

# **Overview of Prospectus, Post-Admission and Transparency Obligations under Union Law**

**Deutsche Börse AG**

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## 1 Introduction

The following overview summarises important prospectus, post-admission and transparency obligations under the new Prospectus Regulation (EU) 2017/1129, which replaces the former Prospectus Directive 2003/71/EC, the Market Abuse Regulation (EU) 596/2014 and the Transparency Directive 2004/109/EC in connection with an admission of financial instruments to the regulated market of the Frankfurt Stock Exchange (FSE).

The overview takes into account the laws and rules in effect on 21 July 2019. The overview focuses on issuers of financial instruments admitted to trading on regulated markets in Germany only that have their registered seat in Germany.

Issuers having their registered seat in another EU / EEA member state or having chosen another EU / EEA member state as their home member state (within the meaning of section 2 para. 1 lit. (i) of the Transparency Directive) may be subject to additional requirements under local implementation legislation. Differing local regulatory practice has to be observed.

Most issuers' obligations include a publication on the issuers' website and/or submission to media for the effective dissemination throughout the European community. Compliance with issuers' obligations is monitored by the competent authorities in the respective EU member state. A list of competent financial regulatory authorities for selected European countries is set out in section 3.

This overview has been prepared with due care, to fulfil the FSE's obligation pursuant to Art. 7 para. 1 of the Commission Delegated Regulation (EU) 2017/568. It is, however, pointed out that this overview provides a high-level summary and that FSE neither assumes any liability with regard to the comprehensiveness or accurateness of this overview, nor does FSE intend to provide legal advice by making this overview available to the public. Issuers remain responsible and it is recommended that issuers obtain independent advice, to ensure compliance with all applicable laws, regulations or stock exchange rules.

In particular, this overview does not cover additional obligations pursuant to national legislation or any stock exchange rules, nor does it cover additional obligations or exemptions that may exist for credit institutions and similar enterprises. The overview does not consider corporate law obligations other than as set out herein, nor does it consider applicable accounting standards or accounting practices. Also, the overview does not include any obligations of shareholders of a listed company (e.g. voting rights notifications, etc.).



## 2 Definitions

<b>“BaFin”</b>	German Federal Financial Supervisory Authority ( <i>Bundesanstalt für Finanzdienstleistungsaufsicht</i> )
<b>“BörsG”</b>	German Stock Exchange Act ( <i>Börsengesetz</i> )
<b>“ESMA”</b>	European Securities Market Authority
<b>“EEA”</b>	European Economic Area
<b>“EU”</b>	European Union
<b>“FSE”</b>	Frankfurt Stock Exchange
<b>“German Companies Register”</b>	<i>Unternehmensregister</i>
<b>“HGB”</b>	German Commercial Code ( <i>Handelsgesetzbuch</i> )
<b>“MAR”</b>	EU Market Abuse Regulation No 596/2014 of the European Parliament and the Council dated 16 April 2014, as amended
<b>“PCAs”</b>	Persons closely associated with PDMRs within the meaning of MAR
<b>“PDMRs”</b>	Persons discharging managerial responsibilities within the meaning of MAR
<b>“Prospectus Directive”</b>	Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003, as amended
<b>“Prospectus Regulation”</b>	Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017
<b>“Transparency Directive”</b>	Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004, as amended
<b>“WpAV”</b>	Securities Trading Reporting Regulation ( <i>Wertpapierhandelsanzeigeverordnung</i> )
<b>“WpHG”</b>	German Securities Trading Act ( <i>Wertpapierhandelsgesetz</i> )
<b>“WpPG”</b>	German Securities Prospectus Act ( <i>Wertpapierprospektgesetz</i> )



### 3 Competent Financial Regulatory Authorities

Country	Regulator	Address and Contact Information
Austria	Financial Market Authority (FMA)	Austrian Financial Market Authority (FMA) Otto-Wagner-Platz 5 A-1090 Vienna Austria Tel.: (+43) 1 249 59 0
France	Autorité des Marchés Financiers (AMF)	Autorité des Marchés Financiers 17, place de la Bourse 75082 Paris Cedex 02 France Tel: (+33)1 5345 6000
Germany	Federal Financial Supervisory Authority (BaFin)	Bundesanstalt für Finanzdienstleistungsaufsicht Marie-Curie-Str. 24-28 60439 Frankfurt Germany Tel: (+49) 0228 / 4108 - 0
Italy	Commissione Nazionale per le Società e la Borsa (CONSOB)	Commissione Nazionale per le Società e la Borsa Via Giovanni Battista Martini, 3 00198 Rome Italy Tel: (+39) 06 84771
Luxembourg	Commission de Surveillance du Secteur Financier (CSSF)	Commission de Surveillance du Secteur Financier 283, route d'Arlon L-1150 Luxembourg Grand Duchy of Luxembourg Tel: (+352) 26 25 1 - 1
Poland	Polish Financial Supervision Authority (KNF)	Komisja Nadzoru Finansowego Plac Powstańców Warszawy 1 skr. poczt. 419



Country	Regulator	Address and Contact Information
		00-950 Warszawa Tel: (+48 22) 262 50 00
Spain	Spanish Securities Market Commission (CNMV)	Comisión Nacional del Mercado de Valores Edison, 4 28006 Madrid Spain Tel: (+34) 91 585 15 00
The Netherlands	Authority for the Financial Markets (AFM)	The Dutch Authority for the Financial Markets (AFM) Vijzelgracht 50 1017 HS, Amsterdam The Netherlands Tel: (+31) (0) 20 797 2000



## **4 Overview of Prospectus, Post-Admission and Transparency Obligations under Union Law and German implementing Law**

### **4.1. Offering of securities - Prospectus Obligations**

#### **4.1.1. Obligations pursuant to the Prospectus Regulation**

Pursuant to Art. 3 of the Prospectus Regulation, an issuer may not offer securities without having published a prospectus for such securities, except in certain cases as outlined in Art. 1 para. 4 and 5 of the Prospectus Regulation-

The Prospectus Regulation provides a new gradual system for the disclosure requirement. In view of the specificities of different types of securities, issuers, offers and admissions, this Regulation sets out rules for different forms of prospectuses - a standard prospectus, a wholesale prospectus for non-equity securities, a base prospectus, a simplified prospectus for secondary issuances and the EU Growth prospectus as new type of prospectus. The EU Growth prospectus in Art. 15 of the Prospectus Regulation tries to offer proper balance between cost-efficient access to financial markets and investor protection to allow smaller, growing companies to raise capital.

Art. 6 and 7 of the Prospectus Regulation requires that the prospectus contains all information which, according to the particular nature of the issuer and of the securities, is necessary to enable investors to make an informed assessment of the assets and liabilities, financial position, profit and losses, and prospects of the issuer and of any guarantor, and of the rights attaching to such securities. Art. 16 of the Prospectus Regulation clarifies the criteria for assessment and presentation of risk factors, which are now limited to a total number of 15 and may be categorized by using a qualitative scale of low, medium and high, whereby the most material risk factors shall be mentioned first. All the information shall be presented in an easily analysable, concise and comprehensible form, generally limited to a maximum of 7 pages. The prospectus liability and additional requirements in case the final offer price and amount of securities which will be offered to the public cannot be included in the prospectus are stipulated in Art. 11 and 18 of the Prospectus Regulation.

Regular issuers now also have the option of drawing up a shelf registration-type document, which allow faster access to capital markets and more efficient financial reporting for those that file it for at least two consecutive years. This universal registration document is stipulated in Art. 9 of the Prospectus Regulation with further specifications.

Pursuant to Art. 20 of the Prospectus Regulation, the prospectus, prior to its publication, must be approved by the competent financial regulatory authority. The competent financial regulatory authority shall notify the issuer within 10 working days from the submission of the prospectus of its decision on regarding the approval of the prospectus, whereby failure by the competent financial regulatory authority to give a decision on the approval of the prospectus shall not be deemed to constitute approval of the prospectus. In case the public offer involves securities issued by an issuer which does not have any securities admitted to trading on a regulated market and who has not previously offered securities to the public, the time limit for the approval of the prospectus is extended to 20 working days.



Once approved, the prospectus shall be filed with the competent authority of the home Member State, shall be accessible to ESMA through the competent authority and shall be made available to the public by the issuer, the offeror or the person asking for admission to trading on a regulated market (i) by insertion in newspapers, (ii) in a printed form to be made available, free of charge, to the public, (iii) in electronic form on the issuer's website, or (iv) by other means as further specified in Art. 21 of the Prospectus Regulation.

Art. 24 of the Prospectus Regulation provides that, where an offer to the public or admission to trading on a regulated market is provided for in one or more Member States, or in a Member State other than the home Member State, the prospectus approved by the home Member State and any supplements thereto shall be valid for the public offer or the admission to trading in any number of host Member States, provided that certain notification requirements are complied with.

Further details can be found in the Prospectus Regulation.

#### **4.1.2. Implementation in Germany**

The Prospectus Regulation has been implemented in Germany in the WpPG.

BaFin is the competent German authority for the approval of a prospectus.

#### **4.1.3. Scope of Application**

Issuers:

All.

Financial instruments:

- Shares
- Debt Instruments and other Securities as defined in the WpPG

### **4.2. Financial Reports**

#### **4.2.1. Annual financial report**

- (i) Obligations pursuant to the Transparency Directive

Pursuant to Art. 4 of the Transparency Directive, an issuer must publish an annual financial report.

The annual financial report shall contain at least:

- Audited financial statements (including, as applicable, the consolidated accounts);
- Management report;
- Balance sheet oath.



The annual financial report must be published not later than four months after the end of the financial year and must remain publicly available for at least ten years.

The issuer shall prior to such publication announce when and under which internet address (e.g. the company's website) the annual financial report will be disclosed.

(ii) Implementation in Germany

Art. 4 of the Transparency Directive has been implemented in Germany in section 114 WpHG, and the provisions of WpAV dealing with the publication and content of financial reports.

The announcement of when and under which internet address the annual financial report will be disclosed must be submitted to BaFin in parallel to its publication. As soon as possible after its publication, the announcement must be submitted to the German Companies Register. BaFin takes the view that a period of one week between the announcement and the publication of the financial report will be sufficient.

The financial report must be submitted to the German Companies Register where it must remain publicly available for at least ten years.

(iii) Scope of application in Germany

Issuers:

German domestic issuers (*Inlandsemittent*, § 2 para. 14 WpGH), i.e.:

- (a) issuers whose home country is the Federal Republic of Germany, with the exception of those issuers whose securities are not admitted in Germany but only in another member state of the EU / EEA, to the extent that they are subject to the disclosure and notification requirements pursuant to the Transparency Directive (2004/109/EC); or
- (b) issuers whose home country is not the Federal Republic of Germany but another member state of the EU / EEA and whose securities are only admitted to trading on an organised market in Germany.

Financial instruments:

- Shares
- Debt Instruments and other Securities as defined in the WpHG

Exemption:

Issuers that only issue debt instruments in minimum denominations per unit of at least EUR 100,000 each or the equivalent in other currencies are exempt. This exemption does not affect existing corporate law obligations to prepare financial reports.

#### **4.2.2. Half-year financial report**

(i) Obligations pursuant to the Transparency Directive

Pursuant to Art. 5 Transparency Directive, an issuer must publish a half-year financial report.

The half-year financial report shall include at least:

- Condensed financial statements (including, as applicable, the condensed consolidated accounts);



- Interim management report;
- Balance sheet oath.

If the half-year financial report is reviewed by auditors, the rules on the audit of the annual report apply accordingly. If the half-year financial report has not been reviewed by auditors, an express statement to that effect shall be made in the half-year report.

The half-year financial report must be published without delay, but not later than three months after the end of the reporting period. The half-year financial report must remain publicly available for at least ten years.

The issuer shall prior to such publication announce when and under which internet address (e.g. the company's website) the half-year financial report will be disclosed.

(ii) Implementation in Germany

Art. 5 of the Transparency Directive has been implemented in Germany in section 115 WpHG, and the provisions of WpAV dealing with the publication and content of financial reports.

The announcement of when and under which internet address the half-year financial report will be disclosed must be submitted to BaFin in parallel to its publication. As soon as possible after its publication, the announcement must be submitted to the German Companies Register. BaFin takes the view that a period of one week between the announcement and the publication of the half-year financial report will be sufficient.

The half-year financial report must be submitted to the German Companies Register where it must remain publicly available for at least ten years.

(iii) Scope of application in Germany

Issuers:

German domestic issuers (*Inlandsemittent*), i.e.:

- (a) issuers whose home country is the Federal Republic of Germany, with the exception of those issuers whose securities are not admitted in Germany but only in another member state of the EU / EEA, to the extent that they are subject to the disclosure and notification requirements pursuant to the Transparency Directive (2004/109/EC); or
- (b) issuers whose home country is not the Federal Republic of Germany but another member state of the EU / EEA and whose securities are only admitted to trading on an organised market in Germany.

Financial instruments:

- Shares
- Debt Instruments

Exemption:

Issuers that only issue debt instruments in minimum denominations per unit of at least EUR 100,000 each or the equivalent in other currencies are exempt. This exemption does not affect existing corporate law obligations to prepare financial reports.



### 4.2.3. Report on payments to governments

(i) Obligations pursuant to the Transparency Directive

Pursuant to Art. 6 Transparency Directive, an issuer who is active in the extractive industry sector, or logging in primary forests must prepare on an annual basis a report on payments made to governments. The report must be made public at the latest six months after the end of each financial year and must remain publicly available for at least ten years. Payments to governments shall be reported at consolidated level.

The issuer shall prior to such publication announce when and under which internet address (e.g. the company's website) the payment report will be disclosed.

(ii) Implementation in Germany

Art. 6 of the Transparency Directive has been implemented in Germany in section 116 WpHG, and the relevant provisions of WpAV.

The announcement of when and under which internet address the report on payments to governments will be disclosed must be submitted to BaFin in parallel to its publication. As soon as possible after its publication, the announcement must be submitted to the German Companies Register.

The report on payments to governments must be submitted to the German Companies Register where it must remain publicly available for at least ten years.

(iii) Scope of application in Germany

Issuers:

German domestic issuers (*Inlandsemittent*), i.e.:

- (a) issuers whose home country is the Federal Republic of Germany, with the exception of those issuers whose securities are not admitted in Germany but only in another member state of the EU / EEA, to the extent that they are subject to the disclosure and notification requirements pursuant to the Transparency Directive (2004/109/EC); or
- (b) issuers whose home country is not the Federal Republic of Germany but another member state of the EU / EEA and whose securities are only admitted to trading on an organised market in Germany,

except for issuers who are subject to section 341q HGB.

Financial instruments:

- Shares
- Debt Instruments and other Securities as defined in the WpHG.



## 4.3. Inside information, insider list, market sounding and managers' transactions

### 4.3.1. Ad-hoc notification

(i) Obligations pursuant to the MAR

Pursuant to Art. 17 MAR, an issuer shall inform the public as soon as possible of inside information which directly concerns that issuer.

Inside information is information of a precise nature, which has not been made public, relating, directly or indirectly, to the issuer or to one or more financial instruments, and which, if it were made public, would be likely to have a significant effect (i.e. a reasonable investor would be likely to use this information as part of the basis of his or her investment decisions) on the prices of those financial instruments or on the price of related derivative financial instruments.

The issuer must ensure that inside information is made public in a manner which enables fast access and complete, correct and timely assessment of the information by the public. In addition, the inside information must be made available on the issuer's website to the general public for at least five years. The issuer shall not combine the disclosure of inside information to the public with the marketing of its activities.

Further details can be found in Art. 17 MAR and Commission Implementing Regulation (EU) 2016/1055. Further information on the term inside information can be found in Art. 7 MAR.

(ii) German national legislation

German national legislation stipulates further obligations in section 26 WpHG and the provisions of WpAV dealing with the publication of information and notification on the publication.

In particular, a German domestic issuer (*Inlandsemittent*) must, prior to its publication, submit the inside information to BaFin and to the managements of the stock exchanges where the financial instruments are admitted to trading or are traded. As soon as possible after publication of the inside information, the inside information must be transmitted to the German Companies Register.

(iii) Scope of application in Germany

Issuers:

All.

Financial instruments:

All financial instruments, except for those financial instruments which are traded without the issuers' request or consent, whereby the term financial instruments includes securities

- (a) admitted to trading on a regulated market in Germany, or for which a request for admission to trading on a regulated market in Germany has been made;
- (b) traded on a multilateral trading facility (MTF) in Germany, or for which a request for admission to trading on a regulated market or MTF in Germany has been made;
- (c) traded on an organised trading facility (OTF) in Germany; or



- (d) which are not covered by point (i), (ii), or (iii) above, the price or value of which depends on or has an effect on the price or value of a financial instrument referred to in these points, including, but not limited to, credit default swaps and contracts for difference.

### **4.3.2. Delay of ad-hoc notification**

#### (i) Obligations pursuant to the MAR

Pursuant to Art. 17 para. 4 and 5 MAR an issuer may, on its own responsibility, delay public disclosure of inside information, provided that all of the following conditions are met:

- The immediate disclosure is likely to prejudice the legitimate interests of the issuer and the legitimate interests of the issuer outweigh the interest of the capital markets for immediate disclosure,
- The delay of disclosure is not likely to mislead the public, and
- The issuer is able to ensure the confidentiality of that information.

Art. 17 MAR, Commission Implementing Regulation (EU) 2016/1055 and Commission Delegated Regulation (EU) 2016/522.

#### (ii) German national legislation

German national legislation stipulates further obligations in case an issuer delays public disclosure of inside information in section 26 WpHG and the provisions of WpAV dealing with the publication of information and notification on the publication.

#### (iii) Scope of application in Germany

See item (iii) above.

### **4.3.3. Insider list**

#### (i) Obligations pursuant to the MAR

Pursuant to Art. 18 MAR, an issuer or any person acting on its behalf or on its account shall draw up and maintain an insider list, and shall take all reasonable steps to ensure that any person on the insider list acknowledges in writing the legal and regulatory duties entailed and is aware of the sanctions applicable to insider dealing and unlawful disclosure of inside information.

The issuer or any person acting on its behalf or on its account shall:

- (a) draw up an insider list of all persons who have access to inside information and who are working for them under a contract of employment, or otherwise performing tasks through which they have access to inside information, such as advisers, accountants or credit rating agencies;
- (b) promptly update the insider list; and
- (c) provide the insider list to the competent authority as soon as possible upon its request.



Persons who are otherwise performing tasks through which they have access to inside information relating to the issuer, such as advisers, accountants or credit rating agencies, have an individual responsibility to draw up and update an insider list in accordance with Art. 18 MAR. The issuer or person acting on its behalf or on its account shall retain the insider list for a period of at least five years after it is drawn up or updated.

The insider list has a mandatory format set out in Commission Implementing Regulation (EU) 2016/347. The insider list is required to be deal-specific / event-based and divided into separate sections relating to different inside information. In addition, a supplementary section with the details of individuals who have access at all times to all inside information (permanent insiders) may be included. In that case, the details of permanent insiders included in the supplementary section shall not be included in the other sections of the insider list.

Further details can be found in Art. 18 MAR and Implementing Regulation (EU) 2016/347.

(ii) Scope of application in Germany

Issuers:

All.

Financial instruments:

All financial instruments, except for those financial instruments which are traded without the issuers' request or consent, whereby the term financial instruments includes securities

- (a) admitted to trading on a regulated market in Germany, or for which a request for admission to trading on a regulated market in Germany has been made;
- (b) traded on a multilateral trading facility (MTF) in Germany, or for which a request for admission to trading on a regulated market or MTF in Germany has been made;
- (c) traded on an organised trading facility (OTF) in Germany; or
- (d) which are not covered by point (i), (ii), or (iii) above, the price or value of which depends on or has an effect on the price or value of a financial instrument referred to in these points, including, but not limited to, credit default swaps and contracts for difference.

#### **4.3.4. Market sounding**

(i) Obligations pursuant to the MAR

Art. 11 MAR sets out rules on the communication of information prior to the announcement of a transaction or in the context of a takeover bid (market sounding) by an issuer or by a secondary offeror of financial instruments or a third party acting on their behalf.

A market sounding comprises the communication of information, prior to the announcement of a transaction, in order to gauge the interest of potential investors in a possible transaction and the conditions relating to it such as its potential size or pricing, to one or more potential investors by the issuer or a third party acting on behalf or on the account of the issuer.

In addition, disclosure of inside information by the issuer, when intending to make a takeover bid for the securities of a company or to merge with a company, to parties entitled to the securities, also constitutes a market sounding, provided that:



- (a) the information is necessary to enable the parties entitled to the securities to form an opinion on their willingness to offer their securities; and
- (b) the willingness of parties entitled to the securities to offer their securities is reasonably required for the decision to make the takeover bid or merger.

Disclosure of inside information made in the course of a market sounding shall be deemed to be made in the normal exercise of a person's employment, profession or duties where the disclosing market participant complies with certain procedural, communication and documentation requirements as specified in Art. 11 MAR, Commission Implementing Regulation (EU) 2016/959, and Commission Implementing Regulation (EU) 2016/960.

- (ii) Scope of application in Germany

Persons:

All issuers, as well as other market participants as further specified in Art. 11 MAR.

Financial instruments:

All financial instruments

- (a) admitted to trading on a regulated market in Germany, or for which a request for admission to trading on a regulated market in Germany has been made;
- (b) traded on a multilateral trading facility (MTF) in Germany, or for which a request for admission to trading on a regulated market or MTF in Germany has been made;
- (c) traded on an organised trading facility (OTF) in Germany; or
- (d) which are not covered by point (i), (ii), or (iii) above, the price or value of which depends on or has an effect on the price or value of a financial instrument referred to in these points, including, but not limited to, credit default swaps and contracts for difference.

#### **4.3.5. Managers' transactions**

- (i) Obligations pursuant to the MAR

Pursuant to Art. 19 para. 3 MAR, the issuer shall ensure that transactions of which the issuer has been notified in accordance with Art. 19 para. 1 MAR by persons discharging managerial responsibilities (PDMRs) or by persons closely associated with them (PCAs) (so-called managers' transactions) are made public promptly and no later than three business days after the transaction. Publication must be made in a manner which enables fast access to this information on a non-discriminatory basis.

The issuer shall notify its PDMRs of their obligations relating to managers' transactions in writing (including their notification obligations, prohibition of trading in relevant financial instruments during a period of 30 calendar days before the announcement of an interim financial report or a year-end report which the issuer is obliged to make public according to the stock exchange rules or national law (closed periods), as well as their obligation to instruct their PCAs as regards managers' transactions, and to keep a copy of this instruction).

The issuer shall draw up and maintain a list of all its PDMRs and their PCAs.



Further details regarding the obligations in relation to managers' transactions can be found in Art. 19 MAR, Commission Implementing Regulation (EU) 2016/523 and Commission Delegated Regulation (EU) 2016/522.

(ii) German national legislation

German national legislation stipulates further obligations in section 26 WpHG and the provisions of WpAV dealing with the publication of information and notification on the publication.

In particular, a German domestic issuer (*Inlandsemittent*) must, as soon as possible after publication of the managers' transaction, transmit the notification on the managers' transaction to the German Companies Register and to BaFin.

(iii) Scope of application in Germany

Issuers:

All.

Financial instruments:

All financial instruments, except for those financial instruments which are traded without the issuers' request or consent, whereby the term financial instruments includes securities

- (a) admitted to trading on a regulated market in Germany, or for which a request for admission to trading on a regulated market in Germany has been made;
- (b) traded on a multilateral trading facility (MTF) in Germany, or for which a request for admission to trading on a regulated market or MTF in Germany has been made;
- (c) traded on an organised trading facility (OTF) in Germany; or
- (d) which are not covered by point (i), (ii), or (iii) above, the price or value of which depends on or has an effect on the price or value of a financial instrument referred to in these points, including, but not limited to, credit default swaps and contracts for difference.

#### **4.4. Prohibition of insider dealing, market manipulation and safe harbour for issuers**

##### **4.4.1. Prohibition of insider dealing**

(i) Rules under the MAR

Pursuant to Art. 14 MAR neither issuers, nor other market participants may

- engage or attempt to engage in insider dealing (as defined in Art. 8 MAR),
- recommend that another person engage in insider dealing or induce another person to engage in insider dealing (as defined in Art. 8 para. 2 MAR), or
- unlawfully disclose inside information (as defined in Art. 10 MAR).

(ii) Scope of application

Persons:

All market participants.



Financial instruments:

All financial instruments which are:

- (i) admitted to trading on a regulated market or for which a request for admission to trading on a regulated market has been made;
- (ii) traded on a multilateral trading facility (MTF), admitted to trading on an MTF or for which a request for admission to trading on an MTF has been made;
- (iii) traded on an organised trading facility (OTF);
- (iv) not covered by point (i), (ii) or (iii) above, the price or value of which depends on or has an effect on the price or value of a financial instrument referred to in those points, including, but not limited to, credit default swaps and contracts for difference.

#### **4.4.2. Prohibition of market manipulation**

- (i) Rules under the MAR

Pursuant to Art. 15 MAR, neither an issuer, nor another market participant shall engage in or attempt to engage in market manipulation.

The term “market manipulation” is defined in Art. 12 MAR and includes numerous variants of both information-based market manipulation (e.g. disseminating information which gives, or is likely to give, false or misleading signals as to the supply of, demand for, or price of, a financial instrument or other relevant instruments), and trade-based market manipulation (e.g. entering into a transaction, placing an order to trade or any other activity or behaviour which affects or is likely to affect the price of one or several financial instruments or other relevant instruments).

- (ii) Scope of application

Persons:

All market participants.

Financial instruments:

All financial instruments which are:

- (i) admitted to trading on a regulated market or for which a request for admission to trading on a regulated market has been made;
- (ii) traded on a multilateral trading facility (MTF), admitted to trading on an MTF or for which a request for admission to trading on an MTF has been made;
- (iii) traded on an organised trading facility (OTF);
- (iv) not covered by point (i), (ii) or (iii) above, the price or value of which depends on or has an effect on the price or value of a financial instrument referred to in those points, including, but not limited to, credit default swaps and contracts for difference.



### **4.4.3. Safe harbour for issuers**

Art. 5 MAR provides that the prohibitions of insider dealing and market manipulation do not apply to trading in own shares in buy-back programmes where:

- the full details of the programme are disclosed prior to the start of trading;
- trades are reported as being part of the buy-back programme to the competent authority of the trading venue in accordance with paragraph 3 and subsequently disclosed to the public;
- adequate limits with regard to price and volume are complied with; and
- it is carried out in accordance with the objectives referred to in paragraph 2 and the conditions set out in this Article and in the regulatory technical standards referred to in paragraph 6.

In order to benefit from the exemption, a buy-back programme shall have as its sole purpose:

- to reduce the capital of an issuer;
- to meet obligations arising from debt financial instruments that are exchangeable into equity instruments; or
- to meet obligations arising from share option programmes, or other allocations of shares, to employees or to members of the administrative, management or supervisory bodies of the issuer or of an associate company.

The issuer shall report to the competent authority of each trading venue on which the shares are admitted to trading or are traded no later than by the end of the seventh daily market session following the date of the execution of the transaction, all the transactions relating to the buy-back programme, in a detailed form and in an aggregated form. The aggregated form shall indicate the aggregated volume and the weighted average price per day and per trading venue.

Further details can be found in Art. 5 MAR and Commission Delegated Regulation (EU) 2016/1052.

## **4.5. Publication of holdings and trades in shares and related instruments**

### **4.5.1. Publication of voting rights notifications**

#### **(i) Obligations pursuant to the Transparency Directive**

Pursuant to Art. 12 para. 6 Transparency Directive, an issuer must, without delay and at the latest within three trading days, publicly disclose the voting rights notifications and notifications about the holding of instruments which the issuer receives from shareholders and holders of other financial instruments, respectively, pursuant to Art. 9 et seq. of the Transparency Directive.

#### **(ii) Implementation in Germany**

Art. 12 para. 6 Transparency Directive has been implemented in section 40 WpHG and the provisions of WpAV dealing with the publication and notifications of changes in the voting rights.

In parallel to the publication, the issuer must notify BaFin. After the publication and notification to BaFin the issuer must transmit the notification to the German Companies Register without delay.



(iii) Scope of application in Germany

Issuers:

German domestic issuers (*Inlandsemittent*), regardless of their statutory seat, i.e.:

- (a) issuers whose home country is the Federal Republic of Germany, with the exception of those issuers whose securities are not admitted in Germany but only in another member state of the EU / EEA, to the extent that they are subject to the disclosure and notification requirements pursuant to the Transparency Directive (2004/109/EC); or
- (b) issuers whose home country is not the Federal Republic of Germany but another member state of the EU / EEA and whose securities are only admitted to trading on an organised market in Germany.

Financial instruments:

Shares and related instruments only.

#### **4.5.2. Declaration about the holding and trading of own shares**

(i) Obligations pursuant to the Transparency Directive

Art. 14 Transparency Directive stipulates that, where an issuer acquires or disposes of its own shares, either itself or through a person acting in his own name but on the issuer's behalf, the issuer must make public the proportion of its own shares as soon as possible, but not later than four trading days following such acquisition or disposal where that proportion reaches, exceeds or falls below the thresholds of 5 % or 10 % of the voting rights.

(ii) Implementation in Germany

Art. 14 Transparency Directive has been implemented in section 40 WpHG and the provisions of WpAV dealing with the publication and notifications of changes in the voting rights.

In parallel to the publication, the issuer must notify BaFin. Without delay after the publication and notification to BaFin, the issuer must transmit the notification to the German Companies Register without delay.

(iii) Scope of application in Germany

Issuers:

German domestic issuers (*Inlandsemittent*), i.e.:

- (a) issuers whose home country is the Federal Republic of Germany, with the exception of those issuers whose securities are not admitted in Germany but only in another member state of the EU / EEA, to the extent that they are subject to the disclosure and notification requirements pursuant to the Transparency Directive (2004/109/EC); or
- (b) issuers whose home country is not the Federal Republic of Germany but another member state of the EU / EEA and whose securities are only admitted to trading on an organised market in Germany.

Financial instruments:

Shares and related instruments only.



### 4.5.3. Notification / publication of amendments to capital and voting rights

(i) Obligations pursuant to the Transparency Directive

Pursuant to Art. 15 Transparency Directive, an issuer must disclose to the public amendments (i.e. increase or decrease) to the total number of voting rights and of the date of the effectiveness of the increase or decrease in the number of voting rights.

(ii) Implementation in Germany

Art. 15 Transparency Directive has been implemented in section 41 WpHG and the provisions of WpAV dealing with the publication and notifications of changes in the voting rights.

Disclosure to the public must be made without delay, and at the latest within two trading days. In parallel to the publication, the issuer must notify BaFin. After the publication and notification to BaFin, the issuer must transmit the notification to the German Companies Register without delay.

In case voting rights are increased by issuance of pre-emptive shares, publication is only required together with a publication that must be made anyhow, but at the latest at the end of a calendar month during which the change in the number of voting rights occurred. In this case, the publication of the date of effectiveness of the change in the voting rights is not required.

(iii) Scope of application in Germany

Issuers:

German domestic issuers (*Inlandsemittent*), i.e.:

- (a) issuers whose home country is the Federal Republic of Germany, with the exception of those issuers whose securities are not admitted in Germany but only in another member state of the EU / EEA, to the extent that they are subject to the disclosure and notification requirements pursuant to the Transparency Directive (2004/109/EC); or
- (b) issuers whose home country is not the Federal Republic of Germany but another member state of the EU / EEA and whose securities are only admitted to trading on an organised market in Germany.

Financial instruments:

Shares and related instruments only

### 4.6. Other disclosure obligations

#### 4.6.1. Changes in rights

(i) Obligations pursuant to the Transparency Directive

Pursuant to Art. 16 Transparency Directive, an issuer must publish:

- any change in the rights attaching to the various classes of shares, and any changes in the rights attached to derivative securities issued by that issuer which are giving access to the shares of that issuer; and
- in case of securities other than shares, any changes in the rights of holders of securities other than shares, including changes in the terms and conditions of these securities which could



indirectly affect those rights, resulting in particular from a change in loan terms or in interest rates.

(ii) Implementation in Germany

Art. 16 Transparency Directive has been implemented in section 50 WpHG and the provisions of WpAV dealing with the publication and notifications of changes in the voting rights.

Publication must be made without delay and must be transmitted to BaFin at the same time. After the publication and notification to BaFin the issuer must transmit the notification to the German Companies Register without delay.

(iii) Scope of application in Germany

Issuers:

German domestic issuers (*Inlandsemittent*), i.e.:

- (a) issuers whose home country is the Federal Republic of Germany, with the exception of those issuers whose securities are not admitted in Germany but only in another member state of the EU / EEA, to the extent that they are subject to the disclosure and notification requirements pursuant to the Transparency Directive (2004/109/EC); or
- (b) issuers whose home country is not the Federal Republic of Germany but another member state of the EU / EEA and whose securities are only admitted to trading on an organised market in Germany.

Financial instruments:

- Shares
- Debt Instruments and other Securities as defined in the WpHG

#### **4.6.2. Publication of home Member State**

(i) Obligations pursuant to the Transparency Directive

Pursuant to Art. 2 para. 1 lit. (i) Transparency Directive, an issuer must publish its home member state without delay.

(ii) Implementation in Germany

Art. 2 para. 1 lit (i) Transparency Directive has been implemented in section 5 WpHG and the provisions of WpAV dealing with the choosing of the home member state.

The issuer must transmit the information to the German Companies Register and to BaFin.

(iii) Scope of application in Germany

Issuers:

Issuers

- (a) whose home member state is the Federal Republic of Germany; or
- (b) who choose the Federal Republic of Germany as home member state.



Financial instruments:

- Shares
- Debt Instruments and other Securities as defined in the WpHG

## **4.7. Equal treatment of security holders and support**

### **4.7.1. Obligations pursuant to the Transparency Directive**

Pursuant to Art. 17 Transparency Directive, an issuer must ensure:

- (i) Equal treatment of holders of admitted securities;
- (ii) Facilities and information necessary to enable holders to exercise their rights are publicly available in Germany and that the integrity of data is preserved, and that shareholders are not prevented from exercising their rights by proxy. In particular, the issuer shall:
  - (a) provide certain information with regard to the general meeting;
  - (b) make available a proxy form to each person entitled to vote at a shareholders' meeting;
  - (c) designate as its agent a financial institution within Germany through which shareholders may exercise their financial rights;
  - (d) publish notices or distribute circulars concerning the allocation and payment of dividends and the issue of new shares.
- (iii) Implementation in Germany

Art. 17 of the Transparency Directive has been implemented in Germany in sections 48, 49 WpHG.

### **4.7.2. Scope of application in Germany**

Issuers:

Issuers whose home member state is the Federal Republic of Germany

Financial instruments:

- Shares
- Debt Instruments and other Securities as defined in the WpHG

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