BaFin

Bundesanstalt für
Finanzdienstleistungsaufsicht

Federal Financial
Supervisory Authority

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Ms.
Vanessa Countryman
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Ref. no.: WA 12-Wp 2055-2019/0026 (please quote in all correspondence)

12 August 2021

Substituted compliance application pursuant to Rules 0-13 and 3a71-6 under the Securities Exchange Act of 1934 ("Exchange Act").

Dear Ms. Countryman,

The Bundesanstalt für Finanzdienstleistungsaufsicht ("BaFin") is filing this application to request that the Securities and Exchange Commission ("SEC") make a determination (a "substituted compliance determination") pursuant to Rule 3a71-6(a) under the Exchange Act that compliance with the German law requirements specified below by the class of market participants described below may satisfy the corresponding requirements applicable to a security-based swap dealer or major security-based swap participant registered with the SEC that is not a U.S. person (together, "non-U.S. SBS entities").

This application is in addition to the BaFin application dated 6 November 2020, which was granted pursuant to the conditions as described in the Final SEC Order dated 22 December 2020 (Release No. 34-90765; File No. S7-16-20). Consequently, this application incorporates by reference the 6 November 2020 application, and BaFin confirms that the 6 November 2020 application remains accurate in all respects.

This application relates to German law requirements applicable to investment firms and credit institutions that are authorized by BaFin to provide investment services or perform investment activities in Germany and are supervised by the ECB (or have a licensing application pending with the ECB as of the date of this application letter) as a significant institution (each, a "covered entity").

Chief Executive Director of Securities Supervision | Asset Management

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1. BaFin believes that those German law requirements are comparable to the following areas of the Exchange Act and the rules and regulations thereunder applicable to non-U.S. SBS entities: risk control requirements in the area of capital and margin

2. Regarding all other Exchange Act requirements—risk control: risk management systems, trade acknowledgment and verification, portfolio reconciliation and dispute resolution, portfolio compression and trading relationship documentation requirements; recordkeeping and reporting: record creation, record maintenance, reporting and notice requirements; Internal supervision and compliance: supervision, conflict of interest and chief compliance office requirements; and counterparty protection: fair and balanced communications, risks and characteristics disclosure, incentives or conflicts of interest disclosure, daily mark disclosure, "know your counterparty," suitability and clearing rights disclosure requirements—BaFin refers to its application dated 6 November 2020, incorporated by reference herein. BaFin confirms that the 6 November 2020 application remains accurate in all respects.

This application describes how German law requirements applicable to covered entities compare to U.S. requirements in the areas listed above. The annex to this application provides a side-by-side comparison of each of the relevant German and U.S. requirements, as well as an analysis of their comparability.

Information relevant to the SEC's analysis of BaFin's supervision and enforcement frameworks for capital and margin requirements is attached to this letter as Annex A.

In connection with the requirement set out in Exchange Act Rule 3a71-6(c)(3) regarding the SEC's access to books and records and onsite inspections and examinations, BaFin confirms that there are no laws or policies in Germany or the European Union (see below with respect to the GDPR (as defined below)) that would impede the ability of a covered entity to provide the SEC prompt access to its books and records or submit to onsite inspection and examination by the SEC.

BaFin confirms it has entered into a substituted compliance memorandum of understanding with the SEC on 18 December 2020 addressing issues of supervision and enforcement cooperation in connection with substituted compliance. With respect to the Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data ("GDPR"), an understanding between BaFin and the SEC was reached in connection with satisfaction of the requirement under Rule 3a71-6(a)(2)(ii) of the Exchange Act.

If you any questions, please do not hesitate to contact me.

Kind regards,

Thorsten Pötzsch
Chief Executive Director of BaFin's Resolution Sector
(Acting ad interim for BaFin's Securities Supervision Sector)

Annex A

1. German Banking Act Translation (2021-05-12)
2. German Recovery and Resolution Act Translation (2021-04-29)
3. Regulatory Mapping_Capital Portion_BaFin_final_2021-05-12
4. Regulatory Mapping_Margin Bafin_final_24.03.2021
5. Questionnaire SEC NonBanks_Bafin_final
6. SEC follow-up Questions_on Capital and Margin BaFin_final_2021-05-12
7. Further SEC recordkeeping_reporting questions_BaFin final 2021-05-12
8. SEC Recordkeeping_Questions_for_German_BaFin_final_2021-05-20
9. German Follow up Questions 6.7.21_BaFin_14.06.2021
10. LiqV - Liquidity Regulation
11. Additional Translations HGB WpDVerOV

Annex A

1. German Banking Act Translation; SEC follow-up questions on capital and margin
2. German Recovery and Resolution Act Translation
3. Regulatory Mapping Capital Portion
4. Regulatory Mapping Margin
5. Questionnaire SEC NonBanks
6. SEC Follow-up Questions on Capital and Margin
7. Further SEC Recordkeeping Reporting Questions
8. SEC Recordkeeping Questions for German BaFin
9. German Follow-up Questions
10. Liquidity Regulation
11. Additional Translation

German Banking Act (Convenience Translation) (as in force from 29 December 2020 including CRD V amendments. A few of the sections are in force as of 28 June 2021. For these sections, both translations have been added to the table, the one in force until 28 June 2021 and the one in force as of 28 June 2021 and have been marked accordingly.)	
§ 2a KWG	**Section 2a KWG**
(1) Institute können eine Freistellung nach Artikel 7 der Verordnung (EU) Nr. 575/2013 in der jeweils geltenden Fassung bei der Aufsichtsbehörde beantragen. Dem Antrag sind geeignete Unterlagen beizufügen, die nachweisen, dass die Voraussetzungen für eine Freistellung nach Artikel 7 der Verordnung (EU) Nr. 575/2013 vorliegen.	(1) Institutions may submit an application to the supervisory authority requesting an exemption pursuant to Article 7 of Regulation (EU) No 575/2013 as last amended. The application shall be accompanied by appropriate documentation to prove that the conditions for an exemption pursuant to Article 7 of Regulation (EU) No 575/2013 have been met.
(2) Sofern die Voraussetzungen für eine Freistellung nach Artikel 7 der Verordnung (EU) Nr. 575/2013 vorliegen, kann die Aufsichtsbehörde Institute auf Antrag für das Management von Risiken mit Ausnahme des Liquiditätsrisikos von den Anforderungen gemäß § 25a Absatz 1 Satz 3 Nummer 1, 2 und 3 Buchstabe b und c bezüglich der Risikocontrolling-Funktion freistellen. Dem Antrag sind geeignete Unterlagen beizufügen, die nachweisen, dass die Voraussetzungen nach Satz 1 vorliegen.	(2) Where the conditions for an exemption pursuant to Article 7 of Regulation (EU) No 575/2013 have been met, BaFin may, upon request, exempt institutions from the requirements regarding the risk control function laid down in Section 25a (1) sentence 3 numbers 1, 2 and 3 letters (b) and (c) for the management of risks with the exception of liquidity risk. The application shall be accompanied by appropriate documentation to prove that the conditions pursuant to sentence 1 have been met.
(3) Institute können eine Freistellung nach Artikel 8 der Verordnung (EU) Nr. 575/2013 in der jeweils geltenden Fassung bei der Aufsichtsbehörde beantragen. Dem Antrag sind geeignete Unterlagen beizufügen, die nachweisen, dass die Voraussetzungen für eine Freistellung nach Artikel 8 der Verordnung (EU) Nr. 575/2013 vorliegen.	(3) Institutions may submit an application to the supervisory authority requesting an exemption pursuant to Article 8 of Regulation (EU) No 575/2013 as last amended. The application shall be accompanied by appropriate documentation to prove that the conditions for an exemption pursuant to Article 8 of Regulation (EU) No 575/2013 have been met.
(4) Sofern die Voraussetzungen für eine Freistellung nach Artikel 8 der Verordnung (EU) Nr. 575/2013 vorliegen und eine Freistellung nach Artikel 8 der Verordnung (EU) Nr. 575/2013 gewährt wird, kann die Aufsichtsbehörde Institute auf Antrag für das Management von Liquiditätsrisiken von den Anforderungen gemäß § 25a Absatz 1 Satz 3 Nummer 1, 2 und 3 Buchstabe b und c bezüglich der Risikocontrolling-Funktion freistellen. Dem Antrag sind geeignete Unterlagen beizufügen, die nachweisen, dass die Voraussetzungen nach Satz 1 vorliegen.	(4) Where the conditions for an exemption pursuant to Article 8 of Regulation (EU) No 575/2013 have been met and an exemption pursuant to Article 8 of Regulation (EU) No 575/2013 is granted, the supervisory authority may, upon request, exempt institutions from the requirements regarding the risk control function laid down in Section 25a (1) sentence 3 numbers 1, 2 and 3 letters (b) and (c) for the management of liquidity risks. The application shall be accompanied by appropriate documentation to prove that the conditions pursuant to sentence 1 have been met.

§ 6b KWG	**Section 6b KWG**
(1) Im Rahmen der Beaufsichtigung beurteilt die Aufsichtsbehörde	(1) As part of its prudential supervisory tasks, the supervisory authority reviews
1. die Regelungen, Strategien, Verfahren und Prozesse, die ein Institut zur Einhaltung der aufsichtlichen Anforderungen geschaffen hat, und	1. the arrangements, strategies, processes and mechanisms implemented by an institution to comply with the prudential requirements, and
2. die Risiken, denen ein Institut ausgesetzt ist oder sein könnte, insbesondere auch die Risiken, die unter Berücksichtigung der Art, des Umfangs und der Komplexität der Geschäftstätigkeit eines Instituts bei Stresstests festgestellt wurden.	2. the risks to which an institution is or might be exposed, notably including the risks revealed by stress testing taking into account the nature, scope and complexity of an institution's activities.
Die Bundesanstalt arbeitet hierbei mit der Deutschen Bundesbank nach Maßgabe des §7 zusammen.	To this end BaFin cooperates with the Deutsche Bundesbank pursuant to Section 7.
(2) Die Aufsichtsbehörde bewertet anhand der Überprüfung und Beurteilung zusammenfassend und zukunftsgerichtet, ob die von einem Institut geschaffenen Regelungen, Strategien, Verfahren und Prozesse sowie seine Liquiditäts- und Eigenmittelausstattung ein angemessenes und wirksames Risikomanagement und eine solide Risikoabdeckung gewährleisten. Neben Kreditrisiken, Marktrisiken und operationellen Risiken berücksichtigt sie dabei insbesondere	(2) On the basis of the review and evaluation, the supervisory authority makes a summary and forward-looking assessment of whether the arrangements, strategies, processes and mechanisms implemented by an institution and the liquidity and own funds held by it ensure appropriate and effective risk management and sound coverage of its risks. In addition to credit, market and operational risk, BaFin takes particular account of
1. die Ergebnisse der internen Stresstests eines Instituts, das einen IRB-Ansatz verwendet oder das zur Berechnung der in den Artikeln 362 bis 377 der Verordnung (EU) Nr. 575/2013 in der jeweils geltenden Fassung festgelegten Eigenmittelanforderungen für das Marktrisiko ein internes Modell verwendet;	1. the results of internal stress tests carried out by an institution which adopts an internal ratings-based (IRB) approach or which uses an internal model to calculate its own funds requirements for market risk as set out in Articles 362 to 377 of Regulation (EU) No 575/2013 as last amended;
2. die Fähigkeit eines Instituts, auf Grund von gemäß Artikel 105 der Verordnung (EU) Nr. 575/2013 in der jeweils geltenden Fassung vorgenommenen Bewertungskorrekturen seine Positionen des Handelsbuchs unter normalen Marktbedingungen kurzfristig ohne wesentliche Verluste zu veräußern oder abzusichern;	2. an institution's ability in the light of valuation adjustments taken pursuant to Article 105 of Regulation (EU) No 575/2013 as last amended to sell or hedge out its trading book positions within a short period without incurring material losses under normal market conditions;
3. das Ausmaß, in dem ein Institut Risikokonzentrationen ausgesetzt ist, und deren Steuerung durch das Institut, einschließlich der Erfüllung der aufsichtlichen Anforderungen;	3. the exposure to and management of concentration risk by an institution, including its compliance with the prudential requirements;

4. die Auswirkung von Diversifikationseffekten und auf welche Art und Weise sie in das Risikomesssystem eines Instituts einbezogen werden;	4. the impact of diversification effects and how such effects are factored into an institution's risk measurement system;
5. die Robustheit, Eignung und Art der Anwendung der Grundsätze und Verfahren, die ein Institut für das Management des Risikos eingeführt hat, das trotz des Einsatzes anerkannter Kreditrisikominderungstechniken bei dem Institut verbleibt;	5. the robustness, suitability and manner of application of the policies and procedures implemented by an institution for the management of the residual risk associated with the use of recognised credit risk mitigation techniques;
6. die Angemessenheit der Eigenmittel, die ein Institut für Verbriefungen hält, für die es als Originator gilt, unter Berücksichtigung der wirtschaftlichen Substanz der Transaktion und des Grads an erreichter Risikoübertragung; die Aufsichtsbehörde überwacht in diesem Zusammenhang, ob ein Institut außervertragliche Unterstützung für eine Transaktion leistet;	6. the adequacy of the own funds held by an institution for securitisations for which the institution is the originator, taking into account the economic substance of the transaction and the degree of risk transfer achieved; in this context, the supervisory authority monitors whether an institution provides implicit support to a transaction;
7. die Liquiditätsrisiken, denen ein Institut ausgesetzt ist, sowie deren Beurteilung und Steuerung einschließlich der Entwicklung von Alternativszenarioanalysen und wirksamer Notfallpläne sowie der Steuerung risikomindernder Faktoren, insbesondere Höhe, Zusammensetzung und Qualität von Liquiditätspuffern;	7. the exposure to, evaluation of and management of liquidity risk by an institution, including the development of alternative scenario analyses and effective contingency plans, as well as the management of risk mitigants, in particular the level, composition and quality of liquidity buffers;
8. die Ergebnisse aufsichtlicher Stresstests nach Absatz 3 oder nach Artikel 32 der Verordnung (EU) Nr. 1093/2010;	8. the results of prudential stress tests pursuant to paragraph (3) or Article 32 of Regulation (EU) No 1093/2010;
9. die geografische Verteilung der eingegangenen Risiken eines Instituts;	9. the geographical location of an institution's exposures;
10. das Geschäftsmodell;	10. the business model;
11. das Zinsänderungsrisiko eines Instituts aus Geschäften, die nicht unter das Handelsbuch fallen;	11. an institution's interest rate risk arising from non-trading activities;
12. die Verfahren zur Ermittlung und Sicherstellung der Risikotragfähigkeit eines Instituts nach § 25a;	12. the processes and mechanisms for determining and ensuring an institution's internal capital adequacy pursuant to Section 25a;
13. das Risiko einer übermäßigen Verschuldung eines Instituts, wie es aus den Indikatoren für eine übermäßige Verschuldung hervorgeht, wozu auch die gemäß Artikel 429 der Verordnung (EU) Nr. 575/2013 in der jeweils geltenden Fassung bestimmte	13. the exposure of an institution to the risk of excessive leverage as reflected by indicators of excessive leverage, including the leverage ratio determined in accordance with Article 429 of Regulation (EU) No 575/2013 as last amended; in determining the adequacy of the leverage

Verschuldungsquote zählt; bei der Beurteilung der Angemessenheit der Verschuldungsquote eines Instituts und der vom Institut zur Steuerung des Risikos einer übermäßigen Verschuldung eingeführten Regelungen, Strategien, Verfahren und Mechanismen berücksichtigt die Aufsichtsbehörde das Geschäftsmodell des Instituts;	ratio of an institution and of the arrangements, strategies, processes and mechanisms implemented by the institution to manage the risk of excessive leverage, the supervisory authority takes account of the institution's business model;
14. die Regelungen zur Sicherstellung einer ordnungsgemäßen Geschäftsführung eines Instituts, die Art und Weise ihrer Implementierung und praktischen Durchführung sowie die Fähigkeit der Mitglieder des Leitungsorgans zur Erfüllung ihrer Pflichten.	14. an institution's arrangements for ensuring sound management, the nature of their implementation and practical execution as well as the ability of the members of the management body to perform their duties.
(3) Die Aufsichtsbehörde kann ein Institut aufsichtlichen Stresstests unterziehen oder, soweit die Bundesanstalt Aufsichtsbehörde ist, die Deutsche Bundesbank hierzu beauftragen. Hierzu kann die Aufsichtsbehörde und, soweit die Bundesanstalt Aufsichtsbehörde ist, auch die Deutsche Bundesbank	(3) The supervisory authority may subject an institution to supervisory stress tests or, to the extent BaFin is the supervisory authority, commission the Deutsche Bundesbank to carry out such stress tests. To this end, the supervisory authority, or, to the extent BaFin is the supervisory authority, also the Deutsche Bundesbank may
1. das Institut auffordern, seine Risiko-, Eigenmittel- und Liquiditätspositionen unter Nutzung der institutseigenen Risikomanagement-Methoden bei aufsichtlich vorgegebenen Szenarien zu berechnen und die Daten sowie die Ergebnisse an die Aufsichtsbehörde, die Deutsche Bundesbank und, soweit Aufsichtsbehörde die Europäische Zentralbank ist, auch an die Bundesanstalt zu übermitteln und	1. require the institution to calculate its risk, own funds and liquidity positions using the institution's own risk management methods in prudentially defined scenarios and transmit the data and results to the supervisory authority, the Deutsche Bundesbank, and to the extent the European Central Bank is the supervisory authority, also to BaFin, and
2. die Auswirkungen von Schocks auf das Institut auf der Grundlage aufsichtlicher Stresstest-Methoden anhand der verfügbaren Daten bestimmen.	2. determine the impact of shocks on the institution on the basis of supervisory stress testing methods using the available data.
(4) Die Aufsichtsbehörde bestimmt Häufigkeit und Intensität der Überprüfungen, Beurteilungen und möglicher aufsichtlicher Stresstests unter Berücksichtigung der Größe, der Systemrelevanz sowie der Art, des Umfangs und der Komplexität der Geschäfte eines Instituts. Die Überprüfungen und Beurteilungen werden mindestens einmal jährlich aktualisiert. Soweit die Bundesanstalt Aufsichtsbehörde ist, nimmt sie die Aufgaben nach Satz 1 in Abstimmung mit der Deutschen Bundesbank wahr. Die Aufsichtsbehörde wendet bei der Überprüfung und Beurteilung nach Absatz 1 den Grundsatz der Verhältnismäßigkeit nach	(4) The supervisory authority establishes the frequency and intensity of the reviews, evaluations and possible supervisory stress tests having regard to the size, systemic importance and the nature, scale and complexity of an institution's activities. The reviews and evaluations shall be updated at least annually. To the extent BaFin is the supervisory authority, it shall perform the tasks pursuant to sentence 1 in consultation with the Deutsche Bundesbank. On conducting the review or assessment pursuant to paragraph (1), the supervisory authority shall apply the principle of

Maßgabe der von ihr veröffentlichten Kriterien an. (5) Die Aufsichtsbehörde kann die Methode der Überprüfung und Beurteilung nach Absatz 1 anpassen, um Instituten mit einem ähnlichen Risikoprofil Rechnung zu tragen. Die angepasste Methode 1. kann risikoorientierte Referenzwerte und quantitative Indikatoren einschließen, 2. hat die angemessene Berücksichtigung spezifischer Risiken zu ermöglichen, denen ein Institut möglicherweise ausgesetzt ist, und 3. darf den institutsspezifischen Charakter von Anordnungen, die im Zusammenhang mit dem aufsichtlichen Überprüfungs- und Beurteilungsverfahren, der laufenden Überprüfung der Erlaubnis zur Verwendung interner Ansätze oder zur Abwehr von Verstößen gegen dieses Gesetz oder gegen die Anforderungen der Verordnung (EU) Nr. 575/2013 erlassen wurden, nicht beeinträchtigen.	proportionality in accordance with the criteria it publishes. (5) The supervisory authority may adjust the method of the review and assessment pursuant to paragraph (1) in order to give due consideration to institutions with a similar risk profile. The adjusted method 1. may include risk-oriented reference values and quantitative indicators, 2. shall facilitate the appropriate consideration of specific risks that an institution is potentially exposed to, and 3. may not detract from the institution-specific character of orders that were issued in connection with the supervisory review and assessment method, the ongoing review of the permission to apply internal approaches or to prevent violations of this Act or of the requirements of Regulation (EU) No 575/2013.
§ 6c KWG	**Section 6c KWG**
(1) Die Aufsichtsbehörde ordnet an, dass ein Institut, eine Institutsgruppe, eine Finanzholding-Gruppe oder eine gemischte Finanzholding-Gruppe über die Anforderungen der Verordnung (EU) Nr. 575/2013 hinaus zusätzliche Eigenmittel vorhalten muss, wenn sie im Rahmen des aufsichtlichen Überprüfungs- und Beurteilungsverfahrens nach § 6b und der nach § 10 Absatz 1 erlassenen Rechtsverordnung feststellt, dass 1. Risiken oder Risikoelemente nicht oder nicht ausreichend durch die Eigenmittelanforderungen nach den Teilen 3, 4 und 7 der Verordnung (EU) Nr. 575/2013 und nach Kapitel 2 der Verordnung (EU) 2017/2402 sowie nach der Rechtsverordnung nach § 10 Absatz 1 abgedeckt sind, 2. die Risikotragfähigkeit nicht gewährleistet ist oder die in Artikel 393 der Verordnung (EU) Nr. 575/2013 festgelegten Anforderungen zur Ermittlung und Steuerung von Großkrediten nicht eingehalten werden und es	(1) The supervisory authority issues an order requiring an institution, group of institutions, financial holding group or mixed financial holding group to meet own funds requirements in respect of risks and risk elements not covered by Regulation (EU) No 575/2013, if it determines that in connection with the supervisory review and assessment method pursuant to Section 6b and the legal instrument issued pursuant to Section 10(1) that 1. risks or risk elements are not or not sufficiently covered by the capital requirements pursuant to Parts 3, 4 and 7 of Regulation (EU) No 575/2013 and pursuant to Chapter 2 of Regulation (EU) 2017/2402 as well as pursuant to the legal instrument pursuant to Section 10(1), 2. risk-bearing capacity is not ensured or the capital requirements specified in Article 393 of Regulation (EU) No 575/2013 on the identification and management of large loans are not complied with and it is unlikely that

unwahrscheinlich ist, dass andere Aufsichtsmaßnahmen ausreichen, um sicherzustellen, dass diese Anforderungen innerhalb eines angemessenen Zeitraums erfüllt werden können,	other supervisory measures will be sufficient to ensure that these requirements can be met within a reasonable period of time,
3. die auf Grund von Artikel 105 der Verordnung (EU) Nr. 575/2013 vorgenommenen Bewertungskorrekturen wahrscheinlich nicht ausreichen, um die Positionen des Handelsbuchs unter normalen Marktbedingungen kurzfristig ohne wesentlichen Verlust veräußern oder absichern zu können,	3. the valuation adjustments made on the basis of Article 105 of Regulation (EU) No 575/2013 are unlikely to be sufficient to enable trading book positions to be sold or hedged in the short term under normal market conditions without incurring material losses,
4. die Anforderungen für die Anwendung des genehmigten internen Ansatzes nicht erfüllt werden und dies wahrscheinlich zu einer unzureichenden Eigenmittelausstattung führt,	4. the requirements for the application of the approved internal approach are not met and this is likely to lead to insufficient capital adequacy,
5. das Institut, die Institutsgruppe, die Finanzholding-Gruppe oder die gemischte Finanzholding-Gruppe wiederholt keine zusätzlichen Eigenmittel in angemessener Höhe bildet oder beibehält, um der Eigenmittelempfehlung nach § 6d zu entsprechen, oder	5. the institution, group of institutions, financial holding group or mixed financial holding group repeatedly fails to establish or maintain additional own funds of an appropriate amount in order to comply with the recommendation on own funds pursuant to Section 6d, or
6. andere institutsspezifische Situationen vorliegen, die zu wesentlichen aufsichtlichen Bedenken führen.	6. other institution-specific situations exist that give rise to significant supervisory concerns.
Die zusätzliche Eigenmittelanforderung nach Satz 1 darf nur für die Zwecke der Deckung der Risiken angeordnet werden, die sich aus der Geschäftstätigkeit des einzelnen Instituts ergeben. Dies schließt die Auswirkungen bestimmter Wirtschafts- und Marktentwicklungen nur ein, wenn sie sich im Risikoprofil des Instituts widerspiegeln.	The additional own funds requirement pursuant to sentence 1 may be imposed only for the purpose of covering risks arising from the business activities of the individual institution. This includes the effects of certain economic and market developments only if they are reflected in the risk profile of the institution.
(2) Das Vorhalten zusätzlicher Eigenmittel auf Grund einer Feststellung nach Absatz 1 Satz 1 Nummer 1 kann nur angeordnet werden, wenn die Beträge, die Arten und die Verteilung des Kapitals, die die Aufsichtsbehörde unter Berücksichtigung der aufsichtlichen Überprüfung der Verfahren zur Ermittlung und Sicherstellung der Risikotragfähigkeit als angemessen betrachtet, über die in den Teilen 3, 4 und 7 der Verordnung (EU) Nr. 575/2013 und in Kapitel 2 der Verordnung (EU) 2017/2402 festgelegten Eigenmittelanforderungen	(2) The holding of additional own funds on the basis of a finding pursuant to paragraph (1), sentence 1, number 1 may only be ordered if the amounts, types and distribution of capital which the supervisory authority considers to be adequate, taking into account the supervisory review of the procedures for the determination and assurance of risk-bearing capacity, exceed the own funds requirements laid down in Parts 3, 4 and 7 of Regulation (EU) No 575/2013 and in Chapter 2 of Regulation (EU) 2017/2402. The supervisory authority shall also assess in particular

hinausgehen. Die Aufsichtsbehörde bewertet dazu insbesondere auch	
1. die institutsspezifischen Risiken oder Risikoelemente, die von den in den Teilen 3, 4 und 7 der Verordnung (EU) Nr. 575/2013 und in Kapitel 2 der Verordnung (EU) 2017/2402 festgelegten Eigenmittelanforderungen ausdrücklich ausgenommen oder von diesen nicht erfasst werden,	1. the institution-specific risks or risk elements that are explicitly excluded or not covered by the capital requirements laid down in Parts 3, 4 and 7 of Regulation (EU) No 575/2013 and in Chapter 2 of Regulation (EU) 2017/2402
2. die institutsspezifischen Risiken oder Risikoelemente, die trotz Erfüllung der in den Teilen 3, 4 und 7 der Verordnung (EU) Nr. 575/2013 und in Kapitel 2 der Verordnung (EU) 2017/2402 festgelegten Anforderungen wahrscheinlich unterschätzt werden,	2. the institution-specific risks or risk elements that are likely to be underestimated despite compliance with the requirements set out in Parts 3, 4 and 7 of Regulation (EU) No 575/2013 and in Chapter 2 of Regulation (EU) 2017/2402
3. die wesentlichen Zinsänderungsrisiken aus Positionen des Anlagebuchs gemäß Absatz 3.	3. the material interest rate risks arising from positions in the non-trading book pursuant to paragraph (3).
Bei Risiken und Risikoelementen, die den Übergangsregelungen oder Bestandsschutzklauseln gemäß der Richtlinie 2013/36/EU oder der Verordnung (EU) Nr. 575/2013 unterliegen, ist grundsätzlich keine Unterschätzung der Risiken oder Risikoelemente gegeben. Für die Zwecke des Satzes 1 deckt das als angemessen betrachtete Kapital alle gemäß Satz 2 als wesentlich ermittelten Risiken oder Risikoelemente ab, die nicht oder nicht ausreichend von den in den Teilen 3, 4 und 7 der Verordnung (EU) Nr. 575/2013 und in Kapitel 2 der Verordnung (EU) 2017/2402 festgelegten Eigenmittelanforderungen abgedeckt sind.	In the case of risks and risk elements that are subject to the transitional arrangements or grandfathering clauses pursuant to Directive 2013/36/EU or Regulation (EU) No 575/2013, there is generally no underestimation of the risks or risk elements. For the purposes of sentence 1, the capital deemed adequate shall cover all risks or risk elements identified as material in accordance with sentence 2 which are not or not sufficiently covered by the capital requirements laid down in Parts 3, 4 and 7 of Regulation (EU) No 575/2013 and in Chapter 2 of Regulation (EU) 2017/2402.
(3) Zinsänderungsrisiken aus Positionen des Anlagebuchs können insbesondere als wesentlich gelten, wenn	(3) Interest rate risks arising from positions in the non-trading book may be considered material in particular if
1. sich der Barwert eines Instituts auf Grund einer plötzlichen und unerwarteten Zinsänderung, wie sie sich aus einem der sechs aufsichtlichen Zinsschockszenarien ergibt, um mehr als 15 Prozent seines Kernkapitals verringert oder	1. the present value of an institution decreases by more than 15 per cent of its core capital due to a sudden and unexpected change in interest rates, such as that resulting from one of the six regulatory interest rate shock scenarios, or
2. der Nettozinsertrag eines Instituts auf Grund einer plötzlichen und unerwarteten Zinsänderung, wie sie sich aus einem der zwei aufsichtlichen Zinsschockszenarien ergibt, stark rückläufig ist.	2. the net interest income of an institution falls sharply as a result of a sudden and unexpected change in interest rates resulting from one of the two regulatory interest rate shock scenarios.

Wenn die Aufsichtsbehörde im Rahmen des Überprüfungs- und Beurteilungsverfahrens nach § 6b zu dem Ergebnis kommt, dass die Steuerung des sich aus Geschäften des Anlagebuchs ergebenden Zinsänderungsrisikos durch das Institut angemessen ist und dass das Institut diesem Zinsänderungsrisiko nicht übermäßig ausgesetzt ist, werden diese Risiken als nicht wesentlich betrachtet.	If, as part of the review and assessment procedure pursuant to Section 6b, the supervisory authority concludes that the institution's management of the interest rate risk arising from transactions in the non-trading book is adequate and that the institution is not unduly exposed to this interest rate risk, these risks shall be deemed not to be material.
(4) Die Höhe der zusätzlichen Eigenmittelanforderungen, die zur Abdeckung des Risikos einer übermäßigen Verschuldung angeordnet sind, das nicht ausreichend durch Artikel 92 Absatz 1 Buchstabe d der Verordnung (EU) Nr. 575/2013 abgedeckt ist, richtet sich nach der Differenz zwischen dem nach Absatz 2 als angemessen betrachteten Kapital und den in den Teilen 3 und 7 der Verordnung (EU) Nr. 575/2013 festgelegten Eigenmittelanforderungen. In allen anderen Fällen richtet sich die Höhe der zusätzlichen Eigenmittelanforderung nach der Differenz zwischen dem nach Absatz 2 als angemessen betrachteten Kapital und den in den Teilen 3 und 4 der Verordnung (EU) Nr. 575/2013 und in Kapitel 2 der Verordnung (EU) 2017/2402 festgelegten Eigenmittelanforderungen.	(4) The amount of the additional own-funds requirements imposed to cover the risk of excessive indebtedness not adequately covered by Article 92(1) letter d of Regulation (EU) No 575/2013 shall be determined by the difference between the capital deemed adequate under paragraph 2 and the own-funds requirements laid down in Parts 3 and 7 of Regulation (EU) No 575/2013. In all other cases, the amount of the additional capital requirement shall be determined by the difference between the capital deemed adequate under paragraph (2) and the capital requirements laid down in Parts 3 and 4 of Regulation (EU) No 575/2013 and Chapter 2 of Regulation (EU) 2017/2402.
(5) Das Institut, die Institutsgruppe, die Finanzholding-Gruppe oder die gemischte Finanzholding-Gruppe hat die zusätzliche Eigenmittelanforderung, um andere Risiken als das Risiko einer übermäßigen Verschuldung abzudecken, zu mindestens drei Vierteln mit Kernkapital zu erfüllen. Das Kernkapital nach Satz 1 muss zu mindestens drei Vierteln aus hartem Kernkapital bestehen. Das Institut, die Institutsgruppe, die Finanzholding-Gruppe oder die gemischte Finanzholding-Gruppe hat die zusätzliche Eigenmittelanforderung, um das Risiko einer übermäßigen Verschuldung abzudecken, mit Kernkapital zu erfüllen. Die Aufsichtsbehörde kann gegenüber dem Institut anordnen, dass die zusätzliche Eigenmittelanforderung mit einem höheren Anteil an Kernkapital oder hartem Kernkapital zu erfüllen ist, soweit dies unter Berücksichtigung der Situation des Instituts erforderlich ist.	(5) The institution, group of institutions, financial holding group or mixed financial holding group shall, in order to cover risks other than the risk of excessive indebtedness, cover the additional own funds requirement with tier 1 capital by at least three-quarters. At least three-quarters of the tier 1 capital pursuant to sentence 1 must consist of Common Equity Tier 1 capital. The institution, group of institutions, financial holding group or mixed financial holding group has to meet the additional own funds requirement to cover the risk of excessive indebtedness with tier 1 capital. The supervisory authority may order the institution to meet the additional own funds requirement with a higher proportion of tier 1 capital or Common Equity Tier 1 capital if this is necessary in consideration of the situation of the institution.
(6) Die Eigenmittel, die zur Erfüllung der zusätzlichen Eigenmittelanforderung eingesetzt werden, um das Risiko einer übermäßigen	(6) The own funds used to meet the additional own funds requirement to cover the risk of excessive indebtedness which is not sufficiently

Verschuldung abzudecken, das nicht ausreichend durch Artikel 92 Absatz 1 Buchstabe d der Verordnung (EU) Nr. 575/2013 abgedeckt ist, dürfen nicht zur Erfüllung einer der folgenden Anforderungen eingesetzt werden:	covered by Article 92(1) letter d of Regulation (EU) No 575/2013 may not be used to meet any of the following requirements:
1. der in Artikel 92 Absatz 1 Buchstabe d der Verordnung (EU) Nr. 575/2013 festgelegten Eigenmittelanforderung,	1. the own funds requirement laid down in Article 92(1) letter d of Regulation (EU) No 575/2013,
2. der erhöhten Eigenmittelanforderungen zur Abdeckung von Risiken und Risikoelementen nach § 10 Absatz 3, die nicht von Artikel 1 der Verordnung (EU) Nr. 575/2013 abgedeckt sind,	2. the increased own funds requirements to cover risks and risk elements pursuant to Section 10(3) that are not covered by Article 1 of Regulation (EU) No 575/2013,
3. der erhöhten Eigenmittelanforderungen nach § 10 Absatz 4,	3. the increased own funds requirements pursuant to Section 10(4),
4. der in Artikel 92 Absatz 1a der Verordnung (EU) Nr. 575/2013 festgelegten Anforderung an den Puffer der Verschuldungsquote,	4. the requirement for the buffer of the debt ratio laid down in Article 92(1a) of Regulation (EU) No 575/2013,
5. der Eigenmittelempfehlung nach § 6d, sofern sich diese Empfehlung auf die Risiken einer übermäßigen Verschuldung bezieht.	5. the own funds recommendation pursuant to Section 6d, provided that this recommendation relates to the risks of excessive indebtedness.
Die Eigenmittel, die zur Erfüllung der zusätzlichen Eigenmittelanforderung für sonstige Risiken eingesetzt werden, dürfen nicht zur Erfüllung einer der folgenden Anforderungen eingesetzt werden:	Own funds used to meet the additional capital requirement for other risks may not be used to meet any of the following requirements:
1. der in Artikel 92 Absatz 1 Buchstabe a, b und c der Verordnung (EU) Nr. 575/2013 festgelegten Eigenmittelanforderungen,	1. the own funds requirement laid down in Article 92(1) letter a, b and c of Regulation (EU) No 575/2013,
2. der erhöhten Eigenmittelanforderungen zur Absicherung von Risiken und Risikoelementen nach § 10 Absatz 3, die nicht von Artikel 1 der Verordnung (EU) Nr. 575/2013 abgedeckt sind,	2. the increased own funds requirements to cover risks and risk elements pursuant to Section 10(3) that are not covered by Article 1 of Regulation (EU) No 575/2013,
3. der erhöhten Eigenmittelanforderungen nach § 10 Absatz 4,	3. the increased own funds requirements pursuant to Section 10(4),
4. der Kapitalpufferanforderungen nach den §§ 10c bis 10g,	4. the capital buffer requirements pursuant to Sections 10c to 10g,
5. der Eigenmittelempfehlung nach § 6d, sofern sich diese Empfehlung auf andere Risiken als das Risiko einer übermäßigen Verschuldung bezieht.	5. the own funds recommendation pursuant to Section 6d, provided that this recommendation relates to the risks other than the risk of excessive indebtedness.

§ 10 Abs. 3, 4, 6 KWG	Section 10(3), (4), (6) KWG
(3) Die Aufsichtsbehörde kann anordnen, dass ein Institut, eine Institutsgruppe, eine Finanzholding-Gruppe oder eine gemischte Finanzholding-Gruppe Eigenmittelanforderungen in Bezug auf nicht durch Artikel 1 der Verordnung (EU) Nr. 575/2013 erfasste Risiken und Risikoelemente einhalten muss, die über die Eigenmittelanforderungen nach der Verordnung (EU) Nr. 575/2013 sowie die zusätzliche Eigenmittelanforderung nach § 6c und nach einer nach Absatz 1 erlassenen Rechtsverordnung hinausgehen. Die Aufsichtsbehörde ordnet solche zusätzlichen Eigenmittelanforderungen nach Satz 1 insbesondere anordnen,	(3) The supervisory authority may order that an institution, a group of institutions, a financial holding group or a mixed financial holding group must comply with capital adequacy requirements in respect of risks and risk elements not covered by Article 1 of Regulation (EU) No 575/2013 which exceed the capital adequacy requirements under Regulation (EU) No 575/2013 and the additional capital requirement under Section 6c and under a statutory instrument adopted pursuant to paragraph (1). The supervisory authority shall order such additional own funds requirements pursuant to the sentence 1 above in particular
1. um einer besonderen Geschäftssituation des Instituts, der Institutsgruppe, der Finanzholding-Gruppe oder gemischten Finanzholding-Gruppe, etwa bei Aufnahme der Geschäftstätigkeit, Rechnung zu tragen oder	1. in order to take due account of a particular business situation of the institution, group of institutions, financial holding group or mixed financial holding group such as the commencement of business operations, or
2. wenn das Institut, die Institutsgruppe, die Finanzholding-Gruppe oder die gemischte Finanzholding-Gruppe nicht über eine ordnungsgemäße Geschäftsorganisation im Sinne des § 25a Absatz 1 verfügt.	2. if the institution, the group of institutions, the financial holding group or the mixed financial holding group does not have a proper business organisation within the meaning of Section 25a(1).
(4) Die Bundesanstalt kann von einzelnen Instituten, Institutsgruppen, Finanzholding-Gruppen und gemischten Finanzholding-Gruppen oder von einzelnen Arten oder Gruppen von Instituten, Institutsgruppen, Finanzholding-Gruppen und gemischten Finanzholding-Gruppen das Vorhalten von Eigenmitteln, die über die Eigenmittelanforderungen nach der Verordnung (EU) Nr. 575/2013 und nach der Rechtsverordnung nach Absatz 1 hinausgehen, für einen begrenzten Zeitraum auch verlangen, wenn diese Kapitalstärkung erforderlich ist,	(4) BaFin may also require individual institutions, groups of institutions, financial holding groups and mixed financial holding groups or individual types or groups of institutions, institution groups, financial holding groups and mixed financial holding groups to hold own funds which exceed the own funds requirements under Regulation (EU) No 575/2013 and under the statutory instrument referred to in paragraph (1) for a limited period of time, even if this capital strengthening is necessary,
1. um einer drohenden Störung der Funktionsfähigkeit des Finanzmarktes oder einer Gefahr für die Finanzmarktstabilität entgegenzuwirken und	1. in order to counteract the threat of a financial market dysfunction or a danger to financial market stability, and
2. um erhebliche negative Auswirkungen auf andere Unternehmen des Finanzsektors sowie auf das allgemeine Vertrauen der Einleger und	2. in order to prevent substantial negative repercussions for other financial sector undertakings and for the general confidence of

anderer Marktteilnehmer in ein funktionsfähiges Finanzsystem zu vermeiden.	depositors and other market participants in a functioning financial system.
Eine drohende Störung der Funktionsfähigkeit des Finanzmarktes kann insbesondere dann gegeben sein, wenn auf Grund außergewöhnlicher Marktverhältnisse die Refinanzierungsfähigkeit mehrerer für den Finanzmarkt relevanter Institute beeinträchtigt zu werden droht. Soweit sie Aufsichtsbehörde ist, kann die Bundesanstalt in diesem Fall die Beurteilung der Angemessenheit der Eigenmittel nach von der Verordnung (EU) Nr. 575/2013 und von der Rechtsverordnung nach Absatz 1 abweichenden Maßstäben vornehmen, die diesen besonderen Marktverhältnissen Rechnung tragen. Zusätzliche Eigenmittel können insbesondere im Rahmen eines abgestimmten Vorgehens auf Ebene der Europäischen Union zur Stärkung des Vertrauens in die Widerstandsfähigkeit des europäischen Bankensektors und zur Abwehr einer drohenden Gefahr für die Finanzmarktstabilität in Europa verlangt werden. Bei der Festlegung von Höhe und maßgeblicher Zusammensetzung der zusätzlichen Eigenmittel und des maßgeblichen Zeitpunktes für die Einhaltung der erhöhten Eigenmittelanforderungen berücksichtigt die Bundesanstalt die Standards, auf deren Anwendung sich die zuständigen europäischen Stellen im Rahmen eines abgestimmten Vorgehens auf Unionsebene verständigt haben. In diesem Rahmen kann die Bundesanstalt verlangen, dass die Institute in einem Plan nachvollziehbar darlegen, durch welche Maßnahmen sie die erhöhten Eigenmittelanforderungen zu dem von der Bundesanstalt nach Satz 5 festgelegten Zeitpunkt einhalten werden. Soweit der Plan die Belange des Finanzmarktstabilisierungsfonds im Sinne des § 1 des Stabilisierungsfondsgesetzes berührt, erfolgt die Beurteilung des Plans im Einvernehmen mit dem Lenkungsausschuss nach § 4 Absatz 1 Satz 2 des Stabilisierungsfondsgesetzes (Lenkungsausschuss). Die Bundesanstalt kann die kurzfristige Nachbesserung des vorgelegten Plans verlangen, wenn sie die angegebenen Maßnahmen und Umsetzungsfristen für nicht ausreichend hält oder das Institut sie nicht einhält. In diesem Fall haben die Institute auch die Möglichkeit eines Antrags auf Stabilisierungsmaßnahmen nach dem Stabilisierungsfondsgesetz zu prüfen, wenn	A financial market dysfunction may be impending, in particular, if extraordinary market circumstances threaten to impair the ability of several institutions that are important to the financial market to refinance themselves. To the extent it is the supervisory authority, in such cases BaFin may assess the adequacy of the own funds according to criteria which deviate from Regulation (EU) No 575/2013 and from the statutory order pursuant to paragraph (1) and which take account of these special market circumstances Additional own funds may be stipulated, in particular, in the context of concerted action at the European Union level aimed at strengthening confidence in the resilience of the European banking sector and averting a potential danger to financial market stability in Europe. In determining the amount and applicable composition of the additional own funds and the applicable deadline for complying with the higher own funds requirements, BaFin will take account of the standards which the competent European authorities have agreed to apply in the context of concerted action at the European Union level. In this context, BaFin may require the institutions to draw up a plausible plan which spells out what measures they will take to comply with the higher own funds requirements by the deadline stipulated by BaFin pursuant to sentence 5. Insofar as the plan impinges upon the concerns of the Financial Market Stabilisation Fund within the meaning of Section 1 of the Stabilisation Fund, Act (*Stabilisierungsfondsgesetz*), the plan will be assessed in agreement with the Steering Committee pursuant to Section 4(1) sentence 2 of the Stabilisation Fund Act (Steering Committee). BaFin may demand a timely improvement of the plan submitted if it considers the stated measures and implementation periods to be inadequate or if the institution does not adhere to them. In such cases, institutions shall also consider the option of applying for stabilisation measures pursuant to the Stabilisation Fund Act if no alternative measures are available. If BaFin, in agreement with the Steering Committee, establishes that the plan has not been improved or has been insufficiently improved, BaFin may appoint a special commissioner within the meaning of Section 45c(1) and assign to him/her the task

keine alternativen Maßnahmen zur Verfügung stehen. Sofern nach Feststellung der Bundesanstalt im Einvernehmen mit dem Lenkungsausschuss keine oder nur eine unzureichende Nachbesserung des Plans erfolgt ist, kann die Bundesanstalt einen Sonderbeauftragten im Sinne des § 45c Absatz 1 bestellen und ihn mit der Aufgabe nach § 45c Absatz 2 Nummer 7a beauftragen. Zudem kann sie anordnen, dass Entnahmen durch die Inhaber oder Gesellschafter, die Ausschüttung von Gewinnen und die Auszahlung variabler Vergütungsbestandteile nicht zulässig sind, solange die angeordneten erhöhten Eigenmittelanforderungen nicht erreicht sind. Entgegenstehende Beschlüsse über die Gewinnausschüttung sind nichtig; aus entgegenstehenden Regelungen in Verträgen können keine Rechte hergeleitet werden.	pursuant to Section 45c(2) number 7(a). In addition, BaFin may order that withdrawals by the proprietors or shareholders, the distribution of profits and the payment of variable remuneration components are not permitted unless and until the required higher level of own funds is reached. Any conflicting resolutions on profit distribution shall be void; no claims or entitlements may be derived from any conflicting contractual provisions.
[In Kraft bis zum 28.06.2021, dann: (6) Die Aufsichtsbehörde kann anordnen, dass ein Institut der Deutschen Bundesbank häufigere oder auch umfangreichere Meldungen zu seiner Solvabilität einreicht als in den Artikeln 99 bis 101 der Verordnung (EU) Nr. 575/2013 vorgesehen. Die Aufsichtsbehörde darf häufigere oder umfangreichere Meldungen nach Satz 1 nur anordnen, wenn die Anordnung für den Zweck, für den die Angaben erforderlich sind, verhältnismäßig ist und die verlangten Angaben nicht schon vorhanden sind.] [In Kraft ab dem 28.06.2021, dann: (6) Die Aufsichtsbehörde kann anordnen, dass ein Institut der Deutschen Bundesbank häufigere oder auch umfangreichere Meldungen einreicht, als in Artikel 430 Absatz 1 Untersatz 1 Buchstabe a, b, d bis g, Artikel 430 Absatz 2 bis 5 sowie in den Artikeln 430a und 430b der Verordnung (EU) Nr. 575/2013 vorgesehen.]	[In force until June 28, 2021, then (6) The supervisory authority may order an institution to submit to the Deutsche Bundesbank more frequent or also more detailed reports on its solvency than envisaged in Articles 99 through 101 of Regulation (EU) No 575/2013. The supervisory authority may only order more frequent or also more detailed reports pursuant to Sentence 1if the order is proportionate to the purpose for which the information is required and the requested information is not already available.] [In force as of June 28, 2021, then (6) The supervisory authority may order an institution to submit to the Deutsche Bundesbank more frequent or also more detailed reports on its solvency than envisaged in Article 430(1) subparagraph 1 letter a, b, d to g, Article 430(2) to (5) and Articles 430a and 430b of Regulation (EU) No 575/2013.]
§ 10b KWG	**Section 10b KWG**
Zur Erfüllung der Kapitalpufferanforderungen nach den §§ 10c bis 10g dürfen die Institute kein hartes Kernkapital verwenden, das erforderlich ist zur 1. Einhaltung der Eigenmittelanforderung nach Artikel 92 Absatz 1 Buchstabe a bis c der Verordnung (EU) Nr. 575/2013,	To fulfil the capital buffer requirements under Section 10c through 10g, the institutions may not use any Common Equity Tier 1 capital required for 1. compliance with the own funds requirement laid down in Article 92 (1) letter a through c of Regulation (EU) No 575/2013,

2. Unterlegung der risikobasierten Komponente der Anforderungen nach den Artikeln 92a und 92b der Verordnung (EU) Nr. 575/2013, 3. Einhaltung der zusätzlichen Eigenmittelanforderungen nach § 6c, 4. Einhaltung der Eigenmittelempfehlung nach § 6d, 5. Einhaltung der erhöhten Eigenmittelanforderungen nach § 10 Absatz 3, 6. Einhaltung der erhöhten Eigenmittelanforderungen nach § 10 Absatz 4, 7. Einhaltung einer der anderen anwendbaren Kapitalpufferanforderungen nach den §§ 10c bis 10g und 8. Einhaltung der Eigenmittelanforderung gemäß den §§ 49 bis 51 des Sanierungs- und Abwicklungsgesetzes. Satz 1 gilt entsprechend für Institutsgruppen, Finanzholding-Gruppen und gemischte Finanzholding-Gruppen, denen mindestens ein Institut angehört, das die Anforderung nach Satz 1 auf Einzelinstitutsebene erfüllen muss, sowie für Institute im Sinne des Artikels 22 der Verordnung (EU) Nr. 575/2013.	2. backing the risk-based components of the requirements pursuant to Articles 92a and 92b of Regulation (EU) No 575/2013. 3 compliance with the additional own funds requirements pursuant to Section 6c, 4. compliance with the own funds recommendation pursuant to Section 6d, 5. compliance with the increased own funds requirements pursuant to Section 10 (3) 6.compliance with the increased own funds requirements pursuant to Section 10(4) 7.compliance with one of the other capital buffer requirements pursuant to Sections 10c through 10g and 8.compliance with the own funds requirements pursuant to Sections 49 through 51 of the Recovery and Resolution Act. Sentence 1 shall apply mutatis mutandis to groups of institutions, financial holding groups and mixed financial holding groups which include at least one institution which is required to meet the requirement in sentence 1 on an individual basis as well as to institutions within the meaning of Article 22 of Regulation (EU) No 575/2013.
§ 10c KWG	**Section 10c KWG**
(1) Ein Institut muss einen aus hartem Kernkapital bestehenden Kapitalerhaltungspuffer vorhalten. Seine Höhe beträgt 2,5 Prozent des nach Artikel 92 Absatz 3 der Verordnung (EU) Nr. 575/2013 ermittelten Gesamtrisikobetrags. (2) Absatz 1 gilt entsprechend für Institutsgruppen, Finanzholding-Gruppen und gemischte Finanzholding-Gruppen, denen mindestens ein Institut angehört, das die Anforderung in Absatz 1 auf Einzelinstitutsebene erfüllen muss, sowie für Institute im Sinne des Artikels 22 der Verordnung (EU) Nr. 575/2013.	(1) An institution shall maintain a capital buffer consisting of Common Equity Tier 1 capital. It shall equal 2.5% of the total risk exposure amount determined pursuant to Article 92(3) of Regulation (EU) No 575/2013. (2) Paragraph (1) shall apply mutatis mutandis to groups of institutions, financial holding groups and mixed financial holding groups which include at least one institution which is required to meet the requirement in paragraph 1 on an individual basis as well as to institutions within the meaning of Article 22 of Regulation (EU) No 575/2013.

§ 10d KWG	Section 10d KWG
(1) Ein Institut muss einen aus hartem Kernkapital bestehenden institutsspezifischen antizyklischen Kapitalpuffer vorhalten. Satz 1 gilt entsprechend für Institutsgruppen, Finanzholding-Gruppen und gemischte Finanzholding-Gruppen, denen mindestens ein Institut angehört, das die Anforderung in Satz 1 auf Einzelinstitutsebene erfüllen muss, sowie für Institute im Sinne des Artikels 22 der Verordnung (EU) Nr. 575/2013.	(1) An institution shall maintain an institution-specific countercyclical capital buffer consisting of Common Equity Tier 1 capital. Sentence 1 shall apply *mutatis mutandis* to groups of institutions, financial holding groups and mixed financial holding groups which include at least one institution which is required to meet the requirement in sentence 1 on an individual basis as well as to institutions within the meaning of Article 22 of Regulation (EU) No 575/2013.
(2) Die institutsspezifische antizyklische Kapitalpuffer-Quote ist der gewichtete Durchschnitt der Quoten für die antizyklischen Kapitalpuffer, die im Inland, in den anderen Staaten des Europäischen Wirtschaftsraums und in Drittstaaten sowie in den zugehörigen europäischen und überseeischen Ländern, Hoheitsgebieten und Rechtsräumen, in denen die maßgeblichen Risikopositionen des Instituts belegen sind, gelten oder nach Maßgabe der nachfolgenden Absätze angewendet werden. Zur Berechnung des gewichteten Durchschnitts wenden die Institute die jeweils geltende Quote für antizyklische Kapitalpuffer auf den jeweiligen Quotienten aus den gemäß den Artikeln 107 bis 311 und 325 bis 377 der Verordnung (EU) Nr. 575/2013 bestimmten Eigenmittelgesamtanforderungen für das Kreditrisiko in dem betreffenden Staat des Europäischen Wirtschaftsraums, des betreffenden Drittstaates sowie in den zugehörigen europäischen und überseeischen Ländern, Hoheitsgebieten und Rechtsräumen und den Eigenmittelgesamtanforderungen für das Kreditrisiko bei allen maßgeblichen Risikopositionen an.	(2) The institution-specific countercyclical buffer rate comprises the weighted average of the countercyclical buffer rates that apply in Germany, in the EEA other countries and in non-EEA states as well as in the associated European and overseas countries, territories and jurisdictions in which the institution's relevant exposures are located, in force or are applicable pursuant to the following paragraphs. To calculate the weighted average, institutions should apply the applicable countercyclical buffer rate to the respective quotient of the total own funds requirements for credit risk determined in accordance with Articles 107 to 311 and 325 to 377 of Regulation (EU) No 575/2013 in the relevant EEA state, the relevant non-EEA state as well as in the associated European and overseas countries, territories and jurisdictions and the total own funds requirements for credit risk for all relevant exposures.
(3) Die Quote des inländischen antizyklischen Kapitalpuffers beträgt 0 bis 2,5 Prozent des nach Artikel 92 Absatz 3 der Verordnung (EU) Nr. 575/2013 ermittelten Gesamtrisikobetrags. Die Quote wird von der Bundesanstalt in Schritten von 0,25 Prozentpunkten festgelegt. Die Bundesanstalt bewertet quartalsweise die Intensität des zyklischen Systemrisikos und beurteilt, welche Quote des inländischen antizyklischen Kapitalpuffers angemessen ist. Sie setzt diese Quote entsprechend ihrer Beurteilung fest oder passt sie erforderlichenfalls an. Hierbei berücksichtigt die Bundesanstalt Abweichungen des Verhältnisses	(3) The ratio of the domestic countercyclical capital buffer shall be 0 to 2.5 percent of the total risk amount determined in accordance with Article 92(3) of Regulation (EU) No. 575/2013. The ratio shall be determined by BaFin in increments of 0.25 percentage points. BaFin shall assess the intensity of cyclical systemic risk on a quarterly basis and assess which ratio of the domestic countercyclical capital buffer is appropriate. It shall set this ratio in accordance with its assessment or, if necessary, adjust it. In doing so, BaFin shall take into account deviations of the ratio of loans to gross domestic product from its long-term trend and any

der Kredite zum Bruttoinlandsprodukt von seinem langfristigen Trend und etwaige Empfehlungen des Ausschusses für Finanzstabilität. Die Bundesanstalt kann, soweit erforderlich, eine höhere Quote als 2,5 Prozent festlegen.	recommendations of the Financial Stability Committee. BaFin may, if necessary, set a higher ratio than 2.5 percent.
(4) Legt die Bundesanstalt die Quote für den inländischen antizyklischen Kapitalpuffer erstmals auf einen Wert über Null fest oder erhöht sie die bisherige Quote, bestimmt sie den Tag, ab dem die Institute die erhöhte Quote zur Berechnung des institutsspezifischen antizyklischen Kapitalpuffers anwenden müssen. Dieser Tag darf nicht mehr als zwölf Monate nach dem Tag der Veröffentlichung der erstmaligen Festlegung oder der Erhöhung der Quote für den inländischen antizyklischen Kapitalpuffer liegen. Liegen zwischen dem Tag nach Satz 1 und der Veröffentlichung der Quote für den inländischen antizyklischen Kapitalpuffer weniger als zwölf Monate, muss diese kürzere Frist durch außergewöhnliche Umstände, etwa eine erhebliche Zunahme der durch übermäßiges Kreditwachstum bedingten Risiken oder eine Situation, in der die Ertragslage der Institute im Europäischen Wirtschaftsraum einen schnelleren Aufbau des inländischen antizyklischen Kapitalpuffers möglich macht, gerechtfertigt sein.	(4) If BaFin sets the domestic countercyclical buffer rate for the first time at a value of more than zero or if it increases the prevailing rate, it will determine the date from which the institutions must apply the increased rate when calculating the institution-specific countercyclical buffer. This date shall be not more than twelve months after the publication date of the initial definition or increase in the domestic countercyclical buffer rate. If the date stipulated in sentence 1 and the publication date of the domestic countercyclical buffer rate are less than twelve months apart, this shorter time period must be justified by exceptional circumstances, such as a material increase in risk on account of excessive credit growth or a situation in which the profitability of institutions in the EEA allows the domestic countercyclical buffer rate to be increased at a faster pace.
(5) Setzt die Bundesanstalt die bestehende Quote für den inländischen antizyklischen Kapitalpuffer herab, teilt sie gleichzeitig einen Zeitraum mit, in dem voraussichtlich keine Erhöhung der Quote für den inländischen antizyklischen Kapitalpuffer zu erwarten ist. Die Bundesanstalt kann das Verfahren jederzeit, auch vor Ablauf des mitgeteilten Zeitraums, wieder aufnehmen und die Quote für den inländischen antizyklischen Kapitalpuffer erneut festlegen oder erhöhen. Die Bundesanstalt veröffentlicht die im jeweiligen Quartal festlegte Quote für den inländischen antizyklischen Kapitalpuffer sowie die Angaben nach den Absätzen 3 und 4 auf ihrer Internetseite.	(5) If BaFin reduces the existing domestic countercyclical buffer rate, it will simultaneously state a time period during which an increase in the domestic countercyclical buffer rate is unlikely to be expected. BaFin may resume the procedure at any time, also before expiry of the announced time period, and redefine or increase the domestic countercyclical buffer rate. BaFin will publish the domestic countercyclical buffer rate defined for each quarter as well as the information set out under paragraphs (3) and (4) on its website.
(6) Die Bundesanstalt kann die von einem anderen Staat des Europäischen Wirtschaftsraums oder einem Drittstaat festgelegte Quote für den antizyklischen Kapitalpuffer für die Berechnung des institutsspezifischen antizyklischen Kapitalpuffers durch die im Inland zugelassenen	(6) BaFin may recognize the countercyclical buffer defined by a another EEA state or a non-EEA state for the calculation of the institution-specific countercyclical buffer by the institutions authorised in Germany if the rate exceeds 2.5% of the total risk exposure amount stated in Article 92 (3) of Regulation (EU) No

Institute anerkennen, wenn die Quote 2,5 Prozent des in Artikel 92 Absatz 3 der Verordnung (EU) Nr. 575/2013 genannten Gesamtforderungsbetrags übersteigt. Solange die Bundesanstalt die höhere Quote nicht anerkannt hat, müssen die im Inland zugelassenen Institute bei der Berechnung des institutsspezifischen antizyklischen Kapitalpuffers eine Quote von 2,5 Prozent für die in diesem Staat belegenen Risikopositionen anwenden.	575/2013. As long as BaFin has not recognised the higher rate, the institutions authorised in Germany must apply a rate of 2.5% to the exposures located in that country when calculating the institution-specific countercyclical buffer.
(7) Hat die zuständige Behörde eines Drittstaates keine Quote für den antizyklischen Kapitalpuffer festgelegt und veröffentlicht, darf die Bundesanstalt die Quote festlegen, die die im Inland zugelassenen Institute bei der Berechnung des institutsspezifischen antizyklischen Kapitalpuffers für die in diesem Staat belegenen Risikopositionen anwenden müssen.	(7) Where the competent authority of a non-EEA state has not defined and published a countercyclical buffer rate, BaFin may define the rate which the institutions authorised in Germany must apply to the exposures located in that country when calculating the institution-specific countercyclical buffer.
(8) Hat die zuständige Behörde eines Drittstaates eine Quote für den antizyklischen Kapitalpuffer festgelegt und veröffentlicht, darf die Bundesanstalt eine höhere Quote für den antizyklischen Kapitalpuffer festlegen, den die im Inland zugelassenen Institute bei der Berechnung des institutsspezifischen antizyklischen Kapitalpuffers für die in diesem Staat belegenen Risikopositionen anwenden müssen, wenn sie hinreichend sicher davon ausgehen kann, dass die von der zuständigen Behörde des Drittstaates festgelegte Quote nicht ausreicht, um die Institute angemessen vor den Risiken eines übermäßigen Kreditwachstums in dem betreffenden Drittstaat zu schützen.	(8) Where the competent authority of a non-EEA state has defined and published a countercyclical buffer rate, BaFin may define a higher countercyclical buffer rate which the institutions authorised in Germany must apply to the exposures located in that country when calculating the institution-specific countercyclical buffer if it may assume with reasonable assurance that the rate defined by the competent authority of the non-EEA state is insufficient to protect the institutions to an appropriate extent from the risks of excessive credit growth in the non-EEA state concerned.
(9) Erkennt die Bundesanstalt eine Quote für den antizyklischen Kapitalpuffer nach Absatz 6 an oder legt sie eine Quote für den antizyklischen Kapitalpuffer nach den Absätzen 7 oder 8 fest, veröffentlicht die Bundesanstalt jeweils auf ihrer Internetseite diese Quote sowie mindestens folgende weitere Angaben:	(9) Where BaFin recognises a countercyclical buffer rate pursuant to paragraph (6) or defines a countercyclical buffer rate pursuant to paragraphs (7) or (8), BaFin will in each case publish this rate on its website and also provide at least the following additional information.
1. den Staat des Europäischen Wirtschaftsraums oder den Drittstaat, für den diese Quote gilt,	1. the EEA state or non-EEA state for which this rate shall apply
2. den Tag, ab dem die im Inland zugelassenen Institute die Quote für den antizyklischen Kapitalpuffer zur Berechnung ihres institutsspezifischen antizyklischen Kapitalpuffers anwenden müssen,	2. the date from which the institutions authorised in Germany must apply the countercyclical buffer rate when calculating their institution-specific countercyclical buffer,

3. in den Fällen, in denen dieser Tag weniger als zwölf Monate nach dem Tag der Veröffentlichung nach diesem Absatz liegt, die außergewöhnlichen Umstände, die eine kürzere Frist für die Anwendung rechtfertigen. (10) Das Nähere regelt die Rechtsverordnung nach § 10 Absatz 1 Satz 1 Nummer 5 Buchstabe a.	3. in those cases in which this date is less than twelve months after the publication date pursuant to this paragraph, the exceptional circumstances which justify a shorter time period for application. (10) More detailed information will be set forth in the statutory order pursuant to Section 10 (1) sentence 1 number 5 letter a.
§ 10e KWG	**Section 10e KWG**
(1) Die Bundesanstalt kann anordnen, dass alle Institute oder bestimmte Arten oder Gruppen von Instituten einen aus hartem Kernkapital bestehenden Kapitalpuffer für systemische Risiken vorhalten müssen. Der Kapitalpuffer für systemische Risiken kann angeordnet werden für alle Risikopositionen, die im Inland, in einem anderen Staat des Europäischen Wirtschaftsraums oder in einem Drittstaat belegen sind, oder für eine Teilgruppe dieser Risikopositionen. Die Quote wird von der Bundesanstalt in Schritten von 0,5 Prozentpunkten oder einem Vielfachen davon festgesetzt. Die Sätze 1 bis 3 gelten entsprechend für Institutsgruppen, Finanzholding-Gruppen und gemischte Finanzholding-Gruppen, denen mindestens ein CRR-Kreditinstitut angehört, das die Anforderungen nach den Sätzen 1 bis 3 auf Einzelebene erfüllt, sowie für Kreditinstitute im Sinne des Artikels 22 der Verordnung (EU) Nr. 575/2013.	(1) BaFin may order all institutions or certain types or groups of institutions to maintain a systemic risk capital buffer consisting of Common Equity Tier 1 capital. The systemic risk buffer may be set for exposures located in Germany, another EEA state or a non-EEA state, or for a subgroup of these exposures. The rate will be set by BaFin in gradients of 0.5 percentage point or a multiple thereof. Sentences 1 to 3 shall apply *mutatis mutandis* to groups of institutions, financial holding groups and mixed financial holding groups which include at least one CRR credit institution which meets the requirements set out in sentences 1 to 3 on an individual basis as well as to credit institutions within the meaning of Article 22 of Regulation (EU) No 575/2013.
(2) Der Kapitalpuffer für systemische Risiken kann angeordnet werden, um systemische oder makroprudenzielle Risiken zu vermindern oder abzuwehren, die 1. zu einer Störung mit schwerwiegenden negativen Auswirkungen auf das nationale Finanzsystem und die Realwirtschaft im Inland führen können und 2. nicht durch die Verordnung (EU) Nr. 575/2013 oder die Kapitalpuffer gemäß den §§ 10d, 10f und 10g abgedeckt sind. Die Anordnung darf nur erfolgen, wenn der Kapitalpuffer für systemische Risiken keine unverhältnismäßige Beeinträchtigung des Finanzsystems oder von Teilen des	(2) The systemic risk buffer may be set to mitigate or prevent long-term non-cyclical systemic or macroprudential risk which 1. may lead to a disruption which has significant effects on the national financial system and the German real economy, and 2. are not covered by Regulation (EU) No 575/2013 or the capital buffer pursuant to Sections 10d, 10f and 10g. The systemic risk buffer may be set only if it does not disproportionately impair the financial system or parts of the financial system of another EEA state or of the European Economic

Finanzsystems eines anderen Staates oder des Europäischen Wirtschaftsraums insgesamt darstellt, so dass das Funktionieren des Binnenmarkts oder des Europäischen Wirtschaftsraums behindert wird. Der Kapitalpuffer für systemische Risiken ist mindestens alle zwei Jahre zu überprüfen. Für Risikopositionen, die in einem anderen Staat des Europäischen Wirtschaftsraums belegen sind, kann ein Kapitalpuffer für systemische Risiken nur angeordnet werden, sofern dies einheitlich für alle Risikopositionen, die in Staaten des Europäischen Wirtschaftsraums belegen sind, erfolgt. Davon ausgenommen sind die Fälle des Absatzes 9.	Area as a whole, such that the functioning of the EEA internal market is impeded. The systemic risk buffer shall be reviewed at least every two years. A systemic risk buffer may only be imposed for exposures located in another EEA state, insofar as it is imposed uniformly for all exposures located in EEA states. The cases set out in paragraph 9 are thereby excluded.
(3) Vor der Veröffentlichung eines Kapitalpuffers für systemische Risiken nach Absatz 7 zeigt die Bundesanstalt diese Anordnung dem Europäischen Ausschuss für Systemrisiken an. Ist ein Institut, für das ein Kapitalpuffer für systemische Risiken angeordnet wird, ein Tochterunternehmen eines Unternehmens mit Sitz in einem anderen Staat des Europäischen Wirtschaftsraums, so zeigt die Bundesanstalt die Entscheidung auch der zuständigen Behörde dieses Staates des Europäischen Wirtschaftsraums an. Betrifft die Anordnung des Kapitalpuffers für systemische Risiken in Drittstaaten belegene Risikopositionen, so zeigt die Bundesanstalt dies dem Europäischen Ausschuss für Systemrisiken ebenfalls an. Bei einem Kapitalpuffer für systemische Risiken oder einer Kombination von Kapitalpuffern für systemische Risiken, der oder die eine Höhe von 3 Prozent für jede betroffene Risikoposition nicht überschreitet, muss die Anzeige einen Monat vor der Veröffentlichung nach Absatz 7 erfolgen. Die Anzeige soll jeweils mindestens folgende Angaben enthalten:	(3) Before publishing a systemic risk buffer pursuant to paragraph 7, BaFin shall notify the ESRB of this imposition. If an institution, for which a systemic risk buffer is imposed, is a subsidiary of an undertaking domiciled in another EEA state, BaFin shall also notify the competent authority of this EEA state of the decision. If the imposition of the systemic risk buffer concerns exposures in non-EEA states, BaFin shall also notify this to the ESRB. In the case of a systemic risk buffer or a combination of systemic risk buffers, which does not exceed the amount of 3 percent for each risk position that is affected, the notification must be made one month prior to the publication pursuant to paragraph 7. The notification should in each case contain at least the following information:
1. eine genaue Beschreibung der systemischen oder makroprudenziellen Risiken, die durch die Anordnung des Kapitalpuffers für systemische Risiken abgewehrt oder vermindert werden sollen;	1. an exact description of the long-term non-cyclical systemic or macroprudential risk that is to be prevented or mitigated by setting the systemic risk buffers;
2. eine Begründung, warum die Risiken nach Nummer 1 eine Gefahr für die Finanzstabilität auf nationaler Ebene in einem Ausmaß darstellen, das den Kapitalpuffer für systemische Risiken in der beabsichtigten Höhe rechtfertigt;	2. the reasons why the risk set out in number 1 poses a risk to financial stability at the national level that justifies setting the systemic risk buffer at the intended level;

3. eine Begründung, warum der Kapitalpuffer für systemische Risiken als voraussichtlich geeignet und verhältnismäßig erachtet wird, um die Risiken nach Nummer 1 abzuwehren oder zu vermindern;	3. the justification for why the systemic risk buffer in its specific design is considered likely to be effective and proportionate to prevent or mitigate the risk set out in number 1;
4. eine Beurteilung der wahrscheinlichen positiven und negativen Auswirkungen der Anordnung des Kapitalpuffers für systemische Risiken auf den Binnenmarkt unter Berücksichtigung aller der Bundesanstalt zugänglichen Informationen;	4. an assessment of the likely positive or negative impact of the imposition of the systemic risk buffer on the internal market based on all the information available to BaFin;
5. die Höhe des Kapitalpuffers für systemische Risiken, die die Bundesanstalt anzuordnen beabsichtigt, die Risikopositionen, für die dieser gelten soll, sowie die Institute, die von der Anordnung erfasst werden sollen;	5. the amount of the systemic risk buffer that BaFin intends to impose, the exposures, to which it shall apply, and the institutions that shall be affected by the imposition;
6. sofern der Kapitalpuffer für alle Risikopositionen gilt, eine Begründung, weshalb keine Überschneidung mit dem Kapitalpuffer nach § 10g gegeben ist.	6. to the extent the capital buffer applies to all exposures, a justification for why there is no overlap with the capital buffer pursuant to Section 10g.
(4) Bei einem Kapitalpuffer für systemische Risiken oder einer Kombination von Kapitalpuffern für systemische Risiken, der oder die für eine der betroffenen Risikopositionen eine Höhe von über 3 Prozent und bis zu 5 Prozent erreicht, ersucht die Bundesanstalt im Rahmen der Anzeige nach Absatz 3 um eine Stellungnahme der Europäischen Kommission. Einen Kapitalpuffer für systemische Risiken oder eine Kombination von Kapitalpuffern für systemische Risiken nach Satz 1 für Risikopositionen, die im Inland oder in Drittstaaten belegen sind, kann die Bundesanstalt anordnen, nachdem	(4) In the case of a systemic risk buffer or a combination of systemic risk buffers of more than 3 percent and up to 5 percent for any of the affected exposures, the BaFin will request an opinion from the European Commission in connection with the notification pursuant to paragraph 3. A systemic risk buffer or a combination of systemic risk buffers pursuant to sentence 1 may be imposed by BaFin for exposures located in Germany or in non-EEA states after
1. die Europäische Kommission eine zustimmende Empfehlung abgegeben hat oder	1. the European Commission has issued an affirmative recommendation or
2. die Bundesanstalt, sofern die Europäische Kommission eine ablehnende Empfehlung abgegeben hat, gegenüber der Europäischen Kommission begründet hat, dass die Anordnung des Kapitalpuffers entgegen der Empfehlung der Europäischen Kommission erforderlich ist.	2. BaFin, insofar as the European Commission issues a issues a negative recommendation, has given the European Commission a justification why, contrary to the European Commission's recommendation, the imposition of the buffer is necessary.
Sind von der Anordnung des Kapitalpuffers für systemische Risiken nach Satz 1 auch Institute betroffen, deren Mutterinstitut seinen Sitz in einem anderen Staat des Europäischen Wirtschaftsraums hat, so kann die Bundesanstalt den Kapitalpuffer für systemische Risiken nur	If the imposition of the systemic risk buffer pursuant to sentence 1 also affects institutions whose parent institution is established in another EEA state, BaFin may only impose the systemic risk buffer if it has requested a recommendation from the European Commission and the ESRB

anordnen, wenn sie in der Anzeige gemäß Absatz 3 die Europäische Kommission und den Europäischen Ausschuss für Systemrisiken um eine Empfehlung ersucht hat. Widerspricht die zuständige Behörde eines betroffenen Staates des Europäischen Wirtschaftsraums der Anordnung des Kapitalpuffers für systemische Risiken nach Satz 1 gegenüber einem Institut, dessen Mutterinstitut seinen Sitz in diesem Staat hat, oder geben sowohl die Europäische Kommission als auch der Europäische Ausschuss für Systemrisiken ablehnende Empfehlungen ab, so kann die Bundesanstalt die Angelegenheit der Europäischen Bankenaufsichtsbehörde zur Durchführung eines Verfahrens zur Beilegung von Meinungsverschiedenheiten nach Artikel 19 der Verordnung (EU) Nr. 1093/2010 vorlegen. Im Fall einer Vorlage nach Satz 4 setzt die Bundesanstalt die Entscheidung über die Festsetzung des Kapitalpuffers aus, bis die Europäische Bankenaufsichtsbehörde einen Beschluss gefasst hat.	in the notification pursuant to paragraph 3. If the competent authority of an affected EEA state objects to the imposition of the systemic risk buffer pursuant to sentence 1 in respect of an institution whose parent institution is established in that state, or if both the European Commission and the ESRB issue negative recommendations, BaFin may refer the matter to the EBA for implementation of a procedure to settle disagreements pursuant to Article 19 of Regulation (EU) No 1093/2010. In the event of a referral pursuant to sentence 4, BaFin shall postpone the decision regarding the setting of the capital buffer until the EBA has adopted a resolution.
(5) Für einen Kapitalpuffer für systemische Risiken oder eine Kombination von Kapitalpuffern für systemische Risiken, der oder die eine Höhe von mehr als 5 Prozent für eine der betroffenen Risikopositionen erreicht, holt die Bundesanstalt die Erlaubnis der Europäischen Kommission nach Artikel 133 Absatz 12 Unterabsatz 3 der Richtlinie 2013/36/EU ein.	(5) For a systemic risk buffer or a combination systemic risk buffers of more than 5 percent for an affected risk position, BaFin will obtain the consent of the European Commission pursuant to Article 133(12) subparagraph 3 of Regulation 2013/36/EU.
(6) Der Kapitalpuffer für systemische Risiken kann auch durch Allgemeinverfügung ohne vorherige Anhörung angeordnet und öffentlich bekannt gegeben werden.	(6) The systemic risk buffer may also be set and be made public as an administrative order (*Allgemeinverfügung*) without prior consultation.
(7) Die Anordnung des Kapitalpuffers für systemische Risiken ist auf der Internetseite der Bundesanstalt zu veröffentlichen. Die Veröffentlichung soll mindestens folgende Angaben enthalten:	(7) The setting of the systemic risk buffer shall be published on BaFin's website. The publication shall contain at least the following information:
1. die Höhe des angeordneten Kapitalpuffers für systemische Risiken,	1. the systemic risk buffer rate,
2. die Institute, Arten oder Gruppen von Instituten, die den Kapitalpuffer für systemische Risiken einhalten müssen,	2. the institutions, types or groups of institutions to which the systemic risk buffer applies
3. die Risikopositionen oder Teilgruppen von Risikopositionen, für die der Kapitalpuffer für systemische Risiken gilt,	3. the exposures or subgroups of exposures, for which the systemic risk buffer applies,

4. eine Begründung der Anordnung des Kapitalpuffers für systemische Risiken,	4. a justification for the imposition of the systemic risk buffer,
5. den Zeitpunkt, ab dem der Kapitalpuffer für systemische Risiken einzuhalten ist,	5. the date as of which compliance with the systemic risk buffer is required,
6. die Staaten, in denen Risikopositionen belegen sind, die in die Anordnung des Kapitalpuffers für systemische Risiken einfließen.	6. the names of the countries where exposures located in those countries are recognised in the systemic risk buffer.
Die Veröffentlichung der Angabe nach Nummer 4 hat zu unterbleiben, wenn zu befürchten ist, dass dadurch die Stabilität der Finanzmärkte gefährdet werden könnte.	Publication pursuant to number 4 shall be waived if there is a danger that it might jeopardise financial market stability..
(8) Für die Aufhebung oder Neufestsetzung der Anordnung eines Kapitalpuffers für systemische Risiken gelten die Absätze 6 und 7 Satz 1 und 2 entsprechend. Führt die Neufestsetzung eines Kapitalpuffers für systemische Risiken zu einer Verringerung seiner Höhe für einzelne Risikopositionen, so sind die Absätze 4 und 5 nicht anzuwenden.	(8) For the cancelation or resetting of the imposition of a systemic risk buffer, paragraphs 6 and 7 sentence 1 and 2 shall apply *mutatis mutandis*. If resetting the imposition of a systemic risk buffer triggers a reduction of its amount for individual exposures, paragraphs 4 and 5 shall not apply.
(9) Die Bundesanstalt kann einen Kapitalpuffer für systemische Risiken, der in einem anderen Staat des Europäischen Wirtschaftsraums angeordnet wurde, anerkennen. Hierzu ordnet sie an, dass alle Institute oder Arten oder Gruppen von Instituten den in diesem anderen Staat des Europäischen Wirtschaftsraums angeordneten Kapitalpuffer für systemische Risiken anzuwenden haben, soweit dieser sich auf Risikopositionen bezieht, die in diesem anderen Staat des Europäischen Wirtschaftsraums belegen sind. Die Absätze 6 und 7 gelten für die Anerkennung entsprechend. Bei der Entscheidung über die Anerkennung hat die Bundesanstalt die Angaben zu berücksichtigen, die von dem anderen Staat des Europäischen Wirtschaftsraums bei der Anordnung des Kapitalpuffers für systemische Risiken veröffentlicht worden sind. Die Bundesanstalt hat den Europäischen Ausschuss für Systemrisiken von der Anerkennung zu unterrichten. Für die Zwecke der Absätze 3, 4 und 5 ist die Höhe eines nach Satz 1 anerkannten Kapitalpuffers nicht zu berücksichtigen.	(9) BaFin may recognise the systemic risk buffer which was set in another EEA state by ordering all institutions or types or groups of institutions to apply the systemic risk buffer ordered in that country insofar as it relates to exposures located in that country. Paragraphs (6) and (7) shall apply *mutatis mutandis* to such recognition. When deciding whether to recognise a systemic risk buffer rate, BaFin shall take into consideration the information presented by the other state that sets that buffer rate. BaFin shall notify the ESRB of its recognition. For the purposes of paragraphs 3, 4 and 5, the rate of the capital buffer recognized pursuant to sentence 1 shall not be taken into account.
(10) Die Bundesanstalt kann den Europäischen Ausschuss für Systemrisiken ersuchen, gegenüber einem oder mehreren anderen Staaten des Europäischen Wirtschaftsraums eine	(10) BaFin may ask the ESRB to issue a recommendation as referred to in Article 16 of Regulation (EU) No 1092/2010 to one or more

Empfehlung nach Artikel 16 der Verordnung (EU) Nr. 1092/2010 zur Anerkennung eines Kapitalpuffers für systemische Risiken abzugeben.	other EEA states to recognise the systemic risk buffer rate.
(11) Erkennt die Bundesanstalt einen Kapitalpuffer für systemische Risiken, der in einem anderen Staat des Europäischen Wirtschaftsraums angeordnet wurde, gemäß Absatz 9 an, so kann dieser Kapitalpuffer für systemische Risiken zusätzlich zu einem Kapitalpuffer für systemische Risiken nach Absatz 1 gelten, sofern diese Kapitalpuffer unterschiedliche Risiken abdecken. Deckt der gemäß Absatz 9 anerkannte Kapitalpuffer dieselben Risiken ab wie der angeordnete Kapitalpuffer nach Absatz 1, ist nur der höhere Kapitalpuffer für systemische Risiken einzuhalten.	(11) If BaFin recognises the systemic risk buffer that has been imposed in another EEA state, pursuant to paragraph 9, this systemic risk buffer can apply additionally to a systemic risk buffer pursuant to paragraph 1, insofar as this capital buffer covers different risks. If the capital buffer recognised pursuant to paragraph 9 covers the same risks as the capital buffer recognised pursuant to paragraph 1, compliance is only required with the higher systemic risk buffer.
(12) Das Nähere regelt eine gemäß § 10 Absatz 1 Satz 1 Nummer 5 Buchstabe b erlassene Rechtsverordnung.	(12) Further details will be set forth in a statutory order pursuant to Section 10(1) sentence 1 number 5 letter b.
§ 10f KWG	**Section 10f KWG**
(1) Die Bundesanstalt ordnet an, dass ein global systemrelevantes Institut einen aus hartem Kernkapital bestehenden Kapitalpuffer für global systemrelevante Institute auf konsolidierter Ebene vorhalten muss. Seine Quote wird von der Bundesanstalt entsprechend der Zuordnung des global systemrelevanten Instituts zu einer Größenklasse auf eine Höhe von 1,0, 1,5, 2,0, 2,5 oder 3,5 Prozent des nach Artikel 92 Absatz 3 der Verordnung (EU) Nr. 575/2013 ermittelten Gesamtrisikobetrags festgelegt und mindestens jährlich überprüft.	(1) BaFin will order global systemically important institutions to maintain a capital buffer for global systemically important institutions (G-SII buffer) on a consolidated basis consisting of Common Equity Tier 1 capital. BaFin will set this rate at 1.0%, 1.5%, 2.0%, 2.5% or 3.5% of the total risk exposure amount determined pursuant to Article 92(3) of Regulation (EU) No 575/2013 in line with the size category to which the global systemically important institution has been assigned and shall review the rate at least annually.
(2) Die Bundesanstalt bestimmt im Einvernehmen mit der Deutschen Bundesbank mindestens jährlich, welche Institute, EU-Mutterinstitute, EU-Mutterfinanzholdinggesellschaften oder gemischten EU-Mutterfinanzholding-gesellschaften mit Sitz im Inland auf Grund einer quantitativen Analyse auf konsolidierter Ebene als global systemrelevant eingestuft werden (global systemrelevante Institute). Sie berücksichtigt bei der quantitativen Analyse die nachfolgenden Kategorien:	(2) BaFin, in agreement with the Deutsche Bundesbank, will identify at least annually which institutions, EU parent institutions, EU parent financial holding companies or EU parent mixed financial holding companies established in Germany are to be classified on the basis of a quantitative analysis as globally systemically important (global systemically important institutions) on a consolidated basis. Its quantitative analysis shall take into account the following categories:

1. Größe der Gruppe,	1. size of the group,
2. grenzüberschreitende Aktivitäten der Gruppe,	2. cross-border activities of the group,
3. Verflechtungen der Gruppe mit dem Finanzsystem,	3. interdependencies of the group with the financial system,
4. Ersetzbarkeit hinsichtlich der angebotenen Dienstleistungen und Finanzinfrastruktureinrichtungen der Gruppe sowie	4. substitutability of the services or of the financial infrastructure provided by the group, and
5. Komplexität der Gruppe.	5. complexity of the group.
Die Institute sind verpflichtet, der Bundesanstalt und der Deutschen Bundesbank die zur Durchführung der quantitativen Analyse benötigten Einzeldaten jährlich zu melden.	Institutions are required to report the microdata needed to perform the quantitative analysis annually to BaFin and to the Deutsche Bundesbank.
(2a) Die Bundesanstalt führt zusätzlich mindestens jährlich eine quantitative Analyse der Institute, EU-Mutterinstitute, EU-Mutterfinanzholding-Gesellschaften und gemischten EU-Mutterfinanzholding-Gesellschaften mit Sitz im Inland auf zusammengefasster Basis durch. Bei der Analyse berücksichtigt die Bundesanstalt	(2a) In addition, BaFin conducts at least once annually a quantitative analysis of the institutions, EU parent institutions, EU parent financial holding companies and mixed financial holding companies established in Germany on a consolidated basis. In the analysis, BaFin takes into account
1. die in Absatz 2 Satz 2 Nummer 1 und 3 bis 5 genannten Kategorien;	1. the categories specified in paragraph (2), sentence 2, number 1 and 3 to 5;
2. die grenzüberschreitenden Tätigkeiten der Gruppe, mit Ausnahme der Tätigkeiten der Gruppe in teilnehmenden Mitgliedstaaten nach Artikel 4 der Verordnung (EU) Nr. 806/2014.	2. the cross-border activities of the group, with the exception of the group's activities in participating Member States pursuant to Article 4 of Regulation (EU) No 806/2014.
Die Indikatoren für die in Satz 2 Nummer 1 genannten Kategorien entsprechen den Indikatoren, die gemäß Absatz 2 Satz 2 bestimmt werden. Die Institute sind verpflichtet, der Bundesanstalt die zur Durchführung der quantitativen Analyse benötigten Einzeldaten jährlich zu melden.	The indicators for the categories specified in sentence 2, number 1 shall correspond to the indicators determined pursuant to paragraph (2), sentence 2. Institutions are required to report the microdata needed to perform the quantitative analysis annually to BaFin.
(3) In Abhängigkeit von den Ergebnissen der quantitativen Analyse weist die Bundesanstalt ein global systemrelevantes Institut einer bestimmten Größenklasse zu. Die Bundesanstalt kann	(3) Depending on the results of the quantitative analysis, BaFin will assign a global systemically important institution to a particular size category. BaFin may
1. ein global systemrelevantes Institut einer höheren Größenklasse zuordnen,	1. assign a global systemically important institution to a higher size category,
2. ein zur Teilnahme am quantitativen Verfahren verpflichtetes Institut, das im	2. designate an institution that is required to participate in the quantitative procedure, and

Rahmen der quantitativen Analyse nicht als global systemrelevantes Institut identifiziert wurde, als solches einstufen und einer der Größenklassen zuordnen, wenn im Rahmen der ergänzenden qualitativen Analyse Merkmale der Systemrelevanz festgestellt wurden, die im Rahmen der quantitativen Analyse nicht oder nicht ausreichend erfasst wurden, oder	which was identified by the quantitative analysis as not being a global systemically important institution, as such and assign it to one of the size categories if, as part of the supplementary qualitative analysis, characteristics of systemic importance were identified which were not captured or were inadequately captured by the quantitative analysis, or
3. das global systemrelevante Institut von einer höheren Größenklasse in eine niedrigere Größenklasse umstufen, sofern sie dabei den einheitlichen Abwicklungsmechanismus berücksichtigt und das Gesamtergebnis der quantitativen Analyse gemäß Absatz 2a zugrunde legt.	3. reclassify the institution of global systemic importance from a higher size category to a lower size category, provided that it does so in on the basis of the single settlement mechanism and the overall result of the quantitative analysis referred to in paragraph (2a).
(4) Die Institute, deren Gesamtrisikopositionsmessgröße im Sinne des Artikels 429 Absatz 4 der Verordnung (EU) Nr. 575/2013 den Wert von 200 Milliarden Euro übersteigt, sind verpflichtet, die Werte der der quantitativen Analyse zugrunde liegenden Indikatoren jährlich innerhalb von vier Monaten nach Abschluss eines jeden Geschäftsjahres, spätestens jedoch bis zum 31. Juli, auf ihrer Internetseite und in dem Medium zu veröffentlichen, welches gemäß Artikel 434 der Verordnung (EU) Nr. 575/2013 für die Veröffentlichung der in Teil 8 dieser Verordnung verlangten Angaben vorgesehen ist. Die Veröffentlichung hat mittels der ausgefüllten, im Anhang der Durchführungsverordnung (EU) Nr. 1030/2014 der Kommission vom 29. September 2014 zur Festlegung technischer Durchführungsstandards in Bezug auf einheitliche Formate und Daten für die Offenlegung der Werte zur Bestimmung global systemrelevanter Institute gemäß der Verordnung (EU) Nr. 575/2013 des Europäischen Parlaments und des Rates (ABl. L 284 vom 30.9.2014, S. 14) enthaltenen Bögen entsprechend den Angaben auf der Internetseite der Europäischen Bankenaufsichtsbehörde elektronisch zu erfolgen. Die Bundesanstalt übermittelt die Bögen an die Europäische Bankenaufsichtsbehörde zwecks zentraler Veröffentlichung auf ihrer Internetseite. Bei der Anordnung und Überprüfung des Kapitalpuffers für global systemrelevante Institute nach Absatz 1 und der Einstufung als global systemrelevante Institute sowie der Zuweisung zu einer Größenklasse nach den Absätzen 2 und 3 sind die insoweit bestehenden Vorgaben und Empfehlungen der Europäischen	(4) Institutions whose total risk exposure measure, as defined in Article 429(4) of Regulation (EU) No 575/2013, exceeds the value of EUR 200 billion shall be required to publish the values of the indicators underlying the quantitative analysis annually, within four months of the end of each financial year, but no later than 31 July, on their Internet site and in the medium provided for in Article 434 of Regulation (EU) No 575/2013 for the publication of the information required in Part 8 of this Regulation. Publication shall be made electronically by means of the completed forms contained in the Annex to Commission Implementing Regulation (EU) No 1030/2014 of 29 September 2014, which specifies technical standards for implementation as regards uniform formats and dates for the disclosure of the values to be used for the identification of global systemically important institutions pursuant to Regulation (EU) No 575/2013 of the European Parliament and of the Council (OJ L 284 dated 30 September 2014, p. 14), as indicated on the EBA website. BaFin transmits the forms to the EBA for central publication on its website. BaFin shall take into account, at its own discretion, the relevant guidelines and recommendations published by EBA and the ESRB when ordering and reviewing the buffer for global systemically important institutions pursuant to paragraph (1) and when classifying institutions as global systemically important institutions as well as when assigning them to a size category pursuant to paragraphs (2) and (3).

Bankenaufsichtsbehörde und des Europäischen Ausschusses für Systemrisiken nach freiem Ermessen der Bundesanstalt zu berücksichtigen.	
(4a) Die in Absatz 4 genannten Institute sind verpflichtet, jährlich die Datenerfassungsbögen des Baseler Ausschusses für Bankenaufsicht auszufüllen und an die Bundesanstalt sowie die Deutsche Bundesbank zu senden. Die Deutsche Bundesbank übermittelt die ausgefüllten Datenerfassungsbögen an den Baseler Ausschuss für Bankenaufsicht. Darüber hinaus kann die Bundesanstalt die ausgefüllten Datenerfassungsbögen des Baseler Ausschusses für Bankenaufsicht auch an die Europäische Bankenaufsichtsbehörde weiterleiten.	(4a) The institutions referred to in paragraph (4) shall be required to complete the data collection forms of the Basel Committee on Banking Supervision and to send them to BaFin and the Deutsche Bundesbank on an annual basis. The Deutsche Bundesbank forwards the completed data collection forms to the Basel Committee on Banking Supervision. In addition, BaFin may also forward the completed data collection forms of the Basel Committee on Banking Supervision to the EBA.
(5) Die Bundesanstalt unterrichtet den Europäischen Ausschuss für Systemrisiken und die als global systemrelevant eingestuften Institute über die Entscheidungen nach den Absätzen 1, 2 und 3 und veröffentlicht Informationen über das Bestehen einer Anordnung sowie die Höhe des angeordneten Kapitalpuffers für global systemrelevante Institute sowie eine Liste der als global systemrelevant eingestuften Institute.	(5) BaFin will notify the ESRB and the institutions classified as globally systemically relevant of the decisions under paragraphs (1), (2) and (3) and publish information on the existence of an order and the amount of the ordered capital buffer for globally systemically relevant institutions as well as a list of the institutions classified as globally systemically relevant.
(6) Das Nähere regelt die Rechtsverordnung nach § 10 Absatz 1 Satz 1 Nummer 5 Buchstabe c.	(6) Further details are regulated by the statutory instrument pursuant to Section 10(1) sentence 1 number 5 letter c.
§ 10g KWG	**Section 10g KWG**
(1) Die Bundesanstalt kann anordnen, dass ein anderweitig systemrelevantes Institut einen aus hartem Kernkapital bestehenden Kapitalpuffer für anderweitig systemrelevante Institute in Höhe von bis zu 3 Prozent des nach Artikel 92 Absatz 3 der Verordnung (EU) Nr. 575/2013 ermittelten Gesamtrisikobetrags auf zusammengefasster oder teilkonsolidierter Basis oder auf Einzelinstitutsebene vorhalten muss.	(1) BaFin may order other systemically important institutions that they must maintain a capital buffer consisting of Common Equity Tier 1 capital for other systemically important institutions in the amount of up to 3 percent of the total risk amount determined in accordance with Article 92(3) of Regulation (EU) No. 575/2013 on a consolidated or sub-consolidated basis or at the level of individual institutions.
(1a) Vorbehaltlich der Einwilligung der Europäischen Kommission kann die Bundesanstalt ein anderweitig systemrelevantes Institut dazu verpflichten, einen aus hartem Kernkapital bestehenden Kapitalpuffer für anderweitig systemrelevante Institute von mehr als 3 Prozent des nach Artikel 92 Absatz 3 der Verordnung (EU) Nr. 575/2013 berechneten	(1a) Subject to the approval of the European Commission, BaFin may require another systemically important institution to maintain a capital buffer consisting of Common Equity Tier 1 capital for other systemically important institutions of more than 3 percent of the total amount at risk calculated in accordance with Article 92 (3) of Regulation (EU) No. 575/2013

Gesamtrisikobetrags auf zusammengefasster oder teilkonsolidierter Basis oder auf Einzelinstitutsebene vorzuhalten.	on a consolidated or sub-consolidated basis or at the level of individual institutions.
(2) Die Bundesanstalt bestimmt im Einvernehmen mit der Deutschen Bundesbank mindestens jährlich, welche Institute, EU-Mutterinstitute, EU-Mutterfinanzholdinggesellschaften gemischten EU-Mutterfinanzholdinggesellschaften, Mutterinstitute, Mutterfinanzholding-Gesellschaften oder gemischten Finanzholding-Gesellschaften mit Sitz im Inland auf konsolidierter oder teilkonsolidierter Basis oder auf Einzelinstitutsebene als anderweitig systemrelevant eingestuft werden (anderweitig systemrelevante Institute). Bei der auf der relevanten Ebene durchgeführten quantitativen und hilfsweise auch qualitativen Analyse berücksichtigt sie jeweils für die untersuchte Einheit insbesondere die nachfolgenden Faktoren:	(2) BaFin, in agreement with the Deutsche Bundesbank, will identify at least annually which institutions, EU parent institutions, EU parent financial holding companies or EU parent mixed financial holding companies established in Germany shall be classified as other systemically important (other systemically important institutions) on a consolidated basis, sub-consolidated or individual basis. In performing the qualitative, and alternatively, also quantitative analysis at the relevant level, BaFin will notably take into account the following factors for each entity analyzed:
1. Größe,	1. size,
2. wirtschaftliche Bedeutung für den Europäischen Wirtschaftsraum und die Bundesrepublik Deutschland,	2. economic importance for the EEA and the Federal Republic of Germany,
3. grenzüberschreitende Aktivitäten sowie	3. cross-border activities. and
4. Verflechtungen mit dem Finanzsystem.	4. interdependencies with the financial system.
(3) Die Bundesanstalt überprüft mindestens jährlich, ob und in welcher Höhe der Kapitalpuffer für anderweitig systemrelevante Institute erforderlich ist. Dabei sind jeweils die insoweit bestehenden Vorgaben und Empfehlungen der Europäischen Bankenaufsichtsbehörde und des Europäischen Ausschusses für Systemrisiken zu beachten. Die Anordnung darf nur erfolgen, wenn der Kapitalpuffer für anderweitig systemrelevante Institute keine unverhältnismäßige Beeinträchtigung des Finanzsystems oder von Teilen des Finanzsystems eines anderen Staates oder des Europäischen Wirtschaftsraums insgesamt darstellt, so dass das Funktionieren des Binnenmarkts des Europäischen Wirtschaftsraums behindert wird.	(3) BaFin will review, at least annually, whether and at what rate the capital buffer is necessary for other systemically relevant institutions. It shall in each case take note of any relevant guidelines and recommendations published by EBA and the ESRB. A capital buffer for other systemically important institutions may be imposed only if does not entail disproportionate adverse effects on the whole or parts of the financial system of another EEA state or of the EEA as a whole, forming or creating an obstacle to the functioning of the EEA internal market.
(3a) Die Bundesanstalt veröffentlicht die für die Einstufung der anderweitig systemrelevanten Institute und die Festsetzung der Höhe des Kapitalpuffers angewandte Methodik unter	(3a) BaFin shall publish the methodology used for the classification of other systemically important institutions and the method applied to establish the amount of the capital buffer, taking

Berücksichtigung der maßgeblichen quantitativen und qualitativen Indikatoren und Schwellenwerte. Dabei sind die insoweit bestehenden Leitlinien der Europäischen Bankenaufsichtsbehörde zu beachten.	into account the relevant quantitative and qualitative indicators and thresholds. The existing guidelines of the EBA must be observed in this respect.
(4) Mindestens einen Monat vor Bekanntgabe der Anordnung eines neuen oder veränderten Kapitalpuffers für anderweitig systemrelevante Institute hat die Bundesanstalt die beabsichtigte Anordnung dem Europäischen Ausschuss für Systemrisiken anzuzeigen. Sofern die Bundesanstalt beabsichtigt, nach Absatz 1a anzuordnen, dass ein anderweitig systemrelevantes Institut einen aus hartem Kernkapital bestehenden Kapitalpuffer für anderweitig systemrelevante Institute in Höhe von mehr als 3 Prozent des nach Artikel92 Absatz 3 der Verordnung (EU) Nr. 575/2013 ermittelten Gesamtrisikobetrags auf zusammengefasster oder teilkonsolidierter Basis oder auf Einzelinstitutsebene vorhalten muss, so hat sie dies dem Europäischen Ausschuss für Systemrisiken mindestens drei Monate vor der beabsichtigten Veröffentlichung der Anordnung anzuzeigen. Die Anzeigen sollen jeweils mindestens folgende Angaben enthalten:	(4) At least one month before the publication of the decision to set or reset a buffer for other systemically important institutions, BaFin shall notify the ESRB. To the extent that BaFin orders according to paragraph (1a) other systemically important institutions that they must maintain a capital buffer consisting of Common Equity Tier 1 capital for other systemically important institutions in the amount of more than 3 percent of the total risk amount determined in accordance with Article 92 (3) of Regulation (EU) No 575/2013 on a consolidated or sub-consolidated basis or at the level of individual institutions, it shall accordingly notify the ESRB at least 3 months prior to the intended publication. Each notification shall contain at least the following information:
1. eine detaillierte Begründung, weshalb die Festsetzung eines Kapitalpuffers für anderweitig systemrelevante Institute gerechtfertigt und den identifizierten Risiken angemessen ist,	1. a detailed justification for why the setting of an O-SII buffer is justified and is proportionate to the risk identified,
2. eine detaillierte Erläuterung der wahrscheinlichen positiven und negativen Auswirkungen des Kapitalpuffers auf den Binnenmarkt des Europäischen Wirtschaftsraums sowie	2. a detailed assessment of the likely positive or negative impact of the O-SII buffer on the EEA internal market, and
3. die Höhe des festgesetzten Kapitalpuffers.	3. the buffer rate that is to be set.
(5) Die Bundesanstalt unterrichtet das jeweilige anderweitig systemrelevante Institut mit den jeweils festgesetzten Kapitalpuffern und den Europäischen Ausschuss für Systemrisiken über die Entscheidungen nach Absatz 1 und 2 und veröffentlicht eine Liste der als anderweitig systemrelevant eingestuften Institute. Die Liste enthält die wesentlichen quantitativen und qualitativen Ergebnisse der den Entscheidungen zugrunde liegenden Analyse unter Berücksichtigung der verwendeten Indikatoren und Schwellenwerte. Zudem übermittelt die Bundesanstalt der Europäischen Bankenaufsichtsbehörde die Werte der für die	(5) BaFin will notify the respective other systemically important institution of the respectively set buffers and the ESRB and of the decisions pursuant to paragraphs (1) and (2) and publish a list of the institutions classified as being other systemically important institutions. The list shall contain the material quantitative and qualitative results of the analysis underlying the decisions, taking into account the indicators and thresholds used. In addition, BaFin will transmit to the EBA the values of the indicators used for the analysis for all institutions that have not already been excluded from the analysis due to their small size compared to the balance sheet

Analyse verwendeten Indikatoren für alle Institute, die nicht bereits auf Grund ihrer gemessen an der Bilanzsumme geringen Größe von der Analyse ausgeschlossen wurden. Dabei sind die insoweit bestehenden Leitlinien der Europäischen Bankenaufsichtsbehörde zu beachten.	total. The existing guidelines of the EBA must be observed in this respect.
(6) Ist das anderweitig systemrelevante Institut Tochterunternehmen eines global systemrelevanten Instituts oder eines EU-Mutterinstituts in einem anderen Staat des europäischen Wirtschaftsraums, das ein anderweitig systemrelevantes Institut im Sinne des Artikels 131 Absatz 1 der Richtlinie 2013/36/EU ist und einem Kapitalpuffer für anderweitig systemrelevante Institute auf zusammengefasster Basis unterliegt, so darf der Kapitalpuffer des Absatzes 1 nicht den niedrigeren der folgenden Beträge überschreiten:	(6) Where the otherwise systemically relevant institution is a subsidiary of a globally systemically relevant institution or an EU parent institution established abroad which is another systemically important institution within the meaning of Article 131(1) of Directive 2013/36/EU and is subject to an O-SII buffer on a consolidated basis, the buffer rate pursuant to paragraph (1) shall not exceed the lower of the following amounts:
1. die Summe der höheren der beiden für die Gruppe auf zusammengefasster Basis geltenden Quoten des Puffers für global systemrelevante Institute oder des Puffers für anderweitig systemrelevante Institute und 1 Prozent des nach Artikel 92 Absatz 3 der Verordnung (EU) Nr. 575/2013 berechneten Gesamtrisikobetrags und	1. the sum of the higher of the two rates of the buffer for globally systemically important institutions or the buffer for other systemically important institutions applicable to the group on a consolidated basis and 1% of the total amount at risk calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013, and
2. 3 Prozent des gemäß Artikel 92 Absatz 3 der Verordnung (EU) Nr. 575/2013 berechneten Gesamtrisikobetrags oder die von der Kommission gemäß Absatz 1 a für die Gruppe auf zusammengefasster Basis genehmigte Höhe des Kapitalpuffers.	2. 3 per cent of the total amount of risk calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013 or the amount of the capital buffer approved by the Commission in accordance with paragraph (1a) for the group on a consolidated basis.
(7) Das Nähere regelt die Rechtsverordnung nach § 10 Absatz 1 Satz 1 Nummer 5 Buchstabe d.	(7) Further details will be set forth in the statutory order pursuant to Section 10(1) sentence 1 number 5 letter d.
§ 10h KWG	**Section 10h KWG**
(1) Solange neben einem Kapitalpuffer für global systemrelevante Institute nach § 10f auch ein Kapitalpuffer für anderweitig systemrelevante Institute nach § 10g auf konsolidierter Ebene besteht, ist nur der höhere der beiden Kapitalpuffer einzuhalten.	(1) Where a group is subject to a G-SII buffer pursuant to Section 10f and also to an O-SII buffer pursuant to Section 10g on a consolidated basis, only the higher of the two buffers shall apply.
(2) Besteht neben einem Kapitalpuffer für global systemrelevante Institute nach § 10f oder	(2) If apart from a capital buffer for globally systemically relevant institutions pursuant to

einem Kapitalpuffer für anderweitig systemrelevante Institute nach § 10g auch ein Kapitalpuffer für systemische Risiken nach § 10e, so sind diese Kapitalpuffer kumulativ einzuhalten. Führt die Höhe der kumulativ einzuhaltenden Puffer nach Satz 1 zu einer Kapitalpufferanforderung in Höhe von mehr als 5 Prozent, verfährt die Bundesanstalt gemäß den Vorgaben nach § 10g Absatz 1a.	Section 10f or a capital buffer for other systemically relevant institutions pursuant to Section 10g an O-SII buffer pursuant to Section 10g also exists on a consolidated basis, these capital buffers shall be complied with cumulatively. If the amount of the buffers to be maintained cumulatively in accordance with sentence 1 results in a capital buffer requirement of more than 5 percent, BaFin shall proceed in accordance with the requirements of Section 10g(1a).
§ 10i Abs. 2-5 KWG iVm § 37 Solvabilitätsverordnung	**Section 10i(2)-(5) KWG in conjunction with Section 37 of the German Solvency Regulation (*Solvabilitätsverordnung*: SolvV)**
§ 10i Abs. 2-5 KWG	**Section 10i(2)-(5) KWG**
(2) Ein Institut, das die kombinierte Kapitalpufferanforderung erfüllt, darf keine Ausschüttung aus dem harten Kernkapital oder auf harte Kernkapitalinstrumente nach Absatz 5 vornehmen, wenn dadurch sein hartes Kernkapital so stark abnehmen würde, dass die kombinierte Kapitalpufferanforderung nicht mehr erfüllt wäre.	(2) An institution which meets the combined buffer requirement shall not make a distribution in connection with Common Equity Tier 1 capital or Common Equity Tier 1 capital instruments pursuant to paragraph (5) to an extent that would decrease its Common Equity Tier 1 capital to a level where the combined buffer requirement is no longer met.
(3) Ein Institut, das die kombinierte Kapitalpufferanforderung nicht oder nicht mehr erfüllt, muss den maximal ausschüttungsfähigen Betrag berechnen und der Aufsichtsbehörde und der Deutschen Bundesbank anzeigen. Das Institut muss Vorkehrungen treffen, um zu gewährleisten, dass die Höhe der ausschüttungsfähigen Gewinne und der maximal ausschüttungsfähige Betrag genau berechnet werden, und muss in der Lage sein, der Aufsichtsbehörde und der Deutschen Bundesbank die Genauigkeit der Berechnung auf Anfrage nachzuweisen. Bis zur Entscheidung der Aufsichtsbehörde über die Genehmigung des Kapitalerhaltungsplans nach den Absätzen 7 und 8 darf das Kreditinstitut 1. keine Ausschüttung aus dem hartem Kernkapital oder auf harte Kernkapitalinstrumente nach Absatz 5 vornehmen, 2. keine Verpflichtung zur Zahlung einer variablen Vergütung oder zu freiwilligen Rentenzahlungen übernehmen und keine variable Vergütung zahlen, wenn die	(3) An institution which does not meet or no longer meets the combined buffer requirement shall calculate the maximum distributable amount (MDA) and notify the Supervisory Authority and the Deutsche Bundesbank of that MDA. The institution shall maintain arrangements to ensure that the amount of distributable profits and the maximum distributable amount are calculated accurately, and must be able to demonstrate that accuracy to the supervisory authority and the Deutsche Bundesbank upon request. Until the supervisory authority has decided on the approval of the capital conservation plan pursuant to paragraphs (7) and (8), the credit institution shall not 1. make a distribution in connection with Common Equity Tier 1 capital or Common Equity Tier 1 capital instruments pursuant to paragraph (5), 2. create an obligation to pay variable remuneration or discretionary pension benefits and pay variable remuneration if the obligation to pay was created at a time when the credit

entsprechende Verpflichtung in einem Zeitraum übernommen worden ist, in dem das Kreditinstitut die kombinierte Kapitalpufferanforderung nicht erfüllt hat, und	institution failed to meet the combined buffer requirement, and
3. keine Zahlungen aus zusätzlichen Kernkapitalinstrumenten vornehmen.	3. make payments on Additional Tier 1 instruments.
Das Nähere regelt die Rechtsverordnung nach § 10 Absatz 1 Satz 1 Nummer 5 Buchstabe e.	Further details will be set forth in the statutory order pursuant to Section 10 (1) sentence 1 number 5 letter e.
(4) Ein Institut, das die kombinierte Kapitalpufferanforderung nicht oder nicht mehr erfüllt und beabsichtigt, eine Ausschüttung ausschüttungsfähiger Gewinne oder eine Maßnahme nach Absatz 3 Satz 3 Nummer 1 bis 3 durchzuführen, teilt diese Absicht der Aufsichtsbehörde und der Deutschen Bundesbank unter Angabe der folgenden Informationen mit:	(4) An institution which does not or no longer fulfils the combined capital buffer requirement and intends to distribute distributable profits or take any action pursuant to paragraph (3), sentence 3, numbers 1 to 3, shall notify the supervisory authority and the Deutsche Bundesbank of this intention, stating the following information:
1. vom Institut vorgehaltene Eigenmittel, aufgeschlüsselt nach	1. the amount of capital maintained by the institution, subdivided as follows:
a) hartem Kernkapital;	a) Common Equity Tier 1 capital;
b) zusätzlichem Kernkapital;	b) Additional Tier 1 capital;
c) Ergänzungskapital;	c) Tier 2 capital;
2. Höhe der Zwischengewinne und Gewinne zum Jahresende;	2. the amount of its interim and year-end profits;
3. Höhe des maximal ausschüttungsfähigen Betrages;	3. the maximum distributable amount;
4. Höhe der ausschüttungsfähigen Gewinne und deren beabsichtigte Aufteilung auf	4. The amount of distributable profits and how it intends to allocate them between the following:
a) Ausschüttungen an Anteilseigner oder Eigentümer;	a) dividend payments;
b) Rückkauf oder Rückerwerb von Anteilen;	b) share buybacks;
c) Zahlungen aus zusätzlichen Kernkapitalinstrumenten;	c) payments on Additional Tier 1 instruments;
d) Zahlung einer variablen Vergütung oder freiwillige Rentenzahlungen, entweder auf Grund der Übernahme einer neuen Zahlungsverpflichtung oder einer Zahlungsverpflichtung, die in einem Zeitraum übernommen wurde, in dem das Kreditinstitut	d) the payment of variable remuneration or discretionary pension benefits, whether by creation of a new obligation to pay, or payment pursuant to an obligation to pay created at a time when the institution failed to meet its combined buffer requirement.

die kombinierte Kapitalpufferanforderung nicht erfüllt hat.	
(5) Eine Ausschüttung aus hartem Kernkapital oder auf harte Kernkapitalinstrumente umfasst	(5) A distribution in connection with Common Equity Tier 1 capital or Common Equity Tier 1 capital instruments shall include the following:
1. Gewinnausschüttungen in bar,	1. a payment of cash dividends,
2. die Ausgabe von teilweise oder voll gezahlten Gratisaktien oder anderen in Artikel 26 Absatz 1 Buchstabe a der Verordnung (EU) Nr. 575/2013 aufgeführten Eigenmittelinstrumenten,	2. a distribution of fully or partly paid bonus shares or other capital instruments referred to in Article 26(1) letter a of Regulation (EU) No 575/2013,
3. eine Rücknahme oder einen Rückkauf eigener Aktien oder anderer Instrumente nach Artikel 26 Absatz 1 Buchstabe a der Verordnung (EU) Nr. 575/2013 durch ein Institut,	3. a redemption or repurchase by an institution of its own shares or other instruments pursuant to Article 26(1) letter a of Regulation (EU) No 575/2013,
4. eine Rückzahlung der in Verbindung mit den Eigenmittelinstrumenten nach Artikel 26 Absatz 1 Buchstabe a der Verordnung (EU) Nr. 575/2013 eingezahlten Beträge und	4. a repayment of amounts paid in connection with the own resources instruments referred to in Article 26(1) letter a of Regulation (EU) No 575/2013, and
5. eine Ausschüttung von in Artikel 26 Absatz 1 Buchstabe b bis e der Verordnung (EU) Nr. 575/2013 aufgeführten Positionen.	5. a distribution of items referred to in Article 26(1) letter b to e of Regulation (EU) No 575/2013.
§ 37 SolvV	**Section 37 SolvV**
(1) Der maximal ausschüttungsfähige Betrag im Sinne des § 10i Absatz 3 des Kreditwesengesetzes errechnet sich durch Multiplikation des nach Absatz 2 berechneten Betrags mit dem gemäß Absatz 3 festgelegten Faktor. Er reduziert sich durch jede nach § 10i Absatz 3 Satz 3 Nummer 1 bis 3 des Kreditwesengesetzes durchgeführte Maßnahme.	(1) The maximum distributable amount within the meaning of Section 10i(3) of the German Banking Act shall be calculated by multiplying the amount calculated in accordance with paragraph (2) by the factor determined in accordance with paragraph (3). It shall be reduced by each measure carried out in accordance with Section 10i(3) sentence 3 numbers 1 to 3 of the German Banking Act.
(2) Der zu multiplizierende Betrag ergibt sich aus	(2) The amount to be multiplied is determined from
1. den Zwischengewinnen, die nicht im Kernkapital gemäß Artikel 26 Absatz 2 der Verordnung (EU) Nr. 575/2013 enthalten sind und die nach der letzten Entscheidung über die Gewinnausschüttung oder eine der unter § 10i Absatz 3 Satz 3 Nummer 1 bis 3 des Kreditwesengesetzes aufgeführten Maßnahmen erwirtschaftet wurden;	1. the interim profits not included in Tier 1 capital pursuant to Article 26(2) of Regulation (EU) No. 575/2013 and which were generated after the last decision on the distribution of profits or one of the measures listed under Section 10i(3) sentence 3 numbers 1 to 3 of the German Banking Act;

2. zuzüglich der Gewinne zum Jahresende, die nicht im Kernkapital gemäß Artikel 26 Absatz 2 der Verordnung (EU) Nr. 575/2013 enthalten sind und die nach der letzten Entscheidung über die Gewinnausschüttung oder eine der unter § 10i Absatz 3 Satz 3 Nummer 1 bis 3 des Kreditwesengesetzes aufgeführten Maßnahmen erwirtschaftet wurden;	2. plus the profits at the end of the year which are not included in Tier 1 capital pursuant to Article 26(2) of Regulation (EU) No. 575/2013 and which were generated after the last decision on the distribution of profits or one of the measures listed under Section 10i(3) sentence 3 numbers 1 to 3 of the German Banking Act;
3. abzüglich der Beträge, die in Form von Steuern zu zahlen wären, wenn die unter den Nummern 1 und 2 aufgeführten Gewinne einbehalten würden.	3. less the amounts that would be payable in the form of tax if the profits referred to in numbers 1 and 2 were retained.
(3) Liegt das von dem Institut vorgehaltene und nicht zur Einhaltung der Eigenmittelanforderungen nach Artikel 92 Absatz 1 Buchstabe c der Verordnung (EU) Nr. 575/2013 verwendete Kernkapital, ausgedrückt als Prozentsatz des Gesamtforderungsbetrags im Sinne von Artikel 92 Absatz 3 der Verordnung (EU) Nr. 575/2013, innerhalb des	(3) If the Tier 1 capital held by the institution and not used to meet the own-funds requirements referred to in Article 92(1) letter c of Regulation (EU) No 575/2013, expressed as a percentage of the total amount of claims within the meaning of Article 92(3) of Regulation (EU) No 575/2013, is within the
1. ersten (das heißt des untersten) Quartils der kombinierten Kapitalpuffer-Anforderung, so beträgt der Faktor 0;	1. first (i.e. the lowest) quartile of the combined capital buffer requirement, the factor is 0;
2. zweiten Quartils der kombinierten Kapitalpuffer-Anforderung, so beträgt der Faktor 0,2;	2. second quartile of the combined capital buffer requirement, the factor is 0.2;
3. dritten Quartils der kombinierten Kapitalpuffer-Anforderung, so beträgt der Faktor 0,4;	3. third quartile of the combined capital buffer requirement, the factor is 0.4;
4. obersten Quartils der kombinierten Kapitalpuffer-Anforderung, so beträgt der Faktor 0,6.	4. top quartile of the combined capital buffer requirement, the factor is 0.6.
(4) Die Ober- und Untergrenzen für jedes Quartil der kombinierten Kapitalpuffer-Anforderung werden wie folgt berechnet:	(4) The upper and lower limits for each quartile of the combined capital buffer requirement shall be calculated as follows:
Untergrenze des Quartils = (Kombinierte Kapitalpufferanforderung /4) x (Qn-1)	Lower limit of the quartile = (combined capital buffer requirement/4) x (Qn-1)
„Qn“ steht für die Ordinalzahl des betreffenden Quartils.	“Qn” stands for the ordinal number of the quartile in question.

§ 10i Abs. 6-9 KWG	Section 10i (6)-(9) KWG
(6) Ein Institut, das die kombinierte Kapitalpufferanforderung nicht oder nicht mehr erfüllt, muss über die Anforderungen der Absätze 3 bis 4 hinaus zusätzlich einen Kapitalerhaltungsplan erstellen und innerhalb von fünf Arbeitstagen, nachdem es festgestellt hat, dass es die kombinierte Kapitalpufferanforderung nicht erfüllen kann, der Aufsichtsbehörde und der Deutschen Bundesbank vorlegen. Die Aufsichtsbehörde kann die Frist zur Vorlage auf längstens zehn Arbeitstage verlängern, wenn dies im Einzelfall und unter Berücksichtigung des Umfangs und der Komplexität der Geschäftstätigkeit des Instituts angemessen erscheint. Der Kapitalerhaltungsplan umfasst	(6) An institution which does not meet or no longer meets its combined buffer requirement shall, in addition to the requirements set out in paragraphs (3) to (4), also prepare a capital conservation plan and submit it to the supervisory authority and the Deutsche Bundesbank no later than five working days after it identified that it was failing to meet the combined buffer requirement. The supervisory authority may authorise a longer delay of up to ten working days for submission if this appears appropriate on the basis of the individual situation of the credit institution and taking into account the scale and complexity of the institution's activities. The capital conservation plan shall include the following:
1. eine Einnahmen- und Ausgabenschätzung und eine Bilanzprognose,	1. estimates of income and expenditure and a forecast balance sheet,
2. Maßnahmen zur Erhöhung der Kapitalquoten des Instituts,	2. measures to increase the capital ratios of the institution,
3. Plan und Zeitplan für die Erhöhung der Eigenmittel, um die kombinierte Kapitalpufferanforderung vollständig zu erfüllen, und	3. a plan and timeframe for the increase of own funds with the objective of fully meeting the combined buffer requirement, and
4. weitere Informationen, die die Aufsichtsbehörde für die in Absatz 7 vorgeschriebene Bewertung als notwendig erachtet.	4. any other information that the supervisory authority considers to be necessary to carry out the assessment required by paragraph (7).
(6a) Die Absätze 1 bis 6 gelten entsprechend für Institutsgruppen, Finanzholding-Gruppen und gemischte Finanzholding-Gruppen.	(6a) Paragraphs (1) to (6) shall apply *mutatis mutandis* for groups of institutions, financial holding groups and mixed financial holding groups.
(7) Die Aufsichtsbehörde bewertet den Kapitalerhaltungsplan und genehmigt ihn, wenn sie der Auffassung ist, dass durch seine Umsetzung sehr wahrscheinlich genügend Kapital erhalten oder aufgenommen wird, damit das Institut die kombinierte Kapitalpufferanforderung innerhalb des von der Aufsichtsbehörde als angemessen erachteten Zeitraums erfüllen kann. Die Aufsichtsbehörde entscheidet über die Genehmigung innerhalb von 14 Tagen nach Eingang des Kapitalerhaltungsplans. Nach Genehmigung des Kapitalerhaltungsplans ist das Institut berechtigt, eine Ausschüttung	(7) The supervisory authority will assess the capital conservation plan, and will approve the plan only if it considers that the plan, if implemented, would be reasonably likely to conserve or raise sufficient capital to enable the institution to meet its combined buffer requirements within a period which supervisory authority considers appropriate. The supervisory authority will decide on the approval within 14 days of receiving the capital conservation plan Once the capital conservation plan has been approved, the institution may distribute distributable profits and implement measures

ausschüttungsfähiger Gewinne sowie Maßnahmen nach Absatz 3 Satz 3 Nummer 1 bis 3 bis zu Höhe des maximal ausschüttungsfähigen Betrags durchzuführen.	pursuant to paragraph (3) sentence 3 numbers 1 to 3 up to the maximum distributable amount.
(8) Genehmigt die Aufsichtsbehörde den Kapitalerhaltungsplan nicht,	(8) If the supervisory authority does not approve the capital conservation plan
1. ordnet die Aufsichtsbehörde an, dass die Ausschüttungsbeschränkungen des Absatzes 3 fortgelten, oder	1. the supervisory authority will order that the restrictions on distributions pursuant to paragraph (3) shall continue to apply, or
2. erlaubt die Aufsichtsbehörde dem Institut die Durchführung von Maßnahmen im Sinne des Absatzes 3 Satz 3 Nummer 1 bis 3 bis zu einem bestimmten Betrag, der den maximal ausschüttungsfähigen Betrag nicht übersteigen darf.	2. the supervisory authority shall allow the institution to implement measures within the meaning of paragraph (3) sentence 3 numbers 1 to 3 up to a certain amount which shall not to exceed the maximum distributable amount.
Daneben kann sie von dem Institut verlangen, seine Eigenmittel innerhalb eines bestimmten Zeitraums auf eine bestimmte Höhe aufzustocken.	It may also require the institution to increase its own funds to a specified level within a specified period.
(9) Die in dieser Vorschrift festgelegten Beschränkungen finden ausschließlich auf Zahlungen und Ausschüttungen Anwendung, die zu einer Verringerung des harten Kernkapitals oder der Gewinne führen, und sofern die Aussetzung einer Zahlung oder eine versäumte Zahlung weder einen Ausfall noch eine Voraussetzung für die Einleitung eines Verfahrens nach den für das Institut geltenden Insolvenzvorschriften darstellt.	(9) The restrictions imposed by this provision apply only to payments and distributions that result in a reduction of Common Equity Tier 1 capital or in a reduction of profits, and to the extent that a suspension of payment or failure to pay does not constitute an event of default or a condition for the commencement of proceedings under the insolvency regime applicable to the institution.
§ 11 KWG	**Section 11 KWG**
(1) Die Institute müssen ihre Mittel so anlegen, dass jederzeit eine ausreichende Zahlungsbereitschaft (Liquidität) gewährleistet ist. Das Bundesministerium der Finanzen wird ermächtigt, durch Rechtsverordnung im Benehmen mit der Deutschen Bundesbank nähere Anforderungen an die ausreichende Liquidität zu bestimmen, insbesondere über die	(1) Institutions must invest their funds in such a way as to ensure that adequate liquidity for payment purposes (liquidity) is guaranteed at all times. The Federal Ministry of Finance is authorized to determine more detailed provisions as to the adequate liquidity by way of regulation to be issued in consultation with Deutsche Bundesbank, in particular in respect to:
1. Methoden zur Beurteilung der ausreichenden Liquidität und die dafür erforderlichen technischen Grundsätze,	1. the methods to assess sufficient liquidity and the technical principles required for this purposes;

2. als Zahlungsmittel und Zahlungsverpflichtungen zu berücksichtigenden Geschäfte einschließlich ihrer Bemessungsgrundlagen sowie 3. Pflicht der Institute zur Übermittlung der zum Nachweis der ausreichenden Liquidität erforderlichen Angaben an die Aufsichtsbehörde und die Deutsche Bundesbank, einschließlich Bestimmungen zu Inhalt, Art, Umfang und Form der Angaben, zu der Häufigkeit ihrer Übermittlung und über die zulässigen Datenträger, Übertragungswege und Datenformate. In der Rechtsverordnung ist an die Definition der Spareinlagen aus § 21 Abs. 4 der Kreditinstituts-Rechnungslegungsverordnung anzuknüpfen. Das Bundesministerium der Finanzen kann die Ermächtigung durch Rechtsverordnung auf die Bundesanstalt mit der Maßgabe übertragen, dass die Rechtsverordnung im Einvernehmen mit der Deutschen Bundesbank ergeht. Vor Erlass der Rechtsverordnung sind die Spitzenverbände der Institute zu hören.	2. transactions to be taken into account as means of payment and payment obligations, including the assessment bases; and 3. the obligations of institutions to submit to the supervisory authority and to Deutsche Bundesbank data required to prove that there is sufficient liquidity, including provisions as to the content, type, extent and form of such data, the frequency of its transmission and permissible data carriers, methods of transmission and data formats. The regulation shall be based upon the definition of saving deposits as provided for section 21 para 4 of the Ordinance on the Accounting of Credit Institutions. The Federal Ministry of Finance may delegate this authority to the Bundesanstalt by way of a regulation subject to the provision that regulation must be issued in agreement with Deutsche Bundesbank. Before the regulation is passed, the central associations of institutions must be consulted.
(2) Die Bundesanstalt kann bei der Beurteilung der Liquidität im Einzelfall gegenüber Instituten über die in der Rechtsverordnung nach Absatz 1 festgelegten Vorgaben hinausgehende Liquiditätsanforderungen anordnen, wenn ohne eine solche Maßnahme die nachhaltige Liquidität eines Instituts nicht gesichert ist.	(2) When assessing institutions' liquidity, BaFin may in individual cases order institutions to meet liquidity requirements which go beyond the statutory order pursuant to paragraph (1) if an institution's ongoing liquidity is not assured without such a measure.
[In Kraft bis zum 28.06.2021: (3) Die Bundesanstalt kann bei der Beurteilung der Liquidität im Einzelfall gegenüber Instituten, Institutsgruppen, Finanzholding-Gruppen und gemischten Finanzholding-Gruppen spezifische über die Anforderungen der Artikel 411 bis 428 der Verordnung (EU) Nr. 575/2013 in der jeweils geltenden Fassung hinausgehende Liquiditätsanforderungen anordnen, um spezifische Risiken abzudecken, denen ein Institut ausgesetzt ist oder ausgesetzt sein könnte. Die Bundesanstalt beachtet dabei die in Artikel 105 der Richtlinie 2013/36/EU in der jeweils geltenden Fassung aufgeführten Erwägungsgründe. Die Bundesanstalt kann darüber hinaus auch die Fristentransformation einschränken. § 10a Absatz 1 bis 3 gilt entsprechend.]	[In force until June 28, 2021, then (3) When assessing institutions' liquidity, BaFin may in individual cases order institutions, groups of institutions, financial holding groups and mixed financial holding groups to meet liquidity requirements which go beyond the requirements of Articles 411 to 428az of Regulation (EU) No 575/2013 as last amended so as to cover specific risks to which an institution is or may be exposed. In so doing, BaFin will take into account the criteria set out in Article 105 of Directive 2013/36/EU as last amended BaFin may additionally impose restrictions on maturity transformation. Section 10a(1) and (3) shall apply *mutatis mutandis*.]

[In Kraft ab dem 28.06.2021, dann (3) Die Bundesanstalt kann bei der Beurteilung der Liquidität im Einzelfall gegenüber Instituten, Institutsgruppen, Finanzholding-Gruppen und gemischten Finanzholding-Gruppen spezifische über die Anforderungen der Artikel 411 bis 428az der Verordnung (EU) Nr. 575/2013 in der jeweils geltenden Fassung hinausgehende Liquiditätsanforderungen anordnen, um spezifische Risiken abzudecken, denen ein Institut ausgesetzt ist oder ausgesetzt sein könnte. Die Bundesanstalt beachtet dabei die in Artikel 105 der Richtlinie 2013/36/EU in der jeweils geltenden Fassung aufgeführten Erwägungsgründe. Die Bundesanstalt kann darüber hinaus auch die Fristentransformation einschränken. § 10a Absatz 1 und 2 gilt entsprechend.]	[In force as of June 28, 2021, then (3) When assessing institutions' liquidity, BaFin may in individual cases order institutions, groups of institutions, financial holding groups and mixed financial holding groups to meet liquidity requirements which go beyond the requirements of Articles 411 to 428az of Regulation (EU) No 575/2013 as last amended so as to cover specific risks to which an institution is or may be exposed. In so doing, BaFin will take into account the criteria set out in Article 105 of Directive 2013/36/EU as last amended BaFin may additionally impose restrictions on maturity transformation. Section 10a (1) and (2) shall apply *mutatis mutandis*.]
(4) Die Bundesanstalt kann anordnen, dass ein Institut, eine Institutsgruppe, eine Finanzholding-Gruppe oder eine gemischte Finanzholding-Gruppe häufigere oder auch umfangreichere Meldungen zu seiner Liquidität einzureichen hat.	(4) BaFin may order an institution, group of institutions, financial holding group or mixed financial holding group to submit more frequent or more comprehensive reports on its liquidity.
§ 24 Abs. 3b KWG	**Section 24(3b) KWG**
(3b) Die Bundesanstalt und die Deutsche Bundesbank können Instituten oder Arten oder Gruppen von Instituten zusätzliche Anzeige- und Meldepflichten auferlegen, insbesondere um vertieften Einblick in die Entwicklung der wirtschaftlichen Verhältnisse der Institute, deren Grundsätze einer ordnungsgemäßen Geschäftsführung und in die Fähigkeiten der Mitglieder der Organe des Instituts zu erhalten, soweit dies zur Erfüllung der Aufgaben der Bundesanstalt und der Deutschen Bundesbank erforderlich ist. Zusätzliche Anzeige- und Meldepflichten nach Satz 1 dürfen nur auferlegt werden, wenn die Anordnung für den Zweck, für den die Angaben erforderlich sind, verhältnismäßig ist und die verlangten Angaben nicht schon vorhanden sind.	(3b) BaFin and the Deutsche Bundesbank may impose additional notification and reporting requirements on institutions or certain types or categories of institutions, in particular in order to obtain more in-depth insights into developments in the institutions' financial situation, into their principles of proper management or into the abilities of members of the institution's governing bodies where this is necessary to fulfil the tasks of BaFin and the Deutsche Bundesbank. Additional notification and reporting requirements pursuant to sentence 1 may only be imposed if the imposition serves the purpose for which the tasks are required, is proportionate and the requested information is not already available.
§ 25a Abs. 1 S. 3 Nr. 2 KWG	**Section 25a(1) sentence 3 number 2 KWG**
Eine ordnungsgemäße Geschäftsorganisation muss insbesondere ein angemessenes und	A proper business organisation shall comprise, in particular, appropriate and effective risk

wirksames Risikomanagement umfassen, auf dessen Basis ein Institut die Risikotragfähigkeit laufend sicherzustellen hat; das Risikomanagement umfasst insbesondere 2. Verfahren zur Ermittlung und Sicherstellung der Risikotragfähigkeit, wobei eine vorsichtige Ermittlung der Risiken, der potentiellen Verluste, die sich auf Grund von Stressszenarien ergeben, einschließlich derjenigen, die nach dem aufsichtlichen Stresstest nach § 6b Absatz 3 ermittelt werden, und des zu ihrer Abdeckung verfügbaren Risikodeckungspotenzials zugrunde zu legen ist;	management, on the basis of which an institution shall continuously safeguard its internal capital adequacy; risk management shall comprise, in particular,] 2. processes for determining and safeguarding risk-bearing capacity, based on a prudent assessment of the risks, potential losses resulting from stress scenarios, including those determined in accordance with the regulatory stress test pursuant to Section 6b(3), and on the risk coverage potential available to cover them;
§ 25a Abs. 1 S. 3 Nr. 3 b) KWG	**Section 25a(1) sentence 3 number 3 (b) KWG**
Eine ordnungsgemäße Geschäftsorganisation muss insbesondere ein angemessenes und wirksames Risikomanagement umfassen, auf dessen Basis ein Institut die Risikotragfähigkeit laufend sicherzustellen hat; das Risikomanagement umfasst insbesondere 3. die Einrichtung interner Kontrollverfahren mit einem internen Kontrollsystem und einer Internen Revision, wobei das interne Kontrollsystem insbesondere b) Prozesse zur Identifizierung, Beurteilung, Steuerung sowie Überwachung und Kommunikation der Risiken entsprechend den in Titel VII Kapitel 2 Abschnitt 2 Unterabschnitt II der Richtlinie 2013/36/EU niedergelegten Kriterien […] umfasst.	A proper business organisation shall comprise, in particular, appropriate and effective risk management, on the basis of which an institution shall continuously safeguard its internal capital adequacy; risk management shall comprise, in particular, 3. the establishment of internal control mechanisms consisting of an internal control system and an internal audit function, whereby the internal control system shall comprise, in particular, b) processes for identifying, assessing, managing as well as monitoring and reporting risks in accordance with the criteria laid down in Title VII, Chapter 2 Section II subsection 2 of Directive 2013/36/EU.
MaRisk BTR 3 Liquiditätsrisiken	**MaRisk BTR 3 Liquidity risks**
1 Das Kreditinstitut hat sicherzustellen, dass es seine Zahlungsverpflichtungen jederzeit erfüllen kann. Dabei ist eine ausreichende Diversifikation, vor allem im Hinblick auf die Vermögens- und Kapitalstruktur, zu gewährleisten. <u>Verbundlösungen</u> Die Anforderung in Satz 2 kann auch durch bestehende Verbund- oder Konzernstrukturen erfüllt werden.	1 The credit institution must ensure that it can meet its payment obligations at all times. In doing so, adequate diversification must be ensured, especially with regard to the asset and capital structure. <u>Joint solutions</u> The requirement in sentence 2 can also be met by existing joint or group structures.

2 Das Kreditinstitut hat für einen geeigneten Zeitraum eine Liquiditätsübersicht zu erstellen, in der die erwarteten Mittelzuflüsse den erwarteten Mittelabflüssen gegenübergestellt werden. Die Annahmen, die den erwarteten Mittelzuflüssen und -abflüssen zu Grunde liegen, sind festzulegen. Bei der Erstellung der Liquiditätsübersicht sind regelmäßig angemessene Szenariobetrachtungen anzustellen.	2 The credit institution shall prepare a liquidity overview for a suitable period of time in which the expected inflows of funds are compared with the expected outflows of funds. The assumptions must be established on which the expected inflows and outflows of funds are based. When preparing the liquidity overview, appropriate scenario considerations must be made regularly.
Szenarien Die Szenarien sind vom Kreditinstitut individuell zu definieren. Mögliche Szenarien sind: ein Ausfall bedeutender Kreditnehmer/Kreditgeber, ein vollständiger oder teilweiser Abzug von Interbankeneinlagen, ein Kursverfall auf den Sekundärmärkten für Wertpapiere der Liquiditätsreserve, eine Verschlechterung des Ratings des Kreditinstituts, eine Streichung wichtiger Kreditlinien, die dem Kreditinstitut eingeräumt wurden.	Scenarios The scenarios are to be defined individually by the credit institution. Potential scenarios include: a default of major borrowers/lenders, a total or partial withdrawal of interbank deposits, a fall in prices on the secondary markets for securities in the liquidity reserve, a deterioration in the credit rating of the credit institution, a cancellation of important credit lines granted to the credit institution.
3 Es ist laufend zu überprüfen, inwieweit das Kreditinstitut in der Lage ist, einen auftretenden Liquiditätsbedarf zu decken. Dabei ist insbesondere auf den Liquiditätsgrad der Vermögenswerte abzustellen.	3 It shall be reviewed on an ongoing basis to what extent the credit institution is able to cover a potentially arising liquidity requirement. In particular, the liquidity ratio of the assets must be taken into account.
4 Das Kreditinstitut muss darlegen, welche Maßnahmen im Fall eines Liquiditätsengpasses ergriffen werden sollen. Dazu gehört die Darstellung der zur Verfügung stehenden Liquiditätsquellen unter Berücksichtigung etwaiger Mindererlöse. Die im Fall eines Liquiditätsengpasses zu verwendenden Kommunikationswege sind festzulegen.	4 The credit institution shall set out the measures to be taken in the event of a liquidity bottleneck. This includes the presentation of the available sources of liquidity, taking into account any reduced revenues. The communication channels to be used in the event of a liquidity bottleneck must be defined.
5 Der Geschäftsleitung ist regelmäßig über die Liquiditätssituation Bericht zu erstatten.	5 The management shall be regularly informed about the liquidity situation.
§ 33 Abs. 1 KWG	**Section 33(1) KWG**
(1) Die Erlaubnis ist zu versagen, wenn	(1) The authorization is to be refused if
1. die zum Geschäftsbetrieb erforderlichen Mittel, insbesondere ein ausreichendes Anfangskapital bestehend aus Bestandteilen des harten Kernkapitals gemäß Artikel 26 Absatz 1 Buchstabe a bis e der Verordnung (EU) Nr.	1. the resources needed for business operations, in particular sufficient initial capital consisting of Common Equity Tier 1 capital pursuant to Article 26(1) letter a through e of the Regulation (EU) No 575/2013 are not available in

575/2013 im Inland nicht zur Verfügung stehen; als Anfangskapital muß zur Verfügung stehen	Germany; the initial capital which must be available is as follows:
a) bei Anlageberatern, Anlagevermittlern, Abschlußvermittlern, Anlageverwaltern und Finanzportfolioverwaltern, Betreibern multilateraler oder organisierter Handelssysteme oder Unternehmen, die das Platzierungsgeschäft betreiben, die nicht befugt sind, sich bei der Erbringung von Finanzdienstleistungen Eigentum oder Besitz an Geldern oder Wertpapieren von Kunden zu verschaffen, und die nicht auf eigene Rechnung mit Finanzinstrumenten handeln, ein Betrag im Gegenwert von mindestens 50 000 Euro,	a) in the case of investment advisers, investment brokers, contract brokers, asset managers and portfolio managers, operators of multilateral trading systems or undertakings engaging in placement business who, in providing financial services, who 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: an amount equivalent to at least €50,000,
b) bei anderen Finanzdienstleistungsinstituten, die nicht auf eigene Rechnung mit Finanzinstrumenten handeln, ein Betrag im Gegenwert von mindestens 125 000 Euro,	b) in the case of other financial services institutions which do not trade in financial instruments for their own account: an amount equivalent to at least €125,000,
c) bei Finanzdienstleistungsinstituten, die auf eigene Rechnung mit Finanzinstrumenten handeln, bei Finanzdienstleistungsinstituten, die das eingeschränkte Verwahrgeschäft im Sinne des § 1 Absatz 1a Satz 1 Nummer 12 erbringen, sowie bei Wertpapierhandelsbanken ein Betrag im Gegenwert von mindestens 730 000 Euro,	c) in the case of financial services institutions which trade in financing 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, as well as securities trading banks: an amount equivalent to at least €730,000,
d) bei CRR-Kreditinstituten ein Betrag im Gegenwert von mindestens fünf Millionen Euro,	d) in the case of CRR credit institutions: an amount equivalent to at least €5 million,
e) (weggefallen)	e) (repealed)
f) bei Anlageberatern, Anlagevermittlern und Abschlussvermittlern, die nicht befugt sind, sich bei der Erbringung von Finanzdienstleistungen Eigentum oder Besitz an Geldern oder Wertpapieren von Kunden zu verschaffen, und nicht auf eigene Rechnung mit Finanzinstrumenten handeln, ein Betrag von 25 000 Euro, wenn sie zusätzlich als Versicherungsvermittler nach der Richtlinie 2002/92/EG des Europäischen Parlaments und des Rates vom 9. Dezember 2002 über Versicherungsvermittler (ABl. EU Nr. L 9 S. 3) in ein Register eingetragen sind und die Anforderungen des Artikels 4 Abs. 3 der Richtlinie 2002/92/EG erfüllen,	f) in the case of investment advisers, investment brokers and contract 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, the amount of €25,000 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 (Official Journal of the European Union L 9 pp 3-10) and fulfil the requirements of Article 4 (3) of Directive 2002/92/EC, and
g) bei Unternehmen, die Eigengeschäfte auch an ausländischen Derivatemärkten und an Kassamärkten nur zur Absicherung dieser Positionen betreiben, das Finanzkommissionsgeschäft oder die	g) in the case of undertakings which conduct proprietary business also on foreign derivatives markets and on spot markets only for the purpose of hedging these positions, which engage in principal broking services or

Anlagevermittlung nur für andere Mitglieder dieser Märkte erbringen oder im Wege des Eigenhandels im Sinne des § 1 Absatz 1a Satz 2 Nummer 4 Buchstabe a als Market Maker im Sinne des § 36 Absatz 5 des Wertpapierhandelsgesetzes Preise für andere Mitglieder dieser Märkte stellen, ein Betrag von 25 000 Euro, sofern für die Erfüllung der Verträge, die diese Unternehmen an diesen Märkten oder in diesen Handelssystemen schließen, Clearingmitglieder derselben Märkte oder Handelssysteme haften, und	investment broking only for other members of these markets or which determine prices for other members of these markets through proprietary trading within the meaning of Section 1 (1a) sentence 2 number 4 letter (a) as a market maker within the meaning of Section 36 (5) of the Securities Trading Act, the amount of €25,000 if clearing members of these markets or trading systems are liable for the fulfilment of the contracts which the aforementioned undertakings conclude on the said markets or in the said trading systems, and
h) bei einem Unternehmen im Sinne des Absatzes 1 Nummer 4 des Artikels 4 der Verordnung (EU) 575/2013 („lokale Firma“), abweichend von Buchstabe c ein Betrag im Gegenwert von mindestens 50 000 Euro.	h) in the case of an undertaking within the meaning of paragraph 1 number 4 of Article 4 of Regulation (EU) 575/2013 (“local firm”), notwithstanding letter c, an amount equivalent to at least €50,000.
2. Tatsachen vorliegen, aus denen sich ergibt, daß ein Antragsteller oder eine der in § 1 Abs. 2 Satz 1 bezeichneten Personen nicht zuverlässig ist;	2. there are circumstances indicating that an applicant or one of the persons designated in Section 1(2) sentence 1 is not trustworthy;
3. Tatsachen die Annahme rechtfertigen, dass der Inhaber einer bedeutenden Beteiligung nicht den im Interesse der Gewährleistung einer soliden und umsichtigen Führung des Instituts zu stellenden Ansprüchen genügt, insbesondere, dass eines der in § 2c Absatz 1b Satz 1 Nummer 1 bis 6 genannten Kriterien erfüllt ist;	3. there are circumstances warranting the assumption that the owner of a significant interest does not satisfy the requirements to be set in the interests of the sound and prudent management of the institution, in particular that one of the criteria specified in Section 2c(1b) sentence 1 number 1 through 6 is not fulfilled.
4. Tatsachen vorliegen, aus denen sich ergibt, daß der Inhaber oder eine der in § 1 Abs. 2 Satz 1 bezeichneten Personen nicht die zur Leitung des Instituts erforderliche fachliche Eignung hat und auch nicht eine andere Person nach § 25c Absatz 5 als Geschäftsleiter bezeichnet wird;	4. there are circumstances indicating that the owner or one of the persons designated in Section 1 (2) sentence 1 is not professionally qualified to manage the institution and that there is also no other person designated pursuant to Section 25c (5) as business manager.
4a. Tatsachen vorliegen, aus denen sich ergibt, dass ein Geschäftsleiter nicht über die zur Wahrnehmung seiner Aufgaben ausreichende Zeit verfügt;	4a. there are circumstances indicating that a senior manager does not have sufficient time to perform his/her tasks;
4b. Tatsachen vorliegen, aus denen sich ergibt, dass ein Geschäftsleiter gegen die Anforderungen des § 25c Absatz 2 verstößt;	4b. there are circumstances indicating that a senior manager violates the requirements of section 25c (2);
4c. das Institut im Fall der Erteilung der Erlaubnis Tochterunternehmen einer Finanzholding-Gesellschaft im Sinne des Artikel 4 Absatz 1 Nummer 20 der Verordnung (EU) Nr. 575/2013 oder einer gemischten Finanzholding-Gesellschaft im Sinne des Artikel 4 Absatz 1 Nummer 32 der Verordnung	4c. the institution, after having been granted authorisation, becomes a subsidiary of a financial holding company within the meaning of Article 4 (1) number 20 of Regulation (EU) No 575/2013 or of a mixed financial holding company within the meaning of Article 4 (1) number 32 of Regulation (EU) No 575/2013 and

(EU) Nr. 575/2013 wird und Tatsachen die Annahme rechtfertigen, dass eine Person im Sinne des § 2d nicht zuverlässig ist oder nicht die zur Führung der Geschäfte der Finanzholding-Gesellschaft oder der gemischten Finanzholding-Gesellschaft erforderliche fachliche Eignung hat;	facts are known which warrant the assumption that a person within the meaning of section 2d is not trustworthy or does not have the professional qualifications required to manage the business of the financial holding company or of the mixed financial holding company;
5. ein Kreditinstitut oder ein Finanzdienstleistungsinstitut, das befugt ist, sich bei der Erbringung von Finanzdienstleistungen Eigentum oder Besitz an Geldern oder Wertpapieren von Kunden zu verschaffen, oder das gemäß einer Bescheinigung der Bundesanstalt nach § 4 Abs. 1 Nr. 2 des Gesetzes über die Zertifizierung von Altersvorsorgeverträgen befugt ist, Altersvorsorgeverträge anzubieten, nicht mindestens zwei Geschäftsleiter hat, die nicht nur ehrenamtlich für das Institut tätig sind;	5. a credit institution or a financial services institution which, in providing financial services, is authorised to obtain ownership or possession of funds or securities of customers or which, in accordance with an attestation from BaFin pursuant to section 4 (1) number 2 of the Act Governing the Certification of Old-Age Pension Contracts (*Gesetz über die Zertifizierung von Altersvorsorgeverträgen*), is authorised to offer old-age pension contracts, does not have at least two senior managers who work for the institution not merely in an honorary capacity;
6. das Institut seine Hauptverwaltung und, soweit es sich um eine juristische Person und nicht um eine Zweigstelle im Sinne des § 53 handelt, seinen juristischen Sitz nicht im Inland hat;	6. the institution has its head office and, to the extent a legal person is concerned and not a branch office within the meaning of Section 53, does not have its legal seat in Germany;
7. das Institut nicht bereit oder in der Lage ist, die erforderlichen organisatorischen Vorkehrungen zum ordnungsmäßigen Betreiben der Geschäfte, für die es die Erlaubnis beantragt, insbesondere eine ordnungsgemäße Geschäftsorganisation gemäß § 25a Absatz 1, zu schaffen;	7. the institution is not prepared or in or a position to make the organizational arrangements necessary for the proper organization of the business, for which it is seeking authorization, in particular a proper organization of the business pursuant to Section 25a (1);
8. der Antragsteller Tochterunternehmen eines ausländischen Kreditinstituts ist und die für dieses Kreditinstitut zuständige ausländische Aufsichtsbehörde der Gründung des Tochterunternehmens nicht zugestimmt hat.	8. the applicant is a subsidiary of a foreign credit institution and the foreign supervisory authority responsible for overseeing this credit institution has not given permission for the establishment of the subsidiary.
Einem Anlageberater oder Anlagevermittler, der nicht befugt ist, sich bei der Erbringung von Finanzdienstleistungen Eigentum oder Besitz an Geldern oder Wertpapieren von Kunden zu verschaffen, und der nicht auf eigene Rechnung mit Finanzinstrumenten handelt, ist die Erlaubnis nach Satz 1 Buchstabe a nicht zu versagen, wenn er anstelle des Anfangskapitals den Abschluß einer geeigneten Versicherung zum Schutz der Kunden die eine Versicherungssumme von mindestens 1 000 000 Euro für jeden Versicherungsfall und eine Versicherungssumme von mindestens 1 500 000	An investment advisor or investment broker who, in providing financial services, is not authorized to obtain ownership or possession of funds or securities of customers, and who does not trade in financial instruments for his/her account, shall not be refused authorization pursuant to sentence 1 letter a if , instead of the initial capital, he/she can demonstrate the conclusion of appropriate insurance providing for an insured amount of at least €1,000,000 for each insurance event and an insured amount of at least €1,500,000 for all insurance events of an insurance year Sentence 2 shall apply mutatis

Euro für alle Versicherungsfälle eines Versicherungsjahres vorsieht, nachweist. Satz 2 gilt für Anlageberater und Anlagevermittler, die zusätzlich als Versicherungsvermittler nach der Richtlinie 2002/92/EG in ein Register eingetragen sind und die Anforderungen des Artikels 4 Abs. 3 der Richtlinie 2002/92/EG erfüllen, mit der Maßgabe entsprechend, dass eine Versicherungssumme von mindestens 500 000 Euro für jeden Versicherungsfall und eine Versicherungssumme von mindestens 750 000 Euro vorgesehen ist. Einem Anlageberater oder Anlagevermittler nach den Sätzen 2 und 3 ist die Erlaubnis auch dann nicht zu versagen, wenn sie eine Kombination aus Anfangskapital und geeigneter Versicherung zum Schutz der Kunden nachweisen, sofern diese Kombination ein Deckungsniveau aufweist, das entweder dem Anfangskapital oder der in Satz 2 oder 3 genannten Versicherung gleichwertig ist. Bei Anlageberatern, Anlagevermittlern, Abschlussvermittlern, Anlageverwaltern oder Finanzportfolioverwaltern, die nicht befugt sind, sich bei der Erbringung von Finanzdienstleistungen Eigentum oder Besitz an Geldern oder Wertpapieren von Kunden zu verschaffen, gilt die Anlage von Eigenmitteln durch das Halten von Positionen in Finanzinstrumenten im Anlagebuch für die Zwecke der Solvenzaufsicht nicht als Handel für eigene Rechnung.	mutandis to 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 Directive 2002/92/EC subject to the proviso that an indemnity of at least €500,000 for each insured loss and at least €750,000 for all insured losses in an insurance year is envisaged. An investment advisor or investment broker pursuant to sentences 2 and 3 shall also not be refused authorization if they demonstrate a combination of initial capital and appropriate insurance for the protection of customers, insofar that this combination exhibits a coverage level equivalent in value to either the initial capital or the insurance referred to in sentence 2 or 3. In the case of investment advisers, investment brokers and contract 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, the investment of won funds through the holding of positions in financial instruments in the investment book for the purposes of solvency supervision does not qualify as trading for their own account.
§ 35 Abs. 1, Abs. 2 Nr. 3, Nr. 8, Abs. 2a, Abs. 2 b KWG	**Section 35(1)(2) no. 3, no. 8, (2a), (2b) KWG**
(1) Die Erlaubnis erlischt, wenn von ihr nicht innerhalb eines Jahres seit ihrer Erteilung Gebrauch gemacht wird. Die Erlaubnis erlischt auch, wenn das CRR-Kreditinstitut nach § 41 des Einlagensicherungsgesetzes von der gesetzlichen Entschädigungseinrichtung oder nach § 11 des Anlegerentschädigungsgesetzes von der Entschädigungseinrichtung ausgeschlossen worden ist oder die Bundesanstalt nach § 47 Absatz 3 Satz 1 des Einlagensicherungsgesetzes festgestellt hat, dass die Zugehörigkeit des Instituts zu einem Einlagensicherungssystem nicht gegeben ist. Satz 2 gilt nicht, soweit die Europäische Zentralbank Aufsichtsbehörde ist. In diesem Fall legt die Bundesanstalt der Europäischen Zentralbank einen Beschlussentwurf nach Artikel 14 Absatz 5 der Verordnung (EU) Nr.	(1) shall expire if it is not used within one year from the date on which it is granted. Authorisation shall likewise expire if the CCR-institution has been excluded from the compensation scheme pursuant to Section 41 of the Deposit Insurance Act or from the compensation scheme pursuant to Section 11 of the Deposit Guarantee and Investor Compensation Act, or BaFin has determined pursuant to Section 37(3) sentence 1 of the Deposit Insurance Act that the institution is not a member of a deposit guarantee system. Sentence 2 shall not apply to the extent the European Central Bank is the supervisory authority. In this case BaFin will present to the European Central Bank a draft resolution pursuant to Article 14(5) of the Regulation (EU) No 1024/2013. Authorisation to conduct

1024/2013 vor. Die Erlaubnis für das Betreiben von Bankgeschäften im Sinne des § 1 Satz 2 Nummer 12 erlischt auch dann, wenn die Zulassung der zentralen Gegenpartei nach Artikel 14 der Verordnung (EU) Nr. 648/2012 zur Erbringung von Clearingdienstleistungen durch die Bundesanstalt abgelehnt wurde und die Ablehnung bestandskräftig ist.	banking business within the meaning of Section 1 sentence 2 number 12 shall likewise expire if the authorisation of the central counterparty pursuant to Article 14 of Regulation (EU) No 648/2012 on the provision of clearing services has been rejected by BaFin and the rejection is final and absolute.
(2) Die Aufsichtsbehörde kann die Erlaubnis außer nach den Vorschriften des Verwaltungsverfahrensgesetzes aufheben, wenn	(2) The Supervisory Authority may revoke authorisation pursuant to the provisions of the Act on Administrative Procedures, and also if
3. ihr Tatsachen bekannt werden, welche die Versagung der Erlaubnis nach § 33 Absatz 1 Satz 1 Nummer 1 bis 8, Absatz 1a oder Absatz 2 Nummer 1 bis 3 rechtfertigen würden;	3. it becomes aware of circumstances warranting the refusal of the authorization pursuant to Section 33(1) sentence 1 number 1 through 8, paragraph 1a or paragraph 2 number 1 through 3;
8. die in den Artikeln 92, 93 bis 403 sowie 411 bis 428 der Verordnung (EU) Nr. 575/2013 niedergelegten aufsichtlichen Anforderungen nicht mehr erfüllt sind;	8. the supervisory requirements laid out in Articles 92, 93 to 403 as well as 411 to 428 of Regulation (EU) No 575/2013 are no longer fulfilled;
(2a) Die Erlaubnis soll durch die Aufsichtsbehörde aufgehoben werden, wenn über das Institut ein Insolvenzverfahren eröffnet oder die Auflösung des Instituts beschlossen worden ist. Der Wegfall der Erlaubnis hindert die für die Liquidation zuständigen Personen nicht daran, bestimmte Tätigkeiten des Instituts weiter zu betreiben, soweit dies für Zwecke des Insolvenz- oder Liquidationsverfahrens erforderlich oder angezeigt ist.	(2a) The authorization will be revoked by the supervisory authority if insolvency proceedings are initiated in respect of the institution or a dissolution order has been issued. The revocation of the authorization shall not hinder the persons responsible for the liquidation from continuing to carry out certain activities of the institution, provided these are necessary or advisable for the purposes of the insolvency or liquidation proceedings.
(2b) Ist die Europäische Zentralbank Aufsichtsbehörde, kann die Bundesanstalt ihr nach Maßgabe der Absätze 2 und 2a Beschlussentwürfe nach Artikel 14 Absatz 5 der Verordnung (EU) Nr. 1024/2013 vorlegen.	(2b) If the European Central Bank is the supervisory authority, BaFin may submit draft resolutions to it pursuant to paragraphs 2 and 2a pursuant to Article 14(5) of Regulation (EU) No 1024/2013.
§36 Abs. 3 Nr. 4, Nr. 5 KWG	**§ 36(3) nos. 4 and 5 KWG**
(3) Die Bundesanstalt kann von den in § 25d Absatz 3 Satz 1 und 2 sowie § 25d Absatz 3a Satz 1 genannten Unternehmen die Abberufung einer der in § 25d Absatz 3 Satz 1 und 2 sowie § 25d Absatz 3a Satz 1 bezeichneten Person verlangen und einer solchen Person die Ausübung ihrer Tätigkeit untersagen, wenn	(3) BaFin can demand the removal of a person specified in Section 25d(3) sentences 1 and 2 and Section 25d(3a) sentence 1 from the undertakings specified in Section 25d (3) Section 36 148 sentences 1 and 2 and Section 25d (3a) sentence 1 and prohibit such a person from carrying out his/her activities, if
4. der Person wesentliche Verstöße des Unternehmens gegen die Grundsätze einer	4. the person was kept unaware of serious violations of the principles of proper

ordnungsgemäßen Geschäftsführung wegen sorgfaltswidriger Ausübung ihrer Überwachungs- und Kontrollfunktion verborgen geblieben sind und sie dieses sorgfaltswidrige Verhalten trotz Verwarnung durch die Bundesanstalt fortsetzt,	management by his or her institution due to careless exercise of its oversight and control function and such behaviour persists despite due warning by BaFin
5. die Person nicht alles Erforderliche zur Beseitigung festgestellter Verstöße veranlasst hat und dies trotz Verwarnung durch die Bundesanstalt auch weiterhin unterlässt,	5. the person did not do everything needed to counter detected infringements and continues to refrain from doing so despite due warning by BaFin,
§ 45 Abs. 1, 2, 3 KWG	**Section 45(1), (2), (3) KWG**
(1) Wenn die Vermögens-, Finanz- oder Ertragsentwicklung eines Instituts oder andere Umstände die Annahme rechtfertigen, dass das Institut	(1) If the assets and liabilities, financial position and profitability of an institution justifies the assumption that the institution does not fulfill
1. die Anforderungen der Artikel 92 bis 386 der Verordnung (EU) Nr. 575/2013 oder des § 10 Absatz 3 und 4,	1. the requirements of Articles 92 to 386 of Regulation (EU) No 575/2013 or of Section 10(3) and (4),
2. die Anforderungen der Artikel 412 und 413 der Verordnung (EU) Nr. 575/2013 oder des § 11,	2. the requirements of Articles 412 and 413 of Regulation (EU) No 575/2013 or of Section 11,
3. die Anforderungen des § 6c,	3. the requirements of Section 6c,
4. die kombinierte Kapitalpufferanforderung nach § 10i,	4. the combined capital buffer requirement pursuant to Section 10i,
4a. die Anforderungen an den Puffer der Verschuldensquote nach § 10j,	4a. the requirements for the buffer for the rate of indebtedness pursuant to Section 10j,
5. die Mindestanforderung an Eigenmittel und berücksichtigungsfähige Verbindlichkeiten und die Anforderung an das Verlustabsorptionskapital nach den §§ 49 bis 51 des Sanierungs- und Abwicklungsgesetzes oder	5. the minimum requirement for own funds and eligible liabilities and the requirement for loss absorption capital pursuant to Sections 49 to 51 of the German Recovery and Resolution Act (*Sanierungs- und Abwicklungsgesetz*) or
6. die Anforderungen des § 51a Absatz 1 oder Absatz 2 oder des § 51b	6. the requirements of Section 51a(1) or (2) or Section 51b
nicht erfüllt oder zukünftig voraussichtlich nicht erfüllen wird, kann die Aufsichtsbehörde gegenüber dem Institut Maßnahmen zur dauerhaften Erfüllung der Anforderungen anordnen.	or is unlikely to do so in the future, the supervisory authority may order the institution to take measures to ensure permanent compliance with the requirements.
(2) Die Aufsichtsbehörde kann insbesondere	(2) The supervisory authority may in particular

1. anordnen, dass das Institut der Aufsichtsbehörde und der Deutschen Bundesbank eine begründete Darstellung der Entwicklung der wesentlichen Geschäftsaktivitäten über einen Zeitraum von mindestens drei Jahren, einschließlich Planbilanzen, Plangewinn- und -verlustrechnungen sowie der Entwicklung der bankaufsichtlichen Kennzahlen, vorlegt,	1. order the institution to present to the supervisory authority and the Deutsche Bundesbank a well-founded description of the development of the key business activities over a period of at least three years, including projected balance sheets and projected profit and loss accounts as well as of the development of the prudential ratios for banking supervision purposes,
2. anordnen, dass das Institut Maßnahmen zur besseren Abschirmung oder Reduzierung der vom Institut als wesentlich identifizierten Risiken und damit verbundener Risikokonzentrationen prüft und der Aufsichtsbehörde und der Deutschen Bundesbank darüber berichtet, wobei auch Konzepte für den Ausstieg aus einzelnen Geschäftsbereichen oder die Abtrennung von Instituts- oder Gruppenteilen erwogen werden sollen,	2. order the institution to review and report to the supervisory authority and the Deutsche Bundesbank on measures for improving protection against or reducing the major risks identified by the institution as material, including the consideration of concepts for exiting from individual business areas or severing parts of the institution or group,
3. anordnen, dass das Institut der Aufsichtsbehörde und der Deutschen Bundesbank über geeignete Maßnahmen zur Erhöhung seines Kernkapitals, seiner Eigenmittel und seiner Liquidität berichtet,	3. order the institution to report to the supervisory authority and the Deutsche Bundesbank on appropriate measures to increase its Tier 1 capital, its own funds and its liquidity,
4. anordnen, dass das Institut ein Konzept zur Abwendung einer möglichen Gefahrenlage im Sinne des § 35 Absatz 2 Nummer 4 entwickelt und der Aufsichtsbehörde und der Deutschen Bundesbank vorlegt,	4. order the institution to develop and submit to the supervisory authority and the Deutsche Bundesbank a concept for averting a potentially dangerous situation within the meaning of Section 35(2) number 4 and
5. Entnahmen durch die Inhaber oder Gesellschafter sowie die Ausschüttung von Gewinnen untersagen oderbeschränken,	5. prohibit or restrict both withdrawals by the proprietors or partners and the distribution of profits,
6. bilanzielle Maßnahmen untersagen oder beschränken, die dazu dienen, einen entstandenen Jahresfehlbetrag auszugleichen oder einen Bilanzgewinn auszuweisen,	6. prohibit or limit balance sheet measures that serve to offset an existing annual loss or to show a balance sheet profit,
7. anordnen, dass die Auszahlung jeder Art von gewinnabhängigen Erträgen auf Eigenmittelinstrumente insgesamt oder teilweise ersatzlos entfällt, wenn die gewinnabhängigen Erträge nicht vollständig durch einen erzielten Jahresüberschuss gedeckt sind,	7. order that the distribution of all types of disbursements on own funds instruments be dispensed with fully or in part and without replacement if the disbursements are not fully covered by an existing annual profit,
8. die Gewährung von Krediten im Sinne von § 19 Absatz 1 untersagen oder beschränken,	8. prohibit or limit lending within the meaning of Section 19(1),
9. anordnen, dass das Institut Maßnahmen zur Reduzierung von Risiken, einschließlich der mit	9. order the institution to take measures to reduce risks, including the risks associated with

ausgelagerten Aktivitäten und Prozessen verbundenen Risiken, ergreift, soweit sich diese aus bestimmten Arten von Geschäften und Produkten oder der Nutzung bestimmter Systeme ergeben,	outsourced activities and processes, insofar as they arise from certain types of activities and products or through the use of certain systems,
10. anordnen, dass das Institut den Jahresgesamtbetrag, den es für die variable Vergütung aller Geschäftsleiter und Mitarbeiter vorsieht (Gesamtbetrag der variablen Vergütungen), auf einen bestimmten Anteil des Jahresergebnisses beschränkt oder vollständig streicht, soweit diese variablen Vergütungsbestandteile nicht durch Tarifvertrag oder in seinem Geltungsbereich durch Vereinbarung der Arbeitsvertragsparteien über die Anwendung der tarifvertraglichen Regelungen oder auf Grund eines Tarifvertrags in einer Betriebs- oder Dienstvereinbarung vereinbart sind,	10. order the institution to limit the total annual amount designated for the variable remuneration of all senior managers and employees (total amount of variable remuneration) to a certain proportion of the profit for the year or to completely cancel it, unless such variable remuneration components are agreed by collective wage agreement or within its scope of application through an agreement of the contracting parties on the application of the provisions of the collective wage agreement or on the basis of a collective wage agreement in a plant-level or service agreement,
11. die Auszahlung variabler Vergütungsbestandteile untersagen oder auf einen bestimmten Anteil des Jahresergebnisses beschränken, soweit diese variablen Vergütungsbestandteile nicht durch Tarifvertrag oder in seinem Geltungsbereich durch Vereinbarung der Arbeitsvertragsparteien über die Anwendung der tarifvertraglichen Regelungen oder auf Grund eines Tarifvertrags in einer Betriebs- oder Dienstvereinbarung vereinbart sind,	11. prohibit or limit the payment of variable remuneration components to a certain proportion of the profit for the year, unless such variable remuneration components are agreed by collective wage agreement or within its scope of application through an agreement of the contracting parties on the application of the provisions of the collective wage agreement or on the basis of a collective wage agreement in a plant-level or service agreement,
12. anordnen, dass das Institut darlegt, wie und in welchem Zeitraum die in Absatz 1 genannten Anforderungen nachhaltig wieder erfüllt werden können (Restrukturierungsplan), und es der Aufsichtsbehörde und der Deutschen Bundesbank regelmäßig über den Fortschritt dieser Maßnahmen berichtet, und	12. order the institution to explain how and in what period of time the requirements specified in paragraph (1) can be sustainably met again (restructuring plan), and to regularly inform the supervisory authority and the Deutsche Bundesbank of the progress of these measures, and
13. anordnen, dass das Kreditinstitut eine oder mehrere Handlungsoptionen aus einem Sanierungsplan gemäß § 13 des Sanierungs- und Abwicklungsgesetzes umsetzt.	13. order the credit institution to implement one or more options for action from a restructuring plan pursuant to Section 13 of the German Recovery and Resolution Act.
(3) Der Restrukturierungsplan nach Absatz 2 Nummer 12 muss transparent, plausibel und begründet sein. Im Restrukturierungsplan sind	(3) The restructuring plan pursuant to paragraph (2) number 12 must be transparent, plausible and justified. For the implementation of the measures described, the plan must name
1. konkrete Ziele, Zwischenziele und Fristen für die Umsetzung der dargelegten Maßnahmen zu	1. concrete aims, interim targets and deadlines that can be monitored by BaFin.

benennen, die von der Aufsichtsbehörde überprüft werden können,	
2. Verantwortlichkeiten zuzuweisen,	2. assign responsibilities,
3. Berichtswege aufzuzeigen,	3. indicate reporting lines,
4. die Auswirkungen des Restrukturierungsplans auf die Eigenmittelausstattung einschließlich einer mittelfristigen Kapitalplanung darzulegen und	4. the effects of the restructuring plan on capital adequacy, including medium-term capital planning, and
5. die bestehende Vermögens- und Ertragslage und deren geplante Entwicklung darzustellen.	5. the existing financial position and results of operations.
Die Aufsichtsbehörde kann jederzeit Einsicht in den Restrukturierungsplan und die zugehörigen Unterlagen nehmen. Die Aufsichtsbehörde kann die Änderung des Restrukturierungsplans verlangen und hierfür Vorgaben machen, soweit sie die angegebenen Ziele, Zwischenziele und Umsetzungsfristen für nicht ausreichend hält oder wenn sich für den Restrukturierungsplan wesentliche Umstände geändert haben oder das Institut die Ziele, Zwischenziele oder Umsetzungsfristen nicht einhalten kann.	BaFin can, at any time, inspect the restructuring plan and the associated documents. BaFin can demand that the restructuring plan be amended and impose specifications in this regard if it considers the stated objectives, interim target and implementation deadlines to be insufficient or if essential circumstances to the restructuring plan have changed or if the institution not adhere to them.
§ 45b Abs. 1 KWG	**Section 45b(1) KWG**
(1) Verfügt ein Institut nicht über eine ordnungsgemäße Geschäftsorganisation im Sinne des § 25a Abs. 1, kann die Aufsichtsbehörde auch bereits vor oder gemeinsam mit einer Anordnung nach § 25a Absatz 2 Satz 2 oder nach § 25c Absatz 4c, auch in Verbindung mit einer Rechtsverordnung nach § 25a Absatz 4 oder Absatz 6 oder nach § 25b, auch in Verbindung mit einer Rechtsverordnung nach § 25b Absatz 5, insbesondere anordnen, dass das Institut	(1) If an institution does not have a proper business organization within the meaning of Section 25a(1), the supervisory authority can, either prior to or together with an order pursuant to Section 25a(2) sentence 2 or pursuant to Section 25c(4c), also in conjunction with a statutory instrument pursuant to Section 25a(4) or (6) or pursuant to Section 25b, also in conjunction with a statutory instrument pursuant to Section 25b(5), order, in particular, that the institution
1. Maßnahmen zur Reduzierung von Risiken ergreift, soweit sich diese aus bestimmten Arten von Geschäften und Produkten oder der Nutzung bestimmter Systeme oder der Auslagerung von Aktivitäten und Prozessen auf ein anderes Unternehmen ergeben,	1. must take measures to reduce risks insofar as they arise from certain types of activities and products or through the use of certain systems or from the outsourcing of activities and processes to another undertaking,
2. weitere Zweigstellen nur mit Zustimmung der Aufsichtsbehörde errichten darf und	2. may establish further branches only with the supervisory authority's approval, and
3. einzelne Geschäftsarten, namentlich die Annahme von Einlagen, Geldern oder	3. may not engage in certain types of business, in particular the acceptance of deposits, funds or

Wertpapieren von Kunden und die Gewährung von Krediten nach § 19 Abs. 1 nicht oder nur in beschränktem Umfang betreiben darf. Die Aufsichtsbehörde ist berechtigt, Maßnahmen nach Satz 1 zusätzlich zu einer Festsetzung erhöhter Eigenmittelanforderungen nach § 10 Absatz 3 Satz 2 Nummer 2 sowie zusammen oder zusätzlich zu einer Festsetzung erhöhter Eigenmittelanforderungen nach § 51a Absatz 2 Nummer 4 anzuordnen.	securities of customers and lending pursuant to Section 19(1), or may engage in such business only to a limited extent. The supervisory authority is entitled to order measures pursuant to sentence 1 in addition to setting out increased own funds requirements pursuant to Section 10(3) sentence 2 number 2 as well as together with or additionally to setting out increased own funds requirements pursuant to Section 51a(2) number 4.
§ 56 Abs. 6, Abs. 7 KWG	**Section 56(6), (7) KWG**
(6) Die Ordnungswidrigkeit kann [In Kraft bis zum 28.06.2021: 1. in den Fällen des Absatzes 2 Nummer 1 Buchstabe a, b und h, Nummer 3 Buchstabe a und f, Nummer 4 und 12, der Absätze 4f, 4h, 5 Satz 1 Nummer 1 bis 7, 15, 18, 19, 21 bis 23 und der Absätze 5b bis 5d mit einer Geldbuße bis zu fünf Millionen Euro,] [in Kraft ab dem 28.06.2021, dann: 1. in den Fällen des Absatzes 2 Nummer 1 Buchstabe a, b und h, Nummer 3 Buchstabe a und f, Nummer 4 und 12, der Absätze 4f, 4h, 5 Satz 1 Nummer 1 bis 7, 15, 18, 19, 21 bis 23 und der Absätze 5b bis 5d mit einer Geldbuße bis zu fünf Millionen Euro,] 1a. in den Fällen des Absatzes 4g mit einer Geldbuße bis zu siebenhunderttausend Euro,] 2. in den Fällen der Absätze 1 und 2 Nummer 3 Buchstabe l und des Absatzes 5a mit einer Geldbuße bis zu fünfhunderttausend Euro, 3. in den Fällen des Absatzes 2 Nummer 2 Buchstabe a, Nummer 3 Buchstabe b bis e, g bis k und m, Nummer 5 bis 10, 13, 14, 17a und 17b, der Absätze 4, 4b Nummer 1 bis 5 und des Absatzes 4c in Verbindung mit Absatz 1a mit einer Geldbuße bis zu zweihunderttausend Euro und 4. in den übrigen Fällen mit einer Geldbuße bis zu hunderttausend Euro geahndet werden. (7) Die Geldbuße soll den wirtschaftlichen Vorteil, den der Täter aus der	(6) The administrative offence may lead [In force until 28 June 2021: 1. in the cases specified in paragraph (2) number 1 letter a, b and h, number 3 letter a and f, number 4 and 12, of paragraphs (4f), (4h), (5) sentence 1 number 1 through 7, 15, 18, 19, 21 to 23 and of paragraphs (5b) to (5d) to the imposition of a fine of up to five million euro, [In force as of June 28, 2021, then: 1. in the cases specified in paragraph (2) number 1 letter a, b and h, number 3 letter a and f, number 4 and 12, of paragraphs (4f), (4h), (5) sentence 1 number 1 through 7, 15, 18, 19, 21 to 23 and of paragraphs (5b) to (5d) to the imposition of a fine of up to five million euro,] 1a. in the cases specified in paragraph (4g) to the imposition of a fine of up to seven hundred thousand euro 2. in the cases specified in paragraphs (1) and (2) number 3 letter (l) to the imposition of a fine of up to five hundred thousand euro, 3. in the cases specified in paragraph (2) number 2 letter a, number 3 letter b to e, g to k and m, numbers 5 to 10, 13, 14, 17a and 17b, paragraphs (4), (4b) number 1 to 5 and of paragraph (4c) in conjunction with paragraph (1a) to the imposition of a fine of up to two hundred thousand euro and 4. in all other cases to the imposition of a fine of up to one hundred thousand euro (7) The fine shall exceed the economic advantage that the perpetrator derived from the

Ordnungswidrigkeit gezogen hat, übersteigen. Reicht in den Fällen des Absatzes 6 das Höchstmaß, mit Ausnahme der Fälle nach Absatz 2 Nummer 11b bis 13, und in den Fällen des Absatzes 4 Nummer 1 bis 3, 8, 9 und 11 bis 15 hierzu nicht aus, so kann es für juristische Personen oder Personenvereinigungen bis zu einem Betrag in folgender Höhe überschritten werden: 1. 10 Prozent des Jahresnettoumsatzes des Unternehmens im Geschäftsjahr, das der Ordnungswidrigkeit vorausgeht, oder 2. das Zweifache des durch die Zuwiderhandlung erlangten Mehrerlöses. § 17 Absatz 4 des Gesetzes über Ordnungswidrigkeiten bleibt unberührt.	administrative offence. If the maximum amount pursuant to paragraph (6) is not sufficient for this, with exception of the cases pursuant to paragraph (2) number 11b to 13, and in the cases of paragraph (4) numbers 1 to 3, 8, 9 and 11 to 15, in the case of legal persons or groups of persons it may be exceeded up to an amount as follows: 1. 10% of the undertaking's annual net turnover in the financial year preceding that in which the administrative offence occurred, or 2. twice the amount of the benefit derived from the violation. This is without prejudice to Section 17(4) of the Act on Breaches of Administrative Regulations.
§ 60b Abs. 1, Abs. 3 KWG	**§ 60b(1), (3) KWG**
(1) Die Bundesanstalt soll, sofern die Bekanntmachung nicht bereits nach § 60c Absatz 1 Satz 1 erfolgt, jede gegen ein ihrer Aufsicht unterstehendes Institut oder Unternehmen oder gegen einen Geschäftsleiter eines Instituts oder Unternehmens verhängte und bestandskräftig gewordene Maßnahme, die sie wegen eines Verstoßes gegen dieses Gesetz, die dazu erlassenen Rechtsverordnungen oder die Bestimmungen der Verordnung (EU) Nr. 575/2013 oder der Verordnung (EU) 2015/847 verhängt hat, und jede unanfechtbar gewordene Bußgeldentscheidung nach Maßgabe der Absätze 2 bis 4 unverzüglich auf ihren Internetseiten öffentlich bekannt machen und dabei auch Informationen zu Art und Charakter des Verstoßes mitteilen. Die Rechte der Bundesanstalt nach § 37 Absatz 1 Satz 3 bleiben unberührt.	(1) BaFin will, without delay, publish on its website any measure which has been imposed and has become legally enforceable on an institution or undertaking subject to its supervision or on a senior manager of an institution or undertaking, which it has imposed for a breach of this Act, the statutory orders issued in connection with it or the provisions of Regulation (EU) No 575/2013, or Regulation (EU) 2015/847 and any decision on an administrative pecuniary penalty that has become non-appealable pursuant to paragraphs (2) to (4), and in doing so will also provide information on the type and nature of the breach. This shall be without prejudice to BaFin's rights pursuant to Section 37(1) sentence 3.
(3) Eine unanfechtbar gewordene Bußgeldentscheidung nach § 56 Absatz 4e darf nicht nach Absatz 1 bekannt gemacht werden, wenn eine solche Bekanntmachung die Stabilität der Finanzmärkte der Bundesrepublik Deutschland oder eines oder mehrerer Vertragsstaaten des Abkommens über den Europäischen Wirtschaftsraum erheblich gefährden oder eine solche Bekanntmachung	(3) A decision on an administrative pecuniary penalty that has become non-appealable pursuant to Section 56(4e) may not be published pursuant to paragraph (1) if such publication would seriously jeopardise the stability of the financial markets of the Federal Republic of Germany or one or more signatory states to the Agreement on the European Economic Area or if such publication would cause disproportionate

den Beteiligten einen unverhältnismäßig großen Schaden zufügen würde.	damage to the institutions or natural persons involved.

German Recovery and Resolution Act (Convenience Translation) (as in force from 29 December 2020 including CRD V amendments)	
§ 36 Abs. 1 SAG	**Section 36(1) SAG**
(1) Verschlechtert sich die Finanzlage eines Instituts, insbesondere auf Grund seiner Liquiditätssituation, auf Grund seiner Fremdkapitalquote oder auf Grund von Kreditausfällen oder Klumpenrisiken, signifikant und verstößt ein Institut hierdurch gegen die Anforderungen der Verordnung (EU) Nr. 575/2013, gegen Vorschriften des Kreditwesengesetzes oder einen der Artikel 3 bis 7, 14 bis 17 und 24, 25 und 26 der Verordnung (EU) Nr. 600/2014 des Europäischen Parlaments und des Rates vom 15. Mai 2014 über Märkte für Finanzinstrumente und zur Änderung der Verordnung (EU) Nr. 648/2012 (ABl. L 173 vom 12.6.2014, S. 84), kann die Aufsichtsbehörde, unbeschadet ihrer Befugnisse nach dem Kreditwesengesetz, gegenüber dem Institut Maßnahmen anordnen, die geeignet und erforderlich sind, um die signifikant verschlechterte wirtschaftliche Situation des Instituts zu verbessern. Gleiches gilt, wenn dem Institut nach einer Bewertung der maßgeblichen Umstände, einschließlich der Eigenmittelanforderungen des Instituts zuzüglich 1,5 Prozentpunkten, in naher Zukunft eine Verschlechterung seiner Finanzlage nach Satz 1 droht. Insbesondere kann die Aufsichtsbehörde	(1) If the financial condition of an institution worsens significantly, in particular due to its liquidity situation, due to its debt ratio or due to credit defaults or cluster risks, and if an institution thereby violates requirements of Regulation (EU) No 575/2013, provisions of the German Banking Act or any of the Articles 3 to 7, 14 to 17 and 24, 25 and 26 of Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 (OJ L 173 of 12 June 2014, p. 84), the supervisory authority may, without prejudice to its powers pursuant to the German Banking Act, order measures of the institution that are suitable and necessary to improve the significantly worsened economic situation of the institution. Having assessed the relevant circumstances, including the own funds requirements of the institution plus 1.5 percentage points, this shall also apply if the institution is threatened by a worsening of its financial condition pursuant to sentence 1 in the near future. In particular the supervisory authority may
1. von der Geschäftsleitung des Instituts verlangen,	1. require the management of the institution,
a) den Sanierungsplan gemäß § 12 Absatz 4 zu aktualisieren, wenn sich die Umstände, die zur Erfüllung oder zur drohenden Erfüllung der in Satz 1 genannten Voraussetzungen geführt haben, von den Annahmen im Sanierungsplan unterscheiden;	a) to update the recovery plan pursuant to Section 12(4) if the circumstances that have led to the fulfillment or imminent fulfillment of the criteria specified in sentence 1 differ from the assumptions made in the recovery plan;
b) eine oder mehrere der im Sanierungsplan genannten Handlungsoptionen umzusetzen;	b) to implement one or more of the courses of action specified in the recovery plan;
c) eine Analyse der Situation vorzunehmen und einen Plan zur Überwindung bestehender Probleme einschließlich eines Zeitplans zu erstellen;	c) to perform an analysis of the situation and prepare a plan for overcoming the existing issues, including a timetable;

d) einen Plan für Verhandlungen über eine Umschuldung mit einigen oder allen Gläubigern zu erstellen;	d) to prepare a plan for negotiating debt restructuring with several or all creditors;
e) die Geschäftsstrategie sowie die rechtlichen und operativen Strukturen zu ändern;	e) to revise the business strategy and the legal and operative structures;
f) der Aufsichtsbehörde und der Abwicklungsbehörde, auch im Rahmen einer Prüfung vor Ort, Zugang zu allen Informationen zu gewähren, die zur Aktualisierung des Abwicklungsplans, zur Vorbereitung der Abwicklung des Instituts und zur Bewertung der Vermögenswerte und Verbindlichkeiten des Instituts für Abwicklungszwecke erforderlich sind; § 78 Absatz 2 gilt entsprechend;	f) to grant to the supervisory authority and the resolution authority, including in the context of an on-site investigation, access to all information required to warrant the updating of the resolution plan, the preparation of the resolution of the institution and the valuation of the assets and liabilities of institution for resolution purposes; Section 78(2) shall apply *mutatis mutandis*;
g) eine Versammlung der Anteilsinhaber mit einer von der Aufsichtsbehörde vorgegebenen Tagesordnung einzuberufen; kommt die Geschäftsleitung dem nicht nach, so kann die Aufsichtsbehörde die Einberufung, einschließlich der erforderlichen Bekanntmachungen, Einladungen, Veröffentlichungen und sonstigen Handlungen, anstelle der Geschäftsleitung mit gleicher Wirkung selbst vornehmen;	g) to call a shareholder meeting with an agenda specified by the supervisory authority; if the management fails to do so, the supervisory authority may thus take it upon itself to call the meeting, including the required announcements, invitations, publications and other acts in place of the management, with equal effect;
2. vom Institut verlangen, dass eines oder mehrere der Mitglieder der Geschäftsleitung und des Aufsichts- oder Verwaltungsorgans des Instituts abberufen werden, sofern sie gemäß den Vorschriften des Kreditwesengesetzes für die Erfüllung ihrer Aufgaben nicht geeignet sind.	2. require the institution to dismiss one or more of the members of the management and the supervisory or administrative board of the institution, insofar as they are unqualified to perform their tasks pursuant to the provisions of the German Banking Act.
§ 49 Abs. 2, Abs. 4 SAG	**Section 49(2), (4) SAG**
(2) Die Anforderung wird als Betrag der Eigenmittel und berücksichtigungsfähigen Verbindlichkeiten gemäß § 49c Absatz 3 bis 5 oder 7 bis 9 berechnet und ausgedrückt als prozentualer Anteil	(2) The requirement is calculated as an amount of own funds and eligible liabilities pursuant to Section 49c(3) to (5) or (7) to (9) and expressed as a percentage share
1. des gemäß Artikel 92 Absatz 3 der Verordnung (EU) Nr. 575/2013 berechneten Gesamtrisikobetrags des Instituts oder gruppenangehörigen Unternehmens und	1. of the total risk exposure of the institution or affiliated entity calculated pursuant to Article 92(3) of Regulation (EU) No 575/2013 and
2. der gemäß den Artikeln 429 und 429a der Verordnung (EU) Nr. 575/2013 berechneten	2. of the total exposure measure of the institution or affiliated entity calculated

Gesamtrisikopositionsmessgröße des Instituts oder gruppenangehörigen Unternehmens.	pursuant to Articles 429 and 429a of Regulation (EU) No 575/2013.
(4) Die Abwicklungsbehörde legt den institutsspezifischen Mindestbetrag von berücksichtigungsfähigen Verbindlichkeiten gemäß Absatz 1 insbesondere auf Grundlage der folgenden Kriterien fest:	(4) The resolution authority establishes the institution-specific minimum amount of eligible liabilities pursuant to paragraph (1) in particular on the basis of the following criteria:
1. des Erfordernisses, sicherzustellen, dass das Institut durch Anwendung der Abwicklungsinstrumente in einer den Abwicklungszielen entsprechenden Weise abgewickelt werden kann;	1. the requirement to assure that the institution can be wound up by applying the resolution instruments in a manner reflecting the resolution objectives;
2. des Erfordernisses, sicherzustellen, dass das Institut über ausreichende berücksichtigungsfähige Verbindlichkeiten verfügt, um bei Anwendung des Instruments der Gläubigerbeteiligung zu gewährleisten, dass	2. the requirement to assure that the institution has sufficient eligible liabilities available to warrant the application of the instruments of creditor participation that
a) Verluste absorbiert werden können und	a) losses can be absorbed and
b) die harte Kernkapitalquote in einem Ausmaß wiederhergestellt werden kann, das erforderlich wäre, um ein ausreichendes Marktvertrauen in das Institut sicherzustellen und es in die Lage zu versetzen, die Zulassungsvoraussetzungen zu erfüllen und die Tätigkeiten, für die es im Rahmen der Richtlinien 2013/36/EU oder 2014/65/EU zugelassen ist, fortzuführen;	b) the Common Equity Tier 1 capital ratio can be restored to the extent that would be necessary to assure a sufficient confidence of the market in the institution and put it in a position to meet the eligibility requirements and continue to conduct the activities for which it is eligible within the scope of Regulations 2013/36/EU or 2014/65/EU;
3. des Erfordernisses, sicherzustellen, dass das Institut auch für den Fall, dass der Abwicklungsplan den möglichen Ausschluss bestimmter Kategorien berücksichtigungsfähiger Verbindlichkeiten nach § 92 vom Instrument der Gläubigerbeteiligung oder die vollständige Übertragung bestimmter Kategorien berücksichtigungsfähiger Verbindlichkeiten im Rahmen einer partiellen Übertragung auf einen übernehmenden Rechtsträger vorsieht, über ausreichende berücksichtigungsfähige Verbindlichkeiten verfügt, um bei Anwendung des Instruments der Gläubigerbeteiligung zu gewährleisten, dass	3. the requirement to assure that the institution, including in the event that the resolution plan foresees the potential exclusion of certain categories of eligible liabilities pursuant to Section 92 from the instrument of creditor participation or the full transfer of certain categories of eligible liabilities in the context of a partial transfer to an acquiring legal entity, has sufficient eligible liabilities available to warrant on the application of the instruments of creditor participation that
a) Verluste absorbiert werden können und	a) losses can be absorbed and
b) die harte Kernkapitalquote in einem Ausmaß wiederhergestellt werden kann, das erforderlich wäre, um ein ausreichendes Marktvertrauen in das Institut sicherzustellen und das Institut in die Lage zu versetzen, die Zulassungsvoraussetzungen zu erfüllen und die	b) the Common Equity Tier 1 capital ratio can be restored to the extent that would be necessary to assure a sufficient confidence of the market in the institution and put it in a position to meet the eligibility requirements and continue to conduct the activities for which it is

Tätigkeiten, für die es im Rahmen der Richtlinien 2013/36/EU oder 2014/65/EU zugelassen ist, fortzuführen;	eligible within the scope of Regulations 2013/36/EU or 2014/65/EU;
4. der Größe, des Geschäftsmodells, der Refinanzierungsstruktur und des Risikoprofils des Instituts;	4. the size, the business model, the refinancing model and the risk profile of the institution;
5. des Umfangs, in dem ein Einlagensicherungssystem gemäß § 145 zur Finanzierung der Abwicklungsmaßnahmen herangezogen werden könnte, und	5. the extent to which a deposit insurance system pursuant to Section 145 can be drawn on to finance the resolution measures, and
6. des Umfangs, in dem der Ausfall des Instituts, insbesondere auf Grund der Vernetzung mit anderen Instituten oder mit dem übrigen Finanzsystem, negative Auswirkungen auf die Finanzstabilität im Sinne einer Ansteckung haben könnte.	6. the extent to which the failure of the institution, especially due to its connections to other institutions or entities or with the remainder of the financial system, would adversely affect financial stability in the sense of contagion
§ 49b SAG	**Section 49b SAG**
(1) Verbindlichkeiten dürfen im Betrag der Eigenmittel und berücksichtigungsfähigen Verbindlichkeiten von Abwicklungseinheiten nur dann enthalten sein, wenn sie die in den Artikeln 72a, 72b und 72c der Verordnung (EU) Nr. 575/2013 genannten Voraussetzungen mit Ausnahme der in Artikel 72b Absatz 2 Buchstabe d genannten Voraussetzungen erfüllen. Soweit gemäß den §§ 49 bis 54 Artikel 92a oder 92b der Verordnung (EU) Nr. 575/2013 Anwendung findet, sind berücksichtigungsfähige Verbindlichkeiten solche im Sinne des Artikels 72k und des Teils 2 Titel I Kapitel 5a der Verordnung (EU) Nr. 575/2013.	(1) Liabilities may only be included in the amount of the own funds and eligible liabilities of resolution units if they meet the criteria specified in Articles 72a, 72b and 72c of Regulation (EU) No 575/2013 with the exception of the criteria specified in Article 72b(2) letter d. Article 92a or 92b of Regulation (EU) No 575/2013 are applicable pursuant to Sections 49 to 54 , eligible liabilities means those within the meaning of Article 72k and Part 2 Title I Chapter 5a of Regulation (EU) No 575/2013.
(2) Abweichend von Artikel 72a Absatz 2 Buchstabe l der Verordnung (EU) Nr. 575/2013 dürfen Verbindlichkeiten aus Schuldtiteln mit eingebetteten Derivaten, wie zum Beispiel strukturierten Schuldtiteln, die im Übrigen die in Absatz 1 Satz 1 genannten Voraussetzungen erfüllen, im Betrag der Eigenmittel und berücksichtigungsfähigen Verbindlichkeiten enthalten sein, wenn	(2) Notwithstanding Article 72a(2) letter l of Regulation (EU) No 575/2013, liabilities arising from debt instruments with embedded derivatives, such as structured debt instruments that otherwise fulfill the criteria in paragraph 1 sentence 1, may be included in the amount of the own funds and eligible liabilities if
1. der Nennwert der Verbindlichkeit, die aus dem Schuldtitel erwächst, zum Zeitpunkt der Emission bereits bekannt ist, festgelegt ist oder ansteigt und von keiner eingebetteten Derivatkomponente betroffen ist, und der	1. the nominal value of the liability arising from the debt instrument on the date of issuance is already known, has been fixed or increases and is not affected by any embedded derivate components, and the total amount of the

Gesamtbetrag der aus dem Schuldtitel erwachsenden Verbindlichkeit einschließlich der eingebetteten Derivatkomponente täglich mit Bezug auf einen aktiven und aus Käufer- und Verkäufersicht liquiden Markt für ein gleichwertiges Instrument ohne Kreditrisiko im Einklang mit den Artikeln 104 und 105 der Verordnung (EU) Nr. 575/2013 bewertet werden kann oder	liability arising from the debt instrument, including the embedded derivate components, can be valued on a daily basis in relation to an instrument of comparable value without credit risk on a market that is active and liquid from a buyer and seller point-of-view in compliance with Articles 104 and 105 of Regulation (EU) No 575/2013 or
2. der Schuldtitel eine Vertragsklausel enthält, in der festgelegt ist, dass der Wert der Forderung im Fall eines Insolvenzverfahrens und einer Abwicklung des Emittenten festgelegt ist oder ansteigt und nicht höher ist als der ursprünglich eingezahlte Betrag der Verbindlichkeit.	2. the debt instrument includes a contractual clause stipulating that the value of the claim in the event of an insolvency proceeding and a resolution of the issuer is fixed or increases and is not higher than the originally paid in amount of the liability.
Schuldtitel, einschließlich ihrer eingebetteten Derivate, dürfen keiner Saldierungsvereinbarung unterliegen und werden nicht nach § 93 Absatz 3 bewertet. Verbindlichkeiten aus Schuldtiteln mit eingebetteten Derivaten dürfen nur für den Teil, der dem in Satz 1 Nummer 1 genannten Nennwert oder dem in Satz 1 Nummer 2 genannten festgelegten oder ansteigenden Betrag entspricht, im Betrag der Eigenmittel und berücksichtigungsfähigen Verbindlichkeiten enthalten sein.	Debt instruments, including their embedded derivatives, are not permitted to be subject to any set-off procedures and shall not be valued pursuant to Section 93(3). Liabilities from debt instruments with embedded derivatives may only be included in the amount of the own funds and eligible liabilities for the part corresponding to the nominal value specified in sentence 1 number 1 or the fixed or increasing amount specified in sentence 1 number 2.
(3) Werden Verbindlichkeiten von einem in der Union niedergelassenen Tochterunternehmen, das Teil derselben Abwicklungsgruppe wie die Abwicklungseinheit ist, an einen seiner Anteilseigner, der nicht Teil derselben Abwicklungsgruppe ist, begeben, so dürfen diese Verbindlichkeiten im Betrag der Eigenmittel und berücksichtigungsfähigen Verbindlichkeiten dieser Abwicklungseinheit enthalten sein, wenn die folgenden Voraussetzungen erfüllt sind:	(3) If liabilities are issued by a subsidiary established in the Union belonging to the same resolution group as the resolution unit, to one of its shareholders not belonging to the same resolution group, these liabilities may thus be included in the own funds and eligible liabilities of this resolution unit if the following criteria are met:
1. die Begebung der Verbindlichkeiten erfüllt die Voraussetzungen nach § 49f Absatz 2 Nummer 1,	1. the issuance of the liabilities fulfills the criteria pursuant to Section 49f(2) number 1,
2. die Kontrolle der Abwicklungseinheit über das Tochterunternehmen durch die Ausübung der Befugnis zur Herabschreibung oder Umwandlung in Bezug auf diese Verbindlichkeiten nach den §§ 65 und 66 wird nicht beeinträchtigt und	2. the control of the resolution unit over the subsidiary by virtue of the exercise of the power to write-down or convert such liabilities pursuant to Sections 65 and 66 is not compromised and
3. die begebenen Verbindlichkeiten nicht den nach § 49f Absatz 1 erforderlichen Betrag übersteigen, von dem die Summe der	3. the liabilities issued do not exceed the amount required pursuant to Section 49f(1), from which the sum of the liabilities issued to

Verbindlichkeiten, die entweder direkt oder indirekt über andere Unternehmen derselben Abwicklungsgruppe an die Abwicklungseinheit begeben und von dieser erworben werden, und der Betrag der gemäß § 49f Absatz 2 Nummer 2 begebenen Eigenmittel abzuziehen ist.	and acquired by the resolution unit either directly or indirectly via other enterprises of the same resolution group and the amount of own funds issued pursuant to Section 49f(2) number 2 shall be deducted.
(4) Unbeschadet der Anforderung nach § 49c Absatz 5 oder § 49d Absatz 1 Nummer 1 ist ein Teil der in § 49e genannten Anforderung in Höhe von 8 Prozent der gesamten Verbindlichkeiten, einschließlich Eigenmitteln, durch Abwicklungseinheiten, die ein global systemrelevantes Institut sind, oder durch Abwicklungseinheiten, die den Anforderungen gemäß § 49c Absatz 5 oder 6 unterliegen, mit Eigenmitteln und mit nachrangigen berücksichtigungsfähigen Instrumenten oder mit Verbindlichkeiten nach Absatz 3 zu erfüllen. Die Abwicklungsbehörde kann zulassen, dass ein Niveau, das unter 8 Prozent der gesamten Verbindlichkeiten einschließlich Eigenmitteln, aber über dem Betrag liegt, der sich aus der Anwendung der Formel (1 – X1/ X2) x 8 Prozent der gesamten Verbindlichkeiten einschließlich Eigenmitteln, ergibt, durch Abwicklungseinheiten, die ein global systemrelevantes Institut sind, oder durch Abwicklungseinheiten, die den Anforderungen gemäß § 49c Absatz 5 oder 6 unterliegen, mit Eigenmitteln und mit nachrangigen berücksichtigungsfähigen Instrumenten oder mit Verbindlichkeiten nach Absatz 3 erfüllt wird, sofern alle Voraussetzungen nach Artikel 72b Absatz 3 der Verordnung (EU) Nr. 575/2013 erfüllt sind. Hierbei sind hinsichtlich der gemäß Artikel 72b Absatz 3 der Verordnung (EU) Nr. 575/2013 möglichen Reduzierung X1 = 3,5 Prozent des gemäß Artikel 92 Absatz 3 der Verordnung (EU) Nr. 575/2013 berechneten Gesamtrisikobetrags und X2 =die Summe aus 18 Prozent des gemäß Artikel 92 Absatz 3 der Verordnung (EU) Nr. 575/2013 berechneten Gesamtrisikobetrags und dem Betrag der kombinierten Kapitalpufferanforderung anzusetzen. Ergibt sich durch die Festlegung gemäß den Sätzen 1 und 2 für Abwicklungseinheiten, die § 49c Absatz 5 unterliegen, eine Anforderung von mehr als 27 Prozent des Gesamtrisikobetrags, so begrenzt die Abwicklungsbehörde für die betreffende Abwicklungseinheit den Teil der Anforderung nach § 49e, der durch den Einsatz von Eigenmitteln, von nachrangigen berücksichtigungsfähigen Instrumenten oder von	(4) Notwithstanding the requirement pursuant to Section 49c(5) or Section 49d(1) number 1, part of the requirement specified in Section 49e in the amount of 8 percent of the total liabilities, including own funds, is to be met with own funds and with subordinate eligible instruments or with liabilities pursuant to paragraph (3) by resolution units that are a global systemically relevant institution or by resolution units subject to the requirements pursuant to Section 49c(5) or (6). The resolution authority may permit fulfillment with own funds and with subordinate eligible instruments or with liabilities pursuant to paragraph (3) which lie under 8 percent of the total liabilities including own funds, but above the amount resulting from application of the formula (1 – X1/ X2) x 8 percent of the total liabilities including own funds, by resolution units that are a global systemically relevant institution or by resolution units subject to the requirements pursuant to Section 49c(5) or (6), provided that all criteria pursuant to Article 72b(3) of Regulation (EU) No 575/2013 are met. With regard to the possible reduction pursuant to Article 72b(3) of Regulation (EU) No 575/2013, X1 = 3.5 percent of the total risk amount calculated pursuant to Article 92(3) of Regulation (EU) No 575/2013 and X2 = the sum of 18 percent of the total risk amount calculated pursuant to Article 92(3) of Regulation (EU) No 575/2013 and the amount of the combined capital buffer requirement are to be applied. If a requirement exceeding 27 percent of the total risk amount results from the specification pursuant to sentences 1 and 2 for resolution units subject to Section 49c(5), the resolution authority accordingly limits for the resolution unit concerned the part of the requirement pursuant to Section 49e that is to be met by the use of own funds, of subordinate eligible instruments or of liabilities pursuant to paragraph (3), to an amount of 27 percent of the total risk amount, if the resolution authority arrives at the assessment that

Verbindlichkeiten nach Absatz 3 zu erfüllen ist, auf einen Betrag in Höhe von 27 Prozent des Gesamtrisikobetrags, wenn die Abwicklungsbehörde zu der Einschätzung gelangt ist, dass	
1. der Zugang zum Abwicklungsfinanzierungsmechanismus im Abwicklungsplan nicht als Option zur Abwicklung dieser Abwicklungseinheit betrachtet wird und	1. the access to the resolution financing mechanism in the resolution plan is not considered as an option for resolution by the resolution unit and
2. wenn Nummer 1 nicht zutrifft, die Abwicklungseinheit die Anforderungen nach § 7a Absatz 3 und 4 des Restrukturierungsfondsgesetzes, je nach Anwendbarkeit, durch die Anforderung nach § 49e erfüllen kann.	2. if number 1 does not apply, the resolution unit can meet the requirements pursuant to Section 7a(3) and (4) of the German Restructuring Fund Law, as applicable, by means of the requirement pursuant to Section 49e.
Bei der Einschätzung gemäß Satz 4 ist zudem das Risiko unverhältnismäßiger Auswirkungen auf das Geschäftsmodell der betreffenden Abwicklungseinheit zu berücksichtigen. Satz 4 gilt nicht für Abwicklungseinheiten, für die § 49c Absatz 6 Anwendung findet.	In the assessment pursuant to sentence 4, the risk of the resolution unit of being exposed to disproportionate risk should be taken into account. Sentence 4 shall not apply to resolution units, for which Section 49c(6) is applicable.
(5) Im Fall von Abwicklungseinheiten, die weder global systemrelevante Institute sind noch Abwicklungseinheiten, auf die § 49c Absatz 5 oder 6 Anwendung findet, kann die Abwicklungsbehörde entscheiden, dass ein Teil der in § 49e genannten Anforderung bis zu einer Höhe von 8 Prozent der gesamten Verbindlichkeiten des Unternehmens einschließlich Eigenmitteln oder bis zu dem Betrag, der sich anhand der Formel nach Absatz 7 errechnet, je nachdem, welcher Wert höher ist, mit Eigenmitteln, mit nachrangigen berücksichtigungsfähigen Instrumenten oder mit Verbindlichkeiten nach Absatz 3 zu erfüllen ist, sofern die folgenden Voraussetzungen erfüllt sind:	(5) In the case of resolution units that are neither global systemically relevant institutions nor resolution units to which Section 49c(5) or (6) apply, the resolution authority shall decide that part of the requirement specified in Section 49e of up to 8 percent of the entity's total liabilities including own funds or up to the amount calculated using the formula pursuant to paragraph (7), whichever is higher, are met by own funds, subordinate eligible instruments or liabilities pursuant to paragraph (3) if the following criteria are met:
1. die in den Absätzen 1 und 2 genannten nicht nachrangigen Verbindlichkeiten nehmen in der Insolvenzrangfolge denselben Rang ein wie Verbindlichkeiten, die gemäß § 91 Absatz 2 oder § 92 Absatz 1 von den Herabschreibungs- und Umwandlungsbefugnissen ausgenommen sind;	1. the non-subordinate liabilities referred to in paragraphs (1) and (2) shall have the same ranking in the insolvency ranking order as the liabilities do that are excluded from the write-down and conversion powers pursuant to Section 91(2) or Section 92(1);
2. es besteht ein Risiko, dass auf Grund des geplanten Gebrauchs von Herabschreibungs- und Umwandlungsbefugnissen bei nicht nachrangigen Verbindlichkeiten, die nicht	2. there is a risk that due to the planned use of write-down and conversion powers for non-subordinate liabilities that are not excluded from the use of these powers pursuant to

gemäß § 91 Absatz 2 oder § 92 Absatz 1 von der Anwendung dieser Befugnisse ausgenommen sind, Gläubiger von aus diesen Verbindlichkeiten erwachsenden Forderungen größere Verluste zu tragen haben als bei einer Liquidation nach dem Insolvenzverfahren;	Section 91(2) or Section 92(1), creditors of claims arising from these liabilities will have to bear greater losses than in the event of liquidation following insolvency proceedings;
3. die Höhe der Eigenmittel und anderen nachrangigen Verbindlichkeiten übersteigt nicht den Betrag, der erforderlich ist, um zu gewährleisten, dass die in Nummer 2 genannten Gläubiger keine größeren Verluste erleiden, als es bei einer Liquidation nach dem Insolvenzverfahren der Fall gewesen wäre.	3. the amount of the own funds and other subordinate liabilities does not exceed the amount required to warrant that the creditors referred to in number 2 do not sustain any greater losses than they would in the event of liquidation following insolvency proceedings.
Stellt die Abwicklungsbehörde fest, dass innerhalb eines Insolvenzranges von Verbindlichkeiten, der berücksichtigungsfähige Verbindlichkeiten einschließt, der Betrag der Verbindlichkeiten, die gemäß § 91 Absatz 2 oder § 92 Absatz 1 von der Anwendung der Herabschreibungs- und Umwandlungsbefugnisse ausgeschlossen sind oder mit hinreichender Wahrscheinlichkeit ausgeschlossen werden könnten, insgesamt über 10 Prozent dieser Kategorie ausmacht, so bewertet die Abwicklungsbehörde das in Satz 1 Nummer 2 genannte Risiko.	If the resolution authority determines that, within an insolvency ranking of liabilities including eligible liabilities, the amount of the liabilities that are excluded or could be excluded with sufficient likelihood from the exercise of write-down and conversion powers pursuant to Section 91(2) or Section 92(1) in total accounts for over 10 percent of this category, the resolution authority accordingly values the risk specified in sentence 1 number 2.
(6) Für die Zwecke der Absätze 4, 5 und 7 umfassen die gesamten Verbindlichkeiten auch Derivatverbindlichkeiten, sofern die Saldierungsrechte der Gegenpartei uneingeschränkt anerkannt werden. Die Eigenmittel einer Abwicklungseinheit, die zur Erfüllung der kombinierten Kapitalpufferanforderung verwendet werden, sind für die Zwecke der Erfüllung der Anforderungen nach den Absätzen 4, 5 und 7 berücksichtigungsfähig.	(6) For the purposes of paragraphs (4), (5) and (7), the total liabilities also include derivative liabilities, insofar that the netting rights of the counterparty are recognized on an unlimited basis. The own funds of a resolution unit used to meet the combined capital conservation buffer requirement are eligible for the purposes of meeting the requirements pursuant to paragraphs (4), (5) and (7).
(7) Abweichend von Absatz 4 hat die Abwicklungsbehörde die Befugnis, zu entscheiden, dass die Anforderung nach § 49e von Abwicklungseinheiten, die ein global systemrelevantes Institut sind, oder von Abwicklungseinheiten, die den Anforderungen nach § 49c Absatz 5 oder 6 unterliegen, mit Eigenmitteln, mit nachrangigen berücksichtigungsfähigen Instrumenten oder mit Verbindlichkeiten nach Absatz 3 zu erfüllen ist, soweit die Summe dieser Eigenmittel, Instrumente und Verbindlichkeiten auf Grund der Verpflichtung der Abwicklungseinheit, den kombinierten Kapitalpufferanforderungen sowie	(7) Notwithstanding paragraph (4), the resolution authority has the power to resolve that the requirement pursuant to Section 49e of resolution units that are a global systemically relevant institution, or of resolution units subject to the requirements pursuant to Section 49c(5) or (6), must be met with own funds, with subordinate eligible instruments or with liabilities pursuant to paragraph (3), to the extent that the total of these own funds, instruments and liabilities due to the obligation of the resolution unit to meet the combined capital conservation buffer requirements and the requirements pursuant to Article 92a of

den Anforderungen nach Artikel 92a der Verordnung (EU) Nr. 575/2013, § 49c Absatz 5 und § 49e nachzukommen, den höheren der folgenden Werte nicht übersteigt:	Regulation (EU) No 575/2013, Section 49c(5) and Section 49e, does not exceed the higher of the following values:
1. 8 Prozent der gesamten Verbindlichkeiten des Unternehmens, einschließlich der Eigenmittel, oder	1. 8 percent of the entity's total liabilities, including the own funds, or
2. den Betrag, der sich anhand der Formel A x 2 + B x 2 + C errechnet, wobei A, B und C die folgenden Beträge sind:	2. the amount calculated on the basis of the formula A x 2 + B x 2 + C, where A, B and C are the following amounts:
a) A = der Betrag, der sich auf Grund der Anforderung nach Artikel 92 Absatz 1 Buchstabe c der Verordnung (EU) Nr. 575/2013 ergibt,	a) A = the amount resulting from the requirement pursuant to Article 92(1) letter c of Regulation (EU) No 575/2013,
b) B = der Betrag, der sich auf Grund der Anforderung nach § 6c Absatz 1 des Kreditwesengesetzes ergibt,	b) B = the amount resulting from the requirement pursuant to Section 6c(1) of the German Banking Act,
c) C = der Betrag, der sich auf Grund der kombinierten Kapitalpufferanforderung ergibt.	c) C = the amount resulting from the combined capital conservation buffer requirement.
(8) Die Abwicklungsbehörde kann die in Absatz 7 genannte Befugnis in Bezug auf Abwicklungseinheiten, die ein global systemrelevantes Institut sind oder die § 49c Absatz 5 oder 6 unterliegen und die eine der Voraussetzungen nach Satz 2 erfüllen, für bis zu höchstens 30 Prozent aller Abwicklungseinheiten ausüben, die ein global systemrelevantes Institut sind oder die § 49c Absatz 5 oder 6 unterliegen und für die die Abwicklungsbehörde die Anforderung nach § 49e festlegt. Die folgenden Voraussetzungen werden von der Abwicklungsbehörde bei Ausübung der Befugnis berücksichtigt:	(8) The resolution authority may exercise the power referred to in paragraph (7) on resolution units that are a global systemically relevant institution or subject to Section 49c(5) or (6) and that meet the criteria pursuant to sentence 2 for up to a maximum of 30 percent of all resolution units that are a global systemically relevant institution or that are subject to Section 49c(5) or (6) and for which the resolution authority defines the requirement pursuant to Section 49e. The following criteria are considered by the resolution authority when exercising this power:
1. in der vorangegangenen Bewertung der Abwicklungsfähigkeit wurden wesentliche Abwicklungshindernisse für die Abwicklungsfähigkeit ermittelt und	1. in the prior valuation of resolvability, material impediments to resolution are established with regard to resolvability and
a) nach Einleitung der Maßnahmen zum Abbau der Abwicklungshindernisse nach § 59 Absatz 6 wurden innerhalb des von der Abwicklungsbehörde vorgeschriebenen Zeitplans keine Abhilfemaßnahmen ergriffen oder	a) after introducing measures to remove impediments to resolution pursuant to Section 59(6), No remedial measures were taken within the timetable specified by the resolution authority or
b) das ermittelte wesentliche Hindernis lässt sich durch keine der Maßnahmen zum Abbau der Abwicklungshindernisse nach § 59 Absatz 6	b) the established material impediment cannot be removed by any of the measures to remove the impediments to resolution pursuant to

beseitigen und die Ausübung der Befugnis nach Absatz 7 würde die negativen Auswirkungen des wesentlichen Hindernisses für die Abwicklungsfähigkeit teilweise oder vollständig aufwiegen;	Section 59(6) and exercising the power pursuant to paragraph (7) would offset the negative effects of the material impediments to resolvability in part or in full;
2. die Abwicklungsbehörde ist der Auffassung, dass die Umsetzbarkeit und Glaubhaftigkeit der bevorzugten Abwicklungsstrategie der Abwicklungseinheit angesichts ihrer Größe, ihrer Verflechtungen, der Art, des Umfangs, des Risikos und der Komplexität ihrer Tätigkeiten, ihrer Rechtsform sowie ihrer Beteiligungsstruktur eingeschränkt sind oder	2. the resolution authority believes that the feasibility and credibility of the resolution unit's preferred resolution strategy is limited given its size, interdependence, nature, scope, risk and complexity of its activities, legal form and ownership structure; or
3. aus der Anforderung nach § 6c Absatz 1 des Kreditwesengesetzes ergibt sich, dass die Abwicklungseinheit, die ein global systemrelevantes Institut ist oder den Bestimmungen gemäß § 49c Absatz 5 oder 6 unterliegt, zu den 20 Prozent der Institute mit dem höchsten Risiko gehört, für die die Abwicklungsbehörde die Anforderung nach § 49 Absatz 1 festlegt.	3. it follows from the requirement pursuant to Section 6c(1) of the German Banking Act that the resolution unit, which is a global systemically relevant institution or subject to the provisions pursuant to Section 49c(5) or (6), belongs to the 20 percent of institutions at the highest risk, for which the resolution authority specifies the requirement pursuant to Section 49(1).
Für die Zwecke der Prozentsätze nach den Sätzen 1 und 2 rundet die Abwicklungsbehörde das berechnete Ergebnis auf die nächsthöhere ganze Zahl auf.	For the purposes of percentage rates pursuant to sentences 1 and 2, the resolution authority rounds up the calculated result to the next highest whole number.
(9) Die Abwicklungsbehörde fasst die in den Absätzen 5 und 7 genannten Entscheidungen nach Anhörung der Aufsichtsbehörde. Bei diesen Entscheidungen berücksichtigt die Abwicklungsbehörde zudem	(9) The resolution authority takes the decisions referred to in paragraphs (5) and (7) after hearing the supervisory authority. In these decisions, the resolution authority also considers
1. die Markttiefe für die Eigenmittelinstrumente der Abwicklungseinheit und die nachrangigen berücksichtigungsfähigen Instrumente, gegebenenfalls die Bepreisung dieser Instrumente und die Zeit, die für die Umsetzung der Entscheidung erforderlichen Transaktionen benötigt wird,	1. the market depth for the resolution unit's own funds instruments and the subordinate eligible instruments, the pricing of these instruments and the time required for the implementation of the transactions required by the decision,
2. den Betrag der Instrumente berücksichtigungsfähiger Verbindlichkeiten, die alle in Artikel 72a der Verordnung (EU) Nr. 575/2013 genannten Voraussetzungen erfüllen, mit einer Restlaufzeit von weniger als einem Jahr ab dem Zeitpunkt, zu dem die Entscheidung gefasst wird, um quantitative Anpassungen an den Anforderungen nach den Absätzen 5 und 7 vorzunehmen,	2. the amount of instruments of eligible liabilities meeting all of the criteria specified in Article 72a of Regulation (EU) No 575/2013, with a remaining time to maturity of less than one year from the date on which the decision was made in order to perform quantitative adjustments of the requirements pursuant to paragraphs (5) and (7),

3. die Verfügbarkeit und den Betrag der Instrumente, die alle in Artikel 72a der Verordnung (EU) Nr. 575/2013 genannten Voraussetzungen – mit Ausnahme der in Artikel 72b Absatz 2 Buchstabe d der Verordnung (EU) Nr. 575/2013 genannten Voraussetzungen – erfüllen,	3. the availability and the amount of instruments meeting all of the criteria specified in Article 72a of Regulation (EU) No 575/2013 – with the exception of the criteria specified in Article 72b(2) letter d of Regulation (EU) No 575/2013.
4. die Frage, ob der Betrag der gemäß § 91 Absatz 2 oder § 92 Absatz 1 von der Anwendung der Herabschreibungs- und Umwandlungsbefugnisse ausgeschlossenen Verbindlichkeiten, die in regulären Insolvenzverfahren denselben Rang wie oder einen niedrigeren Rang einnehmen als die höchstrangigen berücksichtigungsfähigen Verbindlichkeiten, erheblich ist, wenn er mit den Eigenmitteln und berücksichtigungsfähigen Verbindlichkeiten der Abwicklungseinheit verglichen wird; übersteigt der Betrag der ausgeschlossenen Verbindlichkeiten 5 Prozent des Betrags der Eigenmittel und berücksichtigungsfähigen Verbindlichkeiten der Abwicklungseinheit nicht, so gilt der ausgeschlossene Betrag als nicht erheblich; oberhalb dieses Schwellenwerts wird die Erheblichkeit der ausgeschlossenen Verbindlichkeiten von der Abwicklungsbehörde bewertet,	4. the question of whether the amount of the liabilities excluded from the exercise of write-down and conversion powers pursuant to Section 91(2) or Section 92(1), which have the same or lower ranking in insolvency proceedings than the highest ranking eligible liabilities, is material when compared with the own funds and eligible liabilities of the resolution unit; if the amount of the excluded liabilities does not exceed 5 percent of the amount of the resolution unit's own funds and eligible liabilities, the excluded amount accordingly qualifies as immaterial; above this threshold, the materiality of the excluded liabilities is assessed by the resolution authority.
5. das Geschäftsmodell, das Refinanzierungsmodell und das Risikoprofil der Abwicklungseinheit sowie seine Stabilität und seine Fähigkeit, einen Beitrag zur Wirtschaft zu leisten, und	5. the business model, the refinancing model and the risk profile of the resolution unit as well as its stability and its ability to contribute to the economy, and
6. die Auswirkungen etwaiger Umstrukturierungskosten auf die Rekapitalisierung der Abwicklungseinheit.	6. the impact of any restructuring costs on the recapitalization of the resolution unit.
§ 49c SAG	**Section 49c SAG**
(1) Die Anforderung nach § 49 Absatz 1 wird von der Abwicklungsbehörde nach Anhörung der Aufsichtsbehörde anhand folgender Kriterien bestimmt:	(1) The requirement pursuant to Section 49(1) is established by the resolution authority after hearing the supervisory authority based on the following criteria:
1. der Notwendigkeit, sicherzustellen, dass die Abwicklungsgruppe durch Anwendung der Abwicklungsinstrumente, gegebenenfalls auch des Instruments der Gläubigerbeteiligung, auf	1. the need to assure that the resolution group can be wound up in accordance with the objectives of resolution by applying the resolution instruments, including the instrument

die Abwicklungseinheit den Abwicklungszielen entsprechend abgewickelt werden kann;	of creditor participation where applicable, to the resolution unit;
2. der Notwendigkeit, gegebenenfalls sicherzustellen, dass die Abwicklungseinheit und ihre Tochterunternehmen, bei denen es sich um Institute oder gruppenangehörige Unternehmen aber nicht um Abwicklungseinheiten handelt, über ausreichende Eigenmittel und berücksichtigungsfähige Verbindlichkeiten verfügen, damit für den Fall, dass bei ihnen vom Instrument der Gläubigerbeteiligung beziehungsweise von den Herabschreibungs- und Umwandlungsbefugnissen Gebrauch gemacht wird, Verluste absorbiert werden können und weiterhin die Möglichkeit besteht, zu einer Gesamtkapitalquote und gegebenenfalls der Verschuldungsquote der betreffenden Unternehmen auf ein Niveau zurückzukehren, das erforderlich ist, damit sie auch weiterhin den Zulassungsvoraussetzungen genügen und die Tätigkeiten, für die sie gemäß der Richtlinie 2013/36/EU oder der Richtlinie 2014/65/EU zugelassen sind, weiter ausüben können;	2. the need to assure, where applicable, that the resolution unit and its subsidiaries that are institutions or affiliated entities but not resolution units, have sufficient own funds and eligible liabilities to cover the case in which use is made of the instrument of creditor participation or write-down and conversion powers, losses can be absorbed and there is still the possibility to return to a total capital ratio and, where applicable, leverage ratio of the entities concerned to a level necessary to continue to meet the eligibility requirements, and to continue to conduct the activities for which they are authorised pursuant to Directive 2013/36/EU or Directive 2014/65/EU;
3. der Notwendigkeit, sicherzustellen, dass in Fällen, in denen der Abwicklungsplan bereits die Möglichkeit vorsieht, bestimmte Kategorien berücksichtigungsfähiger Verbindlichkeiten gemäß § 92 Absatz 1 vom Instrument der Gläubigerbeteiligung auszunehmen oder im Rahmen einer teilweisen Übertragung vollständig auf einen übernehmenden Rechtsträger zu übertragen, die Abwicklungseinheit über ausreichende Eigenmittel und andere berücksichtigungsfähige Verbindlichkeiten verfügt, damit Verluste absorbiert werden können und die Gesamtkapitalquote und gegebenenfalls die Verschuldungsquote der Abwicklungseinheit wieder auf ein Niveau angehoben werden können, das erforderlich ist, damit sie auch weiterhin den Zulassungsvoraussetzungen genügt und die Tätigkeiten, für die sie gemäß der Richtlinie 2013/36/EU oder der Richtlinie 2014/65/EU zugelassen ist, weiter ausüben kann;	3. the need to assure that in cases in which the resolution plan already foresees the option of excluding certain categories of eligible liabilities pursuant to Section 92(1) from the instrument of creditor participation or in the context of a partial transfer to be transferred fully to an acquiring legal entity, the resolution unit lack adequate own funds and other eligible liabilities to absorb losses and the total capital ratio and, where applicable, leverage ratio of the resolution unit can return to a level necessary to a level necessary to continue to meet the eligibility requirements, and to continue to conduct the activities for which they are authorised pursuant to Directive 2013/36/EU or Directive 2014/65/EU;
4. von Größe, Geschäftsmodell, Refinanzierungsmodell und Risikoprofil des Unternehmens;	4. size, business model, refinancing model and risk profile of the entity;
5. des Umfangs, in dem der Ausfall des Unternehmens die Finanzstabilität	5. the extent to which the failure of the entity would affect financial stability, including by

beeinträchtigen würde, unter anderem durch Ansteckung anderer Institute oder Unternehmen auf Grund seiner Verflechtungen mit anderen Instituten oder Unternehmen oder mit dem übrigen Finanzsystem.	infecting other institutions or entities due to its interdependencies with other institutions or entities or with the remained of the financial system.
(2) Ist im Abwicklungsplan vorgesehen, dass die Abwicklungsmaßnahmen gemäß dem in § 40 Absatz 2 Nummer 2 und 3 genannten Szenario zu treffen sind oder dass von den Befugnissen, relevante Kapitalinstrumente und berücksichtigungsfähige Verbindlichkeiten gemäß § 65 Absatz 4 herabzuschreiben oder umzuwandeln, Gebrauch zu machen ist, muss die in § 49 Absatz 1 genannte Anforderung hoch genug sein, um Folgendes zu gewährleisten:	(2) if the resolution plan foresees that the resolution measures pursuant to the scenario referred to in Section 40(2) number 2 and 3 are to be taken or use is made of the power to write-down or convert relevant capital instruments and eligible liabilities pursuant to Section 65(4), the requirement referred to in Section 49(1) must be high enough to warrant the following:
1. die erwarteten Verluste, die das Unternehmen zu tragen hat, werden vollständig absorbiert (Verlustabsorption);	1. the anticipated losses that the entity must bear are full absorbed (loss absorption):
2. die Abwicklungseinheit und ihre Tochterunternehmen, bei denen es sich um Institute oder gruppenangehörige Unternehmen, aber nicht um Abwicklungseinheiten handelt, werden auf ein Niveau rekapitalisiert, das es ihnen ermöglicht, weiterhin den Zulassungsvoraussetzungen zu genügen und die Tätigkeiten, für die sie gemäß der Richtlinie 2013/36/EU, der Richtlinie 2014/65/EU oder vergleichbaren Zulassungsvoraussetzungen zugelassen sind, für einen angemessenen Zeitraum, der nicht länger als ein Jahr ist, weiter auszuüben (Rekapitalisierung).	2. the resolution unit and its subsidiaries, which are institutions or affiliated entities, but not resolution units, shall be recapitalised to a level enabling them to continue to meet the eligibility requirements and to further conduct the activities, for which they are eligible pursuant to Regulation 2013/36/EU, Regulation 2014/65/EU or comparable eligibility requirements for an appropriate period of No longer than one year (recapitalization).
Sieht der Abwicklungsplan für das Unternehmen eine Liquidation im Rahmen eines Insolvenzverfahrens vor, so bewertet die Abwicklungsbehörde, ob es gerechtfertigt ist, die in § 49 Absatz 1 genannte Anforderung für dieses Unternehmen zu beschränken, sodass sie nicht über den zur Verlustabsorption ausreichenden Betrag hinausgeht. Bei der Bewertung der Abwicklungsbehörde wird die Beschränkung insbesondere hinsichtlich etwaiger Auswirkungen auf die Finanzstabilität und auf die Ansteckungsgefahr für das Finanzsystem beurteilt.	If the resolution plan for the entity calls for liquidation in the context of insolvency proceedings, the resolution authority shall accordingly assess whether it is justified to limit the requirement specified in Section 49(1) for such entity so that it does not exceed the amount sufficient for loss absorption. In this assessment the resolution authority shall assess the limitation in particular in regard to any effects on financial stability and the risk of infection for the financial system.
(3) Für Abwicklungseinheiten entspricht der aus der Anforderung nach Absatz 2 Satz 1 resultierende Betrag	(3) For resolution units, the amount resulting from the requirement pursuant to paragraph (2) sentence 1 corresponds,

1. für die Zwecke der Berechnung der Anforderung nach § 49 Absatz 1 nach Maßgabe von § 49 Absatz 2 Nummer 1 der Summe aus	1. for the purposes of calculating the requirement pursuant to Section 49(1) in accordance with Section 49(2) number 1, to the sum of
a) den bei der Abwicklung zu absorbierenden Verlusten, die den Anforderungen des Artikels 92 Absatz 1 Buchstabe c der Verordnung (EU) Nr. 575/2013 und des § 6c Absatz 1 des Kreditwesengesetzes an die Abwicklungseinheit auf konsolidierter Basis auf Ebene der Abwicklungsgruppe entsprechen, und	a) the losses to be absorbed in connection with the resolution, which correspond to the requirements of Article 92(1) letter c of Regulation (EU) No 575/2013 and Section 6c(1) of the German Banking Act on the resolution unit at the level of the resolution unit on a consolidated basis, and
b) einem Rekapitalisierungsbetrag, der es der aus der Abwicklung hervorgehenden Abwicklungsgruppe ermöglicht, die für sie geltende Anforderung an die Gesamtkapitalquote nach Artikel 92 Absatz 1 Buchstabe c der Verordnung (EU) Nr. 575/2013 und die für sie gemäß § 6c Absatz 1 des Kreditwesengesetzes geltende Anforderung auf konsolidierter Basis auf Ebene der Abwicklungsgruppe nach Durchführung der bevorzugten Abwicklungsstrategie wieder zu erfüllen, und	b) a recapitalization amount enabling the resolution group emerging from the resolution to again meet the requirement applicable to it for the total capital ratio pursuant to Article 92(1) letter c of Regulation (EU) No 575/2013 and the requirement applying to it pursuant to Section 6c(1) of the German Banking Act on a consolidated basis at the level of the resolution group once the preferred resolution strategy is implemented, and
2. für die Zwecke der Berechnung der Anforderung nach § 49 Absatz 1 nach Maßgabe von § 49 Absatz 2 Nummer 2 der Summe aus	2. for the purposes of calculating the requirement pursuant to Section 49(1) in accordance with Section 49(2) number 2, to the sum of
a) den bei der Abwicklung zu absorbierenden Verlusten, die der Anforderung an die Verschuldungsquote der Abwicklungseinheit nach Artikel 92 Absatz 1 Buchstabe d der Verordnung (EU) Nr. 575/2013 auf konsolidierter Basis auf Ebene der Abwicklungsgruppe entsprechen, und	a) the losses absorbed in connection with the resolution, the requirement of the leverage ratio on the resolution unit pursuant to Article 92(1) letter d of Regulation (EU) No 575/2013 corresponding to the resolution unit on a consolidated basis, and
b) einem Rekapitalisierungsbetrag, der es der aus der Abwicklung hervorgehenden Abwicklungsgruppe ermöglicht, die Anforderung an die Verschuldungsquote nach Artikel 92 Absatz 1 Buchstabe d der Verordnung (EU) Nr. 575/2013 auf konsolidierter Basis auf Ebene der Abwicklungsgruppe nach Durchführung der bevorzugten Abwicklungsstrategie wieder zu erfüllen.	b) a recapitalization amount enabling the resolution group emerging from the resolution to again meet the requirement applicable to it for the leverage ratio pursuant to Article 92(1) letter d of Regulation (EU) No 575/2013 on a consolidated basis at the level of the resolution group once the preferred resolution strategy is implemented.
Für die Zwecke des § 49 Absatz 2 Nummer 1 wird die in § 49 Absatz 1 genannte Anforderung als der gemäß Satz 1 Nummer 1 berechnete Verlustabsorptions- und	For the purposes of Section 49(2) number 1, the requirement referred to in Section 49(1) as the loss absorption and recapitalization amount calculated pursuant to sentence 1 number 1,

Rekapitalisierungsbetrag geteilt durch den Gesamtrisikobetrag als Prozentwert ausgedrückt. Für die Zwecke des § 49 Absatz 2 Nummer 2 wird die in § 49 Absatz 1 genannte Anforderung als der gemäß Satz 1 Nummer 2 berechnete Betrag geteilt durch die Gesamtrisikopositionsmessgröße als Prozentwert ausgedrückt. Bei der Festlegung der individuellen Anforderung nach Satz 1 Nummer 2 berücksichtigt die Abwicklungsbehörde die Anforderungen nach § 7a Absatz 3 und 4 des Restrukturierungsfondsgesetzes.	divided by the total risk amount, shall be expressed as a percentage rate. For the purposes of Section 49(2) number 2, the requirement referred to in Section 49(1) as the amount calculated pursuant to sentence 1 number 2, divided by the total exposure measure, shall be expressed as a percentage rate. When determining the individual requirement pursuant to sentence 1 number 2, the resolution authority shall take the requirements pursuant to Section 7a(3) and 4 of the German Restructuring Fund Law into account.
(4) Bei der Festlegung der in Absatz 3 genannten Rekapitalisierungsbeträge verwendet die Abwicklungsbehörde wie folgt:	(4) When determining the recapitalization amounts pursuant to paragraph (3) the resolution authority employs the following:
1. sie verwendet die jüngsten gemeldeten Werte für den relevanten Gesamtrisikobetrag oder die relevante Gesamtrisikopositionsmessgröße für die Verschuldungsquote nach Anpassung an jegliche Änderungen infolge der im Abwicklungsplan vorgesehenen Abwicklungsmaßnahmen und	1. it employs the most recent values reported for the relevant total risk amount or the relevant total exposure measure for the leverage ratio following adjustment of any changes resulting from the resolution measures foreseen in the resolution plan and
2. sie passt nach Anhörung der Aufsichtsbehörde den Betrag, der den nach § 6c Absatz 1 des Kreditwesengesetzes bestehenden Anforderungen entspricht, nach unten oder oben an, um die nach Durchführung der bevorzugten Abwicklungsstrategie für die Abwicklungseinheit anzuwendende Anforderung zu bestimmen.	2. after hearing the supervisory authority it adjusts the amount corresponding to the requirements pursuant to Section 6c(1) of the German Banking Act downward or upward to determining the requirement to be employed after implementing the preferred resolution strategy for the resolution unit.
(4a) Die Abwicklungsbehörde kann die Anforderung nach Absatz 3 Satz 1 Nummer 1 Buchstabe b um eine Anforderung erhöhen, die notwendig ist, um sicherzustellen, dass das Unternehmen nach der Abwicklung für einen angemessenen Zeitraum, der maximal ein Jahr beträgt, in der Lage ist, ausreichendes Marktvertrauen in das Unternehmen aufrechtzuerhalten. Erhöht die Abwicklungsbehörde die Anforderung nach Absatz 4, so wird der Betrag der nach Anwendung der Abwicklungsinstrumente anzuwendenden kombinierten Kapitalpufferanforderung abzüglich des Betrages, der sich aus der Anforderung nach § 10i Absatz 1 Nummer 2 des Kreditwesengesetzes gleichgesetzt. Der Betrag gemäß Absatz 4 wird nach unten angepasst, wenn die Abwicklungsbehörde nach Anhörung der Aufsichtsbehörde feststellt, dass es umsetzbar und glaubhaft ist, dass ein geringerer	(4a) The resolution authority may increase the requirement pursuant to paragraph (3) sentence 1 number 1 letter b by a requirement necessary to assure that the entity after resolution for an appropriate period of a maximum of one year is in a position to maintain sufficient confidence of the market in the entity. If the resolution authority increases the requirement pursuant to paragraph 4, the amount following the employment of the resolution instruments shall be equated to the combined capital conservation buffer requirement to be employed less the amount that results, from the requirement pursuant to Section 10i(1) number 2 of the German Banking Act. The requirement referred to in sentence 4 shall be adjusted downward if, after hearing the supervisory authority, the resolution authority determines that it is implementable and credible that a lower amount suffices to assure market confidence and to assure both the continuation of critical

Betrag ausreicht, um das Marktvertrauen aufrechtzuerhalten und sowohl die Fortführung kritischer Funktionen des Instituts oder des gruppenangehörigen Unternehmens als auch seinen Zugang zu Finanzmitteln sicherzustellen, ohne dass nach Durchführung der Abwicklungsstrategie eine außerordentliche finanzielle Unterstützung aus öffentlichen Mitteln erforderlich wäre, die über die Beiträge aus den Abwicklungsfinanzierungsmechanismen nach § 3a Absatz 4 und § 7a Absatz 3 und 4 des Restrukturierungsfondsgesetzes hinausgeht. Dieser Betrag wird erhöht, wenn die Abwicklungsbehörde nach Anhörung der Aufsichtsbehörde feststellt, dass ein höherer Betrag notwendig ist, um für einen angemessenen Zeitraum, der nicht länger als ein Jahr ist, ein ausreichendes Marktvertrauen aufrechtzuerhalten und sowohl die Fortführung kritischer wirtschaftlicher Funktionen des Instituts oder des gruppenangehörigen Unternehmens als auch seinen Zugang zu Finanzmitteln sicherzustellen, ohne dass über die Beiträge aus den Abwicklungsfinanzierungsmechanismen nach § 3a Absatz 4 und § 7a Absatz 3 und 4 des Restrukturierungsfondsgesetzes hinaus eine außerordentliche finanzielle Unterstützung aus öffentlichen Mitteln erforderlich wäre.	economic functions of the institution or affiliated entity and also its access to financial means, without requiring, once the resolution strategy has been implemented, any extraordinary financial support from public funds exceeding the amounts of the resolution financing mechanisms pursuant to Section 3a(4) and Section 7a(3) and (4) of the German Restructuring Fund Law. This amount shall be increased if, after hearing the supervisory authority, the resolution authority determines that a higher amount is necessary in order to maintain sufficient market confidence for an appropriate period of No longer than one year and both the continuation of critical functions of the institution or the affiliated entity as well as its access to financial means, without requiring any extraordinary financial support from public funds exceeding the amounts of the resolution financing mechanisms pursuant to Section 3a(4) and Section 7a(3) and (4) of the German Restructuring Fund Law.
(5) Für Abwicklungseinheiten, die nicht den Anforderungen gemäß Artikel 92a der Verordnung (EU) Nr. 575/2013 unterliegen und die Teil einer Abwicklungsgruppe sind, bei der der Gesamtwert der Vermögenswerte über 100 Milliarden Euro liegt, entspricht die Höhe der in Absatz 3 genannten Anforderung mindestens 1. 13,5 Prozent, sofern gemäß § 49 Absatz 2 Nummer 1 berechnet, und 2. 5 Prozent, sofern gemäß § 49 Absatz 2 Nummer 2 berechnet. Abweichend von § 49b erfüllen Abwicklungseinheiten die Anforderung gemäß Satz 1 mit Eigenmitteln, nachrangigen berücksichtigungsfähigen Instrumenten oder mit Verbindlichkeiten im Sinne von § 49b Absatz 3. (6) Die Abwicklungsbehörde kann nach Anhörung der Aufsichtsbehörde entscheiden, die Anforderungen nach Absatz 5 auf eine Abwicklungseinheit anzuwenden, die den Anforderungen gemäß Artikel 92a der	(5) For resolution units that are not subject to the requirements pursuant to Article 92a of Regulation (EU) No 575/2013 and which belong to a resolution group with a total asset value exceeding EUR 100 billion, the amount of the requirement specified pursuant to paragraph (3) shall correspond to at least 1. 13.5 percent, to the extent of being calculated pursuant to Section 49(2) number 1, and 2. 5 percent, to the extent of being calculated pursuant to Section 49(2) number 2. Notwithstanding Section 49b, resolution units shall meet the requirement pursuant to sentence 1 with own funds, subordinate eligible instruments or with liabilities within the meaning of Section 49b(3). (6) The resolution authority may, after hearing the supervisory authority, decide not to employ the requirements pursuant to paragraph 5 on a resolution unit that is not subject to the requirements pursuant to Article 92a of

Verordnung (EU) Nr. 575/2013 nicht unterliegt und die Teil einer Abwicklungsgruppe ist, bei der der Gesamtwert der Vermögenswerte unter 100 Milliarden Euro liegt, und bei der die Abwicklungsbehörde zu dem Ergebnis kommt, dass sie bei einem Ausfall mit hinreichender Wahrscheinlichkeit ein Systemrisiko darstellt. Bei ihrer Entscheidung berücksichtigt die Abwicklungsbehörde die folgenden Kriterien:	Regulation (EU) No 575/2013 and belongs to a resolution group having a total asset value under EUR 100 billion, and for which the resolution authority concludes that it represents a system risk with sufficient likelihood in the event of its failure. In its decision the resolution authority considers the following criteria:
1. das Überwiegen von Einlagen und das Fehlen von Schuldtiteln im Refinanzierungsmodell,	1. the predominance of deposits and the absence of debt instruments in the refinancing model,
2. inwieweit der Zugang zu den Kapitalmärkten für berücksichtigungsfähige Verbindlichkeiten beschränkt ist und	2. the extent to which the access to the capital markets for eligible liabilities is limited and
3. inwieweit die Abwicklungseinheit auf den Rückgriff auf hartes Kernkapital angewiesen ist, um die Anforderung nach § 49e einzuhalten.	3. the extent to which the resolution unit relies on the recourse to Common Equity Tier 1 capital in order to comply with the requirement pursuant to Section 49e.
Liegt keine Entscheidung nach Satz 1 vor, so bleiben Entscheidungen nach § 49b Absatz 5 hiervon unberührt. Die Abwicklungsbehörde teilt dem Ausschuss Entscheidungen nach Satz 1 mit, sofern es sich um Abwicklungseinheiten handelt, für die der Ausschuss zuständig ist.	In the absence of a decision pursuant to sentence 1, the decisions pursuant to Section 49b(5) shall remain unaffected. The resolution authority shall inform the board of decisions pursuant to sentence 1 insofar as the board is responsible for the resolution units involved.
(7) Für Unternehmen, die selbst keine Abwicklungseinheiten sind, entspricht die in Absatz 2 Satz 1 genannte Anforderung	(7) For entities that are not resolution units themselves, the requirement referred to in paragraph (2) sentence 1 corresponds
1. für die Zwecke der Berechnung der Anforderung nach § 49 Absatz 1 nach Maßgabe von § 49 Absatz 2 Nummer 1 der Summe aus	1. for the purposes of calculating the requirement pursuant to Section 49(1) in accordance with Section 49(2) number 1, to the sum of
a) den zu absorbierenden Verlusten, die den Anforderungen an das Unternehmen nach Artikel 92 Absatz 1 Buchstabe c der Verordnung (EU) Nr. 575/2013 und § 6c Absatz 1 des Kreditwesengesetzes entsprechen, und	a) the losses to be absorbed, corresponding to the requirements on the entity pursuant to Article 92(1) letter c of Regulation (EU) No 575/2013 and Section 6c(1) of the German Banking Act , and
b) einem Rekapitalisierungsbetrag, der es dem Unternehmen ermöglicht, die für es geltende Anforderung an die Gesamtkapitalquote nach Artikel 92 Absatz 1 Buchstabe c der Verordnung (EU) Nr. 575/2013 und die Anforderung nach § 6c Absatz 1 des Kreditwesengesetzes nach Ausübung der Befugnis zur Herabschreibung oder Umwandlung von relevanten Kapitalinstrumenten und berücksichtigungsfähigen Verbindlichkeiten	b) a recapitalization amount enabling the entity to again fulfill the requirement of the leverage ratio pursuant to Article 92(1) letter d of Regulation (EU) No 575/2013 and the requirement pursuant to Section 6c (1) of the German Banking Act after exercising the power to write-down or convert the relevant capital instruments and eligible liabilities pursuant to Section 65(4) or following the resolution of the resolution group, and

gemäß § 65 Absatz 4 oder nach Abwicklung der Abwicklungsgruppe wieder zu erfüllen, und	
2. für die Zwecke der Berechnung der Anforderung nach § 49 Absatz 1 nach Maßgabe von § 49 Absatz 2 Nummer 2 der Summe aus	2. for the purposes of calculating the requirement pursuant to Section 49(1) in accordance with Section 49(2) number 2, to the sum of
a) den zu absorbierenden Verlusten, die der Anforderung an die Verschuldungsquote des Unternehmens nach Artikel 92 Absatz 1 Buchstabe d der Verordnung (EU) Nr. 575/2013 entsprechen, und	a) the losses to be absorbed, corresponding to the requirements on the entity's leverage ratio pursuant to Article 92(1) letter d of Regulation (EU) No 575/2013, and
b) einem Rekapitalisierungsbetrag, der es dem Unternehmen ermöglicht, die Anforderung an die Verschuldungsquote nach Artikel 92 Absatz 1 Buchstabe d der Verordnung (EU) Nr. 575/2013 nach Ausübung der Befugnis zur Herabschreibung oder Umwandlung von relevanten Kapitalinstrumenten und berücksichtigungsfähigen Verbindlichkeiten gemäß § 65 Absatz 4 oder nach Abwicklung der Abwicklungsgruppe wieder zu erfüllen.	b) a recapitalization amount enabling the entity to again fulfill the requirement of the leverage ratio pursuant to Article 92(1) letter d of Regulation (EU) No 575/2013 after exercising the power to write-down or convert the relevant capital instruments and eligible liabilities pursuant to Section 65(4) or following the resolution of the resolution group.
Für die Zwecke des § 49 Absatz 2 Nummer 1 wird die in § 49 Absatz 1 genannte Anforderung als der gemäß Satz 1 Nummer 1 berechnete Betrag geteilt durch den Gesamtrisikobetrag als Prozentwert ausgedrückt. Für die Zwecke des § 49 Absatz 2 Nummer 2 wird die in § 49 Absatz 1 genannte Anforderung als der gemäß Satz 1 Nummer 2 berechnete Betrag geteilt durch die Gesamtrisikopositionsmessgröße als Prozentwert ausgedrückt. Bei der Festlegung der individuellen Anforderung nach Satz 1 Nummer 2 berücksichtigt die Abwicklungsbehörde die Anforderungen nach § 7a Absatz 3 und 4 des Restrukturierungsfondsgesetzes.	For the purposes of Section 49(2) number 1, the requirement referred to in Section 49(1) as the amount calculated pursuant to sentence 1 number 1, divided by the total risk amount, shall be expressed as a percentage rate. For the purposes of Section 49(2) number 2, the requirement referred to in Section 49(1) as the amount calculated pursuant to sentence 1 number 2, divided by the total exposure measure, shall be expressed as a percentage rate. When determining the individual requirement pursuant to sentence 1 number 2, the resolution authority shall take the requirements pursuant to Section 7a(3) and 4 of the German Restructuring Fund Law into account.
(8) Bei der Festlegung der in Absatz 7 genannten Rekapitalisierungsbeträge hat die Abwicklungsbehörde	(8) When determining the recapitalization amounts specified in paragraph (7), the resolution authority
1. die jüngsten gemeldeten Werte für den relevanten Gesamtrisikobetrag oder die relevante Gesamtrisikomessgröße nach Anpassung an alle Änderungen infolge der im Abwicklungsplan vorgesehenen Maßnahmen zu verwenden und	1. shall employ the most recently reported values for the relevant total risk amount or the relevant total risk amount following adjustment to all changes due to the measures foreseen in the resolution plan and
2. nach Anhörung der Aufsichtsbehörde den Betrag, der der in § 6c Absatz 1 des	2. after hearing the supervisory authority, adjust the amount corresponding to the requirement in

Kreditwesengesetzes genannten Anforderung entspricht, nach unten oder oben anzupassen, um die Anforderung zu bestimmen, die nach Ausübung der Befugnis zur Herabschreibung oder Umwandlung von relevanten Kapitalinstrumenten und berücksichtigungsfähigen Verbindlichkeiten gemäß § 65 Absatz 4 oder nach Abwicklung der Abwicklungsgruppe für das entsprechende Unternehmen anzuwenden ist.	Section 6c(1) of the German Banking Act downward or upward in order to determine the requirement to be employed for the corresponding entity following the exercise of the power to write-down or convert the relevant capital instruments and eligible liabilities pursuant to Section 65(4) or following the resolution of the resolution group.
(9) Die Abwicklungsbehörde kann die Anforderung nach Absatz 7 Satz 1 Nummer 1 Buchstabe b um eine Anforderung erhöhen, die notwendig ist, um sicherzustellen, dass das Unternehmen nach Ausübung der Befugnis zur Herabschreibung oder Umwandlung von relevanten Kapitalinstrumenten und berücksichtigungsfähigen Verbindlichkeiten gemäß § 65 Absatz 4 für einen angemessenen Zeitraum, der nicht länger als ein Jahr ist, in der Lage ist, ausreichendes Marktvertrauen aufrechtzuerhalten. Erhöht die Abwicklungsbehörde die Anforderung nach Satz 1, so wird der Betrag, der nach Ausübung der Befugnis gemäß den §§ 65, 77 und 89 oder nach Abwicklung der Abwicklungsgruppe anzuwendenden kombinierten Kapitalpufferanforderung abzüglich des Betrages, der sich aus der Anforderung nach § 10i Absatz 1 Nummer 2 des Kreditwesengesetzes gleichgesetzt. Die in Satz 1 genannte Anforderung wird nach unten angepasst, wenn die Abwicklungsbehörde nach Anhörung der Aufsichtsbehörde feststellt, dass es umsetzbar und glaubhaft ist, dass ein geringerer Betrag ausreicht, um das Marktvertrauen sicherzustellen und sowohl die Fortführung kritischer wirtschaftlicher Funktionen des Instituts oder gruppenangehörigen Unternehmens als auch seinen Zugang zu Finanzmitteln sicherzustellen, ohne dass eine außerordentliche finanzielle Unterstützung aus öffentlichen Mitteln erforderlich wäre, die über die Beiträge aus den Abwicklungsfinanzierungsmechanismen nach § 3a Absatz 2 und § 7a Absatz 3 und 4 des Restrukturierungsfondsgesetzes hinausgeht, nachdem die Ausübung der Befugnis nach den §§ 65, 77 Absatz 2 und § 89 oder nachdem die Abwicklung der Abwicklungsgruppe erfolgt ist. Dieser Betrag wird erhöht, wenn die Abwicklungsbehörde nach Anhörung der Aufsichtsbehörde feststellt, dass ein höherer Betrag notwendig ist, um für einen	(9) The resolution authority may increase the requirement pursuant to paragraph (7) sentence 1 number 1 letter b by a requirement necessary to assure that, following the exercise of the power to write-down or convert the relevant capital instruments and eligible liabilities pursuant to Section 65(4), the entity is in a position to maintain sufficient market confidence in the entity for an appropriate period of No longer than one year. If the resolution authority increases the requirement pursuant to sentence 1, once the power has been exercised pursuant to Sections 65, 77 and 89 or after the resolution of the resolution group, the amount shall be equated to the combined capital conservation buffer requirement to be employed less the amount that results, from the requirement pursuant to Section 10i(1) number 2 of the German Banking Act. The requirement specified in sentence 1 shall be adjusted downward if the resolution authority, after hearing the supervisory authority, determines that it is implementable and credible that a lower amount suffices to assure market confidence and to assure both the continuation of critical economic functions of the institution or affiliated entity and also its access to financial means, without requiring any extraordinary financial support from public funds exceeding the amounts of the resolution financing mechanisms pursuant to Section 3a(2) and Section 7a(3) and (4) of the German Restructuring Fund Law, once the power has been exercised pursuant to Sections 65, 77(2) and Section 89 or after the resolution of the resolution group. This amount shall be increased if the resolution authority, after hearing the supervisory authority, determines that a higher amount is necessary in order to maintain sufficient market confidence for an appropriate period of No longer than one year, and both the continuation of critical economic functions of the institution or affiliated entity as well as its access to financial means, without

angemessenen Zeitraum, der nicht länger als ein Jahr ist, ein ausreichendes Marktvertrauen aufrechtzuerhalten und sowohl die Fortführung kritischer Funktionen des Instituts oder gruppenangehörigen Unternehmens als auch seinen Zugang zu Finanzmitteln sicherzustellen, ohne dass über die Beiträge aus den Abwicklungsfinanzierungsmechanismen gemäß § 3a Absatz 2 und § 7a Absatz 3 und 4 des Restrukturierungsfondsgesetzes hinaus eine außerordentliche finanzielle Unterstützung aus öffentlichen Mitteln erforderlich wäre.	requiring any extraordinary financial support from public funds exceeding the amounts of the resolution financing mechanisms pursuant to Section 3a(4) and Section 7a(3) and (4) of the German Restructuring Fund Law.
(10) Geht die Abwicklungsbehörde davon aus, dass bestimmte Kategorien berücksichtigungsfähiger Verbindlichkeiten mit hinreichender Wahrscheinlichkeit gemäß § 92 Absatz 1 vollständig oder teilweise vom Instrument der Gläubigerbeteiligung ausgeschlossen werden oder im Rahmen einer partiellen Übertragung vollständig auf einen übernehmenden Rechtsträger übertragen werden könnten, so wird die in § 49 Absatz 1 genannte Anforderung mit Eigenmitteln oder anderen berücksichtigungsfähigen Verbindlichkeiten erfüllt, die ausreichen, um	(10) If the resolution authority assumes that certain categories of eligible liabilities shall be excluded with sufficient likelihood pursuant to Section 92(1) from the instrument of creditor participation in full or in part or in the context of a partial transfer could be transferred in full to an acquiring legal entity, the requirement specified in Section 49(1) shall thus be met with own funds or other eligible liabilities, which suffice to
1. die gemäß § 92 Absatz 1 ausgeschlossenen Verbindlichkeiten zu decken und	1. cover the excluded liabilities pursuant to Section 92(1) and
2. die Erfüllung der in Absatz 2 genannten Voraussetzungen zu gewährleisten.	2. warrant the fulfillment of the criteria specified in paragraph (2).
(11) Eine Entscheidung der Abwicklungsbehörde, eine Mindestanforderung an Eigenmittel und berücksichtigungsfähige Verbindlichkeiten vorzuschreiben, umfasst eine entsprechende Begründung samt einer vollständigen Bewertung der in den Absätzen 2 bis 8 genannten Elemente und wird unverzüglich durch die Abwicklungsbehörde überprüft, um allen Änderungen der Höhe einer nach § 6c Absatz 1 des Kreditwesengesetzes festgesetzten Anforderung Rechnung zu tragen.	(11) A decision by the resolution authority to mandate a minimum requirement of own funds and eligible liabilities shall include a corresponding reasoned opinion including a full assessment of the elements referred to in paragraphs (2) to (8), and shall be promptly reviewed by the resolution authority so that all changes are reflected in the amount of any requirement specified pursuant to Section 6c(1) of the German Banking Act.
(12) Für die Zwecke der Absätze 3 und 7 sind für die Kapitalanforderungen die Übergangsbestimmungen maßgeblich, die in Teil 10 Titel I Kapitel 1, 2 und 4 der Verordnung (EU) Nr. 575/2013 und in den nationalen Rechtsvorschriften zur Ausübung der Optionen, die den Aufsichtsbehörden im Rahmen dieser Verordnung zur Verfügung stehen, festgelegt sind.	(12) For the purposes of paragraphs (3) and (7), the preliminary provisions for the capital requirements are definitive that are established in Part 10 Title I Chapter 1, 2 and 4 of Regulation (EU) No 575/2013 and in the national legal provisions for exercising the options available to the supervisory authority in the context of this regulation.

§ 49d SAG	**Section 49d SAG**
(1) Die in § 49 Absatz 1 genannte Anforderung an eine Abwicklungseinheit, bei der es sich um ein global systemrelevantes Institut oder einen Teil eines global systemrelevanten Instituts handelt, besteht aus	(1) The requirement in Section 49(1) of a resolution unit that is a global systemically relevant institution or belongs to a global system-relevant institution is comprised of
1. den in den Artikeln 92a und 494 der Verordnung (EU) Nr. 575/2013 genannten Anforderungen und	1. the requirements specified in Articles 92a and 494 of Regulation (EU) No 575/2013 and
2. der zusätzlichen Anforderung an Eigenmittel und berücksichtigungsfähige Verbindlichkeiten, die von der Abwicklungsbehörde gemäß Absatz 3 für dieses Unternehmen festgelegt wurde.	2. the additional requirement of own funds and eligible liabilities established by the resolution authority pursuant to paragraph (3) for this entity.
(2) Die in § 49 Absatz 1 genannte Anforderung an ein in der Union ansässiges bedeutendes Tochterunternehmen eines global systemrelevanten Nicht-EU-Instituts besteht aus	(2) The requirement specified in Section 49(1) of a significant subsidiary of a global system-relevant non-EU institution established in the Union is comprised of
1. den in den Artikeln 92b und 494 der Verordnung (EU) Nr. 575/2013 genannten Anforderungen und	1. the requirements specified in the Articles 92b and 494 of Regulation (EU) No 575/2013 and
2. der zusätzlichen Anforderung an Eigenmittel und berücksichtigungsfähige Verbindlichkeiten, die von der Abwicklungsbehörde für dieses bedeutende Tochterunternehmen gemäß Absatz 3 festgelegt wurde und mit Eigenmitteln und Verbindlichkeiten zu erfüllen ist, die den in den §§ 49f und 159 Absatz 2 genannten Bedingungen genügen.	2. the additional requirement of own funds and eligible liabilities established by the resolution authority for such significant subsidiary pursuant to paragraph (3) and to be met with own funds and liabilities satisfying the conditions specified in the Sections 49f and 159(2).
(3) Die Abwicklungsbehörde legt eine zusätzliche Anforderung an Eigenmittel und berücksichtigungsfähige Verbindlichkeiten gemäß Absatz 1 Nummer 2 und Absatz 2 Nummer 2 fest, wenn die in Absatz 1 Nummer 1 oder Absatz 2 Nummer 1 genannte Anforderung nicht ausreicht, um die in § 49c genannten Bedingungen zu erfüllen. Die Festlegung erfolgt in der Höhe, die erforderlich ist, um die Erfüllung der Bedingungen nach § 49c sicherzustellen.	(3) The resolution authority established an additional requirement of own funds and eligible liabilities pursuant to paragraph (1) number 2 and paragraph (2) number 2 fest, if the requirement specified in paragraph (1) number 1 or paragraph (2) number 1 does not suffice to satisfy the conditions specified in Section 49c. The amount shall be established that is necessary to fulfill the conditions pursuant to Section 49c.
(4) Besteht die Gruppe des global systemrelevanten Instituts aus mehreren Abwicklungseinheiten, berechnet die Abwicklungsbehörde den in Absatz 3 genannten Betrag für die Zwecke des § 50 Absatz 2 für jede Abwicklungseinheit und für das	(4) If the group of a global system-relevant institution consists of several resolution units, the resolution authority shall calculate the amount pursuant to paragraph (3) for the purposes of Section 50(2) for each resolution unit and for the parent entity in the Union as if it

Mutterunternehmen in der Union, als wäre es die einzige Abwicklungseinheit des global systemrelevanten Instituts.	were the only resolution unit of the global system-relevant institution.
(5) Zusammen mit der Entscheidung der Abwicklungsbehörde, gemäß Absatz 1 Nummer 2 oder Absatz 2 Nummer 2 eine zusätzliche Anforderung an Eigenmittel und berücksichtigungsfähige Verbindlichkeiten vorzuschreiben, ist eine Begründung einschließlich einer vollständigen Bewertung der in Absatz 3 genannten Elemente vorzulegen. Die Entscheidung wird unverzüglich durch die Abwicklungsbehörde überprüft, um Änderungen in Bezug auf die für die Abwicklungsgruppe oder das bedeutende Unions-Tochterunternehmen eines global systemrelevanten Nicht-EU-Instituts geltende Höhe einer nach § 6c Absatz 1 des Kreditwesengesetzes festgesetzten Anforderung Rechnung zu tragen.	(5) Together with the decision by the resolution authority to mandate an additional requirement of own funds and eligible liabilities pursuant to paragraph (1) number 2 or paragraph (2) number 2, a reasoned opinion shall be submitted, including a full assessment of the elements pursuant to paragraph (3). The decision shall be promptly reviewed by the resolution authority in order to take into account any changes relating to the applicable amount pursuant to Section 6c(1) of the German Banking Act established by the requirement for the resolution group or the significant Union-subsidiary of a global system-relevant non-EU institution.
§ 62 Abs. 1 SAG	**Section 62(1) SAG**
(1) Die Abwicklungsvoraussetzungen in Bezug auf ein Institut liegen vor, wenn	(1) An institution fulfills the conditions for resolution if
1. das Institut in seinem Bestand gefährdet ist,	1. the institution's existence is threatened,
2. die Durchführung einer Abwicklungsmaßnahme zur Erreichung eines oder mehrerer Abwicklungsziele erforderlich und verhältnismäßig ist und wenn dies bei einer Liquidation des Instituts im Wege eines regulären Insolvenzverfahrens nicht im selben Umfang der Fall wäre [und]	2. implementing a resolution measure is necessary and appropriate to achieve one or more resolution objectives, and if in the event of a liquidation of the institution by way of a regular insolvency proceeding this would not be the case to the same extent [and]
3. die Bestandsgefährdung sich innerhalb des zur Verfügung stehenden Zeitrahmens nicht ebenso sicher durch andere Maßnahmen als durch Abwicklungsmaßnahmen beseitigen lässt, wobei als andere Maßnahmen in Betracht kommen:	3. The existential threat does not allow itself to be remedied within the period available equally as reliably as it would by taking measures other than resolution measures, where other measures that may be considered are:
a) Maßnahmen des privaten Sektors einschließlich Maßnahmen eines Institutssicherungssystems,	a) measures by the private sector including measures by an institutional guarantee system,

b) Maßnahmen der Aufsichtsbehörde, insbesondere Maßnahmen des frühzeitigen Eingreifens gemäß den §§ 36 bis 38 oder Maßnahmen gemäß den §§ 45 bis 46 des Kreditwesengesetzes oder c) Herabschreibung oder Umwandlung relevanter Kapitalinstrumente und berücksichtigungsfähiger Verbindlichkeiten gemäß § 65 Absatz 4.	b) measures by the supervisory authority, in particular early intervention measures pursuant to Sections 36 through 38 or measures pursuant to Sections 45 through 46 of the German Banking Act or c) writing down or converting relevant capital instruments and eligible liabilities pursuant to Section 65(4).
§ 62 Abs. 2 S. 1 SAG	**Section 62(2) sentence 1 SAG**
(2) Die Aufsichtsbehörde stellt nach Anhörung der Abwicklungsbehörde oder die Abwicklungsbehörde stellt nach Anhörung der Aufsichtsbehörde die Bestandsgefährdung des Instituts fest.	(2) The supervisory authority established, after hearing the resolution authority, or the resolution authority established, after hearing the supervisory authority, the threat to the existence of the institution.
§ 67 Abs. 1 SAG	**Section 67(1) SAG**
(1) Abwicklungsziele sind 1. die Sicherstellung der Kontinuität kritischer Funktionen; 2. die Vermeidung erheblicher negativer Auswirkungen auf die Finanzstabilität vor allem durch die Verhinderung einer Ansteckung, beispielsweise von Finanzmarktinfrastrukturen, und durch die Erhaltung der Marktdisziplin; 3. der Schutz öffentlicher Mittel durch geringere Inanspruchnahme außerordentlicher finanzieller Unterstützung aus öffentlichen Mitteln; 4. der Schutz der unter das Einlagensicherungsgesetz fallenden Einleger und der unter das Anlegerentschädigungsgesetz fallenden Anleger; 5. der Schutz der Gelder und Vermögenswerte der Kunden.	(1) The objectives of resolution are 1. the assurance of the continuity of critical functions; 2. the avoidance of substantial negative effects on financial stability above all due to the reduction of a contagion, for example, of financial market infrastructures, and due to the maintenance of market discipline; 3. the protection of public funds by means of lower utilization of extraordinary financial support from public funds; 4. the protection of depositors under the German Deposit Protection Act and the investors under the German Investor Compensation Act; 5. the protection of the funds and assets of customers.
§ 138 Abs. 1 SAG	**Section 138(1) SAG**
(1) Im Fall einer Bestandsgefährdung oder einer drohenden Bestandsgefährdung eines Instituts oder eines gruppenangehörigen Unternehmens	(1) In the event of a threat or imminent threat to the existence of an institution or an entity belonging to the group, the management of the

informiert die Geschäftsleitung des Instituts oder des übergeordneten Unternehmens der Gruppe sowie des bestandsgefährdeten gruppenangehörigen Unternehmens unverzüglich die Aufsichtsbehörde und die Abwicklungsbehörde.	institution, or the superior entity of the group and the entity belonging to the group whose existence is threatened, shall promptly inform the supervisory authority and the resolution authority.

Memorandum Regarding Comparability of the German Capital Framework and SEC Rule 18a-1

I. Introduction

In making a substituted compliance determination pursuant to Rule 3a71-6 under the Exchange Act in regards to the capital requirements under Section 15F(e) and Rule 18a-1, the SEC intends to consider whether the capital requirements of the foreign regulatory system "are designed to help ensure the safety and soundness of registrants in a manner that is comparable" to Section 15F(e) and Rule 18a-1 thereunder.[1] The SEC has explained that it will "endeavor to take a holistic approach in considering whether regulatory requirements are comparable for purposes of substituted compliance, and will focus on the comparability of regulatory outcomes rather than predicating substituted compliance on requirement-by-requirement similarity."[2] In guidance to non-U.S. SBSDs (the "Staff Guidance"), the SEC staff request that applications for substituted compliance address the general comparability of the foreign regulatory regime's requirements and analogous requirements under the Exchange Act, including any general differences between the two sets of requirements and the consistency of the two sets' objectives,[3] as well as certain specific questions relating to particular rule areas.

In response to the Staff Guidance, this application is organized as follows. In Section II, we provide an overview addressing general comparability of the German Capital Framework's requirements and the capital requirements of Section 15F(e) and Rule 18a-1, including any general differences between the two sets of requirements and the consistency of the two sets' objectives. In Section III, we address the following specific questions set forth by the Staff Guidance:

A. How does the foreign jurisdiction establish minimum capital requirements?

B. What are the legal consequences if a firm falls below the minimum capital requirements? Does the foreign jurisdiction require that a firm cease conducting business if its capital falls below the required minimum?

C. How effective is the level of capital required of applicable nonbank firms under the foreign jurisdiction's approach with respect to helping ensure that the liquidation of a firm will not result in excessive delay in repayment of the firm's obligations to SBS customers and creditors, therefore assuring the continued market liquidity?

D. To what extent do the required capital levels for nonbank firms in the foreign jurisdiction reflect regulatory concerns that differ from the concerns that underpin Exchange Act Rule 18a-1? Do any differences in the regulatory concerns that underpin the jurisdiction's required capital levels lead to different regulatory outcomes from those attained under the Exchange Act? If so, are there any conditions that could be applied to

[1] 17 C.F.R. 240.3a71-6(d)(4)(i).

[2] Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants, 81 Fed. Reg. 29960, 30078 (May 13, 2016).

[3] Staff Guidance – Information Regarding Foreign Regulatory Requirements for Substituted Compliance Applications 9 (2019).

substituted compliance to promote comparable regulatory outcomes, notwithstanding differences in the underlying concerns?

For the reasons set forth below, the German Capital Framework is aimed at ensuring the safety and soundness of German nonbank SBSDs in a manner comparable to the capital requirements of Section 15F(e) and Rule 18a-1.

II. Overview

Rule 18a-1. Rule 18a-1 mirrors the net liquid assets approach that Exchange Act Rule 15c3-1 applies to securities broker-dealers, requiring a nonbank SBSD to compute its "net capital" requirement by determining its net worth according to U.S. generally accepted accounting principles and then subtracting certain illiquid assets, adding certain subordinated liabilities and making specified additional adjustments. These additional adjustments include certain standardized or model-based market and credit risk deductions, as well as penalty charges for operational risks. The SBSD must maintain net capital at the greater of $20 million or 2 percent of its risk margin amount. The risk margin amount equals (i) the sum of the total initial margin ("IM") required to be maintained by the SBSD at each clearing agency with respect to the SBS that the firm clears for its SBS customers and (ii) the total IM calculated by the SBSD with respect to non-cleared SBS pursuant to Exchange Act Rule 18a-3. SBSDs permitted to use models to compute market or credit risk deductions are required also to maintain tentative net capital of $100 million.

The German Capital Framework. The Capital Requirements Regulation (575/2013) (as amended by CRR II (as defined below), "CRR") and its related legislation, the Capital Requirements Directive IV (2013/36/EU) ("CRD IV", and as amended by CRD V, "CRD"), include the prudential capital requirements applicable to both banks and "investment firms,"[4] such as German nonbank SBSDs. Certain investment firms benefit from a simplified regime, in particular when they are not authorized to provide certain services, including dealing on own account, underwriting of financial instruments or placing of financial instruments on a firm commitment basis. However, this regime does not apply to the German nonbank SBSDs that are the subject of this application. CRR and CRD IV impose mandatory capital and liquidity requirements that address market, credit, counterparty and liquidity risks. On May 20, 2019, the EU passed the Capital Requirements Regulation II (2019/876) ("CRR II") and the Capital Requirements Directive V (2019/878/EU) ("CRD V"), which further refine and implement Basel III standards by amending sections of CRR and CRD IV related to liquidity, large exposures and market and counterparty credit risk, amongst others.[5] In addition, on December 25, 2019, the Investment Firms Regulation (2019/2033) ("IFR") and the Investment Firms Directive (2019/2034/EU) ("IFD") went into effect. This set of legislation will tailor the existing prudential rules under the German Capital Framework to investment firms based on their size and complexity. The substantive requirements under the IFR will apply beginning on June 26, 2021,

[4] "Investment firm" is defined under CRR, Article 4(2), as any legal person whose regular occupation or business is the provision of one or more investment services to third parties and/or the performance of one or more investment activities on a professional basis, and which is subject to the requirements imposed by the Markets in Financial Instruments Directive (2014/65/EU) ("MiFID").

[5] The majority of the amendments contained in the CRR II will apply from June 2021, although certain measures (including total loss-absorbing capacity ("TLAC") requirements for global systemically important institutions ("G-SIIs"), the European equivalent for global systemically important banks ("GSIBs)) apply since June 27, 2019 when the legislation entered into force, and other measures will apply from December 28, 2020 (including changes to the rules on prudential consolidation). Germany adopted and on December 14, 2020 published the Risk Reduction Act (*Risikoreduzierungsgesetz*) to implement CRD V, most of the relevant changes became effective on December 28, 2020.

and will require large investment firms with €30 billion in assets and above and which engage in dealing on own account, underwriting of financial instruments or placing of financial instruments on a firm commitment basis to be re-authorized as credit institutions by the European Central Bank.[6] Such credit institutions will continue to be subject to the capital requirements under CRR and CRD,[7] and will then be supervised by the European Central Bank, together with competent national authorities.[8]

The German Capital Framework requires an investment firm to hold an initial minimum capital depending on the activities it carries out. Under the German Capital Framework, an investment firm carrying out, *inter alia*, own account trading in financial instruments to hold a minimum capital of at least €730,000.[9] In addition, the German Capital Framework requires an investment firm to hold equity and loss-absorbing liabilities, composed primarily of common equity, cash reserves and perpetual or long-term subordinated debt instruments, equal to at least 8 percent of the sum of its risk-weighted assets.[10] On top thereof, an investment firm must maintain certain capital buffers above the minimum 8 percent capital level composed of Common Equity Tier 1 capital instruments.[11] These minimum levels set by the Pillar I capital requirements may be supplemented by Pillar II requirements. Broadly, the Pillar II regime requires an assessment of an investment firm's capital needs by reference to its risks, to be conducted by the investment firm itself and, separately, its prudential regulator. Critically, this Pillar II assessment enables the regulator to exercise supervisory powers to increase an investment firm's capital requirements above the Pillar I minimum capital requirements and capital buffers. Furthermore, resolution authorities also require investment firms to satisfy a minimum requirement for own funds and eligible liabilities[12] ("MREL").[13] Separately, CRR or the

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[6] IFD, Article 62, introducing an Article 8a into CRD.

[7] IFR, Recital 39.

[8] IFR, Recital 39. IFR, Article 62, amending Article 4.1.1) CRR and Regulation 1024/2013 of October 15, 2013, Article 6.4.

[9] Section 33(1) sentence 1 c) of the German Banking Act (*Kreditwesengesetz*).

[10] See CRR, Articles 26, 28, 50–52, 61–63 and 92.

[11] E.g., CRD, Article 128, paragraphs 2, 3 and 4 (implemented into German law by Section 10b of the German Banking Act), Article 129 (implemented into German law by Section 10c of the German Banking Act), Article 130 (implemented into German law by Section 10d of the German Banking Act), Article 131, (implemented into German law by Sections 10f, 10g and 10h of the German Banking Act), and Article 133 (implemented into German law by Sections 10e and 10h of the German Banking Act).

[12] Eligible liabilities include, among others, instruments that are issued and fully paid up with remaining maturities of at least a year. Bank Recovery and Resolution Directive (2014/59/EU) ("BRRD"), Article 45(4) (implemented into German law by Section 49(2) of the German Recovery and Resolution Act (*Sanierungs- und Abwicklungsgesetz*)). The respective rules are tightened and refined under Article 1(17) of the Bank Recovery and Resolution Directive II (2019/879/EU) ("BRRD II"), which inserted BRRD, Article 45b. In addition, the instruments cannot arise from a derivative, be owed to, secured or guaranteed by the German nonbank SBSD itself, and the German nonbank SBSD must not have either directly or indirectly funded its purchase, BRRD, Article 45b. Under BRRD II, the inclusion of derivatives will be possible if certain requirements are met. On June 7, 2019, the EU published the BRRD II which, among other things, amended the BRRD regarding the loss-absorbing and recapitalization capacity of credit institutions and investment firms, namely the institution-specific add-on for G-SIIs and the institution-specific requirement for non-G-SIIs, referred to as MREL, through targeted amendments. Germany adopted and on December 14, 2020 published the Risk Reduction Act to implement BRRD II, most of the relevant changes became effective on December 28, 2020.

[13] CRR II imposes an additional supplemental standard of TLAC and requires G-SIIs to maintain a risk-based ratio of capital and MREL of 18 percent and a non-risk-based ratio of capital and MREL of 6.75 percent against the firm's total calculated risk exposure (until December 31, 2021, 16 percent of total risk

German Banking Act (*Kreditwesgengesetz*), as the case may be, impose liquidity requirements designed to ensure that investment firms can meet both short- and long-term obligations.

General Comparability. Like Rule 18a-1, the German Capital Framework is aimed at ensuring that a German nonbank SBSD maintains sufficiently liquid and high quality assets to meet its obligations to customers, counterparties and other creditors if the firm were to experience financial distress. Especially for larger German nonbank SBSDs with approval to calculate market and credit risk using internal models, both Rule 18a-1 and the German Capital Framework permit firms to apply risk-based market charges that are consistent with the value-at-risk ("VaR") specifications set forth in Basel II standards.[14] In addition, both Rule 18a-1 and the German Capital Framework permit firms with model approval to apply model-based credit risk charges to their derivatives counterparties.[15] For firms without model approval, both Rule 18a-1 and the German Capital Framework provide for standardized approaches for market and credit risk charges and deductions, depending on the asset or exposure.[16] Both rule sets also impose operational risk capital requirements.[17]

The minimum capital levels required by the German Capital Framework are robust and comparable to the minimum levels required by Rule 18a-1. In particular, taking into account applicable capital buffer requirements, German nonbank SBSDs generally must hold own funds equal to at least 10.5 percent of their total risk exposure amounts (composed of market, credit, settlement, credit valuation adjustment, and operational risk requirements),[18] which

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exposure and 6 percent of the leverage ratio exposure measure). CRR II, Article 92a(1). In addition, the competent authorities have the ability to impose MREL requirements on G-SIIs that exceed the statutory minimum requirements. German nonbank SBSDs that are subsidiaries of U.S. GSIBs will be required to maintain MREL equal to 90 percent of the foregoing as applied to their U.S. parent at all times. CRR II, Article 92b(1).

[14] Compare 17 CFR § 240.18a-1(d)(1), (9)(i)–(ii), (e)(1), with CRR, Articles 143(1) and 363. See also Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital and Segregation Requirements for Broker-Dealers, 84 Fed. Reg. 43872, 44038 n.1302 (August 22, 2019) ("Capital Final Rule Release") (noting the use of internal models to compute market risk charges is based on the capital rules for U.S. banking institutions which are, in turn, based on the Basel II requirements).

[15] Compare 17 CFR § 240.18a-1(d)(1), (9)(i)–(ii), (e)(2), with CRR, Article 283(1). See also Capital Final Rule Release, 84 Fed. Reg. at 44038 (noting that the final rule's approach to credit risk charges for SBS counterparties is generally consistent with the approach for banking institutions, which are based on the Basel Accords). For OTC derivatives, credit valuation adjustment requirements also apply under the German Capital Framework, but not Rule 18a-1. CRR II will remove the option that an investment firm with model approval may calculate counterparty credit risk using internal models when calculating large exposures. CRR II, Article 1(93) amending CRR, Article 390(4). Rather, CRR II replaces the existing standardized approaches and models approaches with the standardized approach to counterparty credit risk ("SA-CCR") in line with the Basel framework. SA-CCR is intended to provide a better measure of counterparty risk as opposed to the existing standardized approaches by reflecting netting, hedging and collateral benefits, but it generally is a more conservative measurement of credit risk than internal models-based approaches.

[16] See CRR, Articles 107, 111 et seqq. (Credit risk); CRR, Articles 325 et seqq.

[17] See CRR, Articles 312 et seqq..

[18] See CRR, Articles 92 (1) providing for a total capital ratio of 8 % (comprising 4.5 % of Common Equity Tier 1 capital and 6 % of Tier 1 capital). On top a capital conversation buffer of 2.5 % applies, cf. Article 129 of Directive 2013/36/EU of 26 June 2013, transposed into German law by Section 10c(1) of the German Banking Act. Lighter capital and liquidity requirements and simplified methods for the calculation of total risk exposure amounts apply under CRR to investment firms and groups of investment firms with limited authorization to provide investment services, including those that are not authorized to carry

may be compared in some respects to the sum of the 2 percent risk margin amount requirement and market and credit risk charges applicable under Rule 18a-1. German nonbank SBSDs are also required to calculate and report a leverage ratio of Tier 1 capital divided by their total exposures and, from June 2021, they will be required to comply with a leverage ratio requirement of 3 percent. See CRR, Articles 92(1)(d).

The German Capital Framework (including, as the case may be, Section 11 of the German Banking Act)[19] also imposes liquidity requirements on German nonbank SBSDs. This approach differs from Rule 18a-1, which in lieu of a specific liquidity requirement requires nonbank SBSDs to deduct from their net capital 100 percent of the carrying value for unsecured receivables (except that an SBSD with credit risk model approval may instead apply a credit risk weighted charge for receivables to certain derivatives counterparties) and other assets that cannot readily be converted into cash, as well as securities that have no ready market.[20] Conversely, the German Capital Framework imposes separate liquidity buffers and "stable funding" requirements that ensure German nonbank SBSDs can cover both long-term obligations and short-term payment obligations under stressed conditions for thirty days.[21]

In addition, liquidity risks are generally less significant to German nonbank SBSDs than standalone U.S. SBSDs:

Bank-Style Resolution Regimes. German nonbank SBSDs and other large investment firms are subject to a bank-style resolution regime under the BRRD. The existence of resolution powers permits the relevant resolution authorities to take action well in advance of resolution in order to preserve the continuity of critical services and reduce the impact of an investment firm's failure on financial stability, including through the orderly winding down of activities or restructuring supported by the investment firm's own funds. Accordingly, the focus of the EU resolution regime is not the liquidation of the investment firm. Also, to the extent a German

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out dealing on own account, underwriting of financial instruments or placing of financial instruments on a firm commitment basis. These lighter requirements do not apply to the German nonbank SBSDs that are the subject of this application.

[19] Pursuant to Section 2(9d) of the German Banking Act, the liquidity requirements pursuant to CRR, Articles 411 through 428 do not apply to German investment firms within the meaning of the CRR. Instead, Section 11 of the German Banking Act (as supplemented by the German Liquidity Regulation (*Liquiditätsverordnung*) generally requires investment firms to invest their funds so as to maintain adequate liquidity at all times. The German Liquidity Regulation provides for minimum liquidity requirements based upon a comparison of the remaining terms of certain assets and liabilities. It requires maintenance of a ratio (*Liquiditätskennzahl* or "liquidity ratio") of at least one of liquid assets to liquidity reductions expected during the month following the date on which the ratio is determined. The German Liquidity Regulation also allows investment firms subject to it to use their own methodology and procedures to measure and manage liquidity risk if the BaFin has approved such methodology and procedures. The liquidity ratio (and estimated liquidity ratios for the next eleven months) must be reported to the Bundesbank on a monthly basis. The BaFin may impose on individual investment firms liquidity requirements which are more stringent than the general statutory requirements if such firm's continuous liquidity would otherwise not be ensured. From their re-authorization by the ECB as credit institutions, German nonbank SBSD would be subject to the CRR liquidity requirements, and the national liquidity requirements will no longer apply to them. As discussed below, investment firms may under certain conditions obtain a waiver from applying the German liquidity requirements at a solo level if, among other things, they apply the CRR liquidity requirements.

[20] 17 CFR § 240.18a-1(c)(1)(iv).

[21] CRR, Article 413, establishes a general requirement that firms ensure that long-term obligations are adequately met with stable funding requirements. The Net Stable Funding Ratio ("NSFR"), introduced by Basel III, will become applicable to German nonbank SBSDs as of June 2021.

nonbank SBSD relies on the exemption from SEC segregation requirements under Exchange Act Rule 18a-4(f), it will not be subject to liquidation as a stockbroker under the U.S. Bankruptcy Code.

Minimal Risk to U.S. Customer Property. U.S. customer property should be at minimal risk if a German nonbank SBSD were to experience financial distress. Specifically, a German nonbank SBSD is required to segregate IM from the firm's assets by either placing it with a third-party holder or custodian or via other legally binding arrangements, making the IM remote in the case of the firm's default or insolvency.[22] As a result, U.S. customer property placed with the German nonbank SBSD to margin SBS transactions should be protected in the event the German nonbank SBSD experiences financial difficulties, enters resolution proceedings or is liquidated.

III. Responses to the Staff's Specific Questions

A. How does Germany establish minimum capital requirements applicable to SBSDs?

1. Measurement of Assets and Total Risk Exposure

Consistent with the Basel framework, German nonbank SBSDs are subject to bank-like capital requirements that require a firm to hold sufficient amounts of own funds, composed of Common Equity Tier 1, Tier 1 and Tier 2 capital instruments subject to certain capital deductions (referred to as Pillar I of the Basel framework).[23] The amount of own funds required to be held is determined by calculating the firm's total risk exposure, which requires the firm to risk weight its assets and exposures using specified standardized weights or approved internal model-based methodologies.[24] The categories of risk charges include:[25]

- credit and dilution risk, excluding risk-weighted exposure amounts from the trading book business of the firm;
- position risk (*i.e.*, market risk) and certain large exposures in the trading book;
- foreign-exchange risk, settlement risk and commodities risk;

[22] European Market Infrastructure Regulation Margin RTS (EU) (2016/2251) ("EMIR Margin RTS"), Articles 19(1)(d)–(e), (3) and (8). While not specifically required to be segregated from the investment firm's assets, counterparties may elect for variation margin ("VM") to also be segregated and placed with a third-party custodian. See EMIR Margin RTS, Article 3(b) (stating that the "exchange of collateral agreement" must address "segregation arrangements").

[23] CRR, Article 92(1)-(2).

[24] With regulator permission, investment firms may use internal models to calculate credit, dilution and counterparty risk, CRR, Article 143, certain counterparty credit risk exposure, CRR, Article 283, operational risk, CRR, Article 312(2), market risk, CRR, Article 363, and credit valuation adjustment risk, CRR, Article 383. The permission to use, and continue using, internal models is subject to strict criteria and supervisory oversight by the regulators.

[25] CRR, Article 92(3).

- credit valuation adjustment risk of OTC derivative instruments, other than credit derivatives recognized to reduce risk-weighted exposure amounts for credit risk;

- operational risk; and

- counterparty risk arising from the trading book business of the investment firm for certain derivative transactions, repurchase transactions, securities or commodities lending or borrowing transactions, margin lending or long settlement transactions.

When the total risk exposure amount is multiplied by the relevant capital ratio requirements, the calculation may be compared to the haircuts and other deductions from net capital specified under Rule 18a-1 plus 2 percent of the risk margin amount.

i. Derivative Instruments and Marketable Securities

Under the German Capital Framework, as under Rule 18a-1, derivative instruments and marketable securities are subject to charges for market and credit risk. To that end, capital requirements for derivative instruments and marketable securities are largely calculated pursuant to the rules relating to position risk (*i.e.*, market risk)[26] and counterparty risk arising from trading book business,[27] The comparability between the risk-weighted approach under the German Capital Framework and Rule 18a-1 can be illustrated by comparing their respective approaches to market and credit risk.

In terms of market risk, Rule 18a-1 requires a nonbank SBSD to take certain net capital deductions for its derivatives positions and marketable securities using either standardized haircuts or, if approved to use internal models, market risk models. Rule 18a-1's model-based methodology is based on the internal model approach under Basel 2.5,[28] and the SEC will provisionally permit the use of models approved by qualifying foreign regulators.[29] Similarly, the German Capital Framework's model-based methodology is based on the Basel 2.5 standard.[30] Both regimes incorporate relevant aspects of Basel II in terms of requiring firms with model approval to use a VaR model with a 99 percent, one-tailed confidence level with (i) price changes equivalent to a ten business-day movement in rates and prices, (ii) effective historical observation periods of at least one year and (iii) at least monthly data set updates.[31] The German Capital Framework also implements aspects of Basel 2.5, such as requirements to calculate a "stressed" VaR,[32] which we understand the SEC informally requires model-approved firms it regulates to calculate as well. In addition to the VAR, the German Capital Framework also provides for an Incremental Risk Charge or "IRC" in order to address

[26] CRR, Article 92(3)(b).

[27] CRR, Article 92(3)(f).

[28] Compare 17 CFR § 240.18a-1(d)(1), (9) and (e)(1), with Basel Committee on Banking Supervision, Revisions to the Basel II Market Risk Framework (2011), https://www.bis.org/publ/bcbs193.pdf (describing the revised internal model approach under Basel 2.5).

[29] 17 CFR § 240.18a-1(d)(5)(ii).

[30] Compare CRR, Article 362–377, with Revisions to the Basel II Market Risk Framework, supra footnote 15.

[31] Compare 17 CFR § 240.18a-1(d)(9)(ii)(A)-(C), with CRR, Article 365(1).

[32] CRR, Article 365(2).

incremental default and migration risk in the trading book, which requires an institution to hold additional capital against its credit risk positions in the trading book.[33]

In terms of credit risk, Rule 18a-1 requires nonbank SBSDs to take a net capital deduction for unsecured current exposure and uncollected IM, but firms with model approval may instead multiply that deduction by 8 percent and further by a credit risk weight. Under the German Capital Framework, an investment firm calculates its credit risk exposure generally by taking the accounting value of each of its on- and off-balance sheet exposures (including, for derivatives, a potential future exposure adjustment to address potential increases in value, as the case may be), making certain additional credit risk adjustments, and then applying specific risk weights based on the type of counterparty and the asset's credit quality.[34] For instance, high quality credit exposures, such as exposures to EU member states' central banks, carry a 0 percent risk weight, whereas exposures to EU banks, other investment firms or to other businesses may carry risk weights between 20-150 percent depending on the credit ratings available for the entity or (for exposures to banks and investment firms) for its central government.[35] If no credit rating is available, the investment firm must generally apply a 100 percent risk weight, meaning the total accounting value of the exposure is used.[36]

As mentioned above, investment firms may also be permitted to use internal models for determining credit risk, in which case higher risk weights may apply in specific circumstances. Accordingly, for firms with model approval the two approaches are largely similar, with the German Capital Framework imposing potentially larger risk charges due to imposing risk charges for exposures to central counterparties,[37] credit valuation adjustment requirements to OTC derivatives instruments,[38] and additional capital buffers.[39]

In addition, the internal and external supervisory process provided in Pillar II of the German Capital Framework further helps ensure investment firms do not take on excessive risks in the form of credit risk, market risk and operational risk.[40] Specifically, investment firms are required to maintain adequate internal capital to cover the nature and level of risks, including credit and counterparty risks, to which they may be exposed.[41] To this effect, institutions shall

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[33] CRR, Articles 372 et seqq.

[34] CRR, Article 111 and 113(1). Please note that for marketable securities held in the trading book, no credit risk charge would apply, but only the market risk charge.

[35] CRR, Articles 114–122.

[36] CRR, Articles 121(2) and 122(2).

[37] CRR, Articles 300–311.

[38] CRR, Article 382. The credit valuation adjustment requirement requires investment firms to calculate a capital charge for potential mark-to-market losses associated with a deterioration in the credit worthiness of a counterparty (so-called credit valuation adjustment) applicable to all derivative transactions that are not cleared through a qualifying central counterparty.

[39] For example, $100 million of exposure to a counterparty with a 100 percent risk weight would result in an $8 million capital requirement under Rule 18a-1 versus at least a $10.5 million capital requirement under the German Capital Framework, taking into account the capital conservation buffer. In case of a derivatives exposure, additional capital would then be required for credit valuation risk.

[40] As mentioned above, Pillar II obligations require additional own funds to be held above the minimum levels set by the Pillar I capital obligations.

[41] CRD, Article 73, implemented into German law by Section 25a(1) sentence 3 no. 2 of the German Banking Act, and CRD, Article 79, implemented into German law by Section 25a(1) sentence 3 no. 3 b) of the German Banking Act. Section 25a of the German Banking Act is complemented by the German

have in place sound, effective and comprehensive strategies and processes to assess and maintain on an ongoing basis adequate internal capital (which is commonly referred to as internal capital adequacy assessment process – ICAAP).[42] Those strategies and processes shall be subject to regular internal review to ensure that they remain comprehensive and proportionate to the nature, scale and complexity of the activities of the institution concerned. At least annually, regulators must review those strategies and processes and evaluate the risks that the investment firm is or might be exposed to, the risks that the investment firm poses to the financial system, and the risks revealed by the investment firm's stress testing (taking into account the nature, scale and complexity of the investment firm's activities).[43] The internal and external assessments of risks often results in investment firms holding own funds in excess of the minimum capital requirements.[44]

We consider these requirements to be an effective backstop, especially for firms that do not have market or credit risk model approval. For these firms, Rule 18a-1 is arguably stricter than the German Capital Framework, at least in regards to applying 100 percent capital charges to unsecured current exposure to OTC derivatives counterparties, without risk-weighting of these exposures. However, under the German Capital Framework, an investment firm with such exposures that create risks that are not covered or not fully covered by the minimum own funds requirements under CRR would be expected to address those exposures as part of its Pillar II capital requirements.[45]

ii. Other Types of Assets and Exposures

Under Rule 18a-1, other types of proprietary assets and exposures are generally subject to a 100 percent deduction to net capital in order to address liquidity risk. Under the German Capital Framework, generally each asset other than derivatives and marketable securities is subject to risk-weighting depending on the relevant asset's counterparty and credit quality for purposes of calculating the required capital amounts to be held against such assets, The relevant capital levels (not the risk-weighted amounts) would be the same as described under III.A.1.i above. And again, investment firms may apply standard or, with their supervisor's permission, internal models to measure the relevant credit risk,

In addition, to address liquidity risk, the German Capital Framework imposes separate liquidity requirements on investment firms composed of three main obligations. First, an investment firm is required to hold an amount of sufficiently liquid assets to meet its expected payment obligations under gravely stressed conditions for thirty days (Liquidity Coverage

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Federal Financial Supervisory Authority's (*Bundesanstalt für Finanzdienstleistungsaufsicht* – "BaFin") "Minimum Requirements for Risk Management (MaRisk)" (the "MaRisk"), which provide for further details in respect of an institution's risk management requirements.

[42] CRD, Article 73, implemented into German law by Section 25a(1) sentence 3 no. 2 of the German Banking Act.

[43] CRD, Articles 97 and 99, implemented into German law by Section 6b of the German Banking Act.

[44] CRD, Articles 104 and 104a(1), implemented into German law by Sections 6c(1), 10(3), (4) and (6), 11(2) through (4), 45(1), (2) and (3), and 45b(1) of the German Banking Act.

[45] European Banking Authority, Final Report - Guidelines on the revised common procedures and methodologies for the supervisory review and evaluation process (SREP) and supervisory stress testing (2018); EBA/GL/2018/03.
https://www.eba.europa.eu/sites/default/documents/files/documents/10180/2282666/6c2e3962-6b95-4753-a7dc-68070a5ba662/Revised%20Guidelines%20on%20SREP%20%28EBA-GL-2018-03%29.pdf?retry=1

Ratio or "LCR").[46] The ratio between its liquidity buffer and the net liquidity outflows over a period of 30 days must be equal to 100%. Second, an investment firm is subject to a stable funding requirement whereby it must hold a diversity of stable funding instruments[47] sufficient to meet long term obligations under both normal and stressed conditions (Net Stable Funding Ratio or "NSFR").[48] Third, to ensure that an investment firm continues to meet its liquidity needs, it is required to maintain robust strategies, policies, processes and systems for the identification, measurement, management and monitoring of liquidity risk over an appropriate set of time horizons, including intra-day, and management and monitoring of funding positions, so as to ensure that institutions maintain adequate levels of liquidity buffers and adequate funding (which is commonly referred to as internal liquidity adequacy assessment process – ILAAP).[49] Those strategies, policies, processes and systems shall be tailored to business lines, currencies, branches and legal entities and shall include adequate allocation mechanisms of liquidity costs, benefits and risks. The methodologies for managing and monitoring of funding positions shall include the current and projected material cash-flows in and arising from assets, liabilities and off-balance-sheet items, including contingent liabilities and the possible impact of reputational risk. Further, as part of the Pillar II supervisory requirements under the German Capital Framework, regulators annually review the exposure, measurement and management of liquidity risk by investment firms (including the composition and quality of liquidity buffers).[50]

2. Qualifying Components of Capital

Rule 18a-1 permits a nonbank SBSD to include both equity capital and satisfactory subordinated debt as net capital by permitting the SBSD to exclude subordinated liabilities from the net worth calculation, with satisfactory subordinated debt allowed to comprise up to 70 percent of the sum of the SBSD's subordinated debt and equity.[51]

The German Capital Framework imposes different ratios for the various capital components of own funds. The components of own funds include:

- Common Equity Tier 1 capital instruments, which are mainly comprised of retained earnings and common equity;[52]
- Additional Tier 1 capital instruments, which include other capital instruments and certain long-term convertible debt instruments;[53] and

[46] CRR, Article 412(1). Liquid assets primarily include cash, exposures to central banks, government-backed assets and other highly liquid assets with high credit quality. CRR, Article 416(1). See also footnote 1917 above on the liquidity requirements applying to certain German investment firms.

[47] Stable funding instruments include Tier 1 and Tier 2 capital instruments and other preferred shares and capital instruments in excess of the Tier 2 allowable amount with an effective maturity of one year or greater. CRR, Article 427(1).

[48] CRR, Article 413(1). As of June 28, 2021, the Basel III NSFR requirements will become applicable, as specified in CRR, Articles 428a to 428az introduced by CRR II, Article 1(116).

[49] CRD, Article 86, implemented into German law by Section 25a(1) sentence 3 no.3 b) of the German Banking Act, complemented by the MaRisk (see, in particular, BTR 3).

[50] CRD, Article 98(1)(e), implemented into German law by Section 6b(2) no. 7 of the German Banking Act.

[51] 17 CFR § 240.18a-1(c)(1), (g).

[52] CRR, Article 28.

[53] CRR, Article 52.

- Tier 2 capital instruments, which provide an additional layer of supplementary capital that includes other reserves, hybrid capital instruments and certain subordinated term debt.[54]

The German Capital Framework also requires that investment firms make certain capital deductions from Common Equity Tier 1, Tier 1 and Tier 2 capital instruments that further help ensure that the assets held by the investment firm are backed by sufficient regulatory capital in periods of stress. Due to the Common Equity Tier 1 ratio representing at least 4.5% of its total risk exposure amount and capital buffers representing at least 2.5% of its total risk exposure amount, an investment firm must hold, at a minimum, 66.67% of the firm's total capital requirements (representing at least 10.5% of its total risk exposure amount) as Common Equity Tier 1 instruments (e.g., shareholder's equity, retained earnings and other immediately available reserves).[55]

In addition, investment firms are also required to maintain MREL, which includes certain subordinated debt, in an amount set by the relevant resolution authority.[56] In effect, MREL serves as a less subordinated tier of contingent capital. The required amount of MREL varies by firm depending on its size, funding model and risk profile, among other considerations, and is designed to absorb losses in the case that a bail-in tool were applied so that the Common Equity Tier 1 ratio of the investment firm could be restored to a level necessary to enable it to continue to comply with its capital requirements.[57] Under BRRD II, the relevant rules will be further refined and tightened, also with a view to restore other required levels of capital leverage ratios.[58]

Accordingly, both approaches permit firms to count both equity and certain subordinated debt towards their capital requirements, with the German Capital Framework requiring investment firms make additional capital deductions from their capital instruments and maintain a larger portion of their required capital as retained earnings and common equity, as compared to Rule 18a-1.

3. Required Minimum Amounts of Capital and Early Warning Notification Requirements

As noted above, Rule 18a-1 requires nonbank SBSDs without model approval to maintain net capital, subject to the adjustments described above, at the higher of $20 million or 2 percent of the SBSD's risk margin amount.[59] Nonbank SBSDs with model approval are also required to

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[54] CRR, Article 63.

[55] The Common Equity Tier 1 ratio and capital conservation buffer alone (other buffers may apply on top of these requirements, as further described below) require an investment firm to hold, at a minimum, 66.67 percent of total capital amount in shareholder's equity, retained earnings and other reserves available for immediate use. At most, 14.3 percent of the total capital could be made up of additional Tier 1 capital instruments and 23.8 percent could be composed of Tier 2 instruments.

[56] BRRD, Article 45(6), implemented into German law by Section 49(4) of the Recovery and Resolution Act. Since 01 January 2021, the respective regulation can be found in BRRD, Articles 45c and 45d BRRD, implemented into German law by Section 49c and 49d of the Recovery and Resolution Act.

[57] BRRD, Article 45(6), implemented into German law by Section 49(4) of the Recovery and Resolution Act. Since 01 January 2021, the respective regulation can be found in BRRD, Articles 45c and 45d BRRD, implemented into German law by Section 49c and 49d of the Recovery and Resolution Act.

[58] BRRD II, Article 1(17), which added BRRD, Articles 45(c) and 45(d).

[59] 17 CFR § 240.18a-1(a)(1)(i), (i)(A).

maintain tentative net capital, which is the net capital *before* taking certain market and credit risk deductions, of at least $100 million.[60]

In comparison, the German Capital Framework sets forth minimum capital ratios for each component of own funds. Specifically, German nonbank SBSDs must maintain sufficient levels of Common Equity Tier 1 capital, Tier 1 capital and Tier 2 capital, after making required capital deductions, to satisfy the following capital ratios, expressed as a percentage of the firm's total risk exposure amount:

- Common Equity Tier 1 capital ratio of 4.5 percent,[61]
- Tier 1 capital ratio of 6 percent,[62]
- Total capital ratio of 8 percent,[63]
- Additional buffers that must be met with Common Equity Tier 1 capital (in addition to the Common Equity Tier 1 capital used to meet the capital ratios above):[64]
    - Capital conservation buffer of 2.5 percent,[65]
    - Countercyclical buffer, which varies between member states and in some instances may exceed 2.5 percent,[66] and
    - Systemic risk buffer for institutions (including investment firms), which varies between member states and depends on the relative size and significance of the investment firm.[67] G-SIIs must maintain a capital buffer representing at least 1% of their total risk exposure amount, which amount is determined by the relevant regulator (the BaFin in Germany). Similarly, the BaFin may require other systemically important institutions (O-SIIs) to maintain a capital buffer of up to 3% of the total risk exposure amount. Finally, the BaFin may require institutions to hold a systemic risk buffer for the financial sector or one or more subsets of that sector in order to prevent or mitigate macroprudential or systemic risks.

Investment firms must also hold sufficient MREL, as determined by their relevant regulator.

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[60] 17 CFR § 240.18a-1(a)(2).

[61] CRR, Article 92(1)(a).

[62] CRR, Article 92(1)(b).

[63] CRR, Article 92(1)(c).

[64] CRD, Article 129(1) (implemented into German law by Section 10c(1) of the German Banking Act), Article 130(5) (implemented into German law by Section 10d(1) of the German Banking Act), and Article 133(4) (implemented into German law by Section 10e(1) of the German Banking Act).

[65] CRD, Article 129(1) (implemented into German law by Section 10c(1) of the German Banking Act).

[66] CRD, Article 130(1) (implemented into German law by Section 10d(1) and (3) of the German Banking Act).

[67] CRD, Article 133(1) (implemented into German law by Section 10e(1) of the German Banking Act).

Accordingly, the EU capital ratios are calibrated up to, at a minimum, 10.5% of the investment firm's total risk exposure, rather than 2 percent of the firm's risk margin amount plus applicable capital deductions.

In addition, investment firms are currently required to report their leverage ratio to regulators, which is calculated as a non-risk based "backstop" measure based on the amount of Tier 1 capital and gross exposures.[68] The leverage ratio calculation sits alongside the minimum risk-based capital requirement. Importantly, although this leverage ratio reporting does not yet automatically impose a binding capital requirement on investment firms, regulators will take the leverage of an investment firm into account in their annual Pillar II supervisory requirements and can exercise their Pillar II powers to increase an investment firm's capital requirements in order to address any concerns regarding excessive leverage.[69] From June 2021, German nonbank SBSDs will be required to comply with a leverage ratio requirement of 3 percent.[70]

In addition, investment firms are also subject to annual stress testing requirements performed by their relevant regulators,[71] and those with model approval are subject to additional internal credit risk and counterparty credit risk stress testing requirements for testing capital adequacy.[72] Identified deficiencies in a firm's stress testing may lead to the firm holding additional own funds and act as a further check to ensure investment firms continue to hold sufficient own funds in response to evolving risks.

Both SEC rules and the German Capital Framework provide for notification to the relevant regulators if a firm's capital level approaches its minimum capital requirements. Under Exchange Act Rule 18a-8, a nonbank SBSD is required to notify the SEC within twenty-four hours if its total net capital or tentative net capital is less than 120 percent of the minimums required by Rule 18a-1.[73] Similarly, the German Capital Framework requires an investment firm to provide notice to its prudential regulator if it breaches its capital buffers within five business days, along with a capital conservation plan that sets forth how the firm will restore its capital levels.[74] Notably, both notification requirements ensure that firms alert regulators to possible distress *before* actually breaching minimum capital levels. We describe the further implications under the German Capital Framework of breaching the various MREL requirements, capital buffers and capital ratios below.

Capital requirements imposed by the CRR per se apply at the level of individual banks or investment firm as well as – if applicable and subject to the rules of prudential consolidation –

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[68] CRR, Article 430.

[69] CRD, Article 98(6) (implemented into German law by Section 6b(2) sentence 2 no. 13 of the German Banking Act).

[70] CRR II, Article 1(46), which amended CRR, Article 92(1).

[71] CRD, Article 100(1) (implemented into Section 6b(3) and (4) of the German Banking Act).

[72] CRR, Article 177(2), 290.

[73] 17 CFR § 240.18a-8(b).

[74] CRD, Article 142 (implemented into German law by Section 10i (6) through (9) of the German Banking Act). The capital conservation plan includes estimates of income and expenditures and a plan to increase its own funds to meet its capital buffers. CRD, Article 142(2) (implemented into German law by Section 10i(6) of the German Banking Act). If the regulator does not approve the capital conservation plan, the regulator may impose requirements for the firm to increase its own funds to specified levels (or may impose more stringent restrictions on distributions). CRD, Article 142(4) (implemented into German law by Section 10i (8) of the German Banking Act).

at the consolidated level of the respective group. For certain group structures (e.g. only within the same country for own funds waivers) and under strict conditions, competent prudential supervisory authorities can grant a waiver to the application of own funds and/or liquidity requirements at the individual level.[75] In case of a German nonbank SBSD benefitting from such waiver(s), its compliance with capital requirements is solely determined by the situation of the consolidated group. A similar waiver can be obtained from the competent resolution authority with regards to the compliance with MREL.[76]

B. What are the legal consequences if a firm falls below the minimum capital requirements? Does your jurisdiction require that a firm cease conducting business if its capital falls below the required minimum?

Under the SEC's rules, a nonbank SBSD automatically must cease operations if it falls below its minimum net capital threshold and provide notice of the deficiency to the SEC the same day.[77] EU authorities (including the BaFin as the current supervisor of investment firms such as a German nonbank SBSD), in turn, have more flexibility, possessing wide ranging tools to deal with an investment firm's financial deterioration. Except as specified below, the tools available to EU authorities are the same for credit institutions and investment firms. As a result, there would be only marginal differences to these tools after German firms that have indicated they intend to register as nonbank SBSDs become credit institutions.

Under German law, the breach of capital, MREL or liquidity requirements by a German nonbank SBSD may result in sanctions imposed by the competent supervisor. BaFin usually communicates deficiencies and areas of concern[78] via an official letter to the institutions it supervises. If necessary (in case of more severe issues), the deficiencies are addressed by an administrative order (*Verwaltungsakt*). A written response is expected, often accompanied by meetings to discuss the issues and to elaborate the "to dos" for the institution. If the deficiencies are not remedied with in the time limits set by BaFin, and the investment firm continues to be in breach of regulatory requirements, and in particular in breach of capital, MREL or liquidity requirements, BaFin may take one or more of the following actions, depending on the seriousness of the breach:

1. Prohibit the investment firm from entering into certain transactions or impose other limitations on its activities;[79]

2. remove some or all members of the bank's management or supervisory board from office;[80] or

3. withdraw the investment firm's license in full or in part.[81]

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[75] CRR, Articles 7, 8 and Section 2a (1)-(4) of the German Banking Act.

[76] Article 12h(2) of Regulation (EU) 2019/877 amending Regulation (EU) 806/2014.

[77] 17 CFR § 240.18a-8(a)(1).

[78] Deficiencies may arise from all areas of supervision, breach of capital, MREL or liquidity and AML requirements. A further common sources of deficiencies are violations of governance requirements and improper business organization as stipulated by Section 25a of the German Banking Act and the Minimum Requirements for Risk Managements (MaRisk) in the version of 27 October 2017.

[79] See, e.g., Section 45(2) nos. 6, 8 and 9 of the German Banking Act.

[80] See, Section 36(1) and (3) nos. 4 and 5 of the German Banking Act.

[81] Section 35(1), (2a) of the German Banking Act.

In addition, management board members who are directly and personally responsible for certain offenses against the CRR may be subject to a fine of a maximum amount of €5 million.[82] BaFin may impose fines of up to 10% of the net annual turnover or double the amount of any benefit gained from the offense in case any benefit gained from the offense is higher than the otherwise applicable maximum fine.[83]

BaFin must generally publish formal orders given and actions taken (including the imposition of fines) in respect of infringements of the CRR or the German Banking Act, as the case may be, on its website.[84] However, the BaFin may not make a publication if such publication would threaten to seriously disturb the financial markets or cause disproportionate injury to the parties in question.[85]

Liquidity requirements are breached. Regulators may impose fines, as set forth above, or take other administrative measures, if an investment firm's liquidity position falls below any liquidity and stable funding requirements established at the national or EU level. In particular, under German law, BaFin may require an institution to take early intervention measures when it breaches its liquidity requirements as a result of a rapid deterioration in its liquidity situation, and to submit a recovery plan to restore compliance with its liquidity requirements.[86] Ultimately, if early intervention measures are not sufficient either to put an end to serious breaches of liquidity requirements, or to restore the institution's financial situation, it may remove some or all members of the bank's management or supervisory board from office .[87]

MREL is breached. Once the investment firm falls below its required MREL, the resolution authority may take early measures to intervene, such as, requiring that management take certain actions, order members of management removed or replaced, or require changes to the investment firm's business strategy or legal or operational structure, among others.[88] An investment firm must immediately notify its competent resolution authority when in a situation where it meets the combined buffer requirement, but it fails to meet the combined buffer requirement when considered in addition to the applicable MREL requirements.[89] In addition, the investment firm must notify the competent resolution authority if it considers the firm to be failing or likely to fail.[90]

Capital buffers are breached. A breach of an investment firm's capital buffer requirements automatically triggers certain restrictions on the firm's ability to make certain distributions

[82] See, Section 56(6) of the German Banking Act.

[83] See, Section 56(7) of the German Banking Act.

[84] See, Sections 60b(1) of the German Banking Act.

[85] See, Sections 60b(3) of the German Banking Act.

[86] See, Section 45(1),(2) and (3) of the German Banking Act.

[87] See, Section 36(1) and (3) nos. 4 and 5 of the German Banking Act.

[88] BRRD, Article 27(1)(implemented into German law by Section 36(1) of the German Recovery and Resolution Act).

[89] BRRD, Article 27(1)(implemented into German law by Section 36(1) of the German Recovery and Resolution Act).

[90] BRRD, Article 81(1) (implemented into German law by Section 138(1) of the German Recovery and Resolution Act).

(e.g., paying certain dividends or employee bonuses).[91] Investment firms also must prepare a capital conservation plan and submit it to the relevant regulator within five business days after breaching its capital buffer requirements.[92] The restrictions increase in severity with the degree of the breach.

Regulators may also impose other requirements in case of non-compliance with regulatory requirements, such as:[93]

- requiring the investment firm to have additional own funds in excess of any minimum requirements[94];
- requiring the investment firm to submit a plan to restore compliance with applicable capital and liquidity requirements and set a deadline for implementation[95];
- requiring the investment firm to restrict or limit its business or operations, or requiring the divestment of activities that pose excessive risks to the soundness of the investment firm[96];
- restricting or prohibiting distributions or interest payments by an investment firm to its shareholders or holders of Additional Tier 1 instruments[97];
- imposing additional or more frequent reporting requirements, including reporting on own funds, liquidity and leverage[98]; and
- imposing specific liquidity requirements, including restrictions on maturity mismatches between assets and liabilities[99].

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[91] CRD, Article 141 (implemented into German law by Section 10i(2) through (5) of the German Banking Act, in conjunction with Section 37 of the German Solvability Ordinance (*Solvabilitätsverordnung*)); CRD, Article 141b.

[92] CRD Article 142 (implemented into German law by Section 10i(6) through (9) of the German Banking Act). The capital conservation plan includes estimates of income and expenditures and a plan to increase its own funds to meet its capital buffers. CRD, Article 142(2) (implemented into German law by Section 10i(6) of the German Banking Act). If the regulator does not approve the capital conservation plan, the regulator will impose requirements for the firm to increase its own funds to specified levels (or may impose more stringent restrictions on distributions). CRD, Article 142(4) (implemented into German law by Section 10i(8) of the German Banking Act).

[93] CRD, Article 104(1).

[94] See, Sections 6c(1) and 10(3) of the German Banking Act.

[95] See, Section 45(2) sentence 1 no. 12 of the German Banking Act.

[96] See, Section 45(2) sentence 1 no. 9 of the German Banking Act.

[97] See, Section 45(2) nos. 5 and 7 of the German Banking Act..

[98] See, Section 24(3b) of the German Banking Act.

[99] See, Sections 11(3) of the German Banking Act.

BaFin may also remove one or more directors of the investment firm, or, in case of serious breaches and provided early intervention measures are not sufficient, remove some or all members of the bank's management or supervisory board from office [100].

Note that while regulators generally have broad discretion as to *what* powers they may exercise, the German Capital Framework specifically requires that BaFin require investment firms to hold increased capital when:[101]

- risks or elements of risks are not covered by the capital requirements in the German Capital Framework;
- the investment firm lacks robust governance arrangements, appropriate resolution and recovery plans, processes to manage large exposures or effective processes to maintain on an ongoing basis the amounts, types and distribution of internal capital needed to cover the nature and level of risks to which they might be exposed; or
- the sole application of other administrative measures would be unlikely to timely and sufficiently remedy the situation.

Minimum capital requirements are breached: As described above, regulators also can sanction an investment firm (or its management) if the firm either falls below the capital or liquidity thresholds under the German Capital Framework.[102] They may also withdraw an investment firm's authorization.[103, 104]

In all of the above circumstances, and provided additional requirements are met, it is also possible that resolution authorities may, in consultation with the supervisory authorities, assess the investment firm as "failing or likely to fail," triggering a resolution action (which could occur even *before* the investment firm actually breached its minimum capital, liquidity or MREL requirements).[105] Once BRRD II is implemented, a breach of applicable requirements may also trigger restrictions on the firm's ability to make certain distributions (e.g., paying certain dividends or employee bonuses).[106]

[100] See, Section 36(1) and (3) nos. 4 and 5 of the German Banking Act.

[101] CRD, Article 104a(1) (implemented into German law by Section 6c(1) of the German Banking Act).

[102] CRD, Article 102(1) (implemented into German law by Section 45(1) and (2) of the German Banking Act).

[103] MiFID, Article 8(c) (as implemented into German law by Section 35(2) nos. 3 and 8 of the German Banking Act).

[104] In the case of credit institutions, the European Central Bank is the authority in charge of withdrawals of authorization, on the basis of Article 4 of Regulation 1024/2013 of October 15, 2013 and Section 35(2b) of the German Banking Act.

[105] BRRD, Article 32(1)(a) (implemented into German law by Sections 62(2) sentence 1 of the German Recovery and Resolution Act).

[106] BRRD II, Article 1(6), which inserted BRRD, Article 16a.

C. **How effective is the level of capital required of applicable nonbank firms under your jurisdiction's approach with respect to helping ensure that the liquidation of a firm will not result in excessive delay in repayment of the firm's obligations to SBS customers and creditors, therefore assuring the continued market liquidity?**

The German Capital Framework's liquidity requirements directly address the ability of investment firms to continue to meet obligations to their customers and counterparties. As noted above, these liquidity requirements require an investment firm to hold an amount of sufficiently liquid assets to meet any expected liquidity outflows under gravely stressed conditions for thirty days.[107] Stable funding requirements also require investment firms maintain sufficient diversity of stable funding instruments to meet long term obligations under both normal and stressed conditions.[108] To ensure that investment firms continue to meet their liquidity needs, they are required to maintain robust strategies, policies, processes and systems for the identification of liquidity risk over an appropriate set of time horizons, including intra-day.[109] Accordingly, the liquidity requirements under the German Capital Framework help ensure that investment firms can continue to fund their operations over various time horizons, including timely making payments to customers and counterparties.

In addition, investment firms are subject to a similar resolution regime as banks. The EU/German resolution regime does not focus on liquidation. Rather, it emphasizes the continuity of critical services and reduction of the impact of an investment firm's failure on financial stability, including through the orderly winding down of activities or restructuring supported by the investment firm's own funds where this, among other requirements, cannot be ascertained through normal insolvency proceedings.

In particular, resolution authorities in the EU (including Germany) must have regard to the following resolution objectives: (i) to ensure the continuity of critical functions (i.e., those that support financial stability in the relevant member state); (ii) to avoid a significant adverse effect on the financial system, in particular by preventing contagion, including to market infrastructures, and by maintaining market discipline; (iii) to protect public funds by minimizing reliance on extraordinary public financial support; (iv) to protect depositors covered by the member states' Deposit Guarantee Schemes and investors covered by the member states' Investor Compensation Schemes; and (v) to protect client funds and client assets.[110] A resolution action, rather than insolvency proceedings, would be instituted where the resolution objectives above would not be met under normal insolvency proceedings to the same extent as resolution, provided that the other conditions to resolution are met.[111] In order to enable resolution with a minimum impact on client funds and assets, taxpayers and financial stability, investment firms must have sufficient loss-absorbing and recapitalization

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[107] CRR, Article 412(1). Liquid assets primarily include cash, exposures to central banks, government-backed assets and other highly liquid assets with high credit quality. CRR, Article 416(1). See also footnote 1917 re. the national liquidity requirements applicable to CRR investment firms.

[108] CRR, Article 413(1). As of June 28, 2021, the Basel III NSFR requirements will become applicable, as specified in CRR, Articles 428a to 428az introduced by CRR II, Article 1(116).

[109] CRD, Article 86 (implemented into German law by Section 25a(1) sentence 3 no.3 b) of the German Banking Act, complemented by the MaRisk (see, in particular, BTR 3)).

[110] BRRD, Article 31(2) (implemented into German law by Section 67(1) of the German Recovery and Resolution Act).

[111] BRRD, Article 32(5) (implemented into German law by Section 62(1) no. 2 of the German Recovery and Resolution Act).

capacity (hence the requirements for MREL and capital requirements in excess of an investment firm's Pillar I capital requirements).

Accordingly, in resolving a German nonbank SBSD, BaFin would take action to resolve the firm in such a way as to restructure its business to the extent required and feasible in order to ensure the continuity of critical functions (including by way of transferring parts of such business, as the case may be) and, to the extent debts or transactions would not be transferred or continued, as the case may be, to pay outstanding debts in a reasonably timely manner to the SBS counterparties (and creditors) (to the extent such obligations are not subject to bail-in), protect client funds and assets and protect the underlying market's liquidity.

With that said, if liquidation did occur, EU regulations also protect counterparties and promote continued market liquidity through margin requirements. EU margin requirements require investment firms to hold high quality, liquid assets as margin for SBS. Specifically, investment firms are required to exchange IM and VM composed of highly liquid assets, which are not exposed to excessive credit, market or foreign exchange risk, such that a non-defaulting counterparty can liquidate the collateral in a sufficiently short time to protect against losses on non-centrally cleared OTC derivative contracts.[112] IM must be segregated from the investment firm's assets by either placing it with a third-party holder or custodian or via other legally binding arrangements, making the IM remote in the case of the firm's default or insolvency.[113] In addition, while not specifically required to be segregated from the investment firm's assets, counterparties may elect for VM to also be segregated and placed with a third-party custodian.[114] These requirements help to further protect customers and counterparties in the event a German nonbank SBSD experiences financial distress and liquidation.

D. To what extent do the required capital levels for nonbank firms in your jurisdiction reflect regulatory concerns that differ from the concerns that underpin Exchange Act Rule 18a-1? Do any differences in the regulatory concerns that underpin your jurisdiction's required capital levels lead to different regulatory outcomes from those attained under the Exchange Act? If so, are there any conditions that could be applied to substituted compliance to promote comparable regulatory outcomes, notwithstanding differences in the underlying concerns?

The German Capital Framework and the net liquid assets test under Rule 18a-1 generally reflect similar regulatory concerns. Section 15F(e) provides for the imposition of capital requirements to help ensure the safety and soundness of the SBSD considering the risk associated with activities in non-cleared SBSs.[115] Similarly, the German Capital Framework stresses the need for investment firms to adopt sound structures, with capital requirements that both ensure a firm's solvency and efficient, safe and sound derivatives markets, while balancing capital requirements with the relevant risks addressed.[116] Both are designed to provide protection for counterparties and customers in accordance with the safety and soundness objectives of Section 15F(e). Although the two regimes reflect somewhat different

[112] EMIR Margin RTS, Recital (31) and Article 7.

[113] EMIR Margin RTS, Articles 19(1)(d)-(e), (3) and (8).

[114] EMIR Margin RTS, Article 3(b) (stating that the "exchange of collateral agreement" must address "segregation arrangements").

[115] 15 U.S.C. § 78o–10(e)(3)(A)(i)-(ii).

[116] CRR, Recitals 40, 43 and 87.

approaches to addressing these objectives in respect of liquidity risks, these approaches are both ultimately designed to address these risks by requiring a firm to have a sufficient amount of liquid assets to satisfy its obligations.

To the extent that the SEC deems these differences significant, however, it is notable that liquidity risks are not as significant to German nonbank SBSDs as standalone U.S. SBSDs because the former are subject to a bank-style resolution regime that is not primarily focused on liquidation. Also, to the extent the German nonbank SBSD can rely on the segregation exemption provided in Exchange Act Rule 18a-4(f), German nonbank SBSDs will generally not be subject to the stockbroker liquidation provisions of the U.S. Bankruptcy Code.

In addition, unlike U.S. nonbank SBSDs, certain German nonbank SBSDs will have access to short-term liquidity through relevant EU member state central banks. For instance, under the amendments to the CRD and CRR that have been introduced by IFD and IFR, which will apply from June 26, 2021, large investment firms with €30 billion in assets and above that engage in dealing on own account will be automatically reclassified as credit institutions, which would provide them access to Eurosystem standing facilities following authorization by the European Central Bank.[117]

Because the German Capital Framework resembles the capital, liquidity and resolution regimes for U.S. banks, the approach taken to capital and liquidity for bank SBSDs by the U.S. prudential regulators should also prove instructive. In the proposing release for the implementing regulations for U.S. bank SBSDs, the Prudential Regulators noted that existing capital and liquidity standards, which had undergone amendments to align with the Basel III frameworks in 2013 and 2014, were already "sufficient" to offset risks from SBS activities and "ensure the safety and soundness of the covered swap entity."[118] Therefore, the Prudential Regulators did not propose separate capital requirements for bank SBSDs. Rather, the Prudential Regulators reiterated the existing capital requirements imposed on bank SBSDs and required they continue to comply with already applicable risk-based and leverage capital requirements.[119] This is consistent with the approach proposed by the Commodity Futures Trading Commission ("CFTC"), which would permit a swap dealer to choose between a "Bank-Based Capital Approach" based on existing U.S. bank holding company capital rules or the net liquid assets capital approach reflected in Rule 18a-1.[120] Implicitly, the CFTC found that the Bank-Based Capital Approach, which mirrors the German Capital Framework, meet the statutory objectives of the Commodity Exchange Act § 4s(e) for nonbank swap dealers,[121] which are identical to those in Section 15F(e) for nonbank SBSDs.

Taken together, the German Capital Framework reflects similar regulatory concerns and leads to comparable regulatory outcomes as the capital requirements under Section 15F(e) and Rule 18a-1. Rather than require German nonbank SBSDs to comply with two different

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[117] See, IFD, Recital 7. National central banks may also allow investment firms to make use of intraday credit under TARGET2. See TARGET Guideline (EU/2012/27), Annex III, L 30/67, available at https://www.ecb.europa.eu/ecb/legal/pdf/l_03020130130en00010093.pdf .

[118] See, Margin and Capital Requirements for Covered Swap Entities, 79 Fed. Reg. 57348, 57382 (September 24, 2014).

[119] Id. The final rule adopted this same approach. Margin and Capital Requirements for Covered Swap Entities, 80 Fed. Reg. 74847 (Nov ember 30, 2015).

[120] See Capital Requirements of Swap Dealers and Major Swap Participants, 84 Fed. Reg. 69,664, 69,665 (December 19, 2019).

[121] 7 U.S.C. § 6s(e).

approaches to capital and liquidity, the SEC should grant this application for German nonbank SBSDs to satisfy their requirements under Section 15F(e) and Rule 18a-1 by continuing to comply with the German Capital Framework.

However, while we believe that the German Capital Framework's capital and liquidity requirements sufficiently address concerns about a German nonbank SBSD's ability to meet its obligations to its customers and counterparties in times of financial stress consistent with the regulatory outcomes of Section 15F(e) and Rule 18a-1, to the extent the SEC is concerned about potential inconsistencies with U.S. insolvency law it may consider granting the requested comparability determination on the condition that a German nonbank SBSD qualify for and rely on Exchange Act Rule 18a-4(f)'s exemption to the SEC's segregation requirements.

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Annex B: Table Regarding Comparability of

the German Margin Framework and SEC Rule 18a-3

Comparability Assessment of Certain Securities and Exchange Commission and EU Requirements Applicable to Security-Based Swap Dealers pursuant to SEC Staff Guidance on Substituted Compliance Applications

Master Chart on Substituted Compliance for Security-Based Swap Dealers – SEC Staff Guidance – Information Regarding Foreign Regulatory Requirements for Substituted Compliance Determinations dated December 23, 2019[1] (the **SEC Guidance**)

The purpose of this chart is to facilitate applications to the SEC for a substituted compliance determination with respect to the EU in relation to the SEC requirements contained in the SEC Guidance. The SEC Guidance provides detail on the approach by which SEC Staff will assess substituted compliance applications and poses questions for applicants to consider regarding the regulatory interests reflected in the relevant foreign requirements and asks how those are comparable to the interests associated with the analogous requirements under the Exchange Act. The chart below summarizes the relevant SEC requirements (including Exchange Act requirements) applicable to security-based swap dealers (**dealers**) without prudential regulators (i.e. nonbanks) and with prudential regulators (i.e. banks), in accordance with the discussion of these requirements in the SEC Guidance, and provides a summary of the relevant comparable EU requirements. The chart is organized by the regulatory categories set out in the SEC Guidance. This chart does not include category five of the SEC Guidance.

Throughout column 1 of this chart, requirements applicable to (i) all dealers are denoted in standard text, (ii) only dealers without prudential regulators (i.e. nonbanks) are denoted in bold text, and (iii) only dealers with prudential regulators (i.e. banks) are denoted in italicized text. Although certain SEC requirements may apply differently to banks and nonbanks, unless otherwise stated in column 2 or column 3, the analogous EU requirements apply equally to both banks and nonbanks.

Terms used in the chart are defined in the Glossary in Annex II.

Approach

This chart is organized following the order of the questions in the SEC Guidance. Column 1 sets out the relevant SEC requirements and a summary of the SEC's policy goals, generally tracking closely the language provided in the SEC Guidance. These are followed by the EU law requirements, and a summary of the EU's policy goals, that correspond to the SEC requirements (column 2). Finally, an assessment of the comparability of outcomes (or of requirements, where appropriate) is set out in the third column.[2]

Statements on EU law requirements and policy goals are drafted on the basis of requirements that apply to dealers when established in the EU (i.e. a direct comparison is made between how the US regime applies to dealers and how the EU regime applies to equivalent types of EU firms).

Regulation of EU firms in a comparable position to dealers

Scope of EU legislation

The activities of dealers established in the EU in relation to security-based swaps is regulated in the EU primarily in accordance with five sets of legislation:

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[1] SEC Staff Guidance (Dec. 23, 2019), *available at* https://www.sec.gov/files/staff-guidance-substituted-compliance-applications.pdf.

[2] We note that comparability of outcomes alone is sufficient under the SEC's holistic approach to assessing substituted compliance because such approach "will focus on the comparability of regulatory outcomes rather than predicating substituted compliance on requirement-by-requirement similarity." *See* SEC Guidance at p. 3 (quoting Exchange Act Release No. 77617 (Apr. 14, 2016), 81 FR 29960, 30074 (May 13,2016) (**Business Conduct Adopting Release**) *available at* https://www.govinfo.gov/content/pkg/FR-2016-05-13/pdf/2016-10918.pdf. Comparability of requirements is included, where applicable, for completeness.

1. the Markets in Financial Instruments Regulation (**MiFIR**) and the recast Markets in Financial Instruments Directive (**MiFID**) (also known as "MiFID II"): MiFIR is a regulation and MiFID is a directive which both entered into force on July 2, 2014 (see below for the distinction between regulations and directives as a matter of EU law).

   MiFIR and MiFID apply to "investment firms", which comprise any legal person whose regular occupation or business is the provision of one or more investment services to third-parties and/or the performance of one or more investment activities on a professional basis. Investment services and activities means any of the services and activities listed in Section A of Annex I of MiFID (e.g. dealing as principal or agent, advising on transactions) relating to any of the instruments listed in Section C of Annex I of MiFID. Section C of Annex 1 refers explicitly to swaps as well as "other derivative financial instruments".

   Credit institutions are also subject to MiFIR and MiFID when providing investment services or conducting investment activities and, accordingly, EU legislation that is stated in this chart to apply to investment firms also applies to Credit Institutions.

2. the European Market Infrastructure Regulation (**EMIR**): EMIR is a regulation which entered into force on August 16, 2012.

   EMIR implements various of the G20 commitments to reform OTC derivatives markets in an effort to promote greater stability and transparency. EMIR applies a G20 mandatory clearing obligation and bilateral risk-management requirements for persons dealing in 'over-the-counter' (**OTC**) derivatives and reporting requirements for derivatives contracts, as well as establishing requirements for central counterparties (**CCPs**), clearing members, trade repositories and, in some respects, trading venues. EMIR applies its requirements differently in certain respects to 'financial counterparties' (**FCs**) and 'non-financial counterparties' (**NFCs**).

3. the Capital Requirements Regulation (**CRR**) and Capital Requirements Directive (**CRD IV**): CRR is a regulation and CRD IV is a directive, which entered into force on June 28, 2013 and July 17, 2013, respectively.

   CRR and CRD IV establish prudential and supervisory requirements for "institutions", which comprise "credit institutions" and certain "investment firms" (together **CRR Firms**). Relevant investment firms include those with permission to deal on own account in and/or underwrite the placing of MiFID financial instruments. CRR and CRD IV together implement the Basel framework in the EU. The term dealing on own account is defined to capture "trading against proprietary capital resulting in the conclusion of transactions in one or more financial instruments" (art 4(1)(6)), and extended by recital 24 to include dealing as matched or riskless principal. Any investment firm that will be party as principal to a security based swap will be dealing on own account.

4. the Bank Recovery and Resolution Directive (**BRRD**): BRRD is a directive which entered into force on January 1, 2015.

   BRRD establishes rules and procedures relating to the recovery and resolution of CRR Firms (among other entities – despite the reference to "bank" in this directive's common name, it applies to both Credit Institutions and Investment Firms).

5. the Market Abuse Regulation (**MAR**) and the Criminal Sanctions for Market Abuse Directive (**CSMAD**): MAR is a regulation and CSMAD is a directive which both entered into force on July 2, 2014.

MAR establishes restrictions on insider dealing and market manipulation and disclosure requirements for issuers of financial instruments. CSMAD establishes related criminal sanctions.[3]

EU member states can implement EU legislative requirements in a more onerous manner, and/or can impose additional requirements, through member state law (these are known as "gold-plating" of EU requirements).

Application of EU legislation

The various parts of EU legislation considered in this chart each apply where instruments are MiFID financial instruments and each cover different topics in relation to the relevant subject matter and are designed to operate in conjunction with each other. Transactions will be subject to EMIR, MiFIR, MIFID, CRR, CRD IV, BRRD, MAR and CSMAD requirements except where a particular transaction is exempt from a particular regime are specifically noted in the chart below. EU legislation does not vary on a product-specific basis (within the broader set of instruments treated in EU law as MiFID financial instruments) – i.e. there is no distinction between what would be categorized in the US as swaps and security-based swaps.

EU regulations are binding with direct effect in all EU member states (i.e. no transposition into the national law of each EU member state is required to give effect to them). All member states of the EU are legally bound to implement the provisions of EU directives, in accordance with the Treaty on the Functioning of the European Union, by transposing them into their national law. For each directive referred to, we have assumed that each EU member state has completed the process of transposing that directive into its national law on identical terms set out in the directive and such transposed law is in full force and effect.

MiFIR, MiFID, EMIR, CRR, CRD IV, MAR and CSMAD are so-called 'Level 1' legislation. These are supplemented by a range of subordinate 'Level 2' legislation and 'Level 3' guidance. All such legislation and guidance is referenced in this chart where relevant.

The EU regulations and directives considered in this document are intended to establish a high degree of minimum harmonisation and consistency across the laws of EU member states, with only limited scope for local discretion or deviation. This chart is limited to matters of EU law and does not address the laws of each EU member state.

All of the EU legislation considered in this chart is currently in force. This chart does not address upcoming or potential future revisions to such EU legislation.

Application to dealers covered in this chart

We would expect that the dealers would generally be treated by the EU regime as:

- ***For the purposes of CRR and CRD IV:*** CRR Firms (either Credit Institutions or Investment Firms, as appropriate – in the context of this chart, there are some limited cases where CRR distinguishes between Credit Institutions and Investment Firms: these points have been expressly noted in the relevant responses;
- ***For the purposes of MiFIR and MiFID:*** Investment Firms; and
- ***For the purposes of EMIR:*** Financial Counterparties.

[3] CSMAD does not apply in the UK and Denmark.

We have expressly noted in the relevant responses how MAR and CSMAD apply to dealers.

Some obligations under EMIR are also affected by EMIR's so-called 'clearing threshold'. FCs that exceed the clearing threshold (**FC+s**) are subject to the mandatory clearing requirement, whereas FCs that do not exceed the clearing threshold (**FC-s**) are not. We have noted where this is relevant in the chart. Whether a dealer would be a FC+ or an FC- will depend upon their individual trading activity and so no statement of general application can be made. How the clearing threshold applies to counterparties is dealt with in each relevant response.

Scope of Instruments

Pursuant to Exchange Act section 3(68), security-based swaps encompass any agreement, contract or transaction that is a swap as defined under section 1a of the Exchange Act (without regard to paragraph (47)(B)(x) of such section) and is based on (i) an index that is a narrow-based security index, including any interests therein or on the value thereof; (ii) a single security or loan, including any interest therein or on the value thereof; or (iii) the occurrence, nonoccurrence, or extent of the occurrence of an event relating to a single issuer of a security or the issuers of securities in a narrow-based security index, provided that such event directly affects the financial statements, financial condition, or financial obligations of the issuer.[4]

For the rules discussed in this chart, we would expect security-based-swaps to fall within the scope of MiFID financial instruments and that the provisions of EMIR would apply to security-based-swaps.

[4] https://www.govinfo.gov/content/pkg/USCODE-2010-title15/pdf/USCODE-2010-title15-chap2B-sec78c.pdf

1. Category: Risk Control Requirements

a. Executive Summary

The risk control requirements of the Exchange Act promote market stability by requiring that registered entities have adequate financial resources and follow risk mitigation and documentation practices that are appropriate to manage the market, counterparty, operational and legal risks associated with their security-based swap business.

b. Subcategory: Capital Requirements for Nonbank[5] Firms

See Annex A.

[5] Note that the SEC's capital and margin rules (including certain risk-management system rules) only apply to dealers that do not have a prudential regulator, and that prudential regulators are responsible for capital and margin rules applicable to dealers that are banks. *See* Exchange Act section 15F(e)(1) [15 U.S.C. 78o-10(e)(1)] https://www.govinfo.gov/content/pkg/USCODE-2010-title15/pdf/USCODE-2010-title15-chap2B-sec78o-10.pdf.

c. Subcategory: Margin Requirements for Nonbank Firms

The SEC margin requirements help ensure, by providing adequate liquidity, that counterparty default does not impair the complying nonbank firm, and more generally help ensure that default does not result in wider issues within the market.

Overview of the scope of the EU margin rules

EMIR implements various G20 commitments to reform OTC derivatives markets in an effort to promote greater financial stability and transparency. Pursuant to EMIR, FCs and NFC+s are required to exchange margin in respect of OTC derivative contracts not cleared by a CCP (to the extent they transact with each other or non-EEA equivalents and, in certain cases, if two non-EEA equivalents transact with each other). EMIR, Article 11.

The detail of the EMIR margin requirements is set out in the EMIR Margin RTS which are designed to be consistent with the BCBS-IOSCO Global Standards on Margin.

The EMIR Margin RTS mandate the exchange of: (i) "variation margin" to reflect the results of the daily marking-to-market or marking-to-model of outstanding contracts, and (ii) "initial margin" to cover its current and potential future exposure in the interval between the last margin exchange and the liquidation of positions or hedging of market risk following a default of the other counterparty. EMIR Margin RTS, Articles 1(1) and 1(2).

Variation margin requirements have now been phased in for all in-scope entities. EMIR Margin RTS, Article 37.

Initial margin requirements are in the process of being phased in but will only apply if each counterparty's AANA outstanding on a group basis is above the relevant threshold. Phase-in has already occurred in respect of Phases 1 to 4 (i.e. in instances where the AANA of both counterparties on a group basis is greater than EUR 0.75 trillion). The Revised EMIR Margin RTS will amend the timeframe for Phase 5 implementation and include a new Phase 6 implementation date (where the AANA of both counterparties on a group basis is greater than EUR 50 billion and EUR 8 billion respectively) in line with recent revisions to the BCBS-IOSCO Global Standards on Margin. EMIR Margin RTS, Article 36 as amended by the Revised EMIR Margin RTS.

As discussed further below (where relevant), there are various exceptions and derogations at a counterparty and transaction level. **SEC Requirement and/or Policy Goal Summary per SEC (with link to**		**Comparability Assessment**	**National Measures Germany**
c. Subcategory: Margin Requirements for Nonbank Firms			
1. To what extent are models permitted for calculating initial margin? What are the minimum standards required of acceptable models (e.g., required confidence levels and restrictions on the use of models in connection with equity security-based swaps)?			
Models permitted: **The SEC's rules for nonbank dealers permit the nonbank dealer to calculate initial margin using either the standardized approach[6] to calculating initial margin or an approved model (including an industry standard model).**	**Models permitted**: Counterparties shall calculate the amount of initial margin to be collected using either a standardized approach or an initial margin model or both (but if both are used in relation to the same netting set, they must be applied consistently for each non-centrally cleared OTC derivative contract). If agreed with the other party, each party can apply a different approach. When one or both parties rely on an initial margin model, they	**Comparability of outcomes**: The EU margin requirements relating to minimum standards for models provide a comparable regulatory outcome to the SEC margin model requirements. In particular, the regulatory outcomes pursued under Exchange Act rule 18a-3(d)(2) and the EMIR Margin RTS are comparable in that each permit the use of models and impose comparable minimum	**No additional national comments**

[6] Under the standardized approach, if the dealer is not also registered as a broker-dealer, it must calculate initial margin using standardized haircuts specified as part of the capital provisions of rule 18a-1. Exchange Act rule 18a-3(d)(1) [17 CFR 240.18a-3(d)(1)]. For credit default swaps, the stand-alone dealer must use the calculation method specified in Exchange Act rule 18a-1(c)(1)(vi)(B)(1) [17 CFR 240.18a-1(c)(1)(vi)(B)(1)]; for other security-based swaps, the standalone dealer must use the calculation method specified in Exchange Act rule 18a-1(c)(1)(vi)(B)(2) [17 CFR 240.18a-1(c)(1)(vi)(B)(2)].

As discussed further below (where relevant), there are various exceptions and derogations at a counterparty and transaction level. **SEC Requirement and/or Policy Goal Summary per SEC (with link to**		**Comparability Assessment**	**National Measures Germany**
c. Subcategory: Margin Requirements for Nonbank Firms			
1. To what extent are models permitted for calculating initial margin? What are the minimum standards required of acceptable models (e.g.,			
	shall agree on the model developed. EMIR Margin RTS, Article 11. The initial margin model may be developed by any of, or both, counterparties or by a third-party agent. EMIR Margin RTS, Article 14.	standards on such models with the overarching aim of reducing risk. While the SEC Guidance does not require that the EU have analogues to every requirement under SEC rules in order to be deemed comparable, we note the comparability of specific requirements below for completeness. **<u>Comparability of specific requirements</u>**: The below EU requirements are comparable to analogous SEC requirements in the following ways:	
Model authorization:	**Model authorization:**	**Model authorization:**	

As discussed further below (where relevant), there are various exceptions and derogations at a counterparty and transaction level. **SEC Requirement and/or Policy Goal Summary per SEC (with link to**		**Comparability Assessment**	**National Measures Germany**
c. Subcategory: Margin Requirements for Nonbank Firms			
1. To what extent are models permitted for calculating initial margin? What are the minimum standards required of acceptable models (e.g., required confidence levels and restrictions on the use of models in connection with equity security-based swaps)?			
Firms seeking to use a model shall apply for authorization to use models (including an industry standard model) to calculate initial margin, subject to conditions addressing, inter alia, the associated confidence level, risk factors considered, and the use of empirical correlations.	Upon request, counterparties using an initial margin model shall provide the regulators with any documentation relating to the risk management procedures relating to such model at any time. EMIR Margin RTS, Article 2(6).	We note that Exchange Act rule 18a-3(d)(2) requires firms to apply for authorization to use models to calculate initial margin. The EU requirements currently do not require such an application. However, the EU requirements provide that, upon request, counterparties using an initial margin model shall provide the regulators with any documentation relating to the risk management procedures relating to such model at any time. EMIR Margin RTS, Article 2(6). While this is not the same as requiring specific pre-approval from a regulator, we note that the EC has represented to the CFTC in the context of the CFTC Substituted Compliance Decision on	

As discussed further below (where relevant), there are various exceptions and derogations at a counterparty and transaction level. **SEC Requirement and/or Policy Goal Summary per SEC (with link to**		**Comparability Assessment**	**National Measures Germany**
c. Subcategory: Margin Requirements for Nonbank Firms			
1. To what extent are models permitted for calculating initial margin? What are the minimum standards required of acceptable models (e.g., required confidence levels and restrictions on the use of models in connection with equity security-based swaps)?			
		Margin on this point that competent authorities within the member state responsible for supervising FCs and NFC+s as part of their on-going prudential regulation and supervision will enforce applicable legislation and control whether the models adopted by these entities comply with the requirements under the EU margin rules and that Article 12 of EMIR grants the competent authorities in each member state the authority to impose fines if EMIR rules are infringed. Consequently, the CFTC considered the rules to be comparable in outcome. *See* the CFTC Substituted Compliance Decision on Margin at 48403-48404.	

As discussed further below (where relevant), there are various exceptions and derogations at a counterparty and transaction level. **SEC Requirement and/or Policy Goal Summary per SEC (with link to**		**Comparability Assessment**	**National Measures Germany**
c. Subcategory: Margin Requirements for Nonbank Firms			
1. To what extent are models permitted for calculating initial margin? What are the minimum standards required of acceptable models (e.g., required confidence levels and restrictions on the use of models in connection with equity security-based swaps)?			
Model standards: **For security-based swaps other than equity security-based swaps for a dealer, an acceptable model must use a 99%, one-tailed confidence level with price changes equivalent to a ten business-day movement in rates and prices. The model further must use risk factors sufficient to cover all the material price risks inherent in the positions for which the initial margin amount is being calculated, including foreign exchange or interest rate risk, credit risk, equity risk, and commodity risk, as appropriate. Empirical correlations may be recognized by the model within each broad risk category, but not**	**Model standards**: • Potential future exposure: Potential future exposure is an estimate of a one-tailed 99% confidence interval over an MPOR of at least ten days. EMIR Margin RTS, Article 15(1). • Initial margin models may only include non-centrally cleared OTC derivative contracts within the same netting set. Any diversification, hedging or risk offset within a netting set can only be applied to contracts within the same underlying asset class, not across asset classes. EMIR Margin RTS, Articles 17(1) and (2).	**Model standards:** • **Confidence level**. The confidence levels used to calculate the quantum of initial margin set forth in EMIR Margin RTS, Article 15(1) and Exchange Act rule 18a-3(d)(2)(i) are comparable. • **Account positions**. EMIR Margin RTS, Article 17(1) and (2) restrict models from including contracts with different underlying asset classes. These requirements are comparable to Exchange Act rule 18a-3(d)(2)(i). • **Risk factors**. The risk factors required to be considered in	

As discussed further below (where relevant), there are various exceptions and derogations at a counterparty and transaction level. **SEC Requirement and/or Policy Goal Summary per SEC (with link to**		**Comparability Assessment**	**National Measures Germany**
c. Subcategory: Margin Requirements for Nonbank Firms			
1. To what extent are models permitted for calculating initial margin? What are the minimum standards required of acceptable models (e.g., required confidence levels and restrictions on the use of models in connection with equity security-based swaps)?			
across broad risk categories. *See* Exchange Act rule 18a-3(d)(2)(i) [17 CFR 240.18a-3(d)(2)(i)]. [7] **For equity security-based swaps, a dealer (other than a full-purpose broker-dealer) may apply for authorization to use models to calculate initial margin, subject to the above requirements, provided the counterparty's account does not hold equity security positions other than equity security-based swaps and equity swaps. *See* Exchange Act rule 18a-3(d)(2)(ii) [17 CFR 240.18a-3(d)(2)(ii)].** [8]	• Initial margin models should capture all significant risks arising from entering into non-centrally cleared OTC derivative contracts included in the netting set. The model performance should be continuously monitored, including back testing the model at least every three months. EMIR Margin RTS, Article 14. • Initial margin calculations: For the purposes of initial margin model calculations, any correlations between the value	creating models set forth in EMIR Margin RTS, Article 14 are comparable to those set forth in Exchange Act rule 18a-3(d)(2)(i).	

[7] https://www.ecfr.gov/cgi-bin/text-idx?SID=f21356649423aa2f17ac838f9928d337&mc=true&node=se17.4.240_118a_63&rgn=div8

[8] https://www.ecfr.gov/cgi-bin/text-idx?SID=f21356649423aa2f17ac838f9928d337&mc=true&node=se17.4.240_118a_63&rgn=div8

As discussed further below (where relevant), there are various exceptions and derogations at a counterparty and transaction level. **SEC Requirement and/or Policy Goal Summary per SEC (with link to**		**Comparability Assessment**	**National Measures Germany**
c. Subcategory: Margin Requirements for Nonbank Firms			
1. To what extent are models permitted for calculating initial margin? What are the minimum standards required of acceptable models (e.g., required confidence levels and restrictions on the use of models in connection with equity security-based swaps)?			
	of the unsecured exposure and the collateral must not be taken into account. EMIR Margin RTS, Article 11. • Historical observation period requirements: (i) Equally weighted data from a period of three to five years, (ii) at least 25% of data must be representative of period of significant financial stress. EMIR Margin RTS, Articles 16(1) and 16(2). • Where stressed data referred to in Article 16(2) of the EMIR Margin RTS does not constitute at least 25% of the data used in the initial margin model, the least recent data of the		

As discussed further below (where relevant), there are various exceptions and derogations at a counterparty and transaction level. **SEC Requirement and/or Policy Goal Summary per SEC (with link to**		**Comparability Assessment**	**National Measures Germany**
c. Subcategory: Margin Requirements for Nonbank Firms			
1. To what extent are models permitted for calculating initial margin? What are the minimum standards required of acceptable models (e.g., required confidence levels and restrictions on the use of models in connection with equity security-based swaps)?			
	historical data referred to in Article 16(1) of the EMIR Margin RTS shall be replaced by data from a period of significant financial stress, until the overall proportion of stressed data is at least 25% of the overall data used in the initial margin model. EMIR Margin RTS, Article 16(3). **Model Risk Management**: • Counterparties are required to establish an internal governance process to assess the appropriateness of the initial margin model on a continuous basis, including all of the following: (a) an initial validation of the model by suitably qualified persons who		

As discussed further below (where relevant), there are various exceptions and derogations at a counterparty and transaction level. **SEC Requirement and/or Policy Goal Summary per SEC (with link to**		**Comparability Assessment**	**National Measures Germany**
c. Subcategory: Margin Requirements for Nonbank Firms			
1. To what extent are models permitted for calculating initial margin? What are the minimum standards required of acceptable models (e.g., required confidence levels and restrictions on the use of models in connection with equity security-based swaps)?			
	are independent from the persons developing the model, (b) a follow up validation whenever a significant change is made to the initial margin model and at least annually, and (c) a regular audit process to assess the following: (i) the integrity and reliability of the data sources, (ii) the management information system used to run the model, (iii) the accuracy and completeness of data used, and (iv) the accuracy and appropriateness of volatility and correlation assumptions. EMIR Margin RTS, Article 18(1).		

As discussed further below (where relevant), there are various exceptions and derogations at a counterparty and transaction level. **SEC Requirement and/or Policy Goal Summary per SEC (with link to**		**Comparability Assessment**	**National Measures Germany**
c. Subcategory: Margin Requirements for Nonbank Firms			
1. To what extent are models permitted for calculating initial margin? What are the minimum standards required of acceptable models (e.g., required confidence levels and restrictions on the use of models in connection with equity security-based swaps)?			
	• The documentation of the risk management procedures relating to the initial margin model shall meet all of the following conditions: (a) it shall allow a knowledgeable third-party to understand the design and operational detail of the initial margin model, (b) it shall contain the key assumptions and the limitations of the initial margin model, and (c) it shall define the circumstances under which the assumptions of the initial margin model are no longer valid. EMIR Margin RTS, Article 18(2). • Counterparties are required to document all changes to the		

As discussed further below (where relevant), there are various exceptions and derogations at a counterparty and transaction level. **SEC Requirement and/or Policy Goal Summary per SEC (with link to**		**Comparability Assessment**	**National Measures Germany**
c. Subcategory: Margin Requirements for Nonbank Firms			
1. To what extent are models permitted for calculating initial margin? What are the minimum standards required of acceptable models (e.g., required confidence levels and restrictions on the use of models in connection with equity security-based swaps)?			
	initial margin model. That documentation shall also detail the results of the validations carried out after those changes. EMIR Margin RTS, Article 18(3). • Counterparties must establish, apply and document risk management procedures which include procedures providing for or specifying the calculation and collection of margin. Article 2(2)(b) of the EMIR Margin RTS.		

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Comparability Assessment	National Measures Germany
c. Subcategory: Margin Requirements for Nonbank Firms			
2. What are the prerequisites for netting agreements in connection with calculating margin?			
Dealers may account for netting agreements when calculating collection and delivery amounts so long as:	A "netting set" is a set of non-centrally cleared OTC derivative contracts between two counterparties that is subject to a legally enforceable bilateral netting agreement. EMIR Margin RTS, Article 1(3). The amount of variation margin to be collected by a counterparty shall be the aggregation of the values calculated in accordance with Article 11(2) of EMIR of all contracts in the netting set, minus the value of all variation margin previously collected, minus the net value of each contract in the netting set at the point of entry into the contract, and plus the value of all variation margin previously posted. EMIR Margin RTS, Article 10. Counterparties shall calculate the amount of initial margin to be collected using either the	**Comparability of outcomes**: The EU's requirements for netting agreements provide a comparable regulatory outcome to the netting agreement prerequisites to calculating margin set forth in the SEC's requirements. In particular, the regulatory outcomes pursued under Exchange Act rule 18a-3(c)(5), the EMIR Margin RTS Articles 1(3), 2, 9, 10 and 11 and Annex IV and CRR Articles 295-298 are comparable in that each provides for margin calculations to be made by reference to netting agreements but only if such netting agreements are legally enforceable agreements documenting the key terms of the netting arrangement. While the SEC Guidance does not require that the EU have analogues to every requirement under SEC rules in order to be deemed	

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Comparability Assessment	National Measures Germany
c. Subcategory: Margin Requirements for Nonbank Firms			
2. What are the prerequisites for netting agreements in connection with calculating margin?			
	standardized approach set out in Annex IV of the EMIR Margin RTS or initial margin models, in each case, by reference to netting sets. EMIR Margin RTS, Articles 9 and 11 and Annex IV.	comparable, we note the comparability of specific requirements below for completeness.	
		<u>Comparability of specific requirements</u>: The below EU requirements are comparable to analogous SEC requirements in the following ways:	
Enforceability: **(i) the netting agreement is enforceable in each relevant jurisdiction, including in insolvency proceedings;**	**Enforceability**: **<u>EMIR Margin RTS</u>** Where counterparties enter into a netting or exchange of collateral agreement, they must perform an independent legal review of the enforceability of those agreements (which shall be considered satisfied in relation to the netting agreement where the agreement is recognized in accordance with Article 296 of	**Enforceability**: The enforceability of netting agreements required by EMIR Margin RTS, Articles 2(3) and 2(4) and Articles 296(2)(b) and 297 CRR are together comparable to Exchange Act rule 18a-3(c)(5) as each requires netting agreements to be enforceable, including in insolvency proceedings.	

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Comparability Assessment	National Measures Germany
c. Subcategory: Margin Requirements for Nonbank Firms			
2. What are the prerequisites for netting agreements in connection with calculating margin?			
	the CRR). That review may be conducted by an internal independent unit or an independent third-party. EMIR Margin RTS, Article 2(3). Counterparties must establish policies to assess on a continuous basis the enforceability of the netting and exchange of collateral agreements that they enter into. EMIR Margin RTS, Article 2(4). **CRR** Investment Firms must obtain and provide to their regulator a written and reasoned legal opinion to the effect that, in the event of a legal challenge of the netting agreement, the relevant Investment Firm's claims and obligations would not exceed the single net sum determined under the netting agreement. The legal opinion must refer to the applicable law: (i) the		

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Comparability Assessment	National Measures Germany
c. Subcategory: Margin Requirements for Nonbank Firms			
2. What are the prerequisites for netting agreements in connection with calculating margin?			
	jurisdiction in which the counterparty is incorporated; (ii) if a branch of an undertaking is involved, which is located in a country other than that where the undertaking is incorporated, the jurisdiction in which the branch is located; (iii) the jurisdiction whose law governs the individual transactions included in the netting agreement; and (iv) the jurisdiction whose law governs any contract or agreement necessary to effect the contractual netting. Article 296(2)(b) CRR. Investment Firms must establish and maintain procedures to ensure that the legal validity and enforceability of their contractual netting is reviewed in the light of changes in the law of relevant jurisdictions referred to in Article 296(2)(b) of the CRR. Article 297(1) CRR.		

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Comparability Assessment	National Measures Germany
c. Subcategory: Margin Requirements for Nonbank Firms			
2. What are the prerequisites for netting agreements in connection with calculating margin?			
Determinability: **(ii) the gross receivables and gross payables under the netting agreement are determinable at any time; and**	**Determinability:** **<u>EMIR Margin RTS</u>** The EMIR Margin RTS requires that the terms of all necessary agreements (including, as relevant, the terms of any netting agreement and the terms of any exchange of collateral agreement) must document (at least): (a) any payment obligations arising between counterparties, (b) the conditions for netting payment obligations, (c) events of default or other termination events of the non-centrally cleared OTC derivative contracts, (d) all calculation methods used in relation to payment obligations, (e) the conditions for netting payment obligations upon termination, (f) the transfer of rights and obligations upon termination, and (g) the governing law of the	**Determinability**: The risk management procedures for determining netting agreement terms and obligations set forth in EMIR Margin RTS, Article 2(2)(g) and CRR Article 286(7) are comparable to the determinability requirements set forth in Exchange Act rule 18a-3(c)(5)(ii) as each requires gross payment obligations and exposures to be determinable.	

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Comparability Assessment	National Measures Germany
c. Subcategory: Margin Requirements for Nonbank Firms			
2. What are the prerequisites for netting agreements in connection with calculating margin?			
	transactions of the non-centrally cleared OTC derivative contracts. EMIR Margin RTS, Article 2(2)(g). **CRR** Investment Firms must measure current exposure gross and net of collateral. Article 286(7) CRR.		
Risk Management: **(iii) for internal risk management purposes, the dealer monitors and controls its exposure to the counterparty on a net basis. Exchange Act rule 18a-3(c)(5) [17 CFR 240.18a-3(c)(5)].**[9]	**Risk Management**: In order to recognize a derivatives netting agreement as being risk-reducing, Investment Firms must us a type of agreement that has been deemed suitable by their regulator. Article 295 CRR. Investment Firms must measure current exposure gross and net of collateral. Article 286(7) CRR. Investment Firms must factor the effects of netting into its	**Risk Management**: The internal risk management procedures required by CRR Articles 111(2), 295, 286(7), 297(3) and 298(1) are comparable to Exchange Act rule 18a-3(c)(5)(iii) as each requires that the dealer measures current exposures on a net basis, where permitted.	

[9] https://www.ecfr.gov/cgi-bin/text-idx?SID=f21356649423aa2f17ac838f9928d337&mc=true&node=se17.4.240_118a_63&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Comparability Assessment	National Measures Germany
c. Subcategory: Margin Requirements for Nonbank Firms			
2. What are the prerequisites for netting agreements in connection with calculating margin?			
	measurement of each counterparty's aggregate credit risk exposure and must manage its CCR on the basis of those effects of that measurement. Article 297(3) CRR. The exposure value of a derivative instrument is determined by taking into account the netting arrangement. Articles 111(2) and 298(1) CRR.		

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Comparability Assessment	National Measures Germany
c. Subcategory: Margin Requirements for Nonbank Firms			
3. What is the required frequency for calculating and collecting/delivering margin?			
Calculating: **Nonbank dealers generally are required to calculate initial margin**	**Calculating:**	**<u>Comparability of outcomes</u>**: **Calculating:**	

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Comparability Assessment	National Measures Germany
c. Subcategory: Margin Requirements for Nonbank Firms			
3. What is the required frequency for calculating and collecting/delivering margin?			
(or "potential future exposure") and variation margin (or "current exposure") as of the close of each business day for each counterparty account, although the calculations must be made more frequently "during periods of extreme volatility and for accounts with concentrated positions." Exchange Act rule 18a-3(c)(6) [17 CFR 240.18a-3(c)(6)].[10]	Counterparties must calculate variation margin at least on a daily basis. EMIR Margin RTS, Article 9(1). Counterparties are required to calculate initial margin no later than the business day following one of these events: (a) where a new non-centrally cleared OTC derivative contract is executed or added to the netting set, (b) where an existing non-centrally cleared OTC derivative contract expires or is removed from the netting set, (c) where an existing non-centrally cleared OTC derivative contract triggers a payment or a delivery other than the posting and collecting of margins, (d) where the initial margin is calculated in accordance with the standardized approach and an existing contract is reclassified in terms of the asset	The EU margin requirements for calculating margin provide a comparable regulatory outcome to the SEC's margin calculation requirements. In particular, the regulatory outcomes pursued under the margin calculation requirements, Exchange Act rule 18a-3(c)(1) and EMIR Margin RTS, Article 9(1) are consistent in that each generally requires variation margin calculations to be made daily with provision for counterparties in different time zones. • In respect of initial margin, the SEC rule also requires calculation on a daily basis but the EMIR Margin RTS do not. *See* EMIR Margin RTS, Article 9(2). In this regard, we note however, that the CFTC margin	

[10] https://www.ecfr.gov/cgi-bin/text-idx?SID=f21356649423aa2f17ac838f9928d337&mc=true&node=se17.4.240_118a_63&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Comparability Assessment	National Measures Germany
c. Subcategory: Margin Requirements for Nonbank Firms			
3. What is the required frequency for calculating and collecting/delivering margin?			
	category referred to by the EMIR Margin RTS as a result of reduced time to maturity, or (e) where no calculation has been performed in the preceding ten business days. EMIR Margin RTS, Article 9(2). Where two counterparties are located in the same time zone, the calculation is based on the netting set of the previous business day. EMIR Margin RTS, Article 9(3)(a). Where two counterparties are not located in the same time zone, the calculation is based on the transactions in the netting set which are entered into before 4:00 PM of the previous business day of the time zone where it is 4:00 PM. EMIR Margin RTS, Article 9(3)(b).	rules mirror the SEC rules on this point and in the CFTC Substituted Compliance Decision on Margin, the EC has confirmed that the EMIR Margin RTS requirement to recalculate whenever there is a change to the netting set will in practice require dealer counterparties to recalculate daily and because of this the EC views the ten day allowance under Article 9(2)(e) of the EMIR Margin RTS as a backstop only and one that is likely to be exercised only in the case of a static portfolio. As set out in the CFTC Substituted Compliance Decision on Margin, the EC believes that as a result of these entities exchanging variation margin, and thereby eliminating current exposure, this difference will be mitigated. The CFTC has, therefore, determined that the EU rules	

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Comparability Assessment	National Measures Germany
c. Subcategory: Margin Requirements for Nonbank Firms			
3. What is the required frequency for calculating and collecting/delivering margin?			
		are nonetheless comparable in outcome to the CFTC rules. *See* the CFTC Substituted Compliance Decision on Margin at 48405.	
Collecting & Delivering: **No later than the close of business of the first business day following the day of the calculation, the dealer must:** – **Variation margin collection: Collect collateral in an amount equal to the dealer's current exposure to the counterparty. Exchange Act rule 18a-3(c)(1)(ii)(A)(1) [17 CFR 240.18a-3(c)(1)(ii)(A)(1)].[11]**	**Collecting & Delivering:** The amount of variation margin to be collected by a counterparty is the aggregation of the values calculated in accordance with Article 11(2) of EMIR of all contracts in the netting set, minus the value of all variation margin previously collected, minus the net value of each contract in the netting set at the point of entry into the contract, and plus the value of all variation margin previously posted. EMIR, Article 11(2) and EMIR Margin RTS, Article 10.	**Collecting and Delivering**: The EU margin requirements for exchanging margin provide a comparable regulatory outcome to the SEC's margin collection and delivery requirements. In particular, the regulatory outcomes pursued under the initial and variation margin collection and delivery requirements, Exchange Act rules 18a-3(c)(1)(ii)(A) and 18a3(c)(1)(ii)(B), and EMIR Margin RTS Articles 10 to 13, are consistent in that each require that sufficient collateral be provided within a business day of calculation (where, in the context of calculation, we note	

[11] https://www.ecfr.gov/cgi-bin/text-idx?SID=f21356649423aa2f17ac838f9928d337&mc=true&node=se17.4.240_118a_63&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Comparability Assessment	National Measures Germany
c. Subcategory: Margin Requirements for Nonbank Firms			
3. What is the required frequency for calculating and collecting/delivering margin?			
– **Variation margin delivery: Deliver collateral in an amount equal to the counterparty's current exposure to the dealer, other than initial margin that the dealer collected. Exchange Act rule 18a-3(c)(1)(ii)(A)(2) [17 CFR 240.18a-3(c)(1)(ii)(A)(2)].[12]**	As already discussed above, counterparties calculate the amount of initial margin to be collected using either the standardized approach or initial margin models. EMIR Margin RTS, Article 11. The posting counterparty shall provide the variation margin as follows: (a) within the same business day of the calculation date; or (b) where certain conditions set out in Article 12(2) of the EMIR Margin RTS are met,[15] within two	different time zones are provided for). However, unlike the SEC rules, the EMIR Margin RTS, Articles 12(1) and 12(2) also allow for variation margin to be provided within two business days of the calculation date when certain conditions are met. In this regard, we note that the equivalent CFTC margin rule mirrors the SEC rule and that the CFTC has taken the view that while the EMIR Margin RTS conditions to a delay in the exchange of variation margin do not	

[12] https://www.ecfr.gov/cgi-bin/text-idx?SID=f21356649423aa2f17ac838f9928d337&mc=true&node=se17.4.240_118a_63&rgn=div8

[15] The provision of variation margin within two business of the calculation date may only be applied to the following: (a) netting sets comprising derivative contracts not subject to initial margin requirements in accordance with the EMIR Margin RTS, where the posting counterparty has provided, at or before the calculation date of the variation margin, an advance amount of eligible collateral calculated in the same manner as that applicable to initial margins in accordance with Article 15 of the EMIR Margin RTS, for which the collecting counterparty has used a MPOR at least equal to the number of days in between and including the calculation date and the collection date; (b) netting sets comprising contracts subject to initial margin requirements in accordance with the EMIR Margin RTS, where the initial margin has been adjusted in one of the following ways: (i) by increasing the MPOR referred to in Article 15(2) of the EMIR Margin RTS by the number of days in between, and including, the calculation date determined in accordance with Article 9(3) of the EMIR Margin RTS and the collection date determined in accordance with Article 12(1) of the EMIR Margin RTS; (ii) by increasing the initial margin calculated in accordance with the standardized approach referred to in Article 11 of the EMIR Margin RTS using an appropriate methodology taking into account a MPOR that is increased by the number of days in between, and including, the calculation date determined in accordance with Article 9(3) of the EMIR

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Comparability Assessment	National Measures Germany
c. Subcategory: Margin Requirements for Nonbank Firms			
3. What is the required frequency for calculating and collecting/delivering margin?			
– **Initial margin collection: Collect collateral in an amount equal to the initial margin amount. Exchange Act rule 18a-3(c)(1)(ii)(B) [17 CFR 240.18a-3(c)(1)(ii)(B)].[13]** – **Initial margin delivery: The rule does not require dealers to deliver initial margin, but does not prohibit the practice.** **Margin can be collected or delivered on the second business day if the counterparty is located in another country and more than four time zones away. Exchange**	business days of the calculation date. EMIR Margin RTS, Article 12(1). In the event of a dispute over the amount of variation margin due, counterparties shall provide at least the part of the variation margin amount that is not being disputed within the original timeframe. EMIR Margin RTS, Article 12(3). The posting counterparty shall provide the initial margin within the same business day of the calculation date. EMIR Margin RTS, Article 13(2). In the event of a dispute over the amount of initial margin due, counterparties shall provide at least the part of the initial margin	make the EU's rule in this area the same as the CFTC margin rule, they do serve to mitigate the potential risks by increasing the initial margin's MPOR by the corresponding number of days associated with a delay in the exchange of variation margin and are, thus, comparable. *See* the CFTC Substituted Compliance Decision on Margin at 48405.	

Margin RTS and the collection date determined in accordance with Article 12(2) of the EMIR Margin RTS. For the purposes of point (a), in case no mechanism for segregation is in place between the two counterparties, those counterparties may offset the amounts to be provided.

[13] https://www.ecfr.gov/cgi-bin/text-idx?SID=f21356649423aa2f17ac838f9928d337&mc=true&node=se17.4.240_118a_63&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Comparability Assessment	National Measures Germany
c. Subcategory: Margin Requirements for Nonbank Firms			
3. What is the required frequency for calculating and collecting/delivering margin?			
Act rule 18a-3(c)(1)(ii) [17 CFR 240.18a-3(c)(1)(ii)].[14]	amount that is not being disputed within the same business day of the calculation date determined in accordance with Article 9(3). EMIR Margin RTS, Article 13(3).		

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Comparability Assessment	National Measures Germany
c. Subcategory: Margin Requirements for Nonbank Firms			
4. How much time is allowed to liquidate accounts in the event of margin shortfalls?			
Dealers must take prompt steps to liquidate positions in an account that does not meet the margin requirements to the extent necessary to eliminate the margin	This is not discussed explicitly in requirements applicable to Investment Firms. However, Investment Firms' capital requirements are scaled to the volatility of collateral and CCR risk management requirements also	**Comparability of outcomes:** The EU requirements relating to risk management, position management and margin use provide a similar regulatory outcome to the SEC requirements. In particular, the regulatory outcomes pursued under	

[14] https://www.ecfr.gov/cgi-bin/text-idx?SID=f21356649423aa2f17ac838f9928d337&mc=true&node=se17.4.240_118a_63&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Comparability Assessment	National Measures Germany
c. Subcategory: Margin Requirements for Nonbank Firms			
4. How much time is allowed to liquidate accounts in the event of margin shortfalls?			
deficiency. Exchange Act rule 18a-3(c)(7) [17 CFR 240.18a-3(c)(7)].[16]	apply. Additionally, the risk management requirements that apply to Investment Firms and obligations in respect of position management and margin use are relevant in this context. In this regard, we note the following: **Capital levels and collateral volatility**: • The volatility of collateral held by Investment Firms is reflected in their capital requirements for credit risk mitigation and CCR purposes. Articles 224 and 285 CRR. Investment Firms that have permission to use internal modelling to calculate their CCR capital requirements are subject to enhanced risk management requirements, in particular,	Exchange Act rule 18a-3(c)(7) and MiFID, CRR, CRD IV and EMIR are comparable in that the risk posed to a non-defaulting party by a counterparty in default is required to be mitigated through capital requirements and risk management. A position that does not meet the margin requirements would be in default. The SEC's requirement to take prompt steps to liquidate positions in default is focused on the need to eliminate the margin deficiency – i.e. to reduce the risk posed to the non-defaulting party by the defaulting party. Although EU law does not require the termination of a defaulted position, or set a fixed time following default for termination to occur, it adopts a comparable focus to Exchange Act rule 18a-3(c)(7) by requiring the appropriate risk management of a	

[16] https://www.ecfr.gov/cgi-bin/text-idx?SID=f21356649423aa2f17ac838f9928d337&mc=true&node=se17.4.240_118a_63&rn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Comparability Assessment	National Measures Germany
c. Subcategory: Margin Requirements for Nonbank Firms			
4. How much time is allowed to liquidate accounts in the event of margin shortfalls?			
	must take into account liquidity risks arising from prescribed events and shocks. Articles 286 and 290 CRR. **Risk management requirements**: • Investment Firms must establish, implement and maintain adequate risk management policies and procedures that identify the risks relating to the firm's activities, processes and systems and, where appropriate, set the level of risk tolerated by the firm. Article 23(1) MiFID Org Reg. • Investment Firms must have robust governance arrangements, which include (among other matters), effective processes to identify, manage, monitor and report the risks they are or might be	defaulted position. We also note that the absence of a requirement to liquidate positions in default does not negate the obligation to collect margin in respect of such positions and a failure to comply with such obligation would lead to regulatory breach – we assume in such a scenario the dealer would likely terminate or liquidate the positions in any event. In practice, to risk manage a defaulted position, the only options available to the non-defaulting party are to terminate (and realize the loss created in the margin shortfall) or to wait for additional margin to be provided. Whether an Investment Firm's risk management practices enable it to wait for additional margin to be provided will depend on its risk tolerance, the size of the position, the time since default and the circumstances of the situation. The EU law risk management requirements described would oblige	

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Comparability Assessment	National Measures Germany
c. Subcategory: Margin Requirements for Nonbank Firms			
4. How much time is allowed to liquidate accounts in the event of margin shortfalls?			
	exposed to, and adequate internal control mechanisms, including sound administrative and accounting procedures that are consistent with and promote sound and effective risk management. Article 74 CRD IV. **Position management requirements**: • Investment Firms must have internal methodologies that enable them to assess the credit risk of exposures. Article 79(b) CRD IV. Investment Firms must have in place clearly defined policies and procedures for the active management of trading book positions and must set and monitor position limits for trading book positions. Articles 103 and 103(b)(ii) CRR. Investment Firms must revalue their trading book positions at	an Investment Firm to terminate a position if this is required in order to give appropriate effect to these risk management principles. *See* Article 74 CRR and Article 23(1) MiFID Org Reg. The rigour with which these risk management requirements must be met is determined in part by the position management requirements. These ensure that the risk of defaulted positions is properly assessed. Investment Firms must closely, and at least daily, monitor their trading book positions, including in respect of credit risk, and that the costs of termination and closing out positions are taken into account as part of this position management. *See* Articles 79(b), 103, 103(b)(ii), 105(3) and 105(10) CRR. Finally, the margin use requirements ensure that an Investment Firm is able to give	Article 74 CRD IV is transposed into German law by section 25a(1) of the German Banking Act (*Kreditwesengesetz*). Article 79(b) CRD IV is transposed into German law by section 25a(1) sentence 3 no. 3 b) of the German Banking Act, which is complemented by the German Federal Financial Supervisory Authority's (*Bundesanstalt für Finanzdienstleistungsaufsicht* – "BaFin") "Minimum Requirements for Risk Management (*MaRisk*)" (*see*, in particular, *MaRisk* AT 4.1 nos. 1 and 9, AT 4.3 no. 1, AT 4.3.2,

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Comparability Assessment	National Measures Germany
c. Subcategory: Margin Requirements for Nonbank Firms			
4. How much time is allowed to liquidate accounts in the event of margin shortfalls?			
	least daily. Article 105(3) CRR. Investment Firms' revaluation of trading book positions must account for valuation adjustments, including close-out costs and early termination. Article 105(10) CRR. **Margin use requirements for OTC derivatives**: • The non-defaulting counterparty must be able to liquidate assets collected as collateral as initial or variation margin in a sufficiently short time in order to protect against losses on non-centrally cleared OTC derivative contracts in the event of a counterparty default. These assets should therefore be highly liquid and should not be exposed to excessive credit, market or foreign exchange risk. EMIR Margin RTS, Recital (31).	effect to its risk management strategy for defaulted positions. The margin use requirements for OTC derivatives achieve this by enabling an Investment Firm to terminate positions (if and when required) with minimum loss. *See* Recital (31) and Articles 2(2)(i), 7(5) and 19(1)(g) EMIR Margin RTS.	BTO 1.2 nos. 3 and 4, BTO 1.4 no. 1, and BTR 1).

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Comparability Assessment	National Measures Germany
c. Subcategory: Margin Requirements for Nonbank Firms			
4. How much time is allowed to liquidate accounts in the event of margin shortfalls?			
	Counterparties shall not use assets as eligible collateral where they have no access to the market for those assets or where they are unable to liquidate those assets in a timely manner in case of default of the posting counterparty. EMIR Margin RTS, Article 7(5). The risk management procedures shall include procedures providing for or specifying the timely re-appropriation of collateral in the event of default by the posting counterparty from the collecting counterparty. EMIR Margin RTS, Article 2(2)(i). The risk management procedures shall include procedures providing for or specifying that initial margin is freely transferable to the posting counterparty in a timely		

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Comparability Assessment	National Measures Germany
c. Subcategory: Margin Requirements for Nonbank Firms			
4. How much time is allowed to liquidate accounts in the event of margin shortfalls?			
	manner on the default of the collecting counterparty. EMIR Margin RTS, Article 19(1)(g). The protections described above for OTC derivatives are not relevant for exchange-traded derivatives as these transactions must be cleared with a CCP and so the default of the counterparty has no direct effect on the non-defaulting party. Article 29 MiFIR.		

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Comparability Assessment	National Measures Germany
c. Subcategory: Margin Requirements for Nonbank Firms			
5. What collateral haircuts are required in connection with the exchange of margin?			
Haircut applicability:	**Haircut applicability**:	**Comparability of outcomes**:	

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Comparability Assessment	National Measures Germany
c. Subcategory: Margin Requirements for Nonbank Firms			
5. What collateral haircuts are required in connection with the exchange of margin?			
The value of collateral delivered pursuant to the rules is subject to standardized haircuts set forth in the applicable capital rules (Exchange Act rule 18a-3(c)(3)(i) [17 CFR 240.18a-3(c)(3)(i)]),[17] but a dealer can elect to apply the standardized CFTC haircut rules if the dealer applies those deductions consistently with respect to a particular counterparty. Exchange Act rule 18a-3(c)(3)(ii) [17 CFR 240.18a-3(c)(3)(ii)][18] (cross referencing 17 CFR 23.156). There is no ability for dealers to apply their own haircut estimates.	Risk management procedures must provide for the daily valuation of collateral in accordance with Articles 21 and 22 of the EMIR Margin RTS. EMIR Margin RTS, Articles 2(2)(d) and 19(1)(a). Parties must apply haircuts when valuing collateral either using the standard methodology in Annex II to the EMIR Margin RTS or using their own estimates in accordance with Article 22 of the EMIR Margin RTS. EMIR Margin RTS, Article 21(1). There is a narrow exemption whereby counterparties may disregard the foreign exchange risk arising from positions in currencies which are subject to a legally binding intergovernmental agreement to limit their variation	The EU collateral haircut requirements provide a comparable regulatory outcome to the SEC collateral haircut requirements. In particular, the regulatory outcomes pursued under Exchange Act rule 18a-3(c)(3) and the standard methodology described in EMIR Margin RTS, Articles 21 and Annex II are consistent in that each require comparable levels of collateral haircuts across similar asset classes to reflect the risk and liquidity in relation to a given asset. We note that the SEC rules provide that dealers can comply by either (i) complying with standardized haircuts set forth in the applicable capital rules, or (ii) complying with the standardized CFTC haircut rules.	

[17] https://www.ecfr.gov/cgi-bin/text-idx?SID=f21356649423aa2f17ac838f9928d337&mc=true&node=se17.4.240_118a_63&rgn=div8

[18] https://www.ecfr.gov/cgi-bin/text-idx?SID=f21356649423aa2f17ac838f9928d337&mc=true&node=se17.4.240_118a_63&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Comparability Assessment	National Measures Germany
c. Subcategory: Margin Requirements for Nonbank Firms			
5. What collateral haircuts are required in connection with the exchange of margin?			
	relative to other currencies covered by the same agreement. Article 21(2) of the EMIR Margin RTS.	In respect of compliance with the standardized haircuts set forth in the applicable capital rules, we note that the SEC stated in the adopting release of the final rule on capital and margin that "the haircuts in proposed Rule 18a-3 (i.e., the standardized haircuts in the proposed nonbank SBSD capital rules) and the haircuts in the margin rules of the CFTC and the prudential regulators (which are based on the recommended standardized haircuts in the BCBS/IOSCO Paper are largely comparable." Exchange Act Release No. 34-86175 (Jun. 21, 2019), 84 FR at 43919 (Aug. 22, 2019) (**Capital and Margin Adopting Release**). As the SEC has already acknowledged this comparability we have therefore focused on comparability between the CFTC and EU haircuts.	

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Comparability Assessment	National Measures Germany
c. Subcategory: Margin Requirements for Nonbank Firms			
5. What collateral haircuts are required in connection with the exchange of margin?			
Haircut amounts: **Initial margin (CFTC Haircut Rules (17 CFR 23.156(a))):**[19] **The value of any eligible collateral collected or posted to satisfy initial margin requirements shall be subject to the sum of the following discounts, as applicable:** **(A) An 8% discount for initial margin collateral denominated in a currency that is not the currency of settlement for the uncleared swap, except for eligible types of collateral denominated in a single termination currency designated as payable to the non-posting counterparty as**	**Haircut amounts**: **Standard methodology: Initial margin** The standard method set out in Annex II to the EMIR Margin RTS sets out haircuts delineated between debt security issuer/securitisation positions, credit quality step and residual maturity. The tables in Annex II to the EMIR Margin RTS setting out the haircuts for long term and short term credit quality assessments are set out in Annex I hereto. Equities in main indices, bonds convertible to such equities and gold shall have a haircut of 15%. For eligible units in UCITS the haircut is the weighted average of	**Haircut amounts:** The CFTC Substituted Compliance Decision on Margin found that EMIR Margin RTS, Annex II sets forth haircuts specific to certain asset classes that are comparable in outcome to those set forth in the CFTC (and, consequently, the SEC) haircut rules, 17 CFR 23.156 and Exchange Act rule 18a-3(c)(3) respectively. Please see Annex I for the CFTC haircuts. Moreover, the CFTC Substituted Compliance Decision on Margin found that the EU margin rules require larger haircuts on government, central bank, and corporate debt where a credit quality assessment indicates low credit quality for the debt. *See* the CFTC Substituted Compliance Decision on Margin at 48409.	

[19] https://www.govinfo.gov/content/pkg/CFR-2016-title17-vol1/pdf/CFR-2016-title17-vol1-sec23-156.pdf

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Comparability Assessment	National Measures Germany
c. Subcategory: Margin Requirements for Nonbank Firms			
5. What collateral haircuts are required in connection with the exchange of margin?			
part of the eligible master netting agreement; and **(B) The discounts set forth in the table found in Annex I hereto.** **The value of initial margin collateral shall be computed as the product of the cash or market value of the eligible collateral asset times one minus the applicable haircut expressed in percentage terms. The total value of all initial margin collateral is calculated as the sum of those values for each eligible collateral asset.** **Variation Margin (CFTC Haircut Rules (17 CFR 23.156(b))):[20]** **The value of any eligible collateral collected or posted to satisfy variation margin requirements**	the haircuts that would apply to the assets in which the fund is invested. A currency mismatch haircut of 8% is applied to initial margin. For cash and non-cash initial margin, the 8% haircut applies where the collateral is posted in a currency other than the currency in which the payments in case of early termination or default have to be made in accordance with the single derivative contract, the relevant exchange of collateral agreement or the relevant credit support annex (**termination currency**). Each of the counterparties may choose a different termination currency. Where the agreement does not identify a termination currency, the 8% haircut shall apply to the market value of all the assets posted as		

[20] https://www.govinfo.gov/content/pkg/CFR-2016-title17-vol1/pdf/CFR-2016-title17-vol1-sec23-156.pdf

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Comparability Assessment	National Measures Germany
c. Subcategory: Margin Requirements for Nonbank Firms			
5. What collateral haircuts are required in connection with the exchange of margin?			
shall be subject to the sum of the following discounts, as applicable: **(A) An 8% discount for variation margin collateral denominated in a currency that is not the currency of settlement for the uncleared swap, except for immediately available cash funds denominated in U.S. cash funds or another major currency; and** **(B) The discounts set forth in the table found in Annex I hereto.** **The value of variation margin collateral shall be computed as the product of the cash or market value of the eligible collateral asset times one minus the applicable haircut expressed in percentage**	collateral. EMIR Margin RTS, Annex II. **Standard methodology: Variation margin** The same rules apply as for initial margin with the following differences: • There is no haircut for cash variation margin. • A currency mismatch haircut of 8% is applied to non-cash variation margin. • For non-cash variation margin, the 8% haircut applies where the non-cash collateral is posted in a currency other than those agreed in an individual derivative contract, the relevant governing master netting agreement or the		

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Comparability Assessment	National Measures Germany
c. Subcategory: Margin Requirements for Nonbank Firms			
5. What collateral haircuts are required in connection with the exchange of margin?			
terms. The total value of all variation margin collateral shall be calculated as the sum of those values of each eligible collateral asset	relevant credit support annex. **Own estimates**: We have not included a discussion of the EU rules relating to the calculation of own volatility estimates for calculating haircuts as there is no corresponding requirement under the SEC rules.		

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Comparability Assessment	National Measures Germany
c. Subcategory: Margin Requirements for Nonbank Firms			
6. To what extent are third-party custodians permitted to hold counterparty collateral?			
Custodian requirements: **Collateral (initial margin or variation margin) must be either: (A) subject to the dealer's physical**	**Custodian requirements**: • **Initial margin**: Initial margin must be protected from the default or insolvency of the	**Comparability of outcomes:** The EU third-party custodian requirements for counterparty collateral provide a comparable	

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Comparability Assessment	National Measures Germany
c. Subcategory: Margin Requirements for Nonbank Firms			
6. To what extent are third-party custodians permitted to hold counterparty collateral?			
possession or control, and able to be liquidated promptly by the dealer without intervention by any other party; or (B) carried by an independent third-party custodian that is a bank or a registered U.S. clearing organization or depository that is not affiliated with the counterparty or, if the collateral consists of foreign securities or currencies, a supervised foreign bank, clearing organization, or depository that is not affiliated with the counterparty and that customarily maintains custody of such foreign securities or currencies. Exchange Act rule 18a-3(c)(4)(ii) [17 CFR 240.18a-3(c)(4)(ii)].[21] **There is a corresponding exception from the initial margin collection requirement when a counterparty**	collecting counterparty by segregating it in either or both of the following ways: (a) on the books and records of a third-party holder or custodian, (b) via other legally binding arrangements. EMIR Margin RTS, Articles 19(3) and 19(1)(d). • **Variation margin**: Third-party custodians are permitted to hold variation margin although there is not a specific requirement for variation margin to be held by third-party custodians under EMIR or the EMIR Margin RTS. As discussed above, any exchange of collateral agreement must be legally enforceable. EMIR Margin RTS, Article 2(3). In addition, variation margin must be held in accordance with all relevant	regulatory outcome to the SEC third-party custodian requirements. In particular, the regulatory outcomes pursued under Exchange Act rule 18a-3(c) and the EMIR Margin RTS are consistent in that each permit, and in some cases under EMIR require, collateral to be held by third-party custodians to minimize credit risk. The SEC rules prohibit collateral from being held by an affiliate of the posting party while the EMIR Margin RTS do not. We note that the CFTC margin rules mirror the SEC rules in this respect and that the CFTC Substituted Compliance Decision on Margin provides that the EC has highlighted that Article 19(3) of the EMIR Margin RTS provide equivalent finality and protection to that offered under the	

[21] https://www.ecfr.gov/cgi-bin/text-idx?SID=f21356649423aa2f17ac838f9928d337&mc=true&node=se17.4.240_118a_63&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Comparability Assessment	National Measures Germany
c. Subcategory: Margin Requirements for Nonbank Firms			
6. To what extent are third-party custodians permitted to hold counterparty collateral?			
delivers margin to an independent third-party custodian. *See* Exchange Act rule 18a-3(c)(1)(iii)(C) [17 CFR 240.18a-3(c)(1)(iii)(C)].[22]	provisions of the EMIR Margin RTS (for example, see further "Liquidity" below). **Eligible Collateral and Concentration Limits**: Counterparties may collect various types of "eligible collateral" to satisfy an initial margin obligation with the eligibility of some asset classes being subject to initial margin concentration limits. EMIR Margin RTS, Articles 4 and 8. In certain circumstances, if initial margin collateral collected from an individual counterparty exceeds EUR 1 billion then in respect of the excess over EUR 1 billion, the sum of values of initial margin collateral collected from that counterparty in the form of certain assets issued by a single issuer or by issuers domiciled in the same country must	CFTC regime because of the requirement that "initial margin shall be protected from the default or insolvency of the collecting counterparty." See CFTC Substituted Compliance Decision on Margin at 48410. While the SEC Guidance does not require that the EU have analogues to every requirement under SEC rules in order to be deemed comparable, we note the comparability of specific requirements below for completeness. **Comparability of specific requirements:** The below EU requirements are, when taken together, comparable to analogous SEC requirements in the following ways:	

[22] https://www.ecfr.gov/cgi-bin/text-idx?SID=f21356649423aa2f17ac838f9928d337&mc=true&node=se17.4.240_118a_63&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Comparability Assessment	National Measures Germany
c. Subcategory: Margin Requirements for Nonbank Firms			
6. To what extent are third-party custodians permitted to hold counterparty collateral?			
	not exceed 50% of the initial margin collateral collected from that counterparty. The 50% limit also applies to risk exposures arising from a single third-party holder or custodian holding initial margin collected in cash. EMIR Margin RTS, Articles 8(2) and (3). Where a G-SII or O-SII collects initial margin in cash from a single G-SII or O-SII counterparty, the collecting party shall ensure that not more than 20% of the total initial margin is maintained in cash with a single third-party custodian. EMIR Margin RTS, Article 8(5). **Risk management procedures**: Risk management procedures for management and segregation of	**Custodian requirements:** • **Initial Margin:** The EMIR Margin RTS require initial margin to be segregated in either or both of the following ways: (a) on the books and records of a third party-holder or custodian, (b) via other legally binding arrangements. The SEC rules require initial margin to either be subject to the dealer's physical possession or control (and subject to applicable segregation requirements under the SEC rules)[23] or carried by an independent third-party custodian that is a bank, clearing organization or depository that is not affiliated with the counterparty.	

[23] The SEC's segregation requirements are set-out at Exchange Act rule 15c3-3 and Exchange Act rule 18a-4. There is an exception from the SEC's segregation requirements for uncleared and cleared security-based swap transactions between a non-US nonbank firm and a non-US person if the firm does not hold customer funds or other property for any US customer.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Comparability Assessment	National Measures Germany
c. Subcategory: Margin Requirements for Nonbank Firms			
6. To what extent are third-party custodians permitted to hold counterparty collateral?			
	margin must provide (i) for the legal arrangements and collateral holding structure that allow access to collateral held by a third-party; and (ii) that non-cash collateral is transferable without encumbrance, including any otherwise imposed by the collecting party's liquidator or a third-party custodian (other than certain routine liens). EMIR Margin RTS Article 19(1)(b) and (h). Where initial margin is held by the collateral provider, collateral must be maintained in insolvency-remote custody accounts. EMIR Margin RTS, Article 19(1)(c). **Segregation**: Counterparties shall ensure that non-cash collateral exchanged as initial margin is segregated as follows: (a) where collateral is held by the collecting counterparty on a proprietary basis, it shall be	• **Variation Margin:** Under the EMIR Margin RTS, third-party custodians are permitted to hold variation margin but there is not a specific requirement for it to be held in this manner. Likewise, the SEC rules permit third-party custodians to hold variation margin but there is not a specific requirement for it to be held in this manner.	

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Comparability Assessment	National Measures Germany
c. Subcategory: Margin Requirements for Nonbank Firms			
6. To what extent are third-party custodians permitted to hold counterparty collateral?			
	segregated from the rest of the proprietary assets of the collecting counterparty; (b) where collateral is held by the posting counterparty on a non-proprietary basis, it shall be segregated from the rest of the proprietary assets of the posting counterparty; (c) where collateral is held on the books and records of a custodian or other third-party holder, it shall be segregated from the proprietary assets of that third-party holder or custodian. EMIR Margin RTS, Articles 19(4) and 19(1)(d). If non-cash initial margin is to be held by the collecting party or a third-party holder or custodian, the posting counterparty must have the option for the collateral to be segregated from the collateral of other posting counterparties. EMIR Margin RTS, Articles 19(5).		

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Comparability Assessment	National Measures Germany
c. Subcategory: Margin Requirements for Nonbank Firms			
6. To what extent are third-party custodians permitted to hold counterparty collateral?			
	Cash collected as initial margin must be maintained in cash accounts at central banks or credit institutions which fulfil all of the following conditions: (i) they are authorized in accordance with CRD IV or are authorized in a non-EEA jurisdiction whose supervisory and regulatory arrangements have been found to be equivalent in accordance with Article 142(2) CRR; and (ii) they are neither the posting nor the collecting counterparties, nor part of the same group as either of the counterparties. The collecting counterparty must take into account the credit quality of such credit institution without relying "solely or mechanistically" on external credit quality assessments. EMIR Margin RTS, Articles 19(1)(e) and 19(8). Collateral protects the collecting counterparty in the event of the		

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Comparability Assessment	National Measures Germany
c. Subcategory: Margin Requirements for Nonbank Firms			
6. To what extent are third-party custodians permitted to hold counterparty collateral?			
	default of the posting counterparty. However, both counterparties are also responsible for ensuring that the manner in which collateral collected is held does not increase the risk of a loss of excess posted collateral for the posting counterparty in case the collecting counterparty defaults. For this reason, the bilateral agreement between the counterparties should allow both counterparties to access the collateral in a timely manner when they have the right to do so, hence the need for rules on segregation and for rules providing for an assessment of the effectiveness of the agreement in this respect, taking into account the legal constraints and the market practices of each jurisdiction. EMIR Margin RTS, Recital (34). Each party to perform an independent legal review in order		

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Comparability Assessment	National Measures Germany
c. Subcategory: Margin Requirements for Nonbank Firms			
6. To what extent are third-party custodians permitted to hold counterparty collateral?			
	to verify that the initial margin segregation arrangements meet the requirements set out in Articles 19(1)(g) and 19(3) to 19(5) of the EMIR Margin RTS, to provide evidence to the relevant competent authority of compliance in each relevant jurisdiction and, upon request by a competent authority, to establish policies ensuring the continuous assessment of compliance. EMIR Margin RTS, Articles 19(6) and 19(7).		

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Comparability Assessment	National Measures Germany
c. Subcategory: Margin Requirements for Nonbank Firms			
6. To what extent are third-party custodians permitted to hold counterparty collateral?			
Liquidity: **Generally, margin collateral held by third-parties or otherwise must have a ready market and be readily transferrable.**[24] **Exchange Act rule**	**Liquidity**: Counterparties shall not use assets as eligible collateral[26] where they have no access to the market for those assets or where they are unable to liquidate those assets in a timely manner in case of default of the posting counterparty. EMIR Margin RTS, Article 7(5). The collateral arrangements must ensure that the initial margin is freely transferable to the posting counterparty in a timely manner on the default of the collecting	**Liquidity:** The EMIR Margin RTS require that the initial margin is freely transferable to the posting counterparty in a timely manner on the default of the collecting counterparty. This is comparable to the requirement under the SEC rules that if the collateral is subject to the dealer's physical possession or control, it is able to be liquidated promptly by the dealer without intervention by any other party.	

[24] Acceptable collateral consists of cash, securities, money market instruments, a major foreign currency, the settlement currency of the non-cleared security-based swap, or gold. The collateral cannot consist of securities and/or money market instruments issued by the counterparty, or by a party related to the dealer or the counterparty.

[26] Eligible collateral consists of: (a) cash in the form of money credited to an account in any currency, or similar claims for the repayment of money, such as money market deposits; (b) gold; (c) debt securities issued by Member States' central governments or central banks; (d) debt securities issued by Member States' regional governments or local authorities; (e) debt securities issued by Member States' public sector entities; (f) debt securities issued by certain multilateral development banks; (g) debt securities issued by certain international organizations; (h) debt securities issued by third countries' governments or central banks, regional governments or local authorities; (i) debt securities issued by credit institutions or investment firms including bonds referred to in Article 52(4) of Directive 2009/65/EC of the European Parliament and of the Council; (j) corporate bonds; (k) the most senior tranche of a securitization, as defined in Article 4(61) of the CRR, that is not a re-securitization as defined in Article 4(63) of the CRR; (l) convertible bonds provided that they can be converted only into equities which are included in an index specified pursuant to point (a) of Article 197(8) of the

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Comparability Assessment	National Measures Germany
c. Subcategory: Margin Requirements for Nonbank Firms			
6. To what extent are third-party custodians permitted to hold counterparty collateral?			
18a-3(c)(4)(i) [17 CFR 240.18a-3(c)(4)(i)].[25]	counterparty. EMIR Margin RTS, Article 19(1)(g).		
Enforceability: **The collateral must be subject to an agreement that is legally enforceable by the dealer against counterparty and any other parties**	**Enforceability**: Where counterparties enter into an exchange of collateral agreement, they shall perform an independent legal review of the enforceability of	**Enforceability**: The SEC rules require that collateral be subject to an agreement that is legally enforceable by the dealer against counterparty and any other	

CRR; (m) equities included in an index specified pursuant to point (a) of Article 197(8) of the CRR; and (n) units or shares in undertakings for collective investments in transferable securities (UCITS) but only if the conditions set out in Article 5 of the EMIR Margin RTS are met.

[25] https://www.ecfr.gov/cgi-bin/text-idx?SID=f21356649423aa2f17ac838f9928d337&mc=true&node=se17.4.240_118a_63&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Comparability Assessment	National Measures Germany
c. Subcategory: Margin Requirements for Nonbank Firms			
6. To what extent are third-party custodians permitted to hold counterparty collateral?			
to the agreement. Exchange Act rule 18a-3(c)(4)(i)(E) [17 CFR 240.18a-3(c)(4)(i)(E)].[27]	those agreements and assess this on a continuous basis. EMIR Margin RTS, Articles 2(3) and 2(4).	parties to the agreement. Similarly, the EMIR Margin RTS require an independent legal review of the enforceability of agreements governing the exchange of collateral.	

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Comparability Assessment	National Measures Germany
c. Subcategory: Margin Requirements for Nonbank Firms			
7. To what extent are there exceptions to the margin requirement?			
There is no obligation on the dealer to deliver initial margin to its counterparty, but there is no prohibition on this practice. There are a number of targeted exceptions to the margin collection	The EMIR margin requirements only apply to *uncleared* OTC derivative contracts, and the EMIR margin requirements require the dealer both to collect initial margin from, and post initial margin to, its	**Comparability of outcomes**: Overall the exceptions to the EU's margin requirement achieve a comparable regulatory outcome to the exceptions to the SEC's margin	

[27] https://www.ecfr.gov/cgi-bin/text-idx?SID=f21356649423aa2f17ac838f9928d337&mc=true&node=se17.4.240_118a_63&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Comparability Assessment	National Measures Germany
c. Subcategory: Margin Requirements for Nonbank Firms			
7. To what extent are there exceptions to the margin requirement?			
and delivery requirements, addressing:	counterparty. EMIR and the EMIR Margin RTS provide for a number of exceptions and derogations including:	requirement. In particular, the regulatory outcomes pursued under Exchange Act rule 18a-3(c)(1)(iii) and EMIR and the EMIR Margin RTS are consistent in that each provides certain exceptions for (i) commercial end user/non-financial counterparty accounts, (ii) legacy transactions entered into prior to the start date of the applicable margin requirements, (iii) inter-affiliate transactions, (iv) multilateral development banks, (v) sovereigns (in the case of the EU, if sovereigns are regarded as "non-undertakings"), and (vi) where the margin required to be transferred and/or exposure falls below certain thresholds. We note that the exceptions to the EU's margin requirement are not identical in all respects to the exceptions to the SEC's margin requirement and there are certain	

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Comparability Assessment	National Measures Germany
c. Subcategory: Margin Requirements for Nonbank Firms			
7. To what extent are there exceptions to the margin requirement?			
		circumstances where an exception may apply under EMIR but would not apply under the SEC rules. Likewise, there are exceptions under the SEC's rules which do not apply under EMIR (for example, there is no obligation on the dealer to deliver initial margin to its counterparty under the SEC's rules). Despite some differences in the scope of the exceptions the two regimes are comparable from a outcomes perspective. We note this approach is consistent with the approach taken by the CFTC in its Substituted Compliance Decision on Margin (as supplemented by the subsequent remarks of Chairman J. Christopher Giancarlo on January 19, 2018), where it found broad comparability between the CFTC and EU margin rules in the interests of providing "certainty to market participants" and ensuring that "global markets are not stifled by	

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Comparability Assessment	National Measures Germany
c. Subcategory: Margin Requirements for Nonbank Firms			
7. To what extent are there exceptions to the margin requirement?			
		fragmentation, inefficiencies and higher costs" despite certain differences in the exceptions, including the fact that transactions with a counterparty that is an NFC- under EMIR would not be subject to the CFTC's margin rules even though it may be a financial end-user that would otherwise be subject to the CFTC's margin rules.[28] **Comparability of specific requirements:**	
Commercial accounts: **Dealers need not collect initial margin, and need not collect or deliver variation margin for commercial end user accounts. Exchange Act rule 18a-3(c)(1)(iii)(A) [17 CFR 240.18a-3(c)(1)(iii)(A)];[29]**	**Commercial accounts**: If one or both parties is a non-financial counterparty below the "clearing threshold" (**NFC-**) or a non-EEA equivalent, the EMIR variation margin and initial margin	**Commercial accounts**: This EU exception is comparable to Exchange Act rule 18a-3(c)(1)(iii)(A) [17 CFR 240.18a-3(c)(1)(iii)(A)] because both exceptions provide that no variation margin or initial margin is required to be exchanged	

[28] https://www.cftc.gov/PressRoom/SpeechesTestimony/opagiancarlo34#P127_31677

[29] https://www.ecfr.gov/cgi-bin/text-idx?SID=f21356649423aa2f17ac838f9928d337&mc=true&node=se17.4.240_118a_63&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Comparability Assessment	National Measures Germany
c. Subcategory: Margin Requirements for Nonbank Firms			
7. To what extent are there exceptions to the margin requirement?			
	requirements do not apply. EMIR Margin RTS, Article 24.	with counterparties that are not subject to the clearing requirement under EMIR or the Exchange Act (as applicable).	
Development banks: **Dealers need not collect initial margin, and need not collect or deliver variation margin for certain multilateral development banks, including the Bank for International Settlements and the European Stability Mechanism. Exchange Act rule 18a-3(c)(1)(iii)(E) [17 CFR 240.18a-3(c)(1)(iii)(E)];[30]**	**Development banks**: If one or both parties is an exempt entity set out in Article 1(4) or Article 1(5) of EMIR (namely, (i) a member of the European System of Central Banks (**ESCB**) or other Member State body performing similar functions or other EU public body charged with or intervening in the management of the public debt; (ii) the Bank for International Settlements; (iii) the central banks and public bodies charged with or intervening in the management of the public debt in Japan, United States of America, Australia, Canada, Hong Kong, Mexico,	**Development banks**: This EU exception is comparable to the Exchange Act rule 18a-3(c)(1)(iii)(E) [17 CFR 240.18a-3(c)(1)(iii)(E)] because both exceptions cover substantially the same type of entities.	

[30] https://www.ecfr.gov/cgi-bin/text-idx?SID=f21356649423aa2f17ac838f9928d337&mc=true&node=se17.4.240_118a_63&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Comparability Assessment	National Measures Germany
c. Subcategory: Margin Requirements for Nonbank Firms			
7. To what extent are there exceptions to the margin requirement?			
	Singapore and Switzerland; (iv) certain multilateral development banks; (v) certain public sector entities within the meaning of point (18) of Article 4 of Directive 2006/48/EC where they are owned by central governments and have explicit guarantee arrangements provided by central governments; and (vi) the European Financial Stability Facility and the European Stability Mechanism), the EMIR variation margin and initial margin requirements do not apply.		
Financial market intermediary accounts: **Dealers need not collect initial margin, but still need to collect and deliver variation margin. Exchange Act rule 18a-3(c)(1)(iii)(B) [17 CFR 240.18a-3(c)(1)(iii)(B)];**[31]	**Financial market intermediary accounts**: There is no such exception under EMIR.	**Financial market intermediary accounts**: EMIR does not contain an exception which is analogous to the financial market intermediary account exception under the SEC rules and therefore EMIR is stricter in this	

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Comparability Assessment	National Measures Germany
c. Subcategory: Margin Requirements for Nonbank Firms			
7. To what extent are there exceptions to the margin requirement?			
		regard. However, we note that under the back-to-back model of client clearing used in the EU we note that the transaction entered into between a client and its clearing member is not subject to the EMIR variation margin and initial margin requirements because the parties thereto are deemed to have fulfilled their clearing obligation with respect to such contract and therefore the EMIR risk-mitigation requirements applicable to uncleared contracts do not apply.[32]	
Affiliate accounts/intragroup transactions: **Dealers need not collect initial margin, but still need to collect and deliver variation margin. Exchange**	**Affiliate accounts/intragroup transactions**: There are exemptions from the EMIR variation margin and initial margin requirements in respect of certain intragroup transactions. The	**Affiliate accounts/intragroup transactions**: he SEC rules are comparable to the CFTC margin rules in this respect (i.e. both state that initial margin does not need to be collected but	

[32] See General Question 2 in the ESMA Q&A on EMIR.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Comparability Assessment	National Measures Germany
c. Subcategory: Margin Requirements for Nonbank Firms			
7. To what extent are there exceptions to the margin requirement?			
Act rule 18a-3(c)(1)(iii)(G) [17 CFR 240.18a-3(c)(1)(iii)(G)];[33]	conditions to this exemption depend on whether the parties are established in the same EU Member State, different EU Member States or outside the EU and also on the classification of the parties. EMIR, Articles 11(5) to 11(10), and EMIR Margin RTS Articles 36(2), 36(3), 37(3), and 37(4) as amended by the Revised EMIR Margin RTS.	that variation margin does need to be collected in respect of inter-affiliate transactions). We note that, notwithstanding differences between the EU and the CFTC margin rules on affiliate accounts/intragroup transactions, in the CFTC's Substituted Compliance Decision on Margin, the CFTC found that the treatment of inter-affiliate transactions under the CFTC margin rules is comparable to the treatment of inter-affiliate transactions under EMIR on an outcomes basis.	
Sovereigns: **Dealers need not collect initial margin, but still need to collect and deliver variation margin for accounts of sovereigns with minimal credit risk. Exchange Act**	**Sovereigns**: Under EMIR, only "undertakings" are subject to the margin requirements. There is no explicit definition of the term 'undertaking' in EMIR. However, the EC Q&A on	**Sovereigns**: To the extent that a sovereign is not an "undertaking" for the purposes of EMIR the dealer will not be required to exchange initial margin or variation margin under the EMIR	

[33] https://www.ecfr.gov/cgi-bin/text-idx?SID=f21356649423aa2f17ac838f9928d337&mc=true&node=se17.4.240_118a_63&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Comparability Assessment	National Measures Germany
c. Subcategory: Margin Requirements for Nonbank Firms			
7. To what extent are there exceptions to the margin requirement?			
rule 18a-3(c)(1)(iii)(F) [17 CFR 240.18a-3(c)(1)(iii)(F)];[34]	EMIR provide some guidance on the meaning of "undertaking". Consequently, the EU analysis on whether a sovereign may benefit from an exemption from margin requirements will depend on the activities carried out by the sovereign in question and whether it is, therefore, an undertaking. If a sovereign is not acting as a commercial entity and is entering into derivative contracts solely for hedging purposes, there may be an argument that this is the proper exercise of public authority or powers which does not constitute economic activity and, consequently, that the sovereign is not an undertaking. Article 1(5) of EMIR (as further discussed above) may also be relevant.	Margin RTS. Under Exchange Act rule 18a-3(c)(1)(iii)(F) [17 CFR 240.18a-3(c)(1)(iii)(F)] the dealer would not be required to collect initial margin but would be required to exchange variation margin with such an entity.	

[34] https://www.ecfr.gov/cgi-bin/text-idx?SID=f21356649423aa2f17ac838f9928d337&mc=true&node=se17.4.240_118a_63&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Comparability Assessment	National Measures Germany
c. Subcategory: Margin Requirements for Nonbank Firms			
7. To what extent are there exceptions to the margin requirement?			
Legacy accounts: **Dealers need not collect initial margin, and need not collect or deliver variation margin. Exchange Act rule 18a-3(c)(1)(iii)(D) [17 CFR 240.18a-3(c)(1)(iii)(D)].[35]**	**Legacy accounts**: The EMIR Margin RTS apply to uncleared OTC derivative contracts entered into or novated on or after the relevant margin start date.	**Legacy accounts**: The EU requirement is analogous to Exchange Act rule 18a-3(c)(1)(iii)(D) [17 CFR 240.18a-3(c)(1)(iii)(D)] as both specify that dealers do not need to collect initial margin or exchange variation margin in respect of transactions entered into before the compliance date of the relevant margin requirement.	
Material swaps exposure: **There is no such exception under the SEC's rules.**	**Material swaps exposure:** Initial margin requirements do not apply to contracts concluded from January in a given year if the AANA of either party was below EUR 8 billion for the months of March, April and May of the previous year. EMIR Margin RTS, Article 28.	**Material swaps exposure:** While the EU requirement is different from Exchange Act rule 18a-3(c)(1)(iii)(H) [17 CFR 240.18a-3(c)(1)(iii)(H)], the CFTC margin rules contain this same exception from initial margin requirements, and the SEC has stated that the CFTC margin rules are "largely comparable" to the SEC margin	

[35] https://www.ecfr.gov/cgi-bin/text-idx?SID=f21356649423aa2f17ac838f9928d337&mc=true&node=se17.4.240_118a_63&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Comparability Assessment	National Measures Germany
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7. To what extent are there exceptions to the margin requirement?			
		rules. In addition, this exception is intended to screen out counterparties whose positions opposite a dealer are unlikely to result in the dealer facing potential future credit exposure in excess of the USD 50 million initial threshold so that those counterparties are not required to put in place documentation relating to the exchange of initial margin. The SEC margin rules similarly address this situation by permitting the dealer to defer collecting initial margin from a counterparty for two months after they initially cross the threshold.	
Initial margin threshold: **Dealers need not collect initial margin to the extent the amount of initial margin would be below the USD 50 million threshold but this does not impact the obligation to collect and deliver variation**	**Initial margin threshold**: Counterparties may provide in their risk management procedures that initial margin collected is reduced by an amount up to EUR 50 million where neither counterparty belongs to any group or the counterparties	**Initial margin threshold**: The EU requirement is analogous to Exchange Act rule 18a-3(c)(1)(iii)(H) [17 CFR 240.18a-3(c)(1)(iii)(H) as both set a comparable threshold (EUR 50 million and USD 50 million respectively).	

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Comparability Assessment	National Measures Germany
c. Subcategory: Margin Requirements for Nonbank Firms			
7. To what extent are there exceptions to the margin requirement?			
margin. Exchange Act rule 18a-3(c)(1)(iii)(H) [17 CFR 240.18a-3(c)(1)(iii)(H)];[36] and	are part of different groups, or EUR 10 million where both counterparties belong to the same group. EMIR Margin RTS, Article 29(1).	We note that the SEC requirement is the same in this regard as the CFTC margin rules, and the CFTC has found that the USD 50 million threshold in the CFTC margin rules is comparable with the threshold under EMIR, notwithstanding the possibility that fluctuating exchange rates may mean the EU threshold may be greater than that under the CFTC margin rules and vice versa.	
Minimum transfer amounts: **Dealers need not collect initial margin, and need not collect or deliver variation margin until the total amount of collateral that needs to be collected with respect to the counterparty is greater than USD 500,000. Exchange Act rule**	**Minimum transfer amounts**: Counterparties may provide in their risk management procedures that no collateral is collected from a counterparty where the amount due from the last collection of collateral is equal to or lower than the amount agreed by the counterparties. The minimum transfer amount shall not exceed	**Minimum transfer amounts**: The EU requirement is analogous to Exchange Act rule 18a-3(c)(1)(iii)(I) [17 CFR 240.18a-3(c)(1)(iii)(I)] as both set a comparable minimum transfer amount (EUR 500,000 and USD 500,000 respectively). We note that the SEC requirement is the same in this regard as the CFTC margin rules, and the CFTC has	

[36] https://www.ecfr.gov/cgi-bin/text-idx?SID=f21356649423aa2f17ac838f9928d337&mc=true&node=se17.4.240_118a_63&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Comparability Assessment	National Measures Germany
c. Subcategory: Margin Requirements for Nonbank Firms			
7. To what extent are there exceptions to the margin requirement?			
18a-3(c)(1)(iii)(I) [17 CFR 240.18a-3(c)(1)(iii)(I)].[37]	EUR 500,000 or the equivalent amount in another currency. EMIR Margin RTS, Article 25(1).	found that the USD 500,000 minimum transfer amount in the CFTC margin rules is comparable with the minimum transfer amount under EMIR, notwithstanding the possibility that fluctuating exchange rates may mean the EU minimum transfer amount may be greater than that under the CFTC margin rules and vice versa.	

[37] https://www.ecfr.gov/cgi-bin/text-idx?SID=f21356649423aa2f17ac838f9928d337&mc=true&node=se17.4.240_118a_63&rgn=div8

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SEC Follow-up Questions – June 10, 2021

Information to be included in the Application (Element 4)

Please also see the responses provided in Annex B in BaFin's prior application, which are incorporated by reference herein.

Supervision Questions

1. For capital and margin requirements for credit institutions and investment firms, explain whether BaFin or the ECB is the primary supervisor. Explain the role of the Single Supervisory Mechanism ("SSM") and how it applies to credit institutions and investment firms.

   Regarding margin requirements for credit institutions and investment firms, BaFin is the primary supervisor (EMIR rules). In the context of the EMIR rules, credit institutions and investment firms are treated as financial counterparties.

   The Single Supervisory Mechanism ("SSM"), consisting of the ECB and national supervisors, is responsible for prudential supervision of credit institutions. Significant credit institutions (main criterion: more than EUR 30 bn total assets) throughout the SSM area are directly supervised by the SSM/ECB. Less significant credit institutions are directly supervised by the respective national supervisor, i.e. BaFin in Germany, in line with common guidelines and principles agreed amongst SSM participants.

   In the past and as of today, neither the ECB nor the SSM have had a role in the direct supervision of investment firms at entity level, regardless their size and business model. However, as investment firms fall within the scope of prudential consolidation, there has been already a link for indirect capital supervision in the past, in case the investment firm is part of a banking group supervised by the SSM at the group-consolidated level.

   Recent European legislation (Investment Firm Regulation and –Directive ("IFD") introduced stricter supervisory rules for so called "large investment firms" (LIF) with bank-like business models and systemic size and complexity. These LIF will soon be treated as credit institutions for prudential regulatory-supervisory purposes. More concretely, large investment firms with total assets above EUR 30 bn on solo- or consolidated level have to seek re-authorization as credit institution by the ECB. They will consequently become subject to direct ECB supervision as significant institution and thus, the ECB is the primary prudential supervisor for large investment firms.[1]

[1] C.f. regulatory mapping or EUROPEAN PARLIAMENT (https://www.europarl.europa.eu/legislative-train/theme-economic-and-monetary-affairs-econ/file-prudential-requirements-for-investment-firms) for some further information on the new prudential requirements for investment firms

Please note that smaller investment firms will remain in the regulatory-supervisory remit of BaFin under a new investment firm regime. However, it can be reasonably assumed that only large investment firms will have a need for registering as SBS entities in the U.S with the SEC. It is assumed that respective investment firms are directly supervised by the ECB as of the SBS compliance date. Responses to the following questions will thus focus on the supervision of large investment firms. In general, regarding both capital and margin, large investment firms are effectively supervised no different from other significant institutions (i.e. significant credit institution that take deposits).

2. Explain the BaFin's day-to-day supervision over the capital and margin of security-based swap ("SBS") activities for credit institutions and investment firms. Distinguish the roles of BaFin-Banking v. BaFin Securities. Include the following information:

As BaFin's day-to-day supervision over margin of security-based swap ("SBS") activities for credit institutions and investment firms is governed by the EMIR rules in the remit of securities supervision BaFin refers to its application for credit institutions dated 6 November 2020 ("ACI"), in particular to Question 3 of our original Element IV response.

Given that prudential supervision of large investment firms (i.e. the kind of investment firm that is expected to apply for substituted compliance) will be the responsibility of ECB/SSM and carried out by a JST, BaFin may refer to the replies on JST day-to-day supervision for capital, where applicable.

a. The approximate number of supervisors assigned to a firm.

On margin as part of EMIR supervision, a dedicated team is responsible for the supervision besides of the reporting obligations as this is in the remit of another team.

BaFin directly supervises ca. 1,500 credit institutions and securities trading banks/investment firms. The latter are generally supervised by BaFin Securities supervision. The staffing for institutions under BaFin's direct supervision varies according to the principle of double proportionality, i.e. taking into account size/complexity of the business model as well as the quality of risk management.

In this context, please note that the largest credit institutions are and large investment firms will become significant institutions under ECB supervision (c.f. question 5).

b. The ways in which, and how often, the supervisors interact with the firm (including meetings, phone calls, etc.).

Interactions between supervisors and firms take place in an institutionalized manner at regular intervals or on an ad-hoc basis. The frequency of interactions depends on the responsibilities of the respective supervised institution/group and on current events of

relevance, such as ad-hoc identified deficiencies as well as notifications or applications of firms. While there are certain mandatory interaction for all firms, BaFin in general pursues a risk-based approach (also c.f. response to 2a).

c. What dedicated reports the supervisor reviews related to capital and margin on a daily, monthly or quarterly basis and how the review works.

Regarding margin supervision, the core report is the EMIR auditor's report, which includes margin and is part of theWpHG Section 89 audit report.

Regarding capital supervision, firms are required by European and national law to regularly submit quantitative and qualitative reports on compliance with prudential requirements. General information on reports reviewed by JSTs is available under question 5d. With regard to significant institutions, the information is owned by the ECB/SSM, BaFin consequently refers to the ECB on this matter.

d. The supervisory tools BaFin uses to correct red flags/violations of law (for example requiring capital charges, speaking with or written communication to management, requiring a special audit, referring to enforcement).

There are various tools at BaFin's disposal to correct violations of supervisory law, used according to their effectiveness and appropriateness. BaFin addresses and requires remediation of deficiencies e.g. through letters or formal meetings with senior management, compliance, internal audit or staff from relevant business areas. Depending on the case, firms may need to present remediation plans and have to face additional scrutiny and potential consequences if diverging from those. BaFin can direct the annual external auditor to focus on certain areas identified by BaFin or (in case of capital) order on-site inspections to identify risks/violations of law and verify close upon remediation.

As one of the main supervisory tools regarding capital, European and German supervisory laws contain provisions that allow imposing capital add-ons for a variety of reasons, i.a. for risks not covered under Pillar 1 as well as to address risks from the violation of specific prudential requirements. Capital add-ons are usually reviewed and set within the context of the Supervisory Review and Evaluation Process (SREP), but can also be imposed on ad-hoc basis, especially in case of ad-hoc identified violations of supervisory law and associated prudential risks.

BaFin can also set qualitative requirements to firms or its management. The usual limitation of such qualitative requirements are mainly defined by the proportionality principle and whether the intended measure is deemed effective. As any administrative order, BaFin's decisions, orders and actions are subject to scrutiny of German courts.

e. If BaFin has onsite supervisors dedicated to capital and margin, explain their role in the supervisory process.

Regarding capital, for the firms under BaFin's direct supervision, BaFin can order onsite inspections that are usually staffed by onsite inspectors from Regional Offices of Deutsche Bundesbank[2] with the possibility of BaFin participation. BaFin furthermore has subject matter experts on specific topics (e.g. Pillar 1 capital models) that participate in onsite investigations.

f. If there is a difference in the supervisory process at BaFin for an investment firm vs. a less significant institution, please describe.

Regarding margining the risk-based matrix within certain types of financials depends on the exposure in OTC derivatives.

As noted under 1, assuming timely IFD implementation, it can be reasonably assumed that only large investment firms will have a need for non-US-SBSD registration with the SEC and those firms are to be treated as significant credit institution. They will be subject to direct SSM/ECB supervision under the same supervisory standards as for significant credit institutions.

However, for completeness, please note regarding:

- Less significant credit institutions: The (EU-wide harmonized) regulatory framework for capital is per se the same (as for significant institutions,), but takes into account proportionality. The supervisory approach for less significant institutions is generally simpler than for significant institutions. Information on the supervisory approach and responsibilities in Germany is e.g. found in an article in Deutsche Bundesbank's Monthly Report[3].

Other/non-significant investment firms: Under the new prudential regime for investment firms, non-significant/non-systemic investment firms with simpler business models and smaller size/complexity on the one hand will benefit from graded and proportional regulatory-supervisory relief. On the other hand, the new prudential regime introduces new requirements tailored to investment services. Going forward, those firms will e.g. be exempt from certain prudential requirements that would apply to less significant credit institutions

[2] Deutsche Bundesbank supports BaFin for the prudential supervision of less significant institutions and maintains Regional Offices in major German cities.

[3] Deutsche Bundesbank (2016): The supervision of less significant institutions in the Single Supervisory Mechanism, in: Monthly Report January 2016 (p. 51 ff.), available at: https://www.bundesbank.de/resource/blob/707562/59693cf901ac26f00ddc6026bc46d068/mL/2016-01-supervision-data.pdf

and are subject to a simpler and/or more fitting (regarding their business models) supervisory approach, compared to less significant credit institutions.

3. Explain how BaFin conducts onsite inspections or thematic reviews related to the capital and margin laws and how these inspections related to the overall supervisory process (refer to Question 7 in your original Element IV response where appropriate). Include how often the onsite inspections occur and the role, if any, of the ECB.

   The supervision of the margin requirements under EMIR is in the remit of securities supervision with no specific distinction regarding onsite inspections or thematic reviews, so BaFin refers to its original Element IV response, in particular Question 7, which apply to large investment firms simultaneously.

   Regarding capital, onsite inspections are mainly a tool to identify risks for a specific area and are ordered by the responsible supervisor. Thus, for significant institutions, onsite inspections are to be ordered by the SSM.

   As noted above, BaFin may order onsite inspections for less significant institutions or non-systemic investment firms. The ECB is usually neither involved in ordering or conducting the investigation. BaFin ordered on average 150-200 inspections during recent years[4].

	2019	2018	2017	2016	2015	2014	2013
Impairment-related special audits	6	9	15	19	33	24	38
Section 25a (1) KWG (MaRisk)	133	130	166	149	123	131	182
Cover	5	7	13	10	13	3	18
Market risk models	1	0	0	1	1	1	7
IRBA (credit risk measurement)	16	7	5	4	6	42	58
AMA (operational risk measurement	0	0	0	0	0	2	2
Total	161	153	199	183	176	203	305

[4] https://www.bafin.de/EN/Aufsicht/BankenFinanzdienstleister/Massnahmen/Sonderpruefung/sonderpruefung_node_en.html

The decrease in the inspections for market risk and credit risk can be explained by the inception of the SSM in November 2014. Generally, only larger banks deploy models for market risk and credit risk. The chart shows banks under direct BaFin supervision; hence since 2015 Significant Institutions directly supervised by the ECB are no longer represented by the figures.

There are three types of onsite inspections:

i) Periodic inspections: when an LSI has not been subject to an onsite inspection for a certain period of time (depending on the size and the quality of the institution)
ii) Ad-hoc inspections: when there is reason to order an onsite inspection
iii) Internal model related inspections: when a bank applies for the use of internal models.

4. If BaFin develops priorities specifically related to capital and margin, explain how those priorities are developed and how they fit into the supervisory process. (Refer to Question 8 in your original Element IV response where appropriate.)

The supervision of the margin requirements under EMIR is in the remit of securities supervision with no specific distinction regarding the development of priorities.

In capital supervision, BaFin typically sets annual supervisory priorities as part of its strategic planning and legal mandate. They are coherently derived from its supervisory strategy and takes into account that BaFin retains responsibilities for the comprehensive supervision of all financial services (i.e. for banks, investment firms and insurers; and for prudential as well as conducts supervision).[5]

Beyond this as well as for information on SSM/ECB supervisory priorities, we refer to the original Element IV response, in particular Question 8.

5. Explain the ECB's day-to-day supervision, through Joint Supervisory Teams ("JST"), over the capital and margin of a significant institution's SBS activities. Include the following information (refer to Question 5 of your original Element IV response where appropriate):

[5] BaFin's Supervisory priorities for 2020, available at: https://www.bafin.de/dok/13918722

Preamble regarding margin supervision and JST involvement in Question 5 and 6: this supervision is part of the BaFin's securities supervision under EMIR, so the JST is not responsible for supervising the compliance with margining requirements.[6]

As a general remark, we would refer to the ECB for further, concrete and binding information on how the ECB conducts supervision.

a. The approximate number of JST supervisors assigned to a firm.

Ongoing prudential supervision of significant institutions is conducted by Joint Supervisory Teams ("JSTs"), staffed by the ECB and national supervisors. Each significant institution has a dedicated JST with a varying number of supervisors, i.a. depending on the size and complexity of the institution. Beyond this, JSTs involve horizontal subject matter experts for specific topics. Please note that significant financial groups with SSM area-wide subsidiaries, branches and activities are in many cases staffed with national supervisors from a variety of jurisdictions.

b. The approximate number of BaFin supervisors assigned to a JST for a German firm.

On margin as part of EMIR supervision, a dedicated team is responsible for the supervision besides of the reporting obligations as this is in the remit of another team. JSTs are not responsible for the supervision of EMIR rules.

BaFin usually assigns supervisors to JSTs for significant institutions with the group parent or a group subsidiary located in Germany and may allocate subject matter expert resources for particular topics (such as Pillar 1 capital models). As seen in BaFin's organigram[7] regarding banking supervision, the number of BaFin supervisors may vary considerably. E.g., there are dedicated divisions solely focusing on Deutsche Bank or Commerzbank, whereas other divisions cover more than one firm.

c. Describe the ways in which, and how often, the JST interacts with the firm on capital and margin issues (including weekly and quarterly meetings, phone calls, etc.).

Interaction with significant institutions is governed by a Supervisory Examination Program ("SEP") that stipulates concrete minimum engagement levels for certain supervisory activities, including interaction with the firm. Two dimensions are taken into account to derive levels and intensity of engagement for individual institutions: i) the institution's size and complexity and ii) the intrinsic riskiness as determined by the JST's risk assessment.

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[6] See the SSM Supervisory Manual for more information regarding ECB's supervision, available at: https://www.bankingsupervision.europa.eu/ecb/pub/pdf/ssm.supervisorymanual201803.en.pdf?42da4200dd38971a82c2d15b9ebc0e65.

[7] Available at: https://www.bafin.de/dok/7859566

Larger and riskier institutions have a more intense engagement level than smaller and less risky ones. In addition to determining overall engagement level, specific engagement levels are derived for individual risk. Beyond scheduled and regulatory meetings and calls, JSTs interact at ad-hoc basis with significant institutions on initiative of the JST or the firm.

d. Describe the reports the JST reviews as part of the day-to-day supervision for capital and margin (including daily, weekly, and quarterly reports).

Firms are subject to regulatory reporting requirements and broad prudential supervisory powers to request information.[8] Therefore, the type and frequency of reports related to capital – as well as the review approach – varies greatly amongst significant institutions.

All firms are obliged to submit regulatory reporting, comprising of standardised prudential information on the financial and prudential situation of supervised entities and includes a large amount of periodic regulatory data and reports. Regarding (regular) regulatory reporting, reference is made to information provided by the European Banking Authority ("EBA"), who governs the rules applicable for the Common- and Financial Reporting Framework.[9]

In addition to regular reporting, there are complementary, potentially ad-hoc, data collections to meet specific data needs that may apply to individual, a group or all supervised institutions.

The assessment of quantitative and qualitative regular and ad-hoc reporting relating to capital is usually carried out along, and if necessary across, the various risk categories and forms the basis for supervisory decisions and further analytical work. Overall, following the rationale provided above under b), large and complex and/or more risky institutions might be subject to higher reporting requirements than less complex and risky ones.

e. The supervisory tools the JST uses to correct red flags/violations of law (including requesting written responses, raising capital charges, operational acts, risk mitigation plans, etc.).

Please note that the application of supervisory tools, measures and sanctions regarding the prudential supervision of significant institutions and large investment firms is within the sole responsibility of the ECB.

[8] In national legislation the powers to request information is implemented via Section 44 of the German Banking Act; the SSM has those rights due to Art. 10 of the SSM Regulation

[9] https://www.eba.europa.eu/regulation-and-policy/supervisory-reporting

6. Explain how the JST conducts onsite inspections related to capital and margin, including how often these inspections occur. Explain how these inspections fit into the overall supervisory process.

   Onsite inspections are carried out periodically and for specific topics and/or risk areas. JSTs typically do not permanently co-locate supervisors onsite at significant institutions. Onsite inspectors are subject matter experts for specific capital or margin topics, such as a specific risk area, and usually performing several missions per year at different institutions (They are not considered JST members in case of ECB-supervised credit institutions or large investment firms). Onsite inspections are an important source of information for supervisory risk assessments and decisions. The resulting inspection reports are usually followed-up by the JST that ensures timely remediation and may initiate decisions to mitigate the identified risks or deficiencies.

7. Explain BaFin's role in the supervision of significant institutions, including membership in the JST, conducting onsite inspections, and the supervisory review and evaluation process ("SREP").

   In JST and SSM context, BaFin's focus is mainly, but not exclusively, on significant institutions that are headquartered in Germany or are relevant for financial stability in Germany for other reasons, e.g. if a branch from a significant institution headquartered outside Germany holds a considerable operation in Germany. Beyond JST membership, BaFin supervisors or subject matter experts (e.g. experts on IT or Pillar 1 capital models) may participate in onsite inspections.

   Please note that major supervisory decisions for significant institutions, including taking SREP decisions, are usually prepared by the "Supervisory Board" as the internal body of the ECB that is responsible for preparing decisions on supervisory matters, and adopted by the Governing Council under the so-called "non-objection procedure" (i.e., the decision is deemed adopted if the Governing Council does not object within a defined period of time). The "Supervisory Board" consists of ECB members and representatives of all SSM national competent authorities.

8. Explain the role the SREP plays in supervising the capital and margin for both significant institutions and less significant institutions.

The SREP for both types of institutions follows European guidelines governed by the EBA.[10] For further information on the SREP for significant institution, please refer to general[11] as well as current[12] information provided by the ECB.

BaFin provides online information on the SREP for less significant institutions, too.[13]

Concretely, the SREP assesses four elements:

i) Business Model,

ii) Internal Governance,

iii) Risks to capital and own funds (further broken down to e.g. credit-, market- operational risks and internal capital adequacy) and

iv) Liquidity.

It consists of an assessment of an institution's risk level and risk control and typically results in Pillar 2 capital add-ons as well as qualitative requirements.

9. Explain the role the Supervisory Examination Program ("SEP") plays in supervising the capital and margin of significant institutions.

Regarding margin supervision SEP is not used as it is a tool of JST.

As regards capital, the SSM plans supervisory activities in a two-step process: strategic planning and operational planning. The SEP operationalizes strategic supervisory priorities at the level of individual significant institutions/JSTs. More concretely, the SEP sets out the main activities for the following 12 months, indicative schedules and objectives and any need for on-site inspections or internal model investigations. The SEP for ongoing activities comprises three components:

i) Minimum Engagement Levels that are required to perform,

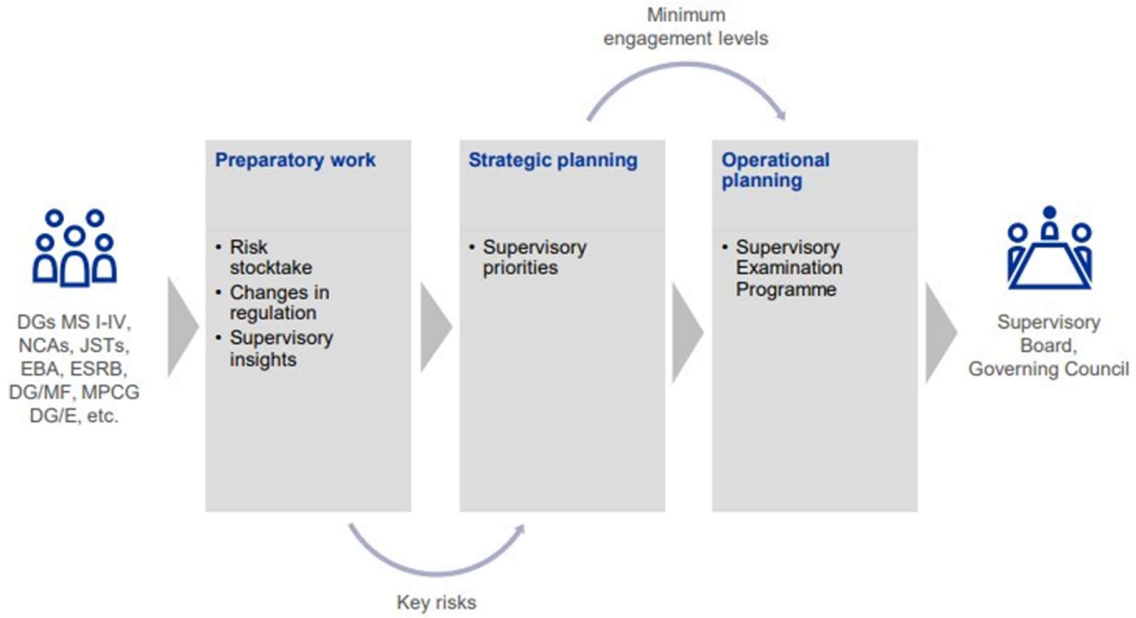
ii) Other regular SEP activities that are centrally planned for all/a number of significant institutions and

[10] Available at: https://www.eba.europa.eu/sites/default/documents/files/documents/10180/2282666/6c2e3962-6b95-4753-a7dc-68070a5ba662/Revised%20Guidelines%20on%20SREP%20%28EBA-GL-2018-03%29.pdf
[11] Available at: https://www.bankingsupervision.europa.eu/about/ssmexplained/html/srep.en.html
[12] Available at: https://www.bankingsupervision.europa.eu/banking/srep/2019/html/index.en.html
[13] Available at: https://www.bafin.de/SharedDocs/Veroeffentlichungen/DE/Fachartikel/2018/fa_bj_1807_SREP.html

iii) Additional SEP activities that are firm-specific and planned the JSTs, taking into available resources.

The figure below visualizes the role of the SEP. Please see SSM supervisory manual[14] chapter 4.1.2 for additional information on the matter.

SSM annual planning process



Source: ECB Banking Supervision.

10. Explain the ECB's oversight of the supervision of less significant institutions.

The decision making and responsibility for supervision over LSI still lies on the national level, i.e. with BaFin under assistance by the Bundesbank.

Within this framework, the ECB is responsible for the effective and consistent functioning of the whole system of European banking supervision, which comprises the ECB and the national banking supervisors of the participating countries. In its oversight function, the ECB works closely with national supervisors to harmonise further the implementation of the rules governing banking supervision, e.g. by agreeing on common supervisory standards which are applied consistently across the system. This helps ensure a level playing field for all banks.

[14] Available at: https://www.bankingsupervision.europa.eu/ecb/pub/pdf/ssm.supervisorymanual201803.en.pdf?42da4200dd38971a82c2d15b9ebc0e65

Where necessary, in exceptional cases, the ECB may take over direct guidelines for the supervision of LSIs.

Please refer to the online article *ECB oversight of less significant institutions*[15], as well as the *SSM supervisory manual (chapter 5)* and the guide to *LSI supervision within the SSM* (ECB, 2017)[16] for additional information.

11. Explain the ECB's use of thematic reviews in the oversight of less significant institutions.

Thematic reviews for less significant institutions are in the responsibility of the respective national supervisor. However, the ECB might facilitate coordination among national supervisors on topic that might be of potential relevance for thematic reviews.

12. Explain how BaFin and the ECB work together to supervise significant institutions and less significant institutions, including the fact that the supervisors are in frequent contact.

As noted under question 1, the ECB might be deemed primary capital supervisor for significant institutions and BaFin for less significant institutions. However, both ECB and the national supervisory authorities of participating countries are integral parts of the SSM. Therefore, the roles and responsibilities of BaFin (or national supervisors in general) and the ECB are tightly interlinked and interdependent for the supervision of significant- as well as less significant institutions.

The main vehicle to supervise significant institutions are the JST in which BaFin plays an active role. BaFin's President, with the Chief Executive Director of Banking Supervision as his/her alternate, is member of the Supervisory Board, the internal body of the ECB that is responsible for preparing decisions on supervisory matters within the SSM.

With regard to LSIs the ECB has mainly an oversight function and is responsible for the effective and consistent functioning of the whole system rather than the supervision of individual institutions. However, there are reporting requirements from the national level to the ECB in cases of relevant developments, e.g. a deterioration in the economic situation of an LSI. Other than that, there are meetings and committees where senior managers of the ECB and the national competent authorities regularly discuss current and strategic matters – without impeding the national competence over LSI.

Please refer to the BaFin online article Single Supervisory Mechanism (SSM)[17] for additional context.

[15] Available at: https://www.bankingsupervision.europa.eu/banking/lsi/html/index.en.html
[16] Available at: https://www.bankingsupervision.europa.eu/ecb/pub/pdf/ssm.reportlsisupervision2017.en.pdf
[17] Available at: https://www.bafin.de/dok/7856444

13. Explain the ECB's authority to obtain records from firms through the supervisory process in the areas of law where substituted compliance has been requested.

    Article 10 of Regulation 2013/1024 ("SSM Regulation") empowers the ECB to request all information and records that is necessary to carry out its supervisory tasks, including on capital.

14. Describe any limitations on sharing supervisory information related to capital and margin with the SEC where BaFin is the direct supervisor.

    As elaborated before, BaFin is the direct supervisor regarding margin supervision, so BaFin only sees limitations on sharing supervisory information only in the area criminal proceedings and investigations where the state prosecutor (*Staatsanwalt*) is responsible and restricts the sharing of information in order not to jeopardize the investigation

    Prudential supervisory information for significant institutions is owned by the ECB. Thus, sharing supervisory information related to capital is subject to /all restrictions set out in the SSM legal framework. Please note that the ECB – as well as BaFin – host or participate in global colleges of supervisors, as stipulated by the Basel framework. We deem this relevant, given that the envisaged registrant for substituted compliance is part of a group subject to prudential consolidation.

    Other/non-significant investment firms: As BaFin is the direct supervisor for non-significant investment firms, there are no specific limitations on sharing supervisory information.

15. If any part of the above supervisory process by BaFin and/or the ECB is not applicable to a branch or subsidiary located in Germany, please explain any differences.

    If the SBS dealer is subject to the supervision of BaFin (margin) or ECB (capital in case of significant institutions) the supervisory process is applicable in Germany. Thus, subsidiaries of foreign banks or investment firms are treated equally to locally-owned institutions. Regarding margins, there are exceptions in case that the entity in question do have a limited OTC derivatives portfolio. As the threshold is significantly lower than the threshold regarding the registration as an SBS, this is not an issue.

    Within the jurisdiction of European law, banks and investment firms have to comply with prudential requirements on consolidated- as well as solo (i.e. subsidiary) level. Please note that banking or investment firm subsidiaries can apply for waivers to own funds- and/or

liquidity requirements, in which case the prudential supervisory focus would shift to the consolidated level.[18]

The case for branches differs according to the location of the respective head office:

- Third country branches (non EU- or EEA member states): Branches of third country institutions are supervised by BaFin and are generally subject to the same requirements as if they were a German credit institution or investment firm by way of a legal fiction of the German banking act.
  Certain exemptions apply to branches of US, Japanese and Australian banks). It is not expected that third country branches apply for branch registration.

- European Economic Area branches: If, in contrast to this, the SBS dealer would organize its German operations in a branch of a European credit institution or investment firm under the so called "passporting" rules (e.g. the Frankfurt branch of a Paris-based credit institution or investment firm), the respective home supervisor would be responsible for enforcing capital and margin rules and BaFin's role would be marginal. In case of a European-based significant institution (ECB supervision) with a branch in Germany, BaFin may be member of the JST, but does not expect to be directly involved in any SBS- or substituted compliance discussion.

Enforcement Questions

16. Regarding the areas of capital and margin, please identify whether BaFin-Securities Supervision, BaFin-Banking Supervision, BaFin-Resolution (each a "Supervisory Group") or the ECB is the primary entity for enforcing regulations applicable to the substituted compliance application.

    Regarding margin, BaFin-Securities Supervision is the primary entity for enforcing regulations applicable to the substituted compliance application.

    The ECB is responsible to enforce prudential rules for significant institutions, including – going forward – large investment firms, while BaFin-Banking Supervision is responsible for the enforcement vis-à-vis less significant credit institutions. Again, BaFin-Securities Supervision is responsible for non-significant investment firms.

17. Tailoring your responses to those institutions that will be registering as security-based swap entities in the U.S., and to the areas of capital and margin, explain each Supervisory Group's enforcement process for breaches by those institutions. Please explain the significance of

[18] The basis for this are Article 7 and 8 of Regulation 2013/575. C.f. *ECB Guide on options and discretions available in Union law* for further information on conditions for capital- and liquidity waivers.

prudential regulation on the power and practical ability of the Supervisory Groups and ECB to ensure compliance of with the law through enforcement.

Regarding margin in the remit of securities supervision BaFin refers to its responses provided for ACI, in particular to of its original Element IV responses. There is no difference in the enforcement process regarding investment firms and regarding margin.

We assume that only large investment firms will be subject to direct ECB supervision as significant institutions in the future will have a need to register as security-based swap dealer. Hence, enforcement responsibilities for capital are with the ECB.

C.f. online for information regarding ECB enforcement[19] as well as sanctions[20].

18. Where breaches in the areas of capital and margin are detected by a JST, please describe the tools the JST uses to correct red flags/violations of law.

Regarding margin in the remit of securities supervision BaFin refers to its responses provided for ACI as BaFin is the primary regulator.

C.f.. reply to Question 5e for the supervisory tools the ECB/JSTs use to ensure compliance with prudential regulatory requirements.

19. If self-regulatory organizations or exchanges have any supervisory or enforcement role over the areas of capital and margin please explain that role, including a discussion of their competence, their powers to investigate and sanction, any tools available to them, who may be subject to their authority, and any limitations on their authority.

The regulatory-supervisory approach in the area of substituted compliance including capital and margin for investment firms is not based on levying powers of self-regulatory organizations.

20. Describe any limits on the Supervisory Groups' and ECB's ability to share information with other German regulatory or criminal authorities. Please tailor your responses to information regarding those institutions that will be registering as security-based swap entities in the U.S., and the areas of capital and margin.

Regarding margin BaFin refers to Question 11 of its original Element IV response

[19] Available at: https://www.bankingsupervision.europa.eu/banking/tasks/enforcement/html/index.en.html
[20] Available at: https://www.bankingsupervision.europa.eu/banking/tasks/sanctions/html/index.en.html

For detailed information about the ability and limits to share prudential supervisory information owned by the ECB, please refer to the ECB.

In general, the relevant professional secrecy rules are laid down in Article 37 of the Statute of the ESCB and of the ECB[21] and with specific regard to the SSM, Article 27 of the SSM Regulation.[22] These provisions are complemented by Articles 53 et seq. of the CRD[23] and their national transposition. For further information regarding the disclosure of confidential information in the context of criminal investigations please also see Decision (EU) 2016/1162 of the ECB of 30 June 2016 on disclosure of confidential information in the context of criminal investigations (ECB/2016/19).[24]

21. For each Supervisory Group that has enforcement authority in the areas of capital and margin, and for the ECB, please describe the investigative powers at its disposal and any limitations on those powers, including the ability to obtain voluntary interviews with caution, listen into calls, etc. In particular, please discuss each Supervisory Group's ability to (i) require documents and interviews of significant institutions and their related individuals; (ii) obtain records from third parties; and (iii) conduct on-site reviews of records.

Regarding BaFin, please refer to Question 13 of its original Element IV response.

As noted under Question 13, the ECB also has broad investigative powers. Article 10 of Regulation 2013/1024 ("SSM Regulation") empowers the ECB to request all information that is necessary to carry out its supervisory tasks. The ECB can explicitly request information from supervised institutions or financial holding companies as well as persons belonging to those entities or outsourcing partners. ECB also has the power to conduct necessary general investigations and on-site inspections pursuant to Articles 11 to 13 of the SSM Regulation.

The use of investigative powers, by BaFin as well as the ECB, are generally limited e.g. by the principle of proportionality.

[21] Available at: https://eur-lex.europa.eu/eli/treaty/tfeu_2016/pro_4/oj
[22] Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions; available at: https://eur-lex.europa.eu/eli/reg/2013/1024/oj
[23] Available at: https://eur-lex.europa.eu/eli/dir/2013/36/2018-07-09
[24] Available at: https://eur-lex.europa.eu/eli/dec/2016/1162/oj

22. Please describe whether enforcement investigations, sanction proceedings, and/or other final resolutions in the areas of capital and margin are made public by the applicable Supervisory Groups and the ECB and, if so, what information is included in such public notice.

Regarding BaFin, please refer to Question 15 of its original Element IV response.

The ECB publishes supervisory penalties on its website[25] in accordance with Article 18 (6) of the SSM Regulation and Article 132 of the SSM Framework Regulation[26]. Please refer to the ECB for further information on how it handles publication of supervisory sanctions.

23. Please identify any applicable statutes of limitations for violations in the areas of capital and margin.

BaFin refers to Question 16 of its original Element IV response.

For time limits applicable to administrative penalties imposed by the ECB, please see Articles 130 and 131 of the SSM Framework Regulation. Please refer to the ECB for further information regarding significant institutions.

[25] Available at: https://www.bankingsupervision.europa.eu/banking/sanctions/html/index.en.html

[26] Regulation (EU) No 468/2014 of the European Central Bank of 16 April 2014 establishing the framework for cooperation within the Single Supervisory Mechanism between the European Central Bank and national competent authorities and with national designated authorities (SSM Framework Regulation) (ECB/2014/17); available at: https://eur-lex.europa.eu/eli/reg/2014/468/oj

German Substituted Compliance Submission

SEC Staff Follow-Up Questions

April 16, 2021

Margin

- The German comparability analysis cites EMIR Margin RTS, Article 9(2), which requires a recalculation of initial margin where there is a change in the netting set, and where no calculation has been performed in the preceding 10 business days. The analysis says that this, in practice, will require dealer counterparties to recalculate initial margin on a daily basis. Is it the practice of dealer counterparties to calculate initial margin on a daily basis for Phase 4 counterparties? Will this be an expected practice for Phase 5 and 6 counterparties?

  BaFin has no indication that this practice will not be applied for Phase 4, 5 and 6 counterparties

- SEC's Rule 18a-3(c)(6) requires that initial and variation margin calculations must be made more frequently than the close of each business day during periods of extreme volatility and for accounts with concentrated positions. Is there an analogous requirement in EMIR, EMIR Margin RTS, or in a German risk management procedure?

  Art. 9 (1) DVO (EU) 2251/2016 states that counterparties have to calculate variation margin on a daily basis. The Frequency of a daily calculation is a minimum requirement. The calculation of initial margins is triggered by certain events, as changes in the netting sets (Art. 9 (2) DVO (EU) 2251/2016). Initial Margins have to be calculated at least after ten business days without a triggering event.

- EMIR Margin RTS Article 19(3)(b) states that "[i]nitial margin shall be protected from the default or insolvency of the collecting counterparty by segregating it in either or both of the following ways: (a) on the books and records of a third-party holder or custodian; (b) via other legally binding arrangements. Can you provide examples of "other legally binding arrangements" that have been implemented by counterparties in Germany?

  Margins are segregated on the books and records of third-party holder or custodians. In most of the cases there is a pledge arranged. Legally (under German Law), a transfer by way of security is possible as long as the collateral is not provided as cash. However, this is not the standard approach.

- EMIR Margin RTS Article 22 and Annex III allows counterparties to use their own estimates to adjust the value of collected collateral. Are any counterparties using these provisions in Germany or are most counterparties using the standardized haircuts for collateral?

Due to the fact that the standardized model of EMIR is close related to the provisions of calculating the haircuts in the CRR it is efficient for counterparties under the CRR Regulation to compute IM provisions with standardized haircuts.

- The original German Application contains certain unofficial English translations of the German Banking Act as of September 2020. Please confirm that there have been no changes to section 25a(1) of the German Banking Act (*Kreditwesengesetz*) subsequent to September 2020. If there have been changes, please provide an updated English translation.

There was a minor amendment effective 29 December 2020 (see below); moreover we refer to the separate document German Banking Act translation (2021-29-04).

§ 25a Abs. 1 S. 3 Nr. 2 KWG	**Section 25a(1) sentence 3 number 2 KWG**
Eine ordnungsgemäße Geschäftsorganisation muss insbesondere ein angemessenes und wirksames Risikomanagement umfassen, auf dessen Basis ein Institut die Risikotragfähigkeit laufend sicherzustellen hat; das Risikomanagement umfasst insbesondere …. 2. Verfahren zur Ermittlung und Sicherstellung der Risikotragfähigkeit, wobei eine vorsichtige Ermittlung der Risiken, der potentiellen Verluste, die sich auf Grund von Stressszenarien ergeben, einschließlich derjenigen, die nach dem aufsichtlichen Stresstest nach § 6b Absatz 3 ermittelt werden, und des zu ihrer Abdeckung verfügbaren Risikodeckungspotenzials zugrunde zu legen ist; …… 5. die Festlegung eines angemessenen ~~Notfallkonzepts~~ Notfallmanagements, insbesondere für IT-Systeme, und	A proper business organisation shall comprise, in particular, appropriate and effective risk management, on the basis of which an institution shall continuously safeguard its internal capital adequacy; risk management shall comprise, in particular … 2. processes for determining and safeguarding risk-bearing capacity, based on a prudent assessment of the risks, potential losses resulting from stress scenarios, including those determined in accordance with the regulatory stress test pursuant to Section 6b(3), and on the risk coverage potential available to cover them; …. 5. the definition of an adequate ~~contingency plan~~ contingency management, especially for IT systems, and

- Please provide a link or an English translation of the German Federal Financial Supervisory Authority's (*Bundesanstalt für Finanzdienstleistungsaufsicht* – "BaFin") "Minimum Requirements for Risk Management (*MaRisk*), in particular, *MaRisk* AT 4.1 nos. 1 and 9, AT 4.3 no. 1, AT 4.3.2, BTO 1.2 nos. 3 and 4, BTO 1.4 no. 1, and BTR 1).

  Please find attached. The latest version is of 27 October 2017.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Capital

- The draft states that: "[t]he substantive requirements under the IFR will apply beginning on June 26, 2021, and will require large investment firms with €30 billion in assets and above that engage in dealing on own account, underwriting of financial instruments or placing of financial instruments on a firm commitment basis, such as such German firms that have indicated they intend to register as nonbank SBSDs, be re-authorized as credit institutions by the European Central Bank." Do you anticipate that there will be any German SBSDs in the future that may wish to reply on substituted compliance that would be subject to capital requirements under the IFR?

  The cited sentence is incomplete and should read:

  The substantive requirements under the IFR will apply beginning on June 26, 2021, and will require large investment firms with €30 billion in assets and above and which engage in dealing on own account, underwriting of financial instruments or placing of financial instruments on a firm commitment basis to be re-authorized as credit institutions by the European Central Bank.[1]

  The IFR sets up new capital requirements for smaller investment firms, whereas the capital rules for large investment firms remain unchanged (i.e. CRR II and CRD V). We neither expect nor anticipate any firms that would be subject to capital requirements under IFR (i.e. small and medium investment firms) to reply to substituted compliance.

- Please confirm that the German firms that have indicated they intend to register as nonbank SBSDs with the SEC will be reauthorized as credit institutions (*i.e.*, will have in excess of €30 billion in assets and above that engage in dealing on own account,

[1] IFD, Article 62, introducing an Article 8a into CRD.

underwriting of financial instruments or placing of financial instruments on a firm commitment basis).

There are two German firms that intend to register as nonbank SBSDs:

MSESE - Morgan Stanley Europe SE
CGME - Citigroup Global Markets Europe AG

Both firms have assets in excess of 30 billion EUR in assets and engage in relevant business activities. Both firms have already reached out to the ECB in order to prepare the reauthorization.

- Footnote 5: Please provide a link or an English translation of the Risk Reduction Act (*Risikoreduzierungsgesetz*) published on 14 December 2020 to implement CRD V.

  With regards to the Captial Portion of Subsituted Compliance you have requested translations of the German Banking Act and the German Recovery and Resolution Act. You also commented on footnote 53 (now 56; and similarly for the new footnote 57). When checking your comment we noticed that the content is outdated as the relevant parts have been superseded by new regulation (without changing the substance of the law). We have explained in the new footnotes 56 and 57. Please advice if this is sufficient or if you need more from us.

- Footnote 9: Please provide an English translation of section 33(1) of the German Banking Act.

  Please see separate document German Banking Act translation (2021-29-04)

- Footnote 11: Please provide an English translation of sections 10b through 10h of the German Banking Act.

  Please see separate document German Banking Act translation (2021-29-04)

- Footnote 12: Please provide an English transition of Section 49(2) of the German Recovery and Resolution Act (*Sanierungs- und Abwicklungsgesetz).*

  Please see separate document German Recovery and Resolution Act (2021-29-04)

- Please provide citation to the two sentences following the sentence that ends with Footnote 15.

  Included in the relevant document

- Sentence that ends with footnote 16: Please provide a citation to the requirement that German nonbank SBSDs generally must hold own funds equal to at least 10.5 percent of their total risk exposure amounts.

  Included in the relevant document

- Sentence that follows footnote 16: Please provide a citation to the leverage ratio requirements.

  Included in the relevant document

- Footnote 17: Please provide an English translation of sections 2(9)d and 11 of the German Banking Act.

  Section 2(9d) reads:

  "Articles 411 to 428 of Regulation (EU) No 575/2013 shall not apply to CRR-investment firms."

  For Section 11 please see separate document German Banking Act translation (2021-29-04)

  - This footnote states that pursuant "to Section 2(9d) of the German Banking Act, the liquidity requirements pursuant to CRR, Articles 411 through 428 do not apply to German investment firms within the meaning of the CRR." Please describe any material differences between the liquidity requirements under the German national laws and the liquidity requirements under the CRR.

    The Liquidity Regulation (Regulation on the liquidity of institutions - LiqV) requires an institution to keep at least as much liquid assets available within one month as liabilities callable within the same period.

    [The liquidity of an institution shall be deemed to be adequate if the liquidity ratio to be calculated does not fall below the value of one. The liquidity ratio denotes the ratio between the liquid assets available in the first maturity band and the liabilities callable during this period. Liquid assets and liabilities are to be assigned to one of the following maturity bands: due on demand or up to one month (maturity band 1), over one month and up to three months (maturity band 2), over three months up to six months (maturity band 3), over six months up to twelve months (maturity band 4).]

The Capital Requirements Regulation (CRR) distiguishes between the short-term Liquidity Coverage Ratio (LCR) and the long-term Net stable funding ratio (NSFR).

The LCR is calculated by dividing a bank's high-quality liquid assets by its total net cash flows, over a 30-day stress period. Whereas the LiqV refers to legal or factual maturities only, the LCR is a stress test that aims to anticipate market-wide shocks and make sure that financial institutions possess suitable capital preservation to ride out any short-term liquidity disruptions.

The NSFR is a liquidity standard requiring banks to hold enough stable funding to cover the duration of their long-term assets. For both funding and assets, long-term is mainly defined as more than one year, with lower requirements applying to anything between six months and a year to avoid a cliff-edge effect. Banks must maintain a ratio of 100% to satisfy the requirement. Whereas the LiqV requirement solely refers to a one month period, the NSFR covers funding and assets after six months and twelve months, respectively.

- This footnote also states, "[f]rom their re-authorization by the ECB as credit institutions, German nonbank SBSDs would be subject to the CRR liquidity requirements, and the national liquidity requirements will no longer apply to them. As discussed above, investment firms may under certain conditions obtain a waiver from applying the German liquidity requirements at a solo level if, among other things, they apply the CRR liquidity requirements."

  Please state when you expect the German firms that intend to register with the SEC as nonbank SBSDS to be re-authorized as credit institutions and subject to the CRR liquidity requirements. (An estimated date would be sufficient.) We believe the phrase "[a]] discussed above" (related to the waiver discussion) should be "[a]s discussed below."

  Correct, it should read as discussed "below".

  Nonbank SBSDS can apply only in June 2021. The ECB is aware about the two German nonbank SBSDS. In the case of Morgan Stanley Europe SE the ECB is already intensively involved in supervision via the existing MS JST. In case of Citigroup Global Markets Europe AG, the ECB is in contact with the firm. It will take a few months to process the authorization, so it should be finished by end 2021 or early 2022. Information that is more precise can be given by ECB.

- Footnote 19: This footnote states: "CRR, Article 413, establishes a general requirement that firms ensure that long-term obligations are adequately met with stable funding requirements. The Net Stable Funding Ratio ("NSFR"), introduced by Basel III, will become applicable to German nonbank SBSDs as of June 2021." Footnote 17 states that

Articles 411 through 428 do not apply to German investment firms within the meaning of the CRR. Will German nonbank SBSDs that are reauthorized as credit institutions be subject to NFSR requirements under the CRR? If not, is there (or will there be) a similar requirement under German national laws?

Yes, this is correct. Footnote 19 speaks to the law to come (June 2021), whereas Footnote 17 speaks to the old supervisory regime.

- Sentence following footnote 30: Please provide a citation to the Incremental Risk Charge or IRC under the German Capital Framework.

  Included in the relevant document

- Footnote 38: Please provide an English translation of the German Federal Financial Supervisory Authority's (*Bundesanstalt für Finanzdienstleistungsaufsicht* – "BaFin") "Minimum Requirements for Risk Management (also requested under the Margin section above).

  Please see our response above

- Footnote 40: Please provide an English translation of section 6b of the German Banking Act.

  Please see separate document German Banking Act translation (2021-29-04)

- Footnote 41: Please provide an English translation of sections 6c(1), 10(3), (4) and (6), 11(2) through (4), 45(1), (2) and (3), and 45b(1) of the German Banking Act.

  Please see separate document German Banking Act translation (2021-29-04)

- Footnote 42: Please provide a link to the following report: European Banking Authority, Final Report - Guidelines on the revised common procedures and methodologies for the supervisory review and evaluation process (SREP) and supervisory stress testing 5 (2018).

  Included in the relevant document

- Footnote 52: Please provide a citation.

  No citation available, this is a calculation based on the legal requirements.

  Acc. to 92 CRR a company must hold

  4.5 % Core Capital CET 1 (shareholder)

  1.5 % Tier 1

  2 % Tier 2

  On top of that 2.5 % Capital Conservation buffer (to be held in CET 1 = shareholder)

  This sums up to a total of 10.5 %

The shareholder capital of 7 % (4.5 % CET1 + 2.5 % CCB) equals 2/3 of the total requirement of 10.5 %

- Footnote 53: Please provide an English translation of Section 49(4) of the Recovery and Resolution Act.

  Please see separate document German Recovery and Resolution Act (2021-29-04)

- Footnote 71: Please provide an English translation of section 10i of the German Banking Act.

  Please see separate document German Banking Act translation (2021-29-04)

- Footnote 72: Please provide an English translation of section 2a (1)-(4) of the German Banking Act.

  Please see separate document German Banking Act translation (2021-29-04)

- The capital analysis states: "[f]or certain group structures (e.g. only within the same country for own funds waivers) and under strict conditions, competent prudential supervisory authorities can grant a waiver to the application of own funds and/or liquidity requirements at the individual level. In case of a German nonbank SBSD benefitting from such waiver(s), its compliance with capital requirements is solely determined by the situation of the consolidated group. A similar waiver can be obtained from the competent resolution authority with regards to the compliance with MREL." Similarly, Footnote 17 indicates that waivers from the liquidity requirements cited the in the capital comparability analysis can be granted.

  Does the capital analysis contemplate that a German nonbank SBSD operating under one or more of these waivers would be entitled to rely on a positive substituted compliance determination with respect to the capital requirements of Exchange Act rule 18a-1 even though the entity registered with the Commission would not be subject to the EU and German laws that set forth the capital and liquidity requirements for credit institutions cited in the comparability analysis? If the answer is yes, the SEC staff would like to have further discussions with the Bafin staff on this point.

  We discussed this in our call on 30 April. BaFin Banking supervision stands ready to keep the dialogue going.

- Please provide citation for the paragraph immediately preceding Footnote 75 regarding deficiencies.

  Included in the relevant document

- Footnote 75: Please provide an English translation of section 45(2) nos. 6, 8 and 9 of the German Banking Act.

  Please see separate document German Banking Act translation (2021-29-04)

- Footnote 76: Please provide an English translation of section 36 (3) nos. 4 and 5 of the German Banking Act.

  Please see separate document German Banking Act translation (2021-29-04)

- Footnotes 77 to 82: Please provide an English translation of sections 35(1), (2a), 45(1),(2) and (3), 56(6), 56(7), 60b(1), and 60b(3) of the German Banking Act.

  Please see separate document German Banking Act translation (2021-29-04)

- Footnotes 84-86: Please provide an English translation of sections 36(1) and 138(1) of the German Recovery and Resolution Act.

  Please see separate document German Recovery and Resolution Act (2021-29-04)

- Footnote 87: Please provide an English translation of section 37 of the German Solvability Ordinance (*Solvabilitätsverordnung).*

  Please see separate document German Banking Act translation (2021-29-04) and provide response whether this is sufficient for you

- Footnote 94: Please provide an English translation of section 24(3b) of the German Banking Act.

  Please see separate document German Banking Act translation (2021-29-04)

- Footnotes 99-100: Please provide an English translation of sections 35(2) nos. 3 and 8, and 35(2b) of the German Banking Act.

  Please see separate document German Banking Act translation (2021-29-04)

- Footnote 101: Please provide an English translation of sections 62(2) sentence 1 of the German Recovery and Resolution Act.

  Please see separate document German Recovery and Resolution Act (2021-29-04)

- Footnotes 106 and 107: Please provide an English translation of sections 67(1) and 62(1) sentence 1 of the German Recovery and Resolution Act.

  Please see separate document German Recovery and Resolution Act (2021-29-04)

Further recordkeeping/reporting questions (SEC-E-Mail of 2021-26-04)

- The German application cites MiFID article 25(2) as comparable to Exchange Act rules 18a-5(a)(4) and (b)(3), (a)(6) and (b)(6), (a)(7) and (b)(7), (a)(8), and (a)(15) and (b)(11), and Exchange Act rules 18a-6(a)(1) and (a)(2), (b)(1)(i) and (b)(2)(i), (b)(1)(iv) and (b)(2)(ii) but does not cite the German law implementing this directive. What is the German law transposition for this directive?

  The German law transposition is section 64 (3) Securities Trading Act (WpHG).

- The German application cites MiFID article 16(2) as comparable to Exchange Act rule 18a-6(b)(1)(ix) and (d)(4)-(d)(5). However, it is not clear which German law implements this directive. Is MiFID article 16(2) implemented in the entirety of WpHG section 80, just certain paragraphs of WpHG section 80 (and if so which ones), or some other German law (and if so which one)?

  Article 16 (2) is a general rule. This general rule is the basis for the associated specific requirements set out in articles 21 – 29 Delegated Regulation (EU) 2017/565. The Delegated Regulation is directly applicable to investment firms. Therefore a transposition of article 16 (2) MiFID and articles 21 – 29 Delegated Regulation into German law is not necessary. However, the Securities Trading Act includes in section 80 (1) sentence 3 a cross reference to articles 21 – 26 Delegated Regulation.

- The German application cites MiFID article 24(9) as comparable to Exchange Act Rule 18a-6(b)(1)(ix), but does not cite the German law implementing this directive. What is the German law transposition for this directive?

  The German law transposition is section 70 WpHG.

- The German application cites MiFID Delegated Directive article 11 as comparable to Exchange Act Rule 18a-6(b)(1)(ix), but does not cite the German law implementing this directive. What is the German law transposition for this directive?

  The German law transposition is Section 6 Section 6 of the German Ordinance specifying the rules of conduct and organizational requirements for investment services companies (*Wertpapierdienstleistungs-Verhaltens- und -Organisationsverordnung* - WpDVerOV):

> **Section 6 Inducements**
>
> (1) Considered to be minor non-monetary inducements in the meaning of Section 64(7) of the German Securities Trading Act, insofar as they fulfill the conditions referred to in Section 64(7) sentence 2 number 1 and 2 of the German Securities Trading Act, are in particular:

1. Information or documentation regarding a financial instrument or an investment service, insofar as they are of a general nature or individually tailored to the situation of a specific client;

2. Materials prepared by a third party requisitioned and compensated by an issuer or potential issuer from the corporate sector in order to advertise a new emission by the issuer concerned, or in which the third party is contractually required to do so by the issuer or potential issuer and is compensated for preparing such material on an ongoing basis, insofar as

a) the relationship between the third party and the issuer is clearly disclosed in the material concerned and

b) the material is simultaneously provided to all investment services enterprises interested therein, or to the public;

3. the participation in conferences, seminars and other educational events held on the benefits and features of a particular financial instrument or a particular investment service;

4. hospitality, the value of which does not exceed a reasonable threshold of qualifying as minor.

(2) An inducement is designed to enhance the quality of the service for the client in the meaning of Section 70(1) sentence 1 number 1 of the German Securities Trading Act, if

1. rendering an additional or higher-quality service commensurate with the amount of the inducement received warrants it for the respective client, for example,

a) providing investment advice that does not entail independent fee-based investment advice, on the basis of a wide range of financial instruments and access to it, including an appropriate number of instruments originating from offerers or issuers, who do not have a close relationship to the investment services enterprise

b) providing independent fee-based investment advice, in combination with

aa) the offer to the client, at least once annually to assess whether the financial instruments that the client has invested in continue to be suitable for him, or

bb) another ongoing service likely to be of value for the client, for example, advice about the optimal structuring of the client's assets,

c) granting access to a wide range of financial instruments at a competitive price, that suitably reflect the client's needs, including an appropriate number of instruments originating from offerers or issuers who do not have a close relationship to the investment services enterprise, in combination with

aa) the provision of resources having an added value, for example objective information instruments to assist the client concerned in making investment decisions or afford him the opportunity to observe or adjust the range of financial instruments, in which he has invested, or

bb) the provision of periodic reports on the development of value and the costs and fees of the financial instruments,

d) facilitating improved access to advisory services, for example, by providing a widespread network of branch offices for the client warranting the local availability of qualified investment advisors, including in rural regions,

2. it does not directly benefit the accepting or granting investment services enterprise, its shareholders or employees, without concurrently representing a concrete benefit for the respective client, and

3. it is justified by the granting of an ongoing benefit for the client concerned in relation to an ongoing inducement.

An inducement does not enhance the quality of the service for the client if the service is thereby rendered prejudicially or not in the best interest of the client.

Investment services enterprises must meet the requirements under sentence 1 and 2 on an ongoing basis for as long as they receive or grant the inducement.

(3) To fulfill the requirements of Section 70(1) sentence 2 of the German Securities Trading Act investment services enterprises must

1. Maintain an internal register of all inducements they receive from a third party in connection with rendering securities services or rendering ancillary securities services, and

2. record,

a) how the inducements received or granted, or inducements, the receipt or granting of which is intended, enhance the quality of the services for the client concerned, and

b) the steps being taken to avoid impeding the fulfillment of the obligation of the investment services enterprise to act honestly, fairly and professionally in the best possible interest of the client..

You will also find a full German – English translation in the annex

- The German application cites the Accounting Directive articles 30 and 34 as comparable to Exchange Act Rule 18a-7 but does not cite the German law implementing this directive. What is the German law transposition for this directive?

The German law transposition of article 30 is the German Commercial Code (HGB) section 325:

Section 325 Disclosure

(1) The members of the corporate body vested with the powers of representation of stock corporations shall disclose the following documents on behalf of the company in the German language:

1. the adopted or approved annual financial statements, the annual report, the declarations pursuant to Section 264(2) sentence 3 and Section 289(1) sentence 5 and the auditor's opinion or the opinion on its rejection and

2. The supervisory board's report and the declaration required pursuant to Section 161 of the German Stock Corporation Act.

The documents shall be submitted to the operator of the German Federal Gazette (*Bundesanzeiger*) in a form facilitating their publication.

(1a) the documents under paragraph1 sentence 1 shall be submitted at the latest one year after the closing date of the financial year to which they relate. If the documents under paragraph 1 sentence 1 number 2 are not submitted within this deadline, they shall be disclosed promptly after becoming available pursuant to paragraph 1.

(1b) If the annual financial statements or the annual report are amended, the amendment shall be disclosed accordingly pursuant to paragraph 1 sentence 1. If the annual financial statements contain only the proposal for the appropriation of profits, the resolution on the appropriation of profits shall be disclosed after becoming available pursuant to paragraph 1 sentence 1.

(2) The members of the body authorized to represent the stock corporation shall have the documents referred to in paragraph 1 published in the German Federal Gazette promptly after their submission.

(2a) For the purposes of disclosure under paragraph 2, the annual financial statements may be replaced by individual financial statements prepared in accordance with the international accounting standards pursuant to Section 315e(1). A company exercising this option shall comply fully with the standards set out therein. Section 243(2), Sections 244, 245, 257, 264(1a), 2 sentence 3, Section 285 No. 7, 8 letter b, No. 9 to 11a, 14 to 17, Section 286(1) and (3) are applicable to such a financial statement. The obligation to disclose an annual report remains unaffected; the annual report pursuant to Section 289 must also refer to the individual financial statements pursuant to sentence 1 to the extent required. The remaining provisions of the second subsection of the Section One and the first subsection of the Section Two shall not apply in this respect. If, due to the application of Section 286(1) to the notes, the requirement referred to in sentence 2 cannot be met, the option under sentence 1 shall not apply.

(2b) The exemption of the disclosure of the individual financial statements under paragraph 2a shall be triggered if

1. instead of the auditor's opinion on the annual financial statements or the opinion on its rejection, the corresponding report on the financial statements under paragraph 2a is included in the disclosure under paragraph 2,

2. the proposal for the appropriation of net income and, if applicable, the resolution on its appropriation stating the net income or loss for the year, are included in the disclosure under paragraph 2, and

3. the annual financial statements with the auditor's opinion or the opinion on its rejection under paragraph 1 and 1a sentence 1 are disclosed.

(3) Paragraphs 1 to 2 and 4 sentence 1 shall apply *mutatis mutandis* to the members of the representative body of a stock corporation who are required to prepare consolidated financial statements and a consolidated annual report.

(3a) If the consolidated financial statements are published together with the annual financial statements of the parent company or with individual financial statements prepared by the parent company under paragraph 2a, the auditor's opinions under Section 322 on both sets of financial statements may be combined; in this case, the respective auditor's opinions may also be combined.

(4) For a stock corporation in the meaning of Section 264d, which is not a stock corporation in the meaning of Section 327a, the period under paragraph1a sentence 1 shall be at the longest four months. The date of the submission of the documents is definitive in respect of compliance with the deadlines pursuant to sentence 1 and paragraph 1a sentence 1.

(5) Obligations of the company based on the law, articles of association or by-laws to otherwise publish, submit or make available to persons the annual financial statements, the individual financial statements under paragraph 2a, the annual report, the consolidated financial statements or the consolidated annual report shall remain unaffected.

(6) Sections 11 and 12(2) accordingly apply to the documents to be submitted to the German Federal Gazette; Section 325a(1) sentence 5 and Section 340l(2) sentence 6 shall remain unaffected.

Footnote

(+++ Section 325:

In regard to application cf. Art. 75(1) HGBEG +++)

(+++ Section 325(1) sentence 1 and 7, paragraphs 2 to 2b, 5 and 6:

In regard to application cf. Section 160(1) KAGB +++)

You will also find a full German – English translation in the annex

The transposition of article 34 is section 316 HGB:

Section 316 Examination Obligation

(1) The annual financial statements and the annual report of stock corporations, which are not small in the meaning of Section 267(1), shall be audited by an auditor. If no audit has taken place, the annual financial statements cannot be adopted.

(2) The consolidated financial statements and the consolidated annual report of stock corporations shall be audited by an auditor. If no audit has taken place, the consolidated financial statements cannot be approved.

(3) If the annual financial statements, the consolidated financial statements, the annual report or the consolidated annual report are amended after the submission of the audit report, the auditor must accordingly re-audit these

documents to the extent that the amendment requires doing so. The result of the audit shall be reported; the auditor's opinion shall be supplemented accordingly. Sentences 1 and 2 shall apply mutatis mutandis to the reproduction of the annual financial statements, the annual report, the consolidated financial statements and consolidated annual report, which a stock corporations has prepared for disclosure purposes as a German issuer (Section 2(14) of the German Securities Trading Act) that issues securities (Section 2(1) of the German Securities Trading Act) and is not a stock corporation in the meaning of Section 327a.

You will also find a full German – English translation in the annex

- The German application cites MiFID Delegated Directive article 8 as comparable to Exchange Act Rules 18a-7(c)-(h) and 18a-9 but does not cite the German law implementing this directive. What is the German transposition for this directive?

  The transposition of article 8 Delegated Directive is section 89 (1) sentence 1 no. 1 WpHG.

- The German application cites MiFID article 73 as comparable to Exchange Act Rule 18a-8 but does not cite the German law implementing this directive. What is the German transposition for this directive?

  The German law transposition is section 25a (1) sentence 6 no. 3 German Banking Act (KWG).

Annex: Translation of German legislative text

German Ordinance specifying the rules of conduct and organizational requirements for investment services companies and German Commercial Code (Convenience Translation)	
§ 6 Verordnung zur Konkretisierung der Verhaltensregeln und Organisationsanforderungen für Wertpapierdienstleistungsunternehmen (Wertpapierdienstleistungs-Verhaltens- und -Organisationsverordnung - WpDVerOV)	**Section 6 of the German Ordinance specifying the rules of conduct and organizational requirements for investment services companies (*Wertpapierdienstleistungs-Verhaltens- und -Organisationsverordnung* - WpDVerOV)**
(1) Als geringfügige nichtmonetäre Vorteile im Sinne des § 64 Absatz 7 des Wertpapierhandelsgesetzes kommen, sofern sie die in § 64 Absatz 7 Satz 2 Nummer 1 und 2 des Wertpapierhandelsgesetzes genannten Voraussetzungen erfüllen, insbesondere in Betracht:	(1) Considered to be minor non-monetary inducements in the meaning of Section 64(7) of the German Securities Trading Act, insofar as they fulfill the conditions referred to in Section 64(7) sentence 2 number 1 and 2 of the German Securities Trading Act, are in particular:
1. Informationen oder Dokumentationen zu einem Finanzinstrument oder einer Wertpapierdienstleistung, sofern sie allgemein	1. Information or documentation regarding a financial instrument or an investment service, insofar as they are of a general nature or

angelegt oder individuell auf die Situation eines bestimmten Kunden abgestimmt sind;	individually tailored to the situation of a specific client;
2. von einem Dritten erstellte schriftliche Materialien, die von einem Emittenten oder potenziellen Emittenten aus dem Unternehmenssektor in Auftrag gegeben und vergütet werden, um eine Neuemission des betreffenden Emittenten zu bewerben, oder bei dem der Dritte vom Emittenten oder potentiellen Emittenten vertraglich dazu verpflichtet ist und dafür vergütet wird, derartiges Material fortlaufend zu erstellen, sofern	2. Materials prepared by a third party requisitioned and compensated by an issuer or potential issuer from the corporate sector in order to advertise a new emission by the issuer concerned, or in which the third party is contractually required to do so by the issuer or potential issuer and is compensated for preparing such material on an ongoing basis, insofar as
a) die Beziehung zwischen dem Dritten und dem Emittenten in dem betreffenden Material unmissverständlich offengelegt wird und	a) the relationship between the third party and the issuer is clearly disclosed in the material concerned and
b) das Material gleichzeitig allen Wertpapierdienstleistungsunternehmen, die daran interessiert sind, oder dem Publikum zur Verfügung gestellt wird;	b) the material is simultaneously provided to all investment services enterprises interested therein, or to the public;
3. die Teilnahme an Konferenzen, Seminaren und anderen Bildungsveranstaltungen, die zu den Vorteilen und Merkmalen eines bestimmten Finanzinstruments oder einer bestimmten Wertpapierdienstleistung abgehalten werden;	3. the participation in conferences, seminars and other educational events held on the benefits and features of a particular financial instrument or a particular investment service;
4. Bewirtungen, deren Wert eine vertretbare Geringfügigkeitsschwelle nicht überschreitet.	4. hospitality, the value of which does not exceed a reasonable threshold of qualifying as minor.
(2) Eine Zuwendung ist darauf ausgelegt, die Qualität der Dienstleistung für den Kunden im Sinne des § 70 Absatz 1 Satz 1 Nummer 1 des Wertpapierhandelsgesetzes zu verbessern, wenn	(2) An inducement is designed to enhance the quality of the service for the client in the meaning of Section 70(1) sentence 1 number 1 of the German Securities Trading Act, if
1. sie durch die Erbringung einer zusätzlichen oder höherwertigen Dienstleistung für den jeweiligen Kunden gerechtfertigt ist, die in angemessenem Verhältnis zum Umfang der erhaltenen Zuwendung steht, wie beispielsweise	1. rendering an additional or higher-quality service commensurate with the amount of the inducement received warrants it for the respective client, for example,
a) die Erbringung einer Anlageberatung, bei der es sich nicht um eine Unabhängige Honorar-Anlageberatung handelt, auf Basis einer breiten Palette geeigneter Finanzinstrumente und unter Zugang zu einer solchen, einschließlich einer angemessenen Zahl von Instrumenten, die von Anbietern oder Emittenten stammen, die in keiner engen Verbindung zum Wertpapierdienst-leistungsunternehmen stehen,	a) providing investment advice that does not entail independent fee-based investment advice, on the basis of a wide range of financial instruments and access to it, including an appropriate number of instruments originating from offerers or issuers, who do not have a close relationship to the investment services enterprise

b) die Erbringung einer Anlageberatung, bei der es sich nicht um eine Unabhängige Honorar-Anlageberatung handelt, in Kombination mit	b) providing independent fee-based investment advice, in combination with
aa) dem Angebot an den Kunden, mindestens einmal jährlich zu beurteilen, ob die Finanzinstrumente, in die der Kunde investiert hat, weiterhin für diesen geeignet sind, oder	aa) the offer to the client, at least once annually to assess whether the financial instruments that the client has invested in continue to be suitable for him, or
bb) einer anderen fortlaufenden Dienstleistung mit wahrscheinlichem Wert für den Kunden, beispielsweise einer Beratung über die optimale Strukturierung des Vermögens des Kunden,	bb) another ongoing service likely to be of value for the client, for example, advice about the optimal structuring of the client's assets,
c) die zu einem wettbewerbsfähigen Preis erfolgende Gewährung von Zugang zu einer breiten Palette von Finanzinstrumenten, die geeignet sind, den Bedürfnissen des Kunden zu entsprechen, darunter eine angemessene Zahl von Instrumenten, die von Anbietern oder Emittenten stammen, die in keiner engen Verbindung zum Wertpapierdienstleistungs-unternehmen stehen, in Kombination mit	c) granting access to a wide range of financial instruments at a competitive price, that suitably reflect the client's needs, including an appropriate number of instruments originating from offerers or issuers who do not have a close relationship to the investment services enterprise, in combination with
aa) der Bereitstellung von Hilfsmitteln, die einen Mehrwert aufweisen, wie etwa objektiven Informationsinstrumenten, die dem betreffenden Kunden bei Anlageentscheidungen helfen oder ihm die Möglichkeit geben, die Palette der Finanzinstrumente, in die er investiert hat, zu beobachten und anzupassen, oder	aa) the provision of resources having an added value, for example objective information instruments to assist the client concerned in making investment decisions or afford him the opportunity to observe or adjust the range of financial instruments, in which he has invested, or
bb) der Übermittlung periodischer Berichte über die Wertentwicklung sowie die Kosten und Gebühren der Finanzinstrumente,	bb) the provision of periodic reports on the development of value and the costs and fees of the financial instruments,
d) das Ermöglichen eines verbesserten Zugangs zu Beratungsdienstleistungen, etwa durch die Bereitstellung eines weitverzweigten Filialberaternetzwerkes, das für den Kunden die Vor-Ort-Verfügbarkeit qualifizierter Anlageberater auch in ländlichen Regionen sicherstellt,	d) facilitating improved access to advisory services, for example, by providing a widespread network of branch offices for the client warranting the local availability of qualified investment advisors, including in rural regions,
2. sie nicht unmittelbar dem annehmenden oder gewährenden Wertpapierdienstleistungs-unternehmen, dessen Gesellschaftern oder Beschäftigten zugutekommt, ohne zugleich einen konkreten Vorteil für den jeweiligen Kunden darzustellen, und	2. it does not directly benefit the accepting or granting investment services enterprise, its shareholders or employees, without concurrently representing a concrete benefit for the respective client, and
3. sie durch die Gewährung eines fortlaufenden Vorteils für den betreffenden Kunden in Relation zu einer laufenden Zuwendung gerechtfertigt ist.	3. it is justified by the granting of an ongoing benefit for the client concerned in relation to an ongoing inducement.

Eine Zuwendung verbessert die Qualität der Dienstleistung für den Kunden nicht, wenn die Dienstleistung dadurch in voreingenommener Weise oder nicht im besten Kundeninteresse erbracht wird. Wertpapierdienstleistungsunternehmen müssen die Vorgaben nach Satz 1 und 2 fortlaufend erfüllen, solange sie die Zuwendung erhalten oder gewähren.	An inducement does not enhance the quality of the service for the client if the service is thereby rendered prejudicially or not in the best interest of the client. Investment services enterprises must meet the requirements under sentence 1 and 2 on an ongoing basis for as long as they receive or grant the inducement.
(3) Zur Erfüllung der Voraussetzungen des § 70 Absatz 1 Satz 2 des Wertpapierhandelsgesetzes müssen Wertpapierdienstleistungsunternehmen 1. ein internes Verzeichnis aller Zuwendungen führen, die sie im Zusammenhang mit der Erbringung von Wertpapierdienstleistungen oder Wertpapiernebendienstleistungen von einem Dritten erhalten, und 2. aufzeichnen, a) wie die erhaltenen oder gewährten Zuwendungen, oder Zuwendungen, deren Erhalt oder Gewährung beabsichtigt ist, die Qualität der Dienstleistungen für die betreffenden Kunden verbessern und b) welche Schritte unternommen wurden, um die Erfüllung der Pflicht des Wertpapierdienstleistungsunternehmens, ehrlich, redlich und professionell im bestmöglichen Interesse der Kunden zu handeln, nicht zu beeinträchtigen.	(3) To fulfill the requirements of Section 70(1) sentence 2 of the German Securities Trading Act investment services enterprises must 1. Maintain an internal register of all inducements they receive from a third party in connection with rendering securities services or rendering ancillary securities services, and 2. record, a) how the inducements received or granted, or inducements, the receipt or granting of which is intended, enhance the quality of the services for the client concerned, and b) the steps being taken to avoid impeding the fulfillment of the obligation of the investment services enterprise to act honestly, fairly and professionally in the best possible interest of the client..
§ 316 HGB (German Commercial Code)	**Section 316 HGB (German Commercial Code)**
(1) Der Jahresabschluß und der Lagebericht von Kapitalgesellschaften, die nicht kleine im Sinne des § 267 Abs. 1 sind, sind durch einen Abschlußprüfer zu prüfen. Hat keine Prüfung stattgefunden, so kann der Jahresabschluß nicht festgestellt werden. (2) Der Konzernabschluß und der Konzernlagebericht von Kapitalgesellschaften sind durch einen Abschlußprüfer zu prüfen. Hat keine Prüfung stattgefunden, so kann der Konzernabschluss nicht gebilligt werden. (3) Werden der Jahresabschluß, der Konzernabschluß, der Lagebericht oder der Konzernlagebericht nach Vorlage des	(1) The annual financial statements and the annual report of stock corporations, which are not small in the meaning of Section 267(1), shall be audited by an auditor. If no audit has taken place, the annual financial statements cannot be adopted. (2) The consolidated financial statements and the consolidated annual report of stock corporations shall be audited by an auditor. If no audit has taken place, the consolidated financial statements cannot be approved. (3) If the annual financial statements, the consolidated financial statements, the annual report or the consolidated annual report are

Prüfungsberichts geändert, so hat der Abschlußprüfer diese Unterlagen erneut zu prüfen, soweit es die Änderung erfordert. Über das Ergebnis der Prüfung ist zu berichten; der Bestätigungsvermerk ist entsprechend zu ergänzen. Die Sätze 1 und 2 gelten entsprechend für diejenige Wiedergabe des Jahresabschlusses, des Lageberichts, des Konzernabschlusses und des Konzernlageberichts, welche eine Kapitalgesellschaft, die als Inlandsemittent (§ 2 Absatz 14 des Wertpapierhandelsgesetzes) Wertpapiere (§ 2 Absatz 1 des Wertpapierhandelsgesetzes) begibt und keine Kapitalgesellschaft im Sinne des § 327a ist, für Zwecke der Offenlegung erstellt hat.	amended after the submission of the audit report, the auditor must accordingly re-audit these documents to the extent that the amendment requires doing so. The result of the audit shall be reported; the auditor's opinion shall be supplemented accordingly. Sentences 1 and 2 shall apply mutatis mutandis to the reproduction of the annual financial statements, the annual report, the consolidated financial statements and consolidated annual report, which a stock corporations has prepared for disclosure purposes as a German issuer (Section 2(14) of the German Securities Trading Act) that issues securities (Section 2(1) of the German Securities Trading Act) and is not a stock corporation in the meaning of Section 327a.
§ 325 HGB (German Commercial Code)	**Section 325 HGB (German Commercial Code)**
(1) Die Mitglieder des vertretungsberechtigten Organs von Kapitalgesellschaften haben für die Gesellschaft folgende Unterlagen in deutscher Sprache offenzulegen: 1. den festgestellten oder gebilligten Jahresabschluss, den Lagebericht, die Erklärungen nach § 264 Absatz 2 Satz 3 und § 289 Absatz 1 Satz 5 und den Bestätigungsvermerk oder den Vermerk über dessen Versagung sowie 2. den Bericht des Aufsichtsrats und die nach § 161 des Aktiengesetzes vorgeschriebene Erklärung. Die Unterlagen sind elektronisch beim Betreiber des Bundesanzeigers in einer Form einzureichen, die ihre Bekanntmachung ermöglicht. (1a) Die Unterlagen nach Absatz 1 Satz 1 sind spätestens ein Jahr nach dem Abschlussstichtag des Geschäftsjahrs einzureichen, auf das sie sich beziehen. Liegen die Unterlagen nach Absatz 1 Satz 1 Nummer 2 nicht innerhalb der Frist vor, sind sie unverzüglich nach ihrem Vorliegen nach Absatz 1 offenzulegen. (1b) Wird der Jahresabschluss oder der Lagebericht geändert, so ist auch die Änderung	(1) The members of the corporate body vested with the powers of representation of stock corporations shall disclose the following documents on behalf of the company in the German language: 1. the adopted or approved annual financial statements, the annual report, the declarations pursuant to Section 264(2) sentence 3 and Section 289(1) sentence 5 and the auditor's opinion or the opinion on its rejection and 2. The supervisory board's report and the declaration required pursuant to Section 161 of the German Stock Corporation Act. The documents shall be submitted to the operator of the German Federal Gazette (*Bundesanzeiger*) in a form facilitating their publication. (1a) the documents under paragraph1 sentence 1 shall be submitted at the latest one year after the closing date of the financial year to which they relate. If the documents under paragraph 1 sentence 1 number 2 are not submitted within this deadline, they shall be disclosed promptly after becoming available pursuant to paragraph 1. (1b) If the annual financial statements or the annual report are amended, the amendment shall

nach Absatz 1 Satz 1 offenzulegen. Ist im Jahresabschluss nur der Vorschlag für die Ergebnisverwendung enthalten, ist der Beschluss über die Ergebnisverwendung nach seinem Vorliegen nach Absatz 1 Satz 1 offenzulegen.	be disclosed accordingly pursuant to paragraph 1 sentence 1. If the annual financial statements contain only the proposal for the appropriation of profits, the resolution on the appropriation of profits shall be disclosed after becoming available pursuant to paragraph 1 sentence 1.
(2) Die Mitglieder des vertretungsberechtigten Organs der Kapitalgesellschaft haben für diese die in Absatz 1 bezeichneten Unterlagen jeweils unverzüglich nach der Einreichung im Bundesanzeiger bekannt machen zu lassen.	(2) The members of the body authorized to represent the stock corporation shall have the documents referred to in paragraph 1 published in the German Federal Gazette promptly after their submission.
(2a) Bei der Offenlegung nach Absatz 2 kann an die Stelle des Jahresabschlusses ein Einzelabschluss treten, der nach den in § 315e Absatz 1 bezeichneten internationalen Rechnungslegungsstandards aufgestellt worden ist. Ein Unternehmen, das von diesem Wahlrecht Gebrauch macht, hat die dort genannten Standards vollständig zu befolgen. Auf einen solchen Abschluss sind § 243 Abs. 2, die §§ 244, 245, 257, 264 Absatz 1a, 2 Satz 3, § 285 Nr. 7, 8 Buchstabe b, Nr. 9 bis 11a, 14 bis 17, § 286 Absatz 1 und 3 anzuwenden. Die Verpflichtung, einen Lagebericht offenzulegen, bleibt unberührt; der Lagebericht nach § 289 muss in dem erforderlichen Umfang auch auf den Einzelabschluss nach Satz 1 Bezug nehmen. Die übrigen Vorschriften des Zweiten Unterabschnitts des Ersten Abschnitts und des Ersten Unterabschnitts des Zweiten Abschnitts gelten insoweit nicht. Kann wegen der Anwendung des § 286 Abs. 1 auf den Anhang die in Satz 2 genannte Voraussetzung nicht eingehalten werden, entfällt das Wahlrecht nach Satz 1.	(2a) For the purposes of disclosure under paragraph 2, the annual financial statements may be replaced by individual financial statements prepared in accordance with the international accounting standards pursuant to Section 315e(1). A company exercising this option shall comply fully with the standards set out therein. Section 243(2), Sections 244, 245, 257, 264(1a), 2 sentence 3, Section 285 No. 7, 8 letter b, No. 9 to 11a, 14 to 17, Section 286(1) and (3) are applicable to such a financial statement. The obligation to disclose an annual report remains unaffected; the annual report pursuant to Section 289 must also refer to the individual financial statements pursuant to sentence 1 to the extent required. The remaining provisions of the second subsection of the Section One and the first subsection of the Section Two shall not apply in this respect. If, due to the application of Section 286(1) to the notes, the requirement referred to in sentence 2 cannot be met, the option under sentence 1 shall not apply.
(2b) Die befreiende Wirkung der Offenlegung des Einzelabschlusses nach Absatz 2a tritt ein, wenn	(2b) The exemption of the disclosure of the individual financial statements under paragraph 2a shall be triggered if
1. statt des vom Abschlussprüfer zum Jahresabschluss erteilten Bestätigungsvermerks oder des Vermerks über dessen Versagung der entsprechende Vermerk zum Abschluss nach Absatz 2a in die Offenlegung nach Absatz 2 einbezogen wird,	1. instead of the auditor's opinion on the annual financial statements or the opinion on its rejection, the corresponding report on the financial statements under paragraph 2a is included in the disclosure under paragraph 2,
2. der Vorschlag für die Verwendung des Ergebnisses und gegebenenfalls der Beschluss über seine Verwendung unter Angabe des Jahresüberschusses oder Jahresfehlbetrags in die Offenlegung nach Absatz 2 einbezogen werden und	2. the proposal for the appropriation of net income and, if applicable, the resolution on its appropriation stating the net income or loss for the year, are included in the disclosure under paragraph 2, and

3. der Jahresabschluss mit dem Bestätigungsvermerk oder dem Vermerk über dessen Versagung nach Absatz 1 und 1a Satz 1 offen gelegt wird.	3. the annual financial statements with the auditor's opinion or the opinion on its rejection under paragraph 1 and 1a sentence 1 are disclosed.
(3) Die Absätze 1 bis 2 und 4 Satz 1 gelten entsprechend für die Mitglieder des vertretungsberechtigten Organs einer Kapitalgesellschaft, die einen Konzernabschluss und einen Konzernlagebericht aufzustellen haben.	(3) Paragraphs 1 to 2 and 4 sentence 1 shall apply *mutatis mutandis* to the members of the representative body of a stock corporation who are required to prepare consolidated financial statements and a consolidated annual report.
(3a) Wird der Konzernabschluss zusammen mit dem Jahresabschluss des Mutterunternehmens oder mit einem von diesem aufgestellten Einzelabschluss nach Absatz 2a bekannt gemacht, können die Vermerke des Abschlussprüfers nach § 322 zu beiden Abschlüssen zusammengefasst werden; in diesem Fall können auch die jeweiligen Prüfungsberichte zusammengefasst werden.	(3a) If the consolidated financial statements are published together with the annual financial statements of the parent company or with individual financial statements prepared by the parent company under paragraph 2a, the auditor's opinions under Section 322 on both sets of financial statements may be combined; in this case, the respective auditor's opinions may also be combined.
(4) Bei einer Kapitalgesellschaft im Sinn des § 264d, die keine Kapitalgesellschaft im Sinn des § 327a ist, beträgt die Frist nach Absatz 1a Satz 1 längstens vier Monate. Für die Wahrung der Fristen nach Satz 1 und Absatz 1a Satz 1 ist der Zeitpunkt der Einreichung der Unterlagen maßgebend.	(4) For a stock corporation in the meaning of Section 264d, which is not a stock corporation in the meaning of Section 327a, the period under paragraph1a sentence 1 shall be at the longest four months. The date of the submission of the documents is definitive in respect of compliance with the deadlines pursuant to sentence 1 and paragraph 1a sentence 1.
(5) Auf Gesetz, Gesellschaftsvertrag oder Satzung beruhende Pflichten der Gesellschaft, den Jahresabschluss, den Einzelabschluss nach Absatz 2a, den Lagebericht, den Konzernabschluss oder den Konzernlagebericht in anderer Weise bekannt zu machen, einzureichen oder Personen zugänglich zu machen, bleiben unberührt.	(5) Obligations of the company based on the law, articles of association or by-laws to otherwise publish, submit or make available to persons the annual financial statements, the individual financial statements under paragraph 2a, the annual report, the consolidated financial statements or the consolidated annual report shall remain unaffected.
(6) Die §§ 11 und 12 Abs. 2 gelten für die beim Betreiber des Bundesanzeigers einzureichenden Unterlagen entsprechend; § 325a Absatz 1 Satz 5 und § 340l Absatz 2 Satz 6 bleiben unberührt.	(6) Sections 11 and 12(2) accordingly apply to the documents to be submitted to the German Federal Gazette; Section 325a(1) sentence 5 and Section 340l(2) sentence 6 shall remain unaffected.
Fußnote	Footnote
(+++ § 325:	(+++ Section 325:
Zur Anwendung vgl. Art. 75 Abs. 1 HGBEG +++)	In regard to application cf. Art. 75(1) HGBEG +++)
(+++ § 325 Abs. 1 Satz 1 u. 7, Abs. 2 bis 2b, 5 u. 6:	(+++ Section 325(1) sentence 1 and 7, paragraphs 2 to 2b, 5 and 6:
Zur Anwendung vgl. § 160 Abs. 1 KAGB +++)	

	In regard to application cf. Section 160(1) KAGB +++)

Recordkeeping Questions for German BaFin as of 4/17/2021

- We noticed that the German sub comp application does not include an analysis for Rule 18a-5(a)(18) and (b)(14). As you can see in the Commission's proposed UK substituted compliance order (available at Notice of Substituted Compliance Application Submitted by the United Kingdom Financial Conduct Authority in Connection with Certain Requirements Applicable to Security-Based Swap Dealers and Major Security-Based Swap Participants Subject to Regulation in the United Kingdom; Proposed Order), the Commission cites the following UK cites as comparable to Exchange Act rule 18a-5(a)(18) and (b)(14): UK EMIR article 11(1)(b) and UK EMIR RTS article 15(1). Even though not cited in the German application, we believe EMIR article 11(1)(b) and EMIR RTS article 15(1) are also relevant to Germany's comparability assessment regarding Exchange Act rule 18a-5(a)(18) and (b)(14). Please let us know if you disagree. Please also let us know if there are any other German law citations that are relevant (and provide English translations if they have not been provided yet).

  BaFin agrees with your analysis and conclusion.

- The German application cites CRR article 104(1)(j) as comparable to Exchange Act Rules 18a-6(b)(1)(v), 18a-6(b)(1)(viii)/18a-6(b)(2)(v), 18a-7(a)(3). However, CRR article 104(1)(j) does not exist. Did the application intend to cite CRD article 104(1)(j)? If so, what is the German law transposition for this directive?

  BaFin confirms that it must read 104(1)(j) CRD instead of CRR.
  The German law transposition can be found in Section 45(2)(No 3) German Banking Act

- As you can see on page 467 of the French substituted compliance application (available at full-french-application.pdf (sec.gov)), the French AMF cites CRR article 176 as comparable to Exchange Act rule 18a-6(b)(1)(ix). Even though not cited in the German application or subsequent correspondence, we believe CRR article 176 is also relevant to Germany's comparability assessment regarding Exchange Act rule 18a-6(b)(1)(ix). Please let us know if you disagree.

  BaFin confirms this analysis and conclusion

- We noticed that the German application cites MiFIR article 26 as comparable to Exchange Act rule 18a-7 in the Comparability Analysis column but not in the EU Requirement column, which is a bit unusual since relevant cites are usually included in both the EU Requirement and Comparability Analysis columns. Since MiFIR article 26 relates to transaction reporting instead of the more general financial reporting covered by Exchange Act rule 18a-7(b), we want to confirm whether MiFIR article 26 should be identified as a comparable citation for Exchange Act rule 18a-7 in the German substituted compliance order.

BaFin confirms that MiFIR article 26 is not a comparable to Exchange Act rule 18a-7(b) as Article 26 MiFIR refers to transaction reporting and not to financial reporting.

- Upon reviewing the German substituted compliance application, we realized that we did not see an EU/German parallel requirement identified in your comparability chart for 17 CFR 240.18a-7(i) (notice of fiscal year change). Can you please confirm there is no parallel requirement, or provide a parallel requirement if this was an inadvertent omission?

  Regulation on the fiscal year can be found in the German Commercial Code (*Handelsgesetzbuch*) and in German Tax Law (*Einkommensteuergesetz*). Both limit the freedom of companies in terms of changing endurance of the fiscal year. There are no specific regulation in the Banking Act.

- As you can see in the Commission's proposed UK substituted compliance order (available at Notice of Substituted Compliance Application Submitted by the United Kingdom Financial Conduct Authority in Connection with Certain Requirements Applicable to Security-Based Swap Dealers and Major Security-Based Swap Participants Subject to Regulation in the United Kingdom; Proposed Order), the Commission cites CRR article 366(5) as comparable to Exchange Act rule 18a-8. Even though not cited in the German application, we believe CRR article 366(5) is also relevant to Germany's comparability assessment regarding Exchange Act rule 18a-8. Please let us know if you disagree.

  We have difficulties spotting the text in which the Commission cites CRR article 366 in the compliance order linked above. Can you please direct us to the relevant page?

  Generally speaking, Art. 366 (5) CRR requires that institutions with an internal model for market risk (IMA) to submit backtesting overshootings within 5 working days to the competent authority. Both MSESE and CGME have applied for IMA permission and are currently under temporary tolerance (permission process ongoing). This requirement also applies to counterparty credit risk exposures including OTC derivatives.

- As you can see in the Commission's proposed UK substituted compliance order (available at Notice of Substituted Compliance Application Submitted by the United Kingdom Financial Conduct Authority in Connection with Certain Requirements Applicable to Security-Based Swap Dealers and Major Security-Based Swap Participants Subject to Regulation in the United Kingdom; Proposed Order), the Commission cites EMIR RTS articles 12 and 13 as comparable to Exchange Act rule 18a-9. Even though not cited in the German application or subsequent correspondence, we believe EMIR RTS articles 12 and 13 is also relevant to Germany's comparability assessment regarding Exchange Act rule 18a-9. Please let us know if you disagree.

  BaFin agrees with your analysis and conclusion.

Germany

Follow-up Questions for Margin and Capital

June 7, 2021

Margin

1. MaRisk is referred to as a "Circular". Is this a regulation or guidance? Is it legally binding?

   This type of legal instrument is something in between. It means minimum requirements for risk management (*Mindestanforderungen an das Risikomanagement (MaRisk)*. It works as a matter of fact like a regulation. However, technically it is a declaration that BaFin binds itself to a certain interpretation of the law (*selbstbindende Verwaltungsauslegung*). The MaRisk are the written interpretation of BaFin in particular how to interpret § 25 para 1 German Banking Act which requires some minimum requirements on the bank's side regarding risk. It specifies the rather vague legal concept laid down in this provision.

Capital

1. Footnote 19: Section 11 of the German Banking Act (as supplemented by the German Liquidity Regulation (*Liquiditätsverordnung*) generally requires investment firms to invest their funds so as to maintain adequate liquidity at all times.
   - Please provide an English translation of *Liquiditätsverordnung*, or the sections relevant to the capital analysis.

     Please cf. attachment.

   - Please confirm that this liquidity regulation will not apply to investment firms reauthorized as credit institutions.

     BaFin confirms – the regulation is inapplicable to large investment firms as soon as they will be reauthorized as credit institutions.

     Additionally, the German supervisory framework is about to change and the liquidity regulation will become inapplicable to small investment firms, too. There will be a new law solely dealing with supervision of small investment firms that covers inter alia liquidity requirements. This new set of regulation has no relevance for substituted compliance as covers small investment firms only.

Additional Information following the conference call between SEC and BaFin on June 07. 2021

Deployment of resources

When deploying its supervisory resources, BaFin follows the principle of proportionality and pursues a risk based approach, as generally required by the European law in CRR, Art. 99 paragraph 1 lit. (b).

Significant Institutions (SI)

The SSM follows a tiering approach that considers the size of the firm (Cluster 1-6) and its quality as measured by the SREP score (1-4), please confirm SSM Supervisory Manual, pp 63. BaFin contributes its resources in line with the SSM requirements, i.e. we contribute more staff to JSTs supervising banks in higher clusters and of lower quality than to JSTs supervising banks in lower clusters and of better quality.

Less Significant Institutions (LSI)

For LSI, BaFin takes couple of decisions to deploy its resources. Again, BaFin pursues a risk based and proportionate approach based on the individual quality of the institutions. The EBA SREP Guidelines (EBA/GL/2014/13 as amended on 19 July 2018) require BaFin and the Deutsche Bundesbank to prepare a risk profile for all LSIs, i.e. the less significant institutions, under their supervision on an annual basis. BaFin uses this risk profile to classify each institution into risk classes from 1 to 4 according to the categories “quality of the institution” and “potential impact of a solvency or liquidity crisis of the institution on the stability of the financial sector”. It derives the supervisory measures necessary from this overall assessment and determines how closely each institution must be supervised on the basis of the principle of proportionality.

Table 2: Risk classification results of LSIs in 2019*

As at 31 December 2019

Institutions in %		Quality				
Risk matrix		**1**	**2**	**3**	**4**	**Total**
Impact	High	0.1	0.4	0.1	0.0	0.6
	Medium	4.4	9.6	2.5	0.1	16.6
	Medium-low	9.0	39.2	7.0	0.4	55.6
	Low	2.7	16.0	7.6	0.9	27.2
	Total	**16.2**	**65.2**	**17.2**	**1.4**	**100.0**

* This table presents the LSIs under the supervision of the Banking Supervision Sector.

Based on this assessment, BaFin decides on necessary supervisory actions and defines the required periods for regular onsite inspections as well as the depth of the annual risk assessment. Similar decisions are made for Investments Firms under BaFin supervision. At the moment

BaFin road tests the concept of focused supervision for LSI that have complex and/or innovative business models.

Capital and Liquidity Waiver, Article 7 and 8 CRR

Article 6 para 1 and 4 of the Regulation (EU) No 575/2013 establishes that institutions shall comply with the obligations of part 2 to 5 and 8 of the CRR on an individual basis. These parts of the CRR address requirements on own funds, large exposures and disclosure. Article 6 para 4 CRR establishes that credit institutions and investment firms shall also comply with the obligations laid down in part 6 of the CRR on an individual basis. Part 6 addresses liquidity requirements.

Requirements for the Capital Waiver, Article 7 CRR

According to Article 7 of the CRR competent authorities may waive the application of Article 6 para 1 CRR on an individual basis, if certain assessment criteria are met. If such waiver is granted, capital requirements need to be met by the respective group on a consolidated basis only. Article 7 para 1 CRR addresses the preconditions for subsidiaries, para 3 addresses those for parent undertakings:

(1) *Competent authorities may waive the application of Article 6(1) to any subsidiary of an institution, where both the subsidiary and the institution are subject to authorisation and supervision by the Member State concerned, and the subsidiary is included in the supervision on a consolidated basis of the institution which is the parent undertaking, and all of the following conditions are satisfied, in order to ensure that own funds are distributed adequately between the parent undertaking and the subsidiary:*

(a) *there is no current or foreseen material practical or legal impediment to the prompt transfer of own funds or repayment of liabilities by its parent undertaking;*

(b) *either the parent undertaking satisfies the competent authority regarding the prudent management of the subsidiary and has declared, with the permission of the competent authority, that it guarantees the commitments entered into by the subsidiary, or the risks in the subsidiary are of negligible interest;*

(c) *the risk evaluation, measurement and control procedures of the parent undertaking cover the subsidiary;*

(d) the parent undertaking holds more than 50 % of the voting rights attached to shares in the capital of the subsidiary or has the right to appoint or remove a majority of the members of the management body of the subsidiary.

[…]

(3) Competent authorities may waive the application of Article 6(1) to a parent institution in a Member State where that institution is subject to authorisation and supervision by the Member State concerned, and it is included in the supervision on a consolidated basis, and all the following conditions are satisfied, in order to ensure that own funds are distributed adequately among the parent undertaking and the subsidiaries:

(a) there is no current or foreseen material practical or legal impediment to the prompt transfer of own funds or repayment of liabilities to the parent institution in a Member State;

(b) the risk evaluation, measurement and control procedures relevant for consolidated supervision cover the parent institution in a Member State.

[..]

<u>Requirements for the Liquidity Waiver, Article 8 CRR</u>

According to Article 8 of the CRR competent authorities may also waive the application of the liquidity requirements on an individual basis if certain assessment criteria are met. If such waiver is granted, liquidity requirements solely need to be met by the group on a consolidated basis only. Article 8 of Regulation (EU) No 575/2013 stipulates the liquidity waiver. The preconditions for a liquidity waiver are set in Article 8 para 1:

(1) The competent authorities may waive in full or in part the application of Part Six to an institution and to all or some of its subsidiaries in the Union and supervise them as a single liquidity sub-group so long as they fulfil all of the following conditions:

(a) the parent institution on a consolidated basis or a subsidiary institution on a sub-consolidated basis complies with the obligations laid down in Part Six;

(b) the parent institution on a consolidated basis or the subsidiary institution on a sub-consolidated basis monitors and has oversight at all times over the liquidity positions of all institutions within the group or sub-group, that are subject to the waiver and ensures a sufficient level of liquidity for all of these institutions;

(c) *the institutions have entered into contracts that, to the satisfaction of the competent authorities, provide for the free movement of funds between them to enable them to meet their individual and joint obligations as they come due;*

(d) *there is no current or foreseen material practical or legal impediment to the fulfilment of the contracts referred to in (c).*

Assessment and necessary documentation

As part of ECB's Options & Discretions Guide ECB has published a guidance on how applications for capital and liquidity waivers of credit institutions within the SSM should be assessed (pg. 5 – 15). Part of this guidance is also the expectation for any applicant to submit a list of documents as part of its application. BaFin applies this guidance accordingly for Non-SSM applications with only slight deviations on a case-by-case basis.

In so far BaFin assessed the waiver applications of MS Europe SE and MS Bank AG for capital and liquidity in line with said ECB Guidance.

For example for the capital waiver specific focus was put on the group structure and governance of both entities as subsidiaries of MS Europe Holding SE, the financial and capital arrangements within that group and the question whether both operating entities are adequately covered by the group's risk management processes, the ICAAP, recovery and resolution planning as well as internal audit functioning on a consolidated level. MS Europe Holding SE also provided a guarantee regarding MS Europe SEs and MS Bank AGs debt obligations.

Diese Übersetzung hat keinen offiziellen Charakter. Der authentische Text ist der im Bundesgesetzblatt veröffentlichte. Weder der Verlag noch die Autoren können für Fehler oder Auslassungen haftbar gemacht werden.

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Liquiditätsverordnung (LiqV)

vom 14. Dezember 2006 (BGBl. I S. 3117), die zuletzt durch Artikel 1 der Verordnung vom 22. Dezember 2017 (BGBl. I S. 4033) geändert worden ist

Eingangsformel

Auf Grund des § 11 Abs. 1 Satz 2 des Kreditwesengesetzes, der durch Artikel 1 Nr. 16 des Gesetzes vom 17. November 2006 (BGBl. I S. 2606) neu gefasst worden ist, verordnet das Bundesministerium der Finanzen im Benehmen mit der Deutschen Bundesbank nach Anhörung der Spitzenverbände der Institute:

Inhalt

§ 1 Anwendungsbereich

(1) Diese Verordnung ist anzuwenden auf

1. Kreditinstitute, auf die die Vorschriften der Artikel 411 bis 428 der Verordnung (EU) Nr. 575/2013 des Europäischen Parlaments und des Rates vom 26. Juni 2013 über Aufsichtsanforderungen an Kreditinstitute und Wertpapierfirmen und zur Änderung der Verordnung (EU) Nr. 648/2012 (ABl. L 176 vom 27.6.2013, S. 1; L 208 vom 2.8.2013, S. 68; L 321 vom 30.11.2013, S. 6; L 193 vom

Liquidity Regulation (LiqV)

of 14 December 2006 (Federal Law Gazette I p. 3117), last amended by Article 1 of the Regulation of 22 December 2017 (Federal Law Gazette I p. 4033)

Introductory Clause

On the basis of § 11 para. 1 sentence 2 of the Banking Act which has been amended by Article 1 No. 16 of the Act of 17 November 2006 (Federal Law Gazette I p. 2606) the Federal Ministry of Finance, in consultation with the Deutsche Bundesbank and after hearing the leading associations of the institutions, issues the following regulation:

Table of contents

§ 1 Scope of application

(1) This Regulation shall be applied to

1. credit institutions for which the provisions of Article 411 to 428 of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176 of 27.6.2013, p. 1; L 208 of 2.8.2013, p. 68; L 321 of 30.11.2013, p. 6; L 193 of 21.7.2015, p. 166; L 20 of

21.7.2015, S. 166; L 20 vom 25.1.2017, S. 3), die zuletzt durch die Verordnung (EU) 2016/1014 (ABl. L 171 vom 29.6.2016, S. 153) geändert worden ist, nicht anzuwenden sind, und

2. Finanzdienstleistungsinstitute, die
   a) Eigenhandel betreiben oder
   b) als Anlagevermittler, Abschlussvermittler oder Finanzportfolioverwalter befugt sind, sich Eigentum oder Besitz an Geldern oder Wertpapieren von Kunden zu verschaffen oder auf eigene Rechnung mit Finanzinstrumenten zu handeln.

(2) CRR-Wertpapierfirmen, die die Vorschriften der Artikel 411 bis 428 der Verordnung (EU) Nr. 575/2013 auf Gruppenebene konsolidiert oder teilkonsolidiert einhalten müssen, können durch die Bundesanstalt auf Antrag von den Anforderungen dieser Verordnung befreit werden.

§ 2 Ausreichende Liquidität

(1) Die Liquidität eines Instituts gilt als ausreichend, wenn die zu ermittelnde Liquiditätskennzahl den Wert eins nicht unterschreitet. Die Liquiditätskennzahl gibt das Verhältnis zwischen den im Laufzeitband 1 verfügbaren Zahlungsmitteln und den während dieses Zeitraumes abrufbaren Zahlungsverpflichtungen an. Zahlungsmittel und Zahlungsverpflichtungen sind jeweils einem der folgenden Laufzeitbänder zuzuordnen: fällig

1. täglich oder in bis zu einem Monat (Laufzeitband 1),
2. in über einem Monat bis zu drei Monaten (Laufzeitband 2),
3. in über drei Monaten bis zu sechs Monaten (Laufzeitband 3),
4. in über sechs Monaten bis zu zwölf Monaten (Laufzeitband 4).

(2) Das Institut hat Beobachtungskennzahlen zu berechnen, die das Verhältnis zwischen den jeweiligen Zahlungsmitteln und den Zahlungsverpflichtungen in den Laufzeitbändern nach Absatz 1 Satz 3 Nr. 2 bis 4 angeben. Die Ermittlung der Beobachtungskennzahlen erfolgt entsprechend der Berechnung der Liquiditätskennzahl nach Absatz 1 Satz 2. Überschreiten die in einem Laufzeitband vorhandenen Zahlungsmittel die abrufbaren Zahlungsverpflichtungen, ist der Unterschiedsbetrag als zusätzliches Zahlungsmittel bei der Ermittlung der Beobachtungskennzahl in dem nächsthöheren Laufzeitband zu berücksichtigen.

25.1.2017, p. 3), last amended by Regulation (EU) 2016/1014 (OJ L 171 of 29.6.2016, p. 153) are not applicable, and

2. financial services institutions which
   a) conduct dealing on own account or
   b) are authorized as investment brokers, contract brokers or financial portfolio managers to obtain ownership or possession of clients' funds or clients' securities or trade for their own account in financial instruments.

(2) CRR investment firms which have to comply with the provisions of Article 411 to 428 of Regulation (EU) No 575/2013 on the group level on a consolidated or partially consolidated basis, may be exempted from the requirements of this Regulation by the Bundesanstalt upon application.

§ 2 Sufficient liquidity

(1) An institution's liquidity is deemed sufficient if the liquidity ratio to be calculated does not fall below the value of one. The liquidity ratio shows the ratio between the liquid assets available in maturity band 1 and the payment obligations callable during this period. Liquid assets and payment obligations are to be assigned to one of the following maturity bands, respectively: becoming due

1. on demand or within up to one month (maturity band 1),
2. over one month up to three months (maturity band 2),
3. over three months up to six months (maturity band 3),
4. over six months up to twelve months (maturity band 4).

(2) An institutions shall calculate observation ratios which indicate the ratio between the respective liquid assets and the payment obligations assigned to the maturity bands pursuant to paragraph 1 sentence 3 nos. 2 to 4. The observation ratios shall be calculated analogous to the calculation of the liquidity ratio pursuant to paragraph 1 sentence 2. Where liquid assets available in a given maturity band exceed the callable payment obligations, the difference is to be taken into account as additional liquid asset for the purpose of calculating the observation ratio in the next higher maturity band.

§ 3 Zahlungsmittel

(1) Als Zahlungsmittel sind im Laufzeitband 1 vorbehaltlich Absatz 3 zu erfassen

1. Kassenbestand,
2. Guthaben bei Zentralnotenbanken,
3. Inkassopapiere,
4. unwiderrufliche Kreditzusagen, die das Institut von einem anderen Kreditinstitut oder der Kreditanstalt für Wiederaufbau erhalten hat,
5. nicht wie Anlagevermögen bewertete Wertpapiere, die zum Handel an einer anerkannten Börse im Sinne des Artikels 4 Absatz 1 Nummer 72 der Verordnung (EU) Nr. 575/2013 in einem Staat des Europäischen Wirtschaftsraums oder an einer Wertpapierbörse nach § 1 Absatz 3e des Kreditwesengesetzes zugelassen sind (börsennotierte Wertpapiere), einschließlich der dem Institut als Pensionsnehmer oder Entleiher im Rahmen von Pensionsgeschäften oder Leihgeschäften übertragenen Papiere,
6. Vermögensgegenstände, die von der Europäischen Zentralbank oder der Zentralnotenbank eines Staates, dessen unbesicherte Zahlungsverpflichtungen ein Risikogewicht nach Artikel 114 der Verordnung (EU) Nr. 575/2013 von 0 Prozent erhalten würden, nach dem jeweiligen Verzeichnis als refinanzierungsfähige Sicherheiten anerkannt werden, wobei das Kreditinstitut im Sitzland der Zentralnotenbank eine Zweigniederlassung haben muss, wenn diese nicht dem Europäischen System der Zentralbanken angehört, einschließlich der dem Institut als Pensionsnehmer oder Entleiher im Rahmen

§ 3 Liquid assets

(1) Notwithstanding paragraph 3, the following items are liquid assets in maturity band 1

1. cash
2. balances with central banks,
3. paper for collection,
4. irrevocable lending commitments which the institution has received from another credit institution or the Kreditanstalt für Wiederaufbau,
5. securities which are not valued like fixed assets and which are admitted to trading on a recognised exchange as defined in Article 4 paragraph 1 number 72 of Regulation (EU) No 575/2013 located in a Member State of the European Economic Area or on a stock exchange as defined in § 1 paragraph 3e of the Banking Act (listed securities), including securities transferred to the institution as a transferee or borrower under repurchase transactions or lending transactions,
6. assets which would be recognised as collateral eligible for refinancing pursuant to the relevant listing by the European Central Bank or the central bank of a country whose unsecured payment obligations would receive a risk weight of zero percent pursuant to Article 114 of Regulation (EU) No. 575/2013, provided that the credit institution has a branch in the country of domicile of the central bank if the latter does not belong to the European System of Central Banks, including assets transferred to the institution as a transferee or borrower under repurchase transactions or lending transac-

von Pensionsgeschäften oder Leihgeschäften übertragenen Vermögensgegenstände, sofern nicht bereits nach Nummer 5 erfasst (bei nullgewichteten Zentralnotenbanken refinanzierungsfähige Vermögensgegenstände),

7. nicht wie Anlagevermögen bewertete gedeckte Schuldverschreibungen nach Artikel 129 der Verordnung (EU) Nr. 575/2013, einschließlich der dem Institut als Pensionsnehmer oder Entleiher im Rahmen von Pensionsgeschäften oder Leihgeschäften übertragenen gedeckten Schuldverschreibungen, und
8. in Höhe von 90 Prozent der jeweiligen Rücknahmepreise nicht wie Anlagevermögen bewertete Anteile an inländischen OGAW-Sondervermögen, inländischen Spezialsondervermögen, deren Anlagebedingungen Anlagegrundsätze und -grenzen vorsehen, die denen von inländischen OGAW entsprechen, und EU-OGAW, soweit deren Rücknahme- und Abwicklungsregelungen denen für Publikumssondervermögen entsprechen; die Anlagebedingungen der Sondervermögen müssen sicherstellen, dass die Anteilseigner ihre Anteile börsentäglich zurückgeben können und die Rücknahme entgegen § 98 Absatz 2 des Kapitalanlagegesetzbuchs nicht verweigert werden kann.

(2) Als Zahlungsmittel sind entsprechend ihren Restlaufzeiten in den Laufzeitbändern 1 bis 4 vorbehaltlich Absatz 3 zu erfassen

1. Forderungen an Zentralnotenbanken,
2. Forderungen an Kreditinstitute,
3. Forderungen an Kunden,
4. bei Zentralnotenbanken refinanzierbare Wechsel, die nicht bereits unter die Nummer 2 oder 3 fallen,
5. Sachforderungen des verleihenden Instituts auf Rückgabe der verliehenen Wertpapiere,
6. andere als die unter Absatz 1 erfassten Schuldverschreibungen und andere festverzinsliche Wertpapiere, einschließlich der dem Institut als Pensionsnehmer oder Entleiher im Rahmen von Pensionsgeschäften oder Leihgeschäften übertragenen festverzinslichen Wertpapiere,
7. Sachforderungen des Pensionsgebers auf Rückübertragung von Wertpapieren im Rahmen echter Pensionsgeschäfte,
8. Geldforderungen des Pensionsnehmers aus unechten Pensionsgeschäften in Höhe des vereinbarten Rückzahlungsbetrags, wenn der aktuelle Marktwert der übertragenen Wertpapiere unter diesem liegt, und
9. Ausgleichsforderungen gegen die öffentliche Hand (insbesondere Ausgleichsfonds Währungsumstellung), einschließlich Schuldverschreibungen aus deren Umtausch, soweit sie nicht von Absatz 1 Nr. 5 erfasst werden,

soweit die jeweiligen Restlaufzeiten zum Meldestichtag die Dauer eines Jahres nicht übersteigen.

(3) Keine liquiditätswirksamen Zahlungsmittel im Sinne der Absätze 1 und 2 sind

1. Forderungen und Wechsel, auf die Einzelwertberichtigungen gebildet worden sind, wenn aktuelle Leistungsstörungen vorliegen,
2. Beteiligungen und Anteile an verbundenen Unternehmen,
3. zurückgekaufte Schuldverschreibungen eigener Emissionen, die die Voraussetzungen des Artikels 129 der Verordnung (EU) Nr. 575/2013 nicht erfüllen,
4. im Rahmen von Pensionsgeschäften oder Leihgeschäften übertragene Wertpapiere für die Dauer des Geschäfts beim Pensionsgeber oder Verleiher,
5. als Sicherheiten gestellte Wertpapiere, die der Verfügung durch das Institut entzogen sind, für den Zeitraum der Sicherheitenbestellung, es sei denn, sie sind bei einer Zentralnotenbank des Europäischen Systems der Zentralbanken verpfändet, und
6. andere als die in Absatz 1 Nr. 8 aufgeführten Investmentanteile, soweit sie

7. covered debt securities not valued like fixed assets as defined in Article 129 of Regulation (EU) No. 575/2013, including covered debt securities transferred to the institution as a transferee or borrower under repurchase transactions or lending transactions, and
8. in the amount of 90 per cent of the respective redemption price, units, not treated as fixed assets, in domestic contractual UCITS investment funds, domestic contractual special funds whose fund rules provide for investment policies and limits which correspond to those of domestic UCITS, and EU UCITS to the extent their redemption and liquidation rules correspond to those of mutual contractual investment funds; the fund rules of the funds must ensure that unit holders can redeem their units on each exchange day and redemption may not be refused in deviation from § 98 paragraph 2 of the Capital Investment Code.

(2) Notwithstanding paragraph 3, the following liquid assets shall be attributed to the maturity bands 1 to 4 according to their residual maturities:

1. claims on central banks,
2. claims on credit institutions,
3. claims on clients,
4. bills of exchange eligible for refinancing with central banks which are not already covered by number 2 or 3,
5. asset claims of the lending institution to the return of the securities lent,
6. debt securities other than those covered by paragraph 1 and other fixed-interest securities including fixed-interest securities which have been transferred to the institution as a transferee or borrower under repurchase or lending transactions,
7. asset claims of the transferor to the return of securities within the framework of genuine repurchase transactions,
8. money claims of the transferee from sales with an option to repurchase in the amount to be repaid which was agreed, if that the current market value of the securities transferred is lower than the agreed amount, and
9. indemnification claims on the public sector (especially the Currency Conversion Indemnification Fund), including debt securities arising from their exchange, to the extent they are not covered by paragraph 1 no. 5.

to the extent the respective residual maturities on the reporting date do not exceed one year.

(3) The following shall not be liquid assets within the meaning of paragraphs 1 and 2:

1. receivables and bills of exchange for which individual value adjustments have been made, if they are currently defaulted,
2. participations and interests in affiliated undertakings,
3. repurchased bonds issued by the institution itself, which do not meet the requirements pursuant to Article 129 of Regulation (EU) No. 575/2013,
4. for the transferor or lender, securities transferred in the framework of repurchase or lending transactions during the duration of the transaction,
5. securities pledged as collateral which cannot be disposed of during the time they are being pledged, unless they are pledged to a central bank of the European System of Central Banks, and
6. units in investment funds other than those referred to in paragraph 1 no. 8,

nicht von Absatz 1 Nr. 5 als Zahlungsmittel erfasst sind.

§ 4 Zahlungsverpflichtungen

(1) Als Zahlungsverpflichtungen sind im Laufzeitband 1 zu erfassen

1. 40 Prozent der täglich fälligen Verbindlichkeiten gegenüber Kreditinstituten,
2. 10 Prozent der täglich fälligen Verbindlichkeiten gegenüber Kunden,
3. 10 Prozent der Spareinlagen im Sinne von § 21 Abs. 4 der Kreditinstituts-Rechnungslegungsverordnung,
4. 5 Prozent der Eventualverbindlichkeiten aus weitergegebenen Wechseln,
5. 5 Prozent der Eventualverbindlichkeiten aus übernommenen Bürgschafts- oder Gewährleistungsverpflichtungen,
6. 5 Prozent des Haftungsbetrags aus der Bestellung von Sicherheiten für fremde Verbindlichkeiten,
7. 20 Prozent der Platzierungs- oder Übernahmeverpflichtungen und
8. 20 Prozent der noch nicht in Anspruch genommenen, unwiderruflich zugesagten Kredite, wenn sie nicht nach Absatz 2 Nr. 12 oder Absatz 3 zu erfassen sind.

(2) Als Zahlungsverpflichtungen sind entsprechend ihren Restlaufzeiten in den Laufzeitbändern 1 bis 4 zu erfassen

1. Verbindlichkeiten gegenüber einer Zentralnotenbank,
2. Verbindlichkeiten gegenüber Kreditinstituten,
3. (weggefallen)
4. Verbindlichkeiten gegenüber Kunden, soweit sie nicht unter Nummer 12 fallen,
5. Sachverbindlichkeiten des entleihenden Instituts zur Rückgabe entliehener Wertpapiere,
6. Sachverbindlichkeiten des Pensionsnehmers aus der Rückgabepflicht von Wertpapieren im Rahmen von echten Wertpapierpensionsgeschäften,

to the extent they are not liquid assets pursuant to paragraph 1 no. 5.

§ 4 Payment obligations

(1) The following shall be payment obligations assigned to maturity band 1

1. 40 per cent of the liabilities to credit institutions due on demand,
2. 10 per cent of the liabilities to clients due on demand,
3. 10 per cent of the savings deposits as referred to in § 21 paragraph 4 of the Ordinance on the Accounting of Institutions,
4. 5 per cent of the contingent liabilities from rediscounted bills of exchange,
5. 5 per cent of the contingent liabilities from guarantees or warrantees provided,
6. 5 per cent of the liability amount from pledging collateral for liabilities of third parties,
7. 20 per cent of the placement or underwriting obligation, and
8. 20 per cent of not yet drawn but irrevocably committed credits, if not to be considered under paragraph 2 number 12 or paragraph 3.

(2) The following shall be considered as payment obligations assigned to the maturity bands 1 to 4, according to their residual maturity:

1. liabilities to a central bank,
2. liabilities to credit institutions,
3. (repealed)
4. liabilities to clients, to the extent not covered by number 12,
5. non-cash liabilities of a lending institution to return borrowed securities,
6. non-cash liabilities of the transferee from the securities repurchase obligation from securities repurchase agreements,

7. Geldverbindlichkeiten des Pensionsgebers aus unechten Pensionsgeschäften in Höhe des vereinbarten Rückzahlungsbetrags, wenn der aktuelle Marktwert der übertragenen Wertpapiere unter diesem liegt,
8. verbriefte Verbindlichkeiten,
9. nachrangige Verbindlichkeiten,
10. Genussrechtskapital,
11. sonstige Verbindlichkeiten und
12. 20 Prozent des nicht in Anspruch genommenen Teils von Verbriefungs-Liquiditätsfazilitäten im Sinne des Artikels 255 Absatz 1 der Verordnung (EU) Nr. 575/2013, die nicht jederzeit fristlos und bedingungslos vom Institut gekündigt werden können, wenn eine Inanspruchnahme zwischen den Refinanzierungsterminen für die Verbriefungstransaktion ausgeschlossen ist,

wenn die jeweiligen Restlaufzeiten zum Meldestichtag ein Jahr nicht übersteigen.

(3) Die während der auf den Meldestichtag folgenden zwölf Monate erwarteten Inanspruchnahmen unwiderruflich zugesagter Investitionskredite und grundpfandrechtlich gesicherter Darlehen, die nach Baufortschritt ausgezahlt werden, sind zu erfassen in Höhe von

1. 12 Prozent im Laufzeitband 1,
2. 16 Prozent im Laufzeitband 2,
3. 24 Prozent im Laufzeitband 3 und
4. 48 Prozent im Laufzeitband 4.

§ 5 Wertpapierpensions- und Wertpapierleihgeschäfte

(1) Im Rahmen echter Pensionsgeschäfte verpensionierte Wertpapiere sind dem Bestand des Pensionsnehmers zuzurechnen, der eine daraus resultierende Sachverbindlichkeit zur Rückgabe der Papiere zu berücksichtigen hat. Der Pensionsnehmer hat in Höhe des vereinbarten Rückzahlungsbetrags eine Geldforderung gegenüber dem Pensionsgeber anzurechnen. Der Pensionsgeber hat anstelle der Wert-

7. cash liabilities of the transferor from reverse repurchase transactions in the amount of the agreed repayment, where the actual market value of the transferred securities is below the agreed repayment,
8. securitised liabilities,
9. subordinate liabilities,
10. participation right capital,
11. other liabilities, and
12. 20 per cent of the uncalled part of securitisation liquidity facilities in the meaning of Article 255 paragraph 1 of Regulation (EU) No 575/2013 which cannot be terminated unconditionally and without notice by the institution at any time, if a claim between the refinancing dates for the securitisation transaction is excluded,

provided that the respective residual maturities do not exceed one year at the reporting date.

(3) The claims, which are expected to take place during the twelve months following the reporting date, on irrevocably committed investment credits and loans secured by real estate lien which are paid out according to construction progress, shall be considered in the following amount

1. 12 per cent in maturity band 1,
2. 16 per cent in maturity band 2,
3. 24 per cent in maturity band 3, and
4. 48 per cent in maturity band 4.

§ 5 Repurchase agreements and securities lending transactions

(1) Securities transferred by way of repurchase transactions shall be assigned to the portfolio of the transferee, who has to take into account a non-cash liability to return the securities arising therefrom. The transferee has to take into account a cash claim on the transferor in the amount of the agreed repayment amount. Instead of the securities, the transferor has to account for a non-cash claim to return

papiere eine Sachforderung auf Rückgabe der Papiere zu erfassen. Er hat eine Geldverbindlichkeit in Höhe des vereinbarten Rückzahlungsbetrags gegenüber dem Pensionsnehmer zu berücksichtigen.

(2) Im Rahmen unechter Pensionsgeschäfte vom Pensionsnehmer erworbene Wertpapiere sind vom Bestand des Pensionsgebers abzusetzen, der an deren Stelle die vom Pensionsnehmer erhaltenen Geldmittel anrechnet. Der Pensionsnehmer hat die Wertpapiere anstelle der abgeflossenen Geldmittel seinem Bestand zuzurechnen. Liegt der Marktkurs der verpensionierten Wertpapiere unter dem vereinbarten Rückzahlungsbetrag,

1. sind die verpensionierten Wertpapiere wieder dem Bestand des Pensionsgebers zuzurechnen, der in Höhe des vereinbarten Rückzahlungsbetrags eine Geldverbindlichkeit gegenüber dem Pensionsnehmer zu berücksichtigen hat, und
2. ist eine Geldforderung gegenüber dem Pensionsgeber in Höhe des vereinbarten Rückzahlungsbetrags beim Pensionsnehmer anzurechnen, der die Wertpapiere vom Bestand abzusetzen hat.

(3) Im Rahmen von Leihgeschäften übertragene Wertpapiere sind vom Bestand des Verleihers abzusetzen und dem Entleiher zuzurechnen. Der Entleiher hat eine Sachverbindlichkeit zur Rückgabe der Papiere zu berücksichtigen, der eine Sachforderung beim Verleiher in entsprechender Höhe gegenübersteht.

§ 6 Bemessungsgrundlage

(1) Bemessungsgrundlage sind bei

1. Zahlungsmitteln nach § 3 Abs. 1 Nr. 5 und 7 die Marktkurse der zugrunde liegenden Wertpapiere bei geschäftstäglicher Marktbewertung,
2. Zahlungsmitteln nach § 3 Abs. 1 Nr. 6 die nach den entsprechenden Bewertungsgrundsätzen der jeweiligen Zentralnotenbank ermittelten Werte der zugrunde liegenden Vermögensgegenstände abzüglich dem von der jeweiligen Zentralnotenbank vorgesehenen Bewertungsabschlag,

the securities. He has to take into account a cash liability in the amount of the agreed repayment vis-à-vis the transferee.

(2) Securities acquired by way of reverse repurchase transactions by the transferee are to be deducted from the transferor's portfolio who, instead of them, accounts for the monies received from the transferee. The transferee has to include the securities in his portfolio, instead of the funds flown out. If the market price of the transferred securities is below the agreed repurchase amount,

1. the transferred securities shall again be attributed to the transferors portfolio, who has to take into account a cash liability to the transferee in the amount of the agreed repurchase amount, and
2. a cash claim on the transferor in the amount of the agreed repayment shall be accounted for by the transferee, who has to deduct the securities from his portfolio.

(3) Securities transferred by way of lending transactions shall be deducted from the lender's portfolio and assigned to the borrower. The borrower shall take into account a non-cash liability to return the securities, which is matched by a non-cash claim from the lender in the corresponding amount.

§ 6 Assessment basis

(1) The assessment basis shall be the following

1. in case of liquid assets pursuant to § 3 para. 1 no. 5 and 7, the market prices of the underlying securities according to daily market valuation,
2. in case of liquid assets pursuant to § 3 para. 1 no. 6, the values of the underlying assets determined in accordance with the corresponding valuation principles of the respective central bank, less the haircut determined by the respective central bank,

3. Zahlungsmitteln nach § 3 Abs. 1 Nr. 8 die Rücknahmepreise,
4. Zahlungsmitteln nach § 3 Abs. 2 Nr. 8 und Zahlungsverpflichtungen nach § 4 Abs. 2 Nr. 7 bis 9 die Rückzahlungsbeträge,
5. Wertpapierposten und wertpapierbezogenen Sachforderungen und Sachverbindlichkeiten im Rahmen von Pensions- und Leihgeschäften die Marktkurse der Wertpapiere bei geschäftstäglicher Marktbewertung,
6. den übrigen Zahlungsmitteln und Zahlungsverpflichtungen die Buchwerte.

Marktkurse sind die am jeweiligen Meldestichtag amtlich festgestellten Kurse oder, falls nicht verfügbar, die vom Institut ermittelten Marktwerte. Werden die Wertpapiere an mehreren Märkten amtlich notiert, so verwendet das Institut Marktkurse nach einer institutsintern festgelegten Methode, die einheitlich und dauerhaft anzuwenden und zu dokumentieren ist. Die Ermittlung der Marktwerte ist vom Institut für den letzten Meldestichtag, die Meldestichtage der vergangenen 24 Monate sowie für den laufenden Meldezeitraum zu dokumentieren und auf Verlangen der Bundesanstalt vorzulegen. Mit Ausnahme der Zahlungsmittel nach Satz 1 Nr. 2 dürfen Schuldverschreibungen und andere festverzinsliche Wertpapiere im Bestand in Höhe von 90 Prozent des Buchwerts und börsennotierte Aktien und andere nicht festverzinsliche Wertpapiere im Bestand in Höhe von 80 Prozent des Buchwerts angesetzt werden, wenn das Institut keine geschäftstägliche Marktbewertung durchführt. Von den Buchwerten der Aktivposten sind Wertberichtigungen für das Länderrisiko, Pauschalwertberichtigungen und Einzelwertberichtigungen abzusetzen, wenn diese die Anrechnung der Aktivposten nach § 3 Abs. 3 Nr. 1 nicht ausschließen.

(2) Ist ein Institut aus meldetechnischen Gründen nicht im Stande, die Wertberichtigungen von den jeweiligen Aktivposten abzuziehen, kann es ein vereinfachtes Verfahren zur Absetzung der Wertberichtigungen anwenden. Bei diesem Verfahren

3. in case of liquid assets pursuant to § 3 para. 1 no. 8., the redemption prices,
4. in case of liquid assets pursuant to § 3 para. 2 no. 8 and liabilities pursuant to § 4 para. 2 no. 7 to 9, the repayment amounts,
5. in case of securities positions and securities-related claims in kind and non-cash liabilities due to repurchase or lending transactions, the market prices or the securities according to daily market valuation,
6. in case of other liquid assets and payment obligations, the book values.

Market prices shall mean the officially fixed prices on the respective reporting date, or, if not available, the market values ascertained by the institution. If the securities are officially quoted on several markets, the institution shall use market prices according to a method internally determined by the institution, which is to be uniformly and permanently applied and documented. The determination of market values has to be documented by the institution for the last reporting date, the reporting dates of the previous 24 months and for the ongoing reporting period and shall be presented to the Bundesanstalt upon request. With the exception of the liquid assets pursuant to sentence 1 no. 2, bonds and other fixed-income securities in the portfolio may be accounted for in the amount of 90 per cent of the book value, and listed shares and other non-fixed-income securities in the portfolio in the amount of 80 per cent of the book value, where the institution does not accomplish a daily market valuation. Value adjustments shall be deducted from the book values of asset items for the country risk, general value adjustments and individual value adjustments, if these do not exclude the recognition of asset items pursuant to § 3 para. 3 no. 1.

(2) Where an institution is unable, due to technical reasons, to deduct the value adjustments from the respective asset items, it may use a simplified approach to deduct value adjustments. Corresponding to the proportion of assignable liquidity

sind, entsprechend dem Anteil der anrechenbaren Liquiditätsposten an der Gesamtsumme sämtlicher Aktiva, auf die sich die Wertberichtigungen beziehen, die insgesamt gebildeten Wertberichtigungen von den Zahlungsmitteln

a) des Laufzeitbandes 1 (Standardverfahren) oder

b) aus allen Laufzeitbändern (alternatives Verfahren)

abzusetzen. Entscheidet sich ein Institut für das alternative Verfahren, hat es beim Abzug der Wertberichtigungen die den Zahlungsmitteln zugrunde liegende Laufzeitstruktur zu berücksichtigen. Einzelwertberichtigungen, die eine Nichtanrechnung der betreffenden Forderungen und Wechsel bewirken, dürfen unberücksichtigt bleiben. Institute, die beabsichtigen, das vereinfachte Verfahren in Anspruch zu nehmen, müssen dies der Bundesanstalt und der Deutschen Bundesbank vor erstmaliger Anwendung anzeigen. In der Anzeige ist anzugeben, auf welche Wertberichtigungen das Verfahren angewandt wird und welche Aktiva einbezogen werden. Die Bundesanstalt kann die Anwendung des vereinfachten Verfahrens untersagen, wenn begründete Zweifel bestehen, dass die aus Wertberichtigungen resultierenden liquiditätseinschränkenden Effekte nicht ausreichend abgebildet werden.

(3) Eine auf eine fremde Währung lautende Position ist zu dem Referenzkurs, der von der Europäischen Zentralbank am Meldestichtag festgestellt und von der Deutschen Bundesbank veröffentlicht worden ist (Euro-Referenzkurs), in Euro umzurechnen. Bei der Umrechnung von Währungen, für die kein Euro-Referenzkurs veröffentlicht wird, sind die Mittelkurse aus feststellbaren An- und Verkaufskursen des Stichtages zugrunde zu legen.

(4) Institute dürfen abweichend von Absatz 3 intern verwendete Fremdwährungsumrechnungskurse aus eigenen Risikomodellen, die für aufsichtliche Zwecke zugelassen sind, weiterhin berücksichtigen, wenn sie diese bereits vor dem

items of the total amount of all assets to which the value adjustments relate, in this approach, the total of the value adjustments made shall be deducted from the liquid assets

a) of maturity band 1 (standard approach), or

b) of all maturity bands (alternative approach)

If an institution opts for the alternative approach, it must take into account the maturity structure of the liquid assets when deducting the value adjustments. Individual value adjustments which result in non-imputing the claims and bills of exchange concerned, can remain unconsidered. Institutions intending to use the simplified approach must notify the Bundesanstalt and Deutsche Bundesbank of this prior to the first application. In that notification, it must be disclosed for which value adjustments the approach is to be used and which assets are to be included. The Bundesanstalt may prohibit the use of the simplified approach if reasonable doubts exist that the liquidity-restraining effects resulting from value adjustments are not sufficiently represented.

(3) A position denominated in a foreign currency shall be converted into euros at the reference exchange rate determined by the European Central Bank at the reporting date and published by Deutsche Bundesbank (Euro reference exchange rate). In converting currencies for which no Euro reference exchange rate is published, the middle exchange rate of the determinable offer and bid prices at the reference date must be taken as a basis.

(4) Institution may, in derogation from paragraph 3, continue to take into account internally used foreign currency conversion rates from own risk models which were approved for prudential purposes, provided that these models were al-

1. Januar 2014 konsistent berücksichtigt haben.

§ 7 Restlaufzeiten

Als Restlaufzeit gilt

1. der Zeitraum zwischen dem jeweiligen Meldestichtag und dem Fälligkeitstag der jeweiligen Zahlungsmittel und Zahlungsverpflichtungen vorbehaltlich der Nummern 2 bis 6,
2. die jeweilige Kündigungsfrist bei ungekündigten Kündigungsgeldern, wobei eine Kündigungssperrfrist hinzuzurechnen ist,
3. der Zeitraum zwischen dem jeweiligen Meldestichtag und der Fälligkeit des Teilbetrags bei Forderungen und Verbindlichkeiten, die regelmäßig in Teilbeträgen zu tilgen sind, ungeachtet dessen, ob die Teilbeträge einen Zinsanteil enthalten oder nicht,
4. die verbleibende Geschäftsdauer bei Sachforderungen aus echten Pensions- und Leihgeschäften mit Wertpapieren im Sinne des § 3 Abs. 1 sowie bei daraus resultierenden Sachverbindlichkeiten und Wertpapierposten des Pensionsgebers aus unechten Pensionsgeschäften,
5. die verbleibende Geschäftsdauer zuzüglich der am Ende des Geschäfts geltenden Restlaufzeiten der Wertpapiere bei Sachforderungen aus echten Pensions- und Leihgeschäften mit anderen als den unter Nummer 4 genannten Wertpapieren und bei daraus resultierenden Sachverbindlichkeiten und Wertpapierposten des Pensionsgebers aus unechten Pensionsgeschäften und
6. die verbleibende Geschäftsdauer bei Geldforderungen und Geldverbindlichkeiten aus echten und unechten Pensionsgeschäften.

Vorzeitige Kündigungsmöglichkeiten sind bei Verbindlichkeiten zu berücksichtigen. Sie sind bei Forderungen und Wertpapieren im Bestand unberücksichtigt zu lassen. Bei Forderungen und Verbindlichkeiten,

ready consistently taken int account prior to 1 January 2014.

§ 7 Residual maturities

The following shall be deemed the residual maturity:

1. the period of time between the respective reporting date and the maturity date of the liquid assets and payment obligations, respectively, without prejudice to numbers 2 to 6,
2. the respective period of notice in case of uncancelled deposits at notice, in doing so, a cancellation lockout period shall be added,
3. the period of time between the respective reporting date and the maturity of a partial amount in the case of receivables and liabilities which have to be regularly paid off in partial amounts, irrespective of whether the partial amounts include an interest part or not,
4. the remaining transaction period in the case of non-cash receivables from repurchase und lending transactions in securities in the meaning of § 3 para. 1, and in the case of resulting non-cash liabilities and securities positions of the transferor from reverse repurchase transactions,
5. in the case of non-cash receivables from repurchase and lending transactions with securities other than those mentioned in number 4, and in the case of resulting non-cash liabilities and securities positions of the transferee from reverse repurchase transactions, the remaining transaction period plus the residual maturity of the securities applicable at the end of the transaction, and
6. in the case of cash receivables and cash liabilities from repurchase and reverse repurchase transactions, the remaining transaction period.

Early termination options shall be treated as liabilities. They shall remain unconsidered in the case of receivables and securities in the portfolio. In the case of receivables and liabilities which are regularly

die regelmäßig in Teilbeträgen getilgt werden, sind die Rückzahlungsbeträge in Höhe der jeweiligen Teilbeträge in die betreffenden Laufzeitbänder einzustellen. Tagesgelder und Gelder mit täglicher Kündigung gelten nicht als täglich fällig. Sie werden wie Festgelder mit eintägiger Laufzeit behandelt.

§ 8 (weggefallen)

§ 9 (weggefallen)

§ 10 Verwendung von institutseigenen Liquiditätsrisikomess- und -steuerungsverfahren

(1) Zur Beurteilung der ausreichenden Liquidität darf das Institut nach dauerhafter Wahl mit Zustimmung der Bundesanstalt anstelle der §§ 2 bis 7 ein eigenes Liquiditätsrisikomess- und -steuerungsverfahren verwenden, wenn die Voraussetzungen nach Absatz 3 erfüllt werden und die Bundesanstalt dessen Eignung für die Zwecke dieser Verordnung auf Antrag des Instituts schriftlich bestätigt hat. Die Bundesanstalt kann ihre Zustimmung an Nebenbestimmungen, insbesondere Auflagen, knüpfen und eine bereits erteilte Zustimmung widerrufen, wenn das Institut die Voraussetzungen nach Absatz 3 nicht mehr erfüllt.

(2) Die Eignung eines institutseigenen Liquiditätsrisikomess- und -steuerungsverfahrens wird auf der Grundlage einer von der Bundesanstalt in Zusammenarbeit mit der Deutschen Bundesbank durchgeführten Prüfung nach § 44 Abs. 1 Satz 2 des Kreditwesengesetzes beurteilt und nach erteilter Eignungsbestätigung durch Nachschauprüfungen überprüft. Wesentliche Änderungen des Liquiditätsrisikomess- und -steuerungsverfahrens bedürfen einer erneuten Eignungsbestätigung nach Absatz 1.

(3) Das Institut hat insbesondere die folgenden Voraussetzungen für die Verwendung eines eigenen Liquiditätsrisikomess- und -steuerungsverfahrens zu erfüllen:

1. Das Liquiditätsrisikomess- und -steuerungsverfahren gewährleistet unter Berücksichtigung der besonderen institutsspezifischen Verhältnisse, der Art und Komplexität der betriebenen Geschäfte und der Größe des Instituts eine adäquate laufende Ermittlung und Überwachung des Liquiditätsrisikos und stellt die Liquiditätslage eingehender und angemessener dar, als bei Anwendung der §§ 2 bis 7. Insbesondere soll das Liquiditätsrisikomess- und -steuerungsverfahren dabei auch Aufschluss über zu erwartende kurzfristige Nettomittelabflüsse, die Möglichkeit zur Aufnahme unbesicherter Finanzierungsmittel sowie die Auswirkung von Stressszenarien ermöglichen. Das Institut überprüft regelmäßig die Einhaltung der Voraussetzungen nach Satz 1.
2. Das Institut hat auf der Grundlage des Liquiditätsrisikomess- und -steuerungsverfahrens geeignete, quantitativ zu bemessende Obergrenzen für Liquiditätsrisiken, auch unter Berücksichtigung von Stressszenarien, eingerichtet (Limite), die es regelmäßig überprüft. Dazu identifiziert das Institut Kenngrößen aus seinem Liquiditätsrisikomessverfahren, die für eine aggregierte Darstellung des Risikos einer nicht ausreichenden Liquidität des Instituts besonders geeignet sind, und dokumentiert, bei welchem Niveau dieser Größen es sich einem nennenswerten, mittleren und hohen Risiko einer nicht ausreichenden Liquidität ausgesetzt sieht, sowie welche Maßnahmen es an das Erreichen eines der benannten Niveaus durch eine der Kenngrößen knüpft.
3. Das Institut zeigt der Deutschen Bundesbank und der Bundesanstalt schriftlich unverzüglich an, wenn eine der Kenngrößen nach Nummer 2 das Niveau für ein mittleres oder hohes Risiko einer nicht ausreichenden Liquidität überschreitet und berichtet über die Maßnahmen, die es zur Beseitigung der Gefährdung getroffen hat und zu treffen beabsichtigt. Die Pflicht zur Meldung der Kennzahlen nach § 11 bleibt unberührt.

paid off in partial amounts, the repayment amounts shall be assigned to the relevant maturity bands, respectively, in the amount of the respective partial amounts. Overnight money and monies with daily termination shall be deemed as not due on demand. They shall be treated like fixed-term deposits with a maturity of one day.

§ 8 (repealed)

§ 9 (repealed)

§ 10 Use of internal liquidity risk measurement and management procedures

(1) For assessing sufficient liquidity, an institution may, according to a permanent decision, use an internal liquidity risk measurement and management procedures instead of §§ 2 to 8 with the Bundesanstalt's approval, provided that the requirements pursuant to paragraph 3 are met and the Bundesanstalt confirms the suitability for the purposes of this Regulation in writing upon the institution's application. The Bundesanstalt may connect its approval with ancillary provisions, in particular conditions, and may revoke a once granted approval if the institution no longer complies with the requirements set out in paragraph 3.

(2) The suitability of an internal liquidity risk measurement and management process is assessed in the basis of an audit conducted by the Bundesanstalt in cooperation with Deutsche Bundesbank pursuant to § 44 para. 1 sentence 2 of the Banking Act, and, subsequent to the suitability being approved, reviewed by way of follow-up audits. Material changes to the liquidity risk measurement and management process require a new suitability approval pursuant to paragraph 1.

(3) In particular, the institution has to meet the following requirements for the use of an internal liquidity risk measurement and management procedure:

1. The liquidity risk measurement and management process ensures, taking into account the particular institution-specific circumstances, the type and complexity of the business conducted and the size of the institution, an adequate ongoing determination and monitoring of liquidity risk and depicts the liquidity situation in a more detailed and appropriate way than under the application of §§ 2 to 8. In doing this, the liquidity risk measurement and management process shall particularly enable to show expectable short-term net liquidity outflows, the possibility to raise unsecured funds and the analysis of the effects of stress scenarios. The institutions shall regularly review the compliance with the requirements under sentence 1.
2. The institution has established suitable quantitatively defined limits for liquidity risk (limits) on the basis of the liquidity risk measurement and management procedure, also taking into account stress scenarios, which it regularly reassesses. For doing this, the institution identifies parameters from its liquidity risk measurement procedure which are particularly suitable for an aggregated presentation of the risk of insufficient liquidity of the institution, and documents at which of these parameter levels it is exposed to a material, medium or high risk of insufficient liquidity, as well as which measures it connects to the reaching of one on the known levels by one of the parameters.
3. The institution notifies to Deutsche Bundesbank and the Bundesanstalt without undue delay in writing if one of the parameters pursuant to number 2 exceeds the level for a medium or high risk of insufficient liquidity and reports on measures it has taken and intends to take to remedy the threat. The obligation to report the parameters pursuant to § 11 remains unaffected.

4. Das Liquiditätsrisikomess- und -steuerungsverfahren und das interne Limitsystem werden für das interne Liquiditätsrisikomanagement und in der Unternehmenssteuerung des Instituts verwendet.

(4) Ein Institut mit Sitz im Inland, das nachgeordnetes Unternehmen einer Institutsgruppe oder einer Finanzholding-Gruppe ist und die Voraussetzungen nach § 2a Absatz 5 des Kreditwesengesetzes erfüllt, oder das übergeordnetes Unternehmen ist und die Voraussetzungen nach § 2a Absatz 5 des Kreditwesengesetzes erfüllt, darf nach dauerhafter Wahl mit Zustimmung der Bundesanstalt von der Anwendung der §§ 2 bis 7 absehen, wenn die Institutsgruppe oder die Finanzholding-Gruppe, der das Institut angehört, ein eigenes Liquiditätsrisikomess- und -steuerungsverfahren verwendet und die Bundesanstalt dessen Eignung schriftlich bestätigt hat. Die Absätze 1 bis 3 gelten entsprechend.

§ 11 Meldungen der Kennzahlen

(1) Die Institute haben der Deutschen Bundesbank zu den Anforderungen nach § 2 nach dem Stand zum Meldestichtag Ende des Monats Meldungen mit den Vordrucken nach Anlage 2 und 3 jeweils bis zum 15. Geschäftstag des auf den Meldestichtag folgenden Monats einzureichen. Auf Antrag des Instituts kann die Bundesanstalt eine Fristverlängerung bewilligen. Für Bürgschaftsbanken und Kreditgarantiegemeinschaften gilt Satz 1 mit der Maßgabe, dass die Meldungen nur zweimal jährlich nach dem Stand zum Meldestichtag Ende Mai und Ende November jeweils bis zum 15. Geschäftstag des auf den Meldestichtag folgenden Monats einzureichen sind.

(2) Macht ein Institut von der Möglichkeit der Verwendung eines eigenen Liquiditätsrisikomess- und -steuerungsverfahrens nach § 10 Gebrauch, legt die Bundesanstalt abweichend von Absatz 1 im Einzelfall Inhalt und Form der monatlichen Meldeanforderungen in ihrer

4. The liquidity risk measurement and management process and the internal limit system shall be used for the internal liquidity risk management and for the business management of the institution.

(4) An institution domiciled in Germany which is a subordinated undertaking of a group of institutions or a financial holding group and meets the requirements of § 2a paragraph 5 of the Banking Act, or which is a parent undertaking and meets the requirements of § 2a paragraph 5 of the Banking Act, may, subject to a permanent decision, refrain from the application of §§ 2 to 8 with the Bundesanstalt's consent, provided that the group of institutions or financial holding group which the institution is a part of uses an internal liquidity risk measurement and management process and the Bundesanstalt has approved its suitability in writing. Paragraphs 1 to 3 apply accordingly.

§ 11 Reporting of ratios

(1) Institutions have to submit reports to Deutsche Bundesbank on concerning the requirements under § 2 as to the status on the reporting date at the end of the month, using the forms pursuant to Annex 2 and 3, until the 15th business day of the month following the reporting date, respectively. Upon the institution's application, the Bundesanstalt may grant an extended deadline. For guarantee banks and credit guarantee associations, sentence 1 applies subject to the proviso that the reports must only be submitted twice a year as to the status on the reporting date at the end of May and at the end of November, until the 15th business day of the month following the reporting date, respectively.

(2) If an institution makes use of the possibility to use an internal liquidity risk measurement and management process pursuant to § 10, The Bundesanstalt shall individually determine, in derogation from paragraph 1, content and form of the monthly reporting requirements in its

schriftlichen Eignungsbestätigung für das jeweilige Liquiditätsrisikomess- und steuerungsverfahren nach § 10 fest.

(3) Die Meldungen nach den Absätzen 1 und 2 sind im papierlosen Verfahren einzureichen. Die Deutsche Bundesbank veröffentlicht im Internet die für eine elektronische Dateneinreichung nach Absatz 1 zu verwendenden Satzformate und den Einreichungsweg. Sie leitet die Meldungen an die Bundesanstalt weiter. Institute haben die Meldungen nach Anlage 2 und 3 für das laufende Kalenderjahr und die zwei vorangegangenen Kalenderjahre aufzubewahren.

§ 12 (weggefallen)

§ 13 Inkrafttreten

Diese Verordnung tritt am 1. Januar 2007 in Kraft.

written suitability confirmation for the respective liquidity risk measurement and management process pursuant to § 10.

(3) The reports pursuant to paragraphs 1 and 2 shall be submitted by paperless filing. Deutsche Bundesbank publishes in the internet the formats and submission methods to be used for electronic data submission pursuant to paragraph 1. It forwards the reports to the Bundesanstalt. Institutions must retain the reports pursuant to Annex 2 and 3 for the current calendar year and the two preceding calendar years.

§ 12 (repealed)

§ 13 Entry into force

This Regulation enters into force on 1 January 2007.

German Ordinance specifying the rules of conduct and organizational requirements for investment services companies and German Commercial Code (Convenience Translation)	
§ 6 Verordnung zur Konkretisierung der Verhaltensregeln und Organisationsanforderungen für Wertpapierdienstleistungsunternehmen (Wertpapierdienstleistungs-Verhaltens- und -Organisationsverordnung - WpDVerOV)	**Section 6 of the German Ordinance specifying the rules of conduct and organizational requirements for investment services companies (*Wertpapierdienstleistungs-Verhaltens- und -Organisationsverordnung* - WpDVerOV)**
(1) Als geringfügige nichtmonetäre Vorteile im Sinne des § 64 Absatz 7 des Wertpapierhandelsgesetzes kommen, sofern sie die in § 64 Absatz 7 Satz 2 Nummer 1 und 2 des Wertpapierhandelsgesetzes genannten Voraussetzungen erfüllen, insbesondere in Betracht:	(1) Considered to be minor non-monetary inducements in the meaning of Section 64(7) of the German Securities Trading Act, insofar as they fulfill the conditions referred to in Section 64(7) sentence 2 number 1 and 2 of the German Securities Trading Act, are in particular:
1. Informationen oder Dokumentationen zu einem Finanzinstrument oder einer Wertpapierdienstleistung, sofern sie allgemein angelegt oder individuell auf die Situation eines bestimmten Kunden abgestimmt sind;	1. Information or documentation regarding a financial instrument or an investment service, insofar as they are of a general nature or individually tailored to the situation of a specific client;
2. von einem Dritten erstellte schriftliche Materialien, die von einem Emittenten oder potenziellen Emittenten aus dem Unternehmenssektor in Auftrag gegeben und vergütet werden, um eine Neuemission des betreffenden Emittenten zu bewerben, oder bei dem der Dritte vom Emittenten oder potentiellen Emittenten vertraglich dazu verpflichtet ist und dafür vergütet wird, derartiges Material fortlaufend zu erstellen, sofern	2. Materials prepared by a third party requisitioned and compensated by an issuer or potential issuer from the corporate sector in order to advertise a new emission by the issuer concerned, or in which the third party is contractually required to do so by the issuer or potential issuer and is compensated for preparing such material on an ongoing basis, insofar as
a) die Beziehung zwischen dem Dritten und dem Emittenten in dem betreffenden Material unmissverständlich offengelegt wird und	a) the relationship between the third party and the issuer is clearly disclosed in the material concerned and
b) das Material gleichzeitig allen Wertpapierdienstleistungsunternehmen, die daran interessiert sind, oder dem Publikum zur Verfügung gestellt wird;	b) the material is simultaneously provided to all investment services enterprises interested therein, or to the public;
3. die Teilnahme an Konferenzen, Seminaren und anderen Bildungsveranstaltungen, die zu den Vorteilen und Merkmalen eines bestimmten Finanzinstruments oder einer bestimmten Wertpapierdienstleistung abgehalten werden;	3. the participation in conferences, seminars and other educational events held on the benefits and features of a particular financial instrument or a particular investment service;
4. Bewirtungen, deren Wert eine vertretbare Geringfügigkeitsschwelle nicht überschreitet.	4. hospitality, the value of which does not exceed a reasonable threshold of qualifying as minor.

(2) Eine Zuwendung ist darauf ausgelegt, die Qualität der Dienstleistung für den Kunden im Sinne des § 70 Absatz 1 Satz 1 Nummer 1 des Wertpapierhandelsgesetzes zu verbessern, wenn	(2) An inducement is designed to enhance the quality of the service for the client in the meaning of Section 70(1) sentence 1 number 1 of the German Securities Trading Act, if
1. sie durch die Erbringung einer zusätzlichen oder höherwertigen Dienstleistung für den jeweiligen Kunden gerechtfertigt ist, die in angemessenem Verhältnis zum Umfang der erhaltenen Zuwendung steht, wie beispielsweise	1. rendering an additional or higher-quality service commensurate with the amount of the inducement received warrants it for the respective client, for example,
a) die Erbringung einer Anlageberatung, bei der es sich nicht um eine Unabhängige Honorar-Anlageberatung handelt, auf Basis einer breiten Palette geeigneter Finanzinstrumente und unter Zugang zu einer solchen, einschließlich einer angemessenen Zahl von Instrumenten, die von Anbietern oder Emittenten stammen, die in keiner engen Verbindung zum Wertpapierdienst-leistungsunternehmen stehen,	a) providing investment advice that does not entail independent fee-based investment advice, on the basis of a wide range of financial instruments and access to it, including an appropriate number of instruments originating from offerers or issuers, who do not have a close relationship to the investment services enterprise
b) die Erbringung einer Anlageberatung, bei der es sich nicht um eine Unabhängige Honorar-Anlageberatung handelt, in Kombination mit	b) providing independent fee-based investment advice, in combination with
aa) dem Angebot an den Kunden, mindestens einmal jährlich zu beurteilen, ob die Finanzinstrumente, in die der Kunde investiert hat, weiterhin für diesen geeignet sind, oder	aa) the offer to the client, at least once annually to assess whether the financial instruments that the client has invested in continue to be suitable for him, or
bb) einer anderen fortlaufenden Dienstleistung mit wahrscheinlichem Wert für den Kunden, beispielsweise einer Beratung über die optimale Strukturierung des Vermögens des Kunden,	bb) another ongoing service likely to be of value for the client, for example, advice about the optimal structuring of the client's assets,
c) die zu einem wettbewerbsfähigen Preis erfolgende Gewährung von Zugang zu einer breiten Palette von Finanzinstrumenten, die geeignet sind, den Bedürfnissen des Kunden zu entsprechen, darunter eine angemessene Zahl von Instrumenten, die von Anbietern oder Emittenten stammen, die in keiner engen Verbindung zum Wertpapierdienstleistungs-unternehmen stehen, in Kombination mit	c) granting access to a wide range of financial instruments at a competitive price, that suitably reflect the client's needs, including an appropriate number of instruments originating from offerers or issuers who do not have a close relationship to the investment services enterprise, in combination with
aa) der Bereitstellung von Hilfsmitteln, die einen Mehrwert aufweisen, wie etwa objektiven Informationsinstrumenten, die dem betreffenden Kunden bei Anlageentscheidungen helfen oder ihm die Möglichkeit geben, die Palette der Finanzinstrumente, in die er investiert hat, zu beobachten und anzupassen, oder	aa) the provision of resources having an added value, for example objective information instruments to assist the client concerned in making investment decisions or afford him the opportunity to observe or adjust the range of financial instruments, in which he has invested, or

bb) der Übermittlung periodischer Berichte über die Wertentwicklung sowie die Kosten und Gebühren der Finanzinstrumente,	bb) the provision of periodic reports on the development of value and the costs and fees of the financial instruments,
d) das Ermöglichen eines verbesserten Zugangs zu Beratungsdienstleistungen, etwa durch die Bereitstellung eines weitverzweigten Filialberaternetzwerkes, das für den Kunden die Vor-Ort-Verfügbarkeit qualifizierter Anlageberater auch in ländlichen Regionen sicherstellt,	d) facilitating improved access to advisory services, for example, by providing a widespread network of branch offices for the client warranting the local availability of qualified investment advisors, including in rural regions,
2. sie nicht unmittelbar dem annehmenden oder gewährenden Wertpapierdienstleistungs-unternehmen, dessen Gesellschaftern oder Beschäftigten zugutekommt, ohne zugleich einen konkreten Vorteil für den jeweiligen Kunden darzustellen, und	2. it does not directly benefit the accepting or granting investment services enterprise, its shareholders or employees, without concurrently representing a concrete benefit for the respective client, and
3. sie durch die Gewährung eines fortlaufenden Vorteils für den betreffenden Kunden in Relation zu einer laufenden Zuwendung gerechtfertigt ist.	3. it is justified by the granting of an ongoing benefit for the client concerned in relation to an ongoing inducement.
Eine Zuwendung verbessert die Qualität der Dienstleistung für den Kunden nicht, wenn die Dienstleistung dadurch in voreingenommener Weise oder nicht im besten Kundeninteresse erbracht wird. Wertpapierdienstleistungsunternehmen müssen die Vorgaben nach Satz 1 und 2 fortlaufend erfüllen, solange sie die Zuwendung erhalten oder gewähren.	An inducement does not enhance the quality of the service for the client if the service is thereby rendered prejudicially or not in the best interest of the client. Investment services enterprises must meet the requirements under sentence 1 and 2 on an ongoing basis for as long as they receive or grant the inducement.
(3) Zur Erfüllung der Voraussetzungen des § 70 Absatz 1 Satz 2 des Wertpapierhandelsgesetzes müssen Wertpapierdienstleistungsunternehmen	(3) To fulfill the requirements of Section 70(1) sentence 2 of the German Securities Trading Act investment services enterprises must
1. ein internes Verzeichnis aller Zuwendungen führen, die sie im Zusammenhang mit der Erbringung von Wertpapierdienstleistungen oder Wertpapiernebendienstleistungen von einem Dritten erhalten, und	1. Maintain an internal register of all inducements they receive from a third party in connection with rendering securities services or rendering ancillary securities services, and
2. aufzeichnen,	2. record,
a) wie die erhaltenen oder gewährten Zuwendungen, oder Zuwendungen, deren Erhalt oder Gewährung beabsichtigt ist, die Qualität der Dienstleistungen für die betreffenden Kunden verbessern und	a) how the inducements received or granted, or inducements, the receipt or granting of which is intended, enhance the quality of the services for the client concerned, and
b) welche Schritte unternommen wurden, um die Erfüllung der Pflicht des Wertpapierdienstleistungsunternehmens, ehrlich,	b) the steps being taken to avoid impeding the fulfillment of the obligation of the investment services enterprise to act honestly, fairly and

redlich und professionell im bestmöglichen Interesse der Kunden zu handeln, nicht zu beeinträchtigen.	professionally in the best possible interest of the client..
§ 316 HGB (German Commercial Code)	**Section 316 HGB (German Commercial Code)**
(1) Der Jahresabschluß und der Lagebericht von Kapitalgesellschaften, die nicht kleine im Sinne des § 267 Abs. 1 sind, sind durch einen Abschlußprüfer zu prüfen. Hat keine Prüfung stattgefunden, so kann der Jahresabschluß nicht festgestellt werden. (2) Der Konzernabschluß und der Konzernlagebericht von Kapitalgesellschaften sind durch einen Abschlußprüfer zu prüfen. Hat keine Prüfung stattgefunden, so kann der Konzernabschluss nicht gebilligt werden. (3) Werden der Jahresabschluß, der Konzernabschluß, der Lagebericht oder der Konzernlagebericht nach Vorlage des Prüfungsberichts geändert, so hat der Abschlußprüfer diese Unterlagen erneut zu prüfen, soweit es die Änderung erfordert. Über das Ergebnis der Prüfung ist zu berichten; der Bestätigungsvermerk ist entsprechend zu ergänzen. Die Sätze 1 und 2 gelten entsprechend für diejenige Wiedergabe des Jahresabschlusses, des Lageberichts, des Konzernabschlusses und des Konzernlageberichts, welche eine Kapitalgesellschaft, die als Inlandsemittent (§ 2 Absatz 14 des Wertpapierhandelsgesetzes) Wertpapiere (§ 2 Absatz 1 des Wertpapierhandelsgesetzes) begibt und keine Kapitalgesellschaft im Sinne des § 327a ist, für Zwecke der Offenlegung erstellt hat.	(1) The annual financial statements and the annual report of stock corporations, which are not small in the meaning of Section 267(1), shall be audited by an auditor. If no audit has taken place, the annual financial statements cannot be adopted. (2) The consolidated financial statements and the consolidated annual report of stock corporations shall be audited by an auditor. If no audit has taken place, the consolidated financial statements cannot be approved. (3) If the annual financial statements, the consolidated financial statements, the annual report or the consolidated annual report are amended after the submission of the audit report, the auditor must accordingly re-audit these documents to the extent that the amendment requires doing so. The result of the audit shall be reported; the auditor's opinion shall be supplemented accordingly. Sentences 1 and 2 shall apply mutatis mutandis to the reproduction of the annual financial statements, the annual report, the consolidated financial statements and consolidated annual report, which a stock corporations has prepared for disclosure purposes as a German issuer (Section 2(14) of the German Securities Trading Act) that issues securities (Section 2(1) of the German Securities Trading Act) and is not a stock corporation in the meaning of Section 327a.
§ 325 HGB (German Commercial Code)	**Section 325 HGB (German Commercial Code)**
(1) Die Mitglieder des vertretungsberechtigten Organs von Kapitalgesellschaften haben für die Gesellschaft folgende Unterlagen in deutscher Sprache offenzulegen:	(1) The members of the corporate body vested with the powers of representation of stock corporations shall disclose the following documents on behalf of the company in the German language:

1. den festgestellten oder gebilligten Jahresabschluss, den Lagebericht, die Erklärungen nach § 264 Absatz 2 Satz 3 und § 289 Absatz 1 Satz 5 und den Bestätigungsvermerk oder den Vermerk über dessen Versagung sowie	1. the adopted or approved annual financial statements, the annual report, the declarations pursuant to Section 264(2) sentence 3 and Section 289(1) sentence 5 and the auditor's opinion or the opinion on its rejection and
2. den Bericht des Aufsichtsrats und die nach § 161 des Aktiengesetzes vorgeschriebene Erklärung.	2. The supervisory board's report and the declaration required pursuant to Section 161 of the German Stock Corporation Act.
Die Unterlagen sind elektronisch beim Betreiber des Bundesanzeigers in einer Form einzureichen, die ihre Bekanntmachung ermöglicht.	The documents shall be submitted to the operator of the German Federal Gazette (*Bundesanzeiger*) in a form facilitating their publication.
(1a) Die Unterlagen nach Absatz 1 Satz 1 sind spätestens ein Jahr nach dem Abschlussstichtag des Geschäftsjahrs einzureichen, auf das sie sich beziehen. Liegen die Unterlagen nach Absatz 1 Satz 1 Nummer 2 nicht innerhalb der Frist vor, sind sie unverzüglich nach ihrem Vorliegen nach Absatz 1 offenzulegen.	(1a) the documents under paragraph1 sentence 1 shall be submitted at the latest one year after the closing date of the financial year to which they relate. If the documents under paragraph 1 sentence 1 number 2 are not submitted within this deadline, they shall be disclosed promptly after becoming available pursuant to paragraph 1.
(1b) Wird der Jahresabschluss oder der Lagebericht geändert, so ist auch die Änderung nach Absatz 1 Satz 1 offenzulegen. Ist im Jahresabschluss nur der Vorschlag für die Ergebnisverwendung enthalten, ist der Beschluss über die Ergebnisverwendung nach seinem Vorliegen nach Absatz 1 Satz 1 offenzulegen.	(1b) If the annual financial statements or the annual report are amended, the amendment shall be disclosed accordingly pursuant to paragraph 1 sentence 1. If the annual financial statements contain only the proposal for the appropriation of profits, the resolution on the appropriation of profits shall be disclosed after becoming available pursuant to paragraph 1 sentence 1.
(2) Die Mitglieder des vertretungsberechtigten Organs der Kapitalgesellschaft haben für diese die in Absatz 1 bezeichneten Unterlagen jeweils unverzüglich nach der Einreichung im Bundesanzeiger bekannt machen zu lassen.	(2) The members of the body authorized to represent the stock corporation shall have the documents referred to in paragraph 1 published in the German Federal Gazette promptly after their submission.
(2a) Bei der Offenlegung nach Absatz 2 kann an die Stelle des Jahresabschlusses ein Einzelabschluss treten, der nach den in § 315e Absatz 1 bezeichneten internationalen Rechnungslegungsstandards aufgestellt worden ist. Ein Unternehmen, das von diesem Wahlrecht Gebrauch macht, hat die dort genannten Standards vollständig zu befolgen. Auf einen solchen Abschluss sind § 243 Abs. 2, die §§ 244, 245, 257, 264 Absatz 1a, 2 Satz 3, § 285 Nr. 7, 8 Buchstabe b, Nr. 9 bis 11a, 14 bis 17, § 286 Absatz 1 und 3 anzuwenden. Die Verpflichtung, einen Lagebericht offenzulegen, bleibt unberührt; der Lagebericht nach § 289	(2a) For the purposes of disclosure under paragraph 2, the annual financial statements may be replaced by individual financial statements prepared in accordance with the international accounting standards pursuant to Section 315e(1). A company exercising this option shall comply fully with the standards set out therein. Section 243(2), Sections 244, 245, 257, 264(1a), 2 sentence 3, Section 285 No. 7, 8 letter b, No. 9 to 11a, 14 to 17, Section 286(1) and (3) are applicable to such a financial statement. The obligation to disclose an annual report remains unaffected; the annual report pursuant to Section 289 must also refer to the

muss in dem erforderlichen Umfang auch auf den Einzelabschluss nach Satz 1 Bezug nehmen. Die übrigen Vorschriften des Zweiten Unterabschnitts des Ersten Abschnitts und des Ersten Unterabschnitts des Zweiten Abschnitts gelten insoweit nicht. Kann wegen der Anwendung des § 286 Abs. 1 auf den Anhang die in Satz 2 genannte Voraussetzung nicht eingehalten werden, entfällt das Wahlrecht nach Satz 1.	individual financial statements pursuant to sentence 1 to the extent required. The remaining provisions of the second subsection of the Section One and the first subsection of the Section Two shall not apply in this respect. If, due to the application of Section 286(1) to the notes, the requirement referred to in sentence 2 cannot be met, the option under sentence 1 shall not apply.
(2b) Die befreiende Wirkung der Offenlegung des Einzelabschlusses nach Absatz 2a tritt ein, wenn	(2b) The exemption of the disclosure of the individual financial statements under paragraph 2a shall be triggered if
1. statt des vom Abschlussprüfer zum Jahresabschluss erteilten Bestätigungsvermerks oder des Vermerks über dessen Versagung der entsprechende Vermerk zum Abschluss nach Absatz 2a in die Offenlegung nach Absatz 2 einbezogen wird,	1. instead of the auditor's opinion on the annual financial statements or the opinion on its rejection, the corresponding report on the financial statements under paragraph 2a is included in the disclosure under paragraph 2,
2. der Vorschlag für die Verwendung des Ergebnisses und gegebenenfalls der Beschluss über seine Verwendung unter Angabe des Jahresüberschusses oder Jahresfehlbetrags in die Offenlegung nach Absatz 2 einbezogen werden und	2. the proposal for the appropriation of net income and, if applicable, the resolution on its appropriation stating the net income or loss for the year, are included in the disclosure under paragraph 2, and
3. der Jahresabschluss mit dem Bestätigungsvermerk oder dem Vermerk über dessen Versagung nach Absatz 1 und 1a Satz 1 offen gelegt wird.	3. the annual financial statements with the auditor's opinion or the opinion on its rejection under paragraph 1 and 1a sentence 1 are disclosed.
(3) Die Absätze 1 bis 2 und 4 Satz 1 gelten entsprechend für die Mitglieder des vertretungsberechtigten Organs einer Kapitalgesellschaft, die einen Konzernabschluss und einen Konzernlagebericht aufzustellen haben.	(3) Paragraphs 1 to 2 and 4 sentence 1 shall apply *mutatis mutandis* to the members of the representative body of a stock corporation who are required to prepare consolidated financial statements and a consolidated annual report.
(3a) Wird der Konzernabschluss zusammen mit dem Jahresabschluss des Mutterunternehmens oder mit einem von diesem aufgestellten Einzelabschluss nach Absatz 2a bekannt gemacht, können die Vermerke des Abschlussprüfers nach § 322 zu beiden Abschlüssen zusammengefasst werden; in diesem Fall können auch die jeweiligen Prüfungsberichte zusammengefasst werden.	(3a) If the consolidated financial statements are published together with the annual financial statements of the parent company or with individual financial statements prepared by the parent company under paragraph 2a, the auditor's opinions under Section 322 on both sets of financial statements may be combined; in this case, the respective auditor's opinions may also be combined.
(4) Bei einer Kapitalgesellschaft im Sinn des § 264d, die keine Kapitalgesellschaft im Sinn des § 327a ist, beträgt die Frist nach Absatz 1a Satz 1 längstens vier Monate. Für die Wahrung	(4) For a stock corporation in the meaning of Section 264d, which is not a stock corporation in the meaning of Section 327a, the period under paragraph1a sentence 1 shall be at the

der Fristen nach Satz 1 und Absatz 1a Satz 1 ist der Zeitpunkt der Einreichung der Unterlagen maßgebend.	longest four months. The date of the submission of the documents is definitive in respect of compliance with the deadlines pursuant to sentence 1 and paragraph 1a sentence 1.
(5) Auf Gesetz, Gesellschaftsvertrag oder Satzung beruhende Pflichten der Gesellschaft, den Jahresabschluss, den Einzelabschluss nach Absatz 2a, den Lagebericht, den Konzernabschluss oder den Konzernlagebericht in anderer Weise bekannt zu machen, einzureichen oder Personen zugänglich zu machen, bleiben unberührt.	(5) Obligations of the company based on the law, articles of association or by-laws to otherwise publish, submit or make available to persons the annual financial statements, the individual financial statements under paragraph 2a, the annual report, the consolidated financial statements or the consolidated annual report shall remain unaffected.
(6) Die §§ 11 und 12 Abs. 2 gelten für die beim Betreiber des Bundesanzeigers einzureichenden Unterlagen entsprechend; § 325a Absatz 1 Satz 5 und § 340l Absatz 2 Satz 6 bleiben unberührt.	(6) Sections 11 and 12(2) accordingly apply to the documents to be submitted to the German Federal Gazette; Section 325a(1) sentence 5 and Section 340l(2) sentence 6 shall remain unaffected.
Fußnote	Footnote
(+++ § 325:	(+++ Section 325:
Zur Anwendung vgl. Art. 75 Abs. 1 HGBEG +++)	In regard to application cf. Art. 75(1) HGBEG +++)
(+++ § 325 Abs. 1 Satz 1 u. 7, Abs. 2 bis 2b, 5 u. 6:	(+++ Section 325(1) sentence 1 and 7, paragraphs 2 to 2b, 5 and 6:
Zur Anwendung vgl. § 160 Abs. 1 KAGB +++)	In regard to application cf. Section 160(1) KAGB +++)