a) of the Banking Act).

- The undertaking must appoint at least two natural persons residing in Germany as **senior managers** if the institution, in providing financial services, is authorised to obtain ownership or possession of funds or securities of customers (section 53 (2) number 1 of the Banking Act). Otherwise, the appointment of one senior manager is deemed sufficient. As set out in detail in section 3 of this Notice, the senior managers must have the necessary professional qualifications and be trustworthy.

As a rule, BaFin assumes that senior managers who have hitherto worked mainly outside the jurisdictional reach of the Banking Act have the necessary professional qualifications if they can demonstrate that they have gained three years' managerial experience at an institution of comparable size and type of business (which may also be domiciled in another country), if they speak German or an internationally used language (English) to a level commensurate with their position as senior manager, if they have one year's experience of practice-related work within the jurisdictional reach of the Banking Act and if at least one of the senior managers has three years' managerial experience at institutions in Germany. If there are two senior managers, at least one of them should have a good command of German.

- In addition to the particulars required pursuant to section 32 (1) sentence 2 of the Banking Act, the undertaking's application for authorisation should contain at least the following information:
 - The name, legal form, registered office and address of the undertaking and the envisaged branch as well as the undertaking's governing bodies and its business purpose according to its articles of association;
 - The nature of the business operations actually conducted by the undertaking in its country of domicile and, if different, in the country in which its head office is located;
 - The name and address of the authority responsible for supervising the undertaking in its country of domicile and, if different, in the country in which its head office is located;
 - The date on which business operations are scheduled to commence; and

- The name of a registered agent in the Federal Republic of Germany authorised to accept service during the authorisation procedure.

Furthermore, it should indicate the financial services specified in section 1 (1a) sentence 2 of the Banking Act for which authorisation is being sought.

The articles of association or partnership agreement of the undertaking, confirmation that the undertaking has been entered in a public register, the undertaking's most recent annual accounts (annual balance sheet together with the profit and loss account) and a management report (annual report) should be appended to the application for authorisation.

The following additional information and documentation should also be included with the application:

- Written confirmation in accordance with section 5 of this Notice regarding the capital freely available to the branch (except in the case of the financial services institutions listed in section 2 (7) of the Banking Act);
- A statement by each senior manager as described in section 5 of this Notice;
- A complete, signed *curriculum vitae* of each senior manager in accordance with section 5 of this Notice;
- Evidence that the undertaking has been granted authorisation to provide financial services by the competent supervisory authority for the undertaking outside Germany (section 53 (2) number 5 of the Banking Act);
- A statement by the undertaking, signed with legally binding effect, confirming that it has decided to establish the branch and has appointed as senior managers the persons named in the application for authorisation;
- Evidence of the power of representation of the person(s) filing the application for authorisation.

The documentation should be submitted to BaFin in German or with a German

translation enclosed.

6.2 A **securities trading firm** domiciled in another **EEA** country may engage in principal broking services or the underwriting business, or act as an investment adviser, investment or contract broker, portfolio manager or proprietary trader, or engage in placement business, the operation of a multilateral trading facility or proprietary business in Germany either through a branch or by providing cross-border services **without authorisation by BaFin** provided that the following **conditions** are met (section 53b (1) of the Banking Act):

- The undertaking has been granted approval by the competent authorities of the home country and is supervised by them in accordance with the Directives issued by the European Communities.

- The business operations covered by the approval granted.

6.3 An undertaking domiciled in another **EEA** country which engages in **foreign currency dealing, factoring or financial leasing** (financial services within the meaning of section 1 (1a) sentence 2 numbers 7, 9 and 10 of the Banking Act) may conduct such operations in Germany either through a branch or by providing cross-border services **without authorisation by BaFin** provided that the following **conditions** are met (section 53b (7) of the Banking Act):

- The undertaking is a subsidiary of one or more CRR credit institutions (section 1 (3d) sentence 1 of the Banking Act).

- The parent undertaking(s) is (are) authorised to operate as a CRR credit institution in the country in which the undertaking is domiciled.

- The operations performed by the undertaking are, in terms of its articles of association, likewise conducted in the home member state.

- The parent undertaking(s) hold(s) at least 90 per cent of the voting rights in the subsidiary.

- The parent undertaking(s) has (have) submitted convincing evidence of the prudent management of the subsidiary to the competent authorities of the subsidiary's home

country and, with the approval of these home country authorities, has (have) jointly and severally guaranteed the obligations incurred by the subsidiary, if appropriate.

- The subsidiary is included in the supervision of the parent undertaking on a consolidated basis.

7 Fees and charges

The authorisation procedure is subject to a fee, pursuant to section 14 of the Act Establishing the Federal Financial Supervisory Authority (*Gesetz über die Bundesanstalt für Finanzdienstleistungsaufsicht*, FinDAG). The amount charged depends on the processing time required in each individual case and on the business volume of the undertaking concerned. However, under section 2 (1) of the Ordinance on the Imposition of Fees and Allocation of Costs pursuant to the FinDAG (*Verordnung über die Erhebung von Gebühren und die Umlegung von Kosten nach dem Finanzdienstleistungsaufsichtsgesetz*, FinDAGKostV) in conjunction with paragraph 1.1.13.1.2 of the schedule of fees, this fee is a minimum of €2,000 and a maximum of €20,000. A fee may also be charged if the applicant withdraws the application for authorisation or if BaFin refuses to grant the authorisation.

Furthermore, institutions are to reimburse the costs incurred by BaFin for ongoing supervision pursuant to section 13 of the Act Establishing the Federal Financial Supervisory Authority; the costs are apportioned among the individual institutions on a *pro rata* basis. Detailed provisions concerning the charges and their collection are laid down by way of a statutory order.

8 Compensation scheme for securities trading firms

All securities trading firms (see section 1.4 of this Notice) must cover their liabilities arising from securities transactions through membership of the compensation scheme for securities trading firms — the *Entschädigungseinrichtung der Wertpapierhandelsunternehmen* or EdW. The contributions to be paid depend on the scale of a firm's business activities. Detailed provisions are laid down by way of a statutory order. For more information on this matter as well as on the documentation to be submitted to EdW, please contact

Entschädigungseinrichtung der Wertpapierhandelsunternehmen (EdW)

10865 Berlin, Germany

Tel.: +49 30 203699 5626

Fax: +49 30 203699 5630

E-mail: mail@e-d-w.de

Internet: <http://www.e-d-w.de>

9 Addresses

Applications for authorisation to provide financial services must be submitted to

Bundesanstalt für Finanzdienstleistungsaufsicht (Federal Financial Supervisory Authority — BaFin)

Marie-Curie-Str. 24-28
60439 Frankfurt, Germany
or Graurheindorfer Str. 108
53117 Bonn, Germany

Tel.: +49 228 41080
Fax: +49 228 4108 1550
E-mail: poststelle@bafin.de
Website: <http://www.bafin.de>

Before applying for authorisation, please contact the **Deutsche Bundesbank Regional Office** responsible for the area in which your registered office is located. If you have any questions regarding this Notice, please also contact the appropriate Regional Office. If necessary, the Regional Office concerned will pass on your enquiry to BaFin along with its comments.

DEUTSCHE BUNDESBANK Regional Office in Berlin and Brandenburg

Leibnizstr. 10
10625 Berlin, Germany

Tel.: +49 30 34750
Fax: +49 30 3475 1290
E-mail: laufende-aufsicht.hv-bbb@bundesbank.de

DEUTSCHE BUNDESBANK Regional Office in North Rhine-Westphalia

Berliner Allee 14
40212 Düsseldorf, Germany

Tel.: +49 211 8740
Fax: +49 211 874 3635
E-mail: bankenaufsicht.hv-nrw@bundesbank.de

DEUTSCHE BUNDESBANK Regional Office in Hesse

Taunusanlage 5
60329 Frankfurt am Main, Germany

Tel.: +49 69 23880
Fax: +49 69 2388 1111
E-mail: bankenaufsicht.hv-h@bundesbank.de

DEUTSCHE BUNDESBANK Regional Office in Hamburg, Mecklenburg-West Pomerania and Schleswig-Holstein

Willy-Brandt-Str. 73
20459 Hamburg, Germany

Tel.: +49 40 37070
Fax: +49 40 3707 4172
E-mail: bankenaufsicht.hv-hms@bundesbank.de

DEUTSCHE BUNDESBANK

Regional Office in Bremen, Lower Saxony and Saxony-Anhalt

Georgsplatz 5

30159 Hannover, Germany

Tel.: +49 511 30330

Fax: +49 511 3033 2796

E-mail: bankenaufsicht.hv-bns@bundesbank.de

DEUTSCHE BUNDESBANK

Regional Office in Saxony and Thuringia

Strasse des 18. Oktober 48

04103 Leipzig, Germany

Tel.: +49 341 8600

Fax: +49 341 860 2599

E-mail: bankenaufsicht.hv-sth@bundesbank.de

DEUTSCHE BUNDESBANK

Regional Office in Rhineland-Palatinate and Saarland

Hegelstr. 65

55122 Mainz, Germany

Tel.: +49 6131 3770

Fax: +49 6131 377 3333

E-mail: bankenaufsicht.hv-rs@bundesbank.de

DEUTSCHE BUNDESBANK

Regional Office in Bavaria

Ludwigstr. 13

80539 Munich, Germany

Tel.: +49 89 28895

Fax: +49 89 2889 3630

E-mail: bankenaufsicht.hv-by@bundesbank.de

DEUTSCHE BUNDESBANK

Regional Office in Baden-Württemberg

Marstallstr. 3

70173 Stuttgart, Germany

Tel.: +49 711 9440

Fax: +49 711 944 1921

E-mail: bankenaufsicht.hv-bw@bundesbank.de

Further information may also be found on the Bundesbank's website at <http://www.bundesbank.de/index.en.php>.